

## PUBLIC CONTRACTS REVIEW BOARD

### Case 1577 – MJEG/MPU/169/2020 – Services - Tender for the Provision of Security / Receptionist Services for the Valletta Design Cluster.

4<sup>th</sup> June 2021

The Board,

Having noted the letter of objection filed by Dr Carlos Bugeja and Dr Graziella Cricchiola acting for and on behalf of Signal 8 Security Services Malta Ltd, (hereinafter referred to as the appellant) filed on the 12<sup>th</sup> March 2021;

Having also noted the Reasoned letter of reply filed by Dr Chris Mizzi on behalf of Valletta Cultural Agency filed on the 26<sup>th</sup> May 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 heard and evaluated the testimony of the witness Ms Laura Desira as summoned by Dr Christopher Mizzi acting as Chairperson of the Evaluation Committee on this tender;

Having noted and evaluated the minutes of the Board sitting of the 3<sup>rd</sup> June 2021 hereunder-reproduced.

### Minutes

#### **Case 1577 – MJEG/MPU/169/2020. Tender for the Provision of Security/Receptionist Services for the Valletta Design Cluster**

The tender was published on the 30<sup>th</sup> December 2020 and the closing date was the 29<sup>th</sup> January 2021. The value of the tender was € 180,280.80.

On the 11<sup>th</sup> March 2021 Signal 8 Security Services Malta Ltd filed an appeal against the Ministry for Justice, Equality and Governance on behalf of the Valletta Cultural Agency as the Contracting Authority objecting to their disqualification on the grounds that their offer did not meet the BPQR criteria.

A deposit of € 901.40 was paid.

There were eight (8) bidders.

On 3<sup>rd</sup> June 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Mr Richard Matrenza 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

**Contracting Authority – Ministry of Justice, Equality and Governance**

Dr Christopher Mizzi Legal Representative  
Ms Laura Desira Representative

**Preferred Bidder – Protection Services (Malta) Ltd**

Dr Shaheryar Ghaznavi Legal Representative  
Dr Lara Chetcuti Legal Representative  
Mr Jason Pisani 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 his written submissions laid out Appellant's case in detail and he would merely comment briefly on the contentious points. The measures offered on the submissions on time-keeping were inter-linked and lead to a complete result if considered holistically. One must not concentrate on the number of measures but on their purpose, similar to the chain principle and there was no justification for the reduction in points awarded. With regard to the measures on transport it does appear as if the Evaluation Committee misunderstood the submissions. Transport is offered to anyone who needs it and three random payslips submitted indicated how the transport allowance was granted. Page 5 of the objection letter amplifies how the allowance is paid to all employees.

Dr Christopher Mizzi Legal Representative for the Ministry for Justice, Equality and Governance emphasised that this was a BPQR basis tender with certain leeway in assessment. On the time-keeping measure the Authority maintains that the proposed measures tie in with each other to the extent that if one measure was removed the others collapsed to only three measures being offered instead of the five requested. With regard to the transport measures the payslips indicated that not all employees were being given the grant when the criteria required that all employees were to receive it.

Ms Laura Desira (153388M) called as a witness by the Authority testified on oath that she was the Chairperson of the Evaluation Committee. She stated that Appellants measures on timekeeping did not amount to five as certain points were a continuation of each other and in some cases a repetition and were more of an indication of back office work than actual supervision on time-keeping. Items 3 and 4 are linked as item 4 merely approves the measure in item 3 and gives no assurance on site supervision. On the transport allowance the economic operator had to ensure that all employees received it but the tender indicated that it was not general in all cases.

Dr Lara Chetcuti Legal Representative for Protection Services (Malta) Ltd said that the BPQR is the most objective way of evaluating a tender and is recognised as being the fairest system. Appellant did not meet certain requisites in the tender leading to a deduction of points. The assessment is not subject to interpretation and hence the appeal is not justified.

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

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 3<sup>rd</sup> June 2021.

Having noted the objection filed by Signal 8 Security Services Malta Ltd (hereinafter referred to as the Appellant) on 12<sup>th</sup> March 2021, refers to the claims made by the same Appellant with regard to the tender of reference MJEG/MPU/169/2020 listed as case No. 1577 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Carlos Bugeja

Appearing for the Contracting Authority: Dr Christopher Mizzi

Appearing for the Preferred Bidder: Dr Lara Chetcuti

Whereby, the Appellant contends that:

- a) **Transparency** - The principal of transparency in the Public Procurement Regulations (PPR) is vital. Till today the Appellant does not have any insight into how the recommended bidder has been awarded the points in the evaluation stage of the tender. This raises a number of questions with regards to transparency.
- b) **Timekeeping** - The Appellant submitted 6 processes, even though only 3 were assessed as compliant. It is the humble opinion of the Appellant that the evaluation committee did not understand the importance of cohesion in these submitted processes. Processes 1, 2 & 6 were deemed as one compliant process. Processes 3 & 4 were deemed as one compliant process. While process 5 was deemed as compliant on its own merits. If the evaluation committee pretended that each process was to be completely independent of each other, that it did not necessarily understand the nature of the service being offered.
- c) **Transport for Employees** - In the rejection letter it was stated "... it is evident that this type of allowance is not given to all employees but rather selectively on a case-by-case basis". The

Appellant certainly didn't state this in his offer. The Appellant, in its proposal, submitted that while the company does provide benefits according to performance of work duties, it is also in a position of providing either transport or a subsidy / allowance on transport to all employees. This has been proved with the sample of payslips provided. The Evaluation committee requested bidders to show that it provides transport services to all employees. The Appellant showed, in a logical manner, that it does in fact provide these services to employees who are in need of them. No commercial entity is going to provide transport services who doesn't need such a service or provide transport allowance who uses the transport provided by the company.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 26<sup>th</sup> May 2021 and its verbal submission during the virtual hearings held on 3<sup>rd</sup> June 2021, in that:

- a) **Transparency** – the marks allotted under the BPQR system to the different bidders are bid specific and their publication would infer on the confidential nature of the technical offer of the winning bidder. The appeal procedure cannot be diverted to a comparison exercise of marks between bidders which would seriously undermine the PPR.
- b) **Timekeeping** – the evaluation committee noted that the measures portrayed in the bid of the objector are artificially split and some of them are more akin to process pertaining to the same measure or else merit to be considered as a sub-measure of a measure. The reasoning for this has been given to the objector in the letter to unsuccessful bidders.
  - i. Processes 1, 2 & 6 were deemed as one compliant process. – Given the similarity with the content of processes 1 & 2, process 2 was deemed as elaborating further on the timesheets and thus a continuation of process 1. Re process 6, the evaluation committee noted that the proposed measure was already mentioned in process 2.
  - ii. Process 3 – the evaluation committee noted that the tender document does not make reference to a palm reader therefore, it should not be assumed by the contractor that a palm reader shall be made available onsite by the Contracting Authority. Moreover, this is a retrospective process. Process 4 – there was insufficient information or lack of a detailed explanation of how this measure is different from the process 3, which in essence is part and parcel of the reconciliation process (process 3).
- c) **Transport for Employees** – Submission of Appellant was;
  - i. *“Signal 8 acknowledge hard working employees and value good performance at work not only by rewarding extra bonuses and allowance but also by communicating our appreciation even on simple good deeds. Depending on the outcome of this continuous employee assessment, employees are also rewarded with*

*additional bonuses directly with their wages, and in situations of outstanding performance, may also be given additional rewards such as a commemorative token and recognition. Reference is made to Appendix 1 where there is proof that employees are paid transport allowance such as cash for use of own car (which can be seen in attached payslips)".* The evaluation committee took note of the payslip in which case for use of own car allowance was listed. However, it also took into account that the bidder stated that such an allowance was directly related to the outcome of the continuous employee assessment whereby outstanding employees are "rewarded with additional bonuses". This implied that only good performers are given the transport allowance as a means of rewarding hard work and thus not all employees would be given a transport allowance or related allowance.

- ii. *"additional allowances will be given to our employees when difficulties, that could affect the employee's means of transportation to the place of work, are identified. Signal 8 is in a position to assist our employees to and from their work placement when required."* Employees who have a means of transport will be given additional allowances, which is being assumed to be a transport allowance. Therefore the allowance is not given to all employees.

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) With regards to the issue of **Transparency**, the Board opines that bidders are indeed entitled to extracts of the evaluation report which concerns **their** respective offers directly, but are not entitled to any insight into how the recommended bidder has been awarded the points in the evaluation stage of the tender. The Board does not uphold this 'preliminary' argument as put forward by the Appellant.
- b) **Timekeeping** – In regards to this argument and grievance, the Board is of the opinion that the fact that these "same processes" have been presented in other bids, it does not necessarily mean that they are adequate for this particular tender. Each and every tender is separate and distinct and contains requirements specific to that particular tender. Moreover, it is important to note that in tenders evaluated under the Best Quality Price Ratio (BPQR), the Evaluation Committee is to be afforded 'leeway' in the way it goes on its business of evaluating the different bids received. This obviously needs to be done in a professional, detailed and meticulous manner and always within the remit of the Public Procurement Regulations and the specific Tender document in question. The Board notes that no specific evidence has been brought to

its attention that this was not the case. Hence the Board does not uphold this grievance of the Appellant.

- c) **Transport for Employees** – The Board notes that the tender document was very specific in its requirements, whereby “Employment Conditions – The EO is to submit proof that all employees are provided with transport allowance or a related allowance.” The Board also notes the Appellant’s submitted documentation in its bid “*Signal 8 acknowledge hard working employees and value good performance at work not only by rewarding extra bonuses and allowance but also by communicating our appreciation even on simple good deeds. Depending on the outcome of this continuous employee assessment, employees are also rewarded with additional bonuses directly with their wages, and in situations of outstanding performance, may also be given additional rewards such as a commemorative token and recognition. Reference is made to Appendix 1 where there is proof that employees are paid transport allowance such as cash for use of own car (which can be seen in attached payslips)*”. After considering such declaration and analysing the requirements of the tender document, that Board opines that the Evaluation Committee did not act in an inept manner when awarding the points on this particular matter. Hence the Board does not uphold this last grievance of the Appellant.

**In conclusion this Board opines that;**

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**

**Mr Lawrence Ancilleri**  
**Member**

**Mr Richard Matrenza**  
**Member**