

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 780**

**GCCL Q 23/2014**

### **Call for Quotations for the Supply of Marine Gas Oil DMA According to ISO 8217.**

The tender was published on the 31<sup>st</sup> October 2014. The closing date was the 7<sup>th</sup> November 2014. The estimated value of the Tender was €366,530 (Exclusive of VAT)

Three (3) bidders had submitted an offer for this call.

On the 5<sup>th</sup> December 2014 Cassar Fuel Limited filed an objection.

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 the 12<sup>th</sup> February 2015 to discuss the objection.

Present for the hearing were:

#### **Cassar Fuel Limited - Appellant**

Mr Darren Marmara`	Chief Executive Officer
Dr Matthew Brincat	Legal Representative

#### **Falzon Fuel Services Limited - Preferred Bidder**

Mr Joseph Falzon	Director
Dr Yvanka Vella	Legal Representative

#### **Gozo Channel Limited - Contracting Authority**

Mr John Muscat	Secretary Evaluation Board
Mr Paul L Cardona	Member Evaluation Board
Dr Georgine Schembri	Legal Representative

The Chairman asked the appellant to explain the letter of objection since this was addressed to the Director of Contracts whereas, since the value of the quotation exceeded €120,000, it should have been addressed directly to the Public Contracts Review Board. Also the said letter did not ask anything from the PCRB but demanded that the Department of Contracts to revoke its decision within two days.

Dr Matthew Brincat on behalf of the appellant explained that the demand of revocation was directed to the Department of Contracts. The objection was because appellant firm contends that its offer was the cheapest offer. The letter contained the reasons for the objection.

Dr Georgine Schembri on behalf of the contracting authority insisted that the preliminary plea she raised on behalf of the contracting authority still stood. The objection was irregularly filed and should be discarded. She also explained that the call had requested bidders to make their offers excluding VAT but the preferred bidder had included VAT in the total when making the financial offer. This was explained through a clarification. In order to be in a position to evaluate like with like the value of the extra VAT had been deducted. The preferred bidder's offer was cheapest. The main fact was that the premium rate offered by the preferred bidder was the cheapest.

Mr Paul L Cardona on behalf of the contracting authority said that the appellant was contending that since the density of the oil it was offering had a density of 0.85 while that of the preferred bidder had a density of 0.86, appellant would have been supplying more litres than the preferred bidder. He explained that fuel is purchased by weight and not by volume. Furthermore, fuel density was never the same. The density varies per shipment and is not a standard. In fact, the appellant firm itself had supplied oil with a density of 0.85 before since density depended on what was on the market. Also a denser fuel had a greater calorific value.

Mr Darren Marmara on behalf of the appellant firm insisted that the call for quotations had been wrongly issued since duty was paid per litre.

Dr Matthew Brincat for the appellant wondered why the preferred bidder had submitted totals including VAT when the tender asked for submission without VAT. The preferred bidder's offer should have been discarded.

Mr Paul L Cardona for the contracting authority re-iterated that fuel is purchased by weight per ton, and that the density specified in the tender documents of 0.85 referred to the generic density of the fuel since in actual fact no fuel with a density exactly of 0.85 is supplied.

Dr Georgine Schembri for the contracting authority explained that the tender was awarded to the lowest premium rate offered irrespective of the density. She also explained that the preferred bidder's offer only included VAT in the grand total. The row total rates of the financial offer form were exclusive of VAT.

The hearing was brought to a close.

**This Board,**

**Having noted the appellant's objection, in terms of the "Reasoned Letter of Objection" dated 5<sup>th</sup> December 2014 and also through the appellant's verbal submissions during the Public Hearing held on the 12<sup>th</sup> February 2015, had objected to the decision taken by**

**the Pertinent Authority, in that:**

- a) **The appellant company contended that its offer was the cheapest;**
- b) **The preferred bidder's offer included VAT in the total bid whilst the Tender Document requested that any offer must not include VAT in it.**

**Having considered the Contracting Authority's verbal submissions during the Hearing held on 12<sup>th</sup> February 2015, in that:**

- a) **The contracting authority raised a preliminary plea to the effect that the appellant's objection was irregularly filed and in this regard, the same should be discarded;**
- b) **The Contracting Authority contends that the VAT element was only included in the Grand Total, the individual rates were exclusive of VAT;**
- c) **The Contracting Authority claims that the preferred bidder's offer had the lowest premium rate.**

**This Board credibly notes that it is evidently clear that the Letter of Objection filed by the Appellant Company does not constitute an Appeal "per se" since no pleas were addressed to the Public Contracts Review Board. This Board opines that the contents of the issue of this appeal are completely void. This Board also confirms that the Appellant's letter of objection was addressed to the wrong entity.**

**In this regard, this Board upholds the Contracting Authority's preliminary plea, declares that the letter of objection was null 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

*4 March 2015*