

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case No. 964 – WDT/T/42//2015: Tender for the Supply, Delivery, Erection and Dismantling of Scaffolding at the Church of the Annunciation, Birgu.**

The Tender was published on the 13<sup>th</sup> November 2015. The closing date was on the 27<sup>th</sup> November 2015. The estimated value of the Tender is €35,000 (Exclusive of VAT).

One (1) offer had been submitted for this Tender.

On the 8<sup>th</sup> April 2016 Vaults Co. Limited filed an Objection against the rejection of its offer and the cancellation of the Tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a hearing on Tuesday the 23<sup>rd</sup> August 2016 to discuss the Objection.

Present for the hearing were:

#### **Vaults Company Limited:**

Mr Ivan Farrugia  
Dr Alessandro Lia

Operations Manager  
Legal Representative

#### **Project Design and Engineering Directorate Ministry for Transport and Infrastructure:**

Mr Stephen Serracino Inglott  
Ms Wendy Jo Mifsud  
Mr Franco Abela  
Mr Joseph D'Amato  
Ms Mireille Fsadni  
Mr Marco Cassar

Chairperson Evaluation Board  
Member Evaluation Board  
Member Evaluation Board  
Member Evaluation Board  
Chief Architect & Civil Engineer  
Assistant Director

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

Dr Alessandro Lia for Vaults Company Ltd produced two witnesses who were heard under oath:

- a) Mr Ivan Farrugia, (ID No. 184381M), Operations Manager with the Appellant who confirmed that the scaffolding offered by Appellant was new and had never been used before;
- b) Mr Stephen Serracino Inglott, (ID No. 40487M), the Chairperson Evaluation Board who confirmed under oath that the Appellant's offer had been the sole Tender received and that their offer had been disqualified and so the Tender had been cancelled.

Dr Alessandro Lia for Vaults Company Ltd explained that the Tender was cancelled for the only reason that there had been one bidder whose offer was disqualified. The Tender had been deemed unsuccessful in terms of clause 18.3 and so was cancelled. The first reason for disqualification was that the Literature submitted by the Appellant was not acceptable since it was a general safety manual for construction of scaffolding and not Technical Literature as requested.

Dr Lia contended that the Appellant had submitted Technical Literature that showed how the mounting and the dismantling would be safely done. He stressed that section 7 c (i) of the Tender's Technical Specifications, which dealt with literature was marked with note 2 and therefore could be rectified.

Therefore the Contracting Authority should have asked the Appellants for clarification on this point. The second reason for disqualification was that Project Design and Engineering Directorate assumed that the scaffolding was not new. Clause 4.13.1 of the Tender states that "scaffolding shall be new and erected on site for the first time...."

The fact that its date of manufacture was 2006 does not mean that it was not new or that it had been used before. Even in this case, clause 7.1 B II(i) Statement of Tools was qualified by note 2 and therefore the Contracting Authority was obliged to ask bidder to clarify/rectify.

The third reason was that no spare part list was being recommended. The form in question said "*please indicate the spare parts recommended by the manufacturer of the scaffolding deemed as absolutely essential for the proper operation for 5 years*". Vaults Company Ltd had written "*not applicable*" because there were no such parts for the pieces of iron forming the scaffolding.

Even this item was qualified by note 2 and also rectifiable. Therefore since these three counts were wrongly used to disqualify Appellant, who had the cheapest offer and was also compliant, the Tender should be awarded to Appellant.

Mr Stephen Serracino Inglott, the Chairperson of the Evaluation Board said that the Tender had not just asked for the safety manual and method of construction of the scaffolding. The Tender had also asked for Technical Specifications of the material being offered.

The Appellant just offered the Health and Safety manual and did not supply the specifications of the material like strength, amount durability etc. Clause 14.12.1 asked for detailed specifications of material. Given the fact that the date of manufacture was from 1998 to 2007

one could not be certain that it was new and never used. This could not be verified, and the Tender had asked for new and unused equipment. Mr Serracino Inglott also did not agree with Vaults Company Ltd that the scaffolding did not have any spare parts – some parts of the scaffolding have to be replaced during use.

The Chairman, PCRB remarked that thus replacement parts were what was requested and not spare parts.

Mr Marco Cassar on behalf of the Contracting Authority explained that there was a difference between Technical Literature and Technical Offer. Technical Literature fell under note 2 and could be rectified. The Technical Offer fell under note 3 and therefore was not rectifiable.

Dr Alessandro Lia for Vaults Company Ltd said that as Mr Serracino Inglott stated the Tender requested replacement parts and not spare parts. He understood the spare parts to be screws etc. The Appellant's Technical Offer had been disqualified for one reason – that it was alleged the equipment was not new. He reaffirmed that the submitted equipment had never been used before and Appellant's Tender submission even indicated the supplier from whence it had been purchased.

Mr Stephen Serracino Inglott for the Contracting Authority insisted that the Tender requested “new and unused” and the Appellant did not state in the Tender submission that it had not been used before.

Dr Lia contended that if the Tender asked for new and unused equipment and the Appellant offered such equipment the Contracting Authority could not assume that the equipment was not so. If it had doubts, it should have asked for clarification.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's Objection, in terms of the “*Reasoned Letter of Objection*” dated 8 April 2016 and also through their verbal submissions during the Public Hearing held on 23 August 2016 had objected to the decision taken by the Pertinent Authority, in that:**

- a) Vaults Company Ltd is that his offer was deemed non-Technically Compliant due to the fact that Project Design and Engineering**

**Directorate allegedly assumed that their scaffolding is not “*Brand New and Never Used*”. In this regard, the Appellants are maintaining that the scaffolding offered was never used and thus it is brand new;**

- b) Vaults Company Ltd is also contending that the reasons given by the Contracting Authority with regards to the submission of a Technical Manual are incorrect. In this regard, the Appellants are maintaining that they had submitted Technical Literature which showed and explained how the mounting and dismantling of the scaffolding would be safely carried out.**

**The Appellants also claim that, if in doubt, the Contracting Authority should have asked for a Clarification;**

- c) Vaults Company Ltd maintains that the Third Reason given by the Contracting Authority why the latter had rejected the Appellant’s Bid did not indicate “*The Spare Parts*” that would be required.**

**In this regard, the Appellant insists that no spare parts are required for the scaffolding but replacement parts.**

**Having considered the Contracting Authority’s “*Letter of Reply*” dated 14**

**April 2016 and also their verbal submissions during the Public Hearing held on 23 August 2016, in that:**

- a) Project Design and Engineering Directorate contend that the Appellant did not indicate whether the scaffolding being offered by the Appellant was new and never used;**
  
- b) Project Design and Engineering Directorate maintain that the Appellants did not submit the Technical Specifications of the material being offered;**
  
- c) Project Design and Engineering Directorate contend that the Appellants did not submit the list of “*Spare Parts*”, as was requested in the Tender Document.**

**Reached the following conclusions:**

- 1. With regards to the Appellant’s First Grievance, this Board, after having examined the relative documentation and heard credible submissions made by both the Appellant Company and the Contracting Authority, opines that the fact that the date of manufacture of the scaffolding was between 1998 and 2007, does not**

**in any credible way mean that the equipment was used.**

**In this regard, this Board feels that a “Clarification” from the Contracting Authority’s end would have rendered the desired explanation. This Board also opines that, the Evaluation Board based its decision, in this regard, on an assumption, which should never be.**

**This Board would also point out that the fact that the scaffolding was never used, as duly confirmed under oath, during the Public Hearing does imply that the scaffolding is brand new.**

**Again, this Board opines that a clarification from the Contracting Authority’s end would have solved this issue. In this regard, this Board credibly opines that since the scaffolding being offered by the Appellant was never used, it is to be considered as brand new and in this regard, this Board upholds the Appellants First Grievance.**

- 2. With regards to the Appellant’s Second Grievance, this Board justifiably note that the Technical Literature which the Contracting Authority is referring to falls under Clause 7c (i) of the Tender Document with specific reference to Note 2, which clearly states that**

*“Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five working days from notification.”*

**In this regard, Project Design and Engineering Directorate should have asked for a clarification as to the specifications of the material of the scaffolding. On this issue, this Board credibly takes into account the nature of the equipment being requested by the Contracting Authority, that is, scaffolding consisting of pipes and connectors thereof and this Board also takes into account the fact that the pipes were manufactured for the specific purpose of forming the skeleton of the scaffolding, so that the material must have been manufactured for this purpose.**

**At the same instance, the manual submitted by Vaults Company Ltd did show how to set up and dismantle the scaffolding structure so that it is obviously clear that the material used was for this purpose. In this regards, this Board upholds the Appellant’s Second Grievance.**

**3. With regards to the Appellant’s Third Grievance, this Board, after taking into account the nature of the equipment, does not opine that**

**the scaffolding structure requires “*spare parts*” due to the very basic and simple engineering structure.**

**This Board opines that the requisition for “*spare parts*” in this particular case was out of place. What the Contracting Authority should have asked was the assurance of availability of “*Replacement Parts*”. In this regard, this Board upholds the Appellant’s Third Grievance.**

**In view of the above, this Board finds in favour of Vaults Company Ltd and recommends that:**

- a) The offer submitted by Vaults Company Ltd is to be re-integrated in the Evaluation Process;**
  
- b) The deposit paid by the Vaults Company Ltd is to be fully refunded.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Carmel Esposito  
Member

*5 September 2016*