

PUBLIC CONTRACTS REVIEW BOARD

Case No. 669

P 4122/12

Tender for the Supply of Three Environmental Friendly Low Emission Estate Cars for the Malta Police Department.

The tender was published on the 8th November 2013. The closing date was the 12th December 2013.

The estimated value of the tender was €53,000 (Inclusive of VAT).

On the 24th January 2014 Cars International Limited filed an objection against the rejection of its offer for 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 Thursday 20th February 2014 to discuss these concerns.

Present for the hearing were:

Cars International Limited - Appellant

Mr Hubert Baldacchino	Representative
Mr Matthew Fenech	Representative

Frank Borda Limited - Preferred Bidder

Mr Darren de Domenico	Managing Director
Dr Peter Borg Costanzi	Legal representative
Dr Jessica Borg	Legal representative

Malta Police Department - Contracting Authority

Asst Commissioner Dr Antoine Casha	Chairman Evaluation Board
Insp. Anthony Agius	Secretary Evaluation Board
Mr Martin Debono	Member Evaluation Board
Sgt. Maj. Brian Scicluna	Member Evaluation Board

After making a brief introduction, the Chairman invited the appellant's representative to make submissions regarding the objection.

Mr Matthew Fenech on behalf of the appellant firm Cars International Limited explained that the objection is based on three points: the price, the engine capacity and the fact that the appellant offered a seven year warranty.

Dr Antoine Casha, Assistant Commissioner and Chairman of the Evaluation Board on behalf of the contracting authority said the appellant's tender offer was disqualified for two reasons. The first one being that the delivery period offered by appellant exceeded the requested 15 weeks; the other being the offered car's engine capacity. This had to be according to the tender specifications the engine capacity had to be not less than 1585 cc while the appellant offered a car with a capacity of 1582 cc. The evaluation board had to abide with the tender specifications. There were other bidders and the board could not accept appellant's bid.

Inspector Anthony Agius on behalf of the contracting authority explained that the contracting authority wanted a 1600cc engine but in the tender specifications this was lowered to 1585cc in order to widen the field. But insisted that a line had to be drawn somewhere. Having done some research it was found that nearly all cars described as 16 fell within the 1585 upward bracket. Replying to a question by the Board, Inspector Agius said that the appellant's car had approximately the same Brake Horse Power as the preferred bidder's car if he remembered correctly but the capacity was 1582.

Mr Marin Debono, a member of the Evaluation Board said that he was not technically knowledgeable but contended that the evaluation board abided by the specifications. Since appellant's offer did not reach the specifications it could not be considered.

Dr Peter Borg Costanzi on behalf of the preferred bidder stated that one of the tender clauses specified that if any bid did not reach the specifications requested, this had to be automatically rejected. The parameters of the specifications were wide – from 1585cc to 2000cc. The preferred bidder's offer was within this range at 1600cc. This would explain the discrepancy in the price offer. He contended that the preferred bidder's car was superior. He also referred that the delivery period cited by appellant was 16 weeks instead of the 15 weeks required by the tender specifications, and this should also have disqualified the appellant's bid automatically.

Mr Hubert Baldacchino on behalf of the appellant said the 3cc should not make any difference to the engine power. He said the greater significance would be the Brake Horse Power of the engine and not the cubic centimetre capacity. He asked if these 3cc difference justify the €4000 difference in the price?

Dr Antoine Casha said that what Mr Baldicchino had just said would have been considered if the evaluation process of appellant's bid continued, but the evaluation board could not ignore the specifications and the evaluation of appellant's bid was not continued. The board had to decide on the available documentation.

Mr Darren de Domenico for the preferred bidder said that the preferred bidder had another car with slightly less cubic centimetres capacity and could have offered this at a lower price, but the BHP of this was less than the tender requisites and therefore the preferred bidder chose to abide by the specifications.

The hearing was at this point brought to an end.

This Board,

Having noted the Appellant's objection in terms of the 'Reasoned Letter of Objection' dated 23rd January 2014 and also through the Appellant's verbal submissions during the hearing held on 20th February 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant's offer was cheaper than that of the Preferred Bidder's.**
- b) The Engine capacity of the Motor Vehicles offered by the Appellant was slightly less than the requirement in the tender document. Appellant contends that this difference is insignificant and does not merit the exclusion of his bid on this ground.**
- c) The warranty conditions offered by the Appellant's bid was by far better than that offered by the Preferred Bidder's offer.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 20th February 2014, in that:

- a) Appellant's offer did exceed the delivery period of the product as stipulated in the tender document.**
- b) Appellant's product was below the capacity of the engine as dictated in the technical specifications of the tender document.**

Reached the following conclusions;

- 1. This Board opines that the fact that the Appellant's Bid was cheaper does not in any way, paves way for the Appellant's offer to be automatically chosen for award. The Bid price factor is only considered to be a valued factor after the Tenderer's Bid is found to be 'Administratively and Technically' compliant. In this regard, the Appellant's offer fell short of the stipulated technical specifications as laid out in the tender document.**
- 2. The Tender document specified a fair and wide range of the capacity of the engine of the motor vehicles to be tendered for. In this Board's opinion, the Contracting Authority dictated a fair and just range of engine capacity of its requirements. The concept behind this wide range being offered by the Contracting Authority is to allow more bidders to participate in the tendering process.**

- 3. This Board opines that the fact that Appellant's Offer provided for a longer warranty period, does not consider this factor to be a decisive issue in the evaluation process of this tender.**

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

14 March 2014