

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1254 – CT 2183/2018 – Provision of Environmentally Friendly Cleaning Services in Colleges and State Schools and Educational Facilities**

The publication date of the call for tenders was the 12<sup>th</sup> July 2018 whilst the closing date of the call for tenders was 9<sup>th</sup> August 2018. The estimated value of the tender (exclusive of VAT) was € 3,131,480.

On the 3rd December 2018 Managing Consulting Service Industry Ltd (MCSI) filed an appeal against the Ministry for Education and Employment as the Contracting Authority objecting to being disqualified on Lot 4 of the above tender on the grounds that their offer was not successful. A deposit of € 15,657 was paid.

There were seven (7) bidders.

On 18<sup>th</sup> January 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants: Managing Consulting Service Industry Ltd**

Dr Antoine Cremona	Legal Representative
Dr Clement Mifsud Bonnici	Legal Representative
Mr Paul Degiorgio	Representative
Mr Ryan Mifsud	Representative
Mr Jason Degiorgio	Representative

#### **Recommended Bidder – Brightness JV**

Dr John Bonello	Legal Representative
Ms Alexia Bongailas	Representative

#### **Contracting Authority – Ministry for Education and Employment**

Dr Dennis Zammit	Legal Representative
Mr Emile Vassallo	Chairman Evaluation Committee
Ms Cristina Cutajar	Member Evaluation Committee
Mr Joseph Zerafa	Member Evaluation Committee

## Department of Contracts

Dr Franco Agius

Legal Representative

Dr Sirole Bezzina Gatt

Legal Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and said that there were two preliminary pleas to be heard before submissions were made on the main hearing.

The first plea concerned the name of the registered user in the records of the Department of Contracts which was in conflict with that appearing in the tender submissions. The second plea sought clarification that this appeal concerned only Lot 4 and not the whole tender which consisted of ten lots. On this latter point both parties confirmed that this was correct.

On the first plea Dr Franco Agius, Legal Representative of the Department of Contracts sought permission to call a witness to testify on this point.

Mr Jason Grech (185071M) testified on oath that he was an Assistant Director at the Department of Contracts and that M.C.C.S Company Ltd was the registered user with the Department. MCSI was not registered.

Dr Antoine Cremona Legal Representative of MCSI pointed out to the witness that both MCSI and M.C.C.S. Ltd bore the Companies Registration number 16749, and it was a company registered under that number that had submitted the tender. This was contested by Dr Agius.

The Chairman proposed a short recess to enable the Board to consider this plea.

After the recess the Chairman stated that the Board had obtained a copy of the Company's registration document (tabled as Doc 1) and had considered the plea. Company MCSI was registered under number 16749, and a name change had been registered before the bid was submitted. A mistake had been made on both sides - the bidder had failed to use the correct company's name at the time of the bid and the Contracting Authority had not noticed this lapse. The Board therefore decided to proceed with hearing the Case, and invited submissions.

Dr Clement Mifsud Bonnici Legal Representative of MCSI said that the tender in question covered the cleaning in schools but he was dealing with the rejection letter on the cancellation of only Lot 4. He wished to raise two procedural points on this letter. Firstly no reason had been given in the rejection letter as to the possibility of appeal and the Appellant was entitled to be given a copy of the score sheet of the successful bidder to enable him to compare the result. This was standard EU practice as laid down in various cases. Eventually the details had been sent late by the Department of Contracts – just before the closing date of the appeal. There were no details of how the award of the points had been classified – this was subsequently given after the closing date for appeals. On this basis alone the deposit paid by Appellants should be refunded. The EU Charter of Fundamental Rights sets the standards of justice which must be followed.

At this stage Dr Mifsud Bonnici requested permission to ask the members of the evaluation committee to withdraw from the hearing.

Continuing Dr Mifsud Bonnici said that the Appellants agree with the best value for money principle; what was in question was how the Best Price Quality Ratio (BPQR) was formulated. How were the criteria and sub-criteria stipulated? What was the relative weighting? The guide to the scoring in the tender was only based on minimum requirements and preferable factors – there was only a beginning and an end but no indication of what the factors to be considered were. After clarification it became clear that the evaluation committee had neither yardstick nor guidelines to direct their evaluating process.

Dr Franco Agius contended that it was untrue that the requested information was not provided to the losing bidder. According to Regulation 242 of the Public Procurement Regulations (PPR) the Director of Contracts has fifteen days to provide additional information – all obligations laid down in the law had been followed. There were two prior remedies available to the bidder if they disagreed with the terms of the tender but these had not been availed of before they made their offer. A recent case decided by the PCRB (Case 1250) had precisely dealt with the point regarding remedies available to a bidder before submitting his tender. The Director of Contracts was not accepting the point that the tender was not well structured – bidder had accepted the terms the minute he placed his bid.

Dr Mifsud Bonnici stated that there are two separate sections at law regarding supplying requested information – one was the fifteen days quoted but there was also Directive 55 (2) which demands that information must be supplied as quickly as possible in summary form. He then requested permission to introduce witnesses.

Mr Joseph Zerafa (82769M) called as a witness by the Appellants testified on oath that he was the Management Support Co-ordinator for Resources and Administration at the Ministry, and was on the evaluation committee. He has been working in schools for 30 years, but was not responsible for cleaners or in the management of cleaning and had been appointed to the committee around end August 2018. He recited the names of the other members of the committee and confirmed that no technical expert in cleaning had been consulted.

Questioned on the criteria in Page 16 of the tender witness referred to specific points (b) and (c) in the assessment procedure – for example in the use of resources. Decisions on such points had been decided in the process of examining the tender – there was no written yardstick but they decided points as they went along. Referred to Page 30 of the tender which shows a number of requisites re time keeping, witness said that each evaluator made an individual assessment – then the average of their marks was taken.

Questioned by Dr Agius, witness stated that in Page 47 of the tender guidelines had been laid down and they used these as their yardstick – marks were assessed according to those guidelines, with deductions if the criteria were not met.

Dr Mifsud Bonnici referred the witness to item 48 (b) which dealt with the use of resources to give timely delivery of tasks and asked him what guidelines were used in the allocation of points and on what criteria had this particular section been marked? On the basis of submissions how were bidders rewarded or had marks deducted?

Witness replied that the committee had evaluated the proposals on the basis of their meeting the set criteria.

Dr Dennis Zammit, Legal Representative of the Ministry for Education and Employment objected to this line of questioning which he said was expressing doubts as to the fairness in the evaluation process. Appellants had every opportunity to query the terms of the tender before the bid if they were unhappy with those terms.

Mr Emile Vassallo (485487M) called as a witness by the Appellants testified on oath that he was the Chairperson of the evaluation committee. He was the Principal of a College with a diploma in Administration and had no qualification in cleansing except as the head of a school. He stated the names of the members of the evaluation committee and confirmed that no technical expert had been used in the evaluation process. His appointment to the evaluation committee was at the beginning of summer 2018. He was referred to Page 16 – items (b) and (c) and Page 29 of the tender documents and asked if the use of resources covered manpower and materials and if the committee had examined all areas and what experience had been used to evaluate the proposals.

Witness stated that their guide was to ensure if the submissions in the bid had followed laid down criteria in the tender – for example the areas to be cleaned, the frequency of cleaning etc. They had not had any difficulty in evaluating as they had followed the criteria – the minimum requirements were areas to be cleaned with the frequency – supervisory requirements were exceptional and preferable. The minimum criteria was cleaning – what was preferable, and hence maximum, was communications with supervisors – the preferable maximum was in the adjectives used e.g. timeliness. At the evaluation stage the committee met regularly and examined submissions jointly with each individual allocating marks and then averaging those marks on points where they were not in agreement.

In reply to questions by Dr Agius witness stated that the submissions were all judged similarly by the committee. Applicant had provided no proof that the cleaning materials contained no chemicals and with regard to timeliness no indication was given as to how it was to be used or its application. With regard to the use of resources there were certain procedures in the bid (e.g. removal of snow from pathways) that were not applicable locally and in the case of back-up facilities the 48 hour lead time before replacements were supplied were felt to be not adequate by the evaluators. The documents submitted in support of the reporting requirements were very poor with insufficient details or details not related to requirements.

The Chairman at this stage said that the Board was satisfied that enough information had been given to enable it to reach a decision on the points regarding the evaluation criteria.

Dr Mifsud Bonnici dealing with the first procedural ground stated that Appellants received letter of rejection although they offered a cheaper price they were given a lower score. Being given only the average score and scoring sheet and concise reasons regarding the marking was not sufficient. The Contracting Authority was obliged to give the relevant reasons – the law demands that a breakdown is given with details and the scoring sheet of the successful bidder. A number of judgements of the European Union confirm that the scoring sheet of the successful bidder enables the Appellant to understand why its offer was not successful. If the BPQR process is used these details have to be given. Dr Mifsud Bonnici here referred to and quoted extracts from CJEU Cases C 532/06 and C 331/04 (and tabled Doc 3). The failure to give more transparent details was a shortcoming and he requested the return of the deposit on these grounds. According to Regulation 272 of the PCRB the 15 days limit does not apply to requested information following rejection letters.

The criteria in a BPQR tender must be allied to discipline in the evaluation process – there must be a yardstick indicating minimum and maximum requirements stipulated in the tender document, otherwise it leads to difficulty in assessing the different factors. In this case the yardstick was discretionary and decided in hindsight – this militates against transparency and fairness. He quoted further extracts from the JCEU cases referred to earlier in support of his claim that guidelines have to be specified in the tender (vide paras 36 and 37 of Case C 532/06). He also referred to the table of good and bad practice as listed in the EU Public Procurement Guidance for Practitioners (see Doc 3).

With regard to the reference made to the availability of pre-contractual remedies, Dr Mifsud Bonnici stated that nowhere in the PPR is there a stage which states that a tender document is final if the precontractual remedy is not used. This Case is different as the illegality occurred after the evaluation of the tender. The evaluation committee created its own yardstick which created doubts regarding the evaluation as no like-for-like comparison could be made.

Dr Franco Agius referred to Regulation 272 quoted by Appellants and noted that this merely referred one back to Regulation 242 which stipulates that information has to be provided within 15 days from time of asking – this time limit had been observed by the Director of Contracts. It is incorrect to claim that the evaluation committee had difficulty in their evaluating, as was amply shown by the evidence of Mr Emile Vassallo who had clearly stated that they had found no difficulty in their assessments. He referred to JCEU Case C 6/15 where it was stated that some leeway was justified in interpreting a request depending on the circumstances of the case. The criteria had been established and it was not necessary for the Appellant to agree with them. If the bidder had not used the pre-contractual remedy then it is taken for granted that bidder had agreed with conditions imposed by the Contracting Authority – at that stage the terms cannot be contested and any appeal can only challenge the decision of the adjudication.

Dr Zammit re-iterated this point – that a pre-contractual remedy or clarification should have been sought prior to placing an offer.

Dr Mifsud Bonnici disagreed with Dr Agius' statement that the criteria existed. When asked witnesses had failed to identify them. The reference to JCEU Case C 6/15 was not correct as this case identified the risk that an existing yardstick could be changed after the tender was issued.

Dr Cremona re-iterated that despite all that had been heard in lengthy testimonies no indication had been given as to the existence of a yardstick or which alternative offer carried more weight.

Dr John Bonello Legal Representative of Brightness JV said that public procurement was based on EU directives but the PCRB had to decide cases on PPR. A pre-contractual remedy should be used as the basis for disagreement with a tender. The evaluation committee should have certain latitude when evaluating, and it was obvious from the testimonies heard that they were aware of what they were doing – they had followed the set parameters.

Finally Dr Agius referred to PP Regulation 239, paras 6 and 7 which he said outlined the merits of the award criteria.

The Chairman thanked all parties for their submissions and declared the hearing closed.

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**This Board,**

**having noted this Objection filed by Managing Consulting Services Industry Limited, (hereinafter also referred to as the Appellants), on 3 December 2018, refers to the contentions made by the latter with regards to Tender of Reference CT 2183/2018 listed as Case No 1254 in the records of the Public Contracts Review Board, awarded by the Ministry for Education and Employment, (hereinafter also referred to as the Contracting Authority).**

**Appearing for the Appellants:**

**Dr Antoine Cremona**

**Dr Clement Mifsud Bonnici**

**Appearing for the Contracting Authority:**

**Dr Dennis Zammit**

**Appearing for the Department of Contracts:**

**Dr Franco Agius**

**Whereby, the Appellants contend that:**

- a) **the Contracting Authority did not provide sufficient information in its “*Letter of Rejection*” dated 23 November 2018, to enable them to exercise effectively its rights at law, in so far as remedies are concerned. In this regard and for this reason alone, the Appellants maintain that the deposit paid for filing this Objection should be refunded;**
  
- b) **the selection criteria do not stipulate minimum requirements so that the yardstick used in the allocation of points in the evaluation process, is very subjective. In this regard, the Appellants maintain that the Evaluation Committee did not have established measuring criteria to enable same to arrive at an objective selection decision so that the Tender for this particular lot should be cancelled.**

**This Board has also noted the Contracting Authority’s “*Reasoned Letter of Reply*” dated 12 December 2018 and also its verbal submissions during the Public Hearing held on 15 January 2019, in that:**

- a) **the Ministry for Education and Employment contend that through a communication sent to the Appellants dated 23 November 2018, the latter were given the reasons why their offer for the lots was not awarded to them. The Contracting Authority also maintains that, in**

**reply to the Appellants' correspondence dated 22 November 2018, it had sent some of the information requested and more time was needed to collate the remaining information in question, however, the Contracting Authority maintains that it had fulfilled all the obligations as laid down in the Public Procurement Regulations;**

**b) the Contracting Authority also insists that the tender document vividly provided the selection and award criteria and in this respect, the Evaluation Committee had the necessary tools to adjudicate and recommend the best compliant offer. In this regard, the Contracting Authority maintains that, such a concern being brought at this particular stage should be disregarded as the Appellants had other remedies to contest this issue.**

**This same Board has also noted the testimony of the following witnesses:**

- 1. Mr Jason Grech who was duly summoned by the Department of Contracts;**
- 2. Mr Joseph Zerafa who was duly summoned by Managing Consulting Services Industry Limited;**

3. Mr Emile Vassallo who was duly summoned by Managing Consulting Services Industry Limited.

This Board has also taken note of the following documents which were submitted during the Public Hearing:

1. Documents MCS1-3 filed as Doc 1 by Managing Consulting Services Industry Limited which included diverse correspondence between the Appellants' Legal Representatives and the Departments of Contracts;
2. A copy of the resolution adopted by M CCS Company Ltd on 15 February 2018 filed by the Public Contracts Review Board as Doc 2;
3. Notes of References filed by Managing Consulting Services Industry as Doc 3.

#### **Preliminary Pleas registered during this Public Hearing**

This Board would refer to the preliminary plea raised regarding the registered economic operator in the tendering process. In this regard, this Board notes that the registered bidder is denoted as M CCS Company Limited whilst the Appellants are Managing Consulting Service Industry (MCSI) Limited. Upon further investigations, this Board would point out that, the Appellants' previous name was M CCS; however, the latter changed its name

**on 15 February 2018 to MCSI Limited, bearing the same Company Registration number, C 16749. In this regard, this Board opines that although the registered economic operator bears the previous name of the Appellants, there was no effective change in the identity of the economic operator. At the same instance, whilst the Appellants failed to register as an economic operator under the new name, the Evaluation Committee also failed to detect such a change of name. In this respect, this Board opines that such a change will not merit the rejection of this Appeal.**

**With regards to the second preliminary plea, this Board has established that this Objection refers to Lot 4 of the Tender and not to the whole Tender.**

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**This Board, after having examined the relevant documentation to this Appeal and heard the submissions made by all interested parties, including the testimony of the witnesses duly summoned, opines that the issues which are to be considered on their merits, are twofold namely:**

- a) The reasons given by the Ministry for Education and Employment for the rejection of the offer submitted by Managing Consulting Services Industry Limited;**

b) **The fact that there were no established basic requirements in the Tender Document.**

a) **Reasons given by the Ministry for Education and Employment to Managing Consulting Services Industry Limited**

1. **With regards to the Appellants' First Contention, this Board would refer to the reasons given by the Contracting Authority for the rejection of the Appellants' offer:**

*“Dear Sir/Madam,*

*Thank you for participating in the above-mentioned procurement procedure. However, this Department regrets to inform you that the offer submitted by your company was not successful as shown in the following table since it failed to satisfy the criterion for award, being the offer with the Best Price Quality Ratio (BPQR).*

*Lot 4*

*The scores allotted to the 1<sup>st</sup> ranked and to your submission are as follows:*

<i>Tender ID</i>	<i>Name of Tenderer</i>	<i>Avg Tech Score</i>	<i>Technical Score 60%</i>	<i>Financial Score 40%</i>	<i>Price in Euro including any arithmetical corrections (if any)</i>	<i>Overall Score</i>	<i>Ranking</i>
<i>98702</i>	<i>Brightness JV</i>	<i>90.50</i>	<i>60</i>	<i>38.53</i>	<i>14,315.00</i>	<i>98.53</i>	<i>1</i>
<i>98665</i>	<i>MCCS Co Ltd</i>	<i>79.80</i>	<i>52.91</i>	<i>40.00</i>	<i>13787.58</i>	<i>92.91</i>	<i>2</i>

**At this particular stage of consideration, the Appellants were informed of the overall score achieved by them as compared to the Recommended Bidder's result. It is credibly acknowledged that such an explanation does not give the clear picture as to where the Appellants' offer failed to reach the Ministry's expectations, and at the same time, Managing Consulting Services Industry Limited were not aware of their score in each particular mandatory requirement. In this**

respect, the Appellants' quite rightly requested the Contracting Authority to make available more information regarding the allocation of points on the mandatory requirements of the offer of both the Appellants and the Recommended Bidder. In this regard, Managing Consulting Services Industry Limited are maintaining that the Contracting Authority did not provide such requested information in sufficient time for the Appellants' to exercise their right of remedial action through the filing of an objection before this Board, who would respectfully refer to Regulation 242 (2) which clearly dictates that:

*“On requests from the candidate or tenderer concerned, the Authority responsible for the tendering process shall as quickly as possible, and in any event within fifteen days from receipt of a written request inform:*

- (a) any unsuccessful candidate of the reasons for the rejection of its request to participate;*
- (b) any unsuccessful tenderer of the reasons for the rejection of its tender including, for the cases referred to in regulation 53 (9) and (10), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements;*

- (c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement;*
- (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers;*
- (e) any unsuccessful tenderer of his right to appeal a decision taken pursuant sub-regulation (1)”*

**Such clause creates an obligation on the Contracting Authority to furnish the requested information to unsuccessful bidders within a period of fifteen days. In this particular case, the additional information which was requested by the Appellants was given after the closing date for appeals. In this respect, this Board opines that although the Ministry for Education and Employment submitted the summary of results to the Appellants within the fifteen day period, the additional information requested by the Appellants and which, in the opinion of this Board, was an important feature for the compilation of Managing Consulting Services Industry Limited’s appeal, was in fact sent by the Contracting Authority after the period allowed for the filing of the Objection.**

b) **The fact that there were no established basic requirements in the Tender Document.**

With regards to Managing Consulting Services Industry Limited's second contention, this Board would acknowledge the fact that the Best Price Quality Ratio adjudicating criteria are the most objective method of assessing an offer. It not only provides equal treatment for all bids but also suppresses the incidence of subjectivity. In this regard, this Board would respectfully refer to the award criteria as stipulated in Article 9.1 of the "*Instructions to Tenderers*" as follows:

*"9.1 The contract will be awarded to the tenderer submitting the offer with the Best Price/Quality Ratio (BPQR) in accordance with the below.*

*Each technical offer will be evaluated in accordance with the award criteria and the associated weighting as detailed in the evaluation grid of this tender document (Article 9.3). No other award criteria will be used. The award criteria will be examined in accordance with the requirements as indicated in the Technical Specifications"*

At the same instance, the Tender Document, under article 9.3 lists the Evaluation Grid wherein, the Contracting Authority stipulates the

mandatory factors on which each offer will be adjudicated with regards to points and for each of the listed items, the Tender denotes the maximum points, so that a clear and transparent yardstick has been denoted and under the same article, an explanation of classification with the relative description is also provided, as follows:

*“Classification Description*

*Exceptional Matches the minimum requirements and goes by far beyond the expectations listed in the Terms of Reference. Has outstanding functionality and completeness.*

*Very Good Matches the minimum requirements and goes beyond the expectations (preferable factors) listed in the Terms of Reference – has very good functionality and completeness*

*Good Matches the minimum requirements and also the expectations (preferable factors) listed in the Terms of Reference*

*Acceptable Only matches the very minimum/basic functionality in regards to factors listed in the Terms of Reference*

*Unacceptable Unacceptable/disqualified if the required functionality is not met. In this case a score of 0 will be assigned.”*

**In this regard, this Board opines that the Tender Document provided more than sufficient information as to the selection and award criteria.**

**With regards to Managing Consulting Services Industry Limited’s contention that there had to be minimum and maximum requirements so as to assess the different factors of the Tender Requirements, this Board acknowledges and appreciates the fact that, in such tenders, where services are being requested, one can establish the allocation of points by comparing the offers with the minimum requirements and in this respect, the same requirements are those factors listed in the terms of reference. At this particular stage of consideration, this Board would refer to extracts from the testimony of Mr Emile Vassallo as follows:**

*“Avukat Sewwa wisq. Mela ejja niffukaw fuq dawn. Dawn naqblu li huma tasks u uhud mit-tasks hemm ukoll estimate ta’kemm forsi għandhom jiehdu. Tista’ tgħidli inti kif identifikajt liema kien il-minimum tat-task u x’kien il-preferable factor?”*

*Xhud* *Il-mistoqsija kienet, jekk nirreferi għall-evaluation grid.*

*Avukat* *Per eżempju għandek areas to be cleaned, għandek classrooms, computer lab*

*Xhud* *“Show how the use of resources will ensure the timely delivery of tasks.”*

*Mela ir-riżorsi huma bażikament il-persuni li huma speċifikati fin-numru ta' tagħhom fil-bill of quantities, kemm iridu jiġu mpjegati persuni. Ovjament hemm riżorsi oħra li fl-esperjenza tagħna nafu li huma materjali, equipment u dawn l-affarijiet u rajna l-proposta tal-economic operator kif ser tasal biex ikun jista' jwettaq dawn it-tasks li hemm fis-schedule 4 b'mod tajjeb. Kien hemm areas, per eżempju rajna fis-submission jekk ġewx inkluzi l-areas kollha. Per eżempju f'certu submissions ma kienx hemm l-areas kollha. Ahna tlabna li jiġu mnaddfa per eżempju l-btiehi. F'certu submissions il-btiehi ma ġewx inkluzi. Allura ahna flejna u rajna isma kemm qed jasal dan l-economic operator biex ikun jista' jwettaq tajjeb*

*id-dmirijiet u dak li qed nagħtu fil-kuntratt biex iwettaq.”*

This Board would also refer to another extract from the credible testimony of Mr Emile Vassallo, whereby the yardstick for the allocation of points is vividly explained, as follows:

*“Avukat            Pero’ nista nistiednek fejn qeghda fit-tender din il-gwida? Jew nissuggerilek li mhux qeghda fit-tender?*

*Xhud                Hemm mistoqsija. Il-gwida hija l-mistoqsija. Barra minn hekk hemm ukoll il-lista fl-ispecific activities on page 29, hemm il-lista tal-postijiet li jridu jnaddfu u b’liema frekwenza, etc etc. Jigifieri nafu xi rridu nnaddfu, nafu x’rizorsi ghandna ghax ahna l-economic operator kien marbut li jimpjega numru ta’ cleaners biex iwettqu x-xoghol. Ha naghti eżempju minn submission ta’ xi hadd iehor, xi hadd iehor per eżempju fis-submission tal-klijent tieghek kien hemm imniżżel li ser tagħtu każ kif jigu ordnati l-cleaning materials meta’ jispiċċaw, li jkun hemm isma, malli cleaner jinduna li ser jibdew jispiċċawlu l-materjali jordna. Irid jordna. Hemm submission oħra*

*ta'haddiehor ma kellhiex din. Jigifieri dan ahna stajna naraw li l-użu tar-riżorsi min-naħa t'economic operator wiehed kien comprehensive, li ħa u haseb dwar kemm il-haddiema u kemm is-supervisors u kemm il-materjali u kemm l-equipment. Hemm ċertu operators oħra li nsew isemmu jew ma semmewx."*

From the testimony of Mr Emile Vassallo, this Board is justifiably convinced that the Evaluation Committee compared each offer on the merits of what each Bidder declared to offer, in a logical, just and transparent manner. At the same instance, this Board opines that the yardsticks of the minimum requirements were the mandatory factors requested in the Terms of Reference as duly stipulated in the Tender Document, so that the selection and award criteria of the Best Price Quality Ratio was appropriately and diligently applied.

On a concluding note, this Board would point out that too much emphasis has been placed on the issue of the "*minimum requirements*" at this stage of the tendering process. In this regard, this Board would respectfully note that Managing Consulting Services Industry Limited had the necessary remedies to raise concerns about the award criteria prior to the closing date of the submission of offers and in this respect, the Appellants did not avail themselves of these remedies. One has to

**acknowledge also the fact that the Appellants submitted an offer for a Tender with all its conditions, so that the acceptance of the latter is to be taken as factual.**

**In view of the above, this Board,**

**i) upholds Managing Consulting Services Industry Limited's first contention;**

**ii) does not uphold the Appellants' second contention;**

**iii) upholds the Ministry for Education and Employment's decision in the award of the contract;**

**iv) directs that, in view of i) above, an amount equivalent to fourteen thousand euro (€ 14,000) from the deposit paid by Managing Consulting Services Industry Limited is to be refunded.**

Dr Anthony Cassar  
Chairman

Mr Carmel Esposito  
Member

Mr Richard A Matrenza  
Member

*5<sup>th</sup> February 2019*