

Vella Carmen at MFE

From: Joshua Grech <joshua@joshuagrech.com>
Sent: Monday, 25 October 2021 09:05
To: Info PCRB at MFE
Cc: Richard Paul Cauchi
Subject: Re: Appell PCRB - Richard Cauchi vs Kunsill Lokali Ta' Sannat
Attachments: Scan Appell PCRB - Richard Cauchi vs Kunsill Lokali Ta' Sannat.pdf; Scan Ittra Objection Cancellation Award - Richard Cauchi - Kunsill Lokali Sannat 08.10.2021.pdf; Scan Proof of Payment Objection PCRB - Richard Attard - Ta' Sannat Local Council.pdf

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Dear Secretary,

Please find attached Objection Letter relative to Tender SNTLC/06/2021 together with proof of payment.

Kindly acknowledge receipt of this email.

Best regards,

Joshua

DR. JOSHUA GRECH
B.A., LL.D., Adv. Trib. Eccl. Melit, M. Juris

94, Triq San Girgor,
Kerċem, Ghawdex

Tel.: 2155464
Mob.: 99246047

The Secretary,
Public Contracts Review Board,
Notre Dame Ditch,
Floriana,
Malta



Monday, 25th October, 2021

LETTER OF OBJECTION OF RICHARD CAUCHI

Re: SNTLC/06/2021 - Works - Tender for the repaving and embellishment of Pjazza Santa Margerita, Ta' Sannat

Dear Sir,

By virtue of this Letter of Objection, Richard Cauchi of 'Blue Waters', Triq ir-Ramla, Nadur, Gozo, holder of Identity Card Number 397092(M) bearing Tender I.D. 156860, makes reference to the above mentioned call for tenders and is hereby submitting a formal objection in relation to the same tender.

Facts of the Case

- The Sannat Local Council issued a Call for Tenders for a Works Tender for the repaving and embellishment of Pjazza Santa Margerita, Ta' Sannat, Gozo.
- That the date of publication of the tender was on the 18th May, 2021 and closing date was on the 18th June, 2021.
- Upon closure of the tendering process, five (5) tenderers submitted their tender, GTG Joint Venture, PRA Construction Limited, the objector, Eson, and Simon Grech, with the objector being the cheapest offerer.
- Following, the evaluation board requested a total of four (4) clarifications from the tenderer dated 7th July, 2021, 29th July, 2021, 6th August, 2021, and 23rd August, 2021 all of which had been duly complied with during the required established time-frames.
- On the 16th September, 2021, the objector had been notified by Ta' Sannat Local Council that:

"The procurement was recommended for award to Richard Cauchi - 000156860 for the amount of €2,178,895.20 excluding VAT this being the cheapest priced offer satisfying the administrative and technical criteria."

- The period of appeal being 10 calendar days from receipt of the mentioned letter through EPPS had elapsed, and no appeals had been filed and therefore, the decision of the contracting authority - Ta' Sannat Local Council - was deemed to be final.
- Immediately following the lapse of the appeal period, the tenderer accepted the award via the online platform and submitted the relative VAT and IRD compliance certificates from the Commissioner for Inland Revenue including for the sub-contractors.
- By virtue of a letter dated 5th October, 2021, the appellant was notified that:

"It is being advised that the Award of this tender is being cancelled. A fresh notification shall be issued in due course."

to which communication, the tenderer objected formally to such notification by virtue of a letter dated the 8th October, 2021, a copy of which is being attached to this objection marked Document 'A';

- Finally, by virtue of a letter dated 16th October, 2021, a cancellation notice was notified to the appellant, informing him that:

"the procurement process for the tender in caption is being cancelled. A fresh call shall be issued in due course."

The tender is being cancelled namely for the following reason:

The economic or technical parameters of the project have been fundamentally altered."

- The objector felt aggrieved by the mentioned decision of the Contracting Authority and therefore is availing himself of the right granting to him in terms of Law and is filing an objection regarding the aforementioned decision within the established time-frame and together with the required deposited of fourteen thousand and five hundred Euro (€14,500) as per Document 'B';

The Objection

That the only reason mentioned in the reason for cancellation of the tender was that the economic or technical parameters of the project have been fundamentally altered. The decision is legally incorrect. Contracting Authority is based itself upon a reason that the criteria of the project have been altered.

With all due respect, the economic and technical parameters were established before the issue of the tender with full details having been specified in the most ample and accurate manner in the tender document. The appellant has offered and based his tender based on these specifications and which were duly accepted by the evaluation committee, hence the issue of the award.

Therefore the evaluation committee is bound by these regulations and cannot act outside these terms. Furthermore, it is not possible for the Contracting Authority to cancel the award of the tender, given that upon the point that the Contracting Authority duly notified the appellant of its decision to award the tender to the appellant and the appellant duly accepting the award, this communication and acceptance constituted an agreement, a contract and thus a binding relationship between the appellant and the Contracting Authority.

Based on this principle alone, the Contracting Authority is bound by its decision which was duly consolidated at the point when the same Contracting Authority communicated its decision to the appellant and confirming that the same appellant has been confirmed as the successful candidate.

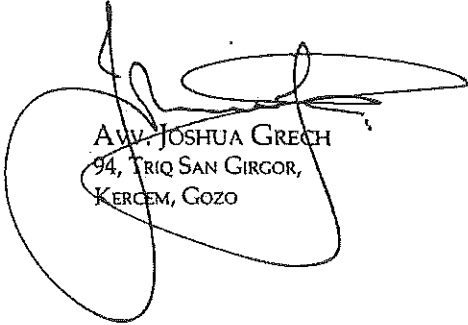
Without prejudice to the above, the mentioned reason for the cancellation of the award has been taken abusively and without any legal basis. The Contracting Authority whilst mentioning the alteration of economic or technical parameters stops short from indicating on the basis of which rule or regulation the mentioned decision is being taken. It should be pointed out that the General Rules of the Tender together with the same tender document, does not mention any possibility whatsoever for the cancellation of the award;

That similarly, the Public Procurement Regulations do not allow for the possibility that an award of a tender may be cancelled or altered. In fact, this runs in line with the principle of contract and quasi-contract which were alluded to above. Upon the Contracting Authority communicating to the appellant its decision to award the tender to the appellant, it has entered into a binding relationship with the same appellant and thus was bound by it.

This point is further stressed by the same Public Procurement Regulations (S.L. 601.03) in terms of Article 241 whereby the particular rules and dispositions regulating the communication and the contents which should be contained in such documentation is clearly listed down. These rules have been clearly respected and duly communicated to the appellant. The fact that the communication of the award had been effected, leave no other possible alternative but to consider that the award to the appellant has been duly made and thus duly effective and binding on both parties.

The appellant furthermore makes reference to Case No. 942 - CT 3238/2014. In this case a clear distinction is made between the cancellation at evaluation stage and the cancellation after Publication of Award - the cancellation after the Publication of the Award rests with the Department of Contracts and not with the Contracting Authority.

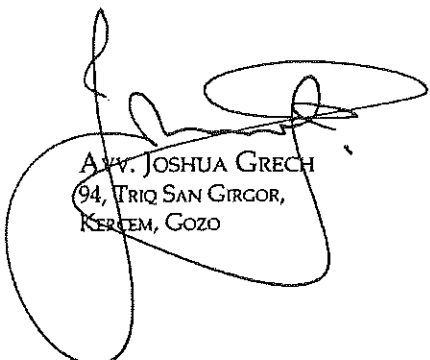
In view of the above, and for any further reasons which may be brought forward during the hearing of this appeal, whilst reserving the right to make further submissions and present further evidence, the appellant humbly requests that this Honorable Board revokes the decision of the Contracting Authority of the 16th October, 2021 whereby the tender has been cancelled and consequently award the tender to the objector Richard Cauchi, whilst giving any such orders and directives as may be necessary in relation to the procurement process relative to the tender in question.



A.W. JOSHUA GRECH
94, TRIQ SAN GIRGOR,
KERCEN, GOZO

List of Witnesses

1. All members of the Evaluation Committee (to Testify on this Call for Tenders procedure during all stages, including but not limited to the pre-drafting stage, drafting stage, pre-publication of the Tenders stage, and adjudication stage);
2. The objector;
3. Representative of the Malta Business Registry
4. Representatives of the Department of Contracts;
5. Other witnesses which the appellant is not aware of, therefore they are being reserved; and
6. Other witnesses permissible by Law are being reserved.



A.W. JOSHUA GRECH
94, TRIQ SAN GIORG, KERCEN, GOZO

DR. JOSHUA GRECH

B.A., LL.D., Adv. Trib. Eccl. Melit., M.Juris

Is-Segretarju Ezekuttiv,
Kunsill Lokali Ta' Sannat,
Triq Sannat,
Ta' Sannat,
Ghawdex

Il-Gimgha, 8 t'Ottubru, 2021

Re: Works - Tender for the repaving and embellishment of Pjazza Santa Margherita, Ta' Sannat - SNTLC 06/2021

Ninsab dirett nikteb ghan-nom ta' Richard Cauchi ta' 'Blue Waters', Triq ir-Ramla, Nadur, Ghawdex, detentur tal-Karta ta' l-Identita' Numru 397092(M) b'referenza ghall-process tat-Tender imsemmi hawn fuq, u in segwitu ghall-ittra tal-Kunsill Lokali Sannat datata 5 ta' Ottubru, 2021.

Illi permezz tal-imsemmija ittra, il-Kunsill Lokali informa lill-mittenti illi l-Award qieghed jigi kancellat u ser tinhareg notifikazzjoni gdida.

Illi l-mittenti permezz tal-prezenti qieghed formalment jinfurmakom illi huwa mhux qieghed jaqbel mal-kontenut ta' din l-ittra u dan ghas-segwenti ragunijiet:

1. Illi l-process tat-tender kien gie finalizzat mill-Bord tal-Evalwazzjoni;
2. Illi z-zmien tal-appell kien lahaq ghadda;
3. Illi l-mittenti gie notifikat bl-Award tat-tender;
4. Illi l-mittenti accetta l-istess Award tat-tender.

Illi ghalhekk ma kien hemm l-ebda raguni l-ghalfejn dan l-Award tat-tender lill-mittenti jigi kancellat.

Ghalhekk, il-mittenti qieghed formalment jinfurmakom li huwa mhux qieghed jaqbel mal-kontenut tal-ittra filwaqt li minn issa jzommkom responsabbli ta' kwalunkwe danni u telf ta' qliegh li jista' jissubbixxi minhabba d-decizjoni mehuda.

Daqstant sabiex tgharfu tidderiegu rwiehkomm ahjar u teviatw spejjez ulterjuri bla bzon.

Bl-ispejjez.


Avy Joshua Grech

BOV

Bank of Valletta

Bank of Valletta p.l.c

Registration Number: C 28333

Registered Office: 55 Zachary Street, Valletta VLT 1130 - Malta

Pay third party

Printed by: Mrs. Miriam Cauchi

Printed on: 25/10/2021 - 08:17

Document ID: 10139798

Transaction details

Beneficiary name:	CASHER MALTA GOVERNMENT
Relation:	Administrative Services
Reason:	Other
Payment details:	OBJECTION ON TENDER REF NO SNTLC 05/2021 TENDER RE P.JAZZA SANNAZ
Currency:	EUR - Euro
Beneficiary account:	MT55MALT011000040001EURCMG5001H
Beneficiary account type:	Valid IBAN of country - Malta
Bank name:	Other bank
Bank address / Bank's BIC:	Insert the beneficiary bank BIC manually
Bank's BIC:	MALMTMT
Beneficiary address:	Yes
Address line 1:	CENTRAL BANK OF MALTA
Address line 2:	CASTLE PLACE
City:	VALLETTA
Postcode:	VLT 1060
Country:	Malta
From account:	business CC (EUR) 4001759078 3
Charges should be paid by:	Shared - I pay BOV charges; CASHER MALTA GOVERNMENT pays the beneficiary bank charges
Amount:	EUR 14,500.00
BOV to transfer the money:	as soon as possible
Receiving bank to get the money as:	same-day priority payment
Saved template:	no

Summary

Credit amount:	EUR 14,500.00
Debited amount (excluding charges):	EUR 14,500.00
Estimated amount to be withdrawn from account:	EUR 14,500.00

Transaction status

Status:	Your instructions have been processed successfully.
Transaction ID:	105368998