

6th October 2025

Public Contracts Review Board
Notre Dame Ravelin,
Floriana,
Malta



JGS Contractors Limited [TID 225937]

Vs

[1] Housing Authority

[2] Green Building Solutions Limited

TWO 3/2025

Tender Name: Tender for the Construction Works of a New Housing Block using environmental performance standards at Triq l-Imdina, c/w Triq San Pietru c/w Triq Karwija Kirkop (KKP-E)

REASONED LETTER OF OBJECTION

Whereas, the Housing Authority (hereinafter “**HA**”) issued a call for tenders for the supply of ‘Tender for the Construction Works of a New Housing Block using environmental performance standards at Triq l-Imdina, c/w Triq San Pietru c/w Triq Karwija Kirkop (KKP-E)’

Whereas, Messrs. JGS Contractors Limited (hereinafter “**JGS**” and/or “the appellant company”) submitted a bid for this procedure;

Whereas, by means of a letter dated 24th September 2025 , the Appellant company was informed that that its offer was being rejected:

*“Thank you for participating in the above-mentioned procurement procedure. However, the Housing Authority regrets to inform you that the procurement proposal submitted by your **company was not technically compliant.** (hereinafter “first reason for rejection”)*

...

*Bidders may submit up to three (3) multiple bids which should be non-identical (technically and financially) for a tender. **The EO is disqualified based on this clause, since the three (3) offers submitted are technical identical.** (hereinafter “second reason for rejection”)*

...

*Moreover, the EO deliberately did not reply to cheapest Bid, the EC deemed that **bidder must be disqualified due to improper practice.**” (hereinafter “third reason for rejection”)*

[added emphasis]

Whereas, the Appellant company feels aggrieved by such a decision, and is hereby submitting its objection within the stipulated time-frame and accompanied with the relative payment (copy of confirmation of payment enclosed as **DOC1**), in accordance with *inter alia* article 270 of Subsidiary Legislation 601.03 (hereinafter the PPR), and this based on the following grievances:-

1. **Wrong evaluation - Appellant's Bid is technically compliant ("first reason for rejection")**

1.1 The rejection letter dated 24th September 2025, alleges that the offer TID 225937 is "not technically compliant", however an in breach of reg. 242 and 272 of S.L. 601.03, it fails to explain why such an offer is technically non-compliant.

1.2 The Appellant submits that its offer is technically compliant, and that the allegation by the Contracting Authority is erroneous and should be quashed by this Honourable Board.

1.3 In any case, and without prejudice to the aforesaid, the appellant company is hereby reserving its rights to the fullest extent possible to request authorisation to submit an additional grievance, once (and if) the Contracting Authority substantiates its position that the offer by the Economic Operator qua appellant is "technically non-compliant".

1.4 Thus and thereby, the appellant company submit that, the first reason for exclusion by the Contracting Authority is mistaken and thereby should be revoked.

2. **Wrong evaluation – Evaluation committee acted in breach of the General Rules Governing Tenders ("second reason for rejection")**

2.1 The second reason for exclusion refers to the fact that the Tender Evaluation Committee (hereinafter 'TEC'), determined that the three (3) offers by the appellant company were "administratively and technically identical". In fact, the letter of exclusion, signed by the "Evaluation Committee", *inter alia* stated that,

"By the deadline bidder submitted the requested documentation, but when evaluated by the EC noted that three (3) bids Tender ID 225936, 225937 and 225938 submitted were administratively and technically identical."

2.2 It is the position of the appellant company that, by making such a declaration, the TEC acted in breach of the General Rules Governing Tenders (hereinafter 'GRGT'), since such governing rules make it abundantly and unambiguously clear that, any tender that is deemed as "administratively non-complaint" should be rejected and not considered any further by the TEC. In fact, provision 16.3 of the GRGT stipulate that:

“Submissions which have qualified under Part 2 shall have their technical offer evaluated to ensure compliance with Clause 5(C) of the Instructions to Tenderers.”

- 2.3 It has been confirmed that, bids with Tender ID 225936 and 225938, have been excluded for “administrative non-compliance”, at which point in time their technical offer was rendered redundant and an “unacceptable tender” in accordance with reg. 2 of the S.L. 601.03, thus they could have never been evaluated by the evaluation committee – this renders the actions of the TEC as being in breach of the GRGT.
- 2.4 An unacceptable tender renders an offer void *ex tunc* – and thereby as the Latin maxim dictates *Quod nullem est, nullum producit effectum!*
- 2.5 Without prejudice to the fact that, the appellant company disagrees with the statement, the evaluation process is compromised as the TEC acted in breach of the parameters upon which the Contracting Authority had itself imposed through the tender procedure, thereby breaching the principle of self-limitation.
- 2.6 Indeed, in PCRB Case No. 1665 of 2021, decided on 27th December 2021, this Honourable Board expressly held that:

“This Board opines that the Evaluation Committee did not observe the principle of Self-Limitation when it deemed the Appellant’s offer as technically non-compliant when it adjudged the equipment of the Appellant company on issues not included within the Tender Dossier.”

- 2.7 It was thereby affirmed that if an appeal were to be upheld on grounds not expressly stipulated in the tender dossier, this would itself infringe the principle of self-limitation as well as the broader procurement principles. In view of the aforesaid, the appellant company submits that this second reason for rejection must likewise be revoked by this Honourable Board.

3. Wrong evaluation – No improper practice (“third reason for rejection”)

- 3.1 The letter of exclusion makes vague reference to “improper conduct/behaviour” without providing any substantiated reason or justification. Such an allegation, made without the slightest factual basis, is procedurally unacceptable and legally unsound.

- 3.2 The appellant company categorically and unequivocally denies any allegation of improper conduct. At all stages of the procurement process, the Appellant has acted with integrity, in full compliance with the tender requirements and in accordance with the law. The allegation is not only unfounded but also highly prejudicial, given its potential reputational harm. The appellant hereby reserves all rights at law at their disposal in relation to such allegation.
- 3.3 For all intents and purposes, the allegation made by the TEC that “the EO deliberately did not reply to cheapest Bid ...” is rejected as unfounded, and the appellant company expects to Contracting Authority to either withdraw this allegation or to substantiate it – In public procurement there is no room for conjunctures, suppositions or any other guesses, in particular when these are not substantiated by hard proof evidence – Thereby the appellant company submits that the TEC acted in breach of the Public Procurement Regulations, in particular reg. 39.
- 3.4 In view of the aforesaid, the appellant company submits that this third reason for rejection must likewise be revoked by this Honourable Board.

4. Breach of the Principle of Proportionality

- 4.1 Without any admission of non-compliance nor that the any actions by the appellant constitute improper conduct, the principle of proportionality has always been interpreted as a principle which cannot create an imbalance between the rights of the entity invoking it and the rights of third parties – The principle which seeks to create a balance between competing interests.
- 4.2 The principle of proportionality was *inter alia* invoked by the Court of Appeal, in the case Fire-tech Limited (C17901) u Cross Zlin AS (60715886) flimkien magħrufa u msejha bħala Firetech Cross TLS Joint Venture v. Dipartiment tal-Kuntratti, wherein it held that not all breaches of the tender specifications should lead to exclusion, in fact it held that:

“Għalkemm huwa minnu illi, biex tithares it-trasparenza u ma jkunx hemm diskriminazzjoni, ir-regoli għandhom jitharsu b’mod uniformi u prevedibbli, u s-sogġettività u d-diskrezzjonalità jitnaqqsu kemm jista’ jkun, madankollu l-prinċipju ta’ proporzjonalità jrid illi mhux kull nuqqas ikollu l-istess konsegwenza, iżda din għandha tiddependi mill-gravità tan-nuqqas u mill-konsegwenzi tiegħu, partikolarment jekk jagħtix vantaġġ lil min jonqos jew joħloq preġudizzju lil oblaturi oħra”

[added emphasis]

4.3 The same has been confirmed in the case in the names of **Cassar Petroleum Services Limited vs Gozo Channel Limited** u d-Direttur tal-Kuntratti, wherein it was held that:

“Għalkemm din is-silta hija dwar legizlazzjoni, tghodd ukoll għal mizuri ta’ implimentazzjoni u decizjonijiet mehudha tahtom. Din il-Qorti għalhekk tagħraf illi għandha qabel xejn tara x’inhu l-ghan ewlieni tas-sejha għall offerti ghax ma dan għandha tkejjel il-proporzjonalita tal-mizuri meduha biex jinkiseb. Fil-kaz tal-lum l-ghan ewlieni kien illi Gozo Channel tixtri n-nafta bl-orhos prezz.

Ma’ humiex sejr in jinkisru l-principji tat-trattament ugwali, l-principju ta’ għarfien reciproku u l-principju tat-trasparenza jekk, bla ma jinbidlu l-kundizzjonijiet tal-offerta nfisha, jinghata zmien biex jingieb id-dokument illi, forsi bi zvista ma tqeghidx mad-dokumenti tal-offerta, waqt li certament ma jkunx qiegħed jithares il-principju tal-proporzjonalita jekk offerta vantagguja tigi mwarba ghax ma’ ngibx dokument li għad jista jingieb”

[added emphasis]

4.4 Thus and thereby, the Appellants, based on the principle of proportionality and without prejudice to any other grievance herein defined, the Appellant is respectfully asking this Honourable Board to determine that the decision of the defendants, or whosoever, is not proportionate and thus in breach of *inter alia* reg. 39 (1) of S.L. 601.03.

NOWTHEREFORE, whilst reserving the right to put forward any other submissions, JGS hereby requests the PCRB:


- i. To order the defendants, or whosoever, to cancel the rejection letter/recommendation for award dated 24th September 2025;
- ii. To order the defendants, or whosoever, to re-instate the appellant company, and through a newly composed evaluation committee re-evaluate the tenders;
- iii. To refund the deposit paid in its entirety;

- iv. To do anything else which is conducive and necessary for the proper execution of the above requests;

JGS is hereby reserving the right to present further evidence, both orally or in writing, during the hearing.



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Bank of Valletta p.l.c
 Registration Number: C 2833
 Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Pay third party

Printed by: Ms. Alexia Sammut
 Printed on: 03/10/2025 - 09:44
 Document ID: 25773094

Transaction details

Payer's name: JGS CONTRACTORS LTD

Beneficiary Name & Surname / Company / Group name: Cashier Malta Government

Relation: Administrative Services

Reason: Other

Payment details: PCRB appeal deposit (TWO 3/2025 Kirkop)

Currency: EUR - Euro

Beneficiary IBAN/Account: MT55MALT011000040001EURCMG5001H

Beneficiary IBAN/Account type: Valid IBAN of country - Malta

Bank name: Other bank

Bank address / Bank's BIC: Let the bank apply the beneficiary bank BIC

Beneficiary address: No

From account: 5002104033 2 (EUR)

Charges should be paid by: Shared - I pay BOV charges; Cashier Malta Government pays the beneficiary bank charges

Amount: EUR 18,570.75

BOV to transfer the money: as soon as possible

Receiving bank to get the money as: normal priority payment

Saved template: Cashier Malta Government

Additional information

Credit amount: EUR 18,570.75

Debited amount (excluding charges): EUR 18,570.75

Estimated amount to be withdrawn from account: EUR 18,574.75

Transaction charge: EUR 4.00

Transaction result

Status: Your instructions have been processed successfully.

Transaction ID: 167404281