

PUBLIC CONTRACTS REVIEW BOARD

Case No. 954 – CT 2114/2015: Tender for the Supply of 11Kv Heat Shrinkable Material.

The Tender was published on the 2nd October 2015. The closing date was on the 12th November 2015. The estimated value of the Tender is €355,831.53 (Exclusive of VAT).

Five (5) bidders had made offers for this Tender.

On the 15th April 2016 TE Connectivity Solutions GmbH filed an Objection against the decision of the Contracting Authority that found its Tender to be technically non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 12th July 2016 to discuss the Objection.

Present for the hearing were:

TE Connectivity Solutions GmbH:

Mr Marcel Tellus Representative

DSG-Canusa GmbH:

Mr Paul Sheridan Representative
Dr Norman Vella Representative

Enemalta Corporation:

Mr Ivan Bonello Chairperson Evaluation Board
Mr Charles Bugeja Member Evaluation Board
Mr Bernard Farrugia Member Evaluation Board
Dr Julianne Portelli Demajo Legal Representative
Dr Clement Mifsud Bonnici Legal Representative

Department of Contracts:

Dr Christopher Mizzi Legal Representative

The Chairman made a brief introduction and invited the Appellant's representative to make his submissions.

Mr Marcel Tellus, Products Manager, on behalf of TE Connectivity Solutions GmbH stated that an internal document prepared for internal perusal was inadvertently submitted with the Appellant's Tender. The latter has been participating in several Tenders, and has been awarded several previously. Unfortunately the person who prepared the present Tender was not cognizant with the Tendering procedures and inadvertently had included the extra document meant only for internal use.

The Chairman remarked that there were two issues here. The first one being that the Appellant had ample opportunity to either raise any pre-contractual concerns or ask for clarification if doubts on some aspects of the Tender conditions existed. The second one was that the Evaluation Board has to make its decisions on the documents submitted by bidders with their offers.

Dr Christopher Mizzi for the Contracting Authority contended that a fundamental rule in such Tenders is the principle of self limitation. If a bidder submits any form of deviation from the original conditions then his offer would have to be disqualified. Such rules cannot be changed after the publication otherwise this would interfere with the principle of proportionality.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 15 April 2016 and also through their verbal submissions during the Public Hearing held on 12 July 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) TE Connetivity Solutions GmbH is contending that, inadverently, had submitted an additional document which was meant only for internal use. In this regard, Enemalta Corporation could have misunderstood submissions;**

Having considered the Contracting Authority's "Letter of Reply" dated 5 May 2016 and also their verbal submissions made during the Public Hearing held on 12 July 2016 , in that:

- a) Enemalta Corporation maintains that any deviations from the conditions as laid out in the Tender Document amounts to disqualification of a bid.**

Reached the following conclusions:

- 1. With Regards to the Appellant's Grievance, this Board, after having examined the relative documentation of this Appeal, would like to justifiably point out that it is the duty and obligation of a Bidder to ensure that the proper submission of the Tender Document had been carried out.**

The fact that TE Connectivity Solutions GmbH submitted the incorrect information, inadvertently, does not exonerate them from their mandatory obligations. This Board points out that the Appellants had the remedy to raise this mistake prior to the closing date of the Tender.

In this case, the Appellants did not avail themselves of such a remedy and in this regard, this Board does not uphold the Appellant's Grievance on this aspect.

- 2. As it had done on many occasions, this Board is emphasizing the fundamental criteria that, the Evaluation Board can only adjudicate a Tender on the documentation duly submitted by the Bidder. Although the incorrect submissions were made by mistake, again, this Board opines that the Appellant's Bid had to be disqualified due to the simple fact that the internal documentation submitted with the Tender Document did infact deviate from the conditions stipulated in the latter.**

In view of the above, this Board finds againd TE Connectivity Solutions GmbH, however due to the prudent co-operation shown by the latter during the Public Hearing, recommends that refund of the deposit which they paid when filing their objection.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

13 July 2016