

ATTN Chairman

Malta Resources Authority,
Millennia, 2nd Floor,
Aldo Moro Road,
Marsa,
MRS 9065
Malta

3rd April 2014

RE: Tender Ref MRA/ENE/157/2013 Tender for Accountancy Services

Dear Mr Chairman,

Further to the communication we received from the MRA dated 28th March 2014, namely 'Notice of Intent for tender Accountancy Services' which effectively announced the cancellation of said tender, we would like to submit our objection on the following grounds:

We make reference to the below excerpt which is taken from p.19 of the tender document in question where there are listed five instances wherein cancellation may occur:

5.2.3 Cancellation may occur where:

- a) the Tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile Tender has been received or there has been no response at all;
- b) the economic or technical parameters of the project have been fundamentally altered;
- c) exceptional circumstances or force majeure render normal performance of the project impossible;
- d) all technically compliant Tenders exceed the financial resources available;
- e) there have been irregularities in the procedure, in particular where these have prevented fair competition.

A contrario sensu, cancellation of tender may not occur where no one of the five instances listed above subsists.

In this light we wish to make note of the reason submitted in your communication of the 28th March 2013 where it was written:

‘Please note that the tender has been cancelled as none of the offers were administratively compliant’

Further to the above we object to the cancellation of said tender on the basis that the Contracting Authority cancelled the tender for reasons not contemplated by the tender document and therefore Contracting Authority had no right to cancel such tender, and acted ultra vires in so doing, to the clear and unequivocal detriment of applicant bidder PKF Malta.

Purely for the ends of being thorough, we wish to make notes on the remainder of Contracting Authority’s communication of the 28th March 2014, which PKF Malta holds to be unfounded in its entirety as aforementioned, our comments in italics:

‘Your tender was administratively non compliant for the following reasons:

1. Form of Tender was incomplete (Section C, Clause 3 specifying rates of tenderer was not completed), as required in clause 1.2.5; Failure to submit this form completed in all respects disqualifies the bid’

This comment refers to the below section.

3 The rates/prices of our tender (inclusive of VAT, duties, other taxes and any discounts) is:

Lot No 1: [.....]

Lot No 2: [.....]

Lot No 3: [.....]

This was not completed because it is clearly stated in the tender document (quoting p.9) “2.1.12 This tender is not divided into lots”

2. ‘The qualification documents of Mr. Darren Agius were not submitted as requested’

Tender requirement:

This Tender is for the provision of the Services of a single Accounts Officer in connection with Project ERDF 288 – Promotion of Renewable Energy Sources in the Domestic Sector (2012)

We assigned Donna Greaves Bonello ACCA CPA MIA B Com as Accounts Officer (satisfying the full requirements) together with all requisite documents as stipulated in tender document including a copy of her warrant.

The tender document only requested one Accounts Officer and we satisfied that minimum entirely. We went beyond that (by naming Darren Aguis as assistant to our assigned Accounts Officer) in order to enhance our bid and exhibit our expertise in EU fund accounting since it has been upheld by the PCRB in past rulings that ‘the Evaluation Board has to adjudicate a tender bid on the information contained in the tender document’, hence PKF Malta wanted to ensure that it was putting forward all

information possible that they deemed relevant and conducive to the enhancement of the bid.

For these reasons, PKF Malta feels aggrieved at Contracting Authority's notice of cancellation of the tender, objects to the same and makes its humble request to the PCRB to:

1. Declare such notice of cancellation null and avoid;
2. To order the tender award to the 'cheapest priced tender' as stipulated in the tender document (p.19), that being the tender bid proposed by PKF Malta according to the published schedule of bids.

Regards,



Dr Marilyn Mifsud, LL.D, Adv
For and on behalf of
PKF Malta



MALTA RESOURCES AUTHORITY

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Date: 4.4.14

Received from Mr/Mrs PKF Maltta Identity Card No. /

The sum of €400 (words: four hundred euros) by

Cash/cheque (Bank LB, cheque No. 7657) being payment of

Licence No./ Authorisation No. / for Objection

to Tender ENE / 157 / 2013

Receiving Officer for Malta Resources Authority