

PUBLIC CONTRACTS REVIEW BOARD

Case 1187 – SNTLC 04/2018 –Tender for Resurfacing of Triq l-20 ta’ Lulju and Major Patching Works with Hot Rolled Asphalt at Triq ta’ Saguna at Sannat

Remedy before Closing Date of a Call for Competition

The publication date of the call for tenders was the 27th April 2018 whilst the closing date of the call for tenders was the 15th May 2018. The estimated value of the tender (exclusive of VAT) was € 38,292.52.

Road Construction Company Ltd filed an appeal on 12th May 2018 against the Sannat Local Council on the grounds that the Local Council cancelled a similar tender for which they had bid.

On 12th July 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Road Construction Co Ltd

Dr Carmelo Galea	Legal Representative
Mr Louis Grima	Representative

Contracting Authority – Sannat Local Council

Dr Larry Formosa	Legal Representative
Mr Jason Curmi	Executive Secretary

Since it has been agreed that this Case be heard in conjunction with the previous Case 1186 (SNTLC 01/2018) the submissions made in that Case also apply in this instance.

This Board,

Having noted this Call for Remedies filed by Road Construction Limited, (herein after referred to as the Appellants) prior to the Closing Date for Competition, on 14 May 2018 refers to the contentions made by the same Appellants with regards to the issue of Tender of Reference SNTLC 04/2018 listed as Case No 1187 in the records of the Public Contracts Review Board, issued by Kunsill Lokali Sannat.

Appearing for the Appellants: Dr Carmelo Galea

Appearing for the Contracting Authority: Dr Larry Formosa

Whereby, the Appellants contend that:

- a) The contents of the works to be carried out are identical to those specified in Tender of Reference SNTLC 01/2018 which was cancelled. Apart from the fact that the Appellants had objected to the cancellation of the Tender, they have serious doubts as to the procedure in issuing this similar Tender.**

This Board has also noted the Contracting Authority's "*Letter of Reply*" dated 21 May 2018 and its verbal submission during the Public Hearing which was held on 12 July 2018, in that:

- a) The Authority insists that the new Tender was issued to include all the proper documentation which was inadvertently missing in the previous Tender of SNTLC 01/2018. In this regard, the Local Council insist that it had adhered to the Public Procurement Regulations in all respects.**

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, opines that, the issue worth of consideration is the reason for the issue of a new Tender with similar specifications as those in the cancelled Tender of Reference SNTLC 01/2018.

This Board was made aware of the fact that the original Tender lacked important documentation with regards to works which had to be carried. As duly emphasized in the previous Appeal, the Local Council, on realising that the original Tender Document was not complete and proper, had two options; either to cancel the Tender or to issue clarifications to incorporate the missing documentation and in this particular case, the Local Council, quite within the parameters of the Public Procurement Regulations, decided to cancel the Tender and issue an amended New Tender.

The New Tender Document is complete to incorporate all the works that must be executed, so that the Local Council has followed the correct procedure to secure the services. In this regard, the Contracting Authority should ensure that the technical specifications so dictated must be clearly defined as to avoid any misunderstandings or misinterpretation by prospective Bidders.

In view of the above, this Board,

- a) Upholds Kunsill Lokali Sannat's action in publishing a New Tender;**

- b) Confirms that the Local Council has conformed, in all respects with the Public Procurement Regulations;**

- c) Orders that the Tendering Process is to be continued**

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Lawrence Ancilleri
Member

24th July 2018