

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1196 – BLC/T06/2018 – Service Tender for the Cleaning and Upkeep of Public Conveniences of Birżebbuġa in an Environmentally Friendly Manner.**

The publication date of the call for tenders was the 16<sup>th</sup> March 2018 whilst the closing date of the call for tenders was the 10<sup>th</sup> April 2018. The estimated value of the tender (exclusive of VAT) was € 10,400.

There was one (1) bid submitted.

On the 18th June 2018, Mr Sandro Caruana entered an appeal against the Contracting Authority's decision to exclude him on the grounds that his offer was considered as not compliant. The tender was cancelled. A deposit of € 400 was paid.

On 2<sup>nd</sup> August 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellant – Mr Sandro Caruana**

Dr Charlene Grima	Legal Representative
Dr Adriano Spiteri	Legal Representative
Mr Sandro Caruana	Representative

#### **Contracting Authority – Birżebbuġa Local Council**

Mr Joseph Cutajar	Chairperson Evaluation Board
Mr Svetlick Flores	Secretary Evaluation Board
Dr Victor Bugeja	Member Evaluation Board & Legal Representative
Mr Carmel Cacopardo	Member Evaluation Board
Ms Doreen Mintoff	Member Evaluation Board

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, welcomed the parties and invited submissions.

Dr Charlene Grima, Legal Representative for Mr Sandro Caruana, said that the basis for her client's appeal was that his offer was assessed to be not compliant, despite the fact that he had provided all the details requested by the Birżebbuġa Local Council. Public Procurement Regulations 53 (6) stated that there should be no obstacles to open competition – since there were no other applicants, the Local Council insistence that Appellant did not comply indicate intransigence on their part.

Dr Victor Bugeja, Legal Representative of the Birżebbuġa Local Council, said that the Appellant disqualified himself. He either did not supply the requested information, or when supplied his submissions were incomplete.

Dr Adriano Spiteri, Legal Representative for Mr Caruana, stated that the basic purpose of a tender was not to exclude. The Council had set very complicated criteria and replies had been submitted to the all the requests made.

Mr Svetlick Flores (ID 51281M) testified on oath that he had drafted the tender and was fully familiar with it. The Council was trying to be more professional and therefore required the submission of certain documentation, and established what criteria had to be followed. As an example he mentioned that in the case of cleaning products to be used, the legal requirements was that the bidder had to submit the name of the product, the quantity to be used, that it has to carry a Eurolabel. Appellant failed to submit specimens of attendance sheets, pictures of the uniforms to be worn and handling of complaints templates. These were minimum requirements.

Dr Adriano Spiteri said that he understood the position of a Best Price Quality Ratio Contract, but alternatives existed such as best price basis.

The Chairman stated that a similar case had been heard by the Board – tender documents must be respected and the bidder had to submit what was requested. The principle of self limitation imposed a balance between reasonableness and lack of documentation and it was up to the bidder to seek clarification before tendering.

He then thanked the parties for their submission and declared the hearing closed.

**This Board,**

**having noted this Objection filed by Mr Sandro Caruana, (hereinafter referred to as the Appellant) on 18 June 2018, refers to the contentions made by the latter with regards to the Cancellation of Tender of Reference BLC/T06/2018, listed as Case No 1196 in the records of the Public Contracts Review Board issued by Kunsill Lokali Birżebbuġa.**

**Appearing for the Appellant: Dr Charlene Grima**

**Dr Adriano Spiteri**

**Appearing for the Contracting Authority: Dr Victor Bugeja**

**Whereby the Appellant contends that:**

- a) His main contention is that the Tender Document dictated conditions which were of an obstacle for any Bidder to submit his offer for this type of work. He also maintains that he had submitted all the details requested and in this regard, his offer should not be deemed to be technically non-compliant.**

**This Board has also noted the Contracting Authority's "*Letter of Reply*" dated 25 June 2018 and also its verbal submissions during the Public Hearing held on 3 August 2018, in that:**

- a) Kunsill Lokali Birżebbuġa insist that the Appellant failed to submit mandatory documentation as dictated in the Tender Dossier so that, the Evaluation Committee had no other option but to deem the Appellant's offer as technically non-compliant.**

**This same Board has also noted the testimony of the witness namely, Mr Svetlick Flores, duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation and heard submissions made by the interested parties, including the testimony of the witness, opines that the issue worth of consideration is the Appellant's submission.**

**The Tender Document is the contractual instrument through which the Contracting Authority lays down the conditions for the execution of the**

tendered works. Such conditions must be reasonable to attain and be applicable to all the offers. The Contracting Authority has the right to impose such conditions so as to ensure a fair and equal level playing field for all Bidders.

At the same instance, the Local Council is bound by the principle of self limitation so that the Evaluation Committee can seek neither clarifications nor rectifications on missing mandatory documentation. In this regard, this Board notes that the conditions laid out by the Local Council and which were not complied with by the Appellant consisted of:

- List of measures to ensure time keeping;
- Backup in case of emergency;
- Reporting requirements;
- Incomplete proposed methodology;
- Minimum requirements;
- Equal Opportunities;

This Board has examined the above mentioned requirements and finds same to be reasonable so that such mandatory conditions can be met. At the same

**instance, this Board cannot find any justifiable reason as to why such conditions were ignored by the Appellant. Needless to say, Mr Sandro Caruana had all the remedies to clarify any intended deficiency on his part, prior to the closing date of the Tender and this Board would point out that the Appellant did not avail himself of the remedies provided to all Bidders. At the same instance, this Board would justifiably point out that the Appellant was well aware of the conditions laid out in the Tender Dossier and by submitting his offer he had accepted all the dictated conditions which he should have abided by.**

**In this particular case, this Board opines that the Appellant, if in doubt, had the remedy to seek clarification prior to his submissions so that his offer will comply with the dictated conditions. In this respect, this Board is being presented with Appeals which could have been easily eliminated had the Bidder, prior to his submissions sought the necessary understanding of what is being requested in the Tender Dossier. One must be reminded that the remit of this Board is to assess whether the Evaluation Procedure was carried out in a fair, just and transparent manner and not to provide explanations of what was requested by the Local Council.**

**In view of the above, this Board:**

- i) Upholds the decision taken by Kunsill Lokali Birżebbuġa in the cancellation of the Tender;**
  
- ii) Does not uphold the contentions made by Mr Sandro Caruana;**
  
- iii) Recommends that the deposit paid by the Appellant should not be refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Richard A Matrenza  
Member

4<sup>th</sup> September 2018