

PUBLIC CONTRACTS REVIEW BOARD

Case 1816 – CT2234/2021 – Tender for the Provision of Security Services for the Ministry for Health – Lot 4

23rd November 2022

The Board,

Having noted the letter of objection filed by Dr Albert Zerafa and Dr Natalino Caruana De Brincat acting for and on behalf of Signal 8 Security Services Malta Limited, (hereinafter referred to as the appellant) filed on the 28th October 2022;

Having also noted the letter of reply filed by Dr Leon Camilleri acting for Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 7th November 2022;

Having also noted the letter of reply filed by Dr Mark Anthony Debono acting for the Department of Contracts (hereinafter referred to as DoC) filed on the 7th November 2022;

Having heard and evaluated the testimony of the witness Mr Steve Ellul (Member of the Evaluation Committee) as summoned by Dr Albert Zerafa acting for Signal 8 Security Services Malta Limited;

Having heard and evaluated the testimony of the witness Ing Karl Farrugia (Representative of the Central Procurement and Supplies Unit) as summoned by Dr Albert Zerafa acting for Signal 8 Security Services Malta Limited;

Having heard and evaluated the testimony of the witness Mr Joseph John Grech (Representative of Signal 8 Security Services Malta Limited) as summoned by Dr Albert Zerafa acting for Signal 8 Security Services Malta Limited;

Having heard and evaluated the testimony of the witness Mr Anthony Cachia (Director General – Department of Contracts) as summoned by Dr Mark Anthony Debono acting for the Department of Contracts;

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 17th November 2022 hereunder-reproduced.

Minutes

Case 1816 – CT 2234/2021 – Tender for the Provision of Security Services for the Ministry for Health

LOT 4

The tender was issued on the 18th August 2021 and the closing date was the 28th October 2021. The estimated value of the tender, excluding VAT, for Lot 4 was € 23,288.40.

On the 28th October 2022 Signal 8 Security Services Malta Ltd filed an appeal against the Ministry of Health through the Central Procurement and Supplies Unit as the Contracting Authority objecting to their disqualification on the grounds that their award of the tender on Lot 4 was being withdrawn.

A deposit of € 400 was paid on this Lot.

There were five (5) bids.

On the 17th November 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Ms Stephanie Scicluna Laiviera as members convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Signal 8 Security Services Ltd

Dr Natalino De Brincat	Legal Representative
Dr Albert Zerafa	Legal Representative
Mr Jovan Grech	Representative
Mr Floyd Grech	Representative

Contracting Authority – Central Procurement and Supplies Unit

Dr Alexia Farrugia Zrinzo	Legal Representative
Dr Leon Camilleri	Legal Representative
Mr Steve Ellul	Member Evaluation Committee
Ms Rita Turchett	Secretary Evaluation Committee
Dr Alison Anastasi	Representative
Mr Daniel Cauchi	Representative

Department of Contracts

Dr Mark Anthony Debono	Legal Representative
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Interested Party

Dr Alessandro Lia	Legal Representative
Mr Steve Ciangura	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Albert Zerafa Legal Representative for Signal 8 Security Services Ltd stated that the Department of Contracts (DoC) decision was based on the wrong premise as the original appeal was only on Lot 1 and that is clear and undoubted. Secondly if the decision impinges on the other lots the Director of Contracts (DoC) it did not clearly indicate why he was not agreeing the decision on the other lots . In the 18th October letter it is indicated the DoC was acting only on Article 89 and nothing else. The sole decision to revoke cannot be used to attack all other lots based on that one decision.

Dr Mark Anthony Debono Legal Representative for the DoC said that the interpretation of the letter of the 18th October 2022 was based on Regulation 39 and was taken to maintain the equilibrium between the economic operators. The decision of the Board of the 19th August 2022 was clear that it affected all the lots and not only Lot 1. All the lots were examined by the DoC and it resulted that

variances existed in all financial offers. Workings on the 40 hour week indicated that the resources proposed were not enough to cover the services required. There was no discrimination as Regulation 15 imposes no time limit. In this context one would refer to EC Municipals vs DoC which decision is accepted by the local Courts. As for the matter of the deposit the DoC applied the proper Regulation on the *quantum*.

Mr Steve Ellul (262476M) asked to testify by Signal 8 Security Services stated on oath that he formed part of the Tender Evaluation Committee (TEC) and that all bids had been treated equally on BPQR basis with particular attention given to the technical side since this was a 70/30 basis tender.

In reply to questions by Dr Debono witness said that the technical side had received detailed attention on all lots with very strict examination of all bids and healthy discussion by the Committee members during the evaluation.

Dr Alessandro Lia Legal Representative for an Interested Party, in reply to his question, was informed that the financial side on all bids was also examined as also on Lot 4.

Engineer Karl Farrugia (24774M) called as a witness by the Appellant testified on oath that he was the Head of the CPSU and the Head of the Contracting Authority and was not involved in the evaluation of the tender. He recalled seeing the decision on PCRB Case 1775. The intention of splitting a tender into lots is that if one lot fails then the whole tender does not fail as well and what applies to one lot may not apply to other lots. In this case the tender was split into lots by health entities. Witness said that he does not recall the tender requirements in lot 1 as these were drawn up by the different entities.

Witness confirmed to Dr Debono that he had no idea what the service requirements were.

Mr Joseph John Grech (435861M) called to testify by the Appellant stated on oath that there was an enormous difference in the service required in lot 1. The rates on lot 1 were based on around 30 persons at administrative level at Mater Dei Hospital plus costs to maintain the service. The wages of all these senior persons as given by the Contracting Authority reaches 221[000 €]. All the ancillary requests involved in these operations were detailed which was not the case in lots 2 to 7 were rates were based on the minimum. On the technical side the bid was correct and as it was the best priced it was recommended for award.

On lot 1 certain anomalies were found and it was awarded to another party. After being notified of the award on other lots witness contacted the DoC to progress matters but was advised that as it was a complete tender all work would commence at the same time. Lot 4 entailed only a normal security service whilst in Lot 1 the requirement was for 254 security personnel with a list of add-on persons which accounts for the additional costs. An additional nine personnel costs amounted to € 218,000. How the tender came to be classed as abnormally low was not explained. The award was revoked without any basis and subsequently a warrant of injunction was filed (Doc 1).

In reply to a question from Dr Debono, witness agreed that the tender was issued on a BPQR basis.

Questioned by Dr Lia witness agreed that the bid on lot 1 was € 800,000 below cost and then stated that although awarded lots 2 to 7 he only took action on Lot 4 before the PCRB and Court action on the other lots as on all the lots combined the deposit required by the DoC was prohibitive. Referred to the injunction witness stated that the DoC said that it would respect the decision on all lots. Referred to the bid price on lot 4 witness said that that price was the same as other economic operators had bid and was based on the minimum rates.

Mr Anthony Cachia (142658M) called to testify on oath by the Department of Contracts was referred to the General Contracts Committee's (GCC) letter of the 18th October 2022 and confirmed that after the first award the GCC was aware of the PCRB's decision on lot 1 and felt that the evaluation was not carried out correctly and therefore deduced that the rest of the other evaluations may also be not correct. Evaluations are on a whole tender and affects all lots. If there is doubt on one lot there is no peace of mind that other lots are correct, and all the Department was asking for was a re-evaluation.

In reply to questions from Dr Zerafa witness said that the decision had been taken as a matter of principle and the PCRB's decision regarding an abnormally low tender on lot 1 had been examined in full. The bid was abnormally low due to the cost of three security officers since the rates, according to the PCRB, had not been worked out correctly. Regarding the revocation of lot 4 witness said that he had worked on the principle that if lot 1 was wrong than all other lots had to be abnormally low. He confirmed that he had not checked that in the case of lot 4 only security officers were required. Referred to the decision of the PCRB on lot 1 witness was not aware that there is no dispute on the number of security officers required but said that he has his own opinion that the offer was not correctly evaluated. He also confirmed that the only appeal was on lot 4 with no appeals on the remaining lots from 2 to 7. When asked to explain why, then, in that case he had asked for a deposit of around € 70,000 to hear the appeal witness replied that he was only following Regulations and confirmed that the decision was taken on both Regulations 17 and 39.

Questioned by Dr Lia witness agreed that there was an element of mistake in the price on lot 1 and he therefore decided that all other six lots were likely to be faulty. The outcome of the injunction was that he decided to proceed with the process and not to proceed with the contestation. On lots 2 to 7 excluding lot 4 he was awaiting the PCRB's decision on today's case and he will then decide how to act.

This concluded the testimonies.

Dr Zerafa said that on the first grievance the PCRB decision on lot 1 should not encroach on the other lots as it is very clear that that decision referred solely to lot 1. The decision by the DoC to combine lots 2 to 7 with it is incorrect as there were no appeals on these lots and thus it is obvious that they are not affected by the decision on lot 1. The PCRB decision is clear and the only error was in the cost of the additional supervisors whereas in the other tenders it was simply a question of security officers without any complications. The least that the DoC should have done was to check if the PCRB decision had any effect on the other lots but this was not done. The Director General had no idea what the problem in lot 1 was or if there were any faults in the other lots and if his decision made sense both as regard lot 1 and all the other lots. It is regrettable that on a tender of this magnitude it appears that the DoC was not aware of what was happening. Regulation 39 speaks of proportionality but witness stated that he acted like that because that is what he felt – where was the proportionality? To attack and appeal a simple decision by the DoC one had to pay €70k. The letter of the 18th October should be revoked in its entirety.

Dr Lia said that Regulation 15 gives the DoC the right to cancel any call or award to avoid the possibility of discrimination between parties. In the first hearing it resulted that two bidders quoted below the minimum price. The Director General decided that there was potential discrimination and that same error was made in the other lots. If he had not done this there would have been discrimination. It is imperative for transparency and non-discrimination that all lots are re-evaluated. If after re-evaluation the appeal is found to be valid the Appellant would still be awarded the tender since this appeal is only on cancellation.

Dr Alexia Farrugia Zrinzo Legal Representative for the CPSU referred to the August 2022 decision on lot 1 and pointed out that the TEC had followed the correct course and this had been recognised by the PCRB.

Dr Debono referred to the PCRB decision and said that it would be unfair not to re-evaluate the other bids. Regulations 39 and 15 ensure that equality is maintained by re-evaluating even if at *prima facie* level and not in depth. The estimated values compared to the bids show big divergences and the DoC has the right to reorder evaluation under Regulation 15 even after the award. The matter of the deposit is a pure mathematical calculation based on the law and does not discriminate.

Dr Zerafa, on a concluding point, said that Dr Lia stated that to avoid discrimination all the DoC had to do was to revoke the awards and order a full re-evaluation but the facts are that there are no appeals on lots 2,3,5,6 and 7. This confirms that other bidders accept the decision and therefore there is no discrimination.

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 17th November 2022.

Having noted the objection filed by Signal 8 Security Services Malta Limited (hereinafter referred to as the Appellant) on 28th October 2022, refers to the claims made by the same Appellant with regard to the tender of reference CT2234/2021 – Lot 4 listed as case No. 1816 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Albert Zerafa & Dr Natalino Caruana De Brincat

Appearing for the Department of Contracts: Dr Mark Anthony Debono

Appearing for the Contracting Authority: Dr Leon Camilleri & Dr Alexia Farrugia Zrinzo

Whereby, the Appellant contends that:

- a) The Director General Contracts erroneously interpreted the decision, dated 19th August 2022 in Case 1775, by applying the said decision to all Lots, this notwithstanding that the Director General Contracts was fully aware the original letter of objection filed by Executive 4 Security Joint Venture was merely limited to one lot, ergo Lot 1. Moreover, the Public Contracts Review Board in the

decision dated 19th August 2022 clearly evaluated the letter of objection filed by Executive 4 Security Joint Venture which was only limited to Lot 1.

- b) Without prejudice to the aforesaid, the decision for withdrawing the award letter dated 29th April 2022 by Director General Contracts does not (a) highlight the reasoning use (sic) or applied behind such administrative act so much so that reference to article 39 (1) of the SL 601.03 was made without context or expiation on the applicability thereof, and (b) that if one had to assume that the decision of the Director General Contracts was based on the assumption that there exist alleged abnormalities vis-à-vis Lot 2 to Lot 7 the Director General Contracts prima facie should have indicated which are these alleged abnormalities. That at face value there seem to be no abnormalities vis-à-vis Lot 2 to Lot 7. That the aforesaid can be confirmed by the fact that no economic operators appealed the recommended awards vis-à-vis Lot 2 to Lot 7 on the same ground that Executive 4 Security Joint Venture originally applied.
- c) Without prejudice to the aforesaid, the Director General Contracts action is erroneous and unreasonable when, by virtue of the correspondence dated 18 October 2022, he extended the right to appeals process on the Lots 2 to 7, notwithstanding that such process was already exhausted. With such decision and wide interpretation, the Director General Contract acted against the principle of natural justice and this not in line with article 39 (1) of the SL 601.03 which holds that the 'Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner' That by analogy by such decision (limitedly to Lot 2 to 7) the Director General Contract is in actual fact and definitely discriminating against the Objector. All economic operators have been treated equally when they had the opportunity to appeal the first time (which in fact was the case vis-à-vis Lot 1).
- d) Without prejudice to the aforesaid, the Director General Contract gave the impression that the right to appeal is relevant on every individual Lot since it is applicable individually to each Lot, when in actual fact there was merely one identical erroneous and unreasonable decision communicate (sic) in merely one letter which was taken across the board vis-à-vis Lot 2 to Lot 7. Moreover, this was a financial burden on the Objector since notwithstanding the decision was one applicable across the board Signal 8 Security Services Malta Limited (C54368) have been force (sic) to pay the fee for each identical objection.

This Board also noted the DoC's Reasoned Letter of Reply filed on 7th November 2022 and its verbal submission during the hearing held on 17th November 2022, in that:

- a) Preliminary -

Despite that the General Contracts Committee had recommended for award the objector by means of a letter dated 29th April 2022, the decision of the Public Contracts Review Board, *a fortiori* this implies that the Tender Evaluation Committee had not evaluated the tender offers in the other

Lots in accordance with the tender document specifications, namely the proper calculation of the costs involved in the provision of the services.

This decision had been the basis of the decision of the General Contracts Committee in terms of regulation 72 and regulation 15 of the Public Procurement Regulations, 2016 whereby the DoC can exercise its administrative authority to revoke the award of the contract should there be discrimination in the award.

b) Payment of deposit of Objection -

The DoC submits that the objector has not adhered to the procedure prescribed for the payment necessary for the lodging of the objection since it has paid by a cheque addressed to the Public Contracts Review Board instead of bank transfer addressed to the Cashier, Government of Malta as stipulated in the letter of the DoC dated 18th October 2022.

c) Erroneous interpretation -

Contrary to the submissions of the objector, the DoC did not interpret wrongly the decision of the Public Contracts Review Board since same decision ordered the Contracting Authority to re-evaluate all the bids received in the tender. Therefore, DoC respectfully disagrees with the following statement made by the appellant: *“Moreover, the Public Contracts Review Board in the decision dated 19th August 2022 clearly evaluated the letter of objection filed by Executive 4 Security Joint Venture which was only limited to Lot 1”*

d) Duty to give reasons -

The DoC respectfully disagrees with the following submission of the objector whereby it states that the DoC has not provided reasons nor justified its administrative decision to revoke the award of the contract and that regulation 39 has been applied without context.

Firstly, the appellant cannot be correct in its statements that the decision taken by the DoC *“was based on the assumption that there exist abnormalities”* since any contrary interpretation of the evaluation process undertaken by the Tender Evaluation Committee entails that the same Committee had adopted a different methodology for calculating the administrative costs involved in the tender offers for the different Lots, when the content of the services for the different Lots involves the same considerations for the same services.

Contrary to the submissions of the objector whereby it states that the DoC should have indicated the *“alleged abnormalities”* in the letter dated 18th October 2022 by the DoC communicated to the objector refers to the decision of the 19th August 2022 whereby the context for the application of regulation 39(1) of the Public Contracts Review Board and the alleged abnormalities refers to the irregularity of the Evaluation to scrutinise abnormally low tenders: *“Thus, since the General Contracts Committee has only been made aware of the defect in evaluation by means of the PCRFB decision and the functions*

of same committee is to evaluate reports and recommendations of contracting authorities and to act on any irregularities detected in the tendering process, the Committee is obliged to ensure that the necessary action has to be taken. Although the PCRB decision may only have direct legal consequences on the evaluation of Lot 1, the Evaluation Committee's failure to scrutinise abnormally low bids, as detailed in the decision of the PCRB, is a defect of evaluation of the tenders which affects the evaluation carried out for all the Lots”

According to Section 1.3 of the Tender Document, the Estimated Procurement Value for Lots 2 to 7 had been as follows: Lot 2 - €3,653,173.68, Lot 3 - €5,684,1 65.89, Lot 4 - €23,288.40, Lot 5 - €193,423.10, Lot 6- €282,565.92, Lot 7 - €2,825,659.20. In accordance with the Letter dated 29th April 2022, the same contracts were awarded to the objector in the following amounts: Lot 2: €3,443,097.84 (€210,075.84) Lot 3: €5.357.784.25 (€326,381.64) Lot 4: €21,949.20 (€1,339.20), Lot 5: €182,300.30 (€11.122.27), Lot 6: €266,316.96 (€16,248.92), Lot 7: €2,663,169.60 (€162,489.96).

While it is acknowledged that no economic operator had appealed the recommended awards vis-a-vis Lots 2 to Lot 7, since the recommended award contracts are offers by the objector all being below the estimated procurement value issued in the tender document, such fact should prima facie call for the scrutiny by the Tender Evaluation Committee.

The Public Contracts Review Board, in its considerations for its decision dated 19th August 2022, states: *“Therefore, it is evident that the 'normal' 40-hour week (multiplied by 2 as done by Mr Farrugia) is certainly not enough resources to cover such a demand in the tender document and therefore mitigating alternatives need to be procured. As outlined in jurisprudence, economic operators are at liberty to bid at what appears to be abnormally low bids, by for example foregoing their element of profitability, but these have to be duly scrutinised by the evaluation committees”*

Since the Public Contracts Review Board had by means of its decision dated 19th August 2022 ordered the setting up of a new Tender Evaluation Committee for the evaluation of offers on account of the lack of scrutiny of low bids, the same reasoning should be applied to the other Lots in the call for tenders under examination, considering that the evaluation of tenders and the recommendations of the Tender Evaluation Committee are drawn up in an individual report in accordance with regulation 17(1)(b) and regulation 241 of the Public Procurement Regulations, 2016.

e) Discrimination and exhaustion of the right of appeal -

The DoC respectfully disagrees that the action of the DoC is erroneous, unreasonable or that it discriminates among economic operators on account that such process has already (sic) exhausted since the application of the decision for the revocation of the award communicated by letter 18th October 2022 is based on its residual authority in terms of regulation 15 of the Public Procurement Regulations, 2016 which provides that such authority may be exercised even after the passage of the time of appeal: *“The Director has the right to cancel the award of a contract at any time during a call for*

tenders or quotations even after the recommended bidder has been decreed and the time establish to file and (sic) appeal before the Public Contracts Review Board has lapsed... made in such « way as to discriminate between economic operators.»

That the DoC submits that there is no discrimination among the different economic operators nor against the objector since the procedural right of appeal is granted ex lege in accordance with regulation 270 of the Public Procurement Regulations, 2016 for the decision to revoke the award. Therefore, the DoC respectfully (sic) that the decision undertaken for the revocation of the award is not in any manner unreasonable or discriminatory.

f) Procedure for the right of appeal and the amount of the deposit-

With all due respect, the DoC in its letter dated 18th October 2022 had issued a decision which revoked the award of six public contracts all of which had been awarded to the objector namely Lot 2, Lot 3, Lot 4, Lot 5, Lot 6 and Lot 7.

The procedure prescribed for communicating the alleged erroneous decision of the revocation of the award by the DoC is an administrative matter which has no bearing whatsoever on the procedural right of the objector to lodge an appeal in terms of regulation 270 of the Public Procurement Regulations, 2016 with respect to the different Lots;

With respect to the submissions of the objector as to the amount fixed as deposit for the filing of the objection, the objector states that: *“Moreover, this was a financial burden on the Objector since notwithstanding the decision was one applicable across the board Signal & Security Services Malta Limited have been force (sic) to pay the fee for each identical objection”*

The DoC respectfully disagrees that the DoC in its letter dated 18th October 2022 there had been any discretion in its decision-making since it had applied the methodology stipulated ex lege and prescribed in regulation 273 of the Public Procurement Regulations, 2016.

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 now consider Appellant’s grievances.

a) **On the Preliminary submissions –**

This Board will as from the outset declare that its decision, numbered 1775, issued on the 19th August 2022, specifically deals with Lot 1 of tender CT2234/2021. The Department of Contracts state in their letter of reply, (reference to point 4 of the “DoC” letter filed on 7th November 2022) that such decision has legal implications on the other lots forming part of the call for tenders. This Board categorically disagrees with such a statement for a number of reasons which will be duly explained further on. However, it is pertinent to immediately point out that as per Section 1 –

Instruction to Tenderers, part 5 (C) (ii), lots 1 to 7 had different and unique specifications relevant to each and every one of them. Without the necessity to state the obvious, lot 1, being the largest in monetary value, had the widest specifications to be adhered to. Lots 2 to 7, in general and in varying degrees, had less requirements with respect to Key Experts.

b) **Payment of deposit of Objection –**

This Board notes that the same DoC representative did not want to proceed with further submissions on the matter. Therefore, this Board will not delve further into this point apart from stating that cheques made payable to the Public Contracts Review Board have always been accepted as a correct manner of settling appeal dues since the inception of the Public Contracts Review Board. The instructions to make payments to the Cashier, Government of Malta by bank transfer was only instituted as an interim measure at the onset of the Covid pandemic to avoid handling paper.

c) **Erroneous interpretation –**

As initially pointed in paragraph (a) of this Board's considerations above, this Board categorically disagrees with the interpretation that the DoC is giving to PCRB decision 1775 issued on 19th August 2022. The Board's remit and jurisdiction, in case number 1775, was solely on Lot 1 of tender CT2234/2021. It is pertinent to note that reference to 'Lot 1' is mentioned on numerous occasions. This both in the minutes and the decision section of case 1775. Without the below being referred to as an exhaustive list, Lot 1 has been referred to in:

- i. The title of the Decision itself;
- ii. The title of the Minutes;
- iii. Page 2 of the Minutes;
- iv. Page 7 paragraphs 'A', 'B' and 'C' of the Decision; and
- v. The Deposit paid.

Therefore, this Board cannot again but not emphasise, that decision 1775 was solely meant to refer to Lot 1 of CT2234/2021.

d) **On the main merits of the appeal –**

- i. This Board notes that the deposit paid on this appeal is only in relation to Lot 4. Hence any eventual decision of this Board is solely attributable to Lot 4.
However, it is also fundamental to note that the DoC's letter of 18th October 2022 is using the same reasoning for the withdrawal of award for Lots 2 – 7.
- ii. Relevant to these proceeding is the testimony under oath of Mr Joseph John Grech whereby he stated "*All the ancillary requests involved in these operations (reference to Lot 1) were detailed which was not the case in lots 2 to 7 were rates were based on the minimum.*" The Board notes that this testimony is corroborated by Section 1 – Instruction to Tenderers, part 5 (C) (ii) as already mentioned in Board considerations para (a) above.

iii. More relevant is the testimony under oath of Mr Anthony Cachia whereby initially this Board concurs with the reasoning he (in representation of the DoC) exercised when he stated *“If there is doubt on one lot there is no peace of mind that other lots are correct”*. However, where this Board completely disagrees is when he stated *“I worked on the principle that if lot 1 was wrong than all other lots had to be abnormally low.”* Moreover, he confirmed that he had not checked that in the case of lot 4 only security officers were required.

The Board disagrees for the following reasons.

- 1) This Board’s decision, i.e. 1775 of 19th August 2022, even though it discussed in detail the principle of ‘Abnormally Low’ bids, it found in favour of the Appellant on the specifics of the ‘Key Experts’. More specifically, that Duty Senior Guards and Supervisors had to be on duty on a 24-hour basis all year long including Public and National holidays and inconsistencies were found on this matter.
 - 2) There were absolutely no issues raised on the ‘Security Officers’. This is evidenced when the Board had stated *“The figure of €10,129,159.27, representing the estimated number of hours at the minimum rate payable to employees (Security Officers) is not being disputed. This also as per paragraph 3 of the Contracting Authority’s letter of reply”* in point (d) of the ‘Relevant points’ and *“The above is all deemed relevant as if one were to add the figure of €10,129,159.27, representing the estimated number of hours at the minimum rate payable to employees (Security Officers) which as already analysed is not being disputed,”* in point (e) of the ‘Conclusions’.
- iv. Therefore, this Board opines that the ideology used by the DoC when deciding on and formulating the letter withdrawing awards of Lots 2 – 7 dated 18th October 2022 is based on wrong motivations. This for the simple fact that Lot 4 requires no ‘Key Experts’ at all, while all the other lots (Lot 2, 3, 5, 6 & 7) require different and less ‘Key Experts’ than Lot 1.
- v. This Board therefore, opines that the DoC, once it interpreted (wrongly) the PCRБ’s decision 1775 as it did, was duty bound to check on these matters (the specific issues why the PCRБ upheld the Appellant’s grievances) rather than just rely on the principle of ‘Abnormally Low’ for the withdrawal of award of Lots 2 – 7.

Therefore, this Board will uphold the Appellant’s main grievance in requesting the revocation of the Department of Contract letter dated 18th October 2022, with specific reference to Lot 4.

e) **On the injunction –**

This Board notes the documentation presented by Appellant during the hearing, reference to the injunction filed by Signal 8 Security Services Malta Limited.

This Board feels it is important to state that its jurisdiction rests solely on Lot 4 for reasons already listed above.

Reference is hereby made to the testimony of Mr Anthony Cachia whereby

Dr Albert Zerafa “..... *Jigjifieri ara jekk naqblux, mela allura, id-decizjoni illi ser tittiebed fir-rigward ta’ Lot 4, issa sia possittiva ghal Signal 8 jew inkella kontra Signal 8. Naqblu allura li ha jkollha effett fuq il-Lots l-obrajn ukoll.*”

Xhud (Mr Anthony Cachia) “*Iva.*”

Since the injunction is a matter between the DoC and Signal 8 the Board is optimistic that its decision on Lot 4 and the views expressed by the Director will now open the way for settlement to be reached on the remaining lots to avoid further delays.

The Board,

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

- a) Uphold Appellant’s Letter of Objection and contentions,
- b) Order the Department of Contracts to annul and revoke its decision on Lot 4 as per its letter 18th October 2022, therefore awarding Lot 4 to the Appellant company,
- c) To take any necessary action it deems fit on Lots 2, 3, 5, 6 and 7 after the conclusions of this Board and
- d) Directs that the deposit paid by Appellant to be reimbursed.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Ms Stephanie Scicluna Laiviera
Member