

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2146 – SPD1/2024/136 – Tender for the Supply, Delivery, and Installation, Testing and Commissioning of Football Ground Lighting at the University of Malta Junior College**

**8<sup>th</sup> October 2025**

The Board,

Having noted the letter of objection filed by Mr Ivor J. Puglisevich acting for MCE Limited, (hereinafter referred to as the Appellant) filed on the 7<sup>th</sup> July 2025;

Having also noted the letter of reply filed by Dr Oriella De Giovanni acting for University of Malta (hereinafter referred to as the Contracting Authority) filed on the 11<sup>th</sup> July 2025;

Having heard and evaluated the testimony of the witness Mr Ivor J. Puglisevich (Representative of MCE Limited) as summoned by Dr Anthony Sammut acting for the Appellant.

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 4<sup>th</sup> September 2025 hereunder-reproduced.

### **Minutes**

Case 2146 SPD1/2024/136 – Tender for the Supply, Delivery, and Installation, Testing and Commissioning of Football Ground Lighting at the University of Malta Junior College.

The tender was issued on the 25<sup>th</sup> of March 2025, and the closing date was the 25<sup>th</sup> of April 2025.

The estimated value of the tender, excluding VAT, was €58,300.00

On 7<sup>th</sup> July 2025, MCE Limited. lodged an appeal against University of Malta – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations. The appellant objected since the tender was technically non-compliant.

A deposit of €400.00 was paid.

There were eight Bids.

On the 4<sup>th</sup> of September 2025, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Mr. Keith Victor Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – MCE Limited. (C3459)**

Dr Anthony Sammut – Legal Representative.

Dr Matthias Azzopardi – Legal Representative.

Mr Ivor Pugliesevich – Company Representative.

Mr Konrad Blackman – Company Representative.

**Contracting Authority – University of Malta.**

Dr Carlos Bugeja – Legal Representative.

Ms Claire Saliba – Chairperson.

Ms. Elaine Mangion – Secretary.

Perit Sarah Anne Borg – Evaluator.

**Recommended Bidder: (M&E) Ltd. (invited).**

**Opening Statements.**

Mr. Kenneth Swain, Chairman of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, Pharma–MCE Limited, and the Contracting Authority, the University of Malta. Mr. Swain then invited the Appellant’s legal representative, Dr. Anthony Sammut, to deliver his initial submissions.

**Initial Submissions.**

***Initial Submissions by the Appellant.***

Dr. Anthony Sammut, legal representative for MCE Limited, began his submissions by explaining that the tender concerned the floodlighting of a sports stadium and specifically requested LED lighting. Due to what he described as a misinterpretation, the lowest bid was disqualified for offering what was, in fact, a superior product.

MCE formally contested the conclusion that its offer was technically non-compliant, maintaining that the key technical parameter was luminosity, not power consumption. The tender requested 850W floodlights, and MCE submitted lights rated at 840W, but with a superior average horizontal illuminance of 315 lumens compared to the specified 200 lumens. The offered floodlights were therefore more energy efficient. This was demonstrated on Page 15 of the Dialux ratings attached to MCE’s clarification response dated 22 May 2025.

Regarding glare ratings, these were shown on Pages 11 and 12 of the same Dialux report and were also included in the clarification submission.

Dr. Sammut posed the question: when considering energy efficiency, which product is superior—the one that consumes more or the one that consumes less? If a bidder were to offer a 2000W product, would that be preferable to one consuming 840W and performing more efficiently?

Dr. Sammut referred to Case 413/17 *Roche Lietuva*, citing the following principle:

*“It is also necessary that the level of detail of the technical specifications complies with the principle of proportionality, which implies, in particular, an examination of whether the level of detail is necessary to achieve the desired objectives.”*

MCE also noted that its offer was significantly lower in price than the bid recommended for award.

***Initial Submissions by the Contracting Authority.***

Dr. Carlos Bugeja, representing the University of Malta, stated that the University had submitted a written response addressing the two grounds of appeal raised by MCE Limited, in accordance with PPR Regulations S.L.601.03.

The first objection concerned the minimum wattage requirement of 850W. MCE Ltd. stated in its documentation and subsequently in its clarification letter that its offered item was rated at 840W, thus not compliant with Article 3.3.11 of the tender specifications.

Regarding the glare rating, the Appellant was required to indicate in the submitted literature that the glare rating complied with Article 3.3.11. Although this information appeared in the Dialux report, it was not explicitly mentioned in MCE’s reply letter. This may have led to an oversight by the Evaluation Committee during the final assessment. The Appellant is therefore justified in its objection concerning the glare rating; however, the 840W product does not meet the minimum 850W wattage requirement stated in the technical specifications.

Dr. Bugeja clarified that the argument concerning the “cheapest bid” was irrelevant, as price was not the determining factor at this stage. There were, in fact, two cheaper bids than that of the Appellant, both of which were also found non-compliant—one for the same reason.

He further noted that if the Appellant believed that the 850W requirement was inconsistent with efficiency principles, it could have invoked the remedy clause during the tendering stage. It was inappropriate, he argued, to criticize the tender’s wording at this stage, as the specifications were now final and could not be reinterpreted.

“When it comes to minimum requirements,” Dr. Bugeja concluded, “we cannot reinterpret or redefine what was not requested.”

**Witness.**

***Mr. Ivor Pugliesevich (ID 227262M), Summoned by Dr. Anthony Sammut.***

Mr. Pugliesevich explained that wattage represents the power enabling an object to function, while floodlights are measured by both wattage (power) and luminosity (light output).

He stated that the floodlights offered by MCE Limited consumed less power while still meeting—and indeed exceeding—the minimum performance requirements. He compared this to the shift from traditional bulbs to LED technology, noting that a modern 5W LED lamp can produce more light than an old 100W bulb.

“When we read in the tender that the request was for minimum requirements,” he explained, “we understood that offering lower wattage, but higher luminosity meant exceeding those minimum requirements.”

He expressed confusion that MCE was being disqualified for offering a product that consumed less power but produced more light, saying humorously that the 840W floodlights “would be so bright, one might need sunscreen.”

In his view, meeting the minimum requirement meant providing equivalent or better performance—so a product consuming less but producing more light should be seen as superior. “To surpass the 850W,” he added, “should mean to perform better, not to consume more.”

***Cross-Examination by Dr. Carlos Bugeja.***

Dr. Bugeja asked whether wattage and luminosity are related. Mr. Pugliesevich confirmed they are but explained that modern technology allows wattage to decrease while luminosity increases.

When asked about the relationship between luminosity per watt, he replied that the formula is evolving with advancing technology.

He reiterated that at 840W, MCE’s product delivered more light output and therefore exceeded the benchmark requirements.

When questioned whether luminosity was explicitly requested in the tender, Mr. Pugliesevich confirmed that it was. He referred to the clarification letter submitted to the Evaluation Committee, in which MCE stated:

“May we draw your attention to the fact that we offered a superior horizontal luminance of 315 lumens. In fact, we offered a higher average luminance. Lower consumption should have been considered a factor to our advantage.”

He explained that this clarification was submitted in response to the Committee’s request.

In response to another question, he confirmed that using less wattage while producing more lumens results in greater efficiency.

**Final Submissions.**

***Final Submissions by Dr. Anthony Sammut.***

In his closing statement, Dr. Sammut reiterated that the relevant technical consideration was luminosity, not consumption. The tender requested 850W floodlights, and MCE offered 840W, but with significantly higher illuminance—315 lumens compared to the required 200 lumens. The floodlights were more energy-efficient, and the bid price was also lower than that recommended for award.

Accordingly, MCE requested a review of the adjudication process.

***Final Submissions by Dr. Carlos Bugeja.***

Dr. Bugeja began his closing submissions with an analogy: “If one requests ten black pencils and five red, but is given eight black and ten red, that cannot be accepted.”

He argued that the Appellant had made several assumptions. While they may have been convinced of their reasoning, the University could not rely on such interpretations.

“One cannot offer less than 850W simply because one believes it is better,” he said. “Nor can one assume to know better than the authority that established the specifications. This is the fundamental mistake made by the bidder.

### **Conclusion of the Hearing.**

With no further arguments presented, Chairman Mr. Kenneth Swain thanked the parties and formally concluded the session.

End of Minutes

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### **Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 4<sup>th</sup> September 2025.

Having noted the objection filed by MCE Limited (hereinafter referred to as the Appellant) on 7<sup>th</sup> July 2025, refers to the claims made by the same Appellant with regard to the tender of reference SPD1/2024/136 listed as case No. 2146 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Anthony Sammut

Appearing for the Contracting Authority: Dr Carlos Bugeja

Whereby, the Appellant contends that:

- 1) Whilst the light fittings offered were of a lesser wattage (840W) than was specified 850W is factually correct, the Appellant respectfully submits that the determining technical consideration should have been luminosity not consumption. The appellant offered a superior average horizontal illuminance of 315 Lumens, as opposed to the specified 200 lumens. It is the opinion of the Appellant that the floodlights offered are more energy-efficient and will perform to a level well above specifications.
- 2) In respect to the requirement to submit glare rating, the appellant contends that these were indeed submitted as part of the clarification response. All values were well within specification.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 11<sup>th</sup> July 2025 and its verbal submission during the hearing held on 4<sup>th</sup> September 2025, in that:

- 1) The first objection refers to the effectiveness of the light fitting submitted by the Appellant featuring 840W, as opposed to the required minimum of 850W, as was requested in the published tender. Regretfully, despite the justification for their submission, their submitted literature, corresponding Technical Offer and subsequent clarification replies features a non-compliant item. Article 3.3.11(c)I of the published Technical Specifications stipulates that the Lighting Luminaries submitted by the prospective bidders require a minimum wattage of 850W. This requirement was unfortunately not met by the Appellant in the respective tender submission.
  
- 2) With respect to, the Glare Rating, this was indeed submitted by the Appellant in the Dialux report which was uploaded with the Clarification letter dated 22<sup>nd</sup> May 2025. There was no direct reference to the Glare Rating in said clarification letter from the MCE, whereby the Appellant was required to quote or refer to a particular point, page or location in the submitted literature showing that the Glare Rating was in fact in compliance to the Table in Article 3.3.11(m) in the published Technical Specifications. This resulted in an oversight by the Evaluation Committee and the engineering Consulting team and may have been missed in the final evaluation.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, including the testimony of the witness duly summoned, will now consider Appellant's grievances as follows in their entirety.

### **Minimum Wattage Requirement**

The Board notes that, *ex-admissis*, the Appellant admitted the shortfall in wattage, stating:

*"while accepting that this is factually correct..."*

The Board also considered the testimony of Mr. Ivor J. Puglisevich. His statements, however, were inconsistent: on one hand, the witness affirmed that the tender requirements were clear to the Appellant; on the other hand, he sought to justify the non-compliant submission on the basis of his own interpretation. He argued that the specification should be read in light of industry technological advancements, maintaining that his product, though of lower wattage, was more efficient and should not have been rejected. This inconsistency weakens the Appellant's position and does not alter the clear and binding requirements of the tender dossier.

If the Appellant believed that Article 3.3.11(c)(i) was ambiguous or contained provisions that would not allow suppliers with more efficient products to tender, it had the right to resort to Article 262 of the Public Procurement Regulations. Article 262(1)(d) provides that one of the pre-contractual remedies available is:

*“To correct errors or to remove ambiguities of a particular term or clause included in a call for competition...”*

Furthermore, Rule 9.4 General rules governing tender also clearly and unequivocally provides that:

*“In submitting a tender (unless otherwise indicated) a tender offer above 100MB will not be accepted by the system (ePPS), the tenderer accepts in full and in its entirety, the content of this tender document, including subsequent Clarifications issued by the Central Government Authority/ Contractual Authority (CGA/ CA), whatever the economic operator’s own corresponding conditions may be, which through the submission of the tender is waived. Tenderers are expected to examine carefully and comply with all instructions, forms, contract provisions and specifications contained in this procurement document”*

The Board further recalls established jurisprudence of the Court of Appeal, which held that bidders cannot, after the outcome of a competition, challenge tender specifications that could have been contested prior to submission. Reference is made to the Court of Appeal judgement of 30 June 2021 in Truevo Payments Limited v Direttur tal-Kuntratti, Ministeru għall-Finanzi u x-xogħol u Credorax Bank Limited (Appeal no 95/21/1), where the court held that:

*“Hu car li l-ilmenti tas-socjeta Credorax Ltd huma diretti lejn il-procedura wzata u ma humiex marbuta mas-sustanza tal-offerta. Din is-socjeta qed tilmenta mill-uzu tal-procedura tal-għoti tal-kuntratt b’negozzjati, fuq il-mod kif gie mfassal il-process ta’ din il-procedura u li ma kienx hemm l-approvazzjoni tad-Direttur tal-Kuntratti għall-uzu ta din il-procedura. Dawn it-tlett aggravji li abbażi tagħhom il-kumpanija appellata Credorax Ltd ppprezentat l-appell tagħha jirrigwardjaw materji illi kienu jeżistu sa mill-bidu nett tal-procedura in kwistjoni, u għal dawn l-ilmenti kienu jeżistu rimedji taht ir-Regolament 262. Dawn l-ilmenti kellhom jitresqu qabel id-data tal-għeluq ta’ sejba għall-kompetizzjoni u mhux, bħal filkaas tallum, wara dik id-data, u sabansitra wara id-decisjoni dwar l-għoti tal-Kuntratt.”*

Therefore, based on the above, the Board cannot but not uphold the Appellant’s contention on the wattage requirement.

### **Glass Rating Requirement**

The Board notes that the Contracting Authority, *ex-admissis*, admitted that the Appellant’s Dialux report contained the Glare rating values, which were compliant. The omission stemmed from the evaluation committee’s oversight rather than a failure by the Appellant to submit the information.

In this respect, the Board upholds the Appellant's contention.

**The Board,**

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

- a) Not To Uphold the Appellant's contention in relation to the Wattage requirement
- b) To uphold the Appellant's contention in relation to the Glare Rating requirement
- c) Upholds the Contracting Authority's decision; and
- d) Directs that the deposit paid by the Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Mr Keith Victor Grech**  
Member

**Mr Lawrence Ancilleri**  
Member