

PUBLIC CONTRACTS REVIEW BOARD

Case No. 664

WSD 4/2013/33

Cottonera Dock No. 1 Project: Tender for Cleaning, Reinstatement and Restoration Works to Historical Dock Head.

The tender was published on the 5th November 2013 and the closing date was on the 19th November 2013.

The estimated value of the tender was €79,026.57 (Exclusive of VAT)

Four (4) bidders had submitted an offer for this tender.

On the 27th December 2013 Vaults Co. Limited filed an objection against the decision to award the tender to Agius Marble Works Limited for the price of €75,406.50, claiming that the preferred bidder's offer and that of Macri Joint Venture were not technically 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 Tuesday 4th February 2014 to discuss this objection.

Present for the hearing were:

Vaults Co.Limited - Appellant

Mr Ivan Farrugia	Representative
Mr Joseph Farrugia	Representative
Dr Alessandro Lia	Legal Representative

Agius Marble Works Limited - Preferred Bidder

Mr Rosario Agius	Representative
Mr Nyal Xuereb	Representative
Dr Paul Gonzi	Legal Representative

Works & Services Department - Contracting Authority

Mr Anton Camilleri	Chairman Evaluation Board
Mr Vincent Centorino	Member Evaluation Board
Mr Antoine Sapiano	Member Evaluation Board

The Chairman, after a brief introduction invited the appellant's representative to make his submissions on the objection.

Dr Alessandro Lia on behalf of the appellant explained that his client had objected to both the offer of the preferred bidder as well as the offer of another bidder classified the second in the financial ranking, since it is being contended that both these offers were not compliant with the tender technical conditions. According to the tender technical specifications found at page 55 article 4.3 of the tender document, the stone to be used for the dock head had to be lower coralline able to withstand 50 MPa or better.

Normal lower coralline stone is able to stand between 25 to 40 MPa. His client had managed to obtain a new kind of stone from a quarry in Qala Gozo that could withstand over 120 MPa especially to be used in this tender. Thus his client could satisfy the tender specifications by using this stone. From the information available to his client and from experience, this was the only stone from Maltese quarries that complied with the tender requirements. He had declarations signed by this quarry's owners that no other bidders had sought to obtain this stone. Stone from other quarries did not reach this requirement and so do not qualify. He asked whether the contracting authority had any controls to ascertain that the stone offered by bidders was according to specifications; and whether the stone submitted by the other bidders had been tested, or did it just rely on the declarations made by the bidders in their tenders. He queried if the contracting authority was satisfied that the stone going to be used by the preferred bidder is according to the specifications.

Perit Anton Camilleri, the Chairman of the Evaluation Board, on behalf of the contracting authority said that there were two stages involved – the evaluation stage and the actuation stage. He contended that the most important stage is the actuation stage because if incorrect information is submitted by bidders, it would be shown up at this stage. The contracting authority asks for certificates, and if these satisfy the tender conditions, they are accepted at the evaluation stage. The material will be tested physically for compliance after the award. In this case all the bidders had declared to be compliant with the tender specifications. He asserted that the material offered by the preferred bidder, not a sample, but the actual material to be used, will be thoroughly tested. If it resulted that the material is not acceptable, the bidder would be asked to change it with acceptable material. This process would be ongoing when the award is finalized and the works are in course. The bidders also submitted small samples but not for testing the strength of the material but to see if the colour of the stone is acceptable.

Dr Alessandro Lia for the appellant insisted that the contracting authority should test the samples before adjudicating the award. After all this was a simple laboratory test to see if the product reaches 50MPa or more. He reiterated that none of the quarries reach this 50MPa and therefore contended that his client was the only compliant bidder. This fact should have been decided at the evaluation stage. The only quarry to reach the conditions was the Qala quarry from where appellant obtained the stone.

Ivan Farrugia on behalf of the appellant said that around two years ago when the new parliament building was going to be constructed, a study of all quarries had been made and a report published. The quarry chosen at the time reached 40MPa. Thus he contended that at that time not one quarry reached over 40 MPa.

Perit Anton Camilleri assured the Board that the stone offered by the preferred bidder must

reach over 50 MPa as otherwise the preferred bidder would be forced to provide what he had declared.

The Chairman explained that the system being used, asking for a self declaration, is not incorrect. If the bidder made false declarations he would face dire consequences. The system is fool-proof.

Dr Alessandro Lia insisted that therefore the strength of the stone should not have been made a mandatory condition of the tender. His client had submitted the only compliant bid.

Ivan Farrugia for the appellant stated that the tender was for hard stone. There was no other material involved.

Dr Paul Gonzi on behalf of the preferred bidder rebutted that the tender involved other material as well. He claimed that fishing expeditions should not be allowed because the appellant did not bring any proof to support his allegations. Those who make allegations should be able to prove what they alleged. The preferred bidder has over thirty years experience and have worked with similar material from the same quarry before. And the preferred bidder has certification that shows that the stone is better than 50 MPa.

The hearing was brought to a close at this point.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 27th December 2013 and also through the Appellant's verbal submissions during the hearing held on 4th February 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that the product material being offered by same is the only one that is really 'technically compliant'.**
- b) Appellant also contends that the Evaluation Board should have ensured that the material being offered by all bidders should have been technically verified during the evaluation stage and not after the award of the tender.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 4th February 2014, in that:

- a) The Evaluation Board asked for the relative declared confirmation from all bidders that the material being offered does in fact conform to the technical specifications as laid out in the tender document. This represented the first stage of technical conformity.**
- b) When the tender is awarded the Preferred Bidder is bound to supply the material with the same technical specifications as dictated in the tender document. If not, the Preferred Bidder will suffer the consequences.**

Reached the following conclusions:

- 1. The fact that the tendering system allows for a ‘Self declaration’ of the technical conformity with specifications as laid out in tender document, does in fact speed up the evaluation process. This is only the first step of conformity.**
- 2. Upon the award of the tender the Preferred Bidder is strictly monitored to ensure deliverance of the dictated technical specifications. This is the ultimate test of adherence in so far as technical specifications are concerned.**
- 3. This Board opines that the system, provided it is followed up by the Contracting Authority, is effective.**

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. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

21 February 2014