

PUBLIC CONTRACTS REVIEW BOARD

Case 1929 – SPD6/2023/026 – Supplies – Tender for the Removal and Delivery of Old Buoys to TM Stores and the Supply, Delivery Installation and Maintenance of New Fairway Buoys at Xemxija for a period of Three Years

3rd November 2023

The tender was issued on the 17th May 2023 and the closing date was the 16th June 2023. The estimated value of this tender, excluding VAT, was € 270,000.

On the 7th August 2023 Sammut Marine Ltd filed an appeal against Transport Malta as the Contracting Authority objecting to their disqualification on the grounds that their bid was deemed to be not technically compliant.

A deposit of € 1,350 was paid.

There were five bids.

On the 24th October 2023 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Dr Vincent Micallef and Ms Stephanie Scicluna Laiviera as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Sammut Marine Ltd

Dr Clement Mifsud Bonnici	Legal Representative
Dr Calvin Calleja	Legal Representative
Mr Benjamin Sammut	Representative

Contracting Authority – Transport Malta

Dr John Refalo	Legal Representative
Mr Godwin Borg	Chairperson Evaluation Committee
Ms Sharyn Mizzi	Secretary Evaluation Committee
Mr Joseph Cutajar	Evaluator
Mr Jason Bongailas	Evaluator
Mr Ray Aquilina	Evalautor
Mr Ludwig Xuereb	Representative
Mr Larson Pisani	Representative

Preferred Bidder – Polaris Marine Services Co Ltd.

Dr Noel Bezzina	Legal Representative
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Department of Contracts

Dr Mark Anthony Debono	Legal Representative
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Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr John Refalo Legal Representative for Transport Malta stated that before the Board proceeds to hear the Appeal he wanted to declare that the Contracting Authority was not proceeding with this contract and was cancelling the award and the tender and that it had no objection to the return of the deposit to the Appellant. He therefore asked for the following note to be recorded verbatim:

“Dr John Refalo on behalf of Transport Malta declares that the Authority shall not be proceeding with the contract award envisaged by the tender SPD6/2023/026 and shall be taking steps formally to revoke the award and the tender within twenty (20) days from the revocation of the tender. The Authority no longer requires the service of the subject matter requested by the tender.”

Dr Clement Mifsud Bonnici Legal Representative for Sammut Marine Limited requested the following note to be recorded verbatim:

“ In the light of this commitment and declaration by the Contracting Authority the Appellant hereby withdraws the appeal in question. The Appellant reserves the right to seek damages and costs from the Contracting Authority in view of the above.

In the circumstances and for Appellants rights to challenge the eventual Contracting Authority decision once published the Appellant requests the refund of the deposit”

Dr Noel Bezzina Legal Representative for Polaris Marine Services Co Ltd requested the following note to be recorded verbatim:

“Dr Noel Bezzina on behalf of Polaris Marine Services states that in view of the circumstances the preferred bidder will hereby await a final cancellation notice by the Contracting Authority and is hereby at this stage reserving its rights both vis-à-vis the cancellation notice and its right to claim its applicable damages for compensation.”

The Chairman said that this exhausts the procedure, and the Board will issue its decision. He then declared the hearing closed.

End of Minutes

Decision

This Board, having noted.

a. The initial declaration by Transport Malta (herein after referred to as the Contracting Authority) whereby it was stated that the Contracting Authority shall not be proceeding with the contract award envisaged by the tender SPD6/2023/026 listed as case No.1929 in the records of the Public Contracts Review Board and that it shall be taking steps formally to revoke the award and the tender within twenty (20) days from the revocation of the tender.

b. The verbalisation by Sammut Marine Ltd (herein after referred to as the Appellant), whereby it declared that, in the light of this commitment and declaration by the Contracting Authority the Appellant hereby withdraws the appeal in question, and that the Appellant reserves the right to seek damages and costs from the Contracting Authority

c. The verbalisation by Polaris Marine Services Co Ltd. (herein after referred to as the Preferred Bidder) whereby the Preferred Bidder will await a final cancellation notice by the Contracting Authority and is reserving its rights both vis-à-vis the cancellation notice and its right to claim its applicable damages for compensation'

Finally, the Board took into consideration the Minutes of the hearing of the Board on the 24 th October 2023 appended above.

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The Board concludes and decides that:

a) Contracting Authority is formally to revoke the award and the tender within twenty (20) days from the revocation of the tender.

b) Directs that the deposit paid by the Appellant is reimbursed

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Dr Charles Cassar
Chairman

Mr Lawrence Ancilleri
Member

Dr Vincent Micallef
Member