

PUBLIC CONTRACTS REVIEW BOARD

Case No. 449

WSC/210/2012

Tender for the Supply of Single Core XLPE Insulated Non-Armoured Cables for the North Sewage Treatment Plant

This call for tender was published on the 13th April 2012, with a closing dated of the 2nd May 2012.

The estimated Value of this tender amounted to € 18,000 (incl. VAT).

Three (3) suppliers tendered for this procurement.

Messrs Electrical Supplies & Services Ltd filed an objection on 22nd June 2012 against the decisions of the Water Service Corporation to disqualify its offer *as technically non-compliant* and to recommend the award of the tender to JP Baldacchino Ltd.

The Public Contracts Review Board, composed of Mr Joseph Croker, Acting Chairman, and Mr Carmelo Esposito and Mr Paul Mifsud as members held a public hearing on Monday 20th August 2012 to discuss this objection.

Present for the hearing were:

Electrical Supplies & Services Ltd

Dr Reuben Farruagia	Legal Representative
Mr Duncan Agius	Representative
Mr Robert Agius	Representative

JP Baldacchino Ltd

Mr Adrian Baldacchino	Representative
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Water Services Corporation (WSC)

Evaluation Board

Ing. Mark Perez	Chairman
Ing. Charmak Camenzuli	Member
Ing. Noel Formosa	Member
Mr Anthony Camilleri	Secretary

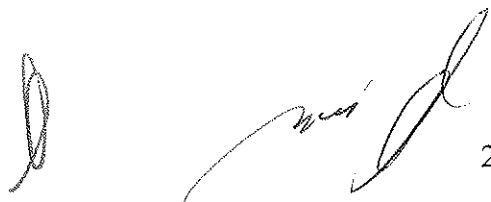


After the A/Chairman's brief introduction, the appellant was invited to explain the motives of his objection.

Dr Reuben Farrugia, for Electrical Supplies and Services Ltd, the appellant, made the following submissions:-

- i. by letter dated 15th June 2012 the contracting authority informed his client that his offer was disqualified as non-compliant because the insulation material offered was in G7 quality HEPR rubber instead of XLPE and that the tender was recommended for award to JP Baldacchino Ltd;
- ii. his client's offer was administratively compliant and the cheapest;
- iii. his client retained that the problem arose because of lack of knowledge on the part of the contracting authority with regard to the technical terminology used in this sector;
- iv. his client claimed that a G7 insulated cable and an XLPE insulated cable were one and the same thing with the sole difference being that the former terminology was used in Italy and in most other European countries whereas the latter terminology was used in the UK;
- v. to demonstrate that G7 and XLPE were the same his client submitted with his objection (i) a declaration by the manufacturer of the product he offered i.e. Mondini Cave Spa, that the cable type FG7OR was produced with Polidan® EC/MD crosslinked polyethylene (XLPE) which satisfied all the technical requirements of the insulation type G7 produced both with rubber HEPR and with crosslinked silane polyethylene (XLPE); (ii) the technical specifications of Polidan® EC/MD crosslinked polyethylene (Polidan XLPE-PEX – Cross-linkable Polyethylene) and (iii) the certification by IMQ, an independent certification agency based in Milan, with regard to cable FG7OR;
- vi. a sample of two types of cables, one rubber insulated and one XLPE insulated were presented to explain the difference;
- vii. in case the evaluation had any doubt about the quality of the cable offered by his client it could have either carried out some research on the product or it could have availed itself of the provisions of the Public Procurement Regulations which entitled the evaluation board to ask for a clarification; and
- viii. in this case the evaluation board did not ask his client for a clarification but resorted to outright disqualification and therefore that decision should be reversed.

Ing. Mark Perez, chairman of the evaluation board, pointed out that the certificates and other documentation referred to by the appellant were attached to his letter of objection but had not been submitted in his original tender submission.



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Ing. Charmak Camenzuli, member of the evaluation board, explained that:-

- a. the evaluation board did not seek a clarification from the appellant because there was no doubt about the type of product that he offered so much so that the technical sheet presented by the appellant referred to FG7OR Single core flexible cable, G7 quality HEPR rubber insulated, PVC sheath and nowhere was the term 'XLPE' indicated;
- b. the evaluation board did carry out its own research on the product and the documentation by TRATOS CAVE Spa relating to the 'Key Cables Code' used in Italy indicated that:-

E4 stood for XLPE polyethylene insulation, whereas

G7 stood for HEPR high ethylene propylene rubber insulation (HEPR = high ethylene propylene rubber); and

- c. the bidders were not asked to present a sample with their bid but the contracting authority retained the right to ask for one, in fact, the recommended bidder was asked to submit a sample of his product.

Ing. Noel Formosa, member of the evaluation board, stressed that according to key cable codes used in Italy G7 = HEPR whereas E4 = XLPE, which were two different materials, and the technical data presented by the appellant referred to HEPR.

Dr Farrugia explained that his client submitted certain documents with his letter of objection but not with his original tender submission because he felt that he should not explain what was common knowledge in the cable manufacturing sector.

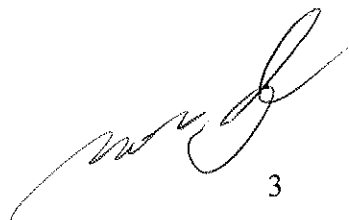
The PCRБ examined the technical data submitted by the appellant in his original tender submission which read, *inter alia*, G7 quality HEPR rubber or similar silanised elastomer.

Ing. Perez insisted that contrary to what the appellant was claiming the industry standards laid down that G7 was synthetic rubber type, i.e. HEPR, and he added that the term 'or similar ..' in the appellant's original specifications meant something that was similar to HEPR/synthetic rubber on the other hand the situation would have been different had the appellant indicated as an alternative E4 which stood for XLPE.

Dr Farrugia reiterated that the evaluation board was obliged to ask for a clarification in terms of the Public Procurement Regulations in the event of even the slightest doubt about the technical specifications.

Mr Adrian Baldacchino, on behalf of the recommended tenderer, remarked that:-

- i. on checking with his supplier he was informed that G7 had nothing to do with XLPE and it appeared that the research conducted by the contracting authority led to the same outcome;



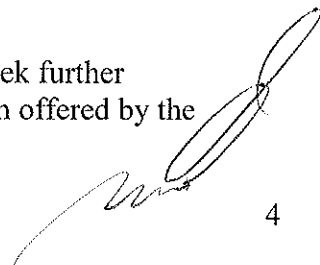
- ii. it would not have been correct for the contracting authority to ask a clarification on something which did not require one because the type of insulation offered by the appellant was clearly laid down in the first place;
- iii. referred to Doc F – 60502-1© IEC:2004+A1:2009 – where tables 14, 15 and 17 demonstrated that the test requirements in respect of certain characteristics of XLPE were superior to those in respect of HEPR; and
- iv. the appellant was not correct in stating that in Italy G7 stood for XLPE.

Mr Duncan Agius, on behalf of the appellant, Electrical Supplies and Services Ltd., stated that the tender document was fashioned on British standards and hence the reference to XLPE however the product he offered originated from Italy where the G7 code was used and he insisted that the product he offered did satisfy the specifications in the tender document.

Ing. Camenzuli, representing the Contracting Authority, explained that the tender technical specifications clearly laid down 'Insulation – (XLPE) Cross-linkable polyethylene compound' however it was clear that the appellant presented a product with a G7/HEPR insulation and if the appellant, as he was claiming at the hearing, had documentary evidence that the G7 corresponded to the XLPE requested in the tender then it was the appellant's responsibility to present such proof with his original tender submission so as to explain his technical compliance with the tender document.

This Board,

- having noted that appellants by letter dated 19th June 2012 together with their verbal submissions presented during this hearing objected to the decision of the Contracting Authority;
- having taken note of the claims submitted by their legal representatives that the code G7 for the classification of electrical cables corresponded with the type of insulation required by the Contracting Authority ie XLPE;
- having noted the documentation submitted by the appellant representative to substantiate his claim;
- having also noted the claim submitted by the appellant's representative that the adjudication board was in duty bound to seek clarifications if in doubt;
- having also noted the submissions made by the members of the evaluation board of the Contracting Authority to the effect the code of the cable offered by the appellant i.e. G7 covered HEPR insulation and not XLPE insulation which was required by Water Services Corporation and that from research carried out by the said adjudication board it resulted that the proper code for the required insulation is E4 as used as a trade standard in Italy wherefrom the cable offered by the appellant originates;
- having also noted the adjudication board's decision not to seek further clarifications since it was manifest to them that the insulation offered by the



appellant did not satisfy the technical requirements of the product indicated in the call for tender;

- having also taken note of the submissions made by the representative of the recommended bidder;

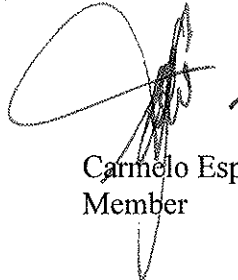
reached the following conclusions:

1. The Public Contracts Review Board is of the opinion that the documentation submitted during the tendering process by the appellant did not clearly indicate that the product offered was technically compliant with what was requested;
2. This Board is also of the opinion that the documentation submitted during the hearing by the appellant to substantiate his claim is lacking in clarity and did not reach its intended use leaving a certain amount of doubt as to the technical compliance of his product with the insulation required by the Water Services Corporation;
3. This Board found that the adjudication board's decision not to seek further clarifications was justified in the light of the research carried out by the said board which confirmed that G7 code did not cover XLPE insulation and only E4 did.

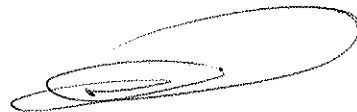
The Public Contracts Review Board as a result finds against the appellant and recommends that the deposit made for the appeal to be heard should not be reimbursed.



Joseph Croker
A/Chair



Carmelo Esposito
Member



Paul Mifsud
Member

10 September 2012