

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 584**

**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 29<sup>th</sup> April 2013, Messrs Ronald & Christopher Bezzina 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:**

##### **Ronald & Christopher Bezzina - Appellants**

Dr Gianfranco Gauci	Legal Representative
Mr Christopher Bezzina	Representative
Mr Ronald Bezzina	Representative

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

Mr Brian Vella	Representative
Mr Ronald Attard	Representative

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

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

After making a brief introduction, the Chairman invited the appellants to make their submissions.

Dr Gianfranco Gauci, on behalf of the appellants explained that the situation is similar to that of the other case heard today, (Case 583) with a difference however, as his clients' bid was the cheapest one. The letter appellants received from the contracting authority did not give any reasons for the adjudication. He claims that his clients are aware that while the Board raised the matter of proper notification to bidders, following the award, the same Board did not take any sanctions against defaulters. He alleged that the Local Councils Department instructs Local Councils specifically not to give any reasons to un-successful bidders. He claimed that the law is clear that the failure to divulge obligatory information about certain decisions renders the decisions themselves invalid. He asserted that if the law required that the motivation for a decision should be divulged, and this was not done, then the decision itself was null. He continued that his clients, being the lowest bidders discovered that they were not successful without any explanation of why their bid was discarded. He claimed that he should be given a copy of the evaluation report and the minutes of the Local Council meeting, and requested an adjournment in order to enable him to study the case.

Dr Luciano Busuttill stated that the motivation for the adjudication of the tender exists and has been made public on line in the minutes of the Marsaxlokk Local Council. These minutes were published immediately, were public, and contained all necessary reasons.

Here the Chairman made it clear that henceforth, tender process had to be according to law in every detail, thus the contracting authority should abide by regulations and notify all the bidders accordingly.

Mr Duncan Hall said that an explanation why appellants' bid was not successful, had in fact been given verbally, before the appeal was filed, to the appellants' wife, Ms Elaine Bezzina.

Dr Luciano Busuttill explained that appellants' bid was discarded for two reasons. One was because of a default notice issued by the Luqa Local Council, and the other was that after making certain calculations on their bid, it was discovered that after removing the administration fee and the fuel costs, it resulted that only €42.37 remained. This was interpreted as not being enough for the payment of three employees, as required by the contracting authority, and therefore meant precarious employment. Another reason for discarding appellants' bid was that the Council was not satisfied with the Road Cleaning service they provided. Their bid was thus not administratively compliant.

Dr Gianfranco Gauci questioned the costs of the preferred bidder, as these were excessive when compared to appellants.

Mr Duncan Hall explained that the amount shown in the preferred bidder's offer was on a daily basis, as requested in the tender document. Appellants, on the other hand quoted an annual figure. Their bid could have been disqualified at that stage, but a clarification was sought from them and it was then that the daily costs of €50 were arrived at.

The hearing was brought to a close at this stage.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Letter of Objection' dated 29<sup>th</sup> April 2013 and also through the Appellant's verbal submissions 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's bid was the cheapest.**
- b) The Appellant was not notified of the reasons for refusal of his tender bid, by the Contracting Authority.**
- c) Since the Contracting Authority was obliged by law to give the reasons for refusal and in this Applicant's case, this was not done by the Contracting Authority, the award of the tender should be declared null and void.**

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

- a) The reasons for refusal of the Appellant's bid were documented in the minutes of the Contracting Authority. The Appellant could have asked for a copy of these minutes.**
- b) The same reasons were explained verbally to the Appellant's wife which were as follows:**
  - i) The Appellant's bid was administratively non compliant, as it did not provide for the cost of three employees as was required in the tender documents.**
  - ii) A default notice was issued to the Appellant by another Local Council, namely Luqa Local Council.**

**Reached the following conclusions:**

- 1. The Contracting Authority was in duty bound to communicate in writing to the Appellant the reasons for non acceptance of the latter's bid. At the same time this Board does not accept the reason for non submission of same as given verbally by the Contracting Authority during the hearing held on 20<sup>th</sup> August 2013.**
- 2. On the other hand, the Appellant's bid was non compliant. This Board also took into consideration the fact that the Appellant's bid price could not sustane the cost of wages for three employees, which was a requisite in the tender document.**
- 3. The fact that a default notice was issued to the Appellant, did not augur favourably during the evaluation stage of any tender.**

**In view of the above, this Board finds against the Appellants and recommends that the deposit paid by the appellant should not be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*18 September 2013*