



MALTA RESOURCES AUTHORITY

MRA/58/2014

07th August 2014

Tender for the Lease of Office Space for the Malta Resources Authority

Question 1:

Para 3.2.3(ii) and para 5 of the Tenderer's Declaration of the invitation to tender appears to make it obligatory on members of a consortium to remain unchanged until the contract is entered into. This is understandable and does not raise any concerns. However para 3.2.3(ii) and para 5 of the Tenderer's Declaration go on to state that the members of the consortium must remain the same (unless a change is required or permitted by law) for the entire duration of the lease, that is for five years certain and five years optional. It seems to us that this must be an unintentional restriction. Whilst it would be justifiable in, say, a contract of works (appalt), where the contractors chosen would not be expected to change (as this would impact matters such as financial solidity, reputation etc), the same does not apply to ownership of property. In a lease, it is standard for a lessor to be able to sell and for the lessee to remain bound by the contract with the buyer. This is, amongst other considerations, intended to ensure that property is not negatively impacted by illiquidity, and because a change in owner has no impact on the lessee.

It would therefore be appreciated if it were to be clarified that the prohibition on changes in consortium members applies only until the contract is entered into and MRA is given vacant possession and that, thereafter, each consortium member can dispose of his or its share as it considers appropriate.

Reply 1:

The Authority has considered the above request for clarification, and is effecting an amendment to the tender as follows:

- Para 3.2.3(ii) to read as follows:

The composition of the joint venture/consortium cannot be modified until the conclusion of the contracting procedure. The consortium/joint venture winning this contract must include the same partners for the whole performance period of the contract other than as may be permitted

or required by law, or with the Authority's prior written consent which shall not be unreasonably withheld.

- Para 5 of the Tender Declaration to read as follows:

*We are making this application in our own right and [**as partner in the consortium** led by < name of the leader / ourselves >] for this tender. We confirm that we are not tendering for the same contract in any other form. We are fully aware that, in the case of a consortium, the composition of the consortium cannot be modified in the course of the tendering procedure until the lease contract is entered into. [We confirm, as a partner in the consortium, that all partners are jointly and severally liable by law for the performance of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, each member, and that all partners in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's performance unless the MRA's prior written consent is obtained].*

A copy of the amended form of Tender Declaration is being uploaded on the Authority's website. Bidders are requested to use the revised template in their submission.