

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 2085 – WSC/T/051/2024 – Supply and Delivery of Stainless Steel Pipes for WW PS to the Water Services Corporation**

**24<sup>th</sup> March 2025**

The Board,

Having noted the letter of objection filed by Mr Adrian Baldacchino acting for and on behalf of JP Baldacchino Co. Ltd, (hereinafter referred to as the appellant) filed on the 28<sup>th</sup> August 2024;

Having also noted the letter of reply filed by Dr Christopher L. Vella and Dr Clyde Bonnici acting for Water Services Corporation (hereinafter referred to as the Contracting Authority) filed on the 6<sup>th</sup> September 2024;

Having heard and evaluated the testimony of the witness Mr Adrian Baldacchino (Representative of J P Baldacchino & Co Ltd.) as summoned by Dr Joseph Camilleri acting for J P Baldacchino & Co Ltd.

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 27<sup>th</sup> February 2024 hereunder-reproduced.

#### **Minutes**

#### **Case 2085 –WSC/T/051/2024 – Supplies – Supply and Delivery of Stainless Steel Pipes for WW PS to the Water Services Corporation**

The tender was published on the 29<sup>th</sup> April 2024 and the closing date of the call for tenders was the 29<sup>th</sup> May 2024.

The estimated value of this tender, excluding VAT, was € 13,200.

On the 28<sup>th</sup> August 2024 J P Baldacchino & Co Ltd filed an appeal against the decision of the Water Services Corporation to disqualify their offer on the grounds that it was technically not compliant.

A deposit of € 400 was paid. There were two bids.

On the 27<sup>th</sup> February 2025 the Public Contracts Review Board composed of Mr Keith Victor Grech as Chairman, Mr Lawrence Ancilleri and Mr Richard A. Matrenza as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – J.P. Baldacchino & Co Ltd**

Dr Joseph Camilleri	Legal Representative
Mr Adrian Baldacchino	Representative

**Contracting Authority – Water Services Corporation**

Dr Christopher Vella	Legal Representative
Ing Gilbert Costa	Chairperson of the Evaluation Committee
Mr Louis Pullicino	Secretary of the Evaluation Committee
Ing Greta Zammit Muma	Evaluator
Ing Mark DeFelice	Evaluator
Ing Anthony Muscat	Representative
Ms Catherine Degabriele	Representative

**Preferred Bidder – Superb Oil Stream and Service Ltd**

Mr Franklin Acevedo	Representative
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Mr Keith Victor Grech Acting Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Joseph Camilleri Legal Representative for J P Baldacchino & Co Ltd stated that on this tender for the supply of pipes there were two bidders. The appellant's bid was cheaper but it was excluded as it was claimed that from the literature supplied the thickness of the pipes was not clear. A clarification was sought but the Contracting Authority still claimed that the information was not clear and was not acceptable. Certain specifications in the pipes are standard including the kg/m<sup>2</sup>. These standards are expressed in the table presented as DOC 1. Different manufacturers all express dimensions in the same way. Appellant offer indicated the relevant pipes by use of arrows coloured red (DOC 2) and clearly indicated specification format and standard of product required. Appellant's claim is that the table is standard and the table made it clear. If the Authority had followed the table and if it was conversant with it, it was clear that the specs were met.

Dr Christopher Vella Legal Representative for the Authority said that the Authority's requisite was clear – the pipes had to have certain specifications as indicated in the tender. The appellant submitted technical questionnaire and literature but there was difficulty with the latter and the evaluators were not convinced that the specs were met. This point was subject to Note 3 regulation so a clarification was sought. All the appellants had to do was to indicate the source of information. Such information was not indicated and the same document with added arrows and highlights was still not clear. Today we were informed, said Dr Vella, that the figures indicated represented kg/m<sup>2</sup>. The appellant was given an

opportunity to clarify but the option was not taken and the Evaluation Committee could not assume anything and were not comfortable that the specifications were satisfied. It would have been discriminatory to do otherwise and left the evaluators with no alternative.

Mr Adrian Baldacchino (484172M) called to testify by the appellant stated on oath that he had thirty years' experience in this industry and the request for the product was very clear as it is covered by a standard ISO. A technical person should have realised that the weight per kilo is the best way to ensure standard and the best way of evaluating the tender. The tender, according to the witness, did not specify that the offer had to be on a weight per kilo basis.

This concluded the testimony.

Dr Camilleri noted that the tender asked for minimum thickness which appellant still met whilst Dr Vella said that the tender allowed certain tolerance on diameters.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 27<sup>th</sup> February 2025.

Having noted the objection filed by JP Baldacchino Co. Ltd (hereinafter referred to as the Appellant) on 28<sup>th</sup> August 2024, refers to the claims made by the same Appellant with regard to the tender of reference WSC/T/051/2024 listed as case No. 2085 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Joseph Camilleri

Appearing for the Contracting Authority: Dr Christopher L. Vella & Dr Clyde Bonnici

Whereby, the Appellant contends that:

- a) On the 19<sup>th</sup> of August 2024, we received a notification informing us that the offers submitted by our company were found to be technically non-compliant. The reason for our non-compliance was stated to be the following: *“Non-Compliant - The following technical rectification was deemed necessary: to submit literature corroborating the technical offer. Its outcome was unacceptable since literature submitted did not corroborate the technical offer in the following specification: wall thickness declared on the technical questionnaire was*

*2mm whilst that highlighted on the literature is 4.92mm for the 2" pipes and 6.35mm for the 3" pipes.*" This reason for rejection of our offer is, to say the least, surprising, since the wall thickness mentioned above does not correlate with any of the data provided by our company. The wall thickness of 4.92mm for the 2" pipes and 6.35mm for the 3" pipes cannot be found in the technical documentation we provided.

- b) On the 18th of June, 2024 WSC has sent us a communication by email, wherein we were informed about 2 issues. On the 21st of June we replied to the above request and provided the same literature as we originally provided at tender submission, but on this occasion, we marked with a red arrow the parts which may have been overlooked during evaluation, including the diameter and thickness of the pipes. Moreover, we highlighted in yellow the diameter and the thickness of the pipes. We also highlighted in yellow the net weight kgs/mts of each pipe requested in the specifications. The weight per metre is a determining indicator to corroborate the right size and thickness of pipe. May we also point out that the table of sizes provided is a standard table for all pipe manufactures and commonly includes sizes on the sides and kgs/mts at the intersections for each diameter in combination with the thickness.
- c) Our company has provided all the necessary technical documentation at tendering stage. Moreover, and as already explained above we again resubmitted the same technical documentation clearly highlighting all points as requested. Finally, the reason for non-compliance is wrong in that the figures quoted are not cited from the technical documentation we submitted.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 6<sup>th</sup> September 2024 and its verbal submission during the hearing held on 27<sup>th</sup> February 2025, in that:

- a) Clause 2 of Section 3 of the Tender Dossier® provided that the pipes required for the tender must have, amongst other specifications, an outside diameter of 2 and 3 inches, and a wall thickness of at least 2mm in both cases. On the one hand, the Technical Questionnaire submitted by the Appellant indicated a wall thickness of the stainless steel pipe which is compliant with that requested in Clause 2 of Section 3 of the Tender Dossier, shown above. On the other hand, the technical literature submitted by the Appellant provided several tables, marked in Italian, which made it impossible for the Contracting Authority to determine which of said tables (if any) is relevant, what were the technical specifications of the pipes offered by the Appellant, and whether said specifications were consistent with those requested in the Tender Dossier and those indicated in the Technical Questionnaire. To make matters worse, the column of the Technical Questionnaire titled 'Reference in the technical literature where this (i.e. the wall thickness of the pipe) is being stated / shown (if applicable)' was left entirely empty. It is pertinent to note that both Clause 2 of Section 3 of the Tender Dossier and the Technical Questionnaire are subject to the

conditions imposed in Note 3. This derives from Clause 5(D) of the Instructions to Tenderers (Section 1).

- b) Therefore, vis-à-vis the wall thickness of the pipes as indicated in the Technical Questionnaire, by virtue of Note 3 above the Contracting Authority could only request clarifications. To this effect, the Contracting Authority sent the Appellant the Clarification Question dated the 18th June, with the aim of clarifying the inconsistency between the Technical Questionnaire and the Technical Literature. Indeed, it was pointed out in the Clarification Question that the Literature regarding the outside diameter, the wall thickness and the length of both the 2" diameter pipe and the 3" diameter pipe, corroborating the Appellant's answer to the first 4 questions in the Technical Questionnaire, could not be determined from Appellant's submission given that two different documents (namely the Technical Literature and the Technical Questionnaire) were provided, each showing different data. The Appellant was therefore requested to either indicate and highlight where in the literature submitted said information could be found, or to submit updated drawing/s including all the dimensions as listed in Clause 2 of Section 3 of the Tender Dossier, clearly highlighting the above.
- c) In his Clarification Reply, submitted on the 21st of June 2024, the Appellant resubmitted one of the tables indicated in the Technical Literature, 'highlighting the information required. Nevertheless, despite this highlighting, the table still remained ambiguous: the Contracting Authority could not determine from the above table, as highlighted, whether the wall thickness of pipes with a diameter of 2 inches was 2mm, 2.92mm, or 4.92mm (2mm and 2.92mm added together). Likewise, in the case of pipes with a diameter of 3 inches, it was unclear whether the wall thickness was 2mm, 4.35mm, or 6.35mm (2mm and 4.35mm added together). This was not helped by the fact that the table is marked only in Italian, and this when according to Clause 6.3 of the General Rules Governing Tenders (V4.10): *“All correspondence and documents related to the procurement document exchanged by the Economic Operator and the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority must be written in English. Supporting documents and printed literature furnished by the Economic Operator may be in another language, provided they are accompanied by an accurate translation into English. For the purposes of interpretation of the procurement document, the English language will prevail.”*
- d) Moreover, said table does not indicate what the highlighted figures of 2.92mm and 4.35mm represent. It was only in its objection letter that the Appellant mentioned that *'We also highlighted in yellow the net weight kgs/mts of each pipe requested in the specifications'*, and this when such information was not requested by the Contracting Authority in the Clarification Question or in the Tender Dossier, and was therefore liable to mislead.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will now consider Appellant's grievances as follows in their entirety.

## Grievance - Technical non-compliance

Following its convening on the 27<sup>th</sup> February 2025, the Board has conducted a review of the matter and considered the Contracting Authority's argument, mainly that:

- The appellant initially submitted a comprehensive brochure from its manufacturer, which outlined a broad spectrum of various pipe types as technical literature. Furthermore, no reference was made to link the specific types of pipes being tendered in response to the Contracting Authority's request through the tender dossier.
- The appellant initial submission was presented in a language other than English, and that an accurate translation was not provided in accordance to clause 6.3 of the General Rules Governing Tenders (V4.10) which *"made it impossible for the Contracting Authority which of the said tables (if any), is relevant"*.
- Even after a request for clarification was made, the appellant submitted a single table that remained ambiguous. *"The Contracting Authority could not determine from the above table, as highlighted, whether the wall thickness of pipes with a diameter of 2 inches was 2mm, 2.92mm or 4.92mm (2mm and 2.92mm added together). Likewise, in the case of pipes with a diameter of 3 inches, it was unclear whether the wall thickness was 2mm, 4.35mm or 6.35mm (2mm and 4.35mm added together)."*

Upon evaluating the documents submitted, the Board notes that the document provided did, in fact, contain translations into English. The only elements that did not have a translation were the row header and the column header of the table, being "Diametri" and "Spessori". However, the document clearly indicates that the table reported the "Net weight KG/Mtrs". The Board further notes that, in its reason for rejection the Contracting Authority states that the *"Wall thickness declared on the technical questionnaire was 2mm whilst that highlighted on the literature is 4.92mm for the 2" pipes and 6.35mm for the 3" pipes."* In this statement the Contracting Authority implicitly conveys that the markings provided by the appellant in its response to the clarification request were enough for it to be able to determine which pipes the appellant was providing and what the "diametri" (Diameters) and "Spessori" (Thicknesses) meant.

Therefore, although the Board concurs with the Contracting Authority in its argument that the net weight was not a requirement of the Tender Dossier, it believes that there should have not been any confusion as to the reporting metrics of the table and to whether the wall thickness being either *"2mm, 2.92mm or 4.92mm (2mm and 2.92mm added together)"* in the case of pipes with a diameter of 2 inches and *"2mm, 4.35mm or 6.35mm (2mm and 4.35mm added together)"* in the case of pipes with a diameter of 3 inches. The Board also believes that the markings provided by the appellant were sufficient to indicate the pipes it will be supplying.

Moreover, the Board notes that even if the interpretation of the evaluation committee, in relation to the thickness being *"4.92mm for the 2" pipes and 6.35mm for the 3" pipes."*, had to be used for the evaluation the tender dossier required pipes with a minimum wall thickness of **at least** (Board emphasis) 2mm, making the appellant's bid still compliant.

Furthermore, upon review of the documentation submitted to the Board, it is evident that another document (from the same manufacturer as indicated by the bidder) is present in the appellant's bid submissions which shows the same table in English. The document also clearly provides the requested dimensional specifications in a diametrical format. As a result, the appellant is considered by the Board to be fully compliant with clause 6.3 of the General Rules Governing Tenders (V4.10). Reference is also made to Court of Appeal's decision of the 30 July 2018 in the names of **Bonnici Bros Projects Ltd et v. Ministru Ghas-sahha et** and the decision of the 25<sup>th</sup> June 2018 in the names of **Rockcut Limited v. Id-Direttur Generali tad-Dipartiment tal-Kuntratti et** where the Court of Appeal held that *"l-offerent m'ghandux jigi skwalifikat fuq in-nuqqas tal-ghotja ta xi tagbrif mitlub fid-dokument tas-sejba, jekk kemm il-darba l-kumitat ta' evalwazzjoni jkun jista jikseb dak it-tgħarif min xi parti obra tad-dokumenti li jigu sottomessi bhala parti minn dik l-offerta."*

#### **Request to award of tender to the Appellant**

The appellant in his letter of objection requests the Board to *"order instead that the contract be awarded our Company"*. Since, it is not in the Board's remit to re-consider/award offers, this request will not be considered further.

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) To Uphold Appellant's contentions with respect to the grievance in relation to the appellant being rejected on the basis of it being technically non-compliant;
- b) Revokes the recommendation of award made in favour of the recommended bidder;
- c) Orders the reintegration of the Appellant's bid in the re-evaluation process, which re-evaluation shall implement the Board's findings;
- d) Directs that the deposit paid by the Appellant to be reimbursed.

**Mr Keith Victor Grech**  
Chairman

**Mr Lawrence Ancilleri**  
Member

**Mr Richard A. Matrenza**  
Member