

PUBLIC CONTRACTS REVIEW BOARD

Case No. 755

CT 3161/2014

Tender for the Design, Supply Installation and Commissioning of Metal Structures to Support the New Photovoltaic Systems at the Gozo General Hospital.

The tender was published on the 29th July 2014. The closing date was the 9th September 2014.

The estimated value of the Tender was €1,141,825.00 (Inclusive of VAT).

On the 10th October 2014 General Maintenance Limited filed a letter of objection against the decision of the Gozo General Hospital to the reject its offer as technically non-compliant.

Five (5) tenderers had submitted an offer.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 4th November 2014 to discuss the objection.

Present for the hearing were:

General Maintenance Limited - Appellant

Mr Marco Camilleri	Representative
Ms Denise Camilleri	Representative
Dr Franco Vassallo	Legal Representative

Steel Structures Co Limited - Preferred Bidder

Mr Kurt Cini	Representative
Ms Wendy Dimech	Representative
Dr Alessandro Lia	Legal Representative

Gozo General Hospital - Contracting Authority

Mr Claudio Tonna	Chairperson Evaluation Board
Mr John Privitelli	Secretary Evaluation Board
Mr Piero Selvaggi	Member Evaluation Board
Mr Robert Mallia	Member Evaluation Board
Mr Francis Grech	Member Evaluation Board
Dr Brigitte Gafa`	Legal Representative
Mr Marnol Sultana	CPSU

Department of Contracts

Mr Kevin D'Ugo	Procurement Manager
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After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of the company's objection.

Dr Franco Vassallo on behalf of the appellant firm made the following submissions:-

- i) That appellant's tender had been discarded because it had offered "All the structure will be painted to the requested RAL colour and only the floor grating will be galvanized." While the technical specifications required that all metal work should be galvanized and painted.
- ii) That appellant's tender had also been discarded because it did not include the requested literature as per technical specifications section 4.
- iii) That the tender was for galvanized structures and appellant had offered metal structures according to specifications including galvanizing of all metal parts and paint according to the specifications. The appellant's offer had explained that the grid flooring would however not be painted, but would just be galvanized since when trodden over any paint would just rub off.
- iv) That from the bills of quantity submitted by appellant it should have been evident that the offer was for galvanized structures.
- v) That the evaluation board had misunderstood the English explanation given by appellant with reference to the floor grid and took it to refer to all the structure. The evaluation board should have noticed the discrepancy of this interpretation with the bills of quantity and asked for clarification.
- vi) It is not understood what kind of literature was required since the tender is for metal structures to be designed by appellant.

Dr Brigitte Gafa on behalf of the contracting authority explained that:

- a) That the literature requested should have shown what type of iron and what type of galvanizing would be used. The contracting authority expected bidders to show the standard of their submitted structures.
- b) That there was no need to ask for clarifications since appellant's submission was very clear that "*only floor grating will be galvanized.*" This left no room for doubt about its meaning.

Dr Franco Vassallo claimed that the tender gave the details of the structure quoting IPE 300 for the metal and IPE 160 referred to the type of structure. This was the reason why the request for literature was not understood. It is clear that no additional literature was required. The appellant's bill of quantity showed clearly that the price being offered was for galvanized iron works. He admitted that the wording of the appellant's explanation could be misleading. He claimed that appellant's offer was €70,000 cheaper and this fact should have led the contracting authority to ask for clarification regarding the explanation about the floor grating.

Dr Alessandro Lia on behalf of Steel Structures Co Limited, the preferred bidder submitted:

1. That he fully agreed with the submissions made by Dr Gafa`.
2. That the tender Article 1 stated that "no account shall be taken of any reservation, disagreement, reservation etc." All bidders had accepted this and the wording of appellant's explanatory note was clear enough.
3. That his client, the preferred bidder had submitted the necessary literature including that referring to the type and grade of iron to be used, S275. This was required in Section 4 Terms of Reference. The type of metal that would be used had to be

specified and relative literature submitted.

4. That the preferred bidder had provided all the literature including that related to the paint, and the specifications of the coatings and included drawings.

Dr Franco Vassallo for the appellant contended that the tender had asked for galvanized iron and this was reflected in the bills of quantity that appellant had been obliged to provide. The item was for galvanized iron. The description offered by appellant referred only to the paint coat and not to the structure. He contended that appellant's tender should be re-integrated.

At this point the hearing was brought to an end.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 10th October 2014 and also through Appellant's verbal submissions during the hearing held on 4th November 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) **Appellant contends that although his offer was the cheapest, his bid was discarded as it was considered to be technically non compliant by the Contracting Authority in so far as 'Galvanised metal works'.**
- b) **Appellant claims that the tendered works entailed the sole supply of metal structures and in this regard, Appellant fails to understand as to why the Contracting Authority was requesting literature with regards to technical specifications of the material being used by the Bidder in the execution of the works being tendered for. The information requested by the Contracting Authority, in so far as 'technical literature' was reflected in the 'Bill of Quantities' wherein description of the material being offered by Appellant was stated.**
- c) **Appellant maintains that, with regards to the galvanising of the metal work perhaps, the Contracting Authority misinterpreted the phrase regarding the floor grid and in this respect, appellant contends that the Contracting Authority should have sought clarification.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 4th November 2014, in that:

- a) **The Contracting Authority contends that the technical specifications and mandatory requirements as laid out in the tender document enough not to instigate the need for any clarification on its part. At the same time the wording used by appellant in his tender was very clear and explicit in that '*Only the floor grating will be galvanised*'.**

- b) The Contracting Authority maintains that the ‘Bill of Quantities’ simply lists the quoted prices and , in no way, does the same document represent an instrument to interpret the technical specifications of the tender.
- c) The form of literature submitted by Appellant was insufficient and lacked the information expected from the Contracting Authority.

Reached the following conclusions:

1. This Board notes that the Appellant’s bid was declared by the Contracting Authority as being ‘technically non compliant’ due to the fact that, Appellant did not comply with Clause 3 of section 4 of the tender document, which imposes the fact that *‘All metal works should be galvanised and protective coats of paint, including a base coat and a minimum of two layers of top coat applied’*. Regarding this issue, Appellant’s bid stated that, *‘All structure will be painted to the requested RAL colour and, only floor grating will be galvanised’*. In this regard, this Board, opines that the Appellant’s bid gave the impression to the Contracting Authority that *‘Only the floor grating will be galvanised’*; whilst the tender mandatory condition called for a ‘full metal works galvanisation’. From credible submissions made by both parties concerned, this Board is justifiably convinced that the Contracting Authority was correct in discarding Appellant’s bid due to this Appellant’s declaration.
- 2) With regards to Appellant’s contention, that the Contracting Authority was aware of the Appellant’s bid technical compliance through the ‘Bill of Quantities’ submitted by same, this Board opines that the ‘Bill of Quantities’ does not represent an instrument of interpretation of the technical specifications. Technical specifications are requested in a tender document to identify the technical property of each item as listed in the ‘bill of quantities’ by the prospective Bidder. In this regard, this Board does not uphold Appellant’s contention.
- 3) With regards to the literature submitted by the Appellant Company; this Board, after having heard submissions and examined the documentation as submitted by Appellant, is credibly convinced that the literature submitted did not contain the required technical ingredients which such documentation should specify. The literature should go ‘pari passu’ with the technical specifications as listed in the tender document. In this respect it was justifiably proved that Appellant’s submission in this regard did not meet such a requirement and was not up to the Contracting Authority’s expectations. This Board upholds the Contracting Authority’s contention that Appellant failed to submit the required technical literature as dictated in the tender document.

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by Appellant should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

13 November 2014