

**The Public Contracts Review Board (info.pcrb@gov.mt)**  
Notre Dame Ditch  
Floriana

25<sup>th</sup> May 2026

**Letter of Objection of Drugsales Limited**

Re: CT2231/2025 (Tender for the supply of Anti-Haemophilia Factor VIII 1000 I.U.)

Dear Sirs/Madams,

We write on behalf of **Drugsales Limited (C-1780)** of Ferreri Buildings, Idward Street, Ta' Qali National Park, Attard with reference the tender in subject.

The tender regards the supply of Anti-Haemophilia Factor VIII 1000 I.U.

The sole award criterion is the price, whereby the contract is to be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria.

Drugsales Limited submitted the best offer, and the only offer, for the said tender.

By means of a letter dated 15<sup>th</sup> May 2026, the contracting authority informed Drugsales Limited that the said tender was being cancelled.

Drugsales Ltd feels aggrieved by the decision of 15<sup>th</sup> May 2026 and is submitting this appeal on the following grounds:

**First Objection: Lack of Explanation as to the Alteration in Economic or Technical Parameters of the Project**

1. The letter dated 15<sup>th</sup> May 2026 states that the contracting authority came up with revised specifications for the procurement of Anti-Haemophilia Factor VIII 1000 I.U., and that therefore this resulted in an alteration of the economic or technical parameters of the project in terms of Section 18.3(b) of the General Rules Governing Tenders.
2. It is to be noted that although the letter dated 15<sup>th</sup> May 2026 initially claims that the Evaluation Committee sought clarification regarding two particular technical specifications, the letter proceeds to state that the contracting authority revised the specifications and simply cancels the tender in terms of Section 18.3(b) alleging a



change in technical specifications, without explaining how and in what manner the said parameters have allegedly and actually changed.

3. Regulation 15(3) states in unequivocal terms that “the decision leading to the cancellation of a procurement procedure has to be made in writing and must include the findings and the reasoning that led to this decision.”
4. Drugsales Limited humbly submit that it is not sufficient to simply refer to Section 18.3(b) of the General Rules Governing Tenders and to claim that there has been a change in the economic or technical parameters of the project. The contracting authority should justify and explain how and in what manner the said technical or economic parameters have effectively changed, and this also in light of the fact that bidders have to a right to contest and appeal from a cancellation decision, and this in terms inter alia of Regulation 15 of the Public Procurement Regulations.
5. This principle has been confirmed also by the Court of Appeal in the case **Borg Bros v. Ministeru għall-Familja u Solidarjetà Soċjali** et decided on the 27<sup>th</sup> June 2014, whereby it was stated:

Ovjament, darba li l-awtorità konċernata ma tatx spjegazzjoni fl-ittra tal-irtirar, min kellu interess kellu jressaq appell quddiem il-Bord biex isir jaf, kif kellu dritt, x'wassal għall-irtirar, bil-konsegwenza li l-Bord ma kellux jordna t-telf tad-depożitu li sar biex seta' jisma l-appell. L-Awtorità konċernata agixxiet strettament mal-liġi meta riferiet għar-regolamenti li jippermettula tirtira sejha għall-offerti, però, min hu interessat għandu dritt jikkontesta d-deċizzjoni u jitolb sħarriġ għadizzjarju tad-deċizzjoni li wasslet għall-irtirar (ara **Hospital Ingenieure Krankenkenhaustechnik Plannings GmbH v. Stadt Wien**, deċiża mill-Qorti Ewropea tal-Gustizzja fit-18 ta' Gunju 2002), u biex dan ikun jista' jsir, trid tinghata informazzjoni dwar x'wassal għall-irtirar. Darba dan inghata quddiem il-Bord, u s-soċjetà appellanti kienet għustifikata titlob spjegazzjoni, ma għandhiex tbatli l-ispejjeż tal-proċeduri quddiem il-Bord. Dan ma jfissirx li dak li sar kien null, iżda biss li s-soċjetà appellanta kienet għustifikata li tressaq ilment quddiem il-Bord. Kien f'dan il-kuntest li l-Bord hass li jirrimarka li kien ikun aħjar li kieku l-awtorità konċernata tati “the specific reasons to all bidders for the cancellation of the tender.”

6. According to law, bidders have a right to contest such cancellation decisions, and therefore also a right to know the reasons for the said decision in order for the bidder and ultimately for this Board to assess whether such decision was justified or otherwise.



7. Drugsales Limited therefore firstly requests clarity regarding how and in what manner the technical or economic parameters of the procurement have allegedly changed.
8. Drugsales Limited reserves the right to amend its objection including to add further objections, after receiving the said clarity.

**Second Objection: The Cancellation of the Tender is not Justifiable**

9. Drugsales Limited has a right according to law to appeal from a cancellation decision, and this in terms inter alia of Regulation 15 of the Public Procurement Regulations, and this Board has the right and the obligation according to law, to review and assess whether the said reason for cancellation is in fact justifiable.
10. This is enshrined in the law, and cancellations have in fact been overturned when cancellations were not motivated or justifiable, inter alia one refers to **Ragonesi & Company Ltd v. Korporazzjoni ghas-Servizzi tal-Ilma** decided by the Court of Appeal on the 29<sup>th</sup> August 2023, and **Agius Stone Works Limited v. Kunsill Lokali Valletta u d-Direttur Ġenerali tal-Kuntratti** decided on the 8<sup>th</sup> April 2025.
11. This second objection (as is the third objection) is based on certain assumptions being made by the objector, and this in light of the fact that the letter dated 15<sup>th</sup> May 2026 doesn't clearly explain how and in what manner the technical parameters of the project have been altered, as already stated in the first objection.
12. The letter dated 15<sup>th</sup> May 2026 stated that the Evaluation Committee was recommending "the issuance of a new procurement procedure incorporating clear, definitive, and unambiguous technical specifications".
13. This statement leads the objector to assume that the technical and economical parameters of the project have not in fact changed, and that the contracting authority still intends to acquire the same identical product being Anti-Haemophilia Factor VIII 1000 I.U.
14. This means that effectively there is no change in the economic or technical parameters of the project.
15. The objector firstly notes that the grounds for cancellation of a tender are limited and specified at law, and are exceptions to the continuation of the procurement process. Regulation 15 of the Regulations listed two specific circumstances, but other grounds may be listed in the procurement documents as in fact are listed in the General Rules governing Tenders. Jurisprudence has confirmed inter alia in the cases Agius Stone

Works Limited v. Kunsill Lokali Valletta u d-Direttur Ġenerali tal-Kuntratti<sup>1</sup> and Polaris Marine Services Co Ltd v. Direttur Ġenerali - Dipartiment tas-Sajd u l-Akkwakultura et<sup>2</sup> that the contracting authority may refer to such grounds listed in the General Rules governing Tenders, and that bidders have a right to appeal from the said cancellation.

16. Given that the contracting authority referred specifically to Section 18.3(b) of the General Rules to cancel an ongoing procurement procedure, it is specifically and only this ground that the cancellation may be assessed, and it is the contracting authority that has the onus to explain and justify the said ground for cancellation.
17. It would in fact appear that the economic or technical parameters of the project are not being altered, but simply that the contracting authority intends to more clearly define certain technical specifications. With all due respect, this does not qualify as a change in the technical or economic parameters of the project.<sup>3</sup>
18. The contracting authority claims that it is cancelling in order to issue a new procedure incorporating clear, definitive, and unambiguous technical specifications. However, there was never any ambiguity or difficulty with the tender specifications as drafted, whether in the past or in relation to this specific tender.
19. The objector points out that previous tenders issued by the contracting authority for Anti-Haemophilia Factor VIII have consistently had the same identical technical specifications regarding "high purity" and "RiCof ratio not greater than 1:2" as those contained in this tender CT2231/2025.
20. Such tenders have been successfully issued, awarded and then supplied in terms of such tenders, without any issues, including awards to the following manufacturers of plasma derived factor VIII: Takeda, Octapharma, Kedrion and BPL Ltd.
21. These tender procedures have involved the participation (and eventual award) not only to Druggales Ltd, but also to its competitors, including PAC3, George

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<sup>1</sup> 8<sup>th</sup> April 2026, Court of Appeal

<sup>2</sup> 30<sup>th</sup> July 2024, Court of Appeal

<sup>3</sup> Note that if the contracting authority is seeking to amend or impose new technical specifications such as to restrict or limit competition, then Druggales Limited reserves the right to take appropriate action including to contest such new restrictive conditions in limitation of competition.

**Borg Barthet, Octapharma, Vivian Commercial, AM Mangion, Europharma, and Target Healthcare.**

22. **Reference is made to just some of these successfully awarded tenders from the last few years, which were drafted in the same manner as this current tender:**

- a. ERU2509U23 - Anti-Haemophilia Factor VIII x 1000IU (IPV007)
- b. ERU1705U23 - Anti-Haemophilia Factor VIII x 1000IU (IPV007)
- c. CT 2298/22 - Anti-Haemophilia Factor VIII x 1000IU (IPV007)
- d. ERU 0204U20 - Anti-Haemophilia Factor VIII x 1000IU (IPV007)
- e. CT 2242/19 – Anti-Haemophilia Factor VIII x 1000IU (IPV007)

23. It is also relevant to note that with specific reference to this tender CT 2231/2025:

- a. **No clarification requests were submitted** by any prospective bidders.
- b. **No pre-contractual objections were submitted** by any prospective bidders
- c. The tender was published for circa 5 weeks between date of publication and closing date, giving ample time for any alleged ambiguities in specifications to be dealt with by any interested party, whether by prospective bidders or by the contracting authority itself.

24. Although **procurement documents should be written in clear and unambiguous terms, the law states that this is in order “to enable all interested parties to understand properly the terms and conditions of the process”**

25. With reference to this Regulation 38 of the Public Procurement Regulations, the Court of Appeal in the case **Ragonesi & Company Ltd v. Korporazzjoni għas-Servizzi tal-Ilma** stated with reference to **Wienstrom GmbH v. Republik Österreich et:**

*33. Dan il-prinċipju jinsab imsaħħaħ ukoll fil-gurisprudenza tal-Qorti tal-Gustizzja tal-Unjoni Ewropea fejn ingħad li, «the award criteria must be formulated, in the contract documents or the contract notice, in such a way as to allow all reasonably well-informed tenderers of normal diligence to interpret them in the same way» (ara EVN AG, Wienstrom GmbH v. Republik Österreich et deciża-fl-4 ta’ Diċembru, 2003)*

26. The fact that previous tenders were issued and awarded with the same identical specifications relating to “high purity” and “RiCof ratio not greater than 1:2” without any issues and the fact that no doubts or clarifications were raised by prospective

bidders in this specific tender, in and of itself clearly demonstrates that the tender specifications as drafted were clear enough for prospective bidders, and prospective bidders know full well what the contracting authority is seeking to acquire when it is seeking Anti-Haemophilia Factor VIII by means of this tender. This is a medical product that is regulated, and which is clear to all the prospective bidders.

27. It is not necessary and the contracting should not over-define a product which is already very clear and known to everyone, and this is definitely not a ground for cancellation of a tender and it is not a change in the technical or economic parameters of the project, even more so when this cancellation is being raised at such a late stage of the procurement process when no objections or requests for clarifications were raised by other parties and when Drugsales Limited has already submitted its offer publicly.

**Third Objection: The Cancellation of the Tender goes against Fundamental Principles of Public Procurement**

28. Such a cancellation of the procurement process also goes against fundamental principles of public procurement.
29. The cancellation letter suggests that the tender will simply be reissued with more clearly defined technical specifications, which means that there will be no effective change in the economic or technical parameters of the project and the prospective bidders will be bidding with the same identical products.
30. The contracting authority will re-issue the tender to just further define what it is already buying and what many suppliers are already (or have in the past) been offering and supplying to the contracting authority.
31. In this regard, if the tender is re-issued with new 'clear' specifications, the product of Drugsales Limited will presumably be in full compliance with these new 'clear' specifications and Drugsales Limited would have to bid with the same product.
32. On the other hand, competitors who would had ample opportunity to bid under this tender with the current specifications, will be re-integrated into the procurement process and be bidding with the same products that they would have bid with for this tender.
33. This is of severe prejudice to Drugsales Limited, and a serious breach of fundamental principles.



34. All suppliers had the same equal opportunity to participate in the tender. No suppliers submitted a clarification or a pre-contractual objections.
35. The tender had a specific deadline, and only Drugsales Ltd placed a bid within the deadline.
36. Drugsales Ltd bid on this tender at a value of Euro 1,253,205, which was a competitive bid and was below the Estimated Procurement Value of Euro 1,424,115.
37. It took circa seven (7) months for the tender to be evaluated, despite the fact that a) only one bid was submitted, and b) the tender specifications are identical to several previous tenders.
38. The cancellation took place after the deadline for submission, and after Drugsales Limited's bid went public.
39. If there really was any ambiguity or doubt about what was being acquired, this could have been raised by prospective bidders, or if anything the contracting authority should have addressed it *before* publication of the tender dossier or, at the latest, before submission and opening of financial offers through the issuance of clarification notes or corrigenda applicable equally to all economic operators. Instead, this did not happen, and it was only after a bid price was exposed, that the contracting authority unilaterally and internally reconsider specifications that had already been used consistently for years in previous procurement procedures for the same item, and this when there was no challenge or contestation by any competitors.
40. If this tender is cancelled and re-issued in such a way that the contracting authority will effectively be acquiring the same product (as it seems that the contracting authority is seeking to do), this is of serious prejudice to Drugsales Limited, given that the price offered by Drugsales Limited has become publicly available, which will be of benefit to competitors.
41. Should the tender be cancelled, Drugsales Limited will effectively be penalized for complying with the deadlines imposed by the contracting authority, whilst its competitors will be re-integrated into (effectively) the same procurement procedure to which they showed absolutely no interest and to which they failed to submit a bid within the deadline, and they will furthermore be placed in an unfairly advantageous position by knowing the price offered by Drugsales Limited.



42. This is a serious breach of fundamental principles of public procurement including equal treatment, proportionality and fair competition, as contained inter alia in Article 18 of Directive 2014/24/EU, Regulation 39 of the Public Procurement Regulations, and as
43. Cancelling the tender in this manner and for the reasons which seem to be raised by the contracting authority breaches such fundamental principles:
- a. Cancellation is not proportionate since
    - i. the tender and what was being acquired was clear to prospective bidders
    - ii. even if there was any ambiguity, no prospective bidders raised any clarifications or objections
    - iii. if anything the contracting authority should have clarified the alleged ambiguity earlier
    - iv. cancelling at this stage, when no one claimed any ambiguity and when Drugsales Limited already signaled its price and when the contracting authority would effectively be acquiring the same product, it certainly not proportionate.
  - b. Cancellation does not observe equal treatment, since it will allow re-integration of competitors into a procurement process to which they had shown no interest and had not submitted a bid within the deadline. All competitors had a deadline and had to abide by it.
  - c. Cancellation leads to unfair competition, since it would result in Drugsales having publicized its bid to the unfair benefit of competitors, and will reward and re-integrate competitors into a process to which they had shown no interest and had not submitted a bid within the deadline.

### Conclusion

Therefore in view of the above, and whilst reserving the right to make further submissions and present further evidence, Drugsales Limited humbly request this Honourable Board to:

- (a) Preliminarily, order the contracting authority to provide an explanation and reasons for how the technical or economic parameters of the project have been altered, in this

in light of the contracting authority's decision to cancel the said tender on the basis of Section 18.3(b) of the General Rules Governing Tenders.

- (b) Revoke the decision of the contracting authority to cancel the said procurement procedure CT2231/2025; and consequently Order that the procurement process continue as though such cancellation was not ordered, and give all opportune orders in the circumstances.
- (c) Take all such measures and give all such orders that this Board may deem necessary and opportune in the circumstances.
- (d) Order that the deposit submitted upon this appeal be refunded to Drugsales Limited.


Saving any other objections at the opportune stage, and reserving all rights and remedies at law. With costs.



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Public Contracts Review Board  
*objection*  
Temporary Receipt for Transcripts at €4 per page

Date: 25/05/26


Received from: Drugsales Ltd

the sum of: € 7,121.00 no of pages: 1

In respect of Tender: CT2231/2025

Cash:  /Cheque No: 018091

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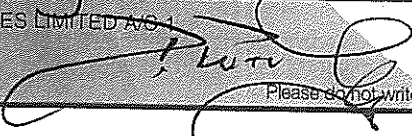



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