

PUBLIC CONTRACTS REVIEW BOARD

Case No. 329

MRRA/W/588/2010; Adv. No. 1/2011 (which was reissued since all the tenders submitted in the original call (WD Adv. No. 153/2010) were found not compliant) Period Contract for the Supply of Steel Wire Mesh for Concrete Reinforcement

This call for tenders was published in the Government Gazette on the 7th January 2011. The closing date for this call, which is a period contract, was the 28th January 2011.

On the 13th April 2011, **JM Vassallo Vibro Steel Ltd** filed an objection against the decision by the Ministry for Resources and Rural Affairs (MRRA) to disqualify its offers for items 1, 2, 3 and 5 as technically not compliant.

The Public Contracts Appeals Board composed of Mr Edwin Muscat as Acting Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Wednesday, 5th October, 2011 to discuss this objection.

Present for the hearing were:

JM Vassallo Vibro Steel Ltd (JMV)

Mr Raymond Vassallo	Representative
Perit Reuben Sciortino	Representative

Polmesh Ltd

Mr Gordon Polidano	Representative
Mr Luke Savona	Representative

Ministry for Resources and Rural Affairs (MRRA)

Evaluation Board

Perit Anton Camilleri	Chairman
Mr Joseph Grech	Member
Perit John Valentino	Member
Perit John Spiteri	Member
Perit Claire Vassallo	Member

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

Perit Reuben Sciortino, on behalf of JM Vassallo Vibro Steel Ltd, the appellant, made the following submissions:

- i. by letter dated 11th April, 2011, the Ministry for Resources and Rural Affairs (MRRA) had communicated that JMV's offers for items 1, 2, 3 and 5 were adjudicated technically not compliant as per clause 7.4.1 which stated as follows:

The steel wire mesh shall conform to the requirements of MSA EN 1992-1-1 'Design of Concrete Structures - General Rules for Buildings', Normative Annex C. The steel wire reinforcement shall have a characteristic yield strength f_{yk} -500MPa and satisfy type class B requirements and conform to the requirements of MSA EN 10080:2005 'Steel for the reinforcement of concrete. Weldable Steel, General' or equivalent standards like BS 4483: 2005 Steel fabric for the reinforcement of concrete, BS 4482: 2005 Cold reduced wire for the reinforcement of concrete, BS 4449:2005+A2:2009 Steel for the reinforcement of concrete. Weldable reinforcing steel bar, coil and decoiled product.

- ii Perit Sciortino then referred to the certificates of conformity submitted with the offer and contended that:

BS4483:2005 Steel fabric for the reinforcement of concrete - Specification, complied with clauses 8 "Evaluation of test results" and in particular with clauses 8.1.3, 8.1.3.1 and also Table 4 within that section;

BS4449:2005+A2:2009 Steel for the reinforcement of concrete – Weldable reinforcing steel - Bar, coil and decoiled product - Specification, complied with clauses 8 "Evaluation of test results" and in particular with clauses 8.1.3, 8.1.3.1.1 and Table 10 within that section; and

BS4482:2005 Steel wire for the reinforcement of concrete products - Specification, complied with clause 7.2 "Mechanical Properties" and in particular with clauses 7.2.3 and Table 3 within that section.

- iii. consequently, he added, it was incomprehensible how these products were adjudicated not complaint when they conformed to British Standards (BS) as laid down in clause 7.4.1 of the tender document.

Perit Anton Camilleri, on behalf of MRRA, explained that:-

- a. in his view, it was not a good practice by testing laboratories to produce test results without an accompanying interpretation of the results, with the consequence that one had to go through them to establish if the item had passed or failed the test;

- b. the adjudicating board, therefore, examined the laboratory test results submitted by both participating bidders and interpreted them according to seven criteria. The purpose of the exercise was to determine whether certain properties of the products offered fell within the stipulated values; and
- c. each item offered had to obtain a pass in respect of all seven criteria, and in the case of the appellant, only item 4 obtained a pass throughout and that part of tender was awarded to him on the basis of price. On the other hand, items 1,2,3, and 5 failed in one or more of the criteria and consequently were adjudicated not compliant as indicated in the evaluation report.

Perit John Valentino, member of the adjudication board, further explained that:

- i. MRRA required the steel wire mesh to be in line with the standards stipulated by the Malta Standards Authority (MSA) as per MSA EN 1992-1-1 which reflected EU (EN) Standards;
- ii. the British Standards (BS) were still applicable in the UK and the BS was similar to MSA EN 1992-1-1 except for 'Normative Annex C' which was not applicable in the case of BS; and
- iii. therefore, one could use BS - without the 'Normative Annex C' - in the UK but one could not use BS in Malta as the tests carried out here were based on the 'Normative Annex C'.

Perit Sciortino on behalf of appellants, recited clause 7.4.1 and stressed the following *or equivalent standards like BS 4483: 2005 Steel fabric for the reinforcement of concrete, BS 4482: 2005 Cold reduced wire for the reinforcement of concrete, BS 4449:2005+A2:2009 Steel for the reinforcement of concrete.* He contended that the tender document was thereby accepting British Standards as an alternative to MSA/EN Standards and his client, (the appellants) did just that, that is, they offered British Standards as per tender specifications.

Perit John Valentino explained that 'Normative Annex C' translated itself into 'type class B' indicated in clause 7.4.1, however, the BS used 'type B 500 B' which was quite different from the European norm 'type class B' so much so that a product could obtain a pass under BS but would fail under MSA/EN Standards. He added that that was why the BS did away with the 'Normative Annex C/type class B' requirement.

Perit Sciortino insisted that once the tender specifications also requested BS as an equivalent then the tender should also be adjudicated according to the norms applicable under the BS. He pointed out that if the contracting authority wanted only MSA/EN Standards then in the tender specifications it should have referred solely to MSA/EN standards and not include BS as an equivalent because it did not make sense to request two different standards and then adjudicate according to the norms of only one of the two standards. Perit Sciortino remarked that in his view the wording of clause 7.4.1 was quite clear and it left no room for any clarifications.

Perit Anton Camilleri argued that although the contracting authority did offer an option between MSA/EN standards and BS in effect it did not because the BS could

not provide the requirements as per 'Normative Annex C' and 'type class B'. He conceded that the wording of clause 7.4.1 could have been somewhat misleading and given the benefit of hindsight it would have been better not to include references to BS. He added that, on the other hand, it was quite clear that the contracting authority was requesting 'Normative Annex C' and 'type class B'.

Perit Valentino pointed out that the contracting authority described its requirements in the very first sentence of clause 7.4.1, i.e. *The steel wire mesh shall conform to the requirements of MSA EN 1992-1-1 'Design of Concrete Structures - General Rules for Buildings', Normative Annex C.* He added that 'Normative Annex C' meant 'type class B' which term did not feature in the BS since 'type B 500 B' was different.

At this point, the hearing was brought to an end.

This Board,

- Having noted that appellants, through their letter of objection dated the 13th April 2011 and through the submissions presented during the hearing held on the 5th October 2011, objected to the decision of the pertinent authority to disqualify their bids regarding items 1,2, 3 and 5 as technically non-compliant.
- Having noted the appellant company's representative's claims and observations, particularly, that, (i) by letter dated 11th April 2011, MRRA had communicated that JMV's offers for items 1, 2, 3 and 5 were adjudicated technically not compliant as per clause 7.4.1, and (ii) Referred to the certificates of conformity submitted with the offer and contended that: BS4483:2005 Steel fabric for the reinforcement of concrete - Specification, complied with clauses 8 "Evaluation of test results" and in particular with clauses 8.1.3, 8.1.3.1 and also Table 4 within that section BS4449:2005+A2:2009 Steel for the reinforcement of concrete - Weldable reinforcing steel - Bar, coil and decoiled product - Specification, complied with clauses 8 "Evaluation of test results" and in particular with clauses 8.1.3, 8.1.3.1.1 and Table 10 within that section; and BS4482:2005 Steel wire for the reinforcement of concrete products - Specification, complied with clause 7.2 "Mechanical Properties" and in particular with clauses 7.2.3 and Table 3 within that section. (iii) consequently, it was incomprehensible how these products were adjudicated not complaint when they conformed to British Standards (BS) as laid down in clause 7.4.1 of the tender document.
- Having considered the contracting authority's representative, Perit Anton Camilleri's submissions wherein he stated that: (a) in his view it was not a good practice by testing laboratories, to produce test results without an accompanying interpretation of the results, with the consequence that one had to go through them to establish if the item had passed or failed the test; (b) the adjudicating board, had therefore examined the laboratory test results submitted by both participating bidders and interpreted them according to seven criteria. The purpose of the exercise was to determine whether certain properties of the products offered fell within the stipulated values; and (c), that each item offered had to obtain a pass in respect of all seven criteria, and in the case of the appellant, item 4 only obtained a pass throughout and part of

tender was awarded to him on the basis of price. On the other hand, items 1,2,3, and 5 failed in one or more of the criteria and consequently were adjudicated not compliant as indicated in the evaluation report, and (d) his admission that the wording of clause 7.4.1 could have been somewhat misleading and that with hindsight, it would have been better not to include reference to BS.

- Having further considered the contracting authority's other representative's submissions, who stated that: (i) MRRA required the steel wire mesh to be in line with the standards stipulated by the Malta Standards Authority (MSA) as per MSA EN 1992-1-1 which reflected EU (EN) Standards; (ii) the British Standards (BS) were still applicable in the UK and the BS was similar to MSA EN 1992-1-1 except for 'Normative Annex C' which was not applicable in the case of BS; and (iii) therefore, one could use BS - without the 'Normative Annex C' - in the UK but one could not use BS in Malta as the tests carried out here were based on the 'Normative Annex C'

reached the following conclusions:

During the hearing, it emerged that the Contracting Authority was only interested in having a supply of Wire Steel Mesh for concrete reinforcement that satisfied the requirements of MSA EN 1992-1-1 and also satisfied type class B requirements and conformed to the requirements of MSA EN 10080:2005 'Steel for the reinforcement of concrete. Weldable Steel, General'.

Unfortunately, tender documents also provided for equivalent British Standards to which appellants' offer conformed. During the hearing, it emerged that, after all, the BS do not conform to Class B requirement so that Items 1, 2, 3, and 5 offered by appellants, albeit conforming to BS standards did not conform to what was required by the Authority, that is, they did not conform to Class B.

In view of the above, this Board agrees with the conclusion reached by the adjudication board and decides against the appellant company.

However, in view of the misleading way, clause 7.4.1 was presented (where the chairman of the adjudicating board admitted that, with hindsight, it would have been better not to include any reference to BS), the Public Contracts Review Board recommends that the deposit paid by the appellant should be reimbursed.

Edwin Muscat
Acting Chairman

Carmel Esposito
Member

Joseph Croker
Member

17 October 2011