

PUBLIC CONTRACTS REVIEW BOARD

CT 2319/2019 (Lot 1)

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

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Case 1528

DATE: 18th March 2021

This Board,

Having noted the Appeal filed by General Cleaners Co. Limited, (hereinafter referred to as the Appellant) and the contents of the said correspondence received by the Board on the 30th November 2020.

Having also noted the contents of the Contracting Authority's letter of reply received by the Board on the 17th December 2020 and filed by Christian Avellino on behalf of The Malta 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 15th December 2020 and filed by Dr Franco Galea on behalf of Melchior Dimech.

Having taken cognisance and evaluated the witnesses' testimony, 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 26th January 2021 and the 26th February 2021 hereunder re-produced:

Case 1528 – CT 2319/2019 – Tender for the Provision of Environmentally Friendly Cleaning Service to the Malta Police Force (Lot 1)

The tender was published on the 20th March 2020 and the closing date of the tender was the 23rd April 2020. The estimated value of the tender (exclusive of VAT) for Lot 1 was €402,159.

On the 30th November 2020 General Cleaners Ltd filed an appeal against the Malta Police Force as the Contracting Authority objecting to their disqualification on the grounds that their bid was not technically compliant.

A deposit of €2,012 was paid by the appellant.

There were eleven (11) bidders.

On 26th 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:

Appellants – General Cleaners Ltd

Dr Gianluca Cappitta	Legal Representative
Mr Ramon Fenech	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 Nicholas Aquilina

Representative

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.

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Dr Gianluca Cappitta, Legal Representative for General Cleaners Ltd referred to the letter of appeal and said that the tender document was the principal guide in submitting a tender. The technical requirements of the tender which are mandatory make no reference to black shoes. The methodology document again makes no reference to black shoes. The Public Contracts Review Board always insists on clear tender instructions and a level playing field and this is precisely the point of the appeal. The Contracting Authority maintains that black shoes are mentioned in the tender structure but it is very unfair that a mandatory component should be added on at the last moment of submission when the tender document on which all preparatory work would have been done does not mention such a requirement.

Mr Christian Avellino (96982M) called as a witness by the Contracting Authority testified on oath that he was the Secretary of the Evaluation Committee and is employed as a Procurement Manager with the Malta Police Force. He was responsible for drafting the tender following which he sent the documents to the Department of Contracts for publication. He agreed that the black shoes were not included in the tender but only included in the tender structure (xml), which according to Article 1.1 of the Tender General Instructions, prevails.

Questioned by Dr Cappitta, witness agreed that the request for black shoes should have been included in the original tender but was missed out due to an oversight and this led to a situation where out of three documents only the last one mentioned black shoes. Witness agreed that access to the xml is the last step after all preparatory work had been completed and that the tender's function is to help bidders to prepare the groundwork for their eventual submissions.

In reply to further questions witness stated it is the responsibility of bidders to follow the xml structure and to ensure that all documents requested in it are submitted. All other bidders in this call followed the tender structure correctly.

Dr Franco Galea Legal Representative for Mr Melchior Dimech said that the tender document is not the end of the bidding process and the xml is part and parcel of the tender and the final submission still has to adhere to the complete terms.

Dr Cappitta stated that the point of the appeal is not whether the xml is the final document but that in the technical terms the mention of black shoes is missing in two out of three documents – the only mention is at the submission stage. The tender

document is normally expected to guide the bidder and one would expect it to have complete details of requirements.

The Chairman 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 1528 held on 26th 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 9.30am was deferred to 9.42am to enable all parties to be present.

The Appellants were represented by Dr Gianluca Cappitta and Mr Ramon Fenech.

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

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 26th January 2021, from where it results that the parties agree that the tender document did not include the request for black shoes. There results no issue between the parties however as to the fact that this detail was included in the xml tender structure.

Whereas the Board notes Christian Avellino's declaration on oath to the effect that "*the request for black shoes should have been included in the original tender but was missed out due to an oversight and this led to a situation where out of three documents only the last one mentioned black shoes*", the Board cannot but note that it is only fair to concede that mistakes can happen, but contracting authorities should ensure to their maximum ability that no such over-sights happen when issuing tender documents.

The Board, in this respect embraces the appellant's legal counsel submission that "*The tender document is normally expected to guide the bidder and one would expect it to have complete details of requirements*" – but this alone does not mean that if a detail is omitted in the tender document but is found in the xml tender structure, then there is cause

for the suspension, cancellation, annulment and/or disqualification of the award and/or disqualification notice as is being requested by the appellant.

The Board finds comfort in this decision in what is stated in **Section 1 – Instructions to Tenderers** – which clearly state:

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*“In case of any discrepancy between the requirements between the requirements contained in this document and those in the tender response format (xml tender structure), **the latter shall prevail**”.*

The Board,

Having evaluated all the above concludes and decides:

a) To dismiss the appeal.

The Board takes this opportunity to solicit all contracting authorities to thoroughly and meticulously verify the contents of all documents they issue in order to avoid discrepancies.

Ian Spiteri Bailey
Chair

Lawrence Ancilleri
Member

Carmel Esposito
Member

¹ Bold for emphasis