

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 1945 – SPD7/2023/035 – Services - Tender for the Provision of Security Services Including Reception Duties at the Malta Statistics Authority**

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

The Board,

Having noted the letter of objection filed by Dr Alessandro Lia on behalf of Lia Aquilina Advocates acting for and on behalf of Executive Security Services Ltd, (hereinafter referred to as the appellant) filed on the 16<sup>th</sup> October 2023;

Having also noted the letter of reply filed by Ms Fiona Borg Halford acting for Malta Statistics Authority (hereinafter referred to as the Contracting Authority) filed on the 26<sup>th</sup> October 2023;

Having heard and evaluated the testimony of the witness Ms Sarah Cachia (Chairperson of the Evaluation Committee) as summoned by Dr Alessandro Lia acting for Executive Security Services 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 27<sup>th</sup> November 2023 hereunder-reproduced.

### **Minutes**

#### **Case 1945 – SPD7/2023/035 – Services – Tender for the Provision of Security Services including Reception Duties at the Malta Statistics Authority**

The tender was issued on the 12<sup>th</sup> July 2023 and the closing date was the 11<sup>th</sup> August 2023.

The estimated value of this tender, excluding VAT, was € 255,000.

On the 16<sup>th</sup> October 2023 Executive Security Services Ltd filed an appeal against the Malta Statistics Authority as the Contracting Authority objecting to their disqualification on the grounds that their bid was marked lower than it merited.

A deposit of € 1,275 was paid.

There were six bids.

On the 27<sup>th</sup> November 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Ms Stephanie Scicluna Laiviera as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Executive Security Services Ltd**

Dr Alessandro Lia Legal Representative  
Mr Steve Ciangura Representative

**Contracting Authority – Malta Statistics Authority**

Dr Christopher Vella Legal Representative  
Dr Sarah J Meli Legal Representative  
Ms Sarah Cachia Chairperson Evaluation Committee  
Ms Fiona Borg Halford Secretary Evaluation Committee  
Mr Duncan Brincat Evaluator  
Mr James Briscoe Evaluator  
Mr Antoine Farrugia Evaluator

**Recommended Bidder – Signal 8 Security Services Malta Ltd**

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

**Recommended Bidder – Goldguard Security Services Ltd**

Invited to attend but did not accept the invitation

**Department of Contracts**

Dr Mark Anthony Debono Legal Representative

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

Dr Lia Legal Representative for Executive Security Services Ltd requested that witnesses be heard first.

Ms Sarah Cachia (174177M) called to testify by the Appellant stated on oath that there were certain shortcomings in the timekeeping criterion offered by the Appellant. In a BPQR tender the Evaluation Committee is looking for quality. The timekeeping template offered had a shortage of details and did not indicate staff changes caused by either side, the reasons therefor and leave of absence. The template covered only one report. The measures were there but there was no step by step statement of how they would be carried out. There was no indication on how reconciliation between the parties would be carried out.

Reference was made to the offer made by Goldguard Security Services Ltd. Dr Lara Attard Legal Representative for Signal 8 Security Services Malta Ltd intervened to say that it was not correct that reference should be made to documents that were not available to all the parties.

Resuming her testimony witness said that Goldguard offered to submit reports unlike Executive Security Services which did not indicate how these will be provided.

Questioned by Dr Vella Legal Representative for the Malta Statistics Authority, witness stated that the Appellant's time sheet gave no indication of changes of personnel, the reason for changes and which side asked for them. There was no room for supervisor's signatures on a report which was required to reconcile hours worked.

In reply to a question from Dr Lia, witness said that it was necessary to have the reconciliation facility on the sheet since the requirement on changes was specified in Article 16.4 of the tender.

This concluded the testimony.

Dr Lia said this appeal revolves on how the BPQR is evaluated and it is a fact that certain leeway is allowed in evaluating such a tender. The reference to Goldguard was in order since in the past the two firms worked together and shared information. The first claim by the Evaluation Committee was that there were details missing in the bid – this was then diluted to one item i.e. the lack of personnel changes on the form. There is no mention in the tender that this is a requirement. When reference is made to communication one does not necessarily mean that a document is required. The Support Services case states that there could be a number of submissions. The claim is made, that unlike Goldguard, Appellant did not supply an extra form for reconciliation, but in the latter case the form provided has to be reconciled anyway. The leeway allowed has been stretched too far as the Appellant did not have anything missing in its bid – all tender elements were fulfilled and the bid did not warrant any deduction of points.

Dr Attard said that the Contracting Authority insists that the submission of the Appellant did not satisfy the requirements. The tender specified certain requirements which could only be fulfilled by providing the correct documents. If the Authority was not satisfied then it was right to reject. The comparison with documents submitted by Goldguard is prejudicial to all other parties since they did not have access to those documents. Each tender is different and this is not a case of working together in the past as this disadvantages any economic operator working on its own. The Board must consider this point. The Authority maintains that documents were missing in the Appellant's offer and this too must be taken into consideration by the Board.

Dr Vella said that the Preferred Bidder disagrees that the submissions of Goldguard and the Appellant should be considered and compared by the Board as this is not a cheapest price tender. The tender is clear in what it required. Five points were allowed for the timekeeping element, that is what the evaluators were expecting and how that element would be achieved by inviting the economic operator to provide a satisfactory report. In this case the submission did not merit the full five points. No indication was given on recording change of personnel which is a crucial point which was not provided and hence the decision.

Dr Lia in a final comment said that the Board is not expected to compare the different bids but must ensure that a comparison is made.

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 27<sup>th</sup> November 2023.

Having noted the objection filed by Executive Security Services Ltd(hereinafter referred to as the Appellant) on 16<sup>th</sup> October 2022, refers to the claims made by the same Appellant with regard to the tender of reference SPD7/2023/035 listed as case No. 1945 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Alessandro Lia  
Appearing for the Contracting Authority: Dr Christopher Vella & Dr Sarah Meli  
Appearing for the Preferred Bidder: Dr Lara Attard

Whereby, the Appellant contends that:

- a) Appellant's bid had absolutely nothing inferior to the submission of the preferred bidder Goldguard Security and the deduction in marks was unjustified. .

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 26<sup>th</sup> October 2023 and its verbal submission during the virtual hearing held on 27<sup>th</sup> November 2023, in that:

- a) As emerges very clearly, it is completely unfounded that the submission made by the Objector for section B.1 Overall Coordination Strategy and Contract Infrastructure (Mandatory Criteria)' had the same level of detail as that required by the Tender and as submitted by the bidders awarded with the tender. In fact, whilst the winning bidders provided a complete write-up together with three annexes detailing the method of time-keeping and a plan for instances where personnel are required to be replaced, the objector only submitted a write-up of the time keeping methods and a timesheet template. In view of this, the TEC took into consideration that the winning bidders provided a greater level of detail and a more comprehensive method of timekeeping to this section of the submission and proceeded to provide a scoring which is reflective of this.
- b) The TEC formulated a justification for the mark awarded and it read as follows: *"Write-up re timekeeping partially satisfied the detailed list of measures required. Only timesheet template was provided apart from the employee code of conduct"*.
- c) It is to be emphasised that the award criterion was that of Best Price Quality Ratio and therefore the TEC was expected to assess the offers on the basis of the quality of service that was being provided by all the bidders. The marks allotted to each bidder are in line with the quality of service that was being provided by each bidder in their bids.
- d) The objector has gone on to claim that the result of the evaluation did not follow the principles of self-limitation and equality between bidders. A statement that the objector has failed to justify. The TEC examined all bids in an equal manner and limited itself to judging the bids on the detail

provided. Since timekeeping in providing security services is a main point of marking, the level of detail and methods used to ensure proper time keeping is paramount to ensure adequate and satisfactory level of service. Therefore, TEC was justified in deducting a mark in the objector's bid since the level of detail and the write up provided were deemed partially satisfied.

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) Initially this Board notes, with disappointment, the comments made by the appellant in relation to the submission of Goldguard Security Services Limited, one of the preferred bidders. The fact that in the past, the appellant and Goldguard would have assisted each other and / or performed tenders as a joint venture (or through any other legal form) is deemed irrelevant to proceedings. In this current tender procedure, these two entities submitted separate bids and therefore these are to be treated as two separate entities.
- b) On to the merits of the case, it is to be pointed out that the bone of contention should not revolve just around the number of appendices provided, or on the number of pages submitted in the write ups. What should be relevant is the quality of the submission itself. This, more so, when the 'Criteria for Award' is as per the Best Price / Quality Ration (BPQR) mechanism.
- c) Following an examination of the bids submitted, it is noted that the three operators relevant to this case, i.e. the appellant (Executive Security Services Ltd), and the two preferred bidders, i.e. Goldguard Security Services Limited and Signal 8 Security Services Malta Ltd all provided well documented write ups explaining the how processes would be entailed and followed.
- d) However, it is noted that the number of annexes / template reports provided differed. As already explained, the mere number of annexes / template reports is irrelevant, but it is the quality of information within that is relevant.
- e) The Board opines that the annexes / template reports further add to the quality of the economic operators submissions, since they are showing how in actual facts the 'initial write-ups' will be eventually implemented.
- f) Whilst it is true that the appellant did indeed provide quite a detailed monthly template report entitled "*Site Timesheet*", which resembles more a monthly reconciliation report which could also possibly be used as a form of employee timesheet, this was the only template report provided. It is to be noted that this report is designed to be used for multiple employees. This as also listed in the appellants submission by the use of the words "Employee 1" and "Employee 2". The other preferred bidders provided further information by way of more template reports, such as the "*Report Changes in Staff*" report something which is linked to page 19 of the tender dossier which states "*Any changes in personnel during the execution of the contract are to be communicated in writing to the*

*Contracting Authority and authorized to the satisfaction of the Contracting Authority as per requirements listed in Section 3 Terms of Reference of this tender document.” Other template reports submitted were i) specific weekly reports to be used for individual employees and ii) specific monthly reports to be used for individual employees.*

- g) The Board notes the importance that the Contracting Authority is giving to any possible security staff changes to be made when in the tender document it is stated *“These people will be given an oath under MSA Act, since they may have access to sensitive and confidential information. The Director General’s consent will be required for any changes in the approved pool of employees.”*
- h) Therefore, when considering all of the above, it is the opinion of this Board that the Evaluation Committee diligently exercised the ‘leeway’ afforded to evaluation boards in tenders adopting the BPQR criteria of award. This since the preferred bidders went a step further to showcase exactly how they would be reporting vital information to the Contracting Authority.

Hence, this Board does not uphold the Appellant’s grievances.

**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**

**Ms Stephanie Scicluna Laiviera**  
**Member**