

PUBLIC CONTRACTS REVIEW BOARD

Case 1325 – SLCC PC (57-19-01) – Tender for the Cleaning and Upkeep of Public Convenience at Santa Lucija, using Environmentally Friendly Products and Services

The publication date of the call for tenders was the 29th January 2019 whilst the closing date of the call for tenders was 19th February 2019. The estimated value of the tender (exclusive of VAT) was € 89,000.

On the 8th May 2019 Mr Sandro Caruana filed an appeal against the Santa Lucija Local Council as the Contracting Authority due to being disqualified on the grounds that his bid was not the most economically advantageous offer. A deposit of € 400 was paid.

There were three (3) bidders.

On 27th June 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr. Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Mr Sandro Caruana

Dr Gabriel Farrugia	Legal Representative
Mr Sandro Caruana	Representative

Contracting Authority – Santa Lucija Local Council

Dr Vincienne Vella	Legal Representative
Mr Terence Ellul	Chairperson Evaluation Committee
Ms Caroline Silvio	Secretary Evaluation Committee
Mr Fredrick Cutajar	Member Evaluation Committee

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and before inviting submissions stated that, first of all the deposit should have been € 445 and not as stated in the rejection letter from the Council. Further the rejection letter failed to state the full reasons for the Appellant's rejection, thus depriving him of his rights. The Contracting Authority is obliged by law to give reasons for rejection including indicating the points awarded. There were many shortcomings in the way the Local Council had handled this tender and there was no point in taking this appeal any further as they had failed the Appellant.

Dr Gabriel Farrugia Legal Representative for Mr Caruana said that his client's appeal was based precisely on the grounds just stated by the Chairman.

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

This Board,

having noted this objection filed by Mr Sandro Caruana (herein after referred to as the Appellant) on 8 May 2019, refers to the claims made by the same Appellant with regard to the tender of reference SLCC PC (57-19-01) listed as case no 1325 in the records of the Public Contracts Review Board, awarded by Santa Lucija Local Council (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Gabriel Farrugia

Appearing for the Contracting Authority: Dr Vincienne Vella

Whereby, the Appellant contends that:

- a) He was not given the reasons as to why his offer was rejected and, in this regard, Appellant insists that the evaluation procedure was not carried out in order to reflect the most advantageous offer.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 17 May 2019, and its verbal submission during the hearing held on 27 June 2019, in that:

- a) the Authority, contends that, although Appellant is alleging that he was not given the reasons for his offer's rejection, same offer was not the most advantageous one in that, under the Best Price Quality Ratio system of Assessment, the preferred Bidder gained more points in the technical section of his offer.**

This Board, after having examined the 'Letter of Rejection' dated 30 April 2019, sent by the Authority, opines that, in this particular case, there were no specific reasons given by the Council to enable Appellant to formulate a proper and objective letter of appeal.

- 1. This Board would, as it has on numerous occasions, emphasise to the Authority the importance and obligation to provide the unsuccessful Bidder with the specific reasons for the rejection of the latter's offer. At the same instance, this Board would remind the Authority that, when the evaluation process is carried out under the 'Best Price Quality Ratio' (BPQR), it is the duty of the Authority to submit the schedule of**

points earned, by Appellant, on each item of the specifications, to enable the latter to identify the deficiency in his offer and be given the opportunity to submit a proper and objective appeal.

In conclusion, this Board,

a) directs that a proper ‘Letter of Rejection’ be re-submitted by the Authority together with a schedule showing the points earned under the ‘Best Price Quality Ratio’;

b) directs that Appellant be allowed to re-submit his objection once the reasons for the rejection of his offer are well and truly identified.

In view of the above, this Board,

i) upholds Appellant’s contention in that no specific reasons were given to him for the rejection of his offer,

ii) directs the Authority to re-submit a fresh ‘Letter of Rejection’ denoting the specific reasons for Appellant’s offer rejection, within a period of fifteen days from today,

iii) directs that Appellant is given the opportunity to object afresh,

iv) directs that the deposit paid by Appellant should be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A. Matrenza
Member

11th July 2019