

1st December 2014

The Procurement Unit, Level 4,

Malta Transport Centre,

Xatt l-Ghassara tal-Gheneb,

Marsa

Complaint by Economic & Management Consultancy Services Ltd

Notice of Objection

**Tender for the Provision of Information Sessions and Organisation of Study Units on EU
Affairs eCT3115/2014**

Whereas, Economic & Management Consultancy Services Ltd (hereinafter 'The Complainant') participated in the above-captioned tender;

Whereas, by means of a notification dated 25th November 2014, Complainant was informed that the offer was refused as it was not in accordance with Article 7.1B(ii) of the Instructions to Tenderers (vide copy attached and marked as EMCS1);

Whereas, Complainant feels aggrieved by the decision and submits the following appeal by virtue of the tender document and the Public Procurement Regulations within the required time-frame and together with the required deposit of €550 on the following grounds;

- 1. Lecturer at the University of Malta is not a Public Officer and/or Employee of the Government.**

The Complainant was found to be administratively not compliant as the Key Expert Project Coordinator Mr.Stefano Mallia was a visiting lecturer at the University of Malta. The Complainant firstly contests this reason for refusal as the University of Malta is an autonomous and independent institution and its employees cannot be considered as Public Officers or persons employed with the Government. This reasoning can be confirmed by various decisions given by this same Board where it was confirmed that a lecturer at the University of Malta is not a Public Officer.

In A Public Contracts Review Board decision dated 18th November 2014, the Board made reference to a decision given by the Court of Magistrates on the 12th of September 2013 which held that '*A Head of Department and senior Lecturer at the University of Malta is not a Public Officer*'¹

Reference is also being made to another decision by this Board dated 12th September 2014² where similarly to the present objection; the Appellant's bid was discarded due to the fact that the 'Key Expert' was employed by the University of Malta. The Board took cognizance of the Appellant's submissions stating that: '*University of Malta lecturers, whether part time or full time are not to be considered as Public Officials and as such same are not to be considered as Civil Servants;*' and of the Contracting Authority's submissions stating that University of Malta employees are not to be considered as civil servants and decided the following;

'...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...'

2. Mr.Stefano Mallia was not a Visiting Lecturer when the Tender was submitted.

In any case, it is to be noted that during the submission of the tender, Mr.Mallia had already terminated his employment as a visiting lecturer within the University of Malta as can be confirmed from the attached letter signed by the Director of Human Resources Ms. Jacqueline Fenech, a copy of which is hereby being attached and marked as EMCS2.

¹ Case no.757 TM 017/2014 Tender for the Provision of Customised training Courses in Customer Case Skills Level 1, 2 and 3.

² Case no. 731 DT-NCPE 05/2014: Tender for the Provision of Training Services and Seminar.

Henceforth, and in the light of the above quoted decisions confirming that the Complainant's bid was incorrectly refused by the Director General (Contacts) Complainant requests that:

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- i. The decision to exclude same and to award the tender to a third party be deemed null and void; and
 - ii. It is re-integrated within the adjudication process; and
 - iii. The deposit paid to institute this appeal is reimbursed in its entirety or *de minimis* order that in terms of Article 21 of LN 174.04 governing Public Procurements, the deposit paid to issue this objection should have been in the amount of €400 and therefore order the restitution of the over-payment.

Complainant is hereby reserving the right to present further evidence and submissions at the hearing of the present complaint.



Dr. Adrian Delia LL.D

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Notre Dame Ravelin
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DEPARTMENT OF CONTRACTS
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25th November 2014

Economic & Management Consultancy Services Ltd

REFERENCE: eCT3115/2014

SUBJECT: Tender for the Provision of Information Sessions and Organisation of Study visits on EU Affairs

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the tender submitted by your company was found to be administratively not compliant as follows:

Tender ID	Tenderer name	Reason
18509	Economic & Management Consultancy Services Ltd	Key Expert Project Coordinator nominated is a visiting lecturer at the University of Malta. Article 7.1 B(ii) 2 of the Instructions to Tenderers specifies that ' <i>Public officers and employees of government agencies and government entities of the beneficiary country, cannot be recruited as experts</i> '.

The criteria for award of this tender was the cheapest priced offer satisfying the administrative and technical criteria.

The tender was recommended for award to TID18097 Nexia BT Advisory Services Ltd for the price of €19,470.00 including VAT.

The decision has been published and is subject to any official objection to the recommended award being submitted at the Corporate Services Directorate Transport Malta, The Procurement Unit, Level 4, Malta Transport Centre, Xatt L-Ghassara tal-Gheneb, Marsa by noon of Tuesday 2nd December 2014.

Yours sincerely,


Anthony Cachia
Director General (Contracts)

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Msida - Malta
UFFIĊĊJU GHAT-TMEXXJA
U L-IŻVILUPP TAR-RIZORSI UMANI



UNIVERSITY OF MALTA
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MANAGEMENT & DEVELOPMENT

TO WHOM IT MAY CONCERN

This is to certify that Mr Stefano Mallia (ID Card No: 546371 M) is not currently employed with the University of Malta. The termination date of his casual contract was the 30th September 2013.

Jacqueline Fenech – Director for Human Resources
Management & Development

26.11.14

Date

Ms Jacqueline Fenech
Director for Human Resources
Management and Development