

## **PUBLIC CONTRACTS REVIEW BOARD**

**Appeal Reference Number** 2196  
**Tender Reference Number** SPD4/2025/11  
**Tender Name** “Framework Contract for the Hire of Open Skips for the Collection and Disposal of Waste using Environmentally Friendly Transportation Services for Saint Vincent de Paul”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 10<sup>th</sup> December, 2025 to hear the appeal as filed by the appellant Brian Borg (hereinafter the ‘Appellant’) on the 8<sup>th</sup> October, 2025, and after taking cognisance of:

The tender document for the ‘Framework Contract for the Hire of Open Skips for the Collection and Disposal of Waste using Environmentally Friendly Transportation Services for Saint Vincent de Paul’ (hereinafter referred to as the “Tender Document”);

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

### **“PUBLIC CONTRACTS REVIEW BOARD**

Case 2196 Objection – SPD4/2025/11 – Framework Contract for the Hire of Open Skips for the Collection and Disposal of Waste Using Environmentally Friendly Transportation Services for Saint Vincent de Paul.

The tender was issued on the 22<sup>nd</sup> April 2025, and the closing date was the 2<sup>nd</sup> June 2025.

The estimated value of the tender, excluding VAT, was €300,787.20.

On 8<sup>th</sup> October 2025 Mr Brian Borg lodged an appeal against St Vincent de Paul Residence. – the Contracting Authority. In accordance with Regulation 270 of the Public Procurement Regulations.

On the 10<sup>th</sup> 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 €1503.94 was paid.

There were fourteen bids.

The attendance for this public hearing was as follows:

### **Appellant – Brian Borg**

Dr Claudio Zammit – Legal Representative

Mr Brian Borg – Appellant

**Contracting Authority – St Vincent de Paul Residence**

Dr Noel Bezzina – Legal Representative  
Mr Anthony Caruana – Chairperson  
Ms Claudia Muscat – Secretary  
Mr Noel Vidal – Evaluator  
Mr Raymond Mangion – Evaluator  
Ms Phyliss Mercieca – SVP Representative

**Recommended Bidder – Zrar Ltd. (C6245)**

Dr John Gauci – Legal representative  
Samuel Bonnici – Company Representative  
Ivan Sciberras – Company representative

**Opening Statements**

Dr Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, Mr Brian Borg, the Contracting Authority, Saint Vincent de Paul, and the recommended bidder, Zrar Ltd.

**Initial Submissions**

**Initial Submissions by Dr Claudio Zammit (for the Appellant)**

Chairperson Dr Ana Thomas asked Dr Zammit about his witnesses.

Dr Zammit stated that before indicating the witnesses, he wished to know whether there was a reply from the Recommended Bidder.

Dr John L. Gauci replied in the negative.

Dr Zammit asked whether there would be an answer.

Chairperson Dr Thomas stated that she imagined there would not be, since the matter was to be heard.

Dr Zammit requested a witness from the Contracting Authority to explain the offers chosen, since the reply made reference to this.

Dr Thomas stated that the Board already had everything in the procurement file.

Dr Zammit noted that the reply of the Residence referred to the separation of construction waste and that the price difference required basic proof of what was offered by the recommended bidder.

Dr Gauci stated that this information was public and available on the website. Dr Zammit replied that he needed a breakdown of the two offers, namely construction waste and mixed waste.

Dr Noel Bezzina stated that his witness, the Chairperson of the Evaluation Committee, would explain how the recommended bidder was chosen.

Dr Ana Thomas stated that she will not allow for a fishing expedition into how the recommended bidder arrived at his amounts and would not tolerate such. However, if Dr Gauci had no objection to declaring the two categories, this could be done verbally.

Dr John L. Gauci minuted the following:

*“L-offerent rakkomandat mghandux oggezzjoni illi jiddikjara illi l-offerta tieghu globali ta €223,347.60 hija maghmula minn zewg elementi.*

*a) Fir-rigward ta’ construction waste only fejn l-ammont huwa ta €25,779.60.  
b) Fir-rigward ta mixed waste l-offerta relattiva hija ta €197,568 u dan kif jista jikkonstata dan il-bord”.*

Chairperson Dr Ana Thomas asked about witnesses and invited the parties to make initial submissions. Dr Claudio Zammit, on behalf of the Appellant, stated that he preferred to hear the evidence before making submissions.

Dr Ana Thomas declared that both parties stated that they had no submissions at that stage.

## **Witness**

### **Mr Anthony Caruana (ID No. 44470M)**

Mr Anthony Caruana, Chairperson of the Evaluation Committee, stated that the Committee followed standard procedures to adjudicate the tender, namely the eligibility, technical, and financial phases. He explained that there were shortcomings in the technical phase, but mainly in the financial phase, where five offers had an extremely low price, which the Committee considered to be abnormally low.

A clarification note was sent to all five bidders, including the appellant. Four bidders failed to provide a satisfactory justification for their prices. However, the

fifth bidder explained in detail how waste would be disposed of and recycled. This fifth bidder was Zrar Ltd., who was present for the hearing.

Based on the explanations submitted, the Evaluation Committee was able to consider the low prices. One issue in the tender concerned the fixed prices set by the State, Wasteserv, for waste disposal: €80 per ton for 2025, €100 per ton for 2026, and €120 per ton for 2027. The global prices submitted were significantly lower and appeared insufficient to cover these expenses.

The witness clarified the Evaluation Committee realised that Zrar Ltd. intended to recycle the waste and therefore would not incur Wasteserv tariffs, resulting in a lower price. However, the tender only required that the waste be removed from St Vincent de Paul.

Mr Caruana stated that the appellant based his tender on experience, which was not a requirement of the tender. Zrar Ltd. intended to use the waste in its quarries, making its price reasonable.

In the Bill of Quantities, the tender requested an open skip of five cubic metres with a calculated weight of 1.76 tons. The appellant submitted a price based on one ton.

Ing. Dr Damien Gatt intervened and asked whether the 1.76 tons was an estimate required by the tender.

Mr Caruana replied that there is a specific Eurostat formula whereby each cubic metre is multiplied by 350 kg of mixed waste, and that each skip must be full according to its size. The appellant submitted a price per ton.

#### **Cross-Examination by Dr Claudio Zammit**

Dr Zammit confirmed with the witness that the price submitted by his client was per skip and not per ton. The offer was based on skips, not on weight, and the tender did not request the weight.

The ranking was carried out based on the financial sum, with Brian Borg and Zrar Ltd. ranking consecutively. The appellant replied to the clarification note based on experience. The witness could not recall whether Zrar Ltd. intended to recycle mixed waste or construction waste.

Dr Zammit clarified that the Wasteserv prices of €80, €100, and €120 per ton referred to mixed waste, while construction waste cost €12 per ton. The witness admitted his mistake.

Chairperson Dr Thomas asked whether the Evaluation Committee had the Wasteserv legal notice with the prices during the evaluation. The witness stated that he was not sure which prices applied to which type of waste.

Dr Bezzina intervened, stressing that the witness was not a legal expert and could not be expected to recall the law by heart, as the legal notice was always available for reference. He confirmed that the Evaluation Committee had consulted it.

Dr Zammit asked whether the Committee considered the number of skips for mixed waste and construction waste.

The witness could not recall the exact numbers. He stated that the Evaluation Committee only considered mixed waste prices and did not consider construction waste prices. The financial bid form specified open skips of five cubic metres, and the Board was not informed of the €12 per ton construction waste price.

Dr Zammit asked whether the Committee considered that mixed waste could vary, such as jablo, wood, or iron.

The witness replied that the Eurostat rate of 350 kg per cubic metre was used and was not a decisive factor. The Board considered five cubic metres as equivalent to 1.76 tons. He stated that he learned of this table from the Secretary of the Board and was unsure whether it was indicated in the tender.

Ing. Dr Damien Gatt asked whether samples were taken or whether this was a literature-based estimate.

The witness confirmed that no samples were taken.

#### **Cross-Examination by Dr John L. Gauci**

Dr Gauci explained that when the appellant stated that a five-cubic-metre skip weighed one ton, this was based on his experience and supporting chits showing weights slightly above one ton.

The financial forms did not reflect 1.76 tons or five cubic metres, but only one ton. The Board calculated this mathematically. Dr Gauci stated that the Board referred to Legal Notice 242/22, and the witness confirmed that it was used. Given the minimal difference between the appellant's and the recommended bidder's prices, the Board discussed the one-ton weight issue.

The appellant stated in the clarification that, based on experience, skips weigh one ton. The recommended bidder, however, explained how the waste would be used in its quarries, avoiding WasteServ costs. The witness agreed.

### **Further Cross-Examination by Dr Claudio Zammit**

Dr Zammit clarified that construction waste constituted one-fourth of the total skips, yet the awarded bidder's offer was more advantageous because disposal would take place on its own property.

Dr Thomas intervened, noting that the witness had never been asked which type of waste was to be recycled.

Mr Caruana recalled that construction waste was to be recycled, but he was unsure about mixed waste.

Dr Zammit stated that there was no indication of what Zrar Ltd. intended to recycle.

### **Final Submissions by Dr Claudio Zammit**

Dr Zammit stated that the appeal raised three grievances.

The first grievance concerned the appellant's three years of experience at the site, which, although not entitling him to the contract, provided practical knowledge that skip weights can range between 400 kg and 1,200 kg.

The second grievance concerned the requirement for five-cubic-metre skips. Dr Zammit was not convinced by the arithmetic resulting in 1.76 tons and considered practical experience more reliable.

The Evaluation Committee considered the recycling capacity of only one bidder. It did not assess the carrying capacity or variability of construction waste skips. The Committee's approach was neither factual nor correct.

Regarding the third grievance, the Committee found the appellant financially unviable. However, the appellant's bid was €7,000 cheaper. For mixed waste, the difference amounted to approximately €6 per skip. Dr Zammit stated that it was unclear how Zrar Ltd. was considered viable while Brian Borg was not, and that the witness failed to justify this conclusion.

Dr Zammit concluded by stating that the Contracting Authority claimed that the absence of a refund request amounted to renunciation of the deposit. However, under the law, the Board must decide on the refund, and it was not a matter of renunciation.

### **Final Submissions by Dr Noel Bezzina**

Regarding the first grievance, Dr Bezzina stated that the appellant could not create a requirement based on experience at St Vincent de Paul. The tender requirements were designed to ensure equal treatment of all bidders.

Regarding the second grievance, he stated that the tender required collection and disposal of waste and that the Committee was obliged to use Legal Notice 242/2022. The Board and witness converted five cubic metres into weight, resulting in 1.76 tons according to Eurostat. The appellant provided no proof that a full five-cubic-metre skip weighed one ton.

Chairperson Dr Thomas asked whether the tender stipulated that skips had to be full before disposal.

Dr Bezzina stated that he was unsure but explained that the Contracting Authority had to ensure proper service regardless of how full the skip was. He stressed that the witness was quoting mixed waste prices and that the appellant assumed each skip weighed one ton, which was not stipulated in the tender.

Regarding price viability, Zrar Ltd. justified its price through recycling construction waste, making it acceptable to the Evaluation Committee. Although there were two waste categories, the appellant could have structured prices accordingly within legal limits.

#### **Final Submissions by Dr John L. Gauci**

Dr Gauci explained that the tender required skips to be filled before replacement and that the contractor would be notified in advance. He referred to Section 3, Terms of Reference, page 16, points 1 and 2, and quoted:

“The successful Tenderers requires to provide to St. Vincent de Paul. Skips must be collected, emptied and replaced on ‘if and as required basis ‘by the Contracting Authority. The Contractor shall be informed beforehand by the Contracting Authority. The Contractor shall collect/replace the skips same day of request”.

This indicated that skips were replaced when full, not daily. Dr Gauci invited the Board to review Zrar Ltd.’s clarification reply, which included six considerations, including the use of construction waste in its own quarry, resulting in financial gain.

Regulation 243 requires more than experience. Referring to *Star Fuels Ltd. vs Wasteserv Malta Ltd.*, he quoted paragraph 13:

“Il-Kriterju jekk prezz hux baxx b’mod mhux normali, m’huwiex biss kif dak il-prezz iqabbel mal- prezz stmat mill-Awtorita Kontraenti jew ma offerti ohra validi, ghalkemm dan jista jkun ta ‘ndikazzjoni.

Kriterju iehor kif il-prezz offerti iqabbel ma kemm il-prodott jew servizz jiswa lil-oblatur.

Prezz li jkun hekk baxx li l-oblatur li jaghmel telf flok qliegh huwa 'ndikazzjoni li l - prezz huwa baxx b'mod normali, pero, dan ma jfissirx li ghandu bil-fors jitwarrab ghax jista jkun hemm fatturi ohra fosthom dawk imsemija fir-regolament 243 li jiggustifikaw il-prezz fic-cirkostanzi tal-kas li jkun izda dan tista tghidu biss wara l-ispjegazzjoni li l-Awtorita Kontraenti ghandha tesigi kif tara li ghandha prezz jidher baxx wisq”.

The Contracting Authority followed these principles. The appellant relied solely on experience, while the recommended bidder addressed all legal requirements. Therefore, the recommendation in favour of Zrar Ltd. was justified.

### **Replica by Dr Claudio Zammit**

Dr Zammit agreed that the tender contained terms of reference but noted that the financial bid form stated that skips had to be removed “on sight regardless of duration.” The tender did not state that skips had to be fully packed. The chits presented were part of the record and were not contested.

The appellant maintained that the chits reflected waste generated at St Vincent de Paul and contained all relevant information.

### **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 Brian Borg on the 8<sup>th</sup> October, 2025, together with proof of payment of a deposit in the amount of €1,503.94, wherein it held as follows:

*“Qieghed nikteb fuq inkarigu ta' Brian Borg (Tender ID 227644) ta' 'Crystal Heart', Triq il-Madonna tal-Hniena, Zurrieq.*

*B'ittra datata 29 ta' Settembru 2025, il-klijent tiegħi gie mgharraf bl-eżitu tal-agġudikazzjoni tal-offerta fuq imsemmija. Illi f'dik l-istess ittra, gie infurmat illi:*

*Il-kumitat ta' evalwazzjoni tal-offerti osserva diskrepanza fil-kalkoli tal-klijent tiegħi, fis-sens li r-rekwiżiti tat-tender jiddefinixxu Open Skip Service bhala hamsa (5) metri kubi, ekwivalenti approssimattivament għal 1.76 tunnellati. Dan in-nuqqas iqajjem dubji rigwardanti r-rati proposti, illi meta mqabbla mat-tariffi tar-rimi kurrenti taht Avviż Legali 242.22 (€80 t-tomna fl-2025, €100 t-tomna fl-2026, u €120 t-tomna fl-2027), jidher li huma taht it-tragwardi mistennija. Din id-diskrepanza tista' tirrizulta f'inefficijenzi finanzjarji, jew inkella riskju ta' nuqqas ta' servizz. Ibbazata fuq il-kunsiderazzjoni t'hawn fuq, il-Kumitat ikkonkluda li din l-offerta ma hijiex finanzjarjament aderenti.*

Permezz tal-prezenti, il-klijent tiegħi jixtieq joggezzjona għall-istess evalwazzjoni u agġudikazzjoni, u dan għas-segventi raġunijiet:

### **L-ewwel aggravju - L-esperjenza tal-esponent**

Illi l-klijent tiegħi, qabel ma saret l-evalwazzjoni, kien diġà kellu l-okkażjoni li jindika lill-Kumitat, wara li ntalab xi kummenti, li jissenjala illi huwa ilu jagħmel dan l-istess xogħol mertu tat-tender għall-istess post għal tliet (3) snin, u għalhekk ix-xogħol jafu sew, inkluż it-tip u kwantità ta' skart li jintrema u jingarr mill-post in kwestjoni. Dan iquieghdu f'vantagg sabiex joffri rati iktar realistici kōmmensurati mal-mod kif jopera hu, jiggifieri bhala bniedem li jahdem wahdu, b'diversi ingenji, b'għaliq li toffrili iktar flessibilita' anke fil-mod kif jiddetermina l-prezzijiet tiegħu.

### **It-tieni aggravju - Il-piż li għandu jkun attribwit għal kull skip**

Illi, bla pregudizzju għall-premess, il-konsiderazzjoni illi għamel il-Kumitat kienet illi kull open skip fiha 1.76 tunnelli, u skond l-istess kumitat, il-klijent tiegħi ikekalkula hażin għaliex meta tikkonsidra 1.76 tunnelli, il-prezz tar-rimi jigi tali illi l-offerta magħmula ma tkunx viabbli. Dwar dan, il-klijent tiegħi jista' fattwalment jikkonferma, anke mill-esperjenza li għandu kif fuq imsemmi, illi l-ebda skip minn dawke li jintużaw, meta jintalab biex ibattalhom, ma jkun daqshekk tqal. Għall-kuntrarju, il-prattika hija illi kull skip ikollha tunnelli jew inqas, u dan kif juru diversi chits li qegħdin hawn jigu annessi, ta' rimi li sar mill-istess lok in kwestjoni, u li jindikaw kull skip li jkun mar ha l-klijent tiegħi fil-facilita' tar-rimi tal-iskart. Għalhekk, il-konsiderazzjoni li għamel il-Bord illi kull skip ikun fiha skart ta' 1.76 tunnelli ma hijiex wahda gusta u fattwali, u kummerjalment tagħmel iktar sens l-offerta tal-klijent tiegħi milli l-konsiderazzjoni li għamel il-Kumitat. Dan iktar u iktar meta skond l-offerta, il-prezz mitlub kien għal kull 'open skip', u mhux a bażi ta' piż. Li kieku l-awtorita' li harget is-sejha riedet titlob offerti a bażi tal-piż, kienet tagħmel dan espressament, u mhux titlob offerta a bażi ta' skip individwali. Kien ikun għalhekk iktar korrett il-Kumitat ta' Evalwazzjoni kieku kkonSIDra il-piż f'każ li l-offerta kienet abbażi ta' piż, pero' ladarba l-offerta hija abbażi ta' skip, il-konsiderazzjoni dwar piż hija konsiderazzjoni li l-Kumitat għamilha barra l-parametri tas-sejha li fuqha kellu jagġudika, u mhux skond it-termini tal-istess sejha.

Illi, mingħajr pregudizzju għall-premess, huwa wkoll dibattibbli kemm huwa minnu illi skip ta' hames (5) metri kubi tixen 1.76 tunnelli kif qed jigi indikat mill-Kumitat, u dan anke minhabba l-fatt illi l-iskart huwa imballat, kif carament indikat fl-offerta, u għalhekk wiehed ma jistax b'certezza jistabbilixxi illi skip ha tkun tixen 1.76 tunnelli jew xi piż ieħor differenti. L-iskart li qed nitkellmu fuqu, mil-lok in kwestjoni, jista' jvarja u jikkonsisti f'ħafna materjal imballat, illi jintuza fil-bajja ta' kuljum. Anzi jingħad ukoll, illi mhux kull skip tkun bħall-ohra, ikun hemm minnhom li jkun ehfef, u obrajn itqal. M'hemm l-ebda regola fissa dwar il-piż ta' skip, bħal kif donnu qed jgħid il-Kumitat ta' Evalwazzjoni. L-aħjar riga għall-piż ta' skip għalhekk hija propju l-esperjenza tal-ingħoddi li turi propju mod ieħor, mhux dak indikat mill-Kumitat.

### **It-tielet aggravju - Il-viabilita' finanzjarja tal-offerta tal-esponent u tal-offerent magħzul**

Illi f'kull każ, u mingħajr pregudizzju għall-premess, għandu jingħad illi l-istess argument illi ngħab mill-Kumitat sabiex jirrifjuta l-offerta tal-klijent tiegħi, jista' similmement jigi applikat għall-offerta

li għażel il-Kumitat. Filwagt li l-offerta tal-klijent tiegħi kienet ta' €216,344.52, l-offerta li ntgħażlet kienet ta' €223,347.60. Il-klijent tiegħi jirriveva illi f'din is-sejba kien hemm talba għal żewġ preżżijiet differenti, u cioe' għal skieps ta' materjal talkonstruzzjoni u skieps għal skart imballat. Jagħmilha cara illi sa issa ma giex lilu indikat x'differenza kien hemm fir-rati ta' Zrar Ltd. bejn skieps għallmaterjal ta' konstruzzjoni u skieps għal skart imballat, u dwar dan jirriserva li jagħmel sottomissjonijiet ulterjuri ladarba l-awtorita' kontraenti tagħti 1- informazzjoni dwar l-evalwazzjoni li saret anke fil-konfront ta' Zrar Ltd. Jibqa' pero' l-fatt illi d-differenza bejn il-klijent tiegħi u l-offerent l-iehor hija biss ta' €7,003.08. Jekk il-konsidrazzjoni tal-Kumitat ta' Evalwazzjoni kienet illi wiehed irid jibbażza fuq 1.76 tunnellati u mhux fuq tunnellata, għal kull skiep, xorta jibqa' illi l-offerta li ntgħażlet xorta wahda ma tistax tkun finanzjarjament vijabbli, anke jekk tużza l-istess argument tal-Kumitat stess. Il-Kumitat jidher li aktar poggja l-attenzjoni tiegħu fuq l-iskart imballat, għaliex fil-konsiderazzjonijiet li ta lill-klijent tiegħi, anke kkwota l-preżżijiet tar-rimi kif inhum bbalissa u kif ba jkun fis-sentejn li gejjin. Jekk wiehed jaqsam id-differenza li hemm bejn il-klijent tiegħi u l-offerent l-iehor (li tammonta għal €7,003.08) fuq l-ammont ta' skieps imballat indikati fittender (1,152 skiep), jibqa' illi l-iskieps tal-offerent magħżul ha jkun biss €6.08 oghla minn dak tal-klijent tiegħi. Meta wiehed jikkunsidra illi d-differenza bejn tunnellata u 1.76 tunnellati hija ta' 76% iktar, il-preżż tal-offerent magħżul pero', mhux 76% iktar minn dak tal-klijent tiegħi, iżda biss 3% iktar. M'hemm l-ebda mod għalhekk kif l-offerent magħżul jiġi gustifikat u jintqal illi għandu offerta finanzjarja iktar vijabbli minn dik tal-klijent tiegħi, għaliex jekk għall-grazzja tal-argument, u mingħajr pregudizzju, l-iskieps in kwestjoni ba jkun kollha ta' 1.76 tunnellati, kif qed jindika l-Kumitat, il-preżż għar-rimi suppost li fl-aħbar każ, jiġifieri fl-2027 ba jkun ta' €211.20 għal kull skiep (1.76 tunnellati x €120 għal kull tunnellata), li xorta hija tariffa ferm oghla kemm mill-preżż kwotat mill-klijent tiegħi kif ukoll minn dak offert mill-offerent magħżul. Kollox jindika għalhekk, illi iktar milli kwestjoni ta' viabilita' finanzjarja ta' wiehed mill-offerenti iktar mill-iehor, l-Awtorita' ha tispiccha thallas 7,003.08 Euro iktar għalhekk, u dan meta l-Awtorita' taf, għax il-klijent tiegħi diga' huwa kuntrattur f'dan ix-xogħol, illi qatt ma kien hemm ilment dwar xi nuqqas da parti tal-klijent tiegħi.

Għaldaqstant, għar-ragunijiet fuq imsemmija, kif ukoll għal ragunijiet ohra li jistgħu jitressqu fil-kors ta' dawn il-proceduri, l-esponent bil-qima jitlob lil dan l-Onorabbli Bord sabiex jogħbhu:

1. Jiehu l-mizuri necessarji sabiex jipprevinu li jkun hemm pregudizzju għall-esponent, inkuz billi jordna s-sospensjoni tad-decizjoni tal-awtorita' kontraenti datata 29 ta' Settembru 2025 permezz ta' liema l-is-sejba in kwestjoni giet agġudikata favur Zrar Ltd.;
2. Jiddikjara li d-decizjoni tal-awtorita' kontraenti datata 29 ta' Settembru 2025 hija nulla u jikkonsidraha bhala ineffettiva għall-fini tal-ligi;
3. Alternattivament, u mingħajr pregudizzju għall-premess, jordna rrevoka tad-decizjoni tal-awtorita' kontraenti datata 29 ta' Settembru 2025 u jiddikjara illi l-esponent issodisfa l-kriterji kollha mitluba fis-sejba għall-offerti;
4. Jordna illi l-kuntratt jiġi agġudikat favur l-esponent bhala l-iktar offerent vantaggjuż u li jissodisfa l-kriterji kollha tas-sejba għall-offerti, jev, fin-nuqqas, jiddikjara illi l-offerta tal-esponent hija pjenament in regola u tigi għalhekk imdabhla mill-gdid fil-process ta' evalwazzjoni sabiex issir evalwazzjoni mill-gdid.”

The written reply as filed by Saint Vincent De Paul Residence dated the 17<sup>th</sup> October, 2025 (with a stamp dated 20<sup>th</sup> October, 2025) (hereinafter the ‘Contracting Authority’) wherein it held as follows:

“Dirett nikteb f'isem u għan-nom ta' Saint Vincent De Paul Residence (hawn aktar '1 isfel imsejba 'SVP' jew 'l-Awtorita' Kontraenti') in konnessjoni mat-tender hawn fuq indikat

(imsejjaħ 'it-Tender') partikolarment b'referenza għall-oggezzjoni mressqa minn Brian Borg ('1-Appellant') datata 8 t'Ottubru 2025, u dan sabiex 1-Awtorita' Kontraenti tressaq ir-risposta tagħha.

Essenzjalment, 1-Appellant qiegħed iqajjem tliet aggravi, u cjo:

1. L-esperjenza tal-appellant;
2. Il-piż li għandu jkun attribwit għal kull skip;
3. Il-Viabilita' finanzjara tal-offerta tal-appellant u tal-offerent magħżul Illi, 1-Awtorita' kontraenti qegħda tirribatti dawn l-aggravi u għalhekk ser tkun qegħda tindirizza kull aggravi separatament.

#### 1. L-esperjenza tal-appellant

Permezz tal-envel aggravi, l-appellant jargumenta li, minhabba l-fatt li huwa ilu joffri s-servizz tiegħu lill-Awtorita' Kontraenti għal tliet snin qabel ma' giet ppubblikata din is-sejba, tpoggih f'vantagg għaliex ix-xogħol jafu sew, inkluż it-tip u kwantita' ta' skart li jintrema u jingarr mill-post in kwestjoni.

B'kull dovut rispettt, dan l-argument huwa wieħed fallaci u nieqes minn kull bażi legali. Kif ser jiġi spjegat fil-perkors ta' dan l-appell, din is-sejba kellha tiġi agġudikata abbażi tal-prezz, dejjem wara li kull offerent jissodisfa 1-kriterja amministrattivi teknici tas-sejba. Huwa għalhekk għal kollox irrelevanti li l-appellant ilu jagħti s-servizz tiegħu lill-Awtorita' Kontraenti għal dawn l-abbar tliet snin stante li dan il-fatt ma' kellu l-ebda impatt fuq il-mod kif gie agġudikat dan it-tender. Dak li l-awtorita' kontraenti għamlet permezz ta' dan it-tender huwa propju l-antitezi tal-argument li qiegħed iqajjem l-appellant, u cjo li l-appellant, qua kuntrattur 'incumbent', ma jkollu l-ebda vantagg fuq oblaturi obra u tassigura li x-xiri ta' dan is-servizz jinbareg b'mod ugwali għal kull oblatur interessat sabiex tiġi assigurata 'a level playing field'.

Barra minn hekk, l-argument li l-appellant jaf 'l-average weight ta' kull skip li normalment ibattal minn gewwa San Vincenz, bir-rispett kollu ma jregix. Dan għaliex, kif dan il-Bord kemm-il darba ppronunzja ruħu fuqha, dak li effettivament jgħodd huma r-rekwiżiti tat-tender u mhux dak li oblatur jidbirlu li għandhom jew huma l-kundizzjonijiet f'tender, kif donnu qiegħed jagħmel l-appellant f'dan il-każ. Għalhekk, għal dawn ir-ragunijiet, dan l-aggravi għandu jiġi miċhud.

#### 2. Il-piż li għandu jkun attribwit għal kull skip.

Permezz ta' dan l-aggravi, l-appellant qiegħed jargumenta 1-kunsiderazzjoni għamel il-kumitat tal-evalwar ossia li open skip ta' hames metri kubi huwa ekwivalenti għal circa 1.76 tunellati, kienet wahda żbaljata għaliex, skont hu u esperjenza li għandu, l-ebda skip li jintużaw mill-awtorita' kontraenti ma jkun daqshekk tqal u għalhekk, minhabba li huwa konsapevoli ta' dan il-fatt, huwa kkonta prezz aktar baxx. Jgħid li għal kuntrarju ta' dak indikat, kull skip miġbur minn San Vincenz ikollu tunellata jew inqas.

Illi, għal darb' obra, dan l-argument li qiegħed jagħmel l-appellant ma jregix. Qabel xejn, kif anke dan l-Onorabbli Bord esprima ruħu f' diversi deċizzjonijiet, jekk una volta l-appellant kien tal-opinjoni li kien hemm xi żball fit-tender jew illi kien hemm xi kundizzjoni li twassal oblatur għal 'impossibility to perform' seta faċilment iressaq l-appell tiegħu abbażi tar-regolament 262 tal-Public Procurement Regulations (pre contractual remedy) sabiex jattakka 1-kundizzjonijiet tat-tender; бага li l-appellant m'għamilx. L-appellant qiegħed għalhekk issa jinqeda b'dan l-appell

sabiex jipprova jattakka 1-kundizzjonijiet tat-tender document li, fl-abbar mill-abbar, la darba appellant tilef l-opportunita' li jressaq xi oggezzjoni tiegħu fir-rigward ta' dawn 1- istess kundizzjonijiet, jorbtu lil kull oblatur inkluż lill-appellant.

Barra minn hekk, huwa għal kollox fallaci l-argument li, mill- BEZZIN LEGAL A esperjenza tal-appellant, it-toqol tal-open skips genwa San Vincenz kien dejjem ikun ta' tunellata jew inqas u mhux ta' 1.76 tunellati. Qabel xejn u kif għa inghad, dak li jghodd huwa 1-kundizzjonijiet u rekwiżiti li gew inklużi fit-tender u li jorbtu lill-appellant. Huwa car li fit-tender gie indikat bhala rekwiżit li offerent huwa marbut li jagħti servizz ta' għir ta' open skip service ta' 5 metri kubi (li jigu circa 1.76 tunellati ta' mixed waste). Inutili l-appellant jghid li fil-prattika l-open skips jiznu tunellata jew inqas għaliex la darba r-rekwiżit huwa ta' 5 metri kubi li jekwivalu għal 1.76 tunellati, mela ifisser li oblatur irid jimxi ma dak il- kejl. Dak li effettivament u erronjament qiegħed jipproponi l-appellant skont l-argument tiegħu huwa li, lil'hinn mill-kundizzjonijiet tat-tender, jispara prezż abbażi ta' kalkolu li għamel hu u li jiddipartixxi mir-rekwiżiti tat-tender, dan kollu għaliex mill-esperjenza tiegħu jaf (jew abjar jassumi) li l-skips dejjem ikunu ta' tunellata. B'kull dovut rispet, dan l-argument assolutament ma jregix u anzi huwa wieħed li jmur kontra kull principju mhaddan fl-akkwist pubbliku.

Barra minn hekk, kif anke ex admissis jghid l-appellant fir-risposta li ta' lill-kumitat, il-kalkolu li hadem hu huwa bbażat fuq 'average' tat-toqol li huwa ha mill-skips ta' San Vincenz. F'dan ir-rigward huwa pertinenti jingħad li r-rekwiżit tat-tender m'huwiex bbażat fuq average iżda fuq kalkolu ta' kemm kull open skip mimli effettivament jizen. Għalhekk, għal darb' ohra, l-appellant m'għandux ragun fuq dan il-punt.

Illi, fir-rigward tad-dubju li qiegħed iqajjem l-appellant rigward il-kalkolu illi skip ta' hames (5) metri kubi jizen 1.76 tunellati, jigi sottomess illi dan il-kalkolu sar mill-kumitat tal-evalwar sabiex il-kubagg ta' open skip mimli bl-iskart jigi mfisser f'toqol (tunellati) u għalhekk il-kumitat wasal għal kalkolu fattwali ta' kemm jigi jizen open skip ta' dan il-kubagg mimli b'mixed waste b'hekk seta' jaggudika l-offerti.

Għalhekk, għar-ragunijiet mogħtija, dan l-aggravju għandu jigi miċhud ukoll.

### 3. Il-viabilita' finanzjarja tal-offerta tal-esponent u tal-offerent magħżul.

Permezz ta' dan l-abbar aggravju, l-appellant jargumenta li r-ragun tar-rifjut li 1- kumitat gab fil-konfront tal-appellant seta' jkun applikat fil-konfront tal-offerent rekommandat. Qabel xejn, b'dan l-aggravju li fih jghid li l-offerta tal-offerent rakkomandat ma kinitx ukoll konformi, l-appellant qiegħed jekk xejn jammetti li lofferta tiegħu verament ma hix wahda konformi u li l-kumitat kellu ragun jiddecieci kif ddecieda.

Madanakollu, fir-rigward ta' dak li l-appellant jargumenta vis-a-vis l-prezż kkvotat mill-offerent rakkomandat, jigi sottomess li, kuntrarjament għal dak li qiegħed jingħad, l-offerent rakkomandat ggustifika l-prezż minnu kwotat billi anke spjega li huwa għandu barriera tiegħu li juzaha sabiex jissepara 1-iskart talkostruzzjoni u li għalhekk seta' jikkwota prezż aktar vantaggjuż minn dik tal-appellant.

Dan jikkuntra ta' dak li għamel l-appellant fejn minkejja li huwa ukoll intalab sabiex jiggustifika l-prezż, huwa naqas milli jagħmel dan u baqa' jinsisti li huwa għandu l-esperjenza f'dan is-servizz għax ilu jagħti dan is-servizz lill-awtorita' kontraenti għal diversi snin. Kien

*propju ghalbeke li l-kumitat, wara li talab kejarifika minghad 1-offerent magbzul fuq il-prezz u verifika l-istess, pproceda sabiex jirrakomanda li dan it-tender jinghata lill-offerent magbzul.*

*Ghalbeke, dan l-aggravju ghandu jigi michud ukoll.*

*Ghaldaqstant, in vista tal-argumenti mressqa f'din ir-risposta kif ukoll sottomissjonijiet obra li jistghu isiru quddiem dan il-bord, l-esponenti ukoll titlob lil dan il-bord sabiex:*

- a. jiddikjara li l-oggezzjoni tal-appellant hija infondata u ghalbeke jichadha fl-interita' taghha;*
- b. jikkonferma d-decizjoni tal-kumitat tal-evalwar li rakkomanda li s-sejba tinghata lill-offerent rakkomandat;*
- c. in vista li ma hemm l-ebda talba ghar-rifuzjoni tad-depozitu, li ma jkunx hemm rifuzjoni tad-depozitu mballas."*

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 brought forward two main grievances, the first relating to the evaluation carried on by the Tender Evaluation Committee (hereinafter the "TEC") regarding the 'averaged' weight per skip, and the second relating to the financial offers of the Appellant and the Preferred Bidder.

#### **A. Tender Evaluation Committee's Evaluation vis-à-vis average weight of skips when compared to the offers made**

On this point, the Appellant raises doubts as to whether the TEC was correct in determining that a skip averages 1.76 tonnes in weight. To substantiate this, the Appellant presented receipts of skips incidentally already taken by the same Appellant from the same site in question as part of his ongoing services agreement with the Contracting Authority, which skips had a net weight of waste of 820kg, 1,000kg, 500kg, 360kg, 520kg, 820kg (per Dok. A to Dok. F attached to the Appellant's appeal).

On the other hand, the Contracting Authority's reply focuses on the fact that if the Appellant thought there was a mistake in the Tender Document leading to an impossibility to perform, he ought to have utilised Regulation 262 of the PPR. Furthermore, the Contracting Authority states as follows with respect to the calculation of 1.76 tonnes per skip:

*"Huwa car li fit-tender gie indikat bhala rekvizit li offerent huwa marbut li jaghti servizz ta' ghir ta' open skip service ta' 5 metri kubi (li jigu circa 1.76 tunellati ta' mixed waste). Inutili l-appellant jghid li fil-prattika l-open skips jiznu tunellata jew inqas ghaliex la darba r-rekvizit huwa ta' 5 metri kubi li jekwivalu ghal 1.76 tunellati, mela ifisser li oblatur irid jimxi ma dak il-kejl." (Page 3 of the Contracting Authority's reply.)*

The Board, after having heard the Chairperson of the TEC testify that the averages weight of 1.76 tonnes was provided to him as a table of reference by the Secretary of the TEC, the Chairperson had no proper explanation as to the legal basis for determining the average weight of a 5m<sup>3</sup> skip as 1.76 tonnes, but explained that the Eurostat rate per cubic metre is that of 350kg. The Chairperson further failed to explain to this Board where in the Tender Document was the tonnage referenced.

This Board refers to the financial bid form, particularly the fourth column which obliges the economic operators to provide a “*Rate per Skip*”, and not rate per tonne or rate per cubic metre.

This Board determines that it results (as confirmed on oath by the Chairperson of the TEC and further confirmed in the letter of regret sent to the Appellant), that the TEC only found fault with the Appellant’s bid when it started evaluation the financial part of his bid in light of the self-introduced average tonnage of 1.76 tonnes for a five cubic metre skip. **This sort of evaluation is flawed in principle, the reasoning applied by the TEC finds no comfort in the Tender Document thereby going against the principle of self-limitation.** The economic operators invited to bid in this tender process were to be evaluated first on their administrative and technical compliance, and here it seems that the Appellant had no issue, then once an economic operator passes this hurdle, then the financial aspect of the bid must necessarily be evaluated vis-à-vis the offers made PER SKIP in this case, and not per skip which may or may not translate to 1.76 tonnes in weight because some undetermined source may or may not have said that the average weight of a full five cubic metre skip is 1.76 tonnes.

The Board further determines that the Contracting Authority was incorrect in stating that the Appellant ought to have adhered to the 1.76 tonnage measurement when in actual fact the Tender Document not once mentions the weight of the waste to be collected, but rather mentions a) the dimensions of the skip i.e. 5m<sup>3</sup> and b) the rate per skip. The considerations relating to tonnage are irrelevant in this tendering process. As the Appellant intelligently suggested, it could very well be that the waste consists in Expanded Polystyrene (colloquially known as Jablo), and surely a skip full of Jablo would surely never equate to the ‘averaged’ 1.76 tonne weight. If the Contracting Authority wished to base its evaluation also on rates per tonne, it had every opportunity to do so, but in this case it did not.

Therefore, the Appellant’s grievance is being upheld.

**B. Financial Offers of the Appellant and the Preferred Bidder**

In view of this Board’s above considerations and the fact that it is ordering a fresh evaluation of the bids made, in the circumstances it shall not be entering into the financial aspects of the offers made.

**DECIDE**

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to uphold the appeal filed by Brian Borg, and whilst it is hereby quashing the rejection letter dated 29<sup>th</sup> September, 2025 and the award notice also dated 29<sup>th</sup> September, 2025, it is reinstating the Appellant’s bid and directing the Tender Evaluation Committee to assess all the bids afresh after taking into consideration the findings of this Board.

The Board further decides to re-imburse the deposit paid by Brian Borg without delay.

**Dr Ana Thomas**  
Chairperson

**Dr Ing. Damien Gatt**  
Member

**Mr Lawrence Ancilleri**  
Member

Wednesday 21<sup>st</sup> January, 2026.