

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2093 – NP-PWD-001-2025 – Negotiated Procedure for the Supply, Installation, Testing, Commissioning and Maintenance of Heating Equipment at the Birzebbuga Aquatic Sports Club**

**2<sup>nd</sup> April 2025**

The Board,

Having noted the letter of objection filed by Mr Anthony Falzon acting for and on behalf of A. Falzon Energy Projects Ltd, (hereinafter referred to as the appellant) filed on the 10<sup>th</sup> March 2025;

Having also noted the letter of reply filed by Ing Stephen Dimech acting for the Public Works Department (hereinafter referred to as the Contracting Authority) filed on the 11<sup>th</sup> March 2025;

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 25<sup>th</sup> March 2025 hereunder-reproduced;

### **Minutes**

#### **Case 2093 - NP-PWD-001-2025 - Negotiated Procedure for the Supply, Installation, Testing, Commissioning, and Maintenance of Heating Equipment at the Birzebbuga Aquatic Sports Club**

##### **1. Tender Overview**

The tender for the supply, installation, testing, commissioning, and maintenance of heating equipment at the Birzebbuga Aquatic Sports Club was published on January 23, 2025, with a submission deadline of January 31, 2025.

The estimated value of this tender, excluding VAT, was €327,953.00.

##### **2. Appeal and Disqualification**

On March 10, 2025, Mr. Anthony Falzon, representing A. Falzon Energy Projects Ltd. (C 51294), filed an appeal against the Public Works Department, the Contracting Authority responsible for the procurement process.

##### **Grounds for Appeal:**

The appeal challenged the disqualification of A. Falzon Energy Projects Ltd. on the basis that their proposed heating installation was deemed incapable of achieving a minimum Coefficient of Performance (COP) value of 4.5 under winter conditions.

A deposit of €1,600 was paid upon filing the appeal.

A total of three bids were submitted for this tender.

### **3. Public Contracts Review Board Hearing**

On March 25, 2025, the Public Contracts Review Board (PCRB) convened a public hearing to review the appeal. The hearing was presided over by the following board members:

- Mr. Kenneth Swain – Chairman
- Dr. Ana Thomas – Member
- Mr. Lawrence Ancilleri – Member

### **4. Attendees at the Public Hearing**

Appellant: A. Falzon Energy Projects Ltd.

- Mr. Anthony Falzon – Company Representative
- Mr. Johann Alosio – Company Representative
- Ms. Tara Falzon – Company Representative

Contracting Authority: Public Works Department

- Dr. Mark Sammut – Legal Representative
- Dr. Emma Schiavone – Legal Representative
- Ing. Stephen Dimech – Chairperson
- Ing. Roberta Vella – Evaluator
- Ing. Mario Sammut – Evaluator
- Ing. James McElhatton – Evaluator
- Ing. Rene Camilleri – Engineer & Project Lead
- Ing. Aurelio Attard – Procurement Officer

Recommended Bidder: SATIEE di Bellomo Giovanna

- Ing. Roger Chetcuti – Company Representative
- Mr. Salvatore Valenti – Company Representative (*arrived after the meeting had concluded*)
- Mr. Andrea Piero Muttoni – Company Representative (*arrived after the meeting had concluded*)

### **5. Proceedings of the Hearing**

#### **Appointment of Secretary**

At the start of the hearing, Chairman Mr. Kenneth Swain inquired whether there were any objections to Ms. Amy Borg, a staff member of the PCRB, acting as Secretary in place of the designated Secretary, who was indisposed. No objections were raised, and the meeting proceeded.

#### **Discussion on the Validity of the Appeal**

The Chairman opened the hearing by stating that, according to the Contracting Authority, the appeal should be considered null and void due to Public Procurement Regulation 270.

He quoted the regulation, which states that:

*“Where the estimated value of the public contract meets or exceeds five thousand euro (€5,000), any tenderer or candidate concerned, or any person having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken—including a proposed award, a rejection of a tender, or a cancellation of a call for tender—after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.”*

The letter of appeal was officially filed on March 10, 2025.

A reply from the Public Works Department was submitted on March 11, 2025, followed by a reasoned reply filed on March 13, 2025.

The Chairman referenced the letter sent by A. Falzon Energy Projects Ltd. on March 13, 2025, which stated that a detailed letter was not provided because the company intended to present its case verbally during the hearing.

However, the Chairman emphasized that this approach violates Regulation 270, as it does not allow the Contracting Authority sufficient time to prepare their defense— a right granted by law. The PCRB, likewise, would need to duly prepare for the hearing.

### **Appellant’s Argument**

Mr. Johann Alosio, representing A. Falzon Energy Projects Ltd., acknowledged that the law required a written appeal, but preferred a verbal presentation to ensure clarity. He argued that a written explanation might not be easily understood by non-technical individuals.

Despite this, he firmly stated that the proposed heating installation would have achieved the required COP value.

### **Response from the Contracting Authority**

The representatives of the Public Works Department declined to make any further comments.

### **Conclusion of the Hearing**

Since no additional arguments were presented, Chairman Mr. Kenneth Swain formally concluded the meeting.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 25<sup>th</sup> March 2024.

Having noted the objection filed by A. Falzon Energy Projects Ltd (hereinafter referred to as the Appellant) on 10<sup>th</sup> March 2025, refers to the claims made by the same Appellant with regards to the tender of reference NP-PWD-001-2025 listed as case No. 2093 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Anthony Falzon

Appearing for the Contracting Authority: Dr Mark Sammut & Dr Emma Schiavone

Whereby, the Appellant contends that:

- a) We believe our offer may have been misinterpreted. We are confident that our proposal fully meets the required specifications outlined in the tender. However, we suspect that certain details may not have been conveyed clearly, which could have led to the assumption that our submission did not comply with the necessary criteria.
- b) We believe our submission offers the best value and solution for this project, and we would appreciate the chance to discuss this matter further.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 11<sup>th</sup> March 2025 and its verbal submission during the hearing held on 25<sup>th</sup> March 2025, in that:

- a) The Contracting Authority believes that such objection should be declared as null and void since it consists in a mere generic statement without any specific reference to items or arguments on which the board is to review the TEC's decision.
- b) Although the objector failed to identify his mode of contention and specifics, the Contracting Authority, based on the bid submitted and subsequent rectifications, wishes to point out to the Public Contracts Review Board the issue which had arisen during the technical evaluation stage, where it was noted that the Coefficient of Performance (COP) of model I-MAX 06115 offered by the objector was of 1.98 in winter. The TEC determined that this was not compliant to the required specifications since it did not meet the established minimum COP of 4.5 in winter. In this respect, the TEC highlighted this non-compliance and gave the objector an opportunity to rectify. In his reply to the TEC's rectification request, the objector proposed an alternative model, HWA1-A/H 04237, which achieves a COP of 2.7 in winter. Therefore, both models offered had a COP which was below the specifications required. Although the objector "*suspects that certain details may have not been conveyed clearly*", the TEC clearly allowed him the possibility to clarify and even rectify such shortcomings.

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 letter of objection.

- a) As stated during the hearing, Regulation 270 of the Public Procurement Regulations (“PPR”) is unambiguous when it states that “..... *may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain **in a very clear manner** the reasons for their complaints.*” (bold emphasis added)
- b) This point was also re-affirmed in a very recent case decided by this Board when in Case 2076 – decided on 11<sup>th</sup> February 2025 – it was decreed that “..... *it is the opinion of this Board that the issue raised before it does not fall within its remit. The Board is seized to treat the grievances as presented to it in the objection application in line with Regulation 270 of the Public Procurement Regulations....*”
- c) Arguments brought forward by the appellant, in their second letter of 13<sup>th</sup> March, where *ex admisissis*, they stated that “*We did not provide a detailed letter as we objected and intended for our point to be made during the hearing by our engineering consultants. Our priority was to have the right to speak rather than submit a written technical statement.*” cannot certainly be entertained.
- d) It is only under special circumstances that new grievances may be ‘added’ following the original letter of appeal which is required to be filed during the ten-day peremptory period. Reference is made to PCRB decision 1893 dated 21<sup>st</sup> August 2023 whereby it was stated that “*In view of this, the Board is more than convinced that the Appellant’s request to include an additional grievance must be met and this since the Appellant could never be in a position to know of this fact in the statutory time limits laid down*”.

Therefore, this Board upholds the Contracting Authority’s arguments in view that the appellant’s objection letter consists of mere generic statements.

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Declares the appeal, as filed by the appellant, as null and void;
- 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

**Dr Ana Thomas**  
Member