

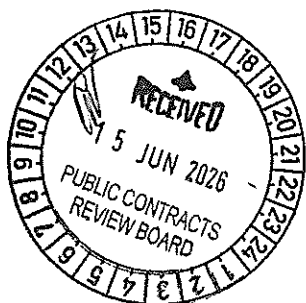
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15th June 2026

PUBLIC CONTRACTS REVIEW BOARD



Tender CT2350/2025
Legacy Ventures Limited
(Objector)

vs
Foundation for Tomorrow's Schools
(Contracting Authority)

And

Elzan Construction Limited
(Recommended Bidder)

Reasoned Reply of Elzan Construction Limited (C64806)
Humbly submits:

Elzan Construction Limited (hereinafter "Elzan"), in its capacity as the bidder recommended for award, respectfully files the present reply and submits as follows:

PRELIMINARY OBSERVATIONS

At the outset, Elzan respectfully submits that the objection filed by Legacy Ventures Limited is unfounded both in fact and in law and ought ultimately to be dismissed.

Elzan maintains that the recommendation for award was lawfully made and that none of the grievances advanced by the Objector establish any breach of the Public Procurement Regulations, the General Rules Governing Tenders, or the requirements of the tender dossier.

Elzan proceeds to address the individual grievances raised by the Objector.

FIRST GROUND OF OBJECTION – ALLEGED BREACH OF ARTICLE 3.1 OF THE GENERAL RULES GOVERNING TENDERS

This grievance is unfounded.

The Objector alleges that Elzan submitted multiple bids and suggests that Article 3.1 of the General Rules Governing Tenders may have been breached.

However, the Objector has failed to produce any evidence demonstrating that the bid recommended for award was ineligible for consideration or that the provisions of

Article 3.1 were breached.

Article 3.1 expressly contemplates the submission of multiple non-identical bids and regulates the manner in which such bids are to be considered.

The Objector has not produced any evidence demonstrating that the bids considered during the evaluation process were identical, that an ineligible bid was considered, or that the recommended bid fell outside the parameters established by the applicable procurement rules.

The grievance should therefore be rejected.

SECOND GROUND OF OBJECTION – THE CITYWAYS PROJECT

The Objector seeks to challenge the determination that the Cityways Project relied upon by it did not satisfy the experience requirements established by the tender dossier. This grievance concerns the Objector's own bid and does not identify any deficiency whatsoever in Elzan's bid.

In any event, the eligibility and experience requirements were clearly established in the tender dossier and were known to all economic operators from the outset.

The Evaluation Committee was entitled and indeed obliged to assess the projects submitted by each bidder against the requirements established by the tender documentation.

The fact that the Objector disagrees with the outcome of that assessment does not render the assessment unlawful.

Nor can the Objector seek, after the conclusion of the evaluation process, to broaden or reinterpret the experience requirements in a manner more favourable to its position. The grievance is therefore devoid of merit and should be rejected.

THIRD GROUND OF OBJECTION – ALLEGED FAILURE TO PROVIDE ADEQUATE INFORMATION

The Objector appears to contend that it is entitled to disclosure of technical evaluation records, technical documentation and information relating to competing bids.

Elzan respectfully submits that such contention is misconceived.

At the outset, it is important to distinguish between information which is in the public domain and information which is not. The technical documentation, technical specifications, technical methodologies, technical literature, certifications, compliance documentation and other technical information forming part of Elzan's tender submission are not in the public domain and, in any event, constitute commercially sensitive and confidential information belonging to Elzan.

The fact that a tender is submitted within the context of a public procurement procedure does not, of itself, place the technical contents of that tender in the public domain. Nor does the fact that the Evaluation Committee examined and assessed such documentation render the underlying technical information part of the public domain.

The technical aspects required by the tender dossier were duly examined, assessed and evaluated by the competent Evaluation Committee. The Committee was entrusted with the task of determining whether the technical requirements established by the tender dossier had been satisfied and reached its conclusions following that evaluation process. The fact that the technical requirements were assessed by the Evaluation Committee does not alter the position that the underlying technical information remains outside the public domain.

Elzan further submits that the technical information contained within its tender submission constitutes commercially sensitive and confidential information which is not in the public domain. Such information forms part of Elzan's technical know-how, procurement methodology, compliance approach and commercial expertise developed and utilised for the purposes of participating in public procurement procedures and commercial projects.

If information of this nature, which is not in the public domain and which is commercially sensitive and confidential, were to be disclosed to the Objector or otherwise made available beyond the limits established by law, such disclosure could confer upon the Objector, or indeed any other economic operator, a technical and commercial advantage in relation to future tenders, procurement procedures or commercial contracts. Competitors would thereby gain access to technical information, methodologies, compliance strategies and documentation developed and submitted by Elzan for the purposes of the present procurement procedure.

Information that is not in the public domain should not be rendered public merely because an unsuccessful bidder seeks access to it following the conclusion of the evaluation process.

It is precisely for these reasons that Elzan did not place such technical information in the public domain and maintains that it should continue to be treated as commercially sensitive and confidential information falling outside the public domain, thereby benefiting from the protection afforded by the applicable procurement framework and by the principles safeguarding fair competition between economic operators.

By contrast, the financial offer submitted within the procurement procedure forms part of the information that is capable of entering the public domain through the procurement process and through the mechanisms established by the applicable procurement rules. The financial offer is therefore distinguishable from the technical information submitted as part of the tender documentation, which remains outside the public domain.

The extent of any disclosure to which the Objector may be entitled is governed by the Interim Decree issued by this Honourable Board and by the applicable provisions of the Public Procurement Regulations. Any disclosure process must therefore be conducted strictly within those parameters and cannot serve as a basis for converting information which is not in the public domain into information that is placed in the public domain.

In any event, the Objector bears the burden of proving the breaches alleged in its objection. The Objector has, to date, failed to identify any substantive irregularity capable of affecting the validity of the recommendation for award.

Accordingly, this grievance is unfounded and should be rejected.

FOURTH GROUND OF OBJECTION – ALLEGED TECHNICAL NON-COMPLIANCE

The Objector raises various allegations concerning Eurovent certification, environmental requirements, GPP requirements, Ecolabel compliance, paints, sanitary ware, HPL cubicles, curtains, blinds, technical literature, certifications and other technical specifications.

Elzan categorically rejects all such allegations.

The allegations advanced by the Objector concern matters forming part of Elzan's technical submission, namely information that is not in the public domain and which furthermore constitutes commercially sensitive and confidential information. The relevant technical documentation was examined and evaluated by the competent Evaluation Committee for the purpose of determining compliance with the tender requirements. The fact that such documentation was evaluated does not render it part of the public domain, nor does it deprive it of its confidential and commercially sensitive character and which, if disclosed, could provide a technical advantage in future procurement procedures or commercial engagements.

The competent Evaluation Committee examined the tender submissions and concluded that Elzan satisfied the applicable technical requirements.

To date, the Objector has not produced evidence demonstrating any actual instance of technical non-compliance.

Elzan therefore maintains that this grievance is devoid of merit and should ultimately be rejected.

FIFTH GROUND OF OBJECTION – KEY EXPERTS AND ALLEGED IDENTITY OF BIDS

The allegations concerning Key Experts and the alleged identity of bids are unsupported by evidence.

The Objector has not demonstrated that any expert nominated by Elzan failed to satisfy the requirements established by the tender dossier.

Nor has the Objector demonstrated that any bid submitted by Elzan was rendered inadmissible or otherwise non-compliant under the applicable procurement rules.

Elzan maintains that all requirements of the tender dossier were satisfied and that this grievance should likewise be dismissed.

SIXTH GROUND OF OBJECTION – ALLEGED PRICE DISCREPANCY

The Objector alleges that there exists a discrepancy between the price indicated at opening stage and the price ultimately considered.

The Objector has not demonstrated that any correction applied was unlawful, irregular or capable of affecting the outcome of the procurement procedure.

Nor has the Objector demonstrated that any bidder suffered prejudice as a result of the alleged discrepancy.

The grievance is entirely speculative and provides no basis for disturbing the recommendation for award.

CONCLUSION

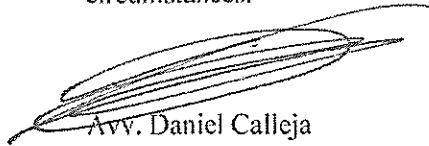
The Objector has failed to establish any breach of the Public Procurement Regulations, the General Rules Governing Tenders, or the provisions of the tender dossier.

The recommendation for award followed a procurement process conducted in accordance with the applicable legal and regulatory framework and was reached following an evaluation undertaken by the competent Evaluation Committee.

None of the grievances advanced by the Objector establish any basis upon which the recommendation for award may lawfully be disturbed.

Accordingly, Elzan Construction Limited respectfully requests this Honourable Board to:

- (i) reject the objection in its entirety;
- (ii) confirm the recommendation for award in favour of Elzan Construction Limited;
- (iii) reject all requests for relief sought by the Objector; and
- (iv) make such further orders as this Honourable Board may deem appropriate in the circumstances.



Avv. Daniel Calleja