

PUBLIC CONTRACTS REVIEW BOARD

Case No. 869

TM 075/2011

Tender for the Upgrading of CCTV Licensed Wireless Links.

The tender was published on the 19th August 2011. The closing date for the call was on the 2nd September 2011. The estimated value of tender is €70,000.00 (Exclusive of Vat).

On the 6th March 2013 Alberta Fire & Security Limited filed an objection against the decision of the contracting authority to re-award the tender to Tektraco Limited whilst there was a pending court case.

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 10th November 2015 to discuss the objection.

Present for the hearing were:

Alberta Fire & Security Equipment Limited:

Mr Karim Cassar
Dr Damian Degiorgio

Representative
Legal Representative

Tektraco Limited:

No representatives were present

Transport Malta:

Mr Robert Vassallo
Mr Joseph Ciappara
Mr Raymond Stafrace
Ms Liz Markam
Dr Joseph Camilleri

Secretary Evaluation Board
Member Evaluation Board
Member Evaluation Board
Representative
Legal Representative

The Chairman explained that this objection was the second in this tender procedure after the Court of Appeal had revoked the Board's previous decision. Appellant, who had been the preferred bidder, objected to the contracting authority's decision to revoke the original award and making a fresh award during the time the court appeal was still pending. Appellant had been the original preferred bidder whilst the present preferred bidder was the original objector. He asked the parties whether they were still interested in the objection since the contracting authority had written that it was no longer interested in the present tender due to the lapse of time.

Dr Joseph Camilleri on behalf of the contracting authority explained that at the time of the present award the law or regulations allowed the contracting authority to continue the award process immediately following the Public Contracts Review Board decision. This was now no longer possible but this case fell in the interim period. He declared that the contracting authority at present no longer had an interest in the tender procedure.

Dr Damian Degiorgio on behalf of the appellant declared that appellant would not object to closing this case but reserved the right to file a new objection if the present tender procedures were continued.

At this point the hearing was closed.

This Board,

The Court of Appeal had revoked this Board's decision in 2011 and had referred back to same to allow a fair discussion regarding the 'Expert's Report', which was not previously made available to all interested parties to enable same to discuss the expert's views on the matter.

In the meantime, since 2011, the Contracting Authority confirming that the merit of the case of this appeal no longer exists, as new technologies by far surpass what was requested in the original tender.

At the same instance, this Board credibly notes that the Appellant Company does not object to the cessation of this Appeal, providing the present tender

procedures are discontinued.

Reached the following conclusions.

- 1. This Board justifiably opines that since 2011, new technologies are on the market and it would be futile for this Board or the Evaluation Committee to evaluate an outdated system. In this regard, this Board upholds the Contracting Authority's decision to cancel the tender under appeal.**
- 2. At the same instance, this Board upholds the Appellant's right to file an objection if the present tender procedures are continued.**

In this regard, this Board opines that this case is now exhausted.

At the same time, this Board recommends that the deposit paid by Appellant Company should be reimbursed.

Dr Anthony Cassar
Chairperson

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

19 November 2015

19 November 2015

