



IN THE PUBLIC CONTRACTS REVIEW BOARD

21<sup>st</sup> April 2026

**Re: Objection 663 - CPSU6399/25 - Tender for the Supply of Sterilization Reels (Various Sizes)**

Reply of the **Central Procurement and Supplies Unit (CPSU)** on behalf of the Department of Health as the Contracting authority to the reasoned application lodged by **Reactilab Ltd (the Objector)**.

A call for tenders for the Supply of Sterilization Reels (Various Sizes) was issued by CPSU on the 16th of September 2025.

A number of bids were submitted and following an evaluation process the tender was recommended for award to **Medina Limited (the recommended bidder)**.

The objector's offer was not recommended for award since it was found to be technically non-compliant for the following reason:

*"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 filed an objection based on 3 grounds of appeal.

CPSU humbly disagrees with the grievances raised and is hereby presenting its reply.

**Submissions**

**On the Introduction**

1. In its introductory paragraphs the objector states that *"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."*
2. CPSU rebuts this claim since the product offered was in breach, ex admisiss of the technical specification number 2.8 which states that: *Expiry date must be printed or stamped on the inner carton/plastic roll.*
3. The objector was so aware that its product was not in line with the said requirement that that it has felt the need to indicate that the expiry date will be *'on the pouch label'*.

**On the First Grievance: Misinterpretation and unduly restrictive application**

4. The objector in this ground of appeal argues that the exclusion of the objector's offer is based on the incorrect interpretation of specification 2.8 and argues that the interpretation adopted fails to appreciate the configuration and use of the offered product and the reason behind such specification.
5. CPSU respectfully disagrees with this argument. The specification was very clear and it states that: *Expiry date must be printed or stamped on the inner carton/plastic roll.*
6. The reason for such requirement was imposed since the outer packaging of the reels is not permitted in sterile environments and this it is important that the expiry date is visible on the inner roll, since a reel is used over a span of time;
7. Without prejudice to the above CPSU submits that once a specification is published and not contested, the evaluation committee is bound to follow such specifications *ad litteram*;
8. Failing to follow the specifications *ad litteram* would result in a breach of the principle of self limitation and that of equal treatment of bidders;
9. The Court of Appeal in the case **Alexis Sciberras vs Direttur tal-Kuntratti et**, decided on the 27th of October 2021 quoted **Nexans France v. European Joint Undertaking for ITER and the Development of Fusion Energy (T-415/10)** decided on the 20th of March 2013 which stated that "*It must be borne in mind at the outset that where, in the context of a call for tenders, the contracting authority defines the conditions which it intends to impose on tenderers, it places a limit on the exercise of its discretion and, moreover, cannot depart from the conditions which it has thus defined in regard to any of the tenderers without being in breach of the principle of equal treatment of candidates. It is therefore by reference to the principles of self-limitation and respect for equal treatment of candidates that the Court must interpret the tender specifications*" (Added emphasis\_
10. Additionally, CPSU submits that such grievance should have been brought up during the applicable time frame for the filing of an action in terms of regulation 262 of the Public Procurement Regulations before the closing time for the submission of offers. Once this time frame lapsed there is a *juris et de juris* presumption that the specifications as published have been accepted and thus whoever submits an offer should observe such specifications.
11. The objector also had ample time to ask for clarifications as per procurement procedure on this matter and indeed chose to do so in certain matters but failed to seek clarification and/or guidance on the issue of the place of the expiry date for which it is now objecting;
12. This has been also the position taken by our Court of Appeal. In fact in the decision of the 10<sup>th</sup> of January 2023 in the names **All Clean Services Limited v. Ministeru għall-Edukazzjoni et**, the Court states that:

*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 irRegolamenti applikabbli, seta' agixxa, bil-*

mezzi li jaghtuh l-istess Regolamenti, biex jipprova jimpunja dik jew dawk il-kundizzjonijiet. Mhux iecitu li l-oblatur ihalli 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-haddiema huma regolati b'ligijiet oħra, u hemm regolamenti li jaghtu poter lill-awtorità kompetenti tissindika fuq dawk il-kundizzjonijiet, però, dan kien ikun argument li kellu jitressaq fl-istadju preparatorju għall-proċess tal-għażla tal-oblatur preferut. Jekk ir-rekwiżit ta' ftehim kollettiv huwa parti mill-kundizzjonijiet li kellhom jiġu sodisfatti minn kull oblatur, is-soċjetà appellanti kellha taderixxi ruħha ma' dak rikjest. **Din il-Qorti osservat diversi drabi li dak rikjest fid-dokumenti tas-sejha għall-offerti jridu jiġu kollha sodisfatti.** (Added emphasis)

13. Similarly, in the decision of the Court of Appeal in the names **Vassallo Builders Ltd v. Wasteserv Malta Ltd** et decided on the 6<sup>th</sup> of May 2025 it was stated that:

*... jekk VBL dehrilha li r-rekwiżit inkwistjoni kien illegali, hija setgħet tattakka dak il-kriterju fl-istadju ta' qabel l-għeluq tas-sottomissjoni tal-offerti, u dan bil-mod kif imsemmi f'Regolament 262 Regolamenti dwar l-Akkwist Pubbliku. La hija naqset milli tagħmel hekk, u s-sejha għall-offerti kienet tobbligaha tressaq kopja tal-«Final or Provisional Acceptance Certificate or equivalent», mela allura, VBL kienet marbuta li tressaq tali dokumentazzjoni, anke jekk dehrilha li dik id-dokumentazzjoni ma kinitx meħtieġa minhabba s-setgħat tal-kumitat tal-*evalwazzjoni* li jwettaq ilverifiki kollha meħtieġa, jew inkella għaliex dak il-kumitat seta' jsib linformazzjoni minn fuq l-internet.* (Added emphasis)

14. For these reason as will be further substantiated during the sitting, this first ground of objection should be rejected.

#### **On the Second Ground of Appeal – Failure to distinguish between clarification and rectification**

15. The objector states that the contracting authority should have asked for a clarification rather than immediate disqualification.

16. The technical evaluation committee is well aware about the distinction between clarification and rectification, however in such case where non-compliance was so evident, a clarification would have been futile since the reply to any clarification request would have not changed the position of the expiry date.

17. The General Rules Governing Tenders in clause 16.3 provide that:

*No rectification shall be allowed in respect of the documentation as accompanied by Note 3 in Clause 5 of the Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be requested. No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications.* (added emphasis)

18. For these reasons, CPSU submit that this second ground of appeal should also be rejected.

**On the Third Ground of Appeal - Disproportionate exclusion and failure to assess substantive compliance.**

19. In this third grievance the objector argues that the decision of CPSU was disproportionate.

20. CPSU respectfully disagrees and submits that if it had to depart from the requirements of specification 2.8, the Technical Evaluation Committee would be breaching the principles of self limitation and equal treatment of bidders.

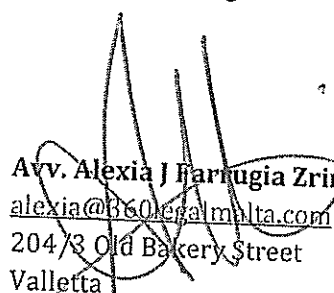
21. CPSU refers to its submission with reference to the first ground of appeal in this objection, which shall apply equally in defence to this third ground as well.

22. For these reasons, CPSU submit that this third ground of appeal should also be rejected.

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

In view of the above, the objection lodged by the objector ought to be rejected in full, whilst the decision of the Evaluation Committee confirmed, and the relevant deposit forfeited.

CPSU will however not object to the refund of the deposit if the appeal is withdrawn before the hearing.

  
Avv. Alexia J Farrugia Zrinzo  
[alexia@360legalmalta.com](mailto:alexia@360legalmalta.com)  
204/3 Old Bakery Street  
Valletta  
For CPSU

Avv. Leon Camilleri  
[leon@360legalmalta.com](mailto:leon@360legalmalta.com)  
204/3 Old Bakery Street  
Valletta  
For CPSU