

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 753**

**GCCL Q 02/2014**

### **Call for Quotation for Repairs/Serviceing of Fire-Fighting Equipment/BA Equipment.**

The tender was published on the 24<sup>th</sup> January 2014. The closing date was the 21<sup>st</sup> February 2014.

The estimated value of the Tender was €14,500 (Exclusive of VAT).

On the 17<sup>th</sup> September 2014 Fire Tech Limited filed a letter of objection objecting to the rejection of their tender for being technically non-compliant.

Three (3) tenders had been received.

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 30<sup>th</sup> October 2014 to discuss the objection.

Present for the hearing were:

#### **Fire Tech Limited - Appellant**

Mr Martin Bugeja	Director
Ms Daniela Camilleri	Representative
Mr Darren Muscat	Representative

#### **Pace Fire Prevention - Preferred Bidder**

Mr David Borg Saydon	Representative
Mr Matthew Ellul	Representative
Mr Carmelo Pace	Director

#### **Gozo Channel Company - Contracting Authority**

Mr Mark Formosa	Member Evaluation Board
Dr Georgine Schembri	Legal Representative

The Chairman made a brief introduction and invited appellant's representative to make his submissions on the letter of objection.

Mr Martin Bugeja on behalf of the appellant admitted not having submitted the necessary documents and certificates through an administrative error. However appellant had not been notified that these documents were missing. Apart from this, he explained, the contracting authority was in possession of the requested documents relating to appellant from previous contracts that appellant had been awarded by the contracting authority during the past eighteen years.

Dr Georgine Schembri on behalf of the contracting authority said that the requirement for the submission of the documents was clear. The missing documents fell under technical specifications and the contracting authority had no discretion to ignore the non-submission of mandatory documents. In fact there were other bidders who were disqualified for the same reasons.

Mr Martin Bugeja on behalf of the appellant reiterated that the contracting authority knew that appellant has the necessary qualifications since even at present appellant was providing services.

The Chairman explained that the contracting authority could only ask for clarifications but could not ask bidders to rectify their tenders.

At this point the hearing was brought to an end.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 17<sup>th</sup> September 2014 and also through Appellant's verbal submissions during the hearing held on 30<sup>th</sup> October 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) **Appellant contends that, although admittedly, failed to submit the documentation as requested in the tender document, the Contracting Authority was well aware of Appellant's capabilities to carry out the tendered works.**
- b) **Appellant claims that the Contracting Authority was in possession of the documentation which Appellant failed to submit and this was due to the fact that, for the last eighteen years he was providing the '*tendered works*'.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 30<sup>th</sup> October 2014, in that:**

- a) **Appellant failed to submit the requested documentation under the technical specifications of the tender document. Appellant was fully aware that such requirements formed part of the technical specifications on which his tender was to be evaluated.**

- b) The Contracting Authority could not request documentation not submitted by Appellant Company, as this would otherwise be a rectification.**

**Reached the following conclusions:**

- a) This Board opines that, the fact that, the Contracting Authority was aware of Appellant's capabilities, does not, in any justifiable manner, exempt the Appellant from sending the requested documentation as dictated in the tender document. In this regard, this Board does not uphold Appellant's first grievance.**
- b) This Board does not consider Appellant's claim, that the Contracting Authority knew of Appellant's capabilities from previous tenders, to be valid. As each tender has to be evaluated on its' own merits. Conditions laid out in the tender document must be strictly abided by. In this regard, this Board finds Appellant second grievance not justifiable.**

**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 Ancilleri  
Member

*7 November 2014*