

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 439

AHO/15/520

**Tender for the Supply, Delivery and Installation of Two Servers including server tapes and Two UPSs for the Ministry of Foreign Affairs**

This call for tenders was published in the Government Gazette on the 14<sup>th</sup> February 2012. The closing date for this call with an estimated budget of € 24,576 (excl. VAT) was the 6<sup>th</sup> March 2012.

Five (5) tenderers submitted their offers.

Messrs Sirap Ltd filed an objection on the 11<sup>th</sup> April 2012 against the decision of the Ministry of Foreign Affairs to discard its offer as technically non-complaint and to recommend award of the tender to Forestals 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 Thursday, 2nd August 2012 to discuss this objection.

Present for the hearing were:

### **Sirap Ltd**

Mr Tonio Paris	Managing Director
Mr Jade Deveraux Attard	Representative

### **Forestals Ltd**

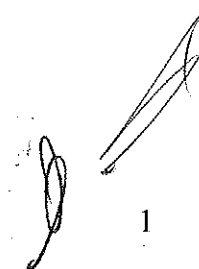
Mr Gordon Dimech	Representative
Mr Alan Tabone	Representative

### **Ministry of Foreign Affairs**

Ms Angele Azzopardi	Director Financial Management
Ms Anna Catania	Representative

### **Evaluation Board**

Mr Walter Mallia	Chairman
Mr Ferdinand Zammit	Member
Mr Jonathan Sajeba	Member
Ms Gabriella Camilleri	Secretary



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

Mr Tonio Paris, representing Sirap Ltd, the appellant company, made the following submission:

- i. by letter dated 4<sup>th</sup> April 2012 his firm was informed that its offer had been discarded because the bid "*does not include all the requested NIC cards as per tender specification document*", namely four (4) ports per server and that the tender was recommended for award to Forestals Ltd;
- ii. its bid was fully compliant with the tender specifications as the servers did include the requested four network cards;
- iii. clause 6.4.1 of the tender specifications requested 4 NICs on 2 separate controllers (2 NICs on board + 2 NICs PCI controller);
- iv. in its tender submission the appellant company had indicated that the 'Supermicro Superserver', the chassis of the server, had two ports, namely 1 occupied by additional Dual Port Network Card and 1 occupied by RAID Controller i.e. 2 NICs on board;
- v. in its tender submission Sirap Ltd also indicated that the key features of the motherboard of the server included under item 4 'Intel 82579LM and 82574L, 2 x Gigabit Ethernet LAN ports', namely 2 NICs PCI controller – any motherboard had a NIC card;
- vi. as a result each server was going to have 4 NICs on two separate controllers as requested in the tender specifications;
- vii. the company's product was fully compliant and cheaper than the recommended offer, namely €9,079.80 as against €10,156.40

Ms Anna Catania, representing the Ministry of Foreign Affairs, explained that:-

- a. in the product description presented by the appellant company in its tender submission there was no mention that each server included the 4 NICs;
- b. whereas the appellant company's representative had just explained that the company had submitted (1) the key features of the chassis of the server and (2) the key features of the motherboard, at evaluation stage the contracting authority did not consider these key features as separate but as one and the same thing, namely the two NIC ports referred to by the appellant company as forming part of the server chassis were considered as the same two NIC ports that were referred to by the appellant company's representative as forming part of the motherboard;

and



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- c. whilst from the literature provided in the tender submission it was not that obvious to conclude that each server had four NICs, yet, given the explanation given at the hearing by the appellant company it seemed plausible

Mr Ferdinand Zammit, a member of the evaluation board, explained that:-

- i. the appellant company could have, at least, listed the server features specifically requested in the tender document and not expected the contracting authority to look them up in its tender submission;
  - ii. if the features requested in the tender document were not declared to have been specifically included in the tender submission then the bidder could, eventually, deny that they were all included and, as a consequence, refuse to provide them;
- and
- iii. the evaluation board did seek clarifications but, in this case, it did not consider it an issue that warranted clarification

At this point Mr Paris intervened to remark that:-

- i. if the contracting authority had any doubts about this aspect of the product it could have, preferably, sought a clarification from the bidding company itself or even visited the product's website and it would have obtained the answers to its queries;
- ii. item 6 of the key features of the chassis referred to an 'additional' dual port network card and that, in itself, this meant that the server had other ports;
- iii. it was not the practice to list all the components of a computer server in the tender submission but only its key features and, moreover, a standard server consisted of the chassis with a motherboard and then it was configured according to the requirements of the user/client, namely including additional cards and so forth;
- iv. the data sheets of the product presented in the tender submission included the chassis of the server together with the motherboard and that satisfied the tender specifications which requested 4 NICs on two separate controllers, two on the chassis and two on the motherboard;
- v. datasheets were submitted for the purpose of being examined by the technical member/s of the evaluation board, who should have arrived at the same explanation/interpretation that he, on behalf of the appellant company, had just given;
- vi. item 6 of the key features of the chassis read as follows:- 3 x low-profile expansion slots with X9SCL-F motherboard – 1 occupied by additional dual port network card and 1 occupied by RAID Controller, which controlled the hard disk, and then there was the motherboard itself;



vii. in other instances, contracting authorities, usually, included a compliance checklist but, in this case, there was no such checklist which would have made things clearer for all parties concerned;

and

viii. if the contracting authority had not indicated that the reason for technical non-compliance was the four NICs it would not have occurred to the appellant company since their inclusion was rather obvious.

The Chairman Public Contracts Review Board drew the attention of those present that, whilst it was a bidding company's responsibility to submit a clear and complete bid and one should not expect the contracting authority to search the internet for information, on the other hand, the contracting authority should go thoroughly through the tender submission, even through the technical datasheets and if a submitted document might not have been clear enough then the regulations allowed the evaluation board to seek clarifications thereon.

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 the 10<sup>th</sup> April 2012 and also through their verbal submissions presented during the hearing held on the 2<sup>nd</sup> August 2012, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant's representative's claims and observations, particularly, the references made to the fact that (a) by letter dated 4<sup>th</sup> April 2012 the firm was informed that its offer had been discarded because the bid "*does not include all the requested NIC cards as per tender specification document*", namely four (4) ports per server and that the tender was recommended for award to Forestals Ltd, (b) its bid was fully compliant with the tender specifications as the servers did include the requested four network cards, (c) clause 6.4.1 of the tender specifications requested 4 NICs on 2 separate controllers (2 NICs on board + 2 NICs PCI controller), (d) in its tender submission the appellant company had indicated that the 'Supermicro Superserver', the chassis of the server, had two ports, namely 1 occupied by additional Dual Port Network Card and 1 occupied by RAID Controller i.e. 2 NICs on board, (e) in its tender submission Sirap Ltd also indicated that the key features of the motherboard of the server included under item 4 'Intel 82579LM and 82574L, 2 x Gigabit Ethernet LAN ports', namely 2 NICs PCI controller – any motherboard had a NIC card, (f) as a result each server was going to have 4 NICs on two separate controllers as requested in the tender specifications, (g) the company's product was fully compliant and cheaper than the recommended offer, namely €9,079.80 as against €10,156.40, (h) if the contracting authority had any doubts about this aspect of the product it could have, preferably, sought a clarification from the bidding company itself or even visited the product's website and it would have obtained the answers to its queries, (i) item 6 of the key features of the chassis referred to an 'additional' dual




port network card and that, in itself, this meant that the server had other ports, (j) it was not the practice to list all the components of a computer server in the tender submission but only its key features and, moreover, a standard server consisted of the chassis with a motherboard and then it was configured according to the requirements of the user/client, namely including additional cards and so forth, (k) the data sheets of the product presented in the tender submission included the chassis of the server together with the motherboard and that satisfied the tender specifications which requested 4 NICs on two separate controllers, two on the chassis and two on the motherboard, (l) datasheets were submitted for the purpose of being examined by the technical member/s of the evaluation board, who should have arrived at the same explanation/interpretation that the appellant company had given, (m) item 6 of the key features of the chassis read as follows:- 3 x low-profile expansion slots with X9SCL-F motherboard – 1 occupied by additional dual port network card and 1 occupied by RAID Controller, which controlled the hard disk, and then there was the motherboard itself, (n) in other instances, contracting authorities, usually, included a compliance checklist but, in this case, there was no such checklist which would have made things clearer for all parties concerned and (o) if the contracting authority had not indicated that the reason for technical non-compliance was the four NICs it would not have occurred to the appellant company since their inclusion was rather obvious;

- having considered the contracting authority's representative's reference to the fact that (a) in the product description presented by the appellant company in its tender submission there was no mention that each server included the 4 NICs, (b) whereas the appellant company's representative had just explained that the company had submitted (1) the key features of the chassis of the server and (2) the key features of the motherboard, at evaluation stage the contracting authority did not consider these key features as separate but as one and the same thing, namely the two NIC ports referred to by the appellant company as forming part of the server chassis were considered as the same two NIC ports that were referred to by the appellant company's representative as forming part of the motherboard, (c) whilst from the literature provided in the tender submission it was not that obvious to conclude that each server had four NICs, yet, given the explanation given at the hearing by the appellant company it seemed plausible, (d) the appellant company could have, at least, listed the server features specifically requested in the tender document and not expected the contracting authority to look them up in its tender submission, (e) if the features requested in the tender document were not declared to have been specifically included in the tender submission then the bidder could, eventually, deny that they were all included and, as a consequence, refuse to provide them and (f) the evaluation board did seek clarifications but, in this case, it did not consider it an issue that warranted clarification;

reached the following conclusions, namely:

1. The Public Contracts Review Board has taken full cognisance of the evaluation board member's claim wherein, *inter alia*, he stated that, (a) the appellant company could have, at least, listed the server features specifically requested in the tender document and not expect the contracting authority to look them up in its tender submission and (b) whilst from the literature provided in the tender submission it was not that obvious to conclude that each server had four NICs,



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yet, given the explanation given at the hearing by the appellant company it seemed plausible.

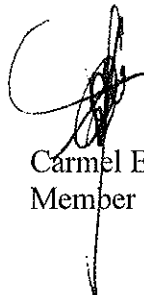
2. The Public Contracts Review Board feels that, considering that in its tender submission the appellant company had indicated that the 'Supermicro Superserver', the chassis of the server, had two ports, namely 1 occupied by additional Dual Port Network Card and 1 occupied by RAID Controller namely 2 NICs on board and that the key features of the motherboard of the server included under item 4 'Intel 82579LM and 82574L, 2 x Gigabit Ethernet LAN ports', namely 2 NICs PCI controller – any motherboard had a NIC card, provided enough information for adequate consideration to be given by the evaluation board.
3. This Board observes that if the contracting authority had any doubts about any particular aspect of the product being offered the evaluation board was at liberty to seek a clarification from the bidding company itself enabling it to obtain pertinent answers to queries. The Public Contracts Review Board feels that, whilst it is a bidding company's responsibility to submit a clear and complete bid and one should not expect the contracting authority to search the internet for information, on the other hand, the contracting authority should go thoroughly through the tender submission, even through the technical datasheets and if, like this instance, a submitted document might not be clear enough then the regulations allow an evaluation board to seek clarifications thereon.
4. The Public Contracts Review Board also feels that the data sheets of the product presented by the appellant company in the tender submission included the chassis of the server together with the motherboard and that this should have sufficed to enable the fulfilment by the appellant company's bid of the tender specifications which requested 4 NICs on two separate controllers, two on the chassis and two on the motherboard.
5. This Board feels that, for clarity's sake, the tender document should have included a compliance checklist.

In view of the above, this Board finds in favour of the appellant company and recommends that the said appellant company be reinstated in the tender evaluation process as well as recommending that the deposit paid by the appellant company for the appeal to be lodged be reimbursed.




Alfred R Triganza  
Chairman

10<sup>th</sup> September 2012



Carmel Esposito  
Member



Joseph Croker  
Member