

28th September 2023

Public Contracts Review Board
Notre Dame Ravelin,
Floriana,
Malta



Cardona Engineering Works [TID 197139]

vs

Central Procurement & Supplies Unit

CPSU 1396/19

Tender Name: Negotiated procedure for the leasing of non-emergency ambulances plus drivers and porters for the non emergency ambulance garage

REASONED LETTER OF OBJECTION

Whereas, the Central Procurement & Supplies Unit (*hereinafter* **CPSU**) issued a call for tenders “Negotiated procedure for the leasing of non-emergency ambulances plus drivers and porters for the non emergency ambulance garage”

Whereas, Messrs. Cardona Engineering Works (*hereinafter* “**Appellants**”) submitted an offer for this procurement procedure;

Whereas, by means of a contract award notice dated 27th September 2023, the appellants were informed the the procurement is being awarded to Malta Red Cross Society;

Whereas, appellant company feels aggrieved by such a decision, and thereby is submitting its objection within the time-frame and accompanied with the relative payment (copy of payment enclosed as **DOC1**), based on the following grievances:

1. **The price of the recommended bidder is abnormally low**

- 1.1 In accordance with article 234[1] of the Public Procurement Regulations (PPR), contracting authorities are required to investigate wheresoever, an economic operator has submitted an abnormally low tender

Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

- 1.2 Whilst it is unclear if any investigation has been undertaken by the contracting authority, failure shall render it to be in breach of article 234 of the PPR, and as confirmed in the PCRB case 1614 [dated 6th August 2021] it shall lead to the cancellation of the award and the revaluation of the offers;
- 1.3 It is hereby additionally imperative to investigate further provision 243[2][f] of the PPR, which specifically deals with ‘the possibility of the tenderer obtaining State aid’, since this would automatically distort competition;
- 1.4 The recommended tenderer, which is a voluntary organization setup through its Statute, but acknowledged as such through Chapter 359 of the Laws Malta – which status renders it eligible for public funding – a matter which should have been investigated by the evaluation committee in accordance with article 234 of the PPR;

2. **The Doctrine of self-limitation**

- 2.1 In a recent PCRB decision with case number 1665 of 2021 [27th December 2021], this Honourable Board held that:

‘This Board opines that the Evaluation Committee did not observe the principle of Self-Limitation when it deemed the Appellant’s offer as technically non-compliant when it adjudged the equipment of the Appellant company on issues not included within the Tender Dossier’

- 2.2 The tender document in provision 9.13, the contracting authority requested that the economic operators submit a copy of logbooks, as per hereunder:

‘Copy of logbooks are to be presented at tendering stage’

[added emphasis - vide tender document]

2.3 To satisfy the requirement, the economic operators must:

- EITHER** Be the owner of the vehicles requested and thereby submit a copy of their logbooks;
- OR** In accordance with article 235 of the PPR, rely on the capacities of third parties, and in the process submit confirmation that the resources shall be available to the economic operator throughout the duration of the agreement;

For clarities sake, sub-contracting is not permissible in the context under review, since it would exceed the permitted percentage of sub-contracting;

2.4 It is the position of the appellant, that the recommended bidder did not produce any of the above, and thereby the award is in breach of the technical specifications;

3. Procedural faults

3.1 As will be shown throughout the PCRB sitting, the evaluation process is marred by breaches of the PPR;

3.2 The evaluation procedural faults include:

3.2.1 Failure to provide a recommendation notice, instead a contract award notice has been published [a contract award can only be confirmed after the lapse of the appeal period];

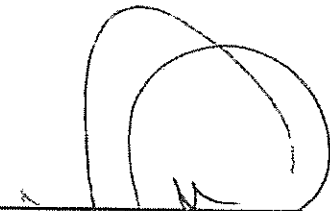
3.2.2 An email communication received from CPSU that the economic operator shall commence operations on the 2nd October 2023;

3.2.3 A recommendation which is included in the ePPS, which recommendation is dated 23rd August 2023, however the document is blank;

NOWTHEREFORE, whilst reserving the right to put forward further submissions, the Appellants hereby requests:

- i. To revoke the contract of award notice;
- ii. To order the CPSU to re-instate the offer/s of the appellants and to re-evaluate all of the offers, by a newly composed evaluation committee;
- iii. To declare that the offer by Malta Red Cross Society is:
 - a. Abnormally low; and/or
 - b. Not compliant with the tender specifications;
- iv. If appropriate, to order that the offer of the appellants is fully compliant with the tender specifications and thus order, instruct or in any other manner that the appellant company should be awarded the tender;
- v. To do anything which is ancillary and conducive to the proper execution of the above requests;
- vi. To refund the deposit paid in its entirety;

Appellants is hereby reserving the right to present further evidence, both orally or in written, during the hearing.



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- Requested Testimony by:**
- (i) Representative of the Evaluation committees**
 - (ii) Representative of the contracting authority**
 - (iii) Representative of the Appellants:**
 - (iv) Representatives of Government departments, including the Director of Contracts & the Ministry of Finance;**



Bank of Valletta p.l.c
 Registration Number: C 2833
 Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Authorise

Printed by: Mr. Kevin Martin Gauci
 Printed on: 28/09/2023 - 16:30
 Document ID: 17548439

Pay third party

Transaction details

Transaction: Pay third party

Beneficiary name: CASHIER MALTA GOVERNMENT

Relation: Administrative Services

Reason: Other

Payment details: APPEAL FOR NON EMERGENCY AMB NEG PRO. CPSU 1396/19 CARDONA ENG WORKS

Currency: EUR - Euro

Beneficiary IBAN/Account: MT55MALT011000040001EURCMG5001H

Beneficiary IBAN/Account type: Valid IBAN of country - Malta

Bank name: Other bank

Bank address / Bank's BIC: Let the bank apply the beneficiary bank BIC

Beneficiary address: No

Withdraw from account: 5001769878 5 (EUR)

Charges should be paid by: Shared - I pay BOV charges; CASHIER MALTA GOVERNMENT pays the beneficiary bank charges

Amount: EUR 5,807.90

Receiving bank to get the money as: normal priority payment

Credited amount: EUR 5,807.90

Debited amount (excluding charges): EUR 5,807.90

Estimated amount to be withdrawn from account: EUR 5,811.90

To be effected on: 29/09/2023

Transaction charge: EUR 4.00

Creator: Mr. Kevin Martin Gauci

Authorised by: Mr. Kevin Martin Gauci

Transaction result

Status: Your instructions have been accepted and will be processed on 29/09/2023.

Transaction ID: 132640454