

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 900**

**CT 2078/2015**

### **Tender for the Leasing of Tail-Lift Vans with Driver and Fuel.**

The Tender was published on the 22<sup>nd</sup> September 2015. The closing date was on the 3<sup>rd</sup> November 2015. The estimated value of the Tender was €581,695.00 (Exclusive of VAT)

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

On the 28<sup>th</sup> December 2015 Transport for Disabled Persons Co-operative Limited filed an objection against the decision taken by the Contracting Authority to award the Tender to South Lease for the price of €530,400.00.

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 4<sup>th</sup> February 2016 to discuss the objection.

Present for the hearing were:

#### **Transport for Disabled Persons:**

Mr Mario Muscat	Chairman
Mr Jesmond Compagno	Cashier
Mr Joseph Abela	Representative
Dr George M Hyzler	Legal Representative

#### **South Lease:**

Mr Joseph Scicluna	Director
Dr Ronald Aquilina	Legal Representative

#### **Central Procurement and Supplies Unit:**

Mr Peter Cordina	Chairperson Evaluation Board
Ms Rita Tirchett	Secretary Evaluation Board
Mr Mario Borg	Member Evaluation Board
Mr Joseph Spiteri	Member Evaluation Board

#### **Department of Contracts:**

Dr Christopher Mizzi	Legal Representative
Mr Kevin D'Ugo	Procurement Manager

The Chairman made a brief introduction and then invited the Appellant's representative to make his submissions.

Dr George M Hyzler on behalf of the Appellant contended that when submitting its Tender bid, the Recommended Bidder, South Lease was not compliant with the Tender specifications in that the vans offered for use were not in Malta and was not fitted with tail-lifts. Also the Recommended Bidder had failed to produce the necessary log-books, insurance cover and certification for the same vans. These faults may have been corrected later but he insisted not at the time the Tender was submitted. He contended that this had been a speculative Tender by the Recommended Bidder. He referred to another case previously decided by this Board where his client had tendered with a vehicle that had not been registered at the time of submission of the Tender, and his Tender had been disqualified. Dr George Hyzler contended further that the Recommended Bidder had never carried out similar work before the present Tender and for this reason; his client expected explanations from the Contracting Authority and the Evaluation Board.

Dr Christopher Mizzi on behalf of the Department of Contracts contended that when two bidders had been deemed to be both administratively and technically compliant by the Evaluation Board, there was no basis for the Public Contracts Review Board to intervene. He also explained that the Tender had not required that bidders should have previous experience. He suggested that the Evaluation Board be heard at this stage.

When asked by the Chairman whether the Recommended Bidder's Tender lacked some documentation, Ms Rita Turchett ID No. 53270M, the secretary of the Evaluation Board, under oath said that the problem was that the Recommended Bidder had offered the use of new vehicles. The latter had declared that everything in his Tender was compliant and had signed "yes". The Recommended Bidder confirmed that all the specifications would be covered through the submission. The technical literature requested from the bidders consisted of a certificate from surveyor and the VRT certificate. However, since he was going to use new vehicles, the Recommended Bidder did not produce these. Instead, he submitted a declaration that stated:

"Kindly note that these replaced the certificate of conformity due to the fact that we shall be submitting new vehicles."

The Contracting Authority had asked for the VRT certificates because in case of used vehicles it could be ascertained that these were fit to be used. The Recommended Bidder did not produce a vehicle surveyor certificate that had been requested by the Contracting Authority for the same reason.

The Recommended Bidder had submitted new vehicles and new vehicles do not require VRT. She agreed that this fact had not been mentioned in the Tender and that no log books had been submitted by the Recommended Bidder. The log books were requested in order to verify that the vehicles were Euro V. She did not know if the vehicles were in fact in Malta at that time and neither did she know if the said vehicles were equipped with tail-lifts.

The Evaluation Board had adjudicated the Tender on the literature submitted and from these it resulted that the vehicles had tail-lifts.

Dr George Hyzler for the Appellant said that the rules for all bidders should be the same, and when going through the Tender one understood that the vehicles should be in Malta, hence the request for VRT and logbooks. The vehicles offered were registered. This could not be a

fishing expedition. The Appellant could easily have done the same since the vehicles which they owned were over capacity and would have benefitted if they tendered on ordered vehicles at one third of the price. He insisted and reiterated that at the time of the Tender submission the vans were not in Malta, were not owned by the Recommended Bidder and were neither registered nor insured.

Ms Rita Turchett, replying to questions by Dr Ronald Aquilina on behalf of the Recommended Bidder, agreed that the Tender did not request the submission of certificate of registration of the vans by Transport Malta. She confirmed that the documents produced by the Recommended Bidder were issued by Gasan and gave information about specific vehicles including chassis numbers.

Dr Ronald Aquilina for the Recommended Bidder contended that the vehicles were in Malta when the Tender was submitted, and were equipped with a tail-lift. He exhibited a document issued by Gasan on the 15<sup>th</sup> September 2015 which shows that the vehicles were in Malta.

Dr George Hyzler on behalf of the Appellant insisted that the document only shows that on the date when the Tender was submitted, the vehicles in question were only “booked”. He contended that the vans are imported as minibuses and then have a tail-lift installed. However this required certification that can only be issued after the tail-lift is fitted. He pointed out that the document filed states “available” and this does not mean that the vehicles were in Malta. The document just shows 4 Ford Transit minibuses and tail-lifts are not mentioned. He insisted that the clarification number one had made it clear that “a copy of the log book must be submitted” whereas these log books have not yet been produced by the Recommended Bidder to date. This was a speculative Tender and such bids should not be allowed. The Recommended Bidder submitted his offer on just a promise of sale.

Dr Ronald Aquilina for the Recommended Bidder said that the Appellant did not produce any proof but just relied on “information received by the latter”. He contended that the Recommended Bidder had invested in new Euro VI vehicles in order to compete in this Tender. Yet his offer was around €250,000 cheaper.

Dr George Hyzler insisted that the Board should be shown documentation that the vehicles were fitted with tail-lifts. He insisted that the photos shown are not of the specific vehicles. He reiterated that the offered vehicles were not compliant. Dr Hyzler continued by stating that Appellant was alleging that the photos did not show the offered vehicles.

Dr Ronald Aquilina said that the photos show other vehicles and not to the vans in question because the vans were in the bonded stores. The Recommended Bidder had submitted photos of similar vehicles.

Dr George Hyzler insisted that the vehicles were not available at the time of the Tender submission.

Dr Christopher Mizzi on behalf of the Department of Contracts explained that the photos in question were not submitted as a rectification but as a clarification of the technical offer, and these substantiated what was submitted in the terms of reference, removing all doubts.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 28 December 2015 and also through their verbal submissions during the Public Hearing held on 4 February 2016 and had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant contends that the Recommended Bidder was not compliant as the vans offered by the latter were not in Malta during the bidding stage. The Appellant also maintains that the vans offered by the same, were not fitted with tail-lifts;**
  
- b) The Appellant maintains that the Recommended Bidder did not submit logbooks, insurance cover and certification of vans, as requested in the Tender Document;**
  
- c) The Appellant also contends that the Recommended Bidder does not possess the required experience to execute the Tendered Service.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 28 January 2016 and the verbal submissions made by the latter during the Public Hearing held on 4 February 2016, in that:**

- a) **Since the two bidders for this Tender were both Administratively and Technically compliant, the Contracting Authority maintains that the Public Contracts Review Board’s intervention is uncalled for;**
- b) **The Contracting Authority contends that the Recommended Bidder had submitted the literature required and since the vans which were being offered by the latter were new vehicles, there was no need for the VRT Certificate. At the same instance, the Recommended Bidder had submitted “*Certificates of Conformity*” of the vans and the Evaluation Board made their adjudication according to the literature submitted, which showed that the vans had tail-lifts;**
- c) **The Contracting Authority confirmed that the Tender did not ask for previous experience.**

**Reached the following conclusions:**

- 1. With regards to the Appellant’s First Grievance, this Board after having examined the relevant documentation and having heard the submissions, would opine that it can be justifiably noted that the Tender did not dictate that the vans should be in Malta at the time of submission of the offers.**

**The fact that the Recommended Bidder had submitted the “*Certificates of Conformity*” from the importer of these vans, confirm that the vehicles are brand new and “*were of Euro V*” classification. This was ample proof for the Evaluation Board to assess the Recommended Bidder’s offer on the documentation submitted by the latter.**

**In this regard, this Board justifiably confirms that the Evaluation Board acted in a fair and transparent manner in its deliberation.**

**With regards to the Appellant’s contention that the vans offered by the Recommended Bidders had no tail-lifts; this Board would refer to the Literature submitted by the Recommended Bidder, wherein, Tail-Lifts were included.**

**At the same instance, this Board would pertinently point out that the Recommended Bidder had signed the necessary documentation where he declared that all the specifications dictated in the Tender Document would be complied.**

**In this respect, this Board credibly opines that this declaration was sufficient for the Evaluation Board to proceed with its adjudication.**

**In this regard, this Board does not uphold the Appellant’s First**

**Grievance.**

- 2. With regards to the Appellant's Second Grievance, this Board, after having heard credible submissions from all parties concerned, opines that the Evaluation Board were informed that the Recommended Bidder would be using new vehicles and in this regard, the same Evaluation Board did not require a VRT Certificate.**

**In the second instance, with regards to the non submission of logbooks by the Recommended Bidder, this Board opines that, since the vans to be used for the Tendered Service are new and not yet registered with Transport Malta, the log books could not be submitted.**

**At the same time, this Board notes that the Tender Document did not dictate the submission of the registration certificates of the vans. This Board also notes that the "*Certificate of Conformity*" issued by Gasan Enterprises confirms the booking of these vehicles with details of chassis numbers and other relevant information which enabled the Evaluation Board to arrive at its adjudication.**

**This Board would respectfully point out that the submission of log books requested by the Contracting Authority was simply to assess**

**whether the vans, which are to be utilised for the service hold a Euro V classification.**

**In this regard, the “*Certificate of Conformity*” issued by Gasan Enterprises confirms that the new vehicles to be used by the Recommended Bidder, do in fact hold a Euro V classification.**

**This Board would also like to point out that the Recommended Bidder declared that the vans to be used are to comply with all the conditions as dictated in the Tender Document.**

**On the other hand, the Contracting Authority has other effective remedies should the Recommended Bidder fail to meet the said conditions. In this regard, this Board upholds the Evaluation Board’s decision to accept the concept that since the vans were not yet registered with Transport Malta, the submission of the logbooks was not possible.**

**At the same instance, this Board would refer to the principle of “*substance over form*”, in that since the Evaluation Board was aware that the vans were to be new and not yet registered, the requisites of the logbooks submission did not carry any weight. In this regard, this Board does not uphold the Appellant’s Second Grievance.**

**3. With regards to the Appellant's Third Grievance, this Board would first of all point out that the Tender Document did not ask for any previous experience. Secondly, this Board credibly points out that the Tendered service is not of any specific nature which dictates previous experience. The tendered service consists of the "*Leasing of Tail-Lift Vans with Driver*".**

**Although Circular 19 dated 16 December 2015 specifically dictates that "*No experience is required for tenders below € 500,000*". The Recommended Bidder's offer was € 530,400. This Board would credibly apply the Principle of "*Proportionality*", whilst acknowledging the favourable difference in price savings and public funds for that matter, to the direct advantage of the Contracting Authority. In this regard, this Board does not uphold the Appellant's Third Grievance.**

**4. On a general note, this Board credibly opines that, from the relative documentation and submissions by the Appellant Company and the Contracting Authority, there was no tangible proof or evidence which indicates that the Recommended Bidder would not be capable of providing new vans as declared by the latter or that the same was not capable of providing the Tendered service. In this regard, this Board**

**justifiably affirms that the Adjudication process was carried out in a just and transparent manner.**

**This Board would like to also refer to the rectification of the Recommended Bidder's offer which was made within the specified period as per clause 7.1.2 of the Tender Document where the Technical Specifications were rectified and accepted by the Contracting Authority.**

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

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Richard A Matrenza  
Member

*11 February 2016*