

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case 2148 – SPD8/2025/057 – Decommissioning and Disposal of 2 Uninterruptible Power Supply (UPS), and the Provision, Installation, Commissioning including 3 years Maintenance of a New UPS System**

**12<sup>th</sup> September, 2025**

The Board,

Having noted the letter of objection filed by Mr Alexander German acting for and on behalf of **Constant Power Solutions**, (hereinafter referred to as the appellant) filed on the 30<sup>th</sup> July, 2025;

Having also noted the letter of reply filed by Dr Paula Axiak and Dr Marlene Zammit acting for and on behalf the Environment and Resources Authority (E.R.A.) (hereinafter referred to as the Contracting Authority) filed on the 8<sup>th</sup> August, 2025;

Having heard and evaluated the testimony of the witness Mr Alexander German (Representative of Constant Power Solutions);

Having noted that both the Contracting Authority and the Recommended bidder did not summon any witnesses;

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

Having noted and evaluated the minutes of the Board sitting of the 11<sup>th</sup> September, 2025 hereunder-reproduced.

### **Minutes**

Case 2148 SPD8/2025/057 – Decommissioning and Disposal of 2 Uninterruptible Power Supply (UPS), and the Provision, Installation, Commissioning including 3 years Maintenance of a New UPS.

The tender was issued on the 24<sup>th</sup> of April 2025, and the closing date was the 26<sup>th</sup> of May 2025. The estimated value of the tender, excluding VAT, was €43,200

On 30<sup>th</sup> July 2025, Constant Power Solutions (MT1582-5205) lodged an appeal against ERA – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations. The appellant objected since the tender was not technically compliant.

A deposit of €400.00 was paid.

There were six Bids.

On the 11<sup>th</sup> of September 2025, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Dr Ana Thomas and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Constant Power Solutions (MT1582-5205).**

Mr Alexander German – Company Representative.

**Contracting Authority – ERA.**

Dr Paula Axiak - Legal representative.

Dr Marianne Zammit – Legal Representative.

Mr Russel Berry Bugeja – Secretary.

Mr Earl Vella – Evaluator.

Mr Alan Borg – Tender Drafter/Technical Advisor.

Mr Mark Spiteri – Contract Manager and Representative of Head of Contracting Authority.

**Recommended Bidder – ELEKTRA Ltd. (C3583)**

Dr Etienne Borg Ferranti – Legal Representative.

**Opening Statements**

Dr Vincent Micallef, Chairman of the Public Contracts Review Board, welcomed the parties present; the Appellant, Constant Power Solutions; the Contracting Authority, ERA; and the representative of the Recommended Bidder, Elektra Ltd.

Since Mr Alexandro German was not a lawyer and was representing himself, the Chairman explained the Board's procedures.

**Initial Submissions**

*Initial Submissions by the Appellant.*

Mr Alexander German, self-employed under the brand Constant Power Solutions, objected to the decision taken, stating that his product was fully compliant with the specifications. He referred to a tender from the previous year where the Committee required a specific certification. At that time, a self-declaration from the company was not accepted because the Committee insisted on third-party certification.

He explained that while his catalogue listed harmonic distortion at 5.5%, the third-party certificate showed it to be 2%. This certificate was a printed document, which, he argued, could not have been manipulated. In contrast, he claimed, any company could make unsupported claims in third-party certifications without verification. He submitted that the third-party certification in this case was disregarded, leading to misinterpretation, and maintained that his product was fully compliant.

*Initial Submissions by the Contracting Authority (ERA)*

Dr Paula Axiak, representing ERA, stated that the Authority had received conflicting information. Mr German had submitted both a manufacturer's report and an independent third-party certificate. The Evaluation Committee relied on the manufacturer's report, considering it more reliable than an independent third-party test carried out on a smaller sample.

*Initial Submissions by the Recommended Bidder (Elektra Ltd.)*

Dr Etienne Borg Ferranti argued that the appellant had misinterpreted both the specifications and the product. He claimed Mr German alleged that Elektra's client had submitted a Salicru product. In fact, the tender had been awarded not to Salicru, but to Schneider. Schneider's product, he said, was fully compliant without the need for additional third-party reports, as it was tested, certified, used globally, and widely sold in heavy industries.

**Witness**

**Mr Alexander German (ID No. 85367M)**

Acting as his own witness, Mr German insisted that his supplies included third-party certification. He stated that the offered product was RM10050X. He referred to tender 620403, issued by the International Engineering Committee, which accepted a threshold of 5.5%. He argued that the current tender had not followed that clause.

The Chairman clarified that Mr German was alleging the tender's terms and conditions were inconsistent with the law. Dr Micallef reminded him that such concerns could have been raised under Law 262 as a pre-contractual remedy.

Mr German repeated that tender 620403 allowed 5.5%. His proposal was, he stressed, €12,000 cheaper. The manufacturer guaranteed less than 5.5%, while he submitted a third-party report confirming less than 2%. He explained that the supplier had not declared 2% because these were transformer less UPSs. His product, DHDU, was compliant. He also noted that according to a list of 50kW suppliers, the awarded bidder APC was not included, unless it had been added recently.

## **Cross-Examination by Dr Etienne Borg Ferranti**

Mr German maintained that he had no doubts about his product, which had been on the market for five years. However, he acknowledged that he needed a test report from his suppliers for the new literature requested by the Committee.

### **Final Submissions**

#### **Final Submissions by Mr Alexander German (Appellant).**

He reiterated that his product was tested by a worldwide third-party company, not merely supported by website information. Although the tender documentation listed 5.5%, he had provided new literature demonstrating improved performance.

#### **Final Submissions by Dr Paula Axiak (Contracting Authority)**

Dr Axiak stated that the Evaluation Committee could not accept a report that did not originate from the manufacturer, which was considered the most reliable source of accurate information. The third-party test results, although indicating better performance, could not replace the manufacturer's official data.

#### **Final Submissions by Dr Etienne Borg Ferranti (Recommended Bidder)**

Dr Borg Ferranti emphasised that his client's submission met the tender's technical requirements. By contrast, the appellant's product showed inconsistencies. Mr German himself had to request his supplier to re-test the data sheets to verify accuracy. The mismatch between the product's documentation and further testing, he argued, clearly demonstrated non-compliance.

### **Conclusion of the Hearing**

With no further submissions, Dr Vincent Micallef thanked all parties and formally concluded the session.

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 11<sup>th</sup> September, 2025.

Having noted the objection filed by Mr Alexander German for and on behalf of Constant Power Solutions (hereinafter referred to as the Appellant) on 30<sup>th</sup> July, 2025, refers to the claims made by the same Appellant

with regard to the tender of reference SPD8/2025/057 listed as case No. 2148 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Mr Alexander German (unassisted)
Appearing for the Contracting Authority:	Dr Paula Axiak and Dr Marlene Zammit
Appearing for the Recommended Bidder	Dr Etienne Borg Ferranti

Whereby, the Appellant contends that:

- 1) In the Evaluation questions, I was requested to submit new literature and highlight where it will be found that the Non-Linear THDu is less than 5%. Hence, I have submitted new literature to show that the non-Linear load THDu is less than 5% by providing third party test report. Such evidence clearly indicates that the product is compliant. In the tender, it is also clearly mentioned that equivalents to the spec are also accepted as long as the bidder (or economic operator) proves the compliancy. Hence, we did proof compliancy with third party test report.
- 2) Elektra are agents for Salicru. My Supplier INVT is the OEM manufacturer for Salicru products. A 100KW UPS with Just Two modules is not a popular economical solution and none from the popular Manufacturer offer such product. I can submit a competition report of 50KW modules manufacturers worldwide which does not show Salicru. It is mostly probable that if our product is not compliant than even the Elektra's offer is not compliant unless changes of the declared specifications has been edited.
- 3) The sole award criteria are the lowest price satisfying the administrative and Technical criteria. With our third-party test report, we have clearly satisfied the technical Criteria and it's not justified to use a so called Economic Operator that is €12, 000 more expensive.

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This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on the 8<sup>th</sup> August, 2025 and its verbal submission during the hearing held on the 11<sup>th</sup> September, 2025, in that:

The Environment and Resources Authority (hereinafter referred to as "ERA" or "Contracting Authority" humbly submits the following:

- i. On 24th April, 2025, a call for tenders for the decommissioning and disposal of 2 Uninterruptible Power Supply (UPS), and the provision, installation, commissioning and maintenance of a new UPS system, for the ERA was issued.
- ii. A number of bids were submitted and a recommendation was made in favour of Elektra Limited (C-3583), their offer being the most economically advantageous offer utilising the BPQR award mechanism.
- iii. The Objector's offer was rejected for the reason that the offer was not technically compliant due to the following reasons:

*"The bidder replied to the rectification letter within the stipulated deadline and satisfied the requirements of Question 2, Question 3 and Question 4. However, the reply did not satisfy the requirements of Question 1. For Question 1, the response provided to the rectification request is not deemed satisfactory. Although a third-party test report was submitted indicating that THDu values under full non-linear load are below 2 percent, the bidder did not submit revised literature or updated manufacturer specifications clearly stating that the product complies with the required THDu under 5 percent for non-linear load, as stipulated in Section 3, Article 2.3. To this effect, the bid is deemed technically non-compliant and should not be considered further".*

- iv. The Objector felt aggrieved with the decision of the evaluation committee and filed its objection.
- v. ERA respectfully disagrees with the Objection and is filing the below submissions.

## **Submissions**

ERA respectfully submits that the Objector's grievance is unfounded in fact and at law for multiple reasons:

1. As per Article 2.3 of Section 3 (Specifications / Terms of Reference) of the tender dossier, bidders were required to submit "supporting literature/brochures and highlight where in the document/s provided, ALL the minimum requirements for the UPS proposed fulfil the technical specifications" which were listed in that section.

As part of his bid, the Objector initially submitted a specification form prepared by INVT, the manufacturer of the Uninterruptible Power Supply (UPS). This form indicated an output THDu of "<1% linear load; <5.5% non-linear load".

However, the tender dossier specified the following output power specification: "THDU: <3% (Linear Load); <5% (Non-Linear Load)". Consequently, the Objector's submission was technically

non-compliant, but subject to a rectification. A rectification letter was issued on the 3<sup>rd</sup> of July, 2025, wherein the Objector was requested to clarify various shortcomings with regards to his submission, including the following:

*"Reference is being made to the literature submitted, entitled 'SPEC for R/v] 50-600kVA Modular UPS (380V,PF=1)\_EV2.3', which specifies an Output THDU of <1% (Linear Load); <5.5% (Non-linear Load). The Evaluation Committee notes that this does not comply with the requirements of Section 3 Article 2.3 (UPS Detailed Specifications, Output Power Specifications) of the tender dossier, which requires a THDU of <3% (Linear Load) and <5% (Non-linear Load). In this regard, you are kindly requested to submit new literature and highlight where in the document/s this can be found to confirm compliance with Section 3 Article 2.3".*

In his reply to the rectification letter, the Objector provided a third-party test certificate by EMTEK, claiming that the UPS's THDU is actually less than 2%, thereby exceeding the requirements set out in the tender.

Consequently, this resulted in the Objector submitting two documents containing conflicting information. The manufacturer, INVT, stated in the official UPS specifications that the THDU under non-linear load is <5.5%, while the third-party test certificate asserted a value below 2%. Nevertheless, this isolated third-party test report - conducted in 2021 on a sample unit - could not override the official manufacturer's specifications, which remain the authoritative reference for technical compliance. Nonetheless, the Objector failed to provide evidence and hence convince the Evaluation Committee that the third-party test report- conducted on a sample - invalidated or superseded the manufacturer's claim as submitted by the Objector and that it should thus be replaced.

Given that the unequivocal non-compliant specification in question was obtained from the manufacturer's own data sheet, the Committee reasonably retained the manufacturer's claim. Under such circumstances, upholding the manufacturer's claim not only maintained evaluative integrity but also ensured procedural transparency, objectivity, and fairness.

The Objector use of "equivalency" within the context of the tender document is being misinterpreted. Nonetheless, as stated above, the Objector failed to provide any evidence that the third part test is "equivalent" to the manufacturer's own claim.

2. The Evaluation Committee is a competent body responsible for assessing all information submitted during the tendering process. Whilst noting the principle of self-limitation, its evaluation is carried out through a thorough vetting process, based on the technical documentation submitted

by the bidders. If any submission fails to meet the tender requirements outlined in the tender dossier, that bid will not be considered further.

The Evaluation Committee correctly evaluated all bids and thus confirms that the technical criteria were met by the recommended bidder. To this end, reference is made to the case with reference **2036 - MGPEQ 41/2024 - Services - EQuotation for the Hiring, Installation and Operation of a Public Address (PA) System for "Charles Buttigieg in Concert 2024"** taking place at Santa Lucija, Kercem, Gozo, decided by the Public Contracts Review Board on the 28<sup>th</sup> of November, 2024, wherein, amongst other things, the following was decided:

*"Fibre Connections - the preferred bidder duly included these in its offer. Once no proof was provided by the appellant to support his own claim that the preferred bidder 'does not have the requested fibre connection', this Board opines that it is not to consider this grievance any further."*

Thus, it is clear that he who alleges must prove. In the case of the Objector, it was not proven that the Evaluation Committee chose a bidder who was not technically compliant, hence rendering the claim unfounded in fact and in law.

3. The award criterion outlined in the tender dossier was as follows:

*"The sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria".*

As clearly indicated in the criterion itself, the cheapest priced bid must also satisfy the administrative and technical criteria. Given that the Objector's bid failed to comply with the technical specifications set out in the tender dossier, the Objector's bid could not be considered for award due to this technical non-compliance.

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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 as follows in their entirety.

## **Summary of Appellant's Submissions**

The Appellant, Mr Alexander German, contends that his offer fully satisfies the technical requirements of the tender. In particular, he submits that the Evaluation Committee had requested further literature regarding the Total Harmonic Distortion (THDu) under non-linear load conditions. In response, he furnished additional documentation, including an independent third-party test report, which demonstrates that the THDu remains below the stipulated threshold of 5%. The Appellant maintains that such evidence incontrovertibly establishes compliance, especially in view of the tender's express acceptance of equivalent products, provided that conformity is duly proven.

The Appellant further asserts that Elektra, representing Salicru, cannot validly distinguish its offering from that of the Appellant. He notes that his supplier, INVT, is the original equipment manufacturer for Salicru products. He argues that the configuration of a 100kW UPS with two modules is neither common nor economical, and that a survey of global 50kW modular manufacturers does not identify Salicru among them. On this basis, he suggests that if his own product were to be deemed non-compliant, then Elektra's proposal would likewise fail to meet the declared specifications, absent any subsequent alteration.

Finally, the Appellant stresses that the sole award criterion is that of lowest price, subject to the satisfaction of the administrative and technical requirements. Having adduced independent test evidence confirming compliance, he argues that his bid should have been evaluated on the basis of price alone. In his submission, it would be neither justified nor lawful to prefer a competitor whose offer is €12,000 more expensive, where both bids meet the requisite specifications.

## **Summary of the Contracting Authority's Submissions**

The Contracting Authority, the Environment and Resources Authority ("ERA"), submits that the appeal is unfounded both in fact and in law.

ERA explains that the tender dossier, under Article 2.3 of Section 3, required bidders to provide supporting literature or brochures and to highlight within such documentation where the minimum technical specifications were met. In his bid, the Appellant relied on the manufacturer's specification sheet, which indicated an output THDu of less than 1% under linear load and less than 5.5% under non-linear load. As the tender required a THDu of less than 3% for linear load and less than 5% for non-linear load, this submission was non-compliant.

A rectification letter was accordingly issued, inviting the Appellant to submit revised literature confirming compliance. In response, the Appellant furnished a third-party test certificate claiming values below 2%. ERA submits, however, that this document created a contradiction, since the official manufacturer's specifications continued to indicate non-compliance. The Evaluation Committee considered the

manufacturer's documentation to be authoritative, and held that a single third-party test report carried out on a sample unit could not override or replace the official specifications. In the absence of updated literature from the manufacturer, the Committee deemed the bid technically non-compliant.

ERA further maintains that the Appellant's reliance on the principle of equivalence is misplaced, since the tender required compliance to be demonstrated by reference to official supporting documentation. It argues that the Evaluation Committee, acting within its competence, correctly assessed the material before it and applied the evaluation criteria transparently and consistently.

Finally, ERA recalls that the award criterion was the lowest price among bids satisfying the administrative and technical requirements. Given that the Appellant's bid failed on technical compliance, it could not be considered for award.

### **Decision of the Public Contracts Review Board**

Having considered the appeal lodged by Mr Alexander German, together with the submissions made by the Contracting Authority, the Environment and Resources Authority ("ERA"), and submissions made by the Recommended Bidder, the Board determines as follows.

The Board notes that the tender dossier, at Article 2.3 of Section 3, required bidders to submit supporting literature or brochures and to indicate clearly where in such documents the minimum technical specifications were met. This requirement is clear and unambiguous.

The Appellant's bid was supported by a manufacturer's specification sheet indicating that the output THDu was less than 1% under linear load and less than 5.5% under non-linear load. As the tender required a THDu of less than 3% under linear load and less than 5% under non-linear load, the Appellant's submission was, on its face, non-compliant.

The Evaluation Committee accordingly issued a rectification letter, inviting the Appellant to submit revised literature confirming compliance. The Appellant replied by furnishing a third-party test certificate, indicating values below 2%. However, this document stood in direct contradiction with the manufacturer's own specifications. The Board agrees with the Evaluation Committee that a single test report conducted on a sample unit could not override or replace the manufacturer's official specifications, which remain the authoritative benchmark for compliance. In the absence of updated literature or revised specifications issued by the manufacturer itself, the bid was properly deemed non-compliant.

The Board further observes that the Appellant's reliance on the principle of "equivalence" is misplaced. The tender required conformity to be demonstrated by means of official supporting documentation. The

Appellant failed to discharge this obligation. The Evaluation Committee, acting within its competence, correctly and transparently assessed the material before it and cannot be faulted in its conclusion.

The Board also notes that one of the Appellant's further grievances was based on the assertion that Elektra tendered Salicru equipment, for which the Appellant's own supplier is the OEM manufacturer. During the proceedings, however, it emerged that the recommended bidder tendered not with Salicru, but with Schneider. This renders the grievance irrelevant and devoid of merit.

Finally, the Board recalls that the award criterion was the lowest price among bids satisfying the administrative and technical requirements. Compliance with those requirements is a precondition to consideration on price. As the Appellant's bid failed to meet the technical specification, it could not lawfully be evaluated further on financial grounds.

For the above reasons, the Board finds the appeal to be unfounded both in fact and in law. The appeal is accordingly rejected, and the award made in favour of Elektra Limited is hereby confirmed.

**The Board,**

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

- a. Not to uphold the Appellant's Letter of Objection and contentions;
- b. Confirms the decision of the Evaluation Committee in its entirety;
- c. Directs that the deposit paid by Appellant not to be reimbursed.

**Dr Vincent Micallef**  
**Chairman**

**Mr Lawrence Ancilleri**  
**Member**

**Dr Ana Thomas**  
**Member**