

PUBLIC CONTRACTS REVIEW BOARD

Case No. 398

MTFLC/T/01/11

Tender for Street Cleaning in Mtarfa

This call was published on the 29th August 2011 with a closing dated of the 16th September 2011. The estimated value amount to €16,000 excluding VAT.

Eight (8) tenderers submitted their offers.

Mr Owen Borg filed an objection on the 6th December 2011 against the decision of the Mtarfa Local Council to recommend award of the tender to Mr Bryden Azzopardi.

The Public Contracts Review Board composed of Mr Joseph Croker, Acting Chairman, and Messrs Carmel Esposito and Paul Mifsud as members, convened a public hearing on the 20th April 2012 to discuss the appeal.

Present during the session:

Owen Borg

Dr Sharon Mizzi	Legal Representative
Mr Owen Borg	Representative
Ms Svetlana Dimech	Representative

Mr Bryden Azzopardi

Mr Bryden Azzopardi	Representative
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Mtarfa Local Council (MLC)

Dr Malcolm Mifsud	Legal Representative
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Evaluation Board

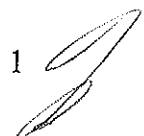
Mr Anton Mifsud	Mayor
Mr Simon Fenech	Deputy Mayor
Ms Josette Micallef	Executive Secretary

After the A/Chairman's brief introduction, the appellant was invited to explain the motives of his objection.

Dr Sharon Mizzi, on behalf of Mr Owen Borg, the appellant, submitted that:-

- i. by letter dated 5th December 2011 the Mtarfa Local Council had informed her client that the award of the tender was recommended to Mr Bryden Azzopardi who had submitted the second most advantageous offer as per notice that had been displayed earlier in the tendering process;



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- ii. that decision communicated by the contracting authority was not sufficiently motivated so as to constitute a proper decision;
- iii. moreover, the reason quoted in the letter of rejection was factually incorrect because according to the schedule of tenders received, the recommended bid, €13,445.70, was not the second cheapest but the third cheapest since there were two other bids that were cheaper, namely, her client's, €8,699, and that of Mr Carmel Mazzitelli, €11,600; and
- iv. in view of the reasons mentioned above the award recommendation ought to be revoked and the tender awarded to her client who submitted the cheapest bid.

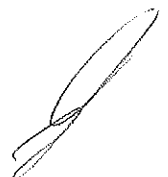
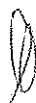
Dr Malcolm Mifsud, on behalf of Mtarfa Local Council, explained that:-

- a. in the course of the tendering process, Mr Carmel Mazzitelli had decided to withdraw his offer and that event was recorded in the evaluation report dated 1st December 2011;
- b. the Specific Conditions of Contract of the tender document specified as follows:

Sweeping will be carried out six day per week, from Monday to Saturday with a fixed work plan as specified in Annex 4 (Annex 1 at page 6); and

Cleaning of all streets falling within the jurisdiction of Mtarfa Local Council twice a week. Emptying of rubbish bins (Annex 2).
- c. in his tender submission the appellant indicated that he would provide the service over two-days-a-week which was in breach of tender conditions whereas the recommended tenderer had indicated that he would provide the service on a six-days-a-week basis, i.e. from Monday to Saturday, as requested in the tender document;
- d. it was correct that in his tender submission the appellant had offered the price of € 8,699 and that the award criterion was the price, however, prior to that the bidder had to satisfy the tender conditions;
- e. from the evaluation of the tenders it resulted that the recommended tenderer had submitted the cheapest compliant offer;
- f. the letter of rejection issued by the contracting authority was sufficiently motivated;
- g. the award of this tender was an item on the agenda of the Council meeting held on the 30th November 2011, which meeting, like all others, was held in public such that the appellant had the opportunity to attend whereas the minutes of the meeting were also displayed on the Council's website; and
- h. the contracting authority had acted correctly and therefore the tender award should be confirmed.

At that point the contracting authority furnished the appellant with a copy of the evaluation report dated 1st December 2011 (but in respect of the meeting held on the 28th November 2011) drawn up by a sub-committee of the local council, and of the Council minutes of the meeting held on 30th November 2011.



The PCRB observed that:-

- i. the evaluation report dated 1st December 2011 stated that the board met with all the bidders, however, although the Board was convinced that the Council acted in good faith, the evaluation board was not only not obliged to meet/contract the bidders during the tendering process but, strictly speaking, that was not allowed by regulations; and
- ii. according to regulations the letter dated 5th December 2011 sent to the appellant should have included the actual reason for disqualification, i.e. that he submitted a two-days-a-week work plan instead of the six-days-a-week work plan requested, so that the appellant would be adequately informed to decide if there were sufficient grounds to lodge an appeal.
- iii. it would be appropriate for the administrative staff of all local councils be given refresher courses so that they may remain abreast with the regulations applicable to public procurement.

Dr Malcolm Mifsud insisted that from the paperwork produced it was evident that the adjudicating board carried out its evaluation in a diligent manner and that the Local Council took its decision at a meeting held in public which in itself was a very transparent forum.

This Board:

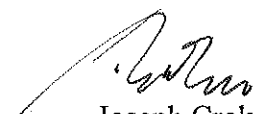
- having noted that the appellants in terms of their letter of objection dated 5 December 2011 and also through their verbal submissions presented during the sitting held on the 20th April 2012 objected to the decision taken by the contracting authority;
- having noted the appellant's representative's claim that by letter dated 5th December 2011 the Mtarfa Local Council had informed her client that the award of the tender was recommended to Mr Bryden Azzopardi who had submitted the second most advantageous offer as per notice that had been displayed earlier in the tendering process; that the decision communicated by the contracting authority was not sufficiently motivated so as to constitute a proper decision; that, moreover, the reason quoted in the letter of rejection was factually incorrect because according to the schedule of tenders received, the recommended bid, €13,445.70, was not the second cheapest but the third cheapest since there were two other bids that were cheaper, namely, her client's, €8,699, and that of Mr Carmel Mazzitelli, €11,600; and in view of the reasons mentioned above the award recommendation ought to be revoked and the tender awarded to her client who submitted the cheapest bid;
- having noted the contracting authority's representative statement that in the course of the tendering process, Mr Carmel Mazzitelli had decided to withdraw his offer and that event was recorded in the evaluation report dated 1st December 2011; that the Specific Conditions of Contract of the tender document specified that "*Sweeping will be carried out six day per week, from Monday to Saturday with a fixed work plan as specified in Annex 4 (Annex 1 at page 6); and*

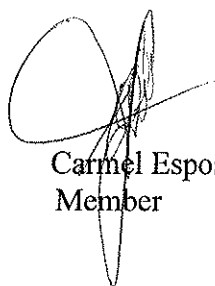
Cleaning of all streets falling within the jurisdiction of Mtarfa Local Council twice a week. Emptying of rubbish bins (Annex 2)." that in his tender submission the appellant indicated that he would provide the service over two-days-a-week which was in breach of tender conditions whereas the recommended tenderer had indicated that he would provide the service on a six-days-a-week basis, i.e. from Monday to Saturday, as requested in the tender document; that it was correct that in his tender submission the appellant had offered the price of €8,699 and that the award criterion was the price, however, prior to that the bidder had to satisfy the tender conditions; from the evaluation of the tenders it resulted that the recommended tenderer had submitted the cheapest compliant offer; the letter of rejection issued by the contracting authority was sufficiently motivated; that the award of this tender was an item on the agenda of the Council meeting held on the 30th November 2011, which meeting, like all others, was held in public such that the appellant had the opportunity to attend whereas the minutes of the meeting were also displayed on the Council's website; and the contracting authority had acted correctly and therefore the tender award should be confirmed.


reached the following conclusions:

1. The Board notes that though the tender had to be judged on the cheapest offer, the successful tenderer had to concurrently comply with all the conditions stipulated in the tender, this in the Board's opinion the appellant did not do as per offer submitted.
2. The decision of refusal as submitted by the Contracting Authority to the appellant did not give sufficient information so that he would have been in an informed position to decide whether or not his case merited an appeal.

In view of the above, the Board finds against the appellant; however, seeing that he was not afforded enough information to enable him to assess properly the chances of his appeal having a positive outcome, the Board is of the opinion that the deposit paid should be reimbursed.


Joseph Croker
Acting Chairman


Carmel Esposito
Member


Paul Mifsud
Member

26th April 2012