

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 692**

**DES 139/2013**

### **Tender for the Supply of Network and Electrical Material for Various Schools Lot 2.**

The tender was published on the 4<sup>th</sup> October 2013. The closing date was the 25<sup>th</sup> October 2013. The estimated value of the

Tender was €65,000 (Exclusive of VAT).

Six (6) bids had been received for this tender.

On the 25<sup>th</sup> March 2014 MCE Limited filed an objection against the rejection of its offer which was declared to be administratively non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 29<sup>th</sup> April 2014 to discuss the objection.

Present for the hearing were:

#### **MCE Limited - Appellant**

Mr Adrian Puglisevich	Director
Mr Ivor Puglisevich	Director

#### **Computime Limited - Preferred Bidder**

Mr Neil Bianco	Head, Sales and Marketing
Dr Steve Decesare	Legal Representative

#### **Ministry for Education and Employment - Contracting Authority**

Mr Carlo Azzopardi	Member Evaluation Board
Mr Franco Costa	Member Evaluation Board
Mr Jesmond Mansueto	Representative

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

Mr Ivor Puglisevich on behalf of the appellant claimed that appellant should not have been disqualified because of lack of experience. Appellant firm had vast experience and had been 37 years in the business. It had worked with the Department of Education before. He stated that appellant's offer had been discarded for not submitting contracts for the years 2011 and 2012. Appellant has in fact submitted projects worked during 2013, but included also a resume` showing projects done during the 37 years of experience and including those in 2011 and 2012. Appellant felt that the contracts worked during 2013 were more relevant than

those of the other two years.

The Board at this point examined the resume` submitted by the appellant and saw that the dates of the projects were not included.

**This Board,**

**Having noted the Appellant's objection , in terms of the 'Reasoned Letter of Objection' dated 25<sup>th</sup> March 2014 and also through Appellant's verbal submissions during the hearing held on 29<sup>th</sup> April 2014 , had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that his offer was discarded due to the simple fact that he did not meet the 'experience criteria' for the years 2011 and 2012 as stipulated in the tender document.**
- b) Appellant feels that although he did not conform to the 'experience criteria' for the years 2011 and 2012, in 2013 his offer by far superseded the required minimum.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 29<sup>th</sup> April 2014, in that:**

- a) The Evaluation Board could only assess the Appellant's offer on the information submitted by same in the tender document.**
- b) Appellant did not conform to Article 7.1 (B) (ii) (1) of page 5 of the tender document.**

**Reached the following conclusions:**

- 1. This Board opines that Prospective Tenderers must always abide by the conditions laid out in the tender document. In this regard, the Appellant Company did infringe this condition and in fact dictated a different approach to the 'experience criteria' from that laid out in the tender document.**
- 2. The Contracting Authority has the privilege to dictate certain conditions in a tender document and these are established after careful and transparent considerations. In this respect, the Evaluation Board carried out the adjudication process in a fair and prudent manner.**

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

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancilleri  
Member

*26 May 2014*