

are no roofs large enough to merit a cost of one million Euro. This puts Maltese prospective bidders at a disadvantage and renders them unable to compete.

Dr Christopher Mizzi Legal Representative for the Ministry for Justice, Culture and Local Government stated that the project required proportionality in the cost of the roof to the total project. There are ways of meeting the tender requirement through joint ventures, sub-contracting and similar methods.

Architect Norbert Gatt (244168M) called as a witness by the Public Contracts Review Board testified on oath that he was the Project Leader in this project. He also emphasised the proportionality of the roof component structure which is costed at €3.2 million or 23% of the project. There was a need for assurance that there is the correct relationship in the contract. The roof component includes all other materials forming part of the structure, as for example glass panes spanning the metal structures.

Dr Mizzi said that if the Board felt that there was a need of a clarification to specify how the roof component is made up he was certain that the Director of Contracts would find no objection.

Dr Franco Agius Legal Representative of the Department of Contracts said that there was no objection to a clarification but it was necessary to ensure that full details of the finished product are given exactly to ascertain that no one is excluded from tendering.

Mr Camilleri pointed out that there was not much point in 'importing' experience when the knowhow already exists in Malta.

The Chairman said that from the explanations provided it must be clear to the Department of Contracts what clarification was required. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this 'Call for Remedy Prior to the Closing Date for a Call for Competition' filed by E&L Enterprises Ltd (herein after referred to as the

Appellants) on 3 October 2019, refers to the claims made by the same Appellants with regard to the tender of reference CT 3065/2019 listed as case no 1380 in the records of the Public Contracts Review Board.

Appearing for the Appellants: Mr Joseph Camilleri

Appearing for the Contracting Authority: Dr Christopher Mizzi

Appearing for the Department of Contracts: Dr Franco Agius

Whereby, the Appellants contend that:

- a) The stipulated experience in metal structures, which is dictated at one million Euro for the construction of the roof, is somewhat high and such an amount will disadvantage Maltese bidders.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 21 October 2019 and its verbal submissions during the hearing held on 7 November 2019, in that:

- a) The Authority maintains that the dictated amount of one million Euro is proportional to the whole project and the Authority is seeking assurance that there will be the correct and experienced workmanship to execute the tendered project.**

This same Board also noted the testimony of the witness namely:

Architect Norbert Gatt, project leader duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation to this Call for Remedy and heard submissions made by the parties concerned, including the testimony of the witness duly summoned opines that, the issue that merits consideration is the stipulated two million Euro worth of past projects relating to the construction of large span steel roofs with welded joints.

- 1. This Board would respectfully refer to clause 7 (c) c) which states as follows:**

“(C) At least two (2) projects effected during the last 5 years (being 2015-2019): the minimum value of which must not be less than €1 million incl. VAT per project for the quoted period for large span steel roofs with welded joints. Value refers only to the roof component and not to the whole project”

The above-mentioned clause is denoting that bidders must have carried out specific large span steel roof with welded joints to the tune of €2 million over the last 5 years (2015-2019).

- 2. This Board however notes that the clause is somewhat unclear and can be misinterpreted in that, it does not stipulate what components are to be included in arriving at cost of projects worth €1 million each, so that, in this regard, this Board opines that, through a clarification note, the Authority should amplify the components which are to be included in estimating the value of such projects, relating to the structure of the roof only.**

- 3. This Board also noted the testimony of Architect Norbert Gat, through which it was confirmed that the roof components includes all other materials forming part of the structure such as glass panes, painting etc.**

In conclusion, this Board opines that:

- a) The stipulated amount of €1 million worth of the roof structure is reasonable and proportional to the total cost of the project, as duly stipulated in clause 7 (c) c) of the tender dossier.**

- b) The components of the roof structure should be identified and denoted, through a clarification note.**

In view of the above, this Board,

- i. Directs the Authority to issue a clarification note to reflect this Board's recommendation,**

- ii. directs the Authority to resume the tendering process once i) above is acted upon.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

14 November 2019