

## **PUBLIC CONTRACTS REVIEW BOARD**

**CT 2319/2019 (Lot 2)**

**Tender for the Provision of Environmentally Friendly Cleaning Services to the Malta Police Force**

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**Case 1527**

**DATE: 18<sup>th</sup> March 2021**

**This Board,**

Having noted the Appeal filed by Alistair Bezzina, (hereinafter referred to as the Appellant) and the contents of the correspondence received by the Board on the 30<sup>th</sup> November 2020.

Having also noted the contents of the Contracting Authority's letter of reply received by the Board on the 17<sup>th</sup> December 2020 and filed by Christian Avellino on behalf of The Police Force as the contracting authority.

Having noted the contents of the of the preferred bidder's letter of reply received by the Board on the 15<sup>th</sup> December 2020 and filed by Dr Franco Galea on behalf of Melchior Dimech.

Having taken cognisance and evaluated the witnesses produced, all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties.

Having noted and evaluated the minutes of the Board sittings of the 26<sup>th</sup> January 2021 and the 26<sup>th</sup> February 2021 hereunder re-produced:

The tender was published on the 20<sup>th</sup> March 2020 and the closing date of the tender was the 23<sup>rd</sup> April 2020. The estimated value of the tender (exclusive of VAT) for Lot 2 was € 55,246.

On the 30<sup>th</sup> November 2020 Mr Alistair Bezzina filed an appeal against the Malta Police Force as the Contracting Authority objecting to his disqualification on the grounds that his bid was not technically compliant.

A deposit of € 400 was paid.

There were eleven (11) bidders.

On 26<sup>th</sup> January 2021 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

**Appellant – Mr Alistair Bezzina**

Dr Jonathan Mintoff Legal Representative

**Contracting Authority – Malta Police Force**

Dr Miguel De Gabriele	Legal Representative
Supt Anthony Agius	Chairperson Evaluation Committee
Mr Christian Avellino	Secretary Evaluation Committee
Mr Charles Lia	Member Evaluation Committee
Insp Chantelle Casha	Member Evaluation Committee
Mr Geoffrey Azzopardi	Representative

**Recommended Bidder – Mr Melchior Dimech**

Dr Franco Galea	Legal Representative
Mr Melchior Dimech	Representative

**Department of Contracts**

Mr Mark Mizzi	Representative
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Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board. He then mentioned that although it was accepted that the letter of reply was outside the set time limits the Board would still hear the case.

Dr Jonathan Mintoff Legal Representative for Mr Alistair Bezzina pointed out that the letter of reply as well as the one from preferred bidder was submitted outside the set time limit and on that basis he objected to the case being heard but would follow the ruling of the Board. He then asked for a witness to be heard.

Dr Kathleen Xerri (186289M) called as a witness by Appellant stated on oath that she is the Legal Counsel at the Office of the Data Protection Commissioner. She stated that in her view it was not necessary to identify a person by both name and surname on a uniform tag as it was the current practice to give minimal information regarding employees.

In reply to a question witness stated that the Data Protection Office did not involve itself in tenders and that the Police Commissioner was not obliged to contact that Office prior to issuing a tender.

Mr Christian Avellino (96982M) called as a witness by the Contracting Authority testified on oath that he is the Procurement Manager for the Malta Police Force and was Secretary of the Evaluation Committee and was responsible for drafting the tender document. He stated that it was a mandatory requirement in the tender for the bidder to submit an identification tag showing the name and surname of the cleaner and the company logo. Appellant submission had shown no reference to the company. It was also mandatory to provide a contingency plan outlining provisions to meet certain situations in the case of emergencies. Appellant indicated that he was proposing to notify the Local Councils in cases of emergency rather than the Malta Police Force. As both these mandatory requirements came under Note 3 it was not possible to seek clarification.

In reply to a question from Dr Mintoff witness stated that contrary to what the letter of rejection stated Appellants had not been disqualified for 'no pullover' and because he did not meet 'the legal requirement for the employment of disabled people'. Failure was actually due to the lack of identification tag and the contingency plan (as per Clause 9.3 of the tender).

In reply to a question from the Chairman witness said that there were no other technical specifications listed in the tender document except the Evaluation Grid.

Witness further stated that the Authority could not ask for rectification on a document that was addressed to the Local Council.

A discussion ensued regarding the erroneous letter of rejection sent by the Department of Contracts, and the Chairman stated that he wants to establish the reason for these obvious errors from a representative of the Department of Contracts.

Mr Jonathan Bugeja (464986M) called as a witness by the Public Contracts Review Board testified on oath that he is the Procurement Manager at the Department of Contracts. He explained that in the normal process, on receipt of the evaluation report this is vetted and then forwarded to the General Contracts Committee and they issue the final recommendations. In this instance an error occurred when the wrong ‘cut and paste’ was used in the rejection letter – the decision of the GCC in the award was correct and the error must have occurred due to a temporary distraction and normal pressure of work.

Dr Franco Galea Legal Representative for Mr Melchior Dimech suggested that following what has just been said by witness the correct course would be for the Director of Contracts to withdraw the rejection letter, issue a fresh rejection letter indicating the correct reasons and allow the parties concerned to make fresh submissions.

The Chairman said that the Board directed that an amended letter of rejection be issued to give the parties a chance to make their resubmissions and to proceed from that point.

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

End of Minutes

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Reconvening of the public hearing on case 1527 held on 26<sup>th</sup> February 2021 by the Public Contracts Review Board composed of Dr Ian Spiteri Bailey as Chairman, Mr Lawrence Ancilleri and Mr Carmel Esposito as members. The start of the meeting scheduled for 9.15am was deferred to 9.21am to enable all parties to be present.

The Appellants were represented by Dr Larry Formosa and the Contracting Authority by Mr Christian Avellino and Mr D’Amato.

The Chairman of the Public Contracts Review Board welcomed the parties and requested confirmation that they accept this virtual meeting as a normal hearing of the Board. He then explained that due to the fact that the Board had been reconstituted since the original appeal was held it was necessary to obtain consent of the parties for the Board to proceed to a decision on the basis of submissions already made. The parties gave their consent.

The Chairman thanked the parties for their co-operation and declared the hearing closed.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 26<sup>th</sup> January 2021, from where it results that the parties agree that the letter of rejection dated 20<sup>th</sup> November 2020 contains a wrong, erroneous reason for justifying the non-technical compliance, namely that “*no pullover and no identification tag*” and that no proof was submitted to the effect that the “*economic operator met the legal requirements for the employment of disabled people*”. In the words of Jonathan Bugeja, procurement manager of the contracting authority, this was due to “*an error occurred when the wrong ‘cut and paste’ was used in the rejection letter*” probably due to “*a temporary distraction and normal pressure of work*”.

The Board,

Having evaluated all the above concludes and decides:

- a) To annul the rejection letter sent to the appellant by the contracting authority dated 20<sup>th</sup> November 2020, and
- b) To order the contracting authority to re-send to the appellant the letter of rejection with the correct and right reason for such a rejection in process CT2319/2019, in order that the appellant’s right at law to appeal from such new letter of rejection remain unprejudiced.

In view of the above considerations, the Board furthermore orders that the deposit paid by the appellant upon filing of this appeal should be refunded back to the same appellant.

**Ian Spiteri Bailey**  
Chair

**Lawrence Ancilleri**  
Member

**Carmel Esposito**  
Member