

PUBLIC CONTRACTS REVIEW BOARD

Case 1815 – CT 2175/2021 – (Re-Issue) Tender, in Lots, for the Provision of Cleaning Services using Environmentally Friendly Cleaning Products to Heritage Malta Sites and Museums – LOT 1

22nd November,2022

The tender was issued on the 27th May 2021 and the closing date was the 1st July 2021. The estimated value of the tender, excluding VAT, for Lot 1 was € 495,188.68.

On the 14th January 2022 General Cleaners Co Ltd filed an appeal against Heritage Malta as the Contracting Authority objecting to their disqualification on the grounds that their bid on Lot 1 did not rank first.

A deposit of € 2,476 was paid on this Lot.

There were ten (10) bids.

On the 15th November 2022 the Public Contracts Review Board composed of Dr Charles Cassar, as Chairman, Mr Richard Matrenza and Dr Vincent Micallef as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – General Cleaners Ltd

Dr Gianluca Cappitta	Legal Representative
Dr Paul Radmilli	Legal Representative
Mr Ramon Fenech	Representative

Contracting Authority – Heritage Malta

Dr Alessandro Lia	Legal Representative
Mr Vince Pulis	Chairperson Evaluation Committee
Mr Lawrence Spiteri	Evaluator
Mr Mark Anthony Spiteri	Evaluator
Ms Isabella Micallef	Secretary Evaluation Committee

Preferred Bidder – Apex Group Ltd

Ms Stephanie Bonello	Representative
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Department of Contracts

Dr Mark Anthony Debono	Legal Representative
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Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Gianluca Cappitta Legal Representative for General Cleaners Ltd said that the grounds of appeal were those listed in his submissions. He wished to call a witness on the point of the collective agreement however he had not managed to contact him.

Dr Alessandro Lia Legal Representative for Heritage Malta objected to this request which had previously been made at the March 2022 hearing – there had been ample time to contact the witness.

The Chairman directed that the hearing proceeds.

Dr Ciappitta said that the appeal was on the number of points deducted on several criteria. He was not dealing with items that had already been decided at a previous hearing which meant that this leaves seven criteria to deal with.

The first was the Response Time. According to the Tender Evaluation Committee's (TEC) the response time stated was not within the timeframe stipulated. The wording in the tender refers to response time and therefore it meets the requirements as the words 'response time' were clearly used in the reply. The tender asked for response time not initiation time and thus it was not fair to deduct points.

Regarding the Special Events criteria the deduction was due to there being no mention on planning and implementation. This request was met as the document submitted addressed this point as indicated in the letter of objection. The sites and places for special events were different and therefore it is impossible to be precise without knowing the event. A general explanation was provided with a generic description covering this criterion as economic operator was unable to be specific on unknown events.

The Method Statement, Allocation of Resources and Mitigation of Risks can all be dealt with under the method statement. Item 4.2.5 of the Terms of Reference of the tender state that details are to be as approved beforehand by Heritage Malta or as directed. One cannot given a method statement of how the cleaning is going to be carried out as tender makes it clear that that is to be agreed and can only be decided by site visits. The same reasons apply why the operator cannot be specific on the allocation of resources and mitigation of risks until these are agreed. Points should not have been deducted here.

On the matter of the Collective Agreement it was explained in the written submissions that no proof could be produced as registration is simply a matter of record. In tender 2287/2021 the same request was made and bidder gave the same reply and was awarded full marks. The same thing occurred in another SPD tender.

Written submissions were made in regard to the Transport Allowance that transport was provided when necessary which equates to meeting this requirement. More than one document was provided supporting this and the decision reached on this point was not correct.

Finally on Health and Safety the complaint is that there was no reference made to Heritage Malta – the argument here is similar to the one in the method statement, namely that the tender speaks of prior agreement regarding specific sites since

operating practices have to be discussed and cannot be given at tender stage. Again, it was unfair to deduct points as all criteria were covered and exhausted.

Dr Lia referred to what had been decided by the PCRB in the first tender. In Case 1702 there were nine points in all with two already decided. In each of B2, B4 and C2 there were three grievances to be decided. The previous decision dealt with Sick Personnel in the Contingency Plan and the Board should have stopped there. Once the point on sick personnel was accepted the Board cannot now reach a different conclusion. Initiation means the start not the completion of a criterion. The three items under B4 were dealt with in the previous tender under methodology with no reference to subparagraphs and therefore that section was decided *in toto*. The Board said in this regard that Appellant totally ignored the need for specific sites but provided a generic answer – certain sites require special attention but this was totally ignored – in fact in a certain item reference was made to cleaning at Jobsplus – if one point is accepted as wrong the others all follow. If Appellant felt that the method statement cannot be detailed as requested he had ample chance to use Regulation 262 for clarification.

On the three points under Criterion C2, continued Dr Lia, the first two points are additions and not mandatory. On the collective agreement there is no registration and therefore no points awarded – this is the correct procedure. The transport allowance offered is conditional and only given when and if. This was not what the Authority wanted and the allowance should be given anyway – so again deduction of points is merited. Health and safety submissions argument is the same as the methodology one and applies as well.

Dr Ciappitta in conclusion said that the Authority was relying on two points but the Appeal Court decision was on the entire decision and the points made were applicable to all the criteria.

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

End of Minutes

The Board,

Having noted the letter of objection filed by Dr Gianluca Cappitta and Dr Paul Radmilli acting for and on behalf of General Cleaners Co. Ltd, (hereinafter referred to as the appellant) filed on the 14th January 2022; refers to the claims made by the same Appellant with regards to the tender of reference No.1815 in the records of the Public Contracts Review Board.

Having also noted the letter of reply filed by Dr Alessandro Lia on behalf of Lia & Aquilina Advocates acting for and on behalf of Heritage Malta (hereinafter referred to as the Contracting Authority) filed on the 24th January 2022;

Having taken cognisance and evaluated 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 15th November 2022.

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 15th of November 2022.

Whereby, the Appellant stated that the appeal was on points deducted on several criteria. The criteria that were decided in the previous hearing will not be dealt with leaving seven criteria to be dealt with namely:

Response time; Special Events; Method Statement; Allocation of Resources and Mitigation of Risks; Collective Agreement; Transport allowance; Health and Safety; and argued as follows

- a) Response Time. **Evaluation Criteria B.2** - The appellant stated that the wording in the tender refers to response time and therefore Appellant's submission meets the requirements as the words 'response time' were clearly used in the reply.
- b) Special Events. **Evaluation Criteria B.2** - The sites and places for special events were different and therefore it is impossible produce precise plan without knowing the event. A general explanation was provided with a generic description covering this criterion as economic operator was unable to be specific on unknown events.
- c) The Method Statement, Allocation of Resources and Mitigation of Risks **Evaluation Criteria B.4** - can all be dealt with under the method statement. Operator cannot provide how the method statement, allocation of resources and mitigation of risks, could be carried out as tender makes it clear that that is to be agreed and can only be decided by site visits. Points should not have been deducted in this respect.
- d) Collective Agreement. **Evaluation Criteria C.4** - It was explained in the written submissions that no proof could be produced as registration is simply a matter of record.
- d) Transport Allowance: **Evaluation Criteria C.2** - Transport was provided, when necessary, which equates to meeting this requirement
- e) Health and Safety: **Evaluation Criteria C.4** - The argument here is like the one in the method statement, namely that the tender speaks of prior agreement regarding specific sites since operating practices must be discussed and cannot be given at tender stage'

Whereby, the Contracting Authority, contends that:

- a) In Case 1702 there were nine points in all with two already decided. In each of B2, B4 and C2 there were three grievances to be decided. The previous decision dealt with Sick Personnel in the Contingency Plan. Once the point on sick personnel was accepted the Board cannot now reach a different conclusion. Initiation means the start not the completion of a criterion.
- b) The three items under B4 were dealt with in the previous tender under methodology with no reference to sub-paragraphs and therefore that section was decided *in toto*. Appellant totally ignored the need for special attention at specific sites but provided a generic answer. If Appellant felt that the method statement cannot be detailed as requested, he had ample chance to use Regulation 262 for clarification.
- c) With regard to the three points under Criterion C2, Contracted Authority stated, the first two points are add-ons and not mandatory. On the collective agreement there is no registration and therefore no points awarded.
- d) The transport allowance offered is conditional and only given in certain circumstances. This was not what the Authority requested, and the allowance should be given anyway – so again deduction of points is merited.
- e) With regard to Health and Safety, the same argument used in the methodology applies as well.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, contends that:

when a tender is being awarded by BPQR, it is essential to be specific. The Tender dossier makes several references to the sites and museums which need to be cleaned including references to the artefacts and exhibits on show which require special treatment for their 'conservation' needs. Therefore, with regards to

- a) Special Events (**Evaluation Criteria B.2**)
- b) The Method Statement, Allocation of Resources and Mitigation of Risks (**Evaluation Criteria C.4**)
- c) Health and Safety (**Evaluation Criteria C.4**)

the Appellant's submissions were of a generic nature. A generic document could be evaluated as being compliant, but for a quality document, the Evaluation Committee expected the tenderer to make specific reference to the tender subject.

It is the nature of BPQR evaluation, that bids meeting the minimum criteria are not awarded the most points on technical matters. If other bidders were more specific in their submissions, they would have scored more points.

Response Time, the Appellant misunderstood the concept requested ie plan execution vis a vis plan initiation and indicates that the response time required to initiate a process would take 15-30 mins.

With regards to the **Collective Agreement** there is no proof of registration provided and therefore points could not have been awarded.

The Evaluation Committee could not find a proper specific mention of a **Transport Allowance** in the bid.

Therefore, this Board does not uphold Appellant's grievances on Lot 1.

In conclusion this Board;

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

- a. Does not uphold Appellant's Letter of Objection and contentions regarding Lot 1,
- b. Upholds the Contracting Authority's decision in the recommendation for the award of the tender to Apex Community Services Ltd,
- c. Directs that the deposit paid by Appellant not to be reimbursed.

Dr Charles Cassar
Chairman

Dr Vince Micallef
Member

Mr Richard A Matrenza
Member