

PUBLIC CONTRACTS REVIEW BOARD

Case 1014 – DH 3608/2015 – Call for Quotations With Extended Threshold For The Leasing of Tail Lift Vans

The Publication Date of the Call for Tenders was 11 October 2016 whilst the Closing Date for Call of Tenders was 25 October 2016. The Estimated Value of the Tender, (Exclusive of VAT) was € 120,000 for both lots.

Two (2) Bidders have submitted offers for this Tender.

On 20 December 2016, Transport for Disabled Persons filed an Objection against the decision of the Central Procurement and Supplies Unit and to find their Tender non-compliant against a deposit of € 600.

On 10 January 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Transport for Disabled Persons

Mr Jesmond Compagno	Representative
Mr Mario Muscat	Representative
Dr George Hyzler	Legal Representative

Contracting Authority – Central Procurement and Supplies Unit

Mr Paul Dalli	Chairperson, Evaluation Board
Ms Karen Scicluna	Secretary, Evaluation Board
Ms Rita Tirchett	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Dr George Hyzler, the Legal Representative for Transport for Disabled Persons opened by submitting that there was a mistake in the decision given by the Contracting Authority since it said that no log books were presented by his clients where in reality the log books presented did not conform with the required specifications and it was only for this fact that the sentence should be corrected.

Dr Hyzler did not exclude further consequences following this correction but as a matter of fact, there was a difference between a document which was not submitted and one which was not compliant.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit commented that he was not going to repeat what he wrote in the Reasoned Letter of Reply dated 6 January 2017 but with regards Dr Hyzler's previous submissions he wanted to say that this Tender was cancelled because the vehicles which the Appellants referred to in their bid were not the vehicles which will be eventually used for this Tender.

Effectively, the proper wording should be "*no formal document of the logbook vehicle was submitted*". The Tender Document requested a van which was Euro 6 and that at the moment that the Tender was submitted; the vehicle must be present and available.

The Evaluation Board could not consider the Appellant's Bid since the vans proposed were Euro 5 vehicles and were not the vans which were planned to be used since quotations were submitted of vans which were Euro 6, hence compliant, which were not present at the moment that the bid was submitted.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, asked whether the log books which the Appellant submitted were not to be used in the Tender.

Dr George Hyzler, the Legal Representative for Transport for Disabled Persons replied that one cannot present a log book of a vehicle which was not in Malta. Dr Hyzler disagreed with Dr Zrinzo Azzopardi's submissions.

The Log books which were presented were of vehicles which were in Malta at submission stage and which can be used. There was also additional documentation on vehicles which were to be imported.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, asked whether the log books presented were of the category which the Central Procurement and Supplies Unit requested for which Dr George Hyzler for the Appellant replied in the negative.

Dr Hyzler continued by saying that five log books were presented some of which were Euro 6 and others which weren't. His clients also presented additional documentation of vehicles which were not in Malta and for that part, the Contracting Authority was right.

With regards the presented log books, Dr Hyzler argued that the Contracting Authority should have said that some of the log books did not satisfy the Tender Document requisites but not that no log books were presented.

There were no Euro 6 vehicles in Malta continued the Appellant's Legal Representative who continued by saying that the decision taken by the Contracting Authority was an erroneous one since it speaks about documents which were not presented when in reality the documents were presented. It could have said that the documents submitted did not satisfy the Tender Requirements.

At this stage, the Public Hearing was closed.

This Board,

Having noted this Objection filed by Transport for Disabled Persons (herein after referred to as the Appellant) on 20 December 2016, refers to the Contentions made by the latter with regards to the award of Tender of Reference DH 3608/2015 listed as Case No 1014 in the records of the Public Contracts Review Board, awarded by the Central Procurement for Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr George Hyzler

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

Whereby, the Appellant contends that:

a) **Transport for Disabled Persons contend that the reasons given by the Contracting Authority for the rejection of their offer was incorrect, in that, the Appellant did in fact submit the log books required, however these were not compliant and not, as stated in the Letter of Rejection, that the log books were not submitted.**

In this regard, the Appellant insists that there existed a difference between a document which was not submitted and one which was submitted but not compliant.

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 6 January 2017 and its verbal submissions during the Public Hearing held on 10 January 2017, in that:

a) **The Central Procurement and Supplies Unit maintains that the log books submitted by the Appellant did not reflect or justify the Technical Requirements as specified in the Tender Document.**

At the same instance, the Contracting Authority contends that the Letter of Rejection stated that "*no formal log books*" were submitted thus referring to the "*proper log books*" of the vehicles to be utilised for the execution of this Tender.

This Board, after having treated the merits of this case, arrived at the following conclusions:

- 1. Following the examination of the relative documentation and the hearing of the submissions made by all parties concerned, this Board would like to justifiably point out that the “*Letter of Rejection*” dated 12 December 2016, did in fact indicate that the vehicle log books were not submitted. However, this Board also notes that the same “*Letter of Rejection*” did denote that the document submitted by the Appellant to prove the ownership of the requested vehicles consisted of a “*Quotation*” for the said vehicles so that the requested vehicles were not as yet in possession of the Appellant at the date of submission of the Tender.**

This Board, as had on many occasions, would emphasize the importance of giving the specific reasons for the rejection of a Tender. Such action, on the part of the Central and Procurement and Supplies Unit, would allow the Appellant to object on the proper grounds for the rejection of his offer.

Had direct and definite reasons been given, unnecessary Objections and delays in the awarding of the Tender would have been avoided.

In this particular case, this Board opines that the “*Letter of Rejection*” should have specified the log books submitted and which of these log books were Technically Non Compliant.

In this regard, this Board justifiably feels that if the reasons given by the Contracting Authority were more specific and to the point, such an Objection would not have arisen.

- 2. This Board would also like to mention the fact that the reason for the requirement of the submission of the log books was to prove and justify the ownership and standard of the vehicles to be deployed on the Tendered service.**

In this case, the Central Procurement and Supplies Unit could not ascertain if the required vehicles were in possession of the Appellant at the time of submission of the Tender.

At the same instance, some of the log books submitted by Transport for Disabled Persons did not refer to the standard which was requested in the Tender Document.

In other words, the log books presented by the Appellant did not pertain to the vans that would be deployed if there was an award.

In view of the above, this Board credibly contend that the “*Letter of Rejection*” did not specify clearly the reasons for the rejection of Transport for Disabled Persons’ offer with specific reference to the submissions of log books.

In this regard, this Board upholds the Appellant’s grievance yet at the same instance, confirms the Contracting Authority’s decision to declare the Appellant’s offer as being non compliant.

This Board recommends that the deposit paid by the Appellant should be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito.
Member

17 January 2017