

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 890**

**OPM/F&A 2146/2015**

**Tender for the Provision of an Audio and Visual Collaboration Solution for the Office of the Prime Minister.**

The Tender was published on the 27<sup>th</sup> October 2015. The closing date was on the 10<sup>th</sup> November 2015.

The estimated value of the Tender is €59,332.03 (Exclusive of Vat).

Three (3) offers had been submitted for this Tender.

On the 4<sup>th</sup> December 2015 DAB Electronica Co Limited filed an objection against the proposed award to ICT Limited for the amount of €117,621.31 Exclusive of VAT.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday the 14<sup>th</sup> January 2016 to discuss the objection.

Present for the hearing were:

**DAB Electronica Co. Limited:**

Mr Alan Gatt	Representative
Mr Joseph Vella	Representative

**ICT Solutions:**

Mr Keith Fearne	Managing Director
Mr Finian Massa	Business Development Executive
Dr Simon Schembri	Legal Representative

**Office of the Prime Minister:**

Mr John Agius	Chairman Evaluation Board
Mr Justin Caruana	Member Evaluation Board
Ms Marica Saliba	Member Evaluation Board
Mr John Abela	Representative
Mr Alex Magro	DG Support Services
Dr Abigail Caruana	Legal Representative

The Chairman made a brief introduction and pointed out that the letter of objection should give the clear reasons of the objection. The present did not and the Board could have dismissed it without further hearing. Unproven allegations would not be tolerated. He would however be hearing the case with the Contracting Authority's permission.

Dr Abigail Caruana for the Contracting Authority did not object but reserved the right to examine and reply to any new factor being raised by the Appellant.

The Chairman invited Appellant's representative to make his submissions about the objection. Mr Joseph Vella on behalf of the Appellant alleged a lack of seriousness by the Contracting Authority. This was proven by the letter of reply submitted by the Contracting Authority. He alleged that a company based in Greece had informed him that the present Tender had already been awarded. The Tender specifications should be clearer. He claimed that during a clarification meeting he had been told that the best solution would win the award. The price did not come into it.

The Chairman explained that if the Appellant had any concerns he should have raised them before the closing date.

Mr Joseph Vella said that he did not do so because since he had been informed that the budget was no problem and that the best submission would be preferred, he chose to offer what he considered a good submission. The Tender was about national security and the cost element should not be considered once the best solution was sought. He alleged that the specifications had been prepared after the Contracting Authority had met with the Recommended Bidder.

Dr Abigail Caruana on behalf of the Contracting Authority explained that:

- a) This was a Departmental Tender and by law the value was limited to €120,000. Appellant's two options at €135,000 and €161,000 both exceeded this maximum allowed and would have to be discarded;
- b) The profit margin of the Recommended Bidder does not concern the Contracting Authority, but still the Recommended Bidder's submission seems credible;
- c) The alleged contact with suppliers, which the Appellant alleged, was in fact because the Contracting Authority had done some market research before issuing the Tender and in the process had contacted several suppliers. The Recommended Bidder had not been asked for quotations. A clarification was in fact sought from one of the bidders but this was issued according to clause 16.6 and no new information had been submitted as a result;
- d) The Tender was issued under normal conditions and the contractor would have to provide exactly what he offered, otherwise the Contracting Authority would take the necessary action.

Mr John Agius, ID No 256257M, the Chairperson Evaluation Board, under oath stated that there had been no communication with any of the bidders during the evaluation of the Tender. A request for clarification was issued after permission from the DCC was obtained. The Tender specifications had been written following examining the Contracting Authority's

requirements and also after receiving the advice of a specialist in the matter.

Mr John Abela ID NO 50075M, the Director, Finance and Administration, with the Contracting Authority confirmed under oath the contents of the Contracting Authority's letter of reply to the objection.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's objection, in terms of the "Unreasoned Letter of Objection" dated 4<sup>th</sup> December 2015 and also through Appellant's verbal submission during the hearing held on 14<sup>th</sup> January 2015, had objected to the decision taken by the pertinent authority, in that:**

- a) Appellant Company alleged that through the Contracting Authority's "*Letter of Reply*" dated 6<sup>th</sup> January 2016, same authority showed lack of seriousness;**
- b) Appellant also contends that he was informed that the Tender had already been awarded, by a company based in Greece;**
- c) Appellant company maintains that since he was informed that the best submission would be preferred, he chose the best offer he could possibly submit. In this regard, he was also informed that the price**

**was not the issue.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 6<sup>th</sup> January 2016 and also the authority's verbal submissions during the hearing held on 14<sup>th</sup> January 2016, in that:**

- a) The Contracting Authority maintains that the Appellant company should have been aware that this is a departmental Tender and the value should not exceed Euro 120,000 exclusive of VAT. Appellant's two options by far exceeded this limit;**
  
- b) The Contracting Authority confirmed (under oath) that there was no communications with the bidders during the evaluation process. The authority conducted market research prior to the issue of the Tender.**

**Reached the following conclusions:**

- 1. This Board would credibly note that the "*Letter of Objection*" of Appellant contained no reasons for the grievances raised. Although this Board decided to hear the appeal after having received confirmation of same, from the Contracting Authority. In this regard, this Board would treat the first allegation made by the**

**Appellant Company.**

**With regards to Appellant's first allegation, this Board justifiably deplores the fact that, after Appellant's non-adherence to the remedies proved by the Public Procurement Regulations, Appellant takes the opportunity to air his views and allege occurrences which, the same Appellant company did not provide credible evidence or proof that such allegations did in fact occurred. In this regard, due to non existence of evidence of such allegations, this Board justifiably does not uphold Appellant's contentions as credible, and this same Board does not uphold Appellant's first grievance and allegation that the Contracting Authority's "*Letter of reply*" dated 6<sup>th</sup> January 2016, indicated in any credible way, lack of seriousness.**

- 2. With regards to Appellant's second contention, this Board credibly notes that no proof or evidence was submitted by Appellant Company to substantiate his claim that he was informed by a company situated in Greece, that the Tender has already been awarded. This Board again deplores allegations made by Appellant Company which cannot be substantiated by credible evidence. In this regard, this Board does not uphold Appellants' second grievance.**

**3. With regard to Appellant's third contention, this Board credibly notes, that although Appellant company maintains that he was informed from unmentioned sources that the budget was no problem, the Appellant should have been aware that this was a departmental Tender and the maximum amount which same Tender could amount to Euro 120,000. This important cardinal effect was thoroughly ignored by Appellant, in this regard, this Board does not uphold Appellant third grievance.**

**4. On a general note, this Board deplores the fact that allegations are made by Appellants without specific evidence or proof which are to be considered by this Board. On many occasions, this Board had reaffirmed its jurisdiction in that it is only empowered to ensure that the evaluation by the evaluation committee was conducted in a fair and transparent manner. In this regard, this Board upholds the evaluation committee's transparent evaluation process.**

**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

*25 January 2016*