PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number	**2176/1**
Tender Reference Number	**TWO 3/2025**
Tender Name	**"Tender for the Construction Works of a New Housing Block using Environmental Performance Standards at Triq l-Imdina, c/w Triq San Pietru c/w Triq Karwija Kirkop (KKP_E)"**

The Public Contracts Review Board (hereinafter the 'Board' or the 'PCRB') convened a public hearing on the 2nd June, 2026 to hear the appeal as filed by the appellant JGS Contractors Ltd (hereinafter the 'Appellant') on the 6th October, 2025, and after taking cognisance of:

The tender document for the 'Tender for the Construction Works of a New Housing Block using Environmental Performance Standards at Triq l-Imdina, c/w Triq San Pietru c/w Triq Karwija Kirkop (KKP_E)' (hereinafter referred to as the "Tender Document");

The minutes of the proceedings dated 2nd June 2026 which are being reproduced hereunder:

*"**Case 2176 – 607 – TWO 3/2025 – Tender for the Construction Works of a New Housing Block using Environmental Performance Standards at Triq l-Imdina, c/w Triq San Pietru c/w Triq Karwija Kirkop (KKP_E).***

The Tender was issued on the 17th March 2025, and the closing date was 28th April 2025.

The estimated value of the tender, excluding VAT, was €3,714,151.04

On 6th October 2025, JGS Contractors Ltd., lodged an appeal against Housing Authority – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 2nd June 2026, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Maria Cardona and Mr Keith Victor Grech as members, convened a public hearing to consider the appeal.

A deposit of €18,570.75 was paid.

There were Eight bids.

The attendance for this public hearing was as follows:

Appellant – JGS Contractors Ltd

Dr Matthew Paris – Legal Representative
Mr Justin Sammut – Company Representative
Ms Alexia Sammut – Company Representative

Contracting Authority – Housing Authority

Dr Mattia Felice – Legal Representative
Mr Christian Avellino – Chairperson
Ms Rita Galea – Evaluator
Mr Simon Brincat – Evaluator
Ms Diane Aquilina – Evaluator
Ms Nadine Delia -- Senior Manager – Procurement Section
Ms Leeann Xuereb -- Supervisor – Procurement Section

Recommended Bidder – Green Building Solutions Ltd

Dr Beryl Buttigieg – Legal representative

Opening Statements

The Chairperson welcomed the parties present and formally opened Case Number 2176 in the records of the PCRB. The Chairperson identified the Appellant as JGS Contractors Ltd. the Contracting Authority as Housing Authority and acknowledged the presence of the representative of the Recommended Bidder – Green Building Solutions Ltd.

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

Initial Submissions

Dr Matthew Paris for the appellant JGS noted that this appeal had been heard and taken to the Superior Court and was subsequently referred back to the PCRB. He stated that there was only one point to be decided and asked whether the Board requested that all the evidence be heard again or whether it would rely on the acts already on record and treat them as such.

Dr Mattia Felice for the Contracting Authority suggested relying on the available acts.

The Board assured the parties that they had the transcripts.

Dr Felice noted that there were two points to be decided: whether the content of technical offer 225937 by JGS was technically identical, and whether the actions of JGS amounted to improper practice.

The Board minuted:

"Il-Partijiet jiddikjaraw illi, ser jistrieħu fuq il-provi ġja kompilati, quddiem dan il-Bord kif diversament presedut, u qegħdin jagħtu l-eżenzjoni tagħhom, sabiex

dan il-Bord ma jerġax jisma x-xhieda kif mismuha. Allura jifdal din il-kwistjoni u r-rettifika. Il-partijiet jiddikjaraw li wara s-sentenza tal-appell datata 26 ta Marzu 2026, m'ghandhomx provi xi jressqu fuq dak indikat f'paragrafu 38 tas-sentenza suċitat u għaldaqstant jaqblu li ser jittrattaw dawn il-punti oralment fis-seduta tal-lum".

Submissions:

Dr Matthew Paris (for the Appellant)

Dr Paris stated that both the PCRB and the Superior Court concluded that the exclusion of JGS was due to improper practice. The Law and PPR 601.03 do not refer to the concept of improper practice.

There is only a reference to irregular tenders, conflicts of interest, and collusion. The term improper practice is implied but not defined, and Dr Paris awaited a definition from the Board. The Evaluation Committee concluded that the appellant had engaged in improper practice.

In Clause 3.1 of the General Rules Governing Tenders, one finds a list of what one can and cannot do. Clause 3.4 states what can happen when there is a subcontractor.

The recommended bidder, Green Building Solutions, is practically identical to another company, Rock Cut, which is a subcontractor of the appellant. The appellant had an issue with the ESPD.

Neither Green Building Solutions nor Rock Cut were both subcontractors and bidders. However, Rock Cut, which is identical to Green Building Solutions, is both a bidder and a subcontractor. The Evaluation Committee and the Director of Contracts did not qualify this as improper practice because they restricted themselves solely to the language of the provisions. Green Building Solutions acted in one way with Rock Cut but acted differently with JGS.

In Clause 16.1 of the General Rules Governing Tenders, exclusion because there was no response is not contemplated.

The action taken against the appellant was improper, unsupported, and contrary to the principle of self-limitation. Referring to the South Lease judgment, he stated that one could not look only at what one thinks is written but must also consider the ancillary documents. The Committee should not have excluded the three offers but only the two offers for which no response was submitted.

Referring to Article 62(2) of the PPR, he stated that it was clear that the entire offer was subject to change during the evaluation process, except for Note 3. In *the case of JGS, two offers were disqualified because of the ESPD of Rock Cut and certain information relating to turnover. Yet the third offer was compliant. The conclusion that the three offers were identical was incorrect. The submission deadline applied to all documents falling under Note 3, anything beyond that could be adjusted by the bidder.*

In this particular case, one could not have a mixture of both situations; either the offers were all compliant or they were not. In reality, were all the offers identical?

He quoted Clause 3.1:

"Bidders may submit up to three multiple bids which should all be non-identical technically and financially".

The wording "technically and financially" is cumulative. The prices were all different. The offer is not made up solely of the technical offer form; it also includes the key experts and the literature. In the submission of the technical questionnaire regarding the reinforcement of concrete, three entities are indicated with a slash in between, meaning and/or. It was obvious that every tender had one entity. Had they been given the opportunity to clarify, they would have explained this more clearly.

This is the first case in which the conduct has been interpreted as improper practice. The concept to be deduced is indicated in a particular judgment, and no definition was found. Clarification was not sought. This is the concept of "indicia".

Dr Paris referred to an ECJ judgment concerning "ambiguous evidence" and the right to decide. This was the decision in Lloyd's C-114/17, which states:

"The principles of transparency, equal treatment and non-discrimination allow their exclusion if it appears, on the basis of unambiguous evidence, that their tenders were not drawn up independently".

The other decision concerns "indicia" and provides an opportunity for rebuttal, which is the concept underlying clarification.

The Board noted that bids 36 and 38 received no response to the rectification request, while bid 37 received an answer but no clarification.

Dr Paris concluded that the appellant was not demanding to win the tender, but that the Evaluation Committee's forma mentis had been clouded by the belief that JGS had engaged in improper practice. Consequently, the appellant was excluded without proper justification. They requested that the case be re-evaluated.

Submissions:

Dr Mattia Felice (for the Contracting Authority)

Dr Felice stated that this was the first time he had heard the appellant mention a problem regarding the allegation of improper practice, namely that Rock Cut Ltd. was their subcontractor and that Green Building Solutions was a bidder in its own right in this process.

This was never mentioned in the grievance. The concept of improper practice exists to safeguard the public procurement process from abuse. The cardinal principle is that Public Authorities must choose the best product at the best value for money. One cannot risk missing the woods for the trees.

The appeal from the Court is full of legal sophisms with no substance and appears to miss the elephant in the room, namely the improper conduct. The judgment was not clouded but rather simple and clear. He quoted from a document issued by OLAF, a European body concerned with fraud.

This document lists various red flags in cases where, for example, a bidder shows little interest in one of its bids or submits what is effectively a symbolic bid. This is what JGS did when; after seeing the prices of the bidders, it failed to respond regarding the first offer because its own price was higher and conveniently failed to respond regarding the second offer because its price was much lower.

The appellant chose the best of both worlds when it selected the bid that was slightly cheaper than the offer submitted by Green Building Solutions. The appellant stated that it did not respond "for its own reasons".

Dr Felice referred to Article 993 of the Civil Code, which states that pre-contractual dealings should be conducted in good faith. This was absent in the present case. He referred to the case of Anthony Baldacchino vs The Chairman of Enemalta, decided on 11 October 2006.

"Innegabilment, il-metru ta' dik il-bona fide li jippreciza l-Artikolu 993 tal-Kodici Civili, u li bih jitkejjel l-ezekuzzjoni tal-kuntratti in generali, ghandu jkollu, b' adozzjoni, post xieraq anke fl-istajdi anterjuri ghall-konkluzjoni tal-kuntratt. Hekk bil-metru ta' dan l-istess principju l-parti li tghid li ssubiet dannu tista' ggib 'il quddiem prova ta' mgieba soggettiva ta' malafede fil-kontroparti jew anke prova ta' kondotta merament kolpuza fejn dik il-kontroparti tkun, bla motiv gust, naqset b' tali mod li twassal biex teludi laspettattivi ta' l-offerent fejn dan ikun ippresta fidi, bl offerta tieghu, fuq il-konkluzjoni tal-kuntratt".

Article 993 applies to Public Procurement.

The judgment was not clouded but recognised that there was a game being played. The three bids were identical except for the price. The fact that two bids were withdrawn because the appellant did not respond to the rectification request does not mean that they were not identical bids. The rules of the game required the bidder to take responsibility for all three offers.

If the Board were to adopt the approach taken by the appellant, it would become a lesson in how to operate at the fringes of the rules rather than how to comply with them. The Board's role is to safeguard compliance with the law.

The Board must consider the ultimate benefit to the Contracting Authority arising from the three bids. Good faith requires Price A for Product A, Price B for Product B, and so on. However, in this case, the same product was offered at different prices. Where were the clouding judgement of the Committee and the potentiality of the improper practice? The Public Procurement Regulations scope was to have transparency, justice and the best value for money.

Submissions:

Dr Beryl Buttigieg (for the Preferred Bidder)

Dr Buttigieg invited the Board to refer to page 14 of the transcripts. The Court of Appeal had referred the acts back for a determination of whether the offers were identical. JGS did not deny that the offers were the same. Rather, JGS argued that such conduct was permissible by law.

A rectification was requested for all three offers, but JGS chose to ignore two of them and responded to only one rectification request.

The Board clarified that the rectification related to the ESPD and turnover requirements. Bids 36 and 38 received no response and therefore became administratively non-compliant. Only bid 37 remained under consideration.

Dr Buttigieg argued that the request for rectification itself was a clear indication that the bids were identical. Information available from the MBR demonstrates that Green Building Solutions and Rock Cut are separate companies.

The appellants are arguing that they were not given an opportunity to clarify their position, while at the same time Rock Cut was never present and was never summoned during the proceedings. Rock Cut could neither confirm nor deny the submissions now being made.

The Board noted that subcontractors were never called during appeal proceedings.

Replica by Dr Matthew Paris

Dr Paris noted that he was not introducing a new grievance. He referred to the circumstances solely to explain the interpretation of improper practice to the Board. It appears that the concept of improper practice was being applied for the first time in these circumstances.

Since certain circumstances could be inferred as indicating improper practice, the authorities were obliged to seek clarification. He referred to paragraph 37 of Case C-531/16 and quoted:

"As concerns the standard of proof required in order to determine that a tender is neither autonomous nor independent, the principle of effectiveness requires that a breach of the EU rules governing public procurement may be proved not only by direct evidence, but also through indicia, provided that they are objective and consistent and that the related tenderers are in a position to submit evidence in rebuttal".

There had to be an opportunity to submit a rebuttal.

Replica by Dr Mattia Felice

Dr Felice stated that the circumstances of the present case were completely different, since this was not a case of collusion between two separate companies but rather concerned the manner in which bids submitted by the same bidder were administered. The appellant appeared to be attacking the procedure. The appeal contained extensive legal argumentation but little discussion of the merits.

The case could perhaps have been evaluated differently; however, the judgment was not clouded. The OLAF document cited earlier identified the conduct adopted in this case as a red flag.

Landmark judgments explore new legal territory. This case, he suggested, could become a landmark decision concerning improper practice.

Conclusion of the Hearing

The Chairperson, Dr Ana Thomas, thanked all parties present and formally concluded the hearing. The Board would communicate its decision in due course."

The written pleadings as filed by JGS Contractors Ltd on the 6th October 2025, together with proof of payment of a deposit in the amount of €18,570.75, wherein it held as follows:

"REASONED LETTER OF OBJECTION

Whereas, the Housing Authority (hereinafter "HA") issued a call for tenders for the supply of 'Tender for the Construction Works of a New Housing Block using environmental performance standards at Triq l-Imdina, c/w Triq San Pietru c/w Triq Karwija Kirkop (KKP-E)"

Whereas, Messrs, JGS Contractors Limited (hereinafter "JGS" and/or 'the appellant company") submitted a bid for this procedure;

Whereas, by means of a letter dated 24th September 2025 , the Appellant company was informed that that its offer was being rejected:

"Thank you for participating in the above-mentioned procurement procedure. However, the Housing Authority regrets to inform you that the procurement proposal submitted by your company was not technically compliant. (hereinafter "first reason for rejection")

...

Bidders may submit up to three (3) multiple bids which should be non- identical (technically and financially) for a tender. The EO is disqualified based on this clause, since the three (3) offers submitted are technical identical. (hereinafter "second reason for rejection")

...

Moreover, the EO deliberately did not reply to cheapest Bid, the EC deemed that bidder must be disqualified due to improper practice." (hereinafter "third reason for rejection")

Whereas, the Appellant company feels aggrieved by such a decision, and is hereby submitting its objection within the stipulated time-frame and accompanied with the relative payment (copy of confirmation of payment enclosed as DOC1), in accordance with Inter alia article 270 of Subsidiary Legislation 601.03 (hereinafter the PPR), and this based on the following grievances:

1. Wrong evaluation - Appellant's Bid is technically compliant ("first reason for rejection")

1.1 The rejection letter dated 24" September 2025, alleges that the offer TID 225937 is "not technically compliant", however an in breach of reg. 242 and 272 of S.L. 601.03, it fails to explain why such an offer is technically noncompliant.

1.2 The Appellant submits that its offer is technically compliant, and that the allegation by the Contracting Authority is erroneous and should be quashed by this Honourable Board.

1.3 In any case, and without prejudice to the aforesaid, the appellant company is hereby reserving its rights to the fullest extent possible to request authorisation to submit an additional grievance, once (and if) the Contracting Authority substantiates its position that the offer by the Economic Operator qua appellant is "technically non-compliant".

1.4 Thus and thereby, the appellant company submit that, the first reason for exclusion by the Contracting Authority is mistaken and thereby should be revoked.

2. Wrong evaluation - Evaluation committee acted in breach of the General Rules Governing Tenders ("second reason for rejection")

2.1 The second reason for exclusion refers to the fact that the Tender Evaluation Committee (hereinafter 'TEC'), determined that the three (3) offers by the appellant company were *"administratively and technically identical". In fact, the letter of exclusion, signed by the "Evaluation Committee", inter alia stated that,*

"By the deadline bidder submitted the requested documentation, but when evaluated by the EC noted that three (3) bids Tender ID 225936, 225937 and 225938 submitted were administratively and technically identical."

2.2 *It is the position of the appellant company that, by making such a declaration, the TEC acted in breach of the General Rules Governing Tenders (hereinafter 'GRGT'), since such governing rules make it abundantly and unambiguously clear that, any tender that is deemed as "administratively non-complaint" should be rejected and not considered any further by the TEC. In fact, provision 16.3 of the GRGT stipulate that:*

"Submissions which have qualified under Part 2 shall have their technical offer evaluated to ensure compliance with Clause 5(C) of the Instructions to Tenderers."

2.3 *It has been confirmed that, bids with Tender 1D 225936 and 225938, have been excluded for "administrative non-compliance", at which point in time their technical offer was rendered redundant and an "unacceptable tender" in accordance with reg. 2 of the S.L. 601.03, thus they could have never been evaluated by the evaluation committee - this renders the actions of the TEC as being in breach of the GRGT.*

2.4 *An unacceptable tender renders an offer void ex tunc - and thereby as the Latin maxim dictates Quod nullem est, nullum producit effectumt!*

2.5 *Without prejudice to the fact that, the appeliant company disagrees with the statement, the evaluation process is compromised as the TEC acted in breach of the parameters upon which the Contracting Authority had itself imposed through the tender procedure, thereby breaching the principle of self- limitation.*

2.6 *Indeed, in PCRB Case No. 1665 of 2021, decided on 27th December 2021, this Honourable Board expressly 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 non-compliant when it adjudged the equipment of the Appellant company on issues not included within the Tender Dossier."

2.7 *It was thereby affirmed that if an appeal were to be upheld on grounds net expressly stipulated in the tender dossier, this would itself infringe the principle of self-limitation as well as the broader procurement principles. In view of the aforesaid, the appellant company submits that this second reason for rejection must likewise be revoked by this Honourable Board.*

3. *Wrong evaluation - No improper practice ("third reason for rejection")*

3.1 *The letter of exclusion makes vague reference to "improper conduct/behaviour" without providing any substantiated reason or justification. Such an allegation, made without the slightest factual basis, is procedurally unacceptable and legally unsound.*

3.2 The appellant company categorically and unequivocally denies any allegation of improper conduct. At all stages of the procurement process, the Appellant has acted with integrity, in full compliance with the tender requirements and in accordance with the law. The allegation is not only unfounded but also highly prejudicial, given its potential reputational harm. The appellant hereby reserves all rights at law at their disposal in relation to such allegation.

3.3 For all intents and purposes, the allegation made by the TEC that "the EO deliberately did not reply to cheapest Bid ... " is rejected as unfounded, and the appellant company expects to Contracting Authority to either withdraw this allegation or to substantiate it — In public procurement there is no room for conjunctures, suppositions or any other guesses, in particular when these are not substantiated by hard proof evidence — Thereby the appellant company submits that the TEC acted in breach of the Public Procurement Regulations, in particular reg, 39.

3.4 In view of the aforesaid, the appellant company submits that this third reason for rejection must likewise be revoked by this Honourable Board.

4. Breach of the Principle of Proportionality

4.1 Without any admission of non-compliance nor that the any actions by the appellant constitute improper conduct, the principle of proportionality has always been interpreted as a principle which cannot create an imbalance between the rights of the entity invoking it and the rights of third parties — The principle which seeks to create a balance between competing interests.

4.2 The principle of proportionality was inter alia invoked by the Court of Appeal, in the case Firetech Limited (C17901) u Cross Zlin AS (60715886) flimkien maghrufa u msejha bhala Firetech Cross TLS Joint Venture v. Dipartiment tal-Kuntratti, wherein it held that not all breaches of the tender specifications should lead to exclusion, in fact it held that:

"Ghalkemm huwa minnu illi, biex tithares it-trasparenza u ma jkunx hemm diskriminazzjoni, ir-regoli ghandhom jitharsu b'mod uniformi u prevedibbli, u s-soggettivitd u d-diskrezzjonalita jitnaggsu kemm jista' jkun, madankollu lprincipju ta' proporzjonalita jrid i mhux kull nuqqas ikollu Hstess konsegwenzq, izda din ghandha tiddependi millgravita tan-nugqas u mill-konsegwenzi tieghu, partikolarment jekk jaghtix vantagg fil min jongos jew johlogx pregudizzju lil oblaturi ohra"

4.3 The same has been confirmed in the case in the names of Cassar Petroleum Services Limited vc Gozo Channel Limited u d0Direttur tal-Kuntratti wherein it was held that:

"Ghalkemm din is-silta dwar legislazzjoni tghodd ukoll ghal mizuri ta implimentazzjoni u decizjonijiet mehudha tahtom. Din il-Qorti ghalhekk taghraf illi ghandha qabel xejn tara x'inhu l-ghan ewlieni tas-sejha ghal-offerti ghax ma dan ghandha tkejjel il-proporjonalita tal-mizuri meduha biex jinkiseb. Fil-kaz tal-lum l-ghan ewlieni kien illi Gozo Channel tixtri n-nafta bl-orhos prezz.

Ma' humiex sejrin jinkisru I-principji tat-trattament ugwalli, l-principju ta' gharfien reciproku u principju tat-trasparenza jeklk, bla ma jinbidlu I-kundizzjonijiet tal-offerta *nfisha, jinghata zmien biex jingieb id-dokument illf, forsi bi zvista ma tqeghidx mad-dokumenti tal-offerta, wagt li certament ma jkunx gieghed jithares il-principju talproporzjonalita jekk offerta vantaggjuza tigi mwarba ghax ma' ngibx dokument Ii ghad jista jingieb"*

4.4 *Thus and thereby, the Appellants, based on the principle of Proportioanlity and without prejudice to any other grievance herein defined, the Appellant is resepectfully asking this Honourable Board to determine that the decision of the defendants, or whosoever, is not proportionate and thus in breach of inter alia reg.39(1) of S.L. 601.03*

NOWTHEREFORE, whilst reserving the right to put forward any other submissions, JGS hereby requests the PCRB

i. *To order the defendants or whosever, to cancel the rejection letter/recommendation for award dated 24th September 2025;*
ii. *To order the defendants, or whosoever, to re-instate the appellant company, and through a newly composed evaluation committee re-evaluate the tenders;*
iii. *To refund the deposit paid in its entirety;*
iv. *To do anything else which is conducive and necessary for the proper execution of the above requests;*

JGS is hereby reserving the right to present further evidence, both orally or in writing, during the hearing."

The written reply as filed by Green Building Solutions Limited on the 12th October, 2025 (hereinafter the 'Preferred Bidder') wherein it held as follows:

"Below is the Green Building Solutions Limited ("GBS") reply to the letter of objection dated the 6th of October 2025 filed by JGS Contractors Limited ("JGS").

GBS strongly believes that the grounds of objections raised by JGS are unfounded and are not based on sufficient nor reasonable justifications that can safely and comfortably steer the Public Contracts Review Board ("PCRB") to change, alter or modify the decision of the contracting authority ("CA").

The objector's grounds of objection and the underlying justifications are being contested as explained hereunder

1. *Preliminary Observations*

1.1. *The Appellant's letter of objection rests primarily on assertions of alleged procedural irregularities and unsubstantiated claims that the Evaluation Committee ("TEC") misapplied the Public Procurement Regulations (SL 601.03). These allegations are unfounded in fact and at law.*

1.2. *The decision to disqualify the Appellant was reasoned, consistent with the tender dossier, and grounded in the principles of transparency, equal treatment, and proportionality as enshrined in Regulation 39(1) of S.L. 601.03.*

1.3. *Each ground of exclusion was justified on objective criteria and documented during the evaluation process. The Appellant's submissions were technically non-conforming and procedurally defective.*

1.4. *It is further noted that the Appellant's offer was not only technically non-compliant but also vitiated by conduct contrary to the ethical and procedural integrity expected in public procurement procedures.*

2. *On the First Reason for Rejection: Technical Non-Compliance*

2.1 *The Appellant asserts that its offer was technically complaint. However, TEC's assasment identified material deficiencies and inconsistencies in relation to the mandatory technical specifications outlined in the tender dossier.*

2.2 *The CA is required to exclude any bid which does not comply with the conditions, specifications, or requirements set out in the procurement documents. The Appellant's submission failed to meet essential technical requirements and was therefore correctly excluded.*

2.3 *The burden of proving compliance lies entirely with the bidder. The contracting authority is under no obligation to re-interpret or amend tender requirements to accommodate deficiencies or shortcomings.*

2.4 *Regulation 272, read with Regulation 242, requires that tenderers be informed of the reasons for rejection, supported by reference to the evaluation record. The rejection letter duly fulfilled this obligation by summarising the grounds of technical noncompliance as established by TEC.*

2.5 *The assertion that the rejection letter lacked detail does not vitiate the validity of the exclusion.*

2.6 *The Public Contracts Review Board has consistently held that material non-compliance cannot be rectified or clarified post-submission. TEC's decision on this first ground was therefore fully justified and lawful.*

3. *On the Second Reason for Rejection: Submission of Technically Identical Bids*

3.1 *The tender expressly permitted up to three (3) non-identical bids; both technically and financially. This flexibility was intended to allow bidders to propose innovative or alternative solutions, not to replicate identical offers.*

3.2 *The Appellant submitted three offers (Tender IDs 225936, 225937, 225938) which, upon examination, were administratively and technically identical. This contravenes the express stipulation in the tender dossier and constitutes a clear breach of the tender's submission conditions.*

3.3 *The Appellant's assertion that two of its bids were already excluded and should not have been evaluated further misunderstands the evaluation process. TEC's reference to the* *"identical" nature of all three bids is an evaluative observation confirming that the Appellant failed to comply with the non-identicality requirement across its submissions. This is not a breach of procedure, but a factual finding.*

3.4 *The purpose of the non-identicality clause is to prevent manipulation of the tender mechanism by flooding the evaluation with substantially identical offers. The Appellant's conduct defeats that purpose and undermines the level playing field principle in Regulation 39(1) of SL 601.03.*

3.5 *TEC was therefore also correct to disqualify all three bids. The principle of selflimitation invoked by the Appellant is inapplicable here, since the exclusion arises directly from the tender documents themselves.*

4. *On the Third Reason for Rejection: Improper Practice*

4.1 *The reference to "improper practice" was made in the context of the Appellant's failure to respond transparently during clarification requests regarding the cheapest bid.*

4.2 *The Contracting Authority is empowered to seek clarifications from bidders, and obliges bidders to reply fully and accurately within the prescribed time. Any deliberate failure to respond constitutes improper conduct and can also serve to distort competition.*

4.3 *TEC's conclusion was therefore not arbitrary but derived from the Appellant's own omission, which compromised the integrity of the evaluation process.*

4.4 *The Appellant's argument that the allegation was "vague" is also unmerited. It is evidently clear that the disqualification stemmed from a procedural failure which, in a competitive procurement context, amounts to an act of non-cooperation prejudicial to transparency and equal treatment.*

4.5 *This ground of exclusion was therefore properly applied by TEC.*

5. *On the Principle of Proportionality*

5.1 *The Appellant's invocation of proportionality mischaracterises the doctrine. Proportionality does not require a Contracting Authority to overlook breaches of mandatory requirements, especially where such breaches undermine the fairness or integrity of the procurement process.*

5.2 *The present case does not involve minor administrative irregularities that do not affect the substance of the offer but involves fundamental breaches including identical bids, technical non-conformity, and lack of cooperation all of which are necessary for compliance.*

5.3 *Proportionality does not and should never extend to condoning material irregularities that prejudice other bidders or distort competition. Upholding the Appellant's exclusion is therefore the proportionate and legally correct decision.*

6. *Conclusion*

6.1 The Appellant's submissions fail to demonstrate any procedural or substantive error in the decision of the CA or TEC.

6.2 The exclusion was based on clear and objective grounds fully consistent with the tender dossier and the applicable procurement regulations.

6.3 The Appellant's disqualification should therefore be confirmed, and the letter of objection dismissed in its entirety.

In view of the above GBS, whilst reserving the right to call up witnesses and make oral submissions during the scheduled Public Contract Review Board hearing, calls on the Board to dismiss and reject JGS's ground of objection and reaffirm the contracting authority's decision."

The written reply as filed by the Housing Authority on the 15th October, 2025 (hereinafter the 'Contracting Authority') wherein it held as follows:

"Reasoned Letter of Reply filed by the Housing Authority

The Housing Authority ("HA") categorically refutes all allegations raised by JGS Contractors Limited ("•JGS") as entirely unfounded and devoid of merit.

The HA issued a call for tenders for the supply of Tender for the Construction Works of a New Housing Block using environmental performance standards at Triq I-Imdina, c/w Triq San Pietru c/w Triq Karwija Kirkop (KKP-E).

JGS Contractors Limited (JGS) submitted three offers bearing Tender ID numbers 225936, 225937, 225938 which ranked first, second and fourth respectively. JGS was aware of such rankings.

The HA requested administrative requests for clarifications from JGS in relation to all three offers.

Conveniently, JGS replied only with respect to the offer which placed second, while failing to respond to the correspondence conceming the offers placing first and fourth.

Pursuant to General Conditions, Clause 3. l, the HA was obliged to reject such offers given that all three offers submitted were identical from a technical point of view and thus rendered the offers administratively and technically non-compliant in accordance with Clause 3.1 of the General Conditions.

<u>First Grievance</u>

The HA submits that the Evaluation Committee never evaluated the tender offer submitted by JGS under TID 225937. The words "was not technically compliant" appearing in the first paragraph of the Icttcr dated 24th September 2025 are clearly a typographical error.

Indeed, the same letter continues to elaborate on the reasons for non-compliance as follows:

'-The main reasons why your procurement proposal was non-compliant are as follows: The following requestfor rectification was deemed necessary. EO was requested to;

1. Provide details concerning the sub-contractor/s and submit an ESPD for the subcontractor/s, since in the submitted ESPD, your company mentioned 1 % (Rockcut Ltd) subcontracting as requesting in Section 1 — Instructions to Tenderers — Clause 5(B)(c)(2); and

2. Provide attesting that the minimum average yearly turnover during the past three (3) years, being 2022-2024 is not less than €500,000 per year, as requested in Section I-Instruction to Tenderers- Clause 5(B)(b), since this was missing from your submission.

By the deadline, bidder submitted the requested documentation, but when evaluated by the EC noted that three (3) bids Tender ID 225936, 225937 and 225938 submitted were administratively and technically identical. General Rules Governing Tenders Clause 3.1 states that "Bidders may submit up to three (3) multiple bids which should be non-identical (technically and financially) for a tender." "The EO is disqualified based on this clause, since the three (3) offers submitted are technically identical. Moreover, The EO deliberately did not reply to cheapest Bid, the EC deemed that bidder must be disqualified due to improper practice. "

After careful examination of the above, it is evident that the phrase "was not technically compliant" in the first paragraph of the said letter constitutes a typographical error. The substantive reasons outlined in the remainder of the letter clearly relate to non-compliance with Clause 3.1. of the General conditions given that all three offers submitted were identical from a technical point of view and thus, this rendered the offer administratively and technically noncompliant in accordance with Clause 3.1 of the General Conditions.

Accordingly, no error of evaluation occurred, as the HA did not conduct a technical evaluation of the offer in question.

Second Grievance

The Evaluation Committee acted in full conformity with the General Rules Governing Tenders, particularly Article 3.1 of the General Conditions, which stipulates that bidders may submit up to three non-identical bids.

In compliance with this requirement, the Committee was obliged to compare the three bids submitted by JGS to ascertain that they were neither technically nor financially identical.

The HA never stated that the offers submitted under TID 225936 and TID 225938 were " "unacceptable tenders" as alleged by the appellant. Rather, these were deemed "administratively non-compliant" for the following reasons:

"The main reasons why your procurement proposal was non-compliant are as follows: The following requestfor rectification was deemed necessary. EO was requested to;

1. Provide details concerning the sub-contractor/s and submit an ESPD for the subcontractor/ s, since in the submitted ESPD, your company mentioned 1% (Rockcut Ltd) subcontracting as requesting in Section 1 — Instructions to Tenderers — Clause 5(B)(c)(2); and

2. Provide attesting that the minimum average yearly turnover during the past three (3) years, being 2022-2024 is not less than €500,000 per year, as requested in Section I-Instruction to Tenderers- Clause 5(B)(b), since this was missing from your submission.

By the deadline, bidder did not answer the rectification request, therefore, his offer could not be considered further.
Administratively non-compliant.,,

The mere classification of a tender as administratively non-compliant does not render it an unacceptable tender within the meaning of Regulation 2 of S.L. 601.03.

Moreover, once an offer is deemed administratively non-compliant, this does not preclude the Evaluation Committee from examining the submissions to ensure adherence to Article 3.1 of the General Rules.

Were such scrutiny prohibited, contracting authorities would risk implicitly condoning improper practices by contractors who intentionally submit multiple identical offers and strategically fail to respond to requests for rectification relating to the lowest-priced identical offer, thereby gaining undue financial advantage for the same works and specifications.

The General Conditions form an integral part of the tender documentation; therefore, by ensuring their strict application, the Evaluation Committee acted within its legal remit and did not violate the principle of self-limitation. On the contrary, it ensured that such principle was upheld. Therefore, both the appellant's and also the caselaw quoted in support thereof are negated by the particular circumstances of this case.

Third Grievance

In relation to the third grievance, the HA submits that the reasons for considering the conduct of JGS as improper practice were explicitly set out in the letter dated 24th September 2025, and that such determination was made in accordance with Article 3.1 of the General Conditions.

A comparative analysis carried out by the Evaluation Committee of the technical questionnaires and supporting literature confirmed that all three offers were technically identical, differing only in financial (see documents DOK HAI, HA2 (i) HA2 (ii), HA3, HA 4 (i) HA4 (ii), HA 5 and HA6 (i), HA 6(ii) respectively).

It is inconceivable for three offers based on identical technical specifications to yield different financial quotations, as was done by JGS. Conduct of this nature goes diametrically against the scope of an open and transparent public procurement system.

Furthermore, Article 3.1 of the General Conditions explicitly empowers the Evaluation Committee to disqualify any submission that gives rise to improper practice:

"In any case, if any submissions lead to any form of conflict of interest, collusion, or improper practice, the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority reserves the right to disqualify any submission as necessary."

The fact that JGS deliberately failed to reply to the letters sent through a request for rectification dated 23rd May 2025 concerning the offers that ranked first and fourth, knowing that failure to respond would render such offers administratively non-compliant, while simultaneously submitting three technically identical offers with only financial variations, constitutes improper practice on the part of the appellant and should not find the approval of this Board, even as a matter of principle.

Fourth Grievance

The manner in which the appellant believes that the principle of proportionality should have been applied by the EC is a travesty of what the principle actually stands for. This is so because the principle of proportionality does not require a contracting authority to overlook serious breaches of mandatory requirements and to forgive improper and unfair practices.

The HA acted proportionately and lawfully in declaring JGS non-compliant for submitting identical offers. The decision was made strictly in accordance with the General Conditions, which impose clear procedural and substantive obligations on tenderers.

The principle of proportionality does not entail that contracting authorities must disregard or violate applicable rules. Rather, it requires that actions taken are appropriate and necessary to achieve compliance with those rules. In this case, no lesser measure was legally available or suitable, and the HA's action was entirely justified and proportionate.

For the reasons stated above, the Housing Authority respectfully maintains that all actions taken were in full conformity with the applicable tender regulations, the General Conditions, and principles of good administration.

The HA therefore submits that the appeal lodged by JGS Contractors Limited should be dismissed in its entirety. Accordingly, no expenses whatsoever in relation thereto should be borne by the HA"

The judgment of the Honourable Court of Appeal as delievered on the 26th March, 2026 (Appeal Number 484/2025/1);

The submissions of the Appellant, the Preferred Bidder and the Contracting Authority as delivered by their legal representatives, as well as the entirety of the acts of these proceedings;

Considers;

This Board notes that, by means of a judgment dated 26th March, 2026, the Court of Appeal in its Superior Jurisdiction ordered that this case be been sent back to the Public Contract's Review Board for this Board to decide the objection made by the Appellant afresh in line with paragraph 38 of the same judgment. For ease of reference this Board shall refer *verbatim* to the relevant paragraphs of the Court of Appeal's judgment hereunder:

"35. Fit-tielet lok, din il-Qorti lanqas ma taqbel mad-deċiżjoni tal-Bord ta' Reviżjoni Dwar Kuntratti Pubbliċi li kien hemm xi nuqqasijiet proċedurali dwar il-mod kif l-Awtorità tad-Djar waslet għall-konklużjoni tagħha li JGS Contractors Limited kienet ħatja ta' «improper practice» għall-għanijiet tar-regola 3.1 tal-General Rules Governing Tenders V4.10. Kif ġie spjegat aktar kmieni, l-Awtorità tad-Djar qiegħda tattribwixxi «improper practice» fuq JGS Contractors Limited għaliex minkejja li hija ġiet mitluba li tipprovdi dokumenti fir-rigward tat-tliet offerti tagħha, hija għażlet li tipprovdi dawn id-dokumenti għal offerta waħda minnhom biss li ma kinitx l-orħos waħda. Dan kollu f'sitwazzjoni fejn il-prezzijiet tal-oblaturi ekonomiċi kollha li ħadu sehem fis-sejħa kienu kollha mikxufa.

36. Jekk dan l-aġir ta' JGS Contractors Limited joħloqx «improper practice» għall-għanijiet tar-regola 3.1 tal-General Rules Governing Tenders V4.10 hija kwistjoni li għalissa ħa tibqa' impreġudikata sabiex tiġi deċiża mill-Bord ta' Reviżjoni Dwar Kuntratti Pubbliċi. Li hu żgur però ma jistax jingħad li din ir-raġuni msemmija mill-Awtorità tad-Djar hija proċeduralment diffettuża għaliex ma jirriżultax li JGS Contractors Limited qiegħda tmeri l-fatt li hija tat id-dettalji mitluba lilha fil-konfront biss tal-offerta 225937 li ma kinitx l-orħos waħda fost it-tliet offerti li hija xeħtet.

37. Fl-aħħar lok, il-Bord ta' Reviżjoni Dwar Kuntratti Pubbliċi ma għamilx sew li sab ksur tal-prinċipju tal-proporzjonalità ladarba sa issa huwa għadu ma stħarriġx jekk fil-verità l-offerti mixħuta minn JGS Contractors Limited kienx ħaqqhom li jiġu skwalifikati skont ir-regola 3.1 tal-General Rules Governing Tenders V4.10.

38. L-eżitu ta' din is-sentenza għalhekk mhijiex eżattament dak li qiegħda tippretendi Green Building Solutions Ltd illi tiġi mħassra d-deċiżjoni tal-Bord ta' Reviżjoni dwar Kuntratti Pubbliċi u tiġi kkonfermata l-iskwalifika ta' JGS Contractors Limited. Mod ieħor l-eżitu ta' din issentenza għandu jwassal sabiex tiġi mħassra d-deċiżjoni tal-Bord ta' Reviżjoni Dwar Kuntratti Pubbliċi u sabiex dan l-istess Bord jiddeċiedi: (i) jekk il-kontenut tekniku tal-offerta 225937 mixħuta minn JGS Contractors Limited huwiex bħal dak li jinsab fl-offerti 225936 u 225938; u (ii) jekk l-għemil ta' JGS Contractors Limited li rettifikat biss l-offerta 225937 u mhux ukoll l-offerta 225936 li kienet orħos, f'ċirkostanzi fejn il-prezzijiet ta' kulħadd kienu mikxufa, għandux jikkwalifika bħala każ ta' «improper practice» u b'hekk jekk għandux jattira l-iskwalifika tal-offerta skont ir-regola 3.1 tal-General Rules Governing Tenders V4.10"

Therefore, the Court of Appeal in its Superior Jurisdiction by means of its decision dated 26th March, 2026 has directed this Board to decide on:

i) Whether the technical contents of the offer 225937 was the same as that found in bids 225936 and 225938; and

ii) Whether the actions of the Appellant JGS Contractors Limited which rectified only offer 225937 and not also 225936 which was the cheapest bid, in the circumstances when all prices were disclosed, should qualify as a case of improper practice and should attract the disqualification of the bids in terms of Rule 3.1. of the General Rules Governing Tenders v4.10.

Were bids 225936, 225937 and 225938 technically identical or not?

During the hearing of this appeal, it was not contested that the technical questionnaires submitted by the Appellant for the bids with tender identification numbers 225936, 225937 and 225938 were identical in terms of what was written therein, however the Appellant submitted that they were in fact different in essence.

The submissions made by the Appellant's lawyer in the hearing of this appeal and as reflected in the minutes above[1], were such that suggested that the use of the forward slash symbol ("/") when inputting supplier names obviously meant that one supplier was meant for one bid, the other supplier for the other bid et cetera... The Appellant further argued that had the Evaluation Committee asked the Appellant to clarify the contents of the technical questionnaire, this would have been clarified and made clear. Furthermore, the Appellant argues that the three (3) bids must have been technically and financially identical to be considered so, and in this case from a financial point of view all three bids were different.

This Board must immediately state that no economic operator should expect the Evaluation Committee to assume that a forward slash is code for offering different suppliers for different bids. More so when these are found in one and the same technical questionnaire and reproduced identically for all three bids, and more so when in response to certain items only one supplier was indicated! This Board cannot fathom how the Evaluation Committee could have ever arrived as such a conclusion, neither does this Board expect the Evaluation Committee to use its imagination to such a degree (if at all). It cannot be understated that nothing stopped the Appellant from preparing three separate and distinct technical questionnaires, one for each bid, if the Appellant truly wished to offer different suppliers per item, per bid. The fact of the matter is that the Evaluation Committee was faced with three identical technical questionnaires in terms of the suppliers stipulated, and that whilst it is true that in two out of ten items listed, three or more suppliers were indicated for those items, however, it is equally true that in the remaining eight items two or less suppliers were indicated. Therefore, the Appellant's reasoning holds no water. Furthermore, this Board finds that in the circumstances, there was nothing that required clarity as it was sufficiently clear that all technical questionnaires were identical in terms of stipulated suppliers.

This Board equally disagrees with the Appellant when it argues that for the bids to be considered identical, they bids must be both financially <u>and</u> technically identical. Once the Appellant's bids are technically identical as evidenced through the identical technical questionnaires, which cannot be rectified at any stage, then irrespective of the price, the bids cannot be considered as non-identical bids – albeit with different tender identification numbers and a different price attached to them. The General Rules Governing Tenders clearly stipulates the inverse, that for bids to be considered non-identical, they are to be technically <u>and</u> financially different (*3.1 Bidders may submit up to three (3) multiple bids which should all be non-identical (technically and financially) for a tender*). The argument that the technical literature to be supplied can be rectified is also superfluous in the circumstances, as technical literature must always match with, and complement the technical questionnaires submitted with the bids and cannot result in a 'new' offer.

Therefore, after having reviewed the entirety of the bids and particularly the technical questionnaires, this Board determines that all three of the Appellant's bids were, in fact, technically identical.

Did the actions of the Appellant constitute improper practice?

To tackle the second issue at hand, that is, whether the Appellant's actions could be considered improper practice and thus be disqualified in terms of Rule 3.1. of the General Rules Governing Tenders v4.10., this Board must necessarily refer to Rule 3 relating to 'Multiple Tenders':

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[1] *The wording "technically and financially" is cumulative. The prices were all different. The offer is not made up solely of the technical offer form; it also includes the key experts and the literature. In the submission of the technical questionnaire regarding the reinforcement of concrete, three entities are indicated with a slash in between, meaning and/or. It was obvious that every tender had one entity. Had they been given the opportunity to clarify, they would have explained this more clearly.*

"3. Multiple Tenders

3.1 ***__Bidders may submit up to three (3) multiple bids which should all be non-identical__*** *(technically and financially) for a tender. In cases where bidders submit more than three (3) non-identical bids, the evaluation board will only consider the first three (3) cheapest offers submitted - irrespective of their administrative, technical and financial compliance. All other bids submitted by the tenderer will be automatically disqualified.*

… ***__In any case__***, ***__if any submissions lead to any form of__*** *conflict of interest, collusion, or* ***__improper practice__***, *the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority reserves the right to disqualify any submission as necessary.*

… Non-abidance to Articles 3.1, 3.2, 3.3 and 3.4 by Economic Operators in their composition and submissions ***__shall lead to the outright disqualification of all of the bids in question__***.*"* (Added emphasis of the PCRB).

Having already established the fact that the Appellant's multiple bids were identical, this Board must now consider whether the rectification of bid 225937 coupled with the abandoning of bid 225936 may be construed as an improper practice given the fact that at that stage prices were divulged.

Rule 3.1. above, allows for up to three multiple, non-identical bids, and caters for the scenario where more than three non-identical bids are submitted, that is, the cheapest three are considered irrespective of their administrative, technical and financial compliance. Rule 3.1. however, does not explicitly cater for a scenario when an economic operator submits more than one technically identical bid with different price-tags.

Whilst it is true that the term improper practice has not been defined at law nor within the General Rules Governing Tenders, this Board hereby holds that in the context of public procurement, the term improper practice must necessarily include instances where bidders adopt practices whereby through their acts or omissions as seen in their totality and in the circumstances, which will effectively result in an unfair advantage over other bidders, by for example taking an advantage in the situation at hand. In the present procurement process, the Appellant submitted three technically identical bids, at three different prices. Once the prices were disclosed and requests were made, the Appellant abandoned the bid which was more expensive than another competitor's bid (225938 €3,681,888.74), abandoned also its own cheapest bid which was the cheapest bid of the entire lot (225936 €3,338,880.26), and 'saved' only the bid which ranked cheaper than its competitor's bid but higher than its own cheapest bid (225937 €3,489,888.27). In this circumstance, the Appellant's inactions in respect of bids 225936 & 225938 were just as significant as the rectification of bid 225937.

Therefore, in these particular circumstances, especially considering the Appellant's knowledge of the value of other bids, considering further the fact that the bids submitted by the Appellant were objectively and factually technically identical, the Appellant's very submission of identical bids at different prices, and the Appellant's retention of only the most financially advantageous bid 225937 (which was €151,008.01 more expensive than the Appellant's own cheapest bid, which was otherwise identical), constitutes, in this Board's opinion an improper practice on the part of the Appellant. In the circumstances the unfairness emanates from two aspects that when coupled together create unfairness vis-à-vis the other competitors, the first owes to the fact that the bids were essentially identical, and the second is that this was all in the context of disclosed prices. Had the Appellant's other bids not been identical in the technical sense, then the probability would be that the unfairness would not have resulted.

In view of the above considerations, this Board deems that Contracting Authority was not incorrect in disqualifying the bids in question given the non-abidance to Rule 3.1. of the General Rules Governing Tenders v4.10 which expressly provides for outright disqualification of all of the bids in cases of improper practice.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to reject the appeal filed by the Appellant.

The Board further decides not to re-imburse the deposit paid by the Appellant.

Dr Ana Thomas	**Dr Maria Cardona**	**Mr Keith Victor Grech**
Chairperson	**Member**	**Member**

Tuesday 14th July, 2026.