

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 665**

**WSM 197/2013**

**Period Contract for Security Services and Security Duties to be Performed at the Maghtab Complex.**

The tender was published on the 23rd August 2013. The closing date was the 13th September 2013.

The estimated value of the Tender was €35,035 (Exclusive of VAT).

Four (4) bids had been received for this tender.

On the 12<sup>th</sup> December 2013 Kerber Securities Limited filed an objection against its bid having been rejected because it was administratively non-compliant.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancillieri as members convened a hearing on Thursday the 6<sup>th</sup> February 2014 to discuss the objection.

Present for the hearing were:

### **Kerber Securities Limited - Appellant**

Mr Joseph Urpani	Representative
Dr Mark Portelli	Legal Representative

### **Signal 8 Security Services Malta Limited- Preferred Bidder**

Mr Joseph John Grech	Representative
Mr Josef Cuschieri	Representative

### **WasteServ Malta Limited - Contracting Authority**

Mr Marvic Fenech Adami	Chairperson Evaluation Board
Ms Agatha Galea	Member Evaluation Board
Dr Victor Scerri	Legal Representative

Following a brief introduction by the Chairman, the appellant's representative was invited to make his submissions on the objection.

Dr Mark Portelli on behalf of his clients the appellant said his client's offer was disqualified because it was alleged that it was in breach of clause 1.2.12 in that it failed to submit the Personnel Licences, Certificate of Fire Fighting Course and computer literacy certificate for one of the guards. The same clause asked for bidders to submit 5 personnel and he wanted the contracting authority to specify which of the guards caused the bid to be rejected.

Dr Victor Scerri said that there were several missing documents, for example, certificates in computer literacy. Appellants offered six persons but only two certificates in computer literacy were submitted. The certificates of Paul Genovese, Anthony Farrugia, Jesmond Vella and Joseph Micallef were missing. The fire fighting certificates submitted in fact were not fire fighting certificates. The Personnel Licence of one of the employees was also missing. There were a number of requested documents for some of the submitted personnel missing.

Dr Mark Portelli on behalf of appellant referred to clause 7.6.2 at page 22 of the tender document which states that the computer literacy certificates are only needed for personnel working the day shift.

Dr Victor Scerri said that the evaluation board did not have the information which of the submitted personnel by appellant was to work on the day shift or otherwise. The contracting authority asked for a number of employees who had computer literacy certification. There were other missing certificates. The Fire Fighting certificates, because appellant submitted certificates regarding the safe use of fire extinguishers, and other certificates for some employees.

Dr Mark Portelli for the appellant stated that the rejection letter mentioned one guard and now the contracting authority is mentioning several of appellant's submitted guards. This amounted to a shifting of the goal-posts. Although the tender asked for 5 guards, appellant submitted documentation for 6 guards. Thus it follows that if one of these guards did not have the proper documentation the other five had. And the appellant's bid was the cheapest.

The Chairman remarked that if the appellant had to submit documentation and this was not all submitted it meant that the documentation was missing.

Dr Mark Portelli insisted that the letter of rejection did not specify which guard had the missing documentation.

The Chairman asked the contracting authority which documents were missing in appellant's bid.

Dr Victor Scerri on behalf of the contracting authority said that the tender asked bidders to submit five persons as employees and the appellant offered six persons, this does not mean however that if there was missing documentation for one of them, the others were in order. The missing certificates did not refer to the same person but these six persons had several missing documents of a different kind. The bid did not have complete documentation for five persons.

Mr Joseph Urpani for the appellant said that Jesmond Vella had submitted a certificate from the Hotel Emergency Team Course which included fire fighting, and also a certificate from another college for Health and Safety which also included fire fighting. Of the two other employees on the day shift Bjorn Attard attended the same course. Vince Axisa submitted all the documents except for the licence but he was the sixth person submitted by appellant. Only the tag had been missing, he was licensed but did not have the tag.

Mr Marvic Fenech Adami the Chairperson of the Evaluation Board, on oath stated that the contracting authority asked for five guards and the appellant submitted six. As a total of persons submitted, the appellant's bid was in order but there were missing certificates. Computer literacy certificates were missing; the fire fighting certificates submitted were not valid as fire fighting certificates. Another one had the difficulty in that he was not in possession of a licence. There were no five persons who were compliant. Four, Paul Genovese, Anthony Farrugia, Jesmond Vella and Joseph Micallef had no computer literacy and another one Bjorn Attard possessed computer literacy but did not have fire fighting certificate. There remained Vince Axisa who had the problem that he did not possess a licence. There were no five persons who had all the qualifications required.

At this point the hearing was brought to a close.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 12<sup>th</sup> December 2013 and also through Appellant's verbal submissions during the hearing held on 6<sup>th</sup> February 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that his offer did satisfy the requirements as specified in clause 1.2.12 of the tender document.**
- b) Appellant affirms that all necessary documents were submitted to the Contracting Authority.**
- c) Appellant complained of the fact that in the 'letter of refusal', the Contracting Authority did not specify which documentation was missing. Furthermore Appellant contends that the personnel being assigned to this tender were qualified.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 6<sup>th</sup> February 2014, in that:**

- a) The Appellant in actual fact did not submit all the documentation as stipulated in the tender document.**
- b) The technical qualifications of the personnel to be assigned to this tender by Appellant were not up to the required standard as required in the tender document.**

**Reached the following conclusions:**

- 1. This Board opines that the tender document is a contract between the Tenderer and the Contracting Authority. So that any condition or requirement laid out in the tender document must be strictly adhered to.**

**In this regard, the tender document stipulated certificates to confirm the technical qualifications of the personnel to be assigned for this tender. From submissions made during the hearing it was proved that the Appellant failed to submit all the requested documentation.**

- 2. From the documentation related to qualifications of personnel to be deployed, the Evaluation Board could only adjudicate on the actual documentation submitted by Appellant. During the hearing of this appeal, it was evidently proved that the personnel to be assigned for this tender did not have the required technical standard.**

**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. Lawrence Ancillieri  
Member

*11 March 2014*