

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1942 – CT2434/2022 – Works Tender for the Finishing, Mechanical and Electrical Works, and Landscaping Works using Environmentally Friendly Products and Methods at Palazzo Parisio Valetta - MFET**

**3<sup>rd</sup> January 2024**

The Board,

Having noted the letter of objection filed by Dr Daniel Buttigieg on behalf of Fenech & Fenech Advocates acting for and on behalf of Legacy Ventures Limited, (hereinafter referred to as the appellant) filed on the 20<sup>th</sup> October 2023;

Having also noted the letter of reply filed by Dr Anthony Borg acting for Ministry for Foreign and European Affairs and Trade (hereinafter referred to as the Contracting Authority) filed on the 30<sup>th</sup> October 2023;

Having heard and evaluated the testimony of the witness Engineer Darryl Schembri (Representative of AIS Technology Ltd) as summoned by Dr Daniel Buttigieg acting for Legacy Ventures Limited;

Having heard and evaluated the testimony of the witness Mr Gianluca Vella Valetta (Representative of Legacy Ventures Limited) as summoned by Dr Daniel Buttigieg acting for Legacy Ventures Limited;

Having heard and evaluated the testimony of the witness Engineer Mario Sammut (Member of the Evaluation Committee) as summoned by Dr Anton Borg acting for Ministry for Foreign and European Affairs and Trade;

Having heard and evaluated the testimony of the witness Engineer Mario Sammut (Chairperson of the Evaluation Committee) as summoned by Dr Anthony Borg acting for Ministry for Foreign and European Affairs and Trade;

Having heard the testimony of Ms Anna Catania as summoned by Dr Anthony Borg acting for the Ministry for Foreign and European Affairs and Trade;

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 16<sup>th</sup> November 2023 hereunder-reproduced.

### **Minutes**

**Case 1942 – CT 2434/2022 – Works Tender for the Finishing, Mechanical and Electrical Works, and Landscaping Works using Environmentally Friendly Products and Methods at Palazzo Parisio, Valetta**

The tender was issued on the 10<sup>th</sup> March 2023 and the closing date was the 27<sup>th</sup> April 2023.

The estimated value of this tender, excluding VAT, was € 3,418,844.

On the 20<sup>th</sup> October 2023 Legacy Ventures Ltd filed an appeal against the Ministry for Foreign and European Affairs and Trade as the Contracting Authority objecting to their disqualification on the grounds that their bid was deemed to be not technically compliant.

A deposit of € 17,094 was paid.

There were eight bids.

On the 16<sup>th</sup> November 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Dr Vincent Micallef as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Legacy Ventures Ltd**

Dr Daniel Buttigieg	Legal Representative
Mr Gianluca Vella Valletta	Representative
Mr Martin John Azzopardi	Representative

**Contracting Authority – Ministry for Foreign and European Affairs and Trade**

Dr Anthony Borg	Legal Representative
Ms Anna Catania	Chairperson Evaluation Committee
Mr Aleandro Pace Tahir	Secretary Evaluation Committee
Eng Roberta Vella	Evaluator
Eng Mario Sammut	Evaluator
Ms Pamela Dingli	Representative

**Recommended Bidder - Mereasy Ltd**

Invited to attend but did not take up the invitation

**Department of Contracts**

Dr Mark Anthony Debono	Legal Representative
Mr Nicholas Aquilina	Representative

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

Dr Daniel Buttigieg Legal Representative for Legacy Ventures Ltd said that Appellant disagreed with the Tender Evaluation Committee's (TEC) decision as the allegedly missing documentation had all been submitted in full – as in fact, partly confirmed by the Authority. Appellant was also contesting the letter of the 23<sup>rd</sup> September which was mentioned to be in error. This in itself was enough to warrant the return of the deposit. The Director of Contracts was obliged to give full details why a bid was excluded and not just a bare outline.

Dr Borg Legal Representative for the Ministry for Foreign and European Affairs and Trade stated that certain information was lacking and the Appellant was given the opportunity to correct this, but still did

not provide all information requested after clarification. The date of the 23<sup>rd</sup> was a clerical error which did not affect the appeal. The reply by the Appellant to the letter of exclusion belies the claim that not enough information was provided.

Dr Mark Anthony Debono Legal Representative for the Department of Contracts said that letters were sent by the Contracting Authority and any reference to the Department of Contracts in this context is incorrect. According to Regulation 72 a summary of the reasons for disqualification is sufficient.

Engineer Darryl Schembri (460390M) called to testify by the Appellant stated on oath that he is the owner of a building management company, AIS Technology Ltd and was requested to quote for a Building Management System (BMS) to comply with GPP criteria. Witness indicated that the various service agreements, warranties claimed by the Authority as not to have been provided are all part of the system offered and are not individual documents. Similarly, energy saving is part of the process of providing the system and is inbuilt in it.

Mr Gianluca Vella Valletta (91698M) called to testify by the Appellant confirmed that the BMS was compiled by the previous witness and covered what was requested in the tender from page 18 onwards. Witness explained that this is a complex system covering sensors throughout and a Service Level Agreement to maintain the system, as required in the tender (pages 157-161), is included. This included maintenance and upgrades of the system. The Ecolabel classification covering electrical efficiency on installations, computers, monitors is covered by a manual comparing standards and satisfies all the criteria and covers all parts albeit not in detail. Commissioning is a lengthy process. Each system in the routine testing reacts with the BMS on its own and each area has to be programmed to clients' requirements.

In reply to a question by Dr Borg witness stated that an actual Ecolabel had not been presented but the system offered is made for Eco friendly compliance.

In answer to questions by Dr Debono witness said that the technical data system included items on energy savings; that he is aware of the General Rules Governing Tenders and on a screen share he indicated purported diagrams which Dr Debono pointed out were Data Sheets of the equipment. Witness said that there is a full twelve months support from the manufacturer. The Service Level Agreement covers maintenance and service. The installation and commissioning of the building was covered in several pages of their submission concluded the witness.

Engineer Mario Sammut (438088M) called to testify by the Authority stated on oath that he was one of the Evaluators. He said that the literature supplied was not organised but accepts that certain items had been submitted. There are issues on the GPP criteria which are part of the documents required as for instance there are monitors other than the ones referred to in the replies. The Authority required an Energy Performance document which is nowhere indicated in the literature and is missing in the offer. Even after clarification the verification of minimum energy test reports was not submitted. The availability of spare parts was not indicated anywhere and the same applied for the reparability manual. The building Energy Performance System was not shown anywhere – this is required to know the type of routine testing required involving many components tied together and in this case not even a generic statement indicating how it is to be done was provided.

In reply to questions from Dr Buttigieg, witness said that the Energy document referred to is not the same as Ecolabel 1 – from the information provided this was not available. The monitors are not automatically compliant simply because they are Ecolabel 1.

It was confirmed to Dr Debono by the witness that the information on Ecolabel was not provided.

In reply to further questions from Dr Buttigieg, witness said that the query raised in the notification referred to all monitors which had to be GPP compliant – no verification of this was found in the submissions.

Ms Anna Catania (381967M) called to testify by the Contracting Authority stated on oath that the verification required was not provided. A written declaration from the tenderer was required not from the supplier of the equipment. The clarification made clear what was requested.

In reply to a question from Dr Buttigieg witness said that the Tec requested verification of the tender requirements which was referred to in the request for clarification. Witness also confirmed to Dr Debono that the information on Ecolabel was not provided.

This concluded the testimonies.

Dr Buttigieg stated that on the merits of the case two witnesses indicated where the information was provided in Appellant's submissions and all information had been provided. The TEC decision was based on vague demands and no details were provided as to what they were referring to. They have an obligation to clearly indicate what they were seeking; this apart from misleading dates on letters. The evidence of Engineer Vella Valletta was convincing and the same information was accepted as sufficient in other tenders. All the above factors should lead to the conclusion to cancel the award.

Dr Debono said that the decision, after rectification, was taken by the TEC not the Department of Contracts. The Appellant was not misled by the wrong date on the letter as he filed the Appeal with no problems. Requirements were not met and the Authority had no alternative but to disqualify. Rectification could only be requested once and decisions have to abide by the PPR. Reference to past tenders cannot be considered and the appeal is not sustainable.

Dr Borg said that it has been proven that Appellant failed to supply certain information. The NQUAYMT case made it very clear that the Authority cannot keep requesting clarifications. It is clear what the TEC required but was not all provided. Past tenders cannot be considered as having any bearing on the present appeal. The TEC gave the bidder every opportunity to rectify the bid but this was not taken up.

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 16<sup>th</sup> November 2023.

Having noted the objection filed by Legacy Ventures Limited (hereinafter referred to as the Appellant) on 20<sup>th</sup> October 2023, refers to the claims made by the same Appellant with regard to the tender of reference CT2434/2022 listed as case No. 1942 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Dr Daniel Buttigieg

Appearing for the Contracting Authority: Dr Anthony Borg

Appearing for the Department of Contracts: Dr Mark Anthony Debono

Whereby, the Appellant contends that:

- a) It only received an evaluation (sic) request by the Evaluation Committee on the 6<sup>th</sup> of June 2023 and on the 7<sup>th</sup> of September 2023, following which the appellant gave the department all the relevant information requested. The appellant did not receive any evaluation (sic) request after that and definitely did not receive one on the 23<sup>rd</sup> of September. Moreover the appellant feels aggrieved by the fact that the assessment made on items which he was deemed to be non-compliant was clearly mistaken as will be explained below, and following the evaluation committee's communication of the 7<sup>th</sup> of September the appellant rectified any shortcomings he may have had.
- b) The items the appellant was considered to be non-compliant on were the following;

- i. Acoustic Plaster Screed Article 6.5 – Missing GPP verifications

The appellant did indeed file the relative GPP verifications as can be see (sic) from the tender originally submitted. So much so that this item was not included in the request for rectification made on the 7<sup>th</sup> of September 2023. This can be found in pages 82 – 100 of the initial technical submissions

- ii. Management of Waste and Unused paint.

This item again was not included in the original request for rectifications of the 7<sup>th</sup> of September 2023. Moreover the GPP verification submitted in the tender meet the required criteria. The decision also fails to identify what information was missing in order to ascertain why it is alleged that the required criteria was not adhered to. It is good to note that identical information for similar tenders was submitted successfully by the appellant and his sub-contractors and in all other cases, the information provided was always considered to be compliant with the requirements imposed. Moreover one cannot understand how the evaluation committee did not have any issue with the information submitted originally since this was not included in the request of the 7<sup>th</sup> of September and therefore one cannot understand how the issue was raised only in the decision. The required information is on page 302 and 303 of the initial technical submissions.

- iii. Warrant of Service, Continued availability of spare parts, design for reparability

DG Contracts alleges that the GPP verifications for these items were not included, however it is clear that in the appellant's reply to the rectification request of the 7<sup>th</sup> of September 2023, the appellant included all information requested by the evaluation committee, and this as can be attested by the fact that Warranty of Service included in BEMS documentation, as with

Ventilation, Lift and ELVs included across the document. There is also guarantees for reparability, and servicing as required.

iv. Installation and commissioning of building energy systems

In this case again, all information required in accordance to standards, practices, the tender document and GPP verifications was submitted in the same way it was submitted in other tenders successfully. This can be attested from the reply filed by clients following the request of the 7<sup>th</sup> of September 2023. It is also good to note the DG Contracts has filed to indicate what the missing information is. The relevant information is on pages 118-160

- c) Moreover, as a decision making adjudicating authority, the Department of Contracts is obliged to give reasons for its refusal and to substantiate same. In light of the right of the tenderer to appeal the decision given, jurisprudence, such as Joseph Spiteri Duca vs Awtorita tal-Artijiet, is constant in the sense that any administrative decision has to be backed with clear reasons for refusal, and this in order to give the appellant a proper possibility to appeal such decision and for the appellant to be able to assess whether the decision taken is appealable or not. It is not enough to state that my client's tender was missing information or that the information provided did not meet the criteria or standards expected, but rather, a clear indication of why the DG believed it did not meet the criteria and what information was missing must be given. This failure is even more pertinent in this case when one considers that the decision taken by the DG is based on an evaluation (sic) request of the 23<sup>rd</sup> of September which effectively does not exist, as can be seen form the epps portal.
- d) Additionally, the appellant feels aggrieved by the fact that the information given by him in his tender submission was very similar if not identical to information given by him or his sub-contractors in various tenders which were applied for. In none of these tenders was he considered as technically non-compliant and the evaluation committee in such other tenders has always considered the information given as being in line with the requirements expected from a submission and compliant to all GPP verifications.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 30<sup>th</sup> October 2023 and its verbal submission during the hearing held on 16<sup>th</sup> November 2023, in that:

- a) Reference made in the Evaluation Report to the 23 September was erroneously quoted and should read 7<sup>th</sup> September 2023. The Evaluation Committee confirms that no further clarifications were sent after the 7<sup>th</sup> September 2023.
- b) Literature: Acoustic Plaster Screed - The submission was once again reviewed, and the Evaluation Committee confirms that the information submitted in relation to Acoustic Plastic Scree is

technically compliant. Notwithstanding this, the offer was still considered non-compliant on other grounds.

- c) GPP: Management of waste and unused paint - The submission was once again reviewed, and the Evaluation Committee confirms that the information submitted in terms of waste and unused paint management is technically compliant. Notwithstanding this, the offer was still considered non-compliant on other grounds.
- d) GPP Computers and Monitors - Warranty and service agreements - The tenderer had to provide the following information: *“The tender shall provide a written declaration that the products supplied will be warrantied in conformity with the specifications and service requirements.”* Following a request to rectify shortcomings of the 7th September 2023, the written declaration required was not submitted by the tenderer.
- e) GPP Computers and Monitors – Repairability and replacement of components and parts - The tenderer had to provide the following information: *“The tenderer shall provide a declaration that compatible spare parts, including rechargeable batteries (if applicable), will be made available to the contracting authority or through a service provider. Equipment holding the EU Ecolabel or another relevant Type | Eco-label fulfilling the specified requirements will be deemed to comply.”* Following a request to rectify shortcomings of the 7th September 2023, the written declaration required was not submitted by the tenderer.
- f) GPP Computers and Monitors - Design for Reparability - The tenderer had to provide the following information: *“A manual shall be provided by the tenderer, which shall include an exploded diagram of the device illustrating the parts that can be accessed and replaced, and the tools required. It shall also be confirmed which parts are covered by service agreements under the warranty. Equipment holding the EU Ecolabel or another relevant Type 1 Eco-label fulfilling the specified requirements will be deemed to comply.”* Following a request to rectify shortcomings of the 7th September 2023, the require (sic) manual including related diagrams and tool requirements was not submitted by the tenderer.
- g) GPP Construction of the Building or major renovation works - Installation and commissioning of building energy systems. - The Tenderer was requested to provide the following information: *“The main construction contractor or the DBO contractor shall describe and commit to carrying out a functional performance testing routine in order to ensure that the systems perform within design parameters.”* Following a request to rectify shortcomings of the 7 September 2023, the required information and commitment regarding functional performance testing routines was not submitted by the tenderer.
- h) The Evaluation Committee has reviewed the information in pages 118 to 160 as referenced in the communication of the 18th October 2023 and could not confirm the required information. For reference purposes, the information submitted refers to the following and is not consistent with the required information: - CCTV recorder (pg 118) - PoE Switch (pg 122) - Junction box for bullet camera (pg 127) - Video intercom (pg 130) - Surface mount medium duty exit button (pg 132) - 13.8B DC G- Range BM Series (pg 133) - Video intercom door module (pg 134) - Accessory package (pg 137) - Video intercom indoor station (pg 139) - MCP indoor call range (pg 142)

- Electric strikers (pg 144) - Suprema, centralised access control and time and attendance system (pg 147)

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 witnesses duly summoned, will now consider Appellant's grievances.

- a) **On the date issue** – it is clear that the date referred to in the rejection letter, i.e. *“Following evaluation request of the **23<sup>rd</sup> September**, the Evaluation Committee was not satisfied with the information.....”* (bold emphasis added) should have read 7<sup>th</sup> September 2023. It is also obvious that this was a *lapsus calami* and no prejudice has been suffered by the appellant in such regard. The Board, therefore, does not have anything further to add on this matter and deems it irrelevant.
- b) **On the reasons provided in the rejection letter** – reference is made to the reasons provided in the rejection letter of 10<sup>th</sup> October 2023. Reference is also made to regulation 272 of the Public Procurement Regulations which speaks about *“.....a summary of the relevant reasons to the rejection of the tender.....”*, therefore what was provided in the letter of 10<sup>th</sup> October 2023 is deemed sufficient and contained enough detail for the appellant to be able to file an appeal should it decide to do so. This more so, when such information is viewed in the context that the appellant was more than capable of formulating a well drafted appeal and therefore had the necessary information on which to base its grievances.
- c) **On the argument that such information was very similar if not identical to information given by him or his sub-contractors in various tenders** – this line of argumentation has been rebutted on several occasions by this Board. The remit of this Board is to analyse and decide on grievances brought to it on a specific tender, in this case CT2434/2022. It is not its remit to review and analyse other tender documents to correlate whether the specifications were identical to this particular tender. Therefore, what this Board will now consider are the specific grievances numbered 1 to 4 in the letter of objection of the appellant.
- d) **On the matters on technical non-compliance matters** –
  - i. Acoustic Plaster Screed Article 6.5 – Missing GPP verifications – The Board notes that the Contracting Authority conceded that the submission of the appellant was indeed technically compliant on this matter and therefore this Board upholds appellant's grievance.
  - ii. Management of Waste and Unused paint - The Board notes that the Contracting Authority conceded that the submission of the appellant was indeed technically compliant on this matter and therefore this Board upholds appellant's grievance.
  - iii. Warrant of Service, Continued availability of spare parts, design for reparability and Installation and commissioning of building energy systems (combined) – After reviewing the submissions by appellant and contracting authority and given due notice of the testimony under oath of all



the witnesses, this Board is more than serene to ascertain that the evaluation committee duly provided a fair opportunity to the appellant to ‘correct’ its original submission by issuing the rectification request of 7<sup>th</sup> September 2023, however the appellant failed to reply **in full** to all the matters raised within. Reference is made to the missing energy test reports (see testimony of Engineer Mario Sammut), written declarations from the tenderer (see testimony of Ms Anna Catania). Given that rectifications on the same matter could only be requested once, the evaluation committee duly decided to deem the submission of the appellant as technically non-compliant. The Board agrees with such a decision and does not uphold the grievances of the appellant on these two grounds.

**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 apart from the grievances on the Acoustic Plaster Screed and Management of Waste and Unused paint,
- 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**

**Dr Charles Cassar**  
**Member**

**Dr Vincent Micallef**  
**Member**