

PUBLIC CONTRACTS REVIEW BOARD

Case No. 400

CT/3027/2011; Adv No CT/191/2011

Tender for the Restoration to Valletta Landfront Fortifications - VLT 14

This call for tenders was published on the 30th August 2011 with a closing date of the 25th October 2011. The estimated budget amounted to €810,358 inclusive of VAT.

Seven (7) tenderers submitted an offer.

On the 2 January 2012, Attard Bros Ltd filed an objection against the decision of the Contracts Department to disqualify its tender as administratively non-compliant for the purposes of Clause 16.1 (b) (iii) 'Power of Attorney' and Clause 16.1 (e) (iii) (a) 'Detailed Method Statement'.

The Public Contracts Review Board composed of Mr Joseph Croker as Acting Chair, and Messrs Carmel Esposito and Paul Mifsud as members convened a public hearing on Friday, 20th April 2012 to discuss the appeal.

Present during the hearing:

Attard Bros Ltd

Dr Stephen Thake	Legal Representative
Mr Michael Attard	Representative of Attard Bros Ltd
Mr Thomas Sammut	Representative
Mr Vincenzo Leone	Representative

HSB Joint Venture

Dr John Gauci	Legal Representative
Mr Anton Schembri	Representative
Mr Hugh Vella	Representative

Ministry for Resources and Rural Affairs (MRRA)


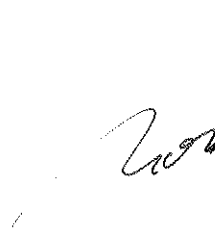
Dr Victoria Scerri	Legal Representative
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Evaluation Board

Perit Norbert Gatt	Chairman
Perit Chantelle Busuttil	Member
Perit Mario Ellul	Member

Contracts Department

Mr Jonathan Barbara	Representative
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After the A/Chairman's brief introduction, the appellant was invited to explain the motives of his objection.

Preliminary Submission – Appeal Not Lodged Within the Prescribed Period

Dr Victoria Scerri, on behalf of the contracting authority, made following preliminary submission:-

- i. Reg. 84 (1) of the Public Procurement Regulations provided, among other things, as follows:

Any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract or a cancellation of a call for tender, may file a notice of objection with the Review Board.

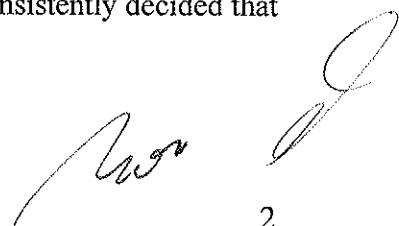
The notice shall be filed within ten calendar days following the date on which the contracting authority has by fax or other electronic means sent its proposed award decision.

- ii. the letter of rejection issued by the Department of Contracts was dated 21st December 2011 whereas the appeal, although dated 30th December 2011, was received by the Ministry of Finance (PCRB) on 2nd January 2012 as per 'received date' stamped on the letter of appeal; and
- iii. that meant that the appeal was not made within the prescribed ten (10) calendar days following the date of the appellant's notification.

Dr Stephen Thake, on behalf of Attard Bros Ltd, the appellant, remarked that:-

- a. in its letter of rejection dated 21st December 2011, the Department of Contracts had indicated to his client that an appeal could be entered by noon of Monday 2nd January 2012;
- b. the instructions issued by the Director of Contracts were clear and quite reasonable considering that 31st December was a Saturday, 1st January 2012 was both New Year's Day and a Sunday and so Monday 2nd January 2012 was the first opportunity available to his client to lodge his appeal; and
- c. it was unfair that his client was being notified of this issue at the hearing such that he was not being give adequate time to prepare his defence.

Dr John Gauci, on behalf of HSB Joint Venture, the recommended bidder, remarked that whenever there was a discrepancy between the instructions issued by the Department of Contracts and the Public Procurement Regulations with regard to the period within which an appeal had to be lodged, the PCRB had consistently decided that the Public Procurement Regulations prevailed.



Mr Jonathan Barbara, representing the Department of Contracts, declared that the appellant was notified on the 21st December 2011 by fax and that the department had a document confirming that the communication had been received.

The Board continued with the hearing without prejudice until it could consult on the preliminary plea, however, after:

- having heard the preliminary submission to the effect that the appeal was not submitted within the stipulated 10 calendar days period;
- having noted that according to records held by the Department of Contracts and as verified by Mr Jonathan Barbara from the Department the notice was actually delivered to the appellant company on the 21st December 2011;
- having also noted that in his letter of the 21st December 2011 the Director of Contracts had informed the appellant company that he (the appellant) had until the 2nd January 2012 noon to submit an appeal, i.e. if he intended to do so;
- having noted that the letter of objection though dated 30th December 2011 was actually received at the PCRB on the 2nd January 2012;
- having consulted the relevant regulations of the Public Procurement Regulations wherein it is clearly stated that an appeal had to be submitted within 10 calendar days following the date on which the contracting authority has by fax or other electronic means sent its proposed award decision.
- having also noted that the Public Procurement Regulations do not empower the Director of Contracts to make changes to the period when the appeal may be lodged,

came to the following conclusions:

1. The appeal was lodged on the 2nd January 2012 in contravention of the provisions of the Public Procurement Regulations;
2. The appellant was misdirected when informed that an appeal may be lodged by the 2nd January 2012
3. The Board may not take cognizance of an appeal not lodged within the timeframe stipulated in the Public Procurement Regulations.

In view of the above, the Board finds against the appellant; however, since the appellant was manifestly misguided by the letter received from the Department of Contracts indicating that he had until the 2nd January 2012 to submit an appeal, the Board recommends that the deposit paid on appeal be reimbursed.


Joseph Croker
A/Chair


Carmel Esposito
Member


Paul Mifsud
Member

26th April 2012