

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 643**

**T 08/2013**

### **Tender for the Delivery, Installation, Commissioning, Maintenance, After Sales Services and Testing of Data Storage Solution and Related Hardware and Software.**

The tender was published on the 23<sup>rd</sup> July 2013 and the closing date was on the 7<sup>th</sup> August 2013.

The estimated value of the tender was €110,000 (Exclusive of VAT)

Eight (8) bidders had submitted an offer for this tender.

On the 3<sup>rd</sup> October 2013 Merlin Computers Ltd filed an objection against the decision to discard its offer as being technically non-compliant and against the proposed award of the tender to ICT Limited.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday 17<sup>th</sup> December 2013 to discuss this objection.

Present for the hearing were:

#### **Merlin Computers Limited - Appellant**

Mr Sandro Mousu`	Representative
Mr Joel Spiteri	Representative
Dr Arthur Azzopardi	Legal Representative

#### **ICT Limited - Preferred Bidder**

Mr Keith Fearne	Representative
Mr Liam Pace	Representative
Mr Simon Vella	Representative
Dr David Zahra	Legal Representative

#### **Malta Environment & Planning Authority - Contracting Authority**

Ms Karen Vella	Secretary, Evaluation Board
Mr Keith Cappello	Asst. Secretary, Evaluation Board
Mr Mark Ellul	Member Evaluation Board
Mr Sven Farrugia	Member Evaluation Board
Mr Manuel Spiteri	Member Evaluation Board
Ms Mariella Dobрева	Observer
Dr Ian Borg	Legal Representative

The Chairman made a brief introduction and the appellant's representative was invited to make his submissions about the objection.

Dr Arthur Azzopardi on behalf of the appellant Merlin Computers Ltd said that his client's bid had been the cheapest yet the evaluation board decided that the offer was technically non-compliant and he wanted to rebut this. He went through the list of items declared by the evaluation board to be non-compliant. The H2 Disk Array Enclosures. Here he contended that the tender document did not provide a form to be filled in, but bidders had to supply supporting documentation of the data submitted. Thus the specifications were given by the supporting documents. Dr Azzopardi admitted that the tender submitted by his client may have contained typing mistakes, but these were not in the specifications. He insisted that his client was compliant because all that was requested was given. The same system had in fact been supplied to other government entities before the present tender. The contracting authority had thus two options open, either to ask client for clarification or ask one of the other users of the system proposed by appellant. He reiterated that the supporting documentation supplied by his client satisfied all the requisites of the tender and what more, was around €34,000 cheaper. He continued that since the tender was issued the market changed and the requested 15K SAS discs were no longer available. The supporting documentation submitted by the appellant explained this and pointed out solutions. Regarding the point cited by the evaluation board that appellant did not provide the disk array enclosures divided into two main units he insisted that the present technology allowed the separation of the primary and secondary storage units to be housed physically in the same unit together and still be separated. He stressed that the system proposed by his client is being used in other government departments. The system was secure.

Another point on which his client's offer was disqualified was the diagram which shows that the proposed system indicates that the backup server has only one point of failure and is connected to one switch only and there is no redundant connection to the second switch. However Dr Arthur Azzopardi contended that since the same system is being used by other departments the evaluation board should have asked for clarifications.

Mr Keith Cappello on behalf of the contracting authority stated that he was a member on the evaluation board and when adjudication of the offers was being made it could be seen that appellant's bid was inferior to the other offers. In fact it was rejected on technical points. The tender specifications were correct and there were no errors. The appellant firm itself admitted to having made typing errors in the tender. The evaluation board could not ask for clarifications if the bids were completely off specifications, but had to evaluate what was before it.

Manuel Spiteri on behalf of the contracting authority said that appellant had in fact supplied supporting documentation but this stated what the product offered could accomplish but did not state that this was being offered by appellant. To be clear he explained that the documents submitted by appellant showed what the product was capable of but the same documents did not state that the appellant was offering to provide the product. Bidders had to make technical offers supported by the relevant documentation. Appellant provided general supporting documents and not those referring to their bid. For example he stated that the contracting authority required 15K SAS disc. There had been a clarification asking if 10K was acceptable and the reply had been yes provided the size being offered. Appellant offered 10K SAS discs but did not double the size. The tender asked for 10 T Bytes and Merlin offered 5 T Bytes. The contracting authority wanted the Backup Tape Autoloader should have two tape drives because it did not want a single point of failure. Merlin submitted one tape

drive. In this case the supporting documents stated that it was capable of accepting up to one hundred, but only one was offered. The appellant offered a “Raid 1” backup server when the tender asked for “Raid 5”. The diagram submitted with appellant’s bid clearly shows that a single point of failure was being offered. Appellant’s offer did not provide what was requested and the evaluation board could not ask for clarification. The technical offer made by appellant was not what was required.

Dr Arthur Azzopardi on behalf of the appellant said that all manufactures produced generalized documentation and specific documentation of their products. He contended that the documentation submitted by the appellant met the tender specifications, and that appellant offered what the contracting authority wanted. He offered to produce and install the system so that the Board could see that it complies.

Mr Keith Cappello reiterated that the evaluation board had done its work correctly and it found that appellant’s offer was “off specifications” that is did not meet the specifications.

Mr Manuel Spiteri on behalf of the contracting authority replying to a question by the Chairman stated that appellant’s technical offer was not according to specifications. He contended that appellant’s technical offer was not reflected in the documentation submitted with it, it did not correspond.

Dr Ian Borg on behalf of the contracting authority said the point of contention here is that the appellant did not offer what the tender required.

Mr Keith Fearne on behalf of the preferred bidder said that appellant submitted general brochures but these did not correspond to what was offered.

At this point the hearing was brought to an end.

**This Board,**

**Having noted the Appellant’s objection, in terms of the ‘Reasoned Letter of Objection’ dated 3<sup>rd</sup> October 2013, and also through the Appellant’s verbal submissions during the hearing held on 17<sup>th</sup> December 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant contends that his offer was technically compliant and also that all the necessary technically specifications were submitted with the tender document.**
- b) Furthermore, Appellant insists that since the system offered by same is in use with other government departments, any misunderstood concept of the layout of the system should have been evened out by the Evaluation Board, through clarifications.**

**Having considered the Contracting Authority’s verbal submissions during the hearing held on 17<sup>th</sup> December 2013, in that:**

- a) **The Appellant's offer was technically not up to the required standard as specified in the tender document.**
- b) **The technical specifications as specified in the tender document were correct and precise and in this regard the Appellant's bid did not comply with the necessary requirements.**

**Reached the following conclusions:**

- 1. From the lengthy submissions made by both the Appellant Company and the Contracting Authority, this Board opines that it was made vividly clear by the technical members of the Evaluation Board, that the Appellant's offer was indeed not technically compliant.**
- 2. The Appellant's Bid did not provide what was exactly required in the tender document.**

**In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*30 January 2014*