



Public Contracts Review Board  
Department of Contracts  
Notre Dame Ravelin  
Floriana VLT2000

11 September 2023

Dear Sirs,

Re: **MONITORING OF SUBMARINE CABLE BETWEEN MALTA AND SICILY (the "Tender")**

1. We have been instructed by Enemalta plc (C-65836) (the "**Contracting Authority**") to lodge this reply in terms of Regulation 276(c) of the Public Procurement Regulations (Subsidiary Legislation 601.03) (the "**PPR**") in connection with the above-captioned Tender and in response to the appeal lodged by Medbiologix Company Limited (C-76516) (the "**Appellant**") on 1 September 2023 (the "**Appeal**").
2. A brief factual matrix is set out here:
  - a. on 22 May 2023, the Contracting Authority issued the Tender to the Appellant, Ultramap Limited (UK Company Registration Number 08349784) (the "**Preferred Bidder**"), and GateHouse Maritime A/S (Danish Company Registration Number 12948700), with a closing date of 16 June 2023;
  - b. on 22 August 2023, the Contracting Authority circulated a Recommendation Form to all 3 bidders with the following ranking:

The offer that is recommended for award is the cheapest priced offer satisfying the administrative and technical criteria. The compliant offers are shown in the following table:

Economic Operator	Financial Offer Grand Total for 5 Years (exc. VAT)	Final ranking
Ultramap Limited	€102,000	1
Mediabiologix Company Limited	€120,000	2
GateHouse Maritime A/S	€126,430	3
Mediabiologix Company Limited	€245,000	4
Mediabiologix Company Limited	€620,000	5

- c. In evaluating the offers received, the Contracting Authority relied on the self-declarations submitted to it by its bidders via their financial bid forms and the technical schedules. In so doing, the Contracting Authority found all bidders to be administratively and technically compliant.
3. The appellant lodged its appeal on 1 September 2023, whereby it is claiming that: (a) the Recommended Bidder's bid is abnormally low (b) non-compliance of the Recommended Bidder with Clause 2.4.13 regarding the requirement for a *'dedicated a 24/7 team which monitors the sea vessels activity'* and (c) the appellant has the sole representation in Malta of Vesper Guardian, a manufacturer of virtual Aids to Navigation (AtoN) systems.
4. The Contracting Authority disagrees with the grievances raised by the Appellant, and requests this Honourable Board to dismiss it in its entirety, and to confirm the decision of the Contracting Authority in awarding the contract to the Recommended Bidder.

***Legal Submissions***

5. The Appellant alleges that the Recommended Bidder submitted an abnormally-low offer. The estimated procurement value of the Tender was €125,000. The Contracting Authority arrived at this value by considering the actual cost incurred by the Contracting Authority for this service over a period of more than two years. The Contracting Authority also conducted market research on the basis of multiple quotations received to establish the current prices for such services and to identify the economic operators that are able to provide the services required.
6. The lowest 3 bids were: €102,000 from the Recommended Bidder, €120,000 from the Appellant, and €126,430 from GateHouse Maritime. These 3 bids are all within the same financial region of €24,430 and it is therefore difficult to follow the Appellant's assertion that the winning bid is abnormally low, particularly when it stands so close to its own bid which is only €18,000 higher.
7. In addition, the 4<sup>th</sup> ranked and last ranked bids as submitted by the Appellant came in at €245,000 and €620,000 respectively. This means that the former cost twice as much as the top ranked bids, and the last ranked bid is five times as much. The financial viability which stands out is not that of the Recommended Bidder in submitting a bid which is within the same waters as its first two competitors, but the latter two offers of the Appellant which are abnormally high in comparison to their own offer which ranked second and to their competitors.
8. In raising its grievance, the Appellant relies on a calculation derived from the latter's financial offer: (€102,000 / 5 years / 365 days / 24 hours).

9. The Appellant's calculation is an oversimplification and incorrect. It is based on the assumption that the monitoring software must be manned by an employee day and night, and whose exclusive scope of work is dedicated to the Contracting Authority's submarine interconnector cable between Malta and Sicily.
10. This is not correct and it is certainly not the interpretation which the Contracting Authority had in mind when it required the tenderer to have '*a dedicated 24/7 team which monitors the sea vessels activity*'. In fact, the system is '**a web-based system** to monitor through a secure 24/7 **automatic** identification system' (emphasis added). There is physically no need for any input by an employee but as the name itself describes, a need to 'monitor' for vessels.
11. In formulating its appeal, the Appellant emphasises that the contract must have the required means of satisfying Clause 2.4.13 of the Tender which stipulates that: '*the supplier should have a dedicated 24/7 team which monitors the sea vessel activity and shall contact the sea vessel by any standard means to notify the crew about the location of the subsea cable*', the inference being that the Recommended Bidder falls short of this requirement.
12. For the avoidance of any doubt, the Contracting Authority reiterates that it carried out its evaluation in accordance with the self-declarations provided by the bidders, and all bidders were found to be compliant with the Tender requirements.
13. Whoever alleges must prove, and the Appellant has not submitted any evidence to substantiate its claim.
14. The Appellant also argues that it is the only economic operator who has the "*sole representation in Malta of Vesper Guardian*". From the Contracting Authority's standpoint, any intra-party contractual relations are of no concern to it, since they are *res inter alios acta*. Both the PCRB and the Court of Appeal have recognised and applied this principle in recent caselaw.<sup>1</sup>
15. Furthermore, the Contracting Authority submits that this is not a matter of exclusivity. The fact that the Appellant has exclusive representation of Vesper Guardian in Malta, one of the service providers who supply AtoN systems is neither here nor there. There are other providers outside of Malta capable of supplying such systems, as evidenced by the bids received.

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<sup>1</sup> Reference is made to: (a) Court of Appeal, *Joe Micallef & Son Express vs id-Direttur tal-Anzjani u Kura fil-Komunita* (27 June 2014), (b) Court of Appeal, *Cherubino vs Dipartiment tal-Kuntratti et* (3 October 2017), and (c) Court of Appeal, *JV Healthcare vs Cherubino Limited et* (12 June 2023).

16. Even if, *in arguendo*, the Appellant's argument had to be accepted, this would mean that the Appellant is capable of restricting competition and obtaining a monopoly on the market, which would certainly go against every tenet of public procurement.
17. In view of the foregoing, the objection lodged by the Appellant should be rejected and the Contracting Authority's decision to award the contract to the Recommended Bidder should be confirmed by this Honourable Board.

THEREFORE, in view of the above and for other reasons that may be adduced at law at the sitting to be set by the Public Contracts Review Board, the Contracting Authority humbly requests the same Board to:

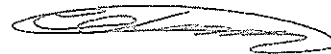
- (i) declare that the objection lodged by the Appellant is unfounded in fact and in law, and to reject the appeal in its entirety; and
- (ii) orders the deposit paid by the Appellant not to be refunded,

subject to any declaration or order that it deems fit and opportune.

Yours Sincerely,  
Ganado Advocates



Dr. Clement Mifsud-Bonnici  
([cmifsudb@ganado.com](mailto:cmifsudb@ganado.com))



Dr. Calvin Calleja  
([ccalleja@ganado.com](mailto:ccalleja@ganado.com))