

PUBLIC CONTRACTS REVIEW BOARD

Case No. 536

LGA/REG/04/2012

Framework Contract for the Provision of Compliance Auditing

This call for tender was published on the 4th November 2012 with a closing date on the 26th November 2012. Once this was a Framework Contract and the Contracting Authority was not in a position to envisage the number of audits, no contract value was inserted. All fees collected from applicants by the Authority are directly forwarded to the contractors.

DSG Consulting Ltd filed an objection on the 5th March 2013 against the decision of the Lotteries and Gaming Authority to disqualify its offer on the grounds that the three reference letters requested in the tender were not submitted.

The Public Contracts Review Board composed of Mr Joseph Croker as A/Chairman and Messrs Carmel Esposito and Paul Mifsud as Members convened a hearing on the 26th April 2013 to discuss the objection.

Present for the hearing:

DGS Consulting Ltd

Dr Paul Borg Costanzi Legal Representative

Kyte Consultants

Mr Trevor Axiaq Representative

FACT Group

Mr Andrew Galea Representative

Lotteries and Gaming Authority

Evaluation Board

Mr Daniel Cilia	Chairman
Mr Damien Xuereb	Member
Mr Jason Farrugia	Member
Dr Corinne Gatt	Secretary

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

Dr Paul Borg Costanzi, on behalf of DGS Consulting Ltd, the appellant, made the following submissions:

- i. by email dated 1st March 2013 his client was informed that his offer had been disqualified because he failed to submit the three reference letters as requested in the tender document;
- ii. his client acknowledged that it was a genuine administrative error on his part not to have included these three reference letters however he maintained that a bidder should not be discarded because of an administrative mistake, which mistake could have been rectified through a request for clarifications with which he would have complied forthwith;
- iii. this shortcoming did not in any way affect his client's technically competent so much so that he was executing a three year contract providing similar services to the satisfaction of the LGA; and
- iv. had the LGA requested the appellant to submit these three reference letters, it would not have altered the substance of the original tender submission.

Dr Corinne Gatt, on behalf of the LGA, explained that:-

- a. the LGA acknowledged that it already had a good working relationship with DSG Consulting Ltd however this was a new tendering procedure and all bidders had to abide by the tender conditions, including the submission of three reference letters;
- b. the LGA displayed the answers to the clarifications sought by interested parties on its website and so they were publicly available;
- c. the appellant did submit the list of references to companies and organisations which made use of his services however he failed to submit the three reference letters as per clause 4.2 (e) under 'General Requirements';
- d. the LGA had sought the advice of the Departmental Contracts Committee and of the Department of Contracts as to whether it could ask DSG Consulting Ltd to submit the missing reference letters and the advice given was to abide strictly by the tender conditions – emails dated 15th and 18th January 2013 referred;
- e. clause 4.2 'General Requirements' provided, among other things, that: *Absence of adherence to any one of the 'General Requirements' shall nullify the offer* – and (e) of the General Requirements referred specifically to the submission of the three reference letters; and
- f. moreover, clause 1.10.3 read as follows:-

The Evaluation Committee may, in writing and according to the correct legal procedure, require any of the interested parties to provide clarifications in regard to the submitted offer or any part thereof. This is permitted in the interest of transparency and the equal treatment of all interested parties. In such cases, the party requested to clarify shall not be permitted to modify the submitted offer but merely provide clarifications.

Mr Daniel Cilia, chairman of the evaluation board, remarked that the appellant's tender submission made reference to his website where there was a list of reference letters however the tender document requested the submission of reference letters and not to references displayed on websites.

Mr Damien Xuereb, member of the evaluation board, remarked that on visiting the appellant's website one found letters of reference from clients of DSG Consulting Ltd and if the appellant had submitted those letters with his tender submission they would have sufficed.

Dr Borg Costanzi reiterated that his client was not contesting the fact that the three reference letters were not submitted, even if this was through a genuine oversight, but the bone of contention was that the absence of these reference letters was mitigated by the fact the DSG Consulting Ltd was already rendering this service to the LGA and that kind of concrete proof of experience and competence was by far better and more reliable than any reference letter. He added that the reference letters available on his client's website, even if not addressed to the LGA, were further proof of his experience and competence.

At this point the hearing came to a close.

This Board,

- having noted that the DSG Consulting Ltd had through a letter dated 5th March 2013 objected to their being excluded from the tendering procedure;
- having also noted that the tender required the submission of three reference letters with the tender document; having noted that appellant submitted a list of references but did not submit the requested letters;
- having noted that the contracting authority stated that the tender document required the submission of reference letters and not lists;
- having also noted that the fact that the mentioned letters were not submitted was not in dispute;

came to the following conclusions:

1. the Public Contracts Board while acknowledging the fact that the reference letters might not have been included with the tender document through an administrative mistake;

2. the Board is of the opinion that the submission of a list of referees does not satisfy the requirement for the submission of reference letters; and
3. the Board also notes that it is the tenderer's responsibility to ensure full adherence with the conditions laid down in the tender document.

In view of the above, the Board finds against the appellant and recommends that the deposit lodged to cover the appeal be forfeited.

Joseph Croker
A/Chairman

Carmel Esposito
Member

Paul Mifsud
Member

2nd May 2013