

4th April, 2024

Chairman  
Public Contracts Review Board  
Notre Dame Ditch  
Floriana, FRN 1601



Dear Sir,

**Re: CT 2192/2023 - Framework Agreement for the Disposal of Asbestos containing Material in an environmentally friendly manner from Malta for the Water Services Corporation**

By means of this present we are hereby filing the Reasoned Letter of Reply for and on behalf of the Water Services Corporation, as the contracting authority publishing the captioned tender (hereinafter referred to as the 'Contracting Authority'), with reference and in response to the letter filed on the 25th March, 2024 (hereinafter referred to as the '**Objection Letter**') by M Stream Limited (TID 199735) (hereinafter referred to as the '**Appellant**') in relation to the captioned tender.

By means of the Objection Letter the Appellant contested the reason for rejection whereby the tender was recommended for award to Edile First Choice Zerafa, being the cheapest priced offer satisfying the administrative and technical criteria at €1,545,525. The reasons for appeal are twofold:

1. Technical compliance misinterpretation
2. Ethical and Conflict of Interest Concerns

In this regard, by way of reply, the Contracting Authority humbly submits the following:

### **1. Technical compliance misinterpretation**

- a) The Appellant states, by means of this objection, that the appellant adhered to the requirements found in the Tender Dossier and the Clarification Question related thereto requesting Training Certificates for Environmental Technicians in asbestos removal. In fact, in the Letter of Objection the Appellant states that this was done by submitting a declaration and therefore not the Training Certificates themselves. The Appellant is making incorrect reference to the Tender Dossier and quoting erroneously.
- b) Reference is made to Clause 4.3 of the Tender Dossier in the section titled 'Certification Requirements' which is crucial to the case at issue. This provides as follows:

*For this framework agreement, the tenderer must present the following:*

*4.1 A copy of an active ERA Waste Carrier Registration from Class D3 to carry/transport the asbestos containing material.*

*4.2 An active ERA TFS permit for the export of asbestos containing material.*

***4.3 Training certificates for Environmental Technicians in asbestos removal who are registered with the Occupational Health and Safety Authority (OHSA).***

*4.4 Certificates from accredited certification bodies regarding the company Management Systems covering the company's asbestos removal operations certified to Health & Safety ISO 45001:2018.*

*4.5 Details of an ISO 17025 accredited laboratory, and the respective schedule and accreditation certificates for the same laboratory.*

(Emphasis added)

- c) The Appellant failed to submit the certificates required and as a result a rectification request was submitted (attached and marked as **Doc. A**). Nevertheless, the Appellant failed again in submitting the requested certificates and instead submitted a declaration. This was not in line with the requirements of the Tender Dossier and thus the bid was considered as not technically compliant.
- d) In the Objection Letter, the Appellant erroneously refers to Section 5(c)(i)(c) - Specifications under Selection and Award Requirements which requires that a declaration is required. However this is a separate requirement from that mentioned in Clause 4.3. Thus the submission of the declaration as required in the former section did not satisfy the requirement for certificates as requested by the latter section.

## **2. Ethical and Conflict of Interest Concerns**

- a) The Appellant states that the fact that an offer was submitted by Barbagallo First Choice Zerafa and Edile First Choice Zerafa raises substantial ethical issues leading to potential conflict of interest since these entities appear to be related. The Appellant stops short from delving further into the manner of conflict of interest.
- b) The Contracting Authority does not take such allegations lightly and it does not appear, in any manner, that there is any conflict of interest in having the same company or individual participating in two separate bids in two different joint ventures. In this regard, reference is made to Sections 3.1, 3.2, 3.3 and 3.4 of the General Rules Governing Tenders, which do not in any manner prohibit such a scenario. In fact, section 3.1 states that:

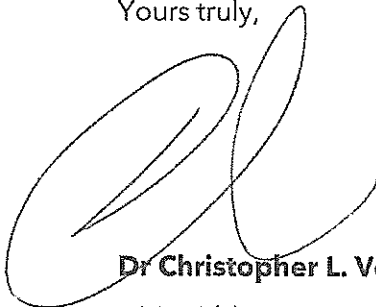
*Bidders may submit up to **three (3) multiple and non-identical (technically and financially) bids** for a tender. In cases where bidders submit more than three (3) non-identical bids, the evaluation board will only consider the first three (3) cheapest offers submitted - irrespective of their administrative, technical and financial compliance. All other bids submitted by the tenderer will be automatically disqualified.*

- c) Section 3 of the abovementioned rules is specifically dedicated to Multiple Tenders and therefore who may submit more than one tender. No exclusion for entities participating in more than one bid as part of different joint ventures exist. Moreover, the Contracting Authority, does not consider that this situation creates any situation of a conflict of interest.

On the basis of the foregoing, my client contends that the Public Contracts Review Board should find against the appellant and confirm the decision of the Contracting Authority.

Whilst thanking you for your kind attention, I remain,

Yours truly,

A handwritten signature in black ink, appearing to be 'Dr Christopher L. Vella', written in a cursive style.

**Dr Christopher L. Vella**

40/1, Old Mint Street, Valletta  
[cvella@oldmintlegal.com](mailto:cvella@oldmintlegal.com)

Da. A



31<sup>st</sup> January 2024

Messrs. M-Stream Ltd - TID 199735

**CT2192/2023 - SERVICES - FRAMEWORK AGREEMENT FOR THE DISPOSAL OF ASBESTOS CONTAINING MATERIAL IN AN ENVIRONMENTALLY FRIENDLY MANNER FROM MALTA FOR THE WATER SERVICES CORPORATION**

Reference is made to the tender in caption, and to your offer submission to same.

The Evaluation Committee noted the following shortcomings with regard to your submission:

**Technical** - Reference is made to Section 1 Article 5 C (ii) of the Tender Dossier and Key Experts.

- Documents of Qualifications Claimed by the Key Experts could not be traced in your submission and are being considered as missing. Kindly rectify.

**Technical** - Reference is made to Section 1 Article 5 C (iii) of the Tender Dossier and Literature List.

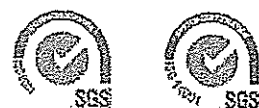
- **Literature List - Item 1**  
Technical sheets of the vehicles where the emission standards are defined could not be traced in your submission and are considered as missing.  
Therefore, you are kindly being requested to submit Technical Sheets of the vehicles in the English Language highlighting where emission standards are defined.  
For those vehicles where technical upgrade has achieved EURO IV standard the measures must be documented and included, and this must be approved by a credible third party.  
(Tech. Specs. Section 3, Clause 3.4)
- **Literature List - Item 2**  
Training certificates for Environmental Technicians in asbestos removal could not be traced in your submission and are considered as missing.  
(Tech. Specs. Section 3, Clause 4.3)

Kindly either indicate where in the literature submitted the above requirements are being met or submit fresh literature, clearly highlighting the above.

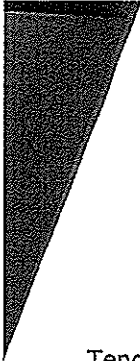
In terms of Article 5 of the Instructions to Tenderers, you are hereby being given the opportunity to rectify these shortcomings within five (5) working days of this notification or the deadline established on ePPS.

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ISO 14001 applies only to WSC Main Office, Ta' Kandja P.S. and Pembroke R.O. Plant



Tenderers who fail to rectify the shortcomings identified in this communication shall be deemed to be non-compliant.

The requested documents in the rectification are to be submitted through the appropriate Electronic Public Procurement (ePPS) module.

This rectification opportunity is being sent without any commitment whatsoever on the part of the Contracting Authority, and does not imply that your offer will be accepted as it may still be deemed administratively, technically or financially non-compliant during the evaluation process.

Best regards,

Evaluation Committee  
Water Services Corporation