



MINISTRY FOR AGRICULTURE, FISHERIES,
FOOD AND ANIMAL RIGHTS

Department of Fisheries and Aquaculture

Fisheries Directorate
Agriculture Research & Innovation Hub, Ingiered Road, Luqa, LQA 3300 – Malta

20th March 2024

Re: Objection: SPD8/2022/181 - Tender for the Supply, Delivery, Maintenance, and Commissioning of Two Rigid Hull Inflatable Boats (RHIB) for the Department of Fisheries and Aquaculture.

Reply to the Public Contracts Review Board (PCRB) to the objection lodged by Dr. Chris Cilia LL.D. on behalf of Polaris Marine Services Co. Ltd (the objector).

Following a call for tenders published on the 7th of December 2022 (14:22) for the supply, Delivery, Maintenance and Commissioning of Two Rigid Hull inflatable Boats (RHIB) for the Department of Fisheries and Aquaculture, a number of bids were submitted, and the items were recommended for award to: United Equipment Co. (UNEC) Ltd. (the recommended bidder).

The current objector had already objected to that recommendation and filed an objection in front of this PCRB. The PCRB rejected said objection but this was overturned by a judgement of the Court of Appeal delivered on 29th August 2023, which requires no repetition in the context of this objection upon the decision of cancellation communicated by the Director of Contracts on the 29th February 2024 which is the basis for this objection.

The objector felt aggrieved with the decision and filed the present objection.

The Contracting Authority humbly disagrees with the objector's grievances and is filing the below submissions in reply of:

First of all, it is regrettable that the communicated decision as objected to contains no reference is made to the actual reason for the cancellation of the procurement procedure, and this reason was communicated by the Technical Evaluation Committee to the Department of Contracts, as shown in the document attached and marked **DOC. A**. In essence, considering that this project was meant to be financed by European Union funds and with the deadlines for Malta obtaining said funds having elapsed, the Contracting Authority did not deem the project economically feasible and it is not currently sustainable to substitute EU funding with national funds. With respect, while the above omission is

regretted, it would not change the fundamental aspect as to the funding of the project which involves a considerable amount. This falls within the parameters of rule 18.3(b) of the General Rules governing Tenders V4.9, being those in force at the time when the decision was communicated (and this was also provided for in the same rules V.4.5 as in force when this call for tenders was published).

For the record, there is absolutely no issue of discrimination amongst economic operators. Even further, there is absolutely no intent or motion to act in contempt of any Court. However, if funding is found lacking or the project becomes financially unsustainable, the option available at law for the Contracting Authority and the Department of Contracts is the cancellation of the whole procedure. It is to be noted that the Court of Appeal did not order the award of the contract in favour of the objector, as the objector seems to pretend, but ordered the *"Dipartiment tal-Kuntratti sabiex dan jerġa' jorħroġ aġġudikazzjoni ġdida, wara li jerġa' jdaħħal lura l-offerta ta' Polaris Marine Services Co. Ltd."*. The Contracting Authority submits that this order needs to be taken in context of the proceedings in front of the Most Honourable Court of Appeal and the procurement procedure at the stage it was in. The lack of sustainable funding for the intended contract, which intervened following said judgement, is a compelling reason for the cancellation of the procurement procedure *in toto*. In short, no one is being awarded the contract because financing is lacking and, or unsustainable according to the priorities of the public administration which are, and should remain, at the discretion of the relevant public authority rather than subservient to the economic interests of a private operator who did not supply anything to the Contracting Authority. So much so that in rule 18 of the General Rules governing Tender V4.9, there is the following provided:

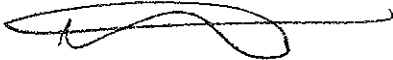
"In no circumstances will the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority be liable for damages, whatever their nature (in particular damages for loss of profits) or relationship to the cancellation of a tender, even if the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority has been advised of the possibility of damages. The publication of a contract notice does not commit Central Government Authority/Sectoral Procurement Directorate/Contracting Authority to implement the programme or project announced." (bold emphasis in original, underlining added)

As shown by the objector's own objection, the objector knows about the General Rules governing Tenderer. The Contracting Authority also submits that expenses incurred by the objector, in so far as related to the first objection is referred, have been accounted for through the relevant Court judgement as referred by the objector, and which the relevant authorities have respected in full and paid up accordingly. The Contracting Authority further submits that the reasons for cancellation trump

the financial and economic burdens which an economic operator acting in the field of public procurement could foresee as whatever happened between the parties involved is possible according to law. Once again, the objector coloured his objection with colourful expletives which are regrettable and rejected.

The Contracting Authority is hereby reserving its right to present further evidence both written and orally to further their submissions in relation to this objection.

In conclusion and in view of all the above and the available documentation as filed or may be filed in the proceedings, the requests of the objector ought to be rejected in full, the cancellation of the procurement procedure confirmed, and the relevant deposit forfeited.



Audrey Balzan

Legal Office

Department of Fisheries & Aquaculture