

PUBLIC CONTRACTS REVIEW BOARD

Case No. 581

DCS/T4/2013

Tender for the Supply and Installation of Electrical Services at Gozo College, Xaghra Primary School.

The tender was published on the 22nd January 2013. The closing date was the 19th February 2013.

The estimated value of the Tender was €61,729.75 (Exclusive of VAT).

Five (5) bidders submitted their offers.

On the 25th July 2013 Mr Noel Borg filed an objection against the award of the tender to Mr Richard Cauchi.

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 Thursday 8th August 2013 to discuss the appeal.

Present for the hearing:

Mr Noel Borg - Appellant

Mr Noel Borg	Representative
Dr Renata Formosa	Legal Representative

Mr Richard Cauchi – Recommended Bidder

Dr Abigail Critien	Legal Representative
Mr Richard Cauchi	Representative

Ministry of Education – Contracting Authority

Eng. Mario Cauchi	Chairman Evaluation Board
Ms Maria Agius	Secretary Evaluation Board
Mr Anthony Cassar	Member Evaluation Board
Ing. Jeffrey Muscat	Member Evaluation Board
Mr George Scicluna	Member Evaluation Board
Mr Renaldo Cini	Sr Principal Ministry of Education
Dr Joseph Bonello	Legal Representative

After a brief introduction, the Chairman invited the appellant to give the reasons behind his objection.

Dr Renata Formosa on behalf of the appellant submitted that her client's appeal was based on the facts that the contracting authority failed to inform him of:

- 1) The fact that his bid was not chosen.
- 2) The reasons why his offer was found non-compliant, as it was bound to do by the Regulations.

She contended that appellant's offer was the cheapest, and thus the reason for having it rejected should have been explained, again a requisite of the Procurement Regulations.

Dr Joseph Bonello, appearing for the contracting authority asked for the production of two witnesses who were to explain the contracting authority's point of view on the matters raised by appellant's legal representative. He contended that as the bidders were informed that the award was made to Richard Cauchi, it followed, and the other bidders should have understood that their bids were not chosen. He asserted that in Gozo this was the normal practice. He also questioned the effect the result of this appeal had on the tender. The validity of the tender is not affected by any administrative errors following the adjudication.

Mr Renaldo Cini, a senior principal at the Ministry of Education, Gozo, under oath, explained that the normal procedure in use was followed after the tender was awarded. This is what always happened in Gozo. Thus all bidders were informed that the tender had been awarded and no other details were included in the correspondence.

It was explained to the witness by the PCRБ that this procedure was not normal. Procurement Regulations stated otherwise. The same regulations applied to Gozo as well.

Engineer Mario Cauchi, testified that he was the chairperson of the evaluation board. He stated that whilst the preferred bidder's offer was both administratively and technically compliant, appellant's offer was found to be administratively non-compliant because it failed to prove he had the necessary mandatory experience. Article 6.1.2 of the tender, required the bidders to submit evidence of their previous experience. They had to show at least 2 similar projects, as a minimum, in the last 4 years. The value of these projects should not be less than the minimum of €25,000. Appellant's bid, form 5 on page 28, clearly shows that although three projects were listed, only one of these had been completed 100%, and this project's value was €8,000. The other two projects were not completed.

Replying to a question by appellant's legal representative, witness confirmed that appellant's bid was the cheapest. He explained that the evaluation board, when evaluating bids, first checked the administrative compliance of all bidders. Those that were found to be so then proceeded to be checked for technical compliancy. Appellant's offer failed the administrative compliancy stage and was not evaluated further.

Replying to a question by Dr Abigail Critien, preferred bidder's representative, witness reiterated that bidders had to pass the administrative compliance test before their technical offer and financial offer was examined. Those who failed the administrative test, were disqualified and their bids rejected.

The hearing was at this point brought to a close.

This Board,

Having noted the Applicant's objection in terms of 'Reasoned Letter of Objection' dated 22nd July 2013, had objected to the decision taken by the pertinent Contracting Authority, in that:

- i) The Appellant's bid was the cheapest.**
- ii) No reason was given by the Contracting Authority for refusal of the Appellant's tender bid.**

Having noted the Contracting Authority's verbal submissions during the hearing held on the 8th of August 2013 and the verbal submissions made by two witnesses presented by the Contracting Authority in that:

- i) The Appellant's Bid failed to pass the test regarding experience on similar projects. Hence Appellant did not comply on an 'Administrative' basis.**
- ii) To this effect, the Appellant's bid could not be considered from the technical aspect.**

Reached the following conclusions:

- 1. The Contracting Authority was in duty bound to state the reasons for the refusal of the tender of the Appellant. Had it not been that the Appellant was s not 'Adminstratively Compliant', the situation would have been otherwise.**
- 2. Since the Preferred Bidder was fully compliant and the second cheapest, the Evaluation Board chose the 'Fully Compliant Bidder'.**

In view of the above, this Board, after taking into consideration the fact that the Contracting Authority failed to inform the Appellant of the reasons for refusal of his bid, finds against the Appellant and recommends that the deposit paid by the Appellant should be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

13th August 2013