

PUBLIC CONTRACTS REVIEW BOARD

12<sup>th</sup> February 2024

**Re:- 406 - Objection CT 2306/2023 - Tender for the Supply, Delivery, Installation, Testing and Commissioning of Standby Generator Set for Mount Carmel Hospital**

Reply of the **Central Procurement and Supplies Unit (CPSU)** on behalf of the Department of Health to the reasoned application lodged by Electro Fix Ltd (the Objector);

On the 6<sup>th</sup> of October 2023 a call for tenders for the Supply, Delivery, Installation, Testing and Commissioning of Standby Generator Set for Mount Carmel Hospital was published on the website etenders.gov.mt;

A number of offers were submitted, and following an evaluation process a recommendation was made in favour of A. Falzon Energy Projects Ltd (the recommended bidder), being the cheapest technically and administratively compliant offer;

The Objector was informed by means of a letter dated 26<sup>th</sup> January 2024 that its offer was rejected because it was not technically compliant for the following reasons:

*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 Objector felt aggrieved and filed its objection based on 2 main grievances.

CPSU humbly disagrees with the grievances and is filing its reply in the same order of the Objector's grievances.

**Submissions**

**On the First Grievance: Unclear and/or contradictory reasons for rejection**

1. In its first grievance the Objector claims that the reason for rejection is unclear and/or contradictory;
2. CPSU respectfully submits the total opposite. The reasons for rejection is indeed clear and the grievance of the objector is totally unfounded;
3. The reason for rejection cannot be read in isolation, but has to be read within the context of the offer to which it refers;

4. It is certainly undisputed that the Technical offer form is a note 3 document, has to be duly filled in, in its entirety and does not allow for any rectification;
5. The Objector, as clearly stipulated in the reason for rejection, left the boxes next to clause 3.13, totally blank. The Objector did not reply with a yes or a no as requested and did not make reference to the literature which should substantiate. This differs from what is stated in the letter of objection where the objector says "or rather did not attach" - This is not a matter of did not attach but purely of leaving part of the Technical Offer Form Blank. In substantiation, part of the objector's technical offer form is being reproduced below:

3.11	termination of both armoured and non armoured cables.	N/A		YES		
3.12	Contractor shall have a warranted electrical engineer, who shall certify all works	N/A		YES		See Key Expert Form
3.13	Tenderer to provide a Letter from the Supplier (not the tenderer himself) that tenderer has a local	N/A				

	maintenance facility and would be able to provide spare parts when needed.					
3.14	Tenderer to provide a Letter from the Supplier (not the tenderer himself) that all engine parts are available and will be in stock for the	N/A		YES		\$25C-923102713 110.pdf \$25C-

6. The fact that an essential part of the Technical Offer Form was left blank is a reason sufficient enough for the objector's offer to be rejected;
7. The General Rules Governing Tenders in clause 16.3 Part 3 - Technical Compliance are clear on this matter:

*No rectification shall be allowed in respect of the documentation as accompanied by Note 3 in Clause 5 of the Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be requested. No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications.*

8. Since the Technical offer form is note 3 and no rectification can be requested, and in this case not even a clarification could be requested since clarifications could only be submitted on the submitted information, and no information was submitted by the Objector in this Part of the technical offer form;
9. This case is not one relating to a missing formality such as a signature, which did not change the substance of the submission, but a missing part of the Technical Offer form which is essential;

10. Strict observance of the rule relating to Note 3, especially in such a case where the missing information relates to the substance of the submission, ensures equal treatment of participants in a procurement process, which is one of the fundamental elements of public procurement;
11. The Evaluation Committee could have stopped there and it would have been enough, however in order to further substantiate their position that this is not a matter of a missing formality, referred to the literature submitted to highlight that what was requested in clause 3.13 of the Technical Offer Form was not even provided for in such literature, and hence stated that *"Supplier did not confirm that bidder has a local maintenance facility as requested"*.
12. The reason for rejection is therefore one reason for rejection dealing with the same Clause of the Technical Offer Form, which is abundantly clear even if read in isolation, let alone when read in the context of the Objector's submission;
13. If reason for rejection was not clear enough for the Objector to lodge an appeal it would have surely no lodged a 6-page reasoned letter of Objection!
14. For these reasons this first grievance ought to be rejected;

**On the Second Grievance: Appellants' Offer is Technically Compliant**


15. With reference to this second Grievance, CPSU refers to its submissions made in relation to the first grievance which are also applicable in response to this second grievance;
16. The submissions above clearly demonstrates that the Objector was not compliant;
17. In paragraph 2.4 of the Objection Letter, the Objector states that it as replied with a Yes to clause 3.13 in the Technical Offer Form. This might be the impression that the Objector has and could be a genuine mistake from its end, however a mistake on the part of the Objector has to be borne by the objector. From its end the contracting authority is bound by strict rules in its evaluation process, especially when it comes to note 3 clauses, and cannot depart from these rules due to the principle of equal treatment of bidders.
18. As already states, a clarification was not permissible on this matter because this would have only been possible on submitted information, and clause 3.13 of the Technical Offer form was left completely blank!;
19. Without prejudice to the above, although in the context of the blank clause, the submissions of paragraph 2.7 of the Objection Letter are immaterial, CPSU is hereby replying in brief;
20. With reference to clause 2.7.1, the fact that local maintenance facility is only used in the Technical Offer form, does not in any way diminish any of its importance and the word 'local' is self explanatory and does not require any further definition. Moreover, clauses 3.13 and 3.14 of the Technical Offer Form were both in Bold so that their importance is highlighted;

21. If the Objector had any difficulty with clause 2.7.2 and its relevance, it should have filed an application in terms of regulation 262 of the Public Procurement Regulations;
22. With reference to clause 2.7.3 and 2.7.4, CPSU submits that the principle of self limitation, does not allow for extensive interpretations of tender documents. If the Contracting authority required only efficient replacement of parts it would have just stated that, but since the contracting authority requested also a local maintenance facility, and the requirement was not contested, it should have been fulfilled by the objector!

CPSU hereby reserves its right to present further evidence and submissions both written and orally to further substantiate their reply in relation to the said application throughout the hearings.

In view of the above, the objection lodged by the objector ought to be rejected in full, whilst the decision of the Evaluation Committee confirmed, and the relevant deposit forfeited.

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