

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1941 – SPD8/2023/087 – Framework Contract for the Provision of Security Services for the Environment and Resources Authority**

**7<sup>th</sup> December 2023**

The Board,

Having noted the letter of objection filed Dr Lara Attard on behalf of Caruana De Brincat Legal acting for and on behalf of Signal 8 Security Services Malta Ltd, (hereinafter referred to as the appellant) filed on the 30<sup>th</sup> October 2023;

Having also noted the letter of reply filed by Dr Paula Axiak on behalf of Environment and Resources Authority (hereinafter referred to as the Contracting Authority) filed on the 6<sup>th</sup> November 2023;

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

Having heard and evaluated the testimony of the witness Mr Daniel Cilia (Chairperson of the Evaluation Committee) as summoned by Dr Lara Attard acting for Signal 8 Security Services Malta Ltd;

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 16<sup>th</sup> November 2023 hereunder-reproduced.

### **Minutes**

#### **Case 1941 – SPD8/2023/087 – Services – Framework Contract for the Provision of Security Services for the Environment and Resources Authority**

The tender was issued on the 26<sup>th</sup> July 2022 and the closing date was the 15<sup>th</sup> September 2022.

The estimated value of this tender, excluding VAT, was € 249,599.75

On the 30<sup>th</sup> October 2023 Signal 8 Security Services Malta Ltd filed an appeal against the Environment and Resources Authority as the Contracting Authority objecting to their disqualification on the grounds that their bid was deemed to be not technically compliant.

A deposit of € 1,248 was paid.

There were six bids.

On the 16<sup>th</sup> November 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Signal 8 Security Servcies Malta Ltd**

Dr Lara Attard	Legal Representative
Mr Joseph John Grech	Representative
Mr Julian Dimech	Representative

**Contracting Authority – Environment and Resources Authority**

Dr Paula Axiak	Legal Representative
Mr Daniel Cilia	Chairperson Evaluation Committee
Ms Kirsty Agius	Secretary Evaluation Committee
Mr Alan Borg	Evaluator
Mr Ivan Buttigieg	Evaluator
Mr Jean Mark Pace	Evaluator
Mr Mark Pisani	Representative

**Recommended Bidder – Executive Security Services Ltd**

Dr Alessandro Lia	Legal Representative
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**Recommended Bidder - Goldguard Security**

Invited to attend but did not take up the invitation

**Department of Contracts**

Dr Mark Anthony Debono	Legal Representative
Mr Nicholas Aquilina	Representative

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

Dr Lara Attard Legal Representative for Signal 8 Security Services Malta Ltd said that the Technical Bid was not accepted since it was not compliant and requested that witnesses be heard.

Mr Joseph John Grech (435861M) called to testify by the Appellant stated on oath that since 2005 he has been providing employees with tie safety clips and indicated pictures of such submitted. His firm is currently supplying The Contracting Authority with security services and there have been no complaints about the tie clips provided. No clarification was requested by the Authority.

In reply to a question from Dr Paula Axiak Legal Representative for the Authority, witness said that the photos provided in his submissions all showed security clip ties and this was also stated in the submissions.

Dr Lia the Legal Representative for Executive Security Services Ltd referred witness to tender article 6.3 (Facilities to be provided by the Contractor) and witness said that he met all the items listed in the article and photos were supplied for each item requested.

At this stage Dr Lia asked the Board to record the fact that Mr Grech had used crude language directed at him and refused to answer his questions.

Mr Daniel Cilia (64070M) called to testify by the Appellant stated on oath that he was the Chairperson of the Evaluation Committee and that no clarification request was necessary as the Appellant's submission was clear and there was nothing to clarify. What Appellant had submitted was a photo of a badge not a tie.

This concluded the testimonies.

Dr Attard said that photos had been submitted of all items used by security staff with both winter and summer uniforms displayed. The tender was not clear as to what type of tie was requested. Appellant is currently offering the Authority its services and is aware of their requirements. The Authority is mandated to seek clarifications although the Authority claims that there are no guidelines on this matter. As this matter was listed under Note 3 it could not be rectified. Appellant requests that the tender is re-evaluated.

Dr Lia said that the claim now appears to have changed to the tender not being clear. Appellant claims that he has long experience in dealing with tenders and therefore must be very clear what a clip on tie is, but now seems to be changing tack. The tender is very clear on the point of the clip on tie and if one wants reassurance on had to look at the offer of the preferred bidder which shows separate photos showing back and front of tie. Appellant seems to have omitted this. Note 3 cannot ask for something that is mandatory.

Dr Axiak re-iterated that the request was for a clip on tie but Appellant very clearly submitted a badge and therefore there was nothing to clarify.

The Chairman thanked the parties for their submissions 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 16<sup>th</sup> November 2023.

Having noted the objection filed by Signal 8 Security Services Malta Ltd (hereinafter referred to as the Appellant) on 30<sup>th</sup> October 2023, refers to the claims made by the same Appellant with regard to the tender of reference SPD8/2023/087 listed as case No. 1941 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Dr Lara Attard

Appearing for the Contracting Authority: Dr Paula Axiaq  
Appearing for the Preferred Bidder: Dr Alessandro Lia

Whereby, the Appellant contends that:

- a) Uniform/ Attire (Mandatory) -
  - i. The objector has obtained a score of 0% in relation to this criterion, based on the claim that although the bidder provided several photos of the uniforms as requested by the Contracting Authority, the image illustrated on the nineteenth (19) page of the evidentiary document does not satisfy the requirement of the Contracting authority in relation of (sic) the criteria of security clip on tie.
  - ii. Article 6.3 of the Terms of Reference solely provides that, amongst of (sic) other things, the uniform shall include a security clip on tie, without providing any guidelines as to the interpretation to be given to the meaning of security clip on tie.
  - iii. whilst the tenderer's technical offer has been classified under Note 3 under Clause 5 of the Tender Dossier, the Notes to clause 5 clearly empowers the Evaluation Committee to seek clarification of tenders submitted by the tenders.
  - iv. Whilst the evaluation committee is not obliged to seek clarification in every case it deems that an offer has become technically non-compliant, however the evaluation committee has a duty to exercise a certain degree of care when considering the content of each tender, especially when the clarification is both practically possible and necessary.
  - v. The matter in contention is usually requested within the Tender Dossier's technical literature, which documentation was not requested within this Tender Dossier. The technical literature typically falls under note two, which allows for the rectification and clarification of documentation, thus affirming that a request for clarification on this matter would not have been onerous on the Contracting Authority.
  - vi. Within the documentation presented together with the tender, the objector has presented multiple photographs of Signal 8 Security Services Malta Limited's employee wearing their summer uniform and their winter uniform, each of which included a tie. This means, that the Evaluation Committee could have sought clarifications form the objector in relation to the technical characteristics of the tie, without the objector having to rectify or submit new documentation.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 6<sup>th</sup> November 2023 and its verbal submission during the hearing held on 16<sup>th</sup> November, in that:

- a) The Operator contends that an unjustified technical score has been given to him in view that no guidelines were given as to the interpretation to be given to the meaning of a security clip on tie. ERA holds that it is tacitly understood that security officers ought to wear clip on ties as a precaution for their own safety, since they can easily be pulled off in case of an emergency. This is substantiated by the fact that ERA didn't receive any requests for clarifications from operators with respect to the interpretation to be given to a security clip on tie, since it stands to reason. Moreover, any doubts with regards to the content of the tender dossier could have been clarified during the online clarification meeting which was held on Tuesday 22<sup>nd</sup> August 2023 whereby the Authority was available to answer any questions which arose, or through a clarification in writing between the 26<sup>th</sup> July 2023 and 23<sup>rd</sup> August 2023.
- b) The Objector also contends that the Evaluation Committee was empowered to seek clarification of tenders submitted by tenderers. In view that the BPQR was the pre-set mechanism within the tender document and the Evaluation Committee were obliged to follow such a mechanism, the Authority humbly submits that a clarification was not necessary since the submission made by the Operator clearly indicated what he was providing as 'Security clip on tie', thus no clarifications were required. The only remedy which may have potentially mitigated the loss of points in the BPQR to the Operator would have been through a rectification, which option was not available to the Evaluation Committee due to the limitation set in Note 3 to the Notes to Clause 5.
- c) In line with Procurement Policy Note #40 issued on 01.06.2023, the Evaluation Committee could not make a clarification request for information or documentation which was missing from the submission or which was incomplete since such falls under 'Rectification' and not under 'Clarification' as seems to be wrongly implied by the Operator.
- d) The Authority holds that it was the Operator's obligation to provide evidence that the tie is a clip on. The Evaluation Committee did not require to seek clarifications in view that what the Operator provided was evidently not what the Authority requested or is understood to mean for the purpose of security personnel uniforms.

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 now consider Appellant's grievances in their entirety.

- a) The Board notes that the tender dossier was drafted in a clear and unambiguous manner. It is the Board's opinion that there is nothing ambiguous in the requirement of the 'Security Clip on tie' as per the Evaluation Grid of the tender document. Even so, one is to further note that no

clarifications were requested by the appellant in this regard. It is obvious that there were no issues of an ambiguous nature.

- b) It is to be noted that in this specific tender procedure, the 'Security Clip on tie' criterion was of a mandatory nature which fell under the remit of Note 3. Any arguments that in previous tenders this type of requirement usually forms part of the technical literature, which falls under Note 2, are deemed irrelevant to proceedings. What is relevant is how this tender document was structured!
- c) It is also noted that as part of the appellant's tender submission, under the section 'Security clip on tie', the appellant submitted a photograph of a 'badge'. Whilst it is also true that within the entire submission, of the appellant, there are numerous photographs of a 'tie', it must be noted that these are all 'front end' visuals. This in sharp contrast to that of the preferred bidders who duly showed front and back visuals to undoubtedly prove that the tie being submitted is a 'Security clip-on tie'.
- d) This Board opines that in order to make amends for the original submission of the appellant, what was needed was the submission of proper proof through a request for rectification, something which was not possible under 'Note 3'. Therefore, the evaluation committee was right in its assessment that a clarification was irrelevant to proceedings.

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**

**Dr Charles Cassar**  
**Member**

**Mr Lawrence Ancilleri**  
**Member**