

The Chairman made a formal declaration that in another case already heard by the Public Contracts Review Board, Case number 811, regarding tender SVP 770, an unknown person had tried to contact a Board member through the telephone. He stressed that the Public Contracts Review Board was an autonomous board and all communications with it are through public channels and hearings. Contact with members outside of such public hearings is not permissible or condoned. He declared that any future occurrence would be passed to the right venue for investigation.

He then made a brief introduction to the present case and then asked appellant's representative to make her submissions on the objection.

Dr Beryl Jean Buttigieg on behalf of the appellant first remarked that contracting authorities should be more specific when informing bidders that their bids were disqualified, in the present case no details for the reason were given. She said that the Public Contracts Review Board had also remarked on this several times. She said that for this reason, the letter of objection was based on an assumption of what led to the disqualification. This assumption was that appellant did not include the financial offer in a certain page but had included it in another page. She cited another case decided by this Board wherein it was decided that this did not mean that no financial offer had been made since the amount was clearly included in another part of the tender submission. She declared that appellant was disqualified for not filling in the amount of the financial offer at page 37 of the tender document but insisted that the amount was written at page 33. This indicated clearly the amount of the financial offer by appellant.

Dr Victor Scerri on behalf of the contracting authority said that appellant's tender, at page 37, clause 3 "Kindly state the Total Cost:..." was left blank. Clause 1.2.7 at page 2 of the tender document specifically said that the bidders had to complete the attached tender form and continues **failure to submit this form completed in all respects** shall disqualify the bid. The evaluation board thus had no option but to disqualify the appellant's tender offer as being administratively non-compliant. The form in question contained the tenderer's declaration that had to be signed by the bidder.

Dr Beryl Jean Buttigieg said that the fact of the omission was not contested but insisted that the point had been decided by this Board before in similar circumstances in the case of tender CT 3113/2012 and requested the Board to give the same decision as the one given in that case. The case had also referred to the financial offer not being included in the tender declaration form but included in another page.

Dr Victor Scerri on behalf of the contracting authority said that the tender document at page 36, the Tenderer Declaration Form clearly stated that "failure to submit the tender form completed in all aspects shall tender the offer null". Bidders had to sign this declaration and it was for this reason that the contracting authority had to reject the offer.

At this point the hearing was closed.

This Board,

Having noted the Appellant's company's objection, in terms of the 'Reasoned letter of objection' dated 10th March 2015 and also through Appellant's verbal submission during the hearing held on 9th June 2015, had objected to the decision taken by the

pertinent Authority, in that:

- a) **Appellant contends that since no specific reason was given by the Contracting Authority for the refusal of Appellant's offer, Appellant's objection is assumed to be the non-inclusion of the price in part C of the tender document. Appellant contends that the price was included on page 33 of tender document.**

Having considered the Contracting Authority's verbal submission during the hearing held on the 9th June 2015, in that:

- a) **The Contracting Authority maintains that Appellant was well aware that clause 3 on page 37 of the tender document clearly states that 'Failure to submit this form completed in all respects shall disqualify the bid', Appellant failed to include the price on page 37 so that his declaration was incomplete.**

Reached the following conclusions:

1. **This Board, on numerous occasions has expressed its concern regarding the lack of specific reasons given in the "Letter of Rejection" of a bid. Although the Contracting Authority stated a reason that 'As required in tender clauses 1.2.7. Appellant failed to submit the tender form completed in all respects"; this Board opines that the reason could have been more specific and straight to the point. The Appellant must be given the right direction on which to object.**
2. **With regards to Appellant's main contention, this Board justifiably opines that although the price was not submitted on page 37 of the tender document, it was credibly proven that the price was in fact shown on page 33 of the same document. In this regard this Board considers that the reason for disqualification of Appellant's offer was 'trivial'. The European Court of Justice and this Board decided in previous cases that 'The Evaluation Boards should not disqualify bidders on trivial matters'. In this particular case, the information requested in the tender document was not missing but stated on page 33 instead of page 37. In this regard this Board upholds Appellant's main contention.**

In view of the above, this Board finds in favour of the Appellant Company and recommends that:

- i. **Appellant's offer should be reintegrated in the evaluation process.**
- ii. **The deposit paid by Appellant should be reimbursed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

16 June 2015