

The Chairman made a brief introduction wherein he referred to previous decisions taken on the subject matter of the letter of objection. He also referred to a recent circular issued by the Department of Contracts wherein contracting authorities had been instructed to amend the templates for tenders by omitting the relevant clause referring to employees of government agencies and entities recruited as experts. A copy of this circular was handed out to all the parties present. The Chairman also indicated that the Board's decision would be in line with the previous decisions.

Dr Silvio De Bono for the appellant declared that he wanted to state that this was the 4th case in which the appellant had been disqualified. He stated that on the 2nd December 2014, a Transport Malta employee had phoned him and asked him to withdraw the present objections. Yesterday, he received a judicial letter informing him that these cases are being followed through. The contracting authority had offered to reimburse the deposit paid when making the objection. He wanted to know the real position.

The Chairman explained that the directive had now been issued and contracting authorities had now to comply with the directive.

Dr Silvio De Bono continued that this Board had recorded a very important principle and he was pleased to have contributed to have this principle accepted through the various objections.

Mr Anselmo Bugeja on behalf of the preferred bidder wanted to know more about the directive and was handed a copy. He agreed that University Lecturers should not be excluded from providing their knowledge.

The hearing was at this point brought to a close.

This Board

Having noted the Appellant's Objection, in terms of the "Reasoned Letter of Objection" dated 12th November 2014 and also through the Appellant's verbal submissions during the hearing held on the 20th January 2015, had objected to the decision taken by the pertinent Authority in that:


- a) The appellant contends that this was the fourth time that he had to file an appeal on the grounds that, since he was a University lecturer, he was disqualified to act as a key expert, as the Contracting Authority maintained that University lecturers are public officials.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 20th January 2015, in that:

- a) Although the Contracting Authority agrees that University lecturers should not be excluded from practising their expertise, the Evaluation Committee was only following directives given to it.**

Reached the following conclusions:

- 1. This Board upholds the Appellant's contentions and its previous decisions on this**

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issue. This Board also points out that on the 13th January 2015, the Department of Contracts issued a circular called "Procurement Policy No. 11" clearly stating that the clause "Public Officers and Employees of Government Agencies and Government entities of the Beneficiary Country cannot be recruited as Key Experts" is being deleted with immediate effect so that University lecturers are not excluded from practising the role of "Key Experts";

2. This Board would also refer to the above mentioned directive issued by the Department of Contracts wherein it is clearly laid out that such assignments are allowed provided that there exist no conflict of interests.

In view of the above, this Board finds in favour of the appellant company and recommends that:

- i) The Appellant's offer is to be reintegrated in the Evaluation Process;
- ii) The deposit paid by the Appellant is to be reimbursed.

Dr Anthony Cassar
Chairman



Dr Charles Cassar
Member



Mr Richard A. Matrenza
Member



28 January 2015