

PUBLIC CONTRACTS REVIEW BOARD

Case 2125 – CT2173/2024 - (Re-issue CT2381/2023) Provision of Cleaning Services with Reduced Environment Impact at St. Vincent de Paul Long Term Care Facility

2nd July 2025

The Board,

Having noted the letter of objection filed by Dr Peter Fenech and Dr Arthur Azzopardi, acting on behalf of IURIS, acting for and on behalf of X Clean Limited (C69875) (hereinafter referred to as the "Appellant"), filed on the 31st of January 2025;

Having also noted the letter of reply filed by Dr Noel Bezzina acting on behalf of Saint Vincent De Paul (hereinafter referred to as the "Contracting Authority") and Dr Audrey Vella Buttigieg acting on behalf of the Department of Contracts, filed on the 7th of February 2025;

Having also noted the letter of reply filed by Dr Clement Mifsud Bonnici, Dr Calvin Calleja, and Dr Kelly Cini, acting on behalf of Ganado Advocates, acting for and on behalf of Servizi Malta Ltd (C-45511) (hereinafter referred to as the "Recommended Bidder"), filed on the 11th of February 2025;

Having heard and evaluated the testimony of the witness Ms Karen Muscat (ID 141773 M) (Member of the Tender Evaluation Committee) as summoned by Dr Peter Fenech acting on behalf of the Appellant;

Having taken cognisance of and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 25th of June 2025, hereunder reproduced:

Minutes

CT 2173/2024 (Re-issue 2381/2023) – Provision of Cleaning Services and Reduced Environment Impact at St. Vincent de Paul Long Term Care Facility

The tender was issued on the 05th of June 2024, and the closing date was the 9th of July 2024.

The estimated value of the tender, excluding VAT, was € 10,118.789.81

A deposit of €50,000 was paid.

There were 10 bids

On the 25th of June 2025 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairperson, Dr Ana Thomas, and Dr Ing. Damien Gatt, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant: X Clean Limited:

Dr Peter Fenech	Legal Representative
Dr Luigi Fenech	Legal Representative
Ms Kristina Xuereb	Director

Contracting Authority: St Vincent de Paul Long Term Facility

Dr Noel Bezzina	Legal Representative
Ms Karen Muscat	Chairperson
Mr Mark Bonanno	Evaluator
Mr Mario Caruana	Evaluator
Mr Noel Vidal	Evaluator
Ms Claudia Muscat	Secretary
Ms Marica Saliba	Company Representative

Department of Contracts

Dr Audrey Marlene Vella Buttigieg	Legal Representative
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Servizi Malta Ltd:

Dr Clement Mifsud-Bonnici	Legal Representative
Dr Calvin Calleja	Legal Representative
Dr Kelly Cini	Legal representative
Ms Dominique Desira	Company Representative
Mr Matthew Castillo	Company representative

Introduction

Mr Kenneth Swain, Chairperson of the Public Contracts Review Board (PCRB), welcomed the parties and declared the session open.

The Chairman invited Dr Peter Fenech representing the Appellant X Clean Limited to start with his initial submissions.

Initial Submissions

Appellant's Submission

Dr Fenech stated that in his initial submissions he would be brief since the letter of appeal had the necessary details which he was sure the present members of the PCRB would have familiarised themselves with beforehand.

He stated that the appellant was presenting three (3) grievances.

However, he declared that the appellant was renouncing and doing away with the first grievance "*Unjustified Extension of the Validity Period*".

At this stage, the Chairman intervened and pointed out that this tender was issued under the General Rules version 4.9 which were recently updated.

Dr Fenech continued by clarifying that he would concentrate on the next two grievances being:

1. That Servizi Malta was not technically compliant
2. That there was an incorrect computation of the award and Best Price Quality Ratio (BPQR)

Dr Fenech emphasized that Servizi Malta Ltd were not compliant since they did not indicate the personnel that will be carrying out the infection control as was required in the tender. For this omission, Servizi Malta Ltd had its marks deducted by 0.2 out of a total of five (5). He reiterated that since this is a crucial part of the submission, the appellant wants a member of the tender evaluation committee (TEC) to explain how this calculation was reached.

Submissions by the Contracting Authority

Dr Bezzina stated that the third grievance is developed from the second one. He emphasised that contrary to what the appellant is insisting, Servizi Malta 's submission couldn't be disqualified because it is alleged that Servizi Malta Ltd did not indicate the infection control personnel in its submission.

Dr Bezzina explained that Servizi Malta Ltd submitted the information which was requested and that certain marks were deducted according to the grading system from 0 to 100 as will be explained by a member of the TEC who will to be summoned to take the witness stand.

Witness Testimonies

Testimony of Ms Karen Muscat (ID 141773 M) as summoned by Dr. Fenech

Addressing Ms. Muscat, Dr. Fenech referred to the marks deducted by the TEC due to a missing document that was to be sent by Servizi Malta Ltd. Ms. Muscat intervened, stating that there were no missing documents and that the document in question had indeed been sent.

At this point, Dr. Fenech, referring to a specific column (Criterion 1.12 B4 – Methodology), inquired about the calculation of the deduction of 0.2 out of a total of 5 marks. Ms. Muscat explained that the overall marks were originally one hundred (100), but through a ratio, the maximum was set at five (5). She continued that there were three evaluators who provided different respective marks for a mandatory essay (write-up) of approximately two hundred fifty (250) to three hundred (300) words regarding a list of services required by the tender. This document, she clarified, was sent; however, it lacked a required item. Despite this, all other required items, totaling around thirty (30), were included.

Ms. Muscat concluded that all three evaluators deducted marks according to their assessment of the importance of the missing item. Since only one item was not addressed, a score of zero (0) could not be given. Thus, the deduction of marks was solely based on the absence of this single item.

Cross-Examination:

Dr Mifsud Bonnici asked Ms Muscat to identify the specific item that was missing in the submitted document (with reference to the write-up).

Ms Muscat referred to page 37 of the tender document and read out the paragraph in question i.e.

“As a minimum, every three (3) months, qualified infection control personnel employed by the contractor are to certify and produce a report”

In response to Dr. Mifsud Bonnici's question, Ms. Muscat clarified that this criterion pertains to the contractor.

At this stage, the Chairperson invited the parties to present their final submissions.

Final submission

Final submission by Dr Fenech for the Appellant

Dr. Fenech emphasised that the issue involves cleaning services at St. Vincent de Paul, Malta's largest hospital. These services must meet infection control criteria, which the preferred bidder failed to comply with. Dr. Fenech stated that for him, from the beginning, it is problematic if infection control is not properly submitted in the tender.

Dr. Fenech argued that the tender required submission of detailed methodology, and among the criteria was infection control. The tender requires an economic operator to submit a methodology through a write-up report to demonstrate objectives, responsibilities, and duties.

Dr. Fenech argued that simply noting the absence of the infection control person's name is insufficient. His main concern was the lack of identification of this person. Our grievance emphasizes this point and stresses the importance of knowing the infection control person's capabilities and capacity, as required by the document.

Dr. Fenech stressed the fact that the methodology involved should have ensured that all objectives of this tender were achieved.

Dr. Fenech at this stage hypothesized a situation where the tender is won and the day after there is an outbreak like the one when we had Covid 19. He noted that when COVID hit, they weren't prepared and had to react quickly.

Dr. Fenech emphasized that in summary, a tender involving the biggest hospital in Malta was awarded when an infection control person was not even mentioned in the bid. He continued that one cannot say that legally the preferred bidder satisfied the requirements. Dr. Fenech added that in a cleaning contract where infection control is a fundamental issue, the Contracting Authority demands this criterion, but when this is not given, and in spite of this important item, (only) zero point two (0.2) marks are deducted.

Dr Fenech continued that whether the maximum marks are a hundred (100) or a five (5), this is a crucial issue, and the Adjudicating Committee had the obligation to make sure that it had to have the indication to know who the person responsible for this task was. This is so because the person must

be a qualified person who has to provide a methodology which the Contracting Authority itself wanted.

Dr. Fenech contended that this boils down to a situation where if there is no known person there is no known methodology. He argued that if you don't have the name of the person, how do you have the methodology?.

At this stage, Dr Fenech referred to Court Ruling No. 177/2021 by Judge Miriam Hyman in the case of " *BINGHAM CAROL ANNE NOE ET vs SEDDON JOHN EDWIN.*" The court emphasised that when a submission is required within a stipulated time frame, any material provided after that period will not be accepted.

Dr. Fenech compared this to the current case in which the infection control requirement was not provided within the specified timeframe. He noted that merely deducting 0.2 marks for this omission is insufficient.

As regards to the second submission, i.e. grievance no 3 in the letter of objection, quoting Page 14 out of 53 pages of the tender document, "*score of zero shall be allotted if this document is not submitted.*" Dr. Fenech argued that this should have led to disqualification, not a minor point deduction. He insisted that the accent now was on documentation and not on a write up.

He compared the recommended bidder's submission with the appellant's (X Clean Limited) submission, which included detailed documentation on their infection control plan, responsible person, and implementation schedule (every six weeks). He also questioned how compliance can be assessed without these detailed elements.

Dr Fenech emphasized that although all this was not submitted, the adjudicating committee decided quite wrongly to deduct marks for the simple reason that there was no name. He remarked that what was required was not just the name, but a methodology through the submission of a write up demonstrating assurance that the cleaners provide the expected objectives. He explained that this was not just a ticking of boxes exercise and that is why the appellant is submitting that the computation of the BPQR was wrong because this merited zero marks and hence without the required documentation legally the bid had to be disqualified. He ended that while the omission of a name can be tolerated, the omission of the documentation cannot be tolerated.

Final submission by Dr Mifsud Bonnici for the Recommended Bidder

Dr Mifsud Bonnici stated that the first issue to address was why they were present at this hearing. He submitted that they were there because of a particular comment made by the Contracting Authority on the BPQR sheet regarding his client's offer, which stated '*infection control personnel not included*'.

Dr Mifsud Bonnici argued that such a comment should never have reached the appellant as it was commercially sensitive. However, he stated he would not dwell on procedural issues and would focus on the substantive matters.

Dr Mifsud Bonnici submitted that the comment demonstrated that the Contracting Authority had misinterpreted the tender, as had the appellant. He emphasized that the condition at issue was a performance condition, evidenced by the use of terminology referring to "the Contractor" rather than "the bidder" or "the economic operator," indicating this applied to the successful bidder who would sign the contract.

Dr Mifsud Bonnici argued that if infection control personnel were as crucial as claimed by the appellant, the Contracting Authority would have included this requirement in the tender selection

criteria, requiring the operator to have infection control personnel with specific experience, and would have included it as a key expert requirement. He stressed that infection control was a performance condition to be satisfied upon contract signature.

Dr Mifsud Bonnici referenced European jurisprudence, specifically C-403/21 SC NV Construct SRL v Județul Timiș, where the Court of Justice stated that "*to oblige tenderers to satisfy all the conditions of performance of the contract at the time of submission of their tenders would be to impose an excessive requirement – one which might dissuade economic operators from participating in procurement procedures – and would thus infringe the principles of proportionality and transparency.*"

Dr Mifsud Bonnici noted that this jurisprudence was embraced by the Board earlier that week in case 2084, PTL vs Malta Police Force, where the Board rejected PTL's argument to interpret a performance condition as something that needed to be satisfied immediately upon tender submission.

Dr Mifsud Bonnici analysed the criterion at issue, stating it accomplished two things: first, it created a principle requiring proof of methodology through submission of a write-up report, which had been submitted and satisfied; second, the methodology should demonstrate assurance that cleaners provide expected objectives. He emphasized that the English terminology was significant, as it required demonstrating "assurance" rather than simply satisfying minimum technical specifications.

Dr Mifsud Bonnici explained that the criterion focused on what was important to the Contracting Authority and indicated five factors for prominence in the report. He stated that their report addressed precisely these issues, as did the appellant's submission.

Dr Mifsud Bonnici countered any impression that infection control was not given importance by the recommended bidder. He stated they had exhibited submittals in the procurement file that included references to infection control, cleaner training addressing infection control, submission of standard operating procedures on training including infection control sections, and CVs of infection control experts who would provide training.

Dr Mifsud Bonnici questioned what exactly the appellant claimed the Board should find, asking whether there was a requirement to submit names of cleaners with ID cards and CVs. He argued these were "*figments of imagination*" as the tender did not request such documents but rather asked for a performance condition satisfied upon contract signing.

Regarding the third grievance about point allocation, Dr Mifsud Bonnici stated he disagreed with the points allocated, believing that the recommended bidder should have received full points without deduction. However, since his client won the contract and was in pole position, he had no reason to raise these grievances except to show the truth.

Dr Mifsud Bonnici concluded by addressing what he perceived as the real reason for the appeal. He noted that the appellant had been the incumbent service provider for 10 years, had received direct orders, and had won the previous tender. He submitted that the appeal was being made to delay proceedings in hopes of obtaining an extension or direct order.

Closing remarks by Dr Peter Fenech for the Appellant

Dr Peter Fenech began his final reply by emphasizing that one should not minimize the seriousness of this procurement matter. He stated that while his colleague (Dr Mifsud Bonnici) had suggested various issues were unimportant, saying "*it doesn't matter because I can give it to you later*" or "*it doesn't matter because it wasn't requested*" or "*this because it wasn't mentioned,*" they were discussing a cleaning contract in a hospital.

Dr Peter Fenech emphasized that infection control was specifically mentioned in the tender, citing page 37: *"As a minimum, every three (3) months, qualified infection control personnel employed by the contractor are to certify and produce a report that cleaning methods used at Saint Vincent de Paul are in line with Hospital standards as per Malta law."* He argued that he had not been legally misinterpreted and challenged the suggestion that the Contracting Authority had misinterpreted the tender, questioning why, if this were the case, the Contracting Authority would have made the comment (in the BPQR form) about infection control personnel not being included.

Dr Peter Fenech disputed the characterization of infection control as merely a "performance condition." He argued that what they were judging was whether those submitting offers to provide the services had met the requirements. He stated: *"That's what we're judging. What we're judging is whether those who submitted to offer those services (meaning the performance conditions) reached them. That's what we're judging."*

He argued that the obligation was to provide the methodology upfront, not after signing the contract: *"You had the obligation to give the methodology. Not to tell me who will do the training. You had the obligation to tell me who, what criteria they have, what is the methodology you will implement to achieve those six weeks, to do those 3 months."* Dr Peter Fenech emphasised that the write-up was mandatory and that infection control was part of this mandatory write-up.

Dr Peter Fenech wrapped up by stressing that assurance must be demonstrated through clear identification of responsible personnel and their methods. He maintained that, in his view, the Contracting Authority had erred in its approach, and he felt compelled to make this point clear.

Hearing Conclusion

The Chairman thanked the parties for their submissions and declared the sitting closed

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 25th of June 2025.

Having noted the objection filed by X Clean Limited (C69875) (hereinafter referred to as the "Appellant") on the 31st of January 2025 and refers to the claims made by the same Appellant with regards to the tender of reference CT2173/2024 listed as case No. 2125 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Peter Fenech & Dr Luigi Fenech
Appearing for the Contracting Authority:	Dr Noel Bezzina
Appearing for the Department of Contracts:	Dr Audrey Vella Buttigieg
Appearing for the Recommended Bidder:	Dr Clement Mifsud Bonnici, Dr Calvin Calleja, & Dr Kelly Cini

Whereby, the Appellant contends with respect to:

1. Unjustified Extension of the Validity Period

- The tender document for CT2173/2024, specifically clause 4.5 of section 4 found on page 46, states that *'the contents of this procurement document complement the latest version of the General Rules Governing Tenders applicable on the date of the publication of this tender, the Terms of Use and the Manual for Economic Operators applicable to Government's e-procurement Platform (available from the Resources Section).*
- Therefore, it transpires abundantly clear that the General Rules Governing Tenders are directly applicable to this procurement procedure;
- As per the General Rules Governing Tenders, specifically clause 8.1, the period of validity of tenders is ninety days, *'tenders must remain valid for a period of 90 days after the deadline for submission of tenders indicated in the contract notice, the procurement document or as modified in accordance with clause 10.1. Any tenderer who quotes a shorter validity period will be rejected'*;
- Therefore, the above clearly and unequivocally imposes that the evaluation of the tender shall be conducted within the period of 90 days;
- Additionally, clause 18.4 of the General Rules Governing Tenders confirms that *'the CGA/SPD reserves the right to cancel the whole tendering process if it confirms that the duration of the evaluation has exceeded the stipulated time limit in clause 8 of these General Rules Governing Tendering'*;

- This further confirms that the established validity period of the evaluation process is 90 days, and this time-frame is to be rigorously abided by without reservation;
- The Public Contracts Review Board, in its decision dated 12th of March of the year 2024, bearing number 1434, emphasised that, '*an extension of the validity period, is only authorised in exceptional circumstances*';
- As is well established, the Public Contracts Review Board has already expressed itself on this matter, that unless the need to extend the validity period of 90 days is of an urgent and extraordinary nature, such extension will not be permitted;
- The prospective tenderers were never notified by way of a clarification note issued by the Economic Operator of any extension and therefore the initial validity period of 90 days is without a doubt the validity period in toto. The aim behind retaining an adjudication within said determined time frame requires no further explanation. Whilst appellant company is aware of the amendments to the procurement regulations introduced over the last two years, there has been no introduction in the law stating that the Contracting Authority/Department of Contracts can unilaterally extend this validity period or has the authority to adjudicate the tenders outside the requested validity period. A validity period introduced by the very same Department of Contracts. Ubi lex voluit lex dicit; any other interpretation can only lead to abuse.
- Furthermore, it is the position of X Clean that no such situation developed to validate any extension whatsoever;
- Hereunder is a matrix determining the timeframes;
 - Date of tender submission deadline: 9th of July 2024
 - Termination of initial validity period: 9th of October 2024
 - Date of award of the tender: 24th of January 2025;
- There can be no doubt that the award was made after the expiration of the period of the validity of the offer, and this in complete disregard and violation of the General Rules Governing Tenders;
- In the case under review, the above-mentioned provisions have not been observed and therefore, the award is in blatant breach of the General Rules Governing Tenders;

2. *Servizi Malta Ltd not Technically Compliant*

- On page 41 of the award document, communicated to X Clean and dated 24th of January 2025 , it transpires abundantly clear that Criterion 1.12., was not completed or adhered to, by Servizi Malta Ltd rendering their bid technically non-compliant and thus the tender submitted not eligible for further consideration;
- Quoting said award document, *'B4.Economic Operators shall provide a methodology through the submission of a write-up report, of approximately between 250 to 500 words, demonstrating assurance that the Cleaners provide the expected objectives, responsibilities and duties in regard to the activities required in Article 4.2. (1-39) of Section 3 ToR. This report shall also make reference to all the activities that will be carried out by the Contractor in order to ensure that the expected level of service is reached. Such activities shall include but not be limited to: - training provided; supervisions or inspections; visual inspections, on-the- spot checks, formal inspections; full system audits on its own management systems and any other quality assurance measures to be practiced by the Contractor?'*;
- As is clearly stated by the Contracting Authority, Servizi Malta Ltd failed to indicate the personnel that will be carrying out the infection control, and thus the mandatory reports stipulated in clause 4.2.5 of the tender document and duties of the economic operator have been omitted, and this in clear breach of the tender requirements as outlined in the General Rules Governing Tenders, seeing that the infection control is a key element within the methodology which is a mandatory criteria as per page 11 of the tender document;
- As per the World Health Organisation (WHO), *'without effective IPC it is impossible to achieve quality health care delivery. Infection prevention and control effects all aspects of health care, including hand hygiene, surgical site infections, injection safety, antimicrobial resistance and how hospitals operate during and outside of emergencies'*;
- The fact that the personnel has not been mentioned renders the expected objectives in regard to the activities required such as training, supervisions, inspections, spot checks in doubt and the Contracting Authority is not in a position to assure requested and expected objectives are reached. It is thus inexplicable how the offer by Servizi Malta Ltd was even considered;
- Additionally, as per clause 16.1 (2) of the General Rules Governing Tenders, *'the Evaluation Committee must ensure that an economic operator is ab initio eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same'*;
- Furthermore, in line with clause 16.3 of the General Rules Governing Tenders, *'in order to be considered for this Evaluation, tenderers must submit a completed Technical Offer'*;
- Finally, the clause 16.3 (2) clarifies that *'in respect of rectifications and clarifications, the processes established in Clause 16.1, shall mutatis mutandis apply'*, thus meaning for a tender to be considered, the Evaluation Committee must be in possession of all the requirements by the closing date for the submission of the tender;

3. Incorrect computation of award and Best Price Quality Ratio (BPQR)

- As is clearly stipulated in Criterion 1.12. above mentioned, '*a score of ' 0 ' shall be allotted if this documentation is not submitted. If a ' 0 ' score shall be allotted, the bid shall be disqualified*';
- It cannot be disputed that the infection control personnel are an integral part of this tender, and this is confirmed on page 37 of the tender document;
- '*As a minimum, every three (3) months, qualified infection control personnel employed by the contractor are to certify and produce a report that cleaning methods used at Saint Vincent de Paul are in line with Hospital Standards as per Malta law.*';
- '*As a minimum, every six (6) weeks, microbiological sampling of the environmental surface are to be taken and examined by certified laboratories in line with Hospital standards as per Malta Law ..*';
- Therefore, if the preferred bidder failed to mention infection control personnel, their methodology could not have provided the required comfort and conformity requested in order for cleaning to be certified as being carried out in line with hospital standards;
- Seeing that the infection control personnel have been completely omitted from the methodology required in criterion 1.12, the Contracting Authority was in no position to award any score for this criterion;
- Thus, and therefore, the awarding of a 4.80 out of 5.00, and removing just 0.20 points for the failure to identify infection control personnel, was factually incorrect and skewed the computation in the favor of Servizi Malta Ltd;
- In line with the above, the Appellant contends that for this grave omission, the tender cannot be operated as requested by the Department of Contracts/Contracting Authority, rendering the bid to be disqualified;

The Board also noted Contracting Authority's and DOC's Reasoned Letter of Reply filed on 7th of February 2025 and its verbal submission during the hearing held on 25th of June 2025, in that:

1. Unjustified Extension of the Validity Period

- It is pertinent to point out that, the requests being made by the Appellant are contradictory. While the Appellant is, in its first request, asking this honourable board to declare that the evaluation was carried out in violation of procurement regulations and thus should be declared null and void, the Appellant is, at the same time also requesting the cancellation of the tender procedure. Additionally, the Appellant (even though in subsidium) is also requesting this board declare the bid submitted by the recommended bidder to be technically not compliant and order the DoC to proceed with the adjudication of the remaining offers.

- When reading such requests, it is clear that, while the Appellant is contending that the tender and consequently the evaluation process should be declared null and void, it is also requesting the adjudication (or rather re-adjudication) of the offers with that of the recommended bidder. This in itself contradicts that very first request being made by the Appellant and thus, the Appellant ex admissis is accepting the fact that the Tender procedure cannot be declared null and void.
- Moreover, the Appellant is obviously mis-interpreting the applicable General Rules Governing Tenders. Indeed, the Appellant mistakenly states that the General Rules "*clearly and unequivocally impose(s) that the evaluation of the tender shall be conducted within the period of 90 days*". The Contracting Authority and the DoC humbly submit that this is an incorrect interpretation of the General Rules. In fact, when section 8.1 of the General Rules is closely read, in conjunction with the subsequent rules, it appears that the 90 day validity period is imposed upon the bidders and their offers. As opposed to previous versions of the General Rules, the General Rules applicable to this tender make no reference to any specific procedure for extending the time limit beyond 90 days. This means that the requirement for asking for an extension was disposed of in the applicable General rules and thus, unless the prospective bidder retracts his offer beyond the 90 day validity period, its offer will remain valid.
- Therefore, the 90 day validity period is applicable to the tender **ER** (emphasis added) and the offer submitted and not the period of evaluation. Contrary to what is being argued by the Appellant, there is no clear and unequivocal rule that the evaluation of the tender shall be conducted within the period of 90 days.
- It is also likewise pertinent to remark that, the decision of the 12th March of the year 2024, cited by the Appellant, is actually a decision which was given in 2020 and thus the General Rules applicable then were different from the present ones governing this tender.

2. Servizi Malta Ltd not Technically Compliant

- At the outset, it is *sine qua non* to state that, according to several decisions of this honourable board and the Court of Appeal, the PCRB and even the courts cannot and do not have the competence to review or re-evaluate what has already been evaluated by an evaluation board composed of experts in the relative field, who, following an evaluation of the submissions made, deem that an offer is technically compliant with the tender specifications (vide for example – *Lonor Imhallel Edwina Grima – Labo Parm vs Direttur tal-Kuntratti et (59/2012)*).
- In this ground of appeal, the Appellant argues that the recommended bidder wasn't technically compliant because it failed to indicate the personnel that will be carrying out the infection control and thus the mandatory reports stipulated in clause 4.2 .5 of the tender document and duties of the economic operator have been omitted and this in clear breach of the tender requirements.
- Although it is conceded that the recommended bidder did not indicate the personnel. as requested in the tender requirements, it is to be noted that the requirement of indicating the personnel for

infection control was part of a set of further requirements which all bidders had to satisfy. In fact, marks were allocated to such requirements as a whole and marks were also deducted if bidders failed to provide information with respect to specific requirements. In this case, the recommended bidder did not furnish information related to infection control personnel, however it furnished information with respect to all the other requirements. Contrary to what is being argued by the Appellant, such shortcoming does not mean that the recommended bidder was to be declared as non-compliant and thus excluded but it merely meant that the recommended bidder lost points on the grading system. When the total number of points awarded were counted, the recommended bidder still ranked first.

- This therefore means that, contrary to what the Appellant is arguing, the recommended bidder was deemed to be compliant with the tender requirements.

3. Incorrect computation of the award and Best Price Quality Ratio (BPOR)

- In essence, this ground of appeal is similar to the second ground of appeal; in this ground the Appellant is stating that the recommended bidder should have been a score of ' 0 ' since the information related to infection control personnel was not provided. Once again the Appellant is misinterpreting the requirements and the relative guidance notes.
- Firstly, the Appellant conveniently quotes only part of the criterion laid down in section 1.2 and omits to reproduce the whole text. Indeed, the note reads as follows:

*"Points shall be allotted **within a range from 0 to 100 % (emphasis added)**. A score of ' 0 ' shall be allotted if this documentation is not submitted. If a ' 0 ' score shall be allotted the bid shall be disqualified".*

- Basically, this means that, as already explained above, points were given depending on how many requirements the tenderers satisfied. In fact, the note cited above clearly states that points were to be allotted within a range from 0 to 100 and not just a point score of 0 **OR** 100 (therefore automatically meaning compliant or not compliant). Once again, the Contracting Authority and the DoC submit that, points were deducted for failing to provide information about a particular requirement, however this does not mean that a tenderer was to be declared disqualified since the tender referred to several requirements (outlined in Article 4.2 (1-39) of section 3 terms of reference) which has to be satisfied and points were awarded accordingly.

The Board also noted the Reply of the Recommended bidder filed on 11th of February 2025 and its verbal submission during the hearing held on 25th of June 2025, in that:

1. ***First Ground of Appeal: No Requirement to conclude Evaluation within the Bid Validity Period***

Preliminary Plea

- Preliminary, the Appellant's first request that the "adjudication of the tender carried out" is "null and void" is inadmissible. On this basis, the Appellant's first ground of objection-on which this first request is sought-is to be rejected summarily without considering the merits thereof.
- ***First***, there is no provision in the PRR, the General Rules or otherwise which provides that the evaluation of the Tender would be null and void if it is not carried out within the 90 day validity period. It is an established principle of Maltese law that nullity can only be invoked if it is expressly stipulated for by law.
- ***Second***, this Honourable Board is not empowered to declare any evaluation procedure null and void within the context of an application filed in terms of Regulation 270 of the PPR. This Board may "accede or reject the appeal" against a decision of the Contracting Authority or alternatively "*even cancel the call if it appears that this is best in the circumstances of the case*" (PPR, Regulation 276(h)).
- On the other hand, this Board may declare a contract ineffective, and thus null and void, within the context of an application filed in terms of Regulation 277 of the PPR. Therefore, this Board simply is not empowered by law to grant the request / relief based on this first ground of appeal.

On the Merits

- Without prejudice to the above preliminary plea, the Recommended Bidder humbly submits that the Appellant's first objection is unfounded in fact and in law, and has no legal basis whatsoever and must thus be rejected in its entirety. In fact, the Appellant's grievance has already been attempted unsuccessfully in other cases in the past by the very same Appellant. (Reference made to Case 1889 – CT2025/2020 – The Provision of Cleaning Services using Environmentally Cleaning Products for Entities within the Active Ageing and Community Care (AACC) – Lot 1 delivered on 10 July 2023).
- At the outset it is submitted that the General Rules do not impose an obligation on the Contracting Authority to award the contract within the validity period of the tender. Nor do they state that if the evaluation of the tender is not concluded within the validity period of the same tender, then any award given is null and void.
- In fact, Article 19.1 of Version 4.9 and Version 4.10 of the General Rules reads as follows: "*The Central Government Authority/Sectoral Procurement Directorate/Contracting Authority will notify the successful tenderer in writing, that his/her submission has been recommended for award, pending any appeal being lodged in*

terms of the Public Procurement Regulations (being reproduced as follows)" with no reference being made as to the period within which such notification of the award must be made.

- The lack of reference to such a time limit is clearly an intentional omission by the Department of Contracts, particularly when one considers that the same Article 19.1 in the preceding Version 4.8 of the General Rules used to read as follows: "**19.1 *Prior to the expiration of the period of validity of the offers***, the Central Government Authority / Sectoral Procurement Directorate / Contracting Authority will notify the successful tenderer in writing, that his/ her submission has been recommended for award, pending any appeal being lodged in terms of the Public Procurement Regulations" and such qualification was removed in July 2023.
- The Appellant's claim that the award of the Tender must be declared null and void because it was made following the expiration of the validity of the offers, has been repeatedly rejected by the Maltese Courts and by the General Court of the European Union.
- In this respect, reference is made to Case T-553/13 (Decision of the General Court (Fourth Chamber) delivered on 2 December 2015, European Dynamics Luxembourg SA et al vs European Joint Undertaking for ITER and the Development of Fusion Energy) , wherein the General Court, when dealing with awards given after the expiration of the validity of the tender; clearly stipulates that:

"the only consequence that may arise from that provision for the contracting authority is that it cannot oblige a tenderer whose tender has expired to sign and perform a contract based on the conditions set out in that tender."

and

"... the mere fact that the final decision was adopted after that validity period had ended cannot render the award decision unlawful. The first plea in law must therefore be dismissed."

- Reference is also made to the case of *Luxury Living Technologies Limited vs Ministeru għall-Ambjent, I-Energija u l-Intrapriża* et (Decision of the Court of Appeal delivered on 8 April 2024, Appeal Reference Number 632/2023/1 (para. 13)) whereby the Court of Appeal clearly states that:
"Dan ifisser illi meta, bhal fil-każ tallum, il-proċess tal-evalwazzjoni ma jkunx intemm sakemm kienu għadhom jorbtu l-offerti, is-sejba ma tithassarx ipso facto iżda biss jekk hekk jidbrilha l-awtorità kontraenti. II- fatt li l-awtorità baqghet għaddejja bil-proċess tal-għażla jfisser illi ma għażlitx li thassar is-sejba, li, mela, baqghet tisma, b'dan iżda li l-oblaturi ma baqghux marbuta bl-offerta taqghom."
- Moreover, it is also submitted that Version 4.9 of the General Rules, i.e. the version of the General Rules applicable to this Tender also do not stipulate a specific procedure which needs to be adopted by the Contracting Authority when extending the period of validity of the Tender, as such requirement was once again expressly removed from prior versions of the General Rules. This is clearly in line with the established case law that terms of validity are intended to (i) protect the Contracting Authority in the sense that the bidder cannot simply withdraw his offer before the

period of validity has expired; and (ii) to protect the bidder so that he is not obliged to sign the contract if the evaluation period exceeds the validity period of the tender. The *raison d'etre* behind such clauses is clearly not intended to invalidate a decision to award a tender, simply because such decision was made after the validity period of the tender had expired.

- In this case, the Recommended Bidder has provided its unequivocal and express confirmation that its offer is still valid and that it is willing to sign and perform the contract based on the conditions set out in that Tender, and thus there are no grounds for the award of the Tender to be declared null and void on this basis.

2. *Second Ground of Appeal: Recommended Bidder's Bid is Technically Compliant*

- It is submitted that point B4 of the Evaluation Grid on page 11 of the Tender only requires that the Write-Up Report "demonstrates assurance" that the performance conditions set out in Article 4.2. of Section 3 - Terms of Reference would be provided, and nowhere is it stated that each separate performance condition set out in the abovementioned Article 4.2 needs to feature explicitly in the Write-Up Report for the bid to be technically compliant.
- Without prejudice to the confidentiality and commercial sensitivity of the Recommended Bidder's technical offer *inter alia* the Write-Up Report, the Write-Up Report makes specific reference and provides clear explanations as to the steps taken by the Recommended Bidder to ensure infection control including regular employee training, routine and non-routine audits, inspections, spot checks and other quality assurance measures.
- The Recommended Bidder also provided the Contracting Authority with the Standard Operating Procedures entitled '*Servizi Malta Staff Training Plan*' (the "**Training Plan**") which includes extensive elements relating to infection control, with particular reference being made to Section 2.3 and Section 3.3 dealing with Cleaning and Infection Control Training which is provided to all staff of Servizi upon induction, and annually thereafter, and which includes extensive training regarding the chain of infection, the role of the environment in the spread of infection, prevention of the spread of infection, standard precautions and transmission based precautions, management of bodily fluid spillages, etc.
- Section 2.3 of the Training Plan also a renowned professional as a cleaning and infection control specialist engaged by the Recommended Bidder to provide training to its employees.
- Thus, the Appellant's implication that the Recommended Bidder did not submit a completed technical offer because the evaluation committee was not in a position to assure that the objectives, responsibilities and duties set out in Article 4.2 (1-39) of Section 3-Terms of Reference would be adhered to is clearly unfounded and blatantly incorrect.

3. *Third Ground of Appeal: BPQR was applied correctly*

- Point B4 of the Evaluation Grid clearly states that "**Points shall be allotted within a range from 0 to 100 %. A score of ' 0 ' shall be allotted if this documentation is not submitted.** If a '0' score shall be allocated the bid shall be disqualified".
- In terms of the explanatory note set out in page 19 of the tender document, it is clear that where the specific criterion within the BPQR allows for a gradation of points, as is clearly the case in point B4 mentioned above, a range from 0 to 100 % per criterion may be allotted. It is only in those instances where such gradation is not allowed that '0' must be awarded if the declaration/proof/form/template is not in line with the specified requirements.
- Therefore, with regards point B4 of the Evaluation Grid, a score of ' 0 ' could only be awarded if the Write-Up Report was not submitted at all, which is clearly not the case here. It is not contested that the Write-Up Report was indeed submitted by the Recommended Bidder.
- Accordingly, particularly given that the Write-Up report makes reference to a substantial amount of information regarding how infection control would be handled by the Recommended Bidder, the evaluation committee was correct when it granted a grade of 4.8 to Criterion 1.12 B4. Methodology, and in doing so it followed the principle set out in Section 6.2 of the Tender Document i.e. that "*When evaluating technical offers, each evaluator awards for each criterion/sub-criterion a score out of a maximum of 100 **in accordance with the technical criteria and any sub-criteria as outlined in the evaluation grid***".

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will now consider Appellant's grievances.

At the outset, the Board notes that during the Initial submissions, the Appellant formally withdrew the first ground of appeal, concerning the unjustified extension of the validity period. The Board will therefore consider the Appellant's remaining grievances.

Grievance 2: Alleged Technical Non-Compliance of the Recommended Bidder

- The Appellant's central argument is that the Recommended Bidder, Servizi Malta Ltd, should have been disqualified for failing to identify the specific qualified infection control personnel in its write-up report. The write up report is required as per tender Evaluation Grid Criterion B.4 that makes reference to Article 4.2 of Section 3 TOR. The Appellant contends that this omission makes it impossible to verify the methodology and renders the bid non-compliant.
- The Board notes the argument put forward by the Recommended Bidder that the requirement in question, found on page 37 of the tender document, is a performance condition. The clause states, "*As a minimum, every three (3) months, qualified infection control personnel employed by the contractor are to certify and produce a report*". The use of the term "contractor" rather than "bidder" or "economic operator"

strongly indicates an obligation to be fulfilled **after** the contract is awarded, not a prerequisite for submission.

- This interpretation is consistent with European jurisprudence, such as case C-403/21 SC NV Construct SRL v Județul Timiș, which held that obliging tenderers to satisfy all performance conditions at the time of tender submission would be an excessive and disproportionate requirement. The Board also recalls its own recent decision in Case 2084, PTL vs Malta Police Force, which embraced this same principle.
- The Board opines that requiring the identification of specific personnel at the bid submission stage for what is a post-award performance obligation would be a disproportionate requirement.
- Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 3: Incorrect computation of award and Best Price Quality Ratio (BPQR)

- The Appellant argues that the Recommended Bidder should have been allotted a score of '0' for the methodology criterion (Evaluation Grid Criterion B.4), which would have resulted in disqualification. This is based on the clause stating, "*a score of '0' shall be allotted if this documentation is not submitted*".
- The Board notes a critical distinction between the non-submission of a document and the submission of a document with a minor omission. The witness from the Tender Evaluation Committee, Ms. Karen Muscat, testified that the write-up (as required in Evaluation Grid Criterion B.4) was indeed submitted by the Recommended Bidder. She clarified that the document was extensive, covering around thirty required items, and that the point deduction was due to the omission of just one of these items.
- The tender's evaluation criteria explicitly state that "*Points shall be allotted within a range from 0 to 100%*". A score of '0' is reserved for the complete failure to submit the documentation, which was not the case here. The Evaluation Committee acted correctly by utilizing the provided scoring range to deduct a small number of points (0.2 out of 5) to reflect what the TEC felt was a minor omission, rather than applying the disqualification penalty reserved for non-submission.
- The Appellant's insistence that a single omission within a document should be treated as a complete failure to submit the document is an incorrect and overly rigid interpretation of the tender's award criteria.
- Furthermore, the Board agrees with the Recommended Bidder's submission during the hearing that, given the requirement relates to a post-award performance condition, full marks should have been allocated without any deduction to the Recommended bidder for the methodology criterion (refer to Evaluation Grid Criterion B.4). However, the minor deduction applied by the Evaluation

Committee, while unnecessary in the Board's view, was nonetheless reasonable and proportionate and did not affect the overall outcome of the evaluation.

- Therefore, the Board does not uphold the Appellant's grievance on this point.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant to **not be reimbursed**.

Mr Kenneth Swain
Chairman

Dr Ing. Damien Gatt
Member

Dr Ana Thomas
Member