

## **PUBLIC CONTRACTS REVIEW BOARD**

**Case No. 754**

**FTS 128/2014**

**Tender for the Supply and Installation of Synthetic Surface at Various Schools.**

The tender was published on the 29<sup>th</sup> July 2014. The closing date was the 19<sup>th</sup> August 2014.

The estimated value of the Tender was €93,732.20 (Exclusive of VAT).

On the 24<sup>th</sup> September 2014 Three Eight Nine Limited filed a letter of objection objecting to the award of the tender to Projekte Global Limited for the amount of €56,982.20.

Two (2) tenders had been received.

The Public Contracts Review Board composed of Dr Anthony Cassar (Chairman), Dr Charles Cassar and Mr Lawrence Ancilleri as members convened a hearing on Thursday the 30<sup>th</sup> October 2014 to discuss the objection.

Present for the hearing were:

### **Three Eight Nine Limited - Appellant**

Mr Etienne Borg	Director
Mr Joe Borg	General Manager

### **Projekte Global Limited - Preferred Bidder**

Mr Desmond Mizzi	Director
Dr Adrian Delia	Legal Representative

### **Foundation for Tomorrow's Schools - Contracting Authority**

Mr Stephen Bonello	Chairman Evaluation Board
Mr Ivan Zammit	Secretary Evaluation Board
Mr Sandro Zammit	Member Evaluation Board
Mr Leonard Zammit	Technical Advisor
Dr Simon Micallef Stafrace	Legal Representative

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

Mr Etienne Borg, Director with the appellant firm and on its behalf said that the objection was based on the fact that appellant was certain that the preferred bidder, for €65,000, will not Provide the required thickness of synthetic surface according to the tender specifications. He contended that this certainty arose from the appellant having inspected other works provided by the same preferred bidders in other contracts. The surface had been between 10 to 12 mm instead of 18mm. Appellant was sure that the preferred bidder would do the same for the current tender.

Dr Simon Micallef Stafrace on behalf of the contracting authority said that the appellant is relying on other contracts and not referring to the present tender. He said that the other contract referred to by the appellant had specifications asking for a different thickness.

Mr Joe Borg for the appellant insisted that no tender has been issued for thicknesses less than 18 mm.

Dr Adrian Delia on behalf of the preferred bidder stressed that the objection was not alleging that the award was wrongly made. He insisted that the contracting authority had not made any wrong decision in preferring his client. The tender had been recommended for award to the cheapest offer. The Board should disregard any speculative arguments by the appellant.

At this point the hearing was brought to an end.

**This Board,**

**Having noted the Appellant's objection, in terms of the 'Reasoned Letter of Objection' dated 23<sup>rd</sup> September 2014 and also through Appellant's verbal submissions during the hearing held on 30<sup>th</sup> October 2014, had objected to the decision taken by the pertinent Authority, in that:**

- a) Appellant contends that through the price as quoted by the Preferred Bidder, Appellant is certain that the execution of the tendered works by the Preferred Bidder, will not be in accordance with the technical specifications with regards to the thickness of the 'synthetic surface'.**
- b) Appellant claims that through similar works carried out by the Preferred Bidder, the thickness of the 'synthetic surface was between 10mm to 12mm and not 18mm.**

**Having considered the Contracting Authority's verbal submissions during the hearing held on 30<sup>th</sup> October 2014, in that:**

- a) Appellant is relying his arguments on other contracts awarded to the Preferred Bidder, such tenders having different technical specifications.**

- b) The Contracting Authority awarded the tender to the cheapest fully compliant Bidder.**

**Reached the following conclusions:**

- 1. From the submissions made, this Board opines that Appellant's contention that the Preferred Bidder will install '*synthetic surface*' of thickness less than 18mm, is completely speculative and not credible. In this regard, this Board notes the Appellant allegation, is not justified. It is the Contracting Authority's responsibility to ensure that once the tender is awarded, the Preferred Bidder will carry out the works in accordance with the technical specifications as dictated in the tender document. This Board does not uphold Appellants contention.**
- 2. It is not the jurisdiction of this Board to discuss or rather evaluate Appellant's claim in that, in other contracts awarded to the Preferred Bidder, the latter installed '*synthetic surface*' of thickness less than 18mm.**

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

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*7 November 2014*