

PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2234
Tender Reference Number SPD5/2025/034
Tender Name “Tender for the Provision of Internal Audit Services to the Local Government Division”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 30th April, 2026 to hear the appeal as filed by the appellant NOUV Audit Ltd (hereinafter the ‘Appellant’) dated 11th March, 2026 (with a stamp dated 13th March, 2026), and after taking cognisance of:

The tender document for the ‘Tender for the Provision of Internal Audit Services to the Local Government Division’ (hereinafter referred to as the “Tender Document”);

The minutes of the proceedings dated 30th April, 2026 which are being reproduced hereunder:

“PUBLIC CONTRACTS REVIEW BOARD

Case 2234 – Objection- SPD5/2025/034 – Provision of Internal Audit Services to the Local Government Division.

The Tender was issued on the 15th January 2026, and the closing date was 5th February, 2026.

The estimated value of the tender, excluding VAT, was €60,000.00.

On 13th March 2026, Nouv Audit Ltd., lodged an appeal against the Local Government Division (Ministry for Culture, Lands and Local Government), in accordance with Regulation 270 of the Public Procurement Regulations.

On the 30th April 2026, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Maria Cardona and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €400 was paid.

There were four bids.

The attendance for this public hearing was as follows:

Appellant – Nouv Audit Ltd

*Dr Mark Vassallo – Legal Representative
Mr Andrew Naudi – Company Representative
Ms Jennifer Vella – Company representative*

Contracting Authority – Local Government Division (Ministry for Culture, Lands and Local Government)

Dr Daniel Inguanez – Legal Representative

Ms Claire Bugeja – Chairperson

Ms Vanessa Azzopardi – Evaluator

Mr Joseph Tabone – Evaluator

Mr Duncan Busuttil – Evaluator

Ms Jeanette Abdilla – Secretary

Dr Mariella Silvio – Contracting Authority Representative

Opening Statements

The Chairperson welcomed the parties present and formally opened Case Number 2234 in the records of the PCRB. The Chairperson identified the Appellant as, Nouv Audit Ltd., the Contracting Authority as the Local Government Division (Ministry for Culture, Lands and Local Government).

Initial Submissions

The Chairperson commenced the hearing by stating that the Board is delivering a decree regarding the appellant’s request for information dated 18th March 2026.

*“That this Board, after having considered the requests made, deems that the information requested by the Appellant may be produced by members of the Evaluation Committee during their testimony before this Board, **this provided that by doing so the Evaluation Committee shall not divulge any confidential and sensitive information pertaining to third parties and their bids.**”*

Therefore, this Board considers that in the circumstances the requests as postulated are untimely and are thus being rejected.”

Dr Thomas stated that the appellant, to strengthen his arguments, can ask the Evaluation Committee questions, provided that they do not divulge technical information.

Dr Mark Vassallo referred to a preliminary plea filed by the appellant company, wherein the appellant company requested this Board to declare the reply filed to this appeal as null and to remove the reply from the acts of this appeal. The reply was presented and signed by the Evaluation Committee and not by the Contracting Authority.

The Chairperson stated that the Board is precluded from giving a preliminary decision. The Board will give its decision in its final judgment.

Dr Vassallo said that the issue is that if the reply is null, the course of the appeal would be different from if the reply is not null. He mentioned that if the Board does not make a preliminary decision, this would not be a problem.

Dr Thomas said that the Board was precluded, since there are sentences in the appeal that state so, but she understood the point raised by the appellant. The Board stated that either way, this does not preclude it from being assisted today and hearing submissions.

Dr Vassallo stated that whether the reply will remain in the acts or not, he believes they should know before the submissions, but it is for the Board to decide.

Dr Inguanez stated that they have no witnesses to produce. In truth, for the appellant's exception, the issue is whether they simply file the answer.

Dr Vassallo replied that after he saw the reply, he also stated that he would not produce witnesses. They only wished to deal today with the filing or otherwise of the reply. Even for the other side, they should know whether the reply is to form part of the acts, but in the meantime, he would not interfere with the Board, although he felt that this is the correct approach.

The Appellant minuted: "Dr Mark Vassallo għall appellatant jecepixxi in-nullita tar-risposta stante illi giet ipprezentata mill-kumitat tal-Evalwazzjoni u mhux mill-Awtorita Kontraenti".

The Contracting Authority: "Dr Daniel Inguanez għall Awtorita Kontraenti jirribatti din l-eccezzjoni bhala 'nfondata fi dritt u x'se jigi 'ttrattat".

Dr Vassallo said that this was not an interim decision. This concerns the admissibility of a reply. He was not asking for a preliminary sentence, but for a decree on a decision that can be given now. He mentioned that when dealing with a witness, the Board would not allow the witness to give evidence and then decide afterwards.

The Chairperson stated that whether the Board decides that the reply was not correctly submitted or otherwise, the Board will not preclude the parties from participating. The Board will hear what all parties have to say and then give one judgment.

Both parties indicated that they have no witnesses to present and will proceed only with final submissions.

Final Submissions

Final Submissions by Dr Mark Vassallo (for the appellant)

Dr Vassallo started his final submissions by stating that he saw the reply of the Evaluation Committee, and although it remains to be seen whether it will remain in the acts or not, at this stage he was assuming that this was the reply of the Contracting Authority.

They had emphasized section 1, Instructions to Tenderers, referring to the document forming part of Note 3, and the list of documents under Article C, Article 5C, which are part of Note 3.

There is the Tenderer's Technical Offer Form, which forms part of the appeal and was uploaded void. This is not being contested.

There is also reference to the GDPR questionnaire and technical offer, and both are marked as Note 3. Moreover, a paragraph states, and he quotes:

"Kindly note that further to submit the Technical offer form and the GDPR will render the bid non-compliant and thus will not be considered any further".

There is no doubt that an error, a genuine error, was committed. When the technical offer document was uploaded, instead of uploading the completed form, the sample form was uploaded, which contained no information. It was void.

The appeal is based on this, since the Contracting Authority asked for a clarification as per Regulation 62 regarding the GDPR questionnaire, and both documents are classified under Note 3.

During the consideration of this tender, the Contracting Authority requested a clarification regarding the GDPR questionnaire. What precluded the Contracting Authority from requesting a clarification regarding the technical form? The Contracting Authority should have acted equally and should have requested a clarification about the technical form.

Since it is evident that this was a mistake and a clerical error, a clarification should have been requested as to whether the void document was submitted purposely or by mistake. This would not have negatively affected the other bidders.

Strictly speaking, the contents requested in the technical offer form would not have benefited either bidder. Between the preferred bidder and the appellant's bid, there is a difference of €13,000. Dr Vassallo asked whether it is in the public interest to accept an offer that costs €13,000 more because the Contracting

Authority did not request a clarification as per Regulation 62, as it did for another document of the same nature under Note 3.

Since a clarification was requested for the second document, the GDPR questionnaire, they cannot then state that the offer in the administrative stage was non-compliant. At the very least, non-compliance should have been identified before the clarification, not after.

Dr Thomas asked for clarification on whether the clarification requested on the GDPR questionnaire involved correcting something or clarifying something already included.

Dr Vassallo replied that something was clarified which was not in the questionnaire, but he argued that if a clarification can be requested for one document under Note 3, then another clarification could also have been requested for a different document under the same note.

He referred to Regulation 62 of the Public Procurement Regulations and quoted:

“Where the information or documentation to be submitted is or appears to be incomplete or erroneous or where specific documents are missing, the Contracting Authority in terms of procurement may request economic operators concerned to submit supplement clarify or complete the relevant information or documentation within the appropriate time limit”.

Dr Vassallo stated that once the Authority triggered Regulation 62 and requested a clarification on the GDPR form, it should also have requested clarification on the technical form.

Final Submissions by Dr Daniel Inguanez (for the Contracting Authority)

Dr Inguanez stated that with regard to the preliminary plea raised, the reply was presented on the letterhead of the Local Government Division, which is the Contracting Authority, and was signed by the Evaluation Committee. There is no specific form required for filing an appeal or a reply; these may be presented in the form of a letter. This should not give rise to nullity. The Evaluation Committee represents the Contracting Authority, and this should not invalidate the reply.

The procedure before the PCRB does not strictly apply all regulations of the Code of Organisation and Civil Procedure applicable in the Law Courts. It is a more informal procedure. There is no requirement to be represented by a lawyer, and both appeals and replies depend on the form prescribed by law.

Evaluators are public servants within the Contracting Authority, chosen by the Permanent Secretary.

A member of the Evaluation Committee may give evidence and respond to submissions.

The reply was from the Contracting Authority, which has juridical personality under the Public Administration Act. There are two differences between the GDPR questionnaire and the Technical Offer:

- 1. The GDPR questionnaire had content submitted which required clarification. The Evaluation Committee issued a clarification note because two forms were requested—one under Eligibility Criteria (Section A, page 4 of the Tender Document).*
- 2. The GDPR questionnaire under Section C forms part of the Specifications Offer (page 6 of the Tender Dossier). Under Specifications, the GDPR was marked as Note 3, whereas under Section A (page 4) it was marked as Note 2, where clarification can be requested.*

The Tender Dossier is divided into Eligibility (Section A), Grounds for Exclusion (Section B), and Technical Offer (Section C).

The procedure is as follows: first, eligibility of all bidders is assessed; if non-compliant, the bid stops there. If compliant, it moves to exclusion grounds; if excluded, the bid stops there.

The appellant had missing information and was asked for clarification. Under exclusion grounds, there were no issues, and the process moved on to the technical offer, where a void form was found. This is marked as Note 3. A technical form was submitted, but it was completely void.

Dr Inguanez referred to two judgments delivered by this Board, namely Appeal No. 2174 (5/12/2025) and Appeal No. 2187 (1/12/2025).

In both cases, there was a similar situation where a form was submitted void. Regulation 62 refers to errors, obvious clerical errors, or misinformation, but a void form cannot be considered equivalent to a clerical error.

If a tender is missing the technical offer, it cannot be evaluated and a clarification cannot be requested.

Dr Thomas asked whether the GDPR questionnaire consists of two separate forms.

Dr Inguanez replied in the affirmative.

The Chairperson of the Evaluation Committee explained that there are two separate forms: Section A (Eligibility Criteria) and Section C (Specifications).

Dr Inguanez concluded that the clarification was issued on Section A of the GDPR questionnaire. He added that no bidder can be given the opportunity to change their bid after the closing deadline, because after prices are known, one could submit a different technical offer or alter its modalities.

Conclusion of the Hearing

With no further arguments presented, Chairperson Dr Ana Thomas thanked the parties and formally concluded the session."

The written pleadings as filed by NOUV Audit Ltd dated 11th March, 2026 (with a stamp dated 13th March, 2026, together with proof of payment of a deposit in the amount of €400, wherein it held as follows:

"1. This objection is being filed on behalf of NOUV Audit Ltd. (hereinafter referred to as "the Objector") in terms of the provisions of the Public Procurement Regulations (Subsidiary Legislation 601.03) following the decision communicated by the Contracting Authority through the Sectoral Procurement Directorate on 6 March 2026 in relation to Tender SPD5/2025/034 concerning the provision of internal audit services to the Local Government Division.

2. By means of the said communication, the Contracting Authority informed the Objector that its bid had been declared technically non-compliant on the basis that the Tenderer's Technical Offer Form - Questionnaire had been submitted without being duly completed and that consequently the contract was recommended for award to another bidder.

3. The Objector respectfully submits that the decision to exclude its bid from further evaluation is unlawful, disproportionate, procedurally inconsistent, and contrary to the principles governing public procurement procedures.

4. The Objector therefore respectfully requests the Board to review and set aside the evaluation decision taken by the Contracting Authority for the reasons set out below.

5. The Objector submits that the Technical Offer Form was inadvertently uploaded without the intended content due to an administrative error during the electronic submission process through the Electronic Public Procurement System.

6. The omission was therefore purely clerical in nature and resulted from an administrative uploading error rather than from any intention on the part of the Objector not to submit a technical offer.

7. The Objector submits that this type of administrative error constitutes precisely the type of situation for which the clarification mechanism provided under the Public Procurement Regulations was designed.

8. Regulation 62 of the Public Procurement Regulations expressly provides that where information or documentation submitted by economic operators appears to be incomplete or erroneous, the contracting authority may request the economic operators concerned to submit, supplement, clarify

or complete the relevant information within an appropriate time limit, provided that such requests are made in compliance with the principles of equal treatment and transparency.

9 The purpose of the clarification mechanism provided under the Public Procurement Regulations is to prevent disproportionate exclusions resulting from minor administrative errors that can be remedied without altering the substance of the tender.

10. The Objector further notes that the Contracting Authority itself activated the clarification procedure during the evaluation process.

11. In fact, the Evaluation Committee formally requested the Objector to rectify and clarify certain information contained in the GDPR Questionnaire forming part of the documentation submitted with the bid.

12. By means of that communication, the Objector was granted five working days to rectify the identified shortcoming and to upload the requested information through the Electronic Public Procurement System.

13. The Objector submits that once the Contracting Authority decided to activate the clarification procedure and to allow rectification of certain elements of the bid documentation, it was required to apply such procedure in a consistent and nondiscriminatory manner in respect of comparable administrative omissions.

14. The decision to allow rectification of certain documents forming part of the bid while at the same time excluding the Objector on the basis of another administrative omission constitutes an inconsistent and unequal application of the clarification procedure and is therefore contrary to the principles of equal treatment, proportionality, transparency, and fair competition governing public procurement procedures.

15. The Objector further submits that if the alleged omission relating to the Technical Offer Form were truly considered to render the bid automatically non-compliant, the Contracting Authority ought to have rejected the bid immediately rather than proceeding to request clarifications relating to other elements of the technical submission.

16. The fact that the Contracting Authority proceeded to evaluate the Objector's bid and to request clarifications in relation to other elements of the technical documentation demonstrates that the bid was considered capable of clarification and that the evaluation process was still ongoing.

17. In such circumstances, the failure to extend the same clarification opportunity with respect to the Technical Offer Form constitutes a procedural irregularity which materially affected the fairness and consistency of the evaluation process.

18. The Objector further notes that the tender documentation itself contributed to procedural ambiguity.

19. During the tender procedure the Contracting Authority issued a clarification note informing prospective bidders that the Key Expert Forms and the Technical Offer Form Questionnaire had not originally been included in the tender documentation and were subsequently uploaded on the electronic procurement platform.

20. The Objector submits that the late availability of these documents created an element of procedural uncertainty for bidders and reinforces the argument that any administrative omission relating to the form should have been treated as a clarifiable matter rather than as a ground for automatic exclusion.

21. The Objector further notes that the tender documentation itself contains provisions allowing the Contracting Authority to request clarifications on submitted information during the evaluation stage.

22. In light of these provisions, the Objector reasonably expected that any administrative shortcomings identified in the submitted documentation would be addressed through the clarification procedure envisaged by the tender documentation itself.

23. The Objector further submits that the exclusion of its bid resulted in a manifestly disproportionate outcome which is also detrimental to the public interest.

24. The Objector's financial offer amounted to €31,800 excluding VAT, whereas the contract was recommended for award to another bidder for €45,000 excluding VAT.

25. The difference between the two bids amounts to €13,200, representing a significant additional expenditure of public funds.

26. While the Objector acknowledges that compliance requirements must be respected, the exclusion of the most economically advantageous offer on the basis of a rectifiable administrative error undermines the fundamental objective of public procurement procedures, namely the achievement of best value for money in the use of public funds.

27. The Objector respectfully submits that allowing clarification of the Technical Offer Form would not have altered the substance of the bid, would not have conferred any competitive advantage on the Objector, and would have ensured the preservation of effective competition within the procurement procedure.

28. The Objector further respectfully submits that the principles of proportionality and good administration require that contracting authorities exercise their discretionary powers in a manner which promotes competition and avoids unnecessarily restrictive interpretations of tender requirements.

29. In the present case the failure to allow clarification of a clerical uploading error constitutes a rigid and disproportionate application of the tender requirements.

30. In light of the foregoing, the Objector submits that the decision to declare its bid noncompliant was procedurally inconsistent, disproportionate, and contrary to the Public Procurement Regulations as well as the general principles of equal treatment, transparency, proportionality, and sound financial management.

31. The Objector therefore respectfully requests the Board to declare that the exclusion of the Objector's bid was unlawful and procedurally defective.

32. The Objector further respectfully requests the Board to set aside the evaluation decision issued by the Contracting Authority and to order the re-evaluation of the Objector's bid following the opportunity for the Objector to clarify or complete the Technical Offer Form.

33. The Objector remains ready to submit the fully completed Technical Offer Form immediately upon request and reiterates that the omission resulted solely from an administrative uploading error.

The Objector kindly requests that receipt of this objection be formally acknowledged.”

The written reply as filed on the 24th March, 2026 (hereinafter the ‘Contracting Authority’) wherein it held as follows:

“Subject: Formal Objection to Award Decision by NOUV Audit Ltd

The evaluation Committee is hereby providing a reasoned letter of reply concerning the objection raised in relation to the tender SPD5/2025/034 for the Provision of Internal Audit Services to the Local Government Division by NOUV Audit Ltd.

The procedure adopted by the Evaluation Board throughout the tender process was in strict accordance with the published tender documentation. The evaluation was conducted sequentially, beginning with the administrative requirements, followed by the technical submissions, and concluding with the financial offers. This structured approach ensured both transparency and fairness for all participants. To clarify, any requests for clarifications/rectifications were made during the administrative evaluation phase. This was necessary to address any administrative discrepancies and to allow bidders to rectify or clarify points where possible, in line with the tender rules.

Once the Evaluation Committee proceeded to assess the technical submissions, it should be noted that no further clarifications or rectifications could be sought. This is because the technical document in question is designated as a Note 3 document, as defined in the published tender documentation.

SECTION 1-INSTRUCTIONS TO TENDERERS

Article 5. Selection and Award Requirements

(C) Specifications

(i) Tenderer's Technical Offer in response to specifications to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. (Note 3). The Technical Offer shall consist of the submission of a filled-in:

- *Tenderer's Technical Offer Form - Questionnaire (Note 3)*
- *GDPR Questionnaire: Technical Offer (Note 3) Kindly note that failure to submit the Technical Offer Form - Questionnaire (Note 3) and the GDPR Questionnaire: Technical Offer (Note 3) will render the bid non-compliant and thus will not be considered any further.*

Note 3 documents are final and must be submitted as originally required; they cannot be resubmitted or amended after the tender closing date. This stipulation was strictly adhered to by the Evaluation Committee.

*Yours faithfully,
Evaluation Committee”*

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 one (1) main grievance, and raised an additional plea regarding the admissibility of the Contracting Authority's reply as filed.

A. The Reply As Filed

Dr Mark Vassallo for and on behalf of the Appellant minuted a request for this Board to declare the reply filed in the acts of this appeal as inadmissible based on the fact that it was not the Local Government Division *qua* Contracting Authority but that it was the Evaluation Committee which lacks legal and juridical personality who filed a reply. Furthermore, Dr Vassallo asked this Board to discard the reply in its entirety as it is null.

The Contracting Authority here contends that the proceedings before this Board are more informal than that of the Courts of Law, that the law speaks of a reasoned letter without the need of it being signed by a lawyer. Dr Inguanez further submitted that the reply was typed on the letterhead of the Contracting Authority but signed off by the 'Evaluation Committee' which is part and parcel of the Contracting Authority having a separate legal and juridical personality as per the Public Administration Act.

On this point, this Board refers to Regulation 276(c) of the Public Procurement Regulations, Subsidiary Legislation 601.03 of the Laws of Malta (hereinafter the 'PPR'), which states that:

“the contracting authority and any interested party may, within ten calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government's e-procurement platform, file a written reply to the appeal.”

This Board finds that from a review of the reply as filed on the letterhead of the Contracting Authority, although it was stated that the reply was for the Evaluation Committee, there is no doubt that this was intended to be the formal reply by the Contracting Authority to this appeal. This Board declares that whilst it would have been more ideal had the reply been clearer, there is no doubt that this was the reply of the Contracting Authority as confirmed by the Contracting Authority's legal representative Dr Inguanez during the hearing held before this Board. It would have been different had the 'Evaluation Committee' insisted on being represented and recognised as an interested party before this Board instead of the Contracting Authority. As correctly pointed out by the Contracting Authority, the loose wording as found within the PPR regarding the "written reply" which may be filed by a contracting authority in terms of Regulation 276(c) puts no obligation on the reply being signed, by a lawyer or otherwise, and therefore this rule cannot be imposed on parties if it finds no comfort at law.

Therefore, the Appellant's request to declare the Contracting Authority's reply as inadmissible is unfounded and is hereby being rejected.

B. Clarification Should Have Been Sought

The Appellant's one and main grievance relates to the fact that during the tender evaluation process the Tender Evaluation Committee sought a clarification on the GDPR Questionnaire submitted by

the Appellant, and did not use the same metric to ask for a clarification on the Technical Offer Form, both of which are classified under Note 3.

The Contracting Authority on the other hand argues that in this procurement process, each economic operator was bound to produce two (2) different and distinct GDPR Questionnaire's one under Section 5(A)ii) relating to eligibility criteria (classified as Note 2) on Page 4 of the Tender Document, and the other under Section 5(C)(i) as part of the technical offer specifications (classified as Note 3) on Page 6 of the Tender Document.

From a quick overview of the Tender Document, this Board finds that the Contracting Authority is wholly correct in submitting that economic operators were in fact requested to submit two separate and distinct GDPR Questionnaires. Per the sample GDPR questionnaires available with the Tender Document, it immediately results that one questionnaire is entitled "GDPR Questionnaire ^(Note 2)" and consists of twelve (12) pages, whilst the other questionnaire is entitled "GDPR Questionnaire: Technical Offer ^(Note 3)" and consists of two (2) pages.

It further results to this Board, as also correctly submitted by the Contracting Authority during the hearing of this appeal, that the rectification sought by the Evaluation Committee during this tendering process was related to the GDPR Questionnaire classified as Note 2, and not regarding the GDPR Questionnaire classified as Note 3. In fact, this Board notes that the rectification was regarding 'Section 1b1', a section which only features in the GDPR Questionnaire classified as Note 2. This Board shall quote *verbatim* from the rectification request sent to the Appellant:

"Rectification required from NOUV AUDIT LTD. - TID: 000238521

Reference is made to the tender in caption, and to your offer submission to same.

*Before proceeding any further with the evaluation, the Evaluation Committee noted that with regard to the specific requirements as detailed in **GDPR Questionnaire: High Risk - All Bidders (Note 2)** and with specific reference to: -*

Section 1b1: Do you currently have a Data Protection Officer (DPO)? If yes, kindly provide information. If no, kindly quote the relevant articles/provisions from the GDPR clarifying why a Data Protection Officer is not required.

Kindly update Section 1b1 of the GDPR Questionnaire: High Risk with the requested information and upload it again through the appropriate Electronic Public Procurement (ePPS) module.

Since the GDPR Questionnaire' documentation falls under the terms of "Note 2' *to Article 5 of the Instruction to Tenderers, you are hereby being given the opportunity to rectify these shortcomings within five (5) working days of notification, as per the stipulated deadline as stated in the Electronic Public Procurement (ePPS).*

Tenderers who fail to rectify the shortcoming identified in this communication shall be deemed to be non-compliant." (Added emphasis of the PCRB).

Therefore, it is misleading for the Appellant to argue that the Evaluation Committee should have asked for a clarification on the Technical Offer Form which is Note 3 given that the Evaluation Committee had already asked for a clarification on the GDPR Questionnaire also classified as Note 3. The Appellant's submission in this regard is incorrect for two reasons:

- a) a clarification was never sought; it was a rectification which was sought;
- b) the rectification sought was regarding a Note 2 GDPR Questionnaire, not the Note 3 GDPR Questionnaire.

This Board must immediately underline that it is undisputed that the Technical Offer Form, the subject of this appeal, is classified as Note 3, as is also evident from the following sections of the Tender Document which state as follows:

“Tenderer’s Technical Offer in response to specifications to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. (Note 3)

The Technical Offer shall consist of the submission of a filled-in:

- *Tenderer’s Technical Offer Form – Questionnaire (Note 3)*
- *GDPR Questionnaire: Technical Offer (Note 3)*

Kindly note that failure to submit the Technical Offer Form - Questionnaire (Note 3) and the GDPR Questionnaire: Technical Offer (Note 3) will render the bid non-compliant and thus will not be considered any further.”

...

“Notes to Clause 5:

- 1. Not applicable for departmental tenders.*
- 2. Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification.*

All Rectifications are free of charge.

- 3. No rectification shall be allowed. **Only clarifications on the submitted information may be requested.** Tenderers will be requested to clarify the submitted information within five (5) working days from notification.*

Requests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained.”

Therefore, it is clear that in the circumstances, only a request for a clarification on submitted information could have been requested, as a request for a rectification was expressly disallowed by the Tender Document. What this Board must now determine is whether the mistake of the Appellant of uploading a completely empty Technical Offer Form could have been saved by requesting a clarification, or not. Here, this Board must refer to the judgment of the Court of Appeal in its Superior Jurisdiction decided on the 13th November, 2025 in the names ‘**Krypton Chemists Limited vs. Cherubino Limited**’ where the Court delves into the difference between a request for a clarification and a request for a rectification:

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

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

Established jurisprudence on this matter dictates that clarifications may only be sought on already submitted information by asking for *an explanation on* or *an interpretation of* that submitted information, and that this procedure cannot be used to submit new information or to change the substance of the offer.

In this regard, this Board finds that it would have made no sense for the Evaluation Committee to request a clarification on a completely empty Technical Offer Form. *Lapsus* or not, had the Evaluation Committee allowed the Appellant to correct its mistake, or rather its complete and absolute omissions, it would have in truth been allowing the Appellant to *rectify* his offer and submit new information altogether (by replacing the Technical Offer Form or by filling in the empty replies). The Evaluation Committee would have been incorrect in doing so as it would have placed other economic operators at a disadvantage by not ensuring a level playing field! A request for clarification could have never cured the Appellant’s *lapsus*, it was only a rectification of the Technical Offer Form as submitted which could have cured it.

Therefore, this Board finds that the Evaluation Committee was not incorrect in its determination not to request a clarification regarding an empty Technical Offer Form.

In view of the above considerations, this Board finds that the Appellant’s grievance is not justified and is hereby being rejected.

DECIDE

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

The Board further decides not to re-imburse the deposit paid by NOUV Audit Ltd.

Dr Ana Thomas
Chairperson

Dr Maria Cardona
Member

Mr Lawrence Ancilleri
Member

Monday 4th May, 2026.