

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 837**

**NLC 253/00**

### **Tender for Environmentally Cleaning of Non-Urban Roads.**

The tender was published on the 31<sup>st</sup> January 2014. The closing date was the 4<sup>th</sup> March 2014. The estimated value of tender is €51,797 (Exclusive of VAT).

Six (6) offers had been received for this tender.

On the 13<sup>th</sup> February 2015 Mr Carmel Mazzitelli filed an objection against the decision of the contracting authority to discard his tender.

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 4<sup>th</sup> August 2015 to discuss the objection.

Present for the hearing were:

#### **Mr Carmel Mazzitelli:**

Mr Carmel Mazzitelli	Representative
Dr Simon Micallef Stafrace	Legal Representative

#### **Mr Charles Mifsud:**

Mr Charles Mifsud	Representative
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#### **Naxxar Local Council:**

Mr Paul Gatt	Member Evaluation Board
Dr Adrian Mallia	Legal Representative

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

Dr Simon Micallef Stafrace on behalf of his client Mr Carmel Mazzitelli remarked on the length of time the adjudication of this tender took – nearly a year. He then referred to a previous recent decision regarding Grange Services Limited wherein emerged the principle of the spirit for which the tender was issued, that is to obtain the best service for the contracting authority at the cheapest price. The appellant's tender had been disqualified because 'he did not own a vehicle' but with his tender submission appellant had informed the contracting authority that he would be purchasing the vehicle for which he submitted the log book and documents as soon as and if he was awarded. Appellant's tender had been the cheapest and in fact had by now purchased a vehicle costing €30,000.

Dr Micallef Stafrace cited from a Public Contracts Review Board's previous decision wherein the Board had declared, in a case where precarious employment had been alleged, that it was up to the contracting authority to ensure that the contractor followed the tender conditions to the letter. In the present case, he claimed that this practice had not been followed and appellant's tender had been rejected forthwith and the contracting authority did not wait to see if appellant would have been delivering the service.

Dr Adrian Mallia on behalf of the Naxxar Local Council explained that the contracting authority is allowed to set up selection criteria, like experience, tools and references upon which to evaluate the tenders. The tender specifications in this case required bidders to show the ownership of their vehicle. The tender specified that the vehicles had to be of 'green' procurement standards and listed the tonnage of each to be between five and ten tons. This clearly meant that bidders had to own their vehicles; yet in spite of the one year the tender took to be adjudicated appellant still had not purchased the vehicle he had promised to buy. In fact during an interview he had informed the contracting authority that he was no longer going to purchase the vehicle he had indicated in his tender submission. The contracting authority had to be assured that the person who was awarded the tender could deliver the service.

Mr Paul Gatt on behalf of the contracting authority confirmed that appellant had informed the interview board that he was no longer buying the vehicle he had indicated in the tender submission and since the appellant had no vehicle, the evaluation board had to reject his offer.

Dr Adrian Mallia explained that bidders were called to an interview. During this interview appellant had declared that he would no longer be buying the vehicle indicated in his tender and whose log book he had produced. The vehicle had not been evaluated since the appellant had declared that the vehicle was no longer his.

At this point the hearing was closed.

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## **This Board**

**Having noted the Appellant's objection in terms of the "Reasoned Letter of Objection" dated 13<sup>th</sup> February 2015 and also through the Appellant's verbal submissions during the Public Hearing held on the 4<sup>th</sup> August 2015, had objected to the decision taken by the Pertinent Authority, in that:**

- a) The Appellant claims that his offer was rejected because he did not own a vehicle although with his offer, he submitted a declaration that he would buy the requested vehicle, if his offer is awarded the contract;**
- b) The Appellant also contends that since his offer was the cheapest, his bid should have been further evaluated by the "Evaluation Committee" for the latter to ensure delivery of the service as requested in the Tender Document.**

**Having considered the Contracting Authority's verbal submissions during the Hearing held on 4<sup>th</sup> August 2015, in that:**

- a) The Contracting Authority contends that as per Tender Specifications, bidders had to show that they own a vehicle as specified in the Tender Document. The Appellant did not own the vehicle on which the declaration was made;**
- b) The Contracting Authority could not process further the Appellant's offer as it was "administratively non compliant".**

**Reached the following conclusion:**

- 1. This Board, after hearing submissions both from the Appellant and the Contracting Authority, justifiably contends that specifications as dictated in a Tender Document must be strictly respected by the bidder. Mandatory requirements in a Tender are not capriciously laid out by the Contracting Authority, but are so requested to ensure an appropriate product or service for which the Tender was issued. In this particular case, the Tender Document dictated the ownership of a vehicle which meets Euro IV standards to enable the bidder to carry out the requested service.**

**The Appellant did not own such a vehicle. This Board credibly notes that the vehicle which was mentioned in the declaration as submitted by the Appellant was not owned by the latter but represented a “possible purchase”, should the Tender be awarded by the Appellant. This Board credibly opines that there was no proof of ownership of the vehicle mentioned by the Appellant, in his declaration. In this regard, this Board does not uphold the Appellant’s first grievance;**

- 2. With regards to the Appellant’s second grievance, this Board justifiably notes that the Appellant had informed the Contracting Authority that he was no longer going to purchase the vehicle mentioned in his declaration. This Board contends that it was the duty of the Contracting Authority to ensure that any of the bidders awarded the Tender would deliver the tendered service.**

**In this regard, this Board opines that the Evaluation Committee acted in a diligent manner in discarding the Appellant's offer and at the same time, this Board contends that the Appellant's offer could not be processed further as it was administratively not compliant. To this effect, this Board does not uphold the Appellant's second grievance.**

**In view of the above, this Board finds against the Appellant 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

*17 August 2015*