

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

Mr Ian Azzopardi on behalf of BTI Ltd explained that their offer had ranked second in pricing but was disqualified because of the non submission of literature and certificates. They had submitted literature and since the Appellant's firm manufactured the items subject of this Tender it had enclosed the relevant literature. The certificate had been submitted after being requested through a clarification.

Dr Stefan Zrinzo Azzopardi on behalf of the Contracting Authority explained that Appellant had submitted two offers – 50663 and 50665 and these were deemed to be Technically Non Compliant. The Appellant had been asked through clarifications to submit the proper literature and certificates but had produced only the certificates and failed to submit the necessary literature. When asked by the Contracting Authority to rectify the Tender, the Appellant has submitted only the certificate. A copy of the Tender Documentation was also enclosed and declared to be the specifications according to Appellant. The Evaluation Board was right in deciding to eventually disqualify.

Mr Ian Azzopardi for the Appellant insisted that the literature had been submitted. He contended that in the clarification reply, BTI Ltd had stated that it was the manufacturer of the objects and that the literature had been submitted. The Appellant had copied and pasted the literature as requested in the Tender Document.

Mr Wayne Caruana ID No. 16694M, the Chairperson of the Evaluation Board, under oath said that Appellant had submitted specifications for polo shirts but did not provide the Technical Specifications for the tunics. Once the specifications for an item were submitted the procedure should have been followed for all the items requested. The Appellant instead had just made copies of the Tender specifications document and submitted them as literature.

Dr Stefan Zrinzo Azzopardi for the Contracting Authority contended that during the evaluation certain things were not clear to the Evaluation Board and Appellant was asked to remedy matters and clarify. However Appellant had still failed to provide the necessary answers.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 10 May 2016 and also through their verbal submissions during the Public Hearing held on 23 June 2016 had objected to the

decision taken by the Pertinent Authority, in that:

- a) BTI Ltd maintains that his offer was discarded due to the non-submission of literatures and certificates. In this regard, the Appellant contends that he had submitted the Literature and that the certificate was submitted after a clarification.**

Having considered the Contracting Authority's "*Letter of Reply*", dated 16 June 2016 and also through their verbal submissions during the Public Hearing held on 23 June 2016, in that:

- a) The Contracting Authority contends that the Appellant did not send the necessary Literature in the first place. Upon requesting clarifications, BTI Ltd did not provide the Technical Specifications for the Tunics which formed part of the item being tendered for.**

Reached the following conclusions:

- 1. With Regards to the Appellant's Contention, this Board, after having heard credible submissions from the Contracting Authority and after having reviewed the documentation pertaining to this Appeal, opines that the Treatment of the latter should be based on two main issues,**

namely the “*Literature and Certificates*” and the “*Non Submission of Mandatory Information*”.

- *Literature and Certificates*

This Board justifiably establishes that the Tender Document dictated that the Literature plus Manufacturer’s Certificates must be presented with the Tender Document. As previously adjudicated on numerous cases, Literature requested in a Tender Document are not capriciously demanded but their submissions would ensure that what is being offered by the Tenderer meets the necessary Technical Specifications to render the Contracting Authority’s desired result.

It has been emphasized on numerous occasions that the Technical Literature should complement the Technical Specifications as dictated in the Tender Document. In this particular case, when BTI Ltd was asked to submit the Technical Specifications for “*Tunics*”, the Appellant did not comply with this request; instead he submitted a “*Cut and Paste*” copy of the Tender Technical Specification, which was not what the Clarification has called for.

- *Non Submission of Mandatory Documentation*

This Board credibly opines that the fact that BTI Ltd did not submit the mandatory requisites does in fact hinder the prospects of award in the Evaluation Process. As stated in the Point above, the Literature and the necessary certificates were mandatory and it was the Tenderer's Obligation to submit the same in the first place, i.e. with the submission of the Tender Document.

This Board also notes that even through Clarifications, the Appellant Company failed to submit what was clearly requested. In this regard, this Board does not uphold the Appellant's Contentions.

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

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

4 July 2016