

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 390

SLZ/003/2010

**Tender for the Restoration of Pjazza San Lawrenz, San Lawrenz, Gozo.**

This call for tenders was published in the Government Gazette on the 20<sup>th</sup> April 2011. The closing date for this call with an estimated budget of € 140,581.35 (excl. VAT) was the 6<sup>th</sup> June 2011.

Two (2) tenderers submitted their offers.

Mr Joseph Mercieca filed an objection on the 11<sup>th</sup> November 2011 against the decisions of the San Lawrenz Local Council to disqualify his offer as it was considered to be administratively non-compliant and to recommend the award of the tender to Grima Tabone Joint Venture.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Tuesday, 20<sup>th</sup> March 2012 to discuss this objection.

### Mr Joseph Mercieca

Dr Carmelo Galea	Legal Representative
Mr Joseph Mercieca	The Appellant

### Grima Tabone Joint Venture

Dr Joseph Grech	Legal Representative
Mr Joseph Grima	Representative
Perit Amanda de Giovanni	Representative

### San Lawrenz Local Council

Dr Michael Tanti Dougall	Legal Representative
Mr Noel Formosa	Mayor SLLC
Ms Luciennne Haber	Ex-Executive Secretary (San Lawrenz Local Council)

### Evaluation Board

Mr Saviour Bonello	Chairman
Perit Edward Scerri	Member
Perit Godwin Sultana	Member
Ms Michelle Vella	Secretary

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

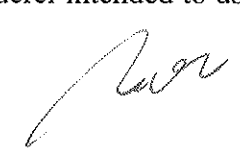
Dr Carmelo Galea, legal representative of Mr Joseph Mercieca, the appellant, stated that by letter dated 4<sup>th</sup> November 2011 the contracting authority had informed his client that his offer was found to be administratively non-compliant because his tender submission *"failed to meet the administrative requirements since not all the information requested under Technical Capacity (Clause 6.1.2, Volume 1, Section 4 of the tender dossier) was submitted. The information submitted under Form 2 of Volume 1 Section 4 'Experience as Contractor' was incomplete."*

Dr Galea went on to make the following submissions:-

- i. clause 6.1.2 of the tender document requested the bidder (i) to provide evidence that during the previous 5 years he had executed works of a similar scope or nature, with a total value of at least €150,000, (ii) that, at least, one project of a similar nature had to have been completed in the past 5 years and (iii) in so listing the end clients, the tenderer was giving his consent to the Evaluation Committee, so that the latter might, if it deemed necessary, contact the relevant clients with a view to obtain from them an opinion on the works provided to them by the tenderer;
  - ii. his client had submitted at page 23 of this tender submission Form 2 of Volume 1 Section 4 (page 26 of tender document) duly filled in giving all details of the site, value, dates, clients, percentage of works carried out, whether prime or sub-contractor and if final acceptance certificate had been issued;
  - iii. his client had satisfied, by far, all the requirements of the tender document in this regard, including the number and value of the works carried out;
  - iv. even if, for the sake of the argument, some aspect of the information submitted was not clear to the contracting authority it could have sought a clarification on the information submitted to be in conformity with the regulations;
- and
- v. it was his client's contention that he submitted a compliant offer and for a substantially cheaper price than that of the recommended tender, namely €104,151 against €130,979.

Dr Michael Tanti Dougall, legal representative of the contracting authority, remarked that:-

- a. Dr Galea was not entirely correct in his statement that, as far as Form 2 of Volume 1 Section 4 was concerned, the appellant had satisfied the tender document because the past projects had to involve the laying of paving slabs within an area subject to vehicular traffic and related sub-base works and the laying of slabs within pavements;
- b. clause 16.1 (e) (ii) also required the bidder to submit literature/DVD of previous similar projects and of products and methods which tenderer intended to use to



carry out the works. Dr Tanti Dougall stated that the appellant did not submit any literature or DVD with regard to past similar projects and the products/methods that the said appellant intended to use on this project;

and

- c. note (3) to clause 16.1 precluded the contracting authority from seeking rectification with regard to (d) 'Technical Capacity' and (e) 'Technical Specifications' and the advice given to the contracting authority's officials by the Department of Contracts was on those same lines.

Dr Galea:-

- i. whilst conceding that his client did not submit the literature referred to in clause 16.1 (e) (ii) with regard to previous similar projects, yet stated that his client did submit the specifications of the material, namely the slabs that he was going to use in the execution of this project;

and

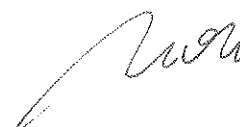

- ii. argued that the submission of a couple of photographs was not considered, in itself, sufficient and truthful proof of previous similar works carried out. He proceeded by observing that his client had provided the list of previous similar projects indicating the location and respective client and, by virtue of clause 6.1.2, authorised the contracting authority to contact the relevant clients with a view to obtaining from them an opinion of the works provided to them by his client.

The Chairman Public Contracts Review Board remarked that, whilst it was the prerogative of the contracting authority to verify the information submitted by the tenderer regarding his previous projects with respective clients, it was equally the bidder's obligation to abide by the instructions of the tender document, especially with regard to mandatory requirements as was the provision of literature at clause 16.1 (e) (ii).

Dr Galea contended that in the letter of rejection dated 4<sup>th</sup> November 2011 the contracting authority did not refer to clause 16.1 (e) (ii) but reference was made to Form 2 at page 26 of the tender document titled 'Experience as Contractor'. He stressed that his client had not been made aware that the reason for refusal was, in fact, the non submission of literature rather than an incomplete Form 2 and, moreover, he claimed that, even so, that shortcoming, *per se*, was not considered sufficient to lead to his client's disqualification.


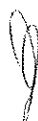
The Chairman Public Contracts Review Board remarked that the fact remained that the appellant failed to corroborate his experience by the submission of relevant literature, which requirement was mandatory. He added that the issue was not whether the literature submitted by the appellant was irrelevant or insufficient but that he submitted none at all.

At this point the hearing was brought to a close.



This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 11<sup>th</sup> November 2011 and also through their verbal submissions presented during the hearing held on the 20<sup>th</sup> March 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 4<sup>th</sup> November 2011 the contracting authority had informed the appellant that his offer was found to be administratively non-compliant because his tender submission "*failed to meet the administrative requirements since not all the information requested under Technical Capacity (Clause 6.1.2, Volume 1, Section 4 of the tender dossier) was submitted. The information submitted under Form 2 of Volume 1 Section 4 'Experience as Contractor' was incomplete*", (b) clause 6.1.2 of the tender document requested the bidder (1) to provide evidence that during the previous 5 years he had executed works of a similar scope or nature, with a total value of at least €150,000, (2) that, at least, one project of a similar nature had to have been completed in the past 5 years and (3) in so listing the end clients, the tenderer was giving his consent to the Evaluation Committee, so that the latter might, if it deemed necessary, contact the relevant clients with a view to obtain from them an opinion on the works provided to them by the tenderer, (c) the appellant had submitted at page 23 of his tender submission Form 2 of Volume 1 Section 4 (page 26 of tender document) duly filled in giving all details of the site, value, dates, clients, percentage of works carried out, whether prime or sub-contractor and if final acceptance certificate had been issued, (d) the appellant had satisfied, by far, all the requirements of the tender document in this regard, including the number and value of the works carried out, (e) even if, for the sake of the argument, some aspect of the information submitted was not clear to the contracting authority it could have sought a clarification on the information submitted to be in conformity with the regulations, (f) it was the appellant's contention that he submitted a compliant offer and for a substantially cheaper price than that of the recommended tender, namely €104,151 against €130,979, (g) whilst conceding that he did not submit the literature referred to in clause 16.1 (e) (ii) with regard to previous similar projects, yet the appellant stated that he did submit the specifications of the material, namely the slabs that he was going to use in the execution of this project, (h) the submission of a couple of photographs was not considered, in itself, sufficient and truthful proof of previous similar works carried out, (i) the appellant had provided the list of previous similar projects indicating the location and respective client and, by virtue of clause 6.1.2, he was authorising the contracting authority to contact the relevant clients with a view to obtaining from them an opinion of the works provided to them by him, (j) in the letter of rejection dated 4<sup>th</sup> November 2011 the contracting authority did not refer to clause 16.1 (e) (ii) but reference was made to Form 2 at page 26 of the tender document titled 'Experience as Contractor' and (k) the appellant was not made aware that the reason for refusal was, in fact, the non submission of literature rather than an incomplete Form 2 and that, even so, that shortcoming, *per se*, was not considered sufficient to lead to his bid's disqualification;
- having considered the contracting authority's representatives' reference to the fact that (a) Dr Galea was not entirely correct in his statement that, as far as Form 2 of Volume 1 Section 4 was concerned, the appellant had satisfied the tender document

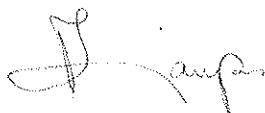


because the past projects had to involve the laying of paving slabs within an area subject to vehicular traffic and related sub-base works and the laying of slabs within pavements, (b) clause 16.1 (e) (ii) also required the bidder to submit literature/DVD of previous similar projects and of products and methods which tenderer intended to use to carry out the works and the appellant did not submit any literature or DVD with regard to past similar projects and the products/methods that the said appellant intended to use on this project and (c) note (3) to clause 16.1 precluded the contracting authority from seeking rectification with regard to 'Technical Capacity' and 'Technical Specifications' and the advice given to the contracting authority's officials by the Department of Contracts was on those same lines,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that whilst it was the prerogative of the contracting authority to verify the information submitted by the tenderer regarding his previous projects with respective clients, it was equally the bidder's obligation to abide by the instructions of the tender document, especially with regard to mandatory requirements as was the provision of literature at clause 16.1 (e) (ii).
2. The Public Contracts Review Board argues that the fact remained that the appellant failed to corroborate his experience by the submission of relevant literature, which requirement was mandatory and, at this point, the issue was not whether the literature submitted by the appellant which was irrelevant and insufficient but that the appellant ultimately failed to submit the said mandatory information and this fact alone cannot be overlooked by this Board.

In view of the above, this Board finds against the appellant company and recommends that the deposit paid by the appellant to file the objection be forfeited.



Alfred R Triganza  
Chairman



Carmel Esposito  
Member



Joseph Croker  
Member

11<sup>th</sup> April 2012