

PUBLIC CONTRACTS REVIEW BOARD

Case No. 958 – CT 2142/2016: Tender for the Handling and Compaction of Permitted Waste at the Magtab Environmental Complex.

The Tender was published on the 27th May 2016. The closing date was on the 7th July 2016. The Estimated Value of the Tender is €1,800,000.

On the 15th June 2016 Ballut Blocks Services Limited filed an Objection raising Pre-Contractual Concerns about clauses in the Tender Document.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Carmel Esposito as members convened a hearing on Thursday the 28th July 2016 to discuss the Objection.

Present for the hearing were:

Ballut Blocks Services Limited:

Mr Paul Vella	Director
Dr Massimo Vella	Legal Representative

WasteServ Malta Limited:

Mr Martin Casha	Procurement Manager
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Department of Contracts:

Dr Chris Mizzi	Legal Representative
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The Chairman made a brief introduction and invited the Appellant's representative to make his submissions.

Dr Massimo Vella on behalf of Ballut Blocks Services Ltd said that they had objected to the Tender as explained in the Letter of Objection. However, having seen the Letter of Reply submitted jointly by the Contracting Authority and the Department of Contracts, declares that his client agrees with the contents of the Letter of Reply and sees no need to pursue the Objection further, provided that the proposals made in the latter are concluded as declared.

The parties present agreed that the above be incorporated into this Board's decision.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection in terms of the "*Reasoned Letter of Pre-Contractual Objection*" dated 15 June 2016 and also their verbal submissions during the Public Hearing held on 28 July 2016, in that:

- a) Ballut Blocks Services Ltd contends that the imposition of Clause 7**
 - (b) (ii) (1) of the Tender Document restricts the spirit of competition.**
- WasteServ Malta should also consider the nature of the market in question, in that, the only Maltese bidder who can abide by this condition is the present handling contractor. In this regard, Ballut Blocks contend that the removal of the requirement would allow other prospective bidders to participate.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 13 July 2016 and also their verbal submissions during the Public Hearing held on 28 July 2016, in that:

a) The Contracting Authority contends that since the “*Experience Clause*” is not so fundamental due to the fact that the supervision of the execution of the Tendered Works will be carried out by WasteServ Malta, the latter will acceded to the removal of this same clause;

b) With regards to the Appellant’s contention, in that the mobilisation period should be extended to four (4) weeks, the same Contracting Authority confirmed that such a request is being acceded to.

In view of the above, this Board opines that the Tendering Process should be continued and to provide for:

- i) The Removal of the Experience Clause, as requested in Clause 7 (b) (ii) 1 of the Tender Document;**
- ii) The mobilisation period should be extended to four (4) weeks.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

2 August 2016