

PUBLIC CONTRACTS REVIEW BOARD

Case No. 614

QLC/CBR/19/97

Tender for the Collection of Bulky Refuse.

The tender was published on the 6th August 2013. The closing date was the 16th August 2013.

The estimated value of the Tender was €44,280 (Exclusive of VAT).

Five (5) bidders had submitted an offer.

On the 3rd September 2013, Dimbros Limited filed an objection against the decision to award the tender to Ronald Debono obo R&A Waste Services Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Tuesday 15th October 2013 to discuss the appeal.

Present for the Hearing:

Dimbros Limited - Appellant

Mr Malcolm Dimech	Representative
Dr Sabrina Micallef	Legal Representative

R & A Waste Services Limited - Recommended Bidder

Mr Ronald Debono	Representative
Dr Leonard Caruana	Legal Representative

Qormi Local Council - Contracting Authority

Ms Rosianne Cutajar	Mayor
Mr Kenneth Brincat	Executive Secretary
Mr Bjorn Azzopardi	Councillor
Mr Charles Farrugia	Councillor
Mr Sean Meli	Councillor
Mr Ralph Puli	Councillor
Dr Stefan Zrinzo Azzopardi	Legal Representative

Following a brief introduction, the Chairman invited appellant's representative to make submissions on the objection to the award.

Dr Sabrina Micallef on behalf of appellant Dimbros Ltd stated that certain requisites that the tender had, had not been satisfied by the preferred bidder. She mentioned as an example that the tender required certificates that the submitted vehicles were Euro 4. While appellant submitted the required certificate with the tender, the preferred bidder only submitted a declaration that the vehicle used by him was Euro 4 and did not submit a certificate. The preferred bidder also declared that he had the necessary experience, whereas appellant has information that the preferred bidder did not perform any similar service during the last twelve years. His last contract was with Iklin Local Council and that tender had been terminated prematurely because of a default.

Dr Sabrina Micallef continued that she wanted to ask the Executive Secretary if there were any directives issued to phone some bidders in the period between the publishing and the adjudication of the tender, because she claimed that appellant had information that a certain Councillor had phoned a bidder.

The Chairman here stopped Dr Micallef and said that she was making allegations that could not and would not be entered into by this Board.

Mr Kenneth Brincat, the Executive Secretary of the Qormi Local Council, called to testify by the appellant, under oath stated that the Council's policy regarding award of contracts is that first an evaluation board is appointed. The board first examines the bids for administrative compliance then the board interviews all the bidders, the same procedure used by all the other local councils. Mr Brincat, replying to a question by Dr Micallef said that experience was not a requisite of the present tender. Although it was not a requisite, the board also asked the bidders about their experience, but did not need to verify the information given by the bidders regarding their experience. Other requisites had been verified in detail, including the Euro 4 registration of the vehicles submitted. At this point the Public Contracts Review Board was shown the Logbook submitted by the preferred bidder that shows that his vehicle is Euro 4 compliant.

Replying to another question by Dr Micallef, witness testified that the preferred bidder had experience in refuse collection. In fact he also served the Qormi Local Council in the refuse collection field. He confirmed that the preferred bidder had all the qualifications necessary for the tender. Since the preferred bidder did not have experience in bulky refuse, the evaluation board did not feel the need to check his experience, which was not a requisite.

Dr Sabrina Micallef wanted to call to the witness stand Mr Bjorn Azzopardi to ask him about the allegations she had previously made. But the Chairman once again reminded her that the Board would not go into these allegations. Appellants had other venues to raise the matter of the allegations, but not this Board. It was clear that the allegations could be of a criminal nature and definitely would not be heard by the Board.

Dr Stefan Zrinzo Azzopardi on behalf of the contracting authority said that the requisites of the tender had been supplied by the preferred bidder. The documents produced by the preferred bidder were sufficient and his offer was fully compliant. Since his offer was clearly the cheapest and most advantageous offer. Experience was not a requisite therefore it stands to reason that he was awarded the tender.

Dr Leonard Caruana on behalf of the preferred bidder said that the Board has to stand by

facts and not by allegations. He submitted that experience was not a requisite in the present tender.

The hearing was here brought to a close.

This board,

Having noted the Appellant's objection, in terms of the ' Reasoned Letter of Objection' dated 3rd September 2013 and also through the Appellant's verbal submissions during the hearing held on 15th October 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant stated certain allegations regarding 'Preference' instituted by the Evaluation Board towards certain bidders.**
- b) The Preferred Bidder submitted only a declaration that the vehicle to be employed in the activity of this tender requirement was a Euro 4 classification. In this regard, no certification of this attestation was submitted.**
- c) The Preferred Bidder did not have the necessary experience to carry out the activity as specified in the tender document.**

Having noted the Contracting Authority's verbal submissions during the hearing held on 15th October 2013, in that:

- a) The Evaluation Board of the Contracting Authority followed the same evaluation procedure as that adopted by all Local Councils.**
- b) The Evaluation Board stated that the experience factor in the same field of activity related to in the tender was not a requisite.**
- c) All information submitted by tenderers were checked and verified by the Evaluation Board.**
- d) The Preferred Bidder's offer was fully compliant and most advantageous**

Reached the following conclusions:

- 1. This Board noted that the Appellant made allegations and this same Board declares that it has no competent authority by law to discuss this issue.**
- 2. From the verbal submissions made by both parties during the hearing held on 15th October 2013, it was evidently clear that the preferred bidder's vehicle that was to be employed on the specific activity of the tender , did in fact have a Euro 4 classification.**

3. The Preferred Bidder submitted all the required documentation as specified in the tender document.

4. The experience issue was not a mandatory factor in the evaluation process.

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

20 November 2013