

PUBLIC CONTRACTS REVIEW BOARD

Case No. 962 – CT 3101/2015: Tender for the Set up of MUŻA at the Auberge D’Italie in Merchant Street in Valletta.

The Tender was published on the 13th May 2016. The closing date was on the 14th July 2016. The estimated value of the Tender is €3,695,962.22.

On the 6th July 2016 Camray Company Limited filed an objection raising pre-contractual concerns about the Tender, asking for an extension for the deadline and a new Bill of Quantities.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Mr Lawrence Ancilleri and Mr Carmel Esposito as members convened a hearing on Tuesday the 2nd August 2016 to discuss the objection.

Present for the hearing were:

Camray Company Limited:

Mr Brian Miller	Senior Manager
Mr Adrian Fabri	Tender Executive
Dr Reuben Farrugia	Legal Representative

Heritage Malta:

Mr Kenneth Gambin	Chief Executive Officer
Mr Alexander Debono	Project Leader
Ms Veronica Bonello	Project Manager
Ms Veronica Bonavia	DTR Architect
Mr Steve Gambin	Project Manager

Department of Contracts:

Dr Chris Mizzi	Legal Representative
Ms Marisa Gauci	Representative

The Chairman made a brief introduction and invited the Appellant's representative to make his submissions.

Dr Reuben Farrugia on behalf of Camray Company Ltd said that after having examined the Letter of Reply which was jointly submitted by the Department of Contracts and Heritage Malta, it can be seen that an agreement is possible, resolving the matter.

The Contracting Authority seems to have agreed to issue a new Bill of Quantities. However, he pointed out that Clarification note number 9 had given new plans to be used but as yet these have not yet been circulated among the interested bidders. The only remaining difficulty is the request made by Appellant for a two week extension of the closing date from the receipt of the said plans. The number of Clarifications issued in this Tender merit an additional two weeks period.

Dr Chris Mizzi on behalf of the Department of Contracts explained that the law allows the Contracting Authority a period of six days following the issue of the latest Clarification. However, the circumstances at the Contracting Authority and the Department of Contracts show that the closing date could not be fixed before the 25th August 2016. This gives additional time for bidders to prepare their Tender submissions.

This is being done because it is in the interest of the Department of Contracts that the present Tender is successfully concluded and awarded. He explained that the workings were already finished and he promised that the necessary final Clarification and plans would be issued within eight (8) days from the day of the Public Hearing, namely 2 August 2016. He also promised that the closing date would not be before the 25th August 2016.

The parties asked for this agreement to be incorporated into this Board's decision.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Pre-Contractual Concern*" dated 6 July 2016 and also their verbal submissions during the Public Hearing held on 2 August 2016 had objected to the decision taken by the Pertinent Authority, in that:

a) Camray Company Limited's major concern is that due to the fact

that there existed numerous Clarifications on the Technical side, a new Bill of Quantities is to be issued by the Contracting Authority, incorporating such amendments;

b) The Appellant Company also refers to Clarification Number 9 whereby new “Plans” were to be issued by the Contracting Authority, yet, so far these plans have not been circulated to prospective Bidders;

c) In view of the above mentioned rectifications, the Appellant contends that the closing date for the submission of Tenders should be extended to at least 25 August 2016.

Having considered the Contracting Authority’s “Letter of Reply” dated 28 July 2016 and also their verbal submissions during the Public Hearing held on 2 August 2016, in that:

a) Through its “Letter of Reply” and its verbal submissions, the Contracting Authority confirmed that the requests made by the Appellants are being acceded to.

Reached the following conclusions:

1. After having examined the relative documentation and credible submissions made by the parties concerned, this Board acknowledges the agreement on the following points:

i) Due to the various Clarifications, a fresh Bill of Quantities together with plans to be circulated to prospective bidders is to be issued within Eight (8) Days from this Board's Decision;

ii) Since i) above is to take immediate effect, the Closing Date of the Tender should be extended to at least 25 August 2016.

At the same instance, this Board recommends that after the relative action is taken by the Contracting Authority, the Tendering Process is to proceed.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

3 August 2016