

PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2194
Tender Reference Number KLMsd/TDR/01/2025
Tender Name “Tender for the Cleaning, Upkeep, Maintenance of Public Gardens and Soft Areas in Msida Using Environmentally Friendly Products and Practices”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 10th December, 2025 to hear the appeal as filed by the appellant Green Ivy Cleaning Services (hereinafter the ‘Appellant’) and signed by Emmanuel Bellia, and after taking note of:

The tender document for the ‘Tender for the Cleaning, Upkeep, Maintenance of Public Gardens and Soft Areas in Msida Using Environmentally Friendly Products and Practices’ (hereinafter referred to as the “Tender Document”);

The minutes of the proceedings dated 10th December, 2025 which are being reproduced hereunder:

“PUBLIC CONTRACTS REVIEW BOARD

Case 2194 KLMsd/TDR/01/2025 – Tender for the cleaning, Upkeep and Maintenance of Public Gardens and Soft Areas in Msida using Environmentally Friendly Products and Practices.

The tender was issued on the 26th May 2025, and the closing date was the 23rd June 2025.

The estimated value of the tender, excluding VAT, was €19,492.

On 23rd October 2025 Green Ivy Cleaning Services, lodged an appeal against the Msida Local Council. – the Contracting Authority. In accordance with Regulation 270 of the Public Procurement Regulations.

On the 10th December 2025, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Ing. Damien Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

A deposit of €400 was paid.

There were four bids.

The attendance for this public hearing was as follows:

Appellant – Green Ivy Cleaning Services

Dr Thomas Demartino – Legal Representative

Contracting Authority – Msida Local Council

Dr Ryan Ellul – Legal Representative
Mr Alfred Farrugia – Chairperson
Ms. Josette Micallef – Secretary
Mr Charles Selvaggi – Evaluator
Ms Christine Amaira – Evaluator
Mr Nicholas Chircop – Evaluator

Preferred Bidder – Callus Garden Centre has officially declined the invitation

Opening Statements

Dr Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, Green Ivy Cleaning Services, and the Contracting Authority, Msida Local Council.

Initial Submissions

Initial Submissions by Dr. Thomas Demartino (for the Appellant)

Dr. Thomas Demartino stated that Tender KLM 01/2025 concerns the upkeep and maintenance of Public Gardens under the responsibility of the Msida Local Council.

The appellant is aggrieved by the decision of the adjudication board of the Msida Local Council, since the offer submitted by Green Ivy Cleaning Services was the cheapest.

The Chairperson, Dr. Ana Thomas, intervened and confirmed that Dr. Thomas Demartino was the legal representative of Green Ivy Cleaning Services and that the owner, Mr. Emanuel Bellia, was not present.

The appellant was technically compliant; however, the Msida Local Council, in its decision notice and in the reasoned letter of reply, noted that the technical document was not signed and that no proof had been provided regarding the minimum hourly workers' cost. The appellant submitted a signed technical document with the stipulated conditions, but during the clarification period the Council requested a different technical document in a new format, and Green Ivy Cleaning Services complied with this request.

In the documents provided with the tender, the tender dossier did not request the conditions and signatures with their details; instead, it

contained a list of conditions, and documents were to be submitted in line with these conditions. The client agreed to these conditions and submitted the document.

It is therefore not valid for the Local Council to state that there was no technical document.

Regarding the minimum hourly workers' cost, the Local Council requested confirmation that the contractor would adhere to the yearly notice concerning minimum rates for workers. Green Ivy Cleaning Services referred to the notice issued by the Government regarding the minimum hourly workers' cost, signed it, and submitted it.

Dr. Demartino insisted that the clarification period exists to address any details regarding the cheapest bid, not for the Local Council to prolong the process and incur additional expenses. The Council should have selected the most advantageous bid even if it was not perfect. The technical document, he argued, was not clearly worded.

The first technical offer submitted by the Council differed from other technical offers, where one usually finds the conditions together with a form for details and signatures.

The Local Council requested the bidder to produce a document containing the requested conditions and to sign it. The client submitted a signed technical document, and during the clarification period submitted another technical document as requested by the Msida Local Council.

Dr. Ana Thomas inquired about the date of submission of the appeal.

Dr. Demartino stated that the email containing the appeal had been sent, but the payment took longer to process due to a technical problem. However, he insisted that the PCRB had accepted the appeal.

The Chairperson stated that the Local Council had argued that the appeal was “fuori termine,” and that a decision is taken only when all elements are complete.

Dr. Demartino admitted that the tender was submitted on time, but that the payment arrived late, and that there was proof Green Ivy Cleaning Services had attempted to make the payment earlier.

Initial Submissions by Dr. Ryan Ellul (for the Contracting Authority)

Dr. Ellul began by referring to the “*fuori termine*”. Law 601.03, regulation 271 states that the appeal must be submitted within ten days of the letter issued

by the Local Council. The letter was issued on October 9th, 2025, and the appeal was received on October 23rd, 2025. The law states that an appeal is valid when the whole process is submitted. The stamp on the appeal shows the date of payment as 23rd October. Therefore, the Board should consider this appeal *“fuori termine”*.

The Tender Document is issued under the Government Special Conditions, and the Local Council does not need to analyse the conditions. The technical document was clear, and the Local Council was requesting information about littering, grass maintenance, etc. It is the tenderer who must explain to the Council how the work will be carried out.

The appellant did not submit any proof of this; he merely signed the technical offer. No work plan was provided.

Dr. Ana Thomas reviewed the documents provided.

Dr. Ellul stated that this technical offer fell under Note 3, “clarifications but no rectifications.” The Local Council could not identify missing information for a technical offer that was not properly completed. A clarification note requesting a worksheet was sent, but this was never submitted.

The Council was correct in eliminating Green Ivy Cleaning Services, even though it was the cheapest, because the tender document had not been completed in accordance with the law.

Dr. Ana Thomas explained the procedure for the hearing and, since there were no witnesses, invited both parties to proceed with Final Submissions.

Final Submissions by Dr. Thomas Demartino

Dr. Demartino stated that the technical document differed from the usual format. It contained a list of references for the technical dossier and a list of conditions, and Green Ivy Cleaning Services had signed for all of this, accepting all conditions. There was no work plan because it was stipulated in the tender dossier, which included a reference to the relevant condition in the technical document, and this was all signed. Therefore, the tender was compliant in substance.

Final Submissions by Dr. Ryan Ellul

Dr. Ellul referred to page 33 of the Tender Document and quoted:

“The workman is to be proposed by the tenderer, which is to be included in the tenderer’s remarks and regard upon and agreed upon with the Local Council.”

This was never submitted, and the appellant merely signed a document included in the technical offer dossier, without providing any information regarding the works. It would not have been fair play for the other tenderers if the Local Council had clarified such an incomplete submission.

If the Council had accepted the bid of Green Ivy Cleaning Services after the closing date, the other bidders would have appealed. All necessary documents must be submitted for a tender to be considered complete, and in this case the Local Council acted correctly in eliminating Green Ivy Cleaning Services, even though it was the cheapest.

Replica by Dr. Thomas Demartino

Dr. Demartino argued that an offer is rejected if it is technically non-compliant. In this case, the offer was administratively non-compliant because the requested format was different.

The clarification period could be used to provide further information requested by the Contracting Authority. The Board should distinguish between technical non-compliance and administrative non-compliance.

Conclusion of the Hearing

With no further arguments presented, Chairperson Dr Ana Thomas thanked the parties and formally concluded the session.”

The written pleadings as filed by Green Ivy Cleaning Services, together with proof of payment of a deposit in the amount of €400, wherein it held as follows:

“1. Background

Whereas Green Ivy Cleaning Services participated in the above mentioned procurement process;

Whereas on the 26th May 2025 the Contracting Authority published the tender in question, whilst the deadline for submission was the 23rd June 2025;

Whereas on the 23rd June 2025 the Appellant submitted its bid in full compliance with the Tender Dossier as the Appellant understood it.

Whereas the Appellant submitted, inter alia, a signed technical document (the "Technical Document") (Doc 1) which the Tender Dossier required. The Appellant did so in the format the Appellant interpreted to be in conformity with the instructions. In essence, the technical document contained a number of conditions which referred to the technical dossier. The appellant simply signed the document provided by the Contracting Authority to show and prove that he is agreeing with the conditions being referred to. It is illogical to assume that the bidding contractor has to draw up his

own technical document and submit it, rather than sign the document provided to display and prove his compliance with the conditions being set out.

Whereas subsequently, during the evaluation phase (or when requested by the Evaluation Committee) the Appellant provided a properly formatted version of the same Technical Document (or otherwise corrected the format) to demonstrate full compliance with the tender requirement. This is provided as Doc 2. In the Written Request for Clarification submitted by the Contracting Authority on the 21st August 2025 the Contracting Authority requested the cheapest bidder, ie. the appellant, as per Art 7.1 of the Instructions to Tenderers to rectify the minimum hourly workers cost and whether or not the technical offer was submitted;

Whereas the appellant, in his response, submitted on the 28th August 2025, confirmed that he shall be abiding with the minimum hourly workers cost (Docs 4 and 5) and submitted the technical offer as requested, as shown in Doc 2;

Whereas notwithstanding the foregoing, on the 10th October 2025, the CA issued a letter of proposed award to Callus Garden Centre, which had submitted a higher price than that of the Appellant, as per Doc 3. The CA indicated in its award justification that the Appellant's bid had been rejected because the signed Technical Document was "not provided" (or "provided in wrong format") and therefore deemed administratively non-compliant:

"approved the report submitted by the Evaluation Committee wherein it was recommended to award the tender mentioned above to Callus Garden Centre as the cheapest compliant bidder".

Whereas the Appellant respectfully contends that that finding is erroneous in fact and in law. The Appellant now brings this objection to the PCRB within the time-limit set out in Regulation 270 et seq. of the Public Procurement Regulations (Subsidiary Legislation 601.03).

2. Grounds of the appeal

The Appellant submits the following grounds of objection:

2.1 Misapplication of administrative non-compliance rule/failure to respect equal treatment & transparency

The Appellant submits that the tender instructions for the Technical Document (its signature requirement, format, etc.) were in fact ambiguously worded or inadequately explained by the CA. Under such circumstances, the principle of predictability and clarity of tender conditions must prevail. See e.g. the PCRB in Case 2084-P.4074/2021: "The Board notes that whether compliance ... is mandated ab initio ... or can be fulfilled during contract performance fundamentally depends on the precise wording of the tender document itself and the overall context of the procurement."

In light of the above, to penalise the Appellant for submitting the Technical Document in what the CA considered the "wrong format" when the instructions did not clearly define the format, would breach the principle of equal treatment (since other bidders might have likewise been uncertain), transparency, and result in an arbitrary exclusion.

In short: a technical document requirement must be interpreted in context; if the bidder has indeed submitted substantively the correct documentation, then a minor formatting issue should not

automatically lead to disqualification unless the tender clearly forewarned that format deviations would lead to rejection.

2.2 The Appellant in fact corrected the document during evaluation - acceptance of corrected version

The Appellant further submits that, during the evaluation phase, the Appellant provided the correctly formatted version of the Technical Document (or otherwise conformed with the CA's instructions once the matter was flagged) and also clarified its agreement with the Minimum Hourly Wage Cost as per Doc 4 and 5. The CA's evaluation therefore proceeded with complete knowledge of the correct documents, and the Appellant's bid was demonstrably in line with the technical and administrative requirements.

Maltese jurisprudence recognises that depending on the precise wording of the tender document, the contracting authority may allow rectification or clarification of certain omissions or deficiencies. For example in PCRB Case No. 2127 the CA allowed the bidder to rectify proof of registration of a key expert within a set rectification period.

2.3 Public procurement requirements - administrative compliance vs. technical compliance

Under Maltese law, administrative and technical compliance are distinct: an offer must be administratively compliant (i.e., submitted in accordance with the bid instructions) and technically compliant (i.e., meets the specification) before the financial evaluation stage. The key question is whether the submission of the Technical Document in the correct form constituted a mandatory requirement at the time of tender submission (i.e., immediate fulfilment) or whether the requirement was capable of being rectified or deemed to have been fulfilled when the correct version was accepted in the evaluation process. The PCRB in Case 2084 (PTL v Malta Police Force) held:

"The Board affirms the principle that whether compliance with a tender requirement is mandated ab initio... or can be fulfilled during contract performance fundamentally depends on the precise wording of the tender document itself."

If the Tender Dossier, as in this case, did not clearly state that the technical document to be submitted must be formulated by the bidding contractor rather than use the one provided then to disqualify the Appellant would violate the principles of transparency and equal treatment, because bidders could not foresee that a minor format variation would lead to automatic elimination.

2.4 Award to higher bidder despite erroneous disqualification of Appellant

The Appellant further submits that the CA awarded the contract to a higher priced bidder notwithstanding that the Appellant's bid was both technically and administratively compliant (once the correct documents were provided) and offered a lower price. This raises a fundamental challenge to the legitimacy of the award and the value for money principle underpinning procurement law. In Maltese procurement law, the CA must act in accordance with the award criteria set out in the tender (e.g., lowest price or best price-quality ratio) and must not award to a higher bidder unless there is a valid qualitative reason or unless the lower bidder is disqualified in accordance with the tender rules. See the general commentary:

"E.C. Municipals Limited vs. Dipartiment tal-Kuntratti... even if the contract had been recommended ... if it was found that any of the required documents had not been provided with the offer, then the signing of the contract could not take place."

Thus, the Appellant contends that the award is tainted by the erroneous disqualification of the Appellant and must be set aside or re-evaluated.

3. Relief sought

In light of the foregoing, the Appellant respectfully requests that the PCRB:

- (a) Declare that the disqualification of the Appellant's bid on the basis of non-submission or wrong-format submission of the Technical Document was unlawful, in that it violated the tender conditions (insofar as they were unclear as to the format of the technical document to be submitted), and breached the principles of equal treatment, transparency and proportionality.*
- (b) Order the Contracting Authority to re-install the Appellant's bid, to direct the evaluation committee (or a newly-constituted evaluation committee) to proceed with the evaluation of the Appellant's bid, including price, in accordance with the tender criteria.*
- (c) In the alternative, order the Contracting Authority to cancel the award to the higher bidder and award the contract to the Appellant (given that the Appellant was lowest and compliant).*
- (d) Direct that the deposit paid by the Appellant be fully reimbursed.*
- (e) Order any other such relief as this Board deems fit, including costs.*

4. Conclusion

For the reasons set out above, the Appellant respectfully submits that the tender award decision is procedurally flawed, in breach of applicable procurement rules and jurisprudence, and must be set aside (or the bid re-evaluated) to ensure compliance with the public procurement framework and fairness to all bidders.

The Appellant stands ready to provide the complete tender dossier, all bids submitted (confidentially), the correct version of the Technical Document, the evaluation report and any further evidence required by this Board.

We thank the Board for its consideration of this submission."

The written reply as filed by the Msida Local Council (hereinafter the 'Contracting Authority') wherein it held as follows:

"Ninsab direttament nikkomunika mieghek ft-interess tal-klijenta taghna, il-Kunsill Lokali tal-Imtida ta' 2, Triq San Alwigi, Imsida, b'referenza ghall-oggezzjoni fuq ittender bl-isem Tender for the Cleaning, Upkeep and Maintenance of Public Gardens and Soft Areas in Msida Using Environmentally Friendly Products and Practices

Illi l-Kunsill kontraenti qiegbed in primis jicbad kull allegazzjoni msejsa ft-appell imressaq minn Green Ivy Cleaning Services bhala infondanti fil-fatt u fid-dritt.

1. Appell fuori termine

1. Illi in primis irid jigi rilevat li l-appell intavolat minn Green Ivy Cleaning Services huwa wiehed tardiv u dan in vista tal-fatt li l-appell, bekk kif indikat mit-timbru fuq l-appell, l-istess gie ntafolat fit-23 t'Ottubru tas-sena 2025;

2. Illi skont Legislazzjoni Sussidjarja 601.03, Regolament 271, tali appell kellu jigu ntafolat fi żmien għaxar t'jiem ossia sal-20 t'Ottubru tas-sena 2025;

3. Illi konsiderat dan, l-appell huwa wiehed tardiv u m'għandbux jiġi milqugh;

2. Żball fis-sottomissjoni tad-dokumenti

1. Illi waqt 1-istadju tal-evalwazzjoni, il-Kunsill kontraenti kien b'għat ittra ta' kjarifika lill-appellant, liema ittra qiegħda tigi hawn annessa u mmarkata bhala Dok 'A, permezz ta' liema huwa kien intalab sabiex sabiex jikjarifika s-segweni: - minimum hourly workers cost; - Technical offer was not submitted. Kindly send us a clarification confirming that it was not submitted.

2. Illi fl-istadju tal-offerta, l-appellant kien issottometta t-technical offer eżistenti f'offerta mingħajr ma sottometta l-pjan ta' hidma u l-istrategija ta' kif kien beħsiebu jagħmel ix-xogħol imsemmi fl-offerta;

3. Illi l-appellant qiegħed jittanta jkajjem il-punt li kien hemm xi ambigwita u/jew li kienet spjegata hażin u li għalhekk wassal sabiex ma jintavolax it-technical offer - tant li l-istess appellant kemm iffirmat d-dokument anness mal-offerta u intavola l-istess dokument;

3. Illi hija ċara li l-appellant kellu jintavola l-metodoloġija ta' kif kien ser jgħid, tant li fit-Tender's technical offer, hemm esplicitament imniżżel li a technical offer is to be provided by the economic operator;

4. Illi l-appellant qiegħed jittanta jargumenta li għaladarba d-dokumenti neccessarji gew sottomessi fi stadju tal-kjarifikazzjoni, mela allura, skont l-istess appellant, tali dokument kellu jiġi meqjus bhala wiehed validu;

5. Illi jirriżulta li l-appellant naqset milli tteħli' d-dikjarazzjonijiet meħtieġa fl-istadju tal-offerta u għaldaqstant l-offerta ma kienetx wabda kompluta. Illi in oltre u b'referenza għal dan, l-istess Kunsill jagħmel referenza għan-nota 3 u cioe' No rectification shall be allowed. Only clarifications on the submitted information may be requested. Tenderes will be requested to clarify the submitted information within five (5) working days from notification. Bir-rispett kull dokument li jirrigwardja l-metodoloġija kellhom jigu sottomessa fl-istadju tal-offerti mill-appellant.

Għaldaqstant, il-bord talgħażla kien korrett meta skwalifika lill-Green Ivy Cleaning Services. Għaladarba 1- istess giet skwalifikata, 1-Kunsill kontraenti mar għall-offerta obra. Għaldaqstant u in vista tas-suespost, il-Kunsill kontraenti filwaqt li jirriżerva li jressaq dawke il-provi kollha meħtieġa u permessibbli skont il-ligi, l-istess Kunsill jitlob sabiex dan il-Board joġġhbu jkchad l-appell ta' Green Ivy Cleaning Services u minflok jikkonferma in toto d-deċiżjoni tal-Bord talgħażla fejn gie rakkomandat li Callus Garden Centre jingħata din l-offerta. Daqstant għandhu x'jissottometti a savju gudizzju ta' dan il-Bord."

The opening and closing submissions of the Appellant and the Contracting Authority as delivered by their legal representatives;

Considers;

This Board notes that the Appellant has by email dated 20th October, 2025 22:47pm sent the appeal document to the PCRB's generic email info.pcrb@gov.mt, and at 08:16am of the following morning, it results that Assistant Manager at the PCRB Ms Amy Borg requested proof of payment of the deposit and to treat the request with urgency. The Board further notes that on the 21st October, 2025 the Appellant stated that the bank transfer did not work and states he is attaching evidence thereof (but failed to attach any one document), and that it was only on the 23rd October, 2025 that the deposit was affected and brought to the attention of the PCRB by means of an email timed 12:51pm.

This Board further notes the relevant sections of the Public Procurement Regulations, Subsidiary Legislation 601.03. of the Laws of Malta (the 'PPR'):

"270. Where the estimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints."

*"271. **The objection shall be filed within ten calendar days** following the date on which the contracting authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period." (Added emphasis of the PCRB).*

*"273. **The objection shall only be valid if accompanied by a deposit** equivalent to 0.50 per cent of the estimated value set by the contracting authority of the whole tender or if the tender is divided into lots according to the estimated value of the tender set by the contracting authority for each lot submitted by the tenderer, **provided that in no case shall the deposit be less than four hundred euro (€400)** or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision." (Added emphasis of the PCRB).*

The Board, having reviewed all relevant documentation and the relevant regulations, deems that there exists no doubt that the validity of the objection is not only tied to the temporal requirement to be filed within ten calendar days following the date on which an interested party is informed by fax or electronic means of the proposed award/cancellation/rejection but also to the monetary requirement that each objection **shall** be **"accompanied by a deposit"**. The text of Regulation 273 of the PPR specifically imposes this *ad validitatem*, and that therefore, an objection shall be construed to be 'invalid' if not accompanied by a deposit. In fact, it is an established procedure that generally within the appeal itself, appellants make reference to the deposit paid in terms of the relevant regulation and attached a document to attest to the proof of payment.

The Board notes further that the Contracting Authority was notified with the appeal immediately on the 23rd October, 2025 and submitted its reasoned letter of reply on the 6th November, 2025.

The Board refers to Regulation 276(c) of the PPR which holds as follows:

“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, file a written reply to the appeal.” (Emphasis of the PCRB).

In view of the foregoing, it evidently results that the appeal filed by the Appellant as well as the reply filed by the Contracting Authority have both been filed *fuori termine*.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to abstain from taking further cognisance of the appeal as filed by Green Ivy Cleaning Services.

The Board further decides not to re-imburse the deposit paid by Green Ivy Cleaning Services.

Dr Ana Thomas
Chairperson

Ing. Dr Damien Gatt
Member

Mr Lawrence Ancilleri
Member

Tuesday 20th January, 2026.