

PUBLIC CONTRACTS REVIEW BOARD

Case No. 468

KLR/16/2009

Tender for the Collection of Mixed Household Waste, Victoria, Gozo

This call for tenders was published in the Government Gazette on the 22nd October 2010. The closing date for this call with an estimated budget of € 287,265.44 was the 19th November 2010.

Two (2) tenderers submitted their offers.

Koperattiva Ghawdxija Indafa Pubblika filed an objection on the 7th August 2012 against the decision of Kunsill Lokali Rabat (Ghawdex) to disqualify its offer and to recommend the cancellation of the tender.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Paul Mifsud as members convened a public hearing on Tuesday, 16th October 2012 to discuss this objection.

Present for the hearing were:

Koperattiva Ghawdxija Indafa Pubblika

Dr Jean Paul Grech	Legal Representative
Mr Marcel Bonnici	Representative
Ms Laurie Zammit	Representative

Kunsill Lokali Rabat (Ghawdex)

Dr Georgianne Schemri	Legal Representative
Ms Miriam Attard	Technical Board Member

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

Dr Jean Paul Grech, legal representative of the Victoria Local Council (Ghawdex), the appellant, made the following submissions:

- i. the Victoria Local Council informed his client of its conclusion which read as follows:

“in view of the fact that the projected funds available based on the projected allocated budget are not adequate to sustain Victoria Local Council's obligations for all the years that are covered by this offer, were the Council to enter into a contract as per offer by the most economical and advantageous tender, it is being recommended the Victoria Local Council refuse all offers”;

- ii. this contract was to run for 4 years the estimate was arrived at by taking into account the expenditure for 2008/9 resulting in a total of €287,265;
- iii. the offer made by his client was not an annual flat rate applicable for the 4 year period but it was based on a rising scale over the four period as follows:

Year 1	€ 58,032
Year 2	€ 61,984
Year 3	€ 66,976
Year 4	€ 73,840

for a total of € 260,832;

- iv. after tender opening stage and after examining the financial offers received, the evaluation board concluded that once the offer €73,840 in respect of Year 4 was over the €71,816 annual budget then the offer had to be refused;
- v. if one were to consider the budget against the price offered over the 4 year contract period it would emerge that the budget amounted to €287,265.44, whereas his client's offer amounted to €260,832 which was about €26,000 below the 4-year budget allocation;
- vi. the conclusion of the evaluation board itself had taken into account the whole 4-year contract period and not each year on its own;
- vii. if one were to work out the average per annum of his client's 4-year offer it would amount to about €65,000 per annum or about €6,000 less than the Council's annual budget;
- viii. local councils were allocated funds on an annual basis and any unexpended balance was carried over to the subsequent year and, as a result, for the 1st year of the contract the difference between the Council' budget of €71,816 and his client's offer of €58,032 would be carried forward to the next year and so

forth and these 'surpluses' were more than sufficient to make good for the only excess that would materialise in Year 4 of the contract;

and

- ix. the line of reasoning adopted by the Council seemed to imply that it would have accepted a bid which offered a flat rate of €71,000 for each year of the 4-year contract period which meant that the Council would have ended up forking out an additional €26,000 of taxpayers' money, unnecessarily.

Dr Georgianne Schembri, legal representative of the Victoria Local Council, submitted that:-

- a. the Council was not questioning, in any way, the technical competence of the appellant;
- b. the Council allocated funds to its activities on an annual basis and, therefore, once the offer made by the appellant for Year 4 was in excess of the annual amount budgeted then the Council felt that it had to reject the offer;
- c. it was not the case that unspent balances from a budget allocation was, automatically, carried forward to the subsequent year;

and

- d. the only problem with the appellant's offer was that the offer made for the 4th year of the contract period was over the Council's budget, otherwise the Council was satisfied with the level of service previously rendered by the appellant besides the fact that, by cancelling the tender, the Council would have to re-issue the tender.

Ms Miriam Attard, executive secretary of the Victoria Local Council and technical board member, confirmed that there were instances when it was possible to carry forward unspent budget allocations to the subsequent year.

Dr Schembri explained that the Council had asked the Local Councils Department whether the Council could accept the appellant's offer only in respect of the first 3 years, which were within the annual budget, and/or if it could enter into negotiations with the appellant in respect of the 4th year of the contract. She added that a similar request was made to the Contracts Department, however, the reply received was that the Council (a) had to adhere to the tender conditions and (b) in order to enter into negotiations with the bidders the procedure had to be a negotiated tender procedure in the first place.

Mr Paul Mifsud, a Public Contracts Review Board member, observed that the Council had a total allocation of €168,583 (page 2 of the tender document) for waste management, 42.6% of which, or about €71,816, were earmarked for refuse collection, which was the subject of this contract.

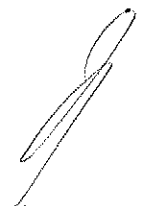


The Chairman Public Contracts Review Board remarked that the Council's decision was not economically sound in the sense that it refused the appellant's offer which was €26,000 below the Council's estimate for the 4-year contract period while, at the same time, it would have accepted an offer which was equivalent to the Council's annual budgets for the 4-year contract period thereby costing the taxpayer some €26,000 more over 4 year contract period.

At this point the hearing came to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 21st August 2012 and also through their verbal submissions presented during the hearing held on the 16th October 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) the Victoria Local Council informed the appellant of its conclusion which read "*in view of the fact that the projected funds available based on the projected allocated budget are not adequate to sustain Victoria Local Council's obligations for all the years that are covered by this offer, were the Council to enter into a contract as per offer by the most economical and advantageous tender, it is being recommended the Victoria Local Council refuse all offers*", (b) this contract was to run for 4 years - the estimate was arrived at by taking into account the expenditure for 2008/9 resulting in a total of €287,265, (c) the offer made by the appellant was not an annual flat rate applicable for the 4 year period but it was based on a rising scale over the four year period as follows – Year 1 (€ 58,032) - Year 2 (€ 61,984) - Year 3 (€ 66,976) - Year 4 (€ 73,840) ... for a total of € 260,832, (d) after the tender opening stage and after examining the financial offers received, the evaluation board concluded that once the offer of €73,840 in respect of Year 4 was over the €71,816 annual budget then the offer had to be refused, (e) if one were to consider the budget against the price offered over the 4 year contract period it would emerge that the budget amounted to €287,265.44, whereas the appellant's offer amounted to €260,832 which was about €26,000 below the 4-year budget allocation, (f) the conclusion of the evaluation board itself had taken into account the whole 4-year contract period and not each year on its own, (g) if one were to work out the average per annum of the appellant's 4-year offer it would amount to about €65,000 per annum or about €6,000 less than the Council's annual budget, (h) local councils were allocated funds on an annual basis and any unexpended balance was carried over to the subsequent year and, as a result, for the 1st year of the contract the difference between the Council' budget of €71,816 and the appellant's offer of €58,032 would be carried forward to the next year and so forth and these 'surpluses' were more than sufficient to make good for the only excess that would materialise in Year 4 of the contract and (i) the line of reasoning adopted by the Council seemed to imply that it would have accepted a bid which offered a flat rate of €71,000 for each year of the 4-year contract period which meant that the Council would have ended up forking out an additional €26,000 of taxpayers' money, unnecessarily;
- having considered the contracting authority's representative's reference to the fact that (a) the Council was not questioning, in any way, the technical competence of the appellant, (b) the Council allocated funds to its activities on an annual basis and,

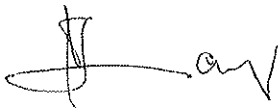


therefore, once the offer made by the appellant for Year 4 was in excess of the annual amount budgeted then the Council felt that it had to reject the offer, (c) it was not the case that unspent balances from a budget allocation was, automatically, carried forward to the subsequent year, (d) the only problem with the appellant's offer was that the offer made for the 4th year of the contract period was over the Council's budget, otherwise the Council was satisfied with the level of service previously rendered by the appellant besides the fact that, by cancelling the tender, the Council would have to re-issue the tender, (e) the Victoria Local Council and technical board member, confirmed that there were instances when it was possible to carry forward unspent budget allocations to the subsequent year, (f) the Council had asked the Local Councils Department whether the Council could accept the appellant's offer only in respect of the first 3 years, which were within the annual budget, and/or if it could enter into negotiations with the appellant in respect of the 4th year of the contract and (g) albeit a similar request was made to the Contracts Department, yet, the reply received was that (1) the Council had to adhere to the tender conditions and (2) in order to enter into negotiations with the bidders the procedure had to be a negotiated tender procedure in the first place,

reached the following conclusions, namely:

1. The Public Contracts Review Board recognizes the fact that the evaluation committee had made a gross error of judgment in its assessment and overall evaluation of this particular tender.
2. The Public Contracts Review Board establishes that the Council's decision was not economically sound in the sense that it refused the appellant's offer which was €26,000 below the Council's estimate for the 4-year contract period while, at the same time, it would have accepted an offer which was equivalent to the Council's annual budgets for the 4-year contract period thereby costing the taxpayer some €26,000 more over 4 year contract period.
3. This Board cannot but argue against the evaluation committee's statement, namely that the only problem with the appellant's offer was that the offer made for the 4th year of the contract period was over the Council's budget and that, otherwise, the Council was satisfied with the level of service previously rendered by the appellant besides the fact that, by cancelling the tender, the Council would have to re-issue the tender. Undoubtedly, administrative common sense should have prevailed.

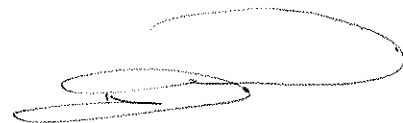
In view of the above, this Board finds in favour of the appellant and recommends that, apart from being reintegrated in the tender evaluation process, the deposit paid by the same appellant for the appeal to be lodged should be reimbursed.



Alfred R Triganza
Chairman



Joseph Croker
Member



Paul Mifsud
Member

29 October 2012