

PUBLIC CONTRACTS REVIEW BOARD

Case 1782 – MFT/01/2022/CFQ – Call for Quotations for the Provision of Tender Drafting Services at the Ministry for Tourism

5th September 2022

The Board,

Having noted the letter of objection filed by Dr Daniel Calleja on behalf of Carmelo Galea & Associates acting for and on behalf of Yama Yami Limited, (hereinafter referred to as the appellant) filed on the 8th August 2022;

Having also noted the letter of reply filed by Dr Daniel Inguanez acting for the Ministry for Tourism (hereinafter referred to as the Contracting Authority) filed on the 17th August 2022;

Having heard and evaluated the testimony of the witness Mr Paul Pace (Chairperson of the Evaluation Committee) as summoned by Dr Daniel Calleja acting for Yama Yami Limited;

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 1st September 2022 hereunder-reproduced.

Minutes

Case 1782 – MFT/01/2022 – Call for Quotations for the Provision of Tender Drafting Services at the Ministry for Tourism

The tender was issued on the 31st May 2022 and the closing date was the 13th June 2022. The estimated value of the tender, excluding VAT, was € 9,990

On the 8th August 2022 Yama Yami Ltd filed an appeal against the Ministry for Tourism as the Contracting Authority objecting to its disqualification on the grounds that its bid was deemed to be not the most economically advantageous.

A deposit of € 400 was paid.

There were eight (8) bids.

On the 18th August 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Yama Yami Ltd

Dr Daniel Calleja

Legal Representative

Contracting Authority – Ministry for Tourism

Dr Daniel Inguanez	Legal Representative
Mr Paul Pace	Chairperson Evaluation Committee
Mr Kurt Camilleri	Member Evaluation Committee
Mr Luke Ellul	Member Evaluation Committee
Mr Glenn Mifsud	Member Evaluation Committee

Preferred Bidder – Mr John B Attard

Mr John Attard	Representative
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Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Daniel Calleja Legal Representative for Yama Yami Ltd said that the bid by Appellant was the lowest submitted and hence decision appealed when the tender was not awarded to it. However a clarification indicated that the offer by Mr Attard was the cheapest. Appellant had not been given sight of the clarification response.

Dr Daniel Inguanez pointed out that this was not provided as the document in question showed figures submitted by other bidders.

Mr Paul Pace (157561M) called as a witness by Appellant testified on oath that he was the Chairperson of the Evaluation Committee. On a share screen he showed a copy of the clarification response by Mr Attard confirming the figure submitted in the Financial Bid Form.

Dr Calleja said that in the particular circumstances of this case he trusted that the Board would consider refunding the deposit paid. This request was not contested by the other parties.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 1st September 2022.

Having noted the objection filed by Yama Yami Limited (hereinafter referred to as the Appellant) on 8th August 2022, refers to the claims made by the same Appellant with regard to the tender of reference MFT/01/2022/CFQ listed as case No. 1782 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Daniel Calleja
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Appearing for the Contracting Authority:	Dr Daniel Inguanez
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Whereby, the Appellant contends that:

- a) The grounds for this objection are clear and manifest. That primarily the most economically-advantageous bid was that of the appellant Yama Yami Limited (C87476) and this as it results from the Opened Tender Details whereby Yama Yami Limited Tender ID 175700 bid was that of €5,940, whilst John B Attard Tender ID 175712, John B Attard Tender ID 175714 and John B Attard Tender ID 175719 all were in the amount of €7,590.
- b) That for some unknown reason the tender was awarded to John B Attard for the price of €5,610 excluding VAT.
- c) Thus it manifestly clear that the cheapest bid was that of the appellant and the tender ought to have been awarded to it.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 17th August 2022 and its verbal submission during the virtual hearing held on 1st September 2022, in that:

- a) On opening of tenders it resulted on the e-PPS system that the Appellant's tender ID 175700 financial offer was that of €5,940, whereas the financial offer recommended tender ID 175714 of John B. Attard (the "Preferred Bidder") was that of €7,590. This is as shown in the e-PPS extract exhibited by the Appellant with its Letter of Objection. The financial offers of €5,940 and €7,590 are the figures that the respective bidders input into the e-PPS system when uploading their bids. Upon evaluation of the tenders submitted it became clear that there was a discrepancy in the Preferred Bidder's tender ID 175714 since whereas the e-PPS system showed a financial offer of €7,590 the declared financial offer in the Financial Bid Form submitted in the tender offer was that of €5,610.
- b) The Contracting Authority issued a Request for Clarification to the Preferred Bidder in the 21st of July 2022. *"Can the Bidder kindly confirm the Financial Bid amount for bid number 000175714?"* In his reply the Preferred Bidder confirmed that his financial offer was that of €5,610 as stated in the Financial Bid Form.
- c) In view of the facts of the case it is clear that the cheapest bid was the Preferred Bidder's with tender ID 175714 at the price of E5,610. Therefore, the Contracting Authority's recommendation for award is correct and should be upheld. A subsidiary question that arises is whether the Evaluation Committee was correct in seeking clarification to confirm the financial offer of the Preferred Bidder. In the Contracting Authority's view, the Evaluation Committee was justified in seeking a clarification, and in considering the offer of €5,610 as the correct amount, for the following reasons.
 - i. Firstly, the amount of €5,610 was included in the Preferred Bidder's signed Financial Bid Form which makes part of his tender offer per se. On the other hand, the data input into the e-PPS system does not constitute part of the tender offer.

- ii. Secondly, the Financial Bid Form is marked as Note 3, that is: "No rectifications shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification. " In this case, the Preferred Bidder was never requested to rectify his Financial Bid Form but only to clarify or, even better, to confirm the amount therein indicated.
- iii. Thirdly, the case law of the Court of Appeal has frequently held that Evaluation Committees must act proportionately, namely by seeking clarification from bidders rather than outright rejecting tenders for any obvious mistake.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will now consider Appellant's grievances.

- a) This Board is thoroughly convinced that the proper procedure was followed by the Evaluation Committee. This also when taking into consideration the testimony under oath of Mr Paul Pace. Under such circumstances, a clarification request was merited. This for two main reasons. Initially the Financial Bid Form is the document which forms part of the tender offer. Moreover, such action, undertaken by the Evaluation Committee, is also deemed to be in line and within the spirit of the principle of proportionality. Therefore, the main grievance of the Appellant is not upheld.
- b) The Board also notes the request, by Appellant, for refund of deposit. When considering that the clarification request information was not made available to the Appellant and that he had no other means of knowing other than to lodge this appeal, this Board will uphold such a request for the refund of the deposit.

The Board,

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

- a) Does not uphold Appellant's main grievances as listed in the Letter of Objection,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant, under such circumstances, to be reimbursed.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard Matrenza
Member