

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 797**

**FTS 138/2014**

**Tender for a Period Contract for Hiring of Skips for Various Schools (Sites) in Malta in an Environmentally Friendly Manner.**

The tender was published on the 14<sup>th</sup> November 2014. The closing date was the 9<sup>th</sup> December 2014. The estimated value of tender is €19,067.80(Exclusive of VAT).

Five (5) bidders had submitted bids for this tender.

On the 30<sup>th</sup> January 2015 Pullicin Developers Ltd. filed an objection against the decision of the contracting authority to disqualify their tender as being technically non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday 14<sup>th</sup> April 2015 to discuss the objection.

Present for the hearing were:

### **Pullicin Developers Ltd - Appellant**

Mr Christ Pullicino	Director
Mr Dylan Pullicino	Representative
Dr Cynthia Xerri Debono	Legal Representative

### **Mr Raymond Zammit - Preferred Bidder**

Mr Raymond Zammit	Director
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### **Foundation for Tomorrow's Schools - Contracting Authority**

Mr Joseph Zerafa Boffa	Chairperson Evaluation Board
Mr Ivan Zammit	Secretary Evaluation Board

The Chairman, following a brief introduction, invited Appellant's representative to make her submissions on the objection.

Dr Cynthia Xerri Debono on behalf of the Appellant explained that her client had been disqualified on the technical criteria of the tender. The tender required vehicles to be Euro IV and the Evaluation Board decided that Appellant's vehicle was Euro III. She said that Appellant had purchased the vehicle in question as being Euro IV but when informed of disqualification the latter had checked the vehicle's log book and found that it was erroneously rated as Euro III. The Appellant had immediately taken steps to have the log book corrected and informed the contracting authority but this was after her client had been disqualified. She contended that Appellant had submitted the log book with the offer and it was only after the rejection of Appellant's offer that the fact of the wrong classification on the log book became known. She contended that clause 29 of the tender document allowed for clarification and insisted that the contracting authority could have asked her client for clarification about the Euro classification of the vehicle.

The Chairman explained that evaluation could only be made on the information submitted with the documents, and the Evaluation Board could not ask for a clarification since Appellant had submitted a certificate, the log book itself.

Mr Ivan Zammit for the Contracting Authority said that the Evaluation Board only had the submitted log book to evaluate. It could not be expected that such a document be erroneous. Clarification is resorted to only when there is some doubt on a matter while the evaluation is being made. He said that the contracting authority was subsequently informed of the erroneous classification in the log book. It was the bidders' obligation to submit the correct documentation with their tenders and Appellant could have checked the log book before submitting it.

Dr Cynthia Xerri Debono for the Appellant reiterated that the latter had submitted all the required documentation in his possession.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the "Reasoned Letter of Objection" dated 30 January 2015 and also through the Appellant's verbal submissions during the Public Hearing held on the 14<sup>th</sup> April 2015 had objected to the decision taken by the pertinent Authority, in that:**

- a) **The Appellant contends that due to an "oversight" to the vehicles' log book as submitted, contained an erroneous description of the type of vehicle which had to be employed on the tendered works. The latter had to be classified to conform to a Euro (IV) Grade. The Certificate issued by the Transport Authority stated erroneously that the vehicle was classified as Euro (III) grade. The Appellant maintains that this oversight was not in any way, due to any negligence on his part;**
- b) **The Appellant also contends that the Evaluation Committee should have requested a clarification.**

**Having noted the Contracting Authority’s Verbal Submissions during the Public Hearing held on 14<sup>th</sup> April 2015, in that:**

- a) The Contracting Authority maintains that the Evaluation Committee could only adjudicate the Tender contents on the information submitted by the Appellant Company. In this regard, the Appellant submitted a “non compliant” logbook of the vehicle to be deployed on the tendered works;**
- b) The Contracting Authority contends that the Evaluation Committee could not have asked for a clarification on a document submitted by the Appellant which states that the vehicle had an inferior classification than that requested in the Tender Document.**

**Reached the Following Conclusions:**

- 1. It was credibly proven that the classification of the vehicle to be deployed by the Appellant did not satisfy the requested grade as dictated in the Tender Document. The fact that the vehicle’s official log book was erroneously issued by the relevant authority, does not fall within the ambit or responsibility of the Evaluation Committee. It was the responsibility of the Appellant Company to ensure that the documentation accompanying the Tender Document was correct. In this regard, this Board opines that the Evaluation Committee acted in a diligent and transparent manner. This Board does not uphold appellant’s first contention;**
- 2. With regards to the Appellant’s Second Condition, this Board opines that in this particular appeal there was no justifiable reason for the Evaluation Board to seek clarification, as the Appellant did submit the required information ie. The vehicle’s log book but with a deficiency classification. In this respect, this Board does not uphold the Appellant’s Second Grievance.**

**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. Lawrence Ancillieri  
Member

*21 April 2015*