

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 881**

**CT 2004/2015**

### **Tender for the Provision of Insurance Services to WasteServ Malta Limited.**

The Tender was published on the 24<sup>th</sup> April 2015. The closing date was on the 4<sup>nd</sup> June 2015. The estimated value of the Tender is €1,472,422.29.

Three (3) offers had been submitted for this Tender.

On the 25<sup>th</sup> September 2015 Mediterranean Insurance Brokers (Malta) Limited filed an objection against the proposed award of the Tender to AIB Insurance Brokers 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 Thursday the 17<sup>th</sup> December 2015 to discuss the objection.

Present for the hearing were:

#### **Mediterranean Insurance Brokers (Malta) Limited:**

Mr Joseph Cutajar	Managing Director
Mr Ivan Muscat	Director
Ms Fiona Borg	Representative
Dr Franco Galea	Legal Representative
Dr Michael Sciriha	Legal Representative

#### **AIB Insurance Brokers Limited:**

Mr Ramon Mizzi	Managing Director
Dr Paul Cachia	Legal Representative

#### **WasteServ Malta Limited:**

Mr Martin Casha	Chairperson Evaluation Board
Mr Emmanuel Micallef	Member Evaluation Board
Dr Victor Scerri	Legal Representative

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

Mr George Vella	Procurement Manager
Dr Christopher Mizzi	Legal Representative

The Chairman made a brief introduction wherein he pointed out that the Letter of Objection did not clearly give the reasons for the objection, and neither did the second Reasoned Letter sent by the Appellant. The latter's representative was then invited to make his submissions.

Dr Franco Galea on behalf of the Appellant explained that in the second letter, the Appellant contended that although the Tender was to be awarded to the cheapest bidder, this bid had to be compliant. He admitted that there was a difference in the financial bids but that consideration should be given to whether offers were being compared like with like. It was evident in the present case that the Evaluation Board had been misdirected by the Recommended Bidder so that when the price was compared, this comparison was defective.

Dr Christopher Mizzi on behalf of the Department of Contracts said that it was for the Public Contracts Review Board to regulate how the hearing proceeds but he said that fishing expeditions should definitely not be allowed.

Dr Franco Galea for the Appellant explained that the bidders had been asked to provide the prices of twelve policies and had to indicate the premium, stamp duty and total cost. These had to be multiplied by 3 to give the final offer. But before the financial evaluation the bidders had been given a digest of the insurance policies required that contained "*shortlisted participants are invited to formulate their financial proposals on the base of the information contained in the digest. The valuation of the financial proposals shall be limited to the financial value of the policies equivalent to the contents of this digest.*" This meant that before the financial evaluation, bids would be evaluated technically.

The financial bid had to be made after evaluating the cost of the policies, because otherwise, if awarded the Tender, bidders would not be able to cover the risks demanded by the client.

For this reason, Appellant wanted to produce the following witnesses.

Mr Joe Antignolo, ID No. 356557M, Head of Business at Citadel Insurance under oath said that in the period 24<sup>th</sup> April 2015 to 4<sup>th</sup> June 2015 Citadel did not give any quotations regarding the present Tender to any broker.

Dr Christopher Mizzi on behalf of the Department of Contracts objected to the production of further witnesses since the bids of the Tender are confidential and should not be divulged. These include any workings and calculations made by bidders before submitting Tender. Quotes given by insurers to brokers should not be divulged.

Mr Peter Saliba ID No. 118779M, on behalf of Mapfre Middlesea, under oath said that in the relevant period, his company had been approached by AIB Insurance Brokers and by Island Insurance Brokers. His company had decided not to provide quotes since they already carried 40% of the risk.

Mr Gunther Schembri, ID No. 68477M, a Manager with Atlas Insurance Limited under oath stated that in the same period his company had accepted to quote for the general business policies offered 60% of the risk. His company was the incumbent and quoted to the Appellant brokers the business class and contents policies numbers 1, 2, 3, 4, 5, 6 and 9. They did not offer any quotes to any other broker.

Ms Claudine Gauci, ID No. 86774M on behalf of Atlas Insurance under oath said that her

company had issued a quotation to MIB for health insurance, item 11, and offered 100% risk. No other quotations had been given.

Mr Leslie Causon, ID 26262M for Gasan Mamo Insurance, under oath testified that between the 24<sup>th</sup> April 2015 and 4<sup>th</sup> June 2015 his company had given quotes to two brokers – MIB and Island, for 60% risk on 7 policies in connection with this Tender. These policies were numbers 1 to 6 and 9.

Mr Joe Avellino ID No. 197063 M on behalf of Argus Insurers under oath testified that his company during the same period had offered 25 % non-motor risk to 4 brokers. On motor insurance it offered to Island and Osprey. It also offered quotes for items 1 to 6, 9 and 12 to AIB, MIB, Island and Osprey while for item 10 quotes were issued to Island and Osprey. His company also had the intention to cover the Marsa incinerator offering 25% risk.

Mr Joe Naudi Montalto ID No. 497661M on behalf of Montalto Insurance under oath testified that his company had offered quotations for two policies only, those items numbers 7 and 8 to Osprey Insurance Brokers, MIB, AIB and Island at 100% risk. Our company represents AIG Europe limited.

Mr Clayton Farrugia ID No. 410682M on behalf of MIB Insurance Agency under oath said that his company represented Lloyds Insurance and Citadel Insurance. He said that his firm did not issue any quotations to any broker during the period when the Tender was issued.

Dr Franco Galea said that neither SMS insurance nor Elmo insurance had issued any quotations and had informed him so through emails.

Mr Martin Casha, ID No. 43457M, Chairperson Evaluation Board, under oath said that both the Appellant and the Recommended Bidders had quoted for all policies. MIB had quoted as per submitted table for items as follows:

Atlas: Items 1 to 6, 9 and 12, had quoted 60% and, for item 11, health insurance 100%. No quote was made for Items 7 and 8;

Mapfre: for general – 40%, for health 100% and for Items 7, 8 and 10 no quotes;

Gasan Mamo: general 60%; 100% for health; no quotes for items 7 and 8 and 100% for Item 10;

Elmo: no quotes

Montalto Insurance Agency: 100% for Items 7 and 8;

Citadel: 90% for Item 11

Argus: 25% for general

Thus the Appellant had shown all quotes and indicated who the principals would be.

For the Recommended Bidder, AIB:

Item 1	100% but did not include it in schedule and insurers not indicated
Item 2	100% not indicated
Item 3	100% not indicated
Item 4	100% not indicated
Item 5	100% Montalto Insurance
Item 8	100% not indicated
Item 9	100% not indicated
Item 10	100 % Argus underwriters
Item 11	100% not indicated
Item 12	100% not indicated.

No other information was submitted by the Recommended Bidder. MIB had made reference to the incinerator facility and indicated cover of it. The Recommended Bidder did not make any reference to the incinerator; at least witness did not remember. But this was not demanded.

Replying to Dr Christopher Mizzi witness stated that the Tender had asked for insurance cover in 12 policies. Bidders had to submit the minimum policy covers being offered. Bidders had to give in detail what they were offering, had to declare that they were offering what was requested.

Replying to Dr Paul Cachia for the Recommended Bidder, the witness said that all the three offers received had been administratively and technically compliant. The bidders according to the Tender Document had to give the percentage cover offered but were not required to quote the details of the insurers. The Recommended Bidder had provided all the rates of cover for all the policies; and all the three bidders had provided the necessary information.

The Recommended Bidder AIB Brokers Limited had submitted the cheapest offer. Replying to a question by Dr Franco Galea he said that the previous policies had lapsed at the end of September but had been extended up to next March.

Dr Victor Scerri and Dr Christopher Mizzi objected to further questions about this extension and said that the Appellant should state the reason for asking these questions.

Dr Franco Galea for the Appellant explained that when the previous cover was about to lapse, the Contracting Authority had approached the three bidders in the present Tender to provide interim cover and that it is the contention of the Appellant that in that instance, the Recommended Bidder had failed to offer conditions according to the level of the present Tender. This he insisted was relevant for the present Tender.

Dr Christopher Mizzi for the Department of Contracts contended that the Board has to decide

only on the proceedings in the present Tender only. The Contracting Authority has the power to sanction any bidder who does not provide what he offered.

Dr Paul Cachia for the Recommended Bidder contended that the proceedings for the extension were for a period of six months only and thus the conditions had to be different. For this reason the proceedings for extension were irrelevant to the present case.

Dr Franco Galea for the Appellant admitted that the financial offer of his client was not the cheapest. Evaluation had also to consider the administrative and technical capacities of bidders. The Tender did not just require the price of each policy. At page 16 of the Tender – “results to be achieved by the service provider”, several obligations were listed. Bidders should have provided much more information and not just minimum for the policies.

The Recommended Bidder failed to mention the incinerator and according to the witnesses produced today none of their principals had quoted for item 10. Before submitting the Tender financial offer, Appellant had calculated and worked out the details of the policies according to the market. On certain items, Appellant had offered 100% coverage while the Recommended Bidder had offered 25%.

The Recommended Bidder had also failed to list the insurers it would be using to provide the service for each item. He contended that therefore the technical evaluation by the Evaluation Board had not been ‘like with like’. It was also clear that the Recommended Bidder did not have the necessary underwriters. The Contracting Authority’s contention that once bidders were compliant only the financial offer would decide was not correct.

Dr Paul Cachia for the Recommended Bidder said that the grievances raised in the Letter of Objection should be considered. Fishing expeditions involving vague allegations should not be allowed. There was no mention of any non-compliance of the Recommended Bidder. Brokers these days do not have to rely solely on the local insurance agencies but on agencies all over Europe. The Recommended Bidder had done all the necessary analysis before submitting its offer.

The Tender Document had not asked bidders to declare their underwriters. In this case it was clear that since all three bidders were administratively and technically compliant the only deciding factor was the financial bid and the Contracting Authority was correct in choosing the Recommended Bidder.

Dr Christopher Mizzi for the Department of Contracts said that this Board should only examine the procedure followed by the Evaluation Board, that it followed the procurement regulations. He stated that in fact the latter had asked for certain clarifications from the Recommended Bidder.

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 25 September 2015 and also through their verbal submissions during the Public Hearing held on 17 December 2015, and had objected to the decision taken by the Pertinent Authority, in that:**

- a) **The Appellant Company contends that the Evaluation Committee had been misdirected, in that the Recommended Bidder did not give all the necessary information to the Authority, such as the indications of the insurers and the amount of risk covered by the same.**

**In this regard, the Appellant maintains that the Evaluation Committee did not compare "*Like with Like*" and the non-inclusion of the "*insurers*" by the Recommended Bidder means that the latter does not have the necessary underwriters.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 30 October 2015 and also the Contracting Authority's verbal submissions during the Public Hearing held on 17 December 2015, in that:**

- a) **The Contracting Authority maintains that both the Recommended Bidder and the Appellant Company were administratively and technically compliant, so that the final aspect to be considered was the price. In this respect, the Recommended Bidder's offer was the cheapest.**

**Reached the following conclusions:**

1. **First of All, this Board would refer to the requirements dictated in the Tender Document with particular reference to the "*Financial Bid Breakdown*" schedule. This same Board credibly notes that nowhere in the Tender Document was mentioned a requirement for the submissions of the identity of the insurers.**

**What was stated was "*in submitting their offer/s, prospective bidders are requested to submit a full breakdown of the Premium of each type/class of insurance cover/policy, indicating each item and the rate applicable. This information shall not form part of the Evaluation Process, but shall be binding and form an integral part of the contract etc.*" In this regard, this Board justifiably affirms that there was no mandatory requirement for the bidder's to indicate who the "*insurers*" are.**

- With regards to the Appellant’s contention that the Evaluation Committee were misguided so that there was no fair assessment by the latter on a “*like with like*” basis; this Board would justifiably opine that the Tender was for a “*quote*” for insurance cover of twelve items clearly indicated in the Financial Bid Breakdown.

The Evaluation Board, quite correctly, had to conduct its assessment on those items so dictated in the “*Financial Bid Breakdown*”. Through clarifications dated 13 July 2015 and 31 July 2015, the Evaluation Committee confirmed that the premiums quoted by the Recommended Bidder did in fact cover the full requirements as dictated in the Tender Document.

In this regard, this Board credibly opines that the Evaluation committee were not misled by the Recommended Bidder as whenever there was doubt on a particular item, the latter sought and obtained the necessary clarification.

This Board would like to also point out that the Evaluation Committee had to evaluate the quoted premiums only on the dictated requirements as listed in the “*Financial Bid Breakdown*”. There exists no evidence that the Evaluation Committee did not follow this procedure.

In this regard, this Board opines that both the Appellant and the Recommended Bidder were assessed on a “*Like with Like*” basis.

2. This Board points out that the sole award criterion was the price. The Recommended Bidder was the cheapest fully compliant bidder. In this regard, this Board justifiably opines that the Evaluation Board followed the correct, fair and transparent principles of Public Procurement.
3. This Board would like to also point out that the numerous witnesses summoned by the Appellant Company did not provide any facts or proven evidence that the Recommended Bidder did not have “*Underwriters*”. All that came out from the submissions of the said witnesses was who quoted and who did not for the coverage of the insurance of the Recommended Bidders.

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

*29 December 2015*