

PUBLIC CONTRACTS REVIEW BOARD

Case 1558 – SGN – SSCS 01/20 – Tender for Street Sweeping and Cleaning Services in the Locality of San Ġwann Using Environmentally Friendly Practices

6th May 2021

This Board,

Having noted the letter of objection filed by Dr Adrian Mallia on behalf of Galea Cleaning Solutions Joint Venture;

Having taken cognizance and evaluated all the evidence produced and all the documents in the case as well as the submissions made by the representatives of the parties,

Having considered the decision of this Board of the 20th July 2020 in case number 1458 and the Court of Appeal's decision delivered on the 6th October 2020 in the case Rikors Nru 265/20;

Having noted and evaluated the minutes of the Board's virtual sitting of the 30th March 2021 hereunder reproduced;

Minutes

The tender was published on the 6th February 2020 and the closing date was the 4th March 2020. The value of the tender was € 400,000 (excluding VAT).

On the 15th February 2021 Galea Cleaning Solutions JV filed an appeal against the San Gwann Local Council as the Contracting Authority objecting to their disqualification on the grounds that the Contracting Authority illegally disclosed confidential information.

A deposit of € 2,000 was paid.

There were six (6) bidders.

On 30th March 2021 the Public Contracts Review Board (PCRB) composed of Dr Charles Cassar as Chairman, Mr Carmel Esposito and Mr Richard Matrenza as members convened a public virtual hearing to discuss the objections.

for the Board to direct that the tender be cancelled. It was also to be noted that the Local Authority had failed to reply to the letter of objection.

Dr Ramona Attard Legal Representative for the San Gwann Local Council said that the Court of Appeal had dealt with the whole spectrum and decided which points it felt it wished to deal with. The whole process was dictated by the Court decision.

Dr Mallia invited the Board to examine all the documents submitted by him to confirm his contention that the matter of disclosure of confidential documents had not been dealt with.

Dr Cassar thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board noted that the present objection raised by the appellant, asking for the cancellation of the tender was filed on the 15th February 2021. The reason for this cancellation being the fact that the evaluation report had been distributed to all participants after the award had been made.

The Board does not think that any action taken by a contracting authority after the tender has been awarded can be the cause for the tendering process being cancelled. In the present case the tender process had been concluded and it was only later that the evaluation report had been distributed. The present appellant had been the preferred bidder at the time. The Board in its decision of the 20th July had gone into the matter and did not consider that it merited cancellation but still issued a warning to the Contracting Authority not to do so again.

The Board feels that if the present appellant was convinced of the fact that distribution of the evaluation report merited cancellation, then surely he would have appealed from this Board's decision of the 20th July 2020. Instead another bidder had appealed from the decision on another matter. The Court of Appeal had in a decision given on the 6th October 2020 decided that the present appellant (then the preferred bidder) should be disqualified.

Appellant has pointed out Articles 14.1 and 14.2 of the General Rules Governing Tenders as a basis for requesting cancellation of the tender. The Board has examined in detail these articles that state:

“14. Secrecy of the Procedure

*14.1 After the opening of the tenders, no information about the examination, clarification, evaluation or comparison of tenders or decisions about the contract award may be disclosed **before the notification of award.***

*14.2 Information concerning checking, explanation, opinions and comparison of tenders and recommendations concerning the award of contract, may not be disclosed to tenderers or any other person not officially involved in the process unless otherwise permitted or required by law. **Any attempt by a tenderer to approach any member of the Evaluation Committee, or of the Central Government Authority/Ministerial Procurement Unit/Contracting Authority directly during the evaluation period will be considered legitimate grounds for disqualifying his tender.**”*

This Board does not agree with appellant that these articles state that there should be cancellation whenever the evaluation report is published in toto to all bidders. They state that no comparisons of information may be disclosed before the notification of award and that if any bidder attempts to approach members of the evaluation board or the contracting authority during the evaluation process then this may lead to his disqualification.

The Board considers that the appellant cannot demand the cancellation of the tender now and decides by rejecting appellant’s request. The deposit paid should be forfeited.

Charles Cassar

Richard Matrenza

Carmel Esposito

Chairman

Member

Member