

PUBLIC CONTRACTS REVIEW BOARD

Case No. 589

DH 1641/2013

Provision of Transportation Services for CPSU

The tender was published on the 10th May 2013. The closing date was the 12th June 2013.

The estimated value of the Tender was €141,600 Including VAT (period contract).

Three (3) bidders submitted their offers.

S. Curmi & Sons filed an objection on the 14th August 2013 against a decision taken by the contracting authority Central Procurement & Supplies Unit to discard their bid and award the tender to Ranger Limited.

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:

S. Curmi & Sons - Appellants

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| Mr Sergio Curmi | Representative |
| Dr Stefan Zrinzo Azzopardi | Legal Representative |

Ranger Limited – Recommended Bidder

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| Mr Godwin Mifsud | Managing Director |
| Ms Natalino Caruana De Brincat | Representative |
| Dr Martin Fenech | Legal representative |

Central Procurement and Supplies Unit – Contracting Authority

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| Ing Karl Farrugia | Chief Executive Officer |
| Mr Pierre Sammut | Chairperson Evaluation Board |
| Mr Emanuel Gatt | Member Evaluation Board |
| Ms Stephanie Abela | Secretary Evaluation Board |
| Mr William Alfred Grech | Member Evaluation Board |
| Mr Mark Spiteri | Member Evaluation Board |

The Chairman made a brief introduction and the appellant company's representative was invited to explain the motives of his firm's objection.

Dr Stefan Zrinzo Azzopardi on behalf of the appellants stated that in their letter of objection they tackled several points which were behind the reason why their tender was disqualified. It was understood that the preferred bidder was the only remaining bidder who was compliant after the disqualification of the other bidders. It was for this reason that the preferred bidder was awarded the tender. He would be going through the list of reasons the adjudication board gave for the disqualification of his clients' offer.

1. List of similar projects effected during the last three years was not submitted. Contends that his clients bid included a list of files issued by the contracting authority, where appellant was providing services to the same contracting authority for more than three years. Direct reference was made in the tender documents to these services, and the same trading licence was used. He stated that he found it strange that the evaluation board was not cognizant with the fact that appellant had provided service to the same authority, and instead declare that this documentation was not submitted.
2. Requisites of vehicle V and C do not comply with clause 3.13 of the terms of reference, as these had been on the road for more than five (5) years. Dr. Zrinzo Azzopardi contends that the vehicles so found to be non-compliant are the same vehicles which appellant was using for previous contracts with the same authority. He queried the reason why the same vehicles being used today, for the same service, now suddenly being found non-compliant for the present tender.
3. Regards the non submission of the log book of vehicle A. Dr Zrinzo Azzopardi affirms that the log book was in fact submitted with the tender. However this referred to a vehicle which was still owned by third parties, but which was going to be acquired by the appellants. This vehicle was going to be an addition just for the present tender but was already available.
4. And both deal with the payload capacity of vehicles B and C, and the evaluation board claimed that these vehicles were non compliant because their payload capacities of the rear double wheels was not 5000kgs as requested in the tender. Dr Zrinzo Azzopardi asserts that both these vehicles were compliant and his clients had submitted the relative log books to show that they were.

Thus he reiterated that the tender was awarded through the exclusion of appellants' bid. Such award however had to be according to the present policies of the government. It was thus being claimed that the award would go against one of the policies that the government wishes to enforce. The preferred bidder offered rates that breach the government policy in force about the rates of pay to employees. Preferred bidder offered the service of personnel at an hourly rate of €5.50, inclusive of VAT. The relevant authority and the unions agree that to cover the minimum wage, the hourly rate of an employee had to be €5.53 excluding VAT. Thus the offer of €5.50 made by preferred bidder is not enough to cover the minimum wage and the award of the tender to preferred bidder breaches current government policy, which policy was issued in a Government Circular and was circulated to all government departments. This circular was issued on the 1st July 2013 while the adjudication of the tender was made on the 8th August 2013.

Pierre Sammut, Chairman Evaluation Board, stated that first of all the members of the evaluation board did not necessarily come from the department that issued the tender. Also

personally known information could not be used in the adjudication but this had to be done solely on the submitted documentation. In the present case, what was submitted with the appellants' bid was a number of questionnaires sent by the appellant to employees of the contracting authority wherein these declared to be satisfied with the services offered by Ranger Limited. This was not what was asked for by the tender document and it was not considered enough to replace what was requested. The log books filed with the tender showed that the proposed vehicles were registered more than five years ago. The fact that the same vehicles were currently being used was considered to be irrelevant for the evaluation process; the evaluation board had to consider compliancy with tender request. While tender document asked for the production of all log books, the evaluation board could only find two log books submitted by appellants when they proposed three vehicles. One of the log books was not submitted. The payload capacities as shown by the certificates submitted with the tender by appellants showed that this was 4000kgs. and not 5000kgs. as requested in the tender. On being pointed out by the Board that in fact three log books were available, Mr Sammut stated that one of these was a provisional log book, and could not be considered for evaluation.

Mr Sergio Curmi, appellant explained that the provisional log book referred to a vehicle that he intended to purchase if and when he was awarded the tender. He would not purchase this special vehicle if he did not obtain the award.

Mr Pierre Sammut continued that there was a Clause in the tender that the service would have to start with immediate effect and a vehicle that had yet to be purchased could not be immediately used as requested. He was sure that it was not the evaluation board's remit to make inspections of the submitted vehicles; the board had just to base its findings on the documents submitted by the bidders. Regarding the employees' wages, although the tender had been issued before the Circular mentioned by the appellants, the evaluation board felt the need, and obtained the permission to ask for clarification from the compliant bidder, wherein he was asked to declare that he would abide by the requirements of the Government Circular. The preferred bidder declared that he would abide. Furthermore the evaluation board ascertained that the rate offered by the preferred bidder was in fact more than the minimum wage. As long as this was so, it was felt that it was a commercial decision left to the bidder to quote this low, as long as the minimum wage was covered.

Dr Martin Fenech on behalf of the preferred bidder remarked that the prerequisite of submission of vehicles less than five years old was mandatory, and any bidder who was not compliant with the condition should not have tendered. If he did file his bid it should have been disqualified. Regarding the 5000kg condition, appellants' engineer himself certified that the vehicles were 4000kgs. Dr Fenech continued that his clients' bid was for €4.80 excluding VAT, and this was above the minimum wage. Furthermore, in a clarification, we declared that we would be abiding by the Circular and paying our employees, who incidentally are all full time, the rate of €5.50.

On being asked by the Board, Mr Pierre Sammut stated that the requested capacity of the vehicles was: Vehicle A 1600kg; vehicle B 5000kg; vehicle C 5000kg.
Appellants offered: vehicle A 1000kg; vehicle B 4000kg and vehicle C 4000kg.

At this point the hearing was brought to an end.

This Board,

Having noted the Appellant's objection in terms of the 'Reasoned Letter of Objection' dated 14th August 2013 and also through the Appellant's verbal submission during the hearing held on the 17th September 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant explained the reason why not all documentation was submitted as requested in the tender document. The Appellant was presently rendering service to the Contracting Authority and the information requested by the Evaluation Board could be easily accessed from the Contracting Authority's records.**
- b) The vehicles are already in use with the Contracting Authority. In this regard, the Appellant fails to understand how, under the new tender, the conditions of the same vehicles failed the required conditions.**
- c) Log book of the vehicles were actually submitted.**
- d) The payload capacity of vehicles B and C is in fact 5000kg as can be verified by a technical inspection.**
- e) The labour rates being quoted by the Preferred Bidder are in breach of Government Regulations.**

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

- a) The fact that the Evaluation Board of the Contracting authority received replies to a number of questionnaires sent by the Appellant to employees of the Contracting Authority does not in any way represent or substitute the information requested in the tender document.**
- b) The Log books submitted to the Evaluation Board exceeded the 'Five Year Period' condition.**
- c) The Fact that the same vehicles were currently being used does not present a comparison to the new tender conditions.**
- d) The payload capacity certification submitted by the Appellant showed clearly that the vehicles had a payload capacity of 4000 kgs.**
- e) A clause in the tender document specifically stated that the service under this is to commence with immediate effect of the award of the tender. In this regard, the Appellant could not meet this requirement as one of the vehicles to be utilised pertained to third parties.**

- f) The labour rates applied by the Preferred Bidder were higher than the minimum wage. In addition, the evaluation Board received assurances from the Preferred Bidder that same will abide by the recent Government Regulations.**

Reached the following conclusions:

- 1. The Documentation requested in the tender document are essential features in the evaluation process, so that they did form part of the actual tender.**
- 2. The fact that the Appellant is presently providing the service to the Contracting Authority does not absolve the Appellant from submitting the required information as stated in the tender document.**
- 3. The Preferred Bidder submitted the requested information.**
- 4. The Preferred Bidder's offer was fully compliant and the cheapest.**

In view of the above, this Board finds against the Appellant and recommends that the deposit paid by the Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

31 October 2013