

PUBLIC CONTRACTS REVIEW BOARD

Case 1039 – WSM 61/213/2016 – Works Tender for the Design, Supply, Delivery and Installation of Racking Structure

The Publication Date of the Call for Tenders was 19 December 2016 whilst the Closing Date for Call of Tenders was 19 January 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 17,000.

Three (3) Bidders have submitted offers for this Tender.

On 2 March 2017, Debono Storage Systems Ltd filed an Objection against the decision of WasteServ Malta to award the Tender to Brands International Ltd for the price of € 17,750 (Exclusive of VAT) against a deposit of € 400.

On 18 April 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Debono Storage Systems Ltd

Nobody was present for the Public Hearing

Recommended Bidder – Brands International

Nobody was present for the Public Hearing

Contracting Authority – WasteServ Malta

Mr Kevin D' Ugo

Ms Denise Grima Connell

Dr Victor Scerri

Chairperson, Evaluation Board

Member, Evaluation Board

Legal Representative

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board opened by saying that this Board was informed that Debono Storage Systems Ltd allegedly did not receive the e-mail inviting him to attend for this Public Hearing.

Dr Anthony Cassar continued by saying that the e-mail was sent, the Appellants knew about this date and in view of the fact that no one turned up, the Public Contracts Review Board was going to rest on the Letter of Objection dated 2 March 2017 with which, Debono Storage Systems Ltd filed their Objection before the same Board.

The Chairman of the Public Contracts Review Board then proceeded by asking WasteServ Malta when the closing date for the Bidders to file any Objections was.

Mr Kevin D' Ugo, the Chairperson of the Evaluation Board together with Dr Victor Scerri, the Legal Representative for WasteServ Malta confirmed that they have sent a Letter of Clarification on 31 January 2017 and had till 7 February 2017 to reply which the Appellants did not do. The Letter of Rejection was sent on 1 March 2017 and Bidders had until 13 March to Appeal.

At this point, Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, summoned Mr Kevin D' Ugo, the Chairman of the Evaluation Board, holding ID Card 367586 M to witness under oath before the Public Contracts Review Board.

At this stage, the Public Hearing was adjourned to Tuesday 25 April 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by Debono Storage Systems Ltd (herein after referred to as the Appellant) on 2 March 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference WSM 61/2013/2016 listed as Case No 1039 in the records of the Public Contracts Review Board, awarded by WasteServ Malta (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Nobody turned up for the Public Hearing

Appearing for the Contracting Authority: Dr Victor Scerri

Whereby, the Appellant contends that:

- a) He was informed that a “*Clarification Note*” was sent by WasteServ Malta, however, this same Clarification was not received by Debono Storage Systems Ltd.

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 7 March 2017 and its verbal submissions during the Public Hearing held on 18 April 2017, in that:

- a) WasteServ Malta confirmed, under oath, that they sent a Clarification Letter on 31 January 2017 without any response from the Appellant.

This same Board also noted the Testimony of the witness namely, Mr Kevin D’ Ugo duly summoned by the Chairman of the Public Contracts Review Board.

This Board, after considering the merits of this case, arrived at the following conclusions:

- 1. This Board, after having examined the relative documentation, opines that there exists enough credible documentation which prove that the clarification was sent by WasteServ Malta on 31 January 2017 and that the same was delivered to Debono Storage Systems Ltd. The latter had to reply by 7 February 2017. In this case, no reply was sent.**

This Board also notes that the Appellant was requested to attend the Public Hearing via e-mail dated 3 April 2017 and yet again, the Appellant informed us that they did not receive such a notification. At the same instance, there is proof that such an e-mail has been delivered to the respective server.

This Board justifiably opines that the Appellants should investigate why such e-mails, which were confirmed to have been delivered, were not available at his end. In this regard, this Board does not uphold the Appellant's Contention.

In view of the above, this Board finds against Debono Storage Systems Ltd and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

25 April 2017