

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1227 – MEDE/MPU/UOM/23/2018 – Tender for the Provision of Training Services- Standards and Management Courses**

#### **Call for Remedies before the Closing Date for Competition**

The publication date of the call for tenders was the 14<sup>th</sup> September 2018 whilst the closing date of the call for tenders was 16<sup>th</sup> October 2018. The estimated value of the tender (exclusive of VAT) was € 190,635.60

On the 8<sup>th</sup> October 2018, Tuning Fork Ltd filed a Call for Remedy against the University of Malta as Contracting Authority on the grounds that the specifications of the tender cannot be met.

On 30<sup>th</sup> October 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellants – Tuning Fork Ltd**

Mr Karl Grech	Representative
Eng. Joseph Caruana	Representative

#### **Contracting Authority – University of Malta**

Dr Oriella de Giovanni	Legal Representative
Mr Tonio Mallia	Representative
Ms Claire Saliba	Representative
Mr Robert Abdilla	Representative
Ms Mary Anne Borg	Representative
Ms Denise Spiteri	Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Mr Karl Grech, Representative of Tuning Fork Ltd, stated that his Company had many years experience in running auditing and training standards courses as requested in this tender. According to the tender it is required that courses have to be accredited by the National Council

for Higher and Further Education (NCHFE) – however none of these courses are so accredited therefore his Company is unable to compete.

Dr Oriella de Giovanni, Legal Representative of the University of Malta, begged to differ in so far as the tender was broadly worded allowing courses to be accredited through the European Qualification Framework (EQF) or the Malta Qualification Framework (MQF). These courses did not have to be accredited solely by the NCHFE.

Mr Grech said that the EQF and MQF were a level rating system for courses, whilst the tender requires accredited courses- they were not compatible.

Dr de Giovanni pointed out that the tender documents (Page 29 Section 9b) offered an ‘either or option’ and an NCHFE accreditation was not compulsory.

Engineer Joseph Caruana re-iterated that the Contracting Authority was mixing accreditation with level rating of courses and these were not interchangeable. All courses offered by Tuning Fork were already accredited by the International Register of Certificated Auditors (IRCA), and he suggested that the tender be amended to give the winning bidder time to obtain the NCHFE accreditation. As it stands the tender is asking for something that cannot be achieved.

Mr Robert Abdilla (286979M) testified on oath that he was the Leader of the Project. The tender requirement was that the institution has to offer courses either recognised by the NCHFE or through the EFQ. The scope of the training was that staff is made familiar with ISO and although the NCHFE accredits the ISO courses there are other avenues open to bidders as the tender offers options.

Mr Tonio Mallia, Representative of the University of Malta said that the course offered by Tuning Fork was ready and had already been delivered; it was accredited to EQF and MQF level and the latter as a Company were already licensed by the NCFHE – therefore there was no problem with their applying as they qualified to meet the tender requirements.

The Chairman thanked the parties for their submissions and declared the hearing closed.

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**This Board,**

**having noted this Call for Remedies filed by Tuning Fork Limited, (also referred to as the Appellants) before the Closing Date for Competition on 8 October 2018, refer to the contentions made by the same Appellants with**

**regard to the Tender of Reference MEDE/MPU/UOM/23/2018 issued by the University of Malta and listed as Case No 1227 in the records of the Public Contracts Review Board.**

**Appearing for the Appellants:**

**Eng Joseph Caruana**

**Mr Karl Grech**

**Appearing for the Contracting Authority:**

**Dr Oriella de Giovanni.**

**Whereby the Appellants contend that:**

- a) their main concern is that, due to the fact that the Tender required that courses have to be accredited by the National Council for Higher and Further Education (NCHFE), and none of these courses are so accredited, the Appellants are being precluded from participating and such conditions are also detrimental to the local Bidders. In this regard, the Appellants are suggesting that sufficient period of time is to be given by the Contracting Authority for the Appellants to obtain NCHFE Accreditation and thus be able to participate in this Tender.**

**This Board has also noted the Contracting Authority's "*Letter of Reply*" dated 15 October 2018 and its verbal submissions during the Public Hearing held on 30 October 2018, in that:**

a) **The University of Malta maintains that the condition stipulated in the Tender Document, which the Appellants are referring to, is broadly worded so that courses can be accredited through other sources apart from the NCHFE, and therefore the same clause does not limit or hinder competition, especially among local suppliers.**

**This same Board has also noted the testimony of the witness, namely, Mr Robert Abdilla who was duly summoned by the University of Malta.**

**This Board, after having examined the relevant documentation to this call for remedy and heard submissions made by the parties concerned, including the testimony of the witness, opines that the issue which deserves consideration is the interpretation of Section 9d, Page 29 of the Tender Document.**

**This Board would respectfully refer to Article (d) which states that:**

***“All courses are to be accredited to EQF or MQF Levels or by a competent body that is accredited by NCHFE.” (Emphasis added)***

**The above mentioned clause provides a choice of accreditation in that the courses can be accredited through the European Qualification Framework (EQF) or the Malta Qualification Framework (MQF). The courses do not have to be accredited solely by the NCHFE, and through the credible testimony of the witness, namely, Mr Robert Abdilla, this Board was made**

**aware that the Tender required that the Bidder had to offer courses that are either recognised by the NCHFE or through the EFQ.**

**During the submissions, this Board noted that Tuning Fork Limited offered courses which were ready and had already been delivered and accredited to EQF and MQF Level, apart from the fact that the Appellants were already licensed by the NCHFE. In this regard, this Board opines that the Appellants can participate in the tender as they meet the tender requirements.**

**In view of the above, this Board,**

- i) confirms that the condition as stated in Article 9d of Page 29 of the Tender Document does not, in any credible way, limit the participation of Tuning Fork Limited and other local prospective bidders;**
  
- ii) opines that the tendering procedure is to be continued without delay.**

Dr Anthony Cassar  
Chairman

Mr Carmel Esposito  
Member

Mr Lawrence Ancilleri  
Member

*1<sup>st</sup> November 2018*