

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 785**

**VAT/CS/Q/1/14 - Call for Quotations for the Supply of Cleaning Services.**

The call was published on the 14<sup>th</sup> November 2014. The closing date for the call was on the 28<sup>th</sup> November 2014.

The estimated value of the call for quotations was €50,847.45 (Exclusive of VAT).

Twelve (12) offers had been received for this call for quotations.

On the 5<sup>th</sup> January 2015 Crystal Clean Limited filed a letter of objection against the disqualification of its offer for being administratively non-compliant

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 24<sup>th</sup> February 2015 to discuss the objection.

Present for the hearing were:

### **Crystal Clean Limited - Appellant**

Mr Herman Depasquale	Accountant
Mr Dennis Xuereb	Director
Ms. Kristina Xuereb	Managing Director
Dr Martin Fenech	Legal Representative

### **Ta' Haxwex Cleaning Services - Preferred Bidder**

Ms. Jacqueline Cauchi	Representative
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### **VAT Department - Contracting Authority**

Mr Patrick Grima	Chairperson Evaluation Board
Mr Manfred Barbara	Member Evaluation Board
Ms. Lorraine Galea	Member Evaluation Board
Mr Ivan Portelli	Member Evaluation Board
Mr Robert Borg	Representative

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

Dr Martin Fenech on behalf of appellant firm Crystal Clean Limited stated that his client was declared to be administratively non-compliant because the hourly rate quoted was less than the rate quoted in Contracts Circular number 27/2014 that had been issued on the 23<sup>rd</sup> December 2014. He contended that since the tender closing date had been the 28<sup>th</sup> November 2014, the effects of the quoted circular should not have affected appellant's submission rates. Appellant's offer had been definitely administratively compliant at the time of the tender closing date, and could definitely not be declared to be administratively non-compliant. Furthermore, he contended that the said circular had stipulated an hourly rate for cleaners for 2015 to be €6.28 without VAT, which amounted to €7.41 with VAT. His client's offer was €7.73 including VAT so the offer should have been found valid and cheaper than the preferred bidder's. The evaluation board must have made an erroneous calculation.

Mr Patrick Grima on behalf of the contracting authority said that this was a call for quotations and not a call for tenders. He explained and admitted that the evaluation board had referred to the said circular but only referred to it about the hourly rates. It must be remembered that in the budget speech reference had been made to precarious employment. He evaluation board had applied the new rates that would be applicable on the 1<sup>st</sup> January 2015.

The Chairman remarked that speaking on the principles involved, the tender had closed before the rates mentioned in the circular became applicable.

Mr Manfred Barbara on behalf of the contracting authority said that although the circular was issued on the 23<sup>rd</sup> December 2014, the information about the new rates had become known on the 17<sup>th</sup> November 2014 through the Budget Speech, before the closing date of the call. Reference to this may be found at page 55 of the same speech. The evaluation board had decided to follow the new rates when evaluating the present call for quotations.

The Chairman remarked that the budget only comes into effect after being approved by Parliament. The tender had closed before the circular was issued. The evaluation board should have used the parameters applicable at the time of the closing date.

Mr Manfred Barbara for the contracting authority said that the evaluation board only used the rates mentioned in the circular as a reference point since the board was not evaluating a tender but a call for quotations, and the circular referred to tenders not call for quotations. The rate offered by appellant for labour costs was €5.80 without VAT this was less than the €6.28 stipulated in the circular.

Mr Herman Depasquale on behalf of appellant stated that at the time of submission of the offer, the rates offered by appellant did not lead to precarious employment.

Dr Martin Fenech insisted that bidders were misled because the circular was issued after the closing date and bidders could not know what would happen in the future.

Mr Manfred Barbara filed a copy of a data sheet the evaluation board used to assess the hourly rate for wages at scale 20.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'reasoned letter of objection' dated 5<sup>th</sup> January 2015, and also through Appellant's verbal submission during the hearing held on 24<sup>th</sup> February 2015, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant felt aggrieved by the contracting authority's decision in that his offer was well within the parameters issued as per circular No 27/2014. In fact, his offer was administratively and technically compliant.**
- b) The circular issued on the 23<sup>rd</sup> December 2014, should not have been taken into consideration by the evaluation committee as it did not come into force prior to 1<sup>st</sup> January 2015. The closing date of the tender was 28<sup>th</sup> November 2014.**

**Having considered the contracting authority's verbal submissions during the hearing held on 24<sup>th</sup> February 2015, in that:**

- a) The contracting authority contends that this was a call for quotations and not a call for tenders.**
- b) The contracting authority maintained that although the circular No 27/2014 was issued on the 23<sup>rd</sup> December 2014, the new rates, as stated in the said circular were known on 17<sup>th</sup> November 2014, through the budget speech. In this regard the evaluation committee opted to follow the new rates.**

**Reached the following conclusions:**

- 1. With regards to appellant's first contention, this Board opines that since the closing date of the tender was before the date of application of the regulations in circular No 27/2014, the evaluation committee was incorrect in applying, as a guideline, future rates which were to be applicable with effect from 1<sup>st</sup> January 2015. Even the same mentioned circular was clear in determining what action needed to be taken for tenders which do not apply as from 1<sup>st</sup> January 2015. In this regards, this Board upholds appellant's first contention.**
- 2. With regards to appellant's second contention, this Board notes that the closing date of the tender was 28<sup>th</sup> November 2014 and in this respect the rates to be guided upon should not in any way reflect future rates. The evaluation committee should have taken into consideration rates which were applicable, prior to 1<sup>st</sup> January 2015. In this regard, this Board upholds appellant second contention.**
- 3. With regards to the contracting authority's first contention, this Board opines that, at evaluation stage, there is no difference as to whether this was a call for quotation or a call for tender. The evaluation procedure should follow the same basic principles in all respects. Appellant's contention in this regard is not credibly justified. In this respect, this Board does not uphold the contracting authority's submission.**

4. **This Board noted that the contracting authority did not follow the guidelines regarding the minimum hourly rates to be applied prior to the effective application date, of the circular no 27/2014 but relied on the budget speech. This Board opines that this manner of approach by the evaluation committee is not credibly justified.**

**In view of the above, this Board find in favour of appellant and recommends that:**

1. **The tender be re-issued, taking into consideration the guidelines dictated in circular no 27/2014.**
2. **The deposit paid by the appellant company be reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*3 March 2015*