

## PUBLIC CONTRACTS REVIEW BOARD

### Case No. 264

**Adv No CT 146/2010 - CT 3060/2010 – WSM159/2009/1  
Service Tender for Engineering, Procurement Construction Management (EPCM)  
Consultancy Services for the Design, EIA, Contracting and Managing a Project for the  
Construction and Operation of a Biological Treatment Plant in the North of Gozo**

This call for tenders was published in the Government Gazette on 23<sup>rd</sup> July 2010. The closing date for this call with an estimated budget of € 725,000 (excluding VAT) was 14<sup>th</sup> September 2010.

Three (3) tenderers submitted their offers.

SLR Consulting Ltd filed an objection on 14<sup>th</sup> January 2011 against the decision to reject their offer on the basis of technical non-compliance and the resulting cancellation of tender.

The Public Contracts Review Board composed of Mr Alfred Triganza as Chairman, Mr Edwin Muscat and Mr. Carmel Esposito as members convened a public hearing on Friday, 11<sup>th</sup> March 2011 to discuss this objection.

Present for the hearing were:

**SLR Consulting Ltd**

Mr Ian Roberts	Director
Mr Mario Schembri	

**WasteServ Malta Ltd**

Mr Aurelio Attard	Contracting Executive
Dr Victor Scerri	Legal Representative

***Evaluation Board***

Mr John V. Vella	Chairman
Ing Joseph Bebezzina	Secretary
Perit Ivan Bartolo	Member
Ing Stephen Dimech	Member

After the Chairman Public Contracts Review Board's brief introduction about this case, SLR Consulting Ltd's representative, namely Mr Ian Roberts, was invited to explain the motives of their objection.

All those present concurred with the appellant company's request to conduct the proceedings in English.

Mr Ian Roberts explained that the only reason given as to why their bid was declared technically non-compliant was related to the inappropriateness of the academic qualifications of one of their experts.

In his introductory submission, he gave a brief background on the project by stating that this was a very complex advisory services contract for the construction of a biological treatment facility on the island of Gozo that covered eight very detailed tasks over a five-year period, namely:

- establishing planning framework
- feasibility study
- cost benefit analysis
- project implementation plans and documents
- environmental impact assessment / environmental impact statement
- preparing an EU Cohesion Fund application
- assisting government on procurement *and*
- assisting government on project management and supervision

Mr Roberts said that they required a very large team of experts across a wide range of fields in order to deliver the advisory services required and in actual fact they had named 25 specialists for this purpose.

Referring to the specific issue of this objection, the appellant company's representative explained that one of the six 'Key Experts' required had to be a *Solid Waste Management Specialist*. Mr Roberts said that in this tender it was recognised that, for one to be able to fully fulfil this role, it might be necessary to name two specialists/experts. Presumably, continued Mr Roberts, this was due to the fact that it was acknowledged that solid waste management and animal husbandry waste were two different fields. The appellant company's representative said that in the previous tender the contracting authority required an expert in what they called 'abattoir waste', which was not quite manure but animal husbandry.

Mr Roberts said that whilst his firm had nominated two experts for this role – a solid waste management expert and an expert in manure, the bone of contention was on the latter specialist. Mr Roberts explained that the individual named for this role was Mr John Morgan who had extensive professional experience within a specific and, directly associated, field that was required by the tender. The appellants' representative sustained that Mr Morgan's expertise, background and experience was clearly not disputed, so much so, that the only objection was on the latter academic qualifications. Mr Roberts said that the expert proposed had the relevant tertiary education in a directly associated field and in this type of industry because he had two

academic qualifications specifically related to animal waste husbandry, namely (a) UK National Diploma in Agriculture and a (b) Diploma in Farm Management, both conferred by the Seale Hayne College in Devon.

In reply to a specific question by the Chairman, Public Contracts Review Board, Mr Roberts explained that a diploma that was obtained some 12 years ago was probably equivalent to today's bachelor's degree in the same field of studies. Mr Roberts remarked that, at that time, this College was one of the top four colleges in the UK and when the nominated expert finished the course it formed part of the University of Plymouth. The appellant company's representative pointed out that, in addition to the three year course in Agriculture, Mr Morgan had a qualification in 'Farm Management' that was equivalent to a post graduate qualification. Mr Roberts contended that SLR's offer should not have been rejected because the qualification were appropriate, directly related to tertiary education from a recognised institution at that point in time and that Mr Morgan's second qualification was recognised as post graduate.

Mr John V Vella, chairman of the evaluation board, in reply to the Chairman Public Contracts Review Board's specific questions, confirmed that:

1. if the indicated diplomas were University degrees they would have been acceptable
2. there were attempts by Mr Joe Bezzina, Secretary of the evaluation board, to establish the equivalency of the diplomas through various communication exchanged with the Malta Qualifications Recognition Information Centre, but these proved futile. At this stage Mr Vella quoted from correspondence dated 6<sup>th</sup> December 2010 whereby, after a brief introduction about the specifications stipulating the minimum qualifications that nominated experts needed to have in such tenders, the Malta Qualifications Council were specifically asked to confirm that the diplomas listed in the table below are not equivalent to a university degree and whether the council could indicate what is the academic qualification level of these diplomas.

<i><b>Institution</b></i>	<i><b>Degree(s) and/or Diploma (s)</b></i>
<i>Seale Hayne College, Devon</i>	<i>Higher National Diploma, Agriculture</i>
<i>Seale Hayne College, Devon</i>	<i>Continuing Education Diploma in Farm Management</i>

On the 8<sup>th</sup> February 2011 Ms Josephine Sultana from the above Centre replied as follows:

*“I already did my research on the Seale Hayne College, Devon way back in January but I wasn't in a position to conclude on this case. This college does not feature in the list of accredited institutions or in the listed institutions. I also found out that Seale-Hayne College opened in 1919, and later became part of the University of Plymouth. After a number of years Plymouth University announced plans to close Seale-Hayne. In fact in 2009 it was reported that Plymouth University confirmed that the College has been sold to the Ivbridge Dame Hannah Rogers Trust.*

*However in the meantime we have sought the advice and opinion of both the NARIC UK and Plymouth University but unfortunately till to day we haven't received any replies what so ever. That's why we were not in a position to disseminate any information before because we are still waiting from these entities.*

*Could you please let us know what kind of information do you have from your end on this college and the courses mentioned in your attachment? Because if these courses are not validated by a university with awarding power we will not be in a position to recognise or level rate these courses”*

On the 25<sup>th</sup> February 2011 Ms Sultana wrote again to Mr Bezzina stating:

*“Please note that our counterparts from the UK and the spokesperson of Plymouth University are asking us “how your entity has come across such college”*

On the same day Mr Bezzina replied as follows:

*“Kindly be informed that the diploma qualifications which I have asked about in my initial request have been presented as credentials by a candidate for a tender procedure. This is how we came to know – and all we know – about this college.*

*We would appreciate any further information you might be able to furnish us with.”*

Mr Vella concluded this part of his intervention by stating that they did not receive any further replies since then on the equivalence issue.

At this stage the chairman of the evaluation board explained why the appellant company's offer was considered to be technically not compliant.

Mr Vella made reference to various sections of the tender document, namely:

***Selection Criteria*** (page 6):

- 6.1 ‘In order to be considered eligible for the award of the contract, tenderers must provide evidence that they meet or exceed certain minimum qualification criteria described hereunder.’*

**Key Expert 2: Solid Waste Management Specialist/s** (page 8):

*'The requirement for experience, as set out for Key Expert 2 below, namely in solid waste management and animal husbandry waste (manure) may not necessarily be vested in one person. Two key experts may be nominated for this role, whereby each one of them must meet the requirements hereby being requested under this profile....'*

and

*'University degree in a discipline relevant to solid waste management which degree can be in areas such as environmental or civil engineering or an equivalent field'*

Mr Vella said that in a clarification issued to all prospective bidders by the Director General (Contracts) on 6<sup>th</sup> September 2010, the reply given to question 1 was as follows:

*"One person can be recommended for two key expert roles as long as he meets the individual criteria required for each key expert role, in this case specifically the key expert role of the Solid Waste Management Specialist and also the key expert role of the Mechanical Engineer"*

Mr Vella pointed out that the evaluation board's decision was based on the fact that one of the experts was not in possession of a University degree as required in Clause 6.1.2(b) (ii) of the ITT. Messrs SLR explicitly put this in the objection letter against bullet No 2 'A university degree in a discipline relevant to solid waste management such as environmental or civil engineering' wherein it was stated that '*John has 2 academic qualifications .....He has a UK National Diploma in agriculture and a Diploma in Farm Management.*'

At this point the Chairman, Public Contracts Review Board, intervened by stating that, as the issue of equivalence of the diplomas was still inconclusive, it was considered crucial and pivotal to establish whether a diploma that was conferred twelve years ago had the equivalence of a degree today. The Public Contracts Review Board requested SLR's representative to submit a copy of the diplomas and the relative syllabus so that the evaluation board would subsequently refer the matter again to the Malta Qualifications Information Centre by asking the relevant question as proposed by the Chairman Public Contracts Review Board. Furthermore, SLR and the evaluation board were requested to provide the Secretary, Public Contracts Review Board with a situation update by Wednesday, 16<sup>th</sup> March 2011.

As a result of this decision the Public Contracts Review Board informed those present that it was postponing the hearing since, at that moment, it did not have enough information to reach a conclusion.

At this point the hearing was brought to a close.

This Board,

- having noted that the appellants, in terms of their ‘reasoned letter of objection’ dated 14<sup>th</sup> January 2011 and also through their verbal submissions presented during the hearing held on 11<sup>th</sup> March 2011, had objected to the decision taken by the pertinent authorities;
- having noted all of the appellant company’s representatives’ claims and observations, particularly, the references made to the fact that (a) the only reason given as to why their bid was declared technically non-compliant was related to the inappropriateness of the academic qualifications of one of their experts, (b) whilst the said company had nominated two experts for the *Solid Waste Management Specialist* role – a solid waste management expert and an expert in manure, the bone of contention was on the latter specialist contending that the person nominated for the role had extensive professional experience within a specific and, directly associated, field that was required by the tender but whose academic qualifications – namely a UK National Diploma in Agriculture and a Diploma in Farm Management, both conferred by the Seale Hayne College in Devon twelve years ago - were deemed not up to the standard as stipulated in the tender specifications and this despite that such diplomas would be equivalent to a bachelor’s degree conferred nowadays in the same field of studies and (c) at that time, the Seale Hayne College in Devon was one of the top four colleges in the UK and when the nominated expert finished the course it formed part of the University of Plymouth;
- having considered the contracting authority’s representative’s reference to the fact that (a) if the indicated diplomas were University degrees they would have been acceptable to the evaluation board and (b) considering the fact that the tender specifications required that key expert no. 2 (Solid Waste Management Specialist) had to have a ‘*University degree in a discipline relevant to solid waste management which degree can be in areas such as environmental or civil engineering or an equivalent field*’, yet, despite all the attempts made by the evaluation board to establish the equivalency of the diplomas in question through various communication exchanged with the Malta Qualifications Recognition Information Centre, these proved futile;
- having examined the content of the letter dated 15<sup>th</sup> March 2011 sent by SLR Consulting Ltd (Mr Ian Roberts – Director) and, most importantly, those of a letter dated 15<sup>th</sup> March 2011 sent by Mr Martyn Warren, Visiting Lecturer and former Head of Land Use and Rural Management (University of Plymouth) addressed to SLR Consulting Ltd, wherein, *inter alia*, he confirmed that:

*“John Morgan attended Seale-Hayne from 1986-1988(3 years) and attained a Higher National Diploma in Agriculture with Credit- at the time considered to be equivalent to a Pass Degree. In 1989, against strong competition, he was accepted onto the Continuing Education Diploma in Farm Management (DFM), a one-year intensive managerial course of high reputation in the UK and elsewhere. He was subsequently awarded a DFM with Credit in 1990.”*

and stated that he can “confirm that the Seale-Hayne Continuing Education Diploma in Farm Management was of post graduate quality, and that the qualifications attained by John Morgan from the period 1985-1990 were more than equivalent to a University undergraduate degree, whether this is measured by the standards of 1990 or those of the present day. Indeed the DFM was subsequently recast as the University of Plymouth Postgraduate Diploma/MSc course in Advanced Agriculture Business Management”

- having also given particular attention to Mr Martyn Warren’s statement (in the same letter dated 15<sup>th</sup> March 2011) wherein he opined the following:

*“Given that John Morgan obtained his Diploma in Farm Management with Credit, I have no hesitation in stating that he achieved a high level of qualification, well in excess of that obtained by a graduate from a conventional degree course”*

- having also given particular attention to Ms Josephine Sultana’s (Malta Qualifications Recognition Information Centre) statement (in her email dated 28<sup>th</sup> March 2011) addressed to Mr Joe Bezzina (WasteServ Malta Ltd) wherein she stated that the Council is “not in a position to determine the level of the BTEC Higher National Diploma in Agriculture of that time because it is now considered as a “legacy award” ... and that “according to the information provided by the University of Plymouth the BTEC Higher National Diploma in Agriculture” is no longer offered let alone validated by the same University and, as a result, the Centre cannot recognise or rate the diploma in question;
- Having also considered further comments made by Ms Sultana in the same email, particularly where she stated that:

*“If this BTEC diploma has to be provided and validated by a recognised awarding body and such qualification is regulated by the Office of the Qualifications and Examinations Regulator (OFQUAL) it would be Level rated at Level 5 of the Malta Qualifications Framework. It is to be pointed out that Level 5 is associated with diploma levels and not with degree level. HND by no way could be considered as a degree”*

and that since this qualification is not regulated the local Centre cannot recognise it,

reached the following conclusions, namely:

1. The Public Contracts Review Board, in principal, feels that the key expert suggested by appellant company could be well qualified for the job but it would be presumptuous if this Board were to solely rely on Mr Warren’s statement. This Board feels that it would have been better had the appellant company endeavoured to seek confirmation as to the validity and equivalency of the Diplomas from a formally (nationally) recognised body rather than from a former Course Tutor/Course Manager for the Diploma in Farm Management at Seale-Hayne College, Devon, UK.
2. The Public Contracts Review Board, however, is not really convinced as to whether the assessment made by the Malta Qualifications Recognition Information

Centre (MQRIC) is based on a thorough examination of facts, especially in view of Ms Sultana's claim that the Centre is "not in a position to determine the level of the BTEC Higher National Diploma in Agriculture of that time because it is now considered as a "legacy award".

3. The Public Contracts Review Board feels that, whilst the contracting authority should focus on the difference between a degree and a diploma, yet emphasis should also, perhaps, be placed on the experience level of key experts. Nevertheless, despite this observation, this Board cannot deny the contracting authority from requesting its own minimal requirements, namely a degree level.

Undoubtedly, in view of (a) the fact that the appellant company still has not managed to bring forward a formally recognised proper equivalency endorsement and (b) Malta's formally recognised body, namely the Malta Qualifications Recognition Information Centre (MQRIC), has already stated that it cannot recognise the said diplomas, in this particular instance this Board finds against the appellant company and also recommends that the deposit paid by the appellants should not be reimbursed.

Alfred R Triganza  
Chairman

Edwin Muscat  
Member

Carmel Esposito  
Member

*5 April 2011*