



Public Contracts Review Board
Department of Contract
Notre Dame Ravelin
Floriana



8th February 2024

Dear Sirs,

Re: Tender for the Upkeep And Maintenance Of Public Gardens And Soft Areas In Marsaskala Using Environmentally Friendly Products And Practices – Reference KLM2023/08 (the “Tender”)

We have been instructed by Antoine Xerri (the “Appellant”) to file an appeal in terms of Regulation 270 of the Public Procurement Regulations (subsidiary legislation 601.03) (the “PPR”) in connection with the above-captioned tender.

The appellant is aggrieved by the Contracting Authority’s proposed award of the Tender to the Recommended Bidder and this for the following reasons:

- A. **First Ground of Appeal: Unclear and Vague Reasons for Rejection.**
- B. **Second Ground of Appeal: Appellant’s Offer is Technically Compliant.**
- C. **Third Ground of Appeal: Appellant’s Offer is most price Competitive.**

Section 1 – Factual Background

1. On 7th November 2023, Marsaskala Local Council (the “the Contracting Authority”) issued a call for the above mentioned tender (hereinafter the “Call for Tenders”), which was published on the ePPS and Government Gazette.
2. The Tender aims to engage services related to the Cleaning, Upkeep and Maintenance of Parks and Gardens, which fall within the responsibility of the Contracting Authority (hereinafter the “Scope of Works”)
3. The estimated procurement value for the Call for Tenders is that of **EUR 236,250** exclude Value Added Tax, with a time-limit for the execution of the contract of **four (4)** years from date of contract signature.
4. In accordance with Clause 6 of Section 1 of the Tender Dossier, the sole award criterion is the price, with the contract awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.
5. The appellant submitted its offer proposal within the procurement procedure and within the stipulated timeframe (the “Offer”), with a Financial Offer of EUR 141,200
6. On 26th January 2024, the Appellant received a letter of Rejection from the Contracting Authority (hereinafter “Letter of Rejection” and hereby marked as **Dok A**). In this letter, the Appellant was informed that its offer was rejected as follows:

“We regret to inform you that your tender (offer number 202420) submitted before the closing date of 5th December 2023 has been rejected by Marsaskala Local Council.

The criteria for award was the cheapest offer which was compliant with the administrative and technical requirement of the tender requisites (...) Your offer was deemed to be technically non-compliant”

7. The Appellant was also informed that the Tender was to be awarded to Callus Garden Centre Ltd (the "Recommended Bidder") for the sum of EUR 168,000, excluding VAT.
8. The Appellant feels aggrieved by the Contracting Authority's decision, and is hereby submitting his objection within the stipulated time frame together with the relative payment (attached as **Dok B**).

Section 2 – Grounds of Appeals

A. First ground of appeal – Unclear and Vague Reasons for Rejection

1. Without prejudice to further submissions on the merits, the appellant humbly submits that the Rejection letter is not sufficiently clear to allow the Appellant to
 - a. Understand the reasons for its Offer to be rejected
 - b. Have the necessary information to file its appeal from said decision within the timeframes stipulated by the PPR.
2. Article 2a(2) of the Remedies Directive (as transposed in Regulation 272 of the PPR) provides that the award decision must be accompanied by a "summary of the relevant reasons as set out in Article 55(2) of the Directive 2014/24/EU, subject to Article 55(3) of that Directive". *[emphasis by appellant]*
3. That by virtue of this assertion, the Rejection Letter fails to provide a comprehensive summary with relevant reasons as to why the Appellant's application was technically not compliant. The natural question would be; why and how was the application not technically compliant?
4. Therefore, the reasons, or more so the lack of reasons, contained in the Rejection Letter do not provide the Appellant with clear explanation as to why its Offer was deemed "non-compliant" creating a situation where the equality of arms and the right to appeal are seriously tarnished.
5. In view of lack of clarity of the Rejection letter, the rights of the Appellant have been breached. In fact, to this very instance, the appellant remains deprived of essential information which are effective exercise of is right at law.

6. That by way of conclusion and for the sake of clarity, the Contracting Authority, contrary to this Board's numerous decisions explaining the correct procedure, failed to give any relevant detail on the adjudication as required by law. To obtain any sort of reply the Appellant had to go through a lot of hassle and various emails which remained un-replied to up until a few days before the deadline for filing a notice of objection. Bottom line, the reasons for rejection were still not outlined in the rejection letter as required by local legislation on the matter.

B. Second ground of appeal – Appellant's Offer is technically compliant

1. Without prejudice to the foregoing, the Appellant contends that its Offer was deemed technically compliant as evidently clear in the documentation submitted by the Appellant which in fact satisfies all administrative and technical requirements which were stipulated in the tender.
2. That after various attempts by the Appellant to obtain reasons for rejection, the Contracting Authority provided as follows as to the rejection justification titled "Waste Handling Permits of Service vehicles and respective log books";

'A clarification was requested and bidder replied however the reply did not all documentation which is required to satisfy the tender requirements. The bidder appears to have commitment of use of only a service vehicle which does not have the ERA waste handling permits required in order to be able to carry out all the works included in the scope of the tender. Bid is technically not compliant.'

3. That first and foremost the Contracting Authority seems to emphasise that the bidder, *qua* Appellant, only appears to have commitment of only one service vehicle. Further to this, an in-depth analysis of the Tender Dossier and requirements doesn't provide for the necessity that the Tender Applicant and prospective Recommended Bidder possess more than one service vehicle. In fact, there is nowhere stipulated the number of vehicles that should be committed to this contract.

4. Moreover, the Appellant provided the Contracting Authority, even after the request for Clarification was sent, documentation which shows multiple service vehicles which fit the tender requirements and the technical specifications, particularly those found in Article 4.2.19 of the Terms of Reference.
5. Point of fact, vehicle with registration number RXC002 possesses the ERA waste handling permits bearing permit numbers GBR/12/03803/23 and GBR/12/03804/23, a valid insurance and also good standard of emissions as proven by the copy of the logbook provided to the Contracting Authority.
6. That Article 4.2.10 of the Terms of Reference and Tender Dossier vaguely stipulate that the emission requirements should be of Euro 4, the service vehicles should also be covered with the relevant waste handling permit and duly insured as required by law and that the service vehicles should have the carrying capacity of at least 1.5 tonnes. All these requirements were substantially fulfilled by the Appellant as shall be explicated further below.
7. That a look at the logbooks of all vehicles owned and tendered by the Appellant prove that the emission requirements of Euro 4 are well satisfied.
8. That, furthermore, Article 4.2.10 mentions the requirement of having the relevant waste handling permit. An emphasis by the Appellant is being made on the use of the singular word permit denoting a single permit. In furtherance to this, the Contracting Authority fails to accurately specify and denote what this relevant waste handling permit is and the Appellant humbly contends that service vehicle bearing registration number RXC002 has indeed waste handling permits bearing numbers GBR/12/03803/23 and GBR/12/03804/23 which cover the scope of the Tender Dossier comprehensively.
9. That, moreover, the Appellant also makes reference to Article 4.2.18 titled Permits in the Tender Dossier whereby there is a clause which enables the Contractor that 'Other permits required for the implementation of other services shall be applied for and obtained by the Contractor'. The Appellant emphasises that the tender document, rejection letter or the clarifications requested did not dictate which waste handling permit which the prospective bidders had to possess.

10. In line with this and without prejudice to the aforementioned submissions, even if, for the sake of the argument, the Appellant did not possess that relevant waste handling permit, the aforementioned clause in article 4.2.18 enables the contractor to apply for said permit which would be required for the implementation of other services. The crux of this is that had the Appellant not have any waste handling permit at time of submission of application, rejection on the basis of not being technically compliant would be a valid one, however here we have a situation where the Appellant had waste handling permits at the time of submission and any missing waste handling permits required for the implementation of other services could have been applied for and obtained by the Contractor (by virtue of article 4.2.18).

11. That after various attempts by the Appellant to obtain reasons for rejection, the Contracting Authority provided as follows as to the second rejection justification titled "Key Expert Form";

'Clarifications were sent and bidder replied, one of which was not answered satisfactorily since bidder did not submit the copy of qualification certificates of the key expert. Bid is technically not compliant.'

12. That the Appellant respectfully and humbly submits that the key expert mentioned in his application possessed a License as Tree Specialist bearing Number 1024/21 issued in accordance to S.L 549.123 and was also valid on submission date. In line with this and in conjunction with the CV submitted, the qualifications were indeed presented because the license in itself is a representation that the individual went through the necessary qualifications required to obtain that license.

13. That the Appellant went the extra mile and provided the license document which clearly shows that the qualification certificates were indeed obtained because these resulted in the eventual license award of Tree Specialist.

C. Third ground of appeal – Appellant’s Offer is most price competitive.

1. In view of the above and in reference to Clause 6 of Section 1 of the Tender Dossier, the appellant submits its view as its Offer to satisfy such criteria of being the most competitive price, which is EUR26,800 cheaper than the Recommended Bidder’s financial proposal.

THEREFORE, the Appellant humbly demands that his Honourable Board should:

- a. Preliminarily, declare that the Letter of Rejection sent to the Appellant is unclear and vague to the prejudice of the Appellant's rights to defend its position at law;
- b. Declare that the Contracting Authority's recommendation of the Tender to the Recommended Bidder is wrong and/or illegal and consequently quash that decision;
- c. Cancel and revoke the proposed award of the Tender to the Recommended Bidder;
- d. Cancel and revoke the Letter of Rejection sent to the Appellant and, if appropriate, declare that the Appellant's bid is fully compliant with all tender specifications;
- e. Do anything else that is conducive and/or necessary for the proper execution of the above requests
- f. Order the refund in full of the deposit paid by the Appellant.

Yours Sincerely,

Av. Mario Mifsud
Mifsud Advocates
245, Constitution Str,
Mosta



Av. Nicholas Mifsud
Mifsud Advocates
714, St. Joseph High Str,
Hamrun

← TRANSACTION DETAILS



Account **500 1879 5580**
SAVINGS ACCOUNT

Transaction Date **07/02/2024**

Amount **EUR -1,181.75**

Running Balance **EUR 3,146.58**

Details **SCT OUTWARDS**
cashier malta
goverment
EUR 1,181.75
Relation:
Administrative
Services
Reason: Other
REF:
2403709081158000 -
1719852830