

PUBLIC CONTRACTS REVIEW BOARD

Case No. 979 – MGOZ T 07/2016: Tender for Design Services of an Integrated Multidisciplinary Design Team for the Gozo Museum, Victoria, Gozo (Malta).

The Tender was published on the 4th March 2016. The closing date was on the 2nd May 2016. The estimated value of the Tender was €265,484.49 (Exclusive of VAT)

Three (3) offers had been submitted for this Tender.

On the 29th July 2016 Forward Architects filed an Objection against the decision taken by the Contracting Authority to award the Tender to Design & Technical Resources Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Lawrence Ancilleri and Mr Richard A. Matrenza as members convened a hearing on Thursday the 15th September 2016 to discuss the Objection.

Present for the hearing were:

Forward Architects:

Mr Christopher Micallef	Representative
Ms Joanna Spiteri Staines	Representative
Dr Mark Refalo	Legal Representative
Dr John Refalo	Legal Representative

Design & Technical Resources Limited:

Mr Robert Sant	Representative
Ms Michaela Borg Francalanza	Representative
Dr Alex Schembri	Legal Representative

Ministry for Gozo:

Ms Nicoline Sagona	Chairperson Evaluation Board
Ms Amanda Cardona	Secretary Evaluation Board
Ms Daphne Fenech	Member Evaluation Board
Ms Daphne Sant Caruana	Member Evaluation Board
Ms Mariella Xuereb	Member Evaluation Board
Mr Mario Saliba	Representative
Mr Charles Hili	Representative
Mr Kenneth Gambin	Representative
Dr Tatiana Scicluna Cassar	Legal Representative

The Chairman pointed out that this Objection was not properly filed. Since the Estimated Value of the Tender was over €120,000 it should have been filed under Regulation 84 at the Public Contracts Review Board. He then made a brief introduction and invited the Appellant's representative to make his submissions.

Dr Mark Refalo on behalf of Forward Architects said that he was advised in the Letter of Rejection to file the Objection in Gozo. He then asked to hear the testimony of the Chairperson of the Evaluation Board.

Ms Nicoline Sagona, ID No. 100479M, the Chairperson of the Evaluation Board, under oath testified that she had not been a juror in the first phase of the Tender Adjudication Process but had been the secretary of the jury.

Forward Architects scored 88.4 points while the Recommended Bidder scored 75.6 points. The minimum score for the design was 75%. This was stated in the Tender design brief. Dr Mark Refalo quoted to witness from page 62 of the design brief which stated that "*Only entries with an average score of 80 or more shall be taken through the whole Evaluation Process through to the Financial Evaluation, however, all entries shall be evaluated for Technical Compliance*" and the witness agreed that this referred to the design jury. When asked to confirm that Design & Technical Resources Ltd did not achieve 80 marks, Ms Sagona said that there appeared to be a discrepancy between the points.

Dr Mark Refalo for the Appellants said that he was trying to understand why the Recommended Bidder was financially evaluated since he did not attain 80 marks as required. This was repeated at page 63 which said "*The financial offers for submission which were not eliminated, i.e. those which have achieved an average score of 80 points or more from the jury, will be evaluated*".

Ms Daphne Fenech from Heritage Malta, member of the Evaluation Board, on behalf of the Contracting Authority said that there was a discrepancy in the document because further down it stated that the minimum mark is 75. She contended that no marks could be assigned for the second package, this was either pass, technically compliant, or not.

The only scores that existed were those of the jury. If bidders were found to be technically compliant these were to be deemed to be the technical score. She insisted that there was no technical score. The MEAT assessment was done on the adjusted scores achieved.

Dr Mark Refalo for the Appellant insisted that there were three stages, the design, the Technical Specifications and the financial. Two sets of marks had to be assigned – the first for the design, by the jury – and the other for the Technical Specifications. There were two thresholds. Only those bidders who obtained more than 80 from the jury would be assessed financially. The other threshold was of 75 points for the Technical compliance, and here those that attained more than 75 would qualify for Financial Evaluation.

Thus a bidder could obtain a pass mark for the design and fail to achieve a pass mark for the technical compliance. Only those bidders that passed both thresholds would be assessed financially.

Dr Tatiana Scicluna Cassar for the Contracting Authority insisted that the final scores were arrived at by using a formula. The evaluation criteria could not be disclosed as explained in

the Tender.

The Chairman asked for the results given by the jury.

Ms Nicoline Sagona, who had been the secretary of the jury, said that she had taken down the minutes of the jury meeting. The average marks obtained by the Appellant were 85%, the Recommended Bidder obtained 75.6 and another bidder obtained 44%. The jury then declared that since both the Recommended Bidder and the Appellant had obtained 75% both would pass for the financial evaluation on the MEAT system.

Mr Kenneth Gambin ID No. 252873G the Chairman of the Jury, under oath testified that all members assigned marks. He did not remember the question of the 80% pass mark being discussed. There were 11 members on the jury, and they judged stage 1 the design. None of the members were aware that 80% were needed for financial assessment.

Ms Nicoline Sagona was then recalled to continue giving evidence stated that the Evaluation Board had acted on the decision given by the jury that “*since both surpassed 75% both were eligible for financial assessment*”.

Dr Alex Schembri on behalf of the Recommended Bidder invited the Board to examine again closely the clause at page 62.

At this point the hearing was closed.

This Board,

Having noted the Appellant’s Objection, in terms of the “*Reasoned Letter of Objection*” dated 29 July 2016 and also through their verbal submissions during the Public Hearing held on 15 September 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) Forward Architects contend that, in accordance with the conditions, as stipulated in the Tender Document, Design & Technical Resources Ltd did not attain the score of 80 marks, for his offer to be able to be**

assessed in the second stage of the Evaluation Process.

Having considered the Contracting Authority's verbal submissions during the Public Hearing held on 15 September 2016, in that:

- a) Ministry for Gozo maintains that the minimum score for the design was 75%, as stated in the design brief. In this regard, the Contracting Authority confirmed that Design & Technical Resources attained a score below the 80 marks.

In this regard, the Contracting Authority confirms that there is a discrepancy in the Tender Document since; further on, the same document stated a minimum mark of 75.

Reached the following conclusions:

1. This Board after having examined the Tender Document and the Evaluation Report with special reference to Pages 62 and 63 states that the introduction to the "*Design Submissions*" clearly states that "*Only entries with an average score of 80 or more shall be taken through the whole evaluation process through the Financial Evaluation, however, all entries shall be evaluated for Technical*"

Compliance.”

With all due respect, this Board cannot understand what the Ministry for Gozo wanted to say by this statement in the Tender Document.

In the first instance, a pass mark of 80% has been set, yet at the same time, in this particular case, the Bidder who attained less than 80% was allowed to be assessed on Technical Matters.

This Board finds the Paragraph on Page 62 of the Tender Document quite confusing and contradictory. It is not only unclear but misleading in all respects.

This Board would also respectfully refer to Page 63, Sub Paragraph Part 3, which again clearly states that “*The Financial Offers for submissions which were not eliminated, i.e. those which have achieved an average score of 80 points or more, from the jury, will be evaluated*”

This Board notes that it is amply clear that this Paragraph instils the fact that only those who have attained 80 points at the design evaluation stage can proceed through the process.

In this particular instance, during the Design Evaluation Process, the 80 marks threshold was totally ignored by the jury and the evaluators of the Technical Process.

This Board notes from the witness' Testimony that the Evaluation Board relied on the verdict of the jury, without referring to the Threshold that had to be achieved, i.e. 80 marks.

Design & Technical Resources Ltd did not attain the 80 pass mark; therefore the continued Evaluation of their offer was null and void. The jury were not correct in delivering their adjudication due to the fact that both competing bidders attained a score of more than 75 marks whilst the threshold as stated in the Tender Document was 80. Thus the jury did not follow the conditions as dictated in the Tender Document.

At the same instance, the Evaluation Board should not have rested on the jury's deliberation, in so far as the Threshold 13 was concerned, but rather referring to Pages 62 and 63 of the Tender Document.

In view of the above, this Board finds that the conditions as laid out in

Pages 62 and 63 were not adhered to by the jury and the Evaluation Board. In this regard, this Board recommends that both offers are to be evaluated once again to ensure that all the conditions in the Tender Document are strictly abided by both the bidders and the Evaluation Board, the latter of which should be composed of different members.

This Board also recommends that the refund of the deposit is to be paid by the Appellant.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

29 September 2016