

BEFORE THE PUBLIC CONTRACTS REVIEW BOARD

CT3065/19

21ST OCTOBER 2019

E & L Enterprises Limited

vs.

Restoration Directorate within the  
Ministry for Justice, Culture and  
Local Government



This is the reply by the Restoration Directorate within the Ministry for Justice, Culture and Local Government (hereinafter referred to as the defendant) to the objection filed by E & L Enterprises Limited in respect of the tender bearing the reference CT3065/19 - Tender for all Works required from Excavation to Finishes for the MICAS Galleries in an environmentally friendly manner.

Respectfully submit:

1. The Restoration Directorate, through the Department of Contracts issued a call for tenders for **all Works required from Excavation to Finishes for the MICAS Galleries in an environmentally friendly manner** on the 4<sup>th</sup> September 2019;
2. The closing date for this call for tenders is the 5<sup>th</sup> November 2019 which had to be extended due to this procedure for a remedy before the closing date of the tender before the PCRB;
3. The plaintiff felt aggrieved by the requirement contained in the Tender Document in the Selection Criteria section under sub-clause 'C', wherein two (2) projects has to be listed carried out in the last 5 years of a minimum value not less than 1 million euros for large span steel roof with welded joints. The objector is arguing that such a requirement is discriminating in favour of foreign Economic Operators where they have much more opportunities to to construct big span roofs and therefore the requirement is easier attainable for foreign companies.

4. The defendant is rejecting all the allegations and arguments put forward by the plaintiff for the following reasons:
5. The Tender's main component is the roofing over of a large existing space within the *Floriana Fortifications Lines*, with steel roofing elements having a clear span of 45x50m. The cost estimate for this project component is of €3.2 million exc. VAT (€3.8 million inc. VAT).
6. Therefore, considering the above the Works of a similar nature being requested are for **two projects** of a minimum project value of €1 million inc. VAT per project. This is equivalent to 23% of the estimated cost for the pertinent component for this tender.
7. The defendant, would like to point out that this requirement was inserted as it was deemed that a contractor for this Tender would invariably be able to supply and erect the required roof. Roofs of lesser costs would possibly be composed of sections of much smaller dimensions with much less complicated logistics of planning, transportation and erection which therefore would not require the necessity of the required experience, facilities and equipment to be able to implement this relatively complicated project.
8. Also, the defendant is claiming that this requirement fits in and is proportionate with the required Technical and Professional Ability and the required Economic and Financial Standing for this Tender as per Selection Criteria.
9. It is the humble opinion of the defendant that a lower threshold for this Selection Criteria requirement would seriously affect the ability threshold of a selected Economic Operator with possible serious implications in the carrying out of the project.
10. The defendant is therefore claiming according to the estimate comparisons and the technical implications of the project to be well within the parameters of the basic principles of Public Procurement being proportionality and equal treatment emanating from Regulation 39 of the Public Procurement Regulations.
11. The defendants reserve the right to produce their own technical advisor to give an account of the various technical points in this tender which require a thorough explanation, as well as an explanation which shows that the

Selection Criteria represents no hindrance for the suitable Economic Operator to possess the necessary technical and professional ability to carry out this project contemplated in this Tender.

*Conclusion*

12. Finally in view of the above, the defendants humbly request the Review Board to dismiss all arguments submitted by the plaintiff thereby dismissing the arguments raised *in toto* and to order the continuation of this tender procedure.

13. The defendants reserve the right to make further submissions and produce such evidence as may be appropriate during the hearing of this remedy.

A handwritten signature in black ink, appearing to be 'Chris Mizzi', written in a cursive style.

Avv. Chris Mizzi

Notification: E & L Enterprises Ltd.