

PUBLIC CONTRACTS APPEALS BOARD

Case 72

CT 2285/05, Advert No 280/2005

Tender for the Construction of a Hardstand for large Fishing Boats at Kavallerizza, M'Xlokk

This call for tenders, published in the Maltese Government Gazette on 26 August 2005, was issued by the Contracts Department following a request transmitted to the latter by the Ministry for Rural Affairs and the Environment.

The closing date for this call for offers was 18 October 2005 and the global estimated value of the contract was Lm 363,247 excluding VAT.

Five (5) different tenderers were considered to be suitable for further consideration.

Following receipt by the appellants of a formal notification (dated 10 March 2006 sent by the DG - Contracts) of the recommendations made by the Evaluation Board, Messrs C & F Building Contractors Ltd filed an objection on 13 March 2006 after being informed that their offer had been disqualified on the basis that it was "not technically compliant because the specific method statement for piling works goes against the requested method in Paragraph 2 of item 7 page 142..."

The Public Contracts Appeals Board (PCAB) made up of Mr Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr Edwin Muscat, respectively, acting as members, convened a public hearing on 05.04.2006 to discuss this objection.

Present for the hearing were:

C & F Building Contractors Ltd

Mr Frank Schembri	Director
Arch Claude R Mallia	
Arch Franco E Montesin	

Ministry for Rural Affairs and the Environment

Mr Paul Fenech Gonzi	Director (Programme Implementation Department)
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Evaluation Committee

Dr Anthony Gruppetta	Chairman
Mr Marco Cassar	Secretary
Mr Carmel Busuttill	Evaluator
Dr Andreina Fenech Farrugia	Evaluator
Mr Andrew Fenech	Evaluator

Soon after the Chairman's brief introduction, C & F Building Contractors Ltd's representatives were invited to explain the reason behind their objection.

Arch Claude Mallia A&CE, representing the appellants, started by stating that they were surprised when they were informed that their tender was '*adjudicated as technically non-compliant because the specific method statement for piling works goes against the requested method in Paragraph 2 of item 7 in page 142 of the Documentation under volume 3 of the technical specifications*' which specified that "*The casting of this concrete, is to employ the lowering of the concrete pump flexible delivery pipe, to the bottom of the pile excavation.*"

Arch Mallia pointed out that, once the length of the flexible pipe was much shorter than the depth of the pile, it was impossible to lower it to the bottom of the pile. He affirmed that it was necessary to lower also the rigid part of the pipe as was the custom adopted in the tremie system. The same representative explained that the latter system, which was used worldwide in the construction of piles, consisted of a funnel-shaped hopper at the top connected to a rigid pipe. In order to corroborate his claim he tabled various documents related to the subject matter.

The same representative proceeded by claiming that the tremie system was the better of the two when displacing concrete underwater because with the other system they would have no control over sea water mixing with concrete and so the quality would be inferior. Thus, he contended that the tremie system was an augmented procedure used to safeguard the quality of the concrete. Nonetheless, he claimed that they never excluded the pump because it could also be used with the tremie system. Arch Mallia pointed out that under Clause 29 EVALUATION AND COMPARISON OF TENDERS it was specified that '*The evaluation committee must evaluate and compare only those tenders considered substantially admissible in accordance to Clause 27.*' Furthermore, the same appellants' representative said that no one has come across documented technical evidence stating that the tremie system '*will render segregation of the aggregate rather than prevent it*' as stated in the Director General Contracts' letter dated 10 March 2006.

Arch Franco Montesin, also representing the appellants, said that the tremie system was a traditional method of concrete delivery underwater whereby the tremie pipe was lowered to the bottom of the excavation, concrete was placed into the funnel-shaped hopper and allowed to drop through the pipe to the bottom of the excavation and the pile was formed. He denied that the tremie would render segregation of the aggregate.

On his part, Mr Frank Schembri, the appellants' director, maintained that, for piling works, concrete could be delivered by two methods, either by the use of a *pump* or the *tremie*. He said that although they used both systems, for this project they proposed the use of the tremie in order to safeguard the quality of concrete. Mr Schembri said that they used the same system when they built underwater piles to support the Maltacom Go Mobile Head Office at Marsa and they did not have any problem of concrete mixing with sea water.

Dr Anthony Gruppetta, Chairman of the Evaluation Committee, began his response by stating that the specifications clearly stipulated that the concrete had to be delivered to the bottom of the pile excavation under continuous pressure of the pump. He asserted that, in principle, the tremie system was a completely different procedure from what was requested in the tender document because the concrete was delivered

by gravity. At this point, Arch Mallia intervened claiming that both systems worked under pressure and that the best method to control pressure was atmospheric pressure. However, Dr Gruppetta drew his attention that C & F Building Contractors Ltd's submission was not accepted because it was not according to the tender specifications.

Replying to a specific question by the PCAB, Dr Gruppetta said that from the five (5) tenders received, the appellants were the only tenderers who indicated that concrete would be poured to the bottom of the pile by the tremie system. However, he said that from the remaining four (4) offers only two (2) were technically compliant with the specifications because the other two (2) were disqualified at the initial stage.

Arch Carmel Busuttil, one of the evaluators of the Evaluation Committee, was the main and only witness to take the stand during these proceedings. He gave his testimony under oath.

Arch Busuttil confirmed that he was the architect who had drawn the specifications regarding the method of delivery of concrete to the base of the piles. He said that the document attached with the submission of the appellants' tender indicated that they were going to use the tremie system which was different from what was requested in the specifications.

On cross-examination by the PCAB, Arch Busuttil declared that, although he was somewhat involved in the Maltacom project that was incidentally mentioned by Mr Schembri, he was not the architect who was directly responsible for the contractor or in charge of the project. However, he said that, knowing both systems, as a designer he preferred the pump system. Both Arch Busuttil and Mr Schembri confirmed that in the past they had worked together and that they still held one another in high esteem.

In his concluding remarks, Dr Gruppetta invited the PCAB to look at the document attached to the appellants' tender document in order to clarify the issue of disqualification.

Arch Mallia concluded by stating that the objection was based on the fact that in the Director General Contracts' letter dated 10 March 2006 it was stated that *'The Tremie System indicated in your offer for the pouring of concrete into the piles will render segregation of the aggregate rather than prevent it.'*

At this stage, the public hearing was brought to a close and the PCAB proceeded with its deliberations before reaching its decision.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 13 March 2006 and also through their verbal submissions presented during the public hearing held on 5th April, 2006, had objected to the decision taken by the General Contracts Committee, formally communicated via a letter, informing them that the tender submitted by them was not successful;
- having considered the fact that the appellants were surprised to learn that that their tender was *'adjudicated as technically non-compliant'* for reasons

explained during the hearing as well as pertinent correspondence on subject matter ;

- having also noted the appellants' claim that the tremie system was the better of the two systems (the other involving the delivery of the concrete under continuous pressure by the use of a 'pump') used when displacing concrete underwater because with the 'pump' system one would have no control over sea water mixing with concrete and so the quality would be inferior ;
- having also considered the disagreement, expressed by Architects Mallia and Montecin respectively, with the statement that the tremie system '*will render segregation of the aggregate rather than prevent it*';
- having taken cognizance of Mr Schembri's claim that the same system was used when underwater piles were built to support the Maltacom *Go Mobile* Head Office at Marsa and that no problems were encountered back then as regards concrete mixing with sea water;
- having heard Dr Gruppetta's claim that that the tremie system was different from what was requested in the tender document which claim was not contradicted by anyone present during the hearing;
- having examined the fact that Dr Gruppetta stated that the appellants' offer was the only one which indicated that concrete would be poured to the bottom of the pile by the *tremie system*;
- having also assessed Arch Busuttill's (the architect who had drawn the specifications) declaration that, knowing both systems, as a designer, he preferred the pump system and had consequently drawn up the specifications accordingly

reached the following conclusions:-

1. The Board has no reason to question the technical competence of the Evaluation Committee, as a whole, and that of the author of the tender document, in particular.
2. Irrespective as to whether a tenderer likes it or not, such tenderer has to abide by the specifications as listed in the Tender Document, even if one feels that a better solution is being offered in view of the profuse application of same, very often throughout the globe.
3. All prospective tenderers have the possibility to request clarifications regarding specifications before the closing of the tender but the appellants did not avail themselves of this opportunity and proceeded to make an offer which was not compliant with such specifications.
4. No tenderer should arbitrarily ignore the parameters listed in a tender document and then expect to be favourably considered along with other tenderers who would have acted totally in line with specifications as requested in the said document.

Consequent to (1) to (4) above, the Board upholds the decision taken by the Contracts Committee that appellants' tender should be disqualified.

Furthermore, in terms of the Public Contracts Regulations, 2005, this Board recommends that the deposit submitted by appellants in terms of regulation 83, should not be refunded.

Alfred R Triganza
Chairman

Anthony Pavia
Member

Edwin Muscat
Member

April 28, 2006