

PUBLIC CONTRACTS REVIEW BOARD

Case 1430 – QLC/CMPG/16/95– Tender for the Upkeep and Maintenance of Gardens, Parks and Soft Areas using Environmentally Friendly Products in the Locality of Hal Qormi

The tender was published on the 21st August 2019 and the closing date of the call for tenders was the 23rd September 2019. The estimated value of the tender (exclusive of VAT) was € 70,000.

On the 31st January 2020 Mr Alistair Bezzina filed an appeal against Qormi Local Council as the Contracting Authority objecting to their disqualification on the grounds of their bid being deemed to be technically non-compliant. A deposit of € 480.25 was paid.

There were five (5) bidders.

On 27th February 2020 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 Alistair Bezzina

Dr Edward Gatt	Legal Representative
Mr Alistair Bezzina	Representative

Recommended Bidder – Progressive Solutions Ltd

Dr Marycien Vassallo	Legal Representative
Mr Wilson Mifsud	Representative

Contracting Authority – Qormi Local Council

Dr Simon Cachia	Legal Representative
Mr Tonio Cuschieri	Member Evaluation Committee
Mr Chris Falzon	Member Evaluation Committee
Ms Karen Camilleri	Representative

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

Dr Edward Gatt Legal Representative for Mr Alistair Bezzina sought permission to call two witnesses.

Mr Alistair Bezzina (409488M) called as a witness testified on oath that by the time he received the tender clarification note of the 11th September he had already submitted his tender.

Questioned by Dr Simon Cachia Legal Representative for the Qormi Local Council witness agreed that the tender submission date was the 23rd September 2019 whilst the clarification note was issued on the 11th September 2019. Witness also confirmed that he did not supply any detailed figures in reply to the clarification note of the 27th November 2019 as he did not feel that there was any need to change the figures submitted in the tender.

Mr Wilson Mifsud (527284M) called as a witness by Appellant testified on oath that he was the owner of the preferred bidders Progressive Solutions Ltd. He testified that he was involved in a Court case regarding a dispute with a workman but made it clear that he was not blacklisted by any local council.

Mr Tonio Cuschieri (15583M) called as a witness by the Public Contracts Review Board testified on oath that he was a qualified accountant by profession and was an evaluator on this tender. He stated that the preferred bidder had bid €70,000 whilst Mr Bezzina had bid some € 52,000 – both figures per year. A clarification note was sent to Appellant asking him to provide detailed calculations of the price offered but he replied that he stood by his submissions. Appellant had been requested to explain his price as it was obvious that multiplying 5 full time workers at the minimum wage rate plus on-costs resulted in a figure higher than that quoted and was thus an abnormally low offer.

Mr Chris Falzon (37983M) called as a witness by the Public Contracts Review Board testified on oath that he was an evaluator on this tender. He said that when one compared the preferred bid at € 70.000 to that of Mr Bezzina at € 52,000 it was very clear that there was the possibility of an abnormally low price quoted and the Council was obliged to obtain workings to justify the price tendered.

Dr Gatt said that the question to be considered was whether Appellant was aware that five persons were required to -fulfil this contract. It is obvious that his costings were not based on five persons. The original tender did not state that it was based on five persons and the calculations were all prepared before Appellant became aware that five persons were demanded.

Dr Cachia stated that the offer by Appellant was below the tender requirements and the Contracting Authority were obliged to query if this was an abnormally low tender, this without prejudice to the fact that the tenderer accepts that a clarification is part of the tender. It was ascertained that the preferred bidder was not black listed.

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 Alistair Bezzina (hereinafter referred to as the Appellant) on 31 January 2020, refers to the claims made by the same Appellant with regard to the tender of reference QLC/CMPG/16/95 listed as case No. 1430 in the records of the Public Contracts Review Board awarded by Qormi Local Council (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Edward Gatt

Appearing for the Contracting Authority: Dr Simon Cachia

Whereby, the Appellant contend that:

- a) The original tender did not stipulate that such a requested service was to be carried out by five persons. In this regard, Appellant maintains that his offer was based on a lesser number of personnel and his offer was submitted before he was made aware of the stipulated number of five employees.**

This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 31 January 2020 and its verbal submissions during the hearing held on 27 February 2020, in that:

- a) The Authority insists that Appellant was aware of the number of employees to be deployed on this tendered service well before the submission of his offer. In addition, Appellant failed to reply to the clarification request dated 27 November 2019, so that the Evaluation Committee had no other option but to deem Appellant’s offer as non-compliant.**

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

Mr Alistair Bezzina duly summoned by Appellant’s Legal representative

Mr Wilson Mifsud duly summoned by Mr Alistair Bezzina

Mr Tonio Cuschieri duly summoned by the Public Contracts Review Board

Mr Chris Falzon duly summoned by the Public Contracts Review Board

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, whether Appellant was well and properly informed about

the stipulated requirements of 5 employees, prior to the submission of his offer.

- 1. First and foremost, this Board would respectfully point out that, any clarifications issued by the Authority prior to the closing date of the submission of offers, form an integral part of the conditions and technical specifications of the original tender document.**
- 2. Although the original tender document did not specify the number of employees to be deployed on the tendered service, clarification No. 2 dated 11 September 2019, did indicate clearly that the Contracting Authority is requesting 5 full time gardeners, as follows:**

“#Clarification Number 2 Date Published 11/09/19

Title of Request Number of gardeners

Question

Kindly clarify how many gardeners are required to be dedicated to this contract on a full time and on a part time basis. In case of part time gardeners, kindly indicate the number of hours required.

File Associated to Question: <No Attachment Exists>

Answer

Please be informed that the Qormi LC needs 5 full time gardeners.

File Associated to answer: <No Answer Attachment Exists> ”

- 3. With regard to Appellant’s claim that he had submitted his offer prior to being made aware of the 5 persons required for this tender, this Board would respectfully point out that, the clarification note stipulating the employment of 5 full time gardeners was communicated to Appellant, on the 11 September 2019, that is twelve days before Appellant’s submissions.**

- 4. This Board would also point out that, when a seemingly abnormally low offer is presented, the Evaluation Committee has the onerous duty to ask the particular tenderer for an explanation as to how his offer was construed. In this regard, this Board notes that, quite appropriately, the Evaluation Committee, through clarification requests dated 27 November 2019, requested an explanation of the price quoted by Appellant, as follows:**

“Clarification ID 2

Date 2019/11/27 17:00:56

Date Answered 2019/11/28 00:42:54

EO Name Alistair Bezzina

Request Title Request for Clarification

Request description The Evaluation Committee considered your financial bid to appear to be abnormally low in relation to the services required. In accordance with clause 243 of the Public Procurement Regulations, please explain the price proposed.

Response to this clarification should be 5 working days from today.

Regards

Requested Attachment N/A”

Following such a request, Appellant replied as follows:

“Response

Kindly be informed that I am aware of the specifications of the contract and I have taken all the necessary costings to ensure that legislation is observed as much as the tendering specifications.

I am therefore aware of the price that I have submitted, which you are kindly requested to consider as valid.

Rest assured of our utmost of service and re-affirm that I am aware of the tendered price and the implications of the tender document.

Regards

Alistair Bezzina”

Through such a response, Appellant confirmed that the quoted price, which did not take into consideration the inclusion of costs relating to 5 full time gardeners, still holds.

In conclusion, this Board opines that:

- a) Appellant was well aware, prior to the submission of his offer, that the tender involved the inclusion of employment of five full time gardeners.**
- b) Appellant quoted price did not include the involvement of 5 full time employees, so that his offer was abnormally low.**
- c) Appellant did not give the explanation requested in clarification request dated 27 November 2019.**

In view of the above, this Board,

- i. does not uphold Appellant's contentions,**
- ii. upholds the Contracting Authority decision in the award of the tender,**

iii. directs that the deposit paid by Appellant should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

5 March 2020