

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 417

**Adv No: CPSU/PH/02/2012 – DH 237/12**

**Tender for the provision of the Services of a Transportation Company to provide transport for the delegates attending the 62nd Session of the World Health Organisation Regional Committee**

This call for tenders was published in the Government Gazette on the 21<sup>st</sup> February 2012. The closing date for this call – which attracted no fewer than two (2) tenderers - with an estimated budget of €120,000 (Excl VAT) was the 21<sup>st</sup> March 2012.

On Site Malta Ltd filed an objection on the 2<sup>nd</sup> May 2012 against the decision of the Central Procurement and Supplies Unit MHEC to disqualify its offer as non compliant and to award the tender to Supreme Travel 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 29<sup>th</sup> May, 2012 to discuss this objection.

Present for the hearing:

### **On Site Malta Ltd**

Ms Lara Caruana	Representative
Ms Helga Ebejer	Representative
Mr Gordon Farrugia	Representative


### **Supreme Travel Ltd**

Ms Amanda Abela	Representative
Mr Leo Grech	Representative
Mr Pierre Mangani	Representative
Mr Kevin Vella	Representative

### **Ministry for Health, the Elderly and Community Care**

### **Evaluation Board**

Ms Inez Cassar	Member
Dr Miriam Dalmas	Chairperson
Ms Audrey Galea	Member
Ms Ruth Spiteri	Secretary



After the Chairman's brief introduction, the representatives of the appellant company were invited to explain the motives of their objections.

Ms Helga Ebejer, representing On Site Malta Ltd, the appellant company, submitted that both tenders should have been disqualified since it had just been revealed to them that Zarb Coaches had participated in both tenders – in the their tender as a partner in a joint venture with On Site Malta and John's Garage and as a sub-contractor in the tender submitted by the recommended tenderer, Supreme Travel Ltd. This was confirmed by the representatives of Supreme Travel Ltd also present for the hearing.

The Chairman, Public Contracts Review Board made reference to paragraph 7 *Multiple Tenders* which specified that:

*7.2 A company may not tender for a given contract both individually and as a partner in a joint venture/consortium.*

*7.3 A company may not tender for a given contract both individually/partner in a joint venture/consortium, and at the same time be nominated as a sub-contractor by any another tenderer, or joint venture/ consortium.*

The representatives of Supreme Travel Ltd remarked that they did not know what the appellant company was complaining about since they did not receive the letter of objection from the contracting authority.

The Chairman Public Contracts Review Board pointed out that the contracting authority was obliged to furnish the recommended tenderer with the letter submitted by the complaining tenderer.

When asked on what grounds did the appellant company base its objection, the representatives of the recommended tenderer were informed by the Public Contracts Review Board that they were complaining against the decision for the disqualification of their offer on the grounds that the requested 'Organisation and Methodology' was not submitted. However, it was pointed out that, although this was not one of the reasons mentioned in their letter of objection, it was within the competence of the Public Contracts Review Board to annul the tendering process once both offers were vitiated.

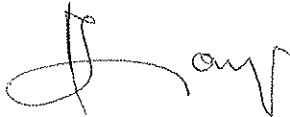
At this point the hearing was brought to a close.

This Board,

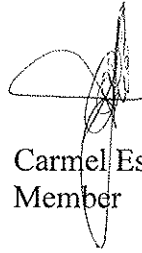
- having noted that the appellants, in terms of their 'letter of objection' dated 2<sup>nd</sup> May 2012 and also through their verbal submissions presented during the hearing held on the 29<sup>th</sup> May, 2012, had objected to the decision taken by the pertinent authorities;
- having noted the appellant joint venture's representatives' claims and observations, particularly, the references made to the fact that Zarb Coaches had participated in both tenders – in the appellant company's tender as a partner in a joint venture with On Site Malta and John's Garage and as a sub-contractor in the tender submitted by the recommended tenderer, Supreme Travel Ltd,

reached the following conclusion, namely that the Public Contracts Review Board feels that since paragraph 7 *Multiple Tenders* specified that 7.3 states that "A company may not tender for a given contract both individually/partner in a joint venture/consortium, and at the same time be nominated as a sub-contractor by any another tenderer, or joint venture/ consortium" it had no other option but to cancel this call and re-issue same.

In view of the above, this Board recommends the cancellation of this call but, at the same time, it also recommends that the said appellant company be reimbursed with the deposit paid for the appeal to be lodged.



Alfred R Triganza  
Chairman



Carmel Esposito  
Member



Joseph Croker  
Member

1<sup>st</sup> June 2012