

PUBLIC CONTRACTS REVIEW BOARD

Case No. 923

GHRC 041/2015

Tender for the Refitting of the Main Chamber at the Grand Master's Palace in Valletta to Function as the Main Conference Hall and Press Conference Room.

The Tender was published on the 24th November 2015. The closing date was on the 12th January 2016. The estimated value of the Tender is €445,470.50.

Four (4) offers had been received for this Tender.

On the 15th March 2016 BAVA Holdings Limited filed an Objection against the decision of the Contracting Authority to award the Tender to De Valier Co. Ltd.

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 the 12th April 2016 to discuss the Objection.

Present for the hearing were:

BAVA Holdings Limited:

Mr Adolfo Camilleri	Representative
Mr Joachim Calleja	Representative
Dr Mark Simiana	Legal Representative

De Valier Co Limited:

Mr Mario Cassar	Managing Director
Mr Ruben Curmi	Representative
Ms Marie Cassar	Representative

Grand Harbour Regeneration Corporation:

Dr Stefan Zrinzo Azzopardi	Board Chairman
Mr Dennis Vella	Chairperson Evaluation Board
Mr Ivan Abela	Secretary Evaluation Board
Mr Mario Bonello	Member Evaluation Board
Mr David Zahra	Member Evaluation Board
Mr Stanley Azzopardi	Member Evaluation Board
Dr Robert Abela	Legal Representative
Dr Lydia Abela	Legal Representative

The Chairman made a brief introduction and invited the Appellant's representative to make his submissions. However Dr Robert Abela on behalf of the Contracting Authority explained that he had a matter to address before this was done. On given permission to do so he asked the Board that one of its members, Dr Charles Cassar, to be changed by another member.

The Chairman, after consulting the other board members acceded to Dr Robert Abela's request and adjourned the hearing of the Objection to a later date in which Dr Charles Cassar would be replaced by another member.

At this point the hearing was closed.

Second Hearing:

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Richard A. Matrenza and Mr Lawrence Ancilleri as members convened a hearing on Thursday 21st April 2016 to discuss the Objection.

Present for the second hearing were:

BAVA Holdings Limited:

Mr Adolfo Camilleri	Representative
Dr Mark Simiana	Legal Representative

De Valier Co Limited:

Mr Mario Cassar	Managing Director
Mr Ruben Curmi	Representative
Ms Marie Cassar	Representative
Mr Benjamin Mangion	Representative

Grand Harbour Regeneration Corporation:

Mr Dennis Vella	Chairperson Evaluation Board
Mr Ivan Abela	Secretary Evaluation Board
Mr Mario Bonello	Member Evaluation Board
Mr David Zahra	Member Evaluation Board
Mr Stanley Azzopardi	Member Evaluation Board
Dr Robert Abela	Legal Representative
Dr Lydia Abela	Legal Representative

The Chairman made a brief introduction and invited Appellant's representative to make his submissions.

Dr Mark Simiana on behalf of the Appellant asked that first he would like to hear the testimony of a member of the Evaluation Board.

Architect Mario Bonello ID No. 89274M, a member of the Evaluation Board, under oath testified that:

- a) Whenever it was deemed necessary, bidders were asked for clarifications;
- b) The Recommended Bidder was asked to clarify four points:
 - i) To clarify whether the key expert 1 offered as project manager had the necessary qualifications that is if he had MQ1 level 5 or not. The reply to this clarification was satisfactory;
 - ii) Regarding Technical Compliance the Recommended Bidder was asked to confirm that the carpet noise absorption coefficient was according to specifications. It resulted from the reply that the carpet and underlay being offered satisfied the Tender specifications and was in fact superior. The Tender had asked for a "carpeting system" and some other bidders had offered carpeting without underlay. The Evaluation Board had researched these themselves but wanted confirmation from the Recommended Bidder;
 - iii) The Recommended Bidder was asked to confirm that the fire resistance of the MDF offered was equivalent or better to Euro C and that the certificate submitted for 18mm MDF also covered 25mm MDF. The reply for both these satisfied the Evaluation Board that all was according to specifications;
 - iv) To confirm that the fire resistance of the paper board submitted (UNI Class 1) was equivalent or better than Euro C. The Evaluation Board had already checked this through research but wanted confirmation from the Recommended Bidder. The reply was again satisfactory.
- c) Clarifications were asked from all bidders whenever necessary. This was because the Contracting Authority wanted safeguards. Even the Appellant was asked to clarify certain points about personnel, sub-contracting and key experts. The Appellant had AF Sign Studio, Neil Said and Joseph Muscat indicated as sub-contractors;
- d) The Evaluation Board had consulted a firm of architects – PARK Periti – who had also prepared the Tender Documents. This consultation was after the Evaluation Board members had examined the offers themselves. The consultants had just pointed out certain important points the evaluators had to look out for, for example the clarifications asked from the Recommended Bidder. On technical matters, the architects had examined all the submitted offers. The report by the architects is already in the file.

Dr Mark Simiana for the Appellant contended that the line between clarification and rectification was very thin and it is important that this line is not crossed. The scope for asking clarifications was to enable the choice of the best offer while ensuring a level playing field. He contended that in the present case the clarifications from the Recommended Bidder were asked because of the non submission of sufficient details, and were in fact rectifications.

Dr Simiana also reiterated that the Contracting Authority should give clear reasons for rejecting the Appellant's offer and thus he asked that the deposit paid in order to file the Objection should be reimbursed. He also suggested that for transparency's sake copies of the evaluation reports should be enclosed with the Letters of Rejection.

Dr Robert Abela on behalf of the Contracting Authority explained that rejections could be made because the offer being non-compliant and in that case he agrees with the Appellant's representative that full reasons should be given; or because it was not the cheapest. In the present Tender, the bid submitted by BAVA Holdings Ltd was both administratively and technically compliant and it was rejected just on the price factor since it was not the cheapest. While the Appellant in the Letter of Objection claimed that the reasons for Rejection were not known, his legal representative made such detailed questions which show otherwise. The Evaluation Board had done its duty in evaluating and adjudication this 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 15 March 2016 and also through their verbal submissions during the Public Hearing held on 21 April 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) BAVA Holdings Ltd contends that the Contracting Authority was obliged by law to dictate the specific reasons why their offer was rejected. Despite the decision taken by the Public Contracts Review Board that this requirement was a "*maxim*", the Contracting**

Authority failed to abide by these instructions to the detriment of the Appellant Company;

- b) The Appellant also contends that through clarifications made by the Contracting Authority, the Appellant has the suspicion that Grand Harbour Regeneration Corporation allowed for rectification on the “*Recommended Bidder’s Offer*”.**

Having considered the Contracting Authority’s “*Letter of Reply*” dated 23 March 2016 and also through their verbal submissions during the Public Hearing held on 21 April 2016, in that:

- a) The Contracting Authority maintains that the reasons given in the “*Letter of Rejection*” dated 7 March 2016, did give enough reasons for the Appellant Company to object;**
- b) The Contracting Authority contends that all clarifications were done in good faith and in accordance with the Public Procurement Regulations. At the same instance, the Contracting Authority maintains that all bidders were treated on the “*Same Level Playing Field*”, in a just and transparent manner.**

Reached the following conclusions:

- 1. With regards to the Appellant's First Grievance, this Board, after having examined the relative documentation connected with the Appellant's contention, justifiably asserts that the "*Letter of Rejection*" sent to the unsuccessful bidder in question, (BAVA Holdings Ltd), did give the specific reasons why the latter's offer was rejected.**

This Board credibly opines that the reasons given were that "*The offer of the Appellant was not the cheapest compliant offer*". This clearly means that the Appellant's Offer was "*Administratively and Technically compliant*". However, it was not the cheapest.

In this particular regard, the Board justifiably notes that the reasons given by the Contracting Authority were precise and correct. This Board credibly notes that the Appellant's bid was "*Administratively and Technically*" compliant and this was noted in the "*Letter of Rejection*". If the Appellant's bid was not "*Administratively or Technically*" compliant, then it would have been the obligation of the Contracting Authority to state the reasons of such defaults.

In this regard, this Board credibly opines that clear and sufficient reasons were given by the Contracting Authority as to why the Appellant's bid was discarded. In the Authority's "*Letter of Rejection*" dated 7 March. In this regard, this Board does not uphold the Appellant's First Grievance and at the same instance, feels that no justification exists in refunding the Appellant Company's deposit.

- 2. With regards to the Appellant's Second Grievance, this Board after having examined the relative documentation in respect of all clarifications and the replies thereafter saw that no evidence or proof was extracted to claim that the clarifications made by the Contracting Authority might have led to rectifications which might give an advantage to the Recommended Bidder.**

In this regard, this Board, as had on many occasions, advised that allegations or suspicions denoted in a "*Letter of Objection*" must be accompanied by proof. In this regard, from credible submissions made by the expert, (Architect Mario Bonello), this Board is comforted by the fact that the Evaluation Board went beyond their expectations. In that, apart from making its own considerations, the Evaluation Board had the back-up support of external advisers.

The Board is credibly convinced that no “*Rectification*” took place, but rather a clarification was sought with which the Evaluation Board was obliged to seek. At the same time, this Board justifiably notes that the Evaluation Board carried out the Evaluation process of this Tender in the most transparent manner, allowing all bidders to compete on a “*Level Playing Field*”.

In view of the above, this Board finds against the Appellants and recommends that the deposit paid by the latter is to be forfeited.

Dr Anthony Cassar
Chairman

Mr Richard A Matrenza
Member

Mr Lawrence Ancilleri
Member

27 April 2016