

PUBLIC CONTRACTS REVIEW BOARD

Case 1276 – MSDEC 76/2013/5 – Tender for the Design and Formation of a Steel Intermediate Flooring and Complete Finishing of Same Room at Top Floor of Casa Leone

The publication date of the call for tenders was the 6th November 2018 whilst the closing date of the call for tenders was 27th November 2018. The estimated value of the tender (exclusive of VAT) was € 55,117.

On the 6th February 2019 De Valier Co Ltd filed an appeal against the Ministry for the Environment, Sustainable Development and Climate Change as the Contracting Authority objecting that their bid was found to be not technically compliant leading to the cancellation of the tender. A deposit of € 400 was paid.

There was one (1) bidder.

On 7th March 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 – De Valier Co Ltd

Dr Marco Woods	Legal Representative
Mr Mario Cassar	Representative
Ms Marilyn Attard	Representative

Contracting Authority – Ministry for the Environment, Sustainable Development and Climate Change

Dr Victoria Scerri	Legal Representative
Mr Francis Farrugia	Chairperson Evaluation Committee
Mr Gaetano Vella	Member Evaluation Committee
Ms Marie Ellen Cordina	Member Evaluation Committee
Ms Joanna Grioli	Representative

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

DR Marco Woods Legal Representative for De Valier Co Ltd stated that Appellants' offer had been rejected (on bid 104484) as the technical offer was lacking two documents - the works programme and a Gantt chart, as a consequence of which the tender was recommended for

cancellation. Appellants' main objection to the disqualification is that their offer was fully conforming and all documents had been submitted in the e-tender.

Ms Marilyn Attard (37587G) called as a witness by the Appellants testified on oath that she prepared the tender for the Appellants' firm and uploaded them on the electronic system. She put the technical offer, the works programme and the Gantt charge into one folder and uploaded that folder ---as a zip file. (For ease of reference these documents are marked A, B and C in the attachment to the letter of objection). Two bids were submitted but the electronic data sheet indicated only one bid was submitted. An email querying this point was tabled as Doc 1.

Ms Marie Ellen Cordina (355396M) called as a witness by the Appellants testified on oath that she was a manager in the Procurement Section of the Ministry and was involved in publishing the tender. During the opening of the bids two colleagues responsible for the opening encountered a problem as on the screen two offers from Appellants were shown but only one box was ticked – which meant that one of the offers was not opened. She contacted a colleague, and the process was halted. She then sent an email to Appellants.

Mr Francis Farrugia (84369M) called as a witness by the Board testified on oath that he was the Chairperson of the evaluation committee. He confirmed that the offer was not compliant and that he was aware that an error had occurred during the opening of those offers. The committee had no knowledge of what documents had been uploaded at that stage nor had the evaluation process started. Subsequently all tenders were opened and the evaluation of both bids proceeded with. There were technical documents missing from Appellants bid. The evaluation process could not continue as the works programme and the Gantt chart had not been submitted.

Mr Gaetano Vella (501261M) called as a witness by the Board testified on oath that he was part of the evaluation team. He confirmed that only the technical offer was submitted in both offers and no Gantt chart had been uploaded.

Mr Christopher Agius (180772M) called as a witness by the Contracting Authority testified on oath that he was a Procurement Manager at the Department of Contracts. His responsibilities included the EPPS system support. He explained that each offer received on a tender was either ticked individually as selected or globally for all bids. If a bid was not ticked that offer was not unlocked.

Dr Woods intervened to say that two offers had been submitted but only one appeared on e-tenders – a clear indication that there was something wrong in the system. Witness Ms Attard had testified that all documents had been uploaded in one pdf folder, containing all three documents but the Contracting Authority still maintained that two of the documents in that folder had not been received.

Continuing his evidence Mr Agius stated that the tender co-ordinator harvests all information in the tender and at no stage where the missing documents seen.

Dr Victoria Scerri Legal Representative for the Ministry for the Environment, Sustainable Development and Climate Change said that enough evidence had been heard to confirm that the two documents referred to earlier had not been received and the bid was non-compliant.

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

This Board,

having noted this Objection filed by De Valier Company Limited (herein after referred to as the Appellants) on 6 February 2019, refers to the claims made by the same Appellants with regard to the Tender of reference MSDEC 76/2013/5 listed as Case No 1276 in the records of the Public Contracts Review Board, issued by the Ministry for the Environment, Sustainable Development and Climate Change (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Dr Marco Woods

Appearing for the Contracting Authority: Dr Victoria Scerri

Whereby, the Appellants contend that:

- a) their offer was rejected due to the alleged claim that the “*works programme*” and “*Gantt chart*”, were not submitted. In this regard, the Appellants maintain that they have submitted both documents as duly requested and their offer was fully compliant, so that cancellation of the Tender is not justified.**

This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 7 February 2019 and its verbal submissions during the hearing held on 7 March 2019, in that:

- a) The Contracting Authority insists that since the Appellants did not submit the requested documentation, namely, the “*Programme of Works*” and the “*Gantt Chart*”, their offer was technically non-compliant and since there were no compliant offers, the Evaluation Committee had no other option but to recommend the cancellation of the Tender**

This same Board has also noted the testimony of the following witnesses namely:

- 1. Ms Marilyn Attard, who was duly summoned by De Valier Company Limited;**
- 2. Ms Marie Ellen Cordina, who was duly summoned by De Valier Company Limited;**
- 3. Mr Francis Farrugia, who was duly summoned by the Public Contracts Review Board;**
- 4. Mr Gaetano Vella, who was duly summoned by the Public Contracts Review Board;**
- 5. Mr Christopher Agius, who was duly summoned by the Ministry for the Environment, Sustainable Development and Climate Change**

This Board has also taken note of the documents submitted by the Ministry for the Environment, Sustainable Development and Climate Change which consisted of an e-mail sent to De Valier Company Limited informing them of the technical hitch in the system, marked as Doc 1 during the Public Hearing.

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned, opines that the issue to be considered refers to the alleged non-submission of the “*Programme of Works*” and the “*Gantt Chart*” by De Valier Company Limited.

- 1. The Appellants, through the testimony of Ms Marilyn Attard, confirmed that upon preparing the requested Tender Documents, the latter were uploaded on to the electronic system, into one folder, as a zip file and such documentation included the “*Programme of Works*” and the “*Gantt Chart*”. The Appellants were also made aware that a technical problem arose from the Contracting Authority’s end, in that, upon the opening of the tender’s procedure, one of the Appellants’ offers was not opened;**
- 2. This Board was also made aware that the technical error being referred to, simply consisted of, one of the members at the, “*Opening of Offers*” stage failing to tick the correct box with the effect that, one of the**

Appellants' offer could not be opened. This Board also noted the testimony of Mr Christopher Agius, the person responsible for the Electronic Public Procurement System support, who confirmed that such a technical error does not affect the contents of the submitted offers and subsequently all tenders were opened and the evaluation of both bids was carried out in the normal procedural method;

- 3. From the above mentioned credible and technical submissions, this Board is comfortably convinced that the technical error which occurred during the "*Opening of Tenders*" stage, did not, in any way, disturb or affect the contents of the submissions made and that the Evaluation Committee were with the non-inclusion of the "*Works Programme*" and the "*Gantt Chart*", both documents being mandatory submissions;**
- 4. This Board would respectfully point out that, the onus of submitting the information, as duly dictated in the Tender Document, falls on the Bidder so that, the latter must ensure that, prior to the actual submission of his offer, he must ensure that his offer complies completely with the requested documentation so stipulated.**
- 5. In conclusion, this Board:**
 - a) opines that although a technical error occurred during the "*Opening of Offers*" stage, the documentation which was actually submitted by the Appellants was not affected in any way and no data was lost from the Electronic Public Procurement System;**

- b) is comfortably convinced that the submissions made by the Appellants did not include the “*Programme of Works*” and the “*Gantt Chart*”, which documents were mandatorily requested in the Tender Document;**
- c) also confirms that since there were no compliant offers, there was no other option but to cancel the Tender.**

In view of the above, this Board,

- i) upholds the decision taken by the Ministry for the Environment, Sustainable Development and Climate Change to cancel the Tender;**
- ii) rejects the contentions made by De Valier Company Limited;**
- iii) directs that the deposit paid by the Appellants should not be refunded**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

14th March 2019