

PUBLIC CONTRACTS REVIEW BOARD

Case 1048 – ZGLC 04/2017 – Cleaning and Upkeep of Żebbuġ Playing Field, Qbajjar Promenade & Ġnien Serjoem is-Saghtrija

The Publication Date of the Call for Tenders was 24 January 2017 whilst the Closing Date for Call of Tenders was 27 February 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 20,000.

Two (2) Bidders have submitted offers for this Tender.

On 29 March 2017, Environmental Landscapes Consortium Ltd filed an Objection against the decision of Kunsill Lokali Żebbuġ Ghawdex to cancel the Tender against a deposit of € 400.

On 16 May 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Richard A Matrenza as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Environmental Landscapes Consortium Ltd

Nobody was present from Environmental Landscapes Consortium Ltd

Contracting Authority – Kunsill Lokali Żebbuġ Ghawdex

Ms Josianne Cassar
Mr William Sultana

Representative
Representative

The Public Contracts' Review Board Chairman, Dr Anthony Cassar, opened by saying that a few moments prior to the commencement of the Public Hearing, a representative for Environmental Landscapes Consortium, has requested a postponement due to the Appellants' Legal Representative not being able to attend.

This request was rejected and thus the Appellants have informed the Public Contracts Review Board that they were going to rest by what they have said in their Letter of Objection dated 28 March 2017. This was confirmed by Mr Antonello Abela, the Principal within the Public Contracts Review Board who spoke to the Appellants' Representative who requested this postponement.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board has then asked the Contracting Authority to clarify something regarding the Annex which there was within the Tender Document, which Bidders had to fill but which Environmental Landscapes Consortium Ltd did not fill correctly. Dr Cassar also requested whether this Annex fell under Clause 7 Note 3 of the Tender Document.

Mr William Sultana on behalf of Kunsill Lokali Żebbuġ (Gozo) confirmed that they could not request a clarification.

At this stage, the Public Hearing was adjourned to Tuesday 23 May 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by Environmental Landscapes Consortium (herein after referred to as the Appellant) on 29 March 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference ZGLC 04/2017 listed as Case No 1048 in the records of the Public Contracts Review Board, issued by Kunsill Lokali Żebbuġ Ghawdex (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Nobody was present

Appearing for the Contracting Authority: Mr William Sultana

Whereby, the Appellant contends that:

- a) Although he did not submit the completed Annex 4.1, “*Schedule of Unit Costs*”, he did submit the global price of the 68 tasks contained in the said annex;**

- b) The Contracting Authority considered the deficiency of not submitting the unit cost for all the items, as being a Technical Deficiency which could not be clarified or rectified. However, in this regard, Environmental Landscapes Consortium insists that, in fact, this lack of submission was an administrative non compliance, so that, the rectification could have been sought.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 5 April 2017 and its verbal submissions during the Public Hearing held on 16 May 2017, in that:

- a) The Contracting Authority contends that none of the Bidders completed Annex 4.1 “*Schedule of Unit Costs*” which formed part of the Financial bid and which fell under Clause 7.3 of the “*Instructions***

to Bidders”, wherein no rectification was possible. In this regard, Kunsill Lokali Żebbuġ (Gozo) had no other option but to cancel the Tender.

This Board, after having considered the merits of this case, arrived at the following conclusions:

1. This Board is considering the merits of this Appeal on the contents of the “*Letter of Objection*” dated 28 March 2017, as Environmental Landscapes Consortium at the final moments, informed this Board that no representative would be available for the Public Hearing. At the same instance, this Board was also informed that the Appellants had no Objection for the Public Hearing to proceed as scheduled.

With regards to the Appellant’s First Grievance, this Board after having examined the relative documentation, notes that Annex 4.1, “*Schedule of Unit Costs*”, consisted of 68 items, the components of which formed the Tendered Works to be carried out.

At the same instance, this Board justifiably points out that the said Annex represented the Financial Bid and for such works a global

sum for the Tendered Works necessitated a breakdown with relative quotes for each of the item listed in the Annex.

The fact that Environmental Landscapes Consortium Ltd contends that it was adequate enough, on their part, to submit a global price, does not, in any credible way, justify the non completion of the Annex which represented a Bid for each item of works to be carried out, as dictated in the Tender Document.

The Tender Document necessitated the completion of Annex 4.1 and in this regard, this Board does not uphold the Appellant's First Grievance since the latter did not abide by this requirement.

- 2. With regards to Environmental Landscapes Consortium Ltd's Second Grievance, this Board would like to refer to Clause 7.D ii) of the Tender Document wherein it was clearly stated that:**

“A Filled-in Financial Bid Form/Bill of Quantities (As per Document Available to Download Online etc)”

This Clause makes it clear that the Financial Offer, as requested, falls under “Notes to Clause 7, Note 3” wherein it is stated that,

“No rectification shall be allowed”.

This Board is credibly convinced that Annex 4.1 formed part of the Financial Offer and in fact represented a Bill of Quantities. In other words, the Annex is regulated by Clause 7, Note 3, so that no rectification can be allowed. In this regard, this Board does not uphold the Appellant’s Second Grievance.

In view of the above, this Board finds against Environmental Landscapes Consortium and recommends that:

- i) The Contracting Authority is authorized to proceed with the cancellation of the Tender;**

- ii) The deposit paid by the Appellant should not be refunded.**

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Richard A Matrenza
Member

23 May 2017