

PUBLIC CONTRACTS REVIEW BOARD

Case 1839 – LCS22/22 – Services – Collection of Bulky Refuse for the Locality of Siggiewi in an Environmentally Friendly Manner

20th January 2023

The Board,

Having noted the letter of objection filed by Mr Twanny Barun on behalf of Malta Recycle and Waste Collection Ltd, (hereinafter referred to as the appellant) filed on the 16th December 2022;

Having also noted the letter of reply filed by Dr Richard Sladden acting for the Siggiewi Local Council (hereinafter referred to as the Contracting Authority) filed on the 26th December 2022;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 19th January 2023 hereunder-reproduced.

Minutes

Case 1839 - LCS 22/22 – Services – Collection of Bulky Refuse for the Locality of Siggiewi in an Environmentally Friendly Manner

The tender was issued on the 13th April 2022 and the closing date was the 10th May 2022. The estimated value of the tender excluding VAT, was € 141,750.

On the 16th December 2022 Malta Recycle and Waste Collection Ltd filed an appeal against the Siggiewi Local Council as the Contracting Authority objecting to their disqualification on the grounds that their offer was deemed not to be the cheapest compliant offer.

A deposit of € 708.75 was paid.

There were three (3) bids.

On the 19th January 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Ms Stephanie Scicluna Laiviera and Dr Vincent Micallef as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Malta Recycle and Waste Collection Ltd

Dr Sarah Pirotta Chircop Beck
Mr Twanny Barun

Legal Representative
Representative

Contracting Authority – Siggiewi Local Council

Dr Richard Sladden
Mr Julian Borg
Ms Ritiene Giorgio
Ms Francine Farrugia

Legal Representative
Evaluator
Representative
Representative

Preferred Bidder – Dimbros

Dr Franco Galea
Mr Melchior Dimech

Legal Representative
Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and directed that the preliminary plea raised by the Contracting Authority be dealt with first.

Dr Richard Sladden Legal Representative for the Siggiewi Local Council stated that this appeal was *fouri termine* as it had not be filed within the statutory time period and should therefore not be heard.

Dr Sarah Pirotta Chircop Beck Legal Representative for the Appellant said that the statutory period was ten days which started to run on the 6th December; the appeal letter was filed on the 16th and was therefore timeous.

Dr Franco Galea Legal Representative for Dimbros Ltd allied his submissions with those of Dr Sladden.

After a short recess to consider the points raised the Chairman stated that the Board refers to Regulation 271 of the PPR which stated that the objection shall be filed within ten calendar days (Regulation read out in full). It is clear that this regulation is more restrictive than the procedures adopted in other types of appeals. At this stage the Board understands that once the notification of disqualification was sent to the Appellant on the 5th December time started running from that date and time. The Board directs that this appeal is proscribed in terms of Regulation 271.

The Chairman thanked the parties and declared the hearing concluded.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 19th January 2023.

Having noted the objection filed by Mr Twanny Barun on behalf of Malta Recycle and Waste Collection Ltd (hereinafter referred to as the Appellant) on 16th December 2022, refers to the claims made by the same Appellant with regard to the tender of reference LCS22/22 listed as case No. 1839 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Dr Sarah Pirotta Chircop Beck

Appearing for the Contracting Authority: Dr Richard Sladden

Whereby, the Contracting Authority's preliminary plea is based on the following:

- a) Preliminary, the nullity of the letter of objection of Mr. Twanny Barun as this was filed after the 10 day period. As a matter of fact, the award notification was sent through the e-tenders system on the 5th of December, 2022 and the appeal of Mr. Barun was registered on the 16th of December, 2022;

This Board, after hearing submissions made by the Contracting Authority's and Appellant's legal representatives makes reference to regulation 271 of the Public Procurement Regulations ("PPR") which states "*The objection **shall** be filed within **ten calendar days** following the date on which the contracting authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period.*" (bold & underline emphasis added). It is clear that this regulation is more restrictive than the procedures adopted in other types of appeals. Therefore, when considering that the notification of disqualification was sent to the Appellant on the 5th December, time started running from that date and time. Consequently, it is clear that the appeal had to be filed by the 15th December.

In conclusion, this Board agreed with the arguments as brought forward by the Contracting Authority in that this appeal is to be deemed filed *fuori termine*.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) To uphold the Contracting Authority's Preliminary Plea and declares the appeal to have been filed *fuori termine*,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Ms Stephanie Scicluna Laiviera
Member