

PUBLIC CONTRACTS REVIEW BOARD

Case No. 562

CT 3101/2012

Works Tender for the Design, Building and Installation of a Tensile Membrane Structure for the Zewwieqa Waterfront, Gozo.

The tender was published on the 28th September 2012 with a closing date of the 20th November 2012. The estimated value of the Tender was €92,746.39 (exclusive of VAT).

Four (4) bidders submitted their offers.

Tolder Carpas Y Toldos S.L., filed an objection on the 11th March 2013 against a decision of the Ministry for Gozo to discard its offer and to recommend the cancellation of the Tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Richard A. Matrenza and Mr Lawrence Ancillieri as members convened a meeting on Thursday 11th July 2013 to discuss the appeal.

Present:

Tolder Carpas Y Toldos S.L. – Appellants

Dr Norval Desira	Legal Representative
Ms Veronica Bonavia	Representative

Ministry for Gozo

Dr Mireille Sacco	Legal Representative
-------------------	----------------------

Evaluation Board

Mr John Cremona	Chairman Evaluation Board
Mr Philip Mifsud	Secretary
Perit Angelo Portelli	Member
Perit Godwin Sultana	Member
Mr Saviour Tabone	Member

Department of Contracts

Mr Jonathan Barbara	Representative
---------------------	----------------

The Chairman made a brief introduction and the appellant company's representative was invited to explain the motives of the firm's objection.

Dr Norval Desira on behalf of appellant firm, referred to his letter of objection and stated that his clients had been disqualified because "*warranty submitted not compliant since it covers only the tensile structure and does not cover fully the first five years*". He claimed that this must have been because of a misunderstanding, a wrong interpretation of his clients bid.

This arose through the submission of an internal warranty, given to his clients, by his suppliers of the tensile fabric, "Ferrari" and was not intended to cover the whole project, or relate to the contracting authority.

The required warranty on all the aspects of the project was however in fact provided by his clients at page 84 of their bid. This clearly and unequivocally states that "*The Company (bidders) provides a warranty covering the fabric, rods, plates and actual installation Any other damages shall be covered by Tolder Carpas Y Toldos SL for the warranty period of 15 years.*" Appellant firm thus provided the all-exhaustive 15 year warranty as was required by the Tender Document, clause 3.3.13. In fact the appellants provide much more than the requested five years warranty.

Dr Mireille Sacco, legal representative of the contracting authority explained that tender document required a five year warranty covering the performance of the structure including the tensile member and support. The title of annexe 3 was General Warranty. The appellants' bid here showed a fabric warranty of five years, with diminishing cover over the period of five years. No explanation was given to show that this was just an internal arrangement between bidder and his supplier of material.

Mr Joe Cremona, the Chairman of the evaluating board explained that here the need for clarification did not arise since the document submitted by bidder clearly stated that Annexe 3 covered only the fabric for less than five years. Clause 3.3.13 mentioned by Dr Desira deals with after sales services and we did not consider this to be a guarantee. For the evaluation board the warranty was that submitted in annexe 3, which appellants themselves indicated was general warranty.

Dr Desira stated that annexe 3 is self explanatory that the warranty was between his clients and their supplier. The period of warranty clearly starts after the installation so it must form part of the after sales services. Furthermore in this case there would be no rectification had the evaluation board asked for clarification on this point as the bidders filed their warranty with their bid.

At this point, Dr Mireille Sacco explained that even if, for argument's sake, the evaluation board had accepted the warranty given by the appellants under the after sales services, their bid would have been disqualified on other financial constrains. Dr Desira protested that his clients were disqualified on technical non-compliance only, and have filed this objection accordingly. Other reasons for disqualification cannot be raised now at this stage of proceedings.

The hearing was brought to an end.

This Board,

Having noted the Appellant's Company, in terms of reasoned letter of objection dated 11th March 2013 and through the verbal submissions made during the hearing held on 11th July 2013, had objected on the following grounds:-

- a) That the Appellant's offer was found to be "Technically non-compliant" by the Evaluation Board.**
- b) That the Warranty Clause did not cover the warranty requested on the "Tensile fabric" to be used on the actual project being contemplated.**
- c) That the limitation of Warranty period referred only to an internal arrangement between Appellant and Supplier.**
- d) That the Appellant contends that a clear General "warranty" was given by the Appellant and this constitutes a "Warranty" of 15 Years on the whole project covering, the total structure including machines, equipment and installation needed for the project.**
- e) That the decision taken by the Contracting Party was erroneous.**

Having considered the Contracting Authority's submissions as follows:

- i) That the Contracting Authority specifically and clearly stated in the tender document that a warranty of five years was mandatory covering the execution of the installation of structure including the tensile membrane and supporting structure.**
- ii) No clarification was given by the Appellant that the warranty allowed on the Tensile Membrane was an internal accord between Appellant and his supplier.**

Having noted and heard submissions made by the Evaluation Board as follows:

That even if the Board accepted the warranty conditions given by the Appellant, the latter's bid would have been rejected on financial constraints.

Reached the following conclusions,

- 1. The public Contracts Review Board opines that the Appellant gave a "General Warranty" and this type of Warranty covered the whole project including material and installation.**
- 2. Clarification during the Evaluation process by the Evaluation Board could have easily established the fact that the Appellant was "technically Compliant".**

- 3. In view of the above this Board finds in favour of the Appellant Company and recommends that the deposit paid by the latter be reimbursed and that the tender be re-issued.**

Dr. Anthony Cassar
Chairman

Mr. Lawrence Ancillieri
Member

Mr. Richard A. Matrenza
Member

1st August 2013