

POST
OFFICE

Tony Oppenheim
Finance and Commercial Director
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Post Office Counters Ltd

Dear Tony,

Post Office Estate/Space Issue

Thank you for your letter of 17th February. In advance of our meeting on 5th March I feel it would be helpful to clarify POCL's position on a number of the contractual issues that you raised.

1. We do not accept your interpretation of the position on implied warranties. Clause 707 makes it clear that there are no implied warranties, and specifically none as to fitness for purpose. Moreover, this position was made perfectly clear during due diligence in relation to POCL's estate. Thus we cannot accept your assertion that there was any "implication" that the POCL estate was "fit for automation".
2. Clause 406 confirms that you were given an opportunity to inspect the estate - not that you had inspected all post offices. This accords with our records of the office visits which you made prior to tendering.
We strongly refute your argument that Pathway acquiesced to Clause 406 "under duress" in the face of POCL's "disproportionate negotiating strength". Pathway together with its holding company was a substantial company, was legally represented, had previous experience of POCL and Government procurements, including automation of post offices in London, and was well able to look after its own interests. Pathway were under no obligation to accept Clause 406 - you were free to bid or not bid. By bidding you chose to accept Clause 406, and we therefore see no reason why this, or indeed any other provision of the Related Agreements, should be set aside on this basis.
3. On the question of choice of keyboard:
Firstly, the Lift keyboard was the one included in your tender, and so formed part of the basis on which POCL accepted your bid. In Functional Specification version 3, you changed this and asked POCL to choose between the Cherry and Lift keyboards. The Functional Specification shows advantages for both keyboards. The requirement to select a single keyboard for all post offices was imposed by Pathway; this was not a POCL requirement. However, faced with your demand that we choose a single keyboard model; the Lift was considered on balance to be the best option. In any case, the keyboard is but one component of the counter-top configuration, and as you know, other components such as the screen size and cabling that would be needed for separate card reader are also significant factors.

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Secondly, as you are aware, Schedule B7 paragraph 2.2 states that in approving the Functional Specification BA/POCL did not relieve Pathway of any of its obligations to meet the requirements. Therefore, by approving the Lift keyboard in the Functional Specification, POCL was not accepting any responsibility for space risk and was not relieving Pathway of its obligation to manage that risk.

4. You refer in your letter to the distinction between "optimising" and "expanding" counter space. This distinction was drawn in meetings discussing possible solutions on a without prejudice basis, and has no contractual status unless and until a change to the contract is agreed. In any case, to the extent that there is any conflict or inconsistency between the broad obligation in Clause 406 and the specific statement in Solution 491, the broader language of Clause 406.3 prevails, since Clauses prevail over Schedules under these circumstances.
5. Clause 406.1 states that Pathway will install its equipment so as to comply with Health and Safety legislation in its immediately surrounding environment. Following the initial 205 installations, user feedback showed that some offices had been installed in a way which was unsatisfactory from a Health and Safety viewpoint; in particular equipment had been installed at unsuitable heights. The guidelines which POCL then commissioned were produced because of these failures, and could only be produced when POCL had had sight of Pathway equipment and installation standards. The guidelines interpret but do not add to the requirement to comply with Health and Safety legislation, in particular the Management of Health and Safety at Work Regulations 1993 which were in effect at award of contract.
6. I note your comments on Pathway Light. However your proposal is still being prepared and we cannot assume that Pathway Light will be accepted by Sponsors. In addition, as far as I am aware, Pathway Light will reduce, but not remove the space problem. We will still be left with multi-position offices where your standard solution will not easily fit, but where Pathway Light will not operate.
7. Your letter also raised a number of other issues which I regard as commercial rather than contractual - i.e. network size, mobile configurations, changes to solution such as flat screens etc. I will address these in our discussions on 5th March.

Finally, your suggestion that POCL has to pay again for services which are already included in the contracted price is not acceptable. While I share your hope that the discussions on 5 March will result in an agreed way forward, this will only be possible if both parties are prepared to be flexible.


David Miller

GRO

Horizon Programme Director

POCL

cc: Mike Coombs, Barrie Davies, Liam Foley
Mena Rego, Keith Baines