

Other Interested Parties

Mr Charles Mifsud
Mr Keith Vassallo
Mr Ray Vella
Mr Roberto Abdilla
Mr Alan Bonnici

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

Dr Francis Cherubino on behalf of the appellant Cherubino Limited stated that its offer had been rejected because its tender "failed to indicate which model was being offered, as the literature of several models was submitted." He insisted that the tender submission for this lot clearly shows which model was being offered, on the top right corner of the Technical Offer marked Fibrescope BPF 5 and also in the submitted literature wherein the technical specifications are listed in detail

Dr Adrian Mallia on behalf of the contracting authority explained that there has been an administrative error since the real reason for disqualifying appellant's bid was not the one stated in the letter of rejection. The document submitted by appellant, marked as BPF 5 shows that 3 of the specifications at page 2 are not compliant with the specifications. For some reason, the findings of the evaluation board about this were not indicated as the reason for disqualification in the letter of rejection.

Dr Francis Cherubino said that he came prepared to make submissions on the reasons given to appellant for rejection. He could not make submissions on other factors.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 1st September 2014 and also through Appellant's verbal submissions during the hearing held on 12th September 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that the reason given by the Contracting Authority for the 'rejection' of his offer was totally unfounded, as he had, in fact, indicated the type of model being offered in the tender document.**

Having considered the Contracting Authority's verbal submission during the hearing held on 12th September 2014, in that:

- a) The Contracting Authority admitted that there was an 'administrative' error in the 'letter of rejection of offer' sent to the Appellant Company. Same Contracting Authority confirmed that the reason given was incorrect. In actual fact, the correct reason why Appellant's bid was discarded was due to 'technical non compliance of specifications of 3 items at page 2 of the tender document.**

Reached the following conclusions:

- 1. This Board strongly condemns the negligence committed by the Contracting Authority, in giving the wrong and completely different reason in the ‘Letter of Rejection’ sent to the Appellant Company. In this regards, this Board expects that more diligence should be exercised by the Contracting Authority when stating reasons for rejection of a tender. This Board opines that the reasons should be specific so that the unsuccessful bidder can opt to redress his complaint. In this regards, this Board upholds the Appellant’s contention that the reason given by the Contracting Authority was unfounded.**

- 2. This Board would also emphasize the fact that the correct version of the reasons for the rejection of the Appellant’s bid should not be made known during the hearing of this Appeal, but rather same stated in the letter of rejection of Appellant’s tender. In this regard, this Board feels that it is not fair and transparent on the part of the Contracting Authority to rectify the ‘Letter of rejection’ during this hearing, as the Appellant cannot appeal on reasons which were not made known to him.**

In view of the above, this Board recommends that:

- a) A fresh ‘Letter of rejection’ be sent to the Appellant Company, specifying the real and actual reasons why his offer was discarded, so that the Appellant can exercise his rights in accordance with the ‘Public Procurement Regulations’.**

- b) The deposit paid by the Appellant Company be reimbursed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

30 September 2014