



7th May 2026

Public Contracts Review Board
Notre Dame Ravelin,
Floriana,
Malta

In the acts of objection with number
672/2026 in the names of:

C&F Building Contractors Ltd [TID 236700]

vs

[1] Department of Contracts

[2] Project Green

[3] Vassallo Builders Limited [TID 236711]

CT 2274/2025

Tender Name: Tender for the Regeneration of an Existing Car Park and Creation of a New Public Garden in Bormla, using Environmentally Friendly Methods and Materials

REASONED REPLY BY VASSALLO BUILDERS LIMITED

Whereas, the Department of Contracts (*hereinafter* “DOC”) issued a call for tenders for the **Regeneration of an Existing Car Park and Creation of a New Public Garden in Bormla, using Environmentally Friendly Methods and Materials;**

Whereas Vassallo Builders Ltd (*hereinafter* “VBL” and/or “Recommended Bidder”) submitted an offer for this procurement procedure, which bid was recommended for award by virtue of a letter dated 17th April 2026;

Whereas C&F Building Contractors Ltd (*hereinafter* ‘C&F’ and/or “Appellant”) filed an objection with the Public Contracts Review Board (*hereinafter* “PCRB”) on the 27th of April 2026, pursuant to regulation 270 of S.L. 601.03;

Whereas, the Recommended Bidder, in accordance with regulation 276(c) of S.L. 601.03, is hereby submitting its written reply as follows: -

REPLY #1

The Appellant’s Programme of Works does not comply with the tender requirements

Reg. 2, 39, 62, 217, and 224 of S.L. 601.03

i. Programme of Works

1. The Recommended Bidder categorically rejects the first grievance raised by the Appellant Company and submits that the same is entirely without merit, both in fact and in law. The position advanced by the Appellant is factually incorrect and is therefore ought to be dismissed in its entirety.

Article 32: Period of Execution of Tasks

- | | |
|-------------|--|
| 32.1 | The performance period of the Contract shall be one hundred and six (106) calendar weeks from the Commencement Date indicated on the Order to Start Works, and subsequently five (5) year maintenance services commencing from date of provisional acceptance. |
|-------------|--|

Extract from tender document page 29

2. Article 32 of the Special Conditions is clear and unambiguous. It stipulates that the performance period of the Contract shall be one hundred and six (106) calendar weeks¹ from the Commencement Date. It is a mandatory and peremptory condition of the tender, and compliance therewith is a *sine qua non* for any offer to be considered technically compliant.
3. It is not disputed, indeed, it is expressly acknowledged within the letter of objection itself that the Programme of Works (*hereinafter* “PoW”) submitted by the Appellant indicates a total project duration of 535 days. On any reasonable reading, 535 days exceeds 530 days by 5 days. The non-compliance is self-evident on the very outset through a simple mathematical exercise.
4. The Appellant now seeks to argue, *ex post facto*, that the three-week² task labelled “Contract award and mobilisation” should be excluded from the computation on the basis that it precedes the Commencement Date. The Appellant itself chose to include it within its PoW and to assign it a defined duration. Having made that choice freely and deliberately, the Appellant cannot now seek to unilaterally exclude those weeks from the total duration as it so pleases, in order to guise such defect, as an evaluation mishap – as the saying goes, ‘*tipprova traqqa’ l-pannu bil-qara’ hamra’*’.
5. For all intents and purposes, the question before this Honourable Board is whether the proposed completion period complies with the maximum allowable duration prescribed by Article 32. The answer in the present case is unequivocally in the negative.
6. Reference is hereby being made to the Court of Appeal judgment in the names of *Green Building Solutions Ltd v. Festivals Malta Agency et. al.*³, (*hereinafter* ‘*Green Building judgment*’). The facts related thereto are the polar opposite to this present case: the appellant’s POW was shorter than the contractual period and the concern of the Technical Evaluation Committee (*hereinafter* “TEC”) was whether the proposed timeline was achievable. In the present case, the situation is diametrically opposite: the Appellant, *ex admissis* declared that it’s PoW is longer than what the tender permits – thereby necessitating an exclusion.
7. There is no ambiguity, no question of feasibility, and no room for interpretation. Whilst in the *Green Building judgment*, the TEC where questioning on whether works could realistically be completed ahead of schedule, in the present case the

¹ 530 working days

² 15 workings days

³ App. Ċiv. 246/25/1, decided on the 11th of November 2025.

TEC faced nothing more than a straightforward arithmetical comparison between the duration stated in the PoW and the maximum permitted under Article 32 of the Special Conditions. The PoW fails that comparison and consequently the exclusion was mandatory.

8. The Court of Appeal in *Green Building* judgement further confirmed the well-established principle, rooted in the earlier decision of *Rockcut Ltd v. Malta Industrial Parks Ltd et* decided on the 31st of May 2019, that the rules of a tender are there to be observed and not to be set aside, and that the contracting authority is obliged to apply strictly the criteria which it itself has established.
9. In the case in question, it is thus clear and unequivocal that the appellant failed to satisfy the mandatory criteria, and the Honourable Board need not go further in this regard.

ii. Failure to seek clarification

10. The Appellant's contention that the TEC ought to have sought a clarification before proceeding to disqualification is equally without merit and must be rejected – whilst the argument has some validity, it is imperative to verify the utility of such clarification – it is the position of the recommended bidder that such a clarification would have changed nothing in the course of this procurement procedure!
11. Reference is hereby being made to the Court of Appeal in *JV Healthcare Limited v. Cherubino Ltd, Central Procurement and Supplies Unit u Dipartiment tal-Kuntratti*⁴. In this case, the Court held that it was not incumbent upon the contracting authority to attempt to salvage a non-compliant offer, and that the clarification mechanism cannot be used to transform a non-compliant submission into a compliant one. In the words of the Court:

“Kull offerta trid issegwi dak mitlub fis-sejha. Dak kontenut fis-summary of product characteristics huwa dak li jorbot u huwa dak li huwa vinkolanti u li għandu sostenn legali [...] ma tarax li kien hemm ebda kjarifika x'tintalab mill-kumitat ta' evalwazzjoni peress li kif għustament sar, ingħata l-piż dovut lid-dokument legali.”

12. In this matter, the non-compliance is not ambiguous, not dependent on the interpretation of a technical document, and not capable of resolution by means of explanation. The Appellant's PoW states, a duration that exceeds the contractual

⁴ App. Ċiv. 468/2025/1, decided on the 10th of March 2026.

limit. A clarification cannot alter what is written in a document already submitted. It cannot change 535 days to 530. It cannot retroactively amend the Appellant's offer. The clarification mechanism exists to resolve genuine ambiguity, not to remedy a clear and substantive non-compliance. To permit a clarification in these circumstances would be to allow the Appellant to effectively alter the substance of its offer post-submission, in breach of the principles of equal treatment and transparency which underpin all public procurement.

13. With regard to the Appellant's proportionality argument, grounded in the alleged price differential of approximately €780,000 between the two offers, the Recommended Bidder submits that this plea is entirely irrelevant and thus also ought to be rejected.
14. The principle of proportionality cannot be invoked to compel a contracting authority to accept a technically non-compliant offer. Technical compliance is a threshold requirement which must be satisfied before any financial evaluation may take place. The Court of Appeal in *Green Building* made clear that the contracting authority is bound by the conditions of its own tender documentation, and cannot depart from them in the name of financial expediency or any other consideration.
15. In any event, the proportionality argument advanced by the Appellant is not only legally untenable but also factually inapplicable on the very premise upon which it is constructed. The doctrine of proportionality in public procurement presupposes the existence of a defect that is minor, peripheral, or clerical in nature, one which does not go to the substance of the offer. In the present case, there is no such defect.
16. The Appellant's Programme of Works exceeds the maximum contractual period as stated on the face of the document itself. This is not a matter of interpretation, oversight, or ambiguity. It is a substantive, self-evident, and unambiguous non-compliance. Where there is no irregularity to be weighed, the proportionality principle simply does not arise. There is nothing to save, nothing to remedy, and nothing to balance. The question of proportionality is therefore entirely irrelevant to the present proceedings.
17. The judgments invoked by the Appellant in support of its proportionality argument are equally inapplicable. The Appellant relies, in particular, on *Europharma Limited vs Central Procurement and Supplies Unit* and *Polaris Marine Services Co Ltd vs Direttur Ġenerali tal-Kuntratti* for the proposition that disqualification is disproportionate where the irregularity is minor and the non-compliant tenderer submitted the cheapest offer.

18. However, in each of those cases, the Court was addressing a situation where the alleged non-compliance was of a formal, marginal, or curable nature. None of those elements exist in the present scenario. The non-compliance in the present case is not formal; it is substantive. The preconditions upon which those judgments rest simply do not exist in these proceedings, and the Appellant cannot transpose their conclusions to a materially different set of circumstances.
19. The price differential of approximately €780,000 between the two offers, upon which the Appellant places considerable emphasis, is also equally irrelevant to this analysis. The Appellant conflates the outcome of a lawful exclusion with an alleged lack of proportionality. The fact that the compliant offer is more expensive is not a ground of review. It is the inevitable and entirely legitimate consequence of the procurement rules being applied correctly. To accept the Appellant's reasoning would be to hold that a non-compliant tenderer can insulate itself against exclusion simply by submitting a lower price, a proposition that is fundamentally inconsistent with the principles of equal treatment and the integrity of the procurement process, and one that finds no support in the applicable legal framework or in any of the authorities cited by the Appellant. Furthermore, if the Evaluation Committee were to entertain the appellants' demands, such derogation from the tender specifications would have resulted in a direct breach of the principle of Self Limitation, deviating from the very rules it had established.
20. Departing from the tender document would have conferred an unlawful advantage upon the Appellant to the detriment of all other tenderers who complied with Article 32 and structured their offers accordingly. The Recommended Bidder, for its part, submitted a fully compliant offer in the expectation that the rules of the tender would be applied uniformly and without exception. Any departure from that position, at the behest of a non-compliant competitor, would constitute a manifest breach of the principle of equal treatment and would expose the entire procurement to challenge. The Evaluation Committee was therefore not only entitled but legally obliged to exclude the Appellant's offer.
21. Accordingly, the first grievance raised by the Appellant is entirely unfounded both in fact and in law, and must be rejected in its entirety. The TEC acted correctly, in full accordance with the tender documentation, and in line with the most recent and binding jurisprudence of the Court of Appeal, in determining that the Appellant's offer was technically non-compliant on the basis of its POW.

REPLY #2

The Appellant's Method Statements are non-compliant

Reg. 2, 39, 62, 217, 224 and 262 of S.L. 601.03

i. Binding requirement on all tenderers

1. It is well established that any economic operator having objections to the terms, conditions, or requirements of a tender document is required to raise such concerns at the appropriate stage, either by submitting a request for clarification or by availing itself of the pre-contractual remedies provided under regulation 262 of S.L. 601.03. These mechanisms are specifically designed to ensure transparency, equal treatment, and the timely resolution of any alleged deficiencies in the procurement process prior to the submission of tenders.
2. In the present case, the appellant failed to exercise any of the remedies available to it within the prescribed timeframes. No clarification requests were submitted, nor was any pre-contractual objection lodged in accordance with the applicable legal framework. Consequently, the economic operator must be deemed to have accepted the terms and conditions of the tender as published, without reservation.

4.7 – General Conditions of Contract

The full set of General Conditions for Works Contracts (Version 4.8) can be viewed/downloaded from the 'Resources Section' at: www.etenders.gov.mt

It is hereby construed that the tenderers have availed themselves of these general conditions and have read and accepted in full and without reservation the conditions outlined therein, and are therefore waiving any standard terms and conditions which they may have.

These general conditions will form an integral part of the contract that will be signed with the successful tenderer/s.

Extract from the tender document

3. In view of the foregoing, the appellant [an all-other economic operators] is now fully bound by the contents of the tender document. Any deviation from the stipulated requirements, whether substantive or formal, cannot be justified at this stage and must necessarily result in exclusion, in line with the principles of equal treatment, transparency, and strict compliance governing public procurement procedures.
4. At this stage, it is entirely misconceived and futile for the Appellant to allege that the requirement in question was excessive, disproportionate, or improperly designed. Such arguments ought to have been raised at the appropriate procedural stage, namely prior to the submission of tenders, through the mechanisms expressly provided for under the applicable procurement framework. Having failed to do so, the Appellant cannot now seek to retrospectively challenge the validity or appropriateness of a requirement which it had the opportunity to contest earlier.

4. Works Method Statements

(One for Demolition, One for Excavation and Piling and one for Construction – Three in total).

The bidder is to submit a works method statement as required by LN 136 of 2019 prepared, signed and endorsed by Contractor's Perit. The works method statement must clearly show how the contractor intends to carry out the works taking into consideration the nature of the site and adjacent properties, the programme of the works and the plant and equipment required to carry out the works.

Extract from the Tender document

5. The requirement in question is clear, mandatory, and binding, and must be adhered to without reservation by all participating tenderers. Any failure to comply cannot be cured or justified post-submission. Notably, the recommended bidder has complied fully with the said requirement, thereby reinforcing the principle that the criteria were both capable of being met and applied consistently. Accordingly, any deviation therefrom must inevitably result in exclusion, in line with the fundamental principles governing public procurement.

ii. Technical offer is of a Note 3 status

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)

Extract from the Tender document

1. It is to be emphasised that the assignment of a Note 3 status within the tendering process signifies that the respective submission is final and not subject to any modification, clarification, or supplementation. This classification is intended to safeguard the principles of transparency and equal treatment, by ensuring that no tenderer is afforded the opportunity to alter or improve its bid after submission.
2. In the present case, the technical offer has been assigned a Note 3 status, and as such, it must be assessed strictly on the basis of the documentation originally submitted. Accordingly, no changes, additions, or rectifications may be considered or permitted at this stage, and any attempt to do so would constitute a clear breach of the procurement rules and the fundamental principles governing the procedure.

iii. Non-compliance with Legal Notice 136 of 2019

1. VBL acknowledges that it does not have full visibility of the appellant's tender submission, and is therefore not in a position to make a comprehensive assessment of the offer as filed. Notwithstanding this limitation, VBL reserves the right to address such aspects of the submission as have come to its attention in the course of these proceedings, and does not concede any point that falls outside its current knowledge.
2. What can however be stated with confidence is that the mere declaration by the appellant that its work method statements are "*in accordance with Legal Notice 136 of 2019*" does not, of itself, establish or demonstrate actual compliance with that Legal Notice. A self-declaration of compliance is not a substitute for compliance itself. The work method statements must satisfy the requirements of LN 136 of 2019 not merely in form, i.e., by containing the requisite headings, declarations or references, but, critically, in substance.

3. It is the substantive content of those statements that must reflect genuine adherence to the obligations imposed by the Legal Notice, and it is against that standard that the appellant's submission falls to be assessed.

NOWTHEREFORE, whilst reserving the right to put forward further submissions, the **Recommended Bidder** hereby requests this Honourable Board to reject the appeal by the appellant.



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