

PUBLIC CONTRACTS REVIEW BOARD

Case 2160 – CFT021-3588/24 – (CPSU 5792/24) – Tender for the Supply of University of Wisconsin Solution

29th October 2025

The Board,

Having noted the letter of objection filed by Dr Francis Cherubino acting for and on behalf of Cherubino Limited, (hereinafter referred to as the appellant) filed on the 28th August 2025;

Having also noted the joint letter of reply filed by Dr Alexia Farrugia Zrinzo and Dr Leon Camilleri acting for the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 9th September 2025;

Having heard and evaluated the testimony of the witness Dr Ian Ellul (Evaluator) as summoned by Dr Matthew Paris acting for Cherubino Limited during the second hearing;

Having noted the additional grievance filed by Dr Matthew Paris and Dr Zackariah Esmail on behalf of Cherubino Limited on the 7th October 2025, following the Board's decree dated 7th October 2025 (first hearing) authorising the submission of a third (additional) grievance;

Having also noted the letter of reply to the third (additional) grievance filed by Dr Alexia J Farrugia Zrinzo and Dr Leon Camilleri on behalf of CPSU on 10th October 2025;

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 7th October 2025 (first hearing) and 14th October 2025 (second hearing) hereunder-reproduced.

Minutes

Case 2160 Objection -- CFT021 – 3588/24 CPSU5792/24 – Tender for the Supply of University of Wisconsin Solution.

The tender was issued on the 28th of May 2024, and the closing date was the 18th of June 2024.

The estimated value of the tender, excluding VAT, was €137,200.00.

On 28th August 2025 Cherubino Limited (C3677) lodged an appeal against Central Procurement and Supplies Unit (CPSU) – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

A deposit of €490.00 was paid.

This was the only bid.

On the 7th of October 2025, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Cherubino Limited. (C3677)

Dr Matthew Paris – Legal Representative.

Dr Francis Cherubino – Company Representative.

Contracting Authority – Central Procurement and Supplies Unit (CPSU)

Dr Leon Camilleri - Legal Representative.

Dr Alexia J Farrugia Zrinzo –Legal Representative.

Mr. Juan Zarb Cousin-Chairperson.

Dr. Ian Ellul – Evaluator (reported sick)

Ms. Romina Debono-Secretary.

Recommended Bidder – Not Applicable.

Opening Statements.

Mr. Kenneth Swain, Chairman of the Public Contracts Review Board (PCRB), formally welcomed the attendees: the Appellant, Cherubino Limited, and the Contracting Authority, Central Procurement and Supplies Unit (CPSU).

Initial Submissions:

Initial Submissions by Dr. Matthew Paris (Appellant)

Dr. Paris stated that Cherubino was excluded on the grounds that it had failed to complete the requested information, whereas the Appellant maintained that all required details had, in fact, been provided.

He explained that in Part 1, there was no valid reason for exclusion, as no page number or paragraph reference had been indicated. In Part 2, a page number was only required in cases where several pages of documentation were submitted; however, in this instance, the requested literature was contained on a single page. Therefore, the exclusion was not justified, as it contradicted the requirements set out in the technical offer form.

Initial Submissions by Dr. Leon Camilleri (Contracting Authority)

Dr. Camilleri explained that the technical offer form corresponds to Note 3 and must be completed correctly. Where “details” were requested, the Appellant had simply written “*as requested*”, and where a reference was required, the Appellant had stated “*see attached literature*”. The Evaluation Committee, therefore, acted correctly when it decided to exclude this bid.

Intervention by the Chairman and Request for a new grievance by the Appellant

The Chairman, Mr. Kenneth Swain, reported that the sole evaluator from the Evaluation Committee had provided a medical certificate at 6:57 a.m. on that day, indicating unavailability due to health

reasons. Mr. Juan Zarb Cousin, Chairman of the Evaluation Committee, and Ms. Romina Debono, Secretary of the Committee, were in attendance at the hearing.

Mr. Swain asked whether the Appellant wished to question these individuals or preferred to wait for the evaluator's presence. He also remarked that, had the evaluator sent the medical notice the previous evening, the hearing would have been postponed, particularly since there was only one evaluator involved.

Dr. Paris stated that he had not been aware that there was only one evaluator, and requested that a new grievance to be submitted, arguing that, according to the Standard Operating Procedures (SOPs) of the Department of Contracts, there should be at least three evaluators.

The Chairman concluded that, under these circumstances, the hearing would have to be suspended. A new grievance would be accepted by the Board by Wednesday, 8th October 2025, and the CPSU would be permitted to reply by Friday, 10th October 2025.

Adjournment

The Board scheduled the continuation of the appeal hearing for Tuesday, 14th October 2025, at 11:00 a.m.

Conclusion of the First Hearing

With no further arguments presented, the Chairman, Mr. Kenneth Swain, thanked all parties and formally concluded the session.

Second Day of Hearing– 14th October 2025.

Minutes – 14th October 2025.

On the 14th of October 2025, at 11:00 a.m., the Public Contracts Review Board (PCRB) reconvened to continue considering the appeal, following the first hearing held on the 7th of October 2025.

The Board was composed of:

- Mr. Kenneth Swain – Chairman
- Dr Ing. Damien Gatt – Member (online)
- Mr. Lawrence Ancilleri – Member

Attendance:

The attendance for this public hearing was as follows:

Appellant – Cherubino Limited. (C3677).

Dr Matthew Paris – Legal Representative.

Dr Zack Esmail – Legal Representative.

Dr Kayleigh Borg – Legal representative.

Dr Francis Cherubino – Company Representative.

Dr David Cherubino – Company Representative.

Contracting Authority – Central Procurement and Supplies Unit (CPSU).

Dr Leon Camilleri - Legal Representative.

Ms. Veronika Sytnyk – Trainee Representative.

Mr. Juan Zarb Cousin-Chairperson

Dr. Ian Ellul – Evaluator.

Ms. Romina Debono-Secretary.

Recommended Bidder – Not Applicable.

Initial Submissions:

Opening Statements.

Mr. Kenneth Swain, Chairman of the Public Contracts Review Board (PCRB), welcomed the parties present: the Appellant, Cherubino Limited, and the Contracting Authority, the Central Procurement and Supplies Unit (CPSU). This was a continuation of the previous hearing held on the 7th of October 2025. The Chairman noted that the initial submissions had been completed. A new grievance had been requested, and the evaluator, Dr. Ian Ellul, was present.

Dr. Paris called Dr. Ian Ellul as his witness.

Witness Testimony

Dr. Ian Ellul (ID 296980M) summoned by Dr. Matthew Paris

Dr. Ellul was the sole evaluator, with the Chairperson, Mr. Juan Zarb Cousin, and the Secretary, Ms. Romina Debono. In this case, there was only one bid, which Dr. Ellul evaluated independently. There were no committee meetings; both the minutes and the evaluation report were prepared by Dr. Ellul. The report was then approved online via ePPs by the committee.

Dr. Paris referred to Part 1 of the technical offer form, sections 2.1 to 2.5, where Cherubino Ltd. had indicated *'as requested'*, and asked Dr. Ellul what information he had expected to receive. Dr. Ellul explained that he expected *'Details on the offer's specifications for the respective requisite'*. Referring to the final column, *'Reference in the technical literature where this is being shown'*, the objection raised was that it had been completed as *'see attached literature'*.

The response from the CPSU was that the relevant paragraph had not been quoted. Dr. Ellul stated that he had expected the document and page number to be indicated. He noted that there was a difference in wording between Part 1 and Part 2 of the form. In Part 2, a page number showing where the information could be verified was requested, whereas Cherubino Ltd. had merely written *'literature'*. The submitted document contained more than one page.

Cross-Examination by Dr. Leon Camilleri

Before beginning the cross-examination, Dr. Camilleri informed all parties that the tender had been cancelled from the system. Although they had appealed with the Department of Contracts, the system did not permit the tender to be re-uploaded. In the event of a re-evaluation, it would have to be carried out manually using the documents already in the possession of the Evaluation Committee.

The Chairman invited Dr. Camilleri to make a verbal statement:

'Dr Leon Camilleri for the CPSU, informs this Board, that by mistake, this tender was cancelled from the system ePPs. This mistake could not be uploaded again electronically, on the system'.

The Chairman confirmed that the Contracting Authority would honour the final ruling in its entirety.

Dr. Matthew Paris then made the following verbal statement:

'Cherubino Ltd. considers the statement of CPSU, and without doubting the genuinity of this mistake, remarks, that this action goes against Reg. 275 of the Public Procurement Regulations. Consequently, it is asking CPSU to make up for this shortcoming, without any prejudice for Cherubino Ltd'.

Dr Paris stated that there was no objection for Dr Ing. Damien Gatt being online.

Final Submissions.

Final Submissions by Dr. Matthew Paris (Appellant)

Dr. Paris argued that the Contracting Authority had failed to follow the Standard Operating Procedures established by the Department of Contracts, which clearly specify that evaluators should not be fewer than three. This is based on the "four-eyes principle", ensuring that one's work is reviewed by others for transparency.

Dr. Paris disagreed with the Contracting Authority's position that this was merely a Standard Operating Procedure arising from discussions between the Director of Contracts and the CPSU. Under the Public Procurement Regulations (PPR), any instruction issued by the Director of Contracts is considered an administrative decision.

He emphasised that this Board has consistently held that evaluation committees should consist of an odd number of evaluators, with a minimum of three. Therefore, the Board should annul and reject all determinations made. The witness had testified that he conducted the evaluation alone, while the other members approved it without being present. This rendered the Chairperson and Secretary effectively redundant. Consequently, the grievance should be upheld.

Regarding the technical offer form, he quoted:

'Bidders are to complete all the details requested in Part 1 of this document and the applicable section/s from Part 2 of this document. Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication'.

In column one, section 2.3, the specification stated 'sterile', and Cherubino wrote 'as requested'. However, the evaluator had expected the information to be copied and pasted from the tender document and replicated in the tender offer form. In this context, Cherubino responded affirmatively and confirmed 'as requested'. The technical offer form, however, does not indicate anywhere that information must be "copied and pasted". While that may have been the intended approach, it was not specified in the document. Therefore, discretion was exercised where none existed, rendering the evaluation invalid.

Regarding the final column, 'Reference in technical literature', if a page number was expected, this should have been explicitly requested and written. In Part 2, the column was only to be completed in cases where the documentation contained more than one page; in this case, Cherubino's literature consisted of a single page. Therefore, the evaluation does not merit being upheld.

Final Submissions by Dr. Leon Camilleri (Contracting Authority)

Dr. Camilleri began his submissions by referring to case 2157, where the literature list had been left blank. Although the reference details were provided, the Board's decision had to be respected.

He stated that this case was similar, as it was evident that a reference had been requested and Cherubino had written '*as requested*'. The evaluator was not provided with specific details, and therefore his conclusion was justified. While Dr. Paris claimed that there was only one page in Part 2, the accompanying literature in fact contained multiple documents, and thus several pages. It was not the evaluator's role to search for references; that responsibility lay with the bidder, Cherubino Ltd.

Dr. Camilleri stressed that the Contracting Authority operates under strict legal and regulatory parameters to safeguard equal treatment. The Evaluation Committee's decision was therefore correct, as the tender document had not been completed properly. Both the authority and the bidder had obligations to fulfil. Considering that the products in question are used in hospitals, any requested details on specifications were required to be submitted.

Referring again to case 2157, Dr. Camilleri invited the Board to take its reasoning into account when deciding on this case.

Regarding the grievance concerning the composition of the Evaluation Committee, Dr. Camilleri argued that the Public Procurement Regulations impose no restrictions on the number of committee members. There is no law requiring a specific number of evaluators, and the legal criteria were satisfied. The committee's composition was lawful, and it was unfair to suggest that the report was not endorsed. The witness had prepared the report, and it was duly endorsed by all committee members. Dr. Paris could have summoned the remaining committee members to testify but chose not to. The decision was endorsed and should be accepted by the Board. Therefore, the appeal should be rejected.

Conclusion of the Hearing

With no further arguments presented, the Chairman, Mr. Kenneth Swain, thanked all parties and formally concluded the session.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the of the 7th October 2025 (first hearing) and 14th October 2025 (second hearing).

Having noted the objection filed by Cherubino Limited (hereinafter referred to as the Appellant) on 28th August 2025 (with an additional grievance filed on the 7th October 2025), refers to the claims made by the same Appellant with regard to the tender of reference CFT021-3588/24 CPSU5792/24 listed as case No. 2160 in the records of the Public Contracts Review Board.

Appearing for the Appellant (first hearing): Dr Matthew Paris

Appearing for the Appellant (second hearing): Dr Matthew Paris, Dr Zack Esmail &
Dr Kayleigh Borg

Appearing for the Contracting Authority (first hearing): Dr Alexia Farrugia Zrinzo & Dr Leon Camilleri

Appearing for the Contracting Authority (second hearing): Dr Leon Camilleri & Ms. Veronika Sytnyk (Trainee Representative)

Whereby, the Appellant contends that:

a) ***Offer is cheapest technically compliant -***

The rejection letter, inter alia states that, "*Bidders are to complete all the details requested in PART 1 of this document AND the applicable section/s from PART 2 of this document. Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication.*"

Whereas the appellants maintain that they in fact did complete all the details requested in PART 1 of this document and the applicable section/s from PART 2 of this document as well as submitted all the requested Literature as clearly submitted, thus providing a fully compliant and valid technical offer. Should there have been the need to verify further, which Cherubino claim was not required, a clarification ought to have been issued by the department. Cherubino maintains that its offer is valid, being the cheapest technically compliant offer and the sole offer in this procedure.

b) ***Principle of proportionality -***

The contracting authority should have applied the principle of proportionality in evaluating this tender, a principle which was not upheld in the current context. The principle is well recognised both by local legislation (Article 39 of S.L. 601.02) as well as in local jurisprudence, such as Krypton Chemists Limited vs Direttur tal-kuntratti (Court of Appeal judgment 336/2018). Adopting the principle to the case under examination, would have maintained that should the matter not have been clear enough to the evaluation committee it should resort to the mechanisms catered for in the tender as stated above, whilst the offer by the Cherubino should have retained its status within the evaluation, without further action.

The Board notes the additional grievance (Third grievance) brought forward by the Appellant in the letter filed on the 7th October 2025 following the Board's ruling during the first hearing on the 7th October 2025.

c) ***Third Grievance - Irregular Composition of Evaluation Committee [TEC]***

- Having established that the composition of the TEC included only one (1) evaluator, it is the position of the Appellant Company that this gives rise to serious procedural flaws. In particular, this goes against "The Standard Operating Procedures (SOP) Guidelines for Tender Evaluation Committees (TEC) Version 1.1" issued by the Department of Contracts (hereinafter referred to as the 'Guidelines').
- The Guidelines unequivocally state that the Evaluation Committee is to be composed of "*a Chairman, a Secretary and **three or an odd number of evaluators***". It is clear that, in the case at hand, this requirement was not adhered to in view of the single evaluator within the Evaluation Committee, and thus the process of the Evaluation Committee in this case was inherently flawed.
- This Guideline has always been interpreted as meaning that the composition should include a minimum of three evaluators or more, in any case always in an odd number.
- In substantiation of the above, this Honourable Board has previously held that having the evaluation conducted by a single evaluator is one of the "most fundamental flaw(s)" in a tender procedure. The Board itself has repeatedly emphasised the importance of having a minimum of three evaluators in order to ensure a fair process. This argument was brought up by the Board in Case No. 2079² wherein the Board stated the following:

*"The **importance of multiple evaluators lies in the collective and balanced judgment they bring to the process, reducing the risk of bias and ensuring a more objective evaluation of tenders.** By evaluating the tender in isolation, the process was inherently flawed, and the decision made by a single evaluator cannot be considered in line with best practices. It is imperative that these guidelines are in place and be adhered to rigorously to ensure transparency, fairness, and consistency in public procurement."*

[emphasis added]

- This same conclusion has been confirmed in multiple PCRB decisions, including but not limited to PCRB Case 2080, Case 2081 and Case 2082.
- In a very recent case, in particular **Case 2086 - CT2392/2023 - Tender for the Supply of Non-Absorbable Polymer Locking Cup Banks for Surgery -PPU**, the Board not only reiterated that having multiple evaluators ensures fairness and transparency during the evaluation process but also emphasised that having a single evaluator goes against public procurement guidelines and regulations:

"Another concerning issue identified by the Board is the fact that the evaluation was conducted by a single evaluator. As per the "Standard Operating Procedures (SOP) Guidelines for Tender Evaluation Committees (TEC) Version 1.1 Department of Contracts," a Tender Evaluation Committee should consist of at least three evaluators, or any odd number, unless otherwise approved by the Director of Contracts. This procedural requirement is not simply advisory but is fundamental to ensuring fairness and transparency in the evaluation process."

The decision made by a single evaluator cannot be considered consistent with the best practices outlined in the relevant guidelines and regulations governing public procurement."

[emphasis added]

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 9th September 2025 and its verbal submission during the hearing held on the 7th October 2025 (first hearing) and 14th October 2025 (second hearing) 2025, in that:

a) ***On the First Grievance - Offer is Cheapest Technically Compliant***

In its first grievance the objector states that the offer is the cheapest technically compliant offer and insists that all sections have been properly filled in. Moreover the objector states that if there was the need to verify further the contracting authority should have requested a clarification. CPSU respectfully submit that a clarification can only clarify what has already been provided and cannot fill in what has been missing. In this case the column from part 1 of the technical offer form entitled 'The Details on the Offer's Specifications' has been replied to with the words 'as requested' in all specifications. The word 'detail' in itself mandates that the economic operator provides some sort of details relating to his product. In the column entitled "*The Reference in the technical literature where this is being stated/shown*" the objector has replied, in all fields with the words 'see attached literature. The word reference mandates that the economic operator gives the page and paragraph from the literature to the relevant information corroborating the technical specification. Moreover, in part 2 of the technical offer form where the objector had to provide certain references from its literature, it replied only with the word 'literature'. As this Honourable Board will note, this is certainly not the proper way how a technical offer form has to be filled in.

b) ***On the Second Grievance - Principle of Proportionality***

In its second grievance the objector claims that if the evaluation committee should have adopted the principle of proportionality in its evaluation. The Court of Appeal in the judgment in the names *Servizzi Malta vs Direttur tal-Kuntratti* decided on the 15th of July 2018 the Court of appeal stated that: *ic-cirkostanzi fejn il-principju ta' proporzjonalità ma jhallix li offerta titwarrb minhabba irregolarità huma "limitati" u "eccezzionali"*. CPSU submits that the principle of proportionality should not be used capriciously in order to save offers which have not been filled in properly on purpose and not as a result of some genuine foresight. The evaluation committee is bound by the principle of self limitation and the equal treatment of bidders, not just in one procurement cycle but uniformity in the procurement processes must be also ascertained. For these reasons as will be further explained and substantiated during the sitting, this first grievance ought to be rejected.

The Board notes the Contracting Authority's Reasoned Letter of Reply for the additional grievance filed on the 13th October 2025, in that:

On the Third Grievance - Irregular Composition of Evaluation Committee

- The Public Procurement Regulations do not state that the evaluation committee has to be composed of 3 or more evaluators, thus the appellants' grievance does not have any legal basis;
- Without prejudice to the above, whilst DOC and CPSU policies might be applicable internally, if a breach of any such policies does not breach the minimum safeguard established by law, the objector does not have any justified reason to overturn an evaluation report established by an evaluation committee appointed in accordance to the applicable laws for the mere reason that an internal policy was not followed;
- Without Prejudice to the above CPSU submit that the mere fact that the Board or the Court ordered a re-evaluation due to the fact that an evaluation committee did not have more than 1 evaluator, does not mean that this should be the same in the present case since; every objection has to be reviewed on its own merits and since our legal system does not apply the doctrine of a binding precedent and thus any past decision on this matter do not bind this Honourable Board to decide otherwise.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will now consider Appellant's grievances.

Grievance 1: Failure to Complete Requested Information in Technical Offer Form

- The Appellant contends that it was unjustly excluded on the grounds that it failed to complete the requested information in the Technical Offer Form, whereas the Appellant maintains that all required details were properly provided.
- In both Part 1 and Part 2 of the Technical Offer Form it is clearly stated that: "*Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication. The information/technical specification provided in the below table shall not be subject to rectifications.*"
- Technical Offer form Part 1 states that '*All details in Part 1 need to be completed*', whilst Technical Offer Part 2 also states '*All details in the applicable sections need to be completed*'.
- This grievance requires examination in two distinct parts, as Part 1 and Part 2 of the Technical Offer Form constitute different forms with different requirements and contexts.

Part 1: Completion of Details Column

- The Board notes that in Part 1 of the Technical Offer Form, sections 2.1 to 2.5, the Appellant indicated "*as requested*" in the column entitled "*Details on the Offer's Specifications for the respective requisite.*" The Evaluation Committee expected specific details to be provided, whereas the Appellant interpreted the requirement as confirmation of compliance.
- The Contracting Authority relies on Case No. 2157, where a similar issue arose concerning incomplete technical offer forms. However, the Board finds that Case No. 2157 is distinguishable from the present case. In Case No. 2157, the relevant field was left entirely blank, providing no information whatsoever. In contrast, in the present case, the Appellant provided a responsive statement "*as requested*", "*see attached literature*" which, while arguably insufficient in detail, constitutes submitted information rather than a complete omission.
- The critical distinction lies in the interpretation of the phrase "*fail to complete*" within the Technical Offer Form's own provisions. The principle of self-limitation requires that the Contracting Authority be bound by its own stipulated terms. The form states that "*Tenderers that fail to complete and upload the requested information will be deemed as non-compliant,*" thereby establishing that the consequence of non-compliance flows specifically from a failure to complete, not from the manner in which the completion is executed.
- In the present case, the Appellant did complete the requested fields by providing the response "*as requested*", "*see attached literature*". While the Evaluation Committee may have expected more comprehensive information, such as copied specifications from the tender document, the Technical Offer Form does not explicitly stipulate that bidders must replicate specifications in this manner, nor does it specify the precise format or level of detail required for the "Details" column. The evaluator testified that he expected details to be copied and pasted from the tender document, but the form itself does not indicate anywhere that information must be copied and pasted.
- The Board observes that where the tender documentation does not provide clear and unambiguous guidance on the format and content of required submissions, and where the Appellant has provided responsive information, the principle of proportionality and the availability of clarification mechanisms under Note 3 become relevant considerations.
- It is the opinion of this Board that the phrase "*fail to complete*" contemplates a failure to provide any information, rather than a failure to provide information in a particular format not explicitly required by the form. The Appellant completed the fields; the information provided was simply not in the format the evaluator anticipated.
- Therefore, the Board upholds Part 1 of Grievance 1, related to Part 1 of the Technical Offer form.

Part 2: Reference in Technical Literature

- The Appellant contends that in Part 2 of the Technical Offer Form, a page number reference was only required where submitted literature contained multiple pages, and that since the Appellant's literature consisted of a single page, no specific page reference was necessary.
- Part 2 of the Technical Offer Form constitutes a different form from Part 1, with different requirements and structure. Unlike Part 1, Part 2 cannot be directly compared to Case No. 2157, as these involved different forms with different contexts.
- The Board notes a fundamental distinction between Part 1 and Part 2 of the Technical Offer Form. The column before the last in Part 1 requests '*Details on the Offer's specifications for the respective requisite*', while the last column in Part 1 requests '*Reference in Technical Literature where this is being stated/shown (if applicable)*'. In contrast Part 2 section 6 does not have a column that requests '*Details on the Offer's specifications for the respective requisite*' whilst the last column in Part 2 Section 6 provides clear and objective instructions: '*To be completed only in case of certificates/documentation with more than one page: If YES, please include page number as to where such information can be confirmed in documents submitted*'.
- Unlike the ambiguity present in Part 1 regarding the format and level of detail required, Part 2 contains an unambiguous and objective requirement: if the submitted documentation contains more than one page, the bidder must include specific page numbers. The instruction 'include page number' is clear, precise, and leaves no room for interpretative discretion.
- The Board notes the testimony of the witness Dr. Ian Ellul, who stated that he expected the document and page number to be indicated, and confirmed that there was a difference in wording between Part 1 and Part 2 of the form. Dr. Ellul specifically testified that in Part 2, a page number showing where the information could be verified was requested.
- Dr. Ellul testified that the submitted literature contained more than one page. The Board confirms that multiple documents were indeed submitted as part of the Technical Literature. Only the ISO certificate was a single page document; all other materials comprised multiple pages. During the hearing it was not established that the ISO certificate was the sole document supporting Part 2 of the Technical Form, a burden of proof which rested with the appellant.
- The Board would also like to point out that the Appellant's responses in Part 2, Section 6 were inconsistent across different reference numbers (rows). For reference Nos 6.1 to 6.3, amongst others, the Appellant's response for the last column was "Literature". For various reference numbers, the last columns were left blank, whilst only in one reply did the Appellant make specific reference to a document.
- The requirement to provide a specific page reference serves a legitimate purpose in enabling the Evaluation Committee to efficiently verify compliance with technical specifications, particularly where documentation spans multiple pages. The Appellant's response of "literature," without specifying the relevant page numbers, in addition to some reference numbers being left blank, does

not satisfy the explicit, clear, and objective requirement for inclusion of page numbers when multiple pages of documentation are submitted.

- Leaving blank fields or the failure to provide specific page references in circumstances where documentation exceeded one page constitutes a material deficiency that falls under Note 3 and no rectifications are allowed. This is distinguishable from Part 1, where the Appellant provided responsive information in all required fields but the tender documentation itself lacked clarity regarding the expected format. In Part 2, the requirement was clear, objective, and unambiguous, and the Appellant failed to comply with this explicit instruction.
- Therefore, the Board does not uphold Part 2 of Grievance 1, relating to Part 2 of the Technical Form.

Grievance 2: Principle of Proportionality

- The Appellant submits that the Contracting Authority failed to apply the principle of proportionality and should have issued a clarification request rather than excluding the bid.
- The Court of Appeal in *Servizzi Malta vs Direttur tal-Kuntratti* established that circumstances where proportionality prevents rejection are "limited" and "exceptional."

Part 1: Application to Part 1 of Technical Offer Form

- The Board finds that Part 1 falls within those limited and exceptional circumstances. As established in Grievance 1 Part 1, the Board observes that where the tender documentation does not provide clear and unambiguous guidance on the format and content of required submissions, and where the Appellant has provided responsive information, the principle of proportionality and the availability of clarification mechanisms under Note 3 become relevant considerations.
- Therefore, the Board upholds Grievance 2 insofar as it relates to Part 1.

Part 2: Application to Part 2 of Technical Offer Form

- Part 2 provided clear, objective instructions to include specific page numbers where documentation exceeded one page.
- Where fields are left blank or generic responses lack specific page references, this constitutes missing information. As per Note 3 to Notes to Clause 5, clarifications can only be made on submitted not missing information. Proportionality does not require acceptance of non-compliance with clear, objective requirements.
- Therefore, the Board does not uphold Grievance 2 insofar as it relates to Part 2.

Grievance 3 (Additional): Irregular Composition of Evaluation Committee

- The Appellant contends that the Evaluation Committee was improperly constituted, having only one evaluator instead of the minimum of three evaluators required by the Standard Operating Procedures (SOP) Guidelines for Tender Evaluation Committees (TEC) Version 1.1 issued by the Department of Contracts.
- The Board notes the testimony of Dr. Ian Ellul, who confirmed that he was the sole evaluator, with Mr. Juan Zarb Cousin serving as Chairperson and Ms. Romina Debono as Secretary. Dr. Ellul testified that in this case, there was only one bid, which he evaluated independently, and that there were no committee meetings. Both the minutes and the evaluation report were prepared by Dr. Ellul. The report was then approved online via ePPS by the committee.
- As highlighted in the Standard Operating Procedures (SOP) Guidelines for Tender Evaluation Committees (TEC) Version 1.1, it is clearly stated that a TEC should consist of "*a Chairman, a Secretary and three or an odd number of evaluators.*" This procedural requirement is not merely advisory but forms part of the established principles for tender evaluation.
- This Board has consistently held that having a single evaluator constitutes one of the most fundamental flaws in a tender procedure. The importance of multiple evaluators lies in the collective and balanced judgment they bring to the process, reducing the risk of bias and ensuring a more objective evaluation of tenders. By evaluating the tender in isolation, the process was inherently flawed, and the decision made by a single evaluator cannot be considered in line with best practices.
- The Board has addressed this issue in multiple previous decisions, including Case No. 2079, Case No. 2080, Case No. 2081, Case No. 2082, and most recently Case No. 2086, all of which emphasised that having multiple evaluators is fundamental to ensuring fairness and transparency in the evaluation process and that evaluation by a single evaluator contravenes public procurement guidelines and regulations.
- It is imperative that the Guidelines established by the Department of Contracts be adhered to rigorously to ensure transparency, objectivity, fairness, and consistency in public procurement.
- Therefore, the Board upholds Grievance 3.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Upholds the Appellant's Letter of Objection and contentions with respect to Part 1 of Grievance 1, relating to Part 1 of the Technical Form.
- b) Does not uphold the Appellant's Letter of Objection and contentions with respect to Part 2 of Grievance 1, relating to Part 2 of the Technical Form.
- c) Upholds the Appellant's Letter of Objection and contentions with respect to Part 1 of Grievance 2, relating to Part 1 of the Technical Form.
- d) Does not uphold the Appellant's Letter of Objection and contentions with respect to Part 2 of Grievance 2, relating to Part 2 of the Technical Form.
- e) Upholds the Appellant's Letter of Objection and contentions with respect to the additional Grievance (Grievance 3).
- f) Orders the Contracting Authority to revoke the notice of cancellation;
- g) Directs that the evaluation be reviewed and that a proper evaluation process be conducted, orders the reintegration of the Appellant's bid in the re-evaluation process;
- h) Directs that this review should include the appointment of an appropriately constituted TEC, with at least three evaluators, to ensure an impartial, objective and transparent process;
- i) Directs that bidders be requested to extend the validity period of their respective bids, if required;
- j) Directs that the deposit paid by Appellant to be **refunded in full**.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Dr Ing Damien Gatt
Member