

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 423

MRRA/W/718/2011

**Framework Contract for the Supply and Delivery of Precast Rectangular Hollow Concrete Blocks to various stores/sites in Malta**

This call for tenders was published in the Government Gazette of the 24<sup>th</sup> January 2012, with a closing dated of 7<sup>th</sup> February 2012. The estimated budget for the tender amounted to €70,750.

Six (6) tenders were received as a result of the call.

Blokrete Ltd filed an objection on the 16<sup>th</sup> March 2012 against the decision of the Ministry for Resources and Rural Affairs to disqualify its offer as technically non-complaint and to award the tender to Vassallo Concrete Services Limited.

The Public Contracts Review Board composed of Mr Joseph Croker, A/Chairman, and Messrs Carmelo Esposito and Paul Mifsud as members convened a public hearing on Friday 15<sup>th</sup> June 2012 to discuss the appeal.

Present for the hearing were:

### **Blokrete Ltd**

Dr Cedric Mifsud	Legal Representative
Dr Joseph Fenech	Representative
Perit Martin Grech	Representative

**Vassallo Concrete Services Ltd – no representative was present**

**Ministry for Resources and Rural Affairs (MRRA)**

### **Evaluation Board**

Mr Anton Camilleri	Chairman
Mr John Valentino	Member
Mr Alex Cutajar	Member
Ms Josephine Muscat	Member


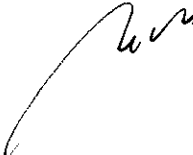



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After the A/Chairman's brief introduction, the appellant was invited to explain the motives of his objection.

Dr Cedric Mifsud, on behalf of Blokrete Ltd, the appellant, submitted that:-

- i. by letter dated 9<sup>th</sup> March 2012, the contracting authority had informed his client that his offer was not compliant because: *For the block type with 63mm thickness, tenderer submitted a sample whose length is 568.7mm as opposed to the 460mm length which is requested in the tender.*
- ii. although in its letter of rejection the contracting authority referred to a 'sample', in reality no sample had been provided because no sample was requested at that stage;
- iii. the reason quoted for rejection concerned the length of the precast rectangular hollow concrete block in respect of which the tender document requested the length of 460mm whereas his client indicated the length of 568.7mm;
- iv. in this case the thickness of the block was far more important than the length so much so that the 'Schedule of Prices and Rates' referred to the items by their thickness and not by their length, e.g. item 6, the item in question, was referred to as 63mm thick with no mention made to its length;
- v. in simple terms, Blokrete could manufacture this block having a thickness of 63mm throughout with a maximum length of 568.7mm as per British Standards, however, whereas the thickness was not adjustable, the length was adjustable to fit any requirement within the limit of 568.7mm;
- vi. the production process of these precast blocks involved the use of moulds with a standard thickness however the length of the mould could be adjusted up to a maximum length of 568.7mm, which was beyond the length of 460mm requested in the tender document;
- vii. therefore his client respected the most important, the thickness of 63mm, and could produce this type of block up to a maximum length of 568.7mm and so could produce the length of 460mm requested in the tender document;
- viii. the item in question, item 6, comprised only 1.5% of the tender value because this type of block was not a 'fast moving' item as one could evidence from his client's schedule of prices, i.e. €950 compared to €57,900;
- ix. besides contending that his client's offer was technically compliant, the fact that the contracting authority was recommending an offer which was €1,580 more expensive when the item in question carried the value of €950 was not justifiable even in economic terms; and



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- x. his client had submitted the same specifications for these types of blocks in various previous calls for tenders and had been found acceptable by the same contracting authority.

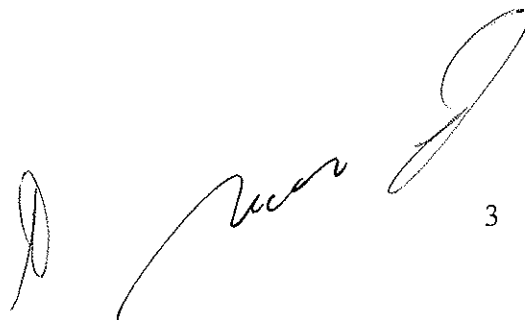
Dr Joseph Fenech, on behalf of Blokrete, remarked that:-

- a. his firm had presented the same tender submission in other previous tender procedures and it had been awarded the contract for the previous 5-year period;
- b. although the mould, in which this type of block was manufactured, was of a standard thickness of 63mm, its maximum length of 568.7mm could be reduced by the use of a lockout so as to produce, for example, a block the length of 460mm as requested in this tender;
- c. the item in question was of the smallest type of block and was rarely used; and
- d. the block proposed by his firm was according to British Standards and according to tender specifications.

Perit Anton Camilleri, chairman of the evaluation board, noted that:

- i. the appellant was correct that tenderers were not requested to submit a sample at that stage;
- ii. for evaluation purposes it was not a question of whether the thickness was more important than the length but the fact was that bidders were expected to stick to the published technical specifications, namely, clause 8.5.1 'Sizes' with read as follows:- The blocks shall be made to the following dimensions:
  - a. Length - 460 mm
  - b. Height - 260 mm
  - c. Thickness – 63mm, 115mm, 150mm, 177mm and 230mm
- iii. according to the literature provided, the product offered by the appellant was 568.7mm in length which exceeded the length requested in the tender specifications; and
- iv. in the circumstances the evaluation board had no other option but to disqualify the appellant as non-compliant.

Perit Josephine Muscat, member of the evaluation board, remarked that in his tender submission the appellant did not indicate that 568.7mm was the maximum length and that he would manufacture the block with the requested dimensions, i.e. 460mm x 260mm x 63mm.



This Board:

- having noted that the appellants in terms of their letter of objection and also through their verbal submissions during the hearing of the 15<sup>th</sup> June 2012 had objected to the decision taken by the MRRA to disqualify them;
- having noted the appellant's representatives claims and observations in particular to the fact that the length indicated the maximum length the mould allowed for the hollow concrete block in question to be manufactured without impinging on its strength; and that contrary to the letter of rejection no sample was submitted for the simple reason that no sample was required at that stage;
- having also considered the contracting authority's counter explanation that the mention of a sample in the letter of rejection was mistakenly included since the appellant was correct to state that no sample was actually requested to be submitted at that stage; having also considered their counter argument that irrespective of whether the thickness of the brick was more important than the length or not, the tenderer had to satisfy the technical specifications in all respect; having also noted that the appellant did not include a note to the effect that he could supply the requested item according to the published specifications,

reached the following conclusions:

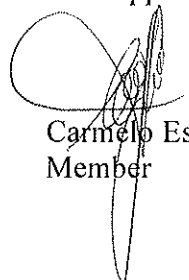
- a. that the length the appellant indicated of the brick in question exceeded that specified in the tender document;
- b. that the tenderer did not insert an explanation to the effect that the declared length of the hollow brick in dispute was the maximum length permissible to be manufactured by the mould without affecting the strength of the brick and that he could actually adjust the mould to supply the requested length;
- c. that the Contracting Authority's was correct to contend that tenderers had to adhere to the technical specifications laid down in the tender document for all items.

In view of the above, the Board finds against the appellant and recommends that the appellant forfeits the deposit paid for the appeal to be lodged.




Joseph Croker  
A/Chairman

26<sup>th</sup> June 2012



Carmelo Esposito  
Member



Paul Mifsud  
Member