

PUBLIC CONTRACTS REVIEW BOARD

Case 1185 – CT 3094/2017 – Tender for the Supply, Delivery and Installation of Automated Border Control Gates for the Malta Police Force at the Malta International Airport

The publication date of the call for tenders was the 22nd December 2017 whilst the closing date of the call for tenders was the 6th April 2018. The estimated value of the tender (exclusive of VAT) was € 538,500.

Vision Box Soluções de Visão por Computador S.A. (herein after referred to as VB) filed an appeal on 1st June 2018 against the Malta Police which had disqualified Appellant on the grounds of being technically non-compliant, leading to the cancellation of the tender. A deposit of € 2,692 was paid.

On 3rd July 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Vision Box

Dr Joseph Camilleri	Legal Representative
Mr João Manuel Fernandes de Oliveira	Representative
Ms Mariana Peixoto	Representative

Contracting Authority – The Malta Police Force

Inspector Silvio Magro	Chairperson Evaluation Committee
Inspector Elton Buckingham	Member Evaluation Board
Mr Ismael Vassallo (PS 767)	Member Evaluation Board
Mr Martin Debono	Member Evaluation Board
Ms Stefania A Sgandurra	EU Projects Co-ordinator
Mr Angel Gafa	Chief Executive Officer
Mr Christian Avellino	Representative
Mr Marco Mallia	Representative

Department of Contracts

Dr Christopher Mizzi	Procurement Manager
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The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, invited Appellants to make their submissions.

Dr Joseph Camilleri, Legal Representative for VB, said by way of general introduction that this appeal concerned the installation of automatic border control gates at Malta International Airport. The process for the tender was in two distinct phases – initially a Request for Information (RFI) dated 8th November 2016 and from the feedback from that followed the second phase – the call for tenders. VB was the only contender but they were disqualified as being non-compliant. Appellant had provided diagrams, technical literature and technical questionnaire as part of the ESPD, showing his commitment to fully conform. The bidder was willing to provide a product that conforms to all the specifications laid down and fully compliant. VB was one of the leading suppliers of control gates and related products at airports throughout the world, and being manufacturers themselves, rather than suppliers, they could customise a product to the exact specification of a client.

There were three reasons given for non-compliance. The first reason was the overall external dimensions of the gates in the RFI which had to be under 3metres in length and 1.2metres in width. There was a procedural problem between what was offered in the tender and the RFI regarding the electronic reader module. The length of the gate without the reader module was 2.93m, well under the requested 3m. It only exceeded the 3m once the reader was included – but this was fixed at a height of approximately 1m and not at ground level – it therefore did not impinge on the length. It was made amply clear in the technical proposal that the reader was an external module which could be customised since VB produced both the hardware and the software for the gates. The Contracting Authority should have sought clarification if there had been any doubt about the submissions.

Mr João Manuel Fernandes de Oliveira (Portuguese Passport N 525767) was called to testify under oath. He stated that he was the Pre-Sales Engineer at VB and had been in their employ for 8 years. His exact responsibility was to design solutions to clients' requirements around the world. He had compiled the specifications of the tender requirements and he confirmed that the technical questionnaire was fully compliant with tender specifications. As VB were the owners of both the hardware and software required to produce these gates they can offer clients the perfect bespoke solution to their needs. The reader module can be placed in several locations on any part of the gate, and thus they can customise the product to meet any stipulated measurements. VB had not been requested to make any clarifications on their submissions.

In reply to questions from Dr Christopher Mizzi, Legal Representative of the Contracting Authority, witness stated that the reader can be customised to bring the total length of the gate to less than 3m. The technical offer had stated that since they were the manufacturers of the gates they could customise and adapt to suit requirements. Embellishment footers accounted for the difference in specifications between 2.91m and 2.93m in the diagrams. Readers were essential

for the gates to function according to specifications indicated by the Malta Police Force. Witness re-iterated that since VB offered modular units they can cope with any measurements specified.

The next witness to testify was Police Inspector Elton Buckingham (529775M) who stated, under oath, that there was concern regarding the measurements on the diagram in the technical offer as the overall length of the gates including the reader exceeded 3m. Witness said that the technical specifications can be adapted, but the Evaluation Committee had not asked if the reader could be placed elsewhere. In reply to questions, witness stated that tender document page 37 section 1.3.1.12(a) indicated that the placing of the reader had to be in front of the doors of the gate; if placed internally it would reduce the width of the gate. The Committee did not approach bidder for clarification on any points. Witness confirmed that the document reader was intended to be an external, detachable unit and not part of the gate, in keeping with the requirements on page 35 section 1.3.1.3 of the tender document.

Moving on to the second reason given for non-compliance, Dr Camilleri stated that the tender specified that the doors required magnet blocks to be able to withstand considerable force, with which his clients again complied. The Evaluation Committee saw no reference to magnetic blocks and reached the wrong conclusion. BV was offering what was requested, albeit they did not mention magnetic blocks, and hence in the technical questionnaire they stated that they were fully compatible. Again, no clarification was sought.

Mr Fernandes de Oliveira took the witness stand again and stated that in the doors they were offering there was an inbuilt motor with a solenoid that created a magnetic field which blocked the door. A second similar solenoid was fitted in case the first one failed.

The Chairman commented at this stage that it seemed as if all the technical details had been supplied with regard to the dimensions, the card readers, the gates but no clarifications had been sought.

Dr Camilleri then moved to the third reason for rejection – namely that there was a requirement that no local air conditioning units could be used to cool the motors in the gates. The commitment in the technical questionnaire confirmed that BV was providing fully compliant equipment which had its own internal cooling system. Bidder was aware that the Malta International Airport followed international standards in having climate controlled systems and what BV had stated was that their product would work in normal temperature parameters and even if that spectrum was not available the gates would keep on working through its own cooling system. This was what had been requested in the tender.

Again Mr Fernandes de Oliveira took the witness stand and confirmed that the gates had an internal cooling system with fans extracting hot air and injecting cool air. In conformity with section 2.5.7 of the tender document the gates will operate for short periods of time at extreme operating temperatures. In long periods of extreme conditions the gates would have a shorter life

cycle. Witness confirmed that gates will operate in the temperature range of $-5^{\circ} > 50^{\circ}\text{C}$ as required in section 1.3.1.8 of the tender.

Inspector Elton Buckingham, recalled to the witness stand, said that there was concern that the gates would not fulfil the requirements (under section 5.2.5.7) of operating for certain period of time which would mean a discontinuance of the service. Witness also pointed out that the restriction on the use of local air conditioning was imposed as certain areas in the Airport were not covered by air-conditioning.

The Chairman again asked if the Evaluation Committee had sought any clarification on what the phrase ‘short periods of time’ referred to.

In his closing remarks Dr Camilleri said that he had dealt with the three reasons the Authority had brought forward to justify the cancellation of the tender. As an afterthought the Authority had said that there were many other points on which they had reservations. If that was the case they should have been stated. Bidder had confirmed compliance with tender requirements and the Evaluation Committee seem to be concerned as they did not find the exact words they wanted – this did not mean non-compliance.

Dr Mizzi said that the Authority was sticking to the main three points raised in the disqualification, and these could not be dealt with by clarifications.

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

This Board,

Having noted this Objection filed by Vision Box, (hereinafter referred to as the Appellants) on 1 June 2018, refers to the contentions made by the same Appellants with regard to the cancellation of Tender of reference CT 3094/2017 listed as Case No 1185 in the records of the Public Contracts Review Board, issued by the Malta Police Force.

Appearing for the Appellants: Dr Joseph Camilleri

Appearing for the Contracting Authority: Dr Christopher Mizzi

Whereby the Appellants contend that:

- a) **The alleged reason that, the external dimension of the gate offered, exceeded the dimensions of 300cm length by 120cm width is incorrect. Appellants' offer indicated a length of 2.93m, which is within the 3m. In this respect, the latter's offer indicated as well that, the "*reader*" was to be situated on top of the gate so that the length measurement will not be impaired by the width of the reader. On the other hand, if the Contracting Authority had any doubts, a clarification from its end would have ironed out any misunderstanding;**

- b) **Although their offer did not make reference to magnetic blocks, the Malta Police Force disregarded the reference to the internal mechanism. Again, in this regard, the Authority failed to seek clarification;**

- c) **Their offer confirmed that its product had its own cooling system and therefore was fully compliant with Section 4, Technical Specifications, item 1.3.1.6. In this regard, the Appellants' offered cooling system will operate within the temperature parameters that is -5° to 50° C as duly requested in Section 1.3.1.8 of the Technical Specifications.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 2 July 2018 and its verbal submissions during the Public Hearing which was held on 3 July 2018, in that:

- a) **The Malta Police Force contends that from the information submitted by the Appellants, the latter's offer indicated that the length of the gate is 2930mm, so that if one had to include the width of the reader, the dimensions given by the Appellants would certainly exceed the 3m.**
- b) **The Contracting Authority also maintains that the information submitted by the Appellants in Section 2.5.5, did not mention at all, the inclusion of magnetic blocks, so that the Evaluation Committee could only assess what the Appellants had stated in their offer;**

c) The Malta Police Force contends that the Tender Document requested, that, since the Malta International Airport's air-conditioning units do not work round the clock, the E-Gate components had to be safeguarded against malfunction due to overheating. In this regard, the Appellants' offer suggested that to ensure optimal efficiency, an air-conditioning system is to be operative, to avoid possible overheating and temporary shutdowns of the system, hence claiming an inconclusive remedy to this probable problem.

This same Board also noted the testimony of the following witnesses namely:

- 1. Mr João Manuel Fernandes de Oliveira, duly summoned by Vision-Box;**
- 2. Inspector Elton Buckingham, duly summoned by The Malta Police Force.**

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 witnesses, opines that the issues to be considered in this Appeal are threefold namely,

(a) The Dimensions of the Gate;

(b) The Inclusion of Magnetic Blocks;

(c) The Cooling System

(a) The Dimensions of the Gate

This Board would refer to Page 34 of the Tender Document with particular reference to Item 1.3.1.1, wherein it states that,

“The overall external dimensions of an ABC e-Gate cannot be greater than 300cm (Length) x 120cm (Width).”

This particular clause dictates that the length of the e-Gate must not exceed 300cm and in this regard, the Appellants submitted a dimension of 2.93m (length) which is within the dictated parameters, however, it does not include the “reader”. The Appellants offer indicated that the “reader” is placed on top of the gate and not at ground level, as requested in the Tender Dossier. On this particular

issue, this Board notes the testimony of Mr João Manuel Fernandez de Oliveira, wherein he stated that:

“Witness: I’m sorry. I believe that, I’m sorry to say this, I believe this is a non issue. I already stated that we are fully compliant and we have base to demonstrate it, that we are fully compliant, with that first topic. Second, we are open to discuss with you exactly what you want. Precisely what you want. So in this case, I again say we can cope with that.”

Furthermore, when the witness was confronted to give a direct confirmation of the Appellants’ quoted length of the gate, he re-affirmed the following:

“Witness: I said three metres. If we are saying that we are fully compliant and we are saying that we can adapt our solutions and we are saying that we will define together with the authorities the solution of the gate. It’s a question that of course we are saying that we are open, within the requirements, we are open to customize our solution and we will share our knowledge, our experience together with the

authorities in order to adapt and to finalize the requirements during the first initial phase.”

This Board notes that the Appellants have been consistently affirming that due to the fact that they are the direct manufacturers of the hardware and owners of the software, they can adapt and suit the Force’s requirements. In this regard, this Board refers to the opening statement of the Appellants’ Technical Report wherein it is stated that:

“One of the most distinguishing design features of the eGate is its modular design. As manufacturer of the complete solution Vision-Box is able to adapt every outer design element of the eGates to the specific requirements of all the stakeholders (Border Police, Airport authority etc.)

The above introduction clearly prenotes that the Appellants are willing to customise the E-Gate whilst maintaining the requested dimensions. At the same instance, this Board notes that all the necessary documentation was submitted by the Appellants, so that, if there was the need for a clarification, the latter was permissible.

With regards to the images submitted in the technical literature, reference to which is denoted in Item 2.4, first and second paragraphs, which state;

“The following images illustrates the standard vb i-match ABC e-Gate dimensions”

So that, it was also made clear by the Appellants that the images submitted were of standard design. However, as stated clearly in their opening paragraph of their Technical offer, the Gate can be customised to suit The Malta Police Force’s requirements. At this stage of consideration and since the appellants submitted all the documentation with the assurances that they can supply such gate to suit the requirements of the Tender Dossier, this Board opines that the explanations and clarifications being given during this Hearing could have ironed out the configuration of the gate, at Evaluation Stage, through clarifications. In this regard, this Board opines that from the Appellants’ submissions and, from the onset it was made clear that they will abide by all the requested specifications so dictated.

(b) The Inclusion of Magnetic Blocks

With regards to this issue, this Board would refer to the reason for non-compliance, in that:

“No reference to the magnetic blocks was found. The documentation provided refers to an internal mechanism.”

This Board was made aware that the purpose of magnetic blocks in the system was so that the doors of the gate would be able to withstand excessive or considerable force. The Evaluation Board’s concern was that the Appellants’ offer did not mention the words “*magnetic blocks*” so that the Committee assumed that the system being offered by the Appellants does not have a facility to withstand considerable force.

In this regard, this Board would again refer to the testimony of Mr Fernandes de Oliveira, in that:

“Witness: This is a technical way that we have designed the solution itself. So it’s actually technical so we have the motor. The motor applies a force to close the door and if that door is blocked or someone tries to open it, we have what we call a solenoid that basically it’s a thing with lots of wires where we put current that will create a magnetic field that will counter force the motor force. That’s the first part. That’s a magnetic box.

As a second magnetic box, we have also a magnetic box outside the motor at the door level that even if the motor, the magnetic block of the motor oversees the way of counterforce, the force of the person that it’s trying to open the door, we have a second solenoid that creates a second magnetic field that will lock the door.”

This Board opines that from the credible testimony of the witness, it was established that Vision-Box’s offer did, in fact, provide for the requirement in this regard. This Board also refers to the Appellants’ offer with regard to this revised item and would quote the relative extract as follows:

<p><i>Detect suspicious directional movement/gait (eg enter through the exit set of doors)</i></p>	<p><i>Detectable by the sensors at the door-level and floor-level of the eGate</i></p>
<p><i>Detect objects blocking opening or closing doors</i></p>	<p><i>Door-blocking obstacles are detected through sensor beams positioned at each door, and mechanical sensors implemented at the door motor, which detect applied force</i></p>

It seems that the different terminology was applied and again, in this respect, the Evaluation Committee should have avoided this misunderstanding through a clarification or confirmation that the Appellants’ system catered for this mandatory requirement. In this regard, this Board opines that the system offered by the Appellants did satisfy the item 1.3.1.6 (e) of the Technical Specifications.

(c) The Cooling System

Section 4, Technical Specifications 1.3.1.8 (5) requested that the ABC e-Gate Provider must not use local air-conditioning units. The

Appellants' offer stated that the gates will be able to operate under a short period of time at lower and higher temperatures in the absence of air controlled conditions.

This Board acknowledges the fact that this statement does create some form of confusion and in its opinion, the Evaluation Committee should have enquired what is meant by short period and what is a lower and a higher temperature. During the Public Hearing, this Board noted various explanations on the Appellants' submission and it became obvious that such explanation would have ironed out all the misunderstandings which the Evaluation Committee assumed.

This Board was made aware that what the Appellants meant in their offer, is that, the gates will operate for short periods of time at extreme temperatures, but in that case the gates will have a shorter life cycle. It was also confirmed that the gates will operate in a temperature range of -5° to 50° C, as duly requested in section 1.3.1.8 of the Technical Specifications. At the same instance, this Board credibly established that the gates have an internal cooling system as clearly amplified by Mr Fernandes de Oliviera, as follows,

“Witness: I can confirm, basically we have a group of fans that will extract the hot air inside the gate to the outside and also it will inject the fresh air from the outside to the inside. On top of that, we have what is called dissipaters to dissipate the heat of the several components that are inside the gate. The gates themselves are designed to operate in extreme conditions”

Taking all the submissions made regarding this issue, this Board is comfortably convinced that Vision-Box’s offer does comply with the Tender Requirements with regards the cooling system of the e-Gate.

On a general note, this Board opines that this case represents a typical instance whereby the Appellants submitted all the requested information but under different configurations which would satisfy all the technical requirements and the overall objective of the tender. The fact that the Appellant stated that the requirements of the tender will be customised does not, in any credible way, imply that there will be a change of the parameters of the tender but rather that the Authority is assured that what the latter has requested, will be performed. This Board has also considered the fact that the Bidder is the manufacturer of such products so that it is evidently possible

that any customisation can be truly effected without any extra efforts. From the submissions and testimony of Mr Fernandes de Oliveira, this Board is comfortably convinced that the Appellants' offer should not be discarded.

In view of the above, this Board:

- 1. Does not uphold the decision taken by the The Malta Police Force to cancel the Tender;**
- 2. Recommends that the offer submitted by Vision-Box is to be re-integrated in the evaluation process taking into consideration this Board's adjudication comments and seek the necessary clarifications as duly recommended by same;**
- 3. Recommends that the deposit paid by the Appellants is to be fully refunded.**

Dr Anthony J Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

17th July 2018