



Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, the Appellant was invited to make his submissions.

Mr Morgan Parnis, representing Business Leaders Malta submitted that he agreed with what the Evaluation Board said in the Letter of Rejection but they objected on the fact that they have sent a Letter by post but they did not receive any feedback about it.

On 26 October 2016 following some time wherein they did not receive any news about this Letter from the Contracting Authority, the Appellants have sent them another e-mail to check whether the first Letter was received. On 7 December 2016, Business Leaders Malta received an acknowledgement of the Letter sent by post and that the Evaluation Board was to get back to them.

On 2 January 2017, continued Mr Parnis, the Appellants received a communication from the e-Procurement website wherein it was stated that Business Leaders Malta did not win the Tender because they did not submit this particular paper. Mr Parnis was wondering whether this Letter did arrive in time at the Contracting Authority's or else whether it did not arrive at all at its final destination.

Dr Anthony Cassar, the Chairman of the Public Contracts' Review Board asked whether the Appellants sent the Letter as a registered one for which Mr Morgan Parnis, representing Business Leaders Malta replied in the negative as had the Letter been sent by registered mail, there would have been clear proofs whether it was received or not.

Mr Parnis continued by saying that they had submitted their offer through e-Procurement for which Dr Anthony Cassar, the Chairman of the Public Contracts Review Board replied that if this procedure was followed, all relevant correspondence should be found in there. Mr Parnis continued that it was only this Letter which was not to be submitted by e-Procurement. The request for submission of this Letter came through normal post and had the request been made through e-Procurement, all this hassle would have been avoided.

Mr Martin Farrugia representing the Ministry for Sustainable Development, the Environment and Climate Change submitted that in this particular case they acted in the same way they act in other Tenders. For this particular Tender, following consultations with the Departmental Contracts' Committee, the Contracting Authority requested the same documentation with the difference that the Bidders had to submit the original documentation. Five from the seven Bidders had replied by the stipulated deadline, 30 September 2016, while the other two, one of which was Business Leaders Malta did not. This left the Contracting Authority with no option but to discard the two bids submitted by the non-compliant Bidders.

At this stage, the Public Hearing was closed.

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**This Board,**

**Having noted this Objection filed by Business Leaders Malta (herein after referred to as the Appellant) on 6 January 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference MSDEC/PAY 38/2016 listed as Case No 1016 in the records of the Public Contracts Review Board, awarded by the Ministry for Sustainable Development, the Environment and Climate Change (herein after referred to as the Contracting Authority).**

**Appearing for the Appellant: Mr Morgan Paris**

**Appearing for the Contracting Authority: Mr Martin Farrugia**

**Whereby, the Appellant contends that:**

- a) The only reason why his Tender was discarded was due to the fact that the Contracting Authority is alleging that it did not receive the signed statement of Exclusivity and Availability in terms of Section 7.1 (b) (2) of the Tender Document. In this regard, Business Leaders Malta insists that such documentation was sent by ordinary mail.**

**This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 9 January 2017 and its verbal submissions during the Public Hearing held on 17 January 2017, in that:**

- a) The Ministry for Sustainable Development, the Environment and Climate Change maintains that the Appellant had to submit the documentation, as requested in communication dated 22 September 2016 by Friday 30 September 2016.**

**In this regard, the Appellant submitted the requested information on 26 October 2016 through an electronic format, which in actual fact; represented a late submission of one month.**

**This Board, after having treated the merits of this case, arrived at the following conclusions:**

- 1. This Board, after having examined the relative documentation and heard submissions from all parties concerned, opines that, it is a most important issue that all the requested submissions are made by Bidders within due date. In this particular case, Business Leaders Malta, through a letter dated 22 September 2016, was well aware of**

**the prescribed deadline for the submissions, namely 30 September 2016.**

**This Board, as had on many occasions, would emphasize the fact that it is the responsibility of the Bidder to ensure that any documentation requested is submitted and delivered to the Contracting Authority within the prescribed time frame. In this context, the Appellant was in duty bound to ensure that the requested information is delivered through reliable means.**

**On the other hand, the Evaluation Board had to rely on the information submitted and in this instance; no such information was submitted to them. The Evaluation Board then had no choice but to consider the Appellant's offer as administratively non compliant**

**In view of the above, this Board finds against Business Leaders Malta and recommends that the deposit paid by the latter should not be refunded.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Carmel Esposito  
Member

*24 January 2017*