

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 842**

**CT 2133/2013**

### **Tender for Framework Agreement for the Execution of Minor Pipe and Road Works for the Water Services Corporation.**

The Tender was published on the 19<sup>th</sup> September 2014. The closing date was the 6<sup>th</sup> November 2014. The estimated value of Tender is €3,050,847.00 (Exclusive of VAT).

Thirty three (33) offers had been received for this Tender.

On the 1<sup>st</sup> June 2015 Mr Gordon Ellul filed an objection against the decision of the Contracting Authority to disqualify 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 18<sup>th</sup> August 2015 to discuss the objection.

Present for the hearing were:

#### **Mr Gordon Ellul:**

Mr Gordon Ellul  
Dr Albert Libreri

Director  
Legal Representative

#### **Water Services Corporation:**

Mr Stephen Riolo  
Mr Jonathan Scerri  
Mr Nigel Ellul  
Mr Gino Micallef  
Mr Sigmund Galea

Chairperson Evaluation Board  
Secretary Evaluation Board  
Member Evaluation Board  
Member Evaluation Board  
Member Evaluation Board

#### **Department of Contracts:**

Dr Christopher Mizzi

Legal Representative

#### **Mr Owen Borg and Mr Karl Jos Dimech:**

Ms Josephine Dimech

Representative

#### **G A Services Ltd:**

Ms Anna Guiga

Representative

Following a brief introduction by the Chairman, the Appellant's representative was invited to make his submissions.

Dr Albert Libreri on behalf of the Appellant made reference to the Letter of Objection and explained that the Tender required a Certificate of Good Conduct for the last six months. When the Appellant filed his bid online, the system allowed the uploading of the first page of the conduct certificate only. This page showed that his client had been guilty of an offence. However the second page would have shown that the offence had been committed on the 6<sup>th</sup> November 2011 that is more than the last 6 months ago. He had filed an updated conduct certificate with the Letter of Objection.

Dr Christopher Mizzi on behalf of the Department of Contracts said that Appellant with his Tender had submitted a Form B conduct certificate that showed that he had a bird trapping contravention for which he had been fined €700. He explained that Form B reverts back to Form A six months after the payment of the fine and this meant that when submitting the Tender, the Appellant had either not yet paid the fine or had paid it less than 6 months before. However together with the Letter of Objection, the latter had submitted another conduct certificate, this time a Form A and dated the 25<sup>th</sup> May 2015. This could mean that at the time of the Tender submission, the Appellant had not paid the fine in question and the Evaluation Board had no option but to reject his Tender. He explained that there was another bidder whose Tender had been rejected for the same reason.

Mr Jonathan Scerri on behalf of the Contracting Authority said that this other bidder whose offer was rejected had also submitted the first page of the conduct certificate.

Dr Albert Libreri for the Appellant contended that the Appellant had a clean conduct during the previous six months as required by the Tender conditions; after all it was the spirit of the law which should prevail in such circumstances and not the letter.

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 30<sup>th</sup> May 2015 and also through the Appellant's verbal submissions during the Public Hearing held on the 18<sup>th</sup> August 2015, had objected to the decision taken by the pertinent Authority, in that:**

- a) **In accordance with the requirements in the Tender Document, a copy of the recent police conduct had to be submitted. The Appellant maintains that he did submit the requested conduct certificate, however, the website would not remit**

**the two sides of the document, to the effect that the Evaluation Committee could not verify whether the Appellant was in possession of a clean police conduct for the last six months, consequently, the Appellant's offer was rejected.**

**Having considered the Contracting Authority's verbal submissions during the Public Hearing held on the 18<sup>th</sup> August 2015 in that:**

- a) The Appellant submitted, the police conduct certificate on a "Form B", which showed that he had a contravention. The Contracting Authority maintains that it is obvious that he did not pay the Contravention Fine and the Appellant could not submit a clean conduct certificate.**

**Reached the following conclusions:**

- 1. This Board credibly notes that the Police Conduct Certificate submitted by the Appellant did in fact indicate that there was recorded a contravention yet, since the second page of the certificate could not be remitted, the Evaluation Committee was not in a position to ask for any clarification or confirmation of the nature of contravention.**

**In this regard, this Board opines that the Evaluation Committee acted in a diligent and transparent manner. Due to the fact that the Contravention occurred in 2011, i.e. 3 years before the closing date of the Tender, this Board, after having examined the fresh police conduct certificate submitted by the Appellant with his letter of Objection, is justifiably convinced that the Appellant had a "Clean Record" but a clean certificate could not be issued by the police, simply due to the fact that the Appellant did not settle the fine imposed on the**

**contravention, which occurred in 2011.**

**In this regard, this Board feels that due to the fact that the second page of the submitted certificate with the Tender was not received by the Contracting Authority, the latter was not able to ascertain the nature of the Contravention and could not establish the date of occurrence of the same, however, in the spirit of the Law, the reason for the Appellant not submitting a clean certificate was purely, for the non payment of fines.**

**In fact, this Board credibly notes that upon settlement of such a fine, a clean conduct certificate was issued, to the effect that the Appellant did have “a clean record” on the date of submission of the Tender Document.**

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

- i) The Appellant’s offer is to be reintegrated in the Evaluation Process;**
- ii) The deposit paid by the Appellant should be reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancillieri  
Member

*31 August 2015*