

PUBLIC CONTRACTS REVIEW BOARD

Case No. 284

Adv. No. CT /33/2010 - CT 3082 / 2010

Service Tender for the Provision of Specialist ICT Training and Certification for Selected Employees within the Public Administration – Lot 6

This call for tenders was published in the Government Gazette on 1st October 2010. The closing date for this for this call for offers was 11th November 2010.

The estimated value of tender (all lots) is Euro 1,067,797 (Excluding VAT).

On 21st February 2011, Dr George Hyzler LLD on behalf of The Computer Training Course Ltd (TCTC) filed an objection against the award of this part tender (Lot 6) to Computer Domain Ltd for Euro 2450 after being informed that his client's offer was not technically compliant since the time frames proposed in the offer consist of one year and not three years as requested in the tender document.

The Public Contracts Review Board composed of Mr Edwin Muscat as Chairman and Mr Carmel Esposito and Mr Joe Croker as members convened a public hearing on Friday 29th April 2011 to hear this objection.

Present at this meeting were:

The Computer Training Course Ltd (TCTC)

Dr George Hyzler	Legal Representative
Mr Ray Abela	Representative

Computer Domain Ltd

Mr Nick Callus	Managing Director
Mr Clint Tabone	Representative

Centre for Development, Research and Training (CDRT), Office of the Prime Minister

Dr Joseph Bonello	Legal Representative
Ms Fabianne Muscat	Project Administrator

Evaluation Board

Dr Philip Von Brockdorff	Chairman
Ms Joanna Grioli	Secretary
Mr Arthur Gerada	Member
Me Kevin Buhagiar	Member

Department of Contracts

Mr Francis Attard	Director General
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After the Chairman's brief introduction, appellants were invited to explain the motives of their objections.

Dr Hyzler explained that by letter dated 16th February 2011, the Contracts Department informed his client that (a) his offer for Lot 6 was not successful as it was not technically compliant since the timeframes proposed in his offer consist of one year and not three years as requested in the tender document, and (b) the said Lot was recommended for award to Computer Domain Ltd, being the cheapest technically compliant offer.

Dr Hyzler claimed that his client's offer was deemed as technically non compliant on the basis of what was stated in the Timetable of Activities forming part of his client's offer, namely, "overall, the project will be ready in 58 weeks i.e. one year and one month maximum." Dr Hyzler explained that this declaration reflects the number of weeks it is anticipated that all the courses would take to complete. As a matter of fact, his client had proposed the following Timetable of Activities:

Lead Time for co-ordination.	3 – 6 weeks
ECDL Expert	24 weeks
ECDL Web Editing	10 weeks
ECDL Image Editing	10 weeks
Ms Publisher	10weeks
Total approx	58 weeks

Dr Hyzler claimed that his client's declaration could have been confused and interpreted to conflict with the "period of execution" as specified in the tender document, that is, "the commencement date shall be upon the last signature of contract - and the period of execution shall be for three years from the said date". In fact, the tender document did not indicate any timeframes for the said courses - it only laid down the period of execution. Dr Hyzler added that the decision to disqualify his client on the basis of the said declaration must have been based on the misconception that "course duration" and "period of execution" were one and the same. His client was aware that the period of execution covered three years from the date of signing of contract. He also understood that by their very nature, the duration of the courses in question were rather short, ranging from 10 to 24 weeks. He added that his client's interpretation of the tender requirement was that selected employees from within the Public Administration would, on different dates, join a particular course during the three year period, and the contractor would be committed to conduct such courses within the stipulated timeframe or such other period as the Contracting Authority may suggest. Dr Hyzler reiterated that his client had implied total flexibility to extend or reduce the completion dates of courses, depending on the wishes of the Authority.

In reply, Dr Joseph Bonello on behalf of the Centre for Development, Research and Training, (CDRT), submitted that the way appellant presented his offer indicated that he was offering the required service for only one year instead of the three years as laid down in the tender document. He added that the contracting authority had requested that tutors were to be available during the whole period. Instead, in the "Statement of Exclusivity and Availability" the tutors that were

proposed by appellant, bound themselves to offer their services for only one year, that is, from January 2011 to December 2011. Dr Bonello added that the contracting authority was not prepared to run the risk where the contractor would not provide the required service beyond the one year period as indicated in the Statements of Exclusivity and Availability of the tutors or beyond the fifty eight weeks indicated in the Timetable of Activities. He concluded by stating that the Contracting Authority preferred to have the same tutors for the duration of the contract rather than having them replaced half way through the contract.

In his reply, Dr Hyzler reiterated that the sole reason for the rejection of his client's offer concerned the duration of the offer. He insisted that his client had bound himself to the three year contract duration as provided in the tender dossier and as a starting point he provided evidence that his tutors were going to be available during the first year of the contract. Eventually, their engagement would have been extended or renewed as normally happens in the case of part-time and free lance workers. The tender document stipulated that the tenderer had to provide the required tutors, however, it did not specify that those same tutors had to render their services for the whole duration of the contract. That is understandable because no employer could guarantee that an employee could provide a service for a given length of time. Various circumstances (sickness, resignations etc) could arise that would prevent such employee from providing the required services. Dr Hyzler added that by signing the tender form, his client bound himself to provide the service, including the tutors, as required.

Dr Philip von Brockdorff, Executive Head at CDRT, intervened by explaining that the tender was part of a larger project, in respect of which, a management company had been set up. The outcome of the training analysis was intended to be developed into a programme structured over a period of three years. Dr Von Brockdorff insisted that since the appellant had committed himself to provide tutors for only one year, the contracting authority was not in a position to plan courses over the three year period and therefore, it had no alternative but to reject appellant's offer.

In his intervention, Mr Nick Callus, Managing Director of Computer Domain remarked that (a) the statement of exclusivity and availability required the key expert to declare that he / she was able and willing to work for the period referred to in the tender document and (b) his company, Computer Domain, which was recommended for award had quoted for all the courses listed in Lot 6 and not only for the mandatory ones as was the case with the appellant., and (c) contrary to what the appellant was claiming, Computer Domain Ltd did in fact submit the price breakdown for each course.

In his reply, Dr Hyzler remarked that the provision of tutors was not the issue. He reiterated that locally there are several tutors who are qualified to deliver ECDL courses. He added that the tender document did not specify that the same tutors had to be engaged for the three year duration of the contract, although one understood that it was preferable to have the same tutors throughout the course.

Dr Hyzler then proceeded to air his other grievance, namely that at Euro 2450, Computer Domain's offer was neither "cheapest" nor technically compliant. He claimed that that company's offer should have been rejected because it did not satisfy the tender requirements as it

did not provide a breakdown of the overall price. He noted that the Schedule of Prices exhibited on the Department of Contract's Notice Board shows only one global figure whereas, according to the tender requirements, it was mandatory for bidders to give a breakdown of prices to reflect the cost of each course.

As regard Computer Domain's price being the cheapest compliant offer, Dr Hyzler contended that if his client's objection were favourably considered and his offer is declared technically compliant, then the evaluation on the basis of price would have to be reviewed by the evaluation committee.

With regard to Dr Hyzler's first grievance, the Chairman noted that following a review of Computer Domain's offer, it was established that the recommended tenderer did in fact provide separate prices for each course listed in Lot 6 as required in the tender document.

Following Dr Hyzler's assertion that his client's financial offer was cheaper than that of the recommended tenderer, a comparative exercise was carried out in respect of the four mandatory courses requested in Lot 6. The result established that Dr Hyzler's assertion was, in fact, correct.

In conclusion, Dr Hyzler observed that although the contracting authority would have preferred a tenderer who quoted for all the courses listed in Lot 6, only four of those courses were mandatory. Once his client quoted for those four courses, his offer was perfectly in order and he should not therefore be penalised for such offer.

At this point, the hearing was brought to a close.

The Board

- Having noted that the appellant in terms of the reasoned letter of objection dated 21st February 2011 and also through their verbal submissions presented during the public hearing held on 29th April 2011 had objected to the decision taken by the General Contracts Committee.
- Having considered the arguments brought forward by appellant's legal adviser, particularly (a) that the tender document did not specify any timeframes for the required courses - it only indicated the period of execution with a duration of three years, and (b) that the 58 weeks indicated by his clients reflected the timeframes for the four courses offered by his client, and (c) that, as the relative courses were rather short, ranging from 10 to 24 weeks, his client's interpretation of the tender was that selected employees would join a particular course on different dates during the three year duration of the contract, and (d) that his client's declaration regarding the timetable of activities might have been confused and interpreted to conflict with the period of execution, and (e) that his client's offer implied total flexibility for the holding of relative courses.
- Having also taken note of the submissions made by CDRT's legal adviser, namely that (a) appellant's offer covered only one year instead of three as laid down in the tender document. This is evidenced by the tutors' statement of Exclusivity and Availability

(which covered only one year) and the timetable of activities (which covered 58 weeks), and (b) the contracting authority was not prepared to run the risk that the contractor would be unable to provide the required service beyond one year, and (c) that it was preferable to have the same tutors for the duration of the contract.

- Having considered the CDRT Executive Head's explanation that (a) this tender was part of a larger project that was intended to be developed over a period of three years and (b) that once appellants committed themselves to provide the required service for one year only, the Centre's plan for the project would have been defeated.
- Having taken note of the remarks submitted by the Managing Director, Computer Domain Ltd, namely that (a) the statement of exclusivity and availability required the key expert to declare that he/she would provide the required service for the period referred to in the tender document, and (b) that his company had quoted for all the courses listed in Lot 6 and not only for the mandatory ones as appellant had done, and (c) that contrary to what appellant was claiming, his company did in fact submit a breakdown of prices that reflected the cost of each course.
- Having also considered the further submissions made by appellant's legal adviser, who reiterated that (a) the sole reason for the rejection of his client's offer concerned the duration of the offer, and (b) that his client had signed the Tender Form without reservations, thus accepting the entire provisions of the contract document, and (c) the tender did not stipulate that the same tutors had to provide the required service during the entire duration of the contract, and (d) that his client had indicated the tutors for the first year and that he intended to renew / extend their engagement as is normally done in the case of part-timers and freelancers, and (e) that locally, there are several tutors qualified to deliver ECDL courses, so that his client does not anticipate any problem should he be constrained to replace any of the tutors who, for some reason or another, decides to opt out, and (f) although the contracting authority preferred that a tenderer quoted for all courses listed in Lot 6, his client was perfectly in order when he quoted for only those that were mandatory, and (g) that Computer Domain's offer should have been rejected because it failed to provide a breakdown of the overall price, and (h) his client's financial offer in respect of the four mandatory courses was cheaper than that of the recommended tenderer.

Reached the following conclusion, namely, that

1. Once appellants signed the Tender Form without any reservations, they bound themselves to deliver that which was requested in the tender document.
2. The tender document did not indicate any time frames for the required courses. It only laid down the period of execution which covered a three year period. The relative courses were essentially of a short duration which led one to conclude that during the three year period, such courses would be repeated at intervals. The 58 weeks quoted by appellants reflected the time frame for the four mandatory courses. Such courses would be repeated as required by the Contracting Authority during the three year duration of the contract.

3. The tender document does not stipulate that the same tutors had to provide the required services for the entire duration of the contract. Therefore, the fact that appellant proposed a number of tutors who committed themselves to provide a service for the first year only does not breach the requirements of the tender because there is nothing that precludes the bidder from extending their engagement or for that matter, engaging other tutors. In the circumstances, it was wrong for one to conclude that appellants were offering the required service for one year only.
4. The financial offer submitted by appellants for the four mandatory courses was found to be cheaper than that offered by the recommended tenderer.
5. Appellant's claim that recommended tenderer's offer was technically non compliant because it provide a global price for the courses listed in Lot 6 and not a breakdown of same to reflect the cost of each course was not correct as it was established that recommended tenderer did in fact provide a breakdown of prices in terms of the tender document.

In view of points 1 to 4 above, the Board finds in favour of the appellant.

In view of the above this Board recommends that the bid submitted by appellant company should be reinstated in the evaluation process. The deposit submitted by the said appellant should thus be reimbursed.

Edwin Muscat
Chairman

Carmelo Esposito
Member

Joe Croker
Member

10 May 2011