

PUBLIC CONTRACTS REVIEW BOARD

Case 1421 – GLC-04-2019 – Tender for Paving Works of Village Core Street, Gudja

The tender was published on the 18th March 2019 and the closing date of the call for tenders was the 5th April 2019. The estimated value of the tender (exclusive of VAT) was € 406,800.

On the 16th January 2020 LBV Ltd filed an appeal against Gudja Local Council as the Contracting Authority objecting to the cancellation of the tender. A deposit of € 2410.22 was paid.

There was one (1) bidder.

On 13th February 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – LBV Ltd

Dr John Bonello	Legal Representative
Mr Justin Attard	Representative

Contracting Authority – Gudja Local Council

Dr Marco Woods	Legal Representative
Ms Lara Mascena	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr John Bonello Legal Representative for LBV Ltd confirmed that this appeal was based on the cancellation of the tender with no reason being given which made the cancellation invalid. This was a case where at least the deposit ought to be returned due to the tender cancellation. Re-evaluation should be ordered by the Public Contracts Review Board. Outline of the actions taken by Appellant prior to filing this appeal were recounted including reference to minutes of Council meetings which referred to other works besides those related to this particular case. Appellants claimed that the same works were entrusted to another contractor by Transport Malta.

Dr Marco Woods Legal Representative for Gudja Local Council said that there had not been any evaluation of the tender prior to the decision to cancel it and those works Appellants were referring to were different and not related to this tender.

The Chairman reminded the parties that the claim by Appellants was that the tender was not awarded and a direct order issued in lieu and this is the point that would be considered.

Mr Justin Attard (176886M) called as a witness by Appellants stated on oath that he was the owner of LBV Ltd. He stated that he saw street signs that underground work was under way in the street to which the tender referred (St Catherine's Street) and other side streets.

Dr Woods pointed out that road works were not the responsibility of the local councils but of Transport Malta and it was not in the competence of councils to issue contracts for such works.

Dr Bonello disagreed and said that village roads were not the responsibility of Infrastructure Malta but of local councils.

Dr Woods referred to Article 558 section 5 of the Laws of Malta which stated that works in any road could be undertaken by Infrastructure Malta and he tabled a press release (Doc 2) issued by the same Infrastructure Malta dated 18th February 2019 indicating a call for offers to undertake works which were akin to this cancelled tender.

The Chairman thanked the parties for their submission and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by LBV Ltd (hereinafter referred to as the Appellants) on 16 January 2020, refers to the claims made by the same Appellants with regard to the tender of reference GLC-04-2019 listed as case No. 1412 in the records of the Public Contracts Review Board.

Appearing for the Appellants:

Dr John Bonello

Appearing for the Contracting Authority: Dr Marco Woods

Whereby, the Appellants contend that:

- a) The tender was cancelled without giving any reasons. At the same instance, Appellants claim that the same works were given to another contractor by Transport Malta.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 23 January 2020 and its verbal submissions during the hearing held on 13 February 2020, in that:

- a) The Authority maintains that the cancellation was due to the fact that the offer exceeded the financial resources available. Moreover, the Authority insists that the works the Appellants are claiming to be the same as those specified in the tender, do not fall under the responsibility of the Authority but of Transport Malta.**

This same Board also noted the testimony of the witness namely:

Mr Justin Attard Director of LBV Ltd.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony

of the witness duly summoned, opines that, the issue that merits consideration is the cancellation of tender by the Authority.

- 1. First and foremost, this Board would respectfully point out that the Authority can cancel the tender for justified reasons, including the non-availability of financial resources and in this particular case, this Board can justifiably confirm that the offers submitted exceeded the financial budget for this project.**
- 2. With regard to Appellants' contention that the alleged same works were awarded to another contractor, this Board, after examining closely the documentation available can affirm that the alleged said works do not fall under the responsibility of the Contracting Authority involved in this appeal but pertain to Transport Malta, a totally different entity, not involved in this appeal.**
- 3. With regard to Appellants' claim that the village roads were the responsibility of the Local Council and not Transport Malta, this Board, after verifying the fact, would point out that, it is a fact that Transport Malta issued a call for offers for same works as those related in the tender**

document, however, such an instance does not involve the Contracting Authority in whatsoever manner.

- 4. This Board would also remind the Authority that the ‘Cancellation Letter’ sent to the bidders could have been better drafted to inform the bidders of the precise reasons as to why such a project could no longer be pursued. The Public Procurement Regulations clearly stipulate that the ‘Letter of Cancellation’ of a tender should contain specific reasons as to why the cancellation is taking place.**

In conclusion, this Board opines that,

- a) The Contracting Authority had a justified reason for the cancellation of the tender.**
- b) The alleged similar works carried out by another contractor do not involve the participation of the Contracting Authority in the award of such works.**

c) The letter informing Appellants of the cancellation of the tender does not denote the specific reasons for such a cancellation.

In view of the above, this Board,

- i. does not uphold Appellants' contentions,**
- ii. upholds the Contracting Authority's decision in the cancellation of the tender,**
- iii. in view of (c) above directs that the deposit paid by Appellants be refunded in full.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

20 February 2020