MICHAEL SCIRIHA ADVOCATES

Public Contracts Review Board
Notre Dame Ditch
Floriana FRN 1601
Malta



16 October 2026

Dear Sirs,

Re: CT2170/2026 - Tender for the Supply, Delivery and Commissioning of Four (4) Brand-New Low Emission 17-19 Tonne Water Bowsers for the Cleansing and Maintenance Division (inclusive of Maintenance Agreement) - Appeal by Road Structures Ltd (TID 000246917)

1. Reference is made to the appeal filed on 9 October 2026 by Road Structures Ltd (the **Appellant**), against the decision of 29 September 2026 (the **Decision**) declaring its offer technically non-compliant.

2. The Contracting Authority respectfully submits that the appeal is unfounded in fact and in law and should be dismissed.

A. Basis of the appeal

3. The appeal rests on two arguments: (i) that the Appellant's entries under Items 3.1 and 3.2 of its Technical Offer were an "obvious clerical error" which the Tender Evaluation Committee (the "**TEC**") should have read past by reference to the literature, and (ii) that the TEC, of its own motion, redirected the evaluation towards the HPP ET 144/110 pump, which allegedly formed no part of the Appellant's offer.

4. The Contracting Authority submits that both arguments are incorrect. The first would lead to a rectification of a Note 3 document after the closing date. The second is contradicted by the Appellant's own rectification reply of 27 August 2026, which introduced the HPP ET 144/110 and expressly instructed the TEC that the information enclosed was to prevail over that submitted at tendering stage.

B. Applicable regulations

5. In terms of Clause 5 of the Tender Document, the Technical Offer is a Note 3 document, and therefore, *"No rectifications shall be allowed. Only clarifications on the submitted information may be requested."* In fact, the Technical Offer form repeats this: *"The information/technical specifications provided in the below table shall not be subject to rectifications."*

6. On the other hand, the Literature is a Note 2 document which is solely intended *"to corroborate a fully compliant technical offer"*.

7. The Contractor's technical offer forms part of the contract (Special Conditions, Article 3.1(e)), and clarifications and rectifications made at evaluation stage take the order of precedence of the document they modify.

8. The Notes to Clause 5 further provide that *"Requests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained."*

9. The objection surrounds Items 3.1 and 3.2 of the Technical Specifications:

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.

C. The Facts

10. In its Technical Offer the Appellant declared, under Item 3.1, a pump rating of "100-150 bar" and, under Item 3.2, a flow at maximum pressure of "≥ 140 but ≤160 lit / minute", in both cases referring to page 19 of its literature.

11. Page 19 of the literature identified an "HPP ET 100/150" piston pump with a "pump flow rate 100 L to 150 bar", i.e. 100 litres per minute at maximum pressure. The literature therefore did not corroborate, but contradicted, the flow of ≥140 litres per minute which the Appellant had declared under Item 3.2.

12. By letter dated 20 August 2026, and sent on the 21st August 2026, the TEC requested the Appellant, among other matters, to *"submit the literature to corroborate with the Flow at Maximum Pressure figures as submitted in the Technical Offer"*, and expressly allowed it to submit *"new literature satisfying all tender conditions"*. The request concerned the literature (Note 2).

13. The Appellant replied on 27 August 2026, making it clear that: *"Kindly note that this reply must be considered as additional documentation to the already submitted literature at tendering/bidding stage. Where information on the enclosed documents conflicts with that submitted at tendering stage the enclosed information is to be considered as applicable."*.

14. Furthermore, the Appellant enclosed a document from its tank supplier on page 8, describing the high-pressure water system as an *"HPP ET 144/110 PISTON PUMP FOR ROAD WASHER"* with *"PISTON PUMP CAPACITY 144 LT AT 150 BAR"*.

15. Apart from this, on pages 16 to 21, the Appellant included a generic extract from the pump manufacturer's catalogue covering the various models, without identifying any model as the one offered.

16. The HPP ET 100/150 appears in that reply only as one of the model entries in the manufacturer's catalogue extract, alongside the HPP ET 144/110 and ten other models. Neither the covering letter nor the supplier's document makes explicit reference to it.

17. Therefore, the statement at paragraph 21 of the appeal that the Appellant's reply did not refer to HPP ET 144/110 and that *"nothing in that reply indicated that the Appellant was replacing the HPP ET 100/150"* is incorrect. According to the Appellant's own catalogue, the HPP ET 144/110 is rated at a maximum of 110 bar, delivering 144 litres per minute at that pressure. This falls short of the 140-160 bar required by Item 3.1.

18. By letter dated 7 September 2026, the TEC therefore requested the Appellant to *"clarify by indicating from your submitted documentation how the Characteristic Chart for pump model HPP ET 144/110 corroborates the statement quoted above"*, keeping in view Items 3.1 and 3.2. The request quoted the Appellant's own words and concerned the very model the Appellant had put forward.

19. The Appellant's reply of 10 September 2026 did not identify any pump model, did not refer to any page or performance curve, and did not state that the HPP ET 100/150 was the pump offered or that the reference to the HPP ET 144/110 was a mistake. It merely asserted that the maximum rated pressure and flow fell within Items 3.1 and 3.2. It therefore failed to clarify its position.

D. Reply to the grievance

(i) The Technical Offer is binding and cannot be corrected as a "clerical error"

20. The Appellant admits in paragraphs 11 and 28 of its appeal that its entries under both Item 3.1 and Item 3.2 are wrong. The Technical Offer, as submitted by the closing date, does not declare a flow at maximum pressure which the pump identified in the Appellant's literature can deliver. What the Appellant now seeks, is the replacement of declared values with different values taken from elsewhere. That is a deemed rectification of a Note 3 document, and is prohibited both by Note 3 and by the Technical Offer form itself.

21. Furthermore, the alleged error cannot be said to be "obvious" either. The Appellant says that the figures "100" and "150" are simply the flow and pressure of the HPP ET 100/150. Yet the figures entered are also equally consistent with the HPP ET 144/110 which the Appellant itself later put forward: 110 bar falls within the "100-150 bar" declared under Item 3.1 of the Technical Offer, and 144 litres per minute falls within the "≥ 140 but ≤160 lit / minute" declared under Item 3.2. The TEC would have had to guess which

values the Appellant intended to be bound by, and to do so against the Appellant's own written instruction of 27 August 2026. Having said that, the 110 bar, in any case, falls below the minimum threshold of 140 required by the Tender Document.

22. Considering the Appellant's offer as it now proposes would grant it, after the closing date, a correction which the tender expressly withheld from all bidders.

23. The Appellant invokes Regulation 62(1) of the Public Procurement Regulations. With all due respect to the Appellant, at the closing date the Appellant's offer contained a binding declaration (≥140 litres per minute) that was not corroborated by the only pump identified in its literature (100 litres per minute). So much so that the Appellant has categorised its own offer as a clerical error.

24. The literature exists to corroborate the Technical Offer, not the reverse. Where the two conflict, the TEC cannot allow Note 2 literature to override Note 3 declarations as that would invert the relationship established by Clause 5(C), under which the Technical Offer is not rectifiable (Note 3) and the literature serves only to corroborate it (Note 2). Had the contract been awarded on the Appellant's offer, the Contracting Authority would have contracted for a pump rated at "100-150 bar" delivering "≥ 140 but ≤160 lit / minute", a commitment which the HPP ET 100/150 cannot meet.

(ii) The TEC did not substitute the pump

25. The rectification request sought literature to corroborate the Appellant's own Item 3.2 figure. The HPP ET 144/110 entered the evaluation solely because the Appellant introduced it, through its supplier's document, together with an express instruction that the new information was to prevail over that submitted at tendering stage.

26. It is not the role of an evaluation committee to disregard part of a bidder's submission or to decide which of two conflicting pumps the bidder intended, when the Appellant failed to clearly indicate the intended pump in either of its letters. The responsibility for submitting a clear and unambiguous offer rests with the bidder.

27. Contrary to what the Appellant is arguing, pages 16 to 21 of the rectification reply did not clearly identify the HPP ET 100/150 as the pump offered. They are a catalogue extract listing the whole ET range.

28. The clarification of 7 September 2026 concerned the HPP ET 144/110 because a clarification following a rectification can only address what the rectification reply contained. The TEC could not reopen the Item 3.2 corroboration in respect of the HPP ET 100/150, that shortcoming having already been the subject of the rectification request (Notes to Clause 5).

29. If the Appellant considered that the reference to the HPP ET 144/110 was mistaken and that the pump offered was the HPP ET 100/150, the clarification of 7 September 2026

was its opportunity to say so. It did not. Having been given two opportunities, the Appellant cannot now attribute to the TEC the consequences of its own submissions.

30. It does not follow, however, that the HPP ET 100/150 renders the offer compliant, since the binding Note 3 declaration under Item 3.2 remains uncorroborated.

(iii) Genuine competition and proportionality

31. Proportionality cannot be invoked to set aside mandatory tender rules which bind the Contracting Authority and all bidders alike. The TEC was bound to evaluate offers strictly in accordance with the tender document, whose terms the Appellant did not challenge before the closing date. Admitting a post-deadline rectification of the Appellant's Technical Offer would breach the equal treatment of the other bidders, who were bound by the same rules.

E. CONCLUSION

32. For the above reasons, the Contracting Authority respectfully requests this Honourable Board to:

    (a) dismiss the appeal and all the Appellant's grievances;

    (b) confirm the Decision of 29 September 2026, including the recommendation to award the Tender to United Equipment Co. (UNEC) Ltd (TID 000246896) for €660,000.00 excluding VAT; and

    (c) order that the deposit paid by the Appellant be forfeited.

The Contracting Authority reserves the right to make further submissions, oral or written, during the hearing of this appeal, and produce the necessary evidence.

Yours faithfully,

Dr Michael Sciriha **Dr Daniel Cutajar**