DALLIPARIS
ADVOCATES



30th October 2026

Public Contracts Review Board
Notre Dame Ditch
Floriana

South Lease Limited

Vs

[1] Department of Contracts

[2] Saint Vincent de Paul Long Term Care Facility

RE: CT2185/2026 Framework Contract for the Provision of Chauffeur Driven Ambulance Service including First Aiders for Saint Vincent de Paul (hereinafter 'the Tender');

Reasoned Objection of South Lease Limited (TID 245914);
Respectfully submits:

1. **Introduction and Background**

1.1 South Lease Limited (hereinafter "the Objector") hereby lodges a formal objection before the Public Contracts Review Board (hereinafter "PCRB"), in terms of Regulation 270 of the Public Procurement Regulations (S.L. 601.03)[1], against the decision of the Department of Contracts and/or the Contracting Authority to declare the offer of the Objector technically non-compliant, and

[1] Regulation 270 of the Public Procurement Regulations (S.L. 601.03).

subsequently to cancel Tender CT2185/2026, as communicated by means of a letter dated 23rd October 2026[2].

1.2 The Tender concerns a thirty-six (36) month framework contract for the provision of a chauffeur driven ambulance service, including first aiders, for Saint Vincent de Paul. The Estimated Procurement Value is that of €1,018,350.00 excluding VAT, and the sole award criterion is the price[3].

1.3 The Objector offered a Peugeot Boxer Type B ambulance, registration number JQZ098, chassis number VF3YEG8FXRMA72215, registered in the name of the Objector and first registered in Malta on the 16th July 2025. Together with its offer, the Objector submitted:

1.3.1 the Tenderer's Technical Offer, by means of which the Objector expressly confirmed, by ticking "*I / We Confirm*", each and every one of the requirements of Section 3 of the Tender, including each of specifications 4.2.3.1 to 4.2.3.13;

1.3.2 under Item 1 of the Literature List (*Ambulance specifications*, 4.2.3 – 4.2.3.13)[4], a Certificate of Conformity to EN 1789:2020+A1, Type B, issued by the bodybuilder Rodríguez López Auto in respect of the very vehicle offered[5], together with the bodybuilder's specification of the unit and the equipment fitted;

1.3.3 under Item 2 and Item 3 of the Literature List, the ambulance logbook registered in Malta and a valid certificate of motor insurance.

1.4 By means of a rectification request, the Objector was asked to submit "*the missing documentation satisfying all points in Literature List*". The Objector replied

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[2] Letter dated 23rd October 2026 issued by the Department of Contracts, signed f/ Director General (Contracts), reference CT2185/2026.

[3] Tender Document, Section 1 – Instructions to Tenderers, Article 1.3 (Estimated Procurement Value of €1,018,350.00 excluding VAT) and Article 6.1 (sole award criterion: price).

[4] Tender Document, Section 1 – Instructions to Tenderers, Article 5(C)(ii) and the Form marked 'Literature list'.

[5] Certificate of Conformity to EN 1789:2020+A1 issued by Rodríguez López Auto S.L.U., Ourense, dated 3rd July 2025, in respect of VIN VF3YEG8FXRMA72215.

within the stipulated time and submitted the odometer reading (4.2.3.2) and the Transport Malta VRT certificate (4.2.3.13), both of which were accepted.

1.5 By means of the letter of the 23rd October 2026, the Objector was informed that its offer was technically non-compliant since it "*did not submit literature to satisfy points 4.2.3.3, 4.2.3.4, 4.2.3.5, 4.2.3.6, 4.2.3.7, 4.2.3.8, 4.2.3.9, 4.2.3.10, 4.2.3.11 and 4.2.3.12 of Section 3 – Specifications*". By means of the same letter, the Objector was informed that the tendering procedure was being cancelled in terms of Article 18.3(a) of the General Rules Governing Tendering.

1.6 In summary, the Objector asserts that the Contracting Authority:-

1.6.1 based its decision on a wrong factual premise, namely that the literature under Item 1 of the Literature List was not submitted, and failed to evaluate the literature which was in fact submitted;

1.6.2 failed to recognise that the literature submitted demonstrates compliance with the specifications in issue;

1.6.3 demanded literature in respect of requirements which, by their very nature, cannot be evidenced by manufacturer's literature, and disregarded the binding declaration made by the Objector in the Tenderer's Technical Offer;

1.6.4 took a decision which is disproportionate, which elevates form over substance and which runs counter to Regulation 39 of S.L. 601.03;

1.6.5 cancelled the Tender on the basis of a premise which, once the exclusion is revoked, no longer subsists.

1.7 In this respect, the Objector is respectfully requesting the PCRB to revoke the decision declaring its offer technically non-compliant and to annul the cancellation of the Tender, and this based on the following grievances:

2. **First Grievance – The Literature under Item 1 was submitted – Failure to evaluate the literature submitted**

2.1 The letter of the 23rd October 2026 records that, during evaluation, the committee noted that "*the ambulance specifications to satisfy points 4.2.3.2 to 4.2.3.13 of Section 3 – Specifications and Item 1 of the Literature List, were not submitted*". With respect, this is factually incorrect.

2.2 Under Item 1 of the Literature List, the Objector submitted, with its original offer, two documents:

2.2.1 a Certificate of Conformity issued by the bodybuilder, Rodríguez López Auto, certifying that the ambulance "*complies with the updated version of the EN 1789:2020+A1 Standard*", Type B. The Certificate identifies the vehicle by its chassis number (VF3YEG8FXRMA72215), which is the same chassis number appearing on the logbook, on the insurance certificate and on the VRT certificate. It lists the tests carried out on, *inter alia*, fire safety, electrical installation, ergonomic space, loading area, M1 seats, ventilation, the temperature system, interior lighting, interior noise and mounting systems and fixation;

2.2.2 the bodybuilder's specification of the unit, setting out the furniture, technical compartment, climate control, oxygen installation and the medical and patient handling equipment.

2.3 The Certificate of Conformity is, in itself, proof that the ambulance is a Type B ambulance in terms of EN 1789. This is precisely what specification 4.2.3.1 requires. Notably, specification 4.2.3.1 is not listed amongst the grounds of non-compliance, which means that the committee itself accepted that the vehicle satisfies EN 1789 Type B.

2.4 Neither document is mentioned anywhere in the letter of the 23rd October 2026. The letter does not state that these documents were examined, nor does it explain why, having been examined, they were considered insufficient in respect of any one specification. The decision proceeds as if nothing had been submitted under Item 1.

2.5 An evaluation committee is bound to examine the content of each tender with care. In the words of the General Court in **Tideland Signal v Commission**[6], the evaluation committee has *"a duty to exercise a certain degree of care when considering the content of each tender"*. A decision which proceeds on the premise that documents were not submitted, when they were, is one taken without such care.

2.6 The decision is therefore vitiated at its root, and on this ground alone it ought to be revoked.

3. **Second Grievance – The literature submitted demonstrates compliance with the specifications in issue**

3.1 The committee treated ten (10) separate specifications as one block and dismissed them together. Had each specification been examined individually against the literature submitted, the committee would have found the following:

3.1.1 4.2.3.3 (minimum equipment) – The specification of the unit lists a central oxygen installation with sockets in the patient compartment; a Corpuls LP1000 semi-automatic defibrillator; a Corpuls C3 Touch defibrillator and patient monitor with non-invasive blood pressure, SpO2, EtCO2 and ECG monitoring; a Stryker Power-PRO XT stretcher; a Ferno scoop stretcher; a Baxstrap spinal board; a Speedblock head immobiliser; a Ferno transfer chair with PowerTraxx; and a suction unit. Moreover, conformity with EN 1789 Type B, which the committee accepted, itself carries with it the

[6] Tideland Signal Ltd v Commission of the European Communities, Case T-211/02, judgment of 27th September 2002.

medical equipment which that standard prescribes for a Type B ambulance;

3.1.2 4.2.3.4 (electric stretcher and stair climber) – The specification of the unit lists the Stryker Power-PRO XT powered stretcher, a Stryker cot loading system and the Ferno PowerTraxx battery-powered stair system, all of which are designed to eliminate manual lifting and handling;

3.1.3 4.2.3.9 (air-conditioning) – The specification of the unit lists an *"AC unit for patient compartment for hot countries"* and a CAN bus control system for lighting and climate, whilst the Certificate of Conformity confirms that the ventilation and temperature systems were tested and found compliant. In this respect, EN 1789 is the European standard which regulates, amongst others, the ventilation, temperature, lighting, noise levels and ergonomic space of the patient compartment. Compliance therewith ensures the clean, comfortable and air-conditioned ambulance which the Tender requires[7];

3.1.4 4.2.3.11 (health and safety equipment) – The Certificate of Conformity confirms that the fire safety requirements of EN 1789 were tested and found compliant, whilst the VRT certificate confirms that the vehicle passed its roadworthiness test, and the logbook confirms that it is licensed as an ambulance by Transport Malta;

3.1.5 4.2.3.12 (seat belts) – The Certificate of Conformity confirms that the M1 seats were tested and found compliant, the specification of the unit lists three (3) seats in the patient compartment, and the logbook confirms a vehicle of category M1 with seven (7) seats.

3.2 It follows that, at the very least in respect of specifications 4.2.3.3, 4.2.3.4, 4.2.3.9, 4.2.3.11 and 4.2.3.12, the finding that the Objector *"did not submit literature"* is simply not correct. The literature was there; it was not considered.

[7] Tender Document, Section 3 – Specifications/Terms of Reference, Article 2.3.

4. **Third Grievance – Literature was demanded for requirements which cannot be evidenced by literature – The binding declaration in the Tenderer's Technical Offer**

4.1 In terms of Article 5(C)(ii) of the Instructions to Tenderers, the scope of the literature is "to *corroborate a fully compliant technical offer*". The literature therefore serves to corroborate; it is not the offer. The offer is the Tenderer's Technical Offer, which the Objector submitted in full and which the committee did not fault.

4.2 Several of the specifications listed in the letter of the 23rd October 2026 are not features of a product described in a manufacturer's brochure, but obligations to be performed during the execution of the contract:

4.2.1 4.2.3.6 provides that "*the drivers shall be responsible to secure/clamp the wheelchairs*". This is a duty imposed on personnel. No manufacturer publishes literature on what a contractor's drivers will do;

4.2.2 4.2.3.8 is a descriptive paragraph explaining why wheelchair tie-downs and occupant restraints are important. It contains no measurable specification at all;

4.2.3 4.2.3.10 requires live data tracking "*accessible by the Contracting Authority*". This is a service to be provided to the Contracting Authority during the contract, not a product characteristic, which in any case as the document Certificate of Conformity confirms, the vehicles shall be equipped with an ACETECH Hardware and Software for tracking purposes.

4.2.4 4.2.3.11 requires the ambulance "*to follow national health and safety regulations*". This is an obligation of legal compliance, which is moreover verified by Transport Malta in the licensing and roadworthiness testing of the vehicle.

4.3 In any case, and this is fundamental, the Objector made an express declaration in the Tenderer's Technical Offer, confirming against each and every one of specifications 4.2.3.1 to 4.2.3.13 that it will adhere to these conditions. The Tenderer's Technical Offer is a Note 3 document, in respect of which no rectification is allowed; the committee raised no issue with it, and therefore accepted it as complete.

4.4 That declaration is not a mere formality. The tender declarations form part of the contract[8], and the Objector is bound by them. Should the Objector fail to honour them, the Contracting Authority is armed with the right to request documentation, to approve or refuse vehicles, and to impose penalties[9]. For the criteria listed above, the declaration in the Tenderer's Technical Offer is the best, and indeed the only, evidence which any economic operator could provide at tendering stage.

4.5 To exclude the Objector for failing to corroborate by means of manufacturer's literature that which cannot be corroborated by manufacturer's literature is to impose an impossible burden. It is the very essence of excessive formalism.

5. Fourth Grievance – The decision is disproportionate – Substance over form – Regulation 39 of S.L. 601.03

5.1 The principle of proportionality under Regulation 39

5.1.1 Regulation 39(1) of the Public Procurement Regulations provides that[10]:

> *"Contracting authorities shall treat economic operators equally and without discrimination and* ***shall act in a transparent and proportionate manner.***"
>
> (added emphasis)

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[8] Tender Document, Section 2 – Special Conditions, Article 2.5(g), which lists "the tender declarations in the Tender Response Format" among the documents making up the contract.

[9] Tender Document, Section 2 – Special Conditions, Articles 5.3, 5.3 and 32.5; Section 3 – Specifications/Terms of Reference, Articles 4.2.5 and 4.2.6.

[10] Regulation 39(1) of the Public Procurement Regulations (S.L. 601.03), which reflects Article 18(1) of Directive 2014/24/EU.

5.1.2 Proportionality is therefore not a matter of discretion, but a binding legal obligation imposed on every contracting authority and on every evaluation committee. It requires that the measures adopted do not go beyond what is appropriate and necessary to attain the objective pursued. As held in **Tideland Signal v Commission**[11]:

> *".... the principle of proportionality requires that measures adopted by the community institutions* ***do not exceed the limits of what is appropriate and necessary*** *in order to attain the objectives pursued and that* ***where there is a choice between several appropriate measures recourse must be had to the least onerous ..."***
>
> (added emphasis)

5.1.3 The Maltese Courts have consistently applied this principle to the exclusion of bidders. In **Ballut Blocks Services Limited v. Hon. Minister for Resources and Rural Affairs et**[12], the Court of Appeal held that the disqualification of a bidder constitutes a disproportionate measure unless it is shown that such disqualification was necessary to protect fair competition.

5.1.4 Similarly, in **Firetech Cross TLS Joint Venture v. Dipartiment tal-Kuntratti et**[13], the Court of Appeal held that:

> *"... l-prinċipju ta' proporzjonalità jrid illi mhux kull nuqqas* ***ikollu l-istess konsegwenza****, iżda din għandha tiddependi mill-gravità tan-nuqqas u mill-konsegwenzi tiegħu ..."*
>
> (added emphasis)

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11 T-211/02, para 39.

12 Qorti tal-Appell (Sede Superjuri), Ballut Blocks Services Limited v. Hon. Minister for Resources and Rural Affairs et, Rik. Nru. 440/2012, deċiża 14 ta' Marzu 2014.

13 Qorti tal-Appell (Sede Superjuri), Firetech Cross TLS Joint Venture v. Dipartiment tal-Kuntratti et, Rik. Nru. 281/2015, deċiża 30 ta' Ottubru 2015.

5.2 Substance over form

5.2.1 Public procurement is a matter of substance over form. The task of the evaluation committee is to establish whether the offer, in substance, satisfies the needs of the Contracting Authority, and not to penalise the bidder for the manner in which that compliance is documented.

5.2.2 In substance, the Contracting Authority has before it an ambulance which is certified as a Type B ambulance in terms of EN 1789, which complies with Euro 6B emission standards, which has a mileage of 12,479 km, which has passed its roadworthiness test, which is licensed as an ambulance by Transport Malta and which is fully insured. The equipment fitted is documented by the bodybuilder itself. The Objector has, moreover, bound itself to every single specification by means of the Tenderer's Technical Offer.

5.2.3 Against this, the only matter raised by the committee is one of form: whether each line of specifications 4.2.3.3 to 4.2.3.12 was matched to a manufacturer's brochure. By excluding the Objector on that basis, the committee elevated form over substance.

5.3 The exclusion and cancellation were not necessary

5.3.1 In the case under review, the Objector claims that its exclusion, and the consequent cancellation of the Tender, were neither necessary nor proportionate, *inter alia*, for the following reasons:

FIRST The vehicle offered by the Objector provides precisely what the Contracting Authority requires, namely a certified EN 1789 Type B ambulance, which the committee itself accepted.

SECOND The sole award criterion is the price. The alleged shortcoming in the literature has no bearing whatsoever on the price,

confers no advantage on the Objector, and causes no prejudice to any other bidder or to fair competition.

THIRD The Tender itself provides the means by which the Contracting Authority can verify the vehicle and its equipment before the service commences, including the submission of the vehicle documents upon signing of the contract, the approval of vehicles by the Contracting Authority, and an eight-week mobilisation period[14]. Any residual doubt could have been addressed through these mechanisms.

FOURTH The consequence of the decision is not merely the exclusion of one bidder, but the cancellation of a three-year framework contract for an essential ambulance and first aid service for the elderly residents of Saint Vincent de Paul, and the need to re-tender, with all the delay and cost which that entails.

5.3.2 The exclusion of the Objector, and the cancellation of the Tender, therefore do not serve as a genuine last resort, but go well beyond what is appropriate and necessary, in breach of Regulation 39 of S.L. 601.03.

6. Fifth Grievance – The cancellation of the Tender falls with the exclusion

6.1 The Tender was cancelled in terms of Article 18.3(a) of the General Rules Governing Tendering[15], on the basis that "*no qualitatively or financially worthwhile tender has been received*". That conclusion rests entirely on the exclusion of the Objector's offer, the financial offer of which was not even evaluated.

6.2 Once it is established that the offer of the Objector was wrongly declared technically non-compliant, the premise upon which the cancellation was based

[14] Tender Document, Section 3 – Specifications/Terms of Reference, Articles 4.2.5 and 4.2.6(vii)-(viii); Section 1 – Instructions to Tenderers, Article 1.2 (eight-week mobilisation period).

[15] General Rules Governing Tendering, Article 18.3(a).

no longer subsists. The cancellation decision must therefore also be annulled, and the Objector's offer reintegrated in the evaluation process, including the evaluation of its financial offer.

7. Refund of the deposit paid

7.1 In view of the aforesaid, the Objector respectfully requests the PCRB to order the refund of the deposit paid in conjunction with this objection, amounting to €5,092.00.

NOWTHEREFORE and for the foregoing reasons, and whilst reserving the right to submit further observations and evidence, the Objector respectfully requests that the PCRB:

i. Annuls and overturns the decision declaring the offer of the Objector technically non-compliant, as communicated by means of the letter dated 23rd October 2026;

ii. Annuls the decision to cancel Tender CT2185/2026, as communicated by means of the same letter;

iii. Orders the reintegration of the Objector's offer in the evaluation process and its re-evaluation, taking into account the literature submitted by the Objector, including the evaluation of its financial offer;

iv. Orders the refund of the deposit made in conjunction with this objection;

v. Gives any appropriate remedy and makes any relevant and necessary declarations in furtherance of the above.

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Doc A.

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Printed on 09:2930.10.2026
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Transfer to a non-APS account

From Account **44114110028**
Status **Sent for processing**

Currency	EUR
Amount	5092.00
To Account	MT55MALT011000040001EURCMG5001H
Payment date	30.10.2026
Payment reference	SL - 13829853 - CT2185/2026
Fee	0.00
Charges	SHA - Charges will be shared
Sort code	
Swift code	MALTMTMTXXX
Beneficiary bank country	MALTA
Beneficiary name	Cashier Malta Government
Verification of payee	Beneficiary name - Close Match
Instant payment	Yes
Beneficiary address line 1	Castille Place
Beneficiary address line 2	
Beneficiary ZIP code	
Beneficiary city	Valletta
Beneficiary country	MALTA