

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board remarked that, interested parties should try and keep the time allotted to them for the commencement of the Public Hearing. He understood that there was a parking problem but when a time is allotted, one should respect it. Following this short introduction, Dr Cassar invited the Appellants' Representative to state their case.

Mr Pierre Farrugia, on behalf of Nibe Marketing Limited said that they have submitted their offer according to the requirements of the Tender Document. Following the publications of the prices, they were requested to send a certificate but erroneously, they have sent a wrong one.

Dr Anthony Cassar, the Chairman of the Public Contracts Review Board pointed out that the Clarification forms part of the Tender Document.

Mr Pierre Farrugia, on behalf of Nibe Marketing Limited admitted that this was a genuine mistake.

Dr Rita Mifsud, the Legal Representative for Aġenzija Support stated that her clients' position was a simple one; that the Contracting Authority has established rules, to respect and during evaluation stage. Even if the Appellants' mistake was a genuine one, they had no option but to discard Nibe Marketing Limited's offer, since Clarifications fall under Note 3.

Mr Pierre Farrugia, on behalf of Nibe Marketing Limited concluded that everybody was in agreement that this was a genuine mistake and he understood that legally he was not right.

At this stage, the Public Hearing was adjourned to Tuesday 22 August 2017 at 09:00 wherein the Public Contracts Review Board will transmit the decision taken for this Objection verbally and then distribute a hard copy of the same to all parties concerned.

This Board,

Having noted this Objection filed by Nibe Marketing Ltd (herein after referred to as the Appellant) on 7 July 2017, refers to the Contentions made by the latter with regards to the award of Tender of Reference SAPP 17/03 listed as Case No 1074 in the records of the Public Contracts Review Board, awarded by Aġenzija Sapport (herein after referred to as the Contracting Authority).

Appearing for the Appellant: Mr Pierre Farrugia

Appearing for the Contracting Authority: Dr Rita Mifsud

Whereby, the Appellant contends that:

- a) **Although he inadvertently submitted the wrong CE Certificate for Hot and Cold Water Dispenser, his offer was compliant and should not have been discarded;**

This Board also noted the Contracting Authority's "*Letter of Reply*" dated 19 July 2017 and its verbal submissions during the Public Hearing held on 10 August 2017, in that:

- a) **Aġenzija Sapport insists that it had followed the prudent and correct procedures in accordance with the Public Procurement Regulations in that, Nibe Marketing Limited did not submit the requested documentation as dictated in the Tender Document.**

This Board, after having considered the merits of this case, arrived at the following conclusions:

- 1. This Board, as had on so many occasions, would like to emphasize the importance which the prospective Bidder must place, when submitting the requested documentation in a Tender Document.**

In this particular case, it is obvious that one of the conditions laid out in the Tender Dossier was the stipulated submission of a “*CE Certification*” for the Hot and Cold Water Dispenser. Nibe Marketing Limited admits that due to an oversight, an incorrect certificate was submitted by the same.

The Evaluation Board can only adjudicate on the documentation submitted by the Bidder and in this regard, the same Evaluation Board could not ask the Appellant for any clarification, as the replacement of a document with a different one, would amount to a rectification, which was not allowable.

In this respect, this Board justifiably affirms that the Evaluation Board had acted in a fair, just and transparent manner so that this Board upholds Agenzija Sapport’s decision.

In view of the above, this Board finds against Nibe Marketing Limited, however due to the mode of co-operation shown by the latter, this same Board recommends that the deposit paid by the Appellants should be fully refunded.

Dr Anthony Cassar
Chairman

Dr Charles Cassar
Member

Mr Lawrence Ancilleri
Member

22 August 2017