PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number	**2171**
Tender Reference Number	**WSC/T/045/2025**
Tender Name	**"Framework Agreement for Audit Monitoring of Potable Water Samples for the Water Services Corporation, covering 2026-2027"**

The Public Contracts Review Board (hereinafter the 'Board' or the 'PCRB') convened a public hearing on the 23rd October, 2025 to hear the appeal as filed by the appellant ALS Czech Republic (hereinafter the 'Appellant') on the 29th August, 2025, and after taking cognisance of:

The tender document for the 'Framework Agreement for Audit Monitoring of Potable Water Samples for the Water Services Corporation, covering 2026-2027' (hereinafter referred to as the "Tender Document");

The minutes of the proceedings dated 23rd October, 2025 which are being reproduced hereunder:

> *"**PUBLIC CONTRACTS REVIEW BOARD***
>
> *Case 2171 Objection – WSC/T/045/2025—Tender for the Provision of Audit Monitoring of Potable Water to the Water Services Corporation, Covering 2026 – 2027 Lot 7.*
>
> *The tender was issued on the 15th May 2025, and the closing date was the 20th June 2025.*
>
> *The estimated value of the tender, excluding VAT, was €30,000.00*
>
> *On 29th August 2025 ALS Czech Republic, lodged an appeal against the Water Services Corporation – the Contracting Authority in accordance with Regulation 270 of the Public Procurement Regulations.*
>
> *On the 23rd October 2025, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Ing. Damien Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.*
>
> *A deposit of €400 was paid.*
>
> *There were two bids.*
>
> *The attendance for this public hearing was as follows:*
>
> ***Appellant – ALS Czech Republic s.r.o. (CZ27407551)***
>
> *Dr Joseph Camilleri – Legal Representative.*
> *Mgr Karel Wimmer – Company Representative.*

Contracting Authority – Water Services Corporation

Dr John L Gauci – Legal Representative.
Ing. David Sacco -- Chairperson.
Dr David Spiteri – Evaluator.
Mr Ramon Zammit – Evaluator.
Ms Emeline Fenech – Evaluator.
Ing. Anthony Muscat -- PRS Managing Professional.
Ms. Catherine Degabriele -- PRS Professional.
Ms. Christine Scicluna – Secretary.

Recommended Bidder – Cada and Sunlab

Mr Carmelo Martini – Company Representative.

Opening Statements

Dr Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, ALS Czech Republic s.r.o., the Contracting Authority, Water Services Corporation and the Recommended Bidder, Cada and Sunlab.

Dr Thomas started the meeting by informing both parties that Dr Ing. Damien Gatt, a member of the PCRB was participating online. Dr Joseph Camilleri for ALS Czech Republic s.r.o and Dr John L Gauci for Water Services Corporation, both minuted their no objection.

Initial Submissions

Initial Submissions by Dr. Joseph Camilleri (for the Appellant)

Dr. Joseph Camilleri, appearing for the appellant, requested that the proceedings be conducted in English. The Contracting Authority raised no objection, and the Board upheld the request.

Dr. Camilleri stated that the proceedings concern a call for Audit Monitoring of Portable Water issued by the Water Services Corporation (reference WSC/T/045/2025). The appeal arises from an objection following an award decision dated 22 August 2025, specifically relating to Lot 7, which involves a technical matter. The concern is whether this technical issue was properly addressed by the Water Services Corporation during the evaluation process.

The tender concerns Audit Monitoring of Water Quality, whereby the recommended bidder is expected to conduct tests on the quality of water intended for human consumption.

The objection relates to the parameters to be tested as part of the contract. In the technical questionnaire, Lot 7 refers to three parameters: the Sum of PFAS and Total PFAS. The objection is based on the fact that, under Directive EU/2020/2184, from January 2026 onward, water intended for human consumption must be tested not only for the Sum of PFAS but also for Total PFAS. This requirement is also reflected in Commission Notice C/2024/4910. These parameters form part of the specifications of the tender.

A copy of the Commission Notice, on page 7 of 9, outlines three methods to calculate the Total PFAS parameter. Any water tested must use one of these approved methods.

Dr. Camilleri clarified that the appellant is not requesting a re-opening of the evaluation process but wishes to highlight two points that raise doubt. Firstly, to conduct these tests, laboratories must be accredited to perform them. This information is publicly available. The appellant sought and obtained copies of the accreditation certificates of the recommended bidder.

Dr. Camilleri presented these certificates, showing that the laboratories forming part of the economic operator were not accredited to conduct the tests required under the Commission Notice. It is therefore doubtful whether the Contracting Authority verified whether the recommended bidder could perform the specified tests.

A secondary, though indicative, point was raised regarding pricing. The appellant's price was higher than those of other bidders. While this may not be decisive, it is noteworthy since the tests required involve more advanced and costly procedures and equipment. The lower prices of other bidders suggest they may not have been offering to conduct the full scope of testing required.

Dr. Camilleri stated that he requested the participation of a technical expert and a member of the Evaluation Committee to address these concerns.

Initial Submissions by Dr. John L. Gauci (for the Contracting Authority)

Dr. John Gauci stated that this appeal concerns a highly technical subject. Lot 7 relates to the Audit Monitoring of Drinking Water for 2026–2027 and involves the analysis of PFAS (per- and polyfluoroalkyl substances), which are industrial chemicals that persist in drinking water. This obligation arises under EU Directive 2020/2184, which was transposed into Maltese law in 2023 through Legal Notice 297/2023.

The Commission Notice referred to by Dr. Camilleri was issued on 7 August 2024—after the Directive was transposed into Maltese law. The methods described on page 7 of 9 of that Notice are not yet part of Maltese law. When the tender was drafted, it was based on the law as it then stood.

Dr. Gauci emphasised that a Commission Notice or Directive does not have direct effect; an entity cannot rely on a Notice to produce a binding legal effect in proceedings. It is up to each Member State to enact Directives and adopt recommendations contained in such Notices. To date, Malta has not transposed the methods described on page 7 of 9 of the Commission Notice into national law.

Accordingly, when the tender was prepared, these legal considerations were taken into account, and the tender specifications were drafted in accordance with the law in force at that time.

Citing Case C-322/88, where the Court held that recommendations have no direct effect (as reflected in Article 189 of the EEC Treaty), Dr. Gauci concluded that the Evaluation Committee evaluated the offers in accordance with both the law and the tender documents. CADA and Sunlab were found compliant and therefore recommended for award.

The Water Services Corporation's position is clear: the tender referred to the law in force, and the Commission Notice does not yet carry legal force. If the Board considers that such requirements should have been included, it may cancel the procedure. However, there were no clarifications or pre-contractual remedy requests submitted. The recommended bidder is fully compliant with the tender specifications.

The Chairman asked whether other lots were related to PFAS. Both parties confirmed that the lots were independent and uncontested.

Witness

Dr. David Spiteri (ID 465285M) — Summoned by Dr. Joseph Camilleri

Dr. Spiteri stated that as part of the tendering process, bidders were required to complete a questionnaire, including a table where they indicated whether they held the necessary accreditations. The Evaluation Team confirmed that, since the parameters Total PFAS and Sum of PFAS as a total not as part of the guidelines since were not specifically listed as guidelines in the technical document, they verified whether these were covered within the laboratories' scopes of accreditation. Dr. Spiteri clarified that the guidelines referred to TFA (Trifluoroacetic Acid) was not included in the evaluation since it was not mentioned in the tender document and obviously as evaluators they proceeded only with the tender specifications.

The Chairperson asked the witness whether the main difference between the Directive, Maltese law, and the Commission Notice is the inclusion of TFA, and Dr Spiteri explained that yes, because under the Commission's recommendations, laboratories should begin considering TFA as part of the Total PFAS measurement. However, this was not mentioned in the technical

documentation, nor in the 2020 Directive. The witness explained that TFA represents a group of acids within the PFAS family. The Commission allows two approaches:

- *Total PFAS, all organic components with the fluorine group, or*
- *Sum of PFAS, which is basically 10–18 specific compounds.*

The recommendation is that if you go for the Sum of PFAS method is used, the limit is lower and is 10 nanograms per litre; if Total PFAS is used, the limit is 50 nanograms per litre slightly higher. Therefore, even if we had to go with the Sum of PFAS method, we would still be compliant with the law. TFA remains a grey area in the EU since few laboratories currently offer this service.

On Dr Thomas's question the witness clarified that even if TFA were transposed into law under an either/or framework, Water Services would remain compliant using the Sum of PFAS method.

Dr. Camilleri referred to Section 4.2.2, page 8, confirming with the witness that TFA is included under Total PFAS with detailed steps for calculation. The witness explained that the Evaluation Committee assessed methods based on the scope of accreditation, which sometimes lacked sufficient detail to cover every legal requirement. Thus, if a laboratory's accreditation board authorised it to perform a specific analysis, the Evaluation Committee deemed it sufficient.

In this case, the Committee did not refer to TFA or the Commission Notice methods but instead relied on the laboratories' accreditation scopes. Any bidder marking itself as non-accredited would automatically fail. The Committee double-checked that PFAS testing, fell within each bidder's accredited scope. PFAS include around 30–40 different chemicals, and the Committee followed the 2020 Directive's guideline to monitor 18 of them.

Dr. Spiteri confirmed he is a scientist, laboratory manager, and member of the Evaluation Committee.

Ing. Jona Kovacova (ID 215520560) — Summoned by Dr. Joseph Camilleri

Ing. Kovacova, appearing online from the Czech Republic, is the PFAS Lead for Continental Europe and collaborates with ALS Lab. She is an analytical chemist. She stated that both parameters are part of the EU Directive, with technical guidelines on measurement.

The Sum of PFAS is determined by LC-MS, summing twenty PFAS compounds, while Total PFAS is a summation of all PFAS present in a sample. Three main approaches may be used: the Total Oxidizable Precursor Assay (TOP), Organic Fluorine analysis, and High-Resolution Chromatography. TFA must be evaluated separately, as it is a distinct compound.

According to the World Health Organization, excluding TFA from analysis would cause the sample to exceed the Total PFAS limit. The Total PFAS requirement has been in effect since August 2024. Ing. Kovacova confirmed that her company uses the TOP approach and has implemented TFA analysis.

Dr. Camilleri presented research from two entities representing the recommended bidder, obtained from an accreditation database, showing the laboratories' accredited scopes.

Dr. Gauci stated that he would call a witness to address the documents' relevance.

Chairperson Dr Thomas minuted the following:

"Dr. Joseph Camilleri for the appellant exhibited two sets of documents, a copy of which is being given to the Contracting Authority, seduta stante, and another copy is given to the Recommended Bidder. Dr. John Gauci, for the Contracting Authority, raised no objection to presentation by counsel but reserved the right for his client to testify thereupon."

The Appellant declared that he has no further evidence to produce.

Dr. David Spiteri (ID 465285M) — Summoned by Dr. John Gauci

Dr John Gauci referred the witness to documents exhibited by counsel for the appellant Dr Camilleri, and asked him to go through them to comment thereupon and also explain what was provided by the Recommended Bidder in its bid in relation to this Lot 7. Dr. Spiteri stated that he is seeing the scope of accreditation for the Sunlab Group Malta, issued by NAB Malta. The witness testified that during the evaluation process these were not the same documents they saw He clarified that these were not the same documents presented to the Evaluation Committee. The bidder submitted the scope of accreditation documents issued by Accredia (Italy), which he assumed is summarised in the other documents, but he is not completely sure. Dr Spiteri re-confirmed that the documents presented during the hearing of the appeal are different from those in the process, it is similar to the Maltese but it is from Accredia.

On the Chairperson's question, the witness confirmed that the documents reviewed during the evaluation process fit what was required from tenderers and that it was Accredia of CADA Lab.

Dr. Spiteri added that when a laboratory in Malta is accredited under ISO 17025, this is a national authority, its national accreditation body (MCCA) therefore all the certificate numbers of the accredited labs will be published on the website, which is automatically updated by Accredia in Italy. The witness confirmed that the documents presented by the Recommended Bidder were also in the public domain, but it is more difficult than the local because in Malta we have twenty-

five Labs but in Italy there is much more and it is more difficult to download the research.

The witness confirmed that once they receive accreditation documentation the Committee assesses immediately the date issue of the scope that it is the latest scope, it is important we get the latest date. In case they some clarifications there they go online to download the certificate on the website because that it automatically updated by Accredia or the national accreditation Board. After that the Committee then checks the parameters listed under the relevant matrix to confirm compliance with the tender's requirements.

The Committee verified both Total PFAS and Sum of PFAS, but since Total PFAS was not yet defined by the Directive, and it was outside the scope of the tender because they were not looking at Total PFAS including TFA so that was something they did not look into.

Final Submissions

Final Submissions by Dr. Joseph Camilleri

Dr. Camilleri argued that certain relevant aspects were overlooked not due to negligence but because there is a disagreement between the position of Contracting Authority and ALS Czech Republic regarding the requirements and the application of newer technical standards in the Commission Notice. The Contracting Authority maintains that anything not yet legally binding is irrelevant to this tender; however, the tender covers the period up to 2027. Both EU institutions and the WHO are advancing these requirements.

Dr. Camilleri therefore proposed that the evaluation be reopened or Lot 7 reissued to take these developments into account.

Final Submissions by Dr. John Gauci

Dr. Gauci noted that the dispute concerns the applicability of the Commission Notice and non-binding guidelines. A new evaluation cannot be undertaken since it was not requested within the tender documentation. If a bidder wished to introduce or amend requirements, the proper course would have been to file a pre-contractual remedy request. The Commission Notice is not law; hence, no breach of legislation occurred. The recommended bidder fully complied with the tender specifications, and the objection should therefore be dismissed.

Conclusion of the Hearing

With no further arguments presented, Chairperson Dr. Ana Thomas thanked the parties and formally concluded the session."

The written pleadings as filed by ALS Czech Republic dated 29th August, 2025, together with proof of payment of a deposit in the amount of €400, wherein it held as follows:

> *"Dear Sir/Madam,*
>
> *We, ALS Czech Republic, hereby submit this appeal in accordance with the provisions of the Public Procurement Regulations, in relation to the tender titled* ***Audit Monitoring of Potable Water to the Water Services Corporation, covering 2026- 2027*** *reference number* ***WSC/T/045/2025****, issued by* ***Water Services Corporation, Qormi Road, Luqa LQA 9043****.*
>
> *We are submitting this appeal following the publication of the recommendation of award decision dated* ***22nd August 2025****, in which our bid was not selected. We believe that the evaluation process may have overlooked key technical and regulátory aspects, particularly those related to compliance with Directive EU/2020/2184 – Water intended for Human Consumption Regulations, which outlines specific requirements for PFAS analysis, including parametric values and analytical methods.*
>
> ***Grounds for Appeal:***
>
> - *The awarded bidder does not appear to meet the analytical scope required under* ***Annex I, Part B*** *of Directive EU/2020/218, particularly regarding the determination of "Sum of PFAS" and "PFAS Total" as per Commission Notice C/2024/4910.*
> - *Our proposal included validated methods aligned with the latest EU technical guidelines, while the selected bid lacks clarity on these aspects.*
> - *We believe the evaluation did not adequately consider the scientific robustness and regulatory alignment of the analytical approach.*
>
> *We respectfully request the Board to review the decision and ensure that the award complies with both technical and legal standards, safeguarding public health and environmental integrity.*
> *Attached to this letter are the relevant supporting documents, including:*
>
> - *A copy of the recommendation of award decision*
> - *The Directive EU/2020/2184*
> - *The Commission Notice C/2024/4910*
> - *The Technical Grounds for Appeal on the resolution of the PFAS requirements stipulated in the* ***WSC/T/045/2025*** *tender.*
>
> *We are submitting this appeal via email, and the required deposit has been made via bank transfer, as per the Board's instructions.*
>
> *We remain at your disposal for any further information or clarification you may require.*

The written reply as filed by Water Services Corporation dated 5th September, 2025 (hereinafter the 'Contracting Authority') wherein it held as follows:

> *"Reasoned Reply of the Water Services Corporation ("WSC") (hereinafter "the Contracting Authority":*
>
> *Respectfully submits;*

The Contracting Authority wishes to reply to the objection which has been filed by ALS Czech Republic s.r.o. (hereinafter "the Objector");

A. Introduction

By means of a letter dated 22nd August 2025, the Objector was informed that whilst its offer was compliant with the administrative and technical requirements, it was not recommended for award on the basis that it was not the cheapest offer. Lot 7 was instead recommended for award to the consortium of Cada and Sunlab at a price of €20,000 excluding VAT.

The Objector has now filed an objection to contest the award decision, primarily on the ground that the recommended bidder is allegedly non-compliant with certain requirements under Directive (EU) 2020/2184 and the associated Commission Notice C/2024/4910 concerning the monitoring of per- and polyfluoroalkyl substances ("PFAS") in water intended for human consumption.

In essence, the Objector's claim rests on the assertion that the recommended bidder's methodology does not include the determination of Trifluoroacetic Acid ("TFA") in the calculation of "PFAS Total", and is therefore not aligned with the most recent technical guidance issued at EU level. The Objector argues that this non-alignment ought to have led to disqualification of the winning offer.

B. Replies

For the reasons set out below, the Contracting Authority respectfully submits that the Objector's allegation is unfounded. The recommended bidder's offer was duly assessed against the published tender specifications, which required compliance with Annex III, Part B of Directive (EU) 2020/2184, and was found compliant. Moreover, and without prejudice, even if the Objector's interpretation of the applicable requirements were to be accepted arguendo, then its own offer would equally fall foul of the same alleged deficiency, thereby depriving it of any standing to single out the recommended bidder.

The appellant seeks to argue that the recommended bidder's offer should have been rejected on the basis that it does not address the new requirement introduced by the Commission Notice of 7 August 2024 concerning the separate determination of Trifluoroacetic Acid (TFA) in the calculation of the parameter "Total PFAS."

With respect, this argument is misplaced for two distinct reasons:

***First**, the Call for Tenders (WSC/T/045/2025) did not expressly incorporate this new requirement. The specifications in Section 3 clearly required tenderers to confirm that the methods used would comply with the performance characteristics laid down in Annex III, Part B of Directive (EU) 2020/2184, namely the criteria on uncertainty of measurement and limits of quantification. The tender documentation did not go further by stipulating the proxy methods or separate TFA quantification set out in the later Commission Notice. The contracting authority evaluated all offers strictly against the requirements actually published in the tender dossier. The recommended bidder was therefore found to be compliant with those requirements.*

It is to be noted that the Objector had every right to request a remedy before the closing date for submission, should it wished to argue that further requirements had to be included in the tender document.

No such request was ever made. The Objector, like all other participants, submitted its offer on the basis of the published specifications which referred to Annex III, Part B of Directive (EU) 2020/2184, and made no reference to additional obligations under the Commission Notice. Having chosen to remain silent and to submit an offer under those terms, the Objector cannot now, after the outcome has been determined, seek to rewrite the tender ex post facto by invoking requirements that were neither expressly incorporated nor clarified at the time of submission.

This principle has been consistently reaffirmed by the Board: an economic operator is not entitled to contest, at objection stage, the content of the tender dossier to which it assented without reservation. The remedy of objection at this stage lies against the evaluation and award decision, not against the tender conditions themselves. To permit otherwise would undermine legal certainty, equal treatment, and the level playing field which procurement procedures are designed to safeguard.

Accordingly, the attempt by the Objector to introduce, post-closing, new obligations derived from the Commission Notice must be rejected. The contracting authority evaluated the offers strictly and faithfully against the requirements published in the Call for Tenders; the recommended bidder was compliant with those requirements, and the Objector's current argument amounts to no more than a belated attempt to shift the goalposts.

***Second**, even if one were to accept arguendo the appellant's position that the Commission Notice requirements applied directly and had to be fulfilled in the offers, then it follows that the appellant's own bid is equally non-compliant, since it also did not provide for the separate quantification and subtraction of TFA, nor for the complete suite of proxy methods for PFAS Total. The appellant cannot therefore reasonably maintain that the winning bid failed to meet such requirements.*

Accordingly, the appellant's submission does not demonstrate that the recommended bidder failed in its obligations, still less that the evaluation committee erred in its assessment. The evaluation was conducted in accordance with the published tender criteria, under which the recommended bidder's offer was both compliant and the cheapest. The appeal should therefore be dismissed.

Moreover, should the Board nonetheless take the view that the Commission Notice requirements had to be expressly incorporated and observed, then the logical consequence is that the appellant's own bid would be equally non-compliant. The appellant cannot seek to annul the award by pointing to a deficiency which is also present in its own submission.

C. <u>Conclusion and WSC 's position</u>

In view of the above, the contracting authority respectfully submits that the award decision in favour of the recommended bidder was taken in full conformity with the applicable procurement rules and the tender dossier as published. The contracting authority had no legal or procedural basis to import requirements not expressly included in the Call for Tenders, and it assessed all offers strictly against the published specifications. On this basis, the recommended bidder was found to be technically compliant and, being the lowest-priced compliant offer, was recommended for award in accordance with the principle that the contract must be awarded to the cheapest compliant offer.

The appellant's arguments rest on an attempt to introduce, at objection stage, obligations which were neither incorporated in the published tender nor raised during the clarification period. Established principles of procurement law dictate that an operator cannot remain silent during the clarification stage and then, after the outcome is known, claim that the tender should have been drafted differently. This would undermine legal certainty and the equal treatment of bidders, since it would amount to altering the playing field after bids were submitted.

Furthermore, even if the Board were to accept arguendo that the technical guidance of the Commission Notice C/2024/4910 had to be treated as binding in full at tendering stage, the inevitable consequence would be that all bidders, including the appellant itself, would fall equally short. The omission of TFA determination is not unique to the recommended bidder; it is common to the appellant's own offer. The appellant cannot therefore obtain any advantage or substitutionary award from the very deficiency it shares.

For these reasons, the contracting authority respectfully requests that the objection be dismissed in its entirety.

***Without prejudice, and solely in the alternative**, should the Board consider that the updated requirements of the Commission Notice must be expressly reflected in the specifications, WSC is prepared to consider reissuing Lot 7 with amended terms so that all economic operators may compete afresh on an equal footing. This would ensure that the updated guidance is implemented in full transparency, while safeguarding the principle of equal treatment.*

The Contracting Authority reserves the right to make further submissions in the hearing to be set to determine this objection."

The opening and closing submissions of the Appellant and the Contracting Authority as delivered by their legal representatives;

Considers;

This Board notes that the Appellant has brought forward one main grievance, that the Preferred Bidder did not meet the analytical scope required Under Annex I, Part B of the European Union Directive EU/2020/2184 Recast (hereinafter the 'Directive') regarding the determination of 'Sum of PFAS' and 'PFAS Total' as per Commission Notice C/2024/4910 (hereinafter the 'Notice').

A. Preferred Bidder's Compliance or Otherwise

The Appellant along with his appeal, produced copies of the recommendation of award, the Directive, the Notice as well as a separate document prepared by the Appellant entitled 'Technical Grounds for Appeal Regarding Lot 7 – PFAS Total Compliance'.

As already explained above, the Appellant's main bone of contention is that the Preferred Bidder is not, in his opinion, technically compliant with the requirements of the Directive. In the Appellant's words *"Based on the available documentation, their approach does not appear to meet the requirements outlined in the tender specifications, nor does it align with the Directive and Commission Notice'.*

The Appellant further argued that there is doubt as to whether the laboratory used by the Preferred Bidder is accredited. On this point in particular regarding the accreditation, the Board deems that it resulted abundantly clear from the testimony of Dr David Spiteri that the Tender Evaluation Committee confirmed the accreditation of the Preferred Bidder (Accredia Italy), and further that the documents presented during the hearing of the appeal by the Appellant's legal representative were not the certificates provided by the Appellant and were different. Therefore, there exists no doubt as to the Preferred Bidder's compliance with accreditation requirements.

The remaining issue, therefore, is whether the Notice is applicable in this context or otherwise.

As a general rule, a European Union directive, unlike a regulation, is not directly applicable unless implemented in local law. Likewise, notices issued by the European Commission *qua* an executive body, are not directly applicable as they have no binding force. They are after all technical guidelines.[1]

The Board refers to Case C-322/88 where the Second Chamber held as follows:

> "As regards more specifically the question asked by the national tribunal, the Commission states that it is impossible for a recommendation to have direct effect. It bases that view on the text of the fifth paragraph of Article 189 of the EEC Treaty: 'recommendations... shall have no binding force.'
>
> Although the Court has held that directives may have direct effect, that is because they are binding. **Recommendations have no binding force, and consequently the Court's reasoning is not applicable to them**." (PCRB's added emphasis).

This Board shall refer to Articles 20(2) and 21(6) of the Directive which hold as follows:

> "The Commission is empowered to adopt delegated acts in accordance with Article 21 in order to amend Annex III where necessary to adapt it to scientific and technical progress.
>
> **The Commission is empowered to adopt delegated acts in accordance with Article 21 in order to amend the parametric value of Bisphenol A in Part B of Annex I, to the extent necessary to adapt it to scientific and technical progress, essentially based on the ongoing review carried out by EFSA.**"[2] (PCRB's added emphasis).
>
> "A delegated act adopted pursuant to Articles 4(3), 11(5), 11(8), 11(11), 13(6) **and 20(2)** shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council."[3] (PCRB's added emphasis).

Therefore, the Commission's power to adopt delegated acts is limited to Bisphenol A in Annex I, Part B, and this power does not extend to the amendment of parametric values of other chemicals.

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[1] "In line with Article 13(7) of the DWD and based on a thorough consultation of the Member States, **this document establishes the technical guidelines on the methods of analysis for monitoring PFAS under the 'PFAS Total' and 'Sum of PFAS' parameters set by the recast DWD**. These technical guidelines include a selection of analytical methods and approaches considered most appropriate for monitoring those parameters, based on a technical and socio-economic assessment [3]."

"**The European Commission therefore encourages Member States to act on these guidelines promptly** in order to accelerate the monitoring of PFAS and to design measures to achieve compliance with the DWD parameters."

Page 3 of the Commission Notice C/2024/4910.

[2] Article 20(2) of the Directive.

[3] Article 21(6) of the Directive.

It is clear therefore, **that the Contracting Authority is not bound by the guidelines as issued in terms of the Notice**, but it is equally important to note that Malta as a Member State is bound to *"take the measures necessary to ensure that water intended for human consumption complies with the parametric values set out in Part B of Annex I for Bisphenol A, Chlorate, Chlorite, Haloacetic Acids, Microcystin-LR, PFAS Total, Sum of PFAS and Uranium"* by the 12th January, 2026 per Article 25 of the Directive.

Given the above considerations, this Board determines that the Contracting Authority was not incorrect in issuing the Tender Document as it did, that the Notice does not have direct effect, and further that if the Appellant had issue with the content of the Tender Document or rather with the omission of the requirement as set forth in the Notice, the Appellant should have brought forward a claim under Regulation 262 of the Public Procurement Regulations.

The Board refers to the decision of the PCRB in the Case 2146 where it was held as follows:

> "The Board further recalls established jurisprudence of the Court of Appeal, which held that bidders cannot, after the outcome of a competition, challenge tender specifications that could have been contested prior to submission. Reference is made to the Court of Appeal judgement of 30 June 2021 in Truevo Payments Limited v Direttur tal-Kuntratti, Ministeru ghall-Finanzi u x-xoghol u Credorax Bank Limited (Appeal no 95/21/1), where the court held that:
>
> > "Hu car li l-ilmenti tas-socjeta Credorax Ltd huma diretti lejn il-procedura wzata u ma humiex marbuta mas-sustanza tal-offerta. Din is-socjeta qed tilmenta mill-uzu tal-procedura tal-ghoti tal-kuntratt b'negozjati, fuq il-mod kif gie mfassal il-process ta' din il-procedura u li ma kienx hemm l-approvazjoni tad-Direttur talKuntratti ghall-uzu ta din il-procedura. Dawn it-tlett aggravji li abbazi taghhom il-kumpanija appellata Credorax Ltd ppprezentat l-appell taghha jirrigwardjaw materji illi kienu jezistu sa mill-bidu nett talprocedura in kwistjoni, u ghal dawn l-ilmenti kienu jezistu rimedji taht ir-Regolament 262. Dawn l-ilmenti kellhom jitresqu qabel id-data tal-gheluq ta' sejha ghall-kompetizjoni u mhux, bhal filkas tallum, wara dik id-data, u sahansitra wara id-decisjoni dwar l-ghoti tal-Kuntratt."

Therefore, the Appellant's grievance is being rejected.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to reject the appeal filed by ALS Czech Republic in its entirety.

The Board further decides not to re-imburse the deposit paid by ALS Czech Republic.

Dr Ana Thomas	**Ing. Dr Damien Gatt**	**Mr Lawrence Ancilleri**
Chairperson	**Member**	**Member**

Friday 28th November, 2025.