

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 607**

**UM 1716**

**Tender for the Supply, Delivery and Installation of Office Furniture Produced with Environmental Friendly Materials and Processes, for the Institute of Digital Games Offices at the University of Malta.**

The tender was published on the 11<sup>th</sup> June 2013. The closing date was the 3<sup>rd</sup> July 2013.

The estimated value of the Tender was €19,847.46, Exclusive of VAT.

Six (6) bidders submitted eight offers for this tender.

On the 20<sup>th</sup> August 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 8<sup>th</sup> 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 Vivendo Projects Ltd, the appellant said that his client's offer was disqualified because it offered the laminate of the wood components in melamine instead of the requested high pressure laminate. Contended that the sample shown to the witness in the previous case, (Case 606, UM 1721) was accepted by the witness to be high pressure laminate, and therefore he would need to examine the witness again. This was because the witness gave the impression that melamine was only supplied in low pressure lamination.

Architect Christopher Spiteri, a member of the evaluation board, on oath, on being questioned by appellant's representative, stated that yes, melamine is only a low pressure laminate.

Dr William Cuschieri stated that it was the process of making the laminate that distinguishes between a high pressure laminate from a low pressure laminate. He contends that melamine could be processed to form part of a high pressure laminate.

Architect Christopher Spiteri continued that according to <http://block.cross.com.au>, "direct pressure laminate, otherwise known as low pressure laminate is what is commonly referred to as melamine" The processes of making high pressure melamine is completely different. When appellant's offer mentioned melamine, the conclusion was that this was low pressure laminate. Appellant could have specifically stated in the offer that it would be providing high pressure laminate. Insists that melamine is not high pressure laminate. High pressure laminate comes in sheets. Appellant's offer was not clear and did not state that a high pressure laminate was being offered, just melamine.

Mr Christopher Gauci for appellant contends that high pressure laminate contains melamine. Both low pressure laminates and high pressure laminates contain melamine. It is only the manufacturing process that is different.

Architect Christopher Spiteri said that the evaluation board went through all the submitted certificates in detail and from them deduced that the offer was for melamine.

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 20<sup>th</sup> the hearing held on 8<sup>th</sup> October 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant stated that his bid was wrongly disqualified as same was deemed to be technically non compliant by the Evaluation Board.**
- b) The Appellant insisted that the material quoted in his bid had indeed the required material components as specified in the tender document.**

- c) The Appellant's bid remained the cheapest among the remaining 'fully compliant' bidders.

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

- a) The material presented in the Appellant's bid consisted of a 'low pressure' laminate. The requirement in the tender document's specifications necessitated a material component consisting of a 'high pressure' laminate.
- b) There is a great difference between a 'Low Pressure' laminate and a 'High Pressure' one.
- c) The material offered by the Appellant was described by same as being 'melamine' which in technical terms classifies the material components as 'Low Pressure' laminates.

Reached the following conclusions:

Needless to mention, this Board has to rely on the logical explanation of the technical experts when it comes to technicality. From the submissions made by the technical expert in the field of the product in question, this Board heard a clear and vivid explanation of the type of material components that were mandatorily requested to conform with the technical specifications in the tender document. In this regard, this Board finds that the Appellant's material components were not of the required specifications.

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*