



The Chairman remarked that the subject matter of this objection had already been decided before both by this Board and by the Civil Court. He asked the contracting authority whether it took cognizance of this Board's decisions because once again the reason for finding appellant's tender non-compliant was that the expert proposed was employed with a government entity. Since the expert in question was a lecturer at the University of Malta, it has already been decided that the University is an autonomous entity and its lecturers are not public servants. Yet the contracting authority keeps insisting in disqualifying tenders for the sole reason that their experts are University lecturers. This cannot go on and the Board would not go into the details again. The University encouraged lectures to participate as experts thus gaining more experience.

Dr Joseph Camilleri on behalf of the contracting authority said that the authority was not saying that the lectures were public servants but employees of a government entity.

The appellant company's representative was invited to explain the motives of the company's objection.

Dr Silvio Debono for the appellant explained that since the last case he has received two further disqualifications from the same contracting authority. He said that the following day he would be submitting another two tenders with the same authority and if the decisions of the Board continue to be ignored then the procedure would be followed for these two tenders and his offers would continue to be disqualified.

Dr Joseph Camilleri for the contracting authority explained that the tender precluded employees of a government entity from participating. The evaluation board examined the case including the Part-time employees Regulations. The evaluation board then sought the directives from the Department of Contracts who cited from an advice given by the attorney general. The evaluation board then considering all these factors, deemed appellant's bid not to be compliant.

Dr Silvio Debono on behalf of the appellant explained that he was confounded by two reasons. The first one was that he had been informed by a person employed with the Department of Contracts that his offer would be rejected. The second was that Mr Ray Stafrace from the contracting authority had informed him that it was the contracting authority's decision but everything depended on the Department of Contracts. Earlier this week he had received another two rejections based on the same reason. He contended that this cannot go on.

At this point the hearing was brought to an end.

**This Board,**

**Having noted Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 1<sup>st</sup> October 2014 and also through Appellant's verbal submissions during the hearing held on 11<sup>th</sup> November 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) **Appellant contends that, for the third time, his bid was disqualified due to the fact that, as a lecturer at the University of Malta, he was considered to be an**

employee of a Government entity. Appellant claims that this is an unfounded reason;

- b) Appellant also alleges that he was informed by an employee from the Contracts' Department that his offers will be rejected in all future bids on the same grounds.

Having considered the Contracting Authority's verbal submissions during the hearing held on 11<sup>th</sup> November 2014, in that:

- a) The Contracting Authority maintains that, after seeking advice from the Department of Contracts, same was informed that Lecturers at the University of Malta were considered to be employees of a Government entity, hence Appellant's bid could not be considered to qualify for the tender in question as same tender precluded employees of a Government entity from participating in a public tender.

Reached the following conclusions:

1. This Board would respectfully refer to the Court of Magistrates' decision taken on 12<sup>th</sup> September 2013, wherein it was held that 'a Head of Department and senior Lecturer at the University of Malta is not a Public Officer'. At the same time, this Board would also refer to the PCRB's decisions on the same subject, dated 7<sup>th</sup> March 2014 and 12<sup>th</sup> September 2014, upholding the fact that a Lecturer at the University of Malta is not to be considered as a Public Officer;
2. This Board is perturbed by Appellant's second claim that he was informed by an employee of the Department of Contracts that his offer will be rejected; prior to the official publication of the award. In this regard, this Board recommends that the Director General of the Department of Contracts investigates such an allegation and act according to his findings.

In view of the above, this Board finds in favour of the Appellant Company and recommends that:

- i) Appellant's offer be reintegrated in the evaluation process,
- ii) The Deposit paid by Appellant be reimbursed.

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*17 November 2014*