



Following a brief introduction by the Chairperson, the appellant's representative was asked to make his submissions on the relative objection.

Mr Jeffrey Calleja on behalf of the appellant Astor Company Limited explained that appellant had submitted three options for the tender. Its offer for Option 1 was disqualified as being technically non compliant and the other two options were disqualified because they exceeded the available budget. However appellant's Option 2 exceeded the previous awarded tender, that awarded in 2009, just by 11%. This increase just covers the cost of living increases given over the intervening years. Contends that whoever worked out the estimates for the present tender reached a too low figure. He further contended that appellant's offer for items 1 and 3 were cheaper than that of 2009. Mr Calleja contends that the appellant could have been awarded one option. He insists that the global price exceeds the previous tender by just €1146.

Oreste Cassar, Chairman of the evaluation board, on behalf of the contracting authority, said that the estimate for the tender is calculated after obtaining from the user departments the number of flags they would be using. The Evaluation committee had a commitment of €21,000 for these flags, including VAT. There were two bidders that were within this budget, and these were asked to submit samples that were then tested at the MCCA Laboratories. These tests are costly and cost around €600 per test. It resulted that these two bids that were within the budget turned out to be technically non-compliant. Thus at that stage, it was decided to stop the evaluation because of the budget restrictions. The appellant's two other options were not tested because, being over the estimate it was felt that testing them would be paying the test costs for nothing. He explained that all the offers that were clearly over the estimate were not considered any further.

Mr Jeffrey Calleja insisted that there must have been a mistake when the estimated budget was being prepared, because the quantity of required items had increased.

Mr Oreste Cassar reiterated that the end users are consulted before assessing the estimated value of the tender, it could be that the demand for these flags was lower than in the previous tender. In fact there were two bidders who were within the estimate, but their bids were not technically compliant.

The hearing was here brought to a close.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 30<sup>th</sup> April 2013 and also through the verbal submissions during the hearing held on 1<sup>st</sup> October 2013, had objected to the decision taken by the pertinent Authority , in that:**

- a) The Appellant's bid for Option 1 was not technically compliant and to this effect the Appellant's offer was disqualified from the next stage of the evaluation process.**

- b) The Appellant insisted that his bid for Option No 2 only exceeded the previous tender value by 11%. This increase in Bid price reflected the increases in cost of living allowances over the years. To this effect, the Appellant's bid for Option 2 was also discarded by the Evaluation Board as the Appellant's bid price failed to fall within the Budget allotted for this tender.**
- c) The Appellant's bid price for Option 1 and Option 3 were in fact cheaper than the price quoted for the same product in the previous tender issued in 2009.**

**Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 1<sup>st</sup> October 2013, in that:**

- a) The Contracting Authority estimates the value of the tender based on the demand requested by the user departments.**
- b) All submitted offers were technically non compliant.**
- c) In view of b) above the Contracting Authority decided to cancel the tender process.**

**Reached the following conclusions:**

- 1. The Appellant cannot and should not compare the estimated value of the present tender with that of a previous issued tender. Each tender has its own requisites and quantities and in this regard, this Board feels that such comparison is not logical.**
- 2. It is a known established fact that a budget is formulated by the Contracting Authority, based on information or rather anticipated requirements of the user departments. In this regard the Evaluation Board acted diligently in cancelling the tender as all submitted offers exceeded the allotted value for this tender.**
- 3. This Board also points out that all bidders were technically non compliant.**

**In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*5 November 2013*

