



Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Dr Adrian Mallia, the Legal Representative for Galea Cleaning Solutions JV submitted that the complaint which his clients had done was a clear one. When one sees the price submitted by the Recommended Bidder, *prima facie* one notes that there was something odd in it.

The Public Contracts Review Board has the task to examine whether the Contracting Authorities did their respective job correctly as per the Public Procurement Regulations and from the contents of the Reasoned Letter of Reply dated 10 March 2017, this was not done correctly. This was a basic problem especially when one considers the current Regulations which deal with abnormally low offers which generally raise some suspicions.

Dr Veronica Aquilina, the Legal Representative for Kunsill Lokali Balzan said that the system used for adjudication was a computerised one which does not allow the Evaluation Board to decide according to the situation concerned.

Dr Adrian Mallia for the Appellants replied that the Public Procurement Regulations requires the Contracting Authority to use its discretion when evaluating Tenders and it was not their problem if the system does not work correctly.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that in cases like these where suspicions of precarious employment could rise, the Evaluation Board should have looked more into the matter at Evaluation Stage. This was another problem which the Electronic Public Procurement System had to deal with.

Dr Ian Spiteri, a member of the Evaluation Board replied that currently the Local Council does not have the discretion to deal with similar cases and that they just process the information which they are presented with by working according to a checklist. The system does not allow these discretions in order to curb abuses.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board noted that unfortunately not all the decisions taken by this Board are heeded upon to by the Contracting Authorities and this is irking the former.

Dr Douglas Aquilina, the Legal Representative for Mr Owen Borg, countered that his client has given all the reassurances which he had to give regarding the matter. When there was an abnormally low tender, the Contracting Authority is obliged to investigate and blacklist Bidders who did not observe the Public Procurement Regulations. The Recommended Bidder never had any similar issues with other Tenders worked with other different local councils and given the fact that Mr Borg would be working at a loss, he was going to take care of some of the requested work personally. There were commercial reasons why this was going to happen.

When there was a Tender with low amounts, one had to see whether the Bidder was financially stable and in line with the Regulations. The fact that a Bidder was working at a loss did not mean that there was precarious employment.

At this stage, the Public Hearing was adjourned to Tuesday 11 April 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

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**This Board,**

**Having noted this Objection filed by Galea Cleaning Solutions (herein after referred to as the Appellant) on 23 February 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference BLC 01/2016 listed as Case No 1034 in the records of the Public Contracts Review Board, awarded by Kunsill Lokali Balzan (herein after referred to as the Contracting Authority).**

**Appearing for the Appellant: Dr Adrian Mallia**

**Appearing for the Contracting Authority: Dr Veronica Aquilina**

**Whereby, the Appellant contends that:**

- a) The price quoted by Mr Owen Borg was abnormally low and in this regard, the Evaluation Board should have used its discretion to determine whether the Recommended Bidder is capable of executing**

**the Tendered Works without raising any doubts of suspicious precarious working conditions.**

**This Board also noted the Contracting Authority's "*Letter of Reply*" dated 28 February 2017 and its verbal submissions during the Public Hearing held on 4 April 2017, in that:**

- a) It had obtained all the necessary assurances from Mr Owen Borg that the Tendered Works will be carried out, in accordance with the stipulated conditions of the Tendered Document, at the quoted price.**

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

- 1. With regards to Galea Cleaning Solution JV's Grievance, this Board would like to respectfully refer to the number of hours dictated by the Tender to be dedicated to the execution of the Tendered Works.**

**It has been agreed and established by all parties concerned that the number of hours requested amount to 4160 hours. This can be converted to a minimum wage payment of € 26,790 taking into account the minimum hourly rate of € 6.44 per hour.**

**It is not the intention of this Board to delve into whether the Preferred Quoted Rate will result in a profit or loss to the Tender, but, this Board cannot but note that the quoted price of Mr Owen Borg covers only 50% of the wage bill.**

**This Board also considered the fact that the Recommended Bidder gave the assurance that, with his quoted price, he will carry out the Tendered Works in accordance with the dictated requirements. However, in this particular instance, Mr Owen Borg's rate is by far substantially low and in this regard, the written assurance that the works will be executed does not justify the cost of wages. It is for this latter issue that this Board is not comforted with the Recommended Quoted overall price.**

**In this regard, this Board would also point out that, during the Evaluation process, the Evaluation Board had to discuss and consider seriously this low price and although, the latter had the necessary assurances from the Recommended Bidder, the same Evaluation Board had to delve into this issue much more deeply, mainly to establish the logical reason why Mr Owen Borg's quotation**

**represented only 50% of the statutory wages which must be paid out during the execution of the Tendered Works.**

**This Board would respectfully emphasize that it is not delving into the commercial aspect of Mr Owen Borg's offer, but on the other hand, this same Board is in duty bound to detect any possible situation which might lead to precarious working conditions and in this case, this Board is not satisfied that such a Tender can be carried out at a quoted price wherein, the minimum hourly rate is not completely provided for in the price. In this regard, this Board upholds the Galea Cleaning Solutions JV's Grievance.**

**2. On a general note, this Board also noted that the majority of the Bidders, with the exception of one, quoted a price which does not cater for the minimum wage. In this regard, this Board, respectfully consider that the quoted prices might give rise to precarious working conditions and in this respect, this Board recommends the following:**

**a) The award of the Tender should be cancelled;**

**b) The Tender itself should also be cancelled and replaced by a fresh one to take into consideration the guaranteed financial back-up to**

**cater for at least the minimum rates to be paid to the Bidder's employees.**

**In this regard, this Board would also recommend deeper scrutiny and consideration to be made by the Evaluation Board to ensure that such assurances are feasible.**

**Finally, this Board recommends that the deposit paid by Galea Cleaning Solutions JV is to be fully refunded.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Richard A Matrenza  
Member

*11 April 2017*