

PUBLIC CONTRACTS REVIEW BOARD

Case No. 799

CT 2043/2014

Tender for the Provision of Security Services on the Campus of the University of Malta and other University Designated Sites.

The tender was published on the 25th November 2014. The closing date was the 6th January 2015. The estimated value of tender is €460,676.95(Inclusive of VAT).

Ten (10) bidders had submitted bids for this tender.

On the 13th March 2015 Grange Security (Malta) Ltd. filed an objection against the decision of the contracting authority to award the tender to Signal 8 Security Services Malta Ltd and asking that the tender be cancelled and re-issued with new parameters.

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 21st April 2015 to discuss the objection.

Present for the hearing were:

Grange Security (Malta) Limited - Appellant

Mr Melvin Grange	Representative
Ms Denise Grange	Representative
Dr Joe Sammut	Legal Representative
Dr Simon Micallef Stafrace	Legal Representative

Signal 8 Security Services Malta Limited - Preferred Bidder

Mr Joseph John Grech	Representative
Dr Steffi Vella Laurenti	Legal Representative

University of Malta - Contracting Authority

Mr Tonio Mallia	Chairperson Evaluation Board
Mr Elton Baldacchino	Secretary Evaluation Board
Mr Joseph Camilleri	Member Evaluation Board
Mr Karm Saliba	Member Evaluation Board
Mr Vince Fabri	Member Evaluation Board
Dr Oriella De Giovanni	Legal Representative

Department of Contracts

Mr Antoine Galea	Procurement Manager
Dr Christopher Mizzi	Legal Representative

The Chairman, following a brief introduction, invited the appellant's representative to make his submissions on the objection.

Dr Simon Micallef Stafrace on behalf of his client the appellant said that the latter was here in order to obtain directives regarding transparency and consistency. He said that there had been a previous tender that had been cancelled because of reasons that the appellant had brought for the present objection. He wanted to refer to it.

The Chairman pointed out that the submissions should be limited to the present tender only. It was this tender award that has been the subject of the objection and that is being scrutinized by the Public Contracts Review Board.

Dr Simon Micallef Stafrace for the appellant explained that the award criteria for the present tender had been the cheapest, compliant tender. He contended that the evaluation process took into consideration only the labour costs and ignored the costs of the other ancillary items. The offers showed a great difference when the details were examined. The tender as awarded to the preferred bidder does not satisfy the regulations related to precarious employment that the administration wanted to address. He agreed that a bidder could opt to work a contract at a loss to obtain certain experience, but he insisted that the possibility of employees working under precarious conditions should not be completely ignored. This Board as well as the Courts of Justice have given great importance to the issue of precarious employment. The price offered should be enough to cover all the overheads. He claimed that it was not enough for the evaluators to choose the cheapest. In his opinion, cheap prices could probably mean precarious employment.

The Chairman asked the contracting authority to inform the Board whether the preferred bidder's offer had been compliant and whether the offer was for an hourly rate.

Dr Oriella De Giovanni for the contracting authority said that the preferred bidder's tender had been totally compliant and that the offer was for an hourly rate, which was more than the minimum €5.78 hourly rate. She continued that the sole criterion that the evaluation board had to consider was the cheapest compliant. The preferred bidder was totally compliant both administratively and technically. The Court had been clear that once the technical and administrative compliance was ascertained, only the price has to be considered when making the award. This means that the cheapest bid prevails. A bidder could obtain other advantages from being awarded a tender other than the price. The labour costs as submitted by the preferred bidder were within the accepted parameters and the preferred bidder had declared and signed that all the laws would be abided with. Thus the preferred bidder was awarded the tender.

The Chairman explained that this Board could not go into the matter of whether bidders made a profit or not. This was decided by the Court of Appeal in a case where the Board had precisely gone into the matter, and was overruled by the Court.

Dr Simon Micallef Stafrace again raised the matter of precarious employment, although he accepted that the tender had asked for a rate per hour and not for labour costs. He wanted also to refer to a warrant of prohibitory injunction 536/2015 issued on the 12th April 2015 in the names Signal 8 vs Heritage Malta.

The Chairman explained that once the rate per hour was within the parameters, the tender had

to be awarded. The onus was on the contracting authority to see that laws are not then broken during the provision of the service.

At this point the hearing was closed.

This Board

Having noted the Appellant's objection in terms of the "Reasoned letter of objection" dated 12th March 2015 and also through the appellant's verbal submissions during the public hearing held on the 21st April 2015 had objected to the decision taken by the pertinent authority, in that:

- a) The appellant company contends that although the cheapest compliant bidder determined the award criteria of this tender, the preferred bidder's quoted rate could lead to precarious working conditions, as the same quoted rates (by the preferred bidder), did not provide for other overhead costs apart from the legal basic labour costs.

Having considered the contracting authority's "Reasoned letter of reply" dated 1 April 2015 and also through their verbal submissions during the public hearing held on the 21st April 2015, in that:

- a) The Contracting Authority contends that the Evaluation Committee had abided by the Court of Appeal's decision, in that since the tenderer was fully compliant as it was the cheapest, yet at the same time conformed with the parameters of the minimum hourly labour rate as dictated by the Government at the time of the evaluation process, the same evaluation committee had acted correctly.

Reached the following conclusions:

1. This Board, after taking into consideration the Hon. Court of Appeal's decision and also this same Board's subsequent decisions maintains that, it is not the competence of either the evaluation committee of the contracting authority nor the competence of the Public Contracts' Review Board to delve into the fact whether the rate quoted by the preferred bidder will result in a breakeven or loss situation. If the rate quoted by the preferred bidder represented an hourly quoted rate for a service to the contracting authority and falls within the parameters of the stipulated minimum hourly labour rate, the cheapest rate is quite rightly chosen. In this regard, this Board does not uphold the appellant's contention;
2. This Board would pertinently point out that although the preferred bidder's quoted rate, which is within the parameters of the stipulated minimum hourly rate to be paid to the employees of the said preferred bidder, might not seem to be considered as commercially viable, the preferred bidder has indulged himself to abide by the local stipulated rules with regards to precarious employment conditions. In this regard, it is the onus of the contracting authority to ensure and monitor that once the awarded tendered services are carried on, these stipulations are strictly adhered to.

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

23 April 2015