

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1308 – ZLC 1/2019 - Cleaning and Upkeep of Public Conveniences using Environmentally Friendly Products**

The publication date of the call for tenders was the 4<sup>th</sup> January 2019 whilst the closing date of the call for tenders was 4<sup>th</sup> February 2019. The estimated value of the tender (exclusive of VAT) was € 50,000.

On the 4<sup>th</sup> April 2019 Mr Sandro Caruana filed an appeal against the Zabbar Local Council as the Contracting Authority objecting that his bid was rejected as being not compliant. A deposit of € 400 was paid.

There were six (6) bidders.

On 7<sup>th</sup> May 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard 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 Martha Mifsud	Legal Representative
Mr Sandro Caruana	Representative

#### **Recommended Bidder – Mr Christopher Bonello**

Dr Alexander Schembri	Legal Representative
Mr Christopher Bonello	Representative

#### **Contracting Authority – Zabbar Local Council**

Dr Byron Camilleri	Legal Representative
Mr Marc Vella Bonnici	Representative
Ms Stephanie Testaferrata de Noto	Representative

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

Dr Martha Mifsud Legal Representative for Mr Sandro Caruana explained that the purpose of her client's appeal was to request reconsideration of the tender decision. The Zabbar Local Council

was claiming that the Selection Criteria Document (SCD) had not been signed. Nowhere and at no time was there any indication that this form had to be signed – her client could not comply with something which had not been requested. In an electronic tender the electronic identity number is sufficient to identify the bidder. The manual of procedure does not make provision for the SCD to be signed. Following the instructions in Clause 7.2a of the tender Appellant should have been notified to make the necessary amendments if there were any shortcomings in his submissions, and allowed the stipulated five days to rectify.

Dr Byron Camilleri Legal Representative for the Zabbar Local Council said that Appellant’s offer was refused as the SCD was not signed. There was ample opportunity to appeal against this rejection – instead the appeal was on other points and nowhere in their objection. was there any reference made to the non-compliance factor.

The Chairman pointed out that the Board was in duty bound to follow the letter of objection, which in this instance was on a completely different issue than non-compliance. At this stage the Board could not consider other objections except those stated in the objection letter as this would be counter to the Public Procurement Regulations. He then thanked the parties for their submissions and declared the hearing closed.

**This Board,**

**having noted this objection filed by Mr Sandro Caruana (herein after referred to as the Appellant) on 4 April 2019, refers to the claims made by the same Appellant with regard to the Tender of reference ZLC 01/2019 listed as case no 1308 in the records of the Public Contracts Review Board, awarded by Zabbar Local Council (herein after referred to as the Contracting Authority).**

**Appearing for the Appellants: Dr Martha Mifsud**

**Appearing for the Contracting Authority: Dr Byron Camilleri**

**Whereby, the Appellant contends that:**

- a) his main concern refers to the fact that, in accordance with the stipulated number of hours and number of employees, as duly dictated in the tender document, the price quoted by the successful bidder will lead to precarious working conditions.**

**This Board also noted the Contracting Authority's 'Letter of Reply' dated 13 April 2019, and its verbal submissions during the hearing held on 7 May 2019, in that:**

- a) the Authority maintains that the reason for Appellant's offer rejection was that, the 'Selection Criteria Document' was not signed so that Appellant's offer was not compliant. At the same instance, Appellant did not mention such a deficiency, in his 'Letter of Objection'.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, opines that, on a preliminary note, Appellant's objection did not refer to the deficiency in his offer but rather raised issues which are not relevant to the merits of the case.**

- 1. This Board would respectfully point out that one of the basic requisites in filing an objection is that the objector must state the reasons why the Authority's decision is not correct.**
  
- 2. In this particular case, Appellant referred to the quoted price of the first two rankings of the offers and endeavoured to prove that, these offers would lead to precarious working conditions. Appellant, in this regard, failed to mention and substantiate his argument as to why his offer was rejected.**
  
- 3. During the hearing, Appellant raised other issues which had no particular effect during the evaluation process of Appellant's offer, so that this Board opines such other issues do not merit consideration.**
  
- 4. This Board would respectfully refer to Regulation 270 of the Public Procurement Regulations which stipulates the contents of an appeal, as follows:**

*“The tenderers may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.”*

**In this regard, this Board justifiably established that the reasons given by Appellant, in his objection letter, do not, in any particular way, refer or reflect, the Authority's reasons, for the rejection of his offer.**

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

- i. Does not uphold Appellant's objection as a valid appeal,**
- ii. Upholds the Contracting Authority's decision in the award of the tender,**
- iii. Directs that the deposit paid by Appellant should not be reimbursed.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Richard A. Matrenza  
Member

*16 May 2019*