

PUBLIC CONTRACTS REVIEW BOARD

Case No. 388

DES/100/2009

Tender for the Hire of Self-Drive Passenger Vans and Cars to the Ministry of Education, Employment and the Family

This call for tenders was published in the Government Gazette on the 9th December 2011. The closing date for this call with an estimated budget of € 23,904 (incl. VAT) was the 22nd December 2011.

Four (4) tenderers submitted their offers.

Mr Gilbert Bonnici filed an objection on the 18th January 2012 against the decisions of the Ministry of Education, Employment and the Family to disqualify his offer as it was considered to be technically non-compliant and to recommend the award of the tender to Altour Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Tuesday, 20th March 2012 to discuss this objection.

Gilbert Bonnici

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| Dr John Gauci | Legal Representative |
| Mr Gilbert Bonnici | The Appellant |

Altour Ltd

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| Mr Aldo Formosa | Representative |
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Ministry of Education, Employment and the Family

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| Dr Fiona Cilia Pulis | Legal Representative |
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Evaluation Board

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| Ms Lorraine Mangion Duca | Chairperson |
| Mr Lawrence Spina | Member |
| Mr Manuel Cachia | Member |

After the Chairman's brief introduction, the appellant was invited to explain the motives of his objection.


Dr John Gauci, legal representative of Mr Gilbert Bonnici, the appellant, submitted that:-

- a. by email dated 11th January 2012 the contracting authority had informed his client that his offer was found to be technically non-compliant since no copies of the logbooks were submitted;
 - b. according to Clause 6.1.2 (c), the bidder had to submit a *'copy of the logbook of each vehicle shown in the list.'*
 - c. his client was quite clear in the information he submitted on the 'List of vehicle details', namely that he was going to offer brand new cars and that, as a result, he was not in position to furnish a copy of their logbook at tendering stage;
 - d. his client had submitted the brochures of the vehicles offered and the declarations requested of him in the tender document;
- and
- e. it was neither fair nor reasonable for one to penalise a bidder for offering brand new cars at a price cheaper than that offered by the recommended tenderer.

Dr Fiona Cilia Pulis, legal representative of the contracting authority, explained that:-

- i. the contracting authority wanted to avail itself of this service as of the start of January 2012;
 - ii. the appellant had indicated that he had not yet registered his vehicles so much so that 2012 was indicated as the year of first registration;
 - iii. apparently, the appellant expected the contracting authority to rely solely on his declaration that he would have the vehicles in Malta, appropriately registered and ready to render the service;
- and
- iv. the contracting authority deducted that the fact that the vehicles were not registered meant that he was not in possession of the required vehicles and, as a consequence, could not render the service.

Ms Lorraine Mangion Duca, chairperson of the adjudicating board, explained that it was evident that the appellant would purchase and register the vehicles required only if awarded the tender and, therefore, the contracting authority did not have the peace of mind that the appellant would be in a position to render this service as on the start of 2012 since he could face problems in the importation and registration of these cars.



Mr Gilbert Bonnici, the appellant, explained that the vehicles were going to be purchased from the stock available at the local agents and, as such, the vehicles would be in his possession upon payment and they would be registered in no time.

The Public Contracts Review Board noted that the closing date of the tender was the 22nd December 2011 and considering that the evaluation report was concluded on the 29th December 2011, the email to the appellant was sent on the 11th January 2012 and the time that had to be allowed for the submission of an appeal, it was definitely not possible to have his contract operative by 1st January 2012.

Mr Lawrence Spina, a member of the adjudicating board, explained it did not matter to them whether the vehicles offered were brand new or whether these would have been on the road for less than five years as what mattered to them was that the vehicles were available to render the service immediately on request and hence the requirement of the vehicles' logbook. He added that, as things were presented, the contracting authority had no comfort that the appellant was in possession of the required vehicles.

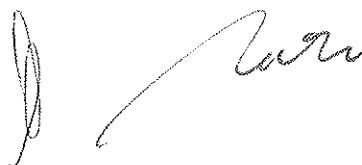
The Chairman Public Contracts Review Board expressed the view that the contracting authority could have asked for a confirmation from the appellant that the vehicles were readily available at the local agents as otherwise their registration would not take up much time.

Mr Manuel Cachia, an officer in charge of transport and a member of the adjudicating board, explained that in this tender they had requested the logbook to ensure that the vehicles were readily available since, in the past, there were instances where the successful tenderer who offered brand new cars took him about two months or so to, actually, purchase and register the vehicles.

Dr John Gauci submitted that:-

- a. the tender document did not stipulate that tenderers would be disqualified if they did not offer vehicles already registered;
 - b. there were, at least, 7 days from date of award to the date of signing the contract, by which date his client would have procured and registered the vehicles;
 - c. upon signing the contract the contracting authority would have the performance guarantee in hand;
 - d. the contracting authority was not going to make use of all the vehicles requested as from day one - in fact, at the beginning, it only required two vehicles;
- and
- e. the contracting authority did not require all the vehicles continuously throughout the contract period but would require the vehicles on demand.

At this point the hearing was brought to a close.



This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 18th January 2012 and also through their verbal submissions presented during the hearing held on the 20th March 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by email dated 11th January 2012 the contracting authority had informed the appellant that his offer was found to be technically non-compliant since no copies of the logbooks were submitted, (b) according to Clause 6.1.2 (c), the bidder had to submit a '*copy of the logbook of each vehicle shown in the list.*', (c) he was quite clear in the information he submitted on the 'List of vehicle details', namely that he was going to offer brand new cars and that, as a result, he was not in position to furnish a copy of their logbook at tendering stage, (d) he had submitted the brochures of the vehicles offered and the declarations requested of him in the tender document, (e) it was neither fair nor reasonable for one to penalise a bidder for offering brand new cars at a price cheaper than that offered by the recommended tenderer, (f) the vehicles were going to be purchased from the stock available at the local agents and, as such, the vehicles would be in his possession upon payment and they would be registered in no time, (g) the tender document did not stipulate that tenderers would be disqualified if they did not offer vehicles already registered, (h) there were, at least, 7 days from date of award to the date of signing the contract, by which date his client would have procured and registered the vehicles, (i) upon signing the contract the contracting authority would have the performance guarantee in hand and (j) the contracting authority was not going to make use of all the vehicles requested as from day one - in fact, at the beginning, it only required two vehicles;
- having considered the contracting authority's representatives' reference to the fact that (a) the contracting authority wanted to avail itself of this service as of the start of January 2012, (b) the appellant had indicated that he had not yet registered his vehicles so much so that 2012 was indicated as the year of first registration, (c) apparently, the appellant expected the contracting authority to rely solely on his declaration that he would have the vehicles in Malta, appropriately registered and ready to render the service, (d) the contracting authority deducted that the fact that the vehicles were not registered meant that he was not in possession of the required vehicles and, as a consequence, could not render the service, (e) it was evident that the appellant would purchase and register the vehicles required only if awarded the tender and, therefore, the contracting authority did not have the peace of mind that the appellant would be in a position to render this service as on the start of 2012 since he could face problems in the importation and registration of these cars, (f) it did not matter to the contracting authority whether the vehicles offered were brand new or whether these would have been on the road for less than five years as what mattered most was that the vehicles were available to render the service immediately on request and hence the requirement of the vehicles' logbook and (g) in this tender they had requested the logbook to ensure that the vehicles were readily available since, in the past, there were instances where the successful tenderer who offered brand new cars took him about two months or so to, actually, purchase and register the vehicles,



reached the following conclusions, namely:

1. The Public Contracts Review Board opines that the closing date of the tender was the 22nd December 2011 and considering that the evaluation report was concluded on the 29th December 2011, the email to the appellant was sent on the 11th January 2012 and the time that had to be allowed for the submission of an appeal, it was definitely not possible to have his contract operative by 1st January 2012.
2. This Board, whilst acknowledging the fact that in this tender the contracting authority had requested the logbook to ensure that the vehicles were readily available since, in the past, there were instances where the successful tenderer who offered brand new cars took him about two months or so to, actually, purchase and register the vehicles, yet argues that the contracting authority could have, at least, asked for a confirmation from the appellant that the vehicles were readily available at the local agents considering that their registration would not take up much time.

In view of the above, this Board finds in favour of the appellant and apart from recommending that the latter's bid be reintegrated with all clarifications being sought to enable the evaluation board to reach a more knowledgeable conclusion, this Board also recommends that the appellant be reimbursed with the deposit paid for the appeal to be lodged



Alfred R Triganza
Chairman

11th April 2012



Carmel Esposito
Member



Joseph Croker
Member