

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 393

**OPM/DCS/08/2011**

**Tender for the Provision of Watchmen/Security Services at Ex-Computer Centre Premises in Swatar l/o Dingli**

This call for tenders was published in the Government Gazette on the 29<sup>th</sup> November 2011. The closing date for this call with an estimated budget of € 33,000 was the 15<sup>th</sup> December 2011.

Seven (7) tenderers submitted their offers.

Executive Security Services Ltd filed an objection on the 13<sup>th</sup> January 2012 against the decisions of the Office of the Prime Minister to disqualify its offer as the latter was considered to be administratively non-compliant and to recommend the award of the tender to JF Security and Consultancy Services 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 Friday, 23<sup>rd</sup> March 2012 to discuss this objection.

### **Executive Security Services Ltd**

Mr Stephen Ciangura                      Representative

### **Global Security Services Ltd**

Dr Jan Karl Farrugia                      Legal Representative  
Mr Mario Cardon                              Representative  
Ms Patricia Borg                              Representative

### **JF Security and Consultancy Services Ltd**

Ms Carina Azzopardi                      Representative

### **Office of the Prime Minister (OPM)**

Mr Alex Magro                              DG Support Services  
Mr Charles Vella                              Representative  
Mr Mario Borg Olivier                      Representative

### **Evaluation Board**

Mr Joseph Bugelli                          Chairman  
Mr Mario Pace                              Member  
Mr Raymond Micallef                      Member

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

Mr Stephen Ciangura, representative of Executive Security Services Ltd, the appellant company, made the following submissions:-

- i. by email dated 6<sup>th</sup> January 2012, the contracting authority had informed his firm that its offer was adjudicated to be administratively non-compliant and that the tender was being awarded to JF Security and Consultancy Services Ltd;
  - ii. Executive Security Services Ltd has been rendering this service since 2011 and there were never any complaints about the service that it was providing;
  - iii. the current tender submission was similar to the one with which his firm had won this contract and he therefore failed to understand how, in this instance, it was adjudicated to be non-compliant;
- and
- iv. in the letter of objection his lawyer had complained that 'no precise and defined reason of the nature of the non compliance is being given'.

The Chairman Public Contracts Review Board observed that it was not sufficient for the contracting authority to inform the bidder that its offer was not administratively compliant but the unsuccessful tenderer had to be given the reasons that led to the company's disqualification as laid down in the Public Procurement Regulations, namely,

*"Reg. 84 .... The communication to each tenderer of the proposed award shall be accompanied by a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 44(3), and by a precise statement of the exact standstill period.*

*Reg. 44 (3) The contracting authority shall, within fifteen days of the date on which the request is received by a party concerned, inform:*  
*(a) any unsuccessful candidate, of the reasons for rejection of its application;*  
*(b) any unsuccessful tenderer, of the reasons for the rejection of his tender, including, for the cases referred to in regulations 46(3) and (4), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirement";*

The Chairman Public Contracts Review Board remarked that it was irrelevant that the appellant company happened to be the current contractor because the fact was that the contracting authority issued a call for tenders and the appellant company had to satisfy the published conditions like any another bidder. He added that the purpose of a call for tenders was for the contracting authority to obtain the most suitable service according to established specifications and criteria at the best price possible.

*At this point the Public Contracts Review Board went through the evaluation report and it turned out that the reason for exclusion was the following: 'Bidder did not include a separate CV of key expert'.*



Mr Ciangura remarked that, in his opinion, the term 'key expert' referred to the person in charge of the service/project, the one whom the contracting authority would make contact with on matters concerning the delivery of this service.

The Chairman Public Contracts Review Board noted that, apparently, one was mixing up the role of the 'key person' with that of the 'key expert' and he went on to explain as follows:

- i) the 'key expert' referred to a person not employed by the bidding company who would be engaged to provide consultancy services on a particular project and hence the requirement of Form 3.4.1 'Statement of Exclusivity and Availability' so that there would be a commitment on the part of the 'key expert' that he would be available to provide his services and that he would not render his services to others on the same project;

and

- ii) the 'key person' would be an employee of the bidding company who would act as a point of reference in case the contracting authority would need to contact the contractor and in that case there was no need of Form 3.4.1 'Statement of Exclusivity and Availability' as the 'key person' would be available to the bidder at all times.

The Chairman Public Contracts Review Board conceded that the evaluation board was correct to note that the appellant company did not submit Forms 3.4 and 3.4.1 but, on the other hand, one had to look into whether it was necessary for the bidders to have a 'key expert' to render this service once they had the required expertise in-house. He added that had the appellant required a 'key expert' then the appellant company's failure to submit Forms 3.4 and 3.4.1 would have assumed a different dimension. The Chairman Public Contracts Review Board opined that the template might require modification when used for this kind of tenders.

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 12<sup>th</sup> January 2012 and also through their verbal submissions presented during the hearing held on the 23<sup>rd</sup> March 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 email dated 6<sup>th</sup> January 2012, the contracting authority had informed the appellant company that its offer was adjudicated to be administratively non-compliant and that the tender was being awarded to JF Security and Consultancy Services Ltd, (b) Executive Security Services Ltd has been rendering this service since 2011 and there were never any complaints about the service that it was providing, (c) the current tender submission was similar to the one with which the appellant company had won this contract and one therefore failed to understand how, in this instance, it was adjudicated to be non-compliant, (d) in the letter of objection the appellant company's lawyer had complained that 'no precise and defined reason of the nature of the non compliance is being given' and (e) in the

company's representative's opinion, the term 'key expert' referred to the person in charge of the service/project, the one whom the contracting authority would make contact with on matters concerning the delivery of this service,

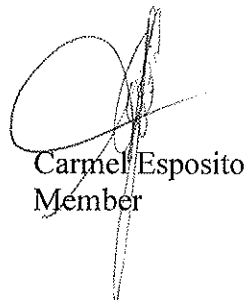
reached the following conclusions, namely:

1. The Public Contracts Review Board opines that it was not sufficient for the contracting authority to inform the bidder that its offer was not administratively compliant but the unsuccessful tenderer had to be given the reasons that led to the company's disqualification as laid down in the Public Procurement Regulations. This Board cannot but place enough emphasis on the fact that a contracting authority is obliged to communicate the reasons for a bidder's disqualification so as to enable the latter to (a) verify the facts and (b) decide if there were sufficient grounds to lodge an appeal and, if so, to prepare a case.
2. This Board contends that it was irrelevant that the appellant company happened to be the current contractor because the fact was that the contracting authority issued a call for tenders and the appellant company had to satisfy the published conditions like any another bidder.
3. The Public Contracts Review Board argues that it was evident that the contracting authority was confusing the role of the 'key person' with that of the 'key expert' which, in this instance, rendered the requirement for the submission of Form 3.4.1, namely, 'Statement of Exclusivity and Availability', futile as this form was intended to obtain a formal commitment on the part of the 'key expert' that he would be available to provide his services and that he would not render his services to others on the same project. The futility of the form was in virtue of the fact that this was usually used in cases where bidders would be engaging the services of external consultancy services but, definitely, not in the case of employees already listed on the bidder's payroll. It transpired that in this case the contracting authority was after a 'contact person' and this could have easily been identified in the role of a 'key person'.
4. This Board notes that, ideally, the bidder should have indicated that Forms 3.4 and 3.4.1 were not applicable since the company would not require a 'key expert' to execute this contract. Whilst it is a fact that had the appellant required a 'key expert' then the appellant company's failure to submit Forms 3.4 and 3.4.1 would have assumed a different dimension, yet this Board rightly feels that, in this instance, this was not the case as explained in (3) above.

In view of the above, this Board finds in favour of the appellant company and apart from recommending that the latter's bid be reintegrated in the evaluation process, this Board also recommends that the appellant company be reimbursed with the deposit paid for the appeal to be lodged.



Alfred R Triganza  
Chairman



Carmel Esposito  
Member



Joseph Croker  
Member

11<sup>th</sup> April 2012