

## **PUBLIC CONTRACTS APPEALS BOARD**

### **Case 73**

#### **CT 2136/2005 Advert No 283/2005**

#### **Tender for the Embellishment Works and Construction and Finishing of Administrative and Child Care Facility at Bulebel Industrial Estate**

This call for tenders, published in the Maltese Government Gazette on 1 September 2005, was issued by the Contracts Department following a request transmitted to the latter by Malta Industrial Parks (MIP).

The closing date for this call for offers was 25 October 2005 and the global estimated value of the contract was Lm 458,227 including VAT.

Four (4) different tenderers submitted their offers.

Following receipt by the appellants of a formal notification (dated 24 February 2006 sent by the DG - Contracts) of the recommendations made by the Evaluation Board, Messrs C & F Building Contractors Ltd filed an objection on 27 February 2006 against the intended award of the said tender to Messrs Asfaltar Limited (Lm 409,232.45 inclusive of VAT).

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

#### **Asfaltar Ltd**

Arch Sandra Vassallo  
Mr Paul Magro  
Mr Michael Attard  
Dr Michael Sciriha                      Legal Representative  
Dr Franco Galea                         Legal Representative

#### **Malta Industrial Parks Ltd (MIPL) - Evaluation Committee**

Ms Carmen Grech                         Chairperson  
Mr Louis Casha                             Secretary  
Arch Gorg Cilia                             Evaluator  
Mr John Rizzo Naudi                      Evaluator  
Mr Ray Vella                                 Evaluator

Following the Chairman's brief introduction, C & F Building Contractors Ltd's representatives were invited to explain in the motive for their objection.

Architect Claude Mallia started by stating that their objection concerned *Bill T – Electrical & Mechanical Installation*.

He explained that on 19 December 2005, Ms Carmen Grech requested C & F Building Contractors Ltd to confirm that the quoted amount of Lm 7,500 included *'the 'Supply and installation of a lift for 4 passengers with 2 stops' as well as the design and electrical installation as per drawings and specifications'*.

Arch Mallia said that in their reply, dated 20 December 2005, it was pointed out that:

*'... "Bill T – Electrical & Mechanical Installation" has been written in a manner which does not break down the bill of quantities and has even been un-numbered. This may be conducive to incorrect interpretation.*

*Nonetheless, we confirm that the quoted amount of Lm 7,500 includes the supply and installation of a lift for 4 passengers with 2 stops as well as the lift's relevant design and electrical installation as per drawings and specifications.*

*We deem that there is no other interpretation except to the above.'*

The appellants' representative said that, eventually, on 2 February 2006 a clarification meeting was held with the General Contracts Committee (GCC) wherein they confirmed what was stated in the above-mentioned letter. He claimed that, apparently, their interpretation was not accepted since, subsequently, they were informed that their tender was not successful because *Bill T* was not complete.

Arch Mallia proceeded by saying that, according to the MIPL's interpretation, *Bill T* represented the electrical and mechanical installation of the whole building and not solely that related to the lift. He contended that it was impossible to carry out all those installation works with Lm 7,500. According to Mr Frank Schembri, the appellants' director, the estimated cost thereof was Lm 40,000. Arch Mallia argued that Asfaltar Ltd submitted such confirmation because their offer was higher than theirs by around Lm 40,000 and therefore the relevant cost could be contained within their total tendered price. Also, he declared that if C & F Building Contractors Ltd had that profit margin, they would have confirmed the execution of such works, including the supply of lift.

Arch Gorg Cilia, a member of the Evaluation Committee, clarified that a detailed breakdown of the items required was provided under *Electrical and Mechanical Installation – S* of the tender's specifications.

He said that C & F Building Contractors Ltd were notified that *Bill T* was not complete because when they were specifically asked by the GCC to confirm whether the quoted amount included everything that was mentioned in *Bill T – Electrical & Mechanical*, the appellants declared that *Bill T* covered only the lift and its electrical installation. On the other hand, Asfaltar Ltd confirmed that the price of Lm 7,500 covered all the electrical and mechanical installation of the whole building and the

lift. At this point, he tabled relative correspondence exchanged between Ms Carmen Grech, the Chairperson of the Evaluation Committee, and Asfaltar Ltd. Arch Cilia said that, it seems to be most probable that, had Asfaltar Ltd not submitted such confirmation, the Evaluation Committee would have had no other option but to consider the third cheapest (Lm 451,940.00 – VAT Inclusive) because, although it was about Lm 100,000 higher than the cheapest offer (Lm 357,020.43 – VAT Inclusive), it was still within the original budget of Lm 388,328 – VAT Exclusive.

In reply to a specific question by the PCAB as to whether it was possible to carry out all those works with Lm 7,500 at the going rate, Arch Cilia acknowledged that it was tight, however, he pointed out that *Bill T* was part of a contract of a much higher value.

Ms Grech, intervened to clarify that they first wrote to C & F Building Contractors Ltd because their offer was the cheapest from those tenders that were technically compliant. She said that when they received their reply they thought that they were referring to the lift and also to the electrical & mechanical installation of the whole building and so they recommended the award of the tender to them. However, Ms Grech pointed out that in their letter dated 10 January 2006 it was specified '*that the eventual award is clearly made conditional that all these works are in accordance with the relevant tender documents, specifications and drawings*'. Subsequently, it resulted that, during a clarification meeting held by the GCC on 2 February 2006, C & F Building Contractors Ltd confirmed that *Bill T* covered only one item, that is, the supply of the lift and its installation. As a consequence, then the Evaluation Committee was instructed by the GCC to consider the 2<sup>nd</sup> cheapest offer, namely that submitted by Asfaltar Ltd (Lm 409,232.45 – VAT Inclusive). She said that since Asfaltar Ltd quoted the same amount for *Bill T*, she requested them to confirm that all items indicated in *Bill T* would be carried out at the quoted amount of Lm 7,500. Ms Grech claimed that in their opinion the reply submitted by Asfaltar Ltd was clear and the GCC accepted their recommendation of their new report to award the tender to Asfaltar Ltd.

Dr Franco Galea, one of Asfaltar Ltd's legal representative, claimed that the statement '*Taking into consideration that Messrs Asfaltar Ltd (second cheapest bidder) had quoted the amount of Lm 7,500 for Bill T as well, the Evaluation Committee wrote to Messrs Asfaltar Ltd requesting confirmation that all of Bill T be carried out at the quoted Lm 7,500*' indicated that the Evaluation Committee was already convinced that Asfaltar Ltd's bid covered all the electrical installations and the lift, and that *Bill T* was interpreted correctly.

Dr Michael Sciriha, Asfaltar Ltd's leading legal advisor said that, when one took into consideration the chronology of facts, one would realise that the Evaluation Committee followed the proper procedure.

In his concluding remarks, Arch Cilia said that the Evaluation Committee was very cautious in its recommendations and that the adjudication process was transparent and fair.

Dr Sciriha said that, contrary to the appellants, Asfaltar Ltd submitted a comprehensive offer as specifically requested in the tender dossier. Also, he said that

in their reply Asfaltar Ltd were clear and consistent with their original offer. Dr Sciriha asserted that his clients took a business risk because if C & F Building Contracts Ltd submitted a different reply, the contract would have been awarded to them.

Mr Schembri reiterated that it was impossible to carry out all those works with Lm 7,500. He also insisted for a comparative costings exercise to be carried out before the tender is awarded.

On his part, Arch Mallia maintained that, once the prices were known they were at a disadvantage because their profit margin was less.

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 5<sup>th</sup> 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 in the MIPL’s interpretation, *Bill T* represented the electrical and mechanical installation of the whole building and not solely that related to the lift;
- having ensured that, when specifically asked by the Committee, the appellants did actually confirm that the amount of Lm 7,500 covered only the lift and its electrical installation;
- having also noted the appellants’ claim that it is impossible for total costs associated with works undertaken to install the lift would only reach Lm 7,500 which argument was acknowledged by Arch Cilia who admitted that it was regarded as very tight for anyone to carry out all those works with Lm 7,500 considering the going rate;
- having also considered Arch Mallia’s claim that Asfaltar Ltd managed to confirm a cost of Lm 7,500 in respect of installation works (lift) because the offer submitted by Asfaltar Ltd was higher than theirs by around Lm 40,000 and, as a consequence, the relevant cost could be contained within their total tendered price;
- having taken cognizance of Arch Mallia’s point raised in connection with the fact that, had C & F Building Contractors Ltd’s offer considered such a high profit margin, they would have likewise been able to confirm a similar cost covering all works, including those connected with the supply and installation of the lift;

- having examined Arch Cilia's argument which referred to the fact that a detailed breakdown of the items required was provided under *Electrical and Mechanical Installation – S* of the tender's specifications,

reached the following conclusions:-

1. There is no reason for this Board to think that both the Evaluation Committee and the General Contracts Committee did not only carry out the job entrusted to them in an efficient and effective manner, strictly adhering to formal procedures, but also acted in a highly transparent and fair method.
2. It is very evident that Asfaltar Ltd took a business risk which turned out in their favour, unlike the case with the appellants.

Consequent to (1) and (2) mentioned above, the Board upholds the decision taken by the Contracts Committee.

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*