

PUBLIC CONTRACTS REVIEW BOARD

Case 1020 – MLC 10/2016 – Services of a Local Council Contracts Manager (General Operations) and Ancillary Services

The Publication Date of the Call for Tenders was 29 July 2016 whilst the Closing Date for Call of Tenders was 31 August 2016. The Estimated Value of the Tender, (Exclusive of VAT) was € 89,000.

Two (2) Bidders have submitted offers for this Tender.

On 25 January 2017, Perit Joseph Attard filed an Objection against the decision of the Mellieħa Local Council to award the Tender to Perit Daniel Cordina for the price of € 67,647 (Exclusive of VAT) against a deposit of € 445.

On 7 February 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Perit Joseph Attard

Perit Joseph Attard	Representative
Dr Josette Sultana	Legal Representative

Recommended Bidder – Perit Daniel Cordina

Perit Daniel Cordina	Representative
Dr Lydia Cordina	Legal Representative

Contracting Authority – Mellieħa Local Council

Mr Carmel Debono	Chairperson, Evaluation Board
Mr John Buttigieg	Member, Evaluation Board
Dr Alfred Abela	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Dr Josette Sultana, the Legal Representative for Perit Joseph Attard submitted that their main contention concerned the qualifications which Perit Daniel Cordina, the Recommended Bidder had. According to the Appellant the latter did not qualify for many of the requisites required in Annex 2 of the Tender Document.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked for which requisites, Perit Daniel Cordina did not qualify. Dr Sultana replied that at face value, the most obvious one was the qualification required for the "*Custodian Services at the Mellieħa Family Park*". The Appellants continued by saying that Perit Attard was being awarded this Tender for the last ten years.

Dr Anthony Cassar the Chairman of the Public Contracts Review Board replied that this was irrelevant to the case and also asked whether the Contracting Authority did take into consideration the Circular 19/2013 issued by the Department of Contracts on 16 December 2013 wherein it stated that experience shouldn't be taken as a main requisite when awarding Tenders below € 500,000. The directive issued in this Circular applied, therefore for this Tender.

Dr Josette Sultana on behalf of the Appellant submitted also that Article 9.1 of the Tender Document *inter alia* stated that,

"The contract will be awarded to the cheapest priced Tender satisfying the Administrative and Technical Criteria".

Dr Alfred Abela, the Legal Representative for Mellieħa Local Council opened his statements by saying that his clients were aware of the Circular 19/2013 by the Department of Contracts and did not consider the experience when awarding the Tender. Both bidders had vast experience and were people of a certain calibre for the Local Council.

Dr Abela continued by saying with regards to the point raised by Dr Sultana regarding Annex 2 that Perit Daniel Cordina has satisfied all the criteria requested by his clients. As indicated in their Reasoned Letter of Reply dated 26 January 2017, the Recommended Bidder was qualified in B.E&A (Honours) and he also had a Masters in Road Engineering. This showed that according to the Mellieħa Local Council, Perit Cordina satisfied all parameters and Dr Abela was wondering what qualification the latter lacked with regards to the custodian services raised previously by Dr Sultana.

Dr Alfred Abela continued by saying that both bidders had the same qualifications but the fact that Perit Cordina was qualified in Road Engineering was an asset to his clients.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked Dr Abela whether the Appellant satisfied all criterias required for which the latter replied in the affirmative.

Dr Alfred Abela, on behalf of the Contracting Authority proceeded by referring to the Article 9.1 mentioned by Dr Sultana previously and said that if all Bidders satisfied the necessary requirements than it was the cheapest Bidder who was to be awarded the Tender and in this case it was Perit Cordina who offered the cheapest bid.

The Local Council felt that Perit Cordina satisfied all necessary requirements and had all necessary qualification. On the other hand, the same Local Council was bound by the Tender requirements and therefore had to award the Tender to the cheapest bid available, hence choosing Perit Daniel Cordina.

Dr Josette Sultana, the Legal Representative for Perit Joseph Attard replied by saying that the Tender was clear in its requirements which stated what experience was needed in each sector.

Mr Carmel Esposito, a Public Contracts Review Board member asked what did the Tender Document required with regards the Custodian Services at the Mellieħa Family Park for which Dr Josette Sultana for the Appellant replied that it required,

“Supervisory or Project Management Experience, preferably with work experience (eg. Quantity Surveying). Environmental Protection experience would be considered as an asset”

Mr Carmel Esposito, a Public Contracts Review Board member remarked that the Custodian Services was the requested service and was not relevant with the experience issue mentioned earlier.

Dr Josette Sultana, the Legal Representative for the Appellant wondered whether enough evidence was presented which showed that the Recommended Bidder had enough experience for the job requested.

Dr Alfred Abela, the Legal Representative for Mellieħa Local Council submitted that from their part if the discussion was about Custodian Services, Perit Daniel Cordina had all the necessary experience since he makes the audit for the Environmental Landscape Consortium. Dr Abela was wondering what qualifications the Appellants were expecting which Perit Cordina did not have when at face value he was qualified enough to do the job.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that despite the fact that the experience did not count one had to see what qualifications did the Bidders have with respect to the Tender Requirements.

Dr Cassar then proceeded to ask whether the Appellant had the same qualifications as the Recommended Bidder for which Perit Joseph Attard replied that he had B.A. Honours and was reading a Masters.

Dr Alfred Abela, the Legal Representative for Mellieħa Local Council argued his statements by insisting that what his clients were saying was that Perit Daniel Cordina was more qualified than the Appellant while Dr Josette Sultana for the Appellant replied that her client had more experience in the areas covered by the Tender.

Dr Alfred Abela for the Contracting Authority said that had the Appellant offered a cheaper bid than Perit Cordina his clients would have awarded the Tender to Perit Attard but the Tender Document was clear when saying that the Tender should be awarded to the cheapest Bid which satisfied the Administrative and Technical requirements and since both Tenders qualified for the latter two requirements, they had to fall for the cheapest bid, hence awarding the Tender to Perit Daniel Cordina.

At this stage, the Public Hearing was adjourned to Tuesday 21 February 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by Perit Joseph Attard (herein after referred to as the Appellant) on 25 January 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference MLC 10/2016 listed as Case No 1020 in the records of the Public Contracts Review Board, awarded by Mellieha Local Council (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Josette Sultana

Appearing for the Contracting Authority: Dr Alfred Abela

Whereby, the Appellant contends that:

- a) Perit Daniel Cordina did not fulfil many of the requisites as requested in Annex 2 of the Tender Document, hence not being the cheapest fully compliant Bidder;**

- b) A particular requisite which the Recommended Bidder did not possess was the qualification requested for the “*Custodian Services at the Mellieha Family Park*”
- c) The Appellant maintains that since he had been the provider of services to the Local Council for the last ten years, he possesses the necessary experience to fulfill the services as requested in the Tender Document.

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 26 January 2017 and its verbal submissions during the Public Hearing held on 7 February 2017, in that:

- a) The Contracting Authority maintains that the Recommended Bidder was more qualified for the Professional Services Tendered for. He is also an asset to the Authority in that, Perit Daniel Cordina also qualified in road works. At the same instance, the Recommended Bidder was the cheapest. In this regard, the Local Council contend that in its adjudication, it had focused on the maxim of the cheapest compliant bid.

This Board, after having treated the merits of this case, arrived at the following conclusions:

1. With regards to the Appellant's first and second contention, this Board, after having heard the submissions made by all parties concerned, could not find any evidence that Perit Daniel Cordina did not satisfy any of the requirements as dictated in the Tender Document.

This Board also notes that Perit Joseph Attard's referral to "Annex 2" with special reference to the item "*Custodian Services at the Mellieħa Family Park*", strictly represent the requirement for work experience, (eg. Quantity surveyor).

This Board would also relevantly refer to the Circular 19/2013 issued by the Department of Contracts on 16 December 2013, wherein it is clearly stated that with effect from 1 January 2014, the experience requisite is not to be applicable as a selection criteria in the Procurement process for Tenders below € 500,000 so that when engaging key experts, professional people one has to assess the particular offer on the basis of "*Educational and Professional qualifications without requesting relevant experience.*"

In this particular case, it has been credibly established that Perit Daniel Cordina is more academically qualified than Perit Joseph

Attard. In fact, the latter was reading for his second degree which Perit Cordina already has. In this regard, this Board after noting that the latter was the cheapest, does not uphold the Appellant's First and Second Contention.

- 2. With regards to the Appellant's Third Contention, this Board as had in the past, would like to emphasize the issue that, the fact that the Appellant has been rendering professional services for the last ten years, does not, in any credible way create an advantage on other competing Bidders.**

The Adjudication process should be based on a "*Level Playing Field*" and no Bidder should be advantaged just because he was the previous incumbent. In this regard, this Board does not uphold the Appellant's Third Contention.

In view of the above, this Board finds against Perit Joseph Attard and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

21 February 2017