

The Secretary  
The Public Contracts Review Board  
Notre Dame Ravelin  
Floriana  
[info.pcrb@gov.mt](mailto:info.pcrb@gov.mt)



29<sup>th</sup> April 2024

Dear Sir,

**Re: SPD1/2023/146 – Tender for the purchase of one new electric vehicle for the National Literacy Agency**

Reasoned letter of reply of the National Literacy Agency to the reasoned letter of objection by Muscat Motors TID0205209 ('the appellant')

Whereas

1. The National Literacy Agency (the Contracting Authority) has published a call for tenders for the purchase of one new electric vehicle on the electronic public procurement platform (ePPs) on the 30<sup>th</sup> January 2024.
2. Following the closing date for the submission of tender offers, the tender evaluation committee appointed by the Contracting Authority commenced its function of evaluating tender offers in terms of the powers vested in terms of regulation 17 of the Public Procurement Regulations, 2016 and rule 16 of the General Rules Governing Tenders.
3. Following the completion of the tasks assigned to it, the findings of such evaluation were communicated to the respective bidders, including the appellant, Muscat Motors TID 0205209, by means of a letter dated 8<sup>th</sup> April 2024, where it had been informed that its tender offer had been considered as being non-compliant.
4. Upon such notification, the appellant considered itself aggrieved from such decision and filed an appeal in terms of regulation 270 *et seq.* of the Public Procurement Regulations, 2016 (Subsidiary Legislation 601.03 of the Laws of Malta).
5. In its objection, the appellant stated that, contrary to what had been stated in the letter dated 8<sup>th</sup> April 2024, the appellant had uploaded the maintenance agreement and had also submitted statements unrelated and irrelevant to the reason for the offer being declared non-compliant.
6. In terms of regulation 276 of the Public Procurement Regulations, 2016 (Subsidiary Legislation 601.03 of the Laws of Malta), the Contracting Authority, having been notified of such reasoned letter of objection, shall hereinafter submit its reasoned letter of reply to the objection.

Hereinafter respectfully submits that:

7. That the appellant's objection is unfounded in fact and in Law as shall hereinafter be expounded.
8. In terms of regulation 270 of the Public Procurement Regulations, 2016 (Subsidiary Legislation 601.03 of the Laws of Malta), the reasoned letter of objection must provide in a very clear manner the reasons for the objection. This objection does not fulfill this criterion.
9. In terms of Section 5(C) of the tender document, participating tenders had been specifically requested to provide a preventive maintenance agreement to the tender evaluation committee.

10. In terms of the letter dated 8<sup>th</sup> April 2024, it is amply clear that the documentation has not been submitted. In terms of the burden of proof incumbent on the appellant, the allegation that the preventive maintenance agreement had been submitted is the responsibility of the appellant to prove in terms of article 562 of the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta.

11. In this respect, the tender evaluation committee had not been able to conduct its evaluation such that this is carried out in terms of Rule 16.3 of the General rules governing tenders.

12. As provided in regulation 62 of the Public Procurement Regulations, 2016 (Subsidiary Legislation 601.03 of the Laws of Malta) and the prescribed procedure established in regulation 39(2) of the Public Procurement Regulations, 2016 (Subsidiary Legislation 601.03 of the Laws of Malta), since the form is subject to Note 3 where information is not available, clarification could be sought.

13. However, in this instance, there had been no information available and consequently the tender evaluation was precluded from requesting clarification concerning information that did not exist.

14. In terms of the principle of self-limitation enunciated in decisions of the Public Contracts Review Board<sup>1</sup>, judgments of the Court of Appeal, including *Fremond Limited vs L-Aġenzija għas-Servizzi tal-Qorti et*<sup>2</sup>, *Christ Gatt vs Id-Direttur tal-Kuntratti et*<sup>3</sup> and the European Court of Justice, in particular *Nexans France vs European Joint Undertaking for Fusion Energy*<sup>4</sup>, the tender evaluation committee was not in a position to decide in a manner other than that provided in terms of the letter dated 8<sup>th</sup> April 2024.

The Contracting Authority reserves its procedural rights to make further submissions and to present any evidence it considers fit and opportune in the circumstances. Therefore, in view of the aforesaid reasons, the Contracting Authority submits to this Honourable Public Contracts Review Board that it is to forthwith dismiss the reasoned letter of objection of the appellant.

Yours sincerely,



**Av. Mark Anthony Debono**

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<sup>1</sup> Case 1951 of 2024, SPDS/2023/035 - Supplies – *Framework Contract for the Supply, Installation, Testing and Commissioning of Environmentally Friendly CCTV Systems across different localities in the Western Regional Council*, 22nd January 2024

<sup>2</sup> *Fremond Ltd (C 20339) vs L-Aġenzija tal-Qorti*, Court of Appeal, Appeal 542/2022/1, 20th March 2023

<sup>3</sup> *Christ Gatt vs Id-Direttur tal-Kuntratti et*, Court of Appeal, Appeal 316/2021/1, 26<sup>th</sup> January 2023

<sup>4</sup> *Nexans France vs European Joint Undertaking for Fusion Energy*, Judgement of the General Court, Case T-415/2010, 20<sup>th</sup> March 2013