MINISTERU GĦALL-ARTI, IL-KULTURA, U L-WIRT NAZZJONALI

MINISTRY FOR ARTS, CULTURE AND NATIONAL HERITAGE

Dipartiment tar-Restawr u l-Preservazzjoni

Restoration and Preservation Department

19th August 2026

Public Contracts Review Board
Notre Dame Ditch
Floriana

Subject: Objection No. 696 - SPD5/2025/033
Sustainable Restoration Works – Marsa Tram Power Station Phase 1 (Asbestos Removal, Temporary Roof, Bridge & West Elevation, Eco-Friendly Steel Restoration)

Reply of the Contracting Authority

The Restoration and Preservation Department, in its capacity as Contracting Authority, respectfully submits this reply to the objection filed by Vaults Co. Ltd. The Contracting Authority requests that the objection be dismissed and the decision to cancel the procurement procedure be confirmed.

The Facts

Only one tender was submitted in response to this procurement procedure, namely that of Vaults Co. Ltd. Following evaluation, the Evaluation Committee established that the submitted offer exceeded the approved estimated procurement value by approximately 16.02%. The Evaluation Committee therefore concluded that the offer was not economically feasible and did not constitute a financially worthwhile proposal for Government. Consequently, cancellation of the procedure was recommended pursuant to Article 18.3(a) of the *General Rules Governing Tenders Version 4.10.*

On the Alleged Financial Compliance of the Tender

The appellant argues that, because no arithmetic errors were identified, its offer could not be regarded as financially non-compliant.

The Contracting Authority submits that this argument misinterprets the basis of the decision.

The notification letter expressly confirmed that no arithmetic errors existed. The decisive consideration was not an arithmetic defect in the bid but the fact that the sole offer exceeded the approved estimate by 16.02% and was consequently considered economically unfeasible and financially not worthwhile.

The Contracting Authority therefore submits that the appellant is focusing on terminology rather than substance. The reasons for the decision were clearly communicated and understood by the appellant, as evidenced by the contents of the objection itself. The real issue is not whether the tender complied arithmetically with the pricing schedule, but whether the Contracting Authority was entitled to conclude that the submitted price did not represent a financially worthwhile outcome for the procurement.

On the Exercise of Discretion under Article 18.3(a) of the *General Rules Governing Tenders V4.10*

The appellant acknowledges that Article 18 of the *General Rules Governing Tenders V4.10* grants discretion to a contracting authority but contends that such discretion was exercised incorrectly.

The Contracting Authority respectfully disagrees.

Article 18.3(a) of the *General Rules Governing Tenders V4.10* specifically contemplates cancellation where no financially worthwhile tender has been received. Necessarily, the exercise of this provision requires the Contracting Authority to evaluate whether the offer received represents acceptable value for public funds in the circumstances of the particular procurement exercise.

No provision of the procurement rules establishes a fixed percentage above the estimated procurement value which must automatically be accepted or rejected. The assessment is case-specific and must be exercised having regard to the circumstances of each individual procurement.

In the present case, only one offer was received, thereby eliminating any possibility of meaningful price competition. The sole offer exceeded the approved estimated procurement value by 16.02%, representing a substantial increase over the financial framework established for the project. The Evaluation Committee therefore concluded that the proposal was not financially worthwhile and recommended cancellation. Such a determination falls squarely within the discretion expressly granted by said Article 18.3(a).

On the Alleged Inconsistency with Other Procurement Procedures

The appellant alleges that other procurement procedures may have been awarded notwithstanding differences between the awarded price and the estimated procurement value.

The Contracting Authority submits that this allegation remains unsupported by evidence and, in any event, is legally irrelevant unless it can be demonstrated that the circumstances of those procedures were materially identical.

Every call for tenders is assessed on its own facts, budgetary considerations, market conditions and procurement requirements. The existence of another procurement procedure involving a different scope of works, different market conditions or different budgetary circumstances cannot constrain the lawful exercise of discretion in the present case.

Conclusion

The Contracting Authority respectfully submits that:

i. The sole offer submitted by Vaults Co. Ltd. exceeded the approved estimated procurement value by approximately 16.02%.

ii. The Evaluation Committee was entitled to determine that the offer was not economically feasible and was not financially worthwhile in the circumstances of the procurement.

iii. Article 18.3(a) of the *General Rules Governing Tenders V4.10* expressly permits cancellation where no financially worthwhile tender has been received.

iv. The decision to cancel the tender procedure was lawful, reasonable, proportionate and in the public interest.

Accordingly, the Contracting Authority respectfully requests the Public Contracts Review Board to reject the objection in its entirety and confirm the cancellation of Tender SPD5/2025/033.

Yours faithfully,

Norbert Gatt
Director General
Restoration and Preservation Department