

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1292 – IMA – 2018/012 – Tender for Cleaning Services using Environmentally Friendly Cleaning Products at Identity Malta Agency Premises**

The publication date of the call for tenders was the 28<sup>th</sup> September 2018 whilst the closing date of the call for tenders was 25<sup>th</sup> October 2018. The estimated value of the tender (exclusive of VAT) was € 116,917.

On the 27<sup>th</sup> February 2019 JF Services (Cleaning) Ltd filed an appeal against Identity Malta Agency as the Contracting Authority objecting that their bid had been excluded as it was not the cheapest compliant tender. A deposit of € 584.59 was paid.

There were five (5) bidders.

On 28<sup>th</sup> March 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – JF Services (Cleaning) Ltd**

Dr Matthew Paris	Legal Representative
Dr Michele Cardinali	Legal Representative
Dr Chiara Zappala	Legal Representative
Mr Alex Borg	Representative

#### **Contracting Authority – Identity Malta Agency**

Dr Neil Harrison	Legal Representative
Mr Martin Bowerman	Chairperson Evaluation Committee
Ms Chantelle Tanti	Secretary Evaluation Committee
Mr Paul Bonanno	Member Evaluation Committee
Mr Pablo Cachia Belli	Member Evaluation Committee
Ms Leonie Zerafa	Member Evaluation Committee
Mr Edwin Ebeyer	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited them to make their submissions.

Dr Matthew Paris Legal Representative for JF Services (Cleaning) Ltd (JFS) stated that the decision of the evaluation committee was being contested as the winning bid was abnormally low.

The concept of abnormally low is traced to Section 234 of the Public Procurement Regulations and in local and European court judgements. He objected to the use by the Contracting Authority of draconian words accusing Appellants of anti-competitive behaviour. Prices are in the main set out in Government circulars and he will endeavour to clarify why Appellants feel that the preferred bid is abnormally low.

Dr Neil Harrison Legal Representative of Identity Malta Agency (IMA) said that the preferred bid was not below the rates stipulated by the Department of Contracts circulars. The quotation was in two parts – the hourly labour rate and administrative costs. Competition means different offers and Appellants should not expect that the price offered by them could not be bettered. In this case the bid winner was able to reduce the administrative costs, thereby defending public interest through a cheaper offer.

Dr Paris requested that the Minutes record that the Contracting Authority accepted, albeit indirectly, that Appellants were not anti-competition when they appealed the award. He then went on to give a breakdown of the financial bid – Item 1 was the fixed hourly labour rate – Item 2 (section 4 of the tender document) dealt with the variable overheads and consumables which JFS had tendered at 45 Euro cents an hour, and similarly on Items 3 and 4. It was Items 2 and 4 (variable costs) that gave rise to the question of abnormally low costs as the winning bidder had quoted these at 21 Euro cents an hour, well below actual costs. The term abnormally low was not defined but ECJ Case 599/10 dealt amply with this matter, and this was more relevant in this case as it was a long term contract which had to be sustainable over a period of time. Due to the divergence of prices the evaluation committee should have asked to see a breakdown of the costs of different bids – in line with market costs there was no way that an offer could go below 45 cents an hour, as his witness will testify.

Mr Alex Borg (109057M) called as a witness by Appellants testified on oath that he was the Manager of JF Services. He tabled a breakdown (Doc A) of the hourly cost of consumables (28cents) and overheads (17cents) based on the experience of current cleaning contracts. These according to witness were the lowest prices of consumables available on the market from diverse supply sources through buying in bulk. In reply to a question he agreed that there were a variety of prices on the market but he was confident that those quoted were the lowest as his extensive research had shown.

Mr Martin Bowerman (399462M) called as a witness by the Board testified on oath that he was the Chairperson of the evaluation committee and that the rates quoted were at the discretion of the bidder. He confirmed that JFS were the incumbents on the present contract. When questioned he said that he could not be certain that a new contractor will deliver the same service as at present but regular monitoring will provide the answer.

Dr Paris said that it has been established that the Board was not looking at the service part of the contract as the cost of that was fixed – so the evaluation was made on the variable costs. Appellants had provided details of consumables and other costs. The cost of materials alone (ignoring

overheads) was 28 cents against the 21 cents offered by the winning bid – on that alone the evaluation committee should have evaluated the costs. The confirmation that they did not is cause enough to revoke the award.

Dr Harrison said that price does not determine quality. The PCRB's role is not to monitor or fix prices. In this tender we have a different supplier with different costs.

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

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**This Board,**

**having noted this Objection filed by JF Services (Cleaning) Limited, (herein after referred to as the Appellants) on 27 February 2019, refers to the claims made by the same Appellants regarding the Tender of Reference IMA 012/2018 listed as Case No 1292 in the records of the Public Contracts Review Board, and awarded by Identity Malta Agency (herein after referred to as the Contracting Authority).**

**Appearing for the Appellants: Dr Matthew Paris**

**Appearing for the Contracting Authority: Dr Neil Harrison**

**Whereby, the Appellants contend that:**

- a) the Preferred Bidders' offer is abnormally low, in that, the latter did not provide for the cost of consumables at market rates, apart from the fact that, this is a long-term contract, and therefore, one has to provide for sustainability over a period of time**

**This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 7 March 2019 and its verbal submissions during the Public Hearing held on 28 March 2019, in that:**

- a) the Contracting Authority maintains that the successful Bidder managed to obtain better prices for consumables than those obtained by the Appellants, so that the administrative costs were cheaper and, in this respect, quite appropriately, the Evaluation Committee chose the cheapest fully compliant offer.**

**This same Board also noted the testimony of the witness namely:**

- 1. Mr Alex Borg, who was duly summoned by JF Services Limited**
- 2. Mr Martin Bowerman, who was duly summoned by the Public Contracts Review Board**

**This Board has also taken note of the documents submitted by JF Services (Cleaning) Limited which consisted of a list of prices of the cleaning items provided.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony**

**of the witnesses duly summoned, opines that the issue that merits consideration is the establishment of whether the successful offer was abnormally low or not.**

**1. This Board would, first and foremost, describe the incidence of abnormally low tenders:**

*“In the current economic climate, there is often keen competition between economic operators, which submit competitive, low-price bids in order to secure work, retain employment and maintain their presence on the market. Low prices can, potentially, result in significant financial benefits to contracting authorities. It may also be the case that low-priced tenders are “too good to be true” and will be very poor value for money or will not be delivered at all. It is in this context that the concept of “abnormally low tenders” arises.”*

**2. There are certain established methods, in order to identify the incidence of abnormally low tenders which may be summarised, as follows:**

- *“An analysis of the price (costs) proposed by an economic operator is made in comparison with the object of the procurement.*
- *A comparison is launched of the tender price with the value of the procurement, as estimated by the contracting authority prior to the procedure. The contracting authority assesses the proportion of deviation of the price from the estimated value.*
- *A comparison is made of the tender price with the prices proposed in all of the other compliant tenders. The Contracting Authority assesses either the deviation from the mean price or verifies the extent of the difference between the tenders, or it applies both methods”*

**3. In this particular case, there were five compliant bids and the average quoted price was € 86,700 whilst the successful bid was € 82,481, so that there exist no substantial or abnormal difference. From documentation which is in possession of this Board, the latter is comfortably assured that there are no precarious working conditions and the preferential price of**

**the successful Bidder results from the cost of consumables being obtained by the Preferred Bidder. At this stage of consideration, this Board will not enter into the merit as to whether the Preferred Bidder will sustain a loss or realise a profit but rather determine that, the minimum rates of pay in accordance with Local Regulations are provided for, which, in this case, this Board is justifiably convinced that it is the case. At the same instance, this Board is well aware of the fact that, on embarking on a long-term contract, the economic operator will always endeavour to obtain the best possible prices for consumables through bulk purchasing and, the economic operator is also aware of any possible increase in the price of consumables during the duration of the Tender.**

- 4. The fact that the cheapest offer was chosen does not necessarily imply that the tendered works will be carried in an inferior manner and in this respect, it is the duty and obligation of the Contracting Authority to carry out the necessary supervision to ensure that the economic operator executes the tendered services to the full satisfaction of the Contracting Authority and in accordance with the offer submitted by the successful Bidder. On the other hand, if the latter breaches any of the conditions stipulated in the Tender Document, there exist remedies for the Contracting Authority to rectify the situation.**

**5. With regards to the Appellants' contention that, the Contracting Authority should have requested a breakdown of costs of consumables from the successful Bidder, this Board opines that, in this particular instance, since the successful Bid was well within the average price of the other Bids and was not deemed to be abnormally low, the Evaluation Committee was not obliged to request such additional information as the offer submitted by the Preferred Bidder was not deemed to be an abnormally-low offer.**

**In conclusion, this Board opines that:**

- a) there exists no incidence to deem that the Preferred Bidder's offer was abnormally low;**
- b) it is comfortably convinced that, the successful offer does not contain an element of precarious working condition;**
- c) it also acknowledges the fact that, through the bulk purchase of consumables, especially in the cleaning services, competitive prices can be obtained for such products.**

**In view of the above, this Board,**

- i) does not uphold the contentions made by JF Services (Cleaning) Limited;**

**ii) upholds Identity Malta's decision to award the Tender to Floorpul  
Company Limited;**

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

Dr Anthony Cassar  
Chairman

Mr Carmel Esposito  
Member

Mr Richard A Matrenza  
Member

*11<sup>th</sup> April 2019*