

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1584 – 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 Carlos Bugeja acting for and on behalf of Signal 8 Security Services Malta 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 and Dr Alexia J Farrugia Zrinzo 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 Cipriott who was Chairperson of the Evaluation Committee on this tender;

Having heard and evaluated the testimony of the witness Mr Joseph John Grech who is a representative of the Appellant company;

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

#### **Minutes**

### **Case 1584 – 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 Signal 8 Security Services 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 – Signal 8 Security Services Ltd**

Dr Carlos Bugeja	Legal Representative
Mr Jovan Grech	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
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**Director of Contracts**

Mr Nicholas Aquilina	Representative
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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 Carlos Bugeja Legal Representative for Signal 8 Security Services Ltd stated that the claim at issue was the deduction of points on the response time element in the tender which the Contracting Authority considers not realistic. Appellant has indicated how this is possible due to various factors including the Company enjoying ISO recognition, and the great number of employees scattered all over the island which gives the opportunity to react very quickly to any situation. The response time should be related to Appellant's resources and is realistic as one is not dealing with some small entity with limited resources. Appellant has been punished because of over-efficiency when efficiency should be welcome when one is dealing with public funds.

Dr Marco Woods Legal Representative for Servizz.Gov (Agency) said that the requested service was required to be performed at 23 hubs all over Malta. Appellant is offering a response time of 10 to 30 minutes on all four contingencies and appears to ignore the fact that external factors affect all projections.

Dr Bugeja intervened to remind the Board that this last point does not apply to Appellant Company as their employees are scattered over all Malta and hence there is no travelling time involved.

Dr Woods resumed by stating that Appellant claims that the Company is committed on several contracts, and it is unrealistic that under those circumstances one were to imagine that employees were doing nothing waiting to respond to an emergency.

Mr Jovan Grech (435861M) called as a witness by the Appellant testified on oath that the number of people he employs is extensive, that the Company has ISO certification in Quality Management, a

control room manned round the clock plus field officers familiar with emergency procedures. The Company is working at various sites in Malta and Gozo with a tailor made IT system to monitor staff availability. The number of vehicles owned includes minibuses used to transport staff besides an exclusive arrangement that their security vehicles can use bus lanes. Staff can be deployed in the least possible time through their control room.

Questioned by Dr Woods witness could not recall if the field officers were mentioned in their tender submissions.

Mr Henry Cipriott (2685M) called as a witness by the Contracting Authority testified on oath that he was the Chairperson of the evaluation committee. He described how the tender was evaluated taking each criterion chronologically. Witness stated that the detailed responses given during this hearing and the additional details supplied in the letter of reply would probably have earned the Appellant better points than for those submitted in the tender. The response time was considered unrealistic to service 23 sites – the time taken to call personnel, in travelling to sites located in out of the way areas were all factors considered in the award of marks. The number of field officers or their location was not mentioned in the technical offer. One must bear in mind the high number of visitors to these sites and the essential aspect of security there at.

Questioned by Dr Bugeja witness agreed that the contingency plan was not final but was to be detailed at the contract stage. However, he pointed out that the committee can only evaluate on what is submitted in the technical offer.

Dr Pace Legal Representative for Kerber Securities Ltd in reply to his question was informed that all similar factors were considered in evaluating each offer.

Dr Pace in his submissions said that it was difficult to follow the thinking underlying the earlier argument that all companies had to be up to Appellants standards. What was clear was that no attempt has been made to show if the evaluation committee acted erroneously. Adjudication on the BPQR basis is the most likely way to remove subjectivity and no proof has been provided that any offer was treated differently. In PCRB Cases 1087 and 1290 the Board dealt with the merit of subjectivity and whether this subjectivity gave some party an advantage – there is no subjectivity if all parties are treated the same in this comparative exercise. The Authority decided that the preferred bidder had the most advantageous offer and Appellant cannot use an appeal hearing to provide additional information which they missed to provide in their bid. There has been no preferential treatment as the same parameters were used throughout.

Dr Bugeja re-iterated that the Appellant has the standards and resources to meet the tender requirements – all that he was requesting was that the Board checks the bids carefully as efficiency should be rewarded not punished.

Dr Woods said the role of the Board was to ascertain that bids were assessed with transparency and self-limitation. Self-limitation is equal to what documents and information is before the evaluation committee. It was stated by a witness that at tendering stage certain information mentioned today was not included in the submissions and on that basis the decision should not be changed.

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 Signal 8 Security Services Malta 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. 1584 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Carlos Bugeja

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 points in only 1 item, that of '*contingency plan*' related to industrial action on an assumption of a purely subjective matter.
- b) The Appellant company is an ISO certified company with a manpower of 850 employees, has a control room operating on a 24x7 basis, has access to a number of field officers for back up purposes, has a full time administrative office and has at its disposal a fleet of cars, motor vehicles and electric vehicles.
- c) The operating system employed by the Appellant allows for a fast and efficient dispatching of resources. Hence in a very ironic way, the Appellant company is being penalised for having such efficient systems.

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 10-30 minutes 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. The Agency submits, that the size of the company is irrelevant when taking into consideration external factors such as weather, traffic, the number of employees taking part in the industrial action and unavailability of employees due to sickness.

- 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 witnesses 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'*, *'Sick Personnel'*, *'Breakdown of public transport systems which may affect the ability of personnel to arrive on time to their place of work'* and *'Replacement, in case of termination if any of the security staff are not performing well'* 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.
- v. Further information was provided by Mr Joseph John Grech, under oath, that if it was presented during the bidding stage, in most probability it would have resulted in more points being awarded to the Appellant company in this particular technical evaluation. This was stated, under oath, by Mr Henry Cipriott, Chairperson of the Evaluation Committee. The Board opines, that the Evaluation Committee can only carry out its assessment on technical matters with the information it has been presented before it. The concept of Self-limitation is crucial in Public Procurement for transparency purposes and to achieve a level playing field between all prospective bidders. Therefore, the Board would recommend that it is paramount that each and every tender bid is prepared on its very own specific merits.

Finally, 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