

11<sup>th</sup> February 2024

Public Contracts Review Board  
Notre Dame Ravelin,  
Floriana,  
Malta

Carmelo Stivala Group [TID  
000189143]

Vs

[1] Malta Strategic Partnership  
Projects Limited; and

[2] Department of Contracts,  
for any interest it may have

MSPPP/01/2022

**Tender Name:** Request for Proposal (RFP) is for a works concession for the Regeneration and Design, Management, Operation, Maintenance and Transfer Back of the ex-Chalet (Sliema) site (the "Site") as a Superior Quality Catering and Entertainment Establishment.

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## REASONED LETTER OF OBJECTION

Whereas, the **Malta Strategic Partnership Projects Limited** (hereinafter "**MSP**" and/or "**defendants**") issued a call Request for Proposal (hereinafter "RFP") for a works concession for the Regeneration and Design, Management, Operation, Maintenance and Transfer Back of the ex-Chalet site (hereinafter the "Site") as a Superior Quality Catering and Entertainment Establishment."

Whereas, Messrs. **Carmelo Stivala Group** (hereinafter "**Appellant company**") submitted a bid for this procedure;

Whereas, by means of a letter dated 31<sup>st</sup> January 2024, the Appellant company was informed that that its offer was being rejected, and the procedure cancelled:

*"Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the offer submitted by your company was not technically compliant.*

*I also regret to inform you that this tendering procedure is being cancelled in lined with Article 18.3(a) of the General Rules Governing Tenders"*

Whereas, the Appellant company feels aggrieved by such a decision, and is hereby submitting its objection within the stipulated time-frame and accompanied with the relative payment (copy of confirmation of payment enclosed as **DOC1**), in accordance with *inter alia* article 106 of Subsidiary Legislation 601.09, and this based on the following grievances:

1. **Wrong evaluation of the bidder's offer**

- 1.1 It is the view of the Appellant company, Carmelo Stivala Group, that its bid has been wrongly evaluated, in breach of *inter alia* the Public Procurement Regulations [S.L. 601.03]; Concessions Contracts Regulations [S.L. 601.09]; Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement [Directive 2004/18/EC]; the Procurement Policy Note #40, and the RFP document itself;
- 1.2 It is the view of the Appellant company that, in accordance with the principles established by this Honourable Board and re-affirmed by the Court of Appeal, that wheresoever it transpires there are grave reasons to disturb the decisions taken by the evaluation committee, than the evaluation of the bids have to be done afresh, by a newly constituted evaluation committee;
- 1.3 The latter has been confirmed *inter alia* in the judgment in the names of **Cherubino Limited versus Id-Direttur [Generali] tal-kuntratti et. '**, wherein it was held that:

*“... din il-Qorti tosserva illi fuq materja ta' apprezzament tekniku bhala regola generali u sakemm ma jintwerewx ragunijiet gravi u konvincenti ma' tiddisturbax apprezzament maghmul minn bord tekniku”*

[added emphasis]

- 1.4 *A contrario sensu*, wheresoever it is shown that there are grave and sufficient reasons that the evaluation committee has failed to consider and/or adhere to certain principles, than this Honourable Board shall intervene and order the re-evaluation of the bids;
- 1.5 The reasons for the wrong evaluation are as follows:

1.5.1 **Wrong interpretation of criteria section 3 – b. Upper Management engaged to operate the establishment**

- 1.5.1.1 The appellant company contends that the contracting authority, through the evaluation committee, wrongly interpreted the criteria in section 3 – b. Upper Management engaged to operate the

establishment, and this in particular since no mandatory document was required to be submitted;

1.5.1.2 Reference is hereby being made to tender document page 23, wherein *inter alia* it held that:

<p>The Food &amp; Beverage Manager will have a minimum of MQF level 5 (or equivalent) qualification or a minimum of 3 years' experience working in an The Head Chef has a minimum of MQF level 5 (or equivalent) qualification or a minimum of 3 years' experience working in an establishment of a similar class (2 points)</p> <p>If the proposed personnel will have higher qualifications and higher years of experience than above, 6 points shall be allotted instead.</p>	<p>The Head Chef has a minimum of MQF level 5 (or equivalent) qualification or a minimum of 3 years' experience working in an establishment of a similar class (2 points)</p> <p>If the proposed personnel will have higher qualifications and higher years of experience than above, 6 points shall be allotted instead.</p>
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[extract from the tender document page 23]

1.5.1.3 By way of comparison, wheresoever the tender document wanted specific documents, it was clear and unequivocal – A comparable situation is the part relating to Key Experts, wherey the tender document in clear and ambiguous terms held that:

<p>For the avoidance of doubt, the tenderers shall be submitting the following documents key expert:</p> <ul style="list-style-type: none"> <li>- Duly filled in Key Expert Form<sup>(Note 2)</sup></li> <li>- Self-Declaration regarding Public Employees<sup>(Note 2)</sup></li> <li>- <i>Curriculum Vitae</i> for each Key Expert<sup>(Note 2)</sup></li> </ul>
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[extract from the tender document page 12]

1.5.1.4 Besides noting the enormous contradiction in the tender drafting, notably that CVs, Declaration and Key Expert Forms, all of which are of a Note 2 status, whilst the criteria for non-key experts being of Note 3 status, the requirement for Food & Beverage Manager and for the Head Chef was at best ambiguous since no specific documentation was

required to be submitted at this stage – and affording “0” points as per hereunder is not only draconian, but a wrong interpretation of the criteria, based on a requirement which required nothing other than a confirmation – a confirmation which has been provided and re-affirmed through the clarification reply as follows:

*“Whilst confirming in its entirety the proposal, it is hereby additionally confirmed that the persons engaged for the contract are in full compliance with the minimum mandatory requirements, both for Upper management and for human resources management criteria.”*

1.5.1.5 It is thus the submission of the appellant company that, insofar as the average technical score for the Upper Management engaged to operate the establishment shall be of “2”, since the economic operator confirmed adherence with the minimum amount, and not as indicated in the extract below:

	Maximum	Average Technical score
<b>b. Upper Management engaged to operate the establishment</b>	12	0

[extract from the rejection letter page 4]

1.5.2 *Criteria section 3 – c. Human resources management – training measures specified*

1.5.2.1 The appellant company contends that training measures have been provided, albeit not extensively, and admittedly not lengthy, but in any case it provided enough and sufficient information to confirm that training shall be provided and thus *de minimis* obtain a minimum score;

1.5.2.2 It is unfortunate that no clarification has been made in relation to this reason for rejection [vide section re: failure to clarify hereunder], which clarification would have specifically confirmed the above;

1.5.2.3 Reference is hereby being made to appellant company’s submission, in particular to:

- 1.5.2.3.1 Page 7 – dealing with training to operate equipment
- 1.5.2.3.2 Page 10 – dealing with training to minimise risks and accidents
- 1.5.2.3.3 Page 166 – dealing with training and certifications as part of control measures
- 1.5.2.3.4 Page 183 – dealing with training as part of a Health & Safety plan

1.5.2.4 Whilst one would understand why a minimum scoring will be afforded in relation to the submission of the appellant company in relation to this criteria, however affording a “0” scoring is definitely not proportionate nor adequate enough, and thus it is the submission of the appellant company that the scoring as per hereunder is inadequate and thus a newly constituted evaluation committee, will be in a position to confirm that the “0” scoring is not justified;

	Maximum	Average Technical score
<b>c. Human resources management</b>	8	0

[extract from the rejection letter page 4]

1.5.3 Breach of the tender document – “Add-on criteria”

1.5.3.1 In breach of the self-limitation principle, the evaluation committee has failed to adhere to principles enunciated through the tender document, and this to the detriment of the appellant company;

1.5.3.2 This Honourable Board has many-a-time confirmed and made its own the principles established in the case in the names of **Nexans France v. European Joint Undertaking for ITER and the Development of Fusion Energy (T415/10)**<sup>2</sup>, in particular,

*“It must be borne in mind at the outset that where, in the context of a call for tenders, the contracting authority defines the conditions which it intends to impose on tenderers, it places a limit on the exercise of its discretion and, moreover, **cannot depart from the conditions which it has thus defined in regard to any of the tenderers without being in breach of the principle of equal treatment of candidates.** It is therefore by reference to the principles of self-limitation and respect for equal treatment of candidates that the Court must interpret the tender specifications.”*

[added emphasis]

1.5.3.3 The tender document distinguished between “add-on criteria” and “mandatory criteria”, and for add-on criteria it held that a minimum of 1% shall be allotted, as follows:

*“For Add-on criteria, the scoring shall take place across a range of points from ‘1%’ to 100%. The submissions will be evaluated in terms of appropriateness and relevance of the proposed approach with a conciseness, internal coherence and with a level of detail. **The minimum score that can be allotted for such criteria is 1% and thus the bid shall not be disqualified.**”*

1.5.3.4 In breach of the above condition, the contracting authority, through the evaluation committee allocated ‘0’ points on multiple occasions for add-on criteria, thus breaching the tender document, as follows:

	Maximum	Average Technical score
Add on criteria	5	0
<b>b.</b> <b>Alternative Energy Generation</b>		

[extract from the rejection letter page 3]

	Maximum	Average Technical score
Add on criteria	10	0
a. The strategy clearly outlines a plan which will be implemented within the operations of the establishment leading to the attainment of quality assurance certifications or equivalent		

[extract from the rejection letter page 4]

1.5.3.5 The above confirms that, the evaluation of the bid by the appellant company has not been done in accordance with declared conditions, and thus the evaluation committee acted in breach of the self-limitation doctrine – when this breach is coupled with all other breaches mentioned in grievance number 1, it is amply clear and sufficiently proven that there are grave and sufficient reasons to warrant a re-evaluation of the bids;

1.5.4 *Breach of Procurement Policy # 40*

1.5.4.1 Reference is hereby being made to the Department of Contracts Procurement Policy number 40 which sets out an obligation on the part of the Evaluation committee to ensure that “*ambiguous, contrasting or not sufficiently explicit and clear*” documentation presented by a tenderer are clarified and explained.



1.5.4.2 In clear and unambiguous terms, the policy states that,

*“In the eventuality that it transpires that the submitted information / documentation is or appears to be ambiguous, contrasting or not sufficiently explicit and clear, Contracting Authorities / Entities, in their capacity as Evaluation Committees, shall request the concerned Economic Operators to clarify the necessary information / documentation, within the appropriate Time Limit.”*

*[added emphasis]*

1.5.4.3 The same principles have been confirmed by multiple decisions, such as the case in the names of **Tideland Signal Ltd vs Commission of the European Communities (Case T0211/02)**<sup>3</sup>, whereby it was held that:

*“In response to the Commissions’ argument that its Evaluation Committee was nevertheless under no obligation to seek clarification from the applicant, the Court holds that the power set out in section 19.5 of the Instructions to Tenders must, notably in accordance with the Community law principle of good administration, be accompanied by an obligation to exercise that power in circumstances where clarification of a tender is clearly both practically possible and necessary*

*While the commission’s evaluation committees are not obliged to seek clarification in every case where a tender is ambiguously drafted, they have a duty to exercise a certain degree of care when considering the content of each tender. In cases where the terms of a tender itself and the surrounding circumstances known to the Commission indicate that the ambiguity probably has a simple explanation and is capable of being easily resolved, then, in principle, it is contrary to the requirements of good administration for an evaluation committee to reject the tender without exercising its power to seek clarification.”*

*[added emphasis]*

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<sup>3</sup> See also *Antwerpse Bouwvereniging NV vs European Commission* [10<sup>th</sup> December 2009] [Case T-195/08] 4361 E info@dalliparis.com  
187, MARINA SUPPLIES, SUITE 11, MARINA STREET, MELTA PLAZA 041 MALTA T +356 2122 4361

- 1.5.4.4 In the case under review, no clarification request has been made in relation to the training measures, which clarification would have provided the necessary confirmation and provided the needed information as to how the requirement has been addressed through its original submission [see supra for further explanation];
- 1.5.4.5 The failure by the evaluation committee is grave and sufficient enough, and reaches the expected level, to spur a re-evaluation – and this since a right incumbent on the economic operator to address the matter at evaluation stage, has been suppressed by the evaluation committee itself – this failure has usurped the rights, or part thereof, of the appellant company for an effective evaluation by the reviewing committee;

2. **Selection versus Award criteria: Criteria for exclusion**

- 2.1 All procurement procedures involve a twofold set of criteria, i.e. [a] the Selection/Qualification/Eligibility criteria; and [b] Award criteria -

By way of definition, Selection/Qualification/Eligibility are such which are mandatory without which the economic operator cannot be considered for award, on their part, Award Criteria are those which are either based on price only or on a ratio system, known as *best price quality ratio*;

- 2.2 **Professor Sue Arrowsmith** in her book, '*The law of Public and Utilities Procurement: Regulation in the EU and UK Volume 14*', *inter alia* states that:

*'The jurisprudence of the ECtHR has emphasised that these two processes are distinct. This means that in some respects different rules govern the two processes, so that they must thus be treated a conceptually distinct. For example, some criteria can be used for award criteria, but not qualification/selection criteria ...'*

- 2.3 Likewise, the European Court of Justice, in the case in the names **Gebroeders Beentjes BV versus State of the Netherlands**, held that,

*'the examination of the suitability of contractors to carry out the contracts to be awarded and the awarding of the contract are two different operations*



*in the procedure for the award of a public works contract.*

- 2.4 Having established the principles, it is opportune to verify the manner in which this RFP, distinguished between selection and award criteria. In particular the RFP in provision 5.1 states that:

*5.1 The concession will be awarded to the tenderer submitting the proposal with the best price quality ratio and which is administratively and technically compliant.*

- 2.5 It is thus inconceivable, how and why the tender used criteria which are:
- 2.5.1 An award criteria
  - 2.5.2 An award criteria relating to the performance of the contract
  - 2.5.3 An award criteria which does not relate to the main objective of the tender [main objective is works concession, the operation is a mere right of exploitation]
  - 2.5.4 An award criteria which does not have a significant impact on the performance on the tender [vide article 67 Directive 2004/18/EC]

To exclude the economic operator, as opposed to, using the award criteria to create a scoring and a final grading between the different economic operators [one submission in this case];

- 2.6 The appellant company has successfully satisfied the selection criteria, has provided all the necessary information, and nonetheless the contracting authority excluded it on an award criteria [which should have never been designated as mandatory, and in any case, they should never have as a consequence the disqualification of the bidder – eligibility criteria are to be assessed solely through selection criteria and not through award criteria];
- 2.7 For avoidance of doubt, the point hereby being made is that award criteria are there to create a ranking between eligible economic operators and not to lead to any exclusion whatsoever. It is thus the submission of the appellant company that its exclusion on the basis of award criteria, is not permissible, nor proportionate [see grievance hereunder], and definitely not in accordance with good procurement governance;

3. Criteria 3 not sufficiently related to the scope of the tender

- 3.1 Directive 2004/18/EC, in article 67, clearly creates an obligation on the part of the contracting authority to create criteria which are “**linked to the subject-matter of the public contract in question**”, and that any criteria relating to “**qualification and experience of staff**” can only be employed if, “**the quality of the staff assigned can have a significant impact on the level of performance of the contract**”

[added emphasis]

- 3.2 In particular, article 67<sup>5</sup> of the Directives states the following:

2. The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, **linked to the subject-matter of the public contract in question**.

Such criteria may comprise, for instance:

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- (b) organisation, qualification and experience of staff assigned to performing the contract, **where the quality of the staff assigned can have a significant impact on the level of performance of the contract;**

- 3.3 Now applying the above principles to the RFP under review, ones establishes that this procurement is a “works concession”, and this as confirmed through:

**FIRSTLY** The tender document name is clear that this is a “... **works concession** for the *Regeneration and Design, Management, Operation, Maintenance and Transfer Back of the ex-Chalet (Sliema) site as a*



Superior Quality Catering and Entertainment Establishment<sup>6</sup>”.

**SECONDLY** The tender document additionally states that, “The Tenderer that is awarded the **works concession** will be entrusted with the execution of works consisting in the regeneration (including design) and continued maintenance of the Site as a Superior Quality Catering and Entertainment Establishment and in consideration for which that Tenderer will be granted the right to exploit the works carried out through the operation of the Site as a Superior Quality Catering and Entertainment Establishment.”

**THIRDLY** Finally, it makes it clear that, “This Procurement Procedure is regulated by the **Concession Contracts Regulations (S.L. 601.09)**.”<sup>7</sup>”

- 3.4 It is thus clear that the main objective of this procurement is the works concession, which by its very definition excludes from the scope of the procurement the operation, and this by transferring the full risk of operation to the economic operator, which risk involves the exploitation of the works carried out – thus the operation of the site;
- 3.5 The above stated is also confirmed through the Legislation, as well as the tender document, as follows:

*“The award of a works or services concession shall involve the transfer to the concessionaire of an operating risk in exploiting those works or services encompassing demand or supply risk or both. The concessionaire shall be deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession. **The part of the risk transferred to the concessionaire shall***

<sup>6</sup> Tender document provision 1.2 – page 4

<sup>7</sup> Tender document – provision 1.9

*involve real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible<sup>8</sup>;*

[added emphasis – S.L. 601.09]

*The Tenderer that is awarded the works concession will be entrusted with the execution of works consisting in the regeneration (including design) and continued maintenance of the Site as a Superior Quality Catering and Entertainment Establishment and in consideration for which that Tenderer will be granted the right to exploit the works carried out through the operation of the Site as a Superior Quality Catering and Entertainment Establishment. The Tenderer that is awarded the works concession will bear the operating risk in exploiting such works carried out<sup>9</sup>.*

[added emphasis – the tender document]

- 3.6 It is thereby clear that the criteria in section 3 are not sufficiently linked to the subject-matter of the request for proposals [as operation is intrinsically outside the scope of the procurement] and more importantly, the experience of the Food & Beverage manager and the Chef [non key experts], do not have a significant impact on the level of performance of the contract – this renders Criteria 3 in breach of article 67 of Directive 2014/24/EU;
- 3.7 Thus and thereby, and without prejudice to the above mentioned grievances, and exclusion on criteria which from the outset are breach of the regulations, is not just absurd but worst still illegal!

**4. Criteria as contract performance conditions**

- 4.1 On a strictly without prejudice basis, the criteria in section 3, are all contract performance criteria, and thus they should not be criteria which lead to an exclusion of an economic operator;
- 4.2 In a judgment in the names of **Joe Micallef & Son Express Skip Services Ltd v. Id-Direttur tal-Anzjani u Kura fil-Komunita**<sup>10</sup>



DALLIPARIS  
ADVOCATES

*“Inoltre, il-ligi trid li min ikun involut fi trasport ta’ merkanzija perikoluza jkollu imqar persuna wahda li jkun konsulent bic-certifikat DGSA. Dan ifisser li biex l-appellat Saviour Mifsud ikun konformi mal-ligi jrid jizgura li jahtar konsulent tas-sigurta’ ghat-trasport li jkollu dan ic-certifikat. Mhux mehtieg li dan Saviour Mifsud personalment ikollu dan ic-certifikat, izda li jahtar konsulent b’din il-kwalifika. Din kwistjoni, pero’, li tolqot l-esekuzzjoni tal-kuntratt, u kif intqal mill-Qorti Suprema tal-Kanada fis-sentenza **Double N Earthmovers Ltd. v. Edmonton (City)**, deciza fil-25 ta’ Jannar, 2007 (kaz 2007 SCC3), li kienet tikkoncerna wkoll garr ta’ skart, “to impose a duty on owners to investigate whether a bidder will comply with the terms of its bid would overwhelm and ultimately frustrate the tender process by creating unwelcome uncertainties. ... **Whether or not the bidder is at the time of tender, capable of performing as promised is irrelevant in the light of the bidder’s legal obligation to do so once its bid is accepted.**”*

*[added emphasis]*

- 4.3 It is thus incomprehensible how matters relating to the performance of the contract, are taken into account by the evaluation stage!
- 4.4 So much are they matters relating to the performance of the contract, that for Key Experts, the RFP states that, “*The Successful Tenderer shall, upon the award of the contract, provide a scanned copy of all related certificates and warrants (if applicable) for each Key Expert*” – Ironic as it might sound, the expectation of the evaluation committee was that for non-key experts the documents were to be submitted at tendering stage [something which the appellant committee forcefully rebuts, since the RFP did not state this];
- 4.5 In line with settled judgments, performance of a contract should not fall within the competence and scope of the evaluation committee, in particular when the risks of such performance is fully absorbed by the economic operator and not the contracting authority!

5. **Proportionality**

- 5.1 Without any admission of non-compliance with the tender specifications, when one considers the scope of the tender, the magnitude of the project, the risk being fully assumed by the economic operator, the fact that no other economic operator participated in the procurement procedure, and the fact that the alleged non-compliance is related to contract performance, on the basis of proportionality the sanction should not and cannot be exclusion of the economic operator!
- 5.2 The principle of proportionality, has always been interpreted as a principle which cannot create an imbalance between the rights of the entity invoking it and the rights of others – The principle which seeks to create a balance between competing interests!
- 5.3 In this case, the appellant company is a sole bidder, and thus whilst not expecting “a red-carpet treatment”, when coupled with the alleged breaches, the principle of proportionality has further relevance in the context under review;
- 5.4 The principle of proportionality was *inter alia* invoked by the Court of Appeal, in the case **Fire-tech Limited (C17901) u Cross Zlin AS (60715886) flimkien maghrufa u msejha bhala Firetech Cross TLS Joint Venture v. Dipartiment tal-Kuntratti**<sup>12</sup>, wherein it held that not all breaches of the tender specifications should lead to exclusion, in fact it held that:

*“Għalkemm huwa minnu illi, biex tiġħares it-trasparenza u ma jkunx hemm diskriminazzjoni, ir-regoli għandhom jitharsu b’mod uniformi u prevedibbli, u s-sogġettività u d-diskrezzjonalità jitnaqqsu kemm jista’ jkun, madankollu l-prinċipju ta’ proporzjonalità jrid illi mhux kull nuqqas ikollu l-istess konsegwenza, iżda din għandha tiddependi mill-gravità tan-nuqqas u mill-konsegwenzi tiegħu, partikolarment jekk jagħtix vantaġġ lil min jonqos jew johloqx preġudizzju lil oblaturi oħra”*

[added emphasis]

- 5.5 The same has been confirmed in the case in the names of **Cassar Petroleum Services Limited vs Gozo Channel Limited u d-Direttur tal-Kuntratti**<sup>13</sup>, wherein it was held that:



*“Għalkemm din is-silta hija dwar legizlazzjoni, tghodd ukoll għal mizuri ta’ implimentazzjoni u decizjonijiet mehudha tahtom. Din il-Qorti għalhekk tagħraf illi għandha qabel xejn tara x’inhu l-ghan ewlieni tas-sejha għall offerti ghax ma dan għandha tkejjel il-proporzjonalita tal-mizuri meduha biex jinkiseb. Fil-kaz tal-lum l-ghan ewlieni kien illi Gozo Channel tixtri n-nafta bl-orhos prezz.*

*Ma’ humiex sejr in jinkisru l-principji tat-trattament ugwali, l-principju ta’ għarfien reciproku u l-principju tat-trasparenza jekk, bla ma jinbidlu l-kundizzjonijiet tal-offerta nfisha, jinghata zmien biex jingieb id-dokument illi, forsi bi zvista ma tqeghidx mad-dokumenti tal-offerta, waqt li certament ma jkunx qiegħed jithares il-principju tal-proporzjonalita jekk offerta vantaggjuza tigi mwarba ghax ma’ ngibx dokument li għad jista jingieb”*

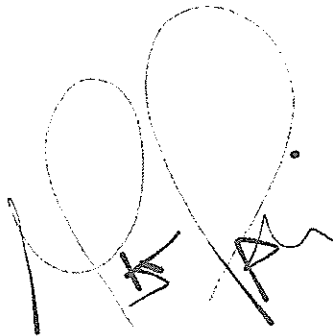
*[added emphasis]*

- 5.6 The similarities (whilst reiterating that it is compliant with the RFP) between the situation under review and the aforementioned Cassar Petroleum case are striking and the failure to exercise proportionality in this context, is disproportionate and definitely not in the best interests of anyone!
6. **Revocation of cancellation**
- 6.1 The appellant company contends and it shall prove that there are manifest errors within the evaluation [vide grievances 1 - 5], and thereby the bid by the economic operator should have never been rejected and consequently a re-evaluation is being requested [vide request iii hereunder];
- 6.2 As a consequence, the cancellation recommended by the contracting authority should also be revoked, since unlike what is declared, the bid of the appellant company is both qualitative and financially worthwhile, and thus cancellation is not justified;
- 6.3 Thus and thereby, the appellant company is by virtue of this appeal also seeking to impugn the recommended cancellation by the contracting authority;

**NOWTHEREFORE**, whilst reserving the right to put forward any other submissions, the Appellant company hereby requests:

- i. To order the defendant Malta Strategic Partnership Projects Limited, or whosoever, to revoke the rejection letter dated 31<sup>st</sup> January 2024;
- ii. Consequently, to order the defendant Malta Strategic Partnership Projects Limited, or whosoever, to revoke the cancellation of the RFP dated 31<sup>st</sup> January 2024;
- iii. To order the defendant Malta Strategic Partnership Projects Limited, or whosoever, to re-instate the offer of the appellant company, and to re-evaluate the bid by a newly constituted evaluation committee;
- iv. To do anything else which is conducive and necessary for the proper execution of the above requests;
- v. To refund the deposit paid in its entirety;

The Appellant company is hereby reserving the right to present further evidence, both orally or in writing, during the hearing.



**Avv. Matthew Paris**  
matthew@dalliparis.com



**Avv. Luke Dalli**  
luke@dalliparis.com



**List of witnesses:**

[i] Representative of the Evaluation committee, the contracting authority and the Department of Contracts:

[ii] Representative of the Malta Business Registry:

[iii] Representative of the appellant company

[iv] Further witnesses which will be requested later



command

Viva Payment Services Single Member S.A. Malta Branch  
6, Oheo Buildings, Floor 5, Sir William Reid Street, GZR 1362 Gzira  
VAT NUMBER: MT28841208  
REGISTRATION NUMBER: OC 1416 www.vivapayments.com

**Transaction details**

Bank transfer command/date	12/02/2024 10:07:12
Transaction Type	Money out to IBAN
Sender	ST HOTELS LTD. [118780067261136772]
Beneficiary	CASHIER MALTA GOVERNMENT
Bank	Central Bank of Malta
IBAN	MT55MALT011000040001EURCMG5001H
Description	MSPPP/01/2022 - STIVALA Chalet
Transaction Amount	50,000.00 EUR

*The current document serves as a money transfer order submission proof and does not verify the completion of the funds transfer. Money transfers take 1-2 business days to reach beneficiary's account. This order may be cancelled by the requester at any time between the request submission and the actual bank transfer completion.*