

PUBLIC CONTRACTS REVIEW BOARD

Case 1149 – ARMS/T/005/2017 - Call for Tender for the Provision of Cash in Transit and Other Security-Related Services

The publication date of the call for tenders was the 12th October 2017 whilst the closing date of the call for tenders was the 9th November 2017. The estimated value of the tender (exclusive of VAT) was € 80,000.

There were two (2) bidders on this tender.

G4S Security Services Malta Ltd filed an appeal on 9th February 2018 against the Contracting Authority's decision to cancel the tender on the grounds that there were irregularities in the procedure preventing fair competition. A deposit of € 400 was paid.

On 22nd March 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – G4S Security Services Malta Ltd

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

Contracting Authority – Automated Revenue Management Services Ltd

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| Dr Lorna Mifsud Cachia | Legal Representative |
| Mr Joe Borg Camilleri | Chairperson Evaluation Board |
| Mr Noel Scerri | Representative |

After a brief welcome the Chairman of the Public Contracts review Board, Dr Anthony Cassar, invited the Appellants to make their submission.

Mr Eder Catania, representing G4S Security Services Malta Ltd stated that there were two bidders for this tender. After requests by the Appellants on a number of clarifications they were advised that the tender was being cancelled due to discrepancies between approved criteria by the DOC and the published award criteria. They were not made aware that there were any grave reasons which affected fair competition.

The Chairman of the Board suggested that it appeared as if there was disagreement between the Departmental Contracts Committee and the Evaluation Board and he asked a representative of the Evaluation Committee to testify.

Mr Joe Borg Camilleri (498574M) Chairperson of the Evaluation Committee testified that their recommendation to award the tender to Appellant had been referred to the DCC. The DCC sent a minute stating that that the award was to be cancelled since there was a discrepancy between the approved criteria and the published criteria of the award.

The Chairman of the Board asked the witness to explain again what happened after the recommendation was sent to the DCC.

Witness confirmed that the DCC advised that the award be cancelled. They referred to discrepancies in the approved criteria. He said he was of the opinion that if there were any anomalies they could not have been of a serious nature. However the Evaluation Committee was not given details of the discrepancies - they were simply sent a minute advising cancellation.

Further questioning of the witness did not shed any further light as to the reason for the cancellation as the short minute from the DCC did not state any reasons for the decision.

The Chairman of the Board commented that the Board had found no reason for the DCC's decision to cancel the decision of the Evaluation Committee. He thanked the parties for their submissions and declared the hearing closed.

This Board,

Having noted this Objection filed by G4S Security Services Malta Limited, (hereinafter referred to as the Appellant) on 9 February 2018, refers to the contentions made by the same with regards to the cancellation of Tender of Reference ARMS/T/005/2017 listed as Case No 1149 in the records of the Public Contracts Review Board, issued by the Automated Revenue Management Services Limited, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellant: Mr Eder Catania

Mr Julian Dimech

Appearing for the Contracting Authority: Dr Lorna Mifsud Cachia

- a) The Appellants' main contention is that the cancellation notice did not provide reasons or explanations as to why the Tender was cancelled.**

This Board also noted the Contracting Authority’s “*Letter of Reply*” dated 19 February 2018 and its verbal submissions during the Public Hearing held on 22 March 2018, in that:

- a) The Contracting Authority maintains that enough justification was transmitted to the Appellants, for the decision to cancel the Tender, namely that there were discrepancies between the approved criteria for the Tender Document and the published criteria.**

This same Board also noted the testimony of the witness namely, Mr Joe Borg Camilleri, duly summoned by the Public Contracts Review Board.

This Board, after having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, opines that the issue worth of consideration is the lack of transparent information given by the Contracting Authority for the cancellation of the Tender.

First and foremost, this Board, as had on numerous occasions, would like to emphasise the importance of rendering specific reasons when action is taken by the Contracting Authority, either to reject an offer or to cancel a Tender.

Such reasons and explanations must be specific to the circumstance itself and not in a vague or holistic manner. In this particular case, the reason given by Automated Revenue Management Services Limited was,

“Due to discrepancies between the approved criteria by the Department of Contracts and published award criteria including also clarification note issued”.

In this regard, this Board justifiably notes that such an explanation does not, in any credible way specifies the real and actual reason for the cancellation of the Tender. At the same instance, this Board would respectfully refer to the Evaluation Report wherein the Appellants’ offer was recommended for award and which recommendation was subsequently cancelled.

In this regard, this Board credibly notes that if there was a discrepancy in the award criteria, the Department of Contracts, being the entity to order the cancellation of the Tender, should have indicated where such a discrepancy occurred. At the same instance, the Contracting Authority should have specifically indicated the deficiency that existed in the award criteria, to the Appellants.

This Board was presented with an incomplete documentation that does not enable it to arrive at a fair and transparent decision. At the same instance, through this incomplete information, the Appellants had to resort to this Review Board to establish where their offer had failed compliancy and why. At this stage of consideration, it is also important to quote a section of the testimony of the Chairman of the Evaluation Board, in that:

Question: “*Bhala ċ-Chairman tal-Evaluation Committee, x’ sibtu eżatt hażin fl-offerta tal-Appellant*”

Answer: “*L-Evalwazzjoni saret skond il-kriterji li ġew ippubblikati. Nista’ nghidlek li saret l-evalwazzjoni fuq it-tnejn, kemm fuq tal-Appellant u kemm fuq l-iehor mill-Evaluation Committee, intbagħat il-materjal kollu għand id-DCC u d-DCC bagħat lura l-fajl b’ minuta*”

Another quote from the testimony of the witness sheds light on the fact that G4S Security Services Malta Limited’s offer was fully compliant, as shown below:

Question: *“Jigifieri min-naħa tal-Evaluation Committee bhala technical compliance, administrative compliance u financial compliance kien in order l-Appellant. Din qamet ghax ma tawx indikazzjoni. Ha nismaghha minghandek jigifieri, ma kien hemm l-ebda mankanza, difett jew whatever?”*

Reply: *“No. Inghataw il-punti skond il-kriterji li l-evaluators kellhom.”*

During the submissions, the Board justifiably noted that the Contracting Authority could not define a clear explanation as to why the Departmental Contracts Committee stated that:

“Due to discrepancies between the approved award criteria by the Department of Contracts and published award criteria, including also clarification issued, this Call for Tenders is to be cancelled”

In this respect, even this Board was not given justification as to where the discrepancies in the award criteria occurred. This Board is somewhat disappointed in that, it has not been presented with the necessary information to enable same to arrive at a fair and just conclusion to this Appeal. At the

same instance, this Board is not comfortable enough to consider the decision taken by the Automated Revenue Management Services Limited in cancelling the Tender, as the reason for such cancellation cannot be identified.

From the documentation presented and the submissions made, this Board does not find enough justification or evidence that there were irregularities and at the same instance no proof was provided that the Appellants' offer did not meet the necessary criteria, so much so, that the Evaluation Board recommended G4S Security Services Malta Limited's offer for award.

In view of the above, this Board,

- i) Does not Uphold the decision taken by the Automated Revenue Management Services Limited in cancelling the Tender;**
- ii) Upholds the contentions made by G4S Security Services Malta Limited;**
- iii) Orders that the offer submitted by the same Appellants is to be reintegrated in the evaluation process;**

iv) Recommends that the deposit paid by G4S Security Services Malta is to be fully refunded.

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Richard A Matrenza
Member

5th April 2018