

PUBLIC CONTRACTS REVIEW BOARD

Case 2152 – SPD8/2025/081 – Services - Framework Contract for the Mapping and Removal of Alien and/or Invasive Flora Species from Designated Areas in an Environmentally Friendly Manner to Ambjent Malta

29th September 2025

The Board,

Having noted the letter of objection filed Mr Daren Taliana acting for and on behalf of Valley Greenscapes, (hereinafter referred to as the appellant) filed on the 29th August 2025;

Having also noted the letter of reply filed by Dr Ryan Ellul acting for Ambjent Malta (hereinafter referred to as the Contracting Authority) filed on the 10th September 2025;

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

Having noted and evaluated the minutes of the Board sitting of the 19th September 2025 hereunder reproduced.

Minutes

585 – SPD8/2025081 - Framework Contract for the Mapping and Removal of Alien and/or invasive Flora Species from Designated Areas in an Environmentally Friendly Manner to Ambjent Malta

The tender was issued on the 29th May 2025 and the closing date was the 1st July 2025

The estimated value of the tender, excluding VAT, was 96,110 euro

On the 29th August 2025, Valley Greenscapes lodged an appeal against Ambjent Malta –the Contracting Authority.

A deposit of 481 euro was paid.

On the 19th September 2025 the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain acting as Chairman, Dr Vincent Micallef and Mr Lawrence Ancilleri. as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant; Valley Greenscapes

Mr Daren Taliana Company Representative

Contracting Authority: Ambjent Malta

Mr Clifford Borg Chairperson

Ms Shirley Muscat Evaluator

Ms Marija Ciappara Evaluator
Mr Francis Farrugia Director Business Development

Recommended Bidder: Garland Malta

Ms Bernardette Galea Company Representative
Mr Antoine Galea Company Representative

Department of Contracts:

Dr Mark Anthony Debono Legal Representative

Minutes

Mr Kenneth Swain, Chairman of the Public Contracts Review Board, welcomed the parties present and explained the procedure to be adopted during the present session.

Before the opening of the session all the parties agreed that the minutes would be taken by Ms Amy Borg one of the secretarial pool of the Board.

The Chairman then declared the session open and invited the members present to present their initial submission.

Initial submissions:

Submissions by the Appellant

Mr Daren Taliana company representative of Valley Greenscapes stated that Valley Greenscapes' bid was rejected due to the fact that it did not submit a Health and Safety Report at the Tendering stage and this was due to pressure of work and family problems.

After an intervention by the Chairman, Mr Taliana affirmed that he was asking for a rectification and that his company should have been qualified to submit any missing documents at the clarification stage in order to be able to rectify within five (5) working days. This he reiterated falls under Notes to clause five (5) section 2 which states *that "tenderers can be asked to clarify or rectify any incorrect or incomplete documentation and/or submit any missing documents within five (5) working days from notification"*, thus being able to present the Health and Safety report as requested within five (5) working days.

Mr Taliana continued that Ambjent Malta did not send for any rectification or clarification and decided that the Tender falls under Clause three (3) which states that no rectifications are allowed.

Mr Taliana ended his submission by stating that Clause 2 and Clause 3 contradicts each other.

Submissions by Ambjent Malta

Francis Farrugia, Director Business Development for Ambjent Malta stated that the Tender Document was clear. He emphasized that Ambjent Malta wanted a Health and Safety Report and this falls under Note three (3) due to its importance. He also stated that according to the involvement of Dr Ryan Ellul in the formulation of the tender it was clearly stated that no rectification shall be allowed and that only clarifications on the submitted information may be

requested. The report was not submitted at tendering stage and therefore no clarifications could be sent.

Mr Farrugia stated that even the appellant himself admitted that Valley Greenscapes did not have the report before the closing date.

Final statement of Chairman

The Chairman explained that the facts are clear and that the Board will decide whether the document falls under Note 2 to Clause 5 or under Note 3 to Clause 5.

At this stage the Chairman thanked the participants for their interventions and declared the session as closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 19th September 2025.

Having noted the objection filed by Valley Greenscapes (hereinafter referred to as the Appellant) on 29th August 2025, refers to the claims made by the same Appellant with regard to the tender of reference SPD8/2025/081 listed as case No. 2152 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Daren Taliana

Appearing for the Contracting Authority: Mr Francis Farrugia

Whereby, the Appellant contends that:

- a) We have received an unfortunate notification that we were rejected from the tender award because we did not submit a Health and Safety Report at the tendering stage. Since the missing document is deemed a non-core document, we believe that in line with practice, we should have been qualified to submit any missing documents at the clarification stage, which would have enabled us to rectify ourselves within five working days.
- b) The clarification and/ or rectification of any incorrect or incomplete documentation and submissions within 5 working days from Notification is identified under Notes to Clause 5. However, this step was skipped.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 10th September 2025 and its verbal submission during the hearing held on 10th September 2025, in that:

- a) Ambjent Malta refers to the present appeal, wherein Mr. Taliana claims that he should have been granted the opportunity to clarify and submit the missing document, namely the *Health and Safety Report*. Ambjent Malta stresses that this document clearly falls under Note 3, and therefore, under this part of the tender, no rectifications are permissible. Consequently, the offer submitted by Mr. Taliana was incomplete.
- b) Furthermore, and in this regard, Ambjent Malta again refers to Note 3, which states: “*No rectification shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification.*” With respect, all required documentation had to be submitted at the tender stage and not after the tender closing date. Accordingly, the Evaluation Committee was correct in disqualifying Mr. Taliana.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider Appellant’s grievances.

- a) The central issue in this appeal concerns the Appellant’s request to be allowed to rectify the omission of the Health and Safety Report at tender stage.
- b) The Board refers to Section 1, paragraph 5(C)(ii) of the tender dossier, which expressly requires the submission of a Health and Safety Report and clearly designates this requirement as subject to Note 3.
- c) Note 3 unambiguously provides that: “*No rectification shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification.*” The distinction between rectification and clarification is therefore decisive.
- d) In line with established jurisprudence of this Board, requirements designated as Note 3 are not capable of rectification. The Board has consistently held in cases such as *Case 1031*, *Case 2016* and *Case 2091* that Note 3 requirements are substantive and essential elements of the offer; consequently, failure to submit such documentation renders the offer incomplete and incapable of being remedied post-submission.
- e) This interpretation is also consistent with the Department of Contracts’ standard tender instructions and Procurement Policy Notes, which reiterate that rectification is excluded in the case of Note 3 matters.
- f) In light of the above, the Board concludes that the Evaluation Committee correctly applied the tender rules in disqualifying the Appellant’s bid, as the omission of the Health and Safety Report constituted a material non-compliance under Note 3. Allowing rectification in such circumstances would not only contravene the express terms of the tender dossier but also undermine the principle of equal treatment among tenderers

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 **not** to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Mr Lawrence Ancilleri
Member