

PUBLIC CONTRACTS REVIEW BOARD

Case 1189 – KLM 2018/02 – Tender for Professional Services of an Architect to the Marsaskala Local Council

The publication date of the call for tenders was the 16th February 2018 whilst the closing date of the call for tenders was the 20th March 2018. The estimated value of the tender (exclusive of VAT) was € 20,000.

Architect William Lewis filed an appeal on 4th June 2018 against the Marsaskala Local Council on the grounds that the Local Council deemed his offer as not financially compliant. A deposit of € 400 was paid.

On 17th July 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Lawrence Ancilleri and Mr Richard A Matrenza as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Architect William Lewis

Dr Stefan Zrinzo Azzopardi	Legal Representative
Dr Marco Woods	Legal Representative
Architect William Lewis	Representative

Contracting Authority – Marsaskala Local Council

Dr Andrew Saliba	Member Evaluation Board
Mr Mario Calleja	Mayor, Marsaskala Local Council
Ms Lucille Bonnici	Secretary Evaluation Board
Architect Kylie Ann Borg Marks	Member Evaluation Board
Ms Doreen Mintoff	Member Evaluation Board

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, welcomed both parties and invited them to make their submissions.

Dr Stefan Zrinzo Azzopardi, Legal Representative of Architect William Lewis, stated that in this Case there was only one argument to pursue – namely who was the cheapest compliant bidder. When the totals of the bids submitted were compared, the bid by Architect Lewis was the cheapest - € 9,065 against € 10,910 next lowest. The Local Council asked for a clarification from bidder on a discrepancy in the totals of his submission and this was not replied to, but the Council cannot exclude for lack of clarification if the offer was still the most attractive. The Evaluation Committee had full documentation to reach this conclusion.

Architect William Lewis (555777M) testified on oath that the discrepancy arose as he wanted one of the figures in his submissions to read .75% but the e-tender system had changed this figure back to 1% automatically. The Clarification Note the Council had submitted had never been received by him. He had no interest in not replying and emphasised that he had never received the clarification note.

Dr Andrew Saliba, Member of the Evaluation Board, said that the Council felt it was necessary to send a clarification as the financial bid is an important document. The error may have been small but it still needed clarifying. This was clearly indicated to the Appellant and his lack of a reply led to the award going to the next best bid.

Dr Zrinzo Azzopardi said that one cannot ignore that the clarification was not received but the lack of a response was not a reason to exclude. From the figures submitted it was clear that his client's bid was cheaper.

The Chairman thanked the parties for their submissions and declared the hearing closed.

This Board,

Having noted this Objection filed by Architect William Lewis, (hereinafter referred to as the Appellant), on 4 June 2018, refers to the contentions made by the same Appellant with regards to the award of Tender of Reference KLM 2018/02 listed as Case No 1189 in the records of the Public Contracts

Review Board, awarded by Kunsill Lokali Marsaskala, (hereinafter referred to as the Contracting Authority).

Appearing for the Appellant: Dr Stefan Zrinzo Azzopardi

Appearing for the Contracting Authority: Dr Andrew Saliba.

Whereby, the Appellant contends that:

- a) **Although the clarification request was not received by the same, his offer was the cheapest and in this regard, from the information so submitted, the Local Council could easily deduce that although there was an error, which occurred due to the Electronic Public Procurement System, his offer was still the cheapest.**

This Board also noted the Contracting Authority's "*Reasoned Letter of Reply*" dated 11 June 2018 and its verbal submissions during the Public Hearing held on 17 July 2018, in that:

a) Kunsill Lokali Marsaskala insists that although the Appellant's offer was the cheapest, a clarification was needed to confirm the totality of the financial offer. In this regard, Architect William Lewis failed to reply to the clarification request, so that the Evaluation Committee had no other option but to discard the Appellant's offer.

This same Board has also noted the testimony of the Appellant.

This Board, after having examined the relative documentation and heard submissions made by the parties concerned, opines that the issue worth of consideration is the effect on the Appellant's offer through non-replying to the clarification request.

First and foremost, this Board notes that the Appellant's offer was deemed administrative and technically compliant, so that the issue relates solely to the financial aspect of the Tender. From submissions made, this Board was made aware that the Appellant's Financial Offer was to represent one of the figures to read 0.75%, however, it has been confirmed by the Authority that the E-Tendering System automatically converted such percentage to 1%, so that the total did not add up to the intended figure.

At this stage of consideration, this Board would emphasize the fact that such a mismatching of percentage figures was not due to the Appellant's intentions, so that this Board takes such a consideration into account. At the same instance, this Board also noted the fact that even if one had to adjust the obvious inadvertent mistake in the total of the financial offer, the Appellant's offer would still remain the cheapest.

In this particular case, this Board also notes that the clarification involved a confirmation of the total of the financial offer so that, it did not represent an issue where the Evaluation Committee could not carry out the Evaluation Process without the forthcoming reply to the clarification, and a distinction has to be made between an issue of confirmation of a total which, in any case, is determined and an issue which requires clarification and without which the Evaluation of an offer cannot be carried out.

The alleged fact that Architect William Lewis did not receive the request for clarification could not be determined except for the fact that this Board has to rely substantially on the testimony, given under oath, by the Appellant himself. At the same time, this Board finds no justifiable reason

for the Appellant's non reply to the clarification, as it was in his personal interest to do so.

This Board would emphasize that, given that the Appellant's offer was administratively and technically compliant and the cheapest, it was in the interest of the Local Council, after the lapse of time, to enquire with the Appellant as to why, he did not attend to the clarification request. This Board has also taken into consideration that the contents of the clarification request, simply represented a request for confirmation of the total of the financial offer which could be determined by the Evaluation Committee, at face value.

In view of the above, this Board:

- a) Does not uphold Kunsill Lokali Marsaskala's decision in awarding the Tender;**

- b) Upholds Architect William Lewis' contention and recommends that his offer is to be re-integrated in the Evaluation Process;**

c) Recommends that the deposit paid by the Appellant should be fully refunded.

Dr Anthony Cassar
Chairman

Mr Lawrence Ancilleri
Member

Mr Richard A Matrenza
Member

31st July 2018