

PUBLIC CONTRACTS REVIEW BOARD

Case 1027 – MIP/TQF/SAF/D47/16 – Call for Tenders for the Provision of Security Services at Safi Aviation Park

The Publication Date of the Call for Tenders was 11 January 2017 whilst the Closing Date for Call of Tenders was 1 February 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 135,000.

On 30 January 2017, JF Security & Consultancy Services Ltd filed a Pre-Contractual Objection against Malta Industrial Parks.

On 7 March 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – JF Security & Consultancy Services Ltd

Mr Matthew Formosa	Representative
Dr Matthew Paris	Legal Representative

Contracting Authority – Malta Industrial Parks

Mr Keith Buttigieg	Member, Evaluation Board
Mr Joe Borg Camilleri	Representative

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, opened by saying that from the correspondence which was given to this Board, it resulted that Malta Industrial Parks was ready to accept the request made by JF Security & Consultancy Services Ltd for which the Contracting Authority confirmed.

Mr Carmel Esposito, a member of the Public Contracts Review Board, asked whether the Appellants were notified about this latest development for which Dr Matthew Paris, their Legal Representative replied in the affirmative.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked Malta Industrial Parks' representatives whether they were ready to change clause A (ii) of the Technical Offer in the Tender Document as follows:

“evidence of specific training in implementing access control, surveillance and patrol provided by Aviation Security Malta (AVSEC – General Security Awareness Training GSAT) or equivalent training that is recognised by the Head Aviation Security and his department as competent authority for Aviation Security in Malta. (It is incumbent on bidder to submit proof that training is recognised by the Head Aviation Security and his department).

Certification of participation in-house/other security training and/or declaration from third party who delivered the training for each security guard to be employed”

Dr Matthew Paris, the Legal Representative for JF Security & Consultancy Services Ltd, said that this type of training is given only by and through the Malta International Airport. If one had nothing to do with aviation services, the MIA would not give permission for training to be done and this was the argument which he was submitting on behalf of his clients. If one was *ab initio* prohibited to provide this training, one was also prohibited to participate in them with the consequence that one had to travel abroad to take these courses.

Mr Joe Borg Camilleri, on behalf of the Malta Industrial Parks, replied that the parties were agreeing that there was no further contestation. From the information which they have whilst compiling the Tender Document, the Contracting Authority found out that it was obliged to enter certain requirements under EU regulations.

Dr Matthew Paris, the Legal Representative for JF Security & Consultancy Services Ltd, whilst agreeing with what the Contracting Authority was saying, reiterated that these same EU regulations also obliged this type of training to be made out in other places.

At this stage, the Public Hearing was adjourned to Tuesday 14 March 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Pre-Contractual Objection filed by JF Security & Consultancy Services (herein after referred to as the Appellant) on 30 January 2017, refers to the Contentions made by the latter with regards to Tender of Reference MIP/TQF/SAF/D47/16 listed as Case No 1027 in the records of the Public Contracts Review Board, issued by Malta Industrial Parks (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Dr Matthew Paris

Appearing for the Contracting Authority: Mr Joe Borg Camilleri

Whereby, the Appellant contends that:

- a) Clause A (ii) of the Technical Offer in the Tender Document does limit the scope of competition. In this regard, JF Security & Consultancy Services maintain that since the training of this sort is only given by the Malta International Airport, the latter would not allow for training of the personnel to be executed by other training institutions to serve the same Tendered requirements, thus prohibiting “*ab initio*” other Bidders to participate.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 6 February 2017 and its verbal submissions during the Public Hearing held on 7 March 2017, in that:

- a) **Malta Industrial Parks does not, in any way, intend to limit competition and deny Bidders from participating in this Tender. In fact, the Contracting Authority is suggesting that Clause A (ii) is to be amended to avoid such a situation as follows:**

“evidence of specific training in implementing access control, surveillance and patrol provided by Aviation Security Malta (AVSEC – General Security Awareness Training GSAT) or equivalent training that is recognised by the Head Aviation Security and his department as competent authority for Aviation Security in Malta. (It is incumbent on bidder to submit proof that training is recognised by the Head Aviation Security and his department).

Certification of participation in-house/other security training and/or declaration from third party who delivered the training for each security guard to be employed”

This Board, after having taken into consideration the merits of this case, arrived at the following conclusions:

- 1. This Board noted the “*Reasoned Letter of Reply*” dated 6 February 2017 whereby it was clearly denoted that Malta Industrial Parks was conceding to JF Security & Consultancy Ltd’s request.**

In this regard, this Board notes that agreement between both parties has been reached and in this respect, this Board recommends that Clause A (ii) of the Technical Offer should read as follow:

“evidence of specific training in implementing access control, surveillance and patrol provided by Aviation Security Malta (AVSEC – General Security Awareness Training GSAT) or equivalent training that is recognised by the Head Aviation Security and his department as competent authority for Aviation Security in Malta. (It is incumbent on bidder to submit proof that training is recognised by the Head Aviation Security and his department).

Certification of participation in-house/other security training and/or declaration from third party who delivered the training for each security guard to be employed”

This Board recommends that the amendment of the above mentioned clause should be executed through a clarification.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

14 March 2017