



MINISTRY FOR GOZO  
St. Francis Square, ir-Rabat, Għawdex

29<sup>th</sup> November 2021.

The Secretary  
Public Contracts Review Board  
Notre Dame Ditch  
Floriana, Malta

**XT MALTA LIMITED  
VS  
MINISTRY FOR GOZO**

**This is the reply of the Contracting Authority to the objection filed by XT MALTA LTD. (dated 19<sup>th</sup> November, 2021) for Tender SPD3/2021/045 Tender for The Supply, Delivery, Installation, Testing and Commissioning Of Mechanical and Electrical Services In An Environmentally Friendly Manner At MGOZ offices At GB Olivier Street, Victoria, Gozo.**

WHEREAS the Sectoral Procurement Directorate issued on behalf of the Ministry for Gozo the above-mentioned call for tenders,

WHEREAS for this tender six (6) bids were submitted,

WHEREAS on the 9<sup>th</sup> November 2021, the Sectoral Procurement Directorate, Department of Contracts, Ministry of Finance and Employment informed the bidder XT MALTA LIMITED, now objector that their offer was considered as technically non-compliant,

WHEREAS the complainant felt aggrieved by the decision of the Sectoral Procurement Directorate 3 and lodged an objection in front of this Honourable Board:

In reply to the objection, the Ministry for Gozo submits as follows:

The tenderer, now objector did not prove that the respectively submitted bid satisfies the following two elements:

- i) **is in compliance with the standards and technical requisites of the tender dossier; and**
- ii) **that it meets the performance or functional requirements of the contracting authority.**

The tenderer in his objection focuses on proving that its offer satisfies performance or functional requirements without proving that the offered supplies satisfy the technical standard requested.

In this regard Regulation 53 S.L. 601.03 says:

“(11) In its tender, the tenderer shall prove by any appropriate means, including those referred to in regulation 232 that the work, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.”

In fact, in the first page of the objection, plaintiff erroneously concludes that:

“this tender has not been awarded to us on minor issues and not technicality” and in the next sentence admits that it did not satisfy at least one technical requirement because allegedly “there was a tender specification that is only done for two brands available in Malta”.



And on the third page type of VRF units the objector reiterates:

“VRF System: Please note that one of the outdoor units was requested to have a minimum cooling capacity of 22.7 Kw. Please note that this type of VRF units with this range of 22.7Kw is only done by two or few specific suppliers...This was only for one (1) outdoor unit from three (3) quoted.”

It is being confirmed that the offer was rejected on the grounds that it was considered technically non-compliant, even after that the bidder was given the opportunity to rectify information. Specifically, it is being re-affirmed that the offer was found to be technically non-compliant on the following grounds:

1. light fixture type has a lamp rating of 1.5W and not as requested in the specifications of the tender document
2. No datasheets (requested in the Literature list) were submitted for
  - i. light fixture type E1,
  - ii. electric water heater,
  - iii. network cabinet,
  - iv. UTP CAT6 cable,
  - v. CCTV SYSTEM – Network Video Recorder (NVR),
  - vi. Manual Call Point (showing IP rating) and the internal beacons.
  - vii. UPS (battery – backup timing and the external maintenance bypass switch).
3. Data Sheets for the New PIR Sensor Model shows that it is not recessed in false ceiling as per specifications.
4. The cooling capacity of the VRF System is 22.4kW and not as per specifications of the tender document which shall be 22.7kW.

In view of the above shortcomings, based on the original offer submitted and the consequent rectified information, the Evaluation Committee had no option other than to consider the offer as technically non-compliant. Moreover, the financial aspect of the same offer was not considered by the Evaluation Committee since bidder was deemed ineligible at the technical evaluation stage.

With reference to the above, one should note that the arguments of the complainant are neither correct nor valid at law and should not be considered. The Adjudicating Board has absolutely evaluated the bid in line with procurement legislation and the general rules governing tendering. On the contrary, had the evaluation committee accepted the offer submitted by complainant XT MALTA LIMITED, it would have been unfair, discriminating and unjust in the context of procurement legislation.

Consequently, the requests put forward by the complainant deserve to be rejected since they are unfounded in fact and in law and the disqualification of the complainant deserves to be confirmed. Contracting Authority is hereby reserving the right to present further evidence, both orally and/or in writing during the hearing.

Dr. Francelle Saliba  
Senior Legal Officer  
Ministry for Gozo

Ms. Carmen Ogilvie Galea  
Director General Operations  
Ministry for Gozo