

IN THE PUBLIC CONTRACTS REVIEW BOARD

3rd April 2024



**Re: Objection 437 - 033-6006/24 - CPSU1396/19 - Negotiated Procedure for the Leasing of Non- Emergency Ambulances Plus Drivers, Porters and Booking Officers for the Non -Emergency Ambulance Garage**

Reply of the **Central Procurement and Supplies Unit (CPSU)** on behalf of the Department of Health to the reasoned application lodged by the **Malta Red Cross Society** (the Objector);

On the 8th of February 2024 a Negotiated Procedure for the Leasing of Non- Emergency Ambulances Plus Drivers, Porters and Booking Officers for the Non-Emergency Ambulance Garage, was published with an estimated contract value of €322,900.

4 offers were submitted, and a recommendation was made in favour of **Emergency Malta Private Medical Services Ltd** (the recommended bidder) being the cheapest price offer satisfying the administrative and technical criteria;

The objector's offer was not selected since although technically, administratively and financially compliant, it was not the cheapest.

The Objector felt aggrieved with the decision of the evaluation committee and on the 25th of March 2024, the objector filed an objection based on 3 grievances, these being 1) Abnormally Low offer, 2) adjustment of financial offer after closing deadline, and 3) Deposit Payable is incorrect;

CPSU respectfully disagrees with the Objection and is filing the below pleas and submissions in reply;

**Submissions**

**On the First Grievance of the Objector: the Preferred Bidder's offer appears to be abnormally low**

1. The Objector claims that the recommended bidder's offer appears to be abnormally low and that the evaluation committee should have requested a clarification in terms of regulation 243(1) of the Public Procurement Regulations (PPR);
2. CPSU respectfully disagrees with the objector since regulation 243 of the PPR does not refer to low offers in general, but to abnormally low offers i.e. offers which when one looks at them it appears that something is not on;
3. A low offer on the other hand, which satisfies the administrative, technical and financial criteria and which does not appear to be abnormally low, is the ultimate objective of competitive public procurement, which is that of purchasing a service which is up to the requested standard at the cheapest price available;
4. This Honourable Board had identified a number of methods how an evaluation committee can flag a potentially abnormally low offer. In case number 1140 delivered on the 15th of March 2018, the Board stated that:

*In practice, methods are often used for the identification of tenders that appear to be abnormally low, such as:*

- *An analysis of the price (Costs) proposed by an economic operator, is made in comparison with the objective of the particular procurement;*
  - *A comparison is carried out between the tendered price and the estimated value of the tender so that an assessment of the proportion of deviation from the estimated price is established;*
  - *A comparison is made of the offer with the average of the other quoted rates for the same procurement. (emphasis added)*
5. The offer of the recommended bidder of €234,738.10 is 73% of the estimated contract value and €30,000 lower than the offer of the second cheapest bidder (which however was declared as not being technically compliant). Although it was a low offer it is not prima facie lower in a way which is not normal, because the values provided in the financial bid form compared to the purpose of the procurement were considered as reasonable by the evaluation committee;
  6. For this reason, this grievance should be rejected;

**Second Grievance of the Objector: The Bidder should not have been allowed to adjust its financial offer after the closing date;**

7. The objector in this part of the objection claims that the evaluation committee allowed a change in the financial offer of the recommended bidder in breach of the principles of equal treatment and giving an undue advantage to the recommended bidder over the other 3 bidders;
8. CPSU disagrees with all the claims as it does not give any undue advantage to the recommended bidder over the other bidders and certainly did not allow for any change in the financial offer;
9. What happened was that the daily ambulance rate multiplied by the number of days was not tallying with the total. CPSU requested a clarification and it confirmed that the daily ambulance rate was correct and that there was an arithmetical mistake in the multiplication. This mistake reflected on the grand total;
10. The General Rules Governing Tenders allow for corrections in such situations in paragraph 17 which provides the below:

*17.1 Admissible tenders will be checked for arithmetical errors by the Evaluation Committee. Without prejudice to other arithmetical errors which may be identified, the following errors will be corrected as follows:*

- (a) where there is a discrepancy between amounts in figures and in words, the amount in words will prevail;*
- (b) where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail;*
- (c) where no rate or price has been entered, but a total has been provided, the rate is to be established by dividing the total against the quantity published;*
- (d) where a rate or price has been entered, but no total has been inputted, the rate is to be multiplied by the quantity published to derive the total;*

*(e) where there is an error in addition in the Grand Total, the evaluation committee will adjust with the correct amount.*

11. The financial offer was thus, as this honourable board can confirm not changed in substance as the unit price prevailed in line with that is stipulated in the above quoted paragraph of the General Rules;
12. Moreover, and without prejudice to the above, the objector cannot claim any advantage of the recommended bidder over the other bidders since the recommended bidder's total price remained the cheapest after it was adjusted to reflect the daily unit price;
13. For the above reasons this second grievance ought also to be rejected;

**Third Grievance of the Objector – The Deposit payable according to the Schedule of Award is incorrect**

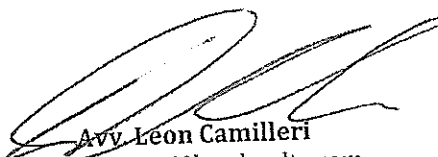
14. Although that CPSU acknowledges that the amount indicated on the schedule of award was not correct due to a human error, and that the correct deposit is €1,614.50, however this should not lead to the cancellation of the award or to any re-evaluation or similar consequence;
15. This is being submitted since the objector still filed its objection, thus any rights of redress of the objector were not affected or prejudiced. Moreover, CPSU notes that the objector did not submit any proof of payment with the objection letter.
16. Thus, this grievance also ought to be rejected;

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

In view of the above, CPSU humbly requests this Honourable Board to reject the objection in by upholding CPSU's reply and forfeit the deposit of €1,614.50. If the objector paid the full €10,000 as indicated in the schedule of award, any amount exceeding €1,614.50 should be refunded.

With Respect.

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