

PUBLIC CONTRACTS REVIEW BOARD

Case No. 659

KLBO 02/2013

Tender for the Street Sweeping and Cleaning in an Environmentally Friendly Manner.

The tender was published on the 22nd October 2013. The closing date was the 22nd November 2013.

The estimated value of the Tender was €30,000.00 (Exclusive of VAT).

Seven (7) bids had been received for this tender.

On the 4th December 2013 V&A Services filed an objection against the proposed award of the tender to Mr Raymond Attard.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Thursday the 30th January 2014 to discuss the objection.

Present for the hearing were:

V&A Services - Appellant

Mr Ronald Attard	Representative
Mr Brian Vella	Representative
Dr Michael Grech	Legal Representative

Kunsill Lokali Bormla - Contracting Authority

Mr Joseph Caruana	Executive Secretary
Mr Ivan Agius	Representative
Dr Luciano Busuttil	Legal Representative

None was present on behalf of the Preferred Bidder Mr Raymond Attard.

The Chairman started the hearing by making a brief introduction and the appellant's

representative was invited to make his submissions regarding the objection.

Dr Michael Grech on behalf of the appellant explained that the preferred bidder's offer, at €32,000 goes against the directives of a Government Circular issued in July 2013. He contended that therefore it was illegal to adjudicate the tender to the preferred bidder. The circular expressly stated that bids that included precarious employment had to be rejected. He insisted that in the preferred bidder's tender the case involved precarious employment. The tender documents indicated that the work had to be done over six days from Monday to Saturday and the bidders must have at least three full time employees. To be given the minimum wage these three employees would cost €33,170.28. Therefore it is evident that the figure offered by the preferred bidder, at €32,000 is way below the minimum wage, the more so since the bid includes VAT which had to be deducted. Dr Grech continued that the above is also valid in the case of the other bidder Silvar Construction & Services, whose bid also falls below the minimum wage after the VAT is removed.

Mr Brian Vella for appellant explained to the Board the workings that he had compiled and that were filed with the letter of objection. He said that no contingency for profit margins had been made in the compilation.

Dr Luciano Busuttil on behalf of the contracting authority said that he was aware of the Government Circular in question and both he and the contracting authority would not accept situations leading to precarious employment. It was not acceptable for a contractor working for the contracting authority to pay his employees less than the minimum wage. But he contended that should a contractor pay his employees less than the minimum wage, the employees can ask for redress from the contractor. The tender required bidders to have three full time employees and the preferred bidder has three full time employees – himself, his wife and his son. Therefore as a self employed person the bidder could choose to earn less than the minimum wage. All bidders have to sign the tender declaration stating that they accept all the tender conditions.

Dr Michael Grech pointed out that the circular ruled out that the work be carried out by self employed persons.

Dr Luciano Busuttil explained the concept of 'self-employed' and insisted that a bidder could choose to earn less than his other employees and less than the minimum wage in order to be awarded the tender.

Dr Michael Grech for the appellant said that he did not agree, the tender required the contractor to have three full-time employees, and to be in line with Circular 12/2013 issued in July 2013, each of these full time employees had to be earning at least the minimum wage. A contractor could not use self employees.

The Chairman explained that here there was no room for manoeuvres; the use of self-employed was not allowed by the Circular.

At this point the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 4th December 2013 and also through Appellant's verbal submissions during the hearing held on 30th January 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) The Preferred Bidder's offer did in fact infringe the Directives as stipulated in the Government Circular dated 1st July 2013 relating, in particular, to precarious work.**
- b) The Preferred Bidder did not satisfy the condition relating to 'minimum number of employees'.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 30th January 2014, in that:

- a) When evaluating the Preferred Bidder's offer, the Contracting Authority took into account the fact that the Preferred Bidder himself was to be included as an employee. So that the minimum number of employees were met.**

Reached the following conclusions:

- 1. From submissions made by both the Appellant and the Contracting Authority, it was evidently clear that the Preferred Bidder's Offer included precarious rates, which are unacceptable in all respects.**

In view of the above this Board:

- I) Finds in favour of the Appellant and recommends that the deposit paid by the Appellant be reimbursed.**
- II) Recommends that a fresh tender be issued taking into account the Directives given in the Government Circular dated 1st July 2013.**

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

27 February 2014