

# THAKE DESIRA

## ADVOCATES

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14<sup>th</sup> September, 2023

Public Contracts Review Board,  
Notre Dame Ditch,  
Floriana FRN1601

**Re: Tender SPD 1/2023/036 – Tender for the General Maintenance to Façade and Roofs of Block D, F, and J with Painting Works which maximise the lifespan of the paint whilst minimising associated environmental impacts at MCAST;**

**Lot 3 – General Maintenance of Façade Block J.**

We act on behalf of George Vella (holder of identity card number (0388191M) Tender ID 193537, 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 general maintenance to façade and roofs of Block D, F and J with painting works which maximise the lifespan of the paint whilst minimising associated environmental impacts at MCAST – Lot 1, 2 and 3.

The said George Vella had submitted an offer for the performance of the three lots.

By notice dated the 4<sup>th</sup> September 2023, attached herewith, George Vella was informed that the offer made by him was technically non-compliant on the grounds listed in that letter. The heading of the letter was as follows:

– **Tender for the General Maintenance to Façade and Roofs of Block D, F, and J with Painting Works which maximise the lifespan of the paint whilst minimising associated env. impacts**

**Lot 1 - General Maintenance of Façade Block D.**

On account of the heading of that letter, George Vella is unsure whether the notice tendered was advice that his offer had been rejected in respect of all three lots or whether the advice tendered relates only to Lot 1 and that further advice is expected by George Vella in relation to Lots 2 and 3. In order however not to risk being too late to file the objection set out below,

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this Letter of Objection is being filed, without prejudice to and with specific reservation of the entitlement of George Vella to file further objections in the event that he is served hereafter with notice of the rejection of his offer in respect of Lot 3 of the said tender.

This objection is restricted to the rejection of the offer made by George Vella in respect of Lot 3 – **General Maintenance of Façade Block J**. The offer made in respect of this Lot 3 was for a grand total price of €35470, which amount is considerably lower than the offer of €43560, made for completion of the same Lot 3 by the recommended Tenderer (KDF Ltd.) such that, in 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 technically non-compliant.

As is clear in the attached letter of the 4<sup>th</sup> September, my client's offer was found to be technically non-compliant and that for the main reasons set out in that letter being:

*Your company did not write down in the Technical Offer Form the brand and model of the following:*

- *Item ref. 2.01 – Stabilising solution as required for surfaces.*
- *Item ref. 2.02 – Durable exterior water-based matt wall paint, containing a tough flexible resin and quality light fast pigments, producing a weather resistant coating to combat the elements.*
- *Item ref. 2.04 – Supply and apply a durable exterior water-based matt wall paint, containing a tough flexible resin and quality light fast pigments, producing a weather resistant coating to combat the elements. Colour shall be confirmed by the CA Project Supervisor and will be in the range of RAL 7000/8000.*
- *Item ref. 3.01 – Supply and lay fibre mesh reinforced liquid membrane. Rate is to include for any remedial works on cement fillets, 150mm around the perimeter closing off with drains and pipe works as required and water testing to confirm impermeability.*

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 does not exist. The imperative that the tenderer should "write down in the Technical Offer the brand and model" of the items required for completion of the works is nowhere clearly set out in the tender document and appears to be a "requirement" hastily contrived to justify the exclusion of the cheaper offer made by the said George Vella.
2. Regulation 239(7) of SL 603.04<sup>1</sup> 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*

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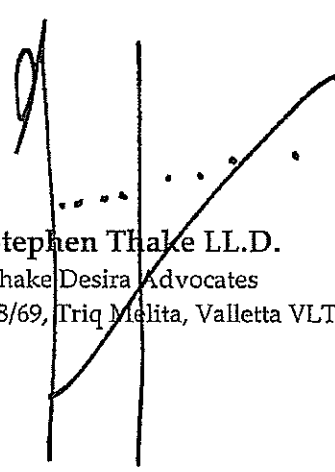
<sup>1</sup> Transposed verbatim from Directive 2014/24/EU

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*basis of price alone*". 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 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 the tenderer should "write down in the Technical Offer the brand and model" of the items required for completion of the works.

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 4<sup>th</sup> September 2023 whereby the offer made by the said George Vella was declared technically 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 4<sup>th</sup> September, awards the procurement Tender SPD 1/2023/036 – Tender for the General Maintenance to Façade and Roofs of Block D, F, and J with Painting Works which maximise the lifespan of the paint whilst minimising associated environmental impacts at MCAST - Lot 3 – General Maintenance of Façade Block J to the said George Vella.



**Stephen Thake LL.D.**  
Thake Desira Advocates  
68/69, Triq Melita, Valletta VLT1122

2:01



< George Vella Lot 1 2 3.zip :≡ Tech... v

DIPARTIMENT TAL-KUNSTRATTI  
Notre Dame Ravelli  
Floriana FRN 1600 - MALTA  
Direttorat għall-Akkwiżizzjoni Settorali



DEPARTMENT OF CONTRACTS  
Notre Dame Ravelli  
Floriana FRN 1600 - MALTA  
Sectoral Procurement Directorate

04<sup>th</sup> September 2023

TID: 193537 George Vella

Reference: SPD/2023/036

Subject: TENDER FOR THE GENERAL MAINTENANCE TO FAÇADE AND ROOFS OF BLOCK D, F, and J WITH PAINTING WORKS WHICH MAXIMISE THE LIFESPAN OF THE PAINT WHILST MINIMISING ASSOCIATED ENV. IMPACTS

Lot 1 - General Maintenance of Façade Block D

Dear Sir/Madam,

Thank you for participating in the above-mentioned procurement procedure. However, this Department regrets to inform you that the procurement proposal submitted by your company was Technically non-Compliant.

The main reason why your procurement proposal was non-compliant is as follows:

Your company did not write down in the Technical Offer Form the brand and model of the following:

- Item ref. 2.01 - Stabilising solution as required for surfaces,
- Item ref. 2.02 - Durable exterior water-based matt wall paint, containing a tough flexible resin and quality light fast pigments, producing a weather resistant coating to combat the elements.
- Item ref. 2.04 - Supply and apply a durable exterior water-based matt wall paint, containing a tough flexible resin and quality light fast pigments, producing a weather resistant coating to combat the elements. Colour shall be confirmed by the CA Project Supervisor and will be in the range of RAL 7000-8000.
- Item ref. 3.01 - Supply and lay fibre mesh reinforced liquid membrane. Rate is to include for any remedial works on cement tiles, 150mm around the perimeter closing off with drains and pipe works as required and water testing to confirm impermeability.

Since the submission of the technical form falls under note 3 in the Tender document, no rectification/clarification is allowed, and therefore deemed this offer as Technically non-compliant.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which has to be lodged electronically with the Public Contracts Review Board by sending an email on: [info.pcrb@gov.mt](mailto:info.pcrb@gov.mt) by noon (12.00 hrs) Thursday 14<sup>th</sup> September 2023, against a deposit of €400.00.

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	Castle Place, Valletta
Account Number	30001EUR.CMG5-001-11
BIC	MALTMTMT
IBAN Code	MT55MALTB11000040001EURCMG50011
Bank Code	01100

The official 'recommendation for award' schedule can be accessed on the website: [www.eftenders.gov.mt](http://www.eftenders.gov.mt).

MINISTRIE TAL-FINANZIJA U N-OCCIOJ - MINISTRY FOR FINANCE AND EMPLOYMENT

Although this Department has not been able to make use of your services on this occasion, we trust that you will continue to take an active interest in its procurement opportunities.

Yours sincerely,

Procurement Manager II  
SPDI





## Transfers - To Other Banks (SEPA)

Thu, 14 Sep 2023 11:08:57 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	678244101 - Current account in Euro
Beneficiary's IBAN	MT55MALT011000040001EURCMG5001H
Beneficiary name	Cashier Government
Amount	400 EUR
Description for payer	Payment Dep SPD1/2023/036
Additional information	
To transfer	Immediately
Starting on	
Ending on	

### CHARGES

SEPA Processing Fee	1.00 EUR
Total Amount To Be Debited	401.00 EUR

**(i)** YOUR REQUEST WAS REGISTERED (130950242)

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