

The Secretary
Public Contracts Review Board
Notre Dame Ditch,
Floriana
FRN 1601



Date: 14 September 2023

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Appeal to the Public Contracts Review Board for tender bearing reference number CT2030/2023 Lot 3

An official appeal is being submitted by KSi Malta, a partnership registered under the laws of Malta bearing partnership registration number LPA 92, and having its registered address at 'The Core, Valley Road, Msida, MSD 9021, Malta' (hereinafter referred to as the 'Firm') to the tender entitled 'Outsourcing by the Internal Audit and Investigations Department (IAID) of Audits of (i) EU Funds, (ii) Funds Received Under Bi-Lateral Programmes, and (iii) EU Funds Received Under Other EU Initiatives', which tender bears reference number 'CT2030/2023'.

The appeal is being made on the following basis:

A) Choice of Lots

Article 3.1 of Section 1 of the Tender Document entitled 'Instructions to Tenderers' had contained the following provision:

'Tenderers may submit a tender for several lots (one or more lots up to a total of 2 lots in all between Lot 1, Lot 2 and Lot 3). Hence, bidders may bid for a total of 3 Lots in all. This is aimed at mitigating against any potential issues of conflict of interest. In such case, it must be ensured that the objectives listed in section 2.1 of the Terms of Reference, are adhered to. In particular, those relating to the minimum number of Key Experts per Lot (as per key expert requirements), who need to be different for each Lot, since audit work on Lots 1, 2, and 3 will be carried out concurrently most of the time.'

A clarification was issued by the Evaluation Committee on 3rd August 2023, stating that the conditions of the e-PPS Core Information were not in line with the published conditions laid out in Article 3.1, Section 1 of the Tender Document.

KSi Malta replied to the Evaluation Committee on 7th August 2023, declaring that Lot 2 and Lot 3 will be referred for evaluation, thus, complying with the tender document requirements that a firm can bid for a total of two lots from Lot 1, Lot 2 and Lot 3. Lot 4 was also listed, however, as per the Tender Document, this lot was separate from Lots 1 to Lot 3; thus, it was included for the sake of certainty in order so that the Contracting Authority would be fully appraised that Lot 4 shall be chosen.

As per the rejection letter entitled 'KSi Malta TID 194984' the Firm was still deemed as non-compliant in view that the Firm submitted 3 lots instead of the allowable 2 lots as per Section 1, Article 3.1 of the Tender Document. The basis for such decision was however unjust and unfounded as KSi Malta adhered to the Evaluation Committee's request and chose two lots accordingly.

B) Allocated Key Experts for Lot 4

As per the above, Article 3.1 of Section 1 of the Tender Document entitled 'Instructions to Tenderers' had contained the following provision:

Tenderers may submit a tender for several lots (one or more lots up to a total of 2 lots in all between Lot 1, Lot 2 and Lot 3). Hence, bidders may bid for a total of 3 Lots in all. This is aimed at mitigating against any potential issues of conflict of interest. In such case, it must be ensured that the objectives listed in section 2.1 of the Terms of Reference, are adhered to. In particular, those relating to the minimum number of Key Experts per Lot (as per key expert requirements), who need to be different for each Lot, since audit work on Lots 1, 2, and 3 will be carried out concurrently most of the time.

Originally, whilst submitting the tender, we had chosen all four Lots. As per the above, after receiving the first clarification on the matter, we had clarified to the Evaluation Committee that we were choosing Lot 2 and Lot 3. Lot 4 was also chosen, because as clarified already, as it was entirely KSi Malta's discretion to do so.

In this regard, a second clarification was issued by the Evaluation Committee on 22nd August 2023, with regards to the CVs which had been originally submitted for Key Experts allocated to Lot 4. The clarification stated the following:

- *Kindly clarify whether the key experts nominated for this lot are presently employed with KSi Malta, given that such information is not outlined in their Curriculum Vitae (CV). If in the affirmative, an updated CV is to be submitted.*
- *If not employed with KSi Malta, kindly indicate the percentage of works to be subcontracted and present the subcontractor's ESPD as required in terms of article 5(B)(c) of the Instructions to Tenderers; or*
- *Change the key experts by updating the form and submitting all the supporting documentation as required in terms of article 5(B)(C)(i) of the Instructions to Tenderers. The key experts must meet the criteria outlined in Section 3 – Terms of Reference, Clause 2.2(b).*

Given that Lot 1 was dropped, the Firm decided to shift the Key Experts which had been allocated to Lot 1 to Lot 4, as was its right to do so. No potential issues of conflict of interest can arise from such a decision given that such Key Experts were allocated solely for Lot 4. Thus, the Firm decided to submit an updated key expert form for Lot 4, wherein the Key Experts put

forward for this engagement form part of the Firm's team, together with all the relevant supporting documentation, more specifically the key experts' CVs and qualifications.

For the avoidance of doubt, notwithstanding the fact that all Key Experts put forward for Lot 2, Lot 3 and Lot 4 are employees of KSi Malta, a chosen employee proposed as a Key Expert was never allocated for more than one chosen Lot. Given that the Tender Document's requirement for different Key Experts for each chosen Lot was adhered to, the decision of the Department of Contracts that the Firm was non-compliant was once again unjust and unfounded. Page 3 of 4

The sequence of events was therefore as follows:

- KSi Malta applied for the 3 lots in Section 1, being Lot 1, Lot 2 and Lot 3.
- In addition, and separately, the Firm applied for Lot 4, which was in line with the tender document and at the discretion of the applicant.
- The evaluation committee sought clarification and asked KSi Malta to specify which two of Lots 1, 2 and 3 will go for evaluation.
- KSi Malta replied and sent Lot 2 and Lot 3 for evaluation. It also informed the committee that it had applied, separately and in its own right, for Lot 4.
- The evaluation committee not only answered, but also confirmed we are able to shift experts between lots.
- KSi Malta receives rejection letter as it applied for 3 lots. The 3 lots in question were Lot 2, 3 and 4. Lot 4 did not have any impediments and was separate from Section 1. Section 1 lots applied to post-clarification where Lot 2 and Lot 3, and therefore we were in line with the application requirements.

Requests

In light of the above, whilst reserving the right to make further submissions and to bring forth all permissible evidence at the opportune stage, we are hereby humbly requesting the Public Contracts Review Board to:

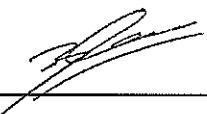
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- i. Invalidate the rejection letter received by KSi Malta, given that due to the reasons provided above, the reasons for rejection were unfounded and unjust.
- ii. Order the Contracting Authority to resume with the technical evaluation of the tender as submitted by KSi Malta, in light of the evidence provided.

Documentary Evidence

Attached to this objection letter, please find the documentary evidence to our claim, as follows:

- Annex A – Request for original clarification re Lots by the Contracting Authority
- Annex B – Reply by KSi Malta to the original clarification re Lots issued by the Contracting Authority
- Annex C – Request for clarification re Key Experts the Contracting Authority (excluding personal information of Key Experts submitted by KSi Malta in response to the Clarification by the Internal Audit and Investigations Department due to this being treated as sensitive data according to Maltese GDPR Regulations)
- Annex D – Regret Letter issued by the Department of Contracts



Bernard Charles Gauci

Partner

For and on behalf of

KSi Malta

Annex A – Request for original clarification re Lots by the Contracting Authority

UFFICCJU TAL-PRIM MINISTRU



OFFICE OF THE PRIME MINISTER

MALTA

*Dipartiment tal-Awdittjar Intern u
Investigazzjonijiet
Uffiċċju tal-Kabnett*

*Internal Audit and Investigations Department
Cabinet Office*

3rd August 2023

KSi Malta

CT2030/2023 - Outsourcing by The Internal Audit and Investigations Department (IAID) of Audits of (i) EU Funds, (ii) Funds Received Under Bi-Lateral Programmes, and (iii) EU Funds received under other EU initiatives

Reference is made to the tender in caption, and to your offer submission to same.

The Evaluation Committee requests a clarification with regard to your submission in the Tender Response Format:

In view that the conditions of the e-PPS Core Information were not in line with the published conditions laid out in Article 3.1, Section 1 of the Tender Document (reproduced below), you are kindly being requested to advise the Contracting Authority which two (2) lots between Lot 1, Lot 2 and Lot 3 are to be referred for evaluation.

3.1 Tenderers may submit a tender for several lots (one or more lots up to a total of 2 lots in all between Lot 1, Lot 2 and Lot 3). Hence, bidders may bid for a total of 3 Lots in all.

In terms of Article 5 of the Instructions to Tenderers, you are hereby being given the opportunity to clarify/rectify this shortcoming within five (5) working days of notification.

Tenderers who fail to clarify/rectify the shortcomings identified in this communication shall be deemed to be non-compliant.

The requested documents in the clarification/rectification are to be submitted through the appropriate Electronic Public Procurement (ePPS) module.

This clarification/rectification opportunity is being sent without any commitment whatsoever on the part of the Contracting Authority, and does not imply that your offer will be accepted as it may still be deemed administratively, technically or financially non-compliant during the evaluation process.

Best regards

Evaluation Committee

Annex B – Reply by KSi Malta to the original
clarification re Lots issued by the Contracting Authority

Evaluation Committee

Internal Audit and Investigations Department

Triq Sa Maison

Floriana

FRN 1613

Malta

7 August 2023

CT2030/2023 – Outsourcing by the Internal Audit and Investigations Department (IAID) of Audits of (i) EU Funds, (ii) Funds received under Bi-Lateral Programmes, and (iii) EU Funds received under other EU initiatives.

Reference is made to the tender in caption and to your request for clarification to same.

Following the publication, receipt and analysis of *RfC at admin stage – KSi Malta 000194984+*, kindly note that the following lots shall be referred for evaluation:

- Lot 2
- Lot 3
- Lot 4

Additionally, in view of the request for clarification sent to our end with regards to the maximum number of submissions for the Lots pertaining to this tender, it is noted that should this Article was reflected in the Tender Response Format, human resources for Lot 4 would have been allocated differently.

As such, we kindly seek clarification whether there is possibility to shift the human resources previously allocated to Lot 1 to Lot 4 now.

We remain at your disposal should anything further be required.

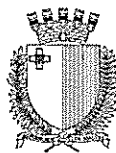
Yours sincerely,



Bernard Charles Gauci

Annex C – Request for clarification re Key Experts by the Contracting Authority

UFFICCJU TAL-PRIM MINISTRU



OFFICE OF THE PRIME MINISTER

MALTA

*Dipartiment tal-Awditor Intern u
Investigazzjonijiet
Uffiċċju tal-Kabinett*

*Internal Audit and Investigations Department
Cabinet Office*

22nd August 2023

KSi Malta

CT2030/2023 - Outsourcing by The Internal Audit and Investigations Department (IAID) of Audits of (i) EU Funds, (ii) Funds Received Under Bi-Lateral Programmes, and (iii) EU Funds received under other EU initiatives

Reference is made to the tender in caption, and to your offer submission to same.

The Evaluation Committee requests the following clarifications/rectifications with regard to your submission in the Tender Response Format:

Lot 4

1. The CVs submitted for key experts, namely Kevin Abela, Nigel Scerri and Darren Agius indicate that such experts are presently employed with Ennesse. However, in Part IV - Selection criteria - Technical and professional ability, of the online ESPD, no reference to subcontracting was made.
 - Kindly clarify whether the key experts nominated for this lot are presently employed with KSi Malta, given that such information is not outlined in their Curriculum Vitae (CV). If in the affirmative, an updated CV is to be submitted.
 - If not employed with KSi Malta, kindly indicate the percentage of works to be subcontracted and present the subcontractor's ESPD as required in terms of article 5(B)(c) of the Instructions to Tenderers; **or**
 - Change the key experts by updating the form and submitting all the supporting documentation as required in terms of article 5(B)(C)(i) of the Instructions to Tenderers. The key experts must meet the criteria outlined in Section 3 – Terms of Reference, Clause 2.2(b).

In terms of Article 5 of the Instructions to Tenderers, you are hereby being given the opportunity to clarify/rectify the above shortcomings within five (5) working days of notification. Tenderers who fail to clarify/rectify the shortcomings identified in this communication shall be deemed to be non-compliant.

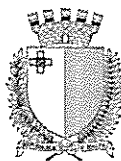
The requested documents in the clarification/rectification are to be submitted through the appropriate Electronic Public Procurement (ePPS) module.

This clarification/rectification opportunity is being sent without any commitment whatsoever on the part of the Contracting Authority, and does not imply that your offer will be accepted as it may still be deemed administratively, technically or financially non-compliant during the evaluation process.

Best regards

Evaluation Committee

Annex D – Regret Letter issued by the Department
of Contracts



12th September 2023

KSi Malta
TID 194984

REFERENCE: CT2030/2023

SUBJECT: Outsourcing by the Internal Audit and Investigations Department (IAID) of Audits of (i) EU funds, (ii) funds received under bi-lateral programmes, and (iii) EU funds received under other EU initiatives

Lot 1, Lot 2 and Lot 3

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. We regret to inform you that your bids for lot 1, Lot 2 and Lot 3 for the Outsourcing by the Internal Audit and Investigations Department (IAID) of Audits of (i) EU funds, (ii) funds received under bi-lateral programmes, and (iii) EU funds received under other EU initiatives were **not** compliant in view that you submitted 3 lots instead of the allowable 2 as per Section 1, article 3.1 of the tender document being reproduced hereunder:

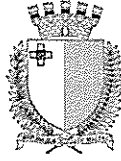
Tenderers may submit a tender for several lots (one or more lots up to a total of 2 lots in all between Lot 1, Lot 2 and Lot 3). Hence, bidders may bid for a total of 3 Lots in all. This is aimed at mitigating against any potential issues of conflict of interest. In such case, it must be ensured that the objectives listed in section 2.1 of the Terms of Reference, are adhered to. In particular, those relating to the minimum number of Key Experts per Lot (as per key expert requirements), who need to be different for each Lot, since audit work on Lots 1, 2, and 3 will be carried out concurrently most of the time.

The tender was recommended for award as follows:

Lot Number	TID	Name of Tenderer	Price in € excluding VAT
1	194979	Grant Thornton	105,000.00
2	194979	Grant Thornton	105,000.00
3	194983	RSM Malta	110,000.00

These being the cheapest priced tender 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 Friday 22nd September 2023 against a deposit for each Lot as follows:

Lot Number	Deposit in €
1	750.00
2	750.00
3	750.00

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	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

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: 58 Zachary Street, Valletta VLT 1130 - Malta

Pay third party

Printed by: Mr. Bernard Charles Gauci
 Printed on: 19/09/2023 - 15:26
 Document ID: 17454671

Transaction details

Payer's name:	KSI MALTA
Beneficiary name:	Cashier Malta Government
Relation:	Administrative Services
Reason:	Other
Payment details:	Official Objection Fee for Lot 3
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
From account:	Overdraft Facility (EUR) 4002456011 7
Charges should be paid by:	Shared - I pay BOV charges; Cashier Malta Government pays the beneficiary bank charges
Amount:	EUR 750.00
BOV to transfer the money:	as soon as possible
Receiving bank to get the money as:	normal priority payment
Saved template:	no

Additional information

Credit amount:	EUR 750.00
Debited amount (excluding charges):	EUR 750.00
Estimated amount to be withdrawn from account:	EUR 751.00
Transaction charge:	EUR 1.00

Transaction result

Status:	Your instructions have been received and will be reviewed. Please do not re-submit this payment.
Transaction ID:	132259612