

PUBLIC CONTRACTS REVIEW BOARD

Case 1729 – SPD2/2021/028 – Tender for Cleaning Service at the International Protection Agency

27th May 2022

The Board,

Having noted the letter of objection filed by Dr Marycien Vassallo on behalf of 8 Point Law acting for and on behalf of Specialist Group Cleaners Limited, (hereinafter referred to as the appellant) filed on the 7th April 2022;

Having also noted the letter of reply filed by Dr Sara Ezabe acting for International Protection Agency (hereinafter referred to as the Contracting Authority) filed on the 14th April 2022;

Having heard and evaluated the testimony of the witness Ms Marie Claire Rizzo Jones (Chairperson of the Evaluation Committee) as summoned by Dr Marycien Vassallo acting for the Specialist Group Cleaners Limited;

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 sitting of the 24th May 2022 hereunder-reproduced.

Minutes

Case 1729 – SPD2/2021/028 – Tender for the Cleaning Service at the International Protection Agency

The tender was issued on the 30th November 2021 and the closing date was the 22nd December 2021. The value of the tender, excluding VAT, was € 58,292.

On the 7th April 2022 Specialist Group Cleaners Ltd filed an appeal against the International Protection Agency as the Contracting Authority objecting to their offer being refused as it was deemed to be technically not compliant

A deposit of € 400 was paid.

There were seven (7) bids.

On the 24th May 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Ms Stephanie Scicluna Laiviera as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Specialist Group Cleaners Ltd

Dr Marycien Vassallo

Legal Representative

Contracting Authority – International Protection Agency

Dr Sara Ezabe Mallieu

Legal Representative

Ms Marie Claire Rizzo Jones

Chairperson of the Evaluation Committee

Ms Christine Galea

Secretary Evaluation Committee

Mr Alan Falzon

Member Evaluation Committee

Mr James Pace

Member Evaluation Committee

Mr Charles Cassar

Member Evaluation Committee

Ms Thea Busuttil

Member Evaluation Committee

Mr Charles Lia

Representative

Preferred Bidder - Dimbros Ltd

Dr Franco Galea

Legal Representative

Mr Melchior Dimech

Representative

Department of Contracts

Dr Mark Anthony Debono

Legal Representative

Mr Kenneth Swain 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. He then invited submissions.

Dr Marycien Vassallo Legal Representative for Specialist Group Ltd requested the testimony of a member of the Evaluation Committee be heard.

Ms Marie Claire Rizzo Jones (368387M) Chairman of the Evaluation Committee confirmed on oath that Appellant had submitted three declarations in connection with the payment of wages to employees.

Dr Vassallo then referred the Board to Page 9 Section C 2 of the tender which is mandatory. She stated that the credit transfer agreement was submitted together with declarations by two individuals that charges were borne by the Company, but the Contracting Authority claims that these are not enough. Agreement with the bank indemnifies them from bearing any charges.

Dr Sara Ezabe Mallieu Legal Representative for the International Protection Agency said that the tender clause referred to states that the contractor is to bear the costs – the SEPA agreement simply states that the bank will not bear any charges. There is only a declaration

by Mr Mifsud stating that all costs are borne by the Company; since this is not signed by the bank it is not compliant.

Dr Franco Galea Legal Representative for Dimbros Ltd agreed with the submissions by the Authority and states that the bank agreement does not mention that no charges will be levied on the employees and the award was justified.

The Chairman noted that there were no further submissions and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 24th May 2022.

Having noted the objection filed by Specialist Group Cleaners Limited (hereinafter referred to as the Appellant) on 7th April 2022, refers to the claims made by the same Appellant with regard to the tender of reference SPD2/2021/028 listed as case No. 1729 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Marycien Vassallo

Appearing for the Contracting Authority: Dr Sara Ezabe

Appearing for the Preferred Bidder: Dr Franco Galea

Whereby, the Appellant contends that:

- a) Rejection Letter stated: *“C2(ii) - Wages are paid by credit transfer costs of which are borne by the contractor - Economic Operators are to provide proof e.g., Agreement with a Bank or written communication between bidder and Bank confirming direct credit settlement of wages (mandatory) - not compliant - Economic Operator did not provide proof such as an Agreement with a Bank or written communication between bidder and bank confirming that credit transfer costs are borne by the contractor (a declaration was submitted instead).”*
- b) Following receipt of the said correspondence the Appellant double checked the relative submitted zip file uploaded on the ePPS. The Appellant notes that the said request agreement/ written communication between bidder and the Bank was also included in the uploaded file and was duly submitted as part of the tender bundle. Hence the requested proof was submitted and my client's offer should not have been disqualified on the basis on technical non-compliance.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 14th May 2022 and its verbal submission during the virtual hearing held on 24th 2022, in that:

- a) Whilst the IPA does not dispute the fact that the agreement/written communication between the bidder and the Bank was provided, the requisite that the credit transfer costs are born by the contractor was not fulfilled. Therefore, an agreement with a Bank or written communication is the means, but the requirement is the stipulation of who pays the credit transfer costs. This condition is not included in the SEPA agreement uploaded, nor in that attached by the objector's lawyer.
- b) To re-affirm this point, the IPA notes that the objector's lawyer whilst attaching the SEPA agreement does not highlight which clause reflects compliance with this obligation.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will consider Appellant's grievances as follows:

- a) The Board makes reference to page 9 of the Tender Dossier whereby in criterion C2(ii) it states *"Wages are paid by credit transfer costs of which are borne by the contractor – Economic Operators are to provide proof e.g., Agreement with a Bank or written communication between bidder and Bank confirming direct credit settlement of wages (mandatory)"*.
- b) The Appellant has in this regard submitted three (3) documents, being:
 - a. Single European Payments Area (SEPA) Credit Transfer Agreement entered into with Bank of Valletta
 - b. Extract of Minutes signed by the Company Secretary confirming that the company has entered into such SEPA agreement with the bank.
 - c. Declaration signed by the company Director confirming that the payment of wages to employees are to be settled by direct credit where all costs are borne by the company.
- c) The Board will now again refer to criterion C2(ii). The Board opines that this criterion can be segregated into three (3) parts. It is requiring that:
 - a. Wages are paid by credit transfer
 - b. Costs of which are borne by the contractor and
 - c. To provide proof. For this requirement it gives out examples, which in the Board's opinion is not an exhaustive list.
- d) Therefore, this Board does not agree with the argumentation brought forward by the Contracting Authority that no proof has been provided in relation to the bank charges / costs of which are borne by the contractor. The Appellant has provided a declaration / confirmation, signed by the Company's director whereby it is stated *"this is to confirm that the company pays wages to employees by direct*

credit transfer where all costs are borne by the company.....”The Board opines that this is sufficient to meet the tender / criterion requirements.

Hence, this Board upholds the Appellant’s grievance.

The Board,

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

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

- a) To uphold the Appellant’s concerns and grievances;
- b) To cancel the Letter of Acceptance dated 30th March 2022 sent to “Mr Melchior Dimech”;
- c) To cancel all the Letters of Rejection dated 30th March 2022;
- d) To order the contracting authority to re-evaluate all the bids received in the tender whilst also taking into consideration the findings of this Board;
- e) after taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Ms Stephanie Scicluna Laiviera
Member