

PUBLIC CONTRACTS REVIEW BOARD

Case No. 766

DH 3084/2014

Call for Quotes with Extended Treshold for the Provision of Environmentally Friendly Cleaning Services for Various Entities with the Parliamentary Secretariat for Health.

The tender was published on the 9th September 2014. The closing date was the 23rd September 2014. The estimated value of the Tender was €120,000 (Exclusive of VAT).

Seven (7) tenderers had submitted an offer for this tender.

On the 28th November 2014 TF Services Limited filed a letter of objection against the decision of the contracting authority to award the tender to JF Services Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 9th December 2014 to discuss the objection.

Present for the hearing were:

TF Services Limited - Appellant

Mr Simon Turner	Representative
Ms Roanne Avallone	Representative

JF Services Limited - Preferred Bidder

Mr Alex Borg	Representative
Mr Michael Carbone	Representative
Dr Matthew Paris	Legal Representative

Central Procurement and Supplies Unit - Contracting Authority

Ms Mary Gauci	Chairperson Evaluation Board
Ms Rita Turchett	Secretary Evaluation Board
Ms Marie Louise Grech	Member Evaluation Board
Mr Geoffrey Scicluna	Member Evaluation Board
Dr Brigitte Gafa`	Legal Representative

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

Mr Simon Turner on behalf of appellant firm explained that the objection was based on the preferred bidder's rates paid by the preferred bidder's employees for Sundays and Public Holidays. He said that from calculations made by the appellant, it resulted that the rates quoted by the preferred bidder for Sundays and Public Holidays were not good enough to cover all the costs for the employees.

Dr Brigitte Gafa` on behalf of the contracting authority said that the appellant is acting under a misconception because the tender had asked for the rates for the service on ordinary days, Sundays and Public Holidays and did not enquire into the amount of wages bidders paid. All bidders had to sign a declaration that they would not pay their employees rates below the minimum wage. Thus the contracting authority's obligations in this regard were exhausted and the contracting authority did not need to investigate further.

Dr Matthew Paris on behalf of the preferred bidder referred to the subsidiary legislation 452.76, the Wages Council Regulation Order. He insisted that the employees of the preferred bidder were paid according to this legislation and the preferred bidder's tender was totally compliant. He then referred to what the appellant had asked in the letter of objection. Appellant had asked the Public Contracts Review Board to award the tender to appellant. This definitely does not fall within the remit of the Public Contracts Review Board which does not award tenders.

At this point the hearing was brought to an end.

This Board,

Having Noted the Appellant's objection in terms of the Reasoned Letter of Objection dated 28th November 2014 and also through appellant's verbal submissions during the hearing held on the 9th December 2014, had objected to the decision taken by the pertinent authority, in that:

- a) Appellant contends that the rates quoted by the preferred bidder did not cover the cost of wages to be paid to employees on Sundays and Public Holidays.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 9th December 2014 in that:

- a) The Contracting Authority maintains that the Tender Document asked for the rates for the service on ordinary days, Sundays and Public Holidays. There was no need to query the amount of wages being paid by the preferred bidder as all bidders signed a declaration not to pay their employees below the minimum wage.**

Reached the Following Conclusions:

- 1. In the Appellant's 'Letter of Objection', appellant requested this Board to award the tender to same. It is not this Board's jurisdiction to award a tender. The function of this Board is to examine and confirm whether the Evaluation Process**

was carried out in a fair and transparent manner. In this regard, this Board cannot accede to such a request;

2. From credible submissions made by the Contracting Authority during the hearing, this Board is justifiably convinced that the Contracting Authority carried out its Evaluation process in a fair and transparent manner. This Board confirms that the Declaration signed by all bidders, in that, they will abide to pay their employees not less than the minimum wage, was a sufficient obligation on behalf of all bidders to adhere to this declaration;
3. The Tender Document requested hourly rates for services to be carried out on ordinary days, Sundays and Public Holidays. This was clearly indicated in the tender and in this regard, the Evaluation Committee chose the most advantageous rate for the tendered service. This Board does not uphold appellants' contention.

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancillieri
Member

16 December 2014