

PUBLIC CONTRACTS REVIEW BOARD

MEDE/MPU/IFE/02/2020

**Tender for the Provision of Security and Receptionist Services to the Institute for Education
for Three (3) years**

Page | 1

Case 1556

DATE: 8th April 2021

This Board,

Having noted the Appeal filed by Dr Alessandro Lia on behalf of appellant company Executive Security Services Limited, (hereinafter referred to as the Appellant) and the contents of the correspondence received by the Board on the 12th February 2021.

Having also noted the contents of the Contracting Authority's letter of reply received by the Board on the 11th March 2021 and filed by Dr Amanda Spiteri Grech.

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties.

Having noted and evaluated the minutes of the Board sitting of the 25th March 2021 hereunder re-produced:

Case 1556 – MEDE/MPU/IFE/2/2020 – Tender for the Provision of Security and Receptionist Services to the Institute for Education

The tender was published on the 18th October 2020 and the closing date was the 16th November 2020. The value of the tender was €98,776 (excluding VAT).

On the 26th January 2021, Executive Security Services Ltd filed an appeal against the Ministry for Education (formerly MEDE) as the Contracting Authority objecting to their disqualification on the grounds that their bid failed to satisfy the Best Price Quality Ratio (BPQR) criterion for award.

A deposit of €493.88 was paid.

There were eight (8) bidders.

On 25th March 2021 the Public Contracts Review Board (PCRB) composed of Dr Ian Spiteri Bailey as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Executive Security Services Ltd

Dr Alessandro Lia	Legal Representative
Mr James Spiteri Staines	Representative

Contracting Authority – Ministry for Education

Dr Amanda Grech Spiteri	Legal Representative
Ms Rita Ellul	Secretary Evaluation Committee
Mr Matthew Bugeja	Representative
Mr John Trapani	Representative
Ms Fiona Vassallo Medici	Representative

Preferred Bidder – Grange Security

Mr Melvin Grange	Representative
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Dr Ian Spiteri Bailey Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations (LN 174.04).

He then noted that the letter of rejection was dated and communicated on the 1st February 2021 whereas the letter of objection was dated and filed on 12th February 2021, which is over the set limit of 10 days stated in the Public Procurement Regulations.

Dr Alessandro Lia Legal Representative for Executive Security Services Ltd said that the disqualification letter from the Contracting Authority stated that appeals had to be submitted up to the 12th February 2021. It is up to the Board to decide if they would consider this appeal bearing in mind that Appellants were only following the Authority's instructions.

Dr Amanda Spiteri Grech, Legal Representative for the Ministry for Education said that the Authority, whose reply is also over the statutory limit of 10 days, is prepared to abide by the directives of the Public Contracts Review Board.

The Chairman confirmed that both parties are in agreement that the statutory ten days had been overridden by both parties.

Dr Lia wished it to be recorded that Appellants were following the Authority's instructions - it was regrettable that bidders should be thus prejudiced and requested that the appeal should proceed if both parties agreed to ignore the dates in the correspondence.

The Chairman pointed out that the Board was bound to follow the procurement regulations. He noted for the record that both parties agree that they will not raise reciprocal objections to the out of date submissions then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 25th March 2021.

The Board further refers to the facts of the appeal, from where it considers that the letter of rejection was dated 1st February 2021, and from where it also results that the contracting authority had, in the same letter, written to the rejected bidder (the appellant) that an objection could be filed by Friday 12th February 2021 at noon.

The Board took note of the parties' agreement minuted during the sitting, whereby they both declared that they would be ready to reciprocally refrain from putting forward objections in respect of the lateness of the letter of objection as well as the letter of reply.

The Board furthermore notes that article 271 of SL174.04 specifically states that *the objection shall be filed within ten calendar days following the date on which the contracting authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period.*

Our Courts have on various occasions reiterated that:

*“L-Osservanza tat-termini stabbiliti fil-Kodici ta’ Organizazzjoni u Procedura Civili u f’ligijiet ohra speċjali li jirregolaw il-kondotta tal-proceduri quddiem il-Qrati u quddiem it-Tribunali huma ta’ ordni pubbliku u ma jistghu jigu bl-ebda mod injorati u lanqas bil-kunsens tal-partijiet rinunzjati jew mibdula. Dawn it-termini jehtieg li jigu osservati u dan taht piena ta’ irritwalita’ u nullita’ tal-proceduri li ghandha, fejn tokkorri u fejn hekk jirrizultaw lilha, tigi ukoll sollevata mill-Qorti ex officio in-nullita’ tattakka l-att inniffsu. Dak l-att fil-procedura hu null ghandu jitqies daqs li kieku qatt ma kien intavolat quddiem il-Qorti li allura jinhtigilha tiskartah indipendentament mill-mod kif l-irregolarita’ tkun giet migjuba a konoxxenza taghha”.*¹

That the Board thus, whilst acknowledging that the appellant company could have been misled with the declaration made by the contracting authority on the letter of rejection, and whilst it would be desirable that the/any contracting authority should refrain from making misleading statements but should strictly indicate what the law states, the appellant company should have always adhered with the provisions of the law, irrespective of such misleading statements. Furthermore the Board deems that no agreement between the parties can rectify any shortcoming at law within this context.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) To annul the letter of objection filed by the appellant company on the 12th February 2021, and to declare the appeal null and void, and
- b) In view of the above considerations, the Board furthermore orders that the deposit paid by the appellant upon filing of this appeal should be NOT refunded back to the same appellant.

The Board deems appropriate to take this opportunity to solicit any contracting authority to refrain from indicating any dates by when a letter of objection is to be

¹ Qorti tal-Appell **Giuseppi Caruana vs Charles s. Charlie Psaila** (21.03.1997) u Qorti tal-Appell **Adolf Micallef vs Direttur tas-Sigurta’ Socjali** (09.05.2014)

sent, but to solely indicate and/or reproduce the relative provision of the law which entitles a party to appeal.

Ian Spiteri Bailey
Chair

Lawrence Ancilleri
Member

Richard A Matrenza
Member