

5th April 2016

Authority for Transport in Malta
Transport Malta,
Malta Transport Centre,
Marsa MRS 1917
Malta

Re: Tender for the Electricity Supply Installation at Ta' Xbiex S and D Marina Ref No. TM 050/2015

Objection by Messrs. Bonnici Brothers Contractors Ltd (hereinafter "Objectors") to be forward to the Public Contracts Review Board in terms of the applicable law

Whereas Objectors participated in the afore-mentioned tender procedure;

Whereas Objectors were informed by the Contracting Authority, that their bid "in connection with the above tender has not been accepted by Transport Malta, since [their] bid was technically non compliant 'due to Main Electrical Panel being rated IP30 instead of the requested IP31'".

Whereas Objectors feel aggrieved by this decision and are therefore filing the present objection;

Therefore, Objectors submit the following:


- 1) **That the Contracting Authority should have sought clarification and/or rectification of the alleged mistake and this in terms of the Tender Documentation.**

That the Tender Documentation stipulated that in relation to the technical documentation, "Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five working days from notification.". The term 'will' imposes an obligation on the Contracting Authority to request clarification and/or rectification of the documentation which is alleged is to be incorrect and not to proceed to an outright exclusion. This principle has been upheld by the Public Contracts Review Board in a number of instances, vide inter alia decision of the PCRB in relation to the *Objection eCT 3024/2015 - Supply and Commissioning of Heavy/Light Plant Equipment and Refrigerated Truck for the Waste Treatment and Transfer Facility at Tal-Kus, Gozo.*

- 2) That without any prejudice to the above and as will be amply demonstrated during the hearing of this appeal, the distinction between a rating of IP31 and IP30 is negligible and irrelevant for the purposes of this particular tender. Furthermore, the negligible difference between the two standards should have led the Contracting Authority to request the necessary clarifications and rectifications, even more so since Objectors declared that by submitting their tender they are going to abide by all tender conditions.

Therefore, in view of the above, Objectors respectfully request this Board to revoke the decision communicated to Objectors by means of the letter dated 29th March 2016 and to order that Tender is awarded to Objectors, as the cheapest compliant tenderer.

Objectors reserve their right to present further evidence and submissions at the public hearing to be summoned by the Public Contracts Review Board.


Dr. John L. Gauci LL.D