

PUBLIC CONTRACTS REVIEW BOARD

Case No. 497

SLC/T/484/2012

Tender for Road Signs and Markings– Sliema Local Council

This call for tenders was published in the Government Gazette on the 3rd August 2012. The closing date for this call with an estimated budget of € 55,647 was the 5th September 2012.

Five (5) tenderers submitted their offers.

Koperattiva Tabelli u Sinjali tat-Traffiku filed an objection on the 10th October 2012 against the decision of the Sliema Local Council to recommend the award of the tender to B. Grima & Sons Ltd.

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 Tuesday, 27th November 2012 to discuss this objection.

Koperattiva Tabelli u Sinjali tat-Traffiku (Koptasin)

Mr Victor Bugeja LP	Legal Representative
Mr Charles Zahra	Representative

B. Grima & Sons Ltd

Dr Tonio Cachia	Legal Representative
Mr Bartolomeo Grima	Representative

Sliema Local Council

Dr Marion Camilleri	Legal Representative
Mr Anthony Chircop	Mayor
Mr Matthew Dimech	Executive Secretary



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

Mr Victor Bugeja, representing the *Koperattiva Tabelli u Sinjali tat-Traffiku*, the appellant, submitted that:-

- i. by letter dated 5th October 2012 the Sliema Local Council informed the appellant that the award of the tender was recommended to B. Grima & Sons Ltd for submitting the most advantageous offer;
- ii. the appellant was contending that its offer was, in fact, not only compliant but also the cheapest;
- iii. from the records of the Council meetings it emerged that the Deputy Mayor, Mr Silvio Zammit, was responsible for traffic management;
- iv. Council meeting held on the 18th September 2012 (minutes signed on 4th October 2012) included the following:-

“Il-Viçi Sindku qal li kien hemm dewmien mhux gustifikat min-naħa tal-Koptasin biex isiru xogħlijiet, fosthom twaħħil ta’ tabelli. Din grat fuq bazi regolari. Kien hemm ukoll okkazjonijiet fejn twaħħlu tabelli li wara fiit zmien inqalghet il-print tat-tabella.

Il-Viçi Sindku qal li għamel kuntatt mas-Sindku tar-Rabat u dak tal-Pietà, biex jara jekk huma qattx hadmu mal-kuntrattur Grima & Sons Ltd. Il-Viçi Sindku qal li dawn is-sindki nfirmawh illi dan il-kuntrattur huwa effiċjenti.

Il-Viçi Sinkdu qal illi prezentement qed idumu biex jinqdew, u wisq jibza li proġetti fil-futur bħall-implimentazzjoni tar-Residential Parking Scheme tiġi kompromessa b’dewmien minn kuntrattur

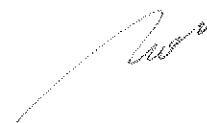
Il-Viçi Sindku qal li Grima & Sons Ltd huma t-tieni l-orħos. Izda, l-prezzijiet tagħhom kienu kwazi l-istess bħal tal-Koptasin.

Il-Kunsilliera Aquilina qalet li x-xogħol prezenti tal-Koptasin huwa tajjeb u dan il-kuntrattur huwa xorta waħda l-irħas

Is-Sindku, il-Viçi Sindku, il-Kunsilliera Radmilli u Busietta qablu biex tiġi rakkomandata l-offerta ta’ Grima & Sons Ltd. Il-Kunsilliera Aquilina ma qabltx.

Il-Kumitat qabel li jirrakkomanda l-offerta ta’ Grima & Sons Ltd għal dan il-kuntratt”

- v. the Council meeting held on the 4th October 2012 (minutes signed on the 18th October) included the following:-



“Il-Kunsillier M Brigulio qal li l-Koptasin ilhom hafna jahdmu mal-Kunsill Lokali tas-Sliema, u qatt ma ra li hemm problemi bix-xoghol tagħhom. Huwa qal li jiftakar li dejjem konna nahdmu tajjeb magħhom. Il-Kunsilliera Aquilina qablet.

Il-Kunsilliera M Camilleri qalet li mal-kuntrattur Koptasin għandna esperjenza imma ma’ Grima & Sons Ltd ma għandniex. Hija għaldaqstant qalet li tirrakkomanda l-offerta ta’ Koptasin. M Brigulio qabel.”

(the Deputy Mayor repeated, more or less, the comments he had made at the meeting held on 18th September 2012 already cited).

“Is-Segretarju Ezekuttiv irrimarka illi meta nsemmu dewmien, irridu niftakru illi s-servizz prezenti kien qed jingħata permezz ta’ kwotazzjoni, illi fiha ma kienx deskritt kemm hu z-zmien biex ninqadew u lanqas kien hemm il-fakultà li jingħataw default notices. F’dan ir-rigward importanti li jekk il-Kunsilliera se jgħoddu kemm damet biex tehel tabella, iridu jgħoddu l-granet minn meta harġet il-purchase order mill-uffiċju tal-Kunsill.

Il-Kunsilliera Aquilina qalet li hi ovvjament għadha ssostni dak li qalet fil-Bord, voldieri, li hija taqbel mal-offerta tal-Koptasin.

Il-Kunsilliera M. Briguglio u M Camilleri qalu li għadarba l-Viċi Sindku huwa responsabbli minn dan is-servizz, ser joqgħodu fuq il-kelma tiegħu li d-dewmien fis-servizz fil-prezent mhux wieħed gustifikat, u għaldaqstant qablu mar-rakkomandazzjoni tal-Bord.

M Aquilina ma qablitz.

Il-Kunsill qabel li tintgħazel l-offerta ta’ B. Grima & Sons Ltd”

- vi. it was evident that the Deputy Mayor Zammit was the only one who was all along denigrating the work performed by the appellant and, at the same time, pushing forward and recommending the award of the tender to B Grima & Sons Ltd;
- vii. on the other hand, Councillors Aquilina, Briguglio and Camilleri praised the work performed by the *Koperattiva Tabelli u Sinjali tat-Traffiku* over time and Councillor Aquilina kept on insisting till the very end that the tender ought to be awarded to the said co-operative whereas Councillors Briguglio and Camilleri at the end gave up by stating that once traffic management was the responsibility of the Deputy Mayor then they were going to back his recommendation to award the tender to Grima & Sons Ltd;
- viii. the Deputy Mayor failed to take the advice of three councillors who expressed their satisfaction with the co-operative’s past performance and relied solely on the advice of two mayors;


- ix. the Council's conclusion that the recommended tenderer submitted the most advantageous offer was highly questionable because the appellant's offer was cheaper than the recommended one, a fact that was acknowledged by the Council itself, and various Councillors expressed positive remarks with regard to the co-operative's past performance;
 - x. the alleged bad workmanship relating to about two out of a number of signs which had pealed off was also questionable because, had it been bad workmanship, then all the signs would have pealed off and, as a result, the appellant was suspecting sabotage or wilful damage/vandalism;
- and
- xi. the appellant never received any default notices.

The Chairman Public Contracts Review Board failed to find in the tender evaluation paperwork a comparative table featuring all the bids received. He was then furnished with the list of items requested and the comparative prices submitted by the *Koperattiva Tabelli u Sinjali tat-Traffiku*, Grima & Sons Ltd, RMS and MCFR where the cheapest prices had been shaded and it emerged that the *Koperattiva Tabelli u Sinjali tat-Traffiku* quoted the cheapest price in the majority of the cases.

Mr Anthony Chircop, Mayor of Sliema, remarked that:

- a. the evaluation committee met on the 18th September 2012 and those present were himself, the deputy mayor, and councillors M Aquilina, P Radmilli and Dr K Busietta together with the executive secretary;
 - b. the Council meeting held on the 25th September 2012 was attended by the Mayor and all Council Members except for Mr PP Portelli and Mr N Gauci;
 - c. the Council relied heavily on the oral submission made by the Deputy Mayor who was in charge of traffic management and who was the one who dealt directly with the contractor/s;
 - d. to his recollection no written default notices were issued to the appellant and if there were any complaints these were communicated verbally;
 - e. Councillor M Aquilina, who recommended the award in favour of the appellant, had served on previous councils and so her experience on traffic management stretched beyond that of other councillors;
- and
- f. the prices offered by the recommended tenderer and the appellant were quite close.

The Chairman Public Contracts Review Board deplored the fact that no records were kept of complaints made by the Council on bad workmanship by its contractors and remarked that decisions on rejecting the cheapest tender had to be arrived at on



tangible proof and on objective criteria. He added that it appeared that the Sliema Local Council relied entirely on the assessment made by one person, the Deputy Mayor, and what one had to deliberate on was whether it was correct for, practically one person, to, effectively, decide on the award of this tender.

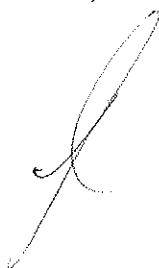
Mr Charles Zahra, also representing the appellant, under oath, gave the following evidence:-

- i. he was the contact person of the *Koperattiva Tabelli u Sinjali tat-Traffiku* with the deputy mayor and/or the executive secretary and most of the communications were made over the telephone;
 - ii. regardless of the fact that in one instance, out of about 22 signs, 2 had pealed off, yet, all the signs were made of the same material and it was therefore odd that only 2 resulted damaged and they were replaced instantly;
 - iii. the alleged delays usually were the result of indecision or of decisions that kept on changing on the part of the local council, namely the council took time to decide on the images sent by the *Koperattiva Tabelli u Sinjali tat-Traffiku* prior to actually fixing the signs;
 - iv. these indecisions caused both delays and extra expenses to the contractor;
 - v. of the long list of items requested in the tender, the first few items were mostly in demand and the *Koperattiva Tabelli u Sinjali tat-Traffiku* offered the best prices;
 - vi. the *Koperattiva Tabelli u Sinjali tat-Traffiku* had been engaged on similar works by the Sliema Local Council since 1995 and, to the appellant's recollection, it did not receive any default notices;
- and
- vii. the appellant was not aware of the allegation made by the deputy mayor that a *Koperattiva Tabelli u Sinjali tat-Traffiku* representative had tried to influence his decision regarding the award of this tender and the Police did not contact the appellant in that regard.

At this stage the Public Contracts Review Board deplored the allegation made by the deputy mayor once he failed to substantiate it or to report it to the Police for investigation as that allegation could have been made solely to influence the other councillors.

Dr Tonio Cachia, legal representative of the recommended tenderer, remarked that:-

- a. the difference in the prices quoted by the recommended tenderer and the appellant amounted to a matter of cents and that reflected the current harsh competition for such services;



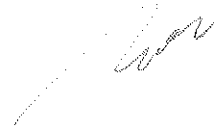
- b. this tender was issued for a period of one year which could be extended up to three years and that it was the first time that a tender was being issued as previously the council contracted these works through quotations which did not provide for the issue of default notices and that could explain the non-issue of default notices to the appellant;
- c. the council was faced with two tender submissions which were both technically compliant and almost identical in price and, as a result, the decision rested on the quality of the service of the tenderers;
- and
- d. the contracting authority could award this tender to the recommended tenderer for one year and if it would find the said tenderer deficient then it would refrain from extending the contract beyond the first year.

The Cairman Public Contracts Review Board disagreed that default notices for bad workmanship were conditional to a contract awarded after a call for tenders and not through quotations.

At this point the hearing came to a close.

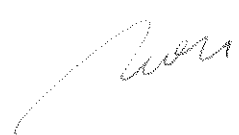
This Board,

- having noted that the appellant company, in terms of its 'reasoned letter of objection' dated the 9th October 2012 and also through its representatives verbal submissions presented during the hearing held on the 27th November 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant's representative's claims and observations, particularly, the references (a) made to the fact that by letter dated 5th October 2012 the Sliema Local Council informed the appellant that the award of the tender was recommended to B. Grima & Sons Ltd for submitting the most advantageous offer, (b) made to the fact the appellant was contending that its offer was, in fact, not only compliant but also the cheapest, (c) made to the fact that from the records of the Council meetings it emerged that the Deputy Mayor, Mr Silvio Zammit, was responsible for traffic management, (d) relating to Council meeting held on the 18th September 2012 (minutes signed on 4th October 2012) included the following, (e) relating to the Council meeting held on the 4th October 2012 (minutes signed on the 18th October) included the following, (f) made to the fact that it was evident that the Deputy Mayor Zammit was the only one who was all along denigrating the work performed by the appellant and, at the same time, pushing forward and recommending the award of the tender to B Grima & Sons Ltd, (g) made to the fact that on the other hand, Councillors Aquilina, Briguglio and Camilleri praised the work performed by the *Koperattiva Tabelli u Sinjali tat-Traffiku* over time and Councillor Aquilina kept on insisting till the very end that the tender ought to be awarded to the said co-operative whereas Councillors Briguglio and Camilleri at the end gave up by stating that once traffic management was the responsibility of the Deputy Mayor then they were going to back his recommendation to award the tender to Grima & Sons Ltd, (h) made to the fact that the Deputy Mayor failed to take the advice of three councillors who expressed their satisfaction with the co-operative's past performance and relied



solely on the advice of two other mayors, (i) made to the fact that the Council's conclusion that the recommended tenderer submitted the most advantageous offer was highly questionable because the appellant's offer was cheaper than the recommended one, a fact that was acknowledged by the Council itself, and various Councillors expressed positive remarks with regard to the co-operative's past performance, (j) made to the fact that the alleged bad workmanship relating to about two out of a number of signs which had peeled off was also questionable because, had it been bad workmanship, then all the signs would have peeled off and, as a result, the appellant was suspecting sabotage or wilful damage/vandalism, (k) made to the fact that the appellant never received any default notices, (l) made to the fact that regardless of the fact that in one instance, out of about 22 signs, 2 had peeled off, yet, all the signs were made of the same material and it was therefore odd that only 2 resulted damaged and they were replaced instantly, (m) made to the fact that the alleged delays usually were the result of indecision or of decisions that kept on changing on the part of the local council, namely the council took time to decide on the images sent by the *Koperattiva Tabelli u Sinjali tat-Traffiku* prior to actually fixing the signs, (n) made to the fact that these indecisions caused both delays and extra expenses to the contractor, (o) made to the fact that of the long list of items requested in the tender, the first few items were mostly in demand and the *Koperattiva Tabelli u Sinjali tat-Traffiku* offered the best prices, (p) made to the fact that the *Koperattiva Tabelli u Sinjali tat-Traffiku* had been engaged on similar works by the Sliema Local Council since 1995 and, to the appellant's recollection, it did not receive any default notices and (q) made to the fact that the appellant was not aware of the allegation made by the deputy mayor that a *Koperattiva Tabelli u Sinjali tat-Traffiku* representative had tried to influence his decision regarding the award of this tender and the Police did not contact the appellant in that regard;

- having considered the contracting authority's representative's reference to the fact that (a) the evaluation committee met on the 18th September 2012 and those present were the Mayor, the deputy mayor, and councillors M Aquilina, P Radmilli and Dr K Busietta together with the executive secretary, (b) the Council meeting held on the 25th September 2012 was attended by the Mayor and all Council Members except for Mr PP Portelli and Mr N Gauci, (c) the Council relied heavily on the oral submission made by the Deputy Mayor who was in charge of traffic management and who was the one who dealt directly with the contractor/s, (d) no written default notices were issued to the appellant and if there were any complaints these were communicated verbally, (e) Councillor M Aquilina, who recommended the award in favour of the appellant, had served on previous councils and so her experience on traffic management stretched beyond that of other councillors and (f) the prices offered by the recommended tenderer and the appellant were quite close;
- having also considered the recommended tenderer's representative's reference to the fact that (a) the difference in the prices quoted by the recommended tenderer and the appellant amounted to a matter of cents and that reflected the current harsh competition for such services, (b) this tender was issued for a period of one year which could be extended up to three years and that it was the first time that a tender was being issued as, previously, the council contracted these works through quotations which did not provide for the issue of default notices and that could explain the non-issue of default notices to the appellant, (c) the council was faced with two tender submissions which were both technically compliant and almost identical in price and, as a result, the decision rested on the quality of the service of the tenderers and (d) the contracting authority could award this tender to the



recommended tenderer for one year and if it would find the said tenderer deficient then it would refrain from extending the contract beyond the first year,

reached the following conclusions, namely:

1. The Public Contracts Review Board deplores the fact that no pertinent records were kept of complaints made by the Council on bad workmanship provided by the appellant. This Board also disagrees that default notices for bad workmanship are conditional to a contract awarded after a call for tenders and not through other approved procedures such as 'quotations'.
2. The Public Contracts Review Board feels that decisions on rejecting the cheapest tender had to be arrived at via the availability of tangible proof and based on objective criteria. Undoubtedly, in this particular instance, this Board cannot but note the total reliance by the Sliema Local Council on the assessment made by one person, the Deputy Mayor. This Board establishes that it was not correct for, practically one person, to, effectively, decide on the award of a tender where all is presented with minimal corroborative proof.
3. The Public Contracts Review Board also deplores the allegation made by the deputy mayor against a staff member of the appellant once the said deputy mayor failed to substantiate the allegation or, at least, report it to the Police for investigation.
4. This Board establishes that the contracting authority did not conduct an equitable and transparent assessment of the tenders in its possession and that the process ended up being highly vitiated.

In view of the above this Board concludes that it would be more opportune and fair for the contracting authority to (a) reissue the tender in question, (b) ensure that, this time, the evaluation process shall formally seek to investigate further and, in a more transparent way, certain issues, such as previous problems with workmanships, timelines, track record and so forth and (c) ensure that no individual would be entrusted with the task of being so pivotal as to whether this tender is awarded to one tenderer rather than another.

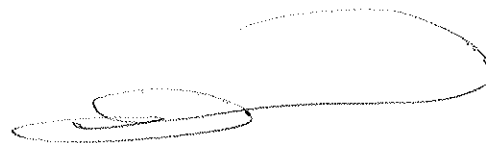
This Board also decides that the appellant should be reimbursed for the fees paid in connection with submitting the claim.



Alfred R Triganza
Chairman



Joseph Croker
Member



Paul Mifsud
Member

4 December 2012