

PUBLIC CONTRACTS REVIEW BOARD

Case No. 586

SLC/T/608/2012

Tender for the Collection of Mixed Household Waste.

The tender was published on the 2nd October 2012. The closing date was the 15th February 2013.

The estimated value of the Tender was €355,932 (Exclusive of VAT).

Three (3) bidders had submitted their offers.

On the 2nd May 2013, Mr Saviour Mifsud filed an objection against a decision by the Contracting Authority, The Sliema Local Council, to award the tender to SRF & Veladrians Joint Venture.

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 3rd September 2013 to discuss the appeal.

Present for the hearing:

Mr Saviour Mifsud - Appellant

Mr Saviour Mifsud	Representative
Dr Luciano Busutil	Legal Representative

SRF & Veladrians Joint Venture – Recommended Bidder

Dr John Gauci	Legal Representative
Mr Steve Farrugia	Representative
Mr Mario Vella	Representative

Sliema Local Council – Contracting Authority

Dr Franco Vassallo	Legal Representative
Dr Joseph Camilleri	Legal Representative
Mr Christian Vella	Accountant
Mr Anthony Chircop	Mayor, Sliema Local Council
Mr Kris Busietta	Vice-Mayor Sliema local Council
Mr Mathew Dimech	Executive Secretary Sliema Local Council

After making a brief introduction, the Chairman invited the appellant to make his submissions.

Before Dr Luciano Busuttil, on behalf of the appellant could start his submissions, Dr Franco Vassallo on behalf of the contracting authority stated that he would like to raise a preliminary plea, and he preferred to raise this before the appellant made his submissions, and he asked for permission to do so. Dr Franco Vassallo was given permission to proceed.

Dr Franco Vassallo, legal representative of the contracting authority stated that one requisite for a valid tender bid was the production of a bank guarantee, a bid bond. This bank guarantee must remain in force throughout the whole period of the adjudication process. Earlier on today it was discovered that appellant's bid bond had lapsed and had not been renewed. Thus it follows that the appellant does not have any further interest in this tender.

Dr Luciano Busuttil for the appellant stated that the appeal was filed after the adjudication procedure had been concluded. The renewal of the bid bond does not feature anywhere in the Public Procurement Regulations. There is no regulation that states that the non-renewal of the bid bond rendered the appeal null. He contended that this Board has not got the remit to decide on the matter. This Board's remit is to ascertain that the decision taken in adjudication was in order. Admitted that in case the Board eventually finds for his client, it would not be possible to award him the tender, but the Board might decide for example to cancel the proceedings. In this latter case the non-renewal of the bid bond would have no effect on the outcome.

Saviour Mifsud the appellant claims that when he was filing the appeal no one asked him to renew the bid bond, neither did the Sliema Local Council advise him to renew the bid bond.

Dr Franco Vassallo stated that Article 2.2 of the tender requires a valid bid bond that must remain valid for one hundred and fifty days from the closing date of the tender. While the present appeal proceedings suspend the tender proceedings, the requirement of a valid bid bond still exists. The letter of objection asked that the award to the preferred bidder be cancelled, and that the tender be awarded to appellant instead. This demand cannot be acceded to because the appellant's bid bond has lapsed. Contended that the Board cannot find in appellant's favour, because his bid bond has lapsed and his offer is no longer covered by a valid bid bond.

Dr Luciano Busuttil, for appellant said that when the appeal was filed, the bid bond was valid. In fact when the tender was adjudicated his offer was still valid and had not been eliminated because of the lapse of the bid bond. The requirement of one hundred and fifty days from the closing date of the tender was adhered to, and this could not be affected by the length of time in which the appeal is heard. The tender document does not mention that the bid bond should remain valid throughout the appeal period.

Appellant Saviour Mifsud stated that the bank guarantee he filed with his offer was returned to him while it was still valid on the 24th April 2013.

Dr Franco Vassallo explained that the reason behind the asking for bid bonds in tender procedures was to safeguard the contracting authority, in case the tenderer withdrew from his offer before the expiration period, or failed to provide the performance bond.

The Chairman here remarked that the Bid Bond remained valid up to the 13 August 2013, and from that date onward was no longer valid.

Dr Franco Vassallo reiterated that the tender was a Most Economic and Advantageous Tender and was awarded following the regulations to the letter and in complete transparency. It is common knowledge, that, even in cases before the Courts of Justice, the Bank Guarantees issued as safeguards, must always be the original. Copies are not acceptable. That was the reason behind the contracting authority sending the bid bond back to appellant after the adjudication, in case he wished to renew it. He reiterated that the contracting authority contends that appellant's claim, as set down in his letter of objection cannot be acceded to.

At this stage, the hearing was suspended for a few minutes until the Board Members deliberated the issue of the preliminary plea raised by the Sliema Local Council.

When the hearing continued, the Chairman asked the contracting authority whether the other bidders had renewed their bid bonds.

Dr Franco Vassallo said of the three original bidders, one had not appealed, the preferred bidder, had renewed his bid bond while the appellant did not.

The hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the reasoned 'Letter of Objection' dated 2nd May 2013 and also through the Appellant's verbal submissions during the hearing held on 3rd September 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Lack of renewal of the bid bond by the Appellant does not render the Appeal null and Void.**
- b) The Appellant was not advised by the Contracting Authority to renew the bid bond.**
- c) The Appellant was not disqualified by the Evaluation Board due to the lapse of the bid bond.**
- d) The Appellant was not given the information as to how points or percentages were awarded to the other bidders.**
- e) There was no established methodology of how points were awarded to bidders. The method was purely subjective.**

Having Considered the Contracting Authority's verbal submissions presented by same during the hearing held on 3rd September 2013, in that:

- a) The Contracting Authority presented a preliminary plea in that 'one of the requisites for a valid tender under these conditions was the production of a bid bond'.**
- b) The same bid bond must remain valid throughout the full adjudication process.**

- c) **The Bid Bond in the tender procedure was required to provide a safeguard to the Contracting Authority in case the Bidder withdrew from his offer prior to the expiration period of the tender.**
- d) **The Appellant's claim that same was not given the information requested as stated in Paragraph 1 of the Appellant's 'Letter of Objection' dated 2nd May 2013, was incorrect.**

Reached the following conclusions:

- 1. **This Board noted that the Appellant had requested sensitive information from the Contracting Authority, regarding the Preferred Bidder's offer prior to the appeal procedure. It is only during the appeal process that such information can be revealed, discussed and questioned upon.**
- 2. **This Board examined in detail the methodology applied by the Evaluation Board of the Contracting Authority used in allocating percentage ratings on the various attributes regarding the administrative and technical compliance of each tender. In this regard, no subjective elements in the system were found.**
- 3. **The method of allocation of points/ percentages applied by the Evaluation Board of the Contracting Authority was fair and just.**

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

10 October 2013