

PUBLIC CONTRACTS REVIEW BOARD

Case No. 403

TM/007/2012

Tender for the Design, Construction, Delivery, Installation and Dismantling of Transport Malta Stand at the Posidonia Exhibition, Athens, 2012

This call for tenders was published in the Government Gazette on the 21st February 2012. The closing date for this call with an estimated budget of € 30,000 was the 16th March 2012.

Three (3) tenderers submitted their offers.

Malta Fairs and Convention Centre filed an objection on the 20th April 2012 against the decisions of Transport Malta (i) not to recommend the award of this tender in its favour since its offer did not turn out to be the most economically advantageous tender and (ii) to recommend award to Casapinta Design Group.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Wednesday, 2nd May 2012 to discuss this objection.

Present for the hearing:

Malta Fairs and Convention Centre

Dr Karl Briffa	Legal Representative
Mr Reuben Caruana	Director, Business Development
Mr Gerald Borg	Representative
Mr Chris Vassallo	Representative

Casapinta Design Group

Mr Tonio Casapinta	Representative
--------------------	----------------

Transport Malta


Mr Maurizio Micallef	Procurement Manager
----------------------	---------------------

Evaluation Board

Mr Jason Bongailas	Member
Mr Charlot Cassar	Member
Mr Charles Axisa	Secretary

Also present:

Mr Christian Borg	Employment and Training Corporation
-------------------	-------------------------------------



After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of his company's objection.

Dr Karl Briffa, legal representative of Malta Fairs and Convention Centre, the appellant company, made the following submissions:-

- i. b
y letter dated 12th April 2012, Transport Malta had informed his firm that (i) its offer was not successful since it was not the most economically advantageous tender and (ii) the award of the tender was being recommended to Casapinta Design Ltd;
- ii. given that, strangely enough, the price offered by his client was identical to that offered by the recommended tenderer, the deciding factors were the administrative and technical compliance or, more precisely, the 'creativity criterion in line with document submitted;
- iii. with regard to 'Suppliers' Credentials' it was questionable how his client and the recommended tenderer were awarded the same number of points, i.e. maximum points, when, for example, his client employed more personnel and had more resources at its disposal than the preferred bidder and when one considered the number and nature of the projects carried out by his client as described in the company's profile;
- iv. with regard to 'Technical Requirements':
 - a. although his client had no access to the recommended tenderer's tender submission, if one were to compare his client's submission with the submission made by the recommended tenderer the previous year one would note quite a difference;

and
 - b. when one considered certain important aspects of the tender requirements, e.g. the lighting, his client represented a renowned supplier in this sector and one, therefore, wondered how the two compliant tenderers were awarded exactly the same number of points;
- v. with regard to 'creativity' one had to ask the adjudicating board to spell out the criteria it applied to evaluate this aspect of the proposals and whether the members sitting on the adjudicating board were qualified to make an objective evaluation of this tendering process;
- vi. from the way the adjudicating board allocated the points, it emerged that, as far as objective criteria were concerned, e.g. company's profile and technical requirements, it awarded maximum marks both to his client and to the recommended tenderer, something which was still quite debatable, however when it came to evaluate 'creativity', which was a subjective criterion, the adjudicating board decided to award his client 15 marks less than the recommended tenderer;

and

- vii. in the light of the above, the members of the adjudicating board were required to explain in detail how they carried out the evaluation of the bids.

Dr Joseph Camilleri, legal representative of Transport Malta, the contracting authority, remarked that:-

- a. albeit in filing its objection the appellant company was required to refer to specific issues concerning the tendering process, yet, in this case the appellant company was asking a number of questions which almost amounted to a fishing expedition, such as whether the preferred bidder was going to sub-contract any of the works or if it had any partnership/joint venture arrangements;

and

- b. the preferred bidder did not indicate any joint venture arrangements and, in the case of sub-contracting, the bidder indicated a sub-contractor to ship/transport the goods.

The Chairman Public Contracts Review Board remarked that the hearing had to determine whether the adjudicating board had conducted the evaluation of the bids in a regular, reasonable and transparent manner by explaining on what grounds it had allocated the marks, especially with regard to subjective criteria such as creativity, which, at first glance, appeared to have been the deciding factor.

Mr Charlot Cassar, a member of the adjudicating board, under oath, gave the following evidence:-

- i. Transport Malta participated at this fair for the purpose of promoting its maritime services and according to section VI (1) of page 40 of the tender document the stand's objectives were to:
 - a. promote ship registration in Malta;
 - b. provide a promotional platform for both Transport Malta and the Maltese maritime service providers at this event;
 - c. portray Maritime Malta as an international service centre at the heart of the Mediterranean;and
 - d. portray Transport Malta as a serious and efficient Maritime administration
- ii. the adjudicating board considered the bids holistically with a view to determine which stand would project Malta in the best light;
- iii. there was no breakdown of the aspects that had to feature by way of creativity but the bidder was left at liberty to come up with one's own ideas;

- iv. he has been attached to Transport Malta for about 2 years and although he was not qualified in technical design and, as far as he was aware - none of the board members were – yet, they based their judgement on the experience they gained in attending this and similar fairs over the years;
 - v. when he visually compared the tender submission of the recommended tenderer with that of the appellant company he considered the former more suitable to convey Transport Malta's message;
 - vi. the evaluators discussed the bids among themselves and then came up with an agreed mark on each criterion for each bid;
 - vii. with regard to the allocation of full marks in respect of 'suppliers' credentials', 'understanding of project and quality of proposal' and 'technical requirements' the criterion applied was that once the proposal was in line with what was requested in the tender document then full marks were given irrespective of whether one might have offered something well beyond basic requirements;
 - viii. in his evaluation grid he had indicated that *'the major weakness (of MFCC's proposal) was the fact that, notwithstanding the bidder's claim in his proposal, the design of the stand was not exactly minimalist and fashionable. It has predominant red and blue hues which TM regards as a bit passé and very much in line with the previous Malta Maritime Authority's brand'*. He considered that whilst, *per se*, that did not reflect Transport Malta's objectives of efficiency and excellence, yet, admittedly, that was his personal assessment;
- and
- ix. in his view the black background presented by the preferred bidder was more suitable.

Mr Jason Bongailas, member of the adjudicating board, under oath, gave the following evidence:-

- a. albeit he was not a designer by profession yet he conducted his evaluation through the experience he gained in attending such conventions during his 18 years of employment with Malta Maritime Authority / Transport Malta;
- b. confirmed that the evaluators did not act independently but allocated the points to bidders after having consulted amongst themselves and that explained why each evaluator awarded the same number of points under each criterion to each bidder;
- c. although, given the benefit of hindsight, an independent approach might have been more suitable than the collective approach, nevertheless the evaluators considered the proposals in a holistic manner;
- d. for example, the black background used by the preferred bidder would be distinct from the colours blue and red of most of the other stands and that would contribute to originality and to an unconventional approach;

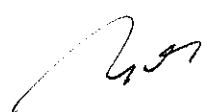


- e. confirmed that both proposals displayed the two requested emphasis on respective brands, namely that of (1) Maritime Malta and (2) Transport Malta;
 - f. whilst he opined that both bidders presented valid proposals such that both of them obtained relatively high marks, yet, in his opinion, the recommended bid was slightly better;
 - g. a point of weakness in the recommended bid was the excessive use of the colour black in the background but, then again, colour was only one of the elements on which he based his assessment;
 - h. the recommended tenderer had submitted only one option and, as per relative evaluation grid, he considered that a weakness because he would have preferred to have more than one option to select from;
 - i. from the technical point of view he allocated full marks once he considered that the proposal met the tender requirements;
- and
- j. with regard to lighting he did not go into the details of what kind of bulbs or lighting system the bidder proposed or if the stand was back or front lit so long as the stand had adequate lighting.

The Chairman Public Contracts Review Board remarked that:-

- i. the evaluation of the aspect concerning 'creativity' should have been subjective only to a certain extent because certain features which Transport Malta wanted in the stand should have been specifically requested in the tender document and similarly features which Transport Malta did not want in the stand should have been so indicated in the tender document at the same time leaving a reasonable margin for the bidder to express his/her sense of creativity in the design;
- ii. the way the adjudicating board carried out its assessment defeated the scope of having an adjudicating board made up of three members to deliberate on tender submissions that had to be awarded on the basis of the most economically advantageous tender (MEAT);
- iii. each board member should have carried out the evaluation independently, on one's own, and then the average mark would be established from the three amounts given by the evaluators - that was the proper way to evaluate MEAT and when subjectivity played a considerable part;
- iv. in the case of a MEAT tendering procedure one would expect that a bidder who submitted a proposal which, in certain aspects, exceeded the basic requirements would have been allocated extra marks;

and



- v. if Transport Malta considered the colours blue and red as outdated or did not reflect innovation then Transport Malta should have indicated in the tender document that the stand should not include those particular colours and thus the bidders would have eliminated features which Transport Malta definitely did not want in the stand.

On his part Dr Camilleri:-

- a. referred to part VI (2) of Volume 3 Section 1 (page 40 of the tender document) 'Overall Design Concept' which read as follows:-

'In order to stand out from the other stands, the design of the Malta stand has to be Original, Creative, and Distinct from the conventional/customary panels.

Stand design has to be attractive and functional reflecting the Maritime Malta's brand (together with TM's corporate image, as a secondary brand) and constructed in a manner which will enable the stand to be visible from a distance.

Wording has to be reduced to a minimum but the word "Maritime Malta" must feature predominantly within the design of the stand so as to permit visitors to clearly identify the exhibitor at first sight.

Stand has to be clean, free of clutter with all accessories (storage area, coffee machine, refrigerator) enclosed within the stand and simple in content and layout with a minimalist and fashionable look.

The stand has to portray an aura of sophistication.

Stand design has to attract attention without being too pretentious. An enclosed meeting area is NOT required.'

- b. the design had to be attractive and functional reflecting the Maritime Malta's brand (together with Transport Malta's corporate image, as a secondary brand) because the shipping register was attributed to the country but administered by Maritime Malta within Transport Malta;

and

- c. the contracting authority could not provide elaborate specifications when dealing with such elements as design and creativity otherwise all bidders would end up presenting the same product.

The Chairman Public Contracts Review Board opined that the stand requirements as published in the tender document were left wide open such that the evaluation had to be carried out almost entirely on subjective lines when the tender requirements should have served as guidance for both (i) the bidders to present what Transport Malta more or less had in mind, especially once Transport Malta seemed to have had its own preferences, e.g. with regard to colours, and (ii) the evaluators.

Mr Maurizio Micallef, procurement manager of Transport Malta, who was involved in the drawing up of the tender document, remarked that:-

- i. Transport Malta had indicated its requirements and, as an example, he referred to section IV (1) 'Visual and Graphics' (page 42 of the tender document) which provided as follows:-
 - *stand visuals should include High Resolution photographic images of Maritime Malta, which may include amongst others, images of Malta flagged vessels, marinas, Grand Harbour and other similar artifacts. The stand should also include Maritime Malta logo and TM logo/s on the wall/s and counter;*
 - *production of visuals is subject to the choice of Transport Malta;*
 - *the images to be used in the stand design shall be supplied by Contractor. Transport Malta will also authorize utilisation of any stock images it has for the purpose of this stand at no extra cost to the contractor;*

and

- ii. with regard to the event that the prices offered by the recommended tenderer and the appellant company were identical, all that he could say was that he was present at tender opening stage which exercise was carried out in public.

Dr Briffa remarked that (a) his client's proposal was, in certain respects, in line with what the recommended tenderer had submitted in its winning bid for the previous Posidonia fair and, as a consequence, he failed to understand how this time the branding of both Maritime Malta and Transport Malta has been radically changed, as was being alleged, when one was dealing, basically, with the same colours and (b) since Transport Malta was claiming that this tender included a high degree of creativity and subjectivity the least that it could have done was to appoint members on the adjudicating board who were competent to evaluate on those lines.

Mr Tonio Casapinta, representing the recommended tenderer, pointed out that:-

- a. this was the most important maritime fair worldwide and it was held every two years;
- b. the stand his company offered for the previous fair even won an award;
- c. his firm opted to use a black background so that it would stand out because most of the stands at maritime fairs were, predominantly, blue in colour;

and

- d. his firm's proposal did not include the basic requirements but it included all that was considered necessary to put up a stand to the requested standard.



Mr Reuben Caruana, also representing Malta Fairs and Convention Centre, the appellant company, offered the following comments:-

- i. Malta Fairs and Convention Centre's stand was presented to scale and was quite visible from different angles;
 - ii. one had to question whether any verifications were carried out so as to ensure that what was being proposed would in fact be provided, e.g. with regard to lighting systems, which was a very important element in the stand;
 - iii. the bidder had to reproduce both brands however that of Maritime Malta had to be the primary brand – white Malta cross on a red background - whereas that of Transport Malta had to be the secondary brand;
- and
- iv. it was not reasonable to state that it was not fitting to use the colour 'blue' in a stand on maritime affairs and, moreover, once the main brand was that of Maritime Malta, one could not avoid using brand colours and, as a result, he failed to understand the adjudicating board comment that the colours red and blue were passé.

With regard to the technical compliance, the Chairman, Public Contracts Review Board, read out the first and third paragraphs of clause 30.4 - Part 3 - Technical Compliance (page 12 of the tender document):-

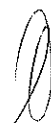
'At this step of the evaluation process, the Evaluation Committee will analyse the administratively-compliant tenders' technical conformity in relation to the Terms of Reference (Volume 3, and the documentation requested by the Contracting Authority as per sub-Clause 16(e)).

'When evaluating technical offers, each evaluator awards each offer a score out of a maximum 100 points in accordance with the technical criteria and any sub-criteria as outlined below. The aggregate final score is arrived at by calculating the arithmetical average of the individual final score of each evaluator.'

The Chairman Public Contracts Review Board remarked that the technical evaluation process was flawed because the adjudicating board members carried out a collective instead of an independent evaluation.

The Chairman Public Contracts Review Board also quoted Volume 3 – 2 'Lighting' at page 42 of the tender document:-

'Adequate lighting should be provided within the entire area of the stand. Although the primary aim is to have adequate luminance on the stand, hi-tech, low heat emitting LED lighting systems would be also be considered, provided that the amount of light is not compromised. Considering the various lighting possibilities available, the ultimate choice of lights as well as the amount of lights is being left up to the bidder's expertise and advice. Bidders might also consider the use of lighting as a design feature'.



At this point Mr Caruana:-

- a. questioned the validity of the technical evaluation carried out by the adjudicating board as it seemed evident that it carried out a superficial examination such that a bidder who offered, say, a lighting system of a 1000W bulbs and spotlights was treated at par with a bidder who offered a sophisticated lighting system such as that offered by Malta Fairs and Convention Centre;

and

- b. stated that it was not enough for the adjudicating board to verify that each bidder submitted a lighting system but it had to evaluate the lighting effects produced by the system proposed which was a very important visual aspect and, considering that the tender document stated that '*bidders might also consider the use of lighting as a design feature*' thus playing a considerable pivotal role in the creativity aspect of the stand.

The Chairman Public Contracts Review Board made the following observations:-

- i. with regard to colour, Mr Cassar considered the black background of the stand as proposed by the preferred tenderer as an asset whereas Mr Bongailas considered the same, excessive, black background as a weakness but this difference in opinion had no influence on the allocation of points;
- ii. the comments made on the evaluation grids were at times inconsistent;
- iii. one had to draw a distinction between a 'logo' and a 'colour scheme', because although one had to reproduce the 'logo' as it was, the colour scheme needed not include solely the 'logo' colours;
- iv. it would seem quite reasonable to give prominence to Maritime Malta, since this was a maritime fair, rather than to Transport Malta;
- v. one could not dispute the fact that both tenderers had displayed the Maritime Malta and Transport Malta brands as requested in the tender document;
- vi. it appeared that the bidder who might have presented features, such as lighting, that went beyond the standard requested was not given due consideration by the adjudicating board all the more when this had to be evaluated on a MEAT basis;
- vii. the contracting authority should have been as objective as possible in the specifications it laid down in the tender document and it should have included all that it considered mandatory and excluded the unacceptable leaving only the inevitable to the bidders' imagination and creativity;

and



- viii. the MEAT procedure was meant as a tool for the adjudicating board to establish which bid was superior to the others and in what respects and it was certainly not meant to allocate maximum points to all bidders notwithstanding the difference in the quality of the submissions because the added value of a bid had to be reflected in the allocation of points.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'letter of objection' dated 20th April 2012 and also through their verbal submissions presented during the hearing held on the 2nd May 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 12th April 2012, Transport Malta had informed his firm that (1) the firm's offer was not successful since it was not the most economically advantageous tender and (2) the award of the tender was being recommended to Casapinta Design Ltd, (b) given that, strangely enough, the price offered by the appellant company was identical to that offered by the recommended tenderer, the deciding factors were the administrative and technical compliance or, more precisely, the 'creativity criterion in line with document submitted, (c) with regard to 'Suppliers' Credentials' it was questionable how the appellant company and the recommended tenderer were awarded the same number of points, namely maximum points, when, for example, the said appellant company employed more personnel and had more resources at its disposal than the preferred bidder and when one considered the number and nature of the projects carried out by Malta Fairs and Convention Centre as described in the company's profile, (d) although the appellant company had no access to the recommended tenderer's tender submission, if one were to compare the appellant company's submission with the submission made by the recommended tenderer the previous year one would note quite a difference, (e) when one considered certain important aspects of the tender requirements, e.g. the lighting, the appellant company represented a renowned supplier in this sector and one, therefore, wondered how the two compliant tenderers were awarded exactly the same number of points, (f) from the way the adjudicating board allocated the points, it emerged that, as far as objective criteria were concerned, e.g. company's profile and technical requirements, it awarded maximum marks both to the appellant company and to the recommended tenderer, something which was still quite debatable, however when it came to evaluate 'creativity', which was a subjective criterion, the adjudicating board decided to award the appellant company 15 marks less than the recommended tenderer, (g) the appellant company's proposal was, in certain respects, in line with what the recommended tenderer had submitted in its winning bid for the previous Posidonia fair and, as a consequence, one failed to understand how this time the branding of both Maritime Malta and Transport Malta has been radically changed, as was being alleged, when one was dealing, basically, with the same colours, (h) since Transport Malta was claiming that this tender included a high degree of creativity and subjectivity the least that it could have done was to appoint members on the adjudicating board who were competent to evaluate on those lines, (i) according to Mr Caruana (1) stated that Malta Fairs and Convention Centre's stand

was presented to scale and was quite visible from different angles, (2) claimed that one had to question whether any verifications were carried out so as to ensure that what was being proposed would in fact be provided, e.g. with regard to lighting systems, which was a very important element in the stand, (3) placed emphasis on the fact that albeit the bidder had to reproduce both brands, yet that of Maritime Malta had to be the primary brand – white Malta cross on a red background - whereas that of Transport Malta had to be the secondary brand and (4) argued that it was not reasonable to state that it was not fitting to use the colour ‘blue’ in a stand on maritime affairs and, moreover, once the main brand was that of Maritime Malta, one could not avoid using brand colours and, as a result, one failed to understand the adjudicating board comment that the colours red and blue were passé, (5) questioned the validity of the technical evaluation carried out by the adjudicating board as it seemed evident that it carried out a superficial examination such that a bidder who offered, say, a lighting system of a 1000W bulbs and spotlights was treated at par with a bidder who offered a sophisticated lighting system such as that offered by Malta Fairs and Convention Centre and (6) stated that it was not enough for the adjudicating board to verify that each bidder submitted a lighting system but it had to evaluate the lighting effects produced by the system proposed which was a very important visual aspect and, considering that the tender document stated that *‘bidders might also consider the use of lighting as a design feature’* thus playing a considerable pivotal role in the creativity aspect of the stand;

- having considered the contracting authority’s representatives’ reference to the fact that (a) albeit in filing its objection the appellant company was required to refer to specific issues concerning the tendering process, yet, in this case the appellant company was asking a number of questions which almost amounted to a fishing expedition, such as whether the preferred bidder was going to sub-contract any of the works or if it had any partnership/joint venture arrangements, (b) the preferred bidder did not indicate any joint venture arrangements and, in the case of sub-contracting, the bidder indicated a sub-contractor to ship/transport the goods, (c) Transport Malta participated at this fair for the purpose of promoting its maritime services and, according to section V1 (1) of page 40 of the tender document, the stand’s objectives were to (1) promote ship registration in Malta, (2) provide a promotional platform for both Transport Malta and the Maltese maritime service providers at this event, (3) portray Maritime Malta as an international service centre at the heart of the Mediterranean, (4) portray Transport Malta as a serious and efficient Maritime administration, (d) the adjudicating board considered the bids holistically with a view to determine which stand would project Malta in the best light, (e) there was no breakdown of the aspects that had to feature by way of creativity but the bidder was left at liberty to come up with one’s own ideas, (f) albeit the board members were intrinsically inexperienced, yet the latter based their judgement on the experience they gained in attending this and similar fairs over the years, (g) the evaluators discussed the bids among themselves and then came up with an agreed mark on each criterion for each bid, (h) with regard to the allocation of full marks in respect of ‘suppliers’ credentials’, ‘understanding of project and quality of proposal’ and ‘technical requirements’ the criterion applied was that once the proposal was in line with what was requested in the tender document then full marks were given irrespective of whether one might have offered something well beyond basic requirements, (i) in his evaluation grid Mr Cassar had indicated that *‘the major weakness (of MFCC’s proposal) was the fact that, notwithstanding the bidder’s claim in his proposal, the design of the stand was not exactly minimalist*

and fashionable. It has predominant red and blue hues which TM regards as a bit passé and very much in line with the previous Malta Maritime Authority's brand'. He considered that whilst, *per se*, that did not reflect Transport Malta's objectives of efficiency and excellence, yet, admittedly, that was his personal assessment, (j) in Mr Cassar's view the black background presented by the preferred bidder was more suitable, (k) as Mr Bongailas claimed, the evaluators did not act independently but allocated the points to bidders after having consulted amongst themselves and that explained why each evaluator awarded the same number of points under each criterion to each bidder, (l) both proposals displayed the two requested emphasis on respective brands, namely that of (1) Maritime Malta and (2) Transport Malta, (m) again in Mr Bongailas' opinion (1) whilst both bidders presented valid proposals such that both of them obtained relatively high marks, yet, the recommended bid was slightly better, (2) a point of weakness in the recommended bid was the excessive use of the colour black in the background but, then again, colour was only one of the elements on which he based his assessment, (3) the recommended tenderer had submitted only one option and, as per relative evaluation grid, he considered that a weakness because he would have preferred to have more than one option to select from, (4) from the technical point of view he allocated full marks once he considered that the proposal met the tender requirements and (5) with regard to lighting he did not go into the details of what kind of bulbs or lighting system the bidder proposed or if the stand was back or front lit so long as the stand had adequate lighting, (n) the design had to be attractive and functional reflecting the Maritime Malta's brand (together with Transport Malta's corporate image, as a secondary brand) because the shipping register was attributed to the country but administered by Maritime Malta within Transport Malta, (o) the contracting authority could not provide elaborate specifications when dealing with such elements as design and creativity otherwise all bidders would end up presenting the same product and (p) Transport Malta had indicated its requirements in section IV (1) 'Visual and Graphics' (page 42 of the tender document),

- having considered the recommended tenderer's representatives' reference to the fact that (a) this was the most important maritime fair worldwide and it was held every two years, (b) the stand his company offered for the previous fair even won an award, (c) the firm opted to use a black background so that it would stand out because most of the stands at maritime fairs were, predominantly, blue in colour and (d) the firm's proposal did not include the basic requirements but it included all that was considered necessary to put up a stand to the requested standard

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that the stand requirements, as published in the tender document, were left wide open such that the evaluation had to be carried out almost entirely on subjective lines when the tender requirements should have served as guidance for both (i) the bidders to present what Transport Malta, more or less, had in mind, especially once Transport Malta seemed to have had its own preferences, e.g. with regard to colours, and (ii) the evaluators.
2. The Public Contracts Review Board feels that the technical evaluation process was flawed because the adjudicating board members carried out a collective instead of an independent evaluation. The way the adjudicating board carried

out its assessment defeated the scope of having an adjudicating board made up of three members to, separately, deliberate on tender submissions that had to be awarded on the basis of the most economically advantageous tender (MEAT). This Board feels that each board member should have carried out the evaluation independently following which the average mark would have been established from the three amounts given by the evaluators thus enabling a proper evaluation of MEAT in a scenario where subjectivity played a pivotal part. This Board observes that the MEAT procedure (a) is meant as a tool for an evaluation board to establish which bid is superior and to which extent when compared to the other bidders (b) is certainly not meant to allocate maximum points to all bidders notwithstanding the difference in the quality of the submissions because the added value of a bid has to be reflected in the allocation of points and, as a consequence, as it so happened in this instance, namely having all board members allocating full marks to those bidders once they considered that the proposal met the basic tender requirement is, *sui generis*, unacceptable. The Public Contracts Review Board cannot place enough emphasis on the fact that, in the case of a MEAT tendering procedure, one would expect that a bidder who submits a proposal which, in certain aspects, exceeds the basic requirements would be allocated extra marks. It is obvious that, in this particular instance, those bidders who might have presented different features and a myriad of operational options, such as those relating to lighting, accessibility, colours, and so forth - all of which would have gone beyond the standard requested - were not given due consideration by the adjudicating board.

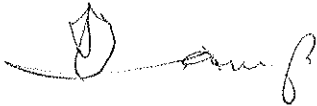
3. This Board cannot but express its reservations regarding the claim made by the contracting authority's representatives, namely that relating to the fact that the latter could not provide elaborate specifications when dealing with such elements as design and creativity as, otherwise, all bidders would have ended up presenting the same product. This Board argues that the evaluation of the aspect concerning 'creativity' should have been subjective only to a certain extent because certain features which Transport Malta wanted in the stand (e.g. preferred colour scheme or exclusion of certain colours) should have been specifically stated in the tender document. Similarly, features which Transport Malta did not want in the stand should have been more emphasised in the tender document at the same time leaving a reasonable margin for the bidders to express their sense of creativity in the design. One cannot but observe that the inconsistent comments made by different evaluators on the evaluation grids and, especially, during the hearing (e.g. relating to colour and lighting) would thus have been easily avoided apart from having secured a better comprehension level by all the prospective bidders. This Board feels that it seems more than evident that the participating bids were generally of the same calibre and, as a result, all hinged on an evaluator's personal preference towards a colour scheme *vis-a-vis* another.
4. This Board opines that, in the absence of more elaborate guidelines, the heavy dose of subjectivity demonstrated by the non-qualified evaluators rendered this evaluation process into an exercise which bordered on amateurism with merit gained being based upon (a) an evaluator's personal preference for a particular colour scheme *vis-a-vis* another, (b) a preferred corporate colour scheme which apparently excluded certain colours, namely blue and red, and this despite the fact that such limitation was not even communicated *a priori* to the bidders and



(c) on a general subjective perception as to what one thinks is aesthetically more acceptable whilst being largely oblivious of other matters equally important in stand design (e.g. functionality, lighting, visibility and so forth).

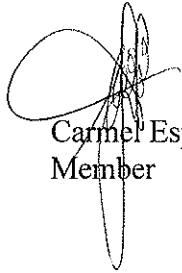
In view of the above, this Board finds in favour of the appellant company and recommends that the said appellant be reimbursed with the deposit paid for the appeal to be lodged.

Also, this Board recommends that this tender be cancelled.



Alfred R Triganza
Chairman

14th May 2012



Carmel Esposito
Member



Joseph Croker
Member