

PUBLIC CONTRACTS REVIEW BOARD

Case No. 275

ESF/EMP/111/10

Tender for the Supply of Training Services in Teaching English as a Foreign Language (TEFL)

This call for tenders was published in the Government Gazette on 3rd September 2010. The closing date for this call with an estimated budget of € 47,000 was 24th September 2010.

One (1) tenderer submitted an offer.

ED English Domain Ltd filed an objection on 28th January 2011 against the decision by the Employment and Training Corporation (ETC) to disqualify its offer and to cancel the tendering process.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Edwin Muscat and Mr. Carmel Esposito as members convened a public hearing on Monday, 18th April 2011 to discuss this objection.

Present for the hearing were:

ED English Domain Ltd

Mr Nick Callus	Representative
Ms Miraide Callus Gatt	Representative
Ms Pauline Fenech	Representative
Mr Clint Tabone	Representative

Employment and Training Corporation (ETC)

Dr Ian Spiteri Bailey	Legal Adviser
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Evaluation Board

Mr Louis Cuschieri	Chairman
Ms Charmaine Chetcuti	Member
Ms Olivia Farrugia	Member
Mr Joseph Galea	Member
Mr Martin Casha	Secretary

After the Chairman's brief introduction, the appellant company was invited to explain the motives of its objection.

Mr Nick Callus, representing ED English Domain, explained that:-

- on 25th January 2011 the Employment and Training Corporation informed ED English Domain that its offer had been rejected because the price offer was not included in Clause 3 of the Tender Form - but had been included in the financial offer;
- the service requested in the tender concerned the teaching of English but the number of students had not been specified in the tender document;
- on the contrary, the tender document indicated that over a six week period the Employment and Training Corporation was going to embark on a promotional programme to attract students to this English Language course;
- the issue regarding the number of students that would attend this training was also brought up during the clarification session held on 16th September 2010 and the Employment and Training Corporation had declared that, at that stage, the number of students who would take up this course had not been established;
- in the circumstances, the offer made by ED English Domain referred to the price per student, namely €175, and the total price would work out at €175 multiplied by the number of students, which had not been established at tendering stage; and
- only one bid was participating in this call for tenders and albeit they were informed that the total price should have been given in the first place, still during a four month period, the Employment and Training Corporation kept on requesting clarifications concerning the technical evaluation of the offer which were duly answered.

Dr Ian Spiteri Bailey, legal representative of the contracting authority, expressed general agreement with the points raised by Mr Callus. Nevertheless, he added that the Chairman of the Departmental Contracts Committee had recommended the cancellation of the tender because the only participating bidder had failed to indicate the total price of the offer. He also noted that the tender document indicated that this was a fee based contract. Dr Spiteri Bailey remarked that the ruling given by the Departmental Contracts Committee was not challenged but it was simply acted upon.

Mr Martin Casha, secretary to the Evaluation Board, confirmed that both in the tender document and in the clarification session held prior to the closing date of the tender the contracting authority did not indicate the number of participants in this training course.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their 'reasoned letter of objection' dated 28th January 2011 and also through their verbal submissions presented during the hearing held on 18th April 2011, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company's representatives' claims and observations, particularly, the references made to the fact that (a) the number of students had not been specified in the tender document, (b) the issue regarding the number of students that would attend this training was also brought up during the clarification session held on 16th September 2010 and the Employment and Training Corporation had declared that, at that stage, the number of students who would take up this course had not been established and (c) in the circumstances, the offer made by ED English Domain referred to the price per student;
- having considered the contracting authority's representative's (a) general agreement with the points raised by Mr Callus, (b) reference to the fact that the Chairman of the Departmental Contracts Committee had recommended the cancellation of the tender because the only participating bidder had failed to indicate the total price of the offer, (c) reference to the fact that the tender document indicated that this was a fee based contract, (d) reference to the fact that the ruling given by the Departmental Contracts Committee was not challenged but it was simply acted upon and (e) confirmation that both in the tender document and in the clarification session held prior to the closing date of the tender the contracting authority did not indicate the number of participants in this training course,

reached the following conclusions, namely:

1. The Public Contracts Review Board considers that the decision taken by the Departmental Contracts Committee to cancel the tender despite the fact that it was evidently clear that in the tender document the contracting authority did not indicate the number of participants in this training course was wrong.
2. The Public Contracts Review Board notes that the contracting authority should have, at least, challenged the ruling taken by the Departmental Contracts Committee as common sense could have possibly prevailed, saving (a) the taxpayer a considerable amount of money and (b) this Board the time to allocate its limited resources to less straightforward hearing sessions.
3. The Public Contracts Review Board opines that, given the circumstances, the appellant company had no other option but to submit its offer in the way it did.

In view of the above this Board finds in favour of the appellant company and, apart from recommending the reintegration of the appellant company in the evaluation process, it also recommends that the deposit paid by the said appellants should be reimbursed.

Alfred R Triganza
Chairman

Edwin Muscat
Member

Carmel Esposito
Member

28 April 2011

