

PUBLIC CONTRACTS REVIEW BOARD

Case 1878 – SPD8/2022/175 – Services – Tender in Lots for the Provision of Marketing, Communication, Merchandise and Printing Services in an Environmentally Friendly Manner for Ambjent Malta.

LOT 1

5th June 2023

The tender was issued on the 9th November 2022 and the closing date was the 9th December 2022. The estimated value of the tender, for Lot 1, excluding VAT, was € 40,000.

On the 21st April 2023 Yama Yami Ltd filed an appeal against Ambjent Malta as the Contracting Authority on the grounds that their bid was deemed to be technically non-compliant.

A deposit of € 875 was paid on Lot 1.

There were eight (8) bids on Lot 1.

On the 1st June 2023 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Yama Yami Ltd

Dr Andrew Saliba	Legal Representative
Mr Ryan Mercieca	Representative

Contracting Authority – Ambjent Malta

Dr Frank Attard Camilleri	Legal Representative
Dr Francis Farrugia	Legal Representative
Mr Patrick Spiteri	Chairperson Evaluation Committee
Ms Graziella Farrugia	Secretary Evaluation Committee
Mr Erik Mifsud	Evaluator
Mr Glenn Chircop	Evaluator
Mr Mario Bajada	Evaluator
Mr Alexander Borg	Representative

Preferred bidder – Adverteyes Ltd

Dr Calvin Calleja	Legal Representative
Ms Sara Schembri	Representative

Department of Contracts

Dr Mark Anthony Debono	Legal Representative
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Dr Charles Cassar Acting Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Andrew Saliba Legal Representative for Yama Yami Ltd said that the facts that no warrant was necessary to practice in Malta and that the key expert meets the MQF Level 6 requirements are not in dispute. The bid was therefore technically compliant. The only contested point is on the key expert form submitted in the bid. Appellant feels justified in replying 'No' to the question regarding practising in Malta as there was no necessity for what the form requested and therefore the point did not arise.

Dr Frank Attard Camilleri Legal Representative for the Contracting Authority said that the Authority would rely on the written submissions.

Dr Calvin Calleja Legal Representative for Adverteyes Ltd said that apart from relying on the written submissions he would ask the Board to note that he had not raised the preliminary plea earlier to enable the Board to consider the case holistically. The appeal by Yama Yami Ltd was null and void because of serious procedural shortcomings, namely that there was no request for the revocation of the award and the lack of a request for a re-evaluation of the offers. The Board had recently in Case 1873 dealt with a point similar to this case. These shortcomings mean that the Board cannot provide remedies not requested.

Dealing with the merits of the case, Dr Calleja stated that the key expert form falls under Note 2 and therefore the Authority gave Appellant a second chance to comply but it chose to answer in the negative. According to Clause 5 of the tender it is clear that the Authority cannot entertain further clarification thereafter. This was simply a matter where if the key expert was able to practice in Malta the answer should have been 'Yes'. Giving Appellant a further chance to change the reply would have distorted competition and gone against the principle of self-limitation. PCR Case 1378 upholds this principle. If Appellant was not clear on how to deal with this point it had two possible remedies available – it did not object to the terms and is therefore bound by them.

Dr Saliba said that he relied on the Board to give the decision they feel is correct but to bear in mind that the matter of authorisation to practice only appears in a template form but not in the actual tender.

After a short recess to consider the points made the Chairman said that the Board felt that they were in a position to reach a decision on the submissions made. He then thanked the parties and declared the hearing closed.

End of Minutes

Decision

This Board, having noted the objection filed by Yama Yami Ltd. (herein after referred to as appellant), on the 21th April 2023. The objection refers to the claims made by the same appellant against Ambjent Malta regarding the tender listed as case No.1878 in the records of the Public Contracts Review Board .

and its verbal submissions during the hearing on 1st June 2023

The Board also noted the letter of reply by Ambjent Malta (herein referred as the Contracting Authority) dated 28th April 2023, together with its verbal submissions during the hearing on the 1st June 2023.

The Board also noted the letter of reply by Adverteyes Ltd (herein after referred to as the preferred bidder) dated 28th April 2023 together with its verbal submissions during the hearing of the 1st June 2023.

Have taken cognisance of the Minutes appended above and all further documents submitted

Whereby,

The Appellant contended that:

Since no warrant was necessary to practice in Malta and that the key expert in question meets the MQF Level 6 requirements, the bid was technically compliant. Therefore, the question requesting whether expert can work in Malta was not necessary. The authorisation to practice form is only a template and not part of the tender dossier.

The Contracting Authority argued that:

- A. The key expert form was originally submitted in blank. Since this form falls under Note 2 the Authority gave Appellant a second chance to comply but Appellant chose to answer in the negative, thus making its bid non-compliant.
- B. If the Appellant felt that the question was confusing it could have resorted to either submit a request for clarification or a pre-contractual remedy in terms of Regulation 262.of the PPR.

After the Board considered the arguments and documentation from all parties, their view is that in replying “no” to the questionnaire regarding warrant to practice in Malta, the appellant automatically excluded itself from further evaluation in the tendering process.

The Board therefore concludes and decides that:

- a) Does not uphold the Appellant's Letter of objection.
- b) Upholds the Contracting Authority's decision in the award of the tender.
- c) Directs that the deposit paid by the Appellant not to be reimbursed but that the amount of € 475 is refunded to it since the deposit required in this instance was only €400.

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member