

PUBLIC CONTRACTS REVIEW BOARD

Case 2241 – SPD3/2025/048 – Supplies - Framework Contract for the Supply and Delivery of Timber to the Ministry for Gozo and Planning – Lot 3

11th May 2026

The Board,

Having noted the letter of objection filed Dr Michael Caruana for and on behalf of Michael Caruana & Co Ltd, (hereinafter referred to as the appellant) filed on the 13th March 2026;

Having also noted the letter of reply filed by Dr Tatiane Scicluna Cassar acting for Ministry for Gozo (hereinafter referred to as the Contracting Authority) filed on the 24th March 2026;

Having heard and evaluated the testimony of the witness Mr Joseph Xiberras (Member of the Evaluation Committee) as summoned by Dr Michael Caruana acting for Michael Caruana & Co Ltd;

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 7th May 2026 hereunder reproduced.

Minutes

661 – SPD3/2025/048 – Framework Contract for the Supply and Delivery of Timber to the Ministry for Gozo and Planning

The tender was issued on 11 November 2025 and the closing date was 12 December 2025. The estimated value of the tender, excluding VAT, was €85,690.

On 13 March 2026, Michael Caruana and Co Ltd lodged an appeal under Regulation 270.

On 7 May 2026, the Public Contracts Review Board, composed of Mr Kenneth Swain as Chairman, Dr Maria Cardona and Dr Vincent Micallef as Members, convened a public hearing to consider the appeal.

A deposit of €400 was paid. There were two bids.

The attendance for the public hearing was as follows:

Appellant: Michael Caruana and Co Ltd

Dr Michael Caruana, Legal Representative.

Contracting Authority: Ministry for Gozo and Planning – Maintenance and Public Cleansing Directorate

Dr Tatiane Scicluna Cassar, Legal Representative.

Mr Joseph Buttigieg, Chairperson.

Mr Mario Xerri, Evaluator.

Mr Joseph Xiberras, Evaluator.

Mr Saviour Tabone, Evaluator.

Preferred Bidder: Frankie Caruana Trading Limited

Formally declined the invitation.

The Chairman welcomed the parties present and formally opened Case Number 2241 in the records of the PCRB. The Chairman identified the Appellant as Michael Caruana and Co Ltd and the Contracting Authority as the Ministry for Gozo and Planning – Maintenance and Public Cleansing Directorate.

The Chairman invited Dr Michael Caruana to make his initial submissions.

Initial submission by Dr Michael Caruana

Dr Caruana stated that he wished to call a witness from the Ministry for Gozo and Planning.

Intervention by Dr Tatiane Scicluna Cassar

Dr Scicluna Cassar submitted that the Appellant was seeking to call as witness the Head of Carpentry or other persons involved in carpentry within the Ministry for Gozo and Planning. She stated that, following her enquiries, no such roles existed and suggested that members of the Adjudicating Committee could instead be called to explain whether the adjudication had been properly carried out.

Intervention by the Chairman

The Chairman clarified that the appeal falls under Regulation 270, which concerns the review of the Evaluation Board's decisions after the tender documents have been issued. He added that the relevant individuals could be called to testify.

Further initial submission by Dr Michael Caruana

Dr Caruana, who stated that he has 60 years of experience in the field, submitted that the issue concerned edging tape, which according to him does not exist in the dimensions of 2440mm x 1220mm (8 feet by 4 feet).

He further stated that he wished to ensure, if the appeal were unsuccessful, that the preferred bidder would be offering the edging tape required by the tender specifications.

At that stage, Dr Caruana produced a sample of edging tape and maintained that this was the only type of edging tape available, but in dimensions different from those required by the tender document. He insisted that the specified product did not exist on the market.

Dr Caruana also argued that the Adjudicating Committee should have requested a demonstration of the edging tape from the preferred bidder. He asked the PCRB to require the preferred bidder to produce a sample, so that it could be established whether the specifications were being met.

He further submitted that there was a mistake in the technical specification and that the Adjudication Board should have sought advice from persons in the carpentry field. He questioned what would

happen if the preferred bidder presented a different type of edging tape, given that, in his view, no other type existed.

Initial submission by the Contracting Authority

Dr Scicluna Cassar stated that the Contracting Authority had specified certain technical requirements in the tender and that bidders were obliged to comply with them. She added that some bidders may have been aware of the alleged discrepancy and chosen not to submit a bid, but that those who did submit offers were expected to tender for what was requested.

She submitted that a bidder cannot answer “Yes” to a requirement, thereby confirming compliance, and then strike out the mandatory dimensions, as this would amount to self-exclusion.

Dr Scicluna Cassar further submitted that mandatory specifications cannot be struck out merely because a bidder believes there is an error. If a bidder considers there to be a mistake, the proper course is to seek clarification or pre-contractual remedies, not to alter the tender response form at submission stage. She noted that the matter falls under Note 3 and that rectifications are not permitted.

She added that the Appellant’s argument was not supported either in law or in fact. The Contracting Authority was entitled to require the stated specifications, and the Evaluation Board was obliged to assess compliance with them as written.

She further submitted that other arguments raised by the Appellant, including those relating to price, were irrelevant at that stage, since the Board was bound by the wording of the tender document. She concluded that the Adjudication Board had acted correctly, as the financial offer could not be considered once the bid had failed at the technical stage.

Intervention by the Chairman

The Chairman asked Dr Caruana whether he had any further submissions.

Further intervention by Dr Michael Caruana

Dr Caruana stated that he had requested the attendance of someone from the Government workshop so that the two types of edging tape could be compared and it could be confirmed whether the Contracting Authority’s specifications existed in practice.

He also indicated that, since the required tape did not exist, the likely result would be that the tender would be awarded by direct order.

He queried why he should lose the tender when, in his view, he was compliant in all respects except for one item in Lot 3.

Further intervention by the Contracting Authority

Dr Scicluna Cassar replied that the Contracting Authority could not summon persons who did not correspond to the roles identified by the Appellant, nor could it call witnesses to testify on tenders in which they had no involvement.

Intervention by the Chairman

The Chairman then asked Dr Caruana whether he intended to call any witnesses.

Dr Caruana asked whether any member of the Adjudicating Board had knowledge of edging tapes, particularly the item under Lot 3, page 19, Item 12, where the thickness is 20mm and the dimensions are 2440mm x 1220mm.

Mr Joseph Xiberras, one of the evaluators, was then called to testify.

Testimony of Mr Joseph Xiberras

In response to a question from Dr Caruana as to whether edging tape ever exists in the dimensions requested by the Contracting Authority, Mr Xiberras stated that the Evaluation Board had adhered to the wording of the tender document, which specified the 2440mm x 1220mm measurements, although he acknowledged that these were not the dimensions demonstrated by the Appellant.

Intervention by the Chairman

The Chairman asked the witness to confirm that the Board had acted on the basis of the wording contained in the tender document.

The witness confirmed this and added that the tender document did not specify the width of the edge, and that the Board did not know why the Contracting Authority had requested those dimensions.

Dr Caruana then showed the witness a sample of edging tape and asked whether that was the tape referred to in the tender. The witness replied that the tape shown by Dr Caruana was the type he had been given when he purchased edging tape.

Intervention by the Chairman

The Chairman explained that the proceedings are governed by Regulation 270, which means that the appeal concerns a post-drafting stage, after the bids have been received and the evaluation decision has been taken. He stated that the PCRb's role is to scrutinise that decision and may invite witnesses, including the Appellant, to present relevant evidence.

The Chairman then asked Dr Caruana whether he wished to summon any further witnesses.

Dr Caruana asked whether the Adjudicating Board had requested a sample from the preferred bidder, as he himself had been asked to produce samples in previous tenders.

Intervention by the Chairman

The Chairman reiterated that samples had not been required by the tender document and that, since the Contracting Authority was not calling any witnesses, the parties were invited to make their final submissions.

Final submission by Dr Michael Caruana

Dr Caruana reiterated that the Adjudicating Board should have been satisfied that the item requested was capable of being supplied. He maintained that the item did not exist in the requested dimensions and that the adjudicators should have verified its existence.

He further insisted that the PCRb should review the evaluators' decision, as the item specified in the tender document could not, in his view, be purchased in the requested form. He also stated that the preferred bidder's sample should be produced for verification.

He concluded by saying that, if this was not done, he ought to win the tender himself.

Final submission by Dr Scicluna Cassar

Dr Scicluna Cassar stated that the Appellant should have raised the issue during the clarification stage and that, under Regulation 262, he could have availed himself of pre-contractual remedies where appropriate.

She reiterated that this was not the proper stage to challenge the contents of the tender document. If the Appellant believed there was an error, the law allowed for clarification, but not for rectification at this stage, particularly as the relevant information falls under Note 3.

Dr Scicluna Cassar also stated that it was not within the competence of the Adjudication Board to request samples, but rather to assess whether the bid complied with the tender requirements. She further submitted that the Appellant could not exclude himself by striking out an essential requirement in the technical offer form while completing the tender documents.

She added that it was not for the tenderer to decide what is or is not applicable, or what does or does not exist, but for the Contracting Authority to set the parameters and requirements of the tender.

She concluded that the Adjudicating Board had acted correctly in its decision.

Further intervention by Dr Michael Caruana

Dr Caruana replied that it was the Contracting Authority which had made the mistake and was failing to acknowledge it. He stressed that the error was not his own but that of the Contracting Authority, which had issued the tender document. He concluded by stating that the Contracting Authority should verify whether the alleged mistake exists and expressed the hope that the winning bidder would produce a sample for verification.

At that point, the Chairman thanked the parties and declared the session closed.

End of minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 7th May 2026.

Having noted the objection filed by Michael Caruana & Co Ltd (hereinafter referred to as the Appellant) on 13th March 2026, refers to the claims made by the same Appellant with regard to the tender of reference SPD3/2025/048 – Lot 3 listed as case No. 2241 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Michael Caruana
Appearing for the Contracting Authority:	Dr Tatiane Scicluna Cassar

Whereby, the Appellant contends that:

- a) By virtue of the present, the undersigned is filing an objection regarding the rejection of its offer under LOT 3 - specifically Item 12 - Edging Tape light oak.
- b) The Offer submitted by Michael Caruana & Co Ltd was the cheapest offer submitted under this LOT, however the LOT was not awarded to the said company on the basis that: "*The Evaluation Committee noted that the tenderer altered the specifications set out in the Technical Offer Questionnaire for Lot 3. Due to these alterations, the Committee determined that the bid could not be considered compliant*".
- c) It is being submitted that the Edging Tape mentioned in Item 12 DOES NOT EXIST in dimensions of 2440mm x 1220mm. It can only be sourced as a roll 50mtrs in length and 20mm width.
- d) According to the Instructions given in the Technical Offer Questionnaire, the tenderer "*declares that he shall be abiding by the technical specifications and that all materials to be used during the work covered by this tender/contract shall conform to the Specifications under Section 3 - Technical Specifications of the Tender Dossier*". Moreover, it states that "*Bidders are to note that statements in the affirmative means that the corresponding specification is being met. A negative statement means that the specification is NOT met and hence the item will be deemed as technically non-compliant*".
- e) Therefore, declaring the affirmative was not possible, as there is absolutely no possibility of supplying edging tape in dimensions of 1220mm x 2440mm, as it does not exist. There is clearly a mistake in the description of the material requested in the Tender document, as the Edging Tape does not exist in sheets but it exists only in rolls.
- f) On the other hand, a negative statement would have disqualified the undersigned from the whole LOT. Thus, the only way the edging tape, which can be sourced and offered could be described, was, by indicating on the technical specification sheet the exact dimensions of the tape Michael Caruana & Co. Ltd. is tendering for, which is the tape available in the market.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 24th March 2026 and its verbal submission during the hearing held on 7th May 2026, in that:

- a) First and foremost, the appellant was found to be technically non-compliant and was therefore not awarded the contract. The specific shortcomings are outlined and explained hereunder. In the technical offer form, which forms part of the tender documentation, the appellant struck out the dimensions required by the Contracting Authority, which were clearly specified in the tender documents. The act of the appellant striking out the required specifications constitutes a very serious irregularity in the submitted documentation.
- b) Furthermore, the appellant initially marked "Yes" in response to the requirement, indicating compliance. However, the appellant subsequently created a contradiction within the submitted

technical offer by striking out the necessary dimensions. This results in an inherent and irreconcilable contradiction: the tenderer expressly confirms compliance by selecting "Yes" yet simultaneously negates that same compliance by striking out the mandatory dimensions. Such internal inconsistency within the technical offer renders the submission unreliable, unclear, and legally non-compliant.

- c) This principle has been firmly upheld by the PCRB, which has consistently held that where a bidder's documentation contains contradictory declarations, the contradiction must be interpreted against the bidder. In PCRB Appeal 1462/2021 (Technology Ventures Ltd vs MITA and PCRB Appeal 1037/2019 (JP Supplies Ltd vs Ministry for Education), the Board held that internal inconsistencies and contradictory statements within a technical offer render it non-compliant, and that such inconsistencies cannot be clarified or rectified after submission as this would breach the principles of equal treatment and transparency.
- d) The act of striking out an essential requirement of the technical offer form effectively alters a fundamental condition set by the Contracting Authority and renders the submission non-compliant. As a consequence, this resulted in automatic exclusion. Accordingly, the Committee did not proceed to financial evaluation.
- e) The Technical Offer document clearly stipulates that tenderers who fail to adhere to requirements, complete and upload all requested information shall be deemed non-compliant and shall not be considered further for final adjudication. Moreover, it is expressly stated that the information and technical specifications provided in the technical questionnaire are not subject to rectification.
- f) This approach is fully aligned with established PCRB jurisprudence, such as PCRB Appeal No. 2174/2023 (Cassar Ship Repair Ltd vs Department of Contracts) and PCRB Appeal No. 1248/2020 (V. & G. Enterprises Ltd vs Enemalta plc), which consistently confirm that mandatory technical requirements must be complied with at the time of submission and cannot be remedied *ex post facto* without breaching the principles of equal treatment and transparency, particularly where the tender documents expressly prohibit rectification.
- g) Furthermore, in his objection, the appellant correctly stated that financial offers cannot be altered following submission. However, the appellant overlooks that the technical questionnaire is also subject to the same principle of non-modifiability, as clearly indicated in Note 3 of the tender document, which explicitly states that such elements cannot be rectified after the submission deadline.
- h) It is important to highlight that all other bidders submitted compliant responses and did not alter or strike out any essential requirements within the technical questionnaire. Consequently, the dimensions requested by the Contracting Authority are feasible and available on the market, and the appellant's claim that such dimensions cannot be provided is merely an assumption made unilaterally by the appellant, rather than a factual limitation of the market.

- i) This approach is consistent with PCRB Case 1600 - CT 2130/2020 (Kerber Security Ltd vs INDIS Malta Ltd), where the Board held that the fact that other bidders complied with the technical specifications clearly demonstrates that the requirements were feasible and available on the market, and that any claim of impossibility by a non-compliant bidder is unfounded.
- j) Additionally, it is not up to any tenderer to dictate what is and what is not applicable or what exists or not to a tender in the technical offer form. It is the Contracting Authority which lays down the parameters and requirements/specifications of a tender and the tenderer cannot, on its own accord, decide to ignore certain requirements or strike out essential specifications just because, according to its mistaken assumption, a particular requirement/specification is not existent.
- k) Moreover, it is imperative to note, that the procurement procedure included a clarification period during which bidders were able to submit questions and/or queries regarding any aspect of the tender documentation. Had the appellant required clarification regarding the specified dimensions or the questionnaire requirements, he could have easily sought guidance from the Contracting Authority within the designated clarification timeframe. Any such queries would have been duly addressed immediately. The tender documents were clear, and at that stage, no clarifications were requested from the appellant's side.
- l) The appellant did not avail himself of this opportunity. At no stage did the appellant clarify this matter with the Contracting Authority and at no stage did the Appellant seek clarification from the Contracting Authority during the tender process (Regulation 38 of the PPR), nor did he invoke any pre-contractual remedy (Regulation 262 of the PPR) if he believed the tender contained defects. It is manifestly evident that, the tenderer failed to exercise any remedies which he could have and is now trying to rectify this mistake by stating that he shouldn't have been deemed technically non-compliant since the dimension "*does not exist*".

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.

- a) The objection concerns the rejection of the Appellant's offer under Lot 3, specifically Item 12 relating to edging tape light oak. The Appellant contends that the edging tape identified in the tender dossier does not exist in the dimensions indicated, namely 2440mm by 1220mm, and that such product may only be sourced in roll form, specifically in a length of 50 metres and width of 20mm. On that basis, the Appellant submits that it was not in a position to declare full compliance with the specification as drafted and that it therefore indicated, in the technical offer sheet, the dimensions of the product which it states is actually available on the market.
- b) The Board notes, however, that in the technical offer form the Appellant did not merely explain or qualify its position, but struck out the dimensions stipulated by the Contracting Authority and

replaced them with different dimensions of its own choosing. At the same time, the Appellant marked the relevant item in the affirmative, thereby declaring that it complied with the specification requested in the tender dossier. This gave rise to a manifest contradiction within the Appellant's own technical offer: the bid simultaneously affirmed compliance with the specification and altered the very specification with which compliance was being declared. Such an internal inconsistency renders the offer uncertain and unreliable and cannot be reconciled in favour of the bidder who created it.

- c) The Board further considers that the Appellant's conduct amounted to a unilateral modification of an essential technical requirement contained in the tender documentation. The technical offer form falls under Note 3, and the tender documents expressly provide that the information and technical specifications contained therein are not subject to rectification after submission. In such circumstances, it was not open to the Appellant to amend the specification so as to align it with the product it wished to offer, even if it genuinely considered the original requirement to be mistaken or impracticable. To permit such a course of action would undermine the principle of equal treatment and would allow an individual bidder to redefine the subject matter of the procurement unilaterally, contrary to the principles of transparency and self-limitation which govern public procurement procedures.
- d) The Board also takes note of the Contracting Authority's position that the remaining bidders did not strike out or amend the dimensions published in the technical questionnaire and submitted their offers in accordance with the tender template. This is a material consideration. It weakens the Appellant's contention that the requirement was objectively impossible to meet and indicates, at the very least, that the issue raised by the Appellant was not self-evident to all operators participating in the procedure. In any event, even assuming that the Appellant genuinely believed that the specification for Item 12 contained an error or referred to a product unavailable on the market, the proper course was not to amend the tender form on its own initiative.
- e) Indeed, the procurement procedure provided mechanisms through which an economic operator could raise doubts, seek clarification, or challenge an allegedly defective specification before the closing date for the submission of tenders. If the Appellant truly considered that the requested edging tape did not exist in the dimensions specified, then the obvious and lawful step would have been either to request clarification from the Contracting Authority during the clarification period or to avail itself of the pre-contractual remedy contemplated by Regulation 262 of the Public Procurement Regulations in order to correct the alleged error or ambiguity. The Appellant did neither. It chose instead to submit a bid in which it altered the published requirement while at the same time affirming compliance with it. The Board considers that a bidder who elects not to challenge an allegedly defective specification at the proper stage cannot subsequently seek to justify its own unilateral amendment of the technical questionnaire after having been declared non-compliant.

- f) The Board also considers that the Appellant's further argument, namely that the item requested does not in fact exist and could therefore not be supplied by any tenderer, does not alter the position in law for the purposes of this appeal. If, as suggested by the Appellant, any bidder, including the preferred tenderer, were ultimately not to be in a position to deliver the edging tape in conformity with the contractual specifications, that would be a matter arising at the contract-performance stage and not a matter capable of excusing a non-compliant bid at tender stage. The function of the Evaluation Committee was to assess the bids as submitted against the tender dossier, and not to speculate on whether the successful bidder might later default in the execution of the contract. The responsibility for ensuring that the items listed in the tender are duly supplied in accordance with the contractual requirements lies, after award, with the Contracting Authority. Should the contractor fail to supply the required items in conformity with the contract, it would then be incumbent on the Contracting Authority to pursue the appropriate contractual and legal remedies.
- g) Accordingly, the possibility of future non-performance by another bidder, if such possibility were ever to arise, cannot retrospectively validate the Appellant's decision to strike out and replace an essential technical specification in its own bid. The objection before the Board concerns the legality of the Appellant's exclusion on the basis of the offer actually submitted, and not hypothetical issues of post-award contract administration.
- h) In the light of all the foregoing considerations, the Board finds that the Evaluation Committee and the Contracting Authority acted correctly in deeming the Appellant's offer technically non-compliant in respect of Item 12 under Lot 3. The Appellant's grievance is therefore not upheld, and the decision of the Contracting Authority is to be confirmed.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides in relation to Lot 3:

- 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 Vincent Micallef
Member

Dr Maria Cardona
Member