

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1583 – CT 2373/2020 – Tender for the provision of Security Guard Services for various Hubs under the remit of Servizz.Gov (Agency)**

21<sup>st</sup> June 2021

The Board,

Having noted the letter of objection filed by Dr Alessandro Lia on behalf of Lia & Aquilina Advocates acting for and on behalf of Executive Security Services Ltd, (hereinafter referred to as the appellant) filed on the 22<sup>nd</sup> March 2021;

Having also noted the letter of reply filed by Dr Marco Woods on behalf of Servizz.Gov (hereinafter referred to as the Contracting Authority) filed on the 30<sup>th</sup> March 2021;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having heard and evaluated the testimony of the witness Mr Henry Cipriotti who was Chairperson of the Evaluation Committee on this tender;

Having noted and evaluated the minutes of the Board sitting of the 15<sup>th</sup> June 2021 hereunder-reproduced.

### **Minutes**

#### **Case 1583–CT 2373/2020. Tender for the Provision of Security Guard Services for Various Hubs under the Remit of Servizz.Gov (Agency)**

The tender was published on the 9<sup>th</sup> October 2020 and the closing date was the 10<sup>th</sup> November 2020. The value of the tender was € 885,023.

On the 22<sup>nd</sup> March 2021 Executive Security Services Ltd Ltd filed an appeal against Servizz.Gov (Agency) as the Contracting Authority objecting to their disqualification on the grounds that their offer failed to satisfy the criterion for award.

A deposit of € 4,425 was paid.

There were seven (7) bidders and eight (8) bids.

On 15<sup>th</sup> June 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellant – Executive Security Services Ltd**

Dr Alessandro Lia

Legal Representative

Mr James Spiteri Staines Representative

**Contracting Authority – Servizz.Gov (Agency)**

Dr Marco Woods Legal Representative  
Mr Henry Cipriott Chairperson Evaluation Committee  
Ms Abigail Abela Cavallaro Secretary Evaluation Committee

**Preferred Bidder – Kerber Securities Ltd**

Dr Ryan Pace Legal Representative

**Director of Contracts**

Mr Nicholas Aquilina Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then asked Appellant’s representative to make his submissions.

Dr Alessandro Lia Legal Representative for Executive Security Services Ltd stated that the reason for the appeal was the reduction in the number of points awarded to Appellant in one element of their submission, namely the response time in the case of industrial action to which said Appellant had provided a very detailed and full response. The Contracting Authority felt that the response time was unrealistic, despite a very detailed proposal. The outcome was a deduction of 2.5 points on this criterion. Appellant accepts that there is a certain leeway in the assessment of tenders under the BPQR system but this must be objective not subjective.

Dr Marco Woods Legal Representative for Servizz.Gov (Agency) said that the BPQR system works such that offers are assessed through points being awarded on different criteria. In this tender the requirement was spread over 23 sites in various localities in Malta. Further details will be given in the testimony of the chairperson of the evaluation committee.

Mr Henry Cipriott (2685M) called as a witness by the Authority testified on oath that he was the chairperson of the Evaluation Committee. The tender indicated that 23 sites around the whole of Malta had to be serviced. If industrial action was taken the time needed to replace the security staff at all these hubs included the contacting of alternative staff, travelling time to the various sites, parking, handover of duties; when all this is taken into consideration the one hour indicated in the proposal was not sufficient. Details of casual workers, although referred to, were not supplied. The evaluators bore in mind that 23 sites had to be taken into consideration and felt that one hour is not sufficient to deal with 30 employees and did not see enough meat on the contingency plan on this point. With reference to the managerial and supervisory staff it was noted that their number was not stated but mention made of the requirement for a minimum of monthly supervision of hubs. The technical offer stated that service will be offered by supervisory and management staff and third party personnel – this was regarded as rather poor and not very detailed by the committee.

Questioned by Dr Woods witness stated that Appellant was awarded 2.5 points out of a possible five for the reasons stated. The quality of service is paramount in this case as hubs are always highly crowded and with certain sensitiveness.

In reply to a question from Dr Ryan Pace, Legal Representative for Kerber Securities Ltd witness said that all the factors mentioned earlier in his testimony had been considered in the assessment of all the other bids.

Dr Pace, in his submissions, said that the basic point that the Board has to consider is the reply just given by witness. The criteria for award of the tender was on BPQR basis and in such a situation one can always find subjective reasons for appealing. There are Appeal Court judgements and directives on the fairness of this system which is set to eliminate subjectivity. What the Board must consider is whether the alleged subjectivity benefitted any party and if the evaluators stuck to the tender criteria and ensured that the level playing field was maintained. Witness confirmed that the criteria were maintained by the bidders and self-limitation on their part observed. All factors had been considered on all bids and hence there was no subjectivity and the committee took the correct decision.

Dr Lia stated that the appeal must be considered in the light of the Contracting Authority's letter of refusal. Witness gave the committee's view as to what was required in case of industrial action. Appellant's proposal said that action would commence on notification of strike action which reduces the response time to nil as parallel shifts would have been implemented by that time. The deduction of points must be related to the offer and this indicated that here options were proposed but the committee decided that these were absolute not acceptable which is tantamount to prejudicially subjective decision.

Dr Woods said that it was obviously the case that it was in the interest of each bidder to quote the shortest possible response time to deal with problems – however as indicated by the witness such times are unrealistic. The Authority did not refuse the proposal completely but reduced the points awarded; there was therefore no indication of subjectivity. Security is a very important aspect where the public is concerned and evaluators can only evaluate by what is offered in the tender.

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

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 15<sup>th</sup> June 2021.

Having noted the objection filed by Executive Security Services Ltd (hereinafter referred to as the Appellant) on 22<sup>nd</sup> March 2021, refers to the claims made by the same Appellant with regards to the tender of reference CT 2373/2020 listed as case No. 1583 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Alessandro Lia

Appearing for the Contracting Authority: Dr Marco Woods

Appearing for the Preferred Bidder: Dr Ryan Pace

Whereby, the Appellant mainly contends that:

- a) The Contracting Authority deducted 2.5 points in only 1 item, that of '*contingency plan*' related to industrial action.
- b) Response time would be minimal due to the fact that casual workers would have started working in parallel to the workers that would be taking / threatening industrial action.
- c) As per point 4.1.1. of the tender document, the Appellant is in no way stating that it would be removing supervisors or managers that would be directly working on this tender to do the work assigned to security guards but that only in extreme circumstances it can re-assign supervisors and / or managers employed within the company to areas where they would be needed to assure continuity to the service being provided.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 30<sup>th</sup> March 2021 and its verbal submission during the virtual hearing held on 15<sup>th</sup> June 2021, in that:

- a) Tender was evaluated on the principals of BPQR.
- b) The objectors indicated a response time of 1 hour to remedy the contingency in the case that an industrial action is instituted by employees of the company. This was considered by the Evaluation Committee as too little. Main reasons; i) the Appellant suggested making use of third-party security personnel, but they did not provide a plan of action if such circumstance arises. ii) the coordination of the workforce affected, time needed to contact casual workers, to request third party security personnel and to allocate them to the different sites of

servizz.gov, and for the personnel to arrive on site, would suggest a longer response time than provided.

- c) As per Court of Appeal 97/20, the Evaluation Committee has a certain degree of leeway on the way it decides. In subjective matters there might be difference of opinions which doesn't necessarily mean a bad decision would have been taken.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will consider Appellant's grievances, as follows in their entirety:

- i. The main point of contention here is the amount of points given by the Evaluation Committee in their assessment of the bid by the Appellant company in relation to the *'contingency plan'* with specific reference to *'Industrial Action which affect the service providers' workforce'* as per page 8 of the Tender dossier.
- ii. It must be noted that the evaluation and eventual award of such tender was to be based on the BPQR method of evaluation.
- iii. In this method of evaluation, the Evaluation Committee is to be 'afforded' an element of *'leeway'* in the way it proceeds with its business of evaluation. It is after all their main responsibility for such an appointment in this respective committee. As per previous PCRB case (Ref: 1577) this element of *'leeway'* needs to be exercised *"...in a professional, detailed and meticulous manner and always within the remit of the Public Procurement Regulations and the specific Tender document in question."* Hence the Evaluation Committee still must proceed with the appropriate diligence in full cognisance of its rights, powers, duties and obligations. In this regard, the Board opines that no specific evidence has been brought forward to show the contrary.
- iv. The Board also notes that, under oath, the Chairperson of the Evaluation Committee stated that all the factors mentioned in his testimony had been considered in the assessment of all the other bids.

Hence, the Board opines that, when considering all the above points, it can be deduced that the Evaluation Committee did in fact use the *"same ruler"* to evaluate all the bids it had in front of it. This resulted in a same level playing field for all the prospective bidders and more importantly the concept of 'Self Limitation' has been observed. Therefore, the Board does not uphold the Appellant's grievances.

**In conclusion this Board;**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Dr Charles Cassar**  
Member

**Mr Lawrence Ancilleri**  
Member