

PUBLIC CONTRACTS REVIEW BOARD

Case No. 588

CPSU/CPU/14/2012

Tender for the Hire of Transportation Services to the Central Procurement and Supplies Unit.

The tender was published on the 16th October 2012. The closing date was the 14th November 2012.

The estimated value of the Tender was: €120,000. (Exclusive of VAT).

One (1) bid was received for this tender.

On the 8th May 2013 Ranger Limited filed an objection against the decision to cancel the tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday 17th September 2013 to discuss the appeal.

Present for the hearing were:

Ranger Limited - Appellants

Mr Natalino Caruana De Brincat	Representative
Mr Godwin Mifsud	Representative
Dr Martin Fenech	Legal representative

Central Procurement & Supplies Unit – Contracting Authority

Mr William Alfred Grech	Member evaluation board
Ms Stephanie Abela	Member evaluation board
Mr Emanuel Gatt	Representative
Ing. Karl Farrugia	Chief Executive Officer

After a brief introduction, the Chairman invited the appellant to explain the reasons for the objection.

Dr Martin Fenech on behalf of the appellant explained that his client's bid was rejected on two points, that:

- a) The payload capacity of offered vehicle B, that was 4000kg instead of 5000 kg, as requested;
- b) The non production of insurance certification.

As regards the first reason, Dr Fenech submitted that a certificate issued by an Engineer in May 2013 shows that the vehicle in question was certified to accept payloads of 5000kgs. He claims that this certificate was issued to correct a previous certification that erroneously had shown the capacity as 4000kgs. The second reason for disqualification was about the insurance certificate and Dr Fenech referred to a certificate of insurance, which he exhibited, that shows that the vehicle is in fact covered by a valid insurance. Thus he contended that any difficulties which might have existed with his client's offer were solved.

The Chairman asked the contracting authority if there was agreement about the capacity of the vehicle offered by appellant.

Ms Stephanie Abela, on behalf of the contracting authority said according to the documents submitted by appellant with his tender offer, there was not. The evaluation board had to base its adjudication on the submitted documents which stated that the vehicle had 4000kgs capacity. The corrected certification was filed with the letter of objection and was not available to the evaluation board, and the board could not find the offer technically compliant. As regards the insurance certification, Ms Abela stated that the document submitted with the offer was not printed with a header and did not show who issued the document. She affirmed that the evaluation board could not ask for clarification on this point because it would have been rectification. In fact the evaluation board asked appellant for clarification but in reply, received new documents that could not be considered as this meant additional documents, and that is not allowed by the Regulations.

Karl Farrugia Chief Executive Officer agreed with the Public Contracts Review Board and supports its views that more communication with the bidders was necessary during the evaluation process. But as things stood they have to obtain permission of higher authorities to communicate and unfortunately this was leading to many cancellations and higher prices.

At this point the hearing was brought to a close.

This Board,

Having noted the Appellant's objection in terms of the 'Reasoned Letter of Objection' dated 8th May 2013 and also through the Appellant's verbal submissions during the hearing held on 17th September 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) **The Appellant's bid was refused by the Contracting Authority on the following grounds:**
 - i) **The payload capacity of vehicle B did not meet the requirements of the tender.**
 - ii) **The Appellant did not produce the insurance certificate as was required in the tender document.**
- b) **The Appellant did produce the insurance certificate.**
- c) **The Appellant, during this hearing, produced an Engineer's certificate certifying that the vehicle B was in conformity with the requirements of the tender conditions.**

Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 17th September 2013, in that:

- a) **The Evaluation Board had to rely on the documents submitted by the Appellant.**
- b) **From documentation submitted, during the evaluation process, the Appellant was not technically compliant.**
- c) **The Evaluation Board did ask for clarifications and instead received new documentation which the Board considered this information as 'Additional' and which is not allowed by the Regulations.**

Reached the following conclusions:

- 1. During the Evaluation stage, the Board had every opportunity to clarify the compliance issue. In this Board's opinion, this in no way is to be regarded as 'Additional Information' or 'Additional Documentation'.**
- 2. The Evaluation Board of any Contracting Authority should not be hindered from applying common sense by illogical decisions taken by higher quarters.**
- 3. This appeal could have easily been avoided through more communications between the Appellant and the Evaluation Board of the Contracting Authority.**
- 4. The Appellant has produced enough evidence during this hearing to prove that he is technically compliant.**

In view of the above, this Board finds in favour of the Appellant and recommends the following:

- i) The tender be awarded to the Appellant.**
- ii) The deposit paid by the Appellant be reimbursed.**

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

24 September 2013