

PUBLIC CONTRACTS REVIEW BOARD

Case No. 836

UM 1871

Tender for the Construction of a Green Roof to be located at the Faculty for the Built Environment, University of Malta as Part of the Life12 Env/MT/000732 Lifemedgreenroof Project icw Action B2.

The tender was published on the 24th February 2015. The closing date was the 1st April 2015. The estimated value of tender is €89,110.70 (Exclusive of VAT).

Two (2) offers had been received for this tender.

On the 16th June 2015 Derek Garden Centre Office Essentials Limited filed an objection against the decision of the contracting authority to reject their tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday 4th August 2015 to discuss the objection.

Present for the hearing were:

Derek Garden Centre Office Essentials Limited:

No representatives

Bonnici Bros. Limited:

Perit Ray Sammut	Representative
Mr Saman Bugeja	Representative
Dr John Gauci	Legal Representative

University of Malta:

Mr Tonio Mallia	Chairperson Evaluation Board
Mr Elton Baldacchino	Secretary Evaluation Board
Mr Antoine Gatt	Member Evaluation Board
Mr Vince L Morris	Member Evaluation Board
Prof. Alex Torpiano	Member Evaluation Board
Dr Oriella Degiovanni	Legal Representative

When the case came up for hearing at 9.00am there were no representatives from the Appellants present.

The Appellants were reminded of the hearing by telephone and promised to appear later. A postponement of thirty minutes was granted. The Board in the meanwhile heard another case that was fixed for hearing at 9.45 am.

When the case was called again at 10.25, that is nearly one and half hours after the appointed time no representatives on behalf of the Appellants had made an appearance.

The Chairman at this point stated to all the parties present that since the Appellants, although regularly notified of the hearing, failed to appear to make their oral submissions, the Board would decide the objection after taking into consideration the submissions made by the Appellants in their letter of objection and the letter of reply by the Contracting Authority.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection in terms of the "Reasoned Letter of Objection" dated 16th June 2015, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant contends that the Tender Document contained misleading instructions and information with regards to documentation to be submitted and at what stage;**
- b) The Appellant claims that the instruments relating to the literature to be submitted on page 26 of the Tender Document were replicated on page 27 of the same document. The two requisites mentioned in the said pages were contradictory;**
- c) The Appellant states that the issue regarded solely the submission of corresponding literature and did not effect the technical and financial**

consideration of the offer. In this respect, the Evaluation Committee should have asked for clarifications.

Having considered the Contracting Authority's "Letter of Reply" dated 6th July 2015, in that:

- a) The Contracting Authority contends that pages 26 and 27 were not replicated in any manner. Both pages refer to different references in the Technical Specifications and instructions. There was no misleading or ambiguous instructions or information which might have misled the bidder on submitting his offer;
- b) The Appellant failed to submit the requested literature and therefore clarifications were not possible.

Reached the following conclusions:

1. This Board, after having examined the Appellant's Letter of Objection, the Contracting Authority's Letter of Reply and the relative Tender Documentation on which the Appellant's objection was made, justifiably notes that page 26, which referred to "Literature/List of Samples" for items 1.1 to 1.9, clearly stated that this list of the said items must be submitted with the Tender.

On the other hand, Page 27 of the Tender Document referred to items 2.1 to 2.7 and also clearly stated that the list of samples together with the corresponding literature to be submitted within 7 (seven) days of being notified to do so.

This Board opines that there is vivid evidence that there was no replication of Page 26 and Page 27 of the Tender Document. In this regard, this Board does not uphold the Appellant's first and second grievances;

- 2. With regards to the Appellant's Third Grievance, this Board has on many occasions, emphasized the mandatory obligation of the bidder to submit the dictated relevant corresponding literature as and when requested. The requested literature forms part of the Technical Specifications of the Tender and should not be regarded as "unimportant documentation".**

This Board opines that the Appellant had clear instructions and information on both pages 26 and 27 of the Tender Document and in this regard, the Appellant did not submit the requested documentation as dictated in the Tender Document.

This Board also opines that the Evaluation Committee could not ask for clarification on documentation which was not submitted by the Appellant. 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 re-imbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

10 August 2015