

PUBLIC CONTRACTS REVIEW BOARD

Case 1158 – MJCL/MPU/16/2018 - Tender for the Provision of Security Services at St Elmo Exam Centre, at the Fish Market, Barriera Wharf and at the Underground Cistern, in Valletta for Valletta 2018 Foundation.

The publication date of the call for tenders was the 29th January 2018 whilst the closing date of the call for tenders was the 13th February 2018. The estimated value of the tender (exclusive of VAT) was € 38,245.

There were six (6) bidders on this tender.

Signal 8 Security Services Malta Ltd filed an appeal on 14th March 2018 against the Contracting Authority's decision to reject the tender on the grounds that Appellant had not been awarded the correct points at the evaluation stage. A deposit of € 400 was paid.

On 19th April 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Signal 8 Security Services Malta Ltd

Dr Carlos Bugeja	Legal Representative
Mr Joseph Jovan Grech	Representative

Recommended Bidder – Executive Security Services Ltd

Dr Matthew Brincat	Legal Representative
Mr Stephen Ciangura	Representative

Contracting Authority – Valletta 2018 Foundation

Dr Christopher Mizzi	Legal Representative
Mr Wayne Caruana	Chairman Evaluation Board
Ms Kirsty Agius	Secretary Evaluation Board
Ms Catherine Tabone	Executive Director

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, welcomed the parties and invited Appellants to make their submissions.

Dr Carlos Bugeja, Legal Representative of Signal 8 Security Services Ltd said that the basis of his client's appeal was that they had not been awarded the maximum points under the Employment Conditions section in the tender document. The Contracting Authority was claiming that there was no collective agreement in force, as a result of which they had been awarded only .5 points instead of the maximum 2 points. There was a collective agreement going back from 2013 to 2015 which continues to run since under Clause 3 of that collective agreement it states that it remained in force until a new agreement is signed. This document had been successfully accepted in other tenders. Moreover, on the 14th February 2018 the General Workers Union had written to the Appellant confirming that discussions on the implementation of a new agreement were under way. This letter had not been submitted with the tender documents.

Dr Christopher Mizzi, Legal Representative of the Valletta 2018 Foundation said that the collective agreement expired in 2015. Clause 3, which had been referred to, states that at least six months before the expiry date a notice in writing had to be given indicating that the agreement will remain in force until such time as a new agreement is signed. No declaration that such negotiations were in train had been submitted. In the absence of information to the contrary the Evaluation Committee could not assume that negotiations were taking place or that the agreement was being extended. The letter from the General Workers Union, presented by Appellants, was dated after the closing date of the tender and it could not possibly have been considered at the evaluation stage.

The Chairman thanked both parties for their submissions and declared the hearing closed.

This Board,

Having noted this Objection filed by Signal 8 Security Services Malta, (hereinafter referred to as the Appellant) on 14 March 2018, refers to the contentions made by the same Appellant with regards to the award of Tender of Reference MJCL/MPU/16/2018 listed as Case No 1158 in the records of the

**Public Contracts Review Board, awarded by the Valletta 2018 Foundation,
(hereinafter referred to as the Contracting Authority).**

Appearing for the Appellant: Dr Carlos Bugeja

Appearing for the Contracting Authority: Dr Christopher Mizzi

Whereby, the Appellants contend that:

- a) **Their main contention is that their offer was not awarded the appropriate marks under the heading of employment conditions, with particular reference to the alleged fact that employees do not have a valid collective agreement in force. In this regard, Signal 8 Security Services Malta Limited insist that the agreement which covered the period up to September 2015, is still valid and in force.**

This Board also considered the Contracting Authority's "*Letter of Reply*" dated 2 April 2018 and its verbal submissions during the Public Hearing held on 19 April 2018, in that:

a) The Valletta 2018 Foundation insist that Clause 3 of the Collective Agreement which was submitted by the Appellants and which expired in September 2015, stated that at least, six months prior to the expiry period, an indication had to be given as to whether such agreement is going to be renewed or cancelled. In this regard, the Contracting Authority was not in receipt of such indication to justify that the present agreement, although expired, is still valid.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, opines that the issue worth of consideration is the interpretation of Clause 3 of the collective agreement duly submitted by Signal 8 Security Services Malta Limited with their offer.

1. This Board, would, first and foremost, refer to the actual collective agreement submitted by the Appellants with particular reference to Clause 3 of the same agreement which states that:

“3. Validity Period of Agreement

This Agreement shall be valid for a period of three (3) years commencing on 1 September 2013 up to the 30st September 2015. At least six months before the expiry date of this Agreement, either party may give notice in writing expressing its wish that this Agreement will remain in force for a definite or indefinite period or its intention to terminate this Agreement and to negotiate a new one, but until such time that a new Agreement is signed this present Agreement shall remain in force”.

One has to acknowledge the fact that the collective agreement expired on 30 September 2015 and the contention made by the Appellants in this regard, is that, although the agreement shows an expiry date of September 2015, in Accordance with Clause 3 above, same agreement is still valid. This Board notes that the above mentioned clause provides for the eventual action that needs to be taken at least, six months prior to the expiry date of such an agreement, in that a notice is to be given as to whether such an agreement is being renewed or cancelled or to negotiate a new one. However it goes on to dictate that until such time that a new agreement is signed, the present agreement shall remain in force.

In this regard, this Board opines that, in accordance with the same clause 3 of the agreement, the eventual necessary action within, at least, six months prior to the expiry date, had to be taken, for the same clause to be effective and the Evaluation Board was not presented with such documentation to prove that since 2015 negotiations were still ongoing, although this Board finds it strange that after two and a half years to date, such alleged negotiations are still ongoing.

At the same instance, the letter dated 14 February 2018 does not indicate that the proper communication prior to the expiry date of the agreement had been effected, so much so, that Clause 3 of the agreement has been completely ignored by the letter issued by the General Workers' Union. In this regard, this Board also notes that such a letter was addressed after the closing date for submission of offers, so that same was not in the possession of the Evaluation Board during the evaluation process.

As has been emphasized, on numerous occasions by this Board, the Evaluation Committee can only assess and evaluate an offer on the

information so submitted by the Bidder and in this particular case, this Board opines that the Evaluation Committee could not assume the present situation of the status of the collective agreement but rather adjudicate on an expired agreement without any proof that negotiations have been ongoing since 2015. At the same instance, this Board opines that the marks awarded to the Appellants' offer, in this particular section, reflected the actual deficiency in the documentation presented by the Appellants and in this respect, this Board does not uphold Signal 8 Security Services Malta Limited's contentions. This Board would also point out that the principle of proportionality and relativity cannot be justly applied in this particular case, as otherwise, it would jeopardise the level playing field element in the evaluation process.

- 2. This Board also noted Signal 8 Security Services Malta Limited's concern with regards to an error in respect of the sum of points that do not tally with the actual marks so awarded. In this regard, through submissions and explanations made by the Valletta 2018 Foundation, this Board is comfortably assured that such an inadvertent mistake does not affect the final ranking of the Appellants' offer.**

In view of the above, this Board:

- i) Upholds the Award Procedure adopted by the Valletta 2018 Foundation;**
- ii) Upholds the mode of the allocation of points to Signal 8 Security Services Malta Limited's offer with particular regards to the "*Employment Conditions*";**
- iii) Does not uphold the Appellants' contentions and recommends that the deposit paid by the latter should not be refunded;**
- iv) Confirms that no justifiable evidence was produced by Signal 8 Security Services Malta Limited to prove that the agreement which expired in 2015, was still valid as at date of submission of their offer.**

Dr Anthony J Cassar
Chairman

Mr Carmel Esposito
Member

Mr Lawrence Ancilleri
Member

8th May 2018