

PUBLIC CONTRACTS REVIEW BOARD

Case No. 478

WSM/207/2012

Period Contract for the Hire of Two (2) Eight Wheeler Tipper Trucks, with Drivers, for the Enabling Works at the Maghtab Rehabilitation Project

This call for tenders was published in the Government Gazette on the 29th May 2012. The closing date for this call with an estimated budget of € 35/hr per truck or €70/hr for two trucks was the 19th June 2012.

Six (6) tenderers submitted their offers.

Denfar Excavators Ltd filed an objection on the 29th August 2012 against the decision of WasteServ Malta Ltd to disqualify its offer and to recommend the award of the tender to Rock Cut Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Carmel Esposito as members convened a public hearing on Friday, 26th October 2012 to discuss this objection.

Present for the hearing were:

Denfar Excavators Ltd

Mr Jason Vella Representative

Rock Cut Ltd

Mr Rhys Lee Buttigieg Representative

WasteServ Malta Ltd

Dr Victor Scerri Legal Representative
Ms Joanne Camilleri Representative

Evaluation Board

Mr Charles Zerafa Chairman

Transport Malta

Mr David Caruana Representative



After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of the company's objection.

Mr Jason Vella, representing Denfar Excavators Ltd, the appellant company, made the following submissions:

- i. by letter dated 28th August 2012 his firm was informed that its bid was found to be technically non-compliant because the main tipper truck 2 exceeded the amount requested in the tender by 7,000kg;
 - ii. albeit the two tipper trucks offered by Denfar Excavators Ltd were identical in all respects, yet the contracting authority found tipper truck no. 1 compliant whereas tipper truck no. 2 bearing no. DBO424 was found to be non-compliant since the relative log book read; 42,000kgs and clause 6.3 (ii) (a) stipulated that "*Gross Vehicle Mass: 30000 to 35000kgs (max. Allowable total mass of fully loaded vehicle)*";
 - iii. these same two tipper trucks had been used for the past year on the same site/works at WasteServ Malta;
 - iv. whilst the tender submission indicated the correct/compliant weight of the truck in question, namely 32,000kgs, yet the contracting authority noted that the log book of truck DBO424 read 42,000kgs in terms of maximum permissible laden mass, which, he claimed, was erroneous and presented a 'Discrepancy Form' which, after being filled in by the VRT Testing station, would be deposited at Transport Malta to amend the log book to read 32,000 kgs;
- and
- v. Transport Malta would need only a relatively short time to process the 'Discrepancy Form'.

Dr Victor Scerri, legal advisor of WasteServ Malta, the contracting authority, submitted that:

- a. the log book submitted by the appellant company with its tender submission in respect of tipper truck DBO424 read 42,000kgs;
 - b. since the appellant company claimed that the details of tipper truck DBO424 had been forwarded to WasteServ Malta in connection with another contract, the authority traced the log book presented on that occasion and it transpired that then the log book read 32,000kgs;
- and
- c. without getting into the merits of how there were two different log books in respect of the same truck no. DBO424, WasteServ Malta called to the witness stand a representative of Transport Malta to give evidence on the matter.



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Mr David Caruana, representing Transport Malta, under oath, gave the following evidence:-

- i. the change in ownership of a vehicle did not, automatically, necessitate change of the log book but Transport Malta only changed the log book upon being notified by a licensed VRT testing station on the prescribed form;
- and
- ii. Transport Malta relied on the certificate presented by the VRT testing station in order to change the details of a log book and if it would turn out that the VRT testing station, wilfully, supplied erroneous information it could have its licence cancelled.

Mr Vella declared that his firm was unaware that the log book of DBO424 read 42,000 kgs and that no alterations had been effected to the vehicle in question to justify the difference in weight. He added that the two trucks offered were identical and were purchased from the same source.

Mr Carmel Esposito, a Public Contracts Review Board member, noted that, notwithstanding that the log book indicated 42,000kgs, according to the evaluation report, the offer made by Denfar Excavators Ltd was adjudicated technically compliant (page 6) and that it was during the inspection of the trucks effected on 30th July 2012 that it was noted that one of the trucks exceeded the weight requested by 7,000kgs (page 7).

Mr Jason Vella denied that the vehicles were inspected, however, Mr Charles Zerafa, chairman of the evaluation board, intervened to state that, although he could not recall all the details of the inspection given that it took place months before, once the inspection was recorded in the evaluation report then it must have been carried out.

Mr Zerafa, under oath, gave the following evidence:-

- he confirmed the contents of the evaluation report regarding the inspection carried out on the vehicles offered by the appellant company;
 - the log book of truck DBO424 presented with the tender documentation read 42,000kgs and the evaluation board had no option but to rate the truck as being over the limit requested;
- and
- the log book of truck DBO424 presented with the previous tender 2010/2011 read 32,000kgs.

Dr Scerri drew the attention of the Public Contracts Review Board that in the relative file there were photographs taken during the inspection carried out by Mr Zerafa and Mr Carlos Tagliana, a WasteServ Malta Ltd's engineer.

At this point the hearing came to a close.


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This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 8th August 2012 and also through their verbal submissions presented during the hearing held on the 26th October 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 28th August 2012 his firm was informed that its bid was found to be technically non-compliant because the main tipper truck 2 exceeded the amount requested in the tender by 7,000kg, (b) albeit the two tipper trucks offered by Denfar Excavators Ltd were identical in all respects, yet the contracting authority found tipper truck no. 1 compliant whereas tipper truck no. 2 bearing no. DBO424 was found to be non-compliant since the relative log book read; 42,000kgs and clause 6.3 (ii) (a) stipulated that "*Gross Vehicle Mass: 30000 to 35000kgs (max. Allowable total mass of fully loaded vehicle)*", (c) these same two tipper trucks had been used for the past year on the same site/works at WasteServ Malta, (d) whilst the tender submission indicated the correct/compliant weight of the truck in question, namely 32,000kgs, yet the contracting authority noted that the log book of truck DBO424 read 42,000kgs in terms of maximum permissible laden mass, which was erroneous and presented a 'Discrepancy Form' which, after being filled in by the VRT testing station, would be deposited at Transport Malta to amend the log book to read 32,000 kgs, (e) Transport Malta would need only a relatively short time to process the 'Discrepancy Form', (f) Mr Vella declared that his firm was unaware that the log book of DBO424 read 42,000 kgs and that no alterations had been effected to the vehicle in question to justify the difference in weight and (g) the two trucks offered were identical and were purchased from the same source;
- having considered the contracting authority's representative's reference to the fact that (a) the log book submitted by the appellant company with its tender submission in respect of tipper truck DBO424 read 42,000kgs, (b) since the appellant company claimed that the details of tipper truck DBO424 had been forwarded to WasteServ Malta in connection with another contract, the authority traced the log book presented on that occasion and it transpired that then the log book read 32,000kgs, (c) the contracting authority did not get into the merits of how there were two different log books in respect of the same truck no. DBO424, (d) that the content of the evaluation report regarding the inspection carried out on the vehicles offered by the appellant company was confirmed by Mt Zerafa, (e) the log book of truck DBO424 presented with the tender documentation read 42,000kgs and the evaluation board had no option but to rate the truck as being over the limit requested, (f) the log book of truck DBO424 presented with the previous tender 2010/2011 read 32,000kgs and (g) in the relative file there were photographs taken during the inspection carried out by Mr Zerafa and Mr Carlos Taliana, a WasteServ Malta Ltd's engineer;
- having also considered Mr Caruana's testimony particularly the fact that (a) the change in ownership of a vehicle did not, automatically, necessitate a change of the log book but Transport Malta only changed the log book upon being notified by a licensed VRT testing station on the prescribed form and (b) Transport Malta relied

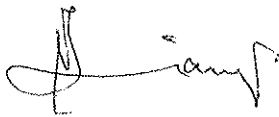
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on the certificate presented by the VRT testing station in order to change the details of a log book and if it would turn out that the VRT testing station, wilfully, supplied erroneous information it could have its licence cancelled

reached the following conclusions, namely:

1. The Public Contracts Review Board recognizes the fact that it is the onus of the bidder to ensure that what one submits is correct.
2. The Public Contracts Review Board also acknowledges the fact that contracting authorities deal in documents and they have to evaluate according to the documents they have in hand at the time of the evaluation. This Board can only support the evaluation board's '*modus operandi*' to the extent that since the log book of truck DBO424 presented with the tender submission read 42,000kgs (corroborated by visual images - photographs taken during the inspection carried out by Mr Zerafa and Mr Carlos Taliana) the evaluation board had no option but to rate the truck as being over the limit requested.

In view of the above this Board finds against the appellant company and recommends that the deposit paid by the same appellant for the appeal to be lodged should not be reimbursed.



Alfred R Triganza
Chairman



Joseph Croker
Member



Carmel Esposito
Member

30 October 2012