

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 425

MG/279/2008

### **Tender for the Design, Development, Implementation, Maintenance and Hosting of an e-Tourism Portal for Gozo**

This call for tenders was published in the Government Gazette on the 2nd March 2012. The closing date for this call with an estimated budget of € 120,000 (excl. of VAT) was the 13th April 2012.

Six (6) tenderers submitted their offers.

ICON Solutions Ltd filed an objection on the 14<sup>th</sup> May 2012 against the decision of the Ministry for Gozo to discard its offer for not being the cheapest and to recommend the award of tender to Casasoft Ltd, which, it claims was both administratively and technically non compliant.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr. Carmel Esposito and Mr Joseph Croker as members convened a public hearing on Monday 25<sup>th</sup> June, 2012 to discuss this objection.

Present for the hearing were:

#### **ICON Solutions Ltd**

Dr Aron Mifsud Bonnici	Legal Representative
Dr Gege Gatt	Representative
Mr Ian Castillo	Representative

#### **Casasoft Ltd**

Dr Ian Spiteri Bailey	Legal Representative
Mr Mark Cassar	Representative
Mr Karl Cassar	Representative

#### **Ministry for Gozo**

Dr Tatiane Scicluna Cassar	Legal Representative
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#### **Evaluation Board**

Ing. Joe Mifsud	Chairman
Mr Manuel Tabone	Member
Ms Doreen Galea	Member
Mr Wilfred Spiteri	Member



After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of the company's objection.

Dr Aron Mifsud Bonnici, legal representative of ICON Solutions Ltd, the appellant company, stated that by email dated 7<sup>th</sup> May 2012, the Ministry for Gozo had informed his client that since the award criterion was the price its offer could not be recommended for award as it was not the cheapest. He added that his client was contending that the recommended tenderer was both administratively and technically non compliant on various grounds.

Referring to Volume 1, section 1, point 6.1.2 (d) 'Selection Criteria' - Company's Profile Dr Aron Mifsud Bonnici made the following submissions:-

- i. Volume 1, section 1, point 6.1.2 (d) 'Selection Criteria' provided that *"Tenderer must provide the company's profile including the length of time (minimum 2 (two years)) in business and the core competencies and ability to deliver an innovative and technically sound solution."*
  - ii. this tender was issued on 2<sup>nd</sup> March 1012 whereas the records held at the Malta Financial Services Authority indicated 9<sup>th</sup> March 2010 as the date on which the recommended company, Casasoft Ltd, was incorporated;
  - iii. whilst, since the closing date of the tender was the 13<sup>th</sup> April 2012, one might perhaps stretch the argument and conclude that the recommended firm had, in fact, been incorporated for two years by the closing date of the tender, yet it was noted that whenever the tender document made reference to dates it specifically mentioned, for example, the closing date of the tender, and as a consequence, by default, whenever no such references were made then the date applicable was the publication date of the tender – a case in point was clause 19.1 of the tender document, which read that tenders *"must remain valid for a period of 150 days after the deadline for submission of tenders ..."*
  - iv. the contracting authority should explain how the recommended firm, which did not meet the selection/administrative criteria, was allowed to proceed to all the stages of the tendering process when it should have been disqualified from the very start;
  - v. apart from the date on company registration, which represented the date of birth of the firm, another aspect that had to be examined was whether the recommended firm was in business for a minimum of two years;
- and
- vi. for the purposes of the Commercial Code a firm was considered a trader after having started retaining and billing clients, engaging staff and so forth, which facts were verifiable from the registers held by the Director of Trade, by the Commissioner of VAT and by the Employment and Training Corporation.

Dr Tatiane Scicluna Cassar, legal representative of the Ministry for Gozo, made the following counter arguments:-

a. Art. 77 (1) of the Companies Act states that

*“On the registration of the memorandum and articles, if any, of a company, the Registrar shall certify under his hand that the company is registered, and the company shall come into existence and shall be authorised to commence business as from the date of registration which date shall be indicated in the certificate: ...”*

b. it was not reasonable nor fair to consider that a company started operations from the date it commenced issuing invoices for work/services performed because the issue of invoices was practically the last stage in a long process;

and

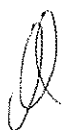
c. for the purpose for establishing that the bidding firm had been set up/in business for two years, the relevant date was the closing date of the tender, namely, the 13<sup>th</sup> April 2012, and not the publishing date, i.e. 2<sup>nd</sup> March 201, and, therefore, the recommended bidding firm, having been registered on the 9<sup>th</sup> March 2010, satisfied the two-year requirement laid down in clause 6.1.2 (d).

Dr Ian Spiteri Bailey, legal representative of Casasoftware Ltd, made the following submissions:-

- i. the date of registration of the recommended firm was the 9th March 2010 whereas the closing date of the tender was 13th April 2012 and, as a result, his client had the required 2 years in business;
  - ii. whilst Casasoftware Ltd was registered in March 2010, yet, the present directors of Casasoftware, Karl and Mark Cassar, who were brothers, had been using Casasoftware as a trade name since 2003/4 and in 2009 Mark Cassar for Casasoftware had even won one of the Digital Awards for best Flash Website;
  - iii. it therefore followed that the experience gained by the Cassar brothers under the brand name Casasoftware since 2003/4 was at the disposal of Casasoftware Ltd, which was registered in 2010, and that Casasoftware Ltd was in business right from the start;
- and
- iv. the Cassar brothers had been in this line of business since 2003/4 and by 2010 their business grew such that it was viable to form a company and register it with the Malta Financial Services Authority.

Dr Mifsud Bonnici remarked that:-

- a. Clause 77 of the Companies Act referred to the date the company was incorporated at which point it would be authorised to do business but, more than that, one had establish that the company was actually doing business;

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b. documents were presented by the recommended tenderer with a view to prove that it had been in business. These included:

- a BirdLife Malta's cheque for €483.74 dated 15<sup>th</sup> January 2009 payable to Casasoft Ltd
- an invoice dated September 2006 in respect of AVI Promotions Ltd
- a Globalair cheque dated September 2006 payable to Casasoft Ltd
- an invoice dated April 2005 in respect of XCalibre

It was pointed out that these were drawn up in respect of Casasoft as a brand name and not in the name of Casasoft Ltd, which was the bidder in this tendering procedure and which had been incorporated in March 2010;

and

c. the case would have been different had the Cassar brothers submitted a tender in their own names or as Casasoft, the brand name, as a joint venture with Casasoft Ltd but, as things stood, Casasoft, the brand name, and Casasoft Ltd were legally unrelated.

Referring to Volume 1 Selection 1, Point 6.1.2 (b) 'Selection Criteria', Dr Gege Gatt, legal representative of ICON Solutions Ltd, submitted that:-

a. clause 6.1.2 (b) of the tender document read as follows:-


*'Evidence of relevant experience in carrying out services of a similar nature over the past 5 years (Form 3.3 of Volume 1, Section 3) including the nature and value, as well as contracts in hand and contractually committed. The minimum number of projects of similar scope/nature (high level of complexity, demonstrate artistic, innovative and user friendly interfaces that engage with the users) completed between 2007 and 2011 must be at least 2 in number.*

*Relevant experience should invariably include: specific experience related to website design, site usability, content development, animated creative content, software development and database management.'*

b. when one examined Casasoft Ltd's website, one would immediately notice that this firm lacked both the 5 years experience requested and did not execute projects of a similar scope/nature;

and

c. as a result, the recommended tenderer not only failed on the requirement of 'two years in business' but also with regard to the relevant experience as contractor.



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At this point those present resorted to discuss issues relating to Volume 3, Section 1 Terms of Reference Point 1.5 'Current State of Affairs in the Relevant Sector' with Dr Gatt explaining that:-

- i. the call for tenders requested an internet service/tool which, unless it was professionally and adequately delivered, could have adverse affects on tourism, which was one of the main economic activities of Gozo. To place major emphasis on this issue, Dr Gatt read out the initial and closing sentences from section 1.5 'Current State of Affairs in the Relevant Sector' (page 46) stating that:-

*'Tourism is one of the strongest sectors in the economy of Gozo as it provides a major stream of revenue which positively impacts on the socio-economic well-being of the Gozitan population. ....  
The aim of this Directorate is to promote Gozo as a specific destination whilst working in liaison with the Malta Tourism Authority through joint initiatives aimed at promoting Gozo both domestically as well as on the international front.'*

- ii. on the website of the recommended tenderer one could perhaps find one or two projects which could, remotely, be classified as related to tourism, one of them being the 'Malta Hotel Guide'. Nevertheless, that was certainly not the kind of experience that the contracting authority was after especially when dealing with such an important economic sector;

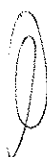
and

- iii. on the other hand, ICON Solutions Ltd had 12 years experience in this sector and had executed 23 tourism related projects besides having developed software and i-Phone applications directly related to the tourism industry.

Dr Scicluna Cassar responded that:-

- a. following the evaluation process the adjudicating board was satisfied that the recommended tenderer had carried out the required two projects of a similar nature between 2007 and 2011, something which even the appellant company itself had acknowledged;
- b. although the appellant company made reference to the web portal of Casasoftware Ltd, yet, the adjudicating board had to evaluate the tender submission, including the projects carried out, and not the web portal of Casasoftware Ltd itself;
- c. i-Phone applications were not a requisite in this call for tenders;
- d. the appellant company's citation from section 1.5 'Current State of Affairs in the Relevant Sector', regarding the importance of the tourism sector to the economy of Gozo, was not a requisite;

and



- e. the term 'of a similar scope/nature' meant that the project had be of the same *'high level of complexity, demonstrate artistic, innovative, and user friendly interfaces that engage the user'* (clause 6.1.2 (b)) but the projects did not have to be tourism related.

Turning the attention of those present on *Volume 3 Section 1 'Terms of Reference' Point 2.1 'Overall Objectives'*, Dr Gatt referred to *Volume 3 Section 1 'Terms of Reference' Point 2.1 'Overall Objectives'* which, among other things, stated that one of the objectives of the Ministry for Gozo was that of ensuring *"an effective marketing approach and a stronger representation in the cut throat competitive international travel market."*

He added that, in spite of the fact that the contracting authority had set out this benchmark in the tender document, it was evident that, whilst the recommended tenderer did not possess the technical capabilities and experience in e-marketing, ICON Solutions Ltd had carried out various projects which included not only the setting up of the website but even managing the e-marketing strategy itself with staff dedicated to that particular activity.

Dr Scicluna Cassar remarked that in its letter of objection dated 14<sup>th</sup> May 2012, the appellant company alleged that Casasoft Ltd had no experience in providing search engine optimisation services to clients in a similar industry. One had to keep in view, continued Dr Scicluna Cassar that whilst the tender requested 'the provision of Search Engine Optimisation services', yet it did not request experience in that particular sector. Furthermore, the phrase *'Ensuring an effective marketing approach and a stronger representation in the cut throat competitive international travel market'* was not a requisite in itself but, as the heading indicated, it was one of the objectives of the tender.

Mr Mark Cassar, director of Casasoft Ltd, intervened and provided the following information:-

- i. he stated that he had been in this sector since 2004 and that he had been awarded the 'Best Flash Webiste Award' at the Digital Awards of 2009;
- ii. some examples of websites and online portals created by Casasoft involving a high level of complexity, highly artistic, innovative and user-friendly interfaces included:-
  - Bet-At.eu (<http://www.bet-at.eu>): a highly customized and fully fledged online gaming casino, integrating with various gaming providers, and online gaming system and including a tailor-made content management system allowing the administrators to manage the listed games, content, as well as a full audit-trail allowing them to keep track of any changes;
  - Sunfly Karaoke (<http://www.sunflykaraoke.com>): an online e-commerce website for one of the leading karaoke music and hardware providers in Europe;

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- OkMalta.com (<http://www.okmalta.com>): one of the most visited local websites, aimed at being any user's homepage and included full blog town, online chat rooms and advertising system;
  - Discount Pages (<http://www.discountpages.com.mt>): a website aimed to serve as a collection of discount offers for its users, including a fully automated referral system with commission payouts, online payment integration (PayPal and credit/debit cards), and a member subscription management and renewal module;
  - Dine In Malta (<http://www.dineinmalta.com>): a local dining guide website containing information on all registered outlets in dining and wine bars registered in Malta and Gozo including automatic subscription management and renewal system and online payment integration;
  - Malta Hotel Guide (<http://www.maltahotelguide.com>): a local hotel guide containing information on all the registered accommodation outlets in Malta and Gozo in collaboration with the Malta Hotels and Restaurants Association (MHRA);
- iii. one had to keep in view that not all Casasoft work was publicly displayed on its online portfolio due to specific requests from some of its clients;
- iv. whilst ICON Solutions Ltd stated that Casasoft's corporate website did not render correctly on i-Phones, yet one had to consider the fact that that corporate website had been developed in 2008/2009 and was based on Adobe Flash Technology which did not cater for i-Phone devices but that did not mean any lack of web-expertise on the part of Casasoft Ltd;
- v. if one were to consider HTML websites, like *OkMalta.com*, one would discover that they rendered well on mobile devices;
- vi. Casasoft has not only integrated several systems with an electronic newsletter management module as well as with online payment solutions with multiple payment methods but has also developed systems used by real estate agents, English language school management systems, online shops/ecommerce websites, all of which required high technical skills and expertise;
- vii. with regard to 'search engine' capabilities, one would find that Casasoft corporate website ranked much higher than that of ICON Solutions Ltd so much so that Casasoft appeared on the front page of search engines such as Google, Web design malta and Web development malta whereas the appellant company's was listed on pages 3 or 4 which, for search engine purposes, was almost insignificant;

and



- viii. Casasoft's proposal would provide additional services, such as, content and keyword analysis, link building techniques and constant monitoring of rankings periodical audit reports to analyse rankings, all of which demonstrated Casasoft's capabilities regarding search engine optimization.

Dr Mifsud Bonnici remarked that the contracting authority seemed to have been primarily interested in the price element of the tender submissions and, in doing so, overlooked important technical aspects attached to this project such as the provisions of clause 4.2.2.15 of the tender document that the site had to render on mobile devices, a requirement which, he contended, was not met by the recommended tenderer.

The Chairman, Public Contracts Review Board, looked up clause 4.2.2.15 'Mobile Version' which read as follows:-

*'Developing mobile website capability for the portal to allow users to access key information on the destination via mobile devices is a requirement. The mobile version should have the portal same look and feel and should mainly feature events, videos and travel plans. User should also be able to login in, in order to access further information. One should ensure that site loading time on said devices should be kept at a bare minimum.'*

Dr Mifsud Bonnici referred to Form 3.5 (page 30 of the tender document) which requested samples of past works and when his client examined the site of Casasoft Ltd itself he found that it did not allow users to access information via mobile devices.

Mr Cassar stated that whilst Casasoft's site was not meant to render correctly on i-Phone devices because it was based on Adobe Flash Technology, yet *OKmalta.com* had all the requisites laid down in clause 4.2.2.15 with regard to mobile websites.

Dr Gatt concluded that the contracting authority had failed to select the appropriate bidder both on the basis of objective criteria, such as the date of company registration and the length of time it had been in business, as well as with regard to the benchmarks it had set concerning technical capabilities and experience.

On her part Dr Cassar Scicluna concluded that:-

- i. the evaluation board had taken into account all relevant aspects with regard to website design, site usability, content development, animated creative content, software development and database management and it was satisfied with the recommended tenderer's tender submission, including the works presented;
  - ii. clause 32.1 at page 17 of the tender document 'Criteria for Award' laid down that the contract would be awarded to the cheapest tender satisfying the administrative and technical criteria;
- and
- iii. since all six tenderers satisfied the administrative and technical criteria, the deciding factor was the price, where the cheapest bid was that of Casasoft Ltd at €44,000 whereas the second cheapest was that of the appellant company at €73,750.01.

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When the Chairman, Public Contracts Review Board, questioned the Department's estimated value of the tender, which was put at €120,000, it turned out that, in fact, that was the limit allowed for a departmental tender. The Chairman remarked that the departmental estimate should reflect the cost of the particular project and it should be a realistic estimate because, among other considerations, it had a bearing on the deposit that the tendering entity had to pay on lodging its appeal.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' filed on the 14<sup>th</sup> May 2012 and also through their verbal submissions presented during the hearing held on the 25<sup>th</sup> June, 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representatives' claims and observations, particularly, the references made to the fact that (a) by email dated 7<sup>th</sup> May 2012, the Ministry for Gozo had informed the appellant company that since the award criterion was the price its offer could not be recommended for award as it was not the cheapest, (b) the appellant company was contending that the recommended tenderer was both administratively and technically non compliant on various grounds, (c) Volume 1, section 1, point 6.1.2 (d) 'Selection Criteria' provided that "*Tenderer must provide the company's profile including the length of time (minimum 2 (two years)) in business and the core competencies and ability to deliver an innovative and technically sound solution.*", (d) this tender was issued on 2<sup>nd</sup> March 2012 and the records held at the Malta Financial Services Authority indicated 9<sup>th</sup> March 2010 as the date on which the recommended company, Casasoft Ltd, was incorporated, (e) whilst, since the closing date of the tender was the 13<sup>th</sup> April 2012, one might perhaps stretch the argument and conclude that the recommended firm had, in fact, been incorporated for two years by the closing date of the tender, yet it was noted that, whenever the tender document made reference to dates, it specifically mentioned, for example, the closing date of the tender, and as a consequence, by default, whenever no such references were made then the date applicable was the publication date of the tender – a case in point was clause 19.1 of the tender document, which read that tenders "*must remain valid for a period of 150 days after the deadline for submission of tenders ...*", (f) the contracting authority should have explained how the recommended firm, which did not meet the selection/administrative criteria, was allowed to proceed to all the stages of the tendering process when it should have been disqualified from the very start, (g) apart from the date on company registration, which represented the date of birth of the firm, another aspect that had to be examined was whether the recommended firm was in business for a minimum of two years, (h) for the purposes of the Commercial Code a firm was considered a trader after having started retaining and billing clients, engaging staff and so forth, which facts were verifiable from the registers held by the Director of Trade, by the Commissioner of VAT and by the Employment and Training Corporation, (i) Clause 77 of the Companies Act referred to the date the company was incorporated at which point it would be authorised to do business but, more than

that, one had establish that the company was actually doing business, (j) albeit documents were presented by the recommended tenderer with a view to prove that it had been in business yet these were drawn up in respect of Casasoft as a brand name and not in the name of Casasoft Ltd, which was the bidder in this tendering procedure and which had been incorporated in March 2010, (k) the case would have been different had the Cassar brothers submitted a tender in their own names or as Casasoft, the brand name, as a joint venture with Casasoft Ltd but, as things stood, Casasoft, the brand name, and Casasoft Ltd were legally unrelated, (l) Volume 1 Selection 1, Point 6.1.2 (b) 'Selection Criteria' stated that *'Evidence of relevant experience in carrying out services of a similar nature over the past 5 years (Form 3.3 of Volume 1, Section 3) including the nature and value, as well as contracts in hand and contractually committed. The minimum number of projects of similar scope/nature (high level of complexity, demonstrate artistic, innovative and user friendly interfaces that engage with the users) completed between 2007 and 2011 must be at least 2 in number. Relevant experience should invariably include: specific experience related to website design, site usability, content development, animated creative content, software development and database management.'*, (m) when one examined Casasoft Ltd's website, one would immediately notice that this firm lacked both the 5 years experience requested and did not execute projects of a similar scope/nature, (n) as a result, the recommended tenderer not only failed on the requirement of 'two years in business' but also with regard to the relevant experience as contractor, (o) with regard to Volume 3, Section 1 Terms of Reference Point 1.5 'Current State of Affairs in the Relevant Sector' the call for tenders requested an internet service/tool which, unless it was professionally and adequately delivered, could have adverse affects on tourism, which was one of the main economic activities of Gozo, (p) whilst, on the website of the recommended tenderer one could perhaps find one or two projects which could, remotely, be classified as related to tourism, one of them being the 'Malta Hotel Guide', yet, that was certainly not the kind of experience that the contracting authority was after especially when dealing with such an important economic sector, (q) on the other hand, ICON Solutions Ltd had 12 years experience in this sector and had executed 23 tourism related projects besides having developed software and i-Phone applications directly related to the tourism industry, (r) Volume 3 Section 1 'Terms of Reference' Point 2.1 'Overall Objectives', among other things, stated that one of the objectives of the Ministry for Gozo was that of ensuring *"an effective marketing approach and a stronger representation in the cut throat competitive international travel market."*, (s) in spite of the fact that the contracting authority had set out this benchmark in the tender document, it was evident that, whilst the recommended tenderer did not possess the technical capabilities and experience in e-marketing, ICON Solutions Ltd had carried out various projects which included not only the setting up of the website but even managing the e-marketing strategy itself with staff dedicated to that particular activity, (t) the contracting authority seemed to have been primarily interested in the price element of the tender submissions and, in doing so, overlooked important technical aspects attached to this project such as the provisions of clause 4.2.2.15 of the tender document that the site had to render on mobile devices, a requirement which, according to the appellant company, was not met by the recommended tenderer and (u) when the appellant company's representative/s examined samples of past works as requested in Form 3.5 (page 30 of



the tender document) it transpired that such works did not allow users to access information via mobile devices;

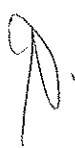
- having considered the contracting authority's representatives' reference to the fact that (a) Art. 77 (1) of the Companies Act states that "*On the registration of the memorandum and articles, if any, of a company, the Registrar shall certify under his hand that the company is registered, and the company shall come into existence and shall be authorised to commence business as from the date of registration which date shall be indicated in the certificate: ...*", (b) it was neither reasonable nor fair to consider that a company started operations from the date it commenced issuing invoices for work/services performed because the issue of invoices was practically the last stage in a long process, (c) for the purpose for establishing that the bidding firm had been set up/in business for two years, the relevant date was the closing date of the tender, namely, the 13<sup>th</sup> April 2012, and not the publishing date, i.e. 2<sup>nd</sup> March 201, and, therefore, the recommended bidding firm, having been registered on the 9<sup>th</sup> March 2010, satisfied the two-year requirement laid down in clause 6.1.2 (a), (d) following the evaluation process the adjudicating board was satisfied that the recommended tenderer had carried out the required two projects of a similar nature between 2007 and 2011, something which even the appellant company itself had acknowledged, (e) although the appellant company made reference to the web portal of Casasoft Ltd, yet, the adjudicating board had to evaluate the tender submission, including the projects carried out, and not the web portal of Casasoft Ltd itself, (f) i-Phone applications were not a requisite in this call for tenders, (g) the appellant company's citation from section 1.5 'Current State of Affairs in the Relevant Sector', regarding the importance of the tourism sector to the economy of Gozo, was not a requisite, (h) the term 'of a similar scope/nature' meant that the project had be of the same '*high level of complexity, demonstrate artistic, innovative, and user friendly interfaces that engage the user*' (clause 6.1.2 (b)) but the projects did not have to be tourism related, (i) considering that in its letter of objection dated 14<sup>th</sup> May 2012, the appellant company alleged that Casasoft Ltd had no experience in providing search engine optimisation services to clients in a similar industry, one had to keep in view that (1) whilst the tender requested 'the provision of Search Engine Optimisation services', yet it did not request experience in that particular sector, (2) the phrase '*Ensuring an effective marketing approach and a stronger representation in the cut throat competitive international travel market*' was not a requisite in itself but, as the heading indicated, it was one of the objectives of the tender and (j) clause 32.1 at page 17 of the tender document 'Criteria for Award' laid down that the contract would be awarded to the cheapest tender satisfying the administrative and technical criteria and since all six tenderers satisfied the administrative and technical criteria, the deciding factor was the price, where the cheapest bid was that of Casasoft Ltd at €44,000 whereas the second cheapest was that of the appellant company at €73,750.01;
- having considered the recommended tenderer's representatives' reference to the fact that (a) the date of registration of the recommended firm was the 9th March 2010 whereas the closing date of the tender was 13th April 2012 and, as a result, the recommended tenderer had the required 2 years in business, (b) whilst Casasoft Ltd was registered in March 2010, yet, the present directors of Casasoft, Karl and Mark Cassar, who were brothers, had been using Casasoft as a trade



name since 2003/4 and in 2009 Mark Cassar for Casasoftware had even won one of the Digital Awards for best Flash Website, (c) the experience gained by the Cassar brothers under the brand name Casasoftware since 2003/4 was at the disposal of Casasoftware Ltd, which was registered in 2010, and that Casasoftware Ltd was in business right from the start, (d) the Cassar brothers had been in this line of business since 2003/4 and by 2010 their business grew such that it was viable to form a company and register it with the Malta Financial Services Authority, (e) Mr Mark Cassar, director of Casasoftware Ltd stated that he had been in this sector since 2004 and that he had been awarded the 'Best Flash Website Award' at the Digital Awards of 2009, (f) some examples of websites and online portals created by Casasoftware involving a high level of complexity, highly artistic, innovative and user-friendly interfaces included *Bet-At.eu* (<http://www.bet-at.eu>) - *Sunfly Karaoke* (<http://www.sunflykaraoke.com>) - *OkMalta.com* (<http://www.okmalta.com>) - *Discount Pages* (<http://www.discountpages.com.mt>) - *Dine In Malta* (<http://www.dineinmalta.com>) - *Malta Hotel Guide* (<http://www.maltahotelguide.com>), (g) one had to keep in view that not all Casasoftware work was publicly displayed on its online portfolio due to specific requests from some of its clients, (h) whilst ICON Solutions Ltd stated that Casasoftware's corporate website did not render correctly on i-Phones, yet one had to consider the fact that that corporate website had been developed in 2008/2009 and was based on Adobe Flash Technology which did not cater for i-Phone devices but that did not mean any lack of web-expertise on the part of Casasoftware Ltd, (i) if one were to consider HTML websites, like *OkMalta.com*, one would discover that they rendered well on mobile devices, (j) Casasoftware has not only integrated several systems with an electronic newsletter management module as well as with online payment solutions with multiple payment methods but has also developed systems used by real estate agents, English language school management systems, online shops/ecommerce websites, all of which required high technical skills and expertise, (k) with regard to 'search engine' capabilities, one would find that Casasoftware corporate website ranked much higher than that of ICON Solutions Ltd so much so that Casasoftware appeared on the front page of search engines such as Google, Web design malta and Web development malta whereas the appellant company's was listed on pages 3 or 4 which, for search engine purposes, was almost insignificant and (l) Casasoftware's proposal would provide additional services, such as, content and keyword analysis, link building techniques and constant monitoring of rankings periodical audit reports to analyse rankings, all of which demonstrated Casasoftware's capabilities regarding search engine optimization,

reached the following conclusions, namely:

1. The Public Contracts Review Board agrees with the contracting authority's argument wherein it was opined that it was neither reasonable nor fair to consider that a company started operations from the date it commenced issuing invoices for work/services performed because the issue of invoices was practically the last stage in a long process.
2. This Board accepts the fact that, for the purpose for establishing that the bidding firm had been set up/in business for two years, the relevant date was the closing date of the tender, namely, the 13<sup>th</sup> April 2012, and not the publishing date, i.e. 2<sup>nd</sup> March 2011, and, as a result, the recommended bidding firm, having been



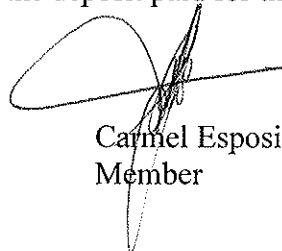
registered on the 9<sup>th</sup> March 2010, satisfied the two-year requirement laid down in clause 6.1.2 (d).

3. Apart from the formal formation of a company, this Board concludes that, as far as the recommended tenderer's experience is concerned, the Cassar brothers had been in this line of business since 2003/4 and by 2010 their business grew such that it was viable for them to form a company and register it with the Malta Financial Services Authority. Also, it was also a fact that Mr Mark Cassar had been awarded the 'Best Flash Website Award' at the Digital Awards of 2009.
4. In the absence of substantial adverse comments this Board has no reason to doubt the recommended tenderer's capability to deliver according to tender specifications having also taken into consideration the examples of websites and online portals created by Casasoft involving – as claimed by the recommended tenderer- a high level of complexity, artistic, innovative and user-friendly interfaces including *Bet-At.eu* (<http://www.bet-at.eu>) - *Sunfly Karaoke* (<http://www.sunflykaraoke.com>) - *OkMalta.com* (<http://www.okmalta.com>) - *Discount Pages* (<http://www.discountpages.com.mt>) - *Dine In Malta* (<http://www.dineinmalta.com>) - *Malta Hotel Guide* (<http://www.malhotelguide.com>). This Board acknowledges that, whilst ICON Solutions Ltd stated that Casasoft's corporate website did not render correctly on i-Phones, yet one had to consider the fact that that corporate website had been developed in 2008/2009 and was based on Adobe Flash Technology which did not cater for i-Phone devices but that did not mean any lack of web-expertise on the part of Casasoft Ltd.
5. In line with the line of thought followed by the evaluation board, the Public Contracts Review Board is satisfied that the recommended tenderer had carried out the required two projects of a similar nature between 2007 and 2011.
6. This Board opines that the fact that although the appellant company made reference to the web portal of Casasoft Ltd, yet, the adjudicating board had to evaluate the tender submission, including the projects carried out, and not the web portal of Casasoft Ltd itself.
7. The Public Contracts Review Board agrees with the contracting authority's claim, namely that, since (a) clause 32.1 at page 17 of the tender document, 'Criteria for Award', laid down that the contract would be awarded to the cheapest tender satisfying the administrative and technical criteria and (b) all six tenderers satisfied the administrative and technical criteria, the deciding factor was the price, where the cheapest bid was that of Casasoft Ltd at €44,000.

In view of the above, this Board finds against the appellant company and recommends that the said appellant forfeits the deposit paid for the appeal to be lodged.



Alfred R Triganza  
Chairman



Carmel Esposito  
Member



Joseph Croker  
Member

23<sup>rd</sup> July 2012