

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case No. 957 – KLM/T/04/2015: Tender for the Collection of Mixed Household Waste in an Environmentally Manner.**

The Tender was published on the 11<sup>th</sup> December 2015. The closing date was on the 18<sup>th</sup> January 2016. The estimated value of the Tender is €143,000 per annum for 4 years (Exclusive of VAT).

Five (5) offers had been received for this Tender.

On the 18<sup>th</sup> April 2016 Northern Cleaning Group Limited filed an Objection against the decision of the Contracting Authority to recommend the award the Tender WM Environmental Limited for €574,000 for 4 years.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Carmel Esposito as members convened a hearing on Thursday the 28<sup>th</sup> July 2016 to discuss the Objection.

Present for the hearing were:

#### **Northern Cleaning Group Limited**

Mr Raymond Mizzi	Director
Mrs Karen Cassar Agius	Representative
Dr Arthur Azzopardi	Legal Representative

#### **WM Environmental Limited**

Mr Wilson Mifsud	Representative
Dr Victor Scerri	Legal Representative

#### **Kunsill Lokali Mosta**

Mr Edwin Vassallo	Mayor
Mr Michael Mifsud	Acting Executive Secretary
Dr Mario Mifsud	Legal Representative

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

Dr Arthur Azzopardi on behalf of Northern Cleaning Group Ltd admitted that WM Environmental Ltd's offer was cheaper than his client's but, since this was a MEAT Tender, the Appellant should have been awarded more points than he did and so should have been awarded the Tender. His main grounds of complain were as follows:

- a) Number of employees: - WM Environmental Ltd had previously won award of five Tenders from five other Local Councils and therefore his employees would have to provide the service while at the same time, they were servicing the five other localities.

Since the waste collection times at Mosta tallies with those at the other localities, (Xghajra, Floriana, Dingli, Rabat and St Paul's Bay and probably Birkirkara), it would not be possible for Appellant to provide the necessary employees to provide the service. Besides, the opening hours at Sant'Antnin and Maghtab are also restricted;

On the other hand, Northern Cleaning Group Ltd's employees would only be used to provide the service at Mosta. It is calculated that a minimum of twelve employees would be required to man the trucks needed for the locality;

- b) Ownership of vehicles: - This Tender laid emphasis on the words "*environmentally friendly*" and therefore the bidders should have produced certificates of conformity, issued by the manufacturer, for their vehicles. Instead, the bidders were assigned 1 point for each truck.

The Appellants contended that this was not correct and that they, who had provided the certificates of conformity, should have been awarded more points. Also the Recommended Bidder could not manage to provide the service because of the other localities serviced by him;

- c) Default notices: - Quoting from the decision on Case 633 issued by this Board albeit in a different composition, Dr Azzopardi contended that since Mr Wilson Mifsud personally had received default notices, then according to the said decision these notices should apply to the Appellant firm as well. The Evaluation Board had completely ignored this and instead assigned full marks to the Recommended Bidder, WM Environmental Limited.

Dr Arthur Azzopardi contended that in view of the above, his clients should have been given more points by the Evaluation Board.

Dr Mario Mifsud on behalf of the Kunsill Lokali Mosta submitted that:

- i) The allegations about the non-provision of service because of the other localities that have to be serviced by the Recommended Bidder should be completely ignored. Only the present Tender should be considered;
- ii) The present Tender was conducted under a MEAT procedure and the Recommended Bidder resulted to have been the cheapest;
- iii) WM Environmental Ltd had assigned a number of employees for the service

according to the number required by the Tender Document. The number of employees submitted by the latter more than that submitted by Northern Cleaning Group Ltd;

- iv) Waste is collected at different times in all localities;
- v) The Recommended Bidder's log books for the vehicles were checked and were found to be correct. The Tender specifications had asked for Euro V vehicles and the Recommended Bidder had offered 5 vehicles whilst the Appellant had offered 3. Older Tenders had not asked for Euro V vehicles and the Recommended Bidder could use non-Euro V vehicles for those Tenders;
- vi) The bidders themselves had to declare any default notices they may have, but the Contracting Authority had sent emails to all the other local councils asking them to state whether any of the bidders had any default notices;
- vii) The MEAT procedure was followed by the Evaluation Board and everything in the Recommended Bidder's Tender was found correct.

Mr Edwin Vassallo the Mayor explained that during Evaluation Stage, the Evaluation Board had had no information from other local councils about any default notices.

Mr Michael Mifsud, the Executive Secretary, for the Contracting Authority explained that emails had been sent to all local councils requesting them to state whether any of the bidders had any default notices. No replies had however been received.

Dr Mario Mifsud for the Contracting Authority reiterated that the MEAT procedure was followed and the price considered. The Evaluation had been correctly carried out.

Dr Arthur Azzopardi for Northern Cleaning Group Ltd explained that the Tender had requested that bidders supply 5 vehicles – 4 large and one small. Three of these had to be Euro V. The Appellant had offered 3 Euro V vehicles manufactured during 2010 while WM Environmental Ltd had offered two Euro V vehicles manufactured in 2007, one in 2008 and another in 2009.

Dr Azzopardi also pointed out that the certificate of compliance, which was critical, was ignored by the Evaluation Board. He also pointed out that his clients employed 14 persons while the Recommended Bidder employed 15 persons that had to be used for all the services which the latter supplied. The impossibility on the Recommended Bidder's part to provide the service should have been realized by the Evaluation Board.

The Chairman remarked that the Recommended Bidder had apparently satisfied all the Tender requirements. If subsequently WM Environmental Ltd could not deliver what he offered then it was up to the Contracting Authority to take the necessary steps.

Dr Arthur Azzopardi for the Appellant raised another grievance in that if the Recommended Bidder had not put down the default notices that were mandatory, this meant that the Recommended Bidder had made a wrong declaration and therefore his offer should be annulled. The Appellant on the other hand had no default notices.

Dr Victor Scerri on behalf of the Recommended Bidder, WM Environmental Limited contended that the fact that his client was awarded Tenders in several other localities was a certificate in itself that his client provided a proper service. He contended that a firm is

distinct from its shareholders and insisted that the Recommended Bidder did not have any default notices. The argument brought by the Appellant regarding the impossibility to provide the service because of awards in other localities does not hold water.

Mr Edwin Vassallo, ID No 450761M, the Mayor of Kunsill Lokali Mosta and member of the Evaluation Board, under oath, testified that points were assigned to bidders according to the number of vehicles offered and their year of manufacture. The compliance factor was included in item 4 of the adjudication grid.

The points were assigned to the bidders according to the documents produced by them, with importance being given to item 4 on the grid. On being asked by the Chairman, he replied that the points were assigned collectively. They did not use the method of each member assigning points individually and then incorporating these by taking the average.

At this point the hearing was closed.

---

**This Board,**

**Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 18 April 2016 and also through their verbal submissions during the Public Hearing held on 28 July 2016 had objected to the decision taken by the Pertinent Authority, in that:**

- a) Northern Cleaning Group Ltd's main objection was in the allocation of points. In this regard, the Appellant Company feel aggrieved at the mode of apportion of points with special regard to the number of employees, ownership of vehicles to carry out the Tendered Services and default notices.**

**With regards to the last mentioned item, the Appellants were contending that the Contracting Authority did not take into account**

**the default notices which WM Environmental had.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 21 April 2016 and their verbal submissions during the Public Hearing held on 28 July 2016, in that:**

- a) Kunsill Lokali Mosta maintains that in the Evaluation Process, the Evaluation Board adopted the MEAT System and that all the various factors as denoted by the Appellants were taken into consideration when awarding the Tender. In this regard, the Contracting Authority insisted that the points were assigned accordingly.**

**Reached the following conclusions:**

- 1. With regards to the allocation of points, this Board, after having heard the Testimony from the Mayor of Kunsill Lokali Mosta, credibly establishes that the allocation of points was carried out in accordance with the Contracting Authority's requirements with regards to the number of employees, ownership of vehicles and default notices.**

**In respect of the latter complaint, this Board notes that the Evaluation Board did in fact check whether the Recommended**

**Bidder had any default notices and through e-mails sent to other Local Councils.**

**However, with regards to the Grievance raised by the Appellants on this issue, this Board would like to justifiably contend that in this particular case, any default notices which WM Environmental Ltd might had were not indicated by the Local Councils to whom such enquires were made by the Evaluation Board, in that it is not correct to state that WM Environmental Ltd, of Company Registration C 53505 had any default notices, without providing the necessary evidence.**

- 2. With regards to the allocation of points on the other grievances as mentioned by the Appellants, this Board, after having heard credible submissions by Kunsill Lokali Mosta's Mayor, established that although the MEAT Procedure was adopted, the allocation of points was not carried out on an individual basis amongst the Evaluation Board members.**

**In this regard, this Board justifiably point out that the purpose of allocation of points by each individual member is to minimize the subjectivity of the system itself. If each individual allocation is then averaged, the resultant points awarded would represent a more just**

**and transparent outcome. In this regard, it was credibly established that this system was not adopted.**

**In view of the above, this Board opines that a re-Evaluation process is to be carried out by the Evaluation Board on the basis that the Allocation of points should be carried out by each member of the Evaluation Board individually and not collectively. The allocated points should than be averaged so that a more realistic and fair assessment is to be carried out on the resultant process.**

**Also this Board would like to issue the following orders:**

- a) The re-instatement of Northern Cleaning Group Ltd in the Evaluation Process;**
- b) The deposit paid by the same Appellants is to be fully refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member

*3 August 2016*