

Public Contracts Review Board
Notre Dame Ditch
Floriana FRN 1600
Malta



4th November 2021

Dear Sirs,

Tender Ref: WSC/T/39/2021

**SUPPLY AND DELIVERY OF PIPE LOCATORS FOR THE
WATER SERVICES CORPORATION**

List of Annexes

Annex I – Disqualification Letter

Annex II – ISO Certification submitted by Appellants

Reference is being made to the notice of objection filed on the 22nd of October 2021 by Ing. Stephen Buttigieg obo Test and Measurement Instrumentation (T.M.I.) Ltd. (*hereinafter 'the Appellants'*) and to the latter's offer submitted in response to the Call for Tenders in Subject.

The Appellants' offer was deemed to be non-compliant on the following grounds (*vide Annex I*):

ISO Certification submitted does not cover manufacture functions.

The Tender Evaluation Committee (*hereinafter 'TEC'*) thus deemed the Appellants' offer to be non-compliant with the Selection Criteria requirement in terms of Section 1, Clause 5(B)(ii) of the Tender Document:

Only suppliers who have in operation at their manufacturing facilities a quality assurance system in accordance with ISO 9001:2015 or equivalent, with certification for manufacture functions, will be considered.

For this reason, manufacturers are to submit certifications to this regard, from accredited inspectors.

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ISO 14001 applies only to WSC Main

Ta' Kandja P.S. and Pembroke R.O.

The Appellants are contending that the submitted ISO Certification (*vide Annex II*) should be deemed compliant by the Contracting Authority as the phrase “assembly” presented on the same certificate is to be construed to have the same meaning as “**manufacture.**” The Appellants moreover add that according to quality experts from Vivax Metrotech, SGS (UK), the terms “assemble,” “manufacture,” and “produce” are used interchangeably to cover the same process.

Notwithstanding this, one must appreciate that the TEC is bound to evaluate all offers at face value and adjudicate solely on the information provided without making any assumptions, as otherwise, the same TEC would be acting *ultra vires*. It is being underlined that such action could potentially lead to a violation EU Public Procurement law and of the principles of equal treatment of all bidders, self-limitation, and transparency.

Being bound by such restrictions, the TEC could only evaluate the term “assembly” on its own which, in the same TEC’s interpretation, is not the same as “manufacture.” For the TEC, the difference between “manufacture” and “assembly” is that to *manufacture* something is to *produce* things from other materials, usually on a large scale, with tools and either physical labour or machinery, whereas *assembly* is the “putting together” of previously manufactured items or parts.

As clearly laid out under Section 3 of the Tender Document, if a bidder’s offer contains provisions or data which do not match the tender’s requirements to the letter, it is up to the same bidder to prove that such offer is equivalent to the Contracting Authority’s conditions and thus fully compliant thereto;

Where in this tender document a standard is quoted, it is to be understood that the Contracting Authority will accept equivalent standards. However, it will be the responsibility of the respective bidders to prove that the standards they quoted are equivalent to the standards requested by the Contracting Authority.

Given that the Appellants did not provide any documentation together with their offer showing that “assembly” and “manufacture” can be used interchangeably, the TEC felt legally compelled to disqualify the Appellants’ offer.

It is to be noted that this Certification is governed by Note 2. However, a Rectification request regarding this ISO Certificate had already in fact been issued by the TEC as the Appellants had initially failed to upload the same certificate at all. Because of this ‘initial’ Rectification, the TEC could not follow up with a second Rectification request on the same subject as this is strictly prohibited in terms of Guidance Note #2 issued by the Department of Contracts:

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Requests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained. Therefore, it shall not be possible to re-send a Request for Clarification / Rectification to attain the originally requested clarification information and / or to rectify the same specific information/documentation.

The TEC could not, therefore, ask the Appellants to change their submission of the ISO Certificate a second time. A request for Clarification was also deemed to be inapplicable in this case as this risked infringing the abovementioned principles. As specified under the same Guidance Note:

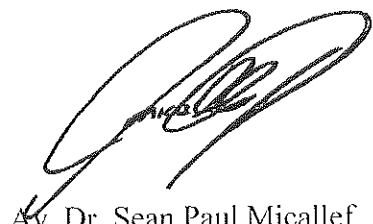
"[I]t is important that the nature of any clarification does not materially change the substance of the requirement or, to that matter, the bidder's submission. If this happens, it would breach the Treaty on the Functioning of the European Union (TFEU) obligation to maintain equality of treatment. It would breach the TFEU obligation if clarifications are sought in order to:

- 1. allow a non-compliant tender to be brought into compliance with the mandatory technical specifications;*
- 2. allow a change in the price quoted in the tender price (except for correction of any arithmetical errors discovered during the tender evaluation)."*

In view of the foregoing, the Contracting Authority reiterates that the offer submitted by the Appellants cannot be deemed to be compliant and that, as a result, their bid must be disqualified.

Referred for deliberation by the Public Contracts Review Board.

Respectfully,



Av. Dr. Sean Paul Micallef
obo Water Services Corporation

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Ta' Kandja P.S. and Pembroke R.O.



Our Ref: WSC 1839/19

12th October 2021

Messrs Test and Measurement Instrumentation Ltd

Dear Sirs

**WSC/T/39/2021 - SUPPLY AND DELIVERY OF PIPE LOACTORS TO THE
WATER SERVICES CORPORATION**

Thank you for participating in the above mentioned tender procedure.

However, I regret to inform you that the tender submitted by your firm was not successful for the following reasons:

- ISO Certification submitted does not cover manufacture functions

For your information the tender is being recommended for award to Reactilab Ltd for the amount of €21,518.00 excluding VAT.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of 22nd October 2021 against a deposit of €400.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

The official schedule can be accessed on the website: www.etenders.gov.mt

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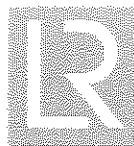


ISO 14001 applies only to WSC Main Office,
Tg' Kandja P.S. and Pembroke R.O. Plant

Although we have not been able to make use of your service on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours faithfully,

Christine Scicluna
Procurement & Stores



Lloyd's
Register

Certificate of Approval

This is to certify that the Management System of:

VIVAX-Metrotech Corporation

3251 Olcott Street, Santa Clara, CA, 95054, United States

has been approved by LRQA to the following standards:

ISO 9001:2015

Chris Koci - Business Director - Certification

Issued by: Lloyd's Register Quality Assurance, Inc.

Current issue date: 1 August 2018

Expiry date: 31 July 2021

Certificate identity number: 10112634

Original approval(s):

ISO 9001 – 11 July 1997

Approval number(s): ISO 9001 – 0011824

The scope of this approval is applicable to:

Design, Assembly and Distribution of Inspection Camera Systems; Design and Distribution of Utility Locators;
and In-House Repair of Inspection Camera Systems and Utility Locators.

