

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2064 – CPSU1449/24 019-3859/24 – Supplies - Hardbound Diaries Sizes A4 and A5**

**20<sup>th</sup> January 2025**

The Board,

Having noted the letter of objection filed by Dr Joseph Gerada and Dr Kimberly Galea, acting on behalf of Salander Group Ltd (hereinafter referred to as the "Appellant"), filed on the 2<sup>nd</sup> of December 2024;

Having also noted the letter of reply filed by Dr Alexia Farrugia Zrinzo and Dr Leon Camilleri acting on behalf of Central Procurement and Supplies Unit (CPSU) (hereinafter referred to as the "Contracting Authority"), filed on the 5<sup>th</sup> of December 2024;

Having heard and evaluated the testimony of the witness Mr Stephen Mercieca (Chairperson of the Evaluation Committee) as summoned by Dr Joseph Gerada acting for Salander Group Ltd;

Having heard and evaluated the testimony of the witness Mr Salvatore Vassallo (Representative of Salander Group Ltd) as summoned by Dr Joseph Gerada acting for Salander Group Ltd;

Having taken cognisance of and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 16<sup>th</sup> of January 2025, hereunder reproduced:

### **Minutes**

#### **Case 2064 – CPSU 1449/24 019-3859/24 – Supplies – Hardbound Diaries Sizes A4 and A5**

The tender was issued on the 13<sup>th</sup> August 2024 and the closing date was the 10<sup>th</sup> September 2024.

The estimated value of this tender, excluding VAT, was € 11,475.

On the 2<sup>nd</sup> December 2024 Salander Group Ltd filed an appeal against the Central Procurement and Supplies Unit objecting to their disqualification on the grounds that their bid was not technically compliant.

A deposit of € 400 was paid.

There were four bids.

On the 16<sup>th</sup> January 2025 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

### **Appellant – Salander Group Ltd**

|                       |                      |
|-----------------------|----------------------|
| Dr Joseph Gerada      | Legal Representative |
| Mr Salvatore Vassallo | Representative       |

### **Contracting Authority – Central Procurement and Supplies Unit**

|                        |                                  |
|------------------------|----------------------------------|
| Dr Leon Camilleri      | Legal Representative             |
| Mr Stephen Mercieca    | Chairperson Evaluation Committee |
| Mr Leo Piscopo         | Secretary Evaluation Committee   |
| Ms Ruth Pace           | Evaluator                        |
| Ms Miriam Toledo       | Evaluator                        |
| Ms Marie Louise Borg   | Evaluator                        |
| Ms Branica Amato Gauci | Representative                   |

### **Preferred Bidder – Malta Wristbands**

Invited but did not attend

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Joseph Gerada Legal Representative for Salander Group Ltd said that the tender was price based and appellant offered the cheapest price. The Technical Offer Form was correctly completed but appellant was subsequently informed that he was not providing what it had offered as he had indicated that the foil would be in silver. As this matter was regulated by Note 3, no clarification was possible. The principle of proportionality was not observed.

Dr Leon Camilleri Legal Representative for the Contracting Authority said that this was a very clear case of the principle of self-limitation. What is requested must be provided and the cheapest price only counted when all the tender specifications were met. The technical literature submitted stated that the foil would be silver not gold. Submitting a 'yes' answer in the Technical Form did not necessarily mean that the final product would be likewise. The literature indicated that the foil would be in silver.

Mr Stephen Mercieca (162469M) Chairperson of the Tender Evaluation Committee called to testify by the appellant stated on oath that four bids were received on this tender. Although cheaper, Salander's bid was disqualified as silver foil, was offered in the technical literature although in the tender Technical questionnaire clauses 2.3 and 2.4, gold had been indicated. Clause 2.5 stated that the final design will be provided whilst under clause 2.7 appellant offered a choice of blue or green cover. Witness said that the CPSU letter of 16<sup>th</sup> October requested technical literature as it was not clear what was being supplied. The reply to that letter indicated that the foil would be in silver and the colour of the cover to be advised by client. The Technical literature was the document on which the final decision was based. Samples were not requested, said the witness, as once the silver foil had been offered the Committee relied on this submission and there was no point in asking for samples.

Mr Salvatore Vassallo (155598M) called to testify by the appellant stated on oath that he was a Director of the appellant company and had been supplying these type of diaries to the Authority for a number of years. All the diaries in question were produced in-house by his firm. The literature list was produced to meet the requirements of the Authority. Foil in any colour could be supplied with no difference in price and it was merely an error that silver had been indicated instead of gold which colour had been indicated in the Technical Order Form.

In reply to questions from Dr Camilleri, witness confirmed that no literature was submitted with the offer and that when rectification was sought it was indicated that the colour would be silver.

This concluded the testimonies.

Dr Gerada said that the offer provided all that was requested in the specifications on page 5 of the tender dossier. The rectification requested items other than the hot foil but contradictory information was supplied by the appellant through a simple error. The principle of proportionality demanded further verification on an offer that was cheaper. The technical offer indicates the availability of different elements like the colour of covers which are not crucial. Why were samples not requested? This would have provided verification. In view of the price difference proportionality demanded further consideration.

Dr Camilleri said that there are two points to be made on the request for rectification. First, no literature was provided. Secondly, clarifications at the bidding stage become part of the tender. If the literature had been submitted at original stage then it could be clarified – however a second clarification could not be asked. According to the General Rules 16.3 literature is required to corroborate the offer – if it does not it shall be disqualified. In the tender specifications it is stated that literature is to be submitted but samples may be requested.

The specifications in the tender, said Dr Camilleri, are clear – gold foil is requested but the literature submitted indicates differently. The work of the evaluators is to confirm and verify statements in the technical offer form and these matters cannot be left to be discussed at a later stage. The error by the appellant cannot be allowed to lead to an infringement of the procurement regulations. The specifications were clear and a different offer could not be considered. Once the literature did not corroborate the offer there was no alternative except to disqualify.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 16<sup>th</sup> of January 2025.

Having noted the objection filed by Salander Group Ltd (hereinafter referred to as the "Appellant") on the 2<sup>nd</sup> of December 2024 and refers to the claims made by the same Appellant with regards to the tender of reference CPSU1449/24 019- 3859/24 listed as case No. 2064 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Joseph Gerada

Appearing for the Contracting Authority: Dr Leon Camilleri

Whereby, the Appellant contends with respect to:

- a) ***The Contracting Authority failed to consider the technical offer questionnaire.***

The primary ground of appeal is that the Contracting Authority failed to consider all documentation submitted by the appellant. In the Technical Offer Questionnaire, the appellant explicitly indicated and agreed to use hot foil **gold** colour print, therefore fully complying with the tender requirements. However, in response to a clarification request dated 16<sup>th</sup> October 2024, the appellant inadvertently referred to silver colour instead of gold.

Notwithstanding this clerical error, the appellant subsequently reaffirmed its commitment to use **gold coloured foil** in its reply to the Clarification request, consistent with the technical details outlined in the Tender Document. Furthermore, the appellant provided supporting documentation demonstrating that the proposed standard fully satisfies the tender's technical requirements.

The Appellant strongly contends that the Contracting Authority was under a duty to evaluate the appellant's submission holistically, taking into account the tenderer's declared intent and good faith. The appellant's initial offer was compliant, and the clerical error does not materially impact the technical conformity of the offer.

The appellant also submitted sufficient evidence to establish that the proposed printing process and materials meet the equivalent standards required by the tender. Despite this, the Contracting Authority failed to give due consideration to the documentation and information provided in the Questionnaire.

The Board also noted Contracting Authority's Reasoned Letter of Reply filed on 5<sup>th</sup> of December 2024 and its verbal submission during the hearing held on 16<sup>th</sup> January 2025, in that:

- a) The objector failed to provide any literature with his initial offer despite such requirement.
- b) Part 16.3 of the General Rules Governing Tenders provide that: *'Submissions which have qualified under Part 2 shall have their technical offer evaluated to ensure compliance with Clause 5(C) of the Instructions to Tenderers. In order to be considered for this Evaluation, tenderers must submit a completed Technical Offer. Literature may also be requested with the technical offer so that the Evaluation Committee will corroborate the technical compliance of the offers.'*

[...].

*'Without prejudice to the possibility of requesting rectifications vis-a-vis Literature, if the Literature submitted with the Technical Offer does not corroborate the offer submitted, the tenderer shall be disqualified.'*

- c) The objector was asked to rectify his position by means of a request issued on the 16<sup>th</sup> of October 2024 and in return the objector stated that the print on the cover will be in silver foil.
- d) In part 16.3 of the general rules, the same rules go on to provide that: *'Rectification replies must be submitted within five (5) working days from notification, and will be free of charge; **failure to comply shall result in the tender offer not being considered any further.**'*
- e) It is very clear that the objector, although he did submit literature, this has only proved his noncompliance and since the objector did not comply the evaluation committee did not have any different way how to proceed.
- f) Given that a rectification request was issued and the information provided in such rectification request did not corroborate with the technical specifications, the evaluation committee acted in full observance of the law and of the general principles of procurement when rejecting the objector's offer. The Board has repetitively pronounced itself that a clarification on the same matter cannot be requested more than once (reference made to case 1942 delivered on the 3<sup>rd</sup> of January 2024).
- g) The evaluation committee must ensure equal treatment, transparency, and self-limitation when adjudicating a tender and could not have closed an eye for a breach of the technical specifications, especially when potentially other economic operators did not submit their offer because they were only able to supply only silver wording. The principles of self-limitation and equal treatment ensure a fair procurement process which is in the interest of all.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

- a) It should be noted that, in addition to the Technical Offer Questionnaire regulated under Note 3, the tender dossier also required the submission of Technical Literature alongside the economic operators' bids. Technical Literature was clearly marked as being governed by Note 2.
- b) Mr. Salvatore Vassallo, during his sworn testimony, confirmed that the appellant did not submit any technical literature with their initial bid.

- c) The tender dossier specifically stated that *“the scope of the literature is to corroborate a fully compliant technical offer”*.
- d) Once the Tender Evaluation Committee determined the Technical Offer Questionnaire to be fully compliant and confirmed that the Technical Literature fell under the remit of Note 2, this Board is of the opinion that the Principle of Equal Treatment and Proportionality were properly upheld when the Evaluation Committee issued a request for rectification to the appellant company.
- e) The rectification request, in its first point stated *“No manufacturer’s technical literature has been submitted to endorse the required specifications listed in Section 3 of the tender dossier.”* In the Board’s view, this statement clearly addresses the issue at hand. The second point in the request for rectification is deemed irrelevant to these proceedings.
- f) In the response to the rectification request, the appellant explicitly stated that ‘foil colour’ was to be ‘Silver’ rather than ‘Gold’.
- g) Reference is now made to the ‘Notes to Clause 5’ of the tender document (Section 1) whereby it is specifically stated that *“Requests for Clarifications and/ or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained.”*
- h) At this point, the Board’s unequivocally believes that if the Evaluation Committee had not proceeded as it did it would have violated the Principle of Equal Treatment which it is obliged to uphold, as it would have granted the appellant an unfair advantage compared to other economic operators.
- i) Regarding the issue of the request for Samples, it should be noted that samples are requested at the discretion of the Evaluation Committee as specified in the tender document. Once it was determined, through the evaluation of the technical literature, that the appellant’s bid was not technically compliant, requesting a sample from the appellant would have been unnecessary.
- j) As for the financial issue, such arguments are considered irrelevant at this stage. Once the technical evaluation concluded that the bid was technically non-compliant, any financial arguments are no longer pertinent as the bid did not reach that stage in the evaluation process.

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Mr Richard Matrenza**  
Member

**Mr Lawrence Ancilleri**  
Member