

PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2174
Tender Reference Number WSC/T/019/2025
Tender Name “Supplies – Supply and Delivery of GRP Cartridge Filter Housing for the Water Services Corporation”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 27th October, 2025 to hear the appeal as filed by the appellant Silvercraft Product Limited (C-2817) (hereinafter the ‘Appellant’) on the 12th September, 2025, and after taking cognisance of:

The tender document for the ‘Supplies – Supply and Delivery of GRP Cartridge Filter Housing for the Water Services Corporation’ (hereinafter referred to as the “Tender Document”);

The minutes of the proceedings dated 27th October, 2025 which are being reproduced hereunder:

“PUBLIC CONTRACTS REVIEW BOARD

Case 2174 WSC/T/019/2025 – Supplies – Supply and Delivery of GRP Cartridge Filter Housing for the Water Services Corporation.

The tender was issued on the 11th April 2025, and the closing date was the 20th May 2025.

The estimated value of the tender, excluding VAT, was €210,000.

On 12th September 2025 Silvercraft Product Limited, lodged an appeal against the Water Services Corporation (WSC). – the Contracting Authority. In accordance with Regulation 270 of the Public Procurement Regulations. The appellant objected since its bid was deemed technically non-compliant.

On the 27th October 2025, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Mr Keith Victor Grech and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

A deposit of €1,050 was paid.

There were Nine bids.

The attendance for this public hearing was as follows:

Appellant –Silvercraft Products Limited. (MT1166/6726)

Dr Lorna Mifsud Cachia – Legal Representative.

Dr Claudia Borg – Legal Representative.

Ms. Suzanne Baldacchino – Company Representative.

Mr. Etienne Scerri – Company Representative.

Contracting Authority – Water Services Corporation

Dr John L Gauci – Legal Representative.
Ing. Jake Diedo-- TEC Chairperson.
Ms Kristie Grech – TEC Secretary.
Ing. Frank Gauci – Evaluator.
Ms Elaine Saliba – Evaluator.
Ing Mark Bugeja – Evaluator.
Ing Anthony Muscat – WSC Procurement.
Ms Catherine Degabriele – WSC Procurement.

Recommended Bidder – INAQUA Vertriebsgesellschaft mbH (HRB5519/DE812181620)

Mr Manuel Gerth-- Company Representative. Online. Was invited. Did not attend.

Opening Statements.

Dr. Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, Silvercraft Products Limited, and the Contracting Authority, the Water Services Corporation (WSC).

Initial Submissions

Initial Submissions by Dr. Lorna Mifsud Cachia (for the Appellant)

Dr. Mifsud Cachia stated that the submission of an Excel file had been requested. This case, she explained, involved a clerical oversight, in which a question in the technical questionnaire had been left unanswered. The question, concerning the pressure of the filter, required a simple “yes” or “no” tick-box response.

She argued that, in applying the principle of proportionality, the Appellant’s offer was compliant with the tender requirements. This was not a matter of conformity requiring Silvercraft Products Ltd. to alter the substance of its offer. Typographical errors could be corrected.

There had been a clarification request regarding a mismatch between “one” and “zero,” but this was not a rectification since the substance of the offer would not have changed.

Dr. Mifsud Cachia emphasized that when a tenderer is disqualified, it is akin to a capital sentence for the bidder. In this case, such a sentence was undeserved

because the issue was merely a clerical oversight. The Contracting Authority's decision was therefore disproportionate, and the Board should uphold this appeal.

Initial Submissions by Dr. John L. Gauci (for the Contracting Authority)

Dr. John Gauci stated that any evidence presented by the Appellant would not be denied by anyone. He noted that Dr. Mifsud Cachia had justified two issues raised by the Appellant — one in the literature list, in the documentation of the offer, where there was a typographical error.

The literature list of the Appellant referred to model TPRO140 instead of the correct model TPRO141. The Evaluation Committee had given the bidder an opportunity to correct this documentation under Note 2. However, the Appellant had a second discrepancy: in the technical questionnaire, under Table .6, the tenderer had to 'confirm that the filter housing can withstand a differential pressure of 2 bar' by ticking "yes" or "no." This box was left empty, even though all other boxes on the same page had been answered.

Dr. Gauci explained that while the Evaluation Committee sought to encourage competition by allowing more bidders to participate, unlike the first error (the incorrect model number), the Committee could not overlook that Clause 6 had been left unanswered. This clause fell under Note 3, which expressly prohibited rectifications for missing information. It was not a case of clarification, as the box had been left blank. No other document in the tender confirmed that the housing could withstand a differential pressure of 2 Bar.

The Appellant, therefore, could not argue on the grounds of justice, equity, or proportionality, since tender regulations clearly determine when clarification or rectification is permissible. Allowing a rectification in this case would have contravened the law.

Referring to Case 1780 (Wasteserv), Dr. Gauci noted that no rectifications were allowed under Note 3. The Board in that case had stated that "such disqualification of appellant's bid is deemed to be in total congruence with normal Public Procurement." Unfortunately, the objector had to be penalised for the missing information.

Witnesses

Mr. Jake Diedo (ID 0186997M) — Summoned by Dr. Lorna Mifsud Cachia

Mr. Diedo, Chairperson of the Evaluation Committee, confirmed he was present during the evaluation. He stated that the question was very simple, requiring a "Yes" or "No" response, and that the form, which contained several lines, was

to be filled online. During the process, the Evaluation Committee referred to Note 2 and Note 3. In this case, rectification was not allowed under Note 3.

He clarified that rectification meant providing additional information beyond what had been submitted. This would have altered the substance of the offer. Since the requirement concerned differential pressure — a factor affecting operational use — the missing response was material.

Asked whether the Committee could determine during evaluation if the product could operate as required, Mr. Diedo explained that supplies only arrive after the award. Therefore, the Evaluation Committee could not determine compliance due to the missing information.

Mr. Etienne Scerri (ID 360878M) — Summoned by Dr. Lorna Mifsud Cachia

Mr. Scerri, Executive Director of Silvercraft Products Ltd., confirmed that he had completed the tender himself and admitted to a clerical oversight regarding the unanswered question. He insisted that their product was fully compliant with the request.

The witness agreed with Dr. Gauci that the question fell under Note 3 and that had the answer been “No,” disqualification would have followed. Mr. Scerri stressed that if their product were non-compliant, they would not have submitted a bid.

Final Submissions

Final Submissions by Dr. Lorna Mifsud Cachia

Dr. Mifsud Cachia argued that, on one hand, the Chairperson of the Evaluation Committee stated they could not determine compliance because the box in the Excel sheet had been left empty. On the other hand, a “Yes” would have indicated compliance, and a “No” would have indicated non-compliance. Therefore, the tender was not non-compliant — the Committee could have sought clarification instead of disqualifying it.

She emphasised the distinction between the compliance of a tender and the compliance of what is offered. In this case, the Committee could not properly analyse the tender and should have requested clarification rather than disqualification.

Dr. Gauci might argue that such a request would amount to a fresh bid; however, this was not the case, as the bid’s substance and content remained unchanged.

In Case 1780, the issues were far more serious and involved more extensive data in the Excel sheet. In this instance, it was easy to overlook a box due to the

format and the large amount of required text. Over the years, the CJEU, the Slovensko judgment, and the Manova judgment have all stressed the importance of proportionality.

When regulations are interpreted too strictly, a valid bidder offering better value for money may be disqualified over a clerical mistake — an error that could be corrected without altering the substance of the offer. There is a clear difference between the document submitted and the offer itself, in this case, the issue lay in the document, not in the offer.

Note 3 dictates that “no rectification shall be allowed, only clarifications on the submitted information may be requested.” Note 2 dictates “that tenderers will be either a requested to clarify/rectify any incorrect documentation and submit any missing documents within five working days from notification” “and only clarifications on the submitted information.”

If a clarification had been requested, nothing would have been rectified — neither the offer nor the tender format. Hence, the decision was disproportionate. The Court has affirmed that the principles of proportionality and competition should prevail over disqualification. In this case, a clarification should have been sought.

Final Submissions by Dr. John Gauci

Dr. Gauci emphasised that all other bidders understood the Excel sheet’s requirements. The Appellant, he said, appeared to be asking for clemency, but the Evaluation Committee acted correctly under Page 5, Note to Clause 5. Where rectification was permitted, it had been allowed; in this case, it was not.

The tender drafters specifically required confirmation that the product could withstand the stated pressure. Since no such confirmation was provided, the Evaluation Committee could not deem the offer compliant.

Referring to *Barth Enterprises Ltd. vs Gozo Hospital* (Case 363/14, Page 9), the Court held that “the offer is in the control of the bidder, he can choose what to offer and how to qualify. He has to take responsibility if this is not compliant with the requests.”

He added that a bidder cannot expect the Contracting Authority to guide them toward compliance. The Committee should not exercise discretion beyond what the law allows. The Contracting Authority’s decision should therefore be confirmed.

Replica

Replica by Dr. Lorna Mifsud Cachia

Dr. Mifsud Cachia referred to the sentence on page 9 stating that the offer is in the hands of the bidder. She argued that in this case, the issue was not whether the offer was compliant with the Contracting Authority's requirements, but simply that the bidder failed to tick the box. The oversight did not make the tender non-compliant; it merely required clarification.

Replica by Dr. John L. Gauci

Dr. Gauci concluded by stating that declaring compliance is an integral part of the offer itself. The objector failed to submit what was required.

Conclusion of the Hearing

With no further arguments presented, Chairperson Dr. Ana Thomas thanked the parties and formally concluded the session."

The written pleadings as filed by Silvercraft Product Limited (C-2817) on the 12th September, 2025, together with proof of payment of a deposit in the amount of €1,050, wherein it held as follows:

"1. Introduction

1.1 We have been instructed by Silvercraft Product Limited (C2817 and TID Number 226911) (hereinafter 'the Appellant') to file this objection in terms of Regulation 270 of the Public Procurement Regulations (the 'PPR') in connection with the tender WSC/T/019/2025 - SUPPLIES - SUPPLY AND DELIVERY OF GRP CARTRIDGE FILTER HOUSING FOR THE WATER SERVICES CORPORATION, hereinafter referred to as 'the Tender'.

1.2 The Appellant is laying out the chronology of facts leading to the present objection:-

- (i) On the 11th April 2025, Tender WSC/T/019/2025 having as its title:- Supplies - Supply and Delivery of GRP Cartridge Filter Housing for the Water Services Corporation was published;*
- (ii) The deadline for submission of tender was the 20th May 2025;*
- (iii) On the 19th May 2025, the Appellant submitted its bid before the closing time.*
- (iv) On the 15th July 2025 the Appellant received a clarification whereby it was requested by the Evaluation Committee to answer to the shortcomings with regards to the Appellant's submission in reply to the technical requirements as per Clause 5C (i) and (ii) of Section 1 of the tender document, Technical Questionnaire and Literature List form: 'Item 1 of literature list - A declaration was submitted declaring that the model being offered is TPRO141 while in question 2 of the technical questionnaire the model stated is TPRO140.'*
- (v) On the 16th July 2025, the Appellant replied to this clarification request.*
- (vi) On the 3rd September 2025, the Appellant received a letter declaring the Appellant as technically non-compliant (hereinafter the 'Rejection Letter');*

1.3 *The Appellant was and is aggrieved by the decision of the Contracting Authority that its bid is technically non-compliant and is hereby filing this present objection to overturn the recommendation of award of the Tender;*

1.4 *According to the Rejection Letter, the Contracting Authority has decided that the Appellant's bid is 'technically non-compliant' because of the following reason:-*

'Question 6 of the technical questionnaire was left unanswered.'

1.5 *The ground underlying the Appellant's grievance as a result of the said decision of the Contracting Authority is clear and manifest and consist in the following:- (i) The Contracting Authority acted disproportionately when it decided straightaway to proceed outright with a declaration of non-compliance of the Appellant's bid which was indeed technically compliant with the published Tender requirements.*

2 *Submissions in relation to the Ground The Appellant will now present all its submissions supporting the grounds of its objection.*

2.1 *The Grievance: - the Contracting Authority acted disproportionately when it decided straightaway to proceed outright with a declaration of non-compliance of the Appellant's bid which was indeed technically compliant with the published Tender requirements as also acknowledged by the Contracting Authority itself.*

2.1.1 *The decision to declare the Appellant's bid as technically non-compliant is in breach of the principle of proportionality which has been repeatedly enunciated by the various levels of adjudicating authorities in Malta and in the European Union, the principle of proportionality being also a general principle of European Union Law. 1This principle lays down the obligation on Member States and the European Institutions not to go beyond what is necessary to achieve the intended objectives and when there are various measures which could attain the same objective, recourse must be had to the least onerous one.*

2.1.2 *The principle of proportionality is a fundamental tenet in both Maltese² and EU Public Procurement Law 3.Over the years, the CJEU has recognized that Contracting Authorities may request clarifications from tenderers even after the submission deadline, and it has confirmed that national laws permitting such requests do not conflict with the then EU Public Procurement acquis. In particular, the Manova judgment provided for a degree of flexibility in interpreting the rules regarding the formal compliance of bids in public procurement procedures.⁴ This ruling built upon the Slovensko judgments which emphasized that Contracting Authorities may seek clarifications after a bid has been submitted, provided that the principles of equal treatment and transparency are respected and that such clarifications do not amount to submitting a new tender. The Manova judgment further emphasized that strict adherence to formal requirements can be eased so long as equal treatment and transparency are maintained. Notably, these decisions predated Directive 2014/24/EU, which explicitly established proportionality as a guiding principle for Member States in public procurement⁵.*

- 2.1.3 *It follows that, where Contracting Authorities are required to act proportionately towards all economic operators, and given that requesting clarifications of submitted tenders does not contravene EU law (as consistently affirmed by the CJEU), it becomes evident that Contracting Authorities have a duty to seek clarifications rather than immediately disqualify a tender. This is particularly the case when a tender appears to contain potentially incomplete information, since requesting clarification is far less burdensome than outright disqualification. From the standpoint of proportionality, correcting or clarifying tender submissions represents a legitimate and lawful alternative to rejecting or disqualifying a bid, provided that the principle of equal treatment is fully respected?.*
- 2.1.4 *In this particular instance, the tender dossier made it clear in Section 5 (C)(i)(a) and (b), Specifications, that clarifications on the submitted information may be requested since Note 3 applied to the Technical Specifications. In fact, the tender dossier made it clear that Note 3 applied both to the:- 'Technical Offer is to be made up of:...' "*
- 2.1.5 *"In this case, as is clear from the Rejection Letter, the reason for the disqualification was that "Question 6 of the technical questionnaire was left unanswered". This clearly meant that what happened was the result of a pure oversight which in no way impinge on the substance of the offer itself. Hence, the lack of answer to Question 6 could have easily been addressed by a Clarification Request.*
- 2.1.6 *It must also be submitted that in this case, such a request would not have amounted to a rectification request but to a clarification request since in this case, it was not a matter of rectifying what had already been submitted but of providing clarification as to the affirmative or negative in reply to the question being posed. Furthermore, it is submitted that a clarification involves further clarity in the offer being made whilst a rectification involves the actual change in substance of the offer. In this case, had the Tender Evaluation Committee requested a clarification request, there would have been no change in the offer made by the Appellant (qua Tenderer) but, rather, a clarification as to whether the cartridge filter housing was capable of operating at a maximum differential pressure of 2 bar between the inlet and the outlet. In other words, the clarification would have simply requested a "yes" or "no" answer. Indeed, this approach was taken by the Evaluation Committee when the model number was not clear so why didn't it take it with respect to this oversight?*
- 2.1.7 *It is therefore clear that the Contracting Authority violated the principle of proportionality by classifying the Appellant's bid as "technically non-compliant" without first requesting clarification on the unanswered Question 6 of the technical questionnaire. Such a decision was disproportionate, particularly given the options available to the Contracting Authority under the Tender, since the issue could have been easily resolved through a clarification request, a procedure the Contracting Authority itself applied in other instances, but notably not in this case. The disqualification appears all the more excessive and unreasonable considering its severe impact on the Appellant resulting in disqualification.*
- 2.1.8 *Without prejudice to the abovementioned, the seriousness of the disproportionate decision becomes even more pronounced when one considers that the Appellant's bid was the cheapest one and hence, had this disproportionate decision not been taken by the Contracting Authority, the Appellant would have been awarded the tender.*

2.1.9 *It is therefore evident that the decision of the Contracting Authority to declare the tender technically non-compliant was disproportionate and went beyond what was appropriate or necessary to achieve the objectives of the Tender. The decision to reject and exclude the bid of the Appellant amounted to the most severe measure and was therefore disproportionate.*

2.1.10 *In light of the foregoing, the Appellant respectfully submits that the Contracting Authority must have sought clarification from the Appellant if it considered that the information requested under Question 6 of the technical questionnaire was missing, in accordance with the principle of proportionality. Indeed, requesting such clarification would have been the proportionate cause of action.*

3. Conclusion

Therefore, in view of the above and for other reasons that may be adduced at law at the sitting to be set up by the Public Contracts Review Board, the Appellant humbly submits that the same Board should respectfully, subject to any declaration or order that it deems fit and opportune:-

- (a) Declare that the Contracting Authority's decision of the 3rd September 2025 was illegal and consequently proceed to annul it;*
- (b) Cancel and revoke the proposed award of the Tender to the Recommended Bidder;*
- (c) Give any and all necessary instructions and directions to the Contracting Authority on the evaluation of the Appellant's bid; and*
- (d) Order the refund of the deposit paid by the Appellant.”*

The written reply as filed by the Water Services Corporation on the 18th September, 2025 (hereinafter the ‘Contracting Authority’) wherein it held as follows:

‘I. Introduction and Overview of Evaluation Process

The Water Services Corporation (WSC) respectfully submits this reasoned reply in response to the objection filed by Silvercraft Products Ltd. (hereinafter "the Objector") regarding the award of the Tender. The Tender in question was awarded to INAQUA Vertriebsgesellschaft mbH ("INAQUA") as the cheapest technically compliant offer, while the Objector's bid was rejected as technically non-compliant. This reply will outline the evaluation process and explain why Silvercraft's offer was found non-compliant, with particular focus on the unanswered Question 6 in its Technical Questionnaire.

It will then provide a detailed legal distinction between Note 2 and Note 3 requirements under the tender dossier, and demonstrate how WSC's actions were consistent with those rules. The Corporation will further reference relevant jurisprudence of the Public Contracts Review Board (PCRB) which consistently uphold that omissions like Silvercraft's are non-rectifiable under Note 3. Finally, WSC reiterates that public procurement evaluations must strictly abide by the submitted bid content. Allowing Silvercraft to cure a Note 3 omission after the deadline would violate fundamental principles of legal certainty, equal treatment, and transparency.

For these reasons, WSC maintains that Silvercraft's disqualification was justified and that the objection should be dismissed.

1. Evaluation Process and Silvercraft's Non-Compliance

The tender was evaluated in accordance with the published criteria. Silvercraft's bid passed the initial administrative compliance stage. During the technical evaluation, the Evaluation Committee identified two issues in Silvercraft's technical submission:

- (i) Discrepancy in Model Identification (Rectified): The model of filter housing was inconsistently referenced in Silvercraft's documentation. Item 1 of the Literature List included a declaration stating the model as "TPRO141", whereas in Question 2 of the Technical Questionnaire the model was given as "TPRO140". This inconsistency was flagged and treated as a Note 2 issue - i.e. an instance of incorrect/incomplete documentation that could either be rectified or clarified. In line with the tender rules, WSC requested Silvercraft to clarify which model was actually being offered, allowing a rectification within five working days. Silvercraft complied with this request and confirmed that the offered model was TPRO140 (explaining that the reference to TPRO141 in the literature was a typographical error). The Committee found this clarification satisfactory, and thus this issue was resolved without altering the substance of the offer.*

- (ii) Unanswered Technical Question (Not Rectifiable): The second issue was that Question 6 of the Technical Questionnaire had been left entirely blank in Silvercraft's submission. This question pertained to a required technical specification, and leaving it unanswered meant that a crucial piece of information was missing from the technical offer. Unlike the model discrepancy (which was rectified by clarifying existing information), the omission of an answer for Question 6 constituted a failure to provide required content by the tender deadline. Under the tender's rules, the Technical Questionnaire forms part of the technical offer which is governed by Note 3, meaning no rectification is allowed for missing information at that stage. In other words, because Silvercraft provided no answer at all to a technical requirement, the Evaluation Committee could not subsequently ask the Objector to supply a new answer after closing. Allowing such a post-deadline answer would have amounted to an inadmissible modification of the bid. The Committee therefore had no choice but to deem Silvercraft's offer technically non-compliant on this ground. This determination was reached even after taking into account the earlier clarification on the model number - the latter became moot once a Note 3 omission (the unanswered question) was confirmed. As a result, Silvercraft's bid failed the technical evaluation and was not considered further for award. The Objector's financial offer was never opened, since only administratively and technically compliant offers proceeded to financial comparison.*

In summary, the evaluation process was conducted strictly in accordance with the tender dossier: Silvercraft was given the opportunity to rectify those issues which were legally rectifiable (the Note 2 item concerning the model reference), but was not permitted to rectify or fill in entirely missing information in its technical form (the Note 3 item, Question 6). This approach is mandated by the tender rules and by law, as elaborated below.

2. Note 2 vs Note 3

The tender dossier (Section 1 - Instructions to Tenderers, Clause 5) clearly distinguishes between two categories of submission requirements, commonly referred to as "Note 2" and "Note 3" items. This distinction is crucial in public procurement practice, as it dictates whether certain shortcomings in a bid may be corrected after the tender submission deadline.

For documents or information falling under Note 2, tenderers may be asked to clarify or rectify incomplete or incorrect submission. The tender explicitly states: "Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification.". In other words, if a bidder's submission has minor clerical errors, omissions of documents (for example, a missing certificate or an incomplete piece of literature), or inconsistencies in the documentation, the Contracting Authority must give the bidder an opportunity to correct or supplement that documentation within five working days. This rectification process is provided free of charge and allows the Evaluation Committee to obtain any documentation that was inadvertently left out or to clarify any ambiguity, as long as the correction does not alter the substance of the bid.

In the context of this tender, the Literature List (Clause 5C(ii)) and certain supporting technical documents were designated as Note 2. Indeed, the Notes to Clause 5 of the Instructions specify that the required literature had to be submitted at tendering stage to corroborate the technical offer, and it fell under Note 2 - hence subject to postsubmission clarification/rectification if necessary. This is why, for example, WSC requested rectifications from various bidders (including Silvercraft) to supply or correct literature items after submission. As documented in the Evaluation Report, WSC sent formal clarification/rectification requests to bidders whenever a Note 2 item was missing or needed correction - such as drawings, catalogues, or declarations - giving them five working days to remedy those gaps.

Silvercraft itself benefitted from this Note 2 process when WSC invited it to clarify the model number discrepancy in its literature vs questionnaire, pursuant to "Notes to Clause 5 of Section 1" of the tender document. The Objector submitted its reply confirming the correct model (TPRO140) within the allowed period, and the Committee found this rectification acceptable. This exemplifies the operation of Note 2: a non-material inconsistency or missing document was corrected after opening, with the sole aim of confirming the offer's compliance with requirements, without introducing any new feature that was not present in the original bid.

By contrast, Note 3 covers the technical offer and any information that defines the substance of the bid, for which no rectification or late submission is permitted. The tender dossier is unequivocal on this point: "No rectification shall be allowed. Only clarifications on the submitted information may be requested.". In practice, this means that if a bidder fails to include a required element of the technical offer itself (such as failing to answer a question in the technical questionnaire, or not providing a mandatory technical detail), the Contracting Authority cannot accept that information later, nor allow the tenderer to alter or add to its original technical response. The only possibility under Note 3 is that the Evaluation Committee may seek clarification on information already submitted - for example, to resolve an ambiguity or to obtain an explanation that does not entail new material - but it cannot request or accept new documentation or answers that were missing at submission time.

In this tender, the Technical Questionnaire (Clause 5C(i)) - which is effectively the Technical Offer form - is a Note 3 item (as are the detailed technical specifications in Section 3 of the

dossier). It was clearly highlighted that the technical offer had to be complete upon submission; any failure to "provide complete technical documentation... will result in the outright rejection of the offer and no rectifications will be allowed - Note 3.". This strict rule serves to uphold fairness: all bidders must submit a fully compliant technical proposal by the closing date, and none can gain an advantage by adding essential technical information after the deadline. The unanswered Question 6 in Silvercraft's Technical Questionnaire falls squarely into this Note 3 category. By leaving a required field blank, the Objector's bid failed to meet a tender specification at the time of submission. The Evaluation Committee could not treat this as a mere clerical oversight or ask for a simple clarification, since there was no information provided at all. The only way to "fix" this would have been to invite Silvercraft to submit a brand new answer after closing, which the rules expressly forbid. Accordingly, the Committee, bound by the Note 3 rule, had to reject the offer as non-compliant due to this material omission.

WSC's evaluation strictly observed these rules: where Silvercraft's issue fell under Note 2 (the model number declaration), a rectification was invited and accepted; where the issue fell under Note 3 (a missing answer in the technical offer), no rectification was possible and the bid was disqualified.

3. Relevant PCRB Jurisprudence Supporting Non-Rectifiability of Silvercraft's Omission

The approach taken by WSC in this tender is well-supported by Maltese procurement case law. The Public Contracts Review Board (PCRB) has on numerous occasions considered the difference between rectifiable minor errors and non-rectifiable substantive omissions. The Board's rulings consistently underscore that a contracting authority must base its evaluation on the contents of the submitted bid and cannot accept *ex post* additions or corrections that would amount to a modification of an offer. (*Vide inter alia* Case No. 2016- ProCare Ltd vs CPSU (Decision of 2024), Case No. 1239 - Be Independent Ltd vs Ministry for Education (MEDE) (Decision of 2018 and Case No. 790- Joseph Cachia & Son Ltd vs WSC (Decision of 2015).

Reference is also made to the decision of this Board delivered in Case No. 1780- PTL Ltd v. Water Services Corporation (Decision of 2022) which expressly stated:

"When also considering that the Technical Offer Questionnaire falls under Note 3, i.e. no rectifications are allowed, such 'disqualification' of Appellant's bid is deemed to be in total congruence with normal public procurement praxis."

In summary, these PCRB cases uniformly support the stance that Silvercraft's omission of a required technical answer was not rectifiable after tender opening. In each case, the Board underscored the contracting authority's duty to enforce the tender requirements as written and to maintain a level playing field. An incomplete technical offer (lacking required details or documents) must lead to disqualification if the missing element falls under Note 3, since any later addition would amount to unfairly altering an offer post-submission. WSC's evaluation in the present tender is entirely consistent with this line of jurisprudence.

4. Upholding Equal Treatment, Transparency, and Legal Certainty

The Objector's plea to be permitted to rectify its omission after the fact runs counter to fundamental procurement principles. Equal treatment and transparency require that all bidders compete on the same terms and that the rules of the competition are clear and enforced

strictly. Allowing one bidder to correct a material gap in its offer post-deadline would amount to shifting the goalposts after bids have been opened, which is manifestly unfair to other participants who respected the requirements. The Court of Justice of the EU and the PCRB have repeatedly affirmed that contracting authorities must not accept substantial changes or late submissions that improve a bidder's position, as this breaches the level playing field and undermines trust in the process. Every tenderer has the responsibility to submit a compliant bid by the deadline, and if they fail to do so, the consequence (though sometimes harsh) is disqualification - this is the trade-off for ensuring fairness to all.

*In this case, Silvercraft had the same opportunity as every other bidder to fully complete its technical questionnaire and include all required information. Indeed, the tender documentation itself highlighted in bold that failure to provide the complete technical documentation at tender submission would lead to "outright rejection... and no rectifications will be allowed". Silvercraft was therefore on clear notice of the importance of a complete technical offer. If any question or requirement was unclear, the Objector could have sought clarification before the submission deadline. The PCRB in *Be Independent vs MEDE* stressed that bidders should "avail themselves of the remedies" (such as asking questions during the tender period) if in doubt - and in that case, the bidder did not, which contributed to its offer being incomplete. Silvercraft similarly did not raise any issue about the questionnaire during the tender's clarification window, and thus it was incumbent on Silvercraft to answer all questions properly. Not answering Question 6 was not a trivial formality; it left the Committee without an essential piece of technical data needed to evaluate the bid against the specifications. To insert an answer now (after seeing the evaluation outcome) would not only violate the tender's explicit Note 3 rule but also offend the principle of legal certainty. The rules cannot be retroactively bent for one bidder without fundamentally harming the credibility of the public procurement regime.*

In view of the above, permitting Silvercraft to remedy its Note 3 omission at objection stage would not only lack any legal basis - it would actively breach the governing rules and principles. It would amount to re-negotiating the Objector's bid after the outcome is known, a step that the Board cannot countenance without eroding the fairness of the tendering process. Indeed, the Board has consistently refused attempts by appellants to alter or supplement their offer post-submission, even if done under the guise of clarifications. The integrity of public procurement rests on the principle that bids are final at the time of opening, save only for the limited clarifications/rectifications allowed by the tender terms (which, as we have shown, do not include adding missing technical answers).

5. Conclusion and WSC's Position

For the reasons elaborated above, the Water Services Corporation respectfully maintains that the Objector's bid was rightly deemed technically non-compliant and that the contract award to INAQUA Vertriebsgesellschaft mbH is fully justified. Silvercraft's failure to answer Question 6 of the Technical Questionnaire was a material omission under Note 3 of the tender conditions - a defect which could not be cured after the tender deadline without violating procurement rules. WSC evaluated all bids strictly against the published requirements and treated all bidders equally: where clarifications were permitted (Note 2 issues), they were uniformly requested; where they were not permitted (Note 3 issues), the bids in question were rejected. Silvercraft's bid, unfortunately, fell into the latter category due to its incomplete technical offer. The PCRB's jurisprudence affirms that WSC's decision in this regard was correct and in line with law, as contracting authorities cannot accept new information to fill

gaps in a submitted bid. To do otherwise would undermine the level playing field and legal certainty in the tender process.

WSC therefore respectfully submits that Silvercraft's objection is without valid grounds and should be dismissed. The Contracting Authority's evaluation and award decision were carried out in strict conformity with the tender dossier and applicable procurement regulations.

INAQUA's offer was the cheapest fully compliant bid and was rightly selected for award, whereas the Objector's offer could not be accepted due to a non-rectifiable non-compliance of its own making. Upholding the Objector's challenge would require overturning the well-established rules on bid submission and rectification, which the Board has consistently upheld to protect fairness and transparency in public contracting.

In conclusion, WSC stands by its evaluation and award decision, and kindly requests the Board to reject the Objector's claims in their entirety, confirming that Tender WSC/T/019/2025 was correctly awarded to INAQUA as the eligible bidder with the lowest-priced compliant offer.”

The opening and closing submissions of the Appellant and the Contracting Authority as delivered by their legal representatives;

Considers;

This Board notes that the Appellant has brought forward one main grievance relating to the alleged disproportionality by the Contracting Authority when excluding the Appellant’s bid as technically non-compliant.

A. Alleged Breach of the Principle of Proportionality

The Appellant’s argument revolves around the fact that the Contracting Authority should have, in the Appellant’s studied opinion, asked the Appellant to clarify “*the unanswered Question 6 of the technical questionnaire*”, and given that the Appellant’s bid resulted to be the cheapest, this rendered the disproportionality more serious in the circumstances.

The Contracting Authority on the other hand contends that the Tender Evaluation Committee acted correctly in that it asked the Appellant to clarify that which was rectifiable and which fell under Note 2, whilst the Tender Evaluation Committee “*could not subsequently ask the Objector to supply a new answer after closing. Allowing such a post-deadline answer would have amounted to an inadmissible modification of the bid. The Committee therefore had no choice but to deem Silvercraft’s offer technically non-compliant on this ground*”.

This Board, having reviewed the Technical Questionnaire submitted by the Appellant in this case, and which was admittedly marked within the Tender Document as Note 3 status, must necessarily highlight the introductory note on Page 1 of the Technical Offer Questionnaire:

*“Economic Operators are required to fill-in the requested information on item being offered for each of the technical requirements listed in table below. **Failure to complete and upload any of the requested information will render the offer non-compliant** and offer will not be considered further through the evaluation process. The information on item being offered provided in the table below falls under Note 3 (Notes to Clause 5, of the Tender Dossier) and shall not be subject to rectifications.”* (Added emphasis of the PCRB).

This status as Note 3 is also confirmed in Section 1 Clause 5(D)(ii) at Page 5 of the Tender Document and defined within the 'Notes to Clause 5' as meaning:

"3. No rectification shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification".

This Board must necessarily delve into the difference between a clarification and a rectification, and hereby refers to the recent judgment in the names 'Krypton Chemists Limited (C-8933) v. Central Procurement and Supplies Unit et' dated 13th November, 2025 delivered by the Court of Appeal (in its Superior Jurisdiction) which dealt with this distinction precisely:

"27. Ma bemma għalfejn ngħidu, il-prinċipju tal-proporzjonalità għandu jiġi applikat b'mod li jbhax l-għanijiet tal-proċess tal-akkwist pubbliku, jiġifieri, li l-kuntratt jingħata lil min jagħmel l-orbox u l-aħjar offerta, mingħajr ma jinkisru l-prinċipji ta' trattament ugwali u trasparenza. Tali prinċipju però m'għandux jintuża bhala pretest biex offerta irregolari tiġi sahvata, jekk dan iwassal għal vantaġġ kompetittiv li mhux xieraq.

28. Hija rilevanti bafna wkoll f'dan il-qasam tal-liġi d-distinzjoni li teżisti bejn kjarifika u rettifika.

***29. Kjarifika hija l-azzjoni li permezz tagħha l-awtorità kontraenti tista' titlob spjegazzjoni jew interpretazzjoni fuq informazzjoni li tkun diġà giet sottomessa mal-offerta.** Naturalment il-proċedura tal-kjarifika ma tistax tintuża biex dak li jkun idabbal informazzjoni ġdida jew biex ibiddel issustanza tal-offerta. Il-Qorti tal-Appell fis-sentenza *Rockcut Limited v. Direttur Generali tad-Dipartiment tal-Kuntratti* deċiża fil-25 ta' Ġunju, 2018 stabbiliet li ma tistax tingħata kjarifika ta' tagħrif li ma jkunx ingħata għaliex il-kjarifika sservi biss biex tagħmel aktar ċar tagħrif li jkun diġà mogħti iżda li ma huwiex ċar biżżejjed. Kif ingħad fis-sentenza *Steelshape Ltd v. Direttur tal-Kuntratti* deċiża fis-7 ta' Anwiissu, 2013, dak li offerent għandu jgħid, għandu jgħidu mal-offerta u mhux jippretendi li jkun mistoqsi d-dettalji tal-modus operandi tiegħu. **Kjarifika, għalhekk hija limitata għal spjegazzjoni ta' elementi diġà preżenti fl-offerta,** mingħajr ma tinbidel il-kompożizzjoni tagħha.*

***30. Rettifika, min-naħa l-oħra, hija l-azzjoni li tippermetti lill-awtorità kontraenti titlob korrezzjoni ta' żbalji jew omissjonijiet. Tali rettifika hija permessa li ssir sakemm din ma tkunx giet esplicitament eskluża fiddokument tas-sejha. Ifisser dan, li jekk skont id-dokument tas-sejha ma tistax issir rettifika mela allura l-awtorità kontraenti tkun miżmuma milli titlob rettifika għaliex l-awtorità kontraenti hija marbuta mal-kundizzjonijiet tas-sejha, b'dana li jekk hija ma tharishomx hija tkun qiegħda tivvantaġġa offerent fuq iehor** (ara *Projekte Global Ltd v. Kunsill Lokali Marsaskala* deċiża mill-Qorti tal-Appell fis-7 ta' Ottubru, 2014 fejn offerta li ma kinitx akkumpanjata minn garanzija xierqa ma setgħetx tiġi rettifikata għaliex tali rettifika kienet projbita mill-kundizzjonijiet tas-sejha). Minbarra dan, irrettifika tista' ssir biss jekk l-ommissjoni jew żball ikunu manifesti, klerikali jew formali, u dawn la jaffettwaw il-kompetizzjoni u lanqas ma jbiddu ssustanza tal-offerta bhall bdil fil-prezz, fl-ispeċifikazzjonijiet tekniċi, jew fl-elementi essenzjali, Hekk pereżempju fis-sentenza *AIB Insurance Brokers Ltd v. Awtorità dwar it-Trasport ta' Malta* deċiża fis-27 ta' Ottubru, 2021, il-Qorti tal-Appell aċċettat rettifika ta' dokument nieqes li ma kienx essenzjali u ma biddilx l-offerta.*

31. Imbaddem dan kollu għall-każ tal-lum, din il-Qorti tqis li n-nuqqas fl-istampa tat-tikketta provdut minn Krypton ma taba l-ebda vantaġġ u ma holoq ebda preġudizzju għall-oblaturi l-obra. Il-problema fl-istampa kienet biss li din ma kienitx cara biżżejjed u għalhekk ma setgħetx tingara faċilment. Nuqqas bhal dan seta' faċilment jiġi msenwi permezz ta' kjarifika għaliex kif rajna aktar kmieni, il-proċedura tal-kjarifika hija aċċettabbli li tintuża meta t-tagħrif mogħti mill-offerent ma jkunx ċar biżżejjed.” (Added emphasis of the PCRB).

This Board considers that established jurisprudence on the matter is constant and clear, that a Contracting Authority may ask the economic operator for a rectification to correct omissions (as in this case) or mistakes, ONLY when the Tender Document allows for it. In this case and others alike, the Technical Questionnaire was classified as a Note 3, and had the Contracting Authority asked the Appellant to rectify and correct its omission in Point 6 of the Technical Questionnaire, it would have in fact been acting unjust in the face of other economic operators which submitted a Technical Questionnaire free from omissions. This Board therefore agrees with the Contracting Authority insofar as it submitted that the Tender Evaluation Committee's hands were tied in asking for a rectification in regards to Point 6, however, this Board disagrees with the Contracting Authority's submission that the discrepancy in the model identification¹ was rectifiable, as the information provided in the Technical Questionnaire was too classified as Note 3, whereas the technical literature was classified as Note 2 and was rectifiable. Therefore, the technical literature was susceptible to change to tally with the Technical Questionnaire but not *vice-versa*.

Therefore, the Appellant's grievance is being rejected as unfounded.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to reject the appeal filed by Silvercraft Product Limited (C-2817) in its entirety.

The Board further decides not to re-imburse the deposit paid by Silvercraft Product Limited (C-2817).

Dr Ana Thomas
Chairperson

Mr Keith Victor Grech
Member

Mr Lawrence Ancilleri
Member

Friday 5th December, 2025.

¹ TPRO140 in the Technical Questionnaire and TPRO141 in the technical literature provided.