

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 583**

**MXLC 01/2013**

### **Tender for the Collection of Mixed Household Waste in an Environmentally Friendly Manner.**

The tender was published on the 26<sup>th</sup> February 2013. The closing date was the 2<sup>nd</sup> April 2013.

The estimated value of the Tender was €61,500 (Exclusive of VAT).

Eight (8) bidders submitted their offers.

On the 30<sup>th</sup> April 2013, Messrs Mario Borg filed an objection against a decision by the contracting authority, Marsaxlokk Local Council to award the tender to V&A Services Ltd.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Thursday 20<sup>th</sup> August 2013 to discuss the appeal.

#### **Present for the hearing:**

##### **Messrs Mario Borg - Appellant**

Dr Carlos Bugeja	Legal Representative
Mr Mario Borg	Representative

##### **V&A Services Limited – Recommended Bidder**

Mr Brian Vella  
Mr Ronald Attard

##### **Marsaxlokk Local Council – Contracting Authority**

Arch Edric Micallef	Mayor
Mr Duncan Hall	Secretary Evaluation Board
Dr Luciano Busutil	Legal Representative

The Chairman made a brief introduction and invited appellant to make his submissions.

Dr Carlos Bugeja on behalf of the appellant stated that as his client was not given the necessary information, in terms of tender conditions at Clause 15 (c). He was not given the reason why his offer was discarded. After the tender was awarded, appellant had asked the contracting authority for this information. He was informed however, that the reasons could not be given to him. The contracting authority, following the award of a contract, was bound by Regulations to inform bidders of their right of appeal. This obligation was not adhered to. Thus appellant had to base the letter of objection on information he managed to obtain from unofficial quarters and could not properly rebut any reasons for his disqualification. Dr Bugeja continued that this action on the part of the contracting authority rendered both the tender itself, and the right to appeal given to bidders by the Public Procurement Regulations, defective.

The tender in question had three requisites, an environmental test, a technical test, and finally the financial test. Regarding the environmental issue, Dr Bugeja stated that while appellant offered Euro III vehicles, those offered by the preferred bidder were Euro II. He could state this because his client at one time was going to purchase the same vehicles now offered by the preferred bidder. His client asserts that the same trucks offered by the preferred bidder were also being used to provide service to other Local Councils. Appellant's vehicles on the other hand were going to be used solely for this tender, and his technical capacities were excellent. Appellant had submitted with his bid, certificates and references from several civil and commercial entities to show his experience. Finally, as regards the financial bid, appellant's offer was far better than that submitted by the preferred bidder. The financial offer represented 40% of the evaluation criteria. Thus, he contended, that appellant's offer surpassed that of the preferred bidder's environmentally, technically and financially. This, combined with the fact that appellant was not given the required information, rendered the tendering process null or defective, requiring further scrutiny.

Dr Luciano Busuttil for the contracting authority stated that the contracting authority is precluded from divulging information about one bidder to any other bidder. The evaluation board prepared an extensive evaluation report showing how the decision to award tender was arrived at. The fact that appellant was not given the reasons for the rejection of his offer does not render the adjudication process null. This tender was a Most Economic and Advantageous Tender furthermore bidders who were not selected for the award were not necessarily non-compliant. The preferred bidder's offer was more advantageous.

Mr Duncan Hall said that the preferred bidder's trucks had been upgraded. A certificate submitted with his bid shows that the trucks in question had been upgraded to Euro IV standard. He continued that following the publication of the award, appellant came personally to his office asking for a copy of the report. This report consists of eleven pages and the minutes of the Council meeting during which adjudication was made contains another ten pages. As the report had not yet been approved, he could not be given a copy, but during his visit which lasted more than one hour, the reason why his bid was not successful was clearly explained to him.

Dr Luciano Busuttil raised a procedural objection to the appeal. Appellant had filed his appeal under Article 84 of the Public Procurement Regulations and should have deposited a minimum of €1200. His deposit was however only €400 and therefore the objection was null. It is either this or his appeal was null because he filed it under the wrong Article of the

same Regulations.

Replying to a question by the Chairman, Mr Duncan Hall confirmed that appellant's offer was administratively compliant and technically compliant, but explained that the financial offer had 40% weighing when marks were assigned during adjudication process. Appellant's financial offer was not the cheapest. The cheapest offer was made by another bidder who was not compliant. Appellant claimed to have the necessary experience but he had been employed by the co-operative before starting on his own and filing the tender. This experience could not be assigned to appellant. He was assigned points for experience but not for completed years in a similar contract.

Dr Luciano Busuttill remarked that the tender required bidders to show they had previous experience of completed years in similar contracts.

Dr Carlos Bugeja for appellant filed a letter of reference issued by the San Gwann Local Council in favour of his client.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection , in terms of 'Reasoned Letter of Objection' dated 30<sup>th</sup> April 2013 and through the verbal submissions presented by same during the hearing held on 20<sup>th</sup> August 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant was not communicated the reasons by the Contracting Authority as to why the Appellant's bid was disqualified.**
- b) On the award of the tender, the Contracting Authority was in duty bound to inform the Appellant of his rights to appeal to decision taken by the Contracting Authority.**
- c) Due to lack of information coming from the Contracting Authority, Appellant had to rely and base his arguments on those stated in his reasoned letter of objection , the information of which was collated from 'Unofficial Sources'.**
- d) The requisites laid out in the tender document could be met by the Appellant, whilst the same could not be applied to the Preferred Bidder.**

**Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 20th August 2013, in that:**

- a) The Contracting Authority is precluded from divulging information pertaining to other bidders, to a competing bidder.**
- b) The fact that the Contracting Authority did not give reasons to the Appellant for refusal of the latter's bid does not render the tender process as null.**
- c) The requirements laid out in the tender document were fully met by the preferred bidder whilst those quoted by the Appellant did not satisfy all.**

**Reached the following conclusions:**

- 1. The Contracting Authority was in duty bound to inform the Appellant of the reasons for refusal of his bid.**
- 2. At the same time, the Contracting Authority was also in duty bound to inform the Appellant of his rights to appeal against the decision of the Contracting Authority.**
- 3. On the other hand, from the verbal submissions made by the Contracting Authority during the hearing of the 20<sup>th</sup> August 2013, it became evidently clear that the Appellant did not satisfy all the conditions laid out in the tender document.**
- 4. The Preferred bidder was administratively and technically compliant. He was also the second cheapest.**

**In view of the above, this Board finds against the Appellant, however the same Board recommends that the deposit paid by the Appellant be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*12 September 2013*