

PUBLIC CONTRACTS REVIEW BOARD

Case No. 561

MTFLC/T/01/12

Tender for the Collection of Mixed Household Waste

The tender was published on the 26th September 2012 with a closing date of the 27th October 2012. The estimated value of the Tender was €34,000 (exclusive of VAT).

Eight (8) bidders submitted their offers.

Northern Cleaning Group Ltd. filed an objection on the 14th February 2013 against a decision of the Mtarfa Local Council, the contracting authority, to discard its offer and to recommend the award of the tender to Chris Gatt.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday 9th July 2013 to discuss the appeal.

Present:

Northern Cleaning Group Ltd.

Dr Arthur Azzopardi	Legal Representative
Mr Brian Borg	Representative
Dr Mathew Brincat	

Chris Gatt, recommended bidder.

Mr Chris Gatt	Representative
Mr George Gatt	Representative
Dr Maria Azzopardi	Legal Representative

Mtarfa Local Council

Ms Josette Micallef	Executive Secretary
Dr Malcolm Mifsud	Legal Representative

The Chairman made a brief introduction and the appellant company's representative was invited to explain the motives of his objection.

Dr Arthur Azzopardi legal representative of appellant firm referred to the letter of objection and stated that the salient points were as follows. The tender had to be adjudicated on the basis of forty per cent 40% on the financial aspect and the remaining sixty percent 60% on the other factors. On the financial aspect there is no contestation on the working of the points assigned for the financial bid. In fact his clients were assigned 26 points while the preferred bidder, being the cheapest was assigned the maximum 40 points.

On the remaining sixty percent of the points, it was here that there were several flawed decisions. Here the allocation of these 60 percent there are standards set out for all local councils and are not fixed by the contracting authority itself.

1. Human Resources: Appellant firm employs ten full time employees. So it should have been assigned more points for this than the preferred bidder.
2. Ownership of vehicles: Appellants have shown in their bid that they own 10 refuse collection trucks. But questions the ownership of vehicles by the preferred bidder. On being asked by the Chairman if he is alleging that the preferred bidder did not have the necessary vehicles, Dr Azzopardi stated that he had asked for a representative from Transport Malta to state if Chris Gatt had any vehicles registered. He contends that this should have been done by the contracting authority itself before adjudicating.
3. References: Appellants produced evidence of four other instances where they had provided service to other councils. Preferred bidder did not have any experience so they should not have been assigned the same points.
4. Default notices: Contends that his clients correctly received the full marks, because they did not have any default notices. However preferred bidder also received full points, but as it is true that he did not have any default notices, he was not exposed to these notices because he was not rendering previous services.

Finally Dr Azzopardi reiterated that unless the preferred bidder had vehicles in his name at the time of the tender closing date, and did not have employees working for him his bid should have been disqualified.

Dr Malcolm Mifsud legal representative of the Mtarfa Local Council stated the evaluation criteria should be that set down in the tender document which binds both the contracting authority and each bidder. There was no specification that bidders had to have ten employees. What is important for this tender was to ensure that bidders had enough manpower to service Mtarfa properly. The number of employees employed with tenderer was not relevant. Evaluation board acted correctly in assigning these points. Preferred bidder satisfied this condition and was given points accordingly.

Regarding vehicles, the contracting authority needed to be satisfied that whoever won the tender would be using Euro 4 Vehicles, so such vehicles were allotted more points.

The preferred bidder in fact had the tender for two other areas - Dingli and Rabat, so it was not true to state that the preferred bidder did not have any experience.

This board has to see that the evaluation board acted correctly when evaluating the offers.

Josette Micallef Executive Secretary Mtarfa Local Council explained that the format used for the tender was issued by the Local Councils Department. The evaluation board examined each bid in detail and checked everything including the log books. Points given on Euro 4 vehicles. Appellants submitted only 1 Euro 4 vehicle, and in fact were offering to serve Mtarfa using a Euro 3 vehicle.

At this point because of allegations made by Dr Azzopardi, that preferred bidder did not possess the necessary vehicles, the Board examined the log books and photos submitted by the preferred bidder with his tender. It was verified that the vehicles he offered were owned by him and were category Euro 4 vehicles.

At this point the hearing was closed.

This Board,

Having noted the reasoned letter of objection filed by the Appellant dated 14th February 2013,

Having noted the Appellant's claims as follows:

The allocation of points relating to the 60% benchmark was not allotted correctly in that:

- a) Appellant had more employees than the preferred bidder – more points had to be given to the Appellant.**
- b) Appellant was more equipped than the preferred bidder.**
- c) Appellant's experience in this trade is much more than the preferred bidder's.**
- d) Allocation of points with regards to "Default notices" , Appellant claims that points given by the evaluation Board did not reflect the scale of exposure in this line of trading**

Having considered the Contracting Authority's submissions as follows:

- a) That the tender document did not stipulate the number of employees the successful bidder had to employ.**
- b) In fact, the successful bidder had to employ the necessary workforce to ensure a good service as laid out in the tender documents.**
- c) The preferred bidder had enough experience for this assignment.**

Reaching the following conclusions,

- 1. The Evaluation Board acted correctly in the allocation of points on deliberation.**
- 2. The preferred bidder had enough experience and resources to deliver.**
- 3. The accusations made by the appellant were unfounded.**

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

29th July 2013