

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2136– SPD1/2024/134 – Tender for the Supply, Delivery and Installation of various furniture items for the Department of Biology, at the Junior College, University of Malta**

**28<sup>th</sup> July 2025**

The Board,

Having noted the letter of objection filed Dr Kevin Camilleri Xuereb and Dr Anthony Cutajar acting for and on behalf of Creative Refurbishing Centre (Malta) Ltd, (hereinafter referred to as the appellant) filed on the 29<sup>th</sup> May 2025;

Having also noted the letter of reply filed by Dr Oriella De Giovanni acting for the University of Malta (hereinafter referred to as the Contracting Authority) filed on the 2<sup>nd</sup> June 2025;

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

Having noted and evaluated the minutes of the Board sitting of the 24<sup>th</sup> July 2025 hereunder-reproduced.

### **Minutes**

Case 2136- SPD1/2024/134 – Tender for the Supply, Delivery, and Installation of Various Furniture Items for the Department of Biology, at the Junior College, University of Malta.

The tender was issued on the 6<sup>th</sup> of January 2025, and the closing date was the 30<sup>th</sup> of January 2025.

The estimated value of the tender, excluding VAT, was €65,236.00

On 29<sup>th</sup> May 2025, Creative Refurbishing Centre (Malta)(C22356) lodged an appeal against University of Malta, Msida Campus (Main Campus) – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations. The appellant’s bid was non-compliant.

A deposit of €400 was paid.

There were seven bids.

On the 24<sup>th</sup> of July 2025, the Public Contracts Review Board (PCRB), composed of Mr. Kenneth Swain as Chairman, Mr Lawrence Ancilleri, and Dr Ing. Damien Gatt as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant: Creative Refurbishing Centre (Malta). (C22356)**

- Mr Attilio Briffa – Company Representative. Director.
- Ms Elaine Caruana Briffa – Company Representative. Chief Financial Officer.

**Contracting Authority: University of Malta Msida Campus (Main Campus)**

- Dr Oriella De Giovanni – Legal Representative.
- Dr Carlos Bugeja – Legal Representative.
- Ms Claire Saliba – Chairperson.
- Mr. Glen Caruana Buttigieg – Secretary.
- Perit Sarah Anne Borg – Evaluator.

**Recommended Bidder: Cieffe Joinery Ltd. (C72908)**

- Dr Carl Grech – Legal Representative
- Dr Ismael Vella – Company Representative

**Opening Statements**

Mr Kenneth Swain, Chairman of the Public Contracts Review Board, welcomed the parties present, including the appellant, Creative Refurbishing Centre (Malta) Ltd., the Contracting Authority—University of Malta—and the representative of the Recommended Bidder, Cieffe Joinery Limited.

Mr Swain then invited the appellant’s representative, Ms Elaine Caruana Briffa, to deliver her initial submissions.

**Initial Submissions**

*Initial submissions by the Appellant*

Ms Elaine Caruana Briffa, representing Creative Refurbishing Centre (Malta) Ltd., began by stating that their bid was the lowest-priced offer. She noted that clarifications had been provided and rectifications addressed. While acknowledging a minor error in their response to the second rectification—a typographical mistake in which a ‘0’ was omitted—she stressed that it was clearly a typo, as a desk cannot possibly be 9mm wide. The literature submitted alongside the technical offer was accurate, and further explanations were provided in their appeal documentation.

*Initial submissions by the Contracting Authority*

Dr Carlos Bugeja, on behalf of the University of Malta, explained that the bid clearly specified the table's dimensions. Following clarification request, the width of the table remained stated as 90 millimetres. He clarified that the Contracting Authority is not permitted to amend the submitted documentation, and as such, the offer failed to meet the specifications outlined in clause 3.49.11 of the tender document.

### *Initial submissions by the Recommended Bidder*

Dr Carl Grech, legal counsel for the Recommended Bidder, emphasised that the appellant was given an opportunity to rectify the issue but confirmed the incorrect measurement in their response. He argued that such mistakes could not be tolerated, particularly when the Contracting Authority had already provided the chance to correct them.

At this stage, the Chairman intervened, questioning whether there was any proof to be provided. He noted that, under public procurement regulations, the Board must base its decision strictly on the submitted documentation. He then invited all parties to provide any additional relevant information.

### **Final Submissions**

#### *Final Submission by Mr Attilio Briffa*

Mr Attilio Briffa, Director of Creative Refurbishing Centre (Malta) Ltd. for the past 34 years, began his final remarks by stating that the company has been participating in government tenders for the past five years. He noted that government tenders involve extensive documentation, all of which—images, descriptions, and certifications—were submitted correctly in their case. The only issue was a minor typographical error, where a single '0' was missing. This error appeared in just one document, while the correct information was provided in another.

Mr Briffa argued that the company should not be penalised for such a minor error, especially given their consistent track record and the high quality of their work. He expressed concern that the government would end up paying significantly more over a single-digit typographical error, pointing out that a desk with a width of 90mm is physically unrealistic.

#### *Final Submission by Dr Carl Grech*

In his closing remarks, Dr Grech reiterated that the Board could not act contrary to the law. He emphasised that the appellant had been given a fair opportunity to rectify the error but failed to do so. Consequently, the Contracting Authority was right to disregard their offer, and the next valid offer should be accepted.

### **Conclusion of the Hearing**

With no further arguments presented, Chairman Mr Kenneth Swain thanked all parties for their participation and formally concluded the hearing.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 24<sup>th</sup> July 2025.

Having noted the objection filed by Creative Refurbishing Centre (Malta) Ltd (hereinafter referred to as the Appellant) on 29<sup>th</sup> May 2025, refers to the claims made by the same Appellant with regard to the tender of referenceSPD1/2024/134 listed as case No. 2136 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Mr Attilio Briffa and Ms Elaine Caruana Briffa

Appearing for the Contracting Authority: Dr Carlos Bugeja and Dr Oriella De Giovanni

Whereby, the Appellant contends that:

- a) The first ground of appeal: the Appellant had the cheapest bidding price, well below the price bid by the Recommended Bidder, while satisfying all the technical requirements as listed in the submitted Technical Offer. The Appellant was EUR 4,068.00 cheaper than the Recommended Bidder.
- b) The second ground of appeal: The reason for the Appellant to be deemed non-compliant stemmed from a simple typo in the submitted literature for item 3.49.11, where 90mm was written instead of 900mm. However, while 90mm was written in the literature, 900mm was submitted in the Technical Offer, clearly highlighting the mistake as a simple typo. The technical offer and the literature are both fundamental documents in the submission of a tender and in our opinion are of equal importance. It is for this reason that we are requesting this esteemed board to re-evaluate the decision taken and not exclude us for this minor mistake.
- c) The third ground of appeal: It stands to reason, that it is impossible to have a desk with a width of 90mm (9cm). Item 3.49.11 was submitted with a 900mm width in the submitted Technical Offer. This product was also identical to items 3.49.10 and 3.49.09 which all had a width of 900mm. This substantiates further the genuinely-committed typo of leaving a simple "0" out of the width of item 3.49.11. Once again, we feel the need to point out that the 900mm width was correctly submitted in the Technical Offer, a document of equal importance to the literature. We are aware that a rectification request was sent to the Appellant and the minor typo in the literature was neither identified nor rectified. Our client apologises for this. The truth is that it was a very stressful period during which the Appellant was working under very strict deadlines related to the SLC Building Furniture tender of the same Contracting Authority and the relative evaluation for the insurance following the collapse accident. Hand on heart the Appellant recognises the minor mistake committed but humbly requests the Board to consider the grounds of appeal, as well as the stressful period in question, to revoke the decision taken by the Contracting Authority on the 19<sup>th</sup> of May, 2025.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 2<sup>nd</sup> June 2025 and its verbal submission during the hearing held on 24<sup>th</sup> July 2025, in that:

a) ***In regard to the first ground of appeal: -***

The Public Procurement Regulations clearly stipulate that in an open tender procedure, it is the cheapest compliant tender that is awarded a Contract. Whilst the Appellant's offer was cheaper, the submission, even following a second Request for Clarification by the Evaluation Committee, was not compliant to the published Technical Specifications and therefore did not satisfy all the technical requirements in the Tender.

b) ***In regard to the second ground of appeal: -***

The Contracting Authority is bound by Public Procurement Regulations, and therefore the nominated Evaluation Committee requested the relevant clarifications and gave the Appellant a clear opportunity to revert with compliant literature. The Evaluation Committee can never act under the assumption that an element in a bidder's submission is a 'typo', as this can be considered to constitute an irregular precedent. This is the precise reason why Rectifications and Clarifications are part of the Evaluation process, to allow for innocent mistakes by bidders to be rectified, justified or explained, within the framework of the Public Procurement Regulations. Furthermore, whenever the information submitted in the Technical Offer and the submitted literature are in conflict, the Committee is bound to address this and give the bidder fair opportunity to rectify their submission. Unfortunately, the Appellant's reply featured the same incongruence between the Technical Offer, and the submitted literature. The clarification was therefore not addressed and the offer was deemed non-compliant.

c) ***In regard to the third ground of appeal: -***

The literature provided by the Appellant in the original submission, as well as in the later submissions in the form of replies to Clarification Requests, reads as composed and assembled by the Appellant, of which company letterhead and logo can also be seen in every page of the submitted literature. This was presented, as opposed to submissions which can feature official supplier or manufacturers' literature data, catalogues or brochures displaying qualities such as dimensions and material are listed and published officially by a manufacturing or supply company. As this case like the Appellant's would have applied to 'Buroart' as per the Appellant's submitted technical offer (see Appendix A page 5 item 10). Therefore, in this particular submission, the literature submitted by the Appellant was tantamount to an official supplier's or manufacturer's brochure, and the Evaluation Committee was bound to assess it as it was presented. One can argue, that under such presented literature, items can be considered to be 'bespoke' or 'customised', a notion further reinforced by wording such as the Appellant presented in their reply to the second clarification, quoted below:

*"..... Will be produced with the exact dimensions as per drawings: L1900xW90xH750mm Since we will be producing these exact measurements....."*

Furthermore, the Evaluation Committee offered the Appellant the opportunity to reflect, rectify and submit the correct width pertaining to the meeting table according to the Public Procurement Regulations. When information is stated, repeated and emphasised in writing, the Committee is bound to take received wording and numbering as it is presented, and evaluate the offer in the only capacity it has at hand: that of the information and literature submitted and documented by the bidder at every stage of the evaluation process.

Lastly, with respect to the wording presented in this particular ground of appeal, leaving a simple '0' out when submitting information is not to be taken lightly or for granted by both the Evaluation Committee and the Appellant, as this can have both technical and financial implications affecting any tender submission.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider Appellant's grievances.

### **Grievance 1: Appellant claims to have submitted the cheapest compliant bid**

- The Board acknowledges that the Appellant's bid was indeed €4,068.00 cheaper than the Recommended Bidder's offer.
- However, the Board notes that under Clause 6.1 (SECTION 1 – INSTRUCTIONS TO TENDERERS) of the tender document, which states "*The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria,*" the award is based on the cheapest **compliant** tender, not merely the cheapest tender.
- The Board finds that the Evaluation Committee correctly determined that the Appellant's bid was technically non-compliant due to the dimensional discrepancy in item 3.49.11, which remained unresolved despite clarification opportunities.
- It is the opinion of this Board that the Evaluation Committee acted in a diligent and proportionate manner by requiring strict compliance with technical specifications.
- Therefore, the Board does not uphold the Appellant's grievance on this point.

### **Grievance 2: Claims that non-compliance stemmed from a simple typographical error**

- The Board notes that the Appellant submitted conflicting information regarding the width of item 3.49.11, with 90 mm stated in the literature and 900 mm in the Technical Offer.
- The Board observes that the Evaluation Committee, acting within the framework of the Public Procurement Regulations, issued requests (as per Note 2 to Clause 5 in the tender document) to allow the Appellant to clarify/rectify this discrepancy.
- The Board finds that despite being afforded a clarification/rectification opportunity, the Appellant's response confirmed the 90mm dimension, stating: "*Will be produced with the exact dimensions as per drawings: L1900xW90xH750mm Since we will be producing these exact measurements...*"
- The Board notes that the Appellant (refer to letter of appeal), explicitly acknowledged the error, stating: "*We are aware that a rectification request was sent to the Appellant and the minor typo in the literature was neither identified nor rectified. Our client apologises for this.*"
- It is the opinion of this Board that the Evaluation Committee cannot act under assumptions that submitted information constitutes a "*typo*" without proper clarification from the bidder, as this would create irregular precedents contrary to the principle of equal treatment.

- The Board notes that the Evaluation Committee acted in accordance with established procurement procedures by providing clarification/rectification opportunities, which the Appellant failed to utilise effectively.
- Therefore, the Board does not uphold the Appellant's grievance on this point.

**Grievance 3: Claims impossibility of 90mm desk width and references to identical items**

- The Board acknowledges the Appellant's argument regarding the physical impossibility of a 90mm wide desk and the consistency with other items (3.49.09 and 3.49.10).
- The Board notes that the Evaluation Committee is bound to assess the submission as presented, particularly when the bidder confirms these dimensions in writing during clarification.
- The Board notes that the Evaluation Committee provided adequate opportunity for rectification through the clarification process, which the Appellant failed to utilise properly.
- Therefore, the Board does not uphold the Appellant's grievance on this point.

**The Board,**

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant **not** to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Dr Ing. Damien Gatt**  
Member

**Mr Lawrence Ancilleri**  
Member