

PUBLIC CONTRACTS REVIEW BOARD

Case 1827 – SPD5/2022/038 – Tender for the Provision of Cleaning Services with a reduced Environmental Impact for the Ministry for National Heritage, the Arts and Local Government

The tender was issued on the 31st July 2022 and the closing date was the 2nd September 2022. The estimated value of the tender excluding VAT, was € 193,085.

On the 10th November 2022 ACJ Cleaning and Hospitality Services Ltd filed an appeal against the Ministry for National Heritage, the Arts and Local Government as the Contracting Authority objecting to their disqualification on the grounds that their offer was deemed to be not technically compliant.

A deposit of € 965 was paid.

There were twelve (12) bids.

On the 15th December 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Ms Stephanie Scicluna Laiviera as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – ACJ Cleaning & Hospitality Services Ltd

Dr Amadeus Cachia	Legal Representative
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Contracting Authority – Ministry for National Heritage, the Arts & Local Government

Dr Fiorella Fenech Vella	Legal Representative
Ms Maria Grixti	Secretary Evaluation Committee
Mr Mikyle Francalamza	Evaluator
Ms Bernadette Felice	Representative

Preferred Bidder – AGV Non Ferrous Metals Ltd

Dr Gianella Farrugia	Legal Representative
Mr Frank Cachia	Representative
Ms Gillian Seymour	Representative

Director of Contracts

Dr Mark Anthony Debono	Legal Representative
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Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Amadeus Cachia Legal Representative for ACJ Cleaning & Hospitality Services Ltd said that he wishes to be made aware of the comments made by the Tender Evaluation Committee (TEC) on the winning bid.

Dr Fiorella Fenech Vella Legal Representative for the Ministry stated that the appeal had nothing to do with the winning bid but with the lack of meeting the requisite regarding employment of disabled persons which is a case for automatic disqualification.

Mr Mikyle Francalanza (86697M) called as a witness by the Appellant stated on oath that he was one of the evaluators of the tender. He explained that the tender had been evaluated collectively by three evaluators. Witness was aware that Appellants had not paid the fine to meet the quota obligations on employment of disabled persons. The quota set by the tender had not been reached and the TEC's decision was based on that fact. The preferred bidder had reached the quota requirement. Witness agreed that there was an error in the tender in the proposed methodology section but this had been overcome by awarding all bidders full marks on that section.

This concluded the testimony.

Dr Cachia said that the points made in the letter of objection were valid and would be followed in the appeal. Companies were at a disadvantage when it came to pay penalties as they cannot pay the fine as no invoices have been issued and it therefore follows that it cannot participate in tenders. In these circumstances it is unfair to include a clause in tenders requiring the employment of disabled persons.

Dr Gianella Farrugia Legal Representative for AGV Non-Ferrous Metals said that the disability clause was there to ensure adherence to the law. The other grievances raised had to do with not reaching the required standards.

Dr Debono Legal Representative for the Department of Contracts said that the TEC had to abide by the principle of self-limitation and referred to PCRB Case 1649 where it was held that no proof has been brought that this was not followed.

Dr Fenech Vella said that the bidder cannot impose terms in tenders and it is up to the Contracting Authority to dictate the terms which bidders have to abide with. The appeal is based solely on shortcomings on the part of the Appellant.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes
