

PUBLIC CONTRACTS REVIEW BOARD

Case No. 635

eCT 2037/2013

Tender for the Provision of Environmentally Friendly Cleaning Services to All Buildings on the Campuses of the University of Malta and the Junior College and Other University Designated Sites.

The tender was published on the 18th June 2013 with a closing date on the 30th July 2013.

The estimated value of the tender was €1,045,500.00.

Five (5) bidders had submitted an offer for this tender.

On the 28th October 2013 TF Services Limited filed an objection against the decision to reject its offer as being non-compliant and against the award of the tender to Gafa' Safeway Limited.

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 21st November 2013 to discuss these concerns.

Present for the hearing were:

TF Services Limited - Appellant

Mr Simon Turner	Representative
Mr Raymond Fenech	Representative
Dr Victor Axiaq	Legal Representative

Gafa` Safeway Limited - Preferred Bidder

Ms Paulette Gafa`	Representative
Mr Gejtu Vella	Representative

University of Malta - Contracting Authority

Mr Elton Baldacchino	Secretary
Mr Mark Debono	Member Evaluation board
Mr Karm Saliba	Member Evaluation board
Mr Christopher Spiteri	Member Evaluation board
Dr Oriella Degiovanni	Legal Representative

Department of Contracts

Mr Sandro Drago	Representative
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The Chairman made a brief introduction and the appellant's representative was invited to make his submissions regarding the objection,

Dr Victor Axiak on behalf of his client TF Services Limited, the appellant, said that the objection is based on two principal reasons. His client's offer was excluded because the evaluation board deemed it not to have the necessary experience. The tender required bidders to show four instances during the last three years where they had provided similar services in order to prove that they had the necessary experience. Appellant had submitted these and also submitted instances where the similar services had been provided by two other companies. These two other companies, Clentec and Cleanmasters, although legally do not form of the appellant company, are owned by the same owners, and appellant wanted to rely on the experience of these to add to its own. However the experience of these two other companies was rejected by the evaluation board as were the services provided by appellant during 2013. The evaluation board decided that only services rendered up to the year 2012 were to be considered in terms of the tender evaluation criteria. He contended that the wording of the main body of the tender document was 'during the last three years' and not calendar years. Since the tender was issued in June 2013 therefore the tender meant to consider services rendered during the three years up to June 2013. Therefore his client was compliant.

Dr Axiak continued that the two other companies, whose experience was rejected, between them had vast experience for a number of years, citing for example Clentec who have had the contract valued at €1,200,000 for Mater Dei Hospital. The shareholders and owners of these two other companies are the same as those of the appellant company. Mr Simon Turner is the sole owner and director of Clentec Limited and Mr Raymond Fenech is the majority shareholder and owner of Cleanmasters Limited. These two persons formed the appellant company TF Services Limited. Finally Dr Axiak contended that appellant company itself was still fully compliant and should not have been disqualified, seeing also that it had filed the cheapest offer.

Dr Oriella Degiovanni on behalf of the contracting authority said that the bidder here was TF Services Limited and any juridical connection was between this and the contracting authority. The other two companies mentioned are irrelevant to this case. The bone of contention of this objection is the wording of Clause 7.1.B.ii (1) which states: "*State the value of services of a similar scope effected during the last 3 years: the minimum value of which must not be less than €50,000 per annum for the quoted period.*" Clause 7.1.ii.(2) continues that "*the minimum number of which must not be less than 4 for the quoted period.*" Thus appellant had to show that in 2010, 2011 and 2012 it had contracts of at least €50,000 each year and also that it had at least 4 similar contracts during the same period. The price element was not relevant at the stage of compliance. Appellant did not submit four contracts amounting at least €50,000 each during the last three years.

Dr Victor Axiak queried the reasoning behind the rejection of the appellant's bid submission for 2013 and choosing a costlier tender.

The hearing was at this point brought to an end.

This Board,

Having noted the Appellant's objection, in terms of the ' Reasoned Letter of Objection' dated 28th October 2013 and also through the Appellant's verbal submissions during the hearing held on 21st November 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant's bid was discarded by the Evaluation Board due to the fact that he lacked the necessary experience as stipulated in the tender document.**
- b) In this regard, the Appellant's bid relied on the experience of related Companies, the shareholder of which was the Appellant. These related Companies had the necessary experience as was required in the tender conditions; however the Evaluation Board of the Contracting Authority did not consider this as being valid.**
- c) The Appellant contends that the conditions regarding 'experience' laid out in the tender document was somewhat unclear.**
- d) The Appellant's bid was the cheapest.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 21st November 2013, in that:

- a) The experience requested in the tender document was specifically stated, in that "The tenderer had to prove that same carried out similar activities during the last three years but must at least have carried out similar activities amounting to Euros 50000 per annum" during the same last three years.**
- b) The Contracting Authority contends that the Appellant did not conform to these conditions as laid out in the tender document.**
- c) Due to the fact that the Appellant was technically non compliant, the Contracting Authority did not take the price factor of the Appellant's Bid.**

Reached the following conclusions:

- 1. After having heard the verbal submissions of both the Appellant Company and the Contracting Authority, this Board feels that the clause in the tender document whereby same Authority stipulates the conditions of the 'Experience Clause' was somewhat limiting the range of tenderers.**
- 2. This same Board feels that the conditions laid out in the tender document, with regards to tenderers' experience should be more practical and avoid the narrow range of prospective bidders. In this context, this Board feels that due to trivial and unnecessary conditions stipulated in the tender document, the taxpayer is**

paying more than he should. This is not acceptable, and this Board with the cooperation of the Contracts Department will amend the Public Procurements regulations for the benefit of the National Economy.

- 3. However, under the present regulations, the Evaluation Board had to abide by the parameters of their authority in evaluating the bids. In this regard, this Board will also do its utmost to ensure that this occurrence will not be repeated. These occurrences, which are costing the National Economy, millions of Euros will not happen again.**
- 4. The Appellant did not satisfy the ‘Necessary Experience’ clause as stipulated in the tender document. To this effect, the Appellant’s offer is considered to be non compliant.**
- 5. The Evaluation Board acted in a diligent manner and abided by the present regulations.**

In view of the above, this Board finds against the Appellant Company however, due to circumstances, this same Board recommends that the deposit paid by the Appellant should be reimbursed.

**Dr. Anthony Cassar
Chairman**

**Dr. Charles Cassar
Member**

**Mr. Richard A. Matrenza
Member**

9 December 2013