DR JOHN L GAUCI
& ASSOCIATES



15th October 2026

IN THE PUBLIC CONTRACTS REVIEW BOARD
Notre Dame Ditch
Floriana

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)

REASONED REPLY ON BEHALF OF UNITED EQUIPMENT CO. (UNEC) LTD (the "Recommended Bidder") in relation to the objection filed by Road Structures Ltd (the "Appellant") on 9 October 2026.

Respectfully submits:

1. Preliminary observations and reservation of rights

1.1. This reply is submitted in terms of regulation 276(c) of the Public Procurement Regulations, S.L. 601.03. My client opposes the request to revoke the recommendation made in its favour and replies to the grounds advanced in the objection, subject to the reservations set out hereunder.

1.2. The present submissions are necessarily based upon the Appellant's account and the extracts reproduced in its objection. The Recommended Bidder is not privy to the complete tender documentation, the Appellant's original offer and the full exchanges with the evaluation committee.

1.3. Thus, the Recommended Bidder expressly reserves the right to make further submissions, raise such further pleas as the record may warrant, produce evidence and question the evidence produced by the other parties, following examination of the Contracting Authority's reply and the production of the procurement record. It respectfully requests a reasonable opportunity to do so before the appeal is determined, subject to the Board's directions.

2. The issue raised by the objection

2.1. The Appellant's case is that it offered an HPP ET 100/150 pump from the outset and that the evaluation committee wrongly assessed its offer by reference to an HPP ET 144/110. That is a disputed factual premise which must be tested against the documents actually submitted.

ADVOCATE
45/11, Strait Street, Valletta, Malta, VLT 1434
Tel: +(356) 2099 1010 Fax: +(356) 2099 101 Mob: +(356) 7925 3794 Email: info@gaucilegal.com

2.2. According to paragraphs 10 and 11 of the objection, the Appellant entered "100–150 bar" under item 3.1 and "≥140 but ≤160 lit/minute" under item 3.2. It now attributes those entries to a clerical error. The same objection relies on page 19 of its literature as identifying an HPP ET 100/150 with a flow of 100 litres per minute at 150 bar. The discrepancy between the flow entered in the Technical Offer Form and the flow now relied upon requires an explanation grounded in the original documents.

2.3. My client does not contend that a pump with a maximum rating of 150 bar and a flow of 100 litres per minute at that pressure would fail the two numerical requirements reproduced in the objection. Nor does the entry "100–150 bar", taken alone, necessarily establish that the maximum pressure falls outside the prescribed range. The question is whether the offer, read as a whole and under the applicable tender conditions, established the required performance for the equipment actually offered, and whether the subsequent exchanges merely clarified that offer.

2.4. The express reference to page 19 must therefore be considered. It cannot, however, be treated as a substitute for examining the complete Technical Offer Form, the other literature to which the form referred and the subsequent replies. The assertion that an error was clerical is a submission to be established from the contemporaneous record, rather than a conclusion which follows merely from the label used in the objection.

3. Clarification cannot become a fresh technical offer

3.1. Regulation 61(2)(a) requires conformity with the requirements, conditions and criteria of the procurement documents. Regulation 62(1) fixes the relevant requirements at the closing date, whilst regulation 62(2) permits requests to supplement, clarify or complete incomplete, erroneous or missing information in accordance with the procurement documents and subject to equal treatment and transparency. The precise rectification provisions governing this tender must accordingly be examined.

3.2. The distinction is also reflected in *Archus and Gama*, Case C-131/16, judgment of 11 May 2017, ECLI:EU:C:2017:358, paragraphs 29–32. Limited clarification and the correction of obvious errors may be permissible, but the process must not result in what is in substance a new tender. The authority must exercise that power fairly and equally towards tenderers.

3.3. Accordingly, my client does not submit that every discrepancy is necessarily fatal, or that additional technical literature can never be accepted. If the original offer already fixed a compliant pump and the later material merely corroborated it, that is materially different from selecting another pump or changing a substantive performance commitment after the closing date. The Board must determine on which side of that distinction the present facts fall.

3.4. The Appellant's reliance upon permission to supply missing or additional literature does not, without more, resolve that question. Such permission must be read in its actual terms and within the tender rules. It cannot be treated as an unrestricted opportunity to replace the technical offer; equally, the submission of a manufacturer's catalogue containing several models is not, by itself, proof that the Appellant substituted one model for another.

4. The rectification and clarification exchanges

4.1. Paragraphs 14 to 21 of the objection describe a rectification request, additional literature, a further clarification request and a reply. The precise wording of each document is material. In particular, the Board should establish where the reference to the HPP ET 144/110 and the figure of 144 litres per minute at 150 bar first appeared, who introduced them, and whether the Appellant expressly selected or adopted that model or performance figure.

4.2. It would be premature for my client to assert that the Appellant offered the HPP ET 144/110 merely because that model appeared in a chart. By the same argument, however, the Appellant cannot contest of the rejection merely by asserting that this was one of several models in the manufacturer's literature. The covering replies, any model selection or annotation, and the particular material submitted in answer to the requests must all be examined.

4.3. The allegation that the committee misled the Appellant likewise requires the actual correspondence. If the committee introduced a model which the Appellant had never offered or adopted, that would call for a different assessment from a case in which the committee was responding to the Appellant's own representations. My client reserves its position on that factual issue pending production of the record.

4.4. The argument in paragraphs 35 to 37 of the objection that substitution would have been impermissible, and commercially unlikely, does not establish that no substitution occurred. Whether an exchange changed the offer is determined by its objective content and effect. Conversely, an unequivocal original model identification cannot properly be displaced simply because another model appears elsewhere in generic literature. These matters cannot be resolved by inference from what either party says would have been logical.

5. Price and the recommendation in favour of my client

5.1. The Appellant relies upon a price difference of €92,000. On its own account, however, the award criterion was the lowest price amongst offers satisfying the administrative and technical requirements. A lower price cannot cure a substantive failure to satisfy those requirements. Equally, compliance must be assessed fairly by reference to the whole offer, without treating a demonstrably correctable clerical error as a substantive failure.

5.2. The objection identifies no separate technical defect in my client's offer. Its request to revoke the recommendation is consequential upon its challenge to the rejection of its own offer. My client is entitled to contest that challenge and submits that the recommendation should not be disturbed on the strength of an account which has yet to be tested against the complete procurement record.

6. Production of the record and conclusions

6.1. For the proper determination of the issues raised, my client requests production of the tender document, forms and clarification notes; the Appellant's original Technical Offer Form and all relevant literature as submitted; the complete rectification and clarification requests and replies, with attachments and submission dates; and the rejection letter and relevant evaluation findings. These should establish the chronology without reconstructing the offer from selected extracts.

6.2. Regulation 276(d) provides for the authority responsible for the tendering process to forward the procurement documentation to the Board. My client requests access to the material necessary to answer the appeal, subject to appropriate protection of genuinely confidential information, and an opportunity to address any evidence upon which the Board proposes to rely.

6.3. For these reasons, and subject to the evidence to be produced, my client respectfully requests that the objection and the consequential request to revoke the recommendation in its favour be rejected. In any event, no finding that the Appellant's offer was compliant ab initio, and no direction founded upon that finding, should be made without examination of the complete record and a fair opportunity for my client to address it.

6.4. The Recommended Bidder reserves all its rights, including the right to supplement this reply after examination of the Contracting Authority's reply, the tender documentation and the evidence produced in these proceedings, and to make such further oral and written submissions as the Board may permit.

Dr. John L. Gauci LL.D