

PUBLIC CONTRACTS APPEALS BOARD

Case No. 232

Adv. CT/WSC/T/7/2010; CT/4012/2010

Supply Tender for the Supply and Fitting of Tyres to Water Services Corporation's Vehicles (Cranes, Trucks & Excavators)

This call for tenders was published in the Government Gazette on 2 March 2010. The closing date for this call for offers was 6 April 2010.

The estimated value of this tender was Euro 51,218.

Three (3) tenderers submitted their offers.

Messrs Montebello Tyres Ltd filed an objection on the 4 August 2010 following the decision by the Contracts Department to award the tender in caption to Messrs Burmarrad Commercials Ltd.

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 Friday, 8 October 2010 to discuss this objection.

Present for the hearing were:

Messrs A Montebello Tyres Ltd

Mr Charles Montebello	Representative
Mr Joe Montebello	Representative
Ms Sylvianne Micallef	Representative
Ms Amanda Abela	Representative

Messrs Burmarrad Commercials Ltd

Mr Mario Gauci	Representative
Mr Sharon Camilleri	Representative

Water Services Corporation (WSC)

Ing. Marco Perez	Manager Procurement and Stores
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Evaluation Board

Ing. Paul Micallef	Chairman
Mr Anthony Camilleri	Secretary
Mr Simon Agius	Member
Ing. Tonio Muscat	Member
Mr Charles Garzia	Member

Department of Contracts

Mr Francis Attard	Director General (Contracts)
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After the Chairman's brief introduction as to how the hearing was going to be conducted, the appellant company was invited to explain the motives of the objection.

Mr Charles Montebello, representing A Montebello Tyres Ltd, the appellant company, explained that, by letter dated 30th July 2010, the Contracts Department informed the company that its offer in respect of Lot 1 was adjudicated to be non-compliant since item 1.4 (10 R22.5) was offered with ply rating of 14 instead of 16. Mr Montebello suspected that, in spite of having submitted the cheapest prices with regard to all the other tyres requested in Lot 1, the contracting authority had discarded all of them because its offer was deemed as non-compliant in respect of one of the types of tyres requested. Mr Montebello complained that when he contacted the Contracts Department to be informed of the brand names offered by the recommended tenderer, he was informed that he could obtain that information only by lodging an appeal and paying the relative deposit.

The Chairman PCAB lamented that the PCAB should not be called in to decide on whether an interested party could or could not be informed of the brand names of the tyres offered by the recommended tenderer but the PCAB should convene hearings to examine and decide on matters concerning the tendering procedure in terms of transparency, the equal treatment of all tenderers and such related aspects of the process.

Ing. Paul Micallef, chairman of the adjudicating board, explained that following the objection filed by Messrs A Montebello Tyres Ltd, the adjudicating board went through the tender documentation once again and it transpired that both tenderers were not compliant with regard to item 1.4. Ing. Micallef admitted that, with regard to item 1.4, the contracting authority requested ply 16 and that the appellant company had indicated in its submission that ply 16 was not available. The adjudication board's Chairman was baffled by the fact that the appellants had retyped the schedules of the items requested and item 1.4 was retyped with ply 16 and that the appellants submitted the quote against a ply 16 item. Ing. Micallef remarked that this same schedule had been used in other previous calls for tenders for the supply of tyres and that the previous contract for such tyres was awarded to Messrs A Montebello Tyres Ltd. Ing. Micallef confirmed that, following a review of the literature submitted by the tenderers, the adjudicating board found that both tenderers were not compliant with regard to item 1.4 of Lot 1.

The Chairman PCAB made it quite clear that this was a purely administrative matter and that such issues had to be addressed by the contracting authority and not by the PCAB. The Chairman PCAB stated that if it transpired that a mistake had been committed at evaluation stage then the contracting authority should have sought the advice of the Contracts Department with a view to obtaining directions as to how to rectify that mistake.

Ing. Micallef remarked that, usually, whenever there was a mistake in the schedule (of prices) the bidders would draw the attention of the contracting authority and the contracting authority would then issue a clarification to all bidders to that effect. Ing. Micallef reiterated that the same schedule had been made use of for years and no one had pointed out that it was deficient in this regard.

Ing. Micallef explained to Mr Montebello that the contracting authority had to award Lot 1 in its entirety, i.e. it could not award individual items of a particular lot otherwise that would amount to a separate tender for each item which practice would be administratively burdensome on the contracting authority. The chairman of the adjudicating board acknowledged that a mistake was made in awarding Lot 1 to Burmarrad Commercials Ltd because this tenderer was, likewise, non-compliant with regard to item 1.4.

On his part, Mr Mario Gauci, representing Burmarrad Commercials Ltd, remarked that, contrary to what the appellant company had declared, he had evidence that item 1.4 was in fact available with ply 16 – however, he admitted that the tyre Burmarrad Commercials offered in its submission in respect of item 1.4 was 14 ply and not ply 16

Mr Montebello remarked that what he meant was that the type of tyre bearing the description given at item 1.4 in the tender document was not imported and, as a consequence, not available in Malta.

The Chairman PCAB remarked that, apparently, the specifications with regard to item 1.4 were correct, namely the item was manufactured but none of the bidders offered it in their tender submissions and hence they were both technically non-compliant.

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 18 August 2010 and also through their verbal submissions presented during the public hearing held on 8 October 2010 had objected to the decision taken by the General Contracts Committee;
- having taken note of the appellants’ representatives’ (a) claim that the company’s offer in respect of Lot 1 was adjudicated to be non-compliant since item 1.4 (10 R22.5) was offered with ply rating of 14 instead of 16, (b) submission that, in spite of having submitted the cheapest prices with regard to all the other tyres requested in Lot 1, the contracting authority had discarded all of them because its offer was deemed as non-compliant in respect of one of the types of tyres requested, (c) claim that when he contacted the Contracts Department to be informed of the brand names offered by the recommended tenderer, he was informed that he could obtain that information only by lodging an appeal and paying the relative deposit and (d) claim that what he meant was that the type of tyre bearing the description given at item 1.4 in the tender document was not imported and, as a consequence, not available in Malta;
- having also taken note of the contracting authority’s representative’s (a) explanation regarding the fact that, with regards to this objection, the adjudicating board had through the tender documentation once again and it transpired that both tenderers were not compliant with regard to item 1.4, (b) statement that with regard to item 1.4, the contracting authority requested ply 16 and that the appellant company had indicated in its submission that ply 16

was not available albeit it later emerged that the appellants had retyped the schedules of the items requested and item 1.4 was retyped with ply 16 and that the appellants submitted the quote against a ply 16 item, (c) remark that the schedule used in this call had been used in other previous calls for tenders for the supply of tyres and that the previous contract for such tyres was awarded to Messrs A Montebello Tyres Ltd, (d) confirmation that, following a review of the literature submitted by the tenderers, the adjudicating board found that both tenderers were not compliant with regard to item 1.4 of Lot 1, (e) remark that , usually, whenever there was a mistake in the schedule (of prices) the bidders would draw the attention of the contracting authority and the contracting authority would then issue a clarification to all bidders to that effect, (f) statement that the same schedule had been made use of for years and no one had pointed out that it was somehow deficient and (g) acknowledgement that a mistake was made by the adjudicating board in awarding Lot 1 to Burmarrad Commercials Ltd because the latter was, similarly, non-compliant with regard to item 1.4;

- having considered Mr Gauci's (a) remark relating to the fact that, contrary to what the appellant company had declared, he had evidence that item 1.4 was in fact available with ply 16 and (b) admission that, regardless of his earlier remark, the tyre his own Company, namely, Burmarrad Commercials Ltd., had offered in its submission a 14 ply and not ply 16 as far as item 1.4 is concerned;

reached the following conclusions, namely:

1. The PCAB's function should be to convene hearings to examine and decide on matters concerning the tendering procedure in terms of transparency, the equal treatment of all tenderers and such related aspects of the process. It is not there so that it can be called in to decide on whether an interested party could or could not be informed of the brand names of the tyres offered by the recommended tenderer.
2. The PCAB feels that the issues raised during this hearing were of a purely administrative nature and that such issues had to be addressed by the contracting authority and not by the PCAB.
3. The PCAB contends that if during some stage of the evaluation process it transpired that a mistake had been committed then the contracting authority should have sought the advice of the Contracts Department with a view to obtaining directions as to how to rectify that mistake.
4. The PCAB feels that, from what transpired during the hearing, the specifications with regard to item 1.4 were correct, namely the item was manufactured and available but none of the bidders offered it in their tender submissions and, as a result, they were both technically non-compliant.
5. The PCAB also concludes that the adjudicating board's own admission that it had made a mistake in awarding Lot 1 to Burmarrad Commercials Ltd because the

latter was, similarly, non-compliant with regard to item 1.4, vitiates the entire process rendering this tender null.

As a consequence of (1) to (5) above this Board finds in favour of appellant company.

The Board recommends that in view of the technical deficiencies (demonstrated in the bidders' respective submissions and the adjudicating board's own mistake) encountered during the evaluation process rendering the impossibility of this tender from being decided upon, it recommends that this tender be cancelled and a fresh call be published in the immediate future.

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

27 October 2010