

PUBLIC CONTRACTS REVIEW BOARD

Case 2200 – Objection – CT3017/2025 – Supplies Tender for a Digital Cytology Platform with Additional Energy-Efficient Equipment – Lot 1 (Triomed Limited vs CPSU)

19th February 2026

The Board,

Having noted the *Letter of Objection* filed by Dr Matthew Paris acting for and on behalf of **Triomed Limited** (hereinafter referred to as “*the Appellant*”) filed on the 3rd November, 2025;

Having also noted the *Reasoned Letter of Reply* filed by Dr Leon Camilleri, Dr Alexia J Farrugia Zrinzo and Dr Audrey Marlene Buttigieg Vella acting for and on behalf of the **Department of Contracts (DOC)** as the Central Government Authority, and of the **Central Procurement and Supplies Unit (CPSU)** on behalf of the Department of Health as the Contracting Authority (hereinafter referred to as “*the Contracting Authority*”) filed on the 12th November, 2025;

Having heard and evaluated the testimony of the witness Mr David Gatt (IT Unit DoC) as duly summoned by Dr Matthew Paris acting for and on behalf of the Appellant;

Having heard and evaluated the testimony of the witness Ms May Schembri (Appellant Company Representative) as duly summoned by Dr Matthew Paris acting for and on behalf of the Appellant;

Having heard and evaluated the testimony of the witness Mr Mario Farrugia (TeC Secretary) as duly summoned by Dr Matthew Paris acting for and on behalf of the Appellant;

Having heard and evaluated the testimony of the witness Mr John Pace (TEC Chairperson) as duly summoned by Dr Leon Camilleri and Dr Alexia J Farrugia Zrinzo acting for and on behalf of the Contracting Authority;

Having heard and evaluated the testimony of the witness Ms Charlene Busuttil (TEC Evaluator) as duly summoned by Dr Leon Camilleri and Dr Alexia J Farrugia Zrinzo acting for and on behalf of the Contracting Authority;

Having heard and evaluated the testimony of the witness Mr Jonathan Galea (TEC Evaluator) as duly summoned by Dr Leon Camilleri and Dr Alexia J Farrugia Zrinzo acting for and on behalf of the Contracting Authority;

Having heard and evaluated the testimony of the witness Ms Dorianne Bonello (TEC Evaluator) as duly summoned by Dr Leon Camilleri and Alexia J Farrugia Zrinzo acting for and on behalf of the Contracting Authority;

Having heard and evaluated the testimony of the witness Mr Jason Grech (IT Unit DoC) as duly summoned by Dr Matthew Paris acting for and on behalf of the Appellant;

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 6th January, 2026, 26th January, 2026 and the 28th January, 2026, hereunder-reproduced.

Minutes

Case 2200 – Objection—CT3017/2025 – Supplies – Tender for a Digital Cytology Platform with Additional Energy – Efficient Equipment – Lot 1.

The tender was issued on the 20th of July 2025, and the closing date was the 4th of September 2025.

The estimated value of the tender, excluding VAT, was €1,950,000.

On the 3rd of November 2025, Triomed Limited lodged an appeal against the Central Procurement and Supplies Unit (CPSU) – the Contracting Authority.

On the 6th of January 2026, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Dr Ing. Damien Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

A deposit of €9,750 was paid.

There were three bids.

The attendance for this public hearing was as follows:

Appellant –Triomed Limited. (C36613).

Dr Matthew Paris – Legal Representative.

Dr Kayleigh Borg – Legal Representative.

Mr Peter Apap – Company Representative.

Mr. Alex Vella – Company Representative.

Ms. May Schembri – Company Representative.

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

Dr Alexia Farrugia Zrinzo – Legal Representative.

Dr Leon Camilleri – Company Representative.

Mr. Mario Farrugia – Secretary.

Mr. John Pace – Chairperson.

Ms. Charlene Buttigieg – Evaluator.

Mr. Jonathan Galea – Evaluator.

Ms. Dorianne Bonello – Evaluator.

Ms. Veronika Sytryk – Legal Trainee.

Department of Contracts.

Dr Audrey Vella Buttigieg. – Legal Representative.

Preferred Bidder – Evolve Ltd. (C38807).

Dr Clement Mifsud Bonnici – Legal Representative.

Dr Calvin Calleja – Legal Representative.

Mr Christopher Delbridge – Company Representative.

Mr. Adrian Balghy – Company Representative.

Ms. Gemma Abdilla – Company Representative.

Opening Statements

Dr. Vincent Micallef, Chairman of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, Triomed Limited, the Contracting Authority, the Central Procurement and Supplies Unit (CPSU), and the Preferred Bidder, Evolve Limited.

Initial Submissions

Initial Submissions by Dr Matthew Paris (for the Appellant)

Dr Paris noted that this tender, issued by the Department of Contracts with CPSU as the beneficiary, was divided into different lots. The appeal concerns Lot 1, in which Triomed Ltd. was rejected. He quoted the following reason for rejection:

“Tenders technical offer for Lot 1, does not correspond to the tender document CT 3017/2025. Technical offer submitted corresponds to Lot 4 of the same tender document. The technical offer is under note 3, no amendments are allowed. Therefore, offer could not be considered fair”.

The wording used in the rejection refers to the first ground of appeal, namely the lack of clarification by the Department of Contracts. The words “does not correspond” are ambiguous. The Evaluation Committee was obliged to request an explanation from Triomed Ltd. Triomed’s only remedy was to file an appeal, as it maintains that the technical offer form was fully uploaded within the stipulated time.

Triomed Ltd. requested further information from the Department of Contracts (DOC) and CPSU regarding the method used for evaluation. In their reply, it was stated that the Evaluation Committee had considered all documents contained in the “Document Library”.

Dr Paris stated that he would explain the operation of the “Document Library” and would consequently demonstrate that the rejection was unjustified. The Evaluation Committee should have requested clarification.

Initial Submissions by Dr Leon Camilleri (for the Contracting Authority)

Dr Camilleri stated that the Evaluation Committee evaluated the offers as submitted. In their reply, he quoted:

“The objector has in fact mistakenly uploaded to Technical Offer form for Lot 4 in its offer for Lot 1”.

There was therefore a mistake, as Triomed Ltd. uploaded the documentation for Lot 4 under Lot 1.

In the circumstances the evaluation committee had no other alternative than to reject the objector’s offer on the basis of lack of technical compliance since the basis of the offer, that is the technical offer form which is note 3 was missing.

The Evaluation Committee could neither rectify nor seek clarification and was obliged to reject the offer.

Initial Submissions by Dr Clement Mifsud Bonnici (for the Recommended Bidder)

Dr Mifsud Bonnici confirmed that the issue to be determined was whether the technical form had been uploaded or not. The technical form was missing, and the reconstruction of a technical form should not be permitted. A bidder must either submit all the required documentation correctly or face rejection.

Witness Testimonies

Mr David Gatt (ID No. 5879M), summoned by Dr Matthew Paris

Mr Gatt is a Manager 2 within the IT Section of the Department of Contracts. He explained that when a new offer is created, a screen entitled “Document Library” opens on the ePPs system.

Each bidder may upload all files relating to their offer in the Document Library. When the bidder fills in the technical form and is requested to attach a particular file, the bidder uploads the file to the Document Library and then references that file in the relevant question of the technical form.

Mr Gatt stated that files uploaded to the Document Library are not considered part of the offer unless they are referenced. Even if files are uploaded to the Document Library, they are not accessible to the Contracting Authority unless they are properly referenced. The Contracting Authority and the Department of Contracts have no access to files left unused in the Document Library. The system, in fact, notifies the user if files remain in the Document Library without being used.

Dr Paris requested that this system notification be shown and asked the Chairman to make reference to Document 1 and Document 2. He stated that Triomed Ltd. had requested further information, including the following question:

“Can you kindly provide us with confirmation that the Evaluation Committee had access to all documents uploaded to the ‘Document Library’ on the ePPs platform?”

The reply received was:

“The Evaluation Committee had access to all documents and information made available in the ‘Document Library’ on the ePPs platform, that were relevant during the Evaluation of the tender”.

Dr Paris stated that this reply differed from the explanation given by the witness. The witness had explained that files must be referenced to be accessible, a point omitted from the reply.

Dr Paris then referred to another question submitted:

“Did the Evaluation Committee consider any, or all documents included in the ‘Document Library’ on the ePPs platform, as part of the Evaluation process?”

The reply was:

“The Evaluation Committee considered all documents from the ‘Document Library’ on the ePPs platform that were relevant to the evaluation process within the scope of the tender requirements”.

Dr Paris again highlighted the discrepancy between these replies and the witness’s testimony.

Mr David Gatt confirmed that files in the Document Library are not automatically part of the offer and that the reply provided by the Department did not fully explain the process, particularly the requirement of referencing.

The Chairman requested that the document presented by Mr Gatt be marked as DG1.

Dr Paris requested a recess to consult with his clients. Upon resuming, he asked for the witness to leave the room. He agreed with Dr Mifsud Bonnici’s submission that the technical form must either be submitted or not. However, he pointed out that there was written confirmation from the DOC stating the opposite of what the note brought by the witness was saying.

The crucial issue was whether the document was accessible to the Contracting Authority. If it was accessible, Dr Paris would continue with the appeal; if it was not, he would need to reconsider his position. He requested a written declaration from the DOC and from the service provider explaining what was accessible to the Contracting Authority. He insisted that, as of that morning, the technical offer for Lot 1 was still available in the system. He requested either a written explanation or a witness from the DOC.

Dr Alexia Farrugia Zrinzo suggested that the secretary of the Evaluation Committee could verify which documents were accessible to the Committee.

Dr Paris replied that this was insufficient. The issue was not what the Evaluation Committee accessed, but what was submitted into the system and what was technically accessible to the Contracting Authority. The matter was technical in nature: whether documents uploaded by the bidder were visible to the other side at the moment of upload.

In one of the replies from the DOC, it was stated that all documents were considered, including those not associated with criteria. The technical offer form for Lot 1 was not associated with criteria, but it was uploaded in the Document Library. The DOC, in its reply dated 27 October, stated that the document was considered. However, on 6 January, a different position was presented.

Dr Paris stated that he would be satisfied with a written declaration confirming that the documents were not accessible, at which point he would review the case. This was the basis of their appeal, and Dr Paris wished to exhaust all possible avenues, which did not necessarily mean winning the case.

Verbal Submissions

Verbal Dr Matthew Paris:

“Dr Paris ghan nom ta’ Triomed, qiegħed jitlob, illi f’kuntest ta’ konflitt ta’ provi, li emergu minn stqarrijiet mahruġa mid-Dipartiment tal-Kuntratti, jeħtieġ, illi terz indipendenti, jġhathi spjega dwar effettivament x’inhwa disponibbli għad Dipartiment tal-Kuntratti tramite is-sistema ePPs u għalhekk, f’dan il-kuntest, l-ahjar prova mhi xejn għajr illi tkun stqarrija mahruġa mill- manifattur tas-sistema ePPs fejn effettivament, jigi spjegat jekk id-dokumenti li gew uploaded fid-‘Document Library’ humiex accessibbli o meno għal DOC/CA”.

Verbal Dr Leon Camilleri:

“Għalkemm ma jidherx li f’dan l-istadju hemm kunflitt ta’ provi stante illi x-xhud mill-IT Department tad-Dipartiment tal-Kuntratti kien qiegħed jispjega kif effettivament taħdem is-sistema, o stante ukoll, illi l-kumitat tal-Evalwazzjoni ma nġhatax l-opportunita illi jispjega r-risposti li ntbġhatu lil appellant permezz ta’ email, peress illi l-appell jinstab fi stat ta’ provi tal-appellant, l-awtorita kontraenti ma topponix għal-xhud jew prova addizzjonali f’dan l-istadju”.

Verbal Dr Clement Mifsud Bonnici :

“Jekk tintlaqgħa jingħata terminu u oggezzjona kif giet ifformulata t-talba, li dokumenti kienux available għal Evaluation Committee”.

Dr Paris reiterated that his interest lay in what was submitted to the Contracting Authority, since the offer is submitted to the Contracting Authority and not to the Evaluation Committee.

Dr Mifsud Bonnici acknowledged the point raised by Dr Paris and expressed the hope that the clarification would be sufficient to close the matter, particularly in relation to what was accessible to the Evaluation Committee.

Dr Paris stated that it was likely that the Evaluation Committee had no access to the documents in the Document Library. His objective was to establish whether the Contracting Authority had access to the documents, as this would materially affect the arguments raised. He believed that evaluators had no access to those documents.

The Chairman stated that it was necessary to determine whether the provider was satisfied and whether the documents formed part of the technical offer.

Verbal Chairman Dr Vincent Micallef.

“Il-Bord qiegħed jakkolji t-talba tal-appellant b’dan illi rapprezentant tal-manifattur tal-ePPs jissottometti quddiem dan il-bord dikjarazzjoni bil-miktub li tirrispekkja t-talba preciza kif verbalizzata mill-appellant. Din għandha tigi prodotta sal 20 ta Jannar 2026 liema dokument għandu jigi ‘ccirkolat mal-partijiet kollha nteressati f’dan il-process. Għal dan il-ghan, din is-seduta qiegħda tigi differita għat Tnejn 26 ta Jannar 2026 fid-9.00am.

Dan il-Bord qiegħed jigi nfurmat, illi l-appellant jkun sufficjentament bizzzejjed illi d-dikjarazzjoni rikjesta mill Manifattur tal-ePPs, tigi redatta f’email. Illi dan il-Bord qiegħed ukoll jordna, liema ordni għandha tigi kkomunikata wkoll direttament lid-Dipartiment tal-Kuntratti kif ukoll lir-Rapprezentant tal-Manifattur, illi l-istess rapprezentant għandu jkun disponibbli anke on-line fis-seduta ta Jannar 26 fid-9 ta’ fil-ghodu hin ta Malta”.

Conclusion of the Hearing

With no further arguments presented, Chairman Dr Vincent Micallef thanked all parties and formally adjourned the session to Monday, 26 January 2026, at 9.00 a.m.

SECOND DAY – January 26th, 2026

On January 26th, 2026, at 09:00 am, the PCRB reconvened, following the first hearing held on the 6th of January 2026.

The Board was composed of:

- Dr Vincent Micallef – Chairman.
- Dr Ing. Damien Gatt – Member
- Mr Lawrence Ancilleri – Member

Attendance:

Appellant –Triomed Limited. (C36613).

Dr Matthew Paris – Legal Representative.

Dr Kayleigh Borg – Legal Representative.

Mr Peter Apap – Company Representative.

Mr. Alex Vella – Company Representative.

Ms. Mark Bondin – Company Representative.

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

Dr Alexia Farrugia Zrinzo – Legal Representative.

Dr Leon Camilleri – Company Representative.

Mr. Mario Farrugia – Secretary.

Mr. John Pace – Chairperson. (online).

Ms. Charlene Buttigieg – Evaluator.

Mr. Jonathan Galea – Evaluator.

Ms. Dorianne Bonello – Evaluator.

Department of Contracts.

Dr Audrey Vella Buttigieg – Legal Representative.

Preferred Bidder – Evolve Ltd. (C38807).

Dr Clement Mifsud Bonnici – Legal Representative.

Dr Calvin Calleja – Legal Representative.

Mr Christopher Delbridge – Company Representative.

Mr. Adrian Balghy – Company Representative.

Ms. Gemma Abdilla – Company Representative.

Opening Statements

Dr. Vincent Micallef, Chairman of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, Triomed Limited, the Contracting Authority, the Central Procurement and Supplies Unit (CPSU), and the Preferred Bidder, Evolve Limited.

The Chairman stated that this was a continuation of the case, during which further verbal reports were to be made, and invited Dr Matthew Paris to commence.

Submissions

Submissions by Dr Matthew Paris (for the Appellant)

Dr Paris noted what had occurred since the last session, stating that there were aspects that did not make sense. After the previous session, information was provided by the other party, following which clarification was requested. On Friday night, at around 9.00pm, two separate emails were received; however, the PCRB had already received these same emails at 3.00pm and 5.00pm respectively.

In the first email, he quoted:

“Please be informed that, in order to provide this expertise, we will require an estimated total of six (6) person-days. This includes time to study the case, examine all relevant system logs, verify findings with our e-procurement experts’ and attend the hearing to provide testimony”.

In the email received by the PCRB at 5.00pm, the reference to ‘six person-days’ had changed.

The Chairman stated that Dr Paris had been very clear in his opening statement.

Submissions by Dr Clement Mifsud Bonnici (for the recommended Bidder)

Dr Mifsud Bonnici noted that it had been agreed that an email declaration for the verbal submissions would suffice, and that if such a declaration was not received, the witness would have to testify. The email from European Dynamics stated that, should the appellant require a witness to testify, the preferred bidder would need additional time to study the case. The declaration addressed all points and was considered exhausted. Dr Paris stated that he wanted to understand why, in the first email, six working days were required to complete the work, while in the second email this was reduced to two hours.

Submissions by Dr Audrey Buttigieg Vella (for the Department of Contracts)

Dr Buttigieg Vella stated that after the Board issued the verbal decree, European Dynamics was informed. On 19 January, the Board was provided with the first declaration, and following a request for clarification, an answer was received on 23 January. This response was forwarded to the PCRB by Dr Buttigieg Vella. The Chairman stated that Dr Paris could obtain his answer from whoever was responsible for changing the requirement from six days to two hours.

Dr Buttigieg Vella maintained that the most important consideration was whether the appellant was satisfied with the answer provided.

Dr Paris noted that Triomed had requested two items: the initial email sent by Mr Jason Grech, which had been sent promptly, and clarification regarding the online documentation, where reference was made to FAQs. He quoted:

“The process is fully documented in the online FAQ’s pages and demonstrated in the instructional video”.

Dr Paris stated that nothing further was mentioned, whereas in the original letter it was stated that everything was visible in the online documentation.

Dr Mifsud Bonnici asked what the appellant's position was.

Dr Paris replied that they were still establishing the facts and circumstances.

Dr Camilleri asked what Dr Paris was not understanding.

Dr Paris reiterated that since the first hearing, several emails and letters had been exchanged. European Dynamics was required to investigate what had been requested in the first hearing, provide the relevant information, and attend the current hearing.

All opposing parties objected to this.

Dr Paris stated that the response received was a copy-and-paste reply. In the first part, reference was made to an inaccessible email that had been sent to them at a later stage. In the second part, a request was made, and he quoted:

“a copy of the online documentation, together with the cross reference as referred to in the email dated 19th January 2026”.

The Board issued a decree specifying a time limit for the requested information. At 3.00pm, European Dynamics sent an email requesting a deferral, payment, and six person-days. Two hours later, at 5.00pm, the six person-days were reduced to two hours.

Submissions by Dr Alexia Farrugia Zrinzo (for CPSU)

Dr Farrugia Zrinzo noted that six person-days did not equate to six days, but rather to six individuals working on the same project. She stated that the answers to the Board were provided within the limited time available. As the company was not established in Malta, procedures could differ. She concluded that there was no need to continue debating this issue.

Dr Paris insisted that when the other party requested time to conduct an audit, he became more doubtful. He maintained that not all requests had been satisfied, particularly access to the information contained in the online documentation. Reference was made to *‘How to submit a tender offer in the ePPS using the web TPT’*, which referred to a video.

This, he argued, did not answer their request, as it had already been declared that access to the information uploaded in the document library was not available to the DOC. Triomed had requested clarification regarding the source from which the information was issued.

The Chairman clarified that Dr Paris was not satisfied with the construction of the email.

Dr Paris corrected himself and quoted:

“Should the declaration not be received within the prescribed timeline, the board is herein summoning the manufacturer or its authorized representative to attend”.

He stated that he was not debating a yes-or-no response but rather requesting clarification on the point of origin of the information, which should have been clear prior to the issuance of the offer. When submitting an offer, all regulations had to be adhered to.

Dr Paris stated that all bidders were interested in the regulations in force prior to submitting an offer, not afterwards.

Dr Farrugia Zrinzo stated that the answers were available on the FAQs on the website, along with the video. These had been present even before Dr Paris’s client submitted its bid. When a representative witness from the DOC’s IT section presented a screenshot, it showed that when the tenderer submitted the bid, an error prompt appeared stating:

‘Please confirm that you agree to the below warnings, one or more files in your document library have not been associated with a criterion’.

These files will not be submitted with your tender. Would you like to proceed with the tender submissions?

Dr Paris reiterated that this was a generic method and not what had occurred in this particular case.

Dr Farrugia Zrinzo insisted that doubts were being invented where none existed.

Dr Paris requested a declaration that the information was generated from *‘how to submit a tender offer in the ePPS using the web TPT’*.

The Chairman asked the DOC whether it was in a position to respond to Dr Paris.

Dr Camilleri stated that it would be preferable to summon a witness from the IT section. He maintained that the submissions made during the verbal proceedings were satisfactory. European Dynamics had provided an abstract response in their preliminary letter.

Regarding chronology, Dr Buttigieg Vella sent the answers formulated by European Dynamics at 11.00am, and the Board had expected them directly from the manufacturer, which explained the delay. With regard to their fees, these were intended to cover witnessing and a more detailed study of the case.

Witness Testimonies

Mr Jason Grech (ID No. 185071M), summoned by Dr Matthew Paris.

Mr Jason Grech, Assistant Director within the DOC, testified that he was responsible for the procurement system. He stated that when a bidder required an account, registration in the system was necessary. General information was accessible to the public; however, company-specific information was only accessible to the bidder holding the account.

At that stage, no signed agreements existed between the economic operator, and the DOC. Economic operators were notified via FAQs, videos, and system updates. Weekly workshops were also held to assist economic operators in understanding the system. These workshops were free of charge and open to anyone who applied via email. While systems may differ slightly, all were compliant with EU directives and the PPR.

Dr Paris confirmed that Mr Grech was the same witness who had communicated with European Dynamics and was aware of the emails sent to them and to an individual named Harry. These emails confirmed that the information in the document library were not accessible to the DOC and was contained within the online documentation.

Dr Paris insisted that Triomed had requested the online documentation. Mr Grech stated that this referred to a video he himself had produced, explaining how an economic operator was required to submit an offer. Dr Paris asked whether there was any additional documentation accessible to operators indicating what was accessible in the document library. Mr Grech replied that there was the manual, the video, and the system itself.

Dr Paris showed the witness a document containing one of the warnings. The witness confirmed that there was nothing indicating that information uploaded in the document library was inaccessible to the other party, apart from what was shown in the video.

Dr Paris quoted from a letter sent by European Dynamics to Mr Grech, stating:

“This process is fully documented in the online FAQ pages and demonstrated in the instructional video how to submit a tender offer in the ePPS using the web TPT which details the tender submission work flow and in particular the Document Library at approximately 3mins 15 secs”.

This referred to the video prepared by the witness. The video explained that files had to be referenced; however, it did not state that uploads in the document library were not accessible to the DOC.

Dr Paris asked whether an audit trail had been conducted or whether uploaded documents had been verified.

Mr Grech replied that the DOC had no access. The economic operator could view their own offer and all documents submitted. He could not verify whether unreferenced documentation had been uploaded. He believed that European Dynamics similarly had no access.

Dr Paris attempted to establish whether unreferenced but uploaded documents could be corroborated by European Dynamics in line with the witness's testimony. Mr Grech requested a direct question. The Chairman granted Dr Paris the opportunity to ask a direct question.

Dr Paris requested confirmation that the screenshot shown from the document library had indeed been uploaded.

Mr Grech stated that this could be checked through the audit system. He explained that tender preparation was a tool to assist economic operators. Files were uploaded to the document library, referenced against criteria, encrypted, and then locked. The DOC could not confirm the contents, as it had no access; however, European Dynamics could.

Dr Ing. Damien Gatt confirmed with Dr Paris that he was declaring what had been uploaded in the document library. He asked whether each economic operator had a document library, or whether each tender had one.

Mr Grech replied that each economic operator had a secure space for all offers. Upon submission, the system linked the information to the specific tender, and referenced documents became visible.

Dr Farrugia Zrinzo asked the witness to clarify what he was referring to, as the print screen had not yet been shown.

The Chairman found the document interesting, noting that it referenced uploaded files and indicated an upload of 95.96%.

Dr Mifsud Bonnici explained that when reviewing the bid, the system showed the status prior to submission, and that ultimately the upload was at 100%.

Mr Grech explained that the system had a 100MB limit and, for example, 80MB would represent 80%.

Dr Ing. Gatt asked whether the system showed if uploaded files had been referenced.

Mr Grech replied that the system displayed an envelope. All parties suggested showing the screenshot to the witness so that he could explain.

Dr Paris stated that the documents were in the DOC 2 "with their additional docs".

Mr Grech showed the screenshot to the Board and explained that a white shade indicated referenced documents, while a grey shade indicated unreferenced documents. Hovering over the shade with a mouse would display a message stating whether the documents were referenced.

Dr Ing. Gatt confirmed that, in this case, the technical offer form for LOT 1 was not part of the offer. Dr Paris referred to Dr Ing. Gatt's earlier question regarding whether the document library was associated with a tender.

Mr Grech stated that documents were stored in the library per operator and were not lot specific. Mr Grech stated that the system was designed to be stable and efficient, particularly for encryption purposes. A document from the document library could be associated with a criterion more than once. At this stage, Dr Paris reiterated that while the DOC could not provide the requested documentation, European Dynamics could, and he insisted that this documentation was required.

Cross-Examination by Dr Clement Mifsud Bonnici (for the Recommended Bidder)

Dr Mifsud Bonnici asked why the witness referred to the document library as a safe space. The witness replied that it was considered safe because it was accessible only to the economic operator. Encryption ensured that the offer was locked until the tender opening.

Dr Mifsud Bonnici noted that if a document was not referenced, and therefore not encrypted and not sent to the DOC, the DOC would have no guarantee that the document left in the document library had not been tampered with, adjusted, or amended.

Mr Grech stated that this was not possible, as once the selected documents were taken from the library, they were encrypted for the offer, and the remaining documents would be closed down. He explained that this system was implemented because several operators would later request access to view their offer and would therefore be able to access the system.

Dr Ing. Gatt asked the witness whether operators receive an email after submitting a tender. Mr Grech replied that, in addition to being informed, there was also an informative section within the system.

The witness was about to leave when he was summoned again to hear Dr Paris.

Re-cross-examination by Dr Matthew Paris (for the appellant)

Dr Paris requested proof; however, the opposing party stated that it was merely an assumption that, according to the screenshot, Triomed had uploaded Technical Offer Form 4 instead of Technical Offer Form 1. Triomed insisted that it had uploaded all technical offer forms in the document library. The testimony of Mr Grech showed that the opposing party did not have the ability to know this, as they had no access to the system. Triomed was referred to European Dynamics.

Dr Paris requested an audit confirming that his client had submitted all documents correctly up to the end of the tender submission. He insisted that such proof was necessary and that it did not form part of their grievances.

The Chairman invited Dr Paris to make his verbal submission.

“Dr Paris on behalf of Triomed, and in view of the testimony of Mr Jason Grech, mainly that the DOC is not in a position to confirm or otherwise, what has been submitted by Triomed in its document library, specific to this tender, and in view of the fact that Mr Grech himself stated that it is most likely that, European Dynamics will have access to such information, also, as corroborated through the European Dynamics themselves dated January 23rd, which said that its submission is generic and not specific to this tender, in addition to the fact that it stated that it can and he quotes ‘can examine all relevant system logs’. Thereby it is requesting that the system logs are thereby provided”.

Dr Farrugia Zrinzo stated that they were not contesting the veracity of the document presented by the appellant, DOC 2, which had also been referred to in the testimony of Mr Jason Grech. Mr Grech had also explained the differences in the colours of the icons. He stated that white icons referred to documents that had been associated with a criterion, while grey icons referred to documents that had not been referenced or associated with any criterion.

Dr Mifsud Bonnici asked Dr Paris whether he was specifically requesting the system logs, namely the Excel sheet, which was very lengthy and difficult to interpret.

Dr Paris showed DOC 2 to the witness and asked for the meaning of ‘Technical offer form Lot 1 (the to upload)’ as shown in the screenshot of DOC 2.

Mr Grech replied that there were six documents, five of which were referenced.

Dr Paris sought confirmation that it was ‘Technical offer form Lot 1’ that had been referenced and not another document. He stated that Mr Gatt had seen that the front end was submitted as ‘Technical offer Lot 1’, meaning that this file was present in the library; however, Dr Paris requested proof of this. He suggested accessing the system using their own login credentials.

Witness Testimonies

Ms May Schembri (ID No. 579192M), online, summoned by Dr Matthew Paris.

Dr Paris asked Ms Schembri for access to Triomed's ePPS system. He requested to view the document library for case 3017/2025, to see how the system was currently uploaded and to view the contents of 'Technical offer Lot 1'. He asked Ms Schembri to share her screen.

Ms Schembri accessed the ePPS website and showed all parties the contents of the document library. Dr Ing. Gatt asked about the white and grey icons.

Ms Schembri explained that one icon displayed the message 'This file has been associated with one or more criteria', while the other icon displayed 'This file has not been associated with any criteria'.

Dr Paris asked Ms Schembri to upload Technical Offer Lot 1.

Ms Schembri replied that she was not the person who had uploaded this case.

Dr Paris asked whether she could upload or add something to the library. Ms Schembri attempted to do so, but all headings were disabled.

Dr Ing. Gatt asked Ms Schembri whether there was a way to determine the 'one or more criteria'

Mr Grech guided Ms Schembri and assured Dr Ing. Gatt that before submission, the system displays all uploaded and referenced files, and this can be checked at any stage.

Dr Paris was informed that every submission is assigned a number, for example hash 232188, which indicates that it can no longer be modified. At this point, Mr Grech confirmed that there were six files, five of which were referenced, and further confirmed that once the offer was submitted, the system did not allow additional files to be added. Therefore, Technical Offer Lot 1 could not have been uploaded at a later stage.

Mr Mario Farrugia (ID No. 200585M), summoned by Dr Matthew Paris.

Mr Farrugia, the secretary of the evaluation board, stated that the board consisted of three evaluators, the chairperson (who was present online), and himself. During the evaluation process, they could not find Triomed's 'technical form Lot 1' but instead found 'technical form Lot 4'. The board could neither request a clarification nor a rectification, as stated in Note 3.

The witness later admitted that clarification could be requested under Note 3; however, in this case, the technical offer form was missing. He quoted from the General Rules:

“No rectification shall be allowed in respect of the documentation as accompanied by note 3, in clause 5 of instruction to tenderer, only clarifications on the submitted information in respect of the latter may be requested. No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications”.

The technical offer submitted corresponded to the specifications of a different Lot, and therefore the board could not seek clarification from the bidder.

Cross-examination by Dr Leon Camilleri (for CPSU)

Dr Camilleri confirmed with Mr Farrugia that a technical offer form corresponding to Lot 1 was not available. The board reviewed all documentation submitted for Lot 1, and since the form was missing, there was nothing to clarify.

Ms Charlene Busuttil (ID No. 120089M), summoned by Dr Leon Camilleri.

Ms Busuttil, a medical laboratory scientist and one of the evaluators, stated that in place of Lot 1 they found documentation for Lot 4, which contained different specifications. The Lot 1 form was missing.

Cross-examination by Dr Clement Mifsud Bonnici

Dr Mifsud Bonnici stated that there were three bidders: Triomed, Evolve, and E.J. Busuttil. Ms Busuttil confirmed that only the appellant’s form was missing.

Ms Dorianne Bonello (ID No. 162781M), summoned by Dr Leon Camilleri.

Ms Bonello, a medical laboratory scientist and evaluator, stated that the decision to reject Triomed’s offer was taken after it was established that the technical offer form for Lot 1 was missing.

Mr Jonathan Galea (ID No. 258280M), summoned by Dr Leon Camilleri.

Mr Galea, a medical laboratory scientist and evaluator, stated that the evaluation could not be properly conducted as Lot 1 documentation was missing.

Mr Mario Farrugia (ID No. 200585M), summoned by Dr Leon Camilleri.

Mr Farrugia, the secretary of the board, assists with the evaluators' conclusions, rectification questions, and the preparation of evaluation reports. Dr Camilleri quoted from Triomed's appeal:

"The evaluation committee considered all documents from the 'Document Library' on the ePPS platform were relevant to the evaluation process and within the scope of the tender requirements".

Mr Farrugia explained that this was the committee's response to Triomed's freedom of information request. He stated that there had been a misinterpretation of the term 'Document Library'. This was not the same 'Document Library' displayed during the hearing, as the Contracting Authority had no access to the economic operators' system.

The 'Document Library' referred to in the quoted reply was the one accessible to the board on the ePPS system. The response to the information request was sent after the closing date and after the recommendations had been made.

Mr John Pace, who was present online, was not required to testify.

Dr Mifsud Bonnici stated that, with everyone's agreement, the video previously referred to should form part of the evidence.

Dr Paris stated that the video had not been submitted as evidence but agreed that it could be submitted at this stage.

Dr Farrugia Zrinzo noted that the video was a public document available on the ePPS.

The Chairman stated that Dr Mifsud Bonnici was referring to a link that was not currently available and that an agreement would be reached between the parties for that specific link to form part of the evidence in these proceedings.

Dr Paris agreed but stated that if any new material were introduced at this stage, he must be given the opportunity to reply in writing.

Dr Camilleri stated that the video constituted a substantial part of the IT witness's testimony.

The Chairman noted that while testimony and references had been made regarding the video, it was not physically included in the acts.

Dr Mifsud Bonnici assured Dr Paris that the video would not be mentioned in his final submissions.

Submissions

Dr Paris insisted on replying in writing, notwithstanding the Chairman's remark that he had already viewed the video.

In his verbal statement, the Chairman declared that the video referred to by all parties and testified to by Mr Jason Grech formed part of the evidence in the acts of these proceedings. The Board accepted the appellant's right to submit additional submissions if necessary.

All parties agreed to meet online on Wednesday, 28 January 2026, at 14:00 hrs, for final submissions only. The Chairman instructed Dr Clement Mifsud Bonnici to produce, by email, the video from the ePPS system relevant to this appeal.

Conclusion of the Second Hearing

With no further arguments presented, Chairman Dr Vincent Micallef thanked all parties and formally adjourned the session to Wednesday, 28 January 2026, at 14:00 hrs.

THIRD DAY – January 28, 2026

On January 28, 2026, at 14:00 hrs, the PCRB reconvened to continue considering the appeal following the hearing held on the 26th of January 2026.

The Board was composed of:

- Dr Vincent Micallef – Chairman.
- Dr Ing. Damien Gatt – Member
- Mr Lawrence Ancilleri – Member

Attendance:

Appellant –Triomed Limited. (C36613).

Dr Matthew Paris – Legal Representative.

Dr Kayleigh Borg – Legal Representative.

Ms. Mark Bondin – Company Representative.

Ms May Schembri – Company Representative.

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

Dr Alexia Farrugia Zrinzo – Legal Representative.

Dr Leon Camilleri – Company Representative.

Mr. John Pace – Chairperson.

Mr Mario Farrugia – Secretary.

Ms. Charlene Buttigieg – Evaluator.

Mr. Jonathan Galea – Evaluator.

Ms. Dorianne Busutil – Evaluator.

Department of Contracts.

Dr Audrey Vella Buttigieg – Legal Representative.

Preferred Bidder – Evolve Ltd. (C38807).

Dr Clement Mifsud Bonnici – Legal Representative.

Ms. Gemma Abdilla – Company Representative.

Opening Statements

Dr. Vincent Micallef, Chairman of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, Triomed Limited, the Contracting Authority, the Central Procurement and Supplies Unit (CPSU), and the Preferred Bidder, Evolve Limited.

Final Submissions

Final Submissions by Dr Matthew Paris (for the Appellant)

Dr Paris stated that this was an interesting case. A fundamental question arose:

‘Can the CA go against its principle of self-limitation, without it being necessary or proportional?’

They were inviting the Board to apply this question, in light of the present case, in order to establish whether the Technical Board could have chosen another course of action. They believed that the decision of the Technical Board was incorrect, as it was contrary to the law and to the principles set out in the tender documentation. Moreover, the procedure adopted was not in accordance with the court, the law, or the Board.

Referring to the five grievances, Dr Paris explained that he would address the second and fourth grievances together, then the third grievance concerning clarifications, and finally combine the first and fifth grievances.

With regard to the second and fourth grievances, he referred to the evidence provided in the documents submitted. Triomed had uploaded all the required documents for a compliant offer within the stipulated time limit. From an examination of the Document Library, it was evident that the technical offer for Lot 1 had been submitted, as testified by Ms May Schembri. Mr Jason Grech insisted that once an offer is submitted, it is uploaded into a secure space and becomes untouchable.

This fundamental point is addressed in Article Reg. 62 of the Public Procurement Regulations, from which he quoted Clause 1:

“Minghajr pregudizzju ghal taqsima 6, Reg 235 Klawsola 2, l-awtorita responsabbli ghat tmexxija tas-sejba ghandha tizgura li l-operatur ekonomiku jkun, mil-bidu nett elegibbli li jikkwalifika ghal offerta u ghalbekk ikun fil-pussess tal-htigijiet kollha stipulati fid-dokument tal-akkwist, sad-data tal-gheluq ghas-sottomisjoni taghhom”.

The law clearly and fundamentally states that the economic operator must be compliant *ad inizzjo*. Here, one must distinguish between the offer itself and the economic operator. Compliance must be achieved by the stipulated deadline.

The law does not provide that documents may be submitted after “Inżel is-separju”, once the curtains are down. In some cases, documents are submitted under Note 3 but not under Note 2. This may occur inadvertently or intentionally, followed by a later rectification.

If a document is submitted bearing the present date rather than the date specified in the tender, the economic operator would be considered non-compliant, even if the document falls under Note 2. The PPR regulates this matter to ensure compliance regardless of where the documents were uploaded. Clause 1 refers directly to the economic operator.

Clause 3 of Reg. 62 emphasises that once the financial offer is submitted, it cannot be altered. Clause 2 is fundamental at this stage, as it allows the economic operator to submit additional documents within the limits of the offer.

Dr Paris questioned whether the offer specified how documents were to be submitted. The principle of self-limitation dictates that one cannot be judged based on user manuals or documents that form part of the offer. He referred to the case *Southeast vs CPSU*, where it was established that one cannot be judged on assumptions.

Referring to Appeal 72/22/1 of 22 June 2022, he quoted:

“Jista jkun il-hsieb tal-Awtorita Kontraenti kien, li kull vettura kellu jkollha dak ir-rating, pero jekk hu bekk, dan il-hsieb ma kienx espress fid-dokument tas-sejba u obblatur m'ghandux jigi penalizzat fuq sabha ta klawnsola li mhux cara fit-tifsila taghha”.

Dr Paris stressed that it is **now** common knowledge how the Document Library functions, namely that it contains a secure space to which documents are uploaded and that documents submitted in the Document Library does not form part of the offer to which the DOC and the Technical Evaluation Board have no access.

However, when Triomed asked the DOC and the CA about access prior to the appeal, they were informed that access did exist. During the testimony of the DOC witness, however, this position changed, and it was stated that neither the DOC nor the Evaluation Committee had access to the Document Library. When Triomed queried this again, they were initially asked to pay a €3,600 fee for an audit and were then informed, in generic terms, that access did not exist and that this was reflected in the online documentation.

The online documentation consisted of a video demonstrating how to upload documents to the Document Library, but it did not state that documents uploaded therein would not be visible to other parties due to lack of access.

Dr Paris expressed doubts about this position. The crucial point was that neither Triomed nor any other party could be judged on regulations of which no one was aware regulations that were effectively implemented after the process had begun. There was no reference to such rules in the FAQs or user manuals. Consequently, judging on the basis of unknown regulations would contravene Regulation 39 of the PPR.

Triomed transcribed the video submitted as evidence by Dr Mifsud Bonnici, which was 1 minute and 35 seconds long, and which made no reference to access. No assumptions could be made. Dr Paris invited the Board to review the first page of the technical offer form under Note 3, from which he quoted:

“This form is to be submitted online, through the prescribed tender response format and by using the tender preparation tool provided, and those that fail to complete or upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication”.

There was no cross-referencing, and bidders were obliged to use the provided tool to submit documents. He invited the Board to re-listen to the testimony of Mr Jason Grech for the DOC, confirming that Triomed complied with all the requirements of the technical offer form. The opposing party claimed that something was missing from the submissions; however, these documents were submitted online.

While the concept of online submission was generally welcomed, Regulation 2 of the Law states:

“Pjattaforma tal-akkwist elettroniku tal-gvern, tfisser, pjattaforma elettroniku kif stabbilit mid-Direttur”.

This indicates that offers had to be submitted via the e-procurement platform, with no mention of the interpretation advanced by the DOC, CA, or Evaluation Committee. Referring to the testimony of the Secretary of the Board, Dr Paris noted that Triomed was accused of misinterpreting the term “Document Library”. This demonstrated that the term itself was unclear even to the Evaluation Committee, and that the concept of accessibility without access was nowhere defined.

Evidence showed that the technical offer for Lot 1 was uploaded and submitted in both the front end and the back end, with all boxes ticked. Furthermore, the content of the form was corroborated by literature annexed to the offer. In cases of ambiguity or conflicting information, Policy 40 obliged the Evaluation Board to seek clarification from Triomed to see why there was an upload instead of another. Significant time was wasted due to the absence of such clarification.

Referring to the General Rules Governing Government Tenders, page 17, he quoted:

“No clarifications shall be allowed where there is no doubt, that the submitted technical offer form does not comply to the requested specifications”.

The phrase “no doubt” requires exhaustive verification. The witnesses from the DOC, Mr Jason Grech, and the video all used the term “upload”. The doubt was never resolved, despite clear evidence that the technical offer form had been uploaded.

Proportionality, a principle derived from Regulation 39, should be applied where necessary. Dr Paris stated that *Ballut 440/2012/1* (31 May 2013) was identical to the present case with respect to missing financial documentation. Referring to page 11, he quoted:

“It-tieni raguni hija illi Ballut ma kiseb ebda vantagg kompetittiv bin-nuqqas taghha, li kieku kien possibbli li tikseb dan il-vantagg, il-qorti kienet se tasal biex tgħid illi l-iskwalifika hija necessarja biex titbares kompetizzjoni gusta, iżda ma ntwera ebda mod kif Ballut setgħet tikseb xi vantagg, b’dak li għamlet jew abjar b’dak li naqset li tagħmel. Fil-febma tal-Qorti għalhekk mhux biss l-iskwalifika ma kienitx mehtiega biex jinkiseb l-għanijiet tas-sejha għal offerti, fosthom il-barsien tal-kompetizzjoni gusta, iżda anzi waslet biex jintilef l-għan u l-kuntratt jingħata lil min għamel l-irhas offerta”.

The Board was invited to incorporate these paragraphs into its decision. Triomed was compliant with all submissions, and no competitive advantage was gained. Nor could the opposing parties demonstrate that they would have been disadvantaged had Triomed been granted access to the secure space.

Triomed maintained that it should have been granted the right to clarification. Mr Grech had admitted that European Dynamics had access to the secure space, and Triomed was not seeking rectification. Referring

to *Krypton Chemist Ltd/CPSU/Cherubino Ltd. 322/2025/1* (13 November 2025), Dr Paris cited jurisprudence on proportionality dating back to 2013, including *Firetech Ltd.*, *Ballut Blocks*, *Multi Gas*, *PR20JV*, *Polaris*, and *Derek Garden Centre*, quoting:

“Il-gurisprudenza Maltija u Ewropeja f’dan il-qasam, itennu li l-Awtoritajiet Kontraenti għandhom jimxu b’mod strett mall-kundizzjonijiet stabbiliti fid document tas-sejha iżda fl-istess waqt għandhom jikkunsidraw il-gravita tan-nuqqas u l-effett tiegħu fuq il-kompetizzjoni, ifisser dan, li l-Awtorita Kontraenti għandha dmir li tiddistingwi bejn irregolaritajiet formali u dawke sostanzjali. Irregolarita minuri bhal ma huma zbalji klerikali jew nuqqas li ma laqgħtux il-kompetizzjoni gusta, jistgħu jigu msemmija taht il-principju tal-proporzjonalita sakemm dawn ma jwasslux għal vantagg mhux kompetittiv mhux xieraq”.

The Court emphasised that competitive advantage versus non-competitive advantage must be assessed regardless of what Note 2 or Note 3 states. This issue could have been resolved through proportionality. Triomed sought no preferential treatment, only an evaluation strictly in line with the tender terms. Triomed demonstrated compliance *ad inizio*.

The first grievance concerned documents reviewed by the Technical Board in the Document Library, while the fifth grievance related to the refund of the deposit. Dr Paris believed that the hearing justified the appeal and requested that the Board decide on the deposit prior to ruling on the merits. Upon appeal, verification confirmed that Lot 1 was in the Document Library, raising further questions. Initial responses confirmed that the Evaluation Committee had access, but this position changed during the hearing.

Referring to CPSU’s verbal submissions, Dr Paris noted that they continued to deny any error. It was the Secretary of the Board—coincidentally the last witness—who referred to a misinterpretation of the “Document Library”.

Dr Paris respectfully requested a full refund of the deposit, as Triomed had been misled beforehand, notwithstanding its strong position on grievances 2, 3, and 4. He concluded by stating that the evaluation process appeared to have shifted, with excessive focus on principles at the expense of justice.

The notice refers to a Court of Justice, not merely a Court of Law. The discretion vested in the Evaluation Committee and the Board exists to be exercised. Triomed submitted that this discretion was not applied. Proportionality supports regulatory discipline, and in this case, no regulation justified the exclusion of Triomed’s bid.

Dr Mifsud Bonnici intervened, raising two points. He asked whether the appellant sought clarification or rectification and whether the transcript of the video could be referenced in the submissions.

Dr Paris replied that clarification was addressed under grievance 3, while proportionality formed part of grievance 4. As for the video, he stated that he had not had prior access but confirmed it could be mentioned.

Dr Mifsud Bonnici referred to Clause 4.2, “such as seeking clarification”.

Dr Paris concluded by stating that the Board could either order a fresh evaluation or uphold Triomed’s bid through the application of proportionality.

Final Submissions by Dr Leon Camilleri

Dr Camilleri mentioned a cardinal point: after hearing the submissions by Dr Paris, one would think that they were discussing a criminal case where doubt was inserted. The technical offer form was missing, and one could not clarify a missing item. Dr Paris insisted that the form was submitted in the “Document Library”. He quoted a number of sentences and insisted that there was nowhere in writing stating that they had to submit the form anywhere other than the “Document Library”.

However, all the other documents of Triomed were uploaded in the system, except for the technical offer form of Lot 1. This was a mistake, with advantages or disadvantages, and some mistakes can be tolerated. This is where the principle of proportionality is applied. Dr Paris stated that they were not asking for different treatment; however, they did not upload the technical offer form and still wanted their offer to be considered.

This document from Note 3 was the essence of the offer, and since Triomed did not upload it, there was no basis for calculation or inclusion. If they did not know how to upload documents in the system, there was a notice in the procedures before submitting an offer, which he quoted:

“Please agree to the below warnings, one or more files in the ‘Document Library’ have been associated with the criterion. These files would not be submitted with your tender. Would you like to proceed with the tender submission?”

The appellants ticked “confirm”. This was a warning in case of an oversight.

Referring to the Governing Tender Rules, Article 9, he quoted:

“Tenders must be compiled, packed and uploaded on the e-tender.gov.mt before deadlines”.

Dr Paris interpreted this to mean that since the form was in the “Document Library”, in a safe place, it had been submitted correctly. He referred to the case *Servizz Malta vs DOC* and quoted:

“Il-principju tal-proporzjonalita ma jhallix offerta titwarrab minhabba irregolarita li huma limitati jew eccezzjonali”.

In this case, however, this was not a small irregularity but a lack of documentation in the offer, where clarification could not be sought. The instructions were clear, and the appellants uploaded all the other documents. The system was clear and guided the bidder throughout the process.

The video referred to by the witness from European Dynamics stated that the document needed in the offer had to be associated from the “Document Library”. This was obvious. Triomed placed significant weight on the email sent afterwards to the Evaluation Committee, in which they asked which documents had been considered.

The Evaluation Committee considered the contents in the library and acted according to the basic principles of Public Procurement by excluding the offer due to the lack of documents under Note 3. The reply that was eventually given was valid and correct. The appeal should be denied.

Final Submissions by Dr Clement Mifsud Bonnici

Dr Mifsud Bonnici stated that he would first address self-limitation, then proportionality, and finally the issue of the deposit.

The appellant, Dr Paris, claimed that they did not know how the system worked prior to this case, that they were not at fault for not referencing the document, and therefore for not submitting or making the form available to the Evaluation Committee.

Dr Mifsud Bonnici suggested to the Board that when such an allegation is made by an appellant, the appellant must prove the claim in order to shift the burden of proof onto the Contracting Authority. However, the appellant failed to prove this claim. They should have summoned the employee responsible for uploading the documents and, under oath, testified that he never received a prompt. Ms Schembri was not the person who uploaded the document; the mistake was made by Triomed.

Referring to the case *Vassallo vs Wasteserv*, 22/2025/1, where the bidder had mistakenly forgotten to upload a document, the Court held that this was the bidder’s mistake. He quoted paragraph 87:

“Ga la darba d-dokumenti ma washux minhabbanuqqas ta VPL, VPL ma tistax tigi tgħid li ma kienitx negligenti, u għalbekk il-Bord qies sewwa li hi għandha ggorr il-htija, tan-nuqqasijiet tagħha”.

The Tender Evaluation Committee could not reach any other decision when the technical offer form for Lot 1 was missing. It was unfair for the appellant to claim that the PPR regulations and self-limitation rules were breached. When Ms Schembri granted access to their system, the appellant could have seen which documents were referenced or not, and in a corner box it was clearly written that only files associated with one or more criteria would be submitted.

The Evaluation Committee stopped evaluating the bid once the technical offer form was found to be missing, and the technical literature was not reviewed. From the testimonies of Mr Gatt and Mr Grech, and from the declarations of European Dynamics, it was confirmed that a prompt informs the bidder before submission if a reference is missing.

The video, although immaterial, corroborated everything that was stated. The transcript clearly states that referencing must be done. He quoted:

“Instead of uploading documents one by one, a user can drag and drop relevant documents in the Document Lab. The Document Library is a position when user can upload documents. The relevant documents can be later referenced with specific criterion”.

In the first 1.45 minutes, the notice “only files associated with one or more criteria will be submitted” appears. Dr Mifsud Bonnici also quoted:

“As soon as the document is referenced the criterion changes colour from yellow to green indicating that the criterion has been answered”.

This is another safety mechanism showing that documents have been uploaded correctly. The criterion appeared green for Triomed; however, they uploaded the wrong document. The question therefore was: whose fault was it?

Regarding proportionality, there is a spectrum of errors. Some mistakes may be clerical, such as forgetting the name of the manufacturer or missing a reference in the literature. However, failing to reference the technical offer form is entirely different.

The Evaluation Committee confirmed that all bidders complied with the instructions on the ePPS. If the Board were to make an exception, as requested by the appellant, it would create an advantage for the appellant and a disadvantage for other bidders. Referring to an older case, *Ballut* (2012), the Evaluation Committee had created a new document because the POQ was missing. It would be dangerous to expect the Evaluation Committee to fill in the technical offer form based on the offer and effectively do the bidder’s work.

Referring to *Case Nkey MT 35/221*, paragraph 5, he quoted:

“L-access fil-manwalita u fit-tiftix sabiex jigu offerti salvati akkost ta kollox, mbux espressjoni tal-proporzjonalita, imma huwa sproporzjon kontra min kien compliant mil bidu nett. Din il-qorti mbux l-enwel darba li tirribadixxi li kull oblatur jrid sa mill-bidu nett tal-offerta tieghu, jsegwi rigorosament dak li trid is-sejha tal-offerti u m’ghandux jippretendi li jigi mitlub jirrange l-offerta biex ikun kompatibbli ma dak li kien mitlub”.

A re-evaluation would be completely disproportionate, as the Tender Evaluation Committee acted correctly. The mistake lay with the appellant. Rectification was not possible, since this concerned Note 3, and the technical offer form is a tailor-made document for this case, explaining how the committee should verify the offer against the technical literature.

Clarification was not applicable in this case, as no document was cross-referenced or submitted. Referring to the *Krypton* case, there had been a ticket that was referenced and submitted but was unclear; the court held that clarification could be sought in that situation.

Regarding the grievance about the deposit, had the appellant withdrawn earlier, the issue would not have arisen. However, since he pursued the case, he was not entitled to the deposit, although this ultimately remained at the Board's discretion.

In conclusion, Dr Mifsud Bonnici stated that this appeal amounted to an attack on the ePPS system, which was designed to instil confidence in the private sector and ensure transparency. Allowing exceptions to enable the Government to enter the bidder's "safe space" would create a dangerous precedent. While the frustration of the bidder is understandable, the rejection was appropriate.

Conclusion of the Third Hearing

With no further submissions, Dr Vincent Micallef 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 4th December, 2025.

Having noted the objection filed by Dr Matthew Paris and Dr Zackariah Esmail (hereinafter referred to as "*the Appellant*") on the 3rd of November, 2025, refers to the claims made by the same Appellant with regard to the tender of reference – *SPD5/2025/023 – Supplies Tender for a Digital Cytology Platform with Additional Energy-Efficient Equipment – Lot 1* listed as case No. 2200 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Dr Matthew Paris

Appearing for the Contracting Authority:

Dr Leon Camilleri, Dr Alexia J Farrugia Zrinzo
and Dr Audrey Marlene Buttigieg Vella

Appearing for the Recommended Bidder

Dr Clement Mifsud Bonnici

Whereby, the Appellant contends that:

Whereas the Department of Contracts (*hereinafter "DOC"*) issued a call for tenders for "*Tender for a digital cytology platform with additional energy-efficient equipment - CT3017/2025*";

Whereas Triomed Limited (*hereinafter "Objector" and/or "Triomed"*) submitted an offer for this procurement procedure; Whereas, by means of a letter dated 24th October, 2025 the offer by Triomed was rejected, whilst the offer by Evolve Limited (*hereinafter "recommended bidder" and/or "Evolve"*) was recommended for award, as follows:

"Thank you for participating in the above-mentioned tender procedure, however, this Department regrets to inform you that the procurement proposal submitted by your company is Technically noncompliant"

Whereas, by means of a letter dated 24th October, 2025, Triomed requested further information in accordance with *Reg. 40 of S.L. 601.03* in connection with its exclusion, and by means of a reply dated 27th October, 2025, the DOC provided the requested information (*hereinafter "REI"*);

Whereas Triomed respectfully submits that the decision to exclude its offer is unjustified in fact and in law and constitutes a breach of the principle of self-limitation, as well as of proportionality under *reg. 39 of S.L. 601.03* of the Laws of Malta;

Now therefore is its objection, in accordance with *reg. 270 of S.L. 601.03* of the Laws of Malta, within the stipulated time-frame and accompanied with the relative payment (*copy of confirmation of payment enclosed as DOC1*), based on the following grievances:-

The exclusion is unjustified and factually incorrect

The first grievance concerns the fundamental issue that the document in question was in actual fact uploaded in the DOC's electronic procurement system' and was thus fully available for review by the Tender Evaluation Committee (*hereinafter "TEC"*).

The appellant notes that the DOC itself, in response to a RFI2, confirmed that:

"The Evaluation Committee considered all documents from the "Document Library" on the EPPS platform that were relevant to the evaluation process and within the scope of the tender requirements"
[added emphasis]

Triomed submits that the Technical offer for Lot 1, was indeed uploaded to the "Document Library" and thereby the claim that it failed to upload the Technical offer for Lot 1 is factually incorrect.

The official confirmation by DOC, demonstrates that all documents made available through the "document library" were deemed validly submitted and accessible to evaluators. Therefore, had the TEC conducted a complete and diligent review of the uploaded materials, it would have confirmed that the technical offer for Lot 1 was complete, compliant, and met all submission requirements.

It follows that the exclusion of Triomed's offer, on the alleged basis of non-submission of the technical offer form, is factually incorrect and procedurally unjustified. The exclusion does not reflect the actual status of the documentation available in the Epps system and therefore the decision to exclude constitutes a manifest error of assessment.

Breach of the Principle of Self-Limitation

The second grievance relates to the breach of the self-limitation principle, a fundamental rule of public procurement which dictates that an authority must adhere strictly to the rules and procedures it has itself established.

The Technical offer form, makes it mandatory clear that, exclusion shall occur if the tenderer fails to upload the "required information", so much so that it states, "*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*" [added emphasis]

The obligation was particularly strict in respect of documents denoted as "Note 3", which are expressly not subject to rectification. Triomed fully complied with this requirement by uploading all required documents in the "Document Library" and thus "*submitted online through the prescribed tender response format and by using the Tender Preparation Tool provided*". Vide Technical offer.

By excluding Triomed, despite full adherence to the procedural requirements, the TEC acted in breach of the tender document, exceeding the limits of its own procedural framework. In so doing, the contracting authority breached the principle of self-limitation, which precludes an authority from evaluating tenders beyond the, or outside the parameters of the tender dossier.

Accordingly, the exclusion must be deemed unlawful, as it violates the principle that authorities are bound by their own procedural and substantive rules.

This Honourable Board, the Court of Appeal and the European Court of Justice, have all been categorical about the principle of self-limitation. This has been confirmed, *inter alia*, in the decision in the name of *Nexans France v European Joint Undertaking for ITER and the Development of Fusion Energy [T-415/10]*⁴, whereby it was held that, "*It must be borne in mind at the outset that where, in the context of a call for tenders, the contracting authority defines the conditions which it intends to impose on tenderers, it places a limit on the exercise of its discretion and, moreover, cannot depart from the conditions which it has thus defined in regard to any of the tenderers without being in breach of the principle of equal treatment of candidates. It is therefore by reference to the principles of self-limitation and respect for equal treatment of candidates that the Court must interpret the tender specifications*" [added emphasis]

Failure to seek clarification and breach of good administration principles

The third grievance concerns the failure of the TEC to seek clarification, notwithstanding the apparent ambiguity regarding the uploaded document.

In accordance with *Procurement Policy Note No. 40*, and the broader principle of good administration, where there are "*discrepancies, "ambiguous" or "unidentified" documentation, the TEC "... shall request the concerned Economic Operators to clarify the necessary information / documentation, within the appropriate Time Limit*", rather than adopt an extreme measure such as exclusion. The facts suggest that, at most, there was a linking issue in how the document was associated with a specific criterion, not a substantive failure to submit the document itself. In such a case, a simple clarification would have sufficed to confirm compliance. The committee's choice to proceed with exclusion instead of clarification represents a disproportionate application of the rules, contrary to the spirit of procedural fairness and transparency that underpins public procurement.

By failing to use this less extreme alternative, the TEC effectively deprived the tenderer of its right to a fair and proportionate evaluation process, thereby breaching both good administrative conduct and the duty of care, which is incumbent on the TEC in every evaluation.

The above was confirmed in the ECJ decision *Tideland Signal Ltd vs Commission of the European Communities (Case T0211/02)*, whereby it was held that:

"In response to the Commissions' argument that its Evaluation Committee was nevertheless under no obligation to seek clarification from the applicant, the Court holds that the power set out in section 19.5 of the Instructions to Tenders must, notably in accordance with the Community law principle of good

administration, be accompanied by an obligation to exercise that power in circumstances where clarification of a tender is clearly both practically possible and necessary." [added emphasis]

Breach of the principle of proportionality

Strictly on a without prejudice to the above arguments, Triomed submits that the decision to exclude its offer is manifestly disproportionate, contrary to *Regulation 39* of *S.L. 601.03* and the principle of proportionality. See also *Antwerpse Bouwwerken NV vs European Commission* [10th December 2009] [Case T-195/08].

Assuming, that there was an obligation to link the document with the specific criterion (despite being duly uploaded and retrievable), the exclusion remains an excessive sanction relative to the nature of the alleged omission. Established case law has consistently held that where the information is available and retrievable from the documents submitted, even if not perfectly categorised, this should not result in exclusion. Rather, the TEC should adopt the least restrictive means of ensuring compliance, such as seeking clarification.

The previously cited decision, *Tideland Signal v Commission*, confirmed this, by stating that:

"... the principle of proportionality requires that measures adopted by the community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued and that where there is a choice between several appropriate measures recourse must be had to the least onerous.."

[added emphasis]

The TEC's decision to exclude Triomed, fails the proportionality test, which requires that administrative actions be appropriate, necessary, and not excessive in relation to the objective pursued. Accordingly, the exclusion decision cannot be sustained in light of the applicable legal principles and must be revoked or set aside.

Refund of deposit paid

The final grievance concerns the refund of the deposit paid upon the filing of this appeal. The Appellant respectfully submits that this appeal has been principally founded on the representations and clarifications provided by the DOC, wherein it was expressly stated that the TEC had access to all documents uploaded in the document library. Should this statement be confirmed as correct, then the objection is entirely justified and ought to be upheld in full, given that the exclusion would have been based on a manifest error of assessment.

However, should it transpire that the DOC's statement was factually inaccurate or misleading, and that the TEC did not in fact have access to all documents duly uploaded by the Appellant, then Triomed would have been misled by the statements.

In any case, Triomed respectfully requests a full refund of the appeal deposit. This request is made strictly without prejudice to the arguments and legal grounds advanced in this submission.

Although different in substance, the gist of this latter was expressed in the decision in the names of *Firetech Limited (C17901) u Cross Zlin AS (60715886) flimkien magbrufa u msejha bhala Firetech Cross TLS Joint Venture kontra Dipartiment tal-Kuntratti*, whereby the Court of Appeal held that: "*Meta Firetech ressaq l-oġġezzjoni tiegħu ddokumenti disponibbli għalih – il-lista' ta' oblaturi u l ittra tad-Dipartiment tat-22 ta' Mejju 2015 - kienu juru illi l-offerta magħżula kienet dik mitfugha minn Alberta. Ma kienx magħruf illi l-offerta saret minn konsorzju u għalhekk f'dak il-waqt kienet ragonevoli l-oġġezzjoni ta' Firetech li 1-Kuntratt jingħata lil Alberta u għal din ir-raguni kien ikun xieraq li, f'dawk iċ-ċirkostanzi, id-depożitu jintradd.*" [added emphasis]

NOW, THEREFORE, whilst reserving the right to put forward any other submissions, Triomed is hereby requesting this Honourable Board:

- i. To order the defendants, or whosoever of them, to revoke the letter dated 24th October, 2025 and cancel the recommended award to the recommended tenderer; and
- ii. To order the defendants, or whosoever of them, to re-instate the offer of Triomed, and to re-evaluate the bids by a newly composed evaluation committee; and
- iii. To refund the deposit paid by Triomed in its entirety;

Triomed is hereby reserving the right to present further evidence and submissions, both orally or in writing, during the hearing.

This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on the 12th November, 2025, and its verbal submissions during the hearing held on the 6th January, 2025, in that:

A call for tenders for the supply of a Digital Cytology Platform with Additional Energy. Efficient Equipment was issued on the 20th of July 2025 and was divided in 4 lots.

The appeal filed for which DOC and CPSU are hereby replying, is limited to Lot 1.

A number of bids were submitted and following an evaluation process Lot 1 was recommended for award to Evolve Limited (the recommended bidder). The Objector's offer was rejected as being technically non-compliant, since the technical offer form for Lot 1 was not uploaded.

The Objector filed a request for information during the term for appeal, which was duly answered by the DOC. The objector still felt aggrieved with the decision of the evaluation committee and filed its objection based on 5 grievances.

DOC and CPSU humbly disagree with the grievances raised and are hereby presenting their reply in the same order of the grievances raised.

Submissions on the First Grievance - The exclusion is unjustified and factually incorrect

In its first grievance, the objector submits that the exclusion is unjustified and factually incorrect as the document in question (presumably the Technical Offer for Lot 1) was uploaded;

The Objector attempts to substantiate his argument with the fact that the DOC in reply to the request for information stated that "*The evaluation committee considered all documents from the 'Document Library' on the EPPS platform that were relevant to the evaluation process and within the scope of the tender requirements*" CPSU and DOC submit that the above cited reply does not in any way state that the technical offer for Lot 1 was uploaded but merely states that the evaluation committee considered all relevant documents;

The evaluation committee had all the documents presented by the objector through his document library which were then downloaded by the evaluation committee as one whole zip file, thus the evaluation committee did consider all documents;

The Objector has in fact mistakenly uploaded to Technical Offer form for Lot 4 in its offer for Lot 1, filed again the same technical offer form correctly for Lot 4;

In the circumstances the evaluation committee had no other alternative than to reject the objector's offer on the basis of lack of technical compliance since the basis of the offer, that is the technical offer form which is note 3, was missing!;

Since the technical offer form is a note 3 document no amendment to it should be permitted, let alone its re-submission!

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 3rd of September, 2024, which stated that::

55. F'dan il-każ, il-proċedura ta' rettifika ma setgħetx però tigi mhaddma u dan għaliex ir-ritratti inkwistjoni ma kinux klassifikati bhala letteratura teknika, u minflok kellhom jitressqu bhala parti integrali mill-offerta teknika li skont id-dokument tas-sejba kienet taqa' fil-kategorija ta' Note 3 u mbux ta' Note 2 5(C)(1) tal-ewwel taqsima tad-dokument tas-sejba, kif ukoll l-estratt ta' taqsima B5 tal-formula Tenderer's Technical Offer - Organisation & Methodology, f'paragrafu 7 ta' din is-sentenza). Anke l-appellanti stess jidher li qiegħda taqbel ma' dan għaliex hija u tfassal l-appell stqarret li: «tali informazzjoni, bbar ritratti li qegħdin jiġu msemmija f'dan il-każ għet klassifikata taht 'Note 3'.

56. Kemm mid-dokument tas-sejba nnifsu (ara Notes to Clause 5 f'pagna 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 mniżżel li, fil-każ ta' dawk ir-rekwiżiti li skont id-dokumenti tal-akkwist jagħbu fil-kategorija ta' Note 3, l-awtorità kontraenti ma tistax titlob rettifiki, u only clarifications on the submitted information may be requested.

57. Għar-raġunijiet li diġà ngħataw, il-Qorti jidbrilba li f'dan il-każ, il-proċedura ta' kejarifika ma setgħet 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 ieħor, bil-kejarifika jew mingħajrha, 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 talevalwazzjoni ma setax jagħtiha l-punti għall-kriterju B5(a), bil-konsegwenza li l-iskewalifika tal-offerta tagħha kienet inevitabbli.

In the present case, what is missing is not merely a photo or a document forming part of the technical offer, as was the case in the above cited judgment, but the whole technical offer form, meaning that no offer was being made at all for the Lot in question!;

For this reason this first grievance ought to be rejected;

On the Second Grievance - Breach of the Principle of Self-Limitation

In this second grievance, the objector states that the evaluation committee acted in: breach of the principle of self-limitation. DOC and CPSU strongly rebut this claim.

As explained in its reply to the first grievance, which is also relevant to all the other. grievances of this objection, the evaluation committee conducted the evaluation process on the basis of the documents submitted and within the parameters of the tender specifications and the applicable laws;

If was thus for this reason and as a result of the adherence to the general principles of public procurement law including that of self-limitation, that the evaluation committee in the absence of a technical offer form for Lot 1 of the tender, had to. exclude the objector's offer to Lot 1;

For this reason this second grievance ought to be rejected;

On the Third Grievance - Failure to seek Clarification and Breach of Good Administration Principles

The objector in this grievance cites DOC policy note number 40 and states that this policy demands that in case of discrepancies, ambiguous and unidentified documentation, the evaluation committee should ask for a clarification. 15. What the Policy note actually says is the below: Evaluation Committees may seek to clarify the following shortcomings: (noted in the Procurement / Concession Submission) by requesting Bidders to clarify their position by submitting the information as specified in the Clarification Request Letter. Shortcoming Discrepancy: Inconsistent and / or Contradictory information. Ambiguity, Unclear and uncertain information. Unidentified: Unsure where a requirement is being satisfied.

The Policy note also states that: Clarification Request Letter Indicate which is the correct information (from the original Submission) to be evaluated as part of the submission, Indicate where is the required information, by making reference to the original Submission. Indicate where (as well as quote, cite and reference) in the original Submission, the specific requirement is being addressed.

The aim of Clarification Requests is to ensure that Evaluation Committees understand fully what the bidders are offering/proposing and hence an informed evaluation may: be carried out. Accordingly, such letters shall only include requests in relation to information / documentation already submitted [emphasis added] in the Procurement/ Concession Document, but which is deemed as not sufficiently explicit: and clear.

Without prejudice to the fact that the same policy note uses the word '*may*', thus indicating a discretion, in the present case the evaluation committee did not see any discrepancy, ambiguity or unidentified document. What was noticed is a mistake which according to the applicable procurement rules could not be clarified or rectified and had thus no alternative then to reject the objector's offer;

For this reason, this third grievance ought to be rejected;

On the Fourth Grievance - Breach of Principle of Proportionality

The objector submits in this fourth grievance that its offer should have been saved. according to the principle of proportionality;

DOC and CPSU humbly disagree since the objector's shortcoming was so serious that under no circumstances could the offer have been saved in line with the principle of proportionality;

The Court of Appeal in the judgment in the names *Servizzji Malta vs Direttur tal-Kuntratti* decided on the 15th of July, 2018 the Court of Appeal stated that:

“I-cirkostanzi fejn il-principju ta' proporzjonalità ma jhallix li offerta titwarrab minhabba irregolarità huma "limitati" u "eccezzjonali”;

DOC and CPSU humbly submit that omitting the entire technical offer form for Lot 1 is certainly not an exceptional reason which merits to be saved in line with the principle of proportionality.

For this reason, this fourth grievance ought to be rejected;

On the Fifth Grievance - Refund of the Deposit Paid

DOC and CPSU submit that this Board should follow the general rule, and if the objection is not upheld then the deposit should be forfeited;

The DOC answered in a timely manner to all the questions posed by the objector which could be answered and the objector was or should have been in possession of all the documents it had presented, thus the objector could not argue the necessity. of this objection to acquire information;

DOC and CPSU will however not object to the refund of the deposit paid only if the objection is withdrawn prior to the first sitting appointment before this Honourable Board.

DOC and CPSU hereby reserve their right to present further evidence and submissions, both written and orally to further substantiate their reply in relation to the said objection throughout the hearings.

In view of the above, the objection lodged by the objector ought to be rejected in full, whilst the decision of the Evaluation Committee confirmed, and the relevant deposit forfeited, unless the case is withdrawn before the sitting is held. In such case, DOC and CPSU will not object to the refund of the deposit.

Having seen the verbal communication of the parties made to the Board, wherein:

Verbal Dr Matthew Paris:

“Dr Paris ghan nom ta’ Triomed, qiegħed jitlob, illi f’kuntest ta’ konflitt ta’ provi, li emergu minn stqarrijiet mabruga mid-Dipartiment tal-Kuntratti, jebtieg, illi terz indipendenti, jgħati spjega dwar effettivament x’inhuwa disponibbli għad Dipartiment tal-Kuntratti tramite is-sistema ePPs u għalhekk, f’dan il-kuntest, l-aħjar prova mbi xejn għajr illi tkun stqarrija mabruga mill-manifattur tas-sistema ePPs fejn effettivament, jigi spjegat jekk id-dokumeti li gew uploaded fid-‘Document Library’ humiex accessibbli o meno għal DOC/CA”.

Verbal Dr Leon Camilleri:

“Għalkemm ma jidbix li f’dan l-istadju hemm kunflitt ta’ provi stante illi x-xhud mill-IT Department tad-Dipartiment tal-Kuntratti kien qiegħed jispjega kif effettivament tabdem is-sistema, o stante ukoll, illi l-kumitat tal-Evalwazzjoni ma ngħatax l-opportunita illi jispjega r-risposti li ntbghatu lil appellant permezz ta’ email, peress illi l-appell jinstab f’i stat ta’ provi tal-appellant, l-awtorita kontraenti ma topponix għal-xhud jew prova addizzjonali f’dan l-istadju”.

Verbal Dr Clement Mifsud Bonnici:

“Jekk tintlaqha jingħata terminu u oggezzjona kif giet ifformulata t-talba, li dokumenti kienux available għal Evaluation Committee”.

Dr Paris reiterated that his interest lay in what was submitted to the Contracting Authority, since the offer is submitted to the Contracting Authority and not to the Evaluation Committee.

Dr Mifsud Bonnici acknowledged the point raised by Dr Paris and expressed the hope that the clarification would be sufficient to close the matter, particularly in relation to what was accessible to the Evaluation Committee.

Dr Paris stated that it was likely that the Evaluation Committee had no access to the documents in the Document Library. His objective was to establish whether the Contracting Authority had access to the documents, as this would materially affect the arguments raised. He believed that evaluators had no access to those documents.

The Chairman stated that it was necessary to determine whether the provider was satisfied and whether the documents formed part of the technical offer”.

Verbal Chairman Dr Vincent Micallef.

“Il-Bord qiegħed jakkolji t-talba tal-appellant b’dan illi rappreżentant tal-manifattur tal-ePPs jissottometti quddiem dan il-bord dikjarazzjoni bil-miktub li tirrispekkja t-talba preciza kif verbalizzata mill-appellant. Din għandha tigi prodotta sal 20 ta Jannar 2026 liema dokument għandu jigi ‘cirkolat mal-partijiet kollha nteressati f’dan il-process. Għal dan il-għan, din is-seduta qiegħda tigi differita għat Tnejn 26 ta Jannar 2026 fid-9.00am. Dan il-Bord qiegħed jigi nformat, illi l-appellant jkun suffiċjentament biżżejjed illi d-dikjarazzjoni rikjesta mill Manifattur tal-ePPs, tigi redatta f’emails. Illi dan il-Bord qiegħed ukoll jordna, liema ordni għandha tigi kkomunikata wkoll direttament lid-Dipartiment tal-Kuntratti kif ukoll lir-Rappreżentant tal-Manifattur, illi l-istess rappreżentant għandu jkun disponibbli anke on-line fis-seduta ta Jannar 26 fid-9 ta’ fil-għodu hin ta Malta”.

Having further noted the communication disseminated to all parties by the PCRБ administrative staff:

Dear Sir / Madam,

*Reference is made to the sitting of the Board held on the 6th January 2026 in relation to **Case 2200 – Objection – CT3017/2025 – Supplies – Tender for a Digital Cytology Platform with Additional Energy-Efficient Equipment – Lot 1.***

Pursuant to the instructions issued by the Board during the said hearing, please find attached herewith the Board Verbal, which is being formally transmitted for your due consideration and compliance.

For the avoidance of any doubt, during the hearing of the 6th January, 2026, the Board, following the verbal intervention made by Dr Matthew Paris, expressly directed the Department of Contracts to procure and submit the requisite information from the manufacturer of the EPPS by means of a written declaration, containing the particulars as articulated in the said verbal.

You are hereby directed to take due cognisance of the attached Board Verbal, and in particular of the substance and scope of the verbal as expounded by Dr Matthew Paris therein, and to act in strict conformity with the same within the time-frame unequivocally established by the Board during the hearing of the 6th instant.

This communication is being made in order to ensure procedural clarity, faithful adherence to the Board’s directions, and the orderly continuation of proceedings in accordance with established principles of administrative propriety.

Yours faithfully,"

Having further seen the Board’s written communication of the 22nd January, 2026:

DECREE OF THE PUBLIC CONTRACTS REVIEW BOARD

Case 619 - CT3017/2025

Supplies: Tender for a Digital Cytology Platform with Additional Energy-Efficient Equipment – Lot 1

Triomed Limited vs CPSU

Date: 21 January 2026

Decree

Having considered the correspondence submitted in relation to the above-captioned case, and noting the appellant's request for certain documentation in advance of the scheduled sitting of the Board on Monday, 26 January 2026, the Public Contracts Review Board hereby issues the following Decree:

- 1. The Department of Contracts is invited and requested to provide a formal reply to the appellant's request, specifically in respect of:*
 - a. A copy of the "initial email" sent by the Department of Contracts, as referenced by Mr Jason Vella in his email to Mr Vincent dated 8 January 2026; and*
 - b. A copy of the "online documentation," together with the relevant cross-references, as referred to in the email dated 19 January 2026.*
- 2. The Department of Contracts is required to submit its reply no later than the close of business on Wednesday, 22 January 2026, so as to allow the Board sufficient time for due consideration prior to the scheduled sitting.*
- 3. The Board reserves its final determination on the appellant's request, including approval or otherwise, following the receipt and review of the Department of Contracts' response.*

This Decree is issued in the exercise of the Board's powers and responsibilities under the applicable legal and procedural framework, with a view to ensuring procedural fairness, transparency, and the orderly conduct of the review proceedings.

By Order of the Public Contracts Review Board,

Chair: Dr Vincent Micallef

Having further seen the Board's written communication of the 22nd January, 2026:

PUBLIC CONTRACTS REVIEW BOARD

Case 619 - CT3017/2025

Supplies: Tender for a Digital Cytology Platform with Additional Energy-Efficient Equipment – Lot 1

Triomed Limited vs CPSU

Date: 22 January 2026

Decree

The Public Contracts Review Board, having considered the submissions of the appellant and the circumstances pertaining to the accessibility of documents within the ePPs system, and following the email reply expedited by the DoC of the 22nd January, 2026, hereby issues the following Decree:

- 1. The Board orders the manufacturer of the ePPs system, or a duly authorised representative thereof, to provide a formal declaration clarifying the following:
 - a. Whether the documents uploaded to the 'Document Library' are accessible to the Department of Contracts (DOC) via the ePPs system; and*
 - b. Any further explanation, in line with Dr Matthew Paris's verbal, necessary to establish the effective availability and accessibility of such documents in relation to the current procurement proceedings.**
- 2. Such declaration must be submitted without delay and no later than close of business on Friday, 23 January 2026.*
- 3. Should the declaration not be received within the prescribed timeframe, the Board is herein summoning the manufacturer, or its authorised representative, to attend the Board's sitting in persona on Monday, 26th January 2026, to provide the required information orally.*
- 4. The Department of Contracts is instructed to take all necessary measures to ensure the physical presence of the manufacturer or its authorised representative at the Board's sitting.*
- 5. The Board emphasises that non-compliance with this Decree will be treated as a serious procedural matter.*
- 6. The Board reserves its final decision following receipt of the declaration or, if required, after the in-person attendance of the manufacturer or its representative.*

This Decree is issued by order of the Public Contracts Review Board in the exercise of its powers to ensure procedural fairness, transparency, and the orderly conduct of proceedings.

By Order of the Public Contracts Review Board

Chair: Dr Vincent Micallef

Having also noted the written declaration signed by Polyxeni D. Gkaintatzi, dated the 23rd January, 2026 in reply to the verbal of Dr Matthew Paris.

This Board, having examined in detail all documentation relevant to the present appeal, having heard the full submissions of all interested parties, having carefully assessed the testimony of the witnesses duly summoned, and having reflected on the procedural and substantive dimensions of the case, now proceeds to deliver its comprehensive and reasoned decision.

Having seen the appeal lodged by Triomed Limited (hereinafter referred to as “*the Appellant*” or “*Triomed*”) in terms of Regulation 270 of *Subsidiary Legislation 601.03*, whereby it challenges the decision of the Department of Contracts and the Central Procurement and Supplies Unit (hereinafter collectively referred to as “*the Contracting Authority*”) to reject its offer for Lot 1 of Tender CT3017/2025;

Having considered the written submissions, documentary evidence, the Reasoned Reply filed on the 12th November, 2025, and the oral submissions and evidence adduced during the sittings held on the 6th January, 2026, 26th January, 2026 and 28th January, 2026 and having deliberated in accordance with law, this Board determines as follows.

I. Procedural History and Context

The tender at issue, CT3017/2025, was issued by the Department of Contracts with the Central Procurement and Supplies Unit as beneficiary and was structured as a multi-lot procurement exercise. The present appeal concerns exclusively Lot 1. Triomed Limited submitted an offer for that lot, which was subsequently rejected at technical evaluation stage. The Appellant challenges that exclusion on multiple grounds, both factual and legal.

The Board notes that the appeal progressed through written pleadings, including the Notice of Objection and the Reasoned Reply, followed by extensive oral proceedings. These proceedings included not only legal submissions but also the production of technical evidence concerning the operation of the ePPS system, a matter which became central to the resolution of the dispute.

II. Submissions of the Parties

A. Submissions on Behalf of the Appellant

Dr Matthew Paris, appearing on behalf of Triomed Limited, submitted that the Appellant’s offer for Lot 1 was unjustly excluded. He relied primarily on the wording of the rejection letter, which stated:

“Tenders technical offer for Lot 1, does not correspond to the tender document CT 3017/2025. Technical offer submitted corresponds to Lot 4 of the same tender document. The technical offer is under note 3, no amendments are allowed. Therefore, offer could not be considered fair.”

Dr Paris argued that the phrase “*does not correspond*” was inherently ambiguous and suggested a mismatch or clerical irregularity rather than a total absence of the Technical Offer. He submitted that such ambiguity triggered a duty on the Evaluation Committee to seek clarification, particularly in light of Procurement Policy Note 40 and the general principles of good administration.

He further submitted that Triomed Limited had uploaded the Technical Offer for Lot 1 within the ePPS “*Document Library*” prior to the submission deadline. In support of this contention, he relied on replies issued by the Department of Contracts to requests for clarification, wherein it was stated that the Evaluation Committee had access to, and considered, all documents contained in the Document Library.

Dr Paris devoted significant attention to the technical functioning of the ePPS system, submitting that the Appellant’s documents were, as a matter of fact, present within the system and should therefore have been accessible to the Contracting Authority. He argued that any failure to associate the document with specific evaluation criteria could not justify outright exclusion, particularly where the document itself was allegedly uploaded.

Throughout the proceedings, Dr Paris emphasised that his objective was to establish, with technical certainty, what documents were accessible to the Contracting Authority at the relevant time. He expressly stated that this exercise was not pursued merely with a view to winning the appeal, but to exhaust all factual and legal avenues in circumstances where contradictory positions appeared to have been taken by the Department of Contracts.

B. Submissions on Behalf of the Contracting Authority

Dr Leon Camilleri, appearing on behalf of the Contracting Authority, submitted that the Evaluation Committee acted strictly in accordance with the tender documentation and applicable procurement law. He rejected the Appellant’s characterisation of the issue as one of ambiguity.

He submitted that the Appellant had mistakenly uploaded the Technical Offer form for Lot 4 within its submission for Lot 1, and that the Technical Offer for Lot 1, a mandatory Note 3 document forming the essence of the bid, was entirely absent. In support of this position, he relied on the clarification issued by the Department of Contracts stating:

“The objector has in fact mistakenly uploaded the Technical Offer form for Lot 4 in its offer for Lot 1.”

Dr Camilleri stressed that Note 3 documents are non-rectifiable by their very nature. Where such a document is missing, the Evaluation Committee is legally precluded from seeking clarification or allowing rectification, and must proceed to exclude the offer. Any other approach would amount to an unlawful modification of the tender.

C. Submissions on Behalf of the Recommended Bidder

Dr Clement Mifsud Bonnici, appearing on behalf of the recommended bidder, aligned himself with the submissions of the Contracting Authority. He submitted that procurement law admits of no middle ground.

A bidder must either submit the required Technical Offer correctly or face exclusion. Reconstruction, inference, or *post hoc* correction is impermissible, particularly in respect of mandatory Note 3 documents.

III. Evidence and Assessment Thereof

The Board heard the testimony of, *inter alia*, Mr David Gatt, Manager 2 within the IT Section of the Department of Contracts, Mr Mario Farrugia, Secretary of the Technical Evaluation Committee, and Mr Jason Grech, IT Unit for the Department of Contracts, summoned at the request of the Appellant.

Mr Gatt and Mr Grech provided a detailed explanation of the operation of the ePPS system. They explained that when a bidder creates an offer, a “*Document Library*” is generated. Bidders may upload files into this library, however, such files do not form part of the tender unless they are expressly referenced within the relevant sections of the Technical Offer form. Files which remain unreferenced are not accessible to the Contracting Authority or to the Evaluation Committee. The system further generates notifications alerting users to the presence of unused files. This testimony was neither contradicted nor undermined. On the contrary, it was accepted by all parties as an accurate description of the system’s operation. The document produced by the witness was marked and exhibited as Document DG1. The Board considers this evidence to be of decisive importance. It establishes that upload alone is insufficient. Accessibility and submission are contingent upon correct referencing within the tender structure.

Further to the foregoing, the Board notes that Document DG1 unequivocally sets out the system-generated warning presented to the Appellant, stating: “*PLEASE CONFIRM THAT YOU AGREE TO THE FOLLOWING WARNINGS: One or more files in your Document Library have not been associated with a criterion. These files will not be submitted with your tender. Would you like to proceed with the tender submission - Confirm - Cancel?*”

This warning plainly alerted the Appellant that one or more documents in the Document Library had not been properly associated with the relevant tender criteria, and that such unreferenced files would therefore not form part of the submitted tender. Despite this explicit caution, the evidence demonstrates that the Appellant nonetheless proceeded with the submission without referencing the requisite document.

Document 2 further substantiates this point, depicting a complete list of files uploaded by the Appellant. Among these, the following files were both uploaded and correctly referenced: (i) Financial Bid for Lot 1; (ii) Technical Offer Form for Lot 4; (iii) Financial Bid Form for Lot 4; (iv) Lot 4 Literature; and (v) Literature List.

By contrast, the Technical Offer Form for Lot 1, the document intended to be submitted for Lot 1, was uploaded but not referenced. The Board considers this circumstance a *res ipsa loquitur* par excellence, in that the unreferenced status of the document speaks decisively to the failure in complying with the system’s procedural requirements. In consequence, it is evident that the Appellant’s failure cannot be ascribed to any

malfunction or ambiguity within the ePPS system, but rather to a failure on the part of the Appellant to follow the clear instructions provided by the system and to ensure that all uploaded files were correctly referenced in accordance with the tender requirements.

IV. Procedural Developments and Directions

Following the witness testimony, Dr Paris accepted that, in law, a Technical Offer must either be submitted or not submitted. He nevertheless maintained that written replies issued by the Department of Contracts appeared to suggest that documents uploaded to the Document Library were accessible, thereby giving rise to a factual inconsistency.

He therefore requested a written declaration from the Department of Contracts and from the manufacturer of the ePPS system clarifying precisely which documents were accessible to the Contracting Authority. The Board acceded to this request and ordered that such a declaration be produced and circulated to all parties by the 20th January, 2026, further ordering that the representative of the system provider be available during the adjourned sitting of the 26th January, 2026.

The Board records these procedural steps as part of its duty to ensure that the Appellant was afforded every reasonable opportunity to substantiate its case.

V. Determination on the Merits

1. First Grievance – Whether the Exclusion Was Unjustified and Factually Incorrect

At the outset, the Board considers it necessary to restate the applicable standard governing its review of an exclusion decision. In accordance with settled Maltese administrative and procurement law, this Board does not substitute its own technical or administrative judgment for that of the Evaluation Committee. Its task is confined to determining whether the contested decision is vitiated by a factual error, a manifest error of assessment, a breach of the applicable legal framework, or a violation of the general principles governing public procurement. The evidential burden rests firmly upon the Appellant to establish the existence of such defects.

The Appellant alleges that its exclusion was unjustified on the basis that the Technical Offer for Lot 1 was, in substance, submitted and accessible to the Contracting Authority. This allegation, however, cannot be assessed in the abstract. It must be evaluated against the objective operation of the electronic procurement platform through which the tender was required to be submitted, as well as the contemporaneous evidence as to what was, and was not, available to the Evaluation Committee at the time of assessment.

The Board places decisive reliance on the testimony of Mr David Gatt and Mr Jason Grech, whose evidence was clear, internally consistent, and unchallenged in any material respect. Both witnesses explained that the

ePPS system operates on the basis of structured submissions linked to specific lots. While tenderers may upload multiple documents to a general document repository, such documents acquire legal relevance only when they are expressly referenced and linked within the designated Technical Offer section for the relevant lot. Absent such referencing, the document remains dormant within the system and is neither visible nor retrievable by the Contracting Authority during the evaluation phase.

This technical architecture is not an ancillary or optional feature of the system. It constitutes the very mechanism by which the integrity, traceability, and equality of electronic submissions are safeguarded. It ensures that evaluation takes place solely on the basis of formally submitted material and prevents evaluators from engaging in speculative searches through unassigned documents, which would be incompatible with the principles of transparency and equal treatment.

Applying these principles to the facts before it, the Board finds as an established fact that the document referenced under Lot 1 corresponded substantively to the Technical Offer prepared for Lot 4. The Technical Offer intended for Lot 1 was not referenced to that lot and, as a consequence, was not submitted in a manner that rendered it accessible to the Evaluation Committee. From a legal and procedural standpoint, this absence is indistinguishable from a total non-submission.

The Appellant sought to rely on written replies issued by the Department of Contracts suggesting that all documents uploaded to the document library were reviewed. The Board cannot accept this argument. Such replies are necessarily couched in general administrative language and cannot override, contradict, or modify the objective technical functioning of the ePPS platform as explained by the witnesses. Nor can they be construed as an admission that a specific, unreferenced document was accessible or taken into account. Administrative correspondence cannot retrospectively cure a failure to comply with mandatory submission requirements.

In light of the foregoing, the Board finds that the Evaluation Committee's conclusion was grounded in objective and verifiable facts and that no manifest error of assessment has been demonstrated. The exclusion of the Appellant's offer for Lot 1 flowed directly and inevitably from the absence of a mandatory Technical Offer. The Appellant has therefore failed to discharge the burden of proof resting upon it.

This grievance is accordingly rejected.

2. Second Grievance – Alleged Breach of the Principle of Self-Limitation

The Appellant further contends that the exclusion decision infringed the principle of self-limitation. This principle, which occupies a central place in procurement jurisprudence, requires a contracting authority to bind itself strictly to the rules and conditions which it has chosen to lay down in the tender documentation.

Its corollary is that neither the authority nor the evaluation body may waive, relax, or reinterpret those rules once the procurement procedure is underway.

In the present case, the tender documentation was unequivocal in its structure and requirements. The procurement was divided into distinct lots, each of which constituted an autonomous object of evaluation. For each lot, tenderers were expressly required to submit a dedicated Technical Offer. This requirement was not peripheral or formalistic. It was intrinsic to the evaluation methodology and to the Authority's ability to assess compliance with the technical specifications applicable to each lot.

The Evaluation Committee adhered strictly to this framework. Upon establishing that no Technical Offer had been validly submitted for Lot 1, it applied the consequences prescribed by the tender rules. At no stage did the Committee depart from, supplement, or reinterpret the tender conditions. Its conduct therefore represents a textbook application of the principle of self-limitation.

The Appellant's argument, if accepted, would invert the very logic of the principle upon which it purports to rely. It would require the Contracting Authority to treat documents prepared for a different lot, or documents not formally submitted at all, as satisfying the requirements of Lot 1. Such an approach would amount to an unlawful relaxation of the tender rules and would place compliant bidders at a disadvantage. Self-limitation does not compel an authority to rescue a non-compliant tender, but it obliges it to resist the temptation to do so.

The Board therefore finds that no breach of the principle of self-limitation occurred. On the contrary, the exclusion decision represents a faithful and rigorous application of the rules governing the procedure.

This grievance is therefore unfounded and is rejected.

3. Third Grievance – Failure to Seek Clarification

The Appellant further alleges that the Evaluation Committee ought to have sought clarification pursuant to Procurement Policy Note 40 before proceeding to exclude its offer. This argument necessitates a careful examination of the scope and limits of clarification mechanisms in public procurement.

Clarification procedures are exceptional instruments intended to resolve ambiguities, inconsistencies, or minor formal irregularities within a tender submission. They presuppose the existence of a substantive submission capable of clarification. They do not, and cannot, serve as a vehicle for the introduction of missing mandatory elements or for the rectification of fundamental non-compliance after the expiry of the submission deadline.

In the present case, the deficiency identified was not ambiguous in nature. The Technical Offer for Lot 1 was absent from the submission as assessed through the ePPS system. There was no incomplete document,

no unclear statement, and no internal inconsistency requiring elucidation. There was simply nothing before the Evaluation Committee that could lawfully be clarified.

To have invoked Procurement Policy Note 40 in these circumstances would have entailed inviting the Appellant to submit, *ex post facto*, a mandatory Note 3 document forming the core of the tender. Such an invitation would have constituted a substantive modification of the tender submission and would have violated the principles of equal treatment and transparency.

The Board therefore finds that the Evaluation Committee acted correctly and lawfully in refraining from seeking clarification. Far from being an omission, this restraint was legally required.

This grievance is rejected.

4. Fourth Grievance – Alleged Breach of Proportionality

Finally, the Appellant invokes the principle of proportionality, arguing that exclusion constituted an excessive response to what it characterises as a technical or formal defect.

The Board recalls that proportionality in public procurement requires that measures adopted by a contracting authority be appropriate and necessary in light of the objectives pursued. However, this principle operates within, not above, the framework of mandatory tender requirements. It cannot be relied upon to neutralise conditions which the tender documentation itself designates as essential.

The submission of a Technical Offer is not a marginal or ancillary obligation. It represents the substantive core of a bid, enabling the contracting authority to verify compliance with technical specifications and to conduct a meaningful evaluation. Where such a document is absent, the tender is deprived of its essential content and cannot be assessed at all.

In such circumstances, exclusion is not a discretionary penalty chosen from a range of options; it is the inevitable legal consequence of non-compliance. Any attempt to admit a bid lacking a Technical Offer would compromise the integrity of the procurement process and erode the principle of equal treatment.

The Board therefore finds that the exclusion of the Appellant's offer was both necessary and proportionate. No lesser measure was available that would have been compatible with the tender rules and the governing legal principles.

This grievance is dismissed.

5. Fifth Grievance – Refund of the Deposit

The final grievance raised by the Appellant concerns the refund of the deposit paid upon the filing of the appeal. The Appellant contends that its appeal was principally prompted by representations and clarifications issued by the Department of Contracts, specifically the statement that the Evaluation Committee had access to all documents uploaded to the Document Library on the ePPS platform. The Appellant submits that, based on such statements, it reasonably believed that its Technical Offer for Lot 1 had been considered and that the exclusion might therefore have been based on a misapprehension or a manifest error of assessment.

Having considered the full context of this grievance, including the documentary evidence, the witness testimony, and the communications exchanged with the Contracting Authority, the Board finds that the Appellant was, to a material degree, misled by the statement issued by the DOC. The Board observes that this misrepresentation, whether deliberate or inadvertent, materially influenced the Appellant's perception of the status of its submission and the appropriateness of lodging the appeal. It is clear that the Appellant acted in reliance on the official communication when pursuing the objection and that such reliance was objectively reasonable.

The Board also notes persuasive guidance from jurisprudence of the Court of Appeal, whereby the Court held that a tenderer who acts in reliance on representations from the contracting authority regarding the status of its submission may, in the circumstances, be entitled to reimbursement of the deposit, even if the objection is otherwise found to be substantively unfounded. In these cases, the Court emphasised the equitable principle that where the tenderer was misled through no fault of its own and in circumstances in which reliance was reasonable, it was appropriate for the deposit to be returned.

Applying that reasoning to the present case, the Board finds that the Appellant's reliance on the statement issued by the DOC was reasonable and materially influenced the decision to pursue the appeal. Although the exclusion of the Appellant's offer for Lot 1 was, on substantive grounds, correctly determined by the Evaluation Committee, the Board recognizes that the Appellant's action in filing the appeal was induced by the Contracting Authority's communications. Equity and the principles underpinning fair administrative practice dictate that the deposit ought not to penalize a tenderer misled in this manner.

Accordingly, while the substantive grievances regarding exclusion have been rejected, the Board finds it just and appropriate to accede to the Appellant's request for the return of the deposit paid in connection with the filing of this appeal. This determination is founded upon the dual rationale of procedural fairness and equitable consideration, and is fully consistent with established jurisprudence in similar circumstances.

The Board therefore orders that the deposit paid by Triomed Limited be refunded in full.

Doctrinal Section on Clarification Issues

The Board's position is reinforced by a careful doctrinal reconciliation in line with the recent judgement delivered by the Court of Appeal in the names *Europharma Limited vs Central Procurement Supplies Unit* [Rikors numru: 445/2025/1 decided on the 29th January, 2026].

The Court of Appeal in *Europharma* articulated a critical distinction between clarification and impermissible rectification. Clarification presupposes the existence of a document capable of being clarified, whereas documents that are absent, unreferenced, or otherwise legally non-existent cannot be rehabilitated through post-submission intervention.

In the present matter, although the technical documents were physically uploaded into the system, they were not formally incorporated into the tender by virtue of the system's "referencing" mechanism. Consequently, these documents were legally inaccessible to the Evaluation Committee and cannot be treated as part of the offer.

Unlike *Europharma*, which concerned documents that were present but imperfectly positioned or described, the Appellant's submission here was objectively non-existent in the eyes of the evaluation framework. The Board's refusal to allow clarification is therefore entirely consistent with appellate doctrine, i.e. contracting authorities must refrain from reconstructing or supplementing offers *ex post facto*, and evaluation bodies cannot selectively incorporate materials not formally submitted in accordance with procedural rules. This approach preserves the twin imperatives of equal treatment and transparency, ensuring that compliance with structural formalities remains a prerequisite for valid submission.

This reasoning is further buttressed by a doctrinal synthesis of *Europharma*, *Fire-tech*, and *Servizzji Malta*. *Europharma* establishes the doctrinal boundary between clarification and impermissible rectification. *Fire-tech* reinforces the principle that procedural safeguards, including deposits, must operate with fairness and proportionality; and *Servizzji Malta* confirms that *bona fide* belief and reliance on system cues are relevant factors in determining the legitimacy of appeal behaviour. When combined, these authorities create a coherent framework. Tenderers are expected to comply with formal submission requirements, but boards must apply deposit mechanisms in a manner that does not punish genuine, non-abusive recourse. The present case exemplifies this balance.

The Appellant's documentation, though unreferenced, was uploaded in accordance with procedural expectations as understood at the time, and the appeal was conducted with a genuine belief in compliance. The deposit's retention would therefore operate as a disproportionate sanction, inconsistent with established jurisprudence.

In conclusion, the Board's position reconciles procedural strictness with equitable principles. Exclusion of unreferenced documentation is legally justified and necessary to preserve the integrity of the tender process. Simultaneous recognition of the Appellant's good faith ensures that procedural instruments, including appeal deposits, operate proportionally. This reasoning mirrors the cautionary stance of *Euopharma*, respects the proportionality considerations of *Fire-tech*, and aligns with the bona fide reliance principles of *Servizzi Malta*. By adopting this dual lens, rigor on form, tempered by fairness, the Board ensures doctrinal fidelity whilst upholding the structural integrity of the procurement framework.

6. Decision

Therefore, for the reasons set out above, the Board hereby:

1. Rejects the objection filed by the Appellant company Triomed Ltd in so far as it refers to the first four grievances;
2. Confirms the decision and conclusions of the Evaluation Committee and the recommended award in favour of Evolve Limited for Lot 1;
3. Upholds the Appellant's fifth grievance and orders that the administrative deposit paid by the Appellant to be fully reimbursed in accordance with the applicable Regulations.

Dr Vincent Micallef
Chairman

Mr Lawrence Ancilleri
Member

Ing. Dr Damien Gatt
Member