

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1971 – QLLC/08/2023 – Tender for the Collection of Bulky Refuse in an Environmentally Friendly Manner**

**2<sup>nd</sup> April 2024**

The Board,

Having noted the letter of objection filed by Dr Frank Anthony Tabone on behalf of Azzopardi Borg & Associates Advocates acting for and on behalf of Sultech & Co, (hereinafter referred to as the appellant) filed on the 9<sup>th</sup> February 2024;

Having also noted the letter of reply filed by Dr Larry Formosa on behalf of Cosyra Legal acting for Qala Local Council (hereinafter referred to as the Contracting Authority) filed on the 13<sup>th</sup> February 2024;

Having also noted the letter of reply filed by Dr Daniel Calleja on behalf of Carmelo Galea & Associates Advocates acting for MJ Trading Limited (hereinafter referred to as the Preferred Bidder) filed on the 15<sup>th</sup> February 2024;

Having heard and evaluated the testimony of the witness Mr William Sultana (Member of the Evaluation Committee) as summoned by Dr Frank Anthony Tabone acting for Sultech & Co;

Having heard and evaluated the testimony of the witness Mr Daniel Caruana (Representative of Transport Malta) as summoned by Dr Frank Anthony Tabone acting for Sultech & Co;

Having heard and evaluated the testimony of the witness Mr Jonathan Henwood (Representative of Environment and Resources Authority) as summoned by Dr Frank Anthony Tabone acting for Sultech & Co;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 5<sup>th</sup> March 2024 hereunder-reproduced.

#### **Minutes**

#### **Case 1971 – QLLC/08/2023 – Tender for the Collection of Bulky Refuse in an Environmentally Friendly Manner.**

The tender was issued in on the 13<sup>th</sup> October 2023 and the closing date was the 7<sup>th</sup> November 2023

The estimated value of this tender, excluding VAT, was € 24,500.

On the 9<sup>th</sup> February 2024 Sultech & Co filed an appeal against the Qala Local Council objecting to their disqualification on the grounds that their offer was not the cheapest bid.

A deposit of € 400 was paid.

There were three bids.

On the 5<sup>th</sup> March 2024 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Sultech & Co**

Dr Frank Anthony Tabone	Legal Representative
Mr Noel Sultana	Representative

**Contracting Authority – Qala Local Council**

Dr Larry Formosa	Legal Representative
Mr William Sultana	Evaluator
Mr Mario Cauchi	Evaluator
Ms Heidi Grech	Representative

**Preferred Bidder – MJ Trading Ltd**

Dr Daniel Calleja	Legal Representative
Mr Ryan Cefai Mercieca	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions noting that the point of the appeal was clear from submissions made.

Dr Frank Tabone Legal Representative for the Appellant requested witnesses be heard.

Mr William Sultana (229699M) called to testify by the Appellant stated on oath that the preferred bidder was MJ Trading and two log books for vehicles ECM 602 and HCC 753 had been submitted showing Malta Recycle and Waste Collection Ltd as owners. Upon clarification the bidder had produced a Lease Agreement on these vehicles.

Mr Daniel Caruana (41279M) called to testify by the Appellant stated on oath that the vehicles referred to were properly registered, ECM in June 2022 and HCC in September 2021, licensed to carry goods and insured – they are however not licensed for hire as a special permit and different licence plates were required for that.

Mr Jonathan Henwood (247282M) called to testify by the Appellant stated on oath that the permits of both vehicles under discussion had permits valid for carrying various types of waste.

This concluded the testimonies.

Dr Daniel Calleja Legal Representative for MJ Trading Ltd said that the preferred bidder had a lease agreement and all the necessary licences. Appellant alleged that this was a case of

sub-contracting but it was not so as there was a valid lease agreement. The preferred bidder was complaint *in toto*. The appeal should be refused.

Dr Larry Formosa representing the Contracting Authority said that the Local Council had raised various queries and the preferred bidder had confirmed that he was leasing the vehicles. The matter had been properly investigated and the Authority was satisfied with the outcome. The appeal was very vague but the evaluation had been correctly carried out.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

---

**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 5<sup>th</sup> March 2024.

Having noted the objection filed by Sultech & Co (hereinafter referred to as the Appellant) on 9<sup>th</sup> February 2024, refers to the claims made by the same Appellant with regard to the tender of reference QLLC/08/2023 listed as case No. 1971 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Frank Anthony Tabone

Appearing for the Contracting Authority: Dr Larry Formosa

Appearing for the Preferred Bidder: Dr Daniel Calleja

Whereby, the Appellant contends that:

- a) According to the requirements outlined in the Tender Dossier and the related documentation, bidders were required to provide/have a main vehicle and a backup vehicle to carry out the required services. The Waste Carrier must use vehicles approved by the Local Council and duly registered by the Environment and Resources Authority (ERA) or any other relevant authority at the time of award/contract duration. Furthermore, bidders were required to prove that vehicles have been duly registered with the ERA to transport bulky refuse (main vehicle and backup vehicle). The ERA fully publishes the list of all Authorised Waste Carriers in Malta & Gozo. The last accessible list was updated on 15/01/24. The name of the Preferred Bidder does not feature on the said list, implying that the vehicles provided by the preferred bidder are not registered in the name of the preferred bidder.

- b) Firstly, the Contracting Authority had to confirm whether it had requested the Preferred Bidder to confirm and/or outline how it intended to fulfil the tender requirements with the involvement of a third party.
- c) Secondly, the Contracting Authority was duty-bound to assess and evaluate such a third party *"in line with the Exclusion and Blacklisting Criteria as per these Instructions to Tenderers. Furthermore, if the sub-contractor is relied upon by the Contractor to meet the standards established in the selection criteria, apart from submitting the relevant commitments in writing, such reliance will be evaluated to verify its correctness and whether in effect these criteria are satisfied."*
- d) Thirdly, it is incumbent upon the Contracting Authority to rigorously ensure compliance with legal standards as mandated by the General Rules Governing Tenders. This includes a thorough examination of the legality of the engagement between the Preferred Bidder and any third party. Such scrutiny is essential, especially in light of specific regulations governing the sector, notably Subsidiary Legislation 499.68 of the Laws of Malta, which pertains to Light Passenger Transport Services and Vehicle Hire Services Regulations. This legislation mandates strict compliance with prescribed standards for vehicle leasing arrangements. It is pertinent to highlight, without delving into specifics at this juncture, that the nature and legality of the relationship between the Preferred Bidder and third parties warrant careful evaluation to ascertain adherence to the stipulated regulatory framework. Such considerations will further result during the hearing of this case.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 13<sup>th</sup> February 2024 and its verbal submission during the hearing held on 5<sup>th</sup> March 2024, in that:

- a) The Qala Local Council holds that the claims put forward by the Objector are manifestly incorrect and should be discarded since during evaluation stage it has in fact strictly adhered to the law and to the tender specifications. The Council has been assured through numerous clarifications that the preferred bidder has the necessary vehicles to satisfy the tender specifications contained in the tender document. The said vehicles are also covered by the necessary ERA permits contrary to the Objector's submissions. Furthermore, the Objector is not correct when stating that the preferred bidder will subcontract the tender to third parties.

This Board also noted the Preferred Bidder's Reasoned Letter of Reply filed on 15<sup>th</sup> February 2024 and its verbal submission during the hearing held on 5<sup>th</sup> March 2024, in that:

- a) The Contracting Authority was correct in its decision since the tender was adjudicated and awarded according to the Public Procurement Regulations. The Winning Bidder's application was technically compliant as per the tender document specifications. The submission tendered by the Appellant that the Winning Bidder will subcontract the tender to third parties is manifestly false.

That the necessary vehicles satisfy the tender specifications as these are all covered by the necessary ERA permits.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

- a) The Board notes that the evaluation committee duly afforded the right of a clarification to the preferred bidder, who in turn supplied the necessary information and Vehicle Lease Agreements which are in place for the use of the vehicles ECM602 and HCC753.
- b) Bearing in mind that this is not a case of sub-contracting as per clauses found in page 5 of the tender dossier, this Board cannot but reject grievances as raised by the appellant.

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Mr Lawrence Ancilleri**  
Member

**Dr Charles Cassar**  
Member