

PUBLIC CONTRACTS REVIEW BOARD

Case No. 410

QLC/CBR/19/97

Tender for the Collection of Bulky Refuse – Qormi Local Council

This call for tenders was published in the Government Gazette on the 2nd December 2011. The closing date for this call – which attracted no fewer than five (5) tenderers - with an estimated budget of € 35,592 (three year contract) was the 30th December 2011.

Mr Owen Borg filed an objection on the 21st February 2012 against the decision of the Qormi Local Council to reject his offer, which was the cheapest, and to recommend tender award in favour of Mr Ronald Debono.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmelo Esposito and Mr Paul Mifsud as members convened a public hearing on Wednesday 16th May, 2012 to discuss this objection.

Present for the hearing:

Mr Owen Borg

Dr Jean Franco Gauci	Legal Representative
Mr Owen Borg	Representative
Mr Malcolm Dimech	Representative
Ms Svetlana Dimech	Representative

Mr Ronald Debono

Mr Ronald Debono

Qormi Local Council

Dr Stefan Zrinzo Azzopardi Legal Representative

Evaluation Board

Mr Jesmond Aquilina	Chairperson
Mr Kenneth Busuttil	Member
Mr Dennis Zammit	Member
Mr John Farrugia	Member



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

Dr Jean Franco Gauci, legal representative of Mr Owen Bonnici, the appellant, submitted that:-

- i. by email dated 16th February 2012, the Qormi Local Council had informed his client that the tender was awarded to Mr Ronald Debono;
- ii. the tender document requested offers for a maximum 2 items for each collection, namely the same charge would be payable for collecting 1 to 2 items from each client;
- iii. albeit from the schedule of tenders received it emerged that his client submitted the cheapest offer, €2.20, out of the 4 bidders who tendered for the collection of up to 2 items per call as requested in the tender document, yet there was a 5th bidder, Mr Ronald Debono, who offered €3.25 for the collection of up to 4 items per call;
- iv. given this scenario it was difficult to conclude which offer was the most advantageous in the absence of statistics because if most collections entailed the collection of 1 or 2 items then his client's offer was the cheapest (€2.20 against €3.25) but if most of the collections entailed the collection of 4 items then the preferred bidder's offer was the cheapest (€3.25 against €4.40);
- v. be that as it may, the offer made by the recommended bidder was irregular because the tender called for offers for collections of up to 2 and not 4 items;
- vi. whilst, according to the minutes of Council meeting held on 14th February 2012 it was recommended that the tender in question be awarded to Mr Debono because it was the most advantageous offer, yet no justification was give to back that conclusion;
- vii. albeit the same minutes stated that the preferred bidder was asked to explain his bid and that he had indicated that he would charge €3.25 per collection of up to 4 items and €2.00 per collection for up to 2 items, yet, the final recommendation was for the contract to be awarded to Mr Debono at the rate €3.20 per collection of up to 4 items;
- viii. one could not help noting that the price offered by the preferred bidder of €2.00 per collection of up to 2 items was made after the closing date of the tender, namely when he was aware of prices offered by the other bidders, and the price of €2.00 per collection of up to 2 items did not feature in the award recommendation;
- ix. his client was not given the same opportunity given to the recommended tenderer, namely to quote a price for a collection of up to 4 items in which case he would have likewise undercut the preferred bid of €3.25;

and



- x. the preferred bid was an irregular one and that it was equally irregular to allow a bidder to make another offer after the prices of the other bidders had been divulged as that defeated the scope for issuing a call for tenders and could even give rise to abuse.

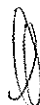
Dr Stefan Zrinzo Azzopardi, legal representative of Qormi Local Council, the contracting authority, submitted that the Qormi Local Council arrived at its conclusion on the basis of price, namely that, in the case of a collection involving 4 items, the recommended price was €3.25 whereas the appellant's price would amount to €4.40 (€2.20 x 2), and, following a clarification, in the case of a collection involving 2 items the recommended price was €2.00 whereas the appellant's price was €2.20. He added that the Council had published the schedule of tenders received and it was evident to one and all that there were bidders who offered for 2 items and for 4 items per collection.

The Public Contracts Review Board noted that:-

- a. the tender called for offers to collect bulky refuse of up to 2 items per collection and, as a consequence, bidders had to quote prices for collections of up to 2 items;
 - b. it was not regular nor transparent for one to allow one bidder to submit another price after having published the prices of the other bidders and worse still, not giving the same opportunity to the other bidders;
 - c. albeit during the interview the current bulky refuse contractor had offered to collect 5 items per collection for the rate of €3 per collection, yet, this verbal offer apparently was discarded by the Council;
 - d. in its deliberations, the adjudicating board did not compare prices like-with-like because one bid was for collections of up to 4 items while all the other bids were for collections of up to 2 items;
- and
- e. the Council might have been conditioned by the fact that the recommended tenderer was the current domestic refuse collection contractor.

Mr Jesmond Aquilina, deputy mayor (mayor at the material time), remarked that:-

- i. the tenders were opened in public, the results made public, the interviews with the bidders were also carried out in public and the Council minutes were in the public domain and, as a result, the process was a transparent one;
- ii. apart from considering the paperwork presented by bidders, the Council interviewed each bidder to be further informed about the bids submitted and about the service proposed;
- iii. the Council was entitled to take into account the performance of bidders and the recommended bidder was already providing a very good service regarding domestic waste collection compared to past contractors;



and

- iv. the current bulky refuse contractor has rendered a very good service but this time he did not submit a competitive offer at €3.00 per 2 item collection.

Dr Gauci reiterated that the recommended bid should have been rejected outright from the start as it was amply clear that it was not in line with published tender requirements and that the tender should have been awarded to his client who made the cheapest offer according to tender specifications.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 21st February 2012 and also through their verbal submissions presented during the hearing held on the 16th May, 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant's representative's claims and observations, particularly, the references made to the fact that (a) by email dated 16th February 2012, the Qormi Local Council had informed the appellant that the tender was awarded to Mr Ronald Debono, (b) the tender document requested offers for a maximum 2 items for each collection, namely the same charge would be payable for collecting 1 to 2 items from each client, (c) albeit from the schedule of tenders received it emerged that the appellant submitted the cheapest offer, €2.20, out of the 4 bidders who tendered for the collection of up to 2 items per call as requested in the tender document, yet there was a 5th bidder, Mr Ronald Debono, who offered €3.25 for the collection of up to 4 items per call, (d) given this scenario it was difficult to conclude which offer was the most advantageous in the absence of statistics because if most collections entailed the collection of 1 or 2 items then the appellant's offer was the cheapest (€2.20 against €3.25) but if most of the collections entailed the collection of 4 items then the preferred bidder's offer was the cheapest (€3.25 against €4.40), (e) be that as it may, the offer made by the recommended bidder was irregular because the tender called for offers for collections of up to 2 and not 4 items, (f) whilst, according to the minutes of Council meeting held on 14th February 2012 it was recommended that the tender in question be awarded to Mr Debono because it was the most advantageous offer, yet no justification was given to back that conclusion, (g) albeit the same minutes stated that the preferred bidder was asked to explain his bid and that he had indicated that he would charge €3.25 per collection of up to 4 items and €2.00 per collection for up to 2 items, yet, the final recommendation was for the contract to be awarded to Mr Debono at the rate €3.20 per collection of up to 4 items, (h) one could not help noting that the price offered by the preferred bidder of €2.00 per collection of up to 2 items was made after the closing date of the tender, namely when he was aware of prices offered by the other bidders, and the price of €2.00 per collection of up to 2 items did not feature in the award recommendation, (i) the appellant was not given the same opportunity given to the recommended tenderer, namely to quote a price for a collection of up to 4 items in which case he would have likewise undercut the preferred bid of €3.25 and (j) the preferred bid was an irregular one and that it was equally irregular to allow a

bidder to make another offer after the prices of the other bidders had been divulged as that defeated the scope for issuing a call for tenders and could even give rise to abuse;

- having considered the contracting authority's representatives' reference to the fact that (a) the Qormi Local Council arrived at its conclusion on the basis of price, namely that, in the case of a collection involving 4 items, the recommended price was €3.25 whereas the appellant's price would amount to €4.40 (€2.20 x 2), (b) following a clarification, in the case of a collection involving up to 2 items the recommended price was €2.00 whereas the appellant's price was €2.20 and (c) the Council had published the schedule of tenders received and it was evident to one and all that there were bidders who offered for 2 items and for 4 items per collection,

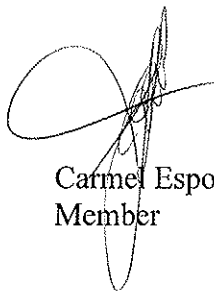
reached the following conclusions, namely:

1. The Public Contracts Review Board opines that the other tenderers were not given the same opportunity given to the recommended tenderer, namely to quote a price for a collection of up to 4 items in which case they would have, likewise, had the opportunity to undercut the preferred bid.
2. The Public Contracts Review Board considers the offer made by the recommended bidder as irregular because the tender called for offers for collections of up to 2 and not 4 items.
3. The Public Contracts Review Board also retains that it was equally irregular for one to allow a bidder to make another offer after the prices of the other bidders had been divulged as that defeated the scope for issuing a call for tenders.

In view of the above this Board finds in favour of the appellant and, apart from being re-integrated in the evaluation process with the offer submitted by the recommended tenderer being regarded as non-compliant, this Board recommends that the said appellant be reimbursed with the deposit paid to file the appeal.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Paul Mifsud
Member

28th May 2012