

PUBLIC CONTRACTS REVIEW BOARD

MJEG/MPU/135/2020

Tender for the Provision of Security officers at the Ministry for National heritage, the Arts and Local Government

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Case 1555

DATE: 8th April 2021

This Board,

Having noted the Appeal filed by Executive Security Services Limited, (hereinafter referred to as the Appellant) by its legal counsel Dr Alessandro Lia and the contents of the correspondence received by the Board on the 26th January 2021.

Having also noted the contents of the Contracting Authority's letter of reply received by the Board on the 19th February 2021 and filed by Dr Chris Mizzi on behalf of the Ministry for National Heritage, the Arts and Local Government as the contracting authority.

Having taken cognisance of all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties.

Having noted and evaluated the minutes of the Board sittings of the 25th March 2021 hereunder re-produced:

Case 1555 – MJEG/MPU/135/2020 – Tender for the Provision of Security Officers at the Ministry for the National Heritage, the Arts and Local Government

The tender was published on the 15th October 2020 and the closing date was the 17th November 2020. The value of the tender was € 184,360.80 (excluding VAT).

On the 26th January 2021, Executive Security Services Ltd filed an appeal against the Ministry for the National Heritage, the Arts and Local Government as the Contracting Authority objecting to their disqualification on the grounds that their bid failed to satisfy the Best Price Quality Ratio (BPQR) criterion for award.

A deposit of €921.80 was paid.

There were seven (7) bidders.

On 25th March 2021 the Public Contracts Review Board (PCRB) composed of Dr Ian Spiteri Bailey as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members, convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Executive Security Services Ltd

Dr Alessandro Lia	Legal Representative
Mr James Spiteri Staines	Representative

Contracting Authority – Ministry for the National Heritage, the Arts and Local Government

Dr Christopher Mizzi	Legal Representative
Ms Christine Zammit	Chairperson Evaluation Committee
Ms Bernadette Ellul Felice	Representative

Preferred Bidder – Signal 8 Security Services Malta Ltd

Dr Carlos Bugeja	Legal Representative
Mr Jovan Grech	Representative

Dr Ian Spiteri Bailey Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations (LN 174.04).

He noted that the letter from the Contracting Authority dated 19th February 2021 indicated that the Authority was inviting the Board to direct a re-evaluation of the Appellants’ bid due to the late discovery of an anomaly in the mark allotted to the Appellants

Dr Chris Mizzi, Legal Representative of the Ministry for the National Heritage, the Arts and Local Government confirmed the request of the Authority and said fresh letters indicating the reasons for disqualification would be issued.

Dr Alessandro Lia, Legal Representative for Executive Security Services Ltd agreed with the Authority's request but said that the claimed anomaly should be explained and the re-evaluation should be on the basis of what has already been decided up to date and not on a total re-evaluation of all the bids where different decisions might be reached. The evaluators should just remove the anomaly and start from that point.

Dr Mizzi was of the view that it would be unfair to bind the evaluation committee's hands by laying down parameters. Once the anomaly was removed the adjudication would be back to a level playing field and redress was necessary to adjust an anomalous situation.

Dr Lia re-iterated that the Authority should re-evaluate only the mistaken part and not start again from scratch. There were contradictory and unclear phrases used in the reason the Authority gave in their request.

Dr Mizzi stated that the Authority wished to see a proper re-evaluation to be sanctioned without, at this stage, going into the merits of the case.

The Chairman said that the Board would decide on the Authority's request taking into consideration the submissions made. He then thanked the parties for their submissions and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 25th March 2021, from where it results that the parties agree that the letter of rejection dated 20th January 2021 contains an anomaly in the rejection reasons given. The contracting authority stated that *"it is in the interest of fairness and transparency as fundamental principles of Public procurement that the contracting authority revises the grounds justifying the marks allotted under this heading for the objector"*.

The Board notes that the reason for deduction of points given on the rejection letter stated *"Employees are not paid a transport allowance. Transport allowance is only provided when needed and depending whether the employee opts to be provided with transport from the company"*.

That the contracting authority requested that this Board “*provides for a re-evaluation of the pertinent bid by the objector and that fresh recommendations are to be issued as a result of the re-evaluation*”.

The Board notes the appellant’s legal counsel’s submission to the effect that the Authority should re-evaluate only the mistaken part and not start again from scratch.

That the Board furthermore notes that the contracting authority declares in its reply that “*such an anomaly could have impacted marks allotted under the pertinent heading for the objecting company*”.

It seems thus clear to the Board that, in view of this declaration, the contracting authority deems that the anomaly agreed to impacted marks solely under the pertinent heading, and hence agrees to have the re-evaluation made and conducted solely and limitedly to the specific heading where marks have been deducted to the appellant company as a result of this anomaly.

The Board,

Having evaluated all the above concludes and decides:

- a) To annul the rejection letter sent to the appellant by the contracting authority dated 20th January 2021, and
- b) To annul the Letters of Acceptance sent to the preferred bidders dated 20th January 2021, and
- c) To order the contracting authority to re-evaluate the marks of the appellant company under the pertinent heading referable to the anomaly, and
- d) Following such re-evaluation, to re-issue the relative letters of acceptance and letters of rejection to the relative parties in view of such re-evaluation, whether similar and/or different to the once already issued.
- e) In view of the above considerations, the Board furthermore orders that the deposit paid by the appellant upon filing of this appeal should be refunded back to the same appellant.

Ian Spiteri Bailey
Chair

Lawrence Ancilleri
Member

Richard A Matrenza
Member