

PUBLIC CONTRACTS REVIEW BOARD

Case 1444 – ILC/T/2/2019 – Professional Services of a Contracts Manager for the L-Iklin Local Council

The tender was published on the 10th December 2019 and the closing date of the call for tenders was the 14th January 2020. The estimated value of the tender (exclusive of VAT) was € 17,200.

On the 24th April 2020 Synthesis Management Services Ltd filed an appeal against L-Iklin Local Council as the Contracting Authority objecting to their disqualification on the grounds that the preferred bidders' offer was not consistent. A deposit of € 400 was paid.

There were four (4) bidders.

On 14th May 2020 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – Synthesis Management Services Ltd

Dr Richard Sladden	Legal Representative
Mr Raphael Carabott	Representative

Preferred Bidder – Mr Adrian Mifsud - Boom Consultancy and Advisory

Mr Adrian Mifsud	Representative
------------------	----------------

Contracting Authority – L-Iklin Local Council

Dr Martin Fenech	Legal Representative
Dr Dorian Schembri	Chairperson Evaluation Committee
Ms Bernice Farrugia	Member Evaluation Committee
Ms Yvonne Bartolo	Member Evaluation Committee
Mr Etienne Montfort	Representative

Dr Anthony Cassar Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties had agreed to treat it as a normal meeting of the Board. He invited submissions.

Mr Raphael Carabott Representative of Synthesis Management Services Ltd said that the tender specified that the bid had to indicate a yearly fee for contract management services so the preferred bidders' offer was according to the tender specifications. The Contracting Authority sought a

clarification from the preferred bidder following which his offer ended up being the cheapest bid over four years as against the original offer of € 15,000 per annum.

Dr Martin Fenech Legal Representative for the L-Iklin Local Council said that the offer was for € 15,000 over the four year period of the tender and not a per annum bid. The financial bid very clearly stated a sum of € 3,750 per annum and the higher figure was the aggregate fee for four years. The Contracting Authority merely sought clarification of this – it was not a correction and it was the cheapest bid. At no stage was it indicated that the figure of € 15,000 was a per annum figure. The financial figure of € 3,750 was clear from the very beginning and there was no chance of any misunderstanding or any intention to mislead.

Dr Richard Sladden Legal Representative of Synthesis Management Services Ltd said that a precedent would be created if a mistake by a bidder was allowed to be corrected through seeking a clarification. The bid of € 15,000 was clear and it should not have been changed after all the bid offers were opened.

The Chairman pointed out that the Contracting Authority is obliged to seek clarification on documents submitted – what they were not allowed to do is to ask for rectification.

Mr Carabott said that the tender asked for on line offers and there was a contradiction between that offer and the outcome on the clarification.

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

End of Minutes

Decision

This Board,

having noted this objection filed by Synthesis Management Services Ltd (hereinafter referred to as the Appellants) on 24th April 2020, refers to the claims made by the same Appellants with regard to the tender of reference ILC/T/2/2019 listed as case No. 1444 in the records of the Public Contracts Review Board awarded by L-Iklin Local Council (hereinafter referred to as the Contracting Authority).

Appearing for the Appellants: Dr Richard Sladden

Appearing for the Contracting Authority: Dr Martin Fenech

Appearing for the Preferred Bidder: Mr Adrian Mifsud

Whereby, the Appellants contend that:

- a) **Their main concern relates to the fact that, the preferred bidder was given the opportunity to rectify his offer so that, the tendered sum offered by the preferred bidder, was not the same as that on the financial bid form, hence a change of goal posts occurred during the evaluation stage of the tendering process.**

This Board also noted the Contracting Authority's 'Letter of reply' dated 4th May 2020 and its verbal submissions during the virtual hearing held on 14th May 2020, in that:

- a) **The Authority strongly contends that there was no rectification to the preferred bidder's offer but purely a clarification was sought on the submitted documentation.**

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties opines that, the issue that merits consideration is the clarification sought by the Contracting Authority.

1. This Board, examined in depth the preferred bidder’s submissions and notes that, the bidder, in his financial bid form, did state that his offer is €3,750 per annum, so that at this stage of consideration, there is no incidence of ambiguity or non-clarity of the offer.

2. This Board would also refer to article 1.3 of the ‘Instructions to Tenderers’, wherein it is stated that:

“1.3 The place of acceptance of the services shall be l-Iklin Local Council, the time-limits for the execution of the contract shall be two (2) years, renewable yearly up to a maximum of four (4) years, and the INCOTERM ²⁰¹⁶ applicable shall be Delivery Duty Paid (DDP).”

The above-mentioned article stipulates a maximum duration of the tendering service of 4 years.

3. The requirement to issue a clarification by the Authority, arose due to the simple fact that, in the preferred bidder’s response format, a global sum of €15,000 was submitted. In this respect, this Board notes that such a figure was quoted as a global sum covering the maximum period of the contract (which represents 4 years at €3,750 per annum). An extract from the evaluation report showing the clarification request and the corresponding response will highlight the reason for such a clarification request, viz:

“

Request for clarification

During the evaluation process, it has been noticed that there is a discrepancy between the Financial bid and the Tender Response Format xml Tender structure

Kindly confirm the yearly fee.

N/A

Chairperson

Evaluation Committee

With reference to your request for clarification, whilst I apologize for the inconvenience caused, kindly be informed that the yearly fee for the contract is 3,750EUR (three thousand, seven hundred and fifty Euros).

By mistake in the Tender Response Format, I inserted the amount of 15,000 (fifteen thousand Euros) which stands for the global amount of the four-year contract (3750x4).

Regards

Adrian Mifsud

BOOM Consultancy And Advisory”

- 4. This Board would respectfully point out that, in this particular instance, the Evaluation Committee had the obligation to seek clarification and confirm, from the preferred bidder that, his offer still stands at €3,750 and that the €15,000 so indicated in his tender response format represented the global offer for the maximum period of 4 years. In this regard, it stands to reason that the**

offered fee of €3,750 for the maximum of four years would add up to €15,000, so that, the latter figure is not a fee per annum.

- 5. With regard to the clarification request issued by the Authority, such a notice constituted a verification of what has been submitted by the preferred bidder and no correction was effected to the quoted fee of €3,750 per annum and at the same instance, the €15,000 global price, was never indicated to be a quote per annum.**

In conclusion, this Board opines that:

- a) The verification request issued by the Authority was truly justified.**
- b) The verification did not, by any means whatsoever alter or correct the original submission of €3,750 per annum. The global price of €15,000 was obviously, in itself, representing the total fee for the maximum period of 4 years and at no particular stage, was it indicated that the quoted €15,000, represented a fee per annum.**
- c) The Evaluation Committee acted in a just and transparent manner, in this adjudication process.**

In view of the above, this Board,

- i. upholds the Contracting Authority's decision in the award of the tender,**
- ii. does not uphold Appellants' contentions,**
- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

22nd May 2020