PUBLIC CONTRACTS APPEALS BOARD

Case No. 179

Adv No. 125/2009 – CT 2076/2009 – DH 3213/2008
Tender for the Provision of Fuel for Boilers at Mater Dei Hospital

This call for tenders with an estimated value of €3,545,455 was published in the Government Gazette on 24.03.2009. The closing date for this call for offers was 19.05.2009.

Two (2) different tenderers submitted their offers.

On 03.11.2009 *Messrs Falzon Fuel Services Ltd* filed an objection following the decision taken by the Contracts Department to disqualify its offer on being found technically non-compliant and to recommend the opening of the third envelope with regard to the tender/s found compliant.

The Public Contracts Appeals Board (PCAB) made up of Mr Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr Carmel Esposito, respectively, acting as members convened a public hearing on 16.12.2009 to discuss this objection.

Present for the hearing were:

Falzon Fuel Services Ltd

Dr Simon Tortell	Legal Adviser
Dr Michael Psaila	Legal Adviser
Mr Joseph Falzon	Representative
Mr Andrew Sacco	Representative

Enemalta Corporation Ltd

Dr Damien Degiorgio	Legal Representative
Dr Erika Grech	Legal Representative
Mr Horace Fenech	Officer, Projects & Development
Mr William Decelis	Procurement Coordinator

Health Division Adjudicating Board

Engineer Angelo Attard	Chairman
Mr Joe Galea	Member
Mr Gilbert Bonnici	Member

Saybolt Malta Ltd

Mr David Gauci	Laboratory Manager

Department of Contracts

Mr Mario Borg	Assistant Director

After the Chairman's brief introduction the appellant Company's representative was invited to explain the motives of the objection filed.

Dr Michael Psaila, legal adviser representing Falzon Fuel Services Ltd, the appellants, explained that by letter dated 28th October 2009 the Department of Contracts had informed his client that his tender was found non-compliant with the provisions of article 1.3 of the tender document which article read as follows:

> *The tenderer is to submit certificates from a recognised authorised body confirming that the fuel that the tenderer will be supplying conformed to the specifications as stated in Annex II. Any Tender which is not accompanied with these certificates shall be rejected outright at the tender opening stage.*
>
> *In the case of a supplier who is already supplying the product being offered, the tenderer shall be exempted from submitting certificates. However, the specific brand name and the respective reference of the Letter of Acceptance/Contracts must be clearly indicated.*

Dr Psaila claimed that it was impossible to produce the results of fuel oil that was going to be supplied through this contract because the closing date of the tender was the 19 May 2009 and, as a consequence, the results of any tests made at the time of submission of offer would have been rendered futile and meaningless when considered in relation to the fuel which would be eventually supplied during the execution of the contract, which, incidentally, the said contract had not been awarded by December 2009.

Dr Psaila explained that the tests made in May 2009 could give a result different from the tests carried out in December of the same year because the characteristics of the fuel could vary in the intervening period. He also informed those present that Mr David Gauci, Laboratory Manager of Saybolt Malta Ltd, would later on be called to give evidence on this technical aspect. Dr Psaila added that his client had indicated that he would be supplying the fuel as required by the tender specifications and which fuel he was already supplying to other clients.

Dr Psaila read out from the letter sent by the Contracts Department which, *inter alia*, stated that:

> *"Falzon Fuel Services Ltd proposed different test methods to confirm the parameters in the required specification but failed to produce a certificate from an arbitrary entity confirming full compliance of its proposal with respect to the requirements*."

Dr Psaila said that, if the certificate concerned the methods and not the fuel itself, his client was submitting that this kind of certificate was never requested. In fact when his client noted the methods proposed in the tender he resorted to Saybolt Malta Ltd to see what methods were currently in use and Saybolt Malta Ltd had informed him that the current methods were different and more up-to-date than those indicated in the tender. Dr Psaila declared that, in the light of this information, his client had sought a clarification from the contracting authority and the reply was conveyed in

Addendum No. 1 dated 8 May 2009 - closing date of tender 19 May 2009 - which he read out:

> "Question 1: *Please advise whether determination of quality of the fuel can be made on the basis of test methods currently performed in the industry, where such test methods are different from those indicated in the tender document?*
>
> Answer 1: *Prospective tenderers are to submit further details on test methods in order to enable the Contracting Authority to confirm or otherwise whether such proposal is acceptable.*"

Dr Psaila stated that his client had declared in his tender documentation that he was going to adhere to the tender specifications and conditions. He added that, since the source of the product changed from time to time, tests would be carried out on the fuel supplied during the execution of the contract whenever requested by the contracting department and according to the methods indicated. Dr Psaila informed the PCAB that explanations were also furnished as to why different methods would be used in the sense that these methods were more up-to-date.

The Chairman PCAB remarked that it was understandable that the adjudicating board had to have some criteria to evaluate on. He added, however, that if the appellant was claiming that the certification requested was impossible to produce then the same appellant was expected to draw the attention of the contracting authority to this 'impossibility' prior to the closing date of the tender. The Chairman PCAB said that the appellant could not decide to play the game and then seek to disrupt it afterwards. He argued that (a) if the requested certificate was impossible to the appellant then it was equally impossible to all the other participating tenderers and (b) if the appellant had proved that impossibility prior to the closing date of tender then the law provided for that tender document to be amended accordingly. The PCAB's Chairman also remarked that, once the contracting authority had asked for further details on the methods to enable it to confirm or otherwise the proposal, then the appellant was expected to submit such details prior to the closing date of the tender. At this point the Chairman PCAB also questioned how one could possibly participate in a tendering process which evaluated requirements which were impossible for any tenderer to supply.

Dr Simon Tortell, also representing the appellant Company, stated that his client did indicate to the contracting authority that the methods it was proposing were more up-to-date than those mentioned in the tender document. He added that it turned out that only two tenderers participated and that only his client had to produce the certificate because the other bidder was Enemalta Corporation which, being the current supplier, was exempted from submitting it.

Dr Psaila recalled that in case reference no CT/2202 the PCAB had been ruled that a tenderer could not be excluded for not submitting something that was technically impossible to provide.

Dr Tortell said that the contracting authority requested a certificate from the tenderer prior to the closing date of tender on the fuel that was going to be used say, six months later, which certificate was not possible to obtain and which would not have

been, neither truthful nor meaningful, given the passage of time. He submitted that his client was asked to provide something that was impossible to obtain whereas the current supplier was exempted from submitting this impossible request. As a result, Dr Tortell claimed that his client was discriminated against by having been treated differently vis-à-vis the other tenderer, adding that it would have been clearer to all had the Contracts Department indicated in Addendum No. 1 the date when it expected his client to submit the further details requested.

The Chairman PCAB expressed the view that, from what had been said up to then, the crux of the matter was whether the appellant was requested to submit something that, technically, did not make sense.

Engineer Angelo Attard, Chairman of the Adjudicating Board, explained that:

(i) this was a three envelope tender and that the appeal concerned the second envelope stage;

(ii) clause 11.2 at page 9 referred to a list of requirements that had to be submitted in envelope 2 whereas clause 1.3 laid down in bold print that "*Any tender which is not accompanied with these certificates shall be rejected outright at the tender opening state*";

(iii) he did not accept the claim that the requested certificate was impossible to provide because all that the contracting authority was requesting at the tender submission stage was a certificate from an independent body that the proposal made by the tenderer was acceptable in the light of the tender specifications;

(iv) it was clear to his board that the further details requested in Addendum No. 1 were to be submitted before the closing date of the tender because the proposal submitted by the appellant, had it been found acceptable, would have had to be brought to the attention of all prospective tenderers prior to the closing date of tender;

(v) the certificate requested did not concern the product itself but the validity of the written proposal made by the appellant, i.e. if the appellant proposed a different method, that new method had to be certified by an arbitrary body that it was applicable to the tender specifications;

(vi) the contracting authority was expecting fresh tender submissions from all bidders and if anyone of them was going to vary from the tender specifications then an independent certificate had to be provided that the different method proposed was applicable to what was being requested;

(vii) Enemalta Corporation, the current supplier, submitted a proposal that conformed to specifications and, in addition, offered about five certificates by Saybolt certifying that it was supplying the 0.1% sulphur gas oil in Malta; and

(viii) the tender document took the delivery timings aspect into consideration so much so that Annex II Article 9 'Sample Testing' (page 62) stated that "*Every month 2 samples from those kept at MDH, taken at random from the deliveries carried out in that same month shall be sent to a certified laboratory, chosen by the supplier, for testing, ….*"

The Chairman PCAB remarked that those tests would be carried out after tender award whereas the hearing concerned a certificate which had to be submitted with the tender documentation. Mr Attard reiterated that the certificate requested was not on the fuel itself but on the written proposal made by the tenderer.

Dr Tortell referred once again to clause 1.3 which requested that "…. *certificates from a recognised authorised body confirming that the fuel that the tenderer will be supplying conforms to the specifications as stated in Annex II*". He claimed that there lied the impossibility of the request. He noted that at the hearing it was being stated that the contracting authority would carry out fuel testing during the execution of the tender. Dr Tortell wandered which authorised body was going to issue the certificate as requested in clause 1.3.

Mr Anthony Pavia, a PCAB member, opined that it could be the case that the contracting authority wanted the tenderer to commit itself at tendering stage to the standards requested and then those standards would be confirmed by testing the fuel itself during the execution of the contract.

Mr Attard rejected the claim that the appellant was discriminated against in relation to the other tenderer. He explained that the monthly tests on the fuel would be carried out only on three parameters, i.e. (a) sulphur content, (b) gross calorific value and (c) viscosity at 40° C and not on all parameters. He added that clause 1.3 also stated that a supplier who presented evidence that he was already supplying the type of fuel requested was exempted from submitting certificates and that Enemalta Corporation had submitted as part of its documentation about five certificates confirming that it was supplying the kind of fuel requested in the tender.

Responding to a question made by the PCAB, Mr Attard confirmed that the fuel requested was not accessible only to Enemalta Corporation so much so that the tender conditions also requested the certificate of origin. Mr Attard informed the PCAB that the appellant Company did make a proposal but did not submit a certificate by an authorised body that the proposal matched the parameters set out in the tender dossier.

Dr Tortell insisted that clause 1.3 referred to a certificate in respect of fuels that the bidder "will be supplying" and that no certificate could be issued in that sense. Dr Psaila added that Falzon Fuel Services Ltd did submit the methods with his offer.

Mr Joseph Falzon, also representing the appellants, remarked that since he could not provide the certificate of the product itself, he gave the specifications which matched those in the tender document and committed also the Company he represented to conform to those specifications.

He added that, between January and November 2009, his firm had supplied in excess of 3.7 million litres of the same kind of fuel in Malta, including hospitals, and in

terms of quantity that exceeded by far Mater Dei Hospital requirements. He explained that

(i) on importation, he had to obtain the approval of the Malta Resources Authority on the specifications of the fuel and these tests were superior to those included in the tender document

(ii) the heating diesel used in Malta and for marine purposes, e.g. yachts, had so far been supplied from one source, i.e. *TOTAL*, and that meant that Enemalta Corporation, Falzon Fuel Services Ltd and any other entity that used heating diesel got it from the same source, which situation could change since this sector was going through a privatisation process, and

(iii) the test on the fuel at the time of the issue of the tender – May 2009 - indicated a maximum density of 0.85 whereas the density of the product distributed at the time of the hearing – December 2009 - was superior to 0.85.

Dr Tortell emphasised the term 'certificates' in the context of the wording of clause 1.3 and maintained that Saybolt Malta Ltd would not issue a certificate in respect of fuel that would be supplied in the future because the results carried out on fuel tended to change over time due to air quality, oxygen and so forth. He expressed the view that, from what had been said until then during the same hearing, it was emerging that the certificate at clause 1.3 should have referred to past supplies and not to future supplies, in which case his client possessed lots of such certificates considering that Falzon Fuel Services Ltd was as big a supplier of fuel as Enemalta Corporation.

Mr Attard remarked that he could not figure out how a contracting authority would not specify the product it wanted to purchase. At that point, the Chairman PCAB observed that specifications were one thing, i.e. a bidder could commit oneself to abide by them while a certificate was another because that could be the result of tests carried out at the time the fuel was actually delivered.

Mr Attard informed the PCAB that

a. the adjudicating board was not involved in the drawing up of the tender specifications

b. he was confident that the appellants had the capacity to supply this type of fuel but they failed to provide certificates of the tests of the fuel they supplied in the past – at this juncture the attention of Mr Attard was drawn to the fact that the first part of clause 1.3 referred to future supplies

c. Enemalta Corporation had provided the 1% sulphur fuel, a certificate from *Saybolt srl* of Sicily covering certain parameters *and*

d. Enemalta Corporation did not provide the specific brand name and letter of acceptance mentioned in clause 1.3

Mr Pavia intervened to remark that (a) it would seem that the tender document contained certain anomalies or inaccuracies in respect of which the tenderers should have sought clarifications from the contracting authority prior to the closing date of the tender and not decide to participate and then object afterwards, and (b) the way answer no. 1 in the *Addendum* was communicated might have left room to different interpretations regarding the timing for the submission of further details.

Dr Tortell remarked that, although Mr Pavia's interpretation could be morally correct, the fact remained that his client was requested an impossible requirement and, to make matters worse, the current supplier (i) was exempted from producing the same certificate and (ii) did not submit all the information requested at clause 1.3., namely the letter of acceptance and the specific brand, which shortcomings should have rendered Enemalta Corporation's offer non-compliant.

Mr David Gauci, Laboratory Manager of Saybolt Malta Ltd, gave the following evidence under oath, *inter alia* claiming that:

i. Saybolt Malta Ltd was an impartial party in the appeal in the sense that it was assigned testing works by Enemalta Corporation, the appellant Company and by other local and international firms;

ii. his firm would not undertake tests on a fuel sample on a particular day conscious that the supply would be effected weeks or months later because the analysis carried out on a particular day could change in, say, a week's time;

iii. no oxidisation stability test had been contemplated in the tender specifications and that was a serious shortcoming because with this test one would be on firmer ground with regard to variations that could occur between one date and another. He added that fuel tested without making use of the oxidisation stability test had to be used there and then as afterwards that certification would be technically worthless since the fuel characteristics could change over time;

iv. as examiner, his firm had a relationship with both the supplier and the receiver and whenever they were assigned such tasks they always dealt with specifications in view of the time difference involved and that it was the first time that he had come across the requirement of this kind of certificate at tendering stage;

v. each test had its verified method with its precise parameters which, in turn included repeatability and reproduceability and, if the fuel would not be within the precise parameters, then the client had the right to sue the supplier; *and*

vi. agreed with the Chairman PCAB that, in this case, there was no difference between a statement submitted by the bidder at tendering stage indicating that the bidder would conform to the tender specifications and a certificate submitted by bidder at tendering stage followed by the routine tests of the fuel on delivery because, in any case, if the routine tests on fuel actually delivered would demonstrate that the fuel was not within specifications then the supplier would be in breach of the contract conditions.

Dr Damien Degiorgio, legal adviser of Enemalta Corporation, an interested party, argued that

(i) the contracting authority requested a certificate in respect of fuel, which certificate could, in fact, be issued even by Saybolt Malta Ltd,

(ii) if such a certificate could be issued then the tenderer was obliged to produce it even if one could question the validity of such a certificate with regard to future fuel deliveries, in other words, a requirement made by the contracting authority in the tender document and which requirement was not impossible to produce had to be satisfied by the tenderer irrespective of how meaningful such a request was for the purpose of ascertaining the specifications of future fuel deliveries, *and*

(iii) since the client was a hospital, the contracting authority might have wished to take extra precautions by asking for a certificate of the product at tendering stage even though the product would be tested regularly on delivery to site during the course of the contract.

At this point the Chairman PCAB expressed the view that from what he heard that far, the submission at tendering stage of (i) a (provisional) certificate that demonstrated that the fuel was up to standard or (ii) a statement/commitment indicating that the fuel would be according to specifications, were of equal value because there was always the possibility that the quality of fuel could vary over time and hence the necessity of regular tests of the fuel on actual delivery.

Mr Gauci reiterated that since no oxidisation stability test was contemplated in the tender document then any test carried out would be useless in relation to future fuel consignments.

The Chairman PCAB remarked that one had to evaluate this matter on the basis of the documentation presented in relation with the tender document. He did not question the request of a certificate as a sort of commitment on the part of the bidders but he did question why a statement by the tenderer to the effect that he would conform to the specifications laid down in the tender was not given the same recognition as the certificate. The Chairman PCAB added that, in this case, the tender document appeared to be deficient and not the adjudicating process.

Mr Attard stressed that the adjudicating board did not discriminate against any tenderer during evaluation. At this point both the Chairman PCAB and the appellant Company shared the view that the tender document could have been discriminatory but not the actions of the adjudicating board because the latter acted according to what was stipulated in the tender document. Mr Attard confirmed that the appellant Company had submitted a statement that it would comply with specifications and that the adjudicating board did not object to the variations in the test methods as proposed by the appellants but the board expected such alternatives to be certified by an independent body which certificate had not been submitted. Mr Attard declared that his board was after certificates from bidders indicating the specifications of the fuel they sold so that the board would know that the bidder had distributed in Malta the

type of fuel requested. He conceded that the tender document did not provide the form in which the certificate had to be presented but he insisted that the adjudicating board was after evidence and not a unilateral statement that the bidder had sold the product in Malta. Mr Attard did not consider such a requirement as 'impossible'.

Dr Degiorgio argued that there was a difference between the 'possibility' and the 'necessity' of the requirement in question. He submitted that the requirement was not impossible even if one could argue about the extent of its usefulness, which argument should have been raised to the contracting authority prior to the closing date of the tender. Dr Degiorgio noted that, whereas prior to the closing date of the tender, the appellant Company had suggested to the contracting authority new methods in respect of which the contracting authority requested further details to evaluate the relative proposal, yet, at the same time, the same appellant Company did not argue against the scope of the certificate requested at clause 1.3. Dr Degiorgio maintained that the submission of the certificate was not an 'impossible' request and that the appellant could not opt to omit that requirement which requirement was indicated as mandatory in bold print.

Mr Horace Fenech, an Enemalta Corporation engineer, informed the PCAB that, although the Corporation was the current supplier of this type of fuel to Mater Dei Hospital, it had submitted two certificates from two independent bodies (including Saybolt) that showed that Enemalta Corporation was proposing to supply fuel according to specifications. Mr Fenech said that Enemalta Corporation sold its products under its own brand but he could not confirm whether the specific brand and the letter of acceptance mentioned in clause 1.3 were in fact submitted by the Corporation with its offer. At this point the Chairman of the adjudicating board declared that he did not find these papers with Enemalta Corporation's tender submission.

Dr Psaila remarked that although the tender document did not request any certification with regard to the methodology that was going to be used, his client, the appellant Company, had made a statement to the effect that it would be using that methodology to determine that the product which it would be supplying will be in conformity with tender specifications.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 03.11.2009 and also through their verbal submissions presented during the public hearing held on the 16.12.2009, had objected to the decision taken by the General Contracts Committee;

- having taken note of Dr Psaila's comments and observations, particularly the fact that his client was claiming that it was impossible to produce the results of fuel oil that was going to be supplied through this contract because the closing date of the tender was the 19 May 2009 and, as a consequence, the results of any tests made at the time of submission of offer would have been rendered futile and meaningless when considered in relation to the fuel which would be eventually supplied during the execution of the contract arguing that the characteristics of the fuel could vary in the intervening period;

- having also taken note of the appellant Company's statement that in its tender documentation it had declared that it was going to adhere to the tender specifications and conditions;

- having heard the appellant Company confirm that they had, arbitrarily, decided not to provide the said certificate together with the original submission - as requested by the contracting authority - in view of the fact that they argued that since the source of the product changed from time to time, tests would be carried out on the fuel supplied during the execution of the contract whenever requested by the contracting department and according to the methods indicated which, according to the same appellants, were more up-to-date than the ones requested by the contracting authority in the tender document;

- having further deliberated on its own observations made during the same hearing, namely those concerning the fact that (a) if the requested certificate was impossible to the appellant then it was equally impossible to all the other participating tenderers, (b) had the appellant proved that 'impossibility' prior to the closing date of tender, then the law would have provided for that tender document to be amended accordingly and (c) the way answer no. 1 in the *Addendum* was communicated might have left room to different interpretations regarding the timing for the submission of further details;

- having also taken note of the fact that albeit, following a clarification originally sought by the same appellant Company the contracting authority had requested further details on the methods to enable it to confirm or otherwise the proposal, yet the said clarification was never submitted by the same appellants;

- having taken full cognizance of the fact that, whilst according to the appellant Company, the other bidder, namely Enemalta Corporation, was exempted from submitting the apposite certificate in view of the fact that the entity is the current supplier, yet, the contracting authority was claiming that it was only exempting certificates relating to existing methods adopted but definitely not in the case of proposed new methods. As a matter of fact, the Adjudicating Board's Chairman stated that Enemalta Corporation, the current supplier, submitted a proposal that conformed to specifications and, in addition, offered about five certificates by Saybolt certifying that it was supplying the 0.1% sulphur gas oil in Malta;

- having also deliberated on Dr Tortell's arguments raised during the hearing, particularly, those relating to the fact that Saybolt Malta Ltd would not issue a certificate in respect of fuel that would be supplied in the future because the results carried out on fuel tended to change over time due to air quality, oxygen and so forth;

- having also taken full cognizance of the points raised by the Adjudicating Board's Chairman, particularly his confirmation that the appellant Company had submitted a statement that it would comply with specifications and that the adjudicating board did not object to the variations in the test methods as

proposed by the appellants but the board expected such alternatives to be certified by an independent body which certificate had not been submitted;

- having heard Mr Falzon's remarks and statement;

- having also obtained a confirmation from the Chairman of the Adjudicating Board that, contrary to what was considered as mandatory in the same tender document specifications, Enemalta Corporation did not provide the specific brand name and letter of acceptance/contracts mentioned in clause 1.3 of the same document;

- having thoroughly deliberated on Mr Gauci's testimony, especially the fact that (a) the firm he represents, namely, Saybolt Malta Ltd, would not undertake tests on a fuel sample on a particular day conscious that the supply would be effected weeks or months later because the analysis carried out on a particular day could change in, say, a week's time, (b) no oxidisation stability test had been contemplated in the tender specifications and that was a serious shortcoming because any fuel tested without making use of the oxidisation stability test had to be used there and then as afterwards that certification would be technically worthless since the fuel characteristics could change over time, (c) it was the first time that he had come across the requirement of this kind of certificate at tendering stage and (d) there was no difference between a *statement* submitted by a bidder at tendering stage indicating that the said bidder would conform to the tender specifications and a *certificate* submitted by a bidder at tendering stage followed by the routine tests of the fuel on delivery

- having taken note of Dr Degiorgio's arguments, particularly the fact that, regardless of how meaningless a request made by a contracting authority might seem – differentiating between the 'possibility' and the 'necessity' of the requirement in question- yet it remains a prerogative which no participating tenderer should arbitrarily disregard

reached the following conclusions, namely:

1. The PCAB feels that it is admissible that (a) a contracting authority has every right to request any certificate or supporting document it deems necessary and (b) an adjudicating board has to have some criteria to deliberate and evaluate issues on.

2. The PCAB argues that whilst specifications' terms and conditions had to be abided by, yet it is also a fact that any of such specifications requested by a contracting authority had to be, possibly, sensibly requested. Basing its deliberation on Mr Gauci's credible testimony, the PCAB doubts whether such mandatory certificate was both meaningful and necessary. Needless to say that this does not preclude anyone from abiding by the document's terms and conditions unless otherwise previously mutually agreed upon.

3. The PCAB also feels that, considering the fact that the appellant Company was claiming that the certification requested was impossible to produce, then

the same appellant was expected to draw the attention of the contracting authority to this 'impossibility' prior to the closing date of the tender and not decide 'to play the game' and then seek to disrupt it afterwards.

4. The PCAB feels that, this being a fresh call, all potential participating tenderers, including an existing supplier, should have '*ab initio*' been placed on a level playing field and that no one should have been given any exemption with regards to supporting documentation and so forth

5. The PCAB acknowledges that, whilst a tenderer (Falzon Fuel Services Ltd) cannot arbitrarily decide to desist from submitting certificates from a recognised authorised body confirming that the fuel that the tenderer will be supplying conformed to the specifications as stated in Annex II, yet, similarly, another tenderer (Enemalta Corporation Ltd) cannot desist from clearly indicating the specific brand name and the respective reference of the Letter of Acceptance/Contracts. The PCAB feels that 'mandatory' requirements have to be deliberated upon and equally judged by an adjudicating board. In this case the PCAB rules that both participating tenderers have reneged from fulfilling the tender document's mandatory requirements.

As a consequence of (1) to (5) above this Board recommends that this tender should be re-issued with the contracting authority giving special consideration to various *lacunae* in the tender document - as amply highlighted in this hearing - in order for errors or unnecessary requests not to be repeated this time around.

In view of the above and in terms of the Public Contracts Regulations, 2005, this Board recommends that the deposit submitted by the appellants should be reimbursed.

Alfred R Triganza	Anthony Pavia	Carmel J Esposito
Chairman	Member	Member

30 December 2009