

PUBLIC CONTRACTS REVIEW BOARD

Case No. 762

DLC 03/2014

Tender for the Collection of Mixed Household Waste.

The tender was published on the 21st March 2014. The closing date was the 4th April 2014. The estimated value of the Tender was €97,700 (Exclusive of VAT).

Four (4) tenderers had submitted an offer for this tender.

On the 20th October 2014 Mr Chris Gatt filed a letter of objection against the decision of the contracting authority to award the tender to WM Environmental Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 18th November 2014 to discuss the objection.

Present for the hearing were:

Mr Chris Gatt - Appellant

Mr Chris Gatt	Director
Mr George Gatt	Representative
Dr Maria Azzopardi	Representative

WM Environmental Ltd - Preferred Bidder

Mr Wilson Mifsud	Director
Dr John Bonello	Legal Representative

Dingli Local Council - Contracting Authority

Mrs Venera Micallef	Mayor
Mr Mark Mallia	Acting Executive Secretary
Dr Joseph P Bonnici	Legal Representative

The Chairman made a brief introduction and invited appellant's representative to make her submissions.

Dr Maria Azzopardi on behalf of her client, the appellant said that it is evident from calculations made by appellant that the offer by the preferred bidder is not feasible. Appellant has experience in the matter and knows what expenses the tender involves. The service cannot be possibly provided at the cost offered by the preferred bidder as there would be a loss. This necessarily would mean that the danger of precarious employment would exist if the tender is awarded to the preferred bidder. This should not have been acceptable to the contracting authority. The contracting authority was contending that it had chosen the most advantageous offer, but the contracting authority cannot ignore the factor of the possibility of precarious employment.

Mr Chris Gatt for the appellant said the preferred bidder offered the service for €107 per day. Three persons, the driver and two collectors, have to work 3 hours daily, according to the tender. The wages for these, at the lowest basic wage set by the ETC, work out at a cost of €58. Allowing €35 daily for diesel and the fact that Dingli includes also Buskett Gardens which have to be serviced three days a week, another 2 hours daily gives the total hours to be worked to 21 per week. When the minimum wage for this number of hours is added to the other overheads and the cost of diesel the amount needed would exceed the € 107 daily as offered by the preferred bidder.

Dr Joseph P Bonnici on behalf of the contracting authority explained that the contracting authority wanted a good service at the best possible price since these costs were coming from public funds. The contracting authority had to see that bidders awarded the contract would be compliant with the tender conditions and criteria. The question of profit is not taken into consideration when adjudicating the tender; a bidder could choose to break even or even at a loss. The letter of objection does not impute any wrong adjudication process for the tender. The evaluation board considered all factors when making the recommendation.

Mr Mark Mallia on behalf of the contracting authority explained that the evaluation board had noticed the other contracts that the preferred bidder was working at the time of adjudication and took this into consideration. The board also checked whether the preferred bidder was black listed, and he was not. He said that it took just 3 hours work daily to provide the service and the costs, wages and expenses to the contractor would for these three hours. The vehicles used in this tender would be used elsewhere in the remaining hours and this fact was also taken into consideration.

Dr John Bonello on behalf of the preferred bidder raised the matter of the late submission of the letter of objection. It was explained to him that since the contracting authority had sent the notice of award to appellant by ordinary mail, there was no clear date of notification. Dr Bonello contended that the contracting authority had to seek the best offer. The preferred bidder, his client, had other contracts running. It takes him less than 3 hours daily to provide the service, this came through an improved work practice. There was no precarious employment with the preferred bidder; his client had vast experience and knew how to calculate the amounts to be bid.

Mr Wilson Mifsud for the preferred bidder explained that when working the contract for the collection of recycling refuse at the same locality, it takes about 1 hour; and when Buskett is included it takes about one and three quarter hours to collect all the recycling waste. Dingli is

a small locality.

Dr Maria Azzopardi for the appellant insisted that 3 hours daily was a tender requisite. She claimed that appellant could only submit the price he offered because his is a family run business.

Mrs Venera Micallef, the Mayor, on behalf of the contracting authority said that the tender did not ask for 3 hours daily. The tender explained that the collection should be carried out between 6.00 and 9.00.

Mr George Gatt for appellant insisted that it was not possible to provide the service in less than 3 hours daily.

Dr Joseph Bonnici on behalf of the contracting authority remarked that it was family run businesses that usually had instances of precarious employment.

At this point the hearing was brought to an end.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 20th October 2014 and also through Appellant's verbal submissions during the hearing held on 18th November 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) **Appellant contends that the rate quoted by the Preferred Bidder could lead to the possibility of precarious employment. In this regard, from calculations compiled by Appellant, same claims that the Preferred Bidder will be operating the tendered service at a loss;**
- b) **Appellant maintains that it is not possible to provide the requested services in less than 3 hours per day.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 18th November 2014, in that:

- a) **The Contracting Authority maintains that the criteria of the award of the tender was, an efficient service at the best possible price. The preferred Bidder's offer met the necessary requirement as was expected from the Contracting Authority;**
- b) **The Contracting Authority pointed out that this tender did not entail a full time service, so that the possibility of precarious working conditions does not arise, since the Preferred Bidder will be utilising the same workforce and equipment, which at present he employs on other tender works which he is presently carrying out.**

Reached the following conclusions:

- 1. This Board opines that it is not the competence of this Board to determine whether the Preferred Bidder, through his quoted rate, will incur a loss or make a profit. This Board, as has been stated in various decisions taken by same, is strongly against any possibility of precarious employment; however, from justifiable submissions made during the hearing it was credibly established that any other expense apart from wages, can be comfortably absorbed by other commercial activities which the Preferred Bidder is carrying out. In this regard, this Board is convinced that since the tendered works entail only a few hours per day, it does not justifiably find an indication that a ‘scenario’ of precarious working conditions may occur. This Board does not uphold the Appellant’s first contention;**

- 2. From credible submissions, it was justifiably established that the tendered service could also be carried out in even less than 3 hours daily as this will depend on the efficiency of the operator. The fact that the successful tenderer is restricted to carry out the service, only from 6.00am to 9.00 am, clearly denotes that the maximum number of hours per day cannot exceed 3 hours. In this regard, this Board does not uphold Appellant’s second contention.**

In view of the above, this Board finds against the Appellant and recommends that the deposit paid by Appellant should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancillieri
Member

28 November 2014