

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1623 – SPM 03/21 – Tender for the Removal of Existing loose items at the building situated at Triq Vajrita c/w Triq Nigel Dennis, Marsascala**

**20<sup>th</sup> September 2021**

The Board,

Having noted the letter of objection filed by Dr Timothy A. Bartolo on behalf of Cilia & Associates Advocates acting for and on behalf of Mr Emanuel Spiteri, (hereinafter referred to as the appellant) filed on the 11<sup>th</sup> June 2021;

Having also noted the letter of reply filed by Dr Ivan Gatt on behalf of GTG Advocates acting for Social Projects Management Ltd (hereinafter referred to as the Contracting Authority) filed on the 21<sup>st</sup> June 2021;

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

Having noted and evaluated the minutes of the Board sitting of the 9<sup>th</sup> September 2021 hereunder-reproduced;

#### **Minutes**

### **Case 1623 – SPM 03-21. Tender for the Removal of Existing Loose Items at the Existing Building situated at Triq Vajrita C/W Triq Nigel Dennis, Marsascala**

The tender was published on the 11<sup>th</sup> February 2021 and the closing date was the 15<sup>th</sup> March 2021. The value of the tender excluding VAT was € 12,000.

On the 11<sup>th</sup> June 2021 Mr Emanuel Spiteri filed an appeal against Social Projects Management Ltd (S.P.M.) as the Contracting Authority objecting to their disqualification on the grounds that their bid was not considered financially compliant.

A deposit of € 400 was paid.

There were ten (10) bidders.

On 9<sup>th</sup> September 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri 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 Emanuel Spiteri**

Dr Timothy Bartolo

Legal Representative

Mr Jeffrey Farrugia Representative

**Contracting Authority – Social Projects Management Ltd**

Dr Ivan Gatt Legal Representative  
Mr Patrick Vella Representative  
Mr Joseph Cini Representative

**Preferred Bidder – Solergia**

Mr Dione Zahra 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.

Dr Timothy Bartolo Legal Representative for Mr Emanuel Spiteri said that the basis of this disqualification was the failure by Appellant to fill the Bill of Quantities; however no one was prejudiced by this omission as it was still possible to assess the value of the bid from the financial offer. No objections were raised when the bid was first submitted and once it was accepted at that stage it should not be rejected now. The final figure has not changed.

Dr Ivan Gatt Legal Representative for Social Projects Management Ltd stated that if any items were not clear before submission a clarification would have been in order. The tender states that if any item is not priced then it would be impossible to reach the final price offered and the bid would not be financially compliant. The decision of the Authority is therefore correct.

Dr Bartolo re-iterated the points made earlier namely that the final figure was still shown and it was immaterial how it was made up.

Dr Gatt noted that the wording of the tender was clear and was not subject to interpretation.

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

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 9<sup>th</sup> September 2021.

Having noted the objection filed by Mr Emanuel Spiteri (hereinafter referred to as the Appellant) on 11<sup>th</sup> June 2021, refers to the claims made by the same Appellant with regards to the tender of reference SPM 03-21 listed as case No. 1623 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Timothy A. Bartolo

Appearing for the Contracting Authority: Dr Ivan Gatt

Whereby, the Appellant contends that:

- a) According to the guidelines indicated in the actual bill of quantity documentation, 'If any item in the Bill of Quantities is left unpriced, then it shall be deemed that the Contractor is taking provision for the price of this item in the rest of the rates'. Furthermore, it is also noteworthy that no reservation was made as to the admissibility of the tender at the moment in time when it was submitted owing to any lack of formality thereof, with it thus being unjust to our client to have such factor have a determining negative impact on the outcome of his bid.
- b) Moreover, the indication of the total costs in the Summary of Bills page nonetheless enabled an accurate and holistic review of the offer in a manner which allows for an accurate assessment of the bid and the financial implications of same. In addition, according to Section 3 of the relevant tender document, the tender in question was not divisible into lots, meaning that tenderers were obliged to bid for the whole of the quantities indicated. This effectively further compounds the argument that the alleged failure to fill in the individual Bills had no appreciable effect on the assessment of the tender, with the entire amount proposed nonetheless resulting from the Summary of Bills page.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 21<sup>st</sup> June 2021 and its verbal submission during the virtual hearing held on 9<sup>th</sup> September 2021, in that:

- a) The Objector's grounds for objection are seriously faulted.
  - i. One has to note that in the Bill of Quantities as published by the Contracting Authority there is a Clause that states the following "if any item in the Bill of quantities is left unpriced, then it shall be deemed that the contractor is taking provision for the price of this item in the rest of the rates".
  - ii. Given that this bidder did not quote for any rates in the unit rate column since he submitted only the summary of bills this clause cannot be applied given that no rates were submitted.
  - iii. As per Tender Document Section 1 – Instruction to Tenderers Clause 3.1 clearly state that tenders must be for the whole of quantities indicated. Tenders will not be accepted for incomplete quantities.

- iv. Given that the objector did not submit Bill No.1 and Bill No.2 which form part of the financial offer, but submitted only the summary of bills, therefore it inevitably follows that his bid is deemed to be financially non-compliant as he did not submit the full financial bid. The financial offer falls under Note 3 no rectifications are allowed, thus the Evaluation Committee was not able to request the bidder to rectify his position during the Evaluation process and hence correct in its decision.

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:

- a) That the main point of contention in this appeal revolves around the non-submission by the Appellant of Bill No.1 and Bill No.2. The argument brought forward by the Appellant is that this did not prejudice the outcome as the Summary of Bills was duly provided.
- b) This Board notes, however, that the non-submission of Bill No.1 and Bill No.2 falls under Note 3 and therefore no rectifications are allowed. The Evaluation Committee would have gone outside its remit if it were to request the bidder to rectify his position. It would have gone against the principles of equal treatment and transparency.

Therefore, this Board does not uphold the Appellant's grievances.

### **The 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 recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Mr Lawrence Ancilleri**  
Member

**Mr Richard Matrenza**  
Member