

PUBLIC CONTRACTS REVIEW BOARD

Case 1354 – F 121/2018 – Tender for the Provision of Cleaning Services in an Environmentally Friendly Manner in the Department of Fisheries and Aquaculture in Ghammieri

The publication date of the tender was the 2nd January 2019 whilst the closing date was 23rd January 2019. The estimated value of the tender (exclusive of VAT) was € 14,560

On the 28th August 2019 Mr Melchior Dimech filed an appeal against the Department of Fisheries and Aquaculture as the Contracting Authority contesting the decision to disqualify him as his bid was not compliant for a variety of reasons. A deposit of € 400 was paid.

There were five (5) bidders.

On 17th September 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri as Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant - Mr Melchior Dimech

Dr Franco Galea	Legal Representative
Mr Melchior Dimech	Representative

Preferred Bidder – Specialist Group Cleaners Ltd

Dr John Bonello	Legal Representative
Ms Alexia Bongailas	Representative
Mr Zacharias Zammit-Zhik	Representative

Contracting Authority – Department of Fisheries and Aquaculture

Dr Victoria Scerri	Legal Representative
Ms Marthese Attard	Chairperson Evaluation Committee
Mr Desmond Scerri	Member Evaluation Committee
Mr Andrew Sciberras	Member Evaluation Committee

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

Dr Franco Galea Legal Representative for Mr Melchior Dimech stated that the tender was evaluated on the Best Price Quality Ratio (BPQR) basis. The process of the evaluation was being challenged on the allocation of points. On one item where points had been deducted Appellant had actually supplied the required declaration. In two instances where the Contracting Authority felt that information was lacking they should have sought clarification or rectification.

Dr Victoria Scerri Legal Representative of the Department of Fisheries and Aquaculture said that there must be reasons for an Authority to seek clarifications or rectifications – if the information requested was evidently there but not sufficient to meet the tender requisites there is no point in seeking these remedies. No reasons had been offered by the Appellant why the BPQR basis had not been adhered to.

Mr Desmond Scerri (479966M) called as a witness by the Public Contracts Review Board (PCRB) testified on oath that he was a member of the evaluation committee. Referring to the requirement that basic training in cleaning service had to be provided witness stated that the document submitted was not signed (Doc 1) and therefore only one mark had been awarded. It was established that the signed document (Doc 2) attached to Doc 1 in fact referred to a separate section. With regard to the methodology covering the level of service Appellant had failed to give the level of service enough prominence (Doc 3) and his submission put the emphasis on time sheets and time keeping and other factors such as sickness. Questioned by Dr Galea witness confirmed that no clarification had been sought on these shortcomings.

The Chairman pointed out that a clarification cannot be used to rectify a bid.

Continuing with his testimony witness said that he could not recall why the words ‘superficial’ and ‘insufficient reasons’ had been used to describe the marked-down submissions in the Back-up Capacity section.

Dr Galea said that from the testimony of the witness it was obvious that clarifications should have been requested. Was the evaluation process carried out correctly or should further information have been sought. It is up to the Board to check if the documents required were submitted correctly.

Dr Scerri said that certain submitted documents were not signed. The declaration purported to have been signed referred to a completely different section. Instead of the level of service offered Appellant had emphasised the timekeeping aspect and would refrain from trying to comment on why the word superficial had been used.

Dr John Bonello Legal Representative for Specialist Group Cleaners Ltd said that the issue was one of subjectivity. The evaluation is based on individual analysis of documents. The PCRB’s responsibility is to ensure that the tender process is correct – their role is not to analyse details. The testimony heard does not reflect that there were any infringements in the process and it is not the scope of the PCRB to re-evaluate a tender. The evaluation seems to have been carried out correctly.

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

End of Minutes.

Decision

This Board,

having noted this objection filed by Mr Melchiore Dimech (herein after referred to as the Appellant) on 28 August 2019, refers to the claims made by the same Appellant with regard to the tender of reference F 121/2018 listed as case no 1354 in the records of the Public Contracts Review Board, awarded by Department of Fisheries and Aquaculture (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Franco Galea

Appearing for the Contracting Authority: Dr Victoria Scerri

Whereby, the Appellant contends that:

- a) The allocation of points, carried out by the Evaluation Committee, do not represent fairly Appellant's submissions. At the same instance, Appellant maintains that if in doubt, about the interpretation of his offer, the Evaluation Committee should have sought clarifications.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 10 September 2019 and its verbal submissions during the hearing held on 17 September 2019, in that:

- a) The Authority contends that Appellant's offer failed on two counts namely, lack of provision of documentary evidence regarding basic training and also failure to provide a list of measures and methodology pertaining to an adequate level of service to be provided. In this regard, Appellant's offer was allocated the appropriate and proportional marks.**

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

Mr Desmond Scerri duly summoned by the Public Contracts Review Board.

This Board has also taken note of the documents submitted by Mr Melchiorre Dimech which consisted of:

Doc I – Declaration by Appellant regarding training of employees,

Doc 2 – Reference letter addressed 'To Whom it May Concern',

Doc 3 – Methodology

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned opines that, the issues that merit consideration are two fold namely:

- **The Method of the Allocation of Marks adopted by the Evaluation Committee, on Appellant's Offer and**
- **Whether there existed instances for Clarification Requests, during the Evaluation Process.**

1. **First and foremost, this Board would point out that the award criterion was the Best Price Quality Ratio (BPQR) and in this respect, same Board confirms that the evaluation process was carried out, as duly stipulated in the tender document and not on the cheapest price.**
2. **One must emphasize the fact, that the BPQR system is the most objective mode of evaluation of offers in that, it suppresses as much as possible the subjectivity element. From documentation and evaluation report, this Board notes that the allocation of marks was carried out in a just and proportional manner, thus representing the actual**

standing and ranking of each offer, so that the final result does represent the most advantageous offer.

3. This Board has also examined Appellant's submissions and noted that:

- With regard to evidence of basic training in cleaning services, Appellant failed to provide documentary evidence that employees have been trained apart from the fact that the declaration submitted by same was not signed.**
- With regard to methodology to show adequate level of service to be provided, Appellant's documentation focused on timekeeping issues rather than proof that an adequate level of service can be provided.**

It is obvious and logical that the Evaluation Committee can only assess objectively on the submissions made by economic operators and in this particular case Appellant's offer failed to submit the expected level of information, thus fewer marks in such cases were allotted.

- 4. With regard to Appellant's contention that the Evaluation Committee should have sought clarifications on Appellant's offer, this Board, as it has on so many occasions, would respectfully point out that, clarifications should never be sought so as to rectify or replace the original submissions. At the same instance, clarifications can only have the character of minor clarification of information already submitted by the tenderer. It must also be pointed out that, in certain circumstances, there is an obligation for the Contracting Authority to ask the tenderer to clarify submitted documents. However, such obligation applies only when the text of the tenderer is vague or unclear and in circumstances of which the Contracting Authority is aware, suggest that this ambiguity can be easily explained.**

- 5. In this particular case, there did not arise the need for the Evaluation Committee to clear any misunderstanding of text. The actual situation represented failure on the part of Appellant to submit relevant information which was mandatorily stipulated in the tender document.**

In conclusion, this Board opines that:

- a) After having examined the evaluation report, this Board confirms that the Evaluation Committee carried out its evaluation process under the award criteria of the Best Price Quality Ratio in a just, fair and transparent manner, adhering to the principles of equal treatment and self-limitation.**

- b) The marks allocated to Appellant's offer reflect a just and fair assessment of the offer and justifiable reasons for such an allocation, were appropriately concluded.**

- c) There existed no instance where the Evaluation Committee had the obligation to ask for clarifications.**

In view of the above, this Board:

- i) Upholds the Contracting Authority's decision in the award of the tender,**

ii) Does not uphold the Appellant's contentions in toto,

iii) Directs that the deposit paid by appellant should not be re-imbursed.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

27 September 2019