

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case No. 973 – WID/T/47/2015: Period Contract for the Supply, Delivery and Stacking of Mild Steel Sections 2016 - 2018.**

The Tender was published on the 29<sup>th</sup> March 2016. The closing date was on the 19<sup>th</sup> April 2016. The Estimated Value of the Tender was €42,974.50 (Exclusive of VAT)

Two (2) offers had been submitted for this Tender.

On the 10<sup>th</sup> June 2016 Joseph Caruana Company Limited filed an Objection against the decision taken by the Contracting Authority to cancel the Tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Richard A. Matrenza and Mr Carmel Esposito as members convened a hearing on Tuesday the 13<sup>th</sup> September 2016 to discuss the Objection.

Present for the hearing were:

#### **Joseph Caruana Co Ltd:**

Dr Michael Caruana

Legal Representative

#### **Ministry for Transport and Infrastructure:**

Mr Chris Cremona

Chairman Evaluation Board

Mr Raymond Caruana

Member Evaluation Board

Mr Paul Gatt

Member Evaluation Board

Mr Gordon Zammit

Member Evaluation Board

Mr Marco Cassar

Representative

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

Dr Michael Caruana on behalf of Joseph Caruana Co Ltd explained that on receiving a rectification request from the Contracting Authority, the Appellant had paid the €50 penalty and replied after receiving the necessary information from the overseas supplier. This reply was sent more than Five Days from the receipt of the letter but this had not assigned any time limit of 5 days for the response.

Dr Caruana contended that the Contracting Authority should have clearly informed the Appellant to send the reply within Five Days from the letter of the 29<sup>th</sup> April 2016 but did not. This was a shortcoming that resulted in the most beneficial Tender to be discarded and the Tender cancelled at a loss to the said Contracting Authority.

Dr Caruana also contended also that in any case Joseph Caruana Co Ltd had declared in the Tender submission that the steel being offered was according to EN 100251/2004 and therefore within the requested specifications sine this indicated the tensile strength.

Mr Chris Cremona, the Chairperson of the Evaluation Board, on behalf of the Contracting Authority stated that the Tender Document referred to Clause 16.2 of the General Rules Governing Tenders version 1.14 which stated that any request for rectification should be remitted within Five Days on penalty of exclusion. This same period was also stated in clause 7.3 in the Tender Document itself.

In the present case the letter requesting rectification had been uploaded on the 29<sup>th</sup> April 2016, with the date due for response was the 6<sup>th</sup> May 2016 while the reply was received from Appellant on the 11<sup>th</sup> May 2016.

In the original version of the Appellant's Tender submission, they had quoted the steel's EN Standard, but the Tender requisites required more detail on the steel offered and Appellant's Tender had not specified the tensile strength of the steel, which was a requisite.

The reply received on the 11<sup>th</sup> May 2016 had supplied this information on the tensile strength. The letter asking for rectification was sent using a template and not drafted by the Evaluation Board. He said that since the present Objection, the Contracting Authority had remedied this and changed the template for such letters requesting rectification. Now these letters also include the date by which the replies had to be sent.

Dr Michael Caruana, on behalf of Joseph Caruana Co Ltd reiterated that the letter asking Appellant to rectify did not have the number of days within which the reply had to be sent. He also contended that the letter informing Appellant of Cancellation, of the 3<sup>rd</sup> June had stated that no reply had been received from his clients and this led the latter to file the Objection.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*", dated 10 June 2016 and also through their verbal submissions during the Public Hearing held on 13 September 2016 had objected to the decision taken by the Pertinent Authority, in that:**

- a) Joseph Caruana Co Ltd's main objection is that their offer was rejected due to the fact that they had replied to a "*Rectification Request*" from the Contracting Authority, but failed to do so within the stipulated period of 5 days from the receipt of such a request.**

**In this regard, the Appellant maintains that he was not informed that such requested information must be submitted within 5 days from receipt.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 20 June 2016 and also their verbal submissions during the Public Hearing held on 13 September 2016, in that:**

- a) Although the Appellant was not informed of the date by which a reply to the rectification was to be submitted, the Contracting**

**Authority contends that Joseph Caruana Co Ltd should have referred to clause 16.2 of the General Rules Governing Tenders wherein, it was clearly specified that: “*Any request for Clarification should be remitted within Five Days on penalty of exclusion*”.**

**Therefore, since the Appellant’s Reply was received on 11 May 2016, Five Days after the due date, the offer submitted by Joseph Caruana Co Ltd was discarded.**

**Reached the following conclusions:**

- 1. This Board, after having examined the relative documentation and heard credible submissions from all parties concerned, justifiably opines that in clause 16.2 of the “*General Rules*” of the Tender, the time limit by which replies to a “*Rectification Request*” is clearly indicated. In this regard, the Appellant was aware of such a condition.**

**It is the duty and obligation of the Bidder to examine carefully the Tender Document and its conditions, so that if at any point or factor, in the Tender Document is not clear enough, a clarification can be sought.**

**However, in this particular case, the Tender was informed of the time limit imposed by the Contracting Authority for the submission of replies. At the same instance, the Five Day period was also stated in Clause 7.3 of the Tender Document itself.**

**In this regard, this Board opines that Joseph Caruana Co Ltd was well aware of such a deadline and the reply submitted by the latter exceeded the time limit, hence the Board rejects the Appellant's Objection.**

- 2. This Board would like to justifiably point out that although the conditions as laid out in the Tender Document would suffice the requirements of transparency, this Board is hereby recommending the inclusion of Time Limits when Clarifications or Rectifications are requested by the latter.**

**By doing this, the Bidder is reminded of his obligations and at the same instance, such an action would prevent unnecessary appeals which would arise.**

**In view of the above, this Board finds against Joseph Caruana Co Ltd and**

**recommends that the deposit paid by the latter should not be refunded.**

Dr Anthony Cassar  
Chairman

Mr Richard A Matrenza  
Member

Mr Carmel Esposito  
Member

*23 September 2016*