

PUBLIC CONTRACTS REVIEW BOARD

Case No. 812

DH 4047/2014

Call for Quotations with Extended threshold for the Transportation Services for the Central Procurement and Supplies Unit.

The call for quotations was published on the 27th November 2014. The closing date was the 5th December 2014. The estimated value of tender is €120,000 (Exclusive of VAT).

Two (2) offers had been received for this tender.

On the 7th May 2015 S Curmi & Sons filed an objection against the decision of the contracting authority to disqualify its quotation offer.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday 2nd June 2015 to discuss the objection.

Present for the hearing were:

S. Curmi & Sons:

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| Mr Sergio Curmi | Director |
| Mr Johan Pace | Representative |
| Dr David Camilleri | Legal Representative |

Ranger Limited:

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| Mr Godwin Fenech | Director |
| Dr Martin Fenech | Legal Representative |

Central Procurement and Supplies Unit:

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| Ms Linzia Bajada | Chairperson Evaluation Board |
| Ms Rita Tirchett | Secretary Evaluation Board |
| Ms Bernardette Brincat | Member Evaluation Board |
| Ms Antonia Formosa | Member Evaluation Board |
| Mr Mark Spiteri | Member Evaluation Board |
| Dr Katrina Borg Cardona | Legal Representative |

The Chairman made a brief introduction and then asked the Appellant's representative to make his submissions on the objection.

Dr David Camilleri for the appellant informed the Board that Mr Sergio Curmi, a Director, would like to take the witness' stand to explain.

Mr Sergio Curmi, ID No. 335571M on behalf of the appellant, under oath, said that the Goods Operator Licences are not issued on the vehicles but are issued to the operator or company allowing the company to operate. After the permit is issued the operator can add or remove vehicles from the list as needed. He filed a copy of a declaration from Transport Malta to prove this. He also filed a copy of a Customs Department licence to act as Cargo Clearance and Forwarding Agent. He claimed that they were going to acquire the necessary vehicles as soon as awarded the tender. The Appellant was going to lease the vehicles and had submitted the relative log books with the tender but did not have the vehicles listed. The tender did not preclude bidders from leasing vehicles. Replying to questions by Dr Katrina Borg Cardona for the contracting authority, witness declared that not all the vehicles submitted with the tender were owned by the Appellant but the relevant log books had been regularly submitted with the tender. They had submitted the Goods Operator Licence and vehicle Number DHQ 086 owned by appellant was not shown in licence. He claimed that the van had not been yet his and he could have it included in the licence anytime. The Appellant replied that the documents filed earlier had formed part of the tender document whilst contending that additional vehicles acquired by appellant could be included in the list of vehicles in the Goods Operator Licence. The Appellant had not asked Burmarrad Commercials for the licence of the vehicles that were intended to be leased. Witness declared that he did not remember the request for clarification number 3 made by the contracting authority on the 13th January 2015.

The Chairman explained to the witness that the Appellant had been asked by the Contracting Authority to explain differences as per clause 4.2 where there were inconsistencies in the Goods Operator Licence, and no reply had been furnished by appellant.

Mr Sergio Curmi on behalf of the appellant, replying to Dr Katrina Borg Cardona said that he had not asked for any clarification regarding clause 4.2 and had checked with Transport Malta and had been told that the company was licensed. Regarding the second point of disqualification – the height of the vehicle, he said that he had checked the log book and it results that the height in the logbook is shown to be 199 cm and not 205 as declared by the evaluators. The vehicle was not yet in Malta and was not yet registered. He agreed that the documents submitted with the tender showed the height to be 205 cm. The contracting authority should have asked Transport Malta to verify the height as listed in the logbook, or asked a surveyor to inspect the van.

Regarding grievance three – the weight capacity of the tail-lift. The tender asked for a capacity of 1000 kgs. He said the tender did not ask for the tail capacity certification but appellant had produced a document that states that the van supports this weight. He contended that the tender document had not asked for this specification. He finally contended that the preferred bidder was using irregular vehicles.

Dr Martin Fenech on behalf of the preferred bidder contended that when a bidder does not indicate which vehicles are going to be used the bidder is given an unfair advantage over bidders who complied with all the requisites. Furthermore the Preferred Bidder's offer was the cheapest.

Dr David Camilleri for the appellant submitted that:

- a) The Goods Operator Licence is issued on the operator and not on the vehicles used by the operator. The operator could amend the vehicles in the list as necessary. In this case the Appellant had intended to lease the vehicles when awarded the tender;
- b) The Appellant could not provide the log books because the vehicles were not yet purchased or leased. The chassis number tallied and was the same and the height is 199 cm;
- c) The bidders were not precluded from leasing the vehicles to be used.

Dr Katrina Borg Cardona for the Contracting Authority pointed out to the Board that appellant had not even listed the vehicle owned by him in the Goods Operator Licence. The wording on the Goods Operator Licence itself states that it covers the vehicles listed in the licence. Appellant could have also submitted the Goods Operator Licence by Burmarrad Commercials. The contracting authority was not obliged to investigate tenders in order to see if the submissions complied or not. It was the bidders who should submit clear offers. Appellant had failed to answer the clarification sought from him. The European Court of Justice had decided that it was up to bidders to ensure that they have clear submissions when tendering.

At this point the hearing was concluded.

This Board,

Having noted the Appellant's objection, in terms of the "Reasoned Letter of Objection" dated 7th May 2015 and also through the Appellant's verbal submissions during the Public Hearing held on the 2nd June 2015, had objected to the decision taken by the pertinent authority, in that:

- a) **The Appellant contends that the "Goods' Operator Licence" is always issued in the name of the company. The latter produced such a document and in this regard, the Appellant feels aggrieved that this factor was one of the reasons for the rejection of his offer;**
- b) **The Appellant maintains that due to an oversight, he had listed the height of the vehicle as 205cm whereas the actual height, (which was stated in the log book of the same vehicle), was in fact 199cm. In this regard, the Appellant contends that the Contracting Authority should have asked for a clarification;**
- c) **The Appellant maintains that nowhere in the Tender Document was stated that the tail lift had to carry a minimum weight of 1000kg. It is only during this hearing that this requirement is being mentioned. In this regard, the appellant can produce certification that the vehicle complies with this request.**

Having considered the Contracting Authority's verbal submissions during the Public Hearing held on 2nd June 2015, in that:

- a) **The Contracting Authority contends that the Evaluation Committee had done its utmost to clarify the specifications submitted by the Appellant with regards to**

Clause 4.2 of the Tender Document. In fact the Appellant did not reply within the stipulated period;

- b) The Contracting Authority also pointed out credibly that the Appellant did not even list the vehicle owned by him in the “Goods Operator License”;**

Reached the following conclusions

- 1. With regards to the Appellant’s first grievance, this Board after having heard credible and proven submissions by the Contracting Authority opines that although the “Goods Operating Licence” is issued in the name of the partnership, the licence itself states that this licence covers the vehicles listed in the same. The Appellant failed to identify clearly which vehicles were covered by this licence. This Board also opines that it was the Appellant’s responsibility to reply to the clarification dated 13 January 2015 wherein, “it was clearly asking for a clarification regarding the inconsistency of the registration numbers of the vehicles indicated in the submitted licence”. In this regard the Appellant did not reply to the request made by the Contracting Authority. This Board justifiably does not hold the Appellant’s first contention;**
- 2. With regards to the Appellant’s second grievance, this Board opines that the Evaluation Committee relied on the information submitted by the Appellant himself. The Appellant declared in the Technical Specifications of the vehicle to be of height of 205cm and this measurement went beyond the maximum height of 200cm. As dictated in the Tender Document, this Board justifiably opines that it was not obligatory for the Evaluation committee to ask for a clarification in this regard as the Appellant himself declared that the height of the vehicle was 205 cm. In this regard, this Board does not uphold the Appellant’s second grievance;**
- 3. With regards to the Appellant’s Third Grievance, this Board credibly opines that since the Tender, notably clause 1.1, (Vehicle A), states that the chassis cab shall have a payload capacity of 1000kg, this same Board notes that the Appellant did in fact state in his Technical Specifications that the vehicle has a maximum carry weight of 2000kg and this satisfies the Tender’s requirement. In this regard, this Board upholds the Appellant’s third grievance.**

In view of the above, this Board finds against the Appellant’s first two grievances and upholds its third one. The Board justifiably opines that the Evaluation Committee acted in a reasonable manner in awarding the cheapest and fully compliant offer and thus recommend that the deposit paid by the Appellant should not be reimbursed.

**Dr. Anthony Cassar
Chairman**

**Dr. Charles Cassar
Member**

**Mr. Lawrence Ancillieri
Member**

12 June 2015