

PAUL FARRUGIA LL.D.
ADVOCATE



The Secretary
Public Contracts Review Board
Notre Dame Ravelin
Floriana FRN 1600

11th September 2023

RE: REFERENCE: CT 3050/2022 - DECISION DATED 1ST SEPTEMBER 2023

SUBJECT: TENDER FOR THE PROVISION, PACKAGING AND DELIVERY OF FOOD ITEMS TO VARIOUS DISTRIBUTIONS CENTERS IN MALTA AND GOZO FOR COLLECTION BY END RECIPIENTS

I act as instructed by Transporter Limited of The Retail Office, M4 Shopping Complex, Old Railway Track, Attard ATF 1234, to submit an appeal from the decision of the Department of Contracts dated 1st September 2023 wherein my clients were advised that:

“the offer submitted by your company was found to be technically non-compliant as follows:

EO was requested to rectify his position by submitting technical literature of the following items: Coffee, Tomatoes, Tuna, Fruit-mixed-in juice or in light syrup, Vegetables in Tin, Whole-Wheat Cereal, Pasta, Rice, Dried Pulses that corroborates the bidder's technical offer. By the deadline bidder replied to the rectification request, however failed to provide: 3 types of pasta and the two-pasta provided were different as specified in Appendix 1 of the Tender Document. Thus, for the reasons mentioned above, bid is deemed to be Technically Non-Compliant and could not be considered further. “

The grounds of appeal are the following:

1. Technical literature was indeed correctly provided

The request for rectification was complied with accurately by Appellant as the requested technical literature was indeed submitted.

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As the Evaluation Committee was aware, the appellant had committed itself to use pasta products produced by the brand “Poiatti” in the execution of the contract. All the Poiatti pasta that was to be utilized in execution of the tender has the same specifications, notwithstanding the different shapes and forms. Appellant submitted a photo showing the rear of a pasta Poiatti pasta packet, where all the pertinent and required technical data is listed (ex. proof of specifications, shelf life, capacity and packing details), and this in compliance with what is stipulated in section 3 – Technical Specifications – Appendix 1. Note that these specifications – **and only these** - were requested under the document titled “Literature List” in the tender document¹. Appellant consequently totally adhered to the request made by the Evaluation Committee on the 6th of June 2023.

Furthermore, under **Appendix 1- Food Package** only the following was requested under the heading “Pasta”

1pkt	Pasta	At least 1000 grams	1. Dry 2. White 3. Pasta: Along the duration of the contract, the contractor should provide at least three different kinds of pasta, which has to be of the same kind in each delivery, from the following varieties: farfalle, fusilli, macaroni, penne and spaghetti.	At least 20 months	Any
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In terms of the above the tenderer was requested to provide 3 different kinds of pasta – of the kind therein stated – having only two requirements, namely “DRY” and “WHITE”. The technical specifications provided by the appellant provided much more data than was actually required.

2. Provision of three types of pasta

In its initial bid Appellant had indicated clearly that Appellant would comply in providing three different types of pasta as requested in the original tender document. As seen from the relevant excerpt of the tender document reproduced in the previous paragraph, tender was only required – at the choice of the tenderer throughout the duration of the contract – to provide **at least** any of those 3 types of pasta – so tenderer could actually opt to provide **all** the kinds of pasta therein stated throughout the execution of the contract. Nothing further was required in the tender document, so one cannot now argue that Appellant was technically non-compliant. Whilst having the right to request clarifications, the Evaluating Committee was not empowered to introduce new rules on the basis of which the tender was to be adjudicated.

¹ That appellant is in full compliance is also confirmed by the following note in the tender document under “Technical Offer”: *Note: Where in this tender document a standard, brand or label is quoted, it is to be understood that the Contracting Authority will accept equivalent standards, brands or labels. However, it will be the responsibility of the respective bidders to prove that the standards, brands or labels they quoted are equivalent to the standards requested by the Contracting Authority. “*

3. Appellant's offer was non-compliant due to the fact that "..... the two-pasta provided were different as specified in Appendix 1 of the Tender Document"

In the humble opinion of the Appellant this merely confirms that every effort was made to ensure that my Appellant's bid, that is cheaper by €82,800, was disqualified.

Firstly, as already shown above, Appendix 1 – Food Package, left it at the bidder's discretion to provide a **minimum** of 3 different types of pasta during the execution of the contract. **There was no requirement for the tenderer to state WHICH KIND of pasta would be provided, as long as it was one of the kinds therein stipulated and having the technical characteristics therein specified.**

This notwithstanding, the Evaluation Committee chose to disqualify the appellant because of what it saw were divergences from the type of pasta that was listed.

It is common knowledge that both spaghetti and macaroni are generic pasta names and that there exist multiple configurations of both.

Spaghetti is a generic description of long, thin, solid, cylindrical pasta. There is no determinate thickness of Spaghetti, and the name *Spaghettoni* merely indicates that the particular type of Spaghetti is merely on the thicker side. Again, if one were to search for what constitutes the strict thickness of spaghetti, one would be totally unsuccessful.

Macaroni is also a generic description of pasta shaped like tubes. As explained, Macaroni is available in different configurations, and there is no specific determined definition as to the thickness of the tubes. Rigatoni are merely Macaroni with a different name, as they have ridges on the outside of the pasta.

4. Appellant in total observance of the substance of the tender.

The Public Contracts Review Board will definitely appreciate that the substance of the tender has been totally observed by the Appellant, and that at the end of the day that is what is required by the Government. The Evaluating Committee was too fiscal in its approach as the appellant was totally compliant with tender requirements. It is submitted that if the Evaluating Committee believed that much further detail was required², it could have availed itself of its right under the tender document to request that all bidders provide physical samples of the products that formed part of their bids, something that the Evaluating Committee failed to do.

² Even if in the opinion of the appellant this was not required under the tender document as appellant was already fully compliant at that stage.

5. Appellant's bid is €82,800 cheaper than the successful bid.

The Public Contracts Review Board will appreciate that the appellant's bid is actually €82,800 cheaper than that of the successful bidder, and this represents a substantial saving to Government.

Furthermore, article 6.1 of the tender document provides as follows: *The sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.*

In view of the above. Appellant humbly submits that the Public Contracts Review Board is to revoke and annul the decision of the 1st September 2023 wherein Appellant's bid was considered to be non-compliant, and subsequently proceed to declare Appellant as the successful bidder, and this on the basis that Appellant's bid is cheaper than that of the nearest bidders.

Av. Paul Farrugia


Avv. Massimo Vella

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1st September 2023

Transporter Ltd
TID:192747

REFERENCE: CT 3050/2022

SUBJECT: Tender for the Provision, Packaging and Delivery of Food Items to Various Distribution Centres in Malta and Gozo for Collection by End Recipients

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the offer submitted by your company was found to be technically non-compliant as follows:

EO was requested to rectify his position by submitting technical literature of the following items: Coffee, Tomatoes, Tuna, Fruit-mixed-in juice or in light syrup, Vegetables in Tin, Whole-Wheat Cereal, Pasta, Rice, Dried Pulses that corroborates the bidder's technical offer. By the deadline bidder replied to the rectification request, however failed to provide: 3 types of pasta and the two-pasta provided were different as specified in Appendix 1 of the Tender Document. Thus, for the reasons mentioned above, bid is deemed to be Technically Non-Compliant and could not be considered further.

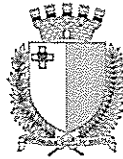
The tender was recommended for award to TID 192767 Daniel Cassar for the amount of €1,507,520 excluding VAT, these being the cheapest priced tenders satisfying the administrative and technical criteria.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of Monday 11th September 2023 against a deposit of €8,288.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

**DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1600 – MALTA**



**DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1600 – MALTA**

Telephone: (0356) 2122 0212
(0356) 2122 0313

Fax: (0356) 2124 7681

e-Mail: info.contracts@gov.mt

website: www.contracts.gov.mt

The official schedule can be accessed on the website: www.etenders.gov.mt.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely,

Anthony Cachia
Director General (Contracts)



Bank of Valletta p.l.c
Registration Number: C 2833
Registered Office: 5B Zachary Street, Valletta VLT 1130 - Malta

Authorise

Printed by: MRS Adreina Fenech Farrugia
Printed on: 10/09/2023 - 10 39
Document ID: 17353281

Pay third party

Transaction details

Transaction:	Pay third party
Beneficiary name:	Cashier Malta Government
Relation:	Financial Services
Reason:	Claim Settlement
Payment details:	Objection re TID 192747REFERENCE CT 3050/2022
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:	Current (EUR) 4002297843 9
Charges should be paid by:	Shared - I pay BOV charges; Cashier Malta Government pays the beneficiary bank charges
Amount:	EUR 8,288.00
Receiving bank to get the money as:	normal priority payment
To be effected on:	as soon as possible
Credited amount:	EUR 8,288.00
Debited amount (excluding charges):	EUR 8,288.00
Estimated amount to be withdrawn from account:	EUR 8,292.00
Transaction charge:	EUR 4.00
Creator:	Mr. Derek Conti
Authorised by:	MRS Adreina Fenech Farrugia, Mr. Derek Conti

Transaction result

Status:	Your instructions have been received and will be reviewed. Please do not re-submit this payment.
Transaction ID:	131888289