

PUBLIC CONTRACTS REVIEW BOARD

Case 1601 – MJEG / MPU / 161/ 2020 – Tender for the Provision of Security Services at the Office of the State Advocate

26th July 2021

The Board,

Having noted the letter of objection filed by Dr Carlos Bugeja on behalf of Prolegal Advocates acting for and on behalf of Signal 8 Security Services Malta Ltd, (hereinafter referred to as the appellant) filed on the 16th April 2021;

Having also noted the letter of reply filed by Dr Chris Mizzi acting for the Office of the State Advocate and the Ministry for Justice, Equality and Governance (hereinafter referred to as the Contracting Authority) filed on the 30th June 2021;

Having taken cognisance and evaluated 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 sitting of the 15th July 2021 hereunder-reproduced.

Minutes

Case 1601 – MJEG/MPU/161/2020. Tender for the Provision of a Security Officer at the Office of the State Advocate.

The tender was published on the 10th December 2020 and the closing date was the 15th January 2021. The value of the tender was € 103,331.

On the 15th April 2021 Signal 8 Security Services Malta Ltd filed an appeal against the Ministry of Justice, Equality and Governance as the Contracting Authority objecting to their disqualification on the grounds that their offer failed to satisfy the BPQR criteria.

A deposit of € 517 was paid.

There were nine (9) bids and eight (8) bidders.

On 15th July 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Signal 8 Security Services Malta Ltd

Dr Carlos Bugeja	Legal Representative
Mr Jovan Grech	Representative

Contracting Authority – Ministry for Justice, Equality and Governance

Dr Chris Mizzi	Legal Representative
Ms Laura Desira	Chairperson Evaluation Committee
Mr Adrian Tonna	Member Evaluation Committee
Ms Julie Bonello	Representative

Preferred Bidder – Protection Services Malta Ltd

Dr Shazoo Ghaznavi	Legal Representative
--------------------	----------------------

Mr Kenneth Swain 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. He then asked Appellant’s representative to make his submissions.

Dr Carlos Bugeja Legal Representative for Signal 8 Security Services Malta Ltd said that Appellant had two grievances on his disqualification in what he considered was a quality offer; namely timekeeping and site visits. Site inspections were dealt with in the proper section and not Section 7.1 which dealt with time keeping. On the second point the Evaluation Committee claims that Appellant made a good submission but made no reference to Articles 4.2.1 and 4.2.2. In fact Appellant had dealt with these points holistically and made detailed submissions indicating total responsibility to provide the level of service expected.

Dr Chris Mizzi Legal Representative for the Ministry for Justice, Equality and Governance stated that a crucial point in this appeal is that Appellant is trying to distinguish between the grid and the Terms of Reference technical bid offer. In a BPQR tender the technical evaluation is important and in this instance two mandatory requirements were missed. The Authority is relying on the detailed written submissions as justification for the award.

Dr Shazoo Ghaznavi Legal Representative for Protection Services Malta Ltd said that he agreed with Dr Mizzi’s submissions. Site visits have to be tied to timekeeping whilst on the second point Appellant provided 15 pages against the Authority’s request for a 200 word submission. Articles 4.1 and 4.2 were not satisfied by Appellant and thus the decision of the Evaluation Committee should be upheld.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 15th July 2021.

Having noted the objection filed by Signal 8 Security Services Malta Ltd (hereinafter referred to as the Appellant) on 16th April 2021, refers to the claims made by the same Appellant with regards to the tender of reference MJEG / MPU / 161/ 2020 listed as case No. 1601 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Carlos Bugeja
Appearing for the Contracting Authority:	Dr Chris Mizzi
Appearing for the Preferred Bidder:	Dr Shazoo Ghaznavi

Whereby, the Appellant, in their Letter of Objection, contends that:

- a) **Timekeeping as per Terms of Reference Article 7.1** - The Evaluation Committee, made a wrong assessment in its evaluation of Criteria B1.1 wherein it also assessed inspections / visits elements together with timekeeping material as pertinent to this section, while the information was submitted in a different section of the tender
- b) **Criteria 5** - A wrong assessment was made by the Evaluation Committee with regard to the Criteria Number 5 in not including all information submitted by the bidder for assessment.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 30th June 2021 and its verbal submission during the virtual hearing held on 15th July 2021, in that:

- a) **Timekeeping as per Terms of Reference Article 7.1** – Inspections / visits at least monthly onsite not mentioned as part of Article 7.1 of the ToR. As a matter of fact the evaluation criteria

are linked to their correlated part in the Terms of Reference in this case Article 7.1 is the pertinent provision. This provision in the ToR includes visits which the contractor is expected to carry out at least monthly.

- b) **Criteria 5** – the Evaluation Committee clearly assessed the submission of the objector and found that in certain requirement of the Terms of Reference namely Article 4.2.1 and Article 4.2.2 were not included in the submission. The Evaluation Committee even remarked that it was an overall good submission however with the lack of this information the committee agreed to award 90% of the marks available for this criterion.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will consider Appellant’s grievances, as follows:

- a) **Timekeeping as per Terms of Reference Article 7.1** –
- i. It is to be noted that Tender Specifications are always becoming more detailed. In this particular case the Terms of Reference, found in Section 3 of the Tender dossier, were very clear. Article 7.1 clearly states that *“the contractor will be expected to visit his personnel on site whilst on duty, on a regular basis (at least monthly) and submit a report to the Manager Corporate Services.”*
 - ii. As the Appellant clearly pointed out, the Tender dossier requested *“a list of measures to ensure Timekeeping as per Terms of Reference Article 7.1”*.
 - iii. It is essential that the Technical submissions made by prospective bidders are to include all points requested by the Tender dossier and the relevant parts of the Tender Specifications as required.
- b) **Criteria 5** –
- i. The Board notes that the Appellant company was awarded 90% of the marks available for this criterion. Hence the Evaluation Committee used its judgement in reducing 10% of the marks available due to certain requirements of the Terms of Reference Articles 4.2.1 and 4.2.2 were not included in the submission.
 - ii. This Board is adamant and has on numerous occasions stated that the Evaluation Committee is to be ‘afforded’ an element of *‘leeway’* in the way it proceeds with its business of evaluation. It is after all their main responsibility for such an appointment in this respective committee.
 - iii. No evidence was brought forward to show that the Evaluation Committee did not use the *“same ruler”* to evaluate all bids it had in front of it or that they did not act in professional, detailed and meticulous manner and always within the remit of the Public Procurement Regulations and the specific Tender document in question. Hence all the bids submitted

for this tender had the same level playing field and hence the concept of ‘Self Limitation’ has been observed.

Finally, the Board, does not uphold the Appellant’s grievances.

In conclusion this Board;

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant’s Letter of Objection and contentions,
- b) Upholds the Contracting Authority’s decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member