

PUBLIC CONTRACTS APPEALS BOARD

Case No. 291

CT/ARMS/T/20/2010

Tender for the Supply and Printing of Bills for Automated Revenue Management Services Ltd

This call for tenders was published in the Government Gazette on 30th April 2010. The closing date for this call with an estimated budget of € 60000 was 27th May 2010.

Six (6) tenderers submitted their offers.

Clentec Ltd filed an objection on 24th December 2010 against the decision by the Contracts Department to disqualify its offer as technically non-compliant.

The Public Contracts Appeals Board composed of Mr Alfred Triganza as Chairman, Mr. Edwin Muscat and Mr Carmel Esposito as members convened a public hearing on Wednesday, 18th May 2011 to discuss this objection.

Present for the hearing were:

Gutenberg Press Ltd

Dr Antoine Naudi
Mr Mario Magro

Legal Representative
Representative

Velprint Ltd

Mr Vincent Vella

Representative

Water Services Corporation (WSC) - Automated Revenue Management Services Ltd (ARMS Ltd)

Mr Marco Perez
Mr Anthony Camilleri

Representative
Representative

Evaluation Board:

Mr Stephen Caruana
Mr Andre Muscat
Ms Bernice Balzan
Mr Mark Lupi
Mr Jude Carabott

Chairman
Member
Member
Memebr
Secertary

After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of his client's objection.

Dr Antoine Naudi, legal representative of Gutenberg Press Ltd, the appellant company, explained that by letter dated 17th December 2010 the Contracts Department notified his client that the company's offer was not successful as it was "technically non-compliant" for two reasons, namely, 'grammage' and 'minimal paper bending at corners'.

With regard to grammage, Dr Naudi remarked that the Contracts Department had furnished the following explanation:-

“Requested grammage of paper was of 90gsm which is equivalent to approx 5.60g per page (and not 5.5g per page as indicted in appellant's letter dated 24th December 2010). A sample of 10 sheets were weighed twice and took average for more accurate tests at the Lab of IWT and a total of 55.5576g was given resulting in an average weight per page of 5.56g which is approx 0.71% below the required grammage.”

According to the certificate of analysis the result in respect of Gutenberg was as follows:

Reference: 90gsm = 5.60g.

*Weight of 10 pages (g)
55.5576g*

*Weight of 1 page (g)
5.56g*

*Difference from Ref. (g)
0.04g*

*% difference
0.71%*

Dr Naudi stated that his client had offered white 90gsm paper as requested in clause 2 of the tender document but, according to the contracting authority, the shortcoming concerned the weight of the paper. He added that the contracting authority itself indicated that the weight per page was 'approx' 5.6g and he, therefore, argued that even if, for the sake of the argument, there was a variation of 0.71%, that surely qualified as an acceptable variation and, to prove his point, he submitted as evidence a document styled 'General Conditions of Sale of Paper and Board Manufacturers in EEC', where Clause 14 'Basis Weight Tolerances of Deliveries' allowed for about 5% tolerance, plus or minus.

Mr Stephen Caruana, chairman of the evaluation board, remarked that all the tenders submitted were, in fact, below the 5% variation and he added that, when his board carried out its first evaluation, the paper weight was not an issue. He added that it was the Contracts Committee that had indicated that the appellant company had to be disqualified because of the paper weight difference. Mr Caruana made it clear that, in the first instance, the

evaluation board did not disqualify the appellant company due to the difference in the weight of the paper that it supplied.

When referring to paper bending Dr Naudi cited the remark communicated by the contracting authority in this regard:

“Printing carried out correctly and no misfeeds given during printing of sample (approx 70 sheets) - no blank/double pages or jamming given while printing. Only concern was a minimal bending of paper at the corners.”

Dr Naudi explained that it could have happened that the test on the paper supplied by his client was carried out after several other printing jobs had been carried out with the result that the rollers would have heated up thus causing the paper to bend minimally at the corners/edges.

Mr Caruana explained that the paper testing was carried out by the contracting authority on its bill printing machines and it was irrelevant whether the appellant company’s paper was tested at the start or at the end of the testing exercise. Mr Caruana added that his board’s observation that the paper tended to bend a bit at the corners was only a sort of ‘passing remark’ but it was not a serious shortcoming that should lead to the disqualification of the appellant company.

Other issues that were considered during the hearing included (a) ISO Certification and (b) the price.

ISO Certification

Dr Naudi stated that Clause 8 of the tender specifications indicated that:

“Preferably suppliers should have in operation at their manufacturing facilities a quality assurance system in accordance with ISO 9001:2000 or equivalent with certification for both design and manufacture functions....”

Dr Naudi claimed that his client’s printing press was the only one in Malta which had a quality assurance system in accordance with ISO 9001:2000, evidence of which could be obtained from the website of the Malta Standards Authority. Dr Naudi pointed out that, although this was not a mandatory requirement but a ‘preference’, it appeared that the evaluation board had not given any consideration to this matter.

Price

Dr Naudi submitted that his client quoted the price of €48,825 whilst the recommended tenderer offered the price of €51,595.50.

Mr Caruana explained that the Water Services Corporation was VAT exempt without credit whereas ARMS Ltd would claim back the VAT element and, as a result, what mattered to ARMS Ltd in terms of price was the basic cost.

Mr Caruana further explained that, on closer examination of the prices, it was evident that three tenderers, among them the recommended tenderer, quoted VAT at 18% whereas the other three, including the appellant company, quoted VAT at 5% and therefore, when one removed the VAT element from the prices submitted, the following picture emerged:

	Basic cost	VAT	Total
Velprint Ltd	€43,725.00	€7,870.50 (18%)	€51,595.00
Gutenberg	€46,500.00	€2,325.00 (5%)	€48,825.00

Mr Mario Magro, representing Gutenberg Press, remarked that once the company he was representing submitted the price of €48,825 then it was bound to provide the service at that price and if it would turn out that the VAT rate on this service was 18% and not 5% then his firm would have to make good for the difference in the rate of VAT.

The Chairman, Public Contracts Appeals Board, disagreed with Mr Magro's argument because the appellant company had broken down its price in terms of basic cost and VAT, as requested in the tender document, and, as a consequence, what mattered was the cost excluding VAT.

Dr Naudi made the point that his client was not contesting the award of the tender to Velprint Ltd but what he was primarily contesting was the fact that his client's offer was disqualified at the technical compliance stage when it was clearly emerging at the hearing, even by clear declarations made by the evaluation board itself, that his client's offer was, in fact, technically compliant. With regard to price, Dr Naudi stated that, according to the VAT legislation, the rate chargeable in this case was 5% and not 18% claiming that the recommended tenderer had failed to submit a tender in conformity with legislation.

Mr Caruana remarked that the fact that three tenderers quoted VAT at 5% and the other three tenderers quoted VAT at 18% demonstrated that there was an element of uncertainty among operators in this sector as to the proper VAT rate that was chargeable.

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 24th December 2010 and also through their verbal submissions presented during the hearing held on 18th May 2011, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representatives' claims and observations, particularly, the references made to the fact that (a) the company's offer was considered not successful as it was "technically non-compliant" for two reasons, namely, 'grammage' and 'minimal paper bending at corners', (b) the company had offered white 90gsm paper as requested in clause 2 of the tender document but, according to the contracting authority, the shortcoming concerned the weight of the paper, (c) the contracting

authority itself indicated that the weight per page was 'approx' 5.6g and that, as a consequence, even if, for the sake of the argument, there was a variation of 0.71%, that surely qualified as an acceptable variation as evidenced in a document entitled 'General Conditions of Sale of Paper and Board Manufacturers in EEC', where Clause 14 'Basis Weight Tolerances of Deliveries' allowed for about 5% tolerance, plus or minus, (d) with regard to paper bending, it could have happened that the test on the paper supplied by the appellant company was carried out after several other printing jobs had been carried out with the result that the rollers would have heated up thus causing the paper to bend minimally at the corners/edges, (d) although, preferably, suppliers should have had in operation at their manufacturing facilities a quality assurance system in accordance with ISO 9001:2000 or equivalent with certification for both design and manufacture functions, yet it appeared that the evaluation board had not given any consideration to this matter in view of the fact that this was not a mandatory requirement but a 'preference', (e) the company had quoted the price of €48,825 whilst the recommended tenderer offered the price of €51,595.50, (f) once the appellant company submitted the price of €48,825 then it was bound to provide the service at that price and if it would turn out that the VAT rate on this service was 18% and not 5% then his firm would have to make good for the difference in the rate of VAT, (g) the appellant company was not contesting the award of the tender to Velprint Ltd but what it was primarily contesting was the fact the company's offer was disqualified at the technical compliance stage when it was clearly emerging at the hearing, even by clear declarations made by the evaluation board itself, that the appellant company's offer was, in fact, technically compliant and (h) with regard to price, according to the VAT legislation, the rate chargeable in this case was 5% and not 18% thus rendering the recommended tenderer's bid as not in conformity with legislation;

- having considered the contracting authority's representative's reference to the fact that (a) it was the Contracts Committee that had indicated that the appellant company had to be disqualified because of the paper weight difference, (b) in the first instance, the evaluation board did not disqualify the appellant company due to the difference in the weight of the paper that it supplied, (c) the paper testing was carried out by the contracting authority on its bill printing machines and it was irrelevant whether the appellant company's paper was tested at the start or at the end of the testing exercise, (d) the evaluation board's observation that the paper tended to bend a bit at the corners was only a sort of 'passing remark' but it was not a serious shortcoming that should lead to the disqualification of the appellant company, (e) the Water Services Corporation was VAT exempt without credit whereas ARMS Ltd would claim back the VAT element and, as a result, what mattered to ARMS Ltd in terms of price was the basic cost and (f) since three tenderers quoted VAT at 5% and the other three tenderers quoted VAT at 18% this demonstrated that there was an element of uncertainty among operators in this sector as to the proper VAT rate that was chargeable;

reached the following conclusions, namely:

1. The Public Contracts Appeals Board argues that albeit the appellant company's offer was considered not successful as it was "technically non-compliant" for two reasons, namely, 'grammage' and 'minimal paper-bending at corners', yet, the

fact that during the hearing the same contracting authority's representatives stated that (a) with regard to the 'grammage' it was the Contracts Committee that had indicated that the appellant company had to be disqualified because of the paper weight difference as, in the first instance, the evaluation board did not disqualify the appellant company due to the difference in the weight of the paper that it supplied and (b) with regard to the paper bending, the evaluation board's representatives claimed that its observation that the paper tended to bend a bit at the corners was only meant to be a sort of 'passing remark' but it was never meant to imply that it was a serious shortcoming that should lead to the disqualification of the appellant company, provided enough clarity as to the fact that, unlike it had been officially decided by the General Contracts Committee, the appellant company's offer was technically compliant.

2. Considering that the issue of price had only been mentioned at the hearing stage and that the appellant company had never been officially made aware that its bid had been disqualified for reasons relating to price issues, the Public Contracts Appeals Board feels that, at this stage, it does not fall within its remit to deliberate further on subject matter.

In view of the above this Board finds in favour of the appellant company and also recommends that, apart from being re-instated in the evaluation process due to the fact that the appellant company's bid was technically correct, the deposit paid by the latter should be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel Esposito
Member

26 May 2011