

## PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2170  
Tender Reference Number CT2022/2025  
Tender Name “Works Tender for the Restoration of the Back Elevations of St Nicholas Curtain Wall, Cottonera Lines Bormla, using Environmentally Friendly Materials”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 23<sup>rd</sup> October, 2025 to hear the appeal as filed by the appellant VM Contracting Limited (C-91536) (hereinafter the ‘Appellant’) on the 29<sup>th</sup> August, 2025, and after taking cognisance of:

The tender document for the ‘Works Tender for the Restoration of the Back Elevations of St Nicholas Curtain Wall, Cottonera Lines Bormla, using Environmentally Friendly Materials’ (hereinafter referred to as the “Tender Document”);

The minutes of the proceedings dated 23<sup>rd</sup> October, 2025 which are being reproduced hereunder:

### **“PUBLIC CONTRACTS REVIEW BOARD**

*Case 2170 Objection – CT2022/2025 – Works Tender for the Restoration of the Back Elevations of St Nicholas Curtain Wall, Cottonera Lines Bormla Using Environmentally Friendly Materials.*

*The tender was issued on the 9<sup>th</sup> March 2025, and the closing date was the 10<sup>th</sup> April 2025.*

*The estimated value of the tender, excluding VAT, was €926,026.50*

*On 29<sup>th</sup> August 2025 VM Contracting Limited, lodged an appeal against the Restoration and Preservation Department. – the Contracting Authority. In accordance with Regulation 270 of the Public Procurement Regulations.*

*On the 23<sup>rd</sup> October 2025, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Ing. Damien Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.*

*A deposit of €4,630.00 was paid.*

*There were six bids.*

*The attendance for this public hearing was as follows:*

### **Appellant – VM Contracting Limited (C91536)**

*Dr Frank B Testa – Legal Representative  
Mr Lawrence Vassallo – Company Representative*

## **Contracting Authority – Restoration and Preservation Department**

*Mr Norbert Gatt – Director General*

*Mr Mark Azzopardi – Chairperson*

### **Department of Contracts**

*Dr Audrey Marlene Buttigieg Vella – Legal Representative*

### **Opening Statements**

*Dr Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, VM Contracting Ltd., the Contracting Authority, the Restoration and Preservation Department and the Department of Contracts.*

*Dr Thomas started the meeting by informing the parties that Dr Ing. Damien Gatt, a member of the PCRB was participating online. All parties minuted their no objection.*

*The Chairperson noted that the only remaining grievance was relating to the refund of the deposit paid by the Appellant and further noted that the Assistant State Advocate in representation of the Restoration and Preservation Department referred the matter for this Board's determination. Dr Audrey Marlene Buttigieg Vella for the Department of Contracts stated the same.*

### **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 the Appellant on the 29<sup>th</sup> August, 2025, together with proof of payment of a deposit in the amount of €4630.00 per transaction slip dated 28<sup>th</sup> August, 2025, wherein it held as follows:

*"We are instructed by VM Contracting Limited (C91536) (the "Objector") of Pavilion Court, Block A, Flat 8, Triq Fra Duminku Mijrud, Għarġhur and refer to the letter dated 19<sup>th</sup> August 2025 (the "Letter"), sent by the Department of Contracts (the "DOC") in relation to the Tender. In the said letter, the Objector was informed that the tender was recommended for award to TID 000224985 Targe Restoration Limited for the amount of €671,631.02 excluding VAT, on the basis that this is being deemed to be the cheapest priced tender satisfying the administrative and technical criteria.*

*The Objector is hereby objecting to this decision on the basis of the following grounds:*

#### **1. Lack of Transparency**

Reference is made to an email sent by the Objector on the 25<sup>th</sup> of August 2025 at 12:53hrs to the following recipients, [mark-anthony.debono.1@gov.mt](mailto:mark-anthony.debono.1@gov.mt); [audrey-marlene.buttigieg-vella@gov.mt](mailto:audrey-marlene.buttigieg-vella@gov.mt); and [info.contracts@gov.mt](mailto:info.contracts@gov.mt) (copy herewith attached and marked as Annex I).

The Objector received delivery receipts for the following three email addresses: [mark-anthony.debono.1@gov.mt](mailto:mark-anthony.debono.1@gov.mt); [audrey-marlene.buttigieg-vella@gov.mt](mailto:audrey-marlene.buttigieg-vella@gov.mt); [info.contracts@gov.mt](mailto:info.contracts@gov.mt) and a read receipt for the following email address: [mark-anthony.debono.1@gov.mt](mailto:mark-anthony.debono.1@gov.mt) (copies of which are being herewith attached and marked as Annexes II, III, IV and IV).

For ease of reference, the self-explanatory content of this email is being reproduced hereunder, as it also gives a succinct outline of the facts underlying and leading to this objection:

“Dear Sirs,

We are instructed by V&M Contracting Limited (TID 000224929) to write to you with reference to your letter dated 19<sup>th</sup> August 2025, through which you informed them that the Works Tender For The Restoration Of The Back Elevations Of St. Nicholas Curtain Wall, Cottonera Lines Bormla Using Environmentally Friendly Materials (the 'Tender') was recommended for award to TID 999224985 Targe Restoration Limited for the amount of Eur671,631.02 (the 'Recommended Bidder').

Reference is also made to the arithmetic clarification document in virtue of which you informed our client of an incorrect summation in the bill of quantities (BOQ) provided between items 'Quarters' Area' 3.02 and 4.05. After this arithmetical correction, our client's bid was reduced from Eur721,933.90 to Eur689,421.88. On the other hand, the Recommended Bidder's bid was reduced from Eur740,883.02 to Eur671,63.02.

The Recommended Bidder's reduction in price is in our client's view abnormal, particularly in view of the fact that the excel sheet's arithmetical error related to two line items that can be considered as 'de minimis' in the context of the BOQ.

Consequently, and in line with Article 39 of the Public Procurement Regulations, you are hereby being requested to furnish our client with the BOQ as originally submitted by the Recommended Bidder and the BOQ submitted by the Recommended Bidder following the arithmetic clarification.

This communication is being sent without prejudice to all our client's rights.”

At the the time of the filing of this Objection, the Objector is yet to receive a reply to this email.

Consequently, in view of the breach of Article 39 of the Public Procurement Regulations and the lack of transparency and clarity being sought, the Objector had no alternative but to file this Objection in order to obtain such transparency and clarity.

## **2. Irregular Reduction of Recommended Bidder's Offer**

The line items which were the subject of the excel sheet's arithmetical error are the following:

“Erect and Dismantle on completion of works, or as directed by the architect in charge, fencing and tunneling to enclose scope of works at least 2m high and in compliance with local regulations to delineate the limits of the scaffolding and any areas required to carry out the works. It has to be

*made sure that a **safe passageway to pedestrians and residents is to be kept under the first tier**, as approved with the scaffolding contractor and health and safety inspections done.”*

*and*

*“Provision for the supply and erection of project sign 3000mm × 2000mm in size on hard backing and attached to the scaffolding as detailed by and to the satisfaction of the architect and civil engineer in charge.”*

*The Objector’s quoted price for each of the above line items is €4,000 and €1,200 respectively.*

*The original offers submitted by the Objector and the Recommended Bidder respectively were as follows:*

*Objector - €721,933.90*

*Recommended Bidder - €740,883.90*

*These offers can objectively be considered as similar in the context of the substantial sums involved.*

*Following the alleged arithmetical correction, the offers ended up as follows:*

*Objector - €689,421.88*

*Recommended Bidder - €671,631.02*

*In other words:*

*The Objector’s offer ended up being reduced by €32,512.02 (or by circa 4.5%) while the Recommended Bidder’s offer ended up being reduced by €69,252.88 (or by circa 9.3%).*

*Given the proximity of the original offers submitted by the Objector and the Recommended Bidder, and given the de minimis nature of the line items in question, this difference is both inexplicable and abnormal. As a consequence, and without prejudice to the first ground to this Objection, Objector is of the view that the change in figures in the Recommended Bidder’s ‘corrected’ bill of quantity involved line items that went beyond the arithmetic clarification in question and that therefore the Recommended Bidder’s offer was irregularly reduced.*

### **3. Reservation of Costs**

*The Objector humbly submits that should this Objection be upheld, it should be reimbursed in full the deposit of €4,630.00 paid by the Objector. Without prejudice to this position, however, Objector contends that the deposit should be refunded to the Objector even if this Objection is not successful, insofar as this Objection is rejected on the basis of evidence that should and could have been provided to the Objector following the request for information submitted in terms of the Objector’s email dated 25<sup>th</sup> August 2025 (Annex I).*

*In light of the above submissions, Objector humbly requests that the decision communicated to it by the DOC by means of the Letter is overturned and for the Tender to be recommended to be awarded to them.”*

The written reply as filed by the Department of Contracts on the 9<sup>th</sup> September, 2025 (hereinafter the 'DOC') wherein it held as follows:

***“Reasoned Letter of Reply of the Department Contracts to the Reasoned Letter of Objection of Messrs.VM Contracting Limited (TID 000224929) received and notified by the Public Contracts Review Board on the 29th August 2025***

*Whereas*

*1. The Restoration and Preservation Department (the Contracting Authority) has published a call for tenders on the ePPS (Electronic Public Procurement System) for the restoration of the back elevations of St.Nicholas Curtain Wall, Cottonera Lines Bormla on 9th March 2025.*

*2. Following the closing date of the submission of tender offers, the technical evaluation committee appointed by the Contracting Authority initiated the evaluation of the tender offers that had been received.*

*3. After having finished its function of evaluating the tender offers, the tender evaluation committee issued its evaluation report and the results of such evaluation were thereafter disclosed to the participating tenderers, which included the appellant.*

*4. The appellant, upon notification of the results, immediately felt aggrieved of the result of such evaluation and proceeded to exercise its procedural right in terms of regulation 270 of the Public Procurement Regulations.*

*5. The Department of Contracts, notified of the reasoned letter of objection lodged, shall submit its reasoned reply in terms of reg.276(c) of the Public Procurement Regulations to address the first grievance raised in the mentioned objection insofar as the Department of Contracts is concerned.*

*6. By means of the first ground of appeal the appellant is arguing that there is lack of transparency because the appellant sent a request for information relating to the bill of quantities as originally submitted by the recommended bidder and the bill of quantities submitted by the recommended bidder following the arithmetic clarification.*

*7. Reg.40 makes it clear that the Director Contracts, the Contracting Authority or the Sectoral Procurement Directorate are obliged not to disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to technical or trade secrets and the confidential aspects of tenders.*

*8. Reg.40 continues enlisting the information which is not considered confidential. Not considered confidential is documentation submitted by economic operators attesting that they comply with selection criteria. This documentation does not include the bill of quantities which forms part of the bidder's technical offer.*

*9. As evidenced in the letter of objection itself the right to appeal was not prejudiced in any way. In fact the appellant filed the appeal addressing the grievance of the irregular reduction of the recommended bidder's offer. Therefore the withholding of information has not prejudiced his rights in any way.*

10. *The Anthea Polska case makes it clear that the right of Information is limited to that information without which the aggrieved bidder would be unable to challenge effectively the decision of the contracting authority. Ultimately this means that the aggrieved bidder has no right to any other information which is not necessary for an effective appeal.*

11. *Consequently if the aggrieved bidder is convinced that there was an irregular reduction of the recommended bidder's offer the only way to prove this allegation is by filing an appeal in front of this Honourable Board and not by a request for information.*

12. *Without prejudice to the above, the appellant's request may result in an infringement of fair competition among participating tenderers, apart from a breach of confidentiality, insofar as the recommended bidder is concerned.*

13. *As has been declared in Telefonica de Espana, SA<sup>1</sup>:*

*".....the Court has repeatedly held that the principal objective of the EU public procurement rules is to ensure the existence of undistorted competition and that, in order to achieve that objective, it is important that the contracting authorities do not release information relating to contract award procedures which could be used to distort competition, whether in an ongoing procurement procedure or in subsequent procedures.*

*Since public procurement procedures are founded on a relationship of trust between the contracting authorities and economic operators, those operators must be able to communicate any relevant information to the contracting authorities in the procurement process, without fear that the authorities will communicate to third parties items of information whose disclosure could be damaging to those operators."*

*DoC reserves the right to present further evidence and written and oral submissions to further substantiate this reply during the hearings.*

*Therefore the Department of Contracts humbly requests that, in view of the above submissions, the evaluation committee's recommendation is to be assessed according to whether the recommended bidder's offer was subject to an irregular reduction or otherwise."*

The written reply as filed by the "Evaluation Committee" on the 10<sup>th</sup> September, 2025 (hereinafter the 'Committee') wherein it held as follows:

*"I am hereby being instructed by the Evaluation Committee to reply to the objection lodged by VM Contracting Ltd - TID 000224929 - (hereinafter referred to as 'the Objector') dated 28th August 2025 against the Recommendation of the Evaluation Committee on CT 2022/2025 sent on the 30th July 2025.*

*The Objector makes two claims: The first refers to an alleged lack of transparency. The Contracting Authority refutes this allegation regarding lack of transparency and clarity and our reply to the second claim showing all the workings relative to the corrections to the tendered amounts is testimony to this. Furthermore, all the requested documentation is also being attached, namely the original BOQ as submitted by recommended bidder (document named Targe 1.Financial Offer\_TRL as*

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<sup>1</sup> Telefonica de EspanaSA, Order of the Vice-president of the General Court, case T-170/22, 28<sup>th</sup> February 2023.

submitted) and the corrected BOQ included in the attached excel sheet named DISPUTE COMPARATIVE.

The second claim relates to the corrections made to the submitted bills of quantities which the Objector deems irregular. The Objector makes reference solely to items 3.02 and 3.03 amounting to €4,000 and €1,200 respectively as being those subject to the arithmetical error. However, this claim is incorrect in that the correction stems not only from the double inclusion of items 3.02 and 3.03 in the Quarters Area Bill as is being claimed, but from:

- (a) Items 3.02, 3.03 and 3.04, and 1
- (b) the summation carried forward beneath item 3.04

in the summation beneath 4.05 in the following page. The cells included in this summation are marked in colour in the attached pdf sheet attached at DOC (equivalent to rows 32 to 39 in the attached excel sheet named DISPUTE COMPARATIVE) to better explain which amounts are being summed in the total beneath item 4.05 (at row 71), all of these being added twice.

This has not been mentioned in the objection letter which only mentions part of the correction (items 3.02 and 3.03 amounting to €4,000 and €1,200 respectively) and does not refer to item 3.04 and the summation beneath it.

This full arithmetical correction thus results in the reduction of an extra €67,601.00 being added to the bid by Targe Restoration Ltd and €27,312.01 to that by VM Contracting Ltd. The claim being made that the difference is inexplicable is thus based on a partial evaluation of the correction being made. Apart from this, the rate for lump sum item Bastion Wall Bill Item 3.01 submitted by Targe Restoration Ltd was €5,000 and not the amount of €3,000 as shown below:

Table 1: Rate as submitted in Bastion Wall Bill:" ...

"The arithmetical error was identified and a correction duly requested as follows:

Table 2: Rate as corrected in Bastion Wall Bill:" ...

"Both economic operators were duly notified of the discrepancy, such corrections being accepted by the contractors. Timelines are indicated in Table 4 below. Copies of the arithmetic correction sent to the Objectors are attached as DOC 2 and DOC 3 and the acceptable of the corrections as DOC 4 and DOC 5.

Table 3: Timeline of clarification:" ...

"The corrections have thus resulted in the following changes:"...

"This should clarify the manner these corrections were carried out. Such amendments were necessary to accurately reflect the submitted rates, and this should hence effectively address the concerns raised in the objection letter that the difference is 'both inexplicable and abnormal and that the recommended bidder's offer was irregularly reduced."

In view of the above, the Objector's request cannot be acceded to, and the Evaluation Committee is hereby confirming its Recommendation."

The letter of partial withdrawal filed by the Appellant on the 18<sup>th</sup> September, 2025, as well as the reply of the Committee to the partial withdrawal dated 3<sup>rd</sup> October, 2025 whereby it stated that it is referring “*the matter to the esteemed Board for its consideration and determination*”;

The submissions of the Appellant and the DOC as delivered by their legal representatives;

**Considers;**

This Board notes that the Appellant in its appeal has brought forward three grievances, however, in view of the DOC and Committee’s replies to this appeal, has decided to withdraw the first two grievances. The Board further notes that whilst the Appellant withdrew the first two grievances relating to the merits of the case, the Appellant has held firmly the third grievance relating to the reimbursement of the deposit paid by the Appellant on account of this present appeal.

**A. Re-Imbursement of Deposit Paid**

The Appellant, in his letter of partial withdrawal dated 18<sup>th</sup> September, 2025 underlines that if the Committee had furnished the information they eventually divulged in their reply to this appeal to the Appellant before the Appellant was constrained in filing an appeal before this Board, the Appellant argues that it would not have been constrained in paying the deposit which must *ex lege* accompany the appeal. In the Appellant’s words:

*“had the information set out in the Evaluation Committee’s reply filed on the 10th of September 2025 been sent to the Objector as requested in the email sent by the Objector on the 25th of August 2025 (as better explained in the Objection), that is prior to the expiration of the deadline for the appeal period, there would have been no need for the Objector to file the Objection and incur the payment of the relative deposit of €4,630.00.”*

The Board notes that both the Evaluation Committee and the Department of Contracts submitted to this Board’s determination on the matter.

Therefore, after having seen the acts of the appeal, the Board hereby determines that the Appellant’s request is well-founded, and decides to uphold the Appellant’s only remaining grievance.

**DECIDE**

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to uphold the Appellant’s third and only grievance and orders the immediate reimbursement of the deposit paid by the Appellant, VM Contracting Limited (C-91536) without delay.

**Dr Ana Thomas**  
Chairperson

**Dr Damian Gatt**  
Member

**Mr Lawrence Ancilleri**  
Member

Thursday 23<sup>rd</sup> October, 2025