

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1265 – MGOZ/MPU/T/47/2018 – Tender for the Construction of Stormwater Culvert and the Reconstruction of Part of Triq Sannat, Xewkija, Gozo**

The publication date of the call for tenders was the 20<sup>th</sup> July 2018 whilst the closing date of the call for tenders was 29<sup>th</sup> August 2018. The estimated value of the tender (exclusive of VAT) was € 229,931.14.

On the 30<sup>th</sup> November 2018 Road Structures Ltd filed an appeal against the Ministry for Gozo as the Contracting Authority objecting that their award of the tender had been retracted. A deposit of € 1150 was paid.

There were two (2) bidders.

On 13<sup>th</sup> February 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Road Structures Ltd**

Dr Carmelo Galea	Legal Representative
Mr Louis Grima	Representative

#### **Contracting Authority – Ministry for Gozo**

Mr Marlon Sultana	Representative
Mr Joseph Cutajar	Chairperson Evaluation Committee

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited them to make their submissions.

Dr Carmelo Galea Legal Representative of Road Structures Ltd said that Appellant had been advised that he was awarded the tender. After the award the Ministry for Gozo withdrew the award according to regulation 18.3 as the tender specifications were divergent in details. The tender documents laid out the order of preference in the tender documentation. There was no case of prevention of lack of competition as the Appellant based their offer on the higher grade of wearing course specified in the tender. The Ministry claimed that they were entitled to use regulation 18.1 to cancel the tender, but they had no right to cancel after the award had been made as that extinguished their right.

Mr Marnol Sultana Representative of the Ministry for Gozo stated that the tender was wrongly issued as there was a divergence in the wearing course grade shown between the technical specification and the Bill of Quantities in the tender documents. As a result of this one bidder had tendered for grade 53 and the other for grade 45. The evaluation committee had decided to award the tender to Road Structures Ltd and the result was published. The Ministry later realised the error and recommended cancellation as bidders had been treated unfairly. A notification of cancellation was published.

Mr Joseph Cutajar (1379G) called as a witness by the Board testified on oath that he was the Chairperson of the evaluation committee, which had considered both bids although offers had been for different grades of wearing course. The difference in grades affected the price. The Bill of Quantities was wrong and the second offer was non-complaint as it offered a grade below 53.

The Chairman thanked the parties for their submission and declared the hearing closed.

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**This Board,**

**having noted this Objection filed by Road Structures Limited, (hereinafter referred to as the Appellants) on 30 November 2018, refers to the contentions made by the latter with regard to the cancellation of Tender of Reference MGOZ/MPU/T/47/2018 listed as Case No 1265 in the records of the Public Contracts Review Board and issued by the Ministry for Gozo.**

**Appearing for the Appellants:**

**Dr Carmelo Galea**

**Appearing for the Contracting Authority:**

**Mr Marnol Sultana**

**Whereby, the Appellants contend that:**

- a) their main contention refers to the fact that the Tender was cancelled whilst their offer, which was fully compliant, was not recommended for**

**award. In this regard, the Appellants maintain that their offer exceeded the requested specifications and the cancellation of the Tender is not justified.**

**This Board has also noted the Contracting Authority’s “Reasoned Letter of Reply” dated 21 December 2018 and also its verbal submissions during the Public Hearing held on 13 February 2019, in that:**

- a) The Ministry for Gozo insists that, since there was a divergence in the “wearing course grade” as shown in the technical specifications and Bill of Quantities, the Evaluation Committee could not assess the offers on a level playing field as, in actual fact, one Bidder quoted for this item in accordance with the grade as shown in the Bill of Quantities whilst the second Bidder quoted a grade as stipulated in the technical specifications. In this respect, the Contracting Authority had no other option but to cancel the Tender.**

**This same Board has also noted the testimony of Mr Joseph Cutajar, Chairman of the Evaluation Committee who was duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation to this Appeal and after having heard submissions made by the parties concerned, including**

**the testimony of the witness, opines that, the issue that merits consideration is the formulation of the technical specifications as stipulated in the Tender Document.**

**1. This Board, as it has on numerous occasions, would respectfully emphasize the importance which should be given to the drafting and formulations of the technical specifications of the Tender Document. It should be acknowledged that these specifications form the core of a Tender and should:**

- be precise in the way they describe the requirements;**
- be easily understood by the prospective Bidder;**
- have clearly defined, achievable and measurable objectives;**
- be in such a manner as not to limit competition or give an advantage to a sector of Bidders;**
- provide sufficient detailed information that allows Bidders to submit a realistic offer.**

**2. This Board would refer to the technical specifications, Appendix 9/2 wherein, the PSV for the wearing course had to be 53. At the same instance, the same item as indicated in the Bills of Quantities, under**

**item of reference 10.003d, shows the wearing course to be 45, hence an apparent divergence between the two specifications for the same technical item.**

**3. In this regard, this Board justifiably establishes that such a divergence created an obstacle for the Evaluation Committee to evaluate, in a transparent manner and on a level playing field, the only two offers duly submitted. On the other hand, had the Evaluation Committee proceeded with the award of the Tender, the Contracting Authority would have breached the basic principles of equal treatment. In this regard, this Board is convinced that the cancellation of the Tender was the only option available to the Ministry.**

**4. On a concluding note, this Board would remind the Contracting Authority that it must ensure that, in future Tenders, technical specifications should be formulated in a clearer manner so as not to limit competition and at the same instance, avoid ambiguities.**

**In view of the above, this Board,**

**i) upholds the decision taken by the Ministry for Gozo in cancelling the Tender;**

**ii) does not uphold the contentions made by Road Structures Limited;**

**iii) directs that an amount of one hundred and fifty euro (€ 150) is to be retained from the deposit made by the Appellant, to cover the costs for the processing of this Appeal.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr. Carmel Esposito  
Member

*21<sup>st</sup> February 2019*