

PUBLIC CONTRACTS REVIEW BOARD

Case No. 765

ML 09/2014

Tender for the Provision of Environmentally Friendly Cleaning Services at Malta Libraries.

The tender was published on the 26th September 2014. The closing date was the 20th October 2014. The estimated value of the Tender was €36,000 (Exclusive of VAT).

Four (4) tenderers had submitted an offer for this tender.

On the 10th November 2014 Dimbros Limited filed a letter of objection against the decision of the contracting authority to award the tender to TF Services Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 9th December 2014 to discuss the objection.

Present for the hearing were:

Dimbros Limited - Appellant

Mr Malcolm Dimech	Representative
Dr Franco Galea	Legal Representative

TF Services Limited - Preferred Bidder

Mr Simon Turner	Representative
Ms Roanne Avallone	Representative

Malta Libraries - Contracting Authority

Mr Bernard Pace	Chairperson Evaluation Board
Ms Joelle Mifsud Bonnici	Member Evaluation Board
Mr Francis Caruana	Member Evaluation Board
Ms Ruth Briffa	Member Evaluation Board

The Chairman made a brief introduction and invited appellant's representative to make his submissions.

Dr Franco Galea on behalf of the appellant firm said that this was a tender that asked bidders to submit an hourly rate for the provision of the service. He explained that the objection to the award to the preferred bidders was based on two grievances. The first and main one being that the preferred bidder's tender was administratively non-compliant since it failed to submit the required copy of the tender form. The tender had a requirement that bidders had to submit their bids in two copies, one marked 'original' and the other marked 'copy'. The preferred bidder had only submitted one copy and this was recorded in the schedule of tenders. Thus the preferred bidder's tender was administratively non compliant and should have been rejected.

Dr Franco Galea continued that the second grievance is that persons involved in the preferred bidder's firm TF Services Limited are also involved in another black-listed company called Clentec Limited. The latter has been blacklisted because of issues of precarious employment. At this point Dr Franco Galea filed copies of documents from the MFSA that showed shareholders and also that the preferred bidder used the same registered address as the black-listed company.

Mr Bernard Pace, the chairperson evaluation board, on behalf of the contracting authority explained that the board had not investigated the shareholders of the preferred bidder; they checked if the preferred bidder was black listed and had just gone after the lowest priced tender. Regarding the missing copy of the preferred bidder's tender, he said that the evaluation board was aware of the non-submission of the copy of the tender, but since all the information was available in the original copy, the board decided not to disqualify the tender since it was the lowest bid. The evaluation board had considered that the extra copy was only necessary if anything was missing from the original.

The Chairman enquired whether the submission of a copy of the original tender was mandatory. This board did not believe in bureaucracy but mandatory conditions should not be disregarded.

Dr Franco Galea for the appellant stated that the requirement was mandatory.

Mr Bernard Pace on behalf of the contracting authority explained that the evaluation board had made a practical choice, discarding the fact of the missing document and considering only that the tender had the cheapest offer and had contained all the necessary information.

Ms Joelle Mifsud Bonnici for the contracting authority said that when the tenders were opened it was discovered that the preferred bidder had submitted just an original tender and failed to submit a sealed copy; this was reported in the Schedule. The evaluation board had checked the tender document for administrative compliance clauses and did not find that the submission of a copy was mandatory. The reason for asking a copy was to check in case anything was found missing from the original copy.

Dr Franco Galea for the appellant insisted that Clause 15.1 of the tender had made it clear that: "(a) all tenders must be submitted in one original, clearly marked 'original', and one identical copy (including all documentation as in the original) signed in the same way as the original and clearly marked 'copy'". He said that this "must" mean that the submission was

mandatory.

At this point the hearing was brought to an end.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 10th November 2014 and also through Appellant's verbal submissions during the hearing held on 9th December 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that the Preferred Bidder's offer should have been discarded by the Evaluation Committee, due to the fact that same Bidder failed to submit a copy of the original tender and documents which were requested and dictated in the tender document;**
- b) Appellant claims that the shareholders are the same as those listed in another Company which was blacklisted by the Contracts Dept.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 9th December 2014, in that:

- a) The Contracting Authority maintains that although the Preferred Bidder did not submit a copy with the original tender document, the original contained all the necessary information that was required. In this regard, the Evaluation Committee proceeded with the evaluation process;**
- b) Once assessed, the Evaluation Committee also took into account the fact that the Preferred Bidder's offer was the cheapest.**

Reached the following conclusions:

- 1. This Board, after having heard all submissions and also referred to the tender document, would opine to point out that Clause 15.1a of the same document, clearly dictates that "All tenders must be submitted in one original, clearly marked 'Original' and one identical copy, signed in the same way as the 'Original' and clearly marked 'Copy'." This clause clearly dictates that the copy of the original tender document was a mandatory requisite. This Board strongly feels that although it would avoid unnecessary bureaucracy, the mandatory conditions laid out in a tender document must be strictly abided by. Mandatory conditions in any tender document are specified for valid reasons, mainly to ensure transparency and level playing field for all bidders. In this regard, this Board upholds Appellant's first grievance;**
- 2. With regards to the Appellant's second contention, this Board is concerned due to the fact that a 'Blacklisted Bidder' may form another distinct and separate entity, which by law cannot be linked to the original entity, however, this instance provides a gateway for abuse and this Board is recommending that the competent Authorities be well aware of this curtain show.**

In view of the above, this Board finds in favour of the Appellant Company and recommends that:

- i) Appellant's Offer be reintegrated in the evaluation process.**
- ii) The deposit paid by Appellant be reimbursed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancillieri
Member

16 December 2014