

PUBLIC CONTRACTS REVIEW BOARD

Case 1588 – MFEA/PPCD/035/2020 – Tender for the Provision of a Roaming, Outdoor, Photographic Exhibition showcasing EU-Funded Projects in Malta and Gozo for the Planning and Priorities Coordination Division

8th July 2021

The Board,

Having noted the letter of objection filed by Mr Thomas Farrugia on behalf of Zaffarese Signs + Displays Ltd, (hereinafter referred to as the appellant) filed on the 26th March 2021;

Having also noted the letter of reply filed by Ms Diane Camilleri on behalf of Planning and Priorities Co-ordination Division (hereinafter referred to as the Contracting Authority) filed on the 29th March 2021;

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

Having noted and evaluated the minutes of the Board sitting of the 22nd June 2021 hereunder reproduced.

Minutes

Case 1588 – MFEA/PPCD/035/2020 - Tender for the Provision of a Roaming, Outdoor, Photographic Exhibition showcasing EU-Funded Projects in Malta and Gozo for the Planning and Priorities Coordination Division

The tender was published on the 19th January 2021 and the closing date was the 19th February 2021. The value of the tender was € 120,000.

On the 26th March 2021 Zaffarese Signs + Displays Ltd filed an appeal against the Planning and Priorities Coordination Division (Government of Malta) as the Contracting Authority objecting to their decision to reject his bid as it was deemed to be not the cheapest technically compliant offer.

A deposit of € 600 was paid.

There three (3) bidder and five (5) bids.

On 22nd June 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain 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 – Zaffarese Signs + Displays Ltd

Mr Benny Zaffarese	Representative
Mr Thomas Farrugia	Representative

Contracting Authority – Planning and Priorities Coordination Division

Ms Daniela Grech	Representative
Mr Alex Formosa	Representative
Mr Karl Vassallo	Representative
Ms Stephanie Portelli	Representative
Ms Cynthia Sultana	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.

Mr Benny Zaffarese Representative for Zaffarese Signs + Displays Ltd objected that having been originally requested to pay a deposit of € 400 he was subsequently asked to increase this to € 600 and that the Contracting Authority had not provided or indicated the reason for his disqualification. He went on to state that the tender requested a display on set designs but when he requested further details was informed that the design can be different to the image provided. The tender dossier was not detailed enough to enable individual design interpretation which made submissions difficult. The tender should be withdrawn and re-issued with more details.

Mr Karl Vassallo Representative for the Planning and Priorities Coordination Division said that Appellant’s bid was the cheapest but was not technically compliant as many technical details were missed out. The technical specifications in the tender gave full details of requirements which were ignored in Appellant’s submission and this was the basis for the decision to exclude. Different designs were acceptable but they had to conform to Article 4.2.2 of the technical specifications which had to be adhered to in full.

Mr Zaffarese re-iterated that details were lacking in the tender and the views of a professional person should have been sought in drafting the tender to which Mr Vassallo replied that the details were all provided and clearly defined. The image provided was only an example of the type of display expected.

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 22nd June 2021.

Having noted the objection filed by Zaffarese Signs + Displays Ltd (hereinafter referred to as the Appellant) on 26th March 2021, refers to the claims made by the same Appellant with regards to the tender of reference MFEA/PPCD/035/2020 listed as case No. 1588 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Benny Zaffarese

Appearing for the Contracting Authority: Mr Karl Vassallo

Whereby, the Appellant, in their Letter of Objection, contends that:

- a) In the announcement of results it was stated “.....*Unfortunately, you are not the cheapest technically compliant bidder*”. Hence it leads one to believe that the offers were technically compliant but not the cheapest. This since there was no explanations and reasons for non-technical compliance. Hence this puts the Appellant at a disadvantage to appeal.
- b) Bids were cheaper than the suggested successful Bidder.
- c) If the evaluation board considered that the Appellant bids were not technically compliant, why was there no notification in this regard?
- d) The Appellant company has a lot of experience in setting up and co-ordination of roaming exhibitions, as it has almost done all these type of exhibitions for the last 10 years.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 29th March 2021 and its verbal submission during the virtual hearing held on 22nd June 2021, in that:

- a) None of the three bids by the Appellant company were found to be technically compliant and therefore the Evaluation Committee could not proceed with the financial evaluation.
- b) Rejection Letter was uploaded on the e-tendering platform to inform Appellant company that the bids submitted were not the cheapest technically compliant. This in line with Article 6 of the tender document.
- c) Reason for the decision by the Evaluation Committee is included in the Evaluation Report which was also uploaded on the e-tendering platform, for which Appellant company has full access to.
- d) Even though different designs where to be accepted, as per clarification note, they still needed to be submitted in compliance with the requirements set in the tender document.
- e) Regarding the 10 year experience, reference is made to Contracts Circular number 19/2013 whereby Appellant’s argument cannot be taken into consideration.

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) ***Rejection Letter*** – The Board has 2 specific comments to put forward on this matter.

- i. Reason for technical non-compliance has to be clearly stated within such communication. This in order for the bidder/s to better evaluate their options on whether to appeal or not. This also as per PCRB case No 1587 whereby the Board stated *“The Board notes that the only way in which the Appellant company could have obtained this information [reason for technical non-compliance], to be able to decide whether it was worthwhile or not to appeal this tender, was through appealing in the first place, in the process having to pay the deposit for such an appeal;”*
- ii. Deposit amount - The Board deems appropriate to take this opportunity to solicit any contracting authority to be clear in the information provided in the Rejection Letters. The deposit payable on appeal is governed by Regulation 273 of SL.601.03 Public Procurement Regulations which clearly states that *“The objection shall only be valid if accompanied by a deposit equivalent to 0.50% of the estimated value set by the contracting authority of the whole tender.....”*

The Board uphold Appellant’s first grievance.

- b) **Technical non-compliance** – The Board opines that the arguments brought forward by the Appellant during the virtual hearing are arguments that should have been brought forward under a Call For Remedies *‘before closing date of a call for competition’* under Regulation 262 rather than an appeal / objection under Regulation 270, *‘decisions taken after the closing date for submissions of an offer.’* The Board does not uphold Appellant’s second grievance.
- c) **Experience** – The fact that the Appellant company has a lot of experience in setting up and coordination of roaming exhibitions, is not deemed relevant to this Tender due to Contracts Circular number 19/2013. The Board does not uphold Appellant’s third grievance.

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 recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant be reimbursed.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member