

PUBLIC CONTRACTS REVIEW BOARD

Case No. 945 – DH 2312/2015: Tender for the Construction of Retaining Wall at Santa Maria Addolorata Cemetery Paola – East Division, Section Na, using Environmentally Friendly Materials and Equipment.

The Tender was published on the 8th March 2016. The closing date was on the 7th April 2016. The estimated value of Tender was €25,455.08 (Exclusive of VAT).

One (1) offer had been received for this Tender.

On the 5th May 2016 Mangion Brothers (Zurrieq) Limited filed a Letter of Objection against the decision of the Contracting Authority to cancel and re-issue the 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 Thursday the 16th June 2016 to discuss the objection.

Present for the hearing were:

Mangion Brothers (Zurrieq) Limited:

Mr Saviour Mangion
Mr Brian Saliba

Representative
Representative

Central Procurement and Supplies Unit:

Ms Mary Gauci
Mr Tanio Scerri
Mr Hadrian Bonello
Mr Malcolm Vella Haber
Dr Katrina Borg Cardona

Chairperson Evaluation Board
Secretary Evaluation Board
Member Evaluation Board
Member Evaluation Board
Legal Representative

The Chairman made a brief introduction and remarked that in this case the Contracting Authority had given the Appellant very clear reasons why the offer was not accepted – “*Your offer has exceeded the allocated budget for this Tender.*” This Board could not ever persuade the Contracting Authority to increase the available budget; it would not allow any waste of time. He then invited the Appellant’s representative to make his submissions.

Mr Brian Saliba on behalf of the Appellant stated that they objected to the cancellation of the Tender.

The Chairman explained that once a budget was allocated the Contracting Authority was bound to adhere to the budget. The Contracting Authority had not rejected the Appellant’s Tender because this was not technically compliant but because the offer exceeded the budget; and this was clearly explained in the Letter of Rejection.

At this point the hearing was closed.

This Board,

Having noted the Appellant’s Objection, in terms of the “*Reasoned Letter of Objection*” dated 5 May 2016 and also through their verbal submissions during the Public Hearing held on 16 June 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) The Main Contention of the Appellants was the cancellation of the Tender by the Contracting Authority.**

Having considered, the Contracting Authority’s “*Letter of Reply*”, dated 11 May 2016 and also their verbal submissions during the Public Hearing held on 16 June 2016, in that:

- a) The Contracting Authority cancelled the tender due to the fact that the Appellant’s offer was way over the budgeted amount.**

Reached the following conclusions:

- 1. This Board is somewhat concerned as to why such an objection was submitted when in the “*Letter of Rejection*” dated 2 May 2016, the Contracting Authority gave the specific reason as to why the Appellant’s offer could not be considered.**

This communication clearly stated that “*Your offer exceeded the allocated budget for this Tender.*” In this regard, this Board justifiably points out that it is not this Board’s jurisdiction to dictate

or recommend an offer which is by far above the budgeted amount. This Board also credibly upholds the Contracting Authority's decision to cancel the Tender for these stated reasons.

This Board considers such an Appeal as "*Frivolous*" and in this respect does not uphold the Appellant's Contention.

In view of the above, and with special reference to the opinion that this is Appeal is to be considered as frivolous, this Board recommends that the Deposit paid by the Appellants should not be refunded

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

20 June 2016