



2<sup>nd</sup> March 2024

Public Contracts Review Board  
Notre Dame Ravelin,  
Floriana,  
Malta

Gerada Quality Construction Limited

vs

[i] Department of Contracts;

[ii] Project Green;

CT 4005/2023

Tender Name: Leasing of office premises for Project Green

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## REASONED LETTER OF OBJECTION

Whereas by means of letter dated 23<sup>rd</sup> February 2024, Gerada Quality Construction Limited [hereinafter 'Gerada'] were informed by the Department of Contracts [hereinafter 'DOC'] that,

*Thank you for participating in the above mentioned procurement procedure.*

*However, I regret to inform you that this tendering procedure is being cancelled in line with Article 18.3 (b) of the General Rules Governing Tendering where it is stated that:*

*'The economic or technical parameters of the project have been altered'*

Whereas Gerada feels aggrieved by the abovementioned decision, and is thereby submitted its objection in accordance with the Procurement of Property Regulations [hereinafter 'PPR'], together with the relative payment:

### 1. Document not applicable to this procurement procedure

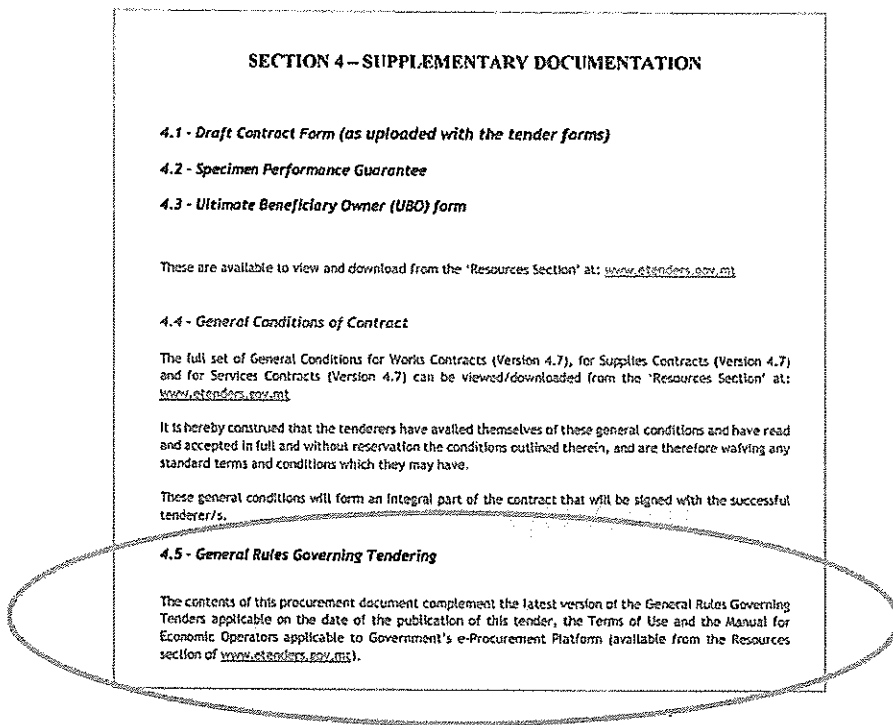
1.1 Reference is hereby being made to article 2 of the PPR, which defines procurement document, as follows:

*"procurement document" means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by tenderers, information on generally applicable obligations and any additional documents including clarifications;*

1.2 The procurement under review, was limitedly subjected to the following documentation:

- The tender procurement document
- The General Conditions for the leasing of premises
- Draft lease agreement [Special conditions] leasing of premises
- A clarification

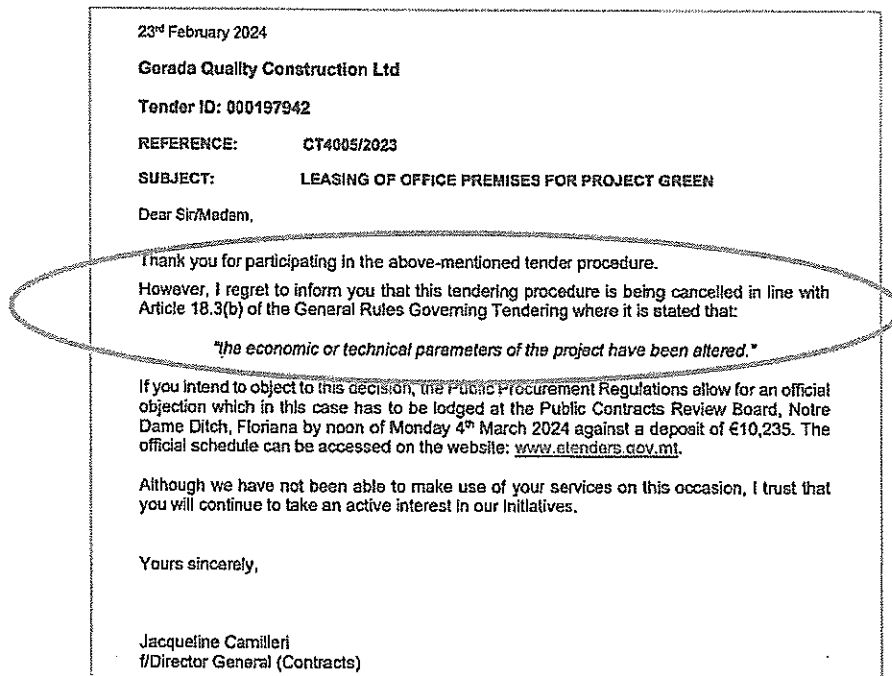
1.3 Unlike other procurement procedures, the one under review was not subjected to any other supplementary documentation, which would generally be presented as follows:



Picture representing supplementary documentation - [added emphasis on General Rules Governing Tendering]

1.4 It is thus in breach of the self-limitation doctrine to refer to documentation which does not form part of tendering procedure, and worst still to use this in pursuit of the cancellation of the tendering procedure;

1.5 In its cancellation letter, the DOC held that:



Picture representing cancellation letter - [added emphasis on reference to General Rules Governing Tendering]

- 1.6 The supplementary General Rules Governing Tendering, in their various variants, are not applicable to this tendering procedure, and in particular article 18 is not and could not be used to cancel this procedure;
- 1.7 By virtue of a communication dated 01<sup>st</sup> March 2024, the DOC was informed about this breach and a request for the withdrawal of this letter has been filed, which request has been disregarded;
- 1.8 The actions by the DOC and/or the Contracting Authority are in breach of the **self-limitation doctrine**, which doctrine is an important public procurement principle which has been referred to by this honourable Board on various occasions, wherein tenderers must be adjudged limitedly on the basis of conditions stipulated within the tender document, thus ensuring predictability and transparency;
- 1.9 In the recent PCRB decision with number Case 1665 of 2021 [27<sup>th</sup> December 2021], this Honourable Board held that:

*'This Board opines that the Evaluation Committee did not observe the principle of Self-Limitation when it deemed the Appellant's offer as technically non-compliant when it adjudged the equipment of the Appellant company on issues not included within the Tender Dossier'*

## **2. Cancellation – a right which should not be abused**

- 2.1 On a strictly without prejudice basis to any other grievance, whilst indeed it is the prerogative of the Department of Contracts to cancel a procurement procedure, such right to cancel is not absolute and should only be availed in determinate situations;
- 2.2 The right for cancellation is regulated as follows:
  - 2.2.1 The Director of Contracts, through article 10 of S.L. 601.12, may order the cancellation of an award of a contract if this is done in breach of the regulations;
  - 2.2.2 The Contractor Authority [Project Green], through article 10 of the tender document [Section 4], reserved the right to cancel the procurement at any point;
- 2.3 In the case under review, the Director of Contracts notified through a letter dated 23<sup>rd</sup> February 2024 that cancellation is being ordered in view of the fact that, “the economic or technical parameters of the project have been altered” – when requested to clarify the reason for a such a decision, the Director of Contracts held that:

*"The above is being substantiated by the following:*

1. *A new organisational structure coupled with a capacity building programme rendered the originally planned premises unsuitable in the context of the new vision,*
2. *Project Green is opting for a serviced facility given that such office environment offers more opportunities for the efficient use of space and collaboration.*
3. *The infrastructure and services usually available within a serviced facility are designed to be managed and maintained centrally, ensuring ongoing maintenance and servicing, hence allowing Project Green to be more effective and resourceful, focusing on its core business,*
4. *Technical parameters of leased serviced premises would also include 24/7 security systems, common reception areas, rentable meeting rooms, board rooms and conference apart from energy efficient technologies which reduce the overall environmental impact."*

2.4 It is clear from the tender document that all of the above requirements and functions are and can be fulfilled through the tender currently under review, and thereby there is no justification to merit such a cancellation;

2.5 A change in technical parameters is different to what has been explained by the Director of Contracts – a change in technical parameters would mean that the tender document as drafted would be unfit for its purposes – something which is not the case in the current circumstances;

2.6 The tender document did also allow for negotiation of certain criteria<sup>2</sup>, thus allowing for further flexibility, which criteria included:

Matters which may be negotiated include, but are not limited to, Inter alia:

- a) Cosmetic elements such as paint colours to be used on walls and doors;
- b) Removal, Installation, or Positioning of partitioning of office spaces.
- c) Layout of furniture, in the event that the preferred bidder is offering the premises as partially or fully furnished
- d) Location of Network and Electricity points
- e) Necessary Signages

2.7 It is thus the submission of Gerada that, cancellation as proposed, is not only in breach of the self-limitation principle [vide grievance 1], but also not sustainable since there are no such changes that warrant a cancellation as proposed;

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<sup>1</sup> Extract from letter by DOC dated 29<sup>th</sup> February 2024

<sup>2</sup> Article 13 – Section 1

### 3. Cancellation – a last resort

- 3.1 Indeed, the Contracting Authority is at the liberty to acquire whatever it desires, as long as this is done in pursuit of widening competition and not create unnecessary obstacles;
- 3.2 Based on the above, the CA is also at the liberty to change its requirements, and thus take such actions to ascertain that its requirements are fulfilled, however likewise it is to do so, without harming competition objectives;
- 3.3 Cancellation at bidding stage, whilst if possible avoidable, creates little discomfort and distortion of competition, but cancellation wheresoever the prices of economic operators have been disclosed must be done with a higher degree of diligence;
- 3.4 In the case under review, the tender opening session was on the 5<sup>th</sup> September 2023 on which day the prices of all bidders were published. Cancellation was thereafter communicated on the 23<sup>rd</sup> February 2024. In this case, competition has been compromised, since prices have been published;
- 3.5 The relationship between the disclosure of prices and its impact on competition has been analysed in the case **Melchior Dimech vs Ministeru tal-Finanzi u Xoghol et.**<sup>3</sup>

*“Soluzzjoni bħal din twassal biex jiġi mfixkel il-proċess tal-kompetizzjoni minħabba li llum il-prezzijiet tal-oblaturi ekonomiċi huma mikxufa u għalhekk l-oblaturi jafu x’inhu lprezz tal-oblaturi l-oħra u b’hekk ikunu jistgħu ibiddu l-offerta tagħhom jekk kemm-il darba ssir sejha ġdida.”*

- 3.6 It is the submission of Gerada that the contracting authority has failed to apply the necessary diligence in this case, and by doing so, it failed to consider the implications on competition;

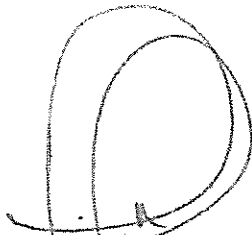
### 4. Refund of deposit

On a strictly without prejudice basis to any other grievance herein defined, it is the submission of Gerada that the deposit should be refunded in view of that determined in grievance no. 1;

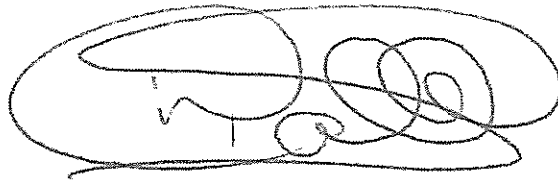
**NOWHEREFORE, whilst reserving the right to put forward any other submissions, Gerada hereby requests PCRB:**

- i. To order the defendants, or whosoever, to revoke the cancellation letter dated 23<sup>rd</sup> February 2024;
- ii. To re-instate Gerada in the procurement procedure and through a newly composed evaluation committee re-evaluate the tenders;
- iii. To refund the deposit paid in its entirety;
- iv. To do anything else which is conducive and necessary for the proper execution of the above requests;

Gerada is hereby reserving the right to present further evidence, both orally or in written, during the hearing.



**Av. Matthew Paris**  
[matthew@dalliparis.com](mailto:matthew@dalliparis.com)



**Av. Luke Dalli**  
[luke@dalliparis.com](mailto:luke@dalliparis.com)

- Requested Testimony by:
- (i) Representatives of DOC/Contracting Authority
  - (ii) Representatives of the appellant company
  - (iii) Others witnesses



Bank of Valletta

**Bank of Valletta p.l.c**  
 Registration Number: C 2833  
 Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

**Authorise**

Printed by: Mr. Gordon Gerada  
 Printed on: 04/03/2024 - 11:15  
 Document ID: 19304646

Pay third party

Transaction details

Transaction: Pay third party

Beneficiary name: Cashier Malta Government

Relation: Non-profit

Reason: Other

Payment details: APPEAL CT4005. 2023 Tender ID 000197942

Currency: EUR - Euro

Beneficiary IBAN/Account: MT55MALT011000040001EURCMG5001H

Beneficiary IBAN/Account type: Valid IBAN of country - Malta

Bank name: Other bank

Bank address / Bank's BIC: Let the bank apply the beneficiary bank BIC

Beneficiary address: No

Withdraw from account: GPI -Current Account (EUR) 5002034519 3

Charges should be paid by: Shared - I pay BOV charges; Cashier Malta Government pays the beneficiary bank charges

Amount: EUR 10,235.00

Receiving bank to get the money as: normal priority payment

To be effected on: as soon as possible

Credited amount: EUR 10,235.00

Debited amount (excluding charges): EUR 10,235.00

Estimated amount to be withdrawn from account: EUR 10,239.00

Transaction charge: EUR 4.00

Creator: Mr. Gordon Gerada

Authorised by: Mr. Gordon Gerada

Transaction result

Status: Your instructions have been processed successfully.

Transaction ID: 139645458