

PUBLIC CONTRACTS REVIEW BOARD

Case 1017 – DH 1652/2016 – Tender for the Supply of Kitchen Rolls

The Publication Date of the Call for Tenders was 24 June 2016 whilst the Closing Date for Call of Tenders was 15 July 2016. The Estimated Value of the Tender, (Exclusive of VAT) was € 120,000.

Two (2) Bidders have submitted three (3) offers for this Tender.

On 28 November 2016, Karta Converters Ltd filed an Objection against the decision of the Central Procurement and Supplies Unit to award the Tender to Zamco Caterware Ltd for the price of € 78,624.00 (Exclusive of VAT) against a deposit of € 600.

On 24 January 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Karta Converters Ltd

Mr Mark Micallef	Representative
Dr Frank B Testa	Legal Representative

Recommended Bidder – Zamco Caterware Ltd

Mr Alexander Zammit	Representative
Mr Leonard Zammit	Representative
	Legal Representative

Contracting Authority – Central Procurement and Supplies Unit

Mr Tonio Briguglio	Chairperson, Evaluation Board
Mr Albert Incorvaja	Secretary, Evaluation Board
Ms Cynthia Spiteri	Member, Evaluation Board
Ms Marlene Zarb	Member, Evaluation Board
Ms Ruth Spiteri	Representative
Dr Stefan Zrinzo Azzopardi	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Dr Frank Testa, the Legal Representative for Karta Converters Ltd opened by making an observation with regards to the Reasoned Letter of Reply issued by the Central Procurement and the Supplies Unit on 19 January 2017 wherein it was wrongly stated that the Appellants were saying that the price was being calculated per sheet.

The Appellants agreed that the price had to be per roll but they were making that reference since in their Letter of Objection dated 25 November 2016; they were explaining how much the price per sheet was. Karta Converters have made this explanation to show why their offer was the cheapest one.

Dr Testa continued by saying that the Public Procurement Regulations were enforced so that public funds were spent where needed and with the least price possible, therefore you have Tenders like these which have specifications, which in this Tender's case all three bids were technically compliant, but then one had to see which of these offers was the most economically convenient.

The Appellants continued by explaining that this Tender concerned toilet paper rolls and the permitted specifications did not provide for one specific type of rolls because if that was the case, no roll analysis would be needed hence no need for the Public Hearing to be convened because if all the rolls were the same then the cheapest offer would have been awarded the Tender.

In this case, continued Dr Testa, despite the fact that the offers presented for this Tender were both technically compliant since they fall within the parameters of the specifications, the rolls came from different spectrums since one roll contained 70 sheets and the other one contained 110, therefore these are different rolls. When one examines which offer was the cheaper, one couldn't examine like with like but one roll would last longer.

Public funds would have been spent better if spent on a roll which lasts more than the other insisted Karta Converters Ltd, hence the Recommended Bidder's offer was not the cheapest one since in the long run and more money would have been spent.

When there is a criterion in the Tender which allow for different rolls to be submitted, one had to analyse which of these was the cheapest and also see what type of roll one was submitting and according to Dr Testa, the Evaluation Board did not do so since there is an enormous difference between the two rolls. When analysing the price per roll, Karta Converters Ltd insisted that they had a much cheaper offer than the one offered by Zamco Caterware Ltd.

Dr Stefan Zrinzo Azzopardi, the Legal Representative for the Central Procurement and Supplies Unit submitted that the role that the Public Contracts' Review Board had in this Tender was to see whether the Evaluation Board had given a fair and equal treatment to all Bidders who submitted an offer.

The Evaluation Board had three offers for this Tender, all of which were technically compliant and they had to compare the price per roll. The analysis which according to the

Appellants had to be done, effectively led to the Reasoned Letter of Reply which was submitted prior to this Public Hearing.

Dr Zrinzo Azzopardi continued by arguing that in order for the Appellant's conclusions to be correct, one had to examine the price per sheet. The Tender Document mentioned the roll specifications and on the basis of the latter, the Evaluation Board had to determine who had the cheapest price per roll and one cannot say that the latter gave an unfair treatment to one Bidder over the other since the criteria in this case had to be the price of the roll. This, according to the Central Procurement and Supplies Unit, had to be the analysis which the Public Contracts Review Board had to do when considering the merits of the case.

Dr Frank Testa, the Legal Representative for Karta Converters Ltd countered that what Dr Zrinzo Azzopardi said above was true but if the specifications allowed for different rolls to be submitted, his clients were not treated right by the Evaluation Board. If the Appellants were given the opportunity to bid with a different roll, the analysis had to be done with the roll with which the latter was bidding.

The difference in price was not a marginal one as his clients were 10% cheaper continued Dr Testa who did not understand why a 110 sheet roll had to be treated at the same way that a 70 sheet roll was treated and eventually the latter was recommended for the award of the Tender.

In order for a fair treatment to be done, one had to take into consideration that the Appellants submitted a different roll and this criterion couldn't be forgotten since the Evaluation Board allowed them to bid with that particular roll. Dr Testa felt that by taking the conclusion which the Contracting Authority had taken, the latter did not award the Tender to the cheapest compliant bid.

At this stage, the Public Hearing was adjourned to Tuesday 31 January 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by Karta Converters Ltd (herein after referred to as the Appellant) on 28 November 2016, refers to the Contentions made by the latter with regards to the award of Tender of Reference DH 1652/2016 listed as Case No 1017 in the records of the Public

Contracts Review Board, awarded by the Central Procurement and Supplies Unit (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Frank B Testa

Appearing for the Contracting Authority: Dr Stefan Zrinzo Azzopardi

Whereby, the Appellant contends that:

- a) **The Tender Document allowed for different types of rolls to be offered and in this regard, the Evaluation Board had to assess the price on the basis of sheets contained in each roll, to enable them to arrive at the cheapest offer. In this contention, the reward was given to a product which by far is more expensive than that offered by the Appellant**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 19 January 2017 and its verbal submissions during the Public Hearing held on 24 January 2017, in that:

a) **The Contracting Authority maintains that the Tender Document dictated that the offers are to be quoted on a “*Price per Roll*” basis. In this regard, the Central Procurement and Supplies Unit contend that the Evaluation Board were correct in adjudicating the Tender in the latter way wherein the cheapest price per roll was that of Zamco Caterware Ltd**

This Board, after having treated the merits of this case, arrived at the following conclusions:

- 1. This Board after having examined the Tender Document and other relevant documentation, opines that it is not its jurisdiction to delve into the mathematical calculation of the price. However, it would like to respectfully treat the merits of the issue of “*Price per Roll*” as dictated in the Tender Document.**

It is vividly clear that the latter requested a quote for the supply of kitchen rolls and the award criteria was the price, so that the award rested on the cheapest fully compliant offer.

At the same instance, this Board justifiably notes that the “*Rolls*” quoted for by Bidders did not contain the same volume or quantities

of sheets and in this regard, the Evaluation Board had to evaluate the costs on a Level Playing Field.

This Board opines that a common factor had to be established to determine and compare the offers on equal footing and in this regard, this Board notes that the only available factor on which the Evaluation Board could compare these offers with regards to the price, was the number of sheets in each roll. Only this basic factor could determine which is the cheapest offer.

This Board also contends that the Central Procurement and Supplies Unit's main intention was to obtain the supplies within the specifications, as dictated in the Tender Document, yet at the cheapest possible price.

- 2. It is a fact that this Board's parameters are restricted to the determination of whether the Evaluation Board had excersided a fair and equal treatment to all Bidders. However, this same Board cannot ignore the fact that, since the Award Criteria was the price, and the "Rolls" submitted by Bidders did not contain the same volume of sheets, the price had to be based on a common factor**

which would eventually allow the Evaluation Board to treat the adjudication for the same unit of supply throughout.

In this particular instance, this Board opines that although the Tender dictated a price per roll and the rolls submitted contained variable columns of sheets, the common factor to establish the cheapest quote was a “*Rate per Sheet*” contained in each particular roll.

In view of the above, this Board finds in favour of Karta Converters Ltd and recommends that:

- i) The Appellant’s offer is to be reintegrated in the Evaluation Process;**

- ii) The deposit paid by the latter should be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

31 January 2017