

# PUBLIC CONTRACTS REVIEW BOARD

**Case No 819**

**SGLC/T/04/2015**

## **Tender for Street Sweeping and Clenaing in the Locality of San Gwann Zone B**

The tender was published on the 20<sup>th</sup> January 2015. The closing date was the 23<sup>rd</sup> February 2015. The estimated value of tender is € 50,000 (Exclusive of VAT).

Seven (7) offers had been received for this tender.

On the 30<sup>th</sup> March 2015, Euro Clean filed an objection against the decision of the Contracting Authority to reject the appellant's offer.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Tuesday 16<sup>th</sup> June 2015 to discuss the objection.

Present for the Public Hearing were:

### **Euro Clean – Appellants**

Mr Alexander Fenech	Director
Dr Matthew Brincat	Legal Representative

### **Twish Co Ltd – Recommended Bidders**

Mr John Borg	Director
Dr John Gauci	Legal Representative

### **Kunsill Lokali San Gwann**

Mr Domenic Cassar	Councillor
Ms Joan Farrugia	Councillor
Mr Kurt Guillaumier	Executive Secretary
Dr Claudine Pace Zarb	Legal Representative

The Chairman made a brief introduction and explained that the case was similar to the one heard previously in Case 818 where the parties involved, except for the preferred bidder were the same. The only difference was the number and names of the streets involved. The Chairman explained that there was no need for repetition of all that had been submitted in the Zone A case. He referred to the Zone A case and reminded the Contracting Authority that the evaluators had the right to go into the matter of whether a bidder made a loss or not; this point has been decided both by the Public Contracts Review Board and the Court of Appeal. The Contracting Authority should ensure that once a tender was awarded, the Contractor delivered the service properly. He said that once the Contracting Authority had decided to short list bidders and held meetings with the bidders so short listed, it should have clarified with the Appellant as well and cleared any doubts that might have existed regarding the latter's offer.

Dr Claudine Pace Zarb for the Contracting Authority explained that Zone B was more densely populated and that the Appellant had offered only two workers for this tender. It was evident that the whole area could not be covered with just two employees.

At this point the Hearing was closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 30<sup>th</sup> March 2015 and also through Appellant's verbal submissions during the hearing held on 16<sup>th</sup> June 2015, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that although his offer was the cheapest, it was not shortlisted. Appellant maintains that if the Contracting Authority had any doubts about his offer, the Evaluation Committee should have asked for clarifications.**
- b) Appellant also maintains that the Tender Document did not dictate the number of employees to be deployed on the tender works. The tender document simply asked for a 'work plan', which was submitted by Appellant.**
- c) Appellant contends that no reasons were given by the Contracting Authority for the rejection of his offer.**

**Having considered the contracting Authority's verbal submissions during the hearing held on the 16<sup>th</sup> June 2015, in that:**

- a) The Contracting Authority contends that the reason for not short listing Appellant's offer was due to the fact that the Evaluation Committee considered Appellant's bid too low to cover all expenses which would be incurred by appellant to carry out the tender works.**
- b) The Contracting Authority maintains that although the Tender Document did not dictate the number of employees to be deployed on the tender works, from experience, the Evaluation Committee considered Appellant's bid as being "Not Feasible".**

**Reached the following conclusions:**

1. With regards to Appellant's first grievance, this Board after hearing credible submissions opines that, since there was a short listing procedure and Appellant's bid was the cheapest, the Evaluation Committee had the obligation to seek 'in dept clarifications' prior to resort to assumptions, which in the opinion of this Board were not justified. The Evaluation Committee jurisdiction was to ensure that Appellant's offer was fully compliant and Not whether the Appellant's bid would incur same in a loss. This Board would like to emphasize this Board's previous decision on this issue which was also affirmed by the Court of Appeal. Quote *"It is not the jurisdiction of the Evaluation Committee of the Public Contracts Review Board to enter into the merit of whether, through his bid, the Appellant will make a profit or sustain a loss"*.

This Board opines that it would be the responsibility of the Contracting Authority to ensure that the most advantageous offer is awarded and thereafter make the necessary supervision to guarantee the quality of works being carried out by the preferred bidder. This Board opines that the Evaluation committee should have asked for clarifications prior to short listing Tenders. In this regard, this Board upholds Appellant's first grievance.

2. With regards to Appellant's second grievance, this Board confirms that the Tender Document did not dictate the number of Employees to be deployed on the Tendering Works; the Tender Document simply requested a work plan which the Appellant should have submitted. This Board opines that the Evaluation Committee should have clarified any doubts prior to assuming that the work plan submitted by Appellant was not feasible. This Board opines that the decision for not short listing Appellant's offer was purely based on assumptions and not verifications. In this regard, this Board upholds Appellant's second contention.
3. This Board has, on many occasions, emphasized the fact that all Contracting Authorities should state the specific reasons for a rejection of an offer. In this regard this Board justifiably confirms that no specific reasons were given to Appellant in the letter of rejection. This Board upholds Appellant's third grievance.

In view of the above, this Board finds in favour of the Appellant and recommends that:

- i. Appellant's offer is to be reintegrated in the Evaluation process.
- ii. The deposit paid by Appellant is to be reimbursed.

**Dr Anthony Cassar**  
Chairman

**Dr Charles Cassar**  
Member

**Mr Lawrence Ancilleri**  
Member

26 June 2015