

PUBLIC CONTRACTS REVIEW BOARD

Case 1635 – MDH 137/2021 – Call for Quotations for the Provision of 112 Ambulance Support Service

6th October 2021

The Board,

Having noted the letter of objection filed by Mr Philip Cardona acting for and on behalf of Emergency Malta, (hereinafter referred to as the appellant) filed on the 19th July 2021;

Having also noted the letter of reply filed by Dr Marco Woods acting for the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 28th July 2021;

Having heard and evaluated the testimony of the witness Mr Steve Ellul (Secretary of the Evaluation Committee) as summoned by Dr Farrugia Zrinzo acting for the Contracting Authority.

Having heard and evaluated the testimony of the witness Dr Michael Spiteri (Medical Doctor and Member of the Evaluation Committee) as summoned by Dr Farrugia Zrinzo acting for the Contracting Authority.

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 5th October 2021 hereunder-reproduced;

Minutes

Case 1635–MDH 137/2021. Call for Quotations for the Provision of 112 Ambulance Support Service

The tender was published on the 25th June 2021 and the closing date was the 30th June 2021. The value of the tender excluding VAT was € 450,000.

On the 19th July 2021 Emergency Malta filed an appeal against Mater Dei Hospital as the Contracting Authority objecting to their disqualification on the grounds that their bid was considered technically non-compliant.

A deposit of € 2,250 was paid.

There were two (2) bidders.

On 5th October 2021 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Emergency Malta

Dr Adrian Delia	Legal Representative
Mr Gordon Agius	Representative

Contracting Authority – Mater Dei Hospital

Dr Alexia Farrugia Zrinzo	Legal Representative
Dr Leon Camilleri	Legal Representative
Mr Steve Ellul	Secretary Evaluation Committee
Dr Michael Spiteri	Member Evaluation Committee
Ms Celia Falzon	Representative

Mr Kenneth Swain 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 invited submissions.

Dr Adrian Delia Legal Representative for Emergency Malta referred to the reason for disqualification by the Authority and their decision that the Appellant’s bid was not acceptable as the ambulance documents did not indicate that they were EN 1789 Type B certified. He referred to pages 3 and 4 of the tender documents which *inter alia* state that the ambulances ‘should be EN 1789 Type B certified’ and ‘relevant documents issued by a reputable entity.... to be submitted’ and indicated that the Certificate (marked as Document Q2 in the tender submission) from Femeraid was from a reputable company and its wording covered all the requirements of the tender; hence Clause 9 was fully satisfied. The CPSU had not raised any other point on the certification aspect. Clause 4 in their letter of reply had to be disregarded as it did not form part of the objection letter.

On this last point the Chairman concurred and stated that the Board would disregard Clause 4 of the letter. Once the technical offer was halted no arguments could be raised on the financial aspect of the bid.

Dr Alexia Farrugia Zrinzo Legal Representative for Mater Dei Hospital said that the Appellant had not made any remedy request to the Board and therefore the objection should be rejected. On the point regarding the appeal the document offered was not what the Authority requested.

Dr Delia said that the Appellant’s objection is clear in the appeal letter and it was up to the Authority to prove that the declaration was not the right one or had not been submitted.

Mr Steve Ellul (262476M) called as a witness by the Contracting Authority testified on oath that he was the Secretary of the Evaluation Committee and had total responsibility for the tender process including preparing the final report. Referred to the document mentioned above (Q2) witness stated that this was a frivolous document with not enough detail and not enough weight. The evaluators expected more detail on each ambulance listed in the document. Witness confirmed that the listed ambulances all conform to the requirements but the Evaluation Committee wanted individual certificates for each vehicle.

Questioned by Dr Delia witness agreed that Femeraid was a reputable entity and agreed that each ambulance was described correctly and had all been accurately covered in the certificate. He reiterated that the Authority expected individual certificates including technical details. Witness confirmed that no clarification had been sought on this point.

Dr Michael Spiteri (292675M) called as a witness by the Contracting Authority testified on oath that he was a Medical Doctor. He stated that the EN 1789 certificate that the Authority wanted was the one issued by the firm that had carried out the conversion of the vehicle from a simple van to a fully equipped ambulance. The entity Femeraid did not do vehicle conversions.

In reply to questions from Dr Delia witness said that it was the convertors which issued CEN 1789 certificates and vehicles cannot be certified as compliant years after they were converted – at the present stage all the listed ambulances would have failed CEN 1789 certification; if such certificate is requested it means the original certificate is what is expected.

This was the conclusion of the testimonies

Dr Delia said that it is very relevant that until the testimony of Dr Spiteri the status of the certification company was not in doubt. Dr Spiteri totally ignored what the tender stated and insisted that the conversion certificate is the only valid one - he then stated that it was not the convertor who certified but another follow-up firm; in so doing witness was trying to defend the indefensible. Witnesses' statements contradicted each other whilst Dr Spiteri was trying to justify what the tender did not ask for. Femeraid is a reputable firm and stated that they inspected the vehicles. The Authority's claim would only be valid if they had proven that the document was false. The Board must be reassured about the genuineness of the certificate proven by the fact that the ambulances are all in service and the Authority did not ask for any clarification.

Dr Farrugia Zrinzo reminded the Board that the Appellant had not requested any remedies in the appeal. The Authority wanted all possible documents on each vehicle. Mr Ellul had not gone into the merits of the Company issuing the certificate – this was to be expected as no certificates had been presented, whilst Dr Spiteri had indicated that the certificate should have been issued at the time of the conversion; moreover there was no indication of how and when the inspection of the vehicles had taken place. The Authority was not comfortable that the specifications had been met. Reference was made to PCRB Case 1278 (2019) wherein the Board had stated that the indicated specification must be met.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 5th October 2021.

Having noted the objection filed by Emergency Malta (hereinafter referred to as the Appellant) on 19th July 2021, refers to the claims made by the same Appellant with regards to the tender of reference MDH 137/2021 as case No. 1635 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Adrian Delia

Appearing for the Contracting Authority: Dr Alexia Farrugia Zrinzo & Dr Leon Camilleri

Whereby, the Appellant contends that:

- a) Submission was made in relation to clause 9 which documents that each ambulance is EN 1789 Type B certified by a reputable entity.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 28th July 2021 and its verbal submission during the virtual hearing held on 5th October 2021, in that:

- a) Preliminary plea – attention is brought to the fact that the objection as submitted contains no request being made to the Public Contracts Review Board. The objection merely includes statements that the objector disagrees with the decision and that they have submitted the required document. That said, the objection before the Board does not contain any formal request to the Board for the re-integration of the offer or for the Board to deem their offer as being compliant
- b) As evidenced from the Tender document, CPSU requested that the bidders submit certification that each of the ambulances listed is EN 1789 Type B certified - Pg 4 of the CFQ quoted hereunder for ease of reference: "Copies of relevant documents issued by a reputable entity showing that each ambulance is EN1789 Type B certified, are to be submitted with the technical offer. Copies of Technical Sheets (Logbooks) and certificates of Motor Insurance for each ambulance being proposed for the execution of the contract should also be submitted with the technical offer." The objectors submitted a document which document was duly evaluated by the Evaluation Committee. However, it transpired that the document is not actual certification of the ambulances, but merely a declaration that the ambulances conform to the standards as stipulated in CEN 1789 Type B. In view of the fact that no actual certificates were

in fact submitted, the Evaluation Committee could not deem that the relevant requirement had been satisfied.

- c) Furthermore, if one were to look at the financial bid as submitted by the objectors, if for all intents and purposes the bidder had submitted the required certificates, the offer would still have been rejected in view of the fact that it exceeded the financial budget of the Call.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will consider Appellant's grievances, as follows:

- a) **Preliminary plea** – This Board makes reference to regulation 270 of S.L. 601.03 Public Procurement Regulations ("PPR") whereby it states "... any tenderer..... may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints." The PPR, therefore, is unequivocal when it speaks about the 'reasons for the complaints', but is not specific on the 'formal requests' as mentioned in the preliminary plea put forward by the Contracting Authority. This Board opines that the 'reason' as put forward by the Appellant is clear in its objection when it is stated that "... **we have submitted** our response to clause 9 which documents that each ambulance is EN1789 Type B certified by a reputable entity." (bold emphasis added). It is taken to be 'clear in its objection' since the reason as put forward by the Contracting Authority for non-compliance in its letter of 9th July 2021 to the Appellant company stated, "... **you failed to submit** relevant documents issued by a reputable entity..." (bold emphasis added). Hence, the Board does not uphold the preliminary plea as put forward by the Contracting Authority.
- b) **Technical offer** – This Board makes reference to:
 - i. page 4 of the 'Call for Quotations' (CfQ) whereby, "*Copies of relevant documents issued by a reputable entity showing that each ambulance is EN1789 Type B certified, are to be submitted with the technical offer. Copies of Technical Sheets (Logbooks) and certificates of Motor Insurance for each ambulance being proposed for the execution of the contract should also be submitted with the technical offer.*"
 - ii. the 'Femeraid International – Certification of Ambulances' which forms part of the bid by the Appellant company which includes details of the Call Sign, Make, Maltese Plate Number and Notes on all the thirteen ambulances inspected.
 - iii. the testimony under oath by Mr Steve Ellul, whereby he agreed that Femeraid was a reputable entity.
 - iv. the testimony under oath by Mr Steve Ellul, whereby it was stated that the Evaluation Committee wanted individual certificates for each vehicle. The Board opines that whether an individual certificate would have been presented by Femeraid for each ambulance, or

one certificate issued for all ambulances to be used in this CfQ is irrelevant to the requisites of the paragraph aforementioned in page 4 of the CfQ and quoted above in point (i).

- v. the testimony under oath by Dr Michael Spiteri, whereby it was first stated that it is the ‘convertor’ firm which issued the CEN 1789 certificate but later stated that it was another ‘follow-up’ firm which issues the certification on the ambulances in accordance with CEN 1789.
- vi. the testimony under oath by Dr Michael Spiteri, whereby the ‘conversion’ certificate is the only valid certificate that the Evaluation Committee would have accepted.

After taking cognisance of all the above, this Board opines that the Evaluation Committee did not adhere to the Self Limitation concept and adopted too much ‘leeway’ in its interpretation of the requisite required by the CfQ dossier.

This Board further, opines that the Appellant company satisfied the requisites of the aforementioned paragraph, quoted in point (i) above, when it submitted the document referred to in point (ii) above, for eventual evaluation. Hence this Board upholds Appellant’s grievance.

- c) Financial offer – This Board opines that since the Evaluation Committee deemed the offer of the Appellant to be technically non-compliant, then no financial evaluation has been carried out. Therefore, no arguments can be raised on the financial aspect of the bid.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) To uphold the Appellant’s concerns and grievance;
- b) To cancel the letter dated 9th July 2021 whereby The Ministry for Health agreed to the recommendation for the cancellation of the CfQ;
- c) To cancel the Letters of Rejection dated 9th July 2021 sent to Emergency Malta;
- d) To order the contracting authority to re-evaluate the bid received by Emergency Malta in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee whilst also taking into consideration the findings of this Board mentioned above.
- e) after taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard Matrenza
Member