

Mr Mario Tufigno for Waste Collection Ltd requested for the Public Hearing to be deferred due to his lawyer having a case in front of the Law Courts.

Dr Anthony Cassar, the Chairman of the Public Contracts' Review Board replied that it is the policy of this same Board not to accept requests for deferments unless there is a health case or a case of an important representative of either the Appellants or the Contracting Authority who would not be available to attend for the Public Hearing due to the persons concerned being abroad on work duties.

Mr Keith Tanti for Kunsill Lokali Pieta' also objected to the Appellants' request stating that the position of Mayor and/or Councillor is not on a full time basis hence these have to take leave from their full time job to appear before the Public Contracts Review Board and thus they cannot take further leave to appease the Appellant.

Mr Tanti also noted that the current contract has expired and therefore this contract had to urgently be signed so that works in their locality were to be started.

Dr Anthony Cassar, the Chairman of the Public Contracts' Review Board suggested that the only date when this Public Hearing can be deferred to was to be January 2017 for which Kunsill Lokali Pieta' objected and reminded this same Board of the urgency of the Tender.

Dr Anthony Cassar, the Chairman of the Public Contracts' Review Board then proceeded to introduce the Objection and invited the Appellant to make his submissions.

Mr Mario Tufigno, for Waste Collection Ltd submitted that he had a document which was going to submit which was to explain how the costing was to be made.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board made it clear that this was not the right forum where the costings were to be discussed.

Mr Mario Tufigno, the Appellants' Representative replied his document was showing how the costings were being made in a different interpretation.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board queried whether a clarification was made regarding the matter for which the Appellant replied in the negative.

Mr Mario Tufigno for Waste Collection Ltd replied that he was going to send two workers for eighty hours and the Contracting Authority was telling them that this was not going to be true.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board replied that this Board was ready to accept the Appellant's request to discuss the costing but made it clear that this same Board was not here to clarify previous mistakes or to correct something which should have been made through a previous clarification.

Mr Mario Tufigno for the Appellants replied that Kunsill Lokali Pieta' did not ask for a clarification for this matter for which the Chairman of the Public Contracts Review Board insisted that it was not this Board's jurisdiction to discuss the prices submitted for a Tender. The Public Contracts Review Board's job was to check whether the procedure was made in a fair, transparent and correct way.

The Appellant continued by saying that in their offer, they always said that they'll be working 80 hours and submitted a document which justified their argument. In it they were also saying how much does a worker wage would cost and that was worked in 1723 hours. Mr Tufigno also presented a clarification which confirmed that the Appellants were going to work 80 hours per week.

The Chairman of the Public Contracts Review Board asked the Appellant to focus on the 80 hours' issue.

Dr Adriana Magro, the Legal Representative for Kunsill Lokali Pieta' opposed any clarifications which were being submitted for which the Chairman of the Public Contracts Review Board replied that they were discussing the 80 hours issue.

Dr Magro continued by saying that the Local Council always acted in good faith. There were three from the four Bidders who submitted replies to clarifications by the Contracting Authority on how did they work their numbers. Two of these bidders replied to this Clarification.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether the clarification asked was about the 80 hours for which Dr Adriana Magro, the Legal Representative for Kunsill Lokali Pieta' replied that it was on the prices in general because when the Evaluation Board made their calculations, they didn't add up.

Dr Magro continued by saying that two of these Bidders replied to the Clarification but Waste Collection Ltd, although they answered to the Clarification made by Kunsill Lokali Pieta', still did not clarify their position with the latter regarding the price. The Local Council worked a very simple equation in order for them to arrive for the amounts required. The amounts submitted by the Appellant did not tally with the amount as worked by the Local Council when doing their calculations

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, requested the Local Council to tackle the 80 hours question and asked the Appellant to re-explain his arguments.

Mr Mario Tufigno for Waste Collection Ltd said that Kunsill Lokali Pieta' requested a Clarification wherein they asked the Bidders to provide a detailed description on how the works as requested by the Tender Document were to be successfully carried out. The answer had to include:

- a) The number of daily workers assigned to this contract;
- b) The number of weekly hours per worker;
- c) The materials, resources and consumables to be used;
- d) The methods on collection and disposal of litter;
- e) Any other details which were to be considered relevant for the successful implementation of this Tender.

The Appellants replied that, *"The cleaning service will be provided by two pedestrian manual sweepers, that is a total 80 man hours, ie two full time employees, as mentioned in our Tender Bid Rational Document attached to submitted Tender and as requested in the Tender Document. Supervision will be effected by our foreman on daily site visits and as when*

required; further supervision is conducted from our office via data track systems installed on the Sweeper bins.

The data tracking systems prompts a notice when the sweeper bin has stopped moving for a specified time, further more the system provides a detailed trail map/street names including time records.

No chemicals will be used unless requested by your office as mentioned in our Tender bid. GPP document attached to our Tender Documents.

Disposal of Litter collected will be collected by our Euro 5 waste disposal truck and disposed of at an authorised WasteServ waste disposal site.

We understand that since your Tender Requirements are for only two full time employees which we will provide, will suffice to clean the locality to meet the required cleanness standards.

Cleaning of culverts will be effected manually assisted by power wash machinery as may be required at an additional charge as quoted in our Bill of quantities.”

Mr Tufigno argued that the Contracting Authority never came back to them and asked them about the minimum hourly rates.

Mr Keith Tanti represented Kunsill Lokali Pieta’ continued on what Dr Magro has said earlier by saying that they were cautious and prudent in their workings. The Evaluation Board did not decide to eliminate the Appellant’s offer because this was not making sense but they have sent a Clarification to clarify their doubts.

Mr Tanti continued by asking what are the costings which, according to the Appellant, the Contracting Authority had to ask for. The costings were worked by taking the 80 hours multiplying them by 52 weeks and then multiplying them with the labour costs which were quoted in the Tender Document.

Kunsill Lokali Pieta’ requested two employees per week for 52 weeks. This was to be multiplied by the hourly rate. Waste Collections Ltd’s offer was less than the amount which they have bid for if one had to take the formula which the Evaluation Board was using when making their calculations argued Mr Tanti.

The Contracting Authority continued by arguing that the labour costs had to be around € 28,000 excluding the 5% management fee. The Appellants have submitted an offer of about € 25,000 which was a ridiculous offer according to Mr Tanti.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked what does the € 25,000 which was submitted cater for. Mr Keith Tanti, representing Kunsill Lokali Pieta’ replied that it was the Bid Amount. The Appellants were telling the Local Council that they will be supplying them the service for € 25,000 while the labour costs were about € 28,000. He emphasised that here the discussion was on a Tender for Cleaning in a Locality and this could never go wrong.

Mr Mario Tufigno, representing Waste Collection Ltd countered that Kunsill Lokali Pieta have awarded the Tender to a company which offered a bid which was € 127 cheaper. Mr Tufigno also said that the Appellants have sent a document wherein their Tender cost each worker € 11,648.18. The amount won't be as much as the Contracting Authority was saying if you had to multiply € 11,648.18 by 2 and add the 5% Management Cost but would have been € 24,461 while the Appellants have bid € 25254. This was only simple mathematics according to Mr Tufigno who noted that they were not taking all documents submitted by Waste Collection Ltd into consideration.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked the Appellants to submit these workings for which the latter complied. Mr Tufigno was wondering what were the criteria used by the Contracting Authority to award the Tender.

The Chairman of the Public Contracts Review Board remarked that the document submitted was not correctly filled for which Mr Mario Tufigno for Waste Collection Ltd replied that the minimum Hourly Workers Cost was not worked on 2080 hours and there was a reason why this was so.

Dr Anthony Cassar, the Chairman of the Public Contracts' Review Board remarked that there was supposed to be an hourly rate. Mr Mario Tufigno for the Appellant replied that when you consider that each worker had vacation and sick leave in that case an extra worker had to be sent to replace the worker which was taking the leave in question while if there is a public holiday, the workers had to be paid twice the rate.

If the workings were calculated on 2080 hours, one had to take the € 1164.48 multiply it by 2 then divide the answer by 2080 in order to get the correct answer argued the Appellant.

Mr Keith Tanti for Kunsill Lokali Pieta' insisted that the working was simple mathematics. Dr Amanda Magro, the Local Council's Legal Representative continued that the Reasoned Letter of Reply dated 18 November 2016 indicated this formula which was the Objector's Declared Hourly Wage multiplied by 2 workers multiplied by 40 hours and multiplied by 52 weeks excluding the 5% Management Fee. The answer reached by the Contracting Authority was € 28,141.60.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether the minimum wage was taken into consideration for which the Contracting Authority replied that they took the Minimum Hourly Working costs submitted by the Appellants. The latter submitted in their offer that the minimum rate paid would be € 6.76 per hour.

The Chairman of the Public Contracts Review Board continued by saying that the document which was presented by the Appellants said Minimum Hourly Rates but the rates in this document were not the minimum hourly rates submitted and that is why he was asking all these questions to the parties concerned as the Public Contracts Review Board was not understanding the figures in the document submitted before them.

Dr Cassar then asked when the clarification was requested for which Mr Keith Tanti for Kunsill Lokali Pieta' replied that it was requested at Evaluation Stage. The Chairman then asked what did the clarification asked for which Mr Tanti replied that Mr Tufigno has read the clarification earlier on.

Mr Keith Tanti for Kunsill Lokali Pieta' contended that they have sent three clarifications. One Bidder replied by deducting the hours which he wanted to submit for 50 which was not what the Council wanted since they were requesting 80 hours of work. The discussion on Waste Collection Ltd was underway during this Hearing while he left the contents of the third clarification for the Recommended Bidder to explain since he was present for this Public Hearing which satisfied Kunsill Lokali Pieta's requirements since from the three replies for clarifications received, it was only his which complied with the Evaluation Board's request.

Dr Joseph Camilleri appearing for Mr Saviour Galea, the Recommended Bidder said that during the Call for Tenders, the Evaluation Board was worried since some bids submitted were abnormally low. The latter concept comes out from the Regulations and previous cases. This concept could not be used to eliminate Bidders from Tenders but from what they knew, the Local Council acted in the correct way by asking the bidders in question, of these being his client, for clarifications.

Dr Camilleri continued by saying that in their case the calculations of the Minimum Hourly Rates were what the Contracting Authority was worried about. The Evaluation Board was wondering how did Mr Galea's offer complied with the requested 80 hours for the Works.

Dr Camilleri explained that Mr Galea's business was a small one and he was to be one of the workers who would be working out the service requested. When the works involved other workers, Mr Galea was bound by the Employment Regulations to pay his employees the wages which were in line with the Regulations whilst with regards to the services which he was to give personally, the Recommended Bidder was flexible enough on his income and therefore he was to choose how much income he is to incur since he was a Self-Employed and he can fix his own tarif.

This was the simple explanation which Mr Galea gave to the Local Council which when considered against other expenses it would be in line with the Bid submitted for this Tender. The Evaluation Board, in their discretion has accepted the explanation given by the Recommended Bidder and in the latter's opinion this must stop there since the Evaluation Board used their discretion correctly.

Mr Mario Tufigno for Waste Collection Ltd said that when making calculations with the price which they had quoted for this Bid, the Public Contracts Review Board would realise that the Appellant's Bid was a profitable one.

Mr Keith Tanti for Kunsill Lokali Pieta' said that the Appellant was changing the tariff which he quoted for which the Appellant denied this allegation. Mr Tufigno replied that they had asked a clarification on the matter but they never got an answer for it.

At this stage, the Public Hearing was closed.

This Board,

Having noted this Objection filed by Waste Collection Ltd (herein after referred to as the Appellant) on 16 November 2016, refers to the Contentions made by the latter with regards to the award of Tender of Reference SS-03 (02/16) listed as Case No 1010 in the records of the Public Contracts Review Board, awarded by Kunsill Lokali Pieta' (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Mario Tufigno

Appearing for the Contracting Authority: Dr Amanda Magro

Whereby, the Appellant contends that:

- a) The costs submitted with the Tender were misinterpreted by the Contracting Authority. At the same instance, the latter did not ask for a Clarification since their offer was allegedly deemed by the Local Council to be abnormally low;**

- b) They had always indicated that they will provide the Tendered service for 80 hours per week.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 18 November 2016 and its verbal submissions during the Public Hearing held on 5 December 2016, in that:

- a) The Contracting Authority contends that the costs submitted by the Appellant were lucid enough to enable them to use a simple multiplication, hence deriving at the lump sum of the offer.**

In this regard, the Evaluation Board regarded this lump sum as being abnormally low and in this respect, Kunsill Lokali Pieta' followed the correct procedure that is required in such cases.

At the same instance, the Local Council requested a clarification on this matter and the Appellant did not reply to clarify the situation.

- b) The Contracting Authority confirms that the Appellant's offer did indicate the provision of 80 man hours weekly and on this basis, the lump sum of the Appellants' offer was derived from, which was more than the Appellant had quoted.**

This Board, after having treated the merits of this case, arrived at the following conclusions:

- 1. With regards to the Appellant's First Grievance, this Board after having examined the relative documentation and heard submissions by all parties concerned, opines that although it is not this Board's jurisdiction to delve into the costs and profitability of the Appellant's offer, it will treat the merits of the Objection, in that, Waste Collection Ltd is raising the issue that his costs were misinterpreted.**

The costs submitted by the Appellant were included in a very simple multiplication formula, i.e. Hourly Labour Cost times Number of Hours (80) times 52 weeks. This Board notes that when applying this simple mathematical computation, Waste Collection's offer in lump sum would add to € 28,000, whilst their submission was quoted at € 25,000. In this regard, this Board establishes the fact that the Appellant's offer was not only substantially low but dangerously inclined to precarious working conditions.

At this particular stage, the Evaluation Board quite correctly and in line with the EU Directives asked the Appellant for Clarifications and in this regard, this Board credibly notes that no credible

explanation was given by Appellant as to how, with his own data, the total sum offered was below the Labour Costs as dictated by the same Appellant.

In this regard, this Board confirms that the original lump sum as submitted by Waste Collection Ltd was below the minimum cost of labour. This Board also confirms that no credible explanation was given by the Appellant for this discrepancy.

- 2. This Board, would on a general note, remark that it is correct and proper for the Evaluation Board to check arithmetically each offer and it is also prudent that once an abnormally low tender is noted, the particular Bidder is approached to clarify his costs.**

Although the Appellant did not clarify the situation, it was possible for the Evaluation Board to establish their offer in Lump Sum Form. On delivering such information, the same Evaluation Board were knowledgeable of the fact that the lump sum quoted by the Appellant was less than the minimum labour costs.

In this regard, this Board justifiably confirms that the Evaluation Board acted in a diligent and transparent manner and followed the appropriate procedure in such circumstances.

In view of the above, this Board finds against Waste Collection Ltd and recommends that the deposit paid by the latter should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

9 December 2016