

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, in a brief introduction requested the Appellant to make her submissions.

Ms Mary Gaerty, Representative of Green Skip Services Ltd, stated that her Company had 25 years experience in this sector. She was familiar with the different uses of bins and the market availability. She had identified the exact bin that the technical specifications in the tender referred to – these matched exactly the features of bin referred to as ‘Nexus TM 200’ which was specific and unique. Only one company offers fire suppression systems inbuilt in the bin. This was a registered trademark and her objection was to the use of the phrase ‘fire suppression’ which limited competition.

Ing Kenneth Abela (459558M) testified on oath that he worked in the Cleansing and Maintenance Division and was involved in the drafting of the tender. There had been no prior use of the type of bin specified in the tender and they had to start from scratch in their research. There were many suppliers of bins but they had traced one particular supplier that provided the option of fire suppression in the bin. The Contracting Authority had intentionally set a wide range in the specifications to allow competition.

Dr Chris Mizzi, Legal Representative of the Cleansing and Maintenance Division of the Ministry referred to the technical specifications (letter i section 4) which indicated that the bins required a fire suppression system which would be automatically activated in case of fire, and the Evaluation Committee were simply following the specifications.

Ms Gaerty said that her firm could offer fire proof bins which were twin skinned and which were in use already; what she was objecting to was the fire suppression system specified.

Mr John Mercieca (265366M) testified on oath that he worked in the Customer Care Department of the Cleansing and Maintenance Division and was responsible for the maintenance of bins for the last five months. In that time he was aware of two instances of bins being set alight. In his view it was essential to have a fire suppression system to ensure that the bin contents did not catch fire.

The Chairman stated that having heard the submissions made, it seemed that the objective should be that a fire in a bin self-extinguishes without the necessity of a fire suppression system and the tender specifications need adjusting to reflect this and to enable competition.

He thanked the parties for their submissions and declared the hearing closed.

This Board,

Having noted this Call for Remedies filed by Green Skip Services Limited before the Closing Date for Competition, (hereinafter referred to as the Appellant) on 12 April 2018, refers to the contentions made by the same Appellant with regards to the issue of Tender of Reference MJCL/MPU/37/2018 listed as Case No 1171 in the Records of the Public Contracts Review Board, issued by the Cleansing & Maintenance Division within the Ministry for Justice, Culture and Local Government.

Appearing for the Appellant: Ms Mary Gaerty

Appearing for the Contracting Authority: Dr Christopher Mizzi

Whereby, the Appellant contends that:

- a) The way that the Technical Specifications were issued can only be complied with by one product, namely “*Nexus TM 20*”. The Appellants make reference to the Technical Requirements of “*Fire Suppression System*”, being dictated and which is only available in one particular product.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 23 April 2018 and its verbal submissions during the Public Hearing held on 24 May 2018, in that:

a) The Ministry for Justice, Culture and Local Government insist that, in general, the Technical Specifications do not limit the scope of competition. The Contracting Authority also maintains that the objective of this Tender is to provide for a Fire Suppression System which would automatically activate in case of fire.

This same Board also considered the testimony of the following witnesses duly summoned by the Ministry for Justice, Culture and Local Government:

- 1. Ing Kenneth Abela;**
- 2. Mr John Mercieca**

This Board, after having examined the relevant documentation and heard submissions made by the parties concerned, including the testimony of the witnesses, opines that the issue worth of consideration is the mode with which the specifications are drafted.

This Board would point out that the Technical Specifications in a Tender Dossier represent the core of the Objective which a Contracting Authority is aiming for. One has to be careful and prudent when drafting Technical Specifications in a Tender Dossier, in that, for the sake of transparency and a Level Playing Field, such specifications should feature the following directives:

- **Be precise in the way they describe the requirements;**
- **Be easily understood by the prospective Bidders;**
- **Have clearly defined, achievable and measurable Objectives;**
- **Not mention any Brand Names or requirements which limit competition or if Brands are mentioned, include the term “*or equivalent*”;**
- **Provide sufficient detailed information that allows Bidders to submit realistic offers.**

In this particular case, this Board would refer to Page 15, (Section 4 Item 2.1), wherein it is stipulated that:

“The Bin must come installed with an Automatic Fire Suppression System, fitted within the hood of the Bin.”

The above dictated Technical Condition does, in actual fact, discard automatically all other Bins that do not have any automatic system to suppress fire. Form the submissions made; this Board was made aware that such specific Technical Specifications refer to a particular product namely Nexus TM 200.

This Board opines that in drafting Technical Specifications, the Contracting Authority should define its objectives and in this particular case, the latter’s objective is to provide bins, the contents of which are prevented from catching

fire. In other words, should the contents catch fire; there should be a system where such incident is suppressed.

This Board would respectfully refer to the testimony of Mr John Mercieca, who is quite knowledgeable on the subject:

Question: “*X’ inhu l-objettiv tieghek? L-objettiv tieghek hu li ma jaqbadx ta’ ġewwa*”

Answer: “*Eżatt*”

Question: “*Li ma jaqbadx. Issa qed jiġi ssuġġerit mill-Bord li jkun hemm, li teżisti forma oħra ta’ kif il-bin ma jaqbadx minghajr ma jkollu “Automatic Suppression Device”, jekk jilhaqx l-istess l-oġġettiv tieghek.*”

Answer: “*Iva jilhqu.*”

In this regard, this Board is comfortably convinced that there exists alternative products which can be fireproof and which can satisfy the Ministry’s Objectives without the need of an “*automatic suppression system*”.

In view of the above, this Board:

- i) Upholds the concerns raised by Green Skip Services Limited;**

ii) Instructs the Ministry for Justice, Culture and Local Government not to include item 2.1 on Page 15 of the Tender Document and to substitute such specification indicating that the bin must provide fire protection to the contents within itself;

iii) Such deletion and substitution of condition 2.1 on page 15, should be affected through a clarification.

Dr Anthony J Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

29th May 2018