

PUBLIC CONTRACTS REVIEW BOARD

Case 1607 – Call for Quotations – For the Provision of Psychological, Counselling and Family Therapy Services – VSA/040/2021

7th September 2021

The Board,

Having noted the reasoned application filed by Dr Marco Woods acting for the Malta Association of Psychotherapists, (hereinafter referred to as the appellant) filed on the 22nd April 2021;

Having also noted the letter of reply filed by Dr Alexander Scerri Herrera on behalf of Victim Support Agency (hereinafter referred to as the Contracting Authority) filed on the 3rd May 2021;

Having heard and evaluated the testimony of the witness Ms Lisa Sultana (Secretary of the Malta Association of Psychotherapy) as summoned by Dr Marco Woods acting for Malta Association of Psychotherapy.

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 24th August 2021 hereunder-reproduced.

Minutes

Case 1607 – VSA/040/2021. Call for Quotations for the Provision of Psychological, Counselling and Family Therapy Services.

Remedy before the Closing Date of a Call for Competition

The call was published on the 9th April 2021 and the closing date was the 23rd April 2021. The estimated value of the call was € 9,950.

On the 22nd April 2021 the Malta Association of Psychotherapists filed an appeal against the Victim Support Agency as the Contracting Authority objecting to the technical specifications as published in the call for quotations.

A deposit of € 400 was paid.

On 24th August 2021 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Mr Lawrence Ancilleri and Mr Richard Matrenza as members convened a public virtual hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellant – Malta Association of Psychotherapists

Dr Marco Woods

Legal Representative

Contracting Authority – Victim Support Agency

Dr Alexander Scerri Herrera

Legal Representative

Mr Brian Farrugia

Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then asked Appellant's representative to make his submissions.

Dr Marco Woods Legal Representative for the Malta Association of Psychotherapists (MAP) said that this appeal was filed on the basis of Regulation 262 of the Public Procurement Regulations (PPRs) and specifically in regard to the requirement for a family therapist which if accepted would lead to the concept that it is a speciality rather than a modality. The requirement of a specific psychotherapy modality in family therapy is thereby excluding certain warranted trained psychotherapists and is the cause for this objection.

Dr Alexander Scerri Herrera stated that this was not a case of discrimination but a specific requirement. There is a distinction between the modality of professions and there is a specific need for family therapists not general psychotherapists and this is an instance where one can ask for the necessary specialisation.

Ms Lisa Sultana (116978M) called as a witness by the Contracting Authority testified on oath that she is the Secretary of the Malta Society of Psychotherapy with a Masters qualification in the subject. She explained that there are different modalities in the way patients are treated. The technical specifications in the call for quotations should indicate the term family therapists since as drafted the tender allows the use of general psychotherapists without specialisation in any sphere. The concept of equivalence is missing and needs to be opened up. Witness stated that she had never worked or been in contact with the Victim Support Agency.

Dr Woods said that the argument just put forward justifies the appeal. The Psychotherapy Society feels that limiting choice militates against competition. Different modalities mean different approaches leading to the same result. It is not right that only family therapists can fulfil this role. The Contracting Authority in their letter of reply claim that the exclusion is based on their requirements and specific needs but the witness took a different line claiming that there are no limitations on modality which all lead to the same result. All psychotherapists can work on family therapy problems and the tender should be widened so as not to infringe the Public Procurement Regulations.

Dr Scerri Herrera said that the role should be dependent on qualifications and experience and a clarification should have been sought earlier to clear this point. Nowhere is the tender in conflict with the law and comparable experience and qualifications would still entitle participation. The Agency knows its requirements best and PCR Case 1589 supported the principle of specialisation.

Dr Woods stated that there may not be infringement of Regulations but the Agency was creating specialisation. The law talks about modality not specialisation and the argument is strengthened by the statement that the Authority will be relying on specialisation. All the appellant is asking is adherence to the PPRs by not creating specialisation and hence discrimination.

Dr Scerri Herrera concluded by saying that the University of Malta runs family therapists specialized courses and therefore modality is not equivalent to specialization.

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 24th August 2021.

Having noted the objection filed by Victim Support Agency (hereinafter referred to as the Appellant) on 22nd April 2021, refers to the claims made by the same Appellant with regards to the tender of reference VSA/040/2021 listed as case No. 1607 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Marco Woods

Appearing for the Contracting Authority: Dr Alexander Scerri Herrera

Whereby, the Appellant contends that:

- a) The Malta Association of Psychotherapists (MAP) hereby feels that the CFQ as published includes technical specifications which hinder open competition and thereby precludes several economic operators from competing in the said Call without any just reason
- b) In terms of Regulation 262 sub regulation (c) and (d) of the Public Procurement Regulations, the Appellant submitted a reasoned application before the closing date of the CFQ.
- c) The CFQ, as drafted and issued, is in violation of the law and/or is likely to violate if continued, as inter alia it is preventing the promotion of fair competition and is further liable to distort competition.
- d) The technical specification in dispute is that concerning Family Therapy Services since the requirement specifically indicates a Family Therapist in possession of a Masters' Degree at MQF Level 7 in Family Therapy. This requirement limits competition by precluding psychotherapists from eligibility to bid for the services relating to psychotherapy.
- e) That the requirement in dispute ought to be altered to read the following: "Psychotherapist – In possession of a Masters' Degree at MQF Level 7 (subject to a minimum of 120 ECTS credits or

equivalent), in a specific psychotherapeutic modality and is a registered psychotherapist having a warrant to exercise the profession of a psychotherapist.”

- f) The services required are those of psychotherapy which are offered by a Psychotherapist, who holds a warrant to exercise the profession of a Psychotherapist. For clarity's sake Family Psychotherapy is a particular psychotherapeutic modality, rather than the profession of Psychotherapy.
- g) The specific requirement requiring a Master's Degree in a specific psychotherapeutic modality of Family Therapy is thereby excluding warranted psychotherapists who have undergone training in another psychotherapeutic modality from competing in this Call for Quotations, thereby breaching the fundamental principles sought to be protected by the Public Procurement Regulations, including but not limited to fair and open competition, lack of discrimination, transparency and the principles of proportionality and fairness.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 3rd May 2021 and its verbal submission during the virtual hearing held on 24th August 2021, in that:

- a) On analysing the requirements of the CFQ, it would be wrongful to assume that simply because the Contracting Authority is requesting a generic Psychologist and Counsellor, then automatically one cannot request a specialist Psychotherapist with academic qualification in Systemic/Family psychotherapy. The services which the Authority requires presently are limited to the niche area of Systemic/Family Psychotherapy.
- b) When referring to Chapter 587 – Psychotherapy Profession Act, it is interesting to note that the legislation itself makes a distinction between the different modalities of psychotherapy as was quoted by the Applicant, therefore the different specialisation and masters available is indicative of the fact that not all psychotherapists serve the same purpose.
- c) The wording of the Appeal suggest that a Contracting Authority is not justified in requesting a specialised service provider. Prior to reaching a conclusion in this regard, one must analyse the needs and the resources available to the contracting authority to see whether the CFQ is reasonable and justified. The CFQ is based on the requirements and necessities of the Contracting Authority and no entity private or public is better positioned to dictate the needs of the Contracting Authority. The reason why general psychotherapists are excluded from the call arises from the fact that currently the Contracting Authority's requirements are limited to that of a systemic/family psychotherapist.
- d) The Association was correct wherein it stated that “the specific requirement requiring a Master's Degree in a specific psychotherapeutic modality of Family Therapy is thereby excluding warranted psychotherapists who have undergone training in another psychotherapeutic modality form

competing in this Call for Quotations.” However, such exclusion is not being done capriciously, but based on the requirements and specific needs of the Contracting Authority.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will consider Appellant’s grievances, as follows:

- a) Reference is made to the testimony under oath of Ms Lisa Sultana, whereby she explained that there are different modalities in the way patients are treated. However different modalities mean different approaches leading to the same result. Hence, they are not to be treated as specialisations.
- b) In this regard the Board opines that the wording used in the Call for Quotations “CfQ” Section C 2b) “Family Therapist – in possession of a Masters’ Degree at MQF Level 7 (subject to a minimum of 60 ECTS / ECVET credits or equivalent), in Family Therapy or a comparable professional qualification and a recognised warrant” is deemed to be ambiguous. It is deemed to be preventing the promotion of fair competition.
- c) With regards to the suggested altered wording as proposed by the Appellant (refer to point E of Appellant contentions), reference is also made to Chapter 587 of the Laws of Malta, article 3 (3)(e) whereby it states “has obtained, to the satisfaction of the Board, training in a specific psychotherapeutic modality for a period of not less than three thousand (3,000) hours, or its equivalent of one hundred and twenty (120) ECTS, which is equivalent to a Master’s degree issued by a higher education institution.” This Board opines that the wording of the CfQ is also ambiguous where it makes reference to a ‘minimum of 60 ECTS credits or equivalent’, when Chapter 587 refers to 120 ECTS credits.

Finally, this Board upholds the Appellant’s grievances.

In conclusion this Board;

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) To uphold the Appellant's concerns and grievances;
- b) To order the contracting authority to modify, amend and/or vary the CfQ such that the Family Therapist Requirement is removed and replaced by that of Psychotherapist;
- c) after taking all due consideration of the circumstances and outcome of this reasoned application, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain
Chairman

Mr Richard Matrenza
Member

Mr Lawrence Ancilleri
Member