

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1049 – KLM/T/04/2015 – Collection of Mixed Household Waste in an Environmentally Manner**

The Publication Date of the Call for Tenders was 11 December 2015 whilst the Closing Date for Call of Tenders was 18 January 2016. The Estimated Value of the Tender, (Exclusive of VAT) was € 143,500.

Five (5) Bidders have submitted offers for this Tender.

On 25 April 2017, WM Environmental Ltd filed an Objection against the decision of the Kunsill Lokali Mosta to award the Tender to Northern Cleaning Group Ltd for the price of € 574,000 (Exclusive of VAT) against a deposit of € 2,900.

On 16 May 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Richard A Matrenza as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

#### **Appellant – WM Environmental Ltd**

Mrs Marika Mifsud	Representative
Dr John Bonello	Legal Representative

#### **Recommended Bidder – Northern Cleaning Group Ltd**

Ms Karen Cassar Agius	Representative
Mr Raymond Mizzi	Representative
Dr Arthur Azzopardi	Legal Representative

#### **Contracting Authority – Kunsill Lokali Mosta**

Mr Ivan Bartolo	Chairperson, Evaluation Board
Mr Keith Cassar	Member, Evaluation Board
Mr Mark Micallef Costa	Member, Evaluation Board
Ms Lorraine Templeman	Representative
Dr Mario Mifsud	Legal Representative

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

Dr John Bonello, the Legal Representative of WM Environmental Ltd, opened by saying that this Appeal was based on a Tender which had already been discussed before the Public Contracts Review Board as diversely composed. The latter has decided to cancel the first Evaluation taken by Kunsill Lokali Mosta and that a new one had to be made with a different Evaluation Board. The current Appeal is now against a decision taken by the Local Council on 18 April 2017 wherein the Tender was awarded to Northern Cleaning Group Ltd since, according to the Letter of Rejection issued on the same date,

*“This Tenderer/contractor scored the highest percentage”*

The Appellants had two Grievances which according to their Legal Representatives were clear. The First Grievance was that the only reason given to WM Environmental Ltd why their Bid was rejected was the one quoted in the Letter of Rejection which was not enough.

Dr Bonello continued by saying that his client's Second Grievance was that the Local Council's way of adjudicating this Tender went against the principle of the Most Economical Advantageous Tender. He then proceeded by referring to a letter which Kunsill Lokali Mosta through its Executive Secretary sent to WM Environmental where the latter was asked to refer to the Evaluation Report.

If one had to examine the latter report, continued the Appellants' Legal Representative, one would see that things were not that much simple. If one had to look at the schedule of offers, one would see that WM Environmental Ltd's offer was far cheaper than the one submitted by Northern Cleaning Group Ltd. He then continued by referring to Annex B of the Reasoned Letter of Reply issued by Kunsill Lokali Mosta on 28 April 2017 wherein he questioned the fact that the Evaluation Board took four hours to decide on how to award this Tender.

Dr John Bonello then quoted the first point in page 2 of the Evaluation Report dated 31 January 2017 which stated,

*“Il-Bord innota illi għalkemm WM Environmental Ltd għandu tmienja haddiema full-time, u Northern Cleaning Group Ltd għandu erba' haddiema full-time, Northern Cleaning jimpjega haddiema bhala waste collectors u WM Environmental Ltd m' għandux impjegati bhala waste collectors”.*

According to the Appellants, the fact that there were eight people working with the Company was superior than one which had only four workers. The fact that the nomenclature was different that waste collectors, since they were listed as Environmental Operators means that they work on municipal issues such as sweeping and waste collecting presented the employees as people who work in the Environmental Sector. On the basis of this, the Local Council decided to award the Tender to Northern Cleaning Group Ltd since the latter had four workers indicated as Waste Collectors.

Dr Bonello then proceeded to quote the second point in Page 2 of the same Evaluation Report which stated,

*“Il-Bord innota li bhala trakkijiet EUR 5, il-kuntrattur Northern Cleaning jigbor iktar skond it-tunnellaġġ tat-trakkijiet tiegħu. U bhala sena ta’ manifattura, Northern Cleaning ghandu trakkijiet iktar moderni”.*

This shows that the Recommended Bidders had trucks with better tonnage. According to the Appellants, the Local Council was not acting correctly since 90% of the trucks present in Malta were second hand trucks bought from the United Kingdom. This was not the right basis to award the Tender to a bidder with the most expensive offer.

Dr John Bonello noted also that at the time that this Tender was being evaluated, his clients were the target of default notices on another Tender regarding landscaping. Following a meeting which was then held regarding the matter where all parties, (WM Environmental Ltd and Kunsill Lokali Mosta), discussed what the issues which were annoying them were, the Appellants complied with the Local Council’s request only for yet another default notice was being issued regarding works which were not covered by this second contract.

Dr Bonello continued by saying that he was mentioning this incident to give a bigger picture since when one looks at the Schedule of Offers and the Evaluation Report, one can see that there was a huge difference between the two offers. It does not make sense for the Kunsill Lokali Mosta to refuse an offer on the basis of nomenclature of the employees and the fact that the tonnage of the truck was greater.

The concept of Public Procurement, whose aim was to curb abuses, encourage transparency and a level playing field was not being respected when evaluating this Tender, concluded the Appellants’ Legal Representative.

Dr Mario Mifsud, the Legal Representative for Kunsill Lokali Mosta submitted that in the first Appeal regarding this Tender, the Public Contracts Review Board had justly said that the points were not assigned on an individual basis, hence sending back the award of Tender for further evaluation.

The fact that the Evaluation Board took four hours to judge the Tender shows that the Local Council acted in a just and equal manner, continued Dr Mifsud. It was true that both Bidders were racing head to head in their quest of having their Tender awarded but if Northern Cleaning Group Ltd had newer machinery, the Contracting Authority was right in rewarding the Tender.

With regards to the employees, Dr Mifsud continued by saying that the problem with WM Environmental Ltd was that on paper one can say that he had a number of employees but then not all of them had the experience. It was better to have four employees who were focused on their job.

Kunsill Lokali Mosta has used the Most Economic Advantageous Tender criteria correctly; the Evaluation Board was composed of people with integrity who observed the Procedure correctly and thus awarded the Tender accordingly.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that the Tender had to be awarded with the Most Economic Advantageous Tender criteria but wanted to ask the Chairperson of the Evaluation Board some questions.

At this point, Mr Ivan Bartolo, the Mayor of Mosta and the Chairperson of the Evaluation Board holding ID Card Number 415069 M was summoned by the Chairman of the Public Contracts Review Board to testify under oath before the latter.

Following Mr Bartolo's Testimony, Mr Keith Cassar, the Vice Mayor of Mosta, holding ID Card Number 318588 M, was summoned by Dr Mario Mifsud, the Legal Representative of Kunsill Lokali Mosta to testify under oath before the Public Contracts Review Board.

Following Mr Cassar's testimony, Dr Arthur Azzopardi, the Legal Representative for Northern Cleaning Group Ltd, submitted that as shown in Mr Cassar's testimony, everybody knew that all Tenders issued by Kunsill Lokali Mosta work with three different vehicles which were different types of Euro 5 despite having the same Certificate of Confirmation since they produce different emissions. The older the truck, the higher are the emissions.

What Mr Cassar was saying with regards to the traffic congestion was not applicable since the discussion was centred around arterial and residential roads hence the waste collection could cause an inconvenient. The reason why the tonnage was being requested was fundamental because one had to see how many rounds does the truck has to make.

With regards the issue of the employees, Dr Azzopardi argued that since the Employees fall under different rules of the Wage Regulation Order, the Employees must have the correct designation with Jobsplus since the Law requests that payment to the latter must be made according to their job designation. The Employees submitted by Northern Cleaning Group Ltd were to work only for this Tender.

At this stage, the Public Hearing was adjourned to Tuesday 23 May 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

---

**This Board,**

**Having noted this Objection filed by WM Environmental Ltd (herein after referred to as the Appellant) on 25 April 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference KLM/T/04/2015 listed as Case No 1049 in the records of the Public Contracts Review Board, awarded by Kunsill Lokali Mosta (herein after referred to as the Contracting Authority).**

**Appearing for the Appellant: Dr John Bonello**

**Appearing for the Contracting Authority: Dr Mario Mifsud**

**Whereby, the Appellant contends that:**

- a) The “*Letter of Rejection*” as submitted by the Contracting Authority, did not contain the specific reasons why his offer was discarded.
  
- b) The mode of how the points were allotted with particular reference to “*number of employees*” and “*EU vehicles*”. In this regard, WM Environmental Ltd maintains that the marks allocated to his offer did not reflect the true picture.

**This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 28 April 2017 and its verbal submissions during the Public Hearing held on 16 May 2017, in that:**

- a) **Kunsill Lokali Mosta contends that enough information was submitted to the Appellants to enable the latter to contest the decision taken by the latter;**
  
- b) **Kunsill Lokali Mosta insists that the Evaluation Board had followed the instructions given by the Public Contracts Review Board to allocate the points under the MEAT system, whereby each member of the Evaluation Board had to allocate the marks on an individual basis so that a fair and just result would be deduced.**

**This same Board also noted the Testimonies of the witness namely:**

- 1. Mr Ivan Bartolo summoned by the Public Contracts Review Board;**
  
- 2. Mr Keith Cassar summoned by Kunsill Lokali Mosta.**

**This Board, after having considered the merits of this case, arrived at the following conclusions:**

- 1. With regards to WM Environmental Ltd's First Grievance, this Board, after having examined the relative documentation, opines that, although the "*Letter of Rejection*" dated 18 April 2017, duly**

submitted to the Appellant, leaves much to be desired, in so far as specific reasons for rejection are concerned, this same Board justifiably refers to the copy of minutes of the Council's meeting of 17 April 2017, wherein it was clearly denoted that the main deciding factor was that Northern Cleaning Group Ltd was capable of collecting more tonnage of waste in less trips being necessary.

The minute specifically stated that,

*“Il-Kunsilliera ġew informati li saret l-Aġġudikazzjoni mill-Bord u t-Tender inghata lil Northern Cleaning. Il-Kunsilliera ġew infurmati li bhala vetturi t-tunnellaġġ ta' ġbir kien aktar minn dak ta' WM Environmental Ltd”.*

In this regard, this Board is comfortably justified that the inclusion of the copy of minutes of the Council's meeting referring to the decision taken on this Award was sufficient enough for the Appellant to be aware as to the reasons for the rejection of his offer.

With regards to the allocation of points relating to the tonnage capacity of the vehicles, this Board acknowledges the fact that the locality where the tendered works are to be carried out, (Mosta), is a

**highly populated area with a high level of traffic congestion so that the less trips the waste collection vehicle makes, the better, as this results in less pollution.**

**At the same instance, it is quite obvious that the bigger the vehicle, the more tonnage it can carry and in this regard, Northern Cleaning Group Ltd obtained more points due to the simple fact that his vehicles can take a bigger capacity than that of WM Environmental Ltd. In this regard, this Board upholds the decision taken by Kunsill Lokali Mosta and does not uphold the WM Environmental Ltd's First Grievance.**

- 2. With regards to the Appellant's Second Contention, this Board would, first and foremost, emphasize that, in this particular case, the MEAT system was the selection criteria and as was stated in this Board's previous decision, relating to the same case, the allocation of points has to be carried out individually by each member of the Evaluation Board.**

**This Board notes that this has been carried out in a fair and just manner so that the most advantageous offer has been determined observing the rules of the MEAT criteria. With regards to the**

**number of employees to carry out this assignment, this Board notes that Northern Cleaning Group Ltd has all the necessary experienced resources to execute the Tendered Works.**

**At the same instance, the Recommended Bidder's vehicles can carry more tonnage of waste so that the allocation of more points in this respect is properly justified and in this respect, this Board opines that the end result of the allocation of points in this regard are truly deserved and justified so that Northern Cleaning Group Ltd scored more points. In this respect, this Board does not uphold the Appellant's Second Contention.**

- 3. On a general note, this Board credibly feels that, in this particular case, the issue of "*subjectivity*" and "*objectivity*" of the MEAT system had been consistently mentioned, so that this Board would respectfully point out that the MEAT system, in itself, is a very objective mode of assessment of the offers.**

**It provides a guideline and scale by which points are to be awarded. Although, as in many cases, some subjective opinions are necessary, the MEAT selection criteria has been proved to be the most fair and just method. In this regard, this Board acknowledges the fact the the**

**Evaluation Board had evaluated this Tender in a just, fair and proper manner.**

**In view of the above, this Board finds against WM Environmental Ltd. However, due to circumstances mentioned in 1) above, this same Board recommends that the Appellant should be refunded the sum of € 2,500.**

Dr Anthony Cassar  
Chairman

Mr Carmel Esposito  
Member

Mr Richard A Matrenza  
Member

*23 May 2017*