GOVERNMENT OF MALTA
MINISTRY FOR AGRICULTURE, FISHERIES AND FOOD SUPPLY



Public Contracts Review Board

Notre Dame Ditch

Floriana

Malta

22nd October 2026

Re. 717 -SPD8/2026/043- 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

Reasoned Letter of Reply

Simply Clean Limited | Reply of the Contracting Authority

The Agriculture and Rural Payments Agency (ARPA), hereinafter the "Contracting Authority", submits this reasoned reply to the objection dated 15 October 2026. Through the below, it *inter alia maintains* that the published mandatory requirements governing the vacation-leave reporting template and the concentrated cleaning-products declaration had to be applied by the Tender Evaluation Committee. It also maintains that the reasons given for the qualitative assessments under Criteria B1 and B4(ii) concern the adequacy of the proposed methods against the published requirements. The collective-agreement grievance is addressed separately, including the decision cited by the Appellant.

The published requirements bind the Evaluation Committee

1. The governing principle is that the Committee must evaluate the offer actually submitted against the requirements actually published. It cannot waive a mandatory requirement for a particular tenderer, substitute its own proposed solution for missing tender information, or introduce a new requirement during evaluation. Equally, it must take account of relevant information already forming part of the offer. This is the principle of self-limitation upon which the Contracting Authority relies throughout this reply.[1]

[1] Court of Appeal (Superior Jurisdiction), NQUAYMT (Bonnici Bros. Services Limited and Korfezdeniz ins Taah. San. Ve Tic. Ltd. Sti) v Agenzija ghal Infrastruttura Malta et, application 35/22/1, judgment of 22 June 2022, paragraph 6, p. 19; see also paragraphs 5 and 7, pp. 18–20. Official judgment: https://ecourts.gov.mt/onlineservices/Judgements/PrintPdf?CaseJudgementId=132833&JudgementId=0

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2. Regulations 39(1), 61(1)(a) and 62 of the Public Procurement Regulations, S.L. 601.03, provide the domestic framework: equal, transparent and proportionate treatment; compliance with the procurement documents; and the distinction between compliance at the closing date and permissible requests concerning incomplete information. Regulation 62(2) makes such requests subject to the procurement document and to equal treatment and transparency.[2] These provisions must be read together rather than treating either strict compliance or clarification as an unrestricted rule.

3. In NQUAYMT v Aġenzija għal Infrastruttura Malta et, the Court of Appeal stated at paragraph 6: "Il-bord ta' evalwazzjoni huwa wkoll marbut bit-termini tad-dokumenti tas-sejħa".[3] In other words, the evaluation board is also bound by the tender documents. The Court distinguished an ambiguity from important information omitted by a bidder, and rejected an approach which would save an offer at the expense of tenderers who complied.

4. The same principle underlies Global Supplies Ltd v Enemalta plc, PCRB Case 1464. At paragraph 4 of its decision, the Board explained that "they have to conduct the evaluation process in accordance with the technical requirements as stipulated in the tender dossier".[4] The reference is to the Evaluation Committee. Documentary verification of technical compliance was material to that decision.

5. In Pizzo, the Court of Justice of the European Union stated at paragraph 39 that "a contracting authority must comply strictly with the criteria which it has itself established".[5] The judgment also requires clear published obligations and rejects exclusion founded on an obligation not expressed in the procurement documents or national law. The Contracting Authority relies on the expressly stated requirements here, not an obligation inferred for the first time after closing. These principles assist the interpretation of the domestic framework; the Contracting Authority does not base its reply on an assumption that the contract value alone brings this procedure within the EU procurement thresholds.

First ground of objection and the consequence of noncompliance

6. The Appellant submits that a zero score under B3(2) or B6(ii) could only result in loss of marks because their individual notes do not repeat the express disqualification sentence appearing under B1, B2 and B4. The Contracting Authority acknowledges the difference in wording. Its submission is that the tender documents must be read as a whole: the designation of these requirements as mandatory, their prescribed content, clause 6.2 of the Instructions to Tenderers, the compliance provisions of the General Rules, and the Terms of Reference all remain relevant.[6]

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[2] Public Procurement Regulations, S.L. 601.03, regulations 39(1), 61(1)(a) and 62, including regulation 62(2). Official consolidated text: https://legislation.mt/eli/sl/601.3/eng/pdf

[3] Court of Appeal (Superior Jurisdiction), NQUAYMT (Bonnici Bros. Services Limited and Korfezdeniz ins Taah. San. Ve Tic. Ltd. Sti) v Aġenzija għal Infrastruttura Malta et, application 35/22/1, judgment of 22 June 2022, paragraph 6, p. 19; see also paragraphs 5 and 7, pp. 18–20. Official judgment: https://ecourts.gov.mt/onlineservices/Judgements/PrintPdf?CaseJudgementId=132833&JudgementId=0

[4] Public Contracts Review Board, Global Supplies Ltd v Enemalta plc, Case 1464, tender TD/T/4142/PC3/2019, decision of 29 July 2020, paragraph 4 of the Board's decision, p. 5; see also paragraphs 3–6, pp. 5–6. Official decision: https://pcrb.gov.mt/wp-content/uploads/2022/12/PCRB_Case_2020_1464.pdf

[5] Court of Justice (Sixth Chamber), Pippo Pizzo v CRGT Srl, Case C-27/15, judgment of 2 June 2016, ECLI:EU:C:2016:404, paragraph 39; see also paragraphs 36–38 and 49–51. Official judgment: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A62015CJ0027

7. B3 is expressly mandatory. Its binary allocation of four points or zero turns on whether the draft template illustrates all minimum requirements. B6 is also expressly mandatory, and B6(ii) specifically prescribes a minimum qualifying proportion of concentrated products as well as the information through which that proportion is to be verified. The Contracting Authority's interpretation is that these are minimum technical obligations, not optional enhancements which a bidder may elect to omit while compensating with marks elsewhere.[7]

8. Clause 6.2 provides for elimination where an individual threshold has been set and is not attained, separately from the overall average technical minimum of 60. The Contracting Authority submits that the mandatory designations and express minimum requirements give effect to that distinction. An aggregate score of 86.45 cannot, of itself, establish compliance with each mandatory requirement. For accuracy, the category points and their percentage equivalents must be kept separate: B3(2) carries four points corresponding to 100% of that subcriterion; the lowest positive B6(ii) band carries one point corresponding to 20% of that subcriterion.[8]

9. In ACJ Cleaning & Hospitality Services v Regulator for Energy and Water Services, PCRB Case 1748, the Board recorded in part (a)(iv) of its own reasoning that "the Evaluation Committee assessed such document as per the requirements of the Tender Dossier whilst duly observing the principle of Self Limitation".[9] The Board upheld the application of the mandatory BPQR documentary requirement and the prescribed distinction between mandatory and add-on criteria. The tender documents in that case expressly linked zero on a mandatory requirement to disqualification. The decision illustrates adherence to the published structure; the Contracting Authority does not suggest that wording absent from the present tender documents can be imported from it.

10. The Contracting Authority asks the Board to uphold rejection only if the published tender documents establish a lawful and sufficiently clear basis for exclusion. That question is distinct from the marks justified by the submitted offer. In Montte SL v Musikene, paragraph 32, the Court of Justice accepted exclusion for failure to reach a "predetermined minimum score threshold"; paragraphs 38–39 require observance of the procurement principles and minimum requirements laid down in the tender documents. In Pizzo, paragraphs 36–39 and 51, the Court required clear published obligations and rejected exclusion for breach of an obligation not expressly arising from the tender documents or applicable national law. An error in treating zero as automatically exclusionary does not, without a separate error in scoring, establish entitlement to additional marks. Accordingly, if the Board rejects the alleged automatic exclusionary effect of zero, the marks under B3(2) and B6(ii) must still be determined under their published scoring rules and on the complete submitted offer.[10]

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[6] Simply Clean Ltd, objection dated 15 October 2026, first ground, pp. 1–2; Procurement Document SPD8/2026/043, Section 1, clause 6.2, p. 7, criteria B1–B6 and associated notes, pp. 9–13; General Rules Governing Tenders, version 4.10, Part 3, Technical Compliance, p. 16.

[7] Procurement Document SPD8/2026/043, Section 1, criterion B3(2), p. 10, and criterion B6(ii), pp. 12–13.

[8] Procurement Document SPD8/2026/043, Section 1, clause 6.2, p. 7, criterion B3(2), p. 10, and criterion B6(ii), pp. 12–13; Simply Clean evaluation grid, total criteria weight and score, p. 25.

[9] Public Contracts Review Board, ACJ Cleaning & Hospitality Services v Regulator for Energy and Water Services, Case 1748, tender SPD6/2021/094, decision of 22 June 2022, part (a)(iv) of the Board's reasoning, p. 6; see also parts (a)(i) and (b), pp. 5–6. Official decision: https://pcrb.gov.mt/wp-content/uploads/2022/11/PCRB_Case_2022_1748.pdf

Second ground of objection and the vacation leave report

11. The reference to Article 7.1.4 in the rejection letter was incorrect. The applicable provision is Article 7.1.5 of the Terms of Reference, p. 37. The Contracting Authority acknowledges that error. The rejection nevertheless identified the subject of the requirement and the perceived shortcoming: the monthly vacation-leave report had to provide for the reliever covering the duties of absent personnel.[11]

12. The incorrect article number does not change the substantive obligation which was published or the subject of the reason notified. The rejection letter expressly described the monthly vacation-leave report and the requirement to identify the reliever. B3(2) and Article 7.1.5 supply that same obligation. The Appellant's second ground addresses that requirement on its merits, showing that it understood the issue notwithstanding the citation error. The Board is accordingly requested to correct the reference and determine the stated compliance issue, rather than treat the mistaken number alone as requiring reinstatement. This does not dispense with proof of the remaining substantive deficiency or with any clarification required by the tender documents.[12]

13. B3(2), p. 10 of the procurement document, expressly calls for a draft monthly template for vacation leave planned for the subsequent month and refers to Article 7. Article 7.1.5 requires that the monthly report clearly indicate the reliever's details. The Contracting Authority's case does not depend on requiring a completed name before the contract starts. The template had to demonstrate how the prescribed information would appear when the monthly report was used.[13]

14. The Appellant supplied a monthly calendar recording employee absences and a separate Vacation Leave Request Form. The calendar has no dedicated provision identifying the employee who will cover each absence. The request form does contain a Replacement Employee Name field. The Contracting Authority does not dispute that field or contend that neither document contains any provision whatsoever for a replacement employee.[14]

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[10] Procurement Document SPD8/2026/043, Section 1, clauses 6.1–6.2, pp. 6–7, B3(2), p. 10, and B6(ii), pp. 12–13. Court of Justice (Fourth Chamber), Monte SL v Musikene, Case C-546/16, judgment of 20 September 2018, ECLI:EU:C:2018:752, paragraphs 32 and 38–39, quotation from paragraph 32. Court of Justice (Sixth Chamber), Pippo Pizzo v CRGT Srl, Case C-27/15, judgment of 2 June 2016, ECLI:EU:C:2016:404, paragraphs 36–39 and 51. Monte judgment: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A62016CJ0546; Pizzo judgment: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A62015CJ0027

[11] Rejection letter to Simply Clean Ltd dated 5 October 2026, p. 1; Procurement Document SPD8/2026/043, Section 3, Articles 7.1.4–7.1.5, p. 37.

[12] Rejection letter to Simply Clean Ltd dated 5 October 2026, p. 1; Procurement Document SPD8/2026/043, Section 1, B3(2), p. 10, and Section 3, Article 7.1.5, p. 37; Simply Clean Ltd, objection dated 15 October 2026, second ground, p. 2.

[13] Procurement Document SPD8/2026/043, Section 1, B3(2), p. 10, and Section 3, Article 7.1.5, p. 37.

[14] Simply Clean Ltd, Leave Planner, p. 1, and Vacation Leave Request Form, p. 1.

15. The tenderer bears responsibility for demonstrating, through its submitted offer, how the published requirements are satisfied. The Committee must examine the complete offer, read related documents together and take account of information which objectively demonstrates compliance. Its task does not extend to constructing a reporting arrangement which the tenderer has not demonstrated. Here, an individual leave request, subject to approval, and a monthly absence calendar perform different functions. The identified documents do not explain how the replacement information on individual requests would form part of the monthly report delivered to the Contracting Authority under Article 7.1.5. The Committee need not assume that such a process exists merely because the two documents could be used together. An express cross-reference or additional narrative is not an independent tender requirement: the question is whether the required monthly reporting arrangement is objectively apparent from the submitted material.[15]

16. This allocation of responsibility is supported by Steelshape Limited v Direttur tal-Kuntratti et, where the Court of Appeal stated: "Dak li offerent ghandu jghid, ghandu jghidu mal-offerta u mhux jippretendi li jkun mistoqsi d-dettalji tal-modus operandi tieghu." The responsibility for presenting the necessary information with the offer rests on the tenderer, rather than on the evaluators to elicit the details needed to demonstrate compliance. The Court upheld the assessment after several clarification requests had failed to identify sufficient information in the offer. The same responsibility to exercise diligence in preparing a clear tender is recognised in SAG ELV Slovensko, paragraph 38. These authorities support assessing the proposal actually demonstrated, without supplying substantive details on the tenderer's behalf.[16]

Third ground of objection and the specified product list

17. B6(ii), pp. 12-13, expressly states: "The declaration shall include a list of all concentrated undiluted cleaning products (including brand names and dilution rate for each)". It also requires the qualifying total quantity and percentage at the minimum dilution rate of 1/80. The published scoring bands depend on that proportion. Article 4.2.6, pp. 34-35, separately requires documentary verification of each product's rate and addresses the rate actually used where several rates are possible, ready-to-use products, and volume at purchase.[17]

18. This is an express requirement that the declaration identify all concentrated undiluted products proposed for this contract, each product's brand and dilution rate, and the qualifying total quantity and percentage. These particulars define the bidder's proposal and permit verification of the proportion on which the marks depend. The requirement is not satisfied merely by naming products and giving a general assurance of GPP compliance. The table headed Item and Product Name supplies part of the prescribed list, but omits the individual dilution rates. The Contracting Authority relies on the required information

[15] Simply Clean Ltd, Leave Planner, p. 1, and Vacation Leave Request Form, p. 1; Procurement Document SPD8/2026/043, Section 1, B3(2), p. 10, and Section 3, Article 7.1.5, p. 37; Public Procurement Regulations, S.L. 601.03, regulations 39(1), 61(1)(a) and 62. Official regulations: https://legislation.mt/eli/sl/601.3/eng/pdf

[16] Court of Appeal (Superior Jurisdiction), Steelshape Limited v Direttur tal-Kuntratti et, civil appeal 175/2013/1, judgment of 7 August 2013, unnumbered reasons on the first grievance, pp. 9–11; quotation from the paragraph beginning "Dak li offerent ghandu jghid", p. 11. Court of Justice (Fourth Chamber), SAG ELV Slovensko a.s. and Others v Úrad pre verejné obstarávanie, Case C-599/10, judgment of 29 March 2012, ECLI:EU:C:2012:191, paragraphs 36–41, especially paragraph 38. Steelshape judgment: https://ecourts.gov.mt/onlineservices/Judgements/PrintPdf?CaseJudgementId=82669&JudgementId=0; SAG ELV Slovensko judgment: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A62010CJ0599

[17] Procurement Document SPD8/2026/043, Section 1, B6(ii), pp. 12–13, and Section 3, Article 4.2.6, pp. 34–35.

and its verification, without imposing an unpublished table layout or treating a different presentation as a substantive defect in itself.[18]

19. The declaration names Sure Floor Cleaner, Sure Glass Cleaner, Probio San and Diversey Good Sense. The statement in the rejection letter that product brand names were missing was erroneous and is withdrawn to that extent. The Committee's remaining concern was the absence of an individual dilution rate for each product in the declaration and of the information needed to verify the declared qualifying quantity and percentage.[19]

20. Removing the erroneous statement about brands leaves a distinct reason already given in the letter of 5 October 2026: the declaration did not specify each product's dilution rate or the information needed to verify the qualifying quantity and percentage. Those omissions were expressly identified in that letter, rather than first introduced in this reply. A brand name answers which product is proposed; it does not itself state its proposed dilution rate or the contract-specific calculation. If the Board confirms the remaining omissions against the complete submitted offer and upholds their stated exclusionary consequence, the correction concerning brands does not remove the basis for rejection under B6(ii). The Contracting Authority therefore asks that the erroneous component be set aside while the independently sufficient components of that notified reason are upheld.[20]

21. The general statement that over 80% of all cleaning products will have a minimum dilution rate of 1/80 does not identify which listed products qualify, the individual rates proposed, or the volume calculation supporting the proportion. The specified list connects that assurance to the products and dilution rates offered for this contract. The Committee could not infer missing choices from the assurance, select among alternative manufacturer dilution rates, or construct a product allocation which the bidder had not proposed. Those acts would supply substantive elements of the offer, rather than verify the proposal submitted. Enforcing the list's published content is an application of self-limitation.[21]

22. The declaration states that technical and safety data sheets may be found in the literature folder. The Contracting Authority accepts that already submitted literature and express cross-references must be considered. Its submission is that technical literature which corroborates a product's characteristics does not, merely by being uploaded separately, replace the bidder's obligation to state the contract-specific information expressly required in the declaration. This follows also from clause 5(C)(ii), p. 6, which identifies corroboration of a fully compliant technical offer as the literature's purpose.[22]

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[18] Simply Clean Ltd, Declaration regarding Undiluted Products being used (GPP), p. 1; Procurement Document SPD8/2026/043, Section 1, B6(ii), pp. 12–13.

[19] Simply Clean Ltd, Declaration regarding Undiluted Products being used (GPP), p. 1; Rejection letter to Simply Clean Ltd dated 5 October 2026, p. 1.

[20] Rejection letter to Simply Clean Ltd dated 5 October 2026, p. 1; Simply Clean Ltd, Declaration regarding Undiluted Products being used (GPP), p. 1; Procurement Document SPD8/2026/043, Section 1, B6(ii), pp. 12–13.

[21] Simply Clean Ltd, Declaration regarding Undiluted Products being used (GPP), p. 1; Procurement Document SPD8/2026/043, Section 1, B6(ii), pp. 12–13, and Section 3, Article 4.2.6, pp. 34–35.

[22] Simply Clean Ltd, Declaration regarding Undiluted Products being used (GPP), p. 1; Procurement Document SPD8/2026/043, Section 1, clause 5(C)(ii), p. 6.

23. Product literature can establish a manufacturer's available dilution rates. It does not necessarily identify the bidder's proposed rate where several are available, the product quantities it proposes to use, or the resulting proportion by volume at purchase. The Committee must consider information already supplied, including the declaration's express reference to the literature. Cross-checking products and performing ordinary arithmetic on complete, fixed inputs are part of evaluation; the need for that exercise does not itself establish noncompliance. The material question is whether the submitted documents already identify the proposed products, rates and quantities sufficiently to establish the qualifying proportion, or leave substantive choices to be supplied. Any finding that the required particulars were absent must follow examination of the complete submitted offer, including the referenced literature.[23]

24. The Committee was therefore entitled to require the information specified by B6(ii), rather than award the highest band solely upon the over-80% assertion. A declaration which omits required particulars cannot be treated as complete merely because brochures describe products capable of qualifying. The Contracting Authority submits that the bidder must demonstrate its own qualifying proposal through the prescribed information. The Board is requested to uphold that application of the published requirement, having regard to the complete offer as submitted.[24]

25. Equal treatment also requires uniform enforcement of this obligation. A tenderer which supplies the specified particulars is entitled to have competing offers assessed against the same requirement. In Archus and Gama, paragraph 26, the Court of Justice of the European Union stated that "the tenders of all competitors must be subject to the same conditions". Paragraphs 30–32 require equivalent treatment of tenderers in the same situation, prohibit clarification amounting to a new tender and guard against undue advantage. Waiving the required particulars for the Appellant, or supplying missing substantive choices on its behalf, would risk giving it an advantage over a tenderer whose offer demonstrated compliance.

26. Accordingly, the Contracting Authority's case on B6(ii) is the enforceability of the prescribed contract-specific list, not a categorical refusal to read literature.

Fourth ground of objection and the supervision methodology

27. The Committee did not impose a requirement to appoint two supervisors. B1 requires a contract-specific methodology for timekeeping and service quality. The contract covers Qormi and Ta' Qali; the way the proposed supervisor will monitor both locations is relevant to the appropriateness and relevance of that methodology. Requiring an explanation of coverage of both premises does not alter the published number of supervisors.[25]

[23] Simply Clean Ltd, Declaration regarding Undiluted Products being used (GPP), p. 1; Procurement Document SPD8/2026/043, Section 1, B6(ii), pp. 12–13, and Section 3, Article 4.2.6, pp. 34–35.

[24] Procurement Document SPD8/2026/043, Section 1, B6(ii), pp. 12–13; Simply Clean Ltd, Declaration regarding Undiluted Products being used (GPP), p. 1.

[25] Procurement Document SPD8/2026/043, Section 1, B1(a)–(b), p. 9, and Section 3, description and location of services, pp. 27 and 35.

28. B1(a) expressly includes random onsite inspections. B1(b) expressly distinguishes routine weekly inspections followed by reports from non-routine or surprise inspections followed by reports. The timekeeping write-up provides for attendance monitoring and weekly inspections; the adequate-service write-up provides for weekly reports, supervisory checks and on-the-spot inspections. These measures were recognised through the substantial marks awarded: 82.67% under B1(a) and 80.42% under B1(b).[26]

29. The Contracting Authority acknowledges that the separate risk report mentions routine and surprise inspections. The issue is not the total absence of those words from the offer, but the extent to which the proposed arrangements explain the practical use of both forms of inspection, their reporting and their operation across the two premises. A general undertaking can be relevant without necessarily deserving full marks for a contract-specific methodology.[27]

30. In SIAC Construction, the Court of Justice of the European Union stated at paragraph 44: "Finally, when tenders are being assessed, the award criteria must be applied objectively and uniformly to all tenderers."[28] Paragraphs 42-43 also require criteria which diligent tenderers can interpret alike and a consistent interpretation throughout the procedure. The Contracting Authority relies on assessing the substance of the methods against the stated inspection requirements. It does not suggest that the Committee has unrestricted discretion or that merely preferring a fuller report would justify a deduction. The published criterion required a methodology, and the reasons explain which aspects of that methodology were considered insufficiently developed.

Fifth ground of objection and risk mitigation

31. The Committee recognised that the Appellant identified relevant risks and proposed a number of measures. Its award of 77.50%, corresponding to 3.10 of four points, reflects that recognition. The report lists 28 risks, including additional risks beyond the eight principal risks in Article 3.2. The number of risks addressed does not, however, determine the quality of the mitigation of the principal contract-specific risks.[29]

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[26] Procurement Document SPD8/2026/043, Section 1, B1(a)–(b), p. 9; Simply Clean Ltd, Writeup on ensuring timekeeping, pp. 1–3, and Writeup on ensuring an adequate level of service, pp. 1–4; Simply Clean evaluation grid, pp. 3 and 5.

[27] Simply Clean Ltd, Writeup on Risks and Mitigation, pp. 1–3; Procurement Document SPD8/2026/043, Section 1, B1(a)–(b), p. 9.

[28] Court of Justice (Fifth Chamber), SIAC Construction Ltd v County Council of the County of Mayo, Case C-19/00, judgment of 18 October 2001, ECLI:EU:C:2001:553, paragraph 44 (first sentence); see also paragraphs 40–43. Official judgment: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A62000CJ0019

[29] Simply Clean evaluation grid, p. 9; Simply Clean Ltd, Writeup on Risks and Mitigation, pp. 1–3; Procurement Document SPD8/2026/043, Section 3, Article 3.2, p. 28.

32. Applying the requirement of objective and uniform assessment in SIAC Construction, paragraph 44, the relevant published obligation is to explain how the risks will be mitigated to achieve the specified activities. Article 3.2 calls for concrete mitigation and continuity measures. The Committee could therefore consider whether the proposed checks and controls explain how the identified risk is prevented or remedied in practice, rather than treating the listing of measures as automatically sufficient for full marks.[30]

33. For cleaning standards, the report promises immediate rectification with supervision, inspections, training and checklists. The Committee's concern was the practical corrective arrangement supporting that promise. Article 7.1.3 already allows one working day for remedial measures after a shortfall, and that contractual provision must be taken into account. The deduction is defended on the adequacy of the operational method within the contractual framework, not the invention of an additional contractual deadline.[31]

34. For contractual compliance and environmental requirements, the report contains a compliance register, audits, training, supervisory monitoring, approved-product records and product-use and dilution measures. It also addresses police-conduct verification under a separate security risk. The Contracting Authority's position is that these measures were relevant but that the report did not sufficiently explain continuous implementation, including checking the required conditions before deployment and ensuring that the correct products reach and are used by the cleaners. This is a qualitative assessment of the measures actually proposed, not an assertion that no such measures were included.[32]

35. The reference to approximately 1,000 words applies across B4. It does not prescribe a separate maximum of 500 words for B4(ii), and it does not remove the requirement for a sufficiently concrete explanation. Brevity can satisfy the criterion; the Contracting Authority does not equate length with quality. The issue is whether the text devoted to the principal risks adequately explains the mitigation, having regard also to relevant information elsewhere in the offer. The reasons for the deduction must be understood in that confined sense.[33]

36. The same distinction applies to any inaccurate description of the supervision or risk submissions. A reference elsewhere in the offer to surprise inspections, a replacement field, an existing remedial period or a mitigation measure must be taken into account. Its existence does not automatically establish that the published criterion was fully satisfied or require full marks. The question is whether the recorded, accurate criticisms still justify the particular assessment. If an inaccurate criticism materially contributed to a deduction, the appropriate score must be reconsidered on the correct facts; the original deduction cannot simply be declared unaffected. Such a correction remains separate from the notified grounds of technical rejection.[34]

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[30] Court of Justice, SIAC Construction Ltd v County Council of the County of Mayo, C-19/00, judgment of 18 October 2001, ECLI:EU:C:2001:553, paragraph 44; Procurement Document SPD8/2026/043, Section 1, B4(ii), pp. 10–11, and Section 3, Article 3.2, p. 28. Official judgment: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A62000CJ0019

[31] Simply Clean Ltd, Writeup on Risks and Mitigation, pp. 1–3; Procurement Document SPD8/2026/043, Section 3, Article 7.1.3, pp. 36–37.

[32] Simply Clean Ltd, Writeup on Risks and Mitigation, pp. 1–3; Procurement Document SPD8/2026/043, Section 1, B4(ii), pp. 10–11, and Section 3, Article 3.2, p. 28.

[33] Procurement Document SPD8/2026/043, Section 1, B4 and B4(ii), pp. 10–11; Simply Clean Ltd, Writeup on Risks and Mitigation, pp. 1–3.

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Sixth ground of objection and the collective agreement

37. The Committee awarded four points under C2(6)(iii), having regard to the initial term ending on 14 February 2026 and the tender's definition of validity. The Appellant relies on Article 4 of the signed agreement, the DIER acknowledgement dated 25 January 2023, and PCRB Case 1939, SPD7/2023/028, Lot 1, decided on 12 December 2023. The Contracting Authority accepts that the complete duration clause, including continuation, must be considered; the initial end date cannot be read in isolation.[35]

38. In continuation with the above, the Contracting Authority asserts that the Evaluation Committee was correct when considering that a term of actual validity is established in the collective agreement, and any period following which is conditionally valid and could not remain so if the parties thereto fail to agree or rather disagree on the contents of the collective agreement. In this sense, that uncertainty led to the Evaluation Committee awarding four points as stated above.

40. Should the Board conclude that subcriterion (v) is satisfied, the adjustment of this separate score does not, without more, remove either technical noncompliance under B3(2) or B6(ii). The Contracting Authority's principal request to uphold the rejection rests on those independently assessed requirements, not on the collective-agreement deduction.[36]

41. For illustration, restoring the two points claimed for the collective agreement, while leaving all other marks unchanged, would increase the recorded total from 86.45 to 88.45 out of 100. That would correct that score but would not supply missing technical information under B3(2) or B6(ii). Accordingly, if either of those notified grounds remains an independently lawful ground of rejection after the Board's review, the rejection should be upheld despite the collective-agreement correction. This is an argument about technical eligibility, not an unsupported assertion that the Appellant would retain the same BPQR ranking: if no independent rejection ground survives, any revised score must be carried through the published formula against the other admissible tenders.[37]

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[34] Court of Justice, SIAC Construction Ltd v County Council of the County of Mayo, C-19/00, judgment of 18 October 2001, ECLI:EU:C:2001:553, paragraph 44; Procurement Document SPD8/2026/043, Section 1, B1, B3(2) and B4(ii), pp. 9–11; Simply Clean Ltd, Leave Planner, p. 1, and Vacation Leave Request Form, p. 1; Simply Clean Ltd, Writeup on Risks and Mitigation, pp. 1–3. Official judgment: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A62000CJ0019

[35] Simply Clean evaluation grid, p. 22; Procurement Document SPD8/2026/043, Section 1, C2(6), pp. 15–16; Collective agreement signed on 20 January 2023, Article 4, p. 3; DIER acknowledgement dated 25 January 2023, p. 1; PCRB Case 1939, SPD7/2023/028, Lot 1, decision of 12 December 2023, JF Services Ltd v Ministry for the Economy, European Funds and Lands, pp. 4–5. Official decision: https://pcrb.gov.mt/wp-content/uploads/2023/12/PCRB_Case_2023_1939-003.pdf

[36] PCRB Case 1939, SPD7/2023/028, Lot 1, decision of 12 December 2023, JF Services Ltd v Ministry for the Economy, European Funds and Lands, pp. 4–5; Collective agreement signed on 20 January 2023, Article 4, p. 3; DIER acknowledgement dated 25 January 2023, p. 1; Procurement Document SPD8/2026/043, Section 1, C2(6)(v), p. 16, B3(2), p. 10, and B6(ii), pp. 12–13. Official decision: https://pcrb.gov.mt/wp-content/uploads/2023/12/PCRB_Case_2023_1939-003.pdf

[37] Simply Clean evaluation grid, collective-agreement score, p. 22, and total score, p. 25; Procurement Document SPD8/2026/043, Section 1, C2(6)(iii)–(v), p. 16, B3(2), p. 10, and B6(ii), pp. 12–13. The illustrative 88.45 total is 86.45 plus two points.

The effect of identified errors on the rejection

42. In Germann Avocats LLC v European Commission, paragraph 28, the Court of Justice confirmed the assessment that "failure on a single criterion was sufficient for the tender to be rejected".[38] That conclusion depended on the requirements actually set out in that tender. It supports upholding a rejection where a separate and legally sufficient failure remains established; it does not create an elimination threshold omitted from the present tender documents. The Board is requested first to decide the interpretation of B3(2) and B6(ii), and then whether either remaining notified ground independently requires rejection.

43. The Contracting Authority therefore advances a concrete, confined case for upholding the result: correcting the article number leaves the same published reporting obligation; deleting the reference to missing brands leaves the previously notified dilution and verification defects; and correcting a separate quality or collective-agreement score does not establish compliance with an independently mandatory technical requirement. The Board can uphold rejection on a surviving notified ground without endorsing the inaccurate component of another reason. Conversely, if the Board finds that neither ground has the alleged exclusionary consequence, or that the remaining evidence satisfies it, the rejection cannot be preserved merely by labelling the errors immaterial.[39]

44. In EUIPO v European Dynamics Luxembourg and Others, paragraph 46, the Court of Justice of the European Union rejected an expectation that the reviewing court itself establish the absence of an effect "when the contracting authority has not provided any details as to that lack of effect".[40] Paragraph 47 required the contracting authority appealing the annulment to explain and establish why the errors could not improve the unsuccessful tenderer's position. The Contracting Authority accordingly relies on the specific distinctions and consequences demonstrated above. It does not ask the Board to invent new rejection reasons, reconstruct discretionary marks on an unproved basis or overlook a clarification opportunity required by the tender. If a defect affects only one ground or assessment, the requested remedy is confined to that defect while preserving any independently lawful rejection ground; if no such ground survives, the unlawful rejection must be set aside.

Relief requested

45. For these reasons, the Contracting Authority requests the Board to reject the Appellant's contention that the specified mandatory reporting and product-list requirements could be dispensed with; uphold the

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[38] Court of Justice (Tenth Chamber), Germann Avocats LLC v European Commission, Case C-233/21 P, order of 20 May 2022, ECLI:EU:C:2022:409, paragraph 28 (the Court's explanation of the independent-criterion reasoning in the order under appeal). The tender in that case expressly prescribed minimum scores for each criterion. Official order: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CO0233

[39] Court of Justice, Germann Avocats LLC v European Commission, C-233/21 P, order of 20 May 2022, ECLI:EU:C:2022:409, paragraph 28; Rejection letter to Simply Clean Ltd dated 5 October 2026, p. 1; Procurement Document SPD8/2026/043, Section 1, B3(2), p. 10, and B6(ii), pp. 12–13. Official order: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CO0233

[40] Court of Justice (Fourth Chamber), European Union Intellectual Property Office (EUIPO) v European Dynamics Luxembourg SA and Others, Case C-376/16 P, judgment of 3 May 2018, ECLI:EU:C:2018:299, paragraphs 45–47, quotation from paragraph 46. EUIPO was the contracting authority appealing the annulment; paragraph 47 does not place its evidential burden on the unsuccessful tenderer. See also S.L. 601.03, regulations 90(3) and 276(h). Official judgment: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0376; Official regulations: https://legislation.mt/eli/sl/601.3/eng/pdf

Committee's application of those requirements and the resulting rejection, on the interpretation advanced above; and dismiss the requests for automatic reinstatement of the marks deducted under B1 and B4(ii).[41]

avv. Edric Micallef Figallo

o.b.o. Agriculture and Rural Payments Agency

[41] Procurement Document SPD8/2026/043, Section 1, B1, B3(2), B4(ii) and B6(ii), pp. 9–13; Rejection letter to Simply Clean Ltd dated 5 October 2026, p. 1.

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