

PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2207
Tender Reference Number WSC/T/016/2025
Tender Name “Services – Tender for the Development, Provision and Implementation of a CRM Software for Water Services Corporation”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 2nd February, 2026 to hear the appeal as filed by the appellant Pipeline (hereinafter the ‘Appellant’) dated the 21st November, 2025 (with a stamp dated 24th November, 2025), and after taking cognisance of:

The tender document for the ‘Services – Tender for the Development, Provision and Implementation of a CRM Software for Water Services Corporation’ (hereinafter referred to as the “Tender Document”);

The minutes of the proceedings dated 2nd February, 2026 which are being reproduced hereunder:

“PUBLIC CONTRACTS REVIEW BOARD

Case 2207 – Objection – WSC/T/016/2025 – Services – Tender for the Development Provision and Implementation of a CRM Software for Water Services Corporation.

The tender was issued on the 10th March 2025, and the closing date was the 21st May 2025.

The estimated value of the tender, excluding VAT, was €1,500,000.00

On the 21st November 2025 Pipeline lodged an appeal against the Water Services Corporation – the Contracting Authority. In accordance with Regulation 270 of the Public Procurement Regulations.

On the 2nd February 2026, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Ing Dr Damien Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

A deposit of €7,500 was paid.

There were five bids.

The attendance for this public hearing was as follows:

Appellant – Pipeline.

Dr Lorna Mifsud Cachia – Legal Representative.

Dr Claudia Borg – Legal Representative.
Mr Conrad Aquilina – Company Representative.
Mr. Clayton Axisa – Company Representative.
Mr. Wayne Pisani – Company Representative.

Contracting Authority – Water Services Corporation.

Dr John L Gauci – Legal Representative.
Mr. Matthew Costa – Chairperson.
Ms. Christine Scicluna – Secretary.
Mr. Owen Attard – Evaluator.
Mr. David Bezzina – Evaluator.
Ms. Dina Gatt Galea – Evaluator.
Ms. Catherine Degabriele -- PRS Professional.
Ing Anthony Muscat – PRS Lead Professional.

Recommended Bidder – Deloitte Advisory and Technology Limited.

Dr Steve DeCesare – Legal Representative.
Dr Stefan Cutajar – Legal Representative.
Mr Ludwig Micallef – Company Representative.
Mr Andrea Muscat – Company Representative.

Opening Statements.

Dr. Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, Pipeline, the Contracting Authority, Water Services Corporation, and the Recommended Bidder, Deloitte Advisory and Technology Limited.

Initial Submissions

Initial Submissions by Dr Lorna Mifsud Cachia (for the Appellant)

Dr Mifsud Cachia stated that she was appealing against the decision rejecting Pipeline JV for the reasons mentioned in their Notice of Objection. After reviewing the tender requirements and the letter of rejection, Pipeline JV should not have been rejected, since they were compliant with the requirements and had shown, during the demo, sufficient space for the request in Section 3 of the tender. They explained their software and how it works during the demonstration. They believe that the rejection was illegal and inappropriate, especially since theirs was also the cheapest bid.

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

Dr Gauci stated that this tender, issued by Water Services, requested CRM software. In addition to the documentation and proof of conformity, the tender required a demo presentation of the specifications and qualities offered by the bidders.

The difficulty the Contracting Authority (CA) had with Pipeline was that, during the meeting, they spoke extensively about their company, and the tender requirements were not demonstrated during the presentation. Pipeline's position was that, if this type of integration was missing, they would provide it at a later stage.

The CA requested a complete, off-the-shelf software solution that could operate immediately once installed on the computer. It was not acceptable for a bidder not to have the product ready but to promise that it would be available later. In their appeal, Pipeline declared that they had the requested functions; however, in other paragraphs there was a lack of functions, for example, integration with WhatsApp. This was Note 3. A sample was requested, and what was shown during the meeting lacked information. The CA therefore had to exclude the cheapest bidder.

Initial Submissions by Dr Steve DeCesare (for the Recommended Bidder)

Dr DeCesare had nothing to add.

The Chairperson asked the witnesses who were not part of the Evaluation Committee to wait outside.

Witness:

Mr Owen Attard (400094M) summoned by Dr Mifsud Cachia.

Mr Owen Attard, Head of Software Architecture at Water Services, was an evaluator. He was in charge of the Software Team at Water Services. The request was for integration "out of the box" without any modification to the core implementation of the system, meaning that the SAP integration had to be ready to function on the existing code base.

Mr Attard was present during the online demo meeting and noted that all the requests were in Note 3. He was not involved in setting the agenda for the demo and was not involved in drafting the tender. He did, however, see the correspondence between Procurement and the bidders after the meeting.

During the demo, three developers were online. Ms Anarita Scerri, who drafted the tender, and two developers were physically present at Water Services. Initially, there was a video featuring a talk by the CEO, followed by another video about the Corporation Zoho. The evaluators then asked for the demo to see the

functionality listed in the tender so that they could assess and compare. They were then shown another demo video by the CEO and another video showing people using the Zoho system.

In the demo video, the evaluators asked about the integration of SAP and WhatsApp. SAP was crucial at Water Services, as all data is stored in SAP, and they wanted an "out of the box" version without modifications to avoid complications. Pipeline stated that they were ready to customise a version if it did not work.

The Chairperson repeated the procedure followed during the meeting and asked the witness whether he was the one who asked the questions.

The witness answered yes, stating that he wanted to safeguard the Corporation. Mr Attard said that the answer regarding SAP was that it was difficult to implement for the demo, and the answer regarding integration was that, if it did not work, they would customise it.

Dr Damien Gatt asked whether there was a definition of the meaning "out of the box" in the tender.

The witness replied in the negative and said that in 'IT' it meant without modification, as the term suggests.

Dr Mifsud Cachia asked whether "out of the box" meant plug and play and asked whether the bidders were given a sandbox environment to show that their system was compliant with the existing system. The witness replied that they were not given a sandbox (testing) environment, as each bidder had to present their own.

Dr Mifsud Cachia stated that when she installs something on her computer, the IT technician asks about the Windows version available. In this case, it was not simply a matter of plug and play, because SAP is very complicated. The witness replied that when SAP is connected to the core functionality, it is not complicated, as there is online documentation with protocols.

Dr Gatt asked whether the protocols were issued in the tender. The witness replied that they were listed with the standard functionality of SAP.

Dr Mifsud Cachia stated that their bid was excluded because Pipeline intended to customise, yet other tenders were accepted without their systems being tested in a sandbox environment.

Mr Attard stated that the video did not show WhatsApp or how it works. The response given was that they would obtain WhatsApp after implementation.

Other bidders showed a video demonstrating how WhatsApp would work from start to finish.

Dr Gatt asked what the demo requirements in the tender were.

The witness stated that they needed to see the functionality, either through a video or in the bidder's own sandbox environment.

Dr Mifsud Cachia stated that Pipeline had a working system, that WhatsApp was included in the presentation, and that they had asked whether anything was missing.

Dr Thomas said that this was the opposite of what the witness had stated.

Dr Mifsud Cachia stated that the witness had said that bidders could use their own sandbox environment.

The Chairperson stated that it had been established that a sandbox environment was not provided to anyone.

Dr Mifsud Cachia asked whether a sandbox environment had even been considered.

The witness replied that this was irrelevant; the bidder had to show their system, and if the functionality was difficult to implement, they could show a video, as other bidders had done.

Dr Thomas informed the witness that Dr Mifsud Cachia was asking whether this was mentioned during the presentation.

The witness replied that Pipeline mentioned that they had a system which was not implemented. The witness did not agree with Dr Mifsud Cachia's statement.

Dr Mifsud Cachia asked whether the demo was recorded, and the witness replied in the negative.

Cross-examination by Dr John Gauci

Dr Gauci asked, apart from WhatsApp, what else Pipeline failed to demonstrate.

The witness replied that the most critical elements were WhatsApp and SAP. Although he did not draft the tender, he was an evaluator and had reviewed it. The WhatsApp requirement was included under Note 3.

During the presentation, Pipeline did not show WhatsApp functioning but stated that it would be available. However, the evaluators did not see it in operation. The other bidders showed a video demonstrating how their WhatsApp function

would operate. This software will be used by customer care to manage calls and issues related to Water Services problems, and the consumer would be able to track their report. WhatsApp is crucial for informing customers, for example, to provide a serial number for updates or to inform them of the dates when repair personnel would attend.

Dr Gatt asked whether, in the Pipeline bid, apart from the demo, they mentioned WhatsApp and SAP.

Mr Attard replied that they had marked them as 'Yes' and stated that they would eventually have them. The evaluators needed to see them functioning. The witness stated that if Pipeline's SAP did not function, it would involve significant work. Other bidders showed samples and videos and assured the evaluators that they did not customise and that their systems worked with the current version.

Dr Gauci referred to Dr Mifsud Cachia's statement that during the meeting, Pipeline representatives showed their system and asked whether there was anything the evaluators did not like, and the evaluators did not raise any concerns.

Dr Mifsud Cachia clarified that her question was whether, if something was not properly explained or addressed, the Authority should have commented. She stated that there were three slides about WhatsApp integration showing the method, and no questions were asked about it.

The witness argued that they had asked, and that "Pipeline "said that if it did not work, they would customise a version. They could not request clarification as it was included in Note 3.

Cross-examination by Dr Steve DeCesare

Dr DeCesare asked the witness to confirm that the Authority did not provide a sandbox environment or protocols to any of the bidders. The witness stated that all bidders were given the same information before the demo.

Re-examination by Dr Lorna Mifsud Cachia

Dr Mifsud Cachia asked the witness to indicate in the tender where it was stated, apart from Section 3, that SAP and WhatsApp were crucial for the Authority.

The witness replied that it was in Section 2.2, Specific Objectives — Integration with SAP 4Hana, "out of the box", Page 16.

Dr Mifsud Cachia asked for a witness who had the communications sent to all bidders before the demo. The bidders had received an email with a link leading

to a form, and Dr Mifsud Cachia requested that this email be included in the Acts.

Witness:

Ms Catherine Degabriele (109588M), summoned by Dr Mifsud Cachia.

Ms Degabriele produced documentation consisting of an email sent to Pipeline JV through ePPS, and the formula sent to them.

Ms Degabriele stated that they had sent a notification letter requesting the provision of a sample at the tender publication stage. The demo sample was required to be in accordance with Section 3. Ms Degiorgio read the email sent through ePPS and forwarded to PCRB. In accordance with Section 1:

‘Where there is the provision of the demo a demonstration is being requested without any commitment on the part of the Corporation, shall take place at the following address WSC Head Office, Qormi Road, Luqa. The session is scheduled for 9.30 on 14th October 2025 and will last approximately two hours, during which the functionality of the system will be reviewed’.

This email was sent by the secretary, and Ms Degabriele was her superior.

Witness:

Ms Christine Scicluna (457476M), summoned by Dr Mifsud Cachia.

Ms Scicluna, the Secretary of the Board, stated that upon publication of the tender, one finds the form containing the samples list. During the evaluation stage, a requirement is issued — the same one read by Ms Degabriele. Ms Scicluna prepared both formulas and confirmed CRM Software with a clause in Form 3. This formula was not sent together with the invitation for the demo.

Cross-examination by Dr John Gauci

Dr Gauci confirmed with the witness that the samples list was in Note 3.

Witness:

Mr Clayton Axisa (202995M), summoned by Dr Mifsud Cachia.

Mr Axisa, a Senior Project Manager with Grand Thornton, together with Mr Conrad Aquilina, drafted the proposal document and presented the demo’s capabilities on the day. The tender document specifies a number of functionalities, and before each function there was the wording ‘ability to’. They had to demonstrate the ability as a vendor. The CA requested the ability to

implement three elements: the ability regarding SAP, the CRM, and the size requirements of the tender.

The request for the sample was 'Development and Implementation' ability to, not the supply of finished goods. Dr Mifsud Cachia told the witness that the specific objections were stated as 'the objectives of this contract are as follows', and one of these was SAP S/4 HANA, out of the box.

The witness compared this to a Betty Crocker cake. The issue is that one can make it because one has the ingredients; however, due to the complex nature of SAP S/4 Hana owned by WSE, it could not be delivered 'out of the box'. Usually, a business analysis of the workflow is carried out, with some triggers available 'out of the box' and others requiring adaptation to the specific case.

The Chairperson noted that the witness did not interpret 'out of the box' as absolute because the document referred to 'ability to'.

The witness stated that the CA were considering circumstances similar to other projects where customisation is required. In the tender, Clause 1.1 refers to 'develop a new CRM'. Referring to 'no changes to base code', the witness, who is an analyst, stated that Zoho colleagues would be better placed to answer. They sought a mature solution with the ability to provide the required functionalities at the lowest price. There is workflow builders built on top of existing code. Zoho has an international solution that does not change for every use case. The bidders were given one year for implementation, and one must ask 'why', if they wanted a commercially off-the-shelf product with a budget of €1.5 million. The witness stated that they bid for many tenders and was speaking from experience, where benchmarking is possible.

Dr Gatt asked about the clarification regarding 'out of box'. The witness replied that there were thirteen clarifications and replies; however, none were from Pipeline.

Dr Mifsud Cachia asked about the clarifications, and Dr Thomas stated that the witness mentioned several issues but did not respond to questions. Dr Mifsud Cachia stated that the tender did not reflect this and that the questions were critical, especially in a post-bid situation where the tender was rejected.

Dr Thomas asked the witness to exhibit the document he was reading from.

Mr Axisa stated that their product was compliant with all requirements. During the proposal and the demo, Pipeline presented a clear table with assurances to deliver all functionalities — the CRM, the field application (although it was descoped), and the AI. When they attended the demo, there were two persons representing WSC, and the Evaluation Committee asked them to open the laptop, as there was no online setup, and to point the laptop at the screen.

They began the demo by explaining the capacity of the companies forming the Pipeline consortium. During the presentation, they asked whether there were any questions for clarification, and only a minor question regarding SAP was raised.

In Zoho's demonstration, they informed the Authority that the 'out of the box' solution did not meet the workflow requirements, as some triggers were predefined while others required additional customisation. His colleagues addressed those scenarios and explained that all scenarios could be tailored.

Dr Thomas asked why they could not deliver using the normal scenario.

Mr Axisa replied that within two hours they provided a concise summary and reassured the committee that they could deliver. They had the ability to deliver in the worst-case scenario, and in the best-case scenario they would deliver with triggers out of the box. They concluded the demo with one question regarding SAP, and the committee stated that they would proceed with the rest of the process.

Dr Thomas asked the witness whether there were any questions about WhatsApp.

Mr Axisa stated that, to his knowledge, there were none. They ended the session with a conclusive video and a testimonial video from a company that Zoho had worked with and concluded by discussing next steps.

The tender document and clarification notes specify the requirements of the bid and refer to ability to deliver. This is demonstrated through the maturity of the solution and the delivering company. This is not a commercially off-the-shelf tender, as Clause 1.2 refers to the development of a new CRM, which implies a software development company.

Dr Thomas clarified that Grand Thornton Pipeline JV understood that it was not commercially 'off the shelf' but required further implementation.

Cross-examination by Dr John Gauci

Mr Axisa stated that their consortium comprised Grand Thornton and Zoho, a company based in India, and that they supported the drafting of the tender. Mr Axisa holds a Bachelor of Science in Business and Information Technology and a Master of Science in Strategic Management and Marketing. He stated that this enabled him to understand the requirements of the tender.

The technical definition of 'out of the box' means the use of standard connectors and APIs from one system to another. The definition of 'plug and play' is when everything is bypassed and solution A connects directly to Z. 'Out of the box', by

definition, uses standard connectors, which still involve substantial work from A to Z.

Dr Gauci asked the witness why he understood that it was impossible for WSC to request an 'out of the box system'.

The witness replied that the Authority would have written 'plug and play', and instead of writing 'ability to', they would have written SAP HANA only.

Dr Gauci asked the witness whether he came before the Board intending to say that WSC did not know what they were doing and to request the removal of 'out of the box'.

The witness replied, 'No', as this formed part of the Terms of Reference. Mr Axisa was present at the demo and at the clarification meeting, where the issue of 'ability to' was discussed, and WSC's response was that they needed to see all functionalities.

Dr Gauci asked the witness to answer yes or no, but the witness did not respond directly.

Dr Mifsud Cachia stated that this amounted to harassment of the witness.

The witness stated that the clarification notes were the most important, especially for those who could not attend. Referring to Question 8 of the clarification notes, he quoted:

"Ability to versus what is required, as per clause 4.2, all activities are required except for the Fields Officers Application, having said that, proof of ability should be still shown for the CA, for the Fields Officers Application".

There was also Question 9 regarding SAP:

"It has to be part of the solution system and must include SAP connectors as an integral part of its offering".

The witness stated that Clarification Note 11 showed a diagram of how it would be implemented.

The CA did not give a clear reference as to how 'Out of the box' should be interpreted, neither in the tender nor in the clarifications.

Dr Gauci told the witness that this was his interpretation, as other bidders had understood it differently. In Dr Gauci's view, Pipeline did not use the two hours allocated for the demo appropriately, given the number of presentations.

Mr Axisa stated that they dedicated 15 minutes to a summary of Grand Thornton, 2 minutes to closing remarks, and the remainder to explaining the demo.

Dr Gauci stated that it was not true that they could not connect through Teams, as there were people following everything remotely.

Mr Axisa stated that he had to set up the Teams link himself. Dr Gauci suggested that this was done to prevent remote participants from following. Mr Axisa replied that Teams shares a screen through a link. He explained to the Chairperson that although they set up the link, the content was not visible due to bandwidth issues, so they had to point the laptop at the screen.

He stated that there was also social media integration, and they demonstrated to the Authority the ability to connect with social media platforms, and that there could have been a question about WhatsApp.

Pipeline gave assurances regarding SAP and WhatsApp by demonstrating the ability of a software company, its functionalities, and the list of deliverables, which would ultimately form part of the contract.

Cross-examination by Dr Steve DeCesare

In the letter preceding the demo, the locality, time, and reference to the samples were specified. Dr DeCesare asked whether there was any reference to 'ability to' or merely a reference to functionalities.

Mr Axisa replied that there was a reference to functionalities; however, from the tender he understood 'ability to'. The letter did not request a video of the CEO nor profiles of the consortium members.

Dr Thomas showed the email provided by Ms Degabriele.

Mr Axisa stated that since there was a reference to the sample, this implied asking for ability. This could be demonstrated by the maturity of the solution and the bidder's competence.

Dr DeCesare referred to the Specific 'Objectives' in Section 3 of the tender document, 2.2, which contained eight bullet points. One of them was 'Integration with SAP S/4 HANA out of the box', on page 16.

Mr Axisa replied that, however, Clause 4.2 referred to 'ability to'. Regarding SAP integration, they demonstrated the customisation of the Zoho flow and, in the worst-case scenario, their ability to deliver. If the matter were simple, there would not have been a one-year timeline. The estimated budget was €1.5 million. He did not recall whether WhatsApp was demonstrated, but social media integration was shown.

Dr Thomas stated that the email was marked Doc CD and the notes Doc CA.

Final Submissions

Final Submissions by Dr Lorna Mifsud Cachia (for the Appellant)

As a non-technical person, she could understand the difficulties faced by a technical person when reading the tender and trying to understand what the Contracting Authority (CA) had in mind. There was no request indicating that WhatsApp was more important than the other requirements. In Article 4.2, there is a list of activities, but none is stated to be more important than the others. However, the witness stated that the SAP and WhatsApp integration were critical.

The CA should have specified this, particularly in Section 3, in the technical form of the samples. This requirement formed part of the tender, just like all the other social media platforms. Pipeline demonstrated that SAP could be delivered even in a worst-case scenario. This amounts to disproportionality, as this was not a case where the tender was non-compliant, but rather a case where the tender specifications were unclear — both in the requests, as they should have explained “out of the box”, and in the clarification notes regarding solutions. Whoever drafted the tender matched the system to a “word”, but the matter is far more complex.

There was a lack of communication, either internally within the Public Procurement team or in what was communicated to the bidders. One cannot rely on the fact that other bidders may have understood what was requested in the demo, because a tender procurement procedure must be clear for everyone. This led to Pipeline being illegally disqualified.

Referring to the tender, she quoted:

“The objectives of this contract are as follows: integration with SAP ‘out of the box’”

However, Article 4.2 refers to the ‘ability’ to create and modify notifications. One cannot make a generic request as per Section 3 and then insist on seeing WhatsApp specifically when there are about thirty separate requirements.

Regarding integration, there was not even a sandbox environment to demonstrate whether the software worked. Pipeline was disqualified without any valid basis. There could be no real-time interaction, as there was no environment available; it was only hypothetically assumed that the existing CRM matched the one offered.

The code box and the videos were provided, but had there been a sandbox environment, they would not have needed to appeal. The tender was misleading when it requested 'out of the box' and 'ability to'. The CA wanted a demo with WhatsApp and SAP integration, interpreting 'out of the box' to mean 'plug and play'. The ambiguity surrounding 'ability to' remains unresolved.

Referring to the Kazis tika of the CJU regarding demonstrations and samples, she quoted:

"Il-Qorti Ewropeja dejjem qalet illi, id-deskrizzjoni ta xi jrid jkun hemm f'demonstration jrid ikun tali illi ma jirrestringix kompetizzjoni".

Certain specifications may result in the rejection of potential bidders. Since State funds are being administered, all bidders should be given a fair opportunity. Pipeline submitted a product compliant with the specifications, including the WhatsApp platform. There was no clear communication about what was required during the demo or what the tender was specifically seeking.

Mr Axisa came prepared with notes, which is not illegal. The CA failed to clearly express its requirements in the tender documents, and this was the core problem. The Board was invited to examine the rejection, noting that although all requests were submitted, there was no explanation of what the Evaluation Committee expected to see during the demo. Pipeline requested that their appeal be upheld.

Final Submissions by Dr John Gauci (for the Contracting Authority)

The subject before the Board was a software system which the corporation wished to acquire in order to organise the services currently provided and ensure that consumers are informed of the best available methods. The CA required WhatsApp notifications, and the requested software needed to match the existing system in order to improve services.

Pipeline's witnesses testified that their software was not 'out of the box', but required implementation, and they offered to customise it in case WhatsApp did not function as required.

Mr Axisa, who has extensive IT experience, understood the meaning of 'out of the box', yet admitted that the system was not 'out of the box'. He did not request clarification nor ask the Authority to amend the requirement. Dr Mifsud Cachia questioned why greater emphasis was placed on SAP integration and WhatsApp. Mr Axisa testified that regarding WhatsApp, they did not demonstrate anything specific but showed integration with Messenger on social media. He also critically failed to demonstrate SAP integration when he stated that the product would be delivered in a bespoke manner.

The situation was clear: the demo constituted the sample. Referring to Case 1863 of the WSC, where the Board stated that it is not for the bidder to decide what is important or not, the sample serves to justify what the bidder declares in the offer. This means that if the bidder ticked 'Yes' for WhatsApp integration, this had to be demonstrated in the sample.

In its decision of 8 May 2023, the Board stated, and he quoted:

“The Board has time and time again provided its judgement, that it is not up to the economic operator to decide which criteria to be deemed of substance or otherwise, the Evaluation Committee therefore observed one of the main principles of Public Procurements, that is achieving a level playing field between all participating economic operators, when it deemed such sample as being non-compliant for the reasons provided.”

This was not a case of a misunderstood request. Mr Axisa clearly understood the requirement; however, the appellants encountered difficulties in meeting it. All other bidders were compliant. Pipeline assumed that they could modify the software later. The appellant focused the demo on experience and qualifications but failed to demonstrate whether the consumer would receive a WhatsApp message or whether the system would fit seamlessly with the existing one upon signing the contract. This was required under Note 3, and the Corporation was therefore obliged to disqualify the offer.

Final Submissions by Dr Steve DeCesare (for the Recommended Bidder)

Dr DeCesare stated that there were two main stages in the competitive process: the evaluation of the bidder and the evaluation of the offer.

In the first stage, under Sections 5A and 5B, there is an assessment of eligibility to determine whether the bidder can carry out the project, including technical and professional ability, list of deliveries, and related criteria.

In the second stage, the technical and financial bids are evaluated to ensure compliance with the request. Part 1 and Part 3 of the General Rules concern the evaluation of the bidder. Clause 5C of the tender document deals with the demo as a sample. Clause 16 states that when a sample is requested, the Evaluation Committee must corroborate the technical compliance of the offers received, not the capability of the company itself.

Within the two-hour demo, the appellant was required to demonstrate the specific objectives, particularly the two bullet points concerning external communication integration for WhatsApp and integration with SAP. The other bidders did not simply state 'Yes' but corroborated technical compliance through their demos.

Replica by Dr Mifsud Cachia (for the Appellant)

Dr Mifsud Cachia argued that Case 1863, cited by Dr Gauci, was inapplicable to this case, as in that instance the offer differed from what was requested. In the present case, the tender met the specifications. They even identified the bullet points mentioned by Dr DeCesare.

This was not a situation where Pipeline failed to demonstrate technical compliance; rather, they may not have demonstrated WhatsApp and SAP integration in sufficient detail. This does not mean they were not technically compliant, nor that they could have anticipated the specific expectations of the Contracting Authority. It was impossible to demonstrate everything within two hours, and it was essential to present the company in India. She maintained that the decision was disproportionate.

Conclusion of the Hearing

As no further arguments were presented, the Chairperson, Dr Ana Thomas, thanked the parties and formally concluded the session.”

The written pleadings as filed by Pipeline on the 21st November, 2025 (with a stamp dated 24th November, 2025), together with proof of payment of a deposit in the amount of €7,500.00, wherein it held as follows:

“1. Introduction

1.1 We have been instructed by Messrs. Pipeline (TID 227041) (hereinafter 'the Appellant') to file this objection in terms of Regulation 270 of the Public Procurement regulations (the 'PPR') in connection with the tender WSC/T/016/2025 - Services - Tender for the Development, Provision and Implementation of a CRM Software for Water Services Corporation, hereinafter referred to as 'the Tender'.

1.2 The Appellant is laying out the chronology of facts leading to the present objection:-

- (i) On the 11th March, 2025 Tender WSC/T/016/2025 having as its title: Services -- Tender for the Development, Provision and Implementation of a CRM Software for Water Services Corporation (hereinafter "the Tender" - was published.*
- (ii) The award criterion of the Tender was "the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria" (Clause 6 of Section 1 of the Tender).*
- (iii) The deadline for submission of tender was the 21st May, 2025.*
- (iv) The Appellant submitted its bid before the closing time (hereinafter "the Bid);*

- (v) *Upon the publication of the results of the tenders submitted, it was immediately clear that Appellant's bid was the cheapest bid.*
- (vi) *The Appellant received a letter dated 13th November, 2025 declaring the Appellant as technically non-compliant (hereinafter the 'Rejection Letter' (Doc. A attached to the email by means of which the notice of objection is being sent).*

1.3 The Appellant was and is aggrieved by the decision of the Contracting Authority that its bid "was found to be technically non-compliant" and is hereby filing this present objection to overturn the recommendation of award of the Tender.

1.4 According to the Rejection Letter, the Contracting Authority decided that the Bid was technically non-compliant because of the following reason:-

Following a demonstration request, the demo did not support all the requested requirements, and the majority of the functionalities were indicated to become available only during the implementation phase. Furthermore, while SAP integration was stated to be feasible without a demonstration of the related functionalities, when asked whether the integration was available out of the box, the vendor indicated that they would first verify the existing capabilities and, if not feasible, proceed with a custom implementation. This approach contradicts the requirement for an out-of-the-box solution.

1.5 The grounds underlying the Appellant's grievance as a result of the said decision of the Contracting Authority is clear and manifest and consist in the following:-

A. First Grievance:- The Contracting Authority acted disproportionately when it decided straightaway, on the basis of a demo, to proceed outright with a declaration of non-compliance of the Bid given that (i) the Bid was and is technically compliant and (ii) given further that this was also and immediately evident from the substance of the Bid itself and, hence, there was no justification for the Bid to be declared technically non-compliant and at the very least, the Contracting Authority should have requested a clarification if it suspected that there was any discrepancy between the substance of the Bid and what was stated, observed and demonstrated during the demo.

B. Second Grievance:-The Contracting Authority acted unlawfully and wrongly when it decided to declare the Bid technically non-compliant because the Bid was and is technically compliant and there is no reason justifying the Bid as technically noncompliant.

2. Submissions in relation to the Grounds of Appeal.

The Appellant will now present all its submissions supporting the grievances making up its objection.

2.1. FIRST GRIEVANCE

2.1.1 The decision to declare the Bid as technically non-compliant is in breach of the principle of proportionality which has been repeatedly enunciated by the various levels of adjudicating authorities in Malta and in the European Union, the principle of proportionality being also a general principle of European Union Law. This principle lays down the obligation on Member States and the

European Institutions not to go beyond what is necessary to achieve the intended objectives and when there are various measures which could attain the same objective, recourse must be had to the least onerous one.

2.1.2 The principle of proportionality is a fundamental tenet in both Maltese and EU Public Procurement Law and it cannot be ignored, set aside or disregarded for any reason whatsoever. Over the years, the CJEU has recognized that Contracting Authorities may request clarifications from tenderers even after the submission deadline, and it has confirmed that national laws permitting such requests do not conflict with the then EU Public Procurement acquis. In particular, the Manova judgment provided for a degree of flexibility in interpreting the rules regarding the formal compliance of bids in public procurement procedures. This ruling built upon the Slovensko judgment which emphasized that Contracting Authorities may seek clarifications after a bid has been submitted, provided that the principles of equal treatment and transparency are respected and that such clarifications do not amount to submitting a new tender. The Manova judgment further emphasized that strict adherence to formal requirements can be eased so long as equal treatment and transparency are maintained. Notably, these decisions predated Directive 2014/24/EU, which explicitly established proportionality as a guiding principle for Member States in public procurement.

2.1.3 It follows that, where Contracting Authorities are required to act proportionately towards all economic operators, and given that requesting clarifications of submitted tenders does not contravene EU law (as consistently affirmed by the CJEU), becomes evident that Contracting Authorities have a duty to seek clarifications rather than immediately disqualify a tender including the situation when it is faced with perceived discrepancies. This is precisely the case in question whereby the Bid was technically compliant but during the demo, the Technical Evaluation Committee ("TEC") thought it opportune to conclude that the Bid was (always according to the TEC) non-compliant because of some "shortcoming" in the demo.

2.1.4 In this case, the disproportionality becomes even more serious and disproportionate because the award criterion of the Tender was the cheapest bid and the Bid was indeed the cheapest. Hence, had the Contracting Authority not erroneously and disproportionately concluded that the Bid was technically non-compliant, the Appellant would have been awarded the contract. Hence, the disproportionality of the Contracting Authority's decision to just proceed with disqualification becomes even more compelling and it is, therefore, of even more paramount importance that this Honourable Board scrutinize the process against the background of severe injustice being wielded against Appellant since such disproportionality resulted not just in the disqualification of the Bid but, doubly, even in the Appellants not being awarded the contract.

2.1.5. Indeed, not all compliant tenders are awarded contracts - the whole point of public procurement is then to find the best (according to the award criteria) offer and then award the contract. In this case, the cheapest bid was the Appellant's and this disqualification brought with it the direct consequence of the Bid not being awarded the tender. Hence, in this very particular case, the disqualification and the disproportionality must be examined also against the backdrop of the fact that the Bid was the cheapest one and would have been awarded the contract. If this remedy is to be really effective (and remedies have to be effective because otherwise the remedy would be rendered pointless) then this Board has no alternative but to take into consideration the stark reality that had the disproportionality not occurred, not only the Bid would not have been considered non-compliant and disqualified but it would have been awarded the Contract.

2.1.6. Therefore, it follows, given the severity of the consequences of the Contracting Authority's decision, if the Technical Evaluation Committee really suspected (completely denied by Appellant) that the Bid was non-compliant on the basis of some factor arising out of the demo, the Technical Evaluation Committee should have first verified the contents of the Bid again to obtain confirmations from the Bid and then, if the suspicions persisted, sought clarification on the relative matter from the Appellant (without prejudice to the Appellant's submission that the Bid was and is indeed fully compliant). That would have been the proportionate way of treating the suspicion of non-compliance on the basis of a demo. Any other action was and is disproportionate and, hence, unlawful.

2.1.7. The injustice of this approach becomes even more manifest when it clearly transpires that the Technical Evaluation Committee did not even cross-check its suspicions against the presentation of the demo itself where it was clearly shown that all the various check-boxes said "yes". This should have led the Technical Evaluation Committee to ask for clarifications - even during the Question and Answer session during the demo itself when, in fact, the TEC asked absolutely no questions relating to the matters raised in the Rejection Letter. There, the TEC had the perfect opportunity to address its own concerns - and, yet, it asked nothing and proceeded with eventually sending the Rejection Letter.

2.1.8. Hence, it is submitted that the decision to disqualify on the basis of a (perceived) discrepancy between the Bid (which was technically compliant) and the demo is manifestly and patently disproportionate.

2.1.9. The disproportionality of the decision to disqualify becomes even more exacerbated when one takes into consideration the fact that the reason for rejection and disqualification is utterly, completely and absolutely baseless.

2.1.10. To illustrate this point, the Appellant shall now turn to breaking down the reason for rejection and explain why this reason is utterly and completely wrong and unsupported by the Bid and the demo itself.

BREAKDOWN OF DISQUALIFICATION REASON

2.1.11. First off it must be humbly submitted that Appellant's Bid and the demo both clearly reflected the full list of requirements (as extracted directly from the Tender), and every required item was marked as Yes. Hence, the comment "Following the demonstration request, the demo did not support all the requested requirements..." is not only completely false and unfounded but completely disproportionate because from the Appellant's submission, it could be easily concluded that all the requirements were indeed met. Furthermore, the Bid clearly demonstrated full alignment with the complete set of technical requirements extracted directly from the Tender. The proposed Zobo CRM Plus solution addressed each requirement comprehensively, covering both the core modules and the integration modules, with every mandatory item explicitly showcased and demonstrated. This reflected Appellant's full capability to meet the specific needs of the Contracting Authority.

2.1.12. Even the comment of the Evaluation Committee that:- "...and the majority of the functionalities were indicated to become available only during the implementation phase." is completely disproportionate because the Technical Evaluation Committee could easily have concluded that the phrase "during implementation" referred to configuration, not software development from scratch. Appellant's model is not a "build-from-zero" but "configure-from-existing". When Appellant stated "available during implementation," Appellants meant that

modules will be enabled and configured for the customer's processes to go live, not built as new code. Standard enterprise CRM implementations proceed by turning on modules (work orders, notifications, reports etc) and customizing workflows, user roles, forms, dashboards- not rewriting engine-level code. Indeed, Appellant's approach aligns with standard enterprise implementation practices.

2.1.13. Additionally, although Appellants do not propose to build new engine-level code for the purposes of this contract, the configuration approach still provides extensive flexibility. Appellants can tailor workflows, fields, forms, automation, dashboards, and permissions to precisely match the Contracting Authority's operational processes. This ensures the system aligns with the Contracting Authority's requirements while maintaining the reliability and scalability of a proven enterprise platform.

2.1.14. With respect to the comment that "Furthermore, while SAP integration was stated to be feasible without a demonstration of the related functionalities...", the Appellants formally submit that integration with SAP S/4HANA is available out of the box through an existing, standard connector in the Zobo ecosystem. This was marked accordingly in the tender submission and referenced in the demo. This connector is part of Zobo's broader integration framework, which provides pre-built, secure, and scalable bridges between Zobo applications and major enterprise platforms.

2.1.15. The Zobo ecosystem includes native connectors, API integration tools, middleware options (such as Zobo Flow and Zobo Integration Platform), and supported third-party interfaces that enable seamless data exchange without the need for custom development. These tools ensure reliable synchronization of key entities such as customer data, transactions, orders, and financial information-between Zobo CRM Plus and SAP S/4HANA. All this is being submitted at this juncture because it must be emphasized that, because of this established integration capability, the requirement was marked as supported in Appellant's Bid and explained in detail during the demo session, reaffirming that the connection relies on standard, proven components rather than bespoke development. Hence, there is no valid reason why the TEC had to pass this observation.

2.1.16. The disproportionately becomes even more poignantly blatant when one takes into consideration the "Out-Of-the-Box" remark which consisted in the following:- "...when asked whether the integration was available out of the box, the vendor indicated that they would first verify the existing capabilities and, if not feasible, proceed with a custom implementation. This approach contradicts the requirement for an out-of-the-box solution."

2.1.17. Indeed, as clearly marked in both the Bid and the demo, Appellant's proposal fully satisfied the Tender requirement for out-of-the-box integration with SAP S/4HANA, as stated under Integration Modules, Item 13(c) in the Tender Dossier. This capability was clearly presented in Appellant's submission, where Appellant explicitly listed "Ability to Integrate with SAP S/4HANA Out of the Box." This reflects the existing, standard SAP connector available within the Zobo ecosystem. Indeed, Appellants can offer the integration of SAP S/4HANA out-of-the-box for most use cases or through custom development using Zobo's APIs or third-parties where needed and, hence, the mandatory requirement remains fully met through the existing out-of-the-box connector.

2.1.18. Undoubtedly, any optional development referenced in Appellant's documentation/discussions relates solely to customer-specific enhancements and does not replace or diminish the standard integration capability already available out of the box. The Appellant's

proposal therefore complies entirely with the tender specification while offering flexibility to support the Contracting Authority's particular SAP configuration where beneficial. This notwithstanding, the Contracting Authority, inexplicably, sought to declare the Bid non-compliant!

2.1.19. Furthermore, it should be noted that Zobo's ecosystem provides a mature, established integration framework, including native connectors, APIs, and middleware tools that enable seamless synchronisation with major enterprise systems such as SAP S/4HANA. This out-of-the-box connector supports the majority of integration use cases without the need for custom code.

2.1.20. The Appellants further wish to clarify the additional wording included in their submission - "or through custom development using Zobo's APIs or third-parties where needed." This wording does not indicate that custom development is required to meet the Tender's mandatory requirement. Instead, it acknowledges a common reality across enterprise SAP environments: many organisations operate customised SAP structures, extended ABAP objects, or unique data fields. In such situations, optional enhancements may be beneficial to align the integration with client-specific SAP customisations.

2.1.21. The mandatory requirement, however, remains fully and independently met through the existing out-of-the-box connector. Any optional development referenced in the Appellant's documentation relates solely to customer-specific adjustments and does not diminish, replace, or call into question the standard integration capability already provided by Zobo.

2.1.22. Hence, the Appellant's proposal fully complies with the Tender specification while also offering the flexibility to support the Contracting Authority's particular SAP configuration where advantageous.

2.1.23. It is therefore evident that the decision of the Technical Evaluation Committee and to declare the tender technically non-compliant was disproportionate and went beyond what was appropriate or necessary to achieve the objectives of the Tender. The decision to reject and exclude the bid of the Appellant amounted to the most severe measure and was therefore disproportionate.

2.1.24. In light of the foregoing, the Appellant respectfully submits that the Contracting Authority must have sought clarification from the Appellant because it would have realized that there was a (perceived) discrepancy between the Bid and what the Technical Evaluation Committee understood during and from the demo and this in accordance with the principle of proportionality. Indeed, requesting such clarification would have been the only proportionate - and lawful - course of action.

2.2 SECOND GRIEVANCE

2.2.1. From the above submissions, it becomes also patently clear that the decision of the Contracting Authority was fundamentally unlawful, as the Contracting Authority was unable to demonstrate any lawful, rational, or proportionate justification whatsoever. Indeed, from the submissions in relation to the first grievance, it becomes amply clear that the conclusion was entirely baseless and there was no ground of whichever nature which could justify it. Hence, the decision to disqualify was also entirely bereft of any truth and, hence, there was no reason to justify it.

2.2.2. It is also patently clear that the Technical Evaluation Committee did not exercise the diligence which tender evaluation must, by its very nature, involve. The Technical Evaluation Committee should have - at least out of diligence if nothing else - crosschecked with the Bid (literally by cross-checking the submission) whether its conclusions are justified or otherwise. Had it done so,

it would not have disqualified the Appellant's Bid and it would have recommended the award of the Contract to the Appellant.

3. Conclusion

Therefore, in view of the above and for other reasons that may be adduced at law at the sitting to be set up by the Public Contracts Review Board, the Appellant humbly submits that the same Board should respectfully, subject to any declaration or order that it deems fit and opportune:-

(a) Declare that the Contracting Authority's decision of the 13th November, 2025 was illegal and consequently proceed to annul it;

(b) Cancel and revoke the proposed award of the Tender to the Recommended Bidder;

(c) Give any and all necessary instructions and directions to the Contracting Authority on the evaluation of the Appellant's bid; and

(d) Order the refund of the deposit paid by the Appellant.”

The written reply as filed by the Water Services Corporation on the 3rd December, 2025 (with a stamp dated 4th December, 2025 (hereinafter the ‘Contracting Authority’) wherein it held as follows:

“1. Introduction

The Water Services Corporation (WSC) respectfully submits the present reply to the Appellant's objection, in order to clarify the factual and technical basis underpinning the Evaluation Committee's decision and to address the assertions raised in the objection. The reply must be placed in its proper context.

This tender required the provision of a fully-fledged, ready and operational CRM system, capable of meeting a detailed list of core and integration functionalities from Day 1, without reliance on custom-builds, bespoke coding, or post-award development to fill functional gaps. This was consistently emphasised during the clarification process, and it reflects WSC's operational needs, risk appetite, and internal capacity. The Corporation cannot undertake a high-risk project dependent on promises of future developments, undocumented APIs, or untested third-party plugins.

Against that background, the Appellant's bid was assessed strictly on the basis of what was submitted in the Technical Offer and what was demonstrated during the mandatory demo. Both have to speak for themselves. The evaluation exercise cannot extend beyond what the bidder showed and declared, and Note 3 of the Tender expressly prevents the TEC from requesting rectification of any element linked to the demo or the substantive technical offer.

It is within this framework that the TEC found the Appellant's offer to be technically non-compliant. The reasons were not procedural, stylistic, or minor. They basically consisted in:

- i. material failures in the demonstration, which did not show several mandatory features that were required to be shown immediately and in operation;*
- ii. explicit contradictions in the Appellant's own documentation, particularly between Clauses 2.1.17, 2.1.20 and 2.1.21 of the objection - where the Appellant at once claims*

- iii. *"out-of-the-box" integration with SAP S/4HANA, while simultaneously admitting that custom development or third-party components would be used "where needed"; inability to show critical AI-assisted, chatbot-driven customer-agent functions, including knowledge-base extraction, workflow auto-creation, and automated handling of customer queries;*
- iv. *absence of the WhatsApp integration, video call support integration, and other communication modules, which were simply stated to "become available during implementation"-a position incompatible with the tender's Note 3 obligations and with WSC's expressly stated refusal to entertain speculative or development-phase deliverables; and*
- v. *the centrality of SAP integration within the overall CRM ecosystem, making it impossible to treat that functionality as a secondary or peripheral point permissible for post-award build-out.*

The TEC did not exclude the Appellant on the basis of a minor point, a presentational issue, or an administrative defect capable of remedy. The non-compliance arises squarely from the Appellant's own demonstration and documentation. Moreover, the deficiencies affect the core of the tender requirements, particularly the integration layer, the automation framework, and the requirement for a fully-operational solution from the outset.

The following sections analyse these matters in detail.

2. Technical Non-Compliance and Internal Contradictions

The Appellant's bid falls short of several core requirements that the tender treated as mandatory. These shortcomings arise directly from (i) what the Appellant demonstrated during the sample session and (ii) what the Appellant declared in its own technical documentation and subsequent objection. Under Note 3, any deficiency relating to the technical offer or the demo cannot be rectified following submission. The TEC therefore evaluated the offer strictly on the basis of what the Appellant showed, not what it later attempted to explain.

2.1 Demo Deficiencies Affecting Mandatory Functionality

The Appellant's demo did not show several functions that the tender required to be demonstrated as already existing, operational, and native to the proposed solution. Instead, the Appellant repeatedly stated that certain features would "be available during implementation". That position is incompatible with the tender structure.

The difficulties in the demo were not marginal. To begin with, the AI module was simply not shown in operation. There was no working chatbot, no AI-driven replies to customer queries, no use of a knowledge base, and no automated creation of work orders from notifications. These are not optional features; they are expressly required, and the demo had to show them working.

The same applies to the communication modules. WhatsApp integration and video-call support were both mandatory, yet neither was demonstrated. The Appellant merely stated that these would become available during implementation. That is not what this tender allows. A feature that must be operational at award cannot be postponed to a later phase.

The automation and workflow elements were also incomplete. The system did not demonstrate the required rule-based creation of work orders linked to specific notification types. What was shown

were parent tickets without the full sequence that should connect notifications, sub-notifications, work orders, and the automatic triggers between them.

Finally, a noticeable part of the session was spent on corporate overview rather than on the requested functionalities. This did nothing to address the missing modules, and under Note 3 the TEC could not request follow-up demonstrations to cure these omissions.

Reference is made to the jurisprudence of this Board, and of the Court of Appeal, which consistently emphasises that a sample submitted by a tenderer must demonstrate the required technical capacity. Where the sample itself (in this case, the demo) fails to show that capacity, the TEC has no option but to exclude the bidder.

See on this point, ad exemplum, this Board's decision in Case 1863 WSC/T/84/2022 - Framework Agreement for the Supply and Delivery of PPR Manifolds to the Water Services Corporation, delivered on 8 May 2023:

"This Board has time and time again provided its judgement that it is not up to the economic operator to decide which criteria are to be deemed of 'substance' or otherwise!

...

d) The Evaluation Committee, therefore, observed one of the main principles of Public Procurement, i.e. achieving a level playing between all participating economic operators, when it deemed such sample as being technically noncompliant for the reasons provided." (added emphasis)

The tender does not permit bidders to present an unfinished system and then complete the missing pieces after award. The Appellant's demo did not show the mandatory functionality, and for that reason alone the bid could not be considered compliant.

2.2 Contradictions in the Appellant's Own Documentation on SAP S/4HANA Integration

The most substantive internal inconsistency concerns SAP S/4HANA integration - one of the core pillars of this CRM procurement.

In Clause 2.1.17 of the Appellant's objection, the Appellant states that integration is available "out-of-the-box", but immediately qualifies this by saying the integration may be achieved "through custom development using Zoho's APIs or third-parties where needed." This already signals that the integration is conditional and not guaranteed.

The Appellant then attempts to redefine this in Clauses 2.1.20 and 2.1.21, claiming that such custom development would only be required in "optional enhancements", "client-specific adjustments", or in scenarios involving "unique data fields". The two positions cannot be reconciled. If integration is truly out-of-the-box, then there should be no circumstances where custom development or third-party components "where needed" must be introduced to achieve basic operability.

Conversely, if such development becomes relevant whenever SAP structures differ from Zoho's assumptions (which is precisely what the Appellant argues) then the integration is not out-of-the-box at all.

For the WSC, SAP is not a peripheral module. It is the backbone of the CRM's operational logic: customer profiles, notification statuses, work-order ties, stock movements, and reporting flows

all depend on it. Under this tender, SAP integration must be native, existing, proven, and demonstrably functional before award, not constructed through post-award development or discovery. The Appellant's own text confirms that this requirement was not met.

2.3 Readiness vs. Promises of Future Development

The tender required a ready-made, operational system. It did not permit reliance on future customisation, integrations to be built later, or functionality to be delivered "during implementation".

The Appellant's proposal rested extensively on what it "can offer", "would develop", or "would make available". This is not compliant. The TEC must evaluate the system as presented. A system dependent on future work, conditional integrations, or external components cannot satisfy a tender whose core objective is an immediate, operational CRM.

3. Proportionality and Why These Failures Cannot Be Treated as Minor

The Appellant attempts to portray the shortcomings in its offer as minor matters, suggesting that the TEC should have treated them as non-material or asked for further explanation. This does not reflect the structure of the tender or the nature of the deficiencies. Proportionality cannot be used to minimise failures that go straight to the substance of what the Corporation is procuring.

In this tender, the essential elements are not difficult to identify. The CRM must be fully operational from the outset; it must have a functioning, native integration with SAP S/4HANA; it must include the AI-driven modules described in the Terms of Reference; and it must already support the communication channels, including WhatsApp and video-call capability, that are central to the WSC's customer-facing functions. These are not peripheral modules that can be tolerated in an unfinished state. They form the backbone of the entire solution.

Against that background, the Appellant's argument that the TEC should have treated the deficiencies lightly is misplaced. A feature that is missing, not demonstrated, or dependent on future development is not a minor issue. The out-of-the-box requirement eliminates the notion that a bidder may present a partially built system and then "complete" it during implementation. The tender does not allow this, and Note 3 expressly prevents the TEC from curing gaps in the technical offer or the demo.

This is especially so in relation to SAP integration. The Appellant's own objection shifts between two incompatible positions: on the one hand claiming that SAP connectivity is available immediately and out-of-the-box, and on the other hand acknowledging that the integration may, "where needed", require custom development or the intervention of third-party components. The Appellant then attempts to recast this as merely an "optional enhancement" needed only in the presence of customised SAP structures. The difficulty is that, for the WSC, SAP is not a secondary system. It is the central data spine through which customer records, notifications, work orders, stock movements, statuses, and reporting all flow. Any uncertainty as to whether the integration exists from day one, and whether it would require further development to operate correctly, strikes directly at the very core of the tender requirements.

The same reasoning applies to the shortcomings in the demo. The tender makes the demo part of the compliance assessment. It is not a marketing opportunity; it is the point at which the bidder must show that the system has the required capabilities. When the Appellant did not show the

chatbot, did not show any knowledge-base extraction, did not show automated work-order creation, and did not show WhatsApp or video-call support, the TEC could not simply assume that these features existed but were not demonstrated. Under the terms of this procurement, the TEC had no authority to request follow-up explanations or to give the bidder a second chance to demonstrate missing functionality.

Proportionality does not permit the TEC to reconstruct an incomplete offer, overlook essential requirements, or treat the absence of core modules as inconsequential. The evaluation must be based on what was actually submitted and demonstrated. In this case, the material elements were either not ready, not shown, or contradicted by the Appellant's own wording. The TEC was therefore correct in concluding that the bid was not compliant, and proportionality provides no basis for a different result.

4. Conclusion

In view of the above, the Evaluation Committee's decision rests on clear and objective grounds. The Appellant's offer was assessed exactly as required by the tender i.e. on the strength of what was submitted in the technical offer and what was demonstrated during the sample session.

The system that was shown was incomplete, key modules were either absent or dependent on future development, and the documentation itself contained contradictions on matters as fundamental as SAP S/4HANA integration. These are not minor imperfections but substantive failures that go to the heart of the tender's mandatory requirements.

The tender did not allow bidders to rely on post-award development to satisfy core functionalities, nor did it permit the TEC to cure gaps in the technical offer or the demo. The out-of-the-box requirement was clear, and Note 3 bound the TEC to evaluate the offer as presented. Once the Appellant failed to demonstrate the required capabilities (particularly in relation to automation, communication channels, AI modules, and SAP connectivity) the TEC had no legal or procedural basis to consider the offer compliant.

Proportionality does not assist the Appellant, because none of the shortcomings are minor. On the other hand, the said shortcomings concern the essential architecture of the system that WSC must rely on operationally, and they directly affect the system's viability from day one. It is submitted that the TEC acted correctly, consistently with the tender provisions and established procurement principles, and its conclusion of non-compliance was both justified and unavoidable.

In view of the above and other submissions that will be made at the hearing of this Objection, WSC respectfully requests the Public Contracts Review Board to dismiss the objection and to uphold the recommendation for award as issued."

The written reply as filed by Deloitte Advisory and Technology Limited dated 12th December, 2025 (with a stamp dated 11th December, 2025) (hereinafter the 'Preferred Bidder') wherein it held as follows:

"1. Introduction

1.1. We are instructed by Deloitte Advisory and Technology Limited ("Deloitte") to file this written reply in accordance with the provisions of regulation 276(c) of the Public Procurement Regulations (Subsidiary Legislation 601.03) (the "PPR"), in reply to the

objection filed by Pipeline (IID 227041) ("Pipeline") in connection with the Tender Procedure (the "Objection"), and notified to Deloitte by the Public Contracts Review Board (the "Board") on 1st December 2025.

- 1.2. *Deloitte notes, at the outset, that it is not privy to the contents of the tender submitted by Pipeline, or the documents or other evidence relied upon by Pipeline for the purposes of its Objection.*
- 1.3. *Deloitte shall therefore set out hereunder its replies on the Objection based on the limited information available to it at this stage, whilst expressly reserving its right to make further submissions and to present evidence in relation to matters of fact which will be established during the hearing.*

2. Facts

- 2.1. *The sole award criterion, as set out in clause 6 of tender document regulating the Tender Procedure (the "Tender Document"), was the price. The contract would be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.*
- 2.2. *Pipeline was disqualified as technically non-compliant, for the following reason:*

"Following a demonstration request, the demo did not support all the requested requirements, and the majority of the functionalities were indicated to become available only during the implementation phase. Furthermore, while SAP integration was stated to be feasible without a demonstration of the related functionalities, when asked whether the integration was available out of the box, the vendor indicated that they would first verify the existing capabilities and, if not feasible, proceed with a custom implementation. This approach contradicts the requirement for an out-of-the-box solution."

- 2.3. *Pipeline contests the said disqualification in terms of the Objection, alleging that:*
 - (i) *First Grievance - the Contracting Authority acted disproportionately when disqualifying Pipeline on basis of the demo without seeking further clarification (the "First Grievance")*
 - (ii) *Second Grievance - the Contracting Authority acted unlawfully and wrongly when deciding that Pipeline's offer was technically non-compliant (the "Second Grievance")*

3. First Grievance - breach of principle of proportionality

A. Introduction

- 3.1. *Pipeline does not contest that the Contracting Authority required an out-of-the-box solution meeting all tender requirements at time of submission.*
- 3.2. *Pipeline however alleges that the solution it offered met all the tender requirements, that this was evidenced in the demo, and that the Contracting Authority acted disproportionately when it did not seek clarification in relation to any suspicion of non-compliance.*

B. Principle of Proportionality

- 3.3. *It is not contested that the principle of proportionality is a fundamental principle which, together with other principles such as the principles of equal treatment, non-discrimination and self-limitation, must be complied with in a public procurement process.*
- 3.4. *The principle of proportionality, in a nutshell, provides that a contracting authority should not adopt a measure which exceeds the limits of what is necessary in order to achieve the objectives pursued and that where there is a choice between several appropriate measures, recourse must be had to the least onerous.¹*
- 3.5. *The key wording is therefore that the Contracting Authority must have a choice between several appropriate measures.*
- 3.6. *In this case, for the reasons outlined below, it is submitted that it had no other lawful choice but to disqualify a tenderer if the demo of the solution offered failed to corroborate the technical offer.*
- 3.7. *In addition, Pipeline seems to imply that the principle of proportionality is applicable to a larger or different extent when assessing a tender which was the cheapest. The principle of proportionality, and all the other principles including the principles of equal treatment, nondiscrimination and self-limitation, apply equally and to the same extent to all tenderers irrespective of price offered. It therefore does not become more serious and more disproportionate (as stated in paragraphs 2.1.4 of the Objection) if the disqualification relates to the cheapest offer.*
- 3.8. *Indeed, even if Pipeline was the only tenderer for a contract, the principles would apply in the same manner. The Board has confirmed this in Case 14102, wherein the Board rejecting the appeal filed by the only tenderer (therefore, not only the cheapest but the only offer) and concluded that:*

"With regard to Appellants' contention in that, their offer should not have been discarded since there was only one offer and through a clarification, no preferential treatment would have been made, this Board would respectfully point out that the Public Procurement Regulations apply in all cases and circumstances, no matter how many offers are submitted to a publicly funded call.

As has been emphasized on so many occasions, this Board would point out that, whilst it is the responsibility and obligation of the bidder to abide by the stipulated requirements of the tender document, it is also the duty and obligation of the Evaluation Committee to abide by the principle of self-limitation so as to ensure that equal treatment and level playing field prevail."

C. Principle of Self-limitation

3.9. *The principle of self-limitation on the other hand requires the Contracting Authority to evaluate tenders strictly on the basis of the conditions stipulated within the Tender Document.*

3.10. *In Case T-415/103, the Court held:*

"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, for the purpose of establishing whether, as the applicant maintains, those specifications could permit the Joint Undertaking to accept the deviations."

D. Non-Compliance of Pipeline

3.11. *Pipeline claims that its demo corroborated its technical offer and proved compliance with all tender requirements.*

3.12. *In its Objection, Pipeline insists several times on statements of compliance in documentation submitted as part of its technical offer and demo. These include:*

(i) *2.1.7 of Objection - The injustice of this approach becomes even more manifest when it clearly transpires that the Technical Evaluation Committee did not even cross-check its suspicions against the presentation of the demo itself where it was clearly shown that all the various check-boxes said "yes".*

(ii) *2.1.11 of the Objection - First off it must be humbly submitted that Appellant's Bid and the demo both clearly reflected the full list of requirements (as extracted directly from the Tender), and every required item was marked as Yes.*

(iii) *2.1.14 of the Objection -.... This was marked accordingly in the tender submission and referenced in the demo.*

(iv) *2.1.17 of the Objection - Indeed, as clearly marked in both the Bid and the demo, Appellant's proposal fully satisfied the Tender requirement for out-of-the-box integration with SAP ...*

3.13. *Pipeline also attached extracts from the Technical Questionnaire it submitted wherein it confirmed compliance with all the requirements (by marking each as "Yes").*

3.14. *It is submitted, with respect, that these statements are not relevant for the purposes of determining whether the Contracting Authority was correct in disqualifying Pipeline.*

3.15. *Pipeline was not disqualified for marking a key requirement as "No". Pipeline was disqualified because the demo - that is, the process in which Pipeline was meant to showcase and prove how the solution it was proposing can do what Pipeline said it can do in its technical offer, and the process pursuant to which the Contracting Authority can verify how the solution proposed meets its requirements - did not prove to the satisfaction*

of the Contracting Authority that the solution proposed met all requirements and functionalities.

- 3.16. *It is not being claimed that Pipeline limits itself to the abovementioned statements (which, in Deloitte's view, are not relevant). Pipeline also states that the solution it offered meets the requirements and that the demo evidenced how it met the requirements.*
- 3.17. *It is submitted that this is the key question of fact that needs to be established in these proceedings, and not whether Pipeline ticked "yes" or "no" in its questionnaire.*
- 3.18. *If the technical offer and demo did not provide the Contracting Authority with the necessary comfort that the solution proposed met all the requirements in the Tender Document, then the Contracting Authority was well within its rights to disqualify Pipeline's offer.*

E. Clarification/ Rectification

- 3.19. *Pipeline insists that the decision was disproportionate because the Contracting Authority did not request any clarifications on the issues discovered by it during the demo.*
- 3.20. *The Tender Document sets out, in clause 5, the applicable clarifications or rectifications. The relevant ones are as follows:*

Note 2: "Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification."

Note 3: "No rectifications shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification."

- 3.21. *The technical offer is marked as Note 3 in the Tender Document. As explained above, it is not possible to rectify anything which is marked as Note 3.*
- 3.22. *It is possible (the Contracting Authority has a right, but not an obligation) to clarify something which is marked as Note 3, limitedly in the case of "incorrect and/or incomplete documentation" and, or "missing" documentation.*
- 3.23. *In this case, the main issue (although it appears that there were contradictory statements and conflicting information) is not something which was incorrect or incomplete or missing - indeed, Pipeline reiterates several times that it submitted a compliant offer and marked everything with "Yes".*
- 3.24. *The main issue is that the solution offered, as demonstrated during the demo to the Contracting Authority, did not fully meet the requirements in the Tender Document. A demo failing to prove how the solution meets the requirements of the Contracting*

Authority is not something which can be resolved with a clarification - the demo is intended to show compliance and, if it does not, then the Contracting Authority has the right to disqualify the tenderer.

3.25. *Pipeline had an obligation to, in its technical offer and demo, prove compliance with the Tender Document. It failed to do so.*

3.26. *The issue is therefore not something which could be clarified. A clarification process is only useful if, at the end of such process, there is the possibility of reaching a different conclusion. In this case, any findings from the clarification process would not have resulted in a different conclusion - that is, that the solution offered did not corroborate the technical offer in the demo.*

3.27. *The Board has repeatedly stated that where a sample (in this case, a demo since the product is software) does not meet the requirements of the contracting authority, the tenderer ought to be disqualified. Reference is made to some of the recent decisions on this point:*

(a) *Case 2011 - CT 2323/2023 - Supplies - Tender for the Supply of Sterile Disposable Urinometer with Urine Collection Bag*

The Board rejected the objection as the demo did not corroborate the technical offer:

"During this demonstration, it was observed that liquid remained in the pipe and that pressure from a syringe was used to push the liquid into the chamber. This demonstration corroborated the observations made by the witnesses."

(b) *Case 1917 - CT2172/2022 - Supplies - Tender for the Supply of Gauze Swabs XRay Detectable - Lot 2*

"In the interest of the principle of equal treatment and by following the concept of Self-Limitation, it is this Board's opinion that the Evaluation Committee correctly deemed the offer of the Appellant as technically non-compliant. Any other decision would simply be giving an unfair competitive advantage to the appellant vis-à-vis the interests of other economic operators participating in this tendering process."

3.28. *Indeed, none of the case-law quoted by Pipeline imposes an obligation on (or relates to) a contracting authority to seek clarification if a sample or demo does not mean the requirements of the contracting authority. On the contrary, the case-law quoted relates to formal errors which could be corrected with a clarification without breaching the fundamental principles underpinning public procurement.*

3.29. *In this case, the demo did not corroborate the technical offer. A Contracting Authority is precluded from asking for a clarification in such cases as it will appear to be negotiating with the tenderer. The 'clarification' which Pipeline is arguing the Contracting Authority should have made would have therefore been tantamount to a rectification, which in this case is not permitted.*

3.30. *This First Grievance therefore ought to be rejected.*

4. *Second Grievance - Decision is fundamentally unlawful*

4.1. *Pipeline alleges, based on the submissions relating to the first Grievance, that the decision of the Contracting Authority was unlawful.*

4.2. *Pipeline does not explain which submissions it is relying on, or why it considers it to be unlawful. It is assumed that this Second Grievance is based on the submissions in paragraphs 2.1.9 to 2.1.22 of Pipeline in its Objection.*

4.3. *Deloitte has not had sight to the technical offer, or the documentation submitted as part of the demo. It is therefore not able to elaborate on these matters at this stage.*

4.4. *Deloitte however notes that Pipeline, in its Objection, states that it proposed the Zobo CRM Plus solution, and that this addressed each requirement comprehensively. However, this statement appears to be contradicted in different parts of the same Objection. Indeed, in paragraphs 2.1.14. and 2.1.1.15. of the Objection, Pipeline states that:*

"..... integration with SAP S/4HANA is available out of the box through an existing, standard connector in the Zobo ecosystem. This was marked accordingly in the tender submission and referenced in the demo. This connector is part of Zobo's broader integration framework, which provides pre-built, secure, and scalable bridges between Zobo applications and major enterprise platforms.

And

"The Zobo ecosystem includes native connectors, API integration tools, middleware options (such as Zobo Flow and Zobo Integration Platform), and supported thirdparty interfaces that enable seamless data exchange without the need for custom development."

4.5. *The use of the words "Zobo ecosystem", "Zobo's broader integration framework", "bridges between Zobo applications and major enterprise platforms" and "supported third-party interfaces", indicate that the relevant solution (Zobo CRM Plus solution) does not, itself, include all the requirements of the Contracting Authority.*

4.6. *If the solution offered (Zobo CRM Plus) does not have, as an integral part thereof, the specifications set out in the Tender Document, then a demo of the Zobo CRM Plus solution could not have (as alleged by Pipeline in 2.1.11. of its Objection) clearly reflected the full list of requirements.*

4.7. *Since Deloitte is not privy to the information relating to the technical offer of Pipeline, Deloitte limits itself to the above at this stage and reserves the right to make further submissions and bring additional evidence prior to and during the hearing of the Objection.*

5. *Conclusion*

5.1. *In view of the above, Deloitte respectfully requests the Board to:*

- (i) reject the Objection filed by Pipeline;*
- (ii) confirm the Contracting Authority's decision.*

5.2. *This reasoned reply is without prejudice to such further submissions that Deloitte may be allowed to make during the proceedings relating to the appeal forming the subject-matter of the Objection.”*

The opening and closing submissions of the Appellant, the Contracting Authority and the Preferred Bidder as delivered by their legal representatives, as well as the witnesses summoned;

Considerers;

This Board notes that the Appellant has brought forward two (2) main grievances, the first that the Contracting Authority’s decision to declare the Appellant’s bid as technically non-compliant is in breach of the principle of proportionality, and the second that the Contracting Authority’s decision was unlawful. The grievances shall be considered below.

A. Decision of the Contracting Authority is Disproportionate

The Appellant in its first grievance holds that the Contracting Authority erroneously and disproportionately concluded that its bid was technically non-compliant, and that this is ever more serious because its bid was the cheapest one. The Appellant holds further that the Tender Evaluation Committee should have verified the contents of the bid again, and if suspicions remained, it should have sought clarifications from the Appellant to ensure proportionality. In the absence of this, the Appellant holds that the Contracting Authority’s decision was disproportionate and hence, unlawful. The Appellant goes on to state that the Appellant’s bid *“clearly demonstrated full alignment with the complete set of technical requirements extracted directly from the Tender”* ... *“The proposed Zobo CRM Plus solution addressed each requirement comprehensively, covering both the core modules and the integration modules, with every mandatory item explicitly showcased and demonstrated.”* All arguments on this point are found in the Appellant’s appeal paragraphs 2.1.11 through to 2.1.24.

In its reply, the Contracting Authority states that the tender required the following system: *“fully-fledged, ready and operational CRM system, capable of meeting a detailed list of core and integration functionalities form Day 1, without reliance on custom-builds, bespoke coding, or post-award development to fill functional gaps.”*

The Contracting Authority states that this was clearly and consistently emphasised in the clarification process. Furthermore, in its reply the Contracting Authority listed the five failures in the Appellant’s bid as the reason behind the decision to declare the said bid as technically non-compliant, which in the Contracting Authority’s opinion were not procedural, stylistic or minor reasons. The reasons consisted in:

- a) Material failures in the demo, lacking mandatory features;
- b) Contradictions in the Appellant’s documentation;
- c) Inability to show critical AI/chatbot-driven functions;
- d) Absence of WhatsApp integration amongst others;

- e) The centrality of SAP integration within the overall CRM ecosystem.

The Board, as part of its considerations, has gone through and taken note of the entirety of the tender dossier, including all questions and replies to clarifications. Of note are the following:

“Question 6

Can you confirm whether the Contracting Authority would accept fully bespoke software or is an off-the-shelf CRM solution with custom configurations and integrations required?

Reply 6

The solution must include all the functionalities listed in the document, including out-of-the-box SAP connectors”

“Question 8

'Ability To' vs what is required?

Reply 8

As per Clause 4.2 Specific Activities including clauses 4.2.1, 4.2.2 are required except for the 'Field Officers Application' (the fourth point under clause 4.2.1).

Having said that, proof of ability should still be shown to the Contracting Authority for the 'Field Officers Application'.”

“Question 9

With SAP do you expect something more than the ability open APIs to communicate for the two systems to communicate or is it something more than that? Can you elaborate a bit on the out-of-the-box integration?

Reply 9

Has to be part of the solution system and must include SAP connectors as an integral part of its offering. This does not exclude configurations/customizations in the integration.”

“Question 32

Are you expecting the whole implementation to be done in a year?

Reply 32

The whole solution should be up and running in one year, obviously in different phases.”

Clayton Axisa, the witness produced by the Appellant, testified that it was impossible for the Contracting Authority to have wanted an out-of-the-box solution due to the complex nature of SAP S/4 HANA, and he further questioned why the tender had a one year time-frame for implementation, and a €1.5 million budget if they wanted a commercially off-the-shelf product? Mr Axisa in his

testimony emphasised that the Appellant understood that the tenderers were bound to prove their ability to reach the tender requirements, relying on the wording of the Tender Document itself.

Owen Attard, Head of Software Architecture at the Water Services Corporation, also produced by the Appellant testified that the Contracting Authority's request was for integration out-of-the-box without modification to the core implementation of the system, meaning that the SAP integration has to be ready to function on the existing code base. Regarding WhatsApp specifically, Mr Attard stated that the Appellant's demo video did not show WhatsApp or how it worked, whereas other bidders showed how WhatsApp was going to work start to finish. On the other hand, when questioned specifically on this point, notwithstanding several recollections of precise and particular details regarding the demo, Mr Axisa could not recall whether WhatsApp was in fact shown during the demo. Mr Attard testified that this was missing from the Appellant's video altogether. In cross-examination the Mr Attard stated that WhatsApp and SAP were critical elements, and although he was not involved in the drafting, as an evaluator he reviewed the Tender Document and knew that WhatsApp as a requirement was classified as Note 3. Answering questions by the Appellant's legal counsel, Mr Attard confirmed that a sand box environment was not offered and that each bidder had to present their own.

In its submissions before this Board, the Appellant argued that the Contracting Authority was not clear in what they required, the Tender Document did not state that WhatsApp and the SAP were crucial, and further that the Contracting Authority should have offered a sand-box environment as this was the only way to see the software working...

On this point this Board must refer to Regulation 262(1)(d) which is the remedy at law for prospective candidates and tenderers like the Appellant in a previous stage, in the event that they wish to *“remove ambiguities of a particular term or clause included in a call for competition”*:

“(1) Prospective candidates and tenderers may, within the first two-thirds of the time period allocated in the call for competition for the submission of offers, file a reasoned application before the Public Contracts Review Board:

(d) to correct errors or to remove ambiguities of a particular term or clause included in a call for competition, in the contract documents, in clarifications notes or in any other document relating to the contract award procedure.” (Added emphasis of the PCRB).

This Board refers to settled jurisprudence on the matter, as referred to in the recent judgment delivered on the 10th March, 2026 by the Court of Appeal (Superior Jurisdiction) in the names **‘Camilleri Paris Mode Limited vs. Dipartiment tal-Kuntratti et’** where it was held that:

“19. Meta qieset il-fatti ta’ dan il-każ, din il-Qorti tqis li dan l-aggravju ma jimmeritax li jiġi milqugħ u dan għal diversi raġunijiet. Qabel xejn, din il-Qorti sejra tissottolinja xi prinċipji korollari li għandhom jiġu meqjusa fl-isfond fattwali ta’ dan il-każ. Awtorità kontraenti mhijiex mogħtija l-jedd li tbiddel jew timmodifika l-kriterji tal-għoti ta’ kuntratt matul il-proċedura tal-għotja (vide Każ - 278/14 SC Enterprise Focused Solutions SRL vs. Spitalul Judeţean de Urgenţă Alba Iulia deciż mill-Qorti tal-Gustizzja tal-Unjoni Ewropea fis-16 ta’ April, 2015).

20. Daqs kemm awtorità kontraenti ma tistax twarrab offerta fuq raġunijiet li ma jkunux previsti fid-dokument tas-sejba (vide Labo-Pharm Ltd v. Il-Kummissarju tal-Pulizija nomine et deciżja

mill-Qorti tal-Appell fid-29 ta' Marzu, 2019), daqstant iehor ma tistax min-naha l-obra ta' offera ta' offera li ma tkunx toqghod ma' dak mitlub fis-sejha (vide *Projekte Global Limited v. Ministru Għal Għandex et deċiżja mill-Qorti tal-Appell fis-16 ta' Lulju, 2018*).

21. Jaqa' fuq l-offerent stess li joqghod ma' dak mitlub fis-sejha, b'dan li huwa ma jistax joqghod jippretendi li l-awtorità kontraenti għandha toqghod issalvalu l-offerta jekk din tkun irregolari (vide *J & J Ganci Granite Limited v. Grand Harbour Regeneration Corporation plc deċiżja mill-Qorti tal-Appell fl-20 ta' Marzu, 2023 u Steelshape Limited v. Direttur tal-Kuntratti et deċiżja mill-Qorti tal-Appell fis-7 ta' Anwissu, 2013*).

22. Fil-każ odjern, l-awtorità kontraenti harġet sejha bi speċifikazzjonijiet partikolari. L-appellanta għet mitluba tagħmel kjarifika fil-15 ta' Lulju 2025 u dan sabiex tikkorrabora l-offerta teknika tagħha. Madanakollu, fit-tweġiba tagħha, l-appellanta naqset li tipprovi spjegazzjoni li l-istandard meħtieġ kien ser jintlaħaq. Huwa inutli li jiġi argumentat li dak l-istandard ma kienx japplika għal prodott iżda għal bini u għalhekk gie skartat mill-appellanta. **Li kellha tagħmel l-appellanta semmai kien li tiehu l-passi li kellha a dispożizzjoni tagħha ai termini tarregolament 262 tal-Legislazzjoni Sussidjarja 601.03.**

23. Infatti, fis-sentenza mogħtija minn din il-Qorti bekk kif diversament komposta fl-10 ta' Jannar, 2023 fl-ismijiet *All Clean Services Limited (C 39278) v. Ministeru għall-Edukazzjoni, l-iSport, iż-Żgħażaġh, ir-Ricerka u l-Innovazzjoni et intqal li:*

*“6. Din il-Qorti ma taqbilx mal-aggravju tas-soċjetà appellanti. Largument li meġus ir-rekwiżiti l-obra mitluba fis-sejha u n-natura tax-xogħol li kellu jittwettaq, din il-kundizzjoni “bi kompletament irrilevanti”, hija siergħa u bla bażi. **Rilevanti jew le, dik il-kundizzjoni kienet tifforma parti mis-sejha, u jekk l-istess kundizzjoni ma avveratx ruhha, is-soċjetà appellanti ma tistax tilmenta fuq il-punti żejda li hadu l-oblaturi l-oħra li wettqu dik il-kundizzjoni.***

7. Din il-Qorti taqbel ma' dak li osserva l-Bord li kull min kien interessat, jekk ma kienx jaqbel ma' xi kundizzjoni fis-sejha, skont ir-Regolamenti applikabbli, seta' agixxa, bil-mezzi li jagħtuh l-istess Regolamenti, biex jipprova jimpunja dik jew dawk il-kundizzjonijiet. Mhux leċitu li l-oblatur iħalli l-proċess għaddej, u wara, jekk jitlef il-kuntratt, jallega li kundizzjoni fis-sejha ma kellhiex tkun hemm għax “kompletament irrilevanti”.

8. Hu veru li l-kundizzjonijiet tax-xogħol tal-baddiema huma regolati b'ligijiet obra, u hemm regolamenti li jagħtu poter lill-awtorità kompetenti tissindika fuq dawk il-kundizzjonijiet, però, dan kien ikun argument li kellu jittressaq fl-istadju preparatorju għall-proċess tal-għażla tal-oblatur preferut. Jekk ir-rekwiżit ta' stebim kollettiv huwa parti mill-kundizzjonijiet li kellhom jiġu sodisfatti minn kull oblatur, is-soċjetà appellanti kellha taderixxi ruhha ma' dak rikjest. Din il-Qorti osservat diversi drabi li dak rikjest fid-dokumenti tas-sejha għall-offerti jridu jiġu kollha sodisfatti. Mhux regolari li tgħid li kundizzjoni partikolari kienet biss “add on” u oblatur jista' jinjoraha, għax min jipparticipa jrid isegwi dak mitlub fiddokumenti.”

24. *Fid-deċiżjoni tas-26 ta' Ottubru 2022 fl-ismijiet Koperattiva Għawdxija tal-Indafa Pubblika Limitata v. Kunsill Reġionali Għawdex et ġie sottolinejat l-importanza tar-regolament 262 tal-Legislażzjoni Sussidjarja 601.03 u ntqal:*

“Fi fiit kliem, dan ir-regolament jippermetti l-ksib ta’ rimedju qabel lgheluq tas-sejba għall-bames raġunijiet:

- (a) meta jirriżultaw klawnsoli jew deċiżjonijiet li huma impossibbli li jitwettqu;*
- (b) meta jirriżultaw kwistjonijiet dwar offerti bil-mezzji tekniċi;*
- (c) meta jkun hemm speċifikazzjonijiet diskriminatorji;*
- (d) biex jitnehhew jew jiġu korreguti klawnsoli żbaljati jew ambigwi; u*
- (e) meta s-sejba għall-kompetizzjoni hija kontra l-liġi.”*

25. *Fil-kawża deċiża fit-30 ta' Ġunju 2021 fl-ismijiet Truevo Payments Limited (C62721) v. Direttur tal-Kuntratti et inghad:*

“Mhux l-istess jista’ jinghad fil-kuntest tal-aggravju l-iebor tas-soċjeta` issa appellanti, dak marbut mal-inammissibilita` tal-ażzjoni in vista tar-rimedju ikkontemplat fir-Regolament 262 aktar qabel indikat. Hu ċar li lilmenti tas-soċjeta` Credorax Ltd huma diretti lejn il-proċedura wżata u ma humiex marbuta mas-sustanza tal-offerta. Din is-soċjeta` qed tilmenta mill-użu tal-proċedura tal-ghoti tal-kuntratt b’negozjati, fuq ilmod kief ġie imfassal il-proċess ta’ din il-proċedura u li ma kienx hemm lapprovażzjoni tad-Direttur tal-Kuntratti għall-użu ta’ din il-proċedura. Dawn it-tlett aggravji li abbażi tagħhom il-kumpanija appellata Credorax Ltd ppreżentat l-appell tagħha jirrigwardjaw materji illi kienu jeżistu sa mill-bidu nett tal-proċedura in kwistjoni, u għal dawn l-ilmenti kienu jeżistu rimedji taht ir-Regolament 262. Dawn l-ilmenti kellhom jitressqu qabel id-data tal-gheluq ta’ sejba għall-kompetizzjoni u mhux , bhal filkaż tallum, wara dik id-data, u sabansitra wara d-deċiżjoni dwar l-ghoti tal-kuntratt.

8. Saret referenza għas-sentenza tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea tat-12 ta’ Frar, 2004 , fil-każ fl-ismijiet Grossman Air Service, Bedarfsluftfabrtunternehmen GmbH & Co. KG v. Republik Österreich (C230/02, CJEU) fejn fost il-konklużjonijiet milbuqa jinghad is-segventi:

“1. Articles 1(3) and 2(1)(b) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, must be interpreted as not precluding a person from being regarded, once a public contract has been awarded, as having lost his right of access to the review procedures provided for by the Directive if he did not participate in the award procedure for that contract on the ground that he was not in a position to supply all the services for which bids were invited, because there were allegedly discriminatory specifications in the documents relating to the invitation to tender, but he did not seek review of those specifications before the contract awarded.”

9. Jidher ċar mill-premess illi darba li, anke f’dan il-każ, il-kuntratt ġie rakkomandat u s-soċjeta` Credorax Ltd naqset li tfittex ir-rimedju opportun skond il-liġi qabel l-gheluq tat-terminu għall-preżentata tal-offerta, ma tistax aktar tappella biex tressaq l-aggravji tagħha.”

26. Din il-Qorti taqbel pjenament ma' dawn il-prinċipji u la l-appellanta naqset li tfitte: ir-rimedju opportun qabel l-gheluq tat-terminu għallpreżentata tal-offerta, ma tistax issa tingeda b'din il-proċedura f'dan listadju. Addirittura f'dan il-każ, mbux talli ma gietx adoperat il-proċedura ai termini tar-regolament 262 fuq riferit, iżda minkejja li l-appellanta ngħatat l-opportunita' li tressaq kjarifika dwar l-offerta tagħha, din xorta wahda ma kkonformatx ruħha. Huwa prinċipju assodat li jekk ir-regoli tassejha jitolbu certu prodott b'certu speċifikazzjonijiet, l-offerenti għandhom joqogħdu għal dawke ir-regoli u joffru prodott skont l-ispeċifikazzjonijiet hemm mitluba. Huwa dak li kellha tagħmel l-appellanta.” (Added emphasis of the PCRB).

It does not result to this Board that the Appellant utilised the remedy available to it under Regulation 262(1)(d) of the Public Procurement Regulations, therefore, it cannot now post-award complain of unclear and/or imprecise tender requirements. If this Board were to decide otherwise, it would be unfair to all the other economic operators which have equally participated and accepted the tender requirements. Once an economic operator like the Appellant participates in a tender and submits its bid, it is thereby accepting the tender requirements as they are.

It is therefore futile for the Appellant to come before this Board to now complain of alleged lack of clarity and the ‘missed’ opportunity to have a sand-box environment. Regarding the sand-box environment, it results that all economic operators were treated equally, none were offered a sand-box environment, and all were offered the same opportunity to present a demo. Therefore, this line of argumentation holds no ground.

Specifically regarding Mr Attard’s indication that WhatsApp and SAP were crucial elements and the Appellant’s submissions that the Contracting Authority should have identified them as crucial, this Board deems that this characterisation was clearly Mr Attard’s learnt understanding of how the CRM system is going to work in practice. This does not however mean that the requirements mentioned ranked somehow higher during the evaluation process, and in fact, this did not result from the evidence as brought before this Board. All Mr Attard emphasised was that these were crucial elements, missing from the Appellant’s demo. Furthermore, in this Board’s opinion the fact that they were part of the several mandatory requirements enlisted in the Tender Document, does in fact make them crucial.

The Appellant argues that the Contracting Authority should have sought clarification if its suspicions remained regarding the Appellant’s bid and demo. On this point, the Board notes that the demo requested from economic operators, was essentially a sample of the CRM Software as presented to the Tender Evaluation Committee, and the Samples List was classified as a Note 3. As Note 3, rectifications were disallowed, whilst clarifications on submitted information were permissible.

Here, this Board must outline the difference between a clarification and a rectification, and hereby refers to the judgment in the names ‘**Krypton Chemists Limited (C-8933) v. Central Procurement and Supplies Unit et’** dated 13th November, 2025 delivered by the Court of Appeal (in its Superior Jurisdiction) which dealt with this distinction precisely:

“27. Ma hemmx għalfejn ngħidu, il-prinċipju tal-proporzjonalità għandu jiġi applikat b'mod li jhars l-għanijiet tal-proċess tal-akkwist pubbliku, jiġifieri, li l-kuntratt jingħata lil min jagħmel l-orbos u l-abjar offerta, mingħajr ma jinkisru l-prinċipji ta' trattament ugwali u trasparenza. Tali prinċipju però m'għandux jintuża bhala pretest biex offerta irregolari tiġi salvata, jekk dan iwassal għal vantaġġ kompetittiv li mbux xieraq.

28. Hija rilevanti hafna wkoll f'dan il-qasam tal-liġi d-distinzjoni li teżisti bejn kjarifika u rettifika.

29. **Kjarifika hija l-azzjoni li permezz tagħha l-awtorità kontraenti tista' titlob spjegazzjoni jew interpretazzjoni fuq informazzjoni li tkun diġà giet sottomessa mal-offerta.** Naturalment il-proċedura tal-kjarifika ma tistax tintuża biex dak li jkun idabbal informazzjoni ġdida jew biex ibiddel issustanza tal-offerta. Il-Qorti tal-Appell fis-sentenza *Rockcut Limited v. Direttur Ġenerali tad-Dipartiment tal-Kuntratti* deċiża fil-25 ta' Ġunju, 2018 stabbiliet li ma tistax tingħata kjarifika ta' tagħrif li ma jkunx ingħata għaliex il-kjarifika sservi biss biex tagħmel aktar ċar tagħrif li jkun diġà mogħti iżda li ma huwiex ċar biżżejjed. Kif ingħad fis-sentenza *Steelshape Ltd v. Direttur tal-Kuntratti* deċiża fis-7 ta' Anwissu, 2013, dak li offerent għandu jgħid, għandu jgħidu mal-offerta u mbux jippretendi li jkun mistoqsi d-dettalji tal-modus operandi tiegħu. **Kjarifika, għalhekk hija limitata għal spjegazzjoni ta' elementi diġà preżenti fl-offerta,** mingħajr ma tinbidel il-kompożizzjoni tagħha.

30. **Rettifika, min-naħa l-oħra, hija l-azzjoni li tippermetti lill-awtorità kontraenti titlob korrezzjoni ta' żbalji jew ommissjonijiet. Tali rettifika hija permessa li ssir sakemm din ma tkunx giet esplicitament eskluża fiddokument tas-sejha. Ifisser dan, li jekk skont id-dokument tas-sejha ma tistax issir rettifika mela allura l-awtorità kontraenti tkun miżmuma milli titlob rettifika għaliex l-awtorità kontraenti hija marbuta mal-kundizzjonijiet tas-sejha, b'dana li jekk hija ma tharishomx hija tkun qiegħda tivvantaġġa offerent fuq iehor** (ara *Projekte Global Ltd v. Kunsill Lokali Marsaskala* deċiża mill-Qorti tal-Appell fis-7 ta' Ottubru, 2014 fejn offerta li ma kinitx akkumpanjata minn garanzija xierqa ma setgħetx tiġi rettifikata għaliex tali rettifika kienet projbita mill-kundizzjonijiet tas-sejha). Minbarra dan, irrettifika tista' ssir biss jekk l-ommissjoni jew żball ikunu manifesti, klerikali jew formali, u dawn la jaffettwaw il-kompetizzjoni u lanqas ma jbiddu ssustanza tal-offerta bħal bdil fil-preżenż, fl-ispeċifikazzjonijiet tekniċi, jew fl-elementi essenzjali, Hekk pereżempju fis-sentenza *AIB Insurance Brokers Ltd v. Awtorità dvar it-Trasport ta' Malta* deċiża fis-27 ta' Ottubru, 2021, il-Qorti tal-Appell aċċettat rettifika ta' dokument nieqes li ma kienx essenzjali u ma biddilx l-offerta.

31. Imbaddem dan kollu għall-każ tal-lum, din il-Qorti tqis li n-nuqqas fl-istampa tat-tikketta provdut minn Krypton ma taba l-ebda vantaġġ u ma holoq ebda preġudizzju għall-oblaturi l-oħra. Il-problema fl-istampa kienet biss li din ma kinitx ċara biżżejjed u għalhekk ma setgħetx tingħata faċilment. Nuqqas bħal dan seta' faċilment jiġi msenwi permezz ta' kjarifika għaliex kif rajna aktar kmieni, il-proċedura tal-kjarifika hija aċċettabbli li tintuża meta t-tagħrif mogħti mill-offerent ma jkunx ċar biżżejjed." (Added emphasis of the PCRB).

Given the fact that the Appellant failed to showcase not one but two key elements in the sample it provided, this failure is in fact an omission. The Contracting Authority's hands were therefore tied. For the Appellant's bid to survive in the circumstances, the Tender Evaluation Committee would have needed to request a rectification to rectify the omissions of the Appellant in its demo and this was an impermissible route given the Note 3 classification.

Much was said about the Appellant's mismanagement of its time during the demo but to this Board, that is irrelevant to the facts at hand. The fact remains that in the time dedicated to showcasing the CRM system, the Appellant failed to demonstrate more than one key functionality. Therefore, this

Board finds that the Tender Evaluation Committee was justified in determining the Appellant's bid to be technically non-compliant and there was nothing disproportionate, unlawful or irrational to it.

This Board further determines that the price would only become relevant had the Appellant's bid been determined to be technically compliant, therefore the price in this context is irrelevant.

Therefore, in view of the above considerations, the Appellant's grievance is being rejected.

B. Decision of the Contracting Authority is Unlawful

In view of this Board's decision relating to the Appellant's first grievance, it follows that the Appellant's second grievance that "*the decision of the Contracting Authority was fundamentally unlawful, as the Contracting Authority was unable to demonstrate any lawful, rational, or proportionate justification whatsoever*" is also unfounded and is being rejected.

DECIDE

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

The Board further decides not to re-imburse the deposit paid by Pipeline.

Dr Ana Thomas
Chairperson

Ing. Dr Damien Gatt
Member

Mr Lawrence Ancilleri
Member

Monday 16th March, 2026.