

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1582 – MIP/TQF/GEN/D019/20 – Tender for Skip Collection and Road Cleaning Services in an Environmentally Friendly manner at various Industrial Estates - North**

**17<sup>th</sup> June 2021**

The Board,

Having noted the letter of objection filed by Dr Alessandro Lia on behalf of Lia & Aquilina Advocates acting for and on behalf of WM Environmental Ltd, (hereinafter referred to as the appellant) filed on the 18<sup>th</sup> March 2021;

Having also noted the letter of reply filed by Dr Katrina Borg-Cardona on behalf of Indis Malta Ltd (hereinafter referred to as the Contracting Authority) filed on the 29<sup>th</sup> March 2021;

Having also noted the letter of reply filed by Dr Jonathan Mintoff and Dr Larry Formosa acting for Mr Alistair Bezzina, (hereinafter referred to as the 'Preferred Bidder) on the 22<sup>nd</sup> March 2021;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 15<sup>th</sup> June 2021 hereunder-reproduced.

#### **Minutes**

### **Case 1582–MIP/TQF/GEN/D019/20. Tender for Skip Collection and Road Cleaning Services in an Environmentally Friendly Manner at Various Industrial Estates - North**

The tender was published on the 11<sup>th</sup> November 2020 and the closing date was the 30<sup>th</sup> November 2020. The value of the tender was € 120,500.

On the 18<sup>th</sup> March 2021 WM Environmental Ltd filed an appeal against Indis Malta Ltd as the Contracting Authority objecting to their disqualification on the grounds that their offer was not the cheapest bid.

A deposit of € 602.50 was paid.

There were six (6) bidders.

On 15<sup>th</sup> June 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain 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:

### **Appellant – WM Environmental Ltd**

Dr Alessandro Lia  
Ms Alexia Bongailas

Legal Representative  
Representative

### **Contracting Authority – Indis Malta Ltd**

Dr Chris Vella  
Mr Keith Buttigieg  
Mr Dorian Bugeja

Legal Representative  
Member Evaluation Committee  
Member Evaluation Committee

### **Preferred Bidder – Mr Alistair Bezzina**

Dr Jonathan Mintoff

Legal Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then asked Appellant's representative to make his submissions.

Dr Alessandro Lia Legal Representative for WM Environmental Ltd said that certain details only came to light on receipt of the letter of reply from the Contracting Authority, since the disqualification letter indicated no reason why Appellant's best priced bid was not awarded the contract. Inversely the Authority would give no information until an appeal was filed which goes totally against the principle of transparency.

Dr Chris Vella Legal Representative for Indis Malta Ltd pointed out that there was a correction on the financial offer of the eventual preferred bidder. Appellant was never the best priced bid but merely part of the offers at the evaluation stage. Details of the arithmetic correction made in BoQ items 1.01, 1.02 and 1.03 indicated the changes to get to the final result in the price. The clarification sought to approve these corrections was replied to by the Appellant in time in line with General Rules regulation 17.3.

Dr Lia re-iterated that the Appellant could not understand the reason for the changes as he was given no explanation, and had no option but to appeal the decision since the evaluation committee would not divulge the reason for the reduction in the offer. Appellant was thus put to unnecessary expense and realises that there is no further merit in the case but is relying on the explanation given. Under the circumstances the deposit should be refunded as the appeal could have been avoided.

Dr Vella said that he left the decision on the refund of the deposit at the discretion of the Board.

Dr Jonathan Mintoff Legal Representative for Mr Alistair Bezzina stated that his client had no objection to the refund of the deposit but noted that certain appeals could be avoided if Contracting Authorities provided more information.

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

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 15<sup>th</sup> June 2021.

Having noted the objection filed by WM Environmental Ltd (hereinafter referred to as the Appellant) on 18<sup>th</sup> March 2021, refers to the claims made by the same Appellant with regards to the tender of reference MIP/TQF/GEN/D019/20 listed as case No. 1582 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Alessandro Lia

Appearing for the Contracting Authority: Dr Chris Vella

Appearing for the Preferred Bidder: Dr Jonathan Mintoff

Whereby, the Appellant mainly contends that:

**a) Recommended Bidder not the cheapest**

The financial value of the bid of the preferred bidder on the opening date of the tender was that of €89,410.24. For some reason, the Contracting Authority sent correspondence to the Appellant that their offer was not the cheapest due to the fact that the preferred bidder was that of €50,530.24. Since the financial offer falls under “note 3”, the offer of €89,410.24 should be final.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 29<sup>th</sup> March 2021 and its verbal submission during the virtual hearing held on 15<sup>th</sup> June 2021, in that:

**a) Recommended Bidder not the cheapest**

Following the completion of the Administrative and Technical Evaluation, all offers brought forward by bidder were checked as per standard procedure and arithmetic errors were found in two offers, one of which was that of the preferred bidder. The Financial Offer Confirmation Template was used to rectify the errors as per standard procedure and as directed by DCC. The arithmetic error was brought to the attention of the bidders concerned one of which signified his acceptance via the ePPS portal. Article 17 of the General Rules Governing Tenders which addresses the correction of Arithmetical Errors provided that: *“17.1 Admissable tenders will be checked for arithmetical errors by the Evaluation Committee. Without prejudice to other arithmetical errors which may be identified, , the following errors will be corrected as follows: ..... (b) where there is a discrepancy between a unit*

*price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail;*” Furthermore, Clause 5D(ii) of Section 1 of the tender dossier applies.

This Board also noted the Preferred Bidder’s Reasoned Letter of Reply filed on 22<sup>nd</sup> March 2021 and its verbal submission during the virtual hearing held on 15<sup>th</sup> June 2021, in that:

**a) Recommended Bidder not the cheapest**

- i. Objector is correct in stating that the Opened Tender Details shows the Financial Value of Mr. Bezzina was €89,410.24 however this was not the actual value of the offer submitted. Mr. Bezzina’s offer was in fact €50,530.24. It transpires that the total found in the financial bid form was arithmetically incorrect and the evaluation board corrected the total in accordance with the tender document and this in line with the Tender documentation.
- ii. The Preferred Bidder submits that no rectification took place during the evaluation and therefore there was no breach of the PPR. General Rules Governing Tenders and the Tender Dossier itself (Notes to Clause 5, Section 1) do allow for the clarification / arithmetical correction of the financial offer.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will consider Appellant’s grievance, as follows:

1. That on the opening date of the tender (30<sup>th</sup> November 2020), the Recommended Bidder’s financial value offer amounted to €89,410.24, i.e. higher than that of the Appellant company.
2. Appellant’s company bid was ‘cheapest’ on opening date of tender.
3. Arithmetical errors were found in two offers, one of which was that of the preferred bidder.
4. The correct standard procedures were used to rectify the error, including the clarification request by the Evaluation Committee to Recommended Bidder, who on his part replied in the required time frame for the said clarification.
5. Specific reference in this scenario is to be made to Article 3.3. of the Standard Operating Procedures / Guidelines for Tender Evaluation Committees (TEC) and to Article 17 of the General Rules Governing Tenders. Article 17(3) of the General Rules Governing Tenders states *“The final tender price, will be determined **after** adjusting it on the basis of Clause 17.1”*, whilst Article / Clause 17.1(b) states *“where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, **the unit price as quoted will prevail**”*. (bold emphasis added).
6. The Board also notes that the Appellant company had no other option but to file an appeal in order to ‘really’ understand why its offer, which was the cheapest offer on the opening date of the

tender was not awarded this tender. This due to the fact that the Contracting Authority did not explain the arithmetical issue to the Appellant company. More so when the offer of the Appellant company was fully compliant in all Administrative, Technical and Financial matters.

After considering all the above points, the Board does not uphold the grievance of the Appellant. However, the Board also notes the exceptional circumstances why the Appellant felt that this appeal was the only remedy it could take in order to obtain the information of why its offer was not awarded the tender due to the Contracting Authority not divulging such information (refer to point 6 above).

**In conclusion this Board;**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant, in these exceptional circumstances, to be reimbursed,
- d) Recommends that in future Contracting Authorities should provide the reasons why the tenderer's offer was not the cheapest to avoid unnecessary appeals.

**Mr Kenneth Swain**  
Chairman

**Dr Charles Cassar**  
Member

**Mr Lawrence Ancilleri**  
Member