

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 784**

**NLC 249/00**

### **Tender for Environmentally Friendly Collection of Bulky Refuse.**

The tender was published on the 31<sup>st</sup> January 2014. The closing date for the tender was on the 4<sup>th</sup> March 2014. The estimated value of the Tender was €24,406 (Exclusive of VAT).

Seven (7) offers had been received for this tender.

On the 26<sup>th</sup> September 2014 Mr Jonathan Mangion filed a letter of objection against the award of the tender to Dimbros Limited for the amount of €16,110.

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 17<sup>th</sup> February 2015 to discuss the objection.

Present for the hearing were:

#### **Mr Jonathan Mangion - Appellant**

Mr Jonathan Mangion	Representative
Dr Mark Vassallo	Legal Representative

#### **Dimbros Limited - Preferred Bidder**

Mr Malcolm Dimech	Representative
Dr Franco Galea	Legal Representative
Dr Douglas Aquilina	Observer

#### **Naxxar Local Council - Contracting Authority**

Mr Paul Gatt	Secretary Evaluation Board
Dr Adrian Mallia	Legal Representative

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

Dr Mark Vassallo on behalf of the appellant, Mr Jonathan Mangion explained that his client had previously been awarded the tender in question. However, following an objection by Dimbros Limited, the latter had been reinstated into the evaluation. Now Dimbros has been awarded the tender. The appellant's grievance is that the contracting authority should not decide to award the tender basing the decision only on the financial offer. The tender document stated that it would be awarded to the most favourable offer and not to the cheapest. He made reference to, and exhibited a copy of the schedule of rates and of another call for quotations issued by the contracting authority where Dimbros, although not being the cheapest, was awarded. He queried how now the contracting authority is basing the award solely on the price while in the said call for quotes it did not do so. He also referred to article 21 of the general conditions for service tenders which refers to damages. He said that the contracting authority did not act correctly in this case. He referred to another Local Council that is suing Dimbros for damages and filed a copy of judicial proceedings against Dimbros by the San Gwann Local Council. He claimed that this fact should have been taken into consideration by the contracting authority. Finally he stated that appellant was not asking the Public Contracts Review Board to take over the duties of the evaluation board but was insisting that the tender should not be solely awarded on the price factor. The contracting authority in the tender itself stated that the awarded price would not necessarily be the cheapest.

Dr Adrian Mallia explained the purpose of this tender was the collection of bulky refuse where residents wishing to avail themselves of the service phoned the contracting authority. This was very simple matter and is not complicated. The comparison of quality as being requested by the appellant is in fact not necessary and is not relevant for the service being offered.

Dr Mark Vassallo claimed that in the previous objection decided by the Board the contracting authority claimed otherwise. In fact it took the opposite view.

Dr Adrian Mallia said that the issue in the previous award had been the question of experience of the then preferred bidder, now the appellant.

Dr Franco Galea on behalf of Dimbros Limited, the preferred bidder confirmed that the merit of the previous objection was that today's appellant had been preferred solely for the reason of being from Naxxar and therefore had more experience. He agreed that the tender should not be just awarded to the cheapest offer but the service involved just the collection of bulky refuse where no special technical knowledge was necessary. Dr Galea said that the appellant since he mentioned the San Gwann case should have also mentioned that the appellant had had his driving licence suspended. He reminded the Board that a bidder could opt to offer the service at a loss provided he provided the service as requested.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the "Reasoned Letter of Objection" dated 26<sup>th</sup> September 2014, and also through the Appellant's verbal submissions during the hearing held on 17<sup>th</sup> February 2015, had objected to the decision taken by the pertinent Authority, in that:**

- a) **The appellant contends that the Contracting Authority should not have decided**

on the award of the tender on the basis of price only, but should have also taken into account the Appellant's performance during his tenure for services given to the same Authority. The Appellant's offer should have been the most advantageous economic tender;

- b) The Appellant claims that the Contracting Authority should have also taken into consideration that the preferred bidder had a Court Case by another Local Council for infringements.

Having considered the Contracting Authority's verbal submissions during this hearing held on the 17<sup>th</sup> February 2015 in that:

1. With regards to the Appellant's first grievance, this Board opines, that justifiably, the Evaluation Committee had the obligation to choose the most advantageous offer after taking into account this Board's previous decision in that the Award criteria should not be based on the Knowledge of the specific district, and this limiting the scope of competition and fair "level playing field ". This Board strongly recommends that since the size of Maltese villages are scarcely compared to other European countries in this particular case the knowledge of the district was not the awarding factor. In this regard, the Award criterion was the price. To this effect, this Board opines that the procedure conducted by the Evaluation Committee was credibly correct and was carried out in a just, fair and transparent manner. This Board does not uphold the Appellant's first grievance;
2. With regards to the Appellant's second contention, this Board, after having heard submissions by both the appellant and the preferred bidder, opined that the arguments made by both parties does not in fact relate to the decision taken by the pertinent Authority. Only relevant facts are considered by this Board and the same does not consider comments made by both mentioned parties which can prejudice the decision taken by this Board. This Board opines that such past instances or rather occurrences on the part of the Appellants and the Recommended Bidders should not be adopted by both parties to the advantage of the situation. In this regard, this Board finds that the Evaluation Committee acted in a fair, diligent and transparent manner in arriving at the result of the Award of this Tender. To this effect, this Board does not uphold the Appellant's second grievance;
3. This Board would opt to point out that the previous decision taken by this Board was that, it is not proper to award this tender for the simple reason that a bidder is acquainted with the specific district. This appeal did not have the same elementary logical reasons.

In view of the above, this Board finds against the defendant 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

24 February 2015