

# THAKE DESIRA ADVOCATES

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ND/785C/MISC

14<sup>th</sup> December 2020

The Secretary  
Public Contracts Review Board  
Department of Contracts  
Notre Dame Ravelin,  
Floriana, VLT2000.

## NOTICE OF OBJECTION

Dear Sir,

**Re: HMP/2019/3 - Tender for finishes and mechanical and electrical works using environmentally friendly materials at the Adelaide Cini Institute at Santa Venera.**

We write on behalf of **ARCHRVC JV**, a joint venture comprising Med Development Services Ltd and RVC Ltd ["Appellant"], of 14, Level 1, Triq il-Hummar, Birkirkara, and are directed to refer to the decision of Hospice Malta of the 4<sup>th</sup> December 2020 - a copy of which is being herewith attached for ease of reference (**DOC: A**) - in connection with the tender in caption.

Appellants feel aggrieved by Hospice Malta's aforementioned decision, and are consequently filing the present notice of objection in accordance with the provisions of the tender documents in caption and with the Public Procurement Regulations (S.L. 601.03).

The principal grounds for Appellants' objection are the following:

- I. **Hospice Malta stated, in its decision of the 4<sup>th</sup> December 2020, that Appellants' offer was technically non-compliant.**

However, by means of a preceding decision of the 3<sup>rd</sup> August 2020 - a copy of which is being herewith attached for ease of reference (**DOC: B**) - Hospice Malta had already established that Appellants' offer was, in fact, technically compliant;

In fact, Hospice Malta had, notwithstanding its decision that Appellants' offer was technically compliant, proceeded to cancel the the tender in caption on the basis of Clause 18.3 (d) of the General Rules Governing Tenders, wherein it is stated that it may cancel the tender in question if: "**all technically compliant tenders exceed the financial resources available**";

In that case, Appellants had filed a notice of objection, after which Hospice Malta had voluntarily decided to resume with the procurement process, as it in fact did, and therefore Appellants had withdrawn their said objection;

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It is very evident, therefore, that Hospice Malta's decision of the 4<sup>th</sup> December 2020 is in direct conflict with its own preceding decision of the 3<sup>rd</sup> August 2020 since, once it had already decided that Appellants' offer was technically compliant, it could not, once the procurement process had resumed, decide that Appellants' offer was technically non compliant, particularly since the tender in caption remained one and the same, as did Appellants' offer;

In fact, Appellants were under the impression that, subsequent to Hospice Malta's decision of the 3<sup>rd</sup> August 2020 - which had clearly established that Appellants' offer was technically compliant - and once the procurement process had resumed, Hospice Malta was simply carrying out a value engineering exercise between all bidders in order to ensure that all offers were in accordance with the financial resources which were at its disposal;

To make matters worse, by means of its decision of the 4<sup>th</sup> December 2020, Hospice Malta, once again, cancelled the tender in caption on the basis of clause 18.3 (d) of the General Rules Governing Tenders - **which applies only in cases of technically compliant offers** - which, once again, is in direct conflict with its decision that Appellants' offer was not technically compliant!

The above should, in Appellants' opinion, clearly demonstrate that the matter as to whether Appellants' offer was technically compliant or otherwise had already been decided by means of Hospice Malta's decision of the 3<sup>rd</sup> August 2020, which decision cannot be overturned except as a consequence of a subsequent decision by this Board to this effect;

II. Without prejudice to the above, Hospice Malta stated, in its decision of the 4<sup>th</sup> December 2020, that although Appellants were requested to provide clarification on submitted literature, and although Appellants had replied within the specified time frame, Appellants' offer was deemed technically non compliant since several items did not satisfy the requested technical specifications, namely:

a) Electrical

1. Fire Detection system item 14 Beam detector reference in technical specification E.1.8 range required between 5 - 100m. Contractor provided a range of 8 - 100m. Not compliant.

Hospice Malta's decision in this regard is wholly unfounded, since Appellants' offer contained the required literature and technical specifications which clearly indicated a range of 5 - 100m as was required by the tender documents in caption;

Evidently, therefore, Appellants' offer in relation to the fire detection system was, indeed, technically compliant;

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2. **CCTV System item 6 Outdoor IP CCTV cameras reference in technical specifications E.2.4 IR requested is 50m. Contractor provided 30m. Not compliant.**

Admittedly, Appellants did submit the incorrect technical sheet in connection with the CCTV system which they offered to Hospice Malta as part of the tender in caption;

Nevertheless, the submission of the incorrect technical sheet was clearly the result of a manifest human error, which could have been easily rectified;

In fact, according to The General Rules Governing Tenders: "*Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification.*";

In Appellant's opinion, the erroneous submission of the incorrect technical sheet should be considered as being tantamount to an incorrect or a missing document - particularly since the document actually submitted had no relation to the system actually offered by Appellants - which could, therefore, have been easily rectified by means of a simple request, by Hospice Malta, for the submission of the correct or missing document;

The correct technical sheet - a copy of which is being herewith attached for ease of reference (DOC: C) - clearly shows that the CCTV system forming part of Appellants' offer did, in fact, have an IR of 50m, and that therefore the system which was offered by Appellants was, indeed, technically compliant;

3. **Lighting item 23-54 light fittings type M, reference in technical specifications E.9.1-E.9.21 type M required at IP66, contractor provided IP65. Not compliant.**

Once again, Hospice Malta's decision in this regard is wholly unfounded, since Appellants' offer contained the required literature and technical specifications which clearly indicated type M at IP66 as was required by the tender documents in caption;

Evidently, therefore, Appellants' offer in relation to the fire detection system was, indeed, technically compliant;

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### b) Finishes

**EU Bill A 1.09 - PAV 12 Wooden natural flooring in Oak. The Thickness of the natural wood flooring in oak is not according to the specifications. The thickness requested in the specifications was that of 16mm-20mm. Reason being that it was intended to extend the wear and tear of the material. Contractor offered a flooring with a thickness of 15mm which falls below the already minimum thickness acceptable in the specification. Not compliant.**

EU Bill A, item 1.09 - PAV 12, referred to in this part of Hospice Malta's decision, clearly stated that the thickness of the wooden flooring offered should be between 16mm and 20mm, including the adhesive glue;

In fact, the main specifications also provided that the adhesive glue thickness should not exceed 10mm;

Thus, according to the main specifications which were provided by Hospice Malta itself, the flooring material could have been, at minimum, 6mm thick, provided that an adhesive glue thickness of 10mm was applied, thereby meeting the minimum overall thickness of the flooring in question of 16mm;

Notwithstanding the above, Appellants offered a flooring material which was 15mm thick and therefore, once the required adhesive glue is applied, Appellants' offer would obviously have met the required 16mm to 20mm overall thickness;

In such regard, it is worth noting that Appellants had also clarified the above in their letter of reply of the 19<sup>th</sup> October 2020, and further clarifications could easily have been requested by Hospice Malta in connection with the same;

Evidently, therefore, Appellants' offer in relation to the wood flooring was, indeed, technically compliant;

iii. **Without prejudice to the above, Hospice Malta stated, in its decision of the 4<sup>th</sup> December 2020, that the tender in caption was being cancelled as provided for in sub-clauses 18.3 (a) and/or (d) of the General Rules Governing Tenders wherein it is stated:**

**(a) the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;**

In such regard, Appellants feel that the reasons provided under this clause are wholly inapplicable and irrelevant to the case at hand, particularly since Appellants' offer was both qualitatively and

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financially worthwhile, and, furthermore, the tender in caption triggered a response by a number of other bidders;

Furthermore, the cancellation of a tender under the provisions of this or of similar clauses at the very end of a procurement process is practically unheard of, since such or similar clauses are invariably invoked within a few days after tenders are opened;

It is also worth noting that Hospice Malta failed to motivate its decision as to why the tender procedure in question was unsuccessful, but merely quoted the above clause without providing any further information whatsoever;

**(d) all technically compliant tenders exceed the financial resources available;**

Apart from the fact that, as previously stated, this ground for cancellation is in direct conflict with Hospice Malta's decision that Appellants' offer was not not technically compliant, Appellants hereby refer to their covering letter accompanying their bid, wherein they expressly commented that *"in our opinion the specification can be further optimised ... (and) feel certain that cost savings can be made without compromising the operational integrity ... we would welcome the opportunity to discuss further requirements in greater detail ... to see if there are areas where we can offer a more cost-effective solution. In view of this, we are willing to negotiate and propose discounts to our offer on various items of the BOQ's"*;

Within such context, Appellants firmly contend that Hospice Malta had the duty, **prior to cancelling the tender**, to enter into negotiations with Appellants, by affording them the opportunity to *"offer a more cost-effective solution ... (and) discounts to our offer on various items of the BOQ's"*;

Alternatively, Hospice Malta could have opted, as is contemplated in the tender document, for a *"decrease in the total volume of work required by the Contracting Authority"* without varying the object of the contract and without exceeding a percentage of 50% of the original contract price (Article 35.11). After all, it is evident that, if all competing bidders' offers were in excess of the financial resources which are available to Hospice Malta, yet Hospice Malta stills indispensably needs to proceed with the tendered finishing works within the Adelaide Cini Institute, **Hospice Malta has no option but to effectively reduce the volume of work required and consider a more cost-effective solution** - all of which was either supported by the tender documents or, indeed, offered by Appellants;

In the light of all the above considerations, Appellants feel deeply aggrieved by the decision to cancel the tender at this late stage of the tendering process, **also because it does not appear to be a justified decision in the above-explained circumstances of the case**. Additionally, in view that this was not an e-tender process but each offer was submitted in hard copy, Appellants justifiably deem

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that they have now been placed in a prejudicial position vis-à-vis other economic operators with regard to the future re-tendering process in connection with this same project;

Finally, Appellants hereby declare that they are still ready to carry out a proper value engineering exercise to their bid in order to economise some unnecessary luxurious items which were requested by Hospice Malta in the tender in caption. Such a process would definitely produce good savings to the cost of the works, and meet Hospice Malta's budget;

- After all, although all essential services are a must, and are indeed required to carry out such a project, it should be noted that this project, when completed, is meant to serve as aid, charity and respite to the community;

IV. Without prejudice to the above, Hospice Malta's decision of the 4<sup>th</sup> December 2020 is wholly unfounded both as a matter of fact and as a matter of law, as will result during the course of these proceedings, since, amongst others, Appellants' bid was not only technically compliant but also satisfied the criteria of being the lowest bid and the most economically advantageous offer;

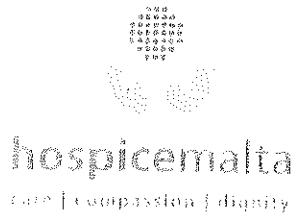
Consequent to all of the above, Appellants humbly request that, in accordance with the relevant provisions of the Public Procurement Regulations, the Public Contracts Review Board upholds the appeal lodged by Appellants and proceeds to annul or otherwise cancel Hospice Malta's decision of the 4<sup>th</sup> December 2020, and order Hospice Malta to proceed with the award of the tender in caption in terms of law.

Yours sincerely,



NORVAL DESIRA LL.D.

Doc A



04-12-2020

Mr Jean Paul Farrugia  
ARCHRVC JV  
14, Level 1  
Triq il-Gummar  
Birkirkara

By registered mail and by e-mail: [sief@rvcltd.com.mt](mailto:sief@rvcltd.com.mt); [jeanpaul@archimedprojects.com](mailto:jeanpaul@archimedprojects.com)

**SUBJECT: TENDER FOR FINISHES AND MECHANICAL AND ELECTRICAL WORKS  
USING ENVIRONMENTALLY FRIENDLY MATERIALS AT THE ADELAIDE  
CINI INSTITUTE AT SANTA VENERA**

**REFERENCE: HMP2019/3**

Dear Sir/Madam,

Thank you for participating in this procurement procedure. However, Hospice Malta regrets to inform you that your offer was technically non-compliant for the following reasons:

ArchRVC Ltd was requested to provide clarification on submitted literature. ArchRVC replied within the specified time frame. However, several items did not satisfy the requested technical specifications as indicated below.

#### **Electrical**

Fire detection system item 14 Beam detector reference in technical specification E.1.8 range required between 5-100m. Contractor provided a range of 8-100m. Not compliant.

CCTV system item 6 Outdoor IP CCTV cameras reference in technical specifications E.2.4 IR requested is 50m. Contractor provided 30m. Not compliant.

Lighting item 23-54 light fittings type M, reference in technical specifications E.9.1-E.9.21 type M required at IP66, contractor provided IP65. Not compliant.

#### **Finishes**

EU Bill A 1.09.- PAV 12 Wooden natural flooring in Oak. The thickness of the natural wood flooring in oak is not according to the specifications. The thickness requested in the specifications was that of 16mm-20mm. Reason being that it was intended to extend the wear and tear of the material. Contractor offered a flooring with a thickness of 15mm which falls below the already minimum thickness acceptable in the specification. Not compliant.

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Website: [www.hospicemalta.org](http://www.hospicemalta.org)  
VO/0062

*J*

In addition, and in any case, your offer exceeded the financial resources available.

Kindly be informed that this tender has been cancelled as provided for in sub-clauses 18.3(a) and/or (d) of the General Rules Governing Tenders for NGOs where it is stated:

(a) the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;

[...]

(d) all technically compliant tenders exceed the financial resources available.

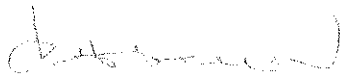
If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: [info.pcrb@gov.mt](mailto:info.pcrb@gov.mt) by noon of 14<sup>th</sup> December against a deposit of €3,250.00.

Payments are to be made through bank transfer in terms of the following details:

Name of account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT56MALT011000040001EURCMG5001H
Bank Code	01100

Although we have not been able to make use of your services on this occasion, Hospice Malta trusts that you will continue to take an active interest in its procurement opportunities.

Yours sincerely,



Lora Cascun  
Chairperson  
Project Management Steering Committee



Doc 3



**hospicemalta**  
care | compassion | dignity

03-08-2020

TENDER FOR FINISHES AND MECHANICAL AND ELECTRICAL WORKS USING ENVIRONMENTALLY FRIENDLY MATERIALS AT THE ADELAIDE CINI INSTITUTE AT SANTA VENERA

REFERENCE: HMP2019/3

SUBJECT: Notice to all Bidders – Cancellation of Tender Process

Dear Sir/Madam,

Thank you for participating in this procurement procedure. However, Hospice Malta regrets to inform you that although your offer was compliant, this procurement procedure is being cancelled in line with Article 18.3 (d) of the General Rules Governing Tenders where it is stated that cancellation may occur where:

- all technically compliant tenders exceed the financial resources, available for this tender.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged at the Public Contracts Review Board, Notre Dame Ditch, Floriana by 13<sup>th</sup> August 12:00pm and formally inform Hospice Malta, against a deposit of €3,250.00

Hospice Malta trusts that you will continue to take an active interest in its procurement opportunities.

Yours sincerely,

Ms Lora Cascun,  
Chairperson Project Management Steering Committee

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VO/0062

# SF-IPDM937ZAWH-8-LL

IP Safire Dome Camera  
8 Megapixel (3840x2160)  
2.8-12 mm motorised varifocal  
autofocus lens  
Compression  
H.265+/H.265/H.264+/H.264  
WDR 120 dB  
Weatherproof IP67 Anti-vandal IK10

Safire  
IP camera  
1/2.5" Progressive Scan CMOS  
8 Megapixel (3840x2160)  
2.8-12 mm motorised varifocal autofocus lens  
0 Lux - IR Range 50 m (Low Light Version)  
Compression H.265+/H.265/H.264+/H.264  
RJ-45 10/100 BaseT  
Audio  
Alarms  
PoE +  
Weatherproof IP67 Anti-vandal IK10  
IR Cut  
WDR 120 dB  
SD card recording  
WEB, CMS, Smartphone and NVR interface  
ONVIF Compatible



DOC C

# Specifications

Brand	NW 100
Image sensor	1/2.3" Progressive Scan CMOS
Maximum resolution	4 (Acquired: 2560 x 2160)
Main Stream rate	4Kp @ 15 FPS / 6Mp @ 20 FPS / 4Mp @ 30FPS / 2Mp @ 25 FPS
Extra Stream rate	2M @ 25 FPS
Compression	H.265 / H.265+ / H.264 / H.264+ / MJPEG
Bitrate	156 Kbps - 16 Mbps
Lens	2.8" 12mm Motorised auto-focus
Minimum illumination	0.01 Lux (F1.2)
Infrared lighting	51mx IR LEDs (50 m)
Image improvements	WDR, BLC, 3D-NR, Face detection, MF, PDI
Day / Night	Removable mechanical ICR filter
Internal memory	MicroSD card Max 128 GB
Video output	1 BNC output (For feed)
Alarms	1 IN / 1 OUT
Audio	1 IN / 1 OUT
Network interface	Ethernet 10/100 BaseT
Advanced features	Line crossing detection
Remote access	Web browser, Sales Config Center, Mobile App and PC Software
Interoperability	ONVIF, ISAPI
Power	12 VDC / 0.8A (max. 10W, PoE)
Degree of protection	Weatherproof IP67, Anti-sand IK10
Material	Metal
Temp. operation	30° C - 60° C
Dimensions	135 mm (H) x 53 (D) mm
Weight	1207 g



**Bank of Valletta p.l.c**  
 Registration Number: C 2833  
 Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

## Pay third party

Printed by: Mr. Raymond Vella  
 Printed on: 14/12/2020 - 08:53  
 Document ID: 7203939

### Transaction details

Payer's name:	Raymond Vella & Co. Ltd
Beneficiary name:	CASHIER MALTA GOVERNMENT
Relation:	Administrative Services
Reason:	Other
Payment details:	REFERENCE HMP2019 3
Currency:	EUR - Euro
Beneficiary account:	MT55MALT011000040001EURCMG5001H
Beneficiary account type:	Valid IBAN of country - Malta
Bank name:	Other bank
Bank address / Bank's BIC:	Let the bank apply the beneficiary bank BIC
Beneficiary address:	No
From account:	Current OD700 63103 (EUR) 4002005710 3
Charges should be paid by:	Shared - I pay BOV charges; CASHIER MALTA GOVERNMENT pays the beneficiary bank charges
Amount:	EUR 3,250.00
BOV to transfer the money:	as soon as possible
Receiving bank to get the money as:	normal priority payment
Saved template:	no

### Additional information

Credit amount:	EUR 3,250.00
Debited amount (excluding charges):	EUR 3,250.00
Estimated amount to be withdrawn from account:	EUR 3,254.00
Transaction charge:	EUR 4.00

### Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	97481716