

PUBLIC CONTRACTS REVIEW BOARD

Case 1685 – MF104/2020 – Tender for the Provision of Cash in Transit Services to the Ministry for Finance and Financial Services and its Line Departments

28th February 2022

The Board,

Having noted the letter of objection filed by Mr Bernard Vella acting for and on behalf of Security Service Malta Ltd, (hereinafter referred to as the appellant) filed on the 20th January 2022;

Having also noted the letter of reply filed by Dr Ivan Sammut and Ms Vanessa Mangion on behalf of Ministry for Finance and Employment (hereinafter referred to as the Contracting Authority) filed on the 27th January 2022;

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 sitting of the 22nd February 2022 hereunder-reproduced;

Minutes

Case 1685 – MF104/2020 – Tender for the Provision of Cash in Transit Services to the Ministry for Finance and Financial Services and its Line Departments. (Lots 1 and 2)

The tender was issued on the 25th August 2020 and the closing date was the 14th September 2020. The value of the tender, excluding VAT, was € 130,000 for all three Lots.

On the 20th January 2022 Security Services Malta Ltd filed an appeal against the Ministry for Finance and Employment (formerly the Ministry for Finance and Financial Services) as the Contracting Authority objecting to their disqualification on the grounds that their tender was deemed to be technically not compliant.

A deposit of € 800 was paid.

There were three (3) bidders.

On the 22nd February 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Ms Stephanie Scicluna Laiviera and Mr Richard Matrenza as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Security Services Malta Ltd

Mr Bernard Vella

Representative

Contracting Authority – Ministry for Finance and Employment

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| Dr Ivan Sammut | Legal Representative |
| Dr Kristina Busuttil | Legal Representative |
| Mr George Camilleri | Secretary Evaluation Committee |
| Ms Stephannie Grech Mallia | Representative |
| Mr James Xuereb | Representative |

Preferred bidder – Ozo Security Ltd

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| Dr Jonathan Thompson | Legal Representative |
| Mr Fabio Muscat | 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 invited submissions.

Dr Sammut Legal Representative for the Ministry for Finance raised a preliminary procedural point regarding late written submissions sent by Appellant.

The Chairman confirmed that in line with the PCRB policy the documents received on the 18th February 2022 will not be considered and will be ignored.

Mr Bernard Vella Representative for Security Services Malta Ltd stated that the winning bid could not be considered as the bidder was not meeting the standards set by the Malta Competition and Consumer Affairs Authority (MCCAA). Further the award of the tender was not valid as the Appellant did not meet the share capital requirements stated in the tender nor did he have the necessary insurance. On the matter of the uniform Appellant claims that they had successfully won previous tenders on the basis of their existing uniforms which in any case cannot be changed without the approval of the Commissioner of Police, whilst they are still waiting for their application to be approved by the MCCAA.

Dr Ivan Sammut Legal Representative for the Ministry for Finance said that the Appellant was claiming that the successful tenderer was not approved by MCCAA when in fact all the tender asked for was a declaration that the successful tenderer guarantees that the services rendered follow the MCCAA standards. This was met by providing the necessary declaration and the Authority did not need to go further. The requirement for the uniform was a technical matter and the uniform had to include a tie. If Appellant felt aggrieved by this requirement he had the availability of Regulation 262 of the PPR to object to this. Since Appellant also failed to meet the technical requirement after a clarification was requested he was awarded a zero (0) mark which meant automatic disqualification.

Dr Jonathan Thompson Legal Representative for Ozo Security Ltd said that Appellant was not technically compliant even after a clarification was requested and had failed to make use of Regulation 262 which should be used as a first step. The tender was clear and Appellant had failed to meet the requirements.

When Mr Vella tried to raise a grievance on the share capital of the preferred bidder Dr Thompson objected as this point was not raised in the original appeal.

The Chairman said that the Board concurred with Dr Thompson's comment and their decision will take account only of the two grievances raised in the appeal.

Dr Sammut said that as far as the MCCA standards apply all the Authority was concerned with was that it would receive proper service and on that score the requirement had been fulfilled. Action should have been taken regarding the uniform earlier than the submission stage and as a result the technical requirements were not met. Regulation 146 forbids altering the original submissions. Reference was made to two Court of Appeal Cases (Multigas and Malta Industrial Parks) both of which confirm that the tender instructions must be observed. The appeal should be refused.

Dr Thompson concluded by saying a tender must assure certainty and transparency and the Board must ensure that what was requested was offered in the bid. On this the Appellant failed and the appeal should be refused.

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 sitting of the 22nd February 2022.

Having noted the objection filed by Security Service Malta Ltd (hereinafter referred to as the Appellant) on 20th January 2022, refers to the claims made by the same Appellant with regards to the tender of reference MF 104/2020 listed as case No. 1685 in the records of the Public Contracts Review Board.

The Board is also noting that there was a 'Reasoned Reply' filed on 18th February 2022 by Mr Bernard Vella acting for Security Service Malta Ltd with further submissions. In this respect the Board notes the

preliminary plea raised by Dr Ivan Sammut acting for the Contracting Authority for this reply to be deemed inadmissible. The Board upholds Dr Ivan Sammut's preliminary plea and invites all interested parties to follow the procedures as set out in the Regulations. All parties participating in the hearing will still have their opportunity to submit their verbal submissions hence no party should feel aggrieved to not having the opportunity to a fair hearing.

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| Appearing for the Appellant: | Mr Bernard Vella |
| Appearing for the Contracting Authority: | Dr Ivan Sammut |
| Appearing for the Preferred Bidder: | Dr Jonathan Thompson |

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

- a) **MCCAA Standards** - The winning bidder is not technically compliant since they are not a member of the MCCAA Standards as outlined in DSM3200:2014, Cash and Valuables-In-Transit and Vaulting Services. On the 5th April 2021, Ozo Security Ltd sent an official letter to join this association. However, this company started offering the Cash in transit service only from the 15th June 2020, and up to today is still not part of this association given shortcomings in their operations. The tender closing date was 14th September 2020, therefore Ozo Security Ltd certainly was not compliant to this standard, after less than 3 months in operation. You can note that discussions are ongoing up to last week, and an audit must take place to certify their level of operation, since we were aware of various shortcomings - being a start-up operation. We cannot understand how this was overlooked to adjudicate this tender to Ozo Security Ltd.
- b) **Uniform** - We also received information that we were technically non-compliant since the uniform pictures we submitted do not display a tie. We would like to inform you that the CIT uniform complies, is approved, and accepted by the Commissioner of Police, and to change any part of the uniform we would need their evaluation and authorisation in writing. At the inception of our business, over 25 years ago, discussions with the Commissioner of Police concluded that the CIT officers should not be wearing a tie, for obvious health and safety reasons, giving the risky nature of the operations. We have 2 distinctive uniforms for the Guarding Services (with a tie) and the Cash in transit Service (without a tie but with a bullet proof vest), both approved by the Commissioner of Police. You can view both uniforms in the attachment named 'uniform'. If we submitted a Guarding uniform, we would have been deceiving the evaluators, in our opinion. Finally, this is the first time, in over 25 years, that we are being pointed out with this 'non-compliance'. We were also successful in the past for the same tender (for several times) with the same uniform. Our uniforms for the CIT and Guarding services never changed since then. The

wording in such a tender would need to be changed, so that the CIT uniform requirement makes sense and not just a copy and paste from the requirement of a Guarding/Security tender.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 27th January 2022 and its verbal submission during the virtual hearing held on 22nd February 2022, in that:

- a) **MCCAA Standards** - Objector is alleging that the winning bidder is not technically compliant since it is not a member of the MCCA Standards as outlined in DSM3200:2014, Cash and Valuables-In- Transit and Vaulting Services. However, the requirement in the tender document did not state that the economic operators have to be a member of the MCCA and neither asked economic operators to provide any proof of this. The technical specifications in clause 4.2 of the tender document required as a minimum standard of service that: *"The successful tenderer needs to guarantee that the service rendered is following the MCCA standards as outlined on DM 3200:2014 Cash and Valuables-In-Transit and Vaulting Services."* The technical offer of the winning economic operator, OZO Security Ltd. gave a declaration claiming the economic operator will adhere with the Technical Requirements, guaranteeing that such standards are observed. Since the winning bidder met the requirement in the tender document in guaranteeing that the service it will render is following the MCCA standards as outlined on DSM 3200:2014, the Objector's first ground is unfounded in fact and at law.
- b) **Uniform** - Even the second ground of objection is unfounded in fact and at law. Amongst the technical specifications required in clause 4.2 of the tender document, it was specifically required that:

“UNIFORMS, APPERANCE AND ATTITUDE

Every Security Officer shall wear a complete Company Uniform which is clean and smart at all times. The successful tenderer is to provide, at his own cost, adequate uniforms and equipment for the intended service delivery. Uniforms shall include a shirt, trousers or skirts, jacket, tie and security bat., Where high risks tasks are envisaged, security personnel must also be provided with bullet proof vest. Pictures/ Photos of uniform are to be submitted with the tender offer.” (Section 3 Article 4.2 page 13).

The Objector did not submit a clarification in regard to this technical requirement during the tender period.

Since objector submitted pictures/photos that did not meet this technical requirement, a rectification was requested. This is a Note 2 requirement - Technical Literature, and in terms of Instructions to Tenderers, the Objector was given the opportunity to rectify its position by re-submitting the above mentioned literature for the three (3) Lots, to be conformity (sic) with respective technical requirements as stated in the tender document. Since Objector failed to meet

the technical Note 2 literature, even after a rectification was requested, Objector's bid was considered as technically not compliant and his bid was not financially evaluated in accordance with tendering regulations. In fact, this bid was considered as technically not compliant as the submitted pictures by bidder Security Service Malta Ltd did not display Jacket, Tie and Shirt as requested in Article 4.2 of Section 3 - Terms of Reference. Whilst the arguments brought forward by Security Services Malta Ltd. may possibly be comprehensible from its point of view, it must be emphasised that the Cash for Transit requirements in the tender document requested a uniform with tie (section 3 Article 4.2 page 13). Furthermore, the Objector did not submit a clarification during the tender period highlighting the mentioned issue and hence the Contacting Authority had no alternative but to consider the offer as technically not compliant.

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:

- a) **MCCAA Standards** – This Board notes that what the tender dossier specifically required was "*The successful tenderer needs to guarantee that the service rendered is following the MCCAA standards as outlined on DM 3200:2014 Cash and Valuables-In-Transit and Vaulting Services.*", this by way of Self Declaration only. This Board notes that the Self Declaration was duly provided by the Preferred Bidder.

Therefore, this Board does not uphold this grievance of the Appellant.

- b) **Uniform** – With regards to this specific grievance, this Board will analyse this in two sections.
 - i. This Board notes that during the evaluation stage, the Contracting Authority adhered to all the procedures necessary as per the Public Procurement Regulations S.L. 601.03. When the Evaluation Committee noticed that the bid of the prospective bidder, now Appellant did not meet the minimum technical requirements as per the Tender Dossier, with specific reference to the Uniform, it proceeded to make a rectification request to the Appellant. Therefore, the Appellant was provided with an opportunity to amend his bid. This in line with 'Note 2' praxis, since Technical Literature falls within the remit of 'Note 2'. This Board notes that the Appellant, upon rectification, still submitted an offer which the Evaluation Committee deemed technically non-compliant.
 - ii. This Board notes that the arguments raised by the Appellant in his objection letter were never contested prior to this appeal. The Board opines that if the Appellant felt aggrieved

that the Tender Dossier requested ‘Cash in Transit’ guards to wear ties, than such sort of grievance (reference to “*We also received information that we were technically non-compliant since the uniform pictures we submitted do not display a tie.*”) should have been dealt with by way of a ‘Remedies before Closing Date of a Call for Competition’ or the very least by way of ‘Clarification’ request to the Contracting Authority during the tendering / bidding process. The tender dossier was clear and unambiguous in paragraph 4.2 of Section 3 when it stated “*Every Security Officer shall wear a complete Company Uniform which is clean and smart at all times. The successful tenderer is to provide, at his own cost, adequate uniforms and equipment for the intended service delivery. Uniforms shall include a shirt, trousers or skirt, jacket, tie and security hat. Where high risks tasks are envisaged, security personnel must also be provided with bullet proof vest. Pictures / Photos of uniform are to be submitted with the tender offer.*” (bold & underline emphasis added).

Reference is also made to *Rockcut Ltd v Malta Industrial Parks Ltd* et decided on 31st May 2019 whereby “*Kif tajjeb osserva d-Direttur Generali (Kuntratti), jekk ir-regoli tas-sejba jimponu l-prezentata ta’ tali taghrif, hu mistenni li offerenti li jiehdu sehem f’dik is-sejba joqogħdu għal dawke ir-regoli. Wara kollox ir-regoli tas-sejba qegħdin bemm biex jigu mbarra u mhux biex jigu mvarra. Biex jigi zgurati il-barsien ta’ dawn il-principji, l-awtorita’ kontraenti hija obbligata li tresservja strettament il-kriterji li hija stess tkun stability.*”

Therefore, this Board does not uphold this grievance of the Appellant.

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 to Ozo Security Ltd,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Ms Stephanie Scicluna Laiviera
Member

Mr Richard Matrenza
Member