

Case 1105 – STVLC T 1/2017 – Service Tender for Street Sweeping and Cleaning of Soft Areas, Gardens and Playing Fields Within Santa Venera in an Environmentally Friendly Manner

The Publication Date of the Call for Tenders was 2 May 2017 whilst the Closing Date for Call of Tenders was 13 June 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 140,000.

Nine (9) Bidders have submitted offers for this Tender.

On 22 September 2017, Mr Owen Borg filed an Objection against the decision taken by Kunsill Lokali Santa Venera to award the Tender to Progressive Solutions Limited for the price of € 118,000 (Exclusive of VAT) against a deposit of € 700.

On 28 November 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Mr Owen Borg

Mr Owen Borg	Representative
Mrs Svetlana Borg Dimech	Representative
Dr Franco Galea	Legal Representative

Recommended Bidder – Progressive Solutions Limited

Mrs Marika Mifsud Bonello	Representative
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Contracting Authority – Kunsill Lokali Santa Venera

Mrs Jane k/a Yvonne Spiteri	Representative
Mr Stephen Sultana	Representative
Dr Josephine Farrugia 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 Franco Galea, the Legal Representative for Mr Owen Borg said that his client has offered € 165,160 for this Tender which was recommended for award to Progressive Solutions Limited for the sum of € 118,000. Dr Galea argued that his client's offer was discarded by Kunsill Lokali Santa Venera because as stated in the Letter of Rejection,

“The Board noted that the price offered does not cover the costs of man-hours proposed and minor expenses required to perform the services”.

The Appellant's Legal Representative was wondering how € 118,000 will cover these expenses if € 165,560 will not. The Local Council did not answer this question while the Recommended Bidder said that he was willing to work this Tender at a loss. The Tender required a certain amount of detail.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board pointed out that when reviewing the documents submitted, this Board noticed that the Evaluation Committee compared 120 hours submitted by Mr Owen Borg with the 80 hours submitted by Progressive Solutions Limited. This was not causing a Level Playing Field. When one considers that every Bidder would be brought to work on equal terms, it resulted that the Appellant's offer was not only the cheapest but would also cover the wages.

Dr Anthony Cassar explained that the first principle of the Public Procurement Regulations was to compare like with like by bringing everybody in a Level Playing Field. If a particular Bidder submitted a different number of hours, this must be brought down to the same number of hours as the other Bidders so that justice, fairness and transparency will prevail.

The Chairman of the Public Contracts Review Board added that Mr Owen Borg's offer was of € 165,560 for 120 hours which when worked out at 80 hours would total € 104,000. This would cover all the wages. Therefore, Dr Cassar requested the Contracting Authority to re-evaluate the Tender once again, basing the Evaluation on the same number of hours for every Bidder. All Bids must be evaluated on the same Level Playing Field.

Dr Franco Galea, the Legal Representative for Mr Owen Borg, referred to Clause 16.3 of the Tender Document which said,

“Further to the provisions of the General Conditions, it is expected that the contractors dedicates three full-time employees in order to perform the services requested”.

Mr Stephen Sultana, the Mayor of Kunsill Lokali Santa Venera, said that the Tender Document also gave a leeway to the Local Council where they can work with two employees if these were competent enough to do what was requested from them. The Tender Document also stipulated that it was up to the Bidder to decide with how many employees he can work out the contract.

Mr Sultana added that Mr Owen Borg in one report submitted that he was going to offer 80 hours whilst in the Electronic Public Procurement System submitted that he was offering 120 hours, hence contradicting himself. Besides, the Evaluation Board treated all Bids equally and in that case it was a third company, Dimbros Limited which had the cheapest offer. Kunsill Lokali Santa Venera would never accept to give Tenders to Bidders who employ people in precarious conditions.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, replied that the important thing for this Board was to make sure that the wages are covered.

At this stage, the Public Hearing was adjourned to Tuesday 12 December 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 Mr Owen Borg (herein after referred to as the Appellant) on 22 September 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference STVLC T 1/2017 listed as Case No 1105 in the records of the Public Contracts Review Board, awarded by Kunsill Lokali Santa Venera (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Franco Galea

Appearing for the Contracting Authority: Mr Stephen Sultana

Whereby, the Appellant contends that:

- a) His offer was rejected due to the alleged fact that his Bid did not even cover the costs of man hours as proposed. In this regard, Mr Owen Borg objects to this reasoning, as his offer was cheaper than that of Progressive Solutions Limited.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 7 November 2017 and its verbal submissions during the Public Hearing held on 27 November 2017, in that:

- a) Kunsill Lokali Santa Venera contends that the Appellant’s offer was assessed, whilst taking into account the proposed number of hours of 120 per week. In this regard, Mr Owen Borg’s offer was not the cheapest. The Local Council is also insisting that the Evaluation Board treated all Bids equally.**

This Board after having examined the relative documentation and heard submissions by the parties concerned, opines that the issue at stake in this Appeal is, “*the number of hours*” proposed by the Appellant and the “*procedure adopted*” by the Evaluation Board in assessing the same offer. In this respect, this Board will consider the merits of this Appeal as follows:

i) Number of Hours Proposed

The Tender Document with particular reference to Clause 16.3 stated that:

“Further to the provisions of the General Conditions, it is expected that the contractors dedicate three full-time employees in order to perform the services requested”

Although further on, the Tender Document gave a leeway to the Local Council to work with less full-time employees, provided the Tendered Services can be satisfactorily carried out, this Board’s justifiable impression is that the Bidder was expected to base his quotation on three full-time employees and therefore it was only natural for the Appellant to submit his offer based on this presumption.

In this regard, this Board opines that during the Evaluation process, one had to establish the standard measuring stick for the number of hours during which the Tendered Works can be executed to the full satisfaction of the Contracting Authority.

In this particular case, from the Evaluation Report, this Board noted that the different offers received quoted various different hours to be expended on the Tendered works, so that the total price of each Bid does not reflect the cost per hour to the Local Council and whether the number of hours allotted by each Bidder would enable the latter to carry out the said works satisfactorily.

In this regard, this Board opines that the Evaluation Board should establish the number of full-time workers to carry out the Tendered Works.

ii) Evaluation Procedure

This Board, after having examined the relative documentation and in particular, the Evaluation Report, would like to respectfully lay out the following table:

	Progressive Solutions Limited	Mr Owen Borg	Mr Owen Borg
Hours	80	120	80
Rate per Hour	€ 6.25	€ 6.25	€ 6.25
Total Hours Per Week	500	750	50
Total Cost Per Annum	€ 26,000	€ 39,000	€ 26,000
Total Cost for 4 Years	€ 104,000	€ 156,000	€ 104,000
Price Quoted	€ 118,000		€ 104,000

If one had to compare the offer submitted by Progressive Solutions Limited's offer with that of Mr Owen Borg's, on the basis that both offers were assumed on the same number of hours, the Appellant's Bid would be cheaper.

The remit of this Board is not to delve whether the particular Bidder will make a profit or incur a loss but whether the Evaluation Process

has been conducted in a just, fair and transparent manner based on the principle of the “*Level Playing Field*”.

In this regard, this Board opines that the variety of offers received with the different number of hours could not enable the Evaluation Board to arrive at a fair and just decision as there was no “*Level Playing Field*”. In this respect, this Board recommends that the Evaluation Board, in their deliberations should compare “*Like with Like*” applying the principle of “*Level Playing Field*” throughout.

In view of the above, this Board finds in favour of Mr Owen Borg and recommends that:

- i) The Appellant’s offer is to be reintegrated in the Evaluation Process;
- ii) The Deposit paid by the same Appellant is to be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

5 December 2017