

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 843**

**SVP 857**

**Call for Quotation Extended Threshold Supply, Delivery and Installation of Aluminium Apertures at St. Francis 3 & 4 Wards, St Vincent de Paul Residence.**

The Tender was published on the 26<sup>th</sup> May 2015. The closing date was the 8<sup>th</sup> June 2015. The estimated value of Tender is €80,000.00 (Exclusive of VAT).

Four (4) offers had been received for this Tender.

On the 1<sup>st</sup> July 2015 Windmill Aluminium Limited filed an objection against the decision of the Contracting Authority to award the Tender to Andrew Vassallo General Trading for the sum of €59,654.00 Exclusive of 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 18<sup>th</sup> August 2015 to discuss the objection.

Present for the hearing were:

**Windmill Aluminium Limited:**

Mr Charles Abela	Representative
Mr Joe Farrugia	Representative
Dr Geoffrey Mifsud Farrugia	Legal Representative

**Andrew Vassallo General Trading:**

Ms Louise Camilleri	Representative
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**Ministry for the Family and Social Solidarity:**

Ms Lorraine Camilleri	Chairperson Evaluation Board
Ms Miriam Azzopardi	Secretary Evaluation Board
Mr James Carabott	Member Evaluation Board

Following a brief introduction by the Chairman, Appellant's representative was invited to make his submissions.

Dr Geoffrey Mifsud Farrugia on behalf of the Appellant referred to the Letter of Objection and explained that Appellant had three grievances regarding the award:

- a) That the Tender was opened one day late;
- b) That the Appellant had submitted two offers but when the opening schedule was published this showed only the highest one of the offers. This was corrected later on when Appellant had protested;
- c) That the Appellant's lower offer had been the cheapest but the Contracting Authority had corrected the Preferred Bidder's offer and reduced this bid by a substantial amount with the result that Appellant's bid was no longer the cheapest.

He claimed that the Tender Document did not have the usual clause allowing for arithmetical corrections to be made and the Preferred Bidder's offer should not have been corrected. He contended that his client's offer was the cheapest offer and not the Preferred Bidder's.

Ms Lorraine Camilleri on behalf of the Contracting Authority explained that the Tenders were opened on the correct date on the 8<sup>th</sup> June 2015. At first there were three bids or envelopes and these were opened and the schedule prepared and published. However it was later discovered that the Appellant had in fact made two different offers which were included in the same envelope and bound together, not in separate envelopes. The persons who opened the offers only took notice of the Appellant's first-opened offer and missed the other thinking it was just one offer. The Tenders were first evaluated for Technical Compliance and all were compliant.

The Evaluation Board then went on to make the Financial Evaluation. It was noted that the Preferred Bidder had an incorrect total in the bill of quantities – the number and the value totals of the separate items were correct – but the grand total incorrectly was shown to be €87,268 instead of the correct €59,654. Thus the total was corrected and the Preferred Bidder was asked if he agreed with the correction.

Dr Geoffrey Mifsud Farrugia on behalf of the Appellant insisted that the Tender had no clause allowing arithmetical corrections as usual and thus the Evaluation Board had no right to correct the Preferred Bidder's offer and the Appellant's offer was the cheapest.

Ms Loraine Camilleri for the Contracting Authority said that the Evaluation Board has to examine all documents submitted by the bidders and decide accordingly.

At this point the hearing was closed.

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**This Board,**

**Having noted, the Appellant's objection, in terms of the "Reasoned Letter of Objection" dated 1<sup>st</sup> July 2015 and also through the Appellant's verbal submissions during the Public Hearing held on the 18<sup>th</sup> August 2015, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Tender was opened one day later;**
- b) One from the two offers submitted by the Appellant was not published and it was only after protests by the latter that the second option was identified;**
- c) The Appellant contends that his offer was the cheapest, and it was only after the Evaluation Committee made an arithmetical correction that the Recommended Bidder's offer was the cheapest. In this regard, the Appellant maintains that since there was no proviso for such corrections, their bid was still the cheapest.**

**Having considered the Contracting Authority's verbal submissions during the Public Hearing held on 18<sup>th</sup> August 2015, in that:**

- a) The Contracting Authority maintains that the Tenders were opened on the correct date, i.e. on the 8<sup>th</sup> June 2015, and not as the Appellant is claiming;**
- b) The Contracting Authority contends that since the two options submitted by the Appellant were contained and bound in one document, upon the opening of the**

**Tenders, the personnel concerned listed the Appellant's offer as the first option. However, it was later discovered that, the latter contained two options. This was rectified in the Schedule of Offers;**

- c) The Contracting Authority affirms that the Arithmetical Correctional Errors were possible under the prevailing circumstances.**

**Reached the following conclusions:**

- 1. With regards to the Appellant's first contention, this Board, after verifying the facts with regards to the opening of tenders, justifiably confirms that the opening of such tender was performed on the due date, i.e. 8<sup>th</sup> June 2015. This Board also notes that the opening of Tenders was executed on the said date at 10:30am and the offers were displaced on the Notice Board at 10:45am.**

**In this regard, this Board does not uphold the Appellant's first contention and at the same instance, this same board does not find any logical or consequential implication as to why, the Appellant's offer was not awarded the Quotation.**

- 2. With regards to the Appellant's second grievance, this Board, after having heard credible and proven submissions by the Contracting Authority's representative, opines that the fact that the latter displayed only one of the two options submitted by the Appellant was clearly justified by the Contracting Authority, in that, the Appellant submitted his options in one envelope and the documents were bound in one folder.**

In this regard, this Board opines that this was a genuine and unintentional mistake by the personnel opening the quotations and this Board noted that it was immediately rectified. This Board recommends that multiple quotations or tenders should be submitted by the Tenderer in separate envelopes to avoid similar circumstances. After having verified the facts this Board opines that such an occurrence did not affect the Adjudicating Process.

3. With regards to the Appellant's Third grievance, this Board would address the "Correction of Arithmetical Errors", under two main principles, namely "Substance over Form" and "Proportionality" as follows

- i) "Substance Over Form"

This Board justifiably notes that the "Arithmetical Error" in the Preferred Bidder's offer consisted of an incorrect addition only. The rates and their multiplying effect were correct. This Board opines that all quotes/tenders are always arithmetically checked by the Evaluation Committee and in this particular appeal there was no exception.

It is a fundamental principle that where there is a discrepancy in the total (Addition), the quoted rates prevail. In this particular instance, the Preferred Bidder quoted the cheapest rates and the multiplied result was also arithmetically correct. It was only the addition of the amounts that was incorrect.

**In this regard, this Board opines that substance should rule over form and the Evaluation Committee were correct in adjusting the total value of the Preferred Bidder's offer.**

**ii) “Proportionality”**

**This Board justifiably contends that the Principle of “Proportionality”, also applies in this case. By making the appropriate arithmetical correction, the Contracting Authority has benefitted in obtaining a much cheaper quotation for the Tendered service.**

**This Board also maintains that it is the duty of the Evaluation Committee to ensure that the most advantageous offer is procured. In this regard, this Board does not uphold the Appellant's Third Contention.**

**In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the latter should not be reimbursed.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancillieri  
Member

*20 August 2015*