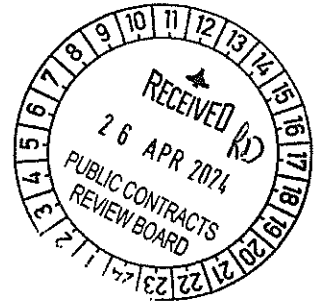


DR JOHN L GAUCI  
& ASSOCIATES

In the Public Contracts Review Board  
Notre Dame Ditch  
Floriana



Today, the 25<sup>th</sup> April 2024

**Re: REFERENCE: CT2323/2023 - Tender for the supply of sterile disposable urinometer with urine collection bag (hereinafter 'the Tender')**

Reasoned Objection by Reactilab Limited (C 56095) (hereinafter 'the Objector')  
Respectfully submits:

Whereas Objector participated in the above-captioned Tender;

Whereas Objector's bid was disqualified as per the notice dated 19<sup>th</sup> April 2024 (hereinafter 'the Exclusion Notice') which is being reproduced verbatim hereunder:

*"Not accepted. Samples when tested by speciality nurses was found that they have a flow problem from the connecting tube to the measuring chamber. Urine does not flow freely but has to be milked out especially with oliguric patients.*

*Since samples falls under note 3 they are not rectifiable. Based on this noncompliance with the specified criteria, we cannot recommend the samples for further evaluation, and they do not meet the standards necessary for our procurement needs.*

*The tender was recommended for award to TID 202945 Drugsales Ltd for the amount of €184,664.36 excluding VAT, these being the cheapest priced tender satisfying the administrative and technical criteria."*

Whereas Objector feels aggrieved by its exclusion from the Tender and is submitting this present Objection.

Whereas the Objector's grievances consist of the following:

### **First Grievance: Misinterpretation of Product Functionality**

The basis for disqualification cited in the notice—that the urine must be "milked out" from the connecting tube to the measuring chamber, particularly in cases involving oliguric patients—is a fundamental misinterpretation of the standard operational procedures inherent to the use of this type of medical equipment. As will be amply demonstrated, Reactilab's product design and functionality require minimal manual adjustment, a common practice across all brands of urinometers. This practice does not signify a flaw in design but is a requisite adjustment by nursing staff to ensure accurate measurement, more so under critical care conditions where patient output is low.

Indeed, this operational necessity should not be misconstrued as a deviation from the expected performance parameters; rather, it is an integral component of the measurement process that ensures precision and reliability, especially in instances of critical patient care wherein urinary output is diminished. The requirement for such manual adjustment is an established procedure to ensure the veracity of the measurement for the purposes of critical patient care.

To assert that such a procedural necessity constitutes a technical non-compliance is to misconstrue the operational realities of clinical practice and to impose an evaluative criterion that is detached from the practical application and use of such medical equipment in a real-world healthcare setting.

### **Second Grievance: Inconsistent Evaluation Criteria**

It appears from the disqualification notice that the evaluation criteria applied may have been inconsistently used without regard for clinical practicality. Both the EU Public Procurement Directives and the Public Procurement Regulations (S.L.601.03), stipulate that the technical specifications shall allow equal access for tenderers and not create unjustified obstacles to the opening up of public procurement to competition.

Indeed Regulation 53(6) stipulates that

(6) Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

Furthermore, Regulation 53 (9) states:

(9) Where a contracting authority uses the option of referring to the technical specifications referred to in sub-regulation 7(b), it shall not reject a tender on the grounds that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender by any appropriate means, including the means of proof referred to in regulation 232, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.


Given that Regulation 53(9) specifically protects the right of a tenderer to demonstrate equivalent satisfaction of the technical specifications, it is imperative that this Board delves into the rationale that led to the disqualification of Reactilab Ltd's tender on the basis that the product requires manual intervention, an aspect which is both a standard practice and potentially characteristic of comparable products in the market.

It is therefore submitted that the technical grounds upon which Reactilab Ltd's tender was disqualified are not sufficiently substantiated. The allegation of non-compliance disregards the practical reality of the clinical use of urinometers.

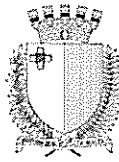
It is also very relevant to ascertain whether the evaluation committee applied the same standard uniformly to all tender submissions and that public procurement process was conducted in accordance with the rule of law, ensuring equal treatment of all economic operators.

In view of the above, and other submissions and evidence to be presented to this Board, including the production of expert witnesses on the subject, the Objector humbly requests this Board:

1. to overturn the decision leading to its exclusion from the Tender,
2. orders the reinstatement of Objector in the Tender procedure, and
3. orders that the deposit being paid in conjunction with this Objection to be refunded to Objector.

  
Dr. John L. Gauci LL.D

DIPARTIMENT TAL-KUNTRATTI  
Notre Dame Ravelin  
Floriana FRN1600 – MALTA



DEPARTAMENT OF CONTRACTS  
Notre Dame Ravelin  
Floriana FRN1600 – MALTA

Telephone: (0356) 237810/12  
e-Mail: info.contracts@gov.mt  
Fax: (0356) 2124 7681  
e-Mail: info.contracts@gov.mt

19<sup>th</sup> April 2024

Reactilab Ltd  
TID 203032

REFERENCE: CT2323/2023

SUBJECT: Tender for the supply of sterile disposable urinometer with urine collection bag

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the tender submitted by your company was found to be technically non-compliant for the following reason:

***Not accepted. Samples when tested by speciality nurses was found that they have a flow problem from the connecting tube to the measuring chamber. Urine does not flow freely but has to be milked out especially with oliguric patients. Since samples falls under note 3 they are not rectifiable. Based on this non-compliance with the specified criteria, we cannot recommend the samples for further evaluation, and they do not meet the standards necessary for our procurement needs.***

The tender was recommended for award to TID 202945 Drugsales Ltd for the amount of €184,664.36 excluding VAT, these being the cheapest priced tender satisfying the administrative and technical criteria.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: [info.pcrb@gov.mt](mailto:info.pcrb@gov.mt) by noon of Monday 29<sup>th</sup> April 2024 against a deposit of €744.00.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

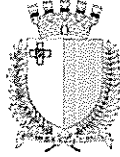
The official schedule can be accessed on the website: [www.etenders.gov.mt](http://www.etenders.gov.mt).

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely,

Gianella Bonnici  
f/Director General (Contracts)

DIPARTIMENT TAL-KUNTRATTI  
Notre Dame Ravelin  
Floriana FRN1600 – MALTA



DIPARTIMENTU TAL-KONTRATTI  
Notre Dame Ravelin  
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TELEPHONE: (0356) 237820/21/2  
e-Mail: info.contracts@gov.mt  
Fax: (0356) 2124 7681  
e-Mail: info.contracts@gov.mt

19<sup>th</sup> April 2024

Reactilab Ltd  
TID 203030

REFERENCE: CT2323/2023

SUBJECT: Tender for the supply of sterile disposable urinometer with urine collection bag

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the tender submitted by your company was not successful since the criteria for award of this tender was the cheapest priced offer satisfying the administrative and technical criteria.

The tender was recommended for award to TID 202945 Drugsales Ltd for the amount of €184,664.36 excluding VAT, this being the cheapest priced tender satisfying the administrative and technical criteria.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: [info.pcrb@gov.mt](mailto:info.pcrb@gov.mt) by noon of Monday 29<sup>th</sup> April 2024 against a deposit of €744.00.

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The official schedule can be accessed on the website: [www.etenders.gov.mt](http://www.etenders.gov.mt).

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely,

Gianella Bonnici  
f/Director General (Contracts)

## Transfers - To Other Banks (SEPA)

Fri, 26 Apr 2024 12:24:12 GMT

For more information on SEPA transfers click [here](#).  
You may print a copy of this information by clicking on the printer icon above.

### CONFIRM DATA

Accounts	275409101 - Current account in Euro
Beneficiary's IBAN	MT55MALT011000040001EURCMG5001H
Beneficiary name	Cashier Malta Government
Amount	744 EUR
Description for payer	OBJECTION RE CT2323/2023
Additional information	Tender for the supply of Sterile Disposable Urinometer with Urine Collection Bag CT2323 2023
To transfer	Immediately
Starting on	
Ending on	

### CHARGES

SEPA Processing Fee	1.00 EUR
<b>Total Amount To Be Debited</b>	<b>745.00 EUR</b>

 YOUR REQUEST WAS REGISTERED (145509496)

Pending for Bank Approval. Your account will be debited once the payment is vetted by the Bank.