PUBLIC CONTRACTS REVIEW BOARD

Case 1514— SPB-T 02/2020 — Tender for the provision of non-Urban Grass Cutting using Low Emission Vehicles and Environmentally Friendly Equipment for St Paul's Bay Local Council.

This hearing was called to consider only the letter of reply dated 12th November 2020 submitted by Dr Jonathan Mintoff acting for Mr Alistair Bezzina and submitted under Regulation 276(c) of the Public Procurement Regulations.

On 20th November 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 virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Galea Cleaning Solutions Ltd

Dr Adrian Mallia Legal Representative

Contracting Authority – St Paul's Bay Local Council

Dr David Bonello Legal Representative
Ms Mariella Strout Representative

Interested Party – Mr Alistair Bezzina

Jonathan Mintoff

Legal Representative

Dr Anthony Cassar 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. He then stated that the point of this hearing was for the Board to discuss the letter from Dr Mintoff on behalf of his client Mr Alistair Bezzina and decide thereon.

Dr Jonathan Mintoff Legal Representative for Mr Alistair Bezzina said that Article 276 (c) of the Public Procurement Regulations allowed the right of reply to bidder. His client was not objecting to the decision but indicating his interest in the outcome and was relying on the objection by Galea Cleaning Solutions Ltd not adding to it.

Dr Adrian Mallia Legal Representative for Galea Cleaning Solutions Ltd said that there is a point of law here which has never been visited and it was necessary to have a decision on it. An objector has to pay a deposit to file an objection whilst another party can claim to have an interest in the outcome of the appeal. Should they not also have to pay a deposit? If a party does not use their right of appeal are they entitled to claim that they are still an interested party? Appellants do not wish to exclude any party, in fact they welcome the additional support, but the situation needs to be clarified.

The Chairman said that the Board intends to tackle this situation and follow the Public Procurement Regulations for future reference.

Dr David Bonello Legal Representative for St Paul's Bay Local Council asked if it was right that a party that failed to appeal within the statutory time limit can then ride on the back of someone else's appeal?

Dr Mintoff said that the Courts allowed appeals riding on other appeals. He referred to EJC Case 131/16 which dealt with the equal treatment of parties and there were several decided cases where after reevaluation had been ordered the decision on the award had been changed.

The Chairman thanked the parties for their submissions and declared the meeting closed.

End of Minutes

Decision

This Board,

having noted this 'Letter of Reply' filed by Mr Alistair Bezzina (hereinafter referred to as the Interested Party) on 12th November 2020, refers to the claims made by the same 'Interested Party' with regard to the tender of reference listed as case No.1514 in the records of the Public Contracts Review Board recommended for award by St Paul's Bay Local Council (hereinafter referred to as the Contracting Authority).

Appearing for the 'Interested Party': Dr Jonathan Mintoff

Appearing for the Contracting Authority: Dr David Bonello

Appearing for Galea Cleaning Solution (Appellants): Dr Adrian Mallia

This Board, after having noted the communication dated 12th November 2020, sent by Mr Alistair Bezzina an unsuccessful bidder in tender of reference SPB T/02/2020 and heard submissions made by Mr Alistair Bezzina, St Paul's Bay

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Local Council (The Contacting Authority) and Galea Cleaning Solutions JV (Appellants) opines the following:

- 1. This Board examined closely the 'Letter of Reply' sent by Mr Alistair Bezzina and notes that, contained therein, are requests for the cancellation of the award of the tender, the re-evaluation of the offers and the alleged claim that, the successful offer is an abnormally-low offer.
- 2. In this regard, this Board would respectfully point out that such requests do not represent a 'Letter of Reply' to the 'Letter of Objection' filed by Galea Cleaning Solutions JV (Appellants), but such communication constitutes additional requests to those stated in Appellants' objection.

In view of the above, this Board,

- i. justifiably establishes that, the communication dated 12th November 2020 sent by Mr Alistair Bezzina constitutes, in its entirety an objection to the decision of the Contracting Authority in the award of tender SPB T/02/2020,
- ii. justifiably establishes that, the communication dated 12th November 2020, filed by Mr Alistair Bezzina does not represent a 'Letter of Reply' which conforms with Article 276 (c) of the Public Procurement Regulations,
- iii. Mr Alistair Bezzina should have filed a 'Letter of Objection' highlighting his concerns, accompanied by the appropriate fee within the prescribed period,

iv. considers that such a communication sent by Mr Alistair Bezzina, under the umbrella of a 'Letter of Reply', as frivolous and vexatious, so that this Board rejects, in its entirety such a communication and will not consider it further.

Dr Anthony Cassar Chairman 25th November 2020 Mr Lawrence Ancilleri Member Mr Carmel Esposito Member