

Case No. 6

Contract: CT / 2324 / 2002 – Supply of Steel Wire Mesh for Concrete Reinforcement (CT 188 / 2002)

The Director General (Contracts) issued the call for offers. The contract was intended to run from 01.01.2003 to 31.12.2003

The estimated value of this contract was Lm 11,000.

Two offers were received and were adjudicated by the adjudication board composed of professional personnel from the Ministry for Resources and Infrastructure, namely Architect Ray Farrugia and Architect John Valentino.

In their Comparison Report dated 03.02.2003 the adjudication board had stated that the cheaper offer submitted was that of Messrs. Polidano Bros. Ltd. at a price of Lm 12,535.92 compared to the one submitted by Messrs. J.M. Vassallo Vibro Blocks Ltd. at Lm 12,680.85. Yet, Messrs. Polidano's offer was rejected as it was contended that it did not satisfy the strength requirements of B.S. 4449:1997 and B.S. 4482:1985 that stipulate that a minimum yield stress of 460N/mm², for two items namely 8 (A252 mesh) and item, 16 (B503 mesh) is required.

Consequently the adjudication board concluded that the tender should be awarded to Messrs. J.M. Vassallo Vibro Blocks Ltd.

Messrs. Vassallo were requested by the pertinent authorities to extend validity of the binding period of contract to which they replied conditionally in the affirmative, namely subject to all items of the tender being awarded to them.

Following a meeting of the General Contracts Committee held on 20.02.2003 it was resolved that "the tender should be split between the two tenderers accepting the cheaper price for each individual item." Otherwise, the contract shall be awarded to the cheaper global tenderer and items 8 and 16 purchased "from the open market when the need arises."

Meantime, in a letter dated 24.03.2003, Messrs Vassallo Vibro Blocks Ltd. requested a reply to various letters sent to the Contracts Department.

At the same time, precisely on 27.03.2003 in another meeting of the General Contracts Committee it was decided that further to agreement with Director General, Works Division (thro' the Minister for Resources and Infrastructure) Messrs. Polidano Bros. Ltd. were to be awarded the contract except for items 8 and 16 which were to be procured from the open market when the need arises.

Following this decision Messrs. J.M. Vassallo Vibro Blocks Ltd. filed an objection on 02.04.2003.

In order to ascertain the validity of the complaint raised by Messrs. JM Vassallo Vibro Blocks Ltd against the decision of the Contracts Committee to award the said tender to Messrs. Polidano Bros. Ltd., the Public Contracts Appeals Board convened on the 23rd July, 2003 under the chairmanship of Mr. Alfred Triganza in the presence of the other board members, namely, Mr. Anthony Pavia and Mr. Edwin Muscat.

The following persons were also in attendance during the said hearing:

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| Mr. A. Bonello | - | A/Director of Contracts |
| Mr. France Bonello | - | Works Division |
| Architect John Valentino | - | Works Division |
| Mr. Joseph Bonello | - | JM Vassallo Vibro Blocks Ltd. |
| Mr. Patrick Spiteri Fiteni | - | JM Vassallo Vibro Blocks Ltd. |
| Dr. Paul Lia | - | JM Vassallo Vibro Blocks Ltd. |
| Ing. P.S. Zammit | - | Polidano Bros. Ltd. |

Dr. Lia commenced his submission of Messrs. Vassallo's objection by stating that for unknown reasons and contrary to normal procedure followed during these last twelve years, an extension to award contract was requested twice. The Works Division did not send a reply when requested to submit reasons for the delay in the award of the contract. He remarked that the Works Departments' analysis report regarding the quality of all items indicated that Messrs. Vassallo's product was superior to that of Messrs. Polidano's. Apart from this, two items which were considered important failed to pass the Laboratory tests. Although the overall difference between the two offers was Lm145 (Messrs. Polidano's offer was cheaper), the overall quality of Messrs. Vassallo's items was superior.

On the technical aspect of the matter, Messrs Patrick Spiteri Fiteni and Joe Bonello emphasised that 70% of the wire mesh offered by Messrs. Polidano Bros. was manufactured from 8 mm cold drawn wire which was the same material that failed Laboratory tests twice.

Architect Valentino (Works Division) stated that testing is only carried out on the mesh and not on coil and that such tenders were awarded on the basis of both the prices and the Laboratory quality tests. He confirmed that Messrs. Polidano failed on two items while all of Messrs. Vassallo's items were superior. He opined that Messrs. JM Vassallo Vibro Blocks Ltd. should have been awarded the contract.

Mr France Bonello spoke from an administrative point of view. He stated that as far as Polidano Bros. was concerned, out of the 16 items, eight were cheaper, four had the same price, two items were more expensive than Messrs. Vassallo's and two were not considered. The reason given for accepting Messrs. Polidano's offer was that their tender was cheaper. With regard to the extension of the binding period and the delay in the issue of award of contract, he stated that this was due to the fact that, despite the issue of two reminders, no reply was received from the National Laboratory in respect of quality tests. He remarked that it was abnormal for such delays to happen. Yet, this could have happened because, at the time, the latter were moving to their new premises in San Gwann (Industrial Estate).

As regards the procedure at the adjudication stage, Mr. Bonello stated that a Technical Board is entrusted with the evaluation of such tenders. In this case it was confirmed that the Technical Board had recommended the offer submitted by J M Vassallo Vibro Blocks on the basis of the fact that the one submitted by Messrs. Polidano failed on two items while tests carried out on samples submitted by Messrs. Vassallo achieved the required acceptable results.

The Ministry for Resources and Infrastructure' Board which was composed of Mr Vince Cassar (Director General Works Division), Mr John Grech (Minister's representative), Mr Mario Rogers (Director Finance and Administration and Mr France Bonello (Contracts and Procurement Section) and John Farrugia (Board Secretary) concurred with the Technical Board's recommendation.

However, the Contracts' Committee felt that in the prevailing circumstances the tender should be either,

- a. split between the two tenderers according to the cheaper price for each individual item, *or*
- b. awarded to the cheaper global tenderer with the items that failed the tests to be purchased from the open market when the need arose.

Due to the fact that Messrs J M Vassallo Vibro Blocks Ltd were not willing to extend the binding period unless they were awarded the whole contract, the Works Division agreed to award the contract as per Contracts Committee's second option. Furthermore, although the general conditions of the tenders allowed that a tender could be divided among two or more tenderers, the Works Division opined that they preferred to deal with one contractor.

When Architect Valentino's attention was drawn to the fact that this decision went against their recommendation in the first report, he stated that he agreed with this decision only because (i) the tender was being awarded to the tenderer in respect of those items that passed the laboratory tests; (ii) it was, overall, the cheapest offer; and (iii) they were pressed by time. However, he declared that, all things being equal, he would abide by the first decision and if another tender were to be issued he would make a similar recommendation to the one he had originally made, namely, in favour of Messrs. Vassallo Vibro Blocks Ltd.

Dr Paul Lia stated that they accepted to extend the binding period on condition that all items of the tender were awarded to them because since the time Messrs. Vassallo Vibro Blocks Ltd. had submitted their offer, steel prices had escalated by about 30% and they felt that it would not have made commercial sense to their Company unless their condition was agreed to.

Engineer Zammit, on behalf of Messrs. Polidano Bros. Ltd., stated that they accepted the extension of the binding period without any condition. It was strange how J M Vassallo Vibro Blocks Ltd accepted to extend the binding period under the condition that all items be awarded to them. Ing. Zammit complained about the fact that the results of laboratory tests simply stated that an item had either passed or failed.

Following evaluation of facts the Public Contracts Appeals Board resolves in favour of Messrs. JM Vassallo Vibro Blocks Ltd. based on the following *premises*:

- a. Original departmental recommendation was in favour of the offer submitted by Messrs. Vassallo;
- b. It was reiterated that, technically, the offer submitted by Messrs Vassallo is still considered to be better than that of the other bidder;
- c. The cost saving of Lm 145 if the offer submitted by Messrs. Polidano were to be accepted would be totally absorbed by the prices at which items 8 and 16 would have to be procured at from the open market, considering that, according to professional witnesses, current market steel prices have since gone up by 30%;
- d. The Works Division preferring to work with one contractor;
- e. Architect Valentino, given another chance, would opt again for a recommendation of the offer submitted by Messrs. Vassallo
- f. The disposition shown by Messrs. Vassallo during the public hearing to accept terms and conditions unconditionally and deliver goods at the same prices;

Moreover, The Board has decided to reimburse the amount of Lm 210 (Two Hundred and Ten Maltese Liri) to Messrs. JM Vassallo Vibro Blocks Ltd. being the amount deposited upon filing the objection.

Alfred R. Triganza
Chairman

Anthony Pavia
Board Member

Edwin Muscat
Board Member

Date: 01.08.2003