

has to be clear in what it requires. All that the Contracting Authority asked for was the draft of a form regarding anonymity but they were now also requesting guidelines of how this is going to be implemented. There is no request in the tender for guidelines and Appellants cannot be disqualified on this point.

Dr Chris Mizzi Legal Representative for the Ministry for Justice, Equality and Governance said that the body temperature methodology is an add-on and hence the Evaluation Committee had certain leeway in allocating points in this area, provided they were justified in their decision. Conversely the second grievance raised was on a mandatory point where the Committee had no latitude in awarding points – the nil points awarded made the bid non-compliant.

Mr Wayne Caruana (16694M) called as a witness by the Public Contracts Review Board testified on oath that he was the Chairperson of the Evaluation Committee. He stated that the requirement for guidelines in implementing anonymity of complainants could be inferred from Requirement 8.4 of the tender. In reply to a question he accepted that guideline was the wrong word to use in the rejection letter and perhaps the word requirement would have been more appropriate.

Dr Bugeja re-iterated that the Appellants had been penalised for referring to the body temperature requirement under a different section whilst the tender nowhere required guidelines about anonymity. It was unfortunate interpretation of terminology – requirements and guidelines have totally different meanings. This was not a question of what the Evaluation Committee desired but what the tender asked – guidelines were not requested.

Dr Mizzi said that the Evaluation Committee had no leeway in adjudication on this point. He agreed that the use of the word guidelines was unfortunate but the use of this word did not change the tender requirements.

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 Signal 8 Security Services Malta Ltd (hereinafter referred to as the Appellants) on 4th August 2020, refers to the claims made by the same Appellants with regard to the tender of reference MJEG/MPU/98/2020 listed as case No. 1487 in the records of the Public Contracts Review Board recommended

for award by Ministry for Justice, Equality and Governance (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Carlos Bugeja

Appearing for the Contracting Authority: Dr Chris Mizzi

Appearing for the Recommended Bidder: Mr James Spiteri Staines

Whereby, the Appellants contend that:

- a) Whilst the Authority alleges that, their offer did not include a methodology system to record body temperature, such related information was submitted under the section dealing with security personnel.**
- b) The Authority also alleges that, their offer, with particular reference to the requirement of article 8.4 of section 3, did not indicate how the anonymity of the complainants would be recorded. In this regard, Appellants maintain that, the tender document did not request a methodology as to how the anonymity would be dealt with and Appellants' offer did indicate that all complaints will be dealt with full confidentiality.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 3rd September 2020 and its verbal submissions during the virtual hearing held on 11th September 2020, in that:

- a) **The Authority insists that Appellants did not submit a methodology system to record the body temperature in line with Covid-19 requirements.**
- b) **In their Complaints Form, Appellants failed to indicate the mandatory requirement of informing complainants of their right to anonymity.**

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

Mr Wayne Caruana, Chairperson of the Evaluation Committee duly summoned by the Public Contracts Review Board.

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 witness duly summoned opines that the issues that merit consideration are two-fold namely:

- a) **Methodology to record body temperature and**
- b) **Appellants' complaint form**

1. Body Temperature Methodology

1.1. This Board would respectfully refer to article 4.2.1 of section 3 (Terms of Reference) wherein the following mandatory requirement is stipulated as follows:

- *“Checking and recording body temperature of each client in premises”*

Such a requirement fell under the duties of the security officers to be assigned for this tendered service.

- 1.2. This Board examined Appellants' offer and noted that, under the 'List of Measures' duly submitted, with particular reference to item 3 'Control Activities', Appellants did state that:**

"In addition, as part of the measures announced by the Health authorities and as required in the tender document the Security Officer shall check and record body temperature of each client entering the Commission for Domestic Violence premises. This will take place to take precautionary measures to contain the spread of Covid-19 and safeguard the employees' health."

It must also be pointed out that, although the issue of 'Body Temperature checking' was, in fact, mentioned, no follow-up on the action to be taken was mentioned.

- 1.3. This Board noted that, the 'Checking of Body Temperature' issue, was more elaborated by the recommended bidder and clearly defined the action to be addressed by the security officers in cases of emergencies relating to Covid-19 Pandemic. It must also be said that, Appellants were not disqualified on such an issue but were allotted 75% of the**

marks, which this Board deems to be proportional to the contents of their submission on this particular issue.

1.4. It is an accepted maxim that, the Evaluation Committee must have leeway in adjudicating offers through comparison of the offers submitted as long, as such assessment is carried out in accordance with the ‘Award Criteria’ and observance of the basic principles of ‘Level Playing Field’, ‘Equal Treatment’ and ‘Non-discrimination’ among bidders. In this regard, this Board after having examined in detail the evaluation report, can justifiably confirm that, the allotment of marks was carried out in a fair and just manner and reflected the level of information contained in each offer so submitted.

2. Appellants’ Complaint Form

2.1. With regard to Appellants’ second grievance, this Board would refer to article 8.4 of section 3, ‘Terms of Reference’, which specifically stipulates that;

“8.4 Complaints Log Sheet

- *The Economic Operator must ensure that a complaints log sheet is kept in a file to be provided by the Contractor every time a complaint is lodged, the inspection log sheet must include the following:*

1. Nature of Complaint

2. Date and Time

2.4. In their submissions, Appellants argue that, they had indicated that, all the information contained in the Complaints Form will remain confidential and in this regard, this Board would respectfully point out that, denoting the word confidential does not mean that, a provision has been included in their Complaints Form to inform the visitor of the right to remain anonymous and in this respect, this Board does not uphold Appellants' contention.

3. In conclusion, this Board opines that:

- a) With regard to Appellants' first contention, this Board confirms that, the issue of 'Body Temperature Checking' of visitors, was mentioned by Appellants in their submission, however, no mention of the subsequent action to be taken by the security officers was included. At the same instance, this Board noted that Appellants were allotted 75% (Average) of the marks under this section.**
- b) The submissions of the recommended bidder with regards to 'Body Temperature checking', were more detailed and catered for any action that might need to be taken, by the security officers, in case of emergency situations. In this respect, this Board notes that, Appellants' allotted marks were proportionally allocated.**

- c) With regard to Appellants’ second contention, it is evidently clear that Appellants failed to include one of the requisites, as stipulated in article 8.4 namely, the inclusion of a provision for the visitors’ right to remain anonymous whilst filling the Complaints Form, so that, as duly denoted in the tender dossier, a ‘zero’ mark was allotted.**

- d) Appellants’ offer was awarded a fair percentage of marks which reflected the level of submissions made by same.**

- e) The Evaluation Committee carried out the adjudication process whilst adhering to the fundamental principles of level-playing field, equal treatment and non-discrimination.**

In view of the above, this Board,

- i. does not uphold Appellants’ contentions,**

- ii. upholds the Contracting Authority’s decision in the recommendation for award of the tender,**

- iii. directs that the deposit paid by Appellants should not be reimbursed.**

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Carmel Esposito
Member

16th September 2020

