

PUBLIC CONTRACTS REVIEW BOARD

Case 1146 – CT 5027/2017 – Framework Tender for the Supply of Environmentally Friendly Uniforms for Messengerial Grades, to all Government Departments and Entities.

The publication date of the call for tenders was the 11th April 2017 whilst the closing date of the call for tenders was the 30th May 2017. The estimated value of the tender (exclusive of VAT) was € 107,957.30

There were three (3) bidders on this tender.

Yorkie Clothing Industry Ltd filed an appeal on 26th January 2018 against the Contracting Authority's decision to cancel the tender. A deposit of € 539 was paid.

On 20th March 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Yorkie Clothing Industry Ltd

Not represented

Department of Contracts

Dr Chris Mizzi
Ms Ninette Gatt

Legal Representative
Senior Manager

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, noted that the commencement of the hearing had been delayed by half an hour to give the appellant the opportunity of turning up. In his absence the Board will base their decision on the documents in hand.

Dr Mizzi, Legal Representative of the Contracting Authority, said that in the absence of the appellant he would not be making any submissions, and will follow the decision of the Board.

The Chairman declared the hearing closed.

This Board,

Having noted this Objection filed by Yorkie Clothing Industry Limited, (hereinafter referred to as the Appellant) on 26 January 2018, refers to the contentions made by the same Appellant with regards to the award of Tender of Reference CT 5027/2017 listed as Case No 1146 in the records of the Public Contracts Review Board, awarded by the Department of Contracts.

Appearing for the Contracting Authority: Dr Christopher Mizzi.

Whereby, the Appellant contends that:

- a) Although, in their submitted form of the minimum wage payable to their employees, there was an inadvertent mathematical error, in actual fact, they pay their employees more than the national minimum wage;**
- b) The Appellants also maintain that they had submitted the reply to the clarification sent by the Department of Contracts, two days over the**

deadline and this was due to the very fact that such a clarification was received during the shut-down period.

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 14 February 2018, whereby it was stated that:

- a) The Department of Contracts insist that in its evaluation process the Evaluation Board all the conditions and requirement, as duly stipulated in the Tender Dossier;**

- b) The Contracting Authority also maintains that the Appellants did not reply to the clarification within the stipulated period of five (5) working days and in this regard, the Evaluation Board had no other option but to deem the offer submitted by Yorkie Clothing Industry Limited as administratively non-compliant.**

This Board convened the Public Hearing of this Appeal at this Appeal at 10:00am, half an hour later than scheduled so as to allow more time for Yorkie Clothing Industry Limited's representatives to turn up. After such delay, this Board opined that the appeal will be considered taking into account the documentation submitted by the parties concerned. In this regard, this Board noted the Department of Contracts' agreement to this decision.

This Board, after having examined the relevant documentation pertaining to this Appeal would respectfully opine that the two main issues to be considered

are (i) submission of the correct information and (ii) the late reply to the clarification note.

1. Submission of the correct information

The Tender Document requested to have a filled in minimum hourly workers' cost form and it was expected that the same is to be filled in correctly. At this particular stage of consideration, it is to be justifiably emphasized that it was the responsibility and obligation of Yorkie Clothing Industry Limited to ensure that, prior to the submission of their offer, all the requested information is to be checked to adhere to the exact requirements of the Tender Dossier.

At the same instance, the Appellants were given the opportunity to correct their arithmetical error in this form. Such an opportunity was not availed of by the Appellants within the stipulated period of 5 (five) working days, so that, quite appropriately, the Evaluation Board had to deem the Appellants' offer as administratively non compliant.

One has to acknowledge and appreciate the fact, that whilst the Bidders had to comply with all the conditions and requirements dictated in the Tender Dossier, the same originator of the latter, that is, the Contracting Authority, in its evaluation process, had to be limited by

these same conditions and requirements, to maintain a level playing field for all the participants. In this regard, this Board opines, that the Evaluation Board carried out its procedure in a fair, just and transparent manner, so that this Board does not uphold the first contention made by Yorkie Clothing Industry Limited. It is futile, at this particular stage of the tendering process, to prove that the Appellants' in reality, do pay its employees at more than the national minimum hourly rate, the correctly filled in form or the reply to the clarification should this be submitted within the dictated time frame, as duly provided in the Tender Dossier.

2. Late submission of Reply to Clarification

With regards to the late submission of the reply to the clarification sent by the Department of Contracts, to enable the Appellants to correct the inadvertent arithmetical mistake in the minimum hourly workers cost form, this Board acknowledges the unfortunate circumstance, in that during the period of submission of such a clarification, the Appellants due to the shut down period, were not available to submit the reply thereto. However, the Evaluation Board were in duty bound to apply the principle of self-limitation and to maintain a level playing field for all the bidders and in this regard, the same Evaluation Board acted in a

transparent manner, as should be, in rejecting the Appellants' late submission of reply and deem their offer as administratively non-compliant.

In view of the above, this Board:

- i) Upholds the decision taken by the Department of Contracts in cancelling the Tender;**

- ii) Does not uphold the contentions made by Yorkie Clothing Industry Limited;**

- iii) Due to the fact that the Tender was cancelled, recommends that the deposit paid by the Appellants should have been fully refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

27th March 2018