

PUBLIC CONTRACTS REVIEW BOARD

Case No. 572

MRRA/M/71/2012

Tender Services of Chairperson Monitoring Board [Malta Embellishment Landscaping Programme].

The tender was published on the 14th December 2012. The closing date was the 28th December 2012.

The estimated value of the Tender was €53,500 (Exclusive of VAT).

Seven (7) bidders submitted their offers.

On the 13th February 2013, Geometric Services filed an objection against the award of the tender to Architect Daniel Cordina Ltd.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday 30th July 2013 to discuss the appeal.

Present for the hearing:

Geometric Services - Appellant

Mr Michael Mercieca	Representative
Ms Ruth Borg	Representative
Dr Robert Gauci Maistre	Legal representative

Architect Daniel Cordina – Recommended Bidder

Dr Lydia Cordina	Legal representative
Dr Partick Galea	Legal Representative
Dr Anthea Cilia	Representative
Arch Daniel Cordina	Representative

Agriculture Directorate – Contracting Authority

Mr Mario Falzon	Chairman Evaluation Board
Ms Maria Seguna	Secretary Evaluation Board
Mr Dennis Sciberras	Member Evaluation Board
Mr Josef Borg	Member Evaluation Board
Ms Miriam Dowling	Member Evaluation Board
Mr Pio Cardona	Representative

After a brief introduction, the Chairman invited the appellant to give the reasons behind his objection.

Michael Mercieca on behalf of appellant Geometric Services stated that the appeal is based on three points. The tender had to be awarded to the cheapest complying bid and in the appellant's opinion, the preferred bidder Architect Anthony Cordina does not meet the administrative and the technical criteria on three issues and his bid should have been rejected.

1. One of the requirements of the tender is that the chosen person should oversee the works of the quantity surveyor. He contends that whilst appellant is also a quantity surveyor, and used to teach quantity surveying at MCAST, the preferred bidder is an architect and not a quantity surveyor.
2. Specifications required, Article 8.5, states that chosen person should have knowledge of MELP and have qualifications. Stated that for 10 years, appellant had been the chairman of this MELP Board that he had set up himself. Preferred bidder was never involved in the MELP and thus does not have the necessary experience that appellant has, and does not compare to him. Appellant had also formulated the contract with the ELC.
3. The difference between appellant's bid and that of the preferred bidder is only a mere €94.

Mr Mario Falzon the chairman of the evaluation board stated that the board evaluated the bids and found that all the bidders were technically and administratively compliant and had to choose the cheapest offer. There was nothing in the selection criteria that required any form of experience in any particular entity. Preferred bidder is an architect and also has a Masters Degree in road engineering and was compliant. The criteria was generalised and no specific experience was requested. Experience had no weighting in the evaluation process. Submitted Curriculum Vitae were used to assess experience.

Dr Robert Gauci Maistre on behalf of the appellants made reference to Article 8.5 of the tender documents which states that the selected person should ideally have knowledge of the Malta Embellishment Landscaping Programme (MELP), and qualifications related to the MELP. He contended that qualifications could only be measured in terms of experience. He claims that the preferred bidder does not have any such experience.

Mr Mario Falzon replied that Article 8.5 said "ideally" and not must. This meant that it was not a mandatory requirement.

Mr Michael Mercieca explained the role of chairman. The chairman design, landscaping, makes estimates and measures works, does the necessary quantity surveying and needs to have knowledge of the government procurement process. He stated that he had asked for clarifications from the contracting authority, but received no answers. Having had no reply to clarifications, he had perforce to make the tender submissions basing his offer on past experience.

Dr Patrick Galea for the preferred bidder said that first of all Geometric Services Limited was struck off the register and filed four documents from the MFSA. The latest research shows that Mr Michael Mercieca is the present director of GS General Services Limited. Regarding the Price offer he states that appellant's offer to match the price of any other bidder is illegal and cannot be entertained.

Architect Daniel Cordina the preferred bidder referred to Article 8.5 of the tender documents and said there were 5 points stating the requirements for chairman. One of these says that “oversee the quantity surveying process to ensure the best value for money.” This is the work done by architects in their normal day to day practice. Appellant has omitted to mention the other requirements in this Article, such as “excellent planning”, “negotiation skills” “computer skills” and others. He claims that he has over 11 years experience in overseeing. He was an architect and has a Masters degree.

Appellant explained that Geometric Services was merged with other companies and renamed GS General Services Ltd but the company registration number remained the same.

The hearing was brought to a close.

This Board,

Having noted the Appellant’s objection in terms of the ‘ Reasoned Letter of Objection’ dated 12th February 2013, had objected to the decision taken by the pertinent Authority, in that :

- a) The preferred Bidder is an Architect and not a Quantity Surveyor;**
- b) The Applicant , who is a Quantity Surveyor , has been the Chairman and founder of the MELP Board for the last 10 years;**
- c) The Preferred Bidder does not have the necessary experience in ‘Surveying’;**
- d) The Appellant’s Bid is only Euros 94 dearest than that of the Preferred Bidder.**

Having considered the Contracting Authority’s verbal submissions during the hearing held on 30th July 2013:

- a) That the Preferred Bidder was an Architect who is well versed in monitoring survey projects;**
- b) That the Evaluation Board of the Contracting Authority stated that all Bidders were administrative and technical compliant and in this circumstance the cheapest bidder had to be chosen;**
- c) That the Preferred Bidder does have the necessary experience.**

Reached the following conclusions:

- 1. The Preferred Bidder’s offer was the cheapest;**

- 2. The Preferred Bidder was qualified enough to carry out the assignment as specified in the tender document.**

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.

Dr. A. Cassar
Chairman

Dr. C. Cassar
Member

Mr. R.A.Matrenza
Member

28 August 2013