

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 721**

### **MG 164/2014: Quotation for the Installation of Claddings at the Zewwieqa Waterfront**

The call was published on the 4<sup>th</sup> June 2014. The closing date was the 6<sup>th</sup> June 2014. The estimated value of the call was €22,400.

Three (3) offers had been received for this tender.

On 2<sup>nd</sup> July 2014 Gozo Concrete Products Limited filed an objection against the disqualification of their offer.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday the 17<sup>th</sup> July 2014 to discuss the objection.

Present for the hearing were:

#### **Gozo Concrete Products Ltd - Appellant**

Dr Joseph Ellis                      Legal Representative

#### **A. F. Ellis (Marble Works) Ltd - Preferred Bidder**

Mr Saviour Ellis                      Director  
Ms Jacqueline Ellis                      Representative  
Dr Carmelo Galea                      Legal Representative

#### **Ministry for Gozo - Contracting Authority**

Ms Daniela Sabino                      Chairperson Evaluation Board  
Ms Amanda Cardona                      Member Evaluation Board  
Perit Sean Micallef                      Representative  
Dr Tatiane Scicluna Cassar              Legal Representative

#### **Witness**

Mr Angelo Camilleri                      EU Funds Manager, Ministry for Gozo

The Chairman made a brief introduction and invited the appellants' representative to make his submissions on the objection. The witness produced by appellants would be heard after the submissions.

Dr Joseph Ellis on behalf of the appellant referred to the letter of objection. He submitted that this was a restricted procedure for quotations and his clients had been informed of the call at 16.29 hrs on the 5<sup>th</sup> June 2014 through an email. Thus appellants had just one day for the submission of the offer since the closing date for the call for quotations was on the 6<sup>th</sup> June 2014 at 10.00. The time limit allowed for the request for clarifications was on the 3<sup>rd</sup> June 2014 at noon. He reiterated that his clients were notified on the 5<sup>th</sup> June 2014. For this reason he contended that, since this was unjust and goes against the procedure for restricted calls, then the call for quotations should be annulled. Dr Ellis continued that the reason for the rejection of his clients' offer was that *"it was found to be technically non-compliant because literature regarding the cladding material and proposed support systems were not submitted as per clause 16.1(e) of the quotation document"* but whoever wrote this had forgotten that the said Notes to clause 16.1 continues that *"bidders will be requested to either clarify/rectify any incorrect/incomplete documentation, and/or submit any missing documents within two working days from notification."* It was not correct to say that appellants' tender was non-compliant because the contracting authority should have asked the appellants to rectify the matter.

Dr Tatiane Scicluna Cassar on behalf of the contracting authority explained that originally the call was for other items and objections had been made and since the project would be using EU Funds approval had been obtained to issue a direct order for the claddings. The time for the procedure had to be short since the works were very urgent. Three firms had been approached to state if they were interested in participating but one of these had not accepted. It was then decided to approach also the appellant to replace the firm that dropped out. The other two bidders had been notified one day before the appellants and had one extra day to submit their offers. From the three chosen, one had dropped out and was replaced by appellants. According to Clauses 11.3 and 24.1 of the quotation document, bidders could have asked for an extension. Appellants could easily have asked for an extension but they did not and had submitted their offer on time.

Dr Tatiane Scicluna Cassar continued that appellants' offer had been disqualified under the technical compliance clause 16.1 (e). This clause, in sub clause ii – Literature/Samples is qualified by note 3 and not by note 2. Note 3 means that no rectification is allowed but only clarifications are allowed. Appellants also claimed that the contracting authority had failed to provide specifications for the stone. However, Article 9.1.0 of the tender document found at page 34 of the tender did provide the necessary technical specifications, including texture, quantity and quality. Appellants did not provide any literature but just gave the price and thus the evaluation board could not adjudicate appellants' offer.

Mr Angelo Camilleri, called to testify by the appellants, under oath stated that he was the Ministry of Gozo's EU fund manager. He confirmed that the email informing appellants was sent by him on the 5<sup>th</sup> June 2014 at 16.30. Similar emails had been sent to Hal Mann and A F Ellis on the 4<sup>th</sup> June 2014 by the project leader. This was a restricted procedure and was urgent. The time set down for clarifications was through an error given as the 3<sup>rd</sup> June 2014, but the requests to the other bidders had been sent on the 4<sup>th</sup> June 2014 in the morning. He could not say if there was any reason why the notice was issued on the 4<sup>th</sup> June and not

earlier.

Replying to questions by Dr Carmelo Galea on behalf of the preferred bidder, witness could not confirm whether the notice had been sent to the preferred bidder also on the 5<sup>th</sup> June 2014 but according to the project leader the preferred bidder was notified after the period for clarifications had elapsed.

Replying to questions by Dr Tatiane Scicluna Cassar witness confirmed that appellants could have asked for an extension. This did not arise from the tender document but the appellants still could have asked for extension. At any rate appellants had submitted his tender on time. Clause 11.1 stated that “Bidders may submit questions in writing to the contracting authority by sending an email to procurement.mgoz@gov.mt up to the date and time indicated in clause 2 above. Clause 2 gave the date as 3<sup>rd</sup> June 2014.

Dr Joseph Ellis for the appellants explained that clause 11.3 gave the right to the contracting authority to extend the time for submitting the offers if appropriate. Clause 11.1 was however tied to the 3<sup>rd</sup> June 2014. He contended that “notes to clause 16.1” referred to all sub articles of article 16.1. He claimed that appellants had offered to give a demonstration on the cladding being offered by them. The appellants did not have enough time to prepare the tender.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant’s objection, in terms of the ‘Reasoned Letter of Objection’ dated 2<sup>nd</sup> July 2014 and also through Appellant’s verbal submissions during the hearing held on 17<sup>th</sup> July 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that his offer was discarded due to the simple fact that he did not submit the ‘Literature’ regarding the cladding material and the proposed support system. Appellant claims that he only had 24 hours to submit the tender document in time;**
- b) Appellant claims that, in accordance with clause 16.1 of the tender document, the Contracting Authority had, at its disposal, 2 working days in which to request clarifications. The Contracting Authority failed to notify the Appellant of any missing information from his tender documentation.**

**Having considered the Contracting Authority’s verbal submissions during the hearing held on 17<sup>th</sup> July 2014, in that:**

- a) Since this tender consisted of an urgent EU funded project, the Contracting Authority sought and was granted permission to issue a direct order. In this regard, the Contracting Authority invited three prospective bidders and the time-frame for the submission of tenders was highly limited due to the urgency of the project;**

- b) **Appellant replaced a ‘no show’ prospective bidder and submitted his offer by the closing date. The Contracting Authority informed all bidders of the restrictive closing date of the tender and in this regard, the Appellant could have asked for an extension of the closing date;**
- c) **The ‘Literature’ which was not submitted by Appellant was of vital importance for the Adjudication Board to assess the offers.**

**Reached the following conclusions:**

1. **This Board opines that the Appellant was well aware of the restrictive time-frame for the submission of his offer and the fact that he submitted his bid by the closing date, implies that the Appellant was abiding by the conditions as laid out in the tender document. One of the mandatory conditions dictated in the said document was that bidders had to submit ‘Literature’ of the cladding material and support system. In this Board’s opinion, and from submissions made during the hearing of this appeal, the requested literature was of prime importance for a fair and just assessment of the submitted offers. At the same time, this Board notes that Appellant was aware that his submitted tender documentation was missing the required ‘Literature’. In this regard, Appellant could have requested an ‘extension’ of the closing date of the tender to enable same to submit the missing ‘Literature’. Appellant failed to file such a request;**
2. **This Board notes that in Appellant’s letter of objection, the latter claims that he had informed the Contracting Authority that he was willing to give a demonstration. In this regard, the Board recognise the fact that the tender document requested submissions of ‘Literature’ and not a ‘demonstration’. Reference is hereby being made to clause 16.1e (Item ii) of the tender document where it is specifically stated what was required;**
3. **Appellant, in his letter of objection, also stated that he could not submit a sample as there was not enough information regarding the type of stone required. In this regard, This Board refers to Article 9.1.0 of the tender document, which specifications does in fact provide the necessary technical details for the Appellant to provide the requested ‘Literature’.**
4. **Appellant contends that, in accordance with Clause 16.1 of the tender document, the Contracting Authority had 2 working days to request clarifications regarding any missing documentation from his submissions. In this regard, this Board refers to the notes to Clause 16.1: item 3, wherein, it is clearly stated that “No rectification shall be allowed. Only clarifications on submitted information may be requested”. In this regard, it was made vividly clear that clarifications can only be made by the Contracting Authority on the submitted documentation and not on missing information since the latter course would be a rectification.**

**Appellant's requested literature was missing and therefore no clarification could be made by the Contracting Authority.**

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

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancillieri  
Member

*12 August 2014*