

PUBLIC CONTRACTS REVIEW BOARD

Case No. 411

SGNLC/T/02/2012

Tender for Cleaning and Maintenance of Parks and Gardens – San Gwann Local Council

This call for tenders was published in the Government Gazette on the 10th January 2012. The closing date for this call – which attracted no fewer than four (4) tenderers was the 13th February 2012.

Mr Christopher Bezzina filed an objection on the 30th March 2012 against the decision of the San Gwann Local Council to reject his tender and to recommend tender award in favour of Environmental Landscaping Consortium 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 Wednesday 16th May, 2012 to discuss this objection.

Present for the hearing:

Mr Christopher Bezzina

Dr Luciano Busuttil	Legal Representative
Mr Christopher Bezzina	Representative

Mr Owen Borg

Dr Jean Franco Gauci	Legal Representative
Mr Owen Borg	Representative
Mr Malcolm Dimech	Representative
Ms Svetlana Dimech	Representative

Environment and Landscaping Consortium Ltd

Dr Ronald Cuschieri	Legal Representative
Mr Charles Attard	Representative

San Gwann Local Council

Dr Keith Grech	Legal Representative
Mr Kurt Guillaumier	Executive Secretary

Evaluation Board/Council – no one was present.



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

Dr Luciano Busuttì, legal representative of Mr Christopher Bezzina, the appellant, submitted that:-

- i. by letter dated 27th March 2012, the San Gwann Local Council informed his client that his submission was unsuccessful and that it was recommended to award the tender to Environment and Landscaping Consortium Ltd since it was the only tenderer which employed qualified gardeners;
 - ii. according to the schedule of tenders received his client had submitted the cheapest offer at €23,000 as against the recommended offer of €27,500;
 - iii. whilst, according to local councils legislation, the council was obliged to interview the bidders in relation to the offers submitted to assist it in the evaluation process, yet no such interviews were held;
- and
- iv. his client possessed the necessary experience to execute the contract and since his offer was the cheapest by a substantial margin, the San Gwann Local Council was required to explain and to justify its evaluation process and recommendation.

Dr Keith Grech, legal representative of San Gwann Local Council, the contracting authority, remarked that:-

- a. the award criterion of this tender was not solely price but the most advantageous one;
- b. whilst the Council was not contesting that Mr Bezzina did possess experience in this field yet the Council recalled that it encountered certain difficulties when Mr Bezzina was entrusted with these works so much so that the Council did not award him the subsequent tender;
- c. the bidder's experience had to be backed up with satisfactory performance, which was not the case with the appellant;
- d. whilst Mr Bezzina's past performance on similar works left to be desired, on the other hand, Environment and Landscaping Consortium Ltd had considerable experience in this sector so much so that it carried out such works on behalf of about thirty eight out of sixty eight local councils and its past performance was very satisfactory;
- e. Environment and Landscaping Consortium Ltd had also declared that it would deploy two full-time employees on this job;

and



- f. the pertinent legislation did not bind local councils to adjudicate tenders solely on the basis of price but it left local councils with a measure of discretion provided that there were valid reasons backing the recommendation.

Mr Kurt Guillaumier, executive secretary of the San Gwann Local Council, under oath, gave the following explanations:

- a. he had been performing the duties of executive secretary with San Gwann Local Council since October 2011 and that prior to that he had served as mayor and councillor of the same locality for a number of years;
- b. he had informed the members of the adjudicating board of the hearing but evidently none of them turned up;
- c. the tender document did not request bidders to submit qualifications and none of the tenderers participating in the tender procedure submitted the qualifications of their employees;
- d. in the case of Environment and Landscaping Consortium Ltd he was aware that their employees were ex-Department of Agriculture employees;
- e. no interviews were held with tenderers, which were permissible by legislation, and no verifications of any sort were carried out with a view to establishing whether the bidders possessed any academic qualifications since the Council relied on the documentation presented in the tender submissions;
- f. Environment and Landscaping Consortium Ltd presented evidence of experience and the list of employees according to the Employment and Training Corporation indicating various personnel who were engaged on gardening works;

and

- g. whilst, as far as he was aware, no default notices were issued against Mr Bezzina, yet he did recall instances in 2004, when he was Mayor of San Gwann, that he received reports that, following pruning works, Mr Bezzina used to leave small branches and other material laying about.

The Chairman Public Contracts Review Board noted that although Mr Bezzina was not officially blacklisted by the issue of default notices still there appeared to be some sort of latent blacklisting.

The Chairman Public Contracts Review Board noted that whilst the only reason for rejection communicated to the unsuccessful bidders was that Environment and Landscaping Consortium Ltd had qualified gardeners, which issue had been raised by Councillor Marica Bayliss, yet it was also emerging that there were other issues, e.g. that past performance by Mr Bezzina in the execution of such works which, as was alleged, was unsatisfactory.

Dr Ronald Cuschieri, legal representative of Environment and Landscaping Consortium Ltd, submitted that:-



- a. the difference between the price of his client and that of the appellant amounted to about €4,000;
 - b. his client was engaged by about thirty eight other local councils on similar works which was ample evidence of its experience in this sector;
 - c. his client was the current contractor and, as a result, the Council was aware of the quality of the work it performed;
 - d. the council's contracts manager assigned the work to be performed to the two Environment and Landscaping Consortium Ltd employees deployed on these works and, if need be, his client could deploy more personnel on a particular job because it possessed the resources to do so;
 - e. any shortcomings pinpointed by the contracting authority were invariably rectified and the price quoted by his client was identical to the one it offered in the 2005 tendering process thereby maintaining the same price in spite of the fact that operating costs were constantly on the increase;
- and
- f. the tendering process was a fair and a transparent one.

Mr Bezzina stated that to his recollection the only complaint that he had received concerned the late presentation of a bill for the Council to issue payment in his favour and that another issue that he had with the Council concerned the provision of water because the Council used to order substantial quantities once he footed the bill adding that, ironically, the Council reduced its orders for the provision of water when, later on, the expense was a charge on the Council.

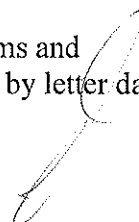
Mr Guillaumier insisted that the complaints related to Mr Bezzina leaving pruning residue laying about instead of disposing of same.

Dr Grech concluded that the contracting authority reached its decision after considering the whole package offered by bidders and Environment and Landscaping Consortium Ltd provided the contracting authority with peace of mind that the contract would be properly executed whereas Mr Bezzina's past performance was not to the satisfaction of the Council.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 30th March 2012 and also through their verbal submissions presented during the hearing held on the 16th May 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 27th



March 2012, the San Gwann Local Council informed the appellant that his submission was unsuccessful and that the tender was being recommended for award to Environment and Landscaping Consortium Ltd since it was the only tenderer which employed qualified gardeners, (b) according to the schedule of tenders received the appellant had submitted the cheapest offer at €23,000 as against the recommended offer of €27,500, (c) whilst, according to local councils legislation, the council was obliged to interview the bidders in relation to the offers submitted to assist it in the evaluation process, yet no such interviews were held and (d) the appellant possessed the necessary experience to execute the contract and since his offer was the cheapest by a substantial margin, the San Gwann Local Council was required to explain and to justify its evaluation process and recommendation;

- having considered the contracting authority's representatives' reference to the fact that (a) the award criterion of this tender was not solely price but the most advantageous one, (b) whilst the Council was not contesting that Mr Bezzina did possess experience in this field yet the Council recalled that it encountered certain difficulties when Mr Bezzina was entrusted with these works so much so that the Council did not award him the subsequent tender, (c) the bidder's experience had to be backed up with satisfactory performance, which was not the case with the appellant, (d) whilst Mr Bezzina's past performance on similar works left to be desired, on the other hand, Environment and Landscaping Consortium Ltd had considerable experience in this sector so much so that it carried out such works on behalf of about thirty eight out of sixty eight local councils and its past performance was very satisfactory, (e) Environment and Landscaping Consortium Ltd had also declared that it would deploy two full-time employees on this job, (f) the pertinent legislation did not bind local councils to adjudicate tenders solely on the basis of price but it left local councils with a measure of discretion provided that there were valid reasons backing the recommendation, (g) the tender document did not request bidders to submit qualifications and none of the tenderers participating in the tender procedure submitted the qualifications of their employees, (h) in the case of Environment and Landscaping Consortium Ltd the evaluation board was aware that their employees were ex-Department of Agriculture employees, (i) no interviews were held with tenderers, which were permissible by legislation, and no verifications of any sort were carried out with a view to establishing whether the bidders possessed any academic qualifications since the Council relied on the documentation presented in the tender submissions, (j) Environment and Landscaping Consortium Ltd presented evidence of experience and the list of employees according to the Employment and Training Corporation indicating various personnel who were engaged on gardening works and (k) whilst, as far as Mr Guillaumier was aware, no default notices were issued against Mr Bezzina, yet he did recall instances in 2004, when he was Mayor of San Gwann, that he received reports that, following pruning works, Mr Bezzina used to leave small branches and other material laying about;
- having considered the interested party's representatives' reference to the fact that (a) the difference between the price of Environment and Landscaping Consortium Ltd and that of the appellant amounted to about €4,000, (b) Environment and Landscaping Consortium Ltd was engaged by about thirty eight other local councils on similar works which was ample evidence of the company's experience in this sector, (c) Environment and Landscaping Consortium Ltd was the current contractor and, as a consequence, the Council was aware of the quality of the work it

performed, (d) the council's contracts manager assigned the work to be performed to the two Environment and Landscaping Consortium Ltd employees deployed on these works and, if need be, the company could deploy more personnel on a particular job because it possessed the resources to do so, (e) any shortcomings pinpointed by the contracting authority were invariably rectified and the price quoted by Environment and Landscaping Consortium Ltd was identical to the one it had offered in the 2005 tendering process thereby maintaining the same price in spite of the fact that operating costs were constantly on the increase, (f) the company could quote for such a price due to economies of scale and (g) the tendering process was a fair and a transparent one,


reached the following conclusions, namely:

1. The Public Contracts Review Board noted that although Mr Bezzina was not officially blacklisted by the issue of default notices, still there appeared to be some kind of latent blacklisting. This Board contends that this line of reasoning, albeit it may be based on valid grounds, yet it could also be vitiated enough to stifle an equitable and transparent adjudication process amongst the participating tenderers.
2. The Public Contracts Review Board notes the fact that the only reason for rejection communicated to the unsuccessful bidders was that Environment and Landscaping Consortium Ltd had qualified gardeners. Nevertheless, during the hearing it also emerged that there were other issues such as Mr Bezzina's execution of works previously entrusted to him by the same Council – so much so that the Council did not award him the subsequent tender - which, as was alleged, was unsatisfactory but which shortcoming was not formally mentioned to Mr Bezzina as a reason for rejection of submission presented by the appellant. This Board cannot but stress the need for full justifications for exclusion to be given to appellants by contracting authorities in order to enable the latter to (a) establish whether they are justified in filing an appeal and (b) if they decide to do so, to ensure an adequate defence of the respective arguments which one would be raising during a hearing.
3. This Board observes that the contracting authority could have been more explicit as to the level of gardening experience / professional level needed. Yet, this Board acknowledges the fact that the tender document, at Doc 06 'Details of Experience', requested the tenderer to provide details of work with public entities since 1994 in the field covered under the contract and, considering that the title of the tender was '*Tender for Cleaning and Maintenance of Parks and Gardens*', it seemed natural that a tenderer would have been expected to demonstrate his level of competency as well as the facility to provide the service in an effective manner including the number of employees one would be inclined to allocate to fulfill one's obligations.
4. The Public Contracts Review Board feels that the contracting authority had every right to consider past performances on similar works noting that, whereas, as far as the appellant is concerned, his past performance left much to be desired, on the other hand, Environment and Landscaping Consortium Ltd had considerable experience in this sector so much so that it carried out such works

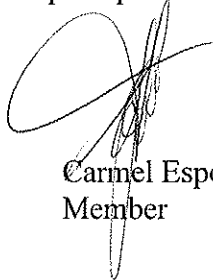
on behalf of about thirty eight out of sixty eight local councils and its past performance was very satisfactory.

5. This Board agrees with the contracting authority that the pertinent legislation did not bind local councils to simply adjudicate tenders on the basis of price only but it provided local councils with a measure of discretion provided that there were valid reasons.
6. The Public Contracts Review Board cannot but agree with the evaluation board's line of thought wherein it was acknowledged that the whole package offered by bidders and Environment and Landscaping Consortium Ltd provided the contracting authority with peace of mind that the contract would be properly executed.
7. The Public Contracts Review Board would like to place emphasis on the fact that it has serious reservations on the fact that Council members form part of adjudication panels. It is this Board's opinion that the persons fulfilling such a pivotal role should be independent.

In view of the above, this Board finds against the appellant company and recommends that the said appellant forfeits the deposit paid for the appeal to be lodged.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Paul Mifsud
Member

28th May 2012