

9th August 2021

The Secretary  
Public Contracts Review Board  
Notre Dame Ditch  
Floriana



**SPD6/2021/034 - PROVISION OF VENUE, CATERING AND ACCOMODATION FOR THE 19TH INBO CONFERENCE, DECEMBER 2021 FOR THE ENERGY AND WATER AGENCY**

The following is the response of the Energy and Water Agency to the letter of objection lodged by Heritage Collection Limited (the Objector) regarding the contract award decision; in this case recommended bidder for award being Mi Malta Ltd.

Reference is being made to point no. 1 of the Letter of Objection submitted by the objector as reproduced below and in particular the underlined text:

*"The technical offer submitted, states, on line 1.b.4 that The Boardroom has a seating capacity of 16 followed by Item 1.b.5 which states that Offices in Venue Two o One has a capacity of 20 persons. Since a board room was specifically requested by the Contracting Authority to be set up in U Shape for 20 persons, Venue Two o One was intended for use for this purpose, the Boardroom, with a capacity of 16 persons was intended for use as the organisers offices."*

The Technical Questionnaire within which these venues were described required tenderers to describe specific venues, matching specific requirements set forth by the Contracting Authority, in specifically allocated sections of the document.

The Evaluation Committee is required to base its Evaluation on the documents as submitted as part of the bid. The Evaluation Committee which is bound to abide by the basic principles of equal treatment, transparency and self-limitation, is also precluded from making assumptions about a bidder's presumed intentions. In this case, the bidder offered a 16-person venue where the Contracting Authority required a 20-person one, and a 20-person venue where the Contracting Authority required two distinct office spaces, when it was mandatory for bidders to clearly meet the technical specifications required for each of the individual venues requested.

Furthermore, the Technical Questionnaire, which contains the above-referenced submissions, is subject to note 3 below reproduced for ease of reference:

"3. No rectification shall be allowed. Only clarifications on the submitted information may be requested."

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Even supposing that the Evaluation Committee had been in a position to presume the Objector's intentions underlying this submission, it is respectfully submitted that altering the submission to change the venue being proposed for 1.b.4 from "The Board Room" to "Two o One" and changing the originally proposed capacity from 16 to 20 persons is considered by the Evaluation Committee to constitute a material change to the technical offer, effectively resulting in a rectification (Change in Technical Offer) and not a clarification, and hence not permitted as per note 3.

In this regard, it is the Evaluation Committee's understanding that this position is aligned with that taken by the Public Contracts Review Board in respect of the objection raised regarding the award of tender bearing reference MEDE/MPU/JOBS+/007/2019 listed as case No. 1420 in the records of the Public Contracts Review Board.

While, as with all cases, the context is not identical in all details, the fundamental underlying principle is. In that case the appellant held that the Contracting Authority ought to have requested a clarification which would have "*clarified any misunderstanding*" in the submitted technical offer.

The Contracting Authority's position was that any change to the technical offer would be tantamount to a rectification, a position the Board concurred with when it held in its decision that:

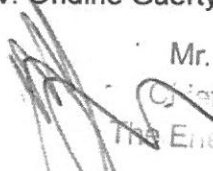
*"With regard to Appellants' claim that the Evaluation Committee should have sought clarifications in respect of 'Number of Hours' and 'Key Experts', **this Board would point out that clarifications should not be used to rectify shortcomings in the original submissions of a tenderer.** At the same instance, this Board opines that if the Evaluation Committee requested clarification, at this particular stage of tendering process, the Authority would have created an unjust disadvantage to other competing bids."*

For the above reasons and further submissions that may be expounded before the Public Contracts Review Board, the Energy and Water Agency respectfully submits that its decision that the offer submitted by Heritage Malta Limited is not technically compliant is correct and should be confirmed.

Yours faithfully



Av. Ondine Gaerty



Mr. Manuel Sapiano  
Chief Executive Officer  
The Energy & Water Agency

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Chief Executive Officer