

PUBLIC CONTRACTS REVIEW BOARD

Case 1886 – SPD8/2022/120 – Services - Tender for Security Services at the Bugibba Waterpark (2023-2024)

26th June 2023

The Board,

Having noted the letter of objection filed Dr Lara Attard and Dr Natalino Caruana De Brincat acting for and on behalf of Signal 8 Security Services Malta Limited, (hereinafter referred to as the appellant) filed on the 5th June 2023;

Having also noted the letter of reply filed by Dr Andrew Saliba and Dr Rachel Powell on behalf of Dalli Advocates acting for Project Green (hereinafter referred to as the Contracting Authority) filed on the 15th June 2023;

Having heard and evaluated the testimony of the witness Mr Melvyn Darmanin (Representative of Nuov) as summoned by Dr Lara Attard acting for Signal 8 Security Services Malta Limited;

Having heard and evaluated the testimony of the witness Mr Paul Debono (Chairperson of the Evaluation Committee) as summoned by Dr Lara Attard acting for Signal 8 Security Services Malta Limited;

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

Having noted and evaluated the minutes of the Board sitting of the 22nd June 2023 hereunder-reproduced.

Minutes

Case 1886 – SPD8/2022/120 – Services – Tender for Security Services at the Bugibba Waterpark (2023-2024)

The tender was issued on the 22nd August 2022 and the closing date was the 15th September 2022. The estimated value of the tender, excluding VAT, was € 21,398.37.

On the 5th June 2023 Signal 8 Security Services Malta Ltd filed an appeal against Project Green (formerly Parks Malta) as the Contracting Authority objecting to their disqualification on the grounds that their bid was deemed to have failed to satisfy the criterion award.

A deposit of € 400 was paid.

There were five (5) bids.

On the 22nd June 2023 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman, Dr Charles Cassar and Ms Stephanie Scicluna Laiviera as members convened a virtual public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Signal 8 Security Services Malta Ltd

Dr Lara Attard	Legal Representative
Mr Joseph John Grech	Representative

Contracting Authority – Project Green

Dr Rachel Powell	Legal Representative
Mr Paul Debono	Chairperson Evaluation Committee
Mr Joseph Gili	Evaluator
Mr Silvan Cutajar	Secretary Evaluation Committee

Preferred Bidder – Executive Security Services Ltd

Dr Alessandro Lia	Legal Representative
-------------------	----------------------

Department of Contracts

Dr Mark Anthony Debono	Legal Representative
------------------------	----------------------

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties and invited submissions.

Dr Lara Attard Legal Representative for Signal 8 Security Services Malta Ltd requested that witnesses be heard first.

Mr Melvyn Darmanin (430085M) called to testify by the Appellant stated on oath that he represented NOUV and had assisted in the tender preparation and submission. Witness was referred to documents submitted in regard to the appeal. He agreed that a copy of the contract of employment with appendices and four copies of payslips were submitted in the tender. The four payslips show the words bonuses and allowances, which words were used interchangeably. Special and one time bonuses indicated that they were granted for exceptional work.

Questioned by Dr Lia Legal Representative for Executive Security Services Ltd, witness stated that he had acted as advisor to the bidder and the employment contract uploaded showed a small extract of the employee’s signature which he agreed had been heavily redacted. The special bonuses were indicated on the payslips submitted but these had been redacted.

Mr Paul Debono (108272M) called to testify by the Appellant stated on oath that the Tender Evaluation Committee (TEC) had compared the contracts of employment submitted by the bidders. In the case of the one submitted by Appellant there were so many redactions that the TEC could not rely on it; no clarification was sought as this was a mandatory item and a clarification would not have been of any use as the submission was clear. Similarly the TEC felt that there were too many redactions on the payslips which were not acceptable.

This concluded the testimonies.

Dr Attard said that there is a difference in the points awarded between the winning bid and the losing one on both criteria contested. On the employment contract it is not right to claim that it could not be confirmed that the document presented was not an active one as there are clear dates indicated

and it is clear even that there was writing before it was redacted. No clarification was sought as the TEC claim that it would have changed the offer whereas it would not have made any changes. Court cases in the past have supported this argument.

On the second exception regarding allowances and bonuses, said Dr Attard, the payslips indicate that there is a distinction made between these two items. A specific bonus is not automatic according to the payslips but again no clarification was sought on the redactions. The tender dossier only briefly details the requests on this requirement. The full points ought to be awarded to the Appellant.

Dr Alessandro Lia said that the grid made it clear as to what was mandatory or add-on. The TEC has no sacrosanct duty to seek clarifications and they stated that it did not feel the need for it as the matter came under Note 3. It was a copy of documents that was requested not a template and if bidder wanted to submit redacted documents it was their responsibility to seek clarification. The same argument applies to the payslips which were redacted so heavily as to render them as templates rather than copies. The most important item in question – bonuses – was redacted although other items were not. The TEC decision is correct in the award of the tender.

Dr Rachel Powell Legal Representative for Project Green said that the TEC was of the view that bidder failed on both points contested. It was impossible to make decisions on documents very heavily redacted. Supplying a document with a part signature only does not authenticate a redacted document – this was a case where rectification would have been required to safeguard the bid, not clarification, and this could not be done and would have been discriminatory. The TEC could not make up for the omissions of the bidder and the same applied to the matter of bonuses and allowances where there was no clear distinction. The TEC had no option in the marking of the bids.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 22nd June 2023.

Having noted the objection filed by Signal 8 Security Services Malta Limited (hereinafter referred to as the Appellant) on 5th June 2023, refers to the claims made by the same Appellant with regard to the tender of reference SPD8/2022/120 listed as case No. 1886 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Lara Attard
Appearing for the Contracting Authority:	Dr Rachel Powell
Appearing for the Preferred Bidder:	Dr Alessandro Lia

Whereby, the Appellant contends that:

a) 1st grievance - Employees have a written contract -

This criterion, (sic) which has been marked as a mandatory requirement requires that the bidder provides a copy of a contract agreement between the bidder and employee. In relation to this criteria, Signal 8 Security Services Malta Ltd. has obtained an average technical score of zero (0). In the submitted documentation, which has been marked as Document 1661166169181, the Objector has declared that the personnel being proposed for the execution of the contract are their employees and have entered into an employment contract as per the conditions listed in the tender document whilst also committing to providing all the contract agreements should the contracting authority request them. Additionally, under appendices 1 and 2 of the aforementioned document the objector has presented a copy of the employee's written contract agreement and a draft employee's contract, with the additional submission of an employment application form. It is therefore being argued that Signal 8 Security Services Malta Ltd should have never been allotted by the Evaluation Committee an average technical score of zero (0) for this criterion as the information requested was provided and the documentation has been provided in line with the specified requirements.

b) 2nd grievance - Other bonuses given to personnel employed on contract - over and above those statutory.

This criterion, which has been marked as an add-on requirement, requires that the bidder provides a copy of a payslip or a contract agreement to attest the fulfilment of this criteria. In relation to this criteria Signal 8 Security Services Malta Ltd has received the score of zero point zero four (0.04) from the evaluators which was then rounded to one (1). As outlined in the tender dossier the Evaluation Committee shall grant a minimum of 1% when the bidder has failed to provide the requested documentation or failed to abide by the requested special requirements. However the bidder has successfully provided the requested documentation. In the submitted documentation, marked as Document 1661166217275 the objector has declared the provision of additional allowances to employees, which include transport allowances, fuel allowances, performances allowances, vehicle maintenance allowances and other tokens of appreciation. Additionally, payslips have been attached to appendix 1 as a proof of the bonuses and allowances which are being provided to their employees. It is therefore being argued that the Signal 8 Security Services Malta Ltd, should have never been allotted by the Evaluation Committee an average technical score of 1 for this criterion, as the information requested was provided and the documentation has been provided in line with the specified requirements.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 15th June 2023 and its verbal submission during the virtual hearing held on 22nd June 2023, in that:

a) 1st grievance - On the Matter of the written employment contract -

The Contracting Authority gave the Appellant a score of zero (0) for failing to satisfy the first criterion, a mandatory requirement, where bidders were requested to provide a "*copy of an employment contract agreement between the bidder and the employee*" [criterion C2(ii)]. In its appeal, the appellant contends that it submitted this contract, marked as Appendix 1 in Document 166166169181.

While the appellant acknowledges the receipt of this document, the document nevertheless did not satisfy the tender requirement, in that the contract submitted by the appellant contains substantial redactions with obscured details to the extent of rendering it indistinguishable from a non-executed draft or template contract. The Evaluation Board could not be satisfied that this was a completed, signed, and executed contract, and thus correctly categorized the submitted document as a draft or template contract, as opposed to an actual and active contract agreement entered into with an existing employee. In the aforementioned Document 166166169181, the appellant thus provided what appear to be two draft or template agreements, when it had to submit a signed and active agreement with a current employee. The integrity and fairness of a public contracting process depend upon full disclosure of pertinent information. An employment contract, as a binding legal agreement between two identifiable parties, must be transparent in its details and substantiated by attested signatures. The submitted document, unfortunately, lacked these vital attributes due to significant redactions. Consequently, it was deemed insufficient as verifiable proof of an active employment relationship. While the Contracting Authority acknowledges, and respects, the necessity to uphold GDPR and other data protection laws, the extent of the redactions in this case was such that it undermined the purpose of the document submission requirement in the tender process.

b) 2nd grievance – On the Matter of Bonuses -

The appellant has also contests (sic) the Contracting Authority's non-recognition of their second document, Document 166166217275, in satisfaction of an add-on requirement showing "Other bonuses given to personnel employed on contract - over and above those statutory" [criterion C2(iv)]. The appellant appears to state that its "transport allowance, fuel allowances, performance allowances, vehicle maintenance allowances and other tokens of appreciation" satisfy this 'bonus' criterion as stated in the tendering criteria. The submission from the appellant does not, however, adhere to the explicit 'bonus' requirement outlined in the tender conditions.

There is a clear distinction between "allowances" and "bonuses". This distinction is more than mere semantics- it involves differing motivations, contexts, and delivery mechanisms. An allowance, typically incorporated in structured remuneration packages, is fixed and directly tied to expenses or predetermined performance metrics, thereby forming a predictable component of an employee's pay. A bonus, in contrast, is at the discretion of the employer and is generally awarded

for exceptional performance that exceeds normal job expectations. The tender explicitly mandated the provision of 'bonuses' beyond statutory requirements, thereby reflecting the Contracting Authority's commitment to promote organisations that extend above-standard remuneration practices.

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 witnesses duly summoned, will now consider Appellant's grievances.

a) **2nd grievance – Criterion C2 (iv)**

Reference is made to the Appellant's submission in relation to the above-mentioned criterion. After thorough analysis and consideration, this Board agrees with arguments brought forward by the Preferred Bidder and the Contracting Authority, in that the submitted documentation is heavily redacted and does not suffice to meet the requirements of such criterion. Whilst it is appreciated that certain information could have been redacted, for the sake of confidential information, such as name, address, ID number and SS number, this Board does not understand why the actual amounts paid by way of 'Special Bonus' would have been redacted and marked with an 'X'. Other information which would not have impacted on confidentiality and / or GDPR issues, has also been unexplainably redacted.

Therefore, this Board opines that the Evaluation Committee was well within its rights to allot the score given and therefore does not uphold the Appellant's second grievance.

b) **1st grievance - Criterion C2(iii)**

Whilst this Board acknowledges that the contract submitted is 'less' redacted than the payslips mentioned above, it is stated that what the tender document required was clear and unambiguous. Criterion C2(iii) states that *"a copy of a contract agreement between the bidder and employee is to be provided"*. This Board opines that if the Appellant had any confidentiality / GDPR concerns, it was up to it to submit a clarification request within the timeframes stipulated in the General Rules Governing Tenders and if the reply provided was not to its satisfaction, it could contemplate further remedial mechanisms as provided in the Public Procurement Regulations S.L. 601.03. Therefore, arguments brought forward by Appellant that in this case it was the responsibility of the Evaluation Committee to seek a clarification from the appellant are not upheld.

The 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 to Executive Security Services Limited,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Charles Cassar
Member

Ms Stephanie Scicluna Laiviera
Member