

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 689**

**KLBO 04/2013**

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

The tender was published on the 22<sup>nd</sup> November 2013. The closing date was the 13<sup>th</sup> January 2014.

The estimated value of the tender was €320,000 (Excluding VAT).

Four (4) bidders had submitted their offer.

On the 28<sup>th</sup> February 2014 Dr Jonathan Abela Fiorentino filed an objection against the decision to disqualify the tender submitted by his client, who was not specified and against the award of the tender to Mr. Saviour Mifsud.

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 the 22<sup>nd</sup> April 2014 to discuss this objection.

Present for the hearing were:

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

|                  |                      |
|------------------|----------------------|
| Mr Wilson Mifsud | Representative       |
| Dr John Bonello  | Legal Representative |

### **Mr Saviour Mifsud - Preferred Bidder**

|                        |                      |
|------------------------|----------------------|
| Mr Saviour Mifsud      | Representative       |
| Dr Franco Galea        | Legal Representative |
| Dr Christopher Chircop | Legal Representative |

### **Kunsill Lokali Bormla - Contracting Authority**

|                      |                      |
|----------------------|----------------------|
| Mr Brian Loffreda    | Representative       |
| Mr Joseph Caruana    | Representative       |
| Dr Luciano Busuttill | Legal Representative |

When the hearing commenced, Dr Luciano Busuttill on behalf of the contracting authority filed a detailed letter of reply to the letter of objection.

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

Dr John Bonello on behalf of his client WM Environmental Limited, the appellant stated that the objection was submitted by Wilson Mifsud personally and the receipt for the deposit had been issued in the name of appellant. The objection by his client was based upon the ETC certificate requested in the tender. His client's tender had been disqualified because the contracting authority claimed that the certificate submitted by appellant with the tender was missing. He explained that the ETC certificate consists of two pages, one giving the totals and the other page giving the names of employees. His client was present at the tender opening and the fact that the certificate was missing was not brought to his attention at that time. It was later alleged that the certificate was missing and appellant's bid disqualified. He said that the only proof of this was Mr Mifsud's declaration on this fact. The contracting authority is not stating that the document was missing but that it lacked the employee's full details. This was after all a recapitulation of the first page wherein the employee totals are reported and this was definitely submitted and the contracting authority agrees so.

The Chairman at this point asked the contracting authority to confirm that in fact the document was a summary of the totals. He asked the relevance of having the names of the employees submitted.

Dr Luciano Busuttill on behalf of the contracting authority said that it resulted from Article 21 which stated that two certificates had to be submitted, the list of employees and the totals of employees. He had personally checked appellant's tender to see if the missing document was found elsewhere in the offer. Bidders had to produce ETC certification giving the number of employees and the details thereof.

Mr Wilson Mifsud the appellant (ID No. 527284M) under oath testified that he was present when the tenders were opened. He affirmed that with the tender he had submitted both the ETC certificate giving totals of employees and another giving the names and Identity Card Number of his employees. He had obtained these ETC certificates two days before the submission of the tender from the Mosta Job Centre and inserted them as these were handed in to him, two pages front page and back page. I was not told anything by anyone present when the tender was opened.

Dr Franco Galea on behalf of the preferred bidder pointed out that normally tenders are submitted in two copies, one the original and the other a sealed copy which is kept for the purpose of checking. He suggested that opening the sealed copy could settle the matter whether the missing document was included in the sealed copy. Since if for any reason the original document was displaced, the sealed version would still have it enclosed.

Dr John Bonello reiterated that he could not see the reason why the names were required.

Dr Luciano Busuttill reiterated that this was because it was a tender requirement.

The Chairman remarked that according to the copies of the ETC documents submitted with the letter of objection, the two documents had been issued by the ETC on the same date. It

was explained to him by both Dr Bonello and Dr Busuttill that when customer asks for these certificates at the ETC he pays a fee and is issued with both documents.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection , in terms of the 'Reasoned Letter of Objection' dated 27<sup>th</sup> February 2014 and also through Appellant's verbal submissions during the hearing held on 22<sup>nd</sup> April 2014, had objected to the tender specifications in tender dossier and that it should be more refined and comprehensive.**

- a) Appellant's bid was discarded due to the fact that same failed to submit the ETC certificate denoting the names of the employees engaged with Appellant Company. Appellant contends that submission of this certificate was in fact affected.**
- b) Appellant affirms that upon the opening of tenders, whereat he was present, no mention of the omission of such documentation was mentioned by the Contracting Authority.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 22<sup>nd</sup> April 2014, in that:**

- a) The Contracting Authority strongly re affirms that the ETC certificate denoting the names and details of the employees of the Appellant Company was not in fact with the tender document. This document was a mandatory requirement; hence Appellant's bid was discarded as being not administratively compliant.**

**Reached the following conclusions:**

- 1. The procedure of issuing tenders by Local councils should be refined more, in so far as, contents of the tender document and also, as to the system of transparent opening of tenders. Such a refinement will avoid occurrences where Appellants claim that they have submitted all documentation whilst at the same time, the Contracting Authority claims otherwise.**
- 2. This Board opines that the procedure for the 'Opening of Tenders' should include a proper scan of the tender document and also proper numeral of accompanying documentation. This system will create transparency and will avoid unnecessary litigations with regards to verification of submission of documentation as requested in the tender document.**
- 3. From submissions made by both the Appellant Company and the Contracting Authority, this Board opines that the mandatory certificate of the ETC confirming the names and details of the employees engaged by the Appellant Company was not submitted by Appellant.**

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

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*20 June 2014*