

To: The Secretary  
Public Contracts Review Board  
Department of Contracts  
Notre Dame Ravelin  
Floriana VLT 2000



12<sup>th</sup> October 2025

Dear Sirs,

**Re: Tender Reference TWO 3/2025 (Tender for for the Construction Works of a New Housing Block using environmental performance standards at Trig I-Imdina, c/w Trig San Pietru c/w Trig Karwija Kirkop (KKP-E))**

Below is the Green Building Solutions Limited (“GBS”) reply to the letter of objection dated the 6<sup>th</sup> of October 2025 filed by JGS Contractors Limited (“JGS”).

GBS strongly believes that the grounds of objections raised by JGS are unfounded and are not based on sufficient nor reasonable justifications that can safely and comfortably steer the Public Contracts Review Board (“PCRB”) to change, alter or modify the decision of the contracting authority (“CA”).

The objector’s grounds of objection and the underlying justifications are being contested as explained hereunder

**1. Preliminary Observations**

- 1.1 The Appellant’s letter of objection rests primarily on assertions of alleged procedural irregularities and unsubstantiated claims that the Evaluation Committee (“TEC”) misapplied the Public Procurement Regulations (SL 601.03). These allegations are unfounded in fact and at law.
- 1.2 The decision to disqualify the Appellant was reasoned, consistent with the tender dossier, and grounded in the principles of transparency, equal treatment, and proportionality as enshrined in Regulation 39(1) of S.L. 601.03.
- 1.3 Each ground of exclusion was justified on objective criteria and documented during the evaluation process. The Appellant’s submissions were technically non-conforming and procedurally defective.
- 1.4 It is further noted that the Appellant’s offer was not only technically non-compliant but also vitiated by conduct contrary to the ethical and procedural integrity expected in public procurement procedures.

## **2. On the First Reason for Rejection: Technical Non-Compliance**

- 2.1 The Appellant asserts that its offer was technically compliant. However, TEC's assessment identified material deficiencies and inconsistencies in relation to the mandatory technical specifications outlined in the tender dossier.
- 2.2 The CA is required to exclude any bid which does not comply with the conditions, specifications, or requirements set out in the procurement documents. The Appellant's submission failed to meet essential technical requirements and was therefore correctly excluded.
- 2.3 The burden of proving compliance lies entirely with the bidder. The contracting authority is under no obligation to re-interpret or amend tender requirements to accommodate deficiencies or shortcomings.
- 2.4 Regulation 272, read with Regulation 242, requires that tenderers be informed of the reasons for rejection, supported by reference to the evaluation record. The rejection letter duly fulfilled this obligation by summarising the grounds of technical non-compliance as established by TEC.
- 2.5 The assertion that the rejection letter lacked detail does not vitiate the validity of the exclusion.
- 2.6 The Public Contracts Review Board has consistently held that material non-compliance cannot be rectified or clarified post-submission. TEC's decision on this first ground was therefore fully justified and lawful.

## **3. On the Second Reason for Rejection: Submission of Technically Identical Bids**

- 3.1 The tender expressly permitted up to three (3) *non-identical* bids; both technically and financially. This flexibility was intended to allow bidders to propose innovative or alternative solutions, not to replicate identical offers.
- 3.2 The Appellant submitted three offers (Tender IDs 225936, 225937, 225938) which, upon examination, were administratively and technically identical. This contravenes the express stipulation in the tender dossier and constitutes a clear breach of the tender's submission conditions.
- 3.3 The Appellant's assertion that two of its bids were already excluded and should not have been evaluated further misunderstands the evaluation process. TEC's reference to the "identical" nature of all three bids is an evaluative observation confirming that the Appellant failed to comply with the non-identity requirement across its submissions. This is not a breach of procedure, but a factual finding.

3.4 The purpose of the non-identity clause is to prevent manipulation of the tender mechanism by flooding the evaluation with substantially identical offers. The Appellant's conduct defeats that purpose and undermines the level playing field principle in Regulation 39(1) of SL 601.03.

3.5 TEC was therefore also correct to disqualify all three bids. The principle of self-limitation invoked by the Appellant is inapplicable here, since the exclusion arises directly from the tender documents themselves.

#### **4. On the Third Reason for Rejection: Improper Practice**

4.1 The reference to "improper practice" was made in the context of the Appellant's failure to respond transparently during clarification requests regarding the cheapest bid.

4.2 The Contracting Authority is empowered to seek clarifications from bidders, and obliges bidders to reply fully and accurately within the prescribed time. Any deliberate failure to respond constitutes improper conduct and can also serve to distort competition.

4.3 TEC's conclusion was therefore not arbitrary but derived from the Appellant's own omission, which compromised the integrity of the evaluation process.

4.4 The Appellant's argument that the allegation was "vague" is also unmerited. It is evidently clear that the disqualification stemmed from a procedural failure which, in a competitive procurement context, amounts to an act of non-cooperation prejudicial to transparency and equal treatment.

4.5 This ground of exclusion was therefore properly applied by TEC.

#### **5. On the Principle of Proportionality**

5.1 The Appellant's invocation of proportionality mischaracterises the doctrine. Proportionality does not require a Contracting Authority to overlook breaches of mandatory requirements, especially where such breaches undermine the fairness or integrity of the procurement process.

5.2 The present case does not involve minor administrative irregularities that do not affect the substance of the offer but involves fundamental breaches including identical bids, technical non-conformity, and lack of cooperation all of which are necessary for compliance.

5.3 Proportionality does not and should never extend to condoning material irregularities that prejudice other bidders or distort competition. Upholding the Appellant's exclusion is therefore the proportionate and legally correct decision.

## 6. Conclusion

6.1 The Appellant's submissions fail to demonstrate any procedural or substantive error in the decision of the CA or TEC.

6.2 The exclusion was based on clear and objective grounds fully consistent with the tender dossier and the applicable procurement regulations.

6.3 The Appellant's disqualification should therefore be confirmed, and the letter of objection dismissed in its entirety.

In view of the above GBS, whilst reserving the right to call up witnesses and make oral submissions during the scheduled Public Contract Review Board hearing, calls on the Board to dismiss and reject JGS's ground of objection and reaffirm the contracting authority's decision.

Yours faithfully,



Av. Leon Chetcuti