

PUBLIC CONTRACTS REVIEW BOARD

Case 2102 – CMB 03/2025 – Tender for the Supply and Installation of CCTV and other ELV Enhancements at the Central Bank of Malta

29th April 2025

The Board,

Having noted the call for remedies filed by Dr Colin Deguara acting for and on behalf of Alberta Fire & Security Equipment Limited, (hereinafter referred to as the appellant) filed on the 4th April 2025;

Having also noted the letter of reply filed by Dr Pauline Lanzon acting for the Central Bank of Malta (hereinafter referred to as the Contracting Authority) filed on the 9th April 2025;

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

Having noted and evaluated the minutes of the Board sitting of the 22nd April 2025 hereunder-reproduced;

Minutes

Case 2102 - CBM 03/2025 – Tender for the Supply and Installation of CCTV and Other ELV Enhancements at the Central Bank of Malta.

The tender was issued on the 13th of March 2025, and the closing date was the 14th of April 2025.

The estimated value of the tender, excluding VAT, was €584,745.

On 4 April 2025, Alberta Fire & Security Equipment Limited (C6606) lodged an appeal against the Central Bank of Malta in accordance with Regulation 262 of the Public Procurement Regulations (S.L. 601.03). The appellant objected to the provisions contained specifically in Section 2.15.1 of the tender document, which states:

A deposit of €2,923.73. was paid.

The matter was brought before the Public Contracts Review Board (PCRB) as a case for remedies.

On 22nd April 2025, the Public Contracts Review Board (PCRB), composed of Mr. Kenneth Swain as Chairman, Mr. Richard Matrenza and Mr. Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

- **Appellant: Alberta Fire & Security Equipment Limited (C6606)**

Dr Colin Deguara – Legal Representative

- **Contracting Authority: Central Bank of Malta**

Dr Pauline Lanzon – Legal Representative
Mr. Robert Grixti – Company Representative

Opening Statements:

The Chairman commenced the hearing by confirming that the appeal had been reviewed, and preliminarily noted that a clarification note appeared to be under consideration.

Initial Submissions:

Initial Submissions by the Appellant:

Dr Colin Deguara began by stating that he had communicated with the Board the previous day, assuming that the same communication had been shared with the Contracting Authority. He indicated that Alberta Fire & Security Ltd. was opposed to the issuance of a mere clarification note, insisting instead that a Corrigendum should be issued.

Dr Deguara argued that while the proposed amendments to section 2.15.1 by the Contracting Authority would be similar in effect to Alberta's request, the reference to "credit and financial institutions" should not simply be revised or interpreted differently via a clarification notice. Instead, this restrictive wording should be entirely removed through a Corrigendum, and the tender document should be amended accordingly to reflect the intent conveyed by the Contracting Authority in their proposal.

Initial Submissions by the Contracting Authority:

Dr Pauline Lanzon responded by asserting that the sector-specific requirement in Clause 2.15.1 was justified in the given context, especially since the award criterion for the tender was exclusively based on price. She maintained that the Central Bank required a parameter that would ensure suitability to its operational context.

The Contracting Authority proposed a solution whereby, rather than continuing with the appeal proceedings, the issue could be addressed through a clarification note issued under Regulation 38(4). She acknowledged that the appellant objected to this approach but noted that the Central Bank had no objection to the withdrawal of the appeal and refund of the deposit. However, she reiterated that in the Bank's view, no procedural errors had been committed, and the clause in question had been properly drafted and applied.

In their proposed clarification note, the Central Bank suggested replacing the contested wording with a requirement for services of a similar nature provided by institutions with security arrangements equivalent to those of credit and financial institutions, and even provided a list of acceptable equivalents, which was reportedly agreeable to the appellant. The core issue appeared to be the legal form the amendment would take—Corrigendum vs. Clarification Note.

Intervention by the Board:

Mr. Swain clarified that a Corrigendum constitutes a formal amendment published on the EPPS platform, while clarifications and rectifications may also be issued via the same system. However, if

substantive changes are made, such changes should be issued as a clarification note, per regulatory practice.

Mr. Robert Grixti of the Central Bank intervened, noting that even supplementary documents may be issued in support of the clarification. Mr. Swain agreed with this interpretation.

Dr Deguara reasserted that a Corrigendum and a clarification note are not legally equivalent. A Corrigendum would eliminate the reference to “credit and financial institutions”, thereby broadening the scope to include other entities with equivalent security protocols, such as diplomatic missions. If only a clarification note is issued without amending the original wording, the tender document would remain internally inconsistent.

Dr Lanzon concluded by reiterating that the Central Bank’s submissions had been made in full clarity and expressed a desire to expedite the proceedings.

Dr Deguara inquired whether the Board had reviewed the email correspondence and enquiries previously submitted, as it could assist in resolving the matter.

The Chairman confirmed receipt and review of the email communication.

Conclusion of the Hearing:

With no further arguments submitted, Chairman Mr. Kenneth Swain formally thanked all those present and concluded the meeting.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 22nd April 2025.

Having noted the call for remedies filed by Alberta Fire & Security Equipment Limited (hereinafter referred to as the Appellant) on 4th April 2025, refers to the claims made by the same Appellant with regards to the tender of reference CMB 03/2025 listed as case No. 2102 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Colin Deguara

Appearing for the Contracting Authority: Dr Pauline Lanzon

Whereby, the Appellant contends that:

- a) At the outset, the appellant respectfully submits that the inclusion of specification 2.15.1 multi-layered (experience) requirement is in manifest breach of established general principles of public procurement. The criteria at 2.15.1 is, effectively, a selection criteria, compliance with which guarantees the continued participation of a prospective bidder throughout the procurement procedure. On the other hand, in the eventuality that a prospective bidder does not match the cumulative requirements of the selection criteria at 2.15.1, said prospective bidder would automatically be excluded from participating in the open call for tenders.
- b) To be unequivocally clear, appellant company acknowledges and accepts that contracting authorities *"may impose requirements ensuring that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard"* (vide Regulation 222 of S.L. 601.03).
- c) This notwithstanding, the Public Procurement Regulations further provide, at Regulation 217 (2), that: *"Contracting authorities may only impose criteria referred to under this regulation on economic operators as requirements for participation. Any of the requirements imposed shall be limited to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the technical and professional abilities to perform the contract to be awarded. All requirements shall be related and proportionate to the subject-matter of the contract."*
- d) As per the selection criteria at 2.15.1, tenderers will be deemed eligible if they satisfy each of the following:
- i. must have previously supplied and installed CCTV and other ELV enhancements (minimum two projects); and
 - ii. must have supplied and installed said products at credit and financial institutions; and
 - iii. must have supplied and installed said products between January 2022 and the closing date for submission; and
 - iv. the value of each implementation as aforesaid must have a minimum value of €50,000 (excluding VAT).
- e) At this juncture, it would be opportune to also refer to Article 18 (1) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (also reproduced in Regulation 39 of the Public Procurement Regulations) which states that: *"Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner. The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators."*
- f) Appellant company contends that the selection criteria at section 2.15.1, as is, is unnecessarily restrictive, inappropriate for the purposes of the ultimate end-goal of this procurement procedure and blatantly narrows competition. Alberta Fire & Security Equipment Limited need not mention the plethora of judgments (delivered by both the Courts of Malta as well as the European Court of Justice) whereby the principles of proportionality and open and fair competition were aggressively

emphasised. Fair competition is the cornerstone of public procurement and its promotion and, more importantly, application ensures that any given Contracting Authority identifies the most value for money offer in relation to the products/services it seeks to procure.

- g) Whereas it is anticipated, and totally understandable, for the Central Bank of Malta to request evidence from prospective bidders attesting to their experience in the supply and installation of CCTV and other ELV enhancements to a value which is commensurate with this call, the need for such to have been supplied and installed at credit and financial institutions is entirely inappropriate, inadequate and disproportionate. Although the appellant is by no means downplaying the fact that the Central Bank of Malta and credit and financial institutions (in general) are indeed optimal examples of high security environments, the Central Bank of Malta and credit and financial institutions are certainly not the only (nor the most complex) high security environments.
- h) Appellant company respectfully submits that the products which the Contracting Authority seeks to procure by virtue of the present procurement procedure are not environment specific and, therefore, restricting this procurement procedure only to prospective bidders who have supplied and installed same (within a prescribed period and over a prescribed minimum value) to credit and financial institutions is effectively a missed opportunity for it excludes a range of economic operators whose experience might, essentially, meet or exceed the standards requested by the Contracting Authority nonetheless. What sense would it make, and how appropriate would it be, to exclude economic operators whose services have been sought, for example, by diplomatic missions, airports, prisons, data centres and/or banknote printing service companies (which, incidentally, supply central banks all over the world)?

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 9th April 2025 and its verbal submission during the hearing held on 22nd April 2025, in that:

- a) The CBM primarily submits that the sector-specific restriction being contested is justified by the inherent security and operational requirements of the CBM. In terms of clause 2.39 of the tender document, the sole award criterion is the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria. Therefore, it is respectfully submitted that evidence of technical capacity and experience as contractor is a critical factor in awarding the contract to an economic operator with the sector-specific experience necessary for the performance of the contract.
- b) This notwithstanding, and without admitting any fault, the CBM submits that it is prepared to issue a clarification note that services of a similar nature provided to institutions with security arrangements comparable to those of credit and financial institutions - such as diplomatic missions, airport, prisons, and banknote printing companies - will be considered acceptable.

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.

- a) Reference is made to paragraph 2.15.1 of the tender dossier which states that *"Tenderers are to provide a list the principal supplies of a similar nature, being the supply and installation of CCTV and other ELV Enhancements as detailed in this Tender. **Tenderers are to state the details of two (2) similar supplies that were implemented at credit and financial institutions as defined by the applicable legislation, carried out, at most, over the period covering January 2022 up to the deadline for submission of this Tender. The value of each implementation must be not less than €50,000.00 excluding VAT.**"* (bold emphasis added)
- b) At the outset, this Board, wishes to affirm its full support to the appellant's arguments that, while the applicable regulations permit contracting authorities to tailor requirements according to their specific needs, in order to achieve the desired quality standards, such requirements must nevertheless be proportionate and appropriate in relation to the subject matter of the contract.
- c) The Board is of the opinion that the manner in which the following extract from paragraph 2.15.1 has been drafted, *".....Tenderers are to state the details of two (2) similar supplies that were implemented at credit and financial institutions as defined by the applicable legislation..."* is not in line with the provisions of Regulation 39(3) of the Public Procurement Regulations. In this regard, reference is made to the Court of Appeal's judgement in the names of Krypton Chemists Limited vs Central Procurement and Supplies Unit delivered on 15th February 2024. The Court stated: *"Għalhekk mill-mod ta' kif taraba din il-Qorti, l-intenzjoni li tnaqqas il-kompetizzjoni b'mod artifiċjali fir-Regolament 39(3) għandha tiġi interpretata fis-sens li meta wieħed janalizzazzja l-kriterji tas-sejha wieħed isib li dawn il-kriterji jkunuw ġew introdotti fis-sejha mhux biex ikun hemm kompetizzjoni mistuħa li tithalla tiehu l-kors naturali tagħha, iżda dawn il kriterji jkunuw ġew introdotti biex il-kompetizzjoni tiġi mnaqqsa b'mod ingustifikat halli b'hekk ikun hemm inqas operaturi ekonomiċi li jieħdu sehem fis-sejha. Dan kollu jrid jiġi interpretat fl-isfond tal-prinċipju generali li l-awtoritajiet kontraenti għandhom jgħallqu aċċess ugħwali għall offerenti, kif ukoll ill jagħmlu trasparenti l-process tal-akkwist."*
- d) Accordingly, this Board, concurs that the reference to *"credit and financial institutions"* in section 2.15.1 should be removed and substituted with the wording proposed by the same Contracting Authority, namely *"institutions with security arrangements comparable to those of credit and financial institutions – such as diplomatic missions, airport, prisons and banknote printing companies"*. This amendment is to be carried out via the issuance of a corrigendum to the tender document.

The Board,

Having carefully reviewed and considered all submissions, arguments and documentation presented, hereby concludes and decides as follows:

- a) To uphold the grievances brought forward by the Appellant;
- b) To order the Contracting Authority to amend Section 2.15.1 of the tender dossier, specifically by removing and replacing the reference identified in paragraph (d) of the findings above, in accordance with the revised wording proposed by the Contracting Authority;
- c) To direct the Contracting Authority to extend the *'Closing Date for the Submission of Tenders'* to the 29th of May 2025, in order to ensure fair and equitable access for all potential tenderers in light of the amendment;
- d) In view of the circumstances and the outcome of this call for remedies, the Board further directs that the deposit lodged by the Appellant be refunded in full.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard Matrenza
Member