

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1390 – ROCA/T/5/2019 – Tender for the Provision of Security Services for the Registry of Companies Agency’s new Premises**

The publication date of the tender was the 7<sup>th</sup> May 2019 whilst the closing date was the 28<sup>th</sup> May 2019. The estimated value of the tender (exclusive of VAT) was € 134,565.60.

On the 11th October 2019 Grange Security (Malta) Ltd filed an appeal against the Malta Business Registry as the Contracting Authority on the grounds that their bid was disqualified as it failed to satisfy the criterion for award. A deposit of € 672 was paid.

There were three (3) bidders. [Note – information sheet erroneously states two]

On 26<sup>th</sup> November 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Grange Security (Malta) Ltd**

Dr Simon Micallef Stafrace	Legal Representative
Mr Melvin Grange	Representative

#### **Recommended Bidder – Signal 8 Security Services Malta Ltd**

Dr Carlos Bugeja	Legal Representative
Mr Joseph John Grech	Representative

#### **Contracting Authority – Malta Business Registry**

Dr Geraldine Spiteri Lucas	Legal Representative
Mr Kenneth Brincat	Chairperson Evaluation Committee
Mr Colin McElhatton	Secretary Evaluation Committee
Mr Joseph Farrugia	Member Evaluation Board
Ms Annalise Zammit	Member Evaluation Committee

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Dr Simon Micallef Stafrace Legal Representative of Grange Security (Malta) Ltd stated that the purpose of this appeal was to determine why .6% of a mark was deducted from Appellants submission. The preferred bidder was awarded full marks because he submitted an ISO certificate whilst Appellant did not, although exactly the same service was offered by both bidders. The ISO certificate was not requested as part of the tender process, so in deciding the award on this basis the evaluation committee was moving away from the tender requisites. As a way of resolving this apparent anomaly Appellant was suggesting that the Board should consider splitting this tender between the two bidders.

The Chairman pointed out that the only function of the Board is to ensure that the evaluation was correctly carried out. The Best Price Quality Ratio (BPQR) adjudication ensures that there is less subjectivity in the evaluation of a tender, and an objective comparison can be made of the bids.

Mr Kenneth Brincat, Chairperson of the evaluation committee stated that all three bidders were fully compliant at equivalent prices. An objective comparison was carried out and one bidder had an ISO certificate which was considered as an add-on and gave that bidder the edge.

Dr Micallef Stafrace said that the ISO certificate is a subjective not objective criterion and was not requested in the tender.

Dr Carlos Bugeja Legal Representative of Signal 8 Security Services Malta Ltd said that the BPQR adjudication system is tailored to judge exactly who meets and who exceeds expectation. The submission of an ISO certificate exceeded the other submissions which merely met requisites.

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

End of Minutes

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## **Decision**

**This Board,**

**having noted this objection filed by Grange Security (Malta) Ltd (herein referred to as the Appellants) on 11 October 2019, refers to the claims made by the same Appellants with regard to the tender of refence ROCA/T/5/2019 listed as case No. 1390 in the records of the Public Contracts Review Board, awarded by Malta Business Registry (herein referred to as the Contracting Authority).**

**Appearing for the Appellants:**

**Dr Simon Micallef Stafrace**

**Appearing for the Contracting Authority: Dr Geraldine Spiteri Lucas**

**Whereby, the Appellants contend that:**

- a) **Their main concern refers to the fact that their offer was deducted 0.6% of a mark due to the alleged fact the preferred bidder's offer included an 'Added On' certification of ISO. In this respect, Appellants insist that such a certification was not a mandatory requirement in tender dossier so that, such a certification should not serve to the detriment of Appellants' offer. In this regard, Appellants insist that, since both their offer and the successful bidder's, are on the same compliancy level, the tender services should be split between the two bidders.**

**This Board also noted the Contracting Authority's 'Letter of Reply' dated 21 October 2019 and its verbal submissions during the hearing held on 26 November 2019, in that:**

- a) **The Authority contends that the Evaluation Committee carried out an objective comparison among the three compliant offers and the successful**

**offer had the added advantage of being ISO certificated so that the offer of the preferred bidder edged over the other bids.**

**This same Board also noted the testimony of the witness namely:**

**Mr Kenneth Brincat duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned, opines that the issue that merits consideration is the additional allocation of percentage mark to the successful tenderer.**

- 1. First and foremost, this Board would point out that the BPQR system of assessing a particular offer is the most objective method of filtering offers and arrives at the most advantageous one.**
- 2. In this particular case, three were fully compliant offers at equivalent prices so that, when such a situation arises, the Evaluation Committee, quite appropriately, must carry out a comparison exercise in order to establish that offer which guarantees the best assurance for the execution of the tendered services.**

**3. With regard to Appellants' contention that the deduction of 0.6% from their offer was not justified and highly subjective, this Board opines that although ISO certification was not a mandatory requirement, same certification does represent an 'Added On' benefit to the Authority and in carrying out an objective comparison among the compliant bids, the Evaluation Committee, under these circumstances, acted in a transparent and responsible manner in taking into consideration the advantage of having an ISO certification. The preferred bidder's offer edged over the other two offers and in this regard this Board does not identify any subjectivity in awarding the successful offer an additional allocation of marks for being the only bid having an ISO certification which, in the long run, will reap benefits to the Authority.**

**4. With regard to Appellants' contention in that, since their offer was equally fully compliant with the successful bid, the tendered service should be split between the two bidders, this Board would respectfully point out that under the BPQR evaluation system, the successful offer was credibly established due to the legitimate 'Add On', offered by the preferred bidder and in this respect, this Board does not identify any justifiable reason as to why the tendered service should be carried out by**

**two bidders and not by the successful bid, the latter of which earned justifiably highest score.**

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

- a) Although the extra score gained by the preferred bidder's offer related to an item which was not mandatory and not requested in the tender dossier, the ISO certification obtained by the preferred bidder represents an 'Add On' benefit to the Authority in the execution of the tendered works.**
- b) The allocation of marks awarded to the preferred bidder's offer relating to the ISO certification is justified and was objectively assessed during the evaluation process**
- c) There exists no justifiable reason as to why the award of the tendering services should be divided between the preferred bidder and Appellants.**
- d) The evaluation process was carried out in a just and transparent manner in an objective manner.**

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

- i. does not uphold Appellants' contentions,**
  
- ii. upholds the Authority's decision in the award of the tender,**
  
- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*10 December 2019*