

## PUBLIC CONTRACTS APPEALS BOARD

### Case No. 111

#### **Advert No CT 454/2006 - CT 2681/2006 – DH 1665/2006 Tender for Architectural Services for the Construction of a 280 Rehabilitation Facility at Qormi, Road Luqa**

This call for tenders was published in the Maltese Government Gazette on 19.12.2006 and was issued by the Contracts Department following a request transmitted to the latter on 27.10.2006 by the Health Division.

The closing date for this call for offers was 15.02.2007 and the estimated contract value was Lm 360,000.

Nine (9) different tenderers submitted their offers.

Following the publication of the Notification of Recommended Tenderers, Messrs *Design & Technical Resources Ltd* filed an objection on 10.08.2007 against the intended awarding of the tender in caption to *The Doric Studio*.

The Public Contracts Appeals Board (PCAB) made up of Mr Alfred Triganza (Chairman) with Mr Anthony Pavia and Mr Edwin Muscat, respectively, acting as members, convened a public hearing on 14.09.2007 to discuss this objection.

Present for the hearing were:

#### **Design & Technical Resources Ltd**

Dr Norval Desira - Legal Representative  
Architect Robert Sant  
Mr Reuben Cauchi  
Ms Vivienne Psaila

#### **The Doric Studio**

Dr Peter Fenech - Legal Representative  
Architect Frank Muscat

#### **Health Division – Evaluation Committee**

Mr Joseph Micallef - Chairperson  
Mr Joseph Degiorgio - Member

#### **Department of Contracts**

Mr Francis Attard – Director General (Contracts)

#### **The Kamra tal-Periti**

Architect David Felice – President

Following the Chairman's brief introduction, Design & Technical Services Ltd's legal representative was invited to explain the motive which gave rise to their objection.

Dr Norval Desira, the appellants' legal representative, started by stating that his client decided to file his objection because of the following reasons:

- 1) the recommended tenderer's offer should have been disqualified because the percentage rate quoted in the financial offer was excessively less than the established legal fee. Dr Desira explained that the fees payable to Architects were established by law under 'Tariff K' of *Schedule A* of the *Code of Organisation and Civil Procedure*. As a consequence, every architect was obliged to abide by these tariffs. He claimed that an architect had no right to charge more or less than the stipulated fees because the rates were fixed. The appellants' lawyer sustained that apart from the fact that the Contracting Authority was supposed to know what was required by law, it was duly notified by the *Kamra tal-Periti* on this specific tender not to accept offers that were not submitted in accordance with the said 'Tariff';
- 2) Dr Desira said that in spite of the fact that the conditions of tender specified that the financial offer could not have variant solutions, the recommended tenderer's financial offer contained three variant solutions, namely,
  - a. *Option A* which had a fixed rate which was less than that established in Tariff K,
  - b. *Option B* wherein it was indicated that the tenderer was ready to reduce the fee further if he was given the opportunity to charge 1% fee plus VAT for measurement, and
  - c. *Option C* wherein he had quoted a rate for design & tender preparation, a rate for supervision and project management and for measurement;
- 3) The same lawyer said that the third grievance dealt with the Adjudication Board's method of evaluating the financial offers because the appellants did not know whether or not the VAT element was taken into consideration. He contended that the applicable VAT should not have been included because this was not an integral part of the fee receivable by the architect for his services. Dr Desira argued that, considering the fact that the margin of difference in the final points of the recommended tenderer and the appellants' was minimal, i.e. 0.16 points, such a computation would have undeniably prejudiced any higher financial offer if these were evaluated inclusive of VAT;
- 4) In their fourth and final grievance, the appellants argued that the recommended tenderer had an advantage over the other competing tenderers because he was the same architect who was awarded the initial contract for the design of the *Rehabilitation Facility*, which they

understood that it was not awarded through a normal tendering procedure, and, also, because all relevant information that was available to him was not provided to them. He contended that this went against both the EU directives and the Public Contracts Regulations.

During the course of these proceedings, Dr Desira said that the most economical advantageous offer was not necessarily the cheapest tender (MEAT). He remarked that his clients had obtained much more weighting points than those given to the recommended tender for the quality of service, as reflected in the technical offer.

The appellants' lawyer explained there were items in the tender that fell under the 'Tariff' while others did not. He said that the recommended tenderer's offer of 2.45% fell below the applicable fixed tariff of 3% and that none of the other tenderers had submitted such a low rate. Dr Desira maintained that the Adjudicating Board should have put more emphasis on the *Tariff K* because the appellants had been severely prejudiced for having adhered to their Council's directives and the law. The Code of Professional Conduct contained in the First Schedule to the Regulations, namely, Regulation 2, specified that it was the duty of an architect to uphold and apply the scale of professional charges payable to architects as per said *Tariff K* of Schedule A to the Code of Organisation and Civil Procedure. Dr Desira emphasised that the Contracting Authority was awarding a contract in violation of the law and that *Tariff K* was not a guideline but 'law'.

In his response to the appellants' remarks, Mr Joseph Micallef, Chairman of the Adjudicating Board, declared that in their evaluation they did not take into consideration *Tariff K* because they had to evaluate the offers according to the terms and conditions of the tender document and also because no reference was made to *Tariff K* on the 'Schedule of Prices'. Mr Micallef claimed that the *Kamra tal-Periti*'s circular referred to by the appellants was not submitted to the Adjudicating Board but to all architects and this was sent a day before the closing date of tender, that is, on 14 February 2007. However, he pointed out that none of the offers received was in compliance with the rates stipulated in *Tariff K*.

On cross-examination by the PCAB, Mr Micallef said that the term '*the most economically advantageous offer*' was a combination between the quality (technical) and financial proposals. He said that according to the tender document, the MEAT had to be established by weighing quality against price on an 80/20 basis. When the PCAB drew his attention that it was the financial offer that changed the balance, Mr Micallef replied that although the price might seem to be the determining factor, it was only a part of the equation.

In reply to specific questions by Dr Desira, the Chairman of the Adjudication Board confirmed that they knew that

- (i) Mr Frank Muscat was the same architect who was awarded the initial contract for the preparation of the design of the 'Rehabilitation Facility',
- (ii) the same architect had calculated the estimated cost of construction, which amounted to Lm 4m, and

- (iii) the estimated cost was not conveyed to the other competing tenderers. However, Mr Micallef added that, in spite of this, these did not affect the adjudication process because they based their decision on the quoted rates and not on the estimated cost of construction.

In reply to the PCAB's remark regarding the fact that there were various reports in the file that were endorsed by different officials, Mr Joseph Degiorgio, a member of the Adjudication Board, clarified that, after the opening of tenders, the offers were referred to the Adjudication Board which was composed of Mr Micallef as Chairman, and Messrs John Attard Kingswell, Lawrence Buttigieg and Joseph Degiorgio, respectively, as members. He explained that this Board evaluated the tenders according to the procedure outlined under clause 2.13 – Evaluation of Tenders. Subsequently, they prepared a report in the form of the 'Evaluation Grid' wherein they gave points to each bidder accordingly. The report was then formally referred to the Director Corporate Services of the Health Division and after checking the points referred the said report to the Contracts Department.

With regard to the 'Evaluation Grid', the Chairman PCAB said that the weighting should be somewhat different because, in his opinion, the fact that tenderers were required to indicate their professional experience and proven track record and that extra points were given to those who had more experience, tended to stifle any chances of new architects ever being in a position to participate.

Mr Degiorgio confirmed that although the financial offers were adjudicated inclusive of VAT, yet, he said that after the appeal they worked out the rates exclusive of VAT and the score obtained by each bidder remained the same. The Adjudication Board's member said that no tenderer took any advantage over the others because the set of plans was attached with the tender document. He was of the opinion that any contestation on *Tariff K* should have been presented within the tendering period and not after award stage. Furthermore, he said that the percentage rates quoted by tenderers were

- a. 5.18%
- b. 5.95%
- c. 4.00%
- d. 3.65%
- e. 3.00%
- f. 10.90%
- g. 8.00%
- h. 9.00%
- i. 2.45%
- j. 2.95%
- k. 5.90%

When the PCAB remarked that the amount/s on which each percentage rate was based was/were unknown and therefore the MEAT could not be determined, Mr Degiorgio explained that according to the tender document '*rates quoted are to be on a percentage basis of certified works*' and therefore the percentages submitted referred to the same amount. Dr Fenech intervened by stating that the architects knew on what amount they based the quoted percentage rate. Dr Desira maintained that they only had the design and that tenderers did not know the estimated cost for the construction

of this project. He proceeded to argue that for evaluation purposes it was essential to know the bottom line on which the tenderers had to base the quoted percentage rates.

In response to the other issues mentioned by the Adjudication Board, Dr Desira said that his client did not need to complain because the law stipulated that architects had to comply with the established fees and not with the tender conditions. With regard to the declaration that the directive was received a day before closing date of tender, the appellants' legal representative said this was still received before the adjudication of tenders. He also emphasised that although no reference was made to the 'Tariff' in the tender document, according to Regulation 11 of the Regulations made by the Chamber of Architects and Civil Engineers, included in the Chamber of Architects Regulations (S.L. 390.01), all persons holding a warrant to practice as architects and civil engineers had to comply with the 'Code of Professional Conduct' contained in the First Schedule to these Regulations as well as the recognized 'Tariff of Fees' listed in *Tariff K* of Schedule A to the Code of Organisation and Civil Procedure.

Dr Peter Fenech, The Doric Studio's legal representative, maintained that the PCAB should not only focus on *Tariff K* but should also establish whether the evaluation and adjudication of tenders was carried out in accordance with the conditions of tenders. He pointed out that *Tariff K* did not specify that such established rates were the minimum that an architect had to charge for the provision of architectural services because it was only meant to lay down guidelines for professional charges payable to architects. The recommended tenderer's representative argued that, if *Tariff K* were to be considered obligatory, then they were violating the established principles of the European Community legislation regarding freedom of provision of services.

He said that every adjudicated tender created a contractual relationship between the Contracting Authority and the recommended Tenderer. Dr Fenech claimed that the directive of the *Kamra tal-Periti* could not bind the Contracting Authority because

- (i) the latter was free to choose the most economically advantageous offer, and
- (ii) it was a commercial decision.

Furthermore, he said that in the past the Director of Contracts had awarded similar tenders that were not according to *Tariff K* and although the *Kamra tal-Periti* was aware of such instances it did not take any action.

Dr Fenech said that they did not agree with the weighting given to his clients in respect of their technical proposal and that if the results were published before the opening of the financial offer they would have filed an objection.

During these proceedings Architect David Felice, President of the *Kamra tal-Periti*, Mr Francis Attard, Director General (Contracts) and Architect Frank Muscat on behalf of The Doric Studio took the witness stand and gave their testimony under oath.

At the beginning of his testimony, Architect Felice gave some background information on the role of the *Kamra tal-Periti*. He stated that the Minister responsible for Works had the power to make regulations and that these formed part of the subsidiary law. He said that the Code of Professional Conduct was contained as a Schedule and formed part of the Regulations. He declared that every architect,

whether he/she was a member of the Chamber or not, was bound to apply the tariff of fees contained in *Tariff K*. Mr Felice claimed that the legislation governing the architects' professional activity assigned the Chamber of Architects to investigate any case of alleged abuse or breach of the Code of Ethics by any member of the profession and in case of serious matters the Minister responsible for Works was obliged to implement the Chamber of Architect's decision. However, he pointed out that the architect involved in such abuse or breach had a right to appeal against such decision.

On cross-examination by the PCAB, the President of the *Kamra tal-Periti* declared that the rates, contained in *Tariff K*, for services provided by architects were fixed and that these were not simply guidelines but were part of local legislation. Also, he remarked that certain works required ancillary services, such as project management, which, though provided by architects, were not included within the said tariff.

Mr Felice also testified that they were investigating every architect who submitted an offer for the tender under reference to explain how they computed the quoted rates and other matters concerning architectural services. He said that on 27 February 2007 they wrote to the Department of Contacts wherein they requested the latter '*to procure the names of the periti who submitted proposals for the tender under reference – CT 454/2006*' and other relevant information. The witness confirmed that, except for an acknowledgement, they did not receive any other reply even though they sent reminders on 16 March and 28 May 2007 respectively. The witness testified that the *Kamra* even held an informal meeting with OPM on various issues concerning the provision of architectural services.

When Dr Fenech asked Architect Felice to state whether the client could engage an architect up to MEPA stage and issue another tender for another architect for construction works, the reply given was in the affirmative. However, in reply to a specific question by Architect Robert Sant, the witness said that although *Tariff K* did not contemplate for an architect to be engaged for the submission of the application and another one to be responsible for the construction works, the spirit of the Tariff was intended to provide the service for the whole project.

During Architect Felice's evidence, it was established that, according to paragraph 10 – *Design and Erection of Buildings* of Tariff K, the fee payable to an architect '*for taking the client's instructions, preparing sketch designs, making approximate estimates of cost by cubic measurement or otherwise, submitting applications for building and/or other licences, preparing working drawings and specification, giving general supervision*', that is for the whole project, was 6% and that according to paragraph 11, an architect was entitled to 4% for the submission of an application to MEPA and 2% for the continuation of the project. However, if after the application stage a new architect was engaged the fee should amount to 3%.

On the explicit request of the PCAB, Architect Felice said that in his personal opinion the percentage rate that should have been quoted by tenderers for the provision of these architectural services was between 8% and 9% inclusive of VAT. This was arrived at after analysing the services indicated in the tender's terms of reference and the rates included in *Tariff K*, copies of which were presented to him for his guidance.

He explained that the payable fees for:

- 1) 'the supervision/monitoring of the whole project from the MEPA permit stage onwards' (para 3.1.2), which meant a "take-over" was 2% or 3% (Para 11);
- 2) the preparation of the 'tender dossier including specifications and bills of quantities' (para 3.2.2) (rate for 'specification' already included in the rate of (1) above) was 2% (para 5),
- 3) 'taking the necessary measurement of works and pricing' (para 3.2.8) was 2% (para 5) and
- 4) the structural design was 2% (para 14).

Both Architects Sant and Muscat respectively, contested Architect Felice's computation regarding the rates. Furthermore, in reply to a specific question by the PCAB, the first contended that, due to the fact that before the closing date of tender they received the *Kamra tal-Periti's* directive, prospective tenderers were obliged to comply with the contents of *Tariff K*. On the other hand the reply given by Architect Muscat was the opposite and the reason given was that in this case the tender document did not make any reference or even mentioned *Tariff K*. When asked by the PCAB to state whether the stipulated tariff was binding on the architect, the reply given by the first was in the affirmative while that given by the latter was in the negative. Also, Mr Muscat insisted that in various European countries the issue of fixed tariffs was contested in courts as they reduced competition.

The second witness to take the stand was the Director General (Contracts) who, on cross-examination by Dr Desira, declared that the name of the Architect indicated on the plans was Mr F Muscat and that the Health Division's 'commitment form' was signed by Mr Degiorgio. When asked to state whether he knew who had contributed to this tender document, the reply given was in the negative since this was prepared by the Health Division.

Finally it was the turn of Mr Muscat, acting on behalf of The Doric Studio, to give his testimony in these proceedings.

On being questioned by Dr Desira, the witness held that for the purpose of this tender he did not give any estimate. Mr Muscat said that he only gave a very preliminary indication of the estimated cost of project, which amounted to Lm 12m (Lm 4m for Construction + Lm 4m for Finishes + Lm 4m for Mechanical and Electrical) when asked to do so during a meeting held at OPM. The witness declared that he was only engaged in the preparation of the designs up to MEPA stage and for the submission of a set of plans to be annexed with the architectural services tender under reference.

Mr Muscat sustained that after the issue of this tender all contacts with the Health Division on this project were stopped and that he only remained in contact with MEPA due to modifications that were being requested by ADT. The witness said that all correspondence sent to MEPA was faxed to the Health Department.

Architect Muscat said that his interpretation was that the minimum fee of 3% was applicable to those who did not submit the application to MEPA. However, he said that, once he was the same architect who had already provided this service, the minimum rate he could charge according to the 'Tariff' was 2%. Dr Fenech intervened to elucidate the fact that, although they were stating that they were not

bound by the tariff, their offer was still within the legal requirement of *Tariff K*. At this point, Dr Desira remarked that while the recommended tenderer did not breach any regulation when 2.45% was quoted, the minimum rate his client could quote was 3% because he was not the abandoned architect.

In his concluding remarks Dr Desira maintained that the fact that

- (i) Mr Muscat was the Architect who had prepared the estimated cost of project (even though preliminary), and
- (ii) the estimated cost of construction was not forwarded to them;

the recommended tenderer had an advantage on the appellants, if not even on other tenderers.

He also sustained that the Tendering Authority or the Health Department was obliged to ascertain that all participants were treated in an equitable manner. The appellants' legal representative claimed that the Adjudication Board knew the amount on which Architect Muscat calculated his rate because the estimated amount was transmitted to them, however, they did not know on what the amounts of the other tenderers were calculated.

Dr Desira said that another advantage that transpired during the hearing in favour of The Doric Studio relating to the minimum rate that Architect Muscat could charge was 2% as he was the same architect who submitted the application to MEPA. However, the minimum rate that his client could quote was 3% because Architect Sant was not involved in the first contract. Dr Desira claimed that if they were to accept Mr Felice's argument that this was not an abandonment but a continuation, then they could not state that the minimum 3% was binding on the recommended tender. The appellants' lawyer sustained that this was definitely blatant unfair competition.

He claimed that in spite of the fact that the Adjudication Board received a copy of the *Kamra tal-Periti's* directive they did nothing to save the situation even though they knew that the tenderer had an advantage over the others. As a consequence, he felt that the whole tendering process was carried out in the most unjust manner.

With regard to *Tariff K*, Dr Desira said that the application of the said tariff was binding on all architects and that it was not simply a guideline but a fixed rate.

Dr Fenech responded by stating that the estimated cost was irrelevant once the appellants were insisting that architects had to comply with the established rates in *Tariff K*.

The recommended tenderer's lawyer said that even though they did not agree that the tariffs were obligatory, The Doric Studio still worked within the parameter of the law because according to the established rates in *Tariff K* the minimum rate he could offer was 2%. Dr Fenech said that tenderers were not obliged to abide by the spirit of the law or the praxis but by what was actually written down in the 'tender document'. He insisted that *Tariff K* was meant to lay down guidelines for professional charges payable to architects and it did not specify that such established rates were the

minimum. At this point Dr Desira clarified that he was not stating that what was in the tariff was the minimum because *Tariff K* neither referred to minimum nor to maximum and so the rates were fixed.

Continuing, Dr Fenech said that this tender created a legal relationship between the Director of Contracts and the Tenderer and therefore the former was free to choose the cheapest offer even if the proposed rate was below the established tariff. He argued that if his client's offer was in breach of the law he would face the consequences.

Dr Fenech also maintained that the *Tariff K* was not obligatory and that it violated the principles of European Community legislation regarding the freedom of provision of services. He claimed that once Malta was a member of the EU, then the latter's legislation superseded that of the former.

At this stage the public hearing was brought to a close and the PCAB proceeded with its deliberations before reaching its decision.

This Board,

- having noted that the appellants, in terms of their 'motivated letter of objection' dated 21.08.2007, and also through their verbal submissions presented during the public hearing held on the 14.09.2007, had objected to the decision taken by the General Contracts Committee;
- having taken note of the appellants' claim that the recommended tenderer's offer should have been disqualified because the percentage rate quoted in the financial offer was excessively less than the fee which according to the same appellants was established by law - and not to be regarded simply as a guideline - under '*Tariff K*' of Schedule A of the Code of Organisation and Civil Procedure, with the appellants' legal advisor admitting that no reference was made to the *Tariff* in the Tender Document itself;
- having evaluated the fact that whilst, on one hand the PCAB had heard how, on this specific Tender, the Contracting Authority was notified by the *Kamra tal-Periti* not to accept offers that were not submitted in accordance with the said *Tariff*, it also noted (1) Dr Desira's claims that (a) he was not stating that what was in the *Tariff* was the minimum because *Tariff K* neither referred to a minimum nor to a maximum contending that the rates were fixed and (b) in spite of the fact that the Adjudication Board did receive a copy of the *Kamra tal-Periti*'s directive yet they did nothing to save the situation even though, in his opinion, the said Board members knew that the tenderer had an advantage over the others; (2) Dr Fenech's claim that the tender created a legal relationship between the Director of Contracts and the Tenderer and therefore the former was free to choose the cheapest offer even if the proposed rate was below the established tariff and (3) Mr Degiorgio's claim that he was of the opinion that any contestation on *Tariff K* should have been presented within the tendering period and not after award stage;

- having, meantime, also noted the claim made by the Chairman of the Adjudicating Board, who during the hearing stated that in their evaluation they did not take into consideration *Tariff K* because they had to evaluate the offers according to the terms and conditions of the tender document and also because no reference was made to *Tariff K* on the ‘Schedule of Prices’
- having considered both (a) the appellants’ concern relating to the fact as to whether the Adjudication Board’s method of evaluating the financial offers was correct because the appellants did not know whether or not the VAT element was taken into consideration as well as (b) Mr Degiorgio’s confirmation that, whilst during the adjudication stage the financial offers were adjudicated inclusive of VAT, yet, it was also a fact that after the appeal was lodged, the same Adjudication Board voluntarily worked out the rates exclusive of VAT with resulting scores obtained by each bidder remaining the same;
- having reflected on (a) the point raised by the appellants regarding the fact that in their opinion the recommended tenderer had an advantage over the other competing tenderers because he was the same architect who was awarded the initial contract for the design of the *Rehabilitation Facility*, (b) the Adjudication Board’s counter-statement which whilst arguing that the estimated cost was not conveyed to the other tenderers, yet it also placed major emphasis on the fact that these costs did not affect the adjudication process because the said Board did not base its decision on estimated cost of construction but on the quoted rates, (c) Dr Fenech’s intervention on the same issue in which it was argued that the estimated cost was irrelevant once the appellants were insisting that architects had to comply with the established rates in *Tariff K*;
- having also considered Dr Fenech’s remark that the PCAB should not only focus on *Tariff K* but should also establish whether the evaluation and adjudication of tenders was carried out in accordance with the conditions of tenders;
- having taken full cognizance of Mr Felice’s testimony including and, especially, the fact that (a) he replied in the affirmative to a question asked by Dr Fenech confirming that a client can engage an Architect up to MEPA stage and issue another tender for another Architect for construction works and (b) in his personal opinion, the percentage rate that should have been quoted by tenderers for the provision of these architectural services was between 8% and 9% inclusive of VAT;
- having noted that both Architects Sant and Muscat respectively, contested Architect Felice’s computation regarding the rates albeit both of them had different views as regards the binding element of the same *Tariff*, including Architect Muscat’s claim that even though they did not agree that the tariffs were obligatory, *The Doric Studio* still worked within the parameter of the law because according to the established rates in *Tariff K* the minimum rate they could offer was 2%;

reached the following conclusions, namely

(A) Re the *Tariff K* issue

1. The Appeals Board, reflected on these issues and, initially, tried to establish whether this is an issue between the tenderer and the body representing the profession, in which case it would be up to the Chamber of Architects to take action against the tenderer if it feels that such action is necessary. In this context, if the PCAB were to agree that it should decide upon the issue, then it would have had to establish whether the fees mentioned in *Tariff K* are obligatory and if they are, whether those proposed by the recommended tenderer are in violation of *Tariff K*.
2. Following an exhaustive deliberation process with regards to the question of whether Architects may charge fees outside those laid down in *Tariff K*, the PCAB feels that, whilst an Architect has an obligation to abide by all rules regulating his / her profession as well as any rules of conduct, yet, it is also true that an Architect's client is entitled to expect him / her to abide by such rules at all times and is not expected to verify that the Architect is in fact acting in accordance with the rules of conduct regulating his / her profession.
3. Further to 2 above, the PCAB also came to the conclusion that this does not, however, preclude the Chamber of Architects from taking any action against an Architect for breach of conduct if it feels that there is such breach.
4. Further analysis by the PCAB of the major issue being contended, namely the one relating to the application of fees as per *Tariff K*, once again suggests that, rationally speaking, one should not expect the Contracting Authority to verify that the fees quoted in proposals submitted by Architects are in fact in compliance with *Tariff K* or with any other law regulating their professional fees. One also notes that the Contracting Authority is entitled to assume that the fees quoted by an Architect (who at the end of the day is a warranted professional) are legally correct. If the Architect quotes fees in violation of the law, then he / she shall be liable to disciplinary action by the Chamber of Architects in terms of the code of conduct, not to mention that he / she can also be liable towards the Contracting Authority itself.
5. On the same issue (see 4 above), it appears that, whilst, prior to the award of the tender, the Contracting Authority was informed by the Chamber of Architects that the latter was investigating any potential breach of ethical conduct by Architects, yet, there was, meantime, no specific decision by the Chamber that any of the proposals were in fact in breach. This is important since any Architect who is found to be in breach by the Chamber has a right to challenge such decision through an appeal mechanism and through the Courts of Malta.
6. On this particular issue the PCAB feels that it is not the Contracting Authority's (or the PCAB's) competence to decide such matters, but, in similar instances, it should only act upon such decisions once they are taken by the competent authorities and in the proper forum.

7. Since, in this particular case, there was no such decision, this Board concludes that the grievance raised by the complainant with regards to the application of fees as stipulated in *Tariff K*, is not justifiable.

(B) Re all other issues raised by appellants

Regarding the possible advantage that *The Doric Studio* might have had over other tenderers, the PCAB concludes that this issue should have been raised at the pre-tender stage or immediately it became known that *The Doric Studio* submitted an offer i.e. at the time of opening of tender box and not following adjudication of contract. The PCAB feels that by going ahead and tendering, the other bidders signified that they had no problems on this score

With regards to other issues, this Board is of the opinion that the arguments brought forward by appellants do not provide sufficient proof that the Adjudication Board has reached the wrong conclusion in recommending that the said tender be awarded to *The Doric Studio*.

In addition, all other pertinent testimony presented during the hearing, as well as the counter arguments brought forward by defendants, did nothing to alter the validity and the equitable manner with which the initial decision was taken, especially those relating to the *financial evaluation* and the possible *advantage given to recommended tenderer*.

In consequence to the above, the appellants' objection to the decision, reached by the General Contracts Committee, to award the Contract to *The Doric Studio*, cannot be upheld by this Board.

Finally, this Board recommends that the deposit submitted by the appellants in terms of the Public Contracts Regulations, 2005, should not be refunded.

**Alfred R Triganza**  
Chairman

**Anthony Pavia**  
Member

**Edwin Muscat**  
Member

*31 December 2007*