

PUBLIC CONTRACTS REVIEW BOARD

Case 1448 – ZBGLC01/2019 – Tender for the Provision of Bulky Refuse Collection using Low Emission Vehicle for the Zebbug Local Council

The tender was published on the 6th November 2019 and the closing date of the tender was the 29th November 2019. The estimated value of the tender (exclusive of VAT) was € 30,000.

On the 11th May 2020 Mr Melchior Dimech filed an appeal against the Zebbug Local Council as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant. A deposit of € 400 was paid.

There were two (2) bidders.

On 29th May 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Mr Melchior Dimech

Dr Franco Galea	Legal Representative
Mr Melchior Dimech	Representative

Contracting Authority – Zebbug Local Council

Dr Phyllis Aquilina	Legal Representative
Mr Isabelle Camilleri	Member Evaluation Committee
Mr Duncan Bartolo	Member Evaluation Committee
Ms Paula M Valletta	Representative
Ms Chanel Bantick	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties had agreed to treat it as a normal hearing of the Board. He invited submissions.

Dr Franco Galea Legal Representative for Mr Melchior Dimech said that the tender requirement was that the vehicle offered must have an emission level of not less than Euro IV standard – his client offered Euro V standard, but both bidders were disqualified for allegedly not having submitted the technical sheet indicating the emissions level.

The tender dossier did not specify a mandatory requirement to provide the technical sheet showing emission standards. Mr Dimech would be using a Euro V vehicle which met the required standard (as

shown in the submitted log book) and therefore no other document was required. The request by the Zebbug Local Council demanding proof of emissions level was therefore unfounded, not merely because it was not requested in the tender but more so as it would only have been required had the vehicle been modified.

Dr Phyllis Aquilina Legal Representative of the Zebbug Local Council stated that the crucial point is that the technical requirements of the tender referred to emission levels not standards which apply to vehicle up to five years old or of a certain mileage and which might no longer apply to a vehicle 10 years old with very high mileage as the bidder was offering. The Contracting Authority, and indeed the public, are only interested in the level of emissions.

Dr Galea said that commercial vehicles were subject to an annual VRT and would be failed if the emission levels were not right. Emission standards were requested and these were provided and no additional proof is required. The tender is clear that technical sheets were required only in the case of engine upgrades to Euro IV standards. In any instance emission levels are only valid at a given time.

Dr Aquilina replied that the tenders all failed because only log books had been presented without any further proof of emission levels, and no VRTs had been presented.

The Chairman stated that the tender document is not clear as it does not appear to have requested emission level certificates. Efforts should be made to try to save the tender from cancellation and the fairest solution would be to ask Transport Malta to provide verification on emission levels on both parties' vehicles. This was agreed to by both parties.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Mr Melchior Dimech (hereinafter referred to as the Appellant) on 11th May 2020, refers to the claims made by the same Appellant with regard to the tender of reference ZBG LC 01/2019 listed as case No. 1448 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Dr Franco Galea

Appearing for the Contracting Authority: Dr Phyllis Aquilina

Whereby, the Appellant contends that:

- a) Although he submitted the necessary documentation to prove that the vehicles to be deployed are above Euro IV standard, his offer was deemed technically non-compliant due to the non-submission of the technical sheet indicting the emission level, which latter documentation was not requested in the tender document. In this regard, Appellants maintain that his Euro V standard classification should suffice as evidence that the emission of the vehicles is within the emission level as requested in the tender dossier.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 20th May 2020 and its verbal submissions during the virtual hearing held on 28th May 2020, in that:

- a) The Authority insists that, the tender document referred to emissions levels and not to standards and the document which confirms the level of emissions was not submitted. In this regard, the Authority had no other option but to deem Appellant's offer as technically non-compliant. Furthermore, since none of the offers submitted the technical sheet, the tender had to be cancelled.**

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned opines that, the issue that merits

consideration is the non-submission of the technical report on the vehicles' emissions.

- 1. This Board would refer to the last two paragraphs of clause 4.2.4 of the technical reference (section 4) of the tender document, as follows:**

“All vehicles used in this tender should have an emission level not less than euro IV (4) according to EC Directive 2005/55/EC. Where vehicles are not certified as EURO IV, but technical aftertreatment has achieved the same standard, this should be documented in the tender application.

The bidder must present the technical sheets of the vehicles where emission standards are defined. For those vehicles where technical upgrade has achieved EURO IV (4) standard the measures must be documented and included in the tender application, and this must be approved by credible third party.”

From the above-mentioned clause, it is evidently clear that the Authority placed great importance to the submission of the technical sheets of the vehicles to be deployed in the tendering service. Even more specific, was the requirement of the data of vehicles with regard to emissions.

- 2. In this particular case, there were only two offers, both of which failed to submit the same documentation (Data Sheets of Vehicles), so that, the Evaluation Committee, in this situation, can request the same data sheets for the bidders' vehicles to show their present emissions.**

- 3. It must be mentioned that, it is the duty of the Authority to endeavour to save the offers and in this particular scenario, it is opportune for the Authority to act accordingly, in the interests of Good Governance, at the same instance, it must also be mentioned that, both bidders will be treated equally and compete on the same level playing field.**
- 4. This Board also notes that, during the submissions, both parties to this appeal, agreed that, the offers should be saved and a request from the Authority for further information will be the most equitable solution.**

In conclusion, this Board opines that:

- a) The Authority's request for the bidders to present a technical data sheet to determine the emissions of each vehicle to be deployed in the execution of this tender, is truly justified.**
- b) Since both bidders failed to submit the same requested documentation, it is an equitable opportunity for the Authority to save both offers and reconsider same after obtaining the necessary data regarding emissions.**
- c) Directs that the data sheet of each vehicle must reflect the present level of emissions as certified by 'Transport Malta'.**

In view of the above, this Board,

- i. directs that the offers be reassessed after the submission of the technical data sheets showing emission levels,**

ii. directs that the deposit paid by Appellant be fully reimbursed.

Dr Anthony Cassar
Chairman
2nd June 2020

Dr Charles Cassar
Member

Mr Carmel Esposito
Member