

PUBLIC CONTRACTS REVIEW BOARD

Case 1803 – WSC/T/19/2022 – Tender for the Supply, Delivery and Unloading of Manhole Covers and Frames for the Water Services Corporation.

Lot 4 – Ductile Covers – Clear Opening 900mm x 900mm

2nd November, 2022

Minutes

The tender was issued on the 2nd March 2022 and the closing date was the 30th March 2022. The estimated value of the tender, on Lot 4, excluding VAT, was € 26,494.60.

On the 30th September 2022 Ragonesi & Co Ltd filed an appeal against the Water Services Corporation as the Contracting Authority objecting to their disqualification on the grounds that their two offers on Lot 4 were not compliant.

A deposit of € 400 was paid covering only one bid.

There were four (4) bids.

On the 27th October 2022 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Ragonesi & Co Ltd

Dr Joseph Camilleri	Legal Representative
Mr Alessandro Benedetti	Representative
Mr Roberto Ragonesi	Representative

Contracting Authority – Water Services Corporation

Dr John L Gauci	Legal Representative
Eng Charles Camilleri	Chairperson Evaluation Committee
Eng Nigel Ellul	Member Evaluation Committee
Architect Mark Frendo	Member Evaluation Committee
Mr Louis Pullicino	Secretary Evaluation Committee
Eng Anthony Muscat	Representative

Recommended Bidder – Mr Anton Zarb

Mr Anton Zarb	Representative
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Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Joseph Camilleri Legal Representative for Ragonesi & Co Ltd said that Appellant had submitted two bids on all lots in this tender. Bids were considered non-compliant as the weight of the manhole cover offered was 62kgs instead of the 68kgs requested in the tender. This was the sole reason for the disqualification. Appellant's offer stated that its offer was in line with the tender and all documentation met the requisites. Clarity on the reason for exclusion was only obtained through the reply from the Contracting Authority which stated that the sample had been weighed with the resultant difference in weight. It must be noted that the sample provided was out of context because as Appellant explained to the Authority the sample was merely an example and the specifications in the tender would apply when the actual product was supplied. This reservation was made since in this particular industry all products are tailor-made and 68kgs manhole are not a standard weight which would be costly to provide a sample as it has to be produced specially. It was unreasonable of the Authority to request a sample.

If one were to question why this was not pointed out before tendering, said Dr Camilleri, the answer is that the bidder made a reservation in its submission which was accepted by the Authority and the sample was provided with a proviso submitted in a letter of the 30th May 2022 to Mr R Falzon which also contained the declaration that delivery will be as requested in the tender. The drawings supplied indicate a theoretical weight of 68kgs and this should have been noted by the Evaluation Committee (EC). The Appellant's offer was prejudiced by the lack of any clarification request to explain the discrepancy in weight.

Dr John Gauci Legal Representative for the Water Services Corporation said that there are two points to consider in this appeal. For a start the appeal was not valid as it covers two bids but the deposit was paid on only one bid. Secondly, Clause 4.3 (g) of the tender specifications clearly state that the covers shall have a weight of at least 68kg each, but the sample provided was only 62 kgs. Samples have to conform with the technical compliance. In PCRB Case 1751 it was held that if samples did not conform then the EC had no option except to discard the offer.

Dr Camilleri stated that the appeal is valid. Appellant was invited by the PCRB to decide which appeal to progress and therefore one appeal and one deposit is valid.

The Chairman ruled that the case will proceed solely on the bid chosen by Appellant.

Ms Raffaella Fedeli (CA 1511133) called as a witness by the Appellant testified on oath that her role at Fonderie Belli included preparing financial and technical offers for the Company. Ragonesi & Co were long standing clients of her firm and they have supplied many products to the Water Services Corporation (WSC) in the past. Appellant is aware that there is an issue on the weight of the sample and went on to explain that the sample has the same characteristics as the final product that would be provided except for the weight. Her company did not have the time to produce a new sample as their existing mould is for a 62kg manhole cover but they provided the correct technical literature. They would have to change the mould to produce a 68kgs sample. If information was relayed to Ragonesi that it won the tender Fonderie Belli would change the mould as has happened in other cases.

Questioned by Dr Gauci witness confirmed that she was aware that the tender requested 68kgs covers and that the sample provided was only 62kgs. The Company would need time to change the mould and there was not enough to do this in this instance.

Engineer Charles Camilleri (16973G) called as a witness by Appellant stated on oath that he is a Manager at WSC and was Chairperson of the EC. He described the evaluation process and explained that the sample when physically weighed registered 62kgs. The EC also consulted the technical specifications and drawings submitted. The EC were not aware of any communication from the bidder regarding the sample and no clarifications were requested as this was a technical point. Bidder does not deny that the cover weighed 62kgs.

In reply to a questions from Dr Camilleri witness said that he had not seen any communication that the sample was not as the actual offer. Tenderers submit the samples to Rudolph Falzon however it is the EC that opens the samples.

Perit Mark Frendo (93486M) called to testify by the Authority stated on oath that he is an Architect by profession and was one of the Evaluators. He explained that when samples are requested no disclaimers are allowed. Sample is the product and no variations are accepted. He was not aware of the letter referred to but this made no difference as disclaimers are not allowed. Exact specifications have to be observed. The literature presented complied but the sample did not.

Engineer Nigel Ellul (341163M) called as a witness by the Authority testified on oath that as an Engineer he dealt with technical matters. Samples have to be what the Authority wants as it is only interested in obtaining good quality products – otherwise there is no point in asking for samples. The consignment has to agree with the sample provided. A manhole cover not up to specifications will warp and after many complaints will eventually break.

This concluded the testimonies.

Dr Camilleri stated that the objection is on one specific point. The sample. Except for the weight, the bid is what was requested so one asks why it was refused without asking for a clarification. Fonderie Belli has supplied the WSC with other products with no problems. There was no indication that the reservations by the bidder were brought to the attention of the EC which now claims that they would have been ignored – this is no argument. Claiming that no clarification could be sought is incorrect as it is stated in the tender that this is possible. At least Ragonesi should have been asked to clarify. In Lot 2 the offer had been rejected because it was not the cheapest, not because bid was non-compliant. There is a contradiction in the way the different lots were dealt with.

Dr Gauci said that General Rule 16.3 states that where samples do not corroborate the offer submitted the tenderer shall be disqualified. The letter referred to would not have changed anything if the sample was not compliant. In Lot 2 the EC did not go into the tender in depth simply because it was not the cheapest and in any case it is not part of the appeal. The principle of self-limitation ties the hands of the EC and they

would have been overstretching themselves if they asked for a clarification as the sample was not compliant.

As a final comment Dr Camilleri noted that the law allows for clarifications.

As there were no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

The Board refers to the Minutes above of the Board Meeting held on the 27th October 2022.

This Board, having noted this objection filed by Ragonesi & Co Ltd., (herein after referred to as appellant), on the 30th of September 2022 refers to the claims made by the same appellant regarding the tender listed as case No.1803 in the records of the Public Contracts Review Board.

Whereby, the appellant's arguments are the following:

A. Bids were considered non-compliant as the weight of the manhole cover offered was 62kgs instead of the 68kgs requested in the tender. The sample that weighed 62Kgs was an example and the specifications in the tender would apply when the actual product was supplied. This was confirmed in a reservation made with the submission of the sample.

B The drawings supplied indicate a theoretical weight of 68kgs and this should have been noted by the Evaluation Committee (EC)

C. The Appellant's offer was prejudiced by the lack of any clarification request to explain the discrepancy in weight.

The Board also noted the letter of reply by the Contracting Authority dated 10th of October 2022, together with its verbal submissions during the hearing on the 27th of October 2022.

Whereby, the Contracting Authority contends that:

A. Clause 4.3 (g) of the tender specifications clearly state that the covers shall have a weight of at least 68kgs.

B. The letter stating that sample weighed 62kgs and that the actual product would weigh 68kgs would not have changed anything if the sample was not compliant as disclaimers were not allowed

C. The principle of self-limitation ties the hands of the EC and they would have been overstretching themselves if they asked for a clarification as the sample was not compliant.

In conclusion the Board after having considered the arguments and documentation from both parties namely the appellant and the Contracting Authority and the testimonies of the witnesses, noted that the Authority applied General Rule 16.3 which states that where samples do not corroborate the offer submitted the tenderer shall be disqualified.

The Board concludes and decides that:

- a) Does not uphold the Appellant's Letter of objection.
- b) Upholds the Contracting Authority's decision.
- c) Directs that the deposit paid by the Appellant not to be reimbursed.

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member