

PUBLIC CONTRACTS REVIEW BOARD

Case No. 257

GHRC 014/2010 – Tender for the Manufacture, Supply and Installation of Two Staircases and Other Metalworks at ‘Banca Giuratale’, No 197, Merchants Street, Valletta

This call for tenders was published in the Government Gazette on 15th November 2010. The closing date for this call for offers with a department estimate of € 50,000 (excluding VAT) was 26th November 2010.

Four (4) tenderers had originally submitted their offers.

Dolphin Industrial Services Ltd filed an objection on 14th December 2010 against the recommendation to award the tender to Calibre Industries Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr. Edwin Muscat and Mr. Carmelo Esposito as members convened a public hearing on Friday, 4th February 2011 to discuss this objection.

Present for the hearing were:

Dolphin Industrial Services Ltd

Dr Carmel Chircop	Director
Mr Daniel Farrugia	Director

Calibre Industries Ltd

Mr Raymond Cortis	Representative
-------------------	----------------

Grand Harbour Regeneration Corporation

Arch Adrian Mamo	Technical Consultant
------------------	----------------------

Evaluation Board

Mr Chris Paris	Chairman
Arch Damian Vella Linicker	Member
Mr Mario Sammut	Member

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

Dr Carmel Chircop, legal representative of Dolphin Industries Services Ltd, explained that, in every tender issued by the Grand Harbour Regeneration Corporation, the contracting authority, always requested to have specifications and workmanship of high standard. He said that the material in respect of this tender consisted mainly of metal, glass and timber. Dr Chircop alleged that it was evident that the material and workmanship of the samples submitted by the recommended tenderer, namely Calibre Industries Ltd, did not conform to the tender specifications and proceeded by sustaining that this was the reason why this tenderer managed to offer a better price. The same appellant company's representative reiterated that the samples submitted by Calibre Industries Ltd were not according to the standards requested in the tender.

When Dr Chircop stated that the samples should have been exhibited for the Board's analysis so as to establish whether they were compliant with the tender's requirements, his attention was drawn by the Chairman, Public Contracts Review Board, that the technical aspect of offers was evaluated by adjudication boards and that the said Review Board's task was to ensure that the proper procedure was followed. It was further explained that, whilst a member of an adjudication board was appointed because of him or her being knowledgeable enough to take decisions, during the appeal stage, in case of doubt, a Review Board was empowered to appoint a third party to assist it in its investigations and analysis of facts submitted either in writing or verbally during the hearing.

Mr Daniel Farrugia, also representing Dolphin Industries Services Ltd, claimed that the thickness of the glass was not according to the technical specifications.

Mr Chris Paris, representing the Grand Harbour Regeneration Corporation, and Chairman of the adjudicating board, remarked that all procedures contemplated by the law were observed. He said that the samples submitted with the tenders were assessed by the architect concerned and, in spite of the observations made these were found to have satisfied all criteria. In the prevailing circumstances, the adjudication board had no alternative but to accept the technical remarks of the architect. He contended that the architect had drawn up the specifications of this project.

Architect Adrian Mamo, Grand Harbour Regeneration Corporation's technical consultant, was called by the Public Contracts Review Board to take the witness stand. He gave his testimony under oath.

On cross-examination by the Public Contracts Review Board, the witness said that, basically, the tender consisted of metal, timber decking and a piece of glass railing. Bidders were requested to submit three samples of metal sections to be employed, namely,

- a rectangular hollow section 40mmx80mm
- an angle iron 25mmx25mm and
- flat bars 40mmx8mm

He said that the tender document indicated that the samples were to be welded together in any fashion or shape and sprayed white. Architect Mamo continued by stating that the recommended tenderer, namely Calibre Industries Ltd, was completely up to specifications. The same contracting authority's consultant remarked that although the samples of the steelworks were welded by spot welds, all steel sections were to be welded together using continuous welds as requested in the

tender. With regard to the thickness of the glass Architect Mamo said that, it was a fact that, according to his report, this was considered compliant and it is also a fact that that this same material only represented about 0.5% of the whole contract.

When his attention was drawn by Dolphin Industries Services Ltd's representatives that the timber sample provided by the awarded company was not a finished product, Architect Mamo said that the timber had to be 42mm solid oak with clear sprayed matt varnish. It was stated that the sample submitted by Calibre Industries Ltd was 'antique' type of finish and remarked that, if the tender were to be awarded to them, the timber surface had to be completely smooth.

Mr Farrugia intervened by stating that the tender requested high specifications and that was what the appellant company did. The same appellant company's representative said that the evaluation board might have given the recommended tenderer the opportunity to remedy the situation or the option to comply with requirements.

Architect Mamo replied and clarified that the sample submitted by Calibre Industries Ltd had one side with an 'antique' effect and the other side was completely smooth. At this point the contracting authority's consultant stated that the Grand Harbour Regeneration Corporation only indicated which timber finish it preferred from the two options given by the recommended tenderer.

Mr Paris said that, before the tender was awarded, it was simply clarified that the contracting authority preferred the clear smooth finish rather than the 'antique' finish and denied that there were any changes in the specifications. The chairman of the evaluation board explained that what happened was that in their submission they gave two options, either clear finish or another type of finish which was not accepted. With regard to the metal works, Mr Paris said that they requested a confirmation that the steel of the staircases instead of being joined together with spot welds they had to be continuous welded because it was a structure. Furthermore, Mr Paris also stated that the recommended tenderer submitted such confirmation and that only the submitted samples were joined together by spot welds.

In reply to a specific question by the Public Contracts Review Board, Mr Paris confirmed that the recommended tenderer did not change its financial offer.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 14th December 2010 and also through their verbal submissions presented during the hearing held on 4th February 2011, had objected to the decision taken by the pertinent authorities;
- having noted the appellant company's representatives' (a) claim that the material and workmanship of the samples submitted by the recommended tenderer, namely Calibre Industries Ltd, did not conform to the tender specifications and that this was the reason why this tenderer managed to offer a better price, (b) claim that the samples submitted by Calibre Industries Ltd were not according to the standards and specifications (thickness) requested in the tender and (c) allegation that the evaluation board might have given the recommended tenderer the opportunity to remedy the situation or the option to comply with requirements;

- having considered the contracting authority's representative's (a) remark that the samples submitted with the tenders were assessed by the architect concerned and, in spite of the observations made by the appellant company's representative, these were found to have satisfied all criteria, (b) submission that the recommended tenderer, namely Calibre Industries Ltd, was completely up to specifications, (c) reply to allegations made by the appellant company's representative in connection with the fact that the timber sample provided by the awarded company was not a finished product, particularly the emphasis on the fact that the sample submitted by Calibre Industries Ltd was 'antique' type of finish and that, if the tender were to be awarded to them, the timber surface had to be completely smooth, (d) remark that, contrary to what the appellant company's representative was alleging, the Grand Harbour Regeneration Corporation only (1) indicated which timber finish it preferred from the two options given by the recommended tenderer, namely, the clear smooth finish rather than the 'antique' finish and that there no changes were made to the specifications and (2) requested a confirmation that the steel of the staircases instead of being joined together with spot welds would have been supplied with continuous welded because it was a structure, (e) reference to the fact that, with regards to metal works, the recommended tenderer submitted such confirmation and that only the samples were submitted by spot welds and (f) confirmation that the recommended tenderer did not change its financial offer,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that the appellant company's claims did not provide this Board with enough reason for it to believe that the contracting authority did not conduct its deliberations as one would expect.
2. The Public Contracts Review Board, furthermore, has found the justifications made and explanations given by the contracting authority's representatives as being very credible and pertinent, particularly with regards to the issues relating to the preferred timber, as well as, the supposedly change in the recommended tenderer's financial offer as claimed by the appellant company.

In view of the above this Board finds against the appellant company and also recommends that the deposit paid by the appellants should not be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmelo Esposito
Member

16 February 2011