

PUBLIC CONTRACTS REVIEW BOARD

Case 1615 – CT 2199/2020. Tender for the Leasing of 38 Low Emission Motor Vehicles; 1 Crew/Cargo Van and 2 Self-Drive Vans Lot 3.

13th August 2021

The Board,

Having seen the letter of objection filed on the 28th June 2021 by Dr Mary Rose Micallef 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 examined the testimony given under oath by witness Pierre Montebello;

Having heard and considered the oral submissions made by the parties' legal representatives during the virtual hearing held on the 5th August 2021;

Having examined the documents produced and taken cognizance of the minutes of the said virtual public hearing of the 5th August 2021, which minutes are being hereunder incorporated;

Minutes:

The tender was published on the 31st July 2020 in three lots and the closing date was the 1st September 2020. The estimated 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 in regard to Lot 3 on the grounds that their offer was deemed technically non-compliant.

A deposit of € 400 was paid.

There were nine (9) bidders.

On 5th 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 Mary Rose Micallef Legal Representative

Contracting Authority – Transport Malta

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| Dr Chris Cilia | Legal Representative |
| Mr Pierre Montebello | Member Evaluation Committee |
| Mr David Penza | Member Evaluation Committee |
| Ms Yvette Camilleri | Member Evaluation Committee |
| Mr Larson Pisani | Representative |

Preferred Bidder – Princess Operations Ltd

Dr Albert Libreri Legal Representative

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 Mary Rose Micallef Legal Representative for Davico Ltd stated that Appellant was declared non-compliant after replying to a request for clarification seeking confirmation that self-driven vans will be provided. This information had already been provided in the original submissions, so the same document was resubmitted to confirm availability.

Dr Chris Cilia Legal Representative for Transport Malta said that the Contracting Authority does not agree with what has been stated otherwise it would not have asked for a clarification. The Authority sent a letter of clarification on the 22nd October 2020 and instead of replying Appellant simply resubmitted what had already been provided. The Evaluation Committee which could not correct the bid had no alternative but to declare the offer technically non-compliant.

Mr Pierre Montebello (34272M) called as a witness by the Contracting Authority testified on oath that he was a member of the Evaluation Committee. He stated that the reason for the disqualification was that Appellant had failed to tick the box specifying ‘Self-Drive Vans’ in the Technical Offer.

Dr Micallef pointed out that Appellant had however confirmed that the vans were available.

Dr Cilia said that this was a technical point. The Appellant was asked to provide missing information and when given an opportunity to clarify had instead resubmitted the financial bid form.

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

End of Minutes

Hereby resolves:

That the matter arose when appellant, during the filling of the tender document, had erroneously failed to tick a column in the Technical Offer of Lot 3. The document clearly show that the tick box for the item “Self -Drive Vans” remained un-ticked.

Since the technical offer of a bid is covered by note 3 the error could not be rectified in any way. Yet instead of just disqualifying this offer, the Contracting Authority on the 22nd October 2021, asked appellant to indicate **where in his offer** he had stated that the self-drive vans would be provided.

When replying to the clarification, appellant just re-submitted the whole document without explaining where in it he was offering the self-drive vans.

The appellant’s letter of objection is just a repeat of this. In it appellant insists that the document had already been submitted with his offer.

Technical Offers, once submitted are covered by note 3 and this means that omissions, even as simple as a tick box, cannot be rectified. Only clarifications on submitted information are allowed. That is the reason why prospective bidders should be very exact when submitting the Technical Offer Form since any mistake made cannot be rectified.

For these reasons the Board rejects appellant’s request and agrees with the recommendation of the Evaluation Committee.

The deposit shall not be refunded.

Dr Charles Cassar

Mr Lawrence Ancilleri

Mr Carmel Esposito

Chairman

Member

Member