

**Case 1088 – T 005/2017 – Provision of Security Services**

The Publication Date of the Call for Tenders was 20 March 2017 whilst the Closing Date for Call of Tenders was 21 April 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 480,000.

Eight (8) Bidders have submitted Nine (9) offers for this Tender.

On 7 September 2017, Executive Security Services Limited filed an Objection against the decision of the Malta Information Technology Agency to award the Tender to G4S Security Service (Malta) Limited for the price of € 480,729.60 (Exclusive of VAT) against a deposit of € 2,400.

On 3 October 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard A Matrenza as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

**Appellant – Executive Security Services Limited**

|                     |                      |
|---------------------|----------------------|
| Mr Alfred Ciangura  | Representative       |
| Mr Stephen Ciangura | Representative       |
| Dr Matthew Brincat  | Legal Representative |

**Recommended Bidder – G4S Security Service (Malta) Limited**

|                  |                |
|------------------|----------------|
| Mr Eder Catania  | Representative |
| Mr Julian Dimech | Representative |

**Contracting Authority – Malta Information Technology Agency**

|                               |                               |
|-------------------------------|-------------------------------|
| Dr Caroline Schembri de Marco | Chairperson, Evaluation Board |
| Ms Vanessa Calleja            | Member, Evaluation Board      |
| Ms Charlene Debono            | Member, Evaluation Board      |
| Mr Mark Scicluna              | Member, Evaluation Board      |
| Mr Robert Grixti              | Representative                |
| Dr Pauline Debono             | Legal Representative          |

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

Dr Matthew Brincat, the Legal Representative for Executive Security Services Limited opened by saying that the recommended Bidder and the Appellant were both compliant. In that, G4S Security Services (Malta) Limited the recommended bidder was given 99.12% while his clients were given 98.77%, the award would cost the Contracting Authority € 14,000 more than the Appellant's offer. In this situation, the Appellants were wondering whether the Contracting Authority evaluated their bid in a correct manner.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether this matter could be established.

Dr Matthew Brincat, the Legal Representative for Executive Security Services Limited replied that, the decision was unfair.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board suggested that one of the members of the Evaluation Board will witness regarding subject matter.

Dr Pauline Debono, the Legal Representative for the Malta Information Technology Agency gave a background on the case prior to the testimony of the witness. The Tender Document gave the Bidders a clear condition in that, the Bidders had to provide a "*visual of uniforms*" and if the Appellant had any doubts, he should have sought Clarification.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that the word, "*visually*" was generic.

Dr Pauline Debono, the Legal Representative for the Malta Information Technology Agency said that, "*in this case, the Tender Document had its criteria and its scoring scale*". After evaluating the Appellant's submissions, the Evaluation Board distributed the marks accordingly; to the electronic respond of; "*incomplete*" or "*unsatisfactorily*".

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board requested one of the members of the Evaluation Board to be summoned as a witness.

Mr Mark Scicluna, holding ID Card Number 215584 M, Manager in the Administration Department at the Malta Information Technology Agency, also a member of the Evaluation Board, was summoned to testify under oath before the Public Contracts Review Board.

Following Mr Scicluna's testimony, Dr Matthew Brincat, the Legal Representative for Executive Security Services Limited said that, they could not have a clear view of how the Evaluation Board took their decision. His clients felt that, the word, "*visual*", was not specified, since a passport photo could also be called "*visual*". The offer submitted by the Appellant was a full uniform. Moreover, the latter asked why they were given a 40% mark for a half length photo and not 50%.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board commented that, the 40% mark was given for the highest scale of "*Poor*".

Dr Matthew Brincat, the Legal Representative for Executive Security Services Limited countered that, in these situations, the Malta Information Technology Agency should have asked for a full length photo.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that the Contracting Authority could have asked for a sample of uniforms.

Dr Matthew Brincat, the Legal Representative for Executive Security Services Limited said that his clients, were requesting the Public Contracts Review Board, to recommend the Contracting Authority, in order to re-evaluate both offers and ask for samples. This is due, that both offers were compliant.

At this stage, the Public Hearing was adjourned to Thursday 19 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,**

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**Having noted this Objection filed by Executive Security Services Limited (herein after referred to as the Appellant) on 7 September 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference T 005/2017 listed as Case No 1088 in the records of the Public Contracts Review Board, awarded by the Malta Information Technology Agency (herein after referred to as the Contracting Authority).**

**Appearing for the Appellant: Dr Matthew Brincat**

**Appearing for the Contracting Authority: Dr Pauline Debono**

**Whereby, the Appellant contends that:**

- a) His main objective was that his offer was much cheaper than that of the Recommended Bidder and the points earned were more or less equal to the latter's offer. In this regard, Executive Security Services**

Limited contends that their offer should be reintegrated in the Evaluation Process and at the same instance; samples are to be produced so that the Evaluation Board can adjudicate the offers in a fairer manner.

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 21 April 2017 and its verbal submissions during the Public Hearing held on 3 October 2017, in that:

- a) The Contracting Authority maintains that the Evaluation Board assessed all Bids in accordance with the "*Scoring Scale Table*" as dictated in Page 8 of the Tender Document. In the case of the Appellant's Offer, it was found that the visual representation of the uniform being offered by the latter did not include a "*Full Length Visual*", and therefore, the Appellant's offer was considered to be incomplete, hence being allocated the deserved percentage in line with the qualitative condition of the product being offered.

This same Board also noted the Testimony of the witness which it has summoned, namely, Mr Mark Scicluna.

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

1. After having examined the relative documentation and heard the submissions made by both parties concerned, including the testimony of the witness duly summoned by this Board, the latter opines that the main issue of this Appeal is the “*Visual Requirement*” of the product offered by Executive Security Services Limited.

First and foremost, this Board would like to justifiably point out that the Evaluation Criteria under the “*Best Price Quality Ration*” is the most objective procedure in assessing offers in that, each particular item or characteristic of the product is independently allotted points or percentages while at the same instance, such procedure is carried out individually by each member of the Evaluation Board so that the overall percentage result represents the weighted average of points awarded by each member. This procedure of evaluation suppresses immensely the element of subjectivity.

In this particular case, the same procedure was adopted and this was clearly indicated on Page 8 of the Tender Document. This Board credibly notes that under Article 9.2 “*Evaluation Process*,” the Basis as to how points are to be allotted is also vividly illustrated as follows:

| <i>Scoring</i> | <i>Definition</i> |
|----------------|-------------------|
|----------------|-------------------|

| <i>Scale</i>   |                  |  |
|----------------|------------------|--|
| <i>0-20%</i>   | <i>Very Poor</i> | <i>Totally fails to address the requirement, or cannot be assessed due to missing evidence</i> |
| <i>21-40%</i>  | <i>Poor</i>      | <i>Response is incomplete or unsatisfactory, or with some major gaps or issues</i>             |
| <i>41-60%</i>  | <i>Good</i>      | <i>Requirement is generally addressed with some minor issues</i>                               |
| <i>61-80%</i>  | <i>Very Good</i> | <i>Requirement is fully addressed, possibly with some added value</i>                          |
| <i>81-100%</i> | <i>Excellent</i> | <i>Response exceeds the requirements</i>   |

*“The offer achieving the highest technical score will be awarded 100% of the technical weight. The other offers will be awarded scores in proportion to the offer with the highest technical score as per below formula”*

**From the testimony of the witness duly summoned by this Board, it emerged that Executive Security Services Limited’s visual presentation of his offer, i.e. the uniform, did not feature a “Full Length”, submission, to the effect that, under this particular item, the Appellant’s score was the maximum, (40%), of the scoring scale wherein the Appellant’s offer was deemed to be “incomplete or unsatisfactory, or with some major gaps or issues.”**

**At this particular stage, once the visual presentation was considered not to include “*Full Length*” demonstration, the Appellant’s offer was deemed to be incomplete by the Evaluation Board in an objective way and quite properly, gave the maximum score of the Section where documentation is incomplete; so that the allocation of percentage in this case was properly carried out.**

**The Tender Document requested a “*visual of uniforms*” so that one would expect that Visual Representations of all the uniform is to be included. This Board noted that the Appellant’s submissions included only the jacket, tie and logo. In this regard, this Board acknowledges the fact that when a “*visual of the employee’s uniforms*”, is requested, it is the full uniform which has to be seen and assessed.**

**This Board notes that although the Appellant’s offer was the cheapest, the Evaluation Board was bound to abide by the conditions and formulations as dictated by the Tender Document. In this regard, this Board justifiably notes that the Evaluation Board carried out its adjudication in a just, fair and transparent manner and allocated points under the “*Best Price Quality Ratio*”, objectively.**

**This Board however would like to also point out that, perhaps, the phrase “*Visual of Uniforms*” could have been amplified to state more specifically what was actually requested. At the same instance, this Board is justifiably convinced that the word “*uniform*” should mean to include all the elements which constitute the same and in this regard, this Board does not uphold the Appellant’s Contention.**

**In view of the above, this Board finds against Executive Security Services Limited and at the same time upholds Malta Information Technology Agency’s decision of award. However, due to the fact that this Board feels that the wording “*Visual Uniform*” could have been more specifically described in the Tender Document, this Board recommends that the deposit made by the Appellant is to be fully refunded.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Richard A Matrenza  
Member

*24 October 2017*