

PUBLIC CONTRACTS REVIEW BOARD

Case No. 499

MIPT/QF/GEN/D19/12

Tender for the Structural and Core Testing – Malta Industrial Parks

This call for tenders was published in the Government Gazette on the 2nd July 2012. The closing date for this call with an estimated budget of € 41,673 (Excl. VAT) was the 30th July 2012.

Two (2) tenderers submitted their offers.

Solidbase Laboratory Ltd filed an objection on the 25th September 2012 against the decisions of Malta Industrial Parks to disqualify its offer as non-compliant and to recommend the award to Terracore Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Paul Mifsud as members convened a public hearing on Monday, 3rd December 2012 to discuss this objection.

Solidbase Laboratory Ltd

Mr Paolo Bugeja	Representative
Mr Matthew Bugeja	Architect
Mr Charles Grech	Representative

Terracore Ltd

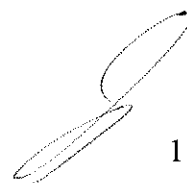
Dr Kris Borg	Legal Representative
Mr Joseph Saliba	Architect
Mr Alfred Xerri	Managing Director

Malta Industrial Parks

Dr Josette Grech	Legal Representative
Mr Edwin Ebejer	Head Procurement Unit

Evaluation Board

Mr David Mifsud	Chairman
Mr John Degiorgio	Member
Mr Victor Camilleri Bowman	Member



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

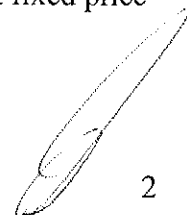
Architect Matthew Bugeja, representing Solidbase Laboratories Ltd, the appellant company, made the following submissions:

- i. by email dated 20th September 2012 the appellant company was informed that its offer was not successful and that the tender was being recommended for award to Terracore Ltd;
- ii. this tender was a measured-work contract and not a lump sum contract and entailed testing existing structures, such as factory buildings, to assess the loads that these same structures could sustain when works were carried out on them;
- iii. the reason for rejection quoted by the contracting authority was that, in three instances, the prices quoted by the appellant company in the bill of quantities were conditional in the sense that the prices could change if the load per test or the m³ of columns, beams and foundations or the m² of slab area were to change;
- iv. this tender referred to the British Standard (BS) without specifying which elements of the British Standard were applicable to the individual tests and, as a consequence, the appellant company submitted a test of a 5 ton load and a method which, in its expert view, would be most suitable for the purposes of this tender;

and
- v. the appellant company did not ask for any clarification as to whether, instead of fixed prices, it could submit prices that could fluctuate according to different loads and so forth.

Dr Josette Grech, legal representative of Malta Industrial Parks, the contracting authority, submitted that:

- a. the bill of quantities at page 47 of the tender document indicated at item 2.00 'Standard load test according to British Standard' and, in this regard, the appellant company inserted in the bill of quantities that it submitted the following condition, namely '*The rate being quoted caters for a 5 ton load per test. If the load requirement increases due to the structure, the rate will be revised*';
- b. in that way the appellant company linked its price to a 5 ton load test which price would change in line with any change in the load whereas the contracting authority requested a fixed price;
- c. the other participating bidder did not qualify the price but quoted a fixed price irrespective of the load;



d. with regard to item 2.04 which indicated that *'The amount is based on 2m³ of columns, beams and foundations'* and, against item 2.05, the appellant company inserted the note *'The amount is based on 2m² of slab area'*;

and

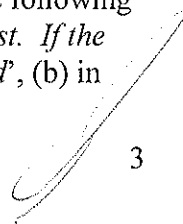
e. clause 17.7 of the tender document specifically stated that *'The prices for the contract must include all the works to be provided. The prices quoted are fixed and not subject to revision or escalation in costs, unless otherwise provided for in the special conditions'*.

The Chairman Public Contracts Review Board remarked that, prior to the closing date of the tender, the appellant company, like any other tenderer, had the opportunity to clarify any aspect of the tender document but it could not take it upon itself to quote prices on certain conditions when the contracting authority requested fixed prices.

At this point the hearing came to a close.

This Board,

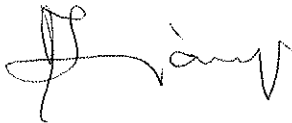
- having noted that the appellant company, in terms of its 'reasoned letter of objection' dated the 25th September 2012 and also through its representatives verbal submissions presented during the hearing held on the 3rd December 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by email dated 20th September 2012 the appellant company was informed that its offer was not successful and that the tender was being recommended for award to Terracore Ltd, (b) this tender was a measured-work contract and not a lump sum contract and entailed testing existing structures, such as factory buildings, to assess the loads that these same structures could sustain when works were carried out on them, (c) the reason for rejection quoted by the contracting authority was that, in three instances, the prices quoted by the appellant company in the bill of quantities were conditional in the sense that the prices could change if the load per test or the m³ of columns, beams and foundations or the m² of slab area were to change, (d) this tender referred to the 'British Standard' (BS) without specifying which elements of the British Standard were applicable to the individual tests and, as a consequence, the appellant company submitted a test of a 5 ton load and a method which, in its expert view, would be most suitable for the purposes of this tender and (e) the appellant company did not ask for any clarification as to whether, instead of fixed prices, it could submit prices that could fluctuate according to different loads and so forth;
- having considered the contracting authority's representative's reference to the fact that (a) the bill of quantities at page 47 of the tender document indicated at item 2.00 'Standard load test according to British Standard' and, in this regard, the appellant company inserted in the bill of quantities that it submitted the following condition, namely *'The rate being quoted caters for a 5 ton load per test. If the load requirement increases due to the structure, the rate will be revised'*, (b) in



that way the appellant company linked its price to a 5 ton load test which price would change in line with any change in the load whereas the contracting authority requested a fixed price, (c) the other participating bidder did not qualify the price but quoted a fixed price irrespective of the load, (d) with regard to item 2.04 which indicated that *'The amount is based on 2m³ of columns, beams and foundations'* and, against item 2.05, the appellant company inserted the note *'The amount is based on 2m² of slab area'* and (e) clause 17.7 of the tender document specifically stated that *'The prices for the contract must include all the works to be provided. The prices quoted are fixed and not subject to revision or escalation in costs, unless otherwise provided for in the special conditions'*,

concludes that, prior to the closing date of the tender, the appellant company, like any other tenderer, has the opportunity to clarify any aspect of the tender document but it cannot take it upon itself to quote prices on certain conditions (*"The rate being quoted caters for a 5 ton load per test. If the load erquirement increases due to the structure, the rate will be revised"*) when the contracting authority would have, such as in this particular instance, requested fixed prices.

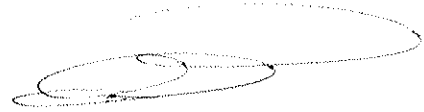
In view of the above this Board finds against the appellant company and recommends that the deposit paid by the same company for the appeal to be lodged should not be reimbursed.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Paul Mifsud
Member

11 December 2012