

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 666**

**CT 3086/2012**

**Tender for Restoration of Wignacourt Tower and Beachpost in St. Paul's Bay using Environmentally Friendly Materials and Products.**

The tender was published on the 21<sup>st</sup> May 2013. The closing date was the 16<sup>th</sup> July 2013.

The estimated value of the Tender was €152,542.37 (Exclusive of VAT).

Ten (10) bids had been received for this tender.

On the 5<sup>th</sup> December 2013 Macri Joint Venture filed an objection against the proposed award of the tender to AX Construction Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Thursday the 6<sup>th</sup> February 2014 to discuss the objection.

Present for the hearing were:

### **Macri Joint Venture - Appellants**

Mr Marzio Filippo Capece Minutolo del Sasso	Representative
Ms Josephine Casabene	Representative

### **AX Construction Limited - Preferred Bidder**

Ms Denise Xuereb	Representative
Dr David Wain	Legal Representative

### **Malta Tourism Authority - Contracting Authority**

Mr Bernard Bartolo	Chairman Evaluation Board
Mr Patrick Attard	Secretary Evaluation Board
Ms Francelle Azzopardi	Member Evaluation Board
Mr Oliver Farrugia	Member Evaluation Board
Perit Kevin Fsadni	Member Evaluation Board
Ms Gabby Mallia	Representative
Perit Veronica Bonavia	Representative
Perit Etienne Magri	Representative
Dr Frank Testa	Legal Representative

### **Department of Contracts:**

Mr Jonathan Barbara	Procurement Manager
Mr Kevin D'Ugo	Procurement Manager

The Chairman made a brief introduction and the representative of the appellant Joint Venture was invited to make submissions regarding the objection.

Ms Josephine Casabene on behalf of the appellants said there were several issues that gave rise to the objection. Having examined the tender documents in detail, the appellants are not sure that all the technical requisites were complied with. She contended that appellant's bid was the first technically compliant offer. She referred to article 22.2 of the Instructions to Tenderers. She said that she was not sure if in the technical samples, the proof of the original timbers had been submitted (by the preferred bidder) as per article 1.12. She continued that the appellants are not sure if the completion letters had been submitted by the preferred bidder. In Clause 6.1.2 at page 9 bidders had to give information regarding technical capacity; if a bidder did not prove that he had the technical capacity he could not be awarded the tender. The tenderer had to submit "evidence of relevant experience in execution of works of a similar nature over the past 6 years, including the nature and value of the relevant contracts, as well as works in hand and contractually committed." ... "Bidders shall be expected to have undertaken at least 4 restoration intervention projects on masonry structures carried out (and completed) by the bidder during the last 6 years, each of which shall have a value of not less than €100,000." The appellants doubt that the preferred bidder has these qualifications. Research through the internet was conducted on the preferred bidder and at the preferred bidder's own web site. The projects that resulted from this research are the Waterfront Project, but this was finished more than 6 years ago; Fort St Angelo is mentioned, and also the St Paul's Catacombs Heritage Park, which, is not a completed project. Ms Casabene continued that appellants could find no mention of tenders that had been awarded to the preferred bidder alone or as the lead partner in a joint venture. In May 2012 AX Construction, the preferred bidder, featured in a two contract awards in a joint venture with Fortres.

Mr Bernard Bartolo the Chairman of the Evaluation Board under oath stated that the evaluation board had gone through the submitted documents, and there was a form which listed similar projects performed during the past 6 years and both the preferred bidder and the appellant passed through that stage, they were both compliant. The appellants failed on the price, they were not the cheapest compliant. The preferred bidder was one hundred percent administratively and technically compliant. The evaluation board had enlisted the help of technical experts to help them assess the offers.

Dr Frank Testa on behalf of the contracting authority said that the letter of objection failed to list the grievances and reasons for the objection.

At this point the hearing was brought to a close.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 5<sup>th</sup> December 2013 and also though the Appellant's verbal submissions during the hearing held on 6<sup>th</sup> February 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant's bid was unfairly discarded as the offer submitted by same was the first cheapest and fully compliant bid.**

- b) Notification of the ‘Letter of refusal’ was sent to the wrong e-mail address.

**Having considered the Contracting Authority’s verbal submissions during the hearing held on 6<sup>th</sup> February 2014, in that:**

- a) Appellant’s letter of objection did not state the specific reasons for objecting to the Contracting Authority’s decision.
- b) Both the Appellant and the Preferred Bidder were fully compliant however the Preferred Bidder was the cheapest.

**Reached the following conclusion:**

1. Any tenderer has the right to Appeal before this Board; however the ‘Reasoned Letter of Objection’ must contain specific reasons and not a general vague statement. The Appellant’s objection contained a general statement without any founded reasons given thereto.
2. The Preferred Bidder was fully compliant and the cheapest and in this regard the Evaluation Board acted in a diligent and fair manner in its decision.

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

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancillieri  
Member

*11 March 2014*