

## PUBLIC CONTRACTS REVIEW BOARD

### **Case No. 977 – T 02/2016: Tender for the Collection of Mixed Household Waste in an Environmentally Friendly Manner.**

The Tender was published on the 24<sup>th</sup> March 2016. The closing date was on the 13<sup>th</sup> May 2016. The estimated value of the Tender was €400,000 (Exclusive of VAT)

Seven (7) offers had been submitted for this Tender.

On the 20<sup>th</sup> June 2016 Mr Elton John Zammit filed an Objection against the decision taken by the Contracting Authority to award the Tender to SRF & Veladrians Joint Venture.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Lawrence Ancilleri and Mr Richard A. Matrenza as members convened a hearing on Thursday the 15<sup>th</sup> September 2016 to discuss the Objection.

Present for the hearing were:

#### **Mr Elton John Zammit:**

Mr Elton John Zammit	Representative
Dr Andy Ellul	Legal Representative
Dr Antonio Depasquale	Legal Representative

#### **SRF & Veladrians JV:**

Mr Steve Farrugia	Representative
Mr Adrian Vella	Representative
Dr Ruth Ellul	Legal Representative
Dr John L Gauci	Legal Representative

#### **Kunsill Lokali Paola:**

Mr Domenic Grima	Chairperson Evaluation Board
Mr Kurt Scerri	Secretary Evaluation Board
Mr Nicholas Seychell	Member Evaluation Board
Dr Luciano Busuttil	Legal Representative

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

Dr Antonio Depasquale on behalf of Mr Elton John Zammit explained that his client had been assigned 86.09% points while the Recommended Bidder was assigned 89.2% points although the Appellant's Financial Offer was cheaper. SRF & Veladrians JV had been allotted more points in the Technical Evaluation.

Dr Depasquale claimed that his client had not been given details about the assignment of these marks as required by law. He cited LN 363.03, the Local Councils Act which obliged Local Councils to provide these details. He had then invoked Clause 34.3 from the same Legal Notice and asked the Contracting Authority to provide this information.

Kunsill Lokali Paola had at first accepted to provide the information on payment of €50, but at a later stage decided against giving it. Even the Tender Document itself had stated that, after adjudication, the scores obtained by bidders in the technical criteria would be made available to unsuccessful bidders.

For this reason, the Appellant and his defendants had difficulty in formulating his Letter of Objection. He cited a previous decision given by the Public Contracts Review Board on the 7<sup>th</sup> February 2015 wherein this Board had lamented the fact that the required information was not freely given.

Kunsill Lokali Paola had totally ignored this Board decision and Dr Depasquale contended that the Board should remit the adjudication back to the Evaluation Board to be dealt with properly. He then queried the way points were assigned, since according to him, no benchmarks existed.

There were 25 maximum points allotted for Human Resources but how these would be allotted was not specified. Also the ownership of the vehicles of the bidders had a maximum of 20 points. The Appellant and the Recommended Bidder both owned their vehicles. You could either be the owner of a vehicle or not and he did not understand how a scale of points could be assigned. It is clear that there was no transparency; only subjective criteria were used. Dr Depasquale finally reiterated that his client's offer was cheaper but the Recommended Bidder was given higher marks for Technical Specifications, resulting in the latter obtaining a higher final mark.

Dr Luciano Busuttill on behalf of the Paola Local Council agreed that there should be directives issued to Local Councils ordering them to give all the details regarding rejection of offers and to give copies of the Evaluation Report to all bidders in a Tender. But in any case, the failure to do so does not nullify the decision itself.

Dr Busuttill cited a decision taken by the Court of Appeal in the case Owen Borg vs Ronald Bezzina on the 24<sup>th</sup> June 2013. He pointed out that the adjudication decision was given openly in a public hearing and was streamed live. The Evaluation Report in this case had given a detailed explanation on the assignments of marks.

Mr Elton John Zammit did not offer the sufficient number of personnel and for this reason he was not given full marks. Full marks were given to any bidder who showed that he had sufficient number of employees to enable the provision of the service. With regards to the decision taken by the Local Council not to provide the information to Appellant on payment of €50, Dr Busuttill said that it was the Department of Contracts who had directed the Contracting Authority not to do so, and this was in writing and is filed. The points assigned were given proportionately to the offers made by the bidders. The assignment of marks was

done by the book.

Dr Antonio Depasquale for the Appellant said that he does not know how the decision had been taken by the Evaluation Board when the final point difference was so small. The number of employees offered by the Appellant was in line to the Tender requisites and the Contracting Authority itself knows that this number of employees was sufficient to provide the service required because his client has been providing the service for the past 15 years.

Dr Luciano Busuttil for Kunsill Lokali Paola said that Objections were discussed during open hearings and therefore at this stage all the information was available to the Appellant who was free to raise other matters rebutting this information.

Dr Andy Ellul for Mr Elton John Zammit stressed that the main point is that the grounds for filing the Objection should be given. He insisted that the Board should send the adjudication back to the Contracting Authority.

Dr John L Gauci on behalf of SRF & Veladrians JV insisted that LN 363.03 was not applicable in the present case. He stated that although the Appellant was claiming he had not sufficient information, he still managed to file a detailed Letter of Objection. It was evident that the Contracting Authority had done its duty when properly assigning the Tender.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*", dated 20 June 2016 and also through their verbal submissions during the Public Hearing held on 15 September 2016 had objected to the decision taken by the Pertinent Authority, in that:**

- a) Mr Elton John Zammit's representatives contend that he was not given enough information regarding the allocation of marks on his offer. In this regard, the Tender Document stipulated that after the Adjudication, the scores awarded to unsuccessful Bidders would be made available;**

- b) The Appellant also maintains that there were doubts as to on which basis the marks were awarded and whether there was enough transparency for the Evaluation Process to be fair enough and just enough.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 26 June 2016 and also their verbal submissions during the Public Hearing held on 15 September 2016, in that:**

- a) Kunsill Lokali Paola insist that although they did not provide all the details regarding the allocation of marks to the Appellant, this fact, alone, does not nullify the decision taken in awarding the Tender;**
- b) With regards to the allocation of marks, Kunsill Lokali Paola maintain that the points assigned were given proportionately on reliable principles that abided by the conditions as laid out in the Tender Document.**

**Reached the following conclusions:**

- 1. With regards to the Appellant's First Grievance, this Board, as had on numerous Adjudications, instructed the Evaluation Boards of the Local Councils to follow the procedure, which states that Letters of**

**Rejections sent to unsuccessful Bidders, should state the specific reasons for the discarding of an offer. This Board regrets that such instructions fell on deaf ears.**

**This Board also suggested that the same Letter of Rejection should also be accompanied by a copy of the Local Council's meeting approving the Award of the Tender. Again, in this regard, the Contracting Authority failed to provide such information to the Appellant.**

**In this particular case, this Board opines, that since Mr Elton John Zammit's overall total marks came very close to the once given by SRF & Veladrians JV, it would have been essential for the Appellant to analyse and object on the specific item where, in his opinion, the marks awarded were considered to be unfair.**

**In this regard, this Board not only upholds the Appellant's Contention but reminds Kunsill Lokali Paola to abide by the Public Procurement Regulations and the conditions laid out in the Tender Document itself, in that, where the MEAT Procedure is adopted, the scores obtained by Bidders in the Technical Criteria would also be made available to unsuccessful Bidders after the Adjudication Process. This Board regretfully notes that this condition was not**

**adhered to by the Contracting Authority.**

**2. With regards to the Appellant's Second Grievance, this Board, after having examined the Evaluation Report, justifiably contends that the allocation of marks was carried out with great diligence and transparency on a Level Playing Field.**

**The Final Total Marks awarded to all Bidders represented the Total of the individual marks awarded to:**

- i. Capacity to Render the Service;**
- ii. Human Resources Allocated;**
- iii. Vehicle Ownership;**
- iv. Date of Manufacture of Vehicles**
- v. Engine Model of Vehicles.**

**On each of these individual requirements, it transpired that the total of marks allotted to SRF & Veladrians JV exceeded marginally, but the same criteria was applied to all offers, hence**

**the final end result should not be regarded as dubious.**

**In this regard, this Board opines that the methodology adopted by the Evaluation Board was fair, just, transparent and on a Level Playing Field. At the same instance, this Board justifiably cannot detect any irregularities in the decision taken by Kunsill Lokali Paola and therefore does not uphold the Second Grievance raised by Mr Elton John Zammit.**

**In view of the above, this Board finds against Mr Elton John Zammit, however, due to the fact that Kunsill Lokali Paola did not provide all the information requested by the Appellant, recommends that the deposit paid by the latter should be refunded.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Richard A Matrenza  
Member

*27 September 2016*