



The Chairman made a brief introduction, explaining that the appellants' legal representative at the last moment sent word that he could not be present for the hearing. However the Chairman had explained to the appellant present, who accepted, that the case could continue with the Board safeguarding appellants' case and leading him as necessary.

The Chairman explained the issues raised by the appellants in their letter of objection. The first concern was that the tender had been re-issued three times and the Chairman explained that the contracting authority had a right to do this. The appellant Charles Gauci agreed. At this point the contracting authority's representative was invited to make his submissions keeping in mind the grievances listed by the appellants in their letter of objection.

Dr Richard Sladden on behalf of the contracting authority the Birkirkara Local Council said that he had already replied to the points raised in the letter of objection in his reasoned letter of reply. The letter of objection had raised points that were irrelevant in the adjudication process. This Board had to assess whether anything in the process was prejudicial to anyone of the bidders or not; whether there was anything that was deemed to prejudice the appellant's tender. He contended that no such prejudice was caused. It is true that the tender specifications had been changed more than once before it was issued, but the contracting authority had its reasons for this, in order to ensure the best service to the largest council in the Island. The main point that had to be considered was whether appellant's tender was compliant with the tender requisites? The contracting authority claims that it was not. The preferred bidder obtained 100% while the appellant obtained 48% of the marks.

At this point the Board asked Mr Charles Gauci, one of the appellants, who stated that he had 50% shareholding of the appellant firm, whether he had consulted his brother, the other appellant and he replied that he had the go ahead of his brother Joseph Gauci to appear at today's hearing.

Mr Ray Pellicano, a consultant with the contracting authority, under oath testified that as can be seen from the evaluation report, points had been assigned to several requirements according to a matrix and this can be found at page five of the evaluation report. Twenty points were assigned to administrative compliancy and eighty points to technical capacity compliance. The administrative requirements consisted of ETC certifications, bank reference; vehicles log books and the literature on plant and equipment. The technical capacity was evaluated on the human resources, including precarious employment possibility; the availability of a foreman; three sweepers, that had most points assigned; the disposal truck and compliancy of this truck; Mepa Registration certificates; availability of a van mounted power wash for certain areas; hand held Vacuum packs; certificate to handle clinical waste and and a declaration that bidders would be following green procurement regulations. Each tender was evaluated according to this template and the results can be found at page 7 of the evaluation report. The template allowed for yes/no answers and you obtained points for a 'yes' and no points for a 'no'. For example if appellant did not show that a foreman was available then he did not obtain any marks for that item.

Mr Charles Gauci the appellant said that appellants did not provide a foreman in their bid because he would be taking care of things himself. Appellant did not have three sweepers because you could not use these where cars were parked. You could only use sweepers in Mannarino Road. He also claimed that appellants are owed payment for five months for work done last year. He had been providing the service for a whole year without a contract and had been losing money. He reiterated that not even one sweeper could be used in the locality, even less three!

Mr Ray Pellicano explained that the tender had been changed three times because previously there was a template that was used to issue other tenders. The Council had changed (through election) and the requirements had also changed. There had been a lot of meetings and discussions to arrive at a proper system. The locality streets and alleys had been divided into zones and a schedule of street cleaning was issued. Thus the second tender had been issued that also included bulky refuse. Unfortunately the application in the official EU Journal had been omitted and the second tender had to be cancelled. The only difference between the second tender and the present one was the removal of the bulky refuse service because this was to be provided under another separate tender. The specifications remained the same.

Dr Richard Sladden on behalf of the contracting authority said that health and safety provisions were the responsibility of the bidders themselves. He referred to clause 7.13 of the tender which states that the provisions of the regulations of general health and safety at place of work should be followed by the contractor at all times and therefore bidders were bound to adhere to the regulations.

Mr Charles Gauci for the appellants said that appellants had been performing work for the contracting authority for six years, having won two consequent tenders. During that time appellants had washed around the Clinic using pressure washers. Appellants had pressure washers. Our equipment is adequate for the locality, and hand held vacuum cleaners are used because this facilitates the work where cars are parked. In practice the cleaning of streets with cars is very difficult, more than is apparent. I had suggested to the contracting authority to order the street hawkers to be provided with a litter bag, because these usually threw rubbish under their vans and when they left, the rubbish was left behind.

The Chairman explained that before submitting the tender, a bidder had the right to ask for meetings explaining any constraints they had and asking for clarifications.

The hearing was at this point brought to a close.

**This Board,**

**Having noted the Appellant's objection , in terms of the 'Reasoned Letter of Objection' dated 26<sup>th</sup> February 2014 and also through Appellant's verbal submissions during the hearing held on 8<sup>th</sup> April 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant complained about the fact that this tender was issued three times. Each time, there were changes and these have caused great inconvenience and also unnecessary additional expense to the appellant. Not to mention the fact that these changes also, in a way, restricted competition.**
- b) Appellant contends that the points awarded to his offer by the Evaluation Board were unfairly allocated and this was to the detriment of Appellant's offer.**
- c) Appellant also contends that his offer was the cheapest.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 8<sup>th</sup> April 2014, in that:**

- a) The main reason why this tender was issued three times was due to the fact that the Contracting Authority (Local Council) felt that changes to the tender and additions thereto would address more the requirements of the locality.**
- b) The Evaluation Board allocates points on the merit of administrative and technical compliance of a tender and not otherwise. These marks/points were allocated in the most transparent manner.**
- c) Although the Appellant's offer was the cheapest, same was not administratively and technically compliant.**

**Reached the following conclusions:**

- 1. This Board opines that the fact that this tender was issued three times, this does not in any way hinder or limit the scope of competition. B'Kara Local Council is one of the largest localities and one has to take into consideration the numerous requirements this particular Council has to cater for.**
- 2. This Board opines that the term 'value for money' is to be interpreted as the best offer or deal that renders the required service efficiently and at a reasonable cost. This term does mean the cheapest offer or deal.**
- 3. From submissions made by the Contracting Authority during the hearing of this Appeal, it is evidently clear that Appellant's offer was not administratively and technically compliant.**

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

Dr. Anthony Cassar  
Chairman

Mr. Richard A. Matrenza  
Member

Mr. Lawrence Ancilleri  
Member

*19 May 2014*