

PUBLIC CONTRACTS REVIEW BOARD

Case No. 450

MRRA/W/259/2011/7

Tender for the Restoration of Bastion Walls and Parapett Wall in Mdina Ditch

This call for tender was published on the 11th May 2012 with a closing date on the 1st June 2012.

The estimated value of the tender is €103,248.75 (Exclusive of VAT).

Six (6) contractors submitted a bid for this tender.

Vaults Ltd filed an objection on 21th June 2012 against the decision of the Ministry for Resources and Rural Affairs to recommend the award of the tender to RSF Joint Venture, since according to the notification the offer submitted by Vaults Ltd was '*higher than the recommended offer*'.

The Public Contracts Appeals Board composed of Mr Joseph Croker, Acting Chairman and Mr Carmelo Esposito and Mr Paul Mifsud as members, held a public hearing on the 20th August 2012 to discuss this objection.

Present for the hearing were:

Vaults Ltd

Dr Paul Lia	Legal Representative
Dr Alessandro Lia	Legal Representative
Ms Yvonne Farrugia	Representative
Mr Ivan Farrugia	Representative

Mdina Res Joint Venture

Dr Christine Belizzi	Legal Representative
Ms Josephine de Maria Casabene	Representative

RSF Joint Venture

Mr Clifton Borg	Representative
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Ministry for Resources and Rural Affairs (MRRA)

Evaluation Board

Perit Norbert Gatt	Chairman
Perit Chanelle Busuttil	Member
Mr George Grima	Member
Mr Godwin Bongailas	Member



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

Dr Alessandro Lia, for Vaults Ltd, the appellant, made the following submissions:-

- i. by letter dated 14th June 2012 the contracting authority informed his client that his offer was not the cheapest compliant offer and that the tender was recommended for award to RSF Joint Venture;
- ii. he contended that the preferred bid should have been rejected because it was not compliant since with regard to item 8.001 of the bill of quantities (BoQ) RSF Joint Venture quoted the rate of €80/sq.m not for the quantity of 1,117 sq.m indicated in the BoQ but for 30% thereof;
- iii. that meant that the rate of €80/sq.m applied only to 30% of 1,117 sq.m and that a different rate might apply for any other work performed over and above the 30% indicated;
- iv. clause 1.2.2 of the tender document provided that: *Failure to fill in the form, or a form with incomplete information, or a form containing ambiguous financial information (e.g. prices, total etc) shall disqualify the tender submission;* and
- v. he argued that if one were to apply the appellant's rate of €80/sq.m to the full quantity of 1,117 sq.m indicated in the BoQ the total price of item 8.001 would increase to €89,360 whereas if one were to apply the same rate to 30% of 1,117 sq.m the total price would amount to €26,808 with the consequence that the offer made by the appellant would increase to €167,489.90 and therefore much higher than his client's offer of €135,277.10.

Perit Norbert Gatt, chairman of the evaluation board, explained that:-

- a. the appellant was correct in his statement that under the column 'Rate incl. VAT' of the BoQ the recommended tenderer had indicated '€80 (for 30% of 1,117 sq. m)';
- b. the letter of objection dated 21st June 2012 submitted by the appellant stopped short of mentioning the last sentence of the description of item 8.001 which was prominently printed in caps and which read as follows:

RATE IS TO BE MEASURED FLAT. THIS ITEM APPLIES ONLY
TO FACE 1 AND FACE 2 AND ASSUMES A 30% AVERAGE
COVER RATE.

- c. It was evident that in their workings bidders interpreted this note in two different ways, i.e. the recommended bidder offered €80/sq.m x 335.10 sq.m (30% of 1,117 sq.m) - putting it differently, he quoted the full normal rate for 30% of the area - whereas the other bidders offered more or less €24.sq. m x 1,117 sq. m (the entire area indicated) - i.e. they offer 30% of the normal rate x the total area);

- d. the evaluation board did not disqualify the recommended bid because with regard to item 8.001 it contained all that was required for inclusion in the eventual contract, i.e. the rate together with the total area of 1,117 sq.m with the note referring to 30% thereof, which put it on the same level as the other offers; and
- e. the note 'for 30% of 1,117 sq.m' included by the recommended tenderer under the 'Rate' column of the BoQ corresponding to item 8.001 reflected the instructions laid down in the last sentence of the description of item 8.001.

Dr Paul Lia, for the appellant, insisted that the quote made by the recommended tenderer was ambiguous because instead of quoting a flat rate he limited his rate only to 30% of 1,117 sq.m and that meant that anything above that quantity was not legally covered by the quoted rate of €80/sq.m. Dr Lia added that the evaluation board should have accepted only a flat rate and should have rejected a qualified rate.

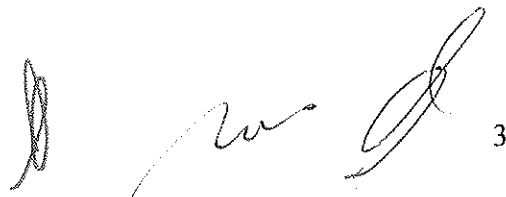
Perit Gatt remarked that with the same argument put forward by Dr Lia in the case of the recommended tenderer the 30% of 1,117 sq.m could only be exceeded if the base quantity of 1,117 sq.m would in fact be exceeded but in such an event even the other bidders might claim a different rate once the base quantity of 1,117 sq.m would be exceeded.

This Board,

- having noted that Messrs Vaults Ltd had by letter dated 21st June 2012 and by the submissions of their representatives during this hearing objected to the decision taken by the Contracting Authority to award this tender to Messrs RSF Joint Venture;
- having taken note of the appellant's representative's arguments that the rate proposed by the recommended tenderer for item 8.001 (plastic repairs of faces 1 and 2) i.e. the rate of €80 for 30% of the measured area rendered his quote more costly than that submitted by his client (i.e. Vaults Ltd);
- having also noted the appellant's opinion that the Contracting Authority should have requested a flat rate for the whole area and not a qualified rate since as things stood anything in excess of the 30% of the measured area could have attracted a different rate;
- having also noted the Authority's counter argument that the appellant's reasoning could also be applied to the other bidders' quotations since anything above the measured area might not be covered by the quoted rate, and that the tender document clearly stated that the rate quoted should take into consideration the assumption that only 30% of faces 1 and 2 would require plastic repair;

came to the following conclusions, namely:

1. The Public Contracts Review Board feels that the way the preferred bidder's quoted rate was submitted amounts to a qualified bid and should not have been considered in the first place;



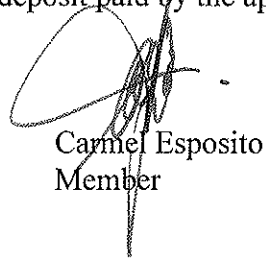
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2. The Board also notes that the bidder was quoting only for 30% of the measured area and thus any variation might have resulted in different rates being applied;
3. The Board is of the opinion that, in order to remove any form of ambiguity, the Contracting Authority should have been more specific and instead of a rate per metre, assuming a 30% coverage, it should have asked for a flat rate to cover the repair of the whole measured area of faces 1 and 2.

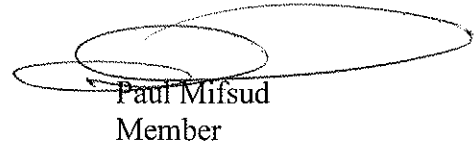
In the face of the foregoing, the Public Contracts Review Board finds in favour of the appellant and recommends that he be re-integrated in the evaluation process. The Board also recommends that the deposit paid by the appellant be reimbursed.



Joseph Croker
A/Chair



Carmel Esposito
Member



Paul Mifsud
Member

10 September 2012

