

PUBLIC CONTRACTS REVIEW BOARD

Case No. 474

HM/22.02.2012

Tender for 3D Documentation of Fort St Angelo, Birgu

This call for tenders was published in the Government Gazette on the 3rd April 2012. The closing date for this call with an estimated budget of € 120,000 (excl. VAT) was the 14th May 2012.

Four (4) tenderers submitted their offers.

St Angelo JV filed an objection on the 20th August 2012 against the decision of Heritage Malta to disqualify its offer as technically non-compliant and to recommend the award of the tender to ABC General Engineering SRL.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Carmel Esposito as members convened a public hearing on Friday, 19th October 2012 to discuss this objection.

St Angelo JV

Dr Franco Galea	Legal Representative
Architect Mariello Spiteri	Representative
Architect Vanessa Pisani	Representative

Heritage Scanning JV – Interested party

Dr Anna Mallia	Legal Representative
Architect Victoria Farrugia Galea	Representative
Mr Steve Demicoli	Representative

ABC General Engineering SRL – recommended tenderer

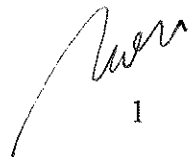
Mr Johann Bondin	Representative
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Heritage Malta

Dr Ruth Baldacchino	Legal Representative
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Evaluation Board

Architect Ruben Abela	Chairman
Ms Joanne Mallia	Member
Ms Veronica Bonello	Member
Ms Anastasia Anastasi Vella	Secretary



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

Dr Franco Galea, legal representative of St Angelo Joint Venture, the appellant joint venture, made the following submissions:

- i. by letter dated 10th August 2012 his client was informed that the tender was technically non-compliant since in its reply dated 13th June 2012 to the request for clarifications of the 8th June 2012, St Angelo JV replied that "Processing in the field" referred to data collection on site which would involve using surveying equipment, photography and laser scanning and, moreover, according to the Gantt Chart presented with the offer, "Processing in the field" was to take up to 30 weeks when clauses 18.0 and 18.1 of Volume 2 Section 3 – Special Conditions stated that:-

"The Contractor will be expected to start works within seven 7 days from signature of contract. The overall duration of this contract is no more than twelve months from signature of contract. However since civil works are planned to start shortly on the Fort, all scanning and surveys on site should be completed within three months from signature of contract."

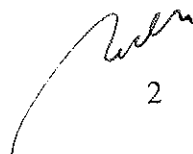
- ii. the Gantt Chart presented by his client with the joint venture's original tender submission indicated two periods regarding 'processing in the field' as follows:
 - Task no. 15 – processing in the field; duration 2 weeks from 05/12/12 to 18/12/12 – that referred to the data gathering/acquisition work which had to be carried out on site which the tender document required to be executed within 3 months from contract signing, which his client assumed to take place on 1st October 2012, and therefore well before the 3 month period ended on 31st December 2012;
 - Task no. 26 – processing in the field; duration 1 week from 10/4/13 to 16/4/13 – this referred to the possibility of having to correct some of the data gathered following data verification by client;

and

- iii. Clause 7.2 referred to the 'submission and approval of progress reports' which had to take place within 45 days from date client received the surveys.

Dr Ruth Baldacchino, legal representative of Heritage Malta, explained that:-

- a. the restoration of Fort St Angelo, partly financed out of EU funds, was quite extensive and, in fact, it was divided into phases and the completion date was set in 2015;



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- b. clause 18.1 indicated that the contract execution period was 12 months, but on site works on this survey had to be completed within a consecutive period of 3 months from signature of contract;
- c. the appellant joint venture set the date of contract signing as the 1st October 2012 and, according to the Gantt Chart it provided, the last date relating to 'processing in the field' at item no. 26 read 16th April 2013 which meant over 6 months instead of 3 months from contract signing as requested;
- d. the evaluation board requested a clarification from the appellant joint venture as to whether 'processing in the field' meant scanning activities on site to which the appellant joint venture replied in the affirmative;

and

- e. that led the evaluation board to disqualify the appellant joint venture for deviating by far from the requested time schedule of the contract.

Dr Galea pointed out that, in the clarification, Heritage Malta only requested confirmation whether 'processing in the field' – not even indicating if that referred to item 15 or item 26 – meant data collection on site using surveying equipment, photography or laser scanning equipment and his client's obvious answer to that was in the affirmative.

Architect Mariello Spiteri, representing the appellant joint venture, explained that:-

- a. as per item 15 in the Gantt Chart, 'processing in the field', namely scanning on site, was to take two weeks from 5th to 18th December 2012, which was well within the 3 month period October-December 2012 requested;
- b. clause 7.2 of the terms of reference dealt with the submission of progress reports and the provision of all that was necessary for the contracting authority to verify the contractor's work and, in case deficiencies would result, then the contractor had to rectify them which activity was included in the Gantt Chart at item 26 'processing in the field' which was to take one week from 10 to 16th April 2013;
- c. by the 12th February 2013 the approval of deliverables (milestones) would have taken place as per item 19 on the Gantt Chart;

and

- d. the term 'processing in the field' was used twice, namely item 15 which referred to survey scanning that would end on 18th December 2012 and item 26 which referred to the verification/rectification exercise of the completed work which would end by 16th April 2013, which included the 45 days taken up by the client after the receipt of the survey – clause 7.2.

Mr Ruben Abela, chairman of the evaluation board, explained that:-

- a. the purpose of this survey was to take a snapshot of Fort St Angelo prior to undertaking the restoration works;
- b. the data gathering on site had to be over within 3 months so that other contractors could start work on this same site;
- c. within 6 months the contractor had to provide the data to the contracting authority for verification;
- d. Item 17 on the Gantt Chart indicated that it would take the appellant four weeks to process all the deliverables, namely up to 29th January 2013;
- e. Item 19 on the Gantt Chart indicated that appellant joint venture would submit the deliverables for approval by 12 February 2013;

and

- f. Item 28 on the Gantt Chart, namely processing deliverables – rectification of item/s that might require modification/correction as would be indicated by the contracting authority following the verification exercise – indicated that it would take the appellant joint venture ten weeks to carry out which was disproportionate when the appellant joint venture stated that it would take it four weeks to process all the deliverables.

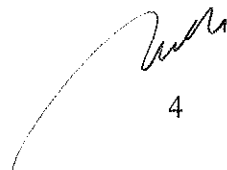
Architect Spiteri pointed out that as per item 26 on his Gantt Chart it would take one week for one to go on site again to effect the corrections which might be indicated by Heritage Malta.

The Chairman Public Contracts Review Board observed that the bidder had to carry out the survey on site within 3 months as a mandatory requirement, the rest, namely corrections or modifications that might be indicated by Heritage Malta during the verification exercise, was based on speculation of whether modifications would be required or not. He added that it would be disproportionate on the part of the contracting authority to disqualify the appellant joint venture because under item 28 the said tenderer indicated ten weeks to process deliverables (corrections) where it could have provided for the worst case scenario when, in fact, it might turn out that no corrections would be necessary such that the ten weeks would not be required at all and, as a result, the Gantt Chart would have to be adjusted accordingly.

At this point the hearing came to a close.

This Board,

- having noted that the appellants, in terms of their ‘reasoned letter of objection’ dated the 16th August 2012 and also through their verbal submissions presented during the hearing held on the 19th October 2012, had objected to the decision taken by the pertinent authorities;



- having noted all of the appellant joint venture's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 10th August 2012 the appellant joint venture was informed that the tender was technically non-compliant since in its reply dated 13th June 2012 to the request for clarifications of the 8th June 2012, St Angelo JV replied that "Processing in the field" referred to data collection on site which would involve using surveying equipment, photography and laser scanning and, moreover, according to the Gantt Chart presented with the offer, "Processing in the field" was to take up to 30 weeks when clauses 18.0 and 18.1 of Volume 2 Section 3 – Special Conditions stated that *"The Contractor will be expected to start works within seven 7 days from signature of contract. The overall duration of this contract is no more than twelve months from signature of contract. However since civil works are planned to start shortly on the Fort, all scanning and surveys on site should be completed within three months from signature of contract."*, (b) the Gantt Chart presented by the appellant joint venture with its original tender submission indicated two periods regarding 'processing in the field' as follows (1) Task no. 15 – processing in the field; duration 2 weeks from 05/12/12 to 18/12/12 – that referred to the data gathering/acquisition work which had to be carried out on site which the tender document required to be executed within 3 months from contract signing, which the appellant joint venture assumed to take place on 1st October 2012, and, therefore, well before the 3 month period ended on 31st December 2012 and (2) Task no. 26 – processing in the field - duration 1 week from 10/4/13 to 16/4/13 – this referred to the possibility of having to correct some of the data gathered following data verification by client, (c) Clause 7.2 referred to the 'submission and approval of progress reports' which had to take place within 45 days from date client received the surveys, (d) in the clarification, Heritage Malta only requested confirmation whether 'processing in the field' – not even indicating if that referred to item 15 or item 26 – meant data collection on site using surveying equipment, photography or laser scanning equipment and the appellant joint venture's obvious answer to that was in the affirmative, (e) as per item 15 in the Gantt Chart, 'processing in the field', namely scanning on site, was to take two weeks from 5th to 18th December 2012, which was well within the 3 month period October-December 2012 requested, (f) clause 7.2 of the terms of reference dealt with the submission of progress reports and the provision of all that was necessary for the contracting authority to verify the contractor's work and, in case deficiencies would result, then the contractor had to rectify them which activity was included in the Gantt Chart at item 26 'processing in the field' which was to take one week from 10 to 16th April 2013, (g) by the 12th February 2013 the approval of deliverables (milestones) would have taken place as per item 19 on the Gantt Chart, (h) the term 'processing in the field' was used twice, namely item 15 which referred to survey scanning that would end on 18th December 2012 and item 26 which referred to the verification/rectification exercise of the completed work which would end by 16th April 2013, which included the 45 days taken up by the client after the receipt of the survey – clause 7.2 and (i) as per item 26 on his Gantt Chart it would take one week for one to go on site again to effect the corrections which might be indicated by Heritage Malta;
- having considered the contracting authority's representative's reference to the fact that (a) the restoration of Fort St Angelo, partly financed out of EU funds, was quite extensive and, in fact, it was divided into phases and the completion date

was set in 2015, (b) clause 18.1 indicated that the contract execution period was 12 months, but on site works on this survey had to be completed within a consecutive period of 3 months from signature of contract, (c) the appellant joint venture set the date of contract signing as the 1st October 2012 and, according to the Gantt Chart it provided, the last date relating to 'processing in the field' at item no. 26 read 16th April 2013 which meant over 6 months instead of 3 months from contract signing as requested, (d) the evaluation board requested a clarification from the appellant joint venture as to whether 'processing in the field' meant scanning activities on site to which the appellant joint venture replied in the affirmative, (e) that led the evaluation board to disqualify the appellant joint venture for deviating by far from the requested time schedule of the contract, (f) the purpose of this survey was to take a snapshot of Fort St Angelo prior to undertaking the restoration works, (g) the data gathering on site had to be over within 3 months so that other contractors could start work on this same site, (h) within 6 months the contractor had to provide the data to the contracting authority for verification, (i) item 17 on the Gantt Chart indicated that it would take the appellant four weeks to process all the deliverables, namely up to the 29th January 2013, (j) item 19 on the Gantt Chart indicated that appellant joint venture would submit the deliverables for approval by 12 February 2013 and (k) item 28 on the Gantt Chart, namely processing deliverables – rectification of item/s that might require modification/correction as would be indicated by the contracting authority following the verification exercise – indicated that it would take the appellant joint venture ten weeks to carry out which was disproportionate when the appellant joint venture stated that it would take it four weeks to process all the deliverables,

reached the following conclusions, namely:

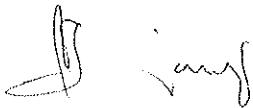
1. The Public Contracts Review Board acknowledges the fact that the Gantt Chart, presented by the appellant joint venture with its original tender submission, indicated two periods regarding 'processing in the field' as follows (1) *Task no. 15* – processing in the field - duration 2 weeks and *Task no. 26* – processing in the field - duration 1 week.
2. The Public Contracts Review Board disagrees with the interpretation given by the contracting authority where, according to the latter, the appellant joint venture set the date of contract signing as the 1st October 2012 and, according to the Gantt Chart it provided, the last date relating to 'processing in the field' at item no. 26 read 16th April 2013 which meant over 6 months instead of 3 months from contract signing as requested. This Board agrees that the appellant joint venture's claim that, in line with item 15 in the Gantt Chart, 'processing in the field', namely scanning on site, was to take two weeks from 5th to 18th December 2012, which was well within the 3 month period October-December 2012 requested. In this context this Board cannot comprehend why when the evaluation board requested a clarification from the appellant joint venture as to whether 'processing in the field' meant scanning activities on site to which the appellant joint venture replied in the affirmative, that led the evaluation board to disqualify the appellant joint venture for deviating from the requested time schedule of the contract.
3. This Board equally fails to understand how the evaluation board interpreted the submission made by the appellant joint venture in connection with item 28 on the

Gantt Chart, namely processing deliverables – rectification of item/s that might require modification/correction as would be indicated by the contracting authority following the verification exercise – as an indication that it would take the appellant joint venture ten weeks to carry out such task. Needless to say that this Board establishes that such an interpretation is totally disproportionate considering that the appellant joint venture had stated that it would take it four weeks to process all the deliverables.

The Public Contracts Review Board argues that, whilst the bidder had to carry out the survey on site within 3 months as a mandatory requirement, the rest, namely corrections or modifications that might be indicated by Heritage Malta during the verification exercise, was based on speculation of whether modifications would be required or not.

This Board also claims that it would be disproportionate on the part of the contracting authority to disqualify the appellant joint venture because, under item 28, the said tenderer indicated ten weeks to process deliverables (corrections) where it could have provided for the worst case scenario when, in fact, it might turn out that no corrections would be necessary such that the ten weeks would not be required at all and, as a result, the Gantt Chart would have to be adjusted accordingly.

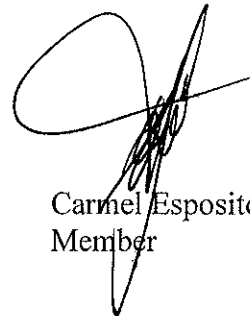
In view of the above, this Board finds in favour of the appellant joint venture and, apart from recommending the reintegration of the appellant joint venture's bid in the evaluation process, this Board also recommends that the deposit paid by the same appellant for the appeal to be lodged should be reimbursed.



Alfred R Triganza
Chairman



Joseph Croker
Member



Carmel Esposito
Member

26 October 2012