

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 626**

**WSM 111/2013**

Tender for the Services of a Structural Engineer.

The tender was published on the 10<sup>th</sup> May 2013. The closing date was the 31<sup>st</sup> May 2013.

The estimated value of the Tender was: €25,000 (Exclusive of VAT).

Six (6) bidders had submitted offers for this tender.

On the 4<sup>th</sup> October 2013 Architecture Project Joint Venture filed an objection against the decision to discard its offer as being technically non-compliant.

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 Thursday 31<sup>st</sup> October 2013 to discuss the appeal.

Present for the hearing were:

### **Architecture Project Joint Venture - Appellant**

Arch. David Felice	Representative
Arch Danica Mifsud	Representative

### **Doric Studio - Recommended Bidder Lots 1&2**

Arch. Frank Muscat	Representative
Dr Peter Fenech	Legal Representative

### **Messrs. Bezzina & Cole - Recommended Bidder Lot 3**

Arch. Keith Cole	Representative
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### **Perit Daniel Grima - Recommended Bidder Lot 4**

Perit Daniel Grima	Representative
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### **WasteServ Malta - Contracting Authority**

Mr Aurelio Attard	Representative
Dr Victor Scerri	Legal Representative

Following a brief introduction by the Chairman, the appellant's representative was invited to make his submissions on the objection.

Mr David Felice on behalf of appellant joint venture said that appellant's joint venture is a warranted practice, and as such all responsibility for work carried out is shouldered collectively by its members. Appellant's offer was discarded because one of the experts submitted in its offer, who is an architect and structural engineer with forty years experience, did not have a warrant. Responsibility is carried by the partnership according to the Periti Act, law Chapter 390. The tender also required a statement from bidders that declared that the experts are employees of the bidder. A warrant can be issued to a firm of architects by the warranting board. However the firm has to be made up of warranted architects. In a partnership, the responsibility is carried by the partnership. Clause 19.4 a) of the Periti Act states that, "*a person shall not be deemed to practice the profession of a warrant holder if he acts as an employee of, or assistant to, a warrant holder or a partnership of warrant holders.*" Architect Joe Calleja, an expert, was an employee of the joint venture. The real problem with the rejection of the offer was Architect Danica Mifsud, who is an architect. The evaluation board, however, said that appellant produced no evidence to show that Ms Danica Mifsud had a master's degree in structural engineering. The relative certificate was only submitted when the objection was made, and was not enclosed with the tender. This certificate was not submitted with the tender because of Clause 3.15 of the tender document. This contained a list of requisites and the submission of certificates was not one of these. Ms Mifsud's Curriculum Vitae was however submitted. The concluding sentence of the said Clause 3.15 made it clear in bold type that tenderers were not expected to submit any other documents not included in the list.

Mr Aurelio Attard on behalf of the contracting authority said that what was said above regarding the warranted partnership was not relevant to this objection. The tender required a warranted architect and civil engineer with five years experience and who had post-graduate qualification in structural engineering. The tenderers had to submit with their offers Curriculum Vitae and past performance records together with the certificates of the key experts to be employed. This is requisite is clearly shown in Clause 1.2.12. The submission of certificates was mandatory. The evaluation board had gone into the same contentions made by the appellant in the objection and taken them into consideration. So much so that the evaluation board prepared a first evaluation report to the DCC and had asked for permission to ask for clarification and the production of certificates. The DCC however refused to allow clarification as this would constitute additional information and rejected the first evaluation report. The evaluation board disagreed with the decision of the DCC and in the second evaluation report it recommended Architect Danica Mifsud be awarded with a proviso that at the time of signing of the contract the certificate would be produced. The DCC rejected this report again. The evaluation board then had no other option but to submit to DCC's decision and reject appellant's bid.

The Chairman here commended the evaluation board for the action taken; however the system does not allow for logical action to be taken by the evaluation boards.

Mr David Felice explained why the certificate was not submitted. He stated that appellant follows the practice not to submit unasked for documents.

Dr Peter Fenech on behalf of the Doric Studio the preferred bidder for lots 1 and 2 stated that Clause 1.2.12 is clear that it is mandatory to send certificates and that this was not rectifiable.

Mr David Felice said that the tender contained ambiguous instructions. For example page 47 of the tender repeated the list of requirements to be submitted and once again the certificates are not included.

Perit Frank Muscat on behalf of Doric Studio referred to another tender adjudicated some months ago where the tender contained a repeat page where bidders had to re-fill submitted data. Appellant failed to repeat the bid price and was disqualified, although being the cheapest. The objection was however lost.

The hearing was at this point brought to an end.

**This Board,**

**Having noted the Appellant's objection , in terms of the 'Reasoned Letter of Objection' dated 3<sup>rd</sup> October 2013 and also through the Appellant's submissions during the hearing held on 31<sup>st</sup> October 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant's bid which was submitted through a 'Joint Venture' had the necessary qualification and experience as requested in the tender document. In this regard, the Appellant feels aggrieved since his bid was discarded by the Contracting Authority due to lack of qualifications and experience.**
- b) The fact that one of the partners of the 'Joint Venture' did not submit the requested proof of the 'Post graduate' qualification does not render the Appellant's bid non compliant. The bid was filed in the name of the 'Joint Venture' and the 'Joint Venture' was fully warranted and qualified enough to comply with the tender conditions.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 31<sup>st</sup> October 2013, in that:**

- a) The tender document clearly stated that the tenderer had to be a warranted Architect, with five years experience and who must also be in possession of a Postgraduate Degree in Structural Engineering. In this regard, the Appellant failed to prove to the Contracting Authority that same had the necessary Postgraduate Qualification.**
- b) The Appellant also had to submit details of Key Experts to be deployed on this assignment. Again in this respect, the Appellant failed to abide by this mandatory requirement.**

**Reached the following conclusions:**

- 1. This Board notes the diligent and practical approach which was adopted by the Evaluation Board. Unfortunately, some of the present regulations of the Public**

**Procurement Procedures do hinder the implementation of a more smooth and practical system in evaluating the tenders.**

- 2. This Board also notes that the Appellant was qualified enough to satisfy the requirements as stated in the tender document. However the Appellant failed to submit the required documentation to prove to the Evaluation Board that Appellant was fully compliant.**
- 3. This Board opines that it is the duty of the tenderer to abide by the conditions as laid out in the tender document. It is futile for any Appellant to present the missing documentation during an Appeal's hearing; same documentation should have been filed with the tender document in the first place.**

**In view of the above, this Board finds against the Appellant, however due to other circumstances, this same Board recommends that the deposit paid by the Appellant should be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*13 January 2014*