



29th April 2024

Public Contracts Review Board
Notre Dame Ravelin,
Floriana,
Malta

In the acts of the objection filed by
on the 18th April 2024, in the names
of:

Simply Clean Limited

vs

Identita et.

SPD 2/202/052

Tender Name: Tender for Cleaning services using environmentally friendly cleaning products at
Identita'



REASONED LETTER OF REPLY

Whereas, Identita (hereinafter "Identita" and/or "contracting authority") issued a call for tenders "Tender for Cleaning services using environmentally friendly cleaning products at Identita";

Whereas, Messrs. AGV Non Ferrous Malta Ltd (hereinafter "Recommended bidder" and/or "AGV") have been recommended for award;

Whereas, by means of a letter dated 18th April 2024, Messrs. Simply Clean Limited (hereinafter "Appellant") appealed against the recommended award;

Whereas by means of a reply Identita submitted its reply on the 26th April 2024;

Whereas, AGV in accordance with regulation 276 (c) of S.L. 601.03 [hereinafter 'PPR'] is submitting its written reply to the appeal filed by the appellant:-

1. Preliminary observation

- 1.1 AGV does not have visibility of the submitted offer by the appellant and thereby in terms of the evaluation process and reasons for exclusion, it rests on the submissions made by the contracting authority;
- 1.2 It is however sufficiently clear that the objection presented by the appellant lacks the necessary degree of clarity required by regulation 270 of PPR, i.e. "*which shall contain in a very clear manner the reasons for their complaints*", in particular insofar as the objection is making reference to the reason for exclusion, whilst making reference to tender specifications which are unrelated;
- 1.3 In view of the aforementioned, AGV hereby reserves its right to make additional submissions, once all relevant information is made available to it in relation to the exclusion of the appellant;

2. *Valid bid ab initio*

- 2.1 On a strictly without prejudice basis, AGV makes reference to regulation 62 (1) of PPR, which specifically states that:

“Without prejudice to Part VI and regulation 235(2), the Valid bid authority responsible for the tendering process must ensure that an economic operator must ab initio be eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same.”

[added emphasis]

- 2.2 This has also been confirmed by the Court of Appeal in the decision in the names of NQUAYMT konsorzju kompost minn (i) **Bonnici Bros. Services Limited (C57464)** u (ii) **Korfezdeniz ins Taah. San. Ve Tic. Ltd. Sti, soċjeta` estera v. (i) Aġenzija għal Infrastruttura Malta**, wherein it held that:

Din il-Qorti mhux l-ewwel darba li tirribadixxi li kull oblatur irid, sa mill-bidu nett mal-offerta tiegħu, isegwi rigorożimament dak li trid issejha għall-offerti u m’għandux jippretendi li jiġi mitlub “jirranġa” l-offerta biex ikun kompatibbli ma’ dak mitlub.

- 2.3 Indeed it is permissible to clarify certain aspects of a submitted tender, and this in accordance with regulation 62 (2) of PPR, however such clarification shall be done *“Provided that such requests are made in full compliance with the principles of equal treatment and transparency”* – the expectation of the appellant in the case under review cannot and should not be clarified since it would prejudice the rights of *inter alia* AGV;

3. *Principle of self-limitation*

- 3.1 The principle of self-limitation is a fundamental principle which has been decided upon on various instances by this Honourable Board, including in decision 1665/2021, wherein the Board held that:

“The Board opines that the Evaluation Committee did not observe the principle of Self-Limitation when it deemed the Appellant’s offer as non-technically compliant when it adjudged the equipment of the Appellant company on issues not included within the Tender Dossier.”

- 3.2 The expectation of the appellant seems to suggest [once again unclear] that the Evaluation committee should have not applied the tender specifications – this is tantamount to a breach of the self-limitation principle, since it would have applied different rules to different economic operators – thus breaching the self-limitation principle, as well as the obligation of equal treatment;
- 3.3 AGV submits that the evaluation committee did not have any discretion whatsoever to opt out from applying the tender specifications uniformly, and on the contrary it had to observe the technical specifications *ad ungiur*;

4. No changes to tender specifications

- 4.1 Whatever reason it had to defect from the tender specifications, such reasons cannot be discussed at this mature stage within the procurement process;
- 4.2 Regulation 262 of PPR specifically creates a remedy within the early stages of the procurement cycle for any party to submit a procedure to address anything within the tender document, through modification, cancellation or the setting aside of any clause within the tender document – a procedure which the appellant opted not to avail of, thus and thereby it has to be adjudged in accordance with the regulations [technical specifications in this case], it explicitly consented to through participation;
- 4.3 This has also been confirmed in the Court of Appeal decision in the names of **Truevo Payments Limited (C62721) v. Direttur tal-Kuntratti et**;

*Dawn l-ilmenti kellhom jitressqu qabel iddata tal-għeluq ta' sejha
għall-kompetizzjoni u mhux , bħal fil-każ tallum, wara dik id-data, u
sahansitra wara d-deċiżjoni dwar l-għoti tal-kuntratt*



NOWTHEREFORE, whilst reserving the right to put forward any other submissions, AGV hereby requests this Honourable Board to reject in its entirety the objection raised by the appellant.

AGV hereby confirms that it has no objection to the release of the deposit, would the appellant opt to withdraw its objection in a timely fashion, and in any case before the hearing of its objection.

A handwritten signature in black ink, appearing to read 'M Paris', is written over a faint, dotted-line signature template.

Avv. Matthew Paris
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