

PUBLIC CONTRACTS REVIEW BOARD

Case 2145 – XM/2025/02 – Tender for the Provision of Security Services at Esplora Foreshore

9th September 2025

The Board,

Having noted the letter of objection filed by Dr Alessandro Lia, acting on behalf of Lia & Aquilina Advocates, acting for and on behalf of Gold Guard Security Services Limited (hereinafter referred to as the "Appellant"), filed on the 2nd June 2025;

Having also noted the letter of reply filed by Dr Joseph Gerada and Dr Kimberly Galea, acting on behalf of Legal Services Malta Consortium, acting for and on behalf of Xjenza Malta (hereinafter referred to as the "Contracting Authority"), filed on the 12th June 2025;

Having also noted the letter of reply filed by Dr Matthew Paris, acting on behalf of DalliParis Advocates, acting for and on behalf of J.F. Security and Consultancy Services Limited (hereinafter referred to as the "Recommended Bidder"), filed on the 9th June 2025;

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 2nd of September 2025, hereunder reproduced:

Minutes

Case 2145 Objection – XM/2025/02 – Tender for the Provision of Security Services at Esplora Foreshore.

The tender was issued on the 5th of March 2025, and the closing date was the 11th of April 2025.

The estimated value of the tender, excluding VAT, was €382,644.

On 2nd June 2025, GoldGuard Security Services Ltd. lodged an appeal against Xjenza Malta, the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

A deposit of €1,935 was paid.

There were six Bids.

On the 2nd of September 2025, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – GoldGuard Security Services Limited.

Dr Alessandro Lia – Legal Representative.

Mr. Patrick Bonnici – Company Representative.

Contracting Authority – Xjenza Malta.

Dr Kimberly Galea Scerri – Legal Representative.

Dr Joseph Gerada – Legal Representative.

Mr. Wayne Caruana – Chairperson Evaluation Committee.

Mr. Massimo Zammit – Evaluator.

Mr. Mark Farrugia – Evaluator.

Mr. James Catania – Evaluator.

Mr. Ezekiel Barbara – Secretary.

Recommended Bidder – Kerber Security Ltd.

Dr Ryan Pace – Legal Representative.

Recommended Bidder – JF Security and Consultancy Services Ltd.

Dr Zack Esmail – Legal Representative.

Dr Sara Caruana – Legal Representative.

Opening Statements

Mr. Kenneth Swain, Chairman of the Public Contracts Review Board, formally welcomed those in attendance: the Appellant, GoldGuard Security Services Ltd.; the Contracting Authority, Xjenza Malta; as well as representatives from the Recommended Bidders—Kerber Security Ltd. and J.F. Security and Consultancy Services Ltd.

Submissions

Submissions by the Appellant (GoldGuard Security Services Ltd.)

Dr. Alessandro Lia opened his submissions by asking for confirmation that Section 3 – Specifications would form part of the contract with the awarded bidders. He insisted that this should be recorded in the minutes.

Dr. Lia noted that GoldGuard had been awarded 57% of the points. The Contracting Authority justified this on the basis that GoldGuard had failed to indicate a replacement time in line with clause 4.1.22 of Section 3, which requires a two-hour timeframe.

Dr. Lia focused on the first grievance, rather than the second grievance concerning the competence of the Evaluation Committee.

On the merits of the first grievance, request B4 II, he quoted:

“The Economic Operator shall submit a proposed methodology, through the submission of a write-up report of approximately 200 words for each criterion, demonstrating how the economic operator shall carry out control activities. A proposed methodology in case of misconduct by employees must be submitted.”

He argued that “misconduct” is not the same as “unsuitability.” Dr. Lia further quoted:

“The Contracting Authority reserves the right—not an obligation, but a right—which will form part of the contract. In the contract there will be both rights and obligations.”

And again:

“The Contracting Authority reserves the right to make on-the-spot inspections to ascertain that the Contractor’s obligations, in particular but not limited to staff competency, training and certification, are being met. The Contracting Authority reserves the right to reject security personnel whom it considers unsuitable. In such a case the Contractor shall provide an eligible replacement within two (2) hours.”

Dr. Lia argued that a person can be competent yet commit misconduct, or incompetent while maintaining perfect conduct. GoldGuard’s write-up contained detailed explanations. The Contracting Authority was therefore wrong to reduce points under B4 II based on clause 4.1.22. A few missing points may eliminate a bidder entirely, and the Authority should have limited itself to the tender document as written, without extending its discretion to interpret distinct concepts.

Submissions by the Contracting Authority (Xjenza Malta)

Dr. Kimberly Galea Scerri, on behalf of the Contracting Authority, stated that the Methodology Mandatory Criterion B4 clearly required such a report. She quoted:

‘How the economic operator shall carry out control activities, including visual inspections, on the spot checks, formal inspections and full system audits to ensure that the employee on site provide the expected level of service in line with the duties outlined in the terms of Reference’

She further argued that in this case the issue related to employee misconduct and clause 4.1.22, which states *“it is reserved but not limited to.”*

The appellant had submitted provisions for other matters but did not provide anything regarding the two-hour replacement requirement. The Contracting Authority therefore reduced the points, in line with the tender and in fairness to other bidders.

She added that if the appellant had any doubts, it could have sought clarification from the Contracting Authority. Since the requested information was missing, the Authority was obliged to decrease the score.

Submissions by the Recommended Bidder 1 (J.F. Security and Consultancy Services Ltd.)

Dr. Zack Esmail argued that if the appellant objected to a particular clause, it should have raised its objection under Regulation 262. The Contracting Authority had complied with the applicable legal rules. He further stated that the appellant’s second grievance contradicted Regulation 270, which requires objections to be clear—something which had not occurred.

Submissions by the Recommended Bidder 2 (Kerber Security Ltd.)

Dr. Ryan Pace submitted that the true meaning of clause 4.1.22 is *“in particular but not limited to.”*

The ultimate goal of the Contracting Authority is to procure uninterrupted services, with safeguards in case of disruption. All bidders were obliged to provide continuous service within the stipulated timeframe. Since the appellant did not meet this requirement, the Authority justifiably reduced its points rather than excluding the bid.

He concluded that the Board cannot overlook the appellant’s error in its submission.

Final Submissions

Final Submissions by Dr. Alessandro Lia

Dr. Lia stressed that the purpose of the write-ups is for contractors to outline their internal procedures for handling specific issues. GoldGuard provided ample information under clause B4 II. The requirement for a two-hour replacement in cases of misconduct was already included in the contract and should not have been imposed again in the write-up. Therefore, the reduction of points was unjustified.

Final Submissions by Dr. Kimberly Galea Scerri

Dr. Galea Scerri reiterated that under section 6.2 the Evaluation Committee was bound to assess all offers based on the terms of reference. Since the two-hour replacement requirement was not addressed, the Authority was obliged to decrease the points.

Conclusion of the Hearing

With no further submissions, Chairman Kenneth Swain thanked all parties and formally concluded the session.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 2nd of September 2025.

Having noted the objection filed by Gold Guard Security Services Limited (hereinafter referred to as the "Appellant") on the 2nd June 2025 and refers to the claims made by the same Appellant with regards to the tender of reference XM/2025/02 listed as case No. 2145 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Alessandro Lia

Appearing for the Contracting Authority: Dr Joseph Gerada & Dr Kimberly Galea

Appearing for the Recommended Bidder

(JF Security and Consultancy Services Ltd): Dr Ezekiel Ismael

Appearing for the Recommended Bidder

(Kerber Security Ltd): Dr Ryan Pace

Whereby, the Appellant contends with respect to:

- (a) The contracting authority deducted points on only one criterion, being “a proposed methodology in case of misconduct by employees must be submitted”
- (b) Appellant will now proceed to present 2 separate grievances
- (c) The reason listed in the rejection letter as provided by the contracting authority refers to criterion 4.1.22 (page 25 of the tender document). It must be stated that section “B4” refers to the term “misconduct” and makes reference to “Terms of Reference”, however there is no section entitled “Terms of Reference”. The reason provided by the Contracting Authority in their rejection letter is found in Section 3 “Specifications”.
- (d) Moreover, it must be noted that article 4.1.22 of the specifications refers to the ‘right’ of the contracting authority to perform on the spot inspections to ascertain the ‘staff competency, training and certification’ and the ‘right’ of the contracting authority to refuse any personnel that it deems ‘unsuitable’. In case this scenario happens the economic operator has to provide an *“eligible replacement within two (2) hours”*.
- (e) Article 4.1.22 therefore refers to a procedure kick started by the Contracting Authority.
- (f) Criterion B4(ii) refers to a procedure that the economic operator from his own stead is to adopt in case of ‘misconduct’ and has nothing to do with ‘staff competency, training and certification’.
- (g) Therefore, the reference made by the Contracting Authority is erroneous and irregular.

The Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 12th June 2025 and its verbal submission during the hearing held on 2nd September 2025, in that:

(a) **Primary Submission**

Firstly, the Contracting Authority maintains that, according to Section 6 of the Tender Document, the primary criterion for this call for offers is the best balance between price and quality. However, this is subject to the condition that the bidder also satisfies the specified administrative and technical criteria. This provision grants a certain discretion to the tender evaluation committee, as already established in Case 1577 by the Honourable Public Contracts Review Board.

"Moreover, it is important to note that in tenders evaluated under the Best Quality Price Ratio, the Evaluation Committee is to be afforded leeway in the way it goes on its business."

Reference is also made to the judgment in the names Saniclean Joint Venture vs St Vincent de Paul Long Term Care Facility, where the Court of Appeal stated: *"Therefore, the Court sees that, all things considered, the evaluation carried out by the selection committee was reasonable, and the Board should not have substituted its own discretion for that of the committee. The latter acted correctly given the delicate situation at Saint Vincent de Paul, and the reduction of points allocated to SaniClean was reasonable in the circumstances due to the weakness of their offer."*

With reference to the objection of the Appellant Company as listed in their letter of objection, the Contracting Authority maintains that the Appellant Company's offer had points deducted for the following reasons, as indicated in the letter dated 22 May 2025.

Points were deducted in the following criterion: *"A proposed methodology in case of misconduct by employees must be submitted. Show how the use of resources will ensure the timely delivery of tasks such as proposed security officers working shifts: 2.33 points/ 57% The methodology should have explicitly outlined the timeframe for personnel replacement, as required by Article 4.1.22 of the Terms of Reference. This clause grants the Contracting Authority the right to reject any security personnel considered unsuitable, obliging the Contractor to provide an appropriate replacement within a maximum of two (2) hours."*

(b) **First Grievance -**

Primarily, reference is made to sections 6.3 of the Tender Document and specifically, section B4. This section makes it clear that the Appellant Company was required to submit a clear report on how the mentioned criteria would be satisfied.

With reference to Article 4.1.22, it provides as follows:

"The Contracting Authority reserves the right to make on-the-spot inspections to ascertain that the Contractor's obligations, in particular but not limited to, staff competency, training and certification. The Contracting Authority reserves the right to reject security personnel whom the Contracting Authority considers to be unsuitable. In the latter case, the Contractor shall provide an eligible replacement within two (2) hours."

This clause further emphasizes the importance of the methodology showing how the bidder intends to guarantee compliance with the above requirements. Therefore, any failure to

satisfactorily address these obligations in the submitted methodology warrants a deduction of points. The Contracting Authority had a duty to ensure that the selected bidder would be in a position to meet the standards set out in these Terms of Reference. The Contracting Authority also notes that in the BPQR Table found in the First Sections, Clause 6.3, the term "terms of reference" is used consistently throughout the Tender Document. Section 3 is referred to either as "Terms of Reference" or as "Specifications." In fact, the Appellant Company submitted its offer regarding the other required criteria in terms of the same Terms of Reference. Therefore, in this context, the Appellant Company cannot allege any ambiguity in the criterion in question when it itself, in other criteria, clearly demonstrated that it understood the term "terms of reference" to refer to Section 3.. The Contracting Authority observes that cases of lack of discipline or inappropriate conduct fall under the definition of staff competency, and therefore, the obligation for replacement within two hours also applies in these circumstances. Therefore, this requirement should be considered an integral part of the criterion in question. It is thus essential that bidders have carefully reviewed the 'terms of reference' and/or the specifications to ensure that every situation that could arise under this criterion is properly and concretely addressed. In this particular case, it is clear that the criterion was not fully addressed by the Appellant Company. Additionally, it should be noted that according to the Notes to Clause 5 in the Tender Document, the Contracting Authority could only request clarification from the bidder regarding the submitted information. Since this information was not provided as required, the Contracting Authority was precluded from requesting information regarding this criterion. It should be noted that in this particular case, the Appellant Company's offer was not completely disqualified, but points were deducted in those areas where the Evaluation Committee noted that the offer did not clearly and fully provide what was required. In other parts, where the offer respected the terms of reference, the Evaluation Committee did not deduct any points.

The main aim of this requirement is for the Contracting Authority to ensure that the provided service will not be interrupted. This requirement—namely, that the Committee is certain the service will not be interrupted due to any 'misconduct'—and the obligation for replacement within a maximum period of two hours, are essential elements for the continuity of the service. Therefore, in light of serious doubts that arose due to the lack of clear information in the offer, the Contracting Authority was obliged to follow the Terms of Reference it established and, consequently, deduct the related points for this purpose.

(c) ***Second Grievance -***

In the Second Grievance, the Appellant Company reserved its position regarding the competence of the members of the evaluation committee and, for this purpose, raised this Grievance. It should be noted that this grievance was neither explained nor substantiated in any way. Since this grievance is unfounded, it should also be rejected.

The Board also noted the Recommended Bidder's Reasoned Letter of Reply filed on 9th June 2025 and its verbal submission during the hearing held on 2nd September 2025, in that:

- (a) Through its first grievance, appellant seems to suggest that the evaluation committee has breached the level playing principle.. Reference is hereby being made to the evaluation grid whereas in clear and unequivocal terms an economic operator was expected to submit: "*A proposed methodology in case of misconduct by employees must be submitted*" It is again being submitted that in any case whereby the appellant did not agree with the tender specification, an objection by virtue of Reg. 262 should have been submitted. Clause 4.1.22 of the tender specifications clearly outlines the obligation of the economic operator to replace any employee within 2 hours in case of any misconduct as deemed by the economic operator. Therefore the methodology should have reflected the parameters and requirements of Clause 4.1.22 of the Tender Specifications. Thus and thereby, the Evaluation Committee was simply abiding to the mandatory requirements and therefore adhering to the principle of self-limitation and any breach of mandatory requirements as the appellant seems to suggest, is nothing more than a contravention of the fundamental principles of public procurement. Any mandatory requirement is there to be adhered to *ad unigium* and any breaches thereto should lead to the exclusion of the economic operator!
- (b) The appellant also seems to submit a grievance on the competence of the evaluation committee, without providing any reasoning to sustain such allegations whatsoever. This is nothing more than a fishing expedition intended to disrupt the procurement procedure without providing any form of reasoning behind this grievance, and thereby any attempts by the appellant to discredit the evaluation committee based on the mere fact that it adhered to the tender conditions is in itself a puerile attempt to salvage an offer which was not technically compliant *ab initio*. Reference is additionally made to reg.270 of S.L. 601.03, wherein it is held that the appeal shall contain in a very clear manner the reasons - it is clear that this grievance fails the mandatory high level requirement set by the legislator, since the allegation made is not defined in a clear manner. In any case, and without prejudice to the above, if the PCRБ permits submissions on this grievance, irrespective of the failures by objector, JF is hereby reserving its rights to the fullest extent possible to submit additional replies thereto.

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.

Grievance 1: The Contracting Authority's Deduction of Points for Failure to Address Two-Hour Replacement Requirement

- The Board notes that the Appellant was required to submit a proposed methodology under criterion B4(ii) addressing "misconduct by employees" in a write-up report of approximately 200 words.
- The Contracting Authority deducted points because the Appellant's methodology did not explicitly outline the timeframe for personnel replacement as required by Article 4.1.22 of the Terms of Reference.
- The Appellant contends that "misconduct" under criterion B4(ii) is distinct from "unsuitability" under Article 4.1.22, arguing that these are separate concepts.
- The Board notes that this tender was evaluated under the Best Price Quality Ratio (BPQR) methodology. It is well-established jurisprudence that Evaluation Committees must be afforded leeway in such evaluations, as confirmed in Case 1577 by this Honourable Board and by the Court of Appeal in Saniclean Joint Venture vs St Vincent de Paul Long Term Care Facility.
- This principle is further supported by the European Court of Justice in TNS Dimarso NV v. Vlaams Gewest (Case C-6/15), which established that evaluation committees must have leeway in carrying out their tasks and may structure their own work of examining submitted tenders.
- The Board observes that Article 4.1.22 specifically states "*in particular but not limited to staff competency, training and certification,*" indicating the provision encompasses circumstances beyond those explicitly listed, including misconduct.
- The Board finds the Contracting Authority's interpretation linking misconduct to the two-hour replacement requirement to be reasonable and within the evaluation committee's discretionary leeway.
- Taking into account that other economic operators participating in this tender procedure submitted more detailed information in relation to this specific criterion, the Board is of the opinion that the Evaluation Committee acted within its legitimate margin of discretionary and did not, in any way, transgress the principle of self-limitation.

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

Grievance 2: Competence of the Evaluation Committee

- The Appellant raised concerns regarding the competence of the members of the evaluation committee but failed to provide any substantive reasoning or evidence to support this allegation.
- The Board notes that pursuant to Regulation 270 of the Public Procurement Regulations, appeals must contain clear and specific reasons for the objections raised.
- The Appellant's failure to articulate any concrete basis for questioning the evaluators' competence renders this grievance entirely unsubstantiated and procedurally defective.
- The Board considers that such unspecified allegations constitute a fishing expedition without merit and cannot be entertained in the absence of proper reasoning.

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 **not** to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Ing. Damien Gatt
Member

Mr Lawrence Ancilleri
Member