PUBLIC CONTRACTS REVIEW BOARD

Case 2280 – QLC/CMPG/16/95 – Services Tender for the Cleaning and Maintenance of Parks, Gardens and Soft Areas in the Locality of Ħal Qormi using Environmentally Friendly Products and Practices (hereinafter the "Tender");

20th November 2026

The Board,

Having noted the Letter of Objection filed by **Anthony Scerri** (hereinafter referred to as ***"the Appellant"***), filed on the 24th September 2026, the said Letter of Objection being dated the 23rd September 2026;

Having also noted the Reasoned Letter of Reply filed by the **Kunsill Lokali Ħal Qormi** (hereinafter referred to as ***"the Contracting Authority"***), filed on the 6th October 2026, the said Reasoned Letter of Reply being dated the 5th October 2026;

Having noted that the recommended tenderer, **Blooming Garden Limited** (hereinafter referred to as ***"the Recommended Bidder"***), did not file a Reasoned Letter of Reply;

Having heard and evaluated the testimony of Mr Ryan Montebello, certified public accountant, summoned as a witness by the Appellant;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 17th November, 2026 hereunder-reproduced.

Minutes

Case 2280 – Objection – QLC/CMPG/16/95 – Provision of Service for the Cleaning and Maintenance of Parks, Gardens and Soft Areas in the Locality of Hal Qormi using Environmentally Friendly Products and Practices.

The Tender was issued on the 1st of July 2026, and the closing date was 24th July 2026.

The estimated value of the tender, excluding VAT, was €85,000.00

A deposit of €425 was paid.

There were Three bids.

On the 24th of September 2026, Mr Anthony Scerri, lodged an appeal against Qormi Local Council – the Contracting Authority.

On the 17th of November 2026, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Mr Keith Victor Grech and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal

The attendance for this public hearing was as follows:

Appellant – Mr Anthony Scerri.

Dr Kirsty Muscat – Legal Representative.

Mr Anthony Scerri – Company Representative.

Contracting Authority – Qormi Local Council.

Mr Robert Mizzi – Executive Secretary. online

Dr Chris Falzon – Evaluator. online

Recommended Bidder – Blooming Garden Ltd.

Officially declined invite.

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2280 in the records of the PCRB. The Chairman identified the Appellant as Mr Anthony Scerri, and the Contracting Authority as Qormi Local Council. The Recommended Bidder, Blooming Garden Ltd., officially declined invite.

Submissions.

The hearing commenced at 9.45 am, as the representatives of the Contracting Authority had failed to appear.

Verbal statement by the Chairman, Dr Vincent Micallef.

"Dan l-appell li kien intiz li jibda fid 9.00 ta fil-ghodu tal-lum 17 ta Novembru 2026, l-Awtorita Kontraenti sad 9.45 ta fil-ghodu ma kienitx prezenti ghas-smiegh ta dan l-appell u dan minkejja illi Ms. Graziella Vella fil-kwalita taghha bhala Assistant Manager tal-PCRB kienet debitament innotifikat lil partijiet kollha, nkluz lil Awtorita Kontraenti, illi l-appell u l-hin tas

smiegh kien fid 9.00 ta fil-ghodu liema notifika tinsab fl-atti konsistenti f'posta elettronika data l-10 ta Novembru 2026 bil-hin 13.54pm.

Illi ghal dan il-ghan dan il-Bord jiddeplora l-fatt li hadt mill partijiet koncernati fi hdan l-Awtorita kontraenti ma nnota l-ordni ta dan il-Bord bid data u l-hin hekk stipulat.

Illi konsegwenzament l-Awtorita Kontraenti gie koncess lilha li tidher ghal dan l-appell permezz ta video conferencing u dan sabiex dan il-Bord jkun jista jipprocedi bis-smiegh ta l-appell. Ghal Awtorita Kontraenti qed jidher is-sur Robert Mizzi Segretarju Ezekuttivt ghal-Kunsill Lokali Hal- Qormi.

Dr Kirsty Muscat mistoqsija minn dan il-Bord jekk ghandiex oggezzjoni illi dan l-appell jipprocedi bil-azzjoni partecipi tal-Awtorita Kontraenti f'video Conference. L-abbli avukat ta l-appellant tiddikjara li ma ssibx l-ebda oggezzjoni li dan l-appell jissokta b'dan il-mod.

Il-Bord jinnota illi l-oblatur rakkomandat mhux prezenti ghas smiegh ta dan l-appell".

Initial Submissions.

Initial Submissions by Dr Kirsty Muscat for Mr Anthony Scerri, the appellant.

Dr Muscat stated that the appellant had submitted a bid for the *'Provision of Service for the cleaning and maintenance of Parks, Gardens and soft areas in Qormi'*. This bid was rejected.

The sole award criterion was the cheapest price, subject to satisfying the administrative and technical requirements. The appellant questioned how the successful tenderer could meet the requirements at the price submitted.

The Chairman noted that the appellant was alleging that the successful bidder's offer was abnormally low.

Dr Muscat stated that the tender required 120 hours of labour and that €68,000 would not even cover the wages. The offer submitted by Blooming Garden Ltd. was not realistic.

Initial Submissions by Mr Robert Mizzi for Qormi Local Council, the Contracting Authority.

Mr Robert Mizzi, who was following the hearing online, stated that the lawyer was not present due to a misunderstanding regarding the time. Mr Mizzi had observed the evaluation process. The Evaluation Board had checked that the offer was the cheapest compliant one, and he disagreed with the term 'abnormally low', as the submission was within the required parameters.

The Evaluation Board had examined all the bids, and the appellant's offer was not the cheapest compliant one. He added that Mr Chris Falzon, who had joined online and was a member of the Evaluation Board, could provide further details.

The Chairman explained that the appellant had already outlined the grounds of the appeal and invited Mr Chris Falzon to briefly elaborate on their reply.

Mr Chris Falzon noted that the Contracting Authority had its requirements and an allocated budget. The Evaluation Committee had found that all three submissions were eligible and complied with the technical requirements. It then assessed whether the bids were financially adequate in relation to the Contracting Authority's budget. The appellant's submission was almost double the amount allocated in the Local Council's budget. The Evaluation Committee had left all the bids for the Contracting Authority to choose from.

The Chairman asked Mr Chris Falzon about his role in the evaluation process. Mr Falzon replied that he was one of the evaluators who had assessed the tender documents.

Witness:

Mr Anthony Scerri, ID No. 343572M, summoned by Dr Kirsty Muscat.

Mr Anthony Scerri provides services to Local Councils by carrying out cleaning and maintenance works on roads and in gardens. He stated that the Qormi Local Council had issued a tender in 2023, which had been

awarded to Taliana Gardening Centre on the basis of the cheapest price. This bidder had subsequently abandoned the tender, and the Qormi Local Council had to issue another tender.

Mr Scerri submitted his bid and noted that the gardens in Qormi were not tidy or properly maintained. He stated that four labourers would cost €80,000, without taking into account the additional costs of dumping, insurance, fuel, COLA and bonuses.

In his bid, Mr Scerri had considered the cost of fertiliser and watering the plants, the electricity required to operate the water pump, and the fuel for the bowser. He was also required to supply seasonal flowers and maintain them.

The tender required waste bins to be emptied every day and disposed of at a site authorised by WasteServ, at a cost. There were also the costs of vehicle maintenance, with prices constantly increasing. The tender required 120 working hours per week, with replacement staff to cover sick leave and days off. Mr Scerri offered to replace the fourth person himself in the event of sick leave.

Before submitting his offer, Mr Scerri checked all the required prices and handed the details to his auditor, Mr Ryan Montebello. There were also expenses relating to the rent of the store and the insurance of the vehicles, employees and property. The tender required three persons working 120 hours per week, together with a constant replacement worker. The sum of €68,400 would only cover the wages. The current contractor was employing only two persons because he could not afford to employ more, which was why he had abandoned the contract. Mr Scerri believed that the same situation would arise with the preferred bidder.

Cross-Examination by Mr Robert Mizzi.

Mr Robert Mizzi wished to ask Mr Scerri if he agreed with the amount submitted in his offer.

The Chairman noted that, at this stage, no comments were to be made, but that Mr Mizzi would be given the opportunity to do so at a later stage. The Chairman explained that Mr Mizzi was being given the opportunity to ask questions, if he had any. The cross-examination should be based on the witness's questions and answers. The fact that the appellant had lodged an appeal showed that the witness had his reasons for doing so.

Mr Robert Mizzi had no questions.

Witness:

Mr Ryan Montebello, ID No. 566785M, summoned by Dr Kirsty Muscat.

Mr Ryan Montebello was a certified public accountant and auditor. He acted as the financial adviser to Mr Scerri. The tender requirements were for three full-time workers and one part-time worker to replace in the event of leave or sickness.

He had prepared the costings in accordance with DIER regulations, whereby every labourer had to be paid according to scales 15 and 16, similar to labourers employed by the Government. In his report, a copy of which he was to present, he showed that the labour costs alone exceeded the amount of the preferred offer. He was 100% certain that the workers would have to be employed under precarious conditions.

The cost of labour exceeded the selling price of the tender. His estimate covered five years and included COLA expenses. He noted that a clause in the last Budget stipulated that the employer had to pay for the TCN permit, which represented an additional expense of €1,000 per year. This was not included in his report, as it had been

prepared before the Budget was issued. The labour cost in his report amounted to €82,000. There were also the costs of an expert in pesticides for the gardens, water and the work required under the tender.

Out of the total cost of €160,000, the profit margin would be 15%. Both the other tenders had submitted amounts below the labour costs required by law. He presented his financial report.

Verbal statement:

"Gie esebit seduta istante document RM1 konsistenti f'hames faccati ta rapport redatt minn Mr. Ryan Montebello ghas-socjeta Finance 24 Corporate Management Ltd".

Mr Montebello stated that it was illegal to submit tenders calculated at a gross loss, as was the case with both tenders submitted. In the final part of his report, he explained why the prices submitted were unrealistic, both from the perspective of commercial law and employment law. He noted that the price for family-friendly pesticide was exorbitant. He had considered the prices applicable in September, which had increased since then. The pesticide had to be environmentally friendly, in accordance with the Government's project for the protection of bees.

Mr Robert Mizzi had no questions.

The Chairman asked the Contracting Authority whether it had any witnesses. Mr Mizzi replied in the negative.

Verbal statement:

"Li l-awtortia kontraenti tiddikjara li m'ghandhomx xhiedha xi jressqu. Il-Bord jiddikjara illi l-istadju tal provi tal-partijiet huwa konkluz u jordna lil partijiet sabiex jghamlu s-sottomissjonijiet finali taghhom".

Final Submissions.

Final Submissions by Dr Kirsty Muscat for Mr Anthony Scerri, the appellant.

Dr Muscat noted that Mr Robert Mizzi had stated that the award would be given to the bidder offering the cheapest price while satisfying the technical requirements. The amount submitted would only cover 120 hours of labour per week, and the bid was therefore not sustainable. She requested that the appeal be upheld.

Final Submissions by Mr Robert Mizzi for Qormi Local Council, the Contracting Authority.

Mr Robert Mizzi stated that it was unfortunate that their lawyer was not present due to the misunderstanding regarding the hearing time. He requested an opportunity for their lawyer to submit a counterresponse.

Dr Muscat objected, stating that no request for an adjournment had been made since the beginning of the appeal, and maintained that she wished the Board to deliver its decision.

The Chairman stated that the Contracting Authority had been given every opportunity to make its final submissions. The appeal had commenced 45 minutes late to allow its representatives to attend. The Board had also allowed participation by video conferencing so that the appeal could proceed, since no one had been present. The lawyer could also have joined the hearing online.

Mr Robert Mizzi stated that the Local Council had an established budget for the offer. The Evaluation Board had evaluated the bids independently. The Council had no objection to the preferred bidder, as it believed that the bidder had also carried out the necessary calculations. Mr Mizzi expressed his regret regarding the misunderstanding.

Conclusion of the Hearing.

With no further arguments presented, the Chairman, Dr Vincent Micallef, thanked the parties and formally concluded the hearing.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 17th November, 2026.

Having noted the objection filed by Anthony Scerri (hereinafter referred to as "the Appellant") on the 24th September 2026, the Board refers to the claims made by the same Appellant with regard to the tender of reference QLC/CMPG/16/95 – Services Tender for the Cleaning and Maintenance of Parks, Gardens and Soft Areas in the Locality of Hal Qormi using Environmentally Friendly Products and Practices (hereinafter the "Tender"); listed as case No. 2280 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Kristy Muscat
Appearing for the Contracting Authority:	Unassisted[1]
Appearing for the Recommended Bidder:	The Recommended Bidder did not appear.

Whereby, **the Appellant contends** that:

Re: Tender QLC/CMPG/16/95

Offer Id: 246397

Appeal - Provision of Service for the Cleaning and Maintenance of Parks, Gardens and Soft Areas in the Locality of Ħal Qormi using Environmentally Friendly Products and Practices

Dear Chairperson,

I am writing on the instructions of Anthony Scerri, holder of identity card number 343572(M) and who resides at 53, Solitaire, Triq ix-Xitwa, Hal Qormi.

That Appellant, respectfully refers to the letter issued by the Qormi Local Council dated 15th September 2026, by virtue of which the Appellant was informed that his tender submission for the "Provision of

[1] The Board convened at 09:00 hours, all parties having been duly notified. Although the Contracting Authority did not appear in person, citing a purported misunderstanding as to the time, the exact date and time had been notified to all parties by Ms Graziella Vella (Assistant Manager) by email of the 22nd October 2026 (12:47) and again by email of the 10th November 2026 (13:54). The Board nonetheless acceded to remote participation by video conferencing and transmitted the link accordingly. The Executive Secretary, Mr Robert Mizzi, joined and participated on behalf of the Contracting Authority, albeit unassisted; its legal counsel, though invited and having confirmed receipt of the link, did not join. The Board is therefore satisfied that the Contracting Authority was afforded every opportunity to be heard and was in fact represented at the hearing through its Executive Secretary.

Service for the Cleaning and Maintenance of Parks, Gardens and Soft Areas in the Locality of Hal Qormi using Environmentally Friendly Products and Practices" was unsuccessful.

A copy of the said notification is being annexed hereto and marked Document A.

The Appellant was informed that Blooming Garden Limited had been selected as the successful tenderer on the basis that its offer was the cheapest offer satisfying the administrative and technical criteria, at a tendered price of €68,400.

The Appellant feels aggrieved by the said decision and is hereby formally lodging an appeal against the award decision.

GROUNDS OF APPEAL

1. The award criterion

The tender document expressly provides under Rule 6:

> *'The sole award criterion will be the price. The Contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical critaria.'*

It follows from the above provision that the lowest price is not, by itself, sufficient to secure the award of the contract.

The lowest-priced offer must also satisfy all the applicable administrative and technical requirements contained in the tender documentation.

The Appellant's concern in the present appeal is therefore not merely that the successful tenderer submitted a lower price. Rather, the Appellant respectfully submits that there are serious grounds to question whether the successful tenderer was capable of satisfying the mandatory technical, personnel, labour, equipment and service requirements stipulated in the tender documents at the price submitted.

2. Mandatory labour requirement

Of particular relevance is Clause 6.1.1 of the Terms of Reference, entitled "Personnel and Key Experts", which requires the Contractor to appoint the necessary key experts, including a Gardener/Horticulturist and/or Nursery Grower, and expressly provides for a minimum total labour input equivalent to 120 hours per week for the execution of the contract.

The tender documentation further provides that the requirement may be met through any appropriate staffing structure, but expressly requires the Contractor to ensure that sufficient and competent personnel are always deployed.

The requirement for the minimum labour input of 120 hours per week is therefore not merely indicative or discretionary. It forms part of the requirements which the successful contractor is required to satisfy in the execution of the contract.

The Appellant respectfully submits that the successful tenderer's financial offer raises a legitimate and material question as to whether the mandatory labour requirement, together with all the other contractual obligations, can realistically and lawfully be fulfilled for the price tendered.

3. Scope and extent of the services

The scope of the contract is extensive and includes, amongst other matters:

a. litter collection and sweeping;

b. grass cutting;

c. tree and shrub pruning;

d. horticultural maintenance;

e. maintenance of seasonal flower beds and horticultural features;

f. soil works;

g. watering and replanting;

h. collection and disposal of green waste and other waste;

i. maintenance of parks, gardens and soft areas; and

j. other horticultural and non-horticultural works specified in the Terms of Reference.

Furthermore, the services are required to be performed from Monday to Saturday, during the working periods specified in the tender documentation.

The Contractor is therefore required to organise its personnel, equipment and resources in such a manner as to ensure that the required services are continuously provided to the standard stipulated in the tender documents.

Consequently, the Appellant respectfully submits that the financial offer of the successful tenderer ought to have been assessed against the entire scope of mandatory contractual obligations, including the minimum labour requirement.

4. Labour and employment costs

The tender expressly requires a minimum total labour input equivalent to 120 hours per week.

The Appellant has prepared and annexed a financial analysis, together with a report concerning the employment costs of, at minimum, a gardener and an assistant, which demonstrates the actual costs associated with employing personnel necessary for the proper execution of the contract.

A copy of the said financial analysis and report is annexed hereto and marked Document B.

The Appellant respectfully submits that the financial analysis demonstrates that the cost of complying with the mandatory labour requirements represents a substantial component of the overall cost of performing the contract.

The successful tenderer's substantially lower tender price consequently raises a material question as to whether the tender price is sufficient to cover, inter alia:

- the minimum 120 hours of labour per week;
- the necessary competent personnel;
- applicable wages and employment-related costs;
- statutory contributions and other employment costs;
- the required horticultural expertise;
- machinery and equipment;
- vehicles and transportation;
- watering resources;
- waste collection and disposal;
- insurance;
- occupational health and safety obligations; and
- all other costs necessary for the proper execution of the contract.

The Appellant emphasises that he is not challenging the successful tender merely because it is cheaper.

The issue raised is whether the successful tender, having been selected under a criterion which expressly requires the cheapest offer satisfying the administrative and technical criteria, actually provides for the resources and costs necessary to comply fully with those mandatory requirements.

5. Required equipment, machinery and watering resources

The tender documentation further requires the Contractor to provide the necessary equipment, machinery, vehicles and other resources required for the execution of the contract.

In particular, the tender documentation requires the provision of the necessary watering resources, including access to a small 1,000-litre bowser and a large 30,000-litre bowser, together with the associated labour, equipment, transport and water costs.

These requirements necessarily involve additional operational expenditure which must be capable of being accommodated within the successful tenderer's tendered price.

The Appellant therefore respectfully submits that the evaluation of the successful tender ought to have taken into consideration whether the tenderer had demonstrated its ability to fulfil all such requirements for the duration of the contract.

6. Compliance with the tender documentation

The Appellant respectfully submits that the Contracting Authority was required to evaluate the successful tender against the requirements actually established in the tender documents.

The fact that the successful tenderer submitted the lowest price cannot, in itself, establish compliance where the tender documents expressly qualify the price criterion by requiring the tenderer to satisfy the administrative and technical criteria.

Accordingly, the Appellant requests that the Board examines whether the successful tenderer's offer, as submitted and evaluated, demonstrates compliance with the mandatory requirements concerning:

1. the minimum 120 hours of labour per week;
2. the deployment of sufficient and competent personnel;
3. the required key expertise;
4. the complete scope of services;
5. the required machinery, vehicles and equipment;
6. the required watering resources;
7. employment and statutory obligations;
8. occupational health and safety requirements;
9. insurance requirements; and
10. all other mandatory obligations contained in the tender documentation.

Should it transpire that the successful tender was accepted notwithstanding that it did not satisfy one or more of the mandatory requirements of the tender, the Appellant respectfully submits that such non-compliance would constitute a material issue concerning the validity of the award decision.

7. Difference in tender prices

The successful tenderer's price is substantially lower than the Appellant's tender price, by approximately 20%.

The Appellant does not contend that the mere fact of a lower price constitutes non-compliance.

However, given the mandatory requirement of 120 hours of labour per week, the extensive scope of services, the requirement for competent personnel, machinery, vehicles, watering resources and other operational resources, the substantial difference in tender prices gives rise to a legitimate issue as to whether the successful tender was properly assessed against the full requirements of the tender documentation.

The Appellant therefore respectfully requests that the evaluation carried out by the Contracting Authority be reviewed and that it be established whether the successful tenderer's offer, as submitted, provides for full compliance with all mandatory requirements.

REQUEST TO THE BOARD

In view of the foregoing, the Appellant respectfully requests that the Public Contracts Review Board:

1. uphold this appeal;
2. annul and/or quash the decision of the Qormi Local Council awarding the contract to Blooming Garden Limited, should the Board establish that the successful tender did not satisfy the mandatory requirements of the tender documentation;
3. declare, where applicable, that a tender which does not satisfy the mandatory administrative and/or technical requirements cannot be selected merely on the basis that it submitted the lowest price; and
4. grant such other remedy or further direction as the Board may deem appropriate in the circumstances and in accordance with law.

The Appellant reserves all rights and remedies available to him at law.

Av. Jason Grima

[Annexed: Document A – notification of the Qormi Local Council dated Tuesday 15th September 2026; Document B – report of Finance 24 Corporate Management Ltd dated 18th September 2026, entitled "Rapport Bla Preġudizzju għall-ispiża tal-Impjiegi", with an annual statement of direct employee costs for five years.]

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on the 6th October 2026 and its verbal submission during the hearing held on the 17th November, 2026, in that:

RE: QLC/CMPG/16/95 - PROVISION OF SERVICE FOR THE CLEANING AND MAINTENANCE OF PARKS, GARDENS AND SOFT AREAS IN THE LOCALITY OF ĦAL QORMI USING ENVIRONMENTALLY FRIENDLY PRODUCTS AND PRACTICES – REPLY TO APPEAL

The Qormi Local Council refers to the appeal submitted by Mr Anthony Scerri in relation to the above-mentioned Call for Tenders and, with respect, submits that the appeal is unfounded both in fact and under the express provisions governing the procurement procedure.

Having carefully considered the grounds raised by the Appellant, the Council respectfully maintains that the tender process was conducted in accordance with the applicable tender conditions and that the decision to proceed with the offer submitted by Blooming Garden Limited was properly reached following the evaluation conducted by the duly appointed Evaluation Board.

The Council therefore respectfully requests that the appeal be dismissed.

1. The procurement in question concerns the provision of services for the cleaning and maintenance of parks, gardens and soft areas within the locality of Hal Qormi, using environmentally friendly products and practices.

The tender documentation expressly established that:

> *"The sole award criterion will be the price."*

It further stipulated that:

> *"The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria."*

The offers received were as follows: Blooming Garden Limited – €68,400; Palace Landscaping Limited – €69,960; Anthony Scerri – €160,000.

The Estimated Procurement Value for the Call for Tenders was established at €85,000 excluding VAT, following comprehensive research, including appropriate financial analysis and market research.

It is therefore immediately apparent that Blooming Garden Limited submitted the lowest-priced offer.

2. The Council considers it important to emphasise that the tender documentation itself determines the parameters according to which the Evaluation Board is required to assess the competing offers.

Article 6.1 of the Tender Document expressly provides that price is the sole award criterion, subject to the tenderer meeting the requisite administrative and technical criteria.

Accordingly, once a tenderer has been found to satisfy the applicable administrative and technical requirements, the tender conditions require the contract to be awarded to the tenderer submitting the cheapest priced offer. The award mechanism was predetermined by the tender documents.

The Evaluation Board was therefore required to apply the criteria established in the tender.

3. The Council notes the Appellant's contention that Blooming Garden Limited allegedly does not possess the necessary requisites to perform the services contemplated by the tender.

This contention is not accepted.

The Evaluation Board was specifically entrusted with the evaluation of the offers submitted and, following its assessment, was satisfied that Blooming Garden Limited fulfilled the applicable administrative and technical requirements and possessed the necessary requisites to undertake the services stipulated in the tender.

The Evaluation Board assessed the tenderer's compliance with the requirements of the procurement and, having found the tenderer to be compliant with the applicable administrative and technical requirements, proceeded to apply the sole award criterion established by Article 6.1, namely price.

The Appellant cannot seek to substitute his own assessment of the capabilities of the successful tenderer for the assessment already carried out by the duly constituted Evaluation Board, particularly in circumstances where the Evaluation Board was satisfied that the tender requirements had been met.

4. The financial disparity between the competing offers is significant and further demonstrates the reasonableness of the Evaluation Board's decision when considered against the express award criterion.

Blooming Garden Limited tendered €68,400, whereas Mr Scerri tendered €160,000.

The difference amounts to: €160,000 - €68,400 = €91,600.

Accordingly, Mr Scerri's tender was €91,600 more expensive than that of Blooming Garden Limited.

Expressed as a percentage, Mr Scerri's offer was approximately 133.92% higher than Blooming Garden Limited's offer.

Conversely, Blooming Garden Limited's offer was approximately 57.25% lower than Mr Scerri's offer.

This is not a marginal difference between competing offers. It represents a very substantial divergence in pricing.

In circumstances where the tender expressly provides that price is the sole award criterion, subject to compliance with the administrative and technical requirements, the Evaluation Board was required to give effect to that criterion.

5. The Council further considers it relevant to point out that the Appellant's tender of €160,000 was itself substantially in excess of the Estimated Procurement Value established for this procurement.

The Estimated Procurement Value was €85,000 excluding VAT.

Mr Scerri's tender therefore exceeded the Estimated Procurement Value by: €160,000 - €85,000 = €75,000.

This represents an excess of approximately 88.24% over the Estimated Procurement Value.

In other words, the Appellant's offer was almost double the estimated procurement value established following the Council's market research and financial analysis.

By contrast, Blooming Garden Limited's tender of €68,400 was: €85,000 - €68,400 = €16,600 below the Estimated Procurement Value, representing approximately 19.53% below the estimated value.

6. The Evaluation Board is not required, nor is it entitled, to disregard the financial parameters underpinning the procurement.

The Estimated Procurement Value of €85,000 was established on the basis of market research and appropriate financial analysis.

The Council therefore had a legitimate and reasonable interest in ensuring that the procurement remained within the financial parameters established for the provision of the required services.

It would be wholly incongruous for a tenderer whose offer exceeds the established Estimated Procurement Value by €75,000, or 88.24%, to contend that the Council should nevertheless prefer that offer over a compliant offer of €68,400, particularly where the tender conditions expressly establish price as the sole award criterion.

The Evaluation Board was therefore entitled, and indeed required, to evaluate the offers within the parameters established by the tender documentation and the Council's financial planning.

7. The Appellant's apparent concern that the lower price may somehow prejudice the quality or adequacy of the services is also not sufficient to justify the rejection of the successful tender.

The tender does not provide that the Council is required to assume, without verification, that a lower-priced tenderer will fail to perform.

On the contrary, the contract contains specific mechanisms through which the Council can monitor and enforce the contractor's performance.

Article 4.2.4 of the Tender Document expressly provides:

> *"Where the Contractor has been instructed in writing by the Local Council Representative to remedy any failure to comply with the Contract Documents, the Contractor shall remedy the failure within three (3) working days from the notification unless he is required to do otherwise by the Local Council Representative."*

This provision is particularly important.

The Council will not simply award the contract and relinquish oversight over its execution. The services will be monitored by the Council through its designated representatives, and where any failure to comply with the contractual requirements is identified, the contractor may be formally instructed to remedy such failure within the stipulated period.

The contractual framework therefore provides the Council with an effective mechanism to ensure that the services are delivered in accordance with the specifications and contractual requirements.

A tenderer's lower price, in itself, cannot reasonably be treated as evidence that the tenderer will fail to perform the contract, particularly where the Evaluation Board has already determined that the tenderer satisfies the applicable requirements.

8. The tender documentation provides for an initial contractual period of one (1) year, with the possibility of extension by a further three (3) years, up to a maximum duration of four (4) years.

This structure further safeguards the interests of the Council.

The initial contractual period enables the Council to monitor the actual performance of the successful contractor and to determine, on the basis of the services actually rendered, whether the contractual obligations have been properly fulfilled.

The possibility of extension is not an unconditional entitlement of the contractor. Rather, the Council will be in a position to assess the quality, adequacy and compliance of the services delivered during the initial contractual period before deciding whether the contractual relationship should be extended in accordance with the applicable tender and contractual provisions.

Thus, the procurement framework itself provides an important practical safeguard: performance will be tested in practice, monitored by the Council and assessed before any further extension is considered.

Should the contractor fail to perform its contractual obligations satisfactorily, the Council will retain the contractual remedies and mechanisms available to it under the tender and contract, including the mechanisms concerning the rectification of failures.

9. The Council respectfully submits that the substance of the Appellant's complaint appears, in effect, to seek the introduction of an additional criterion concerning the perceived capacity or pricing strategy of the tenderer, beyond those established in the tender documents.

Such an approach would undermine the fundamental principle that tenderers must compete based on the criteria published in advance.

The tender clearly informed all prospective tenderers that the sole award criterion was price, provided that the administrative and technical requirements were satisfied.

All tenderers therefore entered the procurement process on the same stated basis. It would be fundamentally unfair to the successful tenderer, and to the procurement process as a whole, if an unsuccessful tenderer could, after the opening and evaluation of the tenders, seek to introduce a new or different criterion by challenging the price of the successful tenderer despite that tenderer having been found compliant by the Evaluation Board.

The Council cannot, after the event, replace the published evaluation methodology with a different methodology simply because the outcome is unfavourable to one of the tenderers.

10. The Council reiterates that the procurement was subjected to an evaluation by the duly appointed Evaluation Board.

The Board considered the tenders in accordance with the applicable tender documentation and was satisfied that Blooming Garden Limited met the requirements to carry out the services stipulated in the procurement.

There is therefore no basis for the Council to disregard the professional assessment and findings of the Evaluation Board in favour of an unsupported assertion made by an unsuccessful tenderer.

The Appellant's disagreement with the Evaluation Board's conclusion does not, by itself, establish that the Board acted incorrectly or that Blooming Garden Limited failed to satisfy the tender requirements.

The Council respectfully maintains that the proper test is whether the successful tenderer complied with the requirements stipulated in the tender documents and whether the evaluation was conducted in accordance with the published award criterion.

On the information available to the Council, the answer to both questions is affirmative.

11. The Council is entrusted with the responsible administration of public funds.

Where the tender documentation provides that the contract is to be awarded to the cheapest tenderer satisfying the administrative and technical criteria, and where the Evaluation Board has determined that the lowest tenderer is compliant, awarding the contract at a substantially higher price would require a compelling and objective justification.

No such justification has been established by the Appellant.

Indeed, accepting the Appellant's tender of €160,000 instead of the compliant offer of €68,400 would result in an additional expenditure of €91,600.

This would constitute an increase of approximately 133.92% over the price submitted by Blooming Garden Limited.

Furthermore, the Appellant's price is €75,000, or 88.24%, above the Council's Estimated Procurement Value of €85,000.

The Council therefore has a legitimate and compelling financial reason to apply the award criterion that was expressly established in the tender documentation.

12. The Council also notes that the Appellant's allegation regarding Blooming Garden Limited's alleged lack of necessary requisites cannot be accepted merely based on assertion.

The relevant question is whether Blooming Garden Limited satisfied the requirements established in the tender.

That question was considered by the Evaluation Board, which was satisfied that the tenderer fulfilled the applicable administrative and technical requirements.

Furthermore, the contract itself contains mechanisms for monitoring performance and requiring the contractor to rectify any identified failure to comply with the contractual requirements.

Accordingly, the Council does not consider that an unsupported concern regarding future performance provides a lawful or reasonable basis for overturning the outcome of the procurement.

13. Conclusion

In light of the foregoing, the Qormi Local Council respectfully submits that the appeal lodged by Mr Anthony Scerri is without sufficient factual or contractual basis.

The relevant facts are clear:

1. The tender expressly established price as the sole award criterion, subject to compliance with the administrative and technical requirements.

2. Blooming Garden Limited submitted the lowest tender at €68,400.

3. Palace Landscaping Limited submitted a tender of €69,960.

4. Mr Anthony Scerri submitted a tender of €160,000.

5. The Appellant's tender was €91,600 higher than Blooming Garden Limited's, representing approximately 133.92% more.

6. The Appellant's tender was €75,000 higher than the Estimated Procurement Value of €85,000, representing approximately 88.24% above the estimated value.

7. Blooming Garden Limited's offer was €16,600 below the Estimated Procurement Value, representing approximately 19.53% below the estimated value.

8. The duly appointed Evaluation Board evaluated the tenders and was satisfied that Blooming Garden Limited satisfied the applicable administrative and technical requirements.

9. Having established compliance, the Evaluation Board was required to apply the expressly stipulated award criterion, namely price.

10. The contract contains mechanisms enabling the Council to monitor the contractor's performance and require the rectification of any failure to comply with the Contract Documents within the stipulated period of three working days, unless otherwise directed by the Local Council Representative.

11. The contract is initially for one year, thereby allowing the Council to monitor actual performance before any possible extension is considered.

12. Any extension beyond the initial term is subject to the applicable contractual provisions and cannot be regarded as an automatic entitlement where the contractor's performance is unsatisfactory.

In these circumstances, the Council considers that the Evaluation Board acted in accordance with the tender conditions and that the selection of Blooming Garden Limited was justified by the express terms of the procurement.

The Council further considers that accepting the Appellant's position would effectively require the Council to disregard the published award criterion of price and to substitute a different criterion based on an unsubstantiated assessment of the successful tenderer's ability to perform the contract, notwithstanding that the Evaluation Board had already assessed and accepted the tenderer's compliance.

For all the above reasons, the Qormi Local Council respectfully submits that the appeal is unfounded, unsubstantiated and devoid of sufficient merit and should therefore be rejected in its entirety.

The Council accordingly respectfully requests that the competent authority dismiss the appeal and confirm the outcome of the procurement procedure in favour of Blooming Garden Limited, in accordance with the tender conditions and the findings of the Evaluation Board.

Mr Robert Mizzi, Executive Secretary, For and on behalf of Hal Qormi Local Council

This Board further noted that the Recommended Bidder, Blooming Garden Limited, did not file a Reasoned Letter of Reply.

CONSIDERATIONS OF THE BOARD

THIS BOARD, after having examined the acts of the appeal in their entirety, namely the Objection filed on the 24th September 2026 together with its Documents A and B; the Reasoned Letter of Reply of the Contracting Authority filed on the 6th October 2026; the Tender and its Terms of Reference; the General Rules Governing Tenders; the Evaluation Report dated the 10th September 2026; the award notification dated the 15th September 2026; and the documentation forwarded to the Chairman in terms of regulation 276(d) of the Public Procurement Regulations, and having noted that the Recommended Bidder filed no Reasoned Letter of Reply, will now consider the seven grievances advanced by the Appellant and the reply of the Contracting Authority to each of them, in the light of the legal framework and the jurisprudence set out below and the principles by which the Board is guided.

Preliminary statement. The seven grievances are closely related, and several of them rest upon the same proposition. In order that each submission of the parties receives a reasoned answer, as regulation 93(3) of the Public Procurement Regulations requires, the Board nonetheless considers each grievance in turn, setting out the grievance, the reply of the Contracting Authority, the legal considerations of the Board and its finding, and cross-referring where the same reasoning applies.

A. Preliminary Considerations and the Applicable Legal Framework

The appeal and the competence of the Board

A.1 The Appellant was notified of the award decision by letter of the Contracting Authority dated Tuesday the 15th September 2026, which stated that "[t]he deadline for filing a notice of objection (appeal) is ten (10) calendar days from the date of this letter" and that "[a]n appeal can be lodged against a deposit of €425.00". The Letter of Objection bears the stamp of the Board of the 24th September 2026, and the Information Sheet completed by the Contracting Authority records the same date of filing. The objection was therefore filed within the ten calendar days prescribed by regulation 271 of the Public Procurement Regulations, S.L. 601.03 (the "PPR").

Regulation 270 confers the right to object; regulation 271 fixes the time for filing; and regulation 273 governs the deposit:

> *"270. Where the estimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award … may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints." (S.L. 601.03, reg. 270)*
>
> *"271. The objection shall be filed within ten calendar days following the date on which the contracting authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period." (S.L. 601.03, reg. 271)*
>
> *"273. The objection shall only be valid if accompanied by a deposit equivalent to 0.50 per cent of the estimated value set by the contracting authority … provided that in no case shall the deposit be less than four hundred euro (€400) or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision." (S.L. 601.03, reg. 273)*

A.2 The Appellant is a tenderer whose offer was not accepted, and the estimated value of the Tender exceeds five thousand euro (€5,000). The Board is accordingly competent to hear and determine the appeal in terms of regulation 270 of the PPR.

The function and the standard of review of the Board

A.3 The function of this Board is to review the legality and regularity of the procurement procedure and of the evaluation. The Board does not substitute its own technical assessment for that of the duly appointed Evaluation Committee, which the Regulations charge with the evaluation of offers and the making of recommendations. The Board will, however, examine the manner in which the Contracting Authority and its Evaluation Committee exercised their discretion; as the Court of Appeal held in X Clean, although the determination whether a bid is abnormally low is a matter of technical appreciation, "il-mod kif l-awtorità tinqeda b'din id-diskrezzjoni jibqa' sindakabbli mill-bord stess u mill-qorti".

By regulation 276(h) of the PPR the Board is to decide, after evaluating all the evidence and after considering all submissions, whether to accede to or to reject the appeal, or even to cancel the call; and by regulation 93(3) it is to indicate the reasons upon which its decision is taken.

> *"(h) after evaluating all the evidence and after considering all submissions put forward by the parties, the Public Contracts Review Board shall decide whether to accede or reject the appeal or even cancel the call if it appears to it that this is best in the circumstances of the case." (S.L. 601.03, reg. 276(h))*

"(3) The decision of the Review Board shall be rendered in writing, be signed by all members and be dated. In its decision the Review Board shall indicate the reasons upon which such decision was taken." (S.L. 601.03, reg. 93(3))

Burden of proof and the evidential position

A.4 Regulation 270 of the PPR requires that an objection "shall contain in a very clear manner the reasons for their complaints". It is, in the first place, for the Appellant to specify and to establish the facts upon which each grievance rests. That burden is applied with due regard to the fact that the offer of the Recommended Bidder and the record of the evaluation lie with the Contracting Authority, which is bound by regulation 241(5) of the PPR to keep "sufficient documentation to justify decisions taken in all stages of the procurement procedure".

"(5) Contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations, preparation of the procurement documents, dialogue or negotiation if any, selection and award of the contract." (S.L. 601.03, reg. 241(5))

The offers of the Recommended Bidder and of Palace Landscaping Limited do not form part of the documentation from which this decision was prepared. The Board therefore makes no finding as to their contents, save as recorded in the Evaluation Report.

The principles governing the procurement – regulation 39

A.5 Regulation 39(1) of the Public Procurement Regulations (S.L. 601.03) provides, and regulation 38(1) requires that the procurement document be written in clear and unambiguous terms:

"39. (1) Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner." (S.L. 601.03, reg. 39(1))

"38. (1) The procurement document shall be written in clear and unambiguous terms so as to enable all interested parties to understand properly the terms and conditions of the process." (S.L. 601.03, reg. 38(1))

Once a contracting authority publishes the conditions of a call, it is bound by them. The Court of Appeal has restated that principle of self-limitation, by reference to regulation 39, in *European Dynamics Luxembourg S.A. u European Dynamics S.A., formanti l-konsorzju European Dynamics Consortium v. LexNova Consortium et* (Appeal No. 291/2026/1, 13th October 2026):

"Tabilħaqq meta fil-kuntest ta' proċedura ta' sejħa għall-offerti, l-awtorità kontraenti tiddefinixxi l-kundizzjonijiet li bi ħsiebha timponi fuq l-offerenti, ħlief tillimita ruħha fl-eżerċizzju tas-setgħa diskrezzjonali tagħha, b'dan għalhekk li ħlief ma tistax tmur lura minnhom mingħajr ma tikser il-prinċipju tat-trattament indaqs bejn l-offerenti" (Appeal No. 291/2026/1, p. 72)

The award criterion – regulation 239

A.6 Regulation 239 provides, in so far as material:

"239. (1) Without prejudice to regulations or administrative provisions concerning the price of certain supplies or the remuneration of certain services, contracting authorities shall base the award of public contracts on the most economically advantageous tender.

(2) The most economically advantageous tender from the point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach … and may include the best price-quality ratio …" (S.L. 601.03, reg. 239(1)–(2))

It follows that the identification of the most economically advantageous tender on the basis of price alone is a mode of award expressly contemplated by the Regulations. The tender under appeal lawfully adopted price as its sole award criterion, subject to the satisfaction of the administrative and technical criteria.

Abnormally low tenders – regulation 243

A.7 Regulation 243 provides, in so far as material:

"243. (1) Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

(2) The explanations may in particular relate to: (a) the economics of the manufacturing process, of the services provided or of the construction method; (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work; … (d) compliance with obligations established in regulations 13(m) and 16(k); …

(4) The contracting authority shall assess the information provided by consulting the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in sub-regulation (2).

(5) Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with applicable obligations referred to in regulation 13(m) and 16(k)." (S.L. 601.03, reg. 243(1), (2), (4) and (5))

The obligations referred to in regulation 13(m) are "applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Schedule 13" (S.L. 601.03, reg. 13(m)). Recital 103 of Directive 2014/24/EU, which regulation 243 transposes, explains the rationale of the provision:

> *"Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. Where the tenderer cannot provide a sufficient explanation, the contracting authority should be entitled to reject the tender. Rejection should be mandatory in cases where the contracting authority has established that the abnormally low price or costs proposed results from non-compliance with mandatory Union law or national law compatible with it in the fields of social, labour or environmental law or international labour law provisions." (Directive 2014/24/EU, recital 103, as reproduced in V. Micallef, Foundations of Public Procurement Law in Malta (2026), commentary on regulation 243)*

Regulation 243 is not an award criterion and does not depend on the award criterion chosen. It is a mandatory rule of the procedure which applies to every tender which appears abnormally low, whether the award is made on price alone or on the best price-quality ratio.

The relevant provisions of the tender document

A.8 Clause 6.1 of the tender document, which contains the award criterion (and which the Appellant cites as "Rule 6"), provides:

> *"The sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria." (Tender document, Clause 6.1)*

Clause 6.1.1 of the Terms of Reference ("Key Experts") provides:

> *"One (1) Gardener/Horticulture and/or Nursery Grower must be the Key Expert for this tender. The Contractor shall ensure a minimum total labour input equivalent to one hundred and twenty (120) hours per week for the execution of the contract. This requirement may be met through any appropriate staffing structure; however, the Contractor must ensure that sufficient and competent personnel are always deployed." (Tender document, Section 3, Clause 6.1.1)*

Clause 4.2.17 of the Terms of Reference ("Watering by Bowser and Water Supply") provides, in so far as material:

> *"During the summer period, at least five (5) water bowsers of 30,000 litres each shall be used, covering all soft areas around the locality of Hal Qormi. The Contractor shall be in possession or provide proof of access of one (1) small water bowser with a capacity of 1,000 litres. The Contractor shall be in possession*

or provide proof of access of one (1) large water bowser with a capacity of 30,000 litres." (Tender document, Section 3, Clause 4.2.17)

Clause 4.2.4 of the Terms of Reference ("Complaints") provides:

"Where the Contractor has been instructed in writing by the Local Council Representative to remedy any failure to comply with the Contract Documents, the Contractor shall remedy the failure within three (3) working days from the notification unless he is required to do otherwise by the Local Council Representative." (Tender document, Section 3, Clause 4.2.4)

Article 18.2 of the Special Conditions provides that the contract "shall be for a period of one (1) year, extendable for another three (3) years, up to a maximum of four (4) years", that "[t]he extensions shall be subject to the same financial and technical offer", and that the Contractor's performance "shall be subject to an annual evaluation by the Contracting Authority". Article 26.1 provides that "[t]his is a global-price contract." The Notes to Clause 5 of the Instructions to Tenderers classify the technical offer and the financial offer under Note 3, under which "[n]o rectifications shall be allowed. Only clarifications on the submitted information may be requested."

The Jurisprudence

A.9 The question which lies at the root of the Appellant's grievances, namely, whether a substantially low price obliged the Contracting Authority to scrutinise the successful tenderer's ability to perform, has been considered, in the context of regulation 243, by the Court of Appeal and by the Court of Justice of the European Union.

Court of Appeal

X Clean Limited v. Dipartiment għall-Anzjanità Attiva u Kura fil-Komunità et (Appeal No. 126/2021/1, 31st August 2021). On the correct benchmark for the assessment, and on the reviewability of the authority's discretion, the Court held:

"Jingħad qabel xejn illi huwa aktar loġiku li l-prezz tal-offerta jitqabbel mal-prezz stmat mill-awtorità kontraenti milli mal-prezz tal-oġħla offerta. Il-prezz stmat huwa bażat fuq riċerka dwar il-kondizzjonijiet tas-suq u għandu għalhekk jitqies realistiku." (Appeal No. 126/2021/1, p. 9)

"… hija kwistjoni ta' apprezzament tekniku. Dan ma jfissirx li minħabba f'hekk ma huwiex soġġett għal skrutinju tal-qorti. Għalkemm il-Bord ta' Reviżjoni fid-deċiżjoni tiegħu jgħid illi "it is in the contracting authority's discretion to determine whether a bid is abnormally low or otherwise" il-mod kif l-awtorità tinqeda b'din id-diskrezzjoni jibqa' sindakabbli mill-bord stess u mill-qorti." (Appeal No. 126/2021/1, p. 9)

"Ma humiex biss ir-rati ta' ħlas ta' pagi lill-impjegati li jistgħu jkunu fatali taħt ir-reg. 243, li jqis ukoll fatturi ambjentali u soċjali." (Appeal No. 126/2021/1, p. 14)

"Fil-fehma ta' din il-qorti, iżda, id-differenza hija sostanzjali biżżejjed biex tobbliga lill-awtorità kontraenti titlob minghand l-oblatur it-tagħrif imsemmi fir-reg. 243(1) tal-L.S. 601.03 u tagħmel l-eżerċizzju li jrid dak ir-regolament qabel tiddeċiedi tagħtihx il-kuntratt." (Appeal No. 126/2021/1, p. 14 (the difference there being 17.58% of the estimate))

Star Fuels Limited v. WasteServ Malta Limited et (Appeal No. 450/2023/1, 22nd January 2024). On the nature of the threshold question, the Court held:

"Għandu jingħad ukoll illi f'dan l-istadju l-kwistjoni ma hijiex jekk il-prezz huwiex hekk baxx illi l-offerta għandha titwarrab iżda biss jekk huwiex hekk baxx illi jiskatta l-obbligu illi "l-awtoritajiet kontraenti għandhom jesiġu li l-operaturi ekonomiċi jispjegaw il-prezz jew l-ispejjeż … … …". Jekk imbagħad l-ispjegazzjoni tkunx tajba u biżżejjed meta tqis il-kriterji tar-reg. 243 ikun ġudizzju li jsir wara li tingħata dik l-ispjegazzjoni." (Appeal No. 450/2023/1, p. 22)

"Għidna illi kriterju relevanti għal dan il-għan jista' jkun li tqabbel il-prezz ma' dak ta' offerti oħra validi u, partikolarment, mal-prezz stmat mill-awtorità kontraenti billi dan, għalkemm biss indikattiv, huwa bażat fuq riċerka dwar il-kondizzjonijiet tas-suq u għandu għalhekk jitqies realistiku; kriterju ieħor hu li tqabbel il-prezz offert ma' kemm jiswa l-prodott għall-oblatur biex tara jekk il-prezz huwiex ekonomikament fattibbli, jekk iħallix telf flok qligħ." (Appeal No. 450/2023/1, p. 23)

"Rajna illi x-xiehda mressqa mill-appellanti turi illi l-prezz offert mill-oblatur magħżul iħalli telf mhux qligħ. Dan fih innifsu hu suspettuż u jitlob spjegazzjoni" (Appeal No. 450/2023/1, p. 23)

The Court accordingly annulled the selection and ordered "li l-għażla ssir mill-ġdid wara li l-awtorità kontraenti tesiġi u tqis l-ispjegazzjoni li jrid ir-reg. 243 tal-L.S. 601.03" (p. 25).

Medbiologix Company Limited vs. Ultramap Ltd, Enemalta plc et (Appeal No. 625/23/1, 14th March 2024):

"… l-awtorità kontraenti ma tistax taqbad u tiskwalifika offerta fuq il-bażi li din hija baxxa wisq, bla ma tagħti minn qabel, l-opportunità lil dak l-oblatur ekonomiku biex jispjega il-prezz jew l-ispejjeż proposti fl-offerta." (Appeal No. 625/23/1, p. 18)

"B'daqshekk din il-Qorti mhijiex qieghda tghid illi l-prezz ta' Ultramap Ltd ghandu jiġi mwarrab ghax huwa baxx b'mod mhux normali. Li qieghda tghid din il-Qorti huwa biss li l-prezz ta' Ultramap Ltd huwa baxx biżżejjed, illi dwaru hemm bżonn spjegazzjoni u verifika skont il-liġi" (Appeal No. 625/23/1, p. 23)

Cardona Engineering Works v. Central Procurement & Supplies Unit, Malta Red Cross Society et (Appeal No. 23/2024/1, 17th June 2024). Having found that the required information had in fact been given and that the evaluation committee was satisfied that the price was realistic, the Court held:

> *"L-awtorità kontraenti għalhekk imxiet kif trid il-liġi, u, ladarba kienet sodisfatta, bit-tagħrif li ngħatalha, li l-prezz għalkemm baxx kien realistiku u fattibbli, ma kellha ebda raġuni biex twarrab l-offerta għar-raġuni li l-prezz baxx wisq." (Appeal No. 23/2024/1, p. 23)*

In the same judgment, the Court had first found that the obligation was engaged: "Tassew illi mad-daqqa t'għajn l-offerta ta' MRCS tidher baxxa wisq u għalhekk skatta l-obbligu tal-awtorità kontraenti illi tesiġi illi MRCS tfisser kif waslet għal offerta hekk baxxa" (p. 22). The authority was upheld because the explanation had in fact been sought and given, "bit-tagħrif li ngħatalha".

Court of Justice of the European Union

SAG ELV Slovensko a.s. and Others (Case C-599/10, 29th March 2012). The Court held, under Article 55 of Directive 2004/18/EC (to which regulation 243 corresponds), that where a tenderer offers an abnormally low price the contracting authority "must ask it in writing to clarify its price proposal", and that Article 55 "precludes a contracting authority from taking the view that it is not required to ask a tenderer to clarify an abnormally low price"; in exercising that function the authority "must treat the various tenderers equally and fairly". (Case C-599/10, operative part)

Veridos GmbH (Case C-669/20, 15th September 2022), given under Directive 2009/81/EC on procurement in the fields of defence and security. The Court held that, "where there is suspicion that a tender is of an abnormally low nature", the contracting authority "is required to verify whether this is actually the case by taking account of all the relevant components", and that "the number of tenders submitted" is not relevant in that regard; and that the authority's assessment, including a decision not to initiate verification, "may be subject to judicial review". (Case C-669/20, operative part)

In *SECAP and Santorso* (Joined Cases C-147/06 and C-148/06, 15th May 2008), concerning works contracts below the threshold of certain cross-border interest, the Court precluded national legislation imposing the automatic exclusion of tenders considered abnormally low "without allowing those contracting authorities any possibility of verifying the constituent elements of those tenders by requesting the tenderers concerned to provide details of those elements".

The common thread of these rulings is that the assessment of an apparently abnormally low tender proceeds by an *inter partes* verification with the tenderer concerned, and not by a unilateral conclusion

of the authority. (The ruling in *Data Medical Service* (Case C-568/13), which concerns the relevance of public funding received by a tenderer, is not material to the present appeal.)

B. The Material Facts Emerging from the Record

B.1 The Tender, issued by the Hal Qormi Local Council and financed through the local budget, concerns the cleaning and maintenance of parks, gardens and soft areas in Hal Qormi using environmentally friendly products and practices, for a period of one year extendable by a further three years up to a maximum of four years (Clause 1.2 of the Instructions to Tenderers; Article 18.2 of the Special Conditions). The Estimated Procurement Value, "based on market research", is €85,000 excluding VAT (Clause 1.3). The Tender document states that its official date of publication was Tuesday the 30th June 2026, whereas the Information Sheet records the 1st July 2026; nothing turns on the difference. The deadline for the submission of tenders was Friday the 24th July 2026 at 11:00hrs (Clause 2).

B.2 Three offers were received: Blooming Garden Limited (Tender ID 000246386) at €68,400; Palace Landscaping Limited (Tender ID 000246379) at €69,960; and the Appellant (Tender ID 000246397) at €160,000.

B.3 The Evaluation Report (summary date 10th September 2026) records each of the three offers as eligible, technically compliant and financially compliant, in identical terms for each tenderer ("The Economic Operator's bid is technically compliant, thus can be evaluated further"; "The Economic Operator's bid is financially compliant"), and concludes:

> *"The Evaluation Committee recommends that this tender is awarded to Blooming Garden Limited for the amount of €68,400.00 exclusive of VAT, this being the cheapest compliant offer. It is confirmed that the offer is fair and reasonable, and funds are available." (Evaluation Report, Final Recommendation)*

The Evaluation Report does not record any request addressed to the Recommended Bidder to explain its price or costs, any explanation received, or any reasoning supporting the statement that the offer is "fair and reasonable". Nor does any such request or explanation appear elsewhere in the documentation from which this decision was prepared.

B.4 By letter of Tuesday the 15th September 2026 the Contracting Authority informed the Appellant that his offer "has not been accepted", that "[t]he sole criterion for award was the price", that the successful bidder was Blooming Garden Limited at €68,400.00, and that an appeal could be lodged within ten calendar days against a deposit of €400.00.

B.5 Document B annexed to the objection is a report of Finance 24 Corporate Management Ltd dated the 18th September 2026, prepared for the Appellant and signed by a certified public accountant. It states that the offers of Blooming Garden Ltd and Palace Landscaping Ltd are not in line with the legal employment obligations, by reference to Legal Notice 172 of 2026, and sets out a projection of the direct annual employment cost of one experienced gardener (first year: €24,165) and of assistant gardeners, "2 FT u wiehed PT", counted as 2.50 employees (first year: €55,918), totalling €80,082 in the first year and rising to €86,178 in the fifth, with an average annual employment cost of €82,821.71. Its "Analizi tal informazjoni" states:

> *"Total dovut lil impjegati biss minghajr l ispejjes reqweziti tax xoghol hu Euro 82,822 / Offerta Maghzula Euro 68,400 / Differenza ghal obligu legalli biss minghajr l obligi tal kuntratt Euro 14,422" (Document B, p. 4)*

The report records that it is based on wage scales fifteen and sixteen and on information available online and furnished by the Appellant, and that it "ma sarx fuq bazi ta Audit imma fuq analizi ta progezzjoni".

B.6 At the hearing of the appeal the Appellant summoned, as his witness, Mr Ryan Montebello, certified public accountant (warrant no. 11766) of Finance 24 Corporate Management Ltd, the financial consultant retained by the Appellant and the author of Document B.

The witness confirmed Document B on oath and explained it in detail. He testified that the price offered by the Recommended Bidder could not have met the requirements of the Tender in so far as the price offer is concerned, for the reason that the price offered would be consumed in its entirety by the wages lawfully due to the personnel required to perform the contract, and would not even suffice to meet them: on the figures set out in Document B, the minimum employment cost alone amounts to €82,822 per annum, so that the successful price of €68,400 falls short of the lawful cost of the employees alone by €14,422, before any account is taken of the further expenses necessarily involved in the performance of the tender obligations, amongst them the engagement of an arborist and horticultural expertise (€5,000), flowers, environmentally-friendly chemicals, machinery, waste disposal, insurance and health-and-safety costs (€38,660.51), and the operating costs, including the obligations towards Transport Malta and supervision (€12,648.22), and before any element of profit.

B.7 The testimony of Mr Ryan Montebello was not contested by the Contracting Authority, which did not cross-examine the witness; nor did the Contracting Authority produce any evidence to rebut it. The evidence so tendered by the Appellant's witness therefore stands unchallenged upon the acts, and has to be taken into consideration by this Board.

C. First Grievance – The Award Criterion

The grievance of the Appellant

C.1 The Appellant submits that, under Clause 6.1 of the Tender, "the lowest price is not, by itself, sufficient to secure the award of the contract", since the lowest-priced offer "must also satisfy all the applicable administrative and technical requirements"; and that there are "serious grounds to question whether the successful tenderer was capable of satisfying the mandatory technical, personnel, labour, equipment and service requirements … at the price submitted".

The reply of the Contracting Authority

C.2 The Contracting Authority replies (paragraphs 1 and 2 of its Reply) that price was the sole award criterion; that "once a tenderer has been found to satisfy the applicable administrative and technical requirements, the tender conditions require the contract to be awarded to the tenderer submitting the cheapest priced offer"; and that the Evaluation Board "was therefore required to apply the criteria established in the tender".

Legal considerations of the Board

C.3 The tender adopted price as its sole award criterion, subject to the satisfaction of the administrative and technical criteria. That mode of award is expressly permitted by regulation 239, which contemplates the identification of the most economically advantageous tender on the basis of price. The Appellant does not, and could not properly, contest the lawfulness of the criterion itself; his complaint is directed to its application. To the extent that the first grievance asserts that the lowest price does not, of itself, secure the award unless the administrative and technical criteria are also satisfied, the Board observes that this proposition is not in dispute: it is common ground, and is the very basis on which the Evaluation Committee proceeded.

C.4 The Board adds that the application of Clause 6.1 presupposes not only that the cheapest offer satisfies the administrative and technical criteria, but also that the procedure leading to its selection complied with the mandatory rules of the PPR, including regulation 243. That question is considered under the Fourth Grievance.

Finding of the Board on the First Grievance

C.5 The proposition advanced by the First Grievance is correct and common ground; it does not, of itself, establish any infringement. The First Grievance is therefore not upheld as an independent ground, without prejudice to the Fourth Grievance.

D. Second Grievance – The Mandatory Labour Requirement

The grievance of the Appellant

D.1 The Appellant submits that Clause 6.1.1 of the Terms of Reference requires "a minimum total labour input equivalent to 120 hours per week", that this requirement "is therefore not merely indicative or discretionary", and that the successful tenderer's financial offer "raises a legitimate and material question as to whether the mandatory labour requirement … can realistically and lawfully be fulfilled for the price tendered".

The reply of the Contracting Authority

D.2 The Contracting Authority replies (paragraphs 3, 10 and 12 of its Reply) that the Evaluation Board "was satisfied that Blooming Garden Limited fulfilled the applicable administrative and technical requirements", that the Appellant "cannot seek to substitute his own assessment of the capabilities of the successful tenderer", and that the allegation "cannot be accepted merely based on assertion".

Legal considerations of the Board

D.3 The minimum labour input of 120 hours per week is, as the Appellant rightly says, a mandatory requirement of the Terms of Reference. It is, however, a requirement as to the performance of the contract: Clause 6.1.1 provides that "**[t]he Contractor shall ensure**" that input "**for the execution of the contract**". The Appellant does not identify anything in the technical offer of the Recommended Bidder which fails to commit to it, and the Evaluation Committee found that offer technically compliant. On the record, therefore, the Second Grievance does not establish technical non-compliance.

D.4 The Second Grievance is, however, correctly framed in its final sentence, which asks whether the requirement can be fulfilled "realistically and lawfully … for the price tendered". That is a question not of technical compliance but of the relationship between the price and the mandatory costs of performance, which is the subject of regulation 243 and of the Fourth Grievance.

Finding of the Board on the Second Grievance

D.5 The Second Grievance is not upheld as a ground of technical non-compliance; the labour requirement is taken into account in the consideration of the Fourth Grievance.

E. Third Grievance – The Scope and Extent of the Services

The grievance of the Appellant

E.1 The Appellant submits that the scope of the contract is extensive, lists the principal services, notes that they are to be performed from Monday to Saturday, and submits that the successful tender "ought to have been assessed against the entire scope of mandatory contractual obligations, including the minimum labour requirement".

The reply of the Contracting Authority

E.2 The Contracting Authority relies on the same paragraphs of its Reply as are set out under the Second Grievance, and on the contractual safeguards described in paragraphs 7 and 8.

Legal considerations of the Board

E.3 The Board accepts that the scope of the services is extensive and that it is relevant to the assessment of the price. The extent of the scope does not, however, of itself establish that the successful tender failed to comply with the Terms of Reference; the Board's considerations under paragraphs D.3 and D.4 apply equally here.

Finding of the Board on the Third Grievance

E.4 The Third Grievance is not upheld as an independent ground; the scope of the services is taken into account in the consideration of the Fourth Grievance.

F. Fourth Grievance – Labour and Employment Costs

The grievance of the Appellant

F.1 The Appellant relies on Document B, which in his submission "demonstrates the actual costs associated with employing personnel necessary for the proper execution of the contract", and submits that the successful tender price "raises a material question as to whether the tender price is sufficient to cover" the minimum labour input, wages, statutory contributions, horticultural expertise, machinery, vehicles, watering resources, waste disposal, insurance, health and safety and all other costs. He emphasises that "he is not challenging the successful tender merely because it is cheaper".

The reply of the Contracting Authority

F.2 The Contracting Authority replies that the financial disparity between the offers demonstrates the reasonableness of the decision (paragraphs 4 to 6); that the Recommended Bidder's offer was 19.53%

below the Estimated Procurement Value, whereas the Appellant's exceeded it by 88.24%; that the Council "is not required to assume, without verification, that a lower-priced tenderer will fail to perform" (paragraph 7); that the complaint seeks "the introduction of an additional criterion concerning the perceived capacity or pricing strategy of the tenderer" (paragraph 9); and that the allegation is "unsupported" (paragraphs 10 and 12). The Reply does not address Document B.

Legal considerations of the Board

(i) The true substance of the grievances

F.3 The second to seventh grievances, although separately framed, rest upon a single proposition: that the successful tender, being substantially lower than the Appellant's, may be incapable of meeting the mandatory requirements of the tender, the minimum labour input of 120 hours per week, the extent of the scope, the equipment and watering resources, and ought therefore to have been subjected to closer scrutiny. In substance, that is the question whether the successful tender "appear[ed] to be abnormally low" within the meaning of regulation 243, so as to engage the obligation to require an explanation of the price.

F.4 The Board does not accept the Contracting Authority's characterisation of that question as the introduction of "an additional criterion". Regulation 243 is a mandatory rule of the PPR, which applies to every procedure irrespective of the award criterion (paragraph A.8 above). The Contracting Authority itself correctly states that it is "not required to assume, without verification, that a lower-priced tenderer will fail to perform"; regulation 243 is precisely the mechanism of verification which the law prescribes.

(ii) The threshold: whether the successful tender appeared abnormally low

F.5 The jurisprudence establishes that the appropriate benchmark for this assessment is, in the first place, the estimated value set by the contracting authority, which, being founded upon market research, is to be regarded as realistic (X Clean; Medbiologix), and, further, a comparison with the other valid offers received (Star Fuels); and, as a further criterion, a comparison of the price with what the performance costs the tenderer, "biex tara jekk il-prezz huwiex ekonomikament fattibbli, jekk iħallix telf flok qligħ" (Star Fuels, p. 23). Measured against the Estimated Procurement Value of €85,000, the successful offer of €68,400 lies 19.53% below the estimate. Taken in isolation, that percentage is comparable to the figure of 17.58% which, in X Clean, was held to be "sostanzjali biżżejjed" to engage the obligation under regulation 243(1).

F.6 The estimate, however, is no more than indicative, and a further comparison is that with the other offers actually received. Here, the second compliant offer, that of Palace Landscaping Limited, at

€69,960, exceeds the successful offer by only €1,560, that is, some 2.28% of the successful offer, and both of the two lowest independent offers cluster closely, at €68,400 and €69,960 respectively.

F.7 The Board has weighed that convergence carefully. Taken alone, the convergence of two independent offers within so narrow a margin could indicate that the realistic market price for the services lies in the region of €68,000 to €70,000. It cannot, however, be taken alone in this case, for three reasons.

First, both offers lie well below the Estimated Procurement Value, which the Contracting Authority itself describes, in paragraph 6 of its Reply, as "established on the basis of market research and appropriate financial analysis"; the margin by which the successful offer falls below that estimate (19.53%) exceeds that which the Court of Appeal held sufficient in X Clean (17.58%).

Secondly, the comparison with the other offers is only one of the criteria; the Court of Appeal in Star Fuels identified, as a further criterion, **the comparison of the price with the cost of performance to the tenderer, and held that evidence that the price "iħalli telf mhux qligħ" is "fih innifsu … suspettuż u jitlob spjegazzjoni"**. Document B is evidence of that kind, and it is directed expressly to both of the two lowest offers.

Thirdly, the Court of Justice in Veridos held that, where there is a suspicion that a tender is abnormally low, the authority must verify it, and that "the number of tenders submitted" is not relevant in that regard.

(iii) The evidential value of Document B

F.8 The Board does not accept the submission of the Contracting Authority that the Appellant's grievances rest upon assertion alone. The Appellant annexed Document B, a costed report signed by a certified public accountant, which the Contracting Authority did not address. The Board is conscious of the limits of that document: it was prepared for the Appellant; it is, by its own terms, a projection and not an audit; and it costs a staffing structure of 3.5 full-time equivalents (one gardener and 2.5 assistants), that is, 140 hours per week, whereas Clause 6.1.1 requires a minimum of 120 hours.

F.8A The evidential position is, moreover, materially strengthened by the oral evidence. The author of Document B, Mr Ryan Montebello, certified public accountant, was summoned as a witness by the Appellant and confirmed his report on oath, explaining in detail that the price offered by the Recommended Bidder could not meet the requirements of the Tender as regards the price offer, in that the price would be exhausted by, and would not even cover, the wages lawfully due to the personnel required, leaving nothing for the remaining costs of performance. That testimony was not contested by the Contracting Authority, which neither cross-examined the witness nor adduced any evidence in rebuttal.

Evidence given under oath which is neither challenged in cross-examination nor contradicted by other proof stands unshaken upon the acts, and has to be taken into consideration by this Board. The Board accordingly attaches to Document B the weight of a costing confirmed on oath and left unrebutted; and whilst the Board remains mindful that the report is, by its own terms, a projection prepared at the instance of the Appellant, those considerations go to its weight and do not displace evidence which the Contracting Authority, though in a position to contest it, chose to leave unanswered.

F.9 The Board has therefore tested the report on the minimum requirement. On the report's own first-year figures, one experienced gardener (€24,165) and two full-time assistants (2 × €55,918 ÷ 2.50 = €44,734.40), that is, 120 hours per week, would cost €68,899.40 in direct employment costs alone. That figure exceeds the price of €68,400 tendered by the Recommended Bidder, before any provision for the key expert's horticultural expertise, machinery, the 1,000-litre and 30,000-litre bowsers and the summer watering regime of Clause 4.2.17, the cherry picker and power-washing equipment of Clause 6.4 of the Terms of Reference, waste disposal, insurance, health and safety, overheads or profit.

F.10 The Board makes no finding that the Recommended Bidder's price is abnormally low, nor that it fails to comply with any obligation in the field of labour law; **those are matters which, under regulation 243(4) and (5), are for the Contracting Authority to assess after consulting the tenderer**. Nor does the Board determine whether the tendered price covers the initial year only or a longer period, a matter on which the documentation before it is not conclusive and which the explanation required by regulation 243 will itself clarify.

As the Court of Appeal held in Star Fuels, "f'dan l-istadju l-kwistjoni ma hijiex jekk il-prezz huwiex hekk baxx illi l-offerta għandha titwarrab iżda biss jekk huwiex hekk baxx illi jiskatta l-obbligu"; and, as it held in Medbiologix, it suffices that the price "huwa baxx biżżejjed, illi dwaru hemm bżonn spjegazzjoni u verifika skont il-liġi".

F.11 On the record before it, a price 19.53% below the Contracting Authority's own market-based estimate, and unanswered evidence that the direct employment cost of the mandatory minimum labour input alone, on the figures produced, exceeds the price tendered, the Board finds that the successful tender 'appeared' to be abnormally low in relation to the services, within the meaning of regulation 243(1), so as to engage the obligation of the Contracting Authority to require the Recommended Bidder to explain its price or costs. The explanations which regulation 243(2)(d) contemplates, concerning compliance with the obligations in the fields of social and labour law referred to in regulation 13(m), are directly in point. That conclusion is fortified by the sworn and unrebutted testimony of Mr Ryan Montebello, which the Board has taken into consideration, and which confirms that the tendered price does not meet the lawful cost of the labour alone.

(iv) Whether the obligation was discharged

F.12 The Board has considered whether, the obligation under regulation 243 being engaged, its substance may be regarded as discharged because the Evaluation Committee confirmed that "the offer is fair and reasonable, and funds are available", so that the case would be governed by Cardona Engineering Works. The Board cannot so conclude. In Cardona Engineering Works the Court of Appeal upheld the authority because the explanation had in fact been sought and given, the committee being satisfied "bit-tagħrif li ngħatalha" (paragraph A.10 above). **Here, the record shows no request to the Recommended Bidder, no explanation received and no reasoning behind the formula "fair and reasonable"**, which appears in identical terms in a report that records each of the three offers as compliant in identical words (paragraph B.3 above). **A unilateral conclusion of the authority, reached without consulting the tenderer, is not the exercise which regulation 243(1) and (4) require**; the Court of Justice in SAG ELV held that the provision "precludes a contracting authority from taking the view that it is not required to ask a tenderer to clarify an abnormally low price", and the Court of Appeal in Medbiologix and Star Fuels required "spjegazzjoni u verifika skont il-liġi". The present case is therefore governed by X Clean, Star Fuels and Medbiologix, and not by Cardona Engineering Works.

Finding of the Board on the Fourth Grievance

F.13 The Board finds that the successful tender appeared to be abnormally low within the meaning of regulation 243(1) of the PPR; that the Contracting Authority was thereby obliged to require the Recommended Bidder to explain its price or costs and to assess that explanation in accordance with regulation 243(4) and (5); and that **it did not do so**. The Fourth Grievance is upheld.

G. Fifth Grievance – Equipment, Machinery and Watering Resources

The grievance of the Appellant

G.1 The Appellant submits that the Tender requires the Contractor to provide the necessary equipment, machinery, vehicles and watering resources, "including access to a small 1,000-litre bowser and a large 30,000-litre bowser", the cost of which must be accommodated within the tendered price, and that the evaluation ought to have considered whether the tenderer had demonstrated its ability to fulfil those requirements.

The reply of the Contracting Authority

G.2 The Contracting Authority relies on the evaluation of the Evaluation Board and on the contractual mechanisms of Clause 4.2.4 and of the annual review of performance.

Legal considerations of the Board

G.3 Clause 4.2.17 of the Terms of Reference requires the Contractor to be in possession of, or to provide proof of access to, the two bowsers, and Clause 6.4 requires proof of access or ownership of specialised equipment "upon request". The Appellant has not shown that the Recommended Bidder's offer fails to comply with those requirements, and the Evaluation Committee found it technically compliant. The cost of those resources is, however, a component of the price which the explanation required under regulation 243 must account for (paragraph F.9 above).

Finding of the Board on the Fifth Grievance

G.4 The Fifth Grievance is not upheld as a ground of technical non-compliance; the cost of the equipment and watering resources is taken into account in the consideration of the Fourth Grievance.

H. Sixth Grievance – Compliance with the Tender Documentation

The grievance of the Appellant

H.1 The Appellant submits that the lowest price "cannot, in itself, establish compliance", and asks the Board to examine whether the successful offer demonstrates compliance with ten listed requirements, from the minimum labour input to insurance and "all other mandatory obligations".

The reply of the Contracting Authority

H.2 The Contracting Authority replies that "the proper test is whether the successful tenderer complied with the requirements stipulated in the tender documents and whether the evaluation was conducted in accordance with the published award criterion", and that on the information available to it "the answer to both questions is affirmative" (paragraph 10 of its Reply).

Legal considerations of the Board

H.3 The Board agrees with the Contracting Authority as to the test. The Board does not, however, conduct the evaluation anew, and the Sixth Grievance, in asking the Board to examine compliance with a list of requirements without identifying any specific shortcoming in the successful offer, does not discharge the burden placed on the Appellant by regulation 270 of the PPR. The Board has, accordingly, no basis on which to disturb the Evaluation Committee's finding of administrative and technical compliance. The Board notes, moreover, that the Evaluation Report records that finding **without stating any reasons**, a practice which regulation 241(5) of the PPR **does not encourage**.

Finding of the Board on the Sixth Grievance

H.4 The Sixth Grievance is not upheld, without prejudice to the Fourth Grievance.

I. Seventh Grievance – The Difference in Tender Prices

The grievance of the Appellant

I.1 The Appellant submits that the successful tenderer's price is substantially lower than his own "by approximately 20%", and that, given the requirements of the Tender, the difference "gives rise to a legitimate issue as to whether the successful tender was properly assessed". He expressly "does not contend that the mere fact of a lower price constitutes non-compliance".

The reply of the Contracting Authority

I.2 The Contracting Authority replies that the Appellant's offer was 133.92% higher than that of the Recommended Bidder and 88.24% above the Estimated Procurement Value, and that awarding the contract at a substantially higher price would require a compelling and objective justification (paragraphs 4, 5, 6 and 11 of its Reply).

Legal considerations of the Board

I.3 The figure of "approximately 20%" stated in the objection does not correspond to the difference between the two offers, which is €91,600, the successful offer being 57.25% lower than the Appellant's; it corresponds rather to the margin of 19.53% by which the successful offer falls below the Estimated Procurement Value. As the Court of Appeal held in X Clean, the relevant benchmark is the estimate and not the price of the highest offer. The true outlier is, on the contrary, the Appellant's own offer of €160,000, which stands 88.24% above the estimate and approximately 134% above the successful offer; the difference between the Appellant's price and the successful price is, accordingly, not of itself a measure of anything.

I.4 The Board agrees with the Contracting Authority that nothing in this decision requires it to award the contract at a higher price. Regulation 243 does not displace the award criterion; it ensures that the cheapest offer is one whose price has been verified where it appears abnormally low.

Finding of the Board on the Seventh Grievance

I.5 The Seventh Grievance is not upheld as an independent ground; the relevant comparison, with the Estimated Procurement Value, has been taken into account in the consideration of the Fourth Grievance.

J. The Further Submissions of the Contracting Authority

The contractual safeguards

J.1 The Board further notes that the tender and the resulting contract are not devoid of safeguards against defective performance. Article 4.2.4 obliges the Contractor to remedy any failure to comply within three (3) working days of written instruction, and the contract is for an initial period of one year, with any extension being neither automatic nor unconditional. Performance will therefore be tested in practice and monitored by the Contracting Authority before any extension is considered.

Those safeguards operate, however, **during the execution of the contract**. They do not substitute for the verification which regulation 243 requires **before the award**: the obligation to require an explanation of an apparently abnormally low price arises at the stage of evaluation, precisely so that a tender which may be "based on technically, economically or legally unsound assumptions or practices" (recital 103 of Directive 2014/24/EU) is examined before the contract is concluded, and not remedied, if at all, after a failure in performance.

The Appellant's juridical interest

J.2 Finally, and without prejudice to the foregoing, the Board observes that, even were the successful offer to be set aside, the next compliant offer is that of Palace Landscaping Limited, at €69,960, and not that of the Appellant, at €160,000. The relief sought by the Appellant would not, therefore, result in the award of the contract to him.

That observation does not, however, deprive the Appellant of standing. Regulation 270 of the PPR confers the right of objection on "any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement", and the Contracting Authority has not contested the Appellant's standing. A tenderer has a legitimate interest in the lawful conduct of the procedure in which it participated. Should the Recommended Bidder's offer be rejected following the verification required by this decision, it will be for the Contracting Authority to apply the rules of the call, including regulation 243, to any other offer which appears abnormally low.

K. The Demands of the Appellant, the Consequences of the Board's Findings and the Deposit

The demands of the Appellant

K.1 The Appellant requests that the Board (1) uphold the appeal; (2) annul and/or quash the decision awarding the contract to Blooming Garden Limited, "should the Board establish that the successful

tender did not satisfy the mandatory requirements of the tender documentation"; (3) declare that a tender which does not satisfy the mandatory administrative and/or technical requirements cannot be selected merely on the basis that it submitted the lowest price; and (4) grant such other remedy or further direction as the Board may deem appropriate.

The consequences for the award

K.2 The award to the Recommended Bidder was made without the verification which regulation 243 required. It cannot stand. The Board does not find that the successful tender failed to satisfy the mandatory requirements of the tender documentation; it annuls the award because the procedure leading to it **omitted a mandatory step**. Consistently with the course taken by the Court of Appeal in Star Fuels, the consequence of this decision is that the Contracting Authority is to require the Recommended Bidder, in writing, to explain the price or costs proposed in its tender in terms of regulation 243(1) of the PPR, including, in particular, how the price accounts for the minimum labour input of 120 hours per week at the applicable rates of pay and employment costs, and for the equipment and watering resources required by the Terms of Reference; to assess the explanation by consulting the tenderer in terms of regulation 243(4) and (5); to record its assessment and reasons in terms of regulation 241(5); and thereafter to take a fresh decision on the award, which will itself be subject to the right of objection under regulation 271.

The deposit

K.3 Regulation 273 of the PPR provides that the deposit "may be refunded as the Public Contracts Review Board may decide in its decision", and regulation 93(4) requires the Board to "recommend on whether any deposit submitted by a party should be refunded, in whole or in part, or not". The appeal has succeeded on the ground which the Board has identified as the substance of all the grievances. The Board therefore recommends the refund of the deposit in full, namely €400.

> *"(4) In its decision the Review Board shall recommend on whether any deposit submitted by a party should be refunded, in whole or in part, or not." (S.L. 601.03, reg. 93(4))*

L. Summary of the Considerations of the Board

L.1 The Board summarises its considerations as follows:

(a) **First Grievance.** The award criterion was lawful; the proposition advanced is common ground. Not upheld as an independent ground.

(b) **Second, Third and Fifth Grievances.** Technical non-compliance with the labour, scope and equipment requirements is not established; those requirements are relevant to the assessment under regulation 243. Not upheld as independent grounds.

(c) **Fourth Grievance.** The successful tender, at 19.53% below the market-based estimate and in the face of unanswered evidence that the direct employment cost of the mandatory minimum labour input alone exceeds the price, 'appeared' abnormally low; the Contracting Authority did not require or assess the explanation which regulation 243 mandates. Upheld. This conclusion is reinforced by the sworn and uncontested testimony of the Appellant's witness, Mr Ryan Montebello, which the Board is bound to take into consideration.

(d) **Sixth and Seventh Grievances.** No specific non-compliance is identified; the relevant price comparison is with the estimate. Not upheld as independent grounds.

(e) **Consequences and deposit.** The award to Blooming Garden Limited is annulled; the Contracting Authority is to require and assess the explanation under regulation 243 and take a fresh decision; the deposit is to be refunded in full.

M. Conclusion and *Decide*

The Board, having evaluated all the above and based on the above considerations, and in terms of regulation 276 of the Public Procurement Regulations (S.L. 601.03), concludes and decides:

a) To uphold the Appellant's appeal, acceding to it in part, namely upon the Fourth Grievance, for the reasons set out in the considerations above; the Board having taken into consideration, in that regard, the testimony of Mr Ryan Montebello, certified public accountant, summoned by the Appellant, which was given on oath and was neither contested nor rebutted by the Contracting Authority;

b) To revoke the decision of the Kunsill Lokali Hal Qormi, communicated to the Appellant by letter of the 15th September 2026, to reject the Appellant's offer and to award tender QLC/CMPG/16/95 to Blooming Garden Limited (Tender ID 000246386) for the sum of €68,400 exclusive of Value Added Tax;

c) To order the Kunsill Lokali Hal Qormi to re-evaluate the tenders submitted for the said tender by a newly constituted evaluation committee, taking into consideration the Board's findings, and in particular the finding that the offer of Blooming Garden Limited 'appeared' to be abnormally low within the meaning of regulation 243(1) of the Public Procurement Regulations, so as to require the explanation and verification prescribed by regulation 243(2), (4) and (5), the assessment and reasons being recorded in terms of regulation 241(5), and to do all else which is conducive and necessary for the proper

execution of the above orders, any fresh decision on the award being subject to the period for objection prescribed by regulation 271;

d) Directs that the deposit paid by the Appellant be fully reimbursed, in terms of regulation 273 and regulation 93(4) of the Public Procurement Regulations.

Dr Vincent Micallef	**Mr Lawrence Ancilleri**	**Mr Keith V. Grech**
Chairman	**Member**	**Member**