

PUBLIC CONTRACTS REVIEW BOARD

Case 2239 –SPD8/2025/142 – Framework Contract for the Supply and Delivery of Three Hundred (300) Metal Bins and Spare Parts for WSM Thermal Treatment Facility (ITF)

7th May 2026

The Board,

Having noted the letter of objection filed by Dr John L. Gauci acting for and on behalf of **United Equipment Co. (UNEC) Ltd**, (hereinafter referred to as “*the Appellant*”) filed on the 16th February, 2026;

Having also noted the Reasoned Letter of Reply filed by Dr Luca Zammit acting for and on behalf of **Wasteserve Malta Limited** (hereinafter referred to as “*the Contracting Authority*”) filed on the 24th February, 2026;

Having also noted the Reasoned Letter of Reply filed by Dr Sarah Rausi acting for and on behalf of **Rausi Company Ltd** (hereinafter referred to as “*the Recommended Bidder*”) filed on the 21st February, 2026;

Having heard and evaluated the testimony of the witness Mr Dylan Debono (TEC Member) as summoned by Dr John L. Gauci for and on behalf the Appellant;

Having heard and evaluated the testimony of the witness Mr Julian Rausi (Representative of *Rausi Company Limited*) as summoned by Dr Sarah Rausi for and on behalf the Recommended Bidder;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the [...] hereunder-reproduced.

MINUTES

Case 2239 – Objection – SPD8/2025/142 – Framework Contract for the Supply and Delivery of Three Hundred (300) Metal Bins and Spare Parts for WSM Thermal Treatment Facility (ITF)).

The Tender was issued on the 23rd of November 2025, and the closing date was 24th of December 2025.

The estimated value of the tender, excluding VAT, was €182,350.00

On 17th of February 2026, United Equipment Co. (UNEC) Ltd., lodged an appeal against Wasteserv Malta Limited– the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 5th of May 2026, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Dr Maria Cardona and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €912 was paid.

There were Nine bids.

The attendance for this public hearing was as follows:

Appellant – United Equipment Co. (UNEC) Ltd

Dr John L Gauci – Legal Representative.

Ms Kery Debono – Company Representative.

Contracting Authority – Wasteserv Malta Limited

Dr Luca Zammit – Legal Representative.

Mr Dylan Debono – Evaluator.

Mr Darren Charles Mifsud – Evaluator.

Mr Eman Frank Falzon – Evaluator.

Ms Joanne Camilleri – Procurement.

Mr Louis Cordina – Manager.

Ms Luana Gatt – Secretary.

Recommended Bidder – Rausi Company Ltd.

Dr Sarah Rausi– Legal Representative

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2239 in the records of the PCRB. The Chairman identified the Appellant as United Equipment Co. (UNEC) Ltd, the Contracting Authority as Wasteserv Malta Limited, and representative of the recommended bidder, Rausi Company Ltd.

The Chairman, Dr Vincent Micallef, opened the meeting by informing both parties that Dr Ing. Damien Gatt, a member of the PCRB, was participating online. Dr John Gauci for UNEC and Dr Luca Zammit for the Contracting Authority both raised no objection.

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

Initial Submissions.

Initial Submissions by Dr John Gauci (for the appellant).

This objection was made to challenge the decision of the Contracting Authority, wherein the appellant's offer was deemed not to be in conformity with the tender requirements, specifically because the swivel castors offered had a diameter of 210mm, which exceeds what clause 1.14 of the technical specifications requested.

He quoted:

"Bins shall be fitted with 4 x swivel castors with no breaks. Wheels are to be manufactured in solid nylon with a diameter of at least 200mm. Each wheel shall be designed to withhold loads of 300 kgs or higher".

The clause stated that the wheels must have a diameter of not less than 200mm. The appellant offered wheels with a diameter of 210mm. Logically, the appellant falls within the requested range. Since 200mm is the minimum, the appellant's offer of 210mm complies with the requirement. The reply of the Contracting Authority acknowledged that there was no dispute on this point.

The appellant, United Equipment Co. (UNEC) Ltd, was excluded on the basis that it was not in conformity with clause 1.14 of the specifications. It was also pointed out that there was a divergence in the technical form, as it did not specify either a minimum or a maximum diameter. This was recognised in the response by Wasteserv, who requested that the Board decide the matter.

Initial Submissions by Dr Luca Zammit (for the Contracting Authority).

Dr Zammit stated that they were ready to rest on their reply. They acknowledged the difference; however, this did not imply that the successful tender was non-compliant, nor were they rejecting the appellant's interpretation.

Initial Submissions by Dr Sarah Rausi (for the preferred bidder).

Dr Rausi stated that the tender form could not be interpreted in isolation. The tender dossier and the technical offer form must be considered together. The technical offer form was circulated via email to show precisely what is indicated in clause 1.14. Note 3 of the technical offer form, which is compulsory, cannot be excluded from the bid. The technical document was uploaded accordingly.

Clause 1.14 is clear and specifies a diameter of 200mm. It is straightforward: the question is whether the bidder satisfies this requirement or not. This is the document to be considered, not the tender dossier alone.

In this particular tender, there is a discrepancy between the tender dossier and the technical form. There is a period during which a bidder may request clarification or challenge anything unclear. This should have been done during that period, and the Contracting Authority states that such clarifications become part of the tender dossier. The clarification period lapsed, the tender was awarded, and only after not being awarded the contract did the appellant file an appeal.

This issue could have been clarified easily at the appropriate time. It is not tenable to claim lack of awareness. The tender dossier provides a range, while the technical document is specific. These are experienced bidders, yet the process is being challenged after completion.

Witness: Mr Dylan Debono (ID no. 192995M), summoned by Dr John Gauci.

Mr Dylan Debono was a member of the evaluation committee, together with Chairperson Mr Ryan Mark Cachia, Mr Darren Mifsud, and Mr Eman Frank Falzon, as the other two evaluators and Secretary Ms Luana Gatt. All members have an engineering background.

The witness explained that swivel castors are wheels attached to the skip to facilitate movement without lifting. He stated that the evaluators reviewed the documents on the ePPS and relied on them. In this case, the notes on the technical offer did not match the requirements of the same technical offer. The witness was asked to read clause 1.14 from page 17:

“Bins shall be fitted with 4 x swivel castors with no breaks. Wheels are to be manufactured in solid nylon with a diameter of at least 200mm. Each wheel shall be designed to withhold loads of 300 kgs or higher”.

The witness stated that by “*diameter of at least 200mm*” he understood this to mean a minimum of 200mm or more. The appellant submitted a diameter of 210mm, which satisfies this minimum requirement.

Dr Gauci noted that the requirement was “*for wheels to withhold loads of 300 kgs*”, which the appellant also satisfied. However, the appellant was disqualified because the technical offer on the ePPS differed, and the evaluators relied on that technical offer. He added that the technical questionnaire was linked to the technical specifications.

The Board observed that there was a discrepancy between the wording used in the tender document and that in the technical offer form and asked the witness whether he had noticed this ambiguity. The witness emphasised that they relied on the documents uploaded on the ePPS. The evaluators did not discuss the issue, as they did not notice the discrepancy.

The Board asked for their position, and the witness replied that they left the matter to the Board to determine whether a re-evaluation was necessary.

Dr Gauci asked whether a difference of 0.1mm made any technical difference. The witness responded that standardisation was the objective, including for spare parts. The witness also confirmed that he had been involved in drafting the tender.

Cross-Examination by Dr Sarah Rausi.

Dr Rausi asked the witness how the discrepancy went unnoticed. He replied that it was a genuine mistake, possibly due to lack of communication. He was asked to read clause 1.14 and the answer provided by Rausi Co. Ltd., quoting:

“Bins shall be fitted with 4 x swivel castors with no breaks. Wheels are to be manufactured in solid nylon with a diameter of at least 200mm. Each wheel shall be designed to withhold loads of 300 kgs or higher”.

The answer provided was: *‘Diameter 200mm with a load capacity of 300 kgs’*. This satisfied the requirement from every perspective, both in the tender dossier and the technical form.

Witness: Mr Julian Rausi (ID no. 17885G), summoned by Dr Sarah Rausi.

Mr Julian Rausi, Director of Rausi Co. Ltd., stated that in cases of such discrepancies, a clarification period exists to determine the exact requirements. They were required to submit the technical offer form via the ePPS, confirming all requested values and specifications against their product with the actual value.

Final Submissions.

Final Submissions by Dr John Gauci (for the appellant).

The Contracting Authority stated that the technical requirement was a minimum of 200mm, while the questionnaire form did not specify a minimum or maximum. This was a human error by the evaluation committee. The appellant was not required to seek clarification, as his offer complied with the technical specifications. Clause 1.14 required the insertion of values, and since the appellant was compliant, he should be reinstated in the process.

Final Submissions by Dr Luca Zammit (for the Contracting Authority).

Dr Zammit stated that the arguments of both parties were valid, and they would abide by the decision of the Board.

Final Submissions by Dr Sarah Rausi (for the Recommended Bidder).

The appeal was based on an alleged discrepancy. On behalf of Rausi, there was no discrepancy, as they complied with both the tender dossier and the technical form. Rausi is not reinterpreting the process; the procedure is established, and a clarification period is provided for bidders. It is not admissible to raise doubts after the award has been made.

Conclusion of the Hearing.

With no further arguments presented, Chairman Dr Vincent Micallef thanked the parties and formally concluded the session.

End of Minutes

Hereby Resolves:

The Board refers to the minutes of the Board sitting of the 5th May 2026.

Having noted the objection filed by Mr John L. Gauci for and on behalf of **United Equipment Co. (UNEC) Ltd** (hereinafter referred to as "*the Appellant*") on the 17th February, 2026, refers to the claims made by the same Appellant with regard to the tender of reference SPD8/2025/142 – Framework Contract

for the Supply and Delivery of Three Hundred (300) Metal Bins and Spare Parts for WSM Thermal Treatment Facility (ITF) listed as case No. 2239 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr John L. Gauci
Appearing for the Contracting Authority:	Dr Luca Zammit
Appearing for the Recommended Bidder:	Dr Sarah Rausi

Whereby, the Appellant contends that:

1. Introduction

This objection is filed by United Equipment Co. (UNEC) Ltd. (the "Appellant") in terms of Regulation 270 of the Public Procurement Regulations (Legal Notice 352 of 2016).

The Appellant is challenging the decision communicated on 12 February 2026 by the Sectoral Procurement Directorate, Department of Contracts, whereby the Appellant's tender was declared technically non-compliant under Tender Reference SPD8/2025/142.

The reason given for the rejection was that the swivel castors offered by the Appellant had a diameter of 210mm, and this was considered to exceed the required measurement under Clause 1.14 of the Technical Specifications.

As a result of this decision, the Appellant was excluded from the procurement procedure and the contract was recommended for award to another tenderer.

The Appellant respectfully submits that this decision is incorrect. The rejection is based on a misinterpretation of the published Technical Specifications. The Appellant's offer complied fully with the stated requirement.

For this reason, the Appellant is requesting that the Public Contracts Review Board annul the decision declaring its tender technically non-compliant and order the necessary corrective action.

II. The Relevant Technical Requirement

The present objection revolves on the interpretation of Clause 1.14 of the Technical Specifications forming part of the published tender dossier.

Clause 1.14 provides:

"Bins shall be fitted with 4x swivel castors with no brakes. Wheels are to be manufactured in solid nylon with a diameter of at least 200mm. Each wheel shall be designed to withhold loads of 300Kgs or higher."

The wording used by the Contracting Authority is precise and deliberate. The requirement is expressed in minimum terms. The wheels must have a diameter of "*at least 200mm*"

The ordinary and natural meaning of the expression "*at least*" is that 200mm constitutes the minimum acceptable dimension. It does not signify an exact measurement. It does not impose a ceiling. It does not restrict the diameter to 200mm and no more.

If the intention of the Contracting Authority had been to require a fixed diameter of exactly 200mm, the specification would have been drafted differently. The document could have stated "*diameter of 200mm*" or "*diameter of 200mm + tolerance*". It did not do so. Instead, it expressly adopted minimum threshold language.

In public procurement procedures, economic operators are bound to comply strictly with the published specifications. Equally, the Contracting Authority is bound to evaluate offers strictly in accordance with those same published specifications. The evaluation cannot introduce additional restrictions which do not appear in the tender document.

The tender dossier contains no provision which limits the wheel diameter to 200mm. There is no clause establishing a maximum dimension. There is no reference to compatibility requirements that would be affected by a slightly larger wheel. There is no tolerance clause applicable to the wheel diameter that would restrict compliance to an upper limit.

It follows that the only reasonable and objective interpretation of Clause 1.14 is that any wheel diameter equal to or greater than 200mm satisfies the requirement.

The interpretation adopted in the rejection decision effectively transforms the words "*at least 200mm*" into "exactly 200mm". Such an interpretation is not supported by the wording of the specification and introduces a restriction that was never communicated to bidders.

The technical requirement, as published, establishes a minimum threshold and nothing more.

III. The Appellant's Technical Submission and Demonstration of Compliance

In response to the Call for Tenders, the Appellant submitted its Tenderer's Technical Offer strictly in accordance with the format and requirements prescribed in the tender dossier. The TO form was completed in full and accompanied by the technical documentation requested under the relevant clauses of the Technical Specifications.

With particular reference to Item 14 of the TTO form, corresponding to Clause 1.14 of the Technical Specifications, the Appellant was required to provide the technical characteristics of the swivel castors proposed for the metal bins. The Appellant expressly declared a wheel diameter of 210mm and a load capacity exceeding 1000kg. The figure of 210mm was clearly and unequivocally inserted in the space provided within the prescribed form.

In addition to the declaration contained in the TTO form, the Appellant submitted supporting technical literature and product drawings, as required by the tender document. The submitted documentation confirms the caster diameter as 210mm and describes the materials and construction of the wheels, including their solid nylon composition and their load-bearing characteristics. The information contained in the literature is consistent with the declaration made in the TTO form.

There is no discrepancy between the narrative declaration and the technical documentation.

The Appellant therefore provided both the required declaration and the corroborating documentation. The submission was complete. It did not omit any requested information. It did not leave any relevant field blank. It did not contain alternative or conditional proposals. The dimension was clearly stated and supported.

Clause 1.14 of the Technical Specifications requires that the wheel diameter be "at least 200mm". A diameter of 210mm exceeds the minimum threshold established by the specification. It follows that the technical requirement was satisfied.

There was no deviation from the published minimum. There was no departure from the technical description requested. There was no inconsistency within the submission. The Appellant complied both formally, by completing the prescribed documentation, and substantively, by offering a product meeting the stated minimum requirement.

It is also significant that the rejection decision does not allege that the larger diameter affects compatibility, performance, safety, or any other functional requirement. The decision does not identify any operational

risk or technical incompatibility arising from the 210mm diameter. The sole reasoning advanced is that the diameter "*exceeds the required measurement*".

However, where a specification establishes a minimum threshold, exceeding that threshold cannot logically or legally amount to non-compliance. The Appellant's submission therefore satisfied the requirement as drafted and published

IV. Error in Evaluation and Misinterpretation of the Specification

The rejection of the Appellant's tender rests exclusively on the assertion that the proposed wheel diameter of 210mm "*exceeds the required measurement*". With respect, that reasoning cannot withstand scrutiny when measured against the wording of the published Technical Specifications.

Clause 1.14 clearly requires that the wheels have a diameter of "*at least 200mm*".

The natural and ordinary meaning of this phrase is unambiguous. It establishes a minimum acceptable dimension. It does not establish a fixed or exact measurement. It does not introduce an upper limit. It does not restrict the diameter to 200mm and no more.

In procurement procedures, technical specifications must be interpreted according to their plain wording. Economic operators are entitled to rely on the published text when preparing their offers. Where a specification sets a minimum requirement, bidders may legitimately propose values equal to or greater than that minimum, provided that no other requirement is infringed.

The evaluation in the present case effectively substitutes the wording "*at least 200mm*" with "*exactly 200mm*". That interpretation is not supported by the tender document. It introduces a limitation which was never expressed, never clarified, and never communicated to bidders.

The Contracting Authority is bound by its own published specifications. It cannot, after submission of tenders, reinterpret a minimum threshold as a maximum requirement. Doing so alters the substance of the technical condition and undermines the principle of transparency. Bidders must know, in advance, the exact criteria against which their offers will be assessed. They cannot be penalised for complying with the literal wording of the published requirement.

It is also relevant that the decision does not identify any technical or functional incompatibility arising from a 210mm wheel diameter. There is no indication that the larger diameter compromises stability, usability,

lifting mechanisms, site compatibility, or any other operational parameter. The rejection is based solely on the fact that the dimension exceeds 200mm.

Exceeding a minimum threshold cannot constitute non-compliance unless the specification expressly establishes a maximum limit. In the absence of such a limit, the only logical conclusion is that any dimension equal to or greater than 200mm satisfies the requirement.

The evaluation therefore suffers from a manifest error of interpretation. The Appellant's offer complied with the specification as written. The rejection arises not from a failure to meet the requirement, but from an incorrect reading of the requirement itself.

Such an error directly affects the legality of the decision and warrants its overturning by this Board.

V. REQUESTS

For these reasons, the Appellant respectfully requests that this Board:

- i) annuls the decision declaring Appellant's tender technically non-compliant;
- ii) orders the reintegration of the Appellant's offer in the process, and
- iii) recommends that the tender be awarded to Appellant being the lowest-priced compliant tenderer.

The Appellant also requests the refund of the deposit paid in conjunction with this objection.

Appellant reserves the right to make further submissions and produce evidence including by summoning relevant witnesses.

This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on the 24th February, 2026 and its verbal submission during the hearing held on the 5th May, 2026, in that:

"The evaluation therefore suffers from a manifest error of interpretation. The Appellant's offer complied with the specification as written. The rejection arises not from a failure to meet the requirement, but from an incorrect reading of the requirement itself.

Such an error directly affects the legality of the decision and warrants its overturning by this Board."

The present written reply by the Contracting Authority is in terms of Regulation 276(c) of Subsidiary Legislation 601.03 of the Laws of Malta.

1. Documentary Framework

The published technical specifications forming part of the Tender Dossier require the wheels of the metal bins to have a diameter of "*at least 200mm*".

Separately, the Technical Offer Form completed by economic operators contains a field in which the aforementioned diameter was indicated through the following, "*with a diameter of 200mm*", without expressly restating the wording "*at least*".

It is therefore evident that two equally important documents employ different formulations:

- The specification establishes a minimum threshold.
- The form reflects a definitive numerical value.

2. Nature of the Divergence

The appellant's appeal highlights that:

- The appellant relies on the wording of the technical specifications, arguing that any diameter equal to or exceeding 200mm satisfies the requirement.
- The appellant was considered to be non-compliant as the stated 200mm was treated as a definitive value as opposed to a minimum standard.

The Contracting Authority observes that this divergence arises not from a deviation by any economic operator, but from the structure and drafting of the procurement documentation itself.

3. On Interpretation

It is a general principle of procurement law that technical offers are to be assessed in light of the procurement documentation as a whole, with the technical specifications forming the substantive benchmark for compliance.

At the same time, the Contracting Authority recognizes that the technical offer form forms part of the submission package and was used by evaluators during assessment.

In this context, the Contracting Authority considers that the matter is one of interpretative alignment between documents, rather than one of manifest non-compliance by either operator.

4. Institutional Position

The Contracting Authority does not seek at this stage to conclusively determine which interpretation must prevail.

However, given that:

- The specification expressly establishes a minimum threshold; and
- The form does not expressly clarify whether the stated figure reflects a minimum or an exact value;

The Contracting Authority acknowledges that the interaction between these documents may reasonably warrant further examination.

This observation should not be construed as:

- A finding that the successful tenderer is non-compliant; or
- A definitive acceptance of the appellant's interpretation.

Rather, it reflects the Contracting Authority's duty to ensure that the award decision rests on a coherent and harmonized reading of all tender documents.

In view of the above facts, submissions and any further submissions that the Contracting Authority will affect at the hearing of the present appeal, it respectfully declares itself amenable to a reopening of the technical evaluation stage in light of the procurement documentation as a whole.

The Contracting Authority also reserves the right to produce such other evidence and witnesses as may be appropriate during the hearing of these proceedings.

This Board also noted the **Rausi Co. Ltd., Reasoned Letter of Reply** filed on the 21st February, 2026 and its verbal submission during the hearing held on the 5th May, 2026, in that:

I. Introduction

The Respondent is rejecting the objection filed by the Appellant and fully withholds the decision communicated on the 12th February 2026 by the Sectoral Procurement Directorate, Department of Contracts, whereby the Respondent's tender submission was declared technically compliant and, as a consequence, was recommended for award the tender under Tender Reference SPD8/2025/142.

The reason for reward is that the product being offered by the Respondent is FULLY IN LINE with both specifications indicated in the Tender Dossier, as well as, the Technical Offer Form, being the document in which the requirements for the product being requested are clearly and unequivocally set out.

For this reason, the Respondent's position is for the Public Contracts Review Board to uphold the decision communicated on the 12 February 2026 and go ahead with the process without any further delay as the objection filed by the Appellant is frivolous and vexatious as shall be further elaborated upon hereunder.

I. The Relevant Technical Requirement

The objection filed by the Appellant is fully based on what is being referred to as "*interpretation*" of Clause 1.14 of the Tender Dossier, and conveniently reference is being made throughout solely to the Tender Dossier, when as a seasoned and experience bidder in Malta's tendering scene the Appellant is fully aware that when taking note of the requirements being requested, a bidder should not and cannot simply refer to the Tender Dossier but is to refer to the Technical Offer Form which is the crucial and the principal document relative to the bid in question.

Respectfully, the Respondent submits that there is NO ROOM for interpretation as the Technical Offer Form CLEARLY sets out what is being requested from the product i.e.

14 Clause Nr1.14 *Bins shall be fitted with 4x swivel castors with no brakes. Wheels are to be manufactured in solid nylon **with a diameter of 200mm**. Each wheel shall be designed to withhold loads of 300Kgs or higher.*

No mistake can be made in any dimension as the requirement is precise and direct.

The Technical Offer Form is the document by virtue of which the bid is presented. In fact, as the Appellant is also very well aware, the Technical Offer Form is what is known as a Note 3 Document-being a compulsory document to be submitted as part of the bid, as per Section C Technical Specifications of the Tender Dossier itself:

One Tenderer's Technical Offer, as per Tenderer's Technical Offer form (TTO) (Note 3) in response to specifications to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. In line with article 3 of the GRGT only one (1) TTO form can be submitted per bid, otherwise outright disqualification of the relevant bid shall take place.

Reference made throughout the full objection by the Appellant to the Tender Dossier in isolation, just as though no other document exists, does not present a valid and solid ground for objection and is an attempt at delaying the tendering bid process. It is always very clear to all bidders in each tendering process that all specifications in the Technical Offer Form are to be met in full and without any exception.

Contracting Authority replied. Clarification responses are then deemed to be part and parcel of all the tendering documentation. But again, this is not news to the Appellant and he is, of course, very well aware that this too could have been done during the period open for clarifications to be submitted. Moreover, with the Appellant's argument that one is simply stick to the Tender Dossier in isolation, then any clarifications which would have been meanwhile addressed are to be deemed to be inexistent - which is not the case and the intention, of course.

The intention of the Appellant therefore was never in bona fide and he always knew that the product being presented was OUT OF SPEC and is now putting forward reasons of misinterpretation which are untrue.

III. The Respondent's Technical Submission and Demonstration of Compliance and the Appellant's Demonstration of NON-COMPLIANCE

In response to the Call for Tenders, the Respondent submitted its Technical Offer strictly in accordance with the requirements as prescribed BOTH IN the Tender Dossier as well as in the Technical Offer Form itself. Requirements prescribed in each were met in full.

It is very clear, as has resulted to the Respondent from the Appellant's objection that the Appellant's bid is therefore not in accordance with the requirements as strictly, clearly and unequivocally expressed in the Technical Offer Form. The Appellant expressly declared a wheel diameter of 210 mm and as a result must have surely not ticked the I CONFIRM box with respect to the Item 14 of the Technical Offer Form, obviously making him OUT OF SPEC.

The Appellant is now requesting for the Board to annul the decision which declared the Appellant's tender technically non-compliant when this can never be the case since at submission stage within the Technical Offer Form the Appellant himself had indicated the diameter of being 210mm rather than the 200mm which was clearly being requested in the Form.

To the contrary, at no point did the Respondent deviate from the Tender Dossier and / or the Technical Offer Form. In the Respondent's case, there has been no departure from the technical description requested and no inconsistency with the submission - the same cannot be said for the Appellant.

In his objection, the Appellant states that in addition to the declaration contained in the Technical Offer Form, the Appellant submitted supporting technical literature and product drawings confirming the caster diameter as 210mm and therefore even more exposing the fact that the product with which he bid for was never in line with requirements being requested.

With all due respect, in reply to the submission made by the Appellant as follows:

It is also significant that the rejection decision does not allege that the larger diameter affects compatibility, performance, safety, or any other functional requirement. The decision does not identify any operational risk or technical incompatibility arising from the 210 mm diameter. The sole reasoning advanced is that the diameter "*exceeds the required measurement*".

It is not up to the Appellant to determine what measurements and dimensions are being established and requested by the Contracting Authority. The measurements and dimensions being requested are to be followed and respected in full by the bidder submitting the bid.

There is no room for questioning why the measurements are the way they are and arguments for considerations that even had they been bigger the product would still serve its purpose.

This procedure is always followed in all tendering processes and never questioned.

IV. Correct Evaluation and no misinterpretation of the Specification

The rejection of the Appellant's tender resting exclusively on the assertion that the proposed wheel diameter of 210mm "*exceeds the required measurement*" is in fact correct, there is no doubt about that. This reasoning withstands all scrutiny when measured against the wording of the published Technical Offer Form being precisely the document to be submitted as part and parcel of the bid.

Clause 14 clearly requires that the wheels have a diameter of "*200mm*", no more no less.

This phrase is not ambiguous, it is fixed and exact with no upper limit and no lower limit.

It restricts the diameter to precisely just that - 200mm.

The wording cannot be plainer than it is and economic operators, when submitting the bid with the main document being the Technical Offer Form, will be making a declaration that they either meet or do not meet the requirements. In the Appellant's case, it is the latter.

The statements made by the Appellant that the Technical Offer in question introduced a limitation which was never expressed, never clarified or never communicated to bidders do not hold any water. There has never been a fresh introduction of any limitation, the dimensions were set out from the start, full stop. The dimensions are precisely being expressed in the Technical Offer Form and, as a result, there needs to be no further communication to bidders as the tendering process followed is exactly identical to all processes followed.

The Appellant being a seasoned and experienced bidder obviously knows this, and, in any case, there had always been room for clarification and ample time at that as clarifications could have been submitted at the exact moment in time as prescribed.

The objection being filed by the Appellant at this point, when the tender had been recommended for award, is proving to be a waste of time to all stakeholders and parties. Had there been any doubts in the first place, these should have been clearly expressed as is always done, and not post award.

The Contracting Authority AT NO POINT did it "*after submission of tenders, reinterpret a minimum threshold as a maximum requirement*" as is being stated by the Appellant in his objection. There has been no reinterpretation and the Technical Offer Form stipulations had always been very clear. The principle of transparency subsisted throughout and the objection being filed only now, when clarifications could have easily been raised during the tendering process, is only a result of the Appellant taking advantage of a circumstance.

The Appellant, as a bidder, knew in advance, the exact criteria and at the point of submission he would have in fact known that he does not meet the tender requirements. The exact criteria against which the offers were going to be assessed were always exact and clear. The decision of rejection of the bid filed by the Appellant should not have come as a surprise to the Appellant.

Once again stating that the relevant decision does not identify any technical or functional incompatibility arising from a 210mm wheel diameter and that there is no indication that the larger diameter compromises stability, usability, lifting mechanisms, site compatibility, or any other operational parameter is an argument which is beyond the scope and out of place. Tendering processes are the way they are for a reason and are never open to other types of products not in line with specifications being proposed by the bidders. The rejection being based solely on the fact that the dimensions are not met is correct and is very typical of tendering processes.

There is no manifest error of interpretation and there is no incorrect reading of the requirement itself in the evaluation which had been made. There is no question that the Appellant's offer did not comply with the specification as written, whilst the Respondent's submission complied in full without any doubt / clarifications needing to be raised.

There has been no error affecting the legality of the decision and there should be no overturning of this decision by the Board. The Board overturning this decision would mean that the Evaluation Committee's decision is overturned on no basis whatsoever, when a bidder, being the Respondent, had in fact met all specifications in question without any shadow of a doubt put into play.

Efforts have also been made by the Respondent to customize the product in full as requested for all specs to be met as specifically requested by the Authority, as should be the case for each and every tender - the bidder meets the specifications being requested and not the Authority having to bend over backwards to meet the product which the bidder has.

V. Requests

For these reasons, the Respondent respectfully requests this Board to reject the objection being filed by the Appellant since it is frivolous and vexatious.

This Board, having considered the letter of objection filed by Dr John L. Gauci acting for and on behalf of **United Equipment Co. (UNEC) Ltd** (hereinafter "*the Appellant*") on the 16th February 2026;

The Reasoned Letter of Reply filed by Dr Luca Zammit acting for and on behalf of **Wasteserve Malta Limited** (hereinafter "*the Contracting Authority*") on the 24th February 2026;

The Reasoned Letter of Reply filed by Dr Sarah Rausi acting for and on behalf of **Rausi Company Ltd** (hereinafter "*the Recommended Bidder*") on the 21st February 2026;

The interlocutory application filed by the Recommended Bidder on the 20th April 2026;

The Decree of the Board of the 20th April 2026;

The reply filed by the Appellant following the Board's aforementioned interlocutory decree; and

The final interlocutory Decree of the Board of the 4th May, 2026;

Having heard and evaluated the testimony of the witnesses summoned; and having taken full cognisance of all the acts, documentation filed and submissions made by the representatives of the parties, now proceeds to deliver its decision.

I. Preliminary Observations

The present objection concerns the decision of the Sectoral Procurement Directorate, Department of Contracts, communicated on the 12th February 2026, whereby the offer submitted by the Appellant was declared technically non-compliant on the sole ground that the swivel castors proposed by the Appellant were of 210mm in diameter, said dimension being held to “*exceed the required measurement*” under Clause 1.14 of the Technical Specifications. As a consequence of that determination, the Appellant was excluded from the procurement procedure and the contract was recommended for award in favour of the Recommended Bidder.

The objection has been lodged pursuant to Regulation 270 of the Public Procurement Regulations, Subsidiary Legislation 601.03 of the Laws of Malta (hereinafter “the Regulations”), which provides:

“270. Where the estimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.”

The Board, in determining this objection, acts pursuant to its power under Regulation 276(h) of the Regulations, which empowers the Board, “*after evaluating all the evidence and after considering all submissions put forward by the parties ... [to] decide whether to accede or reject the appeal or even cancel the call if it appears to it that this is best in the circumstances of the case.*”

It is convenient, at this preliminary stage, to indicate the methodology which the Board will adopt in determining this objection. The Appellant has structured its Letter of Objection under four substantive headings, namely (I) Introduction; (II) The Relevant Technical Requirement; (III) The Appellant's Technical Submission and Demonstration of Compliance; and (IV) Error in Evaluation and Misinterpretation of the Specification, together with a fifth section containing its prayers (V. Requests).

The Board will address each of the substantive grievances in turn, reproducing faithfully the Appellant's grievance, setting out thereafter the written submission of the Contracting Authority and the written submission of the Recommended Bidder by reference to the respective headings of their Reasoned Letters of Reply, and concluding each head with the Board's own determination. Once the substantive grievances have been so disposed of, the Board will proceed to address the specific demands of the Appellant and to enter the resulting *dispositif*.

However, the Board deems it imperative to deal with the interlocutory application filed by the Recommended Bidder and the consequential reply filed by the Appellant.

II. The Interlocutory Application of Rausi Co. Ltd. Dated 20th April 2026

Before turning to the substance of the objection, the Board must first dispose of an interlocutory application filed by the Recommended Bidder on the 20th April 2026, by which the Recommended Bidder sought an order of this Board compelling the Appellant to exhibit the Tenderer's Technical Offer Form submitted by it in the procurement procedure. For the sake of completeness, the Board reproduces hereunder, *ad litteram*, the text of the said application.

(a) Text of the Application Filed by Rausi Co. Ltd.

(a) Text of the Application Filed by Rausi Co. Ltd.

*In the Public Contracts Review Boards
Notre Dame Ditch
Floriana*

Re: Framework Contract for the Supply and Delivery of Three Hundred (300) Metal Bins And Spare Parts For WSM Thermal Treatment Facility (TTF) (Tender Reference: SPD8/2025/142)

Rikors ta' Rausi Co. Ltd. (l-"Esponent") fl-atti tal-ittra tal-oggezzjoni ta' United Equipment Co. (UNEC) Ltd. (Tender ID: 000237360) (l-"Appellant")

ILLI d-dokument kruċjali u ewlieni ta' ***Tender Bid*** huwa *fil-fatt it-Technical Offer Form* li huwa d-dokument li fib jigi ndikat id-dettalji kollha tal-prodott li qed jigi offrut ghal dik *it-Tender* partikolari;

ILLI t- ***Technical Offer Form*** ukoll jipprova r-rekwiżiti tal-prodott li jkun qed jigi mitlub mill-Contracting Authority u f'din –formola ***bidder*** jiddikjara jekk jissodisfax ir-rekwiżiti jew le;

ILLI apparti minn hekk hija t-**Technical Offer Form** li tigi sottomessa fis-sistema tal-**tenders** u ghalbekk huwa dak id-dokument li jirreva lill-**Evaluation Board** dwar jekk il-**bidder** jissodisfax il-kriterji li qed jigu mitluba, jew le.

Ghaldaqstant l-esponenti qed jitlob lil dan l-Onorabbli Bord biex jordna illi l-Appellant jipprezenta t-**Technical Offer Form** li sottometta fir-rigward tat-Tender in kwistjoni, u cioe' Re: *Framework Contract for the Supply and Delivery of Three Hundred (300) Metal Bins And Spare Parts For WSM Thermal Treatment Facility (TTF)* (Tender Reference: SPD8/2025/142) u dan fl-interess tas-smigh tal-proceduri ta' dan l-Appell **de quo**.

Avv. Sarah Rausi

(b) The Decree of the Board of 20th April 2026

On the same day upon which the application was filed, this Board, in observance of the fundamental principle *audi alteram partem*, issued the following Decree, which it likewise reproduces hereunder *ad litteram*:

(b) Decree of the Public Contracts Review Board — 20th April 2026

PUBLIC CONTRACTS REVIEW BOARD

Notre Dame Ditch, Floriana

DECREE

20th April 2026

Tender Reference: SPD8/2025/142

Subject Matter: *Framework Contract for the Supply and Delivery of Three Hundred (300) Metal Bins and Spare Parts for the WSM Thermal Treatment Facility (TTF).*

Appellant: *United Equipment Co. (UNEC) Ltd.*

Applicant / Preferred Bidder: *Rausi Co. Ltd.*

The Public Contracts Review Board (hereinafter "the Board"),

Having seen the Letter of Objection filed by United Equipment Co. (UNEC) Ltd. ("the Appellant") in relation to the tender procedure captioned **Framework Contract for the Supply and Delivery of Three Hundred (300) Metal Bins and Spare Parts for the WSM Thermal Treatment Facility (TTF)**, bearing Tender Reference SPD8/2025/142;

Having seen the application filed before this Board by Rausi Co. Ltd. (“the Applicant”), dated and received on the 20th April 2026, in the context of the above-captioned appeal proceedings;

I. THE APPLICATION

By means of the said application, the Applicant, Rausi Co. Ltd., respectfully submits for the consideration of this Honourable Board the following:

1. That the Technical Offer Form constitutes the crucial and principal document of any tender bid, inasmuch as it is the document in which all the particulars of the product being offered in response to that specific tender are set out and identified.
2. That the Technical Offer Form further sets out the product requirements prescribed by the Contracting Authority, and it is through this very form that the bidder declares whether or not it satisfies each of the requirements so prescribed.
3. That, moreover, it is the Technical Offer Form which is uploaded and submitted through the e-tenders platform, and it is accordingly that document upon which the Evaluation Board relies in determining whether the bidder satisfies the criteria stipulated in the tender documentation.

For the foregoing reasons, the Applicant respectfully requests this Honourable Board to order the Appellant, United Equipment Co. (UNEC) Ltd., to produce and exhibit before the Board the Technical Offer Form submitted by it in respect of the tender in issue, namely the Framework Contract for the Supply and Delivery of Three Hundred (300) Metal Bins and Spare Parts for the WSM Thermal Treatment Facility (ITF) (Tender Reference: SPD8/2025/142), and this in the interest of the proper and orderly conduct of the present appeal proceedings.

II. CONSIDERATIONS OF THE BOARD

The Board, having taken cognisance of the application so filed, considers that, in observance of the fundamental principles of natural justice, and in particular of the principle **audi alteram partem**, it would be neither appropriate nor equitable to entertain or determine the request contained in the said application without first affording the opposing party, together with every other party having an interest in these proceedings, a fair and reasonable opportunity to submit their respective replies and observations thereto.

Accordingly, the Board deems it proper, at this preliminary juncture, to refrain from pronouncing itself upon the merits of the request so advanced, and to confine itself to ordering that the application be duly served upon all parties concerned, with a clearly defined time-limit within which any reply may be filed.

III. DECIDES

For the reasons set out above, the Board hereby orders as follows:

- 1. That the Secretariat of the Public Contracts Review Board shall forthwith notify a copy of the application filed by Rausi Co. Ltd., dated 20th April 2026, to all parties concerned in the present appeal proceedings, including, without limitation, the Appellant, United Equipment Co. (UNEC) Ltd., and the Contracting Authority.*
- 2. That the parties so notified shall have a peremptory term of three (3) working days, to run from the date of service upon them, within which to file their written replies, submissions and observations in respect of the said application, in order that each party may be afforded a full and adequate opportunity to be heard in accordance with the principle of audi alteram partem.*
- 3. That, upon the lapse of the aforementioned term, the Board shall proceed to determine the request contained in the application, on the basis of the pleadings and submissions then on record.*

All further rights of the parties are hereby expressly reserved.

Given by the Public Contracts Review Board this 20th day of April 2026.

Dr Vincent Micallef – Chairperson

Dr Maria Cardona LL.D – Member; Mr Lawrence Ancilleri – Member

(c) The Reply by the Appellant of the 20th April, 2026

(c) Reply of United Equipment Co. (UNEC) Ltd. — 20th April 2026

Reply of United Equipment Co. (UNEC) Ltd to the Application filed by Rausi Co. Ltd on the 20th April 2026; Respectfully submits:

- 1. The Appellant refers to the application filed by Rausi Co. Ltd. dated 20th April 2026, whereby the latter requests that this Honourable Board orders the Appellant to produce the Technical Offer Form submitted in the context of the tender in question.*
- 2. At the outset, the Appellant submits that the request is premature and procedurally irregular (irritwali).*
- 3. The present proceedings arise from an objection filed by the Appellant challenging a specific decision of the Contracting Authority, namely the determination that the Appellant's offer was technically non-compliant on the*

basis of the wheel diameter under Clause 1.14 of the Technical Specifications. The scope of the appeal is therefore clearly defined by the grounds set out in the Letter of Objection.

4. In this context, it is the Appellant who bears the burden of substantiating its grounds of appeal, and it is for the Appellant to produce such documentation as it deems necessary in support of its case. The applicable procedure does not contemplate, at this preliminary stage, that the preferred bidder may seek to compel the Appellant to disclose its entire technical submission without reference to any specific issue arising from the appeal.

5. The request being made is general in nature and is not tied to any particular point in dispute. It effectively seeks disclosure of the Technical Offer Form in its entirety, without identifying any concrete basis upon which such disclosure is necessary for the determination of the issues raised in the appeal.

6. It is further to be noted that, presumably and as customary, the entirety of the tender documentation, including the Technical Offer Form, is already in the possession of this Honorable Board and forms part of the administrative record underlying the impugned decision.

7. The Board therefore has access to all relevant documentation necessary for the proper determination of the appeal.

8. Without prejudice to the above, the Appellant further submits that the Technical Offer Form and the supporting documentation may contain elements of a commercially sensitive and confidential nature, disclosure of which to a competing bidder would be inappropriate.

9. Thus, the Appellant respectfully submits that the present request is premature, and certainly not justified at this stage of the proceedings. In the circumstances, the Appellant requests that the application filed by Rausi Co. Ltd. be rejected.

(d) The Determination of the Board upon the Interlocutory Application

(d) Interlocutory Decree of the Public Contracts Review Board — 4th May 2026

PUBLIC CONTRACTS REVIEW BOARD

Notre Dame Ditch, Floriana

DECREE

4th May 2026

Tender Reference: SPD8/2025/142
Subject Matter: Framework Contract for the Supply and Delivery of Three Hundred (300) Metal Bins and Spare Parts for the WSM Thermal Treatment Facility (TTF).

Appellant: United Equipment Co. (UNEC) Ltd.
Applicant / Preferred Bidder: Rausi Co. Ltd.
Contracting Authority: Waste.Serv Malta Ltd.

The Public Contracts Review Board (hereinafter “the Board”),

Having seen the Letter of Objection filed by United Equipment Co. (UNEC) Ltd. (“the Appellant”) in relation to the tender procedure captioned Framework Contract for the Supply and Delivery of Three Hundred (300) Metal Bins and Spare Parts for the WSM Thermal Treatment Facility (TTF), bearing Tender Reference SPD8/2025/142, by which the Appellant impugns the determination of the Contracting Authority that the Appellant’s offer is technically non-compliant on the basis of Clause 1.14 of the Technical Specifications, namely the prescribed wheel diameter;

Having seen the application filed before this Board by Rausi Co. Ltd. (“the Applicant”), dated and received on the 20th April 2026, whereby the Applicant requests that this Board order the Appellant to produce and exhibit the Technical Offer Form submitted in the context of the tender in issue;

Having seen the Decree of this Board dated 20th April 2026, by which, in observance of the principle *audi alteram partem*, the said application was ordered to be served upon all parties concerned, with a peremptory term within which to file their written replies and observations;

Having seen the reply filed by the Appellant, United Equipment Co. (UNEC) Ltd., dated 22nd April 2026, by which the Appellant opposes the said application and prays that the same be rejected;

Having seen all other documents and pleadings on the record of these proceedings;

I. THE APPLICATION OF RAUSI CO. LTD.

By means of the said application, the Applicant, Rausi Co. Ltd., submits, in substance, that the Technical Offer Form constitutes the crucial and principal document of any tender bid, in that it is the very document in which all the particulars of the product offered are identified, in which the bidder declares whether or not it satisfies each of the requirements prescribed

by the Contracting Authority, and which is uploaded through the e-tenders platform and relied upon by the Evaluation Board for the purposes of determining technical compliance.

On the strength of these submissions, the Applicant requests this Board to order the Appellant to produce and exhibit before it the Technical Offer Form so submitted, in the interest of the proper and orderly conduct of these appeal proceedings.

II. THE REPLY OF UNITED EQUIPMENT CO. (UNEC) LTD.

In its reply of 22nd April 2026, the Appellant resists the application on the following grounds, which the Board summarises as follows:

First, that the request is premature and procedurally irregular (*irritwali*), inasmuch as the present proceedings arise out of an objection challenging a specific and circumscribed determination of the Contracting Authority, namely the finding of technical non-compliance under Clause 1.14 of the Technical Specifications relating to the wheel diameter, and that the scope of the appeal is therefore clearly defined by the grounds set out in the Letter of Objection.

Secondly, that it is the Appellant who bears the burden of substantiating its own grounds of appeal, and that the applicable procedure does not contemplate, at this preliminary stage, that a preferred bidder may compel the Appellant to disclose the entirety of its technical submission without reference to any specific issue arising from the appeal.

Thirdly, that the request is general in nature, is not tied to any particular point in dispute, and effectively seeks the wholesale disclosure of the Technical Offer Form without identifying any concrete basis upon which such disclosure is necessary for the determination of the issues raised.

Fourthly, that the entirety of the tender documentation, including the Technical Offer Form, is, as customary, already in the possession of this Board as part of the administrative record underlying the impugned decision, and that the Board accordingly has access to all documentation requisite for the proper determination of the appeal.

Fifthly, and without prejudice to the foregoing, that the Technical Offer Form and its supporting documentation may contain elements of a commercially sensitive and confidential nature, the disclosure of which to a competing bidder would, in the circumstances, be inappropriate.

III. CONSIDERATIONS OF THE BOARD

(a) The Nature and Scope of the Present Appeal Proceedings.

The Board observes, at the outset, that proceedings before this Board do not constitute a *de novo* review of a tender procedure at large, but rather a circumscribed adjudication confined to the grievances articulated by an aggrieved bidder in its Letter of Objection. It is a settled and elementary principle of appellate procedure that the contours of the dispute are fixed by the pleadings, and that neither party may, by interlocutory device, enlarge the controversy beyond the four corners of the impugned decision and the grounds advanced against it.

In the present case, the appeal is directed exclusively against the Contracting Authority's determination of technical non-compliance under Clause 1.14 of the Technical Specifications concerning the wheel diameter; that, and that alone, is the issue properly before this Board.

(b) *The Locus and Procedural Posture of the Applicant.*

It bears emphasis that the present application emanates not from the Appellant, who alone bears the onus of substantiating its grievance, but from the preferred bidder, whose interest in these proceedings is necessarily defensive in character.

The procedural framework governing appeals before this Board does not envisage that a preferred bidder, in the role of intervener, may invert the customary distribution of the burden of proof so as to compel its competitor to disclose its entire technical submission in the absence of any specific evidential nexus to the matters in controversy.

To countenance such a course would be to convert the appeal procedure into an instrument of inter-bidder discovery, a function for which it was neither designed nor intended, and which is wholly foreign to its summary and circumscribed nature.

(c) *The Generality of the Request and the Prohibition on Fishing Expeditions.*

The Board further notes that the application, as drawn, is conspicuously untethered to any particular issue arising for determination. The Applicant does not identify any clause, specification, declaration or particular within the Technical Offer Form said to be material to the question of compliance with Clause 1.14, nor does it explain how production of the Form, in its entirety, is reasonably necessary to the just disposition of the appeal.

The request is, in substance and in form, a request for wholesale disclosure unconnected to any specific evidential question. It bears all the hallmarks of what is conventionally described as a fishing expedition, and it is well established that orders for the production of documents will not be made on so speculative a footing.

A request of this kind must be specific, focused, and directed to a clearly identified issue, absent such specificity, it is not for this Board to compel a party to lay open its entire commercial submission in the hope that something of relevance may, fortuitously, emerge.

(d) *The Administrative Record Already Before the Board.*

In any event, the request is, with respect, otiose. The Board observes that, in accordance with established practice, the entirety of the tender documentation pertaining to the impugned procedure, including the Technical Offer Form submitted by the Appellant, is transmitted to the Board by the Contracting Authority and forms part of the administrative record upon which the Board adjudicates.

The Board is therefore already in possession of the very document whose production is sought, and it is upon that record, supplemented, where appropriate, by the parties' respective written and oral submissions, that the appeal will be determined. The application, in this regard, presupposes a lacuna in the record which does not exist.

(e) *Commercial Sensitivity and Confidentiality.*

Even were the foregoing considerations to be set aside, the Board would be obliged to weigh, with due circumspection, the legitimate concern advanced by the Appellant that a Technical Offer Form is, by its very nature, a commercially sensitive document, the indiscriminate disclosure of which to a competing bidder would risk the dissemination of proprietary information beyond what the proper conduct of the appeal could possibly require.

The principle of equality of arms between the parties does not entail an undifferentiated right of access to a competitor's technical submission. It rather, requires that each party be afforded a fair opportunity to present its case and to address such matters as are properly in issue.

The Applicant has not demonstrated that the disclosure now sought is necessary, proportionate, or apt to advance the resolution of the dispute, and absent such a demonstration the considerations of confidentiality must, on any view, prevail.

(f) The Burden of Proof Resides with the Appellant.

Finally, the Board reiterates that, in proceedings of this nature, the onus of demonstrating that the impugned decision is vitiated by error rests squarely upon the Appellant. It is for the Appellant, and not for the preferred bidder, to determine which documents, declarations or technical particulars it considers necessary in support of its case, and to produce or invoke the same accordingly.

The Board is not satisfied that any procedural unfairness or evidential lacuna would result from refusing the application; on the contrary, the orderly progress of these proceedings is best served by confining the parties to the issues properly raised and the materials properly relevant thereto.

(g) Conclusion on the Application.

Taking all of the foregoing considerations cumulatively, the Board is firmly of the view that the application filed by Rausi Co. Ltd. is unfounded in principle and unnecessary in fact.

It is unfounded in principle because it seeks to enlarge the scope of the appeal beyond its proper confines, to invert the burden of proof, and to procure the disclosure of a competitor's technical submission upon a generalised footing unsupported by any concrete evidential rationale.

It is unnecessary in fact because the document whose production is sought is already on the record before the Board. The application accordingly falls to be rejected.

IV. DECIDES

For the reasons set out at length above, the Board hereby orders as follows:

- 1. That the application filed by Rausi Co. Ltd., dated 20th April 2026, whereby the said Applicant requested this Board to order the Appellant, United Equipment Co. (UNEC) Ltd., to produce and exhibit the Technical Offer Form submitted in respect of the tender bearing reference SPD8/2025/142, be and is hereby **rejected**.*
- 2. That the appeal proceedings shall continue to be heard and determined upon the basis of the Letter of Objection, the Reply of the Contracting Authority, the Reply of the preferred bidder where applicable, and the administrative record already before this Board, in accordance with the ordinary course of procedure.*

All further rights of the parties are hereby expressly reserved.

Given by the Public Contracts Review Board this 4th day of May 2026.

Dr Vincent Micallef
Chairperson
Public Contracts Review Board

Dr Maria Cardona LL.D
Member

Mr Lawrence Ancilleri
Member

The Board shall, now, accordingly proceed to determine the substantive grievances upon the record as it stands.

III. The Applicable Legal and Regulatory Framework

In order to avoid repetition in the paragraphs which follow, the Board sets out in this introductory section the core regulatory provisions to which recurrent reference will be made in the course of disposing of each of the Appellant's grievances.

(a) Clarity of the Procurement Document – Regulation 38(1)

“38. (1) The procurement document shall be written in clear and unambiguous terms so as to enable all interested parties to understand properly the terms and conditions of the process.”

This provision imposes upon the Contracting Authority a positive and *anterior* obligation, that is to say that the procurement document must, on its own terms and without recourse to extrinsic reasoning, be intelligible to the reasonable economic operator. Where this obligation is imperfectly discharged, the resulting ambiguity or internal inconsistency cannot be cured *ex post facto* by an evaluation which adopts whichever reading happens to exclude a particular tenderer.

Regulation 38(4) reinforces the scheme by permitting clarification notes to “*remove or amend certain inconsistencies or errors*”, a mechanism which, by its terms, operates *during* the tendering period and not after the opening of tenders.

(b) Equal Treatment, Transparency and Proportionality – Regulation 39(1)

“39. (1) Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.”

These are not ornamental words. They embody the three foundational principles of European and Maltese public procurement law, i.e. equality, transparency and proportionality, each of which is engaged on the facts of the present case.

Regulation 39(2) further provides that “[*t*]he tenderer must be selected in a transparent manner and according to a prescribed procedure.”

(c) Technical Specifications – Regulation 53

“53. (1) The technical specifications shall be set out in the procurement documents and these shall lay down the characteristics required of a works, service or supply.”

“(6) Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.”

It is of cardinal importance to observe that Regulation 53(1) designates the *technical specifications* (and not any ancillary confirmation form) as the *locus* in which the characteristics of the supply are to be set out.

(d) The General Rules Governing Tenders (“GRGT”) v4.10

Clause 5.1 of the GRGT provides that “[t]his tender document should be read in conjunction with any clarification notes issued in accordance with Clause 6”, and Clause 6.2 stipulates that “[c]larification notes will constitute an integral part of the procurement documentation...”. Clause 16.3 (Technical Compliance) further provides, in material part, that “[n]o clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications.” By necessary implication, where there is doubt the evaluation committee is bound to act with circumspection rather than to leap to the most exclusionary interpretation.

IV. The *Viva Voce* Evidence Heard at the Hearing of the 5th May 2026

Before turning to the substantive grievances raised in the Letter of Objection, the Board considers it appropriate to record, with such particularity as the matter requires, the substance of the *viva voce* evidence elicited at the hearing of the 5th May 2026. The Board does so for two reasons.

First, because the testimony so adduced bears directly upon the central interpretative question which lies at the heart of these proceedings, namely, the legal consequences of the apparent divergence between Clause 1.14 of the Technical Specifications and Item 14 of the Tenderer's Technical Offer Form.

Secondly, because the manner in which the Evaluation Committee approached, or, more pertinently, *failed to approach*, that divergence is a matter going to the very legality of the impugned decision, and is properly to be ascertained from the lips of those who conducted the evaluation rather than to be inferred *ex post facto* from the laconic terms of the rejection notice.

(a) The Witness

At the instance of Dr John L. Gauci, acting for and on behalf of the Appellant, the Board heard the testimony of **Mr Dylan Debono**, an engineer by profession and a Member of the Technical Evaluation

Committee (TEC) constituted in respect of Tender Reference SPD8/2025/142. Mr Debono was duly sworn and gave evidence in the ordinary course.

(b) The Examination-in-Chief

In the course of examination-in-chief by counsel for the Appellant, Mr Debono confirmed his role within the TEC and addressed, in general terms, the methodology adopted by the Committee in its assessment of technical compliance. Mr Debono also confirmed that he was also involved directly in the architecture of the tender dossier drafting.

At the conclusion of counsel's questioning, the Board, exercising its faculty *ex officio* and in the interests of arriving at a complete and accurate picture of the evaluation as actually conducted, posed a specific and pointed question to the witness, namely, whether, during the evaluation process, the Committee had noted the discrepancy and ambiguity subsisting between the published tender documentation, on the one hand, and the Tenderer's Technical Offer Form, on the other.

The relevance of this question requires no elaboration. As has already been observed, the Tender Dossier, at Clause 1.14 of the Technical Specifications, stipulates a diameter of "*at least 200mm*", a formulation which, on its plain and ordinary signification, establishes a minimum threshold; whereas Item 14 of the TTO form records the dimension as "*with a diameter of 200mm*", omitting the qualifying words "*at least*" and thereby presenting, at least *prima facie*, a definitive numerical value. Whether the TEC perceived this divergence at the time of evaluation, and, if so, how it elected to resolve the same, is a matter of cardinal importance to the proper disposition of this appeal.

(c) The Witness's Response

In response to the question so put by the Board, Mr Debono candidly stated that the Evaluation Committee had relied exclusively upon the wording employed in the Tenderer's Technical Offer Form and had, in so doing, disregarded the nomenclature employed in the Tender Dossier itself.

Whilst Mr Debono did not employ the term "*oversight*" in express terms, the Board understood his evidence, taken in its totality and in its proper context, as implicitly conveying that the discrepancy between the two documents had not been the subject of any deliberate or reasoned determination by the Committee, but had rather passed unaddressed in the course of the evaluation process. It was upon that basis, and upon that basis alone, that the Committee proceeded to reject the Appellant's bid as technically non-compliant.

The Board pauses to underscore the significance of this admission. It comes from a Member of the very Committee whose decision is impugned in these proceedings. It is given on oath. It is unqualified. And it concedes, in terms, that the Evaluation Committee did *not* engage with the textual divergence between the

two documents at all, but resolved the matter unilaterally, and by oversight, in favour of the more restrictive of the two formulations and to the prejudice of the Appellant.

(d) The Submissions of the Recommended Bidder Following the Testimony

Following the conclusion of Mr Debono's evidence, learned counsel for the Recommended Bidder advanced two propositions in seeking to neutralise the effect of the testimony so given.

First, counsel submitted that the Evaluation Committee was correct in confining its analysis to the nomenclature of the Tenderer's Technical Offer Form and in disregarding the formulation framed in the Tender Dossier, notwithstanding what was, on any view, a clear and unequivocal divergence between the two documents. The Recommended Bidder thereby effectively invited the Board to endorse, *post factum*, the very methodological approach which the witness had himself acknowledged to have been the product of oversight.

Secondly, and *arguendo*, counsel submitted that even were the Board to find that the divergence between the two documents amounted to a genuine ambiguity, the Appellant, as a seasoned and experienced economic operator in the Maltese tendering scene, ought to have raised the matter by means of a clarification question addressed to the Contracting Authority during the period prescribed for the submission of clarifications. The failure to do so, counsel submitted, ought to disentitle the Appellant from now invoking the divergence as a ground for impugning the rejection of its tender.

(e) The Appellant's Rebuttal

In rebuttal, learned counsel for the Appellant submitted that the Appellant had had no occasion, and indeed no cause, to raise any clarification question whatsoever at the clarification stage, for the simple and straightforward reason that, in the Appellant's reasonable apprehension, no ambiguity arose upon a reading of the Tender Dossier.

Clause 1.14 of the Technical Specifications was, on its face, clear and self-explanatory in that the diameter of the wheel was to be "*at least*" 200mm, an expression of settled meaning which establishes a minimum requirement and nothing more.

The Appellant, having proposed a diameter of 210mm, occupied a position falling squarely within the four corners of that minimum requirement. There was thus nothing to clarify. A clarification question presupposes the existence of a doubt and in the Appellant's case, there was none, because the published specification was, in itself, clear.

(f) The Board's Preliminary Observations upon the Testimony

The Board reserves its conclusive determination upon the legal consequences of the testimony to its disposition of the substantive grievances which follow. It is, however, appropriate, at this stage, to record three preliminary observations.

First, the testimony of Mr Debono establishes, beyond any controversy, that the Evaluation Committee did not in fact undertake any reasoned interpretative exercise reconciling Clause 1.14 of the Technical Specifications with Item 14 of the Tenderer's Technical Offer Form.

The Committee, on the witness's own evidence, adopted the latter formulation to the exclusion of the former, and did so by oversight rather than by deliberate construction. That state of affairs is, as the Board will explain in due course, irreconcilable with the obligations of transparency, equal treatment and proportionality which Regulation 39(1) imposes upon every Contracting Authority and, derivatively, upon every Evaluation Committee acting in its name.

Secondly, the proposition advanced by the Recommended Bidder, to the effect that the Appellant ought to have raised the divergence at the clarification stage, presupposes the very thing which it sets out to prove, namely, that the divergence was apparent to the reasonable economic operator examining the Tender Dossier *ante* the closing of tenders.

The Appellant's response to this proposition is, in the Board's preliminary view, well-founded. A clarification question lies where doubt exists, and where, as here, the Tender Dossier, taken on its own terms, expresses the requirement in clear minimum-threshold language, no doubt arises and no clarification is invited. To hold otherwise would be to impose upon economic operators a duty of perpetual suspicion in respect of every tender document, requiring them to seek clarification not against ambiguities which the document presents, but against ambiguities which the Evaluation Committee may, at some future date and by some unanticipated process of reasoning, choose to manufacture.

Thirdly, the testimony of Mr Debono is properly to be read together with, and indeed reinforces, the candid admission already made by the Contracting Authority in its Reasoned Letter of Reply, namely, that "*the divergence arises not from a deviation by any economic operator, but from the structure and drafting of the procurement documentation itself*".

The witness's evidence places that admission upon an unimpeachable evidentiary footing and, in so doing, removes from these proceedings any residual question as to the origin of the difficulty. The difficulty originates with the documentation. The documentation is the work of the Contracting Authority; and the consequences of that documentation, in accordance with the principle *verba ambigua contra proferentem interpretantur*, must be borne by its author and not visited upon the economic operator.

The Board will return to these matters in its determination of the Third Grievance below.

V. The Appellant's Grievances, the Replies Filed by the Respondents, and the Determination of the Board upon Each Head

The Board now turns to each of the substantive grievances raised by the Appellant in its Letter of Objection, taking them in the order in which the Appellant has presented them. Under each head, the Board first reproduces the substance of the Appellant's grievance, thereafter sets out the position taken in response by the Contracting Authority and by the Recommended Bidder by reference to the respective headings of their Reasoned Letters of Reply, and concludes with the Board's own determination.

FIRST GRIEVANCE – The Appellant's Section II: "The Relevant Technical Requirement"

(i) The Appellant's Grievance

Under this heading, the Appellant submits that the present objection revolves around the interpretation of Clause 1.14 of the Technical Specifications forming part of the published tender dossier, which clause provides: "*Bins shall be fitted with 4x swivel castors with no brakes. Wheels are to be manufactured in solid nylon with a diameter of at least 200mm. Each wheel shall be designed to withhold loads of 300Kgs or higher."*

The Appellant contends that the wording used by the Contracting Authority is precise and deliberate, expressed in minimum terms, and that the ordinary and natural meaning of the expression "*at least*" is that 200mm constitutes the minimum acceptable dimension; it does not signify an exact measurement, does not impose a ceiling, and does not restrict the diameter to 200mm and no more.

If the intention of the Contracting Authority had been to require a fixed diameter of exactly 200mm, the specification would have been drafted as "*diameter of 200mm*" or "*diameter of 200mm + tolerance*". The Appellant further emphasises that, in public procurement, economic operators and Contracting Authorities alike are bound to adhere strictly to the published specifications, and that the tender dossier contains no provision limiting the wheel diameter to 200mm, no clause establishing a maximum dimension, no reference to compatibility requirements that would be affected by a slightly larger wheel, and no tolerance clause restricting compliance to an upper limit.

The interpretation adopted in the rejection decision, the Appellant submits, effectively transforms the words "*at least 200mm*" into "*exactly 200mm*", introducing a restriction that was never communicated to bidders.

(ii) The Reply of the Contracting Authority

Under its heading "*1. Documentary Framework*", the Contracting Authority acknowledges that the published technical specifications forming part of the Tender Dossier require the wheels of the metal bins to have a

diameter of “*at least 200mm*”, whilst the Technical Offer Form completed by economic operators reflects the dimension as “*with a diameter of 200mm*”, without expressly restating the qualifier “*at least*”.

The Contracting Authority observes that the specification establishes a minimum threshold, whereas the form reflects a definitive numerical value. Under its heading “2. *Nature of the Divergence*”, the Contracting Authority notes that the divergence arises not from a deviation by any economic operator but from the structure and drafting of the procurement documentation itself.

Under its heading “3. *On Interpretation*”, the Contracting Authority recalls the general principle that technical offers are to be assessed in the light of the procurement documentation as a whole, with the technical specifications forming the substantive benchmark of compliance, while acknowledging that the Technical Offer Form forms part of the submission package and was used by the evaluators.

(iii) The Reply of the Recommended Bidder

Under its heading “I. *The Relevant Technical Requirement*” (mis-numbered by the Recommended Bidder as “I” rather than “II”), the Recommended Bidder contends that the Appellant’s reliance upon the Tender Dossier in isolation is misconceived, because a bidder cannot simply refer to the Tender Dossier but must refer to the Technical Offer Form, which the Recommended Bidder characterises as “*the crucial and principal document relative to the bid*”.

The Recommended Bidder reproduces Item 14 of the TFO form, which states “*with a diameter of 200mm*”, and submits that there is “*NO ROOM for interpretation*”. It further observes that the TFO form is a “*Note 3 Document*”, namely a compulsory document which must be submitted as part of the bid, and that it was always clear to all bidders that the specifications in the Technical Offer Form must be met in full and without exception. Any doubts, the Recommended Bidder adds, could and should have been raised during the clarifications stage.

(iv) The Determination of the Board

The Board begins, as it must, with the text of the published specification itself. Clause 1.14 of the Technical Specifications reads:

“Bins shall be fitted with 4x swivel castors with no brakes. Wheels are to be manufactured in solid nylon with a diameter of at least 200mm. Each wheel shall be designed to withhold loads of 300Kgs or higher.”

The expression “at least” is a term of settled meaning in the English language which, in its ordinary, natural and plain signification, establishes a minimum threshold. It does not, and cannot, denote an exact or fixed value. To construe the phrase “*at least 200mm*” as meaning “*exactly 200mm*” is, with respect, to commit violence to the English language itself.

The Board finds it particularly telling that Clause 1.14 employs the “identical” minimum-threshold formulation with respect to the load capacity of the wheels (“300Kgs or higher”), a formulation which no party contends requires an exact load rating of precisely 300kg and no more.

The internal symmetry of Clause 1.14 is devastating to the Recommended Bidder’s strained construction: if the expression “300Kgs or higher” permits values greater than 300kg (as is plainly the case), then the cognate expression “at least 200mm” equally permits values greater than 200mm. Any other reading would require the Board to ascribe to the draftsman an intention that identical grammatical structures, occurring within two consecutive sentences of the same clause, should bear materially different meanings. No principle of construction could justify such a conclusion.

It follows that the Appellant’s first grievance is, on the text alone, well-founded. Clause 1.14 of the Technical Specifications, taken on its own terms, establishes a minimum threshold of 200mm and imposes no maximum dimension whatsoever. The Board accordingly **upholds** the first grievance.

SECOND GRIEVANCE – The Appellant’s Section III: “The Appellant’s Technical Submission and Demonstration of Compliance”

(i) The Appellant’s Grievance

Under this heading, the Appellant submits that, in response to the Call for Tenders, it submitted its Tenderer’s Technical Offer strictly in accordance with the format and requirements prescribed in the tender dossier.

The TTO form was completed in full and accompanied by the technical documentation requested under the relevant clauses. With particular reference to Item 14 of the TTO form, corresponding to Clause 1.14, the Appellant expressly declared a wheel diameter of 210mm and a load capacity exceeding 1000kg, the figure of 210mm being clearly and unequivocally inserted in the space provided within the prescribed form.

Supporting technical literature and product drawings were likewise submitted, consistent with and corroborating the declaration of 210mm. There was no discrepancy between the narrative declaration and the technical documentation. The Appellant emphasises that the submission did not omit any requested information, did not leave any relevant field blank, and did not contain alternative or conditional proposals; a diameter of 210mm exceeds the minimum threshold of 200mm established by the specification, and the technical requirement was therefore satisfied.

The Appellant finally observes that the rejection decision does not allege that the larger diameter affects compatibility, performance, safety, or any other functional requirement, the sole reasoning advanced being that the diameter “*exceeds the required measurement*”.

(ii) The Reply of the Contracting Authority

Under its heading “3. On Interpretation” and its heading “4. Institutional Position”, the Contracting Authority does not dispute the factual matrix of the Appellant’s submission, namely, that the Appellant declared 210mm in the TFO form and corroborated that declaration through technical literature. Rather, the Contracting Authority considers that “*the matter is one of interpretative alignment between documents, rather than one of manifest non-compliance by either operator*”, and declares itself “*amenable to a reopening of the technical evaluation stage in light of the procurement documentation as a whole*”. In substance, the Contracting Authority does not resist the Appellant’s factual case but rather calls for the underlying interpretative question to be conclusively resolved by this Board.

(iii) The Reply of the Recommended Bidder

Under its heading “III. The Respondent’s Technical Submission and Demonstration of Compliance and the Appellant’s Demonstration of NON-COMPLIANCE”, the Recommended Bidder contends that its own submission was strictly in accordance with the requirements prescribed both in the Tender Dossier and in the TFO form.

The Recommended Bidder draws attention to the fact that the Appellant expressly declared 210mm in the TFO form (and, it asserts, “*must have surely not ticked the I CONFIRM box with respect to Item 14*”), thereby placing itself “*OUT OF SPEC*”.

The Recommended Bidder further submits that it is not for a bidder to determine what measurements are being established by the Contracting Authority, that the measurements requested must be followed in full, and that arguments regarding whether a larger product would still serve its purpose are beyond the scope of the exercise.

(iv) The Determination of the Board

The factual position set out by the Appellant under this heading is not contested by any party. The Appellant completed the prescribed Tenderer’s Technical Offer Form, expressly declared a wheel diameter of 210mm, and corroborated that declaration through supporting technical literature and product drawings. There is no internal inconsistency within the Appellant’s own submission. The Contracting Authority does not dispute these facts and indeed builds its institutional position upon them; the Recommended Bidder likewise proceeds upon the same factual premise.

The question is therefore not whether the Appellant in fact declared 210mm, it plainly did, but whether such a declaration rendered its tender non-compliant. That question is answered in a dispositive manner by the Board’s determination on the first grievance: a diameter of 210mm, being *greater than* the minimum threshold of 200mm established by Clause 1.14 of the Technical Specifications, necessarily satisfies the specification as published.

The Recommended Bidder’s suggestion that the Appellant “*must have surely not ticked the I CONFIRM box*” is, with respect, beside the point. Even had the Appellant ticked that box, its declared diameter remains in conformity with the minimum-threshold language of the Technical Specifications. And the Recommended

Bidder's proposition that a bidder may not question the measurements set by the Contracting Authority is nothing to the purpose here. The Appellant does not question the measurement set; it has complied with the measurement as actually published.

The Board accordingly finds that the Appellant's submission satisfied the specification as drafted and published, and **upholds** the second grievance.

THIRD GRIEVANCE – The Appellant's Section IV: "Error in Evaluation and Misinterpretation of the Specification"

(i) The Appellant's Grievance

Under this heading, the Appellant submits that the rejection of its tender rests exclusively on the assertion that the proposed wheel diameter of 210mm "*exceeds the required measurement*", and that such reasoning cannot withstand scrutiny when measured against the wording of the published Technical Specifications.

Technical specifications, the Appellant submits, must be interpreted according to their plain wording; economic operators are entitled to rely on the published text when preparing their offers; and where a specification sets a minimum requirement, bidders may legitimately propose values equal to or greater than that minimum.

The evaluation, in the Appellant's submission, effectively substitutes "*at least 200mm*" with "*exactly 200mm*" and introduces a limitation never expressed, never clarified, and never communicated to bidders. The Contracting Authority is bound by its own published specifications and cannot, after submission of tenders, reinterpret a minimum threshold as a maximum requirement. To do so undermines the principle of transparency.

Further, the Appellant emphasises that no technical or functional incompatibility arising from the 210mm diameter has been identified, and that exceeding a minimum threshold cannot constitute non-compliance in the absence of an express maximum. The evaluation, the Appellant concludes, suffers from a manifest error of interpretation which directly affects the legality of the decision and warrants its overturning.

(ii) The Reply of the Contracting Authority

Under its heading "*4. Institutional Position*", the Contracting Authority concedes that "*the specification expressly establishes a minimum threshold*" and that "*the form does not expressly clarify whether the stated figure reflects a minimum or an exact value*". It acknowledges that "*the interaction between these documents may reasonably warrant further examination*" and declares itself "*amenable to a reopening of the technical evaluation stage in light of the procurement documentation as a whole*". In substance, far from defending the impugned decision, the Contracting Authority now leaves to this Board the task of determining whether the evaluation as conducted is sustainable.

(iii) The Reply of the Recommended Bidder

Under its heading “*IV. Correct Evaluation and no misinterpretation of the Specification*”, the Recommended Bidder submits that the rejection is “*in fact correct, there is no doubt about that*”; that Item 14 of the TFO form “*requires that the wheels have a diameter of ‘200mm’, no more no less*”; that the phrase is “*not ambiguous, it is fixed and exact with no upper limit and no lower limit*”; and that “*it restricts the diameter to precisely just that – 200mm*”.

The Recommended Bidder further submits that no limitation was freshly introduced, that the dimensions were set out “*from the start*”, and that the Appellant, as a seasoned bidder, would have known at the point of submission that it did not meet the requirements.

Finally, the Recommended Bidder submits that arguments concerning whether the 210mm diameter would functionally serve the purpose are “*beyond the scope and out of place*”, and that the Board’s intervention to overturn the decision would be “*on no basis whatsoever*”.

(iv) The Determination of the Board

This grievance engages the very heart of the dispute. The Board addresses it under four sub-heads.

First, as to the alleged divergence between Clause 1.14 of the Technical Specifications and Item 14 of the TFO form. The Recommended Bidder’s contention that the TFO form is “*the crucial and principal document*” which must be read as prescribing an exact value betrays a fundamental misconception as to the respective function and hierarchy of the documents within a procurement procedure.

The Technical Specifications forms are the *substantive* benchmark of compliance. They are the document in which the Contracting Authority defines what it wishes to procure. The TFO form, by contrast, is an *instrumentum*, i.e. a vehicle by which the bidder confirms compliance with the underlying specifications.

This hierarchy is expressly contemplated by Regulation 53(1), which designates the Technical Specifications as the *locus* of characterisation. To elevate the drafting of a “confirmation form” above the substantive specification to which that form relates would be to permit the tail to wag the dog.

Secondly, and *arguendo*, even were the TFO form to be read as co-equal with the Technical Specifications, the inescapable consequence is that the procurement documentation, taken as a whole, contains an internal inconsistency: one document prescribes a minimum threshold, while the other purports to prescribe an exact value.

Such inconsistency is anything but a hallmark of a document drafted “*in clear and unambiguous terms*” as mandated by Regulation 38(1). The law does not permit the Contracting Authority to resolve that ambiguity to the prejudice of the tenderer. On the contrary, the principles of transparency and equal treatment enshrined in Regulation 39(1) operate to protect the economic operator against precisely such a consequence.

It is a longstanding and well-settled principle of interpretation that an ambiguity in a document emanating from one party falls to be construed against that party, and this, in line with the Latin maxim *verba ambigua contra proferentem interpretantur*. This principle applies with particular force in public procurement, where the Contracting Authority is the unilateral author of the documentation and the economic operator has no opportunity to negotiate its terms.

To permit the Evaluation Committee to elect, *after the opening of tenders*, which of two divergent formulations should prevail, would be to confer upon the Contracting Authority an unreviewable power to manipulate the outcome of the procedure, i.e. a power wholly incompatible with Regulation 39(1) and with the prescription in Regulation 53(6) that technical specifications “*shall afford equal access of economic operators to the procurement procedure*”.

Thirdly, and of fundamental importance to the resolution of the present matter, it is a cardinal principle of public procurement law, and one that admits of no qualification and tolerates no departure, that a Contracting Authority is rigorously and irrevocably bound by the terms of its own published tender documentation.

This principle, which finds its most precise expression in the doctrine of self-limitation, operates as a constitutional constraint upon the discretion of the Contracting Authority throughout the entirety of the procurement process. Having defined the criteria, conditions, and specifications by which it will evaluate the offers of economic operators, the Authority is thereafter prohibited from departing from, supplementing, restricting, or reinterpreting those criteria in a manner that was not communicated to tenderers at the time of publication.

The corollary is absolutely absolute. The evaluation of tenders must be carried out by strict and exclusive reference to the criteria as they stood at the time tenders were invited, without addition, subtraction, or gloss.

The juridical foundation of this doctrine in European public procurement law is firmly established. The Court of Justice of the European Union gave authoritative expression to the transparency dimension of this principle in *Emm. G. Lianakis AE and Others v Dimos Alexandroupolis and Others*, Case C-532/06, ECLI:EU:C:2008:40, Judgment of the 24th January 2008, in which the First Chamber held that a contracting authority cannot apply weighting rules or sub-criteria which it has not previously brought to the tenderers' attention, since such conduct would be incompatible with the principle of equal treatment of economic operators and the obligation of transparency flowing therefrom.

The rationale is direct. The transparency obligation requires that all criteria used to identify the most economically advantageous tender, together with their relative importance, must be disclosed in advance so that tenderers are aware of them when preparing their bids.

The Court further confirmed this position in *Manova, Case C-336/12, ECLI:EU:C:2013:647*, Judgment of the 10th October 2013, reaffirming that the principles of equal treatment and transparency require contracting authorities to guarantee equality of opportunity for tenderers at each and every stage of the tendering procedure, which implies that the tenders of all competitors must be subject to the same conditions.

The obligation of self-limitation applies with equal, and indeed particular, force to the evaluation of technical specifications.

In *Medipac-Kazantzidis AE v Venizeleio-Pananeio, Case C-6/05, ECLI:EU:C:2007:337*, Judgment of the 14th June 2007, the First Chamber directly engaged the principle that a contracting authority, having published technical specifications, is bound to evaluate tenders by strict and exclusive reference to those specifications and may not, at the evaluation stage, introduce criteria or standards that were not communicated to tenderers in the tender documentation.

The rationale is clear. To permit otherwise would be to deprive economic operators of the opportunity to prepare their offers on a correct and complete understanding of the requirements to which they would be held, and to expose the evaluation process to the very arbitrariness that the principles of equal treatment and transparency are designed to prevent.

In the present case, the application of these principles admits of only one conclusion. The specification, as published, prescribed a minimum wheel diameter of at least 200mm. The Contracting Authority, in the course of evaluation, treated that minimum as though it were an exact and exclusive measurement, thereby introducing a restriction that had no foundation whatsoever in the published tender documentation and that was never communicated to tenderers. That course of conduct is precisely the form of *post-hoc* reinterpretation that the doctrine of self-limitation exists to prohibit, and it cannot be sustained.

Henceforth, this Board reiterates that a Contracting Authority cannot, after the opening of tenders, introduce additional or more stringent requirements, nor reinterpret an unambiguous minimum threshold as though it were an “*exact value*”. In the present case, the evaluation as conducted has the effect of re-writing Clause 1.14 so as to excise the words “*at least*”. This constitutes a material alteration of the published specification occurring *post factum*, and it is precisely the mischief which Regulations 38(1) and 39(1), read together, were designed to prevent.

The observation is reinforced by Regulation 262(1)(d), which provides a pre-closing remedy enabling this Board to “*correct errors or to remove ambiguities of a particular term or clause included in a call for competition, in the contract documents*”, a provision which confirms that any such correction or removal must occur *before* the closing of the call and not through the *ad hoc* preferences of an evaluator at the stage of analysis.

Fourthly, the Board notes with particular attention the position adopted by the Contracting Authority itself. Far from defending the impugned decision, the Contracting Authority has, ex admissis, candidly acknowledged [whilst not taking any sides] that “*the divergence arises not from a deviation by any economic operator, but from the structure and drafting of the procurement documentation itself*”; that “*the interaction between these documents may reasonably warrant further examination*”; and that it is “*amenable to a reopening of the technical evaluation stage in light of the procurement documentation as a whole*”.

This is a concession of the most significant order. It constitutes, in substance, an admission by the very entity responsible for the authorship of the tender documentation that the divergence within that documentation is traceable to its own conduct and not to any default on the part of the tenderers.

It establishes, by admission, the very ambiguity which Regulation 38(1) forbids, and it demonstrates that the Evaluation Committee’s decision to prefer the stricter reading of the TTO form over the minimum-threshold language/nomenclature of Clause 1.14 was a choice taken in circumstances where the documentation itself was not unambiguous and where, therefore, the principle of transparency operated to protect the bidder.

Fifthly, and decisively, the *viva voce* evidence of Mr Dylan Debono, given upon oath at the hearing of the 5th May 2026 and recorded *in extenso* at Section IV above, places the matter beyond any further argument.

The witness, himself a Member of the Technical Evaluation Committee, conceded in answer to a question put to him *ex officio* by this Board that the Committee had relied exclusively upon the wording of the Tenderer's Technical Offer Form and had, by his own acknowledgement, disregarded through oversight the nomenclature framed in the Tender Dossier.

It is upon this confessed methodological default, and upon nothing else, that the rejection of the Appellant's bid was founded. An evaluation conducted in such circumstances cannot be said to have proceeded by reference to the procurement documentation as a whole; still less can it be said to have been conducted in a manner consonant with the principles of transparency and equal treatment. The error is not merely interpretative; it is, on the evidence of the evaluator himself, an error of process and of attention.

Sixthly, the Board addresses, and rejects, the proposition advanced by the Recommended Bidder to the effect that the Appellant, as a seasoned economic operator, ought to have ventilated the divergence between the two documents by means of a clarification question put to the Contracting Authority during the period prescribed for that purpose.

The proposition is unsustainable for at least three reasons.

First, it inverts the obligation of clarity which Regulation 38(1) places squarely upon the shoulders of the Contracting Authority, and seeks to “transmute” that obligation into a duty of vigilance imposed upon the economic operator. Such an inversion is wholly inconsistent with the scheme of the Regulations.

Secondly, and as the Appellant correctly observes, a clarification question presupposes the existence of a doubt entertained by the bidder. Where the Tender Dossier expresses a requirement in clear minimum-threshold language (“*at least 200mm*”), and where the bidder’s proposed dimension comfortably exceeds that minimum, no doubt arises in the mind of the reasonable economic operator and no occasion for clarification presents itself.

Thirdly, to require an economic operator to seek clarification not in respect of ambiguities apparent on the face of the documentation, but in respect of ambiguities which the Evaluation Committee may subsequently, and by some unforeseeable course of reasoning, contrive to identify, would be to impose a standard of preternatural prescience inconsistent with the principles of “legal certainty” and “good administration”. The Recommended Bidder’s submission upon this point is accordingly **rejected**.

As regards the reasons advanced by the Evaluation Committee, the Board observes that the communicated reason, i.e. that the diameter “*exceeds the required measurement*”, (i) does not identify any functional, operational, safety or compatibility concern attendant upon a diameter marginally greater than 200mm; (ii) does not engage with the minimum-threshold language embedded in Clause 1.14; (iii) does not address, far less resolve, the apparent divergence between Clause 1.14 and Item 14 of the TTO form; and (iv) does not explain why, if the dimension was intended to be read as an exact value, that intention was not made plain within the Technical Specifications themselves, the very document in which Regulation 53(1) requires the characteristics of the supply to be set out.

Regulation 242(2)(b) requires that an unsuccessful tenderer be informed “*of the reasons for the rejection of its tender*”. The terseness of the reason given here does not assist the Contracting Authority in defending the legality of its decision. Indeed, on the contrary, it underscores the absence of any principled basis for the exclusion.

For these reasons, the Board is satisfied that the evaluation suffers from a manifest error of interpretation. The decision of the Sectoral Procurement Directorate of the 12th February 2026 cannot be sustained. The Board accordingly **upholds** the third grievance.

Incidental Matter – The Recommended Bidder’s Characterisation of the Objection as “*Frivolous and Vexatious*”

The Recommended Bidder, both in its “*I. Introduction*” and in its “*V. Requests*”, goes so far as to characterise the Appellant’s objection as “*frivolous and vexatious*”. Though this contention does not form an independent grievance on the Appellant’s part, it falls to the Board to dispose of it before entering the *dispositif*.

An objection is frivolous only where it manifestly lacks any arguable foundation whatsoever. On the facts of this matter, the Appellant has placed before this Board a substantial, principled and carefully reasoned objection grounded in the plain wording of the Technical Specifications and in the cardinal principles of procurement law enshrined in Regulations 38, 39 and 53.

The Contracting Authority itself has expressly conceded that the drafting of its own documentation gives rise to a real interpretative question warranting further examination. In those circumstances, it is not merely legitimate but positively appropriate for the Appellant to have invoked the remedial jurisdiction of this Board. The epithet deployed by the Recommended Bidder is unsustainable and is **rejected**.

VI. The Appellant's Requests – Section V of the Letter of Objection

The Appellant's Section V ("*Requests*") sets forth four distinct demands, namely that this Board: (i) annul the decision declaring the Appellant's tender technically non-compliant; (ii) order the reintegration of the Appellant's offer in the process; (iii) recommend that the tender be awarded to the Appellant, being the lowest-priced compliant tenderer; and (iv) refund the deposit paid in conjunction with the objection. The Board addresses each demand in turn.

Demand (i) – Annulment of the Decision Declaring the Appellant's Tender Technically Non-Compliant

In light of the Board's determinations on the first, second and third grievances, the decision of the Sectoral Procurement Directorate communicated on the 12th February 2026, in so far as it declared the Appellant's tender technically non-compliant on the ground that the proposed diameter of 210mm "*exceeds the required measurement*", is vitiated by a manifest error of interpretation and cannot stand. This demand is accordingly **acceded to**, and the decision is annulled in the terms set out in the *dispositif*.

Demand (ii) – Reintegration of the Appellant's Offer into the Procurement Procedure

The necessary corollary of the annulment of the decision of the 12th February 2026 is that the Appellant's offer must be restored to the procurement procedure and be evaluated by reference to the procurement documentation as published.

This demand is accordingly **acceded to**. The Board orders that the tender be referred back to a newly constituted Evaluation Committee for re-evaluation of the Appellant's offer, which re-evaluation shall proceed upon the footing that a diameter of 210mm satisfies Clause 1.14 of the Technical Specifications, and that the evaluation shall thereafter continue in accordance with the provisions of the GRGT and the applicable Regulations to its natural conclusion.

Demand (iii) – Recommendation that the Tender be Awarded to the Appellant as the Lowest-Priced Compliant Tenderer

Upon this demand the Board cannot, as a matter of jurisdiction and principle, accede. The award of a public contract is not a function of this Board but of the Contracting Authority, acting through its Evaluation Committee and the competent adjudicating bodies in accordance with the provisions of the Regulations and the GRT.

The role of this Board, under Regulation 276(h), is to determine the legality of the decisions taken in the course of the procurement procedure. It is not to substitute its own assessment of technical and financial compliance for that of the Evaluation Committee in respect of offers which have not yet been evaluated according to the published criteria as properly construed.

Moreover, the re-evaluation now ordered must be conducted by the Evaluation Committee in the ordinary course, encompassing all those aspects of the Appellant's offer (administrative, technical and financial) which, owing to the erroneous rejection at the technical stage, have not yet been fully determined.

It would be inappropriate for this Board to pre-empt that exercise by directing a particular outcome. The Appellant's assertion that it is "*the lowest-priced compliant tenderer*" is a matter falling squarely within the province of the Evaluation Committee to verify in the re-evaluation which this Board now orders.

This demand is accordingly **not acceded to** in the form in which it is framed. The Appellant's substantive interest is, however, fully protected by the order entered upon demand (ii), which restores its offer to the procurement procedure for proper evaluation and, where applicable, for award in accordance with the outcome of that evaluation.

Demand (iv) – Refund of the Deposit

The Appellant's objection having been upheld substantially, the deposit paid in conjunction with the objection shall be refunded in full pursuant to Regulation 273 of S.L. 601.03. This demand is accordingly **acceded to**.

VII. Conclusions

In light of the foregoing analysis, the Board reaches the following conclusions:

- (1) The interlocutory application filed by Rausi Co. Ltd. on the 20th April 2026, requesting an order of this Board compelling the Appellant to exhibit its Tenderer's Technical Offer Form, is inadmissible and falls to be rejected for the reasons set out at Section II(d) above, in particular the statutory regime of confidentiality established by Regulation 40 of S.L. 601.03, the absence of any probative

utility in the request given that the declaration of a diameter of 210mm is common ground between the parties, and the extremity of the request to the *thema decidendum* of these proceedings.

- (2) The Appellant's first grievance (Section II of the Letter of Objection) is well-founded. Clause 1.14 of the Technical Specifications, on its plain and ordinary reading, established a minimum threshold of 200mm for the diameter of the swivel castors and imposed no maximum dimension whatsoever.
- (3) The Appellant's second grievance (Section III of the Letter of Objection) is well-founded. The Appellant's submission, declaring a diameter of 210mm and corroborated by technical literature, complied in full with the specification as published.
- (4) The Appellant's third grievance (Section IV of the Letter of Objection) is well-founded. The evaluation suffers from a manifest error of interpretation. The apparent divergence between Clause 1.14 of the Technical Specifications and Item 14 of the TFO form is attributable to the drafting of the procurement documentation by the Contracting Authority (as the Contracting Authority has itself candidly conceded) and cannot be invoked against an economic operator who complied with the Technical Specifications as published. Any ambiguity falls to be construed against the Contracting Authority as the author of that documentation, in accordance with Regulations 38(1) and 39(1).

Furthermore, the *viva voce* evidence of Mr Dylan Debono, Member of the Technical Evaluation Committee, given upon oath at the hearing of the 5th May 2026, has confirmed, by admission, that the Committee relied exclusively upon the wording of the Tenderer's Technical Offer Form and disregarded the formulation employed in the Tender Dossier.

The submission advanced by the Recommended Bidder, to the effect that the Appellant ought to have raised the divergence at the clarification stage, is rejected: a clarification question presupposes a doubt, and no doubt arose upon a fair reading of Clause 1.14 of the Technical Specifications, which, in clear minimum-threshold language, was satisfied in full by the Appellant's proposed dimension of 210mm.

- (5) The decision of the Sectoral Procurement Directorate dated 12th February 2026, in so far as it declared the Appellant's tender technically non-compliant on the ground that the proposed diameter of 210mm "*exceeds the required measurement*", cannot be sustained and is to be annulled.
- (6) The Recommended Bidder's characterisation of the objection as "*frivolous and vexatious*" is rejected.

VIII. Decision

The Board,

Having regard to the foregoing, and acting pursuant to Regulation 276(h) of the Public Procurement Regulations (S.L. 601.03), the Public Contracts Review Board hereby:

- (a) **Rejects** the interlocutory application filed by Rausi Co. Ltd. on the 20th April 2026 for an order compelling the Appellant to exhibit its Tenderer's Technical Offer Form, for the reasons set out at Section II(d) above;
- (b) **Upholds** the objection filed by United Equipment Co. (UNEC) Ltd., and in particular accedes to the first, second and third grievances thereof as articulated under Sections II, III and IV of the Letter of Objection;
- (c) **Accedes** to demand (i) of the Appellant's Requests, and accordingly annuls the decision contained in the Letter of Rejection, of the Sectoral Procurement Directorate communicated on the 12th February 2026 in so far as it declared the Appellant's tender technically non-compliant under Tender Reference SPD8/2025/142; and consequently annuls the decision contained in the Letter of Acceptance of the Sectoral Procurement Directorate communicated on the 12th February 2026 in so far as it declared the recommendation for award in favour of the Recommended Bidder's under Tender Reference SPD8/2025/142;
- (d) **Accedes** to demand (ii) of the Appellant's Requests, and accordingly orders that the tender be referred back to a newly constituted Evaluation Committee for re-evaluation of the Appellant's offer, which re-evaluation shall proceed upon the footing that a diameter of 210mm satisfies Clause 1.14 of the Technical Specifications, and shall thereafter continue in accordance with the provisions of the GRGT and the applicable Regulations to its natural conclusion;
- (e) **Does not accede** to demand (iii) of the Appellant's Requests in the form in which it is framed, the award of the contract falling within the province of the Contracting Authority and its Evaluation Committee in the course of the re-evaluation now ordered, and not within the substitutive jurisdiction of this Board;
- (f) **Accedes** to demand (iv) of the Appellant's Requests, and accordingly directs that the deposit paid by the Appellant in connection with the present objection be refunded in full pursuant to Regulation 273 of S.L. 601.03;
- (g) **Rejects** the submissions of the Recommended Bidder, and in particular rejects the characterisation of the objection as "*frivolous and vexatious*".

Dr Vincent Micallef
Chairman

Mr Lawrence Ancilleri
Member

Dr Maria Cardona
Member