

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 591**

**SLC/T/606/2013**

### **Road Cleaning Services for Sliema Local Council.**

The tender was published on the 2<sup>nd</sup> April 2013 with a closing date of the 2<sup>nd</sup> May 2013.

The estimated value of the Tender was €525,000 (exclusive of VAT).

Seven (7) bidders submitted their offers.

Cleanmasters Company Limited filed an objection on the 6<sup>th</sup> June 2013 against a decision of The Sliema Local Council finding their bid as administratively non-compliant, and the award of the tender to SRF & Veladrians Joint Venture for the price of €525,000 exclusive of VAT.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a meeting on Thursday 19<sup>th</sup> September 2013 to discuss the appeal.

#### **Present:**

#### **Cleanmasters Company Limited - Appellants**

Dr Victor Axiak	Legal representative
Mr Ramon Fenech	Representative
Mr Ray Fenech	Representative

#### **SRF & Veladrians Joint Venture - Preferred Bidders**

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

#### **Contracting Authority - Sliema Local Council-**

Mr Matthew Dimech	Executive Secretary
Dr Franco Vassallo	Legal Representative

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

Dr Franco Vassallo on behalf of the Sliema Local Council, the contracting authority stated that he wanted to raise a preliminary plea that had to be decided before the merits of the case are heard. He contended that the deposit paid by appellant to file the objection was not according to law. To file a valid objection, an aggrieved bidder was obliged to deposit a sum equivalent to .75% of the estimated contract value of the tender. This requirement is according to Article 84 (1) of the Procurement Regulations. The present tender was for street cleaning for a period of three years. Appellant's bid was €117,000 per annum and it follows that the deposit should have been worked on this amount times three, and .75% of this resulting amount is much more than the €1200 amount deposited by the appellant to file the objection. Therefore, Dr Vassallo contended that the objection is null, and there was no need to go into the merits of the objection.

Dr John Gauci on behalf of the recommended bidder agreed with the arguments brought by the contracting authority, in fact the recommended bidder had raised this plea in his letter of reply. There have been several previous decisions by the Public Contracts Review Board which dealt with the same matter, and these decisions have consistently been to reject the objections when the deposit was not enough according to law. The law states that the amount, on which the deposit is worked, has to be the maximum. When the contract is for a period of three years, the deposit should be based on the amount payable for three years.

Dr Victor Axiak for the appellant company stated that the wording in the tender document states "...valid for a period of up to three years", and not "for a period of three years". He contends that this is a slight distinction, but is important. He said that the present tender was issued on the basis of Legal Notice 296/2010 and if Article 84 of this legal notice does not mention the value of the whole tender but states that the deposit should be one percent of the value submitted by the tenderer. Clause 19 of the tender document refers to LN 296/2010, and not to LN 296/2010 as subsequently amended. Furthermore he contended that his client based his deposit, when filing the letter of objection, on the Schedule of Prices on the contracting authority's notice board, where it was evident that the yearly amounts of bids was shown. The global value of the bids for the three years was not shown in this schedule. Dr Axiak contended that according to Clause 4 of the tender specific conditions, "the contractor had to provide the service for the global sum shown in annex 5". Thus his client filed a deposit based on one percent of his bid.

Dr Franco Vassallo for the contracting authority said that it was clear in the tender document that the contract was for three years. Bid had to show annual value for three years. He argued that if appellant's reasoning held true, then this would have meant that appellant was ready to provide the service for three years receiving only €117,000.

Dr John Gauci for the preferred bidder said that the Public Procurement Regulations had clear rules on how the estimated value of the tender had to be calculated. According to Article 16 of the said regulations, the estimated value of a contract for three years, even if these three years included renewals, should be the annual amount times three.

The Chairman remarked that the notice sent by the contracting authority to appellant should have included his right to object and the amount of deposit. The letter sent to appellant however, did not provide such information.

Dr Franco Vassallo on behalf of the contracting authority said that the said authority did not raise another preliminary plea, that the letter of objection was filed outside the legal time limit, because the contracting authority was aware that the letter to failed bidders should have provided more information.

The hearing was brought to an end at this point.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 6<sup>th</sup> June 2013 and also through the Appellant's verbal submissions presented by same during the hearing held on 19<sup>th</sup> September 2013, had objected to the decision taken by the Pertinent Authority, in that:**

- a) In accordance with the tender document, the duration of the Tender was for a period of three years.**
- b) The Tender document did not request the total bid for three years but rather a financial bid per annum.**
- c) The appellant based the amount of deposit to be paid on appeal, on the annual bid price. In fact the global value for three years was not indicated in clause 4 of the tender conditions**
- d) So that the Appellant paid 1% of the annual tendered price.**

**Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 19<sup>th</sup> September 2013, in that:**

- a) The Contracting Authority raised a preliminary plea prior to the discussion of the merits of the case in question.**
- a) The tender was for a period of three years. To this effect, the deposit should have been based on the total amount of the tender i.e. the amount quoted per annum times three.**
- b) In actual fact the Appellant paid 1% on the annual value of the tendered bid.**
- c) The Letter of Objection was filed outside the limited period.**

**Reached the following conclusions:**

- 1. This Board noted that, Had the Contracting Authority, when issuing the letter of refusal to the Appellant, stated clearly the amount to be deposited on appeal, then the Appellant would have been informed of the proper amount of the deposit.**
- 2. On the other hand, the Appellant was fully aware that the tender was for a period of three years.**
- 3. The total amount of deposit should have been to represent .75% of the annual bid price times three.**

**In view of the above this Board finds against the Appellant Company, however, due to administrative failure of information to the Appellant, this same Board recommends the deposit paid by the Appellant be fully reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*8 October 2013*