

PUBLIC CONTRACTS REVIEW BOARD

Case 1848 – TD/T 3694/2022 (4341) – Tender for the Supply of Heavy-Duty Industrial Power Tools

1st March 2023

The tender was issued on the 17th November 2022 and the closing date was the 21st December 2022. The estimated value of the tender excluding VAT, was € 56,080.01.

On the 20th January 2023 Titan International Ltd filed an appeal against Enemalta plc as the Contracting Authority objecting to their disqualification on the grounds that the Contracting Authority had deemed their bid not to be the cheapest.

A deposit of € 400 was paid.

There were five (5) bids.

On the 21st February 2023 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Ms Stephanie Scicluna Laiviera and Mr Lawrence Ancilleri as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Titan International Ltd

Mr Alan Abela Wadge Representative

Contracting Authority – Enemalta plc

Dr Calvin Calleja Legal Representative
Eng Ivan Bonello Evaluator
Eng Adriana Tabone Evaluator

Preferred Bidder – G&T Imports Ltd

Ms Joanna Galea Representative

Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Calvin Calleja Legal Representative for Enemalta Ltd requested that Appellant's preliminary point raised by the Contracting Authority should be dealt with first. He went on to give details of the publishing of the tender and the award and was objecting as no reason has been given to justify the appeal. The letter of objection merely states that there is a suspicion that the technical points fall short of requirements and requests the PCRb to carry out an investigation. This is not a valid

reason under Regulation 270 of the PPR which specifies 'very clear reason' has to be given when filing an appeal. In Case 1119 the appeal was dismissed on the basis that no clear reason was given for appealing. The award process cannot be stopped because of suspicion or because the Appellant feels that its bid would be the best choice.

Mr Alan Abela Wadge Representative for the Appellant said that he can only comment on the technical side of the award and has no comments to make on what has been stated.

The Chairman said the Board will take a short recess to consider the points made.

After the recess the Chairman said that the Board's view was that the Appellant's claim was not sustainable as he had given no clear reason for its appeal and the preliminary plea made was justified. It was not the remit of the PCRB to investigate the award of tenders. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board, having noted this objection filed by Titan International Ltd., (herein after referred to as appellant), on the 20th January 2023, refers to the claims made by the same appellant against Enemalta Plc (herein after referred to as the Contracting Authority) regarding the tender listed as case No.1848 in the records of the Public Contracts Review Board and its verbal submissions during the hearing on 21st February 2023.

The Board also noted the letter of reply by the Contracting Authority dated 27th January 2023, together with its verbal submissions during the hearing on the 21st February 2023.

Whereby, the Contracting Authority contends that:

The preliminary point raised in its reply being that no clear reason has been given to justify the appeal must be dealt with first.

After the Board considered the arguments and documentation from both parties, on this preliminary point, the Board's view was that the Appellant's claim was not sustainable in terms of Regulation 270 of the Public Procurement Regulations as it had given no clear reason for its appeal and the preliminary plea made was justified. It was not the remit of the PCRB to investigate the award of tenders.

The Board therefore concludes and decides that:

- a) Does not uphold the Appellant's Letter of objection.
- b) Upholds the Contracting Authority's decision.
- c) Directs that the deposit paid by the Appellant not to be reimbursed

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Ms Stephanie S Laiviera
Member