

PUBLIC CONTRACTS REVIEW BOARD

Case 1209 – CT 3066/2018 – The Provision of Marketing Services for the Drafting and Implementation of a Marketing Campaign in Relation to the Digital Tourism Platform

The publication date of the call for tenders was the 13th May 2018 whilst the closing date of the call for tenders was the 19th June 2018. The estimated value of the tender (exclusive of VAT) was € 473,000

On the 13th August 2018, Four Communications Group filed an appeal against the Malta Tourism Authority as Contracting Authority on being disqualified on the grounds that their bid failed to satisfy the criterion for the award. A deposit of € 2,365 was paid.

There were three (3) bidders.

On 18th September 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Four Communications Group

Not represented

Recommended Bidder – Keen Ltd

Dr Joseph Grech	Legal Representative
Mr John Falzon	Representative

Contracting Authority – Malta Tourism Authority

Dr Frank Testa	Legal Representative
Mr Arthur Grima	Chairperson Evaluation Board
Mr Patrick Attard	Secretary Evaluation Board
Mr Joseph Bonello	Member Evaluation Board
Mr Oliver Farrugia	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and stated that in the absence of the Appellant the Board will decide the Appeal on the written submissions. All present agreed.

He then declared the hearing closed

This Board,

having noted this Objection filed by Four Communications Group, (hereinafter referred to as the Appellants) on 13 August 2018, refers to the contentions made by the same Appellants with regards to the award of Tender of Reference CT 3066/2018 awarded by the Malta Tourism Authority, (hereinafter referred to as the Contracting Authority), and listed as Case 1209 in the records of the Public Contracts Review Board.

Appearing for the Appellant: *In Absentia*

Appearing for the Contracting Authority: Dr Frank Testa

Whereby:

- a) the Appellants maintain that their offer was technically compliant and reasonably priced so as to include all the necessary requirements as dictated in the Tender Document. In this regard, the Appellants insist**

that the offered price of the Preferred Bidder does not represent the inclusion of all the technical requirements so requested and, at the same instance, is below the threshold of € 400,000.

This Board has also noted the Contracting Authority’s “*Letter of Reply*” dated 21 August 2018 and its verbal submissions during the Public Hearing held on 18 September 2018, in that:

- a) The Malta Tourism Authority contends that the offer submitted by the Preferred Bidder was fully compliant and cheaper than the one offered by the Appellant. The Contracting Authority would also point out that the reference price of € 400,000 is not restrictive and all Bidders were incited to quote their best possible price;**

- b) The Contracting Authority, through its “*Letter of Reply*”, informed this Board that due to an unfortunate technical communication error, only two out of three clarifications were uploaded, hence the request by the same Authority to cancel the Tender.**

This Board notes the absence of the Appellants' presence for this hearing and since no advance notice was given by the latter, for such a situation, this same Board decided to adjudicate the merits of this Appeal on the information submitted by the parties concerned. In this regard, after having examined the relevant documentation to this Appeal, this Board opines that the issues to be considered are twofold namely:

a) The threshold of € 400,000 and

b) The Malta Tourism Authority's request for the cancellation of the Tender.

1. The threshold of € 400,000

With regards to Four Communication Group's contention that the Preferred Bidder's offer was below the € 400,000 as stipulated in clause 4.2 of the Tender Document, this Board would respectfully refer to Clarification 1 which clearly and explicitly states that:

“E. Marketing Budget Allocation and Execution Plan

The chosen contractor must in developing the marketing plan propose the allocation of marketing spend budgeted for each of the proposed marketing activities. They are therefore requested to formulate a marketing budget based on the available funds allocated to market the Digital Tourism Platform. The Calculated Reference Price for the Execution of the Plan is € 400,000.

In addition to this, they are also requested to develop an execution plan which illustrates how the different marketing activities will be executed.”

From the above clause, this Board would point out that through the term “*Calculated Reference Price*”, the Malta Tourism Authority is giving an indication of the financial parameters of this Tender and in no way, is the Authority restricting or creating a “*capping*” for the Bidders’ financial offer. At the same instance, if the Contracting Authority intended to restrict a minimum price, it would have clearly indicated that offers below € 400,000 will be disqualified. This Board also notes that the term “*Threshold*” applied by the Appellants, in their Letter of Objection, is totally incorrect and misleading, as the Contracting Authority only

indicated the financial parameters of the Tender and yet all Bidders were at liberty to quote a price, through which the tendered works/services can be executed within the dictated requirements, whether such a price is below or above the € 400,000.

This Board would also refer to clause 4.3 of the Tender Document wherein, it is clearly indicated that:

“The reference price is defined as an estimated total value, (excluding potential costs), excluding VAT, which purpose shall only be the guideline of prospective Bidders when submitting their offer and is not to be considered as a binding capping price by the Contracting Authority nor the Economic Operator’s bidding price.”

From the “Evaluation Report”, this Board also notes that the Preferred Bidders’ offer included all the technical requirements duly dictated in the Tender Document and was the cheapest Bid. In this regard, this Board confirms that the evaluation procedure was carried out in a transparent and just manner yet, at the same time, would respectfully remind the Authority that, it is its responsibility and obligation to ensure that the

successful Bidder will carry out the tendered tasks to the Authority’s full satisfaction at the quoted price. In this regard, this Board does not uphold the Appellants’ grievances.

2. The Cancellation of the Tender

With regards to the Malta Tourism Authority’s request for the cancellation of the Tender, due to a technical error in downloading a part of Clarification No 2, this Board would refer to the missing part of the clarification with particular reference to its contents, as follows:

Question 5	Designs and Artworks – Page 27 – Section 4.2.1 (D) Can the Contracting Authority confirm that no designs and artworks are to be provided at bidding stage?
Answer 5	The contractor is not being requested to provide any designs and artworks at bidding stage.
Question 6	Kiosks – Page 27 – Section 4.2.1 (D) Are we correct in assuming that the Contracting Authority

	will upload the videos in the kiosks?
Answer 6	The video concept is just an example. However, should this be the case, yes such videos would be displayed on the kiosks themselves. The contractor is reminded that they are expected to come up with original innovative ideas since this is a BPQR tender.
Question 7	Kiosks in total – Page 27 – Section 4.2.1 (D) How many kiosks are there in total?
Answer 7	There are 9 Kiosks in total which will mainly be installed at outside locations.
Question 8	Calculated Reference Price – Page 27 – Section 4.2.1 (E) Can the Contracting Authority confirm if the approximate Calculated Reference Price for the Execution of the Plan is € 470,000 or € 380,000?
Answer 8	The value for this Call for Procurement has been based on a calculated Reference Price. In the context of this procurement, the Reference Price, based on market reference, is that of € 473,000 excluding VAT. The

	<p>implementation campaign must contain initiatives that with a competitive market price of not less than € 400,000.</p> <p>The Reference Price is defined as an estimated total value (excluding potential costs), excluding VAT, which purpose shall only be the guidance of prospective Bidders when submitting their offer and is not to be considered as a binding capping price by the Contracting Authority nor on the Economic Operator’s Bidding Price.</p> <p>The above definition signifies that the quoted Reference Price is not restrictive and final on the Contracting Authority. Economic Operators are free to submit financial offers above or below the Reference Price.</p>
<p>Question 9</p>	<p>Printed Media – Page 27 – Section 4.2.1 (E)</p> <p>In the case of printed media, for the mass and public places, are we correct in assuming that English will be the sole language used?</p>
<p>Answer 9</p>	<p>As per article 4.2.1 (E)</p>

	<p>[quote]</p> <p>The chosen contractor in coming up with the Marketing Plan necessary to execute the Campaign must ensure that the campaign factors in the 6 (six) following languages:</p> <ul style="list-style-type: none">• English;• German;• French;• Italian;• Spanish;• Maltese
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After having examined the relevant documentation, this Board notes that no Bidder had any clarification regarding the missing page from Clarification No 2, so that, as at the date of submissions, all bidders were on a level playing field. At the same instance, this Board took into consideration the fact that, the information contained in the missing page of the clarification was generic and the majority of the contents were

already indicated in clauses of the Tender Document and in this respect, this Board opines that the information contained in the missing page of the clarification does not affect the substance of the offers submitted by the Bidders.

This Board, as it has on so many occasions, would respectfully emphasize the importance which should be given by the Authority to endeavour to save compliant Bids which fall within the parameters of the tender requirements. In this particular case, this Board also notes that the Evaluation Committee, quite correctly, recommended the successful bid for award and the issue of the missing page from Clarification No 2 was only raised by the Contracting Authority in its “*Letter of Reply*”. In this regard, this Board does not uphold the Authority’s request to cancel the tender as the procedure of award was carried out in a transparent and just manner, apart from the basic fact that, all bidders participated on a level playing field.

In view of the above, this Board:

- i) does not uphold the grievances raised by Four Communications Group;**

ii) does not uphold the Malta Tourism Authority's request to cancel the Tender;

iii) upholds the Evaluation Committee's decision in the award of the Tender;

iv) recommends that the deposit paid by the Appellants should not be reimbursed.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

27th September 2018