

PUBLIC CONTRACTS REVIEW BOARD

CT2025/2020 Lot 1 – The Provision of Cleaning Services using Environmentally Friendly Cleaning Products for Entities within the Active Ageing and Community Care

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Case 1552

DATE: 8th April 2021

This Board,

Having noted the Appeal filed by Prof. Ian Refalo on behalf of All Clean Services Limited, (hereinafter referred to as the Appellant) and the contents of the said correspondence received by the Board on the 25th January 2021.

Having also noted the contents of the Contracting Authority's letter of reply received by the Board on the 3rd February 2021 and filed by Dr Mario Mifsud and Dr Christian Camilleri on behalf of Active Ageing and Community Care as the contracting authority.

Having noted the contents of the of the preferred bidder's (Dibaw Services Joint Venture) letter of reply received by the Board on the 2nd February 2021 and filed by Dr Alessandro Lia.

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 23rd March 2021 and the 25th March 2021 hereunder re-produced:

Case 1552 – CT 2025/2020 – Tender for the Provision of Cleaning Services using Environmentally Friendly Cleaning Products for Entities within the Active Ageing and Community Care (AACC)

The tender was published on the 15th May 2020 and the closing date was the 16th June 2020. The value of the tender was €3,659,861 (excluding VAT).

On the 25th January 2021, All Clean Services Ltd filed an appeal against Active Ageing and Community Care as the Contracting Authority objecting to their disqualification on the grounds of their bid being technically not compliant

A deposit of €17,765 was paid.

There were nine (9) bidders and ten (10) bids on Lot 1 and 8 (eight) bidders on Lot 2.

On 23rd March 2021 the Public Contracts Review Board (PCRB) composed of Dr Ian Spiteri Bailey as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – All Clean Services Ltd

Prof Ian Refalo	Legal Representative
Dr John Refalo	Legal Representative
Dr Mark Refalo	Legal Representative

Contracting Authority – Active Ageing and Community Care

Dr Christian Camilleri	Legal Representative
Mr Joseph Delicata	Chairperson Evaluation Committee
Ms Mary Grace Balzan	Secretary Evaluation Committee
Ms Antoinette Zahra	Member Evaluation Committee
Ms Janet Pace	Member Evaluation Committee

Preferred Bidder – DIBAW JV

Dr Alessandro Lia	Representative
Mr Wilson Mifsud	Representative
Mr Gianluca di Lascio	Representative

Dr Ian Spiteri Bailey, 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 in line with Article 89 of the Public Procurement Regulations (LN 174.04). He noted that the letter of reply from the Contracting Authority referred to lots 1 and 2 and therefore he requested Appellants' confirmation that their letter of objection too referred to both lots.

Dr Mark Refalo, Legal Representative for All Clean Services Ltd confirmed that the appeal was on both bids based on the reasons given for disqualification by the Authority.

It was pointed out that the Contracting Authority was not in agreement with the reasons given by the Department of Contracts who mistakenly issued the wrong grounds for the decision taken by the Authority on one of Appellants' bids (134452).

The Chairman asked Appellants' legal representative if they wished to deal with the points as stated or whether, not to prejudice their case, they wished to consider their submissions further.

Dr Alessandro Lia Legal Representative for DIBAW JV said that the letter of objection had been in every one's hands for one and a half months and the reasons for the objections had been similar – the reasons were therefore known and Appellants would not be prejudiced.

Dr Refalo concurred with the Chairman's proposal for a deferment to enable them to make further submissions.

The Chairman stated that the Board after seeing the Contracting Authority's reply and following the request of the Appellants deferred the hearing of the Case to the 25th March 2021 at 12.00 noon.

End of Minutes

SECOND HEARING

On 25th March 2021 the Public Contracts Review Board composed of Dr Ian Spiteri Bailey, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to further discuss the objections.

The attendance for this public hearing was as follows:

Appellants – All Clean Services Ltd

Prof Ian Refalo

Legal Representative

Dr Mark Refalo

Legal Representative John Refalo

Legal Representative

Contracting Authority – Active Ageing and Community Care

Dr Christian Camilleri

Legal Representative

Ms Mary Grace Balzan
Mr Carmel Camilleri

Secretary Evaluation Committee
Member Evaluation Committee

Preferred Bidder – Dibaw JV

Dr Alessandro Lia
Mr Gianluca di Lascio

Legal Representative
Representative

Department of Contracts

Mr Nicholas Aquilina

Representative

Dr Ian Spiteri Bailey Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting and all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations (LN 174.04). He said that a late submission by Appellants had been notified to all parties. Following the procedures laid down in the Public Procurement Regulations only verbal submissions may be made after the letter of appeal and the reply, but in the particular circumstances of this case the Board would abide by the wishes of all the parties.

Dr Alessandro Lia Legal Representative for Dibaw JV said that the note submitted by Appellants did not have any documents annexed.

Dr Mark Refalo Legal Representative for All Clean Services Ltd requested a witness from the Evaluation Committee to testify and asked for a copy of the full evaluation report to be made available to him.

Ms Mary Grace Balzan (474775M) called as a witness by the Appellants testified on oath that she was the Secretary of the Evaluation Committee. Witness detailed the process that the committee undertook in the evaluation of the tender and how the individual assessments were combined to produce the final evaluation report. Individual reports had been supplied to the participating bidders but not the full evaluation report.

Dr Christian Camilleri Legal Representative for Active Ageing and Community Care said that the full report is only available to the Board.

Dr Lia stated that individual reports had already been made available to the parties concerned. Appellants are fully aware of the points of the appeal as they had submitted appropriate replies accordingly.

The Chairman pointed out that the Board noted that the participating parties have the necessary information in hand and would therefore not consider the request for the full evaluation report.

Proceeding with her testimony witness stated that the Appellants' proposals under criteria A.1.i lacked a list of lectures and subjects to be covered; regarding time keeping

no details were supplied as to its implementation; no implementation strategy was supplied in the case of equipment (criteria 3.5.2) whilst the list of cleaning products lacked the Safety Data Sheet. Overall, the terms of reference in the tender seem to have been ignored.

Dr Mark Refalo said that it was essential to have the full evaluation report to enable Appellants to assess if they have been awarded the correct points under each section – one can then find if there were objective reasons in the award of points and decide if the value judgments made were acceptable.

Dr Camilleri said that one must rely on witness's testimony which backed the reasons for disqualification. The Authority used the tender evaluation procedure to reach their conclusions. On mandatory requisites the Evaluators had no option but to disqualify, since note 3 did not allow changes.

Dr Lia stated that according to the witness certain documents were not submitted but even if submitted they were not relevant. In the case of mandatory documents, a zero point is given so if any of these requirements were overlooked the Authority had no option. In the case of the data sheets Appellants had to prove that they were offering equivalent standards. Reference was made to PCRB Case 1476 where failure to prove equivalence was a factor in losing the appeal.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sittings of the 23rd and 25th March 2021.

The Board notes that this tender in question was divided into 2 lots, Lot 1 for the provision of Cleaning Services for AAEC Entities in Malta whereas Lot 2 was for the provision of Cleaning Services for AAEC Entities in Gozo.

It furthermore notes that the appellant company submitted two bids for Lot 1, namely TID 134452 and TID 134544. The contracting authority issued the letter of rejection on the 15th January 2021 to the appellant company in which, the contracting authority listed the reasons for rejection for Lot 1 and Lot 2 separately. It results that the reasons for rejection for in respect of bid TID 134544 were correctly listed, whereas the reasons for rejection for bid TID 134452 were wrongly listed.

The appellant company filed its appeal on four grounds in respect of both bids on Lot 1, but following the contracting authority's reply to the objection letter, wherein the right reasons for the rejection of TID 134452 were now listed in the said letter, namely:

1. *Economic Operator did not submit a proposal including subjects to be covered during the lectures, neither declared that personnel performing the services are to be given the provision of two hours per year per employee in regular in- service refresher lectures,*
2. *Economic Operator did not submit a write up report including a list of measures to ensure time keeping and employees' attendance records,*
3. *Economic Operator did not submit a detailed list of equipment to be utilised for the provision of cleaning services and neither submitted a proposed implementation strategy as required by the terms of reference,*
4. *Economic operator submitted only a list of cleaning products to be used during the contract. However, Safety Data sheets for each cleaning product were not presented and accompanied by proof of Ecolabel.*

The Board notes the evidence on oath submitted by the Evaluation Committee's Secretary, wherein it was stated that the appellant company is non-compliant with the tender requirements on a number of requisites, such as a list of lectures and subjects to be covered, lack of details on time-keeping, lack of implementation strategy and the lack of safety data sheet for cleaning products. All this led the witness to state that "*Overall, the terms of reference in the tender seem to have been ignored*".

The Board furthermore notes that the appellant company contends that its bid was deemed to be technically non-compliant "*not for lack of provision of documentation but for documentation allegedly not being specific enough or not realistic enough or allegedly failed to contain the expected information.*" In view of the evidence provided by the only witness, more over produced by the same appellant company, the Board can only but reject this basis for the appeal.

Furthermore, the Board notes that whereas the appellant's company contends its bid submission was complete and satisfactory, at most had the evaluation committee wanted to properly understand and appreciate the documentation submitted, then it should have sought clarifications to assist in understanding better the offer made. The Board concurs with the submission made by the contracting authority in this respect to the effect that no clarifications were needed, since the issue here was that there was missing documentation and lack of production of information.

Furthermore, it results that it was mandatory information which was omitted in the bid, and as the preferred bidder's counsel rightly pointed out, in terms of the tender document, *“for mandatory criteria, if the requirements are not satisfied, a ‘0’ score shall be allotted and the tender shall be automatically disqualified, whereas if the requirements are all met, full marks per respective criterion shall be allotted”*.

In so far as the appellant company's submission that its documentation in respect of safety data sheets are concerned and that these are actually equivalent to the requested standards, the contracting authority referred the Board to page 25 of the tender document, wherein it is clearly stated that *“where in this tender document a standard, brand or label is quoted, it is to be understood that the Contracting Authority will accept equivalent standards, brands or labels. However, it will be the responsibility of the respective bidders, at tendering stage, to prove that this standard, brand or labels as quoted are equivalent to the standard requested by the contracting authority”*. The Board thus, even if it had to accept that the relative documentation was submitted, finds that the bidder failed to prove that it met the requirements listed by the contracting authority or their equivalent.

Based on the above considerations, the Board will reject the appeal submitted.

The Board,

Having evaluated all the above concludes and decides:

- a) To dismiss the appeal, and,
- b) To order that the deposit paid by the appellant company NOT be refunded to the same appellant company.

Ian Spiteri Bailey
Chair

Lawrence Ancilleri
Member

Dr Charles Cassar
Member