

PUBLIC CONTRACTS REVIEW BOARD

Case No. 932

NLC 245/00

Tender for the Environmentally Friendly Cleaning of Urban Roads.

The Tender was published on the 31st January 2014. The closing date was on the 4th March 2014. The estimated value of the Tender was €185,975.0.

Ten (10) bidders had submitted an offer for this Tender.

On the 29th January 2016 Christian Galea and Family filed an Objection against the decision taken by the Contracting Authority to award the Tender to Innovative Projects Limited for the amount of €145,140.00.

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 21st April 2016 to discuss the Objection.

Present for the hearing were:

Christian Galea and Family:

Mr Christian Galea
Dr Andre` Portelli

Representative
Legal Representative

Innovative Projects Limited:

Mr Cedric Valletta
Dr Katrina Borg Cardona

Representative
Legal Representative

Naxxar Local Council:

Mr Paul Gatt
Dr Larry Formosa

Executive Secretary
Legal Representative

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

Dr Andre Portelli on behalf of the Appellants explained that in Clause 12 specifically stated that the Tender would be awarded to the "*most favourable Tender provided that the Tender has been submitted in accordance with the requirements of the Tender Documents*". Instead, the Contracting Authority had awarded the Tender to the cheapest bidder.

This results from the letter informing his clients of the award. He contended that there was a great difference between "most favourable" and "cheapest". He also claimed that the Contracting Authority should have given the Appellant clear reasons for the decision to award the Tender to the Recommended Bidder. He said that this was not done and he queried as to the reason for this omission.

Dr Larry Formosa for the Contracting Authority submitted that the reasons brought forward for the Objection were baseless. The Appellants had provided no proof that the Contracting Authority had not chosen the best offer. This was not a MEAT Tender. Dr Formosa declared that the Recommended Bidder's offer was in fact totally compliant both administratively and technically, and also the cheapest. The Naxxar Local Council was totally convinced that the Recommended Bidder had the most favourable offer. The Recommended Bidder would not be using any herbicide and additionally would use extra vacuum cleaners to provide the service.

Dr Andre Portelli for the Appellant said the Letter of Rejection gave the reason for adjudication as "the cheapest". The Contracting Authority ignored the clause.

Mr Paul Gatt the Executive Secretary explained that he had met with all the bidders in this Tender and had found the Recommended Bidder to be fully compliant and made sense.

Dr Andre Portelli for the Appellant contended that it was up to the Contracting Authority to explain in detail and justify the reasons for the choice of the award. He contended that the adjudication was not valid since it had ignored the "most favourable" element. He contended and reiterated that the Contracting Authority should have explained why the Recommended Bidder was the "most favourable" and why the Appellant was not.

The Chairman remarked that the Letter of Rejection could have been more explanatory.

Dr Katrina Borg Cardona on behalf of the Recommended Bidder explained that the term "most favourable" included also the price offered and this should have been considered by the Appellant before preparing the Tender. She pointed out that this Tender was not MEAT based and that the Contracting Authority had carefully examined all the offers and had been convinced that her clients' offer which included mechanical sweeping was the best.

Dr Andre Portelli reiterated once again that clause 12 of the Tender Documents had stated "most favourable" and not cheapest. His client had offered what he considered to be most favourable.

Dr Larry Formosa for the Contracting Authority pointed out that in fact the Appellant was the incumbent supplier of the service to the Contracting Authority and had because of this appeal won three extra months of service.

Dr Andre Portelli repeated and contended that the proper procedure should have been

followed by the Contracting Authority.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 29 January 2016 and also through their verbal submissions during the Public Hearing held on 21 April 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) **The Appellant contends that the Adjudication procedure which had to be adopted was on "*most favourable Tender*". In fact, the Evaluation Committee adjudicated this Tender on the "*Cheapest Offer*", which is a different concept;**

- b) **The Appellant also maintain that he was not given specific reasons as to why his offer was discarded, except for the fact that the Recommended Bidder's offer was the cheapest.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 6 February 2016 and also through their verbal submissions during the Public Hearing held on 21 April 2016, in that:

- a) **The Contracting Authority maintained that the Appellant did not provide proof that the offer submitted by Innovative Projects Ltd was not the most favourable.**

Reached the following conclusions:

- 1. With regards to the Appellant's First Contention, this Board after having examined the relative documentation, justifiably notes that the Recommended Bidder's offer was fully compliant and the cheapest thus it is considered to fulfil the award criteria i.e. that of the "*most favourable offer*".**

The fact that the Contracting Authority mentioned the price only in its "*Letter of Rejection*" does not, in any credible way, detract from the basic principles of Public Procurement, that is transparency, level playing field for all bidders and proper adherence to adjudication principles. In this regard, this Board does not uphold the Appellant's First Contention.

- 2. With regards to the Appellant's Second Contention, this Board had, on many occasions, emphasised the obligation on the part of the Contracting Authority to state the specific reasons for rejection to all unsuccessful bidders.**

Although this Board credibly notes that a more detailed “*Letter of Rejection*” with specific reasons as to why the offer was rejected should have been submitted; the omission in itself does not affect the ranking or transparency of the decision taken by the Evaluation Board.

In this Regard, this Board, acknowledges the fact, raised by the Appellant, in that specific reasons for discarding should have been submitted by the Contracting Authority, at the same instance, this Board justifiably upholds the decision taken by the Contracting Authority in its choice of offer.

In view of the above, this Board finds against the Appellant and recommends that the deposit paid by the latter should not be re-imbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

27 April 2016