

FILLETTI & FILLETTI

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

25th September 2014

To whom it may concern,

Appeal from TENDER: Ref No: TM 017/2014

Tender for the provision of Customer Care Skills Level 1 ,2 and 3

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 your email dated 25th September 2014 (Doc 1 attached) informing client that his bid was refused because:

Further to your submission of the 16th 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 administratively non compliant as per clause 16.1 (d) (i) because expert 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 email dated 25th September 2014 and email dated 29th September (Doc 2 herewith attached) this Appeal had to be filed by 2nd October with Transport Malta with a deposit of € 400 (being paid together with this appeal).

An appeal is being lodged from said decision.



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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 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 clause 16.1(d)(i) and 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 Hon Court 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;



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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 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 Dr Silvio De Bono'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**.



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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



Doc 2

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

From: **Silvio De Bono** <silviodebono@gmail.com>

Date: Thursday, September 25, 2014

Subject: Notification Letter re TM 017/2014

To: Tenders at Transport <tenders.tm@transport.gov.mt>, Piscopo James at Transport <james.piscopo@transport.gov.mt>

To whom it may concern.

I refer to this e mail. Allow me to inform you that in am not a public officer. A recent decision was recently taken by the contracts appeals board. I will be appealing this decision.

Thanks and regards
Silvio

On Thursday, September 25, 2014, Tenders at Transport <tenders.tm@transport.gov.mt> wrote:

25th September 2014

Notification Letter

Call for Tender

Tender for the provision of Customer Care Skills

Level 1 ,2 and 3

Ref No: TM 017/2014

Dear Dr. S. De Bono,

Further to your submission of the 16th 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 administratively non complaint as per clause 16.1 (d) (i)

because expert 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 as per below table:

Lot No	Recommended Bidder	Amount
1	Misco Consultancy Ltd	€5,310.00
2	Misco Consultancy Ltd	€3,687.50
3	Misco Consultancy Ltd	€4,130.00

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 Thursday, 2nd October 2014 by 12:00 Hrs (local time) together with a deposit of €400.00

Regards,

Chris Gravino



Marsa, MRS 1917

Malta

☎ (356) 2291 4598

🌐 www.transport.gov.mt

✉ chris.gravino@transport.gov.mt

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Dr. Silvio De Bono DBA
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Mobile + 356 79476978
skype: dr.silvio.de.bono

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Dr. Silvio De Bono DBA
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Dec 2

Subject: RE: Fw[2]: Notification Letter re TM 017/2014
From: "Tenders at Transport" <tenders.tm@transport.gov.mt>
Sent: 29/09/2014 13:49:13
To: "Stefano" <stefano.filletti@gmail.com>

Dear Dr. Filletti,

Appeal together with payment for appeal are to be filed at Procurement Office Level 4, Transport Malta, Malta Transport Centre, Xatt I-Ghassara tal-Gheneb, Marsa by Thursday, 2nd October 2014 by 12:00 Hrs (local time).

Regards,

Chris Gravino



From: Stefano [<mailto:stefano.filletti@gmail.com>]
Sent: 29 September 2014 13:18
To: Tenders at Transport
Cc: DeBono, Silvio
Subject: Fw[2]: Notification Letter re TM 017/2014

Dear Sirs,

reference is made to the this notification.

Can you confirm WHERE appeal is to be filed by 2nd October.

Best regards

Dr Stefano Filletti

Filletti & Filletti Advocates

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Consulate: fillettiadvocates.com/consular-services.html

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25th September 2014

**Notification Letter
Call for Tender**

**Tender for the provision of Customer Care Skills
Level 1,2 and 3**

Ref No: TM 017/2014

Dear Dr. S. De Bono,

Further to your submission of the 16th 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 administratively non compliant as per clause 16.1 (d) (i) because expert 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

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Regards,

Chris Gravino



Malta Transport Centre
Marsa, MRS 1917
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PUBLIC CONTRACTS REVIEW BOARD

Case No. 731

DT-NCPE 05/2014: Tender for the Provision of Training Services and Seminar.

The tender was published on the 24th January 2014. The closing date was the 17th February 2014. The estimated value of the Tender was €25,000 (Exclusive of VAT)

On the 3rd July 2014 IDEA Management Consulting Services Limited filed a letter of objection objecting to the disqualification of their tender because their Key Expert was a Public Officer.

Six (6) bidders had participated in this 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 Tuesday the 2nd September 2014 to discuss the objection.

Present for the hearing were:

IDEA Management Consulting Services Limited - Appellants

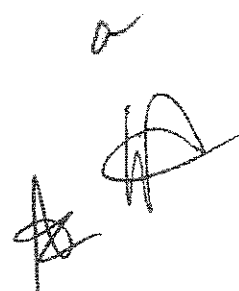
Dr Silvio Debono Representative

Outlook Coop - Preferred Bidder

No representatives were present

National Commission for the Promotion of Equality - Contracting Authority

Ms Therese Spiteri	Chairperson Evaluation Board
Mr Thomas A Muscat	Secretary Evaluation Board
Mr Edmond Apap	Member Evaluation Board
Mr Vince Muscat	Member Evaluation Board
Ms Kathleen Sammut	Member Evaluation Board
Ms Renee Laiviera	Commissioner
Dr Peter Fenech	Legal Representative



The Chairman made a brief introduction and explained that the Board has already given previous decision wherein it was held that University of Malta Lecturers are not to be considered as Public Servants since the University is an autonomous body.

At this point Dr Peter Fenech on behalf of the contracting authority stated that he had filed a note on behalf of the contracting authority wherein the said authority stated that it recognized that it has already been decided before by this Board and its predecessor that University of Malta employees are not to be regarded as civil servants and remitted itself to the Board's decision.

Dr Silvio Debono on behalf of the appellant stated that he was disillusioned by the tender process because, when appellant was asked to clarify the point of public officers, he had clearly explained that albeit he a lecturer at the University of Malta, he was not a public officer. In fact lecturers even had a collective agreement which specifically states this.

At this point the hearing was closed.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 3rd July 2014 and also through Appellant's verbal submissions during the hearing heard on 2nd September 2014, had objected to the decision taken by the pertinent Authority, in that:

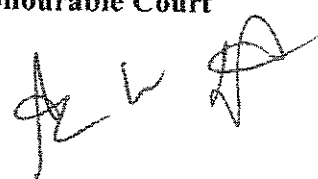
- a) Appellant's bid was discarded due to the fact that, the 'Key Expert' of the proposed tendered project, was not eligible to participate, due to the fact that same Key Expert was employed by the University of Malta and thus considered to be a Civil Servant. This is not in conformity with the parameters of the qualifications of a public tender;**
- b) Various decisions were delivered by the Courts and the Public Contracts Review Board, that Lecturers, whether Part Time or Full time are not to be considered as Public Officers and as such same are not to be considered as Civil Servants.**

Having considered the Contracting Authority's written submission via letter dated 29th July 2014, submitted by the Legal Advisor of the Contracting Authority, in that:

- a) The Contracting Authority confirms that in lieu of the various deliberations delivered by the Public Contracts Review Board, this matter has been decided upon, in that, 'University of Malta Employees' are not to be considered as 'Civil Servants'.**

Reached the following conclusions:

- 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 Honourable Court**



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;

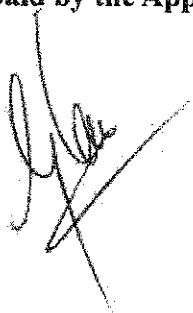
2. This Board opines that without going into repetitive details, which in any case, were pronounced in previous decisions regarding the same contention, both by the Hon. Court of Magistrates and The Public Contracts Review Board, a brief overview of the decisions taken in this case's regard, would perhaps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

- i) The University of Malta is an 'Autonomous Educational Institution';
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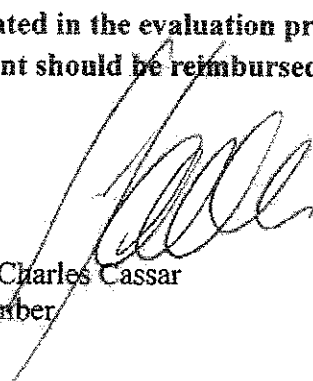
In view of the above, it follows that the Key Expert Submitted by the Appellant is not a public servant and thus this Board finds in favour of the Appellant and recommends that:

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

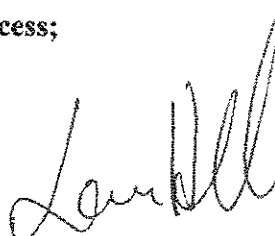
Dr. Anthony Cassar
Chairman



Dr. Charles Cassar
Member



Mr. Lawrence Ancillieri
Member



12 September 2014