



The Secretary
Public Contracts Review Board
Notre Dame Gate
St. Caldedonius Square,
Floriana

Today the 22nd of February 2024

Dear Sir/s,

Reasoned Letter of Reply by the Malta Financial Services Authority
Re.: SPD7/2023/07 – Services – Framework Contract For A Physical Offsite Archival
Services For The Malta Financial Services Authority (MFSA)

I write on behalf of the Malta Financial Services Authority, hereinafter referred to as the “Contracting Authority”. Reference is hereby being made to the letter of objection filed by “Rentastore Malta”, hereinafter referred to as “the objector”, before the Public Contracts Review Board, hereinafter referred to as “the Board”, on the 13th of February 2024 with reference to the tender having reference number SPD7/2023/070. Said letter of objection is hereinafter referred to as “the appeal”.

A tender titled “ – *Services – Framework Contract For A Physical Offsite Archival Services For The Malta Financial Services Authority (MFSA)*” was published. Two (2) bids were submitted, an evaluation process was carried out and the offer of Maltapost P.L.C. was recommended for award.

The sole award criterion was the price. Clause 6.1 of the Instructions to Tenderers stated, “*The sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.*”

The objector’s offer was not recommended for award since it was not “the cheapest priced offer satisfying the administrative and technical criteria.”

The objector felt aggrieved with the decision of the evaluation committee and has filed the appeal before the Board. However, the Contracting Authority finds itself in difficulty when formulating a reply to this objection on the merits. Nevertheless, the Contracting Authority believes that the appeal ought to be rejected *in toto* for the following reasons;

I – The Appeal Is Null And Void As Mr. John Farrugia Randon Does Not Have Judicial Nor Legal Representation Of The Objector

On a preliminary basis and without prejudice to further submissions made by the Contracting Authority, the objector did not present evidence to show that Mr. John Farrugia Randon, the person that signed the objection, had the authority and the right to file this objection as a legal and/or judicial representative of the objector at the time of filing of the objection.

For this reason, this appeal ought to be rejected *in toto*.

II – The Appeal Is Null And Void As The Appeal Is Not Clear

Secondly, and without prejudice to the above and to further submissions made by the Contracting Authority, the Contracting Authority submits that the appeal is null and void as it did not explain its objection in a clear manner. The Contracting Authority finds itself in an impossibility to answer the objection raised on the merits due to the fact that the objection filed by the objector is **not clear at all**.

The objector states that;

“...it has come to their attention that the archives of the proposed awardee do not meet the prescribed standards regards the inert gas technology Fire Suppression system”

The objector then made reference to Clarification Note 1 but provided absolutely **no explanation nor any reasoning** to show or to explain how or why the preferred bidder’s system does not meet the prescribed standards as described in the conditions of the tender. Thus, the Contracting Authority has a number of legitimate questions;

- i. Which specific standard is the objector referring to?
- ii. What system is the objector referring to?
- iii. How does the system of the preferred bidder not meet the prescribed standards?
- iv. What evidence does the objector have to substantiate such allegations?

The above questions emanate naturally from the lack of clarity of the appeal filed by the objector and need to have a clear answer for the Contracting Authority to be able to answer in a fair manner. Said questions would never have arisen had the objection been clear.

The Contracting Authority submits that said clarity is expressly required by the law precisely to allow parties to answer accordingly and to know what the issues at hand are. Reference is hereby being made to regulation 270 of the Public Procurement Regulations;

270. Where the estimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned... may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints. [Emphasis added]

Every objection filed before the Public Contract Review Board needs to be “very clear”. All parties involved in this process have the right to know what the objection is about in order to be able to address the objection in a fair manner. The present objection clearly and evidently does not adhere to this principle as it is **anything but clear**.

This legal argument has been presented, accepted and confirmed by this same board on numerous occasions, among which Case 1848. In this case the Boards dismissed the appeal on the basis that **no clear reason was given for filing their appeal**. The Board felt that the Appellant's claim was **not sustainable as he had given no clear reason** for its appeal and the preliminary plea made was justified. It also declared that it is not the Board's remit to investigate the award of tenders. This reasoning was similarly reflected in Case 1119 where it held that;

This Board would like to first and foremost, point out that the Objection submitted by Infinite Fusion Technologies Limited did not conform with Article 270 of the Public Procurement Regulations in that the Appellants did not state, "in a very clear manner the reasons for the Appellants' complaints".

For this reason, this appeal ought to be rejected *in toto*.

III – The Appeal Is Null And Void Due To The Requests Made By The Objector, And The Lack Thereof

Thirdly, and without prejudice to the above and to further submissions made by the Contracting Authority, the Contracting Authority submits that the appeal is null and void due to the requests made by the objector, and the lack thereof. By means of this appeal the objector asked the Board to carry out a;

“comprehensive reassessment of the proposals submitted”

With all due respect, the Board's role is to determine whether a tender process was carried out in accordance with the law or not, and not to substitute itself with the Contracting Authority in evaluating or reassessing the offers made.

Moreover, the objector has not made a request for the setting aside of the Award Decision.

For this reason, this appeal ought to be rejected *in toto*.

IV – On The Merits

Without prejudice to all preliminary pleas raised above, the Contracting Authority submits the following;

As stated above it is impossible for the Contracting Authority to reply to the objector on the merits as the appeal was submitted in such a manner as to make it impossible for the Contracting Authority to address the objector's appeal. The appeal is unclear and it is neither the Contracting Authority's nor the Board's responsibility to try to determine the objector's grievances.

The only submission the Contracting Authority can make at this stage is that it has adhered scrupulously to all of its obligations at law. Having submitted that, whilst reiterating that **the objector ought not to be given the opportunity to clarify its appeal**, the Contracting Authority

reserves the right to make further submissions on the merits should the Board allow the objector to clarify their appeal.

V - Conclusion

The Contracting Authority is hereby reserving the right to make further submission on the merits and to present further evidence, both written and oral, to further their submissions in relation to this appeal.

In view of the above, the Contracting Authority humbly submits that the appeal lodged by the objector ought to be rejected in full, whilst the decision of the Contracting Authority and the Evaluation Board ought to be confirmed. The relevant deposit is to be forfeited.



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