

PUBLIC CONTRACTS REVIEW BOARD

Case 1173 – 4/2018 – Framework Agreement (Twentyfour months) for Hire of Low Emission Self-Drive cars to the Ministry For Transport, Infrastructure and Capital Projects

The publication date of the call for tenders was the 23rd January 2018 whilst the closing date of the call for tenders was the 13th February 2018. The estimated value of the tender (exclusive of VAT) was € 127,525

On the 23rd April 2018, Burmarrad Commercials Ltd filed an objection against the Contracting Authority on the grounds that their tender was rejected due to being technically non-compliant. A deposit of € 725 was paid.

On 29th May 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Burmarrad Commercials Ltd

Dr Carlos Bugeja	Legal Representative
Mr Mario Gauci Jr	Representative
Ms Sharon Camilleri	Representative

Recommended Bidder – Alpine Rent-a-Car Ltd

Dr Reuben Farrugia	Legal Representative
Mr Nicholas Zahra	Representative
Mr Wilfred Mangion	Representative

Contracting Authority – Ministry for Transport, Infrastructure and Capital Projects

Mr Raymond Caruana	Chairperson Evaluation Committee
Mr Mario Fenech	Member Evaluation Board
Ing Felix Grech	Member Evaluation Board
Mr Ernest Johnson	Member Evaluation Board

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, in a brief introduction requested the Appellants to make their submissions.

Dr Carlos Bugeja, Legal Representative of Burmarrad Commercials Ltd, stated that his clients were advised that their tender was technically non-compliant as the engine size of the vehicles they had offered was not greater than 990cc capacity as requested. The vehicles offered had a nominal value of 1.0l. capacity and therefore they submitted that this was in excess of the requested capacity. In evidence he indicated that both the Log Book and the European Certificate of Conformity showed an engine size of 998cc capacity. Moreover, the vehicles offered were compliant even if the paper work was inconsistent. The Evaluation Committee had made too many assumptions in reaching their conclusions.

Mr Raymond Caruana, Chairperson of the Evaluation Committee, said that no assumptions had been made. The 1.0l capacity mentioned in the brochure was a nominal value. He tabled a copy of the technical form submitted in the tender document which showed a figure of 990 cc engine capacity, and which therefore made the bid non-complaint.

The Chairman of the Board said that the PCRB had often stated that the technical literature represents the technical offer to ensure that the bidder will deliver what has been offered. In this case there was a variance between the technical form and the technical literature, which is not acceptable.

Dr Reuben Farrugia, on behalf of the recommended bidder, made the point that the technical form took precedence over the technical literature. He further pointed out that the Appellant case failed also on another point – the tender sought vehicles of 5-seat capacity, whereas the latter were offering 4-seat capacity cars.

The Chairman thanked the parties for their submission and declared the hearing closed.

This Board,

Having noted this Objection filed by Burmarrad Commercials Limited, (hereinafter referred to as the Appellants), on 23 April 2018 refers to the contentions made by the same Appellants with regards to the Award of

Tender of Reference 4/2018 listed as Case No 1173 in the records of the Public Contracts Review Board, awarded by the Ministry for Transport, Infrastructure & Capital Projects, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Carlos Bugeja

Appearing for the Contracting Authority: Mr Raymond Caruana

Whereby, the Appellants contend that:

- a) **Their offer was technically compliant and in this regard, the engine capacity of the vehicles is 998cc, which is above the minimum requirement of 990cc. The Appellants also contend that the technical literature so submitted confirms that such engine capacity is being offered.**

This Board also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 13 April 2018 and its verbal submissions during the Public Hearing which was held on 29 May 2018, in that:

- a) **The Ministry of Transport, Infrastructure and Capital Projects maintains that although the Literature submitted by the Appellants indicate an engine capacity of 998cc, the Technical Offer stated that the Appellants will be offering vehicles with an engine capacity of 990cc,**

which does not have a capacity of more than 990cc. In this regard, the Appellants' offer was deemed as being technically non-compliant.

This Board, after having examined the relevant documentation to this Appeal and after having heard submissions made by all the interested parties, opines that the issue worthy of consideration is the Technical Literature as submitted by Burmarrad Commercials Limited.

This Board, as it has on numerous occasions, would emphasize that when the Contracting Authority requested Technical Literature or Data, the latter documentation must justify, in all respects, the Technical Specifications duly indicated in the Technical Offer. In this particular case, the Technical Specifications dictated vehicles with an engine capacity of more than 990cc. At the same instance, the Technical Literature indicated an engine capacity of 998cc, so that the Technical Literature's specifications do not confirm the same specification as those stated in the Technical Offer. One has to point out that the Technical Offer Form takes precedence over the Technical Literature, as the latter is requested to support the declared specifications in the Technical Offer and not vice versa. In this regard, this Board confirms and upholds the Contracting Authority's decision to render the Appellants' Offer as being technically non-compliant.

Apart from the issue of engine capacity, during the submissions, this Board was made aware that the Contracting Authority also requested that the vehicles had to be of a five-seat capacity, however, from documentation submitted by the Appellants, the latter's offer was of a four-seat capacity.

This Board also refers to the Log Book submitted with Burmarrad Commercials Limited's "*Letter of Objection*" wherein it is indicating 2016 as the year of manufacture, whilst at the same instance; the certificate of conformity is referring to a vehicle manufactured in 2018. Again, this Board respectfully notes that such inconsistencies do not reflect the product which was indicated in the Appellants' Technical Offer.

With regards to the fact that the Appellants' offer was the cheapest, this Board is well aware that the former are knowledgeable of the Evaluation Process, in that, once an offer is deemed technically non-compliant, same offer cannot reach the stage of the Financial Evaluation.

On a general note, this Board would emphasize the importance which must be taken in submitting the correct information in an offer. One has to acknowledge that it is the responsibility and obligation of the Bidder to ensure that his offer is in adherence to the Technical Specifications, so dictated in the Tender Dossier. If, the prospective Bidder is in doubt about any particular

specification, he has the remedies to clarify the same, prior to the submission of his offer. In this particular case, such remedies were not availed of by the Appellants.

In view of the above, this Board,

- a) Does not uphold the contentions raised by Burmarrad Commercials Limited;**
- b) Upholds the decision taken by the Ministry for Transport and Infrastructure in the Award of the Tender;**
- c) Recommends that the deposit paid by the Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

5th June 2018