

2nd April 2024

Public Contracts Review Board
Notre Dame Ravelin,
Floriana,
Malta



Malta Red Cross Society

vs

**Central Procurement & Supplies Unit -
Ministry for Health;**

033 – 6066/24

Tender Name: Negotiated procedure for the leasing of non-emergency ambulances plus drivers, porters and booking officers for the non-emergency ambulance garage

LETTER OF REPLY BY EMERGENCY MALTA PRIVATE MEDICAL SERVICES LTD.

Whereas, the Central Procurement & Supplies Unit (*hereinafter* **CPSU**) issued a call for tenders “Negotiated procedure for the leasing of non-emergency ambulances plus drivers, porters and booking officers for the non-emergency ambulance garage”

Whereas, Messrs. Emergency Malta Private Medical Services Limited (*hereinafter* “**Recommended bidder**”) submitted an offer for this procurement procedure;

Whereas, the bid by the recommended bidder was recommended for award, whilst the bids by the other bidders have been rejected;

Whereas, the third highest priced offer, appellants Malta Red Cross Society (*hereinafter* “**appellants**” and/or “**MRCS**”) felt aggrieved and submitted and appeal;

Whereas, the recommended bidder, in accordance with regulation 276 (c) of S.L. 601.03 is submitting its written reply to the appeal by MRCS, as follows:-

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1. **First ground of appeal: - the Preferred Bidder's offer appears to be abnormally low**

- 1.1 Primarily, the recommended bidder rebuts the arguments put forward by the appellants that the offer appears to be abnormally low, as completely unfounded in fact and at law;
- 1.2 It is undisputed that the estimated value of a tender, is not the only parameter to be used in relation to verification of potentially abnormally low tenders. As confirmed in **European Public Procurement : Commentary on Directive 2014/24/EU tal-awturi Caranta u Sanchez**, it was held that:

'Furthermore, the case-law has clarified that contracting authorities may compare the price of received tenders to the estimated budget for the contract, to the price of the other tenders submitted, or to the normal market price and thereby identify tenders that appear to be abnormally low.'

[added emphasis]

- 1.3 The aforesaid is consistent with a number of local and ECJ judgments that make it clear that the estimated value is not and should not be used as the sole criterion for evaluation purposes, such as in the case in the names of **Star Fuels Limited v WasteServ Malta Limited et.**¹, wherein it was held that:

'Il-kriterju jekk prezz huwiex baxx b'mod mhux normali ma huwiex biss kif dak il-prezz iqabbel mal-prezz stmat mill-awtorità kontraenti jew ma' offerti oħra validi, għalkemm dan jista' jkun indikazzjoni. Kriterju iehor huwa kif il-prezz offert iqabbel ma' kemm il-prodott jew is-servizz jiswa lill-oblatur.;

[added emphasis]

- 1.4 Thus judgments and claims made in paragraphs 15, 16 & 17 have all been quoted out of context by the appellants, and in any case, more recent decisions have been clearer on the concept of "abnormally low";
- 1.5 In any case, the estimated value in the context under review is not an appropriate metric, and this since all economic operators quoted a price which is considerably cheaper than the estimated value - A more appropriate measure in the context under review is the price offers of the other economic operators, which is as follows:

¹ Qorti tal-Appell [Sede Superjuri] 450/2023/2 deciza 22.01.2024, paragrafu 13

Quoted price by Recommended bidder	€234,738.10	-14.5%
Quoted price by A Medical	€264,510	-4%
Average quoted price	€274,439.78	+100%
Quoted price by Appellants	€290,099	+5.7%
Quoted price by Health JV	€308,412	+12.4%
Estimated Value	€322,900	+17.7%

1.6 On a strictly without prejudice basis, the above quoted prices are also to be compared with an identical service requested by CPSU² for which MRCS is the recommended bidder as follows:

Price quoted by MRCS tender 102 – CPSU 1396/19 [6 month tender]		Price quoted by Emergency Malta Private Medical Services 033 – 6066/24 [2 month tender]	
Quoted price	Equivalent per month	Quoted price	Equivalent per month
€674,284	€112,380	€234,738.10	€117,369.05

This comparative confirms that the price per month quoted by the respondents is higher than the price per month quoted by the appellants in an identical procedure

² Negotiated procedure for the leasing of non-emergency ambulances plus drivers and porters for the non-emergency ambulance garage (Ref. CPSU 1396/10)

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1.7 Finally, the respondents confirm that it has given enough data, breakdown of figures and detail to give the contracting authority the necessary comfort to analyse the financial figures, and thus attesting for itself that the figures are not only not appearing to be abnormally low, but also in conformity with market conditions;

1.8 The PCRB is thereby being respectfully requested to reject this ground of appeal;

2. The second ground of appeal: the Preferred Bidder should not have been allowed to adjust its financial offer after the closing deadline

2.1. The recommended bidder is unaware how the appellants reached the conclusion that there has been a price change, nor is it aware if the appellant requested information to confirm its statements or otherwise;

2.2. In any case, and as can be easily confirmed by this Honourable Board, there has been no change in the financial offer by the respondent company and thus the claim brought forward by the appellants is completely unfounded;

2.3. The PCRB is thereby being respectfully requested to also reject this ground of appeal;

3. The third ground of appeal: The deposit payable according to the schedule of Award is incorrect

3.1. The merits of this grievance is not *per se* a ground of appeal as it does not have any implications on the evaluation process in any manner whatsoever;

3.2. MCRS has filed its objection and it accompanied it with the deposit it deemed appropriate - would the PCRB concur with the statements made by MCRS, it would signify that the appeal would be deemed admissible and thus the appellant would have not suffered any prejudice whatsoever;

3.3. In relation to the deposit paid (or as should have been paid), the recommended bidder will defer to the decision of the PCRB and has no comments to make, other than the deposit in its entirety should not be

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refunded, in view of the fact that appeal by MCRS is frivolous and vexatious;

NOWTHEREFORE, whilst reserving the right to put forward further submissions, the Recommended Bidder hereby requests this Honourable Board to reject the appeal by Malta Red Cross Society;



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