

PUBLIC CONTRACTS REVIEW BOARD

Case 2000 – KLBO 02/2023 – Collection of Bulky Refuse and WEEE from the locality of Bormla, using Low Emission Transport.

7th May 2024

The tender was issued on the 3rd May 2023 and the closing date was the 2nd June 2023.

The estimated value of this tender, excluding VAT, was € 110,000.

On the 6th March 2024 Simply Clean Ltd filed an appeal against the Bormla Local Council objecting to its disqualification on the grounds that their bid was not the cheapest offer.

A deposit of € 550 was paid.

There were two bids.

On the 26th April 2024 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri and Dr Vincent Micallef as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Simply Clean Ltd

Dr Daniel Cutajar	Legal Representative
Dr Franco Debono	Legal Representative
Mr Melchior Dimech	Representative

Contracting Authority – Bormla Local Council

Dr Adrian Sciberras	Legal Representative
Dr Roseanne Sant Cortis	Representative

Preferred Bidders – Ronald Bezzina

Mr Ronald Bezzina	Representative
Ms Ealine Bezzina	Representative

Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Daniel Cutajar Legal Representative for Simply Clean Ltd said that the tender was awarded on price. In the case of the preferred bidder the technical and administrative requirements were not met as the ISO Certificates were not submitted. In a past tender in 2023 Ronald Bezzina was disqualified precisely on this same point. Article 8.2.1 of the tender was not met.

Dr Adrian Sciberras Legal Representative for the Contracting Authority stated that the same Article 8.2.1 also allows the equivalent of the ISO Certificates. Mr Bezzina submitted the ERA certificates stating that these were equivalent.

Dr Franco Galea for the Appellant said that the ERA documents are not equivalent to the Certificates – they are simply permits to carry waste and are available to any contractor.

Dr Sciberras also mentioned that the Board must consider that the price offered by Mr Bezzina is € 8 whilst Appellant had offered € 15.

Dr Galea said that it is the matter of the ISO Certificates that the Board has to decide upon not the price offered.

After a short recess the Chairman said that the Board will hear the merits of the case and make a final decision on all points raised.

Ms Ealine Bezzina on behalf of Mr Ronald Bezzina said that if it is the case that, as stated by Dr Cutajar, the Appellant was the only contractor that held the specified ISO Certificates then they should have been notified to save them bidding. On seeking advice they were informed that ISO certification only applies to large organisations. If ISO is a must why has it not been asked for in later tenders issued by Bormla Council.

Dr Sciberras referred again to the financial offer and the considerable difference in the tendered prices. Both bids were over the allocated budget but Bezzina was nearest to that figure. This financial commitment for a service that is very necessary cannot be met by the Council at the price bid by Simply Clean Ltd.

There being no further submissions the Chairman said the Board will consider the points made in coming to their decision. He then declared the hearing closed.

End of Minutes

Hereby resolves:

The Board refers to the Minutes of the Board sitting of the 26 th April 2024.

Having noted the objection filed by Simply Clean Ltd. (hereinafter referred to as the Appellant) on 06th March 2024, refers to the claims made by the same Appellant regarding the tender of reference KLBO 02/2023 listed as case No. 2000 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Franco Galea/ Dr Daniel Cutajar

Appearing for the Contracting Authority: Dr Adrian Sciberras

Appearing for the Preferred Bidder Ms Ealine Bezzina/Mr Ronald Bezzina

Whereby, the Appellant contended that :

The Preferred Bidder did not meet the technical and administrative requirements because the requested ISO Certificates were not submitted. This issue has occurred before with the Preferred Bidder in a previous tender in 2023, where he was disqualified for the same reason. Article 8.2.1 of the tender, which outlines the obligation of submitting ISO Certificates, was not complied with.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 16th March 2024 and its verbal submissions during the hearing held on 26th April 2024, in that:

Article 8.2.1 allows ISO Certificates or equivalent. Mr Bezzina submitted ERA certificates stating that these were equivalent.

This Board also took note of the Preferred bidder's comment that;

given the fact that the appellant, as claimed, was the sole contractor possessing the specified ISO Certificates, then they should have been informed beforehand to save them from bidding. Upon seeking advice, they were informed that ISO certification only applies to larger organizations. The question arises as to why ISO certification was not requested in subsequent tenders issued by Bormla Council if it is indeed a mandatory requirement?

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, refers to the grievances raised by the Appellant whereby it pleads that this tender should never have been legitimately awarded to the preferred bidder because it clearly failed to produce the ISO certificates as requested in Clause 8.2.1 of the tender dossier. The Contracting Authority rebutted this argument by referring to subclause 8.2.1 above mentioned which states 'or equivalent'. In line with this interpretation the Authority insisted that the preferred bidder had indeed produced the ERA certificates which were to be construed as equivalent and therefore fulfilling the criterion required.

On the other hand the Appellant rebutted by stating that the production of the ERA certificates shall in no way be construed as equivalent and stated that the ERA certificates are as a matter of fact required by all service providers. The Board is inclined to agree with the Appellant on this point. Nonetheless the Board shall in no way ignore an oversight by the Evaluation Committee which militates against the Appellant itself in that even the Appellant should be considered as having failed to produce the correct documents, save for the ISO Certifications. The ISO certificates of the Appellant mention Simply Clean Ltd, whereas the remaining documents, such as the ERA documents and the log book indicate a different name to that of the tenderer. This is also an inherent oversight of the Evaluation Committee. In view of all the above it will be deemed unfair to discard this appeal against the preferred bidder alone when the Appellant is also non-compliant for all intents and purposes of the law.

In view of the abovementioned anomalies and in view of the amateurish manner that the Evaluation Committee conducted its evaluation, this Board decides and declares to cancel this tendering process under the circumstances and this in terms of Regulation 90(3) of the Public Procurement Regulations.

The Board,

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

- a. To order the cancellation of the Tender;
- b. Not to refund the deposit to the Appellant.

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Dr Vincent Micallef
Member