

Following an introduction made by the Chairman of the Public Contracts' Review Board, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Mr Charlo Farrugia, on behalf of the Health Services Group, opened by quoting Page 4 of the Tender Document which *inter alia* stated that:

“The estimated visits for scholastic year 2017-18 amounts to around 11,500 visits whilst estimated visits for Skola Sajf Summer 2018 amounts to around 900 visits”.

Mr Farrugia then remarked that a Clarification was issued at a later stage, on 5 September 2017 which *inter alia* stated that:

“The Contracting Authority would like to clarify that on Page 4 Point 1.2 the estimate global number reflects the estimate number of values per school to be carried during scholastic year 2016-17 for all the schools within all state colleges”.

Dr Franco Agius, the Legal Representative for the Department of Contracts, said that this point was not contested since they were giving statistical information on how many visits there were during the previous year.

Mr Charlo Farrugia, on behalf of the Health Services Group, said that the figures given were understood to be projections for the future. He continued by quoting the opening statement of Point 1.2 of the Tender Document which said that:

“The subject of this Tender is the provision of nursing services in state schools. The Contractor will be required to provide qualified nurses to visit schools on a daily basis and administer prescribed medication and treatment to students eligible for the service. The service has to include also for Skola Sajf and Klabb 3-16”.

According to the Appellant, the wording in this Point was correct and gave a good indication of the future estimates.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, said that the Ministry for Education and Employment was giving an indication on the numbers needed to be considered by the Bidders when they are making their considerations prior to submitting their eventual offers for this Tender.

Mr Charlo Farrugia, for the Appellants, then proceeded by referring to the final part of Point 8 in Page 18 of the Tender Document which *inter alia* states that:

“The following is a list of actual visits per College in Malta and Gozo for the period between September and June. The list shows, (for each month), the number of a) ordinary visits, b) diabetic and c) extra visits. The list also includes the Naxxar Higher Secondary School, the Gozo Sixth Form and Skola Sajf/Klabb 3-16 (the latter for the summer period only, between July and September”.

According to Health Services Group, the wording in this point was wrongly worded since the word “visits” should have been changed to “sessions”. This might misguide Bidders when making their offers.

Dr Franco Agius, the Legal Representative for the Department of Contracts pointed out that each session involved one child and that the payment should be per visit since the sessions vary between one and another.

Mr Charlo Farrugia, on behalf of Health Services Group, pointed out that the Tender Document was saying “*visits*” whilst the “*sessions*” are being considered historically. In his opinion, the meter of payment should either be per visit or per sessions. One can use both but in his opinion the payment should be per intervention.

Dr Franco Agius, the Legal Representative for the Department of Contracts said that both criteria should remain as they are and that Bidders should be aware of how many visits and sessions are needed for this Tender.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, asked whether this can be arranged for visits and sessions for which Dr Franco Agius, the Legal Representative for the Department of Contracts, replied that Clarification 2 issued by the Department of Contracts on 5 September 2017 correct both issues. One cannot say how many visits there could be during a scholastic year.

Mr Charlo Farrugia, for Health Services Group, said that these are estimates for the future and if the visits are to be carried out the wording must be changed to “*2017-18*”.

Dr Franco Agius, the Legal Representative for the Department of Contracts said that it was up to the Contracting Authority to decide what do they need to insert in their Tender Document. He agreed that the wording should have been made in a better way. If needed, this distinction can be made if the Ministry of Education and Employment feels that this has to be done. One session is different than one visit.

Mr Charlo Farrugia, representing Health Services Group, referred to Page 18 of the Tender Document where the wording “*actual visits*” had to be changed to “*actual sessions*” which included “*Ordinary Sessions*”, “*Diabetics Sessions*” and “*Extra Sessions*” so that a clear indication is made of what is a visit and what is a session.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board, asked whether this distinction was made. Dr Franco Agius, the Legal Representative for the Department of Contracts replied that this was made clear in the Reasoned Letter of Reply issued by the latter on 14 September 2017. The Contracting Authority would not find any Objection to elaborate further on the matter.

Dr Agius felt that, this matter could have been resolved by a Request for Clarifications without having the need to disturb the Public Contracts Review Board. At this point in time, the Contracting Authority could not do anything until this Board issues its Decision regarding the matter.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board said that this Board will reword the Clauses in question in order to be more comprehensible.

Dr Franco Agius, the Legal Representative for the Department of Contracts found no Objection. He added that the clearer the wording is the more the process would benefit. At

the end of the day, the process for the Remedies before the Closing Date of Call for Competition has to be done although this could have been avoided.

At this stage, the Public Hearing was adjourned to Tuesday 24 October 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 Remedy before the Closing Date of Call for Competition filed by Health Services Group (herein after referred to as the Appellant) on 12 September 2017, refers to the Contentions made by the latter with regards to the Tender of Reference CT 2142/2017 listed as Case No 1085 in the records of the Public Contracts Review Board, issued by the Ministry of Education and Employment (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Charlo Farrugia

Appearing for the Contracting Authority: Dr Franco Agius

Whereby, the Appellant contends that:

a) Their main concern refers to the final part of Point 8 in Page 18 of the Tender Document which states that: *“The Following is a list of actual visits per college, (for each month), the number of a) ordinary visits, b) Diabetic and c) Extra visits. The list also includes the Naxxar Higher Secondary School, the Gozo Sixth Form and Skola Sajf/Klabb 3-16, (the latter for the summer period only, between July and September).”*

In this regard, the Appellant maintains that the use of the wording *“visits”* in this paragraph should be changed to *“sessions”* as this might misguide Bidders when submitting their offers.

This Board also noted the Contracting Authority’s *“Letter of Reply”* dated 14 September 2017 and its verbal submissions during the Public Hearing held on 28 September 2017, in that:

a) The Contracting Authority confirms that both the wordings *“visits”* and *“sessions”* should remain, as there is a difference between the two. However, the Ministry for Education and Employment is willing to rephrase the contents of Paragraph 8 in Page 18 of the Tender Document to avoid any misunderstandings or misinterpretations.

This Board, after having considered the merits of this case, arrived at the following conclusions:

- 1. This Board after having heard the submissions made by both parties concerned, opines that the Ministry for Education and Employment had the right to include any wording which it deems fit in a Tender Dossier, however such wording must be clear, vivid and does not create any misunderstandings or misinterpretation to the Bidder.**

In this particular case, this Board was informed of the difference that exists between, “*visits*” and “*sessions*” as referred to in the Tender Document and in this regard, this same Board upholds that all the paragraphs and sections in the Tender Document, which refer to past and projected statistics, should be properly denoted by stating “*visits*” and “*sessions*” separately.

This Board would like to also point out that such a concern by the prospective Bidder could have been resolved through a clarification prior to the Closing Date of the Tender.

In view of the above, this Board recommends that, through a “*Clarification Note*”, the above recommended rephrasing is to be carried out by the Ministry for Education and Employment.

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Richard A Matrenza
Member

10 October 2017