

PUBLIC CONTRACTS REVIEW BOARD

Case No. 658

FLC/T/08/13

Street Sweeping and Cleansing in an Environmentally Friendly Manner.

The tender was published on the 12th July 2013 and the closing date was on the 19th August 2013.

The estimated value of the tender was €25,000 (Exclusive of VAT)

Eight (8) bidders had submitted an offer for this tender.

On the 8th November 2013 Mr Owen Borg filed an objection against the decision to reject his tender on grounds that it was not compliant with the tender requirements.

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 Tuesday 28th January 2014 to discuss this objection.

Present for the hearing were:

Mr Owen Borg - Appellant

Mr Owen Borg	Representative
Dr Sabrina Micallef	Legal Representative

WM Environmental Limited - Preferred Bidder

Mr Wilson Mifsud	Representative
Dr John Bonello	Legal Representative

Floriana Local Council - Contracting Authority

Mr Svetlick Flores	Executive Secretary Floriana Local Council
Dr Martin Fenech	Legal Representative
Dr Leontine Calleja	Legal Representative

Following a brief introduction by the Chairman, the appellant's representative was invited to explain the reasons behind the objection.

Dr Sabrina Micallef on behalf of the appellant Mr Owen Borg stated that the case could continue with the verbal submissions.

Dr Martin Fenech on behalf of the contracting authority stated that for the evaluation board that was appointed by the contracting authority to evaluate the tenders had examined the bids in order to see which qualified. Among the criteria examined were the ETC Certificate, The Green Public Procurement, and the wage rate test. Unfortunately the appellant's offer failed in all these criteria. He said that a reply from the ETC, which he filed, showed that the people indicated by the appellant in his bid were not employed by him. Neither did their Identity Card numbers tally. This reply from ETC also claimed that there was a mix up in the information submitted by appellant. This factor was enough to disqualify the appellant because he submitted false information. Regarding Green Public Procurement, appellant had to submit Euro 4 certificates which he failed to produce. Again this should have led to his disqualification. Finally regarding the wage rate test, according to the information submitted by appellant himself, it worked out that the wage rate appellant pays to his employees amounts to €3.77 per hour, and this is much less than the minimum wage and is not acceptable. His offer perforce had to be disqualified.

Dr Sabrina Micallef said that the reason given for the rejection of the appellant's bid was that his submitted vehicles did not comply with the criteria, that is, not less than Euro 4. She continued that according to the tender document, page 28, Work Methods, the contractor had to choose from different methods to provide the service, either mechanical or manual sweeping. Appellant's bid was for manual sweeping only, and also submitted the hours of work and the programme of works together with the number of the vehicles he would use. One of these is an Izuzu Van that is not used for the sweeping because it is used only for the transport of the employees. This van however was category Euro 4. Appellant also stated in the tender that he had a mechanical sweeper although he would not be using this for the tender and he did not therefore submit its log book. He had chosen manual sweeping.

The Chairman enquired why the list obtained from the ETC diverged from the data submitted by appellant with the tender.

Dr Sabrina Micallef reiterated that the reason for the rejection of appellant's bid, according to the letter of rejection, this was not mentioned. However she exhibited an ETC list with the correct information. She reaffirmed that since appellant was going to use manual sweeping, the submission of vehicle certificates was irrelevant and was not needed.

Mr Martin Fenech asked how the appellant intended to dispose of the collected waste. Was he going to use the transport van to carry this collected waste?

Mr Svetlick Flores, the Executive Secretary of the Floriana Local Council said that the tender document had indicated how the collected waste was to be disposed of. Clause 08 'Disposal Sites' gave instructions how this was to be done.

The Board asked Dr Sabrina Micallef how her client intended disposing of the collected waste and she replied that he would be using the van.

Mr Svetlick Flores explained that bidders had to submit a plan showing the proposed working hours for the employees going to be used and the number of hours of service proposed per week. The tender did not require bidders to specify whether the employees used to render the service would be part-timers or full timers. The evaluation board then worked out the man hour of works per year, took into consideration the VAT at 18% and another 5% management fee. The rate was thus worked and amounted to €3.77 per hour. The minimum wage, when the same calculations were made amounted to €4.05 per hour.

Dr Sabrina Micallef reiterated that the letter of rejection just mentioned the Euro 4 non-compliance and she had not prepared to go into other reasons. She stated that her client got to know about the allegations that he had submitted false ETC declarations through the minutes of the Local Council in December 2013. She wanted to know the workings the evaluation board made regarding her client's submission.

Dr Martin Fenech on behalf of the contracting authority explained that appellant's bid was €23,425. When VAT is deducted the offer becomes €19,851. Deduct 5% management fee and divide the result by the number of hours that is by 96. The calculation results to €3.77.

Dr Sabrina Micallef insisted that she did not come prepared for this, because the letter did not say so.

The Chairman explained that it is true that letters of rejection are not giving all the reasons of the rejection but the fact remains that the bid was illegal. The contracting authority could not continue the assessment of an illegal offer.

Mr Owen Borg the appellant said that he understood all the implications of, and all that was written down in the tender he submitted.

Dr John Bonello on behalf of the preferred bidder said that he was concerned about the allegation regarding the falsification of an ETC certificate. The matter, if true goes far beyond this tender and in his opinion the case should be referred to the police.

The hearing was at this point closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 6th November 2013 and also through the Appellant's submissions during the hearing held on 28th January 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that since he was optioning for 'manual sweeping' the reason given by the Contracting Authority for discarding his offer was irrelevant.**
- b) The fact that the Employment and Training Corporation list submitted by the Appellant did not contain the correct information does not form part of the reason why Appellant's bid was discarded.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 28th January 2014, in that:

- c) The Evaluation Board had to consider the 'Green Public Procurement' and also the 'Hourly wage rate' aspects, during the evaluation process.**
- d) The Appellant failed these considerations on both counts.**

Reached the following conclusions:

- 1. This Board strongly maintains that the Contracting Authority has the obligation to communicate the specific reasons to a tenderer for the rejection of his offer. It is 'fair and just' for the Appellant to be made aware of all the facts as to why his offer was discarded.**
- 2. The fact that the Employment and Training Corporation certificate submitted by the Appellant did not concur with the Employment and Training Corporation records did not augur favourably for the Appellant to qualify on any counts during the evaluation process.**

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

27 February 2014