



new information had to be submitted in the very short time available before the closing date of the tender and was unfair as TCTC had already made their submissions. The tender was extended further several times and now had a closing date sometime in March.

Dr Jonathan Spiteri Legal Representative for Jobsplus said that it was essential to extend the process. The requisite information was solely regarding the key experts, but when it was realised that the tender documents included all other experts a clarification was necessary. The terms of the tender were not changed they were simply aligned and the clarification cleared the mistake in the forms. The information submitted by the Appellants was still valid and his offer had not been disadvantaged.

Ms Amber Darmanin (43288M) called as a witness by the Contracting Authority testified on oath that she was the Project Leader in charge of the tender. She stated that the key expert form did not agree with the tender documents and should not have included also managers and tutors. When this was realised it was essential to issue a clarification note.

Mr Abela confirmed that the forms included in his submissions included all personnel as requested and the Contracting Authority should have stuck to the original deadline.

The Chairman mentioned that the issuing of clarifications should be done timeously and not left to the last minute. Having heard the submissions by both sides the Board was assured that the Appellant had not been disadvantaged by the issue of the clarification and his tender submission was still valid.

He then thanked both parties for their submissions and declared the hearing closed.

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**This Board,**

**having noted this “*Call for Remedies*” filed by The Computer Training Course Limited (TCTC), (hereinafter referred to as the Appellants) on 16 January 2019, refers to the contentions made by the same Appellants with regards to the Tender of Reference MEDE/MPU/JOBSPLUS/091/2018 listed as Case No 1268 in the records of**

**the Public Contracts Review Board and issued by the Ministry for Education and Employment.**

**Appearing for the Appellants:**

**Mr Ray Abela**

**Appearing for the Contracting Authority:**

**Dr Jonathan Spiteri**

**Whereby, the Appellants contend that:**

- a) their main concern is that they had submitted their offer a day before the stated deadline of 16 January 2018 and just before the closing date of submissions, the Contracting Authority issued a clarification, after the submission of the Appellants' bid. In this regard, the Appellants maintain that it was unfair that the requested information, via the clarification note contained new information which had to be submitted in a very short time, whilst, at the same instance, the Appellants' Bid was already submitted.**

**This Board has also noted the Contracting Authority’s “Reasoned Letter of Reply” dated 21 January 2019 and its verbal submissions during the Public Hearing held on 21 February 2019, in that:**

- a) the Contracting Authority maintains that the requested information, via the clarification note, related solely to the Key Experts and the terms and conditions of the Tender were not changed so that the clarification simply corrected a mistake in the related form. In this regard, the Contracting Authority confirmed that this alteration should not have an effect on the Appellants’ submitted offer.**

**This same Board has also noted the testimony of the witness, namely Ms Amber Darmanin, who was duly summoned by the Ministry for Education and Employment (Jobsplus).**

**This Board, having examined the relevant documentation to this “Call for Remedies” and heard submissions made by the interested parties, including the testimony of the witness, opines that the issue that merits consideration, is the submission of the Appellants’ offer prior to the issue of the clarification note by the Authority.**

**First and foremost, this Board regrettably notes that the clarification note was issued by the Contracting Authority late in the day: in fact, just prior to the**

**closing date of submissions. In this regard, this Board directs that such instances should be avoided.**

**This Board was made aware that the clarification sent by the Contracting Authority represented a correction, in the related form, concerning experts which erroneously included also managers and tutors. At the same instance, this Board was also informed by the Appellants that their offer included all the requested information, hence there is no missing information in the latter's submissions.**

**In this regard, this Board was also assured by the Contracting Authority that the Appellants' inclusion of additional information on managers and tutors will not place the Appellants' offer at any disadvantage during the Evaluation Stage.**

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

- i) directs that the Appellants' offer is valid and the additional information submitted by the same, should not have a negative effect during the Evaluation Process;**
  
- ii) directs that the tendering process is to be resumed and that the closing date for submissions is to be extended by the same number of days**

**indicated in the clarification note dated 15 January 2019, issued by the  
Contracting Authority**

Dr Anthony Cassar  
Chairman

Mr Carmel Esposito  
Member

Mr Lawrence Ancilleri  
Member

*27<sup>th</sup> February 2019*