

PUBLIC CONTRACTS REVIEW BOARD

Case No. 912

MLC 08/2015

Tender for the Environmentally Cleaning and Maintenance of Public Conveniences.

The Tender was published on the 25th September 2015. The closing date was on the 29th October 2015. The estimated value of the Tender was €198,305.00 (Exclusive of VAT)

Seven (7) bidders had submitted an offer for this Tender.

On the 22nd January 2016 Mr Paul Cardona filed an Objection against the decision taken by the Contracting Authority to award the Tender to Mr Antoine Fenech for the sum of €190,650.00.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Thursday the 3rd March 2016 to discuss the Objection.

Present for the hearing were:

Mr Paul Cardona:

Ms Nathalie Cardona	Representative
Mr Paul Cardona	Representative
Dr Charlene Grima	Legal Representative

Mr Antoine Fenech:

Mr Antoine Fenech	Director
Dr Josette Sultana	Legal Representative

Kunsill Lokali Mellieha:

Mr Clayton Bartolo	Deputy Mayor
Me Carmel Debono	Executive Secretary
Mr Joseph Attard	Contracts Manager
Dr Alfred Abela	Legal Representative

The Chairman made a brief introduction and then invited the Appellants' representative to make her submissions.

Dr Charlene Grima on behalf of the Appellant stated that having seen the Letter of Reply submitted by the Contracting Authority, she insists that the award decision was vitiated since the Recommended Bidder had failed to submit the required GPP list. This fact had been admitted by the Contracting Authority itself, but the Contracting Authority was contending that the omission had been rectified later on. However, the Recommended Bidder should have submitted this document with the Tender and not later when asked by the Contracting Authority.

She contended that all bidders should be treated equally by the Contracting Authority and the Recommended Bidder should have been disqualified for not submitting the necessary document. The Letter of Reply also raises the fact that the criteria for adjudicating also included items like expenses and costs of the products to be used in rendering the service.

She contended that this should not have been done because the necessary information about the materials to be used by the Recommended Bidder was not available when the Tender was opened. This was unjust to all other bidders. The Appellant was therefore demanding the revocation of the award.

Dr Alfred Abela on behalf of the Contracting Authority assured the Board that there had been no preferential treatment to the Recommended Bidder. In fact another bidder had also been asked to rectify the omission of the submission of the GPP list. He insisted that at the time when the Tender was being evaluated, the missing GPP list had been produced and was available.

The Chairman pointed out that it was against procedure to ask for the submission of documents that bidders had failed to submit.

Finally Dr Charlene Grima stated that the Appellant was not insisting on the matter of the bid bond since this had been explained.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection in terms of the "*Reasoned Letter of Objection*" dated 22 January 2016 and also through their verbal submissions during the Public Hearing held on 3 March 2016, had objected to the decision taken by the Pertinent Authority, in that:

a) The Appellant contends that the Contracting Authority awarded the

Tender to a bidder who failed to submit the required GPP List as dictated in the Tender Document. In this regard, the Appellant insists that the Recommended Bidder's offer should have been discarded.

Having considered the Contracting Authority's "*Letter of Reply*" dated 26 January 2016 and also their verbal submissions during the Public Hearing held on 3 March 2016, in that:

- a) The Contracting Authority maintains that it did not make any preferential treatment to any of the bidders. There was another bidder who did not submit the GPP List and this Bidder was also asked to submit the same documentation.**

Reached the following conclusions:

- 1. With regards to the Appellant's Contention that the Recommended Bidder's offer should have been disqualified due to the fact that he did not submit the GPP List as requested in the Tender Document; this Board had, on many occasions, emphasized that non submission of documentation as dictated in a Tender Document represent "*Missing Documentation*" so that, any request made by the Contracting Authority to any bidder to submit any missing documentation would bluntly lead to a "*Rectification*", which is not tolerated in whatsoever manner.**

In this regard, this Board justifiably opines that the Contracting Authority did not conform with the Public Procurement Regulations. This Board strongly opines that the request made by the Contracting

Authority to any bidder who did not submit what was dictated in the Tender Document lead to a “*Rectification*”. In this regard, this Board uphold the Appellant’s Contention.

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 is to be fully reimbursed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

11 March 2016