

PUBLIC CONTRACTS REVIEW BOARD

Case 1327 – ILC/T/6/2018 – Tender for the Provision of the Professional; Services of an Architect to the L-Iklin Local Council

The publication date of the call for tenders was the 30th October 2018 whilst the closing date of the call for tenders was 20th November 2018. The estimated value of the tender (exclusive of VAT) was € 48,000.

On the 13th June 2019 Med Developers Designers and Consultants Ltd filed an appeal against the L-Iklin Local Council as the Contracting Authority's decision to award the tender to a bid quoting abnormally low employment rates. A deposit of € 400 was paid.

There were four (4) bidders.

On 9th July 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr. Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Med Developers Designers and Consultants Ltd

Dr Mark Fenech Vella	Legal Representative
Architect Anthony Bezzina	Representative
Mr Clayton D'Amato	Representative

Preferred Bidder – Creatit Studio

Dr Luana Borg	Legal Representative
Architect Matthew Casha	Representative

Contracting Authority – L-Iklin Local Council

Mr Etienne Montfort	Secretary Evaluation Committee
Architect Julian Borg	Member Evaluation Committee
Ms Yvonne Bartolo	Member Evaluation Committee
Ms Maris Azzopardi	Member Evaluation Committee

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr Mark Fenech Vella Legal Representative of Med Developers Designers and Consultants Ltd said that further to the points in their letter of appeal they wish to add the point that the preferred bidder claims that he was self-employed. The basis of the appeal is a fundamental point of administrative law which does not allow a rate of pay lower than that stated by law. There must be a bare minimum rate of pay to stop abuse.

The Chairman pointed out that the difference between the winning bid and that of the Appellant was only € 180. The tender document requires the use of a professional service of an architect and there was no labour content involved as there was no employment.

Architect Julian Borg Representative of the L-Iklin Local Council agreed that the tenders were close in price. The Council had sought clarification why the rates were so low and was advised that the major part of the costs was the percentage charge on construction costs and certain rates had been discounted to offer a more project oriented bid. The Contracting Authority proceeded with the evaluation and chose the cheapest offer.

Architect Anthony Bezzina said that the rates offered for preparation of reports and similar items were very low. The Board should look at the rates offered on items 6, 7, 9, 10 and 11 in the context of the offer.

The Chairman mentioned that it was essential that one looks at the global price of the bids and not at individual items. The overall difference between the bids was only € 180 and that was not abnormally low according to the European Union directives.

Architect Julian Borg (489286M) called as a witness by the Board testified on oath that he was a member of the Evaluation Committee which had looked at both the global price and the individual rates on the various items in the tender. They had sought a clarification to confirm the rates as presented and were satisfied with the outcome as they were assured that the bidder would absorb the low rates through the percentage charge on the major projects.

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

This Board,

having noted this objection filed by MED Developers Designers and Consultants Limited (herein after referred to as the Appellants) on 13 June 2019, refers to the claims made by the same Appellants with regard to tender of reference ILC/T/6/2018, listed as case no 1327 in the records of the

Public Contracts Review Board, awarded by Iklin Local Council (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Dr Mark Fenech Vella

Appearing for the Contracting Authority: Mr Etienne Montfort

Whereby, the Appellants contend that:

- a) the preferred Bidder's rates with reference to items, 6, 7, 9, 10 and 11 of the bills of quantity, are below the minimum rates one is supposed to pay according to labour laws and, in this respect, this Board is being requested to examine such an instance.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 24 June 2019 and its verbal submission during the hearing held on 9 July 2019, in that:

- a) the Contracting Authority insists that the Evaluation Committee took all the necessary action to ensure that the rates quoted by the Preferred Bidder on items, 6, 7, 9, 10, and 11 of the bills of quantity, were viable and were satisfied with the explanations given by the Bidder. At the same instance, the Committee took into consideration the fact that this tender**

consisted of a professional service of an architect, where no additional labour was involved.

This same Board also noted the testimony of the witness namely, Architect Julian Borg duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned, opines that the issue which merit consideration, in this particular case, is the Appellants' alleged claim in that the Preferred Bidder's rates relating to items, 6, 7, 9, 10 and 11 of the bills of quantity (BQR) were below the statutory rates.

- 1. First and foremost, this Board would respectfully point out that this tender was issued for the provision of professional services of an Architect, so that a holistic approach on a 'Fee-Based Service Contract' has to taken into consideration during the evaluation process.**
- 2. This Board notes that both the Preferred Bidders and Appellants were fully compliant with the exception that the successful Bidder quoted a cheaper overall price by Euro 180 only. In this respect, this Board would point out that the Evaluation Committee took the appropriate measure**

to enquire and find out why the rates for items 6, 7, 9, 10 and 11, of the bill of quantity were low. Explanations given by the Successful Bidder were that, the rates quoted in the items, 6, 7, 9, 10 and 11, had been heavily discounted in order to present a more project-oriented bid. In this regard, this Board confirms that the reasoning behind such discounts in rates on the mentioned items, is logical and appropriate, as the tender asked for a professional service to cover the duties as stipulated in clause 4.2.2 of the tender document.

- 3. This Board would also point out that the award criteria was the price and the Evaluation Committee, quite appropriately followed the principle of self-limitation, so that the evaluation process was carried out in a fair, just and transparent manner.**

In conclusion, this Board opines that:

- a) the Evaluation Committee acted in a diligent manner by seeking explanations from the successful Bidder about the quoted rates for items, 6, 7, 9, 10 and 11 of the Bill of Quantity,**

- b) The award process was correctly and justly executed by the Evaluation Committee,**
- c) Apart from the fact that the tender document included a Bill of Quantity, this tender is to be regarded as professional service tender, so that the global price is pivotal in the consideration for award by the Contracting Authority.**

In view of the above, this Board,

- i) Upholds the Contracting Authority's decision in the award of the tender,**
- ii) Does not uphold Appellants' contentions,**
- iii) Directs that the deposit by appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

11 July 2019