

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 627**

**WSM 048/2013**

**Tender: Period Contract for the Procurement of LPG for the Qortin Gas Treatment Facility in Gozo.**

The tender was published on the 26<sup>th</sup> February 2013. The closing date was the 22<sup>nd</sup> March 2013.

The estimated value of the Tender was: €34,800 (Exclusive of VAT).

Two (2) bidders had submitted offers for this tender.

On the 4<sup>th</sup> October 2013 EasyGas Malta Limited filed an objection against the decision to discard its offer as being administratively non-compliant.

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 5<sup>th</sup> November 2013 to discuss the appeal.

### **Present for the Hearing:**

#### **EasyGas Malta Limited - Appellant**

Mr Johan Brincat	Representative
Mr Ruben Farrugia	Representative

#### **Liquigas Malta Limited - Preferred Bidder**

Mr Jesmar Mifsud	Representative
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#### **WasteServ Malta - Contracting Authority**

Ing. Stephen Dimech	Chairman Evaluation Board
Ms Henriette Putzulu Caruana	Representative
Dr Victor Scerri	Legal Representative

The Chairman, Public Contracts Review Board stated that this Board is conducting research on changes that it feels may be necessary, both on the part of the Department of Contracts, as well on the Public Contracts Review Board to improve procedures. He therefore invited those present, especially the legal representatives to feel free to give any informal comments that they think would be useful. After a brief introduction, the appellant's representative was invited to make his submissions on the objection. It was remarked that the letter of objection failed to give any reasons for the objection.

Mr Johan Brincat, Financial Controller with the appellant firm, stated that the LPG in question is imported into Malta by appellant from Italy. Therefore the certification that came with the product was in Italian and the appellant bid was disqualified for this reason.

The Chairman remarked that the tender document was clear that any certificate had to be either in the English language or, if it was in another language, that a translation had to be filed with the offer. He asked appellant's representative the reason why this condition was not complied with.

Mr Ruben Farrugia on behalf of the appellant stated that appellants could not translate a certificate from an Italian refinery into English. The certificate was enclosed with the bid as it was received from the Italian refinery. He contended that in his opinion one could not translate a technical certificate. He also stated that in previous tender, appellant followed the same procedure and was not disqualified. He reiterated that appellant's employees could not be asked to translate the document.

Dr Victor Scerri explained that with the tender, the only certificate submitted was in Italian, no English translation was enclosed. It was only when the letter of objection was filed that a translation into English was enclosed with the same objection. Dr Scerri continued that the tender did not even ask for an authenticated translation into English, but an ordinary translation in order to help the evaluation board to assess the tender. Although Italian is understood by many Maltese, the certificate could have been in another language that is not so commonly understood. This was the reason for the mandatory requirement for certificates in English or translations.

Ing Stephen Dimech, Chairman of the evaluation board said that since the appellant's tender was deemed administratively non-compliant, the evaluation board did not evaluate his bid for technical compliance.

The hearing was at this point brought to an end.

**This Board,**

**Having noted the Appellant's objection, in terms of a 'Letter' dated 2<sup>nd</sup> October 2013 (without giving reasons) and also through the Appellant's verbal submissions during the hearing held on 5<sup>th</sup> November 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant was unfairly classified by the Evaluation Board as being 'Administratively non Compliant'.**

- b) The Appellant did in fact submit the required certification but in the Italian language.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 5<sup>th</sup> November 2013, in that:**

- a) The Appellant did not submit the requested certification in English as was required in the tender document.**
- b) This requisite was a mandatory condition in the tender document.**
- c) The Contracting Authority's condition was that same requested an ordinary translation and not an authenticated one.**

**Reached the following conclusions:**

- 1. When a specific condition is laid out in any tender document by any Contracting Authority, it is made for a specific purpose. In this regard, quite rightly, the Contracting Authority requested certifications, if not in English, in a loyal normal translated version of same. In this regard, the Appellant did not abide by this condition which was clearly laid out in the tender document.**
- 2. The Evaluation Board of the Contracting Authority acted in a diligent manner in discarding the Appellant's Bid as the latter's bid was in fact 'Administratively' non compliant.**

**In view of the above, this Board finds against the Appellant Company 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

*16 December 2013*