

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 593**

**WSM 079/13**

**Period Contract for the Security Services and Security Duties to be performed at the Sant'Antnin Waste Treatment Plant in Marsascala.**

The tender was published on the 9<sup>th</sup> April 2013 with a closing date of the 30<sup>th</sup> April 2013.

The estimated value of the Tender was €120,000 (exclusive of VAT).

Four (4) bidders submitted their offers.

Signal 8 Security Services Malta Limited filed an objection on the 9<sup>th</sup> July 2013 against a decision of WasteServ Malta Limited to find their bid as administratively non-compliant and the award of the tender to JF Security & Consultancy Services Ltd for the price of €120,000 exclusive of VAT.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a meeting on Thursday 19<sup>th</sup> September 2013 to discuss the appeal.

**Present:**

**Signal 8 Security Services Limited - Appellants**

Mr Joseph John Grech                      Representative

**JF Security & Consultancy Services Limited - Recommended Tenderer**

Mr Matthew Formosa                      Representative  
Dr William Cuschieri                      Legal Representative

**WasteServ Malta - Contracting Authority**

Dr Victor Scerri                              Legal Representative  
Ms Agatha Galea                              Member Evaluation Board

The Chairman made a brief introduction and the appellant company's representative was invited to explain the motives of the firm's objection.

Mr Joseph John Grech on behalf of the appellants first raised the matter that his legal representative could not be present because he was sick. It was explained to him that the hearing would go on nonetheless.

He claimed that appellants' bid was discarded on false means because they had submitted all the necessary documents. Furthermore, he claimed that during the appeal procedure, the contracting authority had issued a call for quotations covering the same services being requested in this tender.

On being asked by the Chairman, Dr Victor Scerri stated that the preferred bidder was the cheapest and compliant bidder. The contracting authority had asked for the production of certain documents, including a conduct certificate for employees issued no more than six months before the closing date. Appellants' bid did contain conduct certificates, but some of them were no longer valid, being issued more than six months before. Thus these could not be taken into consideration by the evaluation board. The contracting authority also asked for ECDL certificates for module 2, 3 and 4 in respect of six persons. These were not submitted by the appellants. This was the reason behind the rejection of their offer.

Mr Joseph John Grech for appellants submitted that appellants produced seven conduct certificates.

Ms Agatha Galea for the contracting authority went through the list of conduct certificates submitted by the appellants:

Kenneth Ward	compliant
Joseph Micallef	compliant
Paul Mallia	compliant
George Mercieca	dated 24 October 2012 expired
Dorothea Schembri	dated 12 June 2012 expired
Conrad Camilleri	compliant
Manuel Aquilina	dated 24 October 2012 expired
Charmaine Ebejer	compliant.
Godwin Sayan	dated 9 August 2012 expired

The closing date of the tender was the 30<sup>th</sup> April 2013 so the conduct certificates issued on the 24 October 2012 were expired at the time of the closing date. Conduct certificates are only valid for six months even for the police.

Mr Joseph John Grech contends that the validity of the certificates should have been on the opening date of the tender and not on the closing date.

The Chairman asked the contracting authority to confirm that the preferred bidder had the cheapest offer and Dr Victor Scerri confirmed this.

Dr William Cuschieri on behalf of the preferred bidder submits that the contracting authority wanted ECDL certification and it should have obtained these from all bidders. In appellants' objection another point was raised that has not been mentioned in this hearing yet; the question of the price offer. It was alleged that the contract would lead to precarious employment. He filed a document that was a copy from the newspapers that contained a declaration by the General Workers Union wherein this states that the Security Guard costs €5.66 an hour. The preferred bidders' offer was higher than €5.66 it is not understood how the letter of objection claims precarious employment. He also made reference to another case decided by this Board, Case 416/12 wherein the Board had decided that if a tenderer undertook to abide with the labour regulations in the payment to its employees then, the tenderer was compliant. Thus his clients' offer was compliant.

Dr Victor Scerri reiterated that appellants' offer did not include all the six employees' ECDL certificates. He stressed that the conduct certificates had to be issued within six months prior to the date of the submission of the offer. Appellants' tender was filed on the 30<sup>th</sup> April 2013 so their previous argument regarding the date when the tender was issued does not hold. Appellants did not file their bid before the closing date, but on the date.

Mr Richard A. Matrenza pointed out that the document filed earlier by the preferred bidder does not apply to this case. It refers to what Mr Cory Greenland said were calculations made by the union on what the minimum wage should be. He contends that wages should be guided by the Circular issued by the head of the Civil Service. What Mr Greenland stated does not affect the content of the Circular.

Mr Joseph John Grech for appellants said that the same Mr Greenland said that if the wages are less than €6.00 an hour, the job could be considered as precarious. That was the reason why appellants' offer was for €6.00. He alleged that the ECDL requirement was tailor made to favour the preferred bidder. These were after all minimum wage earners and do not need the ECDL. Four of the persons indicated in appellants' offer had the ECDL certification while the other two had an equivalent certification by the ETC, yet appellants' offer was rejected.

The hearing was brought to an end at this point.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 9<sup>th</sup> July 2013 and also through the Appellant's verbal submissions during the hearing held on 19<sup>th</sup> September 2013, had objected to the decision taken by the Pertinent Authority, in that:**

- a) The Appellant's bid was declared administratively non compliant by the Evaluation Board of the Contracting Authority, for failure to submit valid Police Conduct Certificates.**
- b) The Appellant's Bid was declared administratively non compliant by the Evaluation Board for failure to submit 6 ECDL certifications in Module 2,3 and 4. In fact only four were submitted.**

- c) **The Recommended Bidder's offer did not comply with recent instructions regarding precarious labour conditions. In this respect, the rates quoted by Appellant could not afford the minimum requirements to abide by these guidelines.**

**Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 19<sup>th</sup> September 2013, in that:**

- a) **The Preferred Bidder was the cheapest and fully compliant.**
- b) **The required conduct certificates had to be valid by the closing date of the tender.**
- c) **The ECDL 2, 3 and 4 in respect of 6 persons were not fully submitted.**

**Reached the following conclusions:**

- 1. When the Contracting Authority issues a tender, the same pertinent Authority lays down specific conditions and required documentation which must accompany the tender document.**
- 2. In this particular case, certification regarding conduct and module's requirements were specifically mandatory requirements. In this regard it is futile to present conduct certificates which according to law expires the period of validity of same.**
- 3. The Preferred Bidder's offer was fully compliant and the cheapest.**

**In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Richard A. Matrenza  
Member

*8 October 2013*