

PUBLIC CONTRACTS REVIEW BOARD

Case 1548 – CT 2398/2020 – Tender for the Dismantling Works of the Nissen Huts and Excavation Works for a Multi-Level Car Park at the Malta National Park, Ta Qali

29th March 2021

This Board,

Having noted the letter of objection filed by Dr Marco Woods on behalf of Tal-Maghtab Construction Co Ltd, hereinafter referred to as the appellant, on the 18th January 2021;

Having noted the letter of reply filed on the 21st January 2021 by Perit Anton Camilleri on behalf of the Ministry for Transport, Infrastructure and Capital Projects hereinafter referred to as the Contracting Authority;

Having also taken cognizance of all the documentation and the evidence produced, including the testimony of the witnesses Mr Ryan Sciberras, Perit Roderick Bonnici and Perit Anton Camilleri;

Having heard the verbal submissions made by Dr Marco Woods on behalf of the appellant, Dr Mark Sammut on behalf of the Contracting Authority and Dr Carl Grech who was acting on behalf of the preferred bidder – Schembri Infrastructure Ltd;

And having noted and evaluated the minutes of the virtual hearing held on the 17th March 2021, hereunder reproduced;

Minutes:

The tender was published on the 25th September 2020 and the closing date was the 12th November 2020. The value of the tender was € 3,788,500 (exclusive of VAT).

On the 18th January 2021 Tal-Maghtab Construction Co Ltd (Maghtab) filed an appeal against the Ministry for Transport, Infrastructure and Capital Projects (Ministry) as the Contracting Authority objecting to their disqualification on the grounds that their bid was not compliant.

A deposit of € 18,943 was paid.

There were nine (9) bidders.

Perit Roderick Bonnici (277984M) called as a witness by Appellant testified on oath that the CMP is complete and ready to be submitted.

Dr Mark Sammut Legal Representative for the Ministry for Transport, Infrastructure and Capital Projects stated that the CMP was required to be submitted with the bid as mentioned in Page 7 of the tender document under Specification 5 (C)(i) 2 which was subject to Note 3. The Appellant submitted a programme of works but not the CMP.

Perit Anton Camilleri (522759M) called as a witness by the PCRБ testified on oath that he was the Chairperson of the Evaluation Committee. He stated that the tender document comprises several parts and often requests documents to be submitted at different stages of the procurement process. If a bidder is required to submit a document at the bidding stage there is no point in arguing that the document will be submitted at the post award stage. In this case the bidder did not submit a CMP but a type of Gantt chart in lieu which included a reference to Note 3 and therefore removes any doubt that the CMP was required at the time of tendering. There is a big difference between the document submitted and what was required. There are two issues here – firstly the bidders were aware of the tender requirement as they submitted a document which they called a CMP and the second issue is that what they submitted was not a CMP and was not acceptable to the Contracting Authority.

Dr Woods said that according to a witness there were two separate requests in the tender for the submission of a CMP. Appellants maintain that they are correct in following the directions in Pages 10 and 28 which clearly state that the CMP is to be submitted at post award stage. Appellants confirmed through a witness that the CMP is ready and available. Appellants submit that should the Board turn down this appeal they should consider refunding the deposit paid.

Dr Sammut mentioned that Appellants do not deny that the CMP was requested both at the bidding and post award stage.

Dr Grech said that it is clear what the tender stated. The reference to the CMP in page 7 afforded no leeway but what was submitted was not what was requested. If as Appellants claim the CMP was ready and available why was it not submitted? The PPR requires proportionality and that excludes late submission of documents and the Authority was correct and justified in its decision.

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

End of Minutes

This Board believes that the present appeal arose after the appellant had been informed that its offer was deemed to be technically non-compliant because it failed to submit the Construction Management Plan as required in Section 1.5 (c)(1) 2 of the tender document. Appellant was also informed that the document submitted with its tender was not considered by the Contracting Authority to be a Construction Management Plan, but was just a Programme of Works/Gantt Chart.

The letter of objection by the appellant did not contest this latter assertion of the Contracting Authority, (that the document submitted was not considered to be a Construction

Management Plan), but instead insisted that the Construction Management Plan should not have been submitted with the tender but had to be submitted post award stage, when the contractor had been awarded. The appellant cited Article 11 and Section 2.2.2;

This Board considers that while it is true that the articles cited by the appellant refer to actions following the award of the tender, appellant failed to take into consideration Clause (C) of the Specifications of the tender document which was clearly marked “note 3” and thus did not allow for rectification. This clause, dealing with the Technical Offer states “The Technical Offer Form shall consist of the following:” and at point 2 it continues “**a) Construction Management Plan** and **b) Declaration Form**”. Therefore it is this Board’s opinion that the Construction Management Plan had to be submitted with the tender and that if not submitted, the omission could not be rectified because of note 3.

In view of the above, this Board finds that the evaluation of appellant’s tender was correctly carried out and thus rejects appellant’s appeal. In the circumstances, the Board also recommends that the amount of Five Thousand Euro (€ 5,000) from the deposit paid by appellant be retained to cover administrative costs and charges, but the balance of € 13,943 is to be refunded to appellant.

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member