

PUBLIC CONTRACTS REVIEW BOARD

Case 1592 – MAFA 9/2021 Tender for the Provision of Security Services at the MAFA Gozo Office and the Mgarr Port

20th September 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 28th March 2021;

Having also noted the letter of reply filed by Dr Victoria Claire Scerri acting for Ministry for Agriculture, Fisheries, Food and Animal Rights (hereinafter referred to as the Contracting Authority) filed on the 5th April 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 noted and evaluated the minutes of the Board sittings of the 24th June 2021 and 14th September 2021 hereunder-reproduced;

Minutes

Case 1592 – MAFA 9/2021. Tender for the Provision of Security Services at the MAFA Gozo Office and the Mgarr Port

The tender was published on the 22nd January 2021 and the closing date was the 15th February 2021. The value of the tender was € 125,831.52.

On the 26th March 2021 Kerber Security Ltd filed an appeal against the Ministry for Agriculture, Fisheries, Food and Animal Rights as the Contracting Authority objecting to their disqualification on the grounds that their offer failed to satisfy the award criterion.

A deposit of € 629.16 was paid.

There were four (4) bidders.

On 24th June 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza 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 Malta Ltd

Dr Carlos Bugeja
Mr Jovan Grech

Legal Representative
Representative

Contracting Authority – Ministry for Agriculture, Fisheries, Food and Animal Rights

Dr Victoria Claire Scerri	Legal Representative
Mr Marixei Callus	Chairperson Evaluation Committee
Mr Mario Micallef	Representative
Mr Marco Zammit	Member Evaluation Board
Mr Jesmond Demanuele	Member Evaluation Board
Mr Mario Agius	Member Evaluation Board

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 noted that the Evaluation Report appeared to be missing the Declaration of Impartiality and Confidentiality signed by the evaluating members and the hearing could not proceed until it was established if these were available.

Mr Marixei Callus Chairperson of the Evaluation Committee said that these declarations had been made on line due to the current pandemic but he was unable to locate them on the ePPS as the tender was closed and access was not allowed.

The Chairman then stated that these Declarations were not available to the Board in the submissions made and therefore the case had to be deferred until these documents are produced. It was essential that Contracting Authorities ensured that they made submissions with full documentation not to delay cases. He thanked the parties for their attendance and declared the hearing deferred.

End of Minutes

SECOND HEARING

On 14th September 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 case further.

The attendance for this public hearing was as follows:

Appellant – Signal 8 Security Services Malta Ltd

Dr Carlos Bugeja	Legal Representative
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Contracting Authority – Ministry for Agriculture, Fisheries, Food and Animal Rights

Dr Victoria Claire Scerri	Legal Representative
Mr Marixei Callus	Chairperson Evaluation Committee
Mr Mario Micallef	Representative
Mr Marco Zammit	Member Evaluation Board

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 noted that the Board had

received confirmation that the Declarations of Impartiality and Confidentiality relating to this evaluation had been received and invited submissions.

Dr Carlos Bugeja Legal Representative for Signal 8 Security Services Malta Ltd said that the grounds for the appeal were well covered in his expansive letter of objection and the point he would make is that the Appellant Company is well established with staff resident in Gozo, and it was therefore well able to fulfil the thirty-minute requirement specified in the tender.

Dr Victoria Claire Scerri Legal Representative for the Ministry for Agriculture, Fisheries, Food and Animal Rights said that the Contracting Authority could not assume that Appellant Company had premises in Gozo and hence the decision was based on this assumption. It was necessary to emphasise that Appellant was not relying on transfers of personnel from Malta in the case of contingencies.

Dr Bugeja said that any doubts in the Authority's mind should have been in favour of the bidder – the offer indicated the existence of a Gozo address and there was no point in assuming, therefore. The tender made it clear that the Company had employees in both Malta and Gozo.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sittings of the 24th June 2021 and 14th September 2021.

Having noted the objection filed by Signal 8 Security Services Malta Ltd (hereinafter referred to as the Appellant) on 28th March 2021, refers to the claims made by the same Appellant with regards to the tender of reference MAFA 9/2021 listed as case No. 1592 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Carlos Bugeja

Appearing for the Contracting Authority: Dr Victoria Claire Scerri

Whereby, the Appellant, in their Letter of Objection, contends that:

- a) The justification mentioned by the Evaluation Committee for giving less points than the maximum attributed to the 'Contingency Plans' category in the Technical Evaluation was "Since the service is to be provided in Gozo no tangible proof is provided of how replacement is to be provided

within 30 minutes as per Section 1 Article 6.1 B2 and Section 3 Article 3.2”. This assumption made by the Evaluation Committee is totally subjective. The Evaluation Committee assumed that the Appellant company operates from within Malta only.

- b) The Appellant company is an ISO certified company with a manpower of 850 employees (250 of which resident in Gozo including a Regional Manager), 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.
- d) A private individual can get from one end of Gozo to the other in 20 minutes by utilising his private vehicle. The company can also aid its employees with the use of its fleet of vehicles and the use of priority lanes.
- e) The BPQR mechanism is there to ensure that the best price and the best quality are a major factor in the award outcome and not the best price and the most convenient offer are awarded the contract.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 5th April 2021 and its verbal submission during the virtual hearings held on 24th June 2021 and 14th September 2021, in that:

- a) In this particular tender, the Contingency Plan is for a service to be provided in Gozo
- b) The Appellant company in its Letter of Objection, mentions that it is capable of operating directly from Gozo thanks to its offices and officers stationed therein. But it failed to indicate this in its bid and write-ups for the Contingency Plan section. The address indicated in its bid mentions a Malta address and hence it shows that the company operates from within Malta. The onus to show that a company is able to operate from Gozo was with the prospective bidders, and the Appellant company failed to do so.
- c) The ISO certification is no proof that the company operates from Gozo directly.
- d) The Contracting Authority is making it clear that the Contingency Plans as presented by the Recommended Bidder does show in an unequivocal manner that their operations are run and administered directly from Gozo.

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

- a) The Board notes that the tender with reference number: MAFA 9/2021 is for services to be provided on the island of Gozo.
- b) The Board also notes that in the proposal / bid of the Appellant company, no specific mention is noted that their operations are done only from the island of Malta or only from the island of Gozo. However, they do point out and confirm that in the occurrence of several scenarios, such as Industrial Action, Temporary absence of personnel not being able to carry out the requested service such as sickness etc, they have confirmed that suitable replacements can be made available within the 30 minutes as requested by the Tender Dossier.
- c) The justification provided by the Contracting Authority for the reduction in points on the Contingency Plans is *"Since the service is to be provided in Gozo no tangible proof of how replacement is to be provided within 30 minutes as per Section 1 Article 6.1 B2 and Section 3 Article 3.2"*
- d) The Constitution of Malta defines the term "Malta" in article 124 (1) as *"Malta means the Island of Malta, the Island of Gozo and the other islands of the Maltese Archipelago, including the territorial waters thereof;"* Furthermore, the Tender Dossier Section 3, paragraph 1.1 states "Beneficiary Country – Malta".
- e) This Board, hence, opines that:
 - i. The Evaluation Committee made assumption/s in arriving at the justification quoted above in point (c). This assumption made by the Evaluation Committee is in breach of the Self Limitation concept that Evaluation Committees need to adhere to. This also created a non-level playing field between prospective bidders.
 - ii. It is also generally accepted that it is the responsibility of Contracting Authorities to try and save tenders by way of Clarifications should this be a possibility. The Board notes that no such attempts were made by the Contracting Authority.

Therefore, this Board upholds the grievances of the Appellant company.

In conclusion this Board;

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

- a) To uphold the Appellant's concerns and grievances;
- b) To cancel the 'Notice of Award' letter dated 18th March 2021;
- c) To cancel the Letters of Rejection dated 18th March 2021 sent to Signal 8 Security Services Malta Ltd;
- d) To order the contracting authority to re-evaluate the bid received from Signal 8 Security Services Malta Ltd in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee, whilst also taking into consideration this Board's findings;
- e) After taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member