

PUBLIC CONTRACTS REVIEW BOARD

Case 1860 – LLC T04/2022 – Tender for the Provision of Health Attendants to carry out the Services of Cleaning of Public Conveniences in an Environmentally Friendly Manner for the Hal Lija Local Council

20th April 2023

The Board,

Having noted the letter of objection filed by Dr Jose A. Herrera acting for and on behalf of Mr Christopher Bezzina, (hereinafter referred to as the appellant) filed on the 27th February 2023;

Having also noted the letter of reply filed by Dr Martin Fenech acting for the Hal Lija Local Council (hereinafter referred to as the Contracting Authority) filed on the 8th March 2023;

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 4th April 2023 hereunder-reproduced;

Minutes

Case 1860 – LLC T04/2022 – Tender for the Provision of Health Attendants to carry out Services of Cleaning of Public Conveniences in an Environmentally Friendly Manner for the Hal Lija Local Council

The tender was issued on the 4th November 2022 and the closing date was the 23rd November 2022. The estimated value of the tender excluding VAT, was € 26,440.68.

On the 27th February 2023 Mr Christopher Bezzina lodged an appeal against Lija Local Council as the Contracting Authority contesting his exclusion on the grounds that his offer was deemed to be technically not compliant.

A deposit of € 400 was paid.

There were four (4) bids.

On the 4th April 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar 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 – Mr Christopher Bezzina

Dr Jose Herrera

Legal Representative

Dr Kristina Camilleri Deguara

Legal Representative

Mr Christopher Bezzina

Representative

Contracting Authority – Lija Local Council

Dr Martin Fenech	Legal Representative
Mr Anthony Dalli	Chairperson Evaluation Committee
Ms Pamela Borg	Secretary Evaluation Committee
Mr Daniel Galea	Evaluator
Mr Kevin Incorvaja	Evaluator
Mr Adrian Mifsud	Evaluator

Preferred Bidder – Mr Joseph Farrugia

Dr Tiffany Attard	Legal Representative
Mr Joseph Farrugia	Representative

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

Dr Jose Herrera Legal Representative for Mr Christopher Bezzina said that on the grievance regarding the employment of persons with disabilities (C1 and C2) there was a mistake on the part of the Council's decision as Appellant employs less than 20 persons and therefore he was not bound to engage persons with disabilities. On the grievance on items B1 and B2 in the tender Appellant had presented the appropriate documents and therefore the Authority should have deducted marks rather than disqualification. There was also the alternative of a request for clarification. Appellant was therefore requesting that his bid is re-assessed.

Dr Martin Fenech Legal Representative for the Lija Local Council said that Appellant has several contracts with Local Authorities and therefore there was the need of clarification on the number of persons he employs through a declaration of the number of employees on his books. The Authority requires proof that the declaration in this regard is not false. As for the second grievance the disqualification was merited as the tender was not properly filled in by Appellant and it is not fair to give him a second chance.

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 4th April 2023.

Having noted the objection filed by Mr Christopher Bezzina (hereinafter referred to as the Appellant) 27th February 2023, refers to the claims made by the same Appellant with regards to the tender of reference T04/2022 as case No. 1860 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Jose A. Herrera

Appearing for the Contracting Authority: Dr Martin Fenech

Whereby, the Appellant contends that:

- a) Criteria C1(i) and C2(vi) – with regards to the two (2) criteria it seems that Mr Bezzina was incorrectly assessed as he employs less than twenty (20) people he is not obliged to have within his workforce 2% being made up of disabled people. This had already been clarified to the Contracting Authority.
- b) Criteria B1(i), B 2(i) and B2(iii) – if this is even to be considered as a ‘mistake’, it is surely of secondary importance. None-the-less this could have been amended with the use of a clarification request. A clarification in this way would not have changed the subject matter of the tender process.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 8th March 2023 and its verbal submission during the virtual hearing held on 4th April 2023, in that:

- a) First grievance – the appellant has various contracts with the government and has employees for sure
- b) Second grievance – it is the responsibility of the economic operator to submit the correct information when participating in a tender procedure.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider Appellant’s grievances.

- a) First grievance - Criteria C1(i)
 - i. This Board will at the onset state that it disagrees with the Contracting Authority’s argumentation on whether or not, the Appellant has several contracts with Local Authorities. This is deemed irrelevant to proceedings, especially as no proof to substantiate this argument was brought forward by same Contracting Authority.
 - ii. What is relevant is what the tender document requested out of economic operators participating in this tender procedure. For this specific criterion, the tender dossier allowed the following for economic operators currently with no employees: *“A score of ‘0’ shall be allotted if a declaration of compliance is not submitted **whereas full marks will be given to the bidder that submits a self-declaration committing oneself to meet the Legal Requirements should employed be engaged during the contract duration.** If a score of ‘0’ shall be allotted, the bidder shall be disqualified.”* (bold & underline emphasis added)

iii. The appellant duly submitted a declaration in this regard and committed himself to meet the Legal Requirements should employees be engaged during the contract duration.

Therefore, this Board upholds Appellant's first grievance.

b) Second grievance - Criteria B1(ii), B2 (i), B2 (ii) and C2 (vi)

It must be noted that the Criteria for Award of this tender was to be in accordance with the Best Price/Quality Ratio (BPQR). The criteria mentioned above had to be evaluated by the evaluation committee and eventually given a range from 0 up to 100%. Only a '0' score would disqualify the bidder except for criterion C2 (vi) for which the minimum possible score was 1%, and hence there was no disqualification on it.

The rejection letter sent to Appellant on 21st February stated: *"It was also considered that the following were not to the full expectations of the tender requirements: B1(ii), B2 (i), B2 (ii), B2 (iii) and C2 (vi)."*

By being '*not to the full expectations*' does not make the bid of the Appellant technically non-compliant! If they were not deemed '*to the full expectations*', a range of marks / points should have been allotted as per the requirements and detailed specifications of the tender document. The way that the Evaluation Committee proceeded with its evaluation goes totally contrary to the principle of Self Limitation imposed on it.

Moreover, it is to be noted, that if required, clarifications are indeed possible on such matters.

Therefore, this Board also upholds Appellant's second grievance.

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 21st February 2023;
- c) To cancel the Letter of Rejection dated 21st February 2023 sent to Mr Christopher Bezzina;
- d) To order the contracting authority to re-evaluate the bid received from Mr Christopher Bezzina 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 these 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

Ms Stephanie Scicluna Laiviera
Member