

PUBLIC CONTRACTS REVIEW BOARD

Case 1043 – CT 2186/2016 – Tender for Investigative Coring in Connection with the Construction of a Sub-Sea Tunnel between Malta and Gozo

The Publication Date of the Call for Tenders was 16 September 2016 whilst the Closing Date for Call of Tenders was 10 November 2016. The Estimated Value of the Tender, (Exclusive of VAT) was € 635,593.22.

Seven (7) Bidders have submitted offers for this Tender.

On 7 April 2017, BST JV filed an Objection against the decision of Transport Malta to award the Tender to Geotec SpA for the price of € 751,645.60 (Exclusive of VAT) against a deposit of € 4,767.

On 25 April 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – BST JV

Mr Paolo Bugeja	Representative
Ms Dorothea Scicluna	Representative
Dr Carl Grech	Legal Representative

Recommended Bidder – Geotec SpA

Dr John Refalo	Legal Representative
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Contracting Authority – Transport Malta

Mr Clifton Borg	Chairperson, Evaluation Board
Ms Mary Grace Pisani	Secretary, Evaluation Board
Mr Lawrence Darmanin	Member, Evaluation Board
Perit John Demicoli	Member, Evaluation Board
Ms Liz Markham	Representative
Mr Ray Stafrace	Representative

Department of Contracts

Ms Graziella Calleja	Procurement Manager
Dr Franco Agius	Legal Representative
Dr Christopher Mizzi	Legal Representative

Following an introduction by The Public Contracts' Review Board Chairman, Dr Anthony Cassar, remarked that this Board would prefer if the Letters of Objection were brief and to the point as it would help the same to prepare for the Public Hearing in a better way. Following this remark, the Appellants were invited to make their submissions.

Dr Carl Grech, the Legal Representative for BST JV submitted that their Appeal was based on the fact that his clients were deemed to be Administratively Non Compliant for 2 reasons which as per the Letter of Rejection issued by the Department of Contracts on 28 March 2017 were,

- i) *“The ‘Tender Guarantee’ submitted does not meet the requirements as stipulated in Article 8 of the Tender Document;*
- ii) *“No reply has been submitted by Bidder to any of the above rectifications requested”*

With regards to the First Grievance, Dr Carl Grech opened by saying that his clients had submitted the Bid Bond in the format required. This was issued by APS Bank on 9 November 2016 for the sum of € 6,300 and it was valid until 25 January 2017. The reason given to why the Bid Bond was not accepted was that it was not compliant with the requirements issued by Article 8 of the Tender Document which *inter alia* stated that,

“The Tender Guarantee is set at € 6,300 and must be an original and valid guarantee presented in the format available to peruse from www.etenders.gov.mt. The guarantee must be issued by a local Maltese Bank or a Financial Institution licensed by a recognized Financial Regulator in the country where the company is located and who assumes responsibility for claims and payments to the amount as stated above. It must remain valid up to and including the 25th January 2017. The Tender Guarantee must be drawn up in the name of the Director General Contracts”

Dr Grech continued by saying that if his client's Bid Bond complied with what the Tender Document was requesting and there was nothing clear on why, according to the Contracting Authority, the Bid Bond was not compliant with Article 8 of the Tender Document.

Dr Carl Grech continued by saying that he had entered into a certain level of detail in the Letter of Objection because he thought that the problem was the date but after seeing the Reasoned Letter of Reply issued by the Department of Contracts and Transport Malta, he realised that the problem was another one since he learned that the problem was the fact that the Bid Bond was issued by Solidbase Laboratory Ltd instead from BST JV, the Joint Venture bidding for this Tender.

Dr Grech referred then to Clause 1.2 of the Joint Venture Agreement signed by the parties forming BST JV on 9 November 2016 which stated that,

“Notwithstanding that the parties may be joint and separately bound to an Authority or entity under contract for the carrying out of services, nothing herein contained shall be interpreted as giving rise to a partnership between the Parties or limiting the rights or powers of either Party to carry on its separate business for its sole benefit”.

This clause clearly shows that all the parties who signed it agreed that there had to be a joint and separate liability. Besides this Agreement allowed Solidbase Laboratory Ltd to be the Lead Party of BST JV.

A Joint Venture does not enjoy a separate juridical personality. It was made in order to ensure Bidders to participate together in a Tender and not as a separate entity. In fact, even when a Department make a contract with Bidders, the Department signs a contract with the separate Bidders and also with all of them as a Joint Venture thanks to the Joint and Separate Liability

The Department of Contracts is saying that once the Bid was submitted by BST JV the Bid Bond submitted by Solidbase Laboratory Ltd is wrong. Usually, the parties concerned start to consolidate their financial situation once they win the Tender and the same happens when it comes to opening a Bank Account. The parties concerned in this Joint Venture have submitted their offer together.

Dr Carl Galea, the Legal Representative for BST JV then proceeded by quoting another part of Article 8.1 of the Tender Document which *inter alia* stated,

“The Tender Guarantee (Bid Bond) is intended as a pledge that the Tenderer will not retract his offer up to the expiry date of the guarantee and, if successful, that he will enter into a contract with the CGA/CA on the terms and conditions stated in the Tender Document”

The fact that one of the partners has made the Bid Bond on behalf of the Joint Venture and submitted it with the rest of the Tender Document shows clearly that they were complying with the requisite that the Bid Bond was going to be executed until the very end and that the Bidders were going to sign the contract with the Authority concerned satisfying the Bid Bond as it happened.

The Bid Bond as it was made satisfied the requirements of Article 8 of the Tender Document because it was made by one of the Bidders who was the lead partner of a Joint Venture. Transport Malta should have seen that the pre-requisites were not satisfied.

Dr Carl Grech then quoted Article 9 of the Reasoned Letter of Reply issued by the Department of Contracts and Transport Malta dated 17 April 2017 which *inter alia* stated that,

“The Bidder for this offer is BST JV and therefore the Bid-Bond guarantee should have been made in the name of such Joint Venture or at least on behalf of BST JV as it is customary in the cases for Joint Ventures”

The Appellants’ Legal Representative continued arguing that whatever happens internally in a Joint Venture was not of competence of the Department of Contracts and there was no reason why the Bid Bond was deemed to be Administratively Non Compliant.

In the same Reasoned Letter of Reply, the Contracting Authorities said that there should be a *“requirement of a Bid Bond”*. Once again, Solidbase Laboratory Ltd was one of the Bidders under the BST Joint Venture Cap. The Appellants could not understand why they are deemed to be non compliant.

At this point, Dr Carl Grech, the Legal Representative for BST JV referred to the Decision 687 issued by the Public Contracts Review Board as diversely composed on 6 May 2014 wherein this point was also raised and the latter had decided to re-integrate the Appellant in the Tender.

Dr Christopher Mizzi, a Legal Representative for the Department of Contracts opened his submissions by saying that Article 8 of the Tender Document does not exist by itself. In this case the Bid Bond should have been submitted by the Bidder. He agreed with Dr Grech's statement that the Bid Bond submitted satisfies Article 8's requisitions but the latter article starts from the fact that the Bidder is providing the Bid Bond.

Therefore, if the Bid Bond is not being done by the proper Bidder it is going against the instructions given in the same Article despite the fact that it complied with all its requirements. It was the particular Bidder who had to provide its Bid Bond.

Dr Mizzi then referred to the first sentence of the same Bid Bond issued on 9 November 2016 which *inter alia* saying that,

“Whereas the Director General Contracts has invited Tenders for the Investigative Coring in connection with the construction of a tunnel between Malta and Gozo under reference number CT 2186/2016 and whereas Solidbase Laboratory Ltd Sqaq iż-Żiemel in Handaq Road, Qormi QRM 4003 [hereinafter referred to as the Tenderer]”,

When reading this first sentence, continued Dr Christopher Mizzi, one could see that the wording takes it for granted that the Bidder was Solidbase Laboratory Ltd which was not the case since a Joint Venture is a separate thing. One cannot judge Solidbase Laboratory Ltd with the Joint Venture itself.

Dr Mizzi then referred to the decision issued by the Civil in the case Jeffrey Farrugia vs Department of Lands of 13 January 2014 wherein there was a clear ruling that the person who made the Bid Bond was not the proper person, hence the Bid Bond in that case was rejected.

In this regard, the Public Contracts Review Board was requested by the Contracting Authority not to ignore the fact that the Bid Bond was not made on the name of the Joint Venture and hence it cannot be accepted. It was true that it was the praxis for a Joint Venture not to have a bank account but on the other hand it is common practice for a Bid Bond to be issued on behalf of a Joint Venture.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board said that the latter agreed that the Bidder was a Joint Venture and that it was clear that the documentation was issued on behalf of Solidbase Laboratory Ltd. Article 8 of the Tender Document was there to cover the Bidders according to this Board.

Mr Carmel Esposito, a member of the Public Contracts Review Board asked whether this was pointed out in the Letter of Rejection for which Dr Franco Agius, a second Legal Representative for the Department of Contracts replied that it was the exact reason why the Appellant's offer was rejected. The Bidder was BST JV not Solidbase Laboratory Ltd hence the requisites of Article 8.1 of the Tender Document were not respected.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board agreed with Dr Franco Agius' later statements.

Dr Christopher Mizzi for the Contracting Authority said that the Letter of Rejection should have had a more detailed wording to explain why BST JV's offer was rejected but on the other hand, it was precise when saying that Article 8 was not respected.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, remarked that one of the reasons why many Bidders were objecting was the fact that the Letter of Rejection was not giving enough specific reasons on why offers were being rejected.

Dr Carl Grech, the Legal Representative for BST JV said that one of the reasons which his clients received in the Letter of Rejection dated 28 March 2017 was,

“Bidders cannot be deemed as administratively compliant since the “Tender Guarantee” submitted does not meet the requirements as stipulated in Article 8 of the Tender Document”.

Dr Christopher Mizzi for the Department of Contracts added that besides the Bid Bond question, the Letter of Rejection has mentioned other points why the Appellant's offer was rejected. In their opinion, in order for the reasons of rejection to be fully comprehensive, they decided to give more details on why the offer was not valid. It was true that maybe the Bid Bond reason was not explained correctly but one had to appreciate the point that the same Letter of Rejection has included other things in order for BST JV to know why they were being disqualified from this Tender.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board said that the Letter of Rejection should have specific reasons why the offer in question was being rejected.

Dr Carl Grech, the Appellant's Legal Representative, pointed out that the only time in Article 8.1 of the Tender Document that the word Tenderer was used was in the following phrase,

“The Tender Guarantee (Bid Bond) is intended as a pledge that the Tenderer will not retract his offer up to the expiry date of the guarantee”.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, then asked who the Tenderer is for which Dr Carl Grech, for the Appellants, replied that it was BST JV but that Article 8.1 of the Tender Document does not specify that it had to be the Tenderer himself to present the guarantee. In this case, the Bid Bond was payable on request so therefore there was no validity.

Dr Grech reminded everyone present that a Joint Venture does not have a separate judicial personality unlike a partnership or a separate judicial entity. In this case, the Joint Venture was an agreement between 3 persons who bound themselves. It was also clear from the Joint Venture agreement which there was that they were not creating a juridical and distinct entity but that they were in agreement that they were going to submit one single offer.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked Dr Grech under which name did the offer was submitted for which the latter replied that it was made under BST JV. The Public Contracts Review Board's Chairman than added that the name was there and one cannot use a fictitious name.

Dr Carl Grech, the Legal Representative for BST JV added that they were three people who were jointly and separately together. Solidbase Laboratory Limited was one of the proper Bidders. The fact that that name was being used to lead the business does not create a separate entity despite being responsible for the business. If one had to file a case in front of the Hon Court, the case would have to be filed against Bezzina Maritime Services Ltd, Solidbase Laboratory Ltd and Trevilsonda s.r.l not against BST since the latter name could not be found anywhere.

Dr John Refalo, the Legal Representative for Geotec SpA wondered whether this was a risk for the business.

Dr Franco Agius, a Legal Representative for the Department of Contracts said that this was not a simple situation since here one finds a Bid Bond for Solidbase Laboratory Ltd whilst the Department of Contracts received an offer from BST JV. Therefore there was a case of either having an offer without a Bid Bond or else a Bid Bond without the offer.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board said that the Bidder was a Joint Venture.

Dr Carl Grech, appearing for BST Joint Venture added to this latter statement that the Joint Venture was composed of Solidbase Laboratory Ltd plus another two. Effectively the Bid Bond was made from one of the Bidders.

Dr John Refalo, the Legal Representative for Geotec SpA argued that Chapter 386 of the Companies Act treats the association and participation of Joint Ventures. This was not a simple commercial exercise under that particular namesake. It was a judicial personality but it might be that the parties concerned were also joint and separate. It was not a simple exercise of taking another name, but it was a new and recognised figure therefore one cannot say that this does not exist.

Dr Christopher Mizzi, a Legal Representative for the Department of Contracts added that when dealing with similar offers, the Evaluation Board works throughout. It was true that there are certain stages but it does not make sense that a Bidder who makes an offer of this type is stopped at this point when he has other deficiencies in his Tender and these are not pointed out to him. At the end of the day, the aim of the Contracting Authority was to help all Bidders to submit better offers in future Tenders.

The Legal Representative for the Appellants, Dr Carl Grech, then proceeded by opening his submissions on the Second Grievance. BST JV did not receive any of the clarifications sent by the Department of Contracts and because of this reason, the Appellant's offer was being deemed as being Administratively Non Compliant.

Dr Franco Agius, one of the Legal Representatives for the Department of Contracts asked the Appellants whether did they received their Clarifications for which Dr Carl Grech, the Legal Representative for the Appellants replied that the first time that they were aware of these clarifications was when BST JV was deemed to be administratively non-compliant. Prior to that, the latter were neither given the chance to recognise these clarifications nor given the possibility to reply to them.

Dr Grech explained that his clients received two e-mails both on 16 January 2017 one at 1554 and another one at 1605 through the Electronic Public Procurement System with the heading being Request for Clarifications. Unlike what happens usually, where attachments were usually sent with the e-mails, this time, the Department of Contracts sent a hyperlink. The Appellants got cognisance of these two e-mails the next day but when they clicked on the hyperlinks to access these clarifications, the only notification which they have received was that no clarifications were disseminated.

The same happened when they tried to access the website and BST JV presented copies of these logs. This was done four times in order to see what these clarifications were about and every time that the Appellants tried to access the Website, they always found out the same message, that no clarifications were disseminated.

Dr Carl Grech continued by saying that with regards to this point, BST JV was not given the chance to be put on a Level Playing Field because of these estranged reasons. The fact that two e-mails were sent already show that there was a technical problem. The e-mail from which the hyperlink was sent was a no reply e-mail generated by the system since this was the praxis generated by the system. Besides, when the Appellant requested a clarification on the Bid Bond no answer was given.

At this point, Ms Dorothea Scicluna, an Administration and Organisation Manager with regards to E-Tenders for Solidbase Laboratory Ltd, holding ID Card No 875851 M was summoned by BST JV to testify under oath before the Public Contracts Review Board.

Following Ms Scicluna's testimony, Mr David Gatt, a Procurement Manager within the Department of Contracts holding ID Card Number 5879 M was summoned by the Department of Contracts to testify under oath before the Public Contracts Review Board.

Following Mr Gatt's testimony, Dr Anthony Cassar, the Chairman of the Public Contracts Review Board said that the main issues for this Objection were the Bid Bond and its Notification.

Dr Christopher Mizzi, the Legal Representative for the Department of Contracts said that this issue was similar to the one of when you have different e-mail accounts. One could be capable of having more than an e-mail account such as his personal e-mail and his work e-mail.

If one pretended that an e-mail was sent to the e-mail you usually use for work, one cannot pretend to enter the personal e-mail and find the e-mail in question there since they are two different persons. The system recognises two different persons and it does not divulge information which might be sensitive. Therefore the system is simple enough and it exists because of its security features.

Dr Carl Grech, the Legal Representative for BST JV argued that the problem was that when an e-mail allows access, this should let the user enter in the link given. This was a point which no witness has answered. In reality, the clarifications requested were three:

- i) The first Clarification regarded the Power of Attorney which was presented and allowed Mr Paolo Bugeja to sign on behalf of all parties concerned in the Joint Venture;

- ii) The second Clarification regarded some data regarding the Joint Venture since one of the partners should have been written as Bezzina Maritime Services Ltd and not Bezzina Group. This was a typing error since the Joint Venture Agreement regarded Bezzina Maritime Services Ltd;
- iii) The third Clarification regarded the requisites of Article 7 of the Tender Document where the Appellants were requested to submit a value for services of a similar nature in the last three years.

Dr Grech continued by saying that BST JV submitted all information regarding all parties concerned and if one had to see only what Trevilsonda srl has submitted, it already showed that all requisitions were satisfied. Besides, the Appellants gave a full list which was not on the table but there were the same headings in a different order for works which amounted to € 2 million.

Dr Christopher Mizzi for the Department of Contracts then said that there was a member of the Evaluation Board who wanted to clarify something. At this point, Perit John Demicoli, an Officer within the Roads and Infrastructure Department of Transport Malta, who was a member of the Evaluation Board holding ID Card Number 294976 M was summoned by the Department of Contracts to testify under oath before the Public Contracts Review Board.

Following Perit Demicoli's Testimony, Dr Carl Grech, the Legal Representative for the Appellants referred to Case 950 decided on 5 July 2016 by the Public Contracts Review Board as differently composed wherein there was a similar issue and the Appellant was not given the chance to reply to these rectifications.

Dr Franco Agius, the Legal Representative for the Department of Contracts concluded that the circumstances were different and it was not fair to refer to the latter sentence since in that case, the e-mail went into the spam. In that case, the Department of Contracts has presented logs which showed that the Economic Operator in question did not read the e-mail.

Dr Agius, finally referred to the Electronic Commerce Act wherein once an information was submitted which required correspondence, this had to be done in the moment where the e-mail was submitted. One cannot associate the two cases since the facts were different.

At this stage, the Public Hearing was adjourned to Tuesday 9 May 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by BST JV (herein after referred to as the Appellant) on 7 April 2017, refers to the Contentions made by the latter

with regards to the award of Tender of Reference CT 2186/2016 listed as Case No 1043 in the records of the Public Contracts Review Board, awarded by Transport Malta (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Carl Grech

Appearing for the Contracting Authority: Dr Franco Agius

Dr Christopher Mizzi

Whereby, the Appellant contends that:

- a) Although the Bid Bond was issued by one of the participants in the Joint Venture and not by the Joint Venture itself, in accordance with Article 8 of the Tender Document, the guarantee is valid, compliant and serves its purpose to the full. In this regard, BST JV insist that their offer should not be discarded due to this fact;**

- b) The Appellant also maintains that he did not receive any clarification note from Transport Malta requesting a rectification to his offer, as allegedly stated by the latter.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” filed on 7 April 2017 and its verbal submissions during the Public Hearing held on 25 April 2017, in that:

- a) Since the Bid Bond was required to secure and safeguard the offer itself, Transport Malta insist that since the actual Bidder was the Joint Venture, such a guarantee had to be issued by the Joint Venture itself and not by a Third Party. In this regard, there was no other option but to deem BST JV’s offer as being “*Administratively Non Compliant*”.**

- b) Transport Malta confirms, with ample justifications that correspondence was sent to the e-mail address of the Appellants requesting rectifications to their offer. In this regard, the Contracting Authority has the necessary proof to justify the fact that the e-mail was sent yet the Appellant did not access the same profile as that used for the submission of the Tender, so that BST JV failed to reply to the e-mail within the specified time.**

This same Board also noted the Testimonies of the witness namely:

- i) Ms Dorothea Scicluna summoned by BST JV;**

ii) Mr David Gatt summoned by the Department of Contracts;

iii) Perit John Demicoli summoned by the Department of Contracts

This Board has also taken note of the following documents:

i) Documents DS 1, DS 2 and DS 3 submitted by Ms Dorothea Scicluna during her Testimony under oath;

ii) Documents DG 1, DG 2, DG 3 and CM 1 submitted by Mr David Gatt during his Testimony under oath;

This Board, after having treated the merits of this case, arrived at the following conclusions:

1. With regards to BST JV's First Grievance, this Board, after having examined the relative documentation and heard lengthy submissions from the parties concerned and the witnesses duly summoned, opines that the issue at stake, is the validity of the Bid Bond in so far as Article 8 of the Tender Document dictates.

It is to be borne in mind that the Bid Bond is intended as a pledge, to ensure that the prospective Bidders will not retract his offer prior to the expiry date as stipulated in the said guarantee. In this particular case, the Bid Bond had to stay till 25 January 2017. At the same instance, the guarantee must be in its original form and issued in favour of the Director General (Contracts).

At this stage, one must consider the judicial standing of the Joint Venture itself. The fact that more than one individual/entity joined forces to form a group under a particular name to enable same to submit an offer jointly, clearly indicates that the Joint effort can submit the offer, so that an identity of this Joint Venture has been established, in this particular case, BST JV.

The latter organisation was formed and regulated by a Joint Venture Agreement duly composed and communicated to the Contracting Authority. At this point in time, the latter recognised and acknowledged the Bidder to be BST JV and not the individual composite members forming such a venture.

In this regard, this Board opines that this is a very important issue to be considered as various arguments were submitted as to the “*Joint and Several*” principle. However, it has been credibly established that the known and recognised Bidder to the Contracting Authority is the Joint Venture itself and not otherwise. If BST JV were successful, the final Contract of Award would be drawn up between the Appellants and Transport Malta.

In actual fact, the Contracting Authority did receive an original Bid Bond for the correct amount in favour of the Director General (Contracts), however, this was issued by one of the participants of the Joint Venture, namely Solidbase Laboratory Ltd, who is not the actual Bidder to this particular Tender.

In this regard, although the Joint Venture has been conveniently constituted to submit an offer, this Board justifiably opines that the Joint Venture has a particular identity and for the purposes of this Tender, BST JV is the official Bidder under whom the official offer was submitted.

This Board opines that the situation would have been different had the Guarantor specifically stated in the Bid Bond that the latter has

been issued for and on behalf of the Joint Venture but no indication in this respect, was effected by Solidbase Laboratory Ltd when issuing such a Bid Bond.

In this regard, this Board, after considering all the submissions made, opines that the Bid Bond presented by the Appellants did not correspond and relate to the actual Bidder, namely BST JV and hence this Board does not uphold the Appellant's First Grievance.

- 2. With regards BST JV's Second Grievance, wherein the latter is claiming that they did not receive any communication relating to a request for rectification from the Contracting Authority, this Board would like to justifiably refer to the Testimony of the Technical witness who credibly explained in detail, the procedure for submission, receipt and accession of e-mails.**

In this particular circumstance, the Appellants claim that, although an e-mail notification for a clarification was received, however, they were unsuccessful in accessing such e-mail. In this context, this Board credibly established that such rectification request was in fact sent by Transport Malta and received by the Joint Venture.

From the Technical Explanation given, it has been credibly established that the receiver of such an e-mail did not, in actual fact, access the same profile which was used for the submission of the Original Tender. In other words, this Board was credibly explained that the receiver of such an e-mail used the incorrect username and as such, could not access the documentation.

In fact, it has been proved that the receiver used the username of Solidbase Laboratory Ltd, one of the participants of the Joint Venture. It is to be mentioned that the information requested in the said e-mail pertained to a rectification exercise which was important for the proper evaluation of the Appellant's offer.

In this regard, this Board is justifiably convinced that the non receipt of the e-mail was due to the Appellant's failure to use the correct username and as such, this Board does not uphold the Appellant's Second Grievance.

- 3. On a general note, this Board would respectfully point out that, as had been noted on numerous occasions, Transport Malta is obliged to render the specific reasons for the rejection of an offer.**

In this particular case, this Board refers to the “*Letter of Rejection*” dated 28 March 2017 wherein, in this Board’s opinion, the specific reason why the Bid Bond does not comply with Article 8 of the Tender Document was not properly indicated.

In view of the above, this Board finds against BST JV and recommends that:

- i) The decision taken by Transport Malta and the Department of Contracts to award the Contract to Geotec SpA is upheld;**
- ii) An amount of € 767 is to be retained to cover this Board’s expenses on this Appeal;**
- iii) Due to reasons stated in Point 3 above, an amount of € 4,000 is to be refunded to the Appellant**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

9 May 2017