

the Public Procurement Regulations the Board will be dealing with this Case on the written submissions.

He very much regretted that the Appellants had not even bothered to advise the Board that they were not intending to appear for the hearing.

He the declared the hearing closed.

This Board,

having noted this Objection filed by iVention, (herein after also referred to as the Appellants) on 5 November 2018, refers to the contentions made by the same Appellants with regards to the award of Tender of Reference WSC/T/64/2018 awarded by the Water Services Corporation and listed as Case No 1242 in the records of the Public Contracts Review Board.

Appearing for the Appellants:

Not Represented

Appearing for the Contracting Authority:

Dr Sean Paul Micallef

Whereby, the Appellants contend that:

- a) the quoted global sum in their offer included all expenses as requested by the Contracting Authority. The document attached to the technical questionnaire gives the rate of € 950 per day, (exclusive of travel and living costs), as the latter are included under maintenance, so that their global sum offered of € 139,750 is all inclusive and in this respect, their offer should not have been discarded.**

This Board has also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 14 November 2018, in that:

- a) Water Services Corporation contend that the additional clarifications to the technical specifications included a rate for services at a cost of € 950 daily, but excluding travel and living costs. In this regard, the Appellants are insisting that the travel and living costs are included under maintenance and as such, the Contracting Authority was not informed that such travel and living costs were in fact included in maintenance costs, so that the global offer, as presented, did not include these costs.**

This Board, would, first and foremost, note that the Appellants were informed of the Public Hearing and the same Board confirms that such a notification was received and read by the same Appellants who also had sufficient time and opportunity to inform this Board of their non-attendance at the Public Hearing. However, no such response to the notification was received by the Secretariat of this Board and the latter opined that this appeal will be decided after due consideration of the written submissions made by all the parties concerned.

In this regard, this Board opines that the issues that deserve consideration are two-fold namely:

- 1. iVention's Original Submissions**

- 2. Supplementary Information**

1. iVention's Original Submissions

From the documentation submitted, this Board confirms that the Appellants' offer was technically compliant, however, during the financial evaluation process, it was noted that, in the document attached to the technical questionnaire, there was stated that:

“We will offer Water Services Corporation a rate of € 950 per day, (exclusive of vat, travel and living cost). Our service estimation for the project is 105 days.”

One has to acknowledge the fact that the Appellants quoted a global price of € 139,750 and in this respect, this Board notes that the Appellants' offer was the cheapest, however, the above mentioned declared exclusion of additional costs is surely to be interpreted as an additional amount which is not included in the global sum of € 139,750.

At this particular stage of consideration of the Appellants' contention that the travel and living expenses are included in clause 3, (Maintenance), it is to be noted that clause 2, indeed denotes

maintenance costs to be at an annual cost of € 4,000. However, this Board notes that nowhere is mentioned the fact that such annual costs include travel and living costs and at the same instance, this same Board notes that in clause 2 (Services), it is not mentioned that although such services costs do not include travel and living costs, such an expense is included under maintenance.

This Board asserts the fact that lacking such an explanation on the part of iVention, the latter do not give any indication to the Evaluation Committee that travel and living costs were not included under services yet included under maintenance costs. It is obvious and logical that, in the event of such lacking information, the Evaluation Committee can only adjudicate the Appellants' offer on the documentation submitted and in this Board's opinion, the documentation submitted by the Appellants indicated that travel and living costs are not included so that the global sum of € 139,750 is not the real cost to the Water Services Corporation. At the same instance, this Board notes that nowhere in iVention's offer, was any indication given clarifying the fact that in the supplementary breakdown of costs, such additional explanation does not alter the quoted global price of € 139,750.

In this regard, this Board notes that an indication that travel and living costs are included under maintenance costs was only made in the Letter of Objection. In this respect, this Board confirms that the Evaluation Committee acted in a just, fair and transparent manner and this Board has been presented with enough credible evidence that the Evaluation Committee could not, in whatsoever manner foresee that the travel and living costs, (although not included in the breakdown of services costs) , are included in maintenance costs, the breakdown of which did not indicate that such costs are included and in this regard, this Board does not uphold the Appellants' contention.

2. Supplementary Information

This Board acknowledges the fact that under certain circumstances, supplementary documentation will enable the Bidder to amplify and explain his offer so that a clear picture is given to the Contracting Authority. In this particular case, the declaration that travel and living costs are not included under “services” complicated more the

representation of such costs, in that, this declaration indicated that such costs are additional and are not included in the global price.

In this regard, this Board would respectfully point out that, it is the duty and responsibility of the Bidder to submit the correct information in his offer and such responsibility should not be shifted on to the Evaluation Committee, which is bound by the principle of self limitation. The Evaluation Committee is bound to be faithful to the conditions imposed in the Tender Dossier and are limited to that remit. The declared breakdown of service costs and the lack of indication by the Appellants that the cost excluded from such a service was included under maintenance, limited the Evaluation Committee to deem that iVention's quoted price was incorrect.

- 3. On a general note, this Board does not uphold the Appellants' request to supply the same with any evaluation notes of individual evaluators nor with notes of evaluation meetings. The Appellants, in this regard, should be made aware that such sensitive information is only presented to this Board.**

In view of the above, this Board,

i) does not uphold the contentions made by iVention;

**ii) upholds the Water Services Corporation's decision in the award of the
Tender;**

**iii) recommends that the deposit paid by the Appellants should not be
refunded.**

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Lawrence Ancilleri
Member

24th December 2018