

PUBLIC CONTRACTS REVIEW BOARD

Case No. 952 – ZBGLC 01/2016: Tender for the Collection of Bulky Refuse in an Environmentally Friendly Manner.

The Tender was published on the 26th February 2016. The closing date was on the 28th March 2016. The estimated value of the Tender was €12,000 (Exclusive of VAT)

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

On the 27th April 2016 Dimbros Limited filed an Objection against the decision taken by the Contracting Authority to reject their Tender on grounds of it not being compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Richard A. Matrenza and Mr Carmel Esposito as members convened a hearing on Thursday the 7th July 2016 to discuss the Objection.

Present for the hearing were:

Dimbros Limited:

Mr Melchiore Dimech	Representative
Dr Franco Galea	Legal Representative

Mr Antoine Bartolo:

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Dr Francois Dalli	Legal Representative

Kunsill Lokali Zebbug:

Ms Sarah Agius	Mayor
Mr Salvu Borg	Chairperson Evaluation Board
Ms Paula M Valletta	Executive Secretary
Dr Katrina Borg Cardona	Legal Representative

The Chairman pointed out that the Estimated Value of this Tender was €12,000 and therefore this Board was precluded from hearing it. Regulation 21 of the Public Procurement Regulations clearly stated that only bidders who participated in Tenders valued at over €12,000 could accede to the Board for redress.

Dr Franco Galea contended that it was the Contracting Authority that asked his client for an additional deposit to cover the amount required according to the same Regulation 21, and it was the Contracting Authority that referred the case to the Public Contracts Review Board.

He further claimed that the Tender Document did not give any indication of the estimated value. The Contracting Authority had through an email dated the 29th April 2016 asked Appellant to increase the deposit as the case would be heard before the PCRB. Therefore the Contracting Authority could not now claim that the Board was not competent to hear this case.

Dr Katrina Borg Cardona on behalf of the Contracting Authority pointed out that the Letter of Objection by the Appellant was addressed to the Public Contracts Review Board. She stated that Article 16.5 of the Public Procurement Regulations shows how the Estimated Value of a Tender is calculated and the Dimbros Ltd could easily work out the value from those regulations and it was clear that the Objection could not be heard before this Board.

At this point the hearing was closed.

This Board,

Having noted the Appellant’s Objection, in terms of the “*Reasoned Letter of Objection*” dated 27 April 2016, and also through their verbal submissions during the Public Hearing held on 7 July 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) Dimbros Ltd maintains that Kunsill Lokali Żebbuġ via an e-mail dated 12 May 2016, informed them that subject to a deposit, the Appellants can appeal.**

Having considered the Contracting Authority's submissions during the Public Hearing held on 7 July 2016, in that:

- a) Kunsill Lokali Żebbuġ contend that the “*Letter of Objection*” was sent to the Public Contracts Review Board.**

Reached the following conclusions:

- 1. This Board opines that, this Appeal refers to a Tender of an Estimate Value of € 12,000. In Accordance with the Public Procurement Regulations, this Board can only hear objections on Tenders which their Estimated Value is more than € 12,000.**

Also, this Board duly acknowledges the fact that it was the Contracting Authority which advised Dimbros Ltd the right of Appeal. This Board would like to also point out that the “*Letter of Objection*” was adressed directly to the Public Contracts Review Board and Kunsill Lokali Żebbuġ, so that the latter should have been aware that the Appellants had other remedies than that of an appeal with the Public Contracts Review Board.

In view of the fact that Dimbros Ltd was misguided in filing this Appeal, this Board recommends that the deposit paid by the latter is to be fully refunded.

Dr Anthony Cassar
Chairman

Mr Richard A Matrenza
Member

Mr Carmel Esposito
Member

13 July 2016