



Dr Carlos Bugeja Legal Representative of Signal 8 Security Services Malta Ltd stated that he had made his clients' case fully in his appeal letter and he rested his claim on that letter.

The Chairman referred to note 3.1 in the tender instructions which appeared to state that the tender cannot be divided between several different contractors and which seemed to be totally the opposite to the decision taken by the Contracting Authority.

Dr Franco Agius Legal Representative of the Department of Contracts said that note 3.1 in totality refers to the award of lots not of the whole contract. He made reference to note 9.1 in the tender which states that the contract will be awarded to the tenderer submitting the Best Price/Quality Ratio offer. In this instance more than one tenderer had submitted offers which meet this criteria and the principle of proportionality was therefore applied.

Dr Franco Agius (496577M) called as a witness by the Contracting Authority testified on oath that Appellants claimed that the award was invalid due to the use of an incorrect name (Executive Services Ltd instead of Executive Security Services Ltd) in the letter of rejection sent to Appellants. This was a small mistake committed solely in that letter as the rest of the documents sent to Appellants showed the correct name. He tabled as evidence several documents submitted to Appellants showing the correct name (Doc 1).

The Chairman pointed out that he concurred that in every other instance in the tender documents the name of the recommended bidder had been correctly used.

Dr Bugeja said that Appellants still maintain that the award was invalid and it is up to the Board to consider the merits of the appeal. There is a legal point at issue and it must be upheld.

The Chairman thanked the parties for their submissions and declared the hearing closed.

**This Board,**

**having noted this objection filed by Signal 8 Security Services Malta Limited (herein after referred to as the Appellants) on 25 March 2019, refers to the claims made by the same Appellants with regard to the Tender of reference CT 2146/2017 listed as case no 1313 in the records of the**

**Public Contracts Review Board, awarded by University of Malta (herein after referred to as the Contracting Authority).**

**Appearing for the Appellants: Dr Carlos Bugeja**

**Appearing for the Contracting Authority: Mr Clayton Xuereb  
Mr Mark Debono**

**Appearing for the Department of Contracts: Dr Franco Agius**

**Whereby, the Appellants contend that:**

- a) their first concern refers to the fact that, since the contractual obligations are to be split between two Economic Operators, they are at a loss as to how the tender services are to be allocated,**
- b) Appellants maintain that, as per notice of award, the Authority awarded 50% of the tender services to an Economic Operator which did not participate in the offers,**
- c) Appellants also mention the fact that the owner of the other successful Economic Operator has ongoing criminal proceedings against him.**

**This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 2 April 2019 and its verbal submissions during the hearing held on 21 May 2019, in that:**

- a) the Authority insists that the tendered services can be split between two Economic Operators, each having an equal portion of the contractual obligations,**
- b) although a typing mistake was inadvertently made in the name of the second successful Bidder’s award, same Bidder was correctly identified throughout the whole tendering process,**
- c) the Authority maintains that, neither the owner of the second successful bid nor the company itself are blacklisted so that the selection process was carried out in a fair, just and transparent manner.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the Parties concerned, will treat the merits of Appellants’ grievances, in the following order:**

- 1.a) with regard to their first grievance, this Board would respectfully point out that, the method as to how the tendering services are to be shared,**

**is neither the concern nor the remit of this Board, to decide upon. This Board's jurisdiction is to review the tendering and evaluation procedure as executed by the Authority and to establish whether the process was carried out in a fair, just and transparent manner. At the same instance, this Board would also note that, Appellants, in their 'Letter of Objection', did not specify as to how such a division of tendering services, will cause them a grievance.**

**1.b) this Board would also point out that the Director of Contracts, faced with two equally compliant Bidders, has the authority to split the tender works or services whenever possible and in this particular case, circumstances allow the tender to be split between two equally and fully compliant Economic Operators,**

**2.a) with regard to Appellants' second contention, this Board notes that the Authority did in fact publish the incorrect name of the other successful Bidder, however, at the same instance, would point out that, the correct identity of other successful Bidder namely, 'Executive Security Services Limited' was always established as the Bidder and was properly indicated in the evaluation and award process. This Board opines that, it is evidently clear that the name of the other successful Bidder was inadvertently denoted as 'Executive Services Limited'. In this regard, this**

**Board notes that such an error occurred only during the publication of award of the tender so that, substance over form should prevail and at the same instance, such an error did not, in any particular way bias the evaluation procedure adopted by the Authority,**

- 3. with regard to Appellants' third grievance, this Board would point out that, the other Tenderer namely, 'Executive Security Services Limited', has no ongoing criminal proceedings against it and is not blacklisted, so that, this Board finds no justification to form any negative opinion on the eligibility of the same Bidder to participate in the award of the tender.**

**In conclusion, this Board opines that:**

- a) the Authority has every right to split the tendered services between two equally and fully compliant Bidders and it is not this Board's remit to opine as to how such an allocation is to be formulated,**
- b) there occurred a genuine and inadvertent error in the publishing of 'Executive Services Limited' as the successful Bidder, however the proper Bidder namely, 'Executive Security Services Limited', was properly identified and well documented throughout the whole tendering process,**

**c) the Bidder namely ‘Executive Security Services Limited’ has no ongoing criminal proceedings against it and is not a blacklisted Economic Operator.**

**In view of the above, this Board:**

**i) upholds the Contracting Authority’s decision in the award of the tender,**

**ii) does not uphold Appellant’s contentions,**

**iii) directs that an amount of five thousand Euro (€5,000) be refunded from the deposit paid by Appellants.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*30 May 2019*