

PUBLIC CONTRACTS REVIEW BOARD

Case No. 786

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

The call was published on the 14th November 2014. The closing date for the call was on the 28th 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 5th January 2015 VSV Cleaning Services filed a letter of objection against the disqualification of their 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 24th February 2015 to discuss the objection.

Present for the hearing were:

VSV Cleaning Services - Appellant

Mr Derek Spiteri	Director
Ms. Maria Buscema Spiteri	Director

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

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

Mr Derek Spiteri on behalf of the appellant explained that appellant's offer had been disqualified. He said that appellant was contesting the fact that the tender was awarded according to a circular that had been issued after the tender closing date.

The Chairman explained to the appellant that the Board had just heard a similar objection on the same tender, but from another appellant. He explained that the circumstances were identical and the Board had deemed that the circular in question should have become applicable for tenders awarded after the 1st January 2015. In fact the same point had been raised by appellant in the letter of objection. He explained that the remarks and explanations given in the previous case, where the objector had been Crystal Clean Limited would be considered as referring also to the present objection and that there was no need to repeat the same arguments.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'reasoned letter of objection' dated 5th January 2015, and also through Appellant's verbal submission during the hearing held on 24th 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 23rd December 2014, should not have been taken into consideration by the evaluation committee as it did not come into force prior to 1st January 2015. The closing date of the tender was 28th November 2014.**

Having considered the contracting authority's verbal submissions during the hearing held on 24th 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 23rd December 2014, the new rates, as stated in the said circular were known on 17th 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 1st 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 1st 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 28th 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 1st 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