

PUBLIC CONTRACTS REVIEW BOARD

Case 1318 – SGN/T/01/18 – Service for the Collection of Bulky Refuse from the Locality of San Gwann in an Environmentally Friendly Manner

The publication date of the call for tenders was the 14th September 2018 whilst the closing date of the call for tenders was 15th October 2018. The estimated value of the tender (exclusive of VAT) was € 15,000.

On the 15th February 2019 Melchior Dimech filed an appeal against the San Gwann Local Council as the Contracting Authority objecting that his bid was disqualified although it was the cheapest. A deposit of € 400 was paid.

There were three (3) bidders.

On 30th May 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Melchior Dimech

Dr Franco Galea	Legal Representative
Mr Melchior Dimech	Representative

Contracting Authority – San Gwann Local Council

Mr Kurt Guillaumier	Representative
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Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr Franco Galea Legal Representative for Melchior Dimech said that the award criteria had been ignored by the Contracting Authority. His client had satisfied the tender criteria and submitted the cheapest price but the Authority had decided to retain the present contractor.

The Chairman said that the Contracting Authority cannot award a tender on the basis of previous service given by a contractor and they had to abide by the tender criteria. Their decision was clearly wrong. He then thanked both parties and declared the hearing closed.

This Board,

having noted this objection filed by Melchior Dimech (herein after referred to as the Appellant) on 15 February 2019, refers to the claims made by the same Appellant with regard to the tender of reference SGN/T/01/2018 listed as case no 1318 in the records of the Public Contracts Review Board, awarded by San Gwann Local Council (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Franco Galea

Appearing for the Contracting Authority: Mr Kurt Guillaumier

Whereby, the Appellant's contend that:

- a) his main contention refers to the fact that the Authority ignored the stipulated award criteria in that, the preferred Bidder was not the cheapest compliant Bidder.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 20 February 2019 and its verbal submissions during the hearing held on 25 April 2019, in that:

- a) the Authority confirms that the preferred Bidder was the second cheapest compliant Bidder and the Authority's Council decision was based on past working relationships.**

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the Parties concerned, opines that the issue that merits consideration is, the decision taken by the Authority in the award of the tender.

- 1. This Board would respectfully refer to the ‘Letter of Rejection’ dated 4 February 2019, as follows:**

“1. In view of the minimal difference in price between the cheapest offer and the second cheapest offer where the second cheapest has a long working history with the Council and has proofed himself countless times.

2. The name of the successful Bidder is Twish co Limited.

3. If you wish to appeal you may do so within 10 working days of the date of this notice (till 3.00pm)

4. The deposit for the appeal is €400 which is to be handed over together with the appeal to the Executive Secretary of the San Gwann Local Council.”

First and foremost, the Authority is in duty bound to observe the principle of self-limitation. Conditions, as laid out in the tender dossier, are to be strictly adhered to both by Bidders and the Contracting Authority itself.

- 2. The award criteria was the cheapest price, however, this Board notes that the preferred Bidder was not the cheapest compliant, but was the second cheapest. At the same instance, this Board deplores the contents of the reason given by the Authority, as to why it chose the preferred Bidder. The Authority must be reminded that the Evaluation Committee cannot change the award criteria during such a stage of the tendering process and must evaluate each offer, in a fair, just and transparent manner and in this respect, this Board is not at all satisfied with the evaluation procedure as adopted by the responsible Committee.**

- 3. The fact that, the Authority had a good working relationship in the past, should never be regarded as an advantage to that Bidder, in a new call for competition. Each Bidder has to be treated on a level playing field and given equal treatment during the evaluation process and in this regard, this Board firmly opines that such basic principles of Public Procurement**

have been breached and completely ignored by the Evaluation Committee.

In conclusion, this Board opines that,

- a) the reason given to Appellant for the rejection of his offer is completely unfounded and incorrect;**
- b) Appellant's contentions are truly justified;**
- c) the Evaluation Committee did not carry out the evaluation process in a just and fair manner. It has also breached basic principle of Public Procurement.**

In view of the above, this Board,

- i) upholds Appellant's contentions;**
- ii) does not uphold the Authority's decision in the award of the tender;**

iii) directs that the Appellant's offer be re-integrated in the evaluation process;

iv) directs that the deposit paid by Appellant be fully refunded;

v) directs that a new Evaluation Committee will re-evaluate all the offers received, whilst ensuring that all Bidders are in conformity with the conditions and technical specifications, as duly dictated in the tender dossier;

vi) directs that the new Evaluation Committee will abide by the principle of self-limitation, in their deliberations.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A. Matrenza
Member

5 June 2019