

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case No. 933 – SGLC/T/6/15: Tender for the Domestic Waste Collection Door to Door.**

The Tender was published on the 30<sup>th</sup> January 2015. The closing date is on the 6<sup>th</sup> March 2015. The estimated value of Tender is €100,000.00 (Exclusive of VAT).

Five (5) offers had been received for this Tender.

On the 3<sup>rd</sup> November 2015 Waste Collection Limited filed a Letter of Objection against the decision of the Contracting Authority to revise its decision to award it the Tender, instead awarding it to Galea Cleaning Solutions.

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 28<sup>th</sup> April 2016 to discuss the Objection.

Present for the hearing were:

#### **Waste Collection Limited:**

Mr Mario Tufigno	Representative
Dr Robert Tufigno	Legal Representative

#### **Galea Cleaning Solutions:**

Mr Christian Galea	Representative
Dr Adrian Delia	Legal Representative

#### **Kunsill Lokali San Gwann:**

Mr Kurt Guillaumier	Executive Secretary
Dr John L Gauci	Legal Representative

The Chairman remarked that the Contracting Authority had withdrawn its award of the Tender to the Appellant because the latter's bid bond had lapsed after what was a considerable time taken for adjudication. The Contracting Authority had also revised its award and awarded anew the Tender while an Objection had been pending. This should never have been done since the filing of a Letter of Objection should halt all action being taken in the Tender appraisal and award. This action created an anomaly. He then made a brief introduction and asked Appellant's representative to make his submissions on the Letter of Objection.

Dr Robert Tufigno on behalf of the Appellant explained that his clients had asked for a re-issue of the Tender just because of this anomaly. It was for this reason that the Appellant had just asked for the revocation of the decision and the re-issue of the Tender.

Dr John L Gauci for the Contracting Authority declared that the Contracting Authority was not bound to remind bidders to renew the bid-bond. He cited another case where the Appellant in that case had failed to renew the bid bond while the Objection was being decided and the Public Contracts Review Board had decided that the case be dropped because the bid bond had not been renewed. That Appellant had acceded the Court of Appeal which decided that he did not even had the right to file an appeal because with the lapse of the bid-bond, any juridical interest he may have had had ended. The Board decision was dated 10<sup>th</sup> October 2013 Mifsud vs Sliema Local Council; this was confirmed by the Court of appeal on the 28<sup>th</sup> February 2014.

Dr Robert Tufigno for the Appellant contended that the present case had been awarded to the latter and had not been disqualified during evaluation.

Dr Adrian Mallia on behalf of the Recommended Bidder explained that the local praxis is for the banks to remind clients that their bid-bond needed renewing. He did not agree that cancellation was the only way out. His client had appealed even when the present Appellant was the awardee. If the Board deemed fit it was the latest decision that had to be revoked and not the whole Tender.

Dr Robert Tufigno on behalf of the Appellant said that his client's bank, Banif, does not notify clients to renew bid bonds. He contended that the re-issue of the Tender was the only just solution.

Dr John L Gauci on behalf of the Contracting Authority submitted that it was up to the bidders to keep their bid-bonds valid. In the present Tender the other bidders had all renewed their bid-bonds.

Mr Kurt Guillaumier on behalf of the Contracting Authority replied to the Chairman that the service was presently being provided by the previous contractor on three-month contracts at the old rate.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's Objection in terms of the "*Reasoned Letter of Objection*" dated 3 November 2015 and also through their verbal submissions during the Public Hearing held on 28 April 2016, had objected to the decision taken by the Pertinent Authority in that:**

- a) The Appellant's sole request was to ask the Contracting Authority to re-issue the Tender and adopt the proper Evaluation process. Waste Collection Limited's contention in this regard is that whilst his offer was the awarded offer, the Contracting Authority maintains that since the Appellant did not renew his Bid Bond, his offer was thereafter discarded and awarded to another bidder whilst an objection on the same Tender was still pending.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 21 October 2015 and also through their verbal submissions during the Public Hearing held on 28 April 2016, in that:**

- a) The Contracting Authority maintains that the only reason why the Appellant's Bid was discarded was due to the fact that, Waste Collection Limited, who was originally the Recommended Bidder,**

**had failed to review his Bid Bond as required in the Tender Document.**

**Reached the following conclusion:**

- 1. This is a case where, although there was an Appeal pending on the same Tender, the Evaluation Board decided to award the Tender to another bidder namely Galea Cleaning Solutions.**

**The Evaluation Board should have been aware that once an Objection was filed on a particular Tender, the Evaluation Process should have been stopped. In this regard, this Board justifiably states that the Contracting Authority acted in an unruly manner and did not follow the Public Procurement Regulations in every respect, during the Evaluation Process.**

**This Board would not treat the matter regarding the renewal of the Bid Bond as the same Board credibly considers that, it is not the issue at stake in this particular circumstance. The main issue is the procedure of how the Evaluation Process was conducted which in this Board's opinion was irregular and not in conformity with the Public Procurement Regulations.**

**In view of the above, this Board justifiably upholds the Appellant's  
Contention and recommends that:**

- i) The Tender is to be re-issued and the proper Evaluation procedure is to be strictly adhered to;**
  
- ii) The deposit paid by the Appellant Company is to be fully reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*17 May 2016*