PUBLIC CONTRACTS REVIEW BOARD

Case 2251 – Objection – CT2231/2025 (Tender for the supply of Anti-Haemophilia Factor VIII 1000 I.U.)

19th June 2026

The Board,

Having noted the letter of objection filed by Dr Douglas Aqulina, Dr Mark Attard Montalto and Dr Samira Briffa acting for and on behalf of **Drugsales Limited**, (hereinafter referred to as *"the Appellant"*) filed on the 25th May, 2026;

Having also noted the Reasoned Letter of Reply filed by Dr Alexia J. Farrugia Zrinzo, Dr Leon Camilleri and Dr Audrey Marlene Buttigieg Vella acting for and on behalf of the **Department of Contracts** (DoC) and the **Central Procurement and Supplies Unit** (CPSU) (hereinafter referred to as *"the Contracting Authority"*) filed on the 4th June, 2026;

Having heard and evaluated the testimony of the witness Dr Dustin Balzan (Director Pharmaceutical Affairs) as summoned by Dr Douglas Aquilina for and on behalf the Appellant;

Having heard and evaluated the testimony of the witness Ms Edith Sciberras (Technical Evaluator as summoned by Dr Leon Camilleri for and on behalf the Department of Contracts and the Contracting Authority;

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 15th June, 2026 hereunder-reproduced.

MINUTES

Case 2251 – 676 -- CT2231/2025 – Tender for the Supply of Anti – Haemophilia Factor VIII 1000 I.U.

The Tender was issued on the 3rd of September 2025, and the closing date was 7th October 2025.

The estimated value of the tender, excluding VAT, was €1,424,115.00

On 25th May 2026, Drugsales Ltd., lodged an appeal against Central Procurement and Supplies Unit (CSPU) – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 15th of June 2026, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Mr Keith Victor Grech and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €7,121.00 was paid.

There was one bid.

The attendance for this public hearing was as follows:

Appellant – Drugsales Ltd.

Dr Douglas Aquilina – Legal Representative.
Mr Andrew Attard Montalto – Company Representative.
Mr Alex Fenech – Company Representative.
Ms Giulia Attard Montalto– Company Representative.
Mr Julian Tonna – Company Representative.
Mr Reuben Demanuele – Company Representative.

Contracting Authority – Central Procurement and Supplies Unit (CSPU).

Dr Leon Camilleri – Legal Representative.
Ms Kirsty Agius – Chairperson.
Ms Federica Spiteri Maempel – Secretary.
Ms Edith Sciberras – Technical Evaluator.
Mr Aldo Sciberras – Evaluator.
Ms Ruth Azzopardi Nuner – Evaluator.

Department of Contracts.
Dr Audrey Vella Buttigieg – Legal Representative.

Recommended Bidder -Not Applicable (Cancellation)

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2251 in the records of the PCRB. The Chairman identified the Appellant as Drugsales Ltd., the Contracting Authority as, Central Procurement and Supplies Unit (CSPU).

The Chairman, Dr Vincent Micallef, informed both parties that Mr Keith Victor Grech, a member of the PCRB, was participating online. Dr Douglas Aquilina for Drugsales Ltd., and Dr Leon Camilleri for Central Procurement and Supplies Unit (CSPU), 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 Douglas Aquilina (for the Appellant)

Dr Aquilina noted that they were discussing a medical product, Anti-Haemophilia Factor VIII. Tenders for this product had been issued frequently over the last five years. This particular tender was the same as the previous ones and contained the same specifications.

Drugsales submitted the best offer. After the tender closed, Drugsales received a letter from CPSU stating that the tender was being cancelled in accordance with Article 18.3(b). Two specifications regarding '*High Purity'* and '*RiCof ratio'* were considered unclear.

The rejection letter stated that the tender was to be reissued with a slight modification to the specifications; however, the product being procured remained the same.

This prejudices Drugsales, as the price it offered is now public, and all other suppliers will be able to submit bids for the same product knowing Drugsales' price. This goes against the fundamental principles of the PPR.

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

Dr Leon Camilleri stated that the specifications had been drafted beforehand and were then provided to the evaluators for assessment. One of the evaluators raised an objection because certain requirements were not clear. The matter was referred to the Directorate of Pharmaceutical Affairs (DPA), which amended the specifications. Since the parameters of the project had been altered, the tender had to be cancelled. A new tender incorporating the amended specifications would be issued. The CPSU considered this course of action to be justified.

Witness

Dr Dustin Balzan (ID 229882M) — Summoned by Dr Douglas Aquilina

Dr Aquilina referred to the CPSU cancellation letter dated 15 May 2026. Dr. Balzan, a member of the DPA, stated that on 4 March the CPSU informed them that there were difficulties in interpreting '*High Purity'* and the '*RiCof ratio'*.

The issue was how to define '*High Purity'* and how to apply the ratio objectively. The last revision of the specifications had been made in 2018. Dr Balzan discussed the matter with the Haemophilia Professor.

The Board clarified that the specifications used in this tender were the same as those used in all previous tenders.

Dr Aquilina referred to previous tenders ERU 2509/23, ERU 1705/23, CT 2298/22, ERU 0204/20, and CF 2242/19, all of which contained the same specifications.

Dr Camilleri noted that Dr. Balzan represented the DPA and that all calls for tenders were issued by the CPSU. The fact that all previous tenders had contained the same specifications was not being contested.

Dr Aquilina asked the witness whether the previous tenders had been successfully fulfilled, and Dr. Balzan replied that no problems had ever arisen.

After consulting with Prof. Alex Gatt, Dr Balzan agreed that the relevant information was not contained in the SPC and that there was ambiguity in its interpretation. The advice was therefore to issue simpler specifications. The previous specifications were, and he quoted:

"*High purity Anti-Haemophilia Factor VIII 1000 I.U. Iyophilised powder together with reconstitution and administration set. The FVIII: VWF ristocetin cofactor activity (RiCof) ratio should not be greater than 1:2".*

The Board clarified that the required changes were not intended to procure a different product but merely to simplify the terminology used in the specifications.

Cross-Examination by Dr. Leon Camilleri

Dr Camilleri noted that the DPA compiles the specifications for medicinal products, which are subsequently issued as tenders by the CPSU. The specifications for this product had remained unchanged since 2018. In this case, the CPSU felt it necessary to consult the DPA, and the DPA agreed that the specifications should be amended.

Witness

Ms. Edith Sciberras (ID No. 360068M) — Summoned by Dr Leon Camilleri

Ms. Sciberras, a Principal Pharmacist with the CPSU since 1992, has served as an evaluator for medicines with the Ministry of Health for the past ten years. She acted as a technical evaluator in this tender. She was not involved in drafting the specifications, and the specifications were not issued by the CPSU.

Ms. Sciberras stated that there was an anomaly in the specifications. She was unable to define '*High Purity'* in Clause 2.1, and in Specification 2.2 there was an issue concerning Factor VIII and the RiCof ratio. She quoted Clause 2.2:

"The FVIII: VWF ristocetin cofactor activity (RiCof) ratio should not be greater than 1:2".

She explained that this provision could be interpreted in different ways, which created the dilemma. The estimated value of the tender was €1.4 million, and the evaluators did not know which interpretation of the specifications should be applied. The DPA decided that the specifications needed to be amended, and therefore the tender had to be cancelled in accordance with Article 18.3(b).

The Board clarified with the witness that this was her first time acting as an evaluator for this Haemophilia product.

Dr Aquilina asked whether either of the other two evaluators had evaluated this product previously. The witness informed Dr Aquilina that he could ask them directly, as they were present.

Dr Aquilina asked the witness whether she had reviewed the submissions made by Drugsales, which included letters from the manufacturer dated 6 and 7 October 2015 stating that the product conformed with the specification.

The witness stated that the evaluation report recorded that the evaluation had not been conducted because the specifications were unclear. She confirmed that she had seen the declaration letter submitted by Drugsales.

The Board asked whether the appellant's product conformed with the tender specifications.

The witness replied that the evaluation had not been carried out because she did not know which interpretation of the specifications should be applied.

Dr Camilleri asked why the evaluation had not been conducted.

The witness stated that there was more than one possible way of evaluating the specifications and that they were not sufficiently clear.

Dr Aquilina requested the Chairman's permission to exhibit the two letters included with the submissions.

The Chairman stated that the appellant exhibited Document DS1 *seduta stante*.

Dr. Douglas Aquilina Verbalised:

"*Dr Aquilina jitlob jekk hemmx kontestazzjoni, minn naha tas CPSU dwar il-fatt, li mit 2018 l'hawn, inhargu numru ta tenders u ERU's, inkluz dawk presentati lil Bord, dwar l-istess prodott, dawn l-istess zewg specifications, allegatament ambigwi, u li f'dawn is-sejhiet, ikkompetew numru ta kompetituri, kif indikat fid dokumenti, inkluz wiehed minnhom, u dawn gew awarded, lil Drugsales Ltd. bl-istess prodott Immunat li gie offrut f'dan it-tender*".

Dr. Leon Camilleri Verbalised:

"*L'Awtorita kontraenti CPSU tista tikkonferma biss illi l-ispecifications, kif ippublikati fit-tender odiern, kienu tali sa mis-sena 2018, kif iddikjara d-direttur tal-Pharmaceutical Affairs u li minn dak inhar sal-lum, hargu numru ta sejhiet b'dawn l-ispecifications, li gew awarded lil suppliers varji.*"

Final Submissions

Final Submissions by Dr. Douglas Aquilina (for the Appellant)

Dr. Aquilina stated that Anti-Haemophilia Factor VIII is a licensed product. Several tenders had previously been issued with the same specifications. There had been no requests for clarification, no pre-contractual objections, and no appeals. The uncertainty arose from the Evaluation Committee and the CPSU, a concern that had never existed in previous years. They are now stating that '*High Purity'* is irrelevant, but this issue could have been clarified during the procurement process.

He argued that this did not involve a change in the economic or technical parameters of the product, since the product itself would remain the same and only the wording of the specifications was being simplified. He referred to Regulation 38 of the PPR and quoted:

"All procurement documents 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".

These tenders had been issued over the last eight years, attracted numerous bidders, and had never generated any requests for clarification.

Dr. Aquilina referred to two cases, *Ragonesi and Company vs Korporazzjoni ghas-Servizzi tal-Ilma* and *Weinstrom vs Republic Osterreich et*, and quoted:

"*The award criteria must be formulated, in the contract documents or the contract notice, in such a way as to allow all reasonably well-informed tenderers of normal diligence to interpret them in the same way".*

The issue, he argued, was that the Evaluation Committee did not understand a tender specification that had previously been interpreted without difficulty. If the intention was merely to remove '*High Purity'*, the tender should not have been cancelled. It was unjust to make such a decision after the tender procedure had already closed.

The only bidder that had submitted a valid offer on time was prejudiced. Drugsales would offer the same product, but all other bidders now knew it offered price. This would constitute a breach of fair competition. He argued that cancellation should only be justified where a completely different product is to be procured.

Final Submissions by Dr. Leon Camilleri (for the Contracting Authority)

Dr. Leon Camilleri stated that the hearing had established the role of the DPA as the department responsible for drafting specifications for medical products. These specifications are then passed to the CPSU, which publishes the tender. The fact that the same product may be evaluated by different evaluators at different times does not necessarily mean that the outcome will always be identical.

In this case, one of the evaluators identified particular specifications, mainly *'High Purity'* and the ratio requirement, that could be interpreted in different ways. The parameters should have been clear and objective. It was not a matter of someone failing to understand the specifications, as the pharmacist involved had extensive experience and nevertheless felt it necessary to refer the matter to the DPA.

The DPA agreed with the evaluator and issued a completely revised set of specifications. In those circumstances, the tender had to be cancelled. He referred to a recent PCRB decision, Case 2235, concerning the structure of the financial bid. The common element was that prices had become known and the cancellation had occurred during the evaluation stage.

In the present case there was only one offer, but the underlying principles remained the same. Since the evaluation could not be carried out, the cancellation of the tender was justified. Accordingly, the decision should be confirmed.

Conclusion of the Hearing

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

Hereby Resolves:

The Board refers to the minutes of the Board sitting of the 15th June 2026.

Having noted the objection filed by Drs Douglas Aquilina, Mark Attard Montalto and Samira Briffa for and on behalf of **Drugsales Limited** (hereinafter referred to as *"the Appellant"*) on the 25th May, 2026, refers to the claims made by the same Appellant with regard to the tender of reference **CT2231/2025 (Tender for the supply of Anti-Haemophilia Factor VIII 1000 I.U.)** listed as case No. 2251 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Drs Douglas Aquilina.

Appearing for the Contracting Authority: Drs Leon Camilleri and Audrey Marlene Buttigieg Vella

Whereby, the Appellant contends that:

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

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

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

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

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

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

1. The letter dated 15th May 2026 states that the contracting authority came up with revised specifications for the procurement of Anti-Haemophilia Factor VIII 1000 I.U., and that therefore this resulted in an alteration of the economic or technical parameters of the project in terms of Section 18.3(b) of the General Rules Governing Tenders.
2. It is to be noted that although the letter dated 15th May 2026 initially claims that the Evaluation Committee sought clarification regarding two particular technical specifications, the letter proceeds to state that the contracting authority revised the specifications and simply cancels the tender in terms of Section 18.3(b) alleging a change in technical specifications, without explaining how and in what manner the said parameters have allegedly and actually changed.
3. Regulation 15(3) states in unequivocal terms that **"the decision leading to the cancellation** of a procurement procedure has to be made in writing and **must include the findings and the reasoning that led to this decision.**
4. Drugsales Limited humbly submit that it is not sufficient to simply refer to Section 18.3(b) of the General Rules Governing Tenders and to claim that there has been a change in the economic or technical parameters of the project. **The contracting authority should justify and explain how and in what manner the said technical or economic parameters have effectively changed, and this also in light of the fact that bidders have to a right to contest and appeal from a cancellation decision,** and this in terms inter alia of Regulation 15 of the Public Procurement Regulations.

5. This principle has been confirmed also by the Court of Appeal in the case **Borg Bros v. Ministeru għall-Familja u Solidarjetà Soċjali et** decided on the 27th June 2014, whereby it was stated:

"Ovvjament, darba li l-awtorità konċernata ma tatx spjegazzjoni l-ittra tal-irtirar, min kellu interess kellu jressaq appell quddiem il-Bord biex isir jaf, kif kellu dritt, x'wassal għall-irtirar, bil-konsegwenza li l-Bord ma kellux jordna t-telf tad-depożitu li sar biex seta' jisma l-appell. L-Awtorità konċernata aġixxiet strettament mal-liġi meta rriferiet għar-regolamenti li jippermettulha tirtira sejha għall-offerti, però, min hu interessat għandu dritt jikkontesta d-deċiżjoni u jitlob stharriġ ġudizzjarju tad-deċiżjoni li wasslet għall-irtirar (ara Hospital Ingenieure Krankenkenhaustechnick Plannings GmbH v. Stadt Wien, deċiża mill-Qorti Ewropea tal-Ġustizzja fit-18 ta' Ġunju 2002), u biex dan ikun jista' jsir, trid tingħata informazzjoni dwar x'wassal għall-irtirar. Darba dan ingħata quddiem il-Bord, u s-soċjetà appellanti kienet ġustifikata titlob spjegazzjonijiet, ma għandhiex tbati l-ispejjeż tal-proċeduri quddiem il-Bord. Dan ma jfissirx li dak li sar kien null, iżda biss li s-soċjetà appellanta kienet ġustifikata li tressaq ilment quddiem il-Bord. Kien f'dan il-kuntest li l-Bord ħass li jirrimarka li kien ikun aħjar li kieku l-awtorità konċernata tati "the specific reasons to all bidders for the cancellation of the tender."

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

7. Drugsales Limited therefore firstly requests clarity regarding how and in what manner the technical or economic parameters of the procurement have allegedly changed.

8. Drugsales Limited reserves the right to amend its objection including to add further objections, after receiving the said clarity.

Second Objection: The Cancellation of the Tender is not Justifiable

9. Drugsales Limited has a right according to law to appeal from a cancellation decision, and this in terms inter alia of Regulation 15 of the Public Procurement Regulations, and this Board has the right and the obligation according to law, to review and assess whether the said reason for cancellation is in fact justifiable.

10. This is enshrined in the law, and cancellations have in fact been overturned when cancellations were not motivated or justifiable, inter alia one refers to **Ragonesi & Company Ltd v. Korporazzjoni għas-Servizzi tal-Ilma** decided by the Court of Appeal on the 29th August 2023, and **Agius Stone Works Limited v. Kunsill Lokali Valletta u d-Direttur Ġenerali tal-Kuntratti** decided on the 8th April 2025.

11. This second objection (as is the third objection) is based on certain assumptions being made by the objector, and this in light of the fact that the letter dated 15th May 2026 doesn't clearly explain

how and in what manner the technical parameters of the project have been altered, as already stated in the first objection.

12. The letter dated 15th May 2026 stated that the Evaluation Committee was recommending "*the issuance of a new procurement procedure incorporating clear, definitive, and unambiguous technical specifications*".

13. This statement leads the objector to assume that **the technical and economical parameters of the project have not in fact changed, and that the contracting authority still intends to acquire the same identical product being Anti-Haemophilia Factor VIII 1000 I.U.**

14. This means that effectively there is **no change** in the economic or technical parameters of the project.

15. The objector firstly notes that the grounds for cancellation of a tender are limited and specified at law, and are exceptions to the continuation of the procurement process. Regulation 15 of the Regulations listed two specific circumstances, but other grounds may be listed in the procurement documents as in fact are listed in the General Rules governing Tenders. Jurisprudence has confirmed inter alia in the cases Agius Stone Works Limited v. Kunsill Lokali Valletta u d-Direttur Ġenerali tal-Kuntratti[1]

    and Polaris Marine Services Co Ltd v. Direttur Ġenerali – Dipartiment tas-Sajd u l-Akkwakultura et[2] that the contracting authority may refer to such grounds listed in the General Rules governing Tenders, and that bidders have a right to appeal from the said cancellation.

16. Given that the contracting authority referred specifically to Section 18.3(b) of the General Rules to cancel an ongoing procurement procedure, **it is specifically and only this ground that the cancellation may be assessed, and it is the contracting authority that has the onus to explain and justify the said ground for cancellation.**

17. It would in fact appear that the economic or technical parameters of the project are not being altered, but simply that the contracting authority intends to more clearly define certain technical specifications. With all due respect, this does not qualify as a change in the technical or economic parameters of the project.[3]

18. The contracting authority claims that it is cancelling in order to issue a new procedure incorporating clear, definitive, and unambiguous technical specifications. However, there was never any ambiguity or difficulty with the tender specifications as drafted, whether in the past or in relation to this specific tender.

[1] 8th April 2026, Court of Appeal.
[2] 30th July 2024, Court of Appeal.
[3] Note that if the contracting authority is seeking to amend or impose new technical specifications such as to restrict or limit competition, then Drugsales Limited reserves the right to take appropriate action including to contest such new restrictive conditions in limitation of competition.

19. The objector points out that **previous tenders issued by the contracting authority for Anti-Haemophilia Factor VIII have consistently had the same identical technical specifications regarding "*high purity*" and "*RiCof ratio not greater than 1:2*" as those contained in this tender CT2231/2025.**

20. Such tenders have been **successfully issued, awarded and then supplied in terms of such tenders, without any issues,** including awards to the following manufacturers of plasma derived factor VIII: Takeda, Octapharma, Kedrion and BPL Ltd.

21. These tender procedures have involved the participation (and eventual award) **not only to Drugsales Ltd, but also to its competitors, including PAC3, George Borg Barthet, Octapharma, Vivian Commercial, AM Mangion, Europharma, and Target Healthcare.**

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

(a) ERU2509U23 — Anti-Haemophilia Factor VIII x 1000IU (IPV007)

(b) ERU1705U23 — Anti-Haemophilia Factor VIII x 1000IU (IPV007)

(c) CT 2298/22 — Anti-Haemophilia Factor VIII x 1000IU (IPV007)

(d) ERU 0204U20 — Anti-Haemophilia Factor VIII x 1000IU (IPV007)

(e) CT 2242/19 — Anti-Haemophilia Factor VIII x 1000IU (IPV007)

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

a. **No clarification requests were submitted** by any prospective bidders.

b. **No pre-contractual objections were submitted** by any prospective bidders.

c. The tender was published for circa 5 weeks between date of publication and closing date, giving ample time for any alleged ambiguities in specifications to be dealt with by any interested party, whether by prospective bidders or by the contracting authority itself.

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

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

33. Dan il-prinċipju jinsab imsaħħaħ ukoll fil-ġurisprudenza tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea fejn ingħad li, «the award criteria must be formulated, in the contract documents or the contract notice, in such a way as to allow all reasonably well-informed tenderers of normal diligence to interpret them

in the same way» (ara EVN AG, Wienstrom GmbH v. Republik Österreich et deċiża fl-4 ta' Diċembru, 2003)

26. The fact that previous tenders were issued and awarded with the same identical specifications relating to "*high purity*" and "*RiCof ratio not greater than 1:2*" without any issues and the fact that no doubts or clarifications were raised by prospective bidders in this specific tender, in and of itself clearly demonstrates that **the tender specifications as drafted were clear enough for prospective bidders, and prospective bidders know full well what the contracting authority is seeking to acquire when it is seeking Anti-Haemophilia Factor VIII by means of this tender.** This is a medical product that is regulated, and which is clear to all the prospective bidders.

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

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

28. Such a cancellation of the procurement process also goes against fundamental principles of public procurement.

29. The **cancellation letter suggests that the tender will simply be reissued with more clearly defined technical specifications, which means that there will be no effective change in the economic or technical parameters of the project and the prospective bidders will be bidding with the same identical products.**

30. The contracting authority will **re-issue the tender to just further define what it is already buying and what many suppliers are already (or have in the past) been offering and supplying to the contracting authority.**

31. In this regard, if the tender is re-issued with new *'clear'* specifications, the product of Drugsales Limited will presumably be in full compliance with these new *'clear'* specifications and Drugsales Limited would have to bid with the same product.

32. On the other hand, competitors who would had ample opportunity to bid under this tender with the current specifications, will be re-integrated into the procurement process and be bidding with the same products that they would have bid with for this tender.

33. This is of severe prejudice to Drugsales Limited, and a serious breach of fundamental principles.

34. All suppliers had the same equal opportunity to participate in the tender. **No suppliers submitted a clarification or a pre-contractual objections.**

35. The tender had a specific deadline, and **only Drugsales Ltd placed a bid within the deadline.**

36. Drugsales Ltd bid on this tender at a value of Euro 1,253,205, which was a competitive bid and was below the Estimated Procurement Value of Euro 1,424,115.

37. It took circa seven (7) months for the tender to be evaluated, despite the fact that a) only one bid was submitted, and b) the tender specifications are identical to several previous tenders.

38. The cancellation took place after the deadline for submission, and after Drugsales Limited's bid went public.

39. If there really was any ambiguity or doubt about what was being acquired, this could have been raised by prospective bidders, or if anything the contracting authority should have addressed it before publication of the tender dossier or, at the latest, before submission and opening of financial offers through the issuance of clarification notes or corrigenda applicable equally to all economic operators. Instead, this did not happen, and it was only after a bid price was exposed, that the contracting authority unilaterally and internally reconsider specifications that had already been used consistently for years in previous procurement procedures for the same item, and this when there was no challenge or contestation by any competitors.

40. If this tender is cancelled and re-issued in such a way that the contracting authority will effectively be acquiring the same product (as it seems that the contracting authority is seeking to do), this is of serious prejudice to Drugsales Limited, given that the price offered by Drugsales Limited has become publicly available, which will be of benefit to competitors.

41. Should the tender be cancelled, **Drugsales Limited will effectively be penalized for complying with the deadlines imposed by the contracting authority, whilst its competitors will be re-integrated into (effectively) the same procurement procedure to which they showed absolutely no interest and to which they failed to submit a bid within the deadline, and they will furthermore be placed in an unfairly advantageous position by knowing the price offered by Drugsales Limited.**

42. This is a serious breach of fundamental principles of public procurement including equal treatment, proportionality and fair competition, as contained inter alia in Article 18 of Directive 2014/24/EU, Regulation 39 of the Public Procurement Regulations, and as

43. Cancelling the tender in this manner and for the reasons which seem to be raised by the contracting authority breaches such fundamental principles:

(a) **Cancellation is not proportionate** since

   i. the tender and what was being acquired was clear to prospective bidders

ii. even if there was any ambiguity, no prospective bidders raised any clarifications or objections

iii. if anything the contracting authority should have clarified the alleged ambiguity earlier

iv. cancelling at this stage, when no one claimed any ambiguity and when Drugsales Limited already signa[l]led [*recte*] its price and when the contracting authority would effectively be acquiring the same product, it certainly not proportionate.

(b) **Cancellation does not observe equal treatment**, since it will allow re-integration of competitors into a procurement process to which they had shown no interest and had not submitted a bid within the deadline. All competitors had a deadline and had to abide by it.

(c) **Cancellation leads to unfair competition**, since it would result in Drugsales having publicized its bid to the unfair benefit of competitors, and will reward and re-integrate competitors into a process to which they had shown no interest and had not submitted a bid within the deadline.

Conclusion

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

(f) Preliminarily, order the contracting authority to provide an explanation and reasons for how the technical or economic parameters of the project have been altered, in light of the contracting authority's decision to cancel the said tender on the basis of Section 18.3(b) of the General Rules Governing Tenders.

(g) Revoke the decision of the contracting authority to cancel the said procurement procedure CT2231/2025; and consequently Order that the procurement process continue as though such cancellation was not ordered, and give all opportune orders in the circumstances.

(h) Take all such measures and give all such orders that this Board may deem necessary and opportune in the circumstances.

(i) Order that the deposit submitted upon this appeal be refunded to Drugsales Limited.

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

With costs.

This Board also noted the **Contracting Authority's and the Department of Contract's Reasoned Letter of Reply** filed on the 4th June, 2026 and its verbal submission during the hearing held on the 15th June, 2026, in that:

A call for tenders for the Supply of Anti-Haemophilia Factor VIII 1000 I.U. was issued by CPSU on the 3rd of September 2025.

One bid was submitted and following an evaluation process the tender was recommended for cancellation since *"the economic or technical parameters of the project have been altered'*

The Objector filed the present objection based on 3 grounds of appeal.

CPSU is humbly presenting its reply.

Submissions

On the First Grievance: Lack of Explanation as to the Alteration in economic or technical parameters of the project

1. In this First Grievance the appellant claims that the reason for the cancellation was not clearly provided.
2. When the evaluation committee came to evaluate the tender, I[t] transpired that certain requirements were insufficiently clear to allow for an objective and verifiable assessment of the offer versus the submitted offer;
3. First and foremost, the requirement for "*high purity Anti-Haemophilia Factor VIII 1000 I.U. lyophilised powder*" (Section 3.1.1.2.1) did not define measurable parameters or reference any recognised standard by which "*high purity*" is to be assessed.
4. Secondly the specification for the FVIII:VWF ristocetin cofactor activity (RiCof) ratio, section 3.1.1.2.2: ("The FVIII:VWF ristocetin cofactor activity (RiCof) ratio should not be greater than 1:2"), does not prescribe a single, unambiguous method of calculation, allowing for more than one technically valid interpretation.
5. The evaluation committee was thus in a situation of impossibility to evaluate the tender and thus had to refer this matter to the Directorate of Pharmaceutical Affairs (DPA) responsible for the [d]rafting of specification relating to medicinal products.
6. The DPA taking considerations of these ambiguities, amended the specifications to avoid such ambiguities in the future, and thus the technical parameters of the project have been altered and the tender had to be cancelled.

On the Second Grievance: The Cancellation of The Tender is not Justifiable

7. DOC and CPSU submit that this grievance is repetitive to the first grievance and to a certain extent contradictory to the same since it is stating that the cancellation was not justifiable and at the same time stating that the reason for the cancellation is not know[n];

8. DOC and CPSU submit that as stated in the reply to the first grievance the cancellation was indeed justified since an evaluation process could not be properly done with the specifications as published, in fact an evaluation did not even take place;

9. The objector makes reference to a number of previous tenders which it is alleging that have been awarded with the same specifications, however it must be submitted that each and every tender is separate and distinct from other tenders, and once the evaluation committee in this tender deemed that the tenders could not be objectively adjudicated on the basis of the published specifications and once the matter was referred to the DPA which in turn amended such specifications, the technical parameters have indeed been altered and the tender had to be cancelled;

On the Third Grievance: The Cancellation of the Tender goes against the Fundamental Principles of Public Procurement

10. DOC and CPSU submit that since the cancellation has been done in accordance with the applicable laws and rules, it cannot be considered in breach of the principles of public procurement;

11. The Cancellation was recommended in accordance to the general rules governing tenders and is subject to appeal, and if the decision of the contracting authority is confirmed, and a new tender is issued, the tender will be issued for all interested participants including the objector;

12. Moreover, and without prejudice to the above, the cancellation was necessary in order to ensure an objective evaluation;

13. The Objector is attempting to capitalise the fact that it was the sole participant in the tender in question, however the principles of public procurement are the same irrespective of the number of bidders participating and thus if multiple tenders had to submit their offers with the specifications as they were published in this tender, the evaluation committee could never ensure that the offers submitted are comparable, and this the recommendation could never be done on objective grounds;

14. Contrary to what is being claimed in this grievance thus the cancellation is spurred by the observance to the principles of equal treatment of economic operators, self-limitation and objectivity.

DOC and CPSU hereby reserve their right to present further evidence and submissions both written and orally to further substantiate their reply in relation to the said objection throughout the hearings.

In view of the above, the objection lodged by the objector ought to be rejected in full, whilst the decision of the Evaluation Committee confirmed.

In the circumstances, DOC and CPSU do not object to the refund of the deposit.

This Board, having examined in detail all documentation relevant to the present appeal, having heard the full submissions of all interested parties, having carefully assessed the testimony of the witnesses duly summoned, and having reflected on the procedural and substantive dimensions of the case, now proceeds to deliver its comprehensive and reasoned decision.

I. The Procurement and the Contested Decision

1. By a call for tenders issued through the Central Procurement and Supplies Unit (CPSU) on the 3rd September 2025, the Contracting Authority invited offers for the supply of Anti-Haemophilia Factor VIII 1000 I.U. (Tender CT2231/2025). It is common ground that the sole award criterion was price, the contract being destined for the cheapest offer satisfying the administrative and technical criteria.

2. The Appellant, Drugsales Limited, submitted the only offer received. The Appellant avers, and the Contracting Authority has not contested, that its offer, in the sum of €1,253,205, fell below the estimated procurement value of €1,424,115.

3. By letter dated 15th May 2026 the Contracting Authority notified the Appellant that the tender was being cancelled. Upon the Appellant's uncontested account of that letter, the Contracting Authority invoked clause 18.3(b) of the General Rules Governing Tenders (v4.10, August 2024) (the "*GRGT*"), namely that "*the economic or technical parameters of the project have been altered*", and indicated that the Evaluation Committee had recommended "*the issuance of a new procurement procedure incorporating clear, definitive, and unambiguous technical specifications*".

4. The Appellant filed the present objection within the period prescribed by Regulation 271, advancing three grounds of appeal. The Contracting Authority and the Department of Contracts filed a reasoned letter of reply on the 4th June 2026 and made oral submissions at the hearing held on the 15th June 2026.

II. The Statutory and Regulatory Framework

5. The Board's competence to entertain an objection against the cancellation of a call for tenders after the lapse of the publication period derives from Regulation 270, which extends the remedy to any person harmed or risking harm by "*a cancellation of a call for tender after the lapse of the publication period*".

6. The cancellation of a procurement procedure is governed, in the first place, by Regulation 15. Regulation 15(3) provides, in mandatory terms, that "*the decision leading to the cancellation of a procurement*

procedure has to be made in writing and must include the findings and the reasoning that led to this decision". Regulation 15(4) confers upon each participating economic operator the right to contest such cancellation before this Board.

7. The circumstances in which a contracting authority may cancel are amplified in clause 18 of the GRGT. Clause 18.1 reserves the right "*to accept or reject any tender and/or to cancel the whole tender procedure before and after the closing established for the submission of the tenders*". Clause 18.3 enumerates discrete circumstances in which "*cancellation may also occur*", amongst which: **(b)** "*the economic or technical parameters of the project have been altered*"; **(d)** "*where there is a discrepancy in the tender document*"; and **(e)** "*there have been irregularities in the procedure, in particular where these have prevented fair competition*".

8. The governing principles are prescribed by Regulation 39(1): contracting authorities "*shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner*". Regulation 38(1) requires that "*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*", whilst Regulation 38(4) empowers the contracting authority "*to issue clarification notes to explain certain matters, to give additional information, to remove or amend certain inconsistencies or errors and to fill in missing information contained in the procurement document*".

   The corresponding clarification mechanism is reflected in clause 6 of the GRGT. Regulation 242(1) further requires that each candidate and tenderer **be informed of the grounds of any decision** "*not to award a contract for which there has been a call for competition*" or "*to recommence the procedure*".

III. The Grievances of the Appellant (in summary)

9. By its **First Grievance**, the Appellant complains of a lack of explanation as to the alleged alteration in the economic or technical parameters of the project. It contends that the cancellation letter did no more than invoke clause 18.3(b) without explaining how, or in what manner, the said parameters had effectively changed, contrary to Regulation 15(3), and it relies upon the judgment of the Court of Appeal in *Borg Bros Limited v. Ministeru għall-Familja u Solidarjetà Soċjali et* (27th June 2014).

10. By its **Second Grievance**, the Appellant contends that the cancellation is not justifiable. It submits that the Contracting Authority intends to procure the self-same product under merely clarified specifications, such that there is no true alteration of parameters; that the identical specifications relating to "*high purity*" and to a "*RiCof ratio not greater than 1:2*" had been used and awarded in numerous antecedent procurements without difficulty; and that, no clarification or pre-contractual objection having been raised during the publication period of approximately five weeks, the specifications were demonstrably clear. It relies, *inter alia*, upon *Ragonesi & Company Limited v. Korporazzjoni għas-Servizzi tal-Ilma* (29th August 2023), *Agius Stone Works Limited v. Kunsill Lokali Valletta u d-Direttur Ġenerali tal-Kuntratti* (8th April 2025) and *Polaris Marine Services Co Limited v. Direttur Ġenerali – Dipartiment tas-Sajd u l-Akkwakultura et.*

11. By its **Third Grievance**, the Appellant contends that the cancellation offends the fundamental principles of public procurement, being, equal treatment, proportionality and fair competition, as enshrined in Regulation 39 and Article 18 of Directive 2014/24/EU. It complains, in particular, that cancellation after the opening of its sole offer, once its price had become public, would permit competitors who declined to bid within the deadline to be re-integrated into a materially identical procedure with knowledge of that price, to the Appellant's serious prejudice.

IV. The Reply of the Contracting Authority (in summary)

12. In its reasoned reply and oral submissions, the Contracting Authority maintains: that two specifications, i.e. the requirement of "*high purity*" (Section 3.1.1.2.1) and the FVIII:VWF ristocetin cofactor activity (RiCof) ratio (Section 3.1.1.2.2), were insufficiently clear to permit an objective and verifiable assessment, such that an evaluation could not properly take place; that the matter was referred to the Directorate of Pharmaceutical Affairs (DPA); that the DPA amended the specifications, whereupon the technical parameters were said to have been altered and the tender had to be cancelled under clause 18.3(b); that each procurement is separate and distinct from every other; that the cancellation was effected in accordance with applicable law and was necessary to ensure an objective evaluation; and that, the principles of public procurement being the same irrespective of the number of bidders, the cancellation is in fact spurred by the observance of equal treatment, self-limitation and objectivity.

The Contracting Authority demands that the objection be rejected and the decision of the Evaluation Committee confirmed, but does not object to the refund of the deposit.

V. Considerations of the Board

A. First Grievance: Lack of Explanation as to the Alteration in Economic or Technical Parameters of the Project

The reply of the Contracting Authority (paragraphs 1 to 6 of the reply)

The Contracting Authority answers that the appellant "*claims that the reason for the cancellation was not clearly provided*", and proceeds, at paragraphs 2 to 6 of its reply, to set out for the first time the substantive reasons summarised at paragraph 12 above: the asserted imprecision of the two specifications, the consequent impossibility of evaluation, the referral to the Directorate of Pharmaceutical Affairs, and the amendment of the specifications said to constitute the alteration of technical parameters.

Considerations of the Board

13. The first grievance is, in substance, a complaint as to "***the sufficiency of reasons***". The Board accepts, as a matter of law, that the duty to give reasons is mandatory and not merely directory. Regulation 15(3) is couched in imperative language, and is reinforced by Regulation 242(1), which requires the communication of the grounds of any decision not to award or to recommence a

procedure. The principle is confirmed by the Court of Appeal in *Borg Bros Limited*, upon which the Appellant relies, where the Court observed:

> *Ovvjament, darba li l-awtorità konċernata ma tatx spjegazzjoni l-ittra tal-irtirar, min kellu interess kellu jressaq appell quddiem il-Bord biex isir jaf, kif kellu dritt, x'wassal għall-irtirar, bil-konsegwenza li l-Bord ma kellux jordna t-telf tad-depożitu li sar biex seta' jisma l-appell — […] min hu interessat għandu dritt jikkontesta d-deċiżjoni u jitlob stharriġ ġudizzjarju tad-deċiżjoni li wasslet għall-irtirar […] u biex dan ikun jista' jsir, trid tingħata informazzjoni dwar x'wassal għall-irtirar.*

14. Upon the Appellant's uncontested account of the letter of the 15th May 2026, the Contracting Authority there confined itself to the bare invocation of clause 18.3(b) and to an announcement of reissuance "*incorporating clear, definitive, and unambiguous technical specifications*", **without articulating how, or in what respect, the economic or technical parameters of the project had been altered**. To that limited extent, the Board finds that the original notification did not satisfy the standard exacted by Regulation 15(3), and that the Appellant was justified in coming before the Board in order to ascertain the reasons to which it was entitled.

15. The Board observes, however, that by its reasoned reply of the 4th June 2026 and its oral submissions of the 15th June 2026, the Contracting Authority has now particularised its reasons. The Appellant's preliminary demand that the Contracting Authority be ordered to furnish an explanation (head (f) of the Appellant's demands) has therefore been overtaken by events, and no separate order to that effect is required.

16. It follows that the first grievance, taken in isolation, is vindicated as to the inadequacy of the reasons originally given, but is now spent as to the relief sought, those reasons having been supplied in the course of these proceedings. The decisive question, i.e. whether the reasons now advanced disclose a "***lawful and justifiable***" ground of cancellation, falls to be determined under the second grievance, to which the Board now turns. The deficiency of the original notification will, nonetheless, be borne in mind when the Board comes to deal with the deposit.

B. Second Grievance: The Cancellation of the Tender is not Justifiable

The reply of the Contracting Authority (paragraphs 7 to 9 of the reply)

The Contracting Authority answers that this grievance is "*repetitive*" of, and "*contradictory*" to, the first; that the cancellation was justified because the specifications as published did not permit a proper evaluation, "*in fact an evaluation did not even take place*"; and that, each tender being "*separate and distinct*" from every other, once the Evaluation Committee deemed the published specifications incapable of objective adjudication and the matter was referred to the Directorate of Pharmaceutical Affairs, which in turn amended them, the technical parameters had indeed been altered and the tender had to be cancelled.

Considerations of the Board

17. The Board addresses, first, the threshold objection that the second grievance is "*repetitive*" of, and "*contradictory*" to, the first. That objection is, with respect, misconceived. The first grievance is directed to the form of the decision, being the sufficiency of its stated reasoning; the second is directed to its substance, being whether the ground invoked is in truth made out. It is neither repetitive nor contradictory for an objector to contend, in the alternative, both that the reasons were inadequately stated and that, upon such reasons as may be discerned, the ground is unsustainable. The two complaints are logically distinct and may properly be pleaded together. The objection is rejected.

18. The substantive question is one of construction: whether that which the Contracting Authority has described amounts, or otherwise, to an alteration of "*the economic or technical parameters of the project*" within the meaning of clause 18.3(b) of the GRGT. Two propositions frame the enquiry. First, the grounds of cancellation enumerated in Regulation 15 and clause 18.3 are exceptional in character and fall to be construed having regard to their evident purpose. Secondly, the Contracting Authority having elected to cancel by specific reference to clause 18.3(b), it is upon that ground alone that the cancellation falls to be assessed, and the *onus* of establishing it rests upon the Contracting Authority.

19. Clause 18.3 enumerates discrete and mutually distinct grounds. Ground (b) is concerned with a genuine alteration of the parameters of the project, that is to say, a material change in the subject-matter to be procured, or in the economic or technical envelope within which it is to be procured.

It is to be distinguished both from the situation contemplated by ground (d) — "*a discrepancy in the tender document*", and, more pertinently, from the mere clarification or more precise re-formulation of pre-existing specifications describing one and the same product. The Regulations themselves recognise the distinction: the appointed mechanism for explaining matters, removing inconsistencies or errors, and filling in missing information is the clarification note issued under Regulation 38(4) and clause 6 of the GRGT, a mechanism designed to be deployed, in the ordinary course, in advance of the deadline for submission and on terms applicable equally to all economic operators.

20. Tested against that distinction, the reasons advanced do not, on the material before the Board, establish an alteration of the economic or technical parameters of the project. The Contracting Authority's own stated object, to reissue the procurement incorporating clear, definitive, and unambiguous technical specifications for the self-same product, Anti-Haemophilia Factor VIII 1000 I.U., is, in terms, an exercise in clarification rather than alteration.

The reply identifies no change to the product, the quantity, the estimated value, or the technical envelope of the requirement; it identifies only an intention to render measurable and unambiguous that which was said to be imprecise. The Board would add that the Contracting Authority has placed before it neither the amended specifications nor any particularised account of a substantive change capable of constituting a technical alteration. In the absence of such material the *onus* cast by clause 18.3(b) is not discharged.

21. The distinction between an alteration of parameters and a clarification of language is not merely semantic, but it is structural and consequential, and it goes to the heart of the present case. The concept of "*economic or technical parameters*" within the meaning of clause 18.3(b) refers to the substantive envelope of the procurement: the identity of the subject-matter to be acquired, the quantitative requirements, the performance standards, the technical characteristics, and the financial or economic conditions of the contract.

These are the parameters that define what is being purchased and under what conditions it is to be supplied. Their alteration would typically manifest in a change to the product itself, a revision of the quantity ordered, a modification of the performance threshold, a material change in the delivery or contractual conditions, or a reconfiguration of the technical requirements that would render a different or enlarged class of product eligible, or would exclude a class previously eligible. None of these has been identified in the present case.

22. What the Contracting Authority has described is something categorically different, i.e. a wish to express, in more measurable and technically precise language, specifications that already define the self-same product. The product remains Anti-Haemophilia Factor VIII 1000 I.U. The quantity remains unchanged. The estimated procurement value remains €1,424,115. The award criterion remains the lowest compliant price. The two specifications said to be imprecise, namely the "*high purity*" requirement in Section 3.1.1.2.1 and the "*FVIII: VWF ristocetin cofactor activity ratio*" in Section 3.1.1.2.2, are not being replaced by different requirements; **they are being reformulated so as to express the same requirement with greater definitional rigour**. That is an exercise in linguistic refinement, not in substantive alteration.

23. The distinction may be illustrated by reference to three analogous situations that would, by contrast, constitute a genuine alteration of technical or economic parameters and thus engage clause 18.3(b) properly.

24. First, consider a procurement for the supply of surgical gloves specifying "*sterile latex gloves, standard size*". If, following evaluation, the Contracting Authority were to reformulate the requirement to specify gloves manufactured in accordance with EN 455 Series, with a particular AQL rating, a specified puncture resistance expressed in Newtons, and a minimum tensile strength, it would be

introducing a measurable standard capable of differentiating products that are superficially identical and of excluding some that were previously eligible.

That would alter the technical parameters, because the performance threshold would, in substance, have changed. If, on the other hand, the Contracting Authority were simply to add the words "*conforming to applicable EU standards*", making explicit what was already implied by the regulated nature of the product, it would have clarified the language without touching the parameters.

25. Secondly, consider a procurement for the supply of a specific pharmaceutical product where the Contracting Authority, following evaluation, amends the specification from "*plasma-derived Factor VIII*" to "*recombinant Factor VIII*", thereby substituting a fundamentally distinct class of product.

That is an alteration of the technical parameters in the most straightforward sense, because the subject-matter has changed. Where, by contrast, the product class remains plasma-derived and lyophilised, and the Contracting Authority merely proposes to specify the purity threshold by reference to a recognised pharmacopoeial standard rather than by the composite adjective "*high purity*", the product class has not changed because only the definition of its measurable expression has been refined.

26. Thirdly, and closest to the facts of the present case, consider a public works tender requiring a structural steel specification described as "*high-grade steel suitable for load-bearing applications*". If, following the opening of offers, the Contracting Authority were to cancel and reissue with a specification requiring steel meeting EN 10025-2 Grade S355, it would be replacing an imprecise qualitative standard with a quantified engineering standard.

Whether that constitutes an alteration of the technical parameters depends entirely on whether the substituted standard changes the class of material that qualifies: if S355 admits the same materials that any competent bidder would have offered for "*high-grade load-bearing steel*", the revision is one of clarity; if it excludes materials that were previously eligible or introduces requirements that require a fundamentally different product, it is an alteration. The mere act of introducing a measurable standard does not, of itself, constitute an alteration of the technical parameter; only the substantive effect of that standard upon the scope of eligible products could do so.

27. These illustrations illuminate the analytical error in the Contracting Authority's position. The Contracting Authority appears to conflate the amendment of the specification document with the alteration of the parameters. A document can be rewritten in entirely different words while expressing the same technical requirement; conversely, a single word change in a specification can alter its substance profoundly. The relevant enquiry is not whether the text of the specification has

changed, but whether the **substantive** "*technical*" or "*economic*" envelope of the procurement has changed. On the evidence before this Board, the answer is plainly in the negative.

28. This conclusion finds direct residence and powerful support in the oral evidence of Dr Dustin Balzan, Director of Pharmaceutical Affairs, whose evidence this Board found to be candid and, upon the central point, entirely unambiguous.

Dr Balzan confirmed that the two specifications in question had, upon the Evaluation Committee's identification of the alleged ambiguity, been referred to the Directorate of Pharmaceutical Affairs, which identified the nomenclature used as potentially giving rise to interpretive uncertainty and recommended rewording for future clarity. Dr Balzan confirmed, emphatically and in terms that the Board considers decisive, that the cancellation was tendered specifically to crystallise the nomenclature used, and that the tender would be reissued for the same supply of the same product. The Board places particular weight upon this last confirmation.

The Director of Pharmaceutical Affairs, testifying on oath, acknowledged that the procurement objective had not changed, that no different or alternative pharmaceutical product was being sought, and that no parameter of the project, in any substantive sense, had been modified.

Whatever the drafting deficiency of the published specification, and the Board does not minimise the legitimate professional concern that prompted the referral to the DPA, the cure for it was clarification, not cancellation under a ground that is reserved for substantive change.

29. Dr Balzan further confirmed that previous tenders for the same product had been published and awarded using the self-same language and nomenclature, without the ambiguity now identified having been raised at any prior stage of any prior evaluation. The Board draws from this confirmation the inevitable inference that the specifications, as drafted, were in practice applied, understood, and adjudicated upon by evaluators and economic operators without difficulty for a sustained period, since at least 2018, and across multiple procurement cycles.

The ambiguity, if it existed, was not one that disclosed itself in any operational consequence, but it disclosed itself only upon internal deliberation by an evaluation committee confronted with a tender whose evaluation, on the Contracting Authority's own account, it chose not to complete.

30. It is in this conjunction of factors, the Contracting Authority's own stated purpose of reacquiring the identical product, the DPA's confirmation that the issue was one of nomenclature rather than substance, the sustained record of successful preceding procurements on identical specifications, the absence of any competing offer against which a problem of comparability could have arisen, and the availability of the less intrusive remedy of clarification under Regulation 38(4), that the

Board's conclusion rests. The alteration of economic or technical parameters contemplated by clause 18.3(b) is of a different and profounder order than the refinement of the language in which existing parameters are expressed.

31. The Contracting Authority's contention that the specifications were so deficient that "*an evaluation did not even take place*" is not borne out by the record; the affirmative evidence points the other way.

First, the Appellant has established, without contradiction, that the identical specifications relating to "*high purity*" and to a "*RiCof ratio not greater than 1:2*" were employed in a series of antecedent procurements for the self-same product (referenced as ERU2509U23, ERU1705U23, CT 2298/22, ERU 0204U20 and CT 2242/19), each of which was duly issued, evaluated, awarded and performed without difficulty and with the participation of numerous economic operators.

That sustained record of uniform interpretation and successful adjudication is cogent and positive evidence that the specifications were, in the language of Regulation 38(1), sufficiently clear "*to enable all interested parties to understand properly the terms and conditions of the process*", and that they satisfied the standard adopted by the Court of Appeal in *Ragonesi & Company Limited*, citing *EVN AG and Wienstrom GmbH v. Republik Österreich et* (Court of Justice, 4th December 2003), namely that the criteria be formulated "*in such a way as to allow all reasonably well-informed tenderers of normal diligence to interpret them in the same way*".

Secondly, and of cardinal importance, the present procurement attracted a single offer, with the consequence that no question of non-comparability between competing offers could arise upon the facts, and no evaluation committee has found, upon the bids actually received, that economic operators in truth interpreted the requirements differently. The further circumstance that no request for clarification and no pre-contractual objection was lodged during the publication period of approximately five weeks is consistent with, and corroborative of, that conclusion.

The Board does not treat such anterior silence as, of itself, conclusive of clarity, for silence before the deadline cannot cure an ambiguity afterwards shown in fact to have existed; here, however, the silence coincides with positive evidence of clarity and with the entire absence of "***any demonstrated divergence in interpretation***", and it is in that conjunction, and not standing alone, that it bears weight.

32. The Board has not overlooked the submission that each procurement is "*separate and distinct*" from every other. That proposition is, as a generality, unimpeachable, and the conduct of prior tenders does not, of itself, bind the Contracting Authority for the future. But the antecedent procurements are not relied upon by the Appellant as a source of estoppel, but they are relied upon as ***probative evidence*** that the specifications were in fact capable of objective evaluation, a matter going directly to the tenability of the very ground invoked. So, that being understood, the autonomy of each procedure does not answer the point.

33. For these reasons the Board finds that, on the evidence and submissions before it, the Contracting Authority has not established that the economic or technical parameters of the project were altered, and that the cancellation effected under clause 18.3(b) is, accordingly, not justified. The second grievance succeeds.

C. Third Grievance: The Cancellation of the Tender goes against the Fundamental Principles of Public Procurement

The reply of the Contracting Authority (paragraphs 10 to 14 of the reply)

The Contracting Authority answers that, the cancellation having been effected in accordance with applicable law, it cannot be in breach of the principles of public procurement; that the cancellation is subject to appeal and that, if confirmed, the reissued tender will be open "*for all interested participants including the objector*"; that the cancellation was necessary to ensure an objective evaluation; that the principles of public procurement are the same irrespective of the number of bidders, since offers submitted upon the published specifications could never be ensured to be comparable; and that, far from offending them, the cancellation is "*spurred by the observance to the principles of equal treatment of economic operators, self-limitation and objectivity*".

Considerations of the Board

34. The third grievance invokes the fundamental principles of equal treatment, proportionality and fair competition, as enshrined in Regulation 39(1), reflected in Article 18 of Directive 2014/24/EU, and reinforced by Regulation 39(3), which proscribes any design of the procurement made "*with the intention of unduly favouring or disadvantaging certain economic operators*".

35. Given the Board's findings under the second grievance, the Appellant's concerns are not without foundation. Where a sole admissible offer has been opened and its price disclosed, the cancellation and subsequent reissuance of a substantially identical requirement carries a manifest risk to equal treatment and to the integrity of competition, for the disclosed price confers an advantage upon those who did not compete.

    The Contracting Authority's answer, that the reissued procedure would be open to all, does not meet the point, since formal openness does not neutralise the asymmetry of information created by the prior disclosure of the Appellant's price.

36. As to proportionality, the availability of the less intrusive mechanism of clarification notes and corrigenda under Regulation 38(4) and clause 6 of the GRGT, apt to cure any genuine ambiguity, in advance of the deadline and on terms applicable equally to all, reinforces the conclusion that cancellation, resorted to only after the opening of the sole offer and in respect of specifications which had occasioned no difficulty, was not a proportionate response.

    The Contracting Authority's appeal to "*self-limitation*" does not assist it; that very principle binds the authority to the procurement as published and to the orderly use of the clarification mechanisms it had reserved.

37. The Board accepts, as a matter of principle, that the safeguarding of an objective and comparable evaluation is a legitimate procurement objective, and that the number of bidders does not dilute the applicable principles. Were the specifications genuinely incapable of objective adjudication, cancellation might well be both justified and proportionate. But, for the reasons given under the second grievance, the Contracting Authority has not established such incapacity; and in its absence the considerations of proportionality and equal treatment advanced by the Appellant are not displaced. In so far as the third grievance is pleaded upon the same premise as the second, it succeeds for the reasons already given.

VI. The Position of the Board in the Present Case and in Objection 645 (CT 2033/2024 — Eribulin): Consistency of Approach

38. The Board is conscious that, in a recent determination of cognate subject-matter, it reached a contrary result upon an objection against the cancellation of a public supply tender, and it considers it right, in the interests of the coherence of its own jurisprudence, to record expressly why the revocation ordered in the present case stands in full harmony with that earlier decision.

The decision in question is that delivered by this Board on the 3rd June 2026 in *Case 2235 — Objection 645 — CT 2033/2024 — Tender for the Supply of Eribulin 0.44mg/ml Solution for Injection* (hereinafter "*Objection 645*"), in which the Board upheld the appellant's grievance as to the failure to give reasons, rejected the grievances directed to the substance of the cancellation, and confirmed the cancellation of that tender, effected under clause **18.3(d)** of the General Rules Governing Tendering, while ordering the refund of the deposit.

The present decision, by contrast, revokes a cancellation effected under clause **18.3(b)**. The two outcomes are opposite, but they proceed, as the Board now explains, from one and the same body of principle applied to materially different facts.

39. In both proceedings, the Board has applied identical standards. In each, the Board has held that the cancellation of a procurement is an exceptional measure of last resort;

That the *onus* of justifying it rests upon the contracting authority and is not discharged by the bare invocation of the relevant sub-paragraph of clause 18.3;

That a cancellation effected after the opening of offers attracts a heightened standard of scrutiny by reason of the disclosure of competitive intelligence which that opening entails;

That the clarity of the procurement documents falls to be measured against the settled standard of the Court of Justice, i.e. that the conditions be formulated so that all reasonably well-informed and normally diligent tenderers may interpret them uniformly, the standard expressed in Objection 645 through *Commission v. CAS Succhi di Frutta* and articulated in the present decision through *EVN AG and Wienstrom GmbH*;

That the power to clarify may be exercised to verify but never to reconstruct or amend the substance of offers; and

That, where the failure to give reasons has obliged an objector to come before the Board, the deposit is to be refunded.

There is no divergence of principle between the two decisions. The divergence lies wholly in the facts to which those shared principles fall to be applied.

40. Three factual distinctions are decisive, and each operates in the same direction.

First, the ground invoked was, in Objection 645, made out, and is, in the present case, not made out: in Objection 645 the Board found, upon the documentary record and upon the unrebutted finding of the Technical Evaluation Committee, (a) that a genuine and material discrepancy existed within the tender documentation, comprising both "*a textual incongruity*" between the stated quantity and the evaluation baseline and (b) "*a structural defect*" in the Financial Bid Form whose formula systematically halved the true value of the offers.

In the present case, the Board has found that no alteration of the economic or technical parameters of the project has been established, the Contracting Authority's purpose being one of clarification of the same product rather than alteration of it.

Secondly, Objection 645 concerned a field of various competing offers which the established defect had rendered non-comparable, so that the disclosure of prices operated symmetrically upon all and the inequality lay in the documents rather than in the cancellation, with the consequence that cancellation there restored, rather than disturbed, the level playing field.

The present case concerns a single offer, so that the disclosure of price operates asymmetrically, to the prejudice of the sole operator who complied with the deadline and to the advantage of competitors who did not, and cancellation here would disturb, rather than restore, equality of treatment.

Thirdly, the defect in Objection 645 was, by its structural nature, incapable of cure by any lawful clarification, the reconciliation of the divergently structured offers amounting to the impermissible reconstruction proscribed in *Manova A/S*.

In the present case, any want of precision was, on the Contracting Authority's own account, remediable by the ordinary mechanism of clarification notes and corrigenda under Regulation 38(4), in advance of the deadline and on terms equal to all, if indeed there was anything to remedy at all.

41. It is in the light of these distinctions that the Board's treatment, in each decision, of the absence of any pre-contractual objection is to be understood, lest the two be thought to stand in tension.

In Objection 645 the Board declined to treat the absence of a challenge under Regulation 262 as conclusive of the clarity of the documents, holding that silence anterior to the deadline does not cure an ambiguity afterwards shown in fact to have existed; and it so held precisely because there was, in that case, positive and unrebutted evidence, the finding of the Technical Evaluation Committee upon the bids actually received, that the operators had in truth interpreted the documents differently.

In the present case, there is no such evidence, and there could be none, a single offer having been received; and there is, on the contrary, affirmative evidence of uniform interpretation in the sustained record of antecedent procurements conducted upon the identical specifications.

The principle is therefore one and the same in both decisions: the absence of pre-contractual objection is never, **of itself**, conclusive of clarity, but falls to be weighed against the positive evidence of how the requirements were in fact understood.

Applied to a record of demonstrated divergence it does not avail the contracting authority; applied to a record of demonstrated uniformity it corroborates the conclusion of clarity.

The opposite results in the two cases are thus the product, not of any inconsistency of approach, but of the faithful application of a single standard to two evidential records that are, in the respects that matter, **each other's opposite**.

The Board accordingly affirms that the present decision and its determination in Objection 645 stand together as coherent applications of the same law.

VII. Decision

42. Before pronouncing its formal orders, the Board records that, the offer having been submitted in 2025, the period of validity prescribed by clause 8.1 of the General Rules Governing Tenders has, on the face of the record, since elapsed.

The Board cannot, and does not, deem the offer to remain valid of its own motion, the validity of a tender being a commitment of the tenderer that may be renewed only with its consent.

The award procedure having been suspended upon the filing of this objection in terms of Regulation 274, however, the Appellant is not to be prejudiced by the lapse of time consumed by these proceedings, which the law itself rendered suspensive; and the appropriate course, reflected in the operative orders which follow, is to direct the Contracting Authority to invite the Appellant to confirm the continued validity of its offer, the procedure to be resumed upon such confirmation and the offer to be treated as having lapsed only in default of it.

43. For all of the foregoing reasons, the Board:

(i) upholds the objection of Drugsales Limited;

(ii) finds that the decision of the 15th May 2026 to cancel Tender CT2231/2025, taken under clause 18.3(b) of the General Rules Governing Tenders, was inadequately reasoned for the purposes of Regulation 15(3) and, upon the reasons subsequently advanced, was not justified, the Contracting Authority having failed to discharge the *onus* of establishing that the economic or technical parameters of the project had been altered;

(iii) revokes and sets aside the said decision of cancellation;

(iv) orders that the procurement procedure CT2231/2025 be reinstated to the position obtaining immediately before the cancellation, and that the evaluation of the offer submitted by the Appellant be resumed and concluded according to law; and, to that end, and the award procedure having been suspended upon the filing of this objection in terms of Regulation 274 so that the Appellant ought not to be prejudiced by the lapse of time attributable to that suspension and to these proceedings, directs that:

(a) within five (5) working days from the date on which this decision becomes final and operative, the Contracting Authority shall invite the Appellant, through the Government's e-procurement platform, to confirm the continued validity of its offer for a further period sufficient to permit the completion of the evaluation and of any consequent recommendation, standstill and award; and, where a tender guarantee (bid bond), if any, was required, to provide a renewed or fresh guarantee of corresponding validity;

(b) upon the Appellant so confirming within five (5) working days of being thus invited, the Contracting Authority shall proceed to conclude the evaluation with all due despatch; and

(c) should the Appellant decline, or fail, to confirm within the period allowed, its offer shall be treated as having lapsed and the Contracting Authority shall be at liberty to act according to law, save that the decision of cancellation hereby set aside shall not on that account be revived; and

(v) directs that the deposit lodged by the Appellant upon the filing of this objection be refunded in full, in terms of Regulation 273.

44. For the avoidance of doubt, the Board records, as a matter of fact apparent from the procurement document itself, that the present tender required no tender guarantee of the tenderers. The Selection and Award Requirements set out at Clause 5 of the Instructions to Tenderers contain no requirement for a bid bond or tender guarantee amongst the documents to be submitted by economic operators; and Note 1 to Clause 5, which in the standard format addresses the rectification of a tender guarantee, expressly records that "*currently Bid Bonds are not applicable*".

No tenderer was therefore obliged to lodge, and the Appellant did not lodge, any bid bond or tender guarantee in respect of this procedure. The sole guarantee contemplated by the procurement document is the *Performance Guarantee* under Article 11 of the Special Conditions, which is a post-award instrument and does not bear upon the present matter.

It follows that the direction at paragraph 33(iv)(a) above, in so far as it concerns the renewal or fresh provision of a tender guarantee, is framed in conditional terms ("*where a tender guarantee (bid bond), if any, was required*") and is solely included *ex abundanti cautela* and as a matter of orderly drafting only.

Upon the facts of the present procurement it is not engaged, no such guarantee having been required of the Appellant in the first place. Nothing in that direction is to be understood as importing any doubt on the part of the Board as to the requirements of the tender in this respect.

Dr Vincent Micallef **Chairman**	**Mr Lawrence Ancilleri** **Member**	**Mr Keith V. Grech** **Member**