PUBLIC CONTRACTS REVIEW BOARD

Case 1268 – MEDE/MPU/Jobsplus/019/2018 –Tender for the Provision of ICT Summer Courses 2019 (Youth Guarantee)

Call for Remedies before the Closing Date for Competition

The publication date of the call for tenders was the 27^{th} December 2018 whilst the closing date of the call for tenders was 16^{th} January 2019 extended to 15^{th} February 2019. The estimated value of the tender (exclusive of VAT) was \in 70,000 plus potential cost of \in 21,000.

On the 16th January 2019, The Computer Training Course Ltd filed a Call for Remedy against the Ministry for Education and Employment as Contracting Authority requesting that the tender proceeds normally on the original terms and conditions.

On 21st February 2019 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Mr Carmel Esposito and Mr Lawrence Ancilleri as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

Appellants – The Computer Training Course Ltd (TCTC)

Mr Ray Abela Representative

Contracting Authority – Ministry for Education and Employment (Jobsplus)

Dr Jonathan Spiteri Legal Representative

Mr David Bonello

Ms Amber Darmanin

Ms Mathea Formosa Gauci

Ms Joanna Sillato

Ms Sylvana Tirchett

Representative

Representative

Representative

Dr Anthony Cassar, Chairman of the Public Contracts Review Board, welcomed the parties and invited submissions.

Mr Ray Abela Representative of TCTC stated that he was the Director of the Appellant Company and that he had submitted their tender by the stated deadline of 16th January 2019. He had prepared the documents one day before the closing date and uploaded them. Late on the day before the closing date MEDE issued a clarification changing the conditions regarding information to be submitted about experts intended to be used in the delivery of the courses. The

new information had to be submitted in the very short time available before the closing date of the tender and was unfair as TCTC had already made their submissions. The tender was extended further several times and now had a closing date sometime in March.

Dr Jonathan Spiteri Legal Representative for Jobsplus said that it was essential to extend the process. The requisite information was solely regarding the key experts, but when it was realised that the tender documents included all other experts a clarification was necessary. The terms of the tender were not changed they were simply aligned and the clarification cleared the mistake in the forms. The information submitted by the Appellants was still valid and his offer had not been disadvantaged.

Ms Amber Darmanin (43288M) called as a witness by the Contracting Authority testified on oath that she was the Project Leader in charge of the tender. She stated that the key expert form did not agree with the tender documents and should not have included also managers and tutors. When this was realised it was essential to issue a clarification note.

Mr Abela confirmed that the forms included in his submissions included all personnel as requested and the Contracting Authority should have stuck to the original deadline.

The Chairman mentioned that the issuing of clarifications should be done timeously and not left to the last minute. Having heard the submissions by both sides the Board was assured that the Appellant had not been disadvantaged by the issue of the clarification and his tender submission was still valid.

He then thanked both parties for their submissions and declared the hearing closed.

This Board,

having this "Call for Remedies" filed noted by The Computer Training Course Limited (TCTC), (hereinafter referred to as the Appellants) on 16 January 2019, refers to the contentions made by the same **Appellants** with regards to the **Tender** of Reference MEDE/MPU/JOBSPLUS/091/2018 listed as Case No 1268 in the records of the Public Contracts Review Board and issued by the Ministry for Education and Employment.

Appearing for the Appellants:

Mr Ray Abela

Appearing for the Contracting Authority:

Dr Jonathan Spiteri

Whereby, the Appellants contend that:

a) their main concern is that they had submitted their offer a day before the stated deadline of 16 January 2018 and just before the closing date of submissions, the Contracting Authority issued a clarification, after the submission of the Appellants' bid. In this regard, the Appellants maintain that it was unfair that the requested information, via the clarification note contained new information which had to be submitted in a very short time, whilst, at the same instance, the Appellants' Bid was already submitted.

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This Board has also noted the Contracting Authority's "Reasoned Letter of Reply" dated 21 January 2019 and its verbal submissions during the Public Hearing held on 21 February 2019, in that:

a) the Contracting Authority maintains that the requested information, via the clarification note, related solely to the Key Experts and the terms and conditions of the Tender were not changed so that the clarification simply corrected a mistake in the related form. In this regard, the Contracting Authority confirmed that this alteration should not have an effect on the Appellants' submitted offer.

This same Board has also noted the testimony of the witness, namely

Ms Amber Darmanin, who was duly summoned by the

Ministry for Education and Employment (Jobsplus).

This Board, having examined the relevant documentation to this "Call for Remedies" and heard submissions made by the interested parties, including the testimony of the witness, opines that the issue that merits consideration, is the submission of the Appellants' offer prior to the issue of the clarification note by the Authority.

First and foremost, this Board regretfully notes that the clarification note was issued by the Contracting Authority late in the day: in fact, just prior to the

closing date of submissions. In this regard, this Board directs that such instances should be avoided.

This Board was made aware that the clarification sent by the Contracting Authority represented a correction, in the related form, concerning experts which erroneously included also managers and tutors. At the same instance, this Board was also informed by the Appellants that their offer included all the requested information, hence there is no missing information in the latter's submissions.

In this regard, this Board was also assured by the Contracting Authority that the Appellants' inclusion of additional information on managers and tutors will not place the Appellants' offer at any disadvantage during the Evaluation Stage.

In view of the above, this Board,

- i) directs that the Appellants' offer is valid and the additional information submitted by the same, should not have a negative effect during the Evaluation Process;
- ii) directs that the tendering process is to be resumed and that the closing date for submissions is to be extended by the same number of days

indicated in the clarification note dated 15 January 2019, issued by the Contracting Authority

Dr Anthony Cassar Chairman Mr Carmel Esposito Member Mr Lawrence Ancilleri Member

27th February 2019