



17<sup>th</sup> April 2026

Public Contracts Review Board  
Notre Dame Ditch,  
Floriana

**Re: CPSU 6399/25 - Tender for the Supply of Sterilization Reels (Various Sizes)**

Reasoned Letter of Objection by Reactilab Ltd (C 56095) (Tender ID 233525) (hereinafter 'the Objector');

Respectfully submits:

**1. Introduction**

The present objection arises from the decision of the Contracting Authority to exclude the Objector from the tendering procedure on the basis of alleged technical non-compliance with Specification 2.8 of the Technical Specifications.

By communication dated 10 April 2026, the Contracting Authority notified the Objector of its exclusion, stating as follows:

“Reason for Rejection: Spec 2.8 - Expiry date must be printed or stamped on the inner carton / plastic roll. The bidder stated that expiry date to be printed ‘on the pouch label’ rather than inner carton/plastic roll as indicated in the technical offer form. Since the technical offer form falls under Note 3, it is non-rectifiable and therefore, the bid is deemed as technically non-compliant.”

The Objector considers that the reasoning reflected in the above indicates a mischaracterisation of the offer and an unduly restrictive reading of the specification in question.

In particular, the evaluation appears to have been carried out on the basis of a strict comparison of terminology, without adequate regard to the actual configuration of the product, the documentation submitted, and the functional purpose underlying the requirement itself.

Unfortunately, this has led to a situation in which a requirement that is, in practice, satisfied has nonetheless been treated as if it were not.

A D V O C A T E

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It is important to underline that the Objector's offer was, in all material respects, complete and responsive to the requirements of the tender dossier. The issue which has led to the present exclusion does not concern any deficiency in the product offered, nor does it relate to performance, safety, or compliance with applicable standards.

On the contrary, it seems to arise from the manner in which the placement of the expiry date within the product's packaging was described, and the interpretation subsequently placed on that description by the Contracting Authority.

It is equally relevant to note that the information concerning the labelling of the product was not absent or unclear in substance. The Objector clearly indicated the presence of the expiry date within the packaging of each individual unit and provided supporting documentation to that effect.

The issue raised by the Contracting Authority is not that something was missing, but how the requirement was interpreted.

Indeed, Objector will show that the exclusion of its offer is based on a wrong interpretation of Specification 2.8, a failure to distinguish properly between clarification and rectification, and an approach that is not proportionate when considering the actual nature of the product offered.

In view of the above, the Objector respectfully asks this Honourable Board to review the matter in its proper context, taking into account both the substance of the requirement and the practical realities of the product's packaging and use, and to set aside the decision to exclude its offer.

**First Grievance: Misinterpretation and unduly restrictive application of Specification 2.8**

The exclusion of the Objector is based exclusively on the Contracting Authority's reading of Specification 2.8, namely that the expiry date was required to be "printed or stamped on the inner carton / plastic roll", and that the Objector's indication in the Technical Offer Form that the expiry date is "on the pouch label" constitutes a deviation from that requirement.

With all due respect, such conclusion proceeds from an interpretation which is unduly narrow and overly formalistic, and which fails to appreciate the actual configuration of the product offered and the practical purpose which the specification is intended to serve.

By its very nature, the product in question is not supplied as a single, isolated unit, but as part of a structured packaging system. Each sterilization reel is individually contained within a pouch which forms part of the inner packaging of the product and which accompanies the reel through storage, handling, and use. It is at this level that

the expiry date assumes its real operational significance. The Objector's product clearly provides for the expiry date to be indicated on the label affixed to each such pouch, thereby ensuring that the relevant information is directly associated with each individual reel and remains visible, accessible, and traceable in practice.

Against this background, the distinction drawn by the Contracting Authority between "inner carton / plastic roll" and "pouch label" is not one which reflects any substantive deficiency in the product or in the information provided, but rather one which **arises solely from the terminology used in the Technical Offer Form.**

The requirement set out in Specification 2.8 is plainly directed towards ensuring that the expiry date is clearly indicated within the packaging of the product in a manner which guarantees traceability and usability. That objective is fully met in the Objector's offer. The expiry date is present at the level of the immediate packaging associated with each unit, and there is no suggestion that such information is absent, obscured, or otherwise deficient.

The approach taken by the Contracting Authority does not look at whether the requirement was actually met. Instead, it focuses only on a strict comparison of wording, which in this case does not reflect how the product is really packaged.

In these circumstances, the Objector submits that the finding of non-compliance is based on a misunderstanding of the offer and a wrong interpretation of the specification. As a result, an offer has been excluded even though, in practical terms, it meets the requirement. This, with respect, cannot be justified.

**Second Grievance: Failure to properly distinguish between clarification and rectification**

Even if one assumes, for the sake of argument, that the way the expiry date was described in the Technical Offer Form could have been read differently, the Objector submits that the Contracting Authority should not have moved straight to disqualification without first seeking a clarification.

The exclusion notice relies heavily on the fact that the Technical Offer Form falls under Note 3 and is therefore considered "non-rectifiable". However, this approach confuses rectification with clarification, and applies the former in a situation which clearly falls within the scope of the latter.

In this case, the relevant information was clearly provided. The Objector stated that the expiry date appears on the pouch label and also submitted the corresponding labelling as part of the technical documentation. The issue identified by the Contracting Authority does not arise from missing or incomplete information, but from how that information was described. In other words, this was not a case where something was not submitted, but rather a matter of how the same information was expressed.

A request for clarification in such circumstances would not have entailed any alteration to the substance of the offer, nor the introduction of new elements. It would simply have allowed the Objector to confirm, by reference to the documentation already submitted, that the expiry date is indeed present within the inner packaging of each unit and to explain how the packaging configuration corresponds to the requirement in question.

This is precisely the type of situation in which clarification serves its intended purpose, namely to elucidate and confirm the content of an offer, as opposed to rectification, which would involve modifying it.

By treating the matter as one of automatic non-compliance on the basis of Note 3, the Contracting Authority has effectively erroneously adopted a rigid approach which excludes any possibility of engaging with the substance of the submission. The result is that a point which could readily have been clarified, without prejudice to the integrity of the procedure, has instead been used as a basis for exclusion.

In these circumstances, the Objector submits that the Contracting Authority should have availed itself of the possibility to seek clarification, particularly in view of the fact that the relevant documentation was already in its possession. Its failure to do so has led to an outcome which does not reflect the actual content of the offer and which, for that reason, is vitiated.

### **Third Grievance: Disproportionate exclusion and failure to assess substantive compliance**

The Objector submits that the decision to exclude its offer is disproportionate and does not reflect a proper assessment of the requirement in substance. The issue identified does not relate to the performance, safety, functionality or suitability of the product, but only to how the placement of the expiry date was described in the Technical Offer Form. In practice, the expiry date is clearly shown on each unit, is easily visible, and allows full traceability throughout use.

In these circumstances, the requirement under Specification 2.8 is effectively met. The Contracting Authority, however, has taken a strictly literal approach to the wording used, without considering whether the purpose of the requirement has actually been fulfilled. This leads to a result which does not reflect how the product is used in practice or the objective of the specification.

Public procurement should not focus only on formal wording, but on whether an offer meets the requirements in a real and practical way. Where the requirement is met in substance, and there is no issue in terms of traceability, safety or usability, it is not consistent with the principles of the process to exclude an offer based only on how something is described, when this has no impact on the product itself.

In this respect reference is made to the judgment delivered on the 30<sup>th</sup> October 2015 by the Court of Appeal (App Nru 281/2015) in the names: *Fire-tech Limited (C17901) et v. Dipartiment tal-Kuntratti*:

*Għalkemm huwa minnu illi, biex titħares it-trasparenza u ma jkunx hemm diskriminazzjoni, ir-regoli għandhom jitharsu b'mod uniformi u prevedibbli, u s-sogġettività u d-diskrezzjonalità jitnaqqsu kemm jista' jkun, madankollu l-prinċipju ta' proporzjonalità jrid illi mhux kull nuqqas ikollu l-istess konsegwenza, iżda din għandha tiddependi mill-gravità tan-nuqqas u mill-konsegwenzi tiegħu, partikolarment jekk jagħtix vantaġġ lil min jonqos jew joħloqx preġudizzju lil oblaturi oħra.*

In the present case, we have an offer which meets the requirement in all material respects but which has been excluded on a purely formal basis.

In the circumstances, the Objector submits that the decision to exclude its offer is disproportionate, does not reflect a proper assessment of substantive compliance, and should therefore be set aside.

## **2. Conclusion**

In view of the foregoing, it is respectfully submitted that the decision of the Contracting Authority to exclude the Objector's offer is not justifiable, in that: i) it is founded on an interpretation of Specification 2.8 which is unduly restrictive, ii) fails to reflect the substance of the requirement, and iii) does not consider properly the documentation and information actually submitted by the Objector.

The evaluation, as carried out, does not engage with the practical and operational realities of the product offered, nor does it assess whether the requirement in question has been satisfied in a meaningful and functional manner. Instead, it proceeds on the basis of a rigid comparison of terminology which, in the present circumstances, leads to an outcome that is disconnected from the purpose of the specification and the objectives of the procurement process.

The Objector has demonstrated that the expiry date is clearly indicated within the inner packaging of each individual unit, thereby ensuring full visibility and traceability, and that the requirement underlying Specification 2.8 is therefore satisfied. Thus, it is submitted that the conclusion of non-compliance is accordingly based on a mischaracterisation of the offer and on a failure to distinguish between matters of form and matters of substance.

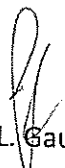
## **3. Demands**

In these circumstances, the Objector respectfully requests this Honourable Board to:

- (i) uphold the present objection and declare that the decision of the Contracting Authority to exclude the Objector's offer on the basis of alleged non-compliance with Specification 2.8 is unfounded;

- (ii) order the setting aside of the said decision;
- (iii) order that the Objector's offer be re-admitted to the procedure;
- (iv) recommend that tender is awarded to Objector being the cheapest compliant bidder;
- (v) order that the deposit paid by the Objector in connection with the present objection be refunded;
- (vi) grant such further or other remedy as this Honourable Board may deem appropriate in the circumstances.

Objector reserves the right to make further submissions and bring forward evidence and witnesses at the sitting/s set by this Honourable Board for the hearing of this appeal.

  
Dr. John L. Gauci LL.D

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## Transaction Details

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Reference Number	PI261090MDV041SS
From Account Number	10000147244
From Account Name	REACTILAB LIMITED
Description	Objection CPSU 6399/25 Tender for Supply of Sterilization Reels
To Account Number	MT55MALT011000040001EURCMG5001H
To Account Name	CIR
Frequency	Once
Amount	550 EUR
Payment Currency	EUR
Swift / BIC	MALMTMTXXX
Send On	19/04/2026
Payment Medium	TIPSPAY
Fees Paid By	Both
Payment Method	Domestic
Total Debit Amount	550 EUR