

PUBLIC CONTRACTS REVIEW BOARD

Case 1564 – Application for Ineffectiveness – Design, Supply, Installation and Maintenance of Bus Shelters in Malta and Gozo and Maintenance of Existing Bus Shelter Canopies.

2nd June 2021

The Board,

Having noted that on 2nd March 2001, Faces Consultants Limited (the “Concessionaire”) and the Local Councils Association, entered into a concession agreement pursuant to which, *inter alia*, the Concessionaire was granted the right to use the bus shelters for the purposes of advertising, whilst binding itself to install, maintain, repair, replace and operate such bus shelters at its own expense. Furthermore, on 11th June 2018, the Concessionaire and the Local Councils Association, entered into an addendum of agreement.

Having noted the application for ineffectiveness filed by Dr Steve Decesare on behalf of Camilleri Preziosi Advocates acting for an on behalf of 356 Holdings Ltd, (hereinafter referred to as the appellant) on the 1st October 2019;

Having also noted the reasoned reply filed by Dr Massimo Vella on behalf of Vella Zammit Mckean Advocates acting for an on behalf of Faces Consultants Limited filed on the 16th October 2019;

Having also noted the reasoned reply filed by Dr Marco Woods acting for an on behalf of Association of Local Councils and 58 Local Councils filed on the 21st October 2019;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties during the virtual hearings of the 15th April 2021 and 20th May 2021;

Having noted and evaluated the minutes of the Board sittings of the 15th April 2021 and 20th May 2021 hereunder-reproduced;

Minutes

Case 1564 – Application for Ineffectiveness – Design, Supply, Installation and Maintenance of Bus Shelters in Malta and Gozo and Maintenance of Existing Bus Shelter Canopies.

The application was filed by 356 Holdings Ltd on the 1st October 2019 against the Association of Local Councils, 59 Local Councils as listed in the application and Faces Consultants Ltd seeking a remedy in accordance with Regulation 113 of the Concession Contracts Regulations that the Concession Agreement is ineffective.

On 15th April 2021 the Public Contracts Review Board (PCRB) composed of Dr Ian Spiteri Bailey as Chairman, Dr Charles Cassar and Mr Richard Matrenza as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – 356 Holdings Ltd

Dr Steve Decesare	Legal Representative
Dr Marisa Vella	Legal Representative
Mr Adrian Sillato	Representative

Contracting Authority – Association of Local Councils

Dr Marco Woods	Legal Representative
Mr Mario Fava	Representative
Ms Lianne Cassar	Representative

Preferred Bidder – Faces Consultancy Ltd

Dr Massimo Vella	Legal Representative
Mr Matthew Farrugia	Representative

Dr Ian Spiteri Bailey Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations (LN 174.04).

Dr Massimo Vella Legal Representative for Faces Consultancy Ltd stated that the Court Case (Ref 1018/119) on this matter is progressing well and asked the Board if it would consider holding a decision on this application until the Court decides on it.

Dr Marco Woods Legal Representative for the Association of Local Councils concurred with the above request and hoped that the Board would meet with it.

Dr Steve Decesare Legal Representative for 356 Holdings Ltd was not in favour of this request. Although one is dealing with the same contract there are two different actions. The Court Case was far from being concluded and the action on the application might likely be sought under different remedies.

After consulting with the members the Chairman stated that the Board is cognisant that there is an outstanding Court case – however it would still hear the appeal which is deferred to the 4th May 2021 at 12.00 noon.

Dr Decesare requested that he is given time to submit a note by the 21st April 2021 regarding the request for conclusion of the other proceedings.

The Chairman acceded to this request and directed that the other parties had till the 28th April 2021 to reply.

End of Minutes

SECOND HEARING

On the 20th May 2021 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Richard Matrenza as members convened a second public virtual hearing to discuss the Case further.

The attendance for this public hearing was as follows:

Appellant – 356 Holdings Ltd

Dr Steve Decesare	Legal Representative
Mr Adrian Sillato	Representative

Contracting Authority – Association of Local Councils

Dr Marco Woods	Legal Representative
Mr Mario Fava	Representative
Ms Lianne Cassar	Representative

Preferred Bidder – Faces Consultancy Ltd

Dr Massimo Vella	Legal Representative
Mr Matthew Farrugia	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He introduced himself and went on to explain that this second hearing was necessary due to a change of Chairman since the first hearing. He requested the parties to confirm the submissions made at the first hearing to enable the Board to come to a decision in this Case.

All the parties signified their agreement to this procedure and confirmed the submissions made at the first hearing.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 15th April 2021 and 20th May 2021.

Having noted the objection filed by 356 Holdings Ltd (hereinafter referred to as the Appellant) on 1st October 2019, refers to the claims made by the same Appellant with regards to the concession agreement listed as case No. 1564 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Steve Decesare
Appearing for the Contracting Authority: Dr Marco Woods
Appearing for the Concessionaire: Dr Massimo Vella

Whereby, the Concessionaire is requesting the Board for a ‘soprasessjoni’ of procedures due to the Court Case instituted by the Appellant in front of the First Hall Civil Court (Ref 1018/119) due to the risk of having conflicting decrees.

This Board, after hearing submissions made by all the interested parties, opines that the issue that merits immediate and only consideration, up to this point, is the application by Dr Massimo Vella Legal representative for Faces Consultants Ltd which is requesting for the ‘soprasessjoni’ of procedures due until the Court (Case Ref 1018/119) gives its decree on the matter. Dr Marco Woods representative of the Association of Local Councils concurs to such request.

In this regard the Board notes that the Court has already held its first sittings and is to issue its preliminary decrees, one of which is that on the appeal filed with this same Board. Therefore, the Court will be deliberating and giving its decree on whether it has jurisdiction over this case / appeal or whether this Board has jurisdiction due to the fact that the Appeal has been filed first before the PCRB and hence denying the application made on 25th October 2019.

In conclusion this Board opines that;

Having evaluated the above considerations, concludes and decides:

- a) To uphold the request for ‘soprasessjoni’ of procedures and therefore suspends Board hearings until the First Hall Civil Court provides its decree on jurisdiction of the case.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Mr Richard Matrenza
Member