

FILLETTI & FILLETTI

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Transport Malta
Transport Malta Centre
Xatt l-Ghassara tal-Gheneb
Marsa

5th November 2014

To whom it may concern,

Appeal from Tender:

Leadership Development Programme for Transport Malta Senior Management
Ref No: TM 015/2014

I am instructed to write on behalf of Dr Silvio De Bono in his own name and on behalf of IDEA Management Consulting Services Ltd of 15, Triq it-Torri Rabat, RBT 2301.

Reference is made to email dated 5th November, 2014 send by Chris Gravino (Doc 1 attached) informing client that his bid was refused because:

Further to your submission of the 23rd May 2014 and the evaluation process, we regret to inform you that your bid in connection with the above tender has not been accepted by Transport Malta since the bid was technically non complaint, because Key Expert being proposed is employed with a government entity of the beneficiary country and cannot be recruited as experts, as per instruction to tenderers clause 6.1.2

As per same email this Appeal has to be filed by 12th November with Transport Malta with a deposit of € 400 (being paid together with this appeal).

An appeal is being lodged from said decision.

Grounds of Appeal

The reason the Evaluation Committee excluded client's bid was the fact that Dr Silvio De Bono holds a resident part-time TR4 senior lecturer post at the University of Malta. It therefore would seem that given that Dr Silvio De Bono is a part-time



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senior lecturer meant that the Evaluation Committee concluded, erroneously, that the bidder was a “employed with a government entity of the beneficiary country” and was consequently non compliant as per instructions to tenderers clause 6.1.2.

This decision is wrong in fact and AT LAW.

Holding a lecturership with the University DOES NOT MAKE A LECTURER A PUBLIC OFFICER or a Government/State Employee! This principle has long been established by the PCRB and our local courts.

Reference is made to **PriceWaterhouse Coopers vs Department of Contracts** wherein it was clearly decided that a lecturer is not a public officer. In other words holding a post of lecturer (full-time) let alone a part-time post DOES NOT MAKE ONE A PUBLIC OFFICER or GOVERNMENT EMPLOYEE.

Similarly the PCRB in a recent decision only a few weeks ago in an appeal **filed by client** in the case **Silvio Debono vs NPCE** (copy herewith attached Doc 3), it was held that holding post of lecturer at the University does not make one a Public Officer or a State Employee, it held that,

1. This Board opines, that the principle in question has long been established, both by the Public Contracts Review Board as per decision taken on Case No 263 on 7 March 2011 and also by the Court of Magistrates as per decision taken on 2nd December 2013. In the latter instance, it was clearly stated by the HonCourt that, "A dean of a Faculty of the University of Malta cannot be deemed to be a public officer". In this regard, this Board upholds the decision taken on 7th March 2011 by the same Board;

2. This Board opines that without going into repetitive details, which in any case, were pronounced in previous decisions regarding the same contention, both by the Hon. Court of Magistrates and The Public Contracts Review Board, a brief overview of the decisions taken in this case's regard, would perhaps reaffirms this Board's decision that:

- i) The University of Malta is an 'Autonomous Educational Institution';*
- ii) The Government has no effective control over the University of*



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Malta;

iii) The University of Malta is regulated through its Council in all areas, such as recruitment, promotion and discipline.

In view of the above, it follows that the Key Expert Submitted by the Appellant is not a public servant and thus this Board finds in favour of the Appellant and recommends that:

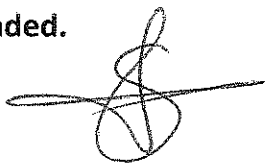
- i) Appellant's offer is to be integrated in the evaluation process;*
- ii) The deposit paid by the Appellant should be reimbursed*

Reference is also made to the case ***Il-Pulizija vs Glanville Goodlip*** wherein it was decided that a Head of Department and senior lecturer at the University of Malta IS **NOT A PUBLIC OFFICER**. These original judgments together with a signed declaration from the Administration of the University of Malta will be formally exhibited during the review/appeal hearing when appointed.

For the above reasons it is abundantly clear that the Evaluation Committee was completely wrong when it excluded Appellant from the tendering process deeming him to be administratively non-compliant because he was an "employee of a government entity or of the beneficiary Government" simply because he hold a part-time lectureship with the University of Malta.

It is therefore clear that the exclusion of appellant's bid is **TOTALLY** wrong and incorrect. It is based on a wrong assumption and conclusion. Appellant is sure that his tender based on MEAT criteria is the **MOST FAVOURABLE**.

For this reason Dr Silvio De Bono is in his own name and on behalf of IDEA Management Consulting Services Ltd formally requesting that his bid be re-evaluated together with the other bids and the evaluation process of all bids undertaken once more. Furthermore he requests that the deposit paid be refunded.



Dr Stefano Filletti



Doh 1.

Subject: Fw[2]: Notification Letter re TM 015/2014
From: "Stefano" <stefano.filletti@gmail.com>
Sent: 11/11/2014 15:23:01
To:

----- Forwarded message -----

From: **Tenders at Transport**<tenders.tm@transport.gov.mt>
Date: Wed, Nov 5, 2014 at 11:12 AM
Subject: Notification Letter re TM 015/2014
To: "silvio@ideamalta.com" <silvio@ideamalta.com>

5th November 2014

Notification Letter

Call for Tender

Leadership Development Programme for

Transport Malta Senior Management

Ref No: TM 015/2014

Dear Dr. S De Bono,

Further to your submission of the 23rd May 2014 and the evaluation process, we regret to inform you that your bid in connection with the above tender has not been accepted by Transport Malta since the bid was technically non compliant, because Key Expert being proposed is employed with a government entity of the beneficiary country and cannot be recruited as experts, as per instruction to tenderers clause 6.1.2

The recommended bidder for this call is Allied Consultants being the most economically advantageous tender for the total amount of €9,830.00 including Vat.

The appeals period for this call for tenders must follow the provisions laid down in the Public Procurement Regulations (Legal Notice 296/2010). The deadline for filing a notice of objection is Wednesday, 12th November 2014 by 12:00 Hrs (local time) together with a deposit of €400.00

Regards,


Chris Gravino



Malta Transport Centre

Marsa, MRS 1917

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 chris.gravino@transport.gov.mt

Regards,

Chris Gravino



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