

PUBLIC CONTRACTS REVIEW BOARD

Case No. 944 – GGH 026/2016: Call for Quotations with Extended Threshold for the Provision of Care Worker Services at the Gozo General Hospital.

The Tender was published on the 24th March 2016. The closing date was on the 6th April 2016. The estimated value of Tender is €120,000 (Exclusive of VAT).

Two (2) offers had been received for this Tender.

On the 28th April 2016 Support Services Limited filed a Letter of Objection against the decision of the Contracting Authority to award the Tender to Omnicare Cooperative.

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 the 14th June 2016 to discuss the Objection.

Present for the hearing were:

Support Services Limited:

Mr Pierre Paul Mangion	General Manager
Mr Robert Debono	Director of Operations
Dr Pauline Lanzon	Legal Representative

Omnicare Cooperative:

Mr Mario J Gerada	Chief Executive Officer
Ms Esmeralda Borg Azzopardi	Personal Assistant

Central Procurement and Supplies Unit – Gozo General Hospital:

Ms Maria Aquilina Caruana	Chairperson Evaluation Board
Mr Robert Mallia	Chief Operations Officer
Mr Philip Muscat	Representative
Dr Kim Zarb	Legal Representative

The Chairman made a brief introduction and pointed out that the Contracting Authority had continued with the evaluation process even after the Letter of Objection had been received. This was completely irregular as once an Objection was submitted all action regarding the Tender should stop.

Dr Kim Zarb on behalf of the Contracting Authority said that their Letter of Reply had explained that the Objection was no longer relevant because the Recommended Bidder had rejected the award.

The Chairman then asked the Appellants' representative to make her submissions.

Dr Pauline Lanzon on behalf of the Appellant explained that the Objection was based on the fact that the Recommended Bidder Omnicare Cooperative had failed to include the costs for feast days and Sundays in the rate submitted.

The Chairman pointed out that there were several decisions by this Board and by the Court of Appeal that stated that whether a bidder made any profit or not with the rates submitted for the Tender was not relevant for adjudication purposes.

Dr Pauline Lanzon explained that the Objection was based on Circulars 27 of 2014 and 4 of 2015. The Recommended Bidder's offer did not include provisions according to the Circulars and should therefore be considered as abnormally low. 475 hours out of the requested 3800 hours had to be considered as being during Sundays and Public Holidays at a different rate. The Appellant had taken this into consideration when arriving at the €8.43 rate. The Letter of Reply by the Contracting Authority states that the Recommended Bidder's offer was the cheapest and that the present Objection was unfounded. That is why the Appellant is insisting on stating the facts.

The Chairman at this point asked the Contracting Authority to confirm that it was accepting the decision of the Recommended Bidder to refuse the award.

Dr Kim Zarb for the Contracting Authority confirmed and pointed out that Omnicare's representative was present and could confirm this as well.

Mr Mario J Gerada on behalf of the Recommended Bidder admitted that Appellant had miscalculated the costings and it was evident that a loss would be incurred at those rates. Support Services Ltd had asked to be allowed to change the rates but was refused. Thus the latter had written to the Contracting Authority refusing the award.

At this point the hearing was closed.

This Board

Having noted the Appellant's Objection in terms of the "*Reasoned Letter of*

Objection” dated 28 April 2016 and also through their verbal submissions during the Public Hearing held on 14 June 2016, had objected to the decision taken by the Pertinent Authority, in that:

- a) Support Services Ltd contends that the Tender was awarded to Omnicare Cooperative, with the latter failing to include the costs for Feast Days and Sundays. In this regard, the Appellant is maintaining that the Recommended Bidder’s offer was computed on the incorrect number of hours and therefore their objection is not unfounded, as alleged by the Contracting Authority in its *“Letter of Reply”*.

Having considered the Contracting Authority’s *“Letter of Reply”* dated 12 May 2016 and also their verbal submissions during the Public Hearing held on 14 June 2016, in that:

- a) The Contracting Authority confirmed that Omnicare Cooperative is refusing the award of the Tender due to the fact that they miscalculated their offer.

Reached the following conclusions:

1. This Board would like to credibly point out that it is not its

jurisdiction to delve whether the offer submitted by Omnicare Cooperative would incur the latter in a loss, but rather adjudicate whether the Evaluation process was carried out in a Transparent and Fair manner.

This Board took also into account the fact that Omnicare Cooperative did in fact inform the Contracting Authority that his offer did not take into consideration all the necessary hours and thus requested to alter the quoted rates.

In this regard, this Board justifiably contends that the request entered by the Contracting Authority to reconsider its Evaluation and Adjudication of this Tender, does not give the desired effect to rectify the situation.

In this regard, this Board opines that a just and fair solution would be the re-issuing of the Tender in question to ensure a fair and just comparison of Tenders indicating the number of hours whilst taking into account the rates payable to workers on Feast Days and Sundays.

In view of the above, this Board recommends the issue of a fresh Tender and at the same time refund the deposit paid by Support Services Ltd.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

20 June 2016