

PUBLIC CONTRACTS REVIEW BOARD

Case 1909 – SPD6/2023/030 – Supplies Tender for the Leasing of Three (3) Electric Vehicles for a period of Three (3) Years for the Ministry for the Environment, Energy and Enterprises (MEEE)

11th September 2023

The Board,

Having noted the letter of objection filed by Mr Gordon Farrugia for and on behalf of Go Hire Ltd, (hereinafter referred to as the appellant) filed on the 4th August 2023;

Having also noted the letter of reply filed by Mr Mark Mascari acting for Ministry for the Environment, Energy and Enterprise (hereinafter referred to as the Contracting Authority) filed on the 14th August 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 7th September 2023 hereunder-reproduced.

Minutes

Case 1909 – SPD6/2023/030 – Supplies – Tender for the Leasing of three (3) Electric Vehicles for a period of three (3) years

The tender was issued on the 8th June 2023 and the closing date was the 5th July 2023. The estimated value of the tender, excluding VAT, was € 73,980.

On the 4th August 2023 GO Hire Ltd filed an appeal against the Ministry for the Environment, Energy and Enterprise as the Contracting Authority objecting to their disqualification on the grounds that their offer was not technically compliant.

A deposit of € 400 was paid.

On the 7th September 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – GO Hire Ltd

Mr Gordon Farrugia

Representative

Contracting Authority – Ministry for the Environment, Energy and Enterprise

Dr Frank Luke Attard Camilleri

Legal Representative

Mr Robert Azzopardi	Chairperson Evaluation Committee
Ms Alberta Callus	Secretary Evaluation Committee
Mr Kristian Sultana	Evaluator
Mr Roderick Azzopardi Custo	Evaluator
Ms Jacqueline Darmanin Meli	Evaluator
Mr Mark Mascari	Representative

Preferred Bidder – Aquarius Rent A Car

Mr Matthew Agius	Representative
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Department of Contracts

Dr Mark Anthony Debono	Legal Representative
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Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Mr Gordon Farrugia Representative for GO Hire Ltd stated that his appeal follows the letter of objection. He accepts that a genuine mistake was made in his submissions and he was not contesting the reasons given for his disqualification. Regrettably he overlooked uploading one file. The missing information was fully available in the rest of the submitted documents such as the technical offer.

Dr Frank Luke Attard Camilleri Legal Representative for the Ministry for the Environment, Energy and Enterprise said that the Authority's case had been made in the letter of reply. The evaluation had followed the tender requirements and the Public Procurement Regulations and the decision was a correct one.

Mr Matthew Agius Representing Aquarius Rent a Car said that his firm would accept the Board's decision in this matter.

There being no further submissions the Chairman 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 7th September 2023.

Having noted the objection filed by Go Hire Ltd (hereinafter referred to as the Appellant) on 4th August 2023, refers to the claims made by the same Appellant with regard to the tender of reference SPD6/2023/030 listed as case No. 1909 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Mr Gordon Farrugia

Appearing for the Contracting Authority: Dr Frank Luke Attard Camilleri

Appearing for the Preferred Bidder: Mr Matthew Agius

Whereby, the Appellant contends that:

- a) On submission of the document, for some reason we have attached only the COC (Certificate of Conformity) which was part of the Technical Questionnaire requested. Whilst we do understand that the document has not been fully submitted from our end, we would like to point out that the information requested in the Technical Questionnaire is all listed down in the COC as well as the Literature List (Brochure of Vehicle) that we have submitted with all the information of the vehicle in question. For some reason and unlike other circumstances, no rectification was requested as we would have corrected our mistake straight away.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 14th August 2023 and its verbal submission during the virtual hearing held on 7th September 2023, in that:

- a) In its objection the Appellant confirmed that it had not submitted the Technical Offer Questionnaire with the offer which it submitted to the Contracting Authority.
- b) The Tender Specifications on page 5 of the Tender Document required that the bidders' Technical Offer consist of inter alia a Technical Offer Questionnaire.
- c) Given that the Technical Offer Questionnaire is a Note 3 document, as per the Notes to Clause 5 on page 6 of the Tender Document, no rectification shall be allowed. Only clarifications on the submitted information may be requested. However, in this case it was not possible to request clarification on information not submitted by the Economic Operator.
- d) Moreover, the Technical Offer Questionnaire itself clearly states that "Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication. The information/technical specifications provided in the below table shall not be subject to rectifications"
- e) The Contracting Authority cannot request rectifications which limits the principles of equal treatment in respect to other economic operators and shall treat all economic operators equally as prescribed in Regulation 39 (1) of the Public Procurement Regulations (S.L. 601.03).

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) The Board notes that the appellant *ex admis* confirmed that the Technical Offer Questionnaire was not submitted with his original bid.

- b) Such a document clearly falls within the remit of 'Note 3' which states that *"No rectification shall be allowed. Only clarifications on the submitted information may be requested....."*
- c) Moreover, the same Technical Offer Questionnaire states within it that *"Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication."*
- d) This Board opines that the way in which the Evaluation Committee conducted its evaluation, resulted in achieving a level playing field between all economic operators whilst also respecting the principle of Self-Limitation.

Hence, this Board does not uphold the Appellant's grievances.

The Board,

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

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender to Aquarius Rent a Car,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Mr Richard Matrenza
Member

Mr Lawrence Ancilleri
Member