



Dr Graziella Cricchiola Legal Representative for Mr Jonathan Zammit stated that the rejection letter gave only one reason for the disqualification but a second one had been included in the letter of reply, and this second one should not be considered.

The Chairman pointed out that it was normal practice for the Board to consider such late inclusion of additional points.

Dr Cricchiola then went on to explain that the Environmental Resources Agency (ERA) licence on one of the vehicles listed in the tender had expired by the closing date of the tender. Expiry was in March 2020 at the height of the COVID pandemic when the VRT testing stations were all shut and thus the vehicle could not be tested and the licences renewed. The vehicles had since been licensed and Appellant's financial offer was the lowest one.

The second grievance arose as the two vehicles were listed under different tables in Appellant's submissions. The tender did not state that both vehicles had to be used concurrently for the collection of waste – there was the possibility of alternate systems for the collection of waste, and therefore it was not clear in the tender that both vehicles should be listed in the same table.

Dr Marco Woods Legal Representative for Gudja Local Council said that the tender literature stated clearly that both vehicles had to be licensed. Appellant had not submitted any proof that they had requested renewal of their licence by ERA. Regarding the second contention it was clear what was requested in the tender document regarding the listing of vehicles and if Appellant had any doubts he should have sought a clarification.

Dr John Gauci Legal Representative for SRF Cleaning Services said that it was normal for the ERA to send a renewal notice one month in advance of the renewal date so Appellant should have received this well before the pandemic struck. No proof had been submitted that the pandemic was the cause of the delay and this point had not even been brought up in the appeal letter. Appellant's offer also fails in respect of the listing of the vehicles under separate tables.

Dr Cricchiola again said that VRT stations were closed from March onwards and this should not militate against her client. The vehicles listed were to be used for alternate collection rounds and the tender was not clear on this point.

The Chairman reminded Appellant that points regarding the clarity of a tender should be dealt with before tendering.

Dr Woods said that no proof had been supplied of any effort on the part of Appellant to renew the ERA licence and no clarification had been sought about the tender's clarity.

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

End of Minutes

## **Decision**

**This Board,**

**having noted this objection filed by Mr Jonathan Zammit (hereinafter referred to as the Appellant) on 29<sup>th</sup> July 2020, refers to the claims made by the same Appellant with regard to the tender of reference GLC-01-2020 listed as case No. 1491 in the records of the Public Contracts Review Board recommended for award by Gudja Local Council (hereinafter referred to as the Contracting Authority).**

**Appearing for the Appellant: Dr Graziella Cricchiola**

**Appearing for the Contracting Authority: Dr Marco Woods**

**Appearing for the Preferred Bidder: Dr John Gauci**

**Whereby, the Appellant contends that:**

- a) One of the vehicles to be deployed in the tender service had its Environmental Resources Agency (ERA) licence ineffective, prior to the submission of his offer. Due to the Covid 19 Pandemic, the process for the renewal of such licence could not be reactivated by the time of the submission of the offer and in this regard, Appellant feels that his offer should not have been rejected due to this unfortunate circumstance.**

- b) From the tender document, it was not clear as to whether both vehicles were to be used concurrently for the collection of the waste or that there was the possibility of using the second vehicle as a ‘Back Up’.**

**This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 14<sup>th</sup> August 2020 and its verbal submissions during the virtual hearing held on 23<sup>rd</sup> September 2020, in that:**

- a) The Authority maintains that, the tender document clearly stated that, both vehicles had to be licensed and in possession of ERA licence. In this regard, Appellant did not provide evidence that, an application for the renewal of ERA licence on one of the vehicles was made.**
- b) The tender document, with special reference to the ‘Questionnaire’, stated clearly that a minimum of 2 vehicles were to be used in the refuse collection.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties opines that, the issues that merit consideration are two-fold namely:**

- a) Unlicensed vehicle**
- b) Whether two vehicles were to be deployed**

**1. Unlicensed Vehicle**

**1.1. The tender document requested that, vehicles to be used for the tendered services, in this case two vehicles, had to be properly**

**authorised by the Environmental Resources Agency (ERA). One of the vehicles to be deployed by Appellant, vehicle HBM 205, did not possess the ERA licence as at the closing date of submission so that, Appellant's offer was deemed as technically non-compliant.**

- 1.2. Appellant maintains that, due to the Covid 19 Pandemic, the process of the renewal of the ERA licence, which involved VRT certification, could not be possibly completed by the closing date of submission of offers.**
- 1.3. It must be acknowledged that, the Evaluation Committee can only adjudicate offers on the documentation submitted by the bidders. It must also be pointed out that, the requested documentation formed an integral part of the technical literature, which latter documentation falls under note 3, where no clarification or rectification is allowed.**
- 1.4. During the hearing, Appellant confirmed that, in his original offer, the problem regarding the renewal of the ERA licence of the vehicle HBM 205 was neither mentioned nor produced evidence of an application for the renewal of the ERA licence for the particular vehicle.**
- 1.5. Appellant had remedies available prior to the submission of his offer. He could have requested a clarification from the Authority or filed a 'Call for Remedy' whereby any problem in renewing the ERA licence could have been presented. In this regard, this Board notes that Appellant failed to avail himself of such remedies.**

**2. Number of Vehicles to be Deployed**

**2.1. With regard to Appellant’s second grievance, this Board would respectfully refer to ‘Questionnaire’ regarding the collection of ‘Mixed Household Waste’, as follows:**

<i>“Collection of Mixed Household waste</i>			
<i>Services shall be collected with either / the following Refuse Collection Vehicle (List vehicles that will be actually used. Minimum of 2 vehicles. Add rows if deemed necessary)</i>			
<i>Reg Number</i>	<i>Vehicle Model</i>	<i>Tonnage</i>	<i>Emission Level (Euro)</i>

**The above section forming part of the questionnaire requests details of the vehicle to be used for the tendered services and specifically dictates that a Minimum of 2 Vehicles is to be deployed for the execution of such services. In this respect, this Board notes that Appellant listed only one vehicle.**

**2.2. Appellant claims that, the tender requirements were confusing in that, it is understood that, although it is stated that a minimum of 2 vehicles**

is to be deployed, one of such vehicles, is to be used as a ‘Back up’. In this respect, this Board would again refer to the questionnaire wherein, the following grid explains what is actually being requested, viz:

<i>“Collection of Mixed Household waste</i>			
<i>Back up-vehicles (List vehicles that can be actually used in case of emergency, with prior approval of the Contracting Authority) (Add rows as required)</i>			
<i>Reg Number</i>	<i>Vehicle Model</i>	<i>Tonnage</i>	<i>Emission Level (Euro)</i>

2.3. The questionnaire clearly segregates the issue of the minimum number of vehicles to be used for the execution of the tendered services and that of a ‘Back Up’ service, in case of emergency situations. In this regard, this Board identifies a clear distinction between what is requested in the normal course of works and what is being stipulated as a ‘Back Up’ service. In this regard, this Board does not uphold Appellant’s second contention.

In conclusion, this Board opines that,

- a) **Appellant failed to provide the necessary ERA licence certificate for vehicle registration no HBM 205, which was to form part of the minimum two vehicles to be deployed on the tendered service.**
- b) **The Covid 19 Pandemic did not preclude Appellant from either requesting a clarification from the Authority or filing a ‘Call for Remedy’ regarding the re-activation of the license of vehicle HBM 205.**
- c) **The tender document was clear in the stipulated minimum requirement of 2 vehicles.**
- d) **The tender dossier also indicated, in a very clear manner, the distinction between the minimum number of vehicles to be deployed and the number of ‘Back Up’ vehicles to cater for emergency circumstances.**

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

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

Dr Anthony Cassar  
Chairman  
*25<sup>th</sup> September 2020*

Mr Lawrence Ancilleri  
Member

Mr Carmel Esposito  
Member