



IN THE PUBLIC CONTRACTS REVIEW BOARD

17th August 2026

Re: Objection 694 - CPSU00127/26 - Call for Quotes for the Supply and Installation and Commissioning of Hot Water Calorifier at Mount Carmel Hospital - MHS

Reply of Central Procurement and Supplies Unit (CPSU) on behalf of the Department of Health as the Contracting authority to the reasoned application lodged by **A. Falzon Energy Projects** (the Objector).

A call for tenders for the Framework Contract **for the Supply and Installation and Commissioning of Hot Water Calorifier at Mount Carmel Hospital had been published and a** number of bids were submitted, including 2 bids submitted by the objector. Following an evaluation process the tender was recommended for award to **Proenergy Solutions Limited** (the Recommended Bidder), having the cheapest offer satisfying all the required specifications.

The Objector's offers were rejected on the basis of technical compliance, with the reason given being the below:

"Non-abidance to Articles 3.1, 3.2, 3.3 and 3.4 by Economic Operators in their composition and submissions shall lead to the outright disqualification of all of the bids in question."

The objector felt aggrieved with the decision of the evaluation committee and filed its objection, based on a number of grounds in relation to TID 243612.

CPSU humbly disagrees with the grievances raised and is hereby presenting its reply.

Submissions

ON THE FIRST GROUND OF APPEAL: ERRONEOUS APPLICATION AND MISINTERPRETATION OF ARTICLE 3 OF THE GENERAL RULES GOVERNING TENDERS

1. The objector in this first grievance confirm that it understood well the reason for rejection, that is offers were rejected due to submitting 2 identical offers:
2. The General Rules Governing tenders provide in clause 3 that:

*3.1 Bidders may submit up to **three (3) multiple bids which should all be non-identical (technically and financially)** for a tender. In cases where bidders submit more than three (3) non-identical bids, the evaluation board will only consider the first three (3) cheapest offers submitted - irrespective of their administrative, technical*

and financial compliance. All other bids submitted by the tenderer will be automatically disqualified.

(...)

3.4 (...) Non-abidance to Articles 3.1, 3.2, 3.3 and 3.4 by Economic Operators in their composition and submissions shall lead to the outright disqualification of all of the bids in question.

3. The general rules clearly provide that both offers must be both technically and financially non identical, meaning that if the 2 offers submitted, have the same technical offer but different prices, both offers shall not be acceptable;
4. According to the Public Procurement Regulations (PPR) and the General Rules Governing Tenders, the order of the evaluation process is; Administrative, Technical and Financial, and thus once the evaluators notice that 2 offers are identical technically, they are duty bound to reject the offers based on the above cited rule.
5. The Objectors argue that its 2 offers were different technically and financially but as this Honourable Board will be able to see, both offers had the same exact and identical technical offer form, which means that the offers were technically identical, and had to be rejected.
6. For these reasons which will be further proven during the sitting, CPSU submits that this grievance ought to be rejected.

ON THE SECOND GROUND OF APPEAL: BREACH OF THE PRINCIPLES OF EQUAL TREATMENT, TRANSPARENCY, AND PROPORTIONALITY (REGULATION 39 OF S.L. 601.03)

7. The Objector submits that the evaluation committee in its evaluation breached the principles of equal treatment, transparency and proportionality.
8. This claim is totally unfounded both in fact and at law, since the evaluation committee, as it always does, ensured that the evaluation committee is carried out in accordance to all applicable laws and rules, the tender conditions and all the general principles of public procurement including those of equal treatment of bidders, transparency, proportionality and self limitation.
9. The evaluation committee ensures adherence to all these principles by applying equally and without distinction the applicable laws and rules, whilst requesting clarifications and rectifications only when permissible by the same laws and rules.

In the present case, the General Rules Governing Tenders did not provide any room for clarification or rectification since it provided that *Non-abidance to Articles 3.1, 3.2, 3.3 and 3.4 by Economic Operators in their composition and submissions shall lead to the outright disqualification of all of the bids in question.*

10. Thus, by disqualifying the objector's offer, the evaluation committee was ensuring equal treatment, transparency, proportionality with all the bidders.

11. For these reasons this grievance ought to be rejected.

**ON THE THIRD GROUND OF APPEAL: BREACH OF PUBLIC INTEREST AND
MANIFEST FAILURE TO ENSURE BEST VALUE FOR PUBLIC FUNDS**

12. The Objector in this grievance states that the evaluation committee breached public interest and failed to ensure best value for public funds. CPSU submits that this is also unfounded in fact and at law for the following reasons.

13. Although the award criteria for this tender is the price, such criteria is not absolute and the offers which should be recommended for award is the cheapest offer satisfying all the administrative, technical and financial criteria.

14. In this case this was not the case since the objector breached clause 3 of the General Rules Governing Tenders.

15. For this reason, this grievance ought to be rejected.

**ON THE FOURTH GROUND OF APPEAL: FAILURE TO PROVIDE SUFFICIENT AND
ADEQUATE REASONS FOR REJECTION**

16. The Objector in this grievance states that the contracting authority failed to provide sufficient information on the rejection.

17. CPSU submits that this grievance is frivolous since enough information was provided to address the reasons for rejection in an appeal based on 3 grievances, including the first grievance which dealt with the reason for rejection.

18. For this reason, this grievance ought to be rejected.

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

CPSU will however not object to the refund of the deposit if the appeal is withdrawn before the hearing.



Avv. Alexia J. Farrugia Zrinzo
alexia@360legalmalta.com
204/3 Old Bakery Street
Valletta



Avv. Leon Camilleri
leon@360legalmalta.com
204/3 Old Bakery Street
Valletta