

Eng Pierre Cassar (282379M) called as a witness by the Public Contracts Review Board testified on oath that he was a member of the evaluation committee. He stated that the technical literature submitted by Appellant matched the tender specifications. The submitted sample was tried on pipes of diameter 63mm and 61 mm not as claimed by Appellant. On the 61 mm pipe test the repair clamp leaked. It failed at a pressure of 10 bar when usually they are expected to withstand a pressure of minimum 16 bar. All products submitted by other bidders had been tested under the same conditions. Questioned by Appellant witness stated that the tender was specific on the pipes diameter and it was wrong to assume that the clamp would be tested on a 60.3 diameter pipe.

The Chairman thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by Anton Zarb Cast Iron Products (herein after referred to as the Appellant) on 9 September 2019, refers to the claims made by the same Appellant with regard to the tender of reference WSC/T/25/2019, listed as case No 1357 in the records of the Public Contracts Review Board, awarded by Water Services Corporation (herein after referred to as the Contracting Authority.

Appearing for the Appellant:

Mr Anton Zarb

Appearing for the Contracting Authority: Dr Sean Paul Micallef

Whereby, the Appellant contends that:

- a) His product should have been tested on pipe of 61 mm diameter and not on pipe of 60.3mm diameter.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 25 September 2019 and its verbal submissions during the hearing held on 25 October 2019, in that:

- a) The Authority confirms that Appellant's product was tested on a 61mm pipe and failed such a test so that the Authority had no other option but to deem Appellant's offer as technically non-compliant.**

This same Board also noted the testimony of the witness namely:

Engineer Pierre Cassar duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned opines that, the issue that merits consideration is the sample submitted by Appellant.

- 1. When the Authority stipulates the submission of samples, it must not only conform with what has been declared by the tenderer in his submitted technical offer but must also be tested to ensure that it can do the function, in an objective manner, to the satisfaction of the Contracting Authority.**

- 2. In this particular case, this Board heard the testimony of Engineer Pierre Cassar, who gave a credible description of the procedure adopted, during the execution of such tests. From the testimony of Engineer Cassar, this Board justifiably establishes that all the tests of all the samples were carried out, on the application of 61mm diameter pipe, so that all samples were tested under the same conditions.**

- 3. In the case of Appellant's sample, it failed the test and, in this regard, the Evaluation Committee had no other option but to deem Appellant's offer as technically non-compliant.**

In view of the above, this Board,

- i. upholds the Contracting Authority's decision in the award of the tender,**
- ii. does not uphold Appellants' contentions,**
- iii. directs that the deposit paid by Appellant should not be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

7 November 2019