

## **PUBLIC CONTRACTS REVIEW BOARD**

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### **Case 1147– ERA QT 12/2017 – Call for Quotations for the Supply, Delivery and Installations of Desks.**

The publication date of the call for quotations was the 27<sup>th</sup> November 2017 whilst the closing date of the call for quotations was the 7<sup>th</sup> December 2017. The estimated value of the tender (exclusive of VAT) was € 9,200

There were nine (9) bidders on this tender.

Al Sadi Fino Company Ltd filed an appeal on 1<sup>st</sup> March 2018 against the Contracting Authority's decision to reject the tender on the grounds of price and on not being technically compliant. A deposit of € 400 was paid.

On 20<sup>th</sup> March 2018 the Public Contracts Review Board composed of Dr Anthony Cassar as Chairman, Dr Charles Cassar and Mr Carmel Esposito as members convened a public hearing to discuss the objections.

The attendance for this public hearing was as follows:

#### **Appellant – Al Sadi Fino Company Ltd**

Dr Rob Gauci Maistre	Legal Representative
Mr Dino Fino	Representative
Mr Matthew Grech	Representative

#### **Recommended Bidder – FX Borg Furniture Ltd**

Ms Jenny Cassar	Representative
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#### **Contracting Authority – Environment and Resources Authority**

Dr Paula Axiak	Legal Representative
Mr Daniel Cilia	Chairman Evaluation Board
Ms Julie Bonello	Secretary Evaluation Board
Mr Alan Borg	Member Evaluation Board

The Chairman of the Public Contracts Review Board, Dr Anthony Cassar, welcomed the parties and requested them to make their submissions.

Dr Rob Gauci Maistre, Legal Representative for Al Sadi Fino Company Ltd, requested Mr Dino Fino on behalf of the Appellant Company to table a copy of the technical offer form which the Contracting Authority had deemed to be non-complaint. He said that the appeal was of a technical rather than a legal nature, since the Appellant's offer had been rejected as the document requested had been submitted on three pages in lieu of the one required by the Authority, which they claim had been submitted in blank.

At the request of the Chairman of the Board, Ms Julie Bonello, (32782M) testified under oath that she was the Secretary of the Evaluation Committee. She tabled a copy of the blank document submitted with the tender and said that this was totally different to the one which Appellant had just tabled and which they claimed that they submitted with the tender. As the document had been submitted in blank form it was not possible to evaluate the tender. A screen shot of Appellant's submission showed clearly that an excel sheet, rather than a pdf form, had been submitted and it was blank.

Dr Rob Gauci Maistre accepted that it appeared that a mistake had been made and he accepted the evidence of the witness.

The Chairman said that it appeared as if an unfortunate mistake had been made. He thanked the parties for their submissions and declared the hearing closed.

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**This Board,**

**Having noted this Objection filed by Al Sadi Fino Company Limited, (hereinafter referred to as the Appellant) on 1 March 2018, referring to the contentions made by the same Appellant with regards to the award of Tender of Reference ERA QT 12/2017 listed as Case No 1147 in the records of the Public Contracts Review Board, awarded by the Environmental and Resources Authority, (hereinafter referred to as the Contracting Authority)**

**Appearing for the Appellant: Dr Rob Gauci Maistre**

**Appearing for the Contracting Authority: Dr Paul Axiak**

**Whereby, the Appellant contends that:**

- a) They had submitted the technical offer form, duly signed and filled. In this regard, the Appellants insist that their offer was technically compliant and the cheapest.**

**This Board also noted the Contracting Authority's "*Letter of Reply*" dated 7 March 2018 and its verbal submissions during the Public Hearing held on 20 March 2018, in that:**

- a) The Appellants did not submit the technical offer form duly filled in as requested in accordance with Article 4 (c) (i) of the Tender Document. In this regard, the Evaluation Committee had no other option but to deem Al Sadi Fino Company Limited's offer as technically non-compliant.**

**This same Board also noted the testimonies of the witness, namely Ms Julie Bonello who was duly summoned to testify by this same Board.**

**This Board has also taken note of the documents submitted by the Environment & Resources Authority which consisted of a copy of blank documents submitted by Al Sadi Fino Company Limited.**

**This Board, after having examined the relative documentation relating to this appeal and heard submissions made by the parties concerned, including the testimony of the witness, opines that the sole issue, in this appeal, is the non submission of the technical offer form as duly requested in the Tender Document.**

**This Board would respectfully refer to article 4 (c) (i) of the call for quotations wherein, it is clearly stipulated that:**

***“Failure to submit such form (technical offer form) duly signed and filled in, will result in disqualification of this offer”***

**One has to appreciate and acknowledge the fact that the technical offer form represents the basis of the offer itself, so that it has to be properly filled in with all the details so requested and duly signed. At the same instance, the Appellants' technical offer form, as so requested, was not received by the Environment and Resources Authority.**

**From the testimony of the witness and the documentation presented during the Public Hearing, it has been credibly established that the document which the Appellants are claiming to have been submitted is not the same as that submitted to the Authority, the latter document being a blank document. In this regard, this Board would refer to the testimony of the witness, in that:**

**Witness: “*Meta ahna, (the Evaluation Committee), niżżilna l-bid minn fuq is-sistema deher ċar li s-sottomissjoni t’ Al Sadi Fino keient vojta, jiġifieri ahna ma stajniex nevalwaw*”**

**When the witness was asked by this Board to confirm if the documents presented by the Appellants during the Public Hearing, represented the same which were actually received by the Contracting Authority, the witness verified that:**

**Witness: “*Le, mhux l-istess sottomissjoni. Le mhux l-istess dokumenti li kellna fis-sistema ahna. Dan mhux li rċevejna ahna. Mhux l-istess dokument.*”**

**In this regard, this Board is credibly convinced that the technical offer form was not submitted, as duly requested by Al Sadi Fino Company Limited. From the credible submissions made by the latter, this Board also acknowledges the fact that this was an inadvertent mistake, on the part of the Appellants, in transmitting the requested information. At the same instance, the Evaluation Board can only evaluate the latter’s offer on the information submitted by the same. In this regard, this Board opines that the Evaluation Board carried out its evaluation process in a fair, just and transparent manner.**

**In view of the above, this Board:**

- i) Upholds the decision taken by the Environment and Resources Authority in the award of the Tender;**

**ii) Does not uphold the contentions made by Al Sadi Fino Company Limited;**

**iii) Recommends that the deposit paid by the Appellants is to be fully refunded, as this same Board is credibly assured that the non submission of the Technical Offer Form was admittedly a genuine mistake from the latter's side.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Carmel Esposito  
Member

*27<sup>th</sup> March 2018*