

PUBLIC CONTRACTS REVIEW BOARD

Case No. 532

ESF/EMP/168/12

Tender for the Provision of Training Services in ICT related subjects

This call for tender was published 31st July 2012 with a closing dated of the 31st August 2012. The estimated value of the tender amounted to €46,500 exclusive of VAT.

Messrs TCTC Ltd filed an objection 9 November 2012 against the decision of the Employment and Training Corporation to disqualify its offer and to recommend the cancellation of the tender.

The Public Contracts Review Board with Mr Joseph Croker as Acting Chairman and Messrs Carmel Esposito and Paul Mifsud as Members convened a public meeting on the 25th April 2013 to discuss this appeal.

Present:

TCTC Ltd

Dr George Hyzler	Legal Representative
Mr Ray Abela	Managing Director

Employment and Training Corporation

Dr Ian Spiteri Bailey	Legal Representative
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Evaluation Board

Mr Jonathan Ferrito	Chairman
Ms Jennifer Debono	Member
Ms Mariella Vella	Member
Ms Mathea Gauci	Member

After the A/Chairman's brief introduction, the appellant was invited to explain the motives of his objection.

Dr George Hyzler, on behalf of TCTC Ltd, the appellant, stated that by letter dated 5th November 2012 his client was informed that his offer was found administratively not complaint because (a) the tender form had been modified and (b) a rate for each course was submitted instead of one rate for all courses.

(A) Tender Form

Dr Hyzler explained with regard to the tender form that:-

- i. it appeared that his client had omitted Sections A and B which provided the details of the tenderer and of the contact person, together with the details of the sub-contractors where in the case of his client there were no sub-contractors;
- ii. the details of the tenderer and of the contact person were made available in other sections of his client's tender submission;
- iii. in the case of the details of sub-contractors, it would have been more appropriate had his client submitted a 'Nil' return, however, it was a fact that his client was not going to engage any sub-contractors; and
- iv. his client did not submit the tender form in the format provided in the tender document but he reproduced the tender form in another format which basically provided the same information with the exception that it made no reference to subcontracting because he was not going to engage any sub-contractors.

Dr Ian Spiteri Bailey, on behalf of ETC, remarked that:-

- a. the appellant omitted the first page (page 20) of the Tender Form, which basically requested details of the bidder, the contact person and the sub-contractors;
- b. the fact that his offer did not involve any sub-contracting did not mean that the appellant was at liberty to leave out the entire page but he should have given the details where applicable or indicate 'Nil' where not applicable; and
- c. it was not acceptable to leave it up to the bidder's judgement as to which part of the tender document to fill in and submit and which to leave out entirely, especially in the case of mandatory documentation such as the Tender Form.

(B) Rates

Dr Hyzler submitted that:-

- i. the contracting authority requested one rate for all the courses however his client understood it differently in that he submitted a rate for each course;
- ii. it made more sense to quote a rate for each course because different courses required different levels in terms of skills and other resources besides being more economically advantageous to the contracting authority; and
- iii. it was conceded that the contracting authority had the right to determine its requirements however in this case it made more sense to request a rate for each course and his client made his submission in this logical manner.

Mr Ray Abela, on behalf of the appellant, remarked that:-

- a. in previous instances, the ETC used to engage tutors to teach these courses and it used to pay these tutors different rates according to each particular course concerning digital literacy or ECDL; and
- b. it therefore made sense to offer different rates for the four different courses and it was important to point out that all the rates quoted by his firm were much cheaper than the single rate quoted by the other bidders.

Dr Ian Spiteri Bailey, on behalf of the ETC, submitted that:-

- i. the contracting authority was not bound by what it requested in previous calls for tenders but it was bound by what it requested in the call for tenderers under review which was quite clear in this regard so much so that clause 1.3 of the 'General Instructions' stated that:

This is an hourly rate-based contract. The hourly rate is applicable for training given in all the subjects listed in section 1.2 whether delivered in Malta or Gozo.
- ii. moreover, clause 3 of the Tenderer's Declaration asked for the: *Rate per hour (excluding VAT)*;
- iii. the clarification notes displayed on ETC's website indicated that 'only one single rate shall be quoted' – a snapshot of the relevant website was produced and it indicated that the minutes of clarification meeting and other clarifications with regard to tenders ref. nos. ESP/EMP/163-177/12 were publicly available; and
- iv. it was regrettable that the appellant misunderstood the tender conditions but in all fairness the tender document was very clear in this respect.

Dr Hyzler maintained that it was much better for the contracting authority to have a rate applicable for each course than one flat rate for all courses and the schedule of tenders received was clear evidence of that.

The Board:

- having noted that Messrs TCTC Ltd on the 8th of November 2012 filed a letter of objection against the decision of the Contracting Authority to disqualify him and to cancel the tender;
- having noted that the appellant admitted to the fact that he had failed to include a page of the tender document which concerned sub-contracting since he did not feel it applied to him seeing that he did not intend to carry out any sub-contracting; having noted that the appellant submitted different rates for different subjects;
- having noted the Contracting Authority representative's contention that the tenderers were obliged to submit the tender document as published by the authority and could not be allowed to choose what to include and what to leave out; having noted also the representative's statement that the authority was not bound by previous tenders but had the right to adjust its requirements as necessary and that in this instance the authority requested one hourly rate to cover all subjects;

reached the following conclusions:

1. It was manifestly clear that the appellant failed to submit the tender document as published by the Contracting Authority;
2. It was also manifestly clear that the appellant did not provide a single rate for the various subjects as requested by the Contracting Authority and as clearly laid down during a clarification meeting which minutes were also published on the authority's website.

In view of the above, the Board finds against the appellant and recommends that the deposit paid be forfeited.

Joseph Croker
A/Chairman

Carmel Esposito
Member

Paul Mifsud
Member

29th April 2013