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The Secretary
Public Contracts Review Board
Notre Dame Revlin
Floriana VLT 2000

Quote for the removal, lifting on hard at temporary storage of M/Y Pathfinder with Reference Number TM Quote 039/2023 (the 'Tender')

Reply to Appel filed by Sammut Marine Limited (C-82608) (the 'Appellant') in terms of Regulation 270 of the Public Procurement Regulations (the "PPR") in connection with the above mentioned tender.

I write to you for and on behalf of the preferred bidder Polaris Marine Services Co. Ltd. (C48840) of 35, 'Polaris', Dawret il-Wied, Mosta (hereinafter 'Polaris' or 'Recommended Bidder') and this in connection with the above captioned Tender, and particularly with reference to the application filed by the Appellant and the reply filed by Transport Malta (hereinafter the 'Contracting Authority').

1. First Ground of Appeal - non-compliance raised by the Contracting Authority was rectifiable.

By virtue of this first ground of appeal, the Appellant argues that the non-compliance of the Appellant upon which the Contracting Authority based its decision and consequent rejection letter, was rectifiable during the evaluation process.

In this regard, the Recommended Bidder rests on the decision taken by the Contracting Authority and its conclusion as to the non-compliance of the Appellant with respect to the Tender requirements.

2. Second Ground of Appeal – reasons provided by the Contracting Authority not in line with general principles of public procurement

In this regard, Polaris humbly submits that the Appellant should clarify what principles are being referred to in order for it to be able to submit a reply and defend its position accordingly.

Therefore, at this stage, Polaris is reserving its right to submit additional reply/ies in relation to this ground of appeal.

3. The reply filed by the Contracting Authority

Although this reply seeks to address the grounds of appeal raised by the Appellant, the Recommended Bidder deemed it appropriate to address the issue raised by the Contracting Authority in its reply, where it stated that the Contracting Authority wishes to proceed with the cancellation of the procedure on the following bases:

- (i) The economic or technical parameters of the project have been altered; and
- (ii) There are exceptional circumstances or force majeure render normal performance of the project impossible.

The Recommended Bidder submits that the submission of the Contracting Authority is merely a declaration of its intention since to date no cancellation notice has been issued and communicated to Polaris and thus this tender procedure is still valid and ongoing, naturally pending the determination of the present proceedings.


THEREFORE, in view of the above and for other reasons that may be adduced at law at the sitting to be set by this Board, the Recommended bidder humbly requests that this Board, save for any other declaration, order or decree it may deem fit:

- a. Declare the appellant's objection as unfounded both at law and in fact and consequently rejects the objection;



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b. Rejects the applicant's request to be refunded in full the deposit paid upon filing of the application.



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