PUBLIC CONTRACTS REVIEW BOARD

Case 1375 – WSC/T/25/2019 – Tender for the Supply and Delivery of Stainless Steel Repair Clamps 63mm for the Water Services Corporation

The publication date of the tender was the 6^{th} March 2019 whilst the closing date was the 3^{rd} April 2019. The estimated value of the tender (exclusive of VAT) was \in 72,525.

On the 9th September 2019 Mr Anton Zarb filed an appeal against the Water Services Corporation as the Contracting Authority on the grounds that his bid was rejected as the sample provided failed test. A deposit of $\ \in 400$ was paid.

There were nine (9) bidders.

On 25th October 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Anton Zarb Cast Iron Products

Mr Anton Zarb Representative

Contracting Authority – Water Services Corporation

Dr Sean Paul Micallef Legal Representative

Eng Stefan Riolo Chairperson Evaluation Board
Ms Kirstie Grech Secretary Evaluation Board
Eng Pierre Cassar Member Evaluation Board
Eng Sigmund Galea Member Evaluation Board

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Mr Anton Zarb Representative of Anton Zarb Cast Iron Products explained the purpose of the clamp on which he had been disqualified as it had failed one of the tests, when it was found to be too large to fit a 60.3mm pipe. According to him this clamp should not have been tested on pipes with a 60.3 diameter when the minimum diameter in the tender asked for 61mm clamps.

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

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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 tende		
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 Nove	ember 2019		