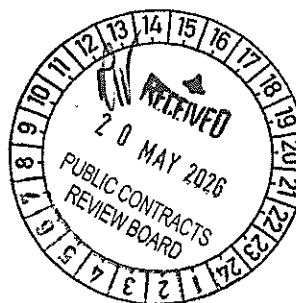


# COSYRA LEGAL

The Brokerage, Level 4, Santa Martha Street, Victoria VCT 2550 Gozo, Malta.

20<sup>th</sup> May 2026

The Chairman  
Public Contracts Review Board  
Notre Dame Ditch  
Floriana  
Malta



**Objection - NLC/04/2025 - Tender for the Cleaning and Clearing of Non-Urban Roads and Sites in Naxxar using Environmentally Friendly Products and Practices**

Dear Chairman,

I write on behalf of the Naxxar Local Council in reply to the objection filed by Carmel Mifsud in respect of the above-captioned tender.

At the outset, the Contracting Authority refers to the reply already filed in connection with the objection submitted by AgriBrands Ltd in respect of the same procurement procedure. The position adopted therein is to be read together with the present reply insofar as both objections concern the same procurement procedure, the same tender conditions, and the same final recommendation for award.

The Contracting Authority maintains that the evaluation process was carried out in good faith, in accordance with the tender dossier, and on the basis of the information and documentation available to the Evaluation Committee at the relevant stages of the procedure.

The present objection is however different in nature from the objection filed by AgriBrands Ltd. The latter objection was directed principally against the recommended bidder, whilst the present objector also seeks to challenge the finding that his own offer was administratively non-compliant.

The objector contends, in substance, that the requirement relating to the Employment Agencies Regulations, namely S.L. 452.130, was incorrectly applied to him since he does not operate an employment agency or employment business but rather provides operational cleaning services directly.

The Contracting Authority respectfully submits that the Evaluation Committee was bound to apply the tender dossier as published. Clause 5(A) of the tender document expressly refers to the Employment Agencies Regulations, S.L. 452.130, and requires the relevant self-declaration in relation to possession of a valid or conditional licence prior to contract signing. The same clause further provides that the signed and dated contract agreement is to be accompanied by a copy of the said licence, and that the Contracting Authority is not to endorse the contract agreement if the licence is not submitted.

It is further submitted that the objector did not challenge the tender condition at the pre-submission stage. The tender dossier therefore constituted the rules of the procurement procedure and was binding on all participating economic operators, including the Contracting Authority itself. The Evaluation Committee could not at evaluation stage disregard or re-write a condition forming part of the tender document.

Insofar as the objector argues that the requirement was inapplicable to his particular business model, the Contracting Authority respectfully submits that this was a matter to be assessed within the framework of the clarification and rectification process. The tender document expressly provides that tenderers may be requested to clarify or rectify incorrect or incomplete documentation, or to submit missing documents, within five working days from notification.



The Contracting Authority understands that the objector replied to the rectification request by giving an explanation as to why, in his view, the licence requirement did not apply to him. However, the Evaluation Committee was not in a position to treat that explanation as a substitute for the documentation requested, unless satisfied that the tender condition was either inapplicable or had been complied with in an equivalent manner. The decision taken must therefore be understood in this procedural context.

Without prejudice to the foregoing, and consistently with the position adopted by the Contracting Authority in respect of the objection filed by AgriBrands Ltd, the Council does not oppose that the matter be remitted to the Evaluation Committee if this Honourable Board considers that further verification is required. However such remission should be limited to the proper reassessment of the administrative compliance of the relevant offers in light of the tender dossier and any directions which this Honourable Board may deem fit to give.

The Contracting Authority objects to the objector's request that his offer be automatically reinstated and that the evaluation process be resumed on that basis without due reassessment by the Evaluation Committee. The Contracting Authority also objects to any remedy which would directly substitute the Board's assessment for that of the Evaluation Committee without first allowing the proper evaluation process to take its course.

For these reasons, the Contracting Authority respectfully requests this Honourable Board to:

1. reject the objection insofar as it alleges that the Contracting Authority acted unlawfully or in breach of the procurement principles;
2. reject the objector's request for an automatic reinstatement of his offer without further evaluation;
3. without prejudice and should this Honourable Board consider that further verification is required, remit the matter to the Evaluation Committee for reconsideration of the



administrative compliance of the relevant offers in accordance with the tender dossier, the applicable procurement rules, and any directions given by the Board;

4. reject any request for the direct award of the tender to any economic operator at this stage; and
5. give such further directions as this Honourable Board may deem appropriate in the circumstances.

The Contracting Authority reserves the right to make further submissions and to produce such documentation as may be required during the hearing of the objection.

Yours faithfully,



Dr. Larry Formosa

