

PUBLIC CONTRACTS REVIEW BOARD

Case 1192 – MGOZ/MPU/T 26/2018 – Tender for the Supply and Delivery of Waste Bins and Smart Sensors as well as the Platform for Sensor Device Connectivity in connection with the Consume-Less Project funded through the Interreg Med Programme 2014-2020

Remedy before Closing Date of a Call for Competition

The publication date of the call for tenders was the 17th May 2018 whilst the closing date of the call for tenders was the 19th June 2018. The estimated value of the tender (exclusive of VAT) was € 195,000.

Green Skip Services Ltd filed an appeal on 30th May 2018 against the Ministry for Gozo on the grounds that the tender was written specifically for one particular product.

On 24th July 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Green Skip Services Ltd

Mrs Mary Gaerty	Representative
Mr John Smith	Representative

Contracting Authority – Ministry for Gozo

Dr Abigail Caruana Vella	Legal Representative
Ms Vicky Xuereb	Representative
Mr Joseph Cutajar	Representative
Ms Miriam Azzopardi	Representative

The Chairman of the Public Contracts Review Board welcomed both parties and reminded them that there was a Board's decision on a previous similar case.

Mrs Mary Gaerty, Representative of Green Skip Services Ltd stated that their objection was based on the fact that the type of bin requested in the tender was built on exactly the same specification as the Glasdon Nexus 200 bin. The colour, the measurement, the fire suppression system, the anti-graffiti material were exactly the same as specified in the tender.

Dr Abigail Caruana Vella, Legal Representative for the Ministry for Gozo said that Appellants were objecting to the automatic fire alarm system not on the specification totality of the bin. This tender was different to previous ones, in so far as the present tender was looking for a bin where the fire prevention system protected the sensors from damage by fire. They were not pointing to one particular supplier – there were at least two other suppliers of these types of bins and the system was not patented. It was anticipated that these bins would have a five year cycle of durable service.

Mr Joseph Cutajar (1379G) testified on oath that he had drafted and reviewed the specifications of the tender. What the Ministry was looking for were smart bins that would monitor location, fill-level, frequency of emptying and service data therefore it was essential to have an automatic fire suppression system to avoid damage to the sensors. The system had to actively turn off the fire as a self extinguishing system would damage the sensors because of the interval before the fire goes out.

Mrs Gaerty pointed out that although there were other suppliers they all supplied the same type of bin and there was no need for a fire suppression system to which Dr Cutajar re-iterated that the only criterion set by this tender was for an active fire suppression system.

The Chairman said that as long as there is a system that protects the sensors any bin would suffice and be acceptable. The objective was to safeguard the sensors. He then thanked the parties for their submission and declared the hearing closed.

This Board,

**Having noted this Call for Remedies filed by Green Skip Services Limited,
(hereinafter referred to as the Appellants), prior to the Closing Date of Call**

for Competition on 30 May 2018, refers to the contentions made by the same Appellants with regards to the Tender of Reference MGOZ/MPU/T/26/2018 listed as Case No 1192 in the records of the Public Contracts Review Board, issued by the Ministry for Gozo, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Ms Mary Gaerty

Appearing for the Contracting Authority: Dr Abigail Caruana Vella

Whereby the Appellants contend that:

- a) Their main concern is that the Technical Specifications of the Tender are formulated in such a manner as to favour a particular brand. In this regard, the Appellants specifically refer to the specifications of the Fire Suppression System.**

This Board also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 12 June 2018 and its verbal submissions during the Public Hearing held on 24 July 2018, in that:

a) The Ministry for Gozo insist that the Technical Specifications of the Tender can be met by more than one supplier. In this regard, such specifications were compiled to ensure that the sensors situated in the bin, are not damaged due to excessive heat.

This same Board also noted the testimony of the witness, namely Mr Joseph Cutajar, duly summoned by the Ministry for Gozo.

This Board, after having examined the relative documentation to this concern and heard submissions made by the witness, namely Mr Joseph Cutajar, who was responsible for the drafting of the specifications of the Tender, opines that the only issue worth of consideration is the “*Fire Suppression System*” being dictated.

This Board was made aware by the Technical Witness that, the Ministry’s objectives are to procure smart bins that would enable same to monitor its location, fill level, frequency of emptying and service data all around Gozo so that such bins will contain a special sensor through which the electronic

platform system will receive such data and in this regard, it is highly important that, in case of fire, such sensors are protected.

In this regard, this Board would point out that the specifications so dictated in the Tender Dossier, related to an “*active fire suppression system*” so that, as long as the product controls and extinguish the contents of the bin, in case of fire, and the sensors are not damaged, the product should satisfy the technical requirements.

This Board would emphasize that the technical specifications of the Tender should be compiled in such a way that there will be no restriction on the scope of competition and in this particular case, this Board opines that a more detailed and generic description of the Technical Specifications should be made by the Contracting Authority so that, any other product which satisfied the intended function can participate in this Tender.

In view of the above, this Board,

- i) Finds that the description of the Technical Specifications with regards to the “*Fire Suppression System*”, indicates a tendency to favour particular brands;**
- ii) Instructs the Ministry for Gozo that through a clarification note, the latter is to describe more clearly the intended objective of the product and in doing so, the same Ministry would amend any Technical Specifications which might favour a particular brand.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

31st July 2018