

The Chairman made a brief introduction and asked the appellant to make his submissions on the objection.

Mr Justin Attard, the appellant said that he had been informed that his tender had been found to be administratively non-compliant because two mandatory items in the schedule of rates of his tender had not been filled in. He felt that this was not sufficient reason for his tender to be rejected.

Perit Joseph Camilleri, the chairman of the evaluation board, on behalf of the contracting authority submitted that the board had disqualified appellant's tender for two reasons. The first one was that two items in the bill of quantities had been filled in with a dash. There was thus ambiguity; the board could not interpret these marks as either minus signs or an indication that the items would not be supplied. The tender document had made it clear in clause 2.8.3 that "Rates and prices shall be entered against each item in the bill of quantities/schedule of prices/rates, or otherwise specifically declared as 'Nil' or 'included' in writing. The price of any item in the bill of quantities/schedule of prices/rates, against which no interpretable entry in writing has been made (i.e. either left blank or marked with a dash or other such unreadable signs), wilfully or otherwise, shall be deemed 'Nil' or 'Included' in other items of the bill of quantities. Requests for correction of such entries during the execution of the contract shall not be entertained." The second was the failure by the appellant to submit samples by the closing date as required by the tender document.

The Chairman at this point remarked that the letter of rejection sent to appellant only mentioned the first reason; there is no mention of non-production of samples.

Perit Joseph Camilleri said that the evaluation report contained both reasons but the letter of rejection was not sent by the evaluation board and he was not aware of its contents.

Perit Joe Borg Grech for the contracting authority said that the submission of samples was important as the tender could not be properly evaluated without them.

Mr Justin Attard explained the reason for not submitting samples. He said that the requested system was very specialised. He had however submitted with his tender a declaration that within three days he would be submitting the samples.

Perit Joseph Camilleri for the contracting authority said that the tender required the submission of two samples, those the lights and the other of the mist sprinklers. These samples were indispensable for the adjudication of the tender. In fact the second cheapest bidder produced the samples but was disqualified because these were not up to requirements.

Perit Joe Borg Grech for the contracting authority submitted that clause 8.5.1 – "Compulsory Submission of the following literature with the tender document."- made it clear that the production of the samples had a great weight in the adjudication of the tender.

Mr Justin Attard, the appellant said that he came prepared to make submissions on the reason given to him for the disqualification and was not prepared to discuss any new reason. The reason for not submitting the samples was that his supplier would not provide samples to him to enable him to submit them with the tender. He insisted that the letter of rejection should have given clearly all the reasons for the rejection.

Perit Joseph Camilleri for the contracting authority said that the evaluation board continued assessing all the tenders, even those that had been administratively non-compliant. It could be the reason why the procurement section had sent the incomplete reasons to appellant.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection in terms of the 'Reasoned Letter of Objection' dated 21st April 2014 and also through Appellant's verbal submissions during the hearing held on 17th June 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that his offer was discarded as the Contracting Authority deemed Appellant's bid as being 'administratively non compliant' due to the fact that in the 'schedule of rates' with specific reference to items 1.01 and 1.02, Appellant failed to fill in the rate as was required in the said schedule.**
- b) Appellant contends that in fact, he did fill in items 1.01 and 1.02 by marking such items in the 'schedule of rates', with a dash.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 17th June 2014, in that:

- a) The Contracting Authority maintains that Appellant's entries relating to items 1.01 and 1.02 of the 'schedule of rates' of the tender document were marked with a dash. The Evaluation Board found it difficult to interpret whether the dash denoted a 'nil' or there was a missing value.**
- b) Apart from the above, Appellant had to produce sample of 'Lights' and 'Mist sprinkles' with the submission of the tender document, as these were of great importance for the adjudicating process. Appellant did not submit such samples.**

Reached the following conclusions:

- 1. This Board notes the contents of the 'Letter of rejection' of Appellant's offer dated 11th April 2014 sent by the Contracting Authority. The reason stated by the Contracting Authority for such a refusal was 'non compliance of the mandatory clause 1.2.2 –items 1.01 and 1.02, in the schedule of rates not filled in'.**

In this regard, this Board refers to clause 2.8.3 of the tender document which states that:

"Tenderers shall quote all components of the price, inclusive of VAT and other taxes, etc. Except as may be provided for the contract ,etc Rates and Prices against each item in the Bill of Quantities/Rates OTHERWISE SPECIFICALLY MARKED NIL AGAINST WHICH NO INTERPRETATION IN WRITING

HAS BEEN MADE, SHALL BE DEEMED AS ALL INCLUSIVE”.

In this regard, this Board opines that items 1.01 and 1.02 of the schedule of rates were in actual fact ‘filled in’ and the Evaluation Board should have applied clause 2.8.3 of the tender document and therefore should have accepted Appellant’s dash as meaning ‘All Inclusive’.

- 2. This Board notes that during the Contracting Authority’s verbal submissions, it was stated by same that there was a second reason for discarding Appellant’s bid and that was the non-submission of samples by Appellant as dictated in clause 8.5.1 of the tender document. Although the Contracting Authority failed to mention the second reason to Appellant in its ‘Letter of Refusal’, this was a mandatory requirement which Appellant failed to submit with the tender document.**

In this regard, Appellant failed to abide by the requirement to provide samples which were of great importance for a fair and just adjudication process. This Board opines that the Evaluation Board acted in a diligent manner in this regard, in discarding Appellant’s offer for not providing samples.

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

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

5 August 2014