

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 492

TM/022/2012

**Tender for the Provision of Traffic Signs and Road Markings icw Transpot Services**

This call for tenders was published in the Government Gazette on the 13<sup>th</sup> July 2012. The closing date for this call with an estimated budget of € 60,000 was the 3<sup>rd</sup> August 2012.

Three (3) tenderers submitted their offers.

Koptasin Ltd filed an objection on the 10<sup>th</sup> October 2012 against the decision of Transport Malta to adjudicate its offer as technically non-compliant and to recommend the award to Road Maintenance Services Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Thursday, 15<sup>th</sup> November 2012 to discuss this objection.

### **Koptasin Ltd**

Mr Victor Bugeja LP	Legal Representative
Mr Louis Zammit	Representative

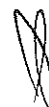
**Road Maintenance Services Ltd** – no representative turned up.

### **Transport Malta**

Dr Joseph Camilleri	Legal Representative
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### **Evaluation Board**

Mr Gilbert Agius	Chairman
Mr Mr Josphe Briffa	Member
Mr Emanuel Zammit	Member
Mr Alan Scerri	Member
Ms Christian Gavino	Secretary



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

Mr Victor Bugeja, representing Kopatsin Ltd, the appellant company, made the following submissions:

- i. by email/letter dated 4th October 2012 the appellant company was informed that its two offers were adjudicated to be (a) technically non-compliant (Option 1) and (b) not the cheapest (Option 2) and that the tender was recommended for award to Road Maintenance Services Ltd;
  - ii. with regard to standards, Volume 3 'Technical Specifications' referred to S.L. 499.57;
  - iii. the tender document and the bill of quantities, in effect, did not indicate any specific standard with regard to the provision of these road signs because the bill of quantities referred to 'Category 2' which, in real terms, was non-existent as a standard and that was, informally, confirmed by Mr Joseph Briffa, Transport Malta employee, and by Architect Testaferrata de Noto, on behalf of Transport Malta at the Public Contracts Review Board hearing held in connection with Case No. 463;
  - iv. whilst, in Case No. 463, the tender specifications indicated the standard 'RA 3' whereas the bill of quantities referred to 'Category 3', yet, in this instance the tender document only referred to 'Category 2' in the bill of quantities and, since that standard was non-existent, then one could deduce that, effectively, this tender document did not lay down any specific standard and, as a result, the bidder was free to offer and propose any standard;
  - v. the appellant company, in fact, offered two options, Option 1, equivalent to standard RA 1, which was adjudicated to be technically non-compliant and Option 2, equivalent to standard RA 2, which was not the cheapest compliant tender;
  - vi. by deduction, it would appear from the way the contracting authority adjudicated the appellant company's two options that the intention was to request RA 2 standards;
- and
- vii. the subject of this appeal was Option 1 and the appellant company's contention was that this option was technically compliant with the tender document since it did not specify any particular standard so much so that 'Category 2' did not feature in traffic signs and road markings standards.

Dr Joseph Camilleri, legal representative of Transport Malta, explained that:-

- a. section 1 of Volume 3 'Technical Specifications' stated that *'The Technical Specifications for road marking and traffic signs are as per S.L. 499.57 unless*



*otherwise specified in the Bill of Quantities. S.L 499.57 may be accessed through the following internet address ...'*

- b. Part 2 'Bill A' 'Signage' of the bill of quantities stated that *'All signage is to comply with the requirements of Category 2 signs set out in the New Roads and Road Works Regulations (S.L. 499.57), particularly with Series 1200'*;
- c. S.L. 499.57 referred to Maltese Standards Category RA 1 and Category RA 2 and, therefore, any reference by Transport Malta to 'Category 2' in fact was meant to refer to 'Category RA 2';
- d. the only shortcoming on the part of Transport Malta was that it omitted the 'RA' but, that notwithstanding, it was quite clear that the tender document specifically referred to Maltese Standards as per S.L. 499.57 and those operating in this sector were aware that those standards referred to Categories RA 1 and RA 2;
- e. in this case the reference to 'Category 2' was evidently meant to refer to 'Category RA 2';
- f. Regulation 7 of S.L. 499.57 'Compliance with Standards' read as follows:

*"(1) Any person designing or building any road or carrying out maintenance or other work thereon shall comply with the following Design and Construction Standards for Road Works"*

- g. the appellant company seemed to imply that because it could not reconcile the reference to standard 'Category 2' made in the bill of quantities with the standards set out in S.L. 499.57, then it was at liberty to propose any standard. That attitude was entirely unacceptable especially when considering that the appellant company participated in other similar tender procedures and, if anything, the least it could have done was to ask for a clarification which was permissible;

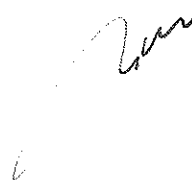
and

- h. one had to note that 'Option 2' submitted by the appellant company, in fact, offered RA 2 standards, namely a higher standard, and that explained why it was more expensive than 'Option 1' with offered RA 1 standards.

The Chairman Public Contracts Review Board made the following observations:-

- i. that in the appellant company's own words, 'Category 2' mentioned in the bill of quantities did not, in fact, refer to recognised standards and, as a result, given such an anomaly in the tender document as to which standards were to apply, the bidding company could have cleared its mind by asking a clarification which was permissible by regulations;

and



- ii. it was noted that the decision with regard to Case 463 was issued on the 26<sup>th</sup> October 2012 whereas the closing date of this tender was the 3<sup>rd</sup> August 2012 and, as a consequence, the considerations taken into account in that decision could not have influenced the appellant company at the time it submitted the offer under review.

Mr Louis Zammit, also representing the appellant company, remarked that no clarifications were asked with regard to the standards requested in this tender document.

Dr Camilleri:-

- a. rejected the notion that this sort of anomaly between 'Category 2' and 'Category RA 2' was recurring frequently because it occurred only in another tender which was issued almost concurrently with this one and even then the circumstances were a bit different;

and

- b. stated that, contrary to what the appellant company seemed to imply, namely that bidders were at a loss about what standards were being requested by the contracting authority, the fact was that the other two participating bidders understood exactly that standard RA 2 was requested and, to a certain extent, even the appellant company understood correctly because in 'Option 2' the appellant company offered what was requested which rendered that offer compliant but not the cheapest.

Mr Bugeja reiterated his earlier arguments and concluded that:-

- i. it was clear that the tender document, as published, did not request any specific standard because 'Category 2' was not a recognised standard and so there was no contradiction to clarify;
- ii. the appellant company was correct in offering Options 1 and 2 so that the contracting authority could have its pick;

and

- iii. the decision of the 26<sup>th</sup> October 2012 with regard to Case 463 corroborated the appellant company's contention in so far as 'Category 2' did not mean 'Category RA 2' and, therefore, Option 1 submitted by the appellant company was not out of specifications and should have been considered for award.

At this point the hearing came to a close.

This Board,

- having noted that the appellant company, in terms of its 'reasoned letter of objection' dated the 9<sup>th</sup> October 2012 and also through its representatives verbal submissions



presented during the hearing held on the 15<sup>th</sup> November 2012, had objected to the decision taken by the pertinent authorities;

- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by email/letter dated 4th October 2012 the appellant company was informed that its two offers were adjudicated to be (Δ) technically non-compliant (Option 1) and (ΔΔ) not the cheapest (Option 2) and that the tender was recommended for award to Road Maintenance Services Ltd, (b) with regard to standards, Volume 3 'Technical Specifications' referred to S.L. 499.57, (c) the tender document and the bill of quantities, in effect, did not indicate any specific standard with regard to the provision of these road signs because the bill of quantities referred to 'Category 2' which, in real terms, was non-existent as a standard and that was, informally, confirmed by Mr Joseph Briffa, Transport Malta employee, and by Architect Testaferrata de Noto, on behalf of Transport Malta at the Public Contracts Review Board hearing held in connection with Case No. 463, (d) whilst, in Case No. 463, the tender specifications indicated the standard 'RA 3' whereas the bill of quantities referred to 'Category 3', yet, in this instance the tender document only referred to 'Category 2' in the bill of quantities and, since that standard was non-existent, then one could deduce that, effectively, this tender document did not lay down any specific standard and, as a result, the bidder was free to offer and propose any standard, (e) the appellant company, in fact, offered two options, Option 1, equivalent to standard RA 1, which was adjudicated to be technically non-compliant and Option 2, equivalent to standard RA 2, which was not the cheapest compliant tender, (f) by deduction, it would appear from the way the contracting authority adjudicated the appellant company's two options that the intention was to request RA 2 standards, (g) the subject of this appeal was Option 1 and the appellant company's contention was that this option was technically compliant with the tender document since it did not specify any particular standard so much so that 'Category 2' did not feature in traffic signs and road markings standards, (h) no clarifications were asked with regard to the standards requested in this tender document, (i) it was clear that the tender document, as published, did not request any specific standard because 'Category 2' was not a recognised standard and so there was no contradiction to clarify, (j) the appellant company was correct in offering Options 1 and 2 so that the contracting authority could have its pick and (k) the decision of the 26<sup>th</sup> October 2012 with regard to Case 463 corroborated the appellant company's contention in so far as 'Category 2' did not mean 'Category RA 2' and, therefore, Option 1 submitted by the appellant company was not out of specifications and should have been considered for award;
- having considered the contracting authority's representative's reference to the fact that (a) section 1 of Volume 3 'Technical Specifications' stated that '*The Technical Specifications for road marking and traffic signs are as per S.L. 499.57 unless otherwise specified in the Bill of Quantities. S.L. 499.57 may be accessed through the following internet address ...*', (b) Part 2 'Bill A' 'Signage' of the bill of quantities stated that '*All signage is to comply with the requirements of Category 2 signs set out in the New Roads and Road Works Regulations (S.L. 499.57), particularly with Series 1200*', (c) S.L. 499.57 referred to Maltese Standards Category RA 1 and Category RA 2 and, therefore, any reference by



Transport Malta to 'Category 2' in fact was meant to refer to 'Category RA 2', (d) the only shortcoming on the part of Transport Malta was that it omitted the 'RA' but, that notwithstanding, it was quite clear that the tender document specifically referred to Maltese Standards as per S.L. 499.57 and those operating in this sector were aware that those standards referred to Categories RA 1 and RA 2, (e) in this case the reference to 'Category 2' was evidently meant to refer to 'Category RA 2', (f) Regulation 7 of S.L. 499.57 'Compliance with Standards' read as follows "*(1) Any person designing or building any road or carrying out maintenance or other work thereon shall comply with the following Design and Construction Standards for Road Works*", (g) the appellant company seemed to imply that because it could not reconcile the reference to standard 'Category 2' made in the bill of quantities with the standards set out in S.L. 499.57, then it was at liberty to propose any standard, (h) it was unacceptable for a participating tenderer to claim that it was at liberty to propose any standard, especially when one considers the fact that the appellant company participated in other similar tender procedures and, if anything, the least it could have done was to ask for a clarification which was permissible, (i) one had to note that 'Option 2' submitted by the appellant company, in fact, offered RA 2 standards, namely a higher standard, and that explained why it was more expensive than 'Option 1' which offered RA 1 standards, (j) rejected the notion that this sort of anomaly between 'Category 2' and 'Category RA 2' was recurring frequently because it occurred only in another tender which was issued almost concurrently with this one and, even then, the circumstances were a bit different and (k) stated that, contrary to what the appellant company seemed to imply, namely that bidders were at a loss about what standards were being requested by the contracting authority, the fact was that the other two participating bidders understood exactly that standard RA 2 was requested and, to a certain extent, even the appellant company understood correctly because in 'Option 2' the appellant company offered what was requested which rendered that offer compliant but not the cheapest,

reached the following conclusions, namely:

1. The Public Contracts Review Board establishes that, in the appellant company's own words, 'Category 2' mentioned in the bill of quantities, did not, in fact, refer to recognised standards and, as a result, given such an anomaly in the tender document as to which standards were to apply, the bidding company could have sought a clarification in regard which was, after all, permissible by pertinent regulations.
2. The Public Contracts Review Board concurs with the contracting authority's claim that it was unacceptable for a participating tenderer to declare that it was at liberty to propose any standard, especially when one considers the fact that the appellant company participated in other similar tender procedures and is fully conversant with the standards referred to by the said contracting authority.
3. The Public Contracts Review Board notes that the decision with regard to Case 463 was issued on the 26<sup>th</sup> October 2012 whereas the closing date of this tender was the 3<sup>rd</sup> August 2012 and, as a consequence, the considerations taken into account in that decision could not have influenced the appellant company at the time it submitted the offer under review. In any case, this Board observes that the



circumstances of the two appeals in question are different and, hence, irrelevant within the context of this appeal.

In view of the above this Board finds against the appellant company and recommends that the deposit paid by the same company for the appeal to be lodged should not be reimbursed.



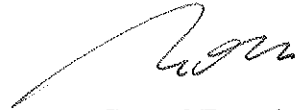
Alfred R Triganza  
Chairman

20 November 2012



~~Joseph Croker~~  
Member

*Carmel Esposito*



~~Carmel Esposito~~  
Member

*Carmel Esposito*