

PUBLIC CONTRACTS REVIEW BOARD

Case No. 783

MHAS 124/2014

Tender for Environmentally Friendly Cleaning Services at the Ministry for Home Affairs and National Security.

The tender was published on the 20th June 2014. The closing date for the tender was on the 4th July 2014.

The estimated value of the Tender was €68,952.00 (Exclusive of VAT).

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

On the 30th December 2014 WM Environmental Limited filed a letter of objection against the award of the tender to Ozosystem Limited for the amount of €94,910.40 per annum.

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 17th February 2015 to discuss the objection.

Present for the hearing were:

WM Environmental Limited - Appellant

Mr Wilson Mifsud	Director
Mr Joachim Calleja	Representative
Mr Adolfo Camilleri	Representative
Dr John Bonello	Legal Representative

Ozosystem Limited - Preferred Bidder

Mr Darren Muscat	Representative
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Ministry for Home Affairs and National Security - Contracting Authority

Mr Stephen Vassallo	Chairperson Evaluation Board
Mr Charles Lia	Member Evaluation Board
Mr Robert Grixti	Director Corporate Services

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

Dr John Bonello on behalf of the appellant company explained that the objection was based on three grievances, mainly that:

- i. Appellant's tender was totally compliant with the tender specifications.
- ii. The preferred bidder's offer;
- iii. The costs involved in this contract are not covered by the offers made by the bidders.

He explained that this tender was different from other tenders in connection with cleaning in that it was issued by the Ministry but involved services to be rendered at several offices and departments situated all over Malta. These places were listed in clause 2.1 and provision also had to be made for the inclusion of any other premises as required. When one calculates and takes into consideration all these premises and also the schedule of services as listed in clause 2.4, found at page 13 of the tender document, which gives the number of employees required and the hours, then it is seen that this is not a normal tender. This tender needs different parameters since bidders could not use the same employees at the different outposts at the same time. Because of the distance between the diverse localities of the premises, contractors need to increase their present staff and also to increase their overheads. Thus bidders could not be compliant. In the schedule you had several idle slots and others needing transport of employees to the different venues. These considerations increase substantially the overheads. It is therefore clearly evident that the first 4 bidders would fail the safeguards against precarious employment. The first 7 bidders do not take into consideration the above mentioned increase in overheads. Most of the bidders' offers do not cover the expenses involved in this tender.

Mr Robert Grixti for the contracting authority said that the first grievance was pointless since appellant was not declared to be non-compliant. This was a service tender and bidders had to offer to provide the service required in the schedule. No other constraints were imposed on the bidders regarding the number of employees; they had to provide the requested services and each bidder had to provide his own solution to be able to comply. No minimum requirements of number of employees were set. The contracting authority was not interested in persons but in the service provided. The evaluation board had followed the circular regarding precarious employment, seeing that no offer was below the €5.78 threshold. It was left up to bidders to assign employees to the several sites as it suited them.

Mr Wilson Mifsud ID No 527284M on behalf of the appellant, under oath said that appellant had been providing the service for the last 8 months. Employees are assigned to the diverse sites as required, although about 4 employees have their place of work fixed. Most work in one place and when the work is finished go to another location to continue cleaning. He said that some hours as listed in the schedule are not necessarily kept. Sometimes instead of staying at a venue for the whole time listed, employees are told to finish early. Appellant is only paid for the actual hours worked. This resulted in additional costs. He could not state how much the cleaning materials cost on a per hour basis. There are additional transport costs.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in term of the 'Reasoned Letter of Objection' dated 30th December 2014 and also through Appellant's verbal submissions during the hearing held on 17th February 2015, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that his offer was fully compliant.**
- b) Appellant claims that the offer submitted by the Preferred Bidder was not realistic as this tender involved substantial costs relating to transportation of Appellant's employees from one department to the other.**
- c) Appellant contends that with his vast experience in the tendered service, the rate quoted by the Preferred Bidder would barely cover the hourly rate of the minimum wage and materials used.**

Having considered the Contracting Authority's verbal submissions during the hearing on 17th February 2015, in that:

- a) The Contracting Authority insists that Appellant's first grievance was never contested and Appellant's offer was technically compliant.**
- b) The Contracting Authority maintains that this was a service tender and hourly rates were requested. The rate quoted by the Preferred Bidder was within the threshold as stated in circular regarding precarious employment and was the most favourable.**

Reached the following conclusions:

- 1. With regards to Appellant's first contention, this Board justifiably upholds the submission made by the Contracting Authority in that, Appellant's offer was not rejected because it was not fully compliant.**
- 2. This Board points out that the hourly rate requested by the Contracting Authority did not stipulate any additional conditions; quite correctly the Contracting Authority tendered for an hourly rate for a service. This Board opines that it is up to the prospective tenderer to include or rather taking in to account all his costs in providing the tendered service. On the other hand, it is in the interest of the Contracting Authority to obtain the most advantageous bid, after ensuring that no precarious working conditions will prevail. This Board, after hearing credible submissions, is convinced that the hourly rate submitted by the Preferred Bidder was the cheapest and conforming with the circular issued with regards to precarious working conditions. In this regard, this Board does not uphold Appellant's second grievance.**
- 3. With regards to Appellant's third contention, this Board would point out that it is not the jurisdiction of this same Board to assess whether the Preferred Bidder's rate will result in a profit or a loss. This Board's jurisdiction is to ensure that the evaluation process has been carried out in a just, fair and transparent**

manner. In this regard, this Board is justifiably convinced that the Evaluation has been carried out in a transparent and equitable manner. This Board does not uphold Appellant's third contention.

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

24 February 2015