



Secretary
Public Contracts Review Board
Notre Dame Ravelin
Floriana

22nd July 2026

Re. SPD1/2025/053 ("Tender for the Supply, Delivery, Installation, Testing and Commissioning of Heavy-Duty Laboratory Furniture for the SLC Building at the University of Malta")

REASONED LETTER OF REPLY by the University of Malta, as Contracting Authority, to objection 687, by SG Solutions Limited

Introduction

These submissions are filed on behalf of the University of Malta, as Contracting Authority, in reply to the reasoned objection lodged by SG Solutions Limited against the decision declaring its offer technically non-compliant and recommending the award of the above tender to Creative Refurbishing Centre (Malta) Limited.

By letter dated 6 July 2026, the Sectoral Procurement Directorate informed SG Solutions Limited that its tender, bearing TID 235856, had been deemed technically non-compliant. The same letter communicated the recommendation for award in favour of TID 235870, Creative Refurbishing Centre (Malta) Limited, for the amount of EUR 144,063.36 excluding VAT.

The objection is founded upon the statement in the Letter of Rejection that clarifications concerning the Quality Assurance Schemes and Environmental Management Standards had not been submitted. SG Solutions Limited states that it had replied through the ePPS on 9 February 2026 at 09:17 and had submitted the ISO 9001 certificate, the manufacturer's SEFA declaration and the ISO 14001 certificate requested in that clarification.

The Contracting Authority accepts that the documents identified by the Objector were submitted in response to the eligibility and administrative clarification to which they related. The difficulty is that the Letter of Rejection inadvertently reproduced the wording of that earlier clarification when explaining a decision which, in fact, arose at the subsequent technical stage.

The objection therefore identifies a genuine error in the wording of the notification, but proceeds from an incorrect conclusion as to its legal and practical effect. The administrative clarification was answered and the tender passed the eligibility stage. A separate technical clarification was not answered within the stipulated time. It is that failure, and not the alleged absence of the certificates annexed to the objection, which resulted in the tender being deemed technically non-compliant. In fact, the letter of rejection specifically indicates that the offer was technically non-compliant and not that it was not eligible or that the tender was administratively non-compliant.

The Contracting Authority accordingly distinguishes between the acknowledged clerical error in the subsequent SPD correspondence and the underlying evaluation decision. The former does not render the unanswered technical clarification answered, does not convert the tender into a technically compliant offer and does not justify the annulment or re-evaluation sought by the Objector.

The eligibility and technical clarification processes were distinct

The central premise of the objection is that the clarification response submitted on 9 February 2026 should have prevented the tender from being declared technically non-compliant. That premise fails to differentiate between two separate stages of the evaluation process.

The first clarification concerned eligibility and administrative matters falling under the selection criteria. It requested evidence concerning the ISO 9001 quality management standard, compliance with the relevant SEFA standards and the ISO 14001 environmental management standard. SG Solutions Limited replied to that clarification and submitted the supporting documents upon which it now relies. The second clarification was a technical clarification issued by the Contracting Authority at the technical evaluation stage. It was separate in date, subject matter and legal effect from the administrative clarification. Compliance with the first request did not constitute a response to the second, just as passing the eligibility stage did not dispense with the requirement to satisfy the technical stage.

There is no dispute that SG Solutions Limited answered the administrative clarification for eligibility purposes referred to later on in the Letter of Rejection. Following receipt of those clarifications, the Evaluation Committee confirmed in its Evaluation Report that the tender was administratively compliant. Therefore, the Contracting Authority does not contend in these proceedings that the Objector failed to submit the ISO 9001 certificate, the SEFA declaration or the ISO 14001 certificate within the deadline applicable to that request. The reasoning is a different one.

The technical clarification request was uploaded on the ePPS system on 9 April 2026 at 09:46. The deadline for submission of a reply was 16 April 2026 at 11:00. No response was submitted within that period, and the ePPS records the status of the clarification request as 'UNANSWERED'.

The technical clarification expressly informed tenderers of the consequence of failing to reply within the stipulated time:

“Tenderers who fail to clarify/rectify the shortcomings identified in this communication by the stipulated date and time shall be deemed to be non-compliant.”

The consequence was therefore stated in advance and applied by reference to an objective event recorded in the electronic system. The clarification had not been answered by the deadline, and the Evaluation Committee could not treat the technical shortcomings as having been clarified or rectified.

The earlier administrative response did not satisfy the technical requirement requested by the second clarification request at technical stage. The administrative documents annexed to the objection were submitted approximately two months before the technical clarification was issued and for a different purpose. They could not operate as a prospective or implied answer to a communication which had not yet been issued. Nor does the fact that SG Solutions Limited submitted the lowest-priced offer alter the position. Price becomes relevant for award only among offers which have first satisfied the mandatory administrative and technical requirements. A lower price cannot supply an omitted technical response or displace the consequence expressly attached to the missed deadline.

The Letter of Rejection

The Letter of Rejection prepared and sent by SPD, and dated 6 July 2026 expressly stated, in its operative opening paragraph, that the procurement proposal submitted by SG Solutions Limited was “Technically non-Compliant”. It did not state that the tender had failed the eligibility or administrative stage. The error appears in the subsequent section setting out the ‘main reasons’ for non-compliance. Instead of reproducing or describing the unanswered technical clarification, the letter repeated the wording of the earlier eligibility clarification concerning the quality assurance and environmental management documents. It then stated, incorrectly in relation to those documents, that the requested information had not been submitted.

The Contracting Authority acknowledges that this wording was mistaken and should not have appeared in the Letter of Rejection. The error arose in the subsequent communication of the outcome; it did not arise in the evaluation itself. The Evaluation Report had already recorded the tender as administratively compliant and identified the operative technical failure. This notwithstanding, the “main reasons” do not constitute the reason for rejection, but are there for mere illustrative purposes. The proper reasoning is reflected in the first paragraph which makes it clear that the offer was “Technically non-Compliant” (and not administratively non-Compliant).

The error contained in the Letter of Rejection does not reflect, and cannot be treated as altering, the decision reached by the Evaluation Committee. As explained above, the Committee had correctly determined that the Objector was administratively compliant but technically non-compliant because the separate technical clarification request remained unanswered within the stipulated deadline. The mistaken reproduction of the eligibility requirements occurred only in the subsequent communication of the decision and did not form part of, or affect, the Committee’s evaluation. The underlying technical ground for rejection therefore remains valid and unaffected by the clerical error in the Letter of Rejection.

Therefore, a re-evaluation confined to the documents relied upon in the objection would reproduce the same result. The Evaluation Committee had already accepted those documents for the purpose for which they were submitted. The unresolved matter remained the unanswered technical clarification, and no lawful re-evaluation could disregard the deadline or deem a response to have been filed where none was submitted.

The Objector should not obtain a substantive advantage from an error which occurred after its own failure to answer the technical clarification and which did not affect the Evaluation Committee’s decision-making.

The rights of Objector

The Contracting Authority submits, in the first place, that the Objector was placed in a position to identify the discrepancy. SG Solutions Limited knew that it had answered the administrative clarification, knew that a separate technical clarification had been issued and could verify from the ePPS that no reply had been filed to that later request. The Letter of Rejection issued by SPD also expressly characterised the result as technical non-compliance, and the objection itself is headed as an objection to a decision of technical non-compliance. The Objector was therefore not informed that it had failed eligibility, nor did it understand the decision as an exclusion at the administrative stage.

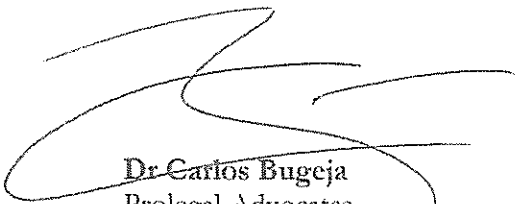
Nevertheless, if the Board considers that the mistaken reproduction of the eligibility requirements materially prejudiced SG Solutions Limited in formulating a grievance directed to the actual technical basis of rejection, the Contracting Authority would not oppose a limited procedural opportunity to file further grievances, if necessary.

Conclusion

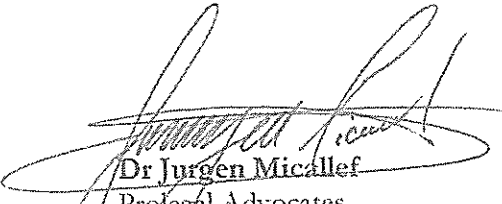
For these reasons, the Contracting Authority respectfully requests that the Public Contracts Review Board dismiss this objection insofar as it seeks annulment of the technical rejection, annulment of the recommendation for award and re-evaluation on the basis of the administrative documents annexed to the objection; confirm the decision declaring SG Solutions Limited's offer technically non-compliant; and uphold the recommendation for award in favour of Creative Refurbishing Centre (Malta) Limited.

In the alternative, and only if the Board considers that the erroneous reasons in the Letter of Rejection materially prejudiced the Objector's right to challenge the actual technical ground, the Contracting Authority does not oppose leave for SG Solutions Limited to file a strictly limited supplementary grievance within a period fixed by the Board, subject to an equal right of reply and without permitting the tender itself to be supplemented or the technical clarification to be answered out of time.

If the objection is dismissed on the grounds presently filed, the Contracting Authority further requests that the deposit paid by the Objector is not reimbursed. If leave to file a supplementary grievance is granted, the determination concerning the deposit should be reserved until the final disposal of the proceedings.



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