

PUBLIC CONTRACTS REVIEW BOARD

Case No. 882

WBG 10/2014

Quotation for the Supply and Delivery of Franka Stone as directed by the Directorate of Projects and Development (Period Contract).

On the 27th February 2015 the Hon. Court of Appeal through Case 424/2014/1 had sent back the objection to the Public Contracts Review Board Bonnici in order for the allegation made by the Appellant that the old quarry SG4 was in fact exhausted was to be investigated, and if it was not, to investigate whether it still had enough stone enabling the Recommended Bidder to satisfy the Tender obligations.

The Board had appointed Geologist Dr Saviour Scerri to investigate and report on the stone availability at the said stone quarry.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday the 17th December 2015 to discuss the report filed by Dr Saviour Scerri and have him answer questions.

Present for the hearing were:

Bugeja Bros (Gozo) Limited:

Mr Mario Bugeja
Dr John L Gauci

Director
Legal Representative

Mr Joseph Attard:

Mr Joseph Attard
Dr Marie Josette Farrugia

Director
Legal Representative

Directorate for Projects and Development:

Mr Saviour Tabone
Mr Saviour Bonello
Mr Eddie Mercieca
Dr Tatiane Scicluna Cassar

Chairperson Evaluation Board
Member Evaluation Board
Member Evaluation Board
Legal Representative

The Chairman made a brief introduction wherein he pointed out that this objection is being heard again following a decision by the Hon. Court of Appeal decision that remitted the matter to this Board in order to further examine Appellant's allegations that the quarry SG4 was exhausted and could not supply any more stone. He explained that the Board had appointed a Technical Expert; Dr Saviour Scerri, geologist, to investigate the matter and report to the Board.

Dr Saviour Scerri ID No. 939649M the appointed expert, under oath, confirmed the report which he had filed with the Board. He also explained that he was cognizant of the Gozo quarry situations and confirmed the plan of the SG4 quarry in the file. Dr Scerri confirmed that he had carried out the assignment given to him by the Board.

Dr John Gauci for the Appellant contended that SG4 had parts of it which were not covered by the necessary permits, and wanted to ask the expert about this issue.

The Chairman replied that that was not part of the expert's assignment. The expert's assignment did not include the investigation whether any part of the quarry was covered by a permit or not.

Replying to questions by the Appellant's Legal Representative he said that when investigating, he had just gone to the existing quarry SG4 according to the MEPA Permits.

At this point, Dr Gauci asked whether he had taken any cognizance of the fact that the Recommended Bidder's own expert had described as the old part of SG4 and the new parts of SG4 that were covered by an enforcement notice which the Recommended Bidder was still trying to obtain permits for. The witness replied that he had just carried out his assignment. The quarry he investigated was covered by permits. He did not consider any other reports. On being shown by Dr Gauci a plan of the quarry witness explained that this did not tally exactly with the plans he used. The quarry he reported on was covered with permits. The quarry SG4 that he examined and reported on had the same configuration.

Dr John Gauci on behalf of the Appellant asked for permission to file a document by Professor Lino Bianco that formed part of an application by the Recommended Bidder to MEPA, application PA 5043/07 wherein it is clearly indicated the old part of the quarry SG4 and the other parts that the Recommended Bidder is still trying to regularize. He explained that this would enable the witness to confront the said document with his own report.

Dr Tatiane Scicluna Cassar on behalf of the Contracting Authority objected because it goes against the Hon. Court of Appeal's decision which was clear enough "to investigate further Appellant's allegation that the old quarry SG4 was exhausted and, if in the negative, to investigate whether the quarry has sufficient stone to enable the Recommended Bidder to satisfy the Tender obligations." She insisted that no new evidence could be produced and that the Board appointed an expert who had investigated SG4 as assigned.

The Chairman at this point denied Dr Gauci's request.

At this point the hearing was closed.

This Board,

Having noted the Hon. Court of Appeal's decision, wherein, the latter decided that the case is to be referred back to the Public Contracts Review Board to investigate whether the Quarry SG4, pertaining to the Recommended Bidder, had enough volume of "*Franka Stone*" to meet the requirement of the Tender under Appeal, had appointed an experienced geologist, namely Dr. Saviour Xerri, to prepare and submit a report to the Public Contracts Review Board.

The purpose of this Second Hearing, held on 17 December 2015, was purely to present the Expert's report, which was distributed to all interested parties. This Board has reached the following conclusions:

- 1. From the Expert's report, this Board justifiably notes that the Quarry SG 4 had ample supply of "*Franka Stone*" to meet the requirements of the Tender in Question. The appointed expert, (under oath), confirmed that "*Quarry SG 4 in the limits of San Lawrenz, Gozo, contains enough good quality "Franka Stone" reserves for a number of years to come*".**

In this regard, this Board credibly confirms that the Quarry SG 4

can supply the requested quantity of good “*Franka Stone*” as dictated in the Tender Document.

2. With regards to the Appellant’s request for the submission of a report, which formed part of an application for a MEPA permit by the Recommended Bidder, this Board, justifiably notes that the documentation which the Appellant requested to submit, had no relevance at all with the verification of the availability of good “*Franka Stone*” from Quarry SG 4.

In this regard, the Appellant’s request for further submission of documentation was totally out of order. This Board treated all submissions during the Public Hearing which was held on 3 June 2014.

To this effect, this Board does not accept the Appellant’s request to submit further documentation which is not relevant to the purpose of the Public Hearing.

This Board, through the Expert’s Report, (attached herewith), carried out the decision made by the Hon. Court of Appeal and would like to quote the sentence issued by the latter, in that:

“Ghar-raġunijiet fuq indikati, tilqa’ l-appell tas-soċjeta’ Bugeja Bros (Gozo) Ltd. u filwaqt li tirrevoka d-deċiżjoni appellata, tordna li l-atti odjerni jintbaghtu lura quddiem il-Bord sabiex dan ikompli jinvestiga l-allegazzjoni tas-Soċjeta’ appellanti li l-barriera l-antika nru SG 4 hija eżawrita u, fil-każ negattiv, jinvestiga jekk ghandhiex biżżejjed ġebel biex l-offerent rakkomandat ikun jista’ jissodisfa l-obbligi tiegħu skond it-Tender Document. Imbagħad il-Bord, ghandu jghaddi biex jiddeċiedi l-appell fil-mertu.”

In view of the above, after having credibly assessed the Expert’s report, which is herewith enclosed and is to form part of this decision, this Board finds against the Appellant and recommends that the deposit paid by the latter should not be reimbursed.

Dr Anthony Cassar
Chairperson

Dr Charles Cassar
Member

Mr Lawrence Ancillieri
Member

7 January 2016

**Soft stone Quarry SG4
l/o San Lawrenz Gozo
Franka Stone Reserves**

DOCUMENT CONTROL

PROJECT NAME : Quarry SG4-Franka stone Mineral reserves

DOCUMENT TITLE : Quarry SG4-Franka stone Mineral reserves

DOCUMENT No. :

DOCUMENT ISSUE

ORIGINAL	Prepared by	Reviewed by	Approved by
Date: 11 December 2015	Saviour Scerri	Name:	Name:
	Signature:	Signature:	Signature:

Distribution:	Contracts Committee
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REVISIONS

REVISION 0	Name:	Name:	Name:
Date:	Signature:	Signature:	Signature:

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INTRODUCTION

Introduction

Following the issue of Advert No ODPD 9/2014-Quotation for the supply and delivery of First Quality type Franka Stone as directed by Directorate of Projects and Development, Ministry for Gozo two quotations were submitted as Follows:

- One quotation by Bugeja Bros.(Gozo) Ltd and
- One quotation by Mr Joseph Attard of Xaghra Gozo

The Tender was awarded to Mr Joseph Attard the cheapest bidder. However, Bugeja Bros complained that Mr Joseph Attard the recommended bidder is not in a position to execute the contract as the permitted quarry SG4 operated by him is exhausted. Clause 6.1.2 of the Tender document stated that *“Bidder must produce evidence that the quarry from which the franka stone is supplied is operated with all the necessary permits/licences.”*

Scope of the report

In the light of the above, the writer was commissioned by the Dr Anthony J Cassar in his capacity as Chairman of the Contracts Committee to verify that Quarry SG4 located at San Lawrenz Gozo (**Figure 1**)and belonging to Mr Joseph Attard resident at Xaghra Gozo **contains extractable Franka stone reserves** .



Figure 1: Map showing location of quarry SG4 in the I/o San Lawrenz Gozo

Quarry SG4 Data Sheet

The data sheet of Quarry SG4 including the permit boundary are found in the Minerals Subject Plan Annex 1 entitled: **Annex 1-Permitted Boundaries For Mineral Workings In Malta And Gozo** and is reproduced below **(Figure 2)**

In order to make measurements of the extent of the quarry and its depth this sheet was posted onto a geographic information system (GIS) This data sheet is shown in **(Figure 3)**.

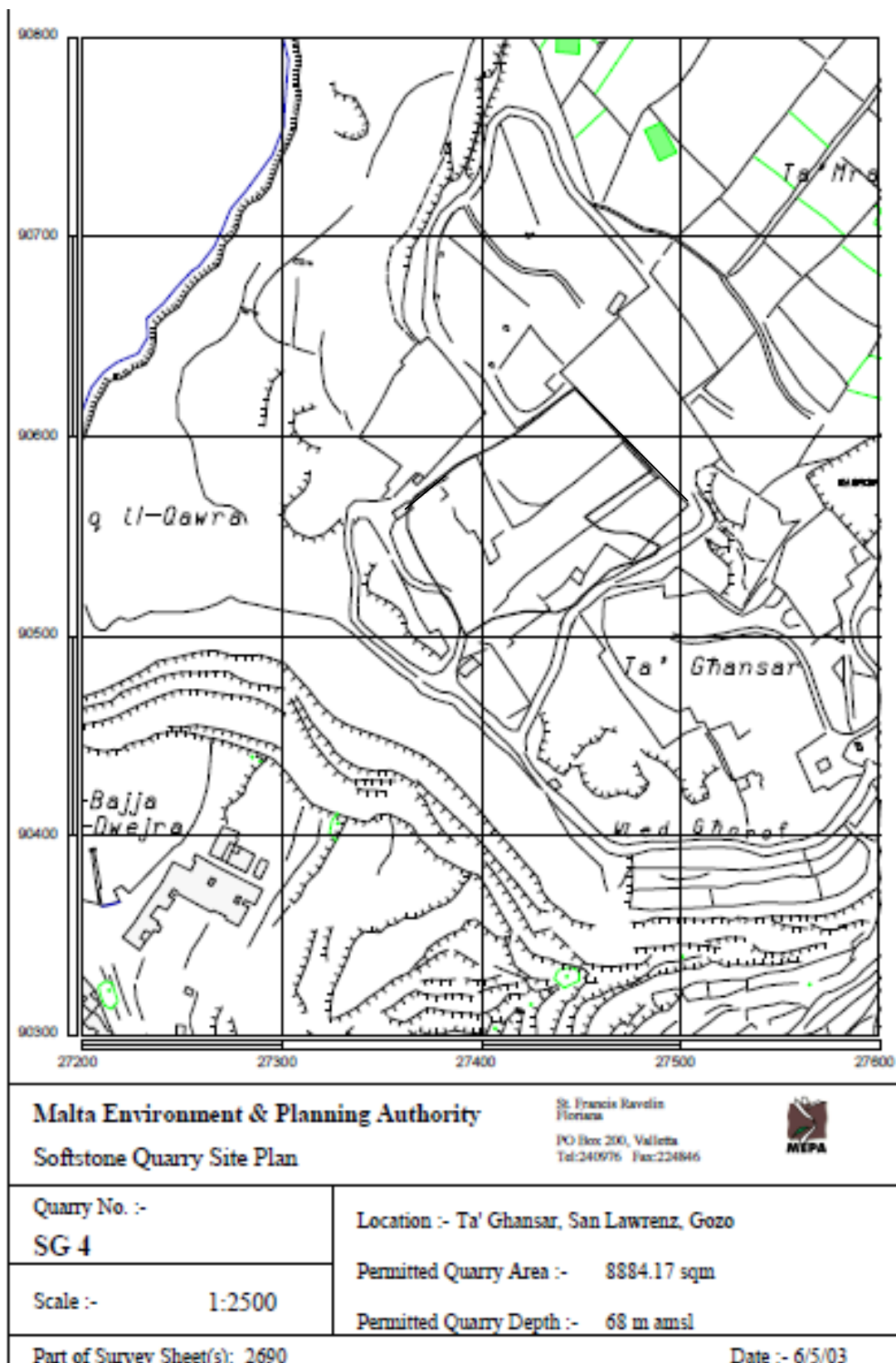


Figure 2: Data sheet for Quarry No SG4 (source: Minerals Subject Plan)

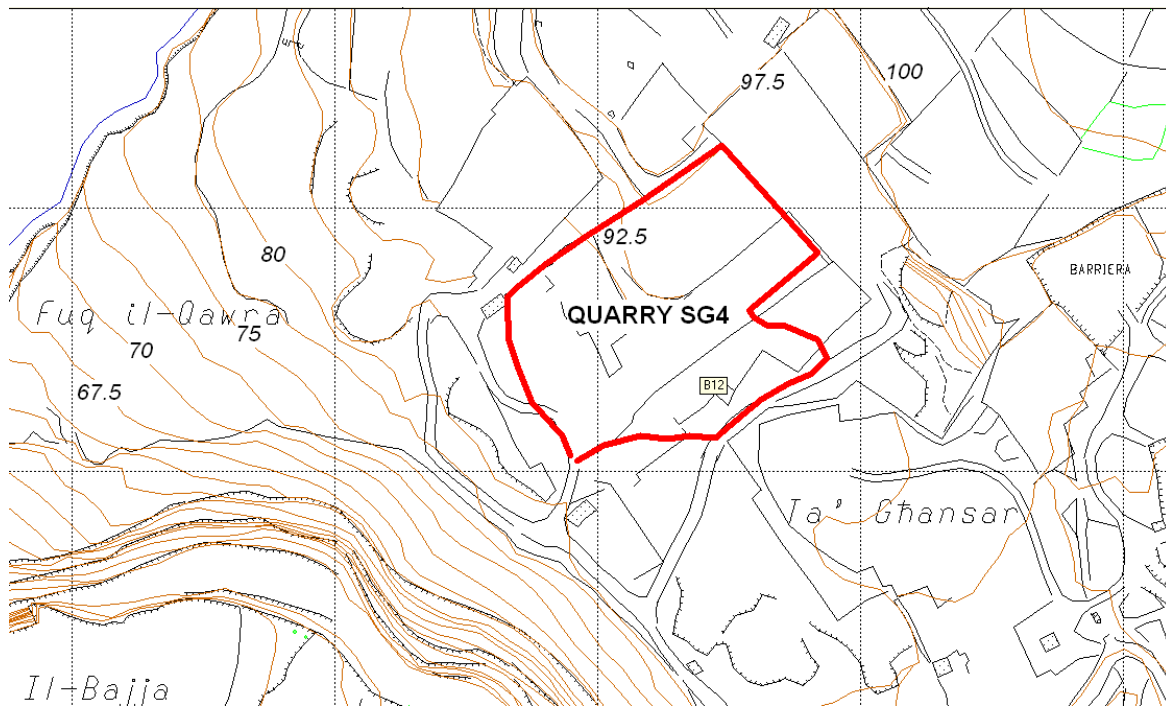


Figure 3: Contour Map (Site plan showing the location of Quarry SG4 at ta' Ghansar for scale each grid square measures 100m by 100m)

Method

The site was inspected on 11 December 2015 and was examined visually and by photographs.

The Findings

The site is presently about 12m deep at its deepest point measured from the entrance gate. From NW to SE the quarry is cut in a stepped arrangement Figure 4. The present conditions of the quarry can be seen in the Google Map shown in Figure 5. it consists of :

- a wall about 18m high at the NW boundary with at its foot
- A terrace approximately 40m wide by 80mlong and
- A 9m deep trench at the SE boundary about 16m wide by 80mlong

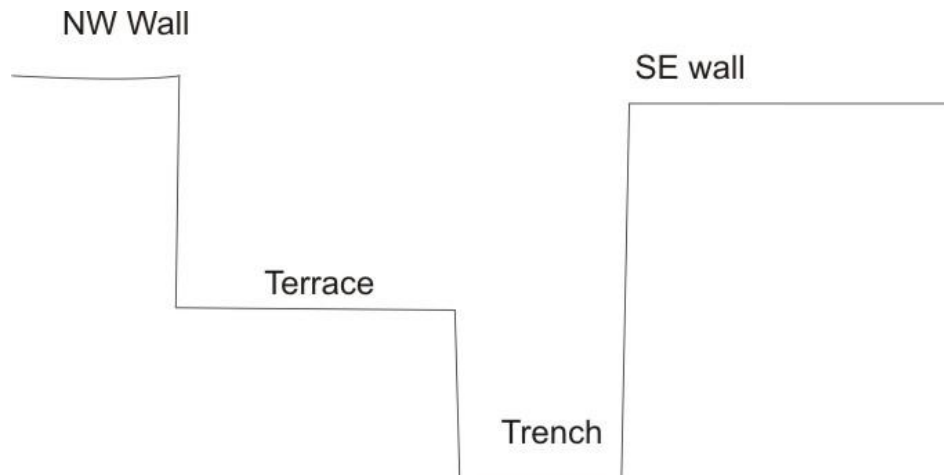


Figure 4: Schematic Cross-section across the quarry (not to scale)



Figure 5: Google map showing the present layout of the quarry

Existing Franka Stone reserves

The terrace which measures approximately **80m long by 40m wide by 9m** deep contains enough franka stone reserves for a number of years to come. This terrace and step are shown in **Plate 1**. The trench and the SW wall of the quarry are shown in **Plate 2**.



Plate 1: View of NW wall terrace and trench



Plate 2: View of the trench



Plate 3: View of the trench and SW wall of Quarry SG4

Conclusions

Quarry SG4 located in the l/o San Lawrenz Gozo contains enough franka stone reserves for a number of years to come.