PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number **2226**
Tender Reference Number **CT3037/2025**
Tender Name **"Tender For The Supply Of Operating Table Systems"**

The Public Contracts Review Board (hereinafter the 'Board' or the 'PCRB') convened a public hearing on the 18th March, 2026 to hear the appeal as filed by the appellant Medina Healthcare Limited (hereinafter the 'Appellant') on the 19th January, 2026, and after taking cognisance of:

The tender document for the 'Tender For The Supply Of Operating Table Systems' (hereinafter referred to as the "Tender Document");

The minutes of the proceedings dated 18th March, 2026 which are being reproduced hereunder:

> "Case 2226 CT3037/2025 – CPSU 2057/20 Supplies Tender for the Supply of Operating Table Systems.
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> The Tender was issued on the 17th December 2025, and the closing date was 3rd February 2026.
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> The estimated value of the tender, excluding VAT, was €4,661,016.95
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> On 19th January 2026, Medina HealthCare Limited, lodged an appeal against the Central Procurement and Supplies Unit (CPSU). – the Contracting Authority, in accordance with Regulation 262 of the Public Procurement Regulations.
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> On the 18th March, 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.
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> A deposit of €23,305.08 was paid.
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> The attendance for this public hearing was as follows:
>
> **Appellant – Medina HealthCare Limited**
>
> Dr Matthew Paris – Legal Representative
> Dr Zack Esmail – Legal Representative
> Mr John Soler – Legal Representative
> Mr Tonio Pace – Legal Representative
>
> **Contracting Authority – Central Procurement and Supplies Unit**
>
> Dr Leon Camilleri – Legal Representative
> Dr Alexia Farrugia Zrinzo – Legal Representative
> Ing. Chris Attard Montalto – Tender Drafter

Interested Parties

Dr Francis Cherubino – Cherubino Ltd
Mr Marcel Mifsud – Associated Drug Company Ltd
Dr Douglas Aquilina – Drugsales Ltd
Mr James Borg – Drugsales Ltd
Ms Giulia Attard Montalto – Drugsales Ltd

Opening Statements

The Chairperson welcomed the parties present and formally opened Case Number 2226 in the records of the PCRB. The Chairperson identified the Appellant as, Medina HealthCare Limited, the Contracting Authority as the Central Procurement and Supplies Unit, and acknowledged the presence of representatives of Interested Parties, Cherubino Ltd., Associated Drug Company Ltd., and Drugsales Ltd.

The Chairperson invited the legal representative for the Appellant to make the initial submissions.

Initial Submissions

Initial Submissions by Dr Matthew Paris (for the Appellant)

Dr Matthew Paris stated that their grievance concerned the purchase of operating tables by the CPSU. He said that the construction of the tender was restrictive, and he referred to the technical specifications as lockout clauses. These clauses exclude the market, allowing only one entity to meet the requirements of the CPSU. Three particular clauses, he noted, would confirm their market research.

A tender should be structured in a way that favours division into lots. The justification provided for the lack of separation into lots is unclear and lacks a valid reason. Dr Paris insisted that the construction of the tender did not favour competition and clarified that he was not alleging any malicious intent by the Contracting Authority. As this tender was to be funded by EU funds, Medina Healthcare suggested either the cancellation of the entire tender or its adjustment through clarification.

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

Dr Leon Camilleri stated that the appeal by Medina Healthcare was unreasonable, as more than one entity could meet the requested criteria. The Contracting Authority, as the buyer, is aware of its requirements, which must remain reasonable to ensure competition. All the contested specifications, he

argued, are justified. It was practical not to divide the tender into lots, as the Contracting Authority requested identical beds.

Dr Ana Thomas asked Dr Camilleri whether the Department of Contracts had participated. The Board noted that they had been notified but no communication was received. It was later known that Dr Audrey Buttigieg Vella was indisposed and could not attend the hearing.

Witness: Ms Daniela Stuermer (ID no. L8W4JXY2N), online, summoned by Dr Paris

Ms Stuermer ensured that her presentation was visible. She worked as a Product Manager for operating tables with Getinge for 15 years. Getinge is a leading global provider in healthcare segments, offering a full portfolio for operating rooms, including Maquet operating tables.

She explained that they were the inventors of the OR Table system in the 1960s and that these tables are sold worldwide. The 'OR Table System' consists of three components: a column that can be fixed to the floor or be mobile, a detachable tabletop, and a transporter used to attach or detach the tabletop from the column. The tender requested a mobile column with a transporter.
In contrast, 'mobile OR tables' consist of a single component, where the column is fixed to a wheeled base and the tabletop is permanently attached. A transporter is not required to move this type of table. This mobile table occupies less space during surgery. The witness stated that one of the tender criteria clauses required smart features, which only Trumpf or Baxter could provide. Getinge offers smart features in its 'mobile table', specifically an anti-collision detection system.

The Chairperson asked when the market research had been conducted, and the witness replied that it had been updated the previous week.

Ms Stuermer stated that clause 2.1 requested an 'immobile table system', which could be supplied by three companies: Trumpf, Petit, and Getinge.

Dr Thomas asked why there was a 'Yes' and a 'No' in brackets in the smart features column.

The witness explained that Getinge had a 'Yes' for the 'immobile system table' and a 'No' for smart features, whereas the 'mobile OR table' includes smart features. Clause 2.9.1 requires an incorporated hygienic seal, which only Trumpf could provide. The witness described these clauses as lockout clauses because only one supplier could satisfy all requirements.

The 'mobile OR table' supplied by Getinge involves fewer steps, as there is no need to attach a detachable tabletop. It includes integrated wheels and

motorised auto-drive functionality with a motor power unit and remote control, allowing the table to move independently and reducing strain on staff. Both table types produce the same outcomes, with no clinical advantage between them.

Each system has its own advantages and disadvantages. Factors such as available space in the theatre layout, user habits, established workflow, and budget must be considered. A mobile table costs approximately 30% less than an OR system, as it has fewer components and a lower overall price.

Ing. Dr Damien Gatt asked why the company included smart features in one model but not the other.

The witness explained that smart systems would eventually be integrated into all models, but implementation had started with mobile tables. These smart features are related to safety.

Dr Camilleri intervened, stating that the appeal concerned clauses 2.1 and 2.10.12, not the smart feature clauses 1.2.1, 1.2.3, 2.3.1, 2.3.2, 2.10.13, and 2.9.1.

Dr Thomas stated that the Board would assess the relevance and connection of these points to the grievance.

Dr Paris asked the witness about alternatives to smart features.

The witness replied that although the system lacks smart features, it includes numerous safety mechanisms, such as collision prevention. She added that one could make a call using a normal phone or a smartphone with more advanced features.

Referring to spec 2.10.12 on page 21, which relates to weight, he quoted: *"The column and Tabletop shall be capable of withstanding a safe patient weight of 400 Kg or greater when the tabletop is in the home position (O-Position)".*

Dr Paris asked the witness to comment on this.

The witness stated that the average weight of heavier patients is around 200–250 kg, and 400 kg is rarely encountered in practice. Getinge can support up to 545 kg in the flat position; however, it is more important to assess the capacity of the back plate and leg plate, as these are more relevant in real-life use.

Dr Thomas noted that Getinge is capable of supporting 545 kg at O-Position for the mobile table, and 380 kg for the system table.

Cross-examination by Dr Leon Camilleri.

Ms Daniela Stuermer, a Product Manager for Operating Tables, works for Getinge.

Referring to clause 2.1, he quoted:

"The operating table system shall be based on a flat based immobile column system, which can be moved if required by integrating a transporter unit as detailed in this document. The column shall never be fixed or bolted down to the ground, under any circumstance".

He agreed with the witness that they offer an operating table meeting that requirement, and that other companies also offer table systems which meet those criteria.

Referring to clause 2.10.12 regarding the weight threshold, the witness had stated that the normal range was between 380 kg and 540 kg. However, there were companies offering mobile systems with a weight threshold of 400 kg or more.

Cross-examination by Dr Douglas Aquilina (for Drugsales Ltd).

Dr Aquilina wished to know what kind of system was being supplied by the witness's company to the Maltese Government. He asked whether it was correct to say that the Government was using the transferable tabletop system and not the mobile system.

Dr Thomas intervened, and asked the witness whether she was aware of the current system being used at Mater Dei.

The witness replied that the Government is using system tables supplied by their company. She explained that parallel processing of patients is possible with a mobile table using the same workflow. With a system table, one would require the same number of transporters as tabletops. Fewer columns would be needed, and the number of tabletops should match the number of transporters.

One of the requirements of the tender in clause 2.1.3 was that the tabletop be machine washable. However, this is not possible with a mobile table. The witness stressed that a mobile table cannot be washed, nor can the system column; only the tabletop on the transporter can be washed. Both systems have the same number of components that can be placed in a washing machine.

Dr Thomas referred to clauses 2.11.3 and 2.11.11 regarding washing.

Further cross-examination by Dr Douglas Aquilina.

Dr Douglas asked the witness whether she had experience in the operating theatre, to which she replied that her job requires her to be present there.

Witness: Ing. Chris Attard Montalto (ID no. 260567M), summoned by Dr Paris.

Ing. Attard Montalto is the Director of Biomedical Marketing Engineering at Mater Dei Hospital and across all entities within the Health Ministry. He has been in this profession since 2012. His department assists other departments in drafting specifications for their needs.

He drafts the tender and then requests input from staff. Drafting began in 2022; however, in 2023 there was an objection from surgeons. In August 2023, samples were requested. Medina Healthcare delivered an operating tabletop with a transporter compatible with their existing model, Otesus.

In August 2023, four companies in Malta were contacted, including Medina Healthcare. Ing. Attard Montalto intended to issue a PMC, but this was halted by the CPSU. They also contacted Cherubino Ltd., ProHealth Ltd., and Drugsales Ltd., all of whom provided samples. At that time, Maquet (now Getinge) were pioneers of the system, and the operating theatres had been designed specifically around this technology, which has been in use since 1996.

Two main considerations for the operating tables, aside from technical aspects, were infection control and patient and staff safety. The operating theatre is a busy environment, and the proposed system involved a table that could be wheeled from one place to another, effectively requiring double the number of tables.

The alternative system would require the patient to be transported on a bed and then transferred in the operating theatre, during which the previous table would be wheeled out, resulting in lost time. The current system involves bringing the patient into the theatre already on an operating tabletop, while another patient is prepared simultaneously, thereby saving time.

The Chairperson redirected the witness to Dr Paris's question and clarified that the specifications drafted in 2023 and approved by the Head of Surgery were not changed.

Dr Paris noted that all samples provided were for system tables. The witness confirmed that it was a collective decision to retain the transporter system, as it was considered the best option for patients. The tender specifications were submitted to the CPSU and the DOC in the first quarter of 2024 and were issued at the end of 2025. The estimated cost was €4.7 million.

Dr Thomas sought clarification on whether the operating theatres were designed for a specific system in terms of layout or dimensions.

Ing. Attard Montalto explained that there is a holding area where the patient waits on a bed. The patient is then transferred to a tabletop with a transporter, wheeled into the operating theatre, placed onto the column, operated on, and then returned to the bed. This process requires handling the patient twice. By contrast, a mobile table would require transferring the patient via a stretcher, resulting in four instances of handling.

Nurses are responsible for all patient transfers. The operating table must then be cleaned and disinfected.

Dr Thomas sought to understand the difference with a mobile tabletop.

The witness emphasised that the specifications required both the tabletop and the transporter to be suitable for disinfection in a tunnel washer, which is safer for infection control. This is not possible with a mobile table. At the end of the day, all components except the column are washed. Ing. Attard Montalto also stated that he did not want floor-mounted columns.

Ing. Dr Gatt noted that both the fixed column and the mobile system via transport column offer the same functions.

Ing. Attard Montalto stated that Maquet had two models, the Otesus and the Magnus, both of which were very good. Getinge later acquired Maquet. While the safety features mentioned by Ms Stuermer were adequate, Dr Paris noted that the tender document required something different.

Referring to article 1.2.1, he quoted:

"Patient safety, the table shall have 'Smart' capabilities to recognize any potential injury".

Dr Camilleri objected on the basis that this clause was not part of the grievance.

Dr Thomas stated that the Board would decide on the relevance of grievances but allowed the witness to answer.

Minute by Dr Leon Camilleri:

"Joggezzjona ghal kull mistoqsija li mhix abbinata ma klawsola 2.1, 2.10.12 u l'qasma tat-tender f'lots".

Dr Matthew Paris minuted as follows:

"Medina HealthCare fl-oggezzjoni taghha ma strahitx fuq aggravju wiehed, izda kien hemm multiciplita ta aggravji. L-ewwel wiehed li ghamel l-elenku ta numru

ta klawsoli, fil-waqt li kien hemm aggravji ohrajn li ma kienux specifici fil-konfront ta klawsoli. Qieghed nirreferi ghal aggravju numru tlieta, li b'mod car hafna gie elenkat li Getinge Maquet ma tistax tippartecipa minhabba li l-lockout clauses u allura mhux talli jifforma parti, talli huwa msejjes fuq il-fatt li effettivament t-tender kif kostruwit ma jippermetti lil hadd jippartecipa ghajr Kumpanija wahda".

The Board minuted as follows:

"F'dan l-istadju l-Bord jawtorizza l-mistoqsijiet, izda jirrizerva, li jqis ir-relevanza taghhom fil-gudizzju finali".

Dr Paris referred back to safety. The witness explained that Ms Stuermer had mentioned safety features such as detection of objects under the table, for example a patient's foot touching the floor. This was considered sufficient.

Dr Paris asked whether they were willing to adjust the safety requirement, particularly clause 1.2.1.

The witness replied that since the offer by Medina Healthcare complies with the clause, there was no need to amend it. He explained that "Smart" refers to sensors that stop the table if something is detected underneath. This requirement was introduced after reviewing samples in 2023.

The witness stressed that surgeons, anaesthetists, and nurses collectively decided to adopt a transporter system and exclude mobile systems. Emails were presented to demonstrate that the specifications were developed collaboratively. He noted that OPT, Baxter, and Getinge could supply transporter systems.

Dr Thomas referred to page 1 and quoted:

"We need to be sure that the motorized table transported, during transportation". It indicates that the subject is transportation system.

Referring to an email dated 9th March 2024, the witness quoted:

"Do we need to be more specific on what weight of patient; the tables can take in different positions? This was one of the questions raised in the theatre users Committee".

The witness explained that this Committee included the Chairman of Surgery, Medical Directors, the Chairman of Anaesthetics, and surgeons, with Mr Clifford Caruana as Chairperson. Although he was not a member, he attended the meeting where the transporter system was selected. Of the four companies—

Cherubino, ProHealth, Drugsales, and Medina—three were compliant, and one was not; Medina was among the compliant companies.

The witness that he was not part of the Committee, but he was confident that discussions concerned operating theatre equipment.

Dr Paris asked what was requested from the four companies.

The witness replied that a transporter system was requested.

Referring to clause 2.9.1, about the incorporated hygiene seal Dr Paris quoted:

"*The Column shall be placed on a solid flat surface with incorporated hygienic seal ensuring that the system is ready and unable to topple over under any event".*

The witness stated that he was unaware that only Baxter could supply this feature. He referred to documentation page 17 for Magnus and page 22 for Otesus models, noting that they sit on a flat platform without being fixed to the ground, and that fluids do not seep underneath the column.

Ing. Dr Gatt stated that no hygienic seal was specified, while Dr Zrinzo referred to the second line of clause 2.9.1, which mentions the hygienic seal.

Cross-examination by Dr Leon Camilleri.

Dr Camilleri agreed that a meeting had taken place among surgeons and doctors to determine the approach to operating tables. The existing tables have been in use for 21 years, albeit with significant maintenance. The witness explained that adopting a mobile system would require doubling the number of beds, as patients would need to be transferred using a separate stretcher for hygiene reasons.

Dr Thomas asked how the 400 kg weight requirement was determined.

The witness replied that 400 kg was required in the "O" position, although the primary need was for a heavy-duty bed. They were also willing to accept the Maquet bed with a 380 kg capacity.

Ing. Dr Gatt confirmed that three companies could supply a 400 kg bed.

Cross examination by Mr James Borg (for Drugsales Ltd).

Mr Borg asked whether the stated weight included accessories and table positioning.

The witness replied that the weight referred only to “safe patient weight”.

Mr Borg noted that a higher weight capacity allows for greater flexibility in positioning and use of accessories, but the witness maintained that 380 kg was sufficient.

Witness:

Mr. Tonio Pace (ID no. 12268M), summoned by Dr Matthew Paris.

Mr. Pace, a Lead Product Specialist, works for Medina Healthcare. He is a nurse with experience in operating theatres from 1999 to 2012. In 2017, he was transferred to Mater Dei, where he had first-hand experience of how patients were transported to and from the holding bay to the theatre, and back to their beds. He was familiar with the tender requirements and stated that the specifications were restrictive. Medina presented the ‘Otesus’ bed with a frontal anti-collision system, but the requirement was for an anti-collision system underneath the bed.

Dr Paris quoted clause 1.2.3:

“The operating table shall include multiple audios and/or illuminated sensor alarms to safeguard other operating theatre equipment in close proximity and under the actual tabletop for collusion which can also cause tabletop tilting and increase the risk of a near event”.

During the demonstration, Medina also presented a table that did not include an ‘overload detection sensor’, as required in the tender. These sensors provide additional safety features.

Mr Pace said that, to date, they could only supply another table, Corin, which is a mobile system rather than a transport system.

Mr. Tonio Pace explained the procedure for patients entering and waiting in the holding bay. Based on his experience, he stated that the transporter can become an obstacle when additional equipment needs to be brought into the theatre during an operation. The mobile system leaves the theatre as one unit, allowing staff to operate with the same number of tables.

The mobile system was more practical, as it could be manoeuvred by one person. At present, the column remains in the operating room, and there were instances where it had to be moved for thorough cleaning. The mobile system also features an efficient wheel system.

The transporter system includes side rails for safety, and a staff member must monitor the sedated patient on the stretcher until the transporter is removed. The mobile system, being a single unit, has side rails in place at all times.

Dr Ana Thomas referred to page 4 of the Getinge literature, which describes a mobile OR table with a 'column with wheels and the tabletop attached to it'. A second option includes a mobile system with wheels but with a detachable tabletop. Option C refers to the systems currently used at Mater Dei, which are detachable and require a transporter, while Option D, as mentioned by Ing. Attard Montalto, was not considered optional, as floor-mounted bolts were not desired.

Dr Paris referred to page 16 of the tender document, clause 1.1, section 3, and quoted:

"The Universal Operating Table System is required for use in surgical procedures of different disciplines, which shall include, but shall not be limited to General surgery, Gynaecology and Obstetrics surgery, Urology, Neurosurgery, but will also include, ENT, Maxillofacial, Bariatric, Orthopaedic and Trauma, Paediatric, Vascular, Cardiothoracic, Plastic Surgery".

The witness stated that this functionality could be achieved with the mobile system. It would require only one carer to move the patient from the holding bay to the theatre, without the need to move transporters or dock the patient to a column.

Cross-examination by Dr Leon Camilleri (for CPSU):

Mr. Borg stated that he worked as a clinical nurse in theatres until 2023. Dr Camilleri agreed with the witness that the proposed mobile system was a fixed system and noted that Medina Healthcare suppliers also provide immobile systems with transporters.

Cross-examination by Mr James Borg (representing Drugsales Ltd):

Mr. Borg asked Mr. Pace whether he agreed with the inclusion of smart safety features. The witness replied that prevention is better than cure and did not consider smart sensors to be unnecessary.

Mr. Borg pointed out that, from a hygiene perspective, the wheels of the mobile system could not be cleaned.

The witness responded that there had never been any issue regarding infection control or hygiene and that there was no evidence indicating whether the wheels could or could not be cleaned.

Dr Leon Camilleri stated that he had a witness from Gozo attending online. She was a surgeon and could not travel to Malta to testify.

Dr Thomas noted that the Board should have been informed of such arrangements in advance, although there was a valid reason for the online testimony. Shortly thereafter, Dr Thomas was informed that Dr Rachel Abela was no longer online.

Dr Leon Camilleri then called the next witness.

Witness:

Ms Bernice Mizzi (ID no. 240287M), summoned by Dr Camilleri.

Ms Mizzi, Head of Operating Theatre Services, has worked in theatres for seventeen years. She explained that they currently use an immobile system and that any change would require adjustments to workflow and patient pathways. At present, once the patient reaches the holding bay, they are transferred to the operating table, then moved to the anaesthetic room, and subsequently to the operating theatre, where the table is docked to a fixed column. After the procedure, the patient remains on the same operating table until recovery, after which they are transferred to a bed and taken to the ward. The theatre is then cleaned, and the cycle begins again.

The witness speculated on how the mobile system would function, as she had only worked with the transporter system.

Dr Thomas wished to conclude the issue regarding weight.

Dr Camilleri noted that it would be recorded that the tender drafter was willing to reduce the requirement from 400 kg to 380 kg, as previously testified. He argued that this adjustment did not justify cancelling the tender, as it was intended to increase competition rather than restrict it.

Final Submissions

Final submissions by Dr Matthew Paris (for the appellant):

Dr Paris argued that the tender should be cancelled, as the procurement process was fundamentally flawed. The tender had been prepared in 2023, yet proceedings were still ongoing in 2026. He referred to Regulation 28(6) of the PPR and quoted:

"The Estimated value shall be valid at the moment at which the call for competition is sent, or, in cases where a call for competition is not foreseen, at

the moment at which the contracting authority commences the procurement procedure".

He noted that the document was prepared in the second quarter of 2023, issued in December 2025, and was still under discussion in March 2026, with prices and specifications based on 2023 data. He described this as both a legal and factual flaw, as it failed to reflect current market conditions.

He also questioned who had drafted the tender, whether the witness or their predecessor.

Dr Paris stated that the hospital's existing system had been superseded by more advanced technology introduced in 2023, as testified by Ms Daniela Stuermer. He argued that such developments could not be ignored, particularly since the tender would remain in effect until 2036. No witness had claimed that the new system was inadequate; rather, the Head of Operating Theatre Services had admitted unfamiliarity with it. The user did not know what was available in the market, however, they said that they made comprehensive research.

He referred to page 3 of the tender document and quoted:

"The Estimated Procurement Value for this Call for Tenders has been based on comprehensive research".

He argued that this "comprehensive research" consisted only of demonstrations from four companies in Malta, rather than a proper Preliminary Market Consultation (PMC), which he claimed was not permitted by CPSU.

Dr Paris requested cancellation of the tender on the grounds that proper preliminary investigations had not been conducted. He noted that Ing. Attard Montalto had stated that the Getinge Maquet product was compliant, despite not knowing its full specifications.

Ms Daniela Stuermer had referred to "lock-out clauses" related to smart features. While individual clauses might appear compliant, taken together they effectively restricted the tender to a single product.

Ing. Attard Montalto had interpreted "smart" as meaning a sensor, yet this was not clearly defined in the tender. Dr Paris referred to a dictionary definition and quoted:

"A smart device is able to do, many of the things a computer does, example to connect to the internet and use software". which means that there is the presumption that the internet is used.

He requested that the term “smart” be clarified in the tender. He also argued that the requirement for an incorporated hygienic seal effectively excluded most products, favouring only one manufacturer.

He noted that no justification had been provided for rejecting a modern mobile system, particularly since Ms Bernice Mizzi had confirmed she had never been trained on such a system.

Ing. Attard Montalto had focused on hygiene concerns without fully understanding the system. According to Ms Stuermer, a mobile system could reduce costs by approximately 30%.

Dr Paris requested the removal of restrictive clauses and greater flexibility to allow selection of the most suitable system. He referred to page 16, clause 1.1.2, and quoted:

“The bidder is to provide a documented proof that the manufacturer has a minimum track record of manufacturing the equipment mentioned above for at least 10 years”.

He noted that this requirement, reinforced by clarification note 3 of 8 January 2026, conflicted with Regulation 232 of the PPR, which recommends 3 to 5 years’ experience rather than 10.

He concluded that the tender should be cancelled and redrafted following a proper market assessment. He argued that the current structure restricted competition and violated Articles 28 and 232. He added that Medina intended to request division into lots (e.g. bariatric and non-bariatric), though CPSU had instead reduced the weight requirement from 400 kg to 380 kg.

Final submissions by Dr Leon Camilleri (for the Contracting Authority):

Dr Camilleri argued that many of the appellant’s claims were not included in the original grievance. The specifications had been published, and the appellant had ample opportunity to contest them.

The initial grievance referred specifically to clause 2.1 (column and mobile system), clause 2.10.12 (weight), and the issue of lots. Claims regarding “lock-out clauses” were only raised during the hearing.

He noted that the appellant had not originally claimed exclusion due to smart features or hygienic seals. These arguments were introduced later.

He stated that the supplier could meet the revised weight and provide a mobile column system. CPSU had identified multiple compliant suppliers during pre-tender research.

He argued that “lock-out clauses” were not formally identified and should be disregarded. He maintained that the hospital had deliberately chosen to retain the column-and-top system, based on operational needs and established practice.

The appellant seems to exclude all the other systems used for many years. Ing Attard Montalto and all the others in the meeting knew about the mobile system, and the decision taken was that the hospital wanted to work with the columns and tops. The witness testified that this system was the most ideal, and it is used also in hospitals abroad.

He stated that the appellant had at least four competing systems and that pre-tender analysis identified three compliant companies. CPSU had assessed market availability and hospital requirements before issuing the tender.

He emphasized infection control and compatibility with existing infrastructure as key advantages of the selected system. He rejected the need for changes or division into lots and stated that the procurement timeline (2024–2025) was reasonable.

He also noted that the appellant had not raised concerns regarding pricing or estimated value in the original grievance.

He concluded that the reduction in weight requirement was intended to increase competition and that the appeal should be rejected. He warned that cancelling the tender could risk loss of EU funding.

Final submissions by Dr Douglas Aquilina (for Interested Party – Drug Sales Ltd):

Dr Aquilina stated that the appellant’s argument centred on clause 2.1 and the claim that mobile systems were more modern. He argued that while their mobile system included smart features, they did not yet offer a transferable table with such features, though development was ongoing.

He maintained that the fixed system offered advantages in workflow, hygiene, and infection control.

He noted that the appellant was capable of supplying a transferable system, as well as other equipment, and that the tender requirements did not restrict competition.

He reiterated that the weight issue had been resolved and that the safety features highlighted by Ms Stuermer were beneficial and already available in Getinge systems.

He questioned whether the appeal was intended to delay proceedings until new products became available.

Conclusion of the Hearing

With no further arguments presented, the Chairperson, Dr Ana Thomas, thanked all parties and formally concluded the hearing. The Board will communicate its decision in due course."

The written pleadings as filed by Medina Healthcare Limited on the 19th January 2026 (with a stamp dated 19th January 2026), together with proof of payment of a deposit in the amount of € 23,305.08, wherein it held as follows:

*"**REASONED APPLICATION***

Whereas the Department of Contracts [hereinafter "DOC"] issued a call for "Tender Name: Supplies Tender for the Supply of Operating Table Systems"

Whereas Messrs. Medina Healthcare Limited (hereinafter "Appellant company" or "Medina") sought to clarify a number of matters and address them through the submission of clarification requests.

*Whereas Medina feels aggrieved by the contents, or part thereof of the procurement document, including the clarification replies thereto, and thereby is submitting its objection to in accordance with regulation 262 of the Public Procurement Regulations (PPR) within the timeframe and accompanied with the relative deposit (enclosed as **DOC1 in the Reasoned Application**).*

The objection is based on the following grievances:

1. Tender as drafted restricts competition

1.1 The PPR provide that procurement procedures should not be designed in a manner that restricts competition[1]. On the contrary, such procedures should be sufficiently open and transparent to encourage the widest possible participation, thereby promoting fair competition and ensuring value for money.

1.2 It is the submission of the appellant company that, the tender procedure CT3037/2025 restricts competition, at least, in the following circumstances: -

*1.2.1 **Clause 2.1 – Column immobile system***

1.2.1.1 The appellant company requested a clarification, by which it enquired on whether the Contracting Authority would be willing to accept other variants such as mobile operating tables, rather than 'fixed column-based architecture', whilst fully respecting the functional requirements as outlined in the tender document, specifically the Tender Offer Form.

[1] [1] *Regulation 39 – PPR*

1.2.1.2 In its reply to the clarification, the Contracting Authority through the Department of Contracts, was categorical that no other functional solution is acceptable.

1.2.1.3 It is acknowledged that the Contracting Authority is at liberty to determine the tender specifications it deems appropriate. However, any specification that has the effect of limiting competition must be objectively justified on legitimate and, where applicable, medical grounds. It is the position of the appellant company that no such grounds exist in this case, and, in the absence of any adequate justification, the appellant company considers the specification to constitute a restriction of competition by design.

1.2.1.4 In furtherance of the above, the Appellant company submits that the Tender Documents impose, in mandatory terms, a requirement that the operating table system be based on a fixed column-based architecture. This requirement is imposed notwithstanding the fact that the tender otherwise defines the Contracting Authority's needs entirely in functional and performance-based terms, including safety, stability, multi-disciplinary use, positioning accuracy, patient flow efficiency and operating theatre turnover.

1.2.1.5 The alternative proposed, i.e. the mobile systems, fully satisfy all functional requirements set out in the tender and, in several material respects, exceed them, by offering additional technological features, improved ergonomics, operational flexibility, efficient patient transfer and reduced dependency on fixed installations. These advantages are directly aligned with the objectives of efficiency, safety and value pursued by the Contracting Authority.

1.2.1.6 It must be additionally noted that, the mobile systems proposed, is the latest technology available on the market, and largely being used in the market outside of the territory.

1.2.1.7 It is imperative to state that all patient workflows will be fully respected with the proposed alternative, and that no adaptation will be required nor will any hindrance be created. Additionally, the patient's best interests will be fully respected and, if anything, enhanced by this alternative, and therefore there is no justification to oppose this approach.

1.2.1.8 Regrettably, the tender document excludes such solutions outright by prescribing a specific technical design architecture. As a result of this exclusion, technologically superior and more modern solutions are rendered non-compliant irrespective of their ability to meet or exceed the stated functional requirements.

1.2.1.9 Such approach artificially narrows down competition and limits participation to a restricted product that conform to the prescribed column-based design. In doing so, the tender prevents the Contracting Authority from receiving potentially better solutions, both functionally and pricewise, and from assessing solutions that provide greater technological advancement.

1.2.1.10 The European Court of Justice has consistently held that contracting authorities may not prescribe a particular technical solution where equivalent or superior solutions exist which are capable of fulfilling the same objectives. In case ***C-368/10, Commission v Netherlands****, the Court confirmed that technical specifications must not unjustifiably exclude alternative solutions.*

1.2.1.11 Article 23(8) of Directive 2004/18 EC specifies that:
Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make... with the effect of favouring or eliminating certain undertakings or certain products... such reference shall be accompanied by the words 'or equivalent'

1.2.1.12 Promoting effective competition is also at the core objective of public procurement. The principle of proportionality, as established in public procurement law and recognized in various judgments of the European Court of Justice (ECJ), requires that any measures adopted by a contracting authority must be appropriate, necessary, and proportionate to achieving their legitimate aims. For instance, in cases such as ***Evropaïki Dynamiki v European Commission****, the ECJ emphasized that contracting authorities must balance their objectives against the overarching requirement to ensure fair competition and equal treatment.*

1.2.1.13 A lack of genuine or adequate competition undermines these objectives whilst also disadvantaging the contracting authority. If there is no or limited competition, it is the contracting authority which suffers with the risk of obtaining higher offers, bad quality supplies/services or possibly no offers at all.

1.2.1.14 Reference is being made to the case of the European Court of Justice : ***C-94/12, Swm Costruzioni 2 SpA and Mannocchi Luigino Di v Provincia di Fermo*** *whereby the court highlighted the issue of restrictive procurement practices, ruling that a contracting authority must not design procurement procedures that restricts competition.*

1.2.1.15 Accordingly, the Appellant submits that the restriction of the tender to column-based operating table systems is neither necessary nor proportionate, unlawfully restricts competition, and deprives the Contracting Authority of the opportunity to evaluate more advanced, modern and economically advantageous solutions.

1.2.2 Clause 2.10.12 - Weight threshold of 400Kg or greater

1.2.3 The Appellant company further submits that the requirement set out in the Technical Specifications which stipulates that "the Column and Table Top shall be capable of withstanding a safe patient weight of 400 Kg or greater when the table top is in the home position (O-Position) also unnecessarily restricts competition and likewise it is also in breach of Reg.39 (3) of S.L. 601.03.

1.2.4 The Appellant company sought clarification particularly in light of the fact that internationally recognised standards and clinical classifications for bariatric use are generally based on a maximum patient weight of circa 317 kg, and that the technical requirement for a safe working load of 400 kg effectively results in all operating tables being classified as bariatric-grade, irrespective of their intended routine clinical use.

1.2.5 In its reply, the Contracting Authority stated that bariatric weights are determined through Body Mass Index (BMI) values linked to both weight and height, and confirmed that the specifications intentionally require the table, at the 0-position, to withstand a safe patient weight of 400 kg, maintaining the specifications unchanged.

1.2.6 The Appellant company submits that this response does not constitute an objective or proportionate justification for the imposition of a blanket 400 kg requirement across all operating table systems being procured. While bariatric capability may be clinically necessary in specific, limited scenarios, the tender itself seeks to procure 32 universal operating tables intended for routine use across multiple theatres and specialities, without any differentiation between standard and bariatric-dedicated operating environments.

1.2.7 The imposition of a uniform 400 kg safe load requirement has the practical effect of excluding a significant portion of modern operating table systems which fully satisfy all functional, safety and clinical requirements for general, orthopaedic, trauma, vascular and other surgical disciplines, but which are engineered to internationally accepted load standards. Such systems are widely used in European hospitals and comply with applicable medical device regulations and safety norms.

1.2.8 Moreover, the requirement materially limits the range of available models on the market and forces all tenderers to offer highly reinforced bariatric-grade systems, even where such capability is neither clinically necessary nor operationally justified for the majority of use cases. This has the inevitable consequence of reducing competition to the detriment of both economic operators and the Contracting Authority.

1.2.9 When viewed cumulatively with the mandatory column-based architecture previously referenced, the 400 kg requirement further contributes to a procurement design that favours a very limited subset of suppliers and raises a legitimate concern that the technical specifications have been drafted around a predetermined solution, rather than around objectively defined functional needs.

2. Tender should be divided into lots

2.1 Without prejudice to the previous grievance, it is the submission of the appellant that the tender should be divided into lots. The reasons presented within the tender document, not to divide the tender into lots, is in the opinion of the appellant company, not justified nor proportionate. The Tender stipulates that:

This tender is not divided into lots, and tenders must be for the whole of quantities indicated. Tenders will not be accepted for incomplete quantities. Tender is not divided in lots since items in this tender are ***interlinked and the contracting authority requires the involvement of one contractor rather than multiple contractors*** *to ensure that different equipment needed, and training requirements are cohesive.*

2.2 It is the submission of the appellant company that the above reasons do not constitute a valid justification which merits that competition is artificially narrowed down and this for the following reasons: -

FIRST *Whilst the Contracting Authority is at liberty for its choice of procurement procedure and its constitution, the supply of the required machines sourced from multiplier suppliers, subject to them being in full compliance with the tender specifications, should not be of any concern whatsoever to the contracting authority.*

SECOND *In addition, proper planning, and appropriate project management should be enough to address any concerns whatsoever of having multiple suppliers as opposed to one (1) supplier.*

THIRD *Finally, each and every contractor, once a lot is awarded, is bound by strict contractual obligations which stipulate the rights and duties of the respective parties. If these rights and duties are clearly and appropriately delineated and apportioned, all the minor concerns raised by the contracting authority will be rendered redundant.*

2.3 The importance of lot division in fostering competition is highlighted in recitals 76 and 78 of Directive 2014/24, being considered as an essential tool in foster the participation of SMEs in public procurement.

2.4 This Honourable Board has previously decided upon the importance of dividing tenders into separate lots, inter alia in ***case 1721 of 2022****, whereby the Board ordered the cancellation of the tender and the re-issuing of the tender in separate lots and highlighting the importance of Regulations 39(3) and 53(6) of Subsidiary Legislation 601.03.*

2.5 The appellant company further submits that the tender is also in breach of the anti-competition provisions of the Treaty of the Functioning of the European Union [TFEU], specifically articles 101 and 102. The treaty establishes the necessity for competitive neutrality and the prevention of anti-competitive practices in public procurement. Contracting authorities must ensure that procurement procedures are transparent, non-discriminatory, and open to all qualified bidders.

2.6 The appellant submits that the tender in question can be easily drafted into several lots. As seen through the delivery phase, one set for operating tables shall be supplied to Mater Dei Hospital and another sent to be supplied to the Gozo General Hospital. Indeed, the tender can be divided into two lots, one for Gozo and one for Malta. Alternatively, divide the tender into two lots, being a lot for motorized, and a lot for non-motorized operating tables.

3. Tender as drafted specifically intended to exclude a particular supplier

3.1 The appellant company submits that the tender specifications were designed in a manner that goes beyond the legitimate discretion of the Contracting Authority and, in effect, were tailored to specifically exclude a particular economic operator from participating in the procurement procedure. Such an approach is contrary to the fundamental principles of transparency, equal treatment, and non-discrimination which underpin public procurement law.

3.2 The appellant further maintains that this exclusionary design was not supported by any objective, technical, or medical justification. Throughout the proceedings before the Public Contracts Review Board, the appellant will demonstrate that the specifications imposed were neither necessary nor proportionate to the stated objectives of the procurement, and that their practical effect was to unjustifiably narrow competition.

3.3 In this regard, the appellant is confident that the evidence to be produced during these proceedings will clearly establish that the tender was structured in a manner intended to favour a specific supplier, to the detriment of fair and open competition. This conduct, if confirmed, would amount to a breach of both national procurement regulations and applicable principles of European Union public procurement law.

3.4 Without prejudice to the foregoing and given that the tender in question is financed through European Union funds, the appellant hereby expressly reserves all its rights to submit complaints, claims, and requests for investigation before the competent national and European bodies, to the fullest extent permitted by law.

4. Refund of deposit paid

4.1 Without prejudice to the above, the Appellant company contends that irrespective of the PCRB outcome, the deposit paid should be refunded for the following reasons:

4.2 The Contracting Authority failed to justify the restriction of competition

4.2.1 As highlighted in the preceding grievances, the Appellant company submits that the Contracting Authority has failed to justify its decision to restrict competition.

4.2.2 By artificially narrowing the specifications, it has limited the participation of a number of potential bidders. Whilst this limitation has no legal and medical justification, the Contracting Authority did not even attempt to provide any objective justification, thus contributing further to the lack of transparency obligations.

4.3 ***Failure to structure the procedure through multiple bids justifications provided are inept***

4.3.1 In addition to the above, and diametrically differently to the preceding provision, the appellant company submits that the justifications provided by the Contracting Authority for its failure to structure the procurement procedure and allowing for the submission of multiple bids, are not justified through legal or medical grounds

4.3.2 The stringent approach adopted vis-a-vis the technical specification could have been softened through the re-organisation of the procedure into multiple bids, an option which the contracting authority instantly rejected.

4.4 In view of the foregoing, the Appellant company hereby requests this Honourable Board to order the refund of the deposit paid for the lodging of this objection.

NOW THEREFORE, whilst reserving the right to put forward further submissions, the Appellant company hereby requests:
i. ***To cancel, modify, remove set aside and/or in any other manner give any other direction in accordance with article 262 of the Public Procurement regulations.***
ii. ***In accordance with article 90 of the PPR, take such interim decisions as required, including but not limited to order the defendants to provide the necessary clarifications as requested by the appellant company.***
iii. ***To do anything which is ancillary and conducive to the proper execution of this decision.***
iv. ***To refund the deposit paid.***
Appellant company is hereby reserving the right to present further evidence, both orally and in written, during the hearing."

The written reply as filed by Central Procurement and Supplies Unit on the 26th January 2026 (with a stamp dated 26th January 2026) (hereinafter the 'Contracting Authority') wherein it held as follows:

"Reply of the ***Central Procurement and Supplies Unit*** *(CPSU) on behalf of the Department of Health to the reasoned application lodged by* ***Medina Limited*** *(the applicant) in terms of regulation 262 of the Public Procurement regulations (PPR) in relation to a number of specifications of the call for tenders in caption.*

On the 19th of January 2025 a call for tenders for the Supply of Operating Tables was published with a number of specifications.

The applicant felt aggrieved by a number of specifications, which it insists that are not required, and filed the present application.

CPSU humbly disagrees with the application. The clauses referred to in the application are all justified as will be further substantiated by professionals during the hearing. Moreover it was confirmed through market research prior to the publication of this tender, that several manufacturers on the market are able to fulfil the tender conditions and thus there is no undue limitation of competition.

In addition to the above, there exist no justification for dividing the tender into lots. The contracting authority is seeking to procure a number of the same operating tables – dividing the tender into lots is not practical especially for health care professionals who will be constrained to work on different tables.

For the above reasons and submissions which will be further explained and evidenced during the sitting, CPSU humbly requests that the application ought to be rejected and the tender document confirmed as published.

CPSU reserves the right to present evidence and to make additional submissions, orally or in writing and to present evidence to sustain its position."

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

Considers;

This Board notes that the Appellant has brought forward three (3) principal grievances, the first that the tender as drafted restricts competition, the second that the tender should have been divided into lots, and the third that the tender as drafted is intended specifically to exclude one particular tenderer. The fourth grievance as postulated within the Appellant's appeal relates to the refund of the deposit paid by the Appellant. This Board shall delve into the Appellant's grievances below, however not in the order as listed in its written pleadings.

A. Tender Drafted to Exclude a Particular Tenderer

From the witnesses as brought before this Board, and arguments set forth, it results that potentially more than one economic operator shall be affected by the tender requirements and the so-called "*lock-out clauses"*. The Appellant's own witness Ms Stuermer explained in her testimony that the effect of these 'clauses' were essentially that of favouring only one economic operator, as opposed to excluding only one particular tenderer. This Board finds that nothing in the Tender Document, nor from the evidence as brought before this Board, indicates or suggests that the Contracting Authority in any way intended to exclude one tenderer in particular as suggested by the Appellant.

Therefore, the Appellant's grievance is being rejected.

B. Tender Should be Split into Lots

The Appellant felt aggrieved of the fact that the Contracting Authority did not split this procurement process into lots. The Appellant argues that the Contracting Authority did not bring forward enough justifications for not splitting this tender into lots. During closing submissions, the Appellant argued that the tender should have been split into lots for bariatric vs. non-bariatric but given the testimony

of the tender drafter who conceded that the Contracting Authority is willing to accept a lower weight threshold, the Appellant would not be insisting on this point.
The Contracting Authority here argues that the purpose of this tender is to procure one and the same product, and medical professionals should not be constrained in working on different operating tables.

On this point this Board finds that in view of the fact that the Contracting Authority is essentially seeking to procure one and the same product, and the delicate and precise environment they are to be used in, there is no objective reason as to why the Contracting Authority should have split the tender into lots, more so when the bariatric/non-bariatric consideration is now superfluous. This Board deems that the Contracting Authority is not wrong to seek to establish and maintain uniformity in the operating table it utilises across operating theatres, particularly when one and the same product is in discussion.

Therefore, the Appellant's grievance is being rejected.

C. Tender as Drafted Restricts Competition

In its appeal, the Appellant contends that the tender requirements as found within the Tender Document restrict competition, specifically mentioning a) the column immobile system (Clause 2.1.) and b) the 400kg threshold (Clause 2.10.12). Throughout the hearing of this appeal, the Appellant focused also on questioning the rationale behind the smart requirements, and the incorporated hygienic seal, alleging that these too are *"lock-out clauses"*. Here the Contracting Authority objected to this line of questioning given that they were not part of the Appellant's written pleadings as raised. The parties minuted their position in this regards.

At the outset, this Board must immediately remark that it is not uncommon for appeals filed before this Board under Regulation 270 of the Public Procurement Regulations, Subsidiary Legislation 601.03 (hereinafter the 'PPR') to emerge unsuccessful at post tendering stage particularly because the aggrieved economic operator would have failed to utilise the remedy at his disposal under Regulation 262 of the PPR thereby challenging the tender requirements at pre-tendering. In this present situation, this Board has before it an Appellant which did in fact utilise the remedy available to it pre-tendering stage and raises a first grievance relating to tender requirements which in its opinion restrict competition. The wording used by the Appellant in its opening premises to this grievance raised are

> "*It is the submission of the appellant company that, the tender procedure CT3037/2025 restricts competition, <u>at least</u>, in the following circumstances".* (Added emphasis of the PCRB).

This Board deems that the Appellant did in fact raise a grievance proper on the restrictive nature of the tender requirements, and gave indications of <u>at least</u> two different clauses which in its opinion serve as lock-out clauses. Therefore, this Board does not agree with the Contracting Authority when it stated that the Appellant did not raise grievances related to the smart features and the incorporated hygienic seal, as these fell well within the Appellant's first grievance although not specifically quoted.

The Board also feels that during this pre-submission stage, where an appellant's main objective is generally to remove ambiguities from tender requirements, this Board should not be expected to, and should not take a stringent and restrictive approach in this regard – as opposed to the more restrictive interpretation one should expect to be taken in post-submission stages when a remedy under Regulation 262 of the PPR was not utilised.

Therefore, in view of the foregoing, the Board shall delve into the so-called *"lock-out clauses"* complained of accordingly:

a) 400kg threshold in the home position/0-position

There is little to say regarding this requirement, given that the Contracting Authority's witness and tender drafter Ing. Attard Montalto conceded during his testimony that a lesser weight would be acceptable for the Contracting Authority.

In this regard, the Contracting Authority is hereby being ordered to clarify to all economic operators precisely the acceptable weight in the 0-position and re-issue the clause so amended accordingly within fourteen (14) running days.

b) Column Immobile System

During this appeal, much was said about the operating table systems ('systems'/'transporter') as opposed to the mobile operating table ('mobile'). This Board understood that at present, systems are used in all operating theatres and that a decision was taken to retain the same product rather than shift to using the mobile. The Appellant argues that this restricts competition, that the conventional system (systems) is now replaced by a newer system (mobile) and that clinically the mobile system is fine and cheaper.

Of note was the testimony of Ms Mizzi, Head of Operating Theatre Services, in this regard, who explained to the Board that changing the type of operating table would necessitate changing workflows and patient pathways. This Board understands also that all staff coming into contact with a new system would need to be professionally trained to work on a new system, apart from adjusting to and practicing new workflows in this delicate environment. Here we are talking of a wide array and number of staff complement, from surgeons to nurses to cleaners and anyone in between.

The Board finds that the Contracting Authority should not be forced to procure a completely different operating table to what it already has in place and wishes to replace as they are now outdated. The Contracting Authority is free to procure the product it requires, more so when changing it would involve a complete overhaul in the protocols, procedures and practices undertaken in the hospital environment particularly in the operating theatres. It cannot be said that by doing so the Contracting Authority is artificially narrowing competition, more so when the Appellant itself is capable of offering the required *systems*. What is being suggested is not a simple replacement of a desk chair without wheels to a desk chair with wheels in a serene office environment with absolutely no change involved. Apart from this, the Board must point out that no witness hinted that a change to the mobile operating table would have any clinical advantage for patients.

On this point, the Board determines that the Appellant is wrong to suggest that this choice restricts competition and finds that the Contracting Authority was well within its rights to choose which type of operating table it wishes to procure.

c) Smart Features

The Board hereby refers to the Tender Document, Clauses 1.2.1. and 1.2.2. which are entitled the basic functions which the product must possess:

"1.2.1 Patient safety- the table shall have "Smart" capabilities to recognize any potential injury (near event) to the patient. It shall allow automatic stop when the patient is at risk of a fall or injury by automatically blocking movement for safety reasons"

"1.2.2 User safety; the table shall allow easy manoeuvrability. Has to have light weight attachments to avoid over stress and heavy lifting problems. The automatic 'smart 'functions will facilitate patient care"

On this point, the Appellant submitted that its mobile operating table offers smart features but its conventional transporter system does not. Ing. Attard Montalto testified to confirm that the conventional model shown by the Appellant to the Contracting Authority before it issued this call for tenders was suitable in terms of smart features. The Appellant remained however none the wiser as it submitted that it does not in fact hold the smart features required within Clauses 1.2.1. and 1.2.2. of the Tender Document.

Here again, the Board feels that the Contracting Authority must eliminate this ambiguity by amending Clauses 1.2.1. and 1.2.2. if necessary, but more importantly to issue a sufficiently clear and detailed clarification note to define and specify what smart features the Contracting Authority is expecting from economic operators, the aim sought by them, and which features may be offered by economic operators which are acceptable to the Contracting Authority and which will achieve this aim.

d) Incorporated Hygienic Seal

The Board refers to the Tender Document, particularly Clause 2.9.1. which states as follows in this respect:

"The column shall be placed on a solid flat surface with <u>incorporated hygienic seal</u> ensuring that the system is steady and unable to topple over under any event The base shall be completely flat and adherent to the floor and shall have a perimeter seal to prevent liquid collection under the base and to ensure better stability of the operating table during use."

On this point too, witnesses with vast experience in the field who testified before this Board disagreed on whether the Appellant could satisfy this requirement. The Appellant's witness Ms Stuermer testified that from her experience in the field she may confirm that only one economic operator in the market could fulfil this requirement as stipulated in the Tender Document (not the Appellant), whilst Ing. Attard Montalto on the other hand testified that the Appellant's model satisfies what the Contracting Authority is after.

The Board deems that this ambiguity must necessarily be eliminated by the Contracting Authority.

Therefore, the Contracting Authority is hereby being ordered to amend Clause 2.9.1. if this is necessary, but more importantly to issue a clarification note to explain what is meant by *"incorporated hygienic seal",* the aim sought by the hygienic seal, what is meant by 'incorporated', and what types or kinds of this hygienic seal may be offered by economic operators which are acceptable to the Contracting Authority and which will achieve this aim.

The Appellant, in final submissions argued that this Board must cancel the tender procedure because of all the shortcomings and suggested that the call for competition violates the law.

This Board refers to Regulation 262(1)(e) of the PPR which states as follows:

"to cancel the call for competition on the basis that the call for competition is in violation of any law or is likely to violate a particular law if it is continued"

From the evidence as brought before this Board, and from a thorough review of the Tender Document, this Board holds that there is no indication, in the slightest, that the call for competition violates any law or is likely to violate a particular law in case it is continued. This Board is not convinced that there exist the circumstances contemplated at law to merit the cancellation of this tender procedure, and whilst it is not this Board's duty to *"save"* a tender procedure, in these particular circumstances there is likewise no reason to discard it altogether by cancelling the tender procedure.

Therefore, the Appellant's grievance is being upheld partially in line with the above considerations.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to reject the Appellant's second and third grievances, to limitedly uphold the Appellant's first grievance and consequently orders the Contracting Authority to **within fourteen (14) running days from the date of this decision**:

a) clarify to all economic operators precisely the acceptable weight in the 0-position and re-issue the clause so amended;

b) amend Clauses 1.2.1. and 1.2.2. if this is necessary, but more importantly to issue a sufficiently clear and detailed clarification note to define and specify what smart features the Contracting Authority is expecting from economic operators, the aim sought by them, and which features may be offered by economic operators which are acceptable to the Contracting Authority and which will achieve this aim;

c) amend Clause 2.9.1. if this is necessary, but more importantly to issue a sufficiently clear and detailed clarification note to explain what is meant by *"incorporated hygienic seal",* the aim sought by the hygienic seal, what is meant by 'incorporated', and what types or kinds of this hygienic seal may be offered by economic operators which are acceptable to the Contracting Authority and which will achieve this aim.

In terms of Article 267 of the Public Procurement Regulations, Subsidiary Legislation 601.03, this Board hereby establishes the new tender submission date as Wednesday 3rd June, 2026 by noon.

The Board further upholds the Appellant's fourth grievance and orders that the deposit paid by the Appellant be refunded in full without delay.

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

Wednesday 29th April, 2026.