

PUBLIC CONTRACTS APPEALS BOARD

Case No. 219

CT/4014/2010; CT/WSC/T/12/2010

Tender for the Supply and Delivery of Submersible Pumps and Accessories

This call for tenders was published in the Government Gazette on 16.03.2010. The closing date for this call for offers was 22.04.2010.

Five (5) tenderers - submitted their offers

AFS Ltd filed an objection on the 7 May 2010 against decision by the Contracts Department to cancel the tender in caption because the tendering process had been compromised since one of the submitted offers was inadvertently left unopened.

The Public Contracts Appeals Board composed of Mr Alfred Triganza as Chairman and Mr. Edwin Muscat and Mr. Carmel J Esposito as members convened a public hearing on Monday, 16 August 2010 to discuss this objection.

Present for the hearing were:

AFS Ltd

Mr Joseph. P. Attard

Managing Director

Water Services Corporation (WSC)

Mr Anthony Camilleri
Ms Violet Borg

Representative
Representative

Department of Contracts

Mr Mario Borg

Assistant Director

After the Chairman's brief introduction as to how the hearing was going to be conducted, the appellant Company was invited to explain the motive/s of the objection.

Mr Joseph Attard, representing AFS Ltd, the appellant Company, expressed his disappointment with the decision taken by the Contracts Department to cancel the tender because it appeared to him that the unopened offer was not submitted after the closing date/time of the tender but that it was left unopened through a genuine oversight on the part of the department. As a consequence, Mr Attard felt aggrieved by the recommendation for this tender to be cancelled since his firm had submitted the cheapest offer and, as a result, if the tender were to be reissued, his firm would find itself at a disadvantage once the other bids had been opened and the prices made public.

Mr Mario Borg, Assistant Director at the Contracts Department, recalled that on that occasion, five tenders were found in the tender box, the details of which were published in the schedule of tenders. He added that, later in the day, Messrs JP Baldacchino Ltd had informed him that the tender it had submitted did not feature on the schedule of tenders. Mr Borg explained that, whenever a tender submission could not go through the aperture of the tender box - as was the case in question - it was the custom to attach a note (in a plastic cover) to the tender box indicating that a tender was being held in the strong room, which tender had to be opened on a given date. Mr Borg further explained that the officer receiving the tenders on that day, namely Ms Michelle Lunetti, was unaware of this practice and, therefore, she did not attach an appropriate note to the tender box. However, Mr Borg stated that Ms Lunetti had confirmed that J.P. Baldacchino Ltd had submitted the tender in time.

Mr Edwin Musct, a member of the PCAB, suggested that in such a case one should perhaps insert an envelope in the tender box indicating that an offer in respect of that particular call for tenders had been deposited in the strong room since it could not get through the aperture of the tender box.

The Chairman PCAB also suggested that Ms Lunetti ought to make a declaration or take an affidavit registering the fact that the tender submitted by JP Baldacchino Ltd had reached the Contracts Department in time and to forward that declaration to the Secretary of the PCAB. The Chairman PCAB remarked that it was not fair on those who submitted an offer to cancel the tendering process because of a genuine oversight on the part of the department.

Mr Mario Borg, assistant director (Contracts Department), and Mr Anthony Camilleri, a representative of the Water Services Corporation, under oath, both declared that Ms Michelle Lunetti had confirmed to them that the tender by JP Baldacchino Ltd had been delivered at the Contracts Department in time.

The Chairman PCAB remarked that, for justice to be served to the tenderers who participated in this process, the unopened tender submitted by Messrs JP Baldacchino should be opened and considered along with the rest so that, instead of being cancelled, the tendering process would continue its course.

At this point the hearing was brought to a close.
This Board,

- having noted that the appellants, in terms of their ‘reasoned letter of objection’ dated 31 May 2010 and also through their verbal submissions presented during the public hearing held on 16 August 2010 had objected to the decision taken by the General Contracts Committee;
- having taken note of Mr Attard’s submission;
- having also taken note of Mr Borg’s explanation of how things developed and his confirmation of Ms Lunetti’s genuine mistake;
- having also taken cognizance of the fact that, under oath, both Mr Borg and Mr Camilleri, declared that Ms Michelle Lunetti had confirmed to them that the tender by JP Baldacchino Ltd had been delivered at the Contracts Department in time,

reached the following conclusions, namely:

1. The PCAB (a) suggests that, in similar circumstances in the future, Contracts Department officials should insert an envelope in the pertinent tender box indicating that an offer in respect of that particular call for tenders has been deposited in the strong room in view of the fact that it could not get through the aperture of the tender box and (b) requires that Ms Lunetti takes an affidavit registering the fact that the tender submitted by JP Baldacchino Ltd had reached the Contracts Department in time with a copy of this affidavit to be forwarded to the Secretary of the PCAB.
2. The PCAB argues that it is not fair on those who submit an offer for a tender process to be cancelled due to a genuine oversight on the part of the department.
3. The PCAB feels that, for justice to be served to the tenderers who participated in this process, the unopened tender submitted by Messrs JP Baldacchino should be opened and considered along with the rest so that, instead of being cancelled, the tendering process would continue its course.

As a consequence of (1) to (3) above this Board finds in favour of the appellant Company.

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

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel J Esposito
Member

20 August 2010