

PUBLIC CONTRACTS REVIEW BOARD

Case 1419 – MJCL/MPU/165/2019 – Tender for the Provision of One Security Guard at the Front Gate at the Cleaning and Maintenance Division Head Office (MJC&LG)

The tender was published on the 10th November 2019 and the closing date of the call for tenders was the 10th December 2019. The estimated value of the tender (exclusive of VAT) was € 165,797.52

On the 13th January 2020 Executive Security Services Ltd filed an appeal against the Ministry for Justice Culture and Local Government as the Contracting Authority objecting that they were disqualified on the grounds that they were technically non-compliant. A deposit of € 829 was paid.

There were six (6) bidders.

On 31st January 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Richard Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Executive Security Services Ltd

Dr Matthew Brincat	Legal Representative
Ms Caroline Tabone	Representative

Preferred Bidder – Grange Security Malta Ltd

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

Dr Christopher Mizzi	Legal Representative
Ms Margaret Zammit	Member Evaluation Committee

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

Dr Matthew Brincat said that Appellants had been disqualified on two points due to the award of lower or no marks. The first point concerned the specifications of the Uniforms where Appellants were awarded nil points but in fact they had provided more extensive graphic specifications than those required in the tender. In respect of the Contingency Requirements Appellants had again

been marked down when in fact what they proposed was an uninterrupted service which was a tender specification. All the submissions made were in line with the tender specifications and it was incomprehensible as to how the evaluation committee had reached such conclusions.

Ms Margaret Zammit (376375M) called as a witness by the Public Contracts Review Board testified on oath that she was a member of the evaluation committee. She stated that the pictures of uniforms submitted by Appellants showed both tieless uniforms (as requested by tender) and others including ties. Pictures showed women wearing both flat shoes (as requested by tender) and heeled shoes. Witness claimed that offering both options did not meet the terms of the tender. There was no consistency in Appellants' replies and in the case of the shoes nil mark had to be awarded as he had offered both flat and heeled shoes – this led to the tender not being ranked.

With regard to the Contingency Plan the evaluation committee could not see how Appellant could claim that the service would be uninterrupted when they stated that they would respond to industrial action within 24 hours. Witness subsequently stated that the contracting authority were not aware that 24 hours notice was required in the case of industrial action which would allow Appellants to offer an uninterrupted service.

Dr Brincat said that his clients had been unnecessarily penalised despite meeting the tender terms.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Executive Security Services Ltd (hereinafter referred to as the Appellants) on 13 January 2020, refers to the claims made by the same Appellants with regard to the tender of reference MJCL/MPU/165/2019, listed as case No. 1419 in the records of the Public Contracts Review Board, awarded by Ministry for Justice, Culture and Local Government (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants:

Dr Matthew Brincat

Appearing for the Contracting Authority: Dr Christopher Mizzi

Whereby, the Appellants contend that:

- a) **Their offer was discarded due to the fact that, on one of the requisites namely, uniforms, Appellants' offer was allotted a nil mark whilst for another item namely contingency plan, Appellants were awarded an unjust mark. In this regard, Appellants maintain that no objective consideration was taken by the Evaluation Committee to the photographic documentation submitted by Appellants with regards to uniforms being offered by them. At the same instance, Appellants contend that the contingency plan submitted ensured that there will be an uninterrupted service throughout the tender period.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 27 January 2020 and its verbal submissions during the hearing held on 30 January 2020, in that:

- a) **The Authority contends that the photographic documentation submitted by Appellants denoted a female uniform with high heels footwear which**

was not in accordance with the requirement of the tender document. Moreover, same photographs depicted male uniforms with ties, so that the Authority had no other option but to deem Appellants' offer as non-compliant.

This same Board also noted the testimony of the witness namely:

Ms Margaret Zammit evaluator duly summoned by the Public Contracts Review Board.

This Board examined closely the relevant documentation to this appeal, with particular reference to the evaluation report and the specific award of marks under the BPQR system, relating to the allocation of points on the two requisites namely, uniforms and contingency plan as submitted by Appellants. After having heard submissions by the parties concerned, including the testimony of the witness duly summoned, this Board opines that, the issue that merits consideration is the allocation of marks on Appellants' offer relating to the two mentioned requisites.

- 1. First and foremost, this Board acknowledges the fact that, the BPQR method of evaluation offers the most reliable and equitable system in arriving at the most economical and advantageous offer as it tends to suppress, as much as possible, the incidence of subjectivity.**

- 2. Needless to mention, during the allocation of marks, the members of the Evaluation Committee must make objective assessments in decisions on the items so requested in the tender dossier. It is, at this crucial stage of assessment of the offer that the subjectivity element must be suppressed as much as possible.**

- 3. In this particular case, there were two items namely, uniforms and contingency plan, where Appellants feel they have been unfairly assessed and thus disqualified and, in this regard, this Board will consider the merits of the allocation of marks thereon.**

- 4. With regard to the issue of uniforms, this Board would refer to the stipulated requirement in this respect, as follows:**

“Minimum requirements: Uniforms – Security Officers attire a photograph is to be uploaded. (mandatory)”

Upon submission of a photograph showing the various types of uniforms, one of the photograph depicted a smart female security guard wearing high heels and the Evaluation Committee gave a ‘Nil’ mark for this mandatory item, as same Committee deemed that such a footwear item in one of the photos goes against clause 4.2 which states that:

“Female Security personnel must at all time wear the shoes without high heels”.

- 5. This Board examined Appellants’ submitted photograph and noted that although, it is a fact that one of the insets shows a female security guard wearing high heels, same photograph also shows two other insets of female security personnel wearing shoes in accordance with the stipulated requirement of the tender document.**

- 6. This Board justifiably established that Appellants’ submission represented a brochure which shows the type of uniforms worn by their security personnel and although one of the insets show a female with high heels for a particular requirement, it also shows other insets of female security personnel wearing shoes according to the stipulated requirement, the latter of which was completely ignored by the**

Evaluation Committee, resulting in allotting a ‘Nil’ mark for a mandatory requirement, thus disqualifying Appellants’ offer.

7. With regard to the Contracting Authority’s alleged ‘Tieless Uniforms’ contention, this Board would again refer to Appellants’ submitted photograph wherein, it is clearly shown that male security personnel’s uniform also does not include a tie. In this respect, this Board notes that the Evaluation Committee were very subjective in their decision and the respective allocation of marks.

8. With regard to Appellants’ contingency plan in respect of an Industrial Action, this Board notes that this tender involves one security person only, so that an urgent replacement of same could be easily achieved from Appellants’ pool of employees. At the same instance, this Board is aware of the fact that, in all cases of an industrial action, the particular union will always give an advance notice of at least 24 hours or more so that within the period of a notice of any Industrial Action, Appellants can replace the sole security person hence, Appellants statement that such a replacement will be effected within 24 hours. This Board would also point

out that Appellants' guaranteed an 'Uninterrupted Service' so that the service will be provided whether there is an Industrial Action or not.

- 9. This Board must emphasize that due consideration is being given to the fact that this tender involves one persona and not a pool of employees, so that, certain conditions which are appropriately applicable to tenders involving the hiring of a group of personnel, are not to be drastically enforced on tenders involving the hiring of one person, the latter of whom can be replaced in a much easier manner.**

In conclusion, this Board opines, that:

- a) The photographic documentation submitted by Appellants consisted of a general description of the uniforms worn by Appellants' personnel to accommodate various occasions so that, the requirements as stipulated in the tender document were included in such documentation.**
- b) The marks allocated for the alleged 'Tieless Uniforms' are proportionally not justified.**

- c) **The mark awarded for the inclusion of ‘High Heels’ footwear of female personnel included in the photographic submission is not justified as same submitted documentation demonstrated a person wearing footwear in accordance with the conditions stipulated in the tender dossier.**

- d) **The Evaluation Committee ignored completely the inclusion of photographic documentation showing personnel without ties and proper footwear as requested in the technical requisites of the tender document.**

- e) **With regard to Appellants’ contingency plan in case of an Industrial Action, the Evaluation Committee failed to take into consideration the fact that:**
 - i) **The tender involved the hiring of the one person at any given time.**

 - ii) **The unions must give an advance notice of at least 24 hours, so that the replacement of one person is easily effected.**

In view of the above, this Board,

- i. upholds Appellants’ contentions,**

- ii. does not uphold the Contracting Authority’s decision in the award of the tender,**

- iii. directs that a re-evaluation process on all the offers be carried out by a differently composed Evaluation Committee,**

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

Dr Anthony Cassar
Chairman

Mr Carmel Esposito
Member

Mr Richard A Matrenza
Member

4 February 2020