

PUBLIC CONTRACTS REVIEW BOARD

Case 1403 – CT 3061/2019 – Tender for the Provision of Security Services at the Agency for the Welfare of Asylum Seekers (AWAS) Open Centres.

The publication date of the tender was the 6th July 2019 whilst the closing date was the 8th August 2019. The estimated value of the tender (exclusive of VAT) was € 5,415,645.

On the 28th October 2019 Signal 8 Security Services Malta Ltd filed an appeal against Agency for the Welfare of Asylum Seekers as the Contracting Authority on the grounds that their bid was not the cheapest compliant offer. A deposit of € 27,078 was paid.

There were four (4) bidders.

On 17th December 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Signal 8 Security Services Malta Ltd

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| Dr Carlos Bugeja | Legal Representative |
| Mr Joseph John Grech | Representative |

Recommended Bidder – G4S Security Services

Mr Eder Catania

Contracting Authority – Agency for the Welfare of Asylum Seekers

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| Dr Abigail Caruana Vella | Legal Representative |
| Ms Sarah Grech | Chairperson Evaluation Committee |
| Ms Janica Penza | Secretary Evaluation Committee |
| Mr Charles Lia | Member Evaluation Committee |
| Ms Sharon Spiteri | Member Evaluation Committee |
| Ms Doreen Seracino | Representative |

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

Dr Carlos Bugeja Legal Representative for Signal 8 Security Services Malta Ltd said that the first point of a two-pronged appeal was that the final adjudication marked Appellant down by just .28% of a mark which is minimal. An extensive exercise had been carried out (filed with the letter of objection) showing the set-up of the scoring sheet in the tender document with that used in the evaluation, and which shows totally different results. The discrepancy arises in the marks outcome due to the converting of marks as percentages in one exercise compared to integers in the other exercise. There are instances where the maximum mark in the tender document and the maximum mark in the evaluation outcome are not the same. The lack of marking according to that laid out in the tender document changed completely the Appellants' marks.

The second point of the appeal is that there appears to be a process of reverse engineering to place Appellant in second place, in that in criteria where they met the tender specifications completely they had been marked down. In several instances like *Safeguarding of Assets* and *Timetable Criteria* Appellants had met the necessary criteria but not awarded the maximum marks. Points appear to have been deducted without justification or logic.

Dr Abigail Caruana Vella Legal Representative for the Agency for the Welfare of Asylum Seekers stated that this was a Best Price Quality Ratio (BPQR) tender and whilst bidders were close on the financial marks which had a weighting of 45%, the preferred bidder did better on the technical marks which had a weighting of 55%. Points were awarded accurately and on merit but there were divergences as different points were allocated to different criteria and marking had been carried out evenly on all bids.

As for the second grievance raised by Appellants, the Board was referred to the letter of reply from the Contracting Authority which rebutted the claims made on marks deducted on several criteria. She referred to the Case *Al Nibras vs Ministry of Education* as having relevance to this case

Mr Charles Lia (402381M) called as a witness by the Public Contracts Review Board testified on oath that he was a member of the evaluation committee. He was referred to various criteria in the tender and asked to explain the reasons why marks had been deducted:

- *Security of Staff and Visitors* – according to witness bidder had a high level of security measures but did not explain what happens in case of an incident; no remedial action proposed if preventive measure do not work
- *Industrial action affecting the contractor's workforce* – bidder only meeting expectations; hence only awarded 3 marks
- *Breakdown of transportation system* – detailed plan and good initiative but not elaborated
- *Employees on site provide expected level of service* – bidder only provided what the tender expected; too generic and no extra information given

The Chairman said that it seemed odd that marks had been deducted in criteria where the bidder had met the tender expectations. He then thanked the parties for their submissions and declared the hearing closed.

Decision

This Board,

having noted this objection filed by Signal 8 Security Services Malta Ltd (herein after referred to as the Appellants) on 28 October 2019, refers to the claims made by the same Appellants with regard to the tender of reference CT 3061/2019 listed as case No. 1403 in the records of the Public Contracts Review Board awarded by Agency for Welfare of Asylum Seekers (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Dr Carlos Bugeja

Appearing for the Contracting Authority: Dr Abigail Caruana Vella

Whereby, the Appellants contend that:

- a) The procedure applied in the allocation of marks during the evaluation process, differed from that stipulated in the tender dossier and in this regard, such an adopted procedure affected adversely Appellants' allotted marks.**
- b) Wherever Appellants' offer met the necessary criteria, Appellants were not awarded the proportional mark, as dictated in the tender document.**

This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 6 November 2019 and its verbal submissions during the hearing held on 17 December 2019, in that:

a) The Authority insists that the preferred bidder did better on the technical score whilst both bidders were close on the financial aspect, rendering a minimal difference in the overall score, under the BPQR system. In this regard, the Authority maintains that points were awarded in a just and fair manner.

b) With regard to Appellants’ second contention, the Authority gave justifiable reasons as to why marks were deducted from Appellants’ offer and these were on the technical areas of their offer. In this regard, the Authority maintains that, the corresponding marks awarded to Appellants’ offer represented the state of presentation of data, as compared to that of the preferred bidder.

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

Mr Charles Lia, Evaluator 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 issues that merit consideration, are two-fold namely:

- a) Adopted allocation of marks and**
- b) Points awarded on items meeting the stipulated requirements.**

1. With regard to Appellants' first contention, this Board would respectfully refer to article 9.2 of the 'Instructions to Tenderers', wherein the tender document itself dictates the method of scoring which is to be adopted in the evaluation process. At this stage of consideration, this Board would point out that through the principle of self-limitation, the Evaluation Committee had to abide strictly by such a stipulated procedure.

2. The Authority, in its 'Reasoned Letter of Reply' dated 6 November 2019, stated that, the Evaluation Committee admittedly did not follow the same procedure as that stipulated in the tender document, however, the Authority applied article 1.1 of the 'Instructions to Tenders', wherein it is stipulated that:

“In case of any discrepancy between the requirements contained in this document (The Tender Document) and those in the tender response format (XML Tender Structure), the latter shall prevail.”

In this regard, this Board notes that the Evaluation Committee applied the scoring system as that denoted in the EPPS, on all the offers, in an even manner, so that equal treatment in the evaluation process applied throughout the allocation of scores on all offers.

- 3. Although this Board would confirm that the divergence in the scoring method was permissible via article 1.1 of the ‘Instructions to Tenderers’, same Board recommends that whenever possible, the same method of scoring as that dictated in the tender document should be applied. At the same instance, this Board opines that such a divergence, did not affect the overall scoring of Appellants’ offer as it was applied evenly on all the competing offers, so that the principles of proportionality and equal treatment were applied in this regard.**

- 4. With regard to Appellants’ second grievance, this Board would refer to the items mentioned in Appellants’ ‘Letter of Objection’ namely:**

a) **Contract Management – Measure to Ensure Time-Keeping**

From the comments made in the evaluation report, Appellants' offer was not given full marks, although the submissions made were highly evaluated by the Evaluation Committee.

b) **Contract Management – Measures to Ensure Security of Staff & Visitors**

The evaluation report states that the bidder has a high level of security measures. The pre-employment screening, searches, site supervisor responsibility and training of staff are a big plus to the Contracting Authority. In this respect, Appellants were not given full marks.

c) **Measure to Ensure Safeguarding of Assets on Site**

Appellants' offer was awarded 60% of the maximum marks, yet the Evaluation Committee noted that the bidder has a good methodology which meets expectations, however, it does not go into details. In this respect, if the expectations were not indicated in the tender dossier, the Evaluation Committee had to resort to a substantial level of subjective assessment.

d) Timetable Mandatory Criteria

Appellants' offer did not describe how supervisions and inspections were to be carried out, so that a deduction of 3 points was effected. Again, this Board notes that an expected description of how such supervision was to be carried out, was not indicated as a mandatory requirement in the tender dossier.

e) Contingency Plans in Case of Sick Personnel

Under this item, Appellants' offer was allocated 4 out of 5 points although the evaluation report says that 'Bidder is well prepared for such a scenario with staff ready for replacement in short time'.

f) Supervision Mandatory Criteria

Under this item, Appellants' offer was deducted 2 marks from a maximum of 10. This Board notes the Committee's comment in that such a deduction of points was due to the fact that 'It was expected that the bidder mentions other contingencies rather than those mentioned in the procurement document'. In this regard, this Board opines that the Authority, in such a case, should have

denoted what the other contingencies were expected to be, in the tender dossier.

5. This Board is not disputing the points allocated to Appellants' offer but, it is not comfortably assured that the reasons given by the Evaluation Committee for the deduction of points, in certain items of Appellants' offer, is objectively justified enough.

6. Under the BPQR system, some form of comparison must be carried out to extract the most advantageous offer, however, one should not expect more than that stipulated in the tender document and in this respect, if the tenderer submitted what was requested, same should be justifiably awarded the deserving points, in accordance with those stated in the tender dossier. At the same instance, if offers with 'Add Ons' were to be given more marks than those who met the mandatory requirements, such a criterion should have been stated in the tender document. In this particular case, this Board could not identify such a provision in the scoring criteria.

In conclusion, this Board opines that:

- a) **Although there has been a divergence in the scoring system, such mode of allocation of marks would not inflict a negative effect on any particular offer, as the method was applied evenly in all the offers.**
- b) **The reasons given by the Evaluation Committee, for the deduction of points on certain items in Appellants' offer, do not justify the corresponding marks awarded to the particular item.**
- c) **Although some form of comparison must be carried out by the Evaluation Committee, to obtain the most advantageous offer, one should not be too subjective in the interpretation of the submissions. The Evaluation Committee should apply the principle of self-limitation, in that, if an offer meets the mandatory requirements, the allocation of marks should reflect such compliance, in a proportionate and deserving mark.**

In view of the above, this Board,

- i. cancels the award of the tender,**
- ii. directs the Authority to re-evaluate the compliant offers,**
- iii. directs that a differently composed Evaluation Committee carries out a re-evaluation process, taking onto consideration this Board's findings.**
- iv. Directs that the deposit paid by Appellants be fully refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

7 January 2020