

PUBLIC CONTRACTS REVIEW BOARD

Case No. 480

ARK/05/11

Services Tender for Architectural and Engineering Services at Ta' Bistra Area A, Mosta and St. Augustine's Catacombs, Rabat, Malta

This call for tenders was published in the Government Gazette on the 12th June 2012. The closing date for this call with an estimated budget of € 21,610.17 (excl. VAT) was the 18th July 2012.

Five (5) tenderers submitted their offers.

Environmental Management Design and Planning Ltd filed an objection on the 20th August 2012 against the decision of the Mosta Local Council to recommend the award of the tender to Architect David Mifsud Parker.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Paul Mifsud as members convened a public hearing on Thursday, 1st November 2012 to discuss this objection.

Present for the hearing were:

Environmental Management Design and Planning Ltd

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

Perit David Mifsud Parker

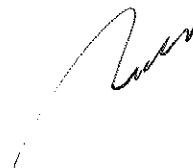

Architect David Mifsud Parker	The Recommended Tenderer
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Mosta Local Council

Dr Joe Mifsud	Legal Representative
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Evaluation Board

Dr George Cassar	Chairman
Architect Ruben Abela	Member
Mr John Camilleri	Member
Mr Glen Farrugia	Secretary



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

Dr Franco Galea, legal representative of Environmental Management Design and Planning Ltd, the appellant firm, made the following submissions:

- i. by letter dated 10th August 2012 the Mosta Local Council informed the appellant firm that, although its offer was administratively and technically compliant, yet it was not the cheapest and, as a result, the offer submitted by Architect David Mifsud Parker was being recommended for award;
 - ii. the appellant firm contended that the recommended tender was not administratively compliant for the following reasons:-
 - a. clause 16 stated that "*Tenderers must indicate where the above documentation is to be found in their offer by using an index. All documentation is to be securely bound/filed*";
 - b. at tender opening stage the appellant firm noted that the recommended tender submission had not been submitted as per clause 16;
- and
- c. it was also noted that, with regard to the appeal procedure, the tender document indicated Part III of the Public Procurement Regulations whereas the appeal procedure applicable should have been that outlined in regulation 21.

Dr Joe Mifsud, legal representative of the Mosta Local Council, remarked that it was evident that the appellant firm was not objecting on the substance of the matter but that the points the firm raised amounted to minor matters concerning tender presentation which were meant to facilitate tender evaluation but which did not form part of the mandatory administrative and technical compliance requirements indicated at clauses 16.1 (a) to (f) and 30.2.

Architect Ruben Abela, a member of the adjudicating board, shared the argument put forward by Dr Mifsud and added that the evaluation board could have asked the recommended tender to submit a copy of its submissions in bound form but that was not felt necessary and, besides, that would have prolonged the process unnecessarily.

On a direct question put by the Chairman Public Contracts Review Board, Architect Abela failed to trace in the 'Tenderer's Declaration' properly filled in and signed in the tender submission made by the recommended tenderer. Architect Abela acknowledged that the 'Tenderer's Declaration' was a mandatory document and that it must have been an oversight on the part of the evaluation board not to have spotted that shortcoming from the outset.

Dr Mifsud, while noting this development, remarked that the reason quoted for the objection was not the non-submission of the 'Tenderer's Declaration'.

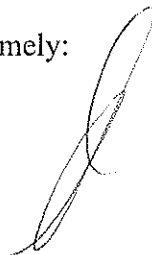
Architect Mifsud Parker, the appellant, under oath, stated that once the evaluation board could not trace in his tender submission the 'Tenderer's Declaration' filled in and signed then he must have omitted it and added that that must have been a genuine oversight on this part.

At this point the hearing came to a close.

This Board,

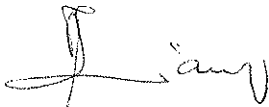
- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 20th August 2012 and also through their verbal submissions presented during the hearing held on the 1st November 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant firm's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 10th August 2012 the Mosta Local Council informed the appellant firm that, although its offer was administratively and technically compliant, yet it was not the cheapest and, as a result, the offer submitted by Architect David Mifsud Parker was being recommended for award and (b) the appellant firm contended that the recommended tender was not administratively compliant for the following reasons (1) clause 16 stated that "*Tenderers must indicate where the above documentation is to be found in their offer by using an index. All documentation is to be securely bound/filed*", (2) at tender opening stage the appellant firm noted that the recommended tender submission had not been submitted as per clause 16 and (3) it was also noted that, with regard to the appeal procedure, the tender document indicated Part III of the Public Procurement Regulations whereas the appeal procedure applicable should have been that outlined in regulation 21;
- having considered the contracting authority's representative's reference to the fact that (a) it was evident that the appellant firm was not objecting on the substance of the matter but that the points the firm raised amounted to minor matters concerning tender presentation which were meant to facilitate tender evaluation but which did not form part of the mandatory administrative and technical compliance requirements indicated at clauses 16.1 (a) to (f) and 30.2, (b) the evaluation board could have asked the recommended tenderer to submit a copy of its submissions in bound form but that was not felt necessary in view of the fact that that was deemed that it would have prolonged the process unduly, (c) it acknowledged that the 'Tenderer's Declaration' was a mandatory document and that it must have been an oversight on the part of the evaluation board not to have spotted that shortcoming from the outset and (d) the reason quoted for the objection was not the non-submission of the 'Tenderer's Declaration';
- having also considered the recommended tenderer's reference to the fact that once the evaluation board could not trace in his tender submission the 'Tenderer's Declaration' filled in and signed then he must have omitted it and added that that must have been a genuine oversight on this part,

reached the following conclusions, namely:

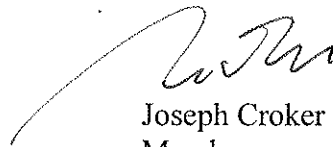


1. The Public Contracts Review Board recognizes the fact that, whilst the 'Tenderer's Declaration' was a mandatory document and that it must have been an oversight on the part of the evaluation board not to have spotted that shortcoming from the outset, yet this does not, in any way allow for any tenderer to continue to be favourably considered at this juncture. This Board has a remit to ensure that an equitable, transparent and justified deliberation process is applicable amongst all participating tenderers.
2. The Public Contracts Review Board establishes that the recommended tenderer would not have been favourably considered had the evaluation board been fully aware of the non-submission of the 'Tenderer's Declaration' by the recommended tenderer.
3. This Board also opines that, whereas clause 16 of the tender document stated that "*Tenderers must indicate where the above documentation is to be found in their offer by using an index. All documentation is to be securely bound/filed*", yet, during the hearing, it was more than evident that the recommended tenderer's submission was anything but in line with this particular requirement.


In view of the above this Board finds in favour of the appellant firm and recommends that the deposit paid by the same firm for the appeal to be lodged should be reimbursed. Furthermore, this Board recommends that the appellant tenderer's bid be reintegrated in the evaluation process for further deliberation by the evaluation board.



Alfred R Triganza
Chairman



Joseph Croker
Member



Paul Mifsud
Member

19 November 2012