

PUBLIC CONTRACTS REVIEW BOARD

Case 1948 – SPD4/2023/036 – Framework Contract for the Provision of Health & Safety Services, Training and Certifications at St. Vincent De Paul Long Term Care Facility

2nd February, 2024

The Board,

Having noted the letter of objection filed by Dr Clive Gerada acting for and on behalf of ALDB and Associates Limited, (hereinafter referred to as the appellant) filed on the 30th November 2023;

Having also noted the letter of reply filed by Dr Noel Bezzina acting for St Vincent De Paul Long Term Care Facility (hereinafter referred to as the Contracting Authority) filed on the 10th December 2023;

Having noted the letter of objection filed Dr Alexander Schembri acting for and on behalf of JK Services Limited, (hereinafter referred to as the Preferred Bidder) filed on the 7th December 2023;

Having heard and evaluated the testimony of the witness Mr Anthony Caruana (Chairperson of the Evaluation Committee) as summoned by Dr Clive Gerada acting for ALDB and Associates 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 11th January 2024 hereunder-reproduced.

Minutes

Case 1948 – SPD4/2023/036 – Services – Framework Contract for the Provision of Health & Safety Services, Training and Certifications at Saint Vincent De Paul Long Term Care facility

The tender was issued on the 10th August 2023 and the closing date was the 18th September 2023.

The estimated value of this tender, excluding VAT, was € 211,575.

On the 30th November 2023 ALDB and Associates filed an appeal against Saint Vincent de Paul Long Term Care Facility objecting to their disqualification on the grounds that their bid was not the cheapest offer.

A deposit of € 1,057.88 was paid.

There were five bids.

On the 11th January 2024 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – ALDB and Associates Ltd

Dr Clive Gerada	Legal Representative
Mr Aldo Busuttill	Representative
Mr Charlot Caruana	Representative

Contracting Authority – St Vincent de Paul Long Term Care Facility

Dr Noel Bezzina	Legal Representative
Mr Anthony Caruana	Chairperson Evaluation Committee
Mr Dennis Spiteri	Secretary Evaluation Committee
Mr Leonard Diacono	Evaluator
Mr Silvio Cilia	Evaluator
Ms Phyllis Mercieca	Representative
Ms Marica Saliba	Representative

Recommended Bidder – JK Services Ltd

Dr Alexander Schembri	Legal Representative
Mr Kevin Borg	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.

Dr Clive Gerada Legal Representative for ALDB and Associates Ltd said that the appeal was based on three grievances – the award itself, the competency of the evaluation and the key experts competence and that they were not stated in the submissions of the preferred bidder.

Dr Noel Bezzina Legal Representative for the Contracting Authority said the first two grievances are of a legal nature whilst the final point will be dealt with through evidence.

Mr Anthony Caruana (44470M) called to testify by the Appellant stated on oath that he was the Chairperson of the Tender Evaluation Committee (TEC) and that there were three evaluators on this tender. The names of the key experts submitted by the preferred bidder were confirmed as being on the registered list of competent person and the electrical engineer was confirmed as being a warranted engineer. There was no restriction on subcontracting in the tender so long as the requirements were observed and the Authority was notified of the names of the persons carrying out the service. The provision of courses was a minimal part of the tender compared to the H&S part.

Dr Alexander Schembri Legal Representative for JK Services Ltd objected to questions being put about sub-contracting as this was not part of the appeal and such questions were not admissible.

The Chairman sustained the objection.

Resuming his testimony Mr Caruana stated that the award criterion was based on the cheapest price after technical and administrative compliance and the ranking was therefore price related. Appellant's price was the highest and therefore they ranked third. The standard procedure as laid down was followed in notifying the economic operators of the outcome of the bids.

Questioned by Dr Bezzina, witness confirmed that the names of the key experts submitted were listed on the Health & Safety Competent Person List and there was, in the tender, the possibility of obtaining a licence after the award of the tender. Witness went on to state that the Occupational H & S Officer was Mr Marco Putzulu Caruana, the Associate H&S Officer was Mr Joseph Gili and the warranted engineer was Engineer Gordon Camilleri.

In reply to a question from Dr Schembri, witness confirmed that these names were as originally proposed when the bid was submitted and there were no subsequent changes.

This concluded the testimony.

Dr Gerada said that despite questions to the witness and what was stated in the rejection letter it still has not been established why the tender was not awarded to the appellant. No explanation was given as to how the TEC reached their ranking. This made it difficult to mount an appeal. Names of key experts were not known until this appeal and this made it difficult to check beforehand. Regulation 62 of the PPR states that everything must be in place at the time of the proposal and this was not the case. The lack of details in the rejection letter hindered an appeal. The decision should be revoked.

The Chairman assured the appellant that the Board will corroborate all the facts given in evidence from the complete documentation available to them.

Dr Schembri said that on a tender where the award was based on price appellant bid at a much higher price and this was clearly indicated in the rejection letter and this reason alone was sufficient. Evidence was given that the persons were nominated in time and all are competent and recognised professionally.

Dr Bezzina view was that appellant is clutching at straws. The tender was decided on price not on technical or administrative submissions. Price was the only criterion and it was not satisfied. The personnel proposed are fully competent and the key experts all conform to requirements, and even if they did not this could always have been rectified at a later stage. The Public Procurement Regulation quoted does not apply in this case and the appeal should be denied.

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 11th January 2024.

Having noted the objection filed by ALDB and Associates Limited (hereinafter referred to as the Appellant) on 30th November 2023, refers to the claims made by the same Appellant with regard to the tender of reference SPD4/2023/036 listed as case No. 1948 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Clive Gerada

Appearing for the Contracting Authority: Dr Noel Bezzina

Appearing for the Preferred Bidder: Dr Alexander Schembri

Appearing for the DoC: Dr Mark Anthony Debono

Whereby, the Appellant contends that:

- a) The rejection letter sent to the appellant on 20th November 2023 includes only general reasons for the exclusion of their tender bid. This goes against administrative law which is there to ensure that detailed explanations are provided.
- b) The appellant company has duly provided all the information in relation to its Key Experts, who have vast experience in the sector. On the other hand the preferred bidder does not have any persons listed in the OHSA list.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 10th December 2023 and its verbal submission during the hearing held on 11th January 2024, in that:

- a) Rejection letter – the Contracting Authority submits that the reasons provided were sufficient and enough to substantiate the decision taken.
- b) Services offered – the tender needs to be evaluated and awarded according to criteria listed within same tender document
- c) Key experts – contrary to what is being alleged, the key experts proposed by the recommended bidder are indeed registered and listed with OHSA.

This Board also noted the Preferred Bidder's Reasoned Letter of Reply filed on 7th December 2023 and its verbal submission during the hearing held on 11th January 2024, in that:

- a) Rejection letter – the award criteria was clear in that *“the sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.”* The offer of the appellant was a whole €52,908.75 higher than that of the preferred bidder.

- b) ALDB Associates Limited being more than capable of providing the required service – no one is disputing this fact albeit their offer was much higher than the winning bid. As already mentioned, the award criteria was ‘the price’.
- c) Key Experts – the proposed Key Experts by the preferred bidder duly satisfied the requirements of the tender document. Moreover, section 5(c) stated *“Any Key Expert who still needs to obtain authorisation to practice profession in Malta can be proposed”*.

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) **Rejection letter –**

Reference is initially made to the tender document, section 1 ‘Criteria for Award’. Paragraph 6.1 duly and unambiguously states *“The sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.”*

Therefore, this was not a tender to be adjudicated under the Best Price Quality Ratio (BPQR) methodology.

As it transpired during the hearing and corroborated with the evaluation report as issued by the Contracting Authority, the appellant was duly evaluated as being both administratively and technically compliant. The sole reason of ‘rejection’ as to why he was not awarded the tender was that there were two (2) better priced, i.e. cheaper bids, which were also both administratively and technically compliant offers.

The rejection letter did state that *“..... the procurement submitted by your company was not the cheapest priced offer satisfying the administrative and technical criteria.”* It also provided a ranking whereby it identified the bid of JK Services Ltd as achieving the first ranking, whilst that of the appellant having achieved a final position of 3rd.

This Board is incredulous as to what other information the appellant expected to be in receipt of. All the relevant and material information has been duly provided and the rejection letter is in full compliance of the Public Procurement Regulations.

b) **Key Experts and Appellant’s capabilities**

As already emphasized, the award criteria was to be in accordance with the cheapest priced offer satisfying the administrative and technical criteria. Therefore, once it has been ascertained that the key experts of the preferred bidder duly satisfied the requirements of the tender dossier, such as being listed in the OHSAs list and / or are duly warranted electrical engineers, other factors such as ‘additional experience’ are deemed irrelevant. This would have been relevant if the tender was being adjudicated under the BPQR methodology.

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

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member