RYAN ELLUL
— ADVOCATES —

Public Contracts Review Board
Notre Dame Ravelin
Floriana
Malta



Today, 11th of November 2026

To the Secretary,

I am writing to you directly at the behest of our client, Ambjent Malta (hereinafter referred to as the "Contracting Authority"), with reference to the objection lodged by LBA Ltd (hereinafter referred to as the "Appellant") concerning the tender entitled *"CT3029/2026 – Tender for a Proposed Construction of a Bird Observatory Including the Formation of 3 No. Brackish Water Ponds for Wader Species at Għadira S-Safra"*.

At the outset, the Contracting Authority categorically rejects the allegations raised by the Appellant in its Reasoned Letter of Objection dated 9th November 2026, particularly the allegation that its technical disqualification was unjustified, disproportionate or contrary to the principles governing public procurement.

The Contracting Authority submits that the procurement procedure was conducted in accordance with the published tender conditions and the applicable Public Procurement Regulations, Subsidiary Legislation 601.03. The decision to declare the Appellant's submission technically non-compliant was based on the failure to satisfy an express requirement of the tender documentation, namely the submission of sketches detailing the proposed accommodation and facilities intended for the Supervisor.

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The Contracting Authority shall address the relevant grounds of objection as follows:

A. Background and the technical evaluation of the tender

The tender concerned the proposed construction of a bird observatory, including the formation of three brackish-water ponds for wader species at Għadira s-Safra. The project is co-financed by the European Union and Ambjent Malta is identified as the final beneficiary of the tender.

The tender was published under reference number CT3029/2026 and required economic operators to submit, amongst other documentation, a Technical Offer addressing the requirements established under Section 1 and the Technical Specifications.

In particular, Section 1, Article 5(C)(i), expressly stipulated the requirements concerning the Technical Offer, including the provision of information relating to the accommodation and facilities intended for the Supervisor.

The Appellant submitted its tender under Tender Identification Number 247178. Following the evaluation, the Department of Contracts communicated, by means of a letter dated 30th October 2026, that the Appellant's submission had been declared technically non-compliant.

The reason communicated was that the Technical Offer failed to include the sketches required in relation to the proposed accommodation and facilities for the Supervisor.

Consequently, the tender was recommended for award to Richard Muscat, Tender Identification Number 247400, for the amount of €638,053.36 excluding VAT, being the cheapest priced tender satisfying the administrative and technical criteria.

B. The express requirement to submit sketches concerning the Supervisor's accommodation

The Contracting Authority respectfully submits that the Appellant's technical disqualification was based on a clear and express requirement contained within the tender documentation.

In this regard, Section 1, Article 5(C)(i), under the requirements concerning the Technical Offer, expressly required the economic operator to provide:

"Accommodation for the Supervisor - The economic operator is to provide sketches and data detailing the characteristics of the accommodation and facilities intended to be provided."

This requirement was not optional, nor was it merely an indicative request for information. It formed part of the documentation required to constitute a complete Technical Offer.

The purpose of this requirement was to enable the Contracting Authority and the Evaluation Committee to assess, at the tender submission stage, the nature, characteristics and suitability of the accommodation and facilities proposed for the Supervisor. The submission of sketches was therefore intended to provide a visual and technical representation of the proposed arrangements, complementing the written description supplied by the tenderer.

The Appellant submitted a separate document entitled "Proposed Accommodation and Facilities for the Supervisor". However, the said document consisted principally of a written description of the proposed accommodation, its facilities and the commitments undertaken by the Appellant.

Whilst the Contracting Authority acknowledges that the Appellant provided certain descriptive information, the submission did not contain the sketches or site-layout drawings expressly required under the tender conditions.

The distinction is fundamental. The requirement was not limited to providing a general undertaking that suitable accommodation would eventually be made available. Rather, the tender expressly required sketches and supporting data detailing the characteristics of the proposed accommodation and facilities.

Accordingly, the fact that the Appellant provided a written description cannot, in itself, be considered sufficient compliance with a requirement that expressly contemplated both descriptive information and graphical representations.

C. The alleged failure to give adequate consideration to the information submitted

In this regard, the Contracting Authority submits that the issue is not whether the Appellant provided some information concerning the proposed accommodation, but whether the information submitted satisfied the specific requirements established by the tender documentation.

The Appellant's document, entitled "Proposed Accommodation and Facilities for the Supervisor", describes various arrangements, including:

1. A clean, secure and suitable working area located within, or immediately adjoining, the Contractor's site office;
2. Dedicated workstation and access to appropriate meeting facilities;
3. Adequate lighting, ventilation, weather protection and electrical supply;
4. Internet connectivity, telephone communication, printing facilities and access to project documentation;
5. Secure storage facilities for drawings, instructions and other project records; and
6. Access to appropriate sanitary and welfare facilities.

The Contracting Authority does not dispute that these matters were addressed in the written submission. Nevertheless, the provision of such information does not dispense with the separate requirement to submit sketches and data detailing the characteristics of the proposed accommodation.

Indeed, the Appellant's own document indicates that the arrangements described were preliminary and that the final arrangements would be established following the award, taking into consideration the approved site set-up, the availability of working areas and the applicable health and safety requirements.

This further demonstrates the importance of the graphical information requested at tender stage, which was intended to allow the Evaluation Committee to assess the proposed arrangements on the basis of the information actually submitted by the tenderer.

The Contracting Authority respectfully submits that the Evaluation Committee was not entitled to disregard an express technical requirement merely because the Appellant had provided other information which it considered sufficient.

To do so would effectively render the requirement for sketches redundant and would undermine the consistency with which the published tender conditions must be applied to all participating economic operators.

D. The principle of proportionality and the alleged absence of competitive advantage

The Contracting Authority acknowledges that proportionality constitutes an important principle in public procurement and that contracting authorities must ensure that decisions taken during the procurement procedure are appropriate and justified in light of the requirements of the tender. Nevertheless, the principle of proportionality cannot be interpreted as permitting a contracting authority to disregard an express requirement of the tender documentation or to accept an incomplete submission after the applicable deadline.

In the present circumstances, the requirement for sketches was expressly incorporated into the Technical Offer requirements. It was therefore incumbent upon every participating economic operator to ensure that its submission complied with the requirements published in the tender document.

The Appellant was afforded the same opportunity as every other tenderer to prepare and submit its Technical Offer in accordance with those requirements. Furthermore, the question of whether the omission would have conferred an actual competitive advantage upon the Appellant is not determinative. The relevant consideration is whether accepting the missing documentation after the submission deadline would compromise the integrity of the procurement procedure and the equal treatment of economic operators.

The Contracting Authority submits that the consistent application of the published requirements is essential to safeguarding transparency, equal treatment and fair competition.

Accordingly, the Appellant cannot rely on the alleged absence of competitive advantage as a justification for disregarding a mandatory requirement which formed part of the tender documentation.

E. The application of Note 3 and the permissibility of clarifications

The Appellant further relies on Note 3 contained in Section 1 of the tender documentation, arguing that the omission of sketches could potentially have been addressed through a clarification, without necessarily amounting to an impermissible rectification of its Technical Offer.

In this regard, Note 3 expressly provides:

"No rectifications shall be allowed. Only clarifications on the submitted information may be requested to be submitted within five (5) working days from notification."

The distinction between a clarification and a rectification is essential.

A clarification is intended to explain or provide further understanding of information which has already been submitted by the tenderer. It cannot be utilised as a mechanism through which a tenderer is permitted to introduce information or documentation which was required to form part of its original submission but was omitted.

In the present case, the sketches required under Section 1, Article 5(C)(i), were not included in the Appellant's original Technical Offer.

Consequently, requesting the Appellant to submit such sketches after the submission deadline would not merely clarify information already provided. It would allow the Appellant to supplement its Technical Offer by introducing a missing element of the mandatory technical documentation.

The Appellant argues that any subsequent sketch would merely illustrate information and commitments already contained in its original submission and would not introduce a new technical solution or alter its contractual obligations.

However, the Contracting Authority submits that the relevant consideration is not whether the subsequently submitted sketches would necessarily alter the substantive nature of the proposed accommodation. Rather, it is whether the sketches themselves constituted information expressly required to be submitted by the prescribed deadline.

The requirement for sketches was independently stipulated in the tender documentation. Their subsequent submission would therefore amount to the provision of documentation which was absent from the original Technical Offer.

Accepting such documentation after the deadline would effectively afford the Appellant an additional opportunity to complete its tender, which was not available to the other participating economic operators.

The Contracting Authority therefore submits that Note 3 cannot be interpreted in a manner that would permit the retrospective completion of a mandatory component of the Technical Offer under the guise of clarification.

F. The adequacy of the evaluation and the reasons for disqualification

The Appellant further challenges the adequacy of the evaluation and the reasons communicated for its technical disqualification.

The Contracting Authority submits that the reason for disqualification was clearly identified in the communication issued by the Department of Contracts dated 30th October 2026.

The said communication expressly identified the missing sketches concerning the proposed accommodation and facilities for the Supervisor and referred to the relevant requirement under Section 1 of the tender documentation.

The Appellant was therefore informed of the specific technical deficiency identified in its submission and was in a position to understand the basis upon which its Technical Offer had been declared non-compliant.

Furthermore, the Contracting Authority submits that the Evaluation Committee was required to assess the Technical Offer on the basis of the requirements published in the tender documentation and the material actually submitted by the Appellant before the applicable deadline.

The fact that the Appellant disagrees with the conclusion reached by the Evaluation Committee does not, in itself, establish that the evaluation was arbitrary, inadequate or contrary to the applicable procurement principles.

The Contracting Authority maintains that the assessment was based on an objective comparison between the documentation submitted and the express technical requirements of the tender.

G. The recommendation for award to Richard Muscat

The Appellant also seeks the annulment or revocation of the recommendation for award in favour of Richard Muscat, Tender Identification Number 247400.

In this regard, Section 1, Article 6.1, of the tender documentation expressly provides that:

"The sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer after satisfying the administrative and technical criteria."

Accordingly, the award mechanism was based on the lowest-price criterion, subject to the prior satisfaction of the administrative and technical requirements.

The recommendation for award to Richard Muscat, in the amount of €638,053.36 excluding VAT, was made on the basis that the tender satisfied the administrative and technical criteria and represented the cheapest priced tender meeting those requirements.

The Contracting Authority submits that the Appellant's technical disqualification must be considered separately from the subsequent application of the price criterion.

Once a tenderer fails to satisfy a mandatory technical requirement, its financial offer cannot be considered as a compliant offer for the purposes of the award criterion.

Consequently, the Appellant's challenge to the recommendation for award cannot succeed merely by questioning the outcome of the financial comparison, particularly where its own Technical Offer was declared non-compliant on a ground expressly provided for in the tender documentation.

The Contracting Authority therefore maintains that the recommendation for award was consistent with the published award criterion and the requirements governing the procurement procedure.

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Concluding remarks

Therefore, and in light of the above, the Contracting Authority respectfully submits that the decision to declare the Appellant's Technical Offer technically non-compliant was justified, proportionate and consistent with the published tender conditions.

The requirement to submit sketches and supporting data concerning the proposed accommodation and facilities for the Supervisor was expressly stipulated under Section 1, Article 5(C)(i), of the tender documentation. The Appellant submitted a written description of the proposed arrangements but failed to include the sketches expressly required.

Furthermore, Note 3 of the tender documentation clearly distinguished between permissible clarifications and prohibited rectifications. The subsequent submission of the missing sketches would effectively amount to supplementing the original Technical Offer after the prescribed submission deadline, thereby potentially compromising the principles of equal treatment, transparency and fair competition.

The Contracting Authority further submits that the recommendation for award to Richard Muscat, Tender Identification Number 247400, in the amount of €638,053.36 excluding VAT, was made in accordance with the published lowest-price award criterion, following satisfaction of the administrative and technical requirements.

In view of the foregoing, the Contracting Authority respectfully requests that the Public Contracts Review Board:

1. *Reject* the grounds of objection raised by LBA Ltd as unfounded;
2. *Confirm* the validity of the decision declaring Tender Identification Number 247178 technically non-compliant;
3. ***Uphold*** the recommendation for award in favour of Richard Muscat, Tender Identification Number 247400, subject to compliance with the applicable legal and tender requirements; and

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4. *Reject* any request for the re-evaluation or retrospective supplementation of the Appellant's Technical Offer.

All rights of the Contracting Authority, Ambjent Malta, are hereby reserved.

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