

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 633**

**SS 1/13**

### **Contract for Manual and Mechanised Cleansing in Environmentally Friendly Manner.**

The tender was published on the 9<sup>th</sup> August 2013. The closing date was the 13<sup>th</sup> September 2013.

The estimated value of the Tender was €18,839 (Exclusive of VAT).

Seven Five (7) bidders had submitted an offer.

On the 3<sup>rd</sup> November 2013, WM Environmental Limited filed an objection against the rejection of its offer.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday 12<sup>th</sup> November 2013 to discuss the appeal.

Present for the hearing were:

#### **WM Environmental Limited - Appellant**

Mr Wilson Mifsud	Representative
Dr Cynthia Galea	Legal Representative
Dr John Bonello	Legal Representative

#### **Mr Owen Borg - Preferred Bidder**

Mr Owen Borg	Representative
Dr Gianfranco Gauci	Legal Representative

#### **Balzan Local Council - Contracting Authority**

Mr Mark Mallia	Secretary
Mr Desmond Zammit Marmara	Councillor
Mr Stephen Gatt	Councillor

The Chairman made a brief introduction and invited the appellant's representative to make his submissions.

Dr John Bonello on behalf of the appellant stated that his client had submitted the lowest bid for this tender but its offer had been rejected because of alleged default notices issued against the appellant firm by the Floriana Local Council. It was only Mr Wilson Mifsud 'de proprio', and not as appellant company, that had worked for the Floriana Local Council and received the default notices, and this fact is not being contested. WM environmental Limited has never received any default notices from Floriana Local Council. His client, Dr Bonello continued, had bid in the present tender as WM Environmental Limited and not in his personal capacity. The appellant has also recently, after the filing of the present objection, been awarded another tender by the Floriana Local Council, and filed a copy of the letter of acceptance. Had his defaults with the latter council been of a serious nature, he would surely not have been awarded another tender. Finally Dr Bonello reiterated that his client's offer was the cheapest offer. Answering a question made by the Chairman if Mr Wilson Mifsud was a shareholder of WM Environmental Limited, Dr Bonello stated that the Company was formed on the 28<sup>th</sup> July 2011 and that Mr Mifsud was the sole shareholder.

Mr Mark Mallia, the Secretary of the Balzan Local Council said that appellant's offer was in fact discarded because of the default notices. The contracting authority had asked several other local councils for information about WM Environmental Ltd and the default notices information was received from Floriana Local Council.

Dr Gianfranco Gauci, appearing on behalf of the preferred bidder produced and filed minutes of meetings held by the Floriana and Fgura Local Councils. He claimed that Mr Wilson was the sole shareholder of appellant company and referred to the lifting of the corporate veil principle in order to obtain justice. The default notices in question had not been withdraw and the reasons behind appellant being awarded another tender by the Floriana Local Council could not be known. There could be several reasons for this decision.

Mr Owen Borg, the preferred bidder, called to testify by the appellant, under oath stated and confirmed that he had recently also bid for a tender issued by the Floriana Local Council.

Dr Bonello for appellant stated that therefore there were other bidders for the Floriana Local Council tender and his client was not awarded this tender because he was the only bidder.

Mr Wilson Mifsud under oath stated that his relations with the Floriana Local Council were good. He worked for the Floriana Council for the last six years. The default notices were issued because of dirty roads which were so because of windy conditions of the weather. However these default notices had not been issued against WM Environmental Ltd. Under cross-examination, Mr Mifsud said that WM Environmental Ltd had no contract with the Fgura Local Council but he personally had such a contract and no default notices had been issued by the Fgura Local council.

Mr Mark Mallia, Secretary with the contracting authority, called to testify under oath said that the evaluation committee had asked for information from other local councils about the appellant and had received such information from several local councils, but only the Floriana Local Council had given information about appellant's default notices.

Here the hearing was brought to a close.

**This Board,**

**Having noted the Appellant's objection ,in terms of the 'Reasoned Letter of Objection' dated 3<sup>rd</sup> November 2013 and also through the Appellant Company's verbal submissions during the hearing held on 12<sup>th</sup> November 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant Company contends that its offer was discarded as it had received default notices from a Local Council. Furthermore, Appellant contends that this was a discriminatory decision as the Appellant Company never received such notices.**
- b) The Appellant Company's bid was the cheapest.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 12<sup>th</sup> November 2013, in that:**

- a) The Appellant Company's Bid was discarded due to previous default notices acknowledged by Floriana Local Council.**
- b) Although no such notices were served against the Appellant Company, default notices were served against the Sole Shareholder of the Appellant Company.**

**Reached the following conclusions:**

- 1. This Board notes that the sole shareholder of the Appellant Company is the same person who was served with default notices. The fact that the Appellant Company has a separate and distinct entity from its shareholders, does not justify the actual eventuality that the sole shareholder of the Appellant Company was in fact personally served with numerous default notices in 2013 by Floriana Local Council.**
- 2. In this particular instance, the Appellant Company, which was recently formed, purely served as a shield to protect the sole shareholder, who in turn was indeed served with default notices.**
- 3. The Evaluation Board of the Contracting Authority acted diligently in evaluating the award of this tender.**
- 4. This Board also takes into consideration that the Preferred Bidders Offer was only Euros 950 dearer than that of the Appellant Company.**

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

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancillieri  
Member

*4 February 2014*