

PUBLIC CONTRACTS REVIEW BOARD

Case No. 702

OPM 2157/2013

Tender for the Provision of Environmentally Friendly Cleaning Services at the Office of the Prime Minister.

The tender was published on the 22nd October 2013. The closing date was the 12th November 2013. The estimated value of the

Tender was €42,373 (Excluding VAT)

Eight (8) offers have been received for this tender.

On the 24th February 2014 Gafa Saveway Cleaners Limited filed an objection against the disqualification of their offer.

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 22nd May 2014 to discuss the objection.

Present for the hearing were:

Gafa` Saveway Cleaners Limited - Appellant

Ms Paulette Gafa`	Representative
Ms Marthese Triganza	Representative

TF Services Limited - Preferred Bidder

Mr Ramon Fenech	Representative
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Office of the Prime Minister - Contracting Authority

Mr Joseph Fenech	Chairman Evaluation board
Ms Joanna Grioli	Member Evaluation Board
Ms Moira Pisani	Member Evaluation Board
Mr Mario Borg Olivier	Assistant Director
Ms Audrey Anne Anastasi	Technical Expert
Mr Ralph Decelis	Representative

Following a brief introduction by the Chairman, the appellant's representative was invited to make her submissions on the objection.

Ms Paulette Gafa` on behalf of the appellant firm Gafa` Saveway Cleaners Ltd. said that her firm's tender offer had been disqualified because it was non-compliant since it failed to *"submit a list of all substances contained above 0.01% by weight of the final product, together with their CAS number and any risk phrases with which they are classified according with Article 5.2.4 of Volume 3 Section 1 Part 1 of the tender document."* However she contended that appellant's bid was compliant since the list was not required in this case as could be seen from the official declaration made by the appellant's supplier SKAT Limited.

Ms Marthese Triganza speaking on behalf of SKAT Limited said that her company normally furnishes bidders with letters explaining that their products, GoGreen, do not contain substances that are classified with risk phrases as outlined in Directive 67/548/eEC. And as such there was no necessity to provide the list of chemicals and CAS no. Apparently in the present case it was alleged that appellant did not submit the list. The products did not contain any of the chemicals and thus the list was not required.

Mr Joseph Fenech, the chairman of the evaluation board, on behalf of the contracting authority said that appellant had been found to be non-compliant for the reasons shown in the evaluation report. The tender document clearly specified that if product submitted by bidders had the EU Eco Label then it was OK. In appellant's case, there was no Eco Label. Clause 5.2.4 of the tender stated that *"All products carrying the EU Ecolabel will be deemed to comply. "If the product does not carry the EU Ecolabel the following information must be clearly provided:*

- *For each product offered, all substances contained above 0.01% by weight of the final product must be listed, together with their CAS Number 3 (where available) and any risk-phrases with which they are classified."*

Appellant's offer did not carry an Ecolabel and therefore had to have submitted the required list. However no such list was submitted by appellant.

Audrey Anne Anastasi on behalf of the contracting authority said that the tender document did not ask for the safety data sheet but if the Ecolabel was not possessed then bidders had to submit a list showing all the substances contained in the product that were over 0.01% by weight and to give its dissertation. The appellant just submitted a list of products that would be used without specifying their chemical composition.

The Chairman remarked that Clause 5.2.4 was clear that in case of not having an Ecolabel then further information was to be submitted.

Ms Paulette Gafa` said that appellant submitted a list of products to be used for cleaning together with a declaration from the manufacturer that these products conformed to the criterion.

The Chairman at this point raised up the matter of the quoted rates. Were the rates checked if these were according to the latest parameters for evaluating precarious employment.

Mr Joseph Fenech on behalf of the contracting authority said that at the time the evaluation of the tender was being made, this point had not yet been mentioned. He said that the

evaluation board had consulted with the Industrial Employment Relations and had obtained the rates of more than one year. It had been explained to the evaluation board that the board would not legally covered if any bid was disqualified specifically for the reason of precarious employment.

Ms Paulette Gafa` on behalf of the appellant said that presently there was established a threshold and the appellant agreed and abided with this but when the tender was issued this threshold was not in place.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 24th February 2014 and also through Appellant's verbal submissions during the hearing held on 22nd May 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) **Appellant contends that his bid was discarded due to the fact that, since the products being offered by same did not possess an 'EU Ecolabel', the Contracting Authority is claiming that, Appellant had to submit further additional information regarding the 'chemical components' of the products being used in the tendered service.**
- b) **Appellant claims that the declaration submitted with the tender document, confirming evidential certification of the proposed products, was sufficient to abide by Clause 5.2.4 of the tender document.**
- c) **In accordance with, 'Volume 1, section 2, Para 11, of Note 2, of the tender document, the Contracting Authority had the right to ask for clarifications regarding the 'chemical components of the product' being used in the tendered services. No clarifications were requested by the Contracting Authority.**
- d) **Appellant's Bid price was cheaper than that of the Preferred Bidder.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 22nd June 2014, in that:

- a) **Appellant's bid was not compliant due to the simple fact that the products he was offering for rendering the required services had no 'EU Ecolabel' and therefore in accordance with Clause 5.2.4 of the tender document, Appellant Company had to submit for each product used in the tendered service, the 'chemical components' and 'risk factor' of same. In this regard, the Appellant did not conform to this mandatory requirement.**

Reached the following conclusions:

- 1. This Board opines that clause 5.2.4 of the tender document, clearly states that ,
“If the product does not carry the ‘EU Ecolabel’, the following information must be provided:**
 - For each product offered, all substances contained above 0.01% by weight of the final product must be listed, together with their CAS-Number 3 (where available) and any risk-phrases with which they are classified.**
 - The name and function of all biocides must be listed. For all biocides classified ad R 50/53 the log Pow of BCF must be given.**
 - The total quantity of elementary phosphorus must be given (applicable to all purpose cleaners per functional unit; applicable to sanitary cleaners per 100g of product).**

Since, Appellant’s products bid not possess the ‘EU Ecolabel’, Appellant failed to submit the required additional information as stipulated in clause 5.2.4 of the tender document.

- 2. The certificate submitted by SKAT Limited dated 21st February 2014, does not comply with the stipulated requirements of giving the ‘chemical components’ of the products being offered by Appellant Company, as dictated in clause 5.2.4 of the tender document.**
- 3. The Contracting Authority has the right to ask for clarifications in terms of ‘volume 1, section 2, paragraph 11 and note 2’. Clarifications can only be made on submitted documentation and not on ‘missing information’. In this case, clarifications could not be effected by the Contracting Authority as there was ‘missing information’ on the part of the Appellant Company.**
- 4. This Board opines that, although the tender was issued in 2013 and at that time, there were no indicative guidelines as to precarious work and conditions, the actual activity to be carried out by the prospective bidder, has to be effected in 2014. In this regard, the established minimum hourly rate at cost to Employer is Euros 5.4 (Exclusive of Vat). Appellant’s bid price was Euros 5.45 at cost (Exclusive of vat). This is applicable for the year 2014.**

This Board notes that no prospective commercial bidder would execute the tendered works without any profit margin at all, especially when the quoted bid rate does not include provision for overheads. This will definitely lead to precarious conditions.

- 5. This Board, cannot but notice the Preferred Bidder's hourly rate of Euros6.5 (Inclusive of Vat) or Euros 5.51 (Exclusive of Vat). Again , this Board opines that since the tendered works are to be carried out during the year 2014, the cost of hourly labour rate has to reflect the established hourly rate of Euros 5.4 (Exc VAT) for 2014.**

In this regard, this Board opines that the Preferred Bidder's hourly rate does not include a provision for 'overheads other costs'. To the effect that the bid price quoted by the Preferred Bidder might also lead to precarious conditions.

In view of the above, this Board recommends that the tender be re-issued to include:

- i) A full breakdown of costs of the hourly wage cost and also to include 'expenses overheads', to indicate whether the Prospective Bidder intends to achieve a modest margin of profit, and in this regard eradicate any possibility of precarious situations.**
- ii) This Board also recommends that the deposit paid by Appellant Company be reimbursed.**

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancilleri
Member

1 July 2014