

PUBLIC CONTRACTS REVIEW BOARD

Case 2172 – SPD8/2025/046 – Framework Contract for the Inspection and Certification of Multiple Types of Equipment Across various Wasteserv Sites in Malta – Lot 6

3rd November 2025

The Board,

Having noted the letter of objection filed Ing. John Cachia for and on behalf of Protech Engineering Solutions Limited, (hereinafter referred to as the appellant) filed on the 9th September 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 17th September 2025;

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 24th October 2025 hereunder reproduced.

Minutes

Case 2172 Objection – SPD8/2025/046 – Framework Contract for the Inspection and Certification of Multiple Types of Equipment Across Various Wasteserv Site in Malta (Lot6).

The tender was issued on the 25th of April 2025, and the closing date was the 26th of May 2025.

The estimated value of the tender, excluding VAT, was €22,086.00

On 9 September 2025, ProTech Engineering Solutions Limited submitted an appeal to Wasteserv Malta, the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On 24 October 2025, the Public Contracts Review Board (PCRB), composed of Mr. Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr. Keith Victor Grech, as members, convened a public hearing to consider the appeal.

A deposit of €400 was paid.

There were Two bids.

The attendance for this public hearing was as follows:

Appellant – Protech Engineering Solutions Limited (C29510)

Dr Kris Borg – Legal Representative.

Ing. John Cachia – Company Representative

Mr Samuel Cachia – Company Representative

Contracting Authority – WasteServ Malta (WSM) Limited

Dr Luca Zammit – Legal Representative

Ing. Yria Zulaynes Vargas Vera – Evaluation Committee

Ms Aylin Fleri - Evaluation Committee

Ms Sandra Milena Guiza Delgadillo - Evaluation Committee

Mr Arun Thomas Vargese – WSM Representative

Mr Louis Cordina – WSM Representative

Recommended Bidder – TVI Services Ltd. (C38176)

Ing. Pierre Cassar – Company Representative was invited but did not attend.

Opening Statements

Mr. Kenneth Swain, Chair of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, Protech Engineering Solutions Ltd., and the Contracting Authority, Wasteserv Malta Ltd.

Initial Submissions

Initial Submissions by Dr. Kris Borg (for the Appellant)

Dr. Borg, representing Protech Engineering Solutions Ltd., stated that the discussion concerned Lot 6 of SPD8/2025/046, *“Service of Inspection and Certification of Mine Safety Appliances – MSA Equipment. Gas detectors, personal protective equipment, and fall arrests systems, rescue tripods.”*

Dr. Borg referred to page 21 of the tender, section 6, reference 2, which lists the requirements, and he quoted:

1. *“Inspect for proper and Safe functionality and calibration of equipment.”*
2. *“Compliance with inspections is S.L. 424.35: Work Equipment (Minimum Safety and Health Requirements.”*
3. *“Conduct tests to verify reliability and accuracy of gas detectors.”*

Referring to page 7 of the tender, titled *Subcontracting Proportion*, he noted that the tenderer must declare whether any subcontracting will take place. On page 8 of the tender, the requirements for the key expert are set out: the expert must be a mechanical engineer with a valid warrant in the mechanical field, and a certificate issued by Mine Safety Appliances (MSA) authorising them to inspect and certify MSA equipment.

Mr. (Ing.) John Cachia, a qualified engineer who runs Protech Engineering Solutions Ltd., submitted his warrant together with training certificates issued by MSA. Mr. (Ing.) Cachia was appointed by Protech Engineering Solutions Ltd., as the key expert and mechanical engineer for Lot 6.

On 29 August 2025, Protech Engineering Solutions Ltd., received a letter from the Contracting Authority stating that their tender was not being considered because the CV of the mechanical engineer had not been submitted. However, on 3 September 2025, the successful bidder, Mr. (Ing) Pierre Cassar, sent an email (exhibited in Document A) to Mr. (Ing) Cachia requesting a meeting to discuss an inspection schedule for MSA Portable Gas Monitors and asking if he was available the following week.

This indicated that the awarded bidder was asking Protech Engineering Solutions Ltd., to carry out the inspection work. This raised concerns for Protech Engineering Solutions Ltd., leading them to file an appeal on two main points:

- Firstly, page 7 of the tender clearly states that subcontracting is not allowed unless declared, yet TVI Services Ltd. was asking Protech to act as a subcontractor.
- Secondly, Protech argued that they were the only company in Malta certified by MSA and the only authorised MSA partner capable of performing such work.

If the awarded bidder was certified, he lacked the necessary equipment to perform the work. In Wasteserv's reasoned letter of reply, Protech Engineering Solutions Ltd., was excluded for failing to provide Mr. (Ing) Cachia's CV. However, the CV of Mr. (Ing) Cassar was also not submitted.

Furthermore, the certificate presented by Mr. (Ing) Cassar—stating "*Certificate of Completion, Register for Equipment Inspect here*"—was issued on the same day the tender was submitted, 25 May 2025. This certificate had a completely different format from genuine MSA certificates, which normally include start and expiry dates and list the specific subjects covered.

MSA issues certifications that fully correspond to the tender's requirements. Protech Engineering Solutions Ltd. sent a clarification email to MSA on 17 September 2025, and Mr. Chris Willits replied that the certificate given to Mr. (Ing) Cassar was an online knowledge-based course and did not demonstrate any practical competency.

Dr. Borg argued that this certification did not meet the requirements of the tender and referred to Document C in the appeal. Another email from Mr. Chris Willets of MSA, dated 23 September 2025, stated that the certificate in question was misleading and falsely represented the tender requirements. Mr. Willets mentioned that he would speak to his manager to address these issues.

An email sent on 25 September 2025 by Mr. Hoyda of MSA confirmed that "*Protech Engineering Solutions Ltd. has all the competences to provide maintenance and service.*" According to MSA's internal records, the successful bidder, TVI Services Ltd., is not an MSA partner in Malta, either for sales or service.

In a "*to whom it may concern letter*" (exhibited in Document E), MSA confirmed that only Protech is certified to carry out the required work. The certificate presented by TVI Services Ltd. could be downloaded online in two minutes after answering a few questions. The adjudication committee noted the missing CV from Protech's submission but failed to recognise the issue with the certificate presented by Mr. (Ing) Cassar.

An additional document submitted by Mr. (Ing) Cassar on 23 October stated that TVI Services Ltd. did not provide sales or service for the equipment to be inspected and had therefore contracted Protech

Engineering Solutions Ltd., to provide the service for Wasteserv. In Document A, Mr. (Ing) Cassar's request for assistance with an inspection schedule from Protech directly related to the tender's requirements. Mr. (Ing) Cassar also exhibited two additional certificates, which had no relevance to the tender's specified requirements.

Referring to the Cirkewwa case, in which four workers lost their lives after entering a gas-filled manhole, Dr. Borg remarked that a gas detector could have saved them. He stressed that, for the benefit of the country, such matters must be handled responsibly.

Initial Submissions by Dr. Luca Zammit (for the Contracting Authority)

Dr. Zammit stated that there had been a misunderstanding. The Contracting Authority had required economic operators to be competent and capable of carrying out inspections. It did not require servicing, calibration, or certification related to those activities. The Evaluation Committee did not base its assessment on those aspects.

He emphasised that the competence of Mr. (Ing) Cachia was not in question; however, his CV had not been submitted. He emphasised that the tender also required the key expert to have an engineer's warrant, not just the MSA certificate. It appeared that the appellant misunderstood the minimum requirements.

In accordance with the Public Procurement Regulations, any objections relating to the minimum requirements should have been submitted within the prescribed period. These requirements were not contested but confirmed, and therefore the recommended bidder was deemed fully compliant.

Regarding subcontracting, both the Contracting Authority and the Evaluation Committee determined that there was no need for subcontracting. When the recommended bidder contacted Protech, it was not for subcontracting purposes. Submitting a certificate that, according to the appellant, was easily downloadable was not the responsibility of the recommended bidder, the Contracting Authority, or the Evaluation Committee, but an issue for MSA itself.

Dr. Zammit concluded that the Evaluation Committee had acted consistently and lawfully in its assessment and that the recommended bidder was compliant with all technical specifications.

Replica by Dr. Kris Borg

Dr. Borg stated that, assuming everything Dr. Zammit said was entirely correct, the question remained whether the Board should rely on a certificate known to be unreliable. No further submissions were made.

Conclusion of the Hearing

The Chairman asked if there were any witnesses, and on receiving a negative reply from both parties and with no further submissions and arguments, Mr. Kenneth Swain thanked the parties and formally concluded the session.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 24th October 2025.

Having noted the objection filed by Protech Engineering Solutions Limited (hereinafter referred to as the Appellant) on 9th September 2025, refers to the claims made by the same Appellant with regard to the tender of reference SPD8/2025/046 listed as case No. 2172 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Kris Borg

Appearing for the Contracting Authority: Dr Luca Zammit

Whereby, the Appellant contends that:

a) ***Technical Concerns***

Specialised Nature of MSA Equipment – Lot 6 groups together various MSA equipment. Some of these items, such as gas detectors, are not generic fall-protection equipment that can be inspected by any warranted engineer. Gas detectors are precision gas measuring instruments containing sensitive sensors that require functional testing, servicing, and calibration using specific calibration gases and equipment. These detectors are life-saving devices, and their effectiveness relies on accurate calibration to correctly detect dangerous atmospheric conditions. An uncalibrated detector may fail to warn the user of unsafe air, with potentially fatal consequences.

Calibration and Service Requirements – Gas detection equipment must be calibrated using manufacturer-approved gases and equipment. Servicing and inspection during calibration are essential to maintain safe operation. Only service providers equipped with the correct calibration tools are capable of performing these functions to the required standard.

Competency and Authorisation by MSA - Rescue and fall-protection equipment must be inspected and serviced exclusively by competent persons trained, qualified, and approved by MSA. MSA audits the work and certifications of its competent persons regularly. To maintain competence, qualified persons are required to undergo periodic refresher and update training.

b) ***Concerns Regarding the Awarded Bidder***

It appears that the awarded bidder is not in possession of the required MSA calibration equipment. Following the publication of the award notification, we received an email from the awarded bidder requesting a meeting to discuss a calibration schedule for MSA gas detectors.

We never had any kind of communication or business whatsoever with the awarded bidder. Hence it is evident that we could have never been listed in this awarded bidder's tender as a subcontractor. If it is the case, this was done against our knowledge or approval.

This raises the following issues:

- **Subcontracting Risk:** If calibration is outsourced to third parties, this introduces potential legal and technical issues. Calibration certificates must be traceable directly to the equipment owner, and outsourcing risk creating gaps in accountability during accident investigations.
- **Non-Compliance with Tender Criteria:** The tender document (page 7) specifies requirements under Technical and Professional Ability (Note 2), including clear disclosure of subcontracting proportions. If no subcontracting was declared, then subcontracting calibration services would be non-compliant.

c) ***Inspection Alone is Insufficient***

While the tender requires "inspection and certification" of MSA equipment, certain items also require functional testing, servicing, and calibration beyond visual or mechanical inspection. The following items fall into this category:

Item 5 – Rescue Tripod

Item 6 – Workman Rescuer

Item 7 – Workman Winch

Item 8 – Personal Self-Rescue Full-Body Harness

Item 9 – Rescue Poles

Item 10 – Mini PFL – Inertia Reel 1.8m

Item 14 – Safety Line

Item 15 – Gas Detector (Altair 5X) Calibration

Each of these items requires:

Detailed internal and external component checks.

Functional testing and load testing where applicable.

Servicing according to MSA's documented procedures.

Calibration using manufacturer-approved methods and equipment.

Examples of Specific Requirements

Rescue Poles (Item 9): - Functional checks and technical verification of attachment.

Mini PFL - Inertia Reet (item 10): inspection, technical verification on acceleration rate of fall stop and operating mechanisms.

Safety line (Item14): - Assembly and tension functional check. Technical verification on tension mechanism and rope lock tightness under tension.

Gas Detectors (Item 15): - Functional checks, calibration with specific calibrated gases, internal and external filters servicing, and alarms verification.

These services demand more than an inspection. They require a certified MSA competent person following approved protocols.

d) ***Tender Evaluation and Price Considerations***

The award decision should not rely solely on compliance with an engineer's CV or the lowest bid price. While we inadvertently omitted attaching the Engineer's CV in our submission, all other MSA competency certifications were provided. We are hereby attaching the missing CV for consideration. The tender covers a 3-year period with an estimated value of €22,086.00 (excluding VAT). Our tender offer was €23,526.00 (excluding VAT), accounting for anticipated yearly increases in calibration consumable costs.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 17th September 2025 and its verbal submission during the hearing held on 24th October 2025, in that:

a) ***Clarification on Minimum Requirements -***

It appears that there has been a misunderstanding regarding the nature of the minimum requirements. The tender documentation clearly required that:

- As per Chapter 321 Engineering Profession Act, the competent person must hold a valid warrant in the mechanical field issued by the Engineering Profession Board enabling him/ her to practice locally.

- Certificate provided by Mine Safety Appliances (MSA) to inspect and certify MSA equipment.2

Both of which have been presented (Doc A and Doc B respectively, attached with this reply) by TVI Services Limited ["the awarded bidder"] hence why it has been awarded with the tender. The current possession of any MSA calibration equipment used to deliver the service was NOT stipulated as a minimum requirement. The requirement was for certified competence and the ability to provide the service. Consequently, ownership of specific equipment was not a factor in assessing compliance with the minimum requirements. If a contractor, after award, fails to provide the

service due to lack of equipment, this would amount to a breach of contract. However, at the evaluation stage, bidders were assessed on their compliance with the published requirements, which did not include ownership of equipment. In light of the above, the appeal is based on a complete misunderstanding of the minimum requirements within the relevant tender. The awarded bidder satisfied all the minimum requirements - as opposed to the appellant whereby it omitted the engineer's CVs, as stated in the appeal itself - and as such, the bid could not lawfully be excluded on the basis of not owning specific equipment, which, again, was never a minimum requirement.

All the tender requirements were clearly stated in the procurement documentation and were duly fulfilled by the awarded bidder, as evidenced in the tenderer's technical offer (Doc C and Doc D) and the key expert form (Doc E) submitted with this letter of reply. Accordingly, there is no valid basis on which the bid can be rejected, nor can it be reasonably contested that the published requirements were not met.

b) ***Timing of Objections under Procurement Regulations.***

If the Appellant feels that ownership of MSA calibration equipment had to be one of the minimum requirements, then this should have been raised at an earlier stage as prescribed by law.

In accordance with Part IX of the Public Procurement Regulations*, any objections, or challenges relating to the minimum requirements within a tender must be submitted within the first two-thirds of the call for competition period for submission of offers. As the appeal was submitted after the close of the tender process, any challenge to the stated minimum requirements falls outside the timeframe allowed by law and therefore cannot be considered at this stage.

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: Recommended Bidder's Lack of Required Technical Competency and Authorisation

- The Appellant contends that the Recommended Bidder lacks MSA manufacturer authorisation and the necessary technical expertise to service and certify MSA equipment.
- Section 1, Clause 5(C)(ii) of the Tender Dossier explicitly requires that Key Expert 6 must possess a Certificate provided by Mine Safety Appliances (MSA) to inspect and certify MSA equipment.
- The Recommended Bidder submitted an MSA certificate (Certificate of Completion). However, the Board is not satisfied that this certificate unambiguously demonstrates compliance with Clause 5(C)(ii), particularly given concerns raised during the hearing that the MSA certificate was an online knowledge-based course certificate issued on the same day as tender submission (25 May 2025),

and correspondence from MSA representatives indicating the certificate "*falsely represented the tender requirements.*"

- The Board notes that email correspondence from MSA representatives (Chris Willits, dated 17 September 2025 and 23 September 2025) confirmed that the certificate presented by the Recommended Bidder was an online knowledge-based course that did not demonstrate practical competency and that only Protech Engineering Solutions Limited possesses the competences to provide maintenance and service as an MSA partner in Malta.
- While the Contracting Authority argues that the certificate presented meets the literal requirement of Clause 5(C)(i), the Board must ensure that tender requirements concerning safety-critical equipment are substantiated by verifiable, adequate certification that genuinely demonstrates the requisite technical competency as stipulated in the tender.
- The Board therefore directs the Contracting Authority to issue a clarification and/or rectification to the recommended bidder in accordance with Note 2 to Clause 5 of the Tender Dossier to provide improved assurance of how he complies to the tender requirements of Clause 5(C)(ii).
- Therefore, the Board, partially upholds the first grievance of the Appellant and orders the reevaluation of the recommended bidder's bid to ascertain compliance or otherwise.

Grievance 2: Recommended Bidder's Non-Compliance through Subcontracting Arrangements

- The Appellant contends that the Recommended Bidder contacted them post-award to discuss an inspection schedule for MSA equipment, indicating an intention to subcontract the work to Protech Engineering Solutions Limited without prior declaration of subcontracting as required by the tender documentation.
- Page 7 of the Tender Dossier, titled *Subcontracting Proportion*, explicitly requires tenderers to declare whether any subcontracting will take place.
- The Contracting Authority argued during the hearing that no subcontracting was intended and that the contact with the Appellant was not for subcontracting purposes. The Contracting Authority submitted that the requirement to own specific equipment was not stipulated as a minimum requirement, and that contact between bidders for operational purposes post-award does not constitute breach of the tender's subcontracting disclosure requirements.
- The Board notes that the Evaluation Committee assessed compliance with the published requirements at the evaluation stage, not operational arrangements post-award, which must be dealt with during contract execution.
- It is the opinion of this Board that the Evaluation Committee acted in a diligent and proportionate manner in assessing the tender submissions against the stated requirements at the evaluation stage.

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

Grievance 3: Improper Evaluation Methodology

- The Appellant contends that the award decision should not rely solely on compliance with an engineer's CV or the lowest bid price and argues that while the Engineer's CV was inadvertently omitted from submission, all other MSA competency certifications were provided and the missing documentation should not have been a sole basis for exclusion.
- Section 1, Clause 5(C)(ii) of the Tender Dossier explicitly requires that for Key Expert 6, bidders must submit: "*Key Experts Form, Statement of Availability Form, Self-declaration form, Engineer's Warrant, Degree Certification and CVs for the following Key Experts and any other requested documentation.*"
- The Contracting Authority's reasoned letter of reply dated 17 September 2025 confirmed that the Appellant was excluded for failing to provide the engineer's CV.
- The Board notes that the responsibility for ensuring complete and compliant submissions rests with the bidder. The Appellant itself acknowledged in its objection that the CV was "*inadvertently omitted*" from its submission. The mandatory requirement for submission of the Engineer's CV is explicit and unambiguous in the tender documentation, and its omission constitutes material non-compliance with published requirements.
- The Board is satisfied that the Evaluation Committee correctly applied the mandatory requirement of Clause 5(C)(ii) by identifying the missing documentation in the Appellant's submission and assessing non-compliance accordingly.
- It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner with respect to this mandatory requirement, and that the price differential between the Appellant's tender and the Recommended Bidder's offer does not override the requirement for compliance with all mandatory documentary prerequisites.
- 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 the Appellant's Letter of Objection and contentions related to the second grievance;
- b. Does not uphold the Appellant's Letter of Objection and contentions related to the third grievance;
- c. Declares the Appellant's first grievance is partially upheld but is at this stage premature and indeterminate at this stage;
- d. With respect to the Appellant's first grievance, directs the Contracting Authority to issue a clarification and/or rectification to the Recommended Bidder in accordance with Note 2 to Clause 5 of the Tender Dossier to provide improved assurance of how he complies or will comply with the tender requirements of Clause 5(C)(ii);
- e. Revokes the recommendation of award made in favour of the Recommended Bidder;
- f. Directs the re-evaluation process to be opened, which re-evaluation shall implement the Board's findings;
- g. Directs that bidders be requested to extend the validity period of their respective bids, if required;
- h. Directs that the deposit paid by the Appellant be reimbursed in full.

Mr Kenneth Swain
Chairman

Dr Ing. Damien Gatt
Member

Mr Keith Victor Grech
Member