

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 746**

**XJR 01/2014**

### **Tender for the Collection of Mixed Household Waste.**

The tender was published on the 18<sup>th</sup> February 2014. The closing date was the 18<sup>th</sup> March 2014.

The estimated value of the Tender was €24,000 (Exclusive of VAT).

On the 18<sup>th</sup> August 2014 Saviour Mifsud filed a letter of objection objecting to the award of the tender to WM Environmental Limited.

Five (5) bidders had participated in this tender.

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 the 14<sup>th</sup> October 2014 to discuss the objection.

Present for the hearing were:

#### **Mr Saviour Mifsud - Appellant**

Mr Saviour Mifsud	Representative
Dr Franco Galea	Legal Representative

#### **WM Environmental Limited - Preferred Bidder**

Mr Wilson Mifsud	Representative
Dr John Bonello	Legal Representative

#### **Kunsill Lokali Xghajra - Contracting Authority**

Mr Anthony Valvo	Chairperson Evaluation Board
Mr Ranier Busuttil	Secretary Evaluation Board
Mr Neil Attard	Member Evaluation Board
Mr Joe Azzopardi	Member Evaluation Board
Ms Mary Doris Borg	Member Evaluation Board
Dr Rachel Montebello	Legal Advisor

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

Dr Franco Galea on behalf of the appellant explained that this tender was for 4 years and included the emptying of a number of bins on wheels –skips. The tender should be awarded according to Clause 12 to the “most favourable offer” and on this point there were no contestations. Appellant's tender was according to the tender requirements. The tender had been awarded to the preferred bidder since “through a unanimous decision by the Local Council decided to choose the offer made by WM Environmental on the basis of its being the most advantageous offer because the Council could increase the number of skips without any additional payment.” In the letter of objection appellant had explained that his offer was €5per day cheaper than that of the preferred bidder's during the first year; €9 per day cheaper for the second year and €4 per day cheaper for the third year. The Council had explained that there were 16 skips that had to be emptied and the appellant had offered to process these free with an additional rate of €1.23 per skip daily for any additional skips over these 16 skips. The preferred bidder had offered to process any additional skips free of charge but the offer for the other rates was more expensive. Dr Galea contended that the preferred bidder's tender was not the most advantageous.

Dr Rachel Montebello on behalf of the contracting authority insisted that the preferred bidder's offer was considered to be the most advantageous by the contracting authority since additional skips would be free. She explained that Xghajra was a sea-side town with special conditions. In supper the population increased considerably and more skips would be needed. The preferred bidder's offer was deemed to be the most advantageous for this reason. The increase in the rates for the other kerbside collections was compensated and set off by the savings to be had for the increase in the number of skips.

Dr Franco Galea for the appellant pointed out that if the contracting authority wanted the option to increase the number of skips then this should have been put down in the tender specifications.

Mr Anthony Valvo, the Mayor of the Xghajra Local Council and Chairperson of the evaluation board explained that the evaluation board was composed of all the councillors themselves. He explained that the need for additional skips could arise throughout the year and these were used only in the lower part of the town; the other part of the town had door to door collection. The evaluation board had considered that the preferred bidder's tender to be the most advantageous because it offered to process any additional skips free of charge and thus the Council could choose to double the number of skips as required. He pointed out that the population doubles during the summer months from May to October. For example he said that this summer the number of skips had been increased to 23. The offer of free additional skips was considered by the evaluation board as a determining factor in deciding which tender was the most advantageous.

Dr Franco Galea on behalf of the appellant reiterated that the contracting authority should have explained the requirements in the tender. He said that he had worked out the difference in the kerbside collection rates between appellant and the preferred bidder and found that the appellant's would have been €1825 cheaper during the first year, €3285 cheaper during the second year and €1460 cheaper during the third year. In three years this difference would be €6570 and thus he contended that his client's offer was still the most advantageous.

Mr Anthony Valvo pointed out that additional skips offered by appellant would amount to €1.23 per bin daily for 365 days. Replying to a question by the Chairman, he said that the Council/evaluation board had calculated that the preferred bidder's offer would be cheaper when considering the totals for kerbside collection plus the skips. This was so since the number of bins could be increased according to requirements at no additional cost.

The hearing was at this point closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 13<sup>th</sup> August 2014 and also through Appellant's verbal submissions during the hearing held on 14<sup>th</sup> October 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that his offer was in accordance with the tender specifications and was the cheapest so that it was the most advantageous bid.**
- b) Appellant claims that if the Contracting Authority is determining the effect of the provision of additional skips, same Authority should have stated so in the tender document.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 14<sup>th</sup> October 2014, in that:**

- a) The Contracting Authority maintains that since the Preferred Bidder would be offering additional skips in excess of the 16 skips tendered for, free of charge; the additional annual expense which the Contracting Authority will be forking out will definitely be offset by the additional free skips which may be required.**
- b) Through experience, it is a known factor that during the tendered period additional skips are required and in this regard, the Evaluation Committee took this important factor into account in determining the most advantageous offer.**

**Reached the following conclusions:**

- 1. This Board opines that the most advantageous offer need not necessarily be the cheapest, however in this particular case, from credible submissions made by the Contracting Authority, it was proved that in the long term, the additional annual expense which the Contracting Authority had to bear will be offset by the provision of additional skips, in excess of 16 skips, free of charge. This Board notes that from credible submissions made by the Contracting Authority, that additional skips would be required during the tendered period, not only in the summer months but also throughout the year. In this regard, this Board upholds the Contracting Authority's decision in that the Preferred Bidder's offer was the most advantageous bid.**

2. **With regards to the Appellant's second grievance in that; 'If the Contracting Authority required more skips in excess of 16, same should have indicated such an important factor in the tender document'; this Board refers to the same document where quotes for additional skips in excess of 16 skips were asked for, so that it was up to the tenderer to assume that should this requirement arises the prospective bidder had to tender a price for the additional skips. In fact, the Appellant did quote for this eventuality so that he was aware that such an instance may occur. This Board opines that Tenderers were quoting on a 'level playing field. In this regard, this Board does not uphold Appellant's contention.**

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

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*28 October 2014*