

PUBLIC CONTRACTS REVIEW BOARD

Case No. 801

TM 085/2014

Tender for the Provision of Scheduled Public Transport Monitoring Services.

The tender was published on the 7th November 2014. The closing date was the 25th November 2014. The estimated value of the Tender was €119,000.00 (Exclusive of VAT)

Two (2) bidders had submitted an offer for this tender.

On the 13th January 2015 Appletree International Limited filed an objection against the award of the tender to Signal 8 Security for the amount of €95,480 including VAT.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday the 28th April 2015 to discuss the objection.

Present for the hearing were:

Appletree International Limited:

Ms Claire Briffa	Director
Dr Charmaine Cherret	Legal Representative

Signal 8 Security Limited

Dr Steffi Vella Laurenti	Legal Representative
--------------------------	----------------------

Transport Malta

Ms Sylvana Bartolo	Chairperson Evaluation Board
Ms Sabrina Schembri	Secretary Evaluation Board
Mr George Attard	Member Evaluation Board
Ms Liz Markham	Procurement Manager
Mr Ray Stafrace	Director
Dr Joseph Camilleri	Legal Representative

The Chairman made a brief introduction and the appellant's representative was invited to make her submissions on the letter of objection.

Dr Charmaine Cherret on behalf of Appletree International Limited, the appellant, explained that appellant's submissions were listed in the letter of objection. She said that she would be presenting some payslips. She contended that:

- i) The tender was not opened according to regulations but the opening was postponed till later and her clients were not informed of the opening;
- ii) There were certain workings of a technical nature that would be explained by Ms Briffa.

Ms Claire Briffa for the appellant referred to the documents submitted by the appellant, and said that the objection was based on the fact that the Government had fixed a rate of €5.78 that employees had to be paid. The contracting authority had asked for the provision of 14,000 hours of service. When this is multiplied by the rate of €5.78 the result would be €95,485.60. The preferred bidder Signal 8 Security submitted a bid of €95,480 which is less than the figure obtained by multiplying the rate by the number of hours. The appellant's offer had been €135,464. She contended that since the preferred bidder offered €95,480 when the rate multiplied by the number of hours amounted to €95,485.60 it follows that the preferred bidder's offer was not technically compliant because it is less than the minimum.

Dr Joseph Camilleri for the contracting authority submitted that:

- a) It was not true that the tender opening date had been postponed, and that in any case there would have been no prejudice to appellant if it had. The tender was opened on the appointed date;
- b) The appellant claims that Clause 7.8 had been breached by the preferred bidder in that his offer did not include VAT. He affirmed that both bidders including the preferred bidder had quoted rates including VAT and he could not understand how the appellant had reached that conclusion;
- c) The appellant is also claiming that the recommended bidder had not signed the declaration as obliged by the tender. The preferred bidder had signed the declaration and thus there was no element of administrative non-compliance on the preferred bidder's part;
- d) The appellant had also referred to the Transfer of Business, Protection of Employment Regulations. The contracting authority had checked this. The appellant is the present incumbent; however the relationship with the contracting authority is with the appellant and not with his employees. This is not a case of a contracting authority farming out existing employees. He claimed that in his view this grievance was pointless;
- e) The bidders were bound to pay their employees at least the minimum wage. Bidders do not have to make a profit but had to commit themselves to pay the minimum wage to employees. The preferred bidder complied and declared that €5.78 would be paid to employees. The contracting

authority had checked that bids were compliant with law and could not assume that some bids were in bad faith. Employees have remedies if not paid the rightful wages.

Dr Charmaine Cherret for the appellant does not agree with Dr Camilleri's submissions since appellant's calculation showed that the amount would not be respected. She also contended that the preferred bidder had not signed the declaration. (At this point the preferred bidder's declaration was shown to the Board, and it was regularly signed).

The Chairman explained that the law states that bidders have to pay a minimum wage of €5.78 per hour to employees. If the preferred bidder declared that he would pay €5.78 the contracting authority had to accept his declaration.

Ms Claire Briffa for the appellant insists that the amount submitted by the preferred bidder was not enough. Multiplying the sum of €5.78 by 14000 it is found that the bid is not good. She asked what would have been the outcome had another bidder quoted the same amount? Appellant is the incumbent providing the service and has a number of employees employed, therefore appellant could not make a bid for the amount of €5.78 since otherwise appellant would have had to dismiss employees.

Ms Liz Markham for the contracting authority said that the tenders are opened in public and the date is advertised beforehand. There was no representative from the appellant when the tender was opened. Testifying under oath, she confirmed that the tender was opened on the 21st November 2015 at 10.00 am. There were three persons present.

Ms Claire Briffa contended that when she went to deposit the tender she had asked a person present near the tender box who informed her that the tenders would not be opened that day since someone was not available.

Dr Steffi Vella Laurenti for the preferred bidder said that clause 11.3 quoted by the appellant speaks of deadlines and not of the opening of the tender. The tender was regularly opened.

The hearing was brought to a close.

This Board,

Having noted the Appellant's objection in terms of the "Reasoned Letter of Objection" dated 13th January 2015 and also through verbal submissions during the hearing held on the 28th April 2015, had objected to the decision taken by the pertinent authority, in that:

- a) The appellant company contends that the opening of the tenders was not carried out on the appointed time and was not made aware to when such a procedure would be carried out by the contracting authority;**
- b) The appellant claims that when one takes into account the provision of 14,000 hours as requested by the contracting authority and the price quoted by the preferred bidder, the labour rate per hour falls short of the stipulated rate of € 5.78 per hour;**

- c) **The appellant also contends that the preferred bidder did not sign the declaration as dictated in the tender document.**

Having considered the contracting authority's verbal submissions during the hearing held on the 28th April 2015, in that:

- a) **The contracting authority re-affirmed that the opening of the tenders was carried out on the same day as scheduled and all bidders were informed;**
- b) **The contracting authority was satisfied that the preferred bidder declared that the rate of € 5.78 would in fact be paid to his employees;**
- c) **The contracting authority exhibited to the Public Contracts Review Board the original declaration which was dictated in the tender document duly signed by the preferred bidder;**

Reached the following conclusions:

1. **With regards to the appellant's first contention, this Board, having heard the credible submissions made by the Contracting Authority justifiably confirms that the opening of the tenders was in fact carried out on the day as scheduled. This Board is also convinced that, as is the normal procedure, all bidders are informed of the day and time the "opening of tenders" was scheduled. This Board opines that even if the time was somewhat changed, this would not have prejudiced the appellant's bid. In this regard, this Board does not uphold the appellant's first contention;**
2. **With regards to the appellant's second contention, this Board is not concerned whether the quoted price of the preferred bidder would in fact result in a loss or profit; this Board is justifiably convinced that through the preferred bidder's declaration, he is bound to pay his employees a rate of € 5.78 per hour. To this effect, this Board does not uphold the appellant's second contention;**
3. **With regards to the appellant's third contention, this Board confirms that the signed declaration dictated in the Tender document was in fact submitted by the preferred bidder, as has been exhibited during the hearing of this appeal. This Board does not uphold the appellant's third 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. Richard A. Matrenza
Member

7 May 2015