

## PUBLIC CONTRACTS APPEALS BOARD

### Case No. 32

#### **CT 2421/04, Advert No WSCD 918/2003, CT/WSC/T/70/2004 Tender for the Supply of Submersible Pumps Fittings and Ancillary Equipment**

This call for tenders, published in the Government Gazette on the 16.07.2004, was issued by the Contracts Department following a formal request received by the latter from the Water Services Corporation on 28.06.2004.

The closing date for this call for offers was 29.07.2004.

The Water Services Corporation appointed an Adjudication Board consisting of

- Ing. Paul Gatt – Chairman
- Ing. Mark Mangion - Member (*Witness*)
- Mr Anton Camilleri – CPO - Member

to analyse the six offers received (including four options received from the same tenderer).

Following the adjudication by the Adjudication Board of the contract, Messrs Attard Farm Supplies Ltd (AFS Ltd) filed an objection against the decision of the General Contracts Committee to award tender to Messrs Engineering and Technology Ltd for the price of Lm 23,696 (including VAT), an offer which was the second cheapest but which was considered the only one which satisfied the tender conditions.

The Public Contracts Appeals Board made up of Mr Alfred Triganza (Chairman), Mr Anthony Pavia and Mr. Edwin Muscat respectively, acting as the other members, convened a public hearing on 11.05.2005.

Present for the hearing were:

#### **Attard Farm Supplies Ltd**

Mr Joseph P Attard (Managing Director)

#### **Messrs Engineering and Technology**

Mr Paul Farrugia (*Witness*)

#### **Water Services Corporation**

Ing. Anthony Rizzo – Chief Executive

#### **Adjudication Board**

Ing. Paul Gatt – Chairman

Ing. Mark Mangion - Member (*Witness*)

Mr Anton Camilleri – CPO - Member

Following the Chairman's brief introduction AFS Ltd's representative, Mr Joseph P Attard, the Company's Managing Director commenced his intervention by stating that as already indicated in their motivated letter of objection dated 15 March 2005 they based their appeal on three points.

He said that the recommended tenderer, namely Messrs. Engineering and Technology failed to adhere to the following tender conditions, viz:

*1.10 - 'Tenderers are being warned to submit all their offers in the appropriately provided schedule of quantities. Tenderers who disregard this schedule and formulate their own shall have their offer disqualified immediately.' and*

*1.11.3 – 'Each Item shall be adjudicated on its own merits. Therefore tenderers are to quote the 'Delivered to Stores Price' for each item and also accept partial orders of any one item in the attached Schedule of Prices.'*

Mr Attard said that these tender conditions were overlooked at the adjudication stage.

With regard to the third point, Mr Attard alleged that the Water Services Corporation (WSC) failed to adhere to the Public Contracts Appeals Board's recommendations made in its decision dated 21<sup>st</sup> June 2004 in respect of Case No 17, namely that, in future, tender specifications should be revised and improved upon in such a way to ensure that they were more generic and not so restrictive.

At this stage, this Board intervened to clarify that each case had to be considered on its own merits and that any references to any other case had to be relevant to this particular objection. Also, Mr Attard was not allowed to raise other issues which were not mentioned in the motivated letter of objection. The PCAB explained that such line of action was being taken because it feels that: (i) it was unfair on the other parties for the latter not to be given the opportunity to prepare themselves to rebut anything and (ii) it should not allow so-called '*fishing expeditions*'.

In his intervention, Ing. Anthony Rizzo, Chief Executive WSC, contended that notwithstanding the fact that Case No 17 (referred to earlier by AFS Ltd's representative) dealt with similar items (submersible pumps), this in no way implied that the same decision would be applicable in this case. Yet, he emphasised that this tender was issued before the PCAB's decision.

According to the WSC's CEO, Messrs Engineering and Technology Ltd (E & T Ltd) had submitted the Schedule of Quantities as requested in the tender documents as it contained all items with a global amount. He tabled a copy of the document supplied by E & T Ltd with their offer. He said that the global price was sufficient for this particular tender.

However, when this Board referred him to Clause No. 1.11.3, Mr Rizzo acknowledged that, the fact that a global amount was submitted it was not possible to accept partial orders.

At this stage Ing. Mark Mangion, a member of the Adjudication Board, took the witness stand.

In his testimony, Ing. Mangion stated that he was the official who drew the specifications. He stated that this tender was issued for the upgrading of a pumping station, Ing. Mangion explained that tenderers were requested to submit offers in the appropriately provided schedule of quantities because, in the past, Bill of Quantities were submitted in such a way that they found it difficult to draw up the price comparative statement. He claimed that, in his opinion, the thing which mattered most was the fact that the schedule had a price of all items to be delivered to stores. In fact the wording of the tender was oriented towards this objective. Also he emphasised that, as all equipment had to be imported, it was imperative that foreign companies were formally represented in Malta by local entities.

When he was referred to tender condition 1.11.3, Mr Mangion replied that in this particular case it was difficult to accept partial orders. The PCAB drew Ing. Mangion's attention to the fact that the WSC could not deviate from tender conditions and specifications once tenderers were specifically requested *"to quote the 'Delivered to Store Price' for each item and also accept partial orders of any one item in the attached Schedule of Prices."*

Mr Paul Farrugia, representing Messrs Engineering and Technology Ltd, testified that his Company had submitted the Schedule of Quantities in accordance with clause 1.10 of the tender conditions. He said that, usually, they provided detailed designs with each tender. At this stage, he tabled a copy thereof in respect of this tender. The Chairman PCAB, intervened to explain that the function of the Board was not to analyse the technical specifications of the items offered but to ensure that the procedures followed at the adjudication stage were (a) in accordance with the Public Contracts Regulations, 2003 and (b) transparent.

In reply to a specific question by the PCAB regarding 1.11.3, Mr Farrugia said that technically it was possible but difficult to accept partial orders. As far as he was aware tenders issued for drainage pumps had never been accepted partially. In his opinion this clause was a bit generic.

#### The PCAB

- a. having considered the written and verbal arguments brought to its attention by the appellant before and during the public hearing;
- b. having considered the fact that the WSC's representatives failed to convince its members about the validity behind their own deviation from the same tender conditions and specifications they had drawn, namely tender condition 1.11.3, in which tenderers are requested to quote the 'Delivered to Store Price' for each item and also accept partial orders of any one item in the attached Schedule of Prices';
- c. having noted that whilst tender condition 1.10 "warned" stated that  
"Tenderers who disregard this schedule and formulate their own shall have their offer disqualified immediately", yet it was the same Corporation which ended up not abiding by the same conditions it drew up";

- d. having taken note that Mr Paul Farrugia, representing Messrs Engineering and Technology Ltd, the awarded party, himself testified that technically it was possible but difficult for his Company to accept partial orders (as stipulated in condition 1.11.3)

realises that the procedure followed by the Water Services Corporation in adjudicating this tender was flawed and as a consequence decides to annul this tender.

This Board also resolves that the appellant should be reimbursed the amount deposited in lodging the claim.

**Alfred Triganza**  
Chairman

**Anthony Pavia**  
Member

**Edwin Muscat**  
Member

*6<sup>th</sup> June 2005*