

PUBLIC CONTRACTS REVIEW BOARD

Case No. 675

WSM 202/2013

Period Contract for Security Services and Security Duties to be Performed at the Family Park in Marsascala.

The tender was published on the 3rd September 2013. The closing date was the 24th September 2013. The estimated value of the Tender was €120,000 (Exclusive of VAT).

Eight (8) bids had been received for this tender.

On the 24th January 2014 Signal 8 Security Services Malta Limited filed an objection against the award of the tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday the 27th February 2014 to discuss the objection.

Present for the hearing were:

Signal 8 Security Services Malta Limited - Appellant

Mr Joseph John Grech	Representative
Mr Gejtu Vella	Representative
Mr Josef Cuschieri	Representative

Kerber Securities Limited - Preferred Bidder

Dr Mark Portelli	Legal Representative
------------------	----------------------

WasteServ Malta Limited - Contracting Authority

Mr Marvic Fenech Adami	Chairman Evaluation Board
Ms Joanne Camilleri	Representative
Dr Victor Scerri	Legal Representative

The appellant's representative was invited to make his submissions following a brief introductory address by the Chairman.

Mr Joseph John Grech on behalf of the appellant referred to recently raised apprehensions regarding precarious employment and said that he could not understand how this tender, which required a number of full-time employees, could be awarded at the price offered by the preferred bidder.

Mr Gejtu Vella on behalf of the appellant also remarked on the recent discussions about precarious employment and said that the appellant company does its best to treat its employees well and has signed a collective agreement. It tries to better its employee's conditions of work. He claimed that the prices quoted by the preferred bidder would just cover the national minimum wage. Thus when certain conditions occurred, the company risked working at a loss. The authorities had therefore to decide if such tenders would be a race to the bottom or if the workers in the sector would obtain decent conditions including the minimum wage. He claimed that presently appellant firm is in discussions with the Department of Labour because of financial constraints it cannot implement a number of clauses in the collective agreement. This type of race to the bottom awards will increase the pressure on the appellant inducing it to cease operations.

Dr Victor Scerri on behalf of the contracting authority stated that the evaluation boards had to abide with the law and act under the direction of the Department of Contracts. Unless a directive is issued preventing the acceptance of offers lower than a specified amount, the evaluation and adjudication has to be carried out on the offers submitted by the bidders. In the present case all the bidders were compliant and adjudication had to be made according to the prices bid.

The Chairman here asked if the contracting authority had a breakdown of the preferred bidder's offer and was shown the document that had been submitted by the preferred bidder showing this breakdown. The Board was also shown the breakdown of the appellant's offer.

Dr Victor Scerri for the contracting authority reiterated that what interested the contracting authority was the compliance of the bidders from whom the cheapest offer would be chosen. There were no directives to reject bids that had no mark-ups.

Mr Gejtu Vella for the appellant explained that Government authorities and entities cannot offer wages less than the minimum wage. He said that directive had been issued from Castille where this is clearly explained. Therefore a contracting authority cannot obtain a service without considering whether the employees had the right conditions. A clear message had to be sent in order that bench marking is made in such contracts safeguarding the conditions of employment of the workers in the sector.

The Chairman explained that as things stand today, the evaluation board has abided with the instructions but that did not mean that these instructions were fine. The Board would go through the workings of the offers to see if any danger of precarious employment existed.

Mr Gejtu Vella defined the meaning of precarious employment and said that whenever conditions and wages were less than the minimum, it was not a case of precarious employment, it was abuse.

Mr Joseph John Grech said that a new European Union Directive that says that the cheapest bid in the award of tenders will have to go by 2015.

Dr Mark Portelli on behalf of the preferred bidder referred to what the appellant's bidder said about the race to the bottom. Abiding with the tender documents, as the contracting authority had in the present case, does not constitute a race to the bottom. The tender document has a declaration that has to be signed, that says that bidders oblige themselves to abide with all the relevant laws, including that of payment of the minimum wage. This declaration was signed by the preferred bidder. He insisted that the preferred bidder abided by the rule regarding the minimum wages. He queried the amount of mark up bidders were expected to include in his bid.

The Chairman explained that the Board would not take over the functions of the evaluation board but would examine the appellant's and the preferred bidder's offers and see if any could lead to abuse leading to precarious employment.

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 24th January 2014 and also through Appellant's submissions during the hearing held on 27th February 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that the hourly rates quoted by the Preferred Bidder could easily lead to precarious conditions being implemented by same.**
- b) Appellant referred to the recent directives issued, to safeguard the conditions of the labour force. These directives have to be abided too.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 27th February 2014, in that:

- a) The Contracting Authority contends that during the evaluation process the Board followed the procedures in accordance with the regulations as stipulated in the Public Procurement Act.**
- b) The Evaluation Board of the Contracting Authority applied the 'Fully Compliant and Cheapest' concept, in selecting the award.**

Reached the following conclusions:

- 1. From the submissions made by both the Appellant and the Contracting Authority, this Board opined to take the responsibility to establish a verified minimum hourly cost of the labour force. To this effect, this same Board, through the pertinent Authority confirmed the following:**

2. For the Year 2014, the minimum hourly labour cost rate is dictated in the fragments as shown below :

	<u>Euros</u>
Basic Hourly rate	4.14
Vacation Leave	0.38
Bonus/ Weekly Allowance	0.25
Public Holidays	0.22
National Insurance	0.41
<u>Total Cost</u>	<u>5.40</u>

The above rate does not include an additional cost per hour of 0.15 cents where a Collective Agreement is in existence.

Summary of Position

	<u>Quoted Bid (Inc VAT)</u>	<u>Hourly Cost(Inc VAT)</u>	<u>Margin</u>
	<u>Euros</u>	<u>Euros</u>	<u>Euros</u>
Preferred Bidder	6.40	6.37	0.03
Appellant	6.57	6.55	0.02

3. As can be deduced from the above simple calculation, this Board opines that no commercial enterprise would enter into an obligation for a ridiculous margin of contribution. In this regard, this Board feels that both the Preferred Bidder's and Appellant's quoted rates could lead to precarious conditions being implemented.

In view of the above, this Board opines that a fresh tender be issued wherein prospective Tenderers should reflect a 'realistic costing' exercise together with a practical margin of profit, in their bids. This will ensure that any precarious situation is totally eradicated.

This Board recommends that the deposit paid by the Appellant Company should be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Laurence Ancilleri
Member

25 March 2014

