

New ECB Premises

**Evaluation Report – Proposal for award of contract
Tender 109 Construction Manager**

Negotiated tender for construction works related to the NEP

**Tender 109
Construction Manager Works for the New ECB
Premises Project**

ECB-PUBLIC

Final, approved 06 August 2009

RESTRICTED

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1 Executive Summary

This evaluation report outlines the result of the tender procedure until and including the first negotiation phase, conducted in order to award a contract on construction management services for the New ECB Premises Project (tender T109).

Due to a potential conflict of interest of Drees&Sommer with the participating company [REDACTED] (●), it only outlines the results of seven offers (excluding [REDACTED]).

The evaluation following the first negotiation meetings (second clarification meeting for JSK; without G2) resulted in the following ranking:

R	Company	Price 60%	Quality 35%	Contract terms 5%	Total scoring
1	JSK Dipl. Ing. Architekten	6,000	1,671	500	8,171
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Based on the evaluation results, the evaluation team recommended (i) conducting a risk analysis in view of the rejection of the offer submitted by JSK and (ii) inviting [REDACTED] further negotiation meetings, subject to the result of the evaluation of [REDACTED].

The result of the second negotiation round as well as the proposal for award (considering all eight offers) is laid down in a separate report, drafted by the NEP-PO [NEP-PRC/2009/254]. The way forward regarding the JSK offer is outlined in a separate decision memo [NEP-PRC/2009/255].

2 Summary of the application phase

The contract notice for this tender was published in the OJ (2008/S 251-334802) on 27 December 2008 as a negotiated procedure. A corrigendum was initiated due to misleading translation by the OJ and published on 13 January 2009 (2009/S 7-007494). The deadline for the submission of applications was 27 January 2009 (see initiation memo, ref. NEP-PRC/2008/110).

31 potential applicants registered in the tender forum. Questions were submitted during the application phase e.g. as regards the exclusion of conditions and the provision of proof of acceptance (see overview Q+A, filed separately). All questions were duly answered via the tender forum.

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13 candidates applied to participate in the tender for construction management services within the deadline.¹

Several inquiries had to be made by the ECB to complement or verify the information provided with the applications (filed separately). All applicants provided the requested information.

Following the evaluation of applications, 2 applicants were excluded from the tender for not complying with the minimum requirement:

[REDACTED] did not meet the minimum requirement regarding two reference projects as outlined under item IV.1.2) of the contract notice. [REDACTED] did not meet the minimum requirement regarding the accumulated total net turnover of at least EUR 10 million in the last three financial years.

The remaining 11 applications have been evaluated on the basis of the selection criteria as published in the contract notice. The evaluation was carried out by the following:

- ECB NEP-PO: [REDACTED] (chair of evaluation)
[REDACTED] (expert) [REDACTED] (deputy)
- ECB CPO: [REDACTED] (chair support/coord. + admin.)
- ECB DG-L: [REDACTED] (legal advice on request)
- D&S: [REDACTED] (expert)
[REDACTED] (coord. + admin.)

In parallel, the CPO conducted background checks to verify the financial stability and reliability of the candidates, as well as to identify potential conflicts of interest, if any, with relevant NEP project participants. According to the Creditreform database, all candidates have stable financial background, ranging between excellent (150-200) and average/moderate (251-300) credit rating.

Regarding the issue of conflict of interest, six issues were identified with the following candidates: [REDACTED]

[REDACTED]. The details are included in the table T109 Construction Manager Outcome of formal check [REDACTED]

The NEP-PRC in each of these cases carefully reviewed the issue of conflict of interest with regard to the potential advance information at the tender procedure (Wissensvorsprung), as well as conflicting interests (widerstreitende Interessen) during contract performance, and decided not to exclude any applicants from the tender procedure.

¹ The number reflects an average rate of submitted applications of approx. 45% of the number of downloaded application forms.

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The first eight ranked applicants were selected as suitable candidates and, according to the decision of the NEP-PRC in its 113a. JF on 27 February 2009, invited to tender (in order of their ranking):

Name	Total	Rank
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	2
[REDACTED]	[REDACTED]	3
[REDACTED]	[REDACTED]	3
[REDACTED]	[REDACTED]	5
JSK JSK Dipl. Ing. Architekten	6.375	6
[REDACTED]	[REDACTED]	6
[REDACTED]	[REDACTED]	6
[REDACTED]	[REDACTED]	9
[REDACTED]	[REDACTED]	10
[REDACTED]	[REDACTED]	11
[REDACTED]	[REDACTED]	12
[REDACTED]	[REDACTED]	13

Evaluation results are attached as Annex 1. Invitation and rejection letters were dispatched on 17 March 2009. The tender documentation was provided in digital format (CD) to the short listed candidates on 17 March 2009.

3 Summary of the tender phase

Following the dispatch of the ITT, questions were submitted during the tender phase as regards the contract, deadlines, the price offer and price matrix, project participants, interfaces, drawings, the description and scope of services, etc. The answers were provided on the forum.

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[REDACTED]

The results of the technical clarification meeting are summarised in the meeting minutes dated 10 June 2009. Within the framework of the technical clarification it became apparent that the team would work in a very formal and bureaucratic manner. In case of contract award, the project leader would more likely operate administratively. Following the meeting, Item 2.2 b / Effective Team Structure was assessed accordingly.

[REDACTED]

The results of the technical clarification meeting are summarised in the meeting minutes dated 10 June 2009. Within the scope of the technical clarification, the organisation and the team setup were explained on the basis of the attached calculation. Open items were defined in a plausible and comprehensible manner. Item 2.2 b / Effective Team Structure was evaluated mutually following the meeting.

The form "Qualification" and details provided in the accompanying letter as well as the CV were considered in the evaluation of the deputy project leader. Item 2.1.1 a / Professional Experience was evaluated amicably subsequent to the meeting.

[REDACTED]

The results of the technical clarification meeting are summarised in the meeting minutes dated 10 June 2009. Following the meeting, Item 2.2 a / Adequate Man Power was re-evaluated. The offered team size with a large number of other staff presents itself as not adequate and was assessed accordingly.

[REDACTED]

The results of the technical clarification meeting are summarised in the meeting minutes dated 12 June 2009. Statements regarding Item 2.3 / Service Concept were of highly theoretical and academic nature without reference to the construction site. Item 2.3 was evaluated accordingly following the meeting.

[REDACTED]

The results of the technical clarification meeting are summarised in the meeting minutes dated 12 June 2009. For the backoffice in Stage 1, the calculative approach of 5.0 in one month was explained plausibly by the tenderer. The mathematical analysis was complemented accordingly.

[REDACTED]

The results of the technical clarification meeting are summarised in the meeting minutes dated 12 June 2009. The meeting and the evaluation was conducted by the NEP-PO without the participation of D&S.

JSK Dipl. Ing. Architekten

The results of the technical clarification meeting are summarised in the meeting minutes dated 15 June 2009. In the meeting it became apparent that Mr Ksionsek was foreseen as project leader in lieu of Mr Stauss. Item 2.1.1 a / Professional Experience was accordingly evaluated subsequent to the meeting.

The results were incorporated into the metric tables and are attached as Annex 2.

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R	Company	Price	Quality	Contract terms	Total scoring
		60%	35%	5%	
1	JSK Dipl. Ing. Architekten	6,000	2,126	500	8,626
[REDACTED]					

Following the results of the clarification and finalisation of the evaluation, the evaluation team recommended inviting companies ranked no. 2 and 3 to negotiation meetings. Although the total score of the tenderer ranked No. 4 is close to the third-ranked tenderer, the fact that the commercial offer is the second-highest and in addition major comments on the draft contract were submitted by this candidate, which would influence the price, lead to the proposal not to invite the fourth-ranked company for negotiations. The offer from JSK should be examined in view of an abnormally low price offer and regarding the technical offer. Therefore, a two-fold clarification meeting with the tenderer was proposed, having a team presentation and a clarification in order to collect further information from the company. The NEP-PRC decided in its 129. JF on 23 June 2009 to invite companies [REDACTED] as well as [REDACTED] to negotiation meetings and company JSK to a second clarification meeting.

5 Summary of the negotiation meetings

Negotiation meetings were carried out between 25 June 2009 and 26 June 2009 with the aim of negotiating the technical, financial, and contractual aspects of the offers. Details are laid down in the meeting minutes (filed separately). Following the meetings, the companies were given the opportunity to submit a revised offer within 5 working days after the negotiation date, cob. Revised offers received were kept confidential until the submission date of the last tenderer. After the submission date of the last revised offer on 02 July 2009, the tenders were opened by the ECB and the contents registered in the opening form.

JSK was given the possibility to submit a written statement on the question of an abnormally low offer following the second clarification meeting.

6 Reference Calls

In order to verify the details provided by the tenderers, in particular focusing on JSK, as the project leader was not present in the clarification meeting, as well as gmp being in the

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narrower choice for further negotiations, the ECB conducted reference calls. The verification focussed on the reference provided from project leaders only. The results were taken into account in the evaluation of revised offers.

7 Evaluation of revised offers

The re-evaluation of the revised offers was carried out based on the award criteria stipulated in the ITT by:

- ECB NEP-PO: [redacted] (chair of evaluation),
[redacted] (expert),
- ECB CPO: [redacted] (chair support/coord. + admin.),
- ECB DG-L: [redacted] (contractual terms),
- D&S: [redacted] (expert)
[redacted] (coord. + admin.)

In the workshops on 06 July, 15 July and 23 July 2009, the revised offers, the findings from the negotiation and/or clarification meetings, and the results provided by the ECB regarding the queries performed with respect to the references of the remaining candidates were considered in the re-evaluation of offers based on the published award criteria. The result is laid down in Annex 3.

The evaluation of the revised offers resulted in the following scoring (**bold: Actual status / fine-print: Status evaluation phase**):

R	Company	Price	Quality	Contract terms	Total scoring
		60%	35%	5%	
1	JSK Dipl. Ing. Architekten	6,000	1,671	500	8,171
		6,000	2,126	500	8,626

[redacted] presented its service concept convincingly in the negotiation on 26 June 2009, in particular through its transparent presentation of the database to be used in the project, which led to an increase from 3 to 4 points in the points awarded for criterion 2.3 "Service Concept". The high requirement for human resources was explained plausibly with the implementation and maintenance of a comprehensive database albeit the high manpower is evaluated as disadvantageous (the scoring for criterion 2.2 "Organisational team structure" remains unchanged). The project leader convinced with his professional experience presented by means of reference projects. The very good impression of the project leader could not be affirmed by his deputy project leader, thus allowing for an increase of the scoring from 2 to merely 3 points for both criteria 2.1.1a) and b) "Project leader and deputy".

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With regard to price, [REDACTED] indicated a reduction by approx. 4% compared to its initial offer; the offer is ranked third place and is approx. 3 million EUR above the second-ranked company. The score was raised accordingly. An alternative offer, reducing the total price if the "Vertragserfüllungsbürgschaft" is reduced to 5% was taken not taken into account for the evaluation in view of comparability of the offers.

[REDACTED]
The designated project management of [REDACTED] was not convincing in the negotiation meeting of 25 June 2009 due to a passive role and lack of participation and knowledge of the project as well as the offer. Due to the passive role of the project leader and deputy, the allocation of tasks of project leader and deputy could not be confirmed as fully plausible, a re-evaluation from 3 to 2 points in both criterion, 2.1.1a) and b) "Project leader and deputy" was performed.

The presentation of the core processes and the service concepts confirmed the good impression of the original documentation; however, the contents were presented in their entirety by persons not allocated to the NEP team.

The comments provided on the contractual conditions were withdrawn, the score raised from 250 to 500 points; the price offer was reduced by approx. 11% compared to the initial offer and the score adapted accordingly.

[REDACTED]
The results of the negotiation meeting were minuted by the ECB; the re-evaluation was conducted by the NEP-PO without the participation of D&S. An assessment is provided by the NEP-PO in a separate report.

JSK Dipl. Ing. Architekten

The results of the second technical clarification meeting held on 25 June 2009 led to a re-evaluation of the criteria 2.1.1a) and b) "Project leader and deputy" and 2.1.2b) "Allocation of tasks in NEP project/ responsibilities and competences". In particular, the review of the score initiated by the NEP-PRC on 10 July 2009 for the professional experience of the project leader (criterion 2.1.1a) compared to the competitors resulted in a re-assessment from 3 to 2 points. It was noted critically that the only comparable project of the deputy project leader to the NEP is the "ICE Fernbahnhof" which was completed several years ago. It became apparent that the project leader Mr Ksionsek (although not present in the meeting) is working mainly in the field of site supervision and less in the area of project management.

It was considered in the criteria 2.1.1b) and 2.1.2b) that, upon request, Mr Joos confirmed during the second clarification meeting that JSK has not supervised and managed the implementation of the design by another architect, except in BBI where JSK worked in a grouping with two other firms. For the project leader no comparable role in carrying out construction management services for an architectural design by another architect (as opposed to an in-house design) was presented. The score was reduced accordingly from 2 to 1 point (criterion 2.1.1b) "allocation of tasks"). Furthermore, the allocation of tasks in the team is not plausible since many of the team members are charged with several key tasks at the

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same time. This was expressly confirmed by JSK in the second clarification meeting. Accordingly, the score was reduced from 3 to 2 points (criterion 2.1.2b "allocation of tasks").

The presented service concept was not convincing and did not confirm the impression of the paper situation (*Papierlage*), so that a re-evaluation was carried out from 2 to 1 point (criterion 2.3).

With 1,671 points, JSK does not meet the required minimum points of 1,750 in the technical offer following the re-evaluation, thus not providing for the necessary quality.

Following the evaluation, the offer from JSK was considered as very low in view of the commercial as well as technical part of the offer. The evaluation team recommended excluding the offer due to doubts in view of the adequacy and non-fulfillment of the minimum requirements regarding the technical offer. Details are laid down in the decision memo "Entscheidungsvorlage Angebot JSK".

8 Recommendation on the way forward

As outlined above, the evaluation team recommends inviting [REDACTED] to further negotiation meeting (subject to the result of the evaluation [REDACTED] which was conducted and minuted separately by the NEP-PO).

9 Final evaluation / Recommendation for the award of contract

The final evaluation results following further negotiations as well as the recommendation for the award of contract is laid down in a separate report, prepared by the NEP-PO [NEP-PRC/2009/254].