

PUBLIC CONTRACTS REVIEW BOARD

CT 2025/2020 Lot 2

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The Provision of Cleaning Services using Environmentally Friendly Cleaning Products for Entities within the Active Ageing and Community Care

Case 1554

DATE: 8th April 2021

This Board,

Having noted the Appeal filed by X Clean Limited, (hereinafter referred to as the Appellant) and the contents of the correspondence sent by Mr Peter Paul Zammit L.P. on behalf of appellant and received by the Board on the 25th January 2021.

Having also noted that the Contracting Authority replied to the Appeal by reply filed by Dr Mario Mifsud and Dr Christian Camilleri on behalf of the Active Aging and Community Care received by the Board on the 3rd February 2021.

Having also noted the reply filed by Dr Alessandro Lia on behalf of Dibaw Services Joint venture received by the Board on the 2nd February 2021.

Having taken cognisance of 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 sitting of the 23rd March 2021 hereunder re-produced:

Case 1554 – 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) –LOT 2

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

On the 25th January 2021 X Clean Ltd filed an appeal against Active Ageing and Community Care as the Contracting Authority objecting to their disqualification on the grounds that their bid failed to satisfy the Best Price Quality Ratio (BPQR) criterion for award.

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 – X Clean Ltd

Mr Peter Paul Zammit LP	Legal Representative
Mr Herman Depasquale	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 Carmel Camilleri	Member Evaluation Committee

Preferred Bidder – DIBAW JV

Dr Alessandro Lia	Legal 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 late submission of fresh documents by Appellants would not be considered. Regulation 90 only allows amendments to written pleadings already

submitted. This is further confirmed by paragraphs 270 to 276 of the Manual of Procedure although verbal submissions are allowed at the hearing. The appeals on Lot 1 and Lot 2 submitted by Appellants were identical and all parties confirmed and agreed that the submissions made in this Case apply also to the appeal on Lot 2.

Mr Peter Paul Zammit LP Legal Representative for X Clean Ltd stated that the basis of the appeal is that the Evaluation Committee failed to check if the preferred bid was abnormally low. There is a range of cases heard by the Public Contracts Review Board on the need on the part of authorities to check on this point. There are large differences in figures submitted on this tender and DIBAW JV is 40% cheaper than Appellants bid. Public Procurement Regulation 96 obliges the evaluation committee to investigate suspected low offers.

Mr Zammit said that there was another contention relating to points deducted in regard to wages for the year 2023 not being declared. More points should have been deducted in this case of missing information. The evaluators should have used discretion regarding the self-certification demanded in section 5 (c) 1) in the Instructions to Tenderers and this affected the points awarded.

Dr Christian Camilleri Legal Representative for Active Ageing and Community Care said that his comments apply to both Lots. The Evaluation Committee followed the correct procedure throughout in their adjudication. In regard to the claim that the preferred bid was abnormally low it must be noted that all tenderers show similar rates for workers' wages using figures laid down in Government Circulars. The difference in the bids is in the administrative costs and which over three years amount to a global difference of one quarter of a million Euro.

The deduction in points in the technical section was explained in the letter of reply. The deductions were on criteria which were not mandatory but add-ons and therefore had no effect on the service offered.

Dr Alessandro Lia Legal Representative for Dibaw JV said he could not comprehend where the claimed figure of 40% difference in the bids came from. The figure submitted by the preferred bidder did not indicate that it is low when compared to the figure stated in the tender in paragraph 1.3 of the Instructions to Tenderers. This is a fishing expedition cloaked under a generic appeal based on presumption of what the bidder was intending – CJEU Cases 196/2010 and 324/2011 deal specifically with this type of exercise. No proof has been provided that the deduction of points was not justified and the decision of the Authority should be confirmed.

The Chairman re-iterated that as declared at the start of the hearing all submissions apply to both appeals by X Clean Ltd. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Hereby resolves:

That the parties and their respective legal representatives declared that their submissions made in respect of Appeal No. 1533 were equally applicable to this appeal procedure. Page | 4

For the avoidance of repetition thus, the Board makes reference to its decision delivered today instant in Appeal Number 1553 and declares that all considerations and evaluations therein made are equally applicable to this appeal.

The Board, based on those same considerations, hereby equally and for the same reasons dismisses the Appeal filed by the appellant company in respect of Lot 2.

The Board,

Having evaluated all the above concludes and decides:

- a) To dismiss the appeal submitted by X Clean Limited, and
- b) To order that the deposit paid by the appellant upon filing of this appeal should not be refunded back to the same appellant.

Ian Spiteri Bailey
Chair

Dr Charles Cassar
Member

Lawrence Ancilleri
Member