

In the Public Contracts Review Board

17th June 2021



Re: CFT - 002/2021- Services of Contract Manager for the Tender for Organic Waste From Commerical Establishments in Malta and Gozo Tourism Areas

Reply of the **Association of Local Councils** (the contracting authority) following the objection lodged by Yami Yami Ltd.

By means of a letter dated the 1st June 2021, the Contracting Authority informed the objectors that the Tender in caption was being cancelled.

The objectors allege that their offers satisfied all the technical criteria listed in the technical specifications and that their offers should be deemed technically compliant and awarded the said call.

Submissions

With reference to the claims submitted by the objectors in the reasoned application, the contracting authority submits the following:

1. The Contracting Authority contends that the reason for non-acceptance of the objector's offer was the following:

"Please be advised that the Call for Tenders 'Services of Contract Management for the tender for Organic Waste from Commercial Establishments in Malta and Gozo Tourism Areas' with CFT CA Unique ID RFQ 002/2021 has been cancelled. Any inconvenience is regretted"

2. The Contracting Authority respectfully submits that the objection in caption is somewhat misleading.

The objector claims that his offer was the only offer submitted **which was administratively, technically, and financially compliant.**

It must be made absolutely clear that the Contracting Authority did not carry out an evaluation of the offer as submitted by the objectors, therefore, the statement that the offer of the objector is administratively, technically, and financially compliant is unfounded at this stage.

3. The Contracting Authority contends that in terms of the General Rules Governing Tenders, the rules provide that cancellation of Tenders may occur on a number of grounds.

Rule 18(3) of the said Rules provides the following:

18.3 Cancellation may occur where:

- a. the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;*
 - a. the economic or technical parameters of the project have been fundamentally altered;***
 - c. exceptional circumstances or force majeure render normal performance of the project impossible;*
 - d. all technically compliant tenders exceed the financial resources available;*
 - e. there have been irregularities in the procedure, in particular where these have prevented fair competition.*
 - f. the only administratively and technically compliant offer is an unjustified abnormally low offer*
4. The Contracting Authority submits that the decision to cancel the said Tender was taken in line with sub-rule (b), that being – *“The economic or technical parameters of the project have been fundamentally altered”*.

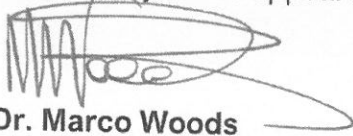
The reason behind such decision to cancel is merely due to the fact that the Contracting Authority will no longer need to out-source the services of a contract manager as was being requested in the Tender but will be carrying out these services in-house.

Again, it is of utmost importance to clarify that the offer of the objector was not subject to an evaluation.

In view of the fact that the Contracting Authority no longer requires that Contract Management be provided by a third-party contractor, but rather will be carried out in-house, the Contracting Authority had no other alternative other than cancelling the Tender in question due to the fact that the said technical parameters of the Call have been fundamentally altered to an extent that they are no longer being requested.

The Contracting Authority is hereby reserving the right to present further evidence both written and orally to further their submissions in relation to the said application throughout the hearings.

For the above reasons, the Contract Authority respectfully requests this Board to reject the appeal as lodged by Yami Yami Ltd.

A handwritten signature in black ink, appearing to read 'Marco Woods', with a long horizontal flourish extending to the right.

Dr. Marco Woods