

PUBLIC CONTRACTS REVIEW BOARD

Case No. 743

MEIB 137/2014: Tender for the Supply of Environmentally Friendly Cleaning Services at MEIB.

The tender was published on the 6th June 2014. The closing date was the 30th June 2014. The estimated value of the Tender was €45,000.

Nine (9) bidders had submitted an offer for this tender.

On the 18th August 2014 Omni Care Limited filed an objection against the proposed award of the tender to JF Services Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Thursday the 18th September 2014 to discuss the objection.

Present for the hearing were:

Omni Care Limited - Appellant

Mr Jonathan Gerada	Executive Secretary
Mr Mario J Gerada	Chief Executive Officer

JF Services Limited - Preferred Bidder

Dr Matthew Paris	Legal Representative
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Ministry for Economy, Investment and Small Businesses - Contracting Authority

Mr Matthew Vella	Chairperson Evaluation Board
Ms Claudine Cortis	Secretary Evaluation Board
Mr Louis Costa	Member Evaluation Board
Ms Marlene Navarro	Member Evaluation Board
Mr Joseph Sciriha	Member Evaluation Board
Mr Michael Mizzi	Assistant Director
Dr Nadine Sant	Legal Representative

The Chairman made a brief introduction and appellant's representative was invited to make his submissions on the objection.

Mr Mario Gerada on behalf of the appellant explained that appellant is a Co-Operative. Appellant was set up in order to safeguard against precarious employment and follows rigorously directives issued by the Government. He alleged that appellant was continually losing tenders because it abides with these directives. He said that appellant had been awarded a four month trial contract. He stated that this tender had been maliciously issued.

At this stage the Chairman remarked that only submissions on matters stated in the letter of objections should be made.

Mr Jonathan Gerada on behalf of the appellant explained that the objection is based on the fact that employees' wages cannot be altered. The objection is based mainly on the fact that the other bidders ignored the present wages presently being given to the employees. Appellant had been disadvantaged by offering the present conditions. The tender specifications failed to give the actual rates being paid at the department.

Mr Mario Gerada said that the tender only published the final rate of offers. This, he contended, could give rise to other bidders inflating their expenses. Appellant offered transparently. Other bidders could for example inflate the overtime rates. Appellant submitted a base rate of €4.50. During the present four month contract this had been changed from €4.14 to €4.40. Appellant was not awarded the tender since its offer was not the cheapest.

Mr Jonathan Gerada explained the objection in that there were already a number of employees at the department receiving a rate and the appellant did not wish to replace them, employing others at a lower rate.

Dr Nadine Sant said that the objection was based on two grievances – that no base rate was given and on other baseless allegations. The tender required the download of a document page 5. Section D- Financial offer- the last sentence reads "(i) no tender shall be accepted where total statutory costs are less than €5.78 per hour." Also, Clause 9.1 of the tender states that the award criteria shall be the cheapest compliant tender. She referred to appellant's financial offer signed by Mr Gerada. On the front page it shows in column one that "Hourly workers' salary (Not less than €5.78 per hour excluding VAT). Thus she contended that the base rate was known and specified in the tender document. The appellant's financial offer last page, where the breakdown is listed, appellant chose to allow more than €5.78 by putting down €4.50 per hour. This was appellant's decision and discretion to offer more than required. This was a public tender awardable to the lowest bid. Appellant's offer was administratively and technically compliant but was ranked the fifth. There were no contestations from the other bidders regarding the base rate. If appellant had any doubt it could have asked for clarification. Appellant has no right to obtain details of the preferred bidder's submission other than the total price. Appellant made unfounded allegations against the contracting authority and should give proof of these or withdraw them. Finally Dr Nadine Sant referred to another decision of the PCRB wherein it was stated that it was not the PCRB's remit to ascertain employees' wages.

Dr Matthew Paris first drew the attention of the Board to statements made during the hearing that were not included in the letter of objection. He insisted that these are not taken into

consideration and discarded. Regarding the allegation that there was no level playing field he said that this was a completely frivolous and vexatious allegation because what was available to the preferred bidder was available to appellant and other bidders. Regarding the base rate he referred to page 5 Clause 9.1 where the base rate was clearly shown.

Dr Matthew Paris continued that his clients had instructed him to state that if the allegations made by the appellant in the letter of objection are not withdrawn, they are going to institute legal proceedings against appellant.

Replying to a question by Board member Mr Richard A Matrenza, Dr Nadine Sant, for the contracting authority, said that there were no other co-operatives that were bidders for this tender. The contracting authority was bound to abide with the law when adjudicating tenders and co-operatives had to abide with the tender specifications. There were no directives instructing evaluation boards to give different treatment to co-operatives.

Dr Matthew Paris said the European Directives on Public Procurement preclude any sort of discrimination in favour of anyone in the award of tenders.

Mr Mario Gerada insisted that he did not make any allegations because he stated that it was possible that things were not done properly. He declared that the intention behind the objection was not in order that appellant be awarded the tender. He had no intention to make allegations against anyone.

Both Dr Matthew Paris and Dr Nadine Sant accepted this statement as a withdrawal of the objection's allegations.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 8th August 2014 and also through Appellant's verbal submissions during the hearing held on 18th September 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant claims that no indication was made in the tender document with regards to the minimum hourly base rate through which the tenderer had to be guided with.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 18th September 2014, in that:

- a) The Contracting Authority refuted all unfounded allegations made by the Appellant, in his letter of objection;**
- b) The Contracting Authority contends that in accordance with clause 9.1 of the tender document, it was clearly pointed out that the award criteria shall be the cheapest but compliant tender.**

Reached the following conclusions:

- 1. This Board strongly condemns the fact that in some instances, the letters of objections contain frivolous and unfounded allegations. In this respect, this Board recommends that the letter of objection by Appellants should be addressed to their complaints. In this particular appeal, appellant accepted to withdraw these allegations and both the Contracting Authority and the Preferred Bidder acceded to this gesture;**
- 2. With regards to Appellant's claim that there was no indication of a minimum hourly base rate in the tender document; this same Board would refer to page 5, clause 9.1, wherein the base rate, is clearly defined as Euros 5.78 (Excl VAT);**
- 3. This Board opines that the Appellant should have been aware of the footnote on page 5 of the tender document, which clearly stated that 'No tender quoting total employee costs at less than Euros 5.78 (Excl VAT) will be accepted. This Board finds that the Appellant was well aware of the conditions stipulated in the tender document;**
- 4. This Board also finds that the recommended offer was the cheapest and fully compliant with the conditions as laid out in the tender document.**

In view of the above, this Board finds against the Appellant and recommends that the deposit paid by Appellant should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A. Matrenza
Member

15 October 2014