

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2058 – SPD3/2024/055 – Tender for the Provision of Technical Consultancy and Architectural Services for the Establishment of the Victoria Parks, Victoria, Gozo**

**27<sup>th</sup> January 2025**

The Board,

Having noted the letter of objection filed by Perit Frank Muscat obo Doric Studio (hereinafter referred to as the "Appellant"), filed on the 26<sup>th</sup> of November 2024;

Having also noted the letter of reply filed by Dr Tatiane Scicluna Cassar, acting on behalf of the Ministry for Gozo and Planning (hereinafter referred to as the "Contracting Authority"), filed on the 5<sup>th</sup> of December 2024;

Having taken cognisance of and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 14<sup>th</sup> of January 2025, hereunder reproduced:

### **Minutes**

The tender was issued on the 12<sup>th</sup> of September 2024, and the closing date was the 11<sup>th</sup> of October 2024.

The estimated value of this tender, exclusive of VAT, was € 252,662.02.

On the 26<sup>th</sup> of November 2024, Perit Frank Muscat obo Doric Studio filed an appeal against the Strategy and Support Division, Ministry for Gozo and Planning, objecting to their disqualification on the grounds that their tender bid ID 000216626 was not considered for evaluation.

A deposit of € 1,263.00 was paid.

There were four bids.

On the 14<sup>th</sup> of January 2024, the Public Contracts Review Board, composed of Mr. Kenneth Swain as Chairman, Dr Ing. Damien Gatt, and Mr. Lawrence Ancilleri as members, convened a virtual public hearing to consider the appeal.



Dr Scicluna Cassar emphasized that these late submissions are inadmissible under PPR Articles 270 and 271. The Chairman confirmed that such documents submitted outside the legal timeframe would not be considered as part of the case proceedings.

#### Submissions and Responses

Perit Frank Muscat, for the appellant, explained that the tender was issued for the assignment of a design team for the Victoria Parks project. Doric studio submitted two bids: Bid with ID 000216626 and Bid with ID 000216695. Both bids (offers) included all required requisites, with one bid (ID 000216695) containing a link to animations.

Perit Frank Muscat, for the appellant, presented his arguments, asserting that there is no valid basis for the disqualification of the second bid. He clarified that the second bid is not identical to the first bid, thereby rendering the disqualification unjustified. Furthermore, the appellant stated that all required requisites were duly submitted. He emphasized that the tender was not awarded based on the lowest price but on a points system, comprising 60% technical evaluation and 40% financial evaluation. According to the appellant, their submissions not only met but significantly exceeded the minimum requirements outlined in the tender. Consequently, the appellant questioned how the evaluation committee awarded only 54 out of 100 points. He requested a re-evaluation of the assessment, arguing that a conservative review should result in a score of at least 81 points out of 100.

The PCRB Chairman sought clarification from the appellant regarding which of the two bids the appeal pertained to: the bid with ID ending 626 or the bid with ID ending 695. The appellant confirmed that the appeal related to the bid with ID ending 626, as the appellant disagreed with the reasons for its elimination. The Chairman clarified that only the bid with ID ending 626 (Bid ID: 000216626) falls within the scope of objection, as the required deposit was paid exclusively for this bid. Consequently, Bid ID 000216695 is considered separately, and no arguments or objections concerning this bid will be entertained at this stage.

Perit Frank Muscat, for the appellant, enforced his point that there is no basis why bid (Bid ID: 000216626) should be eliminated because both bids are identical, as all requisites within this bid were submitted within the stipulated timeframe and so this bid is eligible.

Dr Scicluna Cassar, representing the Contracting Authority, stated that the appeal is based on two grievances. The first grievance concerns the elimination of tender bid with ID 000216626, asserting that it is not identical to tender bid with ID 000216695. The second grievance alleges that tender bid with ID 000216626 was not considered during the evaluation process.

Dr Scicluna Cassar explained that the appellant and the board must understand that the technical evaluation committee was faced with two bids that, *prima facie*, appeared identical in terms of eligibility, technical specifications, and financial terms. Given these apparent similarities and to uphold the principles of fairness and proportionality, the committee clarified the matter to the appellant in writing via a letter dated October 15, 2024. The letter explicitly requested details on any differences between the bids and read as follows:

*“During the evaluation process, the board has noticed that the two bids submitted by your company for the same tender appear to be identical in the Eligibility, Technical, and Financial Criteria.*

*In light of this, the matter is being referred to you for confirmation. If in the affirmative, please indicate with the ID number which of the offers you opt to retain for evaluation.”*

Dr Scicluna Cassar emphasised that the evaluation committee had no issue evaluating both bids if requested. However, the appellant responded to the clarification letter the following day with the statement:

*“While the two bids submitted seem identical, there is one difference. In bid with ID 216695, under Technical Offer item 1.18.2, there is a link to an animation, whereas bid with ID 216626 does not include such a link. We therefore choose to retain bid with ID 216695.”*

Dr Scicluna Cassar stressed that this response by the bidder was extremely clear, as the appellant provided explicit instructions on which bid to retain. The evaluation committee followed the appellant's wishes as requested. It was not a board decision to choose one bid, but rather an instruction from the bidder (the appellant). This decision was solely made by the bidder, and the committee would have acted against the bidder's will if both bids were to be evaluated.

Furthermore, Dr Scicluna Cassar pointed out that the evaluation criteria were based on a Best Price-Quality Ratio (BPQR), with 60% weighting on technical aspects and 40% on financial terms. While both bids were compliant, the appellant's bid had a higher price, resulting in a lower overall score. Consequently, the appellant's bid was not selected as the preferred bidder despite compliance with all requisites.

Mr. Massimo Vella, for the preferred bidder, supported Dr Scicluna Cassar's position, agreeing that the appellant chose which bid to evaluate. He clarified that the other Bid (with ID ending 695) received fewer points compared to the preferred bidder's bid, and on this bid, there is no appeal.

Perit Frank Muscat, for the appellant, made a final argument requesting reference to the clarification letter to understand the Contracting Authority's instructions. He asserted that the appellant in the clarification letter was offered a choice to retain only one of the two bids. He therefore did not voluntarily remove a bid. Furthermore, the appellant cited pages 8/9 of the tender document, stating that both bids achieved a technical score of 50, with the tender requiring an average technical score of 60% to proceed.

Dr Scicluna Cassar, for the Contracting Authority, rebutted by stating that the technical merits of both bidders were not contested and reiterated that the bidder (appellant) had the authority to choose which bid to retain, and there was no enforcement on the bidder to retain only one bid. She emphasized that it was the bidder's (appellant's) choice to retain only one bid.

With no further objections or discussions, the Chairman declared the meeting adjourned.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 14<sup>th</sup> of January 2025.

Having noted the objection filed by Doric Studio Innovative Design Solutions (hereinafter referred to as the "Appellant") on the 26<sup>th</sup> of November 2024 and refers to the claims made by the same Appellant with regards to the tender of reference SPD3/2024/055 listed as case No. 2058 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Perit Frank Muscat

Appearing for the Contracting Authority: Dr Tatiane Scicluna Cassar

Appearing for the Preferred Bidder: Dr Massimo Vella

Whereby, the Appellant contends with respect to:

a) ***Grievance 1: Elimination of Tender Bid with ID 000216626***

The elimination of tender bid with ID 000216626 since it is not identical to tender bid with ID 000216695.

b) ***Grievance 2: Non-Consideration of Tender Bid with ID 000216626 During Evaluation***

Therefore, we are also objecting to the recommendation of the award to tender bid with ID 000216762 since our offer with ID 000216626 was not considered during the evaluation.

The Board also noted Contracting Authority's Letter of Reply filed on 5<sup>th</sup> of December 2024 and its verbal submission during the hearing held on 14<sup>th</sup> of January 2025, in that:

a) ***Response to Grievance 1: Elimination of Tender Bid with ID 000216626***

The Contracting Authority hereby submits that the Technical Evaluation Committee had carefully reviewed the two bids submitted by the Appellant and observed that, *prima facie*, both bids appeared identical in terms of eligibility, technical specifications and financial terms. Given the apparent similarities, and in accordance with the principles of fairness, transparency, and

due diligence in procurement, the Committee deemed it necessary to seek formal clarification from the Appellant. This approach aligns with the legal requirement to ensure all bids are evaluated accurately and that no ambiguity exists in the tender process.

Accordingly, a clarification request was sent to the Appellant on 15<sup>th</sup> of October, 2024 explicitly asking for details on any differences between the bids. Specifically, the request read as follows:

*“During the evaluation process, the board has noticed that the two bids submitted by your company for the same tender, appear to be identical in the Eligibility, Technical and Financial Criteria.*

*In light of this, the matter is being referred to you for confirmation. If in the affirmative, please indicate with the ID number which of the offers you opt to retain for evaluation.”*

The bidder responded in writing on 16<sup>th</sup> October 2024 stating that both bids were indeed identical, with the sole distinction being that one included animation. The Appellant further clarified that no additional evaluation was required and expressed a clear preference to proceed with the tender using the bid containing animation. The Appellant’s response read as follows:

*“While the 2 bids submitted seem identical, there is one difference. In bid with ID 216695 under Technical offer item 1.18.2 there is a link to an animation while in Bid with ID 216626 there is no such link. We therefore choose to retain Bid with ID 216695.”*

This action by the Committee adhered to procurement regulations, which permit clarification requests to ensure that tender bids are evaluated based on complete information. The Appellant’s written confirmation provided the necessary clarity, allowing the Committee to proceed with confidence in its decision-making i.e. without bid ID number 000216626.

***b) Response to Grievance 2: Non-Consideration of Tender Bid with ID 000216626 During Evaluation***

The Contracting Authority contends that as outlined above, the Committee’s decision not to evaluate the second bid i.e. bid ID number 000216626, was based on the Appellant’s formal clarification, which confirmed that he would like to proceed with the other bid. The Appellant explicitly stated his preference to continue with the bid containing the animation and confirmed that no further evaluation was required.

Therefore, the Committee reasonably concluded that, on the basis of the appellant's confirmation, evaluating the second bid would serve no purpose, as the Appellant himself explicitly instructed the Committee not to evaluate it. The Appellant's clarification made it clear that evaluating both bids would yield the same outcome. Thus, to maintain procedural efficiency the Committee proceeded with evaluating bid ID number 000216695.

***c) Award Decision***

In view of this above, the Technical Evaluation Committee and the Contracting Authority would like to state that whilst the Appellant's bid with ID number 000216695 was compliant, the criteria that determined the preferred bidder was based solely on the Best Price Quality Ratio (BPQR) as per Tender Document Clause number 6 "*Criteria for Award*".

Given that the preferred bidder's proposal was fully administrative, technically and financially compliant to the published terms and conditions and was also priced the lowest, the decision was made to award the contract to the one with the Best Price Quality Ratio.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider Appellant's grievances as follows in their entirety.

**Grievance 1: Elimination of Tender Bid with ID 000216626 since it is not identical to tender bid with ID 000216695**

- The Board notes that the Appellant submitted two bids (ID 000216626 and ID 000216695) which initially appeared identical in terms of eligibility, technical specifications, and financial terms.
- The Contracting Authority issued a clarification request on 15<sup>th</sup> October 2024, seeking confirmation of any differences between the two bids.
- The Appellant responded on 16<sup>th</sup> October 2024, clarifying that the only difference was the presence of an animation link in bid ID 000216695.
- The Appellant expressly chose to retain bid ID 000216695 for evaluation, effectively instructing the Evaluation Committee not to proceed with bid ID 000216626.
- Considering this clarification and the Appellant's own written request, the Evaluation Committee did not evaluate bid ID 000216626.
- It is the opinion of this Board that the Evaluation Committee acted in a diligent and proportionate manner and in no way transgressed the principle of self-limitation.

- The Board, henceforth, agrees with the Contracting Authority that the decision on which bid to retain was made by the Appellant himself. Had the Evaluation Committee evaluated bid ID 000216626, it would have contravened the appellant's written request.

Therefore, the Board does not uphold the Appellant's grievance on this point.

#### **Grievance 2: Non-Consideration of Tender Bid with ID 000216626 During Evaluation**

- The appellant claims that the second bid (ID 000216626) was not considered during the evaluation, which prejudiced the outcome.
- The Board notes that the Evaluation Committee acted in accordance with the appellant's written response to the clarification request. In this response, the appellant explicitly instructed the Evaluation Committee to retain bid ID 000216695 for evaluation, thereby excluding bid ID 000216626 from further consideration.
- Given these instructions, the Evaluation Committee's decision not to evaluate bid ID 000216626 was both proportionate and fair, fully aligning with the appellant's own request.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Furthermore, since the letter of objection and deposit was filed only for tender bid ID 000216626 (refer to Meeting Minutes), any grievances related to bid ID 000216695 cannot be entertained in this case.

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Dr Ing. Damien Gatt**  
Member

**Mr Lawrence Ancilleri**  
Member