

PUBLIC CONTRACTS REVIEW BOARD

Case No. 978 – T 01/2016: Tender for Services of Street Sweeping and Cleaning in an Environmentally Friendly Manner.

The Tender was published on the 24th March 2016. The closing date was on the 25th April 2016. The Estimated Value of the Tender was €120,000 (Exclusive of VAT)

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

On the 8th July 2016 Mr Elton John Zammit filed an Objection against the decision taken by the Contracting Authority to award the Tender to Mr Saviour Mifsud.

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 15th 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

Mr Saviour Mifsud:

Mr Saviour Mifsud	Representative
Dr Christopher Chircop	Legal Representative
Dr Franco Galea	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 Busutil	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 referred to the submissions and arguments raised in case 977 heard earlier for the Technical Specifications and insufficient information given by the Local Council to his client.

With Regards the number of personnel, however, Dr Depasquale pointed out that the Appellant had offered 3.5 full time employees while the Recommended Bidder had offered 5 full time employees to render the service. He contended that if one worked out the minimum wage for the 5 full time employees of Mr Saviour Mifsud, it would result that the latter would be working at a loss. This was not acceptable because this really meant that the Recommended Bidder could not provide the service he offered.

This also meant that the analysis made by the Evaluation Board of the number of employees offered by the bidders, was faulted and the same Board in question had failed to understand what was offered properly. The Evaluation Board had to know how many employees would be assigned to render the service.

Dr Luciano Busuttil for Kunsill Lokali Paola declared that the Tender did not specify whether the employees should be full time or part time. What the Tender specified and the Contracting Authority wanted, was 5 employees to sweep the streets of Paola. Dr Busuttil contended that it was up to the bidder if he worked at a loss or not. The points assigned by the independent Evaluation Board purposely appointed by the Contracting Authority were validly given.

In order to ensure transparency, Kunsill Lokali Paola had appointed an independent Evaluation Board and did not evaluate the Tenders itself. The Tender contained a schedule for the cleaning of the streets in the locality.

Mr Nicholas Seychell, ID No. 457855M, a witness produced by the Appellant who was also a Councillor in the locality, under oath stated that he was the councillor in charge of cleaning at the Paola Local Council. From his personal experience, Mr Saviour Mifsud had many employees during the period when the local feast was celebrated but normally there were two or three.

The Chairman decided that this point was irrelevant.

Dr Franco Galea on behalf of the Recommended Bidder said that the question of precarious employment has been debated and decided on *ad nauseam*. The Recommended Bidder had declared in his offer 5 employees and not 5 full time employees.

Dr Galea referred to the Letter of Objection's mention of the equipment – the mechanical sweeper. He declared that the Tender requirements had been satisfied by his client.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection in terms of the "*Reasoned Letter of Objection*" dated 8 July 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 contends that the Appellant was not given the full information regarding the Technical Results of his offer;**

- b) The Appellant maintains that the number of Employees offered by Mr Saviour Mifsud would result in the latter incurring losses. In this regard, the Appellant contends that the Evaluation Board failed to understand how many employees were required for this assignment.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 7 September 2016 and also their verbal submissions during the Public Hearing held on 15 September 2016, in that:

- a) Kunsill Lokali Paola contend that the Tender did not specify whether the employees should be Full Time or Part Time;**

b) The Contracting Authority contends that it is not up to them to determine or assess whether the Recommended Bidder will make a profit or incur a loss.

Reached the following conclusions:

1. This Board, after having examined the conditions stipulated in the Tender Document and heard credible submissions, opines that, the Tender requested that the number of employees to be allotted for the assignment was five.

The Tender document, however, did not state whether these employees should be Full Time or Part Time. It is the responsibility of the Recommended Bidder to determine their status, as long as five employees are allocated for the sweeping and cleaning of the designed area.

In this regard, Mr Elton John Zammit submitted his Objection on assumptions and not on facts.

2. With regards to the Appellant's Grievance, in that, by employing 5 employees, Mr Saviour Mifsud would incur a loss, this Board

credibly notes that, it has been evidently proved that the latter is not being dictated to engage Full Time Employees.

At the same instance, neither this Board nor the Evaluation Board for that matter, can indulge themselves whether, through the quoted rates, the Recommended Bidder will make a profit or sustain a loss.

This Board justifiably opines that it is the obligation of the Recommended Bidder to carry out the assignments in accordance with all the conditions dictated in the Tender Document and at the same time, it is the duty of the Local Council to monitor the works in progress, to ensure that what has been offered is being delivered. If not, there are remedies to the situation that prevails. In this regard, this Board does not uphold the Appellant's Grievances.

In view of the above, this Board finds against Mr Elton John Zammit and recommends that the deposit paid should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

27 September 2016