

PUBLIC CONTRACTS REVIEW BOARD

Case 1547 – CT 2334/2019 – Tender for the Dismantling and Reconstruction of a Platform and Slipway at ix-Xtajta tal-Qawra

29th March 2021.

This Board,

Having noted the letter of objection filed by Dr Marycien Vassallo on behalf of LBV Limited, (hereafter referred to as the appellant), received on the 15th January 2021 whereby the appellant brought forward two grievances against the award of the tender to the preferred bidder because, at the time of submission of the tender he was administratively non-compliant since: i) he had no VAT number as required by the tender document and ii) did not have an account with a bank in Malta;

Having also noted the contracting authority's letter of reply filed by Dr Franco Galea received on the 25th January 2021;

Having taken cognizance and evaluated the evidence produced, all the documentation provided as well as the submissions made by the representatives of the parties involved;

Having heard, examined and considered the testimony of the witness produced by appellant, Ms Maryrose Pace, who had been the Chairperson of the Evaluation Board;

Having noted and evaluated the minutes of the Board virtual sitting of the 17th March 2021, hereunder reproduced:

Minutes:

The request was published on the 15th April 2020 and the closing date was the 19th May 2020. The value of the tender was € 558,000.

On the 15th January 2021 LBV Ltd (LBV) filed an appeal against Transport Malta as the Contracting Authority objecting to the award of the tender on the grounds that the preferred bidder was not administratively compliant at the time of the offer.

A deposit of € 2,790 was paid.

There were five (5) bidders.

On 17th March 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:

Appellants – LBV Ltd

Dr Marycien Vassallo Legal Representative

Contracting Authority – Transport Malta

Dr Franco Galea	Legal Representative
Ms Maryrose Pace	Chairperson Evaluation Committee
Ms Lara Demicoli	Member Evaluation Committee
Mr Rudolph Muscat	Member Evaluation Committee
Ms Sharon Testa	Secretary Evaluation Board
Mr Larson Pisani	Representative

Preferred Bidder – Patti Construction Ltd

Mr Guiseppe Capone Representative

Dr Cassar 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. He then invited submissions.

Dr Marycien Vassallo Legal Representative for LBV Ltd requested that witnesses be heard prior to making submissions.

Mrs Maryrose Pace (562469M) called as a witness by Appellants testified on oath that she was the Chairperson of the Evaluation Committee. She stated that preferred bidders offer was submitted by the closing date of the tender – 19th May 2020. She explained that the reason why the outcome of the evaluation decision was delayed till January 2021 was that the evaluation committee members were working from home due to the pandemic and queries took time to resolve. Witness confirmed that the only clarification sent to Patti Construction was in regard to the key expert form.

Dr Franco Galea Legal Representative for Transport Malta objected to this line of questioning since the appeal was based on the alleged lack of registration under VAT regulations and the lack of a bank account.

Dr Vassallo said that she will not proceed with producing further witnesses. The appeal is on the basis that the preferred bidder was not compliant at the tender stage. She referred to PCRБ Case no 789 which directed that an economic operator must be compliant at the time of submission of a tender. Further, the performance guarantee required to be provided had to indicate the name of a bank. Preferred bidders had stated that at the time of the tender they did not have a bank account.

Dr Galea said that the VAT claim had been withdrawn and there was no requirement in the tender that the bidder had to have a bank account. The performance guarantee referred to, would only be required at contract stage i.e. post award and enforcing it earlier would have been tantamount to restraint of trade.

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

End of Minutes

This Board,

Having also heard and considered the verbal submissions made by Dr Marycien Vassallo on behalf of the appellant and Dr Franco Galea on behalf of Transport Malta, the contracting authority;

This Board considers that two issues form the basis of this appeal. These are the contentions that at the time of submitting his offer, the preferred bidder was not in possession of a number issued by the VAT Department and neither had he an account with a local bank. In the Board's opinion, the first issue was immediately settled upon receipt of the letter of reply filed by the preferred bidder on the 2nd February 2021 since enclosed with it was a Certificate showing clearly that in fact the preferred bidder was registered with the VAT Department since the 23rd March 2020 with effect from the 1st March 2020. It is clear that both these dates came before the tender's closing date which was on the 19th May 2020. Hence appellant's first grievance was not proven.

As regards the second grievance this Board agrees with Dr Franco Galea's submission that having an account with a local bank in order to produce the performance guarantee was not necessary during the tender submission stage but would come into effect after the award of the tender. It would be only then that a performance guarantee became necessary.

The Board also noted that the explanation given under oath by the Chairperson of the Evaluation Board regarding the length of time to effect the evaluation seemed plausible and was not contested by anyone.

For the above reasons, the Board finds against the appellant and rejects the appeal. The deposit should not be reimbursed.

Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member