PUBLIC CONTRACTS REVIEW BOARD

Case 2244 – CPSU5316/25 – Supply of One-Piece Stoma Pouches Size 100mm

8th June 2026

The Board,

Having noted the letter of objection filed by Dr Maria Lisa Buttigieg on behalf of Mamo TCV acting for and on behalf of 3Tech Limited, (hereinafter referred to as the appellant) filed on the 20th April 2026;

Having also noted the letter of reply filed by Dr Alexia Farrugia Zrinzo and Dr Leon Camilleri acting for the Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 27th April 2026;

Having heard and evaluated the testimony of the witness Ms Lorraine Stivala (Member of the Evaluation Committee) as summoned by Dr Maria Lisa Buttigieg acting for the Appellant;

Having heard and evaluated the testimony of the witness Mr Claude Bugeja (Representative for the Appellant) as summoned by Dr Maria Lisa Buttigieg acting for the Appellant;

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 14th May 2026 hereunder-reproduced;

Minutes

Case 2244 – 670 --Objection – CPSU5316/25 – Supply of One-Piece Stoma Pouches Size 100mm.

The Tender was issued on the 7th of April 2026, and the closing date was 25th April 2026.

The estimated value of the tender, excluding VAT, was €140,600.00

On 20th April 2026, 3 Tech Ltd., lodged an appeal against Central Procurement and Supplies Unit (CPSU)– the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 14th of May 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Mr Keith Victor Grech and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €703 was paid.

There were Four bids.

The attendance for this public hearing was as follows:

Appellant – 3 Tech Ltd.

Dr Maria Lisa Buttigieg – Legal Representative.

Mr Claude Bugeja – Company Representative.

Ing. Joseph Bugeja – Company Representative.

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

Dr Alexia Farrugia Zrinzo– Legal Representative.

Dr Leon Camilleri -- Legal Representative.

Ms Bernice Gauci – Chairperson.

Ms Maria Curmi --Secretary.

Mr Jason Fenech --Evaluator.

Ms Lorraine Marie Stivala – Evaluator.

Dr Alec Sladden – Observer.

Recommended Bidder – Krypton Chemists Ltd. Formally declined invitation.

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2244 in the records of the PCRB. The Chairman identified the Appellant as 3 Tech Ltd, the Contracting Authority as the Central Procurement and Supplies Unit (CPSU). The representatives of the preferred bidder, Krypton Chemists Ltd., officially declined the invitation to be present for the hearing.

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

Initial Submissions:

Initial Submissions by Dr Marie Lisa Buttigieg (for the Appellant).

Dr Buttigieg stated that this appeal concerned Stoma pouches. In the rejection letter, the Contracting Authority stated that "*the samples provided were allegedly tried by clients".*

She argued that this testing should have been indicated in the tender. Following the response, 3Tech Ltd. noted that the testing was unjust, since there were many variables involved. Dr Buttigieg requested that the appeal be upheld.

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

Dr Camilleri stated that sample testing had been carried out, and the Evaluation Committee was not satisfied with the results of the appellant's product. He maintained that the reasons given were valid.

Witness:
Ms Lorraine Stivala (ID no. 26487M), summoned by Dr Maria Lisa Buttigieg.

Ms Stivala, a nurse at the Stoma clinic, works with patients who use the product, assists in evaluating the products, and ensures that they are beneficial for the clients. She was not involved in the drafting of the offer; however, she acted as an evaluator and participated in the testing of the product.

She explained that a Stoma pouch is used to collect waste following intestinal surgery. The witness stated that they received fifteen samples, which were handed to the chemist at Mater Dei Hospital. The chemist was responsible for distributing the samples to clients who were of sound mind, not residing in a care home, self-caring, and with a long history of Stoma use.

This was the normal procedure followed whenever a new product was introduced. Patients are taught how to use the Stoma, and follow-up care is carried out at the hospital. The patients were selected by the chemist. The evaluators first distributed the samples from the cheapest bid and subsequently provided the other samples, provided they were new products.

The same patients tried all the samples. They were given two samples each, and the chemist awaited their feedback. A pouch must be changed every day and emptied when it is one-third full.

The chemist also provided gauze and adhesive remover with the sample. The Stoma is cleaned with water. As for directions, these are given on the first day post-operation, and the patients selected were required to have a long history of Stoma use.

The witness noted that they maintain detailed files on every patient. At the time, they were using Stoma pouches provided by Ian Pace Ltd. The patients argued that the pouches supplied by 3Tech Ltd. leaked from the closure when heavy with stool. These leaks caused discomfort, particularly when the patient was outdoors.

This was the reason for the rejection of the bid. The specifications were the same as those of the products currently in use; however, the Velcro did not close properly.

Cross-Examination by Dr Leon Camilleri.

Dr Camilleri stated that Ms Stivala had been a nurse for eleven years, with four years' experience at the Stoma clinic. He explained that the CPSU required these pouches for distribution to long-term patients. The pouches were needed daily, and the nurses insisted that the patients should be able to live a normal life.

When the nurses received the feedback, they tested the 3Tech Ltd. pouches at the hospital and reported the same problem. The two evaluators observed leakage caused by the weight of the stool. They discussed this with the third evaluator, who resided in Gozo.

Mr Claude Bugeja (ID. no 249605L) – Summoned by Dr Maria Lisa Buttigieg.

Mr Claude Bugeja, a sales Manager with 3Tech Ltd. for the past five years, is responsible for handling tenders. He stated that they submitted the samples and received no form of feedback from CPSU. He explained that their manufacturers had been based in China since 2011 and that they had a large clientele across Europe, Asia, and Africa. They manufacture 70 million pouches annually.

He was asked to demonstrate how the sample should be properly closed. He stated that the patients had been closing the pouch too lightly. He insisted that although it was a globally standardised product, it had different specifications and methods of use.

The Velcro used on their product was made of plastic rather than fabric and therefore required greater pressure to close the pouch properly. The witness believed that the patients required a longer adjustment period.

Cross-Examination by Dr Leon Camilleri.

Dr Camilleri agreed with the witness that he did not have a medical profession. He was not present during the testing of the sample and merely assumed that it had not been closed properly.

Final Submissions:

Final Submissions by Dr Maria Lisa Buttigieg (for the Appellant).

Dr Buttigieg stated that the tender requested samples but did not specify that they would be tested on persons. She argued that the testing was neither scientific nor fair. The patients were not selected by the Evaluation Committee, and there was no way of knowing whether they were connected to a particular bidder, suffered from a hand infirmity, or belonged to a specific age group.

There were no details available other than that they were selected by the pharmacist and had long-term Stoma use. The Authority could have requested clarification to ensure that the product was being used properly and to eliminate all possible doubts.

She argued that testing is usually conducted by a medical team and never involved a third person. The tender requested samples only. A trial period involving the use of only two pouches was insufficient. She therefore requested that the appeal be upheld.

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

Dr Camilleri stated that Dr Buttigieg had argued that there was no mention of testing in the tender and that this omission had been intentional. He maintained that the testing of medical products had been conducted by the evaluators using the best method possible.

The appellants could have raised the issue that testing was not mentioned in the tender before the closing date of the offer by submitting an application under Regulation 262 of the PPR. This opportunity was not taken.

The Evaluation Committee considered that the testing was conducted in the most practical manner by distributing the device to patients who used it daily. These patients were best placed to provide feedback, given that they were long-term users. The Evaluation Committee did not rely solely on their feedback but also went to the hospital and tested the product on an existing patient, obtaining the same results.

A clarification would have been futile because, as Ms Stivala testified, she had extensive experience in closing a Stoma pouch. The specifications were the same as those of the products currently in use, with the same type of closure but under a different brand.

However, the pouch supplied by 3Tech Ltd. still leaked, and a clarification would therefore have served no purpose.

Dr Camilleri referred to the burden of proof. He argued that the objection had not been satisfactorily proven because the Evaluation Committee consistently explained the issue regarding the leaks.

The appellant's witness was not medically qualified. He was not present during the testing of the sample, even though he remained convinced that the pouch had not been closed properly. The evidence presented by the appellant was therefore insufficient to rebut the evidence provided by the Evaluation Committee.

Replica by Dr Maria Lisa Buttigieg (for the Appellant).

Dr Buttigieg noted that Ms Stivala testified that she had used the pouch only once.

Conclusion of the Hearing.

The Chairman, Mr Kenneth Swain, thanked all parties present and formally concluded the hearing. The Board would communicate its decision in due course.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 14th May 2026.

Having noted the objection filed by 3Tech Limited (hereinafter referred to as the Appellant) on 20th April 2026, refers to the claims made by the same Appellant with regards to the tender of reference CPSU5316/25 listed as case No. 2244 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Maria Lisa Buttigieg
Appearing for the Contracting Authority:	Dr Leon Camilleri & Dr Alexia Farrugia Zrinzo

Whereby, the Appellant contends that:

a) ***First Grievance - The tender dossier lacks any objective sampling evaluation criteria***

The Tender dossier, at Section 3 - Specifications, sets out detailed technical specifications for the product including dimensions, materials, and functional requirements. The Appellant's product met all these objective specifications. Indeed, the rejection letter does not allege any failure to meet the published specifications but instead relies on subjective user experience that is neither

contemplated nor governed by any provision in the tender documents. The tender dossier for the Tender states at Section 5(C)(iii) that "Samples as per Form marked 'Sample List' may be requested during the adjudication stage to supplement the technical offer submitted." However, the tender dossier is entirely silent on how such samples would be evaluated, tested, or assessed. There is no specification of any testing protocol, acceptance criteria, number of test users, testing conditions, or methodology to be employed in evaluating the samples.

The absence of any documented evaluation criteria for samples is fatal to the Contracting Authority's decision. Stoma pouches are medical devices whose performance is highly dependent on correct application technique, proper skin preparation, individual user anatomy, and adherence to manufacturer instructions. Without a standardised testing protocol specifying these variables, any user feedback is inherently subjective and cannot form the basis of a legally sound disqualification decision. Moreover, the Contracting Authority's rejection letter doesn't provide any evidence that the alleged deficiencies are attributable to the product itself rather than to user error, improper application technique, failure to clean or prepare the peristomal skin area, or other extraneous factors. Medical device performance, particularly for adhesive stoma appliances, is critically dependent on proper skin preparation and application technique. Without documented evidence of correct usage, the reported "leaks" and "skin reactions" cannot be attributed to the sample product.

Apart from the fact of lack of transparency on the testing process and also lack of clarity as to whether there was any user error, the Tender documentation only envisages that samples are there to "supplement the technical offer submitted," underscoring that the purpose of samples is evidentiary and corroborative of the written technical offer, not to create an additional, unwritten, and subjective hurdle with no objective pass/fail criteria. Where samples are evaluated, such evaluation must be conducted against transparent, pre-published criteria that allow bidders to understand what is being tested and how compliance will be determined.

b) ***Second Grievance - The sampling evaluation lacks transparency and due process***

The rejection letter states that *"samples provided [were] tried by clients"* and that *"all clients reported leaks"* while *"some reported also skin redness/skin rash. "*This statement raises fundamental questions of transparency and due process that the Contracting Authority has failed to address:

First, how many clients tested the samples? The phrase "all clients" is meaningless without disclosure of the sample size. If only two or three users tested the product, this doesn't automatically justify disqualification. Second, what were the testing conditions? Were users provided with instructions on proper application? Was the peristomal area properly cleaned and dried before application, as is standard practice for stoma care? Third, were the users experienced stoma patients or new users who may not have developed proper application technique? Fourth, how long was the testing period and under what circumstances was each sample used? The

principles of transparency and equal treatment, fundamental to public procurement law, require that evaluation criteria be known in advance to all bidders. It has been well established in public procurement jurisprudence that Contracting Authorities must adhere to the tender dossier and refrain from introducing non-written requirements at evaluation stage.

The Contracting Authority's reliance on an undisclosed, unstructured, and undocumented "user trial" as the basis for disqualification directly contravenes these principles. Bidders had no notice that samples would be evaluated through informal client feedback rather than against objective, verifiable criteria.

c) ***Third Grievance - Duty to seek clarification and opportunity to respond***

Without prejudice to the above, even if this Honourable Board were to consider that there were legitimate concerns arising from the sample evaluation, the Contracting Authority was under a duty to request clarification and to afford the Appellant an opportunity to respond before resorting to exclusion. The tender's own "Notes to Clause 5" state that "only clarifications on the submitted information may be requested," with a five working day deadline for tenderers to clarify. This mechanism exists precisely to enable the Contracting Authority to resolve uncertainties before disqualification. The Appellant was never informed of any concerns with the samples, never given an opportunity to observe or verify the testing conditions, and never afforded the right to respond to the alleged user complaints. This denial of procedural fairness is particularly egregious given the subjective and contestable nature of the feedback. Had the Appellant been notified, it could have provided evidence of proper application technique, offered to supply replacement samples, or requested supervised testing under controlled conditions. The principle of proportionality under the Public Procurement Regulations (S.L. 601.03) requires that exclusionary measures go no further than necessary to protect the integrity of the procedure! Disqualification based on informal, undocumented user feedback, without any opportunity for the tenderer to respond or for independent verification, is manifestly disproportionate. A clarification request or supervised re-testing would have been sufficient to address any legitimate concerns while respecting the tenderer's right to fair treatment.

Furthermore, the rejection sits uneasily with the tender's evaluation process, which foresees that the sole award criterion is the cheapest price among administratively and technically compliant offers. The Appellant's product met all published technical specifications. By elevating subjective user feedback above the documented technical compliance, and by failing to apply any transparent evaluation methodology, the Contracting Authority has distorted the procurement process and acted contrary to the public interest in securing compliant supplies at the most advantageous price. The award recommendation to Krypton Chemists Ltd, whose bid was more expensive, underscores the practical prejudice caused by this approach.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 27th April 2026 and its verbal submission during the hearing held on 14th May 2026, in that:

a) ***On the First Grievance: The tender dossier lacks any objective sampling evaluating criteria.***

The objector in this first grievance argues that the appellant satisfied all the technical specifications on paper and states that the reason for rejection does not allege any failure to meet the tender specifications. Moreover, it argues that the rejection only came after sample testing and that "the tender dossier is entirely silent on how such samples would be evaluated, tested or assessed. There is no specification on any testing protocol, acceptance criteria, number of test users, testing conditions, or methodology to be employed in evaluating samples. The absence of any documented criteria for samples is fatal to the contracting authority's decision" The Contracting Authority respectfully disagrees with the above cited claim. To the contrary of the argument made, the absence of these criteria, gives the contracting authority the discretion to test the samples in the manner it deems most appropriate in the context of their use and functionality.

The General Rules Governing Tenders provide in clause 16.3 that: *Wherever applicable in the procurement documents, and also in terms of Regulation 12(1) (b) of S.L. 601.03, tenderers may be requested to submit samples so that the Evaluation Committee will corroborate the technical compliance of the offers received. In case of different options provided by the same bidder, respective samples for respective offers should be provided as requested. Without prejudice to the possibility of requesting clarifications, where the samples do not corroborate the offer submitted, the tenderer shall be disqualified.*

The samples submitted in this case did not meet the basic functional aspect of the stoma pouch - that it does not leak. This need that a stoma pouch does not leak is inherent in its intended use and need not be written down. This could have only been discovered with sample testing. Moreover, these stoma pouches are not used solely in a hospital environment, but are used mainly by patients living independently on their own and is replaced every few days - it was thus of paramount importance that the pouch is tested by the clients (patients) since this is the ordinary use of the product which the contracting authority is seeking to procure. In fact, 5 stoma patients who are not new users, but who have been using stoma pouches for a long time were given 2 pouches each to test them. These patients were all trained on how to apply the pouches. The evaluation committee asked for written testimonials on the use of these samples and all of the patients reported leaking, some of them even reporting skin redness. Upon receiving this feedback, the evaluation committee tried the sample on a stoma patient in a ward and the pouch leaked as well, thus confirming the patient's testimonials and confirming that the product offered by the objector is not fit for its intended use and purpose. This method of sample testing is therefore in the opinion of CPSU a very reasonable way of testing in the light of the context of how these stoma pouches will be used when procured. Moreover, considering that absence of a sample testing protocol the evaluation committee had the discretion to test the samples in ways it deems best in the context.

CPSU also submits that if the objector is of the opinion that there should have been a detailed sample testing protocol, this opinion should have been there from the beginning i.e. from when the tender was published and not from when its offer was rejected. This objection for lack of sample testing protocol should have been brought up during the applicable time frame for the filing of an action in terms of regulation 262 of the Public Procurement Regulations before the closing time for the submission of offers. Once this time frame lapsed there is a juris et de juris presumption that the specifications as published have been accepted and thus whoever submits an offer should observe such specifications. The objector also had ample time to ask for clarifications on sample testing as per procurement procedure however chose not to do so.

b) ***On the Second Ground of Appeal - The sampling evaluation lacks transparency an due process***

The contracting authority respectfully submits that this second grievance is a repletion of the first one. CPSU refers to the submissions made in reply to the first grievance which shall be applicable also to this second grievance. For these reasons, CPU submit that this second ground of appeal should also be rejected.

c) ***On the Third Ground of Appeal - Duty to seek clarification and opportunity to respond.***

The Objector in this third grievance argues that the Contracting Authority was under some form of legal obligation to request a clarification from the objector. The above cited General Conditions Governing Tenders clearly state that "Without prejudice to the possibility of requesting clarifications, where the samples do not corroborate the offer submitted, the tenderer shall be disqualified." Moreover the same General Rules in the same part 16.3 provide in a very clear manner that "*No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications."* Additionally CPSU submits that the role of the evaluation lies on the evaluation committee and not the objector, thus if the evaluation committee did not have any doubt that the product offered does not meet its functional specifications, it did not have any obligation to request any clarification and was well within its right to rejected the objector's offer. For these reasons, CPSU submit that this third ground of appeal should also be rejected.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

First Grievance: The Tender dossier lacks any objective sampling evaluation criteria

The Appellant contends that although its product satisfied all published technical specifications contained in the tender dossier, the offer was nevertheless rejected on the basis of subjective user experience criteria which were neither contemplated nor regulated in the tender documentation. The Appellant submits that the tender dossier did not establish any testing protocol, acceptance criteria, testing methodology, number of users or conditions under which samples would be evaluated.

On the other hand, the Contracting Authority submits that the absence of a detailed testing protocol did not invalidate the evaluation process, but rather left discretion to the Evaluation Committee to test the samples in the manner considered most appropriate in light of the intended use of the product.

In so far as the Appellant contests the absence of a more detailed testing protocol within the tender documentation, the Board notes that the appellant could have availed of clarifications and/or pre-contractual remedies as stipulated by article 262 of the Public Procurement Regulations (S.L. 601.03).

In a number of judgements delivered by the Court of Appeal, it was held that if a bidder fails to exercise such pre-contractual remedies, the bidder cannot subsequently, and after being unsuccessful in the competition, challenge any aspect of the procurement document which it could have done before the closing date of the competition. Reference is made to the Court of Appeal decision of the 30 June 2021 in the case of **Truevo Payments Limited v Direttur tal-Kuntratti, Ministeru ghall-Finanzi u x-xoghol u Credorax Bank Limited Appeal no 95/21/1**, where the court held that:

> *"Hu car li l-ilmenti tas-socjeta Credorax Ltd huma diretti lejn il-procedura wzata u ma humiex marbuta mas-sustanza tal-offerta. Din is-socjeta qed tilmenta mill-uzu tal-procedura tal-ghoti tal-kuntratt b'negozjati, fuq il-mod kif gie mfassal il-process ta' din il-procedura u li ma kienx hemm l-approvazjoni tad-Direttur tal-Kuntratti ghall-uzu ta din il-procedura. Dawn it-tlett aggravji li abbazi taghhom il-kumpanija appellata Credorax Ltd ppprezentat l-appell taghha jirrigwardjaw materji illi kienu jezistu sa mill-bidu nett tal-procedura in kwistjoni, u ghal dawn l-ilmenti kienu jezistu rimedji taht ir-Regolament 262. Dawn l-ilmenti kellhom jitresqu qabel id-data tal-gheluq ta' sejha ghall-kompetizjoni u mhux, bhal filkas tallum, wara dik id-data, u sahansitra wara id-decisjoni dwar l-ghoti tal-Kuntratt."*

Accordingly, the Board finds no merit in the Appellant's first grievance.

Second Grievance: The Sampling evaluation lacks transparency and due process

The Appellant further contends that the sampling process lacked transparency and due process, particularly because the rejection letter merely stated that "all clients reported leaks" without specifying the number of users involved, the testing conditions applied, the duration of the testing period, or the characteristics of the patients selected. The Appellant argued that the testing process was informal, undocumented, and subjective, and that the bidders were never informed in advance that the evaluation would be based on client feedback rather than objective technical criteria.

The Contracting Authority submits that the Evaluation Committee acted reasonably and transparently within the discretion afforded to it under the tender documentation and the General Rules Governing Tenders. The Contracting Authority further maintains that the products were tested under ordinary conditions of use by experienced patients and that the findings were subsequently verified independently by the evaluators themselves. The Contracting Authority further argued that the essential functional requirement of a stoma pouch is that it should not leak during normal use and that this could only be verified through practical testing by long-term stoma patients.

The Board notes that the Tender dossier, at Section 3: Specifications, establishes a mandatory functional requirement related to the intended use of the product by patients with a stoma. Furthermore, Section 1: Instructions to Tenders, Clause 5(c)(iii), expressly provides that samples may be requested during the adjudication stage in order to supplement the technical offer submitted.

In this respect, the Board also notes that Clause 16.3 of the General Rules Governing Tenders clearly provides that:

> *"Without prejudice to the possibility of requesting clarification, where the samples do not corroborate the offer submitted, the tenderer shall be disqualified"*

The Board therefore finds that the tender documentation expressly contemplated the use of samples in order to verify whether the product effectively satisfied the functional requirement of the procurement.

The Board further noted from the testimony heard during the hearing that the Evaluation Committee distributed the samples to experienced long-term stoma patients who were self-caring, of sound mind, and accustomed to using similar products on a daily basis. The evidence further shows that **all** [Board Emphasis] of the 5 users reported leakage from the closure mechanism when the pouch became heavy with waste, with some users also reporting skin redness and irritation. Following such feedback, it transpired from the testimonies, that the evaluators themselves tested the pouch in a hospital setting and observed the same leakage issue.

The Board also notes that the Appellant's explanation that the Velcro mechanism used on its product required greater pressure to close properly and that the patients may have required a longer adjustment

period. However, the Board is not convinced by this explanation. Both the patients and the evaluators involved in the testing process were persons of considerable experience in stoma care.

Having considered all of the above, the Board is satisfied that the testing exercise was conducted consistently and with the objective of verifying whether the product fulfilled its essential functional purpose in practical use. The Board therefore finds that the Appellant failed to demonstrate that the evaluation process was conducted arbitrarily, discriminatorily, or in breach of the principles of transparency and equal treatment.

Accordingly the second grievance is likewise rejected.

Third Grievance: Duty to seek clarification and opportunity to respond

The Appellant finally argues that even if concerns had arisen during sample testing the Contracting Authority was under a duty to request clarification and afford the Appellant an opportunity to respond before proceeding with disqualification. The Appellant submits that the clarification mechanism provided under the tender conditions existed precisely to resolve uncertainties and that procedural fairness required the Contracting Authority to notify the Appellant of the alleged deficiencies and permit further explanation or supervised re-testing.

Conversely, the Contracting Authority submits that there existed no legal obligation to seek clarification in circumstances where the Evaluation Committee had no doubt that the product failed to satisfy the required functional specifications. Reliance was placed on clause 16.3 of the General Rules Governing Tenders, which expressly states that where samples do not corroborate the submitted offer, the tenderer shall be disqualified and that clarifications are not required where there is no doubt regarding non-compliance.

The Board agrees with the submissions of the Contracting Authority. Clause 16.3 of the General Rules Governing Tenders clearly provides that:

> *"Without prejudice to the possibility of requesting clarification, where the samples do not corroborate the offer submitted, the tenderer shall be disqualified"*

The Board notes that in the present case the Evaluation Committee did not rely solely on user feedback but independently verified the reported leakage during further testing conducted by experienced medical professionals. Furthermore, the Board also notes that **all** [Board emphasis] of the five users reported leakage. In such circumstances, the Board does not consider that the Evaluation Committee was under any obligation to request clarification or conduct further rounds of testing. The Board further notes that the clarification procedure cannot be used to remedy **substantive deficiencies** [Board emphasis] in the product itself.

Accordingly, the Board finds no merit in the Appellant's Third Grievance.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

a) Does not uphold Appellant's Letter of Objection and contentions,
b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain	**Mr Lawrence Ancilleri**	**Mr Keith Victor Grech**
Chairman	**Member**	**Member**