

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 690**

**MEAIM 14/001**

**Tender for the Provision of Services for the Drafting of the ex-Ante Evaluation of Malta's Material Assistance Operational Programme as Defined by the Draft Regulation for the Fund for European Aid to the Most Deprived.**

The tender was published on the 11<sup>th</sup> February 2014. The closing date was the 14<sup>th</sup> March 2014.

The estimated value of the Tender was €20,000 (Exclusive of VAT).

Three (3) bids had been received for this tender.

On the 8<sup>th</sup> April 2014 Iuris Research Training & Advisory filed an objection against the rejection of its offer and the cancellation of the tender.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Tuesday the 29<sup>th</sup> April 2014 to discuss the objection.

Present for the hearing were:

### **IURIS Research, Training & Advisory - Appellant**

Dr Romina Bartolo  
Dr Peter Fenech

Representative  
Legal representative

### **Ministry for European Affairs and Implementation of the Electoral Manifesto Contracting Authority**

Mr Etienne Bonello  
Ing. Anthony Camilleri  
Ms Juliet Calleja  
Ms Donna Borg Micallef

Chairperson Evaluation Board  
Representative  
Member Evaluation Board  
Member Evaluation Board

After the Chairman made a brief introduction the appellant's representative was invited to make his submissions on the objection.

Dr Peter Fenech on behalf of the appellant firm said the objection was based on three points. The first reason for the rejection of appellant's offer was that Dr Romina Bartolo was not listed as the contact person/project manager. The tender's point 1 at page 7 said "*...is expected to be a senior member and must possess the following qualifications and skills*". Appellant's tender, at page 18 stated that Mr Ramon Muscat will be the project manager. Therefore the tender requisite was satisfied. However appellant aware of the period of the tender was so short decided to submit more resources to the project thus listing and submitting two contact persons. But one of these was over and above the tender requirements.

The second point was that Anne Marie Callus and Sue Vella were employed by the University and thus could not be named as experts. This point has been disputed several times and there are decisions by this Board on the matter. With the letter of objection a copy of a decision by the PCRБ case 263 where it was held that university employees should not be excluded from being appointed key experts. Even the government is in favour of university lecturers doing this kind of work.

The third point of rejection was because of Ms Sue Vella. The Curriculum Vitae submitted with the appellant's tender showed that Ms Vella was employed with the Government. In fact Ms Sue Vella is no longer in such employment and has been so since last July and is now a University employee. He admits that the CV submitted listed Ms Vella's employment "to date". However Ms Vella is additional to the requirements, an extra expert since the expert is Anne Marie Callus. The time constrains led the appellant to include personnel over and above the tender requirements.

Mr Etienne Bonello the Chairman of the Evaluation Board, on behalf of the contracting authority said that with regard to the contact person, that this is indicated as being Dr Romina Bartolo for this tender, it does not refer to project manager. That was the reason the evaluation board decided to disqualify the bid. The key experts are listed at page 8 of appellant's offer. Ms Romina Bartolo is indicated as a contact person for the tender. Regarding Dr Anne Marie Callus he stated that the evaluation board was not aware of the PCRБ decisions on university employees. The board used the same template issued by the Department of Contracts and no circular had been issued following the handing down of the PCRБ decision. Finally he said that it was not clear from the tender document whether Ms Sue Vella was still employed with the government.

Dr Peter Fenech admitted that the un-updated CV had been sent but reiterated that Dr Sue Vella had been surplus to the tender requisites.

At this point the hearing was closed.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 4<sup>th</sup> April 2014 and also through Appellant's verbal submissions during the hearing held on 29<sup>th</sup> April 2014, had objected to the decision taken by the pertinent Authority, in that :**

- a) **Appellant contends that his bid did include the requested details with regards to the identification of the Project Manager, as stated in page 18 of the tender document.**
- b) **Appellant also contends that University employees are allowed if not encouraged to act as Key Experts to projects.**
- c) **Appellant acknowledges the fact that the Curriculum Vitae of the extra Key Expert was not updated, but this fact should not be a valid reason for discarding Appellant's bid as the un-updated Curriculum Vitae refers to the extra Key Expert.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 29<sup>th</sup> April 2014, in that:**

- a) **From the Appellant's bid, the Evaluation Board could only determine that Dr Romina Bartolo was indicated as a 'Contact Person' and not as a 'Key Expert'.**
- b) **The Evaluation Board was not aware of the fact that University employees could be appointed as 'Experts'.**

**Reached the following conclusions:**

1. **This Board opines that the University of Malta is an 'Autonomous' Institution and is regulated by its own Council. University employees are not to be regarded as Civil Servants. In this regard, University employees can be contracted to act as Experts. In fact, even this Board, when necessary; refer to the University of Malta, for the provision of Experts.**
2. **From submissions made by both the Appellant and the Contracting Authority, this Board opines that the Appellant's Bid was in fact compliant.**

**In view of the above this Board finds in favour of the Appellant and recommends the following:**

- i) **The deposit paid by the Appellant should be reimbursed.**
- ii) **The Appellant's bid should be reintegrated in the tendering process.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancilleri  
Member

*12 May 2014*