



Public Contracts Review Board
Department of Contract
Notre Dame Ravelin
Floriana



12TH February 2024

Dear Sirs,

Re: Tender for the Framework Contract for the Removal and Disposal of Waste in an Environmentally Friendly Manner from Various Premises for the Department of Fisheries and Aquacultures – Tender Reference SPD8/2023/127 (the "Tender")

We have been instructed by WeCare Waste Services Ltd (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: Disqualification of the Award to the Recommended Bidder**
- C. Third Ground of Appeal: Appellant's Offer price competitive and technically compliant**

Section 1 – Factual Background

1. On 11th November 2023, the Sectoral Procurement Directorate (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 waste collection and disposal, from various areas for the Department of Fisheries and Aquaculture (hereinafter the “Scope of Works”)
3. The estimated procurement value for the Call for Tenders is that of EUR 40,000 exclude Value Added Tax, with a time-limit for the execution of the contract of twenty-four (24) months 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 38,857.52
6. On 1st of February 2024 the Appellant received a letter of Rejection from the Contracting Authority. In this letter, the Appellant was informed that its offer was rejected as follows:

“this Ministry regrets to inform you that the procurement proposal submitted by your company was not the cheapest priced offer satisfying the administrative and technical criteria”

7. The Appellant was also informed that the Tender was to be awarded to WM Environmental Ltd (the “Recommended Bidder”) for the sum of EUR 33,852 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 well as the true narrative as to what the recommended bidder is involved in as shall be explicated in the following grounds of appeal;

B. Second ground of appeal – Disqualification of the Award to the Recommended Bidder

1. Without prejudice to further submissions on the merits and witnesses to this effect, the appellant humbly submits that the Award Notice should be deemed invalid due to number of infringements done by the Recommended Bidder on a separate Public Contract for similar nature of works listed hereunder as “Framework Contract For The Provision Of Waste Collection Services Using Environmentally Friendly Transportation Services At St Vincent De Paul Long Term Care Facility”;
2. Without prejudice to the foregoing, the Recommended Bidder is publicly and explicitly under investigation from the Environmental Resources Authority (hereinafter ‘the Competent Authority’ due to the number of infringements

mentioned including but not limited to waste incineration, land filling of unburnt waste and illegal storage of hazardous waste.

3. In view of the above, the Competent Authority has also issued a "Stop and Order Compliance to the Recommended Bidder as its empowered by the Cap 549 Article 72-74.
4. In lieu of this, reference is being made to Clause 5 of the Tender Dossier titled Selection and Award requirement point number 3 (iii):

"All services have to be carried out in accordance with all local legislation in terms of H&S matters, site management etc. The Contractor shall ensure adherence to all such regulations and legislation and any other regulations imposed by other relevant authorities.

j) The Contractor is obliged to collect and to dispose of all waste collected (Organic, Recyclables, General Waste, Bulky, Construction and Hazardous including WEEE {waste electrical and electronic equipment} Waste) at authorized waste management facilities in accordance of regulatory instructions issued by ERA and/or Wasteserv."

5. That clearly, from the requirement envisaged in the aforementioned clause, the recommended bidder must necessarily be compliant to local legislation, which is clearly not the case with regards to the recommended bidder in this tender;
6. That the appellant reserves the right to bring forward witnesses and further evidence to substantiate these claims and also provide a comprehensive outlook as to the abusive actions done by the recommended bidder in various other tenders;
7. That moreover, the appellant also has solid information that the recommended bidder was black listed by various local councils such as Mosta, Zurrieq as well as Marsa whereby the recommended bidder was literally stopped from his work due to various infringements even on a tender of street sweeping let alone a tender of this nature;
8. That the appellant knows personally certain legal infringements which the recommended bidder regularly does when winning tenders and is ready to

testify in front of this honourable Board to provide a holistic overview as to why this appeal was filed;

C. Third ground of appeal – Appellant's Offer price competitive and technically compliant

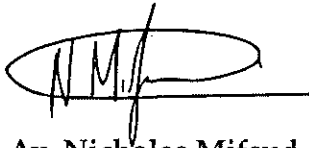
1. In view of the above and in reference to Clause 6 of Section 1 of the Tender Dossier, the appellant submits its view as its Offer to satisfy such criteria of being the most competitive price satisfying the administrative and technical which is EUR26,800 cheaper than the Recommended Bidder's financial proposal.
2. 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.
3. That the appellant humbly submits that the recommended bidder failed to realistically provide a price which can be tenable and rational and simply laid down a figure to undercut other participants and secure the tender automatically;
4. That the appellant is humbly making the aforementioned submission in light of the fact that the pricing of the recommended bidder does not and cannot possibly include the general annual and gradual increase of dumping fees as per Wasteserv Gate Fees

THEREFORE, the Appellant humbly demand 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,

A handwritten signature in black ink, appearing to be 'N. Mifsud', written over a horizontal line.

Av. Nicholas Mifsud
Mifsud Advocates
71A, St. Joseph High Str,
Hamrun



Transfers - To Other Banks (SEPA)

Mon, 12 Feb 2024 18:05:28 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	654698101 - Current account in Euro
Beneficiary's iBAN	MT55MALT011000040001EURCMG5001H
Beneficiary name	Cashier Malta Government
Amount	400 EUR
Description for payer	Appeal for SPD 8/2023/127
Additional information	
To transfer	Immediately
Starting on	
Ending on	

CHARGES

SEPA Processing Fee	1.00 EUR
Total Amount To Be Debited	401.00 EUR

(i) YOUR REQUEST WAS REGISTERED (140738133)

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