

PUBLIC CONTRACTS REVIEW BOARD

Case 1140– SGNLC/T/3/2017 – Tender for the Emptying and Cleaning of Doggie Bins and Cleaning of Dog Park and Picnic Area in an Environmentally Friendly Manner.

The publication date of the call for tenders was the 17th October 2017 whilst the closing date of the call for tenders was the 20th November 2017. The estimated value of the tender (exclusive of VAT) was € 14,000.

There were five (5) bidders on this tender.

Galea Cleaning Solutions JV filed an appeal on 31st January 2018 against the Contracting Authority's decision that their tender had been rejected as it was not the cheapest. A deposit of € 400 was paid.

On 8th March 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Galea Cleaning Solutions JV

Dr Adrian Mallia	Legal Representative
Dr Mark Gatt	Legal Representative

Recommended Bidder – Waste Collection Ltd

Dr Robert Tufigno	Legal Representative
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Contracting Authority – San Gwann Local Council

Mr Kurt Guillaumier	Executive Secretary
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After a brief introduction Dr Anthony Cassar, Chairman of the Public Contracts Review Board, invited the parties to make their submissions.

Dr Adrian Mallia, Legal Representative for Galea Cleaning Solutions JV started by asking a series of questions to the Contracting Authority Representative to try to establish the basis on which the tender offers had been evaluated, and whether the Council had prepared a schedule of operating costs. This would enable to Board to verify that the Council in its evaluation had not used a figure lower than the operating costs to carry out the services required.

Mr Kurt Guillaumier (411974M), Executive Secretary of the San Gwann Local Council testified on oath that the evaluation was based on 40 hour minimum at the minimum wage. He stated that he need not elaborate as the cost of the minimum wage was well known, and this what the Council had used in its evaluation. He did not have an exact breakdown of those figures.

The Chairman pointed out that the Board had a quasi-judicial role and it was necessary for parties appearing before it to come prepared to reply fully to questions.

Continuing his evidence Mr Guillaumier pointed out that the figures appearing in the Contracts Circular did not apply in this case as the hourly rate in that circular referred to provision of service through a service contract.

Dr Robert Tufigno, Legal Council for Waste Collection Ltd asked permission from the Chairman to intervene to clarify the point that the circular referred to dealt with rates for street sweepers, but that this tender covered cleaning of doggie bins and of certain areas, and since it was for full time employment then the minimum wage applied.

In his further submission Dr Mallia stated that it was clear that the Local Council had followed a rule that offers under operating costs should be eliminated, as indeed they had done with three bids – however they had accepted an offer below the operational costs and he wondered why the same yardstick had not been used throughout.

Dr Tufigno re-iterated that the service for this tender did not fall within the category of workers specified in the circular and the rate of € 5.76 used by the Council was correct and in line with the national minimum wage.

The Chairman thanked both parties for their submission and declared the hearing closed.

This Board,

Having noted this Objection filed by Galea Cleaning Solutions JV (hereinafter referred to as the Appellant) on 31 January 2018, referring to the contentions made by the same Appellant with regards to the award of Tender of Reference SGNLC/T/3/2017 listed as Case No 1140 in the records of the Public Contracts Review Board, awarded by San Gwann Local Council, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellant: Dr Adrian Mallia

Appearing for the Contracting Authority: Mr Kurt Guillaumier

Whereby, the Appellant contends that:

- a) The offer submitted by the Recommended Bidder should have been considered as abnormally low due to the fact that the offer did not cater for the minimum hourly rate as per Circular 1/2017 issued by the Department of Contracts dated 17 February 2017.**

This Board also considered the Contracting Authority’s “*Letter of Reply*” dated 12 February 2018 and its verbal submissions during the hearing held on 8 March 2018, in that:

- a) Kunsill Lokali San Gwann insist that the Recommended Bidder’s offer does, in fact, caters for the national minimum wage and was the cheapest compliant offer.**

This same Board also noted the testimony of the witness, Mr Kurt Guillaumier, duly summoned by Galea Cleaning Solutions JV.

This Board, after having examined the relevant documentation pertaining to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned by the Appellants, opines that the issues of this appeal are:

- a) Whether Waste Collection Limited’s offer is to be considered abnormally low or not and;**
- b) Whether the latter’s offer took into account the minimum rates as stipulated in Circular 1/2017 issued by the Department of Contracts dated 17 February 2017.**

- 1. First and foremost, this Board noted the preliminary issue raised by Appellants, in that, they were informed by Kunsill Lokali San Gwann, as to whom an objection should be addressed and the amount of deposit to be paid. In this regard, this Board recommends that, prior to informing the unsuccessful Bidder of his rights and obligations, the Local Council should refer to the Public Procurement Regulations to be guided accordingly;**
- 2. With regards to Galea Cleaning Solutions JV's claim that the successful offer is substantially low, this Board would respectfully describe and interpret what is considered to be "*abnormally low offers*".**

In the current economic climate, there is often keen competition between economic operators, by submitting low-priced bids in order to secure work, retain employment and maintain their presence on the market. It may be the case that low-priced offers are "*too good to be true*" and will be very poor value for money or not will not be delivered at all. It is in this context that the concept of "*abnormally low tenders*" arises.

In practice, methods are often used for the identification of tenders that appear to be abnormally low, such as:

- **An analysis of the price (Costs) proposed by an economic operator, is made in comparison with the objective of the particular procurement;**
- **A comparison is carried out between the tendered price and the estimated value of the tender so that an assessment of the proportion of deviation from the estimated price is established;**
- **A comparison is made of the offer with the average of the other quoted rates for the same procurement.**

In circumstances where suspicions of abnormally low offers arise, the Contracting Authority should not reject a tender without having allowed the Bidder to explain the low price of his offer.

In this particular procurement procedure, there were five offers as follows:

i) An annual offer of € 1,200;

ii) An annual offer of € 6,600;

iii) An annual offer of € 9,268;

iv) An annual offer of € 14,458;

v) An annual offer of € 14,495.

From the above schedule of offers and through basic reasoning, it is evidently clear that the Bidders of the first three offers did not understand or appreciate the main objective of the tender and in this regard, this Board opines that such offers are not only to be considered abnormally low but more appropriately, ridiculous, so that the rejection of these offers did not even merit an enquiry as to why such low offers were submitted.

At the same instance, after taking into account the rejection of the first three offers, there remain two nearly identical offers and in this regard, this Board is comfortably assured that the evaluation procedure was carried out in a fair, just and transparent manner.

3. With regards to the issue of labour costs being fully inclusive in the offer submitted by Waste Collection Limited, this Board noted that reference was made to Circular 1/2017 issued by the Department of Contracts dated 17 February 2017, relating to the minimum hourly rates which should be paid to employees such as cleaners, street sweepers, hospital cleaners, care

workers and clerical. In this regard, this Board justifiably notes that the hourly rate payable to workers carrying out this type of labour, in this particular Tender, is not included in such a circular, so that in such cases, the national minimum hourly rate of € 5.76 must be applied.

In this respect, this Board is satisfied that such an amount, covering the minimum wage of an employee, is evidently included in Waste Collection Limited's offer. This Board, as had expressed on many occasions, would not delve as to whether, through his offer, the economic operator will realise a profit or sustain a loss, but rather ensure that the offer, in itself, catered for, at least the minimum wage as stipulated by law and in this particular case, such a circumstance prevailed. At the same instance, this Board noted that Galea Cleaning Solutions JV quoted a price which was only € 37 per annum dearer than that of the Recommended Bidder, so that this Board justifiably opines that, in his offer, the Appellant also applied the national minimum wage at law and not rates as specified in Circular 1/2017 issued by the Department of Contracts dated 17 February 2017.

In view of the above, this Board:

- i) Upholds Kunsill Lokali San Gwann's decision in the award of the Tender;**

ii) Does not uphold Galea Cleaning Solution JV's contentions;

iii) Recommends that the deposit paid by the Appellants should not be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

15th March 2018