



SPD3/2022/045

Date: 24th February 2023

To All Prospective Bidders

CLARIFICATION Note No. 10

FRAMEWORK AGREEMENT FOR THE PROVISION OF INCONTINENCE DIAPERS, PULL-UPS, PADS AND INCO-SHEET FOR SENIOR CITIZENS AND PERSONS WITH SPECIAL NEEDS FOR THE MINISTRY FOR GOZO

Reference is made to the above-captioned public call for tenders for which the deadline for submission of offers is **17th March 2023 at 09:30 hrs.**

Below please find a set of clarifications, which are construed to form an integral part of the tender document.

Notice to Bidders

Question 1 In view of the fact that the contracting authority is currently involved in proceedings under reference MGOZ NP 02/2023 whereby it held that it prefers that all lots are administered by the same economic operator, will it consider canceling/suspending this procurement procedure pending a decision by the public contracts review board?

Answer 1 **MGOZ NP 02/2023 is a separate and procedurally an independent procurement action. The request for canceling/suspending this procurement procedure is not being considered.**

Question 2 The clarification no. 9 issued by the contracting authority, whilst enlisting a number of principles, fails to address the mandatory requirements ordered by the Court of Appeal [Superior] namely, 'Għalhekk huwa ċar li qed ikun permess speċi ta' ex post award joint venture, iżda dan għandu jiġi spjegat kif se jopera u ndikat bl-aktar mod ċar x'inhuma l-kundizzjonijiet permissibbli ta' tali sħubija. Fil-ħruġ għas-sejħa ġew mitluba ħafna dokumenti relatati mal-kuntratt u l-garanzija, iżda ma hux ċar x'tip u x'kundizzjonijiet tas-sħubija/koperazzjoni li hi



permissibbli li ssir bejn irrebbej ta' lot 1 u dawk tal-lottijiet 2 u 3. Dan għandu jġi spjegat b'mod ċar [added emphasis]. In view of the above, when will the Contracting Authority release the conditions of the ex-post award joint venture, as per the 14th February 2023 Court of appeal decision.

Answer 2

The conditions of the cooperation between Lots 1 and Lots 2 and 3 have been clearly listed in Clarification 9. For ease of reference these are being re-produced hereunder:

- 1. As per article 1.1 of the ITT, the successful bidder awarded the supply of LOT 1 shall ALSO be responsible for the collection, storing, transportation (loading and unloading where applicable) and distribution of all the items listed under all 3 lots, irrespective if the award of the lots is awarded to the same contractor or to different bidders. It is the sole responsibility of the Contractor of Lot 1 to liaise with the Contractors of Lots 2 and 3 to collect the supplies from their respective premises. All items listed in all lots are to be collected by contractor of Lot 1 from contractors of Lots 2 and 3, and eventually distributed from one Centre (Distribution Centre) by the same contractor (Contractor Lot 1), with the Centre to be managed as per Clause 1 in Section 3, Terms of Reference.**
- 2. When Contractor of Lot 1 collects the items from Contractor/s of Lots 2 and 3, a delivery note is to be presented to and endorsed by Contractor Lot 1. At this stage Contractor of Lot 1 shall confirm the quantity of incontinence items collected, and henceforth shall borne all risks**
- 3. As per article 29.2 of the Special Conditions, all items are to be delivered to the Distribution Centre by the contractor of Lot 1, in its original packaging for hygiene and safety reasons.**
- 4. With reference to Article 19.1 of the Special Conditions, it is being clarified again that for Article 19.1 (c), (d) and (e) of the Special Conditions, any right of action/s by the Contracting Authority is applicable (will be imposed) to the contractor of the respective LOT that defied the terms and conditions of the contract.**
- 5. With reference to Article 21.1 of the Special Conditions, it is being clarified that the daily penalty for lack of supply is applicable to the Contractor of the respective lot and NOT to the Contractor awarded LOT 1 who will be eventually**



managing the distribution center. If the Contractors of Lots 2 and 3 do not supply the Contractor of Lot 1 with the enough supplies (quantities) and/or as per the terms of the tender dossier (not to technical specifications), any applicable penalties are to be borne by Contractors of Lots 2 and/or 3 respectively.

6. In general, it is therefore being clarified that the penalties for any failure to supply in terms of the contract will be attributed to the responsible contractor, whether under Lot 1, Lot 2 or Lot 3.

All other documents, conditions and requirements, which are not superseded by this Clarification, remain in place.

Sectoral Procurement Directorate
