



1st November 2019

The Secretary
Public Contracts Appeals Board
Notre Dame Ditch
Floriana FRN 1601

Re: CT2349/2019 – Tender for the Professional Services of Project Designers, Project Supervisors and Project Management and Other Supporting Services for the Construction of Taxiway Lima

Reference is made to correspondence dated 28th October 2019 whereby Athens Development Office SA requested the Board to grant a precontractual remedy in the context of the above-mentioned procurement procedure. In their letter, said prospective bidder is requesting the Board to direct Malta Industrial Parks Limited as the contracting authority to revise selection 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 an EU country or be eligible to become provisionally or permanently locally warranted, without attracting any negative marking in the tender award scoring system published.”*

The relative clause in the tender dossier which originally requested a local warranted *periti* has been superseded by means of two clarifications: Clarification number 1 dated 26 June 2019 (Q&A 12); and Clarification number 2 dated 18 October 2019 (Q&A 2). These two clarifications are annexed hereto for ease of reference.

In accordance with the Periti Act, Chapter 390, Article 3 of the Laws of Malta, no person shall practise the profession unless he is the holder of a warrant granted by the Minister upon recommendation of the ‘Bord tal-Warrant tal-Periti’. Therefore, key experts who are not in possession of a warrant or a temporary service permit cannot execute the basic professional duties required in the context of the public contract in question. Furthermore, given the nature of the contract in question which involves airside infrastructural works at Malta’s only airport, the experience requirement is reasonable and proportionate to the value of works. In terms of scoring, in the light of the clarifications referred to above, the contracting authority will award points depending on key expert’s experience without considering the country where the warrant has been issued, as long as it satisfies the minimum qualification requirements. Needless to say, that contract will only be signed and executed once the preferred bidder would have obtained the necessary local authorisations in terms of law; in the event that a letter of award is issued to a bidder who is not in possession of a local warrant, they can initiate the procedure for recognition in Malta. This may be confirmed with the ‘Bord tal-Warrant tal-Periti’.

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It therefore follows that there is no scope for pre-contractual remedies and the request lodged by Athens Development Office SA ought to be rejected.

Sincerely,

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