

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

Dr Silvio De Bono for the appellant explained that the person who signed the objection was an employee. He declared that with this objection, appellant wanted to establish a principle that would be henceforth be used when adjudicating tenders. He stated that the grievance in no way was to be taken as to reflect on the adjudication board members. However it is clear that in the evaluation process there had been no clear objective criteria. He cited for example the personal credentials of bidders' employees. The information that someone had a first, second or third degree, does not contain any subjective element, but only objective elements. Evaluation criteria should be clear. Yet in the evaluation report adjudicating the CVs of experts proposed by bidders, what should have been the most objective item was assigned different marks. If the points assigned to a certain professional level were previously set then a Masters degree should have been assigned the same marks by all the members of the evaluation board. In the present tender the Curriculum Vitae of participating professionals were given different marks by different evaluation board members. This was the result of unclear criteria, while this should have been adjudicated objectively. Marks given should be backed by objective criteria. There were other factors that do not concur – for example for the Schedule of Activities the deciding factor should have been either yes or no. Yet different marks were assigned by each evaluator, and this was not acceptable.

Dr Joseph Camilleri on behalf of the contracting authority explained the Public Contracts Review Board in hearing the objection. He claimed that the Board could not assume the role of the evaluation committee but had to ensure that the evaluation process was according to law; in fairness; and according to the tender conditions. In a MEAT tender, the law requires that the elements for which the marks are assigned are listed beforehand. The present tender gave a detailed description on how the evaluation would be carried out. Clause 30 precisely explained how the marks would be assigned by different evaluators. The different evaluators each assigned marks on each element.

The Chairman remarked that he assumed that the evaluators had to follow a guide how to assign marks to different levels of proficiency.

Dr Joseph Camilleri for the contracting authority continued and stated that the bidder's profile had three sections and the CVs were only one of these. The first part dealt with the set up and structure. This part was assigned marks. Then there was the section dealing with licensing, accreditation, quality insurance etc, and this section also had a range of marks assigned. The maximum mark was set before and shown in the tender document. Then came the section dealing with CVs. This section itself had several divisions – literature and samples to be assessed; the trainer qualifications and not just his professional achievement. Thus there had to be some subjectivity and this was the reason why different evaluators gave their marks and then taking the average of these marks.

Dr Silvio De Bono replied that this was absurd because in a MEAT tender requires clear criteria that should not have subjective elements. He insisted that clear criteria be used when adjudicating tenders.

Dr Charles Cassar, Board member asked how reliable were the criteria used in this tender?

Dr Joseph Camilleri for the contracting authority insists that the breakdown given in the

tender was detailed enough to assure objectivity. He never stated that the exercise was subjective. In a MEAT tender, where the points are divided into different areas and you have different evaluators, you could never expect that all evaluators give the same marks. The workings of the evaluation process that had been sent to appellant in the letter of reply were also divided into two parts. The first part refers to the evaluation made. The second part had shown the workings assigning full marks to the appellant on those points he mentioned in the objection. However, although this showed that appellant's overall marks would be increased, this was not enough since evaluation also had to take into consideration the price. It was the price that eventually decided the award of the tender.

The Chairman remarked that appellant was insisting that for example a Bachelor's degree would be assigned the same number of marks whoever was adjudicating.

Dr Silvio De Bono for the appellant reiterated that appellant was aware that even if given the full marks for the technical part, appellant still would not be awarded the tender. However appellant had filed the objection just to make a point in order to establish clear criteria in the future.

The hearing was brought to a close.

This Board,

Having noted the appellant's objection, in terms of the "Reasoned letter of objection" dated 11th February 2015 and also through the appellant's verbal submissions during the hearing held on the 28th April 2015, had objected to the decision taken by the pertinent authority, in that:

- a) The appellant company contends that the "Evaluation Criteria" should be more "objective" and not "subjective". In this context, the appellant claims that where there is an objective requirement, as dictated in the Tender Document, the Evaluation committee's members should give the same marks to all bidders in certain sections where all bidders are compliant;**
- b) The appellant insists that on such similar tenders, the Tender Document should dictate clear criteria for the award of a tender without having subjective factors.**

Having considered the Contracting Authority's "Letter of Reply" dated 17th February 2015 and also the submissions made during the hearing held on the 28th April 2015, in that:

- a) The Contracting Authority contends that the tender dictated a detailed description of how the evaluation process would be carried out. In this regard, the Contracting Authority maintains that there were enough instructions in the Tender Document as regards the objective mode of evaluation to ensure transparency and fairness in the adjudicating process;**
- b) The Contracting Authority maintains that the "Award Criteria" was the price. The appellant was fully compliant like the other bidders and the price quoted by the appellant company was not the cheapest. The decision taken was an objective one and not a subjective one.**

Reached the following conclusions:

- 1. With regards to the appellant's first contention, this Board, after having reviewed the procedure adopted by the Evaluation Committee is justifiably convinced that the formula used for the assessment of the appellant's offer was applied to all bidders. This Board is also convinced that the element why the appellant's offer was not successful was the price quoted by the same. The appellant's bid was administratively and technically compliant but the quoted price according to the formulation adopted by the evaluation committee did not place the appellant's offer for the award of the tender. In this regard, this Board does not uphold the appellant's first contention;**
- 2. With regards to the appellant's second contention, this Board, after hearing the credible submissions from the contracting authority, justifiably maintains that the formula applied to all bidders was credibly objective. This Board, also maintains that the "objective or subjective" element do not necessarily apply when a standard formulation of adjudication is applied to all bidders, during the evaluation stage. The main factor why the appellant's bid was not chosen for the award was the price. This same price was an equation in the formulation of the adjudicating process. In this regard, this Board notes that the Tender Document dictated ample regulations of how the adjudicating process will be carried out and in this respect this Board does not uphold appellant's second contention.**

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

7 May 2015