

PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2127
Tender Reference Number SPD4/2024/056
Tender Name **Tender for Finishing Works including Painting works which maximise the lifespan of Paint whilst minimising associated Environmental Impacts at the SIU Block, Ta' Kandja Police Complex**

The Public Contracts Review Board (hereinafter the 'Board' or the 'PCRB') convened a public hearing on the 1st July, 2025 to hear the appeal as filed by the appellant Zouhir Al Dousho (hereinafter the 'Appellant') on the 15th May, 2025, and after taking cognisance of:

The tender document for the "Tender for Finishing Works including Painting works which maximise the lifespan of Paint whilst minimising associated Environmental Impacts at the SIU Block, Ta' Kandja Police Complex" (hereinafter referred to as the "Tender Document");

The minutes of the proceedings dated 1st July, 2025 which are being reproduced hereunder:

"PUBLIC CONTRACTS REVIEW BOARD

Case SPD4/2024/056 – Tender for Finishing Works including Painting Works which maximise the lifespan of Paint whilst minimising associated Environmental Impacts at the SIU Block, Ta' Kandja Police Complex.

The tender was issued on the 4th of September 2024, and the closing date was the 7th of October 2024. The estimated value of the tender, excluding VAT, was €243,596.50.

On 15th May 2025, Zouhir Al Dousho (MT2507-6207) lodged an appeal against Social Innovative Projects Management Ltd. – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations. The appellant's bid was disqualified.

A deposit of €1217.98. was paid and there were fourteen bids.

On the 1st of July 2025, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Mr Lawrence Ancilleri, and Mr. Keith Victor Grech as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant: Zouhir Al Dousho

- Dr Michael Tanti Dougall – Legal Representative.
- Mr Zouhir Al Dousho – Company Representative.

Contracting Authority: Social Innovative Projects Management Ltd

- Dr John L Gauci – Legal Representative.
- Ms. Nathalie Psaila Garnisi – Chairperson.
- Perit Leonard Zammit – Evaluator.
- Ing. Paul Baldacchino – Evaluator.
- Mr. Jurgen Attard – Evaluator.
- Perit Manuel Cassar – Secretary.

Department of Contracts

Dr Mark Anthony Debono – Legal Representative

Recommended Bidder: Christian Bezzina (MT1862-4304)

- Mr. Christian Bezzina – Company Representative.
- Mr. Joseph Bezzina -- Company Representative.
- Mr. Roger Bezzina – Company Representative.

Opening Statements

Dr Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties and invited the appellant's legal representative, Dr Michael Tanti Dougall, to deliver his initial submissions.

Initial Submissions

Initial Submissions by the Appellant

Dr Michael Tanti Dougall, legal representative for Mr Zouhir Al Dousho, commenced his submissions by stating that the appeal was based on two points. Firstly, he raised the issue of a language barrier. The appellant neither speaks nor writes Maltese or English, except for a few work-related terms. He required assistance to complete the tender form. However, when asked to submit the certificate of the Health and Safety Officer, he merely named Mr Joseph Camilleri of OHSa. Dr Tanti Dougall explained that he needed an interpreter from his own office to fully understand the appellant's difficulties, and he emphasised that the language barrier should be taken seriously.

Secondly, he noted that certain information is essential for a tender to be honoured—specifically, the price and the time frame. He explained that, as a lawyer, he himself had never been asked to present a warrant, so it was unreasonable to expect the appellant, whose work is of a technical nature, to do so. He also stressed that no proof was necessary in this case, as the relevant information could be verified in the public domain.

Dr Ana Thomas then invited Dr Tanti Dougall to present his arguments and any witnesses, clarifying that the Board would only consider documents which are strictly found within the acts of the proceedings, and not any other documents which Dr Tanti Dougall is saying are found online and are in the public domain.

Returning to the language barrier, Dr Tanti Dougall reiterated that, as a legal resident in Malta, the appellant had every right to submit a tender. The individual who normally assisted the appellant was not present when he received the relevant email, and by the time help was available, the five-day deadline had elapsed. He pointed out that the Public Contracts Review Board is dealing with public funds and that his client was not seeking substantial profit. Instead, the appellant had provided the name of a well-known, registered Health and Safety Officer. Dr Tanti Dougall argued that the language barrier should have been considered and that the appellant should have been given a fair chance. He added that his client was able to keep costs low because he managed all tasks himself, and this competitiveness should be appreciated by the Board.

Initial Submissions by the Contracting Authority

Dr John L. Gauci, legal representative for the Social Innovative Project Management Ltd., began his submission by referring to the public domain. He explained that the Evaluation Committee had requested a document from the tenderer, followed up with a reminder in accordance with the law, and allowed time for rectification. However, the appellant had submitted only the name of a key expert instead of the required certificate. The key expert was expected to be a competent person registered with OHSA, and the Evaluation Committee specifically asked for a certificate from this individual. No such certificate was ever submitted.

Dr Gauci stated that the appellant had ignored the five-day deadline given to rectify this omission. Although the name of Mr Joseph Camilleri was included in the original bid, no supporting documentation or certificate was submitted. According to the self-limitation principle, the Evaluation Committee had no choice but to exclude the bid.

He referred to four cases in support of this position:

1. NQUAYMT v. Agenzija ghal Infrastruttura Malta et (2022) – decided by the Superior Court.
2. Vassallo Builders (Case 2051).
3. Track Well Films – decision of 13 March 2025 (Case 609/24, page 17, paragraph 43).
4. Derek Garden Centre – decision of 30 July 2024.

Regarding the language issue, Dr Gauci pointed out that tenders are open to both Maltese and foreign nationals, but lack of understanding does not excuse non-compliance. The appellant had sought assistance in preparing the initial submission, demonstrating some level of diligence. However, when he received the five-day notice to rectify, he failed to act. Dr Gauci argued that anyone participating in a country's procurement process must comply with its regulations. The excuse of not finding help within the five days was not acceptable. Tenderers are expected to act as reasonable, well-informed, and diligent professionals.

He referred to the Arriva case, where a bidder claimed misunderstanding of the tender. The so-called 'lost in translation' argument was not accepted in that case, and neither should it be in this one. The appellant should have sought help to overcome the language barrier. Dr Gauci also requested to call the Chairperson of the Evaluation Committee as a witness to confirm the request for rectification and the defect in the tender, unless there is no contestation on the fact that the appellant did not reply to the request for rectification.

Dr Ana Thomas summarised that the Board's understanding is that the Tender Evaluation Committee had, following its receipt of bids, requested a rectification from the appellant and granted him an five days to reply, and that the appellant did not reply. Dr Ana Thomas invited the appellant to state whether he is contesting these facts. Dr Tanti Dougall replied that he is not contesting the facts as stated. In view of this agreement, it was minuted as follows:

'The Parties, Dr Michael Tanti Dougall for the Appellant and Dr John Gauci for the Contracting Authority hereby agree that it is not a contested fact that the Appellant specified Mr Joseph Camilleri by his name as his key expert in the original bid and that when the Contracting Authority issued a request for rectification in terms of supporting documentation, the Appellant did not reply to the said request within the five (5) days afforded to him.'

In view of this minute, the Contracting Authority rested its case.

Final Submissions

Final Submissions by Dr Michael Tanti Dougall

Dr Tanti Dougall began his final submissions by asserting that his client did not ignore the rectification request. He had submitted the name of Mr Joseph Camilleri, a registered professional with OHSA, as part of his original bid. He reiterated that there was a significant language barrier, which is publicly acknowledged. While rectification is part of the process, it should not be considered crucial in this context. Dr Tanti Dougall emphasised that there is no legal precedent in which a language barrier has been properly addressed. He argued that language is essential for communication and that even the

Constitution acknowledges this. The appellant did not understand that he was required to submit additional documentation within five days, especially since he believed the original mention of Mr Camilleri sufficed.

Final Submissions by Dr John L. Gauci

Dr Gauci opened his final remarks by revisiting the Arriva case, a precedent dealing with language barriers. He referred specifically to Case 202, decided on 11 June 2010 by the Public Contracts Appeals Board (PCAB), quoting:

“Finally, the PCAB recognises that most of the problems with the appellant company’s submission emanated due to linguistic issues. However, the PCAB argues that the need for linguistic dexterity does not fall within the competence of the Contracting Authority but is simply an issue to be shouldered by the tenderer per se.”

Dr Gauci insisted that the Contracting Authority would be acting unlawfully if it applied a different standard in this case. He highlighted those other bidders had complied fully with the tender requirements. He cited further case law in support of his argument, including:

- Polaris Marine Services Company Ltd. vs. Director of Contracts, 28 August 2023.
- Quattrolabs Ltd., decision of 13 April 2018.

These decisions emphasise that when the Contracting Authority sets conditions for a tender, it is effectively limiting its own discretion in advance and must apply the rules consistently and fairly.

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 Zouhir Al Dousho on the 15th May, 2025, together with proof of payment of a deposit in the amount of €1,217.98, wherein it held as follows:

“We write for and on behalf of Mr Zouhir Al dousho, residing at Ta’ Goli, Triq it-Torba, Attard, bearer of Residence Permit Number: MT 2083932 and enjoying a refugee status [Number 17572] under International Protection protocol, who had expressed his interest in the above referred to tender.

Our client has been informed that he was disqualified from participating in the above referred to Tender and it is understood that a disqualification notice was issued to him based on lack of proof that the person so identified by him, namely Mr Joseph Camilleri, is formally registered with the Occupation Health and Safety Authority.

With all due respect, in the humble opinion of our client, it is pertinent to emphasise that the list of the competent persons registered with the Occupational Health and Safety Authority as required by law, is readily available in the public domain and therefore, not subject to data protection parameters. Therefore, given that the relative list is publicly available, the registration or otherwise of Mr Joseph Camilleri as a competent person could have been easily verified by this Tribunal without the need to issuing the relative disqualification notice.

It is pertinent to refer to the practice adopted before our Courts of Law which have the power and authority to verify any and all information which would be submitted, through websites and hence in the public domain, to verify any document submitted and or referred to, during the court proceedings. Likewise, it suffices to say that this Board as an adjunction body established by law, has such a power and authority to verify what is in the public domain.

The identification of the competent person's registration with the Authority, as aforesaid, being in the public domain, with all due respect, should not lead to the disqualification of the tenderer even more so when our client did submit the relative important information together with the offer which are deemed fundamentally crucial for the evaluation of the tender.

Subsidiarily, our client is semi illiterate and has very limited understanding of the English language and such language restriction if not, disability, should not be interpreted in any manner as lack of interest or lack of cooperation on his part. He should not be discriminated against because of the language barrier which would undisputably lead to a clear breach of the Constitution and his human rights.

Indeed, from the communications received in the English language, he understood that his offer was attractive enough to be awarded the tender. In his mind, once he identified Mr Joseph Camilleri as the Health and Safety officer, he did so since he was aware that Mr Camilleri specifically provides such services. Hence the reason why the request to provide proof that his chosen Health and Safety Officer is formally registered with the Occupation Health and Safety Authority, was not entertained and not because of any other reason or reasons.

By this present, an appeal is being submitted by our client who strongly believes that his offer should not be disqualified.

Kindly confirm receipt of this appeal.”

The written reply as filed by the Social Innovative Projects Management Ltd on the 23rd May, 2025 (hereinafter the ‘Contracting Authority’) wherein it held as follows:

“Reasoned Reply of Social Innovative Projects Management Ltd. (hereinafter ‘Contracting Authority’) in reply to the Objection of Mr. Zouhir Aldousho (hereinafter ‘the Objector’);

Respectfully submits:

1. Background

1.1. *The above-captioned tender was published with clear instructions and requirements for all bidders. In particular, Section 1 – Instructions to Tenderers, Clause 5(C)(i)(3) of the tender dossier explicitly required bidders to submit proof that the proposed Occupational Health & Safety Officer (Key Expert) is registered with the Occupational Health and*

Safety Authority (OHS.A) (Malta) as a “Competent Person” at the time of tender submission. This means that each bidder had to provide, with their offer, the Key Expert’s relevant certificate or evidence of OHS.A registration. Indeed, the tender document states: “Key Expert 1: Occupational Health & Safety Officer who must be registered by the OHS.A (Malta) as a ‘Competent Person’. Proof attesting that the proposed key expert is registered with the OHS.A must be submitted at tendering stage.”

- 1.2. *Objector submitted a tender offer in response to SPD4/2024/056. However, his offer did not include the required proof of OHS.A registration for his nominated Occupational Health & Safety Officer, Mr. Joseph Camilleri. While the Objector’s submission may have named Mr. Camilleri as the intended Health & Safety key expert, it lacked the documentary evidence (certificate or registration proof) requested by the tender conditions to demonstrate that Mr. Camilleri is a registered Competent Person with OHS.A (Malta).*
- 1.3. *In line with the tender’s own rules, the Evaluation Committee afforded the Objector a one-time opportunity to rectify this omission. On the 20th February 2025, the Contracting Authority sent a formal Rectification Request to the Objector via the Electronic Public Procurement System (ePPS) (attached here as **Annex 1**). In this notice, the Objector was expressly informed of the missing documentation and was instructed to submit the proof of OHS.A registration for the nominated expert (Mr. Camilleri) or to nominate a new qualified Health & Safety Officer and provide all the required documents for that new expert, within a strict deadline.*
- 1.4. *The rectification letter clearly quoted the tender requirement and stated: “it has been noted that the proof that the proposed Occupational Health & Safety Officer is a ‘Competent Person’ registered with OHS.A (Malta) was not submitted. Thus, your company is kindly being asked to rectify your position by submitting the proof pertaining to the nominated Occupational Health & Safety Officer... that he is registered with OHS.A (Malta) as a ‘Competent Person’ or submit a new key expert satisfying all tender conditions together with all relative documents...” (Annex 2). Additionally, the Objector was reminded that failure to rectify the shortcoming within the time allowed would render his offer non-compliant.*
- 1.5. *The rectification deadline was five (5) working days from notification, meaning the Objector had until 27th February 2025 to provide the requested OHS.A registration evidence (or alternate expert documentation). This deadline and the consequences of non-compliance were clearly specified in both the tender dossier and the rectification notice.*
- 1.6. *In fact, Clause 16.3 of the General Rules Governing Tenders (which applies to this procedure) unambiguously provides that if a tenderer “fails to submit the requested documentation within the stipulated rectification period, the offer shall be disqualified for non-compliance”. The rectification notice itself reiterated this, stating: “Tenderers who fail to rectify the shortcomings identified in this communication shall be deemed to be non-compliant.”*
- 1.7. *Objector did not submit any response or documentation by the 27th February 2025 deadline. No proof of Mr. Camilleri’s OHS.A registration was received, nor any alternative key expert information. Consequently, in accordance with the tender conditions*

and the law, the Objector's offer was declared technically non-compliant and disqualified from further consideration. A formal notification of disqualification (citing the failure to provide the OHS.A Competent Person registration proof) was duly issued to the Objector following the evaluation process.

- 1.8. *It is important to underline that the Contracting Authority applied the same process and standards to all bidders. Every tenderer was required to submit the full set of documents for key experts at tender stage. Those who initially missed any required documentation were all given an equal rectification opportunity. Some other bidders did avail themselves of the rectification window to submit missing proofs (for example, at least one competing tenderer submitted the OHS.A registration certificate during the rectification period upon request). Objector was the only bidder who failed to rectify this key requirement. In line with the principle of equal treatment, his offer could not be allowed to proceed when others had complied with the requirements within the allowed time. The exclusion of the Objector's offer was a direct and necessary result of his failure to abide by the tender's explicit conditions, not due to any preference or bias.*
- 1.9. *Having outlined the relevant facts, the Contracting Authority will now address each of the arguments raised in the Objector's appeal letter dated 15th May 2025. For clarity, the main points of contention in the objection are:*
 - 1.9.1. *The Objector's claim that the Evaluation Committee (or this Board) should have verified the OHS.A registration of Mr. Camilleri from the public domain (the OHS.A registry) instead of disqualifying his bid for lack of proof, citing an analogy to practices in Courts of law.*
 - 1.9.2. *The Objector's explanation that his failure to respond to the rectification request was due to his limited understanding of the English language (being "semi-illiterate" in English) and his assertion that disqualifying him in such circumstances amounts to unfair discrimination.*
- 1.10. *The Contracting Authority will demonstrate that these arguments are unfounded in fact and law, and that the disqualification of the Objector's offer was entirely lawful, justified, and non-discriminatory.*

2. *Obligation to Submit the OHS.A Certificate*

- 2.1. *At the outset, the Contracting Authority emphasises that the tender requirement to provide proof of the OHS.A registration at tendering stage was mandatory and was clearly communicated to all bidders. The onus was on each bidder, including the Objector, to demonstrate compliance with this requirement by supplying the necessary documentation. The Objector acknowledges that he did not submit the OHS.A registration certificate for his chosen expert. This was a material omission of a document explicitly required for administrative compliance. In public procurement, failure to submit a required eligibility or qualification document is a legitimate ground for disqualification, unless it is rectified in time. The Objector was given a chance to cure this omission and still failed to do so. Therefore, under the tender rules, disqualification was the only correct outcome.*
- 2.2. *It is not correct for the Objector to suggest that he "had submitted the important information" simply by naming the expert (Mr. Camilleri) in his bid. Providing the name of a proposed expert is not equivalent to providing proof of that expert's*

qualifications. The requirement was not merely to identify a competent Health & Safety Officer, but to prove that the person identified is accredited as a “Competent Person” by OHS.A. The Evaluation Committee cannot infer or assume an expert’s qualifications without evidence, nor can it rely on the bidder’s personal assurance or knowledge that the expert “provides such services.” Tender compliance must be established through the documents required by the tender, not through assumptions or extrinsic knowledge.

- 2.3. *As clearly laid down by the Court of Appeal (Superior) in the judgment of the 10th January 2023, in the names All Clean Services Limited (C 39278) v. Ministeru għall-Edukazzjoni, LiSport, iż-Żgħażaġh, ir-Ricerka u l-Innovazzjoni et:*

Din il-Qorti osservat diversi drabi li dak rikjest fid-dokumenti tas-sejba għall-offerti jridu jiġu kollha sodisfatti. Mhux regolari li tgħid li kundizzjoni partikolari kienet biss “add on” u oblatur jista’ jinjoraha, għax min jippartecipa jrid isegwi dak mitlub fid-dokumenti. Jirriżulta wkoll illi ftehim bhal dan ikun ta’ utilità għal funzjonament tal-kuntratt.

3. No Duty for Evaluation Committee to Source Missing Documents

- 3.1. *The Objector argues that, because the list of OHS.A-registered “Competent Person” professionals is publicly available, the Evaluation Committee (or the PCRB) should have independently verified Mr. Camilleri’s registration from that public source instead of considering the bid incomplete. The Contracting Authority respectfully but categorically refutes this proposition. There is no legal or procedural obligation on an evaluation committee to hunt for information in public registries on behalf of a bidder who failed to submit the required proof. In fact, doing so would contradict fundamental public procurement principles.*
- 3.2. *All bidders must be treated equally and only on the basis of the information they have submitted in their offers (subject to permitted clarifications/rectifications). If the Evaluation Committee were to proactively retrieve a missing certificate for one bidder, it would be effectively improvising an essential part of that bidder’s submission, giving that bidder an advantage not afforded to others who complied with the instructions. It would also undermine the explicit tender condition that required the bidder to submit that proof at the outset. The Public Procurement Regulations and the tender’s rules (see Clause 5 and its Notes) place the responsibility squarely on the tenderer to furnish all requested documentation. The role of the Evaluation Committee is to evaluate what has been submitted, not to supplement or correct a tenderer’s omission by conducting its own outside research.*
- 3.3. *It is worth noting that the Evaluation Committee did, in line with the tender rules, extend a rectification request to the Objector precisely to give him a fair chance to supply the missing OHS.A registration document. This step was taken pursuant to the established procedure (Note 2 to Clause 5) that allows clarification or rectification of certain deficiencies within a fixed short term. However, once the Objector failed to rectify within the allotted 5 working days, the Committee had no further latitude to entertain or cure the deficiency. Clause 16.3 of the General Rules Governing Tenders is clear that failure to rectify a shortcoming in the offer by the given deadline results in elimination. The Committee rightfully adhered to this rule.*

- 3.4. Reference is made to the judgment delivered by the Court of Appeal (Superior) on the 22nd June 2022 in the names NQUAYMT v. Aġenzja għal Infrastruttura Malta et:

Jekk oblatur ikun inghata opportunità ta' rettifika imma xorta wahda jibqa' amministratively non-compliant, il-bord ta' evalwazzjoni ma jistax isalva dik l-offerta billi joqgħod jgħri wara dak l-oblatur sakemm dan, forsi, jirregola l-pożizzjoni tiegħu. F'dan il-każ, il-konsorzju appellat inghata kull ċans jissottometti rubu għat-talbiet tal-awtorita` kontraenti, u imputet sibi jekk baqa' jitraskura dak li kellu jagħmel. L-eċċess fil-manjunità u fit-tfittix sabiex jigu salvati offerti akkost ta' kollox mhux espressjoni ta' proporzjonalità imma huwa sproporzjon kontra min kien "compliant" mill-bidu nett. Din il-Qorti mhux l-enwel darba li tirribadixxi li kull oblatur irid, sa mill-bidu nett mal-offerta tiegħu, isegwi rigorozimament dak li trid is-sejha għall-offerti u m'għandux jippretendi li jigi mitlub "jirrangà" l-offerta biex ikun kompatibbli ma' dak mitlub.

4. Public Availability Does Not Equate to Submission

- 4.1. *The Objector's letter suggests that because Mr. Camilleri's registration status with OHS&A is publicly accessible information (and "not subject to data protection"), the need for the bidder to submit proof should be relaxed. This is a clear misrepresentation of the procurement requirements. Public availability of certain information does not waive the bidder's duty to provide the specific evidence requested.*

- 4.2. *Every bidder is expected to comply in the same manner; none can assume the contracting authority will on its own verify each detail from external sources. The tendering stage is the point at which each bidder must prove its qualifications. The Objector chose to rely on information being "out there" in the public domain, instead of actually supplying it as required – that choice, unfortunately, is a failure of compliance on the bidder's part, not an evaluation error.*

5. Analogy to Court Proceedings is Incorrect and, in any case, Inapplicable to Public Procurement

- 5.1. *The Objector further draws an analogy to practices "before our Courts of law", claiming that courts have the power to verify documents through public websites and that likewise this Board has authority to verify public domain information.*

- 5.2. *With due respect, this comparison is simply incorrect. Our Courts adopt the maxim of quod not est in actis non est in mundis and the only acts that the Court take judicial cognizance of are judicial acts themselves.*

- 5.3. *Ad exemplum in Carmelo Zammit vs Kummissjoni għall-Kontroll ta' l-Iżvilupp (10th April 1995) the Court of Appeal (Commercial) decided as follows:*

"... Il-massima QUOD NON EST IN ACTIS NON EST IN MUNDO hija bażilari f'kull sistema procedurali ta' l-ordinament ġuridiku. Hemm żewġ korrolarji prinċipali ta' din il-massima:

- L-enwel niehed huwa li dak li jgħri, li jissucciedi, fit-tribunal waqt it-trattazzjoni ta' kawża għandu jirriżulta biss milverballi redatti mit-Tribunal stess. Jew

alternattivament, f'dawk il-każijiet fejn il-ġudikant jirrifjuta li jirreġistra fatt rilevanti għall-kawża, l-parti għandha tippreżenta nota jew rikors seduta stante sabiex min ikun qed jippreżjedi f'Tribunal jkun fil-posizzjoni li jipprovi fuq il-fatt. Ebda ġudikant infatti m'għandu jinbidel f'xhud ta' dak li gara quddiemu fl-udjenza w la huwa w l-anqas l-uffiċjali l-oħra tat-Tribunal ma huma ammessi bhala xhieda fuq ir-RES GESTAE ta' l-udjenzi.

- It-tieni korrolarju huwa li t-Tribunal għal dawk li huma lfatti li fuqhom irid jiddeciedi, jridu jirriżultaw mill-atti w l-ġudikant ma jistax juża jew jagħmel riferiment għal fatti, anke jekk huwa personalment ikun jaf bibom, jekk dawn ma jirriżultawx mill-atti tal-kawża. Dawn il-korrolarji, naturalment, huma ġuridikament saldati mill-prinċipju, daqstant ieħor bażilari, illi l-fatti kollha rilevanti għall-kawża jridu jkun għad-disposizzjoni ta' kull min huwa interessat fil-proċess għall-kontroll, kontestazzjoni jew/u konferma. Il-kollegament ma' massima oħra tal-ġustizzja proċedurali ta' AUDIATUR ET ALTERA PARA huwa ovju....”

- 5.4. *In any case, the Evaluation Committee's task is to verify and evaluate what the bidder submitted; it is not empowered to substitute missing documents by unilaterally checking external databases.*
- 5.5. *It is important to stress that the Public Contracts Review Board's role in this objection is to review the decision of the contracting authority for compliance with procurement law and the tender conditions.*
- 5.6. *The crux of the matter, however, is not whether Mr. Camilleri is registered but that the Objector failed to prove it within the required time and manner.*
- 5.7. *To uphold the Objector's argument would effectively sanction a breach of the tender rules, allowing one bidder to bypass a requirement that all others honoured. This would be unfair and illegal in a procurement setting.*
- 5.8. *In summary, the Contracting Authority had no legal duty or prerogative to verify the OHS A registration on the Objector's behalf during the evaluation. The disqualification was a direct result of the Objector's own omission and his failure to remedy it when given the chance. The public availability of the OHS A registry does not alter the validity of the tender requirement.*
- 5.9. *The Evaluation Committee acted correctly and uniformly by disqualifying the bid once the rectification period lapsed with no response.*

6. Language Barrier Claim and Allegations of Discrimination

- 6.1. *The Objector asserts that he is “semi-illiterate” with a very limited understanding of English, and that this language barrier caused him not to respond to the rectification request. He further implies that penalising him for this amounts to discrimination, even invoking constitutional and human rights grounds. The Contracting Authority responds to these points as follows:*

6.1.1. Communication in the Tender Process

This tender was published by the Sectoral Procurement Directorate in Malta whereby the Contracting Authority is Social Innovative Projects Management Ltd, and the official language of the procedure was English, as is standard (see Section 2, Article 2.2 of the Special Conditions, which states “The language used shall be English.”).

All tenderers were made aware from the start that the tender documents, communications, and submissions are in English, which is an official language of Malta and the working language for most public procurements. It is incumbent on participants to ensure they understand the requirements – if necessary by obtaining translations or assistance. In fact, the tender dossier allowed supporting technical documents in other languages only if accompanied by an English translation, underscoring that English text would prevail in interpretation of the offer. The Objector, by submitting a tender, implicitly acknowledged the conditions of the tender, including the language. If the Objector had difficulty comprehending the rectification notice, it was his responsibility to seek clarification or help immediately upon receipt of the communication. The Contracting Authority did not receive any request from the Objector for clarification of the rectification letter, nor any indication that he was unable to understand it. He was silent until filing this objection after the contract was awarded elsewhere.

6.1.2. Equal Treatment, Not Discrimination

The Contracting Authority emphatically denies that the Objector was discriminated against in any manner. All bidders were treated equally and were subject to the same rules and deadlines, regardless of nationality, language, or status. The Objector’s personal language ability was not a factor considered at any point by the Evaluation Committee – he was treated just like every other bidder.

Far from being a case of unfair treatment, the Objector was given an additional opportunity (through rectification) to comply, which is a privilege extended to all bidders to avoid immediate disqualification for curable defects. Many bidders in Maltese public tenders are foreign or not native English speakers; yet they manage to adhere to the requirements by preparing their documents carefully or obtaining translation support. It would be improper and unlawful for the Contracting Authority to waive the tender requirements for one bidder on the basis of a claimed language limitation, as that would indeed amount to unequal treatment vis-à-vis other participants.

There is no evidence whatsoever that the Objector’s offer was excluded for any reason other than the objectively verifiable omission of a required document. The decision to disqualify was founded entirely on the tender conditions and the Objector’s failure to comply with them, not on who the Objector is or what language he speaks.

In fact, the Contracting Authority was not even aware of the Objector’s personal linguistic proficiency; it only knew that no rectification documents were submitted by the deadline. To later claim “discrimination” is misplaced. The Constitution and human rights provisions cited by the Objector are not breached by enforcing published tender rules in a uniform manner. On the contrary, the Contracting Authority’s actions upheld the principles of fairness and equal opportunity by requiring all bidders to meet the same standards without favoritism.

6.1.3. Objector’s Misunderstanding of Communication

The Objector states that from the communications he received in English, he “understood that his offer was attractive enough to be awarded the tender” and thus, in his mind, identifying Mr. Camilleri was sufficient and he did not need to send the proof. If the Objector genuinely misunderstood the purpose or urgency of the rectification request, that is unfortunate; however, the responsibility for that misunderstanding cannot be placed on the Contracting Authority.

The rectification letter was written in clear, formal English, specifying exactly what document was needed and the consequence (non-compliance) if not provided.

There was no indication whatsoever that the contract was assured or that missing information could be ignored. In public procurement, no bidder should assume they have won the tender until a formal contract award is made. The Objector’s subjective impression that his bid was “attractive” does not exempt him from completing the requirements. If anything, it should have encouraged him to promptly provide the missing paperwork to secure compliance. By neglecting to respond, the Objector effectively disqualified himself.

In conclusion on this point, there is no legal provision that obliges a contracting authority to make special exceptions for a bidder due to language limitations in a competitive tender. The Contracting Authority fulfilled its obligations by communicating in the designated language of the procedure and by giving the Objector a fair chance to rectify his offer. The Objector’s inability or unwillingness to understand or respond cannot be shifted onto the Contracting Authority as a “failure” or “discrimination”. The rules were applied even-handedly, and the Objector was not singled out or treated unfairly in any way.

7. Conclusion

- 7.1. *In view of the above, the Contracting Authority reiterates that the Objector’s disqualification from Tender SPD4/2024/056 was entirely justified and in accordance with the governing tender conditions, procurement regulations and the principle of self-limitation.*
- 7.2. *The Objector’s bid was incomplete due to the missing OHS A Competent Person certification, a mandatory document. He was given an opportunity to remedy this omission and did not avail himself of it within the permissible timeframe. Consequently, and as forewarned, his offer had to be deemed non-compliant.*
- 7.3. *The arguments presented in the objection do not reveal any wrongdoing or unfairness by the Contracting Authority or the Evaluation Committee. On the contrary, the Contracting Authority acted strictly within the law and applicable procedures:*
 - i. *It enforced the tender requirements as published (ensuring the level playing field for all bidders).*
 - ii. *It allowed rectification in line with the tender rules, treating the Objector no differently than others.*
 - iii. *It refrained from any improper intervention (such as sourcing documents on a bidder’s behalf) that could violate equal treatment.*

- iv. *It applied the consequence of disqualification only after the Objector failed to comply with a clear and reasonable request within the given deadline.*
- 7.4. *The exclusion of Objector's offer was lawful and necessary to uphold the integrity of the procurement process. Accepting an offer that did not meet the fundamental requirements (and for which the bidder ignored a rectification request) would have been unfair to the compliant bidders and contrary to the explicit terms of the tender.*
- 7.5. *For these reasons, the Contracting Authority respectfully submits that the Objector's claims are without merit. There was no procedural irregularity, no discrimination, and no breach of law by the Contracting Authority. The Objector unfortunately fell short of the tender's requirements, and the outcome is a direct result of that shortcoming.*

8. Requested Decision

- 8.1. *The Contracting Authority kindly urges this Board to reject Objector's objection in its entirety, and to confirm the Contracting Authority's decision to disqualify the Objector's offer and to recommend that the deposit paid by Objector should not be reimbursed.*
- 8.2. *The Contracting Authority reserves the right to make further submissions and to produce evidence."*

The joint minute of the Appellant and the Contracting Authority as follows:

'The Parties, Dr Michael Tanti Dougall for the Appellant and Dr John Gauci for the Contracting Authority hereby agree that it is not a contested fact that the Appellant specified Mr Joseph Camilleri by his name as his key expert in the original bid and that when the Contracting Authority issued a request for rectification in terms of supporting documentation, the Appellant did not reply to the said request within the five (5) days afforded to him.'

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 two (2) main grievances, the first relating to the Appellant's language barrier and the second relating to the fact that the documentation required for the key expert in this tendering process are in the public domain, therefore the Tender Evaluation Committee should have taken them into consideration, as should this Board.

A. The Appellant's Language Barrier

In his submissions, the Appellant's legal representative submitted that the Appellant is not conversant in the English and the Maltese language, so much so that the Appellant sought the help of a third party to effectively be able to submit his bid, as well as to communicate with his lawyer. The Appellant continues that the third party was however not available to assist during the five (5) days during which the Appellant was required to reply to the request for rectification as sent by the Contracting Authority. The Appellant further argues that the Appellant's "disability" in terms of language resulted in a lack of level playing field for all tenderers.

The Contracting Authority on the other hand submitted that a reasonably, well-informed and normally diligent tenderer must comply with tender requirements start to finish, and as the Appellant sought help in compiling the bid he should have sought the same assistance to reply to the request for rectification, amongst other arguments.

The Board, refers to Regulation 39 Sub-Regulation 1 of the Public Procurement Regulations, Subsidiary Legislation 601.03 of the Laws of Malta (the 'PPR'), which holds that:

“Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.” (Added emphasis of the PCRB).

The Appellant in this case and through his written and oral pleadings, insinuates that the Contracting Authority should cater for persons who are illiterate, or not conversant in the English language, so that they too have the opportunity to participate in procurement processes. The Board deems that this reasoning is intrinsically flawed because the Contracting Authority is bound to treat economic operators equally, and not provide for one more than another. The tender document and processes relating thereto, were established to be in the English language, equally for all tenderers. Had the Contracting Authority provided additional services to interpret and/or translate the tender document to a language which the Appellant is comfortable with (although it has not been submitted which language that would hypothetically be), then the Contracting Authority may very well be considered to be in breach of Regulation 39 Sub-Regulation 1 of the PPR as it would have effectively been treating the Appellant *qua* economic operator differently to the other economic operators.

This Board deems that the Contracting Authority is correct in submitting that all bidders are to comply with the tender requirements start to finish. On this point in particular, the Board shall refer to the decision quoted by the Contracting Authority delivered by the then PCAB dated 11th June, 2010 in Case No. 202 wherein the PCAB held that:

*“Finally, the PCAB recognises that most of the problems with the appellant Company’s submission emanated due to linguistic issues. **However, the PCAB argues that the need for linguistic dexterity does not fall within the competence of the contracting authorities or evaluation boards but it is simply an issue that has to be shouldered by the tenderer ‘per se’.**”* (Added emphasis by the PCRB).

Therefore, the Board deems that the Appellant’s grievance is unfounded and is as such being rejected.

B. The Required Documentation is in the Public Domain

The Appellant in not so many words, submits that the documentation required for the key expert Mr Joseph Camilleri (i.e. the OHSa certification) is available in the public domain, not subject to data protection rules and accessible by whoever searches for it. In the Appellant’s words: *“the registration or otherwise of Mr Joseph Camilleri as a competent person could have been easily verified by this Tribunal without the need to issuing the relative disqualification notice”*. The Appellant further submits that *“this Board as an adjunction body established by law, has such a power and authority to verify what is in the public domain.”*

The Contracting Authority on this point referred to the factual background relating to this appeal, in that the Appellant in his bid made reference to Mr Joseph Camilleri as his key expert, the Contracting Authority felt the need to request a rectification on the documentation required and the Appellant did not reply to the said request for rectification.

On these facts, both the Appellant and the Contracting Authority agree, and said acceptance of facts was minuted during the public hearing.¹

The Contracting Authority argues, whilst referring to a spate of jurisprudence, that once an economic operator invited to rectify his position in terms of documentation fails to provide the said documentation as originally requested in the Tender Document, the Tender Evaluation Committee has only one avenue to take, that is the exclusion of the relevant bidder, and this in line with and in full respect of the principle of self-limitation. The Contracting Authority on this point refers to the judgments in the names, **'NQUAYMT v. Agenzija għal Infrastruttura Malta et'** delivered by the Court of Appeal in its Superior Jurisdiction on the 22nd June, 2022, amongst other judgments.

The Board shall quote the relevant considerations as made by the Court of Appeal in its Superior Jurisdiction particularly in Paragraphs 5 and 8 of the same judgment:

'Jekk oblatur ikun inghata opportunita` ta' rettifika imma xorta wahda jibqa' administratively non-compliant, il-bord ta' evalwazzjoni ma jistax isalva dik l-offerta billi jogghod jigi wara dak l-oblatur sakemm dan, forsi, jirregola l-pożizzjoni tieghu. F'dan il-każ, il-konsorzju appellat inghata kull cans jissottometti ruhu għat-talbiet tal-awtorita` kontraenti, u imputet sibi jekk baqa' jitraskura dak li kellu jagħmel. L-eċċess fil-manjamina` u fittfittix sabiex jigu salvati offerti akkost ta' kollox mhux espressjoni ta' proporzjonalita` imma huwa sproporzjon kontra min kien "compliant" millbidu nett. Din il-Qorti mhux l-ewwel darba li tirribadixxi li kull oblatur irid, sa mill-bidu nett mal-offerta tieghu, isegwi rigorożimament dak li trid issejba għall-offerti u m'għandux jippretendi li jigi mitlub "jirranġa" l-offerta biex ikun kompatibbli ma' dak mitlub.'"²

'B'hekk, f'dan il-każ, jirriżulta li l-konsorzju NQUAYMT naqas flewwel lok, li jissottometti offerta administratively complaint, fit-tieni lok, li jirrispondi b' mod sodisfacenti għal-rectification request, u fit-tielet lok, li jirrispondi għall-clarification request, kif trid il-liġi. Jidber ċar għalhekk, li dan il-konsorzju naqas mid-doveri tieghu li jkun konformi mar-rekwiżiti tas-sejba għall-offerti kemm danke amministrattivi, tekniċi u finanzjarji.'"³ (Added emphasis of the PCRB).

The Board refers to the judgment in the names **'Ingrid Magri Overend vs. Awtorità għat-Trasport P'Malta et'**, delivered by the Court of Appeal in its Superior Jurisdiction dated 8th April, 2025. The second grievance as put forward by the appellant in that case, raised the issue that the First Court 'assumed' the existence of a contractual relationship between select parties, when evidence of the said contractual relationship did not emerge from the acts of the case. Reference is made particularly to Paragraph 36 of the above-quoted judgment:

"Iżżid illi minkejja li kif ritenut mill-Ewwel Qorti stess fis-sentenza appellata, tali stebim gatt ma gie preżentat, kif gatt setgħet l-Ewwel Qorti tassumi li kien hemm tali stebim? L-Awtorità ssostni illi ma setgħet issir l-ebda assunzjoni meta ma kien hemm l-ebda prova ta' dan fl-atti, b'dan illi quod non est in actis non est in mundo."

The Court of Appeal agreed with the appellant on this point, albeit this did not vary anything from the First Court's judgment.

¹ *Vide* minutes as quoted above in this same decision.

² Page 19.

³ Page 20.

This Board further refers to the judgment in the names ‘Trackwell FiMS noe vs. Id-Direttur Ġenerali tal-Kuntratti et’ delivered by the Court of Appeal in its Superior Jurisdiction on the 13th March, 2025, also referred to by the Contracting Authority in its submissions, wherein the Court’s considerations were as follows:

“43. Issa filwaqt li huwa kollu minnu li hemm sentenza ta’ din il-Qorti li huma fis-sens, li l-offerent m’ghandux jiġi skwalifikat fuq in-nuqqas tal-ghotja ta’ xi taghrif mitlub fid-dokument tas-sejha, jekk kemm-il darba l-kumitat ta’ evalwazzjoni jkun jista’ jikseb dak it-taghrif minn xi parti ohra tad-dokumenti li jiġu sottomessi bhala parti minn dik l-offerta (ara f’dan is-sens: Bonnici Bros Projects Ltd et v. Ministeru Ghas-Sabha et mogħtija mill-Qorti tal-Appell fit-30 ta’ Lulju, 2018, u Rockcut Limited v. Id-Direttur Ġenerali tad-Dipartiment tal-Kuntratti et mogħtija mill-Qorti tal-Appell fit-25 ta’ Ġunju, 2018), fl-istess waqt, huwa daqshekk ieħor magħruf sewwa fil-ġurisprudenza, li meta r-regolamenti tas-sejha jitolbu b’mod espress certu tip ta’ dokument, dak id-dokument għandu jingħata bil-mod ta’ kif ikun mitlub, u dan sal-ghelug taż-żmien għall-offerti (ara f’dan is-sens: Derek Garden Centre Co Ltd v. Direttorat għall-Akkwist Settorjali et mogħtija mill-Qorti tal-Appell fit-30 ta’ Lulju, 2024 u Melchior Dimech v. Ministeru għall-Finanzi u x-Xogħol et mogħtija mill-Qorti tal-Appell fit-30 ta’ Novembru, 2023).

44. Kemm hu hekk, ingħad kemm-il darba li hija fir-responsabbiltà ta’ kull offerent li jobdi l-kundizzjonijiet tas-sejha bhala «a reasonable well informed and normally diligent tenderer», u għalhekk, għaladarba r-regoli tas-sejha inkwistjoni kienu jimponu fuq l-offerenti l-obbligu li jressqu kopja tal-kontijiet finanzjarji għas-snin 2020, 2021, u 2022, Trackwell kellha tiżgura li tressaq id-dokumenti finanzjarji tagħha għal dawn it-tliet snin shah u mhux għal sentejn minnhom biss (ara f’dan il-kuntest Attard Farm Supplies Limited v. Korporazzjoni għas-Servizzji tal-Ilma mogħtija mill-Qorti tal-Appell fit-29 ta’ Anwissu, 2023). Fis-sewma, ir-regoli tassejha għalhekk qegħdin hemm, u sewwasew sabiex jiġu mharsa u mhux biex jiġu mvarra (ara Legacy Ventures Limited v. Direttur Ġenerali tal-Kuntratti et mogħtija mill-Qorti tal-Appell fit-30 ta’ Lulju, 2024).

45. Wiebed għandu wkoll jifhem u japprezza, li daqs-kemm l-offerenti għandhom joqogħdu attenti li jipprezentaw dak kollu li jkun intalab minnhom fid-dokumenti tas-sejha, huwa daqshekk ieħor importanti li dawke mghobbija bir-responsabbiltà li jgharblu l-offerti, jiġifieri l-membri tal-kumitat ta’ evalwazzjoni, għandhom jimxu skrupolożament mal-kundizzjonijiet li jkunu għew imniżżlin fid-dokument tas-sejha (ara Reactilab Limited v. Korporazzjoni għas-Servizzji tal-Ilma et mogħtija mill-Qorti tal-Appell fit-19 ta’ Ottubru, 2023).

46. Dan għaliex, meta fil-kuntest ta’ procedura ta’ sejha għall-offerti, l-awtorità kontraenti tfassal il-kundizzjonijiet li bi hsiebha timponi fuq l-offerenti, hija tkun qiegħda tillimita l-eżerċizzju tas-setgħa diskrezzjonali tagħha bil-quddiem — b’dana li hija ma tkunx tistax tmur lura mill-kundizzjonijiet tas-sejha, mingħajr ma tikser il-prinċipju tat-trattament indaqs bejn l-offerenti (ara Polaris Marine Services Co Ltd v. Direttur Ġenerali tal-Kuntratti et mogħtija mill-Qorti tal-Appell fit-29 ta’ Anwissu, 2023 u Quattro Labs Limited pro et noe v. Malta College of Art, Science and Technology mogħtija mill-Qorti tal-Appell fit-13 ta’ April, 2018).

47. Bi thaddim ta’ dawn il-prinċipji għall-fatti ta’ dan il-każ, din il-Qorti tqis li għaladarba l-awtorità kontraenti talbet lill-offerenti sabiex jipprezentaw il-kontijiet finanzjarji tagħhom għas-

snin 2020, 2021 u 2022, u l-awtorità kontraenti habbret minn qabel li n-nuqqas tat-tressiq ta' xi wiehed minn dawk id-dokumenti kellu jiġi kkeastigat bis-sanzjoni kiefra taliskwalifika awtomatika, mela allura bin-nuqqas taqgħa, jiġifieri dak li ma tippreżentax il-kontijiet finanzjarji għas-sena 2021, Trackwell waddbet ilgebla fuq saqajha, u ma balliet l-ebda għażla obra f'idejn il-kumitat ta' evalwazzjoni, għajr dik li jiskwalifika mill-proċedura tal-akkwist.” (Added emphasis of the PCRB).

This Board concurs with the reasoning of the Court of Appeal in its Superior Jurisdiction in the above-quoted judgments, and hereby holds that the Appellant is wholly incorrect to imply that the Tender Evaluation Committee at evaluation stage, and this Board now at appellate stage, should itself on its own steam search for, obtain and rely on documents the Appellant alleges are available in the public domain – the same documents which were required at tendering stage, the same documents which were not submitted in the original bid, the same documents which were requested by means of the request for rectification, and the same documents which thereagain the Appellant failed to supply.

The Appellant's argument in this respect is not only illogical but is an argument which if upheld also stands to breach the principle of self-limitation, the principle of equal treatment of economic operators and would effectively mean that the Tender Evaluation Committee and/or this Board are to rely on a document which does not emerge neither from the bid submitted by the Appellant as evaluated by the Tender Evaluation Committee, nor from the acts of this Board.

Therefore, in view of the foregoing, this Board firmly believes that the Tender Evaluation Committee was correct in its findings, and rightly so, its hands were tied in considering the Appellant as non-compliant thereby excluding him, thus, this second grievance as brought forward by the Appellant is also being rejected by this Board.

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 Zouhir Al Dousho in its entirety, and hereby confirms the rejection letter dated 5th May, 2025 and the award notice also dated 5th May, 2025. The Board further decides not to re-imburse the deposit paid by Zouhir Al Dousho.

Dr Ana Thomas
Chairperson

Mr Keith Victor Grech
Member

Mr Lawrence Ancilleri
Member