

PUBLIC CONTRACTS REVIEW BOARD

Case No. 792

DH 81/2014

Call for Quotes with Extended Threshold for the Supply of Bread.

The call for quotes was published on the 11th December 2014. The closing date for the call was the 19th December 2014. The estimated value of tender is €120,000 (Exclusive of VAT).

On the 13th January 2015 David's Bakery Limited filed an objection against the award of Lot 5 (Fancy Sliced Bread) to Golden Harvest Mfg. Co. Ltd for the amount of €74,400.

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 7th April 2015 to discuss the objection.

Present for the hearing were:

David's Bakery Limited - Appellant

Mr David Mercieca	Director
Dr Joshua Grech	Legal Representative

Golden Harvest Mfg. Co. Ltd - Preferred Bidder

Mr Alfred Portelli	Representative
Dr Frank Testa	Legal Representative

Central Procurement and Supplies Unit - Contracting Authority

Mr Albert Briffa	Chairperson Evaluation Board
Ms Rita Tirchett	Secretary Evaluation Board
Mr Reno Grech	Member Evaluation Board
Dr Stefan Zrinzo Azzopardi	Legal Representative

Dr Stefan Zrinzo Azzopardi on behalf of the contracting authority filed a letter of reply to the letter of objection, handing also a copy to the representatives of the appellant and the preferred bidder.

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

Dr Joshua Grech on behalf of the appellant explained that his client was only objecting to the award of Lot 5. Appellant had offered loaves at 45 cents per loaf, the cheapest offer for the lot, yet the tender was awarded to the preferred bidder who had offered 48 cents per loaf. The tender's technical requirements, according to section 7 (b) of the tender document, stated that fancy bread loaves had to have not less than 16 slices per loaf. Appellant had offered a loaf having 18 slices and was thus compliant with the specifications. The contracting authority is claiming that the preferred bidder's loaf is bigger containing 23 slices. He contended that for the other lots, the contracting authority had asked for the price of bread offered per kilogram and for Lot 5 could have also asked the price per kilogram, but had instead asked for the price per loaf. He insisted that since the offers of the appellant and that of the preferred bidder were both compliant, then it follows that the award should have been made to the cheapest offer, that is, to appellant. This cheapest offer was made by appellant and therefore the decision to award Lot 5 to the preferred bidder should be revoked.

Dr Stefan Zrinzo Azzopardi on behalf of the contracting authority explained that the tender had asked that loaves offered for Lot 5 had to have a minimum number of slices of the correct size. The offers of the preferred bidder and of the appellant were both compliant. However, the actual adjudication is carried out by the evaluation board on the information supplied by the bidders themselves as to the price per loaf and on any other information available to the evaluation board. In this case, bidders had submitted sample loaves, and these samples, and the information obtained from these samples was taken into consideration by the evaluation board. The evaluation board could not just base its choice on the prices, but was obliged to choose the most advantageous offer. In this case, although the tender had asked for the price per loaf, while the appellant's loaf weighed 500 grams, the preferred bidder's weighed 600 grams. This information was available to the evaluators during adjudication, and was taken into consideration. This was clearly explained in the evaluation report. The evaluation board had taken into consideration the contracting authority's interests and acted correctly.

Dr Joshua Grech for the appellant remarked that the bidders' interests should also be taken into consideration. A mistake made by the contracting authority should not penalize the bidders. In this case, the specifications for Lot 5 clearly stated that bidders had to quote the price per loaf and not per kilogram, while those for lot 6 were cost per kilogram. The evaluation board had incorrectly adjudicated Lot 5 according to the specifications of Lot 6. He reiterated that appellant's offer was cheaper and had satisfied the specifications as requested.

Dr Frank Testa on behalf of the preferred bidder contended that both appellant's offer and preferred bidder's offers were compliant. However, the specifications had demanded that the loaves would have a minimum of 16 slices each when submitting the price per loaf. Thus loaves could contain more slices and the tender did not intend to ignore the additional number of slices over and above the minimum of 16. Had the specifications asked for 16 slice loaves then appellant's contention would have made sense. He contended that the size of the loaves therefore had to be taken into consideration.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection in terms of the "Reasoned Letter of Objection" dated 12th January 2015 and also through the Appellant's verbal submissions during the Hearing held on the 7th April 2015, had objected to the decision taken by the Pertinent Authority in that,

- a) The Appellant contends that the Tender Document dictated a quote for the price of a "Loaf of Bread", having not less than 16 slices. The Appellant's quote was fully compliant and was the cheapest at 45 cents per loaf;**
- b) The Appellant claims that the Evaluation Committee, in its recommendation, shifted the Goal Post by choosing the preferred bidder's offer on the basis of "Price per kilogram" and not on the "Price per loaf"**

Having considered the Contracting Authority's verbal submissions during the Public Hearing held on the 7th April 2015, in that:

- a) The Contracting Authority insists that since the bidders submitted "sample loaves", the Evaluation Committee had to adjudicate on the submitted samples. The preferred bidder's sample contained more slices so that the price per kilogram was the cheapest. In this regard, the Evaluation Committee was obliged to elect the most advantageous offer.**

Reached the following conclusions:

- 1. With regards to the Appellant's first contention, this Board acknowledges the fact that the Tender Document dictated a "price per loaf". However, this same Board justifiably accepts the Contracting Authority's credible argument in that, since bidders submitted samples, the Evaluation Committee had the obligation to adjudicate the Tender on the samples submitted. In this regard, this Board opines that since the samples were submitted by the bidders, the Evaluation Committee were in a better situation to choose the most advantageous offer and in this respect, the same Evaluation Board acted in a just and transparent manner. In this regard this Board upholds the Contracting Authority's decision for the award of this Tender;**
- 2. With regards to the Appellant's second contention, this Board credibly confirms that the Evaluation Committee based their adjudication on the "sample of loaves" submitted and although the "Price per loaf" of the Appellant Company was cheaper, the Volume and contents of the "Loaf" submitted by the preferred bidder was more advantageous. In this regard, this Board does not uphold the Appellant's second contention.**

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

**Dr. Anthony Cassar
Chairman**

**Dr. Charles Cassar
Member**

**Mr. Lawrence Ancillieri
Member**

14 April 2015