



The hearing started twenty minutes late and the Chairman explained that the Board would not tolerate further such instances. Then, after a brief introduction, the Chairman invited the appellant to give the reasons for the objection.

Mr Jeffrey Calleja on behalf of appellant and a Director of Yorkie Clothing Limited explained that this tender being a three package tender, all bidders should have submitted a bid bond forming the first package of the tender. However, when the tenders were opened, the recommended bidder's bid did not contain any bid bond. This information was obtained from the publication of the opening of the bids on the internet. He contended that since according to page 10 of the tender document the submission of a bid bond was mandatory, and failure to submit it would automatically disqualify bidder, he could not understand why Cadet Direct Limited's bid was not discarded immediately, but awarded the tender. He claimed that he asked the Contracts Department in writing to see the bid bond in question and was told that he had no right to do so.

Lieutenant Colonel Andrew Mallia explained that he was not a member of the adjudicating board but the then Chairman, Lieutenant Galea Roberts who has since been posted overseas according to the exigencies of the service. I took over in his absence. Not being personally present during the opening session, when the tenders were opened he gave a brief resume of how he understands things happened. When the tenders were opened, the Department of Contracts who is the contracting authority, which opens the bids, failed to forward to us, the end users, the bid bond relative to tenderer number 4, the preferred bidder. The following day Mr Bernard Bartolo of the General Contracts Committee forwarded to us the bid bond from tenderer 4 and said that it had not forwarded to us. This was on the 24<sup>th</sup> May 2012. An email from Mr Bernard Bartolo stated that they had received the bid bond in one of the bids in the Uniforms tender yesterday and that he was passing it so that it would be passed to the evaluation board as the Bid bond column for the bidder was marked as "no" since it was not drawn up properly as it was not drawn up to the Director of Contracts. The Board understood that this bid bond was received in time but was not valid.

The evaluation board continued in their evaluation and when they examined the relative bid bond they felt that this was in fact valid. They prepared the evaluation report from where it emerged that all bidders were administratively, technically compliant and tenderer 4 was found to be the cheapest tender. This report was dated 23rd July 2012.

The Chairman referred to an email from Ms Joelle Mifsud Bonnici which stated that *"During the meeting of the General Contracts Committee of the 16<sup>th</sup> October 2012, the committee concurred to revoke its decision, i.e the recommendation of award of this tender to T4 Cadet Direct Ltd., since Nat West Bank has confirmed that it had provided a valid Bank Guarantee on the 7<sup>th</sup> June 2012, i.e. after the closing date of this tender. In the circumstances the evaluation committee is kindly requested to nominate the next cheapest tender offer."*

Lieutenant Colonel Andrew Mallia stated that the evaluation committee contested that assertion because the question she made to the bank was not properly worded and could lead to a distorted reply. In fact we entered into discussion with the Contracts Department and had meetings with the General Contracts Committee wherein it was explained that they had no reason to disqualify the bid because there was no evidence that a) it was issued after the closing date and b) it was invalid. The General Contracts Committee concurred with this and they withdrew their objection. He explained that the original bid bond was replaced by another after the closing date, but this is allowed and does not mean that the original was

invalid. Nat West affirmed by email of the 26<sup>th</sup> February 2013 that it would have honoured the original bid bond, had it been asked.

Another point Lieutenant Colonel Mallia raised was that the original award was published on the 31<sup>st</sup> August 2012 and this award had never been revoked. There was no new evaluation made afterwards. Appellant had 10 days from the original award to file an objection but he did not. He stressed that the original award was never revoked and was still valid and upheld. The evaluation board did not produce any other report. Thus he contended that the appeal was null and void since it was filed too late. He filed several copies of emails that explained what had occurred.

At this stage the hearing was suspended until a representative from the Contracts Department appeared. After waiting for someone from the Contracts Department to make an appearance, the Public Contracts Review Board was informed that Ms Joelle Mifsud Bonnici was no longer there and she had not informed anyone on the matter. The Director General is away and there was no one else who could come. They were however sending Dr Franco Agius to act as Department representative.

At this point the hearing was brought to an end.

**This Board,**

**Having noted the Appellant's objection, in terms of 'Reasoned Letter of Objection' dated 19<sup>th</sup> April 2013 also through the Appellant's verbal submissions during the hearing held on the 25<sup>th</sup> July 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The recommended Bidder's Offer did not contain the Bid Bond, as was duly necessary.**
- b) The preferred Bidder's offer should have been discarded in the first instance.**
- c) The Appellant's Bid was administratively and technically compliant.**
- d) The Appellant's Bid was the second cheapest.**

**Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on the 25<sup>th</sup> July 2013:**

- a) The Bid Bond issued by the preferred bidder was first considered as invalid by the Evaluation Board but after further verifications this decision was reversed by the same Board.**
- b) To this effect, after considering all the aspects of the tender, the Evaluation Board recommended the Bidder who was administratively and technically compliant and the cheapest.**
- c) The Evaluation Board took also into account that the Preferred Bidder could deliver and execute the contract.**

**Reached the following conclusions:**

- 1. The Bid Bond submitted by the Preferred Bidder was confirmed by National Westminster Bank to be valid in all respects.**
- 2. The Preferred Bidder's offer was administratively and technically compliant.**
- 3. The Preferred Bidder's offer was the cheapest.**

**In view of the above, this Board finds against the Appellant Company, however, due to ambiguous circumstances (which could have been avoided by the Contracting Authority), this Board recommends that the deposit paid by the Appellant be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*3 September 2013*