

PUBLIC CONTRACTS REVIEW BOARD

Case No. 969 – MLC 02/2016: Tender for the Cleaning and Maintenance of Parks, Gardens, Pots and Soft Areas in an Environmentally Friendly Manner.

The Tender was published on the 19th January 2016. The closing date was on the 22nd February 2016. The estimated value of the Tender was €80,000 (Exclusive of VAT)

Seven (7) offers had been submitted for this Tender.

On the 27th April 2016 WM Environmental Limited filed an Objection against the decision taken by the Contracting Authority to award Lot1 to Mr Charles Mifsud, Lot 2 to Waste Collection Limited and Lot 3 to Mr Charles Mifsud.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Thursday the 25th August 2016 to discuss the Objection.

Present for the hearing were:

WM Environmental Limited:

Mr Wilson Mifsud	Representative
Mr Robert Napier	Representative
Dr John Bonello	Legal Representative

Kunsill Lokali Mdina:

Mr Peter Sant Manduca	Mayor
Mr Mark Mallia	Executive Secretary
Dr Stefano Filletti	Legal Representative

The Chairman made a brief introduction and invited the Appellant's representative to make his submissions.

Dr John Bonello on behalf of WM Environmental Ltd explained that the Objection was based on two grievances:-

- i) That the Contracting Authority, contrary to this Board's numerous decisions explaining the correct procedure, failed to give any relevant detail on the adjudication as required by law. To obtain any sort of reply the Appellant had to go through a lot of hassle;
- ii) That the Contracting Authority had awarded the Tender in three separate lots when the Tender clearly stated that only one award would be made.

Mr Mark Mallia, the Executive Secretary, ID No 230167M, testifying under oath said that the Tender had to be divided into three lots. Clause 10.4 of the Instructions to Tenderers clearly explained this.

Dr John Bonello on behalf of WM Environmental Ltd at this stage declared that his client would thus withdraw the Objection and requested a refund of the deposit.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 27 April 2016 and also through their verbal submissions during the Public Hearing held on 25 August 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) **WM Environmental Ltd contends that the Contracting Authority had failed to give details on the Adjudication of the Tender;**
- b) **The Appellant maintains that although the Tender stated that only**

one award will be made, the Authority awarded the Tender in three lots.

Having considered the Contracting Authority’s “*Letter of Reply*” dated 12 May 2016 and also their verbal submissions during the Public Hearing held on 25 August 2016, in that:

a) The Contracting Authority maintains that all necessary details regarding the Adjudication of the Tender was communicated to the Appellant;

b) Kunsill Lokali Mdina also point out the Clause 10.4 of the “*Instructions to Tenderers*” clearly explained that the Tender had to be divided into three lots.

Since the objection had been withdrawn, this Board would no longer be taking any cognizance of the case and recommends that the deposit paid by WM Environmental is to be fully refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

2 September 2016