



IN THE PUBLIC CONTRACTS REVIEW BOARD

7th June 2026

Re: 677 - CT2021/2026 - Framework Contract for the Provision of Temperature-Controlled Transportation Services by Drone for Routine and Critical Medical And/Or Pharmaceutical Consignments between Malta and Gozo Healthcare Venues for the MFH

Reply of the **Department of Contracts (DOC)** as the Central Government Authority and **Central Procurement and Supplies Unit (CPSU)** on behalf of the Department of Health as the Contracting authority to the reasoned application lodged by **Miracles Unmanned Solutions JV (the Objector)**.

A call for tenders for the Supply of Controlled Transportation Services by Drone for Routine and Critical Medical And/Or Pharmaceutical Consignments between Malta and Gozo Healthcare Venues for the MFH was issued by DOC on the 13th of February 2026.

The subject tender concerns the procurement of a drone-based logistics solution, including supply, deployment, and operation, under a regulated aviation environment governed by EASA Regulation (EU) 2019/947 and national oversight by Transport Malta (Civil Aviation Directorate).

The Tender Document, together with the issued Clarification Notes, establishes a structured framework for a qualitative selection comprising in full alignment with the requirements of the Public Procurement Regulations:

- Exclusion grounds;
- Selection criteria, including both Suitability and Technical and Professional Ability; and
- Adjudication to the most economically advantageous tender, in accordance with the prescribed contract award criteria, namely the Best Price-Quality Ratio (BPQR).

The award criteria include, inter alia:

- aesthetic and functional characteristics, including accessibility and environmental considerations;
- the organisation, qualifications, and experience of the staff assigned to the performance of the contract; and
- technical performance and operational capability of the proposed solution.

It is further established that all clarifications issued formed an integral part of the Tender Document and were binding on all bidders.

The Objector's offer was rejected due to lack of compliance to the mandatory Selection Criteria (Suitability) as specified in the Tender Document and subsequent Clarifications, and the tender was recommended for award to **Seasus Ltd (the Recommended Bidder)**.

The Objector filed the present objection based on 5 grounds of appeal.

DOC and CPSU humbly disagree with the objection raised and are presenting this reply following the same order of the grievances raised.

Submissions

On the First Grievance - Alleged Technical Defect and Ultra Vires Specification

1. The Objector alleges that the Tender Specification is technically defective and ultra vires on the basis that the combined payload and operational requirements purportedly necessitate UAV operations exceeding the regulatory scope of a Light UAS Operator Certificate (LUC) or a Specific Category Operational Authorisation.
2. The DOC and CPSU respectfully submit that the objection in question has been filed in terms of regulation 270 of the Public Procurement Regulations and thus the remit of this honourable Board is not to decide on any defective specifications but to decide on the evaluation process on the basis of the specifications as published which have been accepted by all bidders the moment they submitted their offer.
3. If the Objector had any reservation on any of the published specifications, a remedy in terms of regulation 262 of the Public Procurement Regulations was available, however the objector did not make use of this remedy, and thus cannot at this stage of the tender process 'complain' about defective specifications.
4. DOC and CPSU refer to the decision of the Court of Appeal of the 10th of January 2023 in the names **All Clean Services Limited v. Ministeru għall-Edukazzjoni et**, where the Court states that:
7. Din il-Qorti taqbel ma' dak li osserva l-Bord li kull min kien interessat, jekk ma kienx jaqbel ma' xi kundizzjoni fis-sejha, skont ir-Regolamenti applikabbli, seta' agixxa, bil-mezzi li jagħtuh l-istess Regolamenti, biex jipprova jimpunja dik jew dawk il-kundizzjonijiet. Mhux leçitu li l-oblatur iħalli l-proçess għaddej, u wara, jekk jitlef il-kuntratt, jallega li kundizzjoni fis-sejha ma kellhiex tkun hemm għax "kompletament irrilevanti".
5. Without prejudice to the above submissions, DOC and CPSU submit that this grievance is also unfounded substantively as will be further explained below.
6. The Objector's argument is premised on the assertion that the Tender Document requires UAV platforms capable of carrying a combined payload in excess of 28 kg, thereby necessarily resulting in a higher Maximum Take-Off Weight (MTOW) and triggering a more onerous regulatory regime.

7. This premise is incorrect and is not supported by the Tender Document or the Clarifications issued.
8. The Tender Document establishes a minimum payload requirement of 10 kg, which requirement is explicitly stated as mandatory. While additional evaluation marks may be awarded for increased payload capacity (e.g. minimum of 15kg or 20 kg), such scoring criteria do not alter the baseline requirement and do not impose any mandatory payload beyond 10 kg.
9. The inclusion of additional scoring for enhanced capacity constitutes a standard Best Price–Quality Ratio (BPQR) evaluation mechanism, encouraging improved performance where available, but does not impose an obligatory operational threshold.
10. The Objector further asserts that a 10-litre medically compliant container inherently weighs approximately 14 kg prior to loading, and proceeds to aggregate such assumed weights to derive a combined payload exceeding 28 kg. This line of argument is not grounded in the Tender Document.
11. The Tender Document requires that the UAV cargo compartment be capable of accommodating certified medical transport containers with a minimum volume of 10 litres. Clarification Note No 1 published on 10th March 2026 clarified that the minimum internal volume requirement of 10 litres refers to the cargo hold of the drone, not to individual containers (refer to Q&A 20).
12. However:
 - No weight or volume per container is specified anywhere in the Tender Document;
 - No standardised container design is prescribed; and
 - No requirement is imposed as to insulation type, thermal structure, or cooling configuration over and above the standards and certifications mentioned in the specifications.
13. Accordingly, the Objector's conclusion of a 14 kg container weight is entirely extraneous to the procurement documentation and reflects a unilateral design assumption rather than a requirement of the tender.
14. The Objector further builds its argument on the assertion that each UAV must simultaneously carry two fully loaded, thermally isolated containers (chilled and ambient), thereby doubling the payload. This interpretation is likewise unsupported.
15. The Tender Document and subsequent Clarifications require that the system be capable of handling mixed consignments (e.g. chilled 2–8°C and ambient 15–25°C) without cross-contamination or temperature deviation. This requirement is clearly functional in nature, relating to:
 - segregation of medical items;
 - preservation of temperature conditions; and

- operational integrity of transport.
16. At no point does the Tender Document mandate the simultaneous carriage of two independent full-capacity containers or define a cumulative or duplicated payload configuration.
17. The Objector's conclusion that two 14 kg containers must be carried simultaneously is therefore based on an assumed configuration which is not required by the Tender Document.
18. When the Tender Document is read as a whole, and together with the issued Clarifications, it is evident that:
- The only mandatory quantitative requirements are a minimum payload of 10kg, and a cargo hold with a minimum volume of 10L;
 - Container requirements are neither volume-based, nor weight-based;
 - Mixed consignments relate to functional capability, not payload multiplication; and
 - No provision imposes a minimum combined payload approaching the values asserted by the Objector.
19. It follows that the Objector's "28 kg payload" conclusion is not derived from the Tender Document, but from a speculative combination of assumptions regarding container design, loading configuration, and operational methodology.
20. The Objector's regulatory argument—namely that the Tender Specification necessarily requires UAV operations falling outside the scope of a LUC or Specific Category Operations Authorisation—is entirely dependent on the above erroneous payload assumption.
21. Given that the Tender Document does not require such payload levels; and does not prescribe any specific MTOW or operational envelope, the assertion that the procurement mandates operations beyond the scope of the specified regulatory framework does not arise.
22. On the contrary, the Tender Document expressly defines, under Clause 5B(a), the applicable suitability requirement, namely that the Contractor be in possession of:
- an EASA-approved (or equivalent) Operations Manual for Specific Category UAS operations, and/or
 - a Light UAS Operator Certificate (LUC).
- This clearly establishes that the procurement is situated within the Specific Category regulatory framework.
23. In the absence of any requirement mandating operational parameters beyond those defined in the Tender Document, there is no basis to conclude that compliance with such regulatory framework would be insufficient.

24. Moreover, the Objector alleges that an internal contradiction exists between the operational performance required and the suitability threshold (Clause 5B(a)). This allegation is entirely dependent on the assumed (and unsubstantiated) payload escalation.
25. Once that assumption is set aside, as explained above, it becomes clear that:
- the technical requirements remain within the scope of the stated minimum payload; and
 - the suitability requirement properly reflects the regulatory framework applicable to such operations.
26. In view of the above submissions it is thus evident that no inconsistency exists between the operational requirements of the Tender Document and the suitability criteria.
27. For all reasons as stipulated above, this first grievance ought to be rejected.

On the Second Grievance: Alleged Failure to Address the Hardware/Operator Distinction

28. The Appellant asserts that the Tender Specification is structurally defective on the basis that it allegedly addresses only the operator certification layer while omitting corresponding suitability requirements relating to UAV platform capability.
29. DOC and CPSU refer to the submissions made in paragraphs 2,3 and 4 of this reply which shall apply to this grievance as well since this is an objection in terms of regulation 270 of the PPR and not a pre-contractual remedy in terms of regulation 262.
30. Without prejudice to the above DOC and CPSU submit also that this second grievance is unfounded substantively and is based on a mischaracterisation of both the structure and the content of the Tender Document.
31. At the outset, it is important to emphasise that public procurement law requires a clear distinction between exclusion grounds, selection criteria, and award criteria. Under the Public Procurement Regulations, contracting authorities are required to ensure that criteria relating to the capacity of the economic operator are not conflated with criteria relating to the evaluation of the tender or the proposed solution.
32. In line with this framework, the Tender Document was deliberately structured as follows:
- Suitability (Clause 5B(a)) addresses the regulatory and legal capacity of the economic operator, namely the requirement to be in possession of an EASA-approved Operations Manual for Specific Category operations and/or a Light UAS Operator Certificate (LUC);

- Technical and Professional Ability (Clause 5B(c)) addresses the experience and capability of the economic operator in delivering services of a similar nature and complexity; and
- The evaluation process, comprising the assessment of Key Experts, the Live Stream Demonstration, and the Technical Evaluation, addresses the performance of the proposed solution, including all mandatory technical, operational, and functional requirements such as UAV platform capability, cargo compartment requirements, operational resilience, environmental tolerances, redundancy and safety systems, and payload performance.

33. Accordingly, the absence of UAV hardware capability as a formal suitability criterion does not constitute an omission, but rather reflects a deliberate and legally compliant separation of exclusion, selection, and award/evaluation criteria, consistent with both the Tender Document and established procurement principles.

34. The Appellant further links this alleged structural omission to the payload analysis advanced under the first grievance. The Contracting Authority has already addressed, in detail, the erroneous assumptions underpinning that analysis. In particular:

- the Tender Document does not prescribe any aggregated payload scenario;
- it does not define container weights; and
- it does not require simultaneous duplication of consignments.

35. In view of the above, the Appellant's conclusion that platform capability represents a "binding constraint" exceeding regulatory thresholds is based on assumptions not grounded in the Tender Document. Thus, the premise underpinning the alleged structural defect falls away.

36. In conclusion, the DOC and CPSU submit that:

- the Tender Document clearly addresses both operator certification and platform capability, albeit through different and appropriate evaluation stages;
- there is no omission in respect of hardware requirements;
- the evaluation framework is internally consistent and aligned with procurement practice; and
- the Appellant's argument is predicated on a misunderstanding of both the Tender structure and the technical requirements.

37. In view of this second grievance ought to be rejected in its entirety.

On the Third Grievance: Alleged Breach of the Principles of Proportionality and Equal Treatment

38. The Appellant contends that its exclusion constitutes a breach of the principles of proportionality and equal treatment on the basis that it holds regulatory authorisations which allegedly exceed, or are superior to, those required under Clause 5B(a), and should therefore have been deemed compliant.

39. This submission is unfounded both in fact and at law as will be further proven.
40. At the outset, it must be emphasised that the suitability requirement under Clause 5B(a) constitutes a clear and mandatory eligibility condition, requiring that bidders be in possession of:
- an EASA-approved (or equivalent) Operations Manual for Specific Category UAS operations; and/or
 - a Light UAS Operator Certificate (LUC).
41. As clarified during the procurement process, this requirement was to be demonstrated at submission stage, subject only to the limited clarifications/rectification regime applicable under the Tender Document.
42. Following such process, the Evaluation Committee determined that the Appellant's submission, as clarified, did not satisfy the substance of the requirement as defined under the suitability criteria, and was therefore non-compliant.
43. The Appellant's argument that its allegedly "higher" or "superior" certification should have been accepted as equivalent or exceeding the stated requirement is incompatible with the principle of equal treatment. The General Rules Governing Tenders in clause 5.6 provide that:
- 5.6 Where in the tender document a standard, brand or label is quoted, it is to be understood that the Contracting Authority will accept equivalent standards, brands or labels. However, it will be the responsibility of the respective bidders, at tendering stage, to prove that the standards, brands or labels they quoted are equivalent to the standards, brands or labels requested by the Contracting Authority.*
44. The Objector failed to prove that the equivalence of the certification provided even following a request for clarification.
45. In procurement proceedings all bidders must be assessed on the basis of the criteria as defined in the Tender Document; and any equivalence must be proven by the same bidder, and if one is claiming a more superior certification, the same bidder must prove to the highest extent of proof that that the certification offered encompasses the elements of the certification requests, something which the objector failed to do.
46. The Appellant further argues that the application of Clause 5B(a) was disproportionate, as it allegedly privileged formal compliance over substantive capability.
47. This argument cannot be sustained for various reasons. The principle of proportionality requires that procurement criteria be:
- appropriate to the subject matter of the contract; and
 - not excessive in relation to the objective pursued.
48. In the present case:

- the requirement for possession of Specific Category operational authorisation (via Operations Manual and/or LUC) is directly linked to the regulated nature of UAV operations within an EU Member State; and
 - constitutes a minimum regulatory threshold, not an excessive or restrictive requirement.
49. Proportionality does not allow for the substitution of clearly defined eligibility conditions with alternative qualifications, even if these are asserted to be more advanced unless sufficiently proven. The argument of substance over form certainly cannot be used in the current situation where such a highly regulated, innovative and complex service is being procured. The objector was duty bound once accepting all tender criteria by submitting an offer, to strictly comply with the tender criteria so that the evaluation committee will be able to adjudicate between comparable offers in line with the principles of equal treatment of bidders and self limitation.
50. To the contrary of what is being claimed by the objector, the evaluation committee would have been in blatant breach of the principle of equal treatment of bidders if it had to accept a certification which was not in line with the tender requirements. The Court of Appeal in the case **Alexis Sciberras vs Direttur tal-Kuntratti et**, decided on the 27th of October 2021 quoted **Nexans France v. European Joint Undertaking for ITER and the Development of Fusion Energy (T-415/10)** decided on the 20th of March 2013 which stated that *"It must be borne in mind at the outset that where, in the context of a call for tenders, the contracting authority defines the conditions which it intends to impose on tenderers, it places a limit on the exercise of its discretion and, moreover, cannot depart from the conditions which it has thus defined in regard to any of the tenderers without being in breach of the principle of equal treatment of candidates. It is therefore by reference to the principles of self-limitation and respect for equal treatment of candidates that the Court must interpret the tender specifications"*
51. As already addressed, the Appellant was afforded the opportunity to clarify and/or rectify its submission in accordance with the applicable rules (including Note 2) however failed to sufficiently address the request for clarification raised.
52. Following this process the Appellant's submission was assessed in the light of the documentation provided; and it was determined that the information submitted did not demonstrate equivalence to, nor fulfilment of, the requirement under Clause 5B(a).
53. Accordingly, the disqualification did not arise from a formalistic application of the criteria, but from a substantive failure to meet the defined suitability requirement, as assessed after allowing for clarification.
54. The Appellant's proportionality argument is also linked to the assertions made under Ground I, namely that the operational profile of the tender exceeds the regulatory scope of the specified suitability requirement. The DOC and CPSU have already demonstrated that such assertions are based on assumptions not grounded in the Tender Document.

55. In the absence of any requirement imposing operational parameters exceeding the defined scope, there is no basis to suggest that the suitability requirement was insufficient or misaligned with the procurement.

56. In light of the above, the Contracting Authority submits that:

- the suitability requirement was clear, objective, and uniformly applicable to all bidders;
- the Appellant was afforded the same opportunity as all other bidders to demonstrate compliance, including through the clarification/rectification stage;
- the assessment carried out by the Evaluation Committee was based on the documentation submitted and in accordance with the Tender Document; and
- no discretionary or unequal treatment was afforded to any bidder.

57. Accordingly, the exclusion of the Appellant does not constitute a breach of the principles of proportionality or equal treatment and this grievance ought to be rejected in its entirety as well.

On the Fourth Grievance – Alleged Failure to Engage with the Substance of the Rectification Submission

58. The Appellant alleges that the evaluation committee failed to properly consider the substance of its Rectification Submission and that this constitutes a procedural error affecting the legality of the decision.

59. This allegation is unfounded in fact and at law as will be proven.

60. At the outset, it is necessary to clarify that the evaluation committee did, in fact, engage with and assess the Rectification Submission in accordance with the applicable tender rules.

61. In line with the provisions of the Tender Document, including the operation of Note 2, bidders were afforded the possibility to clarify elements of their submission; and rectify deficiencies, to the extent permitted within the applicable framework, particularly with reference to documentation.

62. The Appellant availed itself of this opportunity and submitted additional documentation and explanations in response to the request for clarification/rectification.

63. The Evaluation Committee duly assessed the submission in its entirety and following an assessment of the Rectification Submission, it was determined that:

- the documentation and explanations provided did not demonstrate compliance with, nor equivalence to, the requirement under Clause 5B(a); and
- the deficiency identified at submission stage therefore remained outstanding in substance.

64. Accordingly, the Appellant's submission, even as clarified, did not satisfy the suitability requirement, and the disqualification followed from that substantive non-compliance.
65. It is therefore incorrect for the Appellant to suggest that its submission was dismissed as a mere commitment to future compliance. Rather, the Committee assessed the material provided and concluded that it did not meet the requirement as defined in the tender at time of submission, and as requested by the same tender.
66. In line with the above this fourth grievance ought to be rejected in full as well.

On the Fifth Grievance – Alleged Inconsistency Arising from the Professional Declaration Form

67. The Appellant submits that the Professional Declaration Form permits the post-award submission of documentation and that, consequently, its disqualification for not providing regulatory authorisation at tender stage is inconsistent and unlawful.
68. This grievance apart from being frivolous and vexatious, is a total misinterpretation of both the content and the scope of the Declaration.
69. The Professional Declaration Form is a standard document used within the procurement process to address the professional status and authorisations of Key Experts proposed under the tender.
70. As expressly stated in its wording, the Declaration refers to documentation attesting that Key Experts are duly authorised by the relevant professional bodies; and the possibility of providing such documentation post-award within a specified timeframe.
71. The Declaration is therefore clearly limited in scope to individual professional qualifications and warrants and the administrative verification of such qualifications following contract award.
72. It does not extend to, nor regulate, operator-level regulatory authorisations required for the performance of UAV operations.
73. The Appellant's argument conflates two fundamentally distinct elements of the procurement framework, namely:
 - professional authorisations of individuals (Key Experts); and
 - regulatory authorisation of the economic operator to carry out UAV operations.
74. The Appellant's interpretation would effectively extend the scope of the Professional Declaration Form to allow the post-award fulfilment of mandatory eligibility criteria. Such interpretation is incorrect and contrary to the structure of the Tender Document.

75. Suitability requirements under Clause 5B(a) must be met at submission stage, are subject only to the limited clarification/rectification mechanism (as already applied) and cannot be satisfied through post-award commitments.

76. To accept such an approach would fundamentally alter the nature of selection criteria and would undermine the integrity of the procurement process.

77. The Appellant further alleges that the Contracting Authority has applied inconsistent standards by:

- permitting post-award submission under the Declaration; while
- rejecting the Appellant's commitment to provide regulatory authorisation post-award.

78. The two situations are not comparable:

- The Declaration concerns supporting documentation for Key Experts, which may be verified administratively following contract award. Although the key expert still needs to be competent at time of submission.
- Clause 5B(a), by contrast, concerns a substantive precondition of eligibility, namely the operator's regulatory authorisation to carry out the activity forming the subject of the contract.

79. Accordingly, the Contracting Authority has applied distinct provisions to distinct requirements, each in accordance with its purpose and scope.

80. The Contracting Authority submits that:

- all bidders were subject to the same requirements and documentation framework;
- the Professional Declaration Form was applied consistently and within its intended scope; and
- no bidder was permitted to defer compliance with mandatory suitability requirement under the selection criteria to post-award stage.

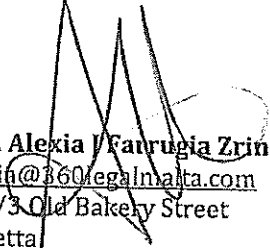
81. To accept the Appellant's position would have resulted in preferential treatment, in breach of the principles of equal treatment, self limitation and the general rule that bidders must be compliant with the mandatory requirements at time of submission of offers.

82. In line with the above this fifth grievance ought to be rejected in its entirety.

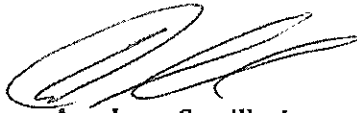
DOC and CPSU hereby reserve their right to present further evidence and submissions both written and orally to further substantiate their reply in relation to the said objection throughout the hearings.

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 and the deposit forfeited.


In the circumstances however DOC and CPSU do not object to the refund of the deposit if this objection is withdrawn before a hearing is appointed.



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