

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 487

**MRRA/W/197/2011/1**

**Period Contract for the Provision of Hot Dip Galvanising of Steel Articles 2012-2013**

This call for tenders was published in the Government Gazette on the 1st June 2012. The closing date for this call with an estimated budget of € 36,017 (excl. VAT) was the 22nd June 2012.

Three (3) tenderers submitted their offers.

Joseph Caruana & Co Ltd filed an objection on the 17<sup>th</sup> September 2012 against the decision of the Ministry for Resources and Rural Affairs to recommend the award of the tender to BRM Sri.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Paul Mifsud as members convened a public hearing on Tuesday, 6th November 2012 to discuss this objection.

### **Joseph Caruana & Co Ltd**

Dr Michael Caruana                      Legal Representative

### **Ministry for Resources and Rural Affairs**

### **Evaluation Board**

Ing. Chris Cremona	Chairman
Mr Denis Cacciattolo	Member
Mr Patrick Cutajar	Member
Mr Joe Fenech	Member
Ms Miriam Montebello	Secretary



The Chairman Public Contracts Review Board informed those present that the recommended bidder, on being informed that this hearing was being scheduled to deal with award recommendation, declared via email, (reproduced hereunder), that the company was withdrawing its bid:-

*“With reference to your email, I would like to point out that since the tender was written in English and I do not speak very good English, there were some points that erroneously I did not understand therefore the price that I have quoted was incorrect. In view of this unforeseen error from my part I would no longer want to take part in this tender.*

*Sorry for any inconvenience that this may have caused to your department in the meantime I look forward to be participating in other tenders that you may issue in the future.*

*Thank you and Regards  
Angelo Iemmolo”*

The Chairman invited the appellant company to explain the motives of its objection.


Dr Michael Caruana, representing Joseph Caruana Ltd, the appellant company, made the following submissions:

- i. by email/letter dated 11th September 2012 the appellant company was informed that its offer was more expensive than the recommended offer and that the tender was recommended for award to BRM Sri for the price of €1.30/kg for lot 1 and €1.50/kg for lot 2 for the total price of €2,750;
- and
- ii. the third paragraph of its appeal called on the contracting authority to clarify the winning bid with the recommended tenderer because the appellant company felt that there must have been some kind of misunderstanding considering the prices quoted and the provisions of the tender document.

Ing. Chris Cremona, chairman of the evaluation board, explained that:-

- a. one had to refer to clauses 8.5.7 and 8.5.8 which read as follows:

*‘8.5.7 The prospective contractor shall accept orders for the galvanising of any article only in writing by means of a works order. All the relevant details shall be indicated on this document and no variations to the actual work performed shall be entertained. The Contracting Authority shall reserve the right to weigh each article before sending it to and after receiving it from the galvanising plant to be able to determine the weight of coating deposited. The weight of the article shall be indicated on the works order for verification purposes by the contractor and any amounts settled shall correspond to this weight, irrespective of the invoiced amount.*



8.5.8 Tenderers shall complete the Schedule of Rates attached in these documents indicating clearly the following rates:

- i. the rate per kg of coating deposited on articles fabricated from solid / hollow steel or iron sections,
- ii. the rate per kg of coating deposited on large articles which shall necessitate double dipping.

*Rates shall also include amounts for pre-treatment (pickling) of articles necessary to permit the galvanising process to initiate and evolve regularly to the required standard.'*

- b. clause 8.3.2 provided an indication to bidders of the total weight of galvanising coating that was to be applied, namely 2000 kg;
- c. the schedule of rates at page 22 of the tender document clearly indicated the: *Rate per kg of Coating Deposited, incl. VAT;*
- d. on examining the offers, the evaluation board had its reservations as to whether all tenderers interpreted correctly the provisions of the tender document so much so that in its conclusions a note was inserted which read as follows:

*'This evaluation committee is basing its recommendations on the assumption that all tenderers have correctly interpreted Clause 8.5.8 which clearly specified that the galvanising rates shall refer to the weight of the galvanizing coating and that their respective financial offers take into account such criteria.'*

- e. the evaluation board also noted that the second cheapest bid quoted the rate of €2.36 which was likewise relatively or abnormally low;
  - f. the evaluation board did not consider it within its remit to approach the bidders to reconsider their price but it drew the attention of the contracting authority that it could have been the case that the two cheapest tenderers might not have interpreted the specifications correctly;
  - g. out of the three rates quoted, the one which made sense was that quoted by the appellant company;
- and
- h. when the evaluation board raised this point with the contracting authority the instructions given were to go by the information provided in the tender submissions.

Dr Caruana remarked that the current contract had been awarded at €18 per kg, which the appellant company considered to be on the low side. He noted that the current contractor did not submit a bid this time round. Dr Caruana argued that once there appeared to be a manifest inconsistency between the tender provisions, the current



contract rate and the cheaper two bids received then the evaluation board, acting through the contracting authority, should have clarified this anomaly as per clauses 4.3.1 and 4.3.2.

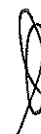
The Chairman Public Contracts Review Board remarked that:-

- i. it was the duty of the evaluation board to make reasonable recommendations and, as a consequence, it should first clarify any grey areas, through the clarification process provided for in the tender document, so that, in the end, it would be in a position to make meaningful recommendations;
- ii. in this case it was evident that the evaluation board made an award recommendation conscious that it did not make sense, namely €1.30/kg and €1.50/kg versus the €18/kg payable under the current contract and the appellant company's offer of €35.40/kg and €53/kg;  
  
and
- iii. it was not enough for the evaluation board to insert a note in its report but first it had to clear any anomalies encountered during evaluation by obtaining all the information necessary to assist it in arriving at informed and meaningful recommendations.

At this point the hearing came to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 17<sup>th</sup> September 2012 and also through their verbal submissions presented during the hearing held on the 6<sup>th</sup> November 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant's representative's claims and observations, particularly, the references made to the fact that (a) by email/letter dated 11th September 2012 the appellant company was informed that its offer was more expensive than the recommended offer and that the tender was recommended for award to BRM Sri for the price of €1.30/kg for lot 1 and €1.50/kg for lot 2 for the total price of €2,750, (b) the third paragraph of its appeal called on the contracting authority to clarify the winning bid with the recommended tenderer because the appellant company felt that there must have been some kind of misunderstanding considering the prices quoted and the provisions of the tender document, (c) the current contract had been awarded at €18 per kg, which the appellant company considered to be on the low side and that the current contractor did not submit a bid this time round and (d) once there appeared to be a manifest inconsistency between the tender provisions, the current contract rate and the cheaper two bids received, then the evaluation board, acting through the contracting authority, should have clarified this anomaly as per clauses 4.3.1 and 4.3.2;
- having considered the contracting authority's representative's reference to the fact that (a) clauses 8.5.7 and 8.5.8, (b) clause 8.3.2 provided an indication to bidders of the total weight of galvanising coating that was to be applied, namely 2000 kg, (c) the



schedule of rates at page 22 of the tender document clearly indicated the *Rate per kg of Coating Deposited, incl. VAT*, (d) on examining the offers, the evaluation board had its reservations as to whether all tenderers interpreted correctly the provisions of the tender document so much so that, in its conclusions, a note was inserted, (e) the evaluation board also noted that the second cheapest bid quoted the rate of €2.36 which was, likewise, relatively or abnormally low, (f) the evaluation board did not consider it within its remit to approach the bidders to reconsider their price but it drew the attention of the contracting authority that it could have been the case that the two cheapest tenderers might not have interpreted the specifications correctly and (g) out of the three rates quoted, the one which made sense was that quoted by the appellant company and (h) when the evaluation board raised this point with the contracting authority the instructions given were for it to go by the information provided in the tender submissions,

reached the following conclusions, namely:

1. The Public Contracts Review Board has taken full cognizance of the fact that the recommended tendering company had withdrawn its tender bid prior to the commencement of the hearing.
2. The Public Contracts Review Board recognizes the fact that it was the duty of the evaluation board to make reasonable recommendations and, as a consequence, it should first clarify any grey areas, through the clarification process provided for in the tender document, so that, in the end, it would be in a position to make meaningful recommendations.
3. The Public Contracts Review Board acknowledges the fact that, in this case, it was evident that the evaluation board made an award recommendation conscious that it did not make sense, namely €1.30/kg and €1.50/kg versus the €18/kg payable under the current contract and the appellant company's offer of €35.40/kg and €53/kg.
4. This Board also opines that it was not enough for the evaluation board to insert a note in its report but first it had to clear any anomalies encountered during evaluation by obtaining all the information necessary to assist it in arriving at informed and meaningful recommendations.

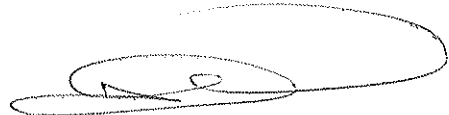
In view of the above this Board finds in favour of the appellant company and recommends that the deposit paid by the same company for the appeal to be lodged should be reimbursed. This Board also recommends that the evaluation board should now proceed with the re-evaluation process of the remaining administratively and technically compliant bidders giving particular attention to market prices and conditions in order to be able to recommend a bid which is closest to commercial parameters prevailing at the moment when such recommendations are made by the evaluation board to the contracting authority.



Alfred R Triganza  
Chairman



Carmel Esposito  
Member



Paul Mifsud  
Member

19 November 2012