

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 897**

**SS 57/15/03**

### **Tender for Street Sweeping and Cleansing Services in an Environmentally Friendly Manner.**

The Tender was published on the 8<sup>th</sup> October 2015. The closing date was on the 10<sup>th</sup> November 2015. The estimated value of the Tender is €43,220.00 (Exclusive of Vat).

Nine (9) bidders had submitted offers for this Tender.

On the 19<sup>th</sup> November 2015 Mr Owen Borg filed an objection against the decision of the Contracting Authority to award the Tender to Mr Ronald Bezzina at the price of €32,034.00.

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 the 28<sup>th</sup> January 2016 to discuss the objection.

Present for the hearing were:

#### **Mr Owen Borg:**

Mr Owen Borg	Representative
Ms Svetlana Dimech	Representative
Dr Mark Grech	Legal Representative

#### **Mr Ronald Bezzina:**

Mr Ronald Bezzina	Representative
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#### **Santa Lucija Local Council:**

Mr Terrence Ellul	Mayor
Ms Caroline Silvio	Executive Secretary
Dr Luciano Busuttil	Legal Representative

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

Dr Mark Grech on behalf of the Appellant explained that the latter had two grievances regarding this Tender. The first one was that the Contracting Authority gave no information in the Letter of Rejection to enable his client to formulate a proper Letter of Objection.

The second one was that Appellant contended that the Recommended Bidder did not possess Euro IV vehicle as required by the Tender specifications. As a proof of this, Dr Mark Grech submitted three photographs that allegedly belonged to the Recommended Bidder, showing vehicle ABT 769 at work when it was clearly not Euro IV. These photographs were taken by Ms Svetlana Dimech two days ago at Santa Lucija.

Dr Luciano Busuttil on behalf of the Contracting Authority explained that from the log book submitted by the Recommended Bidder, the Evaluation Board had clearly understood that the vehicle to be used by the latter was vehicle number KBQ 347, a refuse disposal vehicle, and this was Euro IV.

He also pointed out that the present Tender had still not been awarded and the photos filed today did not mean anything since, as the work has not started yet; the Recommended Bidder could not have been using the vehicle for this Tender. The photos show a vehicle being used in the bulky refuse Tender which is ongoing but has nothing to do with the present Tender.

Regarding the first grievance, Dr Busuttil said that the decision was given and the minutes written in public. It was only the notice of this decision that was later sent to the Appellant but not the decision itself. This is mainly sent in order to enable an objection to be filed. He reiterated that the award decision was taken during a public hearing which was open to all.

The Tender was awarded to the cheapest compliant bidder while the Appellant was not even the second cheapest bidder. He agreed that Local Councils should be more specific when giving the notice of award to bidders whose bid was rejected.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's "*Letter of Objection*" dated 19 November 2015 and also through the Appellant's Verbal Submissions during the Public Hearing held on 28 January 2016, had objected to the decision taken by the pertinent Authority, in that:**

- a) **The Appellant contends that in its “*Letter of Rejection*”, the Contracting Authority did not specify the reasons why their offer was discarded. The omission on the part of the Contracting Authority, hindered the Appellant’s ability to present a specific objection;**
  
- b) **The Appellant also maintains that the Recommended Bidder did not possess Euro IV vehicle as stipulated in the Tender Document.**

**Having considered the Contracting Authority’s “*Letter of Reply*” dated 24 November 2015 and also their verbal submissions during the Public Hearing held on 28 January 2016, in that:**

- a) **The Contracting Authority contends that since the decision for the award of tenders was published in their minutes, which were made public, these could be easily accessed by the Appellant;**
  
- b) **The Contracting Authority maintains that the Recommended Bidder indicated which vehicle was to be utilised and this was vehicle registration number KBQ 347. The Log Book of this said vehicle had a Euro IV classification.**

**Reached the following conclusions:**

- 1. With regards to the Appellant's First Contention, this Board has emphasized, on many occasions, that all Contracting Authorities must give the specific reasons, for discarding a Tender, in their "*Letter of Rejection*".**

**It is a known fact that the decision for the award of the Tender is made public, in this particular case, in the minutes of the Local Council, however this Board opines that still, the "*Letter of Rejection*" must include the specific reasons for refusal.**

**The Appellant should be clearly made aware as to why his offer was discarded. At the same instance, this Board contends that the Appellant should base his objection on the reasons given by the Contracting Authority so that the merits of the case are to be treated accordingly.**

**This Board recommends that, at least with regards to the "*Letter of Rejection*", the Contracting Authority, (or in this case, the Local Council), must send a copy of the minutes of the Council Meeting wherein the reasons for the rejection of offers are clearly demonstrated. In this regard, this Board upholds the Appellant's**

**First Grievance.**

- 2. With regards to the Appellant's Second Contention, this Board credibly confirms that the vehicle which the Recommended Bidder was to utilise for this Tender was vehicle KBQ 347, a refuse disposal vehicle.**

**This Board, after having examined the documentation submitted by the Recommended Bidder with particular reference to the Log Book of Vehicle KBO 347, did in fact state that this Vehicle has a Euro IV Classification. In this regard, this Board justifiably does not uphold the Appellant's Second Grievance.**

**In view of the above, this Board finds against the Appellant with regards to his Second Contention yet at the same instance, this Board recommends that the deposit paid by the Appellant should be reimbursed, in view of the fact that the Appellant was not informed of the specific reasons why his offer was rejected.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*2 February 2016*