

Public Contracts Review Board

Notre Dame Ditch,

Floriana



17 January 2022

Ref:

**TID: 159970/159971 Mediterranean
Protection Solutions Ltd.**

CT2097/2021

**Mediterranean Protection Solutions
Limited (C 48030)**

v

- 1. Information Management Unit
(IMU) – Ministry for Education
(MFED)**
- 2. Director General Department of
Contracts**

**Appeal by means of an objection of Appellant company Mediterranean Protection
Solutions Limited (C 48030) with respect to TID 159970 for the amount of €467,800.00;**

Respectfully submits:

A. FACTS

1. The 'Information Management Unit' ('IMU'), within the Ministry for Education (MFED), published the "*Supplies Tender to Procure and Implement a CCTV System Including Environmentally Friendly Equipment and Client Workstations within Government State Schools*" ("Tender");
2. The Appellant Company Mediterranean Protection Solutions Limited ("Appellant Company") originally submitted three separate and distinct offers with respect to the tender;
3. Eventually the Appellant Company withdrew one of its tenders, namely ID 159969, and retained the tenders with numbers ID159970 and ID 159971 respectively;
4. The Department of Contracts issued a clarification letter with respect to offer TID 159970, to which the Appellant Company replied in full on 2 December 2021;
5. By letter dated the 7th of January 2022 (the "Decision"), attached herewith as **Document A**, the Department of Contracts informed the Appellant Company that the offer submitted by the Appellant Company was found to be technically non-compliant for the following reason:

"You were requested to clarify/rectify your position through a clarification/rectification dated 25.11.2021. Your company replied on time however the following shortcomings were noticed:

Reference to Literature List.

- *Item 6 – POE Network Switch - Dynamic ARP protection support - Given model supports only static ARP.*
 - *Item 6 – POE Network Switch - MAC Address table size - 16,000 entries (Minimum) - Given model supports only up to 8,192 entries."*
6. The Department of Contracts recommended that the Tender be awarded to Alberta Fire and Security Equipment Limited, which offer was for the amount of €550,083.30;

7. The Appellant Company's offer as per TID 159970 for the amount of €467,800.00 was cheapest than that of the recommended tenderer, as per attached Opened Tender Details attached herewith as **Document B**;
8. The Appellant Company contends that the Decision of the Department of Contracts is unfounded both in fact and at law, and that it should be rejected;
9. Therefore, the Appellant Company is submitting this objection with respect to TID 159970 for the amount of €467,800.00;
10. That in terms of Regulation 275 of S.L. 601.03, the award process shall be completely suspended if an appeal is eventually submitted;

B. REASONS FOR THE OBJECTION

11. Now therefore, the Appellant Company is availing itself of the right granted to it in terms of the Public Procurement Regulations 2016, and is filing this Objection given that it feels aggrieved by this Decision, and its grievances, which are clear and manifest, consist of the following:
 - i. The specifications and conditions required by the tender are impossible to meet with the same specifications of the tender, as one would exceed the Estimated Procurement Value based on market research namely €597,450.00, because no such product is available on the market within this price range, and that the only product which would have fitted the Estimated Procurement Value is past end of sale period as evidenced by Aruba Networks Public End of Sale Announcement on the 31st may, 2021, annexed as **Document C**;
 - ii. The product offered by the preferred bidder, while it may meet the specifications of the tender, is past end of sale period as confirmed by the manufacturer's notice;
 - iii. Therefore the tender is being awarded to a preferred bidder whose product is no longer in production, which may lead to variations/modifications *post award* to the detriment and prejudice of the appellant company. Therefore, the following questions arise:

- a) Considering the fact that the product that meets the requested requirements had reached its end of sales date in 'October 31st 2021 or while supplies last', how will the preferred bidder have managed to acquire 100 units of the same product?
- b) If the Department of Contracts was aware prior to the award of the tender that the products subject of the tender were out of production, and even if one had to concede that a "particular" company can conveniently provide 100 units, why did the Department of Contracts proceed knowing that the product is no longer in production, unless there were other considerations unknown to the Appellant Company?
- iv) That even if any of the applicant companies had sufficient stock to supply all 100 schools, they should not have, in good faith, put forward a product which is already past its end of sale period and for which replacements will be difficult to find, when the very 'scope' of the tender was 'to have the same structure of CCTV Cameras across the state schools being installed' (clause 3.1 of the Tender). In offering an out of sale product, the preferred bidder would have knowingly offered to enter into a contract which at some time of its duration he would not be able to honour or fulfill either because the product could not be supplied or because the management or service of the product could not be carried out for five years;
- v) The product furnished by the Appellant Company meets the intended scope of the tender. Not only that, but as declared by the Appellant Company in its letter of clarification, the product offered by the Appellant Company is superior to the technically compliant product requested: "*We confirm that the technical specifications of Aruba 6000 48G Class4 PoE 4SFP PoE+ R8N85A supersede the above specifications in which they provide better performance in general and compliance with the latest protocols and standards. We also confirm that it is Hewlett Packard Enterprise Intelligent Management Centre (iMC) compatible.*",
- vi) The Appellant Company's product will guarantee the replacement of any defective units with like units, none of which can be guaranteed by the end of sale product offered by the preferred bidder;
- vii) The Appellant Company's product can guarantee the Service Level Agreement for five years;
- viii) Even a simple comparison through datasheets of both switches, immediately shows that the new switch is superior than the old model in performance and even in consumption, therefore the offered product of the Appellant Company is more

environmentally friendly, as will be further proved in the proceedings of this objection;

- vii) The offer of the Appellant Company is the cheapest offer, considering that “The sole award criterion will be the price” (clause 6.1 of the tender).

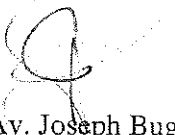
Given that the Appellant Company submitted a compliant Tender, as will be proved during these proceedings, which Tender is also the cheapest in price than the offer put forth by the recommended bidder, it ought to have been the Appellant Company who should have been awarded the Tender;

REQUESTS

Therefore, in view of the above, and whilst reserving the right to make further submissions and present further evidence, the Appellant Company humbly requests this Respectable Board:

- i) To **Declare** that the offer of the Appellant Company Mediterranean Protection Solutions Ltd. is the cheapest offer which meets the overall scope of the tender;
- ii) To **Reject** and **Cancel** the decision of the Department of Contracts dated 7 January 2022, thereby rejecting and cancelling the said Decision;
- iii) To **Accede** to the Appellant Company’s Objection and to **Award** the tender to the appellant company Mediterranean Protection Solutions Limited being the cheapest offer which meets the overall scope of the tender;
- iv) To **Order** the Refund of the deposit of €2,987.00 to the Appellant Company;
- v) That **alternatively**, in the event that the above requests are not acceded to, to cancel the tender “*Supplies Tender to Procure and Implement a CCTV System Including Environmentally Friendly Equipment and Client Workstations within Government State Schools*”, and give such orders and directives it may deem necessary in relation to the Tender, including the re-issuing anew of the tender taking into consideration the currently available products and prices on the market in relation to all aspects of the tender.

Av.  Jean-Pie Gauci-Maistre

Av.  Joseph Bugeja

Appellant Company: Mediterranean Protection Solutions Ltd 63, Msida Seafront, Msida,
MSD 9034

Respondent: Department of Contracts – Notre Dame Ravelin, Floriana FRN 1600

List of witnesses:

1. Appellant company's directors, representatives and employees including Bruce Bonnici, to testify on the facts.
2. The defendant Information Management Unit (IMU) Ministry for Education (MFED) and Director General Department of Contracts representatives/former representatives and employees/former employees, including Jonathan Bugeja and members of the Evaluation Committee with reference to the oath.
3. Representatives of the Malta Information Technology Agency to testify on the object of the tender.
4. Representatives from Computime Limited to testify on the object of the tender.
5. All witnesses that may be indicated by the defendants to testify or be cross-examined on the Tender and other facts relevant to the case.
6. Other witnesses permissible at law.

List of Documents:

Doc. A: Decision by the Department of Contracts dated 7th of January 2022;

Doc. B: Opened Tender Details for CFT Title: CT2097/2021 – Supplies Tender to Procure and Implement a CCTV System incl. Env Friendly Equipment and Client Workstations within Government State Schools, detailing EO Name, Tender Id and corresponding Financial Value (EUR);

Doc. C: Public End of Sale Announcement by Aruba Networks dated 31st May, 2021;

Doc. D: Payment confirmation of official objection deposit made on the 14th January, 2022.

Doc-A

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN1600 – MALTA



DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN1600 – MALTA

Telephone: (0356) 2122 0212
(0356) 2122 0313
Fax: (0356) 2124 7681
e-Mail: info.contracts@gov.mt

7th January 2022

TID: 159970/ 159971 Mediterranean Protection Solutions Ltd

Reference: CT2097/2021

Subject: Supplies Tender to Procure and Implement a CCTV System incl.
Env Friendly Equipment and Client Workstations within
Government State Schools

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the offer submitted by your company was found to be technically non-compliant as follows:

You were requested to clarify/rectify your position through a clarification/rectification dated 25.11.2021. Your company replied on time however the following shortcomings were noticed:

Reference to Literature List.

- Item 6 – POE Network Switch - Dynamic ARP protection support
Given model supports only static ARP.
- Item 6 – POE Network Switch - MAC Address table size - 16,000 entries (Minimum) - Given model supports only up to 8,192 entries.

The procurement for this tender was recommended for award to:- **TID 159944: Alberta Fire and Security Equipment Limited** for the price of **€550,083.30**, Excluding VAT. This being the cheapest compliant offer satisfying the Administrative and Technical Criteria.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of 17th January 2022 against a deposit of €2,987.00.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
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Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

The official schedule can be accessed on the website: www.etenders.gov.mt.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely,

Jonathan Bugeja
f/Director General Contracts

Doc. B



Efficient procurement through eCommerce



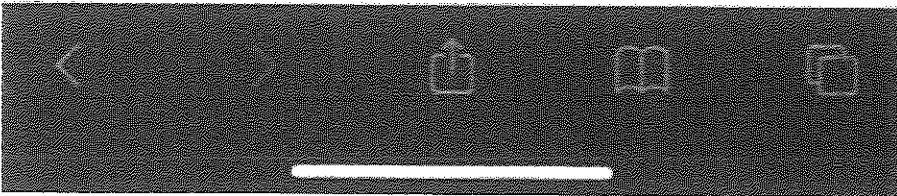
Opened Tender Details

OT Title: CT2027/2021 - Supply Tender to Procure and Implement a CCTV System incl. Env friendly Equipment and Client Workstations within Government State Schools (OT CA Unique ID: CT2027/2021) (Status: Evaluation)

Number of Bids: 1
 Date of Publication/Invitation: 2021-08-26 10:00
 Closing Date: 2021-09-02 10:00
 Opening Date: 2021-09-02 10:00

Package	OT Items	Tender ID	Financial Value (EUR)
Single	Medicines Protection Subcontract 101	102021	40,000.00
Single	Medicines Protection Subcontract 102	102021	40,000.00
Single	Medicines Protection Subcontract 103	102021	40,000.00
Single	SHAR (SHAR LIT)	102021	40,000.00
Single	Medicines Protection Subcontract 104	102021	40,000.00
Single	Medicines Protection Subcontract 105	102021	40,000.00
Single	Medicines Protection Subcontract 106	102021	40,000.00

View OT Evaluation Details



Doc C



End of Sale (EOS) Announcement

Aruba 2530 24 & 48 port Gigabit Switches

Aruba, a Hewlett Packard Enterprise company is currently planning for the End of Sale of the following SKU on the End of Sale date below (or until supplies are gone) and customers are requested to migrate to the appropriate replacement.

End of Sale Product	End of Sale Product Description	Recommended Replacement	Recommended Replacement Description
J9772A	Aruba 2530 48G PoE+ Switch	R8N85A	Aruba CX 6000 48G CL4 4SFP Switch
J9773A	Aruba 2530 24G PoE+ Switch	R8N87A	Aruba CX 6000 24G CL4 4SFP Switch
J9775A	Aruba 2530 48G Switch	R8N86A	Aruba CX 6000 48G 4SFP Switch
J9776A	Aruba 2530 24G Switch	R8N88A	Aruba CX 6000 24G 4SFP Switch

Aruba 2530 Switch Series Replacement Products

The forthcoming Aruba CX 6000 Switch Series is the recommended replacement for the Aruba 2530 Gigabit Switch Series. The Aruba 6000 is a new entry class Layer 2 access switch that extend the benefits of CX switching to ideal for branch offices, midsize businesses, and small enterprises. The Aruba 6000 24G Class4 PoE 4SFP 370W Switch provides a larger PoE power budget when compared to the Aruba 2530 24G PoE+ Switch. The Aruba CX 6000 Switch Series is based on the Aruba ASIC architecture with the programmable AOS-CX operating system used across the entire Aruba CX portfolio for a more consistent, more efficient operator experience. Availability of the Aruba CX 6000 Switch Series is November 1, 2021.

Final Orders for Aruba 2530 Gigabit models

We currently expect to be accepting final orders through the End of Sales however product availability is determined by announced End of Sale (EOS) date or depletion of inventory whichever comes first. We strongly encourage customers to transition all backlog and new orders to the replacement product that is identified in the End of Sale announcement.

End of Life Milestones:

- Public End of Sale Announcement Date: May 31st, 2021
- End of Sales (EOS) Date: October 31st, 2021 **or while supplies last**
- End of Warranty Date: Please refer to the [Aruba Warranty Website](#) (see the Warranty Coverage Quick Reference)

Note: India is excluded in this announcement and for all orders from India, check with local Aruba sales on the end of sales date.

Doc D

BOV

Bank of Valletta

Bank of Valletta p.l.c
Registration Number: C 2833
Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Pay third party

Printed by: Mrs. ELAINE SAMMUT
Printed on: 14/01/2022 - 13:56
Document ID: 10971713

Transaction details

Payer's name:	MEDITERRANEAN PROTEC. SOL. LTD
Beneficiary name:	Cashier Malta Government
Relation:	Professional Service
Reason:	Other
Payment details:	Ref CT2097.2021
Currency:	EUR - Euro
Beneficiary account:	MT55MALT011000040001EURCMG5001H
Beneficiary account type:	Valid IBAN of country - Malta
Bank name:	Other bank
Bank address / Bank's BIC:	Let the bank apply the beneficiary bank BIC
Beneficiary address:	No
From account:	Overdraft-GBF (EUR) 4002178912 4
Charges should be paid by:	Shared - I pay BOV charges; Cashier Malta Government pays the beneficiary bank charges
Amount:	EUR 2,987.00
BOV to transfer the money:	as soon as possible
Receiving bank to get the money as:	normal priority payment
Saved template:	no

Additional information

Credit amount	EUR 2,987.00
Debited amount (excluding charges):	EUR 2,987.00
Estimated amount to be withdrawn from account	EUR 2,991.00
Transaction charge:	EUR 4.00

Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	109092651