

PUBLIC CONTRACTS REVIEW BOARD

Case 1386 – MJCL/MPU/126/2019 – Tender for the Provision of Cleaning Services using Environmentally Friendly Cleaning Products – Lot 2

The publication date of the tender was the 2nd August 2019 whilst the closing date was the 30th August 2019. The estimated value of the tender (exclusive of VAT) was € 21,909.88.

On the 7th October 2019 General Cleaners Co Ltd filed an appeal against the Ministry for Justice, Culture and Local Government as the Contracting Authority on the grounds that their bid was disqualified as it was deemed to be technically non-compliant. A deposit of € 400 was paid.

There were five (5) bidders.

On 21st November 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

Not represented

Recommended Bidder – Managing Consulting Services Industry Ltd

Ms Carmen James Representative

Ms Stephanie Degiorgio Representative

Contracting Authority – Ministry for Justice, Culture and Local Government

Dr Chris Mizzi Legal Representative

Mr Wayne Caruana Member Evaluation Board

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and read out an e-mail that had just been received from Dr Gianluca Ciappetti on behalf of Appellants stating that neither he nor his clients could attend due to a last minute commitment and that the Board should rely on their written submissions in support of their appeal.

Dr Chris Mizzi Legal Representative of the Ministry for Justice Culture and Local Government said that his clients had no objections to this course of action.

- a) The Authority should have realised that with regard to uniform, the same trousers will be used throughout the year so that, their offer should not have been rejected on such grounds.**

- b) Since the same documentation relating to ‘Quality Assurance System’ had been accepted in previous similar tenders awarded to them, the Authority should have deemed their offer as compliant.**

This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 11 November 2019, during the hearing held on 21 November 2019, in that:

- a) With regard to Appellants’ first contention, the Authority insists that Appellants’ offer did not include the full mandatory requirements with regard to winter and summer uniforms.**

- b) With regard to Appellants’ second contention, the Authority maintains that Appellants’ offer did not provide ‘Health and Safety Policy Measures’, so that the offer was not compliant. At the same instance, the Authority contends that the requirements of this tender should not be compared to previous tenders awarded to same Appellants.**

- 1. Through an email dated 21 November 2019 (9.45 am), this Board was informed that Appellants and their legal representative, were unable to attend the hearing. Through the same email, Appellants requested that the hearing be held as scheduled and the submissions made through their ‘Letter of Objection’ dated 7 October 2019, be taken into consideration in the Board’s deliberations.**

- 2. It should also be pointed out that the Authority acceded to such a request.**

- 3. This Board, after having examined the relevant documentation to this appeal, opines that the issues that merit consideration are two-fold namely:
 - (a) Appellants’ submission with regard to uniforms and**
 - (b) Appellants’ submission with regard to quality assurance.****

- 4. With regard to Appellants’ first contention, this Board would refer to the tender’s requirement in this respect, as follows:

“Other Mandatory requirements:

*Uniforms cleaning attire –***

A full summer uniform consisting of shirt and trousers, and a full winter uniform consisting of sweater and trousers. (visual of attire is to be provided, duly having the company name / logo on the shirt and sweater).”

The above clause clearly denotes the required submission of photographs of full summer and winter uniforms with the proper logo of the company.

5. Appellants in their submissions denoted only a pair of shorts for the summer uniform, so that no indication of trousers was presented, and, in this regard, this Board confirms that Appellants’ offer was not compliant with this particular requirement.

6. With regard to Appellants’ second contention, this Board would refer to the tender’s requirement in respect of quality assurance, as follows:

“Social Aspects – Employment Conditions (Mandatory)

Health and Safety Policy and Resources

(Quality assurance systems employed by the contractor to ascertain a safe working environment, e.g. via the provision of

appropriate signage for wet floors, provision of necessary implements such as gloves, etc. 1 point to be allocated for each measure listed shall be provided, up to a maximum of 6 points).”

- 7. Appellants’ submission with regard to above mentioned mandatory requirement lacked the requested quality assurance system to be employed in order to ascertain a safe working environment. Instead, they submitted a checklist and a list of personal equipment. In this respect, Appellants failed to conform with this requirement, so that, again, this Board confirms the decision of the Authority in deeming Appellants’ submission as non-compliant.**

- 8. This Board would also point out that evaluation processes or requirements of previous similar tenders should not be compared to this tender. It should be noted and acknowledged that each tender has its own particular requirements and the latter must be satisfied in all respects.**

- 9. This Board would also emphasize the fact that Appellants’ offer deficiencies were on mandatory technical requirements of the tender**

document so that such shortcomings indicate directly non-compliance with what has been requested.

10. On a final note, this Board would stress the fact that technical specifications are not capriciously formulated but are stipulated in the tender document to ensure a level playing field during the evaluation process.

In conclusion, this Board opines that:

- a) Appellants failed to submit the requested mandatory information in respect of full summer and winter uniforms.**

- b) Appellants failed to submit the requested mandatory information with regard to quality assurance system employed to ascertain a safe working environment.**

c) The Evaluation Committee quite appropriately applied the principle of self-limitation and equal treatment and carried out the evaluation process in a just and transparent manner.

In view of the above, this Board,

- i. does not uphold Appellants' contentions,**
- ii. upholds the Contracting Authority's decision in the award of the contract,**
- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

28 September 2019