

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1988 – CfQ SAPP.23.587 – The Provision of Legionella Testing for all Premises of Agenzija Sapport**

**16<sup>th</sup> April 2024**

The Board,

Having noted the letter of objection filed by Dr Carolina Giambelluca acting for and on behalf of So. Gest. Ambiente s.r.l., (hereinafter referred to as the appellant) filed on the 8<sup>th</sup> March 2024;

Having also noted the letter of reply filed by Dr Ryan C. Pace acting for the Agenzija Sapport (hereinafter referred to as the Contracting Authority) filed on the 18<sup>th</sup> March 2024;

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 11<sup>th</sup> April 2024 hereunder-reproduced.

### **Minutes**

#### **Case 1988 – CfQ SAPP.23.587 – The Provision of Legionella Testing for all Premises of Agenzija Sapport**

The call was issued on the 19<sup>th</sup> January 2024 and the closing date was the 12<sup>th</sup> February 2024

The estimated value of this call excluding VAT, was € 8,400.

On the 8<sup>th</sup> March 2024 SO.GEST. Ambiente Srl filed an appeal against Agenzija Sapport objecting to their disqualification on the grounds that their bid was deemed to be technically non-compliant..

A deposit of € 400 was paid.

There were two bids.

On the 11<sup>th</sup> April 2024 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Ms Stephanie Scicluna Laiviera as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### **Appellant – SO.GEST. Ambiente Srl**

Dr Carolina Giambelluca                      Representative

### **Contracting Authority – Agenzija Sapport**

Dr Ryan Pace	Legal Representative
Mr Kenny Muscat	Chairperson Evaluation Committee
Ms Abigail Corso Spiteri	Secretary Evaluation Committee
Ms Joanne Montanaro	Evaluator
Ms Maria Psaila	Evaluator
Mr Clayton Abela	Evaluator
Ms Alison Attard	Representative

### **Preferred Bidder – Quality Analysis Laboratory Ltd**

Invited but did not attend

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

Dr Ryan Pace Legal Representative for Agenzija Sapport stated that he had no opening submissions to make and the Board should proceed with hearing the case.

Dr Carolina Giambelluca Representative for the Appellant said that she relied on the objection letter and had nothing further to add.

Dr Pace said that the Authority had provided an exhaustive reply to this appeal. Appellant had requested the possibility to the process that it be readmitted. This can only happen following the revocation of the decision subject to this objection. This has not been requested by the Appellant and therefore the Board cannot decide in favour of the Appellant. The fact that it has not been requested means that it cannot be considered. It is not correct for Appellant to claim that the rectification request was not received as it is clear that this was sent and received. The Authority had not alternative as the bid could not be considered complete and their decision was correct.

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

End of Minutes

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### **Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 11<sup>th</sup> April 2024.

Having noted the objection filed by So. Gest. Ambiente s.r.l. (hereinafter referred to as the Appellant) on 8<sup>th</sup> March 2024, refers to the claims made by the same Appellant with regard to the tender of reference SAPP.23.587 listed as case No. 1988 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Carolina Giambelluca

Appearing for the Contracting Authority: Dr Ryan C. Pace

Whereby, the Appellant contends that:

- a) Reference is made to the letter dated 7 March 2024, in which they (the Contracting Authority) informed us that the estimate we presented was not successful as, following the failure to respond to the request for rectification, the offer was not technically compliant with the requests indicated in the CFQ document.
- b) The Appellant states that she did not receive this request and only yesterday, it became aware that there was an error in the submission of the tender.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 18<sup>th</sup> March 2024 and its verbal submission during the hearing held on 11<sup>th</sup> April 2024, in that:

- a) Preliminarily, and prior to delving into the merits of the objection/appeal, reference must necessarily be made to the one request put forth by the appellant, that is to "be given the possibility of being readmitted". The respondent Agency argues that, from a strictly procedural standpoint, this Revisory Board cannot accede to the appellant's request on the basis of the fact that the reintegration of the appellant's offer may only be ordered following the revocation of the decision subject to this objection/appeal. Since this (the revocation of Agenzija Sapport's decision) has not been requested by the appellant company in its objection/appeal, the respondent Agency insists that this Revisory Board cannot - with the correct application of the law - decide in favour of the appellant. For clarity's sake, respondent Agency reaffirms that it is very much aligned to the belief, emphasised by this Honourable Board in many of its decisions, that procedural technicalities shall by no means delay and/or hinder the delivery of substantive justice. This notwithstanding, this Revisory Board is constituted, and regulated, by law and the core principles of natural justice. The failure, by the appellant company, to request the revocation of the decision subject of its objection/appeal is not a mere technicality and/or formality but a fundamental underpinning the appeal process contemplated in the applicable Regulations. Whilst (understandably) excessive formalities are, and should be, frowned upon, the same should apply for the complete disregard of the basic requisites to any objection/appeal which can easily lead this Board to decide *extra petite* or *ultra petita*.
- b) Without prejudice to the foregoing, however, and on the merits, the appellant company argues - with reference to respondent Agency's request for rectification - that it "did not receive this request and only yesterday, it became aware that there was an error in the submission of the tender." This, according to the appellant company, is the one and only reason as a result of which same appellant company failed to adhere to respondent Agency's request for rectification. Yet while the appellant attempts to justify its lack of response by claiming non-receipt, Agenzija Sapport is in a position to confirm otherwise. As per usual practice, the relative request for rectification (which identified the

missing documentation and provided the appellant an opportunity to rectify its shortcomings/carelessness) was posted on ePPS, and therefore received and easily accessible to the appellant, on the 16 of February 2024.

. Regrettably, the request, as confirmed by none other than the appellant, was left unanswered meaning that, after the lapse of the five (5) working days deadline, the Contracting Agency had no other alternative but to consider, in accordance with the applicable call for quotations document, the appellant's offer incomplete and thus "not technically compliant". Had the respondent Agency acted any differently, it would have most certainly been in breach of the said call for quotations document.

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) **Preliminary plea –**

This Board has on multiple occasions adopted and advocated in favour of the principle of substance over form. However, on this occasion, this Board cannot but completely agree with the plea being raised by the Contracting Authority in that the basic requisites must be adhered to when drafting of a letter of appeal / objection.

Therefore, this Board upholds the preliminary plea of the Contracting Authority. However, in the interest of transparency and full disclosure, this Board will nonetheless also proceed to decide on the merits of this particular case.

b) **On the merits –**

This Board notes that the evaluation committee issued a request for rectification on 16<sup>th</sup> February 2024, which was duly and correctly posted on the ePPS online procurement system.

As per the General Rule Governing tenders, section 16;

*“Tenderers will be requested to either clarify/ rectify any incorrect and/ or incomplete documentation, and/ or submit any missing documents within five (5) working days from notification.”*

*“Rectification/ s must be submitted within five (5) working days from notification, and will be free of charge: failure to comply shall result in the tender offer not being considered any further.”*

Once it has been ascertained, also *ex admissis* by the same appellant, that no reply was submitted to this rectification request, this Board cannot but reject *in toto* this grievance of the appellant.

**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

**Ms Stephanie Scicluna Laiviera**  
Member