

PUBLIC CONTRACTS REVIEW BOARD

Case No. 822

eCT 3185/2014

Design and Build Tender for the Restoration and Consolidation of Casino Notabile Mдина – using environmentally sound materials and products.

The tender was published on the 23rd December 2014. The closing date was the 3rd February 2015. The estimated value of tender is €475,000 (Exclusive of VAT).

Nine (9) offers had been received for this tender.

On the 18th May 2015 Capece Construction Limited filed an objection against the decision of the contracting authority to disqualify their tender on technical grounds.

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 2nd July 2015 to discuss the objection.

Present for the hearing were:

Capece Construction Limited:

No one was present when the case was called several times.

Vaults Co Limited:

Mr Ivan Farrugia	Representative
Dr Alessandro Lia	Legal Representative

Restoration Directorate:

Ms Tabitha Dreyfuss	Chairperson Evaluation Board
Mr Norbert Gatt	Member Evaluation Board
Dr Fiorella Fenech Vella	Legal Representative

Department of Contracts:

Dr Christopher Mizzi	Legal Representative
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The Chairman explained that although the case has been called several times, for unknown reasons, no representatives from the appellant firm had made an appearance. The Appellants had been regularly notified of the hearing date and time. He said that the hearing would continue without them and that the Board would decide, basing the decision on the letter of objection filed by the Appellant and other documents filed in this case.

Dr Christopher Mizzi on behalf of the Department of Contracts referred the Board to the joint letter of reply filed by the Department of Contracts and the Contracting Authority and explained that they were relying on what was stated in this joint letter of reply.

Dr Alessandro Lia on behalf of the preferred bidder Vaults Limited declared that his client agreed with the arguments made by the contracting authority and Department of Contracts in their joint letter of reply and made them his own. He said that the Appellant had disregarded instructions given in the clarification about the dismantling of certain parts. The technical compliancy on which the Appellant's offer had been discarded was qualified by note 3 that meant that no rectification was possible but only clarification which meant that Appellant could not change his submissions.

At this point the hearing was closed.

This Board

Having noted the Appellant's objection in terms of the "Reasoned Letter of Objection" dated 18th May 2015 where the Appellant had objected to the decision taken by the pertinent Authority, in that:

- a) **The Appellant contends that since this tender is a "Design and Build" Tender, the Bidder is allowed to submit proposals which are slightly different from those shown on the plan attached to the Tender Document;**
- b) **The Appellant maintains that since the spiral staircase and ceiling thereof are to be dismantled and reinstated, there will be structural movement;**
- c) **The Appellant contends that he had submitted a complete "Bill of Quantities", in**

full and does not agree that his offer was considered as being “Administratively and Technically” non compliant.

Having considered the Contracting Authority’s “Letter of Reply” received on the 30th June 2015, in that:

- a) The Contracting Authority maintains that the Appellant’s first and second contention does not hold water, as the same Contracting Authority must abide by the conditions as dictated in the Tender Document. In this regard, the Appellant did not abide by the drawings and plan as attached to the Tender;**

- b) The Contracting Authority contends that the fact that the Appellant Company submitted a complete bill of quantities does not, in any way, qualify the Appellant’s offer as being “Administratively and Technically compliant”. In assessing whether an offer is fully compliant, the Evaluation Committee takes other important factors into account to determine compliancy;**

- c) The Appellant was fully aware of the parameters by which the tendered works had to be carried out via clarification 3, which was ignored by the same Appellant.**

Reached the following conclusions:

- 1. With regards to the Appellant’s first grievance, this Board, after having examined the conditions stipulated in the Tender Document, justifiably opines that although this was a “Design and Build” Tender, the parameters were clearly indicated in the plans’ attached to the Tender Document.**

This Board also credibly points out that a “Design and Build” tender does not in any way imply proposed substantial changes by the Appellant to those parameters dictated in the Tender Document. The parameters for the dismantling of the walls were clearly marked and indicated on the “Plan” of the Tender document and were also emphasized in Clarification Number 3, which vividly stated that “The maximum allowable dismantling is that indicated in the Tender Drawings”.

This Board notes that this Clarification and Confirmation of the Parameters for the Dismantling of the walls, was completely ignored by the Appellant. In this regard, this Board does not uphold the Appellant’s first contention.

- 2. With regards to the Appellant’s second grievance, this Board justifiably opines that the Contracting Authority had every right to impose parameters and on the other hand the Appellant Company was in duty bound to abide by the same in the execution of the tendered works. It is evidently clear that the Appellant by ignoring Question 1 of Clarification Note 3 was not compliant with regards to the dismantling of the walls as specified in the Tender Drawings.**

This Board opines that the fact that the spiral staircase and ceiling thereof had to be dismantled just does not provide justification for a change in the parameters for the dismantling of the walls “outside” the specifications of the Tender Drawings. In this regard, this Board does not uphold the Appellant’s second contention

- 3. With regards to the Appellant’s third grievance, this Board justifiably opines**

that a “complete bill of quantities” does not, in any credible way, represent an “Administrative and Technical Compliancy” issue. There are other considerations which makes an offer “Administratively and Technically” compliant. In this regard, this Board does not uphold the Appellant’s Third contention.

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. Lawrence Ancillieri
Member

20 July 2015