



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

Today the 4<sup>th</sup> of December 2023

Dear Sir/s,

Reasoned Letter of Reply by the Pieta' Local Council

Re.: KLP/CONS/01/2021 – Concession To Operate A Cafeteria at Pjazza San Luqa, Tal-Pieta'

I write on behalf of the Pieta' Local Council, hereinafter referred to as the "Contracting Authority". Reference is hereby being made to the letter of objection filed by Yama Yami Limited (C87476), hereinafter referred to as "the objector" on the 24<sup>th</sup> of November 2023 with reference to the concession having reference number KLP/CONS/01/2021.

A call for tenders called "*Concession To Operate A Cafeteria at Pjazza San Luqa, Tal-Pieta'*" was published. Two (2) bids were submitted, an evaluation process was carried out and the offer of Mr. Adrian Delia, hereinafter referred to as the "preferred bidder" was recommended for award.

The sole award criterion was the price. Clause 6 of the Instructions to Tenderers stated, "*The sole award criterion will be the price. The contract will be awarded to the tenderer who is technically compliant and submits the highest concession fee and upfront payment combined.*"

The objector's offer was not recommended for award since it was not technically compliant as can and shall be shown.

The objector felt aggrieved with the decision of the evaluation committee and has filed the present objection based on mainly two (2) grievances, namely i. objector was technically compliant, and ii. the initial validity period was erroneously extended;

The Contracting Authority respectfully disagrees and is filing the below submissions;

**i. OBJECTOR WAS TECHNICALLY NON-COMPLIANT**

1. In order for the Contracting Authority to ensure that the Cafeteria is run in a financially responsible manner, as well as to make sure that standards are kept, it obliged all bidders to provide evidence relating to the proposed cleaning schedule, preventative maintenance as well as pest control programme.
2. Reference is hereby being made to sections e, i and j of the technical offer reproduced below;

e	I am aware of and shall abide by the cleaning obligations as indicated in the Terms of Reference.	<input type="checkbox"/> I confirm
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	Furthermore, I am attaching the proposed cleaning schedule and waste management plan as per Section 2 Clause 9.	(attachment required)
i	I am aware of and shall abide by the maintenance and repair obligations of the retail outlet as per Section 2 Clause 9.  Details of the proposed preventive maintenance programme are being attached.	<input type="checkbox"/> I confirm  (attachment required)
j	I am aware of and shall abide by the pest control obligations as per Section 2 Clause 9.  Details of the proposed pest control programme are being attached.	<input type="checkbox"/> I confirm  (attachment required)

3. Specific reference is made to the extracts in bold;

*Furthermore, I am attaching the proposed cleaning schedule and waste management plan as per Section 2 Clause 9. - (attachment required)*

*Details of the proposed preventive maintenance programme are being attached. - (attachment required)*

*Details of the proposed pest control programme are being attached. - (attachment required)*

4. Therefore, it is undoubtable that the proposed plans related to cleaning, waste management, preventative maintenance and pest control were cardinal requirements for each tender offer. Offers lacking such cardinal information could never be accepted as compliant. The Contracting Authority was obliged to refuse any and all tenders submitted which lacked the above mentioned documentation.
5. Whilst underlining the fact that the Contracting Authority could never accept offers that did not provide such information which was a cardinal requirement in terms of the conditions of the tender, the Contracting Authority could never accept such offers even if this obligation was not so as it would frankly be clear evidence of lack of seriousness and trustworthiness of said tenderer.

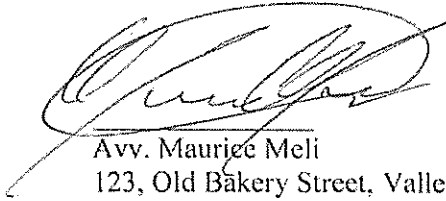
6. Whilst it is obvious that the objector did not submit said documentation, reference is hereby made to the objection by Yama Yami Ltd. which confirms and reiterates the fact that said documents were not submitted. This in and of itself confirms the objector's technical non-compliance.
7. For these reasons this first grievance should be rejected.

ii. **THE INITIAL VALIDITY PERIOD WAS NOT ERRONEOUSLY EXTENDED**

8. The objector claims that the initial validity period of the tender offer was extended incorrectly in terms of the General Rules Governing Tenders.
9. The Contracting Authority states that this grievance is totally frivolous vexatious and unfounded. It is a mere attempt by the objector to attempt to nullify a tender process that did not conclude in the objector's favour.
10. The rule referenced by the objector was intended as a safeguard for the preferred bidder and not for tenderers whose offer was not accepted!
11. Said rule was created in order to protect preferred bidders from suffering excessive increase in costs should the parties take too much time to finalise a contract. Allowing too much time to pass between the award of a tender and the eventually signing of the relative contract could cost the preferred bidder so much that such business venture no longer remains viable and becomes a loss-making operation.
12. It is definitely not intended to be used and abused by competing tenderers who have lost the competitive process as a means of last resort to ruin the business of its competitors!
13. In this case, even though a substantial amount of time has passed between the award of the tender and the eventual signing of the contract, the preferred bidder in this case had absolutely no problem retaining the same offer. If the preferred bidder had a problem with his offer due to the excessive length of time taken to sign the contract, he would have invoked said issue.
14. However, the preferred bidder had **absolutely no problem adhering to the offer** originally made and was comfortable moving forward with it. If this is the case, the objector has no right at law to invoke said rule frivolously and vexatiously in order to damage and stifle his competition.
15. What is also curious and ironic is the fact that whilst the objector is making this grievance, the same objector is now asking the public contracting review board to **confirm its offer with the contracting authority made more than two (2) years ago!**
16. For these reasons this second grievance should also be rejected.

The Contracting Authority is hereby reserving the right to present further evidence both written and orally to further their submissions in relation to this objection.

In view of the above, the Contracting Authority contends that the award is in full compliance of the Law. The Contracting Authority humbly submits that the objection lodged by the objector ought to be rejected in full, whilst the decision of the Contracting Authority and the Evaluation Board be confirmed, and the relevant deposit forfeited.



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