

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1317 – SGN/T/01/18 – Service for the Collection of Bulky Refuse from the Locality of San Gwann in an Environmentally Friendly Manner**

The publication date of the call for tenders was the 14<sup>th</sup> September 2018 whilst the closing date of the call for tenders was 15<sup>th</sup> October 2018. The estimated value of the tender (exclusive of VAT) was € 15,000.

On the 7<sup>th</sup> February 2019 Galea Cleaning Solutions JV filed an appeal against the San Gwann Local Council as the Contracting Authority objecting that their bid was incorrectly disqualified. A deposit of € 400 was paid.

There were three (3) bidders.

On 30<sup>th</sup> May 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Galea Cleaning Solutions JV**

Dr Adrian Mallia	Legal Representative
Mr Saviour Galea	Representative

#### **Contracting Authority – San Gwann Local Council**

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

Dr Adrian Mallia Legal Representative of Galea Cleaning Solutions JV referred to the tender specifications in regard to the type of vehicle required, and specifically that the vehicle had to be curtain-sided. The other two bidders had not indicated that they were offering vehicles that met this specification and should have been disqualified. It stands to reason therefore that the award by the Contracting Authority was not acceptable.

Mr Kurt Guillaumier (411974M) called as a witness by the Appellants testified on oath that he was the Executive Secretary of the San Gwann Local Council. He confirmed that the Contracting Authority needed vehicles to meet the specifications referred to – that is they had to be curtain-

sided. Log books from all three bidders were produced to confirm that two of the bidders did not conform to this requisite, whilst Appellants vehicle met this requirement. Witness regretted that the Contracting Authority had overlooked checking the logbooks to confirm this point, and thus awarded the contract erroneously.

The Chairman thanked the parties for their submissions and declared the hearing closed.

**This Board,**

**having noted this objection filed by Galea Cleaning Solutions JV (herein after referred to as the Appellants) on 7 February 2019, refers to the claims made by the same Appellants with regard to the tender of reference SGN/T/01/2018 listed as case no 1317 in the records of the Public Contracts Review Board, awarded by San Gwann Local Council (herein after referred to as the Contracting Authority).**

**Appearing for the Appellants: Dr Adrian Mallia**

**Appearing for the Contracting Authority: Mr Kurt Guillaumier**

**Whereby, the Appellants contend that:**

- a) their main contention refers to the fact that the other two Bidders, one of whom is the preferred Bidder, does not possess vehicles curtain sided, as stipulated in the tender document. In this regard, Appellants maintain that award procedure has been carried out in an irregular manner.**

**This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 20 February 2019 and its verbal submission during the hearing held on 25 April 2019, in that:**

- a) the Authority contends that the award criteria was based on past good working relationship with the incumbent Bidder.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the Parties concerned, opines that the issue that merits consideration is the type of vehicles offered by the other competing Bidders.**

- 1. This Board would respectfully refer to Clause 4.2.4. of the technical specifications wherein, the last sentence of this clause clearly states the following:**

*“All Vehicles used during the operation are to be curtain sided unless otherwise stated”.*

**From the Log Books of the vehicles, as presented by the other two Bidders, this Board notes that such documentation does not indicate that the offered vehicles are curtain sided. At the same instance, the Authority confirmed that the Evaluation Committee did not check whether such**

**condition was complied with, by the other two competing Bidders. In this regard, it was the duty and obligation of the Evaluation Committee to affirm and carry out the necessary vetting with regard to such verifications and regretfully, this Board finds that no such action was taken by the said Committee.**

- 2. This Board, would also refer to the ‘Letter of Rejection’ dated 4 February 2019, wherein the Authority stated that, although the preferred Bidder was the second cheapest compliant Bidder, the Authority decided to award the tender to same, Bidder due to the latter’s past good working relationship. In this respect, this Board notes that, apart from the fact that the Evaluation Committee completely ignored the stipulated award criteria, same Committee failed to establish a valid reason for the award of the tender to the preferred Bidder, as the reason given for the award, is irregular and breaches the basic principle of self-limitation.**
- 3. The award criteria was the ‘Price’, and the preferred Bidder, as correctly confirmed by the Authority, was not the cheapest compliant Bidder but**

**ranked second. On the other hand, there was no justifiable reason as to why the other offer which ranked first was not chosen for the award.**

- 4. The fact that, the Authority had a good working relationship in the past, should never be treated as an advantage to any Bidder, in a call for competition, so that each offer must be treated equally on a level playing field whilst, at the same instance, the principle of self-limitation must be respected, both by the Bidder and the Authority, the latter having ignored the award criteria.**

**In conclusion, this Board opines that,**

- a) the reason given to Appellants for the rejection of their offer is completely unfounded and incorrect,**
- b) from documentation presented by the other two competing Bidders, this Board confirms that the Log Books of vehicles do not indicate that the vehicles are curtain sided and only Appellants' Log Books conform with such a requirement,**

**c) the Evaluation Committee ignored completely the ‘Award Criteria’ and breached the fundamental principle of self-limitation whilst at the same instance, the Committee did not carry out the necessary verifications with regard to the type of vehicles being offered by all the Bidders.**

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

**i) upholds Appellants’ contentions;**

**ii) does not uphold the Authority’s decision in the award of the tender;**

**iii) directs that Appellants’ offer be re-integrated in the evaluation process;**

**iv) directs the deposit paid by Appellants be fully refunded;**

**v) directs that a new Evaluation Committee will carry out a re-evaluation process of all the offers whilst ensuring that all Bidders are in conformity**

**with the conditions and technical specifications as dictated in the tender dossier;**

**vi) directs that the new Evaluation Committee will abide by the principle of self-limitation, in their deliberations.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Richard A Matrenza  
Member

*5 June 2019*