

PUBLIC CONTRACTS REVIEW BOARD

Case 1559 – SGN – SSCS 01/20 – Tender for Street Sweeping and Cleaning Services in the Locality of San Gwann Using Environmentally Friendly Practices

6th May 2021

The Board,

Having noted the letter of objection filed by Dr Carlos Bugeja on behalf of Owen Borg, hereinafter referred to as the appellant on the 16th February 2021;

Having also noted the letter of reply filed by the San Gwann Local Council;

Having taken cognizance and evaluated the evidence and documents produced as well as having taken into consideration the submissions made by the representatives of the parties during the virtual hearing of the 30th March 2021;

Having gone over the decision delivered by the Public Contracts Review Board on the 20th July 2020 in Case 1458 dealing with an objection by the said appellant;

Having also examined the decision delivered by the Court of Appeal in the case Rikors 265/20 in the names of Owen Borg vs San Gwann Local Council;

Having heard and evaluated the testimony of the witness Chris Falzon who had been the Chairperson of the evaluation board;

Having noted and evaluated the minutes of the hearing held on the 30th March 2021 hereunder reproduced;

Minutes:

The tender was published on the 6th February 2020 and the closing date was the 4th March 2020. The value of the tender was € 400,000 (excluding VAT).

On the 16th February 2021 Mr Owen Borg filed an appeal against the San Gwann Local Council as the Contracting Authority objecting to his disqualification on the grounds that his offer did not meet the Best Price Quality criteria. A deposit of € 2,000 was paid. There were six (6) bidders.

On 30th March 2021 the Public Contracts Review Board (PCRB) composed of Dr Charles Cassar as Chairman, Mr Carmel Esposito and Mr Richard Matrenza as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Mr Owen Borg

Dr Carlos Bugeja

Legal Representative

Contracting Authority – San Gwann Local Council

Dr Ramona Attard

Legal Representative

Dr Charlon Gouder

Legal Representative

Dr Albert Zerafa

Legal Representative

Mr Chris Falzon

Chairperson Evaluation Committee

Ms Nikita Zammit Alamango

Member Evaluation Committee

Mr Trevor Fenech

Representative

Mr Paul Bugeja

Representative

Mr Kurt Guillaumier

Representative

Dr Charles Cassar Substitute Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations (LN 174.04). He then invited submissions.

Dr Carlos Bugeja Legal Representative for Mr Owen Borg said that the grounds for the appeal were detailed in his letter of objection and requested one of the evaluators of the tender to testify regarding the mathematical calculations which had led to the Contracting Authority's decision.

Mr Chris Falzon (37983M) called as a witness by Appellant testified on oath that he was the Chairperson of the Evaluation Committee. He detailed the process the committee had gone through in evaluating the individual bids and how the final report was produced following the individual evaluations by each member. The final qualifying bids considered to be technically compliant were those of Antoine Fenech, Sandro Caruana, Galea Cleaning Solutions, Waste Collection and Owen Borg.

Witness explained that the Council required prices for four years – some bidders quoted prices for one year, some for two years and one for five years – after clarification prices for one year were obtained from each bidder and each offer adjusted accordingly. The final result was decided on the BPQR criteria. The Court of Appeal revoked the award to Galea Cleaning which firm had obtained the highest mark, so the award went to Antoine Fenech who was placed second.

Questioned by a Board member witness stated that the working of the points and the placings were done through the ePP system. The evaluators did suspect the final calculation of the result which seemed to them not to be correct but this was likely due to the fact that Fenech's offer was based on one year's figures but Borg's on four years, but nonetheless they had to abide by the result the system produced.

Dr Bugeja stated that it was frustrating that although Borg was placed first on both the technical and financial scores he had been placed second overall. The BPQR criteria workings obviously did not make sense.

Dr Charlon Gouder Legal Representative for the San Gwann Local Council said that the Board had to rely on what the witness had stated; namely that the evaluation process had been correctly carried out and there was no intention to favour any one party. The adjudicators had no option but to follow the workings of the system and it was now up to the Board to decide if the outcome was correct.

Dr Cassar thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board observes that, following the Court of Appeal decision whereby the offer made by the then preferred bidder – Galea Cleaning Solutions Joint Venture – was disqualified from the tender as being non-compliant to the conditions, the evaluation board had simply went to the second placed bidder and awarded the tender to him. This was Antoine Fenech.

It is clear from the evaluation report that there was something intrinsically wrong with the order of merit of the tender. This had to be adjudicated using the BPQR method and its working was explained in the tender itself at Clause 6 Criteria for Award. Clause 6.1 explains in detail how the order of merit is to be worked out following the allocation of marks in the technical had been assigned for each bidder by each evaluator.

This BPQR should have ensured that those whose offer was the cheapest would obtain most marks for the financial aspect and those who were deemed to be technically better would obtain most marks for the technical aspect. These marks were then to be multiplied by .6 and .4 respectively to arrive at the final rating of bids.

From the evaluation report it is clear that today's appellant's offer was the cheapest offer after that of Galea Cleaning Solutions JV who were disqualified. It is also clear that appellant's technical offer had obtained more points than Antoine Fenech and it stands to reason that the rating given by the evaluation board was wrong. This was confirmed by the testimony of the witness Chris Falzon who laid the blame on the epps system and surmised that it was probably due to the arithmetical corrections that had been made to the offers of some of the bidders. The financial offers had been left unchanged in the epps.

This is absurd; and when the same witness was asked what was done to rectify the clear error, he stated that nothing was done and the flawed result as it came from the epps was accepted. Evaluation Boards are set up from persons and not robots just for this reason. A person is supposed to act intelligently when performing his duty. Yet the evaluation board had just ignored an obvious mistake and continued with the award.

For these reasons it is clear to this Board that the award decision should be revoked.

The Board thus decides in revoking the award of the tender to Antoine Fenech and directs that the evaluation board works out again the proper order of merit according to the tender Clause 6.1. However the same board should refrain from changing the markings given to the bidders in the technical assessment of the offers; they should use the same marks as already awarded.

The Board also directs that the deposit paid by appellant should be refunded.

Charles Cassar
Chairperson

Richard Matrenza
Member

Carmel Esposito
Member