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11th March 2024

**The Secretary
Public Contracts Review Board
Notre Dame Revlin
Floriana VLT 2000**

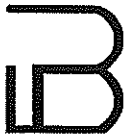
Negotiated Procedure for the Provision of Home Help in the Community Services in Malta - AACC - REF NP03/2024 ("2024 Negotiated Procedure").

Reply to Reasoned application filed by Bad Boy Cleaning Services Limited ('the Objector') pursuant to regulation 270 of the PPR.

I write to you for and on behalf of the Active Ageing and Community Care (hereinafter the 'Contracting Authority') in connection with the above captioned Negotiated Procedure, and particularly with reference to the application filed by Bad Boy Cleaning Services Limited (hereinafter the 'Objector').

Objector has filed the application in accordance with Regulation 270 of the PPR, through which two grounds of objection were raised, namely:

- A) The Contracting Authority could not award the Negotiated Procedure to the Incumbent Contractor;
- B) The Contracting Authority has not used the VEAT notice mandatorily required by law;



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To this effect, the Contracting Authority is rebutting this objection and the grounds of appeal raised therein which grounds will be addressed in this reply.

1. Background

Preliminarily, in his objection, the Objector gives a detailed exposition of the sequence of events which led to the awarding of the present negotiated procedure, which facts, in so far as the chronology of events is concerned, are uncontested.

However, besides explaining the chronology, the Objector purports to show some form of wrongdoing on the part of the Contracting Authority, which is however unsubstantiated as will be shown when addressing the objections.

2. The Contracting Authority could not award the Negotiated Procedure to the Incumbent Contractor.

In essence, by virtue of this ground of appeal, the Objector argues that the Contracting Authority couldn't have awarded the negotiated procedure because, as it is being assumed by the Objector, the Contracting Authority did not have the requisite approvals in advance by the Director General of the Department of Contracts. Additionally, the Objector also argues that if the Contracting Authority did indeed have the approval to award the negotiated procedure, it still couldn't have awarded the Negotiated Procedure since the grounds stipulated in regulation 154 of the PPR are inapplicable.

In this regard, the Contracting Authority submits that, contrary to what is being alleged by the Objector, the Contracting Authority had all the necessary approvals to proceed with the negotiated procedure and subsequently award the same, and this as will be proven in the course of these proceedings (Approval exhibited as DOK AACC 1).

Additionally, the Contracting Authority also submits that such approval by the Director General (Contracts) was granted in terms of Regulation 154(1)(b)(ii) of the PPR subject to certain conditions.

According to Regulation 154(1)(b)(ii) of the PPR, a negotiated procedure without prior publication may be used in cases where the services can be supplied only by a particular economic operator due to the fact that competition is absent for technical reasons.



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The facts leading to the awarding of the negotiated procedure fit exactly within the parameters of Regulation 154(1)(b)(ii). The incumbent economic operator has the specialised knowledge in providing home help services to the specific demographic groups with the required methodologies that significantly enhance service delivery efficiency or effectiveness, as this service required complex care needs of individuals within the community that only the selected provider could reasonably meet in such a short time-span. Faced with the urgent need to continue these services without interruption, the Contracting authority not only needed to address the immediacy of the requirement but also the scale and complexity of service delivery.

It has to be stated that although a tender for a Framework Agreement was issued (CT 2390/2022 – Framework Agreement for the Provision of Home Help Services in the Community within the Active Ageing and Community Care), several unforeseen setbacks throughout the tender process delayed the award of the contract to prospective bidders. This meant that, the service currently offered was jeopardised since there were no other agreements and/or contracts in place ensuring continuity of the services.

It has to be borne in mind that the purpose of the negotiated procedure and even the Framework Agreement is to procure a service intended to support the beneficiaries (being elderly individuals and people with special needs) to keep on living in the community independently for as long as possible. Additionally, such service is also intended to support informal carers and offers elderly people and people with special needs assistance in performing light domestic chores.

Therefore, in order to ensure continuity, procurement through a negotiated procedure had to be resorted to, in light of the prevailing circumstances surrounding the award of the Framework Agreement. Indeed, the approval given for the current negotiated procedure was given for a definite term, that is, for a period of three months.

Therefore, this ground of appeal should be rejected.

3. The Contracting Authority has not used the VEAT notice mandatorly required by law.

In this regard, the Contracting Authority humbly submits that, notwithstanding what is being argued by the Objector, the Contracting Authority has indeed submitted the voluntary ex ante transparency notice with all the required details and information which should be disclosed through the VEAT notice,



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THEREFORE, in view of the above and for other reasons that may be adduced at law at the sitting to be set by this Board, the Respondent Contracting Authority humbly requests that this Board, save for any other declaration, order or decree it may deem fit:

- a. Declare the applicant's objection and consequent claims as unfounded both at law and in fact and consequently rejects the objections and consequent claims;
- b. Rejects the applicant's request to be refunded in full the deposit paid upon filing of the application.



Av. Noel Bezzina

D Amato Ritianne at PCRB

From: Calleja Graziella at Department of Contracts <graziella.calleja@gov.mt>
Sent: Thursday, 25 January 2024 12:19
To: Degabriele Renzo at MHA - AACC
Cc: Abela Mario at MHA - AACC; Schembri Christine at MHA; Tirchett Rita at MHA - AACC; Balzan Mary Grace at MHA - AACC; Spiteri Daniela at Department of Contracts
Subject: CT5000/2024 - Negotiated Procedure for the Provision of Home Help Service in Malta

CT 5000/2024

Dr Renzo Degabriele
Chief Executive Officer
Active Ageing and Community Care
Ministry for Senior Citizens & Active Ageing

Negotiated Procedure for the Provision of Home Help Service in Malta

Reference is made to your e-mail dated 24 January 2024 regarding the subject in caption.

The General Contracts Committee has discussed your request. Further to the approval given on the 29 December 2023, definite approval is now being given to enter into a negotiated contract with Support Services for the Provision of Home Help Service in Malta at the estimated cost of €961,870.00 excl VAT, for a period of 3 months.

This approval has been granted in terms of Regulation 154 (1) (b) (ii) of the Public Procurement Regulations LN352/2016 under the following conditions:

- a) these services are absolutely necessary;
- b) the most cost effective (value for money) basis was taken into consideration when submitting your request;
- c) funds are available.

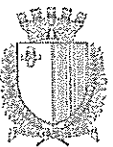
Thanks and regards

Graziella Calleja
Assistant Director

f/Director General (Contracts)
Department of Contracts

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MINISTRY FOR FINANCE
AND EMPLOYMENT

NOTRE DAME RAVELIN,
FLORIANA, MALTA

From: Calleja Graziella at Department of Contracts <graziella.calleja@gov.mt>
Sent: Friday, 29 December 2023 10:57
To: Degabriele Renzo at AACC <renzo.de-gabriele@gov.mt>
Cc: Tirchett Rita at AACC <rita.tirchett.1@gov.mt>; Schembri Christine at MFAA <christine.schembri@gov.mt>;

Balzan Mary Grace at AACC <mary-grace.balzan@gov.mt>; Spiteri Daniela at Department of Contracts <daniela.spiteri.1@gov.mt>

Subject: CT5000/2023 - Negotiated Procedure for the Provision of Home Help Service in Malta

CT 5000/2023

Dr Renzo Degabriele
Chief Executive Officer
Active Ageing and Community Care
Ministry for Senior Citizens & Active Ageing

Negotiated Procedure for the Provision of Home Help Service in Malta

Reference is made to your e-mail dated 19 December 2023 regarding the subject in caption.

The General Contracts Committee has discussed your request. Approval is hereby being given to enter into a negotiated procedure with Support Services for the Provision of Home Help Service in Malta at the estimated cost of €961,870.00 excl VAT, for a period of 3 months.

This approval has been granted in terms of Regulation 154 (1) (b) (ii) of the Public Procurement Regulations LN352/2016 under the following conditions:

- a) these services are absolutely necessary;
- b) the most cost effective (value for money) basis was taken into consideration when submitting your request;
- c) funds are available;
- d) this negotiated procedure is to be published thru' the epps;
- e) the Economic Operator is to be informed about the VEAT notice during publication of this procedure;
- f) the Contracting Authority is to revert for definite approval once the actual costs are known and provide a screenshot from the epps showing the publication of this procedure;
- g) Recommendation for award is subject to the publication of a VEAT notice, observing a minimum 10 day standstill period before the contract is awarded.

Thanks and regards

Graziella Calleja
Assistant Director

f/Director General (Contracts)
Department of Contracts

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NOTRE DAME RAVELIN, FLORIANA, MALTA