



The Chairman made a brief introduction and invited the appellant's representative to make his submissions.

Mr Rhys Lee Buttigieg on behalf of the appellant said that his firm's tender in spite of being the cheapest, had been rejected at administration compliance stage since it had failed to submit a copy of the test certificates, signed by an engineer, of the main excavator and the main tipper truck. The reason for the request of these tests was in order for the contracting authority to know whether these vehicles were usable or not. The tender also required the submission of the insurance certificate and the appellant had submitted the requested certificate. He contended that in order to have the vehicles insured, appellant had to submit the test certificates to the insurance company. Thus he insisted that these two requirements of the tender cancelled each other out. Furthermore there was another clause that bidders had to have back-ups for the vehicles they offered. If these back up vehicles were not in Malta at the time of tender submission, bidders were allowed twenty one days to produce the necessary certificates. Since appellant had back up vehicles available locally as well as others that were not yet in Malta, it was felt that the certificates could be produced after 21 days. He contended that the tender could not have been awarded within those 21 days.

Dr Victor Scerri on behalf of the contracting authority stated that appellant's offer had been disqualified in terms of clause 1.2.16. Vehicles already in Malta, and appellant had declared that one vehicle was in Malta, had to be provided with a test certificate copy. But appellant did not produce this certificate. He stated that the evaluation board could not do otherwise but disqualify appellant's bid because this was clearly stated in the tender document which said "failure to provide the test certificate with the tender submission shall result in the disqualification of the tender".

The Chairman explained that the tender had a requisite that this certificate had to be submitted for all vehicles already in Malta. The evaluation board cannot ignore the non-submission of any document that was mandatory requested.

Dr Victor Scerri reiterated that the evaluation board had to adjudicate on the documents available to it and had to abide with the tender conditions.

At this point the hearing was closed.

### **This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 28<sup>th</sup> February 2014 and also through Appellant's verbal submissions during the hearing held on 27<sup>th</sup> May 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant's offer was discarded as being 'administratively non compliant', due to the fact that same failed to submit a copy of the test certificate duly signed by an Engineer relating to the main excavator and the main tipper truck.**

- b) Appellant claims that since he submitted the insurance certificates of the equipment mentioned in (a) above, it was proof enough that the equipment was properly tested, as otherwise the Insurance Company would not have issued such certificate.

Having considered the Contracting Authority's verbal submissions during the hearing held on 27<sup>th</sup> May 2014, in that:

- a) Appellant did not submit the Engineer's certificate for the equipment as dictated in clause 1.2.16. This was a mandatory requirement.
- b) The Evaluation Board could not ask for clarifications on a missing document as otherwise it will give rise to a rectification.

Reached the following conclusions:

1. This Board had, on numerous occasions, ruled that when a prospective tenderer submits his signed tender document, he is contracting to abide by the conditions and requisites as dictated in the same document. One of the mandatory requirements was that the 'tenderer' had to submit a test certificate signed by an Engineer certifying that the main equipment to be utilised in the tender works were up to the required standard. In this regard, Appellant failed to abide by clause 1.2.16 of the tender document.
2. The tender document clearly and explicitly stated that 'failure to provide the test certificate with the tender shall render in the disqualification of the offer'. Appellant had the opportunity to clarify with the Contracting Authority prior to submission of his offer. Appellant did not avail himself of this remedy.
3. The Evaluation Board was correct in discarding Appellant's bid as being 'non administratively compliant'.

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

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

8 July 2014

