



1.3 Both grounds are misconceived in fact and at law. The Evaluation Committee acted strictly within the tender rules, applied the criteria uniformly and correctly found the Appellant's offer to be technically non-compliant.

## 2. FIRST GROUND

### Programme of Works exceeding 106 calendar weeks

#### 2.1 Mandatory nature of the execution period and evaluability of the Programme of Works

2.1.1 Article 32 of the Special Conditions lays down, in clear and unequivocal terms, a mandatory and non-derogable execution period for the works forming the subject of this tender. It expressly provides that *"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."* This provision is framed in absolute terms and does not admit of any qualification, flexibility or tolerance. The maximum duration of one hundred and six (106) calendar weeks thus constitutes a fixed constraint imposed uniformly on all bidders and forms an essential parameter of the procurement.

2.1.2 This mandatory constraint is reinforced and operationalised at evaluation stage by Clause 5(C)(i)(3) of the Instructions to Tenderers, which obliges bidders, as part of their Technical Offer, to submit a detailed Workplan and Programme of Works in the form of a Gantt Chart produced through critical path analysis. That clause further provides, in express terms, that the Programme of Works *"must abide by the constraints indicated in the technical specifications and have a duration as specified in Article 32 of the Special Conditions."* The submission of a Programme of Works compliant with the stipulated maximum execution period is therefore not aspirational or indicative in nature, but a mandatory requirement expressly linked to Article 32 and made subject to technical evaluation.

2.1.3 The Programme of Works submitted at tender stage constitutes an evaluation document forming an integral part of the Technical Offer and must be assessed strictly as submitted. Neither the tender documents nor the applicable procurement rules permit the Contracting Authority or the Evaluation Committee to treat the Programme as provisional, adjustable or subject to subsequent reconfiguration for the purposes of compliance. Any reliance on post-submission reinterpretations, exclusions of activities, recharacterisation of phases, or substantive amendments that would alter the overall duration proposed by the bidder would directly undermine the mandatory nature of the constraint laid down in Article 32 and expressly incorporated into Clause 5(C)(i)(3). The Evaluation Committee was therefore bound, as a matter of law and procedure, to assess the Programme of Works on its face value and to verify strict compliance with the stipulated maximum duration at the moment of submission.

## 2.2 Objective non-compliance of the submitted Programme of Works

2.2.1 An examination of the Programme of Works submitted by the Appellant demonstrates, in an objective and unequivocal manner, that it provides for a total execution period of five hundred and thirty-five (535) days, commencing on 2 March 2026 and concluding on 17 March 2028, as expressly indicated within the Programme itself. When calculated on a calendar basis, this duration corresponds to one hundred and six (106) weeks and four (4) days. The Programme therefore exceeds the maximum execution period of one hundred and six (106) calendar weeks stipulated under Article 32 of the Special Conditions.

2.2.2 This conclusion is not dependent on interpretation, inference, or evaluative discretion, but flows directly from the dates and duration expressly set out in the Appellant's own submission. The Programme of Works is a self-contained document forming part of the Technical Offer and must be assessed as submitted, without adjustment, exclusion of activities, or recharacterisation of time periods. The tender documents do not permit the Contracting Authority or the Evaluation Committee to reinterpret or recalibrate an otherwise non-compliant programme in order to bring it within the stipulated maximum duration.

2.2.3 In these circumstances, the Evaluation Committee had no margin of appreciation but was obliged to conclude that the Appellant's Programme of Works exceeded the maximum duration allowed by the tender. Any alternative approach would have entailed disregarding the explicit timelines proposed by the Appellant, thereby conferring an unwarranted advantage not available to other bidders and infringing the principles of equal treatment and transparency.

2.2.4 The finding of non-compliance was therefore inevitable, objective and consistent with the manner in which all bids were assessed, and did not involve any subjective judgment or selective application of the tender requirements.

### 2.3 Irrelevance of the "Mobilisation Period" Argument

2.3.1 The Appellant contends that the initial three-week period shown in its Programme of Works relates to "*contract award and mobilisation*" and should therefore be excluded from the calculation of the total execution period. This contention is, however, legally and factually unsustainable when assessed against the tender documentation and the Programme of Works as submitted.

2.3.2 In the first place, the tender documents do not provide for any mechanism whereby bidders are permitted to retrospectively re-engineer, reclassify or disaggregate elements of their submitted Programme of Works in order to bring an otherwise non-compliant timeline within the stipulated execution period. The Programme of Works forms part of the Technical Offer and is required to be fully compliant at the moment of submission.

2.3.3 In any event, and in direct contradiction to the Appellant's argument, the Appellant's own Programme of Works expressly incorporates the mobilisation period within both the critical path and the overall project duration. The start and end dates proposed by the Appellant are clear and unambiguous, and no differentiation is made within the Programme itself between "mobilisation" and execution for the purposes of calculating the total project duration. The Evaluation Committee was therefore bound to assess the Programme exactly as presented and

could not lawfully disregard a time period which the Appellant itself had chosen to include within its scheduling logic.

2.3.4 Acceptance of the Appellant's approach would, moreover, set an untenable precedent whereby bidders could artificially extend the execution period by the simple expedient of re-labelling portions of their Programme of Works after the fact, thereby undermining the principles of transparency, equal treatment and comparability which underpin public procurement procedures. Such an approach would place compliant bidders at an unfair disadvantage and would erode legal certainty by allowing mandatory requirements to be diluted through semantic manoeuvring.

2.3.5 It is further submitted that the Public Contracts Review Board and the Maltese courts have consistently held that where a tender document expressly lays down a mandatory requirement, any failure to comply with that requirement constitutes a material deviation which cannot be ignored, reinterpreted or remedied after submission without infringing the fundamental principles governing public procurement. Accordingly, where a maximum execution period is fixed by the tender documents as a mandatory constraint, a Programme of Works which objectively exceeds that period must, as a matter of law, be treated as non-compliant, irrespective of how the bidder later seeks to characterise individual phases of the programme.

## 2.4 Inapplicability of the Clarification mechanism

2.4.1 It is immediately submitted that the excess identified in the Appellant's Programme of Works does not arise from any ambiguity, lack of clarity, or internal inconsistency within the submitted documentation. On the contrary, the dates of commencement and completion, together with the overall duration of the Programme of Works, are clearly and expressly stated by the Appellant itself. The resulting duration exceeds the maximum period allowed by the tender in an objective and numerical sense, leaving no scope for interpretative doubt or clarification as to what was proposed.

2.4.2 In these circumstances, there was no lawful basis upon which the Evaluation Committee could have resorted to a request for clarification. A clarification mechanism exists solely to elucidate aspects of a bid that are unclear or ambiguous, not to correct, adjust or reinterpret elements which are plainly stated but non-compliant. It cannot be used to amend or compress timelines expressly proposed by a bidder, to disregard or excise activities already incorporated into the Programme of Works, nor to allow the substitution of the submitted programme with a revised or re-engineered version that would differ substantively from that originally tendered.

2.4.3 To permit such an exercise under the guise of clarification would amount, in substance, to allowing the bidder to rectify a material non-compliance after submission. This is expressly prohibited by the tender documentation. Clause 5(C) of the Instructions to Tenderers draws a clear and deliberate distinction between permissible clarifications, which may explain existing information, and impermissible rectifications, which would alter the content, scope or compliance status of a tender. Any post-submission intervention aimed at curing the excessive duration of the Programme of Works would fall squarely within the latter category.

2.4.4 Moreover, allowing the Appellant to adjust its Programme of Works following submission would have the effect of affording it an opportunity to improve or regularise its offer after the submission deadline, an opportunity not available to other bidders whose programmes were assessed strictly as submitted. Such an approach would undermine the principles of equal treatment and transparency and would distort the level playing field that the tender procedure is designed to preserve.

2.4.5 The Evaluation Committee was therefore correct in refraining from seeking any clarification in this regard and in assessing the Programme of Works on the basis of its clear and unequivocal contents. Given that the non-compliance arose from an objective exceedance of a mandatory execution period, it could not lawfully be remedied through clarification without breaching the tender rules and the fundamental principles governing public procurement procedures.

### 3. SECOND GROUND

#### Non-Compliance of Method Statements with L.N. 136 of 2019 and Tender Requirements

##### 3.1 Mandatory nature of the Method Statement requirements and applicability of L.N. 136 at tender stage

3.1.1 Clause 5(C)(i)(4) of the tender documentation expressly required bidders, as part of their Technical Offer, to submit three distinct Method Statements at tender stage. These Method Statements were not sought as indicative outlines or preliminary intentions, but as substantive technical documents forming an integral part of the evaluation process. The tender further stipulated that each Method Statement had to be prepared, signed and formally endorsed by the Contractor's Perit, thereby confirming that professional responsibility was being assumed at the point of submission. Moreover, the tender required that these Method Statements clearly and concretely demonstrate how the works were to be executed, having specific and express regard to the prevailing site conditions, the proximity and protection of adjacent third-party properties, the sequencing and constraints arising from the submitted Programme of Works and the plant and equipment proposed to be deployed in the execution of the contract. The level of detail required was therefore deliberately such as to enable an informed technical assessment of feasibility, safety and compliance at evaluation stage.

3.1.2 In this context, compliance with Legal Notice 136 of 2019 was neither optional nor capable of being postponed to a post-award stage. The tender documentation expressly incorporated L.N. 136 into the technical requirements governing the submission of Method Statements, thereby elevating statutory compliance from a future contractual obligation to an immediate condition of technical admissibility. Once L.N. 136 was expressly referenced and required to be observed in the preparation of the Method Statements submitted with the Technical Offer, its provisions, in particular the detailed requirements set out in its relevant Schedules, became binding evaluation criteria applicable at tender stage. Any failure to comply

with those requirements could therefore not be treated as a matter capable of later rectification or regularisation but constituted a substantive technical non-compliance affecting the admissibility of the bid.

3.1.3 It follows that the Evaluation Committee was required, and indeed obliged, to assess the submitted Method Statements against the requirements of both Clause 5(C)(i)(4) of the tender and the applicable provisions of L.N. 136 of 2019 as incorporated therein. To have treated statutory compliance as something that could be deferred until after the award would have been contrary to the express wording of the tender documents, would have undermined the technical evaluation framework established by the Contracting Authority and would have resulted in unequal treatment between bidders who submitted fully compliant Method Statements and those who did not.

### 3.2 L.N. 136 of 2019: Substantive Requirements were not met

#### (a) Excavation Method Statement

3.2.1 The excavation method statement submitted by the Appellant does not satisfy several mandatory requirements laid down in the Fifth Schedule of Legal Notice 136 of 2019, which prescribes the minimum information that must be included in any method statement dealing with excavation works in proximity to third-party property. In particular, the statement fails to include:

- A dimensioned plan identifying the affected zone, as required by point 2 of the Fifth Schedule, which mandates a schematic, dimensioned representation of the affected zone of the excavation;
- The depths and limits of excavation, required by point 2(a) and (b) of the Fifth Schedule, which obliges the perit to identify both the horizontal limits and the vertical depth of each part of the excavation;

- A shaded representation of the affected zone, as expressly required by point 2(c) of the Fifth Schedule, which distinguishes between the excavation footprint and the wider zone of potential structural influence;
- Identification of third-party properties falling within the affected zone, required by point 2(d) of the Fifth Schedule, which is central to the risk-based protection regime underpinning L.N. 136 of 2019;
- A declared geotechnical basis, whether by reference to the Geological Map of the Maltese Islands, pre-existing investigations, or site-specific ground investigation, as required by point 4(a) to (d) of the Fifth Schedule;
- A signed declaration by the responsible perit stating whether ground improvement or underpinning is required, and if not, providing reasons, as expressly required by point 7 of the Fifth Schedule; and
- A phasing methodology describing how excavation would be carried out so as to achieve the required rock buttressing, as required by point 8(b) and (c) of the Fifth Schedule.

3.2.2 These elements are not optional or discretionary matters of presentation. They constitute core statutory safeguards expressly required by L.N. 136 of 2019 in order to enable a proper assessment of risk to third-party property and public safety. Their absence means that the excavation method statement does not meet the minimum threshold imposed by law and cannot be regarded as compliant.

#### (b) Demolition Method Statement

3.2.3 While the demolition method statement is generally descriptive in nature, it likewise fails to meet the level of technical specificity required by the Fourth Schedule of Legal Notice 136 of 2019. In particular, the statement does not adequately identify:

- The specific risks posed to contiguous or immediately adjacent structures, as required by point 3(a) and point 3(b) of the Fourth Schedule; and
- The technical measures and safeguards adopted to protect the stability of third-party property during demolition, as required by point 3(c), point 3(d), and point 3(g) of the same Schedule.

3.2.4 The Fourth Schedule requires more than a generic description of demolition activities; it requires a structured, risk-driven methodology demonstrating how demolition will be carried out without endangering adjoining structures. The omission of these elements constitutes a substantive departure from the statutory framework imposed by L.N. 136 of 2019.

#### (c) Construction Method Statement

3.2.5 The construction method statement similarly does not satisfy the requirements of the Sixth Schedule of Legal Notice 136 of 2019, which governs method statements for building works. In particular, it fails to include:

- Explicit precautions and safeguards against instability of contiguous structures, as required by point 5(c) and point 5(h)(iii) of the Sixth Schedule; and
- Structural checks demonstrating that existing surrounding structures are capable of sustaining any additional loads imposed by the proposed construction works, as required by points 2, 3 and 4 of the Sixth Schedule.

3.2.6 The Sixth Schedule expressly requires that such checks be either documented or, where information is unavailable, accompanied by a formal declaration whereby the responsible perit assumes full professional responsibility. The absence of both the checks and the corresponding declaration results in non-compliance with mandatory statutory requirements.

### 3.3 The Appellant's interpretation of Legal Notice 136 of 2019 is erroneous and unsustainable

3.3.1 The Appellant's contention that Legal Notice 136 of 2019 allows for a distinction between so-called "preliminary" and "final" method statements for the purposes of procurement is misconceived and finds no support whatsoever in the text, structure or purpose of the Legal Notice. L.N. 136 of 2019 does not recognise, either expressly or implicitly, a two-tier system of method statements whereby a bidder may submit materially incomplete or non-compliant documentation at tender stage and defer substantive compliance to a later phase. On the contrary, the Legal Notice defines a "method statement" as a technical document prepared by a perit assuming professional responsibility and prescribes in mandatory terms the minimum content required for each category of works. Nothing in L.N. 136 of 2019 supports the proposition that compliance with these requirements may be partial, provisional or deferred.

3.3.2 It is correct that Regulation 7 of L.N. 136 of 2019 establishes a latest deadline by which method statements must be submitted prior to the commencement of works. However, that provision sets a statutory backstop for regulatory enforcement; it does not restrict contracting authorities from requiring earlier submission or fuller compliance where this is justified by the nature of the procurement. Regulatory deadlines establish minimum obligations, not ceilings on procurement requirements. In works contracts involving excavation, demolition and construction in proximity to third-party property, public safety and the protection of neighbouring structures are not ancillary concerns, but central risk factors. It was therefore entirely legitimate, rational and lawful for the Contracting Authority and the Department of Contracts to require full technical compliance with L.N. 136 of 2019 at tender stage in order to assess feasibility, safety and risk as part of the technical evaluation.

3.3.3 The Appellant's argument also disregards the express wording of the tender documents, which clearly elevated compliance with L.N. 136 of 2019 from a general future statutory obligation to an immediate condition of technical admissibility. The tender expressly required bidders to submit method statements at tender stage, prepared, signed and endorsed by the Contractor's Perit and prepared in accordance with L.N. 136 of 2019.

3.3.4 The Appellant's interpretation would thus require the Board to accept that mandatory statutory content, expressly incorporated into the tender as an evaluation requirement, could be ignored or treated as aspirational at the very stage when technical compliance was being assessed. Such an approach would not only undermine the integrity of the procurement process but would also erode the principles of equal treatment, transparency and legal certainty which the public procurement regime is designed to safeguard. The Evaluation Committee was therefore correct in rejecting that interpretation and in assessing the Appellant's method statements against the full and substantive requirements of Legal Notice 136 of 2019 at tender stage, as expressly required by the tender documentation.

#### 3.4 No introduction of extraneous or undisclosed requirements

3.4.1 It is submitted that the Evaluation Committee did not introduce, apply or rely upon any requirements that were extraneous to, or inconsistent with, the tender documentation. The technical assessment was conducted strictly on the basis of criteria and obligations that were clearly identified in the call for tenders and made binding on all bidders from the outset. At no stage were additional standards imposed, nor were the requirements interpreted in a manner that extended beyond what was expressly stipulated in the tender.

3.4.2 The technical deficiencies identified in the Appellant's submission correspond directly and exclusively to requirements that were already embedded in the tender framework. In particular, they arise from the substantive obligations imposed by the schedules to Legal Notice 136 of 2019, which the tender expressly required bidders to comply with at the stage of submission of their technical offers, as well as from Clause 5(C)(i)(4) of the tender document

itself, which mandated the submission of method statements prepared, signed and endorsed by the Contractor's Perit in accordance with that Legal Notice. The Evaluation Committee therefore confined itself to verifying compliance with pre-existing and clearly articulated requirements, rather than deriving or superimposing new evaluative benchmarks.

3.4.3 Moreover, the approach adopted by the Evaluation Committee was applied uniformly across all participating economic operators. The same standard of compliance was enforced in respect of all bids, as is evident from the evaluation report, which records that other bidders were likewise found to be technically non-compliant for analogous shortcomings. This consistent and even-handed application of the tender requirements further confirms that the Appellant was not subjected to any differentiated, arbitrary, or post-hoc criteria, but was assessed in accordance with the same objective standards applicable to every participant in the procurement procedure.

#### **4. PROPORTIONALITY AND THE IRRELEVANCE OF PRICE IN THE ABSENCE OF TECHNICAL COMPLIANCE**

4.1 The principle that a public tender be awarded to the economically most advantageous or lowest-priced offer operates only within the universe of bids that are first found to be compliant with the administrative and technical requirements laid down in the tender documents. Price comparison is not an autonomous or overriding criterion, but a downstream exercise which presupposes that the offers being compared satisfy all mandatory conditions of participation and technical admissibility.

4.2 Once an offer is found to be technically non-compliant with mandatory requirements expressly prescribed by the tender documents, it is, as a matter of law and established procurement practice, excluded from further consideration. At that stage, the financial value of the offer becomes legally irrelevant, as the procurement framework does not permit contracting authorities to trade compliance for price or to compensate substantive technical deficiencies through economic advantage. To do otherwise would distort the evaluation

process by re-introducing non-compliant bids into a comparative exercise from which they are, by definition, excluded.

4.3 Accepting a bid which is technically deficient merely on the basis that it is financially cheaper would expose the Contracting Authority to manifest illegality. Such an approach would breach the principles of equal treatment and transparency by disadvantaging bidders who complied in full with the tender requirements, while conferring an unwarranted benefit on a bidder who did not. It would further undermine legal certainty and expose the Authority to a substantial risk of successful challenge and potential liability, both at pre-contractual stage and following contract award. The Evaluation Committee therefore acted correctly and proportionately in treating technical compliance as a precondition to price evaluation and in refusing to allow price considerations to override mandatory technical requirements.

## 5. CONCLUSION

5.1 In light of the foregoing, it clearly emerges that the objection lodged by the Appellant is entirely devoid of merit. The grounds relied upon are not supported by the factual matrix arising from the tender documents and the Appellant's own submissions, are premised on an erroneous interpretation of the applicable legal and procurement framework, and ultimately seek to undermine mandatory requirements expressly laid down in the call for tenders. The objection is therefore factually unsustainable, legally flawed, and incompatible with both the tender conditions and the established principles governing public procurement processes.


5.2 It further results, beyond any reasonable doubt, that the Evaluation Committee discharged its duties lawfully and correctly. The Committee applied the maximum execution period of one hundred and six (106) calendar weeks strictly in accordance with Article 32 of the Special Conditions, correctly identified the objective exceedance arising from the Appellant's Programme of Works and properly concluded that the Appellant's method statements failed to meet the substantive requirements of Legal Notice 136 of 2019 as expressly incorporated into the tender. In doing so, the Evaluation Committee acted in a proportionate, transparent and

consistent manner, applying the same standards uniformly to all economic operators and safeguarding the fundamental principles of equal treatment and legal certainty.

## 6. FORMAL REQUEST

6.1 For all the reasons set out above, the Contracting Authority and the Department of Contracts respectfully request this Honourable Public Contracts Review Board to dismiss the objection filed by C&F Building Contractors Ltd in its entirety. The Contracting Authority and the Department of Contracts further request the Board to confirm the validity and correctness of the technical evaluation carried out by the Evaluation Committee and to uphold the award recommendation in favour of the successful bidder whose offer was found to be fully compliant with the administrative, technical and financial requirements of the tender.

Yours Sincerely,



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