PUBLIC CONTRACTS REVIEW BOARD

Case 2238 – SGLC/T/02/2025 – Tender for the Cleaning, Upkeep and Maintenance of Public Gardens and Soft Areas in San Gwann using Environmentally friendly products and practices

11th May 2026

The Board,

Having noted the letter of objection filed by Dr Mattia Felice on behalf of Callus Garden Centre, (hereinafter referred to as the appellant) filed on the 9th March 2026;

Having also noted the letter of reply filed by Dr Zackariah Esmail acting for and on behalf of San Gwann Local Council (hereinafter referred to as the Contracting Authority) filed on the 20th April 2026;

Having heard and evaluated the testimony of the witness Mr Jonathan Callus (Representative of the Appellant) as summoned by Dr Mattia Felice acting on behalf of the Appellant;

Having heard and evaluated the testimony of the witness Mr Chris Falzon (Chairperson of the Evaluation Committee) as summoned by Dr Zackariah Esmail acting on behalf of the Contracting Authority;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 5th May 2026 hereunder-reproduced.

Minutes

Case 2238 – SGLC/T/02/2025 – Tender for the Cleaning, Upkeep and Maintenance of Public Gardens and Soft Areas in San Gwann using Environmentally Friendly Products and Practices.

The Tender was issued on the 22nd of May 2025, and the closing date was 24th of June 2025.

The estimated value of the tender, excluding VAT, was €90,000

On 9thof March 2026, Callus Garden Centre, lodged an appeal against San Gwann Local Council– the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 5th of May 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Maria Cardona and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €400 was paid.

There were eight bids.

The attendance for this public hearing was as follows:

Appellant – Callus Garden Centre

Dr Mattia Felice – Legal Representative.

Mr Jonathan Callus – Company Representative.

Contracting Authority – San Gwann Local Council

Dr Zack Esmail – Legal Representative.

Dr Kayleigh Borg -- Legal Representative.

Mr Chris Falzon – Chairperson.

Mr Paul Bugeja – Evaluator.

Recommended Bidder – Anthony Xerri.

Dr David Farrugia Sacco– Legal Representative

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2238 in the records of the PCRB. The Chairman identified the Appellant as Callus Garden Centre, the Contracting Authority as the San Gwann Local Council, and representative of the recommended bidder, Anthony Xerri.

The Chairman invited the legal representative for the Appellant to make the initial submissions.

Initial Submissions.

Initial Submissions by Mattia Felice (for the appellant).

Dr Felice stated that they had two grievances. One was that the Contracting Authority relied on a condition that was unclear in the tender document, and the other was that there was no need for a disqualification on a technical point concerning the ownership of a large bowser. The documents presented were clear, and the Contracting Authority was obliged, in any case, to request clarification.

The submissions made by the appellant were sufficient to enable a decision to be reached. The ultimate point was that the Contracting Authority relied on two alleged defects and accepted an offer that was €4,500 higher than that of the appellant.

Initial Submissions by Zack Esmail (for the Contracting Authority).

Dr Esmail had no submissions to make and was ready to hear the witnesses.

Witness:

Mr John Callus ID no. 305783M, summoned by Dr Mattia Felice.

Mr John Callus owned Blooming Garden Ltd., and he was the sole shareholder, while Callus Garden Centre was merely a trade name. He had been in business since 2005 and established the Company in 2021.

Mr Callus had two bowsers and 16 work vehicles, and during the summer peak they used bowsers from C&S Vella. They serviced places such as BOV Adventure Park, Bormla Dock 1, and San Anton School.

During the summer, C&S Vella serviced the north of Malta, while Callus serviced the south.

One of the bowsers was a DAF CF with a capacity of 16 cubic metres, and an ERF, with emission ratings of Euro 5 and Euro 4 respectively. Mr Callus was the registered owner of these bowsers. He also had 16 vans with Euro 6 ratings, and a new bowser that was due to arrive from England. The bowsers belonging to C&S Vella had emission ratings of Euro 6 and Euro 5.

The rejection letter from the Council was sent by email. Mr Callus forwarded the email to his accountant, and they filed an appeal. He recalled that there was a clarification referring to a second note concerning the bowser.

Cross-Examination by Dr Zack Esmail.

Mr Callus had engaged an independent person to handle the submission of tenders. Dr Esmail read out a rectification note sent to Mr Callus:

"During the evaluation, the Evaluation Committee noted the following shortcomings in your submission: the service vehicle logbook is not registered in the name of the economic operator submitting the bid. Please provide documentation clarifying whether Blooming Garden Centre forms part of Callus Garden Centre.

Please provide the minimum exhaust emission rating of the large water bowser, since it is not indicated in the submitted logbook. Please note that you are being given the opportunity to rectify your submission. Failure to reply within five working days may result in your submission being deemed technically non-compliant."

Dr Esmail told the witness that he had stated that the person responsible informed him that they had not received anything. The witness stated that he knew a letter had been submitted concerning a bowser referred to in Note 2. Dr Esmail asked Mr Callus whether he agreed that the Council had given him the opportunity to rectify the submission. Mr Callus stated that he did not know anything about it.

Witness:

Mr Chris Falzon ID no. 37983M, summoned by Dr Zack Esmail.

Mr Chris Falzon was the Chairperson of the Committee. There were three evaluators and a secretary. In the submissions made by Callus Garden Centre, there was a 30,000-litre water bowser registered in the names of other persons, without any declaration from those persons or any logbook documentation confirming that the bowser could be used.

There was only a letter signed by a member of Callus Garden Centre stating that they intended to use this water bowser; however, the declaration itself was unsigned. The bowser to be used was required to be Euro 5, and the request was that all service vehicles be Euro 6. This requirement had been requested by the Local Council.

The Evaluation Committee was satisfied with the explanation provided regarding the connection with Blooming Garden Ltd.

Cross-Examination by Dr Mattia Felice.

Dr Felice told the witness that it appeared as though the bowser to be used was that belonging to C&S Vella, whereas Callus Garden Centre had its own bowsers.

Dr Esmail objected on the basis that these bowsers had not been submitted and did not form part of the tender documents.

The Board clarified that the bowsers submitted in the bid were Euro 5, whereas the tender required Euro 6.

Dr Felice agreed with the witness that the requirements were for a large bowser, a small bowser, and a service vehicle. In the tender, there was a separate heading for the service vehicles and another for the bowsers.

Final Submissions.

Final Submissions by Dr Mattia Felice (for the appellant).

Dr Felice referred to the first grievance, stating that this was a matter concerning the principle of self-limitation. The contract determined the parameters of the acquisition process. He referred to Clause 4.2.10, which stated that the service vehicles should have a carrying capacity of 1.5 tonnes and comply with Euro 6 emission standards.

Clause 4.2.16 requested a small bowser of 1,000 litres and a large bowser of 12,500 litres, without specifying any emission ratings. The Committee stated that the Council required Euro 6; however, this was not expressly stated in the tender. The tender therefore created doubt and ambiguity. Another evaluation should accordingly be carried out.

Regarding ownership, the decision concerned the bowsers. The service vehicle was registered in the name of Mr Jonathan Callus of Blooming Garden Ltd. This Board had issued an identical decision in the case concerning Marsa Local Council. Mr Callus, in his testimony, was honest and stated that he would operate together with another company.

The potential was merely a potential reliance, since he already had his own bowsers. The criteria were price and quality. His client possessed the necessary quality and experience and had submitted the best price.

Final Submissions by Dr Zack Esmail (for the Contracting Authority).

Dr Zack Esmail reviewed Clause 4.2.10 and read:

"The vehicles to be used … shall comply with the emission requirements of Euro 6."

This requirement formed part of the tender conditions, and the Evaluation Committee issued a clarification request to verify the emission ratings. Article 235 of Subsidiary Legislation 601.03 dealt with reliance; however, the Committee had to base its decision on the requirements contained in the offer.

The Council had only one possible decision, namely, to disqualify the appellant's offer, particularly after a clarification request had been issued and remained unanswered.

Replica by Dr Mattia Felice.

Dr Felice noted that Clause 4.2.10 referred to "service vehicle" in the singular and required Euro 6 compliance. In the same category, the bowser was required to have a carrying capacity of 1.5 tonnes. Clause 4.2.16 was specifically dedicated to bowsers.

Replica by Dr Zack Esmail.

Dr Esmail stated that if the appellant had an issue with the drafting of the tender, the appropriate remedy would have been the pre-contractual remedy under Regulation 262. The drafting itself was therefore not in issue.

Conclusion of the Hearing

With no further arguments presented, Chairman Kenneth Swain thanked the parties and formally concluded the session.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 5th May 2026.

Having noted the objection filed by Callus Garden Centre (hereinafter referred to as the Appellant) on 9th March 2026, refers to the claims made by the same Appellant with regards to the tender of reference SGLC/T/02/2025 listed as case No. 2238 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Mattia Felice
Appearing for the Contracting Authority:	Dr Zackariah Esmail

Whereby, the Appellant contends that:

a) ***Grievance 1 -***

The Contracting Authority disqualified my client's offer because according to it, the offer was technically non-compliant since the bidder provided a EURO V large water bowser instead of a

EURO VI as requested by the tender document. As a state of fact, the Tender Document did not specify such a qualification.

In Clause 4.2.16 of the Tender Document, the Contracting Authority only specified that:

"Contractor shall be in possession or provide proof of access of one (1) small water bowser with a capacity of 1,000 litres. Contractor shall be in possession or provide proof of access of one (1) large water bowser with a capacity of 12,500 litres, including the REWS permit".

Nowhere was it specified that the bowsers (both small and large) were to be of a Euro VI classification. Naturally, the Contracting Authority cannot legally disqualify an offer on the basis of a criteria which was not clearly and explicitly presented in the Tender Document.

For the record the only instance where the Tender Document mentions Euro VI standard is in relation to the requirement that "the Economic Operator shall own a service vehicle which shall be used to carry the basic services required" in clause 4.2.10. Here the reference is explicitly related to a vehicle with a carrying capacity of at least 1.5 tonnes, which is clearly a totally different vehicle from a bowser, i.e. a light truck or pick-up. It is clear that the Contracting Authority has extended the specifications applicable to the Service Vehicle to the bowsers, without the Tender Document establishing such qualifications.

In the PCRB decision in Case 1665 - CT 2162/2021-Tender for the Supply of Newborn Screening for CHT and PKU Equipment on Loan (delivered on the 27th December 2021), this Honourable Board held that:

"this Board opines that the Evaluation Committee did not observe the principle of Self Limitation when it deemed the Appellant's offer as technically noncompliant when it adjudged the equipment of the Appellant company on issues not included within the Tender Dossier".

In this regard, the decision is not only incorrect but abusive and illegal and thus definitely subject to review by this Honourable Board.

b) ***Grievance 2 -***

The Contracting Authority declares that it disqualified my client's offer also on the allegation that no declaration was provided by the vehicle owner regarding the use of the large water bowser. First of all, it must be stated that in this regard, the decision is very scant in detail, so much so that it leaves my client in a guessing game as to what problem the Contracting Authority found in relation to the ownership of the large bowser.

As a matter of fact, "Callus Garden Centre" is a trade-name used on the market for over ten years by my client Mr Jonathan Callus (ID 0305783M). It also happens that Mr Callus is the sole shareholder and sole director of Blooming Garden Limited (C-99814), a limited liability company duly constituted under the laws of Malta. As may be confirmed under oath by Mr Callus in the eventual hearing, he is the key physical person behind both the trade-name "Callus Garden Centre" and also Blooming Garden Limited. In the context of a family-run SME, it is understandable that

there is a pooling of resources. In any case, the person registered with the competent authorities as the owner of the bowser is the one and the same Mr Jonathan Callus (ID 0305783M) (Doc C). It is amply clear that this Honourable Board normally adopts a flexible approach when considering formal ownership of requisite equipment. In this case, the large bowser is fully owned. Even if it had a genuine doubt about ownership, the Contracting Authority should have requested a clarification from my client rather than immediately dismissing the offer as technically non-compliant. On this point reference is made to the Department of Contracts Procurement Policy number 40 which sets out an obligation on the part of the Evaluation committee to ensure that ambiguous, contrasting or not sufficiently explicit and clear" documentation presented by a tenderer are clarified and explained. In clear and unambiguous terms, the policy states that, "In the eventuality that it transpires that the submitted information/documentation is or appears to be ambiguous, contrasting or not sufficiently explicit and clear, Contracting Authorities / Entities, in their capacity as Evaluation Committees, shall request the concerned Economic Operators to clarify the necessary information / documentation, within the appropriate Time Limit". Therefore, the duty incumbent on the Contracting Authority to ask for clarification is a must and not merely facultative.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 20th April 2026 and its verbal submission during the hearing held on 5th May 2026, in that:

a) ***Preliminary Observation- Contracting Authority requested a rectification request to the appellant***

The appellant in his objection makes the assertion and allegation on numerous times that the Contracting Authority should have requested a clarification with full in adherence to policy Note 40 referenced and quoted by the appellant. The allegation that no clarification was requested is in incorrect and unfounded. A rectification request, which was indeed sent to the appellant on the 17 of December 2025 reads as follows:

"Dear Economic Operator, During the evaluation, the Evaluation Committee noted the following shortcomings in your submission: 1). The service vehicle logbook is not registered on the Economic Operator submitting the bid. Please provide documentation clarifying if Blooming Garden Limited is part of Callus Garden Centre or otherwise. 2). Please provide the minimum exhaust emission of the large water bowser since it is not present in the logbook submitted. Please note that you are being given the chance to rectify your submission. Failure to reply within five (5) working days may result in your submission as technically noncompliant."

This means that the appellant was given the opportunity by the Contracting Authority to clarify/rectify its position. After an evaluation of the rectification reply, the Evaluation Committee still deemed to appellant to be technically non-compliant, as will be further shown in the replies to the grievances raised by the appellant. In view of the aforesaid, the Contracting Authority will not object to the refund of the deposit paid in case the appellant withdraws the objection.

b) ***Reply to first Grievance- Vehicle Submitted is not technically compliant***

The appellant submits that the evaluation committee was wrong to deem the offer to be technically non-compliant. The water bowser vehicle presented by the appellant was indeed not a EURO VI vehicle as requested in the tender document, as shown by the logbook presented by the appellant. The appellant was given the opportunity to rectify its position and present the logbook of vehicle BCP 071, which vehicle was of EURO V and not EURO VI classification.

Reference is hereby being made to Clause 4.2.10 of the tender document, requiring all service vehicles to fulfil the exhaust emission requirements of EURO 6/VI. The appellant is therefore incorrect to state that the tender document did nt require a EURO 6 vehicle:

"The vehicles to be used in carrying out the service shall at a minimum fulfil the exhaust emission requirements of EURO 6/VI."

The appellant is thus incorrect in its assumption that only the light truck/pick up should possess the EURO 6 classification. All vehicles shall at a minimum possess EURO 6 classification.

Furthermore, the Contracting Authority categorically rejects any allegation that it has breached the principle of self-limitation. in this respect, it is emphasised that the Contracting Authority is strictly bound by the tender conditions which it itself established, in line with the provisions of S.L. 601.03, particularly Regulation 39(1), which enshrines the principles of equal treatment, transparency and non-discrimination between economic operators.

The appellant is effectively requesting that the Contracting Authority accept a vehicle which does not satisfy a mandatory requirement, namely the EURO 6/VI emission standard. Had the Contracting Authority accepted such a vehicle, it would have acted in direct breach of the principle of self-limitation, which obliges contracting authorities to adhere strictly to the criteria and requirements established in the tender documentation. As consistently held in the jurisprudence of the Public Contracts Review Board, once a Contracting Authority sets the rules of a tender, it "cannot depart from the conditions which it has thus defined... without being in breach of the principle of equal treatment." As also established in Case 1937- MEE/1TB/03/2023'

Reference is also made to PCRB Case 1937, wherein the Board clearly held that an evaluation committee cannot ignore non-compliance with tender requirements or allow further rectifications where such action would infringe the tender terms and the principle of self-limitation.

In light of the above, had the Contracting Authority accepted the appellant's non-compliant vehicle, it would have breached not only the doctrine of self-limitation but also the fundamental principles of equal treatment and transparency under S.L. 601.03. Such an action would have been manifestly discriminatory towards the other economic operators who submitted compliant bids in full adherence to the tender requirements.It follows that the exclusion of the appellant on the basis of technical noncompliance was indeed justified. The Contracting Authority had no discretion to waive or disregard a mandatory requirement without acting in breach of not only the tender

document and the general rules governing tenders, but also S.L. 601.03. This grievance is thus sought to be rejected.

c) ***Reply to Second Grievance- Owner Declaration***

The appellant submits that the Contracting Authority was wrong to disqualify the bid in relation to the ownership declaration.

In the rectification request, the Contracting Authority asked the appellant to confirm the ownership of the service vehicle belonging to Blooming Garden Limited. The Contracting Authority also requested confirmation on the emission classification of the large water bowser.

In the rectification reply submitted by the appellant in relation to the large water bowser, the appellant submitted the logbook for vehicle BCP071 alongside a statement stating that: *"Callus Garden Centre is hereby relying on the capacity of Carl & Shan P.Vella (C&S Vella)."*

Whilst the appellant confirmed that the vehicle belonging to Blooming Garden Centre belonged to the same group of companies related to the same commercial undertaking, the appellant declared that he is relying on the capacity of third parties in relation to the large water bowser. The declaration is singed only by the appellant, and there is no confirmation by the vehicle owner, in this case Carl & Shan P.Vella (C&S Vella) that they are providing the full undertaking for the appellant to make use of the vehicle for the tender in question.

Reference is hereby made to Regulation 235(1) of S.L. 601.03, which provides that an economic operator may rely on the capacities of other entities, "regardless of the legal nature of the links which it has with them," provided that it proves to the satisfaction of the Contracting Authority that it will have at its disposal the necessary resources for the performance of the contract. The same provision explicitly requires that such proof be provided, "for example, by producing a commitment by those entities to that effect."

It follows that reliance on third party capacity is not automatic nor presumed, but must be substantiated by clear, objective and verifiable documentation ascertaining that the relied upon entity provides its undertaking and availability.

The appellant manifestly failed to satisfy these requirements. In particular, no commitment, declaration or undertaking was submitted by Carl & Shan P. Vella (C&S Vella) confirming that the vehicle in question would be placed at the disposal of the appellant for the purposes of this tender. The unilateral statement submitted by the appellant does not meet the threshold established under Regulation 235(1).

In the absence of such mandatory proof, the Contracting Authority could not ascertain whether the appellant would in fact have the required resources at its disposal during the execution of the contract. Accepting such a submission would have been contrary to the provisions of S.L. 601.03 and would have undermined the principles of transparency and equal treatment. In view of the aforesaid, the decision of the Evaluation Committee to deem the appellant technically non-compliant on this ground was fully justified, and thus this grievance is ought to be rejected.

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.

a) ***Grievance 1 -***

The starting point must be the wording of the tender dossier itself. The requirement relied upon by the Contracting Authority is found in clause 4.2.10, entitled **"Service Vehicle (including Green Public Procurement)"**, which provides, inter alia, that *"The vehicles to be used in carrying out the service shall at a minimum fulfil the exhaust emission requirements of EURO 6/VI."* That clause, however, is expressly framed under the dedicated heading of the **service vehicle**, in the singular, and must be read in that context rather than in isolation. Properly construed, clause 4.2.10 regulates the service vehicle required for the execution of the contract and cannot be detached from its heading and surrounding text so as to create a general emissions requirement applicable to every other vehicle, machine, or item of plant that may be used in the performance of the service.

By contrast, the bowsers are dealt with separately in clause 4.2.16, entitled **"Watering by Bowser and Water Supply"**, which specifically requires the contractor to be in possession of, or to provide proof of access to, one small water bowser of 1,000 litres and one large water bowser of 12,500 litres, including the relevant REWS permit. Significantly, while this clause is precise as to capacity and permit requirements, it is entirely silent as to any exhaust emission classification. Had the Contracting Authority intended the bowsers to be subject to a EURO 6/VI requirement, it could and should have stated so expressly in that clause, just as it did under clause 4.2.10 in relation to the service vehicle.

In the Board's view, the position adopted by the Contracting Authority cannot be sustained on a proper construction of the tender document. The tender expressly stipulated a EURO 6/VI requirement under the clause dedicated to the service vehicle, yet omitted any such requirement under the separate clause dedicated to the bowsers. That omission cannot be cured at evaluation stage by interpretative reconstruction. The interpretative principle *expressio unius est exclusio alterius* is apposite here: where the drafter has expressly included a requirement in one clause and omitted it in another dealing with a different category of equipment, the omission must be taken to be deliberate, or at the very least operative, and the omitted requirement cannot subsequently be read into the latter clause.

The Board further recalls that contracting authorities are bound by the principle of self-limitation. Once the tender documents have been issued, bids must be assessed strictly by reference to the technical and administrative requirements as actually laid down therein, and not by reference to requirements which, though perhaps intended, were not clearly expressed. To extend the EURO 6/VI requirement from clause 4.2.10 to the bowsers governed by clause 4.2.16 would amount to

the introduction, ex post facto, of an unwritten technical criterion. Such an approach would be inconsistent with the principles of transparency, equal treatment, and legal certainty which underpin the public procurement regime and which require that economic operators be judged only on the basis of conditions that are clear, foreseeable, and expressly communicated in the tender dossier.

The maxim *verba chartarum fortius accipiuntur contra proferentem* is likewise relevant in the present context. To the extent that any ambiguity could be said to arise from the wording or structure of the tender dossier, such ambiguity must be construed against the drafter, namely the Contracting Authority, and not against the economic operator who was entitled to rely in good faith on the wording of the tender as published. An economic operator cannot be penalised for failing to comply with a specification which the Contracting Authority itself did not clearly include in the clause specifically regulating the relevant equipment.

It is not in dispute that the Appellant submitted a service vehicle complying with the EURO 6 emission standard, thereby satisfying the express requirement of clause 4.2.10. It is likewise not disputed that the large bowser relied upon by the Appellant is of EURO V classification. The decisive issue, however, is not whether the bowser met a EURO 6 standard in fact, but whether the tender dossier clearly imposed such a standard on bowsers in law. In light of the separate structuring of clauses 4.2.10 and 4.2.16, the singular and specific heading of the former, and the complete absence of any emissions requirement in the latter, the Board finds that the tender dossier did not clearly and unambiguously require the bowsers to comply with EURO 6/VI.

Accordingly, the disqualification of the Appellant's offer on the basis that the large water bowser was not EURO 6/VI rested on a criterion which cannot be found in the text of clause 4.2.16 and which cannot lawfully be imported into that clause by implication. The Evaluation Committee and the Contracting Authority therefore went beyond the terms of the tender when they treated the EURO 6/VI requirement as extending to the bowsers. The resulting finding of technical non-compliance on this ground cannot be upheld.

The Appellant's first grievance is therefore upheld.

b) ***Grievance 2 -***

As to the second grievance, the Board notes that clause 4.2.16 of the tender document requires the contractor to be in possession of, or to provide proof of access to, two distinct bowsers, namely one small water bowser of 1,000 litres and one large water bowser of 12,500 litres, together with the relevant REWS permit. From the acts it results that the small bowser is owned by Blooming Garden Limited, and during the hearing it was confirmed that Blooming Garden Limited is owned by Mr Jonathan Callus, who operates under the trade name Callus Garden Centre. As regards the large bowser, the Contracting Authority objected to the Appellant's reliance on C&S Vella on the basis that no separate formal undertaking from that entity was produced.

The Board considers that the concern raised by the Contracting Authority in relation to the large bowser is not one that may be dismissed as wholly unfounded. At the same time, however, the Board does not consider that, in the particular circumstances of this case, the issue identified under this grievance should be treated as a defect of such gravity as to justify, by itself and definitively, the maintenance of the Appellant's exclusion from the procedure. This conclusion is reached particularly in light of the Board's finding on the first grievance, by virtue of which the principal ground upon which the Appellant's bid was declared technically non-compliant cannot be sustained.

In the Board's view, once the matter is to be remitted for re-evaluation, the more appropriate and proportionate course is for the issue relating to the large bowser and the alleged reliance on C&S Vella to be addressed by means of a clarification request issued by a newly composed Evaluation Committee. Such clarification would not entail the introduction of a new bid, nor the impermissible rectification of an essential element of the offer, but rather the proper verification of whether the Appellant had at its disposal, at the relevant time, the resource already referred to in its submission. In this respect, the Board considers that the question is one of evidentiary confirmation and should be assessed afresh, objectively and independently, by a newly appointed committee.

Accordingly, the Board refrains from holding that the Appellant has conclusively discharged this aspect of the tender at this stage. Equally, however, the Board is not persuaded that grievance 2 discloses a fatal flaw such as would justify the continued exclusion of the Appellant once grievance 1 has been upheld and the tender process is to be reopened for fresh technical consideration. The proper course is therefore that, upon re-evaluation, the newly composed Evaluation Committee shall address this matter by requesting the necessary clarification and shall thereafter proceed according to law, in light of the clarifications obtained and the requirements of the tender dossier.

The Board,

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

a) To uphold the Appellant's first grievance;
b) To partially uphold the Appellant's second grievance;
c) To cancel the 'Notice of Award' letter dated 26th February14th 2026;
d) To cancel the Letters of Rejection dated 26th February14th 2026 sent to Callus Garden Centre;
e) To order the contracting authority to re-evaluate the bid received from Callus Garden Centre in the tender through a newly constituted Evaluation Committee composed of members which were not involved in the original Evaluation Committee, whilst also taking into consideration this Board's findings;
f) after taking all due consideration of the circumstances and outcome of this Letter of Objection, directs that the deposit be refunded to the Appellant.

Mr Kenneth Swain	**Dr Maria Cardona**	**Mr Lawrence Ancilleri**
Chairman	**Member**	**Member**