

To: **Public Contracts Review Board**
Notre Dame Ditch
Floriana FRN 1601

Attn: Mr Raymond Zarb – f/ Secretary



CC: **Department of Contracts**
Notre Dame Ravelin
Floriana FRN 1600

Attn: Mr Anthony Cachia - Director General

Subject: Call for Remedies before the Closing date of the Competition "Tender for the Professional Services of Project Designers, Project Supervisors and Project Management and other Supporting Services for the Construction of Taxiway Lima. (Ref No: CT 2349/2019)"

Malta, 28 October 2019

Dear Sirs,

Following your reply of Friday 25/10/2019, we would like to comment that the attached Clarification Note No 2 (dated 18/10/2019) does not satisfy our queries, as suitably qualified and experienced foreign experts from the European Union are still totally excluded. Therefore, we submit this new letter underlying the two issues from the Key Expert Selection Criteria that need your attention and were mentioned in our first letter:

1. The Team Leader / Perit is required to be locally warranted, i.e., must be in possession of a "Warrant to Practice in Malta issued by the Warranting Board" and must also have had a "Role in design and supervision of aviation related projects with particular reference to apron/hangar flooring and pavements" and that this role or roles, must have been in a project worth EUR 10 million (€10,000,000) - "Role in the last five (5) years as Project Designer and Project Manager in at least one (1) major projects exceeding EUR 10 million (€10,000,000)"
These criteria essentially rule out the majority, if not all, of the locally warranted key experts, drastically reducing the 'pool' of available experts, and therefore limiting competition whilst totally excluding suitably qualified and experienced foreign experts from the European Union in breach of a fundamental principle of the EU that allows the free movement of workers.
2. The Service Engineer or Engineers are similarly prescribed within what is essentially an exclusion exercise albeit of a more manageable quantum, with the role required to have been in "projects exceeding EUR 5 million (€5,000,000)". The criteria for this position however still exclude the majority of local Engineers and precludes foreign engineers from the European Union from participating.



These criteria will necessarily have an impact on the scoring of any proposal, making them crucial to a successful proposal. It may also mean that by limiting the competition in this manner, the Customer may end up with a project that may not be optimal, having reduced the amount of valid proposals through excessively prescriptive criteria for the selection of key experts.

This is especially so when one considers that the 'warrant' is required to accumulate points in the overall scoring of a tenderer's proposal, however in the absence of a warrant, a potential expert cannot even start the process to gain a temporary warrant until there is a contract in place. This makes it impossible for a bidder to present either a warranted engineer / perit or evidence that an application for a warrant has been submitted. The remedy afforded in the clarification mentioned earlier above does not address our concerns.

We, therefore, respectfully request the Contracting Authority to revise these criteria allowing proposals to include Experts that may not have a local warrant to practice at the time of tendering but may, due to their being EU Nationals, either work unimpeded in a EU country or be eligible to become provisionally or permanently locally warranted, without attracting any negative marking in the tender award scoring system published.

Looking forward to your reply.

Best Regards,


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