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23rd November 2023

The Secretary
Public Contracts Review Board
Notre Dame Gate,
St Calcedonius Square,
Floriana.

Sir,

Re: KLP/CONS/01/2021 – CONCESSION TO OPERATE A CAFETERIA AT PJAZZA SAN LUQA, TAL-PIETA`

I write on behalf of Yama Yami Limited (C87476) of Block B, Flat 5, Triq Taċ-Ċawla, Rabat, Għawdex to file an objection against the decision of the Contracting Authority, the Kunsill Lokali Tal-Pieta`, dated the 14th of November 2023, which stated:

> *After the evaluation process by the Evaluation Committee, it has unfortunately resulted that your offer was not technically compliant. Three documents (Pest Control Programme, General Maintenance programme and the Cleaning programme) which were requested in this Concession were not included in your offer. The tender is being recommended to the other Economic Operator Adrian Delia. You have 10 calendar days to make an appeal if you wish.*

The chain of events leading to this objection are as follows:

A call for tenders was published by the Contracting Authority, the Kunsill Lokali Tal-Pieta`, and after the evaluation of the tenders received by the Kunsill Lokali Tal-Pieta` informed the appellant that its offer was unfortunately resulted that its offer was not technically compliant. Three documents (Pest Control Programme, General Maintenance programme and the Cleaning programme) which were allegedly requested in this Concession were not included in his offer. The tender was recommended to the other Economic Operator Adrian Delia.

That the grounds for this objection are clear and manifest.

1. <u>The Appellant's was not technically compliant</u>

That Yama Yami Limited was deemed as being technically not compliant because in the decision it was stated that three missing documents being the Pest Control Programme, General Maintenance programme and the Cleaning programme which were requested in this Concession were not included in his offer.

The necessity of these documents does not result from the tender document and thus these documents are not required.

That the most economically-advantageous bid was that of the appellant Yama Yami Limited (C87476) and this as it results from the Opened Tender Details and thus the tender should be awarded to Yama Yami Limited.

2. **Unwarranted extension of the initial validity period**

That the applicable General Rules Governing Tenders (hereinafter "GRGT") are directly applicable to this procurement procedure.

The GRGT in provision 12 holds that the initial period of validity of tenders is of circa three (3) months. The provision holds that:

Concessions must remain valid for a period of 90 days after the deadline for submission of concessions indicated in the contract notice and in this procurement document. Any Contractor who quotes a shorter validity period will be rejected. (hereinafter "the initial validity period")

The GRGT thereafter provides for a mechanism through which the initial validity period may be extended (hereinafter "the extended validity period") subject to three main and cumulative conditions:

(i) An exceptional circumstance
(ii) All the tenderers are asked to extend their offer
(iii) The Extension is for a maximum of eight weeks

The above stated, is determined through provision 8.3 of the GRGT as per hereunder:

In exceptional circumstances the Contracting Authority may request that tenderers extend the validity of tenders, without extending the validity of the Tender Guarantee (Bid Bond), for two further periods of four (4) weeks each. Such requests and the responses to them must be made in writing. A tenderer may refuse to comply with such a request without forfeiting his tender guarantee (Bid Bond). However, his tender will no longer be considered for award. If the tenderer decides to accede to the extension, he may not modify his tender.

The above clearly and in equivocal terms imposes that the evaluation of the tender shall be conducted within the period of three (3) months, but in the eventuality of exceptional circumstances, such evaluation may be conducted in a maximum period of five (5) months.

The concept of exceptional circumstances has been outlined in the PCRB decision with number 1434 dated 12th March 2020 – Synthesis Management Services Limited vs Tarxien Local Council, where the PCRB emphasised that:

It should also be mentioned that, an extension to the validity period, is only Authorised in exceptional circumstances and in this particular case, no such urgent or exceptional instances existed.'

The PCRB has developed an objective and rigorous test for the extension of the validity period, which should be of (a) an urgent nature, (b) extraordinary situation. In addition, PCRB has been clear that unless these criteria are satisfied, such extension will not be permitted.

Whilst it's the onus of the Kunsill Lokali Tal-Pieta` to confirm this situation what warranted the extension of the validity period, its the appellant position that no such situation has developed to validate any extension whatsoever, if at all.

3. Award in breach of the GRGT

Without prejudice to the aforesaid, it is the position of the appellant that the award of this tender has been made outside the validity period, and is thus in breach of provision 19.1 of the GRGT:

Prior to the expiration of the period of validity of tenders, the Contracting Authority will notify the successful tenderer in writing, that his tender has been recommended for award, pending any appeal being lodged in terms of the Public Procurement Regulations (being reproduced in Section 2 of the Tender Document).

The dates are as follows:

Deadline for Submission: 24/09/2021
Termination of the initial validity period: 23/12/2021
Date of award of the tender: 14/11/2023

Whilst it is unclear whether Kunsill Lokali Tal-Pieta`has formally extended the tender offers, whilst it is unclear what the exceptional circumstances which warranted the extension/s of the initial validity period are, it is very clear that the award has been made after the expiration of the period of the validity of the offer, in blatant breach of provision 19.1 of the GRGT)

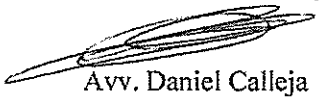
In addition to the aforesaid, reference is also being made to PCRB decision with number 1821 decided on the 15th December 2022, wherein the PCRB held that:

"Paragraph 8.3 goes on to provide, two further extensions of four (4) weeks each. However paragraph 8.3 herein mentioned should not be read in isolation of the three provisos that conditions such article. The provisos clearly state that 1) such extensions are to be permitted in "exceptional circumstances", 2) "if approved to internally through the Contracting Authority" and 3) such requests and the responses to them must be made in writing through the ePPS in the form of a clarification..."

In the case under review, nothing for the aforementioned provisions has been observed and thereby, the award is blatantly in breach of the GRGT;

Nowtherefore, whilst reserving the right to put forward further submissions, the Appellant company hereby requests:

1. To declare that Yama Yami Limited (C87476) was technically compliant and thus order the cancellation of the Notice of Award and order the contracting authority to revaulate the bid received from Yama Yami Limited (C87476)
2. In subordination and without prejudice to the aforesaid, to order the cancellation of KLP/CONS/01/2021 and cancel the decision of the Kunsill Lokali tal-Pieta' awarding the tender to Adrian Delia
3. To do anything else which is conducive and necessary for the proper execution of the above,
4. To refund the deposit in its entirety.



Avv. Daniel Calleja

Requested Testimony by:

(i) Representative of the Evaluation committee – To testify on this tender procedure, during all stages, including but not limited to the pre-drafting stage, drafting stage, and adjudication stage

(ii) Representative of the Contracting Authority/Department of Contracts – To testify on this tender procedure, during all stages, including but not limited to the pre-drafting stage, drafting stage and adjudication stage

(iii) Adrian Delia

Av. Daniel Calleja

Bank of Valletta p.l.c
Registration Number: C 2833
Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Pay third part

Printed by: Mr. Ryan Cefai Merci
Printed on: 23/11/2023 - 22
Document ID: 18190

Transaction details

Beneficiary name:	PCRB
Relation:	Administrative Services
Reason:	Purchase of Services
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 (EUR) 5001352827 3
Charges should be paid by:	Shared - I pay BOV charges; PCRB pays the beneficiary bank charges
Amount:	EUR 400.00
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 400.00
Debited amount (excluding charges):	EUR 400.00
Estimated amount to be withdrawn from account:	EUR 401.00
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:	135107313