

## PUBLIC CONTRACTS REVIEW BOARD

### Case No. 273

**MRRA/W/41/10/14**

**Tender for the Supply and Installation of LED Lighting System and Electrical Works at Bisazza Street, Sliema**

This call for tenders was published in the Government Gazette on 22<sup>nd</sup> February 2011. The closing date for this call with an estimated budget of € 55,898 was 8<sup>th</sup> March 2011.

Seven (7) tenderers submitted their offers.

Smart Light Systems Ltd filed an objection on 25<sup>th</sup> March 2011 against the decision taken by the Ministry for Resources and Rural Affairs to recommend the award of the tender to Messrs Calleja Ltd for the price of €39,738.99.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Edwin Muscat and Mr. Carmel Esposito as members convened a public hearing on Friday, 8<sup>th</sup> April 2011 to discuss this objection.

Present for the hearing were:

#### **Smart Systems Ltd**

Dr Josette Grech	Legal Representative
Mr Jonathan J. Borg	Representative
Mr Stephen Xuereb	Representative

#### **Messrs E Calleja & Sons Ltd**

Eng. Anthony Magro	Representative
Mr Stephen Calleja	Representative

#### **Ministry for Resources and Rural Affairs – Works Division**

Dr Franca Giordmaina	Legal Representative
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#### **Evaluation Board:**

Perit Anton Camilleri	Chairman
Ing. Conrad Casha	Member
Ing. Joseph Abela	Member

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

Dr Josette Grech, legal representative of Smart Light System Ltd, the appellant company, explained that her client's objection centred on the shortcomings noted in the tender submission made by the recommended tenderer, Messrs E Calleja & Sons Ltd, which deficiencies – referred to in (a) and (b) as stated hereunder - she contended were based on facts.

- a) *The rates and prices in the Schedule of Tender were not properly filled in as required in the tender document*
- b) *The recommended tenderer failed to make a clear distinction between Lot 1 and Lot 2*

Dr Grech explained that representatives of her client, namely Mr Jonathan Borg and Mr Stephen Xuereb, were present at the time of the opening of the tenders and they noted that the 'Schedule of Tenders' dated 22<sup>nd</sup> February 2011 was not properly filled in respect of the recommended tenderer. At this stage Dr Grech referred to the Schedule of Tenders (page 2 of 3) where no rates were quoted in column 3 against Tender No. 7 'Calleja Ltd' Option 3 so much so that the space was hyphenated and, as a consequence, Option 3, the awarded option, could not have been properly evaluated. Dr Grech also pointed out that the remark in the last column of page 3 of the same 'Schedule of Tenders' corresponding to Option 3 of the recommended tenderer read "Total covers lots 1 and 2 €38,589.67". The appellant company's legal advisor contended that this made it clear enough that the way the recommended tenderer presented the bid/s did not enable the evaluation committee to distinguish between lots 1 and 2, a fact that led Dr Grech to place emphasis on the fact that all this was unacceptable.

Dr Grech also argued that, according to her client, pages 28 and 29 of the tender document referring to the 'schedule of prices' and rates of lots 1 and 2 of E Calleja & Sons Ltd could not have been properly and entirely filled in given that no 'rates' were given and she called on the Public Contracts Review Board to verify this from the original tender submission since her client did not have access to that information.

Dr Grech also pointed out that the 'Schedule of Prices and Rates' indicated that:

*"This form must be filled in and submitted with the tender document. Failure to fill in the forms, or a form with incomplete information, or form containing ambiguous financial information (e.g. rates, totals, etc) shall disqualify the tender submitted."*

Dr Franca Giordmaina, legal representative of the contracting authority, remarked that this was a particular case in the sense that the appellant company was not bringing forth cogent reasons against its own disqualification justifying the reinstatement of its bid in the tendering process. On the contrary, proceeded Dr Giordmaina, the appellant company was objecting to the proposed award of the tender. Dr Giordmaina hinted that it would appear that the appellant company might have had access to some other source of information as that available to the contracting authority represented a different picture altogether.

Dr Giordamaina explained that, in fact, the schedule of prices was properly filled in by the recommended tenderer. She added that it also resulted to the contracting authority that Lots 1 and 2 were properly presented by the recommended tenderer so much so that two separate *Bills of Quantities* were submitted to satisfy the provisions of clause 5.1 (page 8) which enabled the contracting authority to award each lot separately to different bidders. She added that in this case the recommended bidder turned out to be administratively and technically compliant with regard to both lots.

Dr Grech stated that it was certainly not the case that her client had access to some kind of other source of information but the information obtained was that available to one and all at the public opening of the tenders. Dr Grech also remarked that her client had the interest and the right to call upon the Public Contracts Review Board to go into the way the tendering process was conducted for the sake of transparency and accountability.

Mr Stephen Xuereb, also representing the appellant company, remarked that he noted these shortcomings during the tender opening stage which was held in public and during which one could easily follow proceedings.

Architect Anton Camilleri, Chairman of the Evaluation Board, under oath, explained that the tender submitted by the recommended tenderer was properly filled in as requested in the tender document and, on receipt of this objection, the evaluation board went through the process once again but failed to note the discrepancies alleged by the appellant company, particularly, with regard to the rates and prices. He added that separate bills of quantities were submitted with regard to lots 1 and 2 so as to enable the contracting authority to award each lot to the cheapest compliant tenderer which, in this case, was the same tenderer, E Calleja & Sons Ltd, for both lots.

At this point Architect Camilleri went through the original submission made by the recommended tenderer and it emerged that the 'Schedule of Prices and Rates' submitted by Messrs E Calleja & Sons Ltd with regard to Option 3 for lots 1 and 2 were submitted separately and duly filled in.

The Chairman Public Contracts Review Board remarked that even if, for the sake of the argument, the public officers committed mistakes in the compilation of the 'Schedule of Tenders' at tender opening stage, albeit the tenderer would have, in fact presented a complete and correct tender submission, the tenderer should certainly not face disqualification. The Chairman Public Contracts Review Board observed that it appeared that the appellant company had noticed some shortcomings in the drawing up of the schedule of tenders at tender opening stage and that the same appellant therefore concluded that the recommended tenderer could not have submitted the schedule of rates and prices in order. Nevertheless, it transpired that the recommended tenderer did submit that schedule as requested in the tender document.

Dr Giordamaina remarked that the evaluation board adjudicated the tender on the information, including the schedules, submitted by the bidder and not on the schedule of tenders drawn up by the contracting authority at tender opening stage.

Dr Grech pointed out that in the Schedule of Tenders the price offered by the recommended tenderer was quoted at €38,589.67 whereas the tender was in fact awarded for the price of €39,741.69– *in fact it was €39,738.99, representing a variation of €1,149.32.*

With regard to the difference in the price noted by the appellant company, Dr Gordmaina referred to clause 4.5.1 which stated that:

*“Admissible tenders shall be checked for arithmetical errors by the Evaluation Committee. Errors shall be corrected as follows:*

- a) Where there is a discrepancy between the amounts in figures and in words, the amount in words shall prevail;*
- b) Where there is a discrepancy between a unit rates/price and the total amount derived from the multiplication of the unit rates/price and the quantity, the unit rates/price as quoted shall prevail.”*

Architect Camilleri intervened to confirm that the evaluation board had carried out the exercise indicated at clause 4.5.1 and, in the process the evaluation board effected two arithmetical corrections with regard to Option 3 lot 1 as per sub-clause 4.5.1 (b) which pushed the total price slightly upwards. He declared that that explained the difference in the price brought up by the appellant company.

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 25<sup>th</sup> March 2011 and also through their verbal submissions presented during the hearing held on 8<sup>th</sup> April 2011, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company’s representatives’ claims and observations, particularly, the references made to the fact that (a) Mr Jonathan Borg and Mr Stephen Xuereb, were present at the time of the opening of the tenders and they noted that the ‘Schedule of Tenders’ dated 22<sup>nd</sup> February 2011 was not properly filled in respect of the recommended tenderer, (b) pages 28 and 29 of the tender document referring to the ‘schedule of prices’ and rates of lots 1 and 2 of E Calleja & Sons Ltd could not have been properly and entirely filled in given that no ‘rates’ were given, (c) the appellant company only had access to information which was made available to one and all at the public opening of the tenders and (d) in the Schedule of Tenders the price offered by the recommended tenderer was quoted at €38,589.67 whereas the tender was in fact awarded for the price of €39,741.69;
- having considered the contracting authority’s representative’s reference to the fact that (a) the schedule of prices was properly filled in by the recommended tenderer and that Lots 1 and 2 were properly presented by the recommended tenderer so much so that two separate *Bills of Quantities* were submitted to satisfy the provisions of clause 5.1 (page 8) which

enabled the contracting authority to award each lot separately to different bidders, (b) the recommended bidder turned out to be administratively and technically compliant with regard to both lots, (c) the evaluation board adjudicated the tender on the information, including the schedules, submitted by the bidder and not on the schedule of tenders drawn up by the contracting authority at tender opening stage and (d) the evaluation board had carried out the exercise indicated at clause 4.5.1 and, in the process the evaluation board effected two arithmetical corrections with regard to Option 3 lot 1 as per sub-clause 4.5.1 (b) which pushed the total price slightly upwards and which explained the difference in the price brought up by the appellant company,

reached the following conclusions, namely:

1. The Public Contracts Review Board considers that even if, for the sake of the argument, the public officers committed mistakes in the compilation of the 'Schedule of Tenders' at tender opening stage, albeit the tenderer would have, in fact presented a complete and correct tender submission, the tenderer should certainly not face disqualification. One has to take note of the fact that an evaluation board adjudicates a tender on the information, including schedules, submitted by a bidder and not on a schedule of tenders drawn up by a contracting authority at tender opening stage.
2. The Public Contracts Review Board opines that, from all the documentation viewed during the hearing, it was more than clear that the recommended tenderer did submit all the schedules requested in the tender document and that the entire bid was administratively and technically compliant with regard to both lots

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

Carmel Esposito  
Member

*11 April 2011*