

PUBLIC CONTRACTS REVIEW BOARD

Case 1261 – SLC/T/700/2018 – Tender for the Maintenance of Public Conveniences

The publication date of the call for tenders was the 22nd June 2018 whilst the closing date of the call for tenders was 23rd July 2018. The estimated value of the tender (exclusive of VAT) was € 28,000.

On the 6th December 2018 G.3.B Limited filed an appeal against Sliema Local Council as the Contracting Authority objecting to being disqualified on the grounds that their bid was not the cheapest compliant offer. A deposit of € 400 was paid.

There were five (5) bidders.

On 5th February 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – G.3.B Ltd

Dr John L Gauci	Legal Representative
Mr B Borg	Representative
Mr Mike Grech	Representative

Recommended Bidder – Mr Carmelo Gauci

Mr Patrick Valentino	Representative
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Contracting Authority – Sliema Local Council

Dr Matthew Cutajar	Legal Representative
Mr Anthony Chircop	Chairperson Evaluation Committee
Mr Matthew Dimech	Secretary Evaluation Committee
Ms Maryanne Aquilina	Member Evaluation Committee
Ms Vivienne Galea Pace	Member Evaluation Committee
Mr John Pillow	Member Evaluation Committee

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

Dr John Gauci Legal Representative of G 3 B Ltd said that his client was appealing on a single point – that the offer of the recommended bidder should have been discarded as he was not in a position to execute the contract. According to the minutes of the Sliema Local Council the offer

of the preferred bidder was far lower than the budget but the second next offer was more reasonable. The Council minutes show that they did not make a decision in the first place and only after requesting a cost-analysis exercise and reducing the cleaning time by thirty minutes overall was the offer deemed to be acceptable. This reduction was below what the Council required, and this is obvious from perusal of the evaluation report.

The Chairman intervened to point out that the Contracting Authority must not under any circumstances release the evaluation report in full to any bidder. This is contrary to Public Procurement Regulations (PPR). He requested a member of the evaluation committee to testify.

Mr Matthew Dimech (264284M) testified on oath that he was the Secretary of the Evaluation Committee. The tender did not specify a set number of hours. The Council received an offer from G 3 B Ltd which was € 500 cheaper than the one from Carmelo Gauci, the recommended bidder. During the course of the evaluation an accountant was asked to do a cost-analysis exercise taking into account the cost of wages, maintenance, materials etc. The Council then considered two scenarios within the terms of the evaluation report – one allowing 45 minutes and another 30 minutes to complete the cleaning of one site and move to the next location. The minutes show that Appellants' offer was more reasonable but not fulfil-able. Witness confirmed that no minimum number of hours had been specified in the tender.

Dr Matthew Cutajar said that at the evaluation committee stage the cost-analysis exercise had been carried out and the two scenarios referred to by witness considered. The Appellants' offer was restrictive in the time allowed. Reference was made to certain PCR B Cases which were quoted in the letter of reply.

The Chairman stated that the procedure by the Local Authority in examining if the work could be carried out was the correct course to take. He re-iterated that the release of the evaluation report was totally out of order.

He then thanked the parties for their submissions and declared the hearing closed.

This Board,

having noted this Objection filed by G 3 B Limited, (hereinafter referred to as the Appellants) on 6 December 2018, refers to the contentions made by the same Appellants with regard to the Tender of Reference SLC/T/700/2018 listed as Case No 1261 in the records of the Public Contracts Review Board,

awarded by Kunsill Lokali Sliema, (hereinafter referred to as the Contracting Authority)

Appearing for the Appellants: Dr John L Gauci

Appearing for the Contracting Authority: Dr Matthew Cutajar

Whereby, the Appellants contend that:

- a) the Preferred Bidder's offer was much lower than the Local Council's available budget, with the possible consequence that the Bidder will not be able to execute the Tendered services within the stipulated conditions of the Tender Document. In this regard, the Appellants maintain that even the Contracting Authority had doubts about the price quoted by the selected Bidder and to this effect, the Appellants maintain that, the successful bid should have been discarded;

This Board has also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 17 December 2018 and also its verbal submissions during the Public Hearing held on 5 February 2019, in that:

- b) Kunsill Lokali Sliema insists that the Recommended Bidder's offer was fully compliant and the cheapest. The Local Council, however carried out an investigation into the successful bidder's offer to establish whether, the quoted price by the latter, enabled same to carry out the

Tender services and after such an exercise, the offer was found to be viable.

This same Board also noted the testimony of the witness, namely, Mr Matthew Dimech, who was duly summoned by G 3 B Limited.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness, opines that the issues that deserve consideration are twofold namely,

- 1. The offer submitted by Mr Carmelo Gauci**

- 2. The breach of the Public Procurement Regulations**

- 1. The offer submitted by Mr Carmelo Gauci**

- a) **With regards to G 3 B Limited's alleged claim that, the quoted price by the Recommended Bidder will not enable same to execute the tendered services with all the stipulated conditions, this Board would consider such an issue even though no concrete and justifiable evidence has been presented by the Appellants in support of their claim;**

b) From the documentation made available to this Board and from submissions and explanations provided during the Hearing of this Appeal, this Board would first and foremost point out that, it is not its remit to delve into whether the successful economic operator will realise a profit or incur a loss. This Board's main concern is to ensure that the price quoted by Mr Carmelo Gauci provided for the minimum wage according to local labour regulations. In this regard, this Board notes that quite appropriately, Kunsill Lokali Sliema commissioned an accountant to carry out a "*cost analysis exercise*" to establish whether the price quoted by the Recommended Bidder is reasonable and probable enough to carry out the tendered works in two scenarios and from the examination of such a financial exercise, this Board is comfortably convinced that there are no indications that Mr Carmelo Gauci's offer does not take into account the minimum wage payable to the workforce and the consumables necessary to execute the tendered works to the Contracting Authority's expectation;

c) The Appellants are claiming that the price of the successful bid is way below the budgeted price. Although this Board opines that G 3 B Limited should not be aware of the Budget, an issue which will be treated later on, this same Board would point out that the question of the price has been investigated by Kunsill Lokali Sliema and although

the successful bid is € 5,000 below the estimation, the cost analysis exercise performed, justifies the viability of the execution of the Tendered works yet, at the same instance, safeguards against the risk of non-precarious working conditions. In this regard, this Board finds enough evidence to justifiably conclude that with the quoted price, Mr Carmelo Gauci can execute the tendered works without jeopardising the labour force's working conditions.

2. The breach of the Public Procurement Regulations

- a) During the submissions made by the Appellants, this Board became aware that the former had in their possession a copy of the full and complete Evaluation Report of this Tender. All parties to this Appeal should be knowledgeable enough to realise that such sensitive commercial and internal information should never be in the possession of any of the Bidders to a Tender. In this respect, this Board has also noted that, in actual fact, G 3 B Limited's claims were based on information which they had obtained and which should not have been divulged. In this respect, this Board instructs Kunsill Lokali Sliema to carry out the necessary internal investigation in order to establish how such information ended in the possession of Appellants and at the same instance, this Board would remind the Local Council that such**

divulging of information constitutes a breach of the Public Procurement Regulations. In this regard, this Board sternly expects that such an occurrence will not be repeated.

In view of the above, this Board,

- i) does not uphold the contentions made by G 3 B Limited;**
- ii) upholds Kunsill Lokali Sliema's decision in the award of the Tender;**
- iii) directs that the deposit paid by the Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

13th February 2019