

Following a brief introduction by the Chairman, the appellant's representative was invited to make his submissions on the objection.

Mr Bernard Vella on behalf of appellant explained that appellant's tender had been rejected because :

- “a. A single rate for the various trips required for this tender was not provided;*
- b. no rate for transport from Passports Office to any destination in Malta and Gozo as and when required was provided.”*

The Chairman at this point remarked that while the letter of objection was filed by Security Services Malta Limited, the tender had been submitted by Argus Security Service (M) Ltd. This was irregular and the objection should be submitted by the bidder, not a subsidiary of the bidder.

Mr Bernard Vella for the appellant continued that the Clause 2.1 of the tender called overall objectives stated that the overall objectives of the project of which this contract will be a part are as follows: “To provide Secure Transport Services for the Passports Office of approximately 250 trips from the passports office to Gozo and approximately 6 trips from De La Rue to the Passports Office when required.” This was construed by appellant to mean that two different prices had to be offered, one for the transport of blank passports and another for the transport of completed passports. It was for this reason that appellant had submitted two separate prices in the financial offer, one at €30 and the other at €115. The tender document was ambiguous because only one price was being demanded.

Mr Robert Grixti, Director Corporate Services at the Ministry for Home Affairs, on behalf of the contracting authority explained that the tender document purposely asked bidders to submit just one rate for the transport service. The Overall Objectives mentioned by Mr Vella did not ask for rates but were just terms of reference to help bidders understand what was required by them for the provision of the service. These as an indication gave the figure of approximately 250 for Gozo and approximately 6 trips from De La Rue. Although the security for these 6 trips would be more, the number is so small that it did not need a special rate. One rate for the trips was what was requested. Appellant however submitted two rates and the DCC decided to cancel the tender.

Mr Bernard Vella explained that the appellant was the present contractor providing the service. As such, appellant felt the need to differentiate between the rates for the service and the present rates had been submitted.

Mr Robert Grixti reiterated that the tender was issued for one single rate and one single rate had to be offered.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 26th June 2014 and also through Appellant's verbal submissions during the hearing held on 11th September 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant claims that his offer was unfairly dismissed due to the fact that he submitted two rates for the tendered services instead of quoting a single rate. Appellant was given the impression that separate rates had to be offered, one rate for transportation of blank passports, and this was due to the fact that the latter form of transportation required more security measures.

Having considered the Contracting Authority's verbal submission during the hearing held on 11th September 2014, in that:

- a) The Contracting Authority contends that the 'description of the services to be provided' by the tenderers, as specified in the tender document, did in no way, give the indication that two rates had to be quoted. The tender document clearly stated that one rate had to be submitted.

Reached the following conclusions:

1. This Board would like to point out that, the 'Reasoned Letter of Objection' was made on behalf of 'Security Services Malta Limited' whilst the tender document was submitted on behalf of 'Argus Security Services (Malta) Limited'. The reason given by the appellant for such a mix-up was due to the fact that 'Argus Security Services (Malta) Limited' was a subsidiary of 'Security Services Malta Limited'. This Board considers the reason given by Appellant as incredible. The two mentioned Companies are two separate legal entities and even though there is an indirect relation between both Companies, they are to be considered as two totally different entities. In this regard, this Board opines that the 'Reasoned Letter of Objection' should have been filed in the name of another distinct entity.
2. This Board considers that the tender document stipulated only one single rate is to be quoted. The description of services to be tendered for in the tender document did not indicate, in any way, that two rates had to be submitted, but rather serves as a guideline for tenderers. Conditions laid out in a tender document are to be strictly adhered to. In this regard, Appellant Company did not abide by this principle.

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by Appellant should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A. Matrenza
Member

3 October 2014