



Mr Dolan Debattista Chairperson of the evaluation committee referred to the missing documents, namely the declaration of safe working environment and the template of replacement personnel both of which came under note 3 of the tender dossier. There was no doubt that the documents had not been submitted – in fact the latter document was submitted after the letter of objection had already been sent.

Dr Clement Mifsud Bonnici Legal Representative of Managing Consulting Services Industry Ltd stated that the letter of objection was null in any case as it was not addressed to the Public Contracts Review Board as laid out by law and since there were documents missing and no rectification was allowed the whole submission should have been disregarded.

The Chairman thanked the parties for their submission and declared the hearing closed.

End of Minutes

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## **Decision**

**This Board,**

**having noted this objection filed by Daimond Shine Services Ltd (hereinafter referred to as the Appellants) on 1<sup>st</sup> June 2020, refers to the claims made by the same Appellants with regard to the tender of reference MT/48/2020 listed as case No. 1455 in the records of the Public Contracts Review Board awarded by the Ministry for Tourism and Consumer Protection (hereinafter referred to as the Contracting Authority).**

**Appearing for the Appellants: Mr Christian Farrugia**

**Appearing for the Contracting Authority: Mr Dolan Debattista**

**Appearing for the Preferred bidder: Dr Clement Mifsud Bonnici**

**Whereby, the Appellants contend that:**

- a) **The Authority had failed to request a clarification regarding two missing documents from their offer. In this regard, Appellants maintain that, it was normal for the Evaluation Committee to request missing documents and in this case the same Committee failed to do so.**

**This Board also noted the Contracting Authority’s ‘Letter of reply’ dated 10<sup>th</sup> June 2020 and its verbal submissions during the virtual hearing held on 2<sup>nd</sup> July 2020, in that:**

- a) **The Authority insists that the two missing documents pertained to mandatory technical specifications, the latter of which fall under note 3, which prohibited any clarification or rectification.**

**This same Board also noted the testimony of the witness namely:**

**Mr Dolan Debattista Chairperson Evaluation Committee, duly summoned by the Public Contracts Review Board.**

**This Board, after having examined the relevant documentation to this appeal and heard submissions made by the parties concerned, including the testimony of Mr Dolan Debattista, Chairperson of the Evaluation Committee, would respectfully point out several deficiencies in this appeal.**

- 1. First and foremost, this Board would refer to the obligations of bidders applying for remedies and in this regard, it is respectfully noted that,**

**Appellants’ ‘Letter of Objection’ dated 31<sup>st</sup> May 2020 was incorrectly addressed to the Evaluation Committee of the Contracting Authority instead of the Public Contracts Review Board. This Board would respectfully refer to article 270 of the Public Procurement Regulations wherein it clearly stipulated that such appeals are to be addressed to the PCRB.**

**2. This Appeal refers to missing documentation from Appellants’ offer namely, a declaration relating to safe working environment and a template showing replacement of personnel. It is noted that, both requirements form part of the technical specifications of the tender document.**

**3. Reference was made by Appellants’ relating to note 2 of clause 5 of the tender dossier which states that:**

*“2. Tenderers will be requested to either clarify / rectify any incorrect and /or incomplete documentation, and / or submit any missing documents within five (5) working day from notification.”*

**However, such a note does not refer to the submissions of the technical offer and in this respect, this Board would point out that the missing documentation falls under note 3 of clause 5 which specifically denotes that:**

*“No rectification shall be allowed. Only clarifications on the submitted information may be requested.”*

**Had the Evaluation Committee requested submission of Appellants' missing documentation, it would have amounted to a rectification of Appellants' original offer, which is strictly not permitted.**

- 4. This Board would respectfully point out that, it is the responsibility and obligation of the bidder to include, in his offer, all the mandatory documentation as duly stipulated in the tender document and in this particular case, Appellants' failed to abide by this requirement.**
- 5. It must also be pointed out that, the Evaluation Committee is bound to abide by the basic principles of equal treatment, transparency and self-limitation. This Board notes that the adjudication process was carried out in a just and transparent manner.**

**In conclusion, this Board opines that:**

- a) The missing documentation from Appellants' offer falls under note 3 of clause 5, and therefore precludes rectifications.**
- b) Any requests for the submission of missing documentation from Appellants' original offer would have amounted to a rectification.**
- c) The Evaluation Committee carried out the evaluation process in a fair and transparent manner whilst applying the basic principles of Public Procurement.**

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

- i. does not uphold Appellants' contentions,**
- ii. upholds the Contracting Authority's decision in the award of the tender,**
- iii. directs that the deposit paid by Appellants should not be refunded.**

Dr Anthony Cassar  
Chairman

Dr Charles Cassar  
Member

Mr Lawrence Ancilleri  
Member

*8<sup>th</sup> July 2020*