

The Secretary

The Public Contracts Review Board

Notre Dame Ravelin

Floriana



In the Public Contracts Review Board

18th September 2023

Reply – Reasoned letter of objection SPD3/2023/059 – Framework contract for the delivery, hiring, setting up and dismantling of marquees tents to be utilised in various events in Gozo 2023-2024.

Dear Chairman and Members of the Board,

The following is the reasoned reply of the Ministry for Gozo (hereinafter referred to as ‘the Contracting Authority’) following the reasoned letter of objection lodged by Mr Jean Paul Zerafa (hereinafter referred to as the ‘Appellant’) on the 11th September 2023.

In this reply, the Contracting Authority shall address the objection of the Appellant and shall state the grounds upon which the objection cannot be upheld by this Honourable Board.

Submissions

Whereas in its reasoned letter of objection, the Appellant based its objection on three grievances, mainly:

1. That the modus operation of the Contracting Authority during the Evaluation is in breach of the law and the relative framework;
2. That the Objector submitted comprehensive documentation; and

3. That the Objector has concerns regarding the preferred bidder's compliance.

Now hereby, the Contracting Authority respectfully submits that:

- a) In his first grievance, the Appellant is contending that since his technical offer was fully compliant, the absence of Technical Literature should not have resulted in a 'non-complaint' classification. For this reason, the Evaluations Committee's decision contradicts footnote 12 which outlines the supplementary role of the Technical Literature in verifying an already compliant offer.

In these regards, the Contracting Authority hereby submits that it seems that the Appellant has either misunderstood the tender as regards the technical compliance of the bidders or else has not yet identified and comprehended why he has failed to submit a tender that was technically non-complaint.

In fact, one has to draw a difference between the technical offer and technical literature. In this case, the Appellant was found to be technically compliant with respect to its technical offer but not to be technically compliant in respect to the technical literature. As the technical literature fell under 'Note 2', a rectification request was sent to the Appellant in order to ask him to send such documentation. However, notwithstanding such request, the Appellant submitted an attachment entitled 'Literature List' which when opened was entitled 'Technical Offer' and contained the same information as the technical offer that he had in fact already submitted. It follows that Appellant failed to submit the technical literature as per literature list even after the rectification request. Instead he re-submitted the technical questionnaire and did not submit the design/drawings/sketches of the proposed Marquess for the three different tent sizes as requested in the literature list.

Hence the Evaluation Committee rightly concluded that the Appellant was not technically compliant.

- b) As regards the second grievance of the Appellant, the Contracting Authority confirms that as stated above, upon the submission of his tender and even after the rectification

request was sent to him, the Appellant failed to provide all the necessary documentation and therefore it is not true that he has submitted right from the outset all necessary and pertinent documentation needed for this tender.

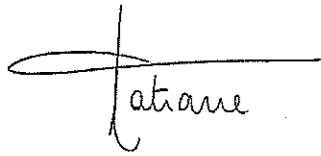
- c) The third grievance of the Appellant does not even hold water since it is based on various assumptions made on the offer submitted by the preferred bidder. In this respect, the Contracting Authority asserts that after the Evaluation Committee has meticulously carried out its evaluation on all the bidders, it has found the preferred bidder to be administratively and technically compliant and therefore the Appellant cannot carry out assumptions on such bidder when it does not have any information about it.

Additionally, the Contracting Authority also submits that as per Article 40 of S.L 601.03, that is, the Public Procurement Regulations; the Contracting Authority, the Director or the Sectoral Procurement Directorate cannot disclose information forwarded to it by economic operators, except with certain exceptions.

Apart from that, Article 19.2 of the General Conditions Governing Tendering provides an exhaustive list of the documents/information that can be passed over to the unsuccessful bidders and does not list the information requested by the Appellant.

It follows that the Contracting Authority is outrightly objecting to the Appellant's request and application where it is requesting access to a number of documents pertaining to the preferred bidder.

Therefore, for the reasons as above stated, the respondent Contracting Authority humbly requests that this Honourable Board should reject and dismiss all arguments submitted by the Appellant, thereby dismissing the objection *in toto* and to re-confirm the decision of the Evaluation Committee for the reasons given.

A handwritten signature in black ink, appearing to read 'Tatiane', with a long horizontal stroke extending to the left and a small loop at the end.

Dr Tatiane Scicluna Cassar
Director Legal Services
Ministry for Gozo