

PUBLIC CONTRACTS REVIEW BOARD

Case 2006 – SPD1/2023/146 – Tender for the Purchase of One New Electric Vehicle for the National Literacy Agency

14th May 2024

The Board,

Having noted the letter of objection filed by Ms Romina Cassar acting for and on behalf of Muscat Motors Ltd, (hereinafter referred to as the appellant) filed on the 18th April 2024;

Having also noted the letter of reply filed by Dr Mark Anthony Debono acting for the National Literacy Agency (hereinafter referred to as the Contracting Authority) filed on the 29th April 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 10th May 2024 hereunder-reproduced;

Minutes

Case 2006 – SPD1/2023/146 – Supplies Tender for the Purchase of One (1) New Electric Vehicle for the National Literacy Agency

The tender was issued on the 30th January 2024 and the closing date was the 20th February 2024.

The estimated value of this tender, excluding VAT, was € 38,000.

On the 18th April 2024 Muscat Motors Ltd filed an appeal against the National Literacy Agency objecting to its disqualification on the grounds that its bid was deemed to be technically not compliant.

A deposit of € 400 was paid.

There were three bids.

On the 10th May 2024 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Ms Stephanie Scicluna Laiviera and Mr Lawrence Ancilleri as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Muscat Motors Ltd

Mr Henry Scicluna

Representative

Mr Silvan Mifsud

Representative

Contracting Authority – National Literacy Agency

Dr Dennis Zammit	Legal Representative
Mr Vincent Borg	Chairperson of the Evaluation Committee
Mr Daniel Cini	Evaluator
Ms Michelle Vella	Evaluator
Mr David Muscat	Representative

Preferred Bidder – Auto Sales Ltd

Mr Mark Testaferrata Moroni Viani	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 Henry Scicluna Representative for Muscat Motors Ltd said that the appellant had been disqualified due to the failure to submit the maintenance contract, which in fact had been submitted with itemised prices.

Dr Dennis Zammit Legal Representative for the National Literacy Agency stated that the appellant had filed a maintenance agreement when the tender asked for a preventative maintenance agreement. The document submitted referred to another tender in any case.

Dr Debono on behalf of the Department of Contracts noted that the bidder has to follow the tender requirements.

Mr Scicluna said that the wrong date in the template was an oversight and could have been clarified. The maintenance agreement provided was equivalent to a preventative maintenance agreement and this too could have been clarified. The figures in the financial bid agree with those in the template.

Dr Zammit said that clarifications are difficult on documents which do not agree. The documents submitted refer to a tender in 2022 and to a different vehicle. The Evaluation Committee cannot request fresh documents. Clause 5c in the tender makes it very clear what was required.

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 10th May 2024.

Having noted the objection filed by Muscat Motors Ltd (hereinafter referred to as the Appellant) on 18th April 2024, refers to the claims made by the same Appellant with regards to the tender of reference SPD1/2023/146 listed as case No. 2006 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Henry Scicluna
Appearing for the Contracting Authority: Dr Dennis Zammit
Appearing for the Department of Contracts: Dr Mark Anthony Debono

Whereby, the Appellant contends that:

- a) They confirm that the Maintenance Agreement has indeed been successfully merged and uploaded. The report has been categorized as partly financial and partly technical as the tender has outlined. Furthermore, they confirm that the total outlined in the report aligns seamlessly with the total requested, considering the spread across the years and factoring in the hourly rate of labour work. They also acknowledge that as per the service agreement, it was agreed that the replacement of front and back brake pads should be undertaken during the third year. This provision has been duly taken into consideration in their assessment of the agreement.
- b) In addition to the mentioned details, upon thorough evaluation, their bid was indeed more competitive than that of the awarded bidder.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 29th April 2024 and its verbal submission during the hearing held on 10th May 2024, in that:

- a) In terms of regulation 270 of the Public Procurement Regulations, 2016 (Subsidiary Legislation 601.03 of the Laws of Malta), the reasoned letter of objection must provide in a very clear manner the reasons for the objection. This objection does not fulfill this criterion.
- b) In terms of Section 5(C) of the tender document, participating tenders had been specifically requested to provide a preventive maintenance agreement to the tender evaluation committee. In terms of the letter dated 8th April 2024, it is amply clear that the documentation has not been submitted. In terms of the burden of proof incumbent on the appellant, the allegation that the preventive maintenance agreement had been submitted is responsibility of the appellant to prove

in terms of article 562 of the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta. In this respect, the tender evaluation committee had not been able to conduct its evaluation such that this is carried out in terms of Rule 16.3 of the General rules governing tenders. As provided in regulation 62 of the Public Procurement Regulations, 2016 (Subsidiary Legislation 601.03 of the Laws of Malta) and the prescribed procedure established in regulation 39(2) of the Public Procurement Regulations, 2016 (Subsidiary Legislation 601.03 of the Laws of Malta), since the form is subject to Note 3 where information is not available, clarification could be sought. However, in this instance, there had been no information available and consequently the tender evaluation was precluded from requesting clarification concerning information that did not exist.

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 makes reference to Section 1 – Paragraph 5(c)(i)(b) of the tender document which clearly and unambiguously states that *“The form marked ‘Preventive Maintenance Agreement’ to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. (Note 3).”*
- b) It is also clear that the appellant failed to upload this mandatory document. Arguments brought forward by appellant that similar applicable information has been submitted in other parts of the bid are deemed irrelevant. Economic operators are to diligently follow the requirements of the tender dossier, especially when such documents are listed as either being ‘Mandatory’ in nature or else listed as falling under the remit of ‘Note 3’.
- c) Once a mandatory document, which has been clearly listed as falling under the remit of ‘Note 3’, has not been submitted by the appellant, this Board concurs with the *modus operandi* of the evaluation committee in that it did not submit a clarification request to the appellant company. Such an issue, i.e. of a missing document, could only be resolved by way of rectification, something which in the specific case, was not permitted.

Hence, due to the above, the grievances of the appellant cannot be upheld and henceforth the letter of objection is hereby being rejected.

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,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Ms Stephanie Scicluna Laiviera
Member