

PUBLIC CONTRACTS REVIEW BOARD

Case 2191 - SLLC/02/2025 - Framework Contract for the Supply of Porfido Paving

9th December 2025

The Board,

Having noted the letter of objection filed by Mr. Joe Grima on behalf of Mr. Joe Grima (hereinafter referred to as the Appellant) on 29th October 2025;

Having also noted the letter of reply filed by Ms Josianne Cassar on behalf of San Lawrenz Local Council (hereinafter referred to as the Contracting Authority) filed on 3rd November 2025;

Having heard and evaluated the testimony of the witness of Mr Noel Formosa (ID: 30671G), Mayor, as summoned by Dr Mark Refalo, acting for Mr. Joe Grima, the appellant;

Having heard and evaluated the testimony of the witness of Mr Joe Grima (ID: 38166G) as summoned by Dr Mark Refalo, acting for Mr. Joe Grima, 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 3rd of December 2025 hereunder reproduced.

Minutes

PUBLIC CONTRACTS REVIEW BOARD

Case 2191 - Objection - SLLC/02/2025 - Framework Contract for the Supply of Porfido Paving

The tender was issued on 22nd July 2025, and the closing date was 22nd August 2025.

On 29th October 2025, Joe Grima lodged an appeal against the San Lawrenz Local Council (Kunsill Lokali San Lawrenz) - the Contracting Authority.

The estimated value of the tender, excluding VAT, was €121,375

A deposit of €487.50 was paid.

There were two bids.

On the 3rd December 2025, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Dr Maria Cardona, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant - Joe Grima

- Dr Mark Refalo - Legal Representative
- Mr Joe Grima - Company Representative

Contracting Authority - San Lawrenz Local Council

- Dr Joseph Grech - Legal Representative
- Mr Noel Formosa - Mayor
- Ms Josianne Cassar - Executive Secretary

Preferred Bidder- Vella Falzon Building Supplies Ltd

- Mr Alex Vella Falzon

Opening Statements

Mr. Kenneth Swain, Chairman of the Public Contracts Review Board (PCRB), formally welcomed the parties present, including representatives from the Appellant, Joe Grima.; the Contracting Authority, San Lawrenz Local council, and the Recommended Bidder, Vella Falzon Building Supplies Ltd.

Initial Submissions

Initial Submissions by Dr Mark Refalo (for the Appellant)

Dr. Refalo stated that the tender requirements did not correspond to the actual intent and scope of the works. The appellant's submission was based on the written requirements; however, correspondence with the Council indicated that the executed works would differ. The appellant understood that the actual works would deviate from the tender specifications.

Initial Submissions by Dr Joseph Grech (for the Contracting Authority)

Dr. Grech argued that the appeal concerned matters beyond the Board's competence, as the Board's jurisdiction is limited to the tender procedure and award decision. The appellant raised technical issues regarding future contract execution, which fall outside the Board's remit. Consequently, the appeal should fail.

Witnesses Testimony

Mr (Mayor) Noel Formosa (ID card 30671G) - Summoned by Dr Mark Refalo

Mr Formosa confirmed that substantial paving works had been undertaken in San Lawrenz, including streets and squares, using a specific "crazy paving" style. He noted that the same tender had been issued twice. Mr Formosa explained that the Council members were not technical experts and had appointed an Architect (Perit) to prepare the specifications based on what was deemed appropriate for the works.

Cross-Examination by Dr Joseph Grech

Mr Formosa stated he was not present during the drafting of the tender. He reiterated that the Council's role was decision-making, while technical specifications were the responsibility of the appointed Architect.

Mr Joe Grima (ID card 38166G) - Summoned by Dr Mark Refalo

Mr. Grima, with 35 years of experience in paving, confirmed he had executed works in San Lawrenz, including the public square and various streets. He testified that the current works utilised curbs and "crazy pattern" paving. Regarding the tender specifications for "Porfido paving slabs," Mr. Grima stated that the specified thickness of 80 mm was impractical for pavements, where the standard is 30-50 mm. He noted that 80 mm slabs are expensive and typically used for heavy vehicular traffic.

Mr. Grima explained that he prepared his tender submission at the last minute and did not have time to request clarifications, submitting based on the written specifications despite knowing they were inappropriate. He expressed concern that the Council would not change the paving style halfway through the project to match the new slab specifications.

Cross-Examination by Dr Joseph Grech

Mr. Grima acknowledged that previous works were awarded via purchase orders, whereas this was a formal tender. He admitted he did not view or respond to the clarification requests issued by the evaluation board due to his last-minute submission. He confirmed that he contacted the Council by telephone on the deadline day to highlight the discrepancy between the specifications and the actual works. He affirmed that the basis of his appeal was the change in specifications from "crazy paving" to slabs.

Final Submissions

Final Submissions by Dr Mark Refalo (for the Appellant)

Dr. Refalo submitted that the tender conditions bind all parties and that the current specifications were impossible to implement, specifically the 80 mm slab thickness. He argued that the Council would eventually have to reduce the thickness, which would be legally impermissible after contract award. The appeal was filed to alert the Council to these defects before contract entry to avoid future complications and costs.

Final Submissions by Dr Joseph Grech (for the Contracting Authority)

Dr. Grech submitted that the Board's remit is to adjudicate procedural correctness. He noted that no procedural irregularity was proven. The challenge was against technical specifications prepared by an external Architect, which is not for the Board to adjudicate. The appellant failed to utilise pre-contractual remedies regarding the specifications and did not respond to clarification requests, rendering the bid non-compliant. The preferred bidder responded to all clarifications and was selected accordingly. Dr. Grech emphasised that the preferred bidder is obligated to adhere to the tender specifications, with penalties applicable for non-compliance.

Final Comment by Mr Alex Vella Falzon (Preferred Bidder)

Mr. Vella Falzon stated that he followed all procedures, submitted on time, and responded to clarifications. He noted that late submissions carry risks and that previous direct orders do not guarantee future work in public tenders. He argued that the technical assessment of thickness was the prerogative of the Architect.

Final Reply by Dr Mark Refalo (for the Appellant)

Dr. Refalo reiterated that the specifications were defective, rendering the clarification process moot. The appeal served to formally notify the Council of the issue.

Conclusion of the Hearing

The Chairman thanked the parties and concluded the hearing, stating that the decision would be notified in due course.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 3rd December 2025.

Having noted the objection filed by Joe Grima (hereinafter referred to as the Appellant) on 29th October 2025, refers to the claims made by the same Appellant with regard to the tender of reference SLIC/02/2025 listed as case No. 2191 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Mark Refalo
Appearing for the Contracting Authority:	Dr Joseph Grech
Appearing for the Recommended Bidder:	Mr Alex Vella Falzon

Whereby, the Appellant contends that:

a. Non-Compliance of Awarded Offer with Mandatory Technical Specifications:

Section 3 of the published Tender Document expressly specifies the product to be supplied as: 'Porfido paving slabs of 300 mm x 450 mm with split edges, 80 mm thickness... edges machine cut, surface finely bush-hammered.' The associated Literature List required tenderers to submit technical datasheets for 'Porfido Paving Slabs (Technical Datasheets) - Section 3.' The use of irregular 'crazy paving' now being accepted under the awarded contract represents a material deviation from the essential specifications.

b. Material Modification of Contract Terms after Award:

Substituting the specified Porfido paving slabs with 'crazy paving' fundamentally changes the contract's subject matter. This constitutes a material modification prohibited by Regulation 173 and breaches the principles of equal treatment and transparency.

c. Procedural Irregularity and Unequal Treatment:

The acceptance of a non-conforming material allows one bidder to benefit from a cheaper, less labour-intensive product, distorting competition and violating the principle of awarding only to the cheapest technically compliant offer.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 3rd November 2025 and its verbal submission during the hearing held on 3rd December 2025, in that:

a. Compliance of the Awarded Offer with Tender Specifications:

The tender evaluation process was carried out in full conformity with the Public Procurement Regulations (SL 601.03) and the published tender dossier, including Section 3 of the technical specifications. All bids were assessed against the same technical and administrative requirements, and the recommended bidder, Vella Falzon Building Supplies Ltd, was found to have submitted a technically compliant offer. The awarded supplier's product satisfies the essential characteristics of the required porfido paving as specified in the tender namely, porfido natural stone paving of the required dimensions and finish. The Council categorically denies that any "irregular" or "crazy paving" has been accepted as a substitute material or as part of the award decision. Any imagery or interpretation suggesting such substitution relates solely to post-award operational considerations, which fall entirely outside the remit of the PCRFB.

b. Alleged Material Modification of Contract Terms:

The Council rejects the allegation that there has been any "material modification" of the contract as envisaged under Regulation 173 of the Public Procurement Regulations. The contract was awarded in line with the specifications and pricing submitted by the successful bidder, as evaluated and recommended by the evaluation committee. No alteration, substitution, or variation has been introduced that would change the nature, scope, or value of the contract. Should any adjustment or request for an alternative format of paving be raised after contract signature, such issues fall under contract management and would, if necessary, be handled through proper procurement channels not as part of the original award process.

c. Alleged Procedural Irregularity or Unequal Treatment:

The evaluation process was conducted with full transparency, fairness, and equal treatment. All bidders were subject to identical evaluation criteria, and none were granted any undue advantage. The recommended bidder was awarded the contract based on being the lowest-priced, technically compliant offer precisely as required under the Public Procurement Regulations. The appellant has not provided any documentary or technical evidence to substantiate claims of procedural irregularity or unequal treatment.

d. Matters Beyond the Remit of the PCRFB:

It is respectfully noted that any concerns raised by the appellant regarding implementation or material delivery following contract award fall beyond the jurisdiction of the Public Contracts Review Board. The

PCRB's role, as defined by Regulation 270, is limited to reviewing the lawfulness and procedural correctness of the award decision, not the subsequent execution or administration of the contract.

e. Other Matters:

- The Council confirms that the tender process was conducted with full transparency and proper documentation of all stages.
- All bidders were granted equal opportunity to clarify or supplement their submissions within the permitted timeframes.
- The award decision was properly endorsed and published in accordance with the applicable regulations.
- The appeal does not present any new information or evidence that would warrant reconsideration of the Council's decision.

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 witnesses duly summoned, will now consider Appellant's grievances.

Grievance 1: Non-Compliance of Awarded Offer with Mandatory Technical Specifications

- The Appellant contends that the Preferred Bidder intends to supply materials that differ from the mandatory specifications outlined in Section 3 of the Tender Document ("*Porfido paving slabs of 300mm x 450mm with split edges....*") (80 mm thickness specified in the Financial Bid).
- The Board notes that the jurisdiction of this Board under Regulation 270 of the Public Procurement Regulations (PPR) is limited to reviewing the lawfulness of the award decision based on the evidence available at the time of evaluation.
- During the hearing, the Appellant's representative admitted that his objection was based on an assumption regarding future contract execution ("crazy paving") rather than on any tangible evidence that the Preferred Bidder's actual tender submission was technically non-compliant.
- The Contracting Authority categorically confirmed that the Preferred Bidder's technical offer was evaluated against the published specifications and found to be fully compliant. The Appellant has failed to produce any evidence to rebut this presumption of regularity.
- Consequently, the Board cannot invalidate an award decision based on speculative assertions regarding future performance that contradict the documentary evidence of the evaluation process.
- Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 2: Material Modification of Contract Terms

- The Appellant argues that substituting the specified slabs with "crazy paving" constitutes an illegal material modification under Regulation 173 of the PPR and breaches the principles of equal treatment and transparency.
- The Board notes that the Appellant's Letter of Objection incorrectly references Regulation 173 of the PPR, which governs the award of contracts under framework agreements with several economic operators, and is not applicable to the present circumstances.
- The applicable regulation for contract modifications is Regulation 246 of the PPR (Modifications during the term of the contract), which establishes the conditions under which modifications may lawfully occur during contract execution.
- Crucially, at the time of this hearing, no contract has been signed between the Contracting Authority and the Preferred Bidder. Consequently, no modification of contract terms has occurred or can be said to have occurred.
- The jurisdiction of this Board under Regulation 270 of the PPR extends to reviewing the lawfulness of the award decision itself. Future hypothetical modifications that have not materialised fall outside the temporal and jurisdictional scope of pre-contractual remedies.
- During the hearing, Dr. Noel Formosa, Mayor of San Lawrenz Local Council, confirmed that an Architect was appointed to prepare the technical specifications and that the Council intends to proceed in accordance with the tender as published.
- The Contracting Authority categorically stated that the award recommendation was made strictly on the basis of the prices and technical offers submitted in accordance with Section 3 of the published Tender Document.
- Any concerns regarding potential future modifications during contract execution are matters of contract management and performance monitoring under Part VIII of the PPR (Regulations 245-261), which provide appropriate remedies distinct from pre-contractual review procedures.
- The Board cannot adjudicate on speculative scenarios regarding future contract performance. To do so would require this Board to exceed its statutory jurisdiction by issuing advisory opinions on contract management matters rather than confining itself to the review of procedural correctness of the award decision.
- Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 3: Procedural Irregularity and Unequal Treatment

- The Appellant alleges that the process breached the principle of equal treatment. However, the Board notes that the Appellant failed to utilise the correct legal remedies available to him.
- First, regarding the alleged "impracticality" of the 80mm thickness specification: The Appellant, under Regulation 262 (Remedies before closing date of a call for competition) of the PPR, had the right to challenge these specifications. By failing to do so, he acquiesced to the tender conditions and cannot now challenge them post-award.
- Second, regarding the evaluation process: The Appellant admitted in testimony that he failed to respond to clarification requests issued by the Evaluation Committee. Note 2 to Clause 5 of the Tender Document explicitly states that tenderers must rectify/clarify documentation within five working days.
- The rejection of the Appellant's bid was therefore a direct consequence of his failure to comply with mandatory procedural requirements, not the result of unequal treatment. The Preferred Bidder, conversely, complied with all clarifications.
- The Board finds that the Evaluation Committee acted diligently and in accordance with the principle of equal treatment by strictly enforcing the tender requirements for all bidders.
- 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

Ms Maria Cardona
Member