

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1340 – CT 2028/2019 – Supply and Delivery to two Wasteserv Sites of One Tonne Rolls, 4mm Diameter, Pre-Greased Black Annealed Wire**

#### **Remedy before Closing Date of a Call for Competition**

The publication date of the call for tenders was the 31<sup>st</sup> May 2019 whilst the closing date was the 23rd July 2019.

On the 26<sup>th</sup> June 2019 Mr Russlan Cilia sought a Remedy against Wasteserv Malta as the Contracting Authority claiming that as drafted the tender made it impossible to obtain a Delivery Duty Paid (DPP) price.

On 13<sup>th</sup> August 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr. Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellant – Mr Russlan Cilia**

Not represented

#### **Contracting Authority – Wasteserv Malta**

Mr Martin Casha	Representative
Ms Branica Xuereb	Representative

#### **Department of Contracts**

Dr Franco Agius	Legal Representative
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Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and prior to inviting submissions noted that the Board had been informed that Appellant was indisposed. However the Board would still like to hear submissions regarding the validity of Appellant's claim.

Dr Franco Agius Legal Representative of the Department of Contracts said that the information which Appellant claims was impossible to obtain can be easily found through existing sources since rates of duties payable on importation of goods are a matter of law.

Mr Martin Casha Representative of Wastserv Malta said that Customs rates of duties payable are fully available through the internet. If in any doubt Appellant should build in a contingency in his bid price to cover any movement in rates. To be acceptable the quotation submitted has to be DPP.

The Chairman thanked the parties for their submissions and stated that the Board will base its decision on the written submissions. He then declared the hearing closed.

**This Board,**

**Having noted ‘Call for Remedy Prior to the Closing Date of a Call for Competition’ filed by Mr Russlan Cilia (herein after referred to as the Appellant) on 26 June 2019, refers to the claims made by the same Appellant with regard to the tender of reference CT 2028/2019 listed as case no 1340 in the records of the Public Contracts Review Board.**

**Appearing for the Appellant:**

**In absentia**

**Appearing for the Contracting authority**

**Mr Martin Casha**

**Appearing for the Department of Contracts: Dr Franco Agius**

**Whereby, the Appellant contend that:**

- a) His main concern refers to the fact that, the tender document requested that the financial offer must be calculated on the basis of delivered duty paid. In this respect, Appellant insists that, in order to be able to quote in**

**such a format, difficulties are being encountered to obtain the necessary information to estimate duty payable on the proposed offer.**

**This Board also noted the Contracting Authority's 'Letter of Reply' dated 8 July 2019 and its verbal submissions during the hearing held on 13 August 2019, in that:**

**a) The Authority maintains that, it is the responsibility of the prospective bidder to obtain and calculate the duty payable on his product and such information can be obtained from sources available.**

**1. This Board, after having examined the relevant documentation to this appeal, opines that, the issue mentioned in Appellant's 'Letter of Objection' does not fall within Regulation 262 of the Public Procurement Regulations in that,**

- Appellant did not mention any clause stipulated in the tender document which is discriminatory or ambiguous and at the same instance, did not even request to set aside any particular clause.**

- **In the opinion of this Board, Appellant is claiming that he is finding difficulties in obtaining the necessary information to enable him to calculate the duty payable on the product, he is proposing to offer.**

**2. This Board opines that such a grievance should not have been brought before this Board and the information being sought for by Appellant can be easily accessible through existing sources.**

**In view of the above, this Board rejects Appellant's objection.**

Dr Anthony Cassar  
Chairman  
*22 August 2019*

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member