

## PUBLIC CONTRACTS REVIEW BOARD

Case No. 634

DCS/29/2012

**Tender for the Leasing of Thirty Seven (37) A4 Energy Efficient Black & White Multifunction Printing Devices Including Full Service & Maintenance Agreement (FSMS) Over a period of Three Years Within the Ministry of Justice, Dialogue and the Family (MJDF).**

The tender was published on the 8<sup>th</sup> January 2013 and the closing date was on the 1<sup>st</sup> February 2013.

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

Four (4) bidders had submitted an offer for this tender.

On the 7<sup>th</sup> November 2013 Strand Electronics Limited filed an objection against the decision to award the tender to Office Group Limited since the devices offered by the latter do not meet the tender specifications.

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 Thursday 21<sup>st</sup> November 2013 to discuss these concerns.

**Present for the hearing were:**

### **Strand Electronics Limited - Appellant**

Mr Ray Azzopardi	Representative
Dr Mark Portelli	Legal Representative

### **Office Group Limited - Preferred Bidder**

Mr Anthony Micallef	Representative
Mr Joe Camilleri	Representative
Mr Robert Micallef	Representative
Dr Lorna Mifsud Cachia	Legal Representative

### **Corporate Services Directorate (MFSS) - Contracting Authority**

Mr Clifford Schembri	Chairman Evaluation Board
Mr Jean Paul St. John	Secretary
Mr Jason Zammit	Member Evaluation Board
Mr John Degiorgio	Director Corporate Services
Mr Godwin Borg	Representative

The Chairman made a brief introduction and invited the appellant's representative to make his submissions.

Dr Mark Portelli on behalf of the appellant explained that this is the second time that this tender has been brought before the Public Contracts Review Board. Originally the present appellant had been the preferred bidder, but Office Group Limited, the present preferred bidder had objected before the Public Contracts Review Board claiming that the machines offered by Strand Electronics Limited were not according to specifications. The Public Contracts Review Board had rejected the objection. Office Group Limited however had filed another appeal before the Court of Appeal and this Court decided on the 16<sup>th</sup> September 2013 by revoking the decision handed down by the Public Contracts Review Board, explaining that the specifications called for both drawers to have the capacity to accept 200g/m<sup>2</sup>, and sending the case back to the Contracting Authority who had to adjudicate the tender only to those bids that were according to specifications. The Evaluation Board had then awarded the tender to Office Group Limited, the preferred bidder.

The present objection, Dr Mark Portelli continued does not query any previous decisions given either by this Board or the Court of Appeal but contends that the machines offered by the preferred bidder, Konica Minolta BIZHUB 36 also do not conform to specifications in that not both drawers accept 200g/m<sup>2</sup> paper. Like appellant's offered machine, only one drawer accepted the required thickness paper. Dr Portelli exhibited a document that appellant had downloaded to show that the preferred bidder's machine did not conform.

Mr John Degiorgio on behalf of the contracting authority said that the evaluation board had, after the Court of Appeal's decision, to re-evaluate only the offers that offered machines that accepted thick paper in both trays according to the Court's decision. The evaluation board had requested clarifications from all bidders and from the replies received the board recommended the award to Office Group Limited.

Clifford Schembri on behalf of the contracting authority, replying to a question by the Chairman said that appellant's offer was not compliant. As stated before the Court of Appeal ordered that only compliant bids be evaluated, that is those bids that offered machines accepting paper up to 200g/m<sup>2</sup> in both trays. The evaluation board asked all bidders to confirm that their machines reached this standard. The reply received from appellant stated that the main tray accepted from 60 to 120g/m<sup>2</sup> but the bypass tray accepted 60 to 200g/m<sup>2</sup>. Therefore the machine offered by appellant did not accept thicker paper from both trays and according to the Court decision appellant's bid had to be found technically non-compliant and discarded. The reply given by appellant forms part of the evaluation report.

Dr Lorna Mifsud Cachia on behalf of the preferred bidder stated that according to the Court of Appeal's decision, appellant's offer was not compliant. She continued to state that the preferred bidder had proof that Office Group's machine is fully compliant. The machine offered by the preferred bidder accepts the required gramage paper in both trays, and this is attested by the relative brochures and literature submitted with the tender. Dr Mifsud Cachia exhibited samples of prints on 200g/m<sup>2</sup> paper printed on the preferred bidder's machine, and a letter from the head of Konica Minolta in Malta. Appellant's offer was not compliant and this fact results from the documents submitted by Strand Electronics Limited with the tender, and which was admitted by appellant itself when replying to the clarification request. She also exhibited a video clip showing the printing of the samples exhibited.

Mr Clifford Schembri explained that the original specifications were not meant to require that machines accepted 200g/m<sup>2</sup> paper from both trays. The Court of Appeal decision however imposed this condition.

Jean Paul St. John, a member on the evaluation board, on behalf of the contracting authority explained that the automatic duplex reversing system uses the upper part of the tray. When printing on both sides the papers are taken from the upper tray and are fed one by one. The standard for this duplex do not accept 200g/m<sup>2</sup>. Replying to Dr Charles Cassar questions, Mr St. John explained that the Kyocera input capacity for the 100 sheet multipurpose bypass tray is 60 to 200 and therefore compliant. The capacity for the 500 sheet the main tray is from 60 to 120g/m<sup>2</sup> and is therefore non-compliant. The Bizhub 36 the printable paper weight is between 60 to 210g/m<sup>2</sup>. Tray 1 takes 500 sheets and trays 2 and 3 take 150 sheets. And it does not indicate that all the trays take 60 to 210g/m<sup>2</sup>. Therefore the evaluation board asked for the confirmation from the preferred bidder and received the reply that *"I hereby confirm that the machine quoted is capable of printing paper of weight from 60 to 200 g/m<sup>2</sup> from both the standard 500 sheet paper tray and the 150 sheet multipurpose bypass tray."*

Dr Mark Portelli on behalf of the appellant stated that the problem was not if the machine accepted paper from 60 to 200 or not, because if so appellant's machine does so accept paper from 60 to 200 from the bypass tray. The question was that both trays had to accept 200g/m<sup>2</sup>. Konica Minolta's brochure does not indicate this and this is the reason why the evaluation board felt the need for clarification on this point. The specifications submitted by the preferred bidder refer to printing paper weight and not to which tray this paper was fed. According to downloaded document states that main unit accepts 60 to 90 g/m<sup>2</sup>, which is the normal. You could still print on thick paper on the printer submitted by appellant but this cannot be put down in the specifications.

Mr Cliff Schembri on behalf of the evaluation board explained that when the first evaluation was made, appellant's bid was not excluded, because it was compliant. But following the Court of Appeal's decision that both drawers were capable of accepting 200g/m<sup>2</sup> paper, it resulted non-compliant. The tender specifications were not changed and it was immaterial for the contracting authority which tray the thick paper was fed. The Court decided this point.

Dr Lorna Mifsud Cachia on behalf of the preferred bidder said that while the appellant's brochure declares that the two trays do not accept any type of paper, the preferred bidder's brochures do not make this distinction.

Mr Robert Micallef on behalf of the preferred bidder stated that the brochure submitted by the preferred bidder does not specify that both trays accept the thick paper because of the fact that both trays do so. Furthermore the Minolta brochure downloaded by the appellant is not supplied by Minolta but by another United States firm.

Mr Ray Azzopardi on behalf of appellant said that there was no need to rely on downloaded brochures. An exhibited brochure that is highlighted shows that the Minolta machine takes from the main tray 60 to 90 while the multipurpose tray from 60 to 210.

Mr Clifford Schembri, the chairman of the evaluation board said that the reason for writing to the four bidders was for the contracting authority to be one hundred percent certain that the machines represented on the brochures were in fact those that would be supplied.

The hearing was at this point brought to an end.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 6<sup>th</sup> November 2013 and also through the Appellant's verbal submissions during the hearing held on 21<sup>st</sup> November 2013, had objected to the decision taken by the pertinent Authority, in that:**

- a) The Appellant contends that the product offered by the Preferred Bidder does not meet the required technical specifications as laid out in the tender document.**
- b) The product offered by the Appellant was capable of meeting the technical requirements as stipulated in the tender document and was capable of carrying out the necessary tasks as required.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 21<sup>st</sup> November 2013, in that:**

- a) In so far as technical specifications are concerned the Evaluation Board was in duty bound to adhere to the decision taken by the Court of Appeal.**
- b) The Evaluation Board requested clarifications from all Bidders to ensure conformity with the technical requirements as specified in the decision given by the Court of Appeal**
- c) The Appellant's bid did not conform with the technical specifications as stipulated in the decision taken by the Court of Appeal.**

**Reached the following conclusions:**

- 1. This Board notes that this is the second time this appeal is brought in front of the same Board. Due to the fact that on the 16<sup>th</sup> of September 2013, the Court of Appeal decided that this Board should adjudicate on the decision of the revised technical specifications as decided by same, this Board has to honour the same decision taken by the Court of Appeal.**
- 2. Due to the established technical specifications as decided by the Court of Appeal, this Board opines that the Appellant's bid is technically non compliant.**

**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

*27 January 2014*