

Tendering procedure : Case Study

Background information

The negotiated procedure ABC 2009Lot1 concerns the procurement of external resources for on-line transactional processing systems. The value of this complex contract was estimated at more than 30 million euro, one of the largest procurement procedures implemented by the FaX to date.

This negotiated procedure followed the failure of an open procedure ABC 2008 Lot 1 launched in the previous year, owing to the “unacceptable technical quality” of the tenders submitted. After having cancelled the procedure, the FaX decided to launch a negotiated procedure by applying Article 127(a) of the General Implementing Rules of the Financial Regulation.

Subject to these provisions, three tenderers (3 Consortia), which had been assessed to pass the selection criteria during the open procedure, were invited to respond to the negotiated invitation to tender.

One Consortium declined to submit a bid and thus only two bids were submitted for the negotiated tender. At the end of the negotiated procedure the contract was awarded in cascade to two tenderers concerned: Consortium I (First contractor) and to Consortium II (Second Contractor).

The leader of the Consortium I was the former contractor of the FaX for similar services.

Audit objectives

To ensure compliance with the legal provisions regarding procurement rules and to ensure that best value for money was achieved.

Summary of Audit Findings

Open tender procedure - The technical knowledge of the evaluation committee members was questioned by one Member of the Evaluation Committee.

In the minutes of the Kick Off meeting of the Evaluation Committee for the Open Tender, it is mentioned that “A question was also asked about the role of the technical sub-committee (...) one member of the committee “expressed surprise that no members with system or IT Administrator experience were on the Evaluation Committee”. It is further mentioned that one evaluator (Deputy Director of the IT Department) commented “that assistance had been invited but no volunteers had come forward”.

Open tender procedure - One evaluator did not apply the evaluation criteria foreseen in the Invitation to the tender (ITT)

Work-sheets detailing and supporting the individual evaluations were available for only 4 evaluators, both for the selection and the award phases. The results concerning the

evaluation of the selection phase and the calculation of the award marks were based on the average of individual evaluations of these four evaluators, not five as required.

Open procedure – It was not possible to assess if the decision made to accept all bids for the “selection” phase was based on an objective evaluation of the criteria set out in the Invitation to Tender (ITT).

Three bids were found admissible for the selection phase. The audit of the evaluation phase showed that for the 3 bids, none was found to be fully compliant with all 11 selection criteria for all four evaluators who made individual evaluations. The Committee decided to proceed to the award phase of the procedure without proving in an objective way that the selection criteria set out in the ITT were complied with.

Open procedure - Material errors were found in the calculation of award marks.

A detailed review of the worksheets prepared by one evaluator showed serious anomalies and errors in the formulae used. The final average marks were therefore materially misstated. These errors have led the Authorising Officer to wrongly cancel the open procedure.

Negotiated procedure - Tender documents to be provided have been substantially altered in comparison to the open procedure.

The documentation to be provided in the Annexes to the ITT was substantially reduced comparing to the open procedure, mainly concerning the information to be provided by the tenderers for the evaluation of the award criteria.

Negotiated procedure - Inaccuracies found in the calculation of the final award marks.

The final calculation of award marks was affected by significant errors. The audit showed that final marks did not always agree with the individual evaluation sheets prepared by the five evaluators.

Negotiated procedure - the award criteria chosen (80 % for quality to 20 % for price) may not have achieved best value for money.

Due to errors found in the calculation of final award marks , the difference in final scores was very likely to be smaller, or could even be favourable to the second best bidder, than the one calculated by the evaluation committee.

Both tenderers were finally included in the framework contract which suggests that they both met the quality standards set by the FaX Had the FaX selected the second Consortium as the first contractor, potential savings of 3,6 million euro could be have been achieved (12 % applied to 30 million euro).

Conclusions

- Both the open procedure and the negotiated procedures were subject to serious anomalies and errors.
- The number and seriousness of anomalies found during the audit therefore affected the regularity of the whole procedure.
- The FaX failed to ensure that the conditions of Article 127(a) of the implementing rules were complied with before launching the negotiated procedure.
- It could not be ensured that best value for money was achieved.