

PUBLIC CONTRACTS REVIEW BOARD

Case 2103 – SPD8/2024/035 – Services (Re-Issue) - Tender for the Maintenance of Water Features and Winterizing at Bugibba Waterpark for Project Green

5th May 2025

The Board,

Having noted the letter of objection filed by Mr Mario Falzon acting for and on behalf of Proman Ltd, (hereinafter referred to as the appellant) filed on the 20th June 2024;

Having also noted the letter of reply filed by Dr Jonathan Thompson and Dr Kristina Friggieri acting for Project Green (hereinafter referred to as the Contracting Authority) filed on the 4th July 2024;

Having heard and evaluated the testimony of the witness Dr Mark Anthony Debono (Representative of the Department of Contracts) as summoned by Dr John Gauci acting for Proman Ltd;

Having heard and evaluated the testimony of the witness Mr Luke Cassar (Chairperson of the Evaluation Committee) as summoned by Dr John Gauci acting for Proman Ltd;

Having heard and evaluated the testimony of the witness Mr Conrad Zammit (Representative of Aquatek) as summoned by Dr John Gauci acting for Proman Ltd;

Having heard and evaluated the testimony of the witness Mr Mark Zammit (Representative of Horizon Projects Ltd) as summoned by Dr John Gauci acting for Proman Ltd;

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 29th April 2025 hereunder-reproduced;

Minutes

Case 2103 - SPD8/2024/035 – Tender for the Maintenance of Water Features and Winterizing at Bugibba Waterpark for Project Green

Date of Publishing of Call of Tender:	28 th March, 2024
Date of Closing Date of Call for Tender:	18 th April, 2024
Estimated Value of Tender (Exclusive of VAT):	50,000.00 euro
Deposit Paid by Appellant:	400.00 euro
Date of filing of objection by Mr Mario Falzon acting for Proman Ltd:	4 th July, 2024
There were 6 Bids	

On 29th April 2025 the Public Contracts Review Board composed of Mr Kenneth Swain acting as Chairman, Mr Keith Victor Grech and Mr Richard Matrenza convened a public hearing to consider the appeal.

Attendance:

Appellant: ProMan Limited

Dr John L. Gauci	Legal Representative
Mr Mario Falzon	Company representative

Contracting Authority: Project Green

Dr Jonathan Thompson	Legal Representative
Dr Kristina Friggieri	Legal Representative
Mr Luke Cassar	Chairman – Managing Director/ Evaluating Board
Mr Charles Camilleri	Secretary
Mr Silvano Cutajar	Evaluator
Ms Jessica Galea	Evaluator
Mr Ivan Farrugia	Evaluator

Recommended Bidder: AASK Enterprise Ltd

Mr Kevin Scerri (invited but did not attend) Company Representative

Department of Contracts:

Dr Mark Anthony Debono	Legal Representative
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Witnesses:

Mr Mark Zammit	Horizon Projects Ltd - Representative
Mr Conrad Zammit	Aqua Tek - Representative

The Chairman welcomed the parties and declared the opening of the Appeal made by ProMan Ltd against Project Green’s decision to declare that ProMan Ltd procurement proposal was not the cheapest priced offer satisfying the administrative and technical criteria.

In his introduction he referred to Dr John Gauci’s letter dated the 24th April 2025 in which Dr Gauci confirmed his appointment as legal aid to ProMan Ltd. and in which he indicated a list of witnesses together with another grievance regarding an abnormally low issue.

The Chairman stated that according to Article 270 of the Public Regulations and a number of decisions taken during the preceding years together with two recent decisions; clearly explained reasoned objections have to be filed within ten calendar days. The Chairman observed that this appeal had been presented a number of months ago, and the grievances presented relate to financial matters regarding decisions on Section A and Section B of the Tender Financial Offer without any references to abnormally low financial bids and consequently the Board cannot accept to pronounce itself on this belated grievance.

At this stage Dr John L. Gauci for Pro Man Ltd, intervened and admitted that the appellant is conscious of the Chairman’s decision, but is also conscious that if new information crops up from the witnesses’ expositions and such information was not previously known to the appellant before the appeal was presented, he reserves the right to present his appeal regarding the abnormally low issue in the ensuing discussion.

Following these statements, Dr Thompson for the Contracting Authority intervened and declared that in case this point is taken up again in future discussions he too reserves the right to answer to such a probability.

Following Dr Thompson's statement Dr Mark Anthony Debono for the Contracting Authority, stated that objections have to be filed within 10 days from the communicated letter to the objector and this according to Regulation 270

The Chairman clarified that such situations involving the 10-day period, have not only been dealt by this Board (reference Case 2093 of the 2nd April 2025 and Case 2076 of the 11th February, 2025) where the word "shall" is used in Regulation 270, but also by the Courts of Appeal.

The Chairman also referred to a case which involved an appeal presented by Dr Decesare where new information came out during the questioning of a witness. This Board gave him the right to present this information as an added grievance and in spite of the fact that the preferred bidder appealed to the Court of Appeal, the later supported this Board's decision.

The Chairman also referred to another case which was presented 4 years ago and in spite of the fact there was a two-year gap the Court of Appeal decided to hear the added grievance.

The Chairman declared that this line of reasoning was to be adopted.

Answering to the Chairman's reference to Dr Thompson's letter of rejection where the latter submitted in paragraph 6 that the Contracting authority has no objection that the process be re-evaluated, Dr Thompson remarked that the Contracting Authority carried out an exercise where there was a re-evaluation of the process to verify if the adjudication was carried out correctly in its preference to the awarded bidder especially to that part dealing with the financial aspects of Section A and Section B. Dr Thompson insisted that the Contracting Authority stands by its judgement in favour of the preferred bidder. Dr Thompson also remarked that the appeal, due to the fact that at the time of its writing was not aided by legal counsel, is rather vague. He also asked if parties should register any preliminary statements.

At this stage, when Dr Gauci called to the witness stand the Director of Contracts or his representative, the Chairman clarified that this tender was issued through the Sectoral Procurement Directorate.

At this point Dr Thompson asked if there was going to be any opening statements and Dr Gauci explained that the objection is about appellant's concerns that the Contracting Authority might have published prices of certain bidders based on Section A only while for other bidders it published prices which were based on Section A and Section B together. Hence Dr Gauci insisted to start with the examination of witnesses to establish if there were any mistakes and to establish what information was at the disposal of the Director of Contracts when he published the prices and what information did he publish.

Answering a question of Dr Thompson, Dr Gauci answered that to establish if the problem rests in the publication or the evaluation one has to hear the witnesses.

Dr Thompson intervened and re-explained that the evaluation was correct even after the second re-evaluation and after considering that of the objector as well as that of the preferred bidder, the same decision regarding the preferred bidder was re-affirmed. Both of them had submitted both Section A and Section B. He continued that two other bidders entered details for Section A only.

Following these statements Dr Gauci called Dr M. A. Debono (ID. 0124390 M) representing the Director General of Contracts to the witness stand.

Answering questions by Dr Gauci, Dr Mark Anthony Debono stated that he represents the Director General of Contracts and that according to Regulations 9 sub-section 2, calls for tenders emanating from the DGC do not involve the Director for Sectoral Procurement. The latter is responsible for calls for Tenders through a different procedure according to regulation 9 sub-section 3.

Dr Debono also stated that prices are published by the openings staff after the opening of tenders and that he has no details about the person who publishes the prices.

Dr Gauci referred to a document dated 14th June 2024 attested to the Department of Contracts. In his answer Dr Debono explained that in this case the Department of Contracts is the Director for Sectoral Procurement which administers its calls in a separate way from the Director General of Contracts.

Dr Gauci called Mr Luke Cassar (ID. 73390M) the Chairman of the Evaluation Committee.

Answering to Dr Gauci's questions Mr Cassar explained how the tender Evaluation Committee was composed and explained that the evaluation process which included meetings, and discussions regarding the 6 bidders and their respective offers and which he later listed. He explained that all bids were administratively and technically compliant. He continued that after this, the TEC assessed the financial bid which consisted of Schedule A consisting of regular works to be implemented while Schedule B consisting of emergency works expected from the supplier in case of emergencies.

Mr Cassar also stated that only one clarification note was sent and this was for a mathematical correction to ASSK Enterprises Ltd. He again explained the difference between the two mentioned Sections and that the winning bid was to be the cheapest price when both Sections were added together. As a result, AASK Ltd qualified as the cheapest bid. Mr Cassar then listed the ranking of the bidders according to adjudication and which came out automatically confirming that only the first and last bidders were compliant. The list was later sent to the Directorate. Mr Cassar explained that after ProMan lodged its appeal there was a re-analysis which due to rectifications the order of the list changed. However, the preferred bidder's price was found to be still the cheapest. Mr Cassar here explained that the procurement procedure was stopped to give the right of objector for his appeal to be heard before the PCRB.

Mr Cassar presented his personal notes and the list to the PCRB during this sitting.

A discussion ensued regarding the two documents involving the two different rankings that is the first before the appeal and the second after the appeal where the corrections to the rankings were made. Mr Cassar confirmed that the latter is to be found on the evaluation report.

Answering to a question by Dr Gauci, Mr Cassar also stated that he was not worried as regards the financial price quoted by AASK Ltd. as although it was less than the estimated value the discrepancy is only of 7 per cent a figure which is accepted by the Contracting Authority since it is less than the 10 per cent marking off line leading to an abnormally low bid.

Answering question put forward by Dr M.A. Debono, Mr Cassar stated that all bidders were compliant but in spite of any ranking AASK's bid remains the cheapest price after one adds Section A and Section B and is not abnormally low since it is only 7% lower than the estimated sum.

Dr Gauci called Aqua Tek representative Mr Conrad Zammit (ID 543180M) to take the stand. Answering a question to Dr Gauci Mr Conrad Zammit stated that he inadvertently did not add the prices for section A with those Section B and neither did he receive any calls for clarifications.

Answering questions to Dr Thompson in the cross examination Mr Zammit confirmed that his bidding price for Section A was a bit lower than the estimated prize of 50,000 euro and that he did not object to the TEC's decision of his exclusion. He also stated that he had met the representative of AASK Ltd during the evaluation process and from the ensuing conversation became aware of his mistake and thought that he would receive a note for clarification; a note which never came.

Dr Gauci called Mr Mark Zammit (ID 343782M) representative of Horizon Projects Ltd.

Answering questions to Dr Gauci confirmed that his company inadvertently quoted a price of 2 euro less than the estimated price of 50,000 euro for Section A but did not add this amount to that envisaged for Section B. He added there were not calls for clarifications as regards the price.

Answering to questions by Dr Thompson Mr Zammit confirmed that Horizon Projects Ltd did not file any objection to their exclusion and that there were no contacts with ProMan Ltd and was not aware how the later became aware about Horizon's discrepancy regarding the financial bid.

Answering further question to Dr Gauci, Mr Mark Zammit stated that the price for meeting the 3 -year period for maintenance service was too high, hence his 2 euro less than the estimated price. Mr Mark Zammit also stated that to him the conditions for this tender were rather vague.

Answering questions to Dr Thompson Mr Mark Zammit declared that Horizon Projects Ltd had no special experience in this field.

Final Submissions

Dr Gauci stated that the communicated evaluation was erroneously wrong. This can be confirmed from the admission by the TEC's admission that after ProMan's appeal they re-evaluated the offers and found that there were discrepancies in the ranking results where only the first and last tenders were compliant. Hence the Contracting Authority and the Evaluation Committee should issue another decision reflecting a position with clear prices according to law. He also stated that the Appellant will reserve the right to appeal regarding the issue of the abnormally low bids at a later stage when this decision is declared.

Dr Gauci referred to a Court's of Appeal decision, Ref 450 of the 22nd January 2024. Star Fuels Ltd. vs Wasteserv Ltd and Civil Appeal 2023/1 which throws light on situations like this case where various tenderers complained that it was very difficult to meet the estimated value of the tender.

Dr Thompson reaffirmed that the interest of the Contracting authority is that the process is correct and will in principle and according to its obligations the Contracting Authority is ready to recheck the process and resend the corrected ranking list. He also reiterated that the question of abnormality low can also be tackled in later stages.

Dr Debono stated that the objection regards the doubts which arouse if the bids were evaluated according to the call for offers and if the financial bids of Section A and Section B were added. Today were have become aware that there was a problem with the ranking but a witness of the TEC has explicitly emphasized that this discrepancy does not mar the decision which awarded the tender to the recommended tenderer that is AASK Enterprises Ltd. He added that any future objections should have been included in the appeal during the 10-day period and as regards to the mentioning of the estimated procurement value, this was set for everyone and if there were any doubts regulation 262 was there to be use by the objector. He also referred to Court of Appeal Case Proevo Payments vs Ministry of Finance of the 30th June 2021 were grievance should be put forward at the beginning of the call for Tenders.

At this stage the Chairman declared that the hearing ended.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 29th April 2025.

Having noted the objection filed by Proman Ltd (hereinafter referred to as the Appellant) on 20th June 2024, refers to the claims made by the same Appellant with regards to the tender of reference SPD8/2024/034 listed as case No. 2103 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr John Gauci

Appearing for the Contracting Authority: Dr Jonathan Thompson & Dr Kristina Friggieri

Whereby, the Appellant contends that:

- a) Please note that the Financial Bid Form of the tender in caption had two sections - Section A listed a number of items for which the bidders were requested to quote a price for each item and Section B listed a number of works for which bidders had to submit a rate which would be used in case of additional works were required. The Financial Bid stipulated that the total of Items A and B should be uploaded in the Financial Section of the EPPS and moreover, the total would be used for evaluation purposes.
- b) On the 14 June 2024, we received the notice of award of the said tender informing the bidders the name of the winning tender offer and the respective price as well as the name and price of the second placed tender offer. For some reason we had the feeling that something was not quite right.
- c) From information we have, not all the bidders had submitted an offer on a like with like basis, that is, some bidders followed to the full the instructions stipulated in the Financial Bid Form and uploaded the total of Section A plus Section B, whereas others submitted the Financial Bid Form giving the prices and total for Section A only, as in fact, the second placed bidder had done. We are also informed that the same second placed bidder did not receive any request for clarification to amend his financial offer to be in line with the conditions as stipulated in the Financial Bid form, nor disqualified for submitting an incomplete financial offer.

- d) This means that the bids submitted were not evaluated on the same and equal level and consequently, our bid, which had a cheaper total for Section A but more expensive rates for works that could potentially not materialize, was disadvantaged and possibly discriminated
- e) Furthermore, since only the total amounts as uploaded by the bidders is published, we cannot establish whether the price of the winning bid is based on the total of Section A and B as requested in the Financial Bid Form or otherwise.
- f) We are therefore requested this Honorable Board to review the financial offers submitted to ensure that all tender offers were evaluated in full accordance to the all terms and conditions as stipulated in the tender dossier and if found that the Evaluation Committee did not take in consideration all the said terms and conditions of the tender dossier, which could have led to a biased result, to provide the relevant remedies by rejecting the Evaluation Committee's recommendations for award and to order the re-evaluation of the tender offers submitted in accordance to the terms and conditions of the tender dossier.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 4th July 2024 and its verbal submission during the hearing held on 29th April 2025, in that:

- a) It resulted from the evaluation carried out that, as notified to the interested parties by means of a letter dated 14 June 2024, that the procurement proposal submitted by the Complainant was not the cheapest priced offer satisfying the administrative and technical criteria and the procurement was recommended for award to AASK Enterprises Ltd.
- b) Following receipt of the Objection, the Contracted Authority reviewed the submissions received and can hereby confirm that the recommended bidder is indeed the cheapest priced offer satisfying the administrative and technical criteria.
- c) Nevertheless and without prejudice to the above, the Contracting Authority finds in principle no objection to have the bids reevaluated should this be deemed required by this Board in order to ensure the integrity and transparency of this public procurement process.

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) The Board makes specific reference to the testimony given under oath by Mr Luke Cassar, who confirmed that following the lodging of the appeal by Proman Limited, a re-analysis of the financial offers was conducted. While the initial recommended tenderer remained unchanged, the ranking order of the six participating economic operators was altered.

- b) Further reference is made to paragraph 6 of the Contracting Authority's written reply submitted to the Board on 4th July 2024, as well as to statements made during the hearing, whereby the Authority declared it held no objection to the re-evaluated of the bids.
- c) Having confirmed the facts of the case, this Board is of the opinion that, in view of the discrepancies observed in the ranking of the economic operators, it is both appropriate and necessary that a fresh and formal financial evaluation be carried out in respect of all submitted offers.

In light of the foregoing, the Board upholds the appellant's grievances.

The Board,

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

- a) To uphold the Appellant's Letter of Objection and the grounds contained therein;
- b) To annul the award recommendation made in favour of the Recommended Bidder;
- c) To order that a re-evaluation of the financial offers submitted by all participating economic operators be conducted, such re-evaluation to be in full conformity with the findings and observations set out in this decision;
- d) After taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Mr Keith Victor Grech
Member

Mr Richard Matrenza
Member