

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 381

ETC/IT/18/11

**Tender for the Supply of Desktop Computers and Notebook Computers –  
Employment and Training Corporation.**

This call for tenders was published in the Government Gazette on the 31<sup>th</sup> May 2011.  
The closing date for this call with an estimated budget of € 40,000 was the 21<sup>st</sup> June  
2011.

Six (6) tenderers submitted their offers.

Advanced Telecommunications Systems Ltd filed an objection on 26<sup>th</sup> September 2011  
against the decisions of the Employment and Training Corporation to disqualify its offer  
as technically non-compliant and to recommend the award of the tender to FGL  
Information Technology Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr.  
Carmel Esposito and Mr Joseph Croker as members convened a public hearing on  
Monday, 20<sup>th</sup> February 2012 to discuss this objection.

### **Advanced Telecommunications Systems Ltd (ATS)**

Mr Paul Agius                      Representative

### **FGL Information Technology Ltd (FGL IT)**

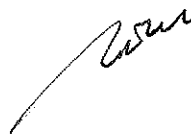
Mr Gordon Dimech              Representative  
Mr Joe Spiteri                    Representative

### **Employment and Trainging Corporations (ETC)**

Dr Jeanine Giglio                Legal Representative

### **Evaluation Board**

Mr John Trapani	Chairman
Mr Stephen Caruana	Member
Ms Charmaine Chetcuti	Member
Mr Stephen Tabone	Member
Mr Martin Casha	Secertary



After the Chairman's brief introduction, the appellant company's representative was invited to explain the motives of his company's objection.

Mr Paul Agius, representing Advanced Telecommunications Systems Ltd, the appellant company, made the following submissions:-

- i. by letter dated 19<sup>th</sup> September 2011, the Employment and Training Corporation had informed him that with regard to Item 2 'Notebook Computers' Advanced Telecommunications Systems Ltd's offer "*failed to satisfy all the requirements, particularly, in regard to the Wifi specifications, namely that the version Draft-n offered was not fully compliant with the specifications requested*";
  - ii. this tender covered the purchase of 70 desktop computers and 3 notebook computers and, according to the contracting authority his company's offer was fully compliant with regard to 70 computers and even with regard to the 3 notebooks, except the WiFi feature of the 3 notebooks;
  - iii. the tender document did not include the specifications of the WiFi and Advanced Telecommunications Systems Ltd offered 'Intel Pro 802.11a/b/g/Draft-N', which it deemed as compliant;
  - iv. by email dated 15<sup>th</sup> July 2011, the contracting authority had requested Mr Agius' company "*to specify the version number of the Draft-n offered to which he replied on the 20<sup>th</sup> July 2011 that: Version Draft is the 802.11n which offers full backwards compatibility with 802.11 g/b, while providing increased data rated of up to 150mbps for 802.11n clients*";
  - v. once again, by email dated 3<sup>rd</sup> August 2011, the contracting authority requested the version number of the Draft-n offered to which the appellant company replied that, after having downloaded the information from the internet, "*the version of Draft-n offered is the latest version, that is draft-n 2*";
- and
- vi. it was not fair to be excluded on a specification which was not given in the tender specifications when the appellant company's offer at €38,905.90 was about €850 cheaper than the recommended tenderer's bid as well as being fully compliant.

Dr Jeanine Giglio, representing the Employment and Training Corporation, remarked that:-

- a. the appellant company was not excluded on the basis of price but because its offer was not technically compliant;
- b. the tender document did not spell out the WiFi specifications but implicitly the contracting authority wanted the standard 'n' and not its draft version/s;
- c. the contracting authority went the extra mile to ask the appellant company which draft-n it's representative was offering because the standard was in constant evolution such that the standard 'n' had from 1 to 11 drafts and, as a result, the

draft-n 2, which the appellant company indicated in its reply to the clarification, was an out-dated version;

and

- d. had the appellant company indicated 'n' or draft-n 11, or something similar, say draft-n 10 – something which would have been considered quite close to the final version - its offer would have been acceptable

Mr Agius remarked that since his company was fully compliant but the contracting authority was doubtful about the WiFi feature of the 3 notebooks then he expected the contracting authority to approach his company to confirm that the latter would be providing the standard WiFi requirement. He added that the Wifi was a minor aspect in a computer system and that it was quite odd to conclude that his company would be providing the notebooks with superior specifications to those requested except for the WiFi since notebooks are invariably issued with standard or above standard equipment.

The Chairman Public Contracts Review Board made the following observations:-

- i. albeit, in all probability the computers offered by the appellant company, albeit not necessarily, could have been up to the requested specifications, yet, the appellant company failed to present its product properly such that its tender submission did give rise to doubts in the mind of the evaluators;
- ii. it was the responsibility of the bidder to present its offer in an orderly and clear manner and, if need be, to seek clarifications prior to submitting its offer, but the bidder should not expect the contracting authority to seek clarifications on things which the bidder should have submitted in the first place;
- iii. the contracting authority went out of its way to ask for the WiFi version being offered by the appellant company and the information it received was quite clear - 'draft-n 2' which, for those in this line of business, was quite different from standard 'n', which was equivalent to 'draft-n 11' or so;

and

- iv. this tender was not split into lots and that there were five participants in this tendering process.

Mr Agius reiterated that all the computers his company was offering were standard equipment and that it made no sense if one were to conclude that the company was going to provide 70 standard computers and fully compliant in all respects and 3 notebooks, which were equally compliant except for the Wifi feature which to the evaluators seemed out of specifications.

Mr Stephen Caruana, IT systems administrator and member of the evaluation board, under oath, gave the following evidence:-

- a. whilst the tender specifications requested standard equipment yet, with regard to the WiFi of the notebooks, the appellant company offered draft-n, which referred to a product that was put on the market prior to the standard 'n' product;



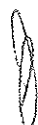
and

- b. the minimum specifications read 'Onboard WiFi 802.11 g/n' whereas the appellant company offered '802.11 a/b/g/Draft-N', which was later indicated to mean 'draft-n 2', but at no stage did the appellant company's offer the 'n' standard.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 26<sup>th</sup> September 2011 and also through their verbal submissions presented during the hearing held on 20<sup>th</sup> February 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 19<sup>th</sup> September 2011, the Employment and Training Corporation had informed his company that with regard to Item 2 'Notebook Computers' Advanced Telecommunications Systems Ltd's offer "*failed to satisfy all the requirements, particularly, in regard to the Wifi specifications, namely that the version Draft-n offered was not fully compliant with the specifications requested*", (b) this tender covered the purchase of 70 desktop computers and 3 notebook computers and, according to the contracting authority his company's offer was fully compliant with regard to 70 computers and even with regard to the 3 notebooks, except the WiFi feature of the 3 notebooks, (c) the tender document did not include the specifications of the WiFi and Advanced Telecommunications Systems Ltd offered 'Intel Pro 802.11a/b/g/Draft-N', which it deemed as compliant, (d) by email dated 15<sup>th</sup> July 2011, the contracting authority had requested Mr Agius' company "*to specify the version number of the Draft-n offered to which he replied on the 20<sup>th</sup> July 2011 that: Version Draft is the 802.11n which offers full backwards compatibility with 802.11 g/b, while providing increased data rated of up to 150mbps for 802.11n clients*", (e) once again, by email dated 3<sup>rd</sup> August 2011, the contracting authority requested the version number of the Draft-n offered to which the appellant company replied that, after having downloaded the information from the internet, "*the version of Draft-n offered is the latest version, that is draft-n 2*", (f) it was not fair to be excluded on a specification which was not given in the tender specifications when the appellant company's offer at €38,905.90 was about €850 cheaper than the recommended tenderer's bid as well as being fully compliant, (g) since his company was fully compliant but the contracting authority was doubtful about the WiFi feature of the 3 notebooks then he expected the contracting authority to approach his company to confirm that the latter would be providing the standard WiFi requirement and (h) since the Wifi was a minor aspect in a computer system it was quite odd for one to conclude that his company would be providing the notebooks with superior specifications to those requested except for the WiFi since notebooks are invariably issued with standard or above standard equipment;
- having considered the contracting authority's representative's reference to the fact that (a) the appellant company was not excluded on the basis of price but because its

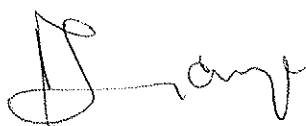


offer was not technically compliant, (b) the tender document did not spell out the WiFi specifications but implicitly the contracting authority wanted the standard 'n' and not its draft version/s, (c) the contracting authority went the extra mile to ask the appellant company which draft-n it's representative was offering because the standard was in constant evolution such that the standard 'n' had from 1 to 11 drafts and, as a result, the draft-n 2, which the appellant company indicated in its reply to the clarification, was an out-dated version, (d) had the appellant company indicated 'n' or draft-n 11, or something similar, say draft-n 10 – something which would have been considered quite close to the final version - its offer would have been acceptable, (e) whilst the tender specifications requested standard equipment yet, with regard to the WiFi of the notebooks, the appellant company offered draft-n, which referred to a product that was put on the market prior to the standard 'n' product and (f) the minimum specifications read 'Onboard WiFi 802.11 g/n' whereas the appellant company offered '802.11 a/b/g/Draft-N', which was later indicated to mean 'draft-n 2', but at no stage did the appellant company's offer the 'n' standard,

reached the following conclusions, namely:

1. The Public Contracts Review Board opines that although, in all probability the computers offered by the appellant company, albeit not necessarily, could have been up to the requested specifications, yet, the appellant company failed to present its product properly such that its tender submission did give rise to doubts in the mind of the evaluators.
2. The Public Contracts Review Board argues that it was the responsibility of the bidder to present its offer in an orderly and clear manner and, if need be, to seek clarifications prior to submitting its offer, but the bidder should not expect the contracting authority to seek clarifications on things which the bidder should have submitted in the first place.
3. The Public Contracts Review Board feels that the contracting authority went out of its way to ask for the WiFi version being offered by the appellant company and the information it received was quite clear - 'draft-n 2' which, for those in this line of business, was quite different from standard 'n', which was equivalent to 'draft-n 11' or so;

In view of the above, this Board finds against the appellant company and recommends that the deposit paid by the latter should not be reimbursed.



Alfred R Triganza  
Chairman



Carmel Esposito  
Member



Joseph Croker  
Member

5 March 2012