



9 October 2026

Public Contracts Review Board
Notre Dame Ditch
Floriana FRN1601
Malta

Dear Sirs,

Re: Tender for the Supply, Delivery and Commissioning of Four (4) Brand-New Low Emission 17-19 Tonne Water Bowzers for the Cleansing and Maintenance Division (inclusive of Maintenance Agreement) – Ref. No. CT2170/2026 (Tender)

1. We have been instructed by **Road Structures Ltd** (TID 246917) (the **Appellant**) to lodge this application in terms of Regulation 270 of the Public Procurement Regulations (Subsidiary Legislation 601.03) (the **PPR**) in connection with the above-captioned Tender (the **Appeal**).
2. The Appellant is aggrieved by the decision of 29 September 2026 of the Department of Contracts and the Cleansing and Maintenance Division within the Ministry for Local Government and Public Works (the **Contracting Authority**) to reject the Appellant's offer as technically non-compliant.
3. The reason for this Appeal is that the Appellant's offer was compliant *ab initio*, and the Contracting Authority was wrong to evaluate it by reference to a different pump which was not on offer.
4. Before delving into its grievance, the Appellant sets out the events leading up to the Contracting Authority's decision.

A. FACTS

5. On 24 June 2026, the Department of Contracts published the Tender for the supply, delivery and commissioning of four brand-new low-emission 17–19 tonne water bowzers, inclusive of a maintenance agreement, for the Cleansing and Maintenance Division.

6. The Tender had an estimated procurement value of €770,000 excluding VAT. The sole award criterion was price, with the contract to be awarded to the cheapest priced offer satisfying the administrative and technical criteria.
7. The Tender required tenderers to submit a Technical Offer Form and technical literature. The stated scope of the literature was to corroborate a fully compliant technical offer.
8. Item 3.1 of the technical specifications required the high-pressure pump to have a maximum pressure rating of between 140 and 160 bar and to be adjustable by means of a pressure-regulating valve. Item 3.2 required the pump to deliver a minimum flow of 90 litres per minute when operating at maximum pressure. The relevant extract of the technical specifications is reproduced below:

3.0 High Pressure System

3.1 Pump rating - The high-pressure pump is to be maximum pressure rated between 140 and 160 bar and is to be adjustable by means of a pressure regulating valve.

3.2 Pump capacity - The pump is to deliver a minimum flow of 90 litre per minute when operating at its maximum pressure.

9. On 5 August 2026, the Appellant submitted its offer (TID246917) along with bids from two other economic operators. The Appellant's financial offer of €568,000 was €92,000 lower than the €660,000 offered by United Equipment Co. (UNEC) Ltd (TID 246896) (the **Recommended Tenderer**).
10. Under Item 3.1, the Appellant inserted "100-150 bar". Under Item 3.2, it inserted "≥140 but ≤160 lit/minute". In both instances the Technical Offer referred the evaluator to page 19 and other sections of the Literature List. The relevant extract is reproduced below:

3.0	<u>High Pressure System</u>		
3.1	Pump rating		
	Pump Rating	100-150 bar Literature must be submitted to corroborate the specifications.	Page 19 and other sections of the literature list
	Adjustable pressure	I confirm ☒ Literature must be submitted to corroborate the specifications.	Page 19 and other sections of the literature list
3.2	Pump Capacity		
	Flow at maximum pressure	≥ 140 but ≤ 160 lit / minute Literature must be submitted to corroborate the specifications.	Page 19 and other sections of the literature list

11. Owing to an obvious clerical error, the figures inserted in these two fields conflated the pressure rating and the flow capacity of the pump. The technical literature to which both fields referred nevertheless made the technical position clear.
12. At page 19, the technical literature submitted with the offer identified the high-pressure water system as incorporating an "HPP ET 100/150 PISTON PUMP" and stated "PUMP FLOW RATE 100 L TO 150 BAR". It also referred to an adjustable overpressure valve and a 0–300 bar pressure gauge.

HIGH-PRESSURE WATER SYSTEM:- HPP ET 100/150
PISTON PUMP FOR ROAD SWEEPER BAR HOSE REEL
WITH MITER NOZZLE HOUSED BEHIND THE VEHICLE CAB
- POWER TRANSMISSION VIA MOTOR-
ELECTROPNEUMATIC DISTRIBUTOR PUMP FLOW RATE
100 L TO 150 BAR - ADJUSTABLE OVERPRESSURE VALVE
- 0-300 BAR PRESSURE GAUGE - WATER DELIVERY TO

13. The technical literature submitted with the offer therefore identified the pump offered as the HPP ET 100/150 and stated that it delivered 100 litres per minute at 150 bar. A maximum pressure of 150 bar falls within the range prescribed by Item

- 3.1, while a flow of 100 litres per minute exceeds the minimum of 90 litres per minute required by Item 3.2.
14. During the evaluation process, the tender evaluation committee (the TEC) issued a rectification request. Among other matters, the TEC requested literature corroborating the flow-at-maximum-pressure figure entered under Item 3.2. The request stated that the Appellant could submit missing documentation or new literature satisfying the tender conditions.
 15. However, the Appellant's offer already contained literature substantiating its compliance with Items 3.1 and 3.2. Notwithstanding the clerical error in the Technical Offer Form, both entries referred the TEC to page 19 of the technical literature, which identified the pump as the HPP ET 100/150 and expressly stated that it delivered "100 L TO 150 BAR". No further supporting documentation was therefore required. Nonetheless, in order to satisfy the TEC's request, the Appellant submitted further technical literature corroborating that compliance.
 16. The Appellant replied, submitting additional documentation. It confirmed that the vehicles to be supplied would be fully compliant and expressly described the enclosed documents as additional to the literature submitted at tender stage.
 17. At pages 16 to 21 of that reply, the Appellant submitted additional technical literature from the pump manufacturer. This included a characteristic chart covering various models, which clearly identified the HPP ET 100/150 mentioned in the original offer, together with its flow and pressure ratings:

 HPP - High Pressure Pumps

Code Codigo	Model Modelo	 Ø mm	 rpm	 l/min	 US gpm	 bar	 psi	 kW	 HP	 kg	 lb
6928 0013	ET 100/150	33	1450	100	26.4	150	2175	29	40	35	76

18. Nevertheless, the TEC then issued a clarification request which, oddly, referred to the HPP ET 144/110. It observed that the chart showed performance curves up to 110 bar and requested the Appellant to demonstrate how the chart corroborated the statement that the pump could deliver 144 litres per minute at 150 bar.
19. The Appellant replied that the pump manufacturer's technical literature had already been submitted, that the maximum rated pressure fell within Item 3.1, and that the flow at maximum rated pressure fell within Item 3.2. The reply expressly stated that it was furnished solely to clarify technical information already submitted.

20. By letter dated 29 September 2026, the Appellant was informed that its offer had been rejected as technically non-compliant. The letter acknowledged that, “[i]n the literature submitted with the tender offer, the high-pressure pump model indicated was HPP ET 100/150”.
21. The Contracting Authority nevertheless assessed the offer by reference to the HPP ET 144/110 and concluded that this pump did not comply with the technical specifications. According to the letter, in its reply to the rectification request the Appellant “mentioned a different model of high-pressure pump, this being HPP ET 144/110”. That is not correct. The Appellant’s reply did not refer to the HPP ET 144/110, which featured in the additional literature only as one of the models listed in the manufacturer’s characteristic chart, alongside the HPP ET 100/150 originally offered. Nothing in that reply indicated that the Appellant was replacing the HPP ET 100/150 with the HPP ET 144/110.
22. The Appellant is aggrieved by the Contracting Authority’s decision of 29 September 2026 for the reason set out below.

B. GRIEVANCE: THE APPELLANT’S OFFER WAS COMPLIANT AB INITIO

23. The Appellant submits that the Contracting Authority’s decision is wrong in fact and in law because the HPP ET 100/150 pump identified in the technical literature submitted at tender stage complies with the Tender’s technical specifications. The Appellant’s offer was therefore compliant ab initio.
24. Regulation 62(1) of the PPR requires the authority responsible for the tendering process to ensure that an economic operator “*must ab initio be eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same*”.
25. The starting point is therefore the offer as it stood at the closing date, read as a whole. The Tender itself required the Technical Offer to be supported and corroborated by technical literature. The Technical Offer expressly directed the TEC to page 19 of that literature for Items 3.1 and 3.2.
26. That page identified the HPP ET 100/150 pump and stated a flow of 100 litres per minute at 150 bar. The pump therefore complied with both substantive technical specifications in the Tender:

3.0 High Pressure System

- 3.1 Pump rating - The high-pressure pump is to be maximum pressure rated between 140 and 160 bar and is to be adjustable by means of a pressure regulating valve.
- 3.2 Pump capacity - The pump is to deliver a minimum flow of 90 litre per minute when operating at its maximum pressure.

27. This is because:
- a. the maximum pressure of 150 bar fell within the prescribed range of 140 to 160 bar; and
 - b. the flow of 100 litres per minute at that pressure exceeded the minimum requirement of 90 litres per minute.
28. The entries "100-150 bar" under Item 3.1 and " ≥ 140 but ≤ 160 lit/minute" under Item 3.2 in the Appellant's Technical Offer Form were the product of an obvious clerical error which conflated the pressure and flow fields. Indeed, the figures "100" and "150" entered under Item 3.1 are simply the flow and the pressure of the HPP ET 100/150 itself. That error did not alter the pump offered. The model and its performance were already ascertainable from the manufacturer's literature forming part of the offer.
29. By the closing date, therefore, the Appellant was in possession of all the requirements stipulated in the procurement documents, as Regulation 62(1) requires, and the TEC was bound to evaluate its offer on that basis. Instead, the TEC redirected its evaluation away from the HPP ET 100/150 and towards the HPP ET 144/110. In doing so, the TEC unilaterally replaced the compliant pump offered by the Appellant with a non-compliant pump which formed no part of the Appellant's offer.
30. The compliance of the HPP ET 100/150 with the Tender's technical specifications was also apparent from the manufacturer's characteristic chart submitted at rectification stage, which listed the HPP ET 100/150 at 100 litres per minute and 150 bar.
31. The difficulty arose not from the technical characteristics of the pump originally offered, but from the manner in which the rectification and clarification exercise unfolded. The TEC's first request focused specifically on corroborating the flow figure entered under Item 3.2. In responding to that request, the Appellant submitted additional technical literature to corroborate the compliance of the HPP ET 100/150 with the Tender's technical specifications. That response did not alter, in any way, the fact that the original

offer and its supporting literature had identified the HPP ET 100/150 as the pump offered.

32. The TEC's follow-on clarification request, which oddly referred to the HPP ET 144/110, was confusing and misled the Appellant. Knowing that it had offered the fully compliant HPP ET 100/150, the Appellant attempted to address the TEC's request by stating that (i) the pump manufacturer's technical literature had already been submitted; (ii) the maximum rated pressure fell within Item 3.1; and (iii) the flow at maximum rated pressure fell within Item 3.2. The reply expressly stated that it was furnished solely to clarify technical information already submitted. Nevertheless, the Appellant's offer was unfairly rejected.
33. The TEC's reliance on the HPP ET 144/110 is all the more difficult to understand given that the Rejection Decision itself expressly acknowledges that the pump identified in the technical literature submitted with the original tender offer was the HPP ET 100/150.
34. If, by the TEC's own admission, the HPP ET 100/150 was the pump originally offered by the Appellant, it is difficult to understand why the subsequent clarification exercise became focused on the HPP ET 144/110 rather than on the technical characteristics of the HPP ET 100/150 already forming part of the Appellant's original submission.
35. In any event, the Appellant could not, through rectification or clarification, substitute the HPP ET 144/110 for the HPP ET 100/150 originally offered. Such a substitution would have introduced a different pump after the submission deadline and would have altered the substance of the technical offer.
36. Moreover, the very rationale underpinning the restrictions on rectification is to prevent an economic operator from obtaining an unfair advantage by transforming a non-compliant offer into a compliant one after the submission deadline.
37. It would be implausible for the Appellant to originally submit a pump which was technically compliant, only to subsequently use the clarification stage to render its submission non-compliant.
38. Indeed, the Appellant is not seeking to substitute a pump after the closing date, add a new technical solution, or rely on information created after the submission of its offer. It seeks only the evaluation of the HPP ET 100/150 pump already identified in its offer, using the pressure and flow data already contained in the literature forming part of that offer. This would not change the water bowser, the pump or the price offered, nor would it afford the Appellant any opportunity to reformulate its offer.

39. Reading the offer as a whole in that manner would not change the brand or model of the water bowser, the pump offered at tender stage, the financial offer, the Appellant's ranking, or any other condition of the offer. Nor would it afford the Appellant an opportunity to reformulate its offer. It would simply give effect to the compliant technical solution evidenced in the original submission.
40. Conversely, rejecting the Appellant because the later rectification and clarification exchanges drifted, at the TEC's initiative, towards a different pump model allows an obvious clerical conflation in the Technical Offer, and the confusion which followed, to prevail over the clear technical literature originally submitted. That outcome is particularly severe where the purpose of the technical literature was precisely to corroborate the Technical Offer and where the original literature demonstrated compliance without any amendment to the offered solution.
41. The rejection of the Appellant's bid is contrary to the principles of genuine competition and proportionality.
42. For these reasons, the Appellant humbly requests this Honourable Board to uphold this grievance and revoke the Contracting Authority's decision of 29 September 2026.

THEREFORE, in view of the above and for other reasons that may be brought in due course at law, the Appellant humbly demands that this Public Contracts Review Board:

- a. declare that the Contracting Authority's decision of 29 September 2026 to reject the Appellant's offer and to recommend the award of the Tender to the Recommended Tenderer was unlawful, and revoke that decision;
- b. order the Contracting Authority to re-evaluate the Appellant's offer on the basis of the HPP ET 100/150 pump identified in it; and
- c. order the refund of the deposit paid upon the filing of this Appeal, subject to any declaration or order as it deems fit and opportune.

Yours sincerely,
Ganado Advocates


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Authorise

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Pay third party

Transaction details

Transaction: Pay third party

Payee type: Corporate Payee

Company name: Cashier Malta Government

Relation: Administrative Services

Reason: Other

Payment details: Objection CT2170/2026 Road Structures Ltd

Currency: EUR - Euro

Beneficiary IBAN/Account: MT55MALT011000040001EURCMG5001H

Beneficiary IBAN/Account type: Valid IBAN of country - Malta

Bank name: Other bank

Bank address / Bank's BIC: Insert the beneficiary bank BIC manually

Bank's BIC: MALTMTMT

Beneficiary address: No

Withdraw from account: Road Structures GBF (EUR) 5002104762 3

Charges should be paid by: Shared - I pay BOV charges, Cashier Malta Government pays the beneficiary bank charges

Amount: EUR 3,850.00

Receiving bank to get the money as: normal priority payment

FPAD Result:

We couldn't confirm that the name you entered matches the recipient's account. This might happen if the recipient's bank doesn't support name checks yet or if there's a temporary issue. Please double-check that the name and account details are correct before continuing. If any details are wrong, the payment could go to the wrong account or may be fraudulent and may not be recoverable. If you're confident everything is correct, you can go ahead and make the payment.

To be effected on: as soon as possible

Credited amount: EUR 3,850.00

Debited amount (excluding charges): EUR 3,850.00

Estimated amount to be withdrawn from account: EUR 3,854.00

Transaction charge: EUR 4.00

Creator: Mr. Louis Grima

Authorised by: Mrs. Josephine Micallef, Mr. Louis Grima

Transaction result

Status: Your instructions have been processed successfully.

Transaction ID: 186703878