

# **PUBLIC CONTRACTS REVIEW BOARD**

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## **Case 1290 – CT 2091/2018 – Tender for the Provision of Security Services to the Foundation for Tomorrow’s Schools**

The publication date of the call for tenders was the 16<sup>th</sup> July 2018 whilst the closing date of the call for tenders was 21<sup>st</sup> August 2018. The estimated value of the tender (exclusive of VAT) was € 1,000,000.

On the 18<sup>th</sup> February 2019 Executive Security Services Limited filed an appeal against the Foundation for Tomorrow’s Schools as the Contracting Authority objecting that their bid had been excluded as it failed to satisfy the criterion for award. A deposit of € 5,000 was paid.

There were seven (7) bidders.

On 25<sup>th</sup> March 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri 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 Limited**

Dr Matthew Brincat	Legal Representative
Ms Caroline Tabone	Representative

### **Recommended Bidder – Signal 8 Security Services Limited**

Dr Carlos Bugeja	Legal Representative
Dr Joseph John Grech	Representative

### **Contracting Authority – Foundation for Tomorrow’s Schools**

Dr Lara Chetcuti	Legal Representative
Eng Simon Scicluna	Chairperson Evaluation Committee
Ms Maria Cutajar	Member Evaluation Committee

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

Dr Matthew Brincat Legal Representative of Executive Security Services Limited (ESS) stated that in this appeal the Appellants wanted to examine the criteria for marking in the ranking of the awards as well as look at the ranking in several previous identical tenders so as to compare the methods of marking. Price was not a factor in the appeal but it was essential to compare the Appellants’ marks with those of the winning bid to find out the difference between good and exceptional grades on the various criteria. As an example Dr Brincat selected Criteria B Item 3 –

‘Security of Visitors’. Adjudicators had stated that ESS had matched and exceeded the minimum requirements in this criterion yet they were only awarded four out of five marks. If they had exceeded the requirements it was inexplicable why the maximum marks were not awarded. This appeared to be a case of subjective marking.

Dr Lara Chetcuti Legal Representative of the Foundation for Tomorrow’s Schools (FTS) explained that the criteria for the award were according to the Public Procurement Regulations and followed the Best Price Quality Ratio (BPQR) basis. There were various grades of awarding of points and she referred to PCRB Case 1088 of 2017 when the Board had confirmed that the BPQR was the best system to suppress subjectivity in the award of tenders. Appellant did not seem to understand that even by fulfilling all the tender requirements it did not necessarily follow that one would obtain full marks.

Mr Simon Scicluna Representative of the FTS said that he was the Chairperson of the evaluation committee. The criteria of mark allocation were not something established by the Foundation and he went on to explain how the five grades of marking were applied.

Ms Maria Cutajar (259481M) called as a witness by the Contracting Authority testified on oath that she was a member of the evaluation committee. The minimum requirements are as described in the tender organisational methodology. With regard to Criteria B Item 3 referred to earlier in the hearing witness stated that although Appellants had exceeded the minimum requirements other bidders had presented policy and procedures which were better, although both systems were good – hence the difference in marks allotted. The preferred bidder had submitted rosters, templates and policies procedures in excess of the terms of reference.

Dr Brincat said that whilst not doubting the integrity of the members of the valuation committee it caused him some anxiety that the witness spoke in the plural form regarding the committee’s decisions. He could not accept that all the members were in total agreement on the allocation of points. Straight away this removed the objectivity.

Ms Cutajar said that the marking by members was done on an individual basis and then the overall opinion of members was considered, but there was no change in the marks awarded.

Dr Brincat then referred to Criteria C – Social Aspects ‘Evidence that Economic Operator is an Equal Opportunity employer’ on which criterion Appellants had submitted the Equality Mark Certificate. Despite this .6 of a mark had been deducted although the Authority had prefaced their remarks by the word ‘moreover’ implying that tenderer had submitted more than was requested.

Mr Scicluna said that in this instance the preferred bidder had submitted an equality policy document which was beyond expectations, and they therefore were awarded a better mark.

Dr Brincat again stated that testimony had been given that marking was not done individually and had been discussed between the evaluators – this defied the point of objectivity and the fairness of the process without the evaluation committee realising it.

Dr Chetcuti said that such assertion was not correct as witness had clarified that documents were marked separately followed by the overall scoring which meant all bidders were treated equally.

The evaluation report was accepted by the Department of Contracts which was another level of approval.

Ms Cutajar was recalled by the Chairman to answer questions under oath from him. She explained the evaluation process step by step. The three members of the committee had individual marking grids and they marked the bids separately. Then they were checked overall to arrive at the final mark. Each member marked their grid individually and no influence was exerted on other members – the individual marks were not changed so that overall there was justification for their marking.

Dr Carlos Bugeja Legal Representative for Signal 8 Security Services (Malta) Limited said that this appeal was based on conjecture and hypothesis. His clients had submitted detailed policies in writing – they were an ISO certified company which ran a 24/7 control room and was exceptional in their performance.

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

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**This Board,**

**having noted this Objection filed by Executive Security Services Limited (herein after referred to as the Appellants) on 18 February 2019, refers to the claims made by the same Appellants with regard to the Tender of Reference CT 2091/2018 listed as Case No 1290 in the records of the Public Contracts Review Board, and awarded by the Foundation for Tomorrow’s Schools (herein after referred to as the Contracting Authority).**

**Appearing for the Appellants:**

**Dr Matthew Brincat**

**Appearing for the Contracting Authority:**

**Dr Lara Chetcuti**

**Whereby, the Appellants contend that:**

- a) **their main concern refers to the criteria for the allocation of marks. In this regard, Appellants’ request to an examination of the difference between the criteria of “good” and that of “exceptional grades” and the respective allocation of points thereto.**

**This Board also noted the Contracting Authority’s ‘Letter of Reply’ dated 21 February 2019 and its verbal submissions during the hearing held on 25 March 2019, in that:**

- a) **the Foundation for Tomorrow’s Schools maintains that the allocation of marks was carried out in accordance with the stipulated formula of the Best Price Quality Ration (BPQR) system and in accordance with the Public Procurement Regulations. In this respect, the Appellants should accept the fact that, fulfilling the Tender Requirements, does not necessarily imply that the Bidder will gain full marks, but it rather depends on what other Bidders offer, over and above the minimum Tender requirements.**

**This same Board also noted the testimony of the following witnesses who were duly summoned by the Foundation for Tomorrow’s Schools:**

1. Mr Simon Scicluna

2. Ms Maria Cutajar

**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 issue that merits consideration is the system adopted by the Evaluation Committee, in the allocation of marks to the Appellants' offer.**

1. **This Board would respectfully refer to Clause 9.2 of the Tender Document, (Criteria for Award), wherein, the award criteria are fully explained as follows:**

*“Please note that the following points allocation will be followed, based on the maximum points allowed for each of the BPQR criteria. The description of exceptional, very good, good, acceptable and unacceptable are listed below:*

<i>Exceptional</i>	<i>Matches the minimum requirements and goes by far beyond the expectations listed in the Terms of Reference</i>
<i>Very Good</i>	<i>Matches the minimum requirements and goes beyond the expectations listed in the Terms of Reference</i>
<i>Good</i>	<i>Matches the minimum requirements but also has add-ons</i>
<i>Acceptable</i>	<i>Matches the minimum requirements</i>
<i>Unacceptable</i>	<i>Not Acceptable</i>

*The marks that shall be given for each BPQR criteria are listed below:*

<i>Maximum Points 100%</i>	<i>Exceptional 100%</i>	<i>Very Good 80%</i>	<i>Good 50%</i>	<i>Acceptable 20%</i>	<i>Unacceptable</i>
10	10	8	5	2	0
8	8	6.4	4	1.6	0
7	7	5.6	3.5	1.4	0
5	5	4	2.5	1	0
4	4	3.2	2	0.8	0

The above stipulated description, as to how the marks will be awarded and what constitutes the various grades of award criteria, is well defined and explained, however, one must acknowledge that when establishing the benchmark for the “*very good*” and “*exceptional*”, a form of comparison of offers must be made to determine the most advantageous offer and in this regard, such an offer is allocated the full marks. Conversely, lesser marks are given for the offer rendering fewer benefits and so on.

2. This Board would also point out that the “*Best Price Quality Ratio*” is the most objective form of assessment of an offer, in that, it suppresses the incidence of subjectivity, so that each offer is assessed on the quality of service or works being proposed by the Bidder, apart from the fact that each evaluator is individually allocating marks on established criteria, so that the median result is as fair and objective, as one would expect.

**3. In this particular case, the Appellants are contesting the points awarded on 18 articles of the “Award Criteria” of their offer, but during the Public Hearing, only some of these issues were raised and, in this regard, this Board would treat the merits of such issues, as follows:**

**a) Criteria C – Social Aspects – “Evidence that Economic Operator offers equal opportunities”**

**In this particular issue, the Appellants are maintaining that since they had submitted the “equality mark” certificate and offered more than that requested, they were not given the full marks of 3, in fact they were awarded 2.4.**

**In this regard, this Board would respectfully point out that, after having examined the Evaluation Report, it is comfortably convinced that the marks so allotted to Appellants’ offer, for this particular item was one of the highest given. The Appellants’ submission was appropriately deemed to be above what was requested so that it was classified as “Very Good” and not exceptional, so that the full marks of 3 points could not be allocated and the given mark of 2.4 is fair and just.**

**4. In their letter of Objection, the Appellants referred to eighteen items of the “Award Criteria”, on which they claim that more marks should have been given. In this respect, this Board, after examining the Evaluation Report would briefly comment on each of the points raised by the Appellants, as follows.**

**a) Criteria A – Personnel to be employed on contract**

Appellants’ offer was correctly deemed as very good. Submissions were beyond those requested, but not exceptional.

**b) Criteria B – Contract Management and Operations – Timekeeping**

Appellants’ offer was correctly deemed as very good. Submissions included add-ons, but not exceptional.

**c) Criteria B – Security of Personnel**

Appellants’ submission included minimum requirements and “*add-ons*” but was deemed good, hence awarded 2.5 out of 5, corresponding to “*good*”.

**d) Criteria B – Security of Visitors**

Appellants’ submission was fairly deemed to be very good, so that four out of five points were awarded.

**e) Criteria B – Safeguarding of Assets**

Appellants’ offer in this regard did not offer terms beyond the expectations so that it was correctly deemed as “*Good*”, thus credited with the stipulated mark related for this grade.

**f) Criteria B – Sick Personnel**

Again, the Appellants’ submission was correctly rated as good and allotted the respective mark accordingly.



**g) Criteria B – Industrial Action**

Appellants' submission was correctly deemed as good and allotted the respective mark accordingly.

**h) Criteria B – Breakdown of Public Transport System**

Appellants' submission was correctly deemed as good and allotted the respective mark accordingly.

**i) Criteria B – Draft Time Sheets with Details**

Appellants' submission was correctly deemed as good and allotted the respective mark accordingly.

**j) Criteria B – Draft Incident Report**

Appellants' submission was correctly deemed as good and allotted the respective mark accordingly.

**k) Criteria B – Support Services Proposed Methodology**

In this case, the Appellants' submission goes beyond the requirements so that quite fairly, it was deemed as very good and awarded the marks accordingly.

**l) Criteria B – Minimum Requirements – Photos Showing Uniforms and Logo**

Appellants' offer in this regard, was correctly deemed as providing the minimum requirements so it was allotted the correct marks accordingly.

**m) Criteria C – Proof of Good Working Conditions**

In this particular instance, the Appellants' insurance policies did not render benefits to the employees and the allotted mark of one point out of three was fair and reasonable.

**n) Criteria C – Freedom to join a Union**

A justifiable assessment of the Appellants' submission in this regard was correctly rated as "*Very Good*".

**o) Criteria C – Direct Debit**

Appellants' submission went beyond the norm due to the Bank's Letter confirming that the system is in place and in this respect, quite appropriately, the Appellants' offer was deemed as "*Very Good*" and awarded the marks accordingly.

**p) Criteria C – Employee’s Written Contract**

Again, in this respect, the Appellants’ submission was correctly rated as very good, hence awarded 1.6 out of 2 marks.

**5. From the examination of the allocation of marks adopted by the Evaluation Committee, this Board is credibly convinced that the methodology applied, in the evaluation process, was logical, objective and consistent throughout, so that, the evaluation procedure for all the offers, under the Best Price Quality Ratio criteria, was carried out in an objective, fair and transparent manner.**

**In conclusion, this Board opines that:**

- a) the marks allocated for each offer were objectively established by the Evaluation Committee and reflected the “*add ons*” on the minimum Tender requirements, each Bidder offered, in a proportionate and consistent manner;**
  
- b) the marks awarded to the Appellants’ offer were objectively allocated to what their offer included, when compared to the other competing Bids, so that, this Board finds no justifiable cause to deem otherwise;**
  
- c) the Tender Document specified in clear terms the full workings of the “*Award Criteria*” formula and in this respect, this Board confirms that the Evaluation Committee complied completely with the dictated terms.**

**In view of the above, this Board,**

- i) does not uphold the contentions made by Executive Security Services Limited;**
  
- ii) upholds the decision of the Foundation for Tomorrow's Schools in awarding the Tender to Signal 8 Security Services Limited;**
  
- iii) directs that an amount of two thousand euro (€ 2,000) is to be retained from the deposit paid by the Appellants to cover costs relating to this Appeal.**

Dr Anthony Cassar  
Chairman

Mr Lawrence Ancilleri  
Member

Mr Carmel Esposito  
Member

*11<sup>th</sup> April 2019*