

PUBLIC CONTRACTS REVIEW BOARD

Case 1303 – MJCL/MPU/109/2018 – Tender for the Provision of Two Security Officers at the Office of the Attorney General

The publication date of the call for tenders was the 25th January 2019 whilst the closing date of the call for tenders was 25th February 2019. The estimated value of the tender (exclusive of VAT) was € 118,957.50.

On the 3rd April 2019, Signal 8 Security Services Malta Ltd filed an appeal against the Ministry for Justice, Culture and Local Government as Contracting Authority objecting that their bid was rejected as it was considered to be non-compliant. A deposit of € 595 was paid.

There were eight (8) bidders.

On 23rd April 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Signal 8 Security Services Malta Ltd

Dr Carlos Bugeja	Legal Representative
Mr John Joseph Grech	Representative

Recommended Bidder – Grange Security (Malta) Ltd

Mr Melvin Grange	Representative
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Contracting Authority – Ministry for Justice, Culture and Local Government

Dr Christopher Mizzi	Legal Representative
Ms Kirsty Agius	Chairperson Evaluation Board
Mr Wayne Caruana	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Prior to the making of submissions it was agreed to proceed with the hearing of witnesses.

Mr Wayne Caruana (16694M) called as a witness by the Contracting Authority testified on oath that he has five years experience of vetting evaluation reports for the MPU. Witness referred to the documents submitted with the tender, which was evaluated on a Best Price Quality Ratio (BPQR) basis and referred particularly to the following items in the Evaluation Grid:

- A half a mark had been deducted as the submitted write-up exceeded the 100/200 words requested in the Contingency Plans, which was mandatory.
- In the Reporting Requirements (also mandatory) further marks had been deducted as the requested log sheet templates had not been identified
- Further marks had been deducted as documents presented were not relevant – they referred to mooring personnel when the tender dealt with security officers
- Under the Social Aspects part which was not mandatory marks were deducted because the valid collective agreement was four years old but still in force through a letter dated in 2018. A fresh agreement was what was expected by the evaluation committee.

Questioned by Dr Carlos Bugeja Legal Representative of Signal 8 Security Services Malta Ltd, witness confirmed that he only checks evaluation reports but is not involved in the marking of the tenders. If he disagrees with any conclusions of the evaluation committee he directs their attention to and discusses points of disagreement with them. Witness stated that he did not consider the submitted example templates as relevant because they referred to other contracts.

Dr Carlos Bugeja said that this was a BPQR tender. Following several previous Public Contracts Board decisions this meant that if the target was reached the appropriate points were awarded but then full marks given if expectations were exceeded. Appellant produced more than was required and it was difficult to understand why they were being penalised. As examples he mentioned that it was difficult to give proper contingency plans (covering all eventualities) in less than two hundred words and his clients were being penalised for giving more than was requested. The concept of BPQR is to encourage higher standards and should not be used as a form of punishment. Log sheet templates had obviously been submitted and it was now up to the Board to examine closely all the documents to verify this fact, while the collective agreement was something that was renewed annually.

Recalled by the Chairman to give further testimony Mr Wayne Caruana stated that the evaluation committee could not identify any document that resembled a log sheet template or that looked similar to sample 8.3 in the tender dossier.

Dr Christopher Mizzi Legal Representative of the Ministry for Justice, Culture and Local Government said that no log templates could be found and the Contracting Authority was still doubtful that they had been submitted. Submissions regarding the mandatory Contingency Plans should respect the tender terms. The parameters are set for all. With regard to the question of

relevance it was shown that Appellants dealt with mooring personnel when the tender asked for security guards and at the end of the day there lies the danger as a contract is signed on the tender submissions and the contractor was only bound by what he had submitted. Reference was made to PCRB Case 3013/16 which is similar to this Case in that the construction management plan submitted referred to a different site to the one in the tender.

Dr Bugeja said that the point of the templates was to give an idea of how Appellants system works – they were simply examples and it was not realistic to claim that a tender for security staff would refer to mooring personnel, same as it was unrealistic to claim that a 200 word contingency plan would be form part of the contract.

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 Limited (herein after referred to as the Appellants) on 3 April 2019, refer to the claims made by the same Appellants with the regard to the tender of reference MJCL/MPU/109/2018 listed as case no 1303 in the records of the Public Contracts Review Board, awarded by the Ministry for Justice, Culture and Local Government (herein after referred to as the Contracting Authority).

Appearing for the Appellants: Dr Carlos Bugeja

Appearing for the Contracting Authority: Dr Christopher Mizzi

Whereby, the Appellants contend that:

a) their main concern refers to the fact that they had submitted all the information as duly stipulated in the tender document, however, they feel aggrieved as to the allocation of points dictated by the Evaluation Committee. Appellants refer to items such as contingency plan, log sheets, security officers and collective agreement and in this regard, Appellants maintain that they had submitted information in excess of the requirements.

This Board also noted the Contracting Authority's 'Letter of Reply' dated 18 April 2019, and its verbal submissions during the hearing held on 23 April 2019, in that:

a) the Authority insists that:

- i. with regards to contingency plan, Appellants' submission merited 90% of the marks and in this respect, the Authority maintains that such allotment reflected the details submitted;**
- ii. with regard to log sheets, the Evaluation Committee could not detect such documentation;**
- iii. with regard to Security Officers, Appellants' submission consisted of documentation relating to 'mooring personnel';**

- iv. with regard to collective agreement, Appellants failed to provide an updated agreement.

In conclusion, the Authority contends that the marks so allotted relating to the above-mentioned items, reflected correctly the contents of the information so submitted by Appellants.

This same Board also noted the testimony of the witness namely, Mr Wayne Caruana duly summoned by the Ministry for Justice, Culture and Local Government.

This Board, after having examined the relevant documentation related to this appeal and heard submissions made by the parties concerned, including the testimony of the witness duly summoned by the Contracting Authority, opines that the issues that merit consideration are:

- i. Contingency Plan submitted by Appellants
- ii. Log Sheet Template
- iii. Support Services
- iv. Collective Agreement

1. Contingency Plan

This Board would respectfully refer to the stipulated requirements with regard to the contingency plan, as stated in the tender document:

3. Contingency Plans-Mandatory	
<i>The Economic Operator is to propose a methodology (in the form of a Contingency Plan Report) through the submission of a write-up report of approximately 100 to 200 words for each of the below 3 sub-criteria.</i>	
<i>Back-up capacity (contingency plans): The contingency plan is to include at least provision for the following:</i>	
○ <i>Sick personnel as per Terms of Reference Article 3.2</i>	<i>Max of: 5 points Max of 100%</i>
○ <i>Industrial actions effecting the Service Provider’s workforce as Terms of Reference Article 3.2</i>	<i>Max of: 5 points Max of 100%</i>
○ <i>Breakdown of public transportation system that may affect the ability of the security staff to arrive punctually to their place of work as per Terms of Reference Article 3.2</i>	<i>Max of: 5 points Max of 100%</i>

The Contingency Plan had to provide for back-up services, sick personnel, any industrial action and breakdown of Public Transportation system. In this respect, this Board after having examined Appellants’ submission, confirms

that Appellants did, in actual fact, describe the action which needed to be taken in the various stipulated scenarios and although Appellants' submission made reference to Mooring Personnel, the documentation did in fact provide remedies for all the eventualities which would be similar to the envisaged situation as denoted in the tender dossier.

2. With reference to such submissions, this Board, after having examined the evaluation report, opines that, the issue with regard to the length of submission to be between 100 to 200 words, should not be a deterrent factor in the allocation of points, as long as the substance of such reporting provides for all the requirements as stipulated in the tender dossier. In this respect, this Board opines that, marks should be awarded for the contents and not for the length, in words, of the submission.

3. Log Sheet Templates

Appellants' alleged deficiency in this regard, refers to the fact that the Authority considered that Appellants' submission consisted of voluminous documentation without the inclusion of a specimen Log Sheet template, so that the marks allotted for this item was correct.

4. In this regard, this Board opines that the Evaluation Committee did not examine properly the contents of Appellants’ submission regarding the identification of Log Sheet Templates, so that the mark allotted for this item was incorrect, as this Board, without any undue effort, identified more than one template in Appellants’ submissions.

5. Support Services

This Board would refer to item 5 re ‘Support Services’ as dictated in the tender document, as follows:

<p><i>5. Support Services – Inspectors - Mandatory</i></p>	
<p>○ <i>Proposed methodology demonstrating how the economic operator shall ensure that the employees on site provide the expected level of service in line with section 4 – technical specifications.</i></p> <p><i>The Economic Operator is to propose a methodology, through the submission of a write-up report, of approximately 100 to 200 words, demonstrating how the economic operator shall ensure that the employees on site provide the expected level of service in line with Article 4.2 forming part of Section 4: Terms of Reference.</i></p>	<p><i>Max of: 6 points</i> <i>Max of: 100%</i></p>

Again, this Board respectfully refers to the above mentioned requirement and the fact that, this condition stipulated that submissions must be of length 100 to 200 words, is to be appreciated as a means of simplifying the evaluation process; however, this Board opines that substance over form should prevail and offers

should not be penalised for submitting documentation of more than 200 words in length but rather being assessed on the contents thereof. In this particular case, Appellants’ submission in this regard, was much more than requested and from the evaluation report, it was noted that such an issue was also taken into consideration, in the allocation of marks. In this respect, this Board opines that the principle of proportionality should prevail and any penalisation of an offer should only be on instances where there is lack of sufficient information to satisfy the stipulated requirements.

6. Collective Agreement

This Board would refer to the requirements in this regard as duly stipulated in the tender document, as follows:

<ul style="list-style-type: none"> <i>The Economic Operator is to submit a copy of a Valid Collective Agreement that is in place and registered with the Department of Industrial and Employment Relations. Add-on</i> 	<p><i>3 points (100% or 1% as a minimum)</i></p>
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The Authority, quite appropriately requested a valid Collective Agreement and such an agreement could only be presented, by Appellants, in the form of a confirmation letter from the relative Union, asserting the fact that, since the previous agreement, which had expired, is not as yet renewed, the previous agreement still stands. In this respect, this Board opines that such a

confirmation should satisfy the Authority that the Economic Operator has an agreement with respective Union which is still valid until a new agreement is negotiated.

In conclusion, this Board opines that:

- a) with regard to the contingency plan submitted by Appellants, marks should be allotted to the substance and not the form in which it was submitted and at the same instance, the length of such submission should not be penalised for being written in more than 200 words,**

- b) with regards to the Log Sheet Templates, Appellants did in fact submit more than one sample Log Sheet and in this respect, the Evaluation Committee should have easily detected and identified such documentation,**

- c) with regards to Support Services, again, the Evaluation Committee should have assessed Appellant's submission on the substance of several documentation, as in this Board's opinion, the methodology described in**

Appellants' submission conforms with the General requirements of the tender,

d) with regard to the Collective Agreement presented by Appellants, consideration of the Union's confirmation by way of a letter presented to the Authority should have been taken, so that the present agreement, although expired, is still valid.

In view of the above, this Board,

- i. upholds Appellants' contentions in that their offer was not allocated the justifiable marks,**
- ii. confirms that the Evaluation Committee did not take into consideration submissions, such as Log Sheets and therefore incorrect allotment of marks, on this particular item, were unfairly given,**
- iii. Does not uphold the Contracting Authority's decision in the award of the tender,**

- iv. Directs that the deposit paid by Appellants be fully refunded,**

- v. Directs the Authority to carry out a fresh evaluation process on all the offers submitted by having an Evaluation Committee differently composed and at the same instance, take into consideration this Board's findings.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

14 May 2019