

PUBLIC CONTRACTS REVIEW BOARD

Case 2104 – CT 2325/2024 - – Framework Contract for the Provision of Security at Pjazza Teatru Rjal

5th May 2025

The Board,

Having noted the letter of objection filed by Dr Alessandro Lia, acting on behalf of Lia & Aquilina Advocates, acting for and on behalf of Gold Guard Security Services Limited (hereinafter referred to as the "Appellant"), filed on the 24th of March 2025;

Having also noted the letter of reply filed by Dr Andrew Grima, acting on behalf of Advocates Primei, acting for and on behalf of Pjazza Teatru Rjal (hereinafter referred to as the "Contracting Authority"), filed on the 2nd of April 2025;

Having heard and evaluated the testimony of the witness Ms. Dorothy Camilleri (Evaluation Committee member) as summoned by Dr Alessandro Lia;

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

Having noted and evaluated the minutes of the Board sitting of the 30th of April 2025, hereunder reproduced:

Minutes

Case 2104 - CT-2325/2024 – Framework Contract for the Provision of Security at Pjazza Teatru Rjal

The tender was issued on the 4th of December 2024, and the closing date was the 7th of January 2025.

The estimated value of the tender, excluding VAT, was €653,763.

On 24th March 2025, Gold Guard Security Services Limited (C72254), lodged an appeal against Pjazza Teatru Rjal (PTR) in accordance with Regulation 270 of the Public Procurement Regulations (PPR). The appellant objected for being disqualified.

A deposit of €3,269 was paid.

There were seven bids.

On the 30th of April 2025, the Public Contracts Review Board (PCRB), composed of Mr. Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr. Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Gold Guard Security Services Limited. (C72254)

Dr Alessandro Lia – Legal Representative.

Contracting Authority – Pjazza Teatru Rjal

Dr Andrew Grima – Legal Representative.

Mr. Christopher Muscat – Director PTR, Chairman of the Tender Evaluation Committee (TEC)

Ms. Dorothy Camilleri – Member TEC- Evaluator.

Preferred Bidder Signal 8 Security Services Malta Ltd. (C54368)

Dr Albert Zerafa – Legal Representative. Invited but did not attend.

Mr. Jovan Grech – Company Representative. Invited but did not attend.

Department of Contracts:

Dr Mark Anthony Debono – Legal Representative.

Introduction

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

Initial Submissions

Submissions by the Appellant

Dr Alexander Lia, legal representative for the appellant, stated that he would forego an introductory statement and instead pose a single question to Ms. Dorothy Camilleri (ID: 20965M), a member of the evaluation board.

Witness Testimonies

Ms. Camilleri as summoned by Dr Lia

Dr Lia inquired whether Ms. Camilleri had participated in the evaluation of the tender and whether she concurred with the assertion that the tender primarily concerned the provision of security personnel. Ms. Camilleri affirmed both points.

Dr Lia further asked Ms. Camilleri to confirm whether the tender required bidders to include within their organisational structure a support and back-office function. Ms. Camilleri agreed, explaining that such requirements are standard in the security sector.

Dr Lia referred to page 29 of the tender document, which reads:

“The contractor is to provide suitably vetted, thoroughly and appropriately trained security personnel and the direct managerial/support/Backoffice/back-up staff.” Ms. Camilleri clarified that the term *“back-up staff”* refers specifically to back up security. The *“back-office”* refers to the administrative

contacts and support personnel with whom she liaises concerning security operations. When Dr Lia asked whether the back office refers to the “administration,” and Ms. Camilleri confirmed.

No further submissions were presented at this stage.

Final Submissions

Final Submissions by Dr Lia.

Dr Lia asserted that the appeal before the Board was straightforward and concerned a single contested evaluation point. Specifically, the reduction of points on one subject. He maintained that there was no room for subjectivity in interpreting this requirement.

He submitted that the Contracting Authority had incorrectly asserted that a requisite document had not been provided. The relevant tender criterion states:

“A contract agreement between the bidder and an employee is to be provided.”

Dr Lia emphasised that the requirement explicitly refers to “an employee” and not necessarily to security personnel. He stressed that the tender documentation, corroborated by Ms. Camilleri’s testimony, clearly mandates the provision of administrative, support, and back-office staff as part of the required structure. Moreover, there is no specific definition of what constitutes an employee in the tender document.

Accordingly, the appellant submitted a valid contract agreement with an individual serving in an administrative capacity, in compliance with the tender’s terms and the interpretation acknowledged by the evaluation board member.

Dr Lia contended that, the contract submitted satisfied the relevant requirement, the Contracting Authority had overstepped the boundaries of the tender parameters, that the interpretation applied by the authority was inconsistent with the wording and intent of the tender. Consequently, the appellant should be deemed compliant and allowed to remain in competition alongside the other three shortlisted bidders.

Final Submissions by Dr Andrew Grima

Dr Grima began by reaffirming that the tender fundamentally concerns the provision of security personnel, a fact known and accepted by all participating bidders. He argued that any interpretation of the tender requirements must be anchored in this central objective.

He maintained that the contract submitted by Gold Guard Security Services Limited was not consistent with the primary aim of the tender, which was to secure front-line security services and the document provided by the appellant did not pertain to security personnel and therefore did not meet the specific requirement as envisaged by the tender.

The consequent deduction in evaluation points was appropriate and justified under the terms of the tender and the evaluation board’s decision should be upheld.

Conclusion

Since no further arguments were presented, Mr. Kenneth Swain, the Chairman, formally thanked all parties for their participation and declared the meeting concluded.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 30th of April 2025.

Having noted the objection filed by Gold Guard Security Services Limited (hereinafter referred to as the "Appellant") on the 24th of March 2025 and refers to the claims made by the same Appellant with regards to the tender of reference CT 2325/2024 listed as case No. 2104 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Alessandro Lia

Appearing for the Contracting Authority: Dr Andrew Grima

Whereby, the Appellant contends with respect to:

(a) Non-Compliance with respect to C2 Employment Conditions (iii)

- GoldGuard was disqualified because according to the Contracting Authority it did not satisfy criterion C2(iii) which required a contract between the bidder and an employee. The reason given by the Contracting Authority reads as follows: "*Bidder did not provide a contract of a security guard*"
- GoldGuard's appeal is clear and consists of the interpretation of the requirement on which basis it was disqualified.
- The requirement reads as follows:

(iii) *Employees have a written contract of employment. **Mandatory***

A copy of a contract agreement between the bidder and an employee is to be provided.

It appears that the Contracting Authority disqualified the appellant because, according to them, the employee of that contract was not a '*Security Guard*', but was indicated as a '*Customer Care Support Officer*'

- a) First of all, the requirement itself does not indicate which employee the bidder should submit an employment contract for. The requirement merely states "[a] *copy of a contract*

agreement between the bidder and an employee." If the tender document wanted it to be specifically of a security guard, then it would have specified so. The Contracting Authority cannot now expect that the appellant should suffer for its own shortcoming.

- b) In any case, even the tender document itself, on page 21 (Special Conditions), requires that there be "*availability as appropriate of support staff and backstopping for the proper execution of the contract*"
- c) Even on page 29 of the tender document it states that "*The Contractor is to provide suitably vetted, thoroughly and appropriately trained security personnel and the direct managerial/ support/ back office/ back-up staff.*"

(b) Competence of the Evaluation Committee

- Finally, the appellant reserves its position regarding the competence of the members of the evaluation committee, and for this purpose is raising this grievance to contest it as well.

The Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 2nd of April 2025 and its verbal submission during the hearing held on 30th April 2025, in that:

(a) Non-Compliance - The requirement does not indicate which employee's contract should be submitted

- The Contracting Authority humbly submits that it does not at all agree with the grievance presented by the Appellant as it is clear that the word "*employee*" refers to a security guard and no other type of employee. So, when it was established that a copy of a *contract agreement between the bidder and an employee* should be presented, the word *employee* qualifies as security personnel. In fact, page 21 of the tender document confirms that employees must have a valid *security guard* license.
- So much so that every other document submitted by the Appellant was related to the provision of security personnel services. In fact, requirement B.5 - Uniform/Attire - does not make specific reference that the uniform had to be that of security guards and in fact the word personnel is used but the bidder provided pictures of a *security guard tag*.
- Moreover, reference is made to the *Scope of Work (Page 28 of the tender document)* where it is established that:
This Tender is designated for companies licensed to carry out security services and only such companies shall qualify to submit an offer. The security company shall suitably be manned with qualified and trained personnel for the security.
- The fact that the Appellant submitted an employment contract for customer support is totally incongruent with the nature of the tender and therefore the evaluation committee was justified in not allocating points.

(b) Non-Compliance - Tender Document (Special Conditions) requires that there be availability as appropriate support staff and backstopping for the proper execution of the contract

- Also, on page 28 of the tender document it states that "*The Contractor is to provide suitably vetted, thoroughly and appropriately trained security personnel and the direct managerial/support/back office/back-up staff*"
- The Contracting Authority humbly submits that the object of the tender was one, namely the provision of security guard services, and these were the employees that were the object of the tender and not the back-up staff.
- Regarding this grievance, the Contracting Authority also submits that even the Operations Plan submitted by the Appellant itself makes reference only to security personnel and not other employees.

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.

Grievance 1: Non-Compliance with Criterion C2 Employment Conditions (iii)

- The Board notes that the Appellant was disqualified because, according to the Contracting Authority, it did not satisfy criterion C2(iii) which required "*a contract agreement between the bidder and an employee.*" The specific reason provided by the Contracting Authority for the disqualification is that the "*Bidder did not provide a contract of a security guard.*"
- The Appellant contests its disqualification on the basis that the tender required "*a copy of a contract agreement between the bidder and an employee*" without specifying the category of employee. The Appellant submitted a contract for a Customer Care Support Officer, arguing this satisfied the requirement.
- The Board notes that Section 3 Terms of Reference clause 4.2 of the tender document explicitly states: "*The contractor is to provide suitably vetted, thoroughly and appropriately trained security personnel and the direct managerial/support/Backoffice/back-up staff.*" Testimony from Ms. Camilleri, an Evaluation Committee member, confirmed that "*back-office*" refers to administrative staff.
- The Board reiterates the principle of self-limitation, which is firmly established in public procurement law and consistently applied by this Board (see, for example, Case 1665- CT 2162/2021, Case 1927 – CPSU1396/19, and Case 1841 – CT3017/2022). This principle requires that the Evaluation Committee strictly applies the criteria as expressly stated in the tender documentation, without adding or interpreting requirements beyond what is written.

- Regulation 39(1) of the PPR obliges contracting authorities to treat economic operators equally and act in a transparent and proportionate manner. Regulation 39(2) further requires that the tenderer be selected in a transparent manner and according to a prescribed procedure.
- Given Section 3 Terms of Reference clause 4.2, the Board finds that interpreting “*employee*” to mean only “*security guard*” constitutes an unjustified restriction not supported by the tender’s wording and infringes these principles.
- In light of the above, the Board finds that the Appellant fulfilled the contract submission requirements for an employee as per tender specifications. The Evaluation Committee’s decision to disqualify the Appellant on this ground was not justified and contravened the principle of self-limitation.

Therefore, the Board upholds the Appellant’s grievance on this point.

Grievance 2: Competence of the Evaluation Committee

- The Appellant alleges a lack of competence on the part of the Evaluation Committee but has not provided any evidence or substantiated arguments in this regard.
- The Board notes that, in accordance with established case law, there is a presumption of competence for duly appointed evaluation committees unless clear evidence to the contrary is presented.
- No such evidence was brought forward by the Appellant during the hearing or in the documentation submitted.

Therefore, the Board does not uphold the Appellant’s grievance on this point.

The Board,

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

- a) To uphold the Appellant's Letter of Objection and contentions related to the first grievance concerning compliance with criterion “C2 *Employment Conditions (iii) Employees have a written contract of employment. Mandatory. A copy of a contract agreement between the bidder and an employee is to be provided.*”
- b) Does not uphold the Appellant's contentions related to the second grievance relating to the Competence of the Evaluation Committee
- c) Orders the reintegration of the Appellant’s bid in the re-evaluation process, which re-evaluation shall implement the Board’s findings.
- d) Directs that bidders be requested to extend the validity period of their respective bids, if required;
- e) Directs that the deposit paid by Appellant to be fully reimbursed.

Mr Kenneth Swain
Chairman

Dr Ing. Damien Gatt
Member

Mr Lawrence Ancilleri
Member