



## Legal Services Malta

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The Chairman/Secretary,  
Public Contracts Review Board,  
Notre Dame Ditch,  
Floriana.

10th May 2019

*Reasoned Reply by Jobsplus (as Contracting Authority) following Application filed by TCTC Ltd dated 3rd May 2019.*

Re: Tender MEDE/MPU/JOBSPLUS/019/2018 The Provision of ICT Summer courses 2019.

Dear Sirs,

Reference is made to the above mentioned application filed by The Computer Training Course (TCTC) Ltd (the complainant) by means of which the applicant is raising, in essence, two similar complaints based on what it considers as having been wrongful scores given to it in relation to suggested mitigation techniques (vis-a-vis challenges which would be faced by the cohort of eligible participants) and ways to keep participants interested and attending the courses offered to them.

Before providing its replies, respondent first of all makes reference to the attached Documentation included with this reply including the Information Sheet, Tender Document, Evaluation Report, Overall Evaluation and Average Technical Score of Domain Academy Limited, as well as Excel Overall marks, and relevant extracts from the complainant's and preferred bidder's offers, which are respectively marked as **Doc A to H** which are being attached with this reply for the sake of completeness and ease of reference, with however the main relevant documentation being considered as being the ones which shall be indicated throughout this reply.

By means of this present reply, Jobsplus, as the Contracting Authority is hereby opposing to the complaint which has been raised for the reasons to be indicated hereunder.

- 1) First of all, whilst the complainant is indicating that nowhere in the tender document was it specified that the proposed mitigation strategies should be original ones (i.e. proposals not reproducing extracts from the tender document), as a matter of fact, the tender document attached as **Doc B** makes it clear in page 11 thereof, under point 9.3 (Evaluation Grid), Point A1 (a) that the challenges to be indicated had to be ***'over and above those identified in this Tender document'***.

This point alone, therefore already nullifies this main complaint being raised by TCTC as the tender document is clear on this point, contrary to what is being stated in the complaint.

In any case it should also be logically considered that proposals going beyond what the tender document referred would be given a more positive consideration than ones indicated in the tender document itself.

- 2) In relation to the above, it is to be noted that whereas the complainant claims that it had provided 8 mitigation strategies whilst the tender document requested 5, the complainant actually provided 6 proposals with however only 3 being considered as being original acceptable mitigation strategies (hence the awarding of 3 points by each evaluator as indicated in the evaluation grid submitted by the complainant with its complaint) whilst the preferred bidder provided 8 mitigation strategies out of which 5 were considered as being original and acceptable mitigation strategies (hence the awarding of 5 points by each evaluator as indicated in the evaluation grid referable to the preferred bidder which is hereby being submitted as **Doc E**) as confirmed from the attached extracts from the complainant (TCTC Ltd) and preferred bidder's (Domain Academy) submitted documents marked **Doc G and Doc H** which refer to the strategies proposed by the two bidders respectively;

- 3) In connection with the above it is to be noted that out of the 6 mitigation strategies provided by the complainant, only 3 of them were considered as acceptable in terms of allocation of points as only 3 were not reproducing extracts from the tender document<sup>1</sup>. The acceptable strategies are, in brief, the following:

- Training of personnel;
- Training sessions and;
- Trainee's personal circumstances.

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<sup>1</sup> Whereby the tender document refers to the following strategies

- Profiling of personnel – in Section 6.1.1 pg 37, Section 6.3 pg 38;
- Streaming; - Section 1.5 pg 25 and Section 4.2 point 2 pg 32 of Tender Document;
- Support through Learning assistants section 4.2 point 3 pg 31, section 4.3 pg 32 and Section 2.2 Point 3, pg 27 and section 6.1.1 pg 36 of Tender Document;

On the other hand, the preferred bidder presented 5 acceptable mitigation strategies which were not reproducing extracts from the tender document and which in brief, are the following:

- Detailed description of course content;
- Emphases on the practical element of the course;
- Real life case-studies;
- Phased escalation approach;
- Creating a comfortable classroom environment;

The preferred bidder therefore provided a better array of proposals;

4) With reference to proposed ways to keep participants interested and attending the courses offered to them it is to be also noted that the complainant proposed 6 suggestions being the following:

- Choice of preferred course;
- Providing a sense of achievement to ensure minimum attendance targets;
- Mitigating fear of failure;
- Training location close to home;
- Training of personnel;
- Inclusion of Industry Speakers during the session

... whilst the preferred bidder submitted 7 different suggestions being the following:

- Using experienced and qualified trainers;
- Using a participative pedagogy methodology;
- Enticing students to achieve something tangible at the end of each Unit;
- Case studies;
- Continuously emphasising the relation of the course content to career prospects;
- Incentives to ensure minimum attendance targets;
- Resit Opportunities and free mock test and exam;

All of the above is confirmed from the extracts from the bidders' respective submissions also attached as part of **Doc G** and **Doc H** already referred to above.

In this regard, it however resulted that one of the evaluators considered that a mark of 4 out of 5 (rather than full marks) in relation to these proposed ways as indicated by the complainant was a fair mark on the basis that two of the proposed

six ways were not considered by such evaluator as being acceptable. In brief the reasons for this consideration, which the evaluator in question may be brought to testify about in further detail during the eventual hearing of this case, were the following:

- Choice of preferred course was considered as irrelevant since the the ECDL Course is already structured in a manner whereby students are always able to choose their preferred intermediate modules.
- Training of Personnel proposal is a repetition of what TCTC submitted in relation to Question 2 of Section A: Ways to mitigate these challenges as indicated above.

In any case it is with all due respect considered that this Board should not syndicate what the evaluator's discretion in this regard was as it is quite clear that the complaint is attacking procedural flaws rather than substantive ones – nevertheless, if need be, the evaluator in question may be produced as a witness to explain in better detail why a mark of 4 out of 5 was given instead of 5 out of 5 in relation to this aspect as already explained.

On the other hand, with regards to the preferred bidder, a mark of 5 out of 5 was given by all the evaluators on the basis that five suggestions out of 7 were deemed acceptable. In any case it is also considered that this issue alone, would not have in any case changed the ultimate result of the outcome in favour of the preferred bidder in view of the lesser marks which the complainant obtained in relation to the mitigation strategies proposals as earlier indicated where the the technical score would have only change from 0.70 to 0.53 (but still in favour of the preferred bidder) and as such this shows that this mark did not alter the ultimate result.

All of the above therefore explains why the preferred bidder scored better than the complainant in relation to the above mentioned points as confirmed by the attached evaluation Grid referable to the preferred bidder as already attached. This in turn explains why the tender was awarded to the preferred bidder instead of the complainant even if by a small margin.

Therefore in view of the above, the Public Contracts Review Board is humbly being requested to dismiss the application submitted by The Computer Training Course Ltd (TCTC) dated 3rd May 2019, in its entirety whilst determining the selection process concluded in relation to the above mentioned tender in favour of the preferred bidder.

Regards,

  
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