

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1071 – WSM 38/222//2017 – Tender for the Supply and Delivery of Compostable Bin Liners for the Collection of Organic Waste**

The Publication Date of the Call for Tenders was 28 June 2017.. The Estimated Value of the Tender, (Exclusive of VAT) was € 114,000.

On 13 July 2017, SR Environmental Solutions Ltd filed a Pre-Contractual Objection against the WasteServ Malta.

On 3 August 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 – SR Environmental Solutions Ltd**

Ing Raymond Muscat	Representative
Ms Sarah Muscat	Representative

#### **Contracting Authority – WasteServ Malta Ltd**

Mr Martin Casha	Representative
Mr Clyde Falzon	Representative
Dr Gavin Gulia	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Dr Gavin Gulia, the Legal Representative for WasteServ Malta submitted that his clients wanted to cancel the Tender.

Ms Sarah Muscat, representing SR Environmental Solutions Ltd, noted with satisfaction the latest development from the Contracting Authority. She then referred to the Reasoned Letter of Reply dated 21 July 2017 issued by the latter where they mentioned tests to certifications and she asked whether these parameters were of international standard.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked why the Tender was cancelled for which Dr Gavin Gulia, the Legal Representative for WasteServ Malta replied that given the fact that the Technical Parameters were fundamentally altered, his clients felt that it was wiser to cancel the Tender.

Mr Martin Casha, representing WasteServ Malta concluded by saying that on the basis of what was said in the Pre-Contractual Concern, they were going to do another study regarding the matter.

At this stage, the Public Hearing was adjourned to Tuesday 8 August 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.

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**This Board,**

**Having noted this Pre-Contractual Objection filed by SR Environmental Solutions Ltd (herein after referred to as the Appellant) on 13 July 2017, refers to the Contentions made by the latter with regards to the Tender of Reference WSM 388/222/2017 listed as Case No 1071 in the records of the Public Contracts Review Board, issued by WasteServ Malta (herein after referred to as the Contracting Authority).**

**Appearing for the Appellant: Ms Sarah Muscat**

**Appearing for the Contracting Authority: Dr Gavin Gulia**

**Whereby, the Appellant contends that:**

- a) **His main concern was that WasteServ Malta was insisting on the thickness of the Bin Liners whilst at the same time has ignored the requirements of international certificates confirming the resistance tests, the latter of which would indicate the best product being offered.**

**This Board also noted the Contracting Authority's "*Letter of Reply*" dated 21 July 2017 and its verbal submissions during the Public Hearing held on 3 August 2017, in that:**

- a) **WasteServ Malta confirmed, during the Public Hearing, that the Tender is being cancelled as the Technical Parameters will be changed.**

**This Board, after having considered the merits of this case, arrived at the following conclusions:**

**1. This Board notes that during the Hearing of this Appeal, WasteServ Malta had decided to cancel the Tender as the Technical Parameters were substantially altered.**

**To this effect, the Contracting Authority feels that it would be more prudent to cancel the Tender and issue a fresh one which would reflect the Pre-Contractual Concern raised by the Appellant.**

**In this regard, this Board upholds the Contracting Authority's decision to cancel the Tender whilst recommending that the deposit paid by SR Environmental Solutions Ltd is to be refunded.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Carmel Esposito  
Member

*8 August 2017*