

PUBLIC CONTRACTS REVIEW BOARD

Case 1119 – TM 072/2017 – Tender for the Supply and delivery of Cisco WiFi Access Points at Transport Malta New Offices.

The Publication Date of the Call for Tenders was 1 September 2017 whilst the Closing Date for Call of Tenders was 22 September 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 42,000.

Seven (7) Bidders have submitted offers for this Tender.

On 26 November 2017, Infinite Fusion Technologies Limited filed an Objection against the decision taken by Transport Malta to award the Tender to Sirap Limited for € 22,400 (Exclusive of VAT) against a deposit of € 400.

On 9 January 2018, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Carmel Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – Infinite Fusion Technologies Limited

Mr Liam Ferriggi	Representative
Mr Mauro Spiteri	Representative

Recommended Bidder – Sirap Limited

Mr Jay Deveraux Attard	Representative
Mr Anthony Paris	Representative

Contracting Authority – Transport Malta

Mr Noel Galea	Member, Evaluation Board
Mr Ivan Jurkovic	Member, Evaluation Board
Mr James Vella	Member, Evaluation Board
Ms Liz Markham	Representative
Dr Joseph Camilleri	Legal Representative

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board said that an Objection should be filed only when the Appellant feels aggrieved of the decision taken by the Contracting Authority.

Dr Cassar continued explaining that since this Objection was purely a fishing expedition about what Sirap Limited offered in this Tender, which was highly unacceptable, the Public Contracts Review Board was going to summon a Technical Person from the Evaluation Board to testify regarding the matter.

At this point, Mr Noel Galea, an ICT Network Administrator within Transport Malta, who was a member of the Evaluation Board for this Tender, holding ID Card Number 423467 M was summoned by the Public Contracts Review Board to testify under oath.

Following Mr Galea's submission, Mr Liam Friggieri, representing Infinite Fusion Technologies Limited said that they have filed an Objection since they had proof that Sirap Limited, the Recommended Bidders were not partners with Cisco Limited.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board insisted that this Board was not interested in hearing alleged claims regarding the Recommended Bidders.

Mr Liam Friggieri, representing Infinite Fusion Technologies Limited insisted further by claiming their previous point and, in an arrogant manner, Mr Friggieri contended that if he will not be heard, he will leave the Public Hearing as he had better things to do, as he got up and actually left the Hearing.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board expelled Infinite Fusion Technologies Limited from the Hall as this Board will not tolerate any arrogant and disrespectful behaviour from anybody.

At this stage, the Public Hearing was adjourned to Tuesday 16 January 2018 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by Infinite Fusion Technologies Limited (herein after referred to as the Appellant) on 26 November 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference TM 072/2017 listed as Case No 1119 in the records of the Public

Contracts Review Board, awarded by Transport Malta (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Liam Friggieri

Appearing for the Contracting Authority: Dr Joseph Camilleri

Whereby, the Appellant contends that:

- a) The Recommended Bidder had no connections with Cisco. In this regard, Infinite Fusion Technologies Limited insisted that the Recommended Bidders are to guarantee that the Cisco Products to be supplied are new and in their original packing and are entitled to a full Cisco Warranty from the manufacturer and that any related software is licensed originally to the customer as the original licensee, authorized to use the Cisco Software.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 27 November 2017 and its verbal submissions during the Public Hearing held on 9 January 2018, in that:

- a) **Transport Malta maintained that the Appellants' Appeal is not proper since they have not indicated any reason for their Objection and neither a request for setting aside the Award Decision;**

- b) **The Contracting Authority also contended that Sirap Limited's offer was fully compliant with the Request for Proposal's dictated requirements.**

This same Board also noted the Testimonies of the witness namely, Mr Noel Galea duly summoned by the Chairman of this Same Board. The Transcript of the latter is herewith attached.

This Board would like to first and foremost, point out that the Objection submitted by Infinite Fusion Technologies Limited did not conform with Article 270 of the Public Procurement Regulations in that the Appellants did not state, *"in a very clear manner the reasons for the Appellants' complaints"*.

This Board also noted that the Appellants' raised allegations which this Board regards as a *"Fishing Expedition"* on the Recommended Bidders' offer. In this regard, this Board established from the testimony given by the Witness that Sirap Limited was fully compliant and made all the

necessary declarations to confirm that their offer will comply with all the requisites dictated in the Request for Proposal. At the same instance, this Board would also point out that, in the event that Sirap Limited does not deliver, Transport Malta has all the remedies to rectify the situation.

From the submissions made by Infinite Fusion Technologies Limited, it was clearly evident that they were not aware of the Appeals' Procedure and the remit of the Public Contracts Review Board.

For clarity's sake, the Jurisdiction of this Board is to establish whether the procedure in the award of this Tender was appropriately carried out and whether the Evaluation process was executed in accordance with the Regulations, as laid out in the Public Procurement Regulations.

In this regard, from the examination of the relevant documentation and the testimony of the Witness, this Board justifiably affirms that the Evaluation Board carried out its function in a fair, just and transparent manner.

In view of the above, this Board:

- i) Upholds Transport Malta's decision of the Award;**

ii) Considers the Objection filed by Infinite Fusion Technologies Limited as null and void, however, recommends that the deposit paid by the latter should be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

16 January 2018