PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number	**2269**
Tender Reference Number	**SPD5/2025/033**
Tender Name	**"Sustainable Restoration Works- Marsa Tram Station Phase 1 Asbestos Removal, Temporary Roof, Bridge and West Elevation, Eco-Friendly Steel Restoration."**

The Public Contracts Review Board (hereinafter the 'Board' or the 'PCRB') convened a public hearing on the 10th September 2026 to hear the appeal as filed by the appellant Vaults Co Limited (hereinafter the 'Appellant') on the 10th August 2026, and after taking cognisance of:

The tender document for the 'Sustainable Restoration Works- Marsa Tram Station Phase 1 Asbestos Removal, Temporary Roof, Bridge and West Elevation, Eco-Friendly Steel Restoration (hereinafter referred to as the "Tender Document");

The minutes of the proceedings dated 10th September 2026 which are being reproduced hereunder:

> *"**Case 2269 – 696 – SPD5/2025/033** – Sustainable Restoration Works Marsa Tram Power Station Phase 1 Asbestos Removal, Temporary Roof, Bridge and West Elevation, Eco-Friendly Steel Restoration.*
>
> *The Tender was issued on the 12th of February 2026, and the closing date was 17th March 2026.*
>
> *The estimated value of the tender, excluding VAT, was €274,338.36*
>
> *On the 10th of August 2026, Vaults Co Ltd. lodged an appeal against Restoration and Preservation Department – the Contracting Authority.*
>
> *On the 10th of September 2026, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Maria Cardona and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.*
>
> *A deposit of €1,372.00 was paid.*
>
> *There was One bid.*
>
> *The attendance for this public hearing was as follows:*
>
> *Appellant – Vaults Co Ltd.*
>
> *Dr Alessandro Lia – Legal Representative.*
> *Mr Ivan Farrugia – Company Representative.*
>
> *Contracting Authority – Restoration and Preservation Department.*

Dr Fiorella Fenech Vella – Legal Representative.
Mr Dennis Attard – Chairperson
Mr Norbert Gatt – Evaluator
Dr Erik Francis Georges Mifsud – Evaluator.
Mr Mark Azzopardi – Evaluator.
Perit Daphne Fenech – Tender Drafter.

Opening Statements

The Chairperson welcomed the parties present and formally opened Case Number 2269 in the records of the PCRB. The Chairperson identified the Appellant as Vaults Co Ltd., and the Contracting Authority as Restoration and Preservation Department.

Initial Submissions

The Chairperson stated that both parties had no witnesses and were ready to start with their submissions.

Submissions by Dr Alessandro Lia (for the Appellant).

Dr Alessandro Lia, for the appellant, noted that they were disqualified as 'financially non-compliant'. This was not the right terminology, as this would refer to the financial part of the offer, which Vaults Co. Ltd. went against.

The decision of the Contracting Authority mentioned two reasons for disqualification: the 'financial non-compliant' and the cancellation of the offer. The appellant acknowledges that the relevant Clause obliges the Contracting Authority with discretion.

Referring to the documents that were handed out by the appellant, there were four references.

The first reference was about the EPV, which was €274K, while the only bid was €318K. The estimate was exceeded by 16%, or €44K. This was not the sum of the final budget, but an estimate. In the third reference, that of the Restoration Department, the estimate was almost €295K, and the bid of the preferred bidder out of the three bids was €348K, with a difference of 18.3%.

Dr Lia stated that his client was disqualified for a difference of €44K, as financially non-compliant, by exercising Clause 18. The tender was cancelled. However, in the same circumstances, a contract was given to Mr Scicluna with a difference of 18.3%, or €54K.

Dr Lia said that the decision regarding his client was taken with more rigidity.

Referring to the tender of Tardum Construction, of the Department of Restoration, which took place three years ago, there was an EPV of €860K and the award was €1.2 million, with a difference of 38.7%, equivalent to €333K. There was also only one bid.

Dr Lia said that they understand that there is a discretion, but this should not vary from one case to another. There are three criteria: the number of bidders, the exceeded percentage, and the exceeded amount in Euros. These criteria need to converge when it comes to the exercise of discretion.

The Contracting Authority did not use the same ruler in other cases regarding the financially non-compliant. Equal treatment and non-discrimination should apply in all Procurement Rules.

Dr Lia asked why certain cases with a bigger exceeded amount, and with one bidder, were accepted while his bid was disqualified.

Submissions by Dr Fiorella Fenech Vella (for the Contracting Authority).

Dr Fenech Vella found it unjust to match different cases, as all the cases were different from each other. Every case had a different budget allocated to it and was for different works. One had to see the scope of works and the conditions of the markets.

The Contracting Authority had every right to exercise its discretion and choose whether to cancel the bid or not. Article 18 of the General Rules Governing Tenders is clear, and she quotes:

"The Central Government Authority reserves the right to accept or reject any tender and/or to cancel the whole tender procedure where the financial offer submitted exceeds the estimated value for the tender, or the financial offers are deemed as economically not feasible".

'Financially non-compliant' meant that the bidder was not adhering to the budget of the Contracting Authority.

Clause 18.5, and she quotes:

"The publication of a contract notice does not commit central government authority to implement the programme or project announced".

It is a fact that the budget of the Contracting Authority was not enough, and that is why this offer was not accepted.

Replica by Dr Alessandro Lia.

Dr Lia said that Clause 18.5 referred to the implementation, and they were talking about something completely different.

Conclusion of the Hearing

With no further arguments presented, the Chairperson, Dr Ana Thomas, thanked all parties and formally concluded the hearing. The Board will communicate its decision in due course."

The written pleadings as filed by on the Vaults Co Limited on the 10th August, 2026, together with proof of payment of a deposit in the amount of €1,372.00, wherein it held as follows:

*"**Ittra ta' Oggezzjoni ta' Vaults Co. Ltd: CFT: SPD5/2025/033 – Sustainable Restoration Works Marsa Tram Station Phase 1 Asbestos Removal, Temporary Roof, Bridge and West Elevation, Eco-Friendly Steel Restoration***

Bil-prezenti, Vaults Co. Ltd qed tilmenta ai termini tal-ligi mid-decizjoni tal-Awtorita' Kontraenti tal-31 ta' Lulju 2026 li permezz taghha l-Awtorita' qieset l-offerta tal-esponenti bhala economically not feasible, konsegwentement qisitha bhala "non-compliant" u ghaddiet biex ikkancellat l-istess sejha.

Fid-decizjoni taghha, l-Awtorita' tghid hekk:

> *Thank you for participating in the above-mentioned procurement procedure. However, this Department regrets to inform you that the procurement proposal submitted by your company was Financially non-Compliant.*
>
> *The main reason why your procurement proposal was non-compliant is as follows: Financial Offer (Note 3)*
>
> *The financial offer was checked for arithmetic errors. No arithmetic errors were found. However, the offer exceeded the departmental budget by 16.02% and hence the EC found the offer to be economically not feasible.*
>
> *In view that there was only one offer for this tender and it exceeds the estimate by 16.02%, the tender is not being considered financially worthwhile and is thus being recommended for cancellation as per Article 18.3 (a) of the General Rules Governing Tenders V4.10 where cancellation may also occur where the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all.*

L-Ewwel Raguni

Qabel xejn, l-esponenti jidhrilha li r-raguni moghtija mill-Awtorita' Kontraenti fejn qieset li l-esponenti kienet "financially non-compliant" hija wahda zbaljata.

Il-compliance o meno ta' oblatur mill-aspett finanzjarju hija regolata espressament fit-tender document u, korrettement, l-Awtorita' Kontraenti sahqet li ma kien hemm ebda zbalji aritmetici fl-offerta ta' Vaults, u li ghalhekk kollox kien in regola.

Il-fatt li l-offerta ta' Vaults qabzet l-estimated procurement value, ma jfissirx li b'hekk l-offerta taghha hija financially non-compliant. Jista' jaghti l-kaz li tkun ta' prezz tant gholi li tiskatta mbaghad id-diskrezzjoni tal-Awtorita' Kontraenti li titlob il-kancellament, izda certament mhux in-nuqqas ta' compliance ta' l-oblatur mat-test tad-dokument tas-sejha.

La darba ma hemm raguni valida u skond id-dokument tas-sejha sabiex l-esponenti tigi meqjusa non-compliant, l-esponenti ghandha, mil-lat procedurali, titqies li ghadha fis-sejha, lil hinn mill-konsiderazzjonijiet relatati mal-kancellament.

It-Tieni Raguni

Id-diskrezzjoni ta' l-Awtorita' li tqis li offerta hija "economically not feasible" u li konsegwentement tikkancella s-sejha, fil-fehma tal-esponenti, ma giex ezercitata korrettement.

Hawnhekk jinsab il-pern ta' din l-oggezzjoni.

L-esponenti taghraf li r-regola 18 tal-General Rules taghti element ta' diskrezzjoni lill-Awtorita' Kontraenti li tizen x'inhu "economically feasible" u x'mhuwiex. Tifhem ukoll li l-istess General Rules imbaghad jaghtu diskrezzjoni wkoll jekk l-Awtorita' tkunx trid tikkancella s-sejha shiha proprju minhabba dan il-fatt.

Fil-fatt, l-Awtorita' f'dan il-kaz qieset in-nuqqas ta' economic feasibility skond ir-regola 18.1, u wara ghaddiet biex ikkancellat it-Tender ai termini tar-regola 18.3 (a) tal-istess General Rules.

Li dawn ir-regoli jimportaw element ta' diskrezzjoni huwa fatt. Li qed jigi kontestat huwa l-fatt li d-diskrezzjoni ma tistax tigi ezercitata minghajr ebda parametri u in vacuum. Allaharesc kien hekk, ghax kieku jkun ifisser li jekk oblatur jitfa' prezz imqar ftit tal-Euro 'l fuq mill-estimated procurement value, ikun ifisser li l-mekanizmu ta' diskrezzjoni ta' l-Awtorita' ikun jista' jiskatta, u tkun tista' tikkancella s-sejha fit-totalita' taghha.

Lanqas huwa minnu li l-estimated procurement value johloq xi ceiling li wiehed ma jistax jaqbez – proprju ghalhekk huwa indikat bhala 'valur stmat'.

L-esponenti ghalhekk tqis li kwalunkwe diskrezzjoni – hekk kif inhi dik ezercitabbli taht ir-regoli 18 tal-General Rules, ghandu jkollha kunsiderazzjonijiet relevanti, ragonevolezza, proporzjonalita', ugwaljanza u imparzjalita', u nuqqas ta' diskriminazzjoni bejn kaz u iehor.

Fil-fehma tal-esponenti, imqar uhud min dawn l-elementi gew miksura f'dan il-kaz.

Meta Awtorita' tippubblika sejha b'valur stmat specifiku, hija tkun qeghda tidhol ghar-riskju li l-orhos oblatur li jikkwalifika jkun ikkwota prezz gholi minn dak il-valur stmat. Id-domanda issa hija, sa kemm huwa prezz 'gholi', 'accettabbli'? Hemm xi persentagg li wiehed ma jistax jaqbez meta joffri prezz gholi mill-EPV? Huwa aktar accettabbli li Awtorita' tikkancella sejha meta d-differenza f'persentagg, ghalkemm mhux kbir, tissarraf f'somma considerevoli?

Donnu dawn id-domandi kollha mhumiex imwiegba mkien – u lanqas wiehed jippretendi li jsib xi tweigba cara u tonda – izda zgur li hemm bzonn li jkun hemm xi tip ta' linji gwida dwar dan kollu. Il-fatt li Awtorita' Kontraenti, wara s-sejha tkun konkluza, wara li l-evalwazzjoni tkun saret proceduralment sew, tqis li l-avarja bejn il-prezz u l-EPV hija determinanti, u li ghalhekk hemm bzonn li tigi kancellata, tehtieg li tigi regolata.

Ibda biex, l-esponenti konxja li hemm diversi sejhiet – inkluz tal-istess Awtorita' kontraenti mertu ta' din l-oggezzjoni – li gew moghtija lil oblaturi kemm b'persentagg akbar ta' avarja bejn il-prezz u l-EPV, kif ukoll b'differenza ta' valur ferm akbar minn dik mertu ta' din l-oggezzjoni. L-esponenti qed tirriserva minn issa li tipprezenta dokumentazzjoni (konsistenti biss f'tender documents u award notices) biex tissostanza din is-sottomissjoni taghha.

Fi ftit kliem, l-esponenti 'qabzet' l-EPV b'16%. Hija konxja minn diversi ghotjiet li qabzu dan il-persentagg. Inoltre, hija 'qabzet' l-EPV b'madwar €44,000. Hija konxja wkoll minn diversi ghotjiet li l-'eccess' mill-EPV kien ferm akbar minn hekk. Allura d-domanda tigi naturali: ghalfejn f'wahda iva, u f'din le? Ghalfejn b'eccess akbar iva, u f'din le?

Is-sitwazzjonijiet kienu jkunu differenti kieku l-Awtorita' Kontraenti zammet uniformita' u linearita' bejn decizjonijiet ta' kancellament u ohra – u zammet konsistenza bejn kancellament u iehor biex tkun tista' tiggustifika l-ezercizzjoni tad-diskrezzjoni taghha f'dan il-kaz.

Konsegwentement, anke l-ghazla ghall-kancellament tas-sejha ghandha tigi revokata.

Talba

Ghaldaqstant, ghar-ragunijiet premessi u ai termini tal-ligi, Vaults Co. Ltd, filwaqt li tirriserva li tipproduci dokumentazzjoni kif hawn fuq spjegat, titlob bir-rispett li dan il-Bord joghgbu:

(i) jiehu mizuri temporanji sabiex jipprevjeni milli ssir aktar hsara partikolarment, fost ohrajn billi jordna s-sospensjoni tad-decizjoni tal-Awtorita' Kontraenti tal-31 ta' Lulju 2026;

(ii) *jordna li tigi mwarrba d-deciżjoni li biha l-Awtorita' skwalifikat lill-esponenti mill-istess sejha u kkancellat l-istess sejha.*

(iii) *iwarrab ir-raguni moghtija mill-Awtorita' li biha Vaults Co. Ltd giet meqjusa non-compliant stante li hija infondata legalment u fattwalment.*

(iv) *iwarrab id-deciżjoni li biha l-Awtorita' kkancellat is-sejha mertu ta' din l-oggezzjoni;*

(v) *konsegwentement jikkonferma lil Vaults Co. Ltd bhala l-ahjar offerent li jissodisfa l-kriterji amministrattivi u teknici tal-istess sejha ghall-offerti u jordna lill-Awtorita' tipprocedi bl-ghotja tas-sejha lill-istess Vaults Co. Ltd."*

The written reply as filed by the Restoration and Preservation Department on the 19th August, 2026 (hereinafter the 'Contracting Authority') wherein it held as follows:

*"**Reply of the Contracting Authority***

The Restoration and Preservation Department, in its capacity as Contracting Authority, respectfully submits this reply to the objection filed by Vaults Co. Ltd. The Contracting Authority requests that the objection be dismissed and the decision to cancel the procurement procedure be confirmed.

The Facts

Only one tender was submitted in response to this procurement procedure, namely that of Vaults Co. Ltd. Following evaluation, the Evaluation Committee established that the submitted offer exceeded the approved estimated procurement value by approximately 16.02%. The Evaluation Committee therefore concluded that the offer was not economically feasible and did not constitute a financially worthwhile proposal for Government. Consequently, cancellation of the procedure was recommended pursuant to Article 18.3(a) of the General Rules Governing Tenders Version 4.10.

On the Alleged Financial Compliance of the Tender

The appellant argues that, because no arithmetic errors were identified, its offer could not be regarded as financially non-compliant.

The Contracting Authority submits that this argument misinterprets the basis of the decision.

The notification letter expressly confirmed that no arithmetic errors existed. The decisive consideration was not an arithmetic defect in the bid but the fact that the sole offer exceeded the approved estimate by 16.02% and was consequently considered economically unfeasible and financially not worthwhile.

The Contracting Authority therefore submits that the appellant is focusing on terminology rather than substance. The reasons for the decision were clearly communicated and understood by the appellant, as evidenced by the contents of the objection itself. The real issue is not whether the tender complied arithmetically with the pricing schedule, but whether the Contracting Authority was entitled to conclude that the submitted price did not represent a financially worthwhile outcome for the procurement.

On the Exercise of Discretion under Article 18.3(a) of the General Rules Governing Tenders V4.10

The appellant acknowledges that Article 18 of the General Rules Governing Tenders V4.10 grants discretion to a contracting authority but contends that such discretion was exercised incorrectly.

The Contracting Authority respectfully disagrees.

Article 18.3(a) of the General Rules Governing Tenders V4.10 specifically contemplates cancellation where no financially worthwhile tender has been received. Necessarily, the exercise of this provision requires the Contracting Authority to evaluate whether the offer received represents acceptable value for public funds in the circumstances of the particular procurement exercise.

No provision of the procurement rules establishes a fixed percentage above the estimated procurement value which must automatically be accepted or rejected. The assessment is case-specific and must be exercised having regard to the circumstances of each individual procurement.

In the present case, only one offer was received, thereby eliminating any possibility of meaningful price competition. The sole offer exceeded the approved estimated procurement value by 16.02%, representing a substantial increase over the financial framework established for the project. The Evaluation Committee therefore concluded that the proposal was not financially worthwhile and recommended cancellation. Such a determination falls squarely within the discretion expressly granted by said Article 18.3(a).

On the Alleged Inconsistency with Other Procurement Procedures

The appellant alleges that other procurement procedures may have been awarded notwithstanding differences between the awarded price and the estimated procurement value.

The Contracting Authority submits that this allegation remains unsupported by evidence and, in any event, is legally irrelevant unless it can be demonstrated that the circumstances of those procedures were materially identical.

Every call for tenders is assessed on its own facts, budgetary considerations, market conditions and procurement requirements. The existence of another procurement procedure involving a different scope of works, different market conditions or different budgetary circumstances cannot constrain the lawful exercise of discretion in the present case.

Conclusion

The Contracting Authority respectfully submits that:

i. *The sole offer submitted by Vaults Co. Ltd. exceeded the approved estimated procurement value by approximately 16.02%.*
ii. *The Evaluation Committee was entitled to determine that the offer was not economically feasible and was not financially worthwhile in the circumstances of the procurement.*
iii. *Article 18.3(a) of the General Rules Governing Tenders V4.10 expressly permits cancellation where no financially worthwhile tender has been received.*

iv. The decision to cancel the tender procedure was lawful, reasonable, proportionate and in the public interest.

Accordingly, the Contracting Authority respectfully requests the Public Contracts Review Board to reject the objection in its entirety and confirm the cancellation of Tender SPD5/2025/033.

Yours faithfully,"

The opening and closing submissions of the Appellant and the Contracting Authority as delivered by their legal representatives;

Considers;

This Board notes that the Appellant has brought forward two (2) main grievances as follows:

A. Mistaken Reason

The Appellant here argues that the reason provided by the Contracting Authority wherein it considered the Appellant's bid as financially non-compliant is mistaken (*"żbaljata"*). The Appellant repeats what the Contracting Authority stated, that the Appellant's bid featured no arithmetical mistakes but that its offer exceeded the estimated procurement value. The Appellant argues that therefore, the Contracting Authority should not have classified the Appellant's bid as financially non-compliant.

The Contracting Authority on the other hand argues that the basis of the appealed decision is being misinterpreted and that the Appellant is focusing on terminology rather than substance. The Contracting Authority further submits that the reasons underlying the decision were clearly communicated and understood by the Appellant, as is evidenced by the contents of his appeal.

This Board having seen the letter of rejection dated 31st July, 2026, considers that whilst it is true that the Contracting Authority's choice of the wording in its introductory sentence is not the most apt particularly considering the rather detailed explanation given to the Appellant as to the underlying reason for the cancellation of the tender, considers that this mismatch did not cause any prejudice vis-a-vis the Appellant and his right to appeal from the cancellation of this procurement procedure. The Appellant has in fact put forward a grievance relating to the Contracting Authority's decision to cancel the tender due to *"no qualitatively or financially worthwhile tender"* being received, therefore whilst it was a poor choice of wording, the reason for cancellation was more than clear to the Appellant.

Therefore, the Appellant's grievance is being rejected.

B. Cancellation of the Tender

The Appellant here argues that whilst Rule 18 in the General Rules Governing Tenders does allow the Contracting Authority an element of discretion in what is considered *"economically feasible"* and what is not. The Appellant argues that an 'estimated procurement value' is an estimate and does not translate into a maximum ceiling which cannot be exceeded. The Appellant goes a step further and argues that in other procurement processes including those relating to the same Contracting Authority the Contracting Authority accepted bids with higher percentage increases over the estimated procurement value, so why not in respect of the Appellant's bid? The Appellant referred to a few examples to substantiate this argument during the oral hearing before this Board.

The Contracting Authority replies to this grievance by underlining that the procurement rules do not establish a fixed percentage above which a bid must automatically be rejected or accepted, but emphasies that the assessment must be carried on a case by case basis having regard to the details relating to individual procurement process. In this case the Contracting Authority received only one bid thereby eliminating any possibility of meaningful price competition and that the 16.02% over and above the estimated procurement value was a substantial increase. The Contracting Authority further argues that such a determination falls squarely within the discretion granted to it in terms of Rule 18.3(a) of the General Rules Governing Tenders.

This Board considers that each individual procurement process must be assessed in its own right, whilst taking into consideration the allocated budget and the restrictions that alone may impose, as well as the Contracting Authority's procurement requirements in each process. Comparisons are odious, unless it is shown that the procurement processes in comparison are materially identical. In this case, as correctly pointed out by the Contracting Authority, no evidence was produced to identify that the Contracting Authority in this procurement process took decisions which, although within its discretion, could be considered to be unfair, disproportionate or unreasonable.

This Board considers that the Appellant's bid being 16.02% above the estimated procurement value is not negligible. This, coupled with the fact that Rule 18.3.(a) of the General Rules Governing Tenders does not limit the Contracting Authority's in terms of percentages or values, leads this Board to determine that the Contracting Authority's decision to cancel the procurement process on the basis of no financially worthwhile tenders being received, was not incorrect in the circumstances.

Therefore, the Appellant's grievance is also being rejected.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to reject the appeal filed by Vaults Co. Ltd in its entirety.

The Board further decides not to refund the deposit paid by Vaults Co. Ltd.

Dr Ana Thomas	**Dr Maria Cardona**	**Mr Lawrence Ancilleri**
Chairperson	**Member**	**Member**

Thursday 22nd October, 2026.