

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1728 – SPD8/2021/151 –Services - Tender for the Provision of Environmental Rangers Services to Ambjent Malta**

**23<sup>rd</sup> May 2022**

The Board,

Having noted the call for remedies filed by Dr Alessandro Lia on behalf of Lia Aquilina Advocates acting for and on behalf of Executive Security Services Limited, (hereinafter referred to as the appellant) filed on the 14<sup>th</sup> March 2022;

Having also noted the letter of reply filed by Dr Lara Borg Bugeja acting for Ambjent Malta (hereinafter referred to as the Contracting Authority) filed on the 23<sup>rd</sup> March 2022;

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

Having noted and evaluated the minutes of the Board sitting of the 19<sup>th</sup> May 2022 hereunder-reproduced.

### **Minutes**

#### **Case 1728 – SPD8/2021/151 – Tender for the Provision of Environmental Rangers’ Services to Ambjent Malta**

The tender was issued on the 19<sup>th</sup> January 2022 and the closing date was the 18<sup>th</sup> February 2022. The value of the tender, excluding VAT, was € 465,360.

On the 14<sup>th</sup> March 2022 Executive Security Services Ltd filed an appeal against Ambjent Malta as the Contracting Authority objecting to their offer being refused as it failed to satisfy the criteria for award.

A deposit of € 2,326.80 was paid.

There were five (5) bids.

On the 19<sup>th</sup> May 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

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

Dr Alessandro Lia  
Mr Stephen Ciangura

Legal Representative  
Representative

## **Contracting Authority – Ambjent Malta**

Dr Lara Borg Bugeja	Legal Representative
Dr Franco Galea	Chairperson of the Evaluation Committee
Ms Therese Zammit	Member Evaluation Committee
Ms Claudette Gambin	Member Evaluation Committee
Mr Charles Cassar	Member Evaluation Committee
Ms Priscilla Mifsud	Representative

## **Preferred Bidder - Signal 8 Security Services Malta Ltd**

Dr Albert Zerafa	Legal Representative
Dr Natalino Debrincat	Legal 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 Alessandro Lia Legal Representative for Executive Security Services stated that the grievances had been dealt with extensively in the written submissions. The reasons given for disqualification under the BPQR rules are not legally valid. Whilst one accepts that the evaluators have certain leeway their decision is still not administratively correct. The reasons given have no meaning and are too bland and do not fulfil the subjectivity rules. The only avenue open to a bidder is to submit an appeal to find out the real reasons. One has to ask if the discretion was used judiciously and how can the Board decide on it. In the OK Case it was stated that it is not sufficient for the Board to ensure that the correct procedure is carried out but that the reasons for rejection make sense. The second grievance of the Appellant is that it is unable to understand how having made such lengthy submissions it is told that that they are insufficient without being given reasons.

Dr Lara Borg Bugeja Legal Representative for Ambjent Malta said that Appellant could have used Regulation 242 of the PPRs to ask for clarification on how the decisions were reached.

Dr Albert Zerafa Legal Representative for Signal 8 Security Services Malta Ltd said that his client would be relying on the written submissions.

Dr Lia said that Regulation 242 puts the onus on the Authority to provide information but does not deal with the result of the evaluation – it does not apply in a case like this where it is claimed that the reasons given were not sufficient.

There being no further submissions the Chairman thanked the parties 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 19<sup>th</sup> May 2022.

Having noted the call for remedies filed by Executive Security Services Limited (hereinafter referred to as the Appellant) on 14<sup>th</sup> March 2022, refers to the claims made by the same Appellant with regard to the tender of reference SPD8/2021/151 listed as case No. 1728 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Alessandro Lia

Appearing for the Contracting Authority: Dr Lara Borg Bugeja

Whereby, the Appellant contends that:

- a) First Grievance – The reasoning provided by the Contracting Authority in its Letter of Rejection is not sufficiently clear. Argumentation is vague, not objective and not properly explained. Therefore, it is clear that such a decision is defective and should be reversed.
- b) Second Grievance – It is not clear why the Evaluation Committee did in fact deduct points for the different criteria. In all criteria, the Appellant provided documentation in much detail, hence it is not understanding how declarations such as *“he only provides a basic back up plan”* and *“bidder does not provide sufficient detail. ....”*. It is to be re-stated that the reasons provided by the Contracting Authority are not detailed enough and vague. The Appellant also submitted ISO certificates as part of its evidence that it will perform the duties to the highest possible standards.

This Board also noted the Contracting Authority’s Reasoned Letter of Reply filed on 23<sup>rd</sup> March 2022 and its verbal submission during the virtual hearing held on 19<sup>th</sup> May 2022, in that:

- a) First Grievance – It is a very well know principle that the Evaluation Committee has the necessary discretion and flexibility to evaluate the bids in front of it. This was confirmed in Managing Consulting Service Industry (MCSI) Limited v Direttur tal-Kuntratti et (17.06.2019) and again in

Executive Security Services Ltd v Agenzija Servizz.Gov et (07.03.2022). This Evaluation Committee treated all bids in front of it in the same manner and method.

- b) Second Grievance – The tender dossier went into much detail with the requirements that each economic operator had to provide. To this end, the Evaluation Committee kept to the evaluation grid very rigorously. There were very valid reasons as to how and why points were deducted.

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) That the Criteria for Award of this tender are as per article 6.1 of Section 1 of the tender dossier which stipulates *“The contract will be awarded to the tenderer submitting the offer with the Best Price/Quality Ratio (BPQR) ……”* The BPQR was established by weighing technical quality against price on a 60/40 basis respectively. Hence this Board notes the ‘greater’ emphasis placed by the Contracting Authority on the Technical aspect of the prospective bids.
- b) That the tender dossier has been drafted in great detail. The Board makes specific reference to Section 6.3 of Section 1, namely the ‘Evaluation Grid’ on pages 7-14 of the tender dossier. This specific section, in the Board’s opinion vastly reduces the risk of subjectivity on the Members of the Evaluation Committee.
- c) That the evaluation as carried out by the Evaluation Committee was not subjective. As stated on numerous occasions by this Board, in the BPQR 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. 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.”* (PCRB Case Ref: 1577) *“Hence the Evaluation Committee still must proceed with the appropriate diligence in full cognisance of its rights, powers, duties and obligations.”* (PCRB Case Ref: 1583) In this regard, the Board opines that no specific evidence has been brought forward to show the contrary
- d) It must also be pointed out that in a ‘BPQR’ method of evaluation not all the criteria are given points on the same methodology. There are the ‘Mandatory’ criteria whereby either ‘maximum points’, i.e. 100% are allotted or a ‘0’ is scored. Therefore, by being administratively or technically compliant, the full 100% of the marks are scored. But there is also another ‘methodology’ whereby a gradation of points ranging from 0% to 100% are to be allotted. Therefore, if for a specific requirement / criterion, another economic operator proposed a better solution, it is that economic operator who is to be afforded the highest score in that specific criterion. The economic operator who was technically compliant but in his offer, did not enter into the same amount of detail as the other economic operator, cannot expect to be given the same amount of points. As stated in

paragraph (a), the Contracting Authority is putting emphasis on quality, 60%. It is noted by the Authority that in one of the criteria marks were generally deducted because a competitor proposed an advanced technological strategy which was reflected in better marks for him.

- e) Nothing has come to the attention of this Board that the Evaluation Committee did not provide the same level playing field to all economic operators participating in this bid.

Hence, this Board does not uphold the Appellant's grievance.

**The 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

**Mr Lawrence Ancilleri**  
Member

**Dr Charles Cassar**  
Member