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8th February 2024

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

Dear Sir,

Re: SPD6/2023/026 - Tender for the Removal and Delivery of Old Buoys to TM stores and the Supply, Delivery, Installation and Maintenance of New Fairway Buoys at Xemxija for a Period of Three Years

I write for and on behalf of my clients Polaris Marine Services Co ltd (Tenderer ID 194311) .

Reference is made to the letter of the 30th January, 2024 by virtue of which my clients were informed by the Department of Contracts that “*although your offer was compliant, this procurement procedure is being cancelled in line with Article 18.3 of the General Rules Governing Tenders which states that cancellation may occur where this is not commercially feasible.*”

By means of the present my clients do hereby lodge an official objection from the said notice of cancellation in terms of law.

The reasons for this objection are being outlined hereunder.

1. Polaris Marine Services Co. Ltd (hereinfter referred to a ‘Polaris’) was selected as the Preferred Bidder for the Tender in caption. An appeal was then lodged by one of the economic operators who had participated in the tender process – Sammut Marine Ltd. The appeal was appointed for hearing on the 24th October, 2023 and



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in the course of the said hearing, the following minute was made by the Contracting Authority:

*“Dr John Refalo on behalf of Transport Malta declares that the Authority shall not be proceeding with the contract award envisaged by the tender SPD6/2023/026 and shall be taking steps **formally to revoke the award** and the tender within twenty (20) days from the revocation of the tender. The Authority no longer requires the service of the subject matter requested by the tender.”*

Subsequently, pursuant to the Contracting Authority’s minuted declaration, the PCRB delivered the following decision on the **3rd November, 2023** -

The Board concludes and decides that:

- a) Contracting Authority is formally to revoke the award and the tender within twenty (20) days from the revocation of the tender.*
- b) Directs that the deposit paid by the Appellant is reimbursed.*

Clearly the time-frame established in the Contracting Authority’s minute made in the course of the hearing of the 24th October, 2023 and, more importantly, established in the PCRB Decision of the 3rd November, 2023 has not been adhered to and consequently there is no longer the right to cancel the tender in question in view of the fact that cancellation was not effected within the established time-frame.

2. Article 18.3 of the General Rules Governing Tenders provides as follows:

“Cancellation may occur where:

- (a) the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;*
- (b) the economic or technical parameters of the project have been fundamentally altered;*
- (c) exceptional circumstances or force majeure render normal performance of the project impossible;*
- (d) all technically compliant tenders exceed the financial resources available;*
- (e) there have been irregularities in the procedure, in particular where these have prevented fair competition;*
- (f) the duration of the evaluation has exceeded the stipulated time limit in article 8 of General rules governing tendering.”*

Hence, contrary to what is stated in the DOC letter of the 30th January, 2024, there is no specific reason for a tender to be cancelled because it is *“not commercially feasible”*.



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The closest limb on which such reason may be appended is para: (d)
- *all technically compliant tenders exceed the financial resources available.*

In this regard, the following submissions are being made –

(A) There can be no doubt (at least it is hoped that there should be no doubt) that, prior to the issuance of the Tender, the Contracting Authority would have ensured that it does have the financial resources to be able to pay for the products / services which would be supplied / provided by the successful bidder. The financial bid submitted by Polaris is well within the parameters of standard industry pricing and hence the reason given at this late stage that the tender is not commercially feasible is clearly staged and constitutes a very feeble excuse to cancel the tender;

(B) The provisions of the quoted Article 18.3 of the General Rules Governing Tenders are not in line with the provisions of Regulation 15(1) of the Public Procurement Regulations (SL 601.03) which provides as follows:

“The Director has the right to cancel the award of a contract at any time during a call for tenders or quotations even after the recommended bidder has been decreed and the time establish to file and appeal before the Public Contracts Review Board has lapsed, if it is found that such a contract has been awarded either in breach of these regulations or the award has been made in such a way as to discriminate between economic operators.”

The tender not being “commercially feasible” is not provided for as a reason for cancellation under the Public Procurement Regulations which transpose into Maltese law the provisions of Directive 2014/24/EU of the European Parliament and of the Council of 26 February, 2014.

There can be absolutely no doubt that, in the hierarchy of laws, the Public Procurement Regulations prevail over the quoted General Rules Governing Tenders and therefore the reason quoted for cancellation in the letter of the 30rd January, 2024 is not a valid reason at law.

(C) No reasons were given to support and prove the reason given for cancellation, that is, that the tender is not commercially feasible. This is in clear and manifest violation of the provisions of Regulation 15(3) of the said Public Procurement Regulations (SL 601.03) which stipulate as follows:

“(3) The decision leading to the cancellation of a procurement procedure has to be made in writing and must include the findings and the reasoning that led to this decision”.

Simply to state that the tender is “not commercially feasible” does not satisfy the requirements established in the said Regulation 15(3).



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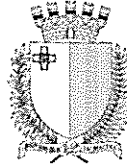
On a final note, it is to be underlined that Polaris has incurred considerable costs in connection with this tender, both at pre-tender stage and after it was selected as the preferred bidder, and certainly has no inclination to simply sit back and allow for the carpet to be swept away from beneath its feet in the obtaining circumstances.

For all of the above reasons, Polaris requests that the decision for cancellation of the Tender in caption as communicated to it by the Department of Contracts in virtue of the letter dated the 30th January, 2024 is **revoked** and consequently orders that the deposit paid by the appellant in connection with this objection is fully refunded.

Yours Truly,



Av. Noel Bezzina
45/9, Strait Street, Valletta



30th January 2024

**Polaris Marine Services Co ltd
Tenderer ID 194311**

SPD6/2023/026 - Tender for the Removal and Delivery of Old Buoys to TM stores and the Supply, Delivery, Installation and Maintenance of New Fairway Buoys at Xemxija for a Period of Three Years

Dear Sir/Madam,

Thank you for participating in the abovementioned procurement procedure. However, we regret to inform you that although your offer was compliant, this procurement procedure is being cancelled in line with Article 18.3 of the General Rules Governing Tenders which states that cancellation may occur where this is not commercially feasible.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on info.pcrb@gov.mt by **12:00hrs (noon) of Friday 9th February 2024** against a deposit of **€1,350**

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001 H
Bank Code	01100

The official recommendation for cancellation schedule 'Cancellation Notice' can be accessed on the website: www.etenders.gov.mt.

Yours sincerely,

SPD6
f/ Sectoral Procurement Directorate

Transfers - To Other Banks (SEPA)

Thu, 08 Feb 2024 09:16:51 GMT

For more information on SEPA transfers click [here](#).
You may print a copy of this information by clicking on the printer icon above.

CONFIRM DATA

Accounts	87840101 - Current account in Euro
Beneficiary's IBAN	MT55MALT011000040001EURCMG5001H
Beneficiary name	Cashier Malta Government
Amount	1350 EUR
Description for payer	Appeal SPD6/2023/026
Additional information	
To transfer	Immediately
Starting on	
Ending on	

CHARGES

SEPA Processing Fee	1.00 EUR
High Value SEPA Processing Fee	3.00 EUR
Total Amount To Be Debited	1,354.00 EUR

 YOUR REQUEST WAS REGISTERED (140498946)

Pending for Bank Approval. Your account will be debited once the payment is vetted by the Bank.