

PUBLIC CONTRACTS REVIEW BOARD

Case 2190 – SPD8/2025/088 – Supplies - Framework Contract for the Supply and Delivery of Cover Hooded Litter Bins, for the Cleansing and Maintenance Division (CMD)

5th December 2025

The Board,

Having noted the letter of objection filed Mr Jonathan Sciberras for and on behalf of 360 Retail Supplies Ltd, (hereinafter referred to as the appellant) filed on the 28th October 2025;

Having also noted the letter of reply filed by Dr Daniel Cutajar acting for Cleansing and Maintenance Division (hereinafter referred to as the Contracting Authority) filed on the 30th October 2025;

Having heard and evaluated the testimony of the witness Mr Raymond Desira (Chairperson of the Evaluation Committee) as summoned by Dr Ilenia Agius acting for 360 Retail Supplies Ltd;

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 3rd December 2025 hereunder reproduced.

Minutes

Case 2190 – SPD8/2025/088 – Supplies - Framework Contract for the Supply and Delivery of Cover Hooded Litter Bins for the Cleansing and Maintenance Division (CMD)

The tender was issued on 21st July 2025, and the closing date was the 15th September 2025.

The estimated value of the tender, excluding VAT, was €66,825.00

On 20th October 2025, 360 Retail Supplies Ltd (Company Registration No. C64990) lodged an appeal against the Cleansing and Maintenance Division (CMD) – the Contracting Authority.

A deposit of €400.00 was paid.

There were eleven bids.

On the 3rd of December 2025, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairperson, Dr Ing. Damien Gatt and Dr Maria Cardona as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – 360 Retail Supplies Ltd (C64990)

- Dr Ilenia Agius – Legal Representative
- Mr Jonathan Sciberras – Company Representative

Contracting Authority – Cleansing and Maintenance Division (CMD)

- Dr Daniel Cutajar – Legal Representative
- Mr Duncan Hall – Tender Drafter
- Mr Raymond Desira – Chairperson of the Evaluation Committee
- Ms Chayenne Burke – Secretary
- Ms Josephine Fenech – Evaluator
- Ms Romina Debono Faure – Evaluator
- Mr Carmel Formosa – Evaluator

Recommended Bidder – View Vista Solutions Limited

- No representative attended the hearing.

Department of Contracts.

- No representative attended the hearing.

Opening Statements

Mr Kenneth Swain, Chairman of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, 360 Retail Supplies Ltd, and the Contracting Authority, the Cleansing and Maintenance Division.

Initial Submissions

Initial Submissions by Dr Ilenia Agius (for the Appellant)

Dr Ilenia Agius, representing 360 Retail Supplies Ltd, stated that the appellant had filed an objection to the award of the tender on two main grounds, though for the purposes of this hearing, the appellant was formally withdrawing the first ground relating to non-compliance with eligibility requirements, as the recommended bidder's lack of local presence in Malta was no longer being pursued as a grievance.

The primary ground to be discussed at this hearing concerned the issue of abnormally low pricing. The appellant contended that the price quoted by the recommended bidder was significantly below market standards. The appellant wished to raise specific concerns regarding the justification provided by the recommended bidder for such a substantially low offer and intended to raise additional matters concerning the evaluation process.

Initial Submissions by Dr Daniel Cutajar (for the Contracting Authority)

Dr Daniel Cutajar, representing the Contracting Authority, stated that the tender in question concerned a supply and delivery contract for cover hooded litter bins. He noted that, in

accordance with procurement regulations, when examining pricing for a supply contract, the Contracting Authority must consider the justifications provided by the tenderer. The Evaluation Committee had requested a clarification from the recommended bidder regarding the unusually low price offered.

Dr Cutajar explained that the recommended bidder's response referred to economies of scale, bulk purchasing arrangements, and streamlined supply logistics. These factors, when properly considered, can reasonably be reflected in a lower price. The Contracting Authority maintained that it had acted in full compliance with Regulation 243(1) of S.L. 601.03 by requesting written clarification, and Regulation 243(2) permitted the acceptance of such justifications as had been provided by the recommended bidder.

Witness Testimony

Mr Raymond Desira (ID 171168M) – Summoned by Dr Ilenia Agius

Mr Raymond Desira, Chairperson of the Evaluation Committee, was called to testify. He confirmed under oath that he had been involved in the evaluation process and had overseen the clarification procedure (regarding Regulation 243(1)) undertaken with the recommended bidder.

Dr Ilenia Agius questioned Mr Desira regarding the process by which the clarification request had been communicated to the recommended bidder. Mr Desira confirmed that the clarification request was uploaded onto the electronic procurement system (ePPS) and that the recommended bidder had submitted its response within five working days, in compliance with the prescribed timeframe.

Dr Ilenia Agius proceeded to inquire as to the precise date on which the clarification request had been entered into the system. Mr Desira indicated that he did not have the exact date immediately available but confirmed that the time limit for submission had not been exceeded. He explained that, even if the response had been received slightly earlier than the prescribed deadline, the Evaluation Committee had allowed the full prescribed period to elapse before proceeding to discuss and assess the response.

Dr Agius then questioned what specific documentation the recommended bidder had submitted in response to the clarification request. Mr Desira stated that the recommended bidder had uploaded a response document (referred to as Document B in the reply by the Contracting Authority dated 30th October 2025) onto the system.

Dr Agius inquired whether, in addition to this response document, there was any other supporting documentation or evidence provided by the recommended bidder. Mr Desira replied that there was no additional documentation beyond the response itself.

Dr Agius proceeded to ask whether the Evaluation Committee had undertaken any independent research or verification to corroborate the claims made in the clarification response. Mr Desira stated clearly that the Committee would not undertake any such research; rather, it would consider only the response submitted by the recommended bidder.

Dr Agius then asked whether, based solely on the submitted clarification response, the Committee had determined that the pricing was reasonable. Mr Desira confirmed that this was indeed the case – the Committee had assessed the response as presented and, on that basis alone, had determined that the pricing appeared justified.

Final Submissions

Final Submissions by Dr Ilenia Agius (for the Appellant)

Dr Ilenia Agius submitted that the core issue in this case was the significant discrepancy between the price budgeted by the Contracting Authority, which was €66,825.00, and the substantially lower price offered by the recommended bidder, which approximated €47,500.00 – a difference of circa € 20,000 below the estimated value. This represented a highly material variance.

When such a substantial price variance is identified, the law requires that clarification be sought and that the response provided must be adequate and substantiated. However, the clarification response provided by the recommended bidder consisted of only a few points. The response lacked substantive evidence or detailed justification.

Specifically, the response referenced "economies of scale," "streamlined logistics," and the existence of "local presence" and "established procedures" without providing concrete evidence to support these claims. When examined critically, the response was vague and ambiguous, offering general assertions rather than factual substantiation.

Dr Agius submitted that the law requires the Committee to be satisfied that the abnormally low pricing has been adequately justified. The appellant contended that a one-page clarification with limited detail did not constitute sufficient justification for a price reduction of approximately 29% below budget. Without proper substantiation, the Committee could not reasonably conclude that the pricing was justified.

The appellant further submitted that the lack of any independent verification by the Committee compounds this concern. The Committee accepted the response at face value without making any verification. This approach, the appellant argued, did not satisfy the requirements of the law.

The appellant also raised the matter of prior dealings. The appellant submitted that it had previously supplied the same category of litter bins to the Cleansing and Maintenance Division under a previous contract. Documentary evidence had been submitted to the Board demonstrating that the appellant had delivered products of the same type, and these deliveries had been completed within the prescribed timeframe. She claimed that the product of the recommended bidder is a risk to the Contracting Authority.

The appellant contended that the Contracting Authority possessed knowledge of the appellant's capability and the quality of the product supplied. Furthermore, the fact that no sample was requested from the recommended bidder – a company with no prior dealings with the Contracting Authority – raised additional concerns about the adequacy of the evaluation.

Dr Agius submitted that, in light of these considerations, the abnormally low pricing had not been adequately justified, and the evaluation process had not been conducted with the required level

of rigor. The appellant therefore requested that the Board uphold its objection and quash the award to the recommended bidder.

Final Submissions by Dr Daniel Cutajar (for the Contracting Authority)

Dr Daniel Cutajar submitted that the Contracting Authority had followed the prescribed procedure correctly. In accordance with the Public Procurement Regulations, when a tender appears abnormally low, the Contracting Authority is obliged to request clarification. This procedure had been followed.

The recommended bidder had submitted a response addressing the points raised by the Contracting Authority. The response provided explanations relating to economies of scale, bulk purchasing arrangements, and streamlined logistics procedures. In accordance with Regulation 243(2) of S.L. 601.03, the Contracting Authority was entitled to accept such justifications as appeared reasonable and credible.

Dr Cutajar noted that the tender documents specified an estimated value of €66,825.00. However, this figure was expressly stated in the tender documentation to be indicative only and not restrictive or final. The public procurement regulations provide that economic operators are expressly permitted to submit financial offers either above or below the estimated value. The mere fact that a tenderer submits an offer below the estimated value does not, in itself, provide grounds for disqualification.

Dr Cutajar referred to the tender documentation, which clearly stated: "The published estimate; the procurement value is not restrictive and final on the contracting authority. Economic operators are free to submit financial offers above or below the estimate."

Dr Cutajar further submitted that the Contracting Authority, as the client entity, must procure what it needs based on specifications, and that contract procedures must be conducted in accordance with the law. The Contracting Authority maintained that the Evaluation Committee's assessment was procedurally sound and that its determination should be upheld.

Conclusion of the Hearing.

With no further arguments presented, Mr Kenneth Swain, Chairman of the Public Contracts Review Board, thanked the parties and formally concluded the session. He indicated that the Board would consider the documentation and submissions made and would issue its decision within the prescribed timeframe.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 3rd December 2025.

Having noted the objection filed by 360 Retail Supplies Ltd (hereinafter referred to as the Appellant) on 28th October 2025, refers to the claims made by the same Appellant with regard to the tender of reference SPD8/2025/088 listed as case No. 2190 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Ilenia Agius

Appearing for the Contracting Authority: Dr Daniel Cutajar

Whereby, the Appellant contends that:

- a) Non-Compliance with Eligibility Requirements: – The awarded company is not locally registered and, to the best of our knowledge, has no operational office or presence in Malta. This raises questions regarding their ability to fulfill logistical and contractual obligations, as well as compliance with local regulations. Typically, such absences of local establishment should disqualify a bidder, as it may impede timely service delivery and post-contract accountability.
- b) Abnormally Low Pricing: – The price quoted by the awarded bidder is significantly below market standards. and in fact approximates the cost of raw materials alone. This raises concerns about unsustainable pricing and potential predatory bidding, which could ultimately compromise service quality or result in contract abandonment. As per standard procurement principles, bids that are abnormally low should trigger a verification process or even rejection if no adequate justification is provided.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 30th October 2025 and its verbal submission during the hearing held on 3rd December 2025, in that:

- a) Non-Compliance with Eligibility Requirements -
The Appellant claims that the recommended tenderer is not locally registered and lacks an operational presence in Malta, and on that basis argues that the recommended tenderer should have been disqualified. The Contracting Authority firmly rejects this argument as legally unfounded, especially in light of the fact that the tender in question contemplates a supply contract. Neither the Public Procurement Regulations nor the tender documents impose any requirement for economic operators to be locally registered or physically established in Malta in order to participate in public procurement procedures. On the contrary, the regulations uphold the principle of non-discrimination among economic operators. Should any practical difficulties arise due to the

tenderer's foreign establishment, the Contracting Authority retains adequate contractual and legal remedies to ensure proper performance and compliance throughout contract execution.

The Contracting Authority further notes that any concerns relating to delivery, performance, or logistical capacity are appropriately addressed through the established selection criteria and contract execution provisions, including any remedies for a breach of contract...

b) **Abnormally Low Pricing -**

The Appellant contends that the offer submitted by the recommended bidder is "significantly below market standards" and should have triggered disqualification unless justified. The Contracting Authority confirms that it acted fully in accordance with the applicable legal provisions.

Under Regulation 243(1) of S.L. 601.03, when a tender appears abnormally low, the Contracting Authority is obliged to request a written explanation from the tenderer before taking any decision to reject the offer.

The Evaluation Committee followed this procedure and requested clarification from the recommended tenderer, whose justification was based on economies of scale, streamlined logistics, and strong supplier relationships. The explanations provided by the recommended tenderer were assessed and accepted by the Evaluation Committee in accordance with Regulation 243(2), which permits acceptance of such justifications.

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) **Non-Compliance with Eligibility Requirements: -**

The Board notes that the appellant, in its opening submissions, expressly renounced this first ground of appeal and confirmed it will not pursue it further. Accordingly, the Board will not address this grievance.

b) **Abnormally Low Pricing –**

The Board has carefully examined the appellant's contention regarding abnormally low pricing in the recommended bidder's offer. The evidence submitted, and also corroborated by the testimony of Mr Raymond Desira, under oath, demonstrates that the Evaluation Committee duly followed the prescribed procedure under the tender terms and applicable regulations, including a specific request for justification from the recommended bidder. The bidder provided comprehensive documentation substantiating its pricing, which the Committee found credible and sufficient. No material irregularities were identified in this process, and the appellant has adduced no compelling

evidence to the contrary. Accordingly, the Board finds that the Committee's assessment was procedurally sound and upholds its determination.

c) **Other points raised – Sample request**

The appellant, in its closing submissions, contended that the Contracting Authority failed to request a sample from the recommended bidder and, given its lack of prior dealings with that bidder, could not adequately assess the product's technical capabilities.

The Board refers to paragraph 16.3 of the General Rules Governing Tenders, which provides: *“Wherever applicable in the procurement documents, and also in terms of Regulation 12(1)(b) of S.L. 601.03, **tenderers may be requested to submit samples** so that the Evaluation Committee will corroborate the technical compliance of the offers received. In case of different options provided by the same bidder, respective samples for respective offers should be provided as requested. Without prejudice to the possibility of requesting clarifications, where the samples do not corroborate the offer submitted, the tenderer shall be disqualified.”* (emphasis added).

This Board holds that a sample request is not mandatory but lies within the Evaluation Committee's discretion, particularly where the recommended bidder's technical documentation fully complied with the tender dossier requirements. The appellant adduced no sufficient evidence demonstrating that a sample was essential for the proper execution of this tender. The Committee's decision not to require one was therefore lawful and reasonable.

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 Damien Gatt
Member

Dr Maria Cardona
Member