

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 660**

**KLBO 02/2013**

**Tender for the Street Sweeping and Cleaning in an Environmentally Friendly Manner.**

The tender was published on the 22<sup>nd</sup> October 2013. The closing date was the 22<sup>nd</sup> November 2013.

The estimated value of the Tender was €30,000.00 (Exclusive of VAT).

Seven (7) bids had been received for this tender.

On the 6<sup>th</sup> December 2013 Euro Clean Services filed an objection against the proposed award of the tender to Mr Raymond Attard.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Thursday the 30<sup>th</sup> January 2014 to discuss the objection.

Present for the hearing were:

**Euro Clean Waste Services - Appellant**

**Kunsill Lokali Bormla - Contracting Authority**

Mr Joseph Caruana  
Mr Ivan Agius  
Dr Luciano Busuttil

Executive Secretary KLB  
Representative  
Legal Representative

There was nobody present on behalf of the Preferred Bidder Mr Raymond Attard.

The Chairman in his brief introduction explained that the circumstances of this objection

were the same as those of the previous case heard – Objection by V&A Services. He stated that the appellant had phoned that he had been detained elsewhere and could not be present. However the Chairman had explained to the appellant that the Board had just heard another objection with identical merit and that the appellant’s presence would not make any material difference, since the arguments of the case were the same.

Dr Luciano Busuttill on behalf of the contracting authority referred to point 2 of the relative Government Circular which stated that “A guarantee that the contractual work will not be carried out by self-employed persons but solely by employees of the tenderer.” He contended that these words do not mean that a self-employed person could not work the tender himself. The meaning of this point is that a tenderer could not hire self-employed persons to do the job instead of offering employment with him. The reason of the circular was to prevent contractors does not carry out the work using other self-employed without giving them the full benefits of employment. It does not mean that the preferred bidder, being self-employed could not work in providing the service. He would still have three full time employees. A self employed person is still an employee. The Board should not interpret this circular to mean that a self-employed person could not get and work the tender.

The Chairman remarked that it is evident that the circular was issued and not circulated to the contracting authorities.

At this point the hearing was brought to a close.

**This Board,**

**Having noted the Appellant’s objection, in terms of the ‘Reasoned Letter of Objection’ dated 5<sup>th</sup> December 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The preferred Bidder’s quoted rate contained an element of precarious work. This factor infringes the Directives stipulated in the Government Circular dated 1<sup>st</sup> July 2013.**
- b) The Preferred Bidder’s Offer did not satisfy the condition laid out in the tender document, relating to the ‘minimum number of employees’.**

**Having considered the Contracting Authority’s verbal submissions during the hearing held on 30<sup>th</sup> January 2014, in that:**

- a) The Contracting Authority contends that the tenderer, a Self Employed Person, was regarded as part of the minimum required employment force.**

**Reached the following conclusions:**

- 1. This Board opines that there really exist a distinction between an ‘Employer’ and an ‘Employee’. So much so, that even the Labour regulations do make this distinction. The Tenderer is the employer and if he is bound to employ a minimum of three employees, he should not be included in this mandatory labour force condition.**

**2. The Preferred Bidder infringed the Regulations as laid out in Government Circular dated 1<sup>st</sup> July 2013.**

**In view of the above, this Board:**

- i) Finds in favour of the Appellant and recommends that the deposit paid by Appellant be reimbursed.**
- ii) Recommends that a fresh tender be issued so that the Evaluation Board of the Contracting Authority will take into consideration the Regulations contained in the Government Circular dated 1<sup>st</sup> July 2013.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancilleri  
Member

*27 February 2014*