

PUBLIC CONTRACTS APPEALS BOARD

Case No. 209

GHRC/002/2010

Tender for Architectural Consultancy Services for the Embellishment and Upgrading Works at the British and Knights Buildings, Dock 1

This call for tenders was published in the Government Gazette on 29 January 2010. The closing date for this call for offers was 26 February 2010.

Nine (9) tenderers had originally submitted their offers

Architecture Project filed an objection on 20 April 2010 following the decision taken by the Contracts Department to award the tender in question to Med. Design Associates Ltd.

The Public Contracts Appeals Board composed of Mr Alfred Triganza as Chairman and Mr. Anthony Pavia and Mr. Carmel J Esposito as members convened a public hearing on Wednesday, 21 July 2010 to discuss this objection.

Present for the hearing were:

Architecture Project

Dr Franco Vassallo	Legal Representative
Dr Joe Camilleri	Legal Representative
Perit David Drago	Representative
Ms Simone Vella Lenicker	Representative

Med. Design Associates Ltd

Perit Charles Buhagiar	Representative
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Grand Harbour Regeneration Corporation (GHRC)

Dr John Bonello	Legal Representative
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Adjudicating Board:

Mr Antoine Portelli	Member
Ms Charmaine Monseigneur	Member
Mr Ray Azzopardi	Secretary

Department of Contracts

Mr Francis Attard	Director General
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The PCAB was informed that Mr Chris Paris, Chairman, and Perit Damian Vella Lenicker, member, of the adjudicating board were both abroad and hence could not be present at the hearing.

After the Chairman's brief introduction, the appellant Company was invited to explain the motives of the objection.

Dr Franco Vassallo, legal representative of Architecture Project, explained that although the recommended tenderer, Med. Design Associates Ltd, was a competent organisation in the architectural sector, it had failed to obtain an un-weighted score of 75% allocated to the technical evaluation as clearly indicated in Clause 17.1 – Technical Submissions – which, *inter alia*, stated that:

“... The Award Criteria will be examined in accordance with the requirements indicated in the Terms of Reference.

Those offers which have achieved a minimum un-weighted score of 75% in the Technical Evaluation will proceed to the next stage of Evaluation.”

Dr Vassallo pointed out that, according to the evaluation carried out by the board, Med. Design Associates Ltd obtained 42 points out of 60 or 70% of the points allocated which fell short of the 75% set out in Clause 17.1 and hence that offer should have been discarded. The Chairman PCAB referred to the 'Technical Weighted Score' sheet which showed that a weighted score of 42 translated itself into an un-weighted score of 65%.

Dr Vassallo remarked that the adjudicating board then decided to waive off the 75% un-weighted score in the technical evaluation and, according to the same board, considered the most economically advantageous tender (MEAT) in order to safeguard the public purse given that the recommended tenderer quoted the price of €112,000 against the price of €234,500 quoted by Architecturæ Project and €160,000 quoted by the next cheapest tenderer, ARC MPP Joint Venture. Dr Vassallo then quoted the analysis report dated 21.05.2010 drawn up by Mr Chris Paris, CEO of GHRC wherein it was stated that:

“Irrespective of the decision as to whether the Appeals Board would enter into the merits of the evaluation or not, it is reasonable to submit that in proposing award to Med. Design Associates Ltd, the GHRC acted diligently and demonstrated a clear intent to protect public funds.”

Dr Vassallo did not question whether the adjudicating board acted in good faith or not in its deliberations but he did declare that (i) the criteria for MEAT were to apply only once the tenderer had satisfied the tender specifications and conditions, (ii) the adjudicating board could not do away with the published award criteria which bound both the bidders and the contracting authority and (iii) his client was technically compliant, submitted a price within the declared budget and, as a result, should have been awarded the tender.

Dr John Bonello, legal representative of the contracting authority, the Grand Harbour Regeneration Corporation (GHRC), submitted that the adjudicating board could not have overlooked the wide variation in the price quoted by the recommended tenderer *vis-à-vis* the other tenderers in its overall evaluation of the bids under consideration since this was a single envelope tender. He added that the argument put forward by the appellants would have made sense had this been a three package tender. Dr

Bonello remarked that in its decision the adjudicating board sought to obtain the best value for money and, as such, it acted correctly and in good faith.

Mr Anthony Pavia, a PCAB member, referred to the 'Technical Evaluation Grid' (broken down) and observed that, under the 'Score for Experience', the recommended tender got 10 points out of 10 for 'Bidder's Experience as an Organisation' but got no points at all out of the 15 allocated for 'Experience in Previous Relevant Projects' whereas the appellant got 10 and 14 points respectively.

Architect Charles Buhagiar, representing Med. Design Associates Ltd, remarked that the firm he represented had been operating for about 27 years and that it was experienced both in the design and in the implementation of such projects so much so that his firm carried out the restoration of a building known as the 'Capitainairie' in the same area as Dock No. 1. He added that his firm had quoted a relatively low price because it had already carried out similar works and, as a consequence, knew what such process entailed. Architect Buhagiar stated that he only got the opportunity to see the evaluation grid at the hearing. He informed those present that his firm had obtained the necessary clearance from Heritage Malta (Architect Reuben Abela's employer) to employ Architect Abela on a part-time basis. Mr Abela is expected to strengthen Architect Buhagiar's firm's human resources, particularly in the specific assignment of supervising the project proposed in the call for tenders. Architect Buhagiar described Architect Abela as a well-known professional in the field of restoration works adding that it was normal practice for firms to employ specialised personnel on a part-time basis to carry out particular assignments.

Architect Buhagiar reiterated that the engagement of Architect Abela was intended to strengthen the human resources capabilities of his firm and that he considered that his firm's past experience in restoration works was completely overlooked by the adjudicating board when the same board awarded zero marks.

At this point Med. Design Associates Ltd's representative raised the issue of a manifest conflict of interest drawing the attention of those present that Ms Simone Vella Lenicker, who was present at the hearing representing Architecture Project, namely the appellant Company, happened to be Architect Damian Vella Lenicker's wife, with Mr Vella Lenicker being a member of the adjudicating board.

Dr Bonello stated that, prior to the commencement of the evaluation process, albeit Architect Damian Vella Lenicker had declared that his wife was employed with one of the bidders yet GHRC's CEO decided that this did not constitute a conflict of interest.

The Chairman PCAB noted that the fact that Ms Vella Lenicker was representing the appellants at the hearing was evidence enough that she was a high ranking member of the organisation. He added that with regard to transparency and impartiality even a perceived conflict of interest had to be considered.

Dr Bonello pointed out that one had to keep in view that the adjudicating board did not recommend the award of the tender to the appellant Company, which was the employer of Ms Vella Lenicker.

Architect Buhagiar remarked that he became aware of this conflict of interest at the hearing and he added that if the other tenderers were to know of this conflict of interest probably some might have lodged an appeal on that count.

The Chairman PCAB intervened to remark that, in its deliberation, the PCAB would have to look into how such a decision to allow Architect Damian Vella Lenicker to sit on the adjudication board despite his declared potential conflict of interest could be interpreted within the entire context of an adjudication process.

Dr Vassallo pointed out that with regard to ‘experience’ the recommended tenderer did not obtain zero marks but he obtained 10 marks as an organisation and zero marks for ‘experience in previous relevant projects’. He then stated that Clause 5 at page 4 of the tender document provided, among other things, that...

“The bidder’s submission shall include a comprehensive CV listing technical qualification and professional experience with particular attention to works of a similar or like nature undertaken during the last five years. The personnel and/or resources to be deployed by the bidder in the provision of the services under this contract shall be employees of the bidder’s organisation. The Bidder may employ specialised experts for the performance of a specific task but sub-contracting of any part of the services is not allowed.”

Dr Vassallo remarked that, from the documents presented, the adjudicating board deduced that the recommended tenderer was in fact a renowned firm in the field of architecture but that in this case it was going to subcontract part of the services to Architect Reuben Abela and that was why the adjudicating board allocated zero marks in terms of experience in previous relevant projects.

Dr Vassallo continued to quote from Clause 5 (page 4) as follows:

“Bidders submitting offers for the services under this invitation for submissions shall have a minimum of ten (10) years professional experience.”

Dr Vassallo stressed that it was the bidding firm that had to have this experience and not its subcontractor.

Architect Buhagiar explained that this kind of work involved a number of tasks, e.g. taking measurements, applying with MEPA and the restoration aspect of the project, and that it was in the latter area that the services of Architect Abela would be mostly required considering his 17 years experience in the sector. Architect Buhagiar remarked that for this particular project he felt that his firm should strengthen/improve its human resources by the engagement of Architect Abela, even if on a part-time basis.

At this stage, the parties concerned presented their arguments as to whether the engagement of Architect Reuben Abela by Med. Design Associates Ltd would amount to sub-contracting or to employment, even if on a part-time basis, and the contracting authority declared that it was satisfied from the papers presented that the proposed engagement of Architect Abela would not amount to sub-contracting and so it was not in breach of tender conditions as was being alleged by the appellant. The

PCAB acknowledged that it was not unheard of that experts, especially in the limited local market, rendered their services to more than one employer.

Dr Vassallo insisted that the firm had to have the necessary experience and not the part-time employee who was going to be entrusted with the role of project leader. He added that Architecture Project had on its books three architects specialised in restoration works and that was why it was awarded 14 out of 15 marks for previous experience and that was also why the price offered was higher than that of the recommended tenderer because his client was specialised in this line of work.

Architect Buhagiar agreed with the view that it was not unheard of that a professional person would render service to more than one employer. He added that his firm had submitted a list of eight professionals who, as a team, would be in charge of the various aspects of the project and that Architect Abela was going to supervise the restoration aspect of the project. Architect Buhagiar declared that even without the services of Architect Abela, his firm possessed adequate human resources to undertake this project and, in fact, it had already carried out similar works.

The Chairman PCAB expressed the view that the adjudicating board did not consider Architect Abela as part of Med. Design Associates Ltd, as an organisation, otherwise it would not have awarded zero marks for experience on previous relative projects. He added that it appeared to him that the way the adjudicating board awarded the points for experience in related works meant that nearly all Architecture Project personnel were experts in restoration whereas Med. Design Associates Ltd did not even have one architect with experience in restoration works.

Ms Charmaine Monseigneur, member of the adjudicating board, under oath gave the following evidence:

- the adjudicating board, although it was aware of the firms specialising in restoration projects, had to evaluate on the documents made at its disposal by the tenderers;
- with regard to ‘experience as an organisation’, the adjudicating board considered the experience of the architects attached to the bidding organisations and it turned out that all the bidders employed experienced architects and hence each was awarded the maximum score of 10 points;
- with regard to ‘experience in previous relevant projects’ in the last five years, the adjudicating board considered the list of projects submitted by the bidders and it was noted that in the case of Med. Design Associates Ltd no such list was presented;
- the members of the adjudicating board carried out the evaluation separately and then the points were aggregated;
- the technical person on the adjudicating board was Architect Damian Vella Lenicker, however, the chairman possessed a qualification in construction management;

- the benchmark of 75% technical compliance was set by management so as to ensure that the work would be carried out to a high standard; and
- the adjudicating board could not overlook (i) the fact that Med. Design Associates Ltd quoted a very competitive/low price and (ii) that Med. Design Associates Ltd did possess a certain degree of experience even though it did not manage to clearly demonstrate it in its submission.

The PCAB asked Architect Buhagiar to go through his firm's original submission and indicate his firm's list of previous relevant projects. Architect Buhagiar, while noting that his submission's covering letter dated 22 February 2010 was incomplete because the last page was missing, could not trace the list with regard to 'previous relevant projects' but he was quick to add that, in the covering letter itself, his firm had indicated the 'Capitainaire' restoration project at the Cottonera Marina and even submitted a brochure which included the restoration works carried out by his firm together with the capability statement.

The Chairman PCAB noted that with regard to Med. Design Associates Ltd the adjudicating board entered the note which read 'none of a similar nature' was submitted when tenderers were requested to submit a 'description of projects of a similar nature undertaken during the last 5 years' (statement titled 'Selection Criteria' refers).

Mr Pavia intervened to note that in the covering letter dated 22 February 2010, under 'Organisation', Med. Design Associates Ltd stated that since

“we do not possess the necessary expertise for restoration works we have appointed conservation architect perit Reuben Abela as the lead consultant for this project...”

Architect Buhagiar said that that statement referred to this project, which, he contended, was a very particular project and that was precisely why his firm was going to engage Architect Abela, i.e. to enhance its capability in this specific area.

The Chairman PCAB expressed the view that the declaration made by Med. Design Associates Ltd that as an organisation, without Architect Abela, it did not possess the necessary expertise for restoration works, could explain why it obtained zero marks for 'previous relevant experience'.

Mr Pavia then referred to what the recommended tenderer had stated in the same letter under 'experience', i.e. that *“Med. Design Associates Ltd has been involved in various projects located within the areas of historical importance – even within the same location as this project.”*

Architect Buhagiar remarked that he could not understand how the adjudicating board did not give any weight to the previous works carried out by his firm. He opined that his firm, together with the engagement of an expert in the person of Architect Abela, provided enough comfort to the contracting authority that it was capable to execute this contract and to do that at a very competitive price.

The Chairman PCAB remarked that the PCAB had to decide on whether the adjudicating board was entitled to change the published award criteria during the evaluation process. He added that the MEAT procedure also meant that everything had to be in place, including the technical capability.

Dr Bonello acknowledged that it could have been the case that the points system applied could have caused certain anomalies at the end of the exercise.

Mr Antoine Portelli, member of the adjudication board, under oath,

- agreed that the recommended tenderer was not awarded any points for previous experience because of the tenderer's own admission that he did not possess such experience;
- opined that the adjudicating board ended up recommending the award of the tender to Med. Design Associates Ltd because of the very advantageous price it offered which had altered the scoring pattern obtained in the technical evaluation such that in the end Med. Design Associates Ltd ranked first with a score of 82 while Architecture Project ranked second with 79; and
- being a single envelope tender, the adjudicating board could not overlook the price element.

The Chairman PCAB remarked that it was emerging clearly that the price turned out to be the main factor that led to the award of the tender to Med. Design Associates Ltd.

In conclusion, Dr Vassallo made the following remarks:

- the hearing centred more on the reasons why the recommended tender was not awarded any marks with regard to previous experience rather than on the fact that it failed to obtain 75% on technical compliance as required by the award criteria, which was the reason that prompted his client to present the appeal;
- rightly so, the adjudicating board reached its decision on the documentation presented by the tenderers and since the recommended tenderer stated that he did not possess previous experience in this line of work the adjudicating board had no option but to award it no points in that regard;
- the technical evaluation grid demonstrated that the recommended bidder failed in that respect and he claimed that the evaluating board acted correctly that far;
- the adjudicating board however did not act correctly, both professionally and ethically, when it decided to do away with the 75% technical compliance requirement;
- the PCAB, as a board of review, had to determine whether the evaluation process was carried out correctly and in doing that it had to establish whether

the adjudicating board acted correctly when it recommended the award to a tenderer that did not meet tender specifications and conditions;

- apart from the provisions of clause 17.1, there were also the provisions of clause 17.3 ‘Selection of Preferred Bidder’ which read as follows:

“The Most Economically Advantageous Tender offer (MEAT) is the selection criteria to be used and will be established by weighing the Technical Quality against the Financial Offer on a 60/40 proportional basis respectively. GHRC is not bound to award the Contract to the Bidder that submits the cheapest offer”;

- moreover, clause 8.3 (page 5) indicated that the maximum value of the contract was set at €250,000 and that the offer of €234,500 made by his client, Architecture Project, was within that estimate;
- it was questionable whether a tenderer could make a bid for a tender which, in order to execute it he would have to engage an expert in that field when, according to the tender document, the bidding organisation itself had to be competent to undertake the contract;
- for the sake of justice and equity, the tendering process had to be conducted in accordance with the published tender document and according to law; and
- Architecture Project was a firm specialised in the field of restoration works and that was evident from the works undertaken at the Valletta Waterfront and by having on its books Architect Konrad Buhagiar, who was selected by Architect Renzo Piano to represent him on the City Gate Project. The financial offer submitted by Architecture Project reflected its expertise and the high quality work that it was capable of delivering.

On his part, Dr Bonello remarked that while nobody was questioning the technical competence of the other participating tenderers, it was evident that the offer made by Med. Design Associates Ltd was the most advantageous one to the contracting authority and that justified the decision taken by the adjudicating board.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their ‘reasoned letter of objection’ dated 30 April 2010 and also through their verbal submissions presented during the hearing held on 21.07.2010, had objected to the decision taken by the pertinent authorities;
- having taken note of Dr Vassallo’s comment relating to the fact that, according to the evaluation carried out by the board, Med. Design Associates Ltd obtained 42 points out of 60 or 70% of the points allocated which fell short of the 75% set out in Clause 17.1 and hence that offer should have been discarded, a point which was corrected during the hearing by the PCAB as it transpired that the ‘Technical Weighted Score’ sheet actually showed that a weighted score of 42 translated itself into an un-weighted score of 65%.
- having also taken note of Dr Vassallo’s concluding remarks, especially when he (a) stated that the adjudicating board reached its decision on the documentation presented by the tenderers and since the recommended tenderer stated that he did not possess previous experience in this line of work the adjudicating board had no option but to award it no points in that regard, (b) claimed that the evaluation board did not act correctly, both professionally and ethically, when it decided to ignore the 75% technical compliance requirement and that, for the sake of justice and equity, the tendering process had to be conducted in accordance with the published tender document and according to law and that the evaluation board could not do away with the published award criteria which bound both the bidders and the contracting authority, (c) argued that it was questionable whether a tenderer could make a bid for a tender which, in order to execute it he would have to engage an expert in that field when, according to the tender document, the bidding organisation itself had to be competent to undertake the contract, (d) claimed that the criteria for MEAT were to apply only once the tenderer had satisfied the tender specifications and conditions, (e) said that his client was technically compliant, submitted a price within the declared budget and, as a result, should have been awarded the tender, and (f) pointed out that with regard to ‘experience’ the recommended tenderer did not obtain zero marks but he obtained 10 marks as an organisation and zero marks for ‘experience in previous relevant projects’ which, as far as he was concerned, came as no surprise considering the fact that it was the bidding firm that had to have this experience and not its subcontractor;
- having duly considered Dr Bonello’s reference to the fact that (a) the adjudicating board could not have overlooked the wide variation in the price quoted by the recommended tenderer *vis-à-vis* the other tenderers in its overall evaluation of the bids under consideration since this was a single envelope tender placing emphasis on the fact that the argument put forward by the appellants would have made sense had this been a three package tender, (b) in its decision the evaluation board sought to obtain the best value for money and, as such, it acted correctly and in good faith, (c) prior to the commencement of the evaluation process, albeit Architect Damian Vella Lenicker had declared that his wife was employed with one of the bidders yet GHRC’s CEO decided that this did not constitute a conflict of interest, (d) one

had to keep in view that the evaluation board did not recommend the award of the tender to the appellant Company, which was the employer of Ms Vella Lenicker and (e) it could have been the case that the points system applied could have caused certain anomalies at the end of the exercise;

- having observed that under the ‘Score for Experience’, the recommended tender got 10 points out of 10 for ‘Bidder’s Experience as an Organisation’ but got no points at all out of the 15 allocated for ‘Experience in Previous Relevant Projects’ whereas the appellant got 10 and 14 points respectively;
- having heard Architect Buhagiar’s arguments and observations, especially those relating to the fact that (a) his firm had quoted a relatively low price because it had already carried out similar works and, as a consequence, knew what such process entailed, (b) he only got the opportunity to see the evaluation grid at the hearing, (c) his firm had obtained the necessary clearance from Heritage Malta (Architect Reuben Abela’s employer) to employ Architect Abela, a well-known professional in the field of restoration works, on a part-time basis with the aim of having the latter carrying out overall supervision of the project proposed in the call for tender apart from other work including e.g. taking measurements, applying with MEPA and the restoration aspect of the project, and that it was in the latter area that the services of Architect Abela would be mostly required considering his 17 years experience in the sector, (d) his firm’s past experience in restoration works was completely overlooked by the evaluation board when the same board awarded zero marks, (e) Ms Simone Vella Lenicker, who was present at the hearing representing Architecture Project, namely the appellant Company, happened to be Architect Damian Vella Lenicker’s wife, with Mr Vella Lenicker being a member of the evaluation board, (f) even without the services of Architect Abela, his firm possessed adequate human resources to undertake this project and, in fact, it had already carried out similar works and (g) the statement made by his own firm in their own submission, namely, that since they “*do not possess the necessary expertise for restoration works*” they “*have appointed conservation architect perit Reuben Abela as the lead consultant for this project...*”, was made within the parameters of this particular tender, claiming that this project was a very particular project and that was precisely why his firm was going to engage Architect Abela, namely to enhance its capability in this specific area;
- having taken into consideration the fact that the contracting authority declared that it was satisfied from the papers presented that the proposed engagement of Architect Abela would not amount to sub-contracting and so it was not in breach of tender conditions;
- having taken full cognizance of Ms Monseigneur’s testimony wherein, *inter alia*, she stated that (a) the evaluation board, although it was aware of the firms specialising in restoration projects, had to evaluate on the documents made at its disposal by the tenderers, (b) with regard to ‘experience in previous relevant projects’ in the last five years, the evaluation board considered the list of projects submitted by the bidders and it was noted that in the case of Med. Design Associates Ltd no such list was presented, (c) the technical person on the evaluation board was Architect Damian Vella

Lenicker, however, the chairman possessed a qualification in construction management and (d) the evaluation board could not overlook (1) the fact that Med. Design Associates Ltd quoted a very competitive/low price and (2) that Med. Design Associates Ltd did possess a certain degree of experience even though it did not manage to clearly demonstrate it in its submission

- having also taken into consideration the fact that in the covering letter dated 22 February 2010, under ‘Organisation’, Med. Design Associates Ltd stated that since “*we do not possess the necessary expertise for restoration works we have appointed conservation architect perit Reuben Abela as the lead consultant for this project...*”;
- having also taken note of Mr Portelli’s evidence wherein, *inter alia*, he (a) confirmed that the recommended tenderer was not awarded any points for previous experience because of the tenderer’s own admission that he did not possess such experience, (b) opined that the evaluation board ended up recommending the award of the tender to Med. Design Associates Ltd because of the very advantageous price it offered which had altered the scoring pattern obtained in the technical evaluation such that in the end Med. Design Associates Ltd ranked first with a score of 82 while Architecture Project ranked second with 79 and (c) being a single envelope tender, the evaluation board could not overlook the price element,

reached the following conclusions, namely:

1. The PCAB feels that the contracting authority has committed a huge blunder when it ignored the declaration made by one of its appointed members on the evaluation board wherein the latter drew the attention of the authority’s management about possible conflict of interest, which, as it transpired during the hearing, was very obvious, albeit this does not mean that the said member was in any way influenced or that he acted in bad faith or unethically. This Board’s opinion is that, all things being equal, it cannot condone the decision taken by the contracting authority’s administration despite the latter being made fully aware of the anomalous situation and this, being fully aware of the maximum need for a clear manifestation of transparency and level playing field in similar circumstances. This need for transparency in this case is even more evident where it appears that an anomalous situation has been created through the awarding of marks for experience in similar projects.
2. The PCAB opines that the adjudicating board could not do away with the published award criteria which bound both the bidders and the contracting authority just because of the element of price and, along the way, be totally oblivious of the fact that there were other criteria which were being completely overlooked, such as the technical capability of the tenderers, even though this Board has high reservations about the observance of the evaluation criteria the same contracting authority had set out in the first place.
3. The PCAB recognises the fact that, albeit in good faith, yet, it is a fact that both the contracting authority ‘per se’ and, particularly, the evaluation board, acted in an inconsistent manner e.g. (a) not observing its own parameters, (b)

giving a ‘zero’ score to the recommended tenderer with regards to relevant experience and then, simultaneously, positively re-evaluate the said tenderer as it was argued that the firm did possess a certain degree of experience even though it did not manage to clearly demonstrate it in its submission, an issue which was not within the prerogative of the evaluation board to decide upon as its remit precludes it from playing the ‘advocate’ in view of impartiality which has to be manifested throughout the entire process and so forth.

4. On the other hand, the PCAB, whilst acknowledging that it is very normal for a participating tenderer to engage other experts in particular related fields aiming at adding more credibility to their bid, yet, in this particular instance, it is not sure as to the extent of the work being assigned to Architect Abela, especially when one considers the tenderer’s own admission in the tender submission, namely that Architect Buhagiar’s firm lacked staff members who “*possess the necessary expertise for restoration works*”, so much so that this situation instigated them to appoint “*perit Reuben Abela as the lead consultant for this project...*”
5. Contrary to what has been argued during the hearing by the contracting authority’s representatives, the PCAB fails to understand why evaluation boards should focus more on ‘price’ in tenders which are submitted in single envelopes.
6. The PCAB feels that, overall, in this particular tender, the ‘modus operandi’ of both the contracting authority and the evaluation board, left very much to be desired. This Board is not at all convinced that the way that the process was conducted was in line with normal procurement regulations.
7. As a result of all the above, the PCAB concludes that the adjudicating process has been compromised and it has to recommend that this tender be cancelled and that a fresh call be issued. Needless to say, all effort has to be made by the contracting authority to ensure that there will be no repetition of decisions taken which led to this anomalous scenario.

In view of the above this Board also recommends that the deposit paid by the appellants should be reimbursed.

Alfred R Triganza
Chairman

Anthony Pavia
Member

Carmel J Esposito
Member

30 July 2010