

PUBLIC CONTRACTS REVIEW BOARD

Case 1436 – MIP/TQF/GGX/D09/19 – Tender for the Provision of Security and Clerical Services at Gozo Innovation Hub

The tender was published on the 9th October 2019 and the closing date of the call for tenders was the 29th October 2019. The estimated value of the tender (exclusive of VAT) was € 128,824.44.

On the 28th February 2020 Executive Security Services Ltd filed an appeal against Malta Industrial Parks Ltd as the Contracting Authority objecting to their disqualification on the grounds that their bid was deemed to be administratively non-compliant. A deposit of € 668 was paid.

There were four (4) bidders.

On 12th March 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Executive Security Services Ltd

Dr Matthew Brincat	Legal Representative
Ms Caroline Tabone	Representative

Recommended Bidder – Signal 8 Security Services Ltd

Dr Carlos Bugeja	Legal Representative
Mr Joseph John Grech	Representative

Contracting Authority – Malta Industrial Parks

Dr Elian Scicluna	Legal Representative
Mr Anthony Caruana	Chairperson Evaluation Committee
Mr Noel Azzopardi	Member Evaluation Committee
Mr Elton Micallef	Member Evaluation Committee
Mr Brian Gatt	Member Evaluation Committee
Mr Keith Buttigieg	Representative
Mr Dorian Bugeja	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Matthew Brincat Legal Representative for Executive Security Services Ltd said that Appellants were disqualified due to the lack of an ISO certificate. In line with the terms of the tender an initiation of application for certification by Appellants fulfilled the tender requirements. Note 2a of the tender does not mean that the full certification had to be produced within five days.

The Chairman said that at this stage the Board wished to see the letter of application for certification sent by Appellants to the Malta Competition and Consumer Affairs Authority (MCCAA).

Since neither the appropriate representative of Appellants nor of the MCCAA was present the Chairman proposed an adjournment of the Case till 13th March 2020 at 8.30am.

On resumption of the case on the 13th March 2020 witnesses were called.

Mr James Spiteri Staines (439790M) called as a witness by Appellants testified on oath that he was an Accountant acting for Executive Security Services Ltd. He stated that he was responsible for the submission of the tender. On the 29th October 2019 he submitted an application for ISO certification online to the MCCAA. When after a certain period he had heard nothing he contacted Ms Maria Bonnici by telephone and was advised to re-apply as his application was not traced in the Agency's records. On the 12th January 2020 he submitted another application – this time keeping a screenshot record his submission. On the 25th January 2020 following a conversation with Ms Bonnici he was advised that there was no record of the application claimed to have been sent in October which was unfortunate as he had not kept any record of that submission.

The Chairman pointed out that the Board had dealt with several similar instances but experience had shown that e-mails do not disappear and somehow there always is a record of them.

Questioned by Dr Elian Scicluna Legal Representative of Malta Industrial Parks witness stated that he has no records of communications with the MCCAA except for the two instances mentioned.

In reply to a question by Dr Carlos Bugeja Legal Representative for Signal 8 Security Services Ltd witness stated that when communicating with the MCCAA in December 2020 he had made no reference to his first communication in October 2019.

Mr Anthony Caruana (279456M) called as a witness by the Public Contracts Review Board testified on oath that he was the Chairperson of the evaluation committee. He confirmed that the committee had requested the missing documentation by way of rectification.

Mr George Cutajar (1279G) called as a witness by the Public Contracts Review Board testified on oath that he is the Director for Standardisation at the MCCA. His responsibilities include the certification of companies and confirmed that it was on his behalf that the letter of 16th December 2019 (Doc B in bundle of documents submitted by Appellants) had been sent. Appellants' application was sent on the 12th December and his first contact with Mr James Spiteri Staines was on the 16th January 2020. There was no previous application prior to the present one.

Questioned by Dr Brincat witness stated that he had checked the records of the Agency and there had been no record of contacts from Appellants prior to the 12th December. He tabled a detailed record of contacts from the 4th October 2019 to the 20th January 2020 confirming this (Doc 1). If there had been any glitches as claimed such glitch would have left a trace. There had been no traces of glitches before December and no record of an application in the inbox in October – in fact there had not been any record of any glitch ever in the Agency's records.

Dr Brincat said that the appeal is not based on whether there was proof of application prior to the 12th December but on the misrepresentation by the evaluation committee of the letter of the 16th December from the MCCA. The Contracting Authority appears to have only considered the phrase 'to start the certification process' in the letter. This was the wrong interpretation since the process started as soon as the application was submitted. The point of the appeal is that proof of the application had been supplied.

The Chairman pointed out that the view of the Board is that according to the tender terms the application for certification must precede the closing date of the tender.

Mr Anthony Caruana, recalled to give further testimony, stated that the certification submission had to be by the closing date of the tender, and it was the omission of such document that had triggered the request for rectification.

Dr Scicluna said that witness had indicated that no record of any applications prior to December exists. Rectification was on submissions already existing and not a fresh move. According to what had been stated, and what the records indicate, the certification process only started on the 12th December 2019.

Dr Bugeja said that the Board must decide on whether the Appellants complied with the tender terms. The first application was submitted on 12th December and the MCCA has no record of any other application.

Dr Brincat said that the Board is obliged to give a ruling that a letter of acknowledgment is the start of an application and that an evaluation committee should not put their own interpretation on words.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Executive Security Services Ltd (hereinafter referred to as the Appellants) on 28 February 2020 refers to the claims made by the same Appellants with regard to the tender of reference MIP/TQF/GGX/D09/19 listed as case No. 1436 in the records of the Public Contracts Review Board awarded by Malta Industrial Parks (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Matthew Brincat

Appearing for the Contracting Authority: Dr Elian Scicluna

Whereby, the Appellants contend that:

- a) The Evaluation Committee had misinterpreted their submission with regard to the application for ISO certificate, in that, the tender document stipulated that proof of commencement of the process for the application of ISO certification, was sufficient and in this respect, Appellants maintain that they had filed the necessary application to the Malta Competition and Consumer Affairs Authority (MCCAA).**

This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 3 March 2020 and its verbal submissions during the hearing held on 12 and 13 March 2020, in that:

- a) The Authority insists that, at the closing date of the submission of offers, Appellants failed to provide proof of the possession of the ISO certificate or evidence of the commencement of the procedure to apply for such a mandatory document. In this regard, the Evaluation Committee had no other option but to deem Appellants’ offer administratively non-compliant.**

This same Board also notes the testimony of the witnesses namely:

Mr James Spiteri Staines duly summoned by Executive Security Services Ltd

Mr Anthony Caruana duly summoned by the Public Contracts Review Board

Mr George Cutajar duly summoned by the Public Contracts Review Board

This Board has also taken note of the document submitted by witness Mr George Cutajar which consisted of:

**Document No. 1 – Record of contacts from the 4 October 2019 to
20 January 2020**

This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned opines that, the only issue that merits consideration is, whether Appellants’ submissions with regard to the mandatory ISO certification, was in compliance with the stipulated condition, in the tender document.

- 1. This Board would respectfully refer to article 7 (b) (ii) c) of the tender document which stipulates that:**

“c) Provide documentation confirming that the Economic Operator is in possession of Certification of Quality in Management by an Accredited Institution or has initiated the process for obtaining such certification. (Note2A)”

Through this particular clause, the Authority requested either the ISO certificate or evidence that the procedure for such an accreditation has begun.

- 2. This Board would point out that, the closing date for the submission of offers was 29 October 2019, so that submission of the certificate or proof of the initiation of the process had to be by the closing date of the tender. In this regard, this Board notes that, Appellants failed to submit either of the stipulated documentation, in their original submission. Furthermore,**

when the Authority requested clarification in this regard, Appellants submitted a copy of an acknowledgement letter from MCCA A dated 16

December 2019, as follows:

***“MALTA COMPETITION AND
CONSUMER AFFAIRS AUTHORITY***

*MIZZI HOUSE NATIONAL ROAD,
BLATA L-BAJDA HMR 9010
MALTA*

+356 23952000

16 December 2019,

Dear Mr. Spiteri Staines,

We acknowledge receipt of the application towards ISO 9001:2015 certification for Executive Security Services Ltd. We will contact you to advise the way forward to start the certification process.

Kind Regards,”

- 3. The above acknowledgment does represent an initiation of the procedure for the application for certification, however, from the testimony of the witness namely, Mr George Cutajar, Director at the MCCA A, it was credibly confirmed that there existed no prior communication from Appellants regarding such an application. At the same instance, this Board was not presented with evidence that initiation commenced more or less around the closing date of **29 October 2019.****

4. With regard to Appellants' claim in that, there was correspondence with MCCA well before the 16 December 2019, this Board would respectfully point out that, such evidence was not produced and neither recorded as received by MCCA.

In conclusion, this Board opines that:

- a) Appellants did commence the procedure for the application of the ISO certification but well after the closing date for the submission of offers.**
- b) No proof or evidence was provided by Appellants to justify any communication with the MCCA around the closing date of the tender.**
- c) The Evaluation Committee carried out the evaluation process in a just, fair and transparent manner.**

In view of the above, this Board,

- i. does not uphold Appellants' contentions,**

- ii. upholds the Contracting Authority’s decision in the award of the tender,**

- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

25 March 2020