

PUBLIC CONTRACTS REVIEW BOARD

Case No. 623

FTS 24/13

Tender for the Supply and Installation of Timber Doors at St Benedict College Primary School Birzebbugia.

The tender was published on the 6th June 2013. The closing date was the 28th June 2013.

The estimated value of the Tender was €40,771.18 (Exclusive of VAT).

Four (4) bidders had submitted an offer.

On the 23rd September 2013, Desira Woodworks Limited filed an objection against the award of the tender to Raymond Camilleri for the amount of €53,250 including VAT.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday 29th October 2013 to discuss the appeal.

Present for the hearing were:

Desira Woodworks Limited - Appellant

Mr Stephen Desira	Representative
Dr Michael Grech	Legal Representative

Mr Raymond Camilleri - Preferred Bidder

No one was present

Foundation for Tomorrow's School - Contracting Authority

Mr Christopher Pullicino	Chairperson Evaluation Board
Mr Sean Cassar	Member Evaluation Board
Mr Albert Ellul	Member Evaluation Board
Mr Ivan Zammit	Member Evaluation Board

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

Dr Michael Grech on behalf of the appellant Desira Woodworks Limited said that this tender had to be adjudicated, according to Clause 32.1, to the cheapest offer that satisfied the administrative and technical criteria. His client's offer was the cheapest offer at €48,470 yet was not awarded the tender. His client's bid could still be viewed today on the authority's web site to be the above stated 48,470. Appellant had received two letters from the evaluation board before the adjudication of the tender requesting clarifications and appellant had replied to these and confirmed that his client would carry out all the works for the price written in the tender form of €48,470. However appellant received a notice of award of the tender which also informed appellant that the evaluation board had arithmetically corrected appellant's offer and thus the offer was no longer the cheapest at €56,370.

Dr Grech continued that the objection is based on two tracks. The first one being that appellant's offer was the cheapest offer. The preferred bidder's offer was €53,250 and it follows that appellant's bid was the cheapest, and this is confirmed by the Schedule of offers, which remains unchanged. The tender in question was based on the total price and not on the unit price. Clause 32 of the tender document states that "*the sole award criterion will be the price. The contract will be awarded to the cheapest priced tender satisfying the administrative and technical criteria*". Here the price referred to the global price. This is easily seen when Clause 17.1 is considered. This clause defines global price where it states that the tenderer had to submit a price which covered the whole of the works in the tender document.

The Chairman remarked that appellant's bid had items that had to be multiplied by the unit price and the bidder had not done this multiplication. The evaluation board corrected this omission.

Dr Grech explained that the tender declaration at page 17 shows that appellant's offer was the global price, that is, €48,470. This amount was declared by appellant to cover all the items of the tender including taxes and other expenses. Even the schedule states that the amount tendered is the global amount.

The second contention regarding this award, Dr Grech continued was that any arithmetical corrections should have been done during the period between the closing date and the award. But the evaluation board did not do this but asked appellant on two occasions to confirm his offer. Appellant was not informed of any correction at that stage. Appellant had complied with these two requests and confirmed his offer. Dr Grech contended that according to Clause 33.2 clearly explained the procedures to be used when offers were corrected arithmetically by the evaluation board. The evaluation board had to seek the approval of the DCC and then communicate the revised price to the bidder who may then either accept the correction or not. The approval from the DCC to revise the price in this case was not obtained and neither did the evaluation board communicate the correction to the bidder, much less ask for acceptance. Appellant was only informed of the arithmetical correction after the tender was adjudicated and it was too late to do anything about it.

Mr Christopher Pullicino on behalf of the contracting authority stated that the Schedule is written immediately after the tenders are opened and that Schedules remain unchanged because these cannot be changed as they reflect the position at the opening stage. It was the

DCC that insisted that the evaluation board asks the appellant to confirm the amount submitted in the tender. The DCC were not asked for their approval to inform the appellant of the correction. The evaluation board insisted that appellant's Bill of Quantity containing the arithmetical error had to be corrected. The DCC insisted that the evaluation board had to receive confirmation from the appellant that the bid tendered was correct at €48,470.

The Chairman stated that apparently the evaluation board asked appellant twice to confirm that the offer being submitted was €48,470, and that this amount covered all the works. Should not the appellant have been informed that his offer had arithmetical error and then asked if the tender price was still being confirmed?

Mr Pullicino replied that the evaluation board could not do this in terms of the tender because it was a unit price tender and it was the unit price that prevailed.

Dr Grech, replying to a question by the Chairman replied that the appellant was willing to perform the work for the tender price submitted of €48,470. This is backed by the tenderer's declaration at page 17 which was signed and accepted by the appellant.

The Chairman asked appellant to explain the item in the bill of quantity that referred to door stoppers. Could these stoppers, of which there were 80, cost €100 each? This is glaringly a mistake. This could have easily been notified to the appellant.

Mr Stephen Desira explained that this was a mistake. The total amount for these stoppers was €100 and inadvertently this amount was put down in the unit price column. The total amount in the bill of quantities for these stoppers was correct, only the unit price was erroneous.

Mr Ivan Zammit on behalf of the contracting authority according to Clause 17.1 the contractor bids for all the works in the Bill of quantity. The appellant's offer was technically compliant.

Here the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 23rd September 2013 and also through the Appellant's verbal submissions during the hearing held on 29th October 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Appellant's bid was the cheapest offer and fully compliant.**
- b) When contacted on two separate occasions by the Evaluation Board, the Appellant confirmed that the total price of the tender submitted was Euros 48,470.**
- c) The Evaluation Board of the Contracting Authority should have informed the Appellant of the arithmetical error that was rectified. This communication**

would have prevented trivial disputes being presented before the Public Contracts Review Board.

Having considered the Contracting Authority's verbal submissions during the hearing held on 29th October 2013, in that:

- a) The Contracting Authority insisted that the arithmetical error in the Appellant's bid had to be corrected, as was required.
- b) The Contracting Authority confirmed that the Appellant's bid was technically compliant. The same Authority also confirmed that no communication from its end was ever remitted to the Appellant regarding the arithmetical correction.

Reached the following conclusions:

1. From the submissions made by both the Appellant Company and the Contracting Authority, it is evidently clear that the actual Appellant bid's total price was Euros 48,470. This was confirmed twice by the Appellant on the actual requests by the Contracting Authority.
2. The arithmetical correction made by the Evaluation Board was also logically incorrect. This Board opines that every member of the Evaluation Board should have been aware that a 'Door stopper' does not and can never cost Euros 100 each.

In view of the above, this Board finds in favour of the Appellant company and apart from recommending that the deposit paid by the Appellant be reimbursed, this same Board opines that the Appellant's bid be integrated in the evaluation process without delay.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

14 January 2014