

Public Contracts Review Board

Notre Dame Ditch

Floriana

Valletta



Today, 18th September 2026

Reasoned Letter of Reply for Objection - SPD3/2026/026 Tender For The Provision of Accessible Passenger Transport Services with Drivers for Wheelchair Users and other clients of Santa Marta Day Centre within the Ministry for Gozo.

Dear Chairman and Members of the Board,

The Ministry for Gozo (hereinafter referred to as 'the 'Contracting Authority') is hereby submitting its reasoned letter of reply following the objection lodged by Paul Borg holder of identity card number (52060G) (hereinafter referred to as the 'Appellant') on the 11th of September 2026.

In this reply, the Contracting Authority shall address the objection of the Appellant and shall state the grounds upon which the objection cannot be upheld by this Honourable Board and at the same time confirm the recommended award in favour of Speedway Garage.

Submissions

Whereas, in its reasoned letter of objection, the Appellant grounds its challenge primarily on a single grievance, namely that its offer was rejected on the basis that certain information was allegedly omitted, whereas the Appellant contends that the information requested was, in fact, duly provided and was never missing

The Contracting Authority respectfully submits that:

As a preliminary point, the Contracting Authority wishes to draw attention to a material omission in the documentation submitted by the Appellant. Whilst the Appellant refers to "Document A" as the Tender Dossier and has attached various documents thereto, the Technical Offer Form, which lies at the core of the issues raised in the present objection, was not completed in its entirety. In particular, certain mandatory information required by the form was omitted.

First and foremost, while the Appellant was administratively compliant, its submission did not meet the required technical standards. Compliance with technical requirements is a prerequisite to progressing to the subsequent financial stage. Accordingly, since the Appellant was not technically compliant, the evaluation could not proceed further.

In its correspondence dated 4th September 2026, the Contracting Authority informed the appellant that, the submitted offer was deemed technically not compliant. The Authority clearly stated that “*the main reason*” for this non-compliance was that, since the technical offer form had not been fully completed and, since the technical offer form was non-rectifiable, the offer was considered as technically non-compliant.

The Appellant bases his objection solely on the argument that information omitted from the Technical Offer Form could allegedly be identified from other supporting documentation forming part of his original tender submission.

The Authority would further emphasise that the Appellant left the first two boxes of the Technical Offer Form uncompleted. The Technical offer form falls within the requirements classified under Note 3, and consequently, the omission could not be rectified after the submission deadline.

In this regard, the contracting Authority would like to point out that in the “Tenderer’s Technical Offer Form (Note 3)”, there is stated clearly that:

“The technical offer falls under Note3, thus, the information/technical specifications provided shall not be subject to rectifications. Therefore, bidders that fail to complete in full, submit and upload the requested information will be deemed as non-compliant and will result in disqualification of their offer. The items being offered in the technical offer must be in conformity with the specifications requested under Section 3 – Technical Specifications and/or the Financial Bid Form.”

In addition to the general rules Clause 5 (c) (I) of the Instructions to Tenderers provide that:

“Tenderer’s Technical Offer Form in response to specifications (is) to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided.”

It is therefore important to note that the requirement to complete and submit the technical offer form in the prescribed manner was not merely procedural or a matter of presentation, but constituted a specific requirement of the tender. The appellant was therefore **fully informed** of this condition, as it was clearly outlined in the tender documentation.

It is also pertinent to note that all other bidders submitted compliant technical offers and did not omit any of the mandatory information required under the Technical Offer Form. In the present case, the provisions cited above clearly demonstrate that the Contracting Authority was precluded from seeking clarification, as the information requested had not been provided in full. Specifically, Items 1 and 2 of the Technical Offer Form were left blank. The omission of such mandatory information rendered the technical offer non-compliant and justified its

rejection in accordance with the applicable procurement regulations and the requirements of the Tender Dossier.

In this regards, it is pertinent to refer to **Case 1780 - CT2391/2021 - Supplies - Supply, Installation, Commissioning and Testing of a Virtual Environment and SAN Solution to the Water Services Corporation**, decided on 29th August 2022. In this case, the Public Contracts Review Board observed the following:

"Any change that would have resulted in making the bid/ offer technically compliant would have been a rectification, something which was not possible. Hence, in the opinion of this Board, the Evaluation Committee correctly discarded the Appellant's offer as technically non-compliant. A clarification would not have 'solved' the issue at hand and any further action by the Evaluation Committee would have been going against a fundamental principle of public procurement, i.e. Self-Limitation. Also a level playing field between all economic operators participating in the tender procedure would have been shattered."

The contracting authority would also like to make reference to the case: **'Rockcut Limited vs Malta Industrial Parks Ltd et** (Court of Appeal decided on 31st May 2019) whereby it stated:

"Jekk ir-regoli tas-sejha jimponu l-prezenza ta tali tagħrif, hu mistenni li offerenti li jiehdu sehem f'dik is-sejha joqogħdu għal daww ir-regoli. Wara kollox ir-regoli tas-sejha qegħdin hemm biex jigu mharsa u mhux biex jigu mwarrba. Biex jiġi żgurat il-harsien ta' dawn il-prinċipji, l-awtorita' kontraenti hija obbligata li tosserva strettament il-kriterji li hija stess tkun stabbiliet (ara f'dan is sens is-sentenza tad-29 ta' April 2004, il-Kummissjoni v. CAS Succhi Di Frutta S.p.A, C-496/99, puntu5)".

In the present case, any request for clarification would have had the effect of allowing the Appellant to provide information that was omitted from the Technical Offer Questionnaire. Such a course of action would have been impermissible, as it would have amounted to the submission of missing information after the tender closing date rather than the clarification of information already provided. Furthermore, it would have placed the other bidder, who duly submitted a fully completed Technical Offer Questionnaire, at an unfair and unjustified disadvantage, thereby undermining the principles of equal treatment, transparency, and fair competition that govern public procurement procedures.

Accordingly, the Appellant failed to complete and submit two of the mandatory fields of the Technical Offer Form namely *'licence registration Nos of Vehicles being offered to render these services'* and *'Seating Capacity of Vehicles being offered to render these services'*. As a result, material information required by the Technical Offer Form was omitted from the Appellant's response. The fact that similar information may have appeared elsewhere in the tender submission is entirely immaterial, as the Appellant failed to provide the mandatory responses where expressly required. The relevant fields were left blank, and the required answers were not provided. The Technical Offer was therefore incomplete, non-compliant, and

liable to rejection in accordance with the Tender Dossier and the applicable procurement regulations.

Permitting missing information to be subsequently identified and incorporated from accompanying documentation would effectively allow the Appellant to supplement or complete its Technical Offer after the submission deadline. In the circumstances, this would constitute a rectification of the submitted Technical Offer, rather than a clarification of information already contained therein, and would therefore be contrary to the express prohibition applicable to Note 3 requirements.

The Technical Offer Form is a fundamental document, contrary to the Appellant's attempt to minimise its significance. It contains critical declarations that determine whether an offer qualifies for further consideration and potential award. 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.

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.

Furthermore, it is not for a tenderer to determine, on its own accord, which requirements of the tender are applicable, material or capable of being disregarded. It is the Contracting Authority, through the tender documents, which establishes the applicable requirements, technical specifications and parameters against which all bids are to be assessed.

A tenderer cannot unilaterally choose to leave essential information blank or omit information expressly required within the relevant section of the technical offer, on the assumption that such information is either unnecessary or may be inferred from information provided elsewhere in its submission. Such an approach would effectively permit a tenderer to substitute its own interpretation of the tender requirements for those established by the Contracting Authority.

In the present case, the information left blank by the Appellant concerned material requirements which formed part of the technical evaluation. The fact that certain information may have been included elsewhere in the bid does not cure the failure to provide the required information in the manner and context stipulated by the tender documentation.

The case relied upon by the Appellant in support of its objection is readily distinguishable from the present circumstances. In fact, in that case (Rik. No: 445/2025/1: Europharma Limited vs Central Procurement and Supplies United), the Court observed that:

“30. In parentesi, nonostante li mhuwiex kompitu ta’ din il-Qorti li teżamina l-offerta ta’ Associated Equipment Limited, huwa interessanti jiġi nnotat ukoll li l-offerta ta’

Associated Equipment Limited (fol 86 e seq) lanqas kien hemm inniżżel il-brand, iżda tali offerta ma gietx ikkunsidrata bħala technically non-compliant”.

The Appellant's reliance on the above-cited case is misplaced. That case is clearly distinguishable on its facts. As acknowledged by the Court, another bidder in the same procurement procedure had also failed to indicate the brand of the equipment offered, yet its bid was not considered technically non-compliant. The Court's comments were therefore directed at an apparent inconsistency in the evaluation of competing bids.

No such inconsistency arises in the present case. The successful bidder complied in full with the technical requirements of the Tender Dossier and duly completed the Technical Offer Form, including all mandatory fields. By contrast, the Appellant left mandatory sections unanswered and failed to provide information expressly required by the Technical Offer Questionnaire. The circumstances are therefore fundamentally different, and the authority relied upon by the Appellant provides no support whatsoever for its position.

The Authority also takes note of the Appellant's statement that *“The principle of equal treatment and proportionality remains entirely uncompromised because the bidder stands to gain no competitive advantage.”* The issue is not confined to whether the Appellant would derive a substantive competitive advantage from the consideration of the omitted information. Rather, the relevant question is whether permitting the omission to be remedied after the tender submission deadline would constitute an impermissible rectification of the Technical Offer. In the present case, it plainly would.

The Tender Dossier expressly provides that no rectifications are permitted in respect of the requirements falling under Note 3. Consequently, the Appellant cannot invoke the principle of proportionality in a manner that would override the clear and unambiguous provisions of the Tender Dossier. The principles of proportionality and equal treatment must be applied harmoniously, and the former cannot be relied upon to circumvent mandatory tender requirements or to permit one tenderer to rectify material omissions after the deadline for submission.

Furthermore, all other bidders successfully provided the information and specifications required under the Technical Offer Form, thereby demonstrating that the requirements were neither impossible to satisfy nor disproportionate in nature. To permit the Appellant to remedy its omission after the closing date would therefore undermine the principles of equal treatment, transparency, and fair competition by placing the Appellant in a more favourable position than tenderers who complied with the Tender Dossier from the outset. Accordingly, the Appellant's argument is unfounded and must be rejected.

With respect to the Appellant's submission of *“deliberately including the logbooks as documentary evidence to ensure no material information was concealed or withheld for a later stage”*, the Contracting Authority wishes to clarify that providing all documents, does not in itself ensure compliance.

Upon review, it was determined that the Appellant's submission failed to fully meet the technical criteria and specifications set out in the tender specifically because required

information was left blank by the Appellant. Completeness of submission alone does not equate to technical compliance.

The Appellant further contends that *"the principle of proportionality strictly requires authorities to distinguish between a substantive failure of compliance and a purely formal defect."* It appears that, on this basis, the Appellant alleges that the principle of proportionality was breached during the evaluation process and, further, that the Contracting Authority acted disproportionately by failing to take into account information allegedly provided elsewhere in the bid.

The Contracting Authority firmly rejects these assertions in their entirety. The evaluation process was conducted in strict accordance with the applicable legal and regulatory framework and the requirements of the tender documents. The same evaluation criteria and requirements were applied uniformly and consistently to all bidders, without distinction.

The Technical Evaluation Committee carefully examined the submissions and verified that the preferred bidder satisfied the applicable technical requirements. In contrast, the Appellant's submission failed to satisfy the prescribed technical standards. The Appellant further submits that *"public procurement processes must not be reduced to a purely formalistic exercise that ignores the foundational objectives of transparency and fairness."* While the Contracting Authority does not dispute the importance of these principles, it is for the Appellant to substantiate its allegation that the Authority acted unfairly or without transparency. A mere assertion of unfairness, cannot suffice. In the present case, the requirements were clearly established in the tender documents and applied equally to all bidders.

Moreover, the primary goal of public procurement legislation is to ensure that services meet required standards at the best possible price. In this context, and in light of the evaluation, the offer submitted by Speedway Garage proved to be the most economically advantageous, is confirmed to be compliant on administrative, technical, and financial grounds.

With respect to the Appellant's assertion that its offer was the cheapest, it is stated that the preferred bidder's offer was deemed financially viable by the Technical Evaluation Committee. All requirements were met, and the principles governing public procurement were strictly adhered to.

The PCRB has consistently reaffirmed that the lowest price is not decisive in isolation and that an offer can only be considered once it is fully compliant from an administrative and technical standpoint.

Although not the lowest-priced offer, the preferred bidder's figures were considered reasonable, feasible, within budget, and fully compliant with the applicable Procurement Regulations.

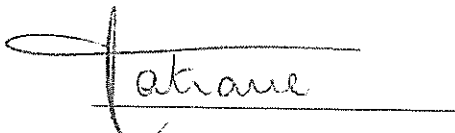
It must be emphasized that the role of the Technical Evaluation Committee is not solely to identify the lowest price, but to seek the most economically advantageous offer, provided that all administrative, technical, and financial criteria are fully satisfied.

This principle has been expressly endorsed by the PCRB, which has repeatedly held that an Evaluation Committee would be acting unlawfully if it were to prioritise price over compliance with mandatory tender requirements.

Furthermore, the primary objective of public procurement legislation is to ensure that the public receives supplies or services that meet the required standards and specifications at the best possible value for money.

Conclusion

Therefore, for the reasons mentioned above, the respondent Contracting Authority humbly requests that this Honourable Board should reject and dismiss all arguments submitted by the Appellant, thereby dismissing the objection in toto and to re-confirm the decision of the Evaluation Committee for the reasons given.

A handwritten signature in black ink, appearing to read 'Tatiane', is written over a horizontal line.

Dr Tatiane Scicluna Cassar
Director
Legal & Compliance Directorate
Ministry for Gozo