

Case 1150 – SVP 1123 – Call for Quotes with Extended Treshold for the Maintenance and Upkeep of Air Conditioning System for Six (6) Months at St Vincent de Paul Long Term Care Facility, Elderly and Community Care

The Publication Date of the Call for Tenders was 24 January 2018 whilst the Closing Date for Call of Tenders was 7 February 2018. The Estimated Value of the Tender, (Exclusive of VAT) was € 60,000.

Four (4) Bidders have submitted offers for this Tender.

On 5 March 2018, Smart Effects Limited filed an Objection against the decision which was taken by St Vincent de Paul Long Term Care Facility, to cancel the Tender against a deposit of € 400.

On 27 March 2018, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Smart Effects Limited

Mr Adrian Fenech	Representative
Dr Lennox Vella	Legal Representative

Contracting Authority – St Vincent de Paul Long Term Care Facility

Ms Marica Saliba	Chairperson, Evaluation Board
Mr Anthony Caruana	Member, Evaluation Board
Mr Leonard Diacono	Member, Evaluation Board
Mr Sandro Ghigo	Member, Evaluation Board
Mr Etienne Bartolo	Representative
Mr James Carabott	Representative
Ms Claudia Muscat	Representative
Dr Abigail Caruana Vella	Legal Representative

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board opened by saying that this Board was being faced with appeals which could have been avoided if the Contracting Authority has declared the reasons as to why the Tender was being cancelled.

This was something which was being exhaustively advised in many sentences issued by this Board but nobody was heeding this directive. Each Contracting Authority should give reasons as to why the Bids were being discarded in the rejection letters which are being sent to the Bidders since this is a basic principle of the Public Procurement Regulations.

Dr Abigail Caruana Vella, the Legal Representative for St Vincent de Paul Long Term Care Facility said that before filing their objection, Smart Effects Limited contacted the Department of Contracts so that reasons were given on why their Bid was being rejected. The Contracting Authority have sent an e-mail to the Department explaining in detail why the Appellant's Bid was being rejected.

The Contracting Authority understood that the reasons could have been elaborated but this does not mean that the latter have taken a wrong decision as even the Hon Court of Appeal has discussed the matter.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board insisted that the reasons were not specific and it was this Board's duty to ensure that the procedure was made in a fair, just and transparent way.

Dr Abigail Caruana Vella, the Contracting Authority's Legal Representative countered that the minimum which was requested by law was to quote the Article from the Tender Document from where the decision taken was based.

With regards to the matter why the decision was cancelled, Dr Caruana Vella said that the Assistant Director of the Contracting Authority was present and could testify regarding the matter.

At this point, Mr Etienne Bartolo, an Assistant Director in Procurement and Administration within St Vincent de Paul Long Term Care Facility, holding ID Card Number 185878 M, was summoned by the Contracting Authority to testify under oath before the Public Contracts Review Board.

Following Mr Bartolo's testimony, Ing Roger Chetcuti, a consultant who aided the Contracting Authority in making this Tender, holding ID Card Number 91984 M was summoned by St Vincent de Paul Long Term Care Facility to testify under oath before the Public Contracts Review Board.

At the end of Ing Chetcuti's testimony, the Chairman of the Public Contracts Review Board thanked everyone present and closed the Public Hearing.

This Board,

Having noted this Objection filed by Smart Effects Limited (herein after referred to as the Appellant) on 5 March 2018, refers to the Contentions made by the latter with regards to the award of Tender of Reference SVP

1123 listed as Case No 1150 in the records of the Public Contracts Review Board, issued by St Vincent de Paul Long Term Care Facility (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Lennox Vella

Appearing for the Contracting Authority: Dr Abigail Caruana Vella

Whereby, the Appellant contends that:

- a) **The Contracting Authority’s decision in cancelling the Tender, as no specific reasons were given for such an action, except for the fact that the same Authority allegedly stated that the parameters of the Tender had been fundamentally altered.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 15 March 2018 and its verbal submissions during the Public Hearing held on 27 March 2018, in that:

- a) **St Vincent de Paul Long Term Care Facility maintains that due to various unforeseen damage to air conditioning units, the technical and financial parameters of the call for quotations had changed substantially.**

This same Board also noted the Testimonies of the witnesses duly summoned by St Vincent de Paul Long Term Care Facility namely:

- 1. Mr Etienne Bartolo;**
- 2. Ing Roger Chetcuti**

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned by the Contracting Authority, opines that the issue worthy of consideration, in this particular case, is whether the cancellation of this call for quotations is justified or not.

First and foremost, this Board would respectfully point out that when a Contracting Authority decides to cancel the Tender/Call for Quotations due to a change in parameters, whether technical or financial, apart from quoting the clause which allows for such an action, the same Authority should and is obliged to specify the reasons as to how and why such a change in parameters justified the cancellation of the same Tender. In this particular case, St Vincent de Paul Long Term Care Facility, in its “*notice of cancellation*”, did not indicate the specific reasons for its decision to cancel the call for quotation.

The purpose of the publication of this call for quotations was to cater for the tendered works, as an interim measure, until such time as a more

holistic and long term tender is issued. At this particular stage of consideration, this Board noted that the sequence of events should be summarised as follows:

- The Tender was published on 24 January 2018;
- The Closing Date of the Tender was on 7 February 2018;
- The Recommendation for Award was on 14 February 2018;
- The Notice of Cancellation was on 21 February 2018

From the above mentioned series of events, this Board notes that the decision to cancel this call was made just one week after the recommendation for the award. At the same instance, this Board was also informed that the Evaluation Committee were made aware that the long term tender, which was intended to follow this interim call for quotation, was approved, for publication, during the evaluation process. Yet, at the same time, the same Evaluation Board recommended the offer submitted by Smart Effects Limited. In this regard, this Board would respectfully refer to the testimony of Mr Etienne Bartolo as follows:

Question: *“X’ kienet ir-raguni li biha gie kkanċellat dat-Tender?”*

Reply: *“Il-Call for Quotations kienet interim measure sakemm irċevejna l-approval għal Tender ikbar. Waqt l-evaluation process, l-approval*

inghata biex johroġ dan it-Tender. Dat-Tender ha jkun qed ikopri A/Cs li qed jiġu nstallati u proprjament il-valur tat-Tender ha jkun akbar.”

Question: *“Skond il-Letter of Reply kien hemm xi ċirkostanzi li kellkom thassru dat-Tender? Kien hemm xi ħsarat?”*

Reply: *“In the meantime, ovvjament il-ħsarat bdew jammontaw”.*

From the above testimony, this Board cannot credibly comprehend how, in such a short period of time, a substantial volume of variations occurred to such an extent that justified the cancellation of this interim measure. At the same instance, from the submissions and the testimony of the witnesses, this Board was given the impression that St Vincent de Paul Long Term Care Facility placed more importance on the long term tender, which has still to be issued, and for which the tendering process has not commenced, than the interim call for quotations under review. In this regard, this Board is justifiably convinced that this call for quotation will cater for the necessary repairs during the period until such time as the tendering process of the long term tender is finally approved and contracted for the award which, from statistics available, will usually represent a period of five months. The real question to be put forward is, what will happen during this interim period?

This Board, acknowledges the fact that the Contracting Authority has all the legal rights to cancel a Tender or a call for quotations in specific circumstances, one of which is a change in parameters, however, in this particular case, the alleged changes or increase in works which has to be carried out, was not quantified or assessed and was not even presented to this Board, as sufficient justification for the cancellation of this call.

This Board, would respectfully point out that it is the duty and obligation of the Contracting Authority to save an offer which has been recommended for award, when taking into consideration the nature and objective of this call for quotation. At the same instance, this Board takes into account the fact that the Bidders expended time and costs in the preparation of their submissions whilst, at the same time, divulged sensitive commercial information for this participation.

In this regard, this Board justifiably notes that it was not:

- i) Credibly convinced that the additional works which occurred over such a short period of time incurred sufficient magnitude to justify the cancellation of this call for quotations due to changes in parameters;**

ii) Presented with any tangible proof as to volume and extent of repairs which went beyond the boundaries of the parameters of this call for quotations;

iii) Presented with any evidence or proof that the allegedly approved new long term tender will cater for the same works as duly requested in this call for quotations and was not even provided with evidence as to the approval of the long-term Tender, for publication.

One has to acknowledge and appreciate that this call for quotation was issued to cater for services to be rendered at St Vincent de Paul residence so that the well-being and comfort of the residents should be considered as a priority. At the same instance, the execution of this call for quotation will not, in any credible way, affect the requirements of the future long term tender.

In view of the above, this Board:

a) Does not uphold the decision taken by St Vincent de Paul Long Term Care Facility to cancel the “*call for quotations*”;

b) Orders that the recommendation for the Award is to be resumed without any further delay;

c) Upholds the grievances raised by Smart Effects Limited and recommends that the deposit paid by the latter is to be fully refundable.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

3 April 2018