

PUBLIC CONTRACTS REVIEW BOARD

Case No. 691

MEAIM 14/001

Tender for the Provision of Services for the Drafting of the ex-Ante Evaluation of Malta's Material Assistance Operational Programme as Defined by the Draft Regulation for the Fund for European Aid to the Most Deprived.

The tender was published on the 11th February 2014. The closing date was the 14th March 2014.

The estimated value of the Tender was €20,000 (Exclusive of VAT).

Three (3) bids had been received for this tender.

On the 10th April 2014 Ernst and Young Limited filed an objection against the rejection of its offer in this tender that has been cancelled.

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 29th April 2014 to discuss the objection.

Present for the hearing were:

Ernst and Young Limited - Appellant

Dr Robert Attard	Director
Mr Chris Meilak	Representative

Ministry for European Affairs and Implementation of the Electoral Manifesto-Contracting Authority

Mr Etienne Bonello	Chairperson Evaluation Board
Ing. Anthony Camilleri	Representative
Ms Juliet Calleja	Member Evaluation Board
Ms Donna Borg Micallef	Member Evaluation Board

After the Chairman made a brief introduction the appellant's representative was invited to make his submissions on the objection.

Dr Robert Attard on behalf of the appellant referred to the letter of objection where the grievances were listed and said that appellant's offer had been rejected because the evaluation board stated that no evidence had been submitted to show that the Key Experts being proposed by appellant were in possession of O levels in English and Maltese. The appellant's tender submission, he contended, had CVs that showed that these key experts had University qualifications and therefore it was implicit that they have O level English to enter university; in fact one of these was a lecturer. Had these O levels been of such importance then the requisite should have been included in the tender check list. In the tender check list there had not been any reference to O levels. In any case, the contracting authority should have asked the appellant to rectify this as rectification was allowed.

The Chairman remarked that appellant's qualifications were the same as his. This implied that a knowledge of English because to attain such qualifications needed a good working knowledge of English.

Mr Etienne Bonello on behalf of the contracting authority said that the evaluation board could not assume anything not submitted. While an ordinary level in English was could be so assumed, this could not be so for Maltese. In this tender knowledge of Maltese was essential. The check list itself made it clear that it was only intended to assist the bidders make their bids and not for the bidders to abide by it. Page 7 of the tender document indicated the requirements. A degree in business administration and studies was necessary and also that "able to communicate in English and Maltese". The evaluation board could not assume knowledge of Maltese since there are mature students who do not need Maltese to enter university. Appellant did not submit any certificates.

Dr Robert Attard for the appellant replying to questions by the Chairman stated that the two persons in question, Chris Meilak and the other have Maltese qualifications. He explained that the entry requirements to the university were clear and public knowledge – you had to have at least grade 5 in English and Maltese. The contracting authority should have been aware of this. One had to see what the tender document requested and the Maltese requisite does not result from the tender. The appellant had submitted the euro pass certificate.

Chris Meilak on behalf of the appellant said that his CV indicated that he was thirty one. When he enrolled at the university he was twenty one years old and did not enrol as a mature student. He graduated BA Hons in 2004 and Masters in 2006.

Dr Robert Attard for the appellant continued that the euro pass document enclosed with the tender had all this information. He said that there were several court cases that had gone into whether the law had to be interpreted literally or teriologically, that is according to common sense. In the present case the contracting authority is taking the literal interpretation. He referred to "Ciantar vs CIR" that dealt on this matter. A literal interpretation would lead to absurd situations where for example a bidder had to submit his birth certificate to prove his existence. The appellant had submitted the euro pass which satisfied requirements.

Mr Etienne Bonello for the contracting authority pointed out Article 16 note 2 that stated that no rectification shall be allowed. The evaluation board was thus bound by regulations.

The Chairman remarked that from the documentation available, the appellant's CV contained enough details to enable the decision to be made without making unnecessary assumptions.

At this point the hearing was closed.

This Board,

Having noted Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 10th April 2014 and also through Appellant's verbal submissions during the hearing held on 29th April 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant's bid was rejected for the following reasons:**
 - i) The Contact Person mentioned in the tender document was not in possession of a recognised certificate at MQF Level in both English and Maltese languages – Appellant contends that this is not the fact.**
 - ii) The 'Senior Expert' indicated in Appellant's offer did not possess a recognised certificate at MQF Level in the English language – Again, Appellant contends that this is not the case.**
 - iii) Appellant submitted the 'Euro Pass' wherein all the necessary information contained therein should have enabled the Evaluation Board to assess favourably the 'Expert's' qualifications.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 29th April 2014, in that:

- a) Appellant's claims are based on the contention that the Evaluation Board had to assume that both Contact person and Experts mention in his offer had the necessary qualifications in both English and Maltese whilst in fact no such certification was submitted.**
- b) The Evaluation Board could only adjudicate Appellant's bid on the information and documentation submitted by Appellant.**

Reached the following conclusions:

- 1. From the verbal submissions and documentation presented during the hearing of the 29th April 2014, this Board, after verifying the fact that both Experts had an 'O' Level standard in both English and Maltese, opines that both Experts indicated by Appellant were definitely qualified enough. The 'Experts' indicated by Appellant were obviously in possession of this entry requirement for admission to a B. Com (Hons) course. This Board obtained confirmation from**

the Admission Department of the University of Malta that candidates for a B.Com, had to possess the minimum entry requirements for admission to this degree course, which includes an equivalent of an ‘O’ level standard in both Maltese and English Languages.

- 2. The Contact Person indicated by the Appellant is definitely qualified in both Maltese and English and this Board is somewhat surprised as to why the Evaluation Board did not recognise the fact that the Contact person was a Fellow of the Chartered Institute of Management Accounts (FCMA), a Fellow of the Association of Chartered Certified Accountants (FCCA), holding the warrant of a Certified Public Accountant and Auditor together with a Malta University degree, a B.A. (Hons) Accty.**
- 3. In this Board’s opinion, the Evaluation Board could have easily deduced that qualified professional people do possess the standard basic requirements to commence a professional course. At the same time, the Evaluation Board could have confirmed that, from the details of the courses undertaken by the Experts so indicated, they possessed the required minimum academic requirements as specified in the tender document.**

In view of the above, this Board finds in favour of the Appellant Firm and recommends that:

- a) Appellant be reintegrated in the tendering process.**
- b) The deposit paid by the Appellant should be reimbursed.**

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Lawrence Ancilleri
Member

12 May 2014