

PUBLIC CONTRACTS REVIEW BOARD

Case 1267 – MIP/TQF/GEN/D06/18 – Call for Tenders for the Provision of Services for the Creation of Unique and Bespoke Brand Identities for Malta Industrial Parks (MIP) and the Artisan Villages

The publication date of the call for tenders was the 11th April 2018 whilst the closing date of the call for tenders was 4th May 2018. The estimated value of the tender (exclusive of VAT) was € 35,000.

On the 7th November 2018 Logix Creative Ltd filed an appeal against Malta Industrial Parks as the Contracting Authority objecting that their bid was found not to be the Best Price Quality Ratio offer. A deposit of € 400 was paid.

There was three (3) bidders.

On 21st February 2019 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:

Appellants – Logix Creative Ltd

Dr Shazoo Ghaznavi	Legal Representative
Mr Pierre Mizzi	Representative

Recommended Bidder – Striped Sox Ltd

Dr Dean Hill	Legal Representative
Mr Kurt Cini	Representative
Ms Deborah Grech	Representative

Contracting Authority – Malta Industrial Parks

Dr John Bonello	Legal Representative
Mr Anthony Caruana	Chairperson Evaluation Committee
Mr Keith Buttigieg	Member Evaluation Committee
Mr Iman Schembri	Member Evaluation Committee
Mr Elton Micallef	Member Evaluation Board

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

Dr Shazoo Ghaznavi Legal Representative for Logic Creative Ltd stated that he would wish to start his submissions by questioning members of the Evaluation Committee.

Mr Anthony Caruana (279456M) called as a witness by the Appellants testified on oath that he was the Chairperson of the evaluation committee. The technical expert evaluators on the committee according to the requirements of the tender were Mr Iman Schembri and Mr Elton Micallef although they did not have any direct knowledge of branding, websites and advertising. The points were awarded individually by the three evaluators and as Chairperson the witness listened to their reasoning and approved their rationale. He agreed totally with the evaluators decisions.

Mr Elton Micallef (49280M) called as a witness by the Appellants testified on oath that he was the Business Development Coordinator at MIP. In this role he was responsible for visitors' attractions and had six years experience of branding, but no experience of web production or graphic design, although he had a Masters in Education and a post graduate qualification in Science Communication. He was part of the team that had allocated the points to the bidders. At Explora, where he had worked for five years, he was part of the educational team and his role included procurement and branding. At Dbiegi Craft Village his responsibility covered liaising with the tenants and branding for one and a half years while at the Ta Qali project he looked after the infrastructure and site attractiveness to draw visitors throughout the year. Witness confirmed that the branding for Explora had been done by Logix Creative Ltd.

Mr Iman Schembri (56266M) called as a witness by the Appellants testified on oath that he had no technical qualifications in branding and his only experience in that sphere was that he had recently served on the evaluation committee of another branding project. He confirmed that he had participated in the grading of points and outlined the procedure followed by the committee in allocating point, and the process followed in regard to the award of points of the key experts. Witness admitted that he did not know how weighted averages worked and could not explain an apparent discrepancy in the award of points.

Mr Keith Buttigieg (8879M) called as a witness by the Contracting Authority testified on oath that he was the Head of Procurement at MIP. He had no qualifications in branding, graphic design or website preparation. He had compiled the tender following the terms of reference provided by the originality unit at MIP. Witness stated that Mr Elton Micallef was a competent person to assist in the branding aspect during the evaluation process and the evaluators had followed the criteria laid out in the tender. He referred to page 14 of the tender document which indicated in grid form how the marking was carried out - however, he pointed out that this does not reflect the scoring in the EPP system which operated on a scoring basis out of 100 and hence figures had to be put in as percentages. This would explain what appeared as certain anomalies in the scores.

As this was a departmental tender past experience of bidders could not be considered or adjudged on. The committee evaluated on information and offers submitted and could not consider items not divulged for reasons of commercial confidentiality. There were no mistakes made in the allocation of points which followed exactly the tender criteria. In PBQR tenders the object is to evaluate the level of service so there has to be elements of both objectivity and subjectivity.

Dr Ghaznavi said that from the evidence heard it was clear that there was no objective assessment but a purely subjective one – compounded by an evaluation by people not technically competent to evaluate. The three evaluators may have been experienced people but not necessarily in branding or graphic design especially in the area of subjective points. Appellants scored very highly on objective points but much less so on subjective sections – reflected in that globally there was only a difference of 2.21 points between the two parties. On the key experts points it was impossible to have fractional points even if the averages were weighted. In the creativity section the scoring grid shows ‘good’ for Appellants but this is not indicated in the evaluation score. (It was pointed out however by an evaluator that the word ‘good’ had been taken out of context by Dr Ghaznavi).

Dr Ghaznavi said that his clients’ appeal was valid and should be met by the Board.

Dr John Bonello Legal Representative for Malta Industrial Parks said that the competence of the evaluation committee should not be assessed on the basis that each individual had to be an expert in that field. The public procurement demands were clear – the evaluation members had to be knowledgeable from experience. Malta is a small market and it is impossible to have top experts to evaluate every tender. Branding is personal and subjective and a matter of individual taste. The EPPS applies to all tenderers and the arithmetical methods are decided by an electronic system which gives a level playing field. Subjectivity is related to a person’s experience and this element should not be disturbed unless it is manifestly wrong. The Public Contracts Review Board’s remit is not to change the scoring method but to have an overall view that the terms of the tender have been adhered to.

Dr Ghaznavi in a final comment said that the Contracting Authority had themselves indicated that the key experts as defined by them were not qualified in the disciplines required.

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

This Board,

having noted this Objection filed by Logix Creative Limited, (hereinafter also referred to as the Appellants), on 7 November 2018 refers to the contentions

made by the same Appellants with regard to the Tender of Reference MIP/TQF/GEN/D06/18 listed as Case No 1267 in the records of the Public Contracts Review Board, awarded by Malta Industrial Parks, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Shazoo Ghaznavi

Appearing for the Contracting Authority: Dr John Bonello

Whereby, the Appellants contend that:

- a) the Evaluation Process of this Tender was not carried out on an objective assessment but rather on a subjective basis, due to the fact that the Evaluation Committee was not composed of technical persons who were knowledgeable in branding or graphic design, so that the allocation of points was carried out arbitrarily.**

This Board has also noted the Contracting Authority's "*Letter of Reply*" dated 17 December 2018 and its verbal submissions during the Public Hearing held on 31 January 2019, in that:

- a) Malta Industrial Parks insists that it had carried out the evaluation process in a fair and just manner. With regard to the composition of the Evaluation Committee, the Contracting Authority contends that, there existed enough knowledge relating to the evaluation process of**

branding and graphic design, by the members of the Evaluation Committee, the latter of which, allocated the respective points in accordance with the requirements of the Tender Document and the offer submitted by each Bidder.

This same Board has also noted the testimony of the witnesses namely:

- 1. Mr Anthony Caruana, who was duly summoned by Logix Creative Limited;**
- 2. Mr Elton Micallef, who was duly summoned by Logix Creative Limited;**
- 3. Mr Iman Schembri, who was duly summoned by Logix Creative Limited;**
- 4. Mr Keith Buttigieg, who was duly summoned by Malta Industrial Parks.**

This Board, having examined the relevant documentation to this Appeal and heard submissions made by the parties concerned, including the testimony of the witnesses duly summoned, opines that the issue that merits consideration is the procedure that was adopted during the Evaluation Process.

1. This particular Tender involved the provision of services for the creation of unique and bespoke brand identities for Malta Industrial Parks and the Artisan Villages. In this respect, the composition of the Evaluation committee, quite appropriately, should be knowledgeable of the procedure for the selection of the most advantageous offer. In this regard, Logix Creative Limited are maintaining that the Evaluation Committee did not possess the necessary technical expertise to adjudicate the most appropriate successful bid, so that their offer was not given the due allocation of points.

2. During the Public Hearing, this Board heard the testimony of the witnesses duly summoned, which identified the Evaluation Committee's members qualifications and experience in branding and graphic design and in this regard, the testimony of Mr Elton Micallef, one of the members of the Evaluation Committee, was quite notable in that, apart from having a Master's degree level in Science Communication, also has experience in Branding and Procurement at Explora. In this respect, this Board is justifiably satisfied that Mr Elton Micallef was knowledgeable enough and had sufficient experience to act as a member of the Evaluation Committee and contribute towards a just and fair assessment of the Appellants' offer.

- 3. With regards to Logix Creative Limited's claim, that the Evaluation process was very subjective and no objective consideration was taken during the assessment process, this Board would respectfully point out that, the Evaluation Criteria was carried out on the Best Quality Price Ratio method and the latter criteria has been found to be the most objective and fair method for evaluating public offers. At the same instance, the Best Quality Price Ratio method is not to be deemed as the perfect system but, it is the best method to suppress the subjectivity element and ensure, as much as possible, a level playing field and equal treatment.**
- 4. The Tender Document specified clearly how the Best Quality Price Ratio will be applied and also vividly indicated the method of allocation of marks to be awarded on the specific items of the Tender Requirements. At this stage of consideration, this Board confirms that the award criteria was well and truly indicated in the Tender Document, so that each Bidder was well informed in advance of the Evaluation Procedure to be applied. At the same time, this Board would also point out that the Evaluation Committee had to abide by all the conditions laid out in the Tender Document. In this respect, this**

Board would refer to Page 14 of the Tender Document, where the criteria is well described, as follows:

	<i>Points Allocation</i>					
<i>Maximum Points</i>	<i>Exceptional</i>	<i>Very Good</i>	<i>Good</i>	<i>Acceptable</i>	<i>Weak</i>	<i>Un-acceptable</i>
<i>18</i>	<i>18</i>	<i>15</i>	<i>12</i>	<i>9</i>	<i>6</i>	<i>0</i>
<i>12</i>	<i>12</i>	<i>10</i>	<i>9</i>	<i>8</i>	<i>4</i>	<i>0</i>
<i>10</i>	<i>10</i>	<i>9</i>	<i>7</i>	<i>6</i>	<i>3</i>	<i>0</i>
<i>5</i>	<i>5</i>	<i>4</i>	<i>4</i>	<i>3</i>	<i>2</i>	<i>0</i>
<i>4</i>	<i>4</i>	<i>3</i>	<i>3</i>	<i>2</i>	<i>1</i>	<i>0</i>
<i>2</i>	<i>2</i>	<i>2</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>0</i>
<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>0</i>

<i>Classification</i>	<i>Description</i>
<i>Exceptional</i>	<i>Matches the minimum requirements and goes by far beyond the expectations, (preferable factors), listed in the Terms of Reference – has outstanding functionality and completeness</i>
<i>Very Good</i>	<i>Matches the minimum requirements and goes beyond the expectations (preferable factors) listed in the Terms of</i>

	<i>Reference – has very good functionality and completeness</i>
<i>Good</i>	<i>Matches the minimum requirements and also the expectations (preferable factors) listed in the Terms of Reference</i>
<i>Acceptable</i>	<i>Only matches the very minimum/basic functionality in regards factors listed in the Terms of Reference</i>
<i>Weak</i>	<i>Although in line with the minimum requirements, the proposal is below the expectations in regards factors listed in the Terms of Reference and some of the aspects are deemed to be in the grey area and not elaborated upon</i>
<i>Unacceptable</i>	<i>Unacceptable/disqualified if the required functionality is <u>not</u> met. In this case a score of 0 will be assigned.</i>

5. From the submissions made by the members of the Evaluation Committee, this Board notes that each member, in his allocation of points, took into consideration the particular grading in each item monitored in the above table and allocated the relative points accordingly, so that the weighted average percentage awarded were strictly in accordance with the stipulated description of each item requested in the Tender Document.

6. In conclusion, this Board is credibly convinced that the Evaluation Committee's members had sufficient knowledge and experience to allocate the points on the Appellants' offer in a just, fair and transparent manner so that the adjudication process was carried out, as objectively as possible and in this respect, this Board does not find any justifiable cause to deem otherwise.

In view of the above, this Board:

i) upholds Malta Industrial Park's decision in the award of the Tender;

ii) does not uphold the contentions made by Logix Creative Limited;

iii) directs that the deposit paid by the Appellants should not be refunded.

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Lawrence Ancilleri
Member

5th March 2019