

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1957 – CMD-MZ-08-2023 – Call for Quotations – CfQ - Hire of 32 Ton Low Emission Tipper Trucks for the Transportation of Waste inclusive of Driver to the Cleansing and Maintenance Division**

5<sup>th</sup> February 2024

The Board,

Having noted the letter of objection filed by Mr Raymond Galea acting for and on behalf of Raydon Excavations Ltd, (hereinafter referred to as the appellant) filed on the 9<sup>th</sup> January 2024;

Having also noted the letter of reply filed by Mr David Gauci acting for the Ministry for Tourism (hereinafter referred to as the Contracting Authority) filed on the 10<sup>th</sup> January 2024;

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 30<sup>th</sup> January 2024 hereunder-reproduced.

### **Minutes**

#### **Case 1957 – CMD-MZ-08-2023 – Call for Quotation. Hire of 32 Ton Low-Emission Tipper Truck for the transportation of waste inclusive of driver to the Cleansing and Maintenance Division**

The tender was issued on the 28<sup>th</sup> November 2023 and the closing date was the 14<sup>th</sup> December 2023.

The estimated value of this tender, excluding VAT, was € 6,750.

On the 9<sup>th</sup> January 2024 Raydon Excavations Ltd filed an appeal against the Cleansing and Maintenance Division (Ministry for Tourism and Public Cleanliness) objecting to its disqualification on the grounds that its bid was not technically compliant.

A deposit of € 400 was paid.

There were two bids.

On the 31<sup>st</sup> January 2024 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

#### **Appellant – Raydon Excavations Ltd**

Mr Raymond Galea

Representative

Mr Roderick Abela

Representative

## **Contracting Authority – Cleansing and Maintenance Division**

Mr David Gauci	Chairperson Evaluation Committee
Ms Josephine Fenech	Secretary Evaluation Committee
Ms Romina Debono Faure	Evaluator
Ms Celine Costa	Evaluator
Ms Chayenne Burke	Evaluator
Ms Elaine Caruana	Representative
Eng Margaret Zammit	Representative

## **Recommended Bidder – Jac Steel Ltd**

Invited to attend but invitation not taken up

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

Mr Raymond Galea Representing Raydon Excavations Ltd said that the one point of this appeal was that there was a wrong entry in the logbook of vehicle JBP 134 submitted in the tender. When the error was realised this was corrected and the vehicle inspected by Transport Malta. In view of this he now expects that its offer will be reconsidered.

Mr David Gauci representing the Contracting Authority stated that in evaluating the tender it was noticed that the mentioned vehicle indicated a Gross Vehicle Weight of 30 tons. Subsequently a fresh log book was presented showing a weight of 40 tons. However, there was another hitch as the fresh log book indicated that the vehicle had an Environmental Category of EURO 4 whereas the tender required vehicles classified EURO 5.

As there were no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

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## **Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 30<sup>th</sup> January 2024.

Having noted the objection filed by Raydon Excavations Ltd (hereinafter referred to as the Appellant) on 9<sup>th</sup> January 2024, refers to the claims made by the same Appellant with regard to the tender of reference CMD-MZ-08-2023 listed as case No. 1957 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Raymond Galea

Appearing for the Contracting Authority: Mr David Gauci

Whereby, the Appellant contends that:

- a) The decision was based on the fact that one (JBP-134) of the two trucks offered was deemed to be below the 32 tonne limit because of an incorrect entry in the original logbook issued by Transport Malta when in fact this particular truck is capable of a maximum of 40 tonnes. When the error on the logbook was noted following your decision, the company took immediate action with Transport Malta to have the Maximum permissible laden mass to be corrected following a technical inspection and certification by a qualified Engineer.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 10<sup>th</sup> January 2024 and its verbal submission during the hearing held on 30<sup>th</sup> January 2024, in that:

- a) Raydon Excavations Ltd, in the Technical Offer, submitted two vehicles with registration numbers JBP134 and JCE343, both of which in the technical offer had a declared Gross Vehicle Weight of 32 ton. However, the submitted vehicle logbook of JBP134 stated that the Gross Vehicle Weight to be 30 ton, that is below the minimum requested in the tender document. Therefore, vehicle JBP 134 was found to be non-compliant. As Raydon Excavations Ltd submitted only two vehicles in the technical offer and one of these was found to be non-compliant, only one vehicle could be considered as conforming to specifications, when a minimum of two conforming vehicles were required.

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) Initially, this Board opines that the Evaluation Committee should have issued a rectification request to the appellant. It is noted that the letter of rejection listed as its main reason, the corroborative evidence as submitted by the appellant (i.e. the logbook as issued by Transport Malta). Such submission did not fall under the remit of Note 3. On the other hand, the Technical Offer Questionnaire, which falls under the remit of Note 3, with respect to the 'Gross Vehicle Weight', did provide data in line with the requirements of the tender dossier.
- b) However, this Board also notes that even if the appellants were to be provided with such a rectification request, their bid would again be deemed as technically non-compliant. This due to the 'Emission Standard' criterion. The tender dossier clearly requested a standard of 'Euro V or better'. On the contrary, the 'revised' logbook, as issued by Transport Malta, clearly shows that the 'Environmental Category' is listed as 'EURO 4'

Therefore, this Board does not uphold 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 main grievances as listed in the Letter of Objection,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
**Chairman**

**Mr Lawrence Ancilleri**  
**Member**

**Dr Charles Cassar**  
**Member**