

PUBLIC CONTRACTS REVIEW BOARD

Case 2210 – SPD5/2025/025 – Tender for the Supply, Installation and Commissioning of VRF Airconditioning Systems at the Court Services Agency (St Thomas More Building)

18th February 2026

The Board,

Having noted the letter of objection filed by Dr Elian Scicluna acting for and on behalf of Smart Effects Limited, (hereinafter referred to as the appellant) filed on the 21st January 2026;

Having also noted the letter of reply filed by Dr Carlos Bugeja on behalf of ProLegal Advocates acting for and on behalf of Court Services Agency (hereinafter referred to as the Contracting Authority) filed on the 29th January 2026;

Having heard and evaluated the testimony of the witness Mr Adrian Fenech (Representative of Smart Effects Limited) as summoned by Dr Elian Scicluna acting for and on behalf of Smart Effects Limited;

Having heard and evaluated the testimony of the witness Ms Maria Dolores Vella (Chairperson of the Evaluation Committee) as summoned by Dr Elian Scicluna acting for and on behalf of Smart Effects Limited;

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 13th February 2026 hereunder-reproduced.

Minutes

Case 2210 Objection – SPD5/2025/025 – Tender for the Supply, Installation and Commissioning of VRF Airconditioning Systems at the Court Services Agency (St Thomas More Building)

The tender was issued on the 12th of August 2025, and the closing date was xxx date.

The estimated value of the tender, excluding VAT, was €460,247.00.

On 21st January 2026, Smart Effects Limited lodged an appeal against the Court Services Agency – the Contracting Authority.

On the 13th of February 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr Lawrence Ancilleri as members convened a public hearing to consider the appeal.

A deposit of €2,301.00 was paid.

There were six bids.

The attendance for this public hearing was as follows:

Appellant – Smart Effects Limited

Dr Elian Scicluna – Legal Representative

Mr Adrian Fenech – Company Representative (ID: 298590M)

Mr Manfredo de Donno – Company Representative

Contracting Authority – Court Services Agency

Dr Carlos Bugeja – Legal Representative

Ms Maria Dolores Vella – Chairperson

Mr Daniel Mifsud – Secretary

Mr Johann Spiteri – Evaluator

Ms Rosita Sammut – Evaluator

Mr George Magri – Evaluator

Ing. Edward Scerri – Key Expert

Preferred Bidder – KBL Services

Mr Keith Busuttil – Company Representative

Mr Oliver Brownrigg – Company Representative

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2210 in the records of the PCRB. The Chairman identified the Appellant as Smart Effects Limited, the Contracting Authority as Court Services Agency, and acknowledged the presence of representatives of the preferred bidder, KBL Services. The Chairman invited the legal representative for the appellant to make the initial submissions.

Initial Submissions

Initial Submissions by Dr Elian Scicluna (for the Appellant)

Dr Scicluna, representing Smart Effects Limited, stated that the company's offer was rejected on the grounds that the Evaluation Board deemed there to be an omission, when in fact this was not the case. Smart Effects Limited submitted its offer fully in accordance with the tender requirements. In the Technical Bid Form, there was a box where the model number was to be indicated. However, the tender requirements did not require a single model number. The client made its submission by indicating "various" in that particular box, as various models were required to meet the technical requirements of the tender. The submission referenced "see attached specs," and the literature/specifications were an integral part of the submission. The literature clearly indicated the model numbers. There was therefore no difficulty for the Evaluation Board to assess the technical specifications that were submitted.

Unfortunately, the decision was made that, due to this so-called omission and non-compliance, the offer was rejected. Certain matters would be confirmed under oath by witnesses. Dr Scicluna stated that in final submissions, the Board would be shown why Smart Effects Limited's position was correct.

Initial Submissions by Dr Carlos Bugeja (for the Contracting Authority)

Dr Bugeja stated that the Contracting Authority makes a distinction between the technical offer as a formal requirement and the literature as substantiating that offer. The literature substantiates what is contained in the technical offer, and not vice versa. In this case, the technical offer form was defective and could not be substituted or corrected by simply attaching literature, as that does not change the fact that the form was not filled in as required.

Witness Testimonies

Mr Adrian Fenech (summoned by Dr Elian Scicluna for the Appellant)

Mr Fenech identified himself as the Director of Smart Effects Limited and took the oath to tell the truth.

Dr Scicluna asked Mr Fenech to specify what led to the Technical Bid Form being filled in in the manner it was submitted.

Mr Fenech explained that the tender was based on several models of air conditioning units. In the technical offer form, there was only one space where a model number could be written. If they had written a single model number, the technical offer would have been for that particular model only. However, there were many more models being submitted as part of the tender. Smart Effects Limited decided to write "various as per specifications" in the technical offer form. In the literature, each item was given the model number to make it clear which model was being referred to, so that anyone reviewing the submission could see each model individually and verify that the specifications were being met.

Dr Scicluna asked whether the tender itself specified that there should be various models or a single model.

Mr Fenech confirmed that the tender did not specify anything regarding the number of models required.

Ms Maria Dolores Vella (summoned by Dr Elian Scicluna for the Appellant)

Ms Vella identified herself (ID: 340264M) and took the oath to tell the truth.

Dr Scicluna asked Ms Vella to confirm whether, during the evaluation, there was any difficulty in making reference to or identifying which models were being referenced, based on the form as filled and the literature as provided.

Ms Vella began by stating that the technical questionnaire is a form or document where the bidder confirms what will be offered. The Chairman interjected, asking Ms Vella to respond directly to the question posed by the legal representative, noting that Dr Bugeja would have the opportunity to make submissions later.

Ms Vella stated that for the Evaluation Committee, the technical questionnaire was not compliant because there were two boxes that should have been filled, and one of them was not filled as required. The literature was given to the key expert, as it appeared to be technical in nature. The key expert confirmed that Smart Effects Limited had everything compliant except for one item (item 3.5.6).

Furthermore, Ms Vella confirmed that the key expert was able to map all the items according to the literature.

Dr Scicluna asked Ms Vella to confirm that the technical specifications and requirements were actually identified according to the literature. Ms Vella stated that the literature is there to support the technical questionnaire, but as she had mentioned, there was one item that was not compliant. When asked to specify which item, Ms Vella identified Item 3.5.6, which was located in the tender document, Section 3, Page 27. She explained that it required a galvanised steel enclosures for the outdoor unit, and the key expert did not map this item from the literature. Dr Scicluna stated that this matter would be addressed in final submissions.

The Chairman asked if there were any other questions. Dr Scicluna confirmed he had no further questions. The Chairman asked if there were any cross-examination questions from Dr Bugeja. Dr Bugeja confirmed he had no questions. The Chairman thanked Ms Vella. Dr Scicluna confirmed he had no further witnesses.

Final Submissions

Final Submissions by Dr Elian Scicluna (for the Appellant)

Dr Scicluna began by addressing the final point mentioned by the witness, who confirmed that there was full technical compliance except for one requirement that was not satisfied. Dr Scicluna noted that this was not indicated as a reason for the rejection of the bid. It would therefore be inappropriate to address this issue at this stage, as past decisions of the Board have established that any technical non-compliance should have been indicated in the award letter.

Moving forward, the Chairperson of the Evaluation Board confirmed that there was technical compliance, and the key expert was able to confirm that everything in the literature substantiated the submission and was an integral part of it. There was no difficulty in corroborating the literature with the tender requirements. Unfortunately, the Board did not conduct the assessment properly. The purpose of an evaluation should be to determine what is being offered. In this case, the opposite occurred: the Board conducted no assessment of what was offered and instead used a checklist to exclude an offer that was not, in fact, excluded in the first place. The decision was disproportionate. Everything that was required was actually submitted and was technically compliant. Everyone was satisfied with the submission. However, as soon as the Board saw "model number: see various specs attached" and the literature, which clearly indicated the model numbers as required, the offer was unfortunately rejected without even being evaluated.

In fact, even in the response from the Contracting Authority, it was evident that despite Smart Effects Limited's offer being the cheapest and compliant, it was not even evaluated and was completely rejected due to a formality appearing non-compliant at face value. Both decisions of the European Union and decisions of this Board have consistently held that substance should prevail over form. In this case, there was no omission and no non-compliance. The form had a requirement for a model number. The tender made no reference to a single model number whatsoever, and as confirmed by the colleague from the Contracting Authority, it is not contested that there were various models. Due to the nature of the VRF system to be offered, there were in fact various models that had to be offered in the submission, and this was done. The model numbers were clearly specified in the literature, and as confirmed by the Chairperson of the Evaluation Board, they could be corroborated.

It is important to understand that there was no express mandatory requirement for a single model. The technical nature of this system, in fact, could not allow for this. It is unclear how even the preferred

bidder, KBL, could have provided a single model, as a system of this nature does not require just one model. Smart Effects Limited filled the form as it deemed appropriate, as the space in the box was not sufficient for all the model numbers being submitted, which were clearly shown in the literature, and therefore made reference to them. There was no omission in this sense.

In conclusion, all model numbers were disclosed. There were no omissions and no additional information needed to be submitted, as everything that was requested was actually submitted. The compliance was verifiable. There was not a random document number in the literature; the model numbers were present, as requested in the form. There are several judgments from this Board stating that an evaluation must assess the offer as a whole. Smart Effects Limited believes that because its offer was compliant and because it was cheaper, the offer should not have been excluded but should have been evaluated. Therefore, this objection should be upheld.

Final Submissions by Dr Carlos Bugeja (for the Contracting Authority)

Dr Bugeja began by referencing what the witness stated before being stopped by the Chairman, noting that the witness was making a valid point, but that making submissions was his role.

Dr Bugeja stated it was necessary to examine the purpose of the literature and the purpose of the technical questionnaire. The technical questionnaire has a formal function. If there is a deficiency in the technical questionnaire, it leaves the Contracting Authority in no position other than to reject the offer. As the witness correctly stated, one could understand from the literature what was being offered, and this is not denied. It is also not contested that a single model was not requested, as this is a rather extensive project. However, what the Contracting Authority is stating is that the literature does not correct a deficiency in the technical offer. The technical offer must be filled as required, and the literature must support the technical offer. Therefore, under the circumstances, and also following the principle of self-limitation—because there will always be other bidders, and if there is something wrong, questions may arise from other bidders or an appeal to the Director General—the Contracting Authority had no choice but to make the decision it did.

Closing

The Chairman stated that at this stage, the hearing could be concluded. The Board would now consider everything that was heard and stated during the hearing and would communicate its decision in due course. The Chairman thanked all parties present.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 13th February 2026.

Having noted the objection filed by Smart Effects Limited (hereinafter referred to as the Appellant) on 21st January 2026, refers to the claims made by the same Appellant with regard to the tender of reference SPD5/2025/025 listed as case No. 2210 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Elian Scicluna

Appearing for the Contracting Authority: Dr Carlos Bugeja

Whereby, the Appellant contends that:

a) ***Misinterpretation of the Tender Requirements -***

The tender documentation does not contain any requirement-explicit or implicit-that bidders must specify a single model number for the entire VRF system. The technical specifications clearly contemplate a complex and integrated HVAC solution consisting of multiple indoor and outdoor units of different types, capacities, and configurations, serving different areas of the building. Such systems, by their very nature, cannot realistically be represented by a single model number. In its technical submission, the Objector clearly identified the brand of the proposed system as LG. In response to the "model number" field, the Objector accurately indicated "various, see attached specs", reflecting the fact that multiple models would be supplied as part of one integrated VRF solution. This INFORMATION was not omitted, obscured, or left ambiguous. On the contrary, the Objector provided comprehensive technical literature detailing each individual model to be supplied, together with its technical characteristics and compliance with the tender requirements. The Contracting Authority's assertion that the tender required the specification of only one model number is unsupported by the tender documentation and amounts to the introduction of an additional requirement after the submission of tenders.

b) ***Substance of the Technical Offer and Supporting Literature -***

The tender expressly requires the submission of technical literature to corroborate a fully compliant technical offer. The Objector complied fully with this requirement by submitting detailed manufacturer documentation clearly identifying all proposed equipment models and demonstrating full compliance with the technical specifications, capacity requirements, and performance criteria laid down in the tender. The entry "various" in the technical questionnaire cannot reasonably be interpreted in isolation. When read together with the accompanying literature—which formed an integral part of the technical offer—it clearly conveyed that the Objector was proposing a multi-model VRF system fully aligned with the tender's scope. The evaluation committee was therefore

in possession of all information necessary to understand precisely what was being offered and to assess technical compliance. The decision to disregard this information and focus exclusively on the wording used in a single field which specifically indicates where to find the required information constitutes an unjustified elevation of form over substance. Moreover, the Technical Offer Form does not allow adequate space for the indication of multiple model numbers, which are inherently required for a multi-component VRF system, and the Objector therefore acted reasonably and in good faith by referring the evaluation committee to the attached technical specifications where all model numbers were clearly and exhaustively identified.

c) ***Form Over Substance and Proportionality -***

The Public Contracts Review Board has repeatedly held that while contracting authorities are entitled to enforce mandatory requirements, they must do so in a manner that is proportionate and consistent with the purpose of the tender. An overly formalistic interpretation that ignores substantive compliance is contrary to fundamental procurement principles. In PCRB Case 2164(2025), the Board recognised the importance of the Technical Offer Form but emphasised that the purpose of technical evaluation is to determine what is actually being offered and whether it meets the requirements of the tender. The Board cautioned against rejecting tenders where the substance of the offer is clear and compliant, even if certain information is presented in a different-but coherent-manner. In the present case, the Objector did not fail to provide the required information. Rather, it provided more detailed and technically accurate information than would have been conveyed by listing a single model number. The rejection of the Objector's bid on this basis is therefore disproportionate and inconsistent with established PCRB decisions.

d) ***Ability of the Evaluation Committee to Assess Compliance -***

In PCRB Case 2015(2023), the Board held that technical non-compliance arises where the documentation provided is so unclear or incomplete that the evaluation committee cannot properly assess the offer. That situation does not arise in the present case. The Objector's technical submission clearly identified every proposed model and allowed the evaluation committee to verify compliance with the technical specifications. There was no ambiguity, uncertainty, or impossibility of evaluation. The rejection was therefore not justified by any inability to assess the Objector's offer, but solely by an artificially restrictive interpretation of the technical questionnaire.

e) ***Distortion of Competition and Economic Impact -***

The improper exclusion of the Objector's bid had a direct and material effect on the outcome of the procurement procedure. The Objector submitted a fully compliant technical offer at a price of €261,561.52 excluding VAT, which is approximately €78,000 lower than the price of the recommended awardee. By excluding the Objector on such an unjustified technicality, the Contracting Authority deprived itself of the most economically advantageous offer and distorted competition to the detriment of both the Objector and the public interest.

f) ***Breach of Transparency and Equal Treatment -***

The principles of transparency and equal treatment require that tender conditions be applied strictly as published and interpreted in a manner that does not unfairly disadvantage certain bidders. By treating the use of multiple model numbers as non-compliant-despite the absence of any such restriction in the tender-the Contracting Authority effectively introduced a new requirement after the fact. This approach unfairly penalises bidders proposing technically sound, multi-component VRF solutions and favours bidders whose systems can be presented under a single nominal model, irrespective of whether that distinction is relevant to technical compliance.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 29th January 2026 and its verbal submission during the hearing held on 13th February 2026, in that:

- a) The Court Services Agency respectfully submits that the objection is unfounded. The tender dossier provides that the sole award criterion is price, and that the contract is to be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria. Accordingly, price becomes relevant only once the tender is found to satisfy the administrative and technical requirements. The dossier further requires that the Technical Offer is submitted through the prescribed Tender Response Format, and that the Technical Offer shall include the Technical Offer Questionnaire.
- b) The dossier also requires that literature is to be submitted with the technical offer at tendering stage and expressly states that the scope of the literature is to corroborate a fully compliant technical offer. The literature is not an alternative to a fully compliant technical offer. In addition, at tendering stage the contractor is required to submit the system proposal details (including layouts and locations of units, piping layout, and cabling routes), and the tender states that *"the above is to [be] included, by the bidder in the Technical Offer Questionnaire"*.
- c) Against this framework, the Contracting Authority's position is not that a bidder must provide a single model number for an entire VRF system. The issue is that the tenderer must provide the requested technical particulars within the prescribed Technical Offer Questionnaire in a manner that allows the Evaluation Committee to ascertain, objectively and comparably, what is being offered and whether it meets the tender's technical requirements.
- d) The Objector's approach (namely, deferring core particulars to attachments and product literature) does not cure an incomplete or insufficient response in the prescribed Technical Offer Questionnaire. In other words, the literature is supporting material intended to corroborate a technical offer that is already complete and compliant. It is not an alternative to the prescribed technical submission, nor can it be used to cure omissions or ambiguity in the Technical Offer Questionnaire by shifting onto the Evaluation Committee the task of reconstructing what is being offered. This is because the literature is intended to corroborate a technical offer that is already

fully compliant and assessable, not to substitute the tenderer's obligation to complete the required technical fields in the prescribed format.

- e) Moreover, the tender's general rules on clarifications and rectifications state that no rectifications shall be allowed and only clarifications on the submitted information may be requested. In these circumstances, the Evaluation Committee could not lawfully permit post-submission completion of essential technical particulars which ought to have been provided in the Technical Offer Questionnaire at tendering stage.
- f) Finally, the dossier confirms that the tender is not divided into lots; it involves the supply and installation of a single, integrated VRF system; tenders must cover the full scope and quantities; and partial offers will not be accepted. This reinforces the need for clarity and determinacy at tendering stage in what is being offered as an integrated solution.

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.

Grievance (a): Misinterpretation of the Tender Requirements

- The Appellant contends that the tender documentation does not require a single model number for the entire VRF system, and that multiple models are inherently necessary for such complex integrated systems.
- The Board notes that the Contracting Authority's rejection letter was based exclusively on the manner in which the model number box in the Technical Offer Form was completed, and made no reference to any other technical non-compliance.
- Mr Adrian Fenech testified that the tender required several models of air conditioning units, and that writing a single model number would have rendered the technical offer incomplete. The Appellant indicated "*various as per specifications*" in the Technical Offer Form and provided comprehensive model numbers in the accompanying literature.
- The tender documentation contains no explicit requirement for a single model number, nor does it prohibit reference to multiple models where technically necessary.
- Therefore, the Board upholds the Appellant's grievance on this point.

Grievance (b): Substance of the Technical Offer and Supporting Literature

- The Contracting Authority submits that literature is intended to corroborate a technical offer that is already complete and cannot cure deficiencies in the Technical Offer Questionnaire.
- Ms Maria Dolores Vella, Chairperson of the Evaluation Committee, testified under oath that the Evaluation Committee successfully cross-referenced (mapped) all model numbers from the literature and that the expert appointed by the Evaluation Board to assist them was able to map all items according to the literature provided by the Appellant.
- When questioned by Dr Scicluna whether there was any difficulty identifying which models were being referenced, Ms Vella confirmed that the evaluation board completed all cross-referencing and established technical compliance (apart from item 3.5.6, discussed below).
- The Board determines where an Evaluation Committee is able to ascertain without ambiguity (and without needing to make any clarifications, although clarifications are allowed under Note 3) what is being offered and whether it meets the tender's technical requirements, the rejection of the bid is disproportionate and contrary to established procurement principles.
- Therefore, the Board upholds the Appellant's grievance on this point.

Grievance (c): Form Over Substance and Proportionality

- Ms Vella's testimony confirmed technical compliance was verifiable from the documentation submitted, with the expert appointed by the evaluation committee able to map all items according to the literature.
- The Board observes that specification 3.5.6 (galvanised sheath for outdoor unit) was raised by Ms Vella during her testimony as a matter of alleged non-compliance. However, this specification was not referenced in the Contracting Authority's rejection letter as a ground for exclusion. The principle of self-limitation requires that a Contracting Authority may only rely upon grounds that were expressly communicated to the bidder in the award decision. Grounds not cited in the rejection letter cannot be introduced post facto to justify the exclusion. Accordingly, specification 3.5.6 falls outside the scope of the present proceedings and cannot be considered by this Board at this stage.
- Where substantive compliance is demonstrable and the Evaluation Committee encountered no genuine impediment to assessment, the exclusion of a bid is disproportionate.
- Therefore, the Board upholds the Appellant's grievance on this point.

Grievance (d): Ability of the Evaluation Committee to Assess Compliance

- As detailed above, Ms Vella confirmed that cross-referencing was successfully completed and technical specifications were verifiable without difficulty or need for clarification.
- Therefore, the Board upholds the Appellant's grievance on this point.

Grievance (e): Distortion of Competition and Economic Impact

- The Appellant submits that its offer was priced at €261,561.52 excluding VAT, approximately €78,000 lower than the recommended awardee.
- The Board notes that the tender specifies price as the sole award criterion, with the contract to be awarded to the cheapest priced offer satisfying the administrative and technical criteria.
- However, at this stage no financial evaluation has taken place on the Appellant's bid, as the Appellant's bid was excluded during technical compliance assessment.
- The question of comparative pricing and economic advantage can only be determined following a proper technical evaluation establishing compliance.
- Therefore, the Board does not pronounce itself on this grievance at this stage, as it is premature.

Grievance (f): Breach of Transparency and Equal Treatment

- The tender documentation contains no requirement, express or implied, limiting bidders to a single model number.
- The introduction of such a requirement at evaluation stage, where it was not specified in the tender documentation, constitutes a breach of the principle of equal treatment.
- Therefore, the Board upholds the Appellant's grievance on this point.

The Board,

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

- a) Upholds Appellant's Letter of Objection and contentions for all Grievances, except for grievance (e) "Distortion of Competition and Economic Impact" where the Board has not pronounced itself.
- b) Directs a re-evaluation of all bids to be conducted by a newly constituted Evaluation Committee, and orders the reintegration of the Appellant's bid in the re-evaluation process, which re-evaluation shall:
 - Be conducted by an Evaluation Committee composed of members who did not participate in the original evaluation;
 - Consider the Board's findings;
- c) Directs that bidders be requested to extend the validity period of their respective bids, if required, to accommodate the re-evaluation process;
- d) Directs that the deposit of € 2,301 paid by the Appellant be reimbursed in full.

Mr Kenneth Swain
Chairman

Dr Ing. Damien Gatt
Member

Mr Lawrence Ancilleri
Member