

PUBLIC CONTRACTS REVIEW BOARD

Case 1662 – SPD 8/2021/047 – Tender for the provision of environmentally friendly cleaning services at the Rural Affairs Department

7th December 2021

The Board,

Having noted the letter of objection filed by Dr Franco Galea on behalf of Saga Juris Advocates acting for and on behalf of Mr Melchior Dimech, (hereinafter referred to as the appellant) filed on the 20th October 2021;

Having also noted the letter of reply filed by Dr Denise Pace acting for the Sectoral Procurement Department – Rural Affairs Department (hereinafter referred to as the Contracting Authority) filed on the 1st November 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 2nd December 2021 hereunder-reproduced;

Minutes

Case 1662–SPD8/2021/047. Tender for the Provision of Environmentally Friendly Cleaning Services at the Rural Affairs Department

The tender was published on the 7th July 2021 and the closing date was the 6th August 2021. The value of the tender excluding VAT was € 92,000.

On the 20th October 2021 Mr Melchior Dimech filed an appeal against the Rural Affairs Department as the Contracting Authority objecting to their disqualification on the grounds that their bid was deemed to be technically not compliant.

A deposit of € 460 was paid.

There were eight (8) bidders.

On 2nd December 2021 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Mr Melchior Dimech

Dr Franco Galea

Legal Representative

Mr Melchiore Dimech

Representative

Contracting Authority – Rural Affairs Department

Dr Victoria Scerri

Legal Representative

Dr Denise Pace

Legal Representative

Ms Jennifer Mallia

Chairperson Evaluation Committee

Ms Moira Farrugia Bonello

Member Evaluation Committee

Mr Kevin Zahra De Domenico

Member Evaluation Committee

Mr Dylan Aquilina

Representative

Preferred Bidder – Apex Community Services Ltd

Mr Stephanie Bonello

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 Franco Galea Legal Representative for Mr Melchiore Dimech said that Appellant was disqualified on technical points as listed in the letter of objection. The Contracting Authority themselves stated that the documents were received by them and therefore this was not a case of disqualification but of deduction of points. The Authority further claim that if no points are awarded on mandatory sections then bidder is automatically disqualified – this is not stated in the tender. Appellant accepts low marks but not disqualification.

Dr Victoria Scerri Legal Representative for the Rural Affairs Department stated that at no stage did the Authority claim that the Appellant's bid was invalid as claimed in the appeal letter. The deduction of points reflects the serious omissions in the methodology statement and the missing elements. The Authority's cardinal point is that elements were missing in the submissions and the amount of points awarded is therefore immaterial.

Dr Galea made the point that the marks should reflect the submissions made and bidder should not be awarded a zero mark and therefore be disqualified.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 2nd December 2021.

Having noted the objection filed by Melchior Dimech (hereinafter referred to as the Appellant) on 20th October 2021, refers to the claims made by the same Appellant with regards to the tender of reference SPD 8/2021/047 as case No. 1662 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Franco Galea

Appearing for the Contracting Authority: Dr Victoria Scerri

Whereby, the Appellant contends that:

- a) Melchior Dimech was informed on 12 October 2021 that the procurement proposal submitted by him was rejected as non-compliant for the following reason:
“The Methodology submitted by the bidder was not technically compliant since the details did not meet the tender requirements. Thus the operator failed to meet the technical criteria. Moreover, the operator also failed to forward an NCPE report which confirms that the operator is an equal opportunities employer.”
- b) The objection being put forth is based on the submission that the reason for rejection, that is, non-compliance, is unfounded. The Methodology section, a mandatory criterion, was clearly provided by the Appellant in his proposal. The consideration that its content does not fulfil the required standard should not render the procurement proposal invalid but is, instead, simply to be reflected in the points awarded.
- c) Similarly, nor is the proposal rendered invalid by the failure to submit an NCPE certificate confirming that the operator is an equal opportunities employer. Evidence that the operator is an equal opportunities employer in line with the NCPE or equivalent is not a mandatory evaluation criterion and, hence, failure to provide such evidence cannot be considered non-compliance. Here, the Appellant wishes to submit for the record that there have been attempts with the NCPE to initiate the Equality Mark certification process, but to no avail as of the date of this email. In this case too, the failure to submit such certificate should have resulted in a deduction of points and not the disqualification of the proposal.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 1st November 2021 and its verbal submission during the virtual hearing held on 2nd December 2021, in that:

- a) It is to be made clear from the very beginning that at no point was Mr. Dimech's procurement proposal declared or "rendered" invalid because its content did not fulfil the required standard as suggested in the appeal letter. Indeed the content of the Methodology Section of the bidder's proposal was duly perused and analysed and was awarded the points accordingly. This can be attested from the Evaluation Report submitted by each member of the evaluation committee whereby under Section B4 entitled Methodology for both sub-section (a) Work methodology to be employed as per Terms of reference Section 3 and sub-section (b) Resources shall operate and be distributed to ensure timely and efficient delivery of services as per Article 4.2. 0 points were awarded.
- b) The evaluation committee established that the methodology submitted by Mr Melchior Dimech is not technically compliant due to the following reasons:
 - i. The daily requirements set out in the Methodology submitted by the bidder does not run parallel with the requested needs as per Section 3 para 4.2.3 in the tender dossier.
 - ii. Although the bidder mentioned tasks that are similar to our requirements set out in Para 4.2.4. yet he failed to mention again the cleaning of rest rooms, refilling of soap dispensers and hand sanitizers. Moreover. amongst other tasks. the bidder refrained to include the cleaning of windows but indicated that instead he will only clean "windows sills that are at a reachable level". Indeed the cleaning of windows service was submitted by the bidder as monthly cleaning procedure as indicated in Reason 3 below.
 - iii. As per the Methodology submitted by the bidder, it has been clearly pointed out that rest rooms will be cleaned once a month and that windows will be cleaned with a glass cleaner also on a monthly basis. This is not acceptable by the Contracting Authority when these tasks were requested in the tender dossier as part of the Weekly Cleaning Services.
- c) In respect to the NCPE report. the request of this document was not a mandatory obligation for the awarding of the tender, but failing to submit this, the bidder received no points. The absence of an NCPE report in itself did not disqualify bidder.

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, by making reference to:

- a) Tender Dossier:
 - i. page 8 & 9 whereby for 'Criteria B4' (Mandatory Criteria), the "Points on ePPS" section is listed as **"Max of 100%"** and a footnote states *"The points shall be allotted within a spectrum from 0% to 100%. If a '0' is allotted to any of the criteria, the offer shall be disqualified."* (bold & underline emphasis added)
 - ii. page 11 whereby it is stated:
"for Mandatory criteria, unless otherwise specified in the individual criterion, the Declaration/Proof/List/Template (or any other information as requested in each criterion) is not provided or else it is not in line with the specified requirements, automatically a score of '0' shall be allotted and the bidder shall be disqualified."
 - iii. **For other Mandatory criteria, whereby the specific criterion within the BPQR allows for a gradation of points (Max of 100%) a range from 0 up to 100% of the marks per criterion may be allotted.** *If a score of '0' shall be allotted, the bidder shall be disqualified."* (bold & underline emphasis added)
- b) The Board notes that the Appellant did provide and submitted the Methodology requested. *Ex admis* the document / submission does have missing and / or non-compliant information, however certain other sections within were duly completed.
- c) This Board opines that in this specific tender there were 2 'types' of Mandatory criteria. The first type was that either 100% of the points are to be allocated to prospective bidders or else a '0' is to be allocated and hence the bid would be declared non-compliant. The second type was to be allocated a spectrum of points from 0% to 100%. Section B4 falls within the latter type of Mandatory criteria.

Hence, due to the fact that the Appellant did submit a methodology statement / document, and it did contain information relevant to the tender dossier, albeit *ex admis*, it does have missing or non-compliant details within, such submission was to be allotted a spectrum of the points prescribed for this section rather than being given a '0' and hence brought to be as non-compliant.

Finally, this Board notes that the NCPE Certification is an 'Add-on' and hence its non submission would not bring the appellant's bid a technically non-compliant.

Therefore, this Board upholds Appellant's grievances.

The Board,

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

- a) To uphold the Appellant's concerns and grievances;
- b) To cancel the 'Notice of Award' letter dated 12th October 2021;
- c) To cancel the Letters of Rejection dated 12th October 2021 sent to Mr Melchior Dimech;
- d) To order the contracting authority to re-evaluate the bid received from Mr Melchior Dimech in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee, whilst also taking into consideration this Board's findings;
- e) After taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member