

PUBLIC CONTRACTS REVIEW BOARD

Case 1753 – SPD4/2021/052 – Works - Re-issue Tender for Finishing Works Using Environmentally Friendly Materials at St. Joseph Ward 1, Saint Vincent De Paul Long Term Care Facility

1st July 2022

The Board,

Having noted the letter of objection filed by Mr Christian Bezzina acting for and on behalf of Mr Christian Bezzina (hereinafter referred to as the appellant) filed on the 30th May 2022;

Having also noted the letter of reply filed by Dr Noel Bezzina on behalf of Bezzina Legal acting for St Vincent de Paul Long Term Care Facility (hereinafter referred to as the Contracting Authority) filed on the 8th June 2022;

Having heard and evaluated the testimony of the witness Perit Sergio De Gabriele (Representative the Contracting Authority) as summoned by Dr Noel Bezzina acting for St Vincent de Paul Long Term Care Facility;

Having heard and evaluated the testimony of the witness Ms Antoinette Laferla (Health Occupational Therapist) as summoned by Dr Noel Bezzina acting for St Vincent de Paul Long Term Care Facility;

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 28th June 2022 hereunder-reproduced;

Minutes

Case 1753 – SPD4/2021/052 – Re-issue Tender for Finishing Works using Environmentally Friendly Materials at St Joseph Ward 1, Saint Vincent De Paul Long Term Care Facility

The tender was issued on the 29th September 2021 and the closing date was the 16th November 2021. The value of the tender, excluding VAT, was € 198,886.50.

On the 30th May 2022 Mr Christian Bezzina 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 offer was deemed to be technically not compliant.

A deposit of € 994.43 was paid.

There were eleven (11) bids.

On the 28th June 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Ms Stephanie Scicluna Laiviera as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Mr Christian Bezzina

Dr Kris Balzan	Legal Representative
Mr Christain Bezzina	Representative
Mr Joseph Bezzina	Representative
Mr Roger Bezzina	Representative

Contracting Authority – St Vincent De Paul Long Term Care Facility

Dr Noel Bezzina	Legal Representative
Mr Anthony Caruana	Chairperson Evaluation Committee
Ms Claudia Muscat	Representative
Mr Raymond Mangion	Representative
Mr Mark Micallef Costa	Representative
Ms Marica Saliba	Representative

Preferred Bidder – Camray Company Ltd

Dr Reuben Farrugia	Legal Representative
Mr Adrian Fabri	Representative

Director of Contracts

Dr Mark Anthony Debono	Legal Representative
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Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Kris Balzan Legal Representative for Mr Christian Bezzina stated that the handle offered did not require grasping, pinching or twisting of the wrist and thus met the tender requirements. The brochure provided indicated a generic product not a detailed one. The grab handle offered was similar to the ones used in alarms and these are fully compliant. If requested clarification would have been complied with. The only item on which further details were requested was the grab handle. The brochure merely indicates use of the product and there was no request to Appellant to prove compliance and consequently he was unjustly failed.

Dr Noel Bezzina Legal Representative for St Vincent De Paul Long Term Care Facility (SVP) said that Appellant did not specify which handle he was providing. The guidelines of the Commission for the Rights of Persons with Disability (CRPD) specify precisely that equipment should not involve grasping, pinching or twisting and thus the model offered does not meet CRPD guidelines and this was the reason for the disqualification.

Dr Reuben Farrugia Legal Representative for Camray Company Ltd said that the brochure provided was generic with no details and does not specify anything. If the product was intended to satisfy the CRPD requirements it should have provided exact details but Appellant was now expecting further request for clarification. It is up to the bidder to provide what was requested

Perit Sergio De Gabriele (0436592M) called as a witness by the Contracting Authority stated on oath that his role was as technical advisor. The brochure submitted lacked detail and the product did not conform with the CRPD regulations. This was confirmed by the tabling of exchange of e-mails with the CRPD.

Ms Antoinette Laferla (439070M) called as a witness by the Contracting Authority testified on oath that she is a Health Occupational Therapist of 29 years' experience. Elderly people have difficulty in gripping and holding items and energy conservation techniques are recommended to stop unnecessary movements. Either of the flushing options offered are too high or need gripping and movement of the shoulders.

Questioned by Dr Balzan witness stated that the grip dangle requires a strong effort to pull down.

This was the end of the testimonies.

Dr Balzan stated that the only non-compliant item was the handle. It is clear that the grab handle does not require any twisting or grasping. The reason that the offer was not acceptable could be for a variety of reasons but not necessarily those given.

Dr Farrugia said that the equipment had to satisfy the CRPD requirements and they had advised that the item offered was not satisfactory.

Dr Bezzina said he had no further points to add following which the Chairman thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 28th June 2022.

Having noted the objection filed by Mr Christian Bezzina (hereinafter referred to as the Appellant) on 30th May 2022, refers to the claims made by the same Appellant with regards to the tender of reference SPD4/2021/052 as case No. 1753 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Kris Balzan
Appearing for the Contracting Authority:	Dr Noel Bezzina
Appearing for the Preferred Bidder:	Dr Reuben Farrugia

Whereby, the Appellant contends that:

- a) In its decision the Evaluation Committee remarked that the Disabled WC flushing cistern mechanism is not compliant with CRPD standards 2011 article 1.11.23 which states that *“the flush control shall be operable using one hand without tight grasping, pinching or twisting of the wrist”*. The Evaluation Committee concluded that the chord which activates the flushing mechanism of the proposed item involves tight grasping to be pulled down and hence is not as per requested technical specifications.
- b) With regard to the literature which I provided for the Disabled WC complete with the flushing system, the Evaluation Committee failed to notice that the submitted data sheet provides for more than one option for the pull handle of the flushing system - one option being straight handle and another option being triangular bangle which does not need any tight grasping to be pulled down. The data sheet clearly shows that the handle can easily be supplied with the triangular bangle as a handle.
- c) The Evaluation Committee should have asked for a clarification about which type of handle would be supplied should the contract be awarded to me.
- d) The method of operation when using the triangular bangle as handle, would be, in principle, the same as the method for operating the alarm for the disabled.
- e) May it also be added that a disabled person who is not capable of operating the flushing system with the triangular bangle would also not be able to operate the alarm in case of an emergency. In such eventualities the disabled person would surely be assisted by a nurse, when obviously in such cases the flushing would be operated by the nurse.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 8th June 2022, its verbal submission during the virtual hearing held on 28th June 2022, in that:

- a) The Contracting Authority hereby submits that, notwithstanding appellant's arguments, following the evaluation of the offer submitted by the Appellant, such offer was not technically compliant due to the following reasons. Section 10.3.1 of the tender document stipulated that: *“Vitreous China sanitary ware colour shall be manufacturer's standard white and shall comply with BS EN 997:2003 or equivalent standards, Sanitaryware for people with special needs shall also comply with local regulations and latest guidelines issued by the CRPD. Handles and grab rails for the special needs toilet are to be in stainless steel.”*
As rightly pointed out by the technical evaluator in his report, the offer submitted by the appellant was not technically compliant due to the fact that it did not comply with the latest guidelines issued by the CRPD.
- b) In fact, CRPD standards 2011, article 1.11 23 states that: *“The flush control shall be operable using one hand without tight grasping, pinching or twisting of the wrist”*
- c) The Contracting Authority submits that, the model submitted by the appellant requires that any user with special needs must necessarily grasp the handle in order to operate the flush control. This therefore means that the model submitted by the appellant is not compliant with the

guidelines of the CPRD and therefore the evaluation committee was correct in its decision, that is, in rejecting the appellant's offer.

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 witnesses duly summoned, will now consider Appellant's grievances.

- a) Since a rectification request was already sent to the appellant, the evaluation committee could not send another clarification request as per "Notes to Clause 5" regulations on page 8 of the tender dossier where it is stated *"Requests for Clarifications and / or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained."*
- b) Reference is made to the testimony under oath of Ms Antoinette Laferla whereby she confirmed in reference to the product offered by the Appellant that *"Either of the flushing options offered are too high or need gripping and movement of the shoulders"*
- c) Reference is made to the testimony under oath of Perit Sergio De Gabriele whereby *"The brochure submitted lacked detail and the product did not conform with the CRPD regulations"*.
- d) Reference is also made to the advice Perit De Gabriele sought from CRPD itself, whereby it was confirmed that the configuration as offered by the Appellant is 'not acceptable' to CRPD i.e. to their regulations. The Board notes that the request as put forward by Perit De Gabriele is somewhat general, however the Board deems that CRPD answered within the understanding of their own regulations.

Due to the above, this Board does not uphold Appellant's grievances.

The Board,

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

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Ms Stephanie Scicluna Laiviera
Member