

PUBLIC CONTRACTS REVIEW BOARD

Case 1197 – CT 3036/2017 – Tender for the Provision of Transport Services using Minivans and Tail Lift Vans

The publication date of the call for tenders was the 13th February 2018 whilst the closing date of the call for tenders was the 20th March 2018. The estimated value of the tender (exclusive of VAT) was € 1,100,000.

On the 26th June 2018, Paramount Garages filed an appeal against Jobsplus as Contracting Authority against their exclusion on the grounds that their offer was not the cheapest satisfying the administrative and technical criteria. . A deposit of € 4,450 was paid.

There were two (2) bids.

On 7th August 2018 the Public Contracts Review Board composed of Mr Carmel Esposito as Chairman, Mr Lawrence Ancilleri 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 – Paramount Coaches

Dr Reuben Farrugia	Legal Representative
Mr Leone Grech	Representative
Ms Ilona Abela Grech	Representative

Recommended Bidder – Executive Booking Office Ltd

Dr Stefan Zrinzo Azzopardi	Legal Representative
Mr Raymond Mifsud	Representative

Contracting Authority – Jobsplus

Dr Jonathan C Spiteri	Legal Representative
Ms Olivia Farrugia	Chairperson Evaluation Committee
Ms Joanna Sillato	Secretary Evaluation Board
Mr David Bonello	Member Evaluation Board
Ms Maria Cacciatore	Member Evaluation Board
Mr Juan Anton Gambina	Member Evaluation Board
Mr Clyde Caruana	Member Evaluation Board

Department of Contracts

Dr Franco Agius
Dr Chris Mizzi
Mr Jonathan Bugeja
Dr Sirole Bettina Gatt

Assistant Director
Procurement Manager
Procurement Manager
Representative

Mr Carmel Esposito, Chairman of the Public Contracts Review Board, welcomed the parties and asked them to make their submissions.

Dr Reuben Farrugia, Legal Representative of Paramount Garage (hereafter referred to as Paramount) asked leave of the Chairman to start by hearing the testimony of witnesses.

Mr Gilbert Agius (353272M) testified on oath that he was the Senior Manager at the Transport Directorate of Transport Malta. In reply to questions he stated that there was no Operators' Licence registered in the name of Executive Booking Office Ltd (hereafter referred to as Executive) but there was an Operators' Licence (no. 335068M) in the name of Yvonne Mifsud.

Witness then replied to a series of questions regarding details of certain vehicles. Witness's replies are tabulated hereunder as follows:

- CPY 029 – vehicle scrapped on 14 March 2017, and does not exist (despite copy of the log book being included in documents supporting bidder's offer to fulfil contract)
- JPY 304 – does no longer exist as transferred on 23 August 2017 to a third party and now re-registered as JPV 304 for private use
- EPY 054 – registered under the Operators' Licence held by Yvonne Mifsud.
- APY 046 – registered under the Operators' Licence held by Yvonne Mifsud
- BLY 035 – registered in the name of Raymond Mifsud. Nine-seater vehicle therefore no Operators' Licence required
- JGY 078 – eight-seater vehicle registered in the name of Raymond Mifsud no Operators' Licence required.
- DBY 013 – registered in the name of Sorrento Garage with an Operators' Licence held by Yvonne Mifsud. Year of manufacture 1999.

Witness confirmed that once a vehicle is scrapped the log books and the number plates are held by Transport Malta and are therefore no longer in circulation.

In reply to a question by Dr Jonathan Spiteri, Legal Representative of Jobsplus, witness confirmed that there were only three vehicles registered under the Operators' Licence held by Yvonne Mifsud and Executive does not have an Operators' Licence and cannot operate a public service. The Licence held by Yvonne Mifsud cannot be used by Executive.

In answer to a question by Dr Franco Agius, Assistant Director of the Department of Contracts, witness said that there was no restriction on Executive obtaining an Operators' Licence subject to

the usual requirements. The name on the log book does not matter as far as operating a public service is concerned – it is the Licence that allows the holder to operate the service.

In the context of a question by Dr Spiteri regarding the possibility of sub-contracting the service, Dr Farrugia interjected to point out that under the terms of the tender document subcontracting was not allowed.

(At this stage the Chairman exempted Mr Gilbert Agius from the restrictions of the Data Protection Act to allow him to table a copy of the Operators' Licence of Yvonne Mifsud).

Ms Olivia Farrugia (84071M) testified on oath that she was the Chairperson of the Evaluation Committee. She stated that to meet the transport requirements of her clients she required a minimum of six minivans of which one had to have tail lift facilities. It was anticipated that there would be 20 trips with normal vans and 4 using tail lifts daily – this was confirmed in the Fee Based Contract Form submitted in the tender. The Evaluation Committee had checked all the documents submitted and was satisfied that the bidder had met all the requirements, and accepted declaration that Executive met the minimum vehicle requirements. It was a condition that at execution of contract bidder had to complete a declaration that it was able to fulfil the conditions of the contract but witness stated that she could not foresee, at this stage, if witness would have 10 minibuses as stipulated.

The Evaluation Committee did not check the name on the Operators' Licence or the registration certificates, and it was only later that it transpired that the Operators' Licence submitted by bidder was in the name of Yvonne Mifsud.

Once the appeal was launched the bidder was asked to confirm the number of vehicles, and the Evaluation Committee was given the log books of six vehicles, and there was no verification if vehicles existed. Witness stated that she saw photocopies of the log books and was not concerned that the vehicles were not all registered in the name of Executive. According to the witness Raymond Mifsud, Executive and Yvonne Mifsud were all one and the same. In the view of the Evaluation Committee it was acceptable that the log books were in different names. It later transpired that the Evaluation Committee had not seen the log books and witness had decided to deal with the matter of checking the log books in an informal manner with a colleague who was not part of the Committee. In the past similar situations she had not bothered to differentiate between individuals and legal entities – in the case of this tender she could not recall what checks she had made. When pressed on the apparent contradictions in her testimony witness then stated that it was the lawyer that had asked for the logbook not the Evaluation Committee.

(At his stage of the testimony Dr Farrugia complained, mentioning that there were legal procedures which Dr Agius was circumventing by influencing the witness. It was not fair to put words into the witness's mouth.

The Chairman reminded the witness that she was there to answer questions not to debate points with Appellants legal representative.)

Continuing with her testimony, witness stated that she could not recall what checks were made to verify ownership of vehicles, but she recalled that there was some doubt about one vehicle. She felt that it was acceptable that certain vehicles could carry less than 14 passengers, even though according to the technical offer it was essential to have vehicles which could accommodate between 60 to a 100 passengers. She also confirmed that she was aware that all vehicles had to have been manufactured from 2005 onwards.

Witness stated that at contract stage successful bidder had to provide a list of vehicles to be used; since the contract can be signed twelve weeks after award of contract it would be in order for the Evaluation Committee to allow purchasing of vehicles within that period. There was some confusion here in the testimony between the commencement of the service and the date of the signing of the contract and witness indicated that the service could commence before the signing of the contract.

In reply to questions put by Dr Jonathan Spiteri, witness stated that she had examined the documents not as Chairperson of the Evaluation Committee but in her other role of project leader. She felt that the declarations made in the ESPD were sufficient. The 12 week period she had referred to was to give the bidder a chance to sign the contract. There were no limitations imposed on the actions of the bidder. For logistical reasons the trips had to be made at the same time hence the need for several vehicles.

In reply to questions by Dr Agius, witness stated that the bidder intends to buy further vehicles. The Evaluation had considered the technical aspects of the bids. The whole point of the ESPD was to facilitate the tendering process and so that mistakes can be rectified. Executive had declared in their bid that they were not intending to sub-contract any part of the contract.

After further comments by both sides Dr Farrugia stated that he had no further questions for the witness and he was ready to start his submissions.

The Chairman pointed out that this hearing had been very long and it was his intention to adjourn the hearing to another date to hear the submissions.

SECONH HEARING

The adjourned hearing was resumed on 30th August 2018.

The Public Contracts Review Board composed of Mr Carmel Esposito as Chairman, Mr Lawrence Ancilleri and Mr Richard A Matrenza as members convened a public hearing for further submissions to be made.

The attendance for this public hearing was as follows:

Appellant – Paramount Coaches

Dr Reuben Farrugia

Legal Representative

Mr Leone Grech Representative
Ms Ilona Abela Grech Representative

Recommended Bidder – Executive Booking Office Ltd

Dr Stefan Zrinzo Azzopardi Legal Representative

Contracting Authority – Jobsplus

Dr Jonathan C Spiteri Legal Representative
Ms Olivia Farrugia Chairperson Evaluation Board

Department of Contracts

Dr Franco Agius Assistant Director
Dr Christopher Mizzi Procurement Manager
Dr Sirole Bettina Gatt Representative

The Chairman welcomed the parties and invited Dr Farrugia, Legal Representative for Paramount Coaches, to make his submissions.

Dr Franco Agius, on behalf of the Department of Contracts requested permission to speak first. He stated that in view of the witnesses heard at the first hearing the Contracting Authority wished to withdraw their previous decision with regard to the award of the tender. The Department is requesting a re-evaluation of the tender documents under a new evaluation board and the cancellation of the award.

Dr Farrugia said that he had no objections on the understanding that the Appellant was refunded the deposit in full that the award is cancelled and the re-evaluation was made by a new board.

Dr Jonathan Spiteri, Legal Representative of Jobsplus concurred with this decision and said that the case merited re-consideration.

The Chairman thanked the parties for their co-operative approach and declared the hearing closed.

Mr Carmel Esposito
Chairman
28th August 2018

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

