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PUBLIC CONTRACTS REVIEW BOARD

OPENWORKSTUDIO

Segretarju tal-Bord
Bord ta' Revizjoni dwar il-Kuntratti Pubblici Notre Dame Ditch
Floriana

18 ta' Dicembru 2023

Ittra ta' Oggezzjoni ta' Openworkstudio Ltd fir-rigward tas-sejha:

Tender for a Regeneration Plan for St. Paul's Bay, Bugibba, Qawra, Xemxija and Salina Area – Tourism Zones Regeneration Agency

Bil-prezenti, Openworkstudio qeghda tilmenta ai termini tal-ligi mid-decizjoni tal-Awtorita' Kontraenti li biha ghazlet lil Adi Associates Environmental Consultants Ltd. bhala l-ahjar offerent, kif spjegat fl-ittra taghha tas-7 ta' Dicembru 2023.

Jidher li ghalkemm Openworkstudio giet meqjusa li ssoddisfat kwazi kollha mir-rekwiziti teknici, tant li hija ottjeniet 97% (jew 58.2/60) bhala *Average Technical Score,* cioe' l-ahjar score tas-sottomissjonijiet kollha, madankollu giet gradwata bhala it-tieni fl-istess sejha minhabba l-element finanzjarju.

L-appellanti tqis li fdan ir-rigward, l-Awtorita' Kontraenti naqset f'diversi modijiet fil-process tal-aggudikazzjoni ta' din is-sejha kif ahjar spjegat aktar l-isfel.

Offerti finanzjarji baxxi b'mod mhux normal

1 Fl-ewwel lok, jidher li l-offerta li giet meqjusa bhala l-ahjar wahda, ossija dik ta' Adi Associates Environmental Consultants, hija 38.6% anqas minn dik *tal-Estimated Procurement Value* indikat mill-Awtorita' Kontraenti stess. Dan il-valur stmat kien ta' €300,000, mentri l-offerta ta' Adi Associates Environmental Consultants hija ta' €184,000 u cioe' €116,000 anqas minn dik stmata mill-Awtorita' Kontraenti.

2 Minnha nfisha, offerta li hija iktar minn terz anqas minn dik anticipata mill-Awtorita' Kontraenti ghandha, b'mod oggettiv, titqies bhala offerta baxxa b'mod mhux normali. Dan ifisser li jinkombu numru ta' obbligi fuq l-Awtorita' Kontraenti sabiex tassigura ruhha li l-offerent li jkun ta prezz baxx kif spjegat, jaghti r-ragunijiet dettaljati tieghu biex jiggustifika tali offerta,

3 Issa r-regolament 243 tal-LS 601,03 dwar *abnormally low offers* jghid hekk:

243, (1) L-awtoritajiet kontraenti gnandhom jesigu li l-operaturi ekonomici jispjegaw il-prezz jew l-ispejjet proposti fl-offerta meta l-offerti jkunu jidhru baxxi b'mod mhux normali fir-rigward tax-xoghlijiet, il-provvisti jew is-servizzi.

4. Filwaqt li m'hemmx dubbju li anke b'mod oggettiv, il-prezz offert minn Adi Associates Environmental Consultants huwa baxx b'mod mhux normali (anke meta paragunat mal-offerenti l-ohra li, anke jekk skwalifikati, l-irhas wiehed wara Adi Associates Environmental Consultants kien ta' 48.3% aktar minn dak tal-offerent rakkomandat), dan ifisser li skattaw l-obbligi kif imposti mil-ligi ai termini tar-regolament 243 tal-LS 601.03, sabiex tistharreg u tottjeni gustifikazzjoni konkreta minghand l-istess offerent dwar kif seta' jaghti prezz tant baxx.

5. Dan kollu gie ritenut finalment ukoll mill-Qorti ta' l-Appell (Sede Superjuri) fl-appelli fl- ismijiet *X Clean Limited vs Dipartiment ghall-Anzjanita' Attiva u Kura jil-Komunita' et* (Appell Numru 127/2021

u Appell Numru 126/2021) it-tnejn decizi fil-31 ta' Awissu 2021. F'dawn iz-zewg appelli, il-Qorti tal-Appell, rinfaccjata bi prezz li kien 17.58% inqas mill-istima moghtija mill-Awtorita' Kontraenti qieset li din id-differenza *"hija sostanzjali bizzejjed biex tobbliga lill-awtorita' kontraenti titlob minghand l-oblatur it-taghrif imsemmi fir-reg. 243(1) tal-L.S. 601.03 u taghmel l-ezercizzju li jrid dak ir-regolament qabel tiddeciedi taghtihx il-kuntratt"*.

6. Fil-fehma tal-appellanti, dan kollu ma sarx jew ma sarx korrettement u ghalhekk, l-Awtorita' Kontraenti naqset fl-ezercizzju tal-obbligi imposti fuqha mil-ligi meta ggudikat li Adi Associates Environmental Consultants kellha titqies bhala l-offerent rakkomandat.

Il-Kumitat Evalwattiv ma haddimx <u>il-kriterju ghall-ghoti</u> tal-kuntratt korrettement

7. Minn qari tal-ittra mibghuta lill-appellanti tas-7 ta' Dicembru 2023, jirrizulta li, ghal numru sostanzjali ta' rekwiziti teknici, diversament ghal dak li jghid id-dokument tas-sejha, il-Kumitat Evalwattiv iddecieda biss jekk kull oblatur kellux *"a good level of understanding as requested in the tender procurement document"* u ghalhekk kienx haqqu il-punti massimi. Salv ghal dawk fejn fl-Evaluation Criteria jinghad car u tond li hemm punti differenti moghtija ghal sottomissjonijiet specifici, jidher li l-Kumitat Evalwattiv ma ghamel "*grading*" tar-rekwiziti teknici tal-oblaturi kif rikjest mid-dokument.

8. Dan imur kontra l-principju baziku ta' procedura ta' BPQR. Minnha nfisha, li wiehed jissoddisfa l-*minimum requirements* ta' sejha msejsa fuq sistema ta' BPQR ma ghandha qatt tfisser li wiehed jottjeni *full marks*. Anzi, ghall-kuntrarju, il-Kumitat Evalwattiv kellu jadopera sistema fejn jalloka b'mod oggettiv serje ta' punti lil min jissoddisfa l-minimum requirements ta' kull kriterju tekniku, izda mbaghad, jalloka aktar punti, lil min jaghti *added value* jew lil min jaghti aktar minn dak rikjest.

9. Huwa mill-aktar evidenti li dan kollu l-Kumitat Evalwattiv ma ghamlux, u bhal donnu is-sejha, l-evalwazzjoni taghha, u l-aggudikazzjoni taghha, trasformawhom f'wahda li l-kriterju spicca biss dak tal-prezz.

10. Fid-decizjoni Case 1290 - CT2091/2018 moghtija fil-11 ta' April 2019, dan il-Bord, diversament kompost dwar sistema ta' BPQR jghid hekk: *"one must acknowledge that when establishing the benchmark for the "very good" and "exceptional", a form of comparison of offers must be made to determine the most advantageous offer and in this regard, such an offer is allocated the full marks."*

11. F'dan il-kaz, huwa evidenti li dan l-ezercizzju kif imsemmi mill-Bord fid-decizjoni hawn fuq citata, ma sarx. Di piu', fdan il-kaz appena citat, il-Bord ikompli jghid hekk:

in conclusion, this Board opines that:

a) the marks allocated for each offer were objectively established by the Evaluation Committee and reflected the "add ons" on the minimum Tender requirements, each Bidder offered, in a proportionate and consistent manner;

b) the marks awarded to the Appellants' offer were objectively allocated to what their offer included, when compared to the other competing Bids, so that, this Board finds no justifiable cause to deem otherwise;

c) the Tender Document specified in clear terms the full workings of the "Award Criteria" formula and in this respect, this Board confirms that the Evaluation Committee complied completely with the dictated terms.

12. Anke fil-Procurement Policy Note #08 tat-18 ta' Awissu 2014, mahruga mid-Directorate Policy

Development and Programme Implementation, dwar is-sistema ta' BPQR (gja' maghrufa bhala MEAT) inghad hekk:

STEP 3: Evaluation - Technical Offer

As can be noted from this example, after assessing the administrative compliance of the offers received, when evaluating technical offers, each evaluator awards each offer a score ***out of a maximum of 100 points in accordance with the technical criteria and any sub- criteria as outlined.*** *The aggregate final score is arrived at by calculating the arithmetical average of the individual final score of each evaluator.* ***Each evaluator must also list the strengths and weaknesses of each bidder for each criterion.***

13. Jidher bl-aktar mod car li l-Kumitat Evalwattiv dan ma ghamlux, u b'hekk il-procedura ta' BPQR giet konvertita fwahda li dak biss li kien jimporta kien il-prezz u xejn aktar.

Ghaldaqstant, ghar-ragunijiet premessi u ai termini tal-ligi, Openworkstudio titlob bir-rispett li dan il-Bord joghgbu:

(i) jiehu mizuri temporanji sabiex jipprevjeni milli ssir aktar hsara partikolannent, fost ohrajn billi jordna s-sospensjoni tad-decizjoni tal-Awtorita' Kontraenti tas-7 ta' Dicembru 2023

(ii) jordna li tigi mwarrba d-decizjoni li biha l-Awtorita' ghazlet lil Adi Associates Environmental Consultants bhala l-offerent rakkomandat.

(iii) jiddikjara li, fil-kors tal-evalwazzjoni tas-sejha mertu ta' dan il-kaz, il-Kumitat Evalwattiv naqas milli jsegwi numru ta' obbligi imposti fuqu legalment jew altrimenti, dawk li jemergu mid- dokument tas-sejha stess.

(iv) jordna li d-decizjoni tas-7 ta' Dicembru 2023 tigi revokata fis-shih u konsegwentement jordna li l-offerta terga tghaddi minn procedura ta' evalwazzjoni gdida, kompost minn kumitat evalwattiv gdid.

(v) salv kull provvediment li dan il-Bord jidhirlu xieraq u opportune.

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Alberto Miceli-Farrugia

LOMBARD

Lombard Bank Malta p.l.c.

Regulated by the Malta Financial Services Authority & Listed on the Malta Stock Exchange

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Printed by: MR ALBERTO MICELI FARRUGIA
Customer: MR ALBERTO MICELI FARRUGIA
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Transfer to Third Party (Transaction id: 1819275)
Transaction status:Unprocessed

Source account:	0144020157200 (EUR) Savings Account
Beneficiary account:	MT55MALT011000040001EURCMG5001H
Beneficiary Bank:	Central Bank of Malta - MALTMTMT
Beneficiary name:	Cashier Malta Government
Beneficiary address:	Dipartiment ta-Kuntratti Notre Dame Ravelin Floriana
Amount:	1,500.00 EUR
Instructed Currency:	Same as Source Account
Transfer Currency:	EUR
Charges:	domestic fees to payer, foreign fees to payee
Same Day Value:	No
Nature Of Payment:	Deposit on objection
Payment reference:	SPD2/2022/060

Charge information

Amount:	1,500.00 EUR
Estimated charges:	4.00 EUR
Total amount to be charged in account currency:	1,504.00 EUR

This transaction is not immediate and requires further processing. It may be delayed, not executed and/or incur extra charges in the event of missing, incomplete and/or inconsistent details.
NOTE: Payments may require supporting documentation. Until your submissions are received to the Bank's satisfaction, the payment will not be released and will be automatically cancelled after 3 days.