

PUBLIC CONTRACTS REVIEW BOARD

Case No. 851 - KLBO 03/2014: Tender for Street Sweeping and Cleaning.

The Tender was published on the 28th November 2014. The closing date was the 3rd December 2014.

The estimated value of Tender is €30,000 (Exclusive of VAT).

Four (4) offers had been received for this Tender.

On the 1st April 2015 Waste Collection Limited filed an objection against the decision of the Contracting Authority to award the Tender to Euro Clean for €33,865.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday 24th September 2015 to discuss the objection.

Present for the hearing were:

Waste Collection Limited - Appellant

Mr Mario Tufigno
Dr Robert Tufigno

General Manager
Legal Representative

Euro Clean – Preferred Bidder

No representatives

Bormla Local Council – Contracting Authority

Mr Joseph Caruana
Dr Mark Simiana

Executive Secretary
Legal Representative

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

Dr Robert Tufigno on behalf of the Appellant explained that his client had submitted the lowest bid and since the Tender had to be awarded to the most favourable offer, the Appellant should have been awarded the same. The Contracting Authority in the Letter of Reply is contending that they have taken into consideration the fact that the Recommended Bidder had offered to provide a greater number of hours. However, this is not so since the Tenderers had to bid a lump sum and not an hourly rate. Thus he contended that the Appellant's offer had been the most favourable. The Contracting Authority's interpretation would in fact be rewarding inefficiency since the Appellant could provide the service of cleaning streets faster.

Dr Mark Simiana on behalf of the Contracting Authority said that the most favourable did not necessarily mean the cheapest. Although the Tenderers had to bid a lump sum, they had to quote the number of hours of service which they will provide, and this fact had to be taken into consideration when assessing the most favourable bid. The Recommended Bidder would

be providing the service for eighty man hours per week while the Appellant offered sixty per week plus six for supervision. This meant that the Recommended Bidder would be providing more hours per week than the Appellant and the hourly rate for the Recommended Bidder worked out lower than the hourly rate of the Appellant. He therefore insisted that the offer by the Recommended Bidder was more advantageous.

Dr Robert Tufigno for the Appellant insisted that the Tender has demanded a lump sum submission and the Contracting Authority could not and should not have worked out the rate per hour for the bidders.

Mr Joseph Caruana on behalf of the Contracting Authority explained that the locality in question has many streets with steps, taking more time to sweep and that Appellant could not provide the service of these streets with just 60 hours per week.

Dr Robert Tufigno pointed out that the Contracting Authority cannot at this change the reason for adjudication. The reason given was that the Appellant's offer was "not the most economically advantageous offer". Now the Contracting Authority is stating that the Appellant could not provide the required service. This is not allowed. If the Contracting Authority is convinced of this, they should have given that reason for rejecting the Appellant's offer and allowed the latter to submit the relevant objection.

Dr Mark Simiana for the Contracting Authority reiterated that the latter wanted to obtain more value for money and the chosen Tender was the most favourable since providing the service for more hours was more favourable. The number of hours needed was not determined by the Contracting Authority but was left for the bidders to work out.

Dr Robert Tufigno rebutted that according to Annex 2, both the number of streets and the frequency of cleaning were listed and the Appellant could provide this service in 60 man hours per week. To offer the Tender to those who would take 80 man hours per week meant penalizing efficiency and rewarding inefficiency.

Dr Mark Simiana for the Contracting Authority said that although the streets and frequency of cleaning were listed in Annex 2, still if cleaner streets could be obtained at a cheaper rate then this would be more advantageous to the Contracting Authority. 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 March 2015 and also through his verbal submissions during the Public Hearing held on the 24 September 2015, had objected to the decision taken by the pertinent Authority, in that:

- a) **The Appellant Company contends that in accordance with the Tender Document, bidders had to quote a “lump sum” amount for the service being tendered for. The Evaluation Board disregarded the condition and based its evaluation on a “rate per hour”. This shift of attitude by the Evaluation Committee penalised the most efficient and technically compliant bidder.**

Having noted the Contracting Authority’s “Letter of Reply” dated 2 April 2015 and also its verbal submissions during the Public Hearing held on 24 September 2015, in that:

- a) **The Contracting Authority maintains that although the bidders had to quote a lump sum they were also asked to quote the number of hours being allotted for the service. Since the Recommended Bidder quoted more allocated hours, the resultant hourly rate of the preferred bidder was thus cheaper. In this regard, the Evaluation Board chose the most advantageous offer.**

Reached the following conclusions:

- 1. With regards to the Appellant’s First Grievance, this Board, after having heard the credible submissions made by the Appellants, justifiably opines that, the conditions laid out in the Tender Document dictated “a lump sum” offer for the service being tendered for. In this regard, the Appellant did quote “a lump sum” which was the cheapest.**

With regards to the number of hours being allocated for the service, the Evaluation Committee’s “change of basis” of the Evaluation

Process does not benefit the most efficient bidder. This Board justifiably contends that the Contracting Authority's main objective was a request for the service to be rendered.

This Board notes that the Appellant was administratively and technically compliant and in accordance with his quoted "lump sum", it was also the cheapest. This Board maintains that the Evaluation Committee did alter the basis of the evaluation process during the evaluation stage.

This Board opines that if the Contracting Authority was to adjudicate on an "Hourly Rate Basis", the fact should have been included in the tender award criteria and made known to the bidders before these submitted their tenders. In this regard, this Board upholds the Appellant's First Grievance.

- 2. This Board would also point out that if a bidder quoted the cheapest "lump sum" yet also quoted fewer hours to be allocated for the service, this cannot be interpreted that the Appellant Company would not be able to perform the requested service; it simply means that the Appellant could execute the Tendered works in less hours. It is then up to the Contracting Authority to ensure that the said works/services are dictated as requested in the Tender Document.**

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

i) The Appellant's bid be re-integrated in the Evaluation Process

ii) The deposit paid by the Appellant should be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

6 October 2015

