

PUBLIC CONTRACTS REVIEW BOARD

Case 1072 – CFT 009-6039/2017 – Tender for the Supply of Building Material

The Publication Date of the Call for Tenders was 28 April 2017 whilst the Closing Date for Call of Tenders was 11 May 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 64,000.

One (1) Bidder have submitted offers for this Tender.

On 10 July 2017, Little Rock Quarry Ltd filed an Objection against the decision of the Central Procurement and Supplies Unit to cancel the Tender against a deposit of € 400.

On 8 August 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Little Rock Quarry Ltd

Mr Louis Grima	Representative
Dr Carmelo Galea	Legal Representative

Contracting Authority – Central Procurement & Supplies Unit

Ing Frankie Caruana	Chairperson, Evaluation Board
Mr Stephan Farrugia	Secretary, Evaluation Board
Mr Joseph Gherxi	Member, Evaluation Board
Mr George Cutajar	Representative
Mr Marco Woods	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Dr Carmelo Galea, the Legal Representative for Little Rock Quarry Ltd submitted that the Tender was issued for an amount of material whose maximum value was € 64,000. In his clients' opinion, the Tender Document does not permit the Central Procurement and Supplies Unit to reject their offer since Clause 9 of the same Document states that,

“The sole award criterion will be the price. The contract will be awarded to the Tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria”.

Little Rock Quarry Ltd was the cheapest and they satisfied all parameters, continued Dr Galea. He then proceeded to say that the Reasoned Letter of Reply issued by the Central Procurement and Supplies Unit on 20 July 2017 quoted Clause 10 of the Special Clauses in the Technical Specifications of the Tender Document which stated that,

“The Adjudication shall be carried out strictly in line with the items and quantities listed within the published Schedule of Prices. The contract will be awarded to the total cheapest offer of the Schedule of Prices satisfying the selection and technical criteria. Tenderers must quote for all items, including the optional items. However the Government of Malta retains the right to re-order similar services, in part or in whole or variants of these items/services over a period of three years from the date of issue of the Letter of Acceptance or up to a global price which shall not exceed € 64,000 (including VAT), whichever earliest and which costs are deemed too be fair and reasonable when compared to the open market. Tenders that do not include an offer for all items will be rejected.”

The Appellant's Legal Representative continued by saying that once that his client's offer satisfy the criteria, the Contracting Authority was bound to order until € 64,000. He then continued explaining that the price for cement and gravel was slightly expensive since it included overheads and since the Tender did not specify any minimum amounts to be ordered. Had the Tender gave a minimum number of orders, the price could have been cheaper but the expenses had to be increased in order for the Contractor to send a deliveryman with one sack of cement, for example.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit stated that the Appellant's Offer was the only offer for this Tender. When faced with this offer, the Evaluation Board had to look at the prices in the open market and check whether these were excessive when compared to the Appellant's offer.

At this point Dr Stefan Zrinzo Azzopardi summoned Mr Joseph Gherxi, a Technical Officer at Mater Dei Hospital, who was also a member of the Evaluation Board, holding ID Card No 260569 M, was summoned to testify under oath before the Public Contracts Review Board.

Following Mr Gherxi's testimony, Dr Carmelo Galea, the Legal Representative for Little Rock Quarry Ltd submitted that the Central Procurement and Supplies Unit did not have the faculty for the original period and the original value. However, when the latter signs the deal with the cheapest compliant bidder, if the Contracting Authority wants to do other orders, it is bound to them if the offers are fair and reasonable with the prices of the open market.

This reservation, was not made at the issuing of the Tender. When the Evaluation was made, the Central Procurement and Supplies Unit was obliged to award the Tender to whoever had the cheapest offer. If the Contracting Authority than sees that there are other prices which are fair and reasonable, they had the right to overwrite them in the duration of the contract.

At this stage, the Public Hearing was adjourned to Tuesday 22 August 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 Little Rock Quarry Ltd (herein after referred to as the Appellant) on 10 July 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference CFT 009-6039/2017 listed as Case No 1072 in the records of the Public Contracts Review Board, issued by the Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Carmelo Galea

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

Whereby, the Appellant contends that:

- a) **His main concern is that the offer which he submitted was the cheapest fully compliant offer. The Award Criteria was the price**

and in this regard, Little Rock Quarry Limited insists that his offer should not have been discarded and cancelled;

- b) The Appellant also contends that the price of cement and gravel was slightly expensive due to the fact that the Tender Document did not specify the frequency and mode of delivery of these items so that overheads had to be included.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 20 July 2017 and its verbal submissions during the Public Hearing held on 8 August 2017, in that:

- a) The Central Procurement and Supplies Unit insist that the Evaluation Board had to compare the Appellant's quoted offer with the price on the Open Market. During this procedure, it transpired that the quoted price of "*Black Cement*" and "*Gravel*" was well above the market price and since Little Rock Quarry Limited's offer was the only submitted Bid, the Evaluation Board had no other option but to cancel the Tender.**

This same Board also noted the Testimonies of Mr Joseph Gherxi duly summoned by the Central Procurement and Supplies Unit

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

- 1. This Board, after having examined the relevant documentation and heard submissions made by all parties concerned, including the Witness' Testimony, opines that the main issue of this Appeal is the interpretation of Clause 10 of the Special Clauses in the Technical Specifications of the Tender Document which, for clarity's sake, states:**

“The Adjudication shall be carried out strictly in line with the items and quantities within the published Schedule of Prices. The Contract will be awarded to the total Cheapest Offer of the Schedule of Prices satisfying the selection and Technical Criteria. Tenderers must quote for all items, including the optional items. However, the Government of Malta retains the right to re-order similar services, in part or in whole or variants of these items/services over a period of three years from the date of issue of the “Letter of Acceptance” or up to a Global Price which shall not exceed € 64,000, (including VAT), which ever earliest and which costs are deemed to be fair and reasonable when compared

to the open market. Tenders that do not include an offer for all the items will be rejected".

This Board opines that the above mentioned clause dictated a "measuring stick" of how Tenders will be assessed and awarded so that the contents mentioned therein are to be strictly considered and adhered to.

With regards to Little Rock Quarry Limited's Contention, this Board credibly notes that Clause 10 above refer to the various items composed in the submitted offer/offers, thus the Evaluation Board had to examine whether, the Bidder quoted for all the items as listed in the "Schedule of Prices" and whether the individual items quoted were fair and reasonable when compared to the open market.

Through this Clause, the Evaluation Board were in duty bound to examine and evaluate each item as per "Schedule of Prices" submitted by the Appellant. Two items which, when compared to the open market, were found to be highly excessive, were "Black Cement" (Item 2) and "Gravel" (Item 6).

In this respect, the Technical Witness confirmed that the quoted prices were not fair and reasonable, when compared to the Open Market. At the same instance, this Board justifiably opines that the exercise carried out by the Evaluation Board was very objective, as the same Board adhered to the Evaluation and award criteria as stipulated by the Tender Document.

The fact that the Appellant's offer was the only Bid for this Tender, does not in any credible way, exonerate the Evaluation Board from adhering to the dictated conditions in the Tender Document. At the same instance, it is evidently clear that Clause 10 specified that the prices for individual items had to be fair and reasonable when compared to the Open Market.

In this particular instance and from the Technical Witness Testimony, it has been credibly proved that the quoted prices for Item 2 "*Black Cement*" and Item 6 "*Gravel*", were well above the fair and Reasonable Norm. In this regard, this Board does not uphold Little Rock Quarry Limited's First Contention.

- 2. With regards to the Appellant's Second Grievance, this Board acknowledges the fact that the supply of cement and gravel involves**

deliveries to the site and a margin for expenses. However, from the Appellant's quoted prices, it should be taken into account that such a provided margin is way too high and thus deems the supply to be well beyond the market price.

The mathematic difference between the price as quoted by the Appellant and the market price does not, in any credible way, justify the fact that the Tender Dossier did not indicate the mode and frequency of supply.

In this regard, this Board would like to justifiably point out that the Tender was for the supply of material for a period and the Tender Specifications were clear with regards to the description and quantity to be supplied.

At the same instance, this Board noted the credible explanations given by the Technical Witness providing enough evidence to prove that the quoted prices for "*Black Cement*" and "*Gravel*" were far too high when compared to those on the open market. In this regard, this Board does not uphold Little Rock Quarry Limited's Second Grievance.

3. In conclusion, this Board opines that the Tender Dossier indicated sufficient information to allow the Bidder to quote fair and reasonable prices. At the same instance, this Board justifiably opines that Clause 10 does in fact oblige the Evaluation Board that due diligence should be made on quoted individual prices to ensure that they do compare to market prices.

In view of the above, this Board:

- i) Upholds the decision taken by the Central Procurement and Supplies Unit to cancel the Tender;**

- ii) Finds against Little Rock Quarry Limited and recommends that the deposit paid by the latter should not be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

22 August 2017