

THAKE DESIRA

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31st August, 2023

Public Contracts Review Board,
Notre Dame Ditch,
Floriana FRN1601



Re: Tender SPD 6/2023/007 – Tender In Lots For The Refurbishment Works At Gnien Dar Il-Kaptan, Mtarfa Using Environmentally Friendly Materials – Re-Issue (Lot 1)

We act on behalf of George Vella (holder of identity card number (0388191M) Tender ID 0194068, of 8, Triq l-Alfier De Medran Street, Hal Tarxien and make reference to the above-captioned tender which invited offers in respect of the refurbishment works at Gnien Dar il-Kaptan, Mtarfa, using environmentally friendly materials – re-issue (Lot 1).

The said George Vella had submitted an offer for the performance of the works and supply of the goods required in the said tender for the sum of two hundred and ninety-seven thousand and thirty Euro (€297,030), excluding VAT, and by notice dated the 22nd August 2023 was informed by the Sectoral Procurement Directorate in the Department of Contracts that the offer submitted by him was not technically compliant and that the main reasons set out in that letter being:

In the tenderer's Technical Offer (Note 3), bidder indicated the model being offered having 4 burners and not 5 as requested in section B Clause 11.2.1 of the tender document. Furthermore, following a rectification sent to bidder with reference to the Literature List, bidder also failed to submit literature indicating the cooking power of the submitted BBQ. Although the bidder replied submitting the requested information, this bid was considered as noncompliant principally because the Tenderer's Technical Offer (Note 3) was filled with a non-compliant model (4-burner).

In the same notice of the 22nd August 2023, the said George Vella was informed that the procurement was recommended for award to LBA Ltd (Tenderer ID 194128) for the amount of €319,232. Apart from being clearly cheaper than the offer made by LBA Ltd., the offer made by the said George Vella was cheaper than any other offer made, such that, in

THAKE DESIRA

ADVOCATES

accordance with the announced criteria for award, the tender would have been awarded to the said George Vella had his offer not been disqualified as being non-compliant.

The said George Vella feels aggrieved by this decision and is hereby objecting to it. The grounds of objection are as follows:

1. The alleged non-compliance of offer made by the said George Vella arises from the number of burners (4) of the model being offered in his offer. This statement was based on the incorrect premises that the tender required that the model have five (5) such burners. The cited requirement arises from Section B Clause 11.2.1 of the Tender document which states "5-Cast Iron porcelain coated burners" (*sic*). The underlined words are semantically unintelligible and could never be the basis of the exclusion of the offer made by the said George Vella. There is nothing to suggest that '5' in the hyphenated '5-Cast' was intended to indicate 5 as the amount of burners required, because the hyphen modifies the adjective after it which in turn qualifies the noun (in fact, it should have been 'porcelain-coated', the noun being burners). Thus, the phrase 5-Cast is meaningless and the number 5 cannot conceivably be attributed the meaning of a qualification of the number of burners the model offered should have. This more so when the tender document has used a word and number format in respect of numerical requirements set out in the specifications in Section 1 of the same Tender document.
2. Even were one to consider that the requirement that there be five (5) burners to have actually existed in the tender document, the decision to exclude the offer and accept an offer which was €22,202 or 7.5% higher based on an item having a value of €450 in the offer made by the said George Vella is unjust and unjustifiable, particularly when no effort was made by way of clarification or rectification to address the perceived non-compliance and in effect save the sum of €22,202 for the public purse.
3. Regulation 239(7) of SL 603.04¹ states that, "*The contracting authority shall specify, in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone*". Paragraph 6 (Criteria for Award) of Section 1 of the tender document states that the sole award criterion will be the price and that the tender would be awarded to the cheapest priced offer satisfying administrative and technical criteria. Based on this criterion, the tender should thus have been awarded to the said George Vella and could only not be so awarded only if it was concluded by the Contracting Authority that the (alleged and disputed) non-compliance meant that the offer as a whole did not satisfy technical criteria. The topic implicit in this

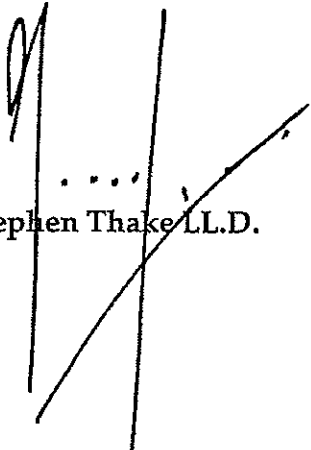
¹ Transposed verbatim from Directive 2014/24/EU

THAKE DESIRA

ADVOCATES

consideration has been the subject matter of European judgements interpreting Directive 2014/24/EU, from which, as stated, our law was transposed. The combined effect of the judgements is that held that a contracting authority may not, in principle, apply weighting rules which it has not previously brought to the tenderers' attention. As is clear, the contracting authority had not in this case clarified that one burner less than five was by the Contracting Authority at any stage.

Therefore, whilst reserving the right to make further submissions and to bring forth all permissible evidence at the opportune stage, the said George Vella humbly requests this Honourable Board to revoke the decision of the Ministry of 22nd August 2023 that, whereby the proposal was declared non-compliant, and to declare his bid as technically compliant and make any such directives as it deems fit in order to ensure that the procurement process proceeds in terms of law with the inclusion of the offer made by the said George Vella, or, as the case may be and having revoked the said decision of the Ministry of 22nd August 2023, awards the procurement to the said George Vella.



Stephen Thake LL.D.

Transfers - To Other Banks (SEPA)

Tue, 29 Aug 2023 20:59:22 GMT


For more information on SEPA transfers click [here](#).
You may print a copy of this information by clicking on the printer icon above.

CONFIRM DATA

Accounts	162400181 - Savings account in Euro
Beneficiary's IBAN	MT55MALT011000040001EURCMG5001H
Beneficiary name	Cashier Malta government
Amount	1659 EUR
Description for payer	Appel SPD6/2023/007
Additional information	
To transfer	Immediately
Starting on	
Ending on	

CHARGES

Unavailable Fee information is currently unavailable. Please try again later.

 YOUR REQUEST WAS REGISTERED (129932934)

Pending for Bank Approval. Your account will be debited once the payment is vetted by the Bank.