

PUBLIC CONTRACTS APPEALS BOARD

Case 80

Advert No 355/2005, CT 2507/2005, ETC FIN/T008 -Tender for the Leasing of Vehicles for use by the E.T.C. for a period of 4 years

This call for tenders, published in the Maltese Government Gazette on 23.12.2005, was issued by the Contracts Department following a request transmitted to the latter by the Employment and Training Corporation on 09.09.2005.

The closing date for this call for offers was 14.02.2006 and the global estimated value of the total contract (4 years) was Lm 74,200 (inclusive of VAT) or Lm 18,549.30 p.a.

Eight (8) different tenderers submitted their offers.

Following the publication of the *Notification of Recommended Tenderers*, Messrs **Sundrive Rentals** filed an objection on 25.04.2006 against the intended award of the said tender to Messrs **Paul & Rocco (Gzira) Ltd** (Lm 72,270 (inclusive of VAT) or Lm 18,067.50 p.a.).

The Public Contracts Appeals Board (PCAB) made up of Mr Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr Edwin Muscat, respectively, acting as members, convened a public hearing on 24.05.2006 to discuss this objection.

Present for the hearing were:

Sundrive Rentals

Mr Aldo Formosa

Paul & Rocco (Gzira) Ltd

Mr George Buhagiar

Mr Etienne Bezzina

Mr Ryan Buttigieg

Employment and Training Corporation (ETC) – Selection Board

Mr John Trapani Member

Ms Sue Vella Member

After the Chairman PCAB's brief introduction, the representative of Sundrive Rentals, the appellants, was invited to provide those present with a verbal rendition of what prompted them to file a formal objection.

Mr Aldo Formosa, Director, Sundrive Rentals, started by stating that they decided to file an objection because they did not know how the ETC had arrived at the decision to recommend the award of the tender to Paul & Rocco (Gzira) Ltd considering the fact that the Hyundai Getz's brochure did not specify the fuel consumption of this car.

Sundrive Rentals' representative contended that the engine specifications of the tendered *Chevrolet Aveo* (appellants' offer) and that of the Hyundai Getz were practically the same and that the engine capacity of both vehicles was 1399cc. He claimed that the fuel consumption of the Hyundai Getz was higher than the 7.5 litres per 100 Kms on which the Board had based its calculations. Also, Mr Formosa said that once Paul & Rocco (Gzira) Ltd tendered with an automatic car, the fuel consumption thereof was higher than that of a manually-driven car. Finally, the appellants' representative remarked that their daily rate for leasing was cheaper than that of the recommended tenderer.

Mr John Trapani, a member of the Selection Board, said that they did not base the evaluation of this tender solely on the tenderers' quoted rental charge but on the most economically advantageous offer. He pointed out that the award of this tender was based on the criteria specified in the tender document itself, whereby the weighted percentage points for price, extras over minimum requirement and suitability were 80%, 5% and 15% respectively. The Board member said that they interpreted the latter criterion to mean fuel consumption and engine cubic capacity.

Mr Trapani explained that in their evaluation they verified the information indicated in the tenderers' offers with that on the brochures and where the mileage was not indicated they contacted and obtained the required information directly from the car makers and not from tenderers. At this point, the PCAB drew the member of Adjudication Board's attention about the fact that the procedure followed was not correct because any queries or clarifications should have been raised or sought through the Department of Contracts.

Continuing, Mr Trapani said that they were informed by the foreign agents that the fuel consumption of the Hyundai Getz (manual, petrol and urban) was 7.5 litres /100 Km. He said that, according to the brochure, the fuel consumption of the Chevrolet Aveo was 8.9 litres /100 Km. On the other hand, the daily rental per car was Lm 4.50 and Lm 4.48 respectively. Mr Trapani said that all this information was used in their workings resulting in the following, viz:

11 Cars	Yearly Rental Charge Lm	Annual Fuel Consumption (Urban) Lm	Total Annual Cost Lm
Chevrolet Aveo	17,987.20	8,099.00	26,086.20
Hyundai Getz	18,067.50	6,825.00	24,892.50
Difference	80.30	-1,274.00	-1,193.70

These results showed that the differential element between the two tenderers was the fuel consumption and that during the contract period of four (4) years Paul & Rocco (Gzira) Ltd's overall offer would be about Lm 4,800 cheaper. Mr Trapani said that Sundrive Rentals and Paul & Rocco (Gzira) Ltd obtained 80% and 75% respectively for *Price*, 5% each for *Extras over minimum* and, 9% and 15% respectively for *Suitability*.

Mr Etienne Bezzina, representing Paul & Rocco (Gzira) Ltd, declared that whilst submitting the brochure as requested in the tender document, yet, the fuel consumption was not indicated. He explained that the fuel consumption of 6.1 litres/ 100 Km indicated in their offer was based on the average for Combined (5.9), Urban (7.4) and Extra (5.0).

However, Mr Bezzina pointed out that the appellants' offer should not have even been considered because in the tender document (Clause 4.5) it was specified that the cars had to be *Hatchback* and the Chevrolet Aveo was a *Saloon* car. Here, on the specific request of the PCAB, Sundrive Rentals' representative confirmed that the car offered was *Saloon*.

Mr Ryan Buttigieg, Sales and Marketing Manager, Meridian Enterprises Co Ltd, claimed that when they asked Hyundai Motor Europe GmbH to submit the fuel consumption of the Hyundai Getz, they declared that it was 7.4 Lt/ 100 Km Urban. He tabled a copy of their declaration. Also, it was pointed out that the Hyundai Motor Europe had confirmed that '*the Manufacturer's data is the only accurate and reliable source for Hyundai Motor Vehicles*.

At this stage, the public hearing was brought to a close and the PCAB proceeded with its deliberations before reaching its decision.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 03.05.2006, and also through their verbal submissions presented during the public hearing held on 24.05.2006, had objected to the decision taken by the General Contracts Committee, formally communicated via a letter, informing them that the tender submitted by them was not successful;
- having considered the comparative consumption per litre for both vehicles, namely Lm 0.075 (Hyundai) *vis-a-vis* Lm 0.089 (Chevrolet);

- having also noted Mr Bezzina's remark regarding the fact that the appellants' offer should not have even been considered because in the tender document, Clause 4.5, it was specified that the cars had to be *Hatchback* and the Chevrolet Aveo was a *Saloon* car, a claim corroborated during the same hearing by Sundrive Rentals' representative himself who confirmed that the car his Company offered was a *Saloon* type;
- having also considered the fact that the engine capacity of both vehicles was 1399cc;
- having positively accepted the explanation provided by Mr Trapani regarding the deliberation methodology availed of by the Evaluation Board with regards to the evaluation of the *suitability* of the respective vehicles;
- having noted that the financial analysis conducted by the Evaluation Board is considered quite in line with normal accounting praxis;
- having observed with reservation the way a supplier was directly contacted by the same beneficiary in order to obtain pertinent information, which 'modus operandi', the PCAB, while considering it to have been made in absolute good faith, yet it could not agree with in principle. The Board, however, noted that this mistaken procedure did not have a significant effect on the outcome of this case.

reached the following conclusions:-

1. The PCAB feels that the Evaluation Board acted in a reasoned, objective and effective operational manner.
2. This Board considers the decision reached by the Contracts Committee as justified.

Pursuant to (1) to (2) above, this Board cannot uphold appeal lodged by the appellants.

In view of the above and in terms of the Public Contracts Regulations, 2005, as well as the fact that this Board considers that the objection lodged by the appellants was not frivolous, recommends that 15 % of the deposit originally submitted by appellants (Lm 111 – One Hundred and Eleven Maltese Liri) should be refunded.

Alfred R Triganza
Chairman

Anthony Pavia
Member

Edwin Muscat
Member

June 06, 2006