

The Chairman made a brief introduction and explained that the Board has already given previous decision wherein it was held that University of Malta Lecturers are not to be considered as Public Servants since the University is an autonomous body.

At this point Dr Peter Fenech on behalf of the contracting authority stated that he had filed a note on behalf of the contracting authority wherein the said authority stated that it recognized that it has already been decided before by this Board and its predecessor that University of Malta employees are not to be regarded as civil servants and remitted itself to the Board's decision.

Dr Silvio Debono on behalf of the appellant stated that he was disillusioned by the tender process because, when appellant was asked to clarify the point of public officers, he had clearly explained that albeit he a lecturer at the University of Malta, he was not a public officer. In fact lecturers even had a collective agreement which specifically states this.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 3rd July 2014 and also through Appellant's verbal submissions during the hearing heard on 2nd September 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) **Appellant's bid was discarded due to the fact that, the 'Key Expert' of the proposed tendered project, was not eligible to participate, due to the fact that same Key Expert was employed by the University of Malta and thus considered to be a Civil Servant. This is not in conformity with the parameters of the qualifications of a public tender;**
- b) **Various decisions were delivered by the Courts and the Public Contracts Review Board, that Lecturers, whether Part Time or Full time are not to be considered as Public Officers and as such same are not to be considered as Civil Servants.**

Having considered the Contracting Authority's written submission via letter dated 29th July 2014, submitted by the Legal Advisor of the Contracting Authority, in that:

- a) **The Contracting Authority confirms that in lieu of the various deliberations delivered by the Public Contracts Review Board, this matter has been decided upon, in that, 'University of Malta Employees' are not to be considered as 'Civil Servants'.**

Reached the following conclusions:

1. **This Board opines, that the principle in question has long been established, both by the Public Contracts Review Board as per decision taken on Case No 263 on 7 March 2011 and also by the Court of Magistrates as per decision taken on 2nd December 2013. In the latter instance, it was clearly stated by the Honourable Court**

that, “A dean of a Faculty of the University of Malta cannot be deemed to be a public officer”. In this regard, this Board upholds the decision taken on 7th March 2011 by the same Board;

2. This Board opines that without going into repetitive details, which in any case, were pronounced in previous decisions regarding the same contention, both by the Hon. Court of Magistrates and The Public Contracts Review Board, a brief overview of the decisions taken in this case’s regard, would perhaps reaffirms this Board’s decision that:

- i) The University of Malta is an ‘Autonomous Educational Institution’;
- ii) The Government has no effective control over the University of Malta;
- iii) The University of Malta is regulated through its Council in all areas, such as recruitment, promotion and discipline.

In view of the above, it follows that the Key Expert Submitted by the Appellant is not a public servant and thus this Board finds in favour of the Appellant and recommends that:

- i) Appellant’s offer is to be integrated in the evaluation process;
- ii) The deposit paid by the Appellant should be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancillieri
Member

12 September 2014