

PUBLIC CONTRACTS REVIEW BOARD

Case 992 – MCH PROC 70/2013 – The Provision of Service for: 1) The Disposal of Scrap from Mount Carmel Hospital and 2) The Purchase of Scrap from Mount Carmel Hospital

The Publication Date of the Call for Tenders was 20 May 2016 whilst the Closing Date for Call of Tenders was 3 June 2016. The Estimated Value of the Tender was € 20,000. (Exclusive of Vat).

Three (3) Bidders have submitted offers for this Tender.

On 22 September 2016, Green Skip Services Ltd filed an Objection against the decision of the Central Procurement and Supplies Unit to award the Tender to Metalco Ltd for the following prices per lot:

Lot 1: € 950/ton	Lot 2: € 600/ton	Lot 3: € 600/ton
Lot 4: € 1000/ton	Lot 5: € 800/ton	Lot 6: € 320/ton
Lot 7: € 1000/ton	Lot 8: € 230/ton	Lot 9: € 310/ton
Lot 10: € 310/ton.		

On 13 October 2016, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Green Skip Services Ltd

Ms Mary Gaerty Representative

Recommended Bidder – Metalco Ltd

No representatives were present for this Public Hearing

Contracting Authority – Central Procurement and Supplies Unit

Mr Brian Zammit	Chairperson, Evaluation Board
Mr Joe Galea	Member, Evaluation Board
Dr Stefan Zrinzo Azzopardi	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Ms Mary Gaerty for Green Skip Services Ltd said that she was filing an Objection because they disagreed with the reasons which the Central Procurement and Supplies Unit stated with regards their elimination from the Tender in the Letter of Rejection dated 15 September 2016.

Green Skip Services Ltd was the cheapest offer and Ms Gaerty gave assurances that all requested documents were submitted. The problem was that when submitting an e-Tender, there is a restriction on how many documents one can upload. The Appellants, continued Ms Gaerty, have uploaded permits for three different trucks in case that one of these trucks would be damaged.

Ms Gaerty continued by saying that the Appellants have uploaded also a permit for Recycling and other Waste, a permit on Waste Electrical and Electronic Equipment and another permit for Hazardous Waste. These permits are issued by MEPA. Apart from that, a Facility Permit was needed which the Appellants are in possession of and which they had uploaded.

Mr Brian Zammit, Chairperson of the Evaluation Board, said that one of the requirements was that Bidders had to submit MEPA permits with their offers but when they reviewed all the Documents which were uploaded by all Bidders, the Contracting Authority did not find the permits for Green Skip Services Ltd and therefore they had no other option but to eliminate the latter.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for Central Procurement and Supplies Unit commented that with regards the clarification issue which was mentioned in the Letter of Objection dated 19 September 2016, that when one sees the documentation of the List of Technical Literature to be submitted with the Tender, if the permits were not uploaded, there was no grounds for Clarifications.

Ms Mary Gaerty, for Green Skip Services Ltd, insisted that this was impossible as the Appellants print everything which they submit. Besides, whatever is uploaded is ticked on the system. She also replied to Dr Zrinzo Azzopardi's comments on the clarifications where she said that normally in the clarifications there is mentioned for which clauses they do not apply.

Dr Anthony Cassar, Chairman Public Contracts Review Board, said when requesting extra documents after the Submission of Tenders, one is requesting a rectification which is not possible.

Ms Mary Gaerty, for Green Skip Services Ltd noted that even the Letter of Rejection had a mistake in the title, for which Dr Stefan Zrinzo Azzopardi for Central Procurement and Supplies Unit admitted that there was a mistake. Ms Gaerty concluded by stating that they never had objected because they have submitted missing documents.

At this stage, the Public Hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 22 September 2016 and also through their verbal submissions during the Public Hearing held on 13 October 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) Green Skips Services Ltd contends that their offer was rejected due to the fact that the Contracting Authority alleged that not all documentation was submitted. In this regard, the Appellants maintain that they had submitted all the necessary permits online.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 7 October 2016 and also their verbal submissions during the Public Hearing held on 13 October 2016, in that:

- a) In accordance with the Tender Document, the Appellant had to submit the necessary permits to prove that they are authorised to carry out the Tendered works. In this respect the Appellant failed to submit the requested MEPA Permits.**

Reached the following conclusions:

- 1. This Board opines that Section 1.1 of the Tender Document requests all MEPA Permits as to waste carriers etc must be supplied/uploaded. This documentation formed part and parcel of the Tender Document.**

This Board after having examined the relative documentation and heard the submissions made by all parties concerned had to rely on the submissions made by Green Skip Services Ltd. The latter's submissions were made online through the E-Tendering System and all submitted information is collated on a CD.

This Board, on examining the CD relating to the Appellant's submissions could not find the MEPA/other permits as requested in the Tender Document and therefore can justifiably establish that Green Skip Services Ltd did not submit the requested information and at the same instance, Central Procurement and Supplies Unit did not receive the same documentation. In this regard, the Evaluation Board was correct in discarding the Appellant's Offer.

In view of the above, this Board finds against Green Skip Services Ltd and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

18 October 2016