

PUBLIC CONTRACTS REVIEW BOARD

Case 1045 – 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 offers for this Tender.

On 7 April 2017, Zamco Caterware Ltd filed an Objection against the decision of the Central Procurement and Supplies Unit to award the Tender to Karta Converters Ltd for the price of € 116,064 (Exclusive of VAT) against a deposit of € 600.

On 2 May 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard A Matrenza as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Zamco Caterware Ltd

Mr Alexander Zammit	Representative
Dr Geoffrey Mifsud Farrugia	Legal Representative

Recommended Bidder – Karta Converters Ltd

Mr Wilfred Privitera	Representative
Dr Frank Testa	Legal Representative

Contracting Authority – Central Procurement and Supplies Unit

Mr Albert Incorvaja	Secretary, Evaluation Board
Ms Maria Gauci	Member, Evaluation Board
Ms Cynthia Spiteri	Member, Evaluation Board
Ms Marlene Zarb	Member, Evaluation Board
Ms Ruth Spiteri	Representative
Dr Alexia Farrugia Zrinzo	Legal Representative

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

Mr Alex Zammit on behalf of Zamco Caterware Ltd opened by saying that they disagreed with the decision issued by the Public Contracts Review Board as diversely composed on 31 January 2017. The contract should have been awarded according to the unit price per roll. This was a unit price per Tender. The rolls quoted were not of the same length.

Zamco Caterware Ltd's representative continued by explaining that the common denominator for the Tender award was per sheet. He disagreed with this statement since the rolls can have a different measurement. There were two methods of how these can be evaluated which were the length in metres and the square area.

Dr Geoffrey Mifsud Farrugia, the Legal Representative for Zamco Caterware Ltd then proceeded to refer to the decision issued by the Public Contracts Review Board as diversely composed on 31 January 2017 wherein it was *inter alia* stated that,

“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.....

.....This Board opines that a common factor had to be established to determine and compare the offers on equal footing”

Effectively what happened was that the price per roll does not mirror the facts and the documents offered by the two bidders, since they had a different price per roll, were not in a fair way on how to judge the price since this would cause a problem.

Dr Mifsud Farrugia continued by saying that it might have been the case that the Tender Specifications were not precise since the rolls were of a different size. The problem regarded the common denominator since as explained earlier by his client, the rolls were not equal. Zamco Caterware Ltd offered two sheets, one of 70 and one of 110 while Karta Converters Ltd offered one of 110.

The sheet width offered by the Appellants was 220mm x 240mm whilst the one offered by the Recommended Bidders was 228mm x 224mm. The common denominator, according to Dr Geoffrey Mifsud Farrugia, should have been either on the basis of square metres or else by the length of either 70 or 110 sheets. With these two methods, if one had to take out the real common factor, the prices go out by themselves.

Prior to the intervention by the Central Procurement and Supplies Unit, Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, and Mr Richard A Matrenza, a member of the same requested that for future reference, the Letter of Rejection issued by the Contracting Authority in question must be signed.

Dr Alexia Farrugia Zrinzo, the Legal Representative for the Central Procurement and Supplies Unit said that the Appellants referred to the decision issued by the Public Contracts Review Board as diversely composed and that her clients based their eventual decisions on

what the previous sentence said. The discussion centred about the actual sheet and hence that was taken as the common denominator.

Dr Geoffrey Mifsud Farrugia, the Legal Representative for Zamco Caterware Ltd agreed with Dr Farrugia Zrinzo's submission and added that the discussion should be on the mathematics done by the Evaluation Board. There should only be one common denominator since if there are more, the eventual answer would be 0. The common denominator should be only one number and should not be the price per sheet.

Dr Frank Testa, the Legal Representative for Karta Converters Ltd observed that one had to be careful when comparing the previous Objection to the current one. The latter was about 70 rolls per sheet and the observations had to be taken in that context. Unlike what Dr Mifsud Farrugia was saying, this was not a mathematical question but a question of Public Procurement and that the sheets offered by his clients were to spec.

Dr Testa suggested two things. First and foremost that both sheets are correct and that secondly the size was such that if one needed a single sheet therefore he can take one sheet. If the sheets offered by Karta Converters were to spec then one had to compare like with like.

The Contracting Authority's Legal Representative then continued explaining that one had to see what will the end user needs since if both rolls are to spec then one had to evaluate according to the price for which Karta Converters Ltd were the cheapest. The consumption should be per sheet.

At this point, Dr Anthony Cassar, the Chairman of the Public Contracts Review Board summoned Ms Cynthia Spiteri, a member of the Evaluation Board holding ID Card Number 434962 M to testify under oath before the latter.

Following Ms Spiteri's testimony, Dr Geoffrey Mifsud Farrugia, the Legal Representative for Zamco Caterware Ltd argued that the opening principle was the price per roll. This was switched to price per sheet since the Evaluation Board felt that the former was not the correct mechanism.

Dr Mifsud Farrugia was not accepting the Central Procurement and Supplies' Unit argument that it was not an issue of the common denominator. Here the situation was about two different companies which work with two different tools. The parameters were the price and it was a distortion of the argument to say that the Common Denominator does not reflect the offer price.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board queried whether the original Tender dictated that the price per roll was to be the deciding factor when awarding the Tender for which Dr Geoffrey Mifsud Farrugia, the Appellants' Legal Representative replied in the affirmative.

Dr Alexia Farrugia Zrinzo for the Central Procurement and Supplies Unit submitted that the Public Contracts Review Board as diversely composed has guided the her clients to evaluate with the price per sheet criteria and that was the reason why the Contracting Authority has decided in that way.

Dr Frank Testa, the Legal Representative for Karta Converters Ltd countered that one cannot use the principle used for the First Objection. Both Bidders were technically compliant and since the cheapest roll was submitted by his clients therefore the Tender should be recommended to be awarded to them.

Mr Wilfred Privitera, representing Karta Converters Ltd submitted that when one said price per roll, one should examine the contents of the roll. This Tender was to be awarded on the basis of the cheapest compliant Bidder and they offered the rolls at 30c per roll against the 31c per roll offered by Zamco Caterware Ltd.

At this stage, the Public Hearing was adjourned to Tuesday 16 May 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 Zamco Caterware Ltd (herein after referred to as the Appellant) on 6 April 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference DH 1652/2016 listed as Case No 1045 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 Geoffrey Mifsud Farrugia

Appearing for the Contracting Authority: Ms Alexia Farrugia Zrinzo

Whereby, the Appellant contends that:

- a) **The Tender dictated the Bidders to quote a unit price per roll and in this regard, Zamco Caterware Ltd maintains that his offer consisted of rolls having a greater length than that of Karta Converters Ltd so that the price per either meter square or per sheet area would have been a much fairer common denominator to assess the unit price.**

This Board also noted the Contracting Authority's verbal submissions during the Public Hearing held on 2 May 2017, in that:

- a) **The Central Procurement and Supplies Unit contend that the Evaluation Board based their evaluation procedure on the decision taken by this same Board on 31 January 2017 regarding a similar case, wherein it was adjudicated that, since there were various sizes and lengths of kitchen rolls, the common denominator should have been based on sheets available in each roll. In this regard, Karta Converters Ltd's offer was the cheapest.**

This same Board also noted the Testimony of the witness namely; Ms Cynthia Spiteri duly summoned to testify under oath by the Chairman of the Public Contracts Review Board.

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

- 1. This Board, after having examined the relative documentation and heard the credible submissions made by all parties concerned, would like to, first and foremost, consider the issue of the “*Common Denominator*” adopted by the Evaluation Board;**

As had been adjudicated in Case 1017, decided by this Board, it is most important that a common denominator is established to evaluate these types of products on a “*Level Playing Field*”. In this regard, two similar quotations, which are both compliant in all respects, except for the fact that the Appellant’s product per sheet has a wider area and is slightly longer than that offered by the Recommended Bidder, are being considered.

This Board notes that the Tender Document dictated that the Criteria Award was to be the “*Cheapest Price per Roll*”. In this regard, this Board would like to note that, perhaps the “*Award Criteria*” was not as perfect as it should be, but one has to take into consideration, that since the rolls do not have the same length, one

has to establish a common denominator which would allow the Evaluation Board to compare “*like with like*” in its deliberations.

This Board would also like to also note that the usage of such products is per sheet so that a most fair and common factor is the number of sheets in a roll. In this particular case, the number of sheets in both Zamco Caterware’s and Karta Converters Ltd’s offer was the same that is 110 sheets, except for the fact that the former’s product had a slightly larger area.

One has also to take into account, that the actual usage and application of the product, under review consists of kitchen rolls which one uses every day by simply cutting off one or two sheets to be applied for cleaning or wiping purpose.

In this regard, this Board opines that the slightly larger area of the Appellant’s sheet should not be the deciding factor in assessing the “*cost per unit*” of this particular consumable, hence it is the actual sheet itself which is being used to serve the same purpose as that of a slightly less square area.

This Board opines that, in this particular case, where the dimensions are both compliant, the price element is the deciding factor and in this regard the only available fair indicator is the price per roll and the number of sheets contained therein.

In this regard, it has been established that both the Appellant's and the Recommended Bidder's offer had the same number of sheets, that is 110, and therefore it was only a question of establishing the cost per sheet based on the price per roll duly quoted by Bidders.

This Board notes that the price per roll as quoted by Karta Converters Ltd was cheaper than that of the Appellant and since the number of sheets in a roll, of both offers is the same, the obvious cheaper price per sheet is that of Karta Converters Ltd.

- 2. On a general note, this Board would like to respectfully point out, that although reference was made to a previous decision taken by this Board on similar circumstances, the latter would like to point out that each and every case has to be taken on its own merits and such considerations have to be considered in arriving at a just and fair adjudication.**

In this case, this Board find that the basis for establishing the cheapest price for the Tendered product was correct and in this regard, this Board does not uphold Zamco Caterware’s Objection yet at the same instance, although the “*Award Criteria*” could have been dictated in a broader parameter in the Tender Document, the decision taken by the Evaluation Board was fair, just and on a Level Playing Field.

In view of the above, this Board finds against Zamco Caterware Ltd and recommends that the deposit paid by the latter should not be refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

16 May 2017