

PUBLIC CONTRACTS REVIEW BOARD

Case No. 354

ARMS/T/39/2011

Tender for the Provision of Office Cleaning for ARMS Ltd

This call for tenders was published in the Government Gazette on 1st July 2011 . The closing date for offers was 22nd July 2011.

The estimated value of this tender was €75,000.

Six (6) tenderers submitted their offers.

Messrs Gafá Safeway Cleaners Ltd filed an objection letter dated 24th August 2011 against the decision taken by the Water Services Corporation to recommend award of tender to VSV Cleaning Services Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman and Mr Carmel Esposito and Mr Joseph Croker as members convened a meeting on Monday, 12th December 2011 to discuss this objection.

Present for the hearing were:

Gafa' Safeway Cleaners Ltd

Ms Paulette Gafá	Representative
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VSV Cleaning Services Ltd

Ms Maria Buscema	Representative
Mr Derek Spiteri	Representative

ARMS Ltd / Water Services Corporation

Adjudicating Board

Mr Mark Lupi	Member
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After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of her company's objection.

Ms Paulette Gafá, representing Gafá Safeway Cleaners Ltd, the appellant company, made the following submissions:-

- i. by letter dated 19th August 2011 the Water Services Corporation informed them that their tender was unsuccessful because their offer was not the cheapest and that the award of the tender in question was being recommended to VSV Cleaning Services Ltd for the price of €75,32;
- ii. Gafá Safeway Cleaners Ltd had appeared before the Public Contracts Appeals Board / Public Contracts Review Board on other occasions on this same issue, namely the hourly rate for cleaning services;
- iii. in order to cover the minimum wage, national insurance, bonuses, vacation leave and VAT, the current minimum rate was €5.68,7,

and
- iv. the price quoted by the recommended tenderer – at €5.59 per hour during normal hours - was below the minimum hourly rate and it was incomprehensible how a government entity could award a tender below the rate established by government itself as that would certainly lead to worker exploitation.

Mr Mark Lupi, a member of the adjudicating board, explained that:-

- the tender document requested the hourly rate for cleaning services and the adjudicating board carried out its evaluation on the basis of the cheapest compliant tender;

and
- the adjudicating board did not go into the merits as to whether the rate quoted by tenderers covered the minimum wage and related benefits/charges because it retained that it was up to the contractor to honour one's obligations at law *vis-a-vis* one's employees,

Mr Derek Spiteri, representing VSV Cleaning Services, the recommended tenderer, remarked that:-

- a. his firm required this contract so as to gain experience and to add it up to its references for submission in future tendering processes;
- b. his firm acknowledged that its human resources were its main asset and it undertook to grant them the remuneration due to them by legislation;
- c. it was not unlawful for a firm to take a commercial decision whereby it took on a contract without making a profit;

d. he was also aware of firms that made a profit out of large contracts and then they were in a position to quote low rates for smaller contracts to beat competition;

and

e. there have been instances where tenders were awarded at the rate of less than €5.68 per hour and their execution would spillover to 2012.

The Chairman Public Contracts Review Board remarked that:-

- i. in a recent decision the Public Contracts Review Board had recommended that the Department of Contracts, acting on the advice of the Department of Industrial and Employment Relations, was to stipulate in the tender document the minimum hourly rate below which no tender for cleaning services would be awarded with a view to safeguarding the welfare to employees engaged on cleaning duties;
 - ii. that same decision also acknowledged that the responsibility to check that employees were paid, at least, according to the minimum set by law, rested with the Department of Industrial and Employment Relations and not with the contracting authority;
 - iii. it was regrettable that the Public Contracts Review Board's recommendations were, seemingly, not being acted upon;
 - iv. the Public Contracts Review Board expected the Contracts Department to circulate among the contracting authorities the minimum rates for cleaning services below which no tenders were to be awarded so that the commercial risk would be taken with regard to the margin of profit;
 - v. in the absence of the issue of such instructions to contracting authorities, the line of reasoning adopted in this case by ARMS Ltd would continue to prevail but if the legal parameters were to be reflected in the tender document then the evaluators would consider rates from the minimum set by law upwards;
 - vi. in the case of contracts that span beyond the current year, then a provision would have to, possibly, be inserted in (a) the tender document and (b) the duly signed agreement whereby the awarded rate in, say, 2011, would be automatically increased in the following year with the cost of living increase granted by government for 2012;
- and
- vii. there appeared to be no other way how to, effectively, safeguard workers' rights in the award of public contracts for cleaning services.

Ms Gafá remarked that contracting authorities had to keep in view the legal parameter with regard to minimum wage payment when awarding tenders otherwise similar

cases would keep on coming before the Public Contracts Review Board and the situation would persist where contractors pay their employees in cash instead of by cheque at the rate of €3.14 per hour.

Mr Derek Spiteri recalled the hearing held on the 12th September 2011 in connection with the Tender for Cleaning Services at GHPS, G'Mangia and Marsa Stores (ref: GHPS/124002d10LZ) where Mr Kurt Balzan, inspector (Industrial and Employment Relations Department), had given the breakdown of the 2011 minimum national wage rate per hour as follows:-

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3.84 - basic rate
0.35 - vacation leave
0.25 - statutory bonuses
0.21 - public holidays
<u>0.38</u> - national insurance
5.03
<u>0.91</u> - VAT
<u>5.94</u>

At this point the hearing was brought to a close.

This Board,

- having noted that the appellant company, in terms of the reasoned letter of objection dated 24th August 2011 and through the verbal submissions made during the hearing held on the 12th December 2011, had objected against the decision taken by the Water Services Corporation to recommend award of tender to VSV Cleaning Services Ltd;
- having noted the appellant firm's representatives claims and observations regarding the fact that (a) the Water Services Corporation informed them that their tender was unsuccessful because their offer was not the cheapest and that the award of the tender in question was being recommended to VSV Cleaning Services Ltd for the price of €75,332, (b) Gafá Safeway Cleaners Ltd had appeared before the Public Contracts Appeals Board / Public Contracts Review Board on other occasions on this same issue, namely the hourly rate for cleaning services, (c) in order to cover the minimum wage, national insurance, bonuses, vacation leave and VAT, the current minimum rate was €5.68,7 and (d) the price quoted by the recommended tenderer – at €5.59 per hour during normal hours - was below the minimum hourly rate and it was incomprehensible how a government entity could award a tender below the rate established by government itself as that would certainly lead to worker exploitation;
- having considered the contracting authority's representative's submissions, namely that (a) the tender document requested the hourly rate for cleaning services and the adjudicating board carried out its evaluation on the basis of the cheapest compliant tender and (b) the adjudicating board did not go into the merits as to whether the rate quoted by tenderers covered the minimum wage and related

benefits/charges because it retained that it was up to the contractor to honour one's obligations at law *vis-a-vis* one's employees;

- having also considered the recommended tenderer's representative's submissions namely that (a) his firm required this contract so as to gain experience and to add it up to its references for submission in future tendering processes, (b) his firm acknowledged that its human resources were its main asset and it undertook to grant them the remuneration due to them by legislation, (c) it was not unlawful for a firm to take a commercial decision whereby it took on a contract without making a profit, (d) he was also aware of firms that made a profit out of large contracts and then they were in a position to quote low rates for smaller contracts to beat competition and (e) there have been instances where tenders were awarded at the rate of less than €5.68 per hour and their execution would spill over to 2012,

reached the following conclusions:

1. The Public Contracts Review Board observes that, in a recent decision, the Public Contracts Review Board had recommended that the Department of Contracts, acting on the advice of the Department of Industrial and Employment Relations, was to stipulate in the tender document the minimum hourly rate below which no tender for cleaning services would be awarded with a view to safeguarding the welfare to employees engaged on cleaning duties. Furthermore, that same decision also acknowledged that the responsibility to check that employees were paid, at least, according to the minimum set by law, rested with the Department of Industrial and Employment Relations and not with the contracting authority.
2. Once again the Public Contracts Review Board is drawing the attention of the pertinent authorities to take heed of its recommendations. In particular, given the need for a transparent procedure to be followed in similar instances, the Public Contracts Review Board expects the Contracts Department to circulate among the contracting authorities the minimum rates for cleaning services below which no offer should be allowed to submit related offers.
3. The Public Contracts Review Board concedes that, in the absence of the implementation of the recommendations referred to above, the line of reasoning adopted in this case by ARMS Ltd, should continue to prevail.

In view of the above this Board finds against the appellant company and recommends that the deposit paid by the latter should not be reimbursed.

Alfred R Triganza
Chairman

Carmel J Esposito
Member

Joseph Croker
Member

26th December 2011