

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 529**

**ZBGLC/04/11**

### **Tender for Cleaning of Urban Areas in Haz Zebbug**

This call for tenders was published in the Government Gazette on the 7<sup>th</sup> October 2011. The closing date for this call with an estimated budget of €55,000 was the 4<sup>th</sup> November 2011.

Three (3) tenderers submitted their offers.

Xuereb Bros filed an objection on the 17<sup>th</sup> December 2012 against the decision of the Zebbug Local Council to recommend the award of the tender to Mr Bryden Azzopardi at the price of €64,000.

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, 15<sup>th</sup> April 2013 to discuss this objection.

### **Xuereb Bros**

Dr Marion Camilleri	Legal Representative
Mr Noel Xuereb	Representative

**Mr Bryden Azzopardi – although notified, nobody turned up.**

### **Zebbug Local Council**

Dr Edward Gatt	Legal Representative
Mr Alfred Grixti	Mayor
Mr Philip Gatt	Project Manager

### **Evaluation Board**

Ms Paula Valletta	Chairperson
Mr Christopher Formosa	(Executive) Secretary

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

Dr Marion Camilleri, legal representative of Xuereb Bros, the appellant company, made the following submissions:

- i. by letters dated 7<sup>th</sup> and 15<sup>th</sup> December 2012 the contracting authority informed the appellant company that the tender was being recommended for award to Mr Bryden Azzopardi for the price of €64,000;
  - ii. the main argument she was putting forward against the proposed award was that if the recommended price of €64,000 did not cover the payment of the minimum wage then it was reasonable to assume that the payment of, at least, the minimum wage was not going to be met;
  - iii. such practice was not fair on bidders who wanted to operate according to regulations;
- and
- iv. the Zebbug Local Council had also remarked in its deliberations that the service offered by the appellant company, which also happened to be the current contractor, was not satisfactory and evidence to that effect were the complaints received and the results obtained following the launch of a survey. Yet, despite this, Dr Camilleri placed emphasis on the fact that, in actual fact, Xuereb Bros had not been served with any default notices, which was the only procedure provided by regulations to communicate complaints to contractors.

Dr Edward Gatt, legal representative of the Zebbug Local Council, submitted the following:-

- a. it was not correct for the appellant company to declare that the recommended price did not cover the minimum wage requirement according to law because the contracting authority had undertaken the following exercise which proved otherwise, that is:

	€
Minimum wage per employee	8,221.72
National insurance contribution	688.48
Bonuses	<u>512.36</u>
Total	<u>9,422.56</u>
Annual wages for 5 employees	47,112.80
5% management fee	2,355.64
18% VAT	<u>8,904.32</u>
Total	<u>58,372.76</u>
Recommended price	<u>64,000.00</u>

- b. on another occasion he had represented the contractor engaged on cleaning services, namely Gafa' Safeway Ltd, before both the Public Contracts Appeals

Board and, on various similar occasions, the Public Contracts Review Board and it had invariably been maintained that it was not up to the Public Contracts Review Board to ensure that employers paid their employees according to labour legislation because that responsibility rested with the Employment and Industrial Relations Department;

- c. the local councils were precluded by legislation from rendering this service by employing their own human resources, in which case they would save money on the payment of VAT and profit margins;

and

- d. as a consequence, the appellant company's assumption that the recommended bid did not cover the minimum wage payment was unfounded and, even if that were to be correct, it was up to the Employment and Industrial Relations Department to supervise whether employers paid their employees according to labour legislation.

The Chairman remarked that, albeit the Public Contracts Review Board had repeatedly recommended to the authorities concerned that, in order to safeguard the interests of the workers, such tenders should not be awarded below a certain threshold that being the payment of the minimum wage, yet those recommendations had not been taken up. He added that once the minimum wage standard was met then the contract would be awarded on commercial considerations, such as profit margins.

Mr Alfred Grixti, mayor of the Zebbug Local Council, stated that, to his recollection, both political parties agreed that tenders should respect the minimum standards of employment. Mr Grixti added that, in this case, all bidders had been furnished with a copy of the evaluation report which included the reasons for discarding certain offers and the award recommendation.

The Public Contracts Review Board noted from the evaluation report that, besides the price, another reason that led to the disqualification of the appellant company was that it had failed to submit evidence that it had taken out an insurance policy as requested in the tender document – clause 19 of the General Conditions. It also observed that, failure to provide such proof, which was a mandatory requirement, should have led to the disqualification of the appellant company at the administrative compliance stage.

Mr Noel Xuereb, representing the appellant company, confirmed that Xuereb Bros had not provided any proof with regard to insurance cover.

The Chairman Public Contracts Review Board noted that whilst it was a fact that, in this case, bidders were furnished with a copy of the evaluation report, yet, he called upon the contracting authority to ensure that, in the future, it includes the reasons for non award of tender in the letter informing the bidder of the individual's or entity's exclusion so that the latter would be better positioned to determine whether to lodge an appeal or not.

At this point the hearing came to a close.

This Board,

- having noted that the appellant company, in terms of its ‘reasoned letter of objection’ dated 17<sup>th</sup> December 2012 and also through its representatives verbal submissions presented during the hearing held on the 15<sup>th</sup> April 2013, 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 letters dated 7<sup>th</sup> and 15<sup>th</sup> December 2012 the contracting authority informed the appellant company that the tender was being recommended for award to Mr Bryden Azzopardi for the price of €64,000, (b) the main argument she was putting forward against the proposed award was that if the recommended price of €64,000 did not cover the payment of the minimum wage then it was reasonable to assume that the payment of, at least, the minimum wage was not going to be met, (c) such practice was not fair on bidders who wanted to operate according to regulations, (d) the Zebbug Local Council had also remarked in its deliberations that the service offered by the appellant company, which also happened to be the current contractor, was not satisfactory and evidence to that effect were the complaints received and the results obtained following the launch of a survey, even though, in actual fact, Xuereb Bros had not been served with any default notices, which was the only procedure provided by regulations to communicate complaints to contractors and (e) Mr Noel Xuereb, representing the appellant company, confirmed that Xuereb Bros had not provided any proof with regard to insurance cover;
- having considered the contracting authority’s representative’s reference to the fact that (a) it was not correct for the appellant company to declare that the recommended price did not cover the minimum wage requirement according to law because the contracting authority had undertaken an exercise which proved otherwise, (b) on other similar occasions it had, invariably, been maintained that it was not up to the Public Contracts Review Board to ensure that employers paid their employees according to labour legislation because that responsibility rested with the Employment and Industrial Relations Department, (c) the local councils were precluded by legislation from rendering this service by employing their own human resources, in which case they would save money on the payment of VAT and profit margins, (d) as a consequence, the appellant company’s assumption that the recommended bid did not cover the minimum wage payment was unfounded and, even if that were to be correct, it was up to the Employment and Industrial Relations Department to supervise whether employers paid their employees according to labour legislation and (e) in this case, all bidders had been furnished with a copy of the evaluation report which included the reasons for discarding certain offers and the award recommendation,

reached the following conclusions, namely:

1. The Public Contracts Review Board noted from the evaluation report that, besides the price, another reason that led to the disqualification of the appellant company

was that it had failed to submit evidence that it had taken out an insurance policy as requested in the tender document – clause 19 of the General Conditions. It also observed that, failure to provide such proof, which was a mandatory requirement, should have led to the disqualification of the appellant company at the administrative compliance stage and, apart from the fact that the appellant company had committed a mistake by not adhering to the tender’s terms and conditions, yet, it was equally correct for this Board to state that the contracting authority had, erroneously, decided to proceed with the evaluation of the appellant company’s offer when the latter’s offer did not even manage to adhere to the administrative requisites of this tender.

2. The Public Contracts Review Board establishes that, whilst it was a fact that, in this case, bidders were furnished with a copy of the evaluation report, yet, it would like to call upon the contracting authority to ensure that, in the future, the latter would include the reasons for the non award of tender in the letter informing the bidder of the individual’s or entity’s exclusion so that the said bidder would be better positioned to determine whether to lodge an appeal or not.

In view of the above this Board finds against the appellant company and, as a result, recommends that the deposit paid by the same company for the appeal to be lodged should not be reimbursed.

Alfred R Triganza  
Chairman

Carmel Esposito  
Member

Paul Mifsud  
Member

*26 April 2013*