

PUBLIC CONTRACTS REVIEW BOARD

Case No. 429

CT/2501/2011

Framework Contract for the Supply of Recycled Toilet Paper

This call for tenders was published in the Government Gazette on the 4th October 2011. The closing date for this call with an estimated budget of € 89,380 (excl. VAT) was the 17th November 2011.

Two (2) tenderers submitted their offers.

Karta Converters Ltd filed an objection on the 9th March 2012 against the decision of the Contracts Department to disqualify its tender and to recommend the award of tender in favour of Zamco Caterware Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Wednesday, 4th July 2012 to discuss this objection.

Present for the hearing were:

Karta Converters Ltd

Dr Frank Testa	Legal Representative
Mr Mark Micallef	Representative
Mr Wilfred Privitera	Representative

Zamco Caterware Ltd

Mr Alexander Zammit	Representative
Mr Leonard Zammit	Representative

Contracts Department (Evaluation Board)

Mr Bernard Bartolo	Chairman
Mr Richard Abela	Member



After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of his company's objection.

Dr Frank Testa, legal representative of Karta Converters Ltd, the appellant company, made the following submissions:

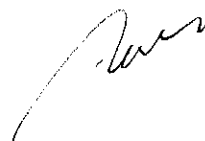
- i. his client was objecting with both the way his client presented its bid and also the way the recommended bidder submitted its bid;
- ii. a correction was required with regard to para. 1 and 4 of the letter of objection dated 9th March 2012 to the effect that the price quoted by his client in its electronic tender submission available to the contracting authority should read "—" and not "Eur 0.00";
- iii. Mr Mark Micallef, on behalf of his client had filled in the electronic tender submission after having attended a training session at the Contracts Department for the purpose – clause 6.1 of the tender document invited prospective bidders to attend this information workshop;
- iv. his client had inputted the information as had been instructed during the training course and, following the submission of the electronic tender document, he was informed by email as follows:-

*CFT: Framework Contract for the supply of recycled toilet
paper receipt ID 00000018
Information: Tender package has been uploaded*

- v. albeit his client had inserted the price of "€0.145", yet, given that the electronic system allowed numbers up to two decimal places, the price on his client's screen read "€0.15";
 - vi. eventually it resulted that the screen at the contracting authority's end displayed the price as "—" instead of the amount "€0.145" keyed in by his client or the "€0.15" allowed by the electronic system;
 - vii. whilst the electronic tender submission made by his client was not printable, yet an electronic version was available on his client's computer;
- and
- viii. since his client had filled in the tender document and that he had received an acknowledgement that it was uploaded at the Contracts Department's end, then it was up to the Contracts Department to explain what went wrong that led to his client's offer being discarded.

Mr Mark Micallef, sales executive at Karta Converters Ltd, under oath, provided the following information:-

- a. he had attended a two-hour workshop at the Contracts Department about the electronic tendering system where, among other things, he was informed that



for the contracting authority to upload an electronic tender submission it had to be entirely and properly filled in and, as a result, he interpreted the electronic receipt to mean that his electronic tender submission was in order;

- b. this was the first instance that he had submitted an electronic tender submission;
- c. when he was informed that the price of his tender submission was displayed as “—“ on the screen at the Contracts Department, he immediately contacted the Contracts Department to inform them that he had in fact quoted the price otherwise the tender submission would not have been accepted by the electronic system that was in place.

Mr Bernard Bartolo, chairman of the evaluation board, submitted the following explanations:-

- a. the electronic tendering system was launched in October 2011 and it should replace the present system entirely by the beginning of 2013 and that during the transition period everyone involved was going through a learning curve;
- b. the receipt ID 00000018 was system generated and it referred to the appellant company having submitted a document;
- c. that receipt simply meant that a document sent by the appellant company had been uploaded by the contracting authority but that receipt did not mean that the sender had submitted the right document or that the contents of the submission were complete and correct;
- d. on receipt the electronic tender submissions were stored in an encrypted form and it was only at tender opening stage that the officer in charge of the system would unlock the encryption so that the tender submissions would be displayed in their proper format;
- e. the Contracts Department has investigated this matter thoroughly, even through its overseas partner Euro Dynamics, and what evidently happened was that when the appellant company's representative uploaded the package onto his computer instead of uploading the tender document he, effectively, uploaded the software of the tender preparation tool;
- f. the appellant company's representative uploaded the 'tender preparation tool.zip' instead of the 'tender document' itself and that was verifiable from the identification numbers generated by the system;
- g. the appellant company did not compile its electronic tender submission online but its representative first created the document on his computer but it was up to the user to create the correct document;
- h. the system generated a receipt indicating that a document had been uploaded but that did not mean that the bidder had submitted the appropriate document or that it was correctly filled in because that came to light at tender opening

stage, namely it was similar to the present system whereby, albeit a receipt was given to the tenderer on depositing a tender submission in the tender box, yet whether the envelope contained the prescribed tender document or whether the document was properly filled in remained to be established at tender opening and tender evaluation stages;

- i. although, ideally, one should fill in the tender document online there might be cases when that would not be practical such as in the case of complex tender submissions;

and

- j. the electronic tendering system was functioning relatively well so much so that even in this tendering process the recommended tenderer presented a compliant electronic tender submission.

The Chairman Public Contracts Review Board remarked that it would be better if the system allowed the user to upload only the tender document template and to block the uploading of other documents so as to eliminate such human errors such as picking up and uploading the wrong document.

Dr Testa argued that the system should have indicated to the user that he did not upload the appropriate document and not simply issue a receipt that the document had been uploaded which, according to the instructions given at the workshop, should have meant that the tender document was acceptable to the system. He argued that, in this way, his client was misled.

Dr Testa also raised the issue that although the tender document stated that only electronic tender submissions were permissible, still, the recommended tenderer made its tender submission by using also PDF files. Dr Testa remarked that in the tender under reference the decimal point restriction in quoting the price had a considerable bearing on the outcome of the tendering process given that the price of a toilet paper roll amounted to about 15 euro cents.

Mr Bartolo explained that:-

- i. the electronic tendering procedure provided the facility to use also PDF files and that facility was available to all tenderers, including the appellant company;
- ii. in fact the system provided, among others, a PDF file which was accessible from the field where the price had to be entered, namely the PDF file was purposely provided for one to enter the price offered and was accessible from the price field of the electronic system itself;
- iii. the recommended tenderer quoted a price to two decimal places in the electronic tendering system, i.e. €0.15, since it only accepted figures up to two decimal places and then the same company quoted the exact price to three decimal places, namely €0.145, in the PDF file, accompanied by an



explanatory note, which PDF file allowed prices to be quoted up to three decimal place;

- iv. the two prices, the electronic and the PDF, were submitted simultaneously in the original tender submission and it was not the case that the recommended tenderer submitted two different prices for the same tender but, effectively, the company submitted one price, namely €0.145 which in the electronic system translated itself into €0.15;

and

- v. on the other hand, the appellant company did not even submit the appropriate tender document but submitted the tender preparation software which indicated no prices whatsoever.

Mr Alexander Zammit, representing the recommended tenderer, stated that, although when filling in the electronic tender document, he was also faced with the problem that the system registered prices up to two decimal places, yet, once the unit price of the product in question was rather low and it was very relevant for him to quote the price up to three decimal places he made an enquiry with the contracting authority and he was informed that the system provided a PDF file, which allowed prices to be quoted up to three decimal places, which was attached to the field in the electronic system where the bidder had to insert price.

Mr Bartolo also stated that the system generated correspondence with bidders such as the recommended award to Zamco Caterware Ltd for the price of €0.145 per roll or €1.45 per 10 rolls.

Dr Testa opined that had the price been requested per 10 rolls the issue concerning the price would not have arisen.

In closing, the Chairman Public Contracts Review Board remarked that the Department of Contracts should have explained the new electronic tendering procedure to this Board so that in such cases it would have been in a position to understand better the mechanics of this new electronic tendering system.

At this point the hearing was brought to a close.

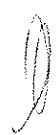
This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' filed on the 9th March 2012 and also through their verbal submissions presented during the hearing held on the 4th July, 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representatives' claims and observations, particularly, the references made to the fact that (a) the appellant company was objecting with both the way it presented its bid and also the way the recommended bidder submitted its bid, (b) a correction was required with regard to para. 1 and 4 of the letter of objection dated 9th March 2012 to the effect that the price quoted by the



appellant company in its electronic tender submission available to the contracting authority should have read “—“ and not “Eur 0.00”, (c) Mr Mark Micallef had filled in the electronic tender submission after having attended a training session at the Contracts Department for the purpose – clause 6.1 of the tender document invited prospective bidders to attend this information workshop, (d) the appellant company had inputted the information as had been instructed during the training course and, following the submission of the electronic tender document, it was informed by email that the tender package has been uploaded, (e) albeit the appellant company had inserted the price of “€0.145”, yet, given that the electronic system allowed numbers up to two decimal places, the price on the company’s screen read “€0.15”, (f) eventually, it resulted that the screen at the contracting authority’s end displayed the price as “—“ instead of the amount “€0.145” keyed in by the appellant company or the “€0.15” allowed by the electronic system, (g) whilst the electronic tender submission made by the appellant company was not printable, yet an electronic version was available on its computer, (h) since Karta Converters Ltd had filled in the tender document and that it had received an acknowledgement that it was uploaded at the Contracts Department’s end, then it was up to the Contracts Department to explain what went wrong that led to his client’s offer being discarded, (i) the system should have indicated to the user that he did not upload the appropriate document and not simply issue a receipt that the document had been uploaded which, according to the instructions given at the workshop, should have meant that the tender document was acceptable to the system arguing that, in this way, the appellant company was misled, (j) although the tender document stated that only electronic tender submissions were permissible, still, the recommended tenderer made its tender submission by using also PDF files and (k) in the tender under reference the decimal point restriction in quoting the price had a considerable bearing on the outcome of the tendering process given that the price of a toilet paper roll amounted to about 15 euro cents;

- having considered the contracting authority’s representatives’ reference to the fact that (a) the electronic tendering system was launched in October 2011 and it should replace the present system entirely by the beginning of 2013 and that during the transition period everyone involved was going through a learning curve, (b) the receipt ID 00000018 was system generated and it referred to the appellant company having submitted a document, (c) that receipt simply meant that a document sent by the appellant company had been uploaded by the contracting authority but that receipt did not mean that the sender had submitted the right document or that the contents of the submission were complete and correct, (d) on receipt the electronic tender submissions were stored in an encrypted form and it was only at tender opening stage that the officer in charge of the system would unlock the encryption so that the tender submissions would be displayed in their proper format, (e) the Contracts Department has investigated this matter thoroughly, even through its overseas partner Euro Dynamics, and what evidently happened was that when the appellant company’s representative uploaded the package onto his computer, instead of uploading the tender document, he, effectively, uploaded the software of the tender preparation tool, (f) the appellant company’s representative uploaded the ‘tender preparation tool.zip’ instead of the ‘tender document’ itself and that was verifiable from the identification numbers generated by the system, (g) the appellant company did not compile its electronic tender submission online but its representative first created the document on his computer but it was up to the user to create the correct document, (h) the system generated a receipt indicating that a document had been uploaded but that did not mean that the bidder had submitted the appropriate document or that it was correctly filled in because that came to light at tender opening stage, namely it was




similar to the present system whereby, albeit a receipt was given to the tenderer on depositing a tender submission in the tender box, yet whether the envelope contained the prescribed tender document or whether the document was properly filled in remained to be established at tender opening and tender evaluation stages, (i) although, ideally, one should fill in the tender document online, there might be cases when that would not be practical such as in the case of complex tender submissions, (j) the electronic tendering system was functioning relatively well so much so that even in this tendering process the recommended tenderer presented a compliant electronic tender submission, (k) the electronic tendering procedure provided the facility to use also PDF files and that facility was available to all tenderers, including the appellant company, (l) in fact the system provided, among others, a PDF file which was accessible from the field where the price had to be entered, namely the PDF file was purposely provided for one to enter the price offered and was accessible from the price field of the electronic system itself, (m) the recommended tenderer quoted a price to two decimal places in the electronic tendering system, namely €0.15, since it only accepted figures up to two decimal places and then the same company quoted the exact price to three decimal places, namely €0.145, in the PDF file, accompanied by an explanatory note, which PDF file allowed prices to be quoted up to three decimal place, (n) the two prices, the electronic and the PDF, were submitted simultaneously in the original tender submission and it was not the case that the recommended tenderer submitted two different prices for the same tender but, effectively, the company submitted one price, namely €0.145 which in the electronic system translated itself into €0.15, (o) on the other hand, the appellant company did not even submit the appropriate tender document but submitted the tender preparation software which indicated no prices whatsoever and (p) the system generated correspondence with bidders such as the recommended award to Zamco Caterware Ltd for the price of €0.145 per roll or €1.45 per 10 rolls;

- having considered the recommended tenderer's representative's reference to the fact that although when filling in the electronic tender document he was also faced with the problem that the system registered prices up to two decimal places, yet, once the unit price of the product in question was rather low and it was very relevant for him to quote the price up to three decimal places he made an enquiry with the contracting authority and he was informed that the system provided a PDF file which allowed prices to be quoted up to three decimal places which was attached to the field in the electronic system where the bidder had to insert price,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that it would be better if the system allowed a user to upload only the tender document template and to block the uploading of other documents so as to eliminate such human errors such as picking up and uploading the wrong document.
2. This Board acknowledges that (a) the recommended tenderer quoted a price rounded to two decimal places in the electronic tendering system, namely €0.15, since it only accepted figures up to two decimal places and then the same company quoted the exact price to three decimal places, namely €0.145, in the PDF file, accompanied by an explanatory note, which PDF file allowed prices to be quoted up to three decimal place and (b) the two prices, the electronic and the PDF, were submitted simultaneously in the original tender submission and it was not the case that the recommended tenderer submitted two different prices for the same tender but,



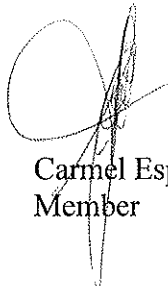
effectively, the company submitted one price, namely €0.145 which in the electronic system translated itself into €0.15.

3. The Public Contracts Review Board, albeit, in principle, it does not agree with the option allowed, yet it cannot but acknowledge the fact that, since the system provided the facility for a tenderer to use also PDF files and that such facility was available to all tenderers including the appellant company, it was only fair to retain that a tendering company which exercised this option should not be penalised for having done so, acted according to tender specifications.
4. On the other hand, this Board also acknowledges the fact that the appellant company did not even submit the appropriate tender document but submitted the tender preparation software which indicated no prices whatsoever. Undoubtedly, this Board has deliberated upon the fact that the system could be, somehow, vitiated but it transpired that, albeit it may still need some fine tuning – such as when a document is first created on a personal computer and then data is transferred and submitted electronically to the contracting authority - yet it was also a fact that (a) the appellant company did not even submit the appropriate tender document but, erroneously, when the appellant company's representative uploaded the package onto his computer, the appellant company's representative uploaded the 'tender preparation tool.zip' instead of the 'tender document' itself and (b) the electronic tendering procedure provided the facility for one to use also PDF files and that facility was available to all tenderers, including the appellant company.
5. The Public Contracts Review Board agrees with the contracting authority's line of reasoning wherein it was argued that the system generated a receipt indicating that a document had been uploaded but that did not mean that the bidder had submitted the appropriate document or that it was correctly filled in because that came to light at tender opening stage, namely it was similar to the present system whereby, albeit a receipt was given to the tenderer on depositing a tender submission in the tender box, yet whether the envelope contained the prescribed tender document or whether the document was properly filled in remained to be established at tender opening and tender evaluation stages.

In view of the above this Board finds against the appellant company but recommends that the latter should be reimbursed with the deposit paid for the appeal to be lodged as this Board considers the appeal not to have been filed in a frivolous manner.



Alfred R Triganza
Chairman



Carmel Esposito
Member



Joseph Croker
Member

11th July 2012