

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 839**

**CT 3026/2015**

### **A Train the Trainer Programme for a Learning Outcomes Framework Approach.**

The Tender was published on the 24<sup>th</sup> April 2015. The closing date was the 4<sup>th</sup> June 2015. The estimated value of Tender is €508,000.00 (Exclusive of VAT).

Three (3) offers had been received for this Tender.

On the 7<sup>th</sup> August 2015 Stirling University and Grant Thornton Consortium filed an 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 Monday 17<sup>th</sup> August 2015 to discuss the objection.

Present for the hearing were:

#### **Stirling University and Grant Thornton Consortium:**

Mr Mark Bugeja	Representative
Mr Matthew Castillo	Representative
Dr Richard Dockrell	Representative
Dr Matthew Paris	Legal Representative
Dr Adrian Delia	Legal Representative

#### **IDEA Management Consulting Services Limited:**

Mr Nick Callus	Representative
Ms Sharon Hili	Representative
Dr Paul Borg	Representative
Dr Clint Tabone	Representative
Dr Silvio Debono	Director
Dr Mark Simiana	Legal Representative

#### **Ministry for Education and Employment:**

Ms Roselynn Vella	Chairperson Evaluation Board
Dr Philip Bonanno	Member Evaluation Board
Mr David Polidano	Member Evaluation Board

#### **Department of Contracts:**

Dr Christopher Mizzi	Legal Representative
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#### **Others:**

Mr Joseph Saliba	Senior Executive ETC
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Following a brief introduction by the Chairman, the Appellant's representative was invited to make his submissions.

Dr Christopher Mizzi on behalf of the Department of Contracts filed a letter of reply.

Dr Adrian Delia for the Appellant Consortium said that his client had been excluded from the Tender, which was a MEAT Tender; because the Contracting Authority regarded that their offer had not reached the desired bench mark. He remarked that the threshold had not been reached for two marks. He said that he would prove that his client had provided everything that was required. He brought as an example the reading list. His client was not assigned any points because the list which was provided was not split into paragraphs.

Another grievance raised by the Appellant was that while the Preferred Bidder was IDEA Management Consulting Services Limited, it was not known who the Tenderer was. The letter of rejection to Appellant states that the Preferred Bidder was IDEA, but the letter of reply states that in reality the Preferred Bidder was a consortium. There was a mandatory clause that required bidding consortia to register the consortium before making the electronic bid and this was not done by the Preferred Bidder. He contended that the Tenderer in question has not got the necessary experience of having performed two similar projects since no Maltese firm has ever completed similar projects. Thus it follows that the bidder who was chosen by the Contracting Authority for award was technically non-compliant.

Dr Christopher Mizzi on behalf of the Department of Contracts said that the Preferred Bidder had submitted information with the Tender that shows that the bid was being submitted by a consortium, the "Educational Leadership Consortium". Furthermore the clause requiring the registration of a consortium was not mandatory and thus the Evaluation Board had to consider the bid as a valid one by a consortium. This was a case where substance should prevail over form. The Contracting Authority had the discretion to either accept this or reject it and it was not mandatory.

Dr Adrian Delia for the Appellant explained that the Important Notice on the submission of e-Tenders, third paragraph says *"In the case where a person requires to submit a Tender on behalf of an entity, which may be an organization or Joint Venture/Consortium, the submission must be performed through the account of the entity. The latter must assign the person an account to perform the submission on its behalf, if the person is not already assigned. The entity will be considered as the economic operator submitting the Tender."* This paragraph was not written in the previous case involving a consortium and this means that for this Tender it is mandatory and allows no lee way and the account owner will be considered as the bidder.

Mr David Polidano ID No. 396970M, a member of the Evaluation Board, under oath said that although the Appellant had submitted a list of over 35 books, 22 journals, 10 policy documents and 6 websites it was assigned 1 point as per 2 a. iv because the submissions are used at the Sterling University for teacher education programme which is a pre-graduate programme. The Appellant did not provide any customized module customized for local use. The Contracting Authority wanted a programme to train trainers, i.e. teachers to train teachers and not pupils. The Appellant's submission targeted a different audience. The Tender required three elements: a) the implementation of outcomes and training context; b) development of trainers and c) required skills and approach for coaching teachers and there was no focus on these elements in the Appellant's reading list. The submission covered a lower level.

Dr Philip Bonanno, ID No 84959M under oath agreed that Appellant had submitted an

extensive reading list. In any of those books one can always find a relevant subject but the reading list had to be addressed to teacher training in the Maltese context. It had to cover the training of trainers and learning outcomes frameworks not literature on generic aspects. Appellant's list was more generic and not focussed on outcomes. There are more specific titles dealing specifically with Outcomes. The book 'A Guide to Teaching Practice' contains indirectly relevant themes but there are more focussed titles. He agreed that the Appellant had submitted a list of books. The Contracting Authority wanted training of trainers and not of teachers.

Mr David Polidano for the Contracting Authority replying to Dr Adrian Delia said that the Training Needs Analysis had to be made by the awarded bidder but the course had to be run concurrently and this is explained in the Tender Document. The course had to start and did not need for the analysis to be finished. Customization can only be effected to a certain extent. The course offered by Appellant was accredited and the modules are at SCQF level 9 and 10 this accreditation had to be MQF level 7. The marks awarded for 2a 4) reflect the fact that the module offered was not as the requested module. A module can be presented without waiting for the analysis.

Dr Adrian Delia for the Appellants referred to Section 2d (ii) and contended that his clients had complied but was only assigned 1 mark out of 2. The item refers to the click facility on the website wireframe. He insisted that the website offered by Appellant for example included a reading least for each lesson which was opened when the user clicked the button.

Dr Bonanno for the Contracting Authority explained that the web page had to contain a reading list for the module and a reading list for each lesson and users had to click on any of these to open the necessary reading list for further reading. The user needed to have a reading list of all the material to be used in the course. Individual lessons would then have other reading suggestions. Regarding 2d (iv) he explained that Appellant was not given full marks because the support provided was limited to the preliminary training in the use of moodle. The support service had to be provided throughout. Experience has shown that when users start using moodle is when difficulties arose.

Dr Richard Dockrell, Passport number 403326332, for the Appellant, under oath said that he was the Director of Learning and Research at Sterling University for 22 years. He worked previously in the Civil Service and in Research. He was directly involved in the preparation of the Tender for submission. Regarding point 1b (i) where the Appellant was given 0 marks for the extensive and exhaustive nature of the knowledge provided, he said that the University of Sterling teaches teachers for the Scottish sector where there is a national curriculum called 'curriculum for excellence'. All schools in Scotland have to deliver this curriculum and the University has a deep understanding of the requirements. About 1b (ii) he explained that the Scottish system has an evolving national curriculum. The more recent one has been approved and is being used in all schools. The latest innovation has been researched and is knowledge outcomes approach. There is no specific link to the Maltese development. He knows that learning outcomes approach is new to Malta. Regarding section 2a where the Appellant's Tender had been awarded 1 point each for all the items he said that the points were deducted because the items were not customized. He said that the customization was for the Scottish system because this was a generic module targeted at the teachers' needs the module is designed to teach teachers in Scotland. Appellant could not provide customized Modules for Malta because the Maltese context was not available – the required training needs analysis had not been provided.

On item (iv) for which Appellant was assigned 1 point out of a possible 3 he said that the reading list was explicitly compiled to support teaching teachers a learning outcomes

approach. There was no requirement to organize the list in a specific way as the Evaluation Board seem to have remarked. Regarding 2c where 1 point was assigned out of 2 he explained that the 2 schools targeted for visits were chosen because there the teachers are delivering learning outcomes approach. The report from the inspector of education in Scotland clearly details both schools to be delivering the curriculum for excellence and an outcomes approach. Both schools are good examples and are involved in an international eco-project. Replying to Dr Christopher Mizzi he said that the web link for the documents was included in the Appellant's Tender submission. A module can be both generic and specific. Teachers would have to adapt and develop their pedagogy, or how they teach. The same applies to all teachers whether they are in Scotland or in Malta. Case studies would be used to deliver the local context. This context would be obtained from the training needs analysis. Theoretically there is no difference between training of teachers or training trainers; in practice there would be. The processes are very similar but the pedagogy would be different. The module Appellant offered will train trainers of teachers.

Dr Adrian Delia for the Appellant reiterated that the latter obtained 78 marks from the required 80 marks. Thus only 2 marks kept Appellant from qualifying. Examination of the reading list alone would suggest that the two deducted marks should be awarded. On the strategy part it is evident that another 2 marks should have been awarded. Finally he referred to the submission of the Tender by the Preferred Bidder instead of by the consortium. He stressed that there was no leeway this time for the Evaluation Board since paragraph 3 of the first page of the Tender makes it clear that it is mandatory that the entity, economic operator in whose name the bid is made would be considered as the bidder.

Dr Christopher Mizzi for the Department of Contracts insists that the disqualification in this case was not mandatory but the latter has some discretion.

At this point the hearing was closed.

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**This Board,**

**Having noted the Appellant's objection, in terms of the "Reasoned Letter of Objection", dated 6th August 2015 and also through the Appellant's verbal submissions during the Public Hearing held on the 17th August 2015, had objected to the decision taken by the Pertinent Authority, in that:**

- a) **The Appellant contends that his offer was discarded as the Contracting Authority deemed that the offer did not reach the expected bench mark. In this regard, the Appellant claims that he has submitted all the details as requested in the Tender Document. As an example, the "Reading List" submitted was not**

**given any points by the Evaluation Committee;**

- b) The Appellant claims that whilst the Preferred Bidder was “Idea Management Consulting Services Ltd” and the “Letter of Rejection” states the same identity, the “Letter of Reply” was in the name of a consortium. The tendered bidder is definitely not in possession of the necessary experience as dictated in the Tender Document.**

**In this regard, the Appellant contends that the Preferred Bidder, namely, Idea Management Consulting Services, does not have the necessary experience in such projects, thus he should be deemed “Technically Non Compliant”;**

- c) The Appellant contends that the Third Paragraph of the “Important Notice” on the submission of E-Tenders states that when a person submits a tender on behalf of an entity, which may be an organisation or a “Joint Venture”, the submission of the Tender must be done through the account of the entity.**

**In this regard, the Appellant claims that this was not performed. The latter also maintains that in accordance with Paragraph 3 of the first page of the Tender Document, it is clearly indicated that economic operator in whose name the bid is made, would be considered as the bidder.**

**Having considered the Contracting Authority’s “Letter of Reply” and also the verbal submissions during the Public Hearing held on 17<sup>th</sup> August 2015, in that:**

- a) The Contracting Authority contends that although the Appellant did submit the “Reading List” and literature, these related to a “Teacher Education**

**Programme”. The Appellant, in this regard, did not provide a “Customised Module” for the requested Tendered Service. The Appellant’s submissions targeted a different section of educational services;**

- b) The Contracting Authority maintains that the Preferred Bidder did inform the Contracting Authority that the tendered service would be executed through a “Consortium”. In this regard, the Contracting Authority were well informed through the submission of the Tender Document.**

**Reached the following conclusions:**

- 1. With regards to the Appellant’s first grievance, this Board, after having examined the documentation and credible submissions made by the Contracting Authority, is justifiably convinced that the Tender Document dictated a “Customised Strategy” and the points awarded to the Appellant reflected this mandatory requirement.**

**The “Reading List” provided by the Appellant was of a “Generic” nature and not addressed to the local “Customised Module”. This Board, through the Contracting Authority’s Technical submissions is credibly convinced that the “Reading List” submitted by the Appellant referred to the training of teachers and not for a “Trainer Programme for the Trainer of Teachers.”**

**This Board also noted that although the “Reading List” submitted by the Appellant was exhaustive, it was credibly proven that it did not contain specific reference to the dictated tendered service, that is “Literature and Instructions for Training of Teachers”, on the module specified in the Tender Document.**

**This Board opines, that if the conditions of a tendered services are dictated to be “Locally Customised”, these conditions are to be explicitly moduled for the local requirements and not generalised. This Board justifiably contends that the Appellant’s submissions were not locally customised. In this regard, this Board does not uphold the Appellant’s first Grievance.**

- 2. With regards to the Appellant’s second and third grievances, this Board justifiably points out that in a previous case, the question of Identity of a bidder, was deeply annotated, in that, if a bidder submits a Tender in his own name and at the same time, the latter submits enough written proof that “should he be awarded the Tender, he will execute the Tender through a Consortium”, then the question of the Identity of the preferred bidder should not be contested.**

**In this particular case, the Preferred Bidder did in fact submit the name and identity of the partner through which a Consortium was being formed, should the Preferred Bidder is awarded the Tendered service. The Consortium’s name was “Educational Leadership Consortium”. This entity was communicated to the Contracting Authority from the beginning. In this regard, this Board upholds the Contracting Authority’s decision in accepting the Tender Submission.**

- 3. On a general perspective, this Board would respectfully point out, that this is a pure case of “Substance over Form”. So much so, that this Board justifiably contends the whole issue has been emphasised on the allocation of points and identity of the preferred bidder. This Board would like to address, (in brief form), these two issues as follows:**

i) **Allocation of Points**

The system of allocation of points by the Evaluation Committee has long been established and considered to be objective, due to the fact that marks are allotted by more than one person, so that an equitable average is determined. The fact, that the training system of the Appellant was “Generic” and not “Tailor Made” for the requirements of the Tender, did credibly, in fact, handicapped the Appellant’s offer.

With regards to the Appellant’s claim that, it was only for two (2) points that the Appellant’s bid failed the bench mark, this Board contends that the discrepancy of two (2) points is the resultant figure.

ii) **Identity of Preferred Bidder**

This Board, as in other occasions, has stressed the importance, that as long as the prospective bidder declares with his submissions that he will carry out the Tendered works through a “Consortium”, the latter is recognised. This Board has also affirmed that as long as all the details of the partner forming the Consortium are recognised, there exists an identity of such entity. In this regard, this Board justifiably confirms that the Preferred Bidder submitted his offer in the name of a Consortium. Substance over form should prevail.

**In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.**

Dr. Anthony Cassar  
Chairman

Dr. Charles Cassar  
Member

Mr. Lawrence Ancillieri  
Member

*1 September 2015*