

PUBLIC CONTRACTS REVIEW BOARD

Case No. 770

CT 3115/2014

Tender for the Provision of Information Sessions and Organisation of Study Visits on EU Affairs.

The tender was published on the 4th July 2014. The closing date was the 26th August 2014. The estimated value of the Tender was €110,170 (Exclusive of VAT).

Three (3) tenderers had submitted an offer for this tender.

On the 2nd December 2014 Economic and Management Consultancy Services Limited filed a letter of objection against the decision of the contracting authority to disqualify its 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 13th January 2015 to discuss the objection.

Present for the hearing were:

Economic and Management Consultancy Services Limited - Appellant

Mr Matthew Castillo	Representative
Mr Stefano Mallia	Representative
Ms Danica Caruana	Legal Representative
Dr Adrian Delia	Legal Representative

Nexia BT Advisory Services Ltd - Preferred Bidder

Ms Marcella Baldacchino	Representative
Mr Kirsten Cutajar Miller	Representative

Transport Malta - Contracting Authority

Ing. Ronald Attard Pullicino	Chairman Evaluation Board
Ms Romina Carabott	Secretary Evaluation Board
Mr Brian Mifsud	Member Evaluation Board
Mr Jason Bongailas	Member Evaluation Board
Mr Ray Stafrace	Procurement Director
Ms Liz Markham	Procurement Manager
Dr Joseph Camilleri	Legal Representative

Department of Contracts

Ms Ninette Gatt	Procurement Manager
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The Chairman declared that the Board did not consider lecturers or part-time lectures at the University of Malta to be public officers. The University is an autonomous entity. He said that this point has been decided upon several times before by the Public Contracts Review Board and by the Courts of Justice. The Department of Contracts had to issue a circular wherein this point is clarified to all contracting authorities.

Dr Adrian Delia said that it does not make sense to discard the contribution of a pool of knowledge and worthy resources, who lectured at the University when awarding tenders.

Dr Joseph Camilleri on behalf of the contracting authority said that he had submitted a note of reply containing submissions on this point. He explained that the contracting authority was not being hard-headed when ignoring previous decisions when appellant's bid was disqualified. He contended that the contracting authority had asked for directives on the matter from the Department of Contracts and the contracting authority was bound to act on these directives.

At this point the hearing was brought to an end.

This Board,

Having noted the Appellant's Objection in terms of the "Reasoned Letter of Objection" dated 2nd December 2015 and also through appellant's verbal submissions during the hearing held on 13th January 2015, had objected to the decision taken by the pertinent authority, in that:

- a) Appellant contends that it would be beneficial to the Contracting Authority by utilising the pool of resources from the University of Malta. University Lecturers are the source of knowledge and expertise in their respective fields;**
- b) Appellant maintains that through previous decisions, University lecturers are not to be classified as public officers.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 13th January 2015, in that:

- a) The Contracting Authority re-affirmed this Board that it was not ignoring decisions taken by both the Honourable Court of Appeal and the Public Contracts Review Board. In this regard, the Evaluation Committee had asked for directives and followed same.**

Reached the following Conclusions:

- 1. This Board would once again refer to its previous decisions on the subject of Key Experts in relation to University Lecturers. University Lecturers are not to be considered as public officers. This Board upholds appellant's contentions;**
- 2. This Board would also like to point out, that on the same day of the hearing of this appeal, a circular was issued by the Department of Contract, (please refer to Procurement Policy Note No. 11), confirming previous decisions taken by the Public Contracts Review Board, so that all Evaluation Committees, now do have a definite and final directive;**

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

- i. The Appellant's offer is to be integrated in the Evaluation Process;**
- ii. The Deposit paid by the Appellant is to be reimbursed.**

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancillieri
Member

20 January 2015