

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



2nd November 2021

REASONED LETTER OF REPLY OF TA' SANNAT LOCAL COUNCIL

RE: SNTLC/06/2021 - Works - Tender for the repaving and embellishment of Pjazza Santa Margerita, Ta' Sannat.

Dear Sir,

By means of the present Reasoned Letter of Reply, Ta' Sannat Local Council of Sannat, Road, Sannat whilst making reference to the above captioned Tender is hereby submitting a formal Reasoned Letter of Reply in relation to the Objection filed by Mr. Richard Cauchi and this in terms of Regulation 276(c) of the Public Procurement Regulations (S.L. 601.03).

FACTS:

1. On the 18th May 2021 the Ta' Sannat Local Council issued the above-captioned Call for Tenders.
2. The closing date for submissions was on the 18th June 2021.
3. Upon the closing date five (5) tenderers submitted their bids.
4. The Evaluation Board recommended that the tender was to be awarded to the Objector Mr. Richard Cauchi.



5. On the 16th September 2021, following this recommendation of the Evaluation Board the Ta' Sannat Local Council notified all bidders that the preferred bid was that of the Objector.
6. That after a couple of days from this date it was drawn to the attention of the Ta' Sannat Local Council that the Objector's submission was non-compliant and that the Evaluation Committee grossly erred in its recommendation since the latter had requested and given the opportunity to the preferred bidder to rectify its submission despite such rectifications falling within "Note 3" and thus no rectifications were allowed. The Objector/Preferred Bidder had originally submitted a Gantt Chart which did not conform to the tender requirements since the Objector had declared that all works were to be completed within a period of ninety four (94) weeks and this when the tender document specifically requested that such works were to be completed within seventy eight (78) weeks.
7. In view of this, the Local Council proceeded to ask the Department of Contracts for its advice on the matter.
8. The Department of Contracts responded to the Council's request by advising that the Call had to be either re-evaluated or cancelled.
9. In view of the above, on the 5th October 2021 the Local Council notified the Objector that the Award of this tender was being cancelled.
10. That the Objector did not appeal from this decision in terms of the Public Procurement Regulations and thus this decision is final.
11. Furthermore, it also transpired that none of the bidders had actually met the specifications requested in the Tender Document in relation to the luminaries. It appears that the luminaries which were requested were not available on the market. The Council was advised to change this requirement in order to allow for more competitive submissions and prices.
12. That during this time the Local Council was also advised by the Superintendence of Cultural Heritage that the material requested in the Tender Document for the paving of the parvis was not suitable.



13. That the Council was also advised that if the tender was split into two, namely by issuing a call solely for the repaving and another for the embellishment, it would also attract more competitive bids.
14. In view of the above the Council decided to change the technical parameters of the tender by issuing two separate tenders (one for the repaving and another for the embellishment) and by requesting a different repaving material (and this still subject to ongoing discussions with SCH) and also by requesting different luminary specification.
15. That in view of the above on the 16th October 2021 the Contracting Authority notified all the bidders that the procurement process for this tender was being cancelled due to the fact that the economic or technical parameters of the project have been fundamentally altered.

That in view of the above it is evident that the Objection made by Mr. Richard Cauchi is unfounded both in fact and in law and should be rejected in its entirety with costs against the Objector and this for the following reasons:

1. At the outset the Contracting Authority contends that the decision of the Contracting Authority to cancel the Award is final since this was communicated to the Objector on the 5th October 2021 and no Objection in terms of the Public Procurement Regulations was filed by the same Objector against this decision. Therefore this honourable Board should only decide on whether the decision to cancel the Tender should stand or whether the Local Council should proceed to re-evaluate the submissions.
2. The Local Council is also flabbergasted by the Objection of the Mr. Richard Cauchi since if it were to re-evaluate the tenders, Mr. Cauchi's bid would have been found to be technically non-compliant since both the Gantt chart and Luminaries' specifications submitted did not conform with the Council's request.
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 ground, namely:



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;
- b. 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.

The Contracting Authority submits that the decision to cancel the said Tender stems from the fact that in this particular case the Contracting Authority was compelled to change the parameters of the project since as stated above, the repaving material should be changed (in line with the Superintendence of Cultural Heritage's request), the specifications of a substantial number of Luminaries (Luminaries Type B, I, R1) will be changed whilst others will be updated and the tender will be split into two as this would be more financially and economically viable.

In view of this 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 such Call is no longer needed.

4. It is also humbly submitted that given the above the Local Council had also the faculty to cancel the Call on the basis of 18.3 (c) and (e).



5. Without prejudice to the above the Contracting Authority contends that even if it proceeded in re-evaluating the submissions, all submissions would have been rejected since they were technically non-compliant.

Therefore, for the above-mentioned reasons and others which may be brought in due course during the proceedings and whilst reserving the right to make further submissions and to present further evidence as permitted by law, the Local Council respectfully submits that the Objection filed by Mr. Richard Cauchi is rejected in its entirety with costs.

Dr. Larry Formosa
Cosyra Legal
The Brokerage, Lv 4,
Triq Santa Marta,
Victoria, Gozo.



Requested Testimony:

- a. All witnesses indicated by the Objector;
- b. Engineer Christian Cordina;
- c. Representative of Superintendence of Cultural Heritage;
- d. Other witnesses which the appellant is not aware of at this stage which are hereby being reserved; and
- e. Other witnesses permissible by Law which are hereby being reserved.

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Vella Carmen at MFE

From: Dr. Larry Formosa <formosalarry@gmail.com>
Sent: Tuesday, 02 November 2021 17:01
To: Zarb Raymond at MFE
Cc: Sannat Local Council at Local Councils; Swain Kenneth at MFE; Vella Carmen at MFE; Fenech Harry at MFE; Philip Vella
Subject: SNTLC 06/2021 – Tender for the repaving and embellishment of Pjazza Santa Margherit, Ta' Sannat.
Attachments: Sannat Local Council - Reasoned Letter of Reply.pdf

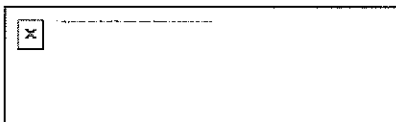
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Dear Mr. Zarb,

I write on behalf of 'Ta' Sannat Local Council with reference to the above-captioned Objection. Attached please find the Council's Reasoned Letter of Reply.

Best regards,

Dr. Larry Formosa LL.D.



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