



National Audit Office
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Auditor General

Our Ref: NAO 86/2018
Your Ref:

3 March 2021

Hon. Dr Beppe Fenech Adami, M.P.
Chair
Public Accounts Committee

**The negotiated contract awarded by the St Vincent De Paul Residence to the JCL and MHC Consortium
in November 2017 for the management of four additional blocks**

Reference is made to an audit presently being undertaken by the National Audit Office regarding the tender titled 'Public Private Partnership for the Provision of Comprehensive Services to St. Vincent de Paul Residence', issued on 10 November 2015, as well as the subsequent negotiated contract for 'Management Services of New Hospital/Residence (part of Public Private Partnership)', both contracted with JCL and MHC Consortium on 14 November 2017. The audit was requested by the Public Accounts Committee on 28 August 2018, when the Opposition Members on the Committee requested the Auditor General to investigate matters relating to the issuance of a contract for the management of a 500-bed residence at the SVP.

During the audit, a meeting was held with the JCL and MHC Consortium on 25 January 2021, wherein this Office sought to clarify certain issues, as well as to obtain the perspective of the Consortium on the matters under review. This is part of the standard practice that this Office adopts in undertaking audits of this nature, intended to ensure balanced, factual and objective reporting. A letter dated 17 February 2021 by James Caterers Ltd, a party to the Consortium, was received by this Office shortly thereafter, a copy of which is hereby attached.

Of concern to the National Audit Office is the intimidation that James Caterers Ltd sought to convey in this correspondence, which this Office deems entirely unacceptable and intended to influence the outcome of this audit. While the National Audit Office will not be intimidated or adversely influenced in its work for Parliament, the matter is being brought to the attention of the Public Accounts Committee, whose support is being sought. This Office is certain that the Public Accounts Committee does not condone attempts at intimidation such as this.

The Office feels that this undue interference with its work is a contempt of parliamentary proceedings and maintains that its communication with Parliament is privileged.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Deguara', written over a horizontal line.

C. Deguara

cc Hon Speaker, House of Representatives

Enc.



James Caterers

National Audit Office
Notre Dame Ravelin
Floriana FRN 1601
Malta

17th February 2021

Re: NAO Investigation on SVPR tender.

I write on behalf of James Caterers Limited.

I refer to the NAO investigation underway on the SVPR tender and to our recent interview.

During the interview we stressed the fact that as a lead member of the chosen consortium we negotiated in earnest. You were clear that in the course of your investigation you were solely reviewing the conduct of the relevant public authorities and not also those of the private contractor/s.

As we openly stated we are currently on the verge of concluding and signing off a large export contract of high value at international level. It follows that during this sensitive time adverse public comments on us or the consortium will have a direct impact on our negotiations with the possibility of frustrating the conclusion of these same negotiations.

Once again we must impress the fact that no adverse comment, direct or indirect, can be afforded against the JCL or the consortium. We have, after all, had occasion to clarify any questions you may have had from our point of view, and during the interview we gave a full, clear, and transparent explanation of how our offers were calculated and put forward to the relevant authorities.

Above all, the government and any of its entities, including your office, could have at any time stepped in to stop the tender award had there been any shortcomings. There were many opportunities to do this, given that the tender was subject to a PCRБ appeal and an appeal before the Court of Appeal. It is not right that post award, and having invested over forty million into this project, the tender process is now set for review. It is neither correct that a private entity or consortium be the subject of chastisement or censure because it has contracted with a public authority.

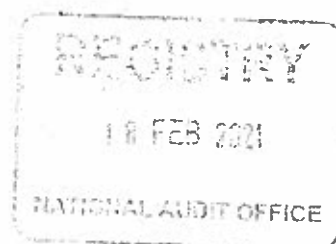
We are neither responsible in any manner whatsoever for any shortcomings, if any exist, committed by the relevant public authorities, including those relating to any public procurement rules or guidelines (a matter for the public authorities to ensure adherence to and not private contractors); nor should we take the brunt for any shortcomings, if any exist.

We trust therefore, as stated by your good selves in our interview, that JCL and the consortium are not under review and therefore should not be the subject of any censure or comment. Please note however that in the event that negative or adverse comments are raised with respect to JCL or the consortium prejudicing thereby the final sensitive negotiations currently underway, JCL will have no option but to hold the NAO and its officers personally responsible for the reputational and material damage which JCL will suffer.

We remain at your disposal should you require any further clarification.

Sincerely Yours,

James Barbara
Managing Director
James Caterers Limited



Refalo

ADVOCATES

23rd February 2021.

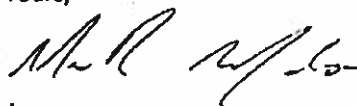
James Caterers Ltd.,
Mr. James Barbara,
Veleran Street,
Fgura, FGR1900

Dear Sirs,

I am instructed by the National Audit Office to reply to your letter of the 17th of the current month. My clients find this letter extremely offensive and disturbing. In particular, your not so veiled reference to possible legal action being taken against them for the work being done by them for Parliament is disturbing and unwarranted. My clients are officers of Parliament and their reports to Parliament are privileged and they will not be interfered with in the proper and correct performance of their public duty. It may well be that that letter amounts to a contempt of Parliament and a breach of its privileges and they feel duty bound to report the matter to the Public Accounts Committee unless the letter is unreservedly and promptly withdrawn by you.

I remain,

Yours,



/s/ Professor Ian Refalo.

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Prof / Prof

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Professor Ian Refalo
Refalo Advocates
61, St. Paul Street
Valletta

26th February 2021

Dear Prof. Refalo,

Re: NAO Investigation on SVPR tender

On behalf of James Catering Limited and James Barbara, I would refer you to your missive dated 23rd February 2021 to them in reply to an earlier letter dated 17th February 2021 addressed to the National Audit Office encaptioned "NAO Investigation on SVPR tender".

I am instructed by my clients to clarify that their letter was never intended to offend, disturb or in any way interfere with the investigative work conducted by the NAO. On the contrary, their sole motivation was to defend and safeguard their professional integrity and hard-earned positive reputation and trust they enjoy among the business community at large.

The message that they wanted to convey was that in so far as they were concerned their participation in the SVPR tendering process was above board and that any linkage of their business concern with any possible bad practices on the part of third parties would not only be grossly unfair and unfounded but would inevitably tarnish their reputation to a great extent and a prejudice to current commercial endeavours of a substantial nature. They have more over reiterated their readiness and availability to furnish any further clarifications to NAO should these be required.

I remain,

Yours,



Dr Stefano Filletti



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