

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1138 – GLC 21/SCS001 – Tender for the Environmentally Friendly Street Cleaning Services in the Locality of Gzira**

#### **Remedies before Closing Date of a Call for Competition**

The publication date of the call for tenders was the 16<sup>th</sup> January 2018 whilst the closing date of the call for tenders was currently extended due to this pre-contractual objection. The estimated value of the tender (exclusive of VAT) was € 510,000.

Galea Cleaning Solutions JV filed a pre-contractual objection on the 5<sup>th</sup> February 2018 against the Contracting Authority that their Call for Competition was onerous on the tenderer on several grounds.

On 6<sup>th</sup> March 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellant – Galea Cleaning Solutions JV**

Dr Adrian Mallia	Legal Representative
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#### **Contracting Authority – Gzira Local Council**

Dr Keith Borg	Legal Representative
Mr Anthony Attard	Representative

The Chairman of the Board, Dr Anthony Cassar, in a short introduction invited the parties to make their submissions.

Dr Adrian Mallia, Legal Representative of Galea Cleaning Solutions JV said that Appellant was objecting to the requirements of the tender which they felt were not proportional to the tender requirements. The imposition of onerous requirements in a tender document limits competition. As examples Dr Mallia mentioned the requirement to employ disabled people, the granting of fringe benefits and having a collective agreement as conditions that were not in the control of the Appellant.

At this stage he tabled several documents covering matters like the Disabled Employment provisions, regulations by the MCCA regarding the registration of organisations, Equal Opportunities and Equality Mark to amplify his point that these provisions were very onerous on, and in some instances did not apply to, small businesses.

The Chairman of the Board pointed out that tender specifications had to be attainable and reasonable and that there was not much point in setting unattainable parameters. In his view the Local Council had acted correctly but had set too high standards. Specifications must be reasonable to allow competition.

Dr Keith Borg, Legal Representative for the Gzira Local Council said that his client had set rigorous specifications to lift standards and improve the environment in the district. He accepted that some of the clauses were onerous but they were not impossible to perform.

Mr Anthony Attard, Representative of the Gzira Local Council, re-iterated that the Council was entitled to set standards to ensure a high level of service.

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

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**This Board,**

**Having noted this Call for Remedies filed prior to the closing date of call for competition by Galea Cleaning Solutions JV on 5 February 2018, refers to the contentions made by the same Appellant with regards to the Tender of Reference GLC 21/SCS 001 listed as Case No 1138 in the records of the Public Contracts Review Board, issued by Kunsill Lokali Gzira, (hereinafter referred to as the Contracting Authority).**

**Appearing for the Appellant: Dr Adrian Mallia**

**Appearing for the Contracting Authority: Dr Keith Borg.**

**Wherein the Appellant is contending that,**

- a) **His concerns refer to the dictated requisites, as stipulated in the tender dossier, which are considered to be, too onerous for Bidders to participate and in this regard, Galea Cleaning Solutions JV maintain that the principle of proportionality should be respected in this particular tender.**

**This Board also considered the Contracting Authority's "*Reasoned Letter of Reply*" dated 19 February 2018 and its verbal submissions during the Public Hearing held on 6 March 2018, in that:**

- a) **Kunsill Lokali Gzira contends that the requirements, as imposed in the tender document, are attainable and are intended to ensure professional execution of the tendered works, taking into consideration the level of training of personnel and knowledge of health and safety by the same.**

**This Board has also taken note of the documents submitted by Galea Cleaning Solutions JV which consisted of various directives and regulations relating to the stipulated requirements of the Tender Document.**

**This Board after having examined the relevant documentation relating to this case and heard submissions made by the interested parties, opines that the issue to be considered, is the level of standards requested in relation to the services being tendered for.**

**First and foremost, this Board would assert that the Contracting Authority has the right to dictate conditions to ensure that the successful economic operator has the ability and requisites to carry out the services or works in accordance with the level of standards which so it desires. In setting these standards and conditions, one must bear in mind that the Local Council must adhere to the directives and guidelines issued by the European Union with regards to the drafting of these conditions and which should:**

- Be precise in the way it describes the requirements;**
- Be easily understood by the prospective bidders;**

- **Have, clearly defined, achievable and measurable objectives;**
- **Must be in such a way so as not to limit free competition.**

**This Board opines that, in this particular case, Kunsill Lokali Gzira has abided by the first three basic guidelines but, by imposing the specific level of standards, as so stipulated in the tender dossier, the same Local Council has limited substantially the number of bidders who can submit offers. In this regard, this Board would justifiably point out that, prior to the imposition of such standards; the Contracting Authority should have assessed the very nature of the service being requested so that the principle of relativity should come into play. In other words, although the service of street cleaning is of the utmost importance for the health and well-being of the public at large, one must be reasonable and proportionate to acknowledge the fact that such a service does not require skilled manpower with specialised training or certifications, but the same must be aware of the importance of hygiene which, in the end, is to their benefit as well.**

**On the other hand, the economic operator must provide assurances that he will pay his employees the stipulated minimum wage and provide his**

**workforce with the tools and equipment for safe execution of the services to be provided. In this regard, this Board opines that the principles of proportionality and relativity should apply in stipulating conditions for this particular tender. By doing so, this Board is not implying that such conditions should not be implemented in other tenders, but, in this particular case, this Board opines that the dictated conditions are too onerous and unreasonable for the bidders to adopt in order to compete. At the same instance, this Board was not presented with credible evidence to justify the inclusion of such excessive conditions for the execution of the type of services being tendered for.**

**In view of the above, this Board recommends that:**

- i) the requirements with regards to reference to ISO 9001.2015, ISO 14001.2015 and the certification of OHSAS 18001 are to be completely excluded from the standards requested in the Tender Document;**
  
- ii) the conditions related to fringe benefits and collective agreement in place are to be completely excluded from the conditions;**

**iii) the requisite to meet the requirements for the employment of disable people should not be applicable in this type of work and therefore should also be excluded;**

**iv) the economic operator is to confirm by way of a declaration that:**

- all employees are aware of the importance of cleanliness and hygiene in the execution of their duties;**
- equal opportunities are available within his labour force;**

**v) such rectifications to the tender dossier should be affected through a clarification note so as to avoid unnecessary delay.**

Dr Anthony J Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member

*13<sup>th</sup> March 2018*