



20th February 2024

The Secretary
Public Contracts Review Board
Notre Dame Ditch
Floriana
FRN 1601

Re: Tender 05/2023 – Street Sweeping Services in the Locality of Ħal Lija, using Low Emission Service Vehicles

I write on behalf of WM Environmental Limited (hereinafter referred to as “WM”) of 13, Triq l-Għasir, Ħaż-Żebbuġ and would refer to the tender in caption and in particular to the notice of objection filed by Galea Cleaning Solutions JV on the 16th February 2024. By means of this letter WM is formally lodging a written reply to such objection as per requirements stipulated at Maltese Law.

The grievances at the merits of the appeal filed by appellant are in respect of the Contracting Authority’s alleged failure in furnishing appellant with (i) a copy of the evaluation report and (ii) a copy of the successful bidder’s bid in so far as the same did not contain confidential information as requested in the email dated 7th February 2024 (marked as Doc. “GCS3” with the notice of objection).

As rightly pointed out by the Ħal Lija Local Council in its reply dated 9th February 2024, the evaluation report is an internal document belonging to the Local Council which cannot be shared and is solely intended for the use of the Local Council. To this extent appellant was furnished with a limited version of the evaluation report showing the points awarded to appellant by evaluators. This matter has already been dealt with by the Court of Appeal (Inferior Jurisdiction) in the case **Roberto Ragonesi vs Il-Kummissarju għall-Infommazzjoni u l-Protezzjoni tad-Data**, (Appeal 65/2018JVC) decided on the 11th October 2019 whereby the Court noted:-

Illli min-natura tiegħu *evaluation report* jidhol fid-dettal tat-tender inkluż l-infommazzjoni kummerċjalment sensitiva mogħtija fl-ispeċifikazzjonijiet annessi mal-istess. Din il-Qorti tikkonferma, kif fuq kollox ikkwotat mill-istess Tribunal, illi huwa l-kuntratt bejn il-partijiet li jitlef il-kunfidenzjalita’ u mhux neċessarjament l-ispeċifikazzjonijiet u nformazzjoni annessa mal-istess. Il-Qorti ssibha wkoll diffiċli biex tifhem kif it-Tribunal wasal għall-konkluzjoni li għandu jingħata kopja tal-*evaluation report* mingħajr ma’ l-ewwel għarbel kif seta’ jiġi evitat li nformazzjoni kummerċjalment sensitiva u *trade secrets* li jinsabu msemmija fl-istess rapport bħala parti mill-*evaluation* ma jiġux noti lit-terzi kompetituri. Fiċ-ċirkustanzi l-Qorti tqis li la darba l-*evaluation report* imsemmi ma jikkwalifikax bħala l-ftehim finali redatt bejn il-partijiet u li huwa dan ta’ l-aħħar li jitlef il-kunfidenzjalita’ f’partijiet biss minnu, wkoll minħabba l-bizgħa reali li tinkixef infommazzjoni kummerċjalment sensitiva, hija għandha tilqa’ wkoll dan l-aggravju u tikkonferma d-deċizjoni tal-Kummissarju appellat.

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Illi dwar ir-*Request D* din il-Qorti fl-analizi tagħha tal-aggravji tal-Enemalta plc suesposti, ġia waslet għall-konkluzjoni li t-Tribunal kien skorrett meta ddeċieda li jilqa' din it-talba *in parte* u jordna li tingħata l-informazzjoni mitluba cioè' kopja tal-*evaluation report* tal-EMC iżda mingħajr it-*technical specifications*. Abbażi tar-raġunament ta' din il-Qorti aktar 'il fuq li l-Qorti qed tagħmel tagħha wkoll f'dan l-aggravju, il-Qorti ser tgħaddi sabliex tiċhad ukoll din il-parti tal-aggravju tal-appellant Ragonesi fl-appell 65/18.

Appellant was provided with the part of the evaluation report limited to the awarding of points by each evaluator in respect of his bid. This satisfied its request submitted in the abovementioned email so that it "*can understand the points awarded*". In respect of the second request, i.e. the provision of a copy of the successful bidder's bid except in so far as this contains confidential information, would be tantamount to a breach of confidentiality as per the quoted judgment (even if the technical specifications were excluded). Hence the Contracting Authority was justified in refusing the latter request.

In view of the foregoing whilst reserving the right to make further submissions and present evidence, WM Environmental Limited humbly submits that the Board confirms the decision taken by the Hal Lija Local Council in awarding the tender in question to WM Environmental Limited whilst rejecting the objection filed by Galea Cleaning Solutions JV.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marycien Vassallo'.

Marycien Vassallo

c.c Client