

PUBLIC CONTRACTS REVIEW BOARD

Case No. 893

T 070/2015

Tender for the Provision of PBX Upgrade.

The Tender was published on the 17th September 2015. The closing date was on the 7th October 2015. The estimated value of the Tender was €50,000.00 (Exclusive of VAT)

Two (2) bidders had submitted an offer for this Tender.

On the 9th November 2015 Comsec Limited filed an objection against the decision taken by the Contracting Authority to award the Tender to GO Plc for the price of €38,500.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday the 26th January 2016 to discuss the objection.

Present for the hearing were:

Comsec Limited:

Mr Martin Aquilina	Representative
Mr Nolan Aquilina	Representative

GO Plc:

Mr Jonathan Brincat	Senior Manager
Mr Omar Debono	Representative

Malta Information Technology Agency:

Ms Caroline Schembri de Marco	Chairperson Evaluation Board
Mr Ian Bonello	Member Evaluation Board
Mr Mark Scicluna	Member Evaluation Board
Mr Robert Sultana	Member Evaluation Board
Mr Robert Grixti	Representative
Dr Danielle Cordina	Legal Representative

The Chairman made a brief introduction and then invited the Appellant's representative to make his submissions.

Mr Martin Aquilina on behalf of the Appellant explained that there were three suppliers of Alcatel equipment in Malta and the latter was the preferred partner that entailed them for better treatment by Alcatel. He claimed that before submitting the Tender Appellant had approached Alcatel and managed to obtain a discount enabling the Appellant to quote a cheaper rate. However the Recommended Bidder GO Plc had submitted a much lower offer and obtained the Tender. He contended that in order to achieve this, the Recommended Bidder must have either made a mistake in the Tender bid, or, had subsidized the price, in which case it acted against the competition laws. He said that the Appellant had already opened a case with the Competition Authority about this Tender.

Dr Daneille Cordina on behalf of the Contracting Authority contended that the Recommended Bidder's price was both the cheapest and compliant Tender. The Appellant's offer had been at any rate over the budget allowed for this Tender of €50,000.00. The Evaluation Board had asked the Recommended Bidder to confirm that they would receive whatever the latter offered in the price schedule. This was confirmed by the Recommended Bidder. Dr Cordina finally contended that the Competition Act was neither the Contracting Authority's nor the Public Contracts Review Board remit.

At this point the hearing was closed.

This Board,

Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 9 November 2015 and also through their verbal submissions during the Public Hearing held on 26 January 2016 and had objected to the decision taken by the Pertinent Authority, in that:

- a) The Appellant contends that the price quoted by the Recommended Bidder cannot sustain the supply of all the Equipment as dictated in the Tender's Technical Specification. The Appellant maintains this stand, due to the fact that he had an agreement with the supplier to**

obtain a discount, thus offering a cheaper rate;

- b) The Appellant Company also contends that the Recommended Bidder must have subsidized the price, in which case, this action goes against the competition rules.**

Having considered the Contracting Authority's "*Letter of Reply*" dated 18 November 2015 and also their verbal submissions during the Public Hearing held on 26 January 2016, in that:

- a) The Contracting Authority maintains that the Recommended Bidder's offer was the cheapest fully compliant bid. At the same instance, the Evaluation Board obtained confirmation that, with the quoted price, the Recommended Bidder would supply all the Technical Requirements as dictated in the Tender Document;**
- b) With regards to the Appellant's Second Contention, the Contracting Authority contends that neither they nor the Public Contracts Review Board can deal with the Competition Laws.**

Reached the following conclusions:

- 1. This Board, after examining the relative documentation and heard**

credible submissions from the Contracting Authority, opines that it is evidently clear that the Recommended Bidder gave the necessary guarantee that he would deliver what was dictated in the Technical Specifications of the Tender Document. He was also the cheapest.

It is neither the jurisdiction of the Evaluation Board nor of the Public Contracts Review Board to question the matter of price and once the confirmation or guarantee that the Recommended Bidder will supply what was stated in the Tender Document is obtained, the Evaluation Board had the obligation to choose the cheapest compliant offer.

If on the other hand, the Recommended Bidder does not deliver what was promised, the Contracting Authority has other remedies to rectify the situation. In this regard, this Board does not uphold the Appellant's First Grievance.

- 2. With regards to Appellant's Second Contention, this Board justifiably opines, its jurisdiction is to ensure and assess whether the Evaluation Process was carried out in a just and transparent manner and not to delve into the "*Competitions Act*". In this regard, this Board does not uphold the Appellant's Second Grievance.**

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.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

1 February 2016