

PUBLIC CONTRACTS REVIEW BOARD

Case No. 955 – WSM 143/2015: Tender for the Supply and Delivery of Compostable Bin Liners for the Collection of Organic (Kitchen) Waste.

The Tender was published on the 30th June 2015. The closing date was on the 21st July 2015. The estimated value of the Tender is €75,000 (Exclusive of VAT).

Six (6) bidders had made offers for this Tender.

On the 10th May 2016 Green Skip Services Limited filed an Objection against the decision of the Contracting Authority to cancel the Tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 12th July 2016 to discuss the Objection.

Present for the hearing were:

Green Skip Services Limited:

Ms Mary Gaerty

Representative

WasteServ Malta:

Ms Suzanne Cassar Dimech

Chairperson Evaluation Board

Mr Clyde Falzon

Member Evaluation Board

Dr Victor Scerri

Legal Representative

The Chairman made a brief introduction and invited the Appellant's representative to make her submissions.

Ms Mary Gaerty on behalf of Green Skip Services Ltd first made certain remarks about a previous case decided by this Board. She continued that a number of Tenders are being cancelled and this is not fair on the bidders who spent time and money on making offers. Furthermore Ms Gaerty contended that the Contracting Authority failed to give clear reasons for the cancellation. As the cheapest bidder, the Appellant had a right to be told the real reasons for the cancellation of the Tender.

Dr Victor Scerri on behalf of WasteServ Malta submitted that they had every right to cancel the Tender according to clause 33.3 (b) that stated that any Tender may be cancelled. He also quoted article 19 of the same Tender and said the validity period had passed without any party pointing this out or complaining. The Tender was for a joint project being held with the Environment Ministry, and this project had addressed both households as well as commercial entities. However at a certain point the Contracting Authority was directed to concentrate on the household aspects and ignore the commercial aspect. Since the present Tender was intended to cover the commercial entities part, it perforce had to be stopped. Thus it was cancelled.

Ms Mary Gaerty for the Appellant contended that in January and February, the Appellant had made enquiries about this Tender and was informed that it was still under adjudication. She alleged that the present Tender was cancelled as soon as the Appellant filed an Objection on the other Tender awarded.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 10 May 2016 and also through their verbal submissions during the Public Hearing held on 12 July 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) Green Skip Services Ltd contends that the excessive delays in deliberations of the Award of Tenders is causing hardship on**

prospective Bidders in so far as time consumption and costs in preparing the offer and awaiting for the outcome.

In this regard, the Appellants are maintaining that the Notice of Cancellation was submitted by the Contracting Authority 9 months after the issue of the Tender without giving clear reasons as to the cancellation.

Having considered the Contracting Authority's "*Letter of Reply*" dated 31 May 2016 and also their verbal submissions during the Public Hearing held on 12 July 2016, in that:

- a) WasteServ Malta is maintaining that it had every right to cancel the Tender and this was done in accordance with clause 33.3 (b) of the Tender Document. In this regard, the Contracting Authority contends that this Tender consisted of a pilot project and circumstances have changed, hence the objective of the Tender was no longer required.**

Reached the following conclusions:

- 1. With regards to the Appellant's First Grievance relating to the**

excessive delay in the processing of the Evaluation of the Tender and after having examined the relative documentation and heard the credible submissions made by the Contracting Authority, this Board credibly notes that since this was a pilot project, some delay should have been expected.

However, the time taken for adjudication of this particular Tender is far from reasonable. The Contracting Authority, in such similar case, should inform the Bidders if an unreasonable delay is to be expected and not inform the same Bidders through a letter which states the Tender's Cancellation. In this regard, this Board upholds the Appellant's Contention on this particular issue.

- 2. With regards to the Appellant's Grievance that the Contracting Authority submitted the Notice of Cancellation without giving specific reasons; this Board after having examined this same Notice, opines that perhaps a more specific explanation why the Tender had to be cancelled should have been amplified more than that stated in the Notice of Cancellation dated 3 May 2016. In this regard, this Board upholds the Appellant's Grievance on this issue.**

However, this Board also points out that the Contracting Authority

had every right to cancel the Tender as per Clause 33.3 (b) of the Tender Document. As it was clarified during the Public Hearing, the Contracting Authority had no other option but to cancel the Tender due to the fact that the Economic and Technical Parameters of the Project had been fundamentally changed.

In view of the above, this Board would like to justifiably contend that despite the long delay from the Evaluation Board to cancel the Tender, WasteServ Malta had every right to take the letter decision although at a late stage.

On the other hand, the Board acknowledges the fact that Green Skip Services Ltd had incurred expenses and time in the preparation of documentation to learn nine months after their offer's submission that the Tender was going to be cancelled.

In this regard, this Board recommends that the deposit paid by the Appellant Company is to be fully reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

15 July 2016