

## PUBLIC CONTRACTS REVIEW BOARD

Case 1999 – CT 2363/2023 – Services Tender for Security Guards at Malta Libraries

2<sup>nd</sup> May 2024

The tender was issued on the 19<sup>th</sup> November 2023 and the closing date was the 19<sup>th</sup> December 2023.

The estimated value of this tender, excluding VAT, was € 631,886.88.

On the 8<sup>th</sup> March 2024 J.F. Security & Consultancy Services Ltd filed an appeal against the Malta Libraries objecting to their disqualification on the grounds that their offer was not successful since it failed to satisfy the criterion for award being the offer with the Best Procurement Quality Ratio (BPQR)

A deposit of € 3,159 was paid

There were seven bids.

On the 26<sup>th</sup> April 2024 the Public Contracts Review Board composed of Dr Charles Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

### **Appellant – J.F. Security & Consultancy Services Ltd**

Dr Matthew Paris	Legal Representative
Dr Zack Esmail	Legal Representative
Mr Matthew Formosa	Representative

### **Contracting Authority – Malta Libraries**

Dr Andrew Grima	Legal Representative
Ms Joanne Sciberras	Chairperson Evaluation Committee
Ms Ruth Briffa	Secretary Evaluation Committee
Mr Henry Cachia	Evaluator
Ms Cheryl Falzon	Representative

### **Preferred Bidders –**

#### **Kerber Security Ltd**

Dr Ryan Pace	Legal Representative
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#### **Grange Security Malta Ltd**

Invited but did not attend

**Executive Security Services Ltd**

Invited but did not attend

**Gold Guard Security Services Ltd**

Invited but did not attend

**Signal 8 Security Services Ltd**

Mr Joseph John Grech

Representative

**Department of Contracts**

Dr Mark Anthony Debono

Legal Representative

Dr Audrey Marlene Buttigieg Vella

Legal Representative

Dr Charles Cassar Deputy Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Matthew Paris for the Appellant made a preliminary point regarding the letter of rejection which failed to state the reason for refusal and that this came out only in the Authority's letter of reply. Regulation 272 stipulates that the reason has to be stated in the rejection letter.

Dr Andrew Grima for the Contracting Authority said that point should have been raised at objection stage and not now.

Dr Mark Anthony Debono representing the Department of Contracts (DoC) said that the Board must only consider appeals on the points raised.

Dr Paris requested that witnesses be heard next.

Ms Joanne Sciberras (174078M) called to testify by the Appellant stated on oath that she is the Director at Malta Libraries and was the Chairperson of the Evaluation Committee (EC) and went on to state that the Appellant bid was not rejected but simply awarded less marks on an item that was an add-on. This was a unanimous decision based on Article C2(Vii)(iii) of the tender and consequently only four points were awarded – this was confirmed in a letter sent to the DoC. As this was note 3 the shortcoming could not be rectified. On a Collective Agreement that expired in 2014 the EC considered the clause that it remained in force but this did not meet the requirements of the tender to award full marks. No proof was provided of any negotiations taking place. The letter submitted from the GWU dated May 2023 was older than six months at the date of tender submission and did not meet the BPQR validity period laid down in the tender. This was not a point of clarification.

Questioned by Dr Grima witness confirmed that the letter from the GWU was dated 23. May 2023 and the first meeting of the EC was in December 2023. DIER were not consulted if their letter was still valid. Although the Collective Agreement expired ten years ago the Appellant was not excluded but awarded less points. In December 2023, when the EC first met, there was no way of knowing if the 60% of the work force mentioned in the May letter was still applicable.

Ms Ruth Briffa (131184M) called to testify by the Appellant stated on oath that the document presented could only be allotted the points laid down in the BPQR.

Mr Henry Cachia (63265M) called to testify by the Appellant stated on oath that he was one of the Evaluators. The evaluators, having discussed the point, were of the view that the Appellant's offer did not meet the BPQR requirements.

This concluded the testimonies.

Dr Paris stated that the tender requirements are rigid and cannot be changed. What was requested was an identical copy of the Collective Agreement for registration with the DIER – an agreement that was in force till 2014 but with an extension agreement that cannot be excluded. The May 2023 agreement with the GWU indicates that negotiations were still in progress. The EC decided that the period of six months from May to December should not be considered when in fact there was no limitation on the validity of documents in the tender. PCRB Case 1665 *Cherubino vs CPSU* and CJEU Case T 211/02 *Tideland* deal with points similar to this case. In PCRB Case 1900 the phrase “undeniably still in force” was used precisely on this point in dealing with the same principle also involving the Appellant and directed that the case be re-evaluated. The EC should have asked for clarification, a point which according to Policy Guidelines 40 is mandatory. The *Tideline* case mentioned deals with the degree of care required if there are any ambiguities. The tender is clear and there are no doubts what is requested.

Dr Grima said that the claims of rejection by Dr Paris are incorrect and out of place. The Collective Agreement expired ten years ago and only transit provisions keeps it active. The letter of May 2023 refers to renegotiations and the DIER in 2022 refers to an agreement in 2014 not precisely what was requested. Clarification not applicable as the EC had no tangible proof that the Collective Agreement met the terms of the tender.

Dr Debono said that Appellant claims that the Agreement is still valid. Regulation 39 of the PPRs defines valid as 90 days and therefore the argument that the Agreement is still valid is not sustainable. The PCRB does not rely on previous cases as precedent and each case must be dealt with on the facts as they are. PCRB Case 1577 deals with the discretion that the EC has in evaluating a BPQR tender.

Dr Ryan Pace Legal Representative for Kerber Securities Ltd said that the Board must bear in mind that Appellant was not excluded but was simply not the winner and was awarded points according to the BPQR criteria. Appellant claims the maximum marks should have been awarded. Witness Ms Sciberras clearly stated why the points were awarded according to the terms. BPQR must not become a ticking the box exercise. Appellant was not excluded and the EC acted correctly and conformed with the tender documents.

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 26 th April 2024.

Having noted the objection filed by JF Security & Consultancy Services Limited (hereinafter referred to as the Appellant) on 08th March 2024, refers to the claims made by the same Appellant regarding the tender of reference CT2363/2023 listed as case No. 1999 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Matthew Paris/Dr. Zack Esmail
Appearing for the Contracting Authority:	Dr Andrew Grima
Appearing for the Preferred Bidders	Dr Ryan Pace for Kerber Security Mr J.J. Grech for Signal 8 Security Services Ltd

Whereby, the Appellant first made a preliminary point on the letter of rejection.

It was highlighted that the letter of rejection failed to elucidate the grounds for refusal, with the clarity on this matter only surfacing in the subsequent letter from the Authority. It's crucial to note that Regulation 272 expressly mandates the inclusion of reasons in the rejection letter.

The Board took note of this point.

Then went on to express the main grievance that:.

The collective agreement that was submitted is valid and is appropriately registered with the Department of Industrial and Employment Relations. The points awarded to JF Security & Consultancy Services Ltd should have been the maximum, in accordance with the criteria weighting matrix, and thus the evaluation and the ensuing marking is erroneous. Moreover, GWU confirmed the validity of the collective agreement by means of a letter which was provided with the submitted documents.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 18th March 2024 and its verbal submission during the hearing held on 26<sup>th</sup> April 2024, in that:

JF Security & Consultancy Services Ltd submitted a copy of an expired collective agreement including a letter by the GWU affirming the validity of the collective agreement. This letter is dated 25 May 2023. The TEC could not therefore conclude that this collective agreement is valid for this tender because the opening of the tenders was on the 19 December 2023 and therefore the letter provided is not sufficient. The reduction of points is justified because the letter of validity provided is expired by six months and the Collective Agreement is also expired. This was not rectifiable during evaluation stage since it falls under Note 3

Thus, the evaluation committee deemed that the collective agreement as an expired collective agreement and as such awarded JF Security & Consultancy Services Ltd four (4) marks out of six (6).

The Contracting Authority did not make a wrong evaluation of the documentation submitted nor of the criteria established in the tender document.

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.

It opines that the Collective Agreement as presented by the Appellant is still in force, although the 'time frame' 4th June 2012 -3rd June 2014, came to an end .

Section 4 of such Collective Agreement states *"This Agreement shall be effective from the 4<sup>th</sup> June 2012 and shall remain in force until the 3<sup>rd</sup> June 2014"*, it then goes also to speak about its validity in 'interim periods' when it states *"During negotiations, and until a new Agreement is signed, the contents of this Agreement shall remain in force"*.

The May 2023 agreement with the GWU indicated ongoing negotiations, a fact confirmed by the correspondence from GWU. However, the EC dismissed its relevance, citing its May date against the December tender opening, despite there being no explicit limitation on document validity within the tender process.

Hence, this Board upholds the Appellant's grievances.

### **The Board,**

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

- A. To uphold the Appellant's concerns and grievances;
- B. To cancel the Letter of Rejection dated 27th February 2023 sent to JF Security & Consultancy Services Limited.
- C. To order the contracting authority to re-evaluate the submission of the Appellant pertaining to C2 (viii) Collective Agreement (add-On-Criteria) whilst taking into consideration this Board's findings.
- D. To refund the deposit to the Appellant.

**Dr Charles Cassar**  
Chairman

**Mr Lawrence Ancilleri**  
Member

**Ms Richard A Matrenza**  
Member