

PUBLIC CONTRACTS REVIEW BOARD

Case No 2078 – CFT 009-3622/24 (CPSU 0743/24) – Supplies Tender - Tender for the Supply of Vinyl Coated Gypsum Tiles

24th February 2025

The Board,

Having noted the letter of objection filed by Dr Carl Grech, acting on behalf of Fenech and Fenech Advocates, acting for and on behalf of Project Technik Limited (hereinafter referred to as the "Appellant"), filed on the 9th of September 2024;

Having also noted the letter of reply filed by Dr Alexia J Farrugia Zrinzo and Dr Leon Camilleri, acting for and on behalf of the Central Procurement and Supplies Unit (CPSU) (hereinafter referred to as the "Contracting Authority"), filed on the 12th of September 2024;

Having heard and evaluated the testimony of the witness Mr Jean Mifsud (Representative of the Project Technik Limited) as summoned by Dr Carl Grech acting for Project Technik Limited;

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

Having noted and evaluated the minutes of the Board sitting of the 13th of February 2025, hereunder reproduced:

Minutes

Case 2078 – Cft 009-3622/24 (CPSU 0743/24) – Tender for the Supply of Vinyl Coated Gypsum Tiles

The tender was published on the 11th June 2024 and the closing date of the call for tenders was the 26th June 2024

The estimated value of this tender, excluding VAT, was € 130,000.

On the 9th September 2024 Project Technik Ltd filed an appeal against the decision of the Central Procurement and Supplies Unit to disqualify their offer on the grounds that it was financially not compliant.

A deposit of € 655 was paid.

There were six bids.

On the 13th February 2025 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Dr Damien Gatt as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Project Technik Ltd

Dr Carl Grech

Legal Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Leon Camilleri	Legal Representative
Dr Alexia Farrugia Zrinzo	Legal Representative
Mr Stephen Mercieca	Chairperson of the Evaluation Committee
Ms Silvana Spiteri	Secretary of the Evaluation Committee
Mr Joseph Muscat	Evaluator
Ms Branica Amato Gauci	Representative

Recommended Bidder - Mr Christian Bezzina

Mr Christian Bezzina	Representative
Mr Joseph Bezzina	Representative
Mr Roger Bezzina	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Carl Grech Legal Representative for Project Technik Ltd stated that the tender covered the supply of tiles and appellant's offer had been disqualified because in the Financial Bid Form a price had been indicated showing three decimal points. There were no problems with the decimal point in the total shown but in the unit cost. There was certainty in the offer as it was very clear what the bid offer was. If the Evaluation Committee had a problem with the unit price it could have been clarified or rectified by a simple process. In Case No 8/2018 also involving Project Technik the Appeal Court held that proportionality principal demanded a rectification in the case of a cheaper bid.

Dr Leon Camilleri Legal Representative for the Central Procurement and Supplies Unit said that the General Rules Governing Tenders made it very clear that offers had to be up to two decimal points as three points do not exist as a currency. The Financial Bid Form was subject to Note 3 and clearly stated that both unit price and grand total must be submitted up to two decimal points. This is not a case of an arithmetical error nor a case of proportionality; if this latter principle had been observed the Authority would have ignored the principle of self-limitation and would have acted unfairly to other possible bidders.

Mr Jean Mifsud (43581M) called to testify by the appellant stated on oath that he was Head of Retail of the appellant company. Referring to the figures in the Financial Bid Form he explained that the price was based on the contents of a whole box of tiles which when translated to the cost of single tiles gave a three decimal price figure. He understood the instructions to mean that it was the grand total that had to be in shown as two decimal places. Appellant had had no communication from the Authority on this matter. Witness referred to a previous tender where a similar query had arisen regarding the decimal point and a rectification had been sought and the tender awarded to the appellant (tabled as DOC 1).

In reply to questions from Dr Camilleri, witness confirmed that he had been responsible for completing the Financial Bid Form and was aware of the stipulation regarding decimal points. Referred to DOC 1 witness confirmed that in that case the unit price was shown after amending to two decimal points.

This concluded the testimony.

Dr Grech said that the Contracting Authority should have acted in this case in a similar way to that in the previous tender and instead of disqualifying should have sought a rectification. It is not normal practice to buy this product in single units and this created problems on unit costs. On a 20% lower offer logic demanded that proportionality should have been applied.

Dr Camilleri stated that each tender had to be decided on its own merits. The General Rules deal only with arithmetical errors and General Rule 17.1 gives a whole raft of the circumstances where errors can be corrected. None of these circumstances apply in this situation where three decimal places do not exist as a currency. Regulation 262 could have been used if appellant anticipated any difficulties in meeting the tender requirements. Proportionality did not apply in this case – equal treatment is what had to be practiced here. Appellant’s claim should be denied.

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 13th of February 2025.

Having noted the objection filed by Project Technik Limited (hereinafter referred to as the "Appellant") on the 9th of September 2024 and refers to the claims made by the same Appellant with regards to the tender of reference CFT 009-3622/24 (CPSU 0743/24) listed as case No. 2078 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Carl Grech

Appearing for the Contracting Authority: Dr Alexia Farrugia Zrinzo and Dr Leon Camilleri

Whereby, the Appellant contends with respect to:

- a) ***The Evaluation Committee ought to have requested a clarification of the Tender and it further ought to have corrected the arithmetical error to the correct amount***

In terms of Clause 15 of the General Rules Governing Tenders, the evaluation committee may, after obtaining approval from the Director General (Contracts)/Departmental Contracts Committee/Sectoral Procurement Directorate, as the case may be, ask a tenderer to clarify any aspect of his tender.

In terms of Clause 15.2 a tenderer may correct arithmetical errors discovered by the evaluation committee when analysing tenders in accordance with Clause 17, which states that:

“Admissible tenders will be checked for arithmetical errors by the Evaluation Committee. Without prejudice to other arithmetical errors which may be identified, the following errors will be corrected as follows:

(a) where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;

(b) where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail;

(c) where no rate or price has been entered, but a total has been provided, the rate is to be established by dividing the total against the quantity published;

(d) where a rate or price has been entered, but no total has been inputted, the rate is to be multiplied by the quantity published to derive the total;

(e) where there is an error in addition in the Grand Total, the evaluation committee will adjust with the correct amount.

As per Clause 17.3 the amount stated in the tender will be adjusted by the Evaluation Committee in the event of error, and the tenderer will be bound by that adjusted amount. In this regard, the Evaluation Committee shall communicate the revised price to the tenderer through a confirmation request via the ePPS. If the tenderer does not accept the adjustment within five (5) working days, his/her tender will be rejected and his tender guarantee forfeited (if applicable).

The fact that three decimal points resulted in the grand total of the offer was the result of an arithmetic error and thus, rather than deeming the offer to be inadmissible and deem the bid to be incompliant, the Evaluation Committee ought simply to have corrected the error in addition in the Grand Total and have the tenderer bound by the corrected amount. Thus, there can be absolutely no doubt that the Appellant would have had in fact simply confirmed acceptance of the adjustments as a result of the arithmetic errors as indicated by the Evaluation Committee itself. It should thus be immediately clear from the nature of the error and from the result of this error that this is nothing more than a mere typing error that should have absolutely no impact on the financial bid in question.

It is submitted that in this case, the Evaluation Committee had to limit itself to adjusting the correct amount as confirmed by the Appellant through the letter dated 2nd November and proceed with awarding the Tender accordingly.

Similarly in terms of Article 62(3) of the Public Procurement Regulations – SL 174.04 on Valid Bids reads as follows:

62. (1) Without prejudice to Part VI and regulation 235(2), the authority responsible for the tendering process must ensure that an economic operator must ab initio be eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same.

(2) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities in terms of the procurement document may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit:

Provided that such requests are made in full compliance with the principles of equal treatment and transparency.

(3) The financial bid cannot be changed with the exception for the correction of evident arithmetic errors as may be allowed in the procurement document.

In this case, the economic operator was deemed to be eligible to qualify for this tender and was in possession of all the requirements stipulated in the procurement documents. The financial bid could be corrected for the evident arithmetic errors and thus the bid should have been deemed to be valid in terms of this Regulation.

Reference is also made to Regulation 146 of the Public Procurement Regulations that reads as follows:

Those tenders may be clarified, specified and optimised at the request of the contracting authority. However, such clarification, specification, optimisation or additional information may not involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.

There can be absolutely no doubt that the application of the amount that ought to have been indicated by the Evaluation Committee would have not in any way distorted competition or have a discriminatory effect.

The indication of the said rates were a mere *lapsus calami* that would have very easily been rectified had the Appellant been given the possibility to clarify this error.

In the circumstances it was unnecessary and completely disproportionate to deem the bid as inadmissible.

It should not be the intention of a contracting committee as regulated by EU Rules of what is necessary for a bona fide offer on any public procurement tender to disqualify an otherwise lawfully submitted tender when there is little if any doubt that what the Department may have regarded as *de minimis* omission would in no way have given rise to any doubt in the minds of the Contracting Authority/Director of Contracts or indeed in the eyes of any other bidders or interested third parties.

The Board also noted Contracting Authority's Reasoned Letter of Reply filed on 27th of November 2024 and its verbal submission during the hearing held on 13th February 2025, in that:

- a) ***The Evaluation Committee ought to have requested a clarification of the Tender and it further ought to have corrected the arithmetical error to the correct amount***

In its grievance the objector claims that what led to the three decimal points was an arithmetical error, and should have been adjusted with the correct amount by the evaluation committee in line with *clause 17.1(e)* of the General Conditions Governing Tenders which states that “*where there is an error in addition in the Grand Total, the evaluation committee will adjust with the correct amount.*”.

This is totally unfounded both in fact and at law.

The objector made an offer with a three decimal point in the unit price and not in the total value, and there is no arithmetical error. The unit price of €1.525, when multiplied by the quantity stipulated in the financial bid form of 50,000 amounts exactly to the total amount indicated in the financial bid form of €76,250.

It is therefore clearly not a case of an arithmetical error, moreover even if there was an arithmetical error, this could have never been adjusted because three decimal point is not accepted in currency and is not acceptable as will be explained below.

The financial bid form clearly stated that “*Three decimal points do not exist as currency; therefore such offers cannot be accepted. All amounts quoted in the financial bid are to be submitted up to two decimal points. (Both the unit price/rate and the grand total price should be up to 2 decimal places)*”;

This is derived from clause 7.5 of the General Rules Governing Tenders which provide that:

*“The currency of the tender is the Euro (€). **Offers are to be submitted up to two decimal points.** In accordance to the provisions of Council Regulation (EC) No. 974/98, it is here being reiterated that three (3) decimal points do not exist as currency. To this effect, any financial value/amount in the Financial Offer of a Procurement Call shall be up to two (2) decimal points. Therefore, if a Financial Bid offer contains a value with three (3) or more decimal points, such a bid cannot be accepted and shall thus be disqualified.”.* The emphasis in bold is also included in the general rules

Clause 7.5 imposes a mandatory obligation on the part of the evaluation committee to reject such offers as is evident from the words “*such a bid cannot be accepted and shall thus be disqualified*”;

In line with the principle of self-limitation, the principle of equal treatment of bidders and in observance of the law and of the General Conditions Governing Tenders, the evaluation committee acted in the only permissible way and rejected the 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 witness duly summoned, will now consider Appellant's grievances.

- a) After careful consideration of the Financial Bid form submitted by the appellant, this Board confidently asserts that the issue at the heart of this appeal does not constitute an 'arithmetical error'. When a multiplication is carried out between the unit price and the quantity offered, the grand total is correctly calculated.
- b) The issue at hand concerns the use of three decimal places in the 'unit cost'. The appellant company has proposed a 'unit cost' of €1.525, i.e. with three decimal places. Had the unit price been rounded to either €1.52 or €1.53, the resulting 'Grand Total' would differ.
- c) At this juncture, the Board refers to a number of documents:
 - i. The Financial Bid form clearly states *"Three decimal points do not exist as currency; therefore such offers cannot be accepted. All amounts quoted in the financial bid are to be submitted up to two decimal points. (both the unit price/rate and the grand total price should be up to 2 decimal places)."* (bold emphasis added)
 - ii. The General Rules Governing Tenders, in paragraph 7.5 also specify: *"The currency of the tender is the Euro (€). Offers are to be submitted up to two decimal points. In accordance to the provisions of Council Regulation (EC) No. 974/98, it is here being reiterated that three (3) decimal points do not exist as currency. To this effect, any financial value/ amount in the Financial Offer of a Procurement Call shall be up to two (2) decimal points. Therefore, if a Financial Bid offer contains a value with three (3) or more decimal points, such a bid cannot be accepted and shall thus be disqualified."* (bold emphasis added)
 - iii. In PCRB case 1079 decided on 12 September 2017 it was ruled: *"In this regard, this Board opines that the unit price should prevail in the adjudication of this Tender, hence the unit price submitted by Associated Marketing Limited was justifiably discarded due to the fact that it was expressed in more than two decimal places."* (bold emphasis added)
- d) Therefore, contrary to the appellant's argument, if this appeal were to be upheld it would contradict the principles of proportionality and equal treatment.

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 Ing. Damien Gatt
Member

Mr Lawrence Ancilleri
Member