

**IN THE PUBLIC CONTRACTS REVIEW BOARD**

Today, 8<sup>th</sup> February 2024

**Letter of objection by Sultech & Co**

Humbly submits:-

**Sultech & Co**, (P 1477), (hereinafter referred to either as the “*Objector*” or “*Appellant*”), (Tender ID 200924), of GGX803, New Street Off Jean De la Vallette Street, Xewkija, Gozo, whilst making reference to the above captioned call for Tenders, is hereby submitting a formal objection in relation to the same call for Tender. Thus, he **is availing of the right granted to him in virtue of Regulation 270 et. seq. of the Public Procurement Regulations (Subsidiary Legislation 601.03 of the Laws of Malta) - Public Procurement Regulations “PPR”, this following the objection lodged**

**Facts pertinent to this Case are the following:**

On 13/10/2023, the Contracting Authority, namely the Qala Local Council, issued a tender for the collection of bulky refuse in an environmentally friendly manner. The criterion for awarding the tender was the price.

The closing date for the submission of offers was on the 07/11/2023

By means of a communication dated 03/02/2024, the Objector was informed by the Contracting Authority of the following:

*“Thank you for participating in this procurement procedure. However, this Entity regrets to inform you that the procurement proposal submitted by your company was not the cheapest priced offer.*

*The procurement was recommended for award to [MJ and 000201075] for the amount of [14,535.60] excluding VAT, this being the cheapest priced offer satisfying the administrative and technical criteria.”*

The Objector feels aggrieved by the decision of the Contracting Authority and is availing himself of the right granted by law to file an objection regarding the aforementioned communication, together with the required deposit of four hundred euros (€400).

## **Objection**

The Objector respectfully submits to this Honourable Board that the evaluation and awarding of the tender were not conducted in accordance with the law.

In light of the aforementioned issues, the appellant raises the following grievances in this Objection:

### **The Preferred Bidder's bid is not compliant**

The Objector refers to the General Rules Governing Tenders, version 4.9, issued by the Department of Contracts in July 2023, specifically to Clause no. 1.1, which reads as follows:

*By submitting their tenders, tenderers are accepting that this procedure is regulated by Maltese Law, and are deemed to know all relevant laws, acts and regulations of Malta that may in any way affect or govern the operations and activities covered by the tender and the resulting contract.*

According to the requirements outlined in the Tender Dossier and the related documentation, bidders were required to provide/have a main vehicle and a backup vehicle to carry out the required services. The Waste Carrier must use vehicles approved by the Local Council and duly registered by the Environment and Resources Authority (ERA) or any other relevant authority at the time of award/contract duration. Furthermore, bidders were required to prove that vehicles have been duly registered with the ERA to transport bulky refuse (main vehicle and backup vehicle).

The ERA fully publishes the list of all Authorised Waste Carriers in Malta & Gozo. The last accessible list was updated on 15/01/24.<sup>1</sup>

The name of the Preferred Bidder does not feature on the said list, implying that the vehicles provided by the preferred bidder are not registered in the name of the preferred bidder.

That the Tender Dossier stipulates that a Bidder shall "*Provide data concerning subcontractors and the percentage of works to be subcontracted. Any subcontractor proposed and disclosed at this stage shall be evaluated in line with the Exclusion and Blacklisting Criteria as per section 7 (B) of these Instructions to Tenderers. Furthermore, if the sub-contractor is relied upon by the Contractor to meet the standards established in the selection criteria, apart from submitting the relevant commitments in writing, such reliance will be evaluated to verify its correctness and whether in effect these criteria are satisfied.*"

In this regard, it is pertinent to refer to the ECJ judgement C-176/98 in the names “*Holst Italia*”, [1999] ECR-I-8607, where the European Court of Justice stated the following:

*“29. Thus, where, in order to prove its financial, economic and technical standing with a view to being admitted to participate in a tendering procedure, a company relies on the resources of entities or undertakings with which it is directly or indirectly linked, **whatever the legal nature of these links may be, it must establish that it actually has available to it the resources of these entities or undertakings which it does not itself own and which are necessary for the performance of the contract ...**”*

Therefore, firstly, the Contracting Authority had to confirm whether it had requested the Preferred Bidder to confirm and/or outline how it intended to fulfil the tender requirements with the involvement of a third party. This query is intrinsic to the requirement outlined above.

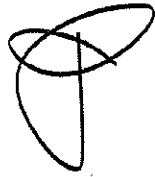
Secondly, the Contracting Authority was duty-bound to assess and evaluate such a third party *“in line with the Exclusion and Blacklisting Criteria as per these Instructions to Tenderers. Furthermore, if the sub-contractor is relied upon by the Contractor to meet the standards established in the selection criteria, apart from submitting the relevant commitments in writing, such reliance will be evaluated to verify its correctness and whether in effect these criteria are satisfied.”*

Thirdly, Following the considerations previously outlined, it is incumbent upon the Contracting Authority to rigorously ensure compliance with legal standards as mandated by the General Rules Governing Tenders. This includes a thorough examination of the legality of the engagement between the Preferred Bidder and any third party. Such scrutiny is essential, especially in light of specific regulations governing the sector, notably Subsidiary Legislation 499.68 of the Laws of Malta, which pertains to Light Passenger Transport Services and Vehicle Hire Services Regulations. This legislation mandates strict compliance with prescribed standards for vehicle leasing arrangements. It is pertinent to highlight, without delving into specifics at this juncture, that the nature and legality of the relationship between the Preferred Bidder and third parties warrant careful evaluation to ascertain adherence to the stipulated regulatory framework. Such considerations will further result during the hearing of this case.

**In light of the foregoing, and considering what will be presented at the hearing, it is the Objector's considered opinion that the preferred bidder's offer fails to comply with the tender requirements and that the Contracting Authority did not ensure strict adherence to the law and the tender specifications.**

In view of the above, and whilst reserving the right to make further submissions and present further evidence (especially in view of the fact that Objector has requested further information), the appellant humbly requests this Honourable Board:

1. to accede to this objection / appeal and find in favour of the objector, in that it shall reverse the decision of the Contracting Authority
2. to declare the preferred bidder's offer as technically non-compliant
3. to order anything else which is conducive and necessary for the execution of the foregoing requests
4. to order the full reimbursement of the deposit paid by the objecto



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**APS BANK  
Plc**Registration  
Number:  
Address:C 2192  
APS Centre, Tower Street B'Kara  
BKR 4012Transaction  
Reference:  
Printed on:  
Printed By:210854741  
20:1508.02.2024  
MARION  
BUTTIGIEG**Transfer to third party**Debit account: **39307710012**Status: **Authorized**

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**Currency:**

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Amount: 400.00

Credit account: MT55MALT011000040001EURCMG5001H

Payment date: 08.02.2024

Payment reference: QLLC/08/2023

Fee: 0.00

Charges: SHA

Sort code:

Swift code: MALTMTMTXXX

Beneficiary bank name: CENTRAL BANK OF MALTA

Beneficiary bank address line 1: Castille Place

Beneficiary bank address line 2: Valletta

Beneficiary bank country:

Beneficiary name: Cashier Malta Government

Beneficiary address line 1: Malta

Beneficiary address line 2:

Beneficiary zip code:

Beneficiary city: Malta

Beneficiary country:

Intermediary bank swift code: