

PUBLIC CONTRACTS REVIEW BOARD

Case 1382 – VLCT-02/2019 – Tender for the Supply, Delivery, Installation. Testing, Maintenance and After Sales of a Smart Parking Management System in Valletta as Part of Civitas Destinations Project (GA No 689031, Horizon 2020)

Remedy before Closing Date of a Call for Competition

The publication date of the call for tenders was the 13th September 2019 whilst the closing date was the 1st November 2019. The estimated value of the tender (exclusive of VAT) was € 58,903.86

On the 30th October 2019 Vodafone Malta Ltd sought a Remedy against the Valletta Local Council as the Contracting Authority because they felt aggrieved by the tender requirements.

On 12th November 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman and Dr Charles Cassar as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Vodafone Malta Ltd

Dr Paul Gonzi	Legal Representative
Dr Thomas Bugeja	Legal Representative
Mr Beppe Vella	Representative
Mr Mario Cordina	Representative
Mr Jason Pavia	Representative

Contracting Authority – Valletta Local Council

Dr Joseph Paul Bonnici	Legal Representative
Ms Leonora Celeste	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and prior to inviting submissions mentioned that one of the Board members due to attend this hearing had been involved in a last minute mishap and was unable to attend. Legal Representatives of both parties confirmed that they were in agreement that the hearing should proceed.

Dr Paul Gonzi Legal Representative for Vodafone Malta Ltd stated that this remedy was being sought in the belief that the technology being offered by Appellants was more advanced than that requested in the tender and there was no reason why the tender should not offer different technologies once they fulfilled the purpose for which they were required. Appellants offered a

‘NB-IoT’ system whereas the Contracting Authority was restricting it to a ‘LoRA’ or ‘SIGFOX S.A’ systems. Other potential bidders had also enquired if they could offer alternative systems. In their reply the Authority had been ambivalent and it was not clear whether they were prepared to consider an equivalent system.

Mr Peter Paul Barbara (94987M) called as a witness by the Appellants testified on oath that he was an employee of Transport Malta. Asked to comment on the letter sent to Appellant by the Valletta Council on the 4th November he stated that in his view the letter seemed to indicate that there was no objection to offering the ‘NB-IoT’ system.

Dr Thomas Bugeja Legal Representative of Vodafone Malta Ltd said that the system Appellants were offering was technologically a very advanced management system and in use in major countries throughout the world. It can give and supersede what the Contracting Authority was asking for.

The Chairman said that the objective of the tender was to give the Valletta Council a parking management system to meet their needs. The Board could see no reason why equivalent systems should not be included in the tender specifications. Tenders must be worded such as to be appropriate to open competition. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this ‘Call for Remedy Prior to the Closing Date for Call for Competition’ filed by Vodafone Malta Ltd (herein after referred to as the Appellants) on 30 October 2019, refers to the claims made by the same Appellants with regard to the tender of reference CLC T-02/2019 listed as case No. 1382 in the records of the Public Contracts Review Board.

Appearing for the Appellants:

Dr Paul Gonzi

Dr Thomas Bugeja

Appearing for the Contracting Authority: Dr Joseph Paul Bonnici

Whereby, the Appellants contend that:

- a) **The tender document does not allow equivalent technologies which would render the same objectives intended by the Authority. In this regard Appellants maintain that there are other systems on the market which can participate, and which are more advanced in such technology.**

This Board also noted the Contracting Authority's 'Letter of Reply' dated 4 November 2019 and its verbal submissions during the hearing held on 12 November 2019, in that:

- a) **The Authority contends that any other technology which complies with the tenders' technical specifications are acceptable for participation.**

This same Board also noted the testimony of the witness namely, Mr Peter Paul Barbara duly summoned by Vodafone Malta Ltd.

This Board, after having examined the relevant documentation to this ‘Call for Remedy’ and heard submissions made by the parties concerned, including the testimony of the witness duly summoned by Vodafone Malta Ltd, opines that the issue that merits consideration is the limiting factor in Clauses 4.3.1.a and 4.3.1.b.

1. This Board would refer to both mentioned clauses as follows:

“4.3.1a. Parking bay availability sensors must:

- *Be capable of at least 95% detection accuracy over the equipment lifetime;*
- *Have a lifetime of at least five (5) years, and replaceable batteries;*
- *Support LPWAN technology (LoRa or SIGFOX);*
- *Be able to reliably detect any type of four-wheel vehicle that may be making use of the bay;*
- *Be sealed, water resistant and vandal proof;*
- *Be easily replaceable in case of irreparable damage;*
- *Be surface mountable or able to be installed into the first few inches of asphalt (drawings indicating installation requirements are to be provided with this bid). Due to heritage reasons, installation may not exceed a depth of 15 centimetres into the asphalt;*

- *Be able to withstand weather extremities experienced in Malta, including heat and heavy water runoff.*

4.3.1.b. Gateway(s) (if applicable) (Provisional Item)

For the purpose of this tender, Gateways refer to any kind of technology which is able to detect available parking spaces. Systems which do not use Gateways would be considered eligible under this call and the only determining factor shall be the Global Price of the system offered.

If the system proposed requires the use of Gateway(s), these should:

- *Provide a seamless connection between the sensors and the central management system;*
- *Support LWAN (LoRa or SIGFOX [if required]) technology to communicate to the sensors;*
- *Support 10/100 Ethernet (PoE)*
- *Include an integrated 3G modem;*
- *Be capable of mounting onto existing street furniture/walls as agreed to by the Contracting Authority.”*

Both the above-mentioned clauses stipulate that, the system must be supported by LPWAN technology (LoRa or SIGFOX).

- 2. From credible submissions and testimony of witness, this Board was made aware that there are other systems that fall within the LPWAN technology, so that the fact that, only ‘LoRa and SIGFOX’ are being stipulated, a restriction to competition from other similar technologies is being created.**
- 3. It must be emphasized that technical specifications in a tender should not be formulated in such a manner as to limit the scope of open competition and render an advantage to any particular economic operator. At the same instance, where brand names are mentioned, the word ‘Or Equivalent’ should always be included.**
- 4. Moreover, this Board would point out that the technical specifications in a tender document are not capriciously formulated. Such specifications should always be directed towards the needs and objectives of the Contracting Authority. On the other hand, the Authority should do its utmost to ensure that the stipulated technical specifications are formulated in such a manner as to allow, as much as possible, participation of prospective bidders.**

In conclusion, this Board opines that:

- a) Both clauses 4.3.1a. and 4.3.1b. restrict the participation to two specific systems only. There are other systems which can achieve the tender's objectives, and these have been excluded from participating in the tender.**

- b) From the testimony of the witness and the contents of the Authority's 'Letter of Reply' dated 4 November 2019, it is being implied that other technologies would be acceptable, so long as the tender requirements are met.**

In view of the above, this Board,

- i. upholds Appellants' concerns,**

- ii. directs the Authority to include 'Or Equivalent' after each brand name of system or technology being mentioned in the tender document,**

- iii. directs the Authority to issue such modifications through a 'Clarification Note',**

**iv. directs the Authority to resume the tendering process after the
‘Clarification Note’ is published,**

v. directs that the closing date for the tender be 6 January 2020.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

14 November 2019