DALLIPARIS
ADVOCATES

5th November 2026

Public Contracts Review Board

Notre Dame Ditch

Floriana



Corinthia Caterers Limited

Vs

Mediterranean Conference Centre et.

RE: MCC 57/2025 Concession for the Provision and Management of Catering Services at the Mediterranean Conference Centre (MCC) (hereinafter 'the Concession');

Reasoned Reply of the Mediterranean Conference Centre (hereinafter 'the Contracting Authority');

Respectfully submits:

1. **Introduction and Background**

1.1 By means of a call for competition published on the Government's e-Procurement Platform ('ePPS') on 2nd February 2026, the Mediterranean Conference Centre (the 'Contracting Authority') invited offers for the award of a concession for the provision and management of catering services at the Mediterranean Conference Centre, reference MCC 57/2025 (the 'Concession'). The procedure is

governed by the Concession Contracts Regulations (Subsidiary Legislation 601.09) (clause 3.1.6 of the Concession Document). The Concession is to be awarded to four (4) concessionaires for a term of five (5) years, and has an estimated value of EUR 10 million, excluding VAT (clauses 2.1.2 and 3.1.4).

1.2 Section 7 of the Concession Document, which is expressly subject to Note 3, required each bidder to submit:

> *"(i) A financial offer calculated on the basis of commission fee of a minimum of 20% of turnover generated (excluding VAT) within the MCC by the Concessionaire payable to the Contracting Authority with a minimum of € 50,000 per annum. (ii) A filled-in Financial Bid Form (as per document available to download online from www.etenders.gov.mt) as per Tender Response Format."*

Note 3 provides:

> *"No rectification shall be allowed. Only clarifications and additional information to corroborate the submitted information may be requested."*

Under Section 8 and clause 12.2.3, administratively and technically compliant bids are ranked according to the percentage commission offered. The four highest offers are identified, and the final commission rate is the simple average of those four offers.

1.3 During the publication stage, a prospective bidder asked how the financial field of the ePPS tender response format was to be completed. The Contracting Authority published the following clarifications on ePPS on 4th March 2026, sixteen (16) days before the closing date:

Clarification no. 5 (published 04/03/2026 at 12:38):

> *"In the financial bid form, it is specified to list a percentage value. However on the EPPS tender (as per screenshot attached), it is not clear whether we are to input the percentage or calculate a total value for the 5 year concession. Can you please clarify?" Answer: "The economic operator has to quote a percentage value in the financial bid form."*

Clarification no. 6 (published 04/03/2026 at 13:37):

> *"Following your reply to the clarification request, can you please advise what value are we to input in the section illustrated in the screenshot attached? Is it the percentage or a value in EUR?" Answer: "A percentage please."*

1.4 The call for competition closed on 20th March 2026. Five (5) offers were received and unlocked. The figures entered by the bidders in the financial field of the ePPS tender response format, as published in the Opened Tender Details, were as follows: Xara Palace Hotel Co. Limited, 23.50; Corinthia Caterers Limited, 50,000.00; James Caterers Ltd, 24.00; Neriku Ltd, 24.00; and Villa Arrigo Ltd, 20.10.

1.6 In its financial offer submitted through ePPS, the Objector, Corinthia Caterers Limited (the 'Objector'), entered the figure of EUR 50,000.00. In the Financial Bid Form uploaded with its offer, it stated a commission of "21 % (twenty one percent)". The two components of the Objector's financial offer were therefore contradictory.

1.7 By letter published on ePPS on 19th October 2026, the Contracting Authority informed the Objector that its offer was not financially compliant, for the following reasons:

> *"You stated a value of €50,000 in the financial offer submitted through ePPS, notwithstanding that the financial offer required a commission fee to be quoted in percentage terms. Furthermore, the financial offer submitted through ePPS and the Financial Bid Form were incompatible and could not be reconciled. A clarification before closure date was issued by the contracting authority stating the percentage requirement. This section is non-rectifiable."*

The Concession was recommended for award to James Caterers Ltd (24.00%), Xara Palace Hotel Company Ltd (23.50%), Villa Arrigo Ltd (20.10%) and Neriku Ltd (24.00%), at a final applicable commission rate of 22.90%.

1.8 On 29th October 2026, the Objector filed an objection under Regulation 106 of the Concession Contracts Regulations (the 'Objection'). It raises three grievances: (i) that its financial offer was compliant; (ii) that it was disqualified on a basis which does not exist in the Concession Document; and (iii) that its disqualification was disproportionate. It requests the Board to annul the Contracting Authority's decision and to order that its offer be readmitted and evaluated on the basis of the commission stated in its Financial Bid Form.

1.9 The Contracting Authority respectfully submits that the Objection is unfounded in fact and in law and should be rejected, for the reasons set out below.

2. Preliminary Observations

2.1 The Objection is silent on Clarifications nos. 5 and 6, although the Letter of Rejection expressly refers to the clarification issued before the closing date. The whole Objection rests on the premise that the Concession Document "*does not say what figure is to be keyed into its financial field*" (paragraph 36 of the

Objection). That premise is incorrect. Clarification no. 6 was asked about that very field, and the answer was unequivocal: *"A percentage please."*

2.2 Clarification notes form an integral part of the Concession Document. The introductory section of the Concession Document provides that

> *"Clarification notes will constitute an integral part of the concession documentation, and it is the responsibility of Economic Operators to visit this website and be aware of the latest information published online prior to submitting their offer."*

Clause 9.7.3 is to the same effect. Under clause 9.1.2,

> *"In submitting a bid, the bidder accepts in full and in its entirety, the content of this Concession document, including subsequent clarifications issued by the Contracting Authority, without reservation."*

2.3 If the Objector considered the requirement in Clarification no. 6 to be unclear or objectionable, the Concession Contracts Regulations afforded it a specific remedy. Under Regulation 98, it could apply to this Board before the closing date *"to correct errors or to remove ambiguities of a particular term or clause included in a call for competition, in the contract documents, in clarifications notes"*. The Objector did not do so. It submitted its offer and thereby accepted the Concession Document, as clarified, without reservation. Grievance no. 2 in particular is in substance a belated challenge to a requirement which the Objector accepted when it bid.

2.4 The Objector does not claim that the figure of EUR 50,000 was a typing or clerical error. It states that it entered that figure deliberately, *"being the minimum annual*

commission stipulated in Section 7(i) of the Concession Document" (paragraph 13 of the Objection).

2.5 The Objector must be assessed by the standard of the reasonably well-informed and normally diligent tenderer (the 'RWIND' tenderer) (C-19/00 *SIAC Construction*, paragraph 42). That standard applies to it with particular force. On its own description, the Objector forms part of the Corinthia group. It has operated in the events sector for more than twenty-five (25) years, has catered for more than 20,000 events, and has experience in contract and corporate catering, including state dinners, galas and international conferences (paragraph 5 of the Objection). A RWIND tenderer of that experience is expected to read the Concession Document in full, together with the clarifications published on ePPS. It must therefore be taken to have known that:

(a) the figure to be entered in the ePPS financial field was the percentage commission (Clarification no. 6);

(b) clarification notes form an integral part of the Concession Document and are accepted without reservation upon submission of an offer (clauses 9.1.2 and 9.7.3);

(c) any contradiction or deviation in an offer leads to the offer not being considered further (introductory section of the Concession Document), and evaluation is based on the material actually presented (clause 10.6.1); and

(d) the financial offer could not be rectified after the closing date (Note 3 to Section 7).

Having deliberately entered EUR 50,000 in a field which it had been told must contain the percentage, the Objector cannot now claim that the consequence was unforeseeable. That consequence was set out in the Concession Document.

Its exclusion is the result of its own choice, and not of any requirement imposed by the Contracting Authority ex post.

3. Replies in relation to the grievances by the objector

3.1 Grievance no. 1: 'The Appellant's financial offer was compliant'

3.1.1 The Objector's first grievance proceeds on the basis that its financial offer consisted solely of the Financial Bid Form (Appendix 2), and that the figure keyed in ePPS is an unsigned entry of no consequence (paragraphs 26 to 28 of the Objection). This reading cannot be sustained. Section 7 requires two distinct components: (i) a financial offer, and (ii) a filled-in Financial Bid Form *"as per Tender Response Format"*. The financial offer under limb (i) is submitted through the financial criteria of the ePPS tender response format. That is the field in which the Objector entered EUR 50,000, and the field that is unlocked and published at the opening of offers (clause 11.1.2).

3.1.2 By means of Clarification no. 6, every bidder was told that the figure to be entered in that field was the percentage commission. Four of the five bidders complied. The Objector alone entered a sum in euro.

3.1.3 The Objector's explanation that EUR 50,000 is the minimum annual commission (paragraphs 30 to 32 of the Objection) does not assist it. The minimum of EUR 50,000 per annum is fixed by the Contracting Authority. It is not offered by the bidder and is not open to competition. The field in question was intended for the one competitive variable, the percentage commission, as Clarification no. 6 made clear. Read in accordance with that clarification, the Objector's entry is a commission of 50,000 per cent. Read as a sum in euro, it is a fixed annual amount, which is a different type of offer that cannot be ranked under Section 8. On neither reading does

it state the commission percentage that Section 7(i) and Clarification no. 6 require.

3.1.4 The Objector's financial offer therefore contained two different and incompatible statements of the price: EUR 50,000 in the ePPS financial offer, and 21% in the Financial Bid Form. The Concession Document is clear on the consequence. Its introductory section provides that

> *"Any disagreement, contradiction, alteration or deviation not permitted in this concession document shall lead to the bid not being considered any further."*

Clause 10.6.1 further provides that *"evaluation of bids will be based on the actual material presented and not on the basis of what is or may be implied."* The Evaluation Committee could not lawfully choose one of the two figures on the Objector's behalf.

3.1.5 The Objector argues that the Contracting Authority itself did not read the ePPS figures literally, since the other bidders' figures were displayed in euro (paragraph 33 of the Objection). This is not so. The ePPS financial field is system-generated in euro format, and the eTenders system does not accept the "%" character. It was precisely for this reason that Clarification no. 6 instructed bidders to enter the percentage figure in that field. The other bidders' figures were read as percentages because they followed Clarification no. 6. The Objector's figure could not be so read, because it did not.

3.1.6 Nor can clause 12.3.1(i), under which the amount in words prevails over the amount in figures, assist the Objector. That clause governs arithmetical discrepancies between the figures and words used to express the same amount. It does not authorise the Evaluation

Committee to prefer one of two different prices submitted in two different components of the same offer.

3.1.7 The first grievance should therefore be rejected.

3.2 **Grievance no. 2: 'The Appellant was disqualified on a basis which does not exist in the Concession Document'**

3.2.1 The basis for the Objector's exclusion is found in the Concession Document itself. It consists of Section 7, as clarified by Clarification no. 6; the rule on contradictions and deviations in the introductory section; clause 10.6.1; and clause 10.6.2, which warns that

> *"failure to include the required information may result in a rejection of the bid".*

The Contracting Authority did not create any requirement or sanction ex post.

3.2.2 The Objector's assertion that the Concession Document *"makes no reference to the XML Tender Structure"* and *"does not say what figure is to be keyed into its financial field"* (paragraph 36 of the Objection) ignores Section 7(ii), which refers to the *"Tender Response Format"*. Above all, it ignores Clarification no. 6, which forms an integral part of the Concession Document and which the Objector accepted without reservation (clauses 9.1.2 and 9.7.3). A RWIND tenderer could not have overlooked that clarification, which addressed the very field in issue (paragraph 2.5 above).

3.2.3 The judgments relied upon by the Objector are distinguishable. As described by the Objector itself, *Krypton* concerned the legibility of a product label, where the tender expressly permitted clarifications.

European Dynamics concerned an indicative word count to which no consequence was attached. The present case concerns the price, which is the core element of the offer. Moreover, the Concession Document (i) expressly excludes rectification of the financial offer (Note 3), (ii) expressly provides that contradictions lead to the bid not being considered further, and (iii) was supplemented by a specific public clarification on the very point in issue.

3.2.4 The principles of transparency and self-limitation, which the Objector invokes, bind the Contracting Authority as much as the bidders. The Contracting Authority was bound by Note 3 and by Clarification no. 6. Had it disregarded the Objector's ePPS financial offer and substituted for it a figure taken from another document, it would have departed from its own rules. It would also have treated the Objector more favourably than the four bidders who complied with Clarification no. 6.

3.2.5 The second grievance should therefore also be rejected.

3.3 Grievance no. 3: 'The disqualification of the Appellant is disproportionate'

3.3.1 The principle of proportionality cannot be invoked to set aside the express terms of the Concession Document, which all bidders accepted. The Evaluation Committee did not exercise a discretion to impose a harsh sanction. It applied the consequence that the Concession Document itself prescribes for a contradictory financial offer.

3.3.2 The Objector submits that the Evaluation Committee should have sought a clarification, relying on Note 3 (paragraph 54 of the Objection). However, the Objector quotes only the second sentence of Note 3 and omits the first. Note 3 reads in full:

"No rectification shall be allowed. Only clarifications and additional information to corroborate the submitted information may be requested."

3.3.3 A clarification under Note 3 may only corroborate information already submitted. It cannot reconcile two contradictory figures. Any request to the Objector to state which of its two figures was its offer would have been an invitation to choose its price after the opening of offers. Any reply confirming 21% would have replaced the EUR 50,000 entered in its ePPS financial offer. That would be a rectification, which Note 3 prohibits. It would also be a material alteration of the offer, which the proviso to clause 12.1.3 prohibits: *"Provided that bidders shall not be permitted to make any material alterations to their bid."* The price is the most material element of any offer.

3.3.4 Clause 12.1.3 itself permits clarifications and rectifications only *"in respect of any incorrect and/or incomplete documentation"* and the submission of missing documents. It does not extend to the reconciliation of contradictory prices. To the extent that general policy guidance, including Policy Note 40, contemplates the clarification of inconsistent submissions, the Concession Document is the *lex specialis* of this procedure. It is governed by the Concession Contracts Regulations (clause 3.1.6), and it deliberately adopts a narrower rule. Note 3, which applies specifically to the financial offer, is narrower still.

3.3.5 The evaluation record confirms that the Evaluation Committee applied these rules consistently and even-handedly. Where Note 2 applied, rectification was permitted, including to the Objector itself in respect of its financial and economic standing. Where Note 3 applied, bidders were only asked to clarify where information already submitted could be found. The Objector was treated in the same way as every other bidder.

3.3.6 In any event, the power to seek clarification is discretionary. Note 3 provides that clarifications "*may*" be requested, and clause 12.1.3 "*reserves the right*" to request them. The case-law of the Court of Justice relied upon by the Objector confirms that a contracting authority may, but is not obliged to, seek clarification. It also confirms that clarification may not lead to what is, in reality, the submission of a new tender (C-599/10 *SAG ELV Slovensko*; C-336/12 *Manova*; Joined Cases C-523/16 and C-536/16 *MA.T.I. SUD*).

3.3.7 The local judgments cited by the Objector are also distinguishable. As described by the Objector, *Ballut Blocks* and *Europharma* concerned information that was missing from one part of the offer but present elsewhere, and *Polaris Marine* and *Evans* concerned obvious clerical errors of form. In the present case, information was not missing. A different and contradictory figure was positively entered in the field designated for the financial offer. By the Objector's own admission, this was done deliberately, and it was not a clerical error. Moreover, the issue had been the subject of a specific public clarification before the closing date.

3.3.8 The Objector further argues that admitting its offer would give it no competitive advantage (paragraphs 52 and 53 of the Objection). That is not the test. The principle of equal treatment requires all bidders to be bound by the same rules. Four bidders complied with Clarification no. 6. Allowing the Objector alone to correct its financial offer after the opening of offers would treat it more favourably than them. It would also undermine the certainty of the financial offers published at opening. Nor does the Contracting Authority's objective of maximising its financial resources (clause 2.2.9) entitle it to depart from the rules of the procedure.

3.3.9 The third grievance should therefore likewise be rejected.

4. Demands

NOWTHEREFORE and in view of the foregoing reasons, and whilst reserving the right to submit further observations and evidence during the scheduled hearing, the Contracting Authority respectfully requests that the Public Contracts Review Board,

4.1 rejects the objection in its entirety.

4.2 that in relation to the deposit paid, whilst the Contracting Authority defers to the decision of this Honourable Board, in the eventuality that the objection is withdrawn in a timely manner, and in any case before any scheduled hearing, it hereby confirms that it has no objection to the refund of the deposit paid.

4.3 Finally, the Contracting Authority, requests this Honourable Board to give any further and appropriate direction as necessary in furtherance of the above.

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