

## **PUBLIC CONTRACTS REVIEW BOARD**

**Appeal Reference Number** 2230  
**Tender Reference Number** TD/Q/1066/2025  
**Tender Name** “Supply and Delivery of Round Head Galvanised Screws  
7mm x 90mm”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 16<sup>th</sup> April, 2026 to hear the appeal as filed by the appellant Wurth Limited (hereinafter the ‘Appellant’) on the 20<sup>th</sup> February, 2026, and after taking cognisance of:

The tender document for the ‘Supply and Delivery of Round Head Galvanised Screws 7mm x 90mm’ (hereinafter referred to as the “Tender Document”);

The minutes of the proceedings dated 16<sup>th</sup> April, 2026 which are being reproduced hereunder:

### **“PUBLIC CONTRACTS REVIEW BOARD**

#### **Case 2230 TD/Q/1066/2025 (12615) – Supply and Delivery of Round Head Galvanised Screws 7mm x 90mm**

The Tender was issued on the 4<sup>th</sup> July 2025, and the closing date was 25<sup>th</sup> July 2025.

The estimated value of the tender, excluding VAT, was €8,050.00

On 23<sup>rd</sup> February 2026, Wurth Ltd., lodged an appeal against, Enemalta plc – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 16<sup>th</sup> April 2026, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Maria Cardona and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €400 was paid.

There were Four bids.

The attendance for this public hearing was as follows:

#### **Appellant – Wurth Ltd.**

Mr Arthur Calleja– Company Representative  
Mr Michael Attard – Company Representative

#### **Contracting Authority – Enemalta plc**

Dr Christopher Mizzi – Legal Representative  
Mr Mark Mizzi – Chairperson

**Preferred Bidder** – J.P. Baldacchino and Co. Limited

Mr Dennis Baldacchino – Company Representative

### **Opening Statements**

The Chairperson welcomed the parties present. The Chairperson identified the Appellant - Wurth Ltd., the Contracting Authority - Enemalta plc and acknowledged the presence of the Representative of the Recommended Bidder, J.P. Baldacchino and Co. Limited.

Since Mr Arthur Calleja, representing Wurth Ltd., was not a lawyer, the Chairperson explained the procedures of the Board.

As all parties declared that they had no initial submissions to make and no witnesses to testify, the Chairperson stated that the parties could proceed with their final submissions.

The Chairperson minuted: *“Il-partijiet jiddikjaraw li ma għandhomx provi xi jressqu u għaldaqstant l-partijiet ser jgħaddu għas-sottomissjonijiet finali”*.

### **Final submissions**

#### **Final Submissions by Mr Arthur Calleja (for the Appellant)**

Mr Calleja explained that although the amount involved was small, he wished to address the principle and the substance of the format. The tender concerned a particular screw. The two questions in the tender form referred to the material, namely galvanized steel, and to wood screw threads.

While compiling the tender, two boxes were not ticked. He stated that this omission occurred erroneously during the preparation of the tender, and they were not contesting this fact.

Mr Calleja insisted that they do meet the requirements of the tender, and that they had also attached a data sheet which satisfies the criteria of the tender, being both the most advantageous offer and technically compliant. They submitted the tender and the data sheet and were available to provide further information. Prior to this tender, Enemalta had been supplied with the same screws.

It is clear that it is the same screw, as evidenced by the image. A person with basic technical knowledge would conclude that it is the same screw. This is a galvanised screw, and it is a plug screw.

In response to a question by Dr Thomas, Mr Cutajar confirmed that during the period of this appeal, Enemalta issued a quotation and Wurth Ltd. supplied the same material. He quoted from an invoice dated 15<sup>th</sup> April 2026.

Mr Arthur Calleja requested that the Board reconsider its decision, since the omission was purely administrative.

### **Final Submissions by Dr Christopher Mizzi (for the Contracting Authority)**

Dr Mizzi said that they sympathise with the appellant's situation, as this is indeed a mishap; however, this does not mean that public procurement regulations can be set aside. This is purely a technical offer submitted by the bidder (note 3), and therefore no rectification can take place. If the technical offer is not duly completed as required, this results in disqualification. The rules are clear: once the technical offer was not completed as required, the evaluation committee disqualified the bid.

Dr Mizzi explained that contrary to what Mr Cutajar stated, the evaluation committee had to stop its assessment as soon as the offer was found to be non-compliant. He referred to the assumptions mentioned by Mr Cutajar regarding technical boards. The evaluation committee could not proceed further since the technical offer had not been completed. It was obliged to stop at that stage.

This is how the evaluation committee treated the other bidders.

The appellant, in his submission, assumes that since they already supply material to Enemalta, this omission should not have led to disqualification. However, each tender or quotation is governed by its own regulations.

The applicable rules and regulations govern each tender, and the appellant's tender application was therefore disqualified.

### **Final Submissions by Mr Dennis Baldacchino (for the Preferred Bidder)**

Mr Baldacchino noted that when J P Baldacchino and Co. Limited omitted certain information/particulars in a previous tender, they were disqualified.

### **Replica by Mr Arthur Calleja (for the Appellant)**

The omission, however, is substantiated by the annexed document submitted with the tender. Substance over form. He disagreed that a good bid should be rejected due to the omission of a tick mark, which was purely a mistake, and argued that this would result in a higher cost to the State.

## **Conclusion of the Hearing**

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

The written pleadings as filed by Wurth Limited dated 20<sup>th</sup> February, 2026, together with proof of payment of a deposit in the amount of €400, wherein it held as follows:

*“With reference to your letter dated 13th February 2026 regarding Contract Ref: TD/Q/1066/2025 (12615) for the Supply and Delivery of Round Head Galvanised Screws 7mm x 90mm, we hereby formally notify you of our objection to the decision taken by the Public Contracts Review Board declaring our bid technically non-compliant.*

*The reason cited relates to an omission in the technical schedule (Note 3) concerning Item 3.2.1 (Galvanised steel) and Item 3.2.2 (Type of thread).*

*We respectfully submit that the required technical details were clearly specified in the data sheets submitted together with our technical offer. The fields in the schedule were inadvertently left blank due to a genuine clerical oversight on our part, and not due to any non-compliance with the technical specifications.*

*Furthermore, we support our position by referring to the previous tender Ref: TD/Q/1954/2023 (8599), which was awarded to us in 2024 for the same product. A copy of the relevant Recommendation of Award and our Official Invoice is attached for ease of reference, confirming our successful supply of compliant items under that contract.*

*In view of the above, we kindly request that the Board reconsiders its decision, taking into account that the omission was purely administrative in nature and that full technical compliance was clearly demonstrated in the submitted documentation.”*

The written reply as filed by Enemalta plc on the 2<sup>nd</sup> March, 2026 (hereinafter the ‘Contracting Authority’) wherein it held as follows:

- “1. Enemalta plc. published the abovementioned call for quotes on the 4th July 2025.*
- 2. The closing date for this call was on the 25th July 2025, upon which date the opening session of this tender took place.*
- 3. For this call for tender 4 (four) offers were unlocked.*
- 4. The award criteria for this call was the cheapest technically compliant bid.*
- 5. The evaluation committee recommended J.P. Baldacchino for award as he was the cheapest technically compliant bid.*
- 6. With regards to the objector, the evaluation committee deemed the offer of Wurth Ltd. as technically non-compliant the reason being quoted in the letter to unsuccessful of the 13th February 2026 is as follows:*

*"Technical Schedule (Note 3) not duly filled in. Items 3.2.1 (Galvanised Steel) and Item 3.2.2 (Type of Thread) were left empty."*

*7. Following such correspondence, Wurth Ltd. filed an objection on the 20th February 2026 in front of the PCRB.*

*8. The objector's alleged grievance is solely the following:-*

*The objector deems that the missing information in the Technical Offer Form had been included in the data sheet attached as literature and therefore his bid should be deemed as compliant.*

*The defendant rejects this allegation and arguments put forward by the objector as unfounded both factually and legally for the following reasons:*

*9. Technical Offer Form - Note 3-Not Rectifiable*

*10. First and foremost, the defendant would like to make reference to the Technical Offer form as submitted by the objector in his submission for this call. It is to be pointed out that the bidder has filled in most of the Technical Offer Form but for some reason left out items 3.2.1 and 3.2.2. The rest of the fields in the Technical Offer Form have been replied to. It is important to note that these two headings (3.2.1 and 3.2.2) of the Technical Offer Form were labelled as Mandatory fields denoted as 'Must have' earmarked with the letter 'M' and the Tenderer Response for these two fields was solicited in the response column as either a 'YES' indication or else a specification of value. The following is a screenshot of the blank fields from the objector's Technical Offer Form:*

*11. In the humble opinion of the defendant one has to be extremely sensitive to the nature of the forms. In this case not only, clear indications were made to what was expected from the bidder's end, but even the instructions at the end of the Form clearly said that the form had to be completed, and that failure to furnish all the information being requested may result in a rejection of the offer.*

*12. All the above disclaimers within the form culminate in the fact that the Technical Offer Form is a Note 3 document as per Instructions to Tenderer.*

*Note 3 spells the following: No rectification shall be allowed. Only clarifications on the submitted information may be requested.*

*13. In this case the Technical Offer Form was not completed and therefore missing information or rather incomplete information was prevalent. Therefore, this entailed that for the submission of such information the Form had to be resubmitted through a rectification exercise which is not permissible for Note 3 Forms. Therefore, in this circumstance, the evaluation committee could not allow for the amendment of the form and thereby had no option other than to disqualify the bidder for providing an incomplete Technical Offer Form.*

*14. Moreover, the bidder in his objection is clearly stating that the Technical Offer Form was incomplete due to a clerical mistake and oversight. This statement should therefore constitute an admission that the Technical Offer Form was incomplete and therefore of a disqualitative nature.*

15. *Should the Evaluation Committee have acted otherwise and accepted to rectify in any way the Technical Offer from this would have constituted a breach of the basic principles of Public Procurement such as level playing field, equal treatment and discrimination.*

16. *For the above reason, the offer had to be disqualified.*

17. *Information to be found in Technical Literature*

18. *Without prejudice to the above, this ground is not of substitute to any requirements of the Technical Offer Form. The Technical Literature is to corroborate and to substantiate the Technical Offer. Therefore, one cannot take for granted the Technical Offer with a remark that any discrepancies would be fixed through the Technical Literature. But rather, the Technical Offer has to be complete since it is the main document of the offer, with the technical literature linking to the offer not the other way round.*

19. *Although the technical literature cannot suffice to complete any blanks within the Technical offer as in this case, the defendant would like to pinpoint some discrepancies in the grounds of this objection with respect to the technical literature.*

20. *The Objector is claiming that the missing information in the Technical Offer was readily available in the datasheet - hence the technical literature. Whereas, this statement could be true for Item 3.2.1 wherein the Technical Literature makes reference to a galvanized steel screw; the matter is not so obvious with respect to Item 3.2.2 wherein a confirmation was required that the screw's thread is suitable for wood. This information is not clear in the datasheet.*

21. *Albeit, this is a side argument which is not intended to create any inroad for the compliance of the technical offer, it is the humble opinion of the defendant that the requested information was not in fact readily available in the technical literature. Therefore the technical offer missing information was fundamental and basic and irreplaceable. Thus, with the technical offer not completed and no room for a rectification for the reasons explained earlier, the evaluation committee had no option but to disqualify the offer. Any action otherwise would have been in breach of the basic principles of public procurement.*

22. *Previous adjudications in favour of the objector*

23. *The objector mentions previous adjudications in favour of himself wherein quoting the previous tender reference and invoices claiming successful supply of the product. 24. The adjudication of previous tenders in favour of the objector creates no precedent. Different calls are prone to different specifications and tender conditions and the fact that the bidder was successful on a previous occasion does not constitute an advantage or any incumbency in a next call.*

25. *For the above reason any reference to a previous call awarded to the objector, although not be contested is not relevant for the outcome of this objection and should therefore be discarded.*

26. *Conclusion*

*Finally in view of the above, the defendant humbly requests the Review Board to dismiss all arguments submitted by the objector and to order the continuation of this tender procedure and proceed with the award as recommended. The defendant reserves the right to make further submissions and produce such evidence and testimony as may be appropriate during the hearing of this remedy."*

The opening and closing submissions of the Appellant and the Contracting Authority as delivered.

## Considers;

This Board notes that the Appellant has brought forward one (1) main grievance.

### A. Omissions in Technical Offer Form

The Appellant's grievance surrounds the fact that two items were left blank in the Technical Offer by mistake and that this was a clerical error, and that technical compliance regarding these two items could be confirmed from the data sheets attached to its bid.

This Board refers to the Selection and Award Requirements Clause 5 of the Tender Document, where in sub-clause (C)(i) the Tenderer's Technical Offer is clearly classified as Note 3. This Board further refers to the Notes to Clause 5 wherein it is stated that "3. No rectification shall be allowed. Only clarifications on the submitted information may be requested."

This Board must necessarily underline that in this case, for the Appellant's bid to survive, the Appellant needed to be given the opportunity to rectify the omissions in its Technical Offer as submitted, changing the empty spaces to a 'yes'. That change, in this Board's view, may never be said to be tantamount to a clarification – but it would result to be purely a rectification. Rectifications are only permissible if the Tender Document allows for them, and in this case, the Tender Document expressly disallowed for rectifications to the Technical Offer. Clerical oversight or not, a rectification is the only solution to an omission, and the Tender Evaluation Committee was therefore correct in not requesting one.

In this respect, reference is made to the recent judgment in the names '**Krypton Chemists Limited (C-8933) v. Central Procurement and Supplies Unit et'** dated 13<sup>th</sup> November, 2025 delivered by the Court of Appeal (in its Superior Jurisdiction) which dealt with this distinction precisely:

*“27. Ma hemmx ghalfejn ngħidu, il-prinċipju tal-proporzjonalità għandu jiġi applikat b'mod li jhars l-għanijiet tal-proċess tal-akkwist pubbliku, jiġifieri, li l-kuntratt jingħata lil min jagħmel l-orbo u l-aħjar offerta, mingħajr ma jinkisru l-prinċipji ta' trattament uguali u trasparenza. Tali prinċipju però m'għandux jintuża bhala pretest biex offerta irregolari tiġi salvata, jekk dan inwassal għal vantaġġ kompetittiv li mhux xieraq.*

*28. Hija rilevanti hafna wkoll f'dan il-qasam tal-liġi d-distinzjoni li teżisti bejn kjarifika u rettifika.*

*29. **Kjarifika hija l-azzjoni li permezz tagħha l-awtorità kontraenti tista' titlob spjegazzjoni jew interpretazzjoni fuq informazzjoni li tkun diġà giet sottomessa mal-offerta.** Naturalment il-proċedura tal-kjarifika ma tistax tintuża biex dak li jkun idabhal informazzjoni għida jew biex ibiddel issustanza tal-offerta. Il-Qorti tal-Appell fis-sentenza *Rockcut Limited v. Direttur Generali tad-Dipartiment tal-Kuntratti* deċiża fil-25 ta' Ġunju, 2018 stabbiliet li ma tistax tingħata kjarifika ta' tagħrif li ma jkunx ingħata għaliex il-kjarifika sservi biss biex tagħmel aktar ċar tagħrif li jkun diġà mogħti iżda li ma huwiex ċar biżżejjed. Kif ingħad fis-sentenza *Steelshape Ltd v. Direttur tal-Kuntratti* deċiża fis-7 ta' Anni 2013, dak li offerent għandu jgħid, għandu jgħidu mal-offerta u mhux jippretendi li jkun mistoqsi d-dettalji*

*tal-modus operandi tiegħu. Kjarifika, għalhekk hija limitata għal spjegazzjoni ta' elementi diġà preżenti fl-offerta, minghajr ma tinbidel il-kompożizzjoni tagħha.*

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

*31. Imbaddem dan kollu għall-każ tal-lum, din il-Qorti tqis li n-nuqqas fl-istampa tat-tikketta provdut minn Krypton ma taba l-ebda vantaġġ u ma holoq ebda preġudizzju għall-oblaturi l-oħra. Il-problema fl-istampa kienet biss li din ma kinitx cara biżżejjed u għalhekk ma setgħetx tingara faċilment. Nuqqas bhal dan seta' faċilment jiġi msenwi permezz ta' kjarifika għaliex kif rajna aktar kmieni, il-proċedura tal-kjarifika hija aċċettabbli li tintuża meta t-tagħrif mogħti mill-offerent ma jkunx ċar biżżejjed.” (Added emphasis of the PCRB).*

Therefore, and in view of the foregoing considerations, the Appellant's grievance is being rejected as unfounded.

## **DECIDE**

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

The Board further decides not to re-imburse the deposit paid by the Appellant.

**Dr Ana Thomas**  
Chairperson

**Dr Maria Cardona**  
Member

**Mr Lawrence Ancilleri**  
Member

Tuesday 12<sup>th</sup> May, 2026.