

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1256 – LCA 01/2018 – Tender for the Provision of Insurance Services to the Local Councils’ Association**

The publication date of the call for tenders was the 3<sup>rd</sup> August 2018 whilst the closing date of the call for tenders was 31<sup>st</sup> August 2018. The estimated value of the tender (exclusive of VAT) was € 50,000.

On the 5th December 2018 Island Insurance Brokers Ltd filed an appeal against the Local Councils’ Association as the Contracting Authority objecting to not being awarded the tender although their offer was the cheapest and they were administratively and technically compliant. A deposit of € 400 was paid.

There were two (2) bidders.

On 22nd January 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Island Insurance Brokers Ltd**

Dr Alessandro Lia	Legal Representative
Mr Mark Spiteri	Representative
Mr David Agius	Representative

#### **Recommended Bidder – AIB Insurance Brokers**

Dr Andre Borg	Legal Representative
Mr Ramon Mizzi	Representative

#### **Contracting Authority – Local Councils’ Association**

Dr Byron Camilleri	Legal Representative
Mr Mario Fava	Chairperson Evaluation Committee
Ms Lianne Mifsud	Secretary Evaluation Committee

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Alessandro Lia Legal Representative of Island Insurance Brokers Ltd said that the starting point of what was a simple appeal was the disqualification letter sent by the Local Councils' Association (LCA) to the Appellant wherein they stated that their bid was administratively and technically complaint and the cheapest, followed by a string of comments about their submission. Despite Appellants being compliant, the LCA changed the parameters and established a set of non-mandatory criteria. The tender had no conditions on the price of the individual items making up the global quotation – the LCA thus created a new procurement system *post-facto*. Section 4 of the Technical Specifications, clause 7, did not allow for the mandatory comments made by the Contracting Authority or have any effects on the final result. Appellants are at a loss to understand the reason for their disqualification.

Dr Byron Camilleri Legal Representative of the Local Councils' Association said that an insurance tender had a set of variables and conditions to be taken into account in deciding the final price. One had to take excesses into consideration and the fact that there was a large number of staff members to be covered. One has to look at the insurance policy as a complete package including Health Insurance and Personal Accident which could not be quantified. Although at face value the Island Insurance offer appeared cheaper, overall in practice it was more expensive.

The Chairman said that at this stage the Board wished to hear the testimony of a technical witness.

Mr Mario Fava (495472M) called to testify by the Board stated on oath that he was the Chairperson of the evaluation committee. He confirmed that the offer by Appellant covered all items asked for in the tender, and as requested the latter had quoted a lump sum price. With regard to note 7 in the rejection letter witness stated that this item would work out more expensive than the preferred bid due to the difference in the premium rates.

Questioned by the Chairman witness agreed that the tender document stipulation (item 1.4) that the bid had to be a lump sum offer had to be respected.

In reply to questions from Dr Lia witness agreed that excesses were only paid in the case of a claim – no details of past excesses had been given to the bidders and points 1 to 6 in the rejection letter were not qualified as part of the evaluation criteria. Item 7 had to be ignored as the LCA themselves had confirmed that it was outside the terms of the evaluation criteria.

Dr Andre Borg Legal Representative of AIB Insurance Brokers (AIB) said that this tender was particular to this kind of service – the product has to be compared on a like for like basis. It was not only the excesses that had to be considered but also any limitations or conditions in a policy. Appellants had not quoted a rate for health insurance contrary to what was asked in clause 1.4 of the tender. He then started comparing details of the different rates in the financial bids.

Dr Lia interjected to complain that it was highly irregular that AIB had been given sight of and had the financial bids in their hands.

Dr Camilleri confirmed that it was him who had given the figures to Dr Borg.

The Chairman said that the Board strongly deplores that the financial offer had been made available to the preferred bidder. This was irregular and the LCA had breached Public Procurement Regulations. It is only the price that is made public and in this case it was the global price which was the criterion. If the LCA wished to judge a tender on individual scoring of items they should have resorted to a Best Price Quality Ratio tender.

Dr Lia re-iterated that it was the global price that counts – the prices of individual items were not binding.

Dr Camilleri contented that the global price was the combined costs of the premiums of the individual items - how much is going to be paid finally is the real price.

The Chairman thanked the parties for their submissions and declared the hearing closed.

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**This Board,**

**having noted this Objection filed by Island Insurance Brokers Limited, (hereinafter also referred to as the Appellants) on 5 December 2018, refers to the contentions made by the latter with regards to the award of Tender of Reference LCA 01/2018 listed as Case No 1256 in the records of the Public Contracts Review Board and awarded by the Local Councils Association, (hereinafter also referred to as the Contracting Authority).**

**Appearing for the Appellants:**

**Dr Alessandro Lia**

**Appearing for the Contracting Authority:**

**Dr Byron Camilleri**

**Whereby, the Appellants contend that:**

- a) they were informed by the Contracting Authority that their offer was rejected yet at the same time, also informed that their offer was administratively and technically compliant and the cheapest. In this regard, the Appellants maintain that during the evaluation process, the Adjudicating Committee changed the selection criteria and breached the principles of transparency and self-limitation.

**This Board has also noted the Contracting Authority's "Reasoned Letter of Reply" dated 14 December 2018 and its verbal submissions during the Public Hearing held on 22 January 2019, in that:**

- a) The Local Councils Association contend that although the Appellants' offer was compliant and the cheapest, the Evaluation Committee also considered the excesses which had to be paid in the event of claims on the various types of the terms of the insurance policy. In this respect, when taking into account such considerations, the Appellants' offer will not be rendered as the cheapest compliant bid.

**This same Board has also noted the testimony of Mr Mario Fava who was duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, including the testimony of the witness duly summoned, opines that the issues which deserve consideration are twofold namely:**

- 1. The Tender Requirements;**
- 2. The submissions made by Island Insurance Brokers Limited.**

**1. The Tender Requirements**

**This Board opines that there are two major factors which must be considered in this particular case that is, the requirements of the Tender Documents and the adherence to the principle of self limitation by both the bidder and the Contracting Authority.**

**On the other side of the coin, the Tender Requirements must be formulated in a manner which:**

- are precise in the way they describe the requirements;**
- be easily understood by the prospective bidders;**
- have clearly defined, achievable and measurable objectives;**

- **provide sufficient detailed information that allow bidders to submit realistic offers.**

**In this regard, this Board opines that, such basic principles have been adhered to by the Local Councils Association in the stipulations of both the technical and financial conditions.**

**This Board would also point out that this tender represented a global price for a service/provisions contract, so that the award criteria was the price and consequently the tender will be awarded to the bidder submitting the cheapest priced offer satisfying the administrative and technical criteria.**

**On the other hand, the Evaluation Committee, in their evaluation process, must adhere and assess each offer, in accordance with the requirements so dictated in Article 7 (d) (i) – Financial Offer which dictates that:**

- i) *“A financial offer calculated on the basis of delivered duty paid (DDP) (Grand Total) for the services tendered as per tender response format (Note 3).”*

**This clause vividly amplifies the fact that the offer is to be considered on the global sum of the services which the technical specifications dictated and which consisted of the provision of insurances for the following categories;**

- a) Building Insurance;**
- b) Electronic Equipment;**
- c) Other Contents Insurance;**
- d) Public Liability;**
- e) Employers' Liability;**
- f) Money Policy;**
- g) Fidelity Guarantee;**
- h) Personal Accident;**
- i) Health Insurance**

**This Board would also note that nowhere in the Tender Document, under its Terms of Reference, does it state that, in their offer, Bidders must provide for any excesses, that may arise through future claims so that what was requested in the technical specifications and the financial offer, was the type of premium and the price thereof.**

**In this regard, the Evaluation Board had to assess the offers which were limited only to these requirements. At the same instance, this Board notes that during the evaluation process, the same Evaluation Committee considered other additional and unstipulated benefits of other competing offers. In this respect, this Board would point out that the principle of “*Level Playing Field*” in this particular case, should have been applied by comparing like with like on the sole basis of what has been stipulated in the Tender Document. This Board cannot but cite an important decision from a Judgement taken by the Court of Appeal on 24 June 2016 in Case 85/2016/1, Transport Services for Disabled Persons Cooperative Limited vs Director General (Contracts) as follows,**

*“Jibqa l-fatt pero’, li ghalkemm il-vetturi kienu “the best value for money”, ma humiex konformi ma’dak mitlub. Din il-Qorti, f’kazijiet simili, mhux l-ewwel darba li kkonfermat il-prinċipju li offerent, anke jekk joffri prodotti ahjar, ghandu jkun skwalifikat jekk il-prodott offrut ma jkunx skond kif indikat fis-sejha. Il-prinċipju ta’trasparenza jrid li*

*l-kumitat t'evalwazzjoni jimxi mad-dettalji tekniċi fid-dokument tas-sejha u mhux jiddeċiedi li jagħzel liema li jidhirlu li hi l-aħjar offerta.”*

Furthermore, this Board would also refer to a judgement by the same Court in Case 433/2014/1, SR Environmental Solutions vs Department of Contracts decided on 6 February 2015, wherein it was concluded that:

*“Ghandu jingħad in prinċipju li kull min huwa involut fil-proċess ta’sejha pubblika, inkluż ukoll dawk li huma mgħobbija bl-oneru li jiġġudikaw is-sejha, huma kollha marbutin bil-kundizzjonijiet li jkunu mniżżla fid-dokumentazzjoni tas-sejha.”*

From the above judgements, it is amply clear that the Evaluation Committee must strictly adhere to what has been dictated in the Tender Document. In this particular case, this Board opines that during the evaluation process, the Committee considered aspects which were not included in the technical conditions of the Tender.

**2. The submissions made by Island Insurance Brokers Limited**

**With regards to this particular issue, this Board would only refer to the Letter of Rejection issued by the Local Councils Association on 23 November 2018 and with particular references to the contents thereof as follows:**

*“The call was adjudicated against the Cheapest Technical and Administratively Compliant criteria. Although your offer was technical and administratively compliant and the cheapest. Please note the following remarks by the Evaluation Committee Board”*

**This Board notes that the Local Council Association is confirming that Island Insurance Brokers Limited’s offer is administratively and technically compliant and the cheapest, which is self explanatory. However, the Contracting Authority listed six reasons why the Appellants’ offer, although fully compliant and the cheapest was discarded and in the last note 7 of the same “Letter of Rejection”, it clearly states that:**

*“Although it was not part of the Evaluation criteria it was also noted that the Premium for the Dependents and Children in respect of the Health Insurance was inflated when compared to the other offers.”*

**From the above mentioned paragraph, this Board cannot but note that the Evaluation Committee did not adhere to the “Global Price” criteria, but rather indicated a particular premium from the requested list which was higher than the other offers. At the same instance, this Board is justifiably convinced that the Local Councils Association itself is confirming that such an issue is not part of the evaluation criteria.**

- 3. On a concluding note, this Board was made aware that AIB Insurance Brokers Limited was in possession of Island Insurance Brokers Limited’s breakdown of their financial offer. During the Public Hearing, this Board was also informed that such sensitive information was passed on to the Preferred Bidder by the Local Council Association themselves.**

**In this regard, this Board deplores this breach of the Public Procurement Regulations. Such information cannot be divulged and the releasing of financial information should not be repeated.**

**In view of the above, this Board,**

- i) does not uphold the Local Council Association's decision in the award of the Tender and revokes it;**
- ii) upholds the contentions made by Island Insurance Brokers Limited;**
- iii) directs that the Appellants' offer is to be re-integrated in the Evaluation Process;**
- iv) directs that the Evaluation Committee re-evaluates the offers submitted, and, in its final adjudication, takes into consideration the merits considered and decided upon by the Board;**
- v) directs that the deposit paid by the Appellants should be fully refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member

*31<sup>st</sup> January 2019*