

PUBLIC CONTRACTS REVIEW BOARD

Case No. 620

WSC T/106/2012

Tender: Repair Clamps for Metric Ductile Iron and Imperial Cast Iron Pipes.

The tender was published on the 28th December 2012. The closing date was the 30th January 2013.

The estimated value of the Tender was €20,312.00 (Inclusive of VAT).

Eight (8) bidders had submitted an offer.

On the 6th June 2013, Ragonesi & Company Limited filed an objection against the rejection of its bid and against the cancellation of the tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday 24th October 2013 to discuss the appeal.

Present for the hearing:

Ragonesi & Company Limited - Appellant

Mr Roberto Ragonesi
Dr Joseph Camilleri

Managing Director
Legal Representative

Water Services Corporation - Contracting Authority

Mr Stefan Vella
Engineer Nigel Ellul
Engineer Ronald Pace
Mr Anthony Camilleri

Secretary Evaluation Board
Member Evaluation Board
Member Evaluation Board
Representative

The Chairman made a brief introduction and invited appellant's representative to make his submissions on the objection.

Dr Joseph Camilleri on behalf of the appellant stated that his client's offer was discarded because the clamp body offered by him was manufactured in stainless steel and not in spheroidal cast iron as specified in Clause 5 of the tender's Technical Specifications. This fact is not being contested. He contended that appellant provided an identical product to that requested and provided the same functions, reached the required specifications, but was made in stainless steel. This fact of being in stainless steel did not change any of the technical capacities of the product, but if anything, being made of stainless steel it was stronger, and had a longer life. With the letter of objection, appellant has produced a declaration from the supplier that confirms the above in more technical detail. Appellant understood that if a product was demanded in a tender, then bidders should offer to provide that product. But, Dr Camilleri contended, that if there was no particular reason for asking this particular type of product, then bidders could offer to provide an equivalent product. He continued that he still has to be shown why the item proposed by the appellant was not good enough for the contracting authority.

Mr Nigel Ellul, a member of the evaluation board, on behalf of the contracting authority said that the repair clamps in question are used to repair leakages and bursts in pipes. Some leaks are small while others result from circumferential breaks. Experience has shown that cast iron clamps are much better at repairing leaks than clamps made from other material. This was true especially whenever circumferential breaks have to be repaired. When using stainless steel to repair circumferential breaks difficulties were experienced and under pressure, the repairs leaked again. Here Mr Ellul produced two samples of clamps, one in stainless steel and the other in cast iron and these were shown to the Board. He stated that the cast iron one allowed for slightly misaligned pipes to be repaired, while stainless steel required perfect alignment of the pipes, and this could not be provided in all cases. The contracting authority wanted a product that would fit all kind of leaks. Furthermore, cast iron clamps can be bored and tapped allowing another outlet to be fitted. This cannot be done when using stainless steel clamps. This was not set down as a reason for disqualification.

Dr Joseph Camilleri remarked that certain factors emerged during the hearing, that were not mentioned in the tender. If the contracting authority wanted particular items, then it should make the specifications clearer from the start. Dr Camilleri stated that the tender was reissued but some additional items were added. The tender was re-issued during the present tender appeal. Dr Camilleri contended that the re-issue of the tender should have been left till after the decision of the present objection.

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

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 6th June 2013 and also through the Appellant's verbal submissions during the hearing held on 24th October 2013, in that:

- a) **Appellant contends that the quality of the product offered by same was of a superior quality than that required in the tender specifications. In this regard, the Appellant had produced evidence to confirm this declaration.**
- b) **The Appellant could not understand why the material of the product offered in his tender was considered as inferior by the Evaluation Board.**
- c) **The Contracting Authority issued additional clarification notes previous to the Appeal hearing of this same tender.**

Having noted the Contracting Authority's verbal submissions during the hearing held on 24th October 2013, in that:

- a) **The Evaluation Board's technical experts demonstrated in great details as to why the Appellant's bid was discarded for technical reasons.**
- b) **The technical experts of the Evaluation Board contended that it is of vital importance that the material of the product be made of cast iron for easier maintenance in case of repairs of leaks.**

Reached the following conclusions:

- 1. From the submissions made by the technical experts of the Contracting Authority it clearly emerged that, in assessing the evaluation of the tender bids, the Evaluation Board of the Contracting Authority acted in a most responsible and diligent manner.**
- 2. The Evaluation Board were prudent to cancel the tender process and re-issue same.**

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

4 December 2013