

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 636**

**CT 3060/2013**

### **Tender for the Provision of Security Services at the Agency for the Welfare of Asylum Seekers (AWAS) Units and Other Centres.**

The tender was published on the 4<sup>th</sup> October 2013. The closing date was the 14<sup>th</sup> November May 2013.

On the 14<sup>th</sup> November October 2013 Executive Security Services Limited filed an objection raising **pre-contractual concerns** regarding the tender in terms of Regulation 85 of the Public Contracts Procurement Regulations.

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 Thursday 21<sup>st</sup> November 2013 to discuss these concerns.

#### **Present for the hearing were:**

##### **Executive Security Services Limited - Appellant**

Mr Stephen Ciangura	Representative
Mr Franco Falzon	Representative

##### **Agency for the Welfare of Asylum Seekers - Contracting Authority**

Mr Stephen Vassallo	Secretary Evaluation Board
Mr John Vella	Member Evaluation Board
Ms Stephanie Borg Bonaci	Member Evaluation Board
Mr Joseph Camilleri	Member Evaluation Board
Perit Anthony Mangion	Technical Expert
Mr Alex Tortell	Head of Contracting Authority
Mr Robert Grixti	Director Corporate Services

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

Mr Franco Falzon on behalf of the appellant firm Executive Services Limited said that the contracting authority had issued a clarification note on the 7<sup>th</sup> November 2013 just seven days before the closing date of the tender. The clarification note was also not clear enough in that it stated that the number of personnel employed by the bidder was 'expected' to be at least 100. What interpretation should be given to 'expected'? He also contended that this was illegally done since the period during which clarifications could be made had lapsed on the 29<sup>th</sup> October 2013. The issue of this clarification note was considered unfair and discriminatory by the appellant because it rendered appellant's bid as non-compliant. This was because there was no time left during the remaining seven days till when the tender closed on the 14<sup>th</sup> November 2013 to employ more personnel to meet the new criteria.

Mr Robert Grixti, Director Corporate Services Ministry Home Affairs, on behalf of the contracting authority explained that the 29<sup>th</sup> October 2013 deadline was for the bidders who wished to submit requests for clarifications. The period that the contracting authority itself could issue clarifications and addendums to the tender document lapsed on the 8<sup>th</sup> November 2013 at eleven forty-five pm. (23.45), and this was written in the tender document itself. In fact more than a clarification, the note, issued on the 7<sup>th</sup> November 2013 was a corrigendum. The previous criterion requiring bidders to submit proof of their technical capacity by listing projects costing at least €500,000 during the past three years has been removed, thus opening the tender to more bidders. The clarification note also added a new condition regarding the number of personnel. Bidders had to have at least a workforce of one hundred security officers. It had to be ensured that whoever was awarded the tender had an adequate workforce since the contracting authority had several premises that had to be covered seven days a week and twenty-four hours a day. The contracting authority had to have ease of mind that the contractor had sufficient manpower to provide the service to all its branches. The clarification note had widened the field enabling more bidders to participate.

Replying to a question by the Chairman, Mr Grixti explained the clarification process. There were two deadlines for the submission of clarifications in the tender. The first deadline was intended for bidders who wished to ask for clarification while the second deadline was intended for the contracting authority who had until then to issue clarifications and addenda which would then form part of the tender document.

The hearing was at this point brought to an end.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 13<sup>th</sup> November 2013 and also through the Appellant's verbal submissions during the hearing held on 21<sup>st</sup> November 2013, had raised a 'Pre Contractual Concern' regarding the decision taken by the pertinent Authority, in that:**

- a) The Appellant could not abide by the requirements of the Contracting Authority due to the 'short time 'given by the latter to submit the required information.**

- b) Appellant contends that the timing of the issue of the clarification note by the Contracting Authority was unfair and discriminatory.**

**Having considered the Contracting Authority's submissions during the hearing held on 21<sup>st</sup> November 2013, in that:**

- a) There were two deadlines for submissions of clarifications:**
- i) First deadline was 29<sup>th</sup> October 2013, which was meant for bidders to ask or clarify for details contained in the tender document.**
  - ii) The second deadline i.e. 8<sup>th</sup> November 2013 was for the Contracting Authority to issue clarifications to bidders.**
- b) The clarification being contested by the Appellant was totally justified by the Contracting Authority.**

**Reached the following conclusions:**

- 1. The Clarifications which the Contracting Authority requested were a safeguard and assurance and in this regard, the same Authority had the duty to ensure that precautions had to be enforced to safeguard the works to be carried out.**
- 2. The Contracting Authority, diligently exercised their discretion in establishing that the preferred bidder would have the necessary resources and experience in carrying out the tender works.**
- 3. The prospective tenderers should follow strictly the conditions laid out in the tender document and abide by the requirements contained therein.**

**In view of the above, this Board finds against the Appellant Company and strongly recommends to prospective bidders to ensure that they follow the correct procedures when filing an appeal. This Board has enough of heavy workload. The Contracting Authority may proceed with the adjudication of the tender.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*4 December 2013*