



Dr John Bonello Legal Representative of Saniclean JV confirmed that this appeal was on both lots. Appellants had submitted a very detailed letter of appeal and a further detailed document had been submitted dealing with the fresh issues raised by the Department of Contracts in their reply. A witness was available to confirm the points of the appeal which was based on the marks awarded and on two issues which were fundamental to the award of the tender, although these two issues seemed to have been side stepped by Dr Agius in his reply on behalf of the Contracting Authority. The fundamental points to be considered were whether there was compliance with the VAT and Social Security requirements in the tender documents. In paragraph 38 of the letter from the Director of Contracts it was confirmed that all necessary tax compliance certificates had been submitted with the offer on the renewed closing date of the tender - namely 3<sup>rd</sup> September 2019. This seemed to be impossible in terms of the time interval as on the 9<sup>th</sup> July 2019 the Commissioner for Revenue had filed an official letter in the Law Courts demanding payment of € 148,216.11 on overdue VAT liabilities. This letter gave executive title to the Commissioner and was equivalent to a Court sentence. There was no record that this liability had been satisfied and it was therefore impossible to claim that there was compliance with VAT obligations.

This point, on its own, was enough to disqualify the preferred bidder from being awarded the tender. Additionally it is established that since 2015 X Clean Ltd had failed to submit Annual Company Returns as required in law. The point of these returns was to enable interested parties to see how a company was faring –in this case this was impossible as no audited accounts had been submitted.

Dr Franco Agius Legal Representative for Saint Vincent de Paul Long Term Facility and for the Director of Contracts said that contrary to the claim by Appellants the Evaluation Board had confirmed, not once but three times, that recently dated compliance certificates had been presented and that the tax affairs of X Clean Ltd were up to date and the Contracting Authority therefore could not exclude them. Further certificates will have to be presented at the time of the award of the tender. With regard to the failure to file Annual Returns there was no law determining exclusion on those grounds.

The Chairman stated that the submission of compliance certificates was mandatory and he wished the Chairman of the Evaluation Committee to testify on this point.

Ms Karen Muscat (ID not stated) called as a witness by the Public Contracts Review Board testified on oath that she was the Chairperson of the evaluation committee. She confirmed receipt of clearance certificates for Social Security, income taxes and VAT which had been carefully examined by the committee.

The Chairman pointed out that the VAT certificate was in the name of Crystal Clean rather than X Clean Ltd.

Witness stated that Crystal Clean is part of the X Clean consortium and pointed out that there was a further compliance letter from the VAT department dated 9<sup>th</sup> August signed by Ms Mariella Orlando and

Mr Joseph Attard stating that X Clean Ltd had no liabilities versus the VAT Department as on that day and that there are no civil proceedings against the taxpayer.

Dr Bonello at this stage requested the Board to summon a representative of the VAT Department to give evidence in a further hearing regarding the outstanding Court Case.

After a short recess the Chairman stated that the Board accepts the request to call as a witness a representative of the VAT Department plus the two signatories of the letter of the 9<sup>th</sup> August referred to by Ms Karen Muscat in her testimony.

A second virtual hearing will be held on Tuesday 28<sup>th</sup> April 2020 at 10.30am. The Chairman thanked the parties for their submissions and declared the hearing adjourned.

### **Second Hearing**

On the 28<sup>th</sup> April 2020 the Public Contracts Review Board composed of Dr Anthony Cassar, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public virtual hearing to discuss further the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Saniclean JV**

Dr John Bonello	Legal Representative
Dr Marycienne Vassallo	Legal Representative

#### **Preferred Bidder – X Clean Ltd**

Mr Peter Paul Zammit LP	Legal Representative
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#### **Contracting Authority – Saint Vincent de Paul Long Term Facility**

Dr Franco Agius	Legal Representative
Ms Karen Muscat	Chairperson Evaluation Committee
Mr Mario Caruana	Member Evaluation Committee
Ms Mary Grace Dalli	Member Evaluation Committee
Ms Marica Saliba	Secretary Evaluation Committee

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar welcomed the parties and invited witnesses to give their testimonies.

Mr Manfred Barbara (466763M) called as a witness by the Public Contracts Review Board testified on oath that he is an Assistant Director at the Office of the Commissioner for Revenue. He stated that it is normal practice for the VAT Department to issue compliance certificates headed 'Without Prejudice'. This was to safeguard the Commissioner regarding the possibility of taking future action against undiscovered tax liabilities which may come to light at a later stage.

Witness stated that he was limited on what details he could give due to the restrictions imposed on him by the VAT legislation.

On behalf of X Clean Ltd, Mr Peter Paul Zammit Legal Representative of the Company, released the witness from his confidentiality obligations and allowed him to give any necessary details regarding his clients' tax affairs as at the time that the compliance certificate was issued.

Witness stated that on the 9<sup>th</sup> July 2019 the debt outstanding by X Clean Ltd was as stated in the Court official letter. After that date a repayment programme with the Company was entered into, but on around the 9<sup>th</sup> August all debts were settled by a lump sum payment. The Court letter still shows the debt as outstanding as X Clean had failed to pay the Court expenses to cancel it. The certificate of 25<sup>th</sup> November 2019 was issued at the Company's request.

Asked why the compliance certificate of the 9<sup>th</sup> August referred to a different numbered tender, witness stated that that was in line with what the Company requested and the Commissioner was not concerned which tender was referred to in the certificate.

In answer to a further question witness confirmed that at the stage of the issue of the certificate all VAT liabilities were cleared and no arrangement or repayment agreement were in existence.

Ms Karen Muscat (141773M) called as a witness by the Public Contracts Review Board testified on oath that she was the Chairperson of the Evaluation Committee.

In reply to a question from the Chairman witness stated that the committee was following the policy of the Director of Contracts in requesting a further certificate.

Dr Franco Agius Legal Representative of the Director of Contracts confirmed that the policy of the Director of Contracts was to ensure that the successful bidder produced a further certificate at the time of the signing of the contract.

Ms Mariella Orlando (156974M) called as a witness by the Public Contracts Review Board confirmed on oath that her signature on the letter of 9<sup>th</sup> August 2019 from the Commissioner of Revenue was authentic.

Mr Joseph Attard (188887M) called as a witness by the Public Contracts Review Board stated on oath that at the time of the letter of 9<sup>th</sup> August 2019 he was a Manager in the Accounting and Finance

Department of the Commissioner of Revenue. He confirmed that it was his signature on the letter referred to.

Dr John Bonello Legal Representative for Saniclean JV referred to the reply by the Director of Contracts to the letter of objection from Appellants which made it obvious why an appeal was necessary as the award of points had been totally subjective.

In reply to an objection by Dr Agius that the additional document submitted by Appellants had included an additional point, Dr Bonello said that the original letter of objection indicated two grievances – mistakes and subjectivity in the award of points and VAT compliance, and hence it covered all points of the appeal and did not go against the Court of Appeal ruling in the Sunspot Tours case cited by Dr Agius.

Mr Giulio La Scala called as a witness by Saniclean JV testified on oath. Witness was directed by Dr Bonello to the letter of the 21<sup>st</sup> February 2020 from the Director of Contracts (DoC) and asked to deal with the points raised therein one by one.

Witness replied as follows:

1. Measures to ensure timekeeping (Criterion E 4)

The statement in the letter of the DoC that there is no back up for the electronic software system is incorrect. The system is backed up by having the cleaners' work sheets signed and counter signed by nurses and security people on the ward to ensure that workers were physically on the ward assigned to them. This is verification by independent sources backed up by a form signed by the foreman. Timekeeping is not only made by the electronic system but physically by onsite inspection of the workers. The structure of Appellants' proposal includes four supervisors responsible for guiding and monitoring the operators to their assigned duties and instructing them on specific tasks, thus providing a high level of supervision.

2. An adequate level of service (Criterion E4)

The complaint against Appellants under this section that they did not explain how or whether the supervisor will confirm the quality of the service is not justified since their offer indicates that Saniclean JV will provide the cleaning protocols based on the British National Health Service standard rules which are recognized worldwide as the bible for cleaning protocols. Furthermore colour coding will be followed by using different regularly washed coloured cloths for cleaning different areas as colour coded in their proposal. Further there is a description of the cleaning processes and how much time is allocated to, and the frequency of cleaning of the different areas with final reports being provided on the processes involved. Training will also be provided. An explanation has been provided about the mathematical way that will be used to ensure the quality levels, all done in line with the NHS rules and the reports that will be provided.

### 3. Rostering Methodology (Criterion E5)

The evaluation committee claims that no reference is made to physical onsite inspections by supervisors confirming that the required tasks have been delivered and that relying on the electronic system applications is insufficient monitoring. This statement is contradicted by the fact that an organization chart is provided indicating that three supervisors (rather than the two requested in the tender document) and a long line of foremen will be assigned to check and inspect all the daily activity and to control each cleaner all over the hospital. The supervisors will be constantly on site during working hours to ensure the best levels of cleanliness prescribed by the contract. Finally the foremen will have to complete a table providing checks on compliance on the proper execution of the work methodologies, completion of planned operations, security systems adopted and correct use of PPE. This is all explained in the roster sample submitted with the offer.

### 4. Contingency Plan (E6)

Appellants noted that the evaluation committee noted on this point that no official agreement is stated to have been made with a taxi company to provide a service in the case of a breakdown of public transport. Appellants state that nowhere in their offer is there any reference to a taxi service but contend that what they offer is a dedicated pickup service by the Company. Another objection raised in this context is that of providing replacement people by extending the hours of work of persons on site, using people from other sites and if this is not feasible then there is a specific team of dedicated people responsible for finding replacements for people absent (for whatever reason) these points are all dealt with in the organization chart provided. In the case of industrial action discussions with trade unions will be held in advance of the proposed action to enable discussions to take place and to notify the contracting authorities of their plan of action.

### 5. Monthly Reports (E7)

The objection here is that there is no mention of incident reporting, health and safety issues and recommendations for improvement, but Appellants contend that this is not requested in the tender. The reporting record offered shows the individual cleaner, the ward, the hour and the timesheet for the respective months as the tender requested.

### 6. Proposed Methodology (E8)

On this point Appellants have already focused on the fact that apart from the SW software system, which is the backbone of their activities, and on which all information will be stored and reported, there is a team of competent managers, supervisors and foremen responsible to observe the daily activities taking place in the hospital and this will be reported to the contracting authority within the same month. This has already been described in an earlier section. Further there are

inspection record forms listing the place, time and date of such inspections and issues to be addressed are noted and a plan drawn up to rectify such issues will be established.

The witness concluded by stating that as he understands it all contested points have been clarified. The issues raised have been thoroughly investigated and evidence has been produced about activities claimed to have been missed in the offer.

In being cross examined by Dr Agius witness stated that the SW application system is an application that can be downloaded from the web, no software installation is required and that Appellants will be responsible for the training of staff in its use.

Dr Agius next dealt with the rostering methodology and asked the witness to confirm that page 5 of their offer was a cut and paste version of the wording in section 8.7 (page 39) of the tender dossier.

Witness said that in the offer there was additional information about the allocation of cleaners in the wards. Appellants were committing themselves to issuing a daily roster for the following day, then a weekly roster Monday to Sunday for the next week and a monthly roster every fifteen days.. The methodology of the rostering will take care of the sizing of the teams with a calculation of how many hours are needed to clean an area and an allocation of how many people are required. After receiving the needs of the wards and quantifying and then allocating the necessary resources a roster will be published monthly, weekly and daily providing the overall report of all the wards with all the teams.

Asked by Dr Agius if the different duties to be carried out are embedded in the roster methodology, witness (referring to page 16 point 1.5 of the offer) replied that for each activity there is reported the cleaners' timings, the job description, the square metres, the risk level of the area and the protocols that have to be used to clean that area. The foremen that are being provided for each area will verify the outcome.

Dr Agius next asked witness to explain what was meant by the use of the phrase 'on a regular basis' in the section dealing with timekeeping and adequate level of service and to confirm that Appellants had been awarded seven out of ten points in this section.

In his reply witness stated that apart from the daily report signed by the foreman on the daily activities there will additionally be a monthly report as a long term form of control on the cleaners to ensure that there is consistency in their work.

In reply to a question from Dr Agius regarding the contingency plan witness confirmed that in the tender Appellants had given no indication as to who would bear the costs of the transport service and that they did not indicate how many Euro 6 vans they owned or had at their disposal.

Asked to comment on the statement that bidder would agree measures ten days in advance in the case of a service breakdown, witness said that this would be possible if it entailed a problem with the

provision of cleaners. In the case of exceptional circumstances the contractor would report this to the hospital and provide them with a plan that was acceptable to them.

Dr Agius next asked a series of question regarding Appellants claim that they can guarantee replacement of employees within ten minutes – particularly the claim on the use of operators already available on site; people having to cover more than one shift; using people from worksites within a ten minute area of Saint Vincent de Paule; the lack of the proper training and skill levels for relief employees.

Witness explained that it will be possible to replace sick people with workers who are on their day off, or one can use staff that is cleaning schools that are under the control of Saniclean JV to replace the sick people; these people would all have been trained to the same high standards and have the same skills level as stated in point 1.6 in the contingency plan.

Witness was directed to criterion 1.4 (page 12) of the tender and asked to explain the criteria used to determine the low touch and high touch surfaces, and explained that this will be determined by an assessment of the potential for exposure of surfaces taking into consideration the type of surface, the susceptibility of the people using it and the contamination probability. Two matrix tables will provide the contamination score on which the frequency of the cleaning will be determined. Witness confirmed that the frequency identified as low touch areas included floors, walls, ceiling, mirrors and window sills.

Dr Agius asked witness to explain the statement made in criterion 1.8 (page 6) regarding ‘the responsible of the services.....will have the task to check weekly the level of quality of the performed services....’

Witness stated that the top responsible person of the Company will personally be in charge to check the inspections of the supervisors and foremen on a weekly basis and provide his own report to verify the level of cleanliness in the hospital rather than rely on the reports provided by others.

Dealing with a question on audits witness stated that very high risk areas will be audited weekly, high risk areas every month, medium risk areas every three months and low risk areas every six months.

Dr Bonello asked the witness what other cleaning contracts was the Company currently fulfilling.

Witness replied that the Company that is part of this Joint Venture has some one thousand employees, some of whom are working as hospital cleaners. The Company has a number of people who are on standby everyday ready to take the place of any absentees – that way they can assure replacements within 10 minutes. On long term replacements people from other placements can be used.

After a ten minute recess Ms Karen Muscat was requested to resume her testimony.

Questioned by Dr Agius, Ms Muscat stated that she was the Chairperson of the evaluation committee. In her view the award of seven out of ten marks for the criterion on time keeping was a good mark. The

reduction was due to too much weighting being given to the SW online system and the committee's concern that the system was not 'smooth' enough to handle 1100 residents and 1800 workers. There was the additional difficulty of training all these people due to their lack of knowledge of the English language and the overall lack of IT knowledge, apart from the possibility of flaws in the system were no backup seemed to be offered. On the other points offered by bidder there was not enough detail provided to assure the evaluation committee that the time keeping would be accurate. This would affect the level of service and have a knock on effect on other services. There was also the difficulty of staff having to check shortcomings on an ad hoc basis during the working day.

On the question of supervision witness stated that this was a main issue as the tender specified 'daily' supervision but the bidder offered 'regular' supervision which is a subjective term and is something which Saint Vincent de Paule definitely requires on a daily basis.

Dr Agius referred witness to criterion 1.4 and particularly to the cleaning frequency of high and low touch surfaces. Witness stated that bidders' offer included floors in the low touch category. The evaluation committee disagreed with this as floors are the areas used most and must be cleaned two or even three times a day.

On rostering bidder submitted the very same schedule that was supplied with the tender. This was not a roster but an indication of the hours of work. What was required was an indication of how the personnel are going to be used on each particular ward and on each particular task.

Questioned on the Contingency Plan, witness stated the use of the words 'taxi service' were used as equivalent to 'a pick up guaranteed alternative service'. The Contracting Authority did not specify the use of taxis. No reference was made in bidder's offer as to who would bear the cost of this alternative transport and the evaluation committee was certain that if the contractor asked for even a small contribution from the workers for this service the latter would report sick and not turn up for work. It was essential to transport workers to site punctually as if the cleaning was not done on time this would have a serious impact on all other patients' services such as washing, cleaning, rubbish collecting, breakfast etc. There was not enough information on the provision or the source of the mini-vans and their availability and this was a problem as the dependence on cleaners was very high and essential.

To overcome the problems of staff on sick leave Appellants had offered three options. The offer of using operatives overnight did not apply as there were no overnight cleaners on site. The alternative of providing cleaners from other sites had the disadvantage that those cleaners might not be trained to meet medical requirements. The third option – that of providing a dedicated team was not defined clearly enough. The outcome was that points were deducted since the plan presented was not clear.

In the part of the tender dealing with the submission of Draft Reports witness said that points had been deducted as although the offer by Appellants was good certain competing offers were more detailed and better explained. Reservations were expressed by witness on the use of the SW application system due to the time required to train staff some of whom were illiterate, did not speak English and had no

knowledge of modern communication systems. This would impact on the operation of the service and interfere with normal work.

As regards the frequency of audits (Criterion 1.8) witness said that the gap proposed between the different types of reports varied from ‘weekly’ compared to others ‘every three to six months’ – this was too vast. Asked by Dr Bonello if she would also read the phrase qualifying the above proposal witness added by reading out: “or as agreed by the Contracting Authority”.

Questioned by Dr Bonello witness agreed that it was the responsibility of the contractor to provide training on the use of the offered software application. Her reservation on its use were due to it being technical to use, re-iterating that among the staff there was lack of knowledge of the English language and the use of communication systems. Witness had never used the system and was not aware that it was in use at Mater Dei Hospital but agreed that the cleaners at the latter place were likely to be of the same calibre as those proposed for Saint Vincent de Paule site.

In reply to a question from the Chairman witness agreed with the statement that the training of staff was the responsibility of the contractor.

On the Contingency Plan, in reply to a question by Dr Bonello, witness said that she agreed that the plan was included in the submissions by bidder but she did not understand it. There was not enough information of what a dedicated team was – however she did say that she was not aware whether this may apply to a dedicated contingency, a project or a process.

Regarding the availability of vans to transport workers in the case of a breakdown of service, witness agreed that it made no difference to the offer whether the vans were hired, leased or borrowed, but mentioned that there was no indication that the vans would be available when needed. The evaluation committee had merely assumed that the workers would have to pay for this breakdown transport without any tangible evidence. There was also concern, on the part of the witness, that untrained workers from other sites would be used, but accepted that it was the responsibility of the contractor to provide cleaners who have been properly trained.

Dr Bonello, in his conclusion, stated that the appeal is essentially an exercise in revising the subjective decisions taken by the evaluation committee. The Contracting Authority and the Public Contracts Review Board have access to the complete dossiers submitted and have the benefit of being able to analyse if Appellants’ offer merits the classification it received. The evaluation committee has the final decision but in its true context this tender is mainly a question of management of what is in effect a retained labour force. The Chairperson of the evaluation committee criticized the points on the Saniclean offer purely on supposition such as, for example, that workers were not IT competent, that they would have to pay for the use of alternate transport in the case of a breakdown and on the public transport alternative itself – everything is based on supposition. No single concrete point or new information had been put forward; merely a repetition of the evaluation committee’s decision.

On the other hand, said Dr Bonello, the Appellants had put forward a very detailed account covering all the points in their submission. It was a well thought out and proficient presentation and there must be latitude in deciding if the management are able to provide the service. It was ridiculous and patronising to claim that in 2020 people are unable to use smart phones. The Contracting Authority's argument regarding the use of a technical system is untenable bearing in mind the considerable number of years IT has been in use by the Government – the system is already in use on a much broader scale at Mater Dei Hospital and the evaluation committee has abused its latitude in its decisions. It is obvious that on the evidence heard the Chairperson of the evaluation committee was not objective and its latitude was not correctly used. The only remedy available to the Appellants is to trust in the judgment of the PCRB which has the access to all documents and can check with the reasonableness of impartial adjudication, and follow the transparency and level playing field principles of the Public Procurement Regulations.

Dr Agius said that he finds the use of certain phrases objectionable and despite what has been said, the evaluation committee felt that they had carried out their duties correctly. The committee was right in worrying about the use of the new system which if adopted may have an impact on the other services and there is a need to train people in using the system. No indication was provided by the Appellants as to how they plan to overcome this impact. The tender was on a PBQR basis and some subjectivity in the decisions reached is unavoidable. The offer should be looked at holistically and one must not fall into the trap of the case *Cateressence vs Director of Contracts* where a master plan was contradicted in the details. One must bear in mind that this economic operator was not disqualified but marked down where the submissions were not up to requested level. It is the duty of the Director of Contracts to ensure that any incongruities in the offer are dealt with accordingly to avoid problems later. On Rostering there were no details supplied by Appellants on how the various duties would interface. Dr Agius quoted from a paper by A T Ernst et al 'Staff scheduling and rostering: A review of applications, methods and models' from the *European Journal of Operational Research*. There was no rostering methodology defined or how the tasks will be integrated in Appellants' offer.

The Contingency Plan stated Dr Agius, was based on three points two of which were regarded as not counting and it therefore stands to reason that points were deducted. Traffic breakdowns affect everyone so they have a knock on effect but no information was supplied in the submissions as to how this point will be dealt with – there was no indication of the source of transport alternative, leading to further shortcomings in the offer. The audits offered by Appellants were dependent on obtaining the agreement of the Contracting Authority which might not be forthcoming – this sort of qualification creates doubts in the minds of the evaluation committee. All these points are not suppositions but based on statements made by the Appellants. It is not unheard of that a contractor charges employees for transport – it is not clear from the submissions what would apply in this instance. The same rigorous approach should be used in evaluations and the evaluation committee assured the Director of Contracts that the evaluation was correctly and diligently carried out.

The Chairman thanked the parties for their submissions and declared the meeting closed.

End of Minutes

## **Decision**

**This Board,**

**having noted this objection filed by Saniclean JV (hereinafter referred to as the Appellants) on 14 February 2020, refers to the claims made by the same Appellants with regard to the tender of reference CT 2374/2018 Lot 2 listed as case No. 1439 in the records of the Public Contracts Review Board awarded by Saint Vincent De Paul Long Term Facility (hereinafter referred to as the Contracting Authority).**

**Appearing for the Appellants: Dr John Bonello**

**Appearing for the Contracting Authority: Dr Franco Agius**

**Whereby, the Appellants contend that:**

- a) The preferred bidder's offer should have been discarded outright due to the fact that they were not compliant with regard to VAT and Social Security requirements as dictated in the tender document.**
- b) The allocation of marks to Appellants' offer was carried out in an erroneous and subjective manner by the Evaluation Committee, with particular reference to the following mandatory issues:**
  - i) Timekeeping measures**
  - ii) Adequate Level of Service**
  - iii) Rostering Methodology**
  - iv) Contingency Plan**

**v) Monthly Reports**

**vi) Proposed Methodology**

**This Board also noted the Contracting Authority's 'Letter of reply' dated 21 February 2020 and its verbal submissions during the virtual hearings held on 23rd and 28th April 2020, in that:**

- a) The Authority insists that it had received all the necessary certification to confirm that the preferred bidder was in compliance with all the mandatory requirements regarding VAT and Social Security contributions.**
- b) With regard to Appellants' claims on the allocation of points on their offer concerning the mandatory items mentioned, the Authority contends that, the marks allotted on these requirements reflected the quality of presentation of such documentation so that, under the BPQR system, the points were objectively awarded.**

**This same Board also noted the testimony of the witnesses namely:**

**Mr Manfred Barbara from VAT Department, duly summoned by Public Contracts Review Board (PCRB)**

**Ms Mariella Orlando from VAT Department, duly summoned by the PCRB**

**Mr Joseph Attard from VAT Department, duly summoned by the PCRB**

**Ms Karen Muscat from Evaluation Committee, duly summoned by the Public Contracts Review Board**

**Mr Giulio La Scala duly summoned by Saniclean JV**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the interested parties, including the lengthy testimony of witnesses duly summoned opines that, the issues that merit consideration are two-fold namely:**

- a) The preferred bidder’s compliance with respect to VAT and Social Security obligations and**
- b) The allocation of marks on mandatory items namely, timekeeping, level of service, rostering, contingency plan, monthly report and proposed methodology.**

**1. With regard to Appellants’ first contention, this Board would respectfully refer to clauses 7 (B)(b) iii) and iv), which dictate the following:**

*“iii) Certificate or Proof from the VAT department that all money due to the VAT department are paid and no amounts are due <sup>(Note 2)</sup>*

*iv) Certificate or Proof from the Social Security department or Inland Revenue Department that all Social Security Contributions, class 1 (employee & employer) and class 2, are fully paid and no amounts are due <sup>(Note 2)</sup>”*

**Appellants, in their submission, are claiming that the preferred bidder did not comply with such a requirement as they were sued by the VAT Department on the 9 July 2019 for unpaid tax amounting to €148,21.**

**In this regard, officials from the VAT department were duly summoned and same confirmed that, as at closing date of the offers, the preferred bidder had no outstanding liabilities with the VAT Department, viz:**

*“Dr Bonello : Mela ghandek il-parameters kif tista’ tixhed*

*Xhud : Dakinhar, jigifieri ghall-habta ta’ Lulju 2019 iva kien hemm dejn dovut tal- ammont li hemm miktub f’ dik l-ittra ufficjali. U nharget dik l-ittra ufficjali, iva nikkonferma*

*Dr Bonello : Issa x’gara wara dik l-ittra ufficjali?*

*Xhud : Wara dik l-ittra ufficjali kien gie d-Dipartiment id-direttur tal-kumpanija, konna ghamilna repayment programme. Dan ir-repayment programme inzamm imma imbghad ghal xil-ewwel gimgha ta’ Awwissu, kien hemm pagament. Id-dejn kien tela’ xi ffit ukoll, pero ghad-9 ta’ Awwissu kien sar lump sum payment fejn gie cleared id-dejn kollu. Jekk tippermettili nispjega, l-ittra ufficjali ghadha hemm sempliciment minhabba spejjez tal-Qorti ghaliex ahna nghidu li jekk irid inehhaha mill-Qorti, jaghmilha t-tax payer stess ghax inkella ma jhallsuniex l-ispejjez. Allura jekk hu jrid jirtira l-ittra ufficjali, hu jaghmel rikors hu jekk irid u jirtiraha. Pero sad-9 ta’ Awwissu, id-dejn fuq VAT kien thallas kollu*

**From the above testimony and corresponding documentation, this Board is comfortably convinced that the preferred bidder was compliant with clauses 7 (B)(b) iii) and iv) of the tender document, so that Appellants' first grievance is not upheld.**

- 2. With regard to Appellants' second grievance regarding the alleged erroneous allocation of marks on items indicated in Appellants' objection, this Board, prior to considering the merit on each grievance, would respectively point out that, the BPQR system has been proved to be the most objective mode of assessing offers and it has also been established, through its application, that it if correctly used justly provides an objective conclusion to select the most advantageous offer possible.**

**Needless to mention, there is always the human subjective element in the weighting of the offers, but the formula itself suppresses the subjectivity element in the evaluation process and in this respect, this Board will consider the merit of the allocation of points on each of the items mentioned in Appellants' objection as follows:**

- 2.1. With regard to timekeeping measures, the Authority insists that apart from the electronic software system, there is no other back-up facility provided by Appellants. On the other hand, Appellants maintain that, the system is backed by having cleaners' worksheets signed and countersigned by nurses**

**and security personnel on the ward, so that there will be verification of such attendance, apart from physical supervision by Appellants' supervisors.**

**From the evaluation report, this Board notes that 3 points were deducted from Appellants' offer due to the non-submission of a back-up system. In this respect, same reason was given by the Evaluators on 'Adequate Level of Service'.**

**In this regard, this Board would point out that, it is the responsibility of the economic operator to ensure that the employees are properly accustomed in the use of the electronic system of the timekeeping and that the same system provides an adequate level of service. Apart from the electronic timekeeping system, there will be physical supervision of staff that will ensure that each employee is fully occupied with its duties. In this respect, an extract from Mr La Scala's testimony will illustrate such a methodology, as follows:**

*“And what are the systems? First, for sure is the software application. But then there is personal observation because the responsible of the services shall be over there and approve the time of the people of attendance. And also the supervisor and also the foreman and then they will show you where. So there is time keeper observations. So there are people that are in charge of that specifically, there are time keepers observation. So it is not only the system electronical but there are people assigned to the task and are called time keepers observation*

Chairman : *Mr La Scala, was that made clear in your offer?*

Witness : *Yes it is written here. And then there is checking data against other independent sources. What does it mean? It means that for instance once the cleaner go to the ward and working to the ward, she will have a sheet that will be signed and counter signed by the nurse in charge. Because when I go in my office, sign the attendance and they are going to the ward, I do not know where it is. She can disappear somewhere in the hospital. So we must ensure that the people are going to the ward. So the additional information that is very important is that there are independent sources, there are nurses but also security people that will be in charge to verify if the people are going somewhere else, the people are hiding in the corner to play games so this source for us is important. And this is written in the offer because we have to also verify with this people which is the attendance of the people. If we go to criterion E.7 in my offer, page 3, criterion E7, we have a form that shall be signed by the foreman to verify the attendance of the people on cleaning duties. So there is a form to sign to verify the area. So there is a very deep investigation about that. So timekeeping is not only made by electronic system but made physically by on site inspection of the people.”*

**In this regard, after taking into consideration the testimony of Mr La Scala and reviewing Appellants’ offer, this Board considers the ‘Timekeeping’ issue is well described in detail and provides the necessary information to the Authority together with the provision of assured control over the**

**timekeeping of the economic operator's employees, so that any deduction of points in this regard is not justified.**

- 3. With regard to 'Rostering Methodology' the Authority contends that Appellants' offer did not provide for onsite inspections by supervisors to confirm that the required tasks have been executed.**

**In this respect, this Board would refer to an extract from the testimony of Mr La Scala who identified the supervision methodology to be applied, as follows:**

*"Witness : This point is referring to the offer into the criterion E.5 which show how the use of resources will ensure timely delivery of the task maximum points will be allotted if the rostering timetable methodology is exhaustive in line with the requirement established in the terms of reference. So this is what is requested in the tender. I would like to point out that in the paragraph is written how, it is not written how will I inspect. Because the inspection is requested in the previous paragraph where there is written timekeeping and adequate level of services. And also specifically in paragraph 1.8 where is reporting the level of services again, over there I explain how I will inspect the resources. Here is requesting how I will use the resources. So how I will put the resources in place to face the activities. But, notwithstanding that, in the paragraph of my offer is written, there is a long explanation about the organisation chart, because the resources shall be organised in a chart. So the people shall not have no organisation. So in the organisation chart is written that there is responsible for the contract, there are 3 supervisor, so there are more supervisor than requested in the tender, because the tender is*

*requesting only two and we are assigning 3 supervisor, so one more, and then there is a long line of foreman that is in charge to make also the daily activity of checking and inspection in all the hospital. Because 3 supervisor for an entire hospital will be under my personal inspection not enough to check what is happening to the hospital. So in addition to that, we have a long line of foremen that will be responsible to go around in the hospital and to be every day to control each cleaner. But onsite inspection is provided in criterion 1.5 here*

*Chairman : Ok*

*Witness : The supervisor will be composed by 3 people and to be always present in the Saint Vincent de Paule site during working hours to ensure that the best levels of cleanliness prescribed by this contract are met. So this is not the softer system. This is people that is going around. Then in addition to that, we have also always as I said before forms to be filled by the foreman and there is the signature of the foreman. So the foreman has to fill this table to verify who is where and who is cleaning what and he has to sign. As indicated in criterion 1.5, the proposed structure include foremen who will be responsible to ensure that will carry out the cleaning activities at the hospital and so there are foreman that are providing inspection. Then there is always this table that is providing also check on compliance on the proper execution of the work methodologies, checks on the completion of the planned operation, check on the proper use of respect of security system adopted, check on the correct use of PPE as shown. So this is all the checks that have to be done. Then the last one,*

*Dr Bonello : Are you in a position to conclude on this point?*

*Witness : Yes. The other point that I would like to show is this one, so we have made all the roster of all the hospital already. On here there are all the roster and all the areas with all the people. So the roster methodology has been already explained and provided into the offer. Very deeply.”*

**In this regard, this Board, after having heard the testimony of Mr La Scala and Ms Karen Muscat, Chairperson of the Evaluation Committee and after having examined Appellants’ offer opines that, the ‘Rostering Issue’ submitted by Appellants did not contain sufficient information to assure the Authority that the methodology that will be applied by Appellants will render a workable solution, so that deduction of points in this respect is justified.**

**4. With regard to the contingency plan to cater for sick personnel, industrial action and breakdown of public transport, this Board would consider each item under review separately, although points were awarded on a global assessment of the mandatory items together.**

**4.1. With regard to sick personnel, Appellants’ are claiming that in the event of sick employees, these can be replaced by extending the hours of available personnel, transferring people from other sites or from a dedicated pool that is available for this eventuality and an extract from the testimony of Mr La Scala will elaborate on this particular issue, as follows:**

*“Witness: Another objection that has been made is in relation to the use of the replacement of the cleaner because they objected that we are providing a replacement of the people extending the hour of the present people. It is not true. Because in the offer it is a very easy process, that is this one*

*Chairman : Which says?*

*Witness : Which says that if there is some people available on site will be use people available on site. If there is people available on other site, will be use people available on other site, if not there is a specific team of people that is in charge on making replacement and this team of people is reported in the organisation chart. In the last line you will see that there is people to replace. So this is a dedicated pool of people that will be in charge to provide replacement of the sick people, absent people, for any reason the people may be absent. The cleaning operators assigned to replacement will be always available to replace the absent ordinary and specialised cleaning operators.”*

**The Authority’s main concern, in this regard, is that replacement of sick personnel from other sites might create a problem due to the simple fact that such replacements are not normally used to carry out cleaning services in such a delicate environment such as St Vincent De Paul. In this respect, an extract from Ms Muscat’s testimony will highlight this particular issue:**

*“Dr Bonello : Inti ghamilt referenza wkoll għall-fatt li l-proposta fejn jigu estizi working hours għalikom mhix accettabli għax intom ma tistgħux testendu l-hinijiet tal-haddiema għax inkella jkunu deklin filgħaxijiet*

*Xhud : Le le jestendu għax filghodu jekk ikollhom xi hadd bis-sick, bil-lejl ma jkollniex nies biex jestendulhom is-sighat. So minn fejn ser jestendu. Dik kienet. Għax ahna night m'għandniex servizz ta' cleaners. Għalhekk semmejniha dik*

*Dr Bonello : Biss naqblu illi l-proposta tal-extension kienet parti minn flow chart illi tispjegalek li wahda mill-options f'kaz li jista jkun hemm extension issegwi certu rotta? Wrieha dalghodu*

*Xhud : Iva għandek yes jew no. Għandi hawn. Pero xorta kienet listed bhala wahda mill-options*

*Dr Bonello : Jekk ma tahdimx dik*

*Xhud : Imma ahna li nkwetajna li l-ohra kienet from other worksites. Li jgib in-nies minn postijiet ohra. Il-postijiet ohra issa liema huma? Dawn x'esperjenza għandhom? Kif semmejt qabel? Jahdmu go lukanda? Go ufficini? Ser jigu jahdmu San Vincenz. Għandhom esperjenza?*

*Dr Bonello : Again imma naqblu illi t-training tal-haddiema hija responsabbilta tal-employer u mhux responsabbilta*

*Xhud : Agreed pero xorta importanti li ssir għax ser teffettwa l-operat tagħna. U s-servizz hux. Bhala standards. Jigifieri jiena xorta rrid*

*nara li jekk ser iggib haddiem inti minn ufficini li dan jaf kif jahsel go  
San Vincenz”*

**In this regard, after taking into consideration the fact that, any replacement of personnel must be knowledgeable enough to carry out cleaning services in Hospitals and Old People’s Homes, it is imperative that this responsibility and onus of replacement should be carried by the economic operator himself and the latter should prove to the Authority that he will be responsible for such a task of replacing sick personnel with others well versed in the operation of their duties in such an environment. In this regard, this Board opines that on this issue, points, should only be deducted if the economic operator, in his submission indicated otherwise, always bearing in mind that the responsibility in providing adequately trained staff, at all times, is his under any circumstances.**

**4.2. With regard to the provision of alternative transport in case of Industrial Action, the Authority contends that Appellants did not indicate any agreement with any local company to provide transport and no mention was made who is to pay for such service. In this particular regard, it is the responsibility of the economic operator to make his own arrangements to ensure that in the eventuality of a transport strike, the employees are ferried to their place of work, without fail and on time, for the execution of their normal duties. In this regard, after having examined Appellants’**

**submission, this Board considers that sufficient information was given to guarantee that personnel will attend at their place work in case of a transport strike. At the same instance, it should not be the Authority's concern whether the operator owns or leases the vehicles, as long as the bidder is cognisant of the fact that he is totally responsible for such an eventuality. Moreover, the issue of who is to bear the cost of such transport, whether the contractor will bear the costs or the employees themselves will contribute, is irrelevant to the terms of the tender and on this particular issue, this Board opines that Appellants were compliant.**

- 4.3. With regard to the eventuality of industrial action, such an issue will not happen overnight so that, it is a normal and democratic approach to avoid such a situation, as much as possible, by holding discussions with the unions involved to come to an amicable solution. If unsuccessful, the contractor can only issue an alternative plan after discussions with the Authority. This Board cannot find a justifiable alternative solution except that it is in the interest of the contractor to avoid such a situation by providing decent working conditions. In this regard, this Board opines that the information submitted by Appellants should be sufficient to comply with the requirements, in the event of industrial action. After considering the above, this Board opines that the contingency plan presented by Appellants was**

**compliant except for the provision for ‘Rostering Methodology’ and the points to be awarded should reflect these considerations.**

**5. With regard to ‘Monthly Reports’, Appellants maintain that they had submitted what was requested in the tender document and their submission consisted of a monthly time sheet for each cleaner only, as duly explained through the testimony of Mr La Scala, as follows:**

*“Chairman : Monthly reports?”*

*Dr Bonello : This is page 13 of your rationale. Can you please explain and reply to the comments of the evaluation committee?”*

*Witness : Yes. In this respect, it is reporting copy of draft report as per clause 7 of the technical specification. The record shall include time sheets to illustrate the number of hours rendered in cleaning services performed for the respective months. So in the objection, it is said that there was no mention of incident reporting, health and safety issues and recommendations for improvement. But this is not requested by the tender. Here the list of the cleaner, the ward, the hour and the timesheet so the record is reporting as requesting the*

*hours rendered for cleaning services per ward and for the respective months. So the record is over there.*

*Chairman :* *In other words, what the tender has requested, in your offer, you have included those items, am I right?*

*Witness :* *Correct.”*

**At this particular stage of consideration, this Board must point out that, during the evaluation process and the allocation of points, some form of comparison must be made so that, the most informative and comprehensive report will attain the highest score, under this requirement. From submissions made and the evaluation report, it is evidently clear that there were submitted reports superior to that of Appellants so that, a deduction of one point was effected and the score awarded to Appellants’ was commensurate with the contents of the report so submitted. In this regard, this Board opines that, the points so allocated relating to ‘Monthly Reports’ were proportionally just and fair. An extract from the testimony of Ms Muscat Chairperson of the Evaluation Committee explains what other bidders included in their ‘Methodology Reports’, as follows:**

*“Dr Agius :* *Kien hemm bidders ohra li taw draft reporting ahjar minn dan il-bidder?*

*Xhud : Kulhadd kellu dawk l-hours on a monthly basis imma kien hemm ohrajn li bhala kwalita kienu ahjar. Kien hemm min semma any incident reporting li kien hemm matul ix-xahar. Any issues li ghandhom li jekk jinqala xi haga you have to discuss. Any issues fuq health and safety. Kien hemm min qal li ser izid any other things li kien hemm matul ix-xahar li rajnieha bhala kwalita ahjar minn ta' dan is-sinjur, ta' din il-kumpanija. Bhala kwalita qed nghidu. Ghalhekk il-marks ftit naqqasna. Xorta hemm kienu s-sighat bhala monthly basis. Just xtaqna li bhala reporting billi s-servizz hu kif inhu, not just about the hours u bhala sighat, kien hemm iktar affarijeit mieghu, speci bhala kwalita kienet ahjar minn affarijiet ohra.”*

- 6. With regard to the proposed methodology, the Authority contends that the overall input duration and completion of tasks is alerted of any shortcomings only through the SW system and not by daily routine on-site inspections and at the same instance, the inputted data can be manipulated intentionally. In this regard, from submissions made various methods were highlighted by Appellants in that, there will be on site supervision so that proof and verification of attendance of personnel will not depend only on the system.**
- 6.1. With regard to the issue of ‘Audits’ the Authority maintains that the gap between the various types of report was too vast; however, Appellants in**

**their submission, did quote that “*Or as agreed by the Contracting Authority*” so that, such a commitment must also be taken into consideration, in the allotment of marks.**

**7. After taking the above-mentioned issues into consideration, this Board opines that:**

- 7.1. With regard to Appellants’ claim that the preferred bidder should have been disqualified as he was not compliant with clauses 7 (B)(b) iii) and iv) of the tender document, it was confirmed by the witnesses from the VAT Department that X Clean Ltd (Preferred Bidder) had no liabilities with the Department as at the date of submission of their offer.**
- 7.2. With regard to time-keeping measures submitted by Appellants, such measures were compliant enough not to be penalised by deduction of any marks.**
- 7.3. With regard to ‘Rostering Methodology’, Appellants’ submissions, could have been more informative and more focused on the allocation of the duties of personnel so that, deduction of marks when compared to other competing submissions, was justified.**
- 7.4. With regard to the ‘Contingency Plan’ relating to sick personnel, it is the responsibility of the economic operator to ensure replacement of sick**

**personnel and marks on this issue should only be deducted if Appellants' submission indicated lack of importance on the issue.**

- 7.5. With regard to the 'Contingency Plan' relating to alternative transport for employees in case of public transport shutdown, Appellants submissions were informative enough to be compliant.**
- 7.6. With regard to the 'Contingency Plan' relating to the eventuality of industrial action, Appellants' submissions were compliant.**
- 7.7. With regard to 'Monthly Reports', more detailed and inclusive reports were in fact submitted by other competing tenderers so that by comparison, the deduction of marks in this regard, were proportionately justified.**
- 7.8. With regard to the dependence on the IT system for timekeeping and attendance supervision, Appellants' submission was compliant through the presence of onsite supervision.**
- 7.9. With regard to 'Audits' to be carried out by Appellants, they denoted a scheme of reporting where gaps between intervals of audits were considered as vast by the Contracting Authority, however, some Appellants cited that 'Or as agreed by the Contracting Authority' so that, such a commitment must also be taken into consideration during the allocation of marks.**

**In view of the above, this Board,**

- i) acknowledges the fact that this tender is substantial in monetary terms but also more importantly notes the necessary quality of service which the successful bidder must offer,**
  
- ii) considering the allocation of marks on certain mandatory items, this Board opines that a re-evaluation process, taking into consideration this Board's findings, will reap a more transparent and advantageous benefit to the Authority,**
  
- iii) does not uphold the Contracting Authority's decision in the award of the tender,**
  
- iv) directs that Appellants' offer be reintegrated in the evaluation process,**
  
- v) directs that the Evaluation Committee shall be differently composed, and shall take this Board's findings in its deliberation,**
  
- vi) directs that the deposit paid by Appellants be fully refunded.**

Dr Anthony Cassar  
Chairman  
*15th May 2020*

Mr Lawrence Ancilleri  
Member

Mr Carmel Esposito  
Member