

## **PUBLIC CONTRACTS APPEALS BOARD**

### **Case No. 34**

#### **CT 2712/2004 – Adv. No. CT/WSC/T/107/2004 – WSC 999/04 Period Contract for the Supply of Winding Wire for submersible and surface motors.**

The Water Service Corporation issued a call for tenders for the ‘Supply of winding wire for submersible and surface motors’. The call was published in the Government Gazette on the 9 November 2004.

The global estimated value of the contract in question covering a period of two years was not to exceed Lm 24,000.

The closing date for this call for offers was 9 December 2004.

An Adjudication Board consisting of

Ing. C. Camenzuli (Chairperson)  
Ing. A. Psaila (Member)  
Mr R. Debattista (Member)

was appointed to adjudicate this tender.

Following the adjudication of this tender, Messrs. AFS Ltd, filed a Notice of Objection on 18 March 2005 against the said award to Messrs. Deeco Limited.

The Public Contracts Appeals Board made up of Mr. Alfred Triganza (Chairman), Mr. Anthony Pavia and Mr. Edwin Muscat, respectively, as members, convened a formal public hearing on 1 June 2005 to discuss this objection.

Present for the hearing were:

AFS Ltd  
Mr Joseph P Attard (Managing Director)

Deeco Ltd  
Mr Joseph Vassallo (Managing Director) (*Witness*)

Water Services Corporation  
Ing. Anthony Rizzo – Chief Executive

Adjudication Board  
Ing. Charmak Camenzuli – Chairman  
Ing. Antoine Psaila – Member  
Mr Robert Debattista - Member  
Mr Anton Camilleri – CPO - Member

After the Chairman's brief introduction, the representative of Attard Farm Supplies Ltd (AFS Ltd), namely Mr Joseph P Attard, was invited to give a general overview about the motivation behind his Company's objection.

Mr Attard started by stating that they filed their objection in respect of tender specifications for Items 2.1 to 2.5 which specified that the copper winding wire for the submersible motors should be PE2 Insulation and PA Coating. This was part of a period contract issued by the WSC for the supply of winding wire for submersible and surface motors, which was awarded to Deeco Ltd. He said that WSC used a terminology known as 'industry standard' and that various companies used this type of winding wire for submersible pumps. He exhibited a sample of this copper winding wire (PE2-PA) and also tabled a document submitted by its manufacturer, namely NSW and various other documents of leading motor builders that used this type of winding wire for their motors.

The appellant claimed that the PE2- PA was not a specification in the tender but a *product*. He insisted that AFS Ltd offered the requested product and that Deeco Ltd offered the XLPE, which although it could meet the WSC's requirements, yet it was definitely not the product requested in the tender document. Mr Attard was of the opinion that if the WSC wanted a different product the specifications should have been written differently by indicating the XLPE. He claimed that there could have been more bidders for this type of product because, according to him, XLPE is cheaper than the PE2 - PA. Furthermore, XLPE is not a proprietary produce and is manufactured by a few companies. Mr Attard said that in accepting XLPE, the WSC was inconsistent considering the fact that the product indicated in the tender specifications was different from that accepted at adjudication stage.

The appellant said that should the WSC have intended to go for something other than the PE2 - PA type, it would have been more professional, ethical and transparent on its part to carry out the fact finding research before issuing the call for offers rather than after! Mr Attard maintained that (a) the WSC carried out the research after his Company filed the objection and (b) the issue of equivalence emerged afterwards, insisting in the process that the XLPE and the PE2- PA were two distinct products.

Referring to Ing. Charmak Camenzuli's statement that the PE2 - PA and XLPE winding wires were equivalent, Mr Attard claimed that although the construction of the wire was the same, the basic difference between the two types of wires was in the manufacturing process. He said that both used cross-linking processes but the XLPE was made through chemical process and the PE2 - PA was made by irradiation, which was a technical process. He said that according to NSW, the first was an easier and cheaper process but which could create difficulties in particular instances, for example, when applied under water. Similar applications could instigate problems due to the chemical additives that this product contains. They claimed that their principals obtained the best results with cross-linking by irradiation and also that the material content was considered by their customers (including the WSC) as an excellent insulation material with very good electrical properties.

In reply to the WSC representatives' statements that they opted to select an equivalent product, Mr Attard claimed that in the tender document, the WSC requested the PE2-PA and therefore it was now obliged to purchase this winding wire from NSW because PE2 - PA was a brand name. The appellant insisted that once NSW did not

submit any offers to Deeco Ltd for this contract, the product offered by Deeco Ltd did not meet specifications based on a specific manufacturing process.

Ing. Anthony Rizzo, the WSC's Chief Executive Officer, said that from the documents presented by Mr Attard it resulted that various companies mentioned the PE2 – PA type and that the WSC had decided as result to quote in the tender document specifications for the same type of winding wire. Furthermore, Mr Rizzo said that even their technical manuals indicated the use of the PE2–PA.

The WSC's CEO said that it was only after they received offers for the use of XLPE winding wire that it was established that there were no standards and, as a consequence, they felt that they would not be contravening anything as it had always regarded PE2 – PA as an industry standard rather than a brand name!

Ing. Charmak Camenzuli, the Chairman of the Adjudication Board, said that the specifications of this tender were drawn up according to the technical manuals of the motors available which indicated either the PVC or PE2 – PA winding wire. He declared that they thought that it was a standard and that they did not know that it was a brand name. He explained that at adjudication stage they accepted Deeco Ltd's offer because the winding wire, namely the XLPE which stood for Cross Linked Polyethylene, was an equivalent material and cheaper. He said that the Corporation's technical staff established that there was no standard after contacting various manufacturers claiming also that when these compared tests they found that both products (XLPE and PE2 – PA) were equivalent.

Also, Mr Camenzuli continued, when they referred the matter to the manufacturers of their motor equipment, namely *Franklin*, in order to enquire whether they could use the XLPE winding wire, the reply given was in the affirmative even though on their manuals and on the Internet they recommended the use of the PE2 – PA.

Ing. Antoine Psaila, another member of the Adjudication Board, confirmed that in the tender document they had requested PE2-PA type of winding wire. He said that by way of definition cross-linked polyethylene had to meet certain standards, insisting, however, that these had nothing to do with the manufacturing process.

He reiterated that the specifications were drawn according to the manuals of the manufacturers of the motor who recommended the use of PE2 - PA. He concluded by stating that the most important thing was that performance of the selected product was according to the required standard.

Mr Joseph Vassallo, Managing Director, Deeco Ltd., testified that Mr Attard had given the impression that their product was superior to the one being offered by Deeco Ltd. He said that PE2-PA was more expensive than XLPE and that the manufacturers themselves, NEXANS, had confirmed that XLPE was equivalent to PE2-PA. He said that the characteristics and dimensions of both products were equivalent and that XLPE-PA (cross-linked polyethylene sheathed with polyamide) was chemically cross-linked polyethylene and the PE2-PA from NSW was cross-linked by irradiation. Here, Mr Attard intervened and said that by this statement NEXANS were acknowledging that PE2 – PA and XLPE were two distinct products by two different manufacturing processes (irradiation against chemical). He

emphasised that WSC had asked for a product with a specific manufacturing process and that the name itself implied a different manufacturing process.

With reference to the documents provided by Mr Attard regarding the fact that many companies used PE2 – PA, Mr Vassallo said that likewise there were many other companies which used XLPE. He said that NSW on its website admitted that *‘the increased resistance to heat is achieved by cross-linking the polyethylene’*.

He said that although WSC specified that the winding wire had to be made of pure electrolytic copper sheathed with PE 2 – insulation and PA – coating, also they indicated that *‘the insulation shall be adequate to withstand temperatures ranging between 35 degrees C and 80 degrees C.’* Deeco Ltd offered a product of superior technical performance to the temperatures required by the WSC.

The Public Contracts Appeals Board, having heard and considered all the evidence submitted, took note that:

- all parties agreed the term PE2-PA is a proprietary brand name;
- no specific national or international standards are available to indicate the particular properties of PE2-PA and, as a consequence, there may arise circumstances where the term itself is taken to indicate that standard.

The Board considers that it is evident that when it is required to refer to the standard and not the particular brand an indication to this effect should be made, e.g. PE2-PA *or its equivalent*. The absence of such an indication can only be taken to mean that what is required is the particular brand and no other possibilities are allowed.

In this particular case the Water Services Corporation appears to have carried out insufficient research before issuing the tender. The necessary resources to carry out more in depth research were available to the Corporation as witnessed by the fact that, following the receipt of bids, the Corporation’s representative was able, through the internet, to build up an adequate store of information which should no doubt serve it well in future.

The Board strongly recommends that Water Services Corporation personnel should be made aware of their responsibilities in this respect and instructed to be more careful in future.

The result of this incomplete preparation was that a tender was issued which because of the reference to the proprietary brand name PE2-PA was limited to one particular manufacturer and possibly one local supplier only, although it has emerged clearly through the evidence submitted that this was not the intention of the Corporation.

The Board can never condone the issue of tenders which limit the choice to a single supplier.

The Board has therefore decided that the tender in question should be annulled and that a new tender should be issued in the immediate future.

Furthermore, the Public Contracts Appeals Board recommends that the appellant should be reimbursed the deposit paid when filing the said objection.

**A. Triganza**  
Chairman

**A. Pavia**  
Member

**E. Muscat**  
Member

*10 June 2005*