

PUBLIC CONTRACTS REVIEW BOARD

Case 1914 – SPD8/2023/082 – Services - Service Tender for Venue Rental and Catering Services for WasteServ’s General Conference 2023

22nd September 2023

The Board,

Having noted the letter of objection filed Ms Pauline Pian acting for and on behalf of Meeting Point Events Ltd, (hereinafter referred to as the appellant) filed on the 22nd August 2023;

Having also noted the letter of reply filed by Dr Pearl Agius acting for Wasteserv Limited (hereinafter referred to as the Contracting Authority) filed on the 28th August 2023;

Having heard and evaluated the testimony of the witness Ms Elaine Briffa (Chairperson of the Evaluation Committee) as summoned by Dr Pearl Agius acting for Wasteserv 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 19th September 2023 hereunder-reproduced.

Minutes

Case 1914 – SPD8/2023/82 – Services - Service Tender for Venue Rental and Catering Services for Wasteserv’s General Conference 2023

The tender was issued on the 5th July 2023 and the closing date was the 26th July 2023. The estimated value of this tender, excluding VAT, was € 30,000.

On the 22nd August 2023 Meeting Point Events (MPE) filed an appeal against Wasteserv Malta Ltd as the Contracting Authority objecting to their disqualification on the grounds that their offer was not the cheapest priced offer.

A deposit of € 400 was paid.

On the 19th September 2023 the Public Contracts Review Board composed of Mr Kenneth Swain 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 – Meeting Point Events

Mr Matthew Scicluna

Representative

Ms Pauline Pian

Representative

Contracting Authority – Wasteserv Malta Ltd

Dr Pearl Agius	Legal Representative
Ms Elaine Briffa	Chairperson Evaluation Committee
Ms Miriam Cassar	Secretary Evaluation Committee
Ms Stephanie Borg Mamo	Evaluator
Ms Davinia Shead	Evaluator

Preferred Bidder – Villa Arrigo Ltd

Mr Jake Debono	Representative
Ms Veronica Zammit Tabona	Representative

Department 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.

Mr Matthew Scicluna Representative for MPE stated that the reason for the appeal was the overstated capacity of the venue of the winning bid. Appellant had been advised that the venue held 500 persons maximum without platforms, tables and other obstructions such as partitions. Appellant had stuck to tender specifications scrupulously and been penalised despite experience in this business going back to 2004.

Dr Pearl Agius Legal Representative for Wasteserv Ltd said the appeal should be discarded as the preferred bidder had met all the specifications in its submissions. This was only a four-hour standing award ceremony catering for 800 persons. The process of the evaluation was not being contested by Appellant as Villa Arrigo Ltd met all requirements. In fact neither bid was penalised as both offers were compliant.

Mr Jake Debono Representative for Villa Arrigo Ltd said that there have never been any issues in the past in organising such events.

Ms Elaine Briffa (432774M) called to testify by the Contracting Authority stated on oath that she was the Chairperson of the Evaluation Committee which had checked both bids through all three stages of the evaluation process and one bid was within budget, the other well beyond. Full literature lists and documentation had been supplied as requested. Witness confirmed to Mr Scicluna that the Evaluation Committee relied on and accepted the self-declarations made.

Dr Agius in her final submissions said that the principle of self-limitation by the Evaluation Committee applied. Appellant had failed to attend the clarification meeting organised in the run up to the tender bids.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 19th September 2023.

Having noted the objection filed by Meeting Point Events Ltd (hereinafter referred to as the Appellant) on 22nd August 2023, refers to the claims made by the same Appellant with regard to the tender of reference SPD8/2023/082 listed as case No. 1914 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Mr Matthew Scicluna
Appearing for the Contracting Authority:	Dr Pearl Agius
Appearing for the Department of Contracts:	Dr Mark Anthony Debono
Appearing for the Preferred Bidder:	Mr Jake Debono

Whereby, the Appellant contends that:

- a) As outlined in the technical offer of the tender, it was explicitly stated that (part 1 clause ii), *“If more than one structure is used, their installation must be seamlessly integrated into one space and clear of any structural obstructions.”* It is with deep concern that we must bring to your attention that the winning venue, clearly, does not meet this critical requirement. We would have possibly bid for cheaper options had we not taken this key requirement into consideration.
- b) Additionally, in the tender specifications, it is clearly stated that (part 1 clause iii), *“The Contracting Authority will be doing an elevated platform, and for the safety and comfort of guests, as well as visibility, there needs to be at least a distance of three (3) meters of clear space from the elevated platform”* & (part 1 clause iii) *“be clear of any structural obstructions so that the platform and screen are visible from all areas for all guests”*; Regrettably, we know from experience that the winning venue does not meet the clear visibility for an audience of 800 persons, nor is there enough space for that many people! A simple online search states, on several platforms, that the ideal capacity for indoor stand-up events is 300 persons. In addition to the stipulated capacity of 800 attendees, the tender specifications unmistakably outline the need for three bars, the provision of 400 chairs for guest use, and the inclusion of 20 bistro tables. Again, the venue is not nearly large enough to meet these technical requirements.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 28th August 2023 and its verbal submission during the hearing held on 19th September 2023, in that:

- a) The winning bidder's venue does meet technical requirements: -

The appellant states that the winning bidder's venue does not meet the technical requirements and even quotes the tender document however fails to pinpoint which parts of the chosen venue fall short of meeting technical requirements. The winning bidder submitted its literature, as it was expected to do, and the Evaluating Committee ruled that for purposes of WasteServ's event, the winning bidder's venue was technically compliant with the published tender specifications. Furthermore, the appellant claimed it could have bid with cheaper options but did not. It is important to note that the appellant was more than welcome to propose more than one bid with different options during the tendering process however it did not do so. Secondly, the Contracting Authority held a clarification meeting on the 11th of July 2023 at 2pm in order to answer any questions on the tender document and the appellant or any of its representatives failed to show up for said meeting where they could have addressed their dilemma in this regard.

b) The winning bidder confirmed that their venue accommodates 800 persons: -

Firstly, the Evaluating Committee evaluated the information that was submitted by the bidders and the winning bidder in particular, confirmed that it is able to accommodate 800 persons, whilst also offering 400 chairs if there is a need for them together with the bistro tables. The Contracting Authority would like to highlight the fact that the Evaluating Committee is bound to evaluate the information that has been submitted and cannot take into consideration external information, otherwise the tendering process would be compromised. In this case, the principle of self-limitation was abided by.

Secondly, WasteServ Malta Limited would like to point out that the snippets submitted by the appellant are screenshots of websites guiding couples on their wedding journey. This information cannot be considered as it has neither been issued by the recommended bidder and nor did it form part of the offer submitted. Moreover, WasteServ emphasizes that this event will be a standing-up event and the provision the appellant is referring to in relation to the 400 chairs, the tender dossier clearly states that these have to be available and accessible and not necessarily in constant use. Additionally, with regard to the bistro tables, the tender specifications clearly state that these may spread all across the venue, both inside and outside.

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) A number of points were raised by the appellant, about the technical non-compliance of the preferred bidder, albeit no proof was forthcoming. An example of this is when the appellant referred to a phone call they made to the preferred bidder venue, on the day before the appeal. All that was presented was a verbal statement from same appellant which can only be classified as hearsay.

- b) In the public procurement realm, as has been stated on a multitude of occasions, the self-limitation principle is of significant importance. With respect to allegations brought forward by appellant on the OHSA and Environmental Health Regulations, the tender dossier was clear that what was required was a self-declaration that the conference venue meets those specific requirements. The Evaluation Committee fully understood what was required of it and correctly adjudged the responses provided by the bidding economic operators.
- c) Had the Appellant felt that the criteria, as drafted, were creating prejudice or infringing public procurement regulations in any way, shape or form, the correct method of dealing with such a situation / grievance would have been a Call For Remedies application as per Regulation 262 of the Public Procurement Regulations.
- d) Finally, it must be stated that the preferred bidder duly submitted all documentation that was required and no proof was presented to show that the evaluation committee lacked in its responsibilities.

Hence, this Board does not uphold the Appellant's grievances.

The 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 not to be reimbursed.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard Matrenza
Member