

PUBLIC CONTRACTS REVIEW BOARD

Case 1408 – WSM 217/2019 – Negotiated Procedure without prior publication for the provision of Labour Hire Services in respect of Services of Personnel for Sites and/or Offices managed and operated by Wasteserv Malta Ltd

The tender was published on the 4th September 2019 and the deadline for submissions was the 25th November 2019. The estimated value of the tender (exclusive of VAT) was € 18,000,000 on a reimbursement basis and € 1,000,000 commission payable to the contractor for a period of 12 months.

On the 5th December 2019 G4S Security Services Malta Ltd filed an appeal against Wasteserv Malta Ltd as the Contracting Authority on the grounds that the winning bid was technically non-compliant. A deposit of € 5,000 was paid.

There were three (3) bidders.

On 19th 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 – G4S Security Services Malta Ltd

Dr Damian De Giorgio	Legal Representative
Mr Julian Dimech	Representative
Mr Eder Catania	Representative

Recommended Bidder –OZO Malta Ltd

Dr Marlon Borg	Legal Representative
Mr Fabio Muscat	Representative

Contracting Authority – Wasteserv Malta Ltd

Dr Gavin Gulia	Legal Representative
Mr Martin Casha	Chairperson Evaluation Committee
Ms Bronia Farrugia	Member Evaluation Committee
Mr Ivan Borg	Member Evaluation committee
Ms Branica Xuereb	Member Evaluation Committee

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

Dr Damian De Giorgio Legal Representative for G4S Security Services Malta Ltd by way of background to this tender said that this was a renewal of a previous tender and was intended to follow on from the previous bidder. The preferred bidder Ozo Malta Ltd was not compliant as they had not provided proof that they were registered as a recruitment agency during the years 2014 to 2018. All submissions were made in the name of Ozo Malta Ltd and the tender award was in that name. The name Ozo Services Ltd did not appear or exist in the previous tender, and there was nothing to indicate that they were part of a Joint Venture in 2016. All references and all submissions in the tender documents were in the name of Ozo Malta Ltd.

Dr Gavin Gulia Legal Representative for Wasteserv Malta Ltd said that he agreed with the fact as far as the timeline from the previous tender was concerned. Applicant in this tender is exactly the same as it was in the previous one.

Me Eder Catania Representative of G4S Security Services Malta Ltd said that Ozo Malta Ltd bid in both tenders but not as a joint venture – there is no evidence that Ozo Services Ltd was in the frame in 2016, and they did not follow the correct procedure of registering as a joint venture.

Mr Martin Casha Chairperson of the Evaluation Committee said that the committee was not bound to release details of submissions. In 2016 Ozo indicated that they were applying as a joint venture. Only those parties that participated in 2016 were eligible to participate this time and Ozo Malta Ltd participated as a joint venture.

Dr De Giorgio said that Appellants had serious doubts about the 2016 submissions as nowhere was there any indication that the bid was in the name of a joint venture.

The Chairman said that the Board is in a position to, and will verify, the details in the 2016 submissions.

Mr Catania requested the PCRБ to check which account was registered in 2016. Rule 2 of the General Rules Governing Tenders specified that there could be no changes in the tender composition. In the EPPS the bidder was registered as Ozo Malta Ltd and nowhere is there any reference to a joint venture.

Mr Casha pointed out that this was a negotiated procedure and not an open tender.

Dr Marlon Borg Legal Representative of Ozo Malta Ltd said that the joint venture covers the agreement and was signed by all entities with an arrangement between them to have a lead partner.

The Chairman stated that the remit of the Board is to ascertain that the 2016 bidder is also the same bidder as in 2019. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Decision

This Board,

having noted this objection filed by G4S Security Services Malta Ltd (herein after referred to as the Appellants) on 5 December 2019 refers to the claims made by the same Appellants with regard to the tender of reference WSM 217/2019 listed as case No. 1408 in the records of the Public Contracts Review Board awarded by WasteServ Malta Ltd (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Dr Damian De Giorgio

Appearing for the Contracting Authority: Dr Gavin Gulia

Whereby, the Appellants contend that:

- a) The preferred bidder is not compliant due to the fact that they were not registered as a recruitment agency in the years 2014 to 2018.**

b) The preferred bidder could not participate in this tender due to the fact that, they were not one of the bidders in the previous tender issued in 2016.

This Board also noted the Contracting Authority's 'Letter of reply' dated 11 December 2019 and its verbal submissions during the hearing held on 19 December 2019, in that:

a) The Authority maintains that OZO Malta Ltd submitted their offer as a joint venture with a third party. Their offer was fully compliant with the stipulated conditions of this negotiated procedure.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, opines that, the issue that merits consideration is to establish whether the identity of the preferred bidder is the same as that which participated in the previous tender issued in 2016.

1. This Board would point out that this tender, under a negotiated procedure, is a renewal of previous similar tender so that, it represents a

continuation for the provision of the same services as that of the previous tender issued in 2016.

- 2. With regard to Appellants' first grievance in that the preferred bidder is not registered as a recruitment agency in the years 2014 to 2018, this Board would first and foremost, consider the identity of OZO Malta Ltd.**

- 3. OZO Malta Ltd submitted its offer in a joint venture with ERREMME Recruitment Ltd, a company registered under number C – 63880, the latter company, through an agreement dated 1 December 2016, entered into a joint venture with OZO Malta Ltd for the purposes of participating in tender reference CT 2191/2016, so that, in the previous tender issued in 2016, OZO Malta Ltd, as the lead partner, participated in a joint venture with ERREMME Recruitment Ltd.**

- 4. ERREMME Recruitment Ltd had the necessary stipulated experience and was licensed to operate as a recruiting agency during the years 2014 to 2018. At the same instance, this Board would also point out that through an agreement dated 13 September 2019, 'ERREMME Recruitment Ltd' renewed its joint obligations with OZO Malta Ltd. It is**

to be noted that a clause of the said agreement clearly denotes the following:

“2. OZO is appointed as lead partner for all intents and purposes of the tender and is therefore fully and unconditionally authorised to act, bind and receive instructions for and on behalf of the joint venture. Without limiting any of the above, OZO is hereby being expressly authorised to sign any and all documentation and submit the proposal in response to the tender on behalf of the joint venture.”

- 5. This Board would also confirm that, OZO Malta Ltd declared the details regarding the joint venture and the Authority was made fully aware, with relevant documentation, of the third parties’ experience and licence compliance, in the ESPD duly submitted.**

In conclusion, this Board opines that:

- a) There exist joint venture agreements for both the previous tender of reference No. CT 2191/2016 and this tender of reference No 217/2019.**

- b) Both parties to the above mentioned two agreements are the same entities.**

- c) OZO Malta Ltd was duly and properly authorised to act on behalf of the joint venture to participate in this tender.**

- d) The joint venture has the necessary licence to operate as a recruitment agency.**

- e) The evaluation process was carried out in a just, fair and transparent manner.**

- f) The preferred bidder is fully compliant and the cheapest.**

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 an amount of €3000 from the deposit paid by Appellants be refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Carmel Esposito
Member

7 January 2020