

8th March, 2021

Chairman
Public Contracts Review Board
Notre Dame Ditch
Floriana, FRN 1601

Dear Sir,

Re: CT2329/2020: Call for Tenders for the Provisions of Data and Telephony Services to Malta Enterprise and its subsidiaries

By means of this present letter, we are hereby filing the Reasoned Letter of Reply for and on behalf of the Malta Enterprise, as the contracting authority publishing the captioned tender (hereinafter referred to as the '**Contracting Authority**'), with reference and in response to the letter dated the 23rd of February, 2021, filed by Melita Limited (hereinafter referred to as the '**Appellant**') in relation to the captioned tender.

By means of the letter dated 23rd February, 2021 (hereinafter referred to as the '**Letter of Objection**'), the Appellant based its objection on the basis of four grounds:

- i. Criteria for award;
- ii. Cheapest price irrespective of calculations;
- iii. Decimal point functionality;
- iv. Clarifications

The Contracting Authority will be submitting its position in relation to each ground:

First ground: Criteria for award

With regards to its first ground for objection, the Appellant claimed that the sole award criterion for the tender was the 'cheapest priced offer' satisfying the administrative and technical criteria and that "*The requirement of providing all*

financial values in the Financial Offer of a Procurement Call up to two (2) decimal points was not a criterion on which the award was based and not even a requirement mentioned anywhere in the Tender Document itself but only in the excel sheet provided”.

In this regard, the Contracting Authority confirms that the award criterion for the tender in question remained as indicated in **article 6 of section 1 of the Tender Document**, being the ‘cheapest priced offer’. Nevertheless, such an offer is required to be administratively, technically and financially compliant. It is indeed for this reason that the offer submitted by Appellant was disqualified, on the ground that it was not ‘*financially compliant*’. Such non-compliance emanated from the fact that cell D27 in the Financial offer as submitted by the Appellant contained more than two decimal points. This runs contrary to the requisites found in the Financial form itself and the General Rules Governing Tenders.

In this regard, the Contracting Authority further submits that the financial form presented in excel format forms part of the Tender and therefore any requisites indicated therein are to be respected by all bidders. In fact, as indicated in the original financial bid (attached and referenced as **Doc. CA1**) it clearly stated that “*Three decimal points do not exist as currency; therefore such offers cannot be accepted. Offers are to be submitted up to two decimal points.*”.

Moreover, this was reiterated in the **General Rules Governing Tenders, rule 7.5** which states:

*“The currency of the tender is the Euro (€). **Offers are to be submitted up to two decimal points.** In accordance to the provisions of Council Regulation (EC) No. 974/98, it is here being reiterated that three (3) decimal points do not exist as currency. To this effect, any financial value/amount in the Financial Offer of a Procurement Call shall be up to two (2) decimal points. Therefore, if a Financial Bid offer contains a value with three (3) or more decimal points, **such a bid cannot be accepted and shall thus be disqualified.***

Such rules are part and parcel of the tender and are to be respected *in toto*. Reference is made to section 4.8 of the Tender Document which clearly includes

such rules within the auspices of the tender. In view of a clear and unequivocal rule stating that offers containing a value with three (3) or more decimal points shall be disqualified, the Evaluation Board had **no option other than to disqualify the appellant's offer.**

The Appellant seems to ignore the requirement for each tender to have a financial bid which respects all the requisites stipulated therein and seems to solely consider the administrative and technical compliance. This runs counter to the obligation of each and every contractor to submit an offer which is in line with the requirements of the tender. To this end, reference is made **to rule number 7.1** which states that *"Before submitting their offer, Economic Operators are to ensure its correctness and completeness and to have taken account of all that is required for the full and proper performance of the contract, and to have included all costs in their rates and prices."*

Finally, it is being submitted that the award criterion remained unchanged throughout the evaluation and award procedure.

Second ground: Cheapest price irrespective of calculations

The second ground of objection relates to the reason for which the offer was rejected. In this regard reference is made to the rejection letter, dated 19th February, 2021 (marked as **Doc. CA2**) which stated:

"The financial offers of the offers submitted which were found to be both administratively and technically compliant were evaluated and it transpired that the cheapest offer submitted by Melita Limited (145413) was financially not compliant. Melita Limited increased the allowable decimal points to three (3). The result is reflected in Excel file of financial bid, cell D 27. Any financial value in the Financial Offer of a Procurement Call shall be up to two (2) decimal points as per instructions in financial bid. Since Financial Offer contains a value with three (3) decimal points, such as bid is not being accepted and is thus being disqualified."

The Appellant argues that *"Melita has truly offered the cheapest priced offer irrespective of whether the price in cell D27 was up to two (2) decimal points or three (3) decimal points."* It also confirmed that D27 was presented in three (3) decimal

places instead of two (2) but states that this was due to the arithmetic result of the 18% VAT conversion as requested by the Contracting Authority.

In this regard, the Contracting Authority submits that all cells in the excel sheet, including cell D27, were set at two decimal points and cell D 27 was not an exception to this. This is evident in the attached document, referenced as **Doc. CA3**, which shows the sheet in its original format. On the other hand, the financial form as filed by the Appellant (attached and referenced as **Doc. CA4**) clearly shows that the decimal places permitted by such form for cell D 27 varies from that found in the original form. In fact the Appellant proceeded to file a Financial form which included three decimal places.

The Appellant, repeatedly stated that its offer was the cheapest priced offer irrespective of the calculations. Such an assumption is incorrect and not in line with the due process that each and every offer submitted by bidders is to be evaluated upon. Being the cheapest priced offer was the award criterion for this tender but it was not the only requisite that an offer had to satisfy in order to be awarded with the tender.

Third ground: Decimal point functionality

In their third ground of objection, the Appellant attempts to argue that the decimal point functionality was not locked and inadvertently admitted that such a function for cell D 27 was changed to allow three decimal points. It is hereby reiterated that the financial form and the General Rules Governing Tenders included clear provisions stating that each value found in the financial form shall be presented in up to two decimal points. Any offer which was not in line with such requirement was to be disqualified.

Fourth ground: Clarifications

In their third ground of objection, the Appellant submits that *“given that all other figures, particularly the totals were provided at two (2) decimal places and that Melita had the cheapest price, the Contracting Authority could have requested clarification*

on the formula populated in cell D 27, before proceeding to award the tender to another entity at a higher price”.

With all due respect, the suggestion being made by the Appellant goes contrary to the tender requirements and the provisions found in the Public Procurement Regulations. It is primarily highly irrelevant that an offer is the cheapest priced in the context of compliance with the requisites found in the tender. The Contracting Authority and the Evaluation Board are bound to follow, in a strict manner, the requisites emanating from the tender document.

Moreover, no clarifications were required. The intention behind clarifications is to clarify matters which are not clear in the offer itself. However, the irregularity found in the Appellant's offer was not the merit of any clarification but rather the merit of a rectification. As evident on page 6 of the tender document, the financial offer for such tender was subject to 'Note 3' which permits **no rectifications**.

The Contracting Authority should not blame for the negligence of the bidders. In this regard reference is made to the judgment delivered by the Court of Justice of the European Union with reference number C-599/10 **SAG ELV Slovensko a.s. and others vs Urad pre verejne obstaravnje** published on the 29th of March 2012 where it was stated:

*“In any event, it does not follow from Article 2 or from any other provision of Directive 2004/18, or from the principle of equal treatment or the obligation of transparency, that, in such a situation, the contracting authority is obliged to contact the tenderers concerned. **Those tenderers cannot, moreover, complain that there is no such obligation on the contracting authority since the lack of clarity of their tender is attributable solely to their failure to exercise due diligence in the drafting of their tender, to which they, like other tenderers, are subject.**”*


The Contracting Authority submits that the principles of proportionality, transparency, equal treatment and non-discrimination are of great relevance to the case at issue. It is pertinent to note that the principle of proportionality would be severely prejudiced

should it be expected that a Contracting Authority requests clarifications where this is not permitted and cannot lead to a rectification. Moreover, reference is made to judgment delivered by the Court of Justice of the European Union on the 10th of October 2013 in the names of **Ministeriet for Forskning, Innovation og Videregaende Uddannelser vs Manova A/S** where it was stated "*Lastly, as a general rule, when exercising its right to ask a tenderer to clarify its tender, the contracting authority must treat tenderers equally and fairly, in such a way that a request for clarification does not appear unduly to have favoured or disadvantaged the tenderer or tenderers to which the request was addressed, once the procedure for selection of tenders has been completed and in the light of its outcome*".

On the basis of the foregoing, my client contends that the Public Contracts Review Board should find against the appellant and confirm the decision of the Contracting Authority and the Department of Contracts. For these reasons, the objection filed by Melita Limited, is unfounded in fact and at law and should be rejected by the Public Contracts Review Board.

Whilst thanking you for your kind attention, I remain,

Yours truly,



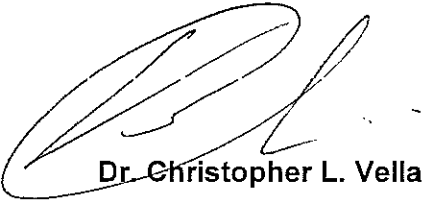
Dr Christopher L. Vella

40/1, Old Mint Street, Valletta

List of Witnesses

1. Representatives and ex-representatives of the Contracting Authority;
2. Representatives and ex-representatives of the Department of Contracts;
3. The objector and representatives of Melita limited;
4. Members of the Evaluation Committee for CT 2292/2017, including the Secretary to the Evaluation Committee;
5. Representatives and ex-representative of the bidder awarded with the tender;

Save other witnesses that may be produced



Dr. Christopher L. Vella

40/1, Old Mint Street, Valletta

Doc. CA1

Financial Bid Form

Breakdown of Costs

Note: Tenderers must quote all components of the price EXCLUSIVE OF VAT, but inclusive of taxes, customs and import duties and any discount, if the tenderer offers a discount, the discount must be absorbed in the rates of the Financial Statement. Delivery costs must be included in all received bids.

Three decimal points do not exist as currency; therefore such offers cannot be accepted. Offers are to be submitted by two decimal points.

The quantities mentioned in this Contract are only indicative and for evaluation purposes only. No guarantee may be given as to the respective quantities to be procured during the duration of the contract as quantities may either exceed or be less than the indicative amount stated in the tender document. The Contractor will be bound by the accepted tender rates offered for the full duration of this contract even if quantities indicated in the tender are eventually exceeded during said contract duration. No claims whatsoever for increase of rates will be entertained for any reason for the entire contract duration and the Contractor shall be bound to continue supplying up to the end of the contract period should the amount indicated be exceeded. Moreover, the Contracting Authority will not be held liable for any damages due to lack of orders. Should the Contracting Authority, by the expiry of the Contract, or expiry of the extension to the Contract, not procure the whole of the indicated quantities, the Contractor shall have no right to claim for any quantities or supplies not utilized.

Call for Tenders for the Provision of Data and Telephony Services to Malta enterprise and its Subsidiaries

Tender Title

Reference Number

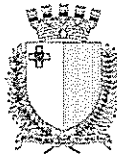
CT2329/2020

Item	Description of Service	Unit	Rate per Unit including Taxes/Charges, other Duties & Discounts but Exclusive of VAT (Delivered Duty Paid - DDP) Euro (€)	Duration	Bandwidth Mbps (if applicable)	Total Amount including Taxes/Charges, other Duties & Discounts but Exclusive of VAT (Delivered Duty Paid - DDP) Euro (€)	
1	Business Broadband Connection at Main Office in Pieta'. (Symmetric - 99.5% Uptime, 8:1 Contention Ratio)	Per Mb/month		36 months	50	€ -	
2	Business Broadband Connection at Main Office in Pieta' (Asymmetric 500Mbps Download/20Mbps Upload, Non SLA)	Per month		36 months	500/20	€ -	
3	Point-to-Point Symmetric Connection - Main Office to Bist, Mirabel	Per Mb/month		36 months	20	€ -	
4	Point-to-Point Symmetric Connection - Main Office to xBIC, Kordin	Per Mb/month		36 months	20	€ -	
5	Point-to-Point Symmetric Connection - Main Office to Centercom, Mosta	Per Mb/month		36 months	10	€ -	
6	Point-to-Point Symmetric Connection - Main Office to Bio Malta, San Gwann	Per Mb/month		36 months	100	€ -	
7	ISDN PRA Line - 60 channel / SIP Trunk	Per month		36 months	N/A	€ -	
8	Local to local calls - on net	Per Minute		375,000 minutes	N/A	€ -	
9	Local to local calls - off net	Per Minute		375,000 minutes	N/A	€ -	
10	Local to Mobile calls - on net	Per Minute		375,000 minutes	N/A	€ -	
11	Local to Mobile calls - off net	Per Minute		375,000 minutes	N/A	€ -	
12	International Calls (as per Table 1 hereunder)		Carried Forward from Sheet 2 (International Calls- Table 1)				
13	Total one-time charges in order to provide the above	Lump Sum	N/A	N/A	N/A	€ -	
						TO BE CARRIED	
						€ -	

FORWARD TO FINANCIAL SECTION OF CALLING TENDER RESPONSE FORMAT

Doc. CAZ.

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN1600 – MALTA



DEPARTAMENTI KONTRATTI
Notre Dame Ravelin
Floriana FRN1600 – MALTA

Telephone: (03566) 220022
(03566) 220033
Fax: (03566) 227688
e-Mail: info@contratti@gov.mt

19th February 2021

Melita Limited
TID145413

REFERENCE: CT2329/2020

SUBJECT: Call for Tenders for the Provision of Data and Telephony Services to Malta Enterprise and its subsidiaries

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the offer submitted by your company was found to be financially not compliant as follows:

“The financial offers of the offers submitted which were found to be both administratively and technically compliant were evaluated and it transpired that the cheapest offer submitted by Melita Limited (145413) was financially not compliant. Melita Limited increased the allowable decimal points to three (3). The result is reflected in Excel file of financial bid, cell D 27. Any financial value in the Financial Offer of a Procurement Call shall be up to two (2) decimal points as per instructions in financial bid. Since Financial Offer contains a value with three (3) decimal points, such a bid is not being accepted and is thus being disqualified.”

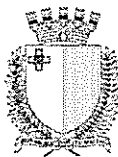
The tender was recommended for award to:
TID145412 GO P.L.C for the amount of €119,695.36 excluding VAT,
this being the cheapest priced tender satisfying the administrative and technical criteria.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of Monday 1st March 2021 against a deposit of €695.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN1600 – MALTA



DIPARTIMENTI OF CONTRACTS
Notre Dame Ravelin
Floriana FRN1600 – MALTA

Telephone: (0356) 220302 2
(0356) 220303 3

Fax: (0356) 247688 1

e-Mail: infocontracts@govmt

Bank Code | 01100 |

The official schedule can be accessed on the website: www.etenders.gov.mt.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely,

Jacqueline Camilleri
f/Director General (Contracts)

Financial Bid form - Excel

File Home Insert Page Layout Formulas Data Review View Tell me what you want to do...

Clipboard Font Font Size: 10 Font Color: 0.025

Font Face: Trebuchet MS

Clipboard: Cut, Copy, Format Painter

Paragraph: Bullets, Numbering, Merge & Center, Wrap Text

Alignment: Left, Center, Right, Justify, Merge & Center

Styles: Conditional Formatting, Table Styles, Styles

Cells: Insert, Delete, Format, Clear, Fill, AutoSum

Editing: Sort & Filter, Find & Select, Filter, Select

Accounting

International Calls - Table 1

A	B	C	D
20	Point-to-Point Symmetric Connection - Main Office to KBIC, Kordin	Per Mb/month	36 mo
21	Point-to-Point Symmetric Connection - Main Office to Centercom, Mosta	Per Mb/month	36 mo
22	Point-to-Point Symmetric Connection - Main Office to Bio Malta, San Gwann	Per Mb/month	36 mo
23	ISDN PRA Line - 60 channel / SIP Trunk	Per month	36 mo
24	Local to local calls - on net	Per Minute	375.00
25	Local to local calls - off net	Per Minute	375.00
26	Local to Mobile calls - on net	Per Minute	375.00
27	Local to Mobile calls - off net	Per Minute	375.00
28	International Calls (as per Table 1 hereunder)	Carried Forward from Sheet 2 (International)	
29	Total one-time charges in order to provide the above	Lump Sum	N/A
30			N/A
31			

Ready

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Type here to search

Format Cells

Category: Accounting

Sample: € 0.03

Decimal places: 2

Symbol: € Euro (€ 123)

Accounting formats line up the currency symbols and decimal points in a column.

OK Cancel

Doc CA3

roadband Connection at Main	Per Mb/month	7.00	36 months	50	€	12,600.00
Broadband Connection at Main Pieta (Asymmetric 500Mbps 20Mbps Upload, Non SLA)	Per month	50.00	36 months		€	00.00
Joint Symmetric Connection - Main 1st, Mriehel	Per Mb/month	5.00	36 months		€	00.00
Joint Symmetric Connection - Main BIC, Kordin	Per Mb/month	5.00	36 months		€	00.00
Joint Symmetric Connection - Main Entercom, Mosta	Per Mb/month	5.00	36 months		€	00.00
Joint Symmetric Connection - Main to Malta, San Gwann	Per Mb/month	5.00	36 months		€	00.00
Line - 60 channel / SIP Trunk	Per month	171.00	36 months		€	66.00
Local calls - on net	Per Minute		375,000 min		€	33.90
Local calls - off net	Per Minute	0.025	375,000 min		€	-
Mobile calls - on net	Per Minute		375,000 min		€	35.59
Mobile calls - off net	Per Minute	0.1016949153	375,000 min		€	33.90
Local Calls (as per Table 1)	Carried Forward from Sheet 2 (International Calls- Ta					

Format Cells

Number Alignment Font Border Fill Protection

Category: General Number Currency Date Time Percentage Fraction Scientific Text Special Custom

Sample € 0.025

Decimal places: 3

Symbol: € Euro (€ 123)

Accounting formats line up the currency symbols and decimal points in a column.

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