

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 612**

**FTS/10/13**

**Tender for Timber Doors for the Primary School C, Ghaxaq.**

The tender was published on the 21st May 2013. The closing date was the 13<sup>th</sup> June 2013.

The estimated value of the Tender was €25,550.85 (Exclusive of VAT).

Seven (7) bidders had submitted an offer.

On the 23<sup>rd</sup> September 2013, Desira Woodworks Limited filed an objection against the rejection of their bid as not being the cheapest offer, and against the decision award the tender to RJ Company Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Tuesday 15<sup>th</sup> October 2013 to discuss the appeal.

**Present for the hearing:**

**Desira Woodworks Limited - Appellant**

Dr Michael Grech	Representative
Mr Stephen Desira	Representative

**R J Company Limited - Preferred Bidder**

Mr Raymond Camilleri	Representative
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**Foundation for Tomorrow's Schools - Contracting Authority**

Mr Christopher Pullicino	Chairman Evaluation Board
Mr Andrew Ellul	Member Evaluation Board
Mr Ivan Zammit	Member Evaluation Board

The Chairman made a brief introduction and asked the appellant's representative to make his submissions on the objection.

Dr Michael Grech on behalf of the appellant said that the sole award criterion for this tender was the lowest priced bid that satisfied the administrative and the technical criteria. His client, the appellant submitted the lowest bid at €19,990.00 and his bid was both administratively and technically compliant. After the closing date of the tender, the contracting authority had sought clarification from appellant where Desira Woodworks were asked to confirm that their offer was €19,990.00, and that this offer covered all the works and services requested in the tender. Appellant replied that the offer submitted covered all the requisites of the tender. It was only by the notice of award to the preferred bidder that appellant got to know that his bid was adjusted upwards to €37,090.00. Appellant's grievance is thus that its offer was the cheapest compliant bid and it should therefore have been awarded the tender. Dr Grech contended that the tender was awarded in contravention of the award criterion, which was the cheapest compliant offer. He insists that his client's offer has still to date not been corrected since, the relative schedule, that is on line, still shows appellant's bid as being €19,990.00. He insisted that the tender was based on the total price and not on the unit price. The cheapest priced offer meant the cheapest total offer. Clause 17.1 asked bidders to submit a total price. On page 17 of the tender; required bidders to fill in the total price of their bid. Even Article 2.09 of the conditions of contract dealing with cases of variances of 5%, always mentions the total price.

He reiterated that appellant was asked twice to confirm that its bid included all the items in the Bills of Quantities for the price of €19,990.00 and appellant confirmed this twice. Appellant was never asked to explain the discrepancy between the total price and the unit prices of the offer. Dr Grech contends that the appellant's offer was never adjusted because this was not brought to the attention of the appellant as required by Article 31.1. According to this Article any correction should have been notified to appellant and the appellant had the right to either agree with the correction or not. Since this was not done, he contended that the correction was not made.

Finally Dr Grech contended that the appellant should be awarded the tender since its bid was the lowest, but if this is not acceded to, then the tender proceedings should be declared null and cancelled because the contracting authority did not abide by the conditions of the said Article 31.1 of the tender document.

Mr Andrew Ellul on behalf of the contracting authority said this case is based on the Bills of Quantities submitted by the appellant. Here were several items are listed in one column, the unit price in the next column and the total price in another column. It was clear that appellant's bid contained an arithmetical error when the unit price was multiplied by the number of items. Regulations clearly state that in such cases of discrepancy, the unit price shown in the Bills of Quantities shall prevail over the total price. It was for this reason that the adjudication board adjusted arithmetically appellant's bid at the first stage of adjudication, before the clarifications about the price were sought from appellant, but appellant was however not informed of this.

The Chairman said that the Board feels that appellant should have been informed that his bid was arithmetically corrected, and should have been asked to declare if the correction was accepted by the appellant or not. Yet appellant was asked twice to confirm the original bid without any indication of why this was being asked. It should have been explained that what

was being asked was because the total bid did not tally with the unit price.

Ivan Zammit on behalf of the Contracting Authority stated that the evaluation board is not authorised to contact the bidders. An evaluation report was presented on the 18<sup>th</sup> June, but the Departmental Contracts Committee did not accept the evaluation board's interpretation of Article 31.1 and insisted that appellant should be asked to confirm the bid using the exact wording as dictated by the Departmental Contracts Committee, that is, if appellant was ready to provide the works at the price of €19,990.00. He said that the evaluation board had consulted the Director of Contracts, who agreed with the board, and had had meetings with the Departmental Contracts Committee. It was finally decided to stand by the original evaluation report.

Mr Andrew Ellul explained that Article 31.1 was there to safeguard the interests of the bidders, because sometimes the arithmetical errors are such that the offers would result greatly diminished, and it was for this reason that it was required to get the bidders in question to agree with the corrections or not.

Dr Michael Grech for the appellant said that the approval given by the DCC for the letter asking clarification from his client is proof enough that the appellant's bid was in fact for €19,990. Rather than following procedures, the evaluation board went against the same procedures because it did not follow the requirements of Clause 31.2, that there had to be the prior approval of the DCC, which was not given, and of the bidder whenever his bid was corrected arithmetically. This was also not done.

Mr Ivan Zammit finally stated that the DCC eventually accepted the decision taken by the evaluation board.

The hearing was here brought to a close.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 23<sup>rd</sup> September 2013 and also through Appellant's submissions during the hearing held on 15<sup>th</sup> October 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant's bid was the cheapest.**
- b) The Appellant's bid price was incorrectly amended by the Evaluation Board of the Contracting Authority.**
- c) The Appellant was requested twice to confirm that the price of Euros 19,990 as stated in the tender document did include all the items requested in the Bills of Quantities. And in this regard the Appellant complied with the request in both instances.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 15<sup>th</sup> October 2013, in that:**

- a) **It was evidently clear that there was a multiplication error in the Bills of Quantities as submitted by the Appellant.**
- b) **The Evaluation Board adjusted the mathematical error without informing the Appellant due to the fact that the Evaluation Board is not allowed to contact bidders during this stage of evaluation.**

**Reached the following conclusions:**

1. **The glaring arithmetical error related to a very simple item (Door Stopper). This Board feels that any member of the Evaluation Board could have deduced that a door stopper does not cost Euros 800. This was clearly an inadvertent, genuine mistake which resulted in the quoted rate placed in the wrong column by the Appellant.**
2. **This Board opines that in such instances, the Evaluation Board should exercise its discretion when faced with such situations.**
3. **The Evaluation Board should have informed the Appellant of the adjustment of the quoted rate for the door stopper.**
4. **The total of the quoted bid does count in the evaluation of a tender. The fact that the Appellant doubly confirmed that the price includes all items as specified in the Appellants bid does in fact establish that although there existed an arithmetical error the price is indeed Euros 19,990.**

**In view of the above, This Board finds in favour of the Appellant Company and recommends that:**

- i) **The Deposit paid by the Appellant be reimbursed.**
- ii) **The Appellant's offer be reintegrated in the evaluation process.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancillieri  
Member

*20 November 2013*