

DR. CHRIS CILIA LL.D.

-ADVOCATE-

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08.03.2024

To: Public Contracts Review Board



Sir,

Re: SPD 8/2022/181 - Tender for the Supply, Delivery, Maintenance and Commissioning of Two Rigid Hull Inflatable Boats (RHIB) for the Department of Fisheries and Aquaculture

Tender ID: 000186463

I write for and on behalf of my clients Polaris Marine Services Co Ltd.

Reference is made to the letter of the 29th February, 2024 by virtue of which my clients were informed by the Department of Contracts that *"this Ministry regrets to inform you that this call for tenders is being recommended for cancellation in line with Article 18.3 of the General Rules Governing Tenders"*.

By means of the present my clients do hereby lodge an official objection from the said notice of cancellation in terms of law.

The reasons for this objection are being outlined hereunder.

1. Polaris Marine Services Co. Ltd (hereinfter referred to a 'Polaris') had participated in this call for tenders and although it had submitted the cheapest offer, its submission was refused as being technically non-compliant on the basis of minor, spurious and inconsequential reasons. Polaris had lodged an appeal from the said decision in front of this Board, which appeal was refuted and then proceeded to file an appeal in front of the Court of Appeal.

By virtue of a decision rendered by the Court of Appeal on the 29th August, 2023 in the appeal procedures **'Polaris Marine Services Co Ltd -vs- Direttur Ġenerali tal-Kuntratti et'** (Rikors Nru. 329/23/1) it was decreed and decided as follows:

"il-Qorti qiegħda tilqa' l-appell (magħmul mis-soċjeta mittenti Polaris Marine Services Co Ltd) billi tħassar is-sentenza tal-Bord ta' Revizjoni dwar Kuntratti Pubbliċi u billi tħassar ukoll l-iskwalifika ta' Polaris Marine Services Co. Ltd u l-ġhoti tal-kuntratt lil United Equipment Co (UNEC) Ltd, kif imfissra mid-Dipartiment tal-Kuntratti bl-ittra tal-11 ta' April, 2023. Minflok il-Qorti qiegħda tordna li l-atti għandhom imorru lura għand id-Dipartiment tal-Kuntratti sabiex dan jerġa' joħroġ aġġudikazzjoni ġdida, wara li jerġa' jdaħħal lura l-offerta ta' Polaris Marine Services Co. Ltd."

Not only has the above-stated decision rendered by the Court of Appeal not been observed (notwithstanding a judicial letter bearing number 796/2024 sent by Polaris to the Director of Contracts and the Director-General – Department of Fisheries and Aquaculture), but my clients have now been informed that, in complete defiance of the said Court judgment, the tender is now being cancelled !

This is completely unacceptable and my clients are also hereby reserving the right to initiate contempt of court proceedings in terms of article 997 of Cap. 12 of the Laws of Malta.

2. Article 18.3 of the General Rules Governing Tenders provides as follows:

"Cancellation may occur where:

(a) the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all ;

(b) the economic or technical parameters of the project have been fundamentally altered;

(c) exceptional circumstances or force majeure render normal performance of the project impossible;

(d) all technically compliant tenders exceed the financial resources available;

(e) there have been irregularities in the procedure, in particular where these have prevented fair competition;

(f) the duration of the evaluation has exceeded the stipulated time limit in article 8 of General rules governing tendering."

The DOC letter dated the 29th February, 2024 completely fails to specify the particular reason as stipulated in paras (a) to (f) of the said Article 18.3 for which the tender is being recommended to be cancelled, and this for the very simple reason that there can be absolutely no reason why this tender is to be cancelled in complete defiance of the above-mentioned judgment of the Court of Appeal.

The Contracting Authority had issued the tender for these two RHIBS for the very obvious reason that these were required for the Contracting Authority's work. Until such time that the tender was going to be awarded to another bidder at a much higher price, there was no inkling whatsoever that the tender was to be cancelled, but now that the Court of Appeal has ordered the reinstatement of Polaris amongst the bidders, deeming Polaris not to be technically non-compliant as had originally been adjudged by the Contracting Authority, and being clear that, as a technically compliant bidder having submitted by far the cheapest offer, Polaris undoubtedly deserves to be awarded the tender, inexplicably and without assigning any specific reason, the tender is being recommended to be cancelled. As stated, this is completely unacceptable, outrageous and in contempt of the order given in the above-quoted judgment of the Court of Appeal.

3. It is further to be stated that the quoted Article 18.3 of the General Rules Governing Tenders are not in line with the provisions of Regulation 15(1) of the Public Procurement Regulations (SL 601.03) which provides as follows:

“The Director has the right to cancel the award of a contract at any time during a call for tenders or quotations even after the recommended bidder has been decreed and the time establish to file and appeal before the Public Contracts Review Board has lapsed, if it is found that such a contract has been awarded either in breach of these regulations or the award has been made in such a way as to discriminate between economic operators.”

In this case there can be asolutely no doubt that there exists no reason in terms of the above-quoted Regulation 15(1) of the Public Procurement Regulations (SL 601.03) for the cancellation of this tender. On the contrary, the discrimination which had existed between economic operators with the initial exclusion of Polaris was redressed and remedied by the above-quoted judgment of the Court of Appeal.

4. Furthermore, no reasons were given to support and prove the reason why this tender is being recommended for cancellation. This is in clear and manifest violation of the provisions of Regulation 15(3) of the said Public Procurement Regulations (SL 601.03) which stipulate as follows:

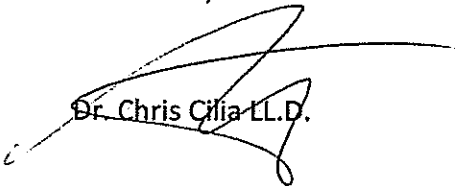
“(3) The decision leading to the cancellation of a procurement procedure has to be made in writing and must include the findings and the reasoning that led to this decision”.

Simply to state that the tender is being recommended for cancellation in terms of Article 18.3 of the General Rules Governing Tenders certainly does not satisfy the requirements established in the said Regulation 15(3).

On a final note, it is to be underlined that Polaris has incurred considerable costs in connection with this tender, both at pre-tender stage and after it was selected as the preferred bidder, and certainly has no inclination to simply sit back and allow for the carpet to be swept away from beneath its feet even in complete defiance of a judgment which has been given by the Court of Appeal.

For all of the above reasons, Polaris requests that the decision for cancellation of the Tender in caption as communicated to it by the Department of Contracts in virtue of the letter dated the 29th February, 2024 is revoked.

Yours Truly


Dr. Chris Cilia LL.D.

Transfers - To Other Banks (SEPA)

Mon, 11 Mar 2024 10:05:33 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	87840101 - Current account in Euro
Beneficiary's IBAN	MT55MALT011000040001EURCMG5001H
Beneficiary name	Cashier Malta Government
Amount	1600 EUR
Description for payer	SPD 8/2022/181
Additional Information	
To transfer	Immediately
Starting on	
Ending on	

CHARGES

SEPA Processing Fee	1.00 EUR
High Value SEPA Processing Fee	3.00 EUR
Total Amount To Be Debited	1,604.00 EUR

 YOUR REQUEST WAS REGISTERED (142516581)

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

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1600 – MALTA
Direttorat għall-Akkwist Settorali



DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1600 – MALTA
Sectoral Procurement Directorate
Telephone: 23781508
e-Mail: spd8.mta@gov.mt

Award Notice

In terms of Regulation 270, Part IX of Legal Notice 352 of 2016 of the Public Procurement Regulations 2016, you are hereby being notified that the Departmental Contracts Committee has agreed with the below recommendation.

Reference	Subject	Decision	Recommended Tenderer	Price (excl VAT)	Deposit
SPD 8/2022/181	Tender for the Supply, Delivery, Maintenance, and Commissioning of Two Rigid Hull Inflatable Boats (RHIB) for the Department of Fisheries and Aquaculture	Cancelled			€1,600

Tenderers are informed that any appeals by means of an objection to the decision listed above must be lodged electronically with the Public Contracts Review Board by sending an email on info.pcrb@gov.mt by 12:00hrs (noon) of 11th March 2024. Objections shall contain in a very clear manner the reasons for the complaint. Payments are to be made to the amount indicated in the table above, calculated in terms of Regulation 273 of Legal Notice 352 of 2016; otherwise, they will not be considered.

Payments are to be made through bank transfer in terms of the following details:	
Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

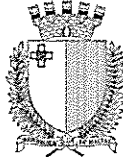
Tenderers are to note that this information does not imply any obligation on the part of Government to actually implement any of the decisions indicated.

Colin Pace

29th February 2024

f/Assistant Director (SPD)

Date



29th February 2024

Messrs Polaris Marine Services Co Ltd

Tender ID: 000186463

TENDER REFERENCE: SPD 8/2022/181

SUBJECT: Tender for the Supply, Delivery, Maintenance, and Commissioning of Two Rigid Hull Inflatable Boats (RHIB) for the Department of Fisheries and Aquaculture

Dear Sir/Madam,

Thank you for participating in the above-mentioned procurement procedure. However, this Ministry regrets to inform you that this call for tenders is being recommended for cancellation in line with Article 18.3(b) of the General Rules Governing Tenders.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of 11th March 2024 against a deposit of €1,600

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCM5001H
Bank Code	01100

The official 'recommendation for cancellation' schedule can be accessed on the website: www.etenders.gov.mt)

Although this Ministry has not been able to make use of your services on this occasion, we trust that you will continue to take an active interest in its procurement opportunities.

Yours sincerely,

Colin Pace
f/Assistant Director SPU8