

PUBLIC CONTRACTS REVIEW BOARD

Case 2186 – CT2362/2024 – Framework Contract for the Provision of Giveaways in different lots for the Malta Tourism Authority – Lot 3

24th November 2025

The Board,

Having noted the Letter of Objection filed Mr Zhi Bo. Hans for and on behalf of **Shichuang Germany GmbH**, (hereinafter referred to as “*the Appellant*”) filed on the 1st October 2025;

Having also noted the Reasoned Letter of Reply filed by Dr Maria Lisa Buttigieg on behalf of Mamo TCV Advocates acting for and on behalf of **Malta Tourism Authority** (hereinafter referred to as “*the Contracting Authority*”) filed on the 14th October 2025;

Having also noted a further application supplementing the initial Letter of Objection filed by Dr Matthew Paris filed on the 30th October, 2025;

Having also noted the Reasoned Letter of Reply of the Contracting Authority filed on the 10th November, 2025, in reply to the aforementioned application;

Having heard the testimony of Mr Arthur Grima (Chairperson of the Evaluation Committee) as duly summoned by Dr Zackariah Esmail acting for and on behalf of the Appellant;

Having heard the testimony of Mr Oliver Farrugia (Secretary of the Evaluation Committee) as duly summoned by Dr Zackariah Esmail acting for and on behalf of the Appellant;

Having heard the testimony of Mr Dalziel Bugeja (Recommended Bidder’s External Consultant) as duly summoned by Dr Zackariah Esmail acting for and on behalf of the Appellant;

Having heard the testimony of Ms Marlene Attard (Representative of the Recommended Bidder’s Company) as duly summoned by Dr Zackariah Esmail acting for and on behalf of the Appellant;

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 20th November, 2025 hereunder reproduced.

Minutes

Case 2186. 606 – Objection – CT2362/2024 – Framework Contract for the Provision of Giveaways in different lots for the Malta Tourism Authority – Lot 3 Beach related giveaways and other material.

The tender was issued on the 16th of January 2025, and the closing date was the 25th of February 2025. The estimated value of the tender, excluding VAT, was €287,790.

On the 1st of September 2025 Shichuang Germany GmbH (DE364770532) lodged an appeal against Malta Tourism Authority – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations. The tender was not the cheapest priced offer.

A deposit of €856.80 was paid.

There were Nine Bids.

On the 20th of November 2025, the Public Contracts Review Board (PCRB), composed of Mr. Kenneth Swain as Chairman, Dr Vincent Micallef and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Shichuang Germany GmbH (DE364770532).

Dr Matthew Paris – Legal Representative (online).

Dr Zack Esmail -- Legal Representative.

Dr Kayleigh Borg – Legal Representative.

Contracting Authority – Malta Tourism Authority.

Dr Maria Lisa Buttigieg – Legal Representative.

Mr Arthur Grima – Chairperson.

Mr Oliver Farrugia – Secretary.

Mr Jake Mifsud – Evaluator.

Ms. Kylie Grech -- Procurement Assistant Manager.

Department of Contracts.

Dr Audrey Marlene Buttigieg Vella – Legal representative.

Dr Daniel Inguanez – Legal representative.

Dr Mark Anthony Debono – Legal Representative.

Recommended Bidder – Pykon Limited. (C98129).

Dr Vince Galea –Legal Representative.

Ms Marlene Attard – Company Representative.

Mr Dalziel Bugeja – Company Representative.

Ms. Mariah Borg – Trainee.

Opening Statements.

Mr Kenneth Swain, Chairman of the Public Contracts Review Board, welcomed the parties present – namely, the Appellant, Shichuang Germany GmbH; the Contracting Authority, the Malta Tourism Authority; and the Recommended Bidder, Pykon Limited.

Initial Submissions.

The Chairman, Mr Swain, stated that the Board was referring to the Appellant's application dated 29 October 2025, together with the answers submitted. The Board reserved the right to decide at the end of the proceedings on the matter of *Fuori Termine* or not. The Chairman referred to the sentence of Support Services, where the Board must hear the merits and decide after the hearings as directed by the Court of Appeal; and second.

Regulation 276, sub-article C states:

"The Contracting Authority and any interested parties may within 10 days"

They are not obliged, but they have the right, to be present and make verbal submissions. The Board will decide whether to note or not the written reply for the appeal.

Dr Esmail added that the application was not solely about the *Fuori Termine* but also contained a request under article 158-10 of the COCP. He insisted that this decision should be taken beforehand, as he wished to know whether the other side had the opportunity to submit proof.

Dr Maria Lisa Buttigieg, representing the Contracting Authority, referred to regulation 90, 601.03 sub-article 2:

"The Chairman also have the power to determine the procedure for the hearing of all complaints lodged before it and shall ensure that during the public hearing all interested parties are given the opportunity to make their case".

Regulation 276 states "may". Every party has the right to make its own case.

The Chairman stated that the appeal would be heard. It is not unusual for interested parties or preferred bidders not to submit a written answer but still attend the hearing and make their submissions verbally.

Initial Submissions by Dr Zack Esmail (for the Appellant).

Dr Esmail chose not to make an opening submission and instead summoned a witness.

Witness: Mr Arthur Grima (ID 162367M) — summoned by Dr Zack Esmail.

Mr Arthur Grima, Director of International Marketing with the Tourism Authority, was the Chairman of the Evaluation Committee. The Committee consisted of three evaluators — Mr Jake Mifsud, Ms Melanie Sant, Ms Ruth Spiteri — and Mr Oliver Farrugia as secretary.

They held approximately four meetings during which the members examined the documents for compliance and checked the samples.

Mr Grima stated that he saw a compliant bid with the cheapest offer, and he signed it off. The evaluation was carried out individually and later discussed collectively. There were nine bids for Lot 3: Pykon Ltd, Shichuang Germany GmbH, TW Consulting and Trade Ltd, Okto Ventures Ltd, Merchandise Malta, Outlook Coop, Scic Crafts Studio, and View Vista Solutions. The Recommended Bidder, Pykon, had submitted two bids with different prices, however, one of the bids was disqualified as it contained no documents or samples.

There was no technical information in the disqualified bid — only prices. The other bid was fully compliant and, although more expensive than the disqualified Pykon bid, was still the cheapest among all submissions. The witness confirmed that he requested the same documents from all bidders.

The Chairman intervened by instructing the witness to answer in the negative if he did not know any answers and allowed other Evaluation Board members to assist by referring to the report.

Dr Esmail asked whether the Board had been given all documents of the Recommended Bidder at the bidding stage. Mr Grima said he did not have information regarding clarifications and rectifications submitted with the bid. Samples were submitted on 12 May 2025. The witness was then suspended, and the secretary was summoned.

Witness: Mr Oliver Farrugia (ID 438476M).

Mr Farrugia verified that all eligibility documents were submitted for both bids, but the disqualified bid was deemed non-compliant because no technical documents were provided. Bid **222781** was the cheapest at €165,510. It only included the technical offer form, without literature.

The other Pykon bid, **222780**, was €171,360, and the Board requested samples.

Asked whether both technical offer forms were identical, the witness confirmed that the forms were the same and had to be filled in by bidders to indicate agreement with the requested services.

When asked for the list of questions in the technical offer form, the witness read:

“I confirm that items will be delivered to the Contracting Authority’s warehouse or any other location as indicated by the Contracting Authority. I confirm that all orders will be delivered in not more than 30 calendar days from when the order is made”.

The witness could not locate Pykon’s technical offer forms, and the Chairman suggested another member access the system.

Dr Esmail requested to know who the authorised person from Pykon was for both bids. The witness explained that the system has an in-built clarification function, not email, and that both bids were submitted by the same user.

At this stage Dr Matthew Paris, excused himself and left the hearing.

Referring to bid **222781**, which was deemed non-compliant, a clarification request was issued because no literature was submitted. A sample request was also issued. The rectification request stated:

“The Evaluation Committee noted the following shortcomings with regards to your submission. The tender Evaluation Committee did not find the requested Literature as per Section 1- Article 5C(i) to corroborate your offer. In line with the literature list, you are kindly requested to provide technical data and photo for Lots 1, 2, 3 and 4”.

The Contracting Authority never received a reply and therefore could not continue evaluating bid **222781**.

Dr Esmail asked about the concept of Improper Practice in the General Rules Governing Tender. Dr Daniel Inguanez intervened, asking him to rephrase.

When asked whether they investigated the lack of reply, the witness said that the final decision is taken by the Board, but in cases of disqualification, they consult the Contracting Authority.

The Chairman summarised: both bids had technical offer forms. For bid **222780**, samples were requested because literature was provided. For bid **222781**, literature was missing; Pykon submitted samples only for **222780**. The Board consulted and concluded that without literature, the evaluation could not proceed.

Dr Esmail cited Article 3 of the General Rules Governing Tender, including: 3.1 and 3.4.

“Bidders may submit multiple tender offers”.

“Economic operator may act as a subcontractor for any number of tenderers, and joint ventures/consortia, provided that it does not participate individually or as part of a joint ventures/consortium, and that the nominations do not lead to a conflict of interest, collusion, or improper practice”.

The witness said the Board could only decide as it did, since no technical information existed for bid **222781**.

Dr Esmail suspended the witness and verbally submitted a new grievance regarding Improper Practice and conflict of interest, arguing that the Evaluation Committee was obliged to investigate.

Dr Maria Lisa Buttigieg objected, arguing that no new grievance could be submitted at this stage.

Dr Esmail argued that a new grievance may be raised once new information arises during testimony, and he expressed this verbally:

“In vista tat-testimonjanza tas-Segretarju tal-Bord tal-Evalwazzjoni, nixtieq naghmel rikjesta biex jizdied aggravju gdid, u dana bin vista ta Artiklu 3 tal-‘General Rules Governing Tender’ fuq il-fatt li r-‘Recommended Bidder’ deliberament iddecieda li ma jwegibx ghal- ‘clarification u rectification’ li l-istess offerent ghamel zewg bids u ddecieda li ma jwegibx wahda minnhom bi skop, u illi l-Bord tal-Evalwazzjoni, kellu jinvestiga dan l-agir tar-‘Recommended Bidder’”.

Dr Esmail clarified that if the grievance is accepted, he is not saying that the Board should establish if there was Improper Practice or not, but that the Evaluation Committee had to investigate in this case.

Dr Maria Lisa Buttigieg replied by stating:

“L-Awtorita Kontraenti topponi ghal din it-talba mghamula mil- appellant, in vista li meta gie ntavolat l’ appell koncernat, diga kellhom konnoxxenza li r-‘Recommender Bidder’ kien issottometta aktar minn zewg bids, u infatti dan hu punt li jissemma fl’ewwel paragrafu ezatt bhal l’ewwel ‘grievance’ mqajjma mil-appellant fuq dan il-punt u allura ma jistax jitqajjem dan l’argument”.

Dr Inguanez referred to case 18/24/1 V.J. Salamone Pharma Ltd Vs Department of Contracts, with a decision taken April 11th, 2024. The Court and the PCRB always insisted that the facts or suspects should be handled at the beginning of the case, not during an appeal or a procedure at the PCRB. He agreed with Dr Buttigieg, that this information was in the first grievance.

Dr Vincent Galea for the Recommended Bidder stated that the claim is legally untenable. The Board has to take the decision according to the appeal. If this grievance is accepted, we will have to start again with new proof and answers.

Replica by Dr Zack Esmail.

Dr Esmail insisted that he knew some points presently, mainly that Pykon had two bids and that the technical offer forms were both the same. He said that no regulations were being changed. Since new information was named during the testimony, a principle taken by the Board in other cases, a new grievance should be accepted.

Replica by Dr Vincent Galea.

The Board could not take a decision after this testimony because one of the questions was if the technical offer forms were identical, and all technical forms of all bidders were identical. This information was available from day One.

Board Decision on New Grievance

After a recess, the Board returned, and the Chairman read:

1. *Il-Bord sema t-talba tal-appellanti għall-inseriment ta' talba għda in kwantu referibbli nuqqas ta' ndagni da parti tal-Bord ta' Evawljazzjoni fil-kuntest ta' "improper practice" ai termini artikolu 3 tal-GRGT u t-talba sussidjarja sabiex l-evalwazzjoni tigi rimessa lura lill-Kumitat ta' Evalwazzjoni sabiex isir l-istharrig opportun*
2. *Sema lill-Awtorita Kontraenti kif ukoll is-sottomissjonijiet tal obblatur rakkomnadat fejn reciprokament oggezzjonaw ghaz-zieda ta' dan l-aggravju*

Il-Bord jikkonsidra illi l-aggravju l-gdid kif debitament propost mill-appellant diga jinkwadra ruhu fl-ewwel aggravju tal-istess appellant u kwindi ma jarax il-htiega li jigi nserit aggravju addizzjonali f'dana l-istadju. Ghldaqstant, pero il-Bord qieghed jaghti l-fakulta lill-appellanti sabiex fis-sottomissjonijiet finali, jaghmel sottomissjonijiet ulterjuri dwar dan il-punt ta' dritt ".

Witness:

Mr Dalziel Bugeja (ID 26493M) summoned by Dr Zack Esmail.

Mr. Bugeja Assists Pykon Ltd. to submit their tenders. He works for R&D Services Ltd. He was involved in both bids submitted. Regarding bid **222781**, the non-complaint bid, they submitted the technical offer form, and the financial bid for.

Mr. Bugeja was given the documents from Pykon Ltd., the prices were discussed with the client, and then the bid was consolidated. Final decisions on clarifications and rectifications are always taken by the client.

Witness:

Ms Marlene Attard (ID 357872M) summoned by Dr Zack Esmail.

Ms. Attard a director in Pykon Ltd. found the suppliers and the prices for the requests of the bid clarifications are discussed with R&D Services and a decision is taken. The company does the Follow ups; however, she has access for the portal.

Dr Esmail asked what happened when they received two rectifications for samples and literature for bid **222781**.

Ms. Attard stated that she asked the suppliers for the requested information, according to the portal but she got no answer.

Dr Esmail asked, how she was able to give process when there was no information.

She stated that the bid requested a lot of items, and the supplier, might have the dimensions requested but the products would have different prices, as the quality and shape would be different. She made two submissions with different prices. She did not have the full details of the requested Lots for the cheapest bid, by the closing date of the call for Tenders. She submitted with the technical assessment and the price.

Dr Esmail emphasised that the literature should have been submitted *ad inizio*.

Ms. Attard did not submit the rectification and the bid was disqualified.

Dr Vincent Galea objected that the Tender Document allows these documents to be submitted later. The Chairman clarified that all requests should be submitted from the beginning. The literature is listed under Note 2, and the Evaluation Board had to react. In bid **222781**, the literature was not submitted at the original bidding stage, and the rectification was not answered. However, there is the faculty of a rectification in Note 2.

Dr Esmail wanted to know if Pykon asked the supplier for the literature.

Mr. Swain explained in a logic way the process of the tender, and asked Ms. Attard, at which stage did they inquire about the literature forms, if it was prior to the initial bid. Ms. Attard could not remember. Dr Esmail verified that Ms. Attard was the person to communicate with the suppliers and have the prices. He established that it was an external company who submitted the bid, and it was Ms. Attard who had all the information. The suppliers had several products that matched the specifications required, with different prices. Ms. Attard asked for help to know the difference between technical specifications and technical literature.

The Chairman explained that the technical literature was the document requested in the tender. There was no objection about the technical questionnaire.

Dr Esmail asked Ms. Attard, how she finalized the prices. Ms. Attard said that they had three foreign suppliers, however, she dealt with one supplier who was more well connected and had multiple suppliers working for him. This same supplier established the prices for both bids, and it was Ms. Attard who finalised the prices.

The Chairman asked Dr Esmail for the procedure after suspending the testimony of Mr. Arthur Grima, Mr. Oliver Farrugia and Mr. Dalziel Bugeja.

Dr Esmail was ready to proceed with the Final Submissions.

Final Submissions

Final Submissions by Dr Zack Esmail.

Dr Esmail verbalized that the request for the new grievance was denied, and he was to address the merit of their first grievance, about the prices. He emphasised that, they heard new facts, from the testimonies during the appeal.

The Board knows how hard it is for the appellant to gather the information for the appeal, and this is the doctrine for Self-limitation and Proportionality. One of the facts established was when the Evaluation Committee said that there were two bids and bid **222781** was submitted with the technical specifications and prices only and was deemed non-compliant. The Evaluation Board requested a rectification request, listed in Note 2. The rectification note is not there to be abused, when you should be compliant *ad inizio*, not deny the information knowing there is a rectification.

This concept does not exist in the Procurement. Also, the two bids were submitted by the same operator, with the same identical technical offer form, and the literature for one bid was provided while the other was missing.

It was stated that there was no information and yet one bid was cheap, and the other was even less. This was abuse of the system. The recommended Bidder consciously did not answer the rectification for the cheapest bid, to hold bid **222780**. It is awkward how the supplier did not give the information for the non-compliant bid **222781**.

The Contracting Authority, after sending a rectification that was not answered, automatically disqualified the bid but that was not the only course for the Contracting Authority to take. They should have investigated if this was Improper Practice, because this behaviour was misleading the Contracting Authority.

A re-evaluation should have been done, and the recommended bidder would have the chance to answer for this behaviour and address the needed clarifications. Referring to Case 2176 JGS Ltd. Vs Housing Authorities and he quotes:

“The Board has carefully examined the record and the respective submissions concerning the allegation of improper conduct. It is axiomatic in administrative and procurement law that accusations impugning a bidder’s probity or professional conduct must be founded upon demonstrable evidence and reasoned analysis. Such allegations, if unsubstantiated or procedurally defective, risk inflicting unwarranted reputational harm and undermining confidence in the fairness of the procurement system”.

The sentence continues, that evidence is needed to know if there was Improper Practice or not. We recommended a re-evaluation to establish the facts.

Final Submissions by Dr Maria Lisa Buttigieg.

The Contracting Authority attend fairs, and organises activities to attract tourists to Malta, and hands out giveaways, like stationery. This lot had tangible things involved. The documents requested were standard, the technical form, the samples and the literature, and the prices.

The Contracting Authority acted accordingly, when the cheapest bid was disqualified, for the lack of all the documents. The second bid by Pykon, was slightly higher in price than the first bid but still less than the appellant's offer. The appellant did not prove that this bid was non-compliant or the most advantageous.

Clause 3.1 of the General Rules Governing Tender states, that there could be up to three bids from the same bidder for flexibility of competition. In this case, it makes sense to have more than one bid as a single element can leave different aspects. In paragraph 4 of 3.1 of the General Rules and she quotes:

"In any case if any submission led to any form of conflict-of-interest, collusion or improper practice, the [Central Government Authority set procurements directives and reserves the right to disqualify any submission as necessary".

There is no element of investigation, but an element of discretion and the only solution would be to disqualify. All bidders were given the same time to submit the samples. Another argument was the rationality of how the sample evaluation was requested; the Contracting Authority requested the samples from all bidders altogether. The appeal of the appellant should be denied.

Final Submissions by Dr. Daniel Inguanez.

Dr Inguanez mentioned the issue of the Fuori Termine of the replies. The Board solved this problem but there were two points that worried the Department of Contracts. First if it should be affixed in the ePPs or not. Regarding the argument by the Contracting Authority, the Department of Contracts noted that the Regulation can be difficult to apply, and they were handling the problem.

Dr Esmail intervened and said that the Regulation says, 'or otherwise' and the Chairman added 'where applicable' and Dr Buttigieg felt that she had observed the regulation correctly.

Dr Inguanez continued, that the appellant was quoting article 158 of the Code of Organisation and Civil procedure. This could not be applied to these procedures, and regulations 270 and 272 dictate the consequences, cioe' that is a bidder does not answer in ten days, he can still participate. Under the COCP, there are instances of other procedures, where the term does not apply etc.

The solution by the Board was the best one. With or without the answers, we had the right to submit according to the law.

Dr Buttigieg added that the aspect of powers, of the Board is really a procedure according to the article of the Prim Awla. The authority submitted the bid in the ten calendar days, and the email was sent on the 13th of October, without a time frame. The appellant had a time frame till noon.

Dr Inguanez mentioned article 3.1 of the General Rules Governing Tenders and he quoted:

“Bidders might submit up to three multiple bids which should all be non-identical, technically and financially”.

In Malta there are a lot of industries who work with agencies, with multiple providers, who could provide different products. This concept of multiple bids is for genuine competition with, the non-identical condition. In this case, the bids were financially non identical, however, technically, the Contracting Authority had the literature list of only one bid and could not verify.

Final Submissions by Dr. Vincent Galea.

Dr Galea a braced the comments of the Department of Contracts and the Contracting Authority. Article 158/10 of the Civil Procedure states that if one does not observe the term, there will not be the right to ask the court for a sentence to your request. The fact that an answer was not presented verbally the law states that it is a contestation.

It could be that where there are multi suppliers, the literature is not always provided. Although collusion was alleged, no proof was shown, and the bid was disqualified as non-compliant. Multiple bids are legitimate competitive strategy.

Conclusion of the Hearing.

With no further arguments presented, Chairman 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 20th November, 2025.

Having noted the objection filed by Shichuang Germany GmbH (hereinafter referred to as the Appellant) on 1st October 2025, refers to the claims made by the same Appellant with regard to the tender of reference CT2362/2024 listed as case No. 2186 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Zackariah Esmail
Appearing for the Contracting Authority:	Dr Maria Lisa Buttigieg
Appearing for the Recommended Bidder:	Dr Vincent Galea

Whereby, the Appellant contends that:

Irregularity in Pricing

The recommended awardee submitted two different quotations within the same LOT (as evidenced in the attached documents), and the contracting authority ultimately selected its higher-priced offer. This constitutes a clear irregularity, as it contravenes the fundamental principle of "one bidder, one quotation", thereby placing other bidders at an unequal disadvantage. Such multiple-quotation practices effectively grant the bidder a double opportunity while undermining the legitimate interests of other competitors. If a single bidder is allowed to submit multiple quotations, only its lowest quotation should be considered the sole valid reference price. Therefore, our company respectfully requests the Review Board to declare such "dual quotations" invalid.

Verification of the Time Limit for Sample Submission

The tender dossier explicitly stipulates that bidders must deliver the complete set of samples within ten (10) working days of notification, failing which their bids shall be automatically disqualified. Our company received the formal notification to submit samples on 24 April 2025 and, despite considerable difficulties, successfully delivered all LOT 3 samples within the prescribed deadline.

To ensure fairness, our company respectfully requests the Review Board to verify:

- i. Whether the recommended awardee delivered all LOT 3 samples within 10 working days of notification;
- ii. The relevant evidence, including the notification date, customs clearance records, and official receipt date, and to disclose such evidence publicly;

- iii. If the deadline was not met, the recommended awardee should, in accordance with the rules, Lose its eligibility for LOT 3.

Questioning the Rationality of the Sample Evaluation Procedure

According to EU rules and standard practice, the request and evaluation of samples should normally follow the ranking of bid prices — that is, the lowest-priced compliant bidder is first invited to submit samples. Our company received the sample submission notification on 24 April 2025, which indicates that bidders priced lower than our company had already been excluded. In this situation, our company had a substantive prospect of award. However, unexpectedly, after completing both sample submission and evaluation, our company was rejected on the grounds that our "price was not the lowest." This is clearly inconsistent with procedural logic. If our company's price was not the lowest, why were we not excluded at the outset? Why were we instead rejected only after the sample evaluation had been completed? This is evidently contrary to reason and transparency.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 14th October 2025 and its verbal submission during the hearing held on 20th November, 2025, in that:

Irregularity in Pricing

The Appellant contends that the recommended bidder of the lot in question, Pykon Limited, submitted two separate quotations, which they allege constitutes an irregularity. In support of this claim, the Appellant puts forward a number of arguments aimed at discrediting the validity of the Contracting Authority's decision. However, it is evident that the Appellant has selectively omitted reference to the General Rules Governing Tenders (Version 4.10) (hereinafter referred to as the "General Rules"), which clearly permit the submission of multiple bids by the same bidder. Specifically, Clause 3 of the General Rules expressly provides that bidders are entitled to submit more than one offer. In the present case, the Pykon Limited submitted two bids. Indeed, the lowest bid submitted by Pykon Limited was ultimately not considered for award due to noncompliance with the tender requirements, namely the absence of the necessary technical documentation. Despite being requested by the Contracting Authority to provide the missing information, the bidder failed to do so. Given the lack of technical compliance, the Evaluation Committee was justified in disregarding the lower-priced bid and proceeding with the evaluation of the only compliant offer submitted by the bidder Pykon Limited. The award was therefore made in full conformity with the applicable rules and procedures, and the Appellant's objections in this regard are both factually incorrect and legally unfounded.

Verification of the Time Limit for Sample Submission

The Contracting Authority confirms that both the Appellant and the recommended bidder (specifically in relation to the compliant bid only), had both complied with the requirement to submit their samples within the stipulated period of ten (10) working days from the date of notification. It is also noted that the Contracting Authority does not retain or demand the submission of documentation such as customs clearance records, as these were not part of the submission requirements. The Authority's primary concern was the timely receipt and evaluation of the physical samples themselves, which formed the basis of the technical assessment. Accordingly, the Contracting Authority affirms that all parties concerned were treated equitably and in a consistent manner, in full adherence to the applicable procurement rules and procedures.

Questioning the Rationality of the Sample Evaluation Procedure

The Appellant alleges that the manner in which the Contracting Authority requested the submission of samples was unreasonable and lacked transparency. The Contracting Authority respectfully disagrees with these assertions, as well as with the arguments advanced by the Appellant in support of what are, in essence, unfounded and misleading claims. There is nothing irregular or procedurally improper in the Contracting Authority's decision to request samples from more than one bidder simultaneously, irrespective of the individual bid amounts.

On the contrary, this approach reflects a pragmatic and efficient method of managing the evaluation process and this particularly in tenders where technical compliance plays a critical role in determining the outcome. Requesting samples from more than one bidder at the same time allows the Evaluation Committee to conduct a comprehensive and comparative assessment of the offers received, ensuring that all bids are evaluated on an equal footing. This method also serves to streamline the evaluation process, reducing unnecessary delays that could arise from sequential sample requests and thereby promoting administrative efficiency.

It is therefore unfounded to suggest that the Evaluation Committee or the Contracting Authority acted in an illogical or improper manner. On the contrary, the simultaneous request for samples from multiple bidders is a reasonable and justified procedural step, taken in the interest of fairness, transparency, and procedural economy. It does not, in any way, prejudice the rights of the bidders, nor does it undermine the integrity of the procurement process.

This Board also noted the Appellant's further application filed on the 30th October 2025 and its verbal submission during the hearing held on 20th November, 2025, in that:

Shichuang Germany GmbH [hereinafter referred to as 'Shichuang' and/or 'Appellant Company'] filed an objection in relation to tender with number CT 2362/2024, limitedly in relation to Lot 3, on the 1st October, 2025, and this following a rejection letter dated 26th September, 2025 by virtue of which it was limitedly stated that, "... *I regret to inform you that the tender submitted by your company was not successful since the criteria for award of this tender was the cheapest prices offer satisfying the administrative and technical criteria*".

Through a letter of reply, filed on the 14th October, 2025, and thereby filed thirteen (13) days after the objection of Shichuang was "*affixed to the notice board of the Review Board*", the Malta Tourism Authority filed its reply.

Shichuang submits that the reply by the Malta Tourism Authority has been filed *fuori termine*, and this in view of the fact that it was filed outside of the permitted statutory ten (10) day period in accordance with reg. 276 (c). which states that:

"The contracting authority and any interested party may, within ten calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government's e-procurement platform ..." [added emphasis]

It has always been the position of this Honourable Board that the timelines established under the Public Procurement Regulations are to be respected *ad unguem*, and that no derogations therefrom shall be permitted.

In view of the above, the submission by the Contracting Authority, is inadmissible, should not be considered and should be removed from the acts of these proceedings.

In addition, and in accordance with Reg. 90 (6) of S.L. 601.03, the Board shall have all such powers as are, by the Code of Organization and Civil Procedure, vested in the Civil Court, First Hall. In view of the above, the Public Contracts Review Board is hereby being asked to:

- (i) declare inadmissible the written submission filed by the Contracting Authority on the 14th October, 2025; and/or
- (ii) declare that the reply by Contracting Authority on the 14th October, 2025 has been filed *fuori termine*, in view of the fact that its reply was filed outside the permitted

timeframe, i.e. “*within ten days from the date when the application is uploaded on the website of the Public Contracts Review Board*”; and/or

(iii) declare that the Contracting Authority has consequently failed to present a defence, and thereby in accordance with article 158 (10) of Chapter 12 of the Laws of Malta should proceed to give judgment as if the defendant failed to appear to the summons;

This Board also noted the Contracting Authority’s further Reasoned Letter of Reply filed on 14th October 2025 and its verbal submission during the hearing held on 20th November, 2025, in that: The Contracting Authority firmly objects to the demands raised in the said application, which are entirely unfounded both in fact and at law. As will be demonstrated, the reply submitted by the Contracting Authority was not filed *fuori termine*.

Firstly, the Contracting Authority the Contracting Authority refers to Regulation 276(c) of SL601.03, as cited by the Appellant itself, which clearly states:

"The Contracting Authority and any interested party may, within ten calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded, where applicable, on the government's e-procurement platform..."

While the appeal was indeed affixed to the notice board of this Honourable Review Board and uploaded accordingly on its website, from a search carried out by the undersigned on the date of receipt of the application of the 29th October, the undersigned did not find that the appeal filed by the Appellant was uploaded to the government's e-procurement platform, namely the etenders.gov.mt website.

Regulation 276(c) unequivocal requires both conditions to be satisfied for the ten-day term to commence.

In the absence of publication on the e-procurement platform, the statutory period has not been triggered, let alone elapsed. Without prejudice to the above, and for the sake of completeness, the reply submitted by the Contracting Authority was filed within ten calendar days from the date of receipt of the appeal.

The appeal was received on 1st October, 2025, meaning the ten-day period commenced on 2nd October and concluded on 11th October, which fell on a Saturday. Given that the correspondence received specified a ten-calendar-day period without reference to specific hours for submission, the final day for filing was

Monday, 13th October. The reply was indeed submitted on that date, and not on 14th October, as incorrectly stamped.

This is corroborated by the relevant email correspondence, which confirms the submission date as being the 13th October. Therefore, the reply was filed within the relative term. Should this Honourable Board nonetheless disagree with the above interpretation, it is respectfully submitted that the Board retains discretion to regulate its own procedure, as provided under Regulation 90(2) of SL 601.03.

Furthermore, the Appellant's reliance on Article 158(10) of the Code of Organisation and Civil Procedure is misplaced. That provision clearly states that for a judgment to be delivered in default, the defendant must also fail to appear at the first hearing. In this case, the first hearing has not yet taken place, and the Contracting Authority retains the right to make submissions prior to any judgment being handed down.

It is well established in local jurisprudence that a party deemed contumacious is not automatically deemed to have acceded to the opposing party's claims. Contumacy is treated as a form of opposition, and the burden remains on the claimant to substantiate its claims with appropriate evidence. This is particularly relevant in the present case, where the appeal is based on speculative allegations and unsubstantiated theories. The nature of the claims put forward by the Appellant itself necessitate a thorough examination of the facts and the bids submitted, and it would be procedurally improper to proceed to judgment without such scrutiny and without granting the contracting Authority to make necessary submissions.

Therefore, in view of the above, and without prejudice to any further arguments that may be raised, the Contracting Authority respectfully requests that this Honourable Board:

1. Dismiss the Appellant's demands as set out in the application dated 29th October 2025; and
2. Confirm the validity of the reply submitted by the Contracting Authority; and/or
3. Refrain from delivering judgment until the necessary evidence has been presented and duly examined and the Contracting Authority is allowed to make necessary submissions.

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 witnesses duly summoned, will now consider Appellant's grievances.

Preliminary Decision on the plea raised in relation to the Contracting Authority's of a *fuori termine* filing of the Reasoned Letter of Reply

Introduction and Procedural Background

The present appeal concerns a tender procedure initiated by the Malta Tourism Authority (hereinafter the “*Contracting Authority*”) under tender number CT 2362/2024, limited to Lot 3.

On the 26th September, 2025, the Contracting Authority issued a rejection letter to Shichuang Germany GmbH (*hereinafter “Shichuang” or the “Appellant Company”*), indicating that the tender submitted by the Appellant was unsuccessful, the award criterion being the cheapest price satisfying the administrative and technical requirements.

In response, the Appellant filed an objection with this Board on the 1st October, 2025. The Contracting Authority subsequently submitted a reply dated the 14th October, 2025.

By a further application filed by the Appellant on the 30th October, 2025, Appellant contends that the reply of the Contracting Authority filed on the 14th October, 2025, was filed *fuori termine*, exceeding the statutory ten (10) day period established under *Regulation 276(c)* of the *Public Procurement Regulations (S.L. 601.03)*. Accordingly, the Appellant requests that the Board declare the submission inadmissible and treat the Contracting Authority as having failed to present a defence.

Applicable Legal Framework

Regulation 276(c) provides:

“The contracting authority and any interested party may, within ten calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government’s e-procurement platform...”

This provision establishes a strict timeframe for responses. The Board has consistently held that such timelines are mandatory, to be respected *ad unguem*, without derogation.

Analysis

The key question is whether the Contracting Authority’s reply was filed within the statutory ten-day period.

The objection was lodged and affixed to the notice board on the 1st October, 2025. Counting ten calendar days from that date, the period for filing a reply expired on 11th October, 2025 being a Saturday. Therefore, given that the day was a Saturday the reply’s affixation is extendable to Monday the 13th October, 2025. From the records of the PCRB it transpires that the reply was sent *via* email on the 13th October 2025 at 17:06hrs. The opening hours of the administrative office of the PCRB is opened for submission between 07:30hrs to 15:30hrs [vide: <https://pcrb.gov.mt/contact-details/>].

In view of the above, the Contracting Authority's reply was affixed on the following day that is the 14th October, 2025, after the closing hours of the PCRB's offices on the same day of transmission *via* email and a day later when the reply was in effect affixed to the PCRB's Notice Board, i.e. beyond the permitted period. There is no provision in the Regulations permitting extensions or late filings. Consequently, the reply is *fuori termine*.

The Appellant's argument is therefore well-founded. By filing outside the statutory period, the Contracting Authority has failed to comply with the mandatory procedural requirement.

The Core Legal Question

Regulation 276(c) speaks of two possible methods of notification:

1. Affixing the appeal to the notice board of the Review Board, and
2. Uploading it on the e-procurement platform "where applicable."

The statutory 10-day clock begins "*from the day on which the appeal is affixed... AND uploaded where applicable.*"

This means the legislator recognises two parallel systems:

- The *Review Board notice board*, which is always operative; and
- The *e-procurement platform*, which is operative only where applicable, i.e., when that method is used.

The phrase "*where applicable*" is not decorative but it creates a conditional requirement. If the platform is *not* used by the contracting authority or by the Review Board, then the affixing to the Board's notice board is the only legally relevant triggering event.

In the present circumstances, it was incumbent upon the Contracting Authority to discharge the burden of demonstrating that publication by the Department of Contracts on the e-procurement platform was, in fact, "*applicable*" within the meaning of Regulation 276(c).

The Regulation clearly envisages two distinct modes of notification, i.e. the Review Board's notice board, perennially operative, and the electronic platform, which comes into play only when the latter is actually employed. The statutory ten-day period is triggered by affixing the appeal to the Board's notice board *and*, only **where applicable**, uploading it to the platform.

The conditional phrasing is deliberate and it imposes an evidentiary duty on the Contracting Authority to establish that the electronic method formed part of the operative notification process in the particular case. Having itself argued that both requisites must be satisfied, the Authority was all the more obliged to substantiate that the platform was engaged, whether through testimony from the DOC or any other

competent witness. Its failure to summon such evidence leaves the alleged applicability entirely unproven, rendering the notice-board affixation the sole legally effective act for the purposes of calculating the prescribed time-limit.

Conclusion and Orders

Having considered the facts, the applicable legal framework, and the procedural timeline, the Board finds as follows:

- (i) The reply transmitted *via* email by the Malta Tourism Authority lately on the 13th October, 2025 when the PCRБ's offices were officially closed and the eventual affixation on the Notice Board on the 14th October 2025 is *fuori termine*;
- (ii) The submission is inadmissible and shall not be considered in the proceedings;
- (iii) This preliminary decision does not constitute a final ruling on the merits of the appeal, which shall continue in accordance with the procedural framework established by the Regulations.

Decision:

Having considered whether to extract the document entirely from the acts or retain it without giving it legal weight, the Board resolves that it shall retain the Reasoned Letter of Reply filed by the Contracting Authority in the acts of these proceedings, given also that the legal counsel for the Recommended Bidder orally dealt with the content of the Reasoned Letter of Reply in quite some detail during the appeal proceedings.

To this effect, the Board wishes to underline the procedural rights pertaining to the Contracting Authority. In terms of **Regulation 89(1)** of S.L. 601.03:

“The sessions of the Review Board during which the complaint is heard shall be held in public and both the complainant and any interested party shall have the right to attend and to be accompanied by any person, professional or otherwise, who they consider suitable to defend their interests.”

Accordingly, the Contracting Authority retains the right to be present during public hearings and to be represented or assisted in the defence of their interests before the Board.

The Board being confronted with this plea, still cannot ignore the sentencing policy of the Court of Appeal in its Superior Jurisdiction. The Board refers to the Court of Appeal judgement in the names *Support Services Limited [C-30778] v. 1. Aġenzija Support; 2. Direttur Ġenerali tal-Kuntratti 3. Executive Security Services Ltd [C-45125] u Executive Group Limited [C-80156] fisimbom proprio u l-istess Executive Security Services Ltd u Executive*

Group Limited kif flimkien eżerienti nnegozju bhala "Executive Care JV" għal kull interess li jista' jkollhom whereby the Court of Appeal held:

23. Imkien fir-Regolamenti dwar l-Akkwist Pubbliku, ma jingħad li l-Bord ta' Reviżjoni jista' jagħti sentenza parzjali. Anzi mill-mod ta' kif inbuma miktuba dawn ir-regoli, wiehed jifhem li l-Bord huwa marbut li jagħti d-deċiżjoni finali tiegħu, wara li jkun sema' dak kollu li jkun rersqu l-partijiet għall-attenzjoni tiegħu. App. Ċiv.191/23/1 Paġna 10 minn 12.

24. Toqgħod hafna hawnhekk il-massima legali: ubi lex voluit, dixit; ubi noluit, tacuit, li tfisser li jekk tkun trid il-liġi tikkellem u meta ma tkunx trid il-liġi tibqa' siekta. Ladarba r-Regolamenti dwar l-Akkwist Pubbliku ma jikkellmu xejn dwar il-possibilità ta' sentenza parzjali, kuntrarjament għal dak li nsibu fil-Kodiċi ta' Organizzazzjoni u Procedura Ċivili, allura wiehed ma jistax hliet jikkonkludi li mhux permessibli li jingħataw sentenzi parzjali f'dan il-qasam tal-kuntratti pubbliċi.

25. Għalhekk din il-Qorti tittama li l-Bord ta' Reviżjoni, b'harsien malispiritu tar-regolamenti li jridu li l-appelli għandhom jiġu deċiżi b'certu heffa, għandu jieqaf milli jordna jew jaċċetta li jaqsam l-appell f'sentenzi separati, imma għandu jeżiġi li l-appell għandu jiġi trattat kollu f'daqqa u wara jagħti sentenza finali.

Whilst the Board embraces the reasoning of the Court of Appeal in that it has the obligation to proceed with determining the content of the Letter of Objection in its entirety, including the replies consequentially filed, which this Board proceeds in so doing, however still, the Board deems that the document *per se*' shall not be afforded any legal weight or evidentiary value whatsoever due to its untimely filing, save but the Board will be taking full cognizance of subsequent Reasoned Letters of Reply filed by the Contracting Authority in the course of these appeal proceedings to subsequent applications filed by the Appellant.

The Board declares the reply of the Malta Tourism Authority filed on the 14th October, 2025 inadmissible for having been filed outside the statutory period. All subsequent proceedings shall take this preliminary ruling into account.

Introduction

The Board has examined the Notice of Appeal, the Contracting Authority's Reasoned Letter of Reply dated the 14th October, 2025, the evidence and documentation produced during the sitting of the 20th November, 2025, and the testimony of the witnesses heard.

The Appellant requests the annulment of the award recommendation issued in favour of Pykon Limited and seeks an order remitting the matter to the Evaluation Committee on the basis of alleged irregularities and purported improper practice under *Article 3* of the *General Rules Governing Tenders* (latest edition).

First Grievance: Irregularity in Pricing

The Appellant submits that the recommended bidder submitted two quotations for the same lot, and that this allegedly contravenes the principle of “*one bidder, one quotation*”. The Appellant argues that, if multiple quotations were to be permitted, only the lowest one should have been considered and that the recommended bidder’s “*dual quotations*” should therefore be deemed invalid.

Reply of the Contracting Authority

The Contracting Authority confirms that Pykon Limited submitted two offers:

1. Bid 222781 priced at €165,510; and
2. Bid 222780 priced at €171,360, the latter being supported by the required technical documentation and samples.

Bid 222781, the lower-priced offer, was incomplete due to missing technical literature and samples. Formal clarification requests were issued to the bidder, who failed to reply. Consequently, the Evaluation Committee was unable to conduct any further technical assessment of bid 222781 and disqualified it. Bid 222780 remained the sole compliant offer.

Board’s Considerations

The Board recalls the governing rule, *Article 3* of the *General Rules Governing Tenders* (latest edition), which provides as follows:

“Article 3 – Multiple Offers

Bidders may submit more than one offer in response to the same call for tenders, provided that each offer is complete, independent, and submitted in accordance with the requirements laid down in the tender dossier. The Contracting Authority shall evaluate each offer separately. The submission of multiple offers shall not of itself constitute an irregularity or improper practice.”

The submission of multiple offers is therefore expressly permitted. Bid 222781 was rendered non-compliant due to the bidder’s non-response of clarification requests. The Evaluation Committee’s secretary testified that such non-response leaves the Committee with no lawful option other than disqualification.

The Appellant's suggestion that the non-response should have triggered an investigation into "improper practice" is misconceived. Improper practice requires evidence of collusion, manipulation, or fraudulent conduct. No such evidence was produced. Non-response constitutes non-compliance, not improper practice.

At this juncture, counsel for the Appellant sought leave to introduce an additional ground of appeal centred on this accusation. The Board heard the parties on this procedural request and subsequently retired to deliberate. Upon its return, the Board delivered its decree, noting that the newly proposed grievance already fell squarely within the ambit of the Appellant's first ground of appeal. It therefore deemed it unnecessary and procedurally redundant to admit an additional grievance at this stage. The Board accordingly granted the Appellant, and all interested parties, liberty to address this point of law within their final submissions, thereby ensuring that the issue could be fully canvassed without disturbing the orderly structure of the appeal. The Board is reproducing its verbal *ad literam*.

"Il-Bord sema t-talba tal-appellant għall-inseriment ta' aggravju gdid in kwantu referibbli nuqqas ta' ndagni da parti tal-Kumitat ta' Evalwazzjoni fil-kuntest ta' "improper practice" ai termini tal-artikolu 3 tal- General Rules Governing Tenders u t-talba sussidjarja sabiex l-evalwazzjoni tigi rimessa lura lill-Kumitat ta' Evalwazzjoni sabiex isir l-istharrig opportun.

Sema l-Awtorita Kontraenti kif ukoll is-sottomissjonijiet tal-Obblatur Rakkomandat fejn reciprokament oggezzjonaw għaż-żieda ta' dan l-aggravju.

Ikkonsidra: Il-Bord jikkonsidra illi l-aggravju l-gdid kif debitament propost mill-appellant diga jinkwadra ruhu fl-ewwel aggravju interpost mill-istess appellant u kwindi ma jarax il-btiega mli jigi nserit aggravju addizzjonali f'dana l-istadju. Għaldaqstant, per il-Bord jagħti l-fakulta lill-appellanti u lill-partijiet kollha nteressati sabiex fis-sottomissjonijiet finali, jagħmlu sottomissjonijiet ulterjuri dwar dan il-punt ta' dritt".

The Board proceeded with the appeal proceedings where the appellant summoned Ms Marlene Attard. The testimony of Ms Marlene Attard further confirmed that although the administration dealt with one supplier, the bidder relied on multiple sub-suppliers, thereby rebutting the Appellant's insinuation that the dual bids reflected an attempt to channel the same product through different price structures.

The Board therefore finds no breach of law or procedure.

Second Grievance: Time Limit for Sample Submission

The Appellant submits that it delivered its samples within ten working days of notification and calls upon the Board to verify whether the recommended bidder did likewise, requesting the production of notification dates, customs documentation, and receipt confirmations.

Reply of the Contracting Authority

The Contracting Authority confirms that both the Appellant and the recommended bidder submitted their samples within the required ten-working-day period. The tender dossier did not require the submission of customs documents, only the timely delivery of the physical samples was relevant.

Board's Considerations

The Appellant produced no evidence suggesting that the recommended bidder submitted samples late. The tender dossier did not impose obligations relating to customs documentation. In the absence of any contradictory evidence, and in view of the Authority's formal confirmation, the Board finds this grievance unfounded.

Third Grievance: Rationality of the Sample Evaluation Procedure

The Appellant argues that samples should be requested sequentially from bidders in ascending order of price, and that being requested to submit samples implied standing as the lowest-priced compliant bidder. The Appellant claims that its eventual rejection on price grounds was therefore illogical and non-transparent.

Reply of the Contracting Authority

The Contracting Authority explains that simultaneous requests for samples are lawful and frequently necessary where technical compliance is central to the evaluation process. This method allows for efficient comparative analysis and avoids procedural delays. All bidders were treated equally.

Board's Considerations

There is no legal requirement mandating sequential sample requests based on price ranking. Sample submission is part of compliance verification and does not establish a bidder's comparative standing.

The fact that the Appellant was asked to submit samples did not entitle it to any presumption of commercial preferability. A bidder may be technically compliant yet not commercially advantageous. The Authority's decision to conduct simultaneous evaluations was lawful, reasonable, efficient, and fully consistent with procurement principles.

Overall Findings

Having examined the full record, the Board concludes that:

1. Pykon Limited lawfully submitted two bids under *Article 3* of the *General Rules Governing Tenders*. Bid 222781 was correctly disqualified due to non-response to mandatory clarifications.
2. No evidence of improper practice was produced. The Appellant's allegations rest on speculation.
3. Both bidders submitted samples within the stipulated time.
4. The sample evaluation procedure was lawful, transparent, and applied uniformly.

Decision

For the reasons set out above, the Board, dismisses the appeal, upholds the Contracting Authority's award recommendation in favour of Pykon Limited on bid 222780 and orders that the tender process remain undisturbed.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Upholds the Appellant's preliminary plea on the submission *fuori termine* of the Contracting Authority's reply;
- b) Does not uphold Appellant's Letter of Objection in relation to the other grievances and contentions;
- c) Upholds the Contracting Authority's decision in the recommendation for the award of the tender; and
- d) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Dr Vincent Micallef
Member