

The Chairman made a brief introduction and asked the Appellant's representative to make her submissions on the objection.

Ms Mary Gaerty on behalf of the Appellant explained that in this pilot project, the Contracting Authority had issued a previous Tender asking for 14 micron thick liners. In this Tender the Appellant had in fact submitted two options, one of which had been declared by the Contracting Authority to be technically non-compliant because the liners offered were 14 microns thick instead of the requested 20 microns. This thickness had been changed through a clarification since originally the Tender requested a thickness of 14 microns.

Ms Gaerty claimed that the thickness as submitted by Appellant of 14 microns was enough for the purpose if the material the liners are made of is of good quality. She also pointed out that a previous Tender had been issued for 14 microns and was only changed because the liners that were successful then had leaked and were causing complaints.

Ms Gaerty continued to explain that the 14 mm liners were used all over the world and the Contracting Authority had changed the specifications because the product that had been chosen in the previous Tender proved defective because of the material it was made of and not because of the thickness. She claimed that the Contracting Authority's consultant had also recommended a thickness of 14 microns. She contended that her product was adequate and was cheaper than the Recommended Bidder's offer.

Dr Victor Scerri on behalf of the Contracting Authority contended that the present Tender had nothing to do with a previous Tender that had been issued. The bins and liners are being used in a pilot project and the Contracting Authority had received a number of complaints from users that the liners leaked. The Contracting Authority had thus used its prerogative to change the specifications for the present Tender, asking for thicker bin liners.

Dr Scerri continued to explain that in other countries such liners are used in suitable bins when taken out for collection, but in Malta, users normally took out just the liner bags for collection and so these had no protection. The Contracting Authority had changed the specifications according to its needs.

Replying to questions raised by the Board, Mr Martin Casha on behalf of the Contracting Authority said that there were three bidders for this Tender who had submitted five offers or options. The Appellant had also offered another option having 20 micron liners.

Ms Mary Gaerty for the Appellant insisted that the thickness of the liners is not relevant. It was the quality of the material the liners were made of that was relevant. If the material was not of good quality, even 20 micron thick liners could leak.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*", dated 14 March 2016 and also through their verbal submissions during the Public Hearing held on 9 June 2016 had objected to the decision taken by the Pertinent Authority, in that:

- a) The Appellant contends that, although the thickness of their offered product was of 14 micron instead of 20 micron as requested in the Technical Specifications of the Tender, Green Skips Ltd was stating that the Liners of 14 micron thickness was more than sufficient for the special usage as dictated by the Contracting Authority;**

- b) When referring to the fact that lines of 14 micron thickness were used worldwide, the Appellant contends that the thickness does not represent the strength of the plastic. It was rather the quality of the material from which it was made that affected the strength. .**

In this regard, the Appellant maintained that due to the fact that the liners which they were offering were made of superior material, the thickness of the liners was not the pivotal factor to ensure that the plastic liners could accommodate the necessary usage as requested by

the Contracting Authority.

Having considered the Contracting Authority's "*Letter of Reply*" dated 18 March 2016 and also their verbal submissions during the Public Hearing held on 9 June 2016, in that:

- a) The Contracting Authority contends that the reason for choosing a thickness of 20 microns instead of 14 was simply due to the fact that, as this was considered as a "*Pilot Project*", the Contracting Authority received various complaints due to leakages when applying a 14 micron thick liner;**

- b) The Contracting Authority insists that the fact that in previous Tenders a thickness of 14 microns was adopted was irrelevant.**

Reached the following conclusions:

- 1. With regards to the Appellant's First Contention, this Board after having examined the relative documentation and heard credible explanations by the Contracting Authority, would like to justifiably point out that the Contracting Authority is in duty bound to dictate the Technical Specifications so as to suit, in all respect the**

requirements of its procurement.

In this particular case, it was amply clear that the Technical Specifications of the liners dictated a Thickness of 20 Microns. This Board affirms the fact that the Technical Specifications are not capriciously outlined but are dictated by the Contracting Authority to ensure that what is being offered correlates with what is being tendered for.

It is not up to the bidder to dictate what specifications are most adaptable to the Contracting Authority but rather, to adhere to the Technical Specifications as dictated in the Tender Document. At the same instance, it is the prerogative of the Contracting Authority to assess what is required for its envisaged uses.

In this regard, this Board justifiably opines that Green Skips Ltd offered liners of Thickness 14 Microns and not 20 Microns as requested and to this effect, the same Board does not uphold the Appellant's First Contention.

- 2. With regards to the Appellant's Second Contention, this Board, after having heard all the Submissions made by both them and the**

Contracting Authority, would like to credibly point out that it is futile for Green Skips Ltd to point out that on previous occasions a thickness of 14 microns was adopted.

This Board can only treat this appeal's Objections and in this regard justifiably notes that the Procurement of this Product was to install the same in a "*Pilot Project*". This Board would like also to affirm that a "*Pilot Project*" is a "*Trial Run*" for a specific period wherein the usage of such a product is tested, so that, if any changes are to be made for the "*Permanent Project*", these are implemented.

In this particular case, the Contracting Authority received a number of complaints due to leakages when using the 14 micron thick liners and the latter, quite rightly, monitored the application of such liners by establishing that the thickness of the liners should be more robust, hence opting for a thickness of 20 microns. In this regard, this Board does not uphold the Appellant's Second Contention

In view of the above, this Board finds against Green Skips Ltd and recommends that the deposit paid by the latter should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

13 June 2016