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15th November, 2023

The Secretary
Public Contracts Review Board
Notre Dame Ditch
Floriana



REASONED LETTER OF REPLY

Re:- CT3039/2022 – Tender for the Mapping, Re-Engineering and Documenting the Business Processes of the Justice Entities within the Ministry of Justice (“the Tender Procedure”).

Dear Sir/Madam,

1. Introduction

1.1. We are instructed by Grant Thornton (“Respondent”) to file this written reply in accordance with the provisions of regulation 276(c) of the Public Procurement Regulations (Subsidiary Legislation 601.03) (the “PPR”) in reply to the objection filed on the 6th November, 2023 before the Public Contracts Review Board (the “Board”) by Deloitte Advisory and Technology Limited (“Objector”) in connection with the tender procedure (“Objection”). A copy of the Objection was transmitted to Respondent on the 9th November, 2023.

1.2. It must be stated and submitted at the outset that the Objection is unfounded in fact and at law and, it is humbly being submitted, it should be rejected by this Honourable Board.

1.3. Respondent notes that the grievances listed in the Objection are the following:-

- (a) An objection in the Best Price/Quality Ratio
- (b) Technical Non-Compliance of Respondent

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1.4. Respondent hereby declares at the outset that it is filing this Reasoned Letter of Reply on the basis of the information which it has in its possession now but reserves to file further observations/comments/replies at a later stage both in writing and verbally during the oral hearing once more information shall be available to it.

1.5. That said Respondent is, however, already in a position, from this early point in the objection procedure, to identify a number of statements and representations in the Objection which are clearly false, misleading and omitting crucial information.

2. Facts

2.1. The following is a full chronology of the facts:-

(i) On the 8th April, 2023, Tender Dossier CT 3039-2022 having as its title:- Tender for the Mapping, Re-Engineering and Documenting the Business Processes of the Justice Entities within the Ministry for Justice was published.

(ii) Deadline for submission of tender was extended to the 11th May through clarification 1 published on the 18th April 2023.

(iii) On the 11th May, 2023, Respondent submitted its bid before the closing time.

(iv) On the 14th June, 2023 the Respondent received a rectification request (hereinafter referred to as "Rectification 1") to resubmit the ESPD document of Respondent's subcontractors in the attachment provided by the Evaluation Committee.

(v) On the 20th June, 2023, Respondent replied to Rectification 1.

(vi) On the 3rd July 2023, a new rectification request was submitted to Grant Thornton to resubmit the ESPD documents of the Respondent's subcontractors as the document format provided by the Evaluating Committee was an old version and a new template was attached to this rectification request.

(vii) On the 5th July, 2023 the Respondent replied to this further rectification request.

(viii) On the 17th July, 2023 the Evaluation Committee sent another rectification request to the Respondent in respect of Key Expert 2 and Key Expert 3. At this stage, no requirement of a Masters Degree for Key Expert 3 was mentioned.

(ix) On the 21st July, 2023 the Respondent replied to this further rectification request.

(x) On the 1st September, 2023 the Respondent received a letter declaring the Respondent's bid as technically non-compliant (hereinafter "Rejection Letter").

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(xii) On the 11th September, 2023, the Respondent filed its objection to the declaration that Respondent's bid was technically non-compliant (hereinafter "Respondent's Objection")

(xiii) On the 18th September, 2023, Objector filed a reply to Respondent's Objection.

(xiii) On the 21st September, 2023, the Department of Justice filed a reply to Respondent's Objection (which reply is hereto attached as "Doc GT 1") by means of which it made it stated:-

8. For this reason the defendant through this reply is officially filing an admission to the pleas of the appellant in order for the defendant to be placed in a position where it can repropose its evaluation conclusion and to be able to issue any fresh recommendations.

(xiv) On the 22nd September, 2023, Objector (Deloitte Advisory and Technology Limited) filed a reply to the Department of Justice's reply of the 21st September, 2023;

(xv) On the 27th September, 2023, Respondent (Grant Thornton) replied to the Department of Justice reply to its Objection (Doc. GT 2 hereto attached);

(xvi) On the 28th September, 2023, the Department of Justice reiterated its intention to re-evaluate the submitted bids (Doc. GT 3 hereto attached);

(xvii) On the 28th September, 2023 the Public Contracts Review Board declared the following:-

Reference is made to your Letter of Objection filed on Monday 11th September 2023 and the Reasoned Letter of Reply filed by the Ministry for Justice dated 28th September 2023 regarding the above captioned tender.

The Public Contracts Review Board having noted that the Contracting Authority intends to re-evaluate the tender, will therefore not consider your objection any further.

This Board recommends that the deposit paid when filing the Objection will be reimbursed.

(xviii) There was no further submission and/or appeal from the part of the Objector;

(xix) On the 27th October, 2023, Respondent received the award letter dated 27th October, 2023 hereto attached and marked **Doc. GT 4**.

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(xx) On the 9th November, 2023 Respondent received the Objection filed by the Objector on the 6th November, 2023.

3. Reply to the First Grievance:- Best Price/Quality Ratio-Ratio

3.1. The criterion for award in this case was the Best Price/Quality Ratio ("BPQR") with the technical aspect weighing 60%.

3.2. The essence of what the Objector is claiming in its reasoned objection is by questioning and attacking the way the evaluation committee performed its evaluation duties in evaluating and awarding this Tender. Objector is claiming, succinctly put, that the Evaluation Committee seems to have equated compliance with technical quality and awarded high marks accordingly; hence the only consideration which the Evaluation Committee has made was whether the tender was compliant or otherwise.

3.3. First of all, it is interesting to note that no such protestations were made by Objectors on a previous occasion related to this evaluation procedure. On the contrary, Objector extolled the virtues of the Evaluation Committee when it had, erroneously it transpired, awarded the Tender to Objector. Indeed, in its reply of the 18th September, 2023, Objector stated the following:-

5.7 In this case, the evaluation of the Tender Procedure was carried out on the basis of clear and detailed criteria and awarded on the basis of the Best Price/Quality Ratio (BPQR) and the Contracting Authority applied, verbatim, what it was required to apply by the Tender Document and the PPR (as well as applicable case-law, as explained above).

5.8 It is submitted, with respect, that the Contracting Authority complied with the principle of self-limitation by first allocating '0' and then disqualifying the Complainant, as it was required to do by the Tender Document as explained above.

3.4. In its reply of the 18th September, 2023, Objector did not enter into the distinctions that it is now making in its Objection. So, whilst in its reply to Respondent's Objection, the Objector is undoubtedly and clearly equating BPQR with compliance. However, on this occasion the Respondent is conveniently trying to create this distinction because it serves its own interests so to do.

3.5 This approach implores judicious objectiveness in the face of the importance of certainty and clarity of outcome as shall be expounded upon later.

3.6. Indeed, in its Objection, Objector is **only assuming** that the evaluation committee did not evaluate the tenders for their quality. The Evaluation Committee would not

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have (one supposes) discussed its internal discussions with any of the tenderers. Hence, just because it suits Objectors, Objector is clearly attacking the evaluation committee on the basis of a whimsical assumption. What is “inconceivable” to Objector, as it stated in paragraph 3.6 was not inconceivable to it when it was the Objector (i.e. Deloitte Advisory and Technology Limited) that was awarded the Tender. The question begs, how is this “inconceivable” given that, undoubtedly, the same system of awarding the Tenders was utilised?

3.7. Furthermore, Objector is also inferring and/or concluding that the fact that the compliant tenderers were all awarded marks in the same range of marks is indicative that the evaluation committee has acted incorrectly or in conflict with the rulings of the PCRB or that the tenderers have identical strengths and weaknesses. This cannot be further from truth. Just because the marks are identical does not necessarily mean that the strengths and weaknesses were identical. By way of analogy, a number of students in any exam may get identical marks and yet get different answers wrong or right. The same applies to a tendering procedure. The fact remains that the identical marks and marks in the same range could very well be the result of all the differing and different strengths and weaknesses of all tenders still adding up to the same marks. We submit that there is nothing inconceivable in this.

3.8. It is indeed uncanny that Objector should claim in paragraph 3.10 of its Objection that *“In this case, it is evident that the evaluation committee misunderstood the requirements of the Tender Document”*. Objector did not complain of this “misunderstanding” when it was awarded the tender the first time round. However, now that Objector has not been awarded the tender it is, again, attributing fault to the evaluation committee when there is none. What evidence did Objector bring to substantiate its gratuitous statement that the evaluation committee has misunderstood the requirements of the Tender Document? The similar score? (as stated in Paragraph 3.13?)

3.9. It must also be stated that, ultimately, it is for the evaluation committee, with its technical expertise, to carry out the evaluation of offers on the basis of the requirements set out in a tender document, following the procedure prescribed by the PPRs and ancillary applicable laws and regulations. Indeed, the Courts and this Board are vested with the legal power to determine whether an evaluation of a bid (or of a number of bids) was performed in terms of the strict rigours of Public Procurement Law. Indeed, neither the ordinary Courts nor the Public Contracts Review Board that is tasked with evaluating any tender and with substituting itself the role of the evaluation committee by themselves evaluating a tender. This has been a fundamental principle underpinning a number of decisions of this Board such as for example:-

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Case 1026:

“This Board would also like to point out that it is not its jurisdiction to assume doubt on the decision taken by the Evaluation Board but rather to verify that the correct and proper procedures were adopted in awarding the Tender.”

Case 1084:

“As stated on numerous occasions, the remit of this Board is to review the Evaluation Process carried out on this particular Tender and to ensure that it has been carried out in a fair, just and transparent manner.”

Case 1119:

“For clarity's sake, the Jurisdiction of this Board is to establish whether the procedure in the award of this Tender was appropriately carried out and whether the Evaluation process was executed in accordance with the Regulations, as laid out in the Public Procurement Regulations.”

3.10 Indeed, the Honourable Court of Appeal has also declared as follows¹:

Mhux komputu ta' din il-Qorti li tidhol biex teżamina jekk, għal xi oġġett partikolari, il-konsorzju appellanti kienx haqqu xi punt jew tnejn aktar. Din hi Qorti ta' reviżjoni li dak li trid tara huwa jekk il-kumitat evalwattiv segwiex il-kriterji stabbiliti u jekk mexiex mal-parametri indikati fis-sejha għall-offerti. Din il-Qorti ma tistax tfettaq dwar kif ingħataw il-marki individwali, speċjalment meta tqis li l-offerta tal-konsorzju appellanti ġa ġie eżaminat u mistharreġ għal darbtejn.

3.11. Furthermore, the Court of Justice of the European Union has held that an evaluation committee must be able to have some leeway in carrying out its task and, thus, it may, without amending the contract award criteria which would have been set out originally in the tender specifications or the contract notice, “**structure its own**

¹ Cateressence Limited ET vs Id-Direttur tal-Kuntratti noe. Et., decided by the Honourable Court of Appeal on the 14th February, 2017 and bearing application number 380/2016.

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*work of examining and analysing the submitted tenders*². The key question, therefore, is not how the evaluation committee allotted marks and points. The key question is whether it observed the procedure for doing so.

3.12. It must be clearly stated that Objector cannot object to the recourse by the Respondent to the above quotations from various Board decisions and Court judgements are being placed. It was the Objector itself which had, in its own reply to the Respondent's Objection of the 11th September, 2023 used these same arguments and quotations to officially substantiate its main argument then that the evaluation committee had indeed adjudicated correctly³.

3.13. Without prejudice to the abovementioned, however, it must be stated that the fact that the tender is to be awarded on the basis of BPQR and that the Evaluation Committee has a level of "leeway"⁴ does not mean that an evaluation committee may act *ad libitum*. It does not mean that the Evaluation Committee has no obligations in the way it marks same. It is undoubted that the Evaluation Committee has to mark the tender evaluation grid on the basis of each bid on its own merit and definitely by following the same awarding criteria. It cannot be emphasised enough that certainty of procedure and clarity of outcome in any award process is fundamental to the principles of transparency, fairness, self-limitation, efficiency, legal compliance and, ultimately proper diligence in how public funds are spent. Indeed, it is the exact *raison d'être* of the Public Procurement Regulations to establish procedure and remove any discretionary and arbitrary judgment in the process of adjudicating a tender. It is clear that the principle of certainty of procedure which the Public Procurement Regulations strive to engender and preserve requires that the actual evaluation committee be afforded prescriptive parameters within which it can operate – such parameters of course being that it can award to all the tenderers as high a mark as it feels in its reasonable discretion to be warranted. It is therefore respectfully submitted and reiterated that scores in the same range do not lead to any conclusion of an alleged misunderstanding or misadjudication as claimed by Objector. On the contrary. These scores show that, when faced with a number of tenders which the evaluation

² The Court of Justice of the European Union said the following:- "*For that purpose, it must be considered that an evaluation committee must be able to have some leeway in carrying out its task. Accordingly, it may, without amending the contract award criteria set out in the contract documents or the contract notice, structure its own work of examining and analysing the submitted tenders.*" (Case 252/10 decided on the 21st July, 2011) Paragraph 35

(<https://curia.europa.eu/juris/document/document.jsf?text=&docid=107936&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=53479> last accessed on the 15th November, 2023 at 22:59 hours.

³ Heading 5 of the Reply filed by Objector to the Respondent's Objection of the 11th September, 2023.

⁴ *Vide note 3.*

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committee considers meeting the quality and criteria prescribed in the invitation to tender document, the evaluation committee adjudicates the respective points in acknowledgement of its assessment of high quality. Hence, the evaluation committee should not be criticised for the mere fact that it awarded high marks to all the tenderers. Indeed, the requirement of certainty of procedure and outcome dictate that all high-quality (or good quality) tenderers be awarded high marks. Any deviation from this would risk introducing undue discretionary judgement and annihilate any certainty in the procedure and any certainty in the outcome of any tendering procedure thereby defeating the whole *raison d'être* of the tendering procedure and this essentially means that had the Evaluation Committee not awarded high-quality tenders with marks in the same region, if it felt that they so warranted, it would have violated the principle of self-limitation and, ultimately certainty of procedure and outcome.

3.14. Objector also quoted from two decisions of the PCRB⁵ to substantiate its arguments and stated that the facts of the present case are even clearer and unambiguous. However, it failed to submit any arguments on why it had come to the conclusion in its Objection that the Evaluation Committee did not evaluate the bids on the basis of quality. The only alleged “evidence” that the Objector referred to (if it can be called indeed “evidence”) was the similar marks of allotted to the four tenderers. Indeed, that is no valid ground based on fact or law that should or could lead to the annulment of the adjudication decision.

3.15. What Objector fails to understand and appreciate is that it is clear that all tenderers were in a position to offer high-quality bids, but not only itself (i.e., Objector). Indeed, from a reading of this first grievance, one could be led to infer that Objector is ascribing itself with an exclusive monopoly over good-quality tenders, when, in reality, it clearly is not the case. Hence, there is nothing to be read into the fact that four tenderers got similar marks in the same range. On the contrary, it shows that the Contracting Authority had managed to attract high-quality bids. The latter fact in itself constitutes evidence of the due and reasonable discretion exercised by the Evaluation Committee in its appreciation and evaluation of nuances between the same high-quality bids and how, in such situations, the evaluation committee is expected to award the same range of marks to ensure that all bids are treated with certainty of procedure and of outcome of the tendering process.

3.16. Therefore, it is hereby being respectfully submitted that this first grievance of Objector should be rejected in fact and at law.

⁵ Case 1616 CT 2292/2020- and Case 1818 – CT 2074/2022

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4. Second Grievance:- Technical Non-Compliance of Respondent

4.1. This second grievance is also totally unfounded in fact and at law. Respondent's tender was fully compliant as shall be submitted hereunder.

Preliminary submission – fuori termine.

4.2. However, at the outset in this regard, it must be submitted that the objection in this regard is totally *fuori termine* and filed beyond the lapse of the period to file an objection with respect to the declaration that Respondent's bid was non-compliant and if Objector had any objection or grievance in relation to the fact that Respondent's bid stopped being considered as non-compliant, then it should have raised that matter within the prescribed timeframes running from the Public Contracts Review Board decision.

4.3. Indeed, in terms of Regulation 270 of the PPR it becomes amply clear that Objector had to file an objection at that point, if they disagreed with Respondent's bid being deemed compliant. Indeed, Regulation 270 states the following:-

270. Where the estimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.

4.4. It is undoubted that Objector could have, in terms of this Regulation 270, filed an objection in due time. The way this regulation is couched is extremely wide and clearly does not have the intention of limiting the decisions and/or actions and/or alleged infringements which may be subject to an appeal.

4.5. Hence, Objector should have lodged an appeal to the PCRFB, if it so wished, at the time when the matter had been resolved, as is also evidenced from the chronology of facts above exposed.

4.6. This Objection has been filed on the 6th November, 2023 which is well beyond the timeframe of ten (10) days which commenced to run from the date of the 21st September 2023 when the Contracting Authority has filed its Note of Admission expressly admitting the Respondent's Objection, than then led to the 28th September

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2023 Public Contracts Review Board decision wherein Respondent's bid was no longer considered as "non-compliant". The latter decision expressed the Board's resolve not to further consider Respondent's earlier objection against non-compliance in the context of the declared decision of the Contracting Authority and Department of Justice within the Ministry of Justice to re-evaluate the tender after having filed an admission to Respondent's objection pleas. Hence, it is undoubted that the Objection in question has been filed way too late and well beyond the express deadline for it to be considered at this particular stage.

4.7. Furthermore, and without any prejudice to the abovementioned, Objector cannot raise this matter at this juncture because it is clear that the Contracting Authority itself had already admitted on 21st September 2023 that Respondent's bid was technically compliant. If the Contracting Authority so admitted that it had made a mistake, Objector was in no position to attack that express note of admission per se without having entered an appeal in due time from the Public Contracts Review Board consequential decision of the 28th September 2023. Moreover, Respondent does not know what was submitted by Respondent and it does not know what consideration or lack thereof was made by the evaluation committee and the Contracting Authority. Hence, it is absolutely in no position at law to validly declare itself that the bid was, in its view, technically non-compliant when the Contracting Authority had itself expressly admitted otherwise, i.e., that Respondent's bid was indeed technically compliant.

4.8. Hence, for the abovementioned reasons, and the grounds which will be submitted hereunder, this grievance also cannot be upheld by this Honourable Review Board.

4.9. However, and without prejudice to the abovementioned, even the grounds on which Objector tried to base its conclusions that Respondent's bid was non-compliant are totally baseless and, frankly, and in the best of hypotheses misleading and replete with misrepresentations of facts (and in the worst case scenario possibly utterly dishonest and made in bad faith) and, without any prejudice to the aforesaid, Respondent shall now address the specific contents of the sub-headings in the Grievance itself.

A. Failure to comply with minimum requirements

4.10. Objector is basing this part of this grievance on the fact that the Respondent disqualification letter states that:- *"Bidder ignored the 1st part of the question regarding Section 3 – Terms of Reference Article 2.3. (Deliverables Expected) and 4.2. (Specific Activities) and only answered the part about Section 2 Article 14.3. (Intellectual Property Rights)*. What Objector conveniently fails to state is that this alleged failure

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was withdrawn by the evaluation committee and the Contracting Authority itself in its express note of admission of the 21st September, 2023.

4.11. Indeed, in its reply, the Contracting Authority made it very clear that it had been wrong in the way they had read Respondent's bid and it was, in fact and at law, technically compliant. The reply by the Contracting Authority is hereto attached and marked **Doc. A**. It is therefore undoubted that Objector is trying to incorrectly found its grievance on a matter which has long been resolved on the basis of 21st September 2023 express note of admission of the Contracting Authority.

4.12. For the avoidance of any doubt, however, Respondent did not only reply to one (1) of three (3) of the minimum requirements set out in A.4. It replied to all the minimum requirements – as was later expressly admitted by the Contracting Authority itself before tis Honourable Public Contracts Review Board.

B. Technical Offer Form

4.13. Of course, Objector has not seen Respondent's submission but this does not excuse the misleading and false representations made under this heading by Objector.

4.14. In this subtitle to their grievance, Objector seem to try to create the impression that Respondent did not submit the Technical Offer Form or, indeed, the information contained herein.

4.15. Respondent did comply with all the requirements of the tender.

4.16. However, before addressing the points of fact raised by Objector, Respondent must state that Objector, all of a sudden, seems to have remembered that there was another objection procedure preceding this in the Tendering Procedure which has concluded in favour of Respondent. It is very telling how Objector seems to cherry-pick those parts of this whole procedure which, *prima facie* and out of context substantiate their otherwise-unsubstantiated arguments.

4.17. Without any prejudice to the abovementioned, however, Objector is clearly to create confusion when there is none with respect to Respondent's objective and clear parameters within which Respondent had filed its objection on the 11th September, 2023.

4.18. For the sake of clarity and for the removal of any doubt, it is hereby unequivocally stated that the order in which all the information was submitted was all present in the bid in the order it should have been presented. Not only that but also that all the information submitted was clearly in line with the Tender and what the Tender submitted.

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4.19. The main issue underpinning the objection raised by Respondent (dated 11th September, 2023) was that in spite of all the information submitted, and despite the bid contents having been submitted in the order as established in the Tender, the Contracting Authority did not initially understand and assess the information submitted. This is clearly evidenced by the principal paragraph in its objection which reads as follows:-

2.2.2. The Appellant's tender bid submission in this respect clearly fully responded to the Tender Section requirements included and also made reference to other sections of the Tender specifically on page 4 and 5 of the document marked A4 where the information requested in A4 of Articles 2.3 and 4.2 of the Tender document had been provided through text and graphic flowcharts, illustrations and representations. The flowcharts, illustrations and representations, in themselves, already provided the information requested in Section A4. Indeed, from Section A1 page 6 to 9 of the said Appellant Tender bid submission, it becomes evidently clear that the Appellant had already provided such information and wanted to avoid repetition of information. Information about the software used is also included in Section C3 and C4. However, the requisite information was already provided elsewhere.

4.20. This is the principal paragraph in the relative part of the objection which had been filed, at the time, by Respondent. Had Objector been really honest in the way it drafted its objection, it would have attacked, as a matter of priority, the contents of this paragraph (at the appropriate juncture and within the appropriate timeframe and certainly not at this stage). For the avoidance of doubt, it is hereby being repeated:- Respondent provided this information in the relative section in the Technical Offer Form.

4.21. The paragraphs mentioned in paragraph 4.14 in the Objection somehow doubt that Respondent has provided all the requested information. Indeed, Respondent's Objection makes it clear that, not only did Respondent provide the relative information in the section but it was also provided in other parts of the tender – this was exactly the point. Below are the full submissions made in this regard by Respondent in its objection:-

2.2.1. The Rejection Letter also unreasonably and incorrectly stated that the Appellant in its tender bid ignored the first part of the question regarding Section 3 – Terms of Reference Articles 2.3., 4.2. and only answered the part about Section 2 Article 14.3. This is absolutely false and baseless.

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2.2.2. The Appellant's tender bid submission in this respect clearly fully responded to the Tender Section requirements included and also made reference to other sections of the Tender specifically on page 4 and 5 of the document marked A4 where the information requested in A4 of Articles 2.3 and 4.2 of the Tender document had been provided through text and graphic flowcharts, illustrations and representations. The flowcharts, illustrations and representations, in themselves, already provided the information requested in Section A4. Indeed, from Section A1 page 6 to 9 of the said Appellant Tender bid submission, it becomes evidently clear that the Appellant had already provided such information and wanted to avoid repetition of information. Information about the software used is also included in Section C3 and C4. However, the requisite information was already provided elsewhere.

2.2.3. Furthermore, and without any prejudice to the submissions contained in sub-paragraph 2.2.2. above, the bidder made clear reference to the actual full information which it had already submitted in earlier sections of its bid submission.

2.2.4. It must be stated, however, without any prejudice to the aforesaid, that the published Tender Document requirements did not specify the particular format as to how a bidder was expected to provide the requisite information. The Appellant was left the freedom to determine of its own accord the mode and format in which to provide the requisite information and this included, of course, cross-referring to other articles of the Appellant's own submission. The published Tender Document did not exclude using graphs and/or flowcharts to provide the required information or, indeed, cross-referencing to other sections of its own submitted bid:- which in themselves are legitimate and reasonable modes of providing information as any other given mode or format given that the published Tender itself does not prescribe or even contemplate at all any such specific mode or format.

2.2.5. Indeed, therefore, it is humbly submitted that this Honourable Board must not entertain the imposition of the draconian and unreasonable penalty of disqualification as that arbitrarily imposed by the Contracting Authority against the

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Appellant's bid because there is nothing in the Tender Document authorizing disqualification in such cases.

2.2.6. Indeed, had the Contracting Authority wanted to impose *ad validatem* any specific way or format for bidders to submit any part of the information requested in Section A4 (such as graphically, or numerically and such like) then on the basis of transparency and legitimate expectations ensuring a level playing field for all bidders, it would have been at law obliged to expressly and unequivocally impose in the Tender Document such specific format. No other specific formal requirement was imposed in the submission format other than that of the word count. That was the only requirement in providing the information requested in this sub-paragraph:- i.e. that of clearly stating that the submission in reply to that request should be of four (400) words.

2.2.7. On the basis of the above grounds, it is clear, therefore, that the Contracting Authority could not have declared the Appellant's bid to be "technically non-compliant" because, as explained, the Appellant's bid was indeed in technical compliance with the published Tender requirements when it supplied the requested information within the abovementioned other parts of its Tender Submission bid. It is manifest that technical substantive compliance of the Appellant's Tender submission bid should prevail over any arbitrary preference of the Contracting Authority as to the mere form of a bid that was never transparently published and communicated to the bidders as a *sine qua non* mandatory requirement *ad validatem*. All the information requested in in Section A4 was in the Tender submission bid and additionally referred to accordingly in the submission for Section A4.

2.2.8. It is therefore submitted that, in this respect, the Appellant's Tender submission was technically compliant and consequently, it is humbly submitted that , this Honourable Public Contracts Review Board should respectfully , uphold the Appellant's objection and quash the decision of the Contracting Authority.

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4.22. Where, in the above submissions in relation to this part of their objection, is Respondent admitting to not satisfying the specifications set out in the tender in the order established? What is clear, however, is that the tender did not specify the shape and form of the submission – it only submitted what and in which order. Respondent was clearly disqualified on grounds which were not specified in the tender. It is for this reason that, in that context, Respondent's exclusion was totally disproportionate and unlawful.

4.23. Indeed, Objector is totally wrong when it submits that:- "Deloitte respectfully submits that all these statements are admissions of non-compliance". There are absolutely NO admissions of non-compliance. On the other hand, the Objection filed by Respondent was showing that the evaluation which the Evaluation Committee had made of its bid was totally erroneous at the time because (they said) that Respondent had failed to give the information required and that the information required was absent. Indeed, not only the information was there but it was clearly marked in the tender offer, and it was also present in its reply to item A.4. Had this not been the case, obviously, the Contracting Authority would not have admitted its wrongdoing.

4.24. . Hence the submissions contained in paragraphs 4.15 till paragraph 4.21 of the Objection are totally unfounded and should be rejected in toto since it is clear that there was no admission of non-compliance.

4.25. Furthermore, and with all due respect, it clearly transpires from the reply filed by the Contracting Authority that the conclusion that Respondent's bid was technically non-compliant due to the fact that:-

7. Following this objection, it then transpired that this evaluation process may have been left bereft of some pertinent details involving a misinterpretation of the evaluation grid arising from the structure of the bid specific material as submitted.

4.26. Hence it is clear that the Evaluation Committee had then initially misunderstood the Respondent's bid and had left out crucial information in relation to Article A.4. This goes on to prove that, indeed, the offer made by Respondent did contain all the information required as per Tender Submission Form.

4.27. However, the fact that there was specified the order and the information required to be submitted, did not mean that the Tenderers were bound on whether to use, say, diagrams, flowcharts, spreadsheets and such like and hence, the tenderers were free

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to abide to all the system of information which best suited their project and their proposals. This is the context in which the paragraphs quoted erroneously by Objector from the objection raised by Respondent should be read.

4.28. Indeed, therefore, paragraph 4.23 till paragraph 4.26 are absolutely inapplicable to the case at issue because Respondent was so circumspect, well-informed and normally diligent tenderer that when its objection was read, the adjudication misunderstanding carried out by the evaluation committee became so evident and clear that the Contracting Authority itself decided to take a stand on the 21st September 2023 with its express Reply Note which admitted there was a mistake.

4.29. In these circumstances, it would have been seriously disproportionate for Respondent for its objection not to lead to an admission as it clearly did.

4.30. Consequently, even this grievance subpart should be rejected by this Board.

C. Clarifications, Rectification, Principles underlying PPR.

4.31. This whole section of the Objection is based on the gratuitous allegation that:- *In this case, a clarification could not be made since Respondent simply ignored certain minimum requirements – there was nothing to clarify. Any clarification would have (a) breached the principles of equal treatment, non-discrimination and transparency and the corollary thereof being the principle of self-limitation, and (b) resulted in a rectification of the technical offer, in breach of Note 3.*

4.32. This is a false assumption being made by Objector.

4.33. Respondent ignored absolutely nothing. On the contrary, when the mistake was duly pointed out in the Respondent reasoned objection of the 11th September 2023, the Contracting Authority, of its own accord, understood that it had been wrong in its earlier assessment that Respondent was technically non-compliant. The Contracting Authority was of course entitled to make an express admission of the grounds underlying Respondent's objection once it was convinced about the clarifications adduced on the technical compliance of Respondent's tender bid. In essence, Respondent merely provided the Contracting Authority the requested clarifications without breaching any of the principles of equal treatment, non-discrimination, transparency and self-limitation or bringing about any rectification as further explained below.

4.34. Indeed, it is also clear that **no rectification was carried out chiefly because none was needed.** All the information requested was already contained in the tender

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as originally submitted. That is why there was the necessity to request for the clarification – because all the information was already there in Respondent's tender submission.

4.35. It is hereby submitted that a rectification would change the substance of a submitted tender offer. That is why rectifications distort competition and are disproportionate and held to be unlawful. In this case, all that was needed was for Respondent to clarify its submission **without, by so making the clarifications, adding anything to it.**

4.36. Indeed, Respondent only needed to submit its objection for the Contracting Authority to realise that its submission was technically compliant. But there was no rectification at any point by Respondent both before as well as after the adjudication the first time round, as specified above.

4.37. Hence, the submissions contained in paragraphs 4.27 till 4.38 are totally baseless in this context because:-

(1) Respondent did not, in any manner, effect any rectification;

(2) Disqualifying Respondent on the basis of information which was already provided in the submission in the appropriate consecutive order would also have been disproportionate and unlawful only because the evaluation committee had not initially understood that the requisite information was already contained in the submission at the appropriate place and;

(3) The only disproportionality with respect to Respondent would have been to disqualify them on the basis of their alleged non-compliance when it clearly resulted and transpired that it was indeed technically compliant.

4.38. With respect to the phrase:- *must have a choice between several appropriate measures* as quoted in paragraph 4.32 of the Objection, it is very clear that an appropriate measure in this case was not to disqualify Respondent which is a perfectly legitimate stand taken by the Contracting Authority in its express admission of the reasoned objections duly raised by Respondent in good time.

4.39. In this sense, therefore, it is very clear that the provisions of paragraph 4.33 till 4.40 are totally unfounded in fact and at law because Respondent did not fail to meet the technical requirements at all.

4.41. It is therefore clear that this third heading of the second grievance is also totally baseless.

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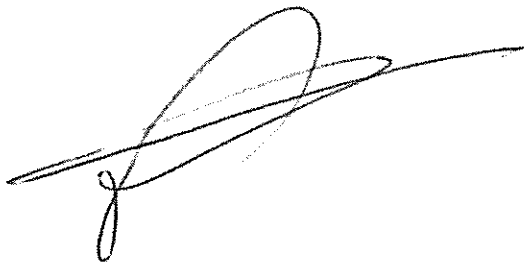
5. Conclusion

5.1. In view of the above, Respondent respectfully requests the Honourable Board to:-

- (i) reject *in toto* the objection filed by Objector; and
- (ii) furthermore, to confirm that the Contracting Authority was correct in its decision to award the relative contract to Respondent;

5.2. Without any prejudice to any further submissions that Respondent may be allowed to make during the relative hearing and to make any further submissions in relation to any other information which may become available to it during any stage of the Objection proceedings in question.

Sincerely,



Avv. Lorna Mifsud Cachia

cc. Respondent

Doc G.T. 1

BEFORE THE PUBLIC CONTRACTS REVIEW BOARD

CT3039/2022

21ST SEPTEMBER 2023

Grant Thornton

vs.

**Department of Justice, within the
Ministry for Justice; and the
Department of Contracts**



This is the reply by the Department of Justice, within the Ministry for Justice (hereinafter referred to as the 'defendant') to the objection filed by Grant Thornton in respect of the tender bearing the reference CT3039/2022 - SERVICES - TENDER FOR THE MAPPING, RE-ENGINEERING AND DOCUMENTING THE BUSINESS PROCESSES OF THE JUSTICE ENTITIES WITHIN THE MINISTRY FOR JUSTICE

Respectfully submit:

- 1. The Department of Contracts on behalf of the Department of Justice issued a call for tenders for THE MAPPING, RE-ENGINEERING AND DOCUMENTING THE BUSINESS PROCESSES OF THE JUSTICE ENTITIES WITHIN THE MINISTRY FOR JUSTICE on the 23rd March 2023;**
- 2. The closing date for this call for tenders following an extension was the 11th May 2023.**
- 3. Following the opening of the bids ten (10) offers had been unlocked for this tender procedure;**
- 4. The award criteria for this Tender is the Best Price Quality Ration (BPQR) in accordance with the weighting and evaluation grid as per Tender Document.**
- 5. Following the evaluation for this tender was carried out a letter dated 1st September 2023 was sent to the objector informing him *inter alia* that his offer**

has been disqualified for the reasons contained therein and the justifications given at the time.

6. The objector felt aggrieved by this communication and proceeded with this objection before this Review Board lodged on the 11th September 2023.
7. Following this objection, it then transpired that this evaluation process may have been left bereft of some pertinent details involving a misinterpretation of the evaluation grid arising from the structure of the bid specific material as submitted.
8. For this reason the defendant through this reply is officially filing an admission to the pleas of the appellant in order for the defendant to be placed in a position where it can repropose its evaluation conclusion and to be able to issue any fresh recommendations.
9. This without any prejudice to the rights for remedy to the bidders following any fresh recommendation for this tender.
10. The defendant has no reservation with respect to the deposit being held by this Board from the appellant.

Christopher Mizzi

Avv. Chris Mizzi

Notification: Grant Thornton

Doc. G.T. 2

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LAW FIRM

27th September, 2023

The Secretary
Public Contracts Review Board
Notre Dame Ditch
Floriana

Dear Sir/Madam,

Re:- CT 3093/2022 – Tender for the Mapping, Re-Engineering and Documenting the Business Process of the Justice Entities within the Ministry for Justice (the "Tender")

We are instructed by Grant Thornton ("the Appellant") to file these submissions following receipt of the reply dated 21st September, 2023 filed by the Department of Contracts on behalf of the Department of Justice.

Having viewed and taken cognizance of the reply filed by Dr. Chris Mizzi on behalf of the Department of Justice within the Ministry for Justice (hereinafter "the Defendant") of the 21st September, 2023, in virtue of which the pleas of the appellant were admitted, and specifically:-

8. For this reason the defendant through this reply is officially filing an admission to the pleas of the appellant in order for the defendant to be placed in a position where it can repropose its evaluation conclusion and to be able to issue any fresh recommendations.

Appellant hereby respectfully submits that, on the basis of the aforesaid admission, this Public Contracts Review Board should, after observing and following the procedure laid out in the Public Procurement Regulations (S.L.601.03), proceed to uphold the pleas of Appellant and therefore to:-

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1. Declare that the Defendant's decision of the 1st September 2023 was illegal and consequently to proceed to quash it;
2. Cancel and revoke the proposed award of the Tender to the Recommended Bidder;
3. Order the Defendant to re-evaluate the Tender and to issue the relative recommendation of award; and
4. Order the refund of the deposit paid by the Appellant to the Appellant.



Avv. Lorna Mifsud Cachia

Doc G.T-3

BEFORE THE PUBLIC CONTRACTS REVIEW BOARD

CT3039/2022

28TH SEPTEMBER 2023

Grant Thornton

vs.

Department of Justice, within the
Ministry for Justice; and the
Department of Contracts



This is a further reply by the Department of Justice, within the Ministry for Justice (hereinafter referred to as the 'defendant') to the objection filed by Grant Thornton in respect of the tender bearing the reference CT3039/2022 - SERVICES - TENDER FOR THE MAPPING, RE-ENGINEERING AND DOCUMENTING THE BUSINESS PROCESSES OF THE JUSTICE ENTITIES WITHIN THE MINISTRY FOR JUSTICE

Respectfully submit:

1. Following the letter of reply by the defendant of the 21st September 2023, and following the reply by Grant Thornton of the 27th September 2023, the defendant reiterates its intention for a re-evaluation of the offers.
2. The defendant has no objection that this procedure is closed without a sitting as he has no further points to submit to the Board.
3. No further submissions on behalf of the defendant.

Christopher Mizzi

Avv. Chris Mizzi

Notification: Grant Thornton

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



Doc G.T-4
DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1600 – MALTA

Contact Number: +356 2378 1001
e-Mail: info.contracts@gov.mt
website: www.contracts.gov.mt

27th October 2023

Grant Thornton
TID: 192165

REFERENCE: CT3039/2022

SUBJECT: Tender for the Mapping, Re-Engineering and Documenting the Business Processes of the Justice Entities within the Ministry for Justice

Dear Sir/Madam,

The General Contracts Committee has accepted the recommendation for award of the above mentioned tender in your favour for the price of €950,000.00 excluding VAT as shown in the following table:

Tender ID	Name of Tenderer	Average Technical Score	Technical Score in proportion to offer with highest average technical score 60%	Financial Offer €	Financial Score in proportion to offer with lowest financial offer 40%	Overall Score (b) + (d)	Ranking
		a	b	c	d		
192165	Grant Thornton	59.40	99.00	€950,000.00	100	99.40	1

The decision has been published and is subject to any official objection to the recommended award being submitted at the Public Contracts Review Board, Notre Dame Ditch, Floriana by noon of Monday 6th November 2023

Yours sincerely,

Joseph Anthony Zammit
f/Director General (Contracts)



Tender ID :192165			
Tenderer's Name : Grant Thornton			
Evaluation Criteria	Maximum Points	Average Technical Score	Justifications
A. Understanding the Terms of Reference			
A.1 –			
A write-up (appx 1,000 words) demonstrating a full understanding of the tender requirements. Include any comments on the terms of reference of importance for the successful execution of activities , in particular its objectives and expected result in deployment of the requested human resources, thus demonstrating the degree of understanding of the contract and how the proposed service will be achieved and possibly exceed the required objectives and results. Article 2.2, 2.3 & 4.2 of Section 3 Terms of Reference, shall take precedence over the tenderer's technical submission, in case of omissions or contradictions.	6 points (mandatory) Max of 100%	6.00 (100.00%)	Compliant
A.2 –			
A description (appx 500 words) of the approach for contract implementation for: Methodology, software, and standards as set out in various articles in Section 3 'Terms of Reference' namely, Art 2.1, Art.2.2, Art 2.3, Art 4.2 & Art 4.3 of the tender document that will be used.	6 points (mandatory) Max of 100%	6 (100.00%)	Compliant
A.3 –			
– A description (appx 400 words) of the added value that the tenderer and their proposed team can bring the successful contract execution in relation to the business domain, including the ability of the tender/learn to align the services to the client's needs and to understand the nature of the client's core business and culture as outlined in Section 2 – Special Condition, Article 16.4	5 points (mandatory) Max. of 100%	5 (100.00%)	Compliant
A.4 –			
Provide information (appx 400 words) on how the information gathered in fulfilment of the contract obligations as specified in Section 3 – Terms of Reference Articles 2.3 & 4.2 and in Section 2- Special Conditions Article 14.3 shall be provided with respect to the holistic delivery of the contract.	5 points (mandatory) Max. of 100%	5 (100.00%)	Compliant
B- Risk Analysis and Mitigation			
B.1-			
B1 – Provide a high-level plan (appx 1,000 words) outlining where: <ul style="list-style-type: none">You see the main risks to the delivery of the contract over and above those already being listed in the Terms of Reference, Section 3 Article 3.2 (3 points)Propose mitigation and contingency measures to address these risks (4 points)	7 points (mandatory) Max. of 100%	7 (100.00%)	Compliant
C- Implementation			
C.1			
– Provide an outline (appx 1,000 words) of the general approach for the implementation of the contract execution, both for: <ul style="list-style-type: none">The overall coordination of the whole contract (4 points) as well as for the individual activities (4 points)	8 points (mandatory) Max of 100%	8 (100.00%)	Compliant
C.2			
A diagrammatic representation (appx 800 words)of a Work Breakdown Structure, highlighting the different processes to be employed.	5 points (mandatory) Max of 100%	5 (100.00%)	Compliant
C.3			
Provide details and description (appx 400 words) of the perpetual (a license that is not subscription-based that would incur additional costs on the Contracting Authority)license software, as per Article 4.2 Section 3 of the Terms of Reference, for at least 5 users, which software will be used for the delivery of the electronic editable files of the processes' mapping and re-engineering.	5 points (mandatory) Max of 100%	5 (100.00%)	Compliant
C.4			
Provide a sample of the process mapping output that will be presented as a deliverable of this project as outlined in Section 3 – Articles 2.2, 2.3 & 4.2.	5 points (mandatory) Max of 100%	5 (100.00%)	Compliant
D Strategy			
	Max 8 points		

Tender ID :192165			
Tenderer's Name : Grant Thornton			
Evaluation Criteria	Maximum Points	Average Technical Score	Justifications
D.1 Provide a detailed overview (appx 1,000 words) of the approach that will be taken to address the project's activities as defined in Section 3, Clauses 2.2, 2.3 & 4.2. For evaluation purposes, bidders are to submit in sufficient detail how the proposed works will be implemented taking into consideration any adjustments required: <ul style="list-style-type: none"> in particular the efficient allocation of resources (4 points) and ensuring that physical presence is guaranteed throughout the implementation of the project (4 points) 	8 points (mandatory) Max of 100%	8 (100.00%)	Compliant
E. Quality Assurance and Support Facilities	Max 9 points		
E.1 A description (appx 500 words) of how overall Quality Control will be implemented throughout the project. Mention any industry-standard certifications, such as ISO 9001:2015 or equivalent and how such standards shall be applied.	5 points (mandatory) Max of 100%	5 (100.00%)	Compliant
E.2 A description (appx 500 words) of the Quality Assurance System, such as ISO 9001:2015 or equivalent, that will be applied for the activities of this contract and explain how such will be applied accordingly.	4 points (mandatory) Max. of 100%	4 (100.00%)	Compliant
F – Timing of Activities	Max 16 points		
F.1 & F.2 F.1 – A detailed Implementation Plan (write-up appx 1,000 words) (4 points)			
F.2 – A 4-year Gantt Chart showing the: <ul style="list-style-type: none"> Milestones, and timing, sequence, (2 points) Duration of the activities (2 points) As per Section 1, Article 1.2 and as underlined in the ToR Article 2.2, 2.3 and 4.2.	8 points (mandatory) Max of 100%	8 (100.00%)	Compliant
F.3 Provide a report (appx 500 words) including how: <ul style="list-style-type: none"> interim reviews of risk mitigation plans are addressed (4 points) And an indication of how the achievement of these milestones would be reflected in the reports (4 points) 	8 points (mandatory) Max of 100%	8 (100.00%)	Compliant
G. Key Experts	Max 15 points		
Criteria G – Key Experts Key experts' strategy and profile In line with Section 1, 5(C) (i) of the Instructions to Tenderers, proof of qualifications held by each of the three (3) Key Experts shall be presented through a Curriculum Vitae (CV). Only the highest qualification shall be taken into consideration. Furthermore, the Key Experts Form, the Statement of Availability Form for each Key Expert, the Self-Declaration form for Key Experts relating to public employees and Professional Declaration Form (if applicable) shall also be submitted. It is the responsibility of the respective bidders to prove that the qualification/s they quote are equivalent to the qualification/s requested by the Contracting Authority. Further to the above, bidders are to provide:			
Key Expert 1 – Project Manager 1. Project Manager qualified in management or an equivalent comparable qualification with any one of the following qualification levels: a. Bachelor's qualification at MQF/EQF Level 6 (or equivalent) (subject to a minimum of 18 ECTS/ECVET credits) (2 points minimum) b. Masters qualification at minimum MQF/EQF Level 7 (or equivalent) (3 points maximum) 2. Has at least three (3) years' work experience as a Project Manager (2points) Additional 2 points will be given for additional years of experience beyond the three (3) years required in clause 2 above.	Max 7 points 3 points (Max of 100% as per gradation – points are not incremental)	7 (100.00%)	Compliant
Key Expert 2 – Business Analyst 1. Business Analyst having a: a. Bachelor's qualification at MQF/EQF Level 6 (or equivalent) (subject to a minimum of 180 ECTS/ECVET credits), in Business Analysis of Business Administration (2 points) b. Master's qualification in Business Analysis or Business Administration at minimum MQF/EQF Level 7 (or equivalent) (4 points) 2. Has at least three (3) years' work experience as Business Analyst.	Max 6 points 4 points (Max of 100% as per gradation – points are not incremental) 2 points (mandatory 0 or 100%)	6 (100.00%)	Compliant
Key Expert 3 – ICT Expert			

Tender ID :192165			
Tenderer's Name : Grant Thornton			
Evaluation Criteria	Maximum Points	Average Technical Score	Justifications
<p>1. Bachelor's qualification at MQF/EQF Level 6 (or equivalent) subject to a minimum of 180 ECTS/ECVET credits) in Systems Analysis & Design, ICT or digitalization. (1 point)</p> <p>If a Master's qualification is in System Analysis and Design, ICT or digitalization at minimum MQF/EQF Level 7 (or equivalent) 2 points)</p>	<p>Max 2 points (Max of 100% as per gradation – marks are not incremental)</p>	<p>1 (50.00%)</p>	<p>Awarded 1 point out of a total of 2. Point given for Level 6 MQF/EQF degree Bachelor of Science (Hons) Computer Science. 1 point deducted as Key Experts does not hold a Master's Qualification.</p>
Total		99.00	