

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1075 – SVP 1062 – Tender for the Repair and Maintenance of the Vehicle Fleet at St Vincent de Paul Long Term Care Facility, Luqa**

The Publication Date of the Call for Tenders was 26 May 2017 whilst the Closing Date for Call of Tenders was 16 June 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 120,000.

One (1) Bidder have submitted offers for this Tender.

On 22 July 2017, Alpine Rent a Car filed an Objection against the decision of the St Vincent de Paul Long Term Care Facility to cancel the Tender against a deposit of € 600.

On 10 August 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 – Alpine Rent a Car**

Mr Tony Zahra	Representative
Dr Stephanie Abela	Legal Representative
Dr Vincent Micallef	Legal Representative

#### **Contracting Authority – St Vincent de Paul Long Term Care Facility**

Mr James Carabott	Chairperson, Evaluation Board
Ms Miriam Azzopardi	Secretary, Evaluation Board
Ms Claudia Muscat	Member, Evaluation Board

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

Dr Vincent Micallef, the Legal Representative for Alpine Rent a Car wanted to ask some questions to one of the St Vincent de Paul's Long Term Care Facility, prior to making his submissions.

At this point, Mr James Carabott, a Hospital Planning Manager at St Vincent de Paul's Hospital who was also the Chairperson of the Evaluation Board holding ID Card 33978 M, was summoned to testify under oath before the Public Contracts Review Board.

Following Mr Carabott's testimony, Dr Vince Micallef, the Legal Representative for Alpine Rent a Car Limited wanted to summon a representative from St Vincent de Paul so that he may testify on the fleet of vehicles which were required for this Tender.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, pointed out that the Appellant had the right to summon him beforehand.

Dr Vince Micallef, the Legal Representative for Alpine Rent a Car Limited continued that since the Evaluation Board were seeing all the documents submitted by the bidder, then they could have been in a position to answer a question which was very important for his clients.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that this would lengthen the procedure. The correct procedure was to advise this Board's Secretariat beforehand so that they could eventually summon the required witness. The main issue at stake was that the offer presented by Alpine Rent a Car was compliant but when divided by the 4,600 hours required, it would have gone over the budget established by the Contracting Authority. This was something that the Evaluation Board could not approve.

Mr Tony Zahra, on behalf of Alpine Rent a Car, pointed out that despite of the fact that the required maximum number of hours was known, the number of vehicles that were required was not known and therefore the hours exceeded the number of hours (4,600) stated in the Tender Document.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, pointed out that the latter does not enter into technical matters but only checks whether the Evaluation Board has proceeded in a fair and equal manner.

Dr Vince Micallef, the Legal Representative for Alpine Rent a Car, said that his clients felt that the Evaluation Board acted beyond their decision parameters. He then referred to Clause 9 of the Tender Document which stated:

*"The sole award criterion will be the price. The contract will be awarded to the Tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria".*

Dr Micallef pointed out that the said clause establishes the parameters with which the Evaluation Board had to work this Tender. Alpine Rent a Car Limited knew that they were compliant but one had to analyse the language used, which was essential for this Tender. The Evaluation Board had to choose according to the cheapest priced offer.

The Appellants' Legal Representative continued by saying that the Evaluation Board, have based their criteria on the fact that; the price offered by his clients exceeded € 120,000. Dr Micallef asked why the Budget Allocation was not written down in the Tender Document and/or in further Clarifications issued if it was of such importance for the Contracting Authority as it would have helped prospective Bidders to evaluate whether it was worth it to submit an offer for this Tender or not.

Dr Vince Micallef continued by saying that if one had to consider the conclusions taken by Mr Carabott, one had to rely on the Documents presented by the Contracting Authority and ask why the Tender Document lacked some important clauses. The latter had to be clearer.

The Appellant's Legal Representative then proceeded to quote Article 38 (1) of the Public Procurement Regulations which stated that:

*“The Procurement Document shall be written in clear and unambiguous terms so as to enable all interested parties to understand properly the terms and conditions of the process”.*

Dr Micallef asked, whether St Vincent de Paul Long Term Care Facility was obliged to write down the Budget Allocation in the Tender Document, as this, was significant for them, then the answer is yes. He also referred to Article 187 (1) of the Public Procurement Regulations which stated that:

*“A Tender shall be considered admissible where it has been submitted by a Tenderer, who has not been excluded pursuant to Part VI and who meets the selection criteria, and whose tender is in conformity with the Technical Specifications without being irregular or unacceptable or unsuitable”*

The Public Procurement Regulations obliges the Contracting Authority to inform the prospective Bidders with the Budget for this Tender. St Vincent de Paul Long Term Care Facility could not judge the Appellant on something which was unknown. .

Dr Vince Micallef continued by saying that the Public Contracts Review Board, as had done in previous cases, has to take a decision and either re-admits the Appellant in the Tender or else obliges the Contracting Authority to open a negotiated process with the same and seal a deal in this respect.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board opined that the Appellant claimed that he had the right to know the Budget and it was on these grounds that this Board was going to pass its judgement.

Dr Vince Micallef, the Legal Representative for Alpine Rent a Car concluded that his clients were clear in their Appeal. The Evaluation Board could not judge the Bidders on things which were not stated in the Tender Specifications.

At this stage, the Public Hearing was adjourned to Tuesday 22 August 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 Alpine Rent a Car (hereinafter referred to as the Appellant) on 22 July 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference SVP 1062 listed as Case No 1075 in the records of the Public Contracts Review Board, issued by St Vincent de Paul Long Term Care Facility (hereinafter referred to as the Contracting Authority).**

**Appearing for the Appellant: Dr Vince Micallef**

**Appearing for the Contracting Authority: Mr James Carabott**

**Whereby, the Appellant contends that:**

- a) Whilst his offer was the cheapest and fully compliant one, his bid was discarded due to the simple fact that it was financially beyond the Contracting Authority's allocated funds for this Tender. In this regard, Alpine Rent a Car maintains that the Tender should not have been cancelled.**

**b) The Appellant also insists that the Tender Document should have indicated the available funds for this Tender so that potential Bidders are aware of the scale of the Tendered Works.**

**This Board also noted the Contracting Authority's "*Letter of Reply*" dated 25 July 2017 and its verbal submissions during the Public Hearing held on 10 August 2017, in that:**

**a) St Vincent de Paul Long Term Care Facility affirm that the Appellant's offer was the only submitted Bid and that it was administratively and technically compliant. However, the same offer was well beyond the allocated funds for this Tender, so that the Evaluation Board had no other option but to cancel the latter.**

**This same Board also noted the Testimonies of the witness namely, Mr James Carabott duly summoned by Alpine Rent a Car.**

**This Board, after having examined the relative documentation and heard submissions made by all parties concerned, opines that the two main issues of this appeal are:**

- i) Whether the Tender Document contained or indicated sufficient information to enable a prospective Bidder to quote within the Contracting Authority's financial parameters and,**
  
- ii) The Cancellation of the Tender.**

**These two issues are being considered as follows:**

**a) Sufficient information in the Tender Document**

**This Board has reviewed closely the Tender Document and justifiably notes that in the Financial Bid Form, St Vincent de Paul Long Term Care Facility clearly indicated that the offers had to be expressed by way of an hourly rate for the maintenance of their fleet of cars.**

**At the same instance, this Board also noted that the Contracting Authority indicated the estimated number of hours involved in this Tender. From the consideration of this documentation, this Board justifiably affirms that St Vincent de Paul Long Term Care Facility was requesting an hourly rate for maintenance and in this respect, this Board opines that no matter how many vehicles will be involved in this Tender, it is the hourly rate which is to be assessed by the**

**Contracting Authority, so that the non inclusion of information on the number of vehicles to be maintained has no relevance to the hourly rate.**

**In this regard, this Board credibly notes that enough and sufficient information was indicated in the Tender Document to enable a prospective Bidder to quote for the Tendered Services. At the same instance, this Board notes that, in fact, Alpine Rent a Car Limited was in a position to quote a rate of € 60 per hour, which was well beyond the Contracting Authority's budget.**

**This Board also opines that if the Appellant felt that there was not enough information in the Tender Document, the latter had the legal remedy to file a Pre-Contractual Remedy which in this case, was not availed by Alpine Rent a Car Limited.**

**b) Cancellation of the Tender**

**This Board acknowledges the fact that the sole award criterion was the price, provided that the offer was administratively and technically compliant. This Board also confirms that once administrative and**

**technical compliance is achieved, the cheapest offer will be awarded the Tender.**

**However, there are justifiable instances when such regulations cannot be applied, such as in this particular case, where there was only one bid, that of the Appellant, and which bid exceeded the Contracting Authority's Budget by one and a half times.**

**One must also bear in mind that this Tender did not fall under the "*Negotiated Procedure*" regime and thus the Evaluation board could only assess on what was submitted. In this case, Alpine Rent a Car Limited's offer was the cheapest due to the fact that it was the only bid in the race, so that the fact that it was the cheapest offer does not necessarily imply that it falls within the award criteria.**

**At the same instance, this Board opines that the Evaluation Board could not recommend an offer which was 130% over the available funds just because of the fact that the Appellant's offer was fully compliant and the cheapest, being the only bid submitted. In this regard, this Board opines that the Evaluation Board had acted in a fair, just and transparent manner in cancelling the Tender.**

**With regards to Alpine Rent a Car Ltd's claim that St Vincent de Paul Long Term Care Facility should have published the available funds for this Tender, this Board finds no credible evidence that had the Contracting Authority indicating the Budget in the Tender Document, the Appellant's hourly rate would have satisfied the Contracting Authority's financial parameters, in view of the fact that Alpine Rent a Car Limited's quoted rate represented an excess of 130% of the allocated funds. In this regard, this Board does not uphold the Appellant's Second Grievance.**

- 1. This Board justifiably notes that although St Vincent de Paul Long Term Care Facility quoted the correct clause as to why the Tender was cancelled, that is:**

*“The Tender Procedure has been unsuccessful. Namely where no qualitatively or financially worthwhile Tender has been received or there has been no response at all.”*

**This same Board would like to justifiably insist that the Contracting Authority should give the exact specific reasons why a Bidder's offer was discarded under these particular circumstances. In this particular case, the Contracting Authority should have stated, in**

**their “*Letter of Rejection*” that the Appellant’s offer was well beyond the allocated budget and therefore, his offer was not financially worthwhile.**

**In view of the above, this Board,**

- i) Upholds St Vincent de Paul Long Term Care Facility’s decision to cancel the Tender;**
  
- ii) Does not uphold Alpine Rent a Car Limited’s Grievances;**
  
- iii) Recommends that more specific reasons and details are to be given by the Contracting Authority for discarding an offer;**
  
- iv) Due to the cancellation of the Tender, it recommends that the deposit paid by the Appellant is to be fully refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*22 August 2017*