

PUBLIC CONTRACTS APPEALS BOARD

Case 82

CT 2483/2005 – Advert Notice E/E/T/PC3/39/2005 - Period Contract for the Supply of Road Lighting Lanterns

This call for tenders, which was published in both the EU Official Journal as well as the Maltese Government Gazette on 9 September 2005 and was issued by the Contracts Department following a request transmitted to the latter on 2 May 2005 by Enemalta Corporation.

The closing date for this call for offers was 8 November 2005.

Twelve (12) different tenderers submitted their offers.

Messrs **Hydroelectric Ltd** filed an objection on 5 June 2006 after being informed that Items 9 to 12, referred to in the Department of Contracts' letter dated 31 May 2006, were not compliant with the tender specifications.

The Public Contracts Appeals Board (PCAB) made up of Mr Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr Edwin Muscat, respectively, acting as members, convened a public hearing on the 28 June 2006 to discuss this objection.

Present for the hearing were:

Hydroelectric Limited

Mr Etienne Bonello DuPuis – Managing Director
Dr Andrew Borg Cardona LL.D

Enemalta Corporation

Mr Godfrey Camilleri – Procurement Executive
Mr Francis Darmanin – Head of Procurement

Adjudication Board

Ing. Mark Sciberras
Ing. John Mizzi

Joseph Cachia & Son Ltd obo GC Illuminations Srl

Ms Nadia Camilleri

After the Chairman's brief introduction, *Hydroelectric Ltd's* representatives were invited to explain the motive of their objection.

Dr Andrew Borg Cardona, the appellants' legal representative started by stating that his client was rejected because Items 9 to 12 (250W High Pressure Sodium Lanterns) were not according to tender specifications as they did not fit with the 43mm diameter bracket. He said that his clients failed to understand how the Evaluation Committee arrived at this conclusion because the product offered could be fitted on a pole with a 42 to 60mm diameter arm.

Enemalta Corporation's engineers, namely Messrs Mark Sciberras and John Mizzi respectively, both of them directly involved in the evaluation of the offers, responded by stating that the mounting arrangements offered for the requested 70W and 150W lanterns were suitable as their bracket could take mountings of different sizes, and had two bolts and a grip on the entire bracket. However, they maintained that the mounting arrangements of the 250W lanterns, which had completely different brackets, were found not suitable for a 43mm diameter bracket because they could not be affixed tightly to the poles. Messrs Sciberras and Mizzi demonstrated samples of the lanterns offered by the appellants to prove their point. At the stage, when Ing Mizzi fastened the bolt of the 250W lantern with his hands, the lantern wobbled. Ing Mizzi explained that the lantern remained unstable because there was too much loose space between the bracket and the pole, and because it had a single bolt arrangement.

At this point, Mr Etienne Bonello DuPuis, Managing Director, Hydroelectric Ltd, intervened by insisting that the lanterns had to be mounted with the appropriate tool, that is, an 'allen key'. Furthermore, he explained that the lantern might have wobbled because the pipe was not positioned at the appropriate place inside the lantern. On his part, Dr Borg Cardona demonstrated to all those present that when he turned the bolt with one of his personal keys the lantern remained stable. Continuing, Mr Bonello DuPuis declared that they had never encountered such problems with neither (a) of the thirty three (33) Local Councils with whom they had contracts for the supply of street lighting nor (b) the Malta Transport Authority, when the same type of lanterns were installed on 50% of the entire 16 km stretch of roads constructed under the Italo-Maltese Financial Protocol.

The appellants' Managing Director maintained that, as requested in the tender, they had submitted all the technical documentation and all the necessary information, including the lanterns' surface area and windage.

Dr Bonello DuPuis insisted that the lanterns offered were suitable for the 43mm diameter brackets. He pointed out that the manufacturing company was a serious one and had contracted another company to have the lanterns tested for safety purposes.

In his concluding remarks, Dr Borg Cardona said that the appellants' objection should be upheld because the products offered were safe and compliant with the tender's specifications.

During the hearing the PCAB drew the attention of the Corporation's representatives that (a) the type of mounting arrangements required and (b) the reasons why the mounting arrangements of the lanterns offered were not considered suitable, should

have been specified in the tender specifications and the evaluation report, respectively. The representatives of the tendering entity submitted that they had kept the specifications as wide as possible to enable the tendering of various solutions.

At this stage, the public hearing was brought to a close and the PCAB proceeded with its deliberations before reaching its decision.

This Board,

- having noted that the appellants, in terms of their ‘letter of objection’ dated 5 June 2006, and also through their verbal submissions presented during the public hearing held on the 28 June 2006, had objected to the decision taken by the General Contracts Committee, formally communicated via a letter, informing them that the tender submitted by them was not successful;
- having considered both the appellants’ own as well as its legal representative’s arguments against why the Evaluation Committee arrived at such a conclusion claiming that the product offered by them could be fitted on a pole with a 42 to 60mm diameter arm;
- having also noted Enemalta Corporation’s representatives unconvincingly trying to explain the reasons for their objection as regards the suitability of the items in question;
- having also considered the appellants’ legal representative’s demonstration when he turned the bolt with one of his personal keys with the lantern remaining stable;
- having noted the fact that similar items had already been installed by appellants in thirty three (33) towns and villages represented by the same amount of local councils;
- having heard from appellants how these products have recently been installed in 50% of the entire 16 km stretch of roads constructed under the Italo-Maltese Financial Protocol;
- having noted the Corporation’s claim that they can only be accountable to items contracted by them and not by other parties;
- having, during the public hearing, already drawn the attention of the Corporation’s representatives that (a) the type of mounting arrangements required and (b) the reasons why the mounting arrangements of the lanterns offered were not considered suitable, should have been specified in the tender specifications and the evaluation report, respectively;

reached the following conclusion, namely that it is satisfied that the tenderer has complied with relevant specifications and therefore the appellants should be reinstated.

The PCAB notes that the representative of Enemalta Corporation seemed to be worried about safety considerations although this concern appears to have been based on a hunch rather than after hard study. In view of these considerations, Enemalta Corporation should examine all relevant safety certificates to ensure that all EU standards are complied with.

Pursuant to the above, this Board upholds the appeal lodged by the appellants.

In view of the above and in terms of the Public Contracts Regulations, 2005, this Board recommends that the deposit submitted by the appellants should be refunded.

Alfred R Triganza
Chairman

Anthony Pavia
Member

Edwin Muscat
Member

July 12, 2006