

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1425 – T 105/19 – Tender for the Provision of Workstation Support Services for Government Ministries (Batch 2)**

The tender was published on the 8<sup>th</sup> November 2019 and the closing date of the call for tenders was the 9<sup>th</sup> December 2019. The estimated value of the tender (exclusive of VAT) was € 528,727.

On the 30<sup>th</sup> January 2020 Smart Technologies Ltd filed an appeal against Malta Information Technology Agency (MITA) as the Contracting Authority objecting to their disqualification on the grounds of their bid being deemed to be non-compliant. A deposit of € 2644 was paid.

There were four (4) bidders.

On 18<sup>th</sup> February 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Smart Technologies Ltd**

Mr Joseph Aquilina	Representative
Mr Ruben Caruana	Representative

#### **Recommended Bidder – 4Sight Technologies Ltd**

Mr Dymar Angileri	Representative
-------------------	----------------

#### **Contracting Authority – Malta Information Technology Agency**

Dr Danielle Vella	Legal Representative
Dr Danielle Mercieca	Legal Representative
Dr Karin Di Maggio	Chairperson Evaluation Committee
Ms Yaneis Buhagiar	Secretary Evaluation Committee
Mr Keith Mallia	Member Evaluation Committee
Mr Mark Anthony Attard	Member Evaluation Committee
Mr Robert Grixti	Representative
Mr Ian Bonello	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Mr Ruben Caruana Representative of Smart Technologies Ltd said that Appellants had been disqualified due to lack of proper certification of Windows 10 when in fact the certification submitted was over and above that required in the tender specifications.

Dr Danielle Vella Legal Representative for Malta Information Technology Agency said that one of the criteria in the tender was the submission of the MCSA certification in Windows 10 Administrators role covering two examinations. The certificate submitted by Appellants was for a Windows 12 server qualification. The contents of that qualification according to the Microsoft website were different to what was required and there was no reference to Windows 10 anywhere in the certificate submitted.

Mr Caruana stated that someone holding a Windows 12 certification could work as an Administrator and Network specialist. MITA wanted a computer support specialist but nowhere is the term support specialist used in the Microsoft website – the term used is Administrator. The Windows 12 certificate is of a higher level to Windows 10 as the system is technically superior.

Mr Keith Mallia (492377M) called as a witness by the Public Contracts Review Board testified on oath that he was part of the evaluation committee. He explained that the Government has some 15,000 work stations based on the Windows 10 system and the tender is meant to cater for about half of these. Microsoft has around twelve different MCSA certificates and the tender specifications requested one particular certificate. The evaluation committee looked at the contents of the certification submitted particularly for server skills on Windows 10 - or their equivalent - but no such skills were found. In reply to questions witness stated that on paper Windows 12 server is totally different from what is required in the tender as far as skills measurements are concerned. The tender asked for Windows 10 certificate but what submitted was different.

The Chairman thanked the parties for their submissions and declared the hearing closed.

End of Minutes

---

## **Decision**

**This Board,**

**having noted this objection filed by Smart Technologies Ltd (hereinafter referred to as the Appellants) on 30 January 2020, refers to the claims made by the same Appellants with regard to the tender of reference T 105/19 listed as case No. 1425 in the records of the Public Contracts Review Board awarded by Malta Information Technology Agency (MITA) (herein after referred to as the Contracting Authority).**

**Appearing for the Appellants: Mr Ruben Caruana**

**Appearing for the Contracting Authority: Dr Danielle Vella**

**Whereby, the Appellants contend that:**

- a) Their offer was disqualified due to the alleged fact that they lacked proper certification of windows 10 application. In this regard, Appellants maintain that the submitted certification is by far superior than that requested in the tender dossier.**

**This Board also noted the Contracting Authority's 'Letter of reply' dated 6 February 2020 and its verbal submissions during the hearing held on 18 February 2020, in that:**

- a) The Authority maintains that the requirement consisted of a submission of MCSA certification in windows 10, covering two specific examination. On the other hand, Appellants submitted certification for a windows 12**

**server qualification which did not include the requirements as specified in the tender document, so that the Evaluation Committee had no other option but to deem Appellants' offer technically non-compliant.**

**This same Board also noted the testimony of the witness namely:**

**Mr Keith Mallia evaluator duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned opines that, the issue that merits consideration is Appellants' submitted certification.**

- 1. This Board would respectfully point out that it is the responsibility of the bidder to ensure that the information submitted in the offer relates and corresponds to the actual requirements as stipulated in the tender document.**
- 2. At the same instance, this Board would also point out that it is the duty and obligation of the Evaluation Committee to adhere to the basic principles of Public Procurement, that is, transparency, equal treatment and self-limitation.**

**3. Wherein a product or a service is denoted by the word ‘Or Equivalent’, it is the bidder’s responsibility to provide evidence that such a product or service is equivalent to the requirements of the tender dossier.**

**4. In this particular case, the tender document mandatorily required that:**

*“The tender confirms that at least one of the proposed personnel making up the hardware and operating software diagnostics, repairs and support team is certified in MCSA (MCSA windows 10 Certification). Proof of this shall be provided in the Key Experts Form.”*

**At the same instance, this Board notes that during a briefing session, such an issue was also fully explained through a question and answer as follows.**

*“Question:*

*With reference to item 15 of the Mandatory Technical Requirements, MSCA Windows 10 is no longer available. Is this certification still required until the tender submission?*

*Answer:*

*MCSA is being replaced by the Microsoft 365 Certified: Modern Desktop Administrator Associate certification. Candidates for the Microsoft 365: Modern Desktop Administrator Associate Certification must pass two exams:*

*MD-100: Windows 10 and MD-101: Managing Modern Desktops. Either MCSA Certification or Microsoft 365 Certified: Modern Desktop Administrator Associate Certification are requested.*

**In this regard, Appellants were aware of the actual requirements and were also knowledgeable of the fact that such a requirement had to include passes in two exams namely: MD-100 Windows 10 and MD-101 Managing Modern Desktops. In this respect, Appellants submissions was totally different from what was requested in the tender document.**

- 5. Appellants' submissions in this regard, failed to adhere to a mandatory requirement and in this regard, the Evaluation Committee had no other option by to disregard Appellants' offer through the basic principle of self-limitation.**

**In conclusion, this Board opines that:**

- a) Appellants' offer failed to include the correct and requested MCSA Windows 10 Certification or equivalent.**
- b) Appellants were made fully aware of what the requirement were through the briefing session and clarification made therein.**

- c) If Appellants had any further doubts after the briefing session, they had the remedies to seek clarifications prior to the submission of their offer.**
  
- d) The clarification referring to the issue of the certification was clearly transmitted by the Authority during the briefing session.**
  
- e) The Evaluation Committee carried out the evaluation process in a just and fair manner.**

**In view of the above, this Board,**

- i. does not uphold Appellants' contention,**
  
- ii. upholds the Contracting Authority's decision in the award of the tender,**
  
- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*24 February 2020*