

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1452 – RLC/T/185/20 – Service Tender for the Collection of Household Waste from the Locality of Rabat (Malta) in an Environmentally Friendly Manner.**

The tender was published on the 28<sup>th</sup> January 2020 and the closing date of the tender was the 24<sup>th</sup> February 2020. The estimated value of the tender (exclusive of VAT) was € 512,000.

On the 21st May 2020 WM Environmental Ltd filed an appeal against the Rabat Malta Local Council as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant and against the cancellation of the tender. A deposit of € 2,560 was paid.

There were three (3) bidders

On 18<sup>th</sup> June 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – WM Environmental Ltd**

Dr John Bonello	Legal Representative
Dr Marycien Vassallo	Legal Representative
Mr Wilson Mifsud	Representative

#### **Contracting Authority – Rabat Malta Local Council**

Dr Richard Sladden	Legal Representative
Mr Paul Bugeja	Chairperson Evaluation Committee
Mr Anthony Bonello	Secretary Evaluation Committee

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties had agreed to treat it as a normal hearing of the Board. He invited submissions.

Dr John Bonello Legal Representative of WM Environmental Ltd (WME) stated that the Public Contracts Review Board had two issues to consider – the disqualification of Appellants' bid and the cancellation of the tender. The letter of reply from the Rabat Local Council dealt clearly with the reason for the refusal of the offer and why they could not consider a very excessive alternative offer. According to clause 1.3 of the tender contract bids were limited to an estimated procurement value of € 512,000. The offer of WME was within this limit subject to being technically correct. The Appellants

were disqualified on the grounds that according to the evaluation committee the works programme offered was not sufficient and that the small vehicle engine did not have Euro VI classification.

Dealing with the latter point Dr Bonello pointed out that the tender in clause 4.2.3 dealt separately with a request for an electric or LPG powered vehicle. WME ensured that by the closing date of the tender they had acquired such a vehicle – in fact on the 20<sup>th</sup> February 2020 they invested in such a vehicle bringing themselves in line with the terms of the tender. As regards the programme of works the Council requested a work plan programme of rubbish collection in Rabat, something which WME were already familiar with as they were the current contractors. They supplied such a works programme detailed by time, street locations and designated vehicles. This was deemed as not sufficiently detailed by the Council without any explanation of what further information they needed and it makes one wonder what further details the Council expected. There is a limit to how subjective the evaluation process can be.

Since there is no issue on these two points Appellants' bid should not have been disqualified and no reason why the tender should have been cancelled as there was one fully compliant bid.

Dr Richard Sladden Legal Representative for the Rabat Local Council said that the work programme presented lacked details in the opinion of the evaluation committee. The logbook of a vehicle is an official document and the Council followed what was stated in the log book and it was the responsibility of the vehicle's owner to check that the details were correct.

Mr Paul Bugeja (113473M) called as a witness by the PCRB stated on oath that he was the chairperson of the evaluation committee. He stated that the tender document requested a detailed method document in line with Article 7.1 – Appellants failed to provide any details of how the programme will be activated. As regards the log book this states that the vehicle has a Euro V engine instead of a Euro VI one as requested.

Dr Bonello said that the evaluation committee had interpreted Article 4.2.3 wrongly to justify the disqualification of Appellants. Electric or LPG powered vehicles had been separately distinguished from other vehicles in the tender and their Euro classification (which applied only to diesel powered engines) was irrelevant as there were no emission levels in these vehicles.

Dr Sladden concluded by saying that the evaluation committee had to stick to the tender wording.

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

End of Minutes

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## **Decision**

**This Board,**

**having noted this objection filed by WM Environmental Ltd (hereinafter referred to as the Appellants) on 21<sup>st</sup> May 2020, refers to the claims made by the same Appellants with regard to the tender of reference RLC/T/125/20 listed as case No. 1452 in the records of the Public Contracts Review Board.**

**Appearing for the Appellants:**

**Dr John Bonello**

**Dr Marycien Vassallo**

**Appearing for the Contracting Authority: Dr Richard Sladden**

**Whereby, the Appellants contend that:**

- a) Their offer, with particular reference to the vehicle engine classification, was allegedly deemed to be non-compliant. In this regard, Appellants maintain that, at the closing date of the offers, they owned in actual fact, a vehicle as duly requested in the tender document.**
- b) Appellants also contend that their programme of works included all the specifications as stipulated in the tender dossier so that, any other details expected by the Evaluation committee to be contained therein, are highly subjective.**
- c) Appellants contend that the Authority cancelled the tender without giving the reasons for such a decision. In the Authority's 'Letter of Reply', it was quoted that the alternative offer was exorbitantly higher than the budget. whilst**

**Appellants' claim that their offer was well within the estimated value of the tender, as duly published.**

**This Board also noted the Contracting Authority's 'Letter of reply' dated 27<sup>th</sup> May 2020 and its verbal submissions during the virtual hearing held on 18<sup>th</sup> June 2020, in that:**

- a) The Authority contends that Appellants' programme of works lacked details and from the Logbook of the vehicle, it transpired that its engine was classified as Euro V and not Euro VI, as stipulated in the tender dossier.**
- b) The Evaluation Committee carried out their evaluation process in accordance with the requirements dictated in the tender document.**

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

**Mr Paul Bugeja Chairman of the Evaluation Committee duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation to this appeal, with particular reference to the Evaluation report and heard submissions made by the parties concerned, including the testimony of the witness duly summoned, opines that the issues that merit consideration are three-fold namely;**

- a) Appellants' programme of works,**
- b) Appellants' vehicle classification,**

**c) Cancellation of the tender.**

**1. Appellants' programme of works**

**1.1 the Authority contends that, the programme of works as submitted by Appellants, lacked details. In this regard, this Board would respectfully refer to article 7.1 of section 3 of the tender document, as follows:**

*“7.1 – Requirements*

*(a) Bidder must submit with Technical Offer a detailed method of work on how the Waste Carrier intends to operate the services. The method of work is to include details of each listed vehicle used, details of street by street collection including the approximate start and end time of the collection service in each and every street.*

*(b) In executing this contract the Waste Carrier is also required to complete a comprehensive Work Plan (Annex 1) on a bi annual basis which is to be forwarded to the Executive Secretary of the said Local Council at least seven (7) days before the entering into force of the work plan. The work plan is to include a sequence of logistical street collection taking into consideration, the exigencies of the said Local Council, and is to include the approximate start and end time of the collection service in accordance with Article 9.*

*(c) The Work Plan, which is to be signed by an authorized representative of the Waste carrier and endorsed by the Mayor and the Executive Secretary on*

*behalf of the Local Council, shall be made available to the contract Manager or supervising entity who will supervise, monitor and check the collection in that locality. Any amendment to the Work Plan shall similarly be made available to the Contract Manager or supervising entity.”*

**The above extract denotes what has to be included in the programme of works and it also refers to Annex 1, which again describes what the Authority is expecting from the bidder, as follows:**

*“Annex 1 – Organisation, Work Plan and Road Sequence*

*To be submitted as part of the Technical Offer*

- a) Submit a Technical & Organisational Methodology*
- b) Submit a detailed method of work including street sequence, timings and vehicle information.”*

**1.2 This Board examined Appellants’ submissions in this regard and notes that, Appellants submitted a detailed timetable of a working plan which satisfies the requirements of item (b) above of Annex 1. This Board also considered the fact that, ‘the Tendered Services’ nature consists of refuse collection and the work plan provided by Appellants denotes the name of the street, the type of vehicle to be used and the time of the collection for every street. In this regard, this Board opines that, Appellants’ submission, in this regard, represents an organisational methodology and a work plan with**

sequences, timings and vehicle information and should be regarded sufficient enough to satisfy the requirements as dictated in Article 7.1.

**1.3 From the Evaluation report, this Board notes that, although the Evaluation Committee expected more details, same Committee did not specify what Appellants' submission was lacking in this regard.**

**1.4 It is an established fact that, the Evaluation Committee must have leeway in its deliberation, however, when decisions or expectations are not strictly indicated in the tender dossier, the subjectivity element is not proportionally suppressed. In this particular case, this Board opines that, the expected additional information for the work plan was not properly detailed in the tender document apart from the fact that, the information submitted by Appellants was sufficient enough to denote such a requirement.**

## **2. Vehicle's engine classification**

**2.1 This Board would respectfully refer to item (f) of clause 4.2.3 article 1.1 as follows:**

*“Electric or LPG Powered Vehicle*

*(f) As part of the fleet of vehicles to used, the contractor must be equipped and provide with one either electric or LPG gas powered refuse collection vehicle.*

*It is the intention of the Local Council to have at least one small electric or LPG powered waste carrier, not exceeding 2000 kgs laden mass to collect all door to*

*door household waste from the historical area in narrow cobble stone alleys and pathways including the main square. The service of such vehicle is required daily, including the collection of recyclable waste which is normally carried out by a sub-contractor part of the national scheme apart from organic and mixed waste.*

*The Contractor bidding for this contract must be equipped with least one small electric or LPG powered waste carrier not exceeding 2 tonnes (type N1) suitable to manoeuvre in narrow strait streets, were such equipment must be ready available prior commencement of the contract. Bidder must provide proof of ownership and all technical and operation specifications with the submission of the tender. No internal combustion engine powered vehicles shall be allowed to be operated in the historical area. Bidders failing to provide and submit all technical documentation for such equipment shall not be considered further for adjudication of this tender.”*

**The above-mentioned clause refers specifically to LPG powered vehicles (or electric) so as to make a distinction from combustion engine driven vehicles.**

**2.2 It is being maintained by Appellants that, the environmental standard of RCV, is applicable only to vehicles with internal combustion engine not exceeding 18 tonnes. On the other hand, the authority contends that, Applicants’ LPG gas powered RCV has an environmental standard of**

**Euro V classification and not of Euro VI, as requested in clause 4.2.3 article 1.1 of the tender document.**

**2.3 This Board would also refer to clause 4.2.3, article 1.1 (c), which clearly states that:**

*“(c) All RCVs not exceeding 18 tons laden mass, used in carrying out the service must have engines meeting a minimum of EURO VI standards, according to EC Directive 2005/55/EC. Where vehicles are not certified as EURO VI but technical after-treatment has achieved the same standard, this should be documented in the tender application”*

**The above-mentioned article stipulates that all RCVs not exceeding 18 tons must have a Euro VI classification. In this regard, this Board notes that, Appellants vehicle’s logbook of the RCV referred to, in article 1.1(f) of the tender document, is classified as Euro V. This Board would respectfully point out that, the above-mentioned article refers to all the RCVs to be used in this tendered service so that, although the LPG vehicle is separately denoted in article 1.1(f), it forms part of the fleet to be deployed in the execution of the tendered service and the classification of a Diesel/LPG Euro V, is not equivalent to a Euro VI classification.**

**2.4 It must also be mentioned that, article 1.1(f) would have been better interpreted if the classification of the LPG powered vehicle was also denoted by the Authority, so as to avoid any misinterpretation or**

**misunderstanding of both articles 1.1(f) and 1.1(c). In this regard, this Board opines that article 1.1(c) dictates that the whole fleet of RCVs below 18 tons should have a classification of Euro VI and Appellants' vehicle logbook denotes a Euro V classification.**

### **3. Cancellation of tenders**

**3.1 This Board reviewed in detail the evaluation report and the only compliant bidder was exorbitantly well over the budget so that, the Evaluation Committee, quite appropriately had no other option but to recommend the tender for cancellation.**

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

- a) The work plan, as submitted by Appellants contained sufficient details to satisfy the requirements of the tender document and indicates the overall picture of the mode of the execution of works.**
- b) Although, clause 4.2.3 article 1.1(f) is dedicated to the requirements of an electric or LPG powered vehicle which does not define a Euro standard for the engine, article 1.1(c) stipulates that all the RVCs should be of Euro VI classification and Appellants' vehicle logbook shows a Euro V standard, a lower classification.**
- c) The Authority, in such circumstances, had no other option but to cancel the tender.**

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

- i. upholds Appellants' first contention,**
- ii. does not uphold Appellants' second contention,**
- iii. upholds the Contracting Authority's decision in the cancellation of the tender,**
- iv. directs the Authority to issue a new tender and to ensure that, the Euro classification of the vehicles be properly and specifically denoted to avoid any misinterpretation of the relevant clauses,**
- v. in view of the circumstances of this particular appeal, directs that an amount of €2,000, from the deposit paid by Appellants, be reimbursed.**

Dr Anthony Cassar  
Chairman  
*2<sup>nd</sup> July 2020*

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member