

PUBLIC CONTRACTS REVIEW BOARD

Case 2254 – NLC/04/2025 – Tender for the Cleaning and Clearing of Non-Urban Roads and Sites in Naxxar using Environmentally Friendly Products and Practices

18th August 2026

The Board,

Having noted the letter of objection filed by Dr Noel Bezzina acting for and on behalf of Agribrands Limited (hereinafter referred to as the "Appellant"), filed on the 13th May 2026;

Having also noted the letter of reply filed by Dr Larry Formosa acting on behalf of Cosyra Legal, acting for and on behalf of the Naxxar Local Council (hereinafter referred to as the "Contracting Authority"), filed on the 19th May 2026;

Having heard and evaluated the testimony of the witness Mr Paul Gatt (ID No. 19665M), Secretary of the Evaluation Committee, as summoned by Dr Noel Bezzina for and on behalf of AgriBrands Ltd (hereinafter referred to as the Appellant);

Having taken cognisance of 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 25th June 2026, hereunder reproduced:

Minutes

Case 2254 – 673 – NLC/04/2025 – Tender for the Cleaning and Clearing of Non-Urban Roads and Sites in Naxxar Using Environmentally Friendly Products and Practices.

The Tender was issued on the 20th of October 2025, and the closing date was 21st November 2025.

The estimated value of the tender, excluding VAT, was €95,000

On 13th May 2026, AgriBrands Ltd., lodged an appeal against Naxxar Local Council, the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 25th of June 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Dr Maria Cardona as members, convened a public hearing to consider the appeal.

A deposit of €475 was paid.

There were five bids.

The attendance for this public hearing was as follows:

Appellant – AgriBrands Ltd.

- Dr Noel Bezzina – Legal Representative.
- Ms Anastasiia Radchenko – Company Representative.

Contracting Authority – Naxxar Local Council.

- Dr Larry Formosa – Legal Representative (online)
- Dr Christopher Deguara – Mayor/Chairperson.
- Mr Paul Gatt – Executive Secretary.
- Ms Yanika Borg – Local Council Officer

Recommended Bidder - Green Ivy Cleaning Services.

- Dr Thomas De Martino – Legal Representative.

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2254 in the records of the PCRB. The Chairman identified the Appellant as AgriBrands Ltd., the Contracting Authority as Naxxar Local Council, and the Recommended Bidder as Green Ivy Cleaning Services.

The Chairman stated that this appeal was to be followed by another appeal concerning the same tender. The appellant in the second hearing requested three witnesses, one of whom is from DIER and is currently abroad. Therefore, another date would be required for the completion of the second appeal. The Chairman noted that the six weeks allowed for the decision would commence at the conclusion of the second appeal.

There was no objection from the parties.

Both parties agreed to begin with the witnesses.

Witness Testimonies

Mr Paul Gatt, ID No. 19665M, summoned by Dr Noel Bezzina.

Mr Paul Gatt was the Secretary of the Evaluation Committee. Dr Bezzina noted that this appeal concerned the employment licence under Clause 5(A). The Recommended Bidder was not clear in his submissions, and a request for clarification was sent. Eventually, he submitted a declaration stating that he would provide the licence upon signing the contract.

The Chairman asked for an explanation regarding "the not clear in his submissions".

The witness clarified that the Recommended Bidder did not explicitly state that he had a licence or that he would submit it upon signing the contract. There were no other clarifications or rectifications. There was also no correspondence regarding the criterion requiring the licence to be renewed for a further two years.

The Chairman confirmed with Dr Noel Bezzina that he had the same exhibited declaration.

Cross-Examination by Dr Thomas De Martino

Dr De Martino asked the witness to confirm that the declaration was submitted by the bidder following the request in the application.

He also confirmed that the wording of the clause regarding the licence was "shall be in possession of", meaning that the bidder either already possessed the licence or would possess it upon being awarded the contract.

The witness stated that he had been involved in the drafting and publication of the tender, with the assistance of others, and accepted responsibility for it. The requirement was based on the templates issued by the Department of Contracts. The services required were the cleaning of non-urban roads.

Dr De Martino asked whether the licence issued by DIER was relevant to operating as an Employment Agency.

The Chairman reminded Dr De Martino that, since this was a cross-examination and the issue had not been raised by Dr Bezzina, he could not ask that question.

Dr De Martino then asked the witness what the DIER licence was. The witness replied that he was not competent to answer.

Cross-Examination by Dr Larry Formosa

Dr Formosa asked whether there had been any questions from the bidders regarding this licence.

The witness replied that there had been no contestations or requests for clarification during the bidding process.

Final Submissions

Final Submissions by Dr Noel Bezzina (for the Appellant)

Dr Bezzina submitted that the appeal was based on two grievances. The Recommended Bidder did not possess the licence required under Clause 5(A), and he also failed to satisfy the second criterion under Clause 5(A).

Regarding the first issue, the entity, company, or economic operator was required to possess a licence. The Recommended Bidder declared that he would be compliant before the signing of the contract.

Regarding the second issue, the Recommended Bidder did not satisfy Clause 5(A), under which the bidder was required to declare not only that he possessed the licence, but also that "prior to the expiry of a valid licence, he had to renew the licence for a further two years".

Dr Bezzina referred to Case 2237 Zabbar Local Council, in which this Board stated:

"The Board further observes that the self-declaration submitted by the Recommended Bidder does not satisfy this requirement in full. Indeed, whilst the Recommended Bidder states that the licence is allegedly not applicable to him because he is self-employed, and further states that if such licence is required he will acquire it and present it to the Local Council, the self-declaration is entirely silent on the further and separate requirement expressly laid down in the tender document, namely that during the Contract Execution Stage and prior to the expiry of a valid licence, the licence would be renewed for further periods of two (2) years".

He submitted that the tender should not have been awarded to the Recommended Bidder because he failed to comply with Clause 5(A).

Final Submissions by Dr Larry Formosa (for the Contracting Authority)

Dr Formosa stated that he wished to rest on the acts of the appeal. He maintained that the tender dossier required the requested licence to be in the bidder's possession at the time of signing the contract. The self-declaration that the bidder would possess the licence and renew it should have been verified at the factual stage.

Final Submissions by Dr Thomas De Martino (for the Recommended Bidder)

Dr De Martino referred to two main points. The first concerned whether the licence had to be submitted with the bid or only upon signing the contract. He argued that this was optional. The second point concerned the relevance of the licence issued by DIER, which regulates Employment Agencies.

He explained that these entities employ people to provide services to third parties. This tender did not involve the recruitment or provision of workers to third parties. Rather, the tender requested a basic service to be provided by a sole operator together with his employees.

He submitted that this Board, in previous decisions, had made it clear that this licence was required only if the service was to be subcontracted or if the bidder and his employees could not provide the service. He referred to Case 2183 concerning the same Naxxar Local Council:

"For subcontracted services or where the economic operator functions as an employment agency. The legislative intent of S.L. 452.130, when read in conjunction with the tender provisions, is clearly to regulate intermediaries in the employment market, rather than individuals personally performing contracted services".

The Board had made it clear that the purpose of this licence, issued under this law, was to regulate intermediaries in the labour market who employ people and provide them to third parties. He quoted:

"Compliance obligations must be interpreted purposively, taking into account the underlying regulatory objectives rather than a literalist or over-extended application that would render the law inapplicable to its intended scope".

In the present case, he argued, the circumstances were entirely different. "The respondent by performing the services personally, does not engage in activities regulated by subsidiary legislation 452.130."

Referring to page 11, he further quoted:

"The Respondent's personal performance of cleaning services does not engage the functions of an employment agency".

The bidder had declared that both he and his employees would perform the work. Therefore, he argued that this licence was superfluous for this contract.

Replica

Dr Noel Bezzina stated that the bidder was bound by his own declaration and submissions. In this case, the Recommended Bidder declared that he would obtain the licence before the signing of the contract, but he failed to satisfy the requirement regarding the renewal of the licence. Therefore, he was not compliant.

Conclusion of the Hearing

The Chairman, Mr Kenneth Swain, thanked all the parties present and formally concluded the hearing.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 25th June 2026.

Having noted the objection filed by Agribrands Limited (hereinafter referred to as the "Appellant") on the 13th May 2026 and refers to the claims made by the same Appellant with regards to the tender of reference NLC 4/2025 listed as case No. 2254 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Noel Bezzina
Appearing for the Contracting Authority:	Dr Larry Formosa
Appearing for the Recommended Bidder:	Dr Thomas De Martino

Whereby, the Appellant contends with respect to:

a) ***Grievance 1 - The Recommended Bidder does not possess a valid Employment Licence.***

According to Clause 5(A) - Selection and Award Requirements – Eligibility Criteria, all economic operators submitting their respective offers for this tender, had to satisfy the referenced requirement.

It appears that, notwithstanding such requirement, the recommended bidder did not have the requisite employment licence at the time of submission of its offer, nor does it possess the same licence at this of submission of this objection, and thus the contracting authority, in this case the Naxxar Local Council, couldn't have awarded this tender to the recommended bidder. On the contrary, the NLC should have rejected the recommended bidder's offer.

b) ***Grievance 2 - The Recommended Bidder failed to satisfy the requirement of Section 5(A) - Eligibility Criteria in its Self-Declaration.***

Without prejudice to the first ground of appeal, the objector contends that the recommended bidder failed to satisfy the requirements of section 5(A) - eligibility criteria, in that it failed to declare in its self-declaration that:

- a. It is in possession of a valid employment licence;
- b. It shall be in possession of a valid or conditional licence prior to contract signing,
- c. during contract execution stage of the procurement procedure, it shall renew the licence for further periods of two (2) years;

In view of such omission, the NLC couldn't have awarded the tender to the recommended bidder.

The Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 19th May 2026 and its verbal submission during the hearing held on 25th June 2026, in that:

- a) In this regard, the Contracting Authority respectfully submits that the tender dossier draws a distinction between the licence itself and the self-declaration to be submitted at tendering stage. While the tender document requires the economic operator to submit a self-declaration confirming that, should it be recommended for award, it shall be in possession of a valid or conditional licence prior to contract signing, the actual copy of the licence is expressly required to accompany the signed and dated contract agreement. The tender document further provides that the Contracting Authority shall not endorse the contract agreement if such licence is not submitted.
- b) Accordingly, the mere fact that the recommended bidder may not have held or submitted the said licence at tender-submission stage does not, in itself, necessarily render the offer technically or administratively non-compliant, provided that the tenderer had complied with the self-declaration requirement and subsequently submits the required licence within the applicable timeframe prior to contract endorsement.
- c) Without prejudice to the foregoing, the Contracting Authority has noted the objection raised with respect to the self-declaration itself. In this respect, and in the spirit of transparency, procedural fairness and equal treatment between economic operators, the Contracting Authority does not oppose that the matter be remitted for the limited purpose of verifying whether the required self-declaration was duly submitted and, where applicable, whether the tender dossier permits clarification or rectification in accordance with the notes to Clause 5 of the tender document.
- d) The Contracting Authority however respectfully objects to the objector's request that the tender be awarded directly to AgriBrands Ltd. and any such conclusion would be premature. Should the Board consider that any aspect of the evaluation requires further verification, the appropriate remedy would be to remit the matter back to the Evaluation Committee for reconsideration in accordance with the tender conditions and the applicable procurement rules, rather than to substitute the evaluation process or automatically award the tender to the objector.

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.

Preliminary, relationship with Case 2255

- This appeal and Case 2255, Carmel Mifsud vs Naxxar Local Council, concern the same tender, the same Clause 5(A), and the same rectification exercise conducted by the same Evaluation Committee in February 2026. Both are decided by this Board on the same day.
- The Board has considered them together and its findings in each are to be read consistently with the other. In Case 2255 this Board has determined that Clause 5(A) does not require an economic operator who personally performs the contracted services, using only workers employed within his own undertaking, to hold or self-declare a licence to operate an Employment Agency or Employment Business under S.L. 452.130. That determination bears directly on both grievances raised in the present appeal.

Grievance 1 — The Recommended Bidder does not possess a valid Employment Licence.

- The Appellant contends that the Recommended Bidder should have been disqualified for not holding a DIER licence under the Employment Agencies Regulations (S.L. 452.130).
- Clause 5(A) of the tender document requires only that an Economic Operator declare that, should it be the Recommended Awardee, it "*shall be in possession of a Valid or Conditional Licence*" prior to Contract Signing. Actual possession of the licence is due only when the signed Contract Agreement is submitted, not at tendering or objection stage.
- The Contracting Authority's Reasoned Letter of Reply of 19th May 2026 correctly draws this distinction; no Contract Agreement has yet been signed.
- The Evaluation Committee, through the testimony of Mr Paul Gatt, Secretary of the Evaluation Committee, confirmed that no requirement existed for the licence itself to be held before this stage.
- It is the opinion of this Board that the Evaluation Committee acted diligently and in accordance with the express terms of Clause 5(A), which does not require possession of the licence at this stage of the procurement process.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 2 — The Recommended Bidder failed to satisfy the requirement of Clause 5(A) in its Self-Declaration.

- The Board examined the electronic tender response structure (ePPS/XML) published for this Call for Tenders, together with the file index of the Recommended Bidder's submission. Clause 5(A) opens by directing that "*Economic Operators are to complete the Eligibility Section through the tender response format.*" The electronic structure is therefore not a mere administrative convenience. It is the means the tender itself prescribes for responding to Clause 5(A), and the wording a bidder was required to answer is the wording as it appeared there.
- Clause 5(A) as printed in the tender document is itself conditional. It does not require every bidder to hold a DIER licence. It requires a licence of "*Economic Operators operating an Employment Agency or Employment Business,*" that is, of a defined class of operator only. A bidder falling outside that class falls outside the clause.
- When the Contracting Authority transposed the clause into the electronic structure, it did not simply reproduce that condition. It added a second one. To the words describing the licence it appended "(if applicable)", words which appear nowhere in Clause 5(A) as printed. The requirement as presented electronically was therefore conditional twice over: it applied to a defined class of operator, and then only "if applicable."
- Whatever the precise scope intended for those two words, they cannot be read as widening the clause. At their lowest they confirm the conditionality already present in Clause 5(A). At their highest they invite each bidder to judge for himself whether the requirement reaches him. On neither reading was the requirement one that fell upon every bidder automatically.

How Clause 5(A) was divided in the electronic structure

Clause 5(A) was not reproduced as a single criterion. It was divided across three:

- Criterion 176093173188233 carried the licence requirement and the requirement to submit a Self-Declaration as to possession of a Valid or Conditional Licence prior to Contract Signing. This was the criterion to which "(if applicable)" was added. It was mandatory and of file type, so that it admitted of no tick-box, no free-text response and no facility to leave it unanswered: a bidder could upload a document, or he could fail to submit a bid, and there was no third course. It was also the only one of the three criteria which the Contracting Authority included in the evaluation.
- Criterion 176093173188221 carried the requirement in Clause 5(A) that the Self-Declaration "shall also specify" that the licence be renewed, during Contract Execution Stage and prior to expiry, for further periods of two (2) years. It was mandatory, offered a single response, "I agree," and was excluded from the evaluation.

- Criterion 176093173188220 carried, in recast form, the requirement that the Contract Agreement be accompanied by a copy of the Licence. It too was mandatory, offered only "I agree," and was excluded from the evaluation.

The two references to "two (2) years"

Care is needed here, because Clause 5(A) uses the words "two (2) years" twice and means something different each time. The first use describes how long a DIER licence lasts once it is issued. The second use describes how often the licence must be renewed while the contract is running. Only the first appears in the criterion the Contracting Authority evaluated. The second, the renewal undertaking, appears only in criterion 176093173188221, which the Contracting Authority chose to exclude from the evaluation.

What the Recommended Bidder actually did

The sequence appears from the Contracting Authority's own record.

- At bid stage, Green Ivy Cleaning Services answered criterion 176093173188233 by uploading a document. The file index of its submission records that document as entitled "*License for operators operating an employment agency or business is not required in this tender since it does not encompass any such work.*" Its answer to the criterion was therefore that the requirement did not apply to it, and that position was apparent from the face of the index.
- Criteria 176093173188220 and 176093173188221, being mandatory and admitting of a single response, were necessarily answered "I agree." No offer could have been submitted otherwise.
- On 13th February 2026 the Evaluation Committee issued a rectification request treating the answer given at bid stage as a shortcoming.
- On 18th February 2026 Green Ivy Cleaning Services filed a self-declaration to the effect that it would be in possession of the licence prior to Contract Signing.
- The Contracting Authority certified compliance with Clause 5(A) on the strength of that later declaration.

Why the grievance fails

- The Appellant's case is that the Recommended Bidder's Self-Declaration was incomplete, in that it addressed only possession of the licence before signing and was silent both as to renewal and as to the copy accompanying the Contract Agreement. On the electronic record that complaint cannot succeed. The renewal undertaking and the undertaking as to the licence copy formed no part of the criterion against which the Recommended Bidder uploaded its declaration. They were separate criteria, mandatory, single-option, and excluded from the evaluation. They could not have been omitted by any bidder, and their absence from the uploaded document signifies nothing.

- Nor can the Recommended Bidder's answer at bid stage be characterised as a failure to comply. The criterion it was answering was expressed to apply "(if applicable)," and the clause it reproduced was in terms confined to operators of a defined class. A bidder who concluded that he fell outside that class, and said so, gave a responsive answer to the question as the Contracting Authority had framed it. It was submitted on behalf of the Recommended Bidder, and not contested, that the Recommended Bidder and his own employees would perform the work. On the determination reached by this Board in Case 2255, that answer was correct.
- It follows that the Recommended Bidder was not required to hold or to self-declare the licence, that its bid-stage answer to criterion 176093173188233 was a proper one, and that there was no defect in its submission capable of founding the disqualification the Appellant seeks.
- The Board records that the Evaluation Committee's decision to issue a rectification request against an answer which was in fact correct, and its handling of the same answer when given by another bidder in this procurement, raise questions of a different order. Those questions do not arise on the grievances pleaded by this Appellant, who was not the operator affected by them. They are addressed in Case 2255, delivered concurrently herewith, at the instance of the operator who was.
- It is the opinion of this Board that the Recommended Bidder's submission satisfied Clause 5(A) as that clause was published and as it was presented to bidders in the tender response format, and that the Appellant has not established any deficiency in it.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Observation and recommendation to the Contracting Authority

The Board considers it necessary to record the following observations on the drafting of this tender, in terms identical to those recorded in Case 2255 delivered concurrently herewith.

Observations

1. Clause 5(A) applies only to Economic Operators "operating an Employment Agency or Employment Business." It was never a requirement falling on every bidder.
2. In the electronic structure the Contracting Authority qualified it further still, adding the words "(if applicable)," which do not appear in the tender document.
3. Notwithstanding both of the above, neither the tender document nor the electronic structure gave a bidder any means of stating that the clause did not apply to him.
4. Criterion 176093173188233 was mandatory and of file type. Every bidder had to upload a document, whatever his position, and it was the only criterion of the three that was scored.
5. Criteria 176093173188220 and 176093173188221 were mandatory and offered a single response, "I agree." Every bidder was therefore compelled to give undertakings premised on the licence being required of him, whether or not it was.
6. Those same two criteria were excluded from the evaluation altogether.
7. The part of Clause 5(A) identifying what an Employment Agency or Employment Business actually does, namely recruitment, Temporary Work Agency or Outsourcing Agency activity, was omitted from the electronic structure entirely, as was the reference to the DIER Employment Agencies portal. The bidder was asked to apply a definition he was never given, and denied the means of checking it.

Recommendations

1. Criterion 176093173188233 should present the bidder with an express choice: "Applicable" or "Not applicable."
2. Whichever option is selected, the bidder should still be required to upload a signed self-declaration. Where "Applicable" is selected, that declaration should address the licence and the undertakings the clause requires. Where "Not applicable" is selected, it should state the grounds on which the bidder maintains that the clause does not apply to him. In either case the declaration should be assessed by the Evaluation Committee on its merits.
3. Criteria 176093173188220 and 176093173188221 should be triggered only where "Applicable" has been selected, and should not be put to a bidder who has declared the clause inapplicable.
4. The wording of every criterion in the electronic structure should correspond exactly to the wording of the corresponding clause in the tender document. Qualifying words such as "(if applicable)" should not appear in one instrument and be absent from the other.
5. Where a clause is divided across several criteria, the division should be such that no substantive requirement falls outside the criterion put out to evaluation.
6. The definitional part of the clause, and the reference to the DIER Employment Agencies portal, should be reproduced in the electronic structure.

The Board,

Having evaluated all the above and based on the foregoing considerations, and noting that although the present Appellant's grievances fail, the findings of this Board in Case 2255, delivered concurrently herewith, establish that the Contracting Authority's application of Clause 5(A) at evaluation stage was erroneous and unequally applied as between bidders, with the consequence that the evaluation of this tender cannot stand, concludes and decides:

- a. Does not uphold the Appellant's grievances;
- b. To revoke the Letter of Rejection dated 4th May 2026 sent to AgriBrands Ltd;
- c. To revoke the Letter of Award dated 4th May 2026 issued in favour of Green Ivy Cleaning Services;
- d. To order the Contracting Authority to re-evaluate the bids received in this tender, taking into consideration the findings of this Board and the findings of this Board in Case 2255 delivered concurrently herewith, and to do anything else which is conducive and necessary for the proper execution of the above orders;
- e. Directs that the deposit of €475 paid by the Appellant is not to be refunded.

Mr Kenneth Swain
Chairman

Dr Maria Cardona
Member

Dr Ing. Damien Gatt
Member