

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 911**

**MLC 08/2015**

**Tender for the Environmentally Cleaning and Maintenance of Public Conveniences.**

The Tender was published on the 25<sup>th</sup> September 2015. The closing date was on the 29<sup>th</sup> October 2015. The estimated value of the Tender was €198,305.00 (Exclusive of VAT)

Seven (7) bidders had submitted an offer for this Tender.

On the 20<sup>th</sup> January 2016 Highland Group Limited filed an Objection against the decision taken by the Contracting Authority to award the Tender to Mr Antoine Fenech for the sum of €190,650.00.

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 Thursday the 3<sup>rd</sup> March 2016 to discuss the Objection.

Present for the hearing were:

**Highland Group Limited:**

Mr Kurt Michael Buttigieg	Director
Mr Kenneth Fenech	Director
Dr Stefan Zrinzo Azzopardi	Legal Representative

**Mr Antoine Fenech:**

Mr Antoine Fenech	Director
Dr Josette Sultana	Legal Representative

**Kunsill Lokali Mellieha:**

Mr Clayton Bartolo	Deputy Mayor
Me Carmel Debono	Executive Secretary
Mr Joseph Attard	Contracts Manager
Dr Alfred Abela	Legal Representative

The Chairman pointed out that the Public Contracts Review Board is an autonomous board and has no connection with the Department of Contracts. He said this because the Letter of Objection was addressed to that department. He then made a brief introduction and then invited the Appellants' representative to make his submissions.

Dr Stefan Zrinzo Azzopardi on behalf of the Appellant explained that the Objection is based on the costings when taken into consideration with the Tender requirements when taking into consideration the Recommended Bidder's offer. The offers of each bidder had to include also the cost of materials, supervision and transport between the diverse sites within the established time-frames. The cost of cleaning materials in the Recommended Bidder's offer is known, as are the wages. However the transport costs are not known and the physical distribution of the public conveniences is such that transport costs would form a substantial amount.

The hourly rates offered by the Recommended Bidder are so low that the conditions of his employees are bound to be nibbled at. It follows that at the Recommended Bidder's rates either the service would not be provided properly or a situation of precarious employment would be created. The Appellant, on the other hand, during clarification meetings, had shown how the expenses and costs were reflected in the offer in detail. For these reasons the Appellant was asking for the revocation of the award decision.

The Chairman asked the Contracting Authority whether the Recommended Bidder had signed a declaration regarding the payment of wages to his employees.

Mr Clayton Bartolo for the Contracting Authority said that each bidder had to show detailed costings per hour and sign a declaration that his Tender was in accordance with Government Circulars regarding payment to employees.

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 20 January 2016 and also through their verbal submissions during the Public Hearing held on 3 March 2016 had objected to the decision taken by the pertinent Authority, in that:**

**a) The Appellant Company contends that the rates quoted by the**

**Recommended Bidder does not allow the latter to execute the tendered works in a proper manner, especially when one takes into account, transport costs and cleaning materials involved. In this regard, the Appellant maintains that the Recommended Bidder's quoted rates might also lead to precarious employment.**

**Having considered the Contracting Authority's verbal submissions during the Public Hearing held on 3 March 2016, in that:**

- a) The Contracting Authority confirmed that detailed costs were submitted and show that the payment rate to employees was in accordance with Government policies.**

**Reached the following conclusions:**

- 1. With regards to the Appellant's Contention, this Board, on many occasions, has ruled that its jurisdiction is to ensure that the evaluation process was carried out in the proper manner in accordance with the Public Procurement Regulations and not to delve whether the Recommended Bidder will make a profit or loss, with his quoted rates.**

**With regards to the possible event leading to precarious employment, this Board is comforted by the signed declaration wherein, the Recommended Bidder has undertaken that the employees allocated for the tendered works, will be paid in accordance with government policies.**

**This Board would like to emphasise that the onus lies within the Contracting Authority to ensure that the works are to be carried out by the Recommended Bidder are executed by the latter in accordance with all the conditions as dictated in the Tender Document.**

**In this regard, this Board does not uphold the Highland Group's contention.**

**In the 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 Richard A Matrenza  
Member

*11 March 2016*