

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 996 – MCST/67/2015/R – Call for Tenders for the Provision of Security Services at Explora Science Centre, Kalkara (Re-Issue)**

The Publication Date of the Call for Tenders was 27 October 2015 whilst the Closing Date for Call of Tenders was 10 November 2015. The Estimated Value of the Tender, (Exclusive of VAT) was € 70,000.

Eight (8) Bidders have submitted offers for this Tender.

On 25 July 2016, Executive Security Services Ltd filed an Objection against the decision of the Malta Council for Science and Technology to award the Tender to JF Security & Consultancy Services Ltd, G4S Security Services (Malta) Ltd and Signal 8 Security Services Malta Ltd for the price of € 70,000 (Exclusive of VAT) against a deposit of € 400.

On 20 October 2016, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

### **Appellant – Executive Security Services Ltd**

Dr Matthew Brincat

Legal Representative

### **Recommended Bidder 1 – JF Security & Consultancy Services Ltd**

No Representative was present on behalf of this company for this Public Hearing.

### **Recommended Bidder 2 – G4S Security Services (Malta) Ltd**

No Representative was present on behalf of this company for this Public Hearing.

### **Recommended Bidder 3 – Signal 8 Security Services Malta Ltd**

No Representative was present on behalf of this company for this Public Hearing.

### **Contracting Authority – Malta Council for Science and Technology**

Ms Karen Micallef

Chairperson, Evaluation Board

Ms Sylvana Turchett

Secretary, Evaluation Board

Mr Carmel Attard

Member, Evaluation Board

Mr Mauro Calleja

Member, Evaluation Board

Mr Mark Sciberras

Member, Evaluation Board

Mr Mario Borg

Representative

Ms Laura Sue Mallia

Representative

The Public Contracts' Review Board Chairman, Dr Anthony Cassar opened by emphasising that when a time is given for the commencement of the Public Hearing it must be respected and the next time that any party comes late for the Public Hearing, the latter will commence *in absentia* of the missing party. Following this opening statement, the Appellant was invited to make his submissions.

Dr Matthew Brincat, Legal Representative for Executive Security Services Ltd, apologised for his late arrival and then continued by saying that his Appeal based on when the Procurement Policy Note 25, (issued by the Department of Contracts on 25 April 2015) and the Circular 06/2016, (issued by the same Department on 28 April 2015) came actually into effect. These were guidelines which helped the Contracting Authorities in their decisions regarding the Public Tenders which they issue.

Dr Brincat contended that this Tender was issued prior to the issuing of these directives. He disagreed with the submissions made by the Contracting Authority that at award stage the latter were not in effect due to the fact that the Malta Council for Science and Technology issued their decision on 22 July 2016. Here Dr Brincat also pointed out that the Notice of Award was issued with a wrong date, namely 22 July 2015 but he acknowledged that this was a typing error from the part of the Council.

Dr Brincat insisted that it was useless to say that these directives were not applicable at the time of issuing of the Tender since these were already in effect when the Tender was awarded and when the Evaluation Board was aware of them. He continued by disagreeing with the Contracting Authority's argument that the directives were not applicable since they were issued after the Tender was issued.

The second point which Dr Brincat wanted to raise was that he was acknowledging the fact that these were only guidelines but if a similar recommendation was issued, one had to try to apply them. He concluded his submissions by saying that this Tender had to be re-issued in a way that the new directives here mentioned were to be reflected.

Mr Mario Borg, on behalf of the Malta Council for Science and Technology agreed with Dr Brincat that the Note and Circular issued by the Department of Contracts was a recommendation on how to move forward. The Procurement Policy Note 25 specifically says that, "*The Best Quality Price Ratio (BPQR), is being recommended for the Procurement of Security, Cleaning, Clerical and Care Working Services.*" The Call for Tenders was issued on 27 October 2015 whilst the Evaluation Process was already under way when the Procurement Policy Note 25 was issued.

Dr Anthony Cassar, Chairman Public Contracts Review Board, asked when the Evaluation Process started for which Dr Matthew Brincat, Legal Representative for Executive Security Services Ltd replied that as illustrated in Document RG2 submitted with his Letter of Objection dated 25 July 2016, the Tender was awarded on 22 July 2016.

Dr Anthony Cassar, Chairman Public Contracts Review Board then asked when the Recommendation was issued for which Mr Mario Borg on behalf of the Malta Council for Science and Technology replied that it was issued on 25 April 2016 when the Evaluation was under way.

With regards to the Appellant's second point, Mr Borg argued that the Department of Contracts has issued a recommendation where any contract regarding security services must have a minimum duration of one year which in this case it was.

Dr Anthony Cassar, Chairman Public Contracts Review Board asked whether the Circular emphasized on the contract duration for which Mr Borg replied that these contracts which were being awarded, were for over a year. The second point was not applicable for this case.

Mr Mario Borg for the Contracting Authority reiterated that the Recommendations issued by the Department of Contracts were not retrospective and that there was no need to restart the process once again since it was a new recommendation not a new Regulation which was issued.

The Council's recommendation was to continue the process which has already started but to issue any future similar Tenders with the new recommendations issued by the Department of Contracts.

Dr Matthew Brincat, Legal Representative Executive Security Services Ltd, said that there was a divergence with respect to the retroactive point. If on 22 July 2016, one knew about certain recommendations, he acknowledged the fact that certain decisions cannot be taken in one day but in this particular case there was an equal pricing of three different Companies.

The Contracting Authority was not in control on what one can Tender but can only examine the submissions which bidder make but if a new recommendation was issued this must be observed.

Mr Mario Borg on behalf of the Malta Council for Science and Technology said that the recommendation was considered and that this was not a Regulation but that it will be applied in future Tenders.

At this stage, the Public Hearing was closed.

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**This Board,**

**Having noted the Appellant's Objection, in terms of the "*Reasoned Letter of Objection*" dated 25 July 2016 and also through their verbal submissions during the Public Hearing held on 20 October 2016 had objected to the decision taken by the Pertinent Authority, in that:**

- a) Executive Security Services Ltd contend that since the Procurement Policy Noted 25 and Circular 06/2016 were issued prior to the decision issued by the Contracting Authority on 22 July 2016, the**

**Evaluation process had to abide by these directives prior to issuing the award. In this regard, the Appellant contends that the Tender should be reissued to conform with the same directives.**

**Having considered the Contracting Authority's "*Letter of Reply*" dated 9 September 2016 and also their verbal submissions during the Public Hearing held on 20 October 2016, in that:**

- a) The Malta Council for Science and Technology maintains that the new Recommendations were issued while the Evaluation Process was being carried out and since these were recommendations and not regulations and the former were not retrospective, hence the Evaluation carried on in its normal course.**

**Reached the following conclusions:**

- 1. This Board, after having examined the relative documentation and heard submissions from the parties concerned, opines that the main issues to be treated are the Contracts Circular 06/2016 and the Procurement Policy Note 25 as follows:**

i) **Procurement Policy Note 25**

**The Procurement Policy Note 25 informs all Contracting Authorities that the priorities and weighting of a Tender depends on the type of services/works being offered.**

**It is to guide the Contracting Authorities on issues relating to precarious working conditions by tackling contracts in a more holistic manner. In other words, the price factor is not the most important issue in the weighting and/or award of the Tender.**

**Through this guideline, the Authority may establish the best “Value for Money” policy by optimising a combination between cost related and non-cost related criteria.**

**This Board notes that these guidelines were effective from 2 May 2016, whilst the publication date of the Tender was 27 October 2015 with a closing date of 10 November 2015. However, the Publication Date of the Notice of Award was 22 July 2016.**

**This Board opines that since the contents of this Procurement Notice were known on 25 April 2016 and the Tender Document was issued well before that date (27 October 2015), the contents**

**which would have established the Award Criteria could not be included in the Tender issued.**

**In this regard, this Board opines that the Malta Council for Science and Technology could not have included the instructions as per Procurement Policy Note 25.**

**ii) Contracts Circular 06/2016**

**This Circular specifies that with regards to Contracts relating to Cleaning Services, Care Worker Services, Clerical Workers and Security Services; such contracts shall not be for a period of less than one year. In this particular instance, the Contracting Authority acted within these instructions.**

**The above mentioned Circular also states that where fully compliant operators bid with exactly the same prices for the same Contract and the latter is subdivided between a number of operators, apart from this being non permissible, the Price Factor will not be the sole criterion for award.**

**At the same instance, where such conditions arise, the policies which may be adopted are described clearly in Procurement**

**Policy Note 25. This means that there exists a correlation between the Note and Contracts’ Circular 6/2016. In this particular case, the latter was to be applied due to the fact that there was ample time for the Evaluation Board to implement the directive of the Circular due to the following facts:**

<b>Date</b>	<b>Details</b>
10-Nov-15	Opening of the Tenders
15-Feb-16	1st Meeting of the Evaluation Board
08-Mar-16	2nd Meeting of the Evaluation Board
30-May-16	3rd Meeting of the Evaluation Board
09-Jun-16	4th Meeting of the Evaluation Board
22-Jun-16	5th Meeting of the Evaluation Board

**The Evaluation Process took enough time for the Evaluation Board to be fully aware of the Circular 6/2016 issued by the Department of Contracts on 28 April 2016. In this regard, this Board justifiably opines that the Evaluation Board should have adopted the Circular’s instructions whereby this particular Tender was to be evaluated in accordance with Contracts Circular 6/2016.**

**In this regard, the Circular is quite clear, in that such an award is not permissible and there was enough time for the Evaluation Board to abide by the Circular's instruction. This Board upholds the Appellant's Grievance.**

**In view of the above, this Board finds in favour of Executive Security Services Ltd and recommends that:**

- i) The Tender is to be re-issued to reflect the Guidelines and instructions in both the Procurement Policy 25 and the Contracts Circular 06/2016;**
  
- ii) The deposit paid by the Appellants should be refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*24 October 2016*