

## **PUBLIC CONTRACTS REVIEW BOARD**

### **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) – Lot 1**

**10<sup>th</sup> October 2022**

The Board,

Having noted the letter of objection filed by Professor Ian Refalo and Dr Mark Refalo on behalf of Refalo Advocates acting for and on behalf of All Clean Services Ltd, (hereinafter referred to as the appellant) filed on the 25<sup>th</sup> January 2021;

Having also noted the letter of reply filed by Dr Mario Mifsud and Dr Christian Camilleri on behalf of Mifsud Advocates acting for and on behalf of Active Ageing and Community Care (hereinafter referred to as the Contracting Authority) filed on the 3<sup>rd</sup> February 2021;

Having also noted the letter of reply filed by Dr Alessandro Lia on behalf of Lia & Aquilina Advocates acting for and on behalf of Dibaw Services Joint Venture (hereinafter referred to as the Preferred Bidder) filed on the 2<sup>nd</sup> February 2021;

Having also noted the initial Public Contract Review Board decision dated 8<sup>th</sup> April 2021 as issued at the sitting chaired by Dr Ian Spiteri Bailey;

Having also noted the Court of Appeal decision (appeal number 128/2021/1) dated 31<sup>st</sup> August 2021 All Clean Services Limited (C-39278) vs Direttur General tal-Kuntratti; Active Ageing and Community Care' Ministeru ghas-Solidarjeta u l-Gustizzja Socjali, il Familja u d-Drittijiet tat-Tfal; Dibaw Services Joint Venture;

Having also noted the Court of Appeal decision (appeal number 126/2021/1) dated 31<sup>st</sup> August 2021 X Clean Limited (C-69875) vs Direttur General tal-Kuntratti; Active Ageing and Community Care' Ministeru ghas-Solidarjeta u l-Gustizzja Socjali, il Familja u d-Drittijiet tat-Tfal; Dibaw Services Joint Venture;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sittings of the 25<sup>th</sup> January 2021, 25<sup>th</sup> March 2021 and 22<sup>nd</sup> September 2022 hereunder-reproduced;

#### **Minutes**

#### **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 15<sup>th</sup> May 2020 and the closing date was the 16<sup>th</sup> June 2020. The value of the tender was €3,659,861 (excluding VAT).

On the 25<sup>th</sup> 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	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 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

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## SECOND HEARING

On 25<sup>th</sup> 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

### **Contracting Authority — Active Ageing and Community Care**

Dr Christian Camilleri	Legal Representative
Ms Mary Grace Balzan	Secretary Evaluation Committee
Mr Carmel Camilleri	Member Evaluation Committee

### **Preferred Bidder - DIBAW JV**

Dr Alessandro Lia	Legal Representative
Mr Gianluca di Lascio	Representative

### **Department of Contracts**

Mr Nicholas Aquilina	Representative
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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

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### **THIRD HEARING**

On the 22<sup>nd</sup> September 2022 the Public Contracts Review Board consisting of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Ms Stephanie Scicluna Laiviera as members convened a public hearing to further discuss this appeal.

The attendance for this hearing was as follows:

#### **Appellant – All Clean Services Ltd**

Dr John Refalo	Legal Representative
Ms Ilona Abela	Representative
Mr George Grima	Representative

#### **Contracting Authority – Active Ageing and Community Care**

Dr Nicholas Mifsud	Legal Representative
Ms Antoinette Zahra	Member Evaluation Committee (on line)
Ms Janet Pace	Member Evaluation Committee
Ms Mary Grace Balzan	Secretary Evaluation Committee

#### **Preferred Bidder – Dibaw Services Joint Venture**

Dr Alessandro Lia	Legal Representative
Ms Jessica Griolo	Representative

#### **Department of Contracts**

Dr Mark Anthony Debono	Legal Representative
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Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and noted that the purpose of this meeting was to implement the decision of the Court of Appeal in the case instituted by All Clean Services Ltd.

Dr Lia Legal Representative for Dibaw Services JV raised a preliminary point stating that this was an anomalous situation in that this case was linked to the two appeal decisions in the X Clean Ltd cases wherein the decision of the PCRB was overturned and the bids had to be re-evaluated. This should be done simultaneously.

Dr Nicholas Mifsud Legal Representative for Active Ageing and Community Care said that in fact the information he had was that the Department of Contracts had requested the halting of the whole process. The X Clean decision was clear – the evaluation of all bids had to be done at the same time by the same evaluation committee.

Dr Refalo Legal Representative for All Clean Services Ltd confirmed that the evaluation grid had been received and concurred that the evaluations must all be carried out at the same time.

After further discussions on how to proceed the Chairman proposed a short recess to enable the Board to consider the points raised.

On resumption the Chairman stated that the Board after hearing the submissions made by all the parties and taking into consideration the Court of Appeal decisions in the case of All Clean Ltd as well as that of X Clean Ltd directs that there is to be a re-evaluation of the offers and of the selections on this tender abiding by the points made in paragraph 23 of the decision of the Court of Appeal in X Clean Ltd vs Department of Active Ageing and Community Care; the Department of Contracts and Dibaw Services (126/2021/1).

At this stage this Board also directs that the deposit paid by the Appellant for this appeal should be refunded.

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

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sittings of the 25<sup>th</sup> January 2021, 25<sup>th</sup> March 2021 and 22<sup>nd</sup> September 2022.

Appearing for the Appellant (3<sup>rd</sup> hearing): Dr John Refalo

Appearing for the Contracting Authority (3<sup>rd</sup> hearing): Dr Nicholas Mifsud

Appearing for the Preferred Bidder (3<sup>rd</sup> hearing): Dr Alessandro Lia

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will proceed to make its considerations.

- a) The Board after having heard the submissions made by all the parties and taking into consideration the Court of Appeal decisions in the case of All Clean Ltd as well as that of X Clean Ltd directs that there is to be a re-evaluation of the offers and of the selections on this tender abiding by the points made in paragraph 23 of the decision of the Court of Appeal in X Clean Ltd vs Department of Active Ageing and Community Care; the Department of Contracts and Dibaw Services (126/2021/1).

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) To order the contracting authority to re-evaluate all the bids received in the tender (Lot 1) whilst also taking into consideration this Board's findings (reference to paragraph (a) above);
- b) Directs that the deposit paid by Appellant to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Mr Lawrence Ancilleri**  
Member

**Ms Stephanie Scicluna Laiviera**  
Member