

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1877 – SPB/T/03/2022 – Services – Collection of Bulky Refuse and WEEE using Low Emission Vehicle from the Locality of San Pawl il-Bahar**

**5<sup>th</sup> June 2023**

The tender was issued on the 5<sup>th</sup> January 2023 and the closing date was the 6<sup>th</sup> February 2023. The estimated value of the tender, excluding VAT, was € 120,000.

On the 10<sup>th</sup> March 2023 Mr Melchiore Dimech filed an appeal against the San Pawl il-Bahar Local Council as the Contracting Authority on the grounds that the decision of the Contracting Authority is null and void.

A deposit of € 600 was paid.

There were six (6) bids.

On the 1<sup>st</sup> June 2023 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### **Appellant – Mr Melchiore Dimech**

Dr Franco Galea	Legal Representative
Mr Melchiore Dimech	Representative

#### **Contracting Authority – San Pawl il-Bahar Local Council**

Dr David Bonello	Legal Representative
Mr Adrian Mifsud	Chairperson Evaluation Committee
Mr Marico Sammut	Secretary Evaluation Committee

#### **Preferred bidder – Malta Recycle and Waste Collection Ltd**

Dr Philip Magri	Legal Representative
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Dr Charles Cassar Acting Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Franco Galea Legal Representative for Mr Melchiore Dimech said that although the award of the tender was on price the preferred bidder was not compliant due to a record of convictions against Mr Twanny Barun. According to the Public Procurement Regulations this bidder should not even have been considered for the award, whether he was blacklisted or not. A very recent Court case decision upheld this. (Busuttil vs Adrian Muscat). The Evaluation Committee was duty bound to check on these points.

Dr David Bonello Legal Representative for the Local Council said that the bid was by a company and not by an individual and hence a separate juridical entity. The conviction

referred to was 17 years ago. According to PP Regulation 192.3 the period of exclusion was limited to five years. Shortcomings on other tenders are not part of the evaluation process.

Dr Philip Magri Legal Representative for Malta Recycle and Waste Collection Ltd said that people can reform but in any case according to the PPR exclusions were limited to five years. These were merely allegations which are denied. A company and an individual are different juridical entities. The decision should be confirmed.

Dr Galea contended that corporate criminal responsibility still applies.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

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## Decision

This Board, having noted the objection filed by Mr Melchior Dimech (herein after referred to as appellant), on the 10<sup>th</sup> March 2023 and its verbal submissions during the hearing on 1<sup>st</sup> June 2023. The objection refers to the claims made by the same appellant against San Pawl il-Bahar Local Council.

regarding the tender listed as case No.1877 in the records of the Public Contracts Review Board

The Board also noted the letter of reply by the San Pawl il-Bahar Local Council (herein after referred to as the contracting authority) dated 17<sup>th</sup> March 2023, together with its verbal submissions during the hearing on the 1<sup>st</sup> June 2023.

The Board having noted the letter of reply dated 24 March by Dr Philip Magri appearing on behalf of Malta Recycle and Waste Collection Ltd (herein after referred to as the preferred bidder) and the verbal submissions

Having taken cognisance of the Minutes appended above, and any further documentation submitted

Whereby,

The Appellant contended that :

- A. The preferred bidder was not compliant due to a record of a conviction against Mr. Twanny Barun, a Director and shareholder of the preferred bidder Company and that,

- B. The preferred bidder failed to honour its obligations under a similar tender with a different local authority.

The Contracting Authority maintains that:

- A. Mr Twanny Barun is not the economic operator who won the tender and his company has a distinct legal personality from the natural person
- B. Exclusions and blacklisting shall be kept in vigore for five years (PPR article 192 (3) from final judgement and since 17 years have passed since conviction the exclusion no longer subsists
- C. Shortcomings of previous tenders are not part of evaluation process.;

After the Board considered the arguments and documentation from all parties, the Board's view is that the Appellant's claim is not sustainable In light of Article 192 (3) of the Public Procurement Regulations

The Board therefore concludes and decides that:

- a) Does not uphold the Appellant's Letter of objection.
- b) Upholds the Contracting Authority's decision in the award of the tender.
- c) Directs that the deposit paid by the Appellant not to be reimbursed

**Dr Charles Cassar**  
**Chairman**

**Mr Lawrence Ancilleri**  
**Member**

**Mr Richard A Matrenza**  
**Member**