

PUBLIC CONTRACTS REVIEW BOARD

Case No. 645

UM 1732

Service Tender for the Supply, Delivery and Installation of Office Furniture Produced with Environmentally Friendly Materials and Processes, for the University of Malta.

The tender was published on the 5th July 2013. The closing date was the 24th July 2013.

The estimated value of the Tender was €41,139.83. (Exclusive of VAT)

Seven (7) bidders had submitted an offer for this tender.

On the 11th October 2013 Vivendo Projects Limited filed an objection against the rejection of its offer 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 Lawrence Ancilleri as members convened a hearing on Tuesday the 7th January 2014 to discuss the objection.

Present for the hearing were:

Vivendo Projects Limited - Appellant

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| Ms Emma Cefai | Representative |
| Ms Marthese Aquilina | Representative |

FXB Limited - Preferred Bidder

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| Ms Jenny Cassar | Representative |
| Mr Patrick Spiteri | Representative |

University of Malta - Contracting Authority

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| Mr Tonio Mallia | Chairman Evaluation board |
| Mr Johann Calamatta | Secretary Evaluation board |
| Mr Christopher Spiteri | Member Evaluation board |
| Mr Mark Debono | Member Evaluation board |
| Mr Elton Baldacchino | Representative |
| Dr Oriella De Giovanni | Legal Representative |

Following a brief introduction by the Chairman, the appellant's representative was invited to make her submissions on the objection.

Ms Emma Cefai on behalf of the appellant company Vivendo Projects Limited stated that this objection is identical to two other objections already decided by the Public Contracts Review Board but which were now pending before the Court of Appeal, and asked that maybe the present objection could await the outcome of the Court of Appeal's decision.

The Chairman said that the Board would continue hearing the objection.

Ms Emma Cefai for the appellant said that since the last objection they had done more research and this was referred to in the letter of objection. The information compared high pressure laminate with melamine and contains technical explanations that melamine is a chemical used in both HPL and LPL. Appellant has also here provided a sample which during the previous objection hearing was recognized as being HPL by the University representative. This was not the first time that appellant had submitted this material for tendering and was successful in getting awards.

Perit Chris Spiteri on behalf of the contracting authority said that the sample produced today had not been included with the appellant's tender bid. The tender required technical literature only. Technically speaking, Melamine is an organic resin. But when you refer to a product made with melamine you are not referring to the resin but you are referring to the melamine laminate which is a low to medium pressure laminate. When melamine is mentioned it is meant the laminate and not the chemical. The appellant's offer refers to laminate and you cannot manufacture furniture from melamine alone. Replying to a question by the Chairman, Mr Spiteri said that nowhere in the appellant's bid was High Pressure Laminate mentioned. It only mentioned melamine.

Ms Emma Cefai for the appellant said that no samples were requested in the tender as otherwise appellant would have supplied them. Appellant compiled the three tenders, one after another. The award of the first tender was issued after the appellant's other tenders had been already submitted. And thus appellant did not have a chance to review their description of the product. That is why appellant has three objections as otherwise the remaining bids would have been amended. Appellant believed that it was supplying according to specifications and when research was done, ambiguity was found regarding the matter.

Perit Chris Spiteri stated that that was what precisely the evaluation board was trying to achieve, the removal of ambiguity. The contracting authority did not want to award the tender to a bidder who confused high pressure laminate with melamine. The contracting authority did not want to be supplied with melamine. The assessment was made on the submitted technical literature which in appellant's case has made it clear that the product being offered was in melamine; no mention of high pressure laminate could be found.

Dr Oriella DeGiovanni on behalf of the contracting authority said that the University wanted and asked for High Pressure Laminate. Bidders had to submit HPL, and the contracting authority could not assume that what the bidder offered was HPL. Tenders could not be ambiguous. Appellant's objection states that its bid was fully compliant but did not prove it. The contracting authority could never assume that what the appellant was submitting was in fact HPL.

Ms Emma Cefai for the appellant said that the contracting authority should have asked for clarification.

At this point the hearing was brought to a close.

This Board,

Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 11th October 2013 and also through the Appellant's verbal submissions during the hearing held on 7th January 2014, had objected to the decision taken by the pertinent Authority, in that:

- a) Appellant contends that the material of the product offered by same was in compliance with the technical specifications as laid out in the tender document.**
- b) Appellant noted that upon enough research carried out by same, ambiguity existed as to the technical description of material, as laid out in the tender document.**

Having considered the Contracting Authority's verbal submissions during the hearing held on 7th January 2014, in that:

- a) The technical evaluators of the Contracting Authority maintain that there exist a technical difference between a 'High Pressure Laminate' and 'Melamine'.**
- b) The Appellant's technical literature which was submitted with the tender document, referred to 'Melamine' and not to 'High Pressure Laminate'.**
- c) The Contracting wanted to eradicate any misinterpretation of any description to the technical details specified in the tender document.**
- d) The Appellant's product did not comply with the technical specifications as requested in the tender document.**

Reached the following conclusions:

- 1. Through lengthy technical explanations submitted by the Contracting Authority, it was made vividly clear to this Board, that there really existed a difference between 'Melamine' and 'High Pressure Laminate'.**
- 2. The Evaluation Board had to assess the validity of the tender on the technical literature submitted by the Appellant. In this regard, the Appellant's bid offered the material described as 'Melamine' and not 'High Pressure Laminate'.**

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. Lawrence Ancillieri
Member

12 February 2014