

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 759**

**PLC 05/2014**

**Tender for the Upkeeping and Maintenance of Soft Areas in an Environmentally Friendly Manner.**

The tender was published on the 20<sup>th</sup> June 2014. The closing date was the 21<sup>st</sup> July 2014. The estimated value of the Tender was €15,600 (Exclusive of VAT)

Four (4) bidders had submitted an offer for this tender.

On the 2<sup>nd</sup> September 2014 WM Environmental Limited filed an objection against the award of the tender to Environmental Landscapes Consortium Limited.

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 Thursday the 13<sup>th</sup> November 2014 to discuss the objection.

Present for the hearing were:

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

Mr Wilson Mifsud	Representative
Dr John Bonello	Legal Representative

### **Environmental Landscapes Consortium Limited - Preferred Bidder**

Mr Charles Attard	Representative
Dr Ronald D Cuschieri	Legal Representative

### **Paola Local Council - Contracting Authority**

Mr Kurt Scerri	Secretary Evaluation Board
Mr Roderick Spiteri	Mayor
Dr Luciano Busuttil	Legal Representative

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

Dr John Bonello on behalf of his client the appellant submitted that:-

1. His client had not been given any reason why his tender had not been successful. He was just informed that his bid was not accepted;
2. That he was not informed of his right to object from the decision;
3. That his client had submitted the cheapest offer.

On making enquiries later, appellant later discovered that in fact his offer had been the cheapest and the most advantageous but was told that the preferred bidder had the necessary equipment to provide the service. The preferred bidder was also the incumbent who had been providing the service and probably this factor helped in the award. Dr Bonello insisted that appellant's offer had been fully compliant with the specifications, appellant had the necessary machinery and was also the cheapest and therefore should have been awarded the tender.

Dr Luciano Busutil on behalf of the contracting authority contended that the fact that appellant was not given reasons does not render the award itself null. He filed two emails from where it results that the contracting authority was advised that it could not provide a copy of the evaluation report to the appellant who insisted to be sent a copy. Bidders and the appellant should know about the right to object from the tender document itself, as it was explained that there would be a right of appeal. The award of the tender was made according to the evaluation report that had been published and the fact of incumbency of the preferred bidder had nothing to do with the award. Dr Busutil insisted that an explanation was given to appellant in time to enable him to file a letter of objection which he in fact did.

Mr Kurt Scerri on behalf of the contracting authority explained that the evaluation took into consideration several factors like the photographs submitted with each tender, plants that would be used and lists of Local Councils the bidders had worked for. For example appellant listed 4 localities while the preferred bidder listed much more. The preferred bidder was offering to use 15,000 plants. The bids were analysed and a report passed to the Council. After receiving appellant's request, the advice given by the Department of Local Government and the Department of Contracts was to provide appellant with a summary decision. Replying to a question by a Board member he explained that each member on the evaluation board made his own assessment.

Dr John Bonello for the appellant insisted that not enough information was given in order to enable an objection to be made. He admitted that the preferred bidder had much experience, forming part of a Private Public Partnership for the past 10 years, and it was obvious that the preferred bidder also had machinery commensurate with the experience. However the present tender asked for the maintenance soft areas at Paola. Appellant's offer was much cheaper and appellant had experience in that he provided the service for soft areas at Mdina. The preferred bidder had included photos of work performed at Ghajn Dwieli, Paola, Kordin and Xintill Roundabout, Tarxien. He suggested that the preferred bidder was chosen because it formed part of a Private Public Partnership.

Mr Kurt Scerri for the contracting authority said pointed out that the machinery owned by the

appellant consisted mainly of machines used in the collection of refuse. These are not used for the maintenance of soft areas. Also that the photos submitted by appellant were not satisfactory and that the appellant's tender, overall, was not up to expectations. His list of plants to be used was also lacking.

Mr Wilson Mifsud for the appellant said that the refuse vehicles are used when working the soft areas to clear the pruning leftover. He had the necessary equipment including cheery pickers and hedge trimmers and he worked the soft areas at Zejtun, Zebbug, Fgura and Mdina Howard Gardens. The tender had not asked for particular types of plants to be used, but he had offered plants from Piscopo Gardens.

Dr Ronald Cuschieri on behalf of the preferred bidder said that the submission of tenders by the preferred bidder had no connection to being part of a Private Public Partnership and in fact it contested and lost many tender awards before. The preferred bidder had offered to plant 15,000 plants for this tender as a minimum. He finally submitted that slashed price tenders were not necessarily the best offers.

At this point the hearing was closed.

### **This Board**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 2<sup>nd</sup> September 2014 and also through Appellant's verbal submissions during the hearing held on 13<sup>th</sup> November 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that he was not informed of the reasons why his offer was rejected by the Contracting Authority nor was he advised by the same Authority of his rights to appeal;**
- b) Appellant claims that he is capable of carrying out the tendered works and is well equipped. He also claimed that his offer was the cheapest;**
- c) Appellant alleges that the Preferred Bidder was awarded the contract due to the fact that same formed part of a Private Public Partnership and this fact might have influenced the Evaluation Committee.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 13<sup>th</sup> November 2014, in that:**

- a) The Contracting Authority maintains that an explanation was given to Appellant, to enable the latter to file a letter of objection;**
- b) The Contracting Authority awarded the tender to the Preferred Bidder on the grounds of documentation and contents in his tender document, which by far were superior in quality than those submitted by Appellant. The Evaluation Committee was, in no way, influenced by the fact that the Preferred Bidder form part of a Private Public Partnership.**

**Reached the following conclusions:**

- 1. This Board regrets the fact that, on many occasions, the Contracting Authorities fail to give the proper and/or specific reasons to unsuccessful bidders for the rejection of their offer. This Board opines that the unsuccessful bidder must be informed, with specific reasons, as to why his offer had been refused, so that Appellant can appeal on those reasons given by the Contracting Authority. Appellant must state the reason why he is appealing in his ‘Letter of Objection’, however, primarily he should know what the reasons for rejection were. In this regard, this Board noted that the Contracting Authority failed in its obligation to inform the Appellant as to why his offer was discarded. This Board upholds Appellant’s first grievance;**
- 2. This Board maintains that the Evaluation Committee has to adjudicate a tender on the documentation and presentation as requested in the tender document. From credible submissions made by the Contracting Authority, this Board is convinced that such a procedure was carefully followed by the Evaluation Committee and it resulted that the submissions made by Appellant Company left much to be desired, especially with regards to the equipment and the plants which were listed to be planted. In this regard, this Board justifiably opines that the Evaluation Committee acted in a fair and transparent manner in the award of this tender. This Board does not uphold Appellant’s second grievance;**
- 3. With regards to Appellant’s third contention in that ‘the fact that the Preferred Bidder formed part of a Private Public Partnership could have influenced the award of the tender’; this Board does not find any just or founded indication that such an instance happened, as the award was credibly given on the submissions made by both the Preferred Bidder and the Appellant, with the result that the most advantageous offer was awarded the tender. This Board does not uphold Appellant’s claim, in this regard.**

**In view of the above, this Board finds against the Appellant Company, however due to the fact that Appellant was not properly informed of the reasons for the rejection of his offer, this same Board recommends that the deposit paid by Appellant should be reimbursed.**

**Dr Anthony Cassar  
Chairman**

**Dr Charles Cassar  
Member**

**Mr Richard A. Matrenza  
Member**

*25 November 2014*