



In the Public Contracts Review Board

Objection:

CT2403/2018 Tender For  
the Removal of Old  
Navigational Buoys,  
Supply, Installation and  
Commissioning of New  
Buoys

In the Names

E.C. Municipals Limited  
[C62598]

Vs

Department of Contracts

Reasoned Reply to the Objection filed by E.C. Municipals Limited by Transport Malta ( TM)  
and the Director General Contracts

Humbly submit:

1. That the objection filed Messrs E.C. Municipals Limited should be dismissed by this Honourable Tribunal for reasons to listed hereunder;
2. That E.C Municipals Limited's objection is based on the allegation raised by said company that despite the Evaluation Committee's finding that said bidder had failed to upload the ESPD form [European Single Procurement Document] after being given the opportunity to rectify such failure, bidder had in fact uploaded such a form;
3. That it is respectfully submitted that the objector's allegation is clearly unfounded and is disproven by the facts of this case;

4. That on the one hand objector alleges that the ESPD form had in fact been submitted with its original bid before the deadline for submission being 18<sup>th</sup> June 2019 but then alleges that Objector's accountant prepared another EDSP form on the 25<sup>th</sup> June 2019 in response to the rectification request made by the Evaluation Committee on the 21<sup>st</sup> of June 2019. If an ESDP document had in fact been submitted with the original bid, there would have been no reason for the Objector's accountant to prepare a new ESPD form on the 25<sup>th</sup> of June 2019;
5. That notwithstanding failure by the objector to file an ESPD form with its original bid, the Evaluation Committee, after requesting authorisation from the Director General Contracts, invited the Objector to rectify his shortcoming within five (5) working days from notification. Notwithstanding such a concession, Objector failed to comply as requested. With all due respect, Document E with the objection presented by appellant is in no way a confirmation or receipt that appellant had in fact, uploaded the requested document. In fact it can be confirmed that a response was filed but no attachment was uploaded;
6. That subsequently, the Objector alleges that such a failure was not due to him but due to a technical fault on the E-Tenders platform. With all due respect, this allegation too is false and unfounded. The E -Tenders platform suffered no technical fault as will be proven during the hearing to be scheduled in respect to this objection;
7. That without prejudice to the submissions made above, neither can this Honourable Tribunal accede to the remedies being requested by the appellant. Should, for any reason whatsoever, this Honourable Tribunal decide to revoke the decision of the Contracting Authority of the 22<sup>nd</sup> of October 2019, this Honourable Tribunal can not proceed to award the tender to appellant but may only refer the case back to the Contracting Authority to make a fresh evaluation and for the procurement process to take its course.

In view of the above, both Transport Malta and the Director General Contracts humbly request this Honourable Tribunal to dismiss the objection raised by Messrs EC Municipals Ltd and to consequently order that the deposit made by said appellant together with its objection filed on the 1<sup>st</sup> of November 2019 be forfeited and this subject to any terms and conditions that this Honourable Tribunal may deem opportune to impose.

  
Advocate Lucio Sciriha