PUBLIC CONTRACTS REVIEW BOARD

Case No. 394

MRRA/W/140/2010/13
Tender for Repairs to Existing Slipway at St Georges Bay, St Julians

This call for tenders was published in the Government Gazette on the 6th January 2012. The closing date for this call with an estimated budget of € 35,015 was the 27th January 2012.

One (1) tenderer submitted their offers.

Power Cut Ltd filed an objection on the 24th February 2012 against the decisions of the Ministry for Resources and Rural Affairs to disqualify its offer as the latter was considered to be technically non-compliant and to recommend the cancellation of the tender.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Friday, 23rd March 2012 to discuss this objection.

Power Cut Ltd

Mr Joseph Cachia	Representative
Perit Joe Bugeja	Representative

Ministry for Resources and Rural Affairs

Evaluation Board

Architect Patrick Grixti Soler	Chairman

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

Mr Joe Bugeja, representing Power Cut Ltd, the appellant company, made the following submissions:-

i. by letter dated 21st February 2012, the contracting authority had informed Power Cut Ltd that its offer was not technically successful due to 'lack of required information on the technical aspect as per Clause 1.2.9';

ii. the appellant company had submitted its profile by way of a list of past works carried out, including works related to marine construction and development;

iii. some of the marine works indicated, e.g. the extension of the Comino Berth with a value of €180,000, were carried out on his company's designs and under the latter's supervision since his firm was also a consultant with Transport Malta;

iv. the Comino Berth project was carried out by Mr Paul Bezzina, who at the time partly owned and directed AB Marine Services but who currently formed part of a team at Power Cut Ltd;

and

v. the company's representative maintained that his company had submitted a compliant offer.

Architect Patrick Grixti Soler, chairman of the adjudicating board, submitted the following:-

a. the slipway at St Georges Bay, St Julians, was constructed by the Tourism Authorities about four years ago but gave in and, as a consequence, the contracting authority wanted to ensure that this time it woud engage a contractor with the required experience;

b. the appellant company was the only bidder in this tendering process;

c. during the evaluation of the appellant company's tender submission doubts cropped up as to whether the appellant comapny had the necessary experience for the following reasons:

   i) Power Cut Ltd did not indicate the projects' name and the marine works content of all the projects listed as 'works carried out';

   ii) whilst the appellant company referred to a certain Mr Paul Bezzina as the person who possessed experience on marine works, yet the said bidder did not provide a letter of commitment from Mr Bezzina that the latter would render his services on this project;

and

d. the tender document requested evidence of the contractor's experience but it did not explicitly request such a document as a letter of commitment from Mr Bezzina.

The Chairman Public Contracts Review Board remarked that, evidently, the contracting authority requested proof of the contractor's experience, the appellant company's representative declared that the company had the required experience and submitted Power Cut Ltd's list of works carried out and also named Mr Paul Bezzina as the person who would be responsible for the works. Nevertheless, the contracting authority expected the bidder to provide a letter of commitment from Mr Bezzina, which document was not requested in the tender document. The Chairman Public Contracts Review Board expressed the view that the contracting authority could have asked for a clarification from the bidder in this regard.

Architect Grixti Soler remarked that correspondence had been exchanged internally where he, as chairman of the evaluation board, requested permission to seek a clarification but the Department's Contracts Committee denied the request.

Following an examination of the relevant file, it did not emerge to the Public Contracts Review Board that any specific written request to the Department's Contracts Committee was made by the adjudicating board for permission to seek a clarification concerning the bidder's experience so much so that in the section title 'Technical Evaluation' of the final evaluation report the adjudicating board confirmed 'that the information submitted by the bidder show a lack of experience in the field which jeopardises the success of the required works' and further confirmed the bid as 'non compliant'.

Architect Grixti Soler insisted that the Department's Contracts Committee did not allow the adjudicating board to seek a clarification from the bidder with regard to his experience in marine related works.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 24th February 2012 and also through their verbal submissions presented during the hearing held on the 23rd March 2012, had objected to the decision taken by the pertinent authorities;

- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 21st February 2012, the contracting authority had informed Power Cut Ltd, the appellant company, that its offer was not technically successful due to 'lack of required information on the technical aspect as per Clause 1.2.9', (b) the appellant company had submitted its profile by way of a list of past works carried out, including works related to marine construction and development, (c) some of the marine works indicated, e.g. the extension of the Comino Berth with a value of €180,000, were carried out on the company's designs and under the latter's supervision since the appellant firm was also a consultant with Transport Malta and (d) the Comino Berth project was carried out by Mr Paul Bezzina, who at the time partly owned and

directed AB Marine Services but who currently formed part of a team at Power Cut Ltd;

- having considered the contracting authority's representatives' reference to the fact that (a) the slipway at St Georges Bay, St Julians, was constructed by the Tourism Authorities about four years ago but gave in and, as a consequence, the contracting authority wanted to ensure that this time it woud engage a contractor with the required experience, (b) the appellant company was the only bidder in this tendering process, (c) during the evaluation of the appellant company's tender submission doubts cropped up as to whether the appellant comapny had the necessary experience for the following reasons, namely (1) Power Cut Ltd did not indicate the projects' name and the marine works content of all the projects listed as 'works carried out', (2) whilst the appellant company referred to a certain Mr Paul Bezzina as the person who possessed experience on marine works, yet the said bidder did not provide a letter of commitment from Mr Bezzina that the latter would render his services on this project, (3) the tender document requested evidence of the contractor's experience but it did not explicitly request such a document as a letter of commitment from Mr Bezzina and (d) the chairman of the adjudicating board had corresponded with the Department's Contracts Committee for the latter to authorize the evaluation board to seek a clarification regarding the bidder's experience in marine related works from the tenderer but such request was declined,

reached the following conclusions, namely:

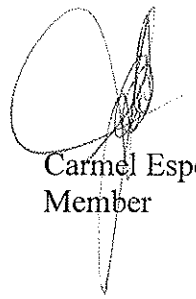
1. The Public Contracts Review Board opines that in order to conform with the contracting authority's request for proof of the contractor's experience the appellant company's representative declared that the company had the required experience with the latter submitting Power Cut Ltd's list of works carried out whilst naming Mr Paul Bezzina as the person who would be responsible for the works. This Board notes that the contracting authority expected the bidder to provide a letter of commitment from Mr Bezzina, which document was not requested in the tender document and, as a consequence, this Board expresses the view that the contracting authority could have only gone as far as to ask for a clarification from the bidder in this regard but definitely not to decide against the appellant company for not submitting anything which was not considered to be mandatory.

2. The Public Contracts Review Board remains dubious of the fact that the evaluation process was properly carried out and this was evidenced by the fact that, following an examination of the relevant file, it did not emerge to the Public Contracts Review Board that any specific written request to the Department's Contracts Committee was made by the adjudicating board for permission to seek a clarification concerning the bidder's experience. Yet, even if this Board were to give the benefit of the doubt to the adjudication board, this Board would, in this instance, still be against the alleged direction given by the Department's Contracts Committee not to allow the adjudicating board to seek a clarification from the bidder with regard to his experince in marine related works.

In view of the above, this Board finds in favour of the appellant company and apart from recommending that the latter's bid be re-evaluated with all clarifications being

sought to enable the evaluation board to reach a more knowledgeable conclusion, this Board also recommends that the appellant company be reimbursed with the deposit paid for the appeal to be lodged.

Alfred R Triganza
Chairman



Carmel Esposito
Member

Joseph Croker
Member

11th April 2012