

PUBLIC CONTRACTS REVIEW BOARD

Case 1596 – RFQ 002/2021 – Services of Contract Manager for the Tender for Organic Waste from Commercial Establishments in Malta and Gozo Tourism Areas

13th July 2021

The Board,

Having noted the letter of objection filed by Dr Larry Formosa on behalf of Cosyra Legal acting for and on behalf of Yama Yami Ltd, (hereinafter referred to as the appellant) filed on the 11th June 2021;

Having also noted the letter of reply filed by Dr Marco Woods on behalf of Association of Local Councils (hereinafter referred to as the Contracting Authority) filed on the 18th June 2021;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 9th July 2021 hereunder-reproduced.

Minutes

Case 1596 – RFQ 002/2021. Services of Contract Manager for the tender for Organic Waste from Commercial Establishments in Malta and Gozo Tourism Areas

The tender was published on the 11th May 2021 and the closing date was the 31st May 2021. The value of the tender was € 6,000.

On the 11th June 2021 Yama Yami Ltd filed an appeal against the Local Councils Association as the Contracting Authority objecting to the cancellation of the tender

A deposit of € 400 was paid.

There was one (1) bidder.

On 9th July 2021 the Public Contracts Review Board (PCRB) composed of, Mr Kenneth Swain Chairman Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Yama Yami Ltd

Dr Larry Formosa
Mr Ryan Cefai Formosa

Legal Representative
Representative

Contracting Authority – Association of Local Councils

Dr Marco Woods
Mr Mario Fava
Ms Lianne Cassar

Legal Representative
Representative
Representative

Mr Kenneth Swain 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. He then asked Appellant’s representative to make his submissions.

Dr Larry Formosa Legal Representative for Yama Yami Ltd stated that no reason was originally given for the cancellation. This went against Article 272 of the PPR and for this reason alone warranted the refund of the deposit made. The Authority could have cancelled the tender before submissions as this was a long term decision and it was unfair on the bidder as he has disclosed his hand price wise and should be entitled for damages.

Dr Marco Woods Legal Representative for the Association of Local Councils referred to Clause 18.1 of the General Rules Governing Tenders which gives the right to cancel tenders at any time. The cancellation could hardly prejudice Appellant as his was the only bid submitted. It was up to the Board to decide on the refund of the deposit but the Authority had no objection to this although they objected to the claim for damages.

Dr Formosa said it is up to the Board to decide regarding damages or compensation to which Dr Woods replied that the matter of damages was not within the ambit of the Board.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 9th July 2021.

Having noted the objection filed by Yama Yami Ltd (hereinafter referred to as the Appellant) on 11th June 2021, refers to the claims made by the same Appellant with regards to the tender of reference RFQ 002/2021 listed as case No. 1596 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Larry Formosa

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellant contends that:

- a) Appellant's offer was the only offer submitted which was administratively, technically and financially compliant.
- b) Decision taken by Contracting Authority to cancel the 'RFQ' should be accompanied by sufficient reasons which reasons should be objectively justified. The Contracting Authority failed to provide any reasons.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 18th June 2021 and its verbal submission during the virtual hearing held on 9^h July 2021, in that:

- a) The objection is misleading, in that the Contracting Authority did not carry out an evaluation, hence the statement that the offer was administratively, technically and financially compliant is unfounded at this stage.
- b) Decision to cancel the said Tender was taken in line with sub-rule (b) of rule 18(3) of the General Rules Governing Tenders "the economic or technical parameters of the project have been fundamentally altered". This due to the fact that the Contracting Authority no longer requires that Contract Management be provided by a third-party contractor but rather will be carried out in-house.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will consider Appellant's grievances, as follows:

- With regards to the Appellant's first grievance, i.e. the only offer submitted which was administratively, technically and financially compliant, the Board finds that no evaluation process was carried out on the bids and proposal received, hence it is frivolous to contend the compliance of such offer. Hence the Board does not uphold Appellant's first grievance.
- As to the cancellation notice, the Board would like to emphasise that the Contracting Authority did provide a notice to the Appellant. However, this did not contain within it enough detailed information for the Appellant to be in a position to fully make an informed decision on whether to appeal or not. This issue has been encountered on numerous occasions (by different Contracting Authorities), and the Board takes this opportunity to again emphasise the importance of adhering

to the respective regulations, guidelines and circulars which the Contracting Authorities need to comply to when writing and issuing Rejection Letters or notices that affect a cancellation of tender. The Board upholds this grievance of the Appellant.

- On the issue of damages, and whether the cancellation was done in good faith or otherwise, this Board feels that no prejudice has been done to the Appellant since there was only 1 bidder for this RFQ. As stated on different occasions, all tenders need to be evaluated on their own specific accord and the financial information provided for this bid is irrelevant for any other future tenders. Article 18.1 of the General Rules Governing Tenders is explicit in the right provided to Contracting Authorities on when a tender procedure can be cancelled.

In conclusion this Board;

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions;
- b) Upholds the Contracting Authority's decision in the cancellation of RfQ 002/2021;
- c) After taking all due consideration of the circumstances and outcome of this Letter of Objection, more specifically that the appellant was not provided with specific information as to the cancellation of the RfQ, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member