

PUBLIC CONTRACTS REVIEW BOARD

Case No. 447

DH/524/2011

Tender for Clerical Services for the Pharmacy of Your Choice

This call for tenders was published in the Government Gazette on the 16th December 2011. The closing date for this call with an estimated budget of € 43,264 was the 18th January 2012.

Three (3) tenderers submitted their offers.

JF Services Ltd filed an objection on the 12th June 2012 against the decision of the Ministry for Health, the Elderly and Community Care to recommend award of the tender to Rent a Store Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Carmel Esposito and Mr Paul Mifsud as members convened a public hearing on Monday, 13th August 2012 to discuss this objection.

Present for the hearing were:

JF Services Ltd

Dr Adrian Delia	Legal Representative
Not. Matthew Paris	Representative
Mr Peter Formosa	Representative
Mr Matthew Formosa	Representative

Rent a Store Ltd

Ms Claudette Pace	Representative
Mr Gordon Dimech	Representative

Ministry for Health, the Elderly and Community Care

Ms Stephanie Abela	Representative
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Evaluation Board

Mr Charles Schembri	Chairman
Ms Maria Briffa	Member
Ms Vicky Calleja	Member
Ms Maria Galea	Member
Ms Jane Agius	Secretary

After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of the company's objection.

Dr Adrian Delia, legal representative of JF Services Ltd, the appellant company, stated that:-

- i. by letter dated 5th June 2012 the contracting authority informed his client that the tender was being recommended for award to Rent a Store Ltd as the cheapest compliant tender;
 - ii. according to the schedule of tenders received the recommended tenderer had offered the following prices: €6.95 for Mondays to Fridays, €10.43 for Saturdays and €13.80 for Sundays (and Public Holidays);
 - iii. clause 32.1 of the tender document stated that "*The sole award criterion will be the price. The contract will be awarded to the cheapest priced tender satisfying the administrative and technical criteria. For evaluation purposes only it is estimated that the service of clerical staff will be utilized for 85% during weekdays and 15% during Sundays and Public Holidays.*";
 - iv. Clause 6.12 of the Terms of Reference (page 45) stated that "*It is expected that the rate to these employees will be equivalent to Scale 16 of the Public Service exclusive of VAT. The Client reserves the right to reject any offer which in its opinion does not respect this clause*";
 - v. in this case the rate was being pegged to that of scale 16 of the Public Service;
- and
- vi. the rate/s quoted by the recommended tenderer did not reflect the provisions of clause 6.12 and, in this respect, invited the contracting authority to indicate its workings in establishing that the recommended rate/s quoted were compliant with this minimum requirement.

Mr Charles Schembri, chairman of the evaluation board, submitted that:-

- a. the hourly rate of Scale 16 was €6.12 and therefore less than the basic rate of €6.95 offered by the recommended tenderer worked out as follows:-

€	
11,059.00	Scale 16 p.a. salary
512.46	Bonus
1,168.32	National insurance
12,739.78	Total p.a.
6.12	Scale 16 rate/hr (€12,739.78/2080 hrs)
6.95	Rate/hr quoted by recommended tenderer for Monday to Friday

b. no account had been taken of vacation leave and sick leave as those were included in the annual salary;

and

c. the evaluation board stuck to the provisions of Clause 6.12 of the terms of reference, namely the salary of scale 16 (plus bonus due to the employee and the national insurance to be paid on behalf the employee) but exclusive of VAT as that was payable by the company/contractor along with its overhead costs.

Dr Adrian Delia submitted that:-

- i. it was assumed that the contracting authority would require a replacement when the clerk would be on vacation leave and on sick leave (an average of 6 days p.a. were included) and one had to keep in view that the contracting authority was requesting an hourly rate;
- ii. if, for the sake of the argument, one were to take the rate indicated by the evaluation board and only add the 18% VAT it would amount to €7.22, which exceeded the €6.95 quoted by the recommended tenderer;

and

- iii. for the purposes of this tender, the hourly rate for scale 16, according to his client, was €7.16 (excluding VAT), which was higher than the average rate quoted by the recommended tenderer, emerged as indicated hereunder:-

	€		€	
	11,049.00	Scale 16 p.a.		
	512.00	Bonus		
	1,104.90	NI		
	12,665.90		1768	No of hours worked p.a.
			7.16	Rate/hr
Annual hrs	2080.00			
9 weekday pub. hol.		72.00		
24 days vac. leave		192.00		
6 day sick leave		48.00		
	312.00			
	1768.00			

On his part Mr Schembri submitted the following workings based on the rates presented by the recommended tenderer, namely the lowest rate of €6.95 to the tune of 85% and the highest rate of €13.80 to the tune of 15% of the total number of hours amounting to 8,500 contemplated in the tender (clause 32.1 cited earlier on), which resulted in an hourly rate of €7.98, which was less than the €7.16 (excl. VAT) and the €7.22 (incl. VAT) indicated by the appellant:-

	Contract	Rate		
	No of hrs	€	€	
Weekdays - 85%	7225	6.95	50,213.75	
Sunday/Pub Hol. - 15%	1275	13.80	17,595.00	
			67,808.75	For 8,500 hrs
	8500		7.98	per hour

Dr Cory Greenland, secretary of the professional, finance and services section of the General Workers Union, under oath, gave the following explanations:-

- a. the General Workers Union had been advocating that clerical staff engaged on a definite contract to render service within government should enjoy a remuneration equivalent to that of his/her counterpart on an indefinite contract in the Public Service;
- b. if a replacement was going to be provided when the employee would be on vacation or sick leave or on public holidays then one had to take these elements into account;
- c. by and large he agreed with the workings presented by the appellant company.

Mr Kurt Balzan, representative of the Industrial and Employment Relations Department, under oath, gave the following breakdown of the hourly rate applicable to scale 16 worked out with the same methodology his department applied when establishing the minimum wage at court hearings, namely excluding sick leave:-

	Salary p.a.	No of hrs	Rate/hr	
	€	p.a.	€	
Scale 16	11,059.00	2,080	5.32	Per hour
			0.49	Vacation leave
			0.25	Bonus
			0.29	Pub. holidays
			0.53	NI
			6.88	Per hour

Dr Delia remarked that if one were to include only the VAT element to the workings of the Industrial and Employment Relations Department the hourly rate would amount to €8.12. He also argued that the evaluation board should have worked out each rate on its own merits and not to consider all the rates collectively.

The Chairman Public Contracts Review Board remarked that the provisions of clause 6.12 were intended to safeguard the wages of the employee without going into overheads and profit margins which, to a certain extent, were commercial considerations on the part of the contractor. He added that there ought to be a standard form for one and all to follow outlining the methodology that had to be employed in quoting rates that had to respect specific aspects of our labour legislation.

The VAT Department had informed the Public Contracts Review Board that the provision of clerical services was a taxable supply on which the standard rate of 18% applied.

The Public Contracts Review Board noted that:-

- a. the form provided in the Volume 4 'Financial Bid' at page 47 of the tender document requested from the bidder only two rates, namely the rate for
 - weekdays, Monday to Saturday
 - Sundays and Public Holidays;
- b. the recommended tenderer submitted three rates, namely €6.95 for Monday to Friday, €10.43 for Saturdays and €13.80 for Sunday (Public Holiday) and, as a result, the tender submission of the recommended tenderer was not in line with tender conditions since for the period Monday to Saturday the recommended tenderer submitted two different rates and not one rate.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 12th June 2012 and also through their verbal submissions presented during the hearing held on the 13th August 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 5th June 2012 the contracting authority had informed the appellant company that the tender was being recommended for award to Rent a Store Ltd as the cheapest compliant tender, (b) according to the schedule of tenders received the recommended tenderer had offered the following prices, namely €6.95 for Mondays to Fridays, €10.43 for Saturdays and €13.80 for Sundays (and Public Holidays), (c) clause 32.1 of the tender document stated that "*The sole award criterion will be the price. The contract will be awarded to the cheapest priced tender satisfying the administrative and technical criteria. For evaluation purposes only it is estimated that the service of clerical staff will be utilized for*



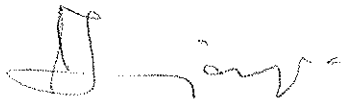
85% during weekdays and 15% during Sundays and Public Holidays.”, (d) Clause 6.12 of the Terms of Reference (page 45) stated that “It is expected that the rate to these employees will be equivalent to Scale 16 of the Public Service exclusive of VAT. The Client reserves the right to reject any offer which in its opinion does not respect this clause”, (e) in this case the rate was being pegged to that of scale 16 of the Public Service, (f) the rate/s quoted by the recommended tenderer did not reflect the provisions of clause 6.12 and, in this respect, the appellant company’s representative invited the contracting authority to indicate its workings in establishing that the recommended rate/s quoted was/were compliant with this minimum requirement, (g) it was assumed that the contracting authority would require a replacement when the clerk would be on vacation leave and on sick leave (an average of 6 days p.a. were included) and one had to keep in view that the contracting authority was requesting an hourly rate, (h) if, for the sake of the argument, one were to take the rate indicated by the evaluation board and only add the 18% VAT it would amount to €7.22, which exceeded the €6.95 quoted by the recommended tenderer, (i) for the purposes of this tender, the hourly rate for scale 16 was €7.16 (excluding VAT), which was higher than the average rate quoted by the recommended tenderer (j) if one were to include only the VAT element to the workings of the Industrial and Employment Relations Department the hourly rate would amount to €8.12 and (k) the evaluation board should have worked out each rate on its own merits and not consider all the rates collectively;

- having considered the contracting authority’s representative’s reference to the fact that (a) the hourly rate of Scale 16 was €6.12 and, as a result, less than the basic rate of €6.95 offered by the recommended tenderer, (b) no account had been taken of vacation leave and sick leave as those were included in the annual salary and (c) the evaluation board stuck to the provisions of Clause 6.12 of the terms of reference, namely the salary of scale 16 (plus bonus due to the employee and the national insurance to be paid on behalf the employee) but exclusive of VAT as that was payable by the company/contractor along with its overhead costs;
- having also considered Dr Greenland’s explanations, especially, the fact that (a) the General Workers Union had been advocating that clerical staff engaged on a definite contract to render service within government should enjoy a remuneration equivalent to that of his/her counterpart on an indefinite contract in the Public Service, (b) if a replacement was going to be provided when the employee would be on vacation or sick leave or on public holidays then one had to take these elements into account and (c) by and large he agreed with the workings presented by the appellant company;
- having given due consideration to Mr Balzan’s testimony, particularly, his reference to the breakdown of the hourly rate applicable to scale 16 which agreed with the methodology his department applied when establishing the minimum wage at court hearings, namely excluding sick leave,

reached the following conclusions, namely that the the Public Contracts Review Board notes that the form provided in the Volume 4 ‘Financial Bid’ at page 47 of the tender document requested from the bidder only two rates, namely the rate for (a) week-days, Monday to Saturday and (b) Sundays and Public Holidays. This Board cannot but take cognisance of the fact that, notwithstanding, the recommended


tenderer submitted three rates, namely €6.95 for Monday to Friday, €10.43 for Saturdays and €13.80 for Sunday (Public Holiday) As a result this Board concludes that the tender submission of the recommended tenderer was not in line with tender conditions since for the period Monday to Saturday the recommended tenderer submitted two different rates and not one rate.

In view of the above, this Board finds in favour of the appellant company and apart from recommending that the appellant tenderer's bid be reinstated in the evaluation process, also recommends that (a) the recommended tenderer's bid be rejected and (b) that the deposit paid by the same appellant company for the appeal to be lodged be reimbursed.

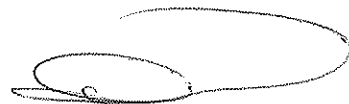


Alfred R Triganza
Chairman

10th September 2012



Carmel Esposito
Member



Paul Mifsud
Member