

PUBLIC CONTRACTS REVIEW BOARD

Case 2180 – SPD8/2025/047 – Supplies - Tender for the Supply, Delivery, Installation and Commissioning of One Truck Tyre Baler Inclusive of 3 Year Maintenance Agreement for WasteServ Malta Limited

12th November 2025

The Board,

Having noted the letter of objection filed Mr Conor Murphy for and on behalf of Gradeall International Ltd, (hereinafter referred to as the appellant) filed on the 10th October 2025;

Having also noted the letter of reply filed by Dr Luca Zammit acting for Wasteserv Malta Limited (hereinafter referred to as the Contracting Authority) filed on the 20th October 2025;

Having heard and evaluated the testimony of the witness Mr Conor Murphy (Representative of Gradeall International Ltd) summoned by Dr Luca Zammit acting for and on behalf Wasteserv Malta Limited;

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 5th November 2025 hereunder reproduced.

Minutes

SPD8/2025/047 – Tender for the Supply, Delivery, Installation and Commissioning of 1 Truck Baler inclusive of 3 Year Maintenance Agreement for Wasteserv Malta Ltd

The tender was issued on the 22nd May,2025 and the closing date was on the 23rd June 2025

The estimated value of the tender, excluding VAT was 107,324 Euro

On the 10th October Mr Conor Murphy on behalf of Gradeall International Limited lodged an appeal against the decision of Wasteserv Ltd, the Contracting Authority, that Think Green can satisfy the administrative and technical criteria of the tender given the price that was submitted that is 64,000.00 Euro

On the 5th November 2025, the Public Contracts Review Board (PCRB) composed of Mr Kenneth Swain as Chairman, Dr Ana Thomas and Dr Maria Cardona as members, convened a public hearing to consider the appeal.

The attendants for this public hearing was as follows:

Appellant: Gradeall Ltd

Mr Conor Murphy Company Representative

Contracting Authority: Wasteserv Malta Ltd

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|------------------------|----------------------|
| Dr Luca Zammit | Legal Representative |
| Mr Daniel Jacob Tabone | TEC Chairman |
| Mr Karl Mizzi | Evaluator |
| Mr Dilan Bonello Boffa | Evaluator |
| Mr Andre Mizzi | Evaluator |
| Ms Luana Gatt | TEC Secretary |
| Mr Louis Cordina | Manager Procurement |

Preferred Bidder – Think Green

Company Representative abroad

Mr Swain welcomed the parties present, announced that the session was to be held in the English language and that representatives of the preferred bidder did not show up for the session. The Chairman explained the procedure to be taken during the sitting to Mr Murphy. Finally, the Chairman invited Mr Murphy to submit his initial submissions.

Initial Submission by Mr Conor Murphy on behalf of Gradeall International Limited

Mr Murphy referred to the objection letter which contended that the price can only be achieved by neglecting some of the administrative and technical criteria since the brand and the model submitted by the preferred bidder did not meet six out of the fifteen (15) items in the technical questioner.

Mr Murphy clarified that he had received the brand and model of the preferred bidder's submission on the 3rd of November after requesting it on two previous occasions, that is on the 9th and the 27th October.

Mr Murphy emphasized that these 6 items and more are covered in the ten objections in the objection letter and summarized the six (6) items in the technical questioner that are not met by the preferred bidder.

Mr Murphy stated that Gradeall have reviewed the unconfirmed brand and model referred to as XT Pack Baler submitted by the preferred bidder and stated that this does not make the requirements of the technical offer document for the items numbered in the technical offer document numbered below.

- Item No 1 (e) the proposed Truck Tyre Baler fits in the footprint provided which is not to be greater than 3.5 meters wide by 2.5 metres deep. The XT Pack Baler is 4.2 meters wide
- Item No 2(b) the Truck Tyre Baler cannot produce a Bale of this number of tyres
- Item No 3 (c) The average weight of the Bale should be between 600kgs and 700 kgs. The XT Pack Baler is 1900 kilos.
- Item No 3 (c) the dimensions of the Bale should be around 1200x1200x900mm. That of the XT Pack Baler is 2200x1300x1400mm
- Item No 4 (d) The Truck should be able to produce at least three (3) bales per hour. The XT Pack Baler cannot do this to the dimensions outlined in 3c
- Item No 9 (e) The resulting Bales shall be tied with an adequate number of baling wires. The XT Pack Baler cannot be tied in a manner that ensures that the dimensions outlined in 3 (c) are complied with and the bale retains its integrity and if one looks at the XT data sheet the bale can only be tied laterally and not tied through the rim.
- Item No 11 for fault trouble shooting. The XT Baler does not have this facility.

Mr Murphy contended that furthermore to the above failures to meet the technical offer requirements support Gradeall's objections in the letter of objection to the decisions of the tender, specifically to points 1,2,3and 6 directly and the objection points 4,5,7,8,9 and 10 indirectly.

Mr Murphy contended that in the original tender document –section 2 –special conditions- article 15-Tender Proces-15.1 it states that in addition to the general conditions the contractor shall not be deemed to have carefully examined the technical specifications before submitting his tender and any requests for modifications in relation to the final design will not be entertained by the Contracting Authority.

Mr Murphy reiterated that it is clear that the XT Pack Baler does not meet the technical offer requirements of the tender and should not be awarded the tender and all these reasons given supports Gradeall's objection.

Initial submission by Dr Luca Zammit

Dr Zammit stated that the Contracting Authority does not have anything to add to its letter of reply to the objection and while acknowledging the experience of the appellant and his assumptions the Evaluation Committee based its decisions on actual facts rather than assumptions.

Dr Zammit explained that the Evaluation Committee based its decisions on actual facts represented by the literature and documentation submitted by the recommended bidder which differs in measurements and specifications than the assumptions of the opposing party thus making his offer compliant.

Dr Zammit referred to the price and stated that this budget outline of the tender dossier is merely a reference and not a binding factor and since the price is low and according to law the Contracting Authority issued a verification request seeking the necessary assurances that this price is not going to hinder the services requested.

Dr Zammit continued that the recommended bidder satisfied all that was required by the tender document, that is substantiating its offer, giving the assurances needed, valid replies, ticking all the boxes and thus confirming compliance to the tender requirements.

Dr Zammit emphasized that due to this the Contracting authority is asking the PCRB to reject the objection which is based on speculation rather than tangible proof which was available to the Evaluation Committee

At this stage the Chairman asked if there were any witness.

Mr Murphy intervened and stated that there were no witnesses to be called by the objector but stated that he reaffirmed his familiarity with the machine that has been submitted by the preferred bidder and he gave his assurance that it certainly does not meet the technical criteria in items numbers 1,2,3,4,9, and 11. He ended his intervention by asking why would a tender be released to the public whenever the technical questionnaire is not fully complied with.

At this stage Dr Zammit asked the appellant to take the stand.

Testimony of Connor Murphy (ID No PU a440378)

Dr Zammit asked Mr Murphy from where he got the information about measurements and specification which he had presented during the sitting.

Mr Murphy replied that he requested the measurements and data sheets from the PCRB. These were sent to him on the 3rd of November 2025 after he had requested them on two previous occasions on the 9th and 27th October 2025 respectively and which he presented in his objection letter. Mr Murphy reaffirmed this when asked again by both the Chairman and Dr Ana Thomas and also offered to give copies of the said document.

At this stage Dr Zammit intervened and stated that the Contracting Authority provided the appellant with the model number and not the data sheets. Following this statement Dr Zammit asked Mr Murphy from where he got the data sheets.

Mr Murphy answered that it came from the PCRB and quoted the email sent by the PCRB secretariat on the 3rd of November, presented it to the Board and the secretariat circulated photo copies to those present.

Intervention by Dr Ana Thomas

After scrutinizing the emails involved, Dr Thomas remarked that the secretariat did not send him the first page and half of the 2nd page of the document that Mr Murphy presented to the Board in the first place.

Dr Thomas continued to explain that the mail sent from the PCRB secretariat had an attachment by Mr Louis Cordina from Wasteserv dated 3rd November 2025 at 10.41 am whereby Mr Cordina addresses Ms Vella from the secretariat and in which he writes "Kindly note that the Tyre Baler being recommended for award for the CFT in subject is manufactured by Xutlan Machinery Company Limited with XT Pack as the brand and XTY-1200LF120120 as the model number."

Answering to a question by Dr Thomas Mr Murphy agreed that this is correct.

Answering to another question by Dr Thomas, Mr Murphy said that the front page in question came from the spec when the appellant searched the model.

Intervention by the Chairman

Questioned by the Chairman Mr Murphy stated that the search by the appellant about the model was made after receiving the brand and model number from the website of the company that supplies the machine. Mr Murphy also asked to be given some time to double check about this issue.

Intervention by Dr Thomas

Dr Thomas addressed Mr Murphy and stated that the data sheet on page 1 of the document refers to XTY-1200LF210210 and not 120120.

Furthermore, Dr Thomas confirmed that what the PCRB secretariat outlined to Mr Murphy was XTY-1200LF120120 and not 210120 and so she remarked that Mr Murphy was referring to a data sheet of another model number with the same brand.

At this stage Mr Murphy stated that maybe there was a typo but they are the only two machines that this manufacturer makes and again offered to double check.

Answering another intervention by Dr Thomas, Mr Murphy confirmed that the data sheet with different measurements which he had testified on was not provided by the PCRB secretariat.

Following this statement Mr Murphy was asked to leave the witness stand.

Final Submission by the Contracting Authority

Dr Zammit confirmed that this was the model presented to the Contracting Authority and the Evaluating Committee had to do its evaluation on the documentation available to it.

Dr Zammit ended by confirming that the recommended bidder met all the necessary requirements and therefore the whole process was natural from that stage on. Referring to the sharing of documentation Dr Zammit stated that the Department of Contracts instructs that unless the information that we are asked to share is already publicly available we are not obliged to share it and what we can share is the model number and the manufacturer

At this point the Chairman declared that since there were no more interventions he thanked those present and declared the session closed.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 5th November 2025.

Having noted the objection filed by Gradeall International Ltd (hereinafter referred to as the Appellant) on 10th October 2025, refers to the claims made by the same Appellant with regard to the tender of reference SPD8/2025/047 listed as case No. 2180 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Conor Murphy

Appearing for the Contracting Authority: Dr Luca Zammit

Whereby, the Appellant contends that:

- a) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck Tyre Baler with the required strength and structural integrity to produce bales composed of 10-12 truck tyres as well as all other requirements of the tender.
- b) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck
- c) Tyre Baler with the required strength and structural integrity to produce average weight of the bale between 600-700 kgs, and the dimensions of the bale should be around $W \times D \times H$ (mm) = 1200 x 1200 x 900, as well as all other requirements of the tender.
- d) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck Tyre Baler with the required strength and structural integrity to produce at least three (3) bales per hour as well as all other requirements of the tender.
- e) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck Tyre Baler with the required strength and structural integrity to have a head press force - at least 45 tons as well as all other requirements of the tender.
- f) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck Tyre Baler with the required strength and structural integrity to have a bale retainer mechanism to allow at least 2 cycles per bale as well as all other requirements of the tender.
- g) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck Tyre Baler with the required remote connection for fault troubleshooting as well as all other requirements of the tender.
- h) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck Tyre Baler that shall conform to local Laws and Legislations and to be CE marked in line with directive 2006/42/EC and amending directive 95/16/EC, as all other requirements of the tender.

- i) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck Tyre Baler with the required strength, structural integrity, remote connection availability and durability as well as supply 50,000 wires along with the machine as required in Item 2 Schedule A on the Financial Bid as well as all other requirements of the tender.
- j) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck Tyre Baler with the required strength, structural integrity, remote connection availability and durability as well as supply 50,000 wires along with the machine and 36 months servicing required in Item 3 Schedule A on the Financial Bid and as well as all other requirements of the tender.
- k) Given the price submitted by Think Green it is not commercially/technically feasible to supply a Truck Tyre Baler with the required strength and structural integrity to include DDP delivery terms, 4% performance Guarantee, Fully insure throughout shipping/installation, install and set up on site, 24 months warranty, an engineer to attend site for 8 hours training as well as all other requirements of the tender.
- l) To summarise; - Given Gradeall Int Ltd's expertise and being a world leading manufacturer of Truck Tyre balers it is not commercially/technically feasible for Think Green to supply the products and services required in the tender SPD8/2025/047 at the price submitted without neglecting some of the administrative and technical criteria and some of Items 1, 2 or 3 in Schedule A on the Financial Bid Form.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 20th October 2025 and its verbal submission during the hearing held on 5th November 2025, in that:

- a) **Unfounded Allegations -**
Based on the Appellant's submitted appeal, the Contracting Authority notes that the Appellant is making assumptions on the inability of the recommended bidder to adhere with the tender requirements based solely on the Appellant's experience within this field of work rather than tangible proof. Also, an abnormally low tender clarification request was raised by the Evaluation Committee in accordance with Regulation 243 of Subsidiary Legislation 601.03 of the Laws of Malta and the recommended bidder in question provided a satisfactory explanation, which adequately accounted for the perceived low price. Consequently, the Evaluation Committee proceeded on that basis.
- b) **Evaluation Process and Rectification -**
The Evaluation Committee is bound to adjudicate tenders solely on the basis of the technical offers and supporting literature submitted by the bidders and if it considers external sources, it would be prejudicial to its own impartiality. As explained, the recommended bidder provided the necessary documentation, satisfied all the tender requisites and backed it up with the essential proof and literature which the Contracting Authority is willing to share should the Public Contracts Review Board see fit to do so.

c) Award of Tender -

In the opinion of the Contracting Authority the recommended award of the above-mentioned tender was in line with the tender requirements and there are no grounds for this decision to be revoked or challenged. In light of the above, the Contracting Authority reaffirms that the evaluation process was conducted fairly and in full compliance with the applicable laws and procedures. The appeal is therefore unfounded in terms of facts and law.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will now consider Appellant's grievances.

- a) The central issue raised by the Appellant, Mr Conor Murphy, concerns the alleged technical non-compliance of the recommended bidder's offer for a truck tyre baler identified as model "XTY-1200LF120120." In accordance with Regulation 40 of the Public Procurement Regulations, the Appellant was duly provided with the brand and model of the recommended bidder's offer prior to the hearing, thus enabling him to conduct his own independent verification. It is noted, however, that the Appellant only made such a request through his letter of appeal, and not within the period prescribed by the Rejection Letter issued on 1 October 2025.
- b) In the course of his independent research, the Appellant located and presented to this Board a technical data sheet for a different model, namely "XTY-1200LF210120." The distinction between the two model numbers is clear and material. The documentation relied upon by the Appellant during his testimony does not correspond to the machine actually offered and evaluated by the Evaluation Committee. Accordingly, the technical characteristics referenced by the Appellant cannot be attributed to the offer under review.
- c) The Appellant attempted to explain this discrepancy by alleging the possibility of a typographical error. However, the principle of *self-limitation* requires the Evaluation Committee, and by extension this Board, to base its assessment strictly on the documentation formally submitted at tendering stage. The Evaluation Committee was therefore bound to evaluate only the technical specification sheet presented by the recommended bidder for model "XTY-1200LF120120." That document formed part of the bid as submitted and was found to satisfy all the technical parameters established in the tender dossier.
- d) Procurement law does not permit reliance on extraneous materials or information obtained from external sources after submission. The Evaluation Committee is precluded from supplementing or correcting the bidder's documentation through independent searches or through data introduced post-submission. Allegations of typographical errors or alternative model references cannot displace the formally submitted evidence where, as here, the documentation is complete, clear, and compliant on its face.

- e) The Board finds that the Evaluation Committee acted within the strict bounds of its lawful competence, in observance of the principles of *self-limitation*, *equal treatment*, and *transparency*. The committee's evaluation was correctly confined to the documents actually forming part of the tender offer, and it properly determined that the specifications of the model "XTY-1200LF120120" met all requirements of the tender dossier.
- f) While the Board acknowledges the Appellant's initiative in seeking to verify technical information independently, such ex-post verification cannot override the procedural and evidentiary framework governing public procurement. The contracting authority was entitled, indeed obliged, to base its decision solely on the materials submitted at tendering stage.

For these reasons, and having given full consideration to all written and oral submissions, as well as the evidence produced during the hearing, the Board finds that the Contracting Authority acted correctly and in full conformity with the tender terms, the applicable procurement regulations, and the principles of transparency, self-limitation, and equal treatment.

The Board further observes that while the Appellant's efforts to verify the technical details of the recommended offer are acknowledged, such post-submission inquiries cannot supersede the formal documentation forming part of the tender. The evaluation process must remain confined to the material duly submitted by bidders at tendering stage, and the Evaluation Committee was right to assess the model "XTY-1200LF120120" as presented, which met all technical specifications required by the tender dossier.

Accordingly, the Board concludes that the Appellant's grievance is unfounded in fact and in law and hereby does not uphold the appeal.

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 Ana Thomas
Member

Dr Maria Cardona
Member