

PUBLIC CONTRACTS REVIEW BOARD

Case 1636 – CT2303/2020 – Tender for the Supply and Delivery of Kitchen Rolls to St. Vincent de Paul Long Term Care Facility, Luqa – (Re-issue)

11th October 2021

The Board,

Having noted the letter of objection filed by Dr Frank B. Testa on behalf of Mamo TCV Advocates acting for and on behalf of Karta Converters Ltd, (hereinafter referred to as the appellant) filed on the 11th June 2021;

Having also noted the letter of reply filed by Dr Noel Bezzina acting for the Saint Vincent de Paul Long Term Care Facility (hereinafter referred to as the Contracting Authority) filed on the 21st June 2021;

Having heard and evaluated the testimony of the witness Mr Mario Caruana (Chairperson of the Evaluation Committee) as summoned by Dr Noel Bezzina acting for the Contracting Authority.

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 7th October 2021 hereunder-reproduced;

Minutes

Case 1636–CT 2303/2020. Tender for the Supply and Delivery of Kitchen Rolls to St Vincent De Paul Long Term Care Facility, Luqa – (Re-Issue)

The tender was published on the 11th March 2021 and the closing date was the 13th April 2021. The value of the tender excluding VAT was € 259,200.

On the 11th June 2021 Karta Converters Ltd filed an appeal against St Vincent de Paul Long Term Care Facility as the Contracting Authority objecting to their disqualification on the grounds that their bid was deemed not to be the cheapest.

A deposit of € 1,296 was paid.

There were three (3) bidders.

On 7th October 2021 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Dr Vincent Micallef as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Karta Converters Ltd

Dr Frank Testa	Legal Representative
Mr Mark Micallef	Representative

Contracting Authority – St Vincent de Paul Long Term Care Facility

Dr Noel Bezzina	Legal Representative
Mr Mario Caruana	Chairperson Evaluation Committee
Ms Claudia Muscat	Secretary Evaluation Committee
Mr Mark Micallef-Costa	Representative

Preferred Bidder – V.J.Salomone Consumer Lines Ltd

Dr Arthur Galea Salomone	Legal Representative
Mr Adrian Salomone	Representative
Mr Jonathan Zammit	Representative

Department of Contracts

Mr Nicholas Aquilina	Representative
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Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then invited submissions.

Dr Frank Testa Legal Representative for Karta Converters Ltd said that the deciding criterion in the tender was the price since both offers were compliant. The offer by Salomone was chosen as it was cheaper price wise but *prima facie* it was apparently higher. The letter of appeal explained why the Appellant's offer was the cheaper one as the rolls offered contained more sheets per roll – if the price quoted was reduced to a price per sheet then Appellant had the better offer. Reference was made to PCRB Case 1017 (DH 1652/2016) which was similar to this case and where it was concluded that the Authority had to compare offers on a 'like for like' basis. If the sole determining factor is the price then an analysis is to be made.

Dr Noel Bezzina Legal Representative for St Vincent de Paul Long Term Care Facility said that the only benchmark was the price criterion. If the Board were minded to go on a 'like for like' comparison then that would border on a BPQR evaluation not price criterion. The tender indicated bids on a price per kitchen roll offer and the cheapest price per roll must prevail and assessing the tender on a price per sheet was moving away from the tender criterion. The General Rules Covering Tenders (Clause 7.5) states that offers are to be submitted up to two decimal points. There was the additional factor that offering more sheets might encourage waste by users.

Mr Mario Caruana (77569M) called as a witness by the Contracting Authority testified on oath that he was the Chairperson of the Evaluation Committee and stated that according to Clause 6 of the tender the sole award criterion was the price and therefore the tender was awarded to the cheapest

compliant bidder. Throughout the tender the reference was to rolls and the financial bid was based on price per roll.

Questioned by Dr Testa, witness confirmed that the recommended bidder offered 100 sheets per roll whilst Appellant's offer was for 110 sheets per roll.

That was the end of the testimony.

Dr Testa said that Appellant was not contesting that price was the criterion nor that the offer price had to be in two decimal points and there was no doubt on compliance. Reference was again made to Case 1017 since the specifications were similar and criterion was still the price. This could not be interpreted as a BPQR tender as one was not querying quality or thickness of the product but simply the procurement process to ensure that value for money was obtained. The argument that more sheets led to wastage was not valid.

Dr Bezzina re-iterated that price was the only indicator in the tender and that means how much the Authority pays for the goods – if one went into the realm of price per sheet then exercise becomes an examination of costs. The only factor the Authority had to consider was the price per roll and it could not evaluate on price per sheet. The knowledge that a product was cheaper could lead to wastage. The Authority was correct in its decision.

Dr Testa briefly commented that the Authority is asking the Board to sanction it to pay more to get less.

Dr Arthur Galea Salomone Legal Representative for V J Salomone Consumer Lines Ltd said that the Board has no discretion to change the criterion of award and would be acting *ultra vires* if it decided otherwise.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 7th October 2021.

Having noted the objection filed by Karta Converters Ltd (hereinafter referred to as the Appellant) on 11th June 2021, refers to the claims made by the same Appellant with regards to the tender of reference CT 2303/2020 listed as case No. 1636 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Dr Frank B. Testa

Whereby, the Appellant contends that:

- a) The offer submitted by the Appellant consisted of five hundred and seventy six thousand (576,000) kitchen rolls at thirty four cents (€0.34) per roll with each roll having 110 sheets. The offer in total amounts to one hundred and ninety-five thousand eight hundred and forty Euros (€195,840). On the other hand according to the information provided by the Department of Contracts on the 10th June 2021, the recommended bidder's kitchen rolls consist of 100 sheets each. This means that when calculating the cost of each roll, and this assuming that the recommended bidder's bid covered 576,000 kitchen rolls, then each roll provided by the recommended bidder costs thirty-two cents (€0.32), excluding VAT.
- b) At face value, the recommended bidder's kitchen roll seems cheaper than that of the appellant. However, upon closer inspection of the said bid and after comparing the price per roll on the basis of the information provided to the appellant, it transpires that the Appellant's bid is much cheaper than that offered by the recommended bidder.
- c) Given that the recommended bidder's 100-sheet roll costs €0.32, then the cost per sheet of such roll is €0.0032 per sheet. On the other hand, the Appellant's 110-sheet roll which costs €0.34 per roll implies that the cost per sheet is €0.00309, and thus it is 3.4% cheaper than that of the recommended bidder.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 21st June 2021 and its verbal submission during the virtual hearing held on 7th October 2021, in that:

- a) The sole criterion for award as stipulated in the Tender Document was the price. Therefore, the tender was to be awarded to the bidder having the cheapest priced offer which satisfies the administrative and technical criteria established in the Tender. Contrary to what is being submitted by the Appellant, the tender document does not stipulate any further criteria for award such as an analysis and / or comparison of the price per roll and / or per sheet, but rather was solely tied to the cheapest most technically and administratively compliant offer.
- b) In view of the fact that the sole criterion was the price, the Evaluation Board could not have determined which is the cheapest bid by determining the 'rate per sheet' contained in each roll. Such analysis would have departed from the criteria laid down in the same document. Furthermore, it is to be noted that, at no stage did the Appellant ask for a clarification of the criteria for award by the Contracting Authority.
- c) The tender document is abundantly clear and the Appellant was well aware, or should have been aware of the Criteria for Award. Additionally, besides the fact that such criterion was

contained in the tender document itself, the evaluation committee has adjudicated and awarded the Tender in accordance with such criterion. Had the Appellant disputed such, it could have easily lodged an application as a pre-contractual remedy in order to address this condition in particular; something which the Appellant has not done.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will consider Appellant's grievances, as follows:

- a) This Board makes reference to PCRB Case 1017 whereby it was 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. 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. 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 columes of sheets, the common factor to establish the cheapest quote was a "Rate per Sheet" contained in each particular roll."*
- b) When comparing this tender dossier to the tender dossier in case 1017, it is noted that the issue at hand is the same. The only differences are the technical specifications, with the only one relevant to this case is the variance of number of sheets per roll allowed, but none-the-less both tenders provided that a "roll" was not fixed in its number of sheets, but a variance was allowed. In this particular case Section 3 of the Tender Dossier states *"Containing between 100 – 115 two-ply sheets per roll"*.
- c) Hence this Board, again makes reference to point (a) above, in that, since the "rolls" were not fixed in their 'number of sheets' per roll, a common factor had to be established to determine and

compare the offers on equal footing. This Board opines that the only possible common factor is the 'Rate per Sheet'.

Therefore, this Board upholds Appellant's grievances.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) To uphold the Appellant's concerns and grievances;
- b) To cancel the 'Notice of Award' letter dated 1st June 2021;
- c) To cancel the Letters of Rejection dated 1st June 2021 sent to Karta Converters Limited;
- d) To order the contracting authority to re-evaluate the bids received in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee and taking into consideration the findings of this Board.
- e) after taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Dr Vincent Micallef
Member