

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2232 – CT2193/2024 – Framework contract for the provision of security guard services for various hubs under the remit of Servizz.gov Agency**

**7<sup>th</sup> May 2026**

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 2<sup>nd</sup> March 2026;

Having also noted the letter of reply filed by Dr Alexia Farrugia Zrinzo and Dr Leon Camilleri acting for Servizz.gov Agency (hereinafter referred to as the Contracting Authority) filed on the 12<sup>th</sup> March 2026;

Having heard and evaluated the testimony of the witness Ms Maronia Zerafa (Evaluator) as summoned by Dr Alessandro Lia acting for and on behalf of Executive Security Services Ltd;

Having heard and evaluated the testimony of the witness Mr Henry Cipriott (Chairperson of the Evaluation Committee) as summoned by Dr Leon Camilleri acting for and on behalf of Servizz.gov Agency;

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> April 2026 hereunder reproduced.

### **Minutes**

Case 2232 – CT2193/2024 – Services – Framework Contract for the Provision of Security Guard Services for Various Hubs Under the Remit of Servizz.Gov Agency.

The Tender was issued on the 16<sup>th</sup> of August 2024, and the closing date was 24<sup>th</sup> of September 2024.

The estimated value of the tender, excluding VAT, was €2,186,940

On 2<sup>nd</sup> of March 2026, Executive Security Services Ltd., lodged an appeal against the Servizz.gov Agency– the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 27<sup>th</sup> of April 2026, 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.

A deposit of €10,935.00 was paid.

There were eight bids.

The attendance for this public hearing was as follows:

**Appellant – Executive Security Services Ltd.**

Dr Alessandro Lia – Legal Representative

Mr Steve Ciangura – Company Representative

**Contracting Authority – Servizz.gov Agency**

Dr Alexia Farrugia Zrinzo – Legal Representative

Dr Leon Camilleri – Legal representative

Mr Henry Cipriott – Chairperson

Ms Maronia Zerafa – Evaluator

Ms Tatiana Sciberras – Evaluator

Mr Carl Saliba – Evaluator

Mr Jurgen Grima – Secretary

Ms Chantelle Vassallo Shead - Contracting Authority’s Representative

**Preferred Bidder – Kerber Securities Ltd.**

Dr Ryan C. Pace – Legal Representative

Mr Martin George Casha – Company Representative

**Opening Statements**

The Chairman welcomed the parties present and formally opened Case Number 2232 in the records of the PCRB. The Chairman identified the Appellant as, Executive Security Services Ltd., the Contracting Authority as the Servizz.gov Agency, and acknowledged the presence of representatives of the preferred bidder, Kerber Securities Ltd.

**Initial Submissions**

The Chairman stated that member Dr Ing. Damien Gatt would be attending the hearing online. Since all parties agreed to proceed and hear the witnesses, the first witness was called.

**Witness Testimonies**

***Ms Maronia Zerafa, ID no. 488876M, summoned by Dr Alessandro Lia***

Ms Zerafa, a PA with the CEO of Servizz.gov, was one of the evaluators in the grievance forming part of the appeal.

Dr Lia mentioned four points referring to the deduction of marks and the reasons, and he quoted: *“Did not specify the number of standby personnel”*

Ms Zerafa noted that this was a BPQR. All the evaluators agreed unanimously, after seeing that the criterion carried five marks, and they discussed how to allocate them. They then shared everything with the Chairperson. This was done before the evaluation process.

Dr Lia stated that the evaluators split the criteria into sub-criteria.

Ms Zerafa explained that they then awarded extra points to those who submitted more information, such as identifying that they had twelve additional personnel or that they would carry out an extra patrol. There was no written report on the sub-criteria, as this was decided internally by the committee.

Dr Lia asked whether they considered if the standby personnel had a car or a licence. This was not a requirement in the tender.

Ms Zerafa noted that this was additional information which they considered. She stated that Executive Security mentioned that they had a number of standby personnel.

Dr Lia asked why fewer marks were awarded, referring to sub-criterion B13, and he quoted: *“The economic operator is to submit a report, in the form of a write up, of approximately 350 words for each of the below outlining a list of measures etc”*. and Number three states *“A list of measures to ensure safeguarding of assets, as per terms of reference 2.2”*.

The evaluators gave the reason:

*“The bidder did not specify any additional safeguarding measures to enhance the protection of assets, as required under article 2.2 of section 3, Terms of Reference”*.

Ms Zerafa stated that they needed to know about closing times for the safeguarding of the agent, opening times, and alarm management. The more details one provides, the more points are awarded.

Dr Lia insisted on identifying what additional safeguarding measures the appellant had failed to specify.

Ms Zerafa replied that it was essential to know whether there were standby personnel in case of illness, as well as details about opening and closing times. Such information would earn more points.

Dr Lia repeated the same question.

The Chairman suggested that the witness be provided with the tender document. He stated that Article 2.2 was on page 28 and the evaluation grid was on page 10.

Ms Zerafa answered that they required more information regarding standby personnel.

Dr Lia asked why this was not indicated in B13. He quoted:

*“The bidder did not specify any additional safeguarding measures to enhance the protection of assets, as required under Article 2.2 of Section 3 – Terms of Reference. A comprehensive asset safeguarding plan should include layered security measures to address various risks and ensure robust asset protection”*.

Ms Zerafa noted that if personnel arrived late, agents would have to wait outside, and Executive Security did not provide sufficient information regarding standby personnel.

Dr Lia asked the witness to read Executive’s submission regarding standby personnel; however, the witness did not have that part of B13.

Referring to B14, he quoted:

*“The Economic Operator is to submit a report in the form of a Write-up of approximately 350 words for each of the below outlining a list of measures as detailed in section 3 Terms of Reference.*

*4) A list of measures to ensure the secure opening and closing of premises as per Terms of Reference Article 2.2”*. and the answer:

*“The bidder’s submission did not include details on the availability of back-up personnel, as required*

*under Articles 4.2.8© and 4.2.8(1) of Section 3 – Terms of Reference, to ensure uninterrupted service during unforeseen absences. Nor did it address operational flexibility to accommodate schedule changes, as may be required by the Contracting Authority under Article 4.2.6 of section 3 – Terms of Reference”.*

Ms Zerafa noted that although Executive Security mentioned supervisors, they did not provide further details.

Dr Lia quoted from page 41:

*“The contractor shall conduct monthly on-site visits to inspect personnel while on duty, ensuring an adequate level of service, and must submit an inspection report to servizz.gov Agency within two weeks following the end of each month”.*

He then asked for a definition of a supervisor.

The witness stated that other bidders provided schedules. Executive should have submitted that the supervisor would check attendance and ensure that all workers were present. Referring to B15, he quoted:

*“A list of measures, including methods of communication, to ensure that all security personnel assigned to this contract are aware and remain updated of the Contracting’s Authority’s policies and procedures, as well as reporting any matters to the Contracting Authority as per Terms of Reference Article 2.2”.* and the answer:

*“The bidder’s submission mentioned spot checks and regular inspections as measures to ensure that security personnel remain updated on the Contracting Authority’s policies and procedures, however, the descriptions provided were brief and lacked sufficient detail to assess their effectiveness. Comprehensive explanations of these measures, including their frequency and scope, are necessary to ensure consistent compliance and timely resolution of issues”.*

Dr Lia asked why fewer marks were awarded for these points, and the witness replied that the descriptions were too brief.

*Cross-examination by Dr Leon Camilleri*

Dr Camilleri confirmed that the committee consisted of a chairperson, a secretary, and three evaluators, and that before the evaluation process they agreed on a sub-criteria methodology. This was done to allocate points based on quality, using a system of x, x+1, or x+2 depending on the level of information provided.

The appellant did submit that they had personnel but did not specify the number. They also failed to provide sufficient information on the safeguarding of assets. The committee based its marks on quality, and additional information was considered beneficial to the evaluation.

***Mr Henry Cipriott, ID no. 2685M, summoned by Dr Leon Camilleri.***

Mr Cipriott, Chairperson of the Evaluation Committee, stated that before the evaluation they established an internal scoring methodology to guide how marks would be awarded. He had eighteen years of experience in drafting tenders, evaluation, and contract management within Public Procurement.

*Cross-examination by Dr Alessandro Lia*

Mr Cipriott confirmed that he was involved in creating the internal scoring methodology. The criteria were derived from the parameters set out in the Terms of Reference. He stressed that the number of standby personnel was of utmost importance, given that there were twenty-five premises. Marks were allocated accordingly, and a minimum of five personnel needed to be indicated.

## **Final Submissions**

### ***Final Submissions by Dr Alessandro Lia (for the appellant)***

Dr Lia argued that the BPQR method is problematic because it is open-ended. An evaluator may interpret broad conditions, create sub-conditions, assign numerical values, and subjectively decide what is satisfactory. This, he argued, is risky.

He acknowledged that this may have been done in good faith but maintained that it was not procedurally correct. Ms Zerafa indicated that additional safeguarding measures referred to standby personnel; however, this was not reflected in the reasons given to Executive for the loss of marks under B13. He quoted:

*“A comprehensive asset safeguarding plan should include layered security measures to address various risks and ensure robust asset protection”.*

He argued that such reasoning was too vague for the appellant to defend itself. Referring again to B15, he noted that one submission by Executive contained nine pages and another four pages. He stated that the submission included a WhatsApp group for communication, meetings, and a supervisor present on-site.

Dr Lia questioned what further information was required and reiterated that BPQR is problematic. The tender should specify minimum requirements, with additional points awarded for enhanced proposals. In this case, Executive Security received less than full marks across all seven criteria.

He further argued that the standby personnel issue arose from the internal scoring system, which should be made available to the Board to assess whether the evaluation was fair and within the tender parameters.

He questioned why specific sub-divisions were used and not others. Mr Cipriott had mentioned five as the minimum number of personnel, but this requirement was determined after the tender closed.

He also addressed the definition of a supervisor, noting that the Evaluation Committee stated: *“While the role of a supervisor was mentioned” taken from B14 “it was not explicitly linked to ensuring adherence to schedules or verifying attendance”.*

Dr Lia maintained that the appellant’s submission already indicated that the supervisor would oversee operations, and no further detail should have been required. While some discretion is granted to evaluation committees, he argued that it must be limited and controlled and not all subdivisions should be accepted, for the simple reason that it was a BPQR.

He concluded by requesting the Board to examine the reasoning provided, which he claimed was generic and failed to clearly identify deficiencies. The issue of standby personnel was not explicitly requested in the tender.

***Final Submissions by Dr Leon Camilleri (for the Contracting Authority)***

Dr Camilleri argued that Dr Lia was challenging the BPQR system in the wrong forum, as it is a valid legal procedure that allows limited discretion within the tender parameters.

The Evaluation Committee was responsible for awarding more points to bidders who provided more detailed information, as confirmed by both witnesses. He stated that it was unjust to question the clarity of the tender requirements.

He added that the appellant could have requested the internal guidelines to verify whether they fell outside the tender parameters. The Board values well-prepared submissions, and it is the duty of the Evaluation Committee to select the best-quality offer. The appellant said that they submitted information, but the Evaluation Committee did not give full marks as the Committee wanted more quality.

All bidders submitted information, but the committee had to determine which was the most comprehensive. He maintained that the committee acted professionally and did not introduce new requirements.

***Final Submissions by Dr Ryan Pace (for the Recommended Bidder)***

Dr Pace stated that, in certain areas, only minimal information had been provided. While the system may not be perfect, it is not the role of the Board to challenge it but to apply the law as it stands.

He noted that BPQR is commonly used and that bidders accept its framework when submitting their offers. If the appellant found any requirements unclear, they could have sought clarification beforehand.

He stated that bidders submit their offers using the available templates, and unsuccessful bidders often challenge the system afterward. BPQR ensures quality-based evaluation rather than price alone.

The appellant could have asked for more information by a clarification. The reality was, that the bidder submits his offers with the templates available, and if he is not awarded, he will attack the system.

He added that differences in scoring were due to variations in the level of detail provided. The number of pages is not decisive; rather, the quality of content is.

He concluded that any discrepancies were minimal and that the Contracting Authority acted correctly.

***Reply by Dr Alessandro Lia***

Dr Lia clarified that he was not attacking the BPQR system itself but rather its application in this case. He referred to the Board's role under Regulation 87.

He maintained that the marks, whether 0.5 or 10, were effectively zero due to the generic reasoning provided. He questioned why the sub-divisions were not included in the tender document.

***Reply by Dr Leon Camilleri***

Dr Camilleri noted that the appellant only became aware of the sub-divisions during the hearing. The appeal was not based on these, and they demonstrated the committee's effort to properly evaluate the tender. He requested that the award be confirmed.

## Conclusion of the Hearing

With no further arguments presented, Chairman Mr Kenneth Swain thanked the parties and formally concluded the session.

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> April 2026.

Having noted the objection filed by Executive Security Services Ltd (hereinafter referred to as the Appellant) on 2<sup>nd</sup> March 2026, refers to the claims made by the same Appellant with regard to the tender of reference CT2193/2024 listed as case No. 2232 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Alessandro Lia
Appearing for the Contracting Authority:	Dr Alexia Farrugia Zrinzo & Dr Leon Camilleri
Appearing for the Preferred Bidder:	Dr Ryan Pace

Whereby, the Appellant contends that:

a) ***First grievance***

We respectfully submit that the first four reductions in points, namely under B1(1), B2(1), B2(2) and B2(3), are all based on the same flawed reasoning. The Authority states that we confirmed the use of standby and replacement personnel, but then reduced our points because we did not indicate how many standby personnel we would have available.

With respect, this reasoning is not justified. The tender documents did not require us to state a specific number of standby personnel, and no such numerical requirement is expressly found in the wording of the relevant subcriteria. The Authority is therefore introducing an additional requirement which was never written in the tender documents.

In our view, we fully satisfied the requirements of these subcriteria. The Authority has exercised its discretion too widely and has penalised us for failing to provide information that was never expressly requested. For this reason, the reductions under B1(1), B2(1), B2(2) and B2(3) are unfounded.

b) ***Second grievance***

We also respectfully object to the reduction of points under B1(3), which concerns the safeguarding of assets.

The Authority stated that our submission did not include “additional safeguarding measures” to enhance asset protection. However, the relevant subcriterion did not ask for additional safeguarding measures; it simply required safeguarding measures. The Authority has therefore expanded the requirement beyond the actual wording of the tender.

Article 2.2 of Section 3 merely states that security officers must safeguard the assets of the Contracting Authority. It does not require the bidder to provide the additional and more onerous level of detail now being demanded by the Authority. We therefore submit that the reduction under B1(3) is not justified.

c) ***Third grievance***

Our third grievance concerns B1(4), namely the secure opening and closing of premises.

The Authority reduced our points on the basis that we did not provide details about regular oversight by supervisors or managers, attendance verification, back-up personnel, and flexibility to accommodate schedule changes. With respect, these matters go beyond what this subcriterion actually required.

The criterion relates specifically to the secure opening and closing of premises. It does not require a full staffing management system or all the additional matters now relied upon by the Authority. Moreover, some of the points raised by the Authority were already addressed elsewhere in our submission. For these reasons, we submit that the reduction under B1(4) is similarly unfounded.

d) ***Fourth grievance***

We further object to the reduction under B1(5), which concerns communication methods and ensuring that security personnel remain aware of the Contracting Authority’s policies and procedures.

The Authority says that our descriptions of spot checks and regular inspections were too brief and lacked sufficient detail. It also again refers to the absence of standby personnel and replacement protocols. However, the Authority has not explained what further detail it expected from us, and the scope of its criticism is too open-ended and subjective.

In our view, the Authority is once again applying an excessively wide interpretation of the requirement and relying on issues which were already raised under other subcriteria. The reduction under B1(5) is therefore unjustified.

e) ***Fifth grievance***

We also reserve our position regarding the competence of the members of the evaluation committee.

This point is raised out of caution, so that our rights are preserved should it become necessary to challenge the matter further. We accordingly maintain this grievance as part of our appeal.

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This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 12<sup>th</sup> March 2026 and its verbal submission during the hearing held on 27<sup>th</sup> April 2026, in that:

- a) With regard to the first grievance, Stand-by personnel / contingency capacity; The absence of a clear indication of number of persons on stand-by had to be taken in consideration by the Evaluation Committee. The Evaluation Committee deducted marks because the Appellant's submission did not indicate the scale or number of standby personnel available for deployment under the contract. Under criteria B1(1) and B2, bidders were required to demonstrate credible measures ensuring staffing continuity and contingency coverage across multiple hubs. In the context of a multi-site security services contract, the capacity of standby personnel constitutes a fundamental operational parameter for assessing whether uninterrupted service can realistically be sustained. Without an indication of standby personnel capacity, the Evaluation Committee could not fully assess:
- the adequacy of replacement resources relative to staffing requirements;
  - the ability to absorb simultaneous absences;
  - the operational resilience of the proposed continuity model.

The deduction therefore reflected the absence of a key quantitative element necessary to evaluate continuity assurance within the scope of the criterion. It did not introduce any additional requirement beyond what is inherently required in order to demonstrate credible staffing continuity and contingency capacity. The Agency submits that the Evaluation Committee exercised its professional judgment within the scope of the published evaluation criteria and the Terms of Reference when determining the points allocated under each criterion. With regard to the different deductions, the Agency submits that the different scoring reflects criterion-specific qualitative weighting: B1(1) concerned general staffing continuity, whereas, B2 criteria concerned disruption scenarios (sick leave, transport failure, termination) requiring higher contingency assurance. The Committee assessed that contingency scenarios required slightly stronger demonstrable capacity than baseline staffing continuity. The marginal difference in deduction reflects proportional qualitative judgment specific to criterion risk profile. Such proportional differentiation is inherent to BPQR evaluation and does not indicate inconsistency. The Evaluation Committee submits further that it used the same evaluation approach with all the bidders, it observed self-limitation by not introducing new requirements, no expansion beyond tender requirements occurred, and all scoring differentiation was reasoned and consistent with BPQR methodology. Thus, the same considerations were applied consistently across all bids, ensuring equal treatment of all participating economic operators. Moreover, the Evaluation Committee acted strictly within the limits of the

tender document and the Terms of Reference when assessing the technical submissions of the participating bidders.

b) With regard to the second grievance: Safeguarding of assets / additional measures:

The criterion required the Economic Operator to submit a write-up outlining a list of measures to ensure that the Contracting Authority's assets are safeguarded, in accordance with Section 3 - Terms of Reference (Article 2.2). The Evaluation Committee acknowledges that the Appellant's submission includes a number of standard security measures (e.g. risk assessment, patrolling, reporting, access control and general supervisory structures). However, the Evaluation-Committee reserved full marks for submissions that not only list baseline measures, but also demonstrate how those measures are strengthened, structured and made resilient to the specific risk environment of the Contracting Authority's hubs. Under the BPQR methodology, the Evaluation Committee must distinguish between submissions that merely list standard security practices and those that demonstrate a structured and contract-specific safeguarding framework capable of addressing the operational risks associated with the various hubs. When the Committee used the word 'additional' in the justification, it was not introducing a separate or new requirement beyond the tender. It was describing the expected level of completeness and robustness within the same criterion, namely, measures that go beyond generic statements and provide a clearer set of controls that collectively reduce risk of loss, damage, unauthorised access, and service gaps. In this regard, the Committee considered that the Appellant's write-up, while comprehensive in breadth, did not sufficiently set out enhanced or contract-specific safeguarding controls demonstrating, for example, a more structured asset-focused methodology (such as clearly defined escalation/verification controls, site-specific safeguarding protocols, or measurable monitoring arrangements), which would allow the Contracting Authority to assess with greater certainty the practical effectiveness of the safeguarding approach under this framework contract. The deduction therefore reflected a qualitative assessment of degree of robustness within the scope of Article 2.2 and the published criterion, and not any expansion of the tender requirements. Therefore, at no stage did the Evaluation Committee introduce new or undisclosed criteria; the assessment was carried out exclusively on the basis of the requirements and evaluation parameters contained in the tender document.

c) With regard to the third grievance: Opening and closing of premises.

The Appellant argues that the Evaluation Committee improperly considered aspects (supervisory oversight, backup personnel, flexibility) already addressed in other criteria and unrelated to opening/closing. This argument misunderstands the nature of operational security functions. Secure opening and closing of premises is intrinsically dependent on: verified personnel presence at defined times; supervisory validation of attendance; continuity during unforeseen absence; ability to adjust staffing schedules.

These aspects are operational prerequisites of opening/closing security, not external matters. Accordingly, the Evaluation Committee was entitled to assess whether the bidder demonstrated operational mechanisms ensuring that opening and closing duties could be reliably executed at all hubs under the contract.

Opening/closing security is the temporal manifestation of staffing continuity and supervision. If presence or substitution cannot be assured, opening/closing security cannot be guaranteed.

The Appellant further argues that because standby and supervision were addressed elsewhere, deductions here were unjustified. The Appellant's submission under this criterion did not explicitly link supervisory oversight or backup arrangements to opening/closing assurance. The Committee therefore assessed the criterion as presented. This approach ensures objective, criterion-specific evaluation and equal treatment across bidders.

d) With regard to the fourth grievance: Personnel awareness / detail and standby.

The Appellant argues that the expected level of detail is unclear and that standby considerations are unrelated to this criterion. The criterion required measures ensuring personnel remain updated on policies and reporting obligations. The Evaluation Committee acknowledged the Appellant's training and communication structures. The Agency submits that the deduction by the Evaluation Committee arose from two interrelated aspects:

1. Limited operational detail regarding frequency, scope, and verification of awareness mechanisms;
2. Absence of demonstrated continuity of awareness during personnel substitution.

Policy awareness in continuous security operations is intrinsically linked to staffing continuity, particularly where replacement personnel may assume duties at short notice. Where replacement personnel are deployed, immediate awareness assurance is required to maintain compliance and reporting integrity. Therefore, standby and replacement protocols are operationally relevant to personnel awareness continuity. Without demonstrable induction or briefing mechanisms for substitute staff, the ability to maintain consistent policy awareness cannot be fully assessed. Thus, the points awarded to the Objector under this criterion were reasonable and duly justified.

e) Regarding the submission made by the Objector, whereby the element of subjectivity in an evaluation regulated by the rules of BPQR is being contested, the Agency submits that on the contrary to that being submitted by the Objector, an element of evaluative discretion is inherent in the application of the BPQR methodology. It is well established that the Board should not substitute its own technical assessment for that of the Evaluation Committee where the latter has acted within the limits of the tender document and the applicable procurement rules. As per the decision delivered by this Board cases 1583 and 1584, confirmed by the Court of Appeal 205/21, and as stated by the Court of Appeal in case 97/20, the Evaluation Committee has a certain degree

of leeway in the manner in which it assesses qualitative elements of technical submissions. In subjective matters there might be difference of opinions which does not necessarily mean a bad decision would have been taken. Therefore, differences in the points allocated between bidders reflect the qualitative differentiation that is inherent in a BPQR evaluation and do not in themselves indicate any irregularity in the evaluation process.

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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.

### **Preliminary Observation**

Before addressing each grievance individually, the Board deems it appropriate to set out the governing legal principle that frames the entirety of its assessment.

It is well established that under the BPQR methodology, an Evaluation Committee is to be afforded an element of leeway in the way it proceeds with its business of evaluation. As affirmed by this Board in PCRB Case 1583 (CT 2373/2020 – Executive Security Services Ltd v. Servizz.gov Agency, decided 21st June 2021) and in the parallel Case 1584 (CT 2373/2020 – Signal 8 Security Services Malta Ltd v. Servizz.gov Agency, decided 21st June 2021), and as confirmed on appeal by the Court of Appeal in Civil Appeal 205/21/1 (Executive Security Services Ltd v. Aġenzija Servizz.Gov, Direttur Ġenerali (Kuntratti) u Kerber Security Ltd, decided 7th March 2022), this leeway must be exercised, in the words of this Board in Cases 1583 and 1584, sourced from the earlier PCRB Case 1577, in a professional, detailed and meticulous manner, and always within the remit of the Public Procurement Regulations and the specific tender document in question. The Evaluation Committee must at all times proceed with the appropriate diligence in full cognisance of its rights, powers, duties and obligations.

The Court of Appeal in Civil Appeal 205/21/1 further articulated the cardinal principle applicable in such matters: where the evaluation made by a selection committee was reasonable, a second-instance board or tribunal should not substitute its own discretion for that of the committee. The Court referenced the principle already established in *Cherubino Limited v. Id-Direttur (Ġenerali) tal-Kuntratti et* (Court of Appeal, 6<sup>th</sup> February 2015), which held that on matters of general technical appraisal, a reviewing court will not disturb the assessment of a technical board unless serious and convincing reasons are shown to the contrary.

As further reaffirmed in *SaniClean Joint Venture vs. St Vincent de Paul Long Term Care Facility et* (Court of Appeal, Civil Superior, 20th July 2020, App. No. 97/2020/1, ECLI:MT:ACIV:2020:122544), when an offer

is to be assessed on the basis of quality points, the Evaluation Committee has a certain degree of discretion (*leeway*) in how it decides. In the awarding of points there are certain subjective elements, and differences of opinion do not necessarily mean that a wrong decision has been taken. This principle was relied upon by the Contracting Authority in PCRB Cases 1583 and 1584, and is consistent with the broader jurisprudence of this Board.

The Board therefore underscores that its role is not to re-evaluate the bids or to replace its own technical judgment for that of the Evaluation Committee. The Board's function is to examine whether the Evaluation Committee acted within the parameters of the tender, observed the principle of self-limitation, applied consistent standards across all bidders, and committed no manifest error of assessment. Absent proof of such manifest error, the Board will not disturb the Evaluation Committee's findings.

### **Grievance 1: Deductions under B1(1), B2(1), B2(2) and B2(3) — Stand-by Personnel / Contingency Capacity**

- The Appellant contends that the Evaluation Committee unjustifiably deducted points under B1(1), B2(1), B2(2) and B2(3) on the grounds that the Appellant's submission did not specify the number of standby and/or replacement personnel in relation to the various contingency scenarios addressed by each criterion. The Appellant submits that the specification of a minimum number of standby personnel was not expressly required by the tender document and that this requirement was determined internally by the Evaluation Committee after the closing of the tender, thus falling outside the published parameters of the call for tenders.
- The Board notes that the evaluation was conducted under the BPQR methodology which, by its nature, allows the Evaluation Committee a degree of evaluative discretion in assessing the qualitative merits of technical submissions, as established in PCRB Cases 1583 and 1584 and confirmed on appeal by the Court of Appeal in Civil Appeal 205/21/1.
- The Board notes the testimony of Ms Maronia Zerafa (Evaluator), who confirmed under oath that the Evaluation Committee agreed unanimously, prior to the evaluation, on an internal scoring sub-methodology designed to allocate points based on the quality and completeness of information provided. This methodology used an incremental system tied to the level of detail submitted, awarding higher marks to bidders who provided more comprehensive information. The Board further notes the testimony of Mr Henry Cipriott (Chairperson of the Evaluation Committee), who confirmed the existence of this internal methodology and stressed that, given the contract covered

twenty-five premises<sup>1</sup>, the indication of a minimum number of standby personnel was considered operationally fundamental to a credible assessment of service continuity.

- The Board observes that the adoption of such an internal scoring sub-methodology is consistent with the approach endorsed by this Board in PCRB Case 1808 (CT2050/2022 – Princess Operations Ltd v. Court Services Agency, decided 8th November 2022), where an Evaluation Committee independently formulated three objective tests to assess compliance with a tender criterion that required an element of further elaboration, a finding confirmed on appeal by the Court of Appeal in App. 549/2022/1 (Princess Operations Ltd v. L-Aġenzija għas-Servizzi tal-Qrati u d-Direttur tal-Kuntratti, decided 20<sup>th</sup> March 2023). This Board found in Case 1808 that an Evaluation Committee may legitimately devise internal tools and objective frameworks to guide its assessment, provided these are applied consistently and in a non-discriminatory manner across all bids, a condition which the evidence in the present case satisfies. The Board further notes that the Court of Appeal in App. 549/2022/1 observed that internally devised criteria should ideally be made known to bidders in advance, a principle entirely consistent with the self-limitation constraint the Board applies in the present case.
- The critical constraint is the principle of self-limitation: the Evaluation Committee may not move the goalposts by introducing entirely new requirements that find no basis whatsoever in the tender document or its Terms of Reference. The internal sub-methodology must always remain anchored to the published evaluation criteria and must not be used as a vehicle to expand the scope of what was originally required of bidders. As confirmed in PCRB Cases 1583 and 1584, and in Court of Appeal Civil Appeal 205/21/1, the leeway afforded to an Evaluation Committee must be exercised within the remit of the specific tender document in question, and the Evaluation Committee must proceed in full cognisance of its rights, powers, duties and obligations. In the present case, the Board is satisfied that the internal sub-methodology did not introduce new requirements but rather structured the manner in which the quality of information already required by the tender was assessed and differentiated, and that it was applied uniformly across all eight bids submitted.
- The Board accepts that Articles 4.2.8(c) and 4.2.8(l) of Section 3 – Terms of Reference, while not prescribing a specific number of standby personnel, clearly contemplate that the Contractor must demonstrate a concrete capacity to provide replacement personnel. In a multi-site contract covering twenty-seven hub sites, the Evaluation Committee was entitled, within the scope of BPQR, to distinguish between submissions that merely confirmed the existence of standby personnel and those that quantified that capacity, thereby enabling a more meaningful assessment of operational resilience.

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<sup>1</sup> The Board notes that twenty seven premises were included in Section 3 Terms of Reference clause 4.1.2 of the tender document.

- The Board also notes that, under oath, Mr Cipriott confirmed that all factors were considered in the assessment of all other bids. As established in PCRB Cases 1583 and 1584, the Evaluation Committee can be said to have used the "same ruler" to evaluate all the bids before it, resulting in a level playing field for all prospective bidders and observing the concept of self-limitation.
- No specific evidence has been brought forward to show that the Evaluation Committee acted erroneously, exceeded the tender parameters, or committed any manifest error of assessment. The Board will therefore not substitute its own judgment for that of the Evaluation Committee.
- It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner and in no way transgressed the principle of self-limitation.

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

### **Grievance 2: Deduction under B1(3): Safeguarding of Assets**

- The Appellant contends that the Evaluation Committee improperly required "additional safeguarding measures" beyond what was stipulated in the criterion, which simply required a list of measures to ensure safeguarding of assets as per Article 2.2 of Section 3 – Terms of Reference.
- The Board notes that Article 2.2 of the Terms of Reference sets out the specific operational security objectives assigned to security officers, including the safeguarding of the Contracting Authority's assets. Criterion B1(3) invited bidders to set out a list of measures giving effect to this requirement.
- The Board acknowledges that during the hearing, when pressed by Dr Lia to precisely identify the deficiency attributed to B1(3), Ms Zerafa's responses demonstrated some overlap with the standby personnel issues raised under other criteria. Notwithstanding this, the Board notes that under BPQR, and consistently with the principles in Cases 1583 and 1584, differences in the level of detail and robustness of submissions will legitimately attract different marks, and a degree of evaluative discretion in assessing the quality of a submission falls squarely within the leeway afforded to the Evaluation Committee.
- The Board accepts that the Evaluation Committee acknowledged the Appellant's standard security measures and did not disqualify the bid but rather awarded a proportionally lower score reflecting its qualitative assessment of the submission's completeness relative to the other bids. The Board interprets the use of the word "additional" in the written justification not as the introduction of a new or undisclosed requirement, but as a description of the higher level of detail expected within the same criterion for a maximum score under the BPQR methodology, a distinction which falls within the evaluative discretion afforded to the Committee.

- No manifest error of assessment has been demonstrated. It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner and in no way transgressed the principle of self-limitation.

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

### **Grievance 3: Deduction under B1(4) — Secure Opening and Closing of Premises**

- The Appellant contends that the Evaluation Committee imported requirements concerning supervisory oversight, attendance verification, back-up personnel and schedule flexibility into a criterion limited to measures ensuring the secure opening and closing of premises, and that matters already addressed elsewhere in the submission were penalised a second time. In particular, the Appellant submits that the deduction in respect of back-up personnel under B1(4) constituted a double-counting of the same deficiency already penalised under B1(1), B2(1), B2(2) and B2(3).
- The Board notes that the secure opening and closing of premises is an operational security function that is by its nature dependent on verified personnel presence at defined times, supervisory validation of attendance, and the availability of contingency cover in the event of unforeseen absence. These elements are not external to the criterion; they are operationally inseparable from the reliable execution of opening and closing duties across twenty-seven hub sites. The Board acknowledges the Appellant's submission that the same deficiency in relation to back-up personnel was also the subject of deductions under other criteria. However, the Board notes that under BPQR each criterion is assessed independently on the basis of the information presented within that criterion's response. The fact that back-up personnel are relevant to multiple operational scenarios does not preclude the Evaluation Committee from assessing their absence in the context of each separate criterion where their presence is operationally relevant.
- The Board notes the testimony of Ms Zerafa, who confirmed under oath that the Appellant's submission referenced supervisors but did not explicitly link the supervisory role to attendance verification or adherence to opening and closing schedules. As established in Cases 1583 and 1584, the Evaluation Committee can only carry out its assessment on technical matters with the information presented before it. A submission that leaves an operational link unexplained cannot be supplemented at appeal stage, and the Evaluation Committee was entitled to assess the submission on its face. The concept of self-limitation further requires that the Committee applies the same standard consistently across all bidders, thereby ensuring transparency and equal treatment among all prospective bidders.
- The Board notes that Articles 4.2.8(c) and 4.2.8(l) of Section 3 – Terms of Reference, cross-referenced in the Evaluation Committee's written justification for B1(4) (in Summary of Evaluation

Grid), form part of the published tender document and directly address the Contractor's obligation to provide replacement and back-up personnel to ensure uninterrupted service. Article 4.2.6, also cross-referenced in the justification, provides that the Contracting Authority reserves the right to vary the number of security guards and service hours based on prevailing exigencies, thereby establishing a published operational context within which schedule flexibility is relevant. The requirements in question were therefore not introduced from outside the tender framework but are grounded in the published terms to which all bidders were subject. No manifest error has been established.

- It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner and in no way transgressed the principle of self-limitation.

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

#### **Grievance 4: Deduction under B1(5) — Personnel Awareness and Communication of Policies**

- The Appellant contends that the Evaluation Committee's deduction under B1(5) was based on reasoning that was excessively vague and open-ended, and that the criterion's requirements were fully satisfied. At the hearing, Dr Lia further submitted that the Appellant's submission had included concrete communication mechanisms, including a WhatsApp group, on-site meetings, and a designated supervisor and questioned what additional detail could reasonably have been expected.
- The Evaluation Committee's written justification (in Summary of Evaluation Grid) identified that the descriptions provided were brief and lacked sufficient detail to assess their effectiveness, specifically, that comprehensive explanations of the measures, including their frequency and scope, were necessary to ensure consistent compliance and timely resolution of issues. The justification further noted the absence of details on stand-by personnel and replacement protocols under this criterion, as required under Articles 4.2.8(c) and 4.2.8(l) of Section 3 – Terms of Reference.
- As confirmed by the Court of Appeal in Civil Appeal 205/21/1, where a decision required a degree of subjective analysis, the Court and, by extension, this Board should not substitute its own preference for that of the Committee. The assessment of whether a submission's descriptions are sufficiently detailed and comprehensive to satisfy the qualitative requirements of a BPQR criterion is precisely the kind of evaluative judgment that falls within the leeway afforded to an Evaluation Committee, as established in PCRB Cases 1583 and 1584.

- The Board further notes that the number of pages submitted is not determinative of quality. This Board has previously confirmed in Case 1584 that the Evaluation Committee can only carry out its assessment on the basis of the information presented before it in the original tender submission, and that additional details raised at hearing stage, however persuasive, cannot retroactively improve a score already awarded on the basis of what was submitted. The Board reaffirms this principle in the present case: an appeal hearing is not an opportunity to supplement a bid that was insufficiently detailed at the tendering stage.
- No manifest error of assessment has been established. It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner and in no way transgressed the principle of self-limitation.

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

#### **Grievance 5: Competence of the Members of the Evaluation Committee**

- The Appellant reserved its position with regard to the competence of the members of the Evaluation Committee, raising this grievance as a precautionary measure to preserve its rights should it become necessary to challenge the matter further.
- The Board notes that no substantive evidence or argument in support of this grievance was advanced during the hearing of the 27<sup>th</sup> April 2026. Mr Henry Cipriott, Chairperson of the Evaluation Committee, testified under oath to eighteen years of experience in drafting tenders, evaluation and contract management within public procurement. No challenge was mounted to the qualifications or suitability of any individual committee member during the proceedings.
- In the absence of any substantive submission or supporting evidence, the Board finds no basis upon which to question the competence of the Evaluation Committee members. Reserving a grievance without advancing any evidence in its support is insufficient to raise a matter for the Board's determination.

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) 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**

**Dr Ing. Damien Gatt**  
**Member**