

PUBLIC CONTRACTS REVIEW BOARD

Case 1846 – SPD2/2022/033 – Services - Framework Contract for Environmentally Friendly Transport Services by means of Coaches and Minibuses to the Armed Forces of Malta – Lot 1

13th February 2023

The Board,

Having noted the letter of objection filed by Dr Johnaton Abela acting for and on behalf of Unscheduled Coach Services Limited, (hereinafter referred to as the appellant) filed on the 16th January 2023;

Having also noted the letter of reply filed by Captain Karl Micallef acting for the Armed Forces of Malta (hereinafter referred to as the Contracting Authority) filed on the 26th January 2023;

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 9th February 2023 hereunder-reproduced.

Minutes

Case 1846 – SPD2/2022/033 – Services – Framework Contract for Environmentally Friendly Transport Services by means of Coaches and Minibuses to the Armed Forces of Malta

LOT 1

The tender was issued on the 30th May 2022 and the closing date was the 21st June 2022. The estimated value of the tender excluding VAT, was € 24,000 over three years for Lot 1.

On the 16th January 2023 Unscheduled Coach Services Ltd filed an appeal against the Armed Forces of Malta as the Contracting Authority objecting to their disqualification on the grounds that the Contracting Authority had deemed their bid not technically compliant.

A deposit of € 400 was paid.

There were three (3) bids.

On the 9th February 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Ms Stephanie Scicluna Laiviera and Dr Vincent Micallef as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Unscheduled Coach Services Ltd

Dr Johnaton Abela
Mr Orazio Spiteri

Legal Representative
Representative

Contracting Authority – Armed Forces of Malta

Major Christian Zammit Cordina
Lt Owen Zammit
Capt Karl Micallef
Capt Roderick Azzopardi
Lt Keith Xuereb

Chairperson Evaluation Committee (Online)
Secretary Evaluation Committee (Online)
Evaluator
Evaluator (Online)
Evaluator (Online)

Department of Contracts

Dr Mark Anthony Debono

Legal Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Johnathan Abela Legal Representative for Unscheduled Coach Services Ltd confirmed that the Appeal was only on Lot 1 of the tender and that appellant was in agreement on all the points raised by the Contracting Authority in their letter of reply.

Capt Karl Micallef Representative of the Armed Forces of Malta said that the Authority stood by the letter of reply dated 26th January 2023.

The Chairman said that the Board notes that the parties are prepared to rest on their written submissions and will issue its decision accordingly. He then thanked the parties and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 9th February 2023.

Having noted the objection filed by Unscheduled Coach Services Limited (hereinafter referred to as the Appellant) on 16th January 2023, refers to the claims made by the same Appellant with regard to the tender of reference SPD2/2022/033 listed as case No. 1846 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Johnaton Abela

Appearing for the Contracting Authority: Captain Karl Micallef

Whereby, the Appellant contends that:

a) ***Objector was technically compliant with having at least 5 coaches having a minimum of 53 passenger seats***

Objector submits that they were technically compliant since at the time of the tender at least 5 vehicles had a minimum of 53 passengers seating capacity. That the Objector had erroneously submitted an older log book of one of their vehicles which showed a seating capacity of less than 53 passenger seats however in actual fact and as evidenced by the latest logbook, vehicle bearing registration number FPY126 had a seating capacity of 55 seats as from the 3rd of July 2020. Given the above, the Objector therefore has at least 5 coaches having a seating capacity in excess of 53 passenger seats and hence is to be deemed technically compliant. That Objector refers to Notes to Clause 5 of the Tender wherein in sub-clause 2 indicates that *“Tender will be requested to either clarify/ rectify any incorrect and/ or incomplete documentation, and/ or submit any missing documents within five (5) working days from notification”*. That the Objector was never notified as per the above clause of any incorrect or incomplete documentation regarding the lack of seating capacity and hence this would be tantamount to the Department not finding any issue with the logbooks submitted. That had the Department followed the Notes to Clause 5 and requested a clarification/ rectification on such issue this would have been clarified/ rectified at the time.

b) ***GPP Verification under section 3 para 7 was unattainable at the time of publishing of the Tender***

That further to a letter of clarification dated 29th July 2022, which letter was limited to the use of alternative fuels, the Objector submitted its response within 5 days wherein it indicated that at the time no alternative fuel coaches were available for sale in Malta and that the Maltese Islands had no infrastructure available to accommodate alternative fuel coaches and hence such request was and still is unattainable. That the Maltese Islands do not provide charging points for heavy vehicles such as coaches and busses (sic) and hence the national infrastructure itself makes it impossible for alternative fuel vehicles to operate in Malta. That the Objector humbly submits that their fleet is in actual fact environmentally friendly as the submitted vehicles are in conformity with EURO V and EURO VI standards, make use of AD Blue fuel to produce less emissions and hence should have been deemed as environmentally friendly and hence technically compliant. That further more and as can be shown during the course of this appeal, the Armed Forces of Malta at present is utilizing the same vehicles as those proposed by the Objector, though from third party operators, to obtain

the current service, which current service has been extended for several times, due to the several cancellations of this tender, hence the cancellation of this tender shall mean that the current service shall continue being supplied by the similar vehicles as those proposed by the Objector or less environmentally friendly as those proposed by the Objector and hence the whole purpose of section 3 para 7 shall be defeated.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 26th January 2023 and its verbal submission during the hearing held on 9th February 2023, in that:

- a) It is not clear whether the appellant is registering an appeal in respect of Lots 1 and 2 since the title of the Reasoned Letter of Objection refers to Lot 1 'only'.
- b) The Contracting Authority hereby confirms what is being claimed by the appellant in respect of the Logbooks submitted, whereby four out of the seven logbooks submitted were found to be fully compliant with the tender requirements and the other three logbooks submitted were non-compliant. The AFM Tender Evaluation Committee confirms that this requirement falls under Note 2 and therefore the bidder should have been requested to rectify his position.
- c) The Contracting Authority was not cognizant with the exclusions provided in Legal Notice 75 of 2022 and after having referred to this Legal Notice agrees with the appellant that the quoted vehicles are complaint (sic) with the GPP requirements included in the published tender documentation.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider Appellant's grievances.

- a) ***Objector was technically compliant with having at least 5 coaches having a minimum of 53 passenger seats*** – This grievance relates to a submission which falls under the remit of 'Note 2'. Since the economic operator, now appellant, was not notified of the Evaluation Board's findings and was immediately considered as non-compliant, this Board agrees with argumentation brought forward by the Appellant in that he was entitled to rectify his position with the view to bring his submission, with specific reference to this criterion, as being technically compliant.
- b) ***GPP Verification under section 3 para 7 was unattainable at the time of publishing of the Tender*** – it transpires that during the evaluation, the exclusions listed in legal notice 75 of 2022, which relate to the vehicles in subject matter to this tender, were not followed and considered by the Evaluation Committee.

Hence, this Board upholds both grievances of the Appellant.

The Board,

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

- a) To uphold the Appellant's concerns and grievances with regards to Lot 1 of this tender;
- b) To cancel the 'Notice of Cancellation' letter dated 6th January 2023;
- c) To order the contracting authority to re-evaluate the bids received in the tender procedure whilst also taking into consideration this Board's findings;
- d) 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

Dr Vincent Micallef
Member

Ms Stephanie Scicluna Laiviera
Member