



Following a brief introduction by the Chairman, the appellant's representative was invited to make his submissions on the objection.

Dr Michael Caruana on behalf of the appellant submitted that the products requested in this tender were simple galvanized water pipes. Appellant had been supplying Government with these for a number of years. Appellant's offer this time has however been rejected because *"ISO certificate submitted does not cover design, as requested in section 4 clause 2."* With its tender, appellant had submitted ISO certification covering manufacture. Pipes are all the same unless different qualities of iron, different threading, sockets and welding were different. Disqualification because of discrepancy in the products galvanizing, the sockets or welding would have been in order but not because of design. Appellant had also submitted samples with the tender and there have been no indication that these samples lacked anything. Appellant had submitted an already established product and was astounded when its offer was disqualified on the design of the pipes. After all pipes were pipes and the design of pipes was limited. The ISO manufacturing certificate enclosed with the tender in itself included how the pipes had to be made and there was no mention of design. Appellant had submitted a heavy duty pipe that the evaluation board should have chosen under the 'bonus pater familiae' principle. Instead the board had chosen a product that was 15% costlier. Dr Caruana contended that the design certificate for the product was irrelevant.

Mr Jonathan Scerri on behalf of the contracting authority, was the Chairperson of the evaluation board explained that ISO certification had 7 scopes including manufacturing, and design. Section 4 of the tender dossier stated that if no valid third party ISO 9001 certificate is submitted with the tender offer, technical evaluation will not proceed any further. This was because in the past, some offers had been technically evaluated and later found to be lacking certification with the resulting waste of time. In the present case, appellant's product was not disqualified because it was technically non-compliant, but it was not evaluated technically since it failed administratively. The evaluation board had wanted to ask for clarifications on this point, but the DCC refused to grant permission for this. The ISO certificate submitted by appellant did not include the design.

Engineer Joe Curmi on behalf of the contracting authority explained that the design certification was demanded in order to ensure compliance. In the past there had been instances where pipes appeared normal but failed within a short time. Appellant had provided samples that visually appeared normal but these could not be evaluated because the evaluation board were precluded from asking for clarifications and the tender had stopped at the administrative compliance stage.

Mr Jonathan Scerri explained that ISO certification certified that the manufacturer is following certain quality procedures.

Engineer Joe Curmi continued that the contracting authority wanted to ensure a certain level of the products submitted and so had asked for ISO certification also on the design. He reiterated that appellant's tender was not technically evaluated since the evaluation board's request for clarification had been rejected by the DCC. He explained that Section 4, Clause 2 clearly stated that *"Only suppliers who have in operation at their manufacturing facilities a quality assurance system in accordance with ISO 9001:2008, with certification for both design and manufacture functions, will be considered."*

Mr Jonathan Scerri reiterated that the evaluation board wanted to ask for clarification but was not allowed and filed copies of the relevant correspondence with the DCC. The appellant's tender was not strictly rejected at the administrative stage but at the start of the technical compliance stage. The Department of Contracts had directed that ISO certification is not tested at the administrative compliance stage but at the technical compliance stage. Since it was not submitted the evaluation process had to stop at that stage.

Dr Michael Caruana stated that he does not agree. The higher authorities should not have stopped the demand for clarifications since notes to clause 7 states that tenderers will be requested to either clarify/rectify any incorrect or incomplete document within two working days.

Mr Jonathan Scerri explained that the note referred only to 7.1. There are three notes relating to several clauses. Note 3 stated that no rectification will be allowed.

Dr Michael Caruana insisted that since there was no difference between the products submitted by appellant and the preferred bidder, the cheaper should have been chosen. Furthermore since samples had been requested then these should have been evaluated and not ignored. The samples would have been the best proof. He insisted that the design, when it comes to galvanized water pipes, is irrelevant. He asked that the samples provided by the appellant be examined and assessed.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 11<sup>th</sup> June 2014 and also through Appellant's verbal submissions during the hearing held on 28<sup>th</sup> July 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that his offer was unfairly discarded due to the simple fact that the ISO certificate submitted by same did not include the 'design' factor. Appellant also claims that the omission of the 'design' in ISO certificate was of no importance to the product being offered.**
- b) Appellant also contends that in accordance with clause 7 of the tender document, the Contracting Authority could have asked for clarifications regarding the non-inclusion of the design factor within two working days. In this regard, the Contracting Authority did not ask for any clarifications.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 28<sup>th</sup> July 2014, in that:**

- a) The Contracting Authority contends that, due to past experience, the ISO certificate had to include the 'design factor'. This was crucial for the Evaluation Board to determine the quality of the product being offered by the prospective**

**bidder. Appellant did submit an ISO certificate but only for the manufacture of the product and not the design.**

- b) Appellant's bid was not evaluated on its 'technical compliance', as same had failed in the 'Administrative Compliance' stage.**
- c) The Evaluation Committee could not ask for clarifications due to missing documentation.**

**Reached the following conclusions:**

- 1. This Board opines that mandatory documentations dictated in a tender document are laid out by the Contracting Authority for a credible and valid reason. In this particular case, the Contracting Authority explained credibly the reason why the ISO certificate had to include the 'design' factor in the same certificate. This Board notes the credible submissions made by the Contracting Authority, the reason being, that the same Contracting Authority wanted to assure itself that the product being offered by the Appellant Company was in conformity with the required standards with regards to both the manufacture and the design of the product being offered by the Appellant Company. This Board upholds the decision taken by the Evaluation Committee.**
- 2. This Board further opines that failure to submit the required documentation as dictated in the tender document should not be a deciding factor for an objection. The Appellant was aware of the conditions as laid out in the tender document. In this respect, this Board finds that non-adherence to the conditions laid out in the tender document is unacceptable. In this regards, this Board, upholds the Contracting Authority's decision that the inclusion of the design factor in the ISO certificate was of great importance.**
- 3. With regards to Appellant's claim, that the Contracting Authority should have asked for clarifications within two working days, this Board notes Clause 7.3 of the tender document wherein, it clearly states that, ' No Rectification shall be allowed'. This Board opines that clarifications can only be made by the Evaluation Committee, on documentation submitted by the prospective bidder and not on missing documentation. In this regards, this Board does not upholds Appellant's claim.**

**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. Lawrence Ancilleri  
Member

*2<sup>nd</sup> September 2014*