

PUBLIC CONTRACTS REVIEW BOARD

Case No. 606

UM 1721

Tender for the Supply, Delivery and Installation of Lecture Room Furniture and Office Furniture Produced with Environmental Friendly Materials and Processes for the Corporate Research and Innovation Building, University of Malta.

The tender was published on the 6th June 2013. The closing date was the 26th June 2013.

The estimated value of the Tender was €90,438.14, Exclusive of VAT.

Six (6) bidders submitted offers for this tender.

On the 9th September 2013, Vivendo Projects Limited filed an objection against the rejection of its bid as being technically non-compliant and the award of the tender to FXB Ltd.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Richard A. Matrenza as members convened a hearing on Tuesday 8th October 2013 to discuss the appeal.

Present for the hearing:

Vivendo Projects Limited – Appellant

Ms Emma Fenech Cefai	Representative
Mr Christopher Gauci	Representative
Dr William Cuschieri	Legal Representative

FXB Limited - Recommended Bidder

Ms Jenny Cassar	Representative
Mr Patrick Spiteri	Representative

University of Malta - Contracting Authority

Mr Tonio Mallia	Chairman Evaluation Board
Mr Johann Calamatta	Secretary Evaluationboard
Architect Christopher Spiteri	Member Evaluation Board
Mr Elton Baldacchino	Representative
Mr Renzo Borg Grech	Representative
Dr Oriella De Giovanni	Legal Representative

The Chairman, Public Contracts Review Board made a brief introduction and invited the appellant's representative to make his submissions on the objection.

Dr William Cuschieri on behalf of the appellant stated that first of all he would like to point out that although the preferred bidder's offer was €127,971, FXB is being awarded the tender for the amount of €110,271. This meant that a bidder was offered the tender with a cheaper price than that the bidder offered. Contends that this vitiates the whole tendering process and creates a precedent. This goes against Public Procurement Regulations. Client's second grievance was that bid was disqualified because it offered stainless steel and aluminium lockers instead of wood as requested in the specifications. He here read from the literature submitted by appellant with the offer. "Doors are made of 8mm stratified HPL and are equipped with rubber gaskets". Appellant abided with specifications. However the hinges and the legs were made of stainless steel. Hinges cannot be made from wood, and legs are better if made from aluminium.

Regarding the first grievance Dr Cuschieri stated that his client's bid was disqualified because the offer was for chipboard covered with melamine instead of high pressure laminate.

Mr Christopher Gauci on behalf of the appellant showed the Board two samples, one of laminate, and the other of a piece of wood covered by high pressure laminate. He stated that appellant presented certificates and guarantees with the tender. Appellants offered high pressure laminate as requested.

Mr Tonio Mallia for the contracting authority stated that regarding the first issue raised by appellant, he explained that the contracting authority chose to remove an item, number 19 from the tender and the price being paid to the preferred bidder is the same as offered in the tender minus the cost of item 19.

Dr Oriella DeGiovanni on behalf of the Contracting Authority explained that there are two types of laminate, the low pressure laminate and the high pressure laminate. From basic research done, it is clear that melamine is supplied only as low pressure laminate. Appellant offered melamine which is a low pressure laminate. The lockers submitted in appellant's offer was not what the contracting authority wanted, the lockers offered by appellant had stainless steel and aluminium structure and not of wood as requested.

Architect Christopher Spiteri, member on the evaluation board under oath stated that the difference between melamine and high pressure laminate is so clear that they cannot be mistaken for one another. The contracting authority wanted a high pressure laminate and the appellant offered melamine, which is a low pressure laminate. Melamine is a thin laminate and comes in rolls and is made with low to medium pressure. High pressure laminates come in sheets stuck under high pressure. There is a difference in thickness and coating and the manufacturing process for the two. There is nowhere in the appellant's tender bid where it is clearly stated that the furniture offered would be constructed with high pressure laminate. Melamine and high pressure laminate refer to the outer coating of the wood. When a section of wood covered with high pressure laminate and another covered with melamine, the difference in thickness can easily be seen. High pressure laminates has a greater durability than low pressure laminates.

Dr William Cuschieri showed a sample to witness. Mr Spiteri said that the sample was high pressure laminate but that it was not what was offered by appellant who offered melamine.

Mr Chris Gauci on behalf of the appellant said the sample was melamine with a resin additive to enable it to withstand high pressure lamination. He contended that the melamine the witness was referring to was called paper laminate.

Architect Christopher Spiteri reiterated that the evaluation board, when making the technical evaluation, found reference to melamine, and there was nowhere explained that what was being offered was a high pressure laminate. Insisted that the sample he was shown was not melamine but a high pressure laminate, and was not what was offered.

The Chairman explained that when a bidder signs the tender bid, he is signing for what he has offered and written down in it.

Dr William Cuschieri finally submitted his client's offer was better and cheaper, and it was admitted that the sample shown was high pressure laminate, but was excluded just because the bid did not state that a high pressure laminate was being offered. He contended that therefore the technical evaluation was flawed.

At this stage, the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 9th September 2013 and also through the appellant's verbal submissions presented by same during the hearing held on 8th October 2013, had objected to the decision taken by the pertinent Authority, in that:

- a) The Preferred Bidder' Offer was cheaper. That is a fact.**
- b) The Appellant's Bid was disqualified due to the fact that the Appellant' product was of an inferior quality to that requested in the technical specifications in the tender document.**
- c) The Appellant exhibited samples of the product for which it tendered.**
- d) The Evaluation Board of the Contracting Authority were mislead regarding the quality of the material being tendered for by the Appellant.**

Having considered the Contracting Authority's verbal submissions presented by same during the hearing held on 8th October 2013, in that:

- a) There are two types of laminate, the low pressured laminate and the high pressured laminate.**
- b) The Appellant's Bid's material consisted of a low pressured laminate.**

- c) **The Samples of the material were different from those described in the tender documents.**

Reached the following conclusions:

- 1. This Board noted that the wood material that had to be included the tender specification had to be of a durable nature and had to last for as many years as possible.**
- 2. Although the Appellant's bid was the cheapest, it did not meet the required specifications for the purpose the tender was issued.**
- 3. From information acquired from technical experts, during the hearing held on 8th October 2013, this Board has been made aware that the Appellant' Bid was not compliant with the technical requirements of the tender in question.**

In view of the above, this Board finds against the Appellant Company and recommends that the deposit paid by the Appellant should not be reimbursed.

Dr. Anthony Cassar
Chairman

Dr. Charles Cassar
Member

Mr. Richard A. Matrenza
Member

4 November 2013