DALLIPARIS
ADVOCATES



21th October 2026

Public Contracts Review Board
Notre Dame Ravelin,
Floriana,
Malta

In the acts of objection in the names of:

Simply Clean Limited (C 101719)

vs

[1] Sectoral Procurement Directorate
[2] JF Services (Staffing) Limited

SPD8/2026/043

Tender Name: Framework Contract for the Provision of Cleaning Services with Reduced Environmental Impact at the Premises of the Agriculture and Rural Payments Agency (ARPA) at Luqa Road, Qormi and ARPA Front Office, Ta' Qali

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REASONED REPLY BY JF SERVICES (STAFFING) LIMITED

Whereas, the Sectoral Procurement Directorate (*hereinafter* "**SPD**" and/or the "**Contracting Authority**") issued a call for tenders for a **Framework Contract for the Provision of Cleaning Services with Reduced Environmental Impact at the Premises of the Agriculture and Rural Payments Agency (ARPA) at Luqa Road, Qormi and ARPA Front Office, Ta' Qali**, bearing reference SPD8/2026/043 (*hereinafter* the "**Tender**"), with the award criterion being the Best Price/Quality Ratio (*hereinafter* "**BPQR**");

Whereas, JF Services (Staffing) Limited (*hereinafter* "**JFS**" and/or the "**Recommended Bidder**") submitted an offer for this procurement procedure, which offer was recommended for award for the price of €96,296.76 excluding VAT, by virtue of a letter dated 5th October 2026;

Whereas, Simply Clean Limited (*hereinafter* "**Simply Clean**" and/or the "**Appellant**") was informed that its offer was found to be technically non-compliant with BPQR Criterion B3(2) and BPQR Criterion B6(ii), and was accordingly excluded from the BPQR evaluation;

Whereas, the Appellant filed an objection with the Public Contracts Review Board (*hereinafter* the "**PCRB**" and/or the "**Honourable Board**") dated 15th October 2026, pursuant to regulation 270 of Subsidiary Legislation 601.03 (*hereinafter* the "**PPR**");

Whereas, the Recommended Bidder, in accordance with regulation 276(c) of the PPR, is hereby submitting its written reply as follows: -

Preliminary Observations

i. The Recommended Bidder has no visibility of the Appellant's offer

1. The Recommended Bidder has no visibility whatsoever of the offer submitted by the Appellant, and is therefore not in a position to confirm or otherwise the factual assertions made by the Appellant in relation to the contents of its own submission. The burden of proving such assertions rests squarely on the Appellant: *'min jallega irid jipprova'*. The Recommended Bidder reserves the right to make further submissions in this regard.

ii. The Appellant accepted the Tender Document without reservation

2. Through the Tenderer's Declaration at clause 1.1.1 of the tender structure, reproduced in its own **Doc A**, the Appellant accepted the Tender Document *"in full and in its entirety [...] without reservation or restriction"*, and acknowledged that

"any disagreement, contradiction, alteration, deviation or omission shall lead to our offer not being considered any further".

3. Wheresoever the Appellant had any concern as to the wording of the Evaluation Grid, or as to the consequences of failing a mandatory requirement, it had every opportunity to address such concern through a request for clarification and/or through the remedy afforded by regulation 262 of the PPR. It did neither, and an economic operator cannot lament about the tender criteria at evaluation stage, let alone after having been found non-compliant.

iii. The third, fifth and sixth grievances cannot lead to the reinstatement of the Appellant's offer

4. The Appellant's offer was excluded on the basis of two (2) distinct and independent findings of technical non-compliance, under BPQR Criteria B3(2) and B6(ii), each of which is on its own sufficient to sustain the exclusion. The third, fifth and sixth grievances relate to marks allotted to an offer which has already been excluded and, even if upheld, *quod non*, could not lead to its reinstatement. The Honourable Board is therefore respectfully requested to determine the first, second and fourth grievances in the first instance, and should these be rejected, to declare the remaining grievances as superfluous.

First ground of appeal: Shortcomings in Section B3 and B6(ii) do not lead to disqualification in terms of the Tender Document

5. The Recommended Bidder categorically rejects this grievance and submits that the same is entirely without merit, both in fact and in law. The Appellant's argument rests on a selective reading of a single note within the Evaluation Grid, read in isolation from the rest of the Tender Document.

6. The Tender Document must be read as a whole. Section B of the Evaluation Grid, together with Criteria B3 and B6 therein, is expressly designated as **"Mandatory"**, and the same designation is repeated against items B.3.2 and B.6.2 of the Organisation and Methodology form, which is itself a Note 3 document. The underlying obligations are, in turn, set out in the Terms of Reference, equally designated as Note 3, in respect of which *"No rectifications shall be allowed".*

7. A requirement which the Tender Document designates as mandatory is a threshold requirement. Failure to satisfy it is not a matter of marks, but of technical compliance. Where the Evaluation Grid specifies a disqualification threshold for criteria scored within a spectrum, it does so precisely because a low score in such

criteria is otherwise a legitimate outcome; it does not follow that a mandatory requirement which is not met at all may be compensated by the loss of a few points.

8. To hold otherwise would allow a bidder to disregard mandatory requirements, forfeit a limited number of points, and still be awarded the contract, in manifest breach of the principle of equal treatment towards those bidders who complied in full. This would be all the more incongruous in a Tender whose very object is the *"Provision of Cleaning Services with Reduced Environmental Impact"*. The Evaluation Committee was bound by the principle of self-limitation, and the Court of Appeal has consistently held that the rules of a tender are there to be observed and that the contracting authority is obliged to apply strictly the criteria which it itself has established.[1]

9. Accordingly, the first grievance is unfounded both in fact and in law, and ought to be rejected in its entirety.

Second ground of appeal: BPQR Criterion B3(2), Draft Monthly Template of Vacation Leave Planned for the subsequent month

i. The reference to Article 7.1.4

10. The reference in the letter of rejection to Article 7.1.4 rather than Article 7.1.5 of the Terms of Reference is immaterial. Both the Evaluation Grid and the Organisation and Methodology form refer bidders to Article 7 of the Terms of Reference as a whole, and the letter of rejection reproduced the requirement in question. The Appellant itself identified the relevant provision and was in no way misled or prejudiced. It is the Tender Document which creates and binds the requirement, not the numbering cited in a letter of rejection.

ii. The consequence of non-compliance

11. The contention that a shortfall under Criterion B3(2) could only lead to the loss of points has already been addressed under the first ground of appeal, to which reference is hereby being made.

[1] Rockcut Ltd v. Malta Industrial Parks Ltd et, Court of Appeal, decided on the 31st May 2019; Green Building Solutions Ltd v. Festivals Malta Agency et, App. Ċiv. 246/25/1, decided on the 11th November 2025.

iii. The requirement was not satisfied

12. The Terms of Reference require the monthly report of vacation leave to *"clearly indicate the details of the reliever who shall perform the duties of the personnel on vacation leave"*, whilst the Evaluation Grid provides that a '0' score shall be allotted where *"the draft report template submitted does not illustrate all minimum requirements"*. The Evaluation Committee found that the Appellant's submission did not satisfy this requirement.

13. The Appellant's own case is that the requirement is met only when separate documents within its submission are *"read together"*. With all due respect, it is not incumbent upon the Evaluation Committee to assemble a compliant template on the bidder's behalf. The obligation to submit a draft template which illustrates all minimum requirements rests on the bidder, and on the bidder alone. In any case, such assessment falls squarely within the technical discretion of the Evaluation Committee, and the Appellant has failed to identify any manifest error therein.

14. Accordingly, the second grievance is unfounded both in fact and in law, and ought to be rejected in its entirety.

Third ground of appeal: BPQR Criterion B1, Timekeeping and Adequate Level of Service

15. Without prejudice to the preliminary observations above, this grievance is equally unfounded. The Evaluation Committee never required the appointment of more than one supervisor. Criterion B1 calls for *"contract-specific know how measures and methodology/ies"*, *"evaluated in terms of appropriateness and relevance of the proposed approach"*, and the Evaluation Committee was fully entitled to assess the submission against the contract as tendered, including the fact that the services are to be rendered across more than one premises.

16. The marks allotted are the result of a qualitative assessment carried out within the remit of the Evaluation Committee. This Honourable Board is not being asked to correct an error, but to re-score a write-up, and the third grievance ought therefore to be rejected.

Fourth ground of appeal: BPQR Criterion B6(ii), Use of Concentrated Undiluted Products

i. The requirement is clear and cumulative

17. BPQR Criterion B6(ii), as replicated in item B.6.2 of the Organisation and Methodology form, is clear and unambiguous:

> *"The declaration shall include a list of all concentrated undiluted cleaning products (including brand names and dilution rate for each) to be used to perform tasks related to this contract [...] It shall also specifically indicate the total quantity as well as the total percentage of products from within the list which have a minimum dilution rate of 1/80."*

18. The requirement is cumulative and attaches to the declaration itself. The Recommended Bidder has no visibility of the Appellant's declaration, which the Appellant has chosen not to exhibit. However, on the Appellant's own submissions, its declaration contained a global statement that the percentage would be *"over 80%"*, together with a reference to its literature folder. A global statement of this nature does not satisfy a requirement to list the dilution rate of each product, and to state the total quantity and the total percentage, which are the very data on which compliance with the mandatory minimum and the allocation of points depend.

ii. Literature corroborates; it does not complete

19. Clause 5(C)(ii) of the Instructions to Tenderers is clear that *"The scope of the literature is to corroborate a fully compliant technical offer"*. Literature is evidence in support of what the technical offer declares; it does not supply what the technical offer omits. Nor does the structure of the ePPS assist the Appellant, since the tender structure provided a dedicated field for the B6(ii) declaration, separate from that for literature. The ePPS dictated where documents were to be uploaded, not what the declaration was to contain.

20. The Appellant's expectation is that the Evaluation Committee should have extracted the relevant data from its literature and compiled the declaration on its behalf. That would amount to the Evaluation Committee completing the Appellant's offer, in breach of the principles of equal treatment and transparency. As held by the Court of Appeal in **Vassallo Builders Ltd v. Wasteserv Malta Ltd et:**[2]

> *"VBL jeħtiġilha tifhem ukoll li meta r-regolamenti tas-sejħa jitolbu b'mod espress ċertu tip ta' dokumentazzjoni, dik id-dokumentazzjoni għandha tingħata bil-mod ta' kif ikun mitlub, u dan sal-għeluq taż-żmien għall-offerti [...]"*

[2] App. Ċiv. 22/2025/1, Court of Appeal.

21. Similarly, in **NQUAYMT v. Aġenzija għal Infrastruttura Malta,**[3] the Court of Appeal held:

> *"L-eċċess fil-manjaminita` u fit-tfittix sabiex jiġu salvati offerti akkost ta' kollox mhux espressjoni ta' proporzjonalita` imma huwa sproporzjon kontra min kien "compliant" mill-bidu nett."*

22. The Appellant itself acknowledges that Note 3 precludes the submission of new information at evaluation stage, and the Court of Appeal has confirmed that the clarification mechanism cannot be used to transform a non-compliant submission into a compliant one.[4] Accordingly, the fourth grievance is unfounded both in fact and in law, and ought to be rejected in its entirety.

Fifth ground of appeal: BPQR Criterion B4(ii), Risks Affecting Execution of the Contract and Mitigations

23. Without prejudice to the preliminary observations above, this grievance is nothing more than a request for this Honourable Board to re-score a qualitative write-up, which falls squarely within the technical discretion of the Evaluation Committee. Criterion B4(ii) concerns *"how the Economic Operator shall mitigate these risks"*, and the Evaluation Committee was entitled to assess the depth and concreteness of the mitigation proposed, and not merely the number of risks listed. The indicative word count applies to Criterion B4 as a whole, and the manner in which it was allocated was entirely the Appellant's choice.

24. Accordingly, the fifth grievance ought to be rejected.

Sixth ground of appeal: BPQR Criterion C2.6, Collective Agreement

25. Without prejudice to the preliminary observations above, this grievance concerns, at most, the difference in marks between two sub-criteria of an offer which has already been excluded, and is therefore immaterial to the outcome of these proceedings.

26. In any event, Criterion C2.6 contains its own definition of validity for the purposes of this Tender, and sub-criterion (iii) expressly caters for a collective agreement whose *"Validity Period exceeds the demarcated 90 day period as per above definition"*. The Evaluation Committee applied the criterion as drafted, in observance of the principle

[3] App. Ċiv. 35/22/1, Court of Appeal, decided on the 22nd June 2022.
[4] JV Healthcare Limited v. Cherubino Ltd, Central Procurement and Supplies Unit u Dipartiment tal-Kuntratti, App. Ċiv. 468/2025/1, decided on the 10th March 2026.

of self-limitation. The Recommended Bidder has no visibility of the Appellant's collective agreement or of any matters relating thereto, and reserves the right to make further submissions in this regard during the hearing.

NOWTHEREFORE, whilst reserving the right to put forward any other submissions, the Recommended Bidder hereby respectfully requests this Honourable Board:

1. **To reject the objection filed by Simply Clean Limited in its entirety;**
2. **To confirm the decision of the Contracting Authority communicated on the 5th October 2026, through which the offer of Simply Clean Limited was found to be technically non-compliant, whilst JF Services (Staffing) Limited was recommended for award of Tender SPD8/2026/043.**

The Recommended Bidder is hereby reserving the right to present further evidence, both orally and in writing, during the hearing.

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