

PUBLIC CONTRACTS REVIEW BOARD

Case 1612 – CT 2199/2020. Tender for the Leasing of 38 Low Emission Motor Vehicles; 1 Crew/Cargo Van and 2 Self-Drive Vans

12th August 2021

This Board,

Having seen the letter of objection filed by Drs Keith A. Borg and Mary Rose Micallef on the 28th June 2021 on behalf of Davico Limited, hereinafter referred to as the appellant;

Having noted the letter of reply filed on the 7th July 2021 by Dr Chris Cilia on behalf of Transport Malta, hereinafter referred to as the Contracting Authority;

Having heard the verbal submissions made by the parties' legal representatives during the virtual hearing held on the 3rd August 2021, and having examined all the documentation produced;

Having finally noted and considered the minutes of the said hearing that are being hereunder incorporated;

Minutes:

The tender was published on the 31st July 2020 and the closing date was the 1st September 2020. The value of the tender was as follows: Lot 1 € 481,800, Lot 2 € 151,840 and Lot 3 € 74,460.

On the 28th June 2021 Davico Ltd filed an appeal against Transport Malta as the Contracting Authority contesting their disqualification on Lots 1 and 2 on the grounds that their offer was not the cheapest.

A deposit of € 2,409 on Lot 1 and € 759 on Lot 2 was paid.

There were fourteen (14) bidders and eighteen (18) bids.

On 3rd August 2021 the Public Contracts Review Board (PCRB) composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri 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 – Davico Ltd

Dr Keith Borg

Dr Mary Rose Micallef

Legal Representative

Legal Representative

Contracting Authority – Transport Malta

Dr Chris Cilia	Legal Representative
Ms Maryrose Pace	Member Evaluation Committee
Mr Pierre Montebello	Member Evaluation Committee
Mr David Penza	Member Evaluation Committee
Ms Yvette Camilleri	Member Evaluation Committee

Preferred Bidder – Princess Operations Ltd

Dr Albert Libreri	Legal Representative
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Dr Charles Cassar Substitute Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then asked Appellant's representative to make his submissions.

Dr Keith Borg Legal Representative for Davico Ltd stated that the appeal was based on the fact that the financial proposal of the preferred bidder would be impossible to fulfil as not all vehicles in the contract would be covered by the insurance premium quoted. It was a mistake by the Evaluation Committee not to request to see the actual policies but merely to rely on the undertaking given by the preferred bidder.

Dr Chris Cilia Legal Representative for Transport Malta made reference to the Authority's letter of reply stating that bidders were requested to submit quotations and the Evaluation Committee was satisfied by the reply. If the submissions were not correct then it was up to the Contracting Authority to take action. There was such a thing as shopping in the market for the best terms and the benefit of a high number of vehicles to be insured which made the bid feasible. The Evaluation Committee had followed the tender criteria.

After a short recess the Chairman said that the Board had heard enough to enable them to reach a decision in this case.

Dr Cilia commented that there would be repercussions if the preferred bidder fails to perform whilst Dr Borg said that he seeks assurance that matters are clarified before the award of the contract.

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

End of Minutes

Hereby resolves:

That the appellant, in the letter of objection raised two grievances against the award of the tender to the preferred bidder Princess Operations Limited:

i) doubts were raised whether at the price offered the preferred bidder could really take into account all the real costs of full insurance cover as requested in the tender and ii) the preferred bidder does not possess the required number of vehicles as requested in the tender.

The Contracting Authority contended that the preferred bidder's offer included the necessary licencing and insurances requirements as set in the tender document and that at any rate, the Contracting Authority would ensure that the preferred bidder will observe his obligations as submitted in his bid. Regarding the second grievance, the Contracting Authority pointed out that the tender document provided a time window during which a bidder could procure any necessary units not held at the time of the submission of the tender.

From the verbal submissions made by appellant's legal representative Dr Keith Borg, it became clear that instead of providing proof of his allegations regarding the insurance offered by the preferred bidder, appellant wanted the preferred bidder to provide documentation over and above that requested in the tender document. The tender document did not ask for insurance certificates but just for a declaration that the vehicles would be comprehensively insured. Yet appellant wanted to have these certificates produced by the preferred bidder.

It is useless for the Appellant to claim at this stage that the Evaluation Committee made a mistake in not asking for these certificates. If the appellant had any doubts about the insurance certifications as set in the tender document, he should have asked for remedies before the closing date of the tender.

For these reasons this Board rejects appellant's grievances and confirms the decision taken by the Evaluation Committee.

The deposit paid by the appellant shall not be refunded.

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member