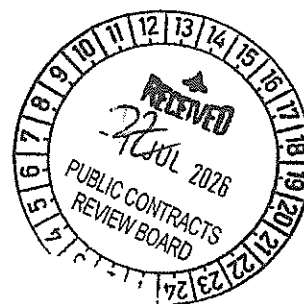




IN THE PUBLIC CONTRACTS REVIEW BOARD

1st July 2026

Re: SPD1/2026/004- SERVICES FRAMEWORK CONTRACT FOR HEAD LICE SCREENING SERVICES IN ALL STATE SCHOOLS AND COLLEGES ACROSS MALTA AND GOZO, INCLUDING SKOLA-SAJF

Reasoned letter of Reply of TBM Trading Limited ('the recommended bidder' or 'TBM') to the letter of objection filed by MJ Trading ('the objector' or 'MJ').

On the 19th of March 2026 Sectoral Procurement Directorate on behalf of the Ministry for Education and Sports issued a call for services relating to a framework contract for head lice screening services in all State schools and Colleges across Malta and Gozo, including Skola-Sajf.

TBM submitted its offer and following an evaluation process it was informed that the evaluation committee recommended its offer for award, being the cheapest compliant offer submitted;

From what TBM is understanding from a reading of the letter of objection, the objector's offer was not recommended for award and deemed to be technically non-compliant by the evaluation committee since it submitted a blank technical offer questionnaire, which is a note 3 documents which cannot be rectified.

The Objector filed an objection against the decision of the evaluation committee.

TBM submits that in the circumstances the decision of the evaluation committee was the only legally correct decision which could have been taken and is hereby presenting its reply and submissions.

Submissions

On the First Ground of Objection: The Objector was Wrongly Declared Technically non-compliant.

1. The Objector in this first ground of objection submits that the rejection of its offer for not submitting a technical offer questionnaire duly filled in is highly formalistic and fails to consider the nature and purpose of the technical offer questionnaire itself;

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2. This argument is legally and factually incorrect as will be further explained throughout this reply;
3. The General Rules Governing Tenders provide in clause 16.3 entitled *Part 3: Technical Compliance*, 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. **In order to be considered for this Evaluation, tenderers must submit a completed Technical Offer.** Literature may also be requested with the technical offer so that the Evaluation Committee will corroborate the technical compliance of the offers. (added emphasis)*

4. The same clause of the General Rules Governing Tenders goes on to state that:

***No rectification shall be allowed in respect of the documentation as accompanied by Note 3 in Clause 5 of the Instructions to Tenderers.** Only clarifications on the submitted information in respect of the latter may be requested. No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications. (added emphasis)*

5. The Tender Document in its instructions to tenderers section Section 5, entitled *Selection and Award Requirements*, sub-section (c) entitled *Specifications*, clearly provide that:

Tenderer's Technical Offer in response to specifications to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. (note 3)

The technical offer shall consist of the following:

- **Technical Offer Questionnaire (Note 3)**
- **GDPR Technical Offer Questionnaire (Note 3) and**
- **Key Experts Forms including POMA Declaration (Note 2)**

6. It is thus clear from the outset that contrary to what the objector is alleging, the Technical offer questionnaire is not some ancillary document to the terms of reference. The Technical offer questionnaire is the core of the offer, ie the technical offer itself and thus failure to submit such document duly filled in, necessarily leads to the disqualification of the offer in accordance to the terms of the General Rules Governing Tenders;

7. For these reasons the first ground of objection ought to be rejected in full;

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On the Second Ground of Appeal: The Alleged Defect Constituted a Genuine Administrative Oversight which was capable of Rectification; and on the Third ground of Appeal: Failure to apply Clarification and Rectification Principles.

8. In its second ground of objection the objector states that its omissions in the technical offer questionnaire constitute a Genuine administrative oversight capable of rectifications. This claim is legally incorrect as will be further explained.
9. The General Rules Governing Tenders, already quoted in this reply, clearly provide that a rectification to a mandatory document marked as note 3 is not permissible. The evaluation committee conducts the evaluation process within a strict and rigid legal and administrative frameworks which does not permit any such deviations. The principle of self limitation mandates that the evaluation process is strictly conducted within the rules as published in the call, and if the same call states that no rectifications are permissible to such document, the evaluation committee could not have decided otherwise.
10. In the judgment *Signal 8 Security Services Malta Limited v. Environment and Resources Authority* decided by the Court of Appeal on the 3rd of September 2024 the court stated the below on documents subject to note 3:

55. F'dan il-każ, il-proċedura ta' rettifika ma setgħetx però tigi mhaddma u dan għaliex ir-ritratti inkwistjoni ma kinux klassifikati bħala letteratura teknika, u minflok kellhom jittressqu bħala parti integrali millofferta teknika — li skont id-dokument tas-sejha kienet taqa' fil-kategorija ta' «Note 3» u mhux ta' «Note 2» 5(Ċ)(i) tal-ewwel taqsima tad-dokument tas-sejha, kif ukoll l-estratt ta' taqsima B5 tal-formula «Tenderer's Technical Offer – Organisation & Methodology, f'paragrafu 7 ta' din is-sentenza). Anke l-appellanti stess jidher li qiegħda taqbel ma' dan, għaliex hija u tfassal l-appell stqarret li: «tali informazzjoni, bħar ritratti li qegħdin jiġu msemmija f'dan il-każ giet klassifikata taħt 'Note 3'».

56. Kemm mid-dokument tas-sejha nnifsu (ara «Notes to Clause 5» f'paġna 5 tad-dokument tas-sejha), kif ukoll anke fil-«procurement policy» li qiegħda tant tishaq dwarha l-appellanti (f'paġna 4 ta' «Procurement Policy Note #40»), nsibu mnizzel li, fil-każ ta' dawh ir-rekwiżiti li skont iddokumenti tal-akkwist jaqgħu fil-kategorija ta' «Note 3», l-awtorità kontraenti ma tistax titlob rettifiki, u «only clarifications on the submitted information may be requested.»

57. Għar-raġunijiet li diġà ngħataw, il-Qorti jidhrilha li f'dan il-każ, il-proċedura ta' kjarifika ma setgħet tbiddel xejn minn-nuqqas tal-appellanti li tressaq ritratt jew xbieha tas-security clip fuq l-ingravajjet kif mitlub fid-dokumenti tal-akkwist. Fi kliem ieħor, bil-kjarifika jew mingħajrha, fl-offerta teknika tal-appellanti xorta waħda ma kienx sejjer ikun hemm ritratt jew xbieha tas-security clip mitluba, u għalhekk, skont ir-regoli tas-sejha, il-kumitat tal-evalwazzjoni ma setax jagħtiha l-punti għall-kriterju B5(a), bil-konsegwenza li l-iskwalifika tal-offerta tagħha kienet inevitabbli.

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58. *Thares minn fejn thares, ma jirriżultax li l-ilmenti tal-appellanti huma misthoqqa, u għalhekk qegħdin jiġu miċhuda għal kollox. (enfasi miżjud)*

11. In the decision of the Court of Appeal in the names of **Trackwell FiMS vs Direttur Ġenerali tal-Kuntratt et** decided on the 13th of March 2025 the Court delved into the matter of mandatory documents at length and stated that:

42. *Għalkemm Trackwell qieghda tipprova tmewwet dan in-nuqqas billi targumenta li r-riżultati finanzjarji tagħha għas-sena 2021, setgħu xorta waħda jinstiltu mill-kontijiet awditjati tagħha għas-sena 2022, din il-Qorti tqis, li f'dan il-każ, id-dokument tas-sejha mhux biss kien jispeċifika iswed fuq l-abjad li s-sottomissjoni tal-kontijiet finanzjarji għas-snin 2020, 2021 u 2022 kien kriterju mandatorju, iżda wkoll kien jinkludi fih twissija ċara li tghid: «Failure to submit the requested Financial Documents will automatically disqualify the Candidate» (ara taqsima B.1.1, f'pagna 44 tad-dokument tas-sejha).*

43. *Issa filwaqt li huwa kollu minnu li hemm sentenzi ta' din il-Qorti li huma fis-sens, li l-offerent m'għandux jiġi skwalifikat fuq in-nuqqas tal-ghotja ta' xi tagħrif mitlub fid-dokument tas-sejha, jekk kemm-il darba l-kumitat ta' evalwazzjoni jkun jista' jikseb dak it-tagħrif minn xi parti oħra tad-dokumenti li jiġu sottomessi bhala parti minn dik l-offerta (ara f'dan is-sens **Bonnici Bros Projects Ltd et v. Ministeru Għas-Saħħa et** mogħtija mill-Qorti tal-Appell fit-30 ta' Lulju, 2018, u **Rockcut Limited v. Id-Direttur Ġenerali tad-Dipartiment tal-Kuntratti et** mogħtija mill-Qorti tal-Appell fit-25 ta' Ġunju, 2018), fl-istess waqt, huwa daqshekk iehor magħruf sewwa fil-ġurisprudenza, li meta r-regolamenti tas-sejha jitolbu b'mod espress ċertu tip ta' dokument, dak id-dokument għandu jingħata bil-mod ta' kif ikun mitlub, u dan sal-gheluq taż-żmien għall-offerti (ara f'dan is-sens: **Derek Garden Centre Co Ltd v. Direttorat għall-Akkwist Settorjali et** mogħtija mill-Qorti tal-Appell fit-30 ta' Lulju, 2024 u **Melchioe Dimech v. Ministetju tal-Finanzi u x-Xogħol et** mogħtija mill-Qorti tal-Appell fit-30 ta' Novembru, 2023). (enfasi miżjud)*

44. *Kemm hu hekk, ingħad kemm-il darba li hija fir-responsabbiltà ta' kull offerent li jobdi l-kundizzjonijiet tas-sejha bhala «a reasonable well informed and normally diligent tenderer», u għalhekk, għaladarba r-regoli tas-sejha inkwistjoni kienu jimponu fuq l-offerenti l-obbligu li jressqu kopja tal-kontijiet finanzjarji għas-snin 2020, 2021, u 2022, Trackwell kellha tiżgura li tressaq id-dokumenti finanzjarji tagħha għal dawn it-tliet snin shaħ u mhux għal sentejn minnhom biss (ara f'dan il-kuntest **Attard Farm Supplies Limited v. Korporazzjoni għas-Servizzi tal-Ilma** mogħtija mill-Qorti tal-Appell fit-29 ta' Awwissu, 2023). Fis-sewwa, ir-regoli tas-sejha għalhekk qegħdin hemm, u sewwasew sabiex jiġu mharsa u mhux biex jiġu mwarrba (ara **Legacy Ventures Limited v. Direttur Ġenerali tal-Kuntratti et** mogħtija mill-Qorti tal-Appell fit-30 ta' Lulju, 2024). (enfasi miżjud)*

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45. Wiehed ghandu wkoll jifhem u japprezza, li daqskemm l-offerenti ghandhom joqoghdu attenti li jipprezentaw dak kollu li jkun intalab minnhom fid-dokumenti tas-sejha, huwa daqshekk iehor importanti li daww mghobbija bir-responsabbiltà li jgharblu l-offerti, jiġifieri l-membri tal-kumitat ta' evalwazzjoni, ghandhom jimxu skrupolożament mal-kundizzjonijiet li jkunu ġew imnizzlin fid-dokument tas-sejha (ara *Reactilab Limited v. Korporazzjoni għas-Servizzi tal-Ilma et mogħtija mill-Qorti tal-Appell fid-19 ta' Ottubru, 2023*). (enfasi miżjud)

46. Dan għaliex, meta fil-kuntest ta' proċedura ta' sejha għall-offerti, l-awtorità kontraenti tfassal il-kundizzjonijiet li bi hsiebha timponi fuq l-offerenti, hija tkun qiegħda tillimita l-eżerċizzju tas-setgħa diskrezzjonali tagħha bil-quddiem — b'dana li hija ma tkunx tistax tmur lura mill-kundizzjonijiet tas-sejha, mingħajr ma tikser il-prinċipju tat-trattament indaqs bejn l-offerenti (ara *Polaris Marine Services Co Ltd v. Direttur Ġenerali tal-Kuntratti et mogħtija mill-Qorti tal-Appell fit-29 ta' Awwissu, 2023* u *Quattro Labs Limited pro et noe v. Malta College of Art, Science and Technology mogħtija mill-Qorti tal-Appell fit-13 ta' April, 2018*).

47. Bi thaddim ta' dawn il-prinċipji għall-fatti ta' dan il-każ, din il-Qorti tqis li għaladarba l-awtorità kontraenti talbet lill-offerenti sabiex jipprezentaw il-kontijiet finanzjarji tagħhom għas-snin 2020, 2021 u 2022, u l-awtorità kontraenti habbret minn qabel li n-nuqqas tat-tressiq ta' xi wiehed minn daww id-dokumenti kellu jiġi kkastigat bis-sanzjoni kiefra tal-iskwalifika awtomatika, mela allura bin-nuqqas tagħha, jiġifieri dak li ma tipprezentax il-kontijiet finanzjarji għas-sena 2021, Trackwell waddbet il-gebla fuq saqajha, u ma halliet l-ebda għażla ohra f'idejn il-kumitat ta' evalwazzjoni, għajr dik li jiskwalifikaha mill-proċedura tal-akkwist. (enfasi miżjud)

48. Trackwell lanqas ma tista' tippretendi li hija setgħet, b'xi mod jew iehor, issewwi dan-nuqqas, bil-mezz tal-proċedura ta' kjarifika. (enfasi miżjud)

49. Kif tixhed il-«Procurement Policy Note #40», li qiegħda tirreferi għaliha Trackwell stess, l-għan wara l-proċedura ta' kjarifika huwa biss sabiex tingħata l-informazzjoni fuq dokumentazzjoni li tkun diġà ġiet sottomessa, u għalhekk f'ċirkostanzi li fihom Trackwell naqset għalkollox milli tressaq il-kontijiet għas-sena finanzjarja 2021, il-proċedura ta' kjarifika ma setgħet twassalha mkien. Jekk xejn, kienet għalhekk biss bil-proċedura ta' rettifika li Trackwell setgħet tagħmel tajjeb għal dan in-nuqqas (ara f'dan is-sens *Signal 8 Security Services Malta Limited v. Environment and Resources Authority et mogħtija mill-Qorti tal-Appell fit-3 ta' Settembru, 2024*).

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50. Digà però rajna li s-sottomissjoni tad-dokument tal-kontijiet finanzjarji ghas-sena 2021, kien meqjus bhala wiehed mill-kriterji mandatorji tas-sejha (ara paragrafu 25 ta' din is-sentenza) u fin-nuqqas tat-tressiq ta' dak id-dokument, il-kumitat ta' evalwazzjoni ma setax jitlob lil Trackwell sabiex issewwi dak in-nuqqas (ara f'dan is-sens **Freemond Limited v. L-Aġenzija ghas-Servizzi tal-Qorti** et moghtija mill-Qorti tal-Appell fl-20 ta' Marzu, 2023).

51. Dan ukoll biex ma jinghadx li d-dokument tas-sejha kien saħansitra jispeċifika li «No rectification shall be allowed in respect of the documentation as outlined in Section B – Selection Criteria» (silta meħuda minn taqsima 3.4.1 f'pagna 15 tad-dokument tas-sejha). Il-kontijiet finanzjarji annwali ghas-sena 2021, kienu jiffurmaw parti mid-dokumenti mitluba f'Taqsima B tad-dokument tas-sejha, u għalhekk, din hija raġuni oħra għalfejn il-kumitat ta' evalwazzjoni ma setax jitlob lil Trackwell sabiex issewwi n-nuqqas tagħha. (enfasi miżjud)

12. In the 2 above quoted judgments, the courts were dealing with missing photos and with missing financial statements, which were mandatory documents. In the present case this Board is facing a missing technical questionnaire which means that the whole technical offer, the core of the submission, is missing in full according to the reason for rejection given. The recommended bidder submits that in the circumstances the evaluation committee could not have even considered an alternative way forward other than the immediate disqualification of the objector's offer;

13. It is of paramount importance to emphasize that the technical offer questionnaire is that part of the tender where the bidder confirms its compliance to the technical specifications and any other submitted document is there to corroborate the technical questionnaire. In this case, the absence of a duly filled in technical questionnaire the evaluation committee could never have determined if the objector's offer was compliant ab initio;

14. For these reasons the second and third grounds of objection ought to be rejected in full.

The recommended bidder hereby reserves its right to present further evidence and submissions both written and orally to further substantiate their reply in relation to the said objection throughout the hearings.

In view of the above, the objection lodged by the objector ought to be rejected in full, whilst the decision of the evaluation committee confirmed and the deposit forfeited.



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