

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**

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Case 1557

DATE: 8th March 2021

This Board,

Having noted the Appeal filed by Dr Lara Chetcuti on behalf of appellant company Protection Services (Malta) 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 1557 – 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 Protection Services (Malta) 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 was technically not compliant.

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 – Protection Services (Malta) Ltd

Dr Lara Chetcuti	Legal Representative
Dr Shazoo Ghaznavi	Legal 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 objection was filed on the 1st February 2021 with the reply submitted on 12th February 2021 which is over the set limit of 10 days stated in the Public Procurement Regulations.

A discussion between the parties ensued regarding the dates on the letters. It was confirmed by Ms Rita Ellul, Secretary of the Evaluation Committee, that erroneously the Contracting Authority had stated that objections had to be lodged by 12th February 2021 instead of the 11th. The Board took note of this statement.

Dr Ghaznavi Legal Representative for Protection Services (Malta) Ltd said that the inadmissibility of the objection depended on the time when it was posted on the ePPS and the Board should be guided accordingly. Appellants had been unilaterally misguided and the appeal should not be annulled.

The Chairman said that submissions had been noted and the Board will decide thereon. He 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 acts the appeal, from where it considers that the letter of rejection was dated and published on the 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. Ms Rita Ellul, Secretary of the Evaluation Committee, stated that erroneously the Contracting Authority had stated that objections had to be lodged by 12th February 2021 instead of the 11th.

The Board notes that albeit being dated 11th February 2021, the letter of objection was filed on the 12th of February 2021.

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 specjali 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

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 erroneous declaration made by the contracting authority in 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.

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 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

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