PUBLIC CONTRACTS REVIEW BOARD

Case 2267 – CPSU 00127/26 – Call for Quotes for the Supply and Installation and Commissioning of Hot Water Calorifier at Mount Carmel Hospital - MHS

9th September 2026

The Board,

Having noted the letter of objection filed by Dr Maurice Meli on behalf of A. Falzon Energy Projects Ltd, (hereinafter referred to as the appellant) filed on the 7th August 2026;

Having also noted the letter of reply filed by Dr Leon Camilleri and Dr Alexia Farrugia Zrinzo acting for and on behalf of the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 17th August 2026;

Having heard and evaluated the testimony of the witness Ing Franco Cassar (Member of the Evaluation Committee) as summoned by Dr Maurice Meli acting for the Appellant;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 3rd September 2026 hereunder-reproduced.

Minutes

Case 2267 – 694 – Objection – CPSU00127/26 – Call for Quotes for the Supply and Installation and Commissioning of Hot Water Calorifier at Mount Carmel Hospital MHS.

The Tender was issued on the 12th of May 2026, and the closing date was 27th May 2026.

The estimated value of the tender, excluding VAT, was €9200

On the 7th of August 2026, A. Falzon Energy Projects Ltd. lodged an appeal against Central Procurement and Supplies Unit (CPSU) – the Contracting Authority.

On the 3rd of September 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Mr Keith Victor Grech and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €699.60 was paid.

There were Four bids.

The attendance for this public hearing was as follows:

Appellant – A. Falzon Energy Projects Ltd.

Dr Maurice Meli – Legal Representative.

Dr Megan Sammut –Legal Representative.

Mr Anthony Falzon – Company Representative.

Ms Tara Falzon – Company Representative.

Contracting Authority – Central Procurement and Supplies Unit (CPSU).

Dr Leon Camilleri – Legal Representative.

Dr Alexia J Farrugia Zrinzo – Legal Representative.

Ms Karen Scicluna – Chairperson

Mr Nandu Sathyan – TEC Secretary

Mr Franco Cassar – Evaluator

Preferred Bidder – – **Proenergy Solutions Limited.**

Mr Andrew Zammit– Company Representative.

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2267 in the records of the PCRB. The Chairman identified the Appellant as A. Falzon Energy Projects Ltd., the Contracting Authority as Central Procurement and Supplies Unit (CPSU), and acknowledged the presence of the Recommended Bidder, Proenergy Solutions Limited.

The Chairman invited the parties to state their names and surnames for the record and thereafter invited the legal representative for the Appellant to make the initial submissions.

Initial Submissions

Initial Submissions by Dr Maurice Meli (for the Appellant).

Dr Maurice Meli requested a representative of the appellant as a witness. He also requested that the representative of the Evaluation Committee not be present during the hearing of his witness.

The Chairman stated that this was not the normal procedure.

Dr Leon Camilleri, the representative for CPSU, objected to this deviation.

Dr Meli noted that he was going to ask his client about the differences in the bids.

Dr Camilleri said that the differences between the bids were present, and not about the change.

Dr Meli decided to call the witness from the Evaluation Board first.

Witness:

Engineer Franco Cassar (ID no. 485666M), summoned by Dr Megan Sammut.

Ing. Franco Cassar saw that both offers were eligible; however, the technical offers were identical. The technical offers and the literature were, word by word, the same. The Evaluation could not be completed, and the Board did not evaluate the financial bids, which were different.

Dr Sammut asked the witness if he had checked the maintenance.

Ing. Cassar noted that the maintenance was not mentioned in the technical offers. The technical offer was Note 3, and Ing. Cassar could not ask for a clarification. The witness had both identical appeals present with him.

Dr Maurice Meli referred to the difference in the first bullet of the appeal; however, Ing. Cassar verified that Dr Meli was referring to the financial bid on the ePPS. Ing. Cassar saw the difference in the financial bid, but for evaluation purposes, he had to stop at the technical phase. The difference was in the maintenance, but this was not relevant.

Cross-examination by Dr Leon Camilleri.

Ing. Franco Cassar was a Chief Engineer with the Health Department and had been evaluating for the last 35 years. This was a small call for quotes, and he was the only evaluator. He agreed with Dr Camilleri that the contents of both technical offer forms 243613 and 243612 were identical.

The tender requested supply and installation, and the maintenance was not mentioned; however, in clause 2.3, there was mention of Servicing and Spares in the guarantee. The inputs were identical.

Re-examination by Dr Maurice Meli.

Ing. Cassar noted that the technical offer form could not be adjusted as it was Note 3, and the maintenance was not included in the form.

Final Submissions

Final Submissions by Dr Maurice Meli (for the Appellant).

Dr Meli stated that the appellant submitted two offers with a difference in the technical and financial bids. The witness had noted that there was a difference in the maintenance. Dr Meli did not agree with Ing. Cassar that both offers were identical.

In offer 1, the maintenance was not included, hence the difference in price. It was so clear that there was no need for a clarification.

He referred to a similar situation in Case 2058 in January 2025 regarding Frank Muscat. In this case, a clarification was requested.

Final Submissions by Dr Leon Camilleri (for the Contracting Authority).

Dr Camilleri referred to clause 3.1 of the General Rules Governing Tenders, quoting:

"Bidders may submit up to three multiple bids which should all be non-identical, technically and financially".

The appellant stated that a clarification could have been requested; however, clause 3.4 states, and he quotes:

"Non abidance to article 3.1, 3.2, 3.3, and 3.4 by economic operators and their composition and submission shall lead to the outright disqualification of all the bids in question".

The word 'outright' clearly indicates that when the elements of clause 3.1 occur, the Evaluation Committee could have disqualified the offer. The technical offer forms were identical.

The appellant stated that there was a difference, since one of the offers mentioned the maintenance; however, the maintenance was reflected in the financial offer.

Dr Camilleri stated that, in the field of Public Procurement, the CPSU buys what is written in the technical form. The sequence was clear, and since the forms were identical, clause 3.1 occurs, followed by clause 3.4, which provides for outright disqualification. The Evaluator acted in accordance with the General Rules Governing Tenders.

Conclusion of the Hearing

The Chairman, Mr Kenneth Swain, thanked all parties present and formally concluded the hearing. The Board would communicate its decision in due course.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 3rd September 2026.

Having noted the objection filed by A. Falzon Energy Projects Ltd (hereinafter referred to as the Appellant) on 7th August 2026, refers to the claims made by the same Appellant with regards to the tender of reference CPSU 00127/26 listed as case No. 2267 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Maurice Meli & Dr Megan Sammut
Appearing for the Contracting Authority:	Dr Leon Camilleri & Dr Alexia Farrugia Zrinzo

Whereby, the Appellant contends that:

a) ***1st grievance – Erroneous Application and Misinterpretation of Article 3 of the General Rules Governing Tenders***

The Contracting Authority erroneously disqualified the Appellant's offer by citing noncompliance with Articles 3.1, 3.2, 3.3, and 3.4 of the General Rules Governing Tenders. Article 3.1 of the General Rules Governing Tenders explicitly provides: *"Bidders may submit up to three (3) multiple bids which should all be non-identical (technically and financially) for a tender. In cases where bidders submit more than three (3) non-identical bids, the evaluation board will only consider the first three (3) cheapest offers submitted - irrespective of their administrative, technical and financial compliance..."* The Appellant acted strictly within the clear parameters of Article 3.1. The Appellant submitted two (2) separate, non-identical offers (Tender ID 243612 and Tender ID 243613), which is well below the maximum limit of three (3) multiple bids permitted by the tender rules. Both offers were distinct, non-identical, and fully differentiated financially and technically. The Contracting Authority failed to demonstrate how or in what manner the submission of two non-identical offers violated Article 3. Disqualifying a tenderer for exercising a right explicitly conferred by Article 3.1 constitutes a manifest error of law and fact.

b) ***2nd grievance – Breach of the Principle of Equal Treatment, Transparency, and Proportionality***

In terms of Regulation 39(1) of the Public Procurement Regulations (S.L. 601.03), Contracting Authorities are under a legal obligation to treat economic operators equally and without discrimination, and to act in a transparent and proportionate manner. Disqualifying the lowest priced compliant offer (€6,996.00 excl. VAT) on an erroneous, misapplied administrative interpretation of the multiple-bidding rule violates the principle of proportionality and leads to an unjustified distortion of competition. By penalizing the Appellant for utilizing a submission feature expressly permitted under the procurement rules, the Contracting Authority acted arbitrarily, breaching the Appellant's legitimate expectation of fair evaluation.

c) ***3rd Grievance – Breach of Public Interest and Manifest Failure to ensure Best Value for Public Funds***

Public procurement legislation is designed to ensure the sound management of public funds by selecting the most economically advantageous tender among compliant offers. The Appellant's bid (Tender ID 243612) is the cheapest offer submitted. It provides a direct, high-specification replacement by the sole local agent of the original manufacturer (Fiorini), complete with a 5-year guarantee. The decision to reject this offer in favor of a substantially higher bid (€7,443.63 excl. VAT) without a valid legal or technical basis imposes an unnecessary financial burden on public funds and runs counter to the objectives of public procurement.

d) ***4th grievance – Failure to provide sufficient and adequate reasons for rejection***

The rejection letter issued by the Contracting Authority merely quotes the text of Article 3.1 and asserts a general conclusion without detailing any specific factual breach committed by the Appellant. A Contracting Authority is legally bound to provide clear, specific, and reasoned justifications when rejecting a tender. A generic citation of a rule that expressly permits up to three bids does not satisfy the legal requirement for adequate reasoning, severely prejudicing the Appellant's rights of defense.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 7th August 2026 and its verbal submission during the hearing held on 3rd September 2026, in that:

a) ***1st grievance -***

The objector in this first grievance confirm that it understood well the reason for rejection, that is offers were rejected due to submitting 2 identical offers: The General Rules Governing tenders provide in clause 3 that: *"3.1 Bidders may submit up to three (3) multiple bids which should all be non-identical (technically and financially) for a tender. In cases where bidders submit more than three (3) non-identical bids, the evaluation board will only consider the first three (3) cheapest offers submitted - irrespective of their administrative, technical and financial compliance. All other bids submitted by the tenderer will be automatically disqualified. (…) 3.4 (...) Non-abidance to Articles 3.1, 3.2, 3.3 and 3.4 by Economic Operators in their composition and submissions shall lead to the outright disqualification of all of the bids in question."*

The general rules clearly provide that both offers must be both technically and financially non identical, meaning that if the 2 offers submitted, have the same technical offer but different prices, both offers shall not be acceptable. According to the Public Procurement Regulations (PPR) and the General Rules Governing Tenders, the order of the evaluation process is; Administrative, Technical and Financial, and thus once the evaluators notice that 2 offers are identical technically, they are duty bound to reject the offers based on the above cited rule. The Objectors argue that its 2 offers were different technically and financially but as this Honourable Board will be able to see, both offers had the same exact and identical technical offer form, which means that the offers were technically identical, and had to be rejected. For these reasons which will be further proven during the sitting, CPSU submits that this grievance ought to be rejected.

b) ***2nd grievance -***

The Objector submits that the evaluation committee in its evaluation breached the principles of equal treatment, transparency and proportionality. This claim is totally unfounded both in fact and at law, since the evaluation committee, as it always does, ensured that the evaluation committee is carried out in accordance to all applicable laws and rules, the tender conditions and all the general principles of public procurement including those of equal treatment of bidders, transparency, proportionality and self limitation. The evaluation committee ensures adherence to all these principles by applying equally and without distinction the applicable laws and rules, whilst requesting clarifications and rectifications only when permissible by the same laws and rules. In the present case, the General Rules Governing Tenders did not provide any room for clarification or rectification since it provided that Non-abidance to Articles 3.1, 3.2, 3.3 and 3.4 by Economic Operators in their composition and submissions shall lead to the outright disqualification of all of the bids in question. Thus, by disqualifying the objector's offer, the evaluation committee was ensuring equal treatment, transparency, proportionality with all the bidders. For these reasons this grievance ought to be rejected.

c) ***3rd grievance -***

The Objector in this grievance states that the evaluation committee breached public interest and failed to ensure best value for public funds. CPSU submits that this is also unfounded in fact and at law for the following reasons. Although the award criteria for this tender is the price, such criteria is not absolute and the offers which should be recommended for award is the cheapest offer satisfying all the administrative, technical and financial criteria. In this case this was not the case since the objector breached clause 3 of the General Rules Governing Tenders. For this reason, this grievance ought to be rejected.

d) ***4th grievance -***

The Objector in this grievance states that the contracting authority failed to provide sufficient information on the rejection. CPSU submits that this grievance if frivolous since enough information was provided to address the reasons for rejection in an appeal based on 3 grievances, including the first grievance which dealt with the reason for rejection. For this reason, this grievance ought to be rejected.

This Board, after having examined the relevant documentation to this appeal, heard submissions made by all the interested parties including the testimony of the witness duly summoned, and given careful consideration to the acts of the case and the evidence produced, including the electronic tender submissions filed by the Appellant under Tender ID 243612 and Tender ID 243613, will now consider the Appellant's grievances and makes the following considerations:

a) The dispute in this case turns, in the first instance, on a question of fact: whether the two offers submitted by the Appellant, under Tender ID 243612 and Tender ID 243613, were or were not "non-identical (technically and financially)" within the meaning of Article 3.1 of the General Rules Governing Tenders ("GRGT") applicable to this call. Article 3.1 GRGT provides that *"Bidders may submit up to three (3) multiple and non-identical (technically and financially) bids for a tender."* The right to submit multiple bids is accordingly not unconditional; it is made subject, by the very provision that confers it, to each such bid being distinct both technically and financially.

b) The Board, having examined the electronic tender submissions filed by the Appellant under both Tender IDs, finds, as a matter of fact, that the Technical Offer Form and the manufacturer's technical literature filed under Tender ID 243613 are identical, document for document, to those filed under Tender ID 243612. This is not a case of two technical offers that happen to be similar in substance; the same electronic files were filed twice, without any amendment whatsoever. The Financial Bid Form (Section E of the Call for Quotes dossier, which constitutes the financial envelope of the bid and falls to be assessed at the financial evaluation stage), by contrast, was not identical: the Appellant's cheaper offer (TID 243612) totalled €6,996.00 and its second offer (TID 243613) totalled €7,421.00, a difference of €425 concentrated in a single line item.

c) At the hearing, the Appellant sought to argue that a technical distinction did in fact exist between the two offers, said to lie in the level of maintenance/servicing offered. The Board does not find this argument to be borne out by the tender record. The Technical Offer Form issued by the Contracting Authority for this call does not itself call for a distinct "maintenance" specification; the only related requirement is item 2.3 of the Technical Specifications, *"Any Servicing and spares in this period shall be free of charge,"* which is bundled with the five-year parts-and-labour guarantee required under item 2.2, is marked as a Mandatory requirement, and calls only for a straight Yes/No confirmation of compliance. Both of the Appellant's submissions answered this requirement identically. The Appellant explained that it did not consider itself free to alter the wording of the Technical Offer Form; that may well be so as to the form's fixed requirement columns, but the form nonetheless included a column headed *"Details on the Offer's specifications for the respective requisite,"* expressly provided for tenderers to particularise their own offer against each requirement. That column was available to the Appellant to record any distinction it wished to draw as to maintenance, servicing, or otherwise, and the Appellant did not use it to differentiate the two submissions in any respect. The Board cannot accept, on this record, that a technical difference existed which the Appellant was simply unable to express; the means to express it existed and were not used.

d) The Board has also, of its own initiative, verified the text of the General Rules Governing Tenders relied upon by both parties. It notes that the sentence quoted in the Contracting Authority's letter of rejection dated 31st July 2026, and repeated without demur by the Appellant in its own appeal, *"Non-abidance to Articles 3.1, 3.2, 3.3 and 3.4 by Economic Operators in their composition and submissions shall lead to the outright disqualification of all of the bids in question"*, does not appear, in those terms, anywhere in the General Rules Governing Tenders produced to this Board, nor in the Call for Quotes dossier for this tender. Article 3.1 GRGT expressly provides for automatic disqualification only of bids submitted in excess of the permitted cap of three non-identical bids, and separately reserves to the Contracting Authority a discretion to disqualify submissions that evidence conflict of interest, collusion, or improper practice. This Board would observe, for the assistance of the Contracting Authority in future cases, that reasons for rejection ought to quote the rule actually in force with precision. That said, this imprecision does not assist the Appellant's case: an offer that fails to satisfy the very condition, technical and financial non-identity, upon which Article 3.1 makes the right to submit multiple bids contingent, is not a valid second or third bid for the purposes of that Article, and its rejection does not require reliance on any additional "outright disqualification" clause. It follows, on the facts found at (b) and (c) above, that the Appellant's second bid was correctly treated as failing to qualify under Article 3.1 GRGT, independently of the imprecise language used in the rejection letter.

e) For these reasons, the First Ground of Appeal cannot succeed. The Contracting Authority did not misapply or misinterpret Article 3.1 GRGT; it correctly identified, and this Board independently confirms, that the Appellant's two bids were technically identical and therefore did not meet the condition of non-identity upon which the entitlement to submit multiple bids depends.

f) It follows, in turn, that the Second Ground of Appeal (breach of equal treatment, transparency and proportionality) and the Third Ground of Appeal (breach of public interest and best value for public funds) must also fail. The Contracting Authority applied Article 3.1 GRGT, a rule published in advance and equally binding on all tenderers, by reference to an objective and verifiable fact, the identity of the two technical submissions, rather than by reference to any distinguishing or discriminatory treatment of the Appellant. As to best value, the pursuit of the most economically advantageous offer under public procurement law is not to be equated with the lowest price simpliciter; it means the lowest price among offers that are administratively, technically and financially compliant. Since the Appellant's cheaper bid did not meet a valid, pre-published condition of participation, the fact that it would otherwise have been the lowest of the four bids received does not entitle it to be treated as the compliant lowest bid.

g) As to the Fourth Ground of Appeal, the Board finds it to be well-founded in part, though not to a degree warranting the annulment of the Contracting Authority's decision. The rejection letter of 31st July 2026 reproduced Articles 3.1 to 3.4 of the GRGT in block and asserted non-compliance without expressly identifying the specific fact relied upon, namely, that the Appellant's two Technical Offer Forms were identical. A contracting authority is expected to state, and not merely to imply, the operative reason for a rejection. That said, the Board notes that the Appellant plainly did understand, and was able fully to argue, precisely that issue as its First Ground of Appeal, and the Contracting Authority's reasoned reply particularised the finding in full well before the hearing. No actual prejudice to the Appellant's rights of defence has therefore resulted. The Board records this finding as a matter which the Contracting Authority should take on board for the future, without this affecting the outcome of the present appeal.

h) In light of all of the foregoing, the Board finds that the Appellant's grievances, taken individually and cumulatively, do not disclose any error of law or fact on the part of the Contracting Authority sufficient to justify overturning its decision.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

a) To reject the Appellant's grievances and to confirm, in their entirety, the decision of the Evaluation Committee and of the Contracting Authority;
b) To confirm the Letter of Rejection issued to the Appellant, A. Falzon Energy Projects Ltd, dated 31st July 2026;
c) To confirm the recommendation for award of Tender CPSU00127/26 in favour of Proenergy Solutions Limited, for the amount of €7,443.63 (excl. VAT), being the cheapest compliant offer;
d) Directs that the deposit paid by the Appellant be forfeited.
e) This Board makes no further order, save as set out above, and directs that a copy of this decision be transmitted to the parties and to the Contracting Authority for information and any necessary action.

Mr Kenneth Swain **Chairman**	**Mr Keith Victor Grech** **Member**	**Mr Lawrence Ancilleri** **Member**