

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 554**

**MIP/TQF/GEN/D32/12**

**Tender for the Provision of Security Services at the Airmalta Head Office, Luqa**

This call for tenders was published in the Government Gazette on the 16<sup>th</sup> October 2012. The closing date for this call with an estimated budget of €105,000 (excl. VAT) was the 7<sup>th</sup> November 2012.

Five (5) tenderers submitted their offers.

Executive Security Services Ltd filed an objection on the 22<sup>nd</sup> February 2013 against the decision of the Malta Industrial Parks to disqualify its offer as technically non-compliant and to recommend the award of the tender to J&F Security & Consultancy Ltd.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Joseph Croker and Mr Carmel Esposito as members convened a public hearing on Wednesday, 22<sup>nd</sup> May 2013 to discuss this objection.

Present for the hearing were:

### **Executive Security Services Ltd**

Dr Veronique Dalli	Legal Representative
Dr Dean Hili	Legal Representative
Mr Stephen Ciangura	Representative

### **J&F Security & Consultancy Ltd**

Dr Matthew Paris	Legal Representative
Mr Peter Formosa	Representative

### **Malta Industrial Parks (MIP)**

Mr Edwin Ebejer	Representative
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### **Evaluation Board**

Col David Mifsud	Chairman
Mr Victor Camilleri Bowman	Member
Mr John Degiorgio	Member

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

Dr Veronique Dalli , legal advisor of Executive Security Services Ltd, the appellant company, made the following submissions:-

- i. by letter dated 18<sup>th</sup> February 2013 the contracting authority informed the appellant company that its tender was being disqualified as it was considered to be technically non-compliant because it did not provide photos showing the proposed uniform;
  - ii. although this was requested under Volume 3 Section 2 'Tenderer's Technical Offer' it was not crucial for the adjudication of the appellant company's tender submission, especially given that it had considerable experience in this sector;
  - iii. the Public Contracts Review Board was an administrative tribunal and it should, therefore, be guided by the principles emerging from administrative law, among them, the principle of reasonableness;
  - iv. although the price was not the sole award criterion, the appellant company contended that such a minor detail should not compel the contracting authority to award a tender which was about €10,000 more expensive;
- and
- v. the contracting authority ought to have asked the appellant company to provide the missing photo of the proposed uniform against the statutory payment of €50 as provided by regulations rather than disqualifying its offer outright and, in that way, reasonableness would prevail over detail.

The Chairman Public Contracts Review Board noted that, according to the letter of rejection dated 18th February 2013, the appellant company was refused because "*the offer did not include proper details, as required, regarding training provisions, personnel uniforms, contingency planning and risk and assumptions (Volume 3 Section 2 – Tenderer's Technical Offer).*"

Col David Mifsud, chairman of the evaluation board, explained that:-

- a. in its letter of objection dated 21<sup>st</sup> February 2013 the appellant company conceded that there were four missing items and, whilst the photo of the proposed uniform might seem trivial, such other missing information, such as the provision of training so as to assess the level of training given to security personnel, contingency planning, namely in case of industrial action and national calamities, together with risks and assumptions affecting the execution of the contract, was considered very important in the light of the nature of the services requested;
- b. all these requirements featured under Volume 3 Section 2 'Tenderer's Technical Offer' which fell under the provisions of clause 16.1 (e) 'Tenderer's

Technical Offer (Volume 3 Section 2) in response to terms of reference (Volume 3 Section 1) (cheapest technically compliant) and Note 3 to clause 16.1 rendered the submission of the information in question a mandatory requirement in which case no rectification was allowed;

c. out of the five participating bidders only one turned out to be fully compliant;

and

d. it could well be the case that the appellant company omitted this information through a genuine oversight but the fact remained that the evaluation board had no other option but to reject the offer for the non-submission of mandatory information.

The Chairman Public Contracts Review Board noted that, albeit the clause 3 'Assumptions and Risks' of the Terms of Reference (page 45) referred to 'the contractor' and not to 'the tenderer' and, as such, this could have been provided at a later stage. Yet, the Chairman Public Contracts Review Board added that if this was in contradiction with the provisions of clause 16.1, then the bidder could have asked for a clarification and not opted to leave out the information.

Mr Stephen Ciangura, also acting on behalf of the appellant company, acknowledged that information with regard to the 'provision of training' and the 'contingency planning' had not been submitted and that this information had not been requested in previous tenders to which the Public Contracts Review Board noted that that did not mean that a contracting authority has to follow the same structure and content every time and that each tender has to be addressed and evaluated by all parties concerned in its own right.

At this point the hearing came to a close.

This Board,

- having noted that the appellant company, in terms of its 'reasoned letter of objection' dated 21<sup>st</sup> February 2013 and also through its representatives verbal submissions presented during the hearing held on the 22<sup>nd</sup> May 2013, 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 18<sup>th</sup> February 2013 the contracting authority informed the appellant company that its tender was being disqualified as it was considered to be technically non-compliant because it did not provide photos showing the proposed uniform, (b) although this was requested under Volume 3 Section 2 'Tenderer' Technical Offer' it was not crucial for the adjudication of the appellant company's tender submission, especially given that it had considerable experience in this sector, (c) the Public Contracts Review Board was an administrative tribunal and it should, therefore, be guided by the principles emerging from administrative law, among them, the principle of reasonableness, (d) although the price was not the sole award criterion, the appellant company contended that such a minor detail should

not compel the contracting authority to award a tender which was about €10,000 more expensive, (e) the contracting authority ought to have asked the appellant company to provide the missing photo of the proposed uniform against the statutory payment of €50 as provided by regulations rather than disqualifying its offer outright and, in that way, reasonableness would prevail over detail and (f) it was acknowledging the fact that information with regard to the ‘provision of training’ and the ‘contingency planning’ had not been submitted and that this information had not been requested in previous tenders;

- having considered the contracting authority’s reference to the fact that (a) in its letter of objection dated 21<sup>st</sup> February 2013 the appellant company conceded that there were four missing items and, whilst the photo of the proposed uniform might seem trivial, such other missing information, such as the provision of training so as to assess the level of training given to security personnel, contingency planning, namely in case of industrial action and national calamities, together with risks and assumptions affecting the execution of the contract, was considered very important in the light of the nature of the services requested, (b) all these requirements featured under Volume 3 Section 2 ‘Tenderer’s Technical Offer’ which fell under the provisions of clause 16.1 (e) ‘Tenderer’s Technical Offer (Volume 3 Section 2) in response to terms of reference (Volume 3 Section 1) (cheapest technically compliant) and Note 3 to clause 16.1 rendered the submission of the information in question a mandatory requirement in which case no rectification was allowed, (c) out of the five participating bidders only one turned out to be fully compliant and (d) it could well be the case that the appellant company omitted this information through a genuine oversight but the fact remained that the evaluation board had no other option but to reject the offer for the non-submission of mandatory information,

reached the following conclusions, namely:

1. The Public Contracts Review Board noted that, according to the letter of rejection dated 18th February 2013, the appellant company was refused because “*the offer did not include proper details, as required, regarding training provisions, personnel uniforms, contingency planning and risk and assumptions (Volume 3 Section 2 – Tenderer’s Technical Offer).*” During the hearing the appellant company’s representative admitted that he was acknowledging the fact that information with regard to the ‘provision of training’ and the ‘contingency planning’ had not been submitted. In this Board’s opinion, this, in itself, was enough for the appellant company’s bid to be rejected.
2. Also, this Board took note of the appellant company’s remark that this tender requested information that had not been requested in previous tenders. Undoubtedly, in this instance, the Public Contracts Review Board cannot but demonstrate its adverse opinion in this regard as one has to bear in mind that a contracting authority is not obliged to follow the same structure and content every time – as a direct consequence this Board argues that each tender has to be addressed and evaluated by all parties concerned on its own merit.

3. This Board agrees with the remark passed by the contracting authority's representative during the hearing, namely that it could well be the case that the appellant company omitted information through a genuine oversight but the fact remained that the evaluation board had no other option but to reject the offer for the non-submission of mandatory information.

In view of the above this Board finds against the appellant company and recommends that the deposit paid by the same company for the appeal to be lodged should not be reimbursed.

Alfred R Triganza  
Chairman

Joseph Croker  
Member

Carmel Esposito  
Member

*31<sup>st</sup> May 2013*