

PUBLIC CONTRACTS REVIEW BOARD

Case 1214 – SVP 1063 – Call for Quotations with Extended Threshold for Preventive and Breakdown Maintenance and Repair of the LPG Storage and Distribution Installations and Hot Water Production Plant at St Vincent de Paul Long Term Care Facility

The publication date of the call for quotations was the 2nd February 2018 whilst the closing date of the call for tenders was the 28th February 2018. The estimated value (exclusive of VAT) was € 70,000

On the 16th July 2018, A. Falzon Energy Projects Ltd filed an appeal against St Vincent de Paul Long Term Facility as Contracting Authority on the grounds that he was disqualified although his request for a clarification had been ignored. A deposit of € 400 was paid.

There were three (3) bidders.

On 27th September 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – A Falzon Energy Products Ltd

Dr Stefan Zrinzo Azzopardi	Legal Representative
Mr Anthony Falzon	Representative

Recommended Bidder – TK Solutions

Mr Mark Grech	Representative
Mr Andrew Grima	Representative

Contracting Authority – St Vincent de Paul Long Term Care Facility

Dr Abigail Caruana Vella	Legal Representative
Mr James Carabott	Chairperson Evaluation Board
Ms Claudia Muscat	Secretary Evaluation Board
Mr Etienne Bartolo	Member Evaluation Board
Mr Anthony Caruana	Member Evaluation Board
Eng. Leonard Diacono	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr Stefan Zrinzo Azzopardi, Legal Representative for A Falzon Energy Products Ltd, sought permission to call a witness.

Eng. Leonard Diacono (0294091M) testified on oath that he was recently appointed as an Engineer at St Vincent Care Facility. He had reviewed the tender but had not been involved in its drafting although it was published after he took up his appointment. He referred to point 18 of the Technical Specifications which detailed the regular maintenance that was required under the tender – this covered consumables and cleaning materials as part of the contract. Additional parts not covered under point 18 came under section 4 of the tender which covered items which could be charged without authorisation (under € 350) and higher priced parts needed sanction. In the tender documents there was also a schedule of routine maintenance.

Dr Stefan Zrinzo Azzopardi stated that the appeal was based on a tender and schedule of works that left much room for interpretation and was disadvantageous to the Appellant who was familiar with the required works. Regarding the maintenance work stipulated it was difficult to compare like with like due to the lack of certain clarity. Appellants' offer appeared higher than his competitors because he had offered a full maintenance and repair programme.

Ms Claudia Muscat (298282M) testifies on oath that she was the Procurement Officer and the Secretary of the Evaluation Board. Bidders were offered the opportunity of a clarification meeting and a site visit which Appellant did not avail himself of. The Evaluation Committee had no record of any clarifications being received up to the closing date of the tender.

Dr Abigail Caruana Vella, Legal Representative of St Paul Long Term Care Facility, said that there was no record of a request for clarification from Appellant, nor did he attend a site meeting. Appellant gave detailed costs of both consumables and extraordinary items although the tender was very clear on what was required.

The Chairman thanked both parties for their submissions and declared the hearing closed.

This Board,

**having noted this Objection filed by A Falzon Energy Products Limited,
(hereinafter referred to as the Appellants), on 16 July 2018, refers to the**

contentions made by the same Appellants with regards to the award of Tender of Reference SVP 1063 listed as Case No 1214 in the records of the Public Contracts Review Board and awarded by St Vincent de Paul Long Term Care Facility, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Stefan Zrinzo Azzopardi

Appearing for the Contracting Authority: Dr Abigail Caruana Vella

Wherein the Appellants,

- a) maintain that the Tender consisted of a schedule of maintenance works and materials involved therein and due to the vague description of what was actually required in the tender document, they included all the parts necessary which they considered should be replaced to carry out a professional maintenance programme. Due to the latter inclusion, their offer was discarded without the Contracting Authority taking into account that their offer included replacement parts in addition to what was required in the schedule of maintenance stipulated in the tender document, so that their offer was not deemed to be the cheapest.**

This Board has also considered the Contracting Authority's "*Reasoned Letter of Reply*" dated 27 July and also its verbal submissions during the Public Hearing held on 27 September 2018, in that:

a) St Vincent de Paul Long Term Care Facility insists that it had never received any clarification request from the Appellants regarding an explanation as to what was really requested and the latter had all the opportunities to request clarifications on any of the technical issues so dictated in the tender document. In this respect, the Contracting Authority chose the cheapest compliant bid.

This same Board has also noted the testimony of the witness, namely, Eng Leonard Diacono duly summoned by A Falzon Energy Projects Limited.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness, opines that the issue to be considered is, the interpretation of the tender's requirements.

1. This Board would respectfully refer to Section 4 – Technical Specifications, in particular point 18 of the Tender Document, wherein it is dictated that:

“The cost of all consumable parts that need regular replacement and any cleaning materials used in conducting routine maintenance shall be included in the task's pricing.”

The above mentioned clause stipulates that those parts and cleaning material which need replacement, as part of the maintenance programme, are to be taken into consideration in the tender price. At the same instance, the tender document provided a schedule which denotes what type of maintenance and on what equipment the works are to be carried out.

Needless to mention, the prospective Bidders, through their experience, should be well aware of what constitutes normal replacement items due to maintenance and what represents extraordinary parts. However, the tender document provides further explanation in this regard, through Section 4, Article 4.1.4 which outlines even further the distinction of parts, as follows:

“4. The Contractor shall quote for suitable replacement parts throughout the duration of the Contract within a specified time period, to ensure that the maximum downtime is not exceeded. For equipment with a higher value, than € 350 excluding VAT, and wherever possible, the

contractor shall be obliged to provide a minimum of 3 quotations from separate suppliers.”

The above clause indicates that the consumables and parts that are normally required for routine maintenance are to be included in the tender price and for other parts which do not fall under routine maintenance, (and are not included in the tender price), and are below the sum of € 350, these can be charged to the Contracting Authority without any prior authorisation, whilst parts above the sum of € 350 are to be sanctioned. In this regard, this Board opines that the wording of the above mentioned Article 4.1.4 could have been drawn in a more simplistic way; however, this same Board confirms that enough information was provided in the tender document to enable bidders to quote as per the regular maintenance schedule so published.

2. This Board has also noted that A Falzon Energy Products Limited did, in actual fact, include the items as requested in the maintenance schedule; however his offer was not the cheapest. At the same instance, the Appellants, if in doubt about a specific item of the technical specifications of the tender, had all the remedies to seek clarifications

prior to the closing date of submissions and in this regard, this Board notes that A Falzon Energy Products Limited did not avail themselves of these remedial provisions.

In view of the above, this Board,

- i) does not uphold A Falzon Energy Products Limited's grievances;**

- ii) confirms that the evaluation process was carried out in a fair, just and transparent manner;**

- iii) upholds St Vincent de Paul Long Term Care Facility's decision in the award of the tender;**

- iv) recommends that the deposit paid by the Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

11th October 2018