

PUBLIC CONTRACTS REVIEW BOARD

Case 1108 – RLC/T/0160/2017 – Provision of Services of a Contracts Manager

The Publication Date of the Call for Tenders was 7 July 2017 whilst the Closing Date for Call of Tenders was 7 August 2017. The Estimated Value of the Tender, (Exclusive of VAT) was € 9,750.

Three (3) Bidders have submitted offers for this Tender.

On 9 October 2017, DuezElectrix, filed an Objection against the decision taken by Kunsill Lokali Rabat to award the Tender to Synthesis Management Services Limited for the price of € 36,660 (Exclusive of VAT) against a deposit of € 400.

On 30 November 2017, the Public Contracts Review Board composed by Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Richard A Matrenza as members convened a Public Hearing to discuss the Objection.

The Attendance for this Public Hearing was as follows:

Appellant – DuezElectrix

Mr Edward Scerri	Representative
Mr Joseph Scerri	Representative

Recommended Bidder – Synthesis Management Services Limited

Mr Raphael Carabott	Representative
---------------------	----------------

Contracting Authority – Kunsill Lokali Rabat

Ms Orietta Cardona	Chairperson, Evaluation Board
Ms Roberta Galea	Secretary, Evaluation Board
Mr Charles Azzopardi	Member, Evaluation Board
Ms Janice Dingli	Member, Evaluation Board
Mr Andrew Mallia	Member, Evaluation Board
Dr Richard Sladden	Legal Representative

Following an introduction made by the Chairman of The Public Contracts' Review Board, Dr Anthony Cassar, the Appellants were invited to make their submissions.

Mr Edward Scerri, on behalf of DuezElectrix, opened by referring to Clause 1.2 from the Tender which stated that:

“The Subject of this Tender is the Provision of Services of a Contracts Manager of the following:

The Provision for the supply to the Rabat Local Council of a service by ensuring that the Contractor whose contract is being managed by the Contract Manager fulfils his obligations and abides by the conditions of the Contract”.

Clause 7a (iii), which stated that:

“In order to be considered eligible for the award of the contract, economic operators must provide evidence that they meet or exceed certain minimum criteria described hereunder,

Declare agreement, conformity and compliance with the provisions of the Statement on Conditions of Employment in Tender Response Format”.

Clause 9, which stated that:

“The sole award criterion will be the price. The contract will be awarded to the Tenderer submitting the cheapest priced offer satisfying the Administrative and Technical Criteria”

Clause 3 in Section 4 which stated that:

“The Contract Manager shall be required to devote a minimum of 40 hours (per week) to manage the contracts mentioned in item 4.2, inclusive of any meetings and administrative duties related to this contract”

And Clause 2.2 in the Terms of Reference which stated that:

“The Contract Manager will be responsible for the following duties:

- (a) Manage and supervise the contracts;*
- (b) Co-operate with and advise the Local Council and Contractor on Technical Matters if required;*
- (c) Ensure the satisfactory carrying out of contractual work and specifically the monthly Work Plan as described in Clause 04 including frequency and quality of work;*
- (d) Certify the partial or full completion of work;*
- (e) Approve payment to the Contractor for services rendered;*

- (f) Bring to the immediate attention of the Local Council any infringements or omissions to the Contract by the Contractor. The Contract Manager shall also recommend remedial actions; in writing and advise the Council with defaults of contract;*
- (g) Assist in the formulation of the monthly work plan and recommend work prioritisation, if necessary, to the Local Council;*
- (h) Attends all meetings requested by the Executive Secretary;*
- (i) Coordinate the Council's maintenance workers, create a maintenance plan for the locality and ensure that all the necessary works are carried out within required deadlines;*
- (j) Provide photographic evidence of all works carried out by the Council's contractors;*
- (k) Signs, barriers and other road signage to be placed as required when works are carried out by the Council Contractors and/or handymen to ensure the safety of residents and visitors alike;*
- (l) Ensure costs are monitored and kept in line with contract rates and approved budgets;*
- (m) Complaints forwarded to the Council are to be forwarded to the Executive Secretary;*
- (n) At the end of each week, the Contract Manager is expected to give a detailed report giving a full explanation of all works undertaken by the Council's handymen, assigned workers and contractors to the Executive Secretary. He is also expected to present the works schedule for the following week;*
- (o) The Contract Manager is to consult/inform on a regular basis the designated councillor of which works carried out involve his/her responsibilities;*
- (p) The Contract Manager is to ensure that any private development is executed according to permits issued by the Council. He is to maintain photographic evidence of the state of public property under the charge of the Council prior to the commencement of work and on completion.*

Mr Scerri continued explaining that the Local Council requested an assertive and experienced person who had to dedicate 40 hours per week for this type of job. He also required a car with all the expenses necessary. One of the forms which had to be submitted was the minimum hourly worker cost sheet.

The minimum wage for this type of job was € 4.24/hour, which was to be increased to € 5.73 when increasing the leave, sick leave, bonuses and allowances. When multiplying this rate by 1080 hours/year, the minimum rate had to be € 11,918.40. Any rate below this would break the statement of conditions of employment.

Mr Scerri then evaluated the offers submitted. Synthesis Management Services Limited quoted an offer worth € 36,660. Duez Electrix quoted an offer worth € 148,200 whilst the

third offer, submitted by Mr Natale Letizia was worth € 150,000. The Appellants noted a 23% difference between their offer and the one of the Recommended Bidder.

Dr Richard Sladden, the Legal Representative for Kunsill Lokali Rabat, said that the price was an important criterion when awarding this Tender. Besides, there was a condition in the same which dictated that the Contracts Manager could not be paid more than 5% of the value of all the Tenders and therefore Bidders had to be careful not to exceed that amount in order to be considered.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked in which Clause this was to be found in the Tender Document for which Dr Richard Sladden, the Legal Representative for Kunsill Lokali Rabat replied that it was from the Local Council's Budget.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that this Board wanted to ensure that the Contracting Authority followed all procedures correctly and asked once again whether this condition was present in the Tender Document.

Ms Orietta Cardona, the Executive Secretary of Kunsill Lokali Rabat contended, that this condition comes out following the determination of the Estimate Budget of the Tender. The Local Council charges 5% of any Contract issued and therefore, they create a list with all the contracts which they have and work out the 5% on each contract, to determine the Budget required.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board asked whether the Appellants were aware of this working since the Tender Document indicated that it was going to charge 5% of the whole bracket of Tenders.

Dr Richard Sladden, the Legal Representative for Kunsill Lokali Rabat replied that the amount budgeted for the Contracts Manager Tender, could not exceed the 5% of the value of all Tenders, for which the preferred bidder would take care of.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that they could not exceed the € 36,000 budget which they have allocated. On the other hand, the Contracting Authority must ensure that all employees are paid at least the stipulated minimum wage as per Public Procurement Regulations.

Dr Richard Sladden, the Legal Representative for Kunsill Lokali Rabat explained that the 5% charge was a subsidiary for the principal criteria of the price. The main question was that the Bidders had to indicate the number of hours they had to work, but one could not compare the price with the minimum wage.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board pointed out that even if the Recommended Bidder would be working 40 hours per week, he would be working under precarious conditions.

Ms Orietta Cardona, the Executive Secretary of Kunsill Lokali Rabat countered that the Local Council could not exceed the Budget which they had allocated for this Tender.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board countered that this should have been indicated in the Tender Document.

Ms Orietta Cardona, the Executive Secretary for Kunsill Lokali Rabat countered that the only compliant offer was the one submitted by the Recommended Bidders.

Mr Raphael Carabott, on behalf of Synthesis Management Services said that the 5% mentioned by the Local Council was not indicated in the Tender Document. The Budgets allocated were available online and therefore any calculations had to be done prior to submitting the offers, as they had done. Eventually, no bidder was guaranteed the award whenever the Local Council would call for a tender for Contracts Manager.

Mr Carabott continued by saying that from what the Appellant was saying, it showed that he did not study the Tender since the price was a fluctuating one. He then proceeded by referring to Page 17 of the Tender Document, saying that, there were different scopes of work required, which were indicated to the successful Bidder.

At this stage, the Public Hearing was adjourned to Thursday 7 December 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by DuezElectrix (herein after referred to as the Appellant) on 9 October 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference RLC/T/0160/2017 listed as Case No 1108 in the records of the Public Contracts Review Board, awarded by Kunsill Lokali Rabat (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Edward Scerri

Appearing for the Contracting Authority: Dr Richard Sladden

Whereby, the Appellant contends that:

- a) **The requested tasks, as dictated in the Tender Document, necessitate the full time involvement of an experienced person who has to dedicate forty hours per week. In this regard, DuezElectrix through its submissions maintains that the offer submitted by Synthesis Management Services Limited, would encourage precarious working conditions as the price quoted by the same does not even cover the minimum wage of a person deployed on this assignment.**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 11 October 2017 and its verbal submissions during the Public Hearing held on 30 November 2017, in that:

- a) **Kunsill Lokali Rabat maintains that the Recommended Bidder's offer was fully compliant and within the budget of the Local Council. At the same instance, the Appellant was well aware that the Contracts Manager could not be paid more than 5% of the value of the contracts under his responsibility and the list and value of these contracts were also indicated in the Tender Document.**

This Board, after having examined the relevant documentation and heard submissions made by all the parties concerned, opines that the two main issues in this Appeal are the “*Interpretation of the Services*” to be provided and the “*Basis on which the price to be offered*” was to be established.

1. Services to be offered

The Tender Document, under Clause 2.2, listed the duties for which the Contracts Manager will be responsible and although the list may seem to be extensive, one has to bear in mind that the Tendered assignment represents the monitoring and reporting on the listed contracts in the Tender Document and not for the actual execution of the contracts. In this regard, this Board considers this Tendered Service as a “*Consultancy Agreement*”, where, in such instances, supervision and reporting thereon, is a normal prime task for a Contracts Manager’s post.

DuezElectrix, in his Objection, referred to the various duties as denoted in the Tender Document, which will fall within his remit however, this Board was presented with facts that relate to the execution of the contracts so denoted and not to the monitoring and reporting of such works being carried out.

In this regard, this Board credibly establishes that the Appellant was not fully cognizant of the actual duties to be performed, as a Contracts Manager for a Local Council. On the other hand, this Board is aware of the fact that if in doubt, the Appellant had the facility to clarify any misunderstandings prior to the submission of his offer. This Board also notes that, the Appellant raised issues with regards to the duties which has to be performed under the Tendered assignment, which could have easily been discussed and established prior to the closing date of the Tender.

2. Basis of quoted price

This Board would like to respectfully refer to Clause 4.2 – Specific Activities, wherein all the contracts to be managed by the Contracts Manager are clearly denoted. At the same instance, this Board would like to refer to the last paragraph of the mentioned Clause, wherein it is stated that:

“The Approximate value of these contracts is € 195,000 (One Hundred and Ninety-Five Thousand) per annum. This is only an indicative amount and is going to be used for adjudication purposes only.”

Through this clause, the Contracting Authority is hereby giving the indicative basis on which the price is to be offered. At this point of consideration, this Board notes, that from the submissions and relative objection, the Appellant was not aware of the fact that 5% management fee, which the Council charges the Contractor, represent the maximum amount through which the Local Council can engage the services of a Contracts Manager to manage and control the listed contracts.

It is quite obvious that the Appellant based his offer on the global amount of these contracts and not 5% of those amounts. In this regard, this Board notes that the Tender Document did not specify that the offers should be based on a maximum of 5% of the values of the Contracts so listed, although the Appellant had every opportunity to clarify this important factor prior to his submissions. Nevertheless, this Board opines that for all future Tenders of this Kind, the Local Council should clearly indicate the connection between the offer and the management fee of 5% so charged by the Council to the contractors.

On a general note this Board opines that the interpretation of what was requested by the Council was not properly translated by the Appellant in submitting his offer and in this regard, this same Board is aware of the fact that the Appellant had all the opportunities to clarify any misunderstandings and/or interpretations which he deemed necessary, however no such remedy was availed of by same.

In view of the above, this Board upholds the Local Council's decision in the award of the Tender and finds against DuezElectrix. However, in view of the fact that the Tender Document could have indicated the connection of the price to be offered and the 5% management fee, the deposit paid by the Appellants is to be fully refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Richard A Matrenza
Member

7 December 2017