

## PUBLIC CONTRACTS REVIEW BOARD

**Case No. 501**

**CT/3022/2012**

**Tender for Aluminium, Cladding, Stainless Steel and Timber Works at the Two (2) Educational Institutes Blocks J and D at MCAST, Paola**

This call for tenders was published in the Government Gazette on the 27<sup>th</sup> July 2012. The closing date for this call with an estimated budget of € 1,245,164 was the 18<sup>th</sup> September 2012.

Five (5) tenderers submitted their offers.

CUP Joint Venture filed an objection on the 5<sup>th</sup> November 2012 against the decisions of the Contracts Department to adjudicate its offer non-compliant and to recommend the award to JS Dimech Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Paul Mifsud as members convened a public hearing on Monday, 3rd December 2012 to discuss this objection.

### **CUP Joint Venture**

Dr Paul Lia	Legal Representative
Dr Alessandro Lia	Legal Representative
Mr Mr Joe Cortis	Representative
Mr Mr Ray Cortis	Representative
Mr Mark Darmanin	Representative
Mr Patrick Gauci	Representative

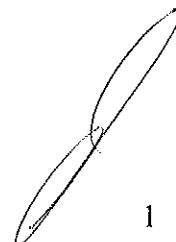
**JS Dimech Ltd – no one turned up at the hearing**

### **Foundation for Tomorrow's Schools**

Architect Leonard Zammit    Technical Advisor

### **Evaluation Board**

Mr Christopher Pullicino	Chairman
Mr Albert Ellul	Member
Mr Andrew Ellul	Member
Architect Deborah Borg	Member
Mr Ivan Zammit	Secretary



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

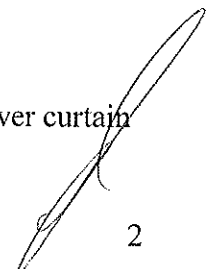
Dr Alessandro Lia, representing CUP Joint Venture, the appellant, stated that by letter dated 26th October 2012 the appellant was informed that its offer was adjudicated technically non-compliant with regard to two specific aspects.

**A) Item 1.10 (j) 'Technical literature of door section with same material for curtain wall: *Tenderer submitted technical literature of the door section but failed to submit technical literature showing the detail between the door and the curtain wall.***

Dr Alessandro Lia explained that the appellant had submitted the technical literature requested as per Item 1.10 and, moreover, provided all the necessary profiles and items required to show the detail between the door and the curtain wall and a technical person could easily figure out how these could be assembled together.

Architect Leonard Zammit, technical adviser to the evaluation board, explained that:-

- i. the appellant did submit literature regarding the different items requested but it failed to demonstrate how these parts could be mounted and fixed with the curtain wall;
  - ii. the provision of that literature was mandatory as per item 1.10 (j) of Volume 1, Section 4 Part 3 List 1 'Technical Literature';
  - iii. with regard to the aluminium curtain wall system, List 2 concerning the submission of the samples requested at item 1.0 (a) Sample of assembled section of a typical curtain wall section made up of mullions, transoms and visible external cover and (b) sample of door section with same material for curtain wall;
  - iv. apart from the individual parts, the contracting authority specifically requested both the literature and a sample of an assembled section of a typical curtain wall;
  - v. item 1.10 (j) had to be seen also in the light of item 1.9 (i) which read as follows "*Drawings should also show the fixing system with the existing concrete structure and the system proposed to allow for expansion/retraction of the aluminium curtain wall structure*" – these requirements were satisfied by the appellant as per technical report attached to the evaluation report;
  - vi. the tender document requested the interface of how the door would be joined to the curtain wall;
- and
- vii. whilst the technical literature of the door section was provided however curtain wall was 'Metra' whereas the door section was of a different make.



Dr Paul Lia conceded that no drawing was provided as to how the various parts would come together but, on the other hand, all the parts had been provided and a technical person would know how to mount them together.

**B) Item No. 1.1 'Cladding System including details of ceramic tile: Tenderer submitted technical literature for the cladding system. However, it was noted that the system is not backed by a support system which drains rainwater away from the struture behind as described in Clause 128.1.2 of Specification 128. Moreover, the tile submitted does not have overlapping joints as specified and the thickness of the tile is not indicated.**

Dr Alessandro Lia explained that:-

- a. clause 128.1.2 provided as follows '*The vertical joints shall be backed up by a support system which drains rainwater away from the structure behind*';
  - b. the documentation provided by the appellant, namely page 188 of the 'ADERMA' literature did provide what was requested;
  - c. likewise, the literature provided did demonstrate that the tile had overlapping joints and the thickness of the tile was also indicated as requested in clause 128.1.2;
- and
- d. the appellant had submitted 150 pages of technical literature and quoted a price about €14,000 cheaper than that of the recommended offer.

Architect Zammit explained that:

- i. with regard to the cladding system the contracting authority requested backing support which drained rainwater, overlapping joints and the thickness of the tile;
- ii. the appellant submitted two sets of technical literature, namely (i) one pertaining to the brand 'ADERMA' which, in his view, did not represent technical literature but was more of an article or a brochure which did not provide exhaustive technical information and (b) another one pertaining to the brand 'FRONTEK' which did contain technical specifications;
- iii. the contracting authority wanted to procure one system and not two different systems, namely 'ADERMA' and 'FRONTEK' and since the material provided marked 'ADERMA' was not the type of literature requested it was set aside and the contracting authority had to evaluate according to the technical literature provided marked 'FRONTEK';

- iv. in its intervention the appellant's representative made reference to the 'ADERMA' brochure which was not found suitable for technical evaluation purposes;
  - v. on the other hand, the 'FRONTEK' technical literature did not provide for overlapping joints or for the thickness and the support system was different from that requested because it had to be assembled by the use of screws and clamps;
- and
- vi. no rectifications were allowed with regard to technical literature/samples as per clause 16.1 (e).

Dr Alessandro Lia insisted that the reasons for disqualification quoted by the contracting authority were in fact met by the appellant as demonstrated by the extensive technical literature provided.

Architect Zammit remarked that:-

- i. the contracting authority requested one system and he made it clear that the appellant submitted only one option which however featured two systems, namely 'ADERMA' and 'FRONTEK';
  - ii. clause 128.4 referred to the technical specifications of the 'architectural wall cladding with solid ceramic tiles' however the 'ADERMA' brochure which the appellant quoted from referred to granite 3 cm in thickness whereas the tender document requested ceramic tiles which was totally different and so the proposal was out of specifications;
- and
- iii. the only technical literature available was that marked 'FRONTEK' and it did not contain all the information requested, such as the thickness of the tiles was 20mm instead of 30mm and it did not feature the support system and the overlapping joints.

Dr Alessandro Lia remarked that on the superstructure one could take both ceramic tiles and granite.

At this point the Chairman Public Contracts Review Board intervened and expressed the following views:

- a. the 'ADERMA' document was, effectively, more of a brochure and, as a result, it could not meet the tender requirements in terms of technical literature besides the fact that it was in the Italian language whereas our official languages were Maltese and English;
- b. the technical literature was meant to corroborate what was stated in the tender submission and although the technical literature might not, necessarily, cover

all the tender requirements in terms of dimensions and so forth it would provide a clear indication of what would eventually be supplied;

- c. albeit the Public Contracts Review Board was primarily concerned with the issues raised in the appeal, yet it was also within its remit to look into the entire tendering process;
- d. if the proposed system could use either ceramic tiles or granite then the appellant should have indicated it in the tender submission;

and

- e. one should not expect the evaluation board to assess the technical aspects from a photograph but the evaluation board had to have the comfort of the necessary technical literature and/or samples.

At this point the hearing came to a close.

This Board,

- having noted that the appellant, in terms of its 'reasoned letter of objection' dated the 5<sup>th</sup> November 2012 and also through its representatives verbal submissions presented during the hearing held on the 3<sup>rd</sup> December 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 26th October 2012 the appellant was informed that its offer was adjudicated technically non-compliant with regard to two specific aspects, (b) the appellant had submitted the technical literature requested as per Item 1.10 and, moreover, provided all the necessary profiles and items required to show the detail between the door and the curtain wall and a technical person could easily figure out how these could be assembled together, (c) conceded that no drawing was provided as to how the various parts would come together but, on the other hand, all the parts had been provided and a technical person would know how to mount them together, (d) clause 128.1.2 provided as follows '*The vertical joints shall be backed up by a support system which drains rainwater away from the structure behind*', (e) the documentation provided by the appellant, namely page 188 of the 'ADERMA' literature did provide what was requested, (f) likewise, the literature provided did demonstrate that the tile had overlapping joints and the thickness of the tile was also indicated as requested in clause 128.1.2, (g) the appellant had submitted 150 pages of technical literature and quoted a price about €14,000 cheaper than that of the recommended offer, (h) insisted that the reasons for disqualification quoted by the contracting authority were in fact met by the appellant as demonstrated by the extensive technical literature provided and (i) remarked that on the superstructure one could take both ceramic tiles and granite
- having considered the contracting authority's representative's reference to the fact that (a) the appellant did submit literature regarding the different items requested but it failed to demonstrate how these parts could be mounted and fixed with the

curtain wall, (b) the provision of that literature was mandatory as per item 1.10 (j) of Volume 1, Section 4 Part 3 List 1 'Technical Literature', (c) with regard to the aluminium curtain wall system, List 2 concerning the submission of the samples requested at item 1.0 (1) sample of assembled section of a typical curtain wall section made up of mullions, transoms and visible external cover and (2) sample of door section with same material for curtain wall, (d) apart from the individual parts, the contracting authority specifically requested both the literature and a sample of an assembled section of a typical curtain wall, (e) item 1.10 (j) had to be seen also in the light of item 1.9 (i) which read as follows "Drawings should also show the fixing system with the existing concrete structure and the system proposed to allow for expansion/retraction of the aluminium curtain wall structure" – these requirements were satisfied by the appellant as per technical report attached to the evaluation report, (f) the tender document requested the interface of how the door would be joined to the curtain wall, (g) whilst the technical literature of the door section was provided, however, curtain wall was 'Metra' whereas the door section was of a different make, (h) with regard to the cladding system the contracting authority requested backing support which drained rainwater, overlapping joints and the thickness of the tile, (i) the appellant submitted two sets of technical literature, namely (1) one pertaining to the brand 'ADERMA' which, in the evaluation board's view, did not represent technical literature but was more of an article or a brochure which did not provide exhaustive technical information and (2) another one pertaining to the brand 'FRONTEK' which did contain technical specifications, (j) the contracting authority wanted to procure one system and not two different systems, namely 'ADERMA' and 'FRONTEK' and since the material provided marked 'ADERMA' was not the type of literature requested it was set aside and the contracting authority had to evaluate according to the technical literature provided marked 'FRONTEK', (k) in its intervention the appellant's representative made reference to the 'ADERMA' brochure which was not found suitable for technical evaluation purposes, (l) on the other hand, the 'FRONTEK' technical literature did not provide for overlapping joints or for the thickness and the support system was different from that requested because it had to be assembled by the use of screws and clamps, (m) no rectifications were allowed with regard to technical literature/samples as per clause 16.1 (e), (n) the contracting authority requested one system and the evaluation board made it clear that the appellant submitted only one option which, however, featured two systems, namely 'ADERMA' and 'FRONTEK', (o) clause 128.4 referred to the technical specifications of the 'architectural wall cladding with solid ceramic tiles' however the 'ADERMA' brochure which the appellant quoted from referred to granite 3 cm in thickness whereas the tender document requested ceramic tiles which was totally different and so the proposal was out of specifications and (p) the only technical literature available was that marked 'FRONTEK' and it did not contain all the information requested, such as the thickness of the tiles was 20mm instead of 30mm and it did not feature the support system and the overlapping joints,

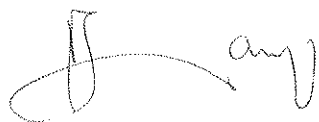
reached the following conclusions, namely:

1. The Public Contracts Review Board opines that the 'ADERMA' document was, effectively, more of a brochure and, as a result, it could not meet the tender requirements in terms of technical literature - the provision of that literature was

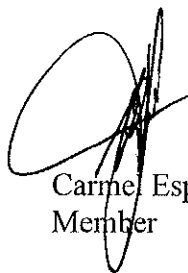
mandatory as per item 1.10 (j) of Volume 1, Section 4 Part 3 List 1 'Technical Literature'.

2. The Public Contracts Review Board establishes that the technical literature was meant to corroborate what was stated in the tender submission and although the technical literature might not, necessarily, cover all the tender requirements in terms of dimensions and so forth it would provide a clear indication of what would eventually be supplied. This Board contends that one should not expect the evaluation board to assess the technical aspects from a photograph but the evaluation board should have the comfort of the necessary technical literature and/or samples.
3. This Board acknowledges that no rectifications were allowed with regard to technical literature/samples as per clause 16.1 (e).
4. The Public Contracts Review Board argues that if the proposed system could use either ceramic tiles or granite then the appellant should have indicated it in the tender submission. This Board agrees with the evaluation board's assessment, particularly with regard to the fact that (a) whilst clause 128.4 referred to the technical specifications of the 'architectural wall cladding with solid ceramic tiles', yet the 'ADERMA' brochure which the appellant quoted from referred to granite 3 cm in thickness whereas the tender document requested ceramic tiles which was different and so the proposal was out of specifications and (b) the only technical literature available was that marked 'FRONTEK' and it did not contain all the information requested, such as the thickness of the tiles was 20mm instead of 30mm and it did not feature the support system and the overlapping joints


In view of the above this Board finds against the appellant company and recommends that the deposit paid by the same company for the appeal to be lodged should not be reimbursed.



Alfred R Triganza  
Chairman



Carmel Esposito  
Member



Paul Mifsud  
Member

17 December 2012