

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 2164 – CT2271/2024 – Tender for the Supply, Installation and Commissioning of QTY 2, Mobile Therapeutic Machines with Reduced Environmental Impact**

**14<sup>th</sup> October, 2025**

The Board,

Having noted the Letter of Objection filed by Dr Clement Mifsud Bonnici and Dr Calvin Calleja acting for and on behalf of **Europharma Ltd.** (hereinafter referred to as *“the Appellant”*) filed on the 1<sup>st</sup> September, 2025;

Having also noted the Reasoned Letter of Reply filed by Dr Alexia J Farrugia Zrinzo and Dr Leon Camilleri acting for and on behalf the Central Procurement and Supplies Unit (C.P.S.U.) (hereinafter referred to as *“the Contracting Authority”*) and Dr Audrey Marlene Buttigieg Vella acting for and behalf the Department of Contracts (D.o.C) filed on the 10<sup>th</sup> September, 2025;

Having invited the parties to produce and summon their respective witnesses, both parties declared that they had no witnesses summoned to testify and indeed they were relying on the documentation submitted in the acts of the proceedings and their respective final oral submissions.

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 13<sup>th</sup> October, 2025 hereunder-reproduced.

#### **Minutes**

Case 2164 Objection – CT2271/2024 – Tender for the Supply, Installation and Commissioning of QTY 2, Mobile Therapeutic Machines with Reduced Environmental Impact.

The tender was issued on the 5<sup>th</sup> December, 2024, and the closing date was the 18<sup>th</sup> February, 2025.

The estimated value of the tender, excluding VAT, was €220,339.60.

On 1<sup>st</sup> September 2025 Europharma Ltd. (C1822) lodged an appeal against Central Procurement and Supplies Unit (CPSU) – the Contracting Authority, and the Recommended Bidder, Associated Equipment Ltd.(C9340) in accordance with Regulation 270 of the Public Procurement Regulations.

A deposit of €848.00 was paid.

There were Two bids.

On the 13<sup>th</sup> October, 2025, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Dr Ana Thomas and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Europharma Ltd. (C1822).**

Dr Clement Mifsud Bonnici – Legal Representative. (online)

Dr Calvin Calleja –Legal representative.

Mr Michael Peresso – Company Representative.

Mr Adrian Azzopardi – Company Representative.

**Contracting Authority – Central procurement and Supplies Unit. (CPSU).**

Dr Leon Camilleri – Legal Representative.

Ms Karen Scicluna – Chairperson.

Mr Stephen Mercieca – Secretary.

Dr Stephan Laspina – Evaluator.

Mr Jesmond Debono – Evaluator.

Mr Jesmond Farrugia – Evaluator.

Ms Marika Cutajar – Manager of Engineering Procurement.

**Recommended Bidder – Associated Equipment Ltd. (C9340).**

Mr. Keith Vassallo – Company Representative.

**Opening Statements.**

Dr Vincent Micallef, Chairman of the Public Contracts Review Board, welcomed the parties present — namely, the Appellant, Europharma Ltd., the Contracting Authority, Central Procurement and Supplies Unit. (CPSU) and the Recommended Bidder, Associated Equipment Ltd.

**Initial Submissions.**

The Appellant declares that he has no witnesses to present in this appeal. The Contracting Authority likewise declares that it has no witnesses to present. Both parties therefore proceeded to their final submissions.

The Chairman dictated the following statement:

*“The Appellant declares that it has no witnesses to summon for this appeal. The Contracting Authority also declares that it has no witnesses to summon. Therefore, both parties shall proceed to their final submissions.”*

**Final Submissions.**

**Final Submissions by Dr Calvin Calleja (Appellant).**

Dr Calleja stated that the tender concerned two mobile therapeutic machines, with an estimated value of €149,000. There were two offers: one from the awarded bidder, which was €215,000 higher than the estimated procurement value, and another from the Appellant, Europharma Ltd., which was 60% cheaper than the awarded bidder’s offer.

According to the rejection letter, the Appellant’s offer was deemed non-compliant because two items of information were missing from the Technical Offer Form: the identity of the manufacturer and the model number.

Dr Calleja argued that this was a clerical error, since the same information had been included elsewhere — in the Declaration of Conformity amendment. He stated that the manufacturer was Fresenius Kabi, and the model number 9008041 / 9008041C, a well-known German make.

He further contended that the Tender Evaluation Committee already had this information within the original bid. The Appellant should not have been rejected merely because the information appeared in Document B rather than Document A.

The Declaration of Conformity is issued by the manufacturer to confirm that the product complies with relevant EU Directives and Regulations. The Technical Offer Form, by contrast, is a self-declaration required by the Contracting Authority and, in Malta, is often completed by the distributor. In this case, Europharma's Declaration of Conformity was signed by the manufacturer. Since the Contracting Authority required submission of the manufacturer's original literature identifying the product offered, the Evaluation Committee had a duty to examine all submitted documents.

Dr Calleja referred to the case *Signal 8 Security Services Ltd. vs Environment and Resources Authority*, cited by the Contracting Authority. He argued that this case was not comparable: in Signal 8, the appellant failed to provide mandatory photos, whereas in the present case, the required information was included in the bid. The Evaluation Committee could have requested clarification as to where this information appeared.

He also cited Court of Appeal Case 49/2018 (*Rock Cut*), in which the Court ruled (paragraph 14) that an offer should not be disqualified if the required information is contained within the bid, even if not in the prescribed section. In that case, the bidder failed to indicate where the information could be found; in this case, Europharma did indicate it.

Further references were made to *Bonnici 235/2018* (para. 27), *Cassar Petroleum 362/2014*, and *AIB Insurance Brokers 237/2021*, where the courts held that the principle of self-limitation is not violated if a late document merely clarifies, without altering, the original offer.

Finally, Dr Calleja mentioned *PCRB Case 2127* concerning finishing works at Ta' Kandja, in which the appellant argued that an OHS certification could have been obtained from the public domain. In contrast, he stated, Europharma is not asking the Committee to search for

missing information, since the information was already within the submitted bid. For these reasons, it would be logical and just for the Board to uphold Europharma's appeal

**Final Submissions by Dr Leon Camilleri (for the Contracting Authority).**

Dr Camilleri argued that what may seem logical to the Appellant is inconsistent with the *General Rules Governing Tenders* (GRGT). Had the Appellant completed the Technical Offer Form correctly, the present issue would not have arisen. The offer is prepared by the economic operator, and it is their responsibility to ensure full compliance; the Contracting Authority is not participating in the bidding process.

The Appellant admits that the Technical Offer Form omitted the brand, model number, and catalogue reference, but claims this information appears in the Declaration of Conformity.

Dr Camilleri referred to Clause 16.3 of the GRGT, which provides that:

*“Literature may also be requested with the technical offer so that the Evaluation Committee can corroborate the technical compliance of the offers.”*

He emphasised that the supporting literature serves only to corroborate what is declared in the Technical Offer Form (Note 3).

Regarding the *Signal 8* case, although the subject matter was different, the principle remains the same: mandatory information must be supplied. As stated in Clause 5.1.6,

*“All tenderers are requested to submit the manufacturer and model of the equipment offered; failing this, the submissions/quotations will be ignored and refused irrevocably.”*

Therefore, the Technical Evaluation Committee had no option but to disqualify the Appellant, as an essential element of the offer was missing.

Dr Camilleri added that the Appellant's emphasis on price was irrelevant, since the Committee must select the *cheapest compliant* offer — and the Appellant's offer was not compliant. Accepting it would have breached the principles of equality and self-limitation. The Technical Offer Form must be corroborated by the literature; missing information could neither be rectified nor clarified after submission.

## **Conclusion of the Hearing.**

The Chairman invited the representative of the recommended bidder to comment. With no further submissions, Dr Vincent Micallef thanked all parties, and the session was formally concluded.

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## **Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 13<sup>th</sup> October, 2025.

Having noted the objection filed by Dr Clement Mifsud Bonnici and Dr Calvin Calleja for and on behalf of Europharma Ltd. (hereinafter referred to as "*the Appellant*") on the 10<sup>th</sup> September, 2025, refers to the claims made by the same Appellant with regard to the tender of reference CT2271/2024 listed as case No. 2164 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Dr Clement Mifsud Bonnici and Dr Calvin Calleja

Appearing for the Contracting Authority:

Dr Alexia J. Farrugia Zrinzo and Dr Leon Camilleri

Whereby, the Appellant contends that:

The Appellant is aggrieved by the decision of the Department of Contracts and the Ministry for Health (the "Contracting Authority") of 22<sup>nd</sup> August, 2025 to reject the Appellant's bid and to award the Tender to Associated Equipment Ltd (TID 222380) (the "Recommended Bidder").

**The reason for this appeal is that the information that the Contracting Authority claims to have been missing from the Technical Offer Form exists elsewhere in the bid.**

Before delving into the grounds of objection, the Appellant sets out the events leading up to the Contracting Authority's decision and this present objection.

## A. FACTS

On 5<sup>th</sup> December 2024, the Contracting Authority published the Tender with the aim of identifying a suitable contractor to supply, install, and commission two mobile therapeutic machines with a reduced environmental impact.

The Tender had an estimated procurement value of €169,491.53 and was to be awarded to the tenderer submitting the cheapest priced offer which satisfies the administrative and technical criteria. The deadline for submission of bids was 18<sup>th</sup> February, 2025.

Two economic operators participated in this Tender, one of which was the Appellant, EUROPHARMA Ltd, a renowned local company offering cost-effective and high-quality pharmaceuticals, devices, and diagnostic products and aids across several industries.

The Appellant submitted a bid with a financial value of €243,287.44, which was approximately €141,000 cheaper than the bid submitted by the Recommended Bidder, which in turn had a financial value of €384,321.71, exceeding the estimated procurement value by €214,830.

The Technical Offer Form required prospective bidders to write down the brand and the model number which the Appellant inadvertently omitted.

However, the information requested by the Contracting Authority already exists in the bid and could have been identified by the Tender Evaluation Committee (the "TEC"). For this Board's ease of reference, the information is the following:

- ***Manufacturer: Fresenius Kabi***
- ***Model Number: 9008041, 9008041C***

On the 22<sup>nd</sup> August, 2025, the Appellant was informed by means of a letter from the Contracting Authority that the tender submitted by it was not successful because it was considered to be technically non-compliant as: *"In the Technical Form, the tenderer failed to indicate the manufacturer and model number of the machine that is being offered. The technical form falls under Note 3 and is therefore not rectifiable. Offer not compliant."*

In the same letter, the Contracting Authority informed the Appellant of its decision to award the Tender to the Recommended Bidder.

The Appellant is aggrieved by the Contracting Authority's decision of the 22<sup>nd</sup> August, 2025 as shall be explained in the upcoming section.

**B. THE GRIEVANCE: THE MANUFACTURER AND THE MODEL NUMBER OF THE APHERESIS MACHINE EXISTS ELSEWHERE IN THE BID**

The Appellant submits that the TEC's decision to disqualify its bid on the basis of the fact that information was included in one document and not another is unlawful and disproportionate.

It is not contested that the Appellant inadvertently omitted to include the manufacturer and the model number of the main equipment offered in the Technical Offer Form. However, the information that the Contracting Authority requested was provided by the Appellant in the literature that was submitted as part of its bid.

Therefore, neither the Contracting Authority nor the TEC can plausibly claim that the information was not provided

By its decision, the Contracting Authority has adopted a form-over-substance approach that has been denounced time and time again by the PCRB and by the Court of Appeal.

The decision to disqualify a bid on the basis that the information that would have been included in that document could have been obtained by the TEC elsewhere in the bid is disproportionate and to the detriment of the Contracting Authority itself which would end up paying €141,000 more because of a form-over-substance approach.

There is certainly no advantage that can be claimed by the other bidder-currently the Recommended Bidder to have been bestowed by the TEC upon the Appellant if the TEC were to identify the manufacturer and the model number from elsewhere in the Appellant's bid.

If, for the sake of argument, the TEC could not identify or was in doubt as to whether it had the correct information in hand, the proportionate measure would have been to request, by means of a clarification, the bidder to identify the manufacturer and the model number from the documentation already submitted as part of its bid.

For this reason, the Appellant humbly requests the Board to uphold this grievance and to revoke the Contracting Authority's decision dated 22 August 2025.

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This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on 23<sup>rd</sup> July 2024 and its verbal submission during the hearing held on 10<sup>th</sup> September, 2025 in that *inter alia* it held:

A call for tenders for the for the Supply Installation and Commissioning of Qty 2 Mobile Therapeutic Machines with Reduced Environmental Impact was issued on the 5th of December 2025.

A number of bids were submitted and following an evaluation process the tender was recommended for award to Associated Equipment Limited (the recommended bidder), having the cheapest offer satisfying all the required specifications.

The Objector's offer was rejected on the basis of technical compliance, with the reason being the below:

*"In the Technical Form, the tenderer failed to indicate the manufacturer and model number of the machine that is being offered. The technical form falls under Note 3 and is therefore not rectifiable. Offer not compliant".*

The objector felt aggrieved with the decision of the evaluation committee and filed its objection.

DOC and CPSU humbly disagree with the grievance raised and are hereby presenting their reply.

### **Submissions**

In its sole grievance, the objector states that the information which was missing from the Technical Offer Form could be found elsewhere in the tender, and that is, in the Literature presented.

As this Honourable Board will notice, the objector left the most important part of the technical offer form, which asks for the manufacturer and model of the offered product completely blank. Moreover, it left completely blank most of the boxes of the technical offer form questionnaire;

DOC and CPSU submit that the offer is the technical offer form and not the literature. By leaving the technical offer form blank, the objector in reality offered nothing;

Clause 16.3 of the **General Rules Governing Tenders** states that:

*"Submissions which have qualified under Part 2 shall have their technical offer evaluated to ensure*

*compliance with Clause 5(C) of the Instructions to Tenderers. In order to be considered for this Evaluation, tenderers must submit a completed Technical Offer. Literature may also be requested with the technical offer so that the Evaluation Committee will corroborate the technical compliance of the offers”.*

Without prejudice to the possibility of requesting rectifications *vis-a-vis* Literature, if the Literature submitted with the Technical Offer does not corroborate the offer submitted, the tenderer shall be disqualified.

The General Rules clearly state that in order to be considered for technical evaluation tenderers must submit a complete technical offer. Due to the fact that the objector failed to present a technical offer form duly filled in, the evaluation committee was duty bound not to consider the objector's offer;

The General Rules makes it clear that it is discretionary for the contracting authority to ask for the presentation of literature and if such request is made, Literature should only be presented to corroborate the technical offer form and not to replace it! If the technical offer form was left blank, what will the literature corroborate?

Moreover, DOC and CPSU emphasize that the technical offer form is a note 3 document and thus any amendment to it should not be permitted, if it was left blank, it could not be amended in any way. This has also been acknowledged by the court of appeal in the judgment *Signal 8 Security Services Malta Limited v. Environment and Resources Authority* decided on the 3<sup>rd</sup> of September 2024, which stated that:

*“F’dan il-każ, il-procedura ta’ rettifika ma setgħetx però tigi mhaddma u dan għaliex ir-ritratti inkwistjoni ma kienux klassifikati bhala letteratura teknika, u minflok kellhom jittressqu bhala parti integrali mill-offerta teknika — li skont id-dokument tas-sejba kienet tagħa’ fil-kategorija ta’ Note 3 u mhux ta’ Note 2 5(C)(i) tal-envel tagsima tad-dokument tas-sejba, kif ukoll l-estratt ta’ taqsima BS tal-formula Tenderer’s Technical Offer - Organisation & Methodology, f’paragrafu 7 ta’ din is-sentenza). Anke l-appellanti stess jidber li qiegħda taqbel ma’ dan, għaliex bija u tfassal l-appell stqarret li: «tali informazzjoni, bħar ritratti li gegħdin jigu msemmija f’dan il-każ giet klassifikata taht 'Note 3'.*

*Kemm mid-dokument tas-sejba nnifsu (ara Notes to Clause 5 Spagna 5 tad-dokument tas-sejba), kif ukoll anke fil-procurement policy li qiegħda tant tishaq dwarha l-appellanti (f’pagna 4 ta’ Procurement Policy Note #40), nsibu mnizzel li, fil-każ ta’ dawk ir-rekwiziti li skont id-dokumenti tal-akkwist jaqgħu fil-kategorija ta’ Note 3, l-awtorità kontraenti ma tistax titlob rettifiki, u [o]nly clarifications on the submitted information may be requested.*

*Għar-ragunijiet li digà ngbataw, il-Qorti jidbrilha li f'dan il-każ, il-procedura ta' kjarifika ma setghet tbiddel xejn minn-nuqqas tal-appellanti li tressaq ritratt jew xbieha tas-security clip fuq l-ingravajjet kif mitlub fid-dokumenti tal-akkwist.*

*Fi kliem iehor, bil-kjarifika jew minghajrha, fl-offerta teknika tal-appellanti xorta wahda ma kienx sejjer ikun hemm ritratt jew xbieha tas-security clip mitluba, u għalhekk, skont ir-regoli tas-sejba, il-kumitat tal-evalwazzjoni ma setax jagħtiba l-punti għall-kriterju B5(a), bil-konsegwenza li l-iskwalifika tal-offerta tagħha kienet inevitabli.*

*Thares minn fejn thares, ma jirriżultax li l-ilmenti tal-appellanti huma misthoggja, u għalhekk għednin jigu miħbuda għal kollox”.*

Furthermore, DOC and CPSU submit that the argument that this Board should adopt the substance over form approach is indeed not applicable to this case since there is no substance to consider in the technical offer form!;

The Court of Appeal in the judgment in the names *Servizzi Malta vs Direttur tal-Kuntratti* decided on the 15<sup>th</sup> of July, 2018 the Court of Appeal stated that: *“ic-cirkostanzi fejn il-principju ta proporzjonalità ma jballix li offerta titwarrab minhabba irregolarità huma "limitati" u "eccezzjonali”;*

It is very clear that this present case is not one of the limited and exceptional cases where the offer should be saved and the evaluation committee was correct in rejecting the offer.

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This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider Appellant’s grievances as follows in their entirety.

#### *1. Introduction*

The Board convened to hear and determine the appeal lodged by EUROPHARMA Ltd (“the Appellant”) against the decision of the Contracting Authority, communicated on the 22<sup>nd</sup> August, 2025, whereby the Appellant’s tender was deemed technically non-compliant for failing to indicate the manufacturer and model number of the machines offered in the Technical Offer Form, which was classified as a Note 3 document and therefore non-rectifiable under the Tender rules.

The Appellant contends that the required information was present elsewhere in the tender documentation and, accordingly, that the Technical Evaluation Committee's ("TEC") decision constitutes an unlawful *form-over-substance* approach, leading to an unnecessarily costly outcome for the Contracting Authority.

## 2. *Factual Background*

2.1. On 5<sup>th</sup> December, 2024, the Contracting Authority issued a Tender for the supply, installation, and commissioning of two mobile therapeutic machines with reduced environmental impact, with an estimated procurement value of €169,491.53, to be awarded to the cheapest technically compliant offer.

2.2. Two bids were received. The Appellant submitted a bid of €243,287.44, approximately €141,000 cheaper than the Recommended Bidder's €384,321.71.

2.3. The Technical Offer Form required tenderers to indicate the manufacturer and model number of the machines offered. The Appellant left these fields blank, though identical information was contained elsewhere in the submitted technical literature.

2.4. On 22<sup>nd</sup> August, 2025, the Appellant was informed that its tender had been declared non-compliant and that the contract would be awarded to the Recommended Bidder.

2.5. The Appellant subsequently lodged its objection before this Board, asserting that the TEC's decision was disproportionate and unlawful.

## 3. *Contracting Authority's Reasoned Reply*

The Board carefully considered the Reasoned Letter of Reply filed by the Contracting Authority (DOC and CPSU) on 10<sup>th</sup> September, 2025, and the verbal submissions made at the hearing on the 13<sup>th</sup> October, 2025, in which the following points were emphasised:

3.1. The Technical Offer Form is the primary and mandatory document through which the technical compliance of an offer is assessed. The accompanying literature is ancillary and is intended solely to corroborate the entries in the Technical Offer Form.

3.2. By leaving the Technical Offer Form largely blank, including the fields for manufacturer and model number, the Appellant effectively submitted no technical offer. Clause 16.3 of the *General Rules Governing Tenders* requires tenderers to submit a completed Technical Offer for evaluation. Literature cannot replace the Technical Offer Form.

3.3. The Technical Offer Form is designated as a Note 3 document, which the Rules expressly classify as non-rectifiable. Any omission therein cannot be corrected post-submission, as confirmed in the Court of

Appeal judgment in *Signal 8 Security Services Malta Limited v. Environment and Resources Authority* (3<sup>rd</sup> September, 2024). The Court held that failure to submit information in a Note 3 document cannot be remedied by reference to ancillary documentation.

3.4. The Contracting Authority further submitted that adopting a *substance-over-form* approach is inapplicable where there is, in fact, no substantive entry in the Technical Offer Form to consider. This aligns with the judgment in *Servizzji Malta v. Direttur tal-Kuntratti* (15<sup>th</sup> July, 2018), which emphasised that proportionality cannot save an offer where procedural irregularities fall outside the narrow category of “*limited and exceptional cases.*”

3.5. Therefore, the Contracting Authority contends that the TEC correctly rejected the Appellant’s offer, and that reliance on literature as a substitute for a blank Technical Offer Form would contravene the principles of equal treatment, transparency, and legal certainty.

### 3.6. Final Submissions of the Parties

During the sitting held on the 13<sup>th</sup> October, 2025, both parties were afforded the opportunity to make their final oral submissions before the Board.

Counsel for the Appellant, EUROPHARMA Ltd, reiterated that the omission to indicate the manufacturer and model number in the Technical Offer Form was merely formal in nature and did not prejudice the evaluation process, since such information was clearly and unambiguously available within the supporting technical literature annexed to the offer. It was further submitted that the TEC ought to have adopted a *substance-over-form* approach in assessing compliance, particularly in light of the fact that the Appellant’s offer was substantially more economical than that of the Recommended Bidder. The Appellant maintained that the decision to declare its offer technically non-compliant was disproportionate, unduly rigid, and contrary to the overarching principles of good administration and sound financial management that govern public procurement. Counsel therefore requested the Board to annul the decision of the Contracting Authority and to direct that the Appellant’s offer be reinstated for evaluation.

On the other hand, Counsel for the Contracting Authority argued that the technical evaluation process must adhere strictly to the formal requirements prescribed in the Tender documentation. It was emphasised that the Technical Offer Form constitutes the fundamental and mandatory instrument through which compliance is assessed, and that any failure to populate mandatory fields, particularly those designated under a Note 3 classification, renders an offer non-compliant and incapable of rectification. The Contracting Authority stressed that permitting tenderers to rely on information found elsewhere in ancillary literature would undermine the principles of transparency, equal treatment, and legal certainty, which are indispensable to the integrity of the procurement process. Counsel accordingly urged the Board to dismiss the appeal in its entirety and to uphold the decision of the Contracting Authority.

#### 4. Considerations of the Board

##### 4.1. On the Primacy of the Technical Offer Form

The Board notes that the Technical Offer Form is a core instrument of tender evaluation, designed to standardise submissions and allow a fair and transparent comparison among competing offers. The General Rules and Instructions to Tenderers explicitly require completion of this form to satisfy technical compliance. Information scattered in ancillary documents cannot substitute for a mandatory entry in a designated evaluation form.

##### 4.2. On Note 3 and Non-Rectifiable

The Board reiterates that the Technical Offer Form is a Note 3 document. Both the Tender documents and jurisprudence (*Signal 8 Security Services*) make clear that non-compliance in such a form is incapable of rectification, even if the required information exists elsewhere. Any other approach would undermine the procedural certainty and uniformity required in public procurement.

##### 4.3. On the Principle of Proportionality

While the Board acknowledges the Appellant's argument invoking proportionality and *substance-over-form*, it emphasises that proportionality cannot override mandatory procedural requirements, particularly where the omission is complete. As noted in *Servizzji Malta*, the exceptions to the strict application of procedural rules are rare and narrowly construed.

##### 4.4. On Literature as Corroboration Only

The Board agrees with the Contracting Authority's position that literature is intended solely to corroborate the Technical Offer Form. Where the form is left blank, there is nothing to corroborate, and the TEC's assessment is therefore justified. Allowing otherwise would breach equal treatment by effectively allowing one bidder to submit an incomplete form while others fully comply.

##### 4.5. On Financial Consequences

The Board recognises the Appellant's point that the Contracting Authority pays more by rejecting its bid. However, procurement law prioritises compliance and equal treatment over cost and cannot countenance the acceptance of incomplete offers simply to achieve lower expenditure.

### 5. Conclusion

Having carefully considered the facts and submissions put forward by the Appellant, together with the Reasoned Letter of Reply and oral arguments presented by the Contracting Authority, the Tender documentation and the applicable General Rules, and the relevant jurisprudence, including the judgments in *Signal 8 Security Services* and *Servizzji Malta*, the Board finds that the Appellant's omission to complete the Technical Offer Form amounts to a material non-compliance with a Note 3 requirement, which, by virtue of its classification, is expressly non-rectifiable.

Accordingly, the appeal is unfounded in both law and fact, and the decision of the Contracting Authority to reject the Appellant's tender was entirely justified. The principle of proportionality and the *substance-over-form* argument cannot apply in circumstances where no substantive information was provided in the mandatory form. The Board therefore confirms the Contracting Authority's decision dated 22<sup>nd</sup> August, 2025, with the administrative deposit paid by the Appellant to be forfeited in accordance with the applicable regulations.

### 6. Decision

Therefore, **this Board** does not uphold Appellant's grievances.

For the reasons set out above, the Board hereby:

1. Rejects the appeal filed by EUROPHARMA Ltd in its entirety;
2. Confirms the decision of the Contracting Authority and the evaluation of the TEC dated 22<sup>nd</sup> August, 2025; and
3. Orders that the administrative deposit paid by the Appellant be forfeited and not to be reimbursed in accordance with the applicable regulations.

**Dr Vincent Micallef**  
Chairman

**Mr Lawrence Ancilleri**  
Member

**Dr Ana Thomas**  
Member