

PUBLIC CONTRACTS REVIEW BOARD

Case 1323 – MEW/T/02/2019 – Tender for the Provision of Cleaning Services at the Ministry for Energy and Water Management

The publication date of the call for tenders was the 11th March 2019 whilst the closing date of the call for tenders was 1st April 2019. The estimated value of the tender (exclusive of VAT) was € 80,847.

On the 9th May 2019 General Cleaners Co Ltd filed an appeal against the Ministry for Energy and Water Management as the Contracting Authority due to being disqualified on the grounds of being allotted a lower technical score. A deposit of € 450 was paid.

There were three (3) bidders.

On 18th June 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – General Cleaners Co Ltd

Dr Gianluca Cappitta	Legal Representative
Mr Ramon Fenech	Representative

Contracting Authority – Ministry for Energy and Water Management

Dr Gabriel Farrugia	Legal Representative
Ms Emily Fiott	Chairperson Evaluation Committee
Mr Xylon Bristow	Member Evaluation Committee
Ms Maria Vassallo	Member Evaluation Committee
Mr Blaine Camilleri	Member Evaluation Committee
Mr Vincent Borg	Representative
Mr Philip Muscat	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited them to make their submissions.

Dr Gianluca Cappitta Legal Representative of General Cleaners Co Ltd said that the appeal was based on three claims. Firstly, the marks awarded to his clients on the Equality Mark certificate was weighted as a percentage. Appellant was waiting to receive the certification that they were

registered as an Equal Opportunity Employer, and inexplicably had been awarded 0.02% of a mark but not one full mark. This is in breach of the guidelines set out in clause 9.3 of the tender document. The second claim concerned the documentation submitted, which according to the Contracting Authority did not satisfy the tender requisites. The Appellants submissions covered exactly what was asked regarding rostering and timetables although the format may have been different to what the Authority expected, and provided all the details laid out in the tender. The marking in regard to this item was unjust and the Appellants request a re-evaluation as the gist of the documents submitted meet the tender requisites. The third point on the appeal is that the Contracting Authority maintains that no reference to transport provision of allowance was provided. The two documents submitted show that the Appellants provided for measures of transport allowance and this was included in the Contingency Plan and the Fringe Benefit documents. If the loss of marks was due to the alleged lack of documents then this was incorrect as alternatives were offered.

Dr Gabriel Farrugia said that there is perfect justification and explanation for the reasons underlying the reduction in marks. Regarding the Equality Mark application for certification, when an actual certificate was requested, 1% was awarded to stop the bid from failing according to clause 9.3 in the tender – this saved the tender. With regards to the other documents, timesheets were presented instead of the required roster and timetable – this the Authority felt gave no indication of what work will be carried out - such as cleaning of specific areas. The presented documents were not in line with the transport provision and contingency plan required; they merely outlined family friendly measures with no mention of transport provision or allowance to be provided to its employees. The Authority cannot be expected to search through the entire dossier submitted to ensure that Appellants had somewhere filed the correct documents.

Dr Cappitta said that the tender should have been evaluated in full and all documents submitted assessed. The report regarding duties covered all the details requested with times, sites etc and if not fully satisfied the Contracting Authority should have allocated marks accordingly. The Quality Mark criteria should have been weighted accordingly as Appellant was waiting for this document to reach him.

Dr Farrugia pointed out that that the document referred to as the timetable had been submitted twice in blank form and hence it was not possible to allot marks. The transport allowance had not been mentioned in any document.

Dr Cappitta said that the difference in the award of marks in the different sections under clause 9.3 could have been made clearer.

There being no further submissions the Chairman thanked the parties for their contributions and declared the hearing closed.

This Board,

Having noted this objection filed by General Cleaners Limited (herein after referred to as the Appellants) on 9 May 2019, refers to the claims made by the same Appellants with regard to the tender of reference MEW/T/02/2019 listed as case no 1323 in the records of the Public Contracts Review Board, awarded by Ministry for Energy and Water Management (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Dr Gian Luca Cappitta

Appearing for the Contracting Authority: Dr Gabriel Farrugia

Whereby, the Appellants contend that:

- a) their first grievance refers to the fact that, with regard to the technical item ‘Equality Mark Certificate’, their offer was allocated 0.02% of one mark and not the full one mark, as duly stipulated in the evaluation grid of the technical specifications;**

- b) Appellants’ second grievance relates to the Authority’s alleged claim that, they did not submit the documentation so requested in the tender**

document. In this regard, Appellants maintain that all the information requested by the Authority is contained in the documentation submitted;

- c) Appellants' third grievance is that the Authority is alleging that, in their offer, no reference was made to the issue of transport provision or transport allowance. In this regard, Appellants would refer to two documents submitted showing the measures of transport allowance and included in the contingency plan and fringe benefits documentation.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 16 May 2019 and its verbal submissions during the hearing held on 18 June 2019, in that:

- a) the Authority insists that Appellants did not submit the requested certification, and, in this respect, they were awarded 1% as per clause 9.3, which in turn, when converted to a weighed score of 0.02 so that, in this regard, such an allocation is truly justified;**
- b) with regard to documentation submitted, Appellants failed to provide rostering and timetable documentation, instead, Appellants submitted time sheets;**

c) the Authority also maintains that no mention of transport provision or allowance provided to its employees was made by Appellants in their offer.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, opines that the issues that merit consideration, in this particular case are:

- **‘Equality Mark’ allocated marks,**
- **Submission of Requested Documentation – Rostering / Timetable,**
- **Transport Provision Allowance.**

I. ‘Equality Mark’ (allocated points)

This Board would refer to clause 9.3.c (i), wherein it was requested that:

“i Evidence that the economic operator is an ‘Equal Opportunities’ employer in line with the equality mark or equivalent (add on) proof/evidence through appropriate documentation obtained through NCPE (or equivalent).”

From the submissions made, this Board notes that the issue being raised by Appellants is the scoring method of points adopted by the Contracting

Authority on this particular item. The maximum points allotted for the requirement was two (2) marks. Appellants, in their submission provided only an application and not the requested certification so that, the Evaluation Committee, quite appropriately did not allocate any points, as the tender clearly stipulated that certification had to be submitted and through Appellants' submissions, it was clear enough that such a requirement was not in Appellants' possession.

At the same instance, the Evaluation Committee allotted 1% to stop the offer for failing for further consideration, thus saving Appellants' bid. In this regard, this Board notes that the Evaluation committee took the appropriate and correct decision to save Appellants' offer for further assessment of same and by allotting 1% on the Electronic Public Procurement System, converted to a weighed score of 0.02, the final allocation on the evaluation grid was automatically converted to 0.

1. Submission of Rostering and Time Table

With regards to Appellants’ second contention, this Board would respectfully refer to clause 9.3 (evaluation grid) B (ii) which stated the following requirement:

<p><i>“ ii Rostering / Timetable (mandatory)</i></p> <p><i>Show how the use of resources will ensure the timely delivery of tasks such as proposed cleaners working shifts.</i></p>	<p style="text-align: center;"><i>10</i></p> <p><i>The marks for the above shall be given within a Spectrum from 0 to 100%”</i></p>
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A rostering schedule is a document which explains how the available workforce will be allotted to their particular tasks in order to carry out the tendered works without any disruption in the execution of the service being given. The roster schedule must show all the necessary provisions being taken by the economic operator to achieve the Authority’s objective.

The schedule should also provide for an illustration of shift of workers to enable the Authority to assess that with such resources and movement of the available work force, such tendering services can be viably carried out by the economic operator.

Whilst, at the same instance, a timetable was also requested, showing the number of hours being dedicated to the tendering works on a daily and weekly basis.

In this particular case, the Authority requested information about proposed cleaning times and areas being covered together with the number of times cleaning is to be performed. Appellants, in their submission, provided only time sheets which did not, in any particular manner, represent a roster schedule and the requested format of timetable. The requested information had to denote how the application of resources will ensure a timely delivery of the proposed tasks and from the documentation submitted by Appellants, such mandatory requisite was lacking.

1. Transport Provision Allowance

With regard to Appellants' third contention, this Board would refer to clause 9.3. (c iii)

<p><i>“iii. Proof of Good Employment conditions (economic operator</i></p> <p><i>To include measures taken in favour of the employee):</i></p> <p><i>a) That the wages are paid by credit transfer – whereby</i></p> <p><i>costs of which are borne by the Contactor (mandatory);</i></p> <p><i>b) That employees are provided with a detailed payslip</i></p> <p><i>(mandatory);</i></p> <p><i>c) That employees have a written contract (mandatory);</i></p> <p><i>d) Contractor provides an insurance cover to his</i></p> <p><i>employees (add-on);</i></p> <p><i>e) Flexi-time allowed (add-on);</i></p> <p><i>f) Transport provision or allowance provided to</i></p> <p><i>employees (add-on);</i></p> <p><i>g) Bonuses other than statutory are provided to employees</i></p> <p><i>(add-on);”</i></p>	<p><i>From (a) to (g) 2</i></p> <p><i>marks each up to</i></p> <p><i>a maximum of 14</i></p> <p><i>marks</i></p>
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The above-mentioned requirement clearly stipulated seven items, each allocated two (2) marks and (iii) F., consisting of transport provision or allowance provided to employees and in this respect, Appellants failed to provide information regarding transport provision or transport allowances and quite appropriately, Appellants’ offer was deducted two (2) points. In this

regard, this Board does not find any justifiable cause to uphold Appellants' contention.

- 4. This Board would respectfully point out that, the allocation of points was carried out under the BPQR system, the latter system being the most objective method of assessment of tenders. At the same instance, this Board, after having examined the evaluation report, opines that the allocation of points was carried out in a fair, just and transparent manner.**

In conclusion, this Board opines that,

- a) The allocation of marks carried out by the Evaluation Committee are truly justified;**
- b) Appellants' submission did not satisfy the inclusion of a roster/timetable scheduled, and provision for transport or transport allowance;**
- c) The Evaluation Committee carried out the evaluation process in a just, fair and transparent manner.**

In view of the above, this Board,

i) upholds the Contracting Authority's decision in the award of the tender;

ii) does not uphold Appellants' contentions;

iii) directs that the deposit paid by Appellants should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

2 July 2019