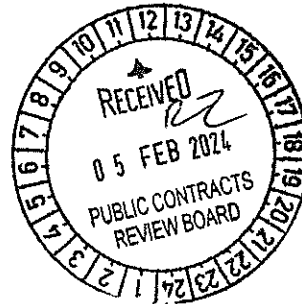


Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriania



5 February 2024

Dear Sirs

Re: Tender for the Supply, Delivery, Installation, Testing and Commissioning of Standby Generator Set for Mount Carmel Hospital – Reference CT 2306/2023 (the “Tender”)

We have been instructed by **Electro Fix Ltd (C 23111) [TID 200727]** (the “Appellant”) to file an appeal in terms of Regulation 270 of the Public Procurement Regulations (Subsidiary Legislation 601.03) (the “PPR”) in connection with the above-captioned Tender.

The Appellant is aggrieved by the Contracting Authority’s (as defined below) proposed award of the Tender to the Recommended Bidder (as defined below) and this for the following reasons:

- a. **First Ground of Appeal: Reasons for Rejection are unclear and contradictory**
- b. **Second Ground of Appeal: Appellant’s Offer adheres to all technical and administrative criteria**

A. Factual Background

1. On 6 October 2023, the Department of Contracts (hereinafter the “DoC” or the “Contracting Authority”) issued a call for the above-mentioned Tender (hereinafter the “Call for Tenders”), which Call for Tenders was published on behalf of the Central Procurement and Supplies Unit (MFH) (hereinafter the “Final Beneficiary”).
2. The Tender aims to procure the supply, installation, testing, commissioning and certification of two canopy type synchronised standby generating set at Mount Carmel Hospital (hereinafter the “Scope of Works”).
3. The estimated Procurement Value for this Call for Tenders is that of EUR 420,000 excluding Value Added Tax, with a time-limit for the execution of the contract of 65 months from the date of the last signature on the contract agreement.

4. In accordance with Clause 6 of Section 1 of the Tender, the sole award criterion is the price, with the contract being awarded to the tenderer submitting the cheapest-priced offer satisfying the administrative and technical criteria as enshrined in the Tender.
5. The Appellant submitted its offer to participate in this procurement procedure (the "Offer") within the stipulated timeframe, with a Financial Offer of EUR 350,312.56.
6. On 26 January 2024, The Appellant received a letter of rejection from the DoC (hereinafter the "Letter of Rejection"). In this letter, the Appellant was informed that its offer was rejected as follows:

[...] However I regret to inform you that the offer submitted by your company was found to be technically non-compliant as follows:

The Technical Offer Form Specification 3.13 – Tenderer to provide a Letter from the Supplier (not the tenderer himself) that tendered has a local maintenance facility and would be able to provide spare parts when needed – was not duly filled in (left blank).

Supplier did not confirm that bidder has a local maintenance facility as requested. Foreign supplier only confirmed supplier and provision of spares.

The Technical Offer falls under Note 3 and is not rectifiable. Not Acceptable.

7. The Appellant was also informed that the Tender was to be awarded to TID 200761 A. Falzon Projects Ltd (the "Recommended Bidder") for the amount of EUR 407,293 excluding VAT, a price significantly higher than the Appellant's Offer.
8. The Appellant feels aggrieved by the DoC's decision is thereby submitting its objection within the stipulated timeframe together with the relative payment (copy of payment hereby attached as 'Doc. A')

B. Grounds of Appeal

1. First Ground of Appeal – Unclear and/or Contradictory Reasons for Rejection

- 1.1. The Appellant humbly submits that the reasons for the Appellant's Offer rejection as penned in the Letter of Rejection are unclear, at best, and certainly contradictory.

- 1.2. As highlighted in the Factual Background, the Letter of Rejection stated that the Appellant's Offer was refused on the following grounds:

The Technical Offer Form Specification 3.13 – Tenderer to provide a Letter from the Supplier (not the tenderer himself) that tendered has a local maintenance facility and would be able to provide spare parts when needed – was not duly filled in (left blank).

Supplier did not confirm that bidder has a local maintenance facility as requested. Foreign supplier only confirmed supplier and provision of spares.

The Technical Offer falls under Note 3 and is not rectifiable. Not Acceptable.

- 1.3. Upon closer inspection of these reasons, it is evidently clear that the Letter of Rejection contains two separate reasons for rejection – the first being that the Appellant 'left blank' (or rather, did not attach in its Offer) the letter required as per Technical Offer Specification 3.13, and the second being that the Appellant did not confirm that it has a local maintenance facility as requested and that its supplier had only confirmed support and provision of services.
- 1.4. It is clear, in the Appellant's views, that the two reasons are, at best, contradictory. The first reason implies that the Appellant did not submit a document (letter) required in terms of the Technical Offer Form Specification 3.13 whilst the second reason actually states that the letter was in fact submitted but did not specify that the Appellant has a local maintenance facility.
- 1.5. Without prejudice to its submissions on the merits, the Appellant humbly submits that the Rejection Letter is not sufficiently clear so as to allow the Appellant to a) understand the reasons for its Offer being rejected and to b) have the necessary information to file its appeal from said decision within the short timeframes enshrined in the PPR.
- 1.6. Article 2a(2) of the Remedies Directive (as transposed in Regulation 272 of the PPR) provides that the award decision must be accompanied by a 'summary of the relevant reasons as set out in Article 55(2) of Directive 2014/24/EU, subject to Article 55(3) of that Directive.¹
- 1.7. The reasons so contained in the Rejection Letter in this case do not provide the Appellant with a clear and unequivocal explanation as to why its Offer was deemed as non-

¹ Article 55(3) of the Remedies Directive is intended to prevent disclosure of information which might prejudice the legitimate commercial interest of the successful bidder or otherwise might prejudice competition. For the record, the Appellant submits that it is not after any commercially sensitive information of the successful bidder.

compliant. At the most basic level, it is unclear whether its perceived non-compliance is based on the first or the second reason stipulated in the said Rejection Letter.

- 1.8. In view of the above, the Appellant humbly submits that its rights have been breached as a result of the lack of clarity of the Rejection Letter, so much so that as of the date of the filing of this letter of objection, the Appellant remains deprived of this crucial information for the effective exercise of its rights at law.
- 1.9. For this reason alone, the Appellant humbly submits that the deposit paid upon filing of the letter of objection should be refunded as a matter of principle.

2. *Second Ground of Appeal: Appellant's Offer is Technically Compliant*

- 2.1. Strictly without prejudice to the foregoing, the Appellant strongly contends that its Offer was deemed as not being technically compliant, when it is abundantly evident that its Offer in fact satisfies all the administrative and technical requirements as stipulated in the Tender.
- 2.2. Primarily on this point, the Appellant refutes any suggestion or claim that any part of its Offer was not "duly filled in" (or "left blank") as stated in the Rejection Letter. The Tender requested two separate letters from each respective bidder's supplier and both letters were duly submitted by the Appellant (copies of which are hereby annexed and marked as 'Doc. B' and 'Doc. C' respectively).
- 2.3. The Appellant's Technical Offer submission clearly indicates that these two letters were duly attached (listed as **S25C-923102713110.pdf** and **S25C-923102713111.pdf** respectively) as part of the Technical Literature required in terms of Section 3.14 of the Technical Offer. Whilst it is true that the first letter should have been attached in terms of Section 3.13, the Appellants humbly submit that this is a very minor detail which should by no means result in a declaration that the Appellant's bid is technically non-compliant!
- 2.4. Furthermore, and strictly without prejudice to the above, the Appellant confirmed its adherence to all the requirements of the Tender, including all specifications as listed in the Technical Offer, by means of its Self-Declaration Form. In fact, it is clear that both Sections 3.13 and 3.14 are marked as "YES" by the Appellant.
- 2.5. The Appellant humbly submits that if the Evaluation Committee had any doubt or query as to the Appellant's adherence to these specifications, it could have – rather, it should have – requested a clarification (not a rectification) in this regard, and this in line with Regulation 62(2) of the PPR which states unequivocally:

(2) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities in terms of the procurement document may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit:

Provided that such requests are made in full compliance with the principles of equal treatment and transparency.

- 2.6. It is abundantly clear that the Evaluation Committee was incorrect to not request a Clarification on this matter. A Clarification could have very easily resolved any doubt and/or uncertainty that the Evaluation Committee might have had in relation to the Appellant's compliance with these requirements. Instead, it sought to unjustly deem the Appellant's Offer as non-compliant to the detriment of the Appellant.
- 2.7. Strictly without prejudice to the foregoing, the Appellant contends that the Evaluation Committee's decision to reject its bid is based on the fact that it (the Appellant) did not specify that it has a "local maintenance facility" is manifestly unjust and incorrect for several reasons:
 - 2.7.1. Primarily, it must be stated that nowhere in the Tender is a "local maintenance facility" defined. The term is not used anywhere else in the Tender other than in Section 3.13 of the Technical Offer.
 - 2.7.2. The specific requisite of a "local maintenance facility" is superfluous in view of the fact that, as specified in the Tender itself, the priority is that all bidders have the capacity to repair and replace any defect or damage "as soon as practicable" (vide Section 32.3 of the Special Conditions). Even more so, Section 32.1 of the Special Conditions even clarify that any replacement of parts must be carried out within fourteen working days from the request.
 - 2.7.3. It is abundantly clear, therefore, that the real requirement of the Contracting Authority is to bind all bidders to effective and efficient replacement of parts, and the Appellant has evidently conformed to this requirement.
 - 2.7.4. For this requisite to be adhered to, all bidders must have immediate access to all spare parts that may be necessary during the term of this contract. The Appellant has clearly satisfied this requirement and its supplier, Fogo Sp z.o.o., has confirmed its full support to this cause.

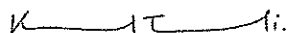
In view of the above, as well as other submissions that will be made during the proceedings of this case, the Appellant humbly submits that the Evaluation Committee's decision to reject the Appellant's Offer – the cheapest, by a considerable margin – is incorrect.

THEREFORE, the Appellant humbly demands that this Honourable Board should:

- a) Preliminarily, declare that the Letter of Rejection sent to the Appellant is unclear and contradictory to the prejudice of the Appellant's rights to defend its position at law;
- b) Declare that the Contracting Authority's recommendation of the Tender to the Recommended Bidder is wrong and/or illegal and consequently quash that decision;
- c) Cancel and revoke the proposed award of the Tender to the Recommended Bidder;
- d) Cancel and revoke the Letter of Rejection sent to the Appellant and, if appropriate, declare that the Appellant's bid is fully compliant with all tender specifications;
- e) Do anything else that is conducive and/or necessary for the proper execution of the above requests
- f) Order the refund in full of the deposit paid by the Appellant.

Appellant hereby reserves the right to present evidence, both orally and in writing, during the hearing.

Yours Sincerely,



Karl Tanti, LL. D
ktanti@ae.com.mt

BOV

Bank of Valletta

Bank of Valletta p.l.c
 Registration Number: C 2833
 Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Authorise

Printed by: Mr. KEITH GALEA
 Printed on: 31/01/2024 - 10:14
 Document ID: 18919070

Pay third party

Transaction details

Transaction: Pay third party

Beneficiary name: Cashier Malta Government

Relation: Professional Service

Reason: Other

Payment details: ElectroFix Ltd TID 200727 REFERENCE CT 23062023

Currency: EUR - Euro

Beneficiary IBAN/Account: MT55MALT011000040001EURCMG5001H

Beneficiary IBAN/Account type: Valid IBAN of country - Malta

Bank name: Other bank

Bank address / Bank's BIC: Let the bank apply the beneficiary bank BIC

Beneficiary address: No

Withdraw from account: EFX Savings 2 (EUR) 4002313731 8

Charges should be paid by: Shared - I pay BOV charges; Cashier Malta Government pays the beneficiary bank charges

Amount: EUR 2,100.00

Receiving bank to get the money as: normal priority payment

To be effected on: as soon as possible

Credited amount: EUR 2,100.00

Debited amount (excluding charges): EUR 2,100.00

Estimated amount to be withdrawn from account: EUR 2,104.00

Transaction charge: EUR 4.00

Creator: Mr. MATTEO AGIUS IMBROLL

Authorised by: Mr. KEITH GALEA, Mr. MATTEO AGIUS IMBROLL

Transaction result

Status: Your instructions have been received and will be reviewed. Please do not re-submit this payment.

Transaction ID: 138172636

To whom it may concern

Dear Sirs,

We confirm that spare parts for the generator sets supplied by FOGO Sp. z o.o. in respect of Tender Reference CT2306/2023 (CPSU 1704/23) supplied to Messrs Electrofix Ltd (Malta) will be available and in stock for the next 6 years as per contract specifications.

Regards,


Blazej Piotrowski
Sales director

FOGO Sp. z o.o.
ul. Świątecznowska 36, Wilkowice
64-115 Świątecznowa
tel. +48 69 534 11 80, (11)
e-mail: agregaty@fogo.pl, www.fogo.pl
NIP: 783-17-35-110 REGON: 363272651

Dear Sirs,

We would like to inform you that FOGO Sp. z o.o. will be supporting Messrs Electrofix Ltd (Malta) with the support and provision of spare parts for the generator sets being offered in this submittal when needed.

Regards,

Blazej Piotrowski
Sales director

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1600 – MALTA



DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1600 – MALTA

Contact Number: +356 2378 1001
e-Mail: info.contracts@gov.mt
website: www.contracts.gov.mt

26th January 2024

ElectroFix Ltd
TID 200727

REFERENCE: CT 2306/2023

SUBJECT: TENDER FOR THE SUPPLY, DELIVERY, INSTALLATION, TESTING AND COMMISSIONING OF STANDBY GENERATOR SET FOR MOUNT CARMEL HOSPITAL

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the offer submitted by your company was found to be technically non-compliant as follows:

The Technical Offer Form Specification 3.13 - Tenderer to provide a Letter from the Supplier (not the tenderer himself) that tenderer has a local maintenance facility and would be able to provide spare parts when needed- was not duly filled in (left blank).

*Supplier did not confirm that bidder has a local maintenance facility as requested.
Foreign supplier only confirmed support and provision of spares.
The Technical Offer falls under note 3 and is not rectifiable. Not Acceptable.*

The tender was recommended for award to TID 200761 A.FALZON ENERGY PROJECTS LTD for the amount of €407,293.00 excluding VAT, these being the cheapest priced tenders satisfying the administrative and technical criteria.

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 Monday 5th February 2024 against a deposit of €2,100.00

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

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1600 – MALTA



DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1600 – MALTA

Contact Number: +356 2378 1001

e-Mail: info.contracts@gov.mt

website: www.contracts.gov.mt

IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

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

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

Yours sincerely,

Joseph Anthony Zammit

f/ Director General (Contracts)