

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 764**

**KLC T 02/2014**

**Tender for the Collection of Mixed Household Waste for the Kalkara Local Council.**

The tender was published on the 17<sup>th</sup> June 2014. The closing date was the 25<sup>th</sup> July 2014. The estimated value of the Tender was €35,596 (Exclusive of VAT)

Five (5) bidders had submitted an offer for this tender.

On the 9<sup>th</sup> October 2014 Mr Mario Borg filed an objection 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 25<sup>th</sup> November 2014 to discuss the objection.

Present for the hearing were:

### **Mr Mario Borg - Appellant**

Mr Mario Borg	Director
Dr Keith Borg	Legal Representative

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

Mr Saviour Mifsud	Director
Dr Christopher Chircop	Legal Representative
Dr Franco Galea	Legal Representative

### **Kalkara Local Council - Contracting Authority**

Ms Speranza Chircop	Chairperson Evaluation Board
Ms Elaine Caruana	Secretary Evaluation Board
Mr Christopher Pullicino	Representative
Dr Luciano Busuttil	Legal Representative

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

Dr Keith Borg on behalf of the appellant said that the appellant's first grievance was that his client had not been given any reasons for the rejection of his tender and although his client had asked formally to be given copies of the technical and financial reports these were not submitted to him by the contracting authority in breach of Clause 34.2 of the tender. This non-compliance with the clause led to a limited and restricted scope when formulating the objection.

Dr Keith Borg further submitted that according to information obtained by his client, the vehicles that are going to be used by the preferred bidder to provide the service are also being used to provide a similar service at Birzebbugia. Tenderers had to show which vehicles were going to be used for this tender. He contended that the preferred bidder's resources had to be shared with another local council.

Mr Mario Borg, the appellant submitted that the preferred bidder also has contracts with other Local Councils including Zejtun and Birzebbugia and thus the Euro V vehicles the preferred bidder owns have to be used and shared with these localities.

Ms Elaine Caruana who was the secretary of the evaluation board, replying to the Chairman confirmed that the evaluation board had taken this fact (of the preferred bidder also having other contracts) into consideration when evaluating. But explained that Kalkara was a small locality and did not require full-time service.

Dr Luciano Busuttill on behalf of the contracting authority explained that the tender did not require bidders to specify which vehicles they would be using to render the service. The tender required bidders to state how many Euro IV and V vehicles they possessed. The appellant himself is the contractor at San Gwann also. He also insisted that the non-submitting of the motivation when notifying bidders of the award did not render the award itself invalid. It was true that the motivation should always be given.

Dr Franco Galea on behalf of the preferred bidder said that the tender required bidders to list the type of vehicles available to run the service in this case Euro IV and V. The preferred bidder owns 3 vehicles and the hours of collection differ for different localities and thus his client is quite able to provide the service. He contended that this objection was just a fishing expedition and this had become a frequent occurrence in similar tenders.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 9<sup>th</sup> October 2014 and also through Appellant's verbal submissions during the hearing held on 25<sup>th</sup> November 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that since he was not given the reasons why his offer was discarded, he was at a disadvantage and in fact restricted in presenting his objection to the PCRB;**

- b) Appellant also contends that when he asked to be given copies of the technical and financial reports, his request was not entertained;**
- c) Appellant claims that the Preferred Bidder has other commitments and the latter will be very restrictive in utilising his present equipment on this tender, which will be to the detriment of the Contracting Authority.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 25<sup>th</sup> November 2014, in that:**

- a) The Contracting Authority maintains that although no reasons were given by same, for the rejection of Appellant's offer, this deficiency should not render the reward itself invalid;**
- b) The Contracting Authority contends that the request made by Appellant to acquire a copy of the technical and financial reports could not be accepted;**
- c) The Contracting Authority confirms that, during the Evaluation process, consideration was taken of the fact that the Preferred Bidder had other commercial commitments and at the same time the fact that Kalkara is a small locality;**

**Reached the following conclusions:**

- 1. This Board had on various decisions taken by same, emphasised the mandatory obligation on the Contracting Authority's part, to state the specific reasons as to why the unsuccessful bidder's offer was rejected. Regretfully, this Board notes that not enough importance was given by some of the Contracting Authorities, mainly Local Councils. Clause 34.2 (iv) of the tender document clearly dictates that the Contracting Authority 'shall notify the unsuccessful bidders of the reasons why the tenderer did not meet the technical specifications'. In this respect, the Contracting Authority failed to abide by this mandatory obligation. This Board upholds the Appellant's first contention.**
- 2. With regards to Appellant's second grievance , this Board opines that nowhere in Clause 34.2 of the tender document, the Contracting Authority was obliged or authorised to submit the technical and financial reports, upon the request of the Appellant. In this regard, this Board does not uphold Appellant's second contention.**
- 3. This Board's jurisdiction is established to ensure that the adjudicating process of the tender evaluation is carried out, in a just and transparent manner. This same Board is not to be concerned whether, due to other commercial activities, the Preferred Bidder would be able to carry out the tendered services/works. It is up to the Contracting Authority to ensure that what has been tendered for is in fact**

**delivered by the Preferred Bidder. In this regard, this Board does not uphold Appellant's third grievance.**

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

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Richard A Matrenza  
Member

*2 December 2014*