

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1462 – MJEG/MPU/62/2020 – Tender for the Provision of Cleaning Services using Environmentally Friendly Cleaning Products for the Human Rights Directorate.**

The tender was published on the 23<sup>rd</sup> April 2020 and the closing date of the tender was the 15<sup>th</sup> May 2020. The estimated value of the tender (exclusive of VAT) was € 87,105.20.

On the 15th June 2020 Mr Sandro Caruana filed an appeal against the Ministry for Justice, Equality and Governance as the Contracting Authority objecting to their disqualification on the grounds that their bid was technically non-compliant. A deposit of € 436 was paid.

There were eight (8) bidders.

On 20th July 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellant – Mr Sandro Caruana**

Dr Ismael Psaila	Legal Representative
Mr Sandro Caruana	Representative

#### **Preferred Bidder – Mr Melchior Dimech**

Dr Franco Galea	Legal Representative
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#### **Contracting Authority – Ministry for Justice, Equality and Governance**

Dr Christopher Mizzi	Legal Representative
Mr Michael Camilleri	Secretary Evaluation Committee
Mr Wayne Caruana	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties had agreed to treat it as a normal hearing of the Board. He invited submissions after noting that the letter of objection left much to be desired as no reasons or proof had been given on the objections raised.

Dr Ismael Psaila Legal Representative for Mr Sandro Caruana said that Appellant had submitted the cheapest offer although he accepts that other factors have to be considered in the award of the tender. The Contracting Authority had confirmed that Appellant's bid had offered an adequate level of service

and therefore should not have been assessed subjectively. One was also aware that there were shortcomings in the preferred bidders offer.

Dr Franco Galea Legal Representative for Mr Melchior Dimech said that the objection letter does not make any reference to subjective decisions by the Authority. There is no proof that Mr Dimech has any legal infringements on employment laws and it does not follow that the cheapest financial bid is necessarily the best one under the BPQR system.

Dr Christopher Mizzi Legal Representative for the Ministry for Justice, Equality and Governance said that Appellant had not provided any proof that the award decision was not correct. Following the BPQR system the financial side represented only 40% of the award. The details of the award were fully shown and one must accept that there must be certain leeway in a subjective assessment. Appellant failed completely on four mandatory requirements of the tender – namely on the supply of uniforms; the draft of the employment contract; the payment of wages by direct order and on the copy of the payslips. On all these four items there was no alternative except to award zero points as all were mandatory specifications and no calibration of points was possible. The preferred bidder is not black listed or excluded from public procurement.

Mr Michael Camilleri (582382M) called as a witness by the Public Contracts Review Board testified on oath that he was the Secretary of the Evaluation Committee. He stated that the preferred bidder had met all the mandatory requirements of the tender requirements. The detailed report on the tender outcome indicated clearly where Applicant's marks were deducted and the reasons therefore and the evaluators had all acted independently of each other in their assessments. Witness confirmed that the four mandatory items mentioned had not been submitted by Appellant.

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

End of Minutes

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## **Decision**

**This Board,**

**having noted this objection filed by Mr Sandro Caruana (hereinafter referred to as the Appellant) on 15<sup>th</sup> June 2020, refers to the claims made by the same Appellant with regard to the tender of reference MJEG/MPU/62/2020 listed as case No. 1462 in the records of the Public Contracts Review Board awarded by**

**the Ministry for Justice, Equality and Governance (hereinafter referred to as the Contracting Authority).**

**Appearing for the Appellant: Dr Ismael Psaila**

**Appearing for the Contracting Authority: Dr Christopher Mizzi**

**Appearing for the preferred bidder: Dr Franco Galea**

**Whereby, the Appellant contends that:**

- a) Since their offer was the cheapest and technically compliant, their offer should have been assessed more objectively.**
- b) At the same instance, the Authority should have taken into consideration the preferred bidder's past performance and other litigation against them, in their deliberations.**

**This Board also noted the Contracting Authority's 'Letter of reply' dated 25<sup>th</sup> June 2020 and its verbal submissions during the virtual hearing held on 20<sup>th</sup> July 2020, in that:**

- a) The Authority maintains that, the evaluation process was carried out in a just and transparent manner whilst abiding with the principles of Public Procurement.**

**b) With regard to the Appellant's second contention, the Authority insists that, the preferred bidder is not blacklisted, apart from the fact, that no proof was presented by the Appellant to support his alleged claims in this regard.**

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

**Mr Michael Camilleri Secretary, Evaluation Committee, duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relative documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned opines that, although the contents of Appellant's 'Letter of Objection' do not constitute the mandatory elements as duly stipulated in the Public Procurement Regulations and consists of allegations without a single piece of evidence to support such alleged claims, for transparency's sake, this Board will treat two issues which it feels should be pointed out.**

**1. Appellant's Offer Assessment**

**1.1. Appellant is claiming that his offer was not objectively assessed although being the cheapest bid.**

**1.2. The above mentioned claim was not substantiated by any justifiable claim however, this Board would respectfully point out that, although it is a fact that Appellant's bid was the cheapest, it had also to satisfy the technical specifications as dictated in the tender document.**

**1.3. This Board would also point out that, it was clearly denoted in the tender document that, under the BPQR system, the financial element, for assessment purposes represented 40 % of the award, so that, the fact that Appellant's offer was the cheapest does not imply that it was ranked as the best and most advantageous offer.**

**1.4. The fact that Appellant's offer lost marks on the technical assessment refers to:**

- Failure to submit the requested information regarding uniforms**
- Failure to submit a draft of employment contract**
- Failure to prove a direct payment system regarding wages**
- Failure to submit a copy of payslips**

**It must be mentioned that all the above four mentioned technical requisites fell under Note 3, so that, no rectification or clarification could be carried out by the Evaluation Committee.**

**1.5. This Board, as it has on so many occasions, would emphasize that, under the BPQR method of assessment of offers, although an element of leeway is exercised by members of the Evaluation Committee, the element of subjectivity is drastically suppressed so that, the most economic and advantageous offer is sifted out. In this regard, this Board justifiably established that, the evaluation process was carried out in a just and**

**transparent manner whilst abiding by the principles of self-limitation and a level playing field.**

## **2. Preferred Bidder's past performance**

**2.1. Appellant is claiming that, the preferred bidder did not deserve the award of the tender due to the alleged fact that, his past performances, on other tendered works has included infringements of employment laws.**

**2.2. This Board would respectfully point out that, Appellant failed to justify the claim made in this regard. At the same instance, this Board would also note that the preferred bidder is not blacklisted and in this respect, he can participate in any tender issued by the Government.**

**In conclusion, this Board opines that:**

- a) Although Appellant's bid was the cheapest, it failed to comply with mandatory technical requirements for which same offer was penalised, so that, under the BPQR method, it did not achieve the highest average percentage.**
- b) Appellant's offer was objectively evaluated, and the evaluation process was carried out in a fair and just manner.**
- c) Appellant failed to justify the technical deficiencies in his offer.**
- d) The preferred bidder is not blacklisted to participate in public tenders and Appellant failed to present proof or evidence to justify his alleged claims.**

**e) Appellant's 'Letter of Objection' leaves much to be desired as it fails to provide the necessary motives and justifiable reasons to complement their claims.**

**f) The preferred bidder's offer is fully compliant.**

**In view of the above, this Board,**

- i. Does not uphold Appellant's contention,**
- ii. Upholds the Contracting Authority's decision in the award of the tender,**
- iii. Directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*27<sup>th</sup> July 2020*