

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 521**

**SLC/T/606/2012**

### **Tender for Road Cleaning Services**

The call for tender was published in the Government Gazette of the 7<sup>th</sup> September 2012 with a closing date of the 9<sup>th</sup> October 2012. The estimated value of the tender covering a period of 3 years amounted to €430,500 excluding VAT. The price of the recommended tender was €169,272.18 per annum, while the appellant's price amounted to €95,000 per annum.

Mr Saviour Mifsud filed an objection on the 22<sup>nd</sup> November 2012 against the decision of the Sliema Local Council to recommend the award of the tender to SRF Cleaning Services.

The Public Contracts Review Board composed of Mr Joseph Croker as A/Chairman, and Messrs Carmelo Esposito and Paul Mifsud as members, convened a meeting on Monday 18<sup>th</sup> February 2013 to discuss the appeal.

### **Present:**

#### **Mr Saviour Mifsud**

|                     |                      |
|---------------------|----------------------|
| Dr Luciano Busuttil | Legal Representative |
| Mr Saviour Mifsud   | Appellant            |
| Mr Kevin Mifsud     | Representative       |

#### **SRF Cleaning Services**

|                          |                      |
|--------------------------|----------------------|
| Dr John Gauci            | Legal Representative |
| Mr Steve Rennie Farrugia | Representative       |

#### **Sliema Local Council**

|                    |                     |
|--------------------|---------------------|
| Mr Anthony Chircop | Mayor               |
| Dr Kris Busietta   | Councillor          |
| Mr Matthew Dimech  | Executive Secretary |

After the A/Chairman's brief introduction, the appellant was invited to explain the motives of his objection.

Dr Luciano Busuttill, on behalf of Mr Saviour Mifsud, the appellant, made the following submissions:

- i. by letter dated 13th November 2012 his client was informed that the tender was being recommended for award to SRF Cleaning Services since it was the most advantageous offer;
- ii. six tenderers participated in this tendering procedure with offers ranging from €50,900 to €177,548 p.a.;
- iii. his client's offer was about €74,000 cheaper than the recommended offer;
- iv. his client had demonstrated in his tender submission that he had more experience than the recommended bidder since he had been in this sector for over 15 years and that he had both the human resources and the equipment required to carry out this service;
- v. his client was already rendering his services to the same local council and he has never been served with any default notice;
- vi. according to the provisions of the tender document the contracting authority was obliged to interview the bidders as part of the adjudication process;
- vii. it was not clear whether the award was arrived at by allocating points to each bidder in respect of a set of criteria; and
- viii. in the circumstances and since no cogent reason had been provided in the letter dated 13th November 2012 why his offer had been discarded and on which grounds the recommended bid was found to be more advantageous, his client was requesting the cancellation of the award as recommended.

Mr Matthew Dimech, executive secretary of the Sliema Local Council, explained that:-

- a. the contracting authority had carried out the mandatory interviews with the bidders and in fact the first to be interviewed was Mr Mifsud as recorded in the minutes of meeting held on the 29th October 2012;
- b. the purpose of the interviews was to assess the capabilities of the tenderers and to give the opportunity to the tenderers to explain how they intended to execute the contract, i.e. to assess their understanding of what this tender entailed, especially in view of the wide variation in the offers received;
- c. the tender document included more information than in the standard tender document such as the division of the area to be covered into different sectors and the frequency in which each sector had to be cleaned;
- d. this was the first instance when the Sliema Local Council was issuing a tender for road cleaning since this service had previously been provided by the central government;
- e. the appellant had explained that he had been carrying out street sweeping works at Tarxien for 12 years, besides being engaged on similar works at

Kalkara and Santa Venera, and that he could provide the requested service by the deployment of 6 cleaners and a supervisor;

- f. the contracting authority did not indicate in the tender document the number of cleaners that had to be provided but it provided all the details of the requirements and then it was left up to the bidders to demonstrate how they intended to meet those requirements;
- g. the tender called only for manual street sweeping services and it excluded mechanical sweepers, which service could be contracted separately by quotation as per clause 18 of the 'Specific Conditions';
- h. the recommended tenderer had been rendering street sweeping services at Msida for the 9 years and at Gzira for 5 years, which localities were considered to have more or less the same characteristics of Sliema in terms of traffic and parking;
- i. the recommended tenderer had indicated that he would deploy 9 cleaners together with a supervisor;
- j. the contracting authority did not opt for the cheapest bid, i.e. that of €50,900 p.a.;
- k. the contracting authority had sought the advice of Mr Ramon Deguara, Manager at the Cleansing Department, who used to supervise these works and he opined that these services required a minimum of 8 cleaners and this advice was obtained in the course of the adjudication;
- l. the three council meetings held to evaluate this tender together with the concluding meeting – which was attended by all coucillors except one - were held in public and the relative minutes were in the public domain;
- m. the Council was unanimous in its award decision;
- n. the appellant was the current contractor providing waste collection and it was correct that he had not been served with any default notice however the nature of the works was quite distinct from those requested in this tender;
- o. the tender was not adjudicated on a MEAT basis otherwise the relative evaluation grid would have been provided in the tender document; and
- p. the recommended tenderer had also offered a once a month service to remove grass from pavements which was included in the price.

Dr Busuttill remarked that:-

- a. evidently this tender was adjudicated on the basis of manpower, i.e. it excluded machinery and equipment, and it therefore appeared that the additional 3 cleaners to be deployed by the recommended tenderer was going

to cost the Council about €74,000 more, i.e. about €25,000 per employee which was very much on the high side;

- b. the Council evidently based its decision mainly on the manpower required for this service and it turned out that the public officer previously in charge of these works was asked to submit his advice in this regard after tender opening stage, however, once this aspect was considered so crucial then the minimum manpower requirement should have been included in the tender document for the sake of transparency; and
- c. in the tender document it was not indicated that this service had to be carried out by at least 8 employees.

Dr Kris Busietta, councillor, remarked that the unanimous decision of the Council to recommend the bid by SRF Cleaning Services was arrived at following a close examination of the bids and following the interviews conducted which revealed that the recommended bidder was more professional in the way he intended to deliver the service. He added that the Council reckoned that SRF Cleaning Services could satisfy best the tender requirements.

Dr John Gauci, obo the recommended tenderer, remarked that with regard to the deposit according to Reg. 84 the deposit represented 1% of 285,000 (appellant's bid 95,000 p.a. x 3 years), i.e. 2,850 and not the minimum of 1,200 set by the same regulation. He added the PCRБ had always held that the deposit for lodging the appeal had to be according to the Public Procurement Regulations and even if the contracting authority was to misguide the bidder in this regard, the bidder was expected to abide by regulations (CT 3057/2010 refers).

### **Deposit To Lodge The Appeal**

Mr Dimech remarked that one had to consider also if the appeal lodged by Mr Mifsud was valid or not in terms of Reg. 84 of the Public Procurement Regulations which, among others things, provided as follows:-

*The notice of objection shall only be valid if accompanied by a deposit equivalent to one per cent of the estimated value of the tender submitted by the tenderer, provided that in no case shall the deposit be less than one thousand and two hundred euro (€1,200) or more than fifty-eight thousand euro (€58,000).*

Dr Busuttill argued that in the absence of the estimated value of the contract, his client had paid the deposit of €1,200 which was the minimum allowed since 1% of his offer, i.e. €95,000 p.a. amounted to €950.

Mr Dimech stated that in his opinion the contract period covered three years and cited Annex 1 'Duration of Contract':

*Subject to earlier termination in accordance with the provisions of the General Conditions, the contract period shall be valid for up to a period of three years subject to the satisfactory performance of contractor.*

Dr Busuttil argued that to his recollection the contract was issued for one year renewable for 3 years. He pointed out that clause 19 ‘Tender Guarantee Requirement’ of the ‘Instructions to Tenderers’ stated that “*The bid bond shall be calculated according to the value of the offer submitted by the tenderer*” and then indicated ranges with regard to the ‘estimated value of the contract’ which seemed to represent the offer per annum. His client had presented a bid bond amounting to €4,660 applicable to a contract value of between €58,250 and €116,500, since his annual offer was of €95,000 p.a. Moreover, the Pro-forma Bill of Quantities requested the global annual sum.

Dr Gauci remarked that the bid bond was governed by tender provisions whereas the deposit to file an appeal was governed by regulations.

It is noted that in the case of the recommended bidder the bid bond had to be the maximum amount requested in the tender document, i.e. €5,824 since both his annual offer and his three year offer exceeded the maximum contract value of €116,500 for bid bond purposes.

This Board:

- having noted that the appellants in terms of their letter of objection and also through their verbal submissions during the hearing of the 18<sup>th</sup> February 2013 had objected to the decision taken by the Sliema Local Council to award the tender to SRF Cleaning Services ‘since their offer was the most advantageous’;
- having noted the appellant’s representatives claims and observations in particular to the fact that the offer submitted by the appellant was cheaper than the recommended one by €74,000; that the appellant had an amount of years experience in carrying out similar services to other localities, namely Kalkara and Tarxien; that the call for tender did not stipulate the number of sweepers engaged in the cleaning of streets but left it to the tenderer to suggest an appropriate number and method;
- having noted the contracting authority’s representative’s explanations that this was the first instance that a similar tender was issued by the council since the service was previously provided by the central government; that the tender document contained more information than the tender usually published by local councils for similar services; that the council carried out the interviews of all bidders as stipulated in the tender document in order to identify the best possible candidate for award; that in the council’s opinion the recommended bidder offered the best service since he also had experience in areas considered to be similar to Sliema i.e. Gzira and Msida; that the tender was not adjudicated on an MEAT basis as otherwise the criteria and weightings would have been included in the tender document; that the council based its decision on the advice given by Mr Ramon Deguara, Manager at the Cleansing Department which used to provide the service who estimated that one would need a minimum of 8 persons to carry out the work;

- having also noted the submissions made by both the contracting authority's representative and the recommended tenderer's to the effect that the appeal should not have been accepted since it was not accompanied by the appropriate amount of deposit which should have been worked out on the cost of a 3 year period and not on the annual cost; having also noted the appellant's representative's claim that the tender was for a period of 12 months which may be extended yearly for 3 years and thus the deposit should have been collected on the cost of the first year; having also noted that in the schedule drawn up during the tender opening session the cost was entered on an annual basis; having also noted that according to Annex 1 'Duration of Contract':

*Subject to earlier termination in accordance with the provisions of the General Conditions, the contract period shall be valid **for up to** a period of three years subject to the satisfactory performance of contractor.*

came to the following conclusions:

1. that the local council made an attempt to include more information than is usually entered in a standard tender issued by local councils for such services and this is highly recommendable;
2. that once the tender was not to be adjudicated on a MEAT basis, but rather on the basis of the cheapest offer that satisfied the contracting authority's requirements, than the local council should have ensured a level playing field by clearly stating minimum requirements which would have to be satisfied for one to be considered for award of the tender; this basic requirement was missing from the tender document since the local council left it up to the tenderer to submit his proposals;
3. that the advice tendered by Mr Ramon Deguara Manager at the Cleansing Department might have been subjective in that he based his calculations on past experience using Government employees as against the use of employees from the private sector;
4. that the tender did not guarantee a three year engagement but specified that the contract period shall be valid for up to a period of three years and as a result the deposit was paid correctly based on the cost of one year.

In view of the above, the Board finds for the appellant and recommends that the tender be re-issued with clear parameters in order to ensure a level playing, which would facilitate an objective adjudication process. It is also recommended that the deposit paid by the appellant to lodge his appeal be refunded in full.

Joseph Croker  
A/Chairman

Carmelo Esposito  
Member

Paul Mifsud  
Member

27 February 2013