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27 ta' Novembru 2019

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PUBLIC CONTRACTS
REVIEW BOARD

Is-Segretarju
Public Contracts Review Board
Notre Dame Ditch

Re. Tender TM036/2019 – Tender for the supply and delivery of network switches and Small form-factor pluggable modules

Twegiba tal-Appell ghall-oggezzjoni mressqa minn S.I.C.T (Malta) Ltd fit-18 ta' Novembru 2019

Illi din ir-risposta qieghda ssir fid-dawl tal-oggezzjoni li giet prezentata mis-socjeta' S.I.C.T (Malta) Ltd u dan fir-rigward ta *Tender TM036/2019 – Tender for the supply and delivery of network switches and Small form-factor pluggable modules*, u qieghed isir ghan-nom tal-Awtorita ghat Trasport.

Illi is-socjeta' appellanti tilmenta li l-awtorita appellata ma kelliex dritt tiddikjara li l-offerta tas-socjeta'appellanti kienet wahda *administratively non-compliant* u in sosten ta' tali aggravju, is-socjeta'appellanti elegat diversi fatti relatati mat-Tender in kwistjoni u elenkat ukoll l-oggezzjoni taghha.

Illi it-Tender in kwistjoni eventwalment kien gie mhassar mill-awtorita appellata u konsegwentament ma giex mghoti l-ebda socjeta'offrejenti.

<u>L-OFFERTA KIENET ADMINISTRATIVELY NON-COMPLIANT</u>

Illi is-socjeta' appellanti tindika li hija kienet irciviet talba ghall-kjarifika liema risposta ghall-kjarifika kellha tinghata sa- 9 ta'Settembru 2019.

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Illi il-kjarifika in kwistjoni kienet titlob issegwenti

I *Power of Attorney duly filled in and signed*

II *To rectify details of bidder form which was already submitted onto another economic operator*

Illi in linja ma dawn it-talbiet is-socjeta' appellanti pprezentat il-*Power of Attorney Form duly filled in*, izda il-korrezzjoni li kienet intalbet fir-rigward tal-*Economic Operator* ma sehhietx entro iz-zmien mghoti mill-awtorita appellata u ex-admissis. Din il-korezzjoni saret fl-10 ta' Settembru 2019 u cioe' wara iz-zmien li kien mghoti mill-awtorita kontra l-appellant.

Illi l-procedura ta' tender hija procedura li tigi regolata strettament bil-ligi, tant hu hekk li l-procedura kollha tal-*procurement* hija regolata minn *Subsidiary Legislation* introdotta taht il-Kap 174 tal-Ligijiet ta'Malta.

Illi f'kwalunkwe procedura li hija regolata bil-ligi, it-terminu taz-zmien mghoti jew mil-ligi jew mill-awtorita li ghandha l-jedd li timponi termini tal-ligi huwa essenzjali li dawn it-termini jigu rispettati.

Illi fil-procedura tal-*procurement* huwa essenzjali li kull parti tinghata l-istess fakulta sabiex tikkompeti kontra xulxin u dan jinkludi l-fatt li meta parti tinghata zmien sabiex jew tikkoregi jew tikjarifika xi informazzjoni mghotija minnha, din il-parti ghandha tirrispetta dawk it-termini.

Illi issa jidher bic-car li fil-kaz odjern is socjeta' appellanti rrispettat it-terminu mghoti lilha mill-awtorita izda limitatament ghall-*Power of Attorney* u t-tieni element li gie mitlub mill-awtorita ma giex sodisfatt entro iz-zmien li kien gie mghoti mill-awtorita.

Illi huwa ghalhekk li l-awtorita apellata issostni li s-socjeta' appellanti ma kinitx *compliant* mar-rekwiziti impost mill-awtorita appellata.

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IT-TENDER GIE IKKANCELLAT

Illi t-tender de quo eventwalment gie kkancellat ghal diversi ragunijiet fosthom li d-dipartiment tal-kuntratti ddikjara li t-tender kien wiehed null.

Illi t-tender in kwistjoni kellu difett stante li kien qed jaghmel referenza ghal ditta partikolari u cioe kien qed jaghmel referenza ghad-ditta 'CISCO' u hemm diversi prononzjamenti kemm lokali u kemm barranin fejn jaghmluha cara li tender document ma jistax jaghmel referenza ghal ditta partikolari.

Illi r-risposta tal-Awtorita appellata hija bbazata fuq dawn iz-zewg punti, liema punti ser jigu trattati iktar fid-dettal waqt is-seduta quddiem dan l-Onorabbli Bord.

Tant ghandha x'tisottometti l-Awtorita appellata

Dr Shaheryar Ghaznavi