

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 442

DH/237/12

### **Provision of the Services of a Transportation Company to Provide Transport for the Delegations attending the 62nd Session of the WHO Regional Committee**

This call for tenders was published in the Government Gazette on the 21st June 2012. The closing date for this call with an estimated budget of € 70,000 was the 11th July 2012.

Four (4) tenderers submitted their offers.

Messrs Paramount Garages filed an objection dated the 20<sup>th</sup> July 2012 against the decision of the Ministry for Health, the Elderly and Community Care to recommend the award of the tender to Silver Star Transport Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Carmel Esposito as members convened a public hearing on Tuesday, 7<sup>th</sup> August 2012 to discuss this objection.

Present for the hearing were:

#### **Paramount Garages**

Dr Alessia Zammit Mc Keon	Legal Representative
Mr Leo Grech	Representing Paramount Garages
Mr Manuel Zarb	Representing Zarb Coaches (Sub-contractor)
Mr Kevin Vella	Representing KopTaCo Coaches Co-Operative Ltd (Sub-contractor)

#### **Silver Star Transport Ltd**

Dr Alistair de Gaetano	Legal Representative
Mr Rennie Zammit	Representative

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

Mr Marlon Sultana	Representative
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#### **Evaluation Board**

Mr Charles Schembri	Chairman
Mr Anthony Spiteri	Member
Ms Marvic Buttigieg	Member
Ms Inez Cassar	Member
Ms Ruth Spiteri	Secretary



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

Dr Alessia Zammit Mc Keon, legal representative of Paramount Garages, the appellant company, explained that:

- i. by letter/email dated 18<sup>th</sup> July 2012 her client was informed that the company's offer was not the cheapest compliant tender and that the tender was recommended for award to Silver Star Transport Ltd for the price of €30,491.12;
  - ii. her client had reliable information that the recommended tenderer did not have sufficient own resources to execute this contract and if the recommended tenderer intended to engage sub-contractors it did not indicate it as required at page 13 of the tender document under the heading 'Sub-Contracting';
- and
- iii. on the other hand, her client, although owning 25 coaches, had indicated in the tender submission that it would be sub-contracting Zarb Coaches and Kop TaCo in the execution of this contract because, locally, no single transport contractor could manage such a contract with one's own resources taking into account the fact that one had also to honour one's other current contractual obligations.

Mr Charles Schembri, chairman of the adjudicating board, explained that Silver Star Transport Ltd did not indicate in its tender submission that it would engage any sub-contractors;

- a. the recommended tenderer had declared that it would honour the conditions laid down in the tender and also declared at para. 4 of the company's tender submission that it had "*an extensive fleet of 53-seater, 36-seater and 18-seater vehicles, all air-conditioned and fully roadworthy, which was recently undated, as well as private chauffeur-driven cars*";
- b. the contracting authority rested on the tenderer's declaration and on the work plan presented but it did not verify that the tenderers actually possessed the resources to carry out the contract;
- c. the tender document contemplated fines in case the contractor failed to meet its contractual obligations;

and

- d. the tender document did not request the number of vehicles that the bidders had registered in their name and, as a consequence, they did not submit such information, not even the appellant company. The chairman of the adjudicating board continued by claiming that it was not within the remit of the evaluating board to check the number of vehicles and so forth.



Dr Zammit Mc Keon remarked that, apparently, in its tender submission, Silver Star Transport Ltd did not indicate the number of vehicles in its possession but her client could tell that it had 3 coaches and it was therefore not possible for the recommended tenderer to transport 700 delegates from one place to another at any one time, as required by the Ministry for Health, the Elderly and Community Care, by relying only on its own resources. She added that, in the circumstances, the recommended tenderer would have to sub-contract a good part of the contract and that would go against the tender conditions, namely against the recommended tenderer's own declaration that the company would not resort to sub-contracting.


The Chairman Public Contracts Review Board noted that the tender document was deficient in the sense that it did not reflect in detail the service that it required and it did not demand from the bidders proof that they had the experience and the resources to undertake this contract so that the contracting authority would have the peace of mind that, at the end of the day, the service would be delivered up to the desired standard.

Dr Alistair de Gaetano, representing Silver Star Transport Ltd, under oath, stated that:-

- i. it was not fair to state that his client only had 3 vehicles at the company's disposal and at no point did the contracting authority request any further information on his client's transport fleet;
  - ii. the contracting authority was free to inspect his client's transport facilities;
  - iii. according to information given by his client he could confirm that his client did have the necessary resources to carry out this contract without the need to resort to sub-contracting;
  - iv. he could not tell, off hand, how many vehicles were registered in his client's name but, if required, he could obtain that information over the phone;
- and
- v. his client had accepted the corrections effected to the company's tender submission by the contracting authority, for example that, for certain events, ten coaches were required instead of the five indicated.

Mr Kevin Vella, transport coordinator at Kop TaCo Coaches Co-operative Ltd, one of Paramount's sub-contractors, under oath, gave the following evidence:-

- a. Mr Rennie Zammit of Silver Star Transport Ltd had contacted him with a view to providing Silver Star Transport Ltd with coaches in connection with a contract that he was bidding for;
- b. Mr Zammit did not mention this particular contract but, given that Mr Zammit contacted him after Paramount Garages had lodged this appeal, he concluded that the contract that Mr Zammit was referring to was, probably, the one under review;



- c. it was normal practice for local transport operators to collaborate in the execution of relatively large contracts as the one under review so much so that not even Kop TaCo, having 48 coaches, could undertake this contract on its own;

and

- d. given his know-how in the local transport business it was incomprehensible how the recommended tenderer could execute this contract solely through the utilisation of the company's own resources.

*The Chairman Public Contracts Review Board instructed Dr de Gaetano to contact Mr Rennie Zammit to report at the Public Contracts Review Board Office to give evidence. The hearing was suspended at 10am and resumed some twenty minutes later.*

Mr Rennie Zammit, also representing Silver Star Transport Ltd, under oath, stated that he intended to execute this contract as any other local transport provider would, namely by seeking the collaboration of other local transport firm or firms.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated the 20<sup>th</sup> July 2012 and also through their verbal submissions presented during the hearing held on the 7<sup>th</sup> August 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representatives' claims and observations, particularly, the references made to the fact that (a) by letter/email dated 18<sup>th</sup> July 2012 the appellant company was informed that the company's offer was not the cheapest compliant tender and that the tender was recommended for award to Silver Star Transport Ltd for the price of €30,491.12, (b) the appellant company had reliable information that the recommended tenderer did not have sufficient own resources to execute this contract and if the recommended tenderer intended to engage sub-contractors it did not indicate it as required at page 13 of the tender document under the heading 'Sub-Contracting', (c) on the other hand, the appellant company, although owning 25 coaches, had indicated in the tender submission that it would be sub-contracting Zarb Coaches and Kop TaCo in the execution of this contract because, locally, no single transport contractor could manage such a contract with one's own resources taking into account the fact that one had also to honour one's other current contractual obligations, (d) apparently, in its tender submission, Silver Star Transport Ltd did not indicate the number of vehicles in its possession but the appellant company could tell that it had 3 coaches and it was, therefore, not possible for the recommended tenderer to transport 700 delegates from one place to another at any one time, as required by the Ministry for Health, the Elderly and Community Care, by relying only on its own resources, (e) in the circumstances, the



recommended tenderer would have to sub-contract a good part of the contract and that would go against the tender conditions, namely against the recommended tenderer's own declaration that the company would not resort to sub-contracting, (f) according to Mr Kevin Vella (1) Mr Rennie Zammit of Silver Star Transport Ltd had contacted him with a view to providing Silver Star Transport Ltd with coaches in connection with a contract that he was bidding for, (2) Mr Zammit did not mention this particular contract but, given that Mr Zammit contacted him after Paramount Garages had lodged this appeal, he concluded that the contract that Mr Zammit was referring to was, probably, the one under review, (3) it was normal practice for local transport operators to collaborate in the execution of relatively large contracts as the one under review so much so that not even Kop TaCo, having 48 coaches, could undertake this contract on its own and (4) given his know-how in the local transport business it was incomprehensible how the recommended tenderer could execute this contract solely through the utilisation of the company's own resources;

- having considered the contracting authority's representatives' reference to the fact that (a) Silver Star Transport Ltd did not indicate in its tender submission that it would engage any sub-contractors, (b) the recommended tenderer had declared that it would honour the conditions laid down in the tender and also declared at para. 4 of the company's tender submission that it had "*an extensive fleet of 53-seater, 36-seater and 18-seater vehicles, all air-conditioned and fully roadworthy, which was recently undated, as well as private chauffeur-driven cars*", (c) the contracting authority rested on the tenderer's declaration and on the work plan presented but it did not verify that the tenderers actually possessed the resources to carry out the contract, (d) the tender document contemplated fines in case the contractor failed to meet its contractual obligations, (e) the tender document did not request the number of vehicles that the bidders had registered in their name and, as a consequence, they did not submit such information, not even the appelland company and (f) the adjudicating board continued by claiming that it was not within the remit of the evaluating board to check the number of vehicles and so forth;
- having also considered the recommended tenderer's representatives' reference to the fact that (a) according to Dr de Gaetano (1) it was not fair to state that his client only had 3 vehicles at the company's disposal and at no point did the contracting authority request any further information on his client's transport fleet, (2) the contracting authority was free to inspect his client's transport facilities, (3) according to information given by his client he could confirm that his client did have the necessary resources to carry out this contract without the need to resort to sub-contracting, (4) he could not tell, off hand, how many vehicles were registered in his client's name but, if required, he could obtain that information over the phone, (5) his client had accepted the corrections effected to the company's tender submission by the contracting authority, for example that, for certain events, ten coaches were required instead of the five indicated and (b) according to Mr Zammit, he intended to execute this contract as any other local transport provider would, namely by seeking the collaboration of other local transport firm or firms,

reached the following conclusions, namely:



1. The Public Contracts Review Board feels that the tender document was deficient in the sense that it did not reflect in detail the service that it required and it did not demand from the bidders proof that they had the experience and the resources to undertake this contract so that the contracting authority would have the peace of mind that, at the end of the day, the service would be delivered up to the desired standard.
2. This Board observes that Dr de Geatano's testimony was devoid of substance and definitely not representative of what the real intention of the recommended tender was.
3. The Public Contracts Review Board considers the 'modus operandi' of this tender's adjudicating board as a mere rubber stamping exercise. The Public Contracts Review Board places emphasis on the fact that it is unacceptable for evaluation / adjudicating boards to rest solely on (a) tenderers' declarations, (b) uncorroborated work plans which, in this case, necessitated, at least, some kind of clarification from the tendering companies (including the recommended tenderer) as to whether they, actually, possessed the resources to carry out the contract and (c) the fact that a tender document contemplates 'fines' in case the contractor fails to meet its contractual obligations. This Board contends that this way of thinking does neither justify nor exculpate any adjudicating board from refraining to conduct adequate in-depth analysis of submissions received as, failing to do this, renders an evaluation process highly amateurish in scope and validity. This Board argues that the scope of a tender is, primarily, the rendering of a service and not to have a penalty clause to serve as a deterrent.
4. This Board feels that, in the light of Mr Zammit's own testimony as, (1) an admission that the recommended tenderer did not have sufficient own resources to execute this contract and, that if the said tenderer were to be contracted, the company would engage the services of sub-contractors and (2) an admission that the recommended tenderer failed to meet a mandatory requirement of the tender document wherein, as required, it did not indicate such matter as contemplated at page 13 of the tender document under the heading 'Sub-Contracting' which should be enough to render the tender submitted by the recommended tenderer as inadmissible.

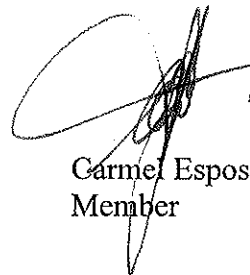
In view of the above, this Board finds in favour of the appellant company and recommends that the said appellant be reinstated in the tender evaluation process as well as recommending that the deposit paid by the appellant company for the appeal to be lodged be reimbursed.



Alfred R Triganza  
Chairman



Joseph Croker  
Member



Carmel Esposito  
Member

8<sup>th</sup> August 2012