

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 855**

**ZLC 08/2015**

**Tender for the cleaning and Maintenance of Public Conveniences Using Environmentally Friendly Products.**

The Tender was published on the 30<sup>th</sup> June 2015. The closing date was the 10<sup>th</sup> July 2015. The estimated value of Tender is €25,424 (Exclusive of VAT).

Four (4) offers had been received for this Tender.

On the 21<sup>st</sup> July 2015 WM Environmental Limited filed an objection against the decision of the Contracting Authority to award the Tender to another bidder.

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 29<sup>th</sup> September 2015 to discuss the objection.

Present for the hearing were:

**WM Environmental Limited:**

Dr John Bonello

Legal Representative

**Mr Sandro Caruana:**

No representatives

**Kunsill Lokali Zabbar:**

Mr Marc Vella Bonnici

Mayor

Mr Duncan Busuttil

Executive Secretary

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

Dr John Bonello on behalf of the Appellant apologised for being late and explained that his client had mixed up the time of the hearing. He contended that since this Tender was issued for a specific number of man hours that were compulsory for all bidders to provide the service, the rates proposed by the other bidders, including the Recommended Bidder, were not enough to cover the National Minimum Wage for their employees. None of the bidders offered the service at more than € 6.29 per hour. The rates submitted by these bidders when multiplied by the number of hours for which the service had to be provided do not cover the minimum wage. The schedule required a total of 16 man hours a day, and without taking into consideration Saturdays and Sundays, it was clear that none of them would reach the threshold of the National Minimum Wage. He contended that therefore it was clear that the danger of precarious employment existed with the rates submitted should one of the other bidders be awarded the Tender.

Mr Duncan Busuttill on behalf of the Contracting Authority referred the Board to the Letter of Reply submitted by the Local Council's Legal Representative wherein the position was clearly explained. Replying to questions by the Chairman he declared that during the evaluation, the minimum rate per hour was taken into consideration. More importantly the evaluators took also into consideration that the bidders would not pay their employees less than the minimum wage – it was a condition that the contractor had to pay his employees according to law.

Dr John Bonello reiterated that when the sums offered by the other bidders were divided by the number of hours, it resulted that none would clear the minimum wage.

Mr Marc Vella Bonnici, the Mayor, explained that the contractor has to supply the service and to pay his employees according to law. Should it transpire that the contractor was breaking the law then the Contracting Authority would take the necessary action. He said that the specifications required the presence of one employee per convenience for eight hours daily. The contractor could have other running contracts and it was up to him to provide 2 attendants, not necessarily the same throughout the day, for 8 hours daily.

Dr John Bonello insisted that according to annex 2 at page 40 there had to be two attendants for 8 hours, one for each convenience per day.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's objection in terms of the Reasoned Letter of Objection dated 21 July 2015 and also through the Appellant's verbal submissions during the Public Hearing held on 29 September 2015, had objected to the decision taken by the**

**pertinent Authority, in that:**

- a) **The Appellant Company's main contention was that the Tender Document dictated a compulsory number of man hours and that the rate quoted by the Recommended Bidder does not in any way cover the National Minimum Wage. The Appellant maintains that the quoted rate of € 6.29 per hour as stated by the Recommended Bidder creates a loophole for the possibility of precarious employment.**

**Having considered the Contracting Authority's "Letter of Reply" dated 1 September 2015 and also through the verbal submissions made during the Public Hearing held on 29 September 2015 in that:**

- a) **The Contracting Authority contends that during the Evaluation process, the hourly rate as quoted by all bidders was taken into consideration. Furthermore, the same Authority had the comfort through a declaration that the Preferred Bidder would pay his employees according to law;**
- b) **The Contracting Authority also had the Recommended Bidder's assurance that he will carry out the tendered services as per Tender Document's conditions.**

**Reached the following conclusions:**

1. **With regards to the Appellant's grievance, this Board justifiably contends that the Appellant's concern, (i.e. that the Recommended Bidder's quoted rate will**

**lead to precarious employment), is not a proven fact and this Board has on numerous occasions expressed its opinion in that “it is not the jurisdiction of the Public Contracts’ Review Board to delve into the issue of whether, through the quoted rate by the Recommended Bidder, the latter will incur either a profit or a loss.” This Board would credibly emphasise the fact that the scope of the Bidder is to be awarded the Tender and not necessarily also to realise a profit.**

**This Board credibly notes that the Evaluation Board of the Contracting Authority acted in a fair and transparent manner when assessing the submitted Tenders. This Board also notes that the Contracting Authority had the necessary assurances and declarations that the Recommended Bidder will comply to the mandatory terms and that he will pay his employees as required by law.**

**This Board obviously contends that it is the Contracting Authority’s responsibility to ensure that all mandatory terms agreed by the Recommended Bidder are executed. In this regard, this Board does not uphold the Appellant’s Grievance.**

**In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the latter should not be reimbursed.**

**Dr Anthony Cassar  
Chairman**

**Dr Charles Cassar  
Member**

**Mr Lawrence Ancillieri  
Member**

*8 October 2015*