

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1393 – MLC 01-2019 – Tender for the Cleaning and Maintenance of Public Gardens, Roadside Tree Plantations and Non-Urban Soft Areas in an Environmentally Friendly Manner**

The publication date of the tender was the 9<sup>th</sup> July 2019 whilst the closing date was the 9<sup>th</sup> August 2019. The estimated value of the tender (exclusive of VAT) was € 115,000.

On the 14<sup>th</sup> October 2019 Mr Alistair Bezzina filed an appeal against Mdina Local Council as the Contracting Authority on the grounds that his bid was disqualified as it was considered to be technically non-compliant. A deposit of € 575 was paid.

There were five (5) bidders.

On 28<sup>th</sup> November 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 – Mr Alistair Bezzina**

Dr Luciano Busuttil	Legal Representative
Ms Marika Bonello	Representative

#### **Recommended Bidder – Mr Carmel Mifsud**

Mr Carmel Mifsud	Representative
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#### **Contracting Authority – Mdina Local Council**

Dr Maurice Meli	Legal Representative
Mr Peter Sant Manduca	Chairperson Evaluation Committee
Mr Raphael Carabott	Member Evaluation Committee
Mr Joseph Debono	Member Evaluation Committee
Ms Maryann Sultana	Member Evaluation Committee
Mr Mark Mallia	Secretary of the Evaluation Committee

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

Dr Luciano Busuttill Legal Representative for Mr Alistair Bezzina, started by contradicting the claim that the deposit had not been paid in time by Appellant. His client had been disqualified because he had not submitted a programme of works in his bid. Normally Local Councils give bidders details of the required works – here it was left to the bidder to provide thus giving the incumbent contractor an advantage and removed the level playing field. It was also odd that the tender had been awarded to the third cheapest bidder.

Dr Maurice Meli Legal Representative for the Mdina Local Council stated that the appeal should be nullified as no equivalent deposit was made by the date notified. All the other bidders had no difficulty in completing Annex 2 in the tender (Requirement to submit a Work Plan), which was a compulsory requirement. No clarification was sought by Appellant and the Council had no alternative except to disqualify the bid.

Dr Busuttill pointed out that Annex 2 had not been completed as Appellant wished to meet the Council to discuss the work involved.

Mr Raphael Carabott (207767M) called as a witness by the Public Contracts Review Board testified on oath that he was a member of the evaluation committee. He stated that all the other tenderers had submitted a work plan as required in Annex 2. This tender related to a gardening operation requiring a key expert who had to decide how and when throughout the year the process was to be carried out and the Council had to rely on the advice of such expert not to dictate the process themselves.

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

End of Minutes

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## **Decisions**

**This Board,**

**having noted this objection filed by Mr Alistair Bezzina (herein after referred to as the Appellant) on 14 October 2019, refers to the claims made by the same Appellant with regard to the tender of reference MLC 01-2019 listed as case No. 1393 in the records in the records of the Public Contracts Review Board,**

**awarded by Mdina Local Council (herein after referred to as the Contracting Authority).**

**Appearing for the Appellant: Dr Luciano Busuttil**

**Appearing for the Contracting Authority: Dr Maurice Meli**

**Whereby, the Appellant contends that:**

- a) His offer had been rejected due to the fact that he had not submitted a programme of works. In this regard, Appellant maintains that, usually the Contracting Authority stipulates, in detail, the works to be performed; in this particular case, no such details were given and it was left to the bidder to formulate such a programme, so that the incumbent contractor had an advantage over the other bidders.**
  
- b) The programme of works scheduled had not been completed as Appellant felt the need of a meeting with the Authority to discuss the work involved so that they can then submit Annex 2.**

**This Board also noted the Contracting Authority's 'Letter of Reply' dated 21 October 2019 and its verbal submissions during the hearing held on 28 November 2019, in that:**

- a) **The Authority insists that, the programme of works was mandatory and Appellant failed to submit such documentation so that, the Evaluation Committee had no other option but to deem Appellant’s bid technically non-compliant.**

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

**Mr Raphael Carabott duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned, opines that, the issue that merits consideration is the non-submission of programme of works by Appellant.**

- 1. This Board would refer to Annex 2 – Works Plan of the Tender Document which states that:**

*“Tenderers must submit in the tender response format, a comprehensive detailed work plan satisfying the administrative and technical criteria. This instruction is compulsory and the Contracting Authority will Disqualify Economic Operators who do not abide by this instruction.”*

- 2. The above-mentioned opening note to Annex 2, clearly and vividly dictates that economic operators who fail to submit the work plan will be automatically disqualified. In this respect, this Board notes that such a workplan was in fact, not submitted by Appellants. At the same instance, the other bidders, including the incumbent contractor, did submit such a workplan, so that there arose no problem in formulating such a programme of works with the other bidders.**
  
- 3. With regard to Appellant's claim that the Authority should have stipulated details as to the works that are required, this Board would respectfully refer to pages 19 to 24 (scope of the work) of the tender dossier wherein all the tasks and activities that are being expected from the economic operator, are clearly denoted in detail, describing the duties and obligations of the bidder in the execution of such works.**
  
- 4. After having examined the contents of pages 19 to 24 of the tender document, this Board justifiably established the fact that, there was sufficient and detailed information relating to the scope and activities of the tendered works, to enable the economic operator to submit the workplan being requested in Annex 2 of the tender dossier.**

**5. With regard to Appellant's second contention, this Board opines that, the Appellant had the remedy to discuss and clarify any misunderstanding or misinterpretation on any clause in the tender document, prior to the submission of his offer and in this regard, this Board notes that Appellant did not avail himself of such remedies. At the same instance, this Board was not presented with evidence to prove that upon Appellant's request to hold a meeting with the Authority to discuss the programme of works, such a request was turned down by the same Authority.**

**6. This Board, as it has on numerous occasions, would point out that, it is the duty and obligation of the prospective bidder to ensure that, prior to the submission of his offer, he has collated all the required information as duly stipulated in the tender dossier without any undue assumptions.**

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

**a) The tender document, with special reference to pages 19 to 24 contained detailed information with regard to tasks and obligations which the successful bidder had to perform, so that there existed no problems in formulation of a work plan.**

**b) The instructions in Annex 2 clearly stated that the submission of the work plan was mandatory so that non-submission of such documentation leads to an outright disqualification of the offer.**

**c) Appellants had all the remedies to obtain the necessary information to enable same to formulate the work plan however, such remedies were not availed of by him.**

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

- i. does not uphold Appellant's contentions,**
- ii. upholds the Contracting Authority's decision in the award of the contract,**
- iii. directs that the deposit paid by Appellant should not be reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Richard A Matrenza  
Member

*17 December 2019*