

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 374

**KLM/2011/06**

**Tender for the Upgrading and Embellishment of Play Area at Misrah Mifsud Bonnici, Marsascala**

The closing date for this tender which was published on the 10th May 2011 was the 9<sup>th</sup> June 2011.

The estimated value of this tender was € 150,000 – € 180,000.

Five (5) tenderers submitted their offers.

Messrs Alhag Malta Ltd filed an objection on 24<sup>th</sup> October 2011 against the decision of Marsascala Local Council to disqualify its offer as technically non-compliant.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr Carmel Esposito and Mr Paul Mifsud as members convened a meeting on Friday, 27<sup>th</sup> January 2012 to discuss this objection.

Present for the hearing:

### **Alhag Ltd**

Mr Matthew Spiteri                      Representative/Engineer

### **Messrs Reactilab Ltd**

Dr John Gauci                              Legal Representative  
Mr Stephen Debono                      Representative

### **JGC Ltd**

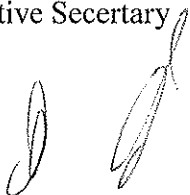
Mr Pierre Cuschieri                      Representative

### **Marsascala Local Council (MLC)**

Dr Susann Agius                              Legal Representative  
Mr Aaron Abela                              Technical Advisor

### **Evaluation Board**

Mr Mario Calleja                              Mayor  
Mr Charlot Mifsud                              Deputy Mayor  
Mr Lawrence Ciantar                              Councillor  
Mr George Farrugia                              Councillor  
Mr John Baptist Camilleri                      Councillor  
Mr Josef Grech                                  Executive Secretary



After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of his company's objection.

### 1) Non-submission of play equipment for age group 13 - 15

Mr Matthew Spiteri representing Alhag (Malta) Ltd, the appellant company, made the following submissions:

- by letter dated 14<sup>th</sup> October 2011 the Marsascala Local Council had informed them that the offer had been found to be non-compliant and quoted as follows:-

*"The reason for this non-compliance was due to the fact that you did not provide play equipment for the age group between 13 and 15 years of age (teens) as clearly indicated in Article 2.01.02 of the General Specifications."*

- with the letter of appeal Alhag (Malta) Ltd had attached a confirmation from Hags Aneby AB of Sweden, the supplier, that the units *Agito Nell* and *Nexus Quantum* were very much suitable to 13-15 year olds and that the recommended age of 6 years upwards was only a recommendation;
- the items in question were made of steel and so very robust;

and

- the contracting equipment could have asked for a clarification as to whether this equipment could be used by age group 13 to 15.

Dr Susann Agius, legal representative of the Marsascala Local Council, remarked that this declaration from the supplier was submitted with the appeal but was not presented with original tender submission and, as a consequence, it could not have been taken into consideration by the evaluation board. Dr Agius added that the equipment presented by the appellant company was clearly indicated for the age group 5 to 12 years and, as a result, there was no scope for the contracting authority to seek a clarification as to whether that same equipment was also suitable to 13-15 year olds, as was being suggested by the appellant company.

### 2) The offer was the highest submitted

Mr Spiteri remarked that the letter of rejection dated 14<sup>th</sup> October 2011 also stated that the offer by Alhag (Malta) Ltd was the highest and went on to explain that Alhag (Malta) Ltd, in fact, presented two options with regard to the CCTV system.

Dr Agius pointed out that the tender document did not provide for more than one option per tender.

Mr Josef Grech, executive secretary to the Marsascala Local Council, remarked that, strictly speaking, the appellant company could have been rejected for submitting two options as the tender document did not allow for that.

The Chairman Public Contracts Review Board intervened to place emphasis on the fact that the appellant company should have been excluded on administrative grounds for submitting two options when the tender document specifically stated that no bidder was allowed to offer more than one option. The Public Board stated that, effectively, the technical evaluation of the offer should not have taken place.

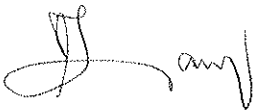
As a direct consequence of the above it was resolved that the appeal hearing would be brought to a close at this point. The other two points, raised in the evaluation report but not featuring in the letter of rejection, namely (i) that no specifications for the lamp post poles were provided, and (ii) the equipment provided for the disabled did not integrate with the other equipment, were not debated.

At this point the hearing was brought to a close.

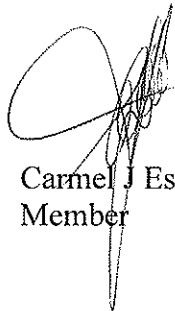
This Board,

- having noted that the appellant company, in terms of the reasoned letter of objection dated 24<sup>th</sup> October 2012 and through the verbal submissions made during the hearing held on 27<sup>th</sup> January 2012, had objected against the decisions of Marsascala Local Council to disqualify its offer as technically non-compliant and to recommend award to JGC Ltd;
- having also noted the appellant firm's representative's claims and observations but, more so, that the appellant company's original bid should not even have qualified to the technical evaluation stage in view of an administrative non-compliance,

resolved to find against the appellant company and to recommend that the deposit paid by the latter should not be reimbursed.



Alfred R Triganza  
Chairman



Carmel J Esposito  
Member



Paul Mifsud  
Member

6 February 2012