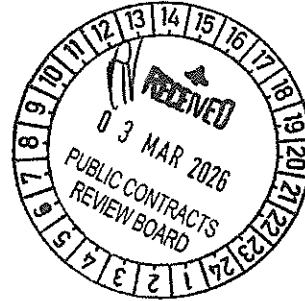


3 March 2026



Public Contracts Review Board
Notre Dame Ditch, Floriana

Reply of the Authority for Transport in Malta (the Contracting Authority) to the Objection lodged by COOP AIL JV (the Appellant) with respect to Tender CT2072/2025 – Framework Contract for the Provision of Shuttle Services in an Environmentally Friendly Manner between the Floriana Park & Ride and Valletta

Dear Chairman and Members of the Board,

A. Preliminary Plea:

Alleged Failure to Provide Information

1. The appellant alleges that the Contracting Authority failed to comply with a request for information dated 15 February 2026 and seeks an interim measure ordering disclosure.
2. The Public Contracts Review Board has already directed the Contracting Authority to submit the complete tender file, including all offers and documentation, and the Authority is complying fully with that direction within the stipulated timeframe.

B. Second Ground of Appeal:

Alleged Substantive Compliance, despite failure to submit TEQ

4. The principal complaint concerns the appellant's disqualification for failing to submit the Technical Offer Questionnaire (TEQ) Form. The appellant in essence says that this omission has no bearing on its offer, since the information required in the TEQ is retrievable elsewhere in its submission.
5. The contracting authority disagrees.
6. First, the tender dossier is unequivocal in Section 1, Clause 5(C)(i), that the offer shall include a completed Technical Offer Questionnaire Form:

(C) Specifications

(i) Tenderer's Technical Offer in response to specifications to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. ^(Note 3)

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The Tenderer's Technical Offer shall include the following:

1. A filled in Technical Offer Questionnaire Form. ^(Note 3)

7. The TEQ was therefore not optional, illustrative, indicative, or superfluous, as the appellant tries to frame it. It was a mandatory and essential element of the

Technical Offer. Its vital importance is **underscored by the fact that once it is submitted, it cannot be modified:**

3. No rectifications shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification.

8. Now in this case the appellant did not even submit the Technical Offer Questionnaire Form at all, and for this reason alone the Contracting Authority could have legitimately discarded the submission. But it instead issued a clarification, asking the appellant to identify the location of its completed TEQ form.
9. The appellant in essence replied that there was no need for it to submit the TEQ form.
10. The appellant sought to convince the Authority - and now this respectable Tribunal - that the TEQ was a mere triviality, an unimportant document that can be substituted by 'equivalent' documents.
11. But tenderers do not get to decide what's important and what isn't. They do not get to decide in what form or manner they are to submit mandatory information. The language used in the TEQ form makes it clear that it is not a guideline, or indicative template that can be changed - or worse, entirely substituted, by something else.

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12. The TEQ is an essential and formal instrument through which each specific clause of the Terms of Reference is expressly accepted and confirmed by the tenderer. An excerpt is produced below for reference:

TECHNICAL OFFER QUESTIONNAIRE <small>(Note 3)</small>		
<p>A technical offer is to be provided by the Economic Operator in response to the Terms of Reference. The form is to be submitted online through the prescribed tender response format and by using the Tender Preparation Tool provided.</p> <p>Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication. The information provided below shall not be subject to rectifications.</p>		
Reference No. in Terms of Reference	I/We Hereby Confirm:	Please Tick Accordingly
4.2.1 and 4.2.2	Confirm that the frequency of trip requested will be provided.	_____ I / We Confirm
4.2.3.1	Confirm Winter requirements in terms of Minivans	_____ I / We Confirm
4.2.3.2	Confirm Summer requirements in terms of Minivans	_____ I / We Confirm <input type="checkbox"/>
4.2.3.3	To abide with additional shuttle services between Floriana Park and Ride and Valletta as may be requested from time to time by the Authority	_____ I / We Confirm
8.2	Have a minimum of nine (9) minivans one of which must be a tail lift van	_____ I / We Confirm
8.2	Two of the minivans deployed on the service must have a minimum seating capacity of 16. These minivans are to be deployed on Route 2 (Vide Section 4.2.4 as per Tender Document) The remainder of the vans must have a minimum seating capacity of 18 passengers.	_____ I / We Confirm
8.2	Minivans deployed by the Contracted Party on the service must be equipped with a fully functional air-conditioning system which has to be switched on during the provision of the service	_____ I / We Confirm
8.2	Minivans deployed on the service must be less than 6 years old from date of manufacture	_____ I / We Confirm
8.2	Drivers deployed on the service are required to wear a uniform provided by the contracted party	_____ I / We Confirm
8.2	Minivans deployed on the service are to have a clear sign indicating that they are on the Park and Ride route.	_____ I / We Confirm

13. Notably, the **TEQ expressly tells the bidders that failing to submit it will lead to irremediable disqualification:**

Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication. The information provided below shall not be subject to rectifications.

14. Doubtless, then, the TEQ is mandatory and vital to the offer; not only because it says so, and because it's non-rectifiable; but also because of what it demands from the tenderer: explicit acceptance and confirmation of operational, technical and fleet requirements, clause-by-clause and with reference to the specific numbered provisions of the Terms of Reference.
15. The TEQ is therefore not - as the appellant tries to frame it - some trivial, or even useless, document that can be substituted by another, or that merely repeats information shown elsewhere in its submission. The TEQ requires express confirmation of numerous specific important elements through the prescribed and standardised structured format for ease of reference and evaluation, with a checklist against which the Evaluation Committee can assess compliance systematically and transparently.
16. Even if one were to concede (which the Authority does not) that some documents in the appellant's submission may show compliance to some of the TEQ requirements, none of them are equivalent to the express confirmation of acceptance and compliance to each point listed.
17. The appellant appears to rely on the fact that it ticked a box in the online submission portal, confirming in general terms that the services would be delivered in accordance with the Technical Specifications. This does not cure

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the omission. Section 1.2 is a general declaration of intent to comply, while the TEQ, which was required to be uploaded under Section 1.1, very evidently distinctly and separately from the general declaration of intent in Section 1.2, is a structured compliance instrument requiring clause-by-clause confirmation of specific numbered provisions of the Terms of Reference, including (inter alia) frequency, seasonal fleet requirements, seating capacity distribution, vehicle age, air-conditioning, alternative fuel percentage, licensing, emission compliance, uniforms and route signage.

18. The general declaration under Section 1.2 does not confirm compliance with each specific clause in a structured checklist required for evaluation.
19. If a generic declaration were sufficient, the TEQ would serve no purpose. Yet the tender not only expressly required the upload of the TEQ, but further declared that failure to do so would render the bid non-compliant and non-rectifiable.
20. The appellant cannot, then, by any stretch of the imagination, equate a broad statement of intent with a mandatory structured compliance instrument. The two are not equivalent. To accept that argument would render the express requirement to upload the TEQ redundant and would undermine the structured evaluation process laid down in the tender dossier.
21. All this considered, the appellant wants to rectify a non-rectifiable situation. As already stated, the TEQ is expressly a non-rectifiable document. Clarification was permissible; but clarification presupposes the existence of a submitted document capable of explanation. Here, the required form was not submitted at all, and so, the appellant can do nothing about it.
22. To allow the appellant to “clarify” or “explain” its omission would amount to rectification, which the tender expressly prohibits.

23. The distinction between clarification and rectification has been addressed repeatedly by the Court of Appeal. In *Rockcut Ltd v Direttur Ġenerali tad-Dipartiment tal-Kuntratti et* (25 June 2018), cited by the appellant, the Court made it clear that:

Iżda ma tistax tinghata kjarifika ta' tagħrif li ma ngħatax; kjarifika sservi biss biex tagħmel aktar ċar tagħrif għa mogħti li iżda ma huwiex ċar bizżejjed.

Jekk, min-naħa l-oħra, fit-twegibiet għall-questionnaire jinghata tagħrifjew jinghataw impenji li ma jkunux ingħataw f'partijiet oħra tal-offerta, mela jekk jithalla li jipprezenta l-questionnaire wara li jkunu nfevhu l-offerti l-oblatur ikun qiegħed jithalla jibdel jew iżid mal-offerta originali tiegħu, u b'hekk jinghata vantaġġ kompetitiv bi preġudizzju għall-oblaturi l-oħra.

[...]

Il-kjarifika li setgħet tagħmel Rockcut kellha tkun tal-asserzjoni tagħha illi t-tagħrif mitlub fil-questionnaire kien għa mogħti fl-offerta. Kif intqal fit-trattazzjoni tal-ewwel aggravju, iżda, Rockcut naqset milli turi kif u fejn, fl-offerta tagħha, jinsab it-tagħrif li ried il-questionnaire.

24. In this case, as we say, the appellant admits that the questionnaire was simply not completed and not uploaded.
25. The appellant then says that the disqualification is disproportionate. But the principle of proportionality does not override clear and mandatory tender

conditions. In *Rockcut*, the Court of Appeal recognised that exclusion may be disproportionate where the requested information is clearly and demonstrably present elsewhere in the offer. But the appellant in the present case simply **did not submit the requested information**. Instead, it is saying that the information requested in the TEQ was superfluous.

26. But it does not get to decide what is necessary and what is superfluous. On this matter, the Court of Appeal has held that where a specific document is expressly required by the tender dossier, it must be submitted as requested and within the deadline. In *Trackwell vs Direttur Ġenerali tad-Dipartiment tal-Kuntratti et* (13 March 2025), the Court of Appeal expressed itself as follows:

....l-offerent m'ghandux jiġi skwalifikat fuq in-nuqqas tal-ghotja ta' xi taghrif mitlub fid-dokument tas-sejha, jekk kemm-il darba l-kumitat ta' evalwazzjoni jkun jista' jikseb dak it-taghrif minn xi parti ohra tad-dokumenti li jiġu sottomessi bhala parti minn dik l-offerta [...] fl-istess waqt, huwa daqshekk ieħor magħruf sewwa fil-ġurisprudenza, li meta r-regolamenti tas-sejha jitolbu b'mod espress ċertu tip ta' dokument, dak id-dokument għandu jinghata bil-mod ta' kif ikun mitlub, u dan sal-għeluq taż-żmien għall-offerti.

Wieħed għandu wkoll jifhem u japprezza, li daqskemm l-offerenti għandhom joqogħdu attenti li jipprezentaw dak kollu li jkun intalab minnhom fid-dokumenti tas-sejha, huwa daqshekk ieħor importanti li daww mgħobbija bir-responsabbiltà li jgħarblu l-offerti, jiġifieri l-membri tal-kumitat ta' evalwazzjoni, għandhom jimxu skrupolożament mal-kundizzjonijiet li jkun għew inniżżlin fid-dokument tas-sejha.

Dan għaliex, meta fil-kuntest ta' proċedura ta' sejha għall-offerti, l-awtorità kontraenti tfassal il-kundizzjonijiet li bi hsiebha timponi fuq l-offerenti, hija tkun qiegħda tillimita l-eżerċizzju tas-setgħa diskrezzjonali tagħha bil-quddiem — b'dana li hija ma tistax tmur lura mill-kundizzjonijiet tas-sejha, minghajr ma tikser il-prinċipju tat-trattament indaqs bejn l-offerenti.

27. That is exactly the position here. Proportionality cannot be invoked to do away with or neutralise an express requirement, particularly where doing so would prejudice equal treatment.
28. There is simply no document resembling the Technical Offer Questionnaire (TEQ) within the bid. Nor has the appellant identified any document which could reasonably be said to replace it. There is no structured clause-by-clause confirmation of the specific Terms of Reference provisions which the TEQ required the bidder to confirm expressly.
29. The Evaluation Committee was not required - nor permitted - to reconstruct confirmations by inference from other, scattered documents. Public procurement cannot operate on assumptions or generous interpretation. Where the tender requires structured, clause-specific confirmation through a prescribed instrument, that instrument must be submitted.
30. All the bidders were bound by the same instructions, and all of them, save the appellant, complied with the requirement to submit the Technical Offer Questionnaire Form. To excuse the appellant from this requirement would undermine equal treatment and procedural transparency. Proportionality cannot be used to neutralise an explicit and mandatory requirement where doing so would compromise equal treatment between bidders.

31. For all these reasons, the Evaluation Committee acted correctly and in strict compliance with the tender document and the Public Procurement Regulations.
32. The second ground of appeal are therefore without merit.

C. Third Ground of Appeal
Alleged Non-Disclosure and Collusion

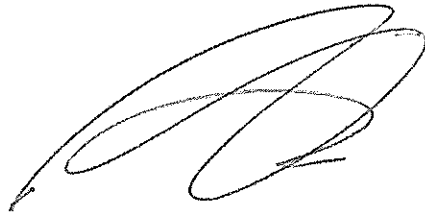
33. The appellant further alleges that Orange Trips Ltd and Executive Transport Ltd failed to disclose interests and acted in collusion, on the sole basis that there is some overlap in shareholding.
34. The Authority was not aware of any such overlap at the time of evaluation. The companies have different names, hold separate passenger transport licences, and the tenders were submitted and signed by different individuals.
35. A public search on the Maltese Business Registry shows some shareholding overlap, but the majority shareholders differ. In Orange Trips, the majority shareholders are Ryan Mifsud and Cynthia Mifsud, whereas in Executive Transport the majority shareholders are Yvonne Mifsud and Raymond Mifsud.
36. The mere existence of common shareholding or similar links does not constitute collusion. Affiliated companies are not prohibited from submitting separate tenders in the same procurement procedure.
37. This principle is well established in EU jurisprudence. In **Specializuotas transportas UAB (C-531/16, 2018)**, **Lloyd's of London (C-144/17, 2018)**, and **Landkreis Aichach-Friedberg (C-416/21, 2022)**, the Court of Justice

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made it clear that contracting authorities may not automatically exclude linked undertakings on the basis of a mere finding of a relationship of control between the undertakings concerned.

38. The allegation of collusion is therefore speculative and unsupported.
39. Accordingly, this ground is without merit.

In view of the above considerations, the contracting authority submits that the appellant's objections should be rejected in their entirety, and deposit paid by the Appellant should not be refunded.



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