PUBLIC CONTRACTS REVIEW BOARD

Case 2235 – Objection 645 – CT2033/2024 – Tender for the Supply of Eribulin 0.44mg/ml Solution for Injection

03rd June 2026

The Board,

Having noted the *Letter of Objection* filed by Dr Matthew Paris and Dr Zackariah Esmail acting for and on behalf of **Cherubino Limited** (hereinafter referred to as "*the Appellant*") on the 30th January, 2026, by which the Appellant impugned the cancellation, communicated by letter dated the 23rd January, 2026, of the call for tenders bearing reference CT 2033/2024 — Tender for the Supply of Eribulin 0.44mg/ml Solution for Injection;

Having noted the *Reasoned Letter of Reply* filed by Dr Leon Camilleri, Dr Alexia J. Farrugia Zrinzo and Dr Audrey Marlene Buttigieg Vella acting for and on behalf of the **Department of Contracts** (hereinafter "*DOC*") as the Central Government Authority, and of the **Central Procurement and Supplies Unit** (hereinafter "*CPSU*") on behalf of the Department of Health as the Contracting Authority (hereinafter together referred to as "*the Contracting Authority*") on the 10th February, 2026, by which the Contracting Authority, while contesting the second grievance on its merits, expressly conceded that the cancellation letter of the 23rd January, 2026 had omitted the reasons underlying the cancellation, and declared that it raised no objection to the filing by the Appellant of any further grievance founded upon the disclosure of those reasons made in the said Reply, nor to the refund of the deposit paid by the Appellant;

Having noted the *Application for Leave to File an Additional Grievance* filed by the Appellant on the 18th February, 2026, founded upon the said disclosure of reasons in the Reasoned Letter of Reply, and the absence of any reply thereto on the part of the Contracting Authority;

Having noted the *Decree of this Board* issued upon the said Application, by which the Board, being satisfied that the application for leave was made promptly and in good faith, granted the Appellant leave to submit an additional grievance pursuant to Regulations 90(1) and 90(4) of the Public Procurement Regulations, and directed the Department of Contracts and the Central Procurement and Supplies Unit to accept the filing of the said additional grievance and to respond thereto in accordance with the applicable regulatory provisions;

Having noted the *Note of Additional Grievance* filed by the Appellant on the 9th March, 2026 in compliance with the said Decree, by which the Appellant advanced an additional grievance to the effect that no discrepancy in fact existed within the tender documentation for CT 2033/2024 and that the Technical Evaluation Committee had erred in concluding to the contrary;

Having heard and evaluated the testimony of the witness Mr Adrian Spiteri (Evaluator) as duly summoned by Dr Matthew Paris acting for and on behalf of the Appellant, and the verbal submissions of the parties, in the course of the sitting of this Board held on the 30th April, 2026 and the 26th May, 2026, the minutes whereof are hereunder reproduced;

Having heard and evaluated the testimony of the witness Mr David Cherubino (representing the Appellant) as duly summoned by Dr Matthew Paris acting for and on behalf of the Appellant, and the verbal submissions of the parties, in the course of the sitting of this Board held on the 30th April, 2026 and the 26th May, 2026, the minutes whereof are hereunder reproduced;

Having noted the *Reply to the Additional Grievance* filed by the Contracting Authority on the 21st April, 2026, by which the Contracting Authority addressed on its merits the additional grievance advanced by the Appellant in its Note of the 9th March, 2026;

Having noted the *Application of the Appellant* of the 29th April, 2026, by which the Appellant requested this Board to declare that the said Reply of the 21st April, 2026 had been filed *fuori termine* in terms of Regulation 276(c) of Subsidiary Legislation 601.03 and to declare it inadmissible in consequence;

Having delivered, by way of *Partial Decision* in these proceedings, its determination upon the said Application of the 29th April, 2026, by which Partial Decision the Application was rejected, the Reply of the 21st April, 2026 was declared procedurally admissible, and the proceedings were directed to continue in accordance with the directions of this Board, the said Partial Decision being incorporated in this Decision by reference;

Having reserved, at the sitting of the 30th April 2026, the question whether the evaluation of the offers in CT 2033/2024 had been conducted by a sole evaluator without the exemption required by section 1.2 of the Standard Operating Procedures of the Department of Contracts, and having directed the production of the documentary evidence bearing upon that question;

Having noted that the documentary evidence so directed, comprising the correspondence of the Director General (Contracts) of the 6th April 2024 and of the 25th July 2025 touching the approval of the composition of the Tender Evaluation Committee, was duly produced by the Contracting Authority and the Department of Contracts, was formally received by this Board, and was notified to the Appellant, and that the Appellant filed no further *rikors* raising any grievance founded thereon within the period allowed to him by the verbal of this Board;

Having taken cognisance of, and evaluated, all the acts and documentation filed in these proceedings, together with the verbal submissions made by the representatives of the parties at the sitting of the 16th March, 2026 hereunder reproduced;

Minutes

Case 2235 – CT2033/2024 – Tender for the Supply of Eribulin 0.44mg/ml Solution for Injection.
The Tender was issued on the 11th of March 2024, and the closing date was 16th April 2024.
The estimated value of the tender, excluding VAT, was €765,540.80
On 30th January 2026, Cherubino Ltd., lodged an appeal against the Central Procurement and Supplies Unit (CPSU)– the Contracting Authority, and The Department of Contracts, in accordance with Regulation 270 of the Public Procurement Regulations.
On the 30th of April 2026, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Dr Ana Thomas and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.
A deposit of €3,833.00 was paid.
There were four bids.
The attendance for this public hearing was as follows:

Appellant – Cherubino Ltd
Dr Matthew Paris – Legal Representative.
Dr Francis Cherubino – Company Representative.
Dr David Cherubino – Company Representative.

Contracting Authority – Central Procurement and Supplies Unit (CPSU)
Dr Alexia Farrugia Zrinzo – Legal Representative.
Dr Leon Camilleri – Legal representative.
Ms Marika Cutajar – Chairperson.
Ms Julia Pirotta – Secretary.
Mr Adrian Spiteri – Evaluator.

Department of Contracts.
Dr Audrey Marlene Buttigieg Vella – Legal Representative.
Recommended Bidder – Not Applicable (Tender recommended for cancellation).

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2235 in the records of the PCRB. The Chairman identified the Appellant as, Cherubino Ltd., the Contracting Authority as the Central Procurement and Supplies Unit (CPSU), and The Department of Contracts**.**
The Chairman invited the legal representative for the Appellant to make the initial submissions.

Initial Submissions.

Initial Submissions by Dr Matthew Paris (for the appellant).

Dr Paris stated that this appeal was split into two. One grievance concerned the lack of information about the cancellation, and the second concerned proportionality. In the joint reply from the Contracting Authority and the Department of Contracts, they conceded that no information had been provided and subsequently gave the reason for the cancellation.

The appellant did not agree with the cancellation, and the response by the Department of Contracts and the Contracting Authority was sent in weeks, instead of within the limit of 10 days.

The appellant appealed again for the opportunity to challenge that response. The appellant's argument was that: a) there were no discrepancies, b) the evaluation could have been carried out, and c) the decision to cancel the tender at this stage was disproportionate.

The Director of the Department of Contracts has limitations imposed by the General Contracts Regulations. Once the offered price is known, there is greater discretion. This was to be the appellant's argument.

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

Dr Camilleri stated that the appellants made an objection *entro termine*, with an additional grievance. There is a difference between an initial answer and an additional grievance. The Contracting Authority was not subject to a limited timeframe to respond. Eventually, a response was given, and it should be admissible. In this case, there was a mistake in the financial bid form, which obliged the Evaluation Committee to conduct an evaluation on a like-for-like basis.

The financial bid form could have been interpreted differently. In the financial bid form, there was, and he quotes:

"Evaluation would be carried out on the cheapest offer per ml"

The quality requested concerned the vials, not the millilitres. If a vial of 2ml was packed in a single package at a certain price, the amount indicated in the financial bid form would not be realistic in relation to what the bidder intended to offer.

Therefore, one either had to change the request in the bid form, which was for 2160 vials, or provide an unrealistic quantity to reach the price. In these circumstances, the Evaluation Committee had every reason to cancel.

Witness:

Mr Adrian Spiteri (ID no. 139581M), summoned by Dr Matthew Paris.

Mr Adrian Spiteri, an evaluator and senior pharmacist with the CPSU, stated that Ms Marica Cutajar was the Chairperson, Ms Julia Pirotta was the secretary, and he himself was the only evaluator. They were chosen by the Department of Contracts. There were four offers: two from Cherubino, one from Pharma MT Ltd, and one from JV Healthcare Ltd.

There were no clarifications either prior to submission or during the evaluation. He did not recall how many times they met. He referred to a clarification request sent to Cherubino:

"Kindly note that the Estimated Quantity required, as per published Tender dossier is '2160 vials x 2ml or equivalent' As per your offer TID 000208633, the quoted Grand Total Price on ePPS and also as per the filled-in Financial Bid form submitted by your company is €317,520.00 and the Pack Price is €294.00 per 2ml vial (0.88mg/2ml). Article 17.1b of the General Rules Governing Tender states: 'where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail'. Please confirm or otherwise that the correct Grand Total Price should work out to be €635,040.00 (€294.00 multiplied by 2160 vials (of 2ml)'. No clarification response was received from Cherubino Ltd. within the stipulated time frame".,

No answer was given by Cherubino to TID 208633.

Another clarification (TID 208636) was sent, and he quotes:

"Kindly note that the Estimated Quantity required, as per published Tender dossier is '2160 vials x 2ml or equivalent'. As per your offer TID 000208636, the quoted Grand Total Price on ePPS and also as per the filled-in Financial Bid form submitted by your company is €376,920.00 and the Pack Price is €349.00 per 2ml vial (0.88mg/2ml). Article 17.1b of the General Rules Governing Tenders states: 'where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail'. Please confirm or otherwise that the correct Grand Total price should work out to be €753,840.00 – (349.00 multiplied by 2160 vials (of 2ml)'. Cherubino's response to the above clarification request was as follows. Further to your query, kindly note that the total price as per our offer of €376,920 is correct. The pre-populated formula in the financial Bid Form, calculates the price per millilitre x number of packs (not the number of packs x price per pack) and the same Financial Bid Form states 'Evaluation will be carried out based on the 'Cheapest offer per millilitre'. Hence our offer of €376,920 for 2160 packs of 2ml, which equates to €174.50 per pack".

A similar clarification was sent to Pharma MT, and their response was:

"Kindly note that as this offer was submitted April 2024, we are unable to offer the same product or pricing at this time due to the time that has since lapsed".

JV Healthcare completed the form differently, according to the Grand Total Price. They created a separate document without using the formula equation in the Excel sheet. At that stage, the Committee did not realise that JV Healthcare had altered the bid form, and as it did not result in a financial error, no clarification was requested from them.

Cross-Examination by Dr Leon Camilleri.

Dr Camilleri clarified that the evaluator had three bids where, when the unit price was multiplied by the quantity, it did not match. Therefore, since they were bound by the unit price and not the total, clarifications were sent to Cherubino and Pharma to confirm whether the unit price was correct, while also indicating the grand totals. Cherubino answered one of the clarifications, as did Pharma, and both confirmed that they stood by the Grand Total.

This Grand Total did not match the unit price. In the case of JV Healthcare, the arithmetical formula had been removed, and the multiplication of unit price by quantity produced the Grand Total.

Dr Paris requested authorisation from the Contracting Authority or the Department of Contracts confirming whether there had been consensus for this offer to be evaluated by a single evaluator.

The Board queried Dr Paris whether he intended to raise another grievance.

Dr Paris stated that he was ready to close the case, reserving his position regarding the issue of consensus. If such consensus was not provided, a new grievance would be submitted in writing.

The Board suggested that Dr Paris verbalise the grievance, and that the Contracting Authority would respond verbally, with a reservation.

Witness.
Mr David Cherubino (ID no. 117978M), summoned by Dr Paris.

Dr Paris noted that Mr Cherubino would testify on technical matters and had submitted an additional document to all parties.

Dr Camilleri objected, stating that the witness came from the Company, which had already had three days to present all documents.

Dr Paris explained that Mr Cherubino was the Director of Cherubino Ltd and a certified public accountant responsible for the company's financial matters. Cherubino did not agree that the evaluation could not be conducted due to a discrepancy.

The financial bid form was included in the ePPS zip file. He quotes: "*Evaluation will be carried out based on the "Cheapest offer per mm",* and this constituted the benchmark. Cherubino's offer was €376,920 in TID 208636. The request was for 2160 vials of 2ml in the tender form, and the same quantity was reflected in the financial bid form.

When €376,920 is divided by 2160 and then by 2ml, the result is €87.25 per ml. This was the amount to be charged, and therefore no clarification was necessary. He quotes the clarification response:

"*Further to your query, kindly note that the total price as per our offer of €376,920 is correct. The pre-populated formula in the financial Bid Form, calculates the price per millilitre x number of packs (not the number of packs x price per pack) and the same Financial Bid Form states 'Evaluation will be carried out based on the 'Cheapest offer per millilitre'. Hence our offer of €376,920 for 2160 packs of 2ml, which equates to €174.50 per pack".*

This constituted the evaluation criterion of the tender. There was no doubt or confusion for any bidder. The CPSU requested 2160 vials of 2ml or equivalent over three years. This is a patented product supplied in 2ml vials.

The Board asked whether the same formula could be used if the product were supplied in 1ml vials. The witness replied that the same form could be used.

Cross-Examination by Dr Leon Camilleri.

Mr Cherubino could not recall whether he personally completed the form.

Dr Camilleri asked how the bid form would have been configured if the vials were 5ml.

The witness replied that their vials were 2ml, with a price per pack of €349.

Dr Camilleri insisted that multiplying €349 by 2160 would not yield the same total price. Each ml costs €87.25, and each vial costs €174.50.

The Board noted that Cherubino quoted €349 per pack, which was not realistic and effectively double the price.

Dr Camilleri agreed with the witness that the product consisted of 2ml per vial, with one vial per pack priced at €174.50. He stated that 2160 multiplied by €174.50 results in the Grand Total; however, multiplying 2160 by €349 would produce a significantly higher amount.

The witness explained that the CPSU required 2160 x 2ml, equivalent to 4320ml. At €87.25 per ml, this results in the submitted total of €376,920.

The witness agreed that the financial bid form did not include a column for *'price per ml',* and that the total price provided was not the price per pack.

The Board clarified that if Cherubino had entered the total price per pack, the overall total would have been half the amount. The witness replied that they followed the criterion '*the cheapest offer per ml*'.

The Board verbalised the following:

"Il-Bord jisma t-talba tal-appellant, inkwantu referibbli, evidenza gdida naxxenti mid-deposizzjoni tas-sur Adrian Spiteri, fejn intqal illi l-istess Spiteri, kien l-uniku evalwatur li evalwa din l-offerta.

L-appellant talab lil Bord invista ta din il-prova gdida,illi jigi koncess lilu, awtorizzazzjoni ta dan il-Bord, sabiex jindirizza dan il-punt, u konsegwentament jintavola aggravju ulterjuri, kemm il-darba, dan jkun mehtieg, u kemm il darba li l-istess appellant, talab konferma mal-Awtorita Kontraenti u mad-Dipartiment tal-Kuntratti, biex tingieb il-prova tal-ezenzjoni, kemm il-darba tezisti fejn jigi ppruvat jekk kienx hemm approvazzjoni sabiex din l-offerta tigi evalwata minn evalwatur wiehed. F'kaz li m'hemmx din il-prova tal-ezenzjoni, l-appellant talab biex izid aggravju fuq dan il-punt.

L-Awtorita Kontraenti u d-Dipartiment tal-Kuntratti qed jimpenjaw irwiehhom sabiex sat 8 ta' Mejju 2026, jghaddu din l-informazzjoni o meno lil-appellant u lil dan il-Bord, kemm il-darba din l-ezenzjoni tezisti. Dan il-Bord ghandu jghaddi biex jghati d-decizzjoni, finali tieghu.

F'kull kaz li din l-ezenzjoni, ma tezistix jew l-appellant ma jkunx sodisfatt, bl-ezitu tar-risposta, l-appellant qieghed illum jigi koncess lilu illi sat-13 ta' Mejju 2026, jipprezenta rikors li jitratta l-aggravju l-gdid, liema dekors ta zmien jiskatta mit-8 ta' Mejju 2026 illi l-Awtorita Kontraenti qieghed jigi koncess lilha li tipprezenta r-risposta taghha sa l- 20 ta' Mejju.

Illi fis-seduta ta' llum, 30 ta' April 2026, il-partijiet trattaw l-aggravju u l-eccessjonijiet kollha, salv biss s-sottomissjonijiet li titratta l-aggravju l-gdid.

Il-Bord qieghed ukoll jiddeferixxi dan l-appell ghal skop ta nformazzjoni ghas 26 ta Mejju (b'dan illi l-partijiet qed jigu ezentati li jattendu)".

Final Submissions.

Final Submissions by Dr Matthew Paris (for the appellant).

Dr Paris began by quoting a decision of the Supreme Court in the case of Melchior Dimech vs The Ministry of Finance and Work, dated 30 November 2023.

"Fi zgur, mhijiex indikattiva s-soluzjoni proposta mill-appellant li s-sejha ghandha tigi mhassra kollha kemm hi. Soluzzjoni bhal din twassal biex jigi mfixkel il-process tal-kompetizzjoni minhabba li llum il-prezzijiet tal-oblaturi ekonomici huma mikxufa u ghalhekk l-oblaturi jafu x'inhu l-prezz tal-oblaturi l-ohra u b'hekk ikunu jistghu ibiddlu l-offerta taghhom jekk kemm il-darba ssir sejha gdida".

That case involved a request by Melchior Dimech to cancel the tender because the validity period had not been respected, as the evaluation took place outside the 90-day period. While the situations differ, the outcome is the same.

In this case, four bidders submitted offers without seeking clarification or a pre-contractual remedy under Regulation 262 to address any ambiguity.

Since no ambiguity was raised, all parties are bound to respect the contents of the offer. The Contracting Authority is equally bound, and any issues should have been addressed at that stage. The Department of Contracts cannot exercise the right to cancel arbitrarily, particularly after submissions have been made.

The alleged discrepancy was not identified by any bidder. The bidder who was no longer interested indicated that too much time had passed and the prices were no longer viable.

Pharma modified the financial bid form. The issue lay in the price per pack and the formula used. The Excel sheet was pre-populated and automatically produced a price of €375 instead of €174. However, for ranking and evaluation purposes, the price per pack was irrelevant; only the evaluation method mattered, and he quotes:

"Evaluation will be carried out based on the cheapest offer per ml".

The evaluator needed only to consider the price per ml. While it is true that no column requested the price per ml, this did not justify cancellation. The matter was unnecessarily complicated. The General Rules Governing Tenders did not apply in this context; specific provisions should prevail over general ones.

While it is true that in cases of discrepancy the unit price prevails, in this case the unit price was irrelevant. Article 17.3 of the General Rules Governing Tenders refers to arithmetical errors.

Dr Paris referred to Case 2078 of 24 February 2025, where Dr Leon Camilleri conceded that arithmetical errors could be corrected. The only discrepancy concerned the price per pack, which was clarified as €174.50. The error arose due to how the Contracting Authority structured the data and information requirements.

This discrepancy led the Contracting Authority to restart the tender process. Regulation 39 of the PPR, concerning proportionality, requires that decisions be proportionate. In some cases, courts have upheld tenders despite discrepancies, as cancellation is the most extreme measure.

Dr Paris questioned whether the discrepancy was attributable to Cherubino, the other bidders, the Department of Contracts, or the Contracting Authority.

He argued that the discrepancy was entirely irrelevant for evaluation purposes. The evaluator could have sought clarification if needed. The tender should never have been excluded.

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

Dr Camilleri stated that the financial bid form was so unclear that the appellant had to call an accountant to testify, presenting a document filled with figures relating to unit prices or price per ml, which were not explicitly provided.

The Department of Contracts has discretion in situations where a document contains an error that could lead to an unjust evaluation. The financial bid form requested 2160 vials and the price per pack, with each pack consisting of one 2ml vial. This was how Cherubino submitted its offer. When the number of vials is multiplied by the pack price, the resulting total is incorrect.

The Melchior Dimech case cited by Dr Paris was entirely different, as it concerned an expired tender period. In this case, the financial bid form was difficult to interpret.

Under the General Rules, the unit price prevails. There is inconsistency between the unit price requested in the column and the statement "*Evaluation would be carried out on the cheapest offer per ml*".

This constitutes ambiguity: is the relevant price per pack or per ml? Among the four offers, one bidder declined to respond to the clarification request, another indicated a unit price of €174 (which was not entered in the form), and another altered the formula due to the ambiguity.

Thus, what the appellant described as a clear financial bid form resulted in different approaches by bidders.

The Evaluation Board could not properly compare the offers. The Director of the Department of Contracts has discretion to cancel in such situations to avoid unjust outcomes in the evaluation process.

Conclusion of the Hearing

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

Hereby resolves:

Having noted the objection filed by Dr Matthew Paris and Dr Zackariah Esmail (hereinafter referred to as *"the Appellant"*) on the 30th of January, 2026, refers to the claims made by the same Appellant with regard to the tender of reference *CT2033/2024 - Tender for the Supply of Eribulin 0.44mg/ml Solution for Injection* listed as case No. 2235 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Matthew Paris
Appearing for the Contracting Authority:	Dr Leon Camilleri, Dr Alexia J Farrugia Zrinzo and Dr Audrey Marlene Buttigieg Vella

Whereby, the Appellant contends that:

Whereas the Department of Contract (hereinafter "DoC") issued a call for tender 'for the supply of eribulin o.44g/ml solution for injection'

Whereas Messrs. Cherubino Limited (hereinafter "Cherubino" and/or "the appellant company") submitted a bid for this procedure.

Whereas, by means of a letter dated 23rd January, 2026, the Appellant company was informed that the tender is being recommended for cancellation, as follows:

"Thank for participating in the above-mentioned tender procedure.

However, I regret to inform you that this tendering procedure is being cancelled in line with Article 18.3(d) of the General Rules Governing Tendering where it is stated that Cancellation may also occur where there is a diserepancy in the tender document"

Whereas the Appellant company feels aggrieved by the decision to recommend the rejection and the cancellation of the tender, and is hereby submitting its objection within the stipulated time-frame and accompanied with the relative payment (copy of confirmation of payment enclosed as DOC1), in accordance with inter alia article 270 of Subsidiary Legislation 601.03 (hereinafter the PPR), and this based on the following grievances:-

1. **<u>Failure to give reasons for the cancellation</u>**

1.1 It is the submission of the appellant company that the letter dated 23rd January fails to satisfy the mandatory requirements set out in Regulation 272 of S.L. 601.03 ("PPR").

1.2 In terms of Regulation 272 of the PPR, it is incumbent upon the DoC, at a minimum, to provide: (i) a summary of the relevant reasons relating to the rejection of the tender, as contemplated under Regulation 242; (ii) the reasons and findings for the cancellation of the call for tenders; and (ii) a precise and unequívocal statement of the applicable standstill period.

1.3 The impugned letter manifestly fails to provide any reasons whatsoever for the cancellation of the call for tenders, other than a generic statement, claiming that there is a discrepancy in the tender document, without explaining any reasons thereto and/or defining the findings as a consequence of such reasons.

1.4 It is pertinent to recall that a recent judgment of the Court of Appeal, Agius Stone Works Limited v. Kunsill Lokali Valletta et (8 April 2025, Rik, Nru. 65/2025/1), unequivocally held that decisions cancelling a call for tenders must expressly set out both the reasons and the findings underpinning such decision. The Court held as follows:

"F' dan ir-rigward il-ligi tghid fir-Regolament 15(3) tar-Regolamenti dwar Kuntratti Pubblici li d-deċiżjoni li twassal ghall-kancellament tas-sejha trid issir bil-miktub u jrid ikun fiha s-sejbiet u r-ragunijiet li wasslu biex din tkun inharget. Minn kliem il-ligi ghalhekk id-deċiżjoni ta' kancellament ta' sejha jrid ikun fiha mhux biss ir-ragunijiet li wassiu t-thassir tas-sejha

iżda jrid ikun fiha anke s-sejbiet (findings)."

1.5 In view of the aforesaid, whilst reserving its rights to the fullest extent permissible to submit any additional grievance once the reasons and findings for the cancelation are made known, it is the position of the appellant company that the letter dated 23rd January 2026 is in breach of Regulation 242 & 272 of the PPR.

2. <u>Cancellation- unnecessary, breaches proportionality principle and anti-competitive</u>

2.1 The appellant company submits that the decision to cancel the call for tenders was neither necessary nor justified.

2.2 The cancellation of a tender must be strictly necessary and applied only as a measure of last resort. While it is acknowledged that the DOC retains the discretion to cancel a tender procedure, such discretion becomes significantly more limited once the prices submitted by the economic operators have been disclosed, in order to safeguard the principles of transparency, equal treatment, and legitimate expectations.

2.3 This was the essence of the Court of Appeal judgment in the names of Cateressence Limited (C-49407) v. Ministeru tal-Intern u Sigurtà Nazzjonali; id-Direttur Generali (Kuntratti); u James Caterers Limited (C-30139), wherein it was held that:

"Dan il-fattur anti-kompetitiv, li certament jikser il-par condicio tal-oblaturi, jeghleb kull vantagg li jista' jinkiseb - u jekk hemm xi vantağg, ma ntweriex x'inhu - bit-thassir tas-sejha ghal offerti. Iservi biss biex jaghti vantagg lil min, sa issa, l-offerta tieghu żammha mistura, li certament huwa kontra l-ispirtu tal-ghoti ta' kuntratti pubblici."

2.4 With regards to disclosure of prices, the Court of Appeal in the decision in the names of, Melchiore Dimech v Ministeru ghall-finanzi u Xoghol et?, it was held:

"Fiżgur, mhijiex indikattiva s-soluzzjoni proposta mill-appellant li ssejha ghandha tiği mhassra kollha kemm hi. Soluzzjoni bhal din twassal biex jigi mfixkel il-process tal-kompetizzjoni minhabba li llum il-prezzijiet tal-oblaturi ekonomici huma mikufa u ghalhekk I-oblaturi jafu x'inhu l-prezz tal-oblaturi l-ohra u b'hekk ikunu jistghu ibiddlu I-offerta taghhom jekk kemm-il darba ssir sejha gdida"

2.5 Likewise, the EC), in the case Tideland Signal v Commission? held that:

"....the principle of proportionality requires that measures adopted by the community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued and that where there is a choice between several appropriate measures recourse must be had to the least onerous ..."

NOWHEREFORE, whilst reserving the right to put forward any other submissions, Cherubino hereby requests the PCRB:

i. To order the defendants, or whosoever, to revoke the letter dated 23rd January, 2026, by virtue of which tender CT2033/2024 has been recommended for cancellation.
ii. To order the defendants, or whosoever, to re-instate the appellant company, and through a newly composed evaluation committee, re-evaluate the tenders.
iii. To refund the deposit paid in its entirety.
iv. To do anything else which is conducive and necessary for the proper execution of the above requests.

This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on the 10th February, 2026, and its verbal submissions during the hearing held on the 16th March, 2026, in that:

A call for tenders for the Supply of Eribulin 0.44mg/ml solution for injection was issued on the 11th of March 2024.

A number of bids were submitted and following an evaluation process the tender was recommended for cancellation on the basis of article 18.3 (d) of the General Rules Governing tenders.

The objector felt aggrieved with the decision of the evaluation committee and filed its objection in terms of regulation 270 of the Public Procurement Regulations (PPR).

DOC and CPSU are hereby presenting their reply.

Submissions

On the First Grievance - Failure to Give reasons for Cancellation

1. In its first grievance the objector states that the reason for the cancellation was not provided in the letter informing the bidders of the intended cancellation;

2. The reason for the cancellation is the below:

   With reference to Article 1.1 under Section 1 of the published Tender Dossier, the Estimated Quantity required is '2160 vials x 2ml or equivalent. However, in the published Financial Bid form template, it was stated as follows; '[Evaluation will be carried out based on the "Cheapest offer per millilitre"]. Therefore, the Estimated Quantity required both in Article 1.1 under Section 1 of the Tender dossier and also in the Financial Bid form template should have been quoted in Total Volume required in mls [ie 4,320mls (i.e. 2,160 units X 2ml each)], instead of as 2160 vials x 2ml or equivalent' (as per Tender dossier) and '2160 vials x 2ml' (as per Financial Bid form template. Pursuant to the above, the Evaluation Committee recommends that this tender is to be cancelled in line with Article 18.3d of the General Rules Governing Tenders, which states: 'Cancellation may also occur where there is a discrepancy in the tender document'

3. The above cited reason as written in the evaluation report was mistakenly omitted from the letters sent on the 23rd of January, 2026.
4. In this regard, DOC and CPSU from the outset declare there is no objection in case the Objector intends to file any new grievance or submission on the basis of this reason for cancellation which is being disclosed to them for the first time in this reasoned letter of reply.

On the Second Grievance - Cancellation Unnecessary, breaches principle of proportionality and anti-competitive

1. In its second grievance the objector argues that the cancellation was not necessary, as this should be a measure of last resort.

2. The DOC and CPSU agree that the cancellation should be a measure of last resort and the evaluation committee embraced this rule in their evaluation process, in fact as will be evidenced further, the evaluation committee asked for evaluation clarifications, particularly for arithmetical corrections in order to try and save the tender.

3. It resulted however, that the bidders interpreted the tender and the financial bid form differently due to the discrepancy as mentioned in the above cited reason for cancellation, thus the evaluation committee could not proceed with an evaluation process of comparable offers.

4. Had the evaluation committee proceeded with the evaluation and made a recommendation it would have been acting in breach of the principle of equal treatment of bidders and in breach of the principle of fairness which is essential in a competitive procurement process.

5. For the above stated reasons as will be further evidenced and substantiated during the hearing, DOC and CPSU humbly submit that this second grievance should be rejected.

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, particularly the second grievance, ought to be rejected.

In view of the fact that the reasons for rejection was omitted from the letter notifying the cancellation and the fact that the discrepancy in the tender documents is in no way imputable to the objector, DOC and CPSU from the outset declare there is no objection to the refund of the deposit, whilst reaffirming their position that the objection on the merits should not be upheld.

Having seen the additional application filed by the Appellant on the 18th February, 2026, to which both the Contracting Authority and the DoC did not reply to the content of this further application, wherein the Appellant further contends:

1. Cherubino Limited (hereinafter "Cherubino" and/or the "Appellant Company") filed an objection before this Honourable Board on the 30th January, 2026 in terms of Regulation 270 of S.L. 601.03. By virtue of said objection, Cherubino submitted, inter alia, that the rejection/cancellation letter failed to provide any reasons for the cancellation of the procedure [vide Grievance No. 1].

2. In a joint reply filed on the 10th February, 2026, the Department of Contracts (hereinafter "DoC") and the Central Procurement & Supplies Unit (hereinafter "CPSU) expressly conceded that the rejection/cancellation letter did not include the reasons for the cancellation. They further stated as follows:

> *"In this regard, DoC and CPSU from the outset declare that there is no objection in case the Objector intends to file any new grievance or submission on the basis of this reason for cancellation which is being disclosed to them for the first time in this reasoned letter of reply." [vide para. 4]*

3. In light of the above admission, and the failure to provide the relevant information from the outset, Cherubino hereby respectfully requests authorisation from this Honourable Board to submit an additional grievance. This request is being filed within ten (10) days from the disclosure of the reasons for cancellation, and on the basis that Cherubino maintains that no discrepancy exists within the tender documents; consequently, the cancellation of the procedure is neither necessary nor justified.

4. For the sake of clarity, although the Technical Evaluation Committee (hereinafter "TEC") concluded that a discrepancy subsisted, no discrepancy in fact existed between the published quantities. The alleged discrepancy amounts to nothing more than an explanatory emphasis on the manner in which the evaluation is to be conducted. Such emphasis finds its legal basis in Regulation 39(2) of the Public Procurement Regulations, which safeguards the principle that "*the tenderer must be selected in a transparent manner and according to a prescribed procedure.*"

NOW, THEREFORE, in view of the foregoing, Cherubino respectfully requests this Honourable Board to grant it leave to submit an additional grievance, *inter alia*, in accordance with Regulations 90(1) and 90(4) of the Public Procurement Regulations.

Application: *Cherubino Limited – Request to File an Additional Grievance*

DECREED:

1. *Whereas Cherubino Limited (hereinafter "Cherubino" and/or the "Appellant Company") filed an objection before this Honourable Board on 30 January 2026 pursuant to Regulation 270 of S.L. 601.03, in which the Appellant Company contended, inter alia, that the rejection/cancellation letter issued in relation to the relevant procurement procedure failed to provide any reasons for such cancellation;*
2. *Whereas the Department of Contracts (hereinafter "DoC") and the Central Procurement & Supplies Unit (hereinafter "CPSU") filed a joint reply on 10 February 2026, expressly conceding that the rejection/cancellation letter did not include any reasons for the cancellation. The said reply further contained the following statement:*

"In this regard, DoC and CPSU from the outset declare that there is no objection in case the Objector intends to file any new grievance or submission on the basis of this reason for cancellation which is being disclosed to them for the first time in this reasoned letter of reply." [vide para. 4]

3. *Whereas Cherubino has requested authorisation from this Honourable Board to submit an additional grievance, such request having been made within ten (10) days from the disclosure of the reasons for cancellation, and wherein Cherubino maintains that no discrepancy exists within the tender documents, and that, consequently, the cancellation of the procedure is neither necessary nor justified;*
4. *Whereas, for the sake of clarity, although the Technical Evaluation Committee (hereinafter "TEC") concluded that a discrepancy subsisted, it is noted that no discrepancy in fact existed between the published quantities, and the alleged discrepancy represents, at most, an explanatory emphasis regarding the manner in which the evaluation is to be conducted, such emphasis being legally grounded in Regulation 39(2) of the Public Procurement Regulations, which safeguards the principle that "the tenderer must be selected in a transparent manner and according to a prescribed procedure";*

NOW, THEREFORE, the Board, having considered the submissions of the Appellant Company and the position of DoC and CPSU, and being satisfied that the application for leave to file an additional grievance is made promptly and in good faith,

HEREBY DECREES AS FOLLOWS:

1. *Cherubino Limited is granted leave to submit an additional grievance pursuant to Regulations 90(1) and 90(4) of the Public Procurement Regulations, specifically in respect of the disclosure of reasons for the cancellation of the relevant procurement procedure.*
2. *The additional grievance shall be considered on its merits by this Honourable Board in due course.*
3. *The Department of Contracts and the Central Procurement & Supplies Unit are directed to accept the filing of such additional grievance and to respond thereto in accordance with the applicable regulatory provisions.*
4. *No aspect of this Decree shall be construed as prejudging the merits of the additional grievance; the Board retains full jurisdiction to examine and determine the grievance upon its submission.*

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3. Additional Grievance - No discrepancy in Tender Document

On the 9th March, 2026 a Note was duly filed by Cherubino Limited to supplement the existing grievances whereby Cherubino Limited respectfully submits that by virtue of this note, Cherubino Limited (hereinafter the "Cherubino" and/or "appellant company"), in accordance with the directives of this Honourable board, is hereby enclosing an additional grievance, which should be considered to form part of, and supplements, the objection filed by the appellant company in accordance with reg. 270 of S.L. 601.03 on the 30th January, 2026.

3.1 Through the reasoned letter of reply filed by the Central Procurement and Supplies Unit (hereinafter referred to as 'CPSU' and/or 'the Contracting Authority') it was established that the reason for rejection of the appellants bid and eventual cancellation was the following: With reference to Article 1.1 under Section 1 of the published Tender Dossier, the Estimated Quantity required is '2160 vials x 2ml or equivalent'. However, in the published Financial Bid form template, it was stated as follows; '[Evaluation will be carried out based on the "Cheapest offer per millilitre"]'.

Therefore, the Estimated Quantity required both in Article 1.1 under Section 1 of the Tender dossier and also in the Financial Bid form template should have been quoted in Total Volume required in mls [i.e 4,320mls (i.e. 2,160 units X 2ml each)], instead of as '2160 vials x 2ml or equivalent' (as per Tender dossier) and '2160 víals x 2ml' (as per Financial Bid form template).

3.2 According to the Contracting Authority, the estimated quantity should instead have been expressed in total millilitres, namely 4,320ml (2160 units x 2ml each). It is the submission of the appellant that there is no discrepancy in the tender document and thus the Contracting Authority was wrong to cancel this current tender procedure.

Indeed, the expression of the estimated quantity as 2160 vials x 2ml simply represents the packaging format of the medicinal product being procured, and this corresponds directly to a total quantity of 4,320ml. 3.3

Consequently, the evaluation of financial offers on the basis of the price per millilitre, as indicated in the Financial Bid Form, remains entirely consistent with the estimated quantity indicated in the tender dossier, since the total quantity in millilitres can be arithmetically derived without any ambiguity.

3.4 In these circumstances, the appellant company submits that the alleged discrepancy amounts, at most, to a difference in the manner in which the quantity is expressed, namely by reference to the packaging unit ("vials x 2ml") as opposed to the total volume in millilitres, and does not in any way affect the ability of the evaluation committee to carry out the financial evaluation in accordance with the stated award criterion.

3.5 Furthermore, the appellant company, submitted its financial offer strictly in accordance with the prescribed financial bid template and the tender response format imposed by the Contracting Authority. It follows that the appellant company relied in good faith on the financial template and evaluation structure established by the Contracting Authority itself.

3.6 It must be stated that the Contracting Authority submitted a clarification request to the appellant company to clarify the correct price, which the appellant companies. [.].

3.7 Furthermore, during the evaluation process, the Evaluation Committee addressed a clarification request to the appellant company requesting confirmation of the financial offer and the workings thereof. The appellant company duly provided the requested clarification and confirmed the contents of its financial offer within the stipulated timeframe.

3.8 It follows that, through this clarification process, the Contracting Authority obtained full confirmation that the price quoted by the appellant company corresponded precisely to the product being offered and the quantity required under the tender documentation.

3.9 In these circumstances, the Appellant Company submits that the clarification process itself eliminated any possible doubt regarding the financial offer submitted, thereby providing the Contracting Authority with full certainty as to the correctness of the price and the offer made.

3.10 Moreover, it must be emphasised that at no stage during the tender procedure did any economic operator challenge or contest the alleged discrepancy in the tender documentation. Indeed, in terms of Regulation 262 of Subsidiary Legislation 601.03, any interested economic operator who considered that the tender documentation contained an ambiguity or irregularity was at liberty to file an objection prior to the submission of tenders. The fact that no such objection was lodged by any potential economic operator further confirms that the tender documentation was sufficiently clear and did not give rise to any ambiguity capable of affecting the preparation of bids.

3.12 Consequently, the alleged discrepancy amounts, at most, to a difference in the manner in which the quantity is expressed, namely by reference to the packaging unit ("vials x 2ml") as opposed to the total volume in millilitres, and does not in any way affect the ability of the evaluation committee to carry out the financial evaluation in accordance with the stated award criterion.

3.13 Even if one were to assume some clarification regarding the financial structure was required, such matter could easily have been addressed through clarification during the evaluation process, without resorting to the drastic measure of cancelling the entire tender procedure.

3.14 The decision to cancel the procedure in these circumstances was therefore unnecessary and disproportionate, particularly in light of the fact that the financial offers had already been submitted and confirmed by the participating economic operators.

The decision to cancel the procedure in these circumstances was therefore unnecessary and disproportionate, particularly in light of the fact that the financial offers had already been submitted and confirmed by the participating economic operators.

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4. Additional Reply - No discrepancy in Tender Document

On the 21st April 2026, an additional Reply of the Central Procurement and Supplies Unit (CPSU) on behalf of the Department of Health as the Contracting authority to the additional grievance raised by Cherubino Ltd (the objector) was filed in the following order:

Submissions

On the Third Grievance – No Discrepancy in the Tender Document

1. The reason for the cancellation is the below:

   With reference to Article 1.1 under Section 1 of the published Tender Dossier, the Estimated Quantity required is '2160 vials x 2ml or equivalent'. However, in the published Financial Bid form template, it was stated as follows; '[Evaluation will be carried out based on the "Cheapest offer per millilitre"]'. Therefore, the Estimated Quantity required both in Article 1.1 under Section 1 of the Tender dossier and also in the Financial Bid form template should have been quoted in Total Volume required in mls [i.e 4,320mls (i.e. 2,160 units X 2ml each)], instead of as '2160 vials x 2ml or equivalent' (as per Tender dossier) and '2160 vials x 2ml' (as per Financial Bid form template). Pursuant to the above, the Evaluation Committee recommends that this tender is to be cancelled in line with Article 18.3d of the General Rules Governing Tenders, which states: 'Cancellation may also occur where there is a discrepancy in the tender document'

2. The Objector is stating that there was no discrepancy in the tender document, however as will be demonstrated, there was indeed a discrepancy which necessitated the cancellation of the tender in order to ensure that all offers are adjudicated on equal and clear terms;

3. The Financial Bid Form provides in bold that evaluation will be carried out on the cheapest price per millilitre, however the columns requested the price to be provided per pack:

FINANCIAL BID

Breakdown of Costs

The Contracting Authority is bound to procure 80% of the awarded Contract Value

Tender Title	Eribulin 0.44MG/ML solution for injection
Reference Number	CT2033/2024 - CPSU/133/24
Lot Number	N/A

Item No	Item Code (Catalogue Code Reference)	Description	Quantity (based on estimated consumption for this tender) Vials x 2mls	Number of MLS per vial	Quantity of vials per Pack	Price Per Pack Including Taxes/Charges, other Duties & Discounts but Exclusive of VAT (Delivered Duty Paid - DDP) €	Total Including Taxes/Charges, other Duties & Discounts but Exclusive of VAT (Delivered Duty Paid - DDP) €
1		Eribulin 0.44MG/ML solution for injection	2,160 Vials x 2mls				
GRAND TOTAL INCLUDING TAXES/CHARGES, OTHER DUTIES & DISCOUNTS BUT EXCLUSIVE OF VAT (DELIVERED DUTY PAID - DDP) *CARRIED FORWARD TO FINANCIAL SECTION OF ONLINE TENDER RESPONSE FORMAT*							
Evaluation will be carried out based on the "Cheapest offer per millilitre" *N.B. Three decimal points do not exist as currency, therefore such offers cannot be accepted. Offers are to be submitted up to two decimal points.*							

4. Moreover, the financial Bid Form had a formula (intended to be used on a FBF based on millilitres) which if the vials had more than 1 ml (and the tender requested that the vials are of 2mls each), it would give as a total, half of the real price (that is quantity of vials multiplied by price per pack)
5. By means of an example, if a 2ml vials which comes in single packs costs €200, and you input such date on the financial bid form, the total, by operation of the formula would be €216000, when in reality 2160 multiplied by 200 is 432,000. See below:

FINANCIAL BID

Breakdown of Costs

The Contracting Authority is bound to procure 80% of the awarded Contract Value

Tender Title	Eribulin 0.44MG/ML solution for injection

Reference Number	CT2033/2024 - CPSU/133/24
Lot Number	N/A

Item No	**Item Code (Catalogue Code Reference)**	**Description**	**Quantity (based on estimated consumption for this tender) Vials x 2mls**	**Number of MLS per vial**	**Quantity of vials per Pack**	**Price Per Pack Including Taxes/Charges, other Duties & Discounts but Exclusive of VAT (Delivered Duty Paid - DDP) €**	**Total Including Taxes/Charges, other Duties & Discounts but Exclusive of VAT (Delivered Duty Paid - DDP) €**
1		Eribulin 0.44MG/ML solution for injection	2,160 Vials x 2mls	2	1	200.00	216000.00
GRAND TOTAL INCLUDING TAXES/CHARGES, OTHER DUTIES & DISCOUNTS BUT EXCLUSIVE OF VAT (DELIVERED DUTY PAID - DDP) *CARRIED FORWARD TO FINANCIAL SECTION OF ONLINE TENDER RESPONSE FORMAT*							**216000.00**
Evaluation will be carried out based on the "Cheapest offer per millilitre" *N.B. Three decimal points do not exist as currency, therefore such offers cannot be accepted. Offers are to be submitted up to two decimal points.*							

6. This actually means that for an economic operator to have the correct total price per pack, one had to either amend the financial bid form (Remove the formula or amend the quantity to 4320mls instead of 2160 vials of 2mls each) something which is not permissible under procurement rules since he FBF is a standard form, or to give unrealistic number in the price per pack section or the number of MLS per vial section.
7. The above clearly demonstrates that there indeed was a discrepancy in the tender documents which could lead to confusion and non-comparable offers. For this reason CPSU humbly submits that the cancellation was justified and that this grievance should be rejected

5. Additional Application by the Appellant – *Fuori Termine*

On the 29th April, 2026, the Appellant filed an additional application in rebuttal to the Contracting Authority's filing of reply on the 21st April, 2026.

Appellant submits that Messrs. Cherubino Limited filed a reasoned objection on the 30th of January 2026 in accordance with Regulation 270 of S.L. 601.03, for which a reply by the Central Procurement & Supplies Unit (hereinafter 'CPSU') and the Department of Contracts ((hereinafter 'DOC') was submitted on the 10th February 2026.

After seeking consent from this Honourable Board, and following a no objection by the CPSU/DOC, Cherubino Limited filed additional grievances on the 9th March 2026, for which a reply was submitted by CPSU/DOC on the 21st April 2026.
Regulation 276 (c) of S.L. 601.03 (hereinafter 'PPR'), stipulates that: *The contracting authority and any interested party may, within ten calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government's e-procurement platform, file a written reply to the appeal. These replies shall also be affixed to the notice board of the Review Board and where applicable they shall also be uploaded on the government's e-procurement platform [added emphasis]*

Thereby, the reply by CPSU/DOC was submitted outside the permitted time-frame established by law. Regulation 276 (c) of PPR is clear and unequivocal whereas an interested party 'may file' a written reply 'within ten calendar days'.

Once the CA, decided to avail themselves of such a right, they had to file their reply within the peremptory term established by law.

The term to submit a reasoned letter of reply is set by law. Such term is a peremptory period, and it is a matter of public order to ascertain that such periods are adhered ad ungium. This principle was discussed and delved into in the judgment of the Court of Appeal in the names of Cutajar Construction Limited v. Pierre P. Gregoire whereas the Court decreed that the term established by law is a peremptory period and as such it is a term that cannot be extended nor derogated therefrom:

> *Li termini ta' żmien stabbiliti mil-liġi għat-tressiq ta' atti tal-Qorti għandhom il-karatteristika ta' termini ta' dekadenza, u għalhekk huma perentorji. Dawn jitolbu l-ħarsien ad unguem u huma ta' ordni pubbliku (App. Inf. PS 6.2.2008 fil-kawża fl-ismijiet Kenneth Abela vs Aplan Limited et), u jistgħu jitqajmu ex ufficio minn qorti jew minn tribunal (App. Inf. PS 12.12.2007 fil-kawża fl-*

ismijiet Salina Wharf Marketing Ltd vs Malta Tourism Authority u App. Inf. PS 12.2.2010 filkawża fl-ismijiet Mirjana Kovecevic vs Myoka Management Ltd). Huma termini li ma jistgħux jinbidlu jew jittawlu, imqar jekk kull parti taqbel dwar dan (App. Inf. (RRB) 21.3.1997 fil-kawża fl-ismijiet Giuseppe Caruana vs Charles Psaila (mhix pubblikata)) [added emphasis] 6. This was also confirmed in the Court of Appeal decision in the names of Vassallo Concrete Services Limited v. Direttur Generali (Kuntratti)1 decided on the 24th of April 2015, whereas the Court stated the following: Hawn mhux qed nitkellmu fuq terminu ta' preskrizzjoni marbut ma' eżerċizzju ta' dritt, iżda ma' terminu marbut ma' eżerċizzju ta' rimedju koncess bil-liġi, u dak irrimedju jrid jiġi eżerċitat fi żmien li timponi l-liġi, u mhux meta jrid dak li jkun [added emphasis]

In view of the aforesaid, and without prejudice to any actions which the Honourable Board deems fit and opportune in accordance with the law, the Appellant is hereby being requested to:

(i) declare that the reply dated the 21st April 2026 by the DOC/CPSU has been filed *fuori termine*, in view of the fact that its reply was filed outside the permitted timeframe, i.e. "*within ten calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government's e-procurement platform*";

(ii) Consequently, declare inadmissible the reply filed by the DOC/CPSU filed on the 21st April 2026;

(iii) take any further action in accordance with S.L. 601.03 and to do anything else which is conducive and necessary for the proper execution of the above.

Preliminary Decision of the Board on the issue of *Fuori Termine*

By application dated the 29th April 2026, the Appellant, Cherubino Limited, requests this Board:

(i) to declare that the reply filed by the Central Procurement and Supplies Unit ("**CPSU**") and the Department of Contracts ("**DOC**") on the 21st April 2026 was filed *fuori termine*, that is, beyond the ten-calendar-day period prescribed by Regulation 276(c) of the Public Procurement Regulations, S.L. 601.03;

(ii) consequently, to declare the said reply inadmissible; and

(iii) to take such further consequential action as the Board may deem appropriate.

The application rests upon two propositions. The first is that Regulation 276(c) imposes a peremptory ten-day period for the filing of replies, which the CPSU and the DOC have demonstrably exceeded in respect of the reply of the 21st April 2026. The second is that the peremptory character of statutory time limits is established by the judgments of the Court of Appeal in *Cutajar Construction Limited v. Pierre P. Gregoire* and

Vassallo Concrete Services Limited v. Direttur Generali (Kuntratti) (Application 64/2011/1, decided on the 24th April 2015), which the Appellant cites as authority for the principle that such terms are required to be observed *ad unguem*, are of public order, and are incapable of derogation by the parties or by the adjudicating body.

The Board has given the application careful consideration. For the reasons set out hereunder, the application falls to be rejected.

II. THE PROCEDURAL CONTEXT

It is appropriate, before turning to the legal substance of the application, to record the procedural sequence by reference to which the present plea must be assessed. That sequence is decisive of the analysis which follows, and it is not reflected in the four corners of Regulation 276(c) on which the Appellant exclusively relies.

The Appellant filed its reasoned objection on the 30th January 2026 in terms of Regulation 270 of S.L. 601.03. To that original objection, the CPSU and the DOC filed a joint reply on the 10th February 2026. That reply was filed within the ten-calendar-day period prescribed by Regulation 276(c). No issue arises in respect of it, and none is raised by the present application.

Thereafter, and as the Appellant itself records at paragraph 2 of its application, the Appellant **sought the Board's consent** to file additional grievances. That consent was granted, and a "*no objection*" was registered on behalf of the CPSU and the DOC.

The Appellant accordingly filed its further grievances on the 9th March 2026, that is to say, more than a month after the original objection-and-reply cycle had been brought to a close, and approximately thirteen months after the underlying award decision. The reply of the 21st April 2026, which is the document presently impugned, was filed in answer to those **additional** grievances, and not in answer to the original objection of the 30th January 2026.

The procedural posture of the present application is therefore narrowly defined. The question for the Board is not whether the original reply cycle was duly observed (it was), nor whether statutory time limits in Maltese procurement law are peremptory in character (they are, where they apply). The question is the antecedent and properly threshold question whether Regulation 276(c) is the time limit that governs a reply to additional grievances admitted to the proceedings by leave of the Board, in the absence of any specific procedural directive to that effect. To that question, the Board now turns.

III. THE TEXTUAL REACH OF REGULATION 276(C)

Regulation 276(c) of S.L. 601.03 provides, in relevant part, that the contracting authority and any interested party may, "*within ten calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government's e-procurement platform, file a written reply to the appeal*".

The textual analysis of that provision begins with its trigger event. The Regulation fixes the ten-day clock by reference to a single, defined, and identifiable procedural moment, i.e. the affixing of "*the appeal*" to the notice-board of the Review Board, and, where applicable, its uploading to the e-procurement platform.

"*The appeal*" in this Regulation is plainly the original objection filed under Regulation 270, i.e. the document by which the procurement review proceedings before this Board are first set in motion.

The Regulation does not, by its terms, contemplate the procedural situation that arises where a second round of grievances is admitted by leave of the Board after the original objection-and-reply cycle has closed.

There is no second "affixing" in the sense contemplated by Regulation 276(c) when leave is given for the filing of additional grievances within already-pending proceedings; and there is, accordingly, no second statutory ten-day clock keyed to such an event. The framework of Regulation 276(c), in the opinion of this Board, was simply not engineered to extend, of its own force and on its plain wording, to the further-round procedural setting which the Appellant's own application of the 9th March 2026 brought into being.

The Appellant's argument, properly examined, requires the Board to *extend* Regulation 276(c) by analogy from the original-objection setting (for which it was drafted) to the additional-grievance setting (for which it was not), and then to apply the extended rule with peremptory effect. The Board cannot accept that proposition, for two connected reasons.

In the first place, peremptory time limits, being of public order, are creatures of express statutory provision. They draw their force from the legislator's deliberate choice to attach a sanction of inadmissibility to non-compliance with a specific term referable to a specific event. They are not the ordinary fare of procedural analogy. To extend a peremptory term beyond the procedural event to which the law attaches it would be to legislate by judicial extension a rule of inadmissibility for a situation the legislator did not address; a course which the very public-order character of such limits forbids.

In the second place, this conclusion is reinforced, not contradicted, by the authorities upon which the Appellant itself relies. *Cutajar Construction Limited v. Pierre P. Gregoire* and *Vassallo Concrete Services Limited v. Direttur Generali (Kuntratti)* establish that where a statutory time limit applies, it is rigorously peremptory: it admits of no extension, no derogation, and no relaxation by agreement of the parties.

The Board accepts that statement of principle without qualification. But the same logic must, in fairness, work in both directions: just as the limit may not be *relaxed* where it does in fact apply, so it may not be *extended* by analogy to a procedural setting which the legislator did not address. A peremptory rule that floats free of its legislative anchor ceases, by that very fact, to be the public-order rule which the Court of Appeal in those cases described.

The Appellant's reliance on Cutajar and Vassallo Concrete is, in consequence, anterior to the issue actually before the Board. Those judgments answer the question "*how strictly must an applicable time limit be observed?*" They do not, and could not, answer the prior question whether Regulation 276(c) is the applicable time

limit at all in respect of a reply to additional grievances filed by leave. That prior question must be answered on the wording of the Regulation itself, and it is answered in the negative.

IV. THE COHERENCE OF THE PROCEDURAL FRAMEWORK

There is, beyond the textual analysis already conducted, a consideration of procedural coherence which independently sustains the same conclusion. The point may be put briefly but it is, in the Board's view, dispositive.

The Appellant's additional grievances of the 9th March 2026 were filed approximately five weeks after the original objection-and-reply cycle had concluded, and approximately thirteen months after the underlying award decision. They were not filed within the ten calendar days prescribed by Regulation 270 of S.L. 601.03 for the filing of objections, nor within any statutory term comparable to that ten-day period. They were filed at a time and in a procedural posture for which the Public Procurement Regulations make no express provision.

The Appellant's additional grievances were nonetheless properly admitted to these proceedings. They were admitted because, as the Appellant itself records, **the Board granted leave for them to be filed and the CPSU and the DOC registered no objection thereto**. Their procedural status is therefore established by the discretionary leave of this Board, exercised with the consent of the responding parties, and not by the autonomous operation of any legal time limit.

Once that is appreciated, the difficulty in the Appellant's position becomes apparent. The Appellant invites the Board to treat the second round of submissions as governed by two distinct and irreconcilable procedural regimes: a regime of discretionary leave insofar as the Appellant's own filings of the 9th March 2026 are concerned, and a regime of strict legal decadence insofar as the Respondents' reply of the 21st April 2026 is concerned.

Procedural rules cannot be applied in such a Janus-faced manner. A second-round procedural framework opened by leave of the Board must, in coherence, govern both the appellant and the responding parties on the same footing.

It is no answer to this difficulty to say, as the Appellant's argument implicitly does, that statutory time limits are peremptory wherever they appear. That proposition is sound but immaterial. The second round of submissions is, by reason of its origin in the Board's leave rather than in the affixing of an appeal under Regulation 270, simply not a setting to which Regulation 276(c) attaches. The Appellant cannot avail itself of the protection of the Board's leave for the purpose of having its own additional grievances entertained, and at the same time deny that same protection to the Respondents in respect of the reply that the leave necessarily anticipated.

V. THE PRINCIPLE OF EFFECTIVE REVIEW AND THE EQUALITY OF ARMS

The conclusion already reached on textual and structural grounds is reinforced by a final consideration of principle which underlies the procurement review framework as a whole.

The right of an appellant to be permitted, by leave of the Board, to file additional grievances in mid-proceedings exists in order to secure the orderly development of submissions within an existing appeal where new factual material or further reflection upon the existing record so warrants.

The corollary of that right is the entitlement of the responding parties to address the substance of those additional grievances by way of reply. The exercise of leave by the Board on the appellant's side and the receipt of a reply on the respondents' side are not severable, as they constitute a single procedural event opened in the interests of the proper determination of the appeal.

To deny the Respondents that opportunity by enforcing against them, *ex post*, a time limit that does not in fact apply to second-round filings would be to vitiate the adversarial integrity of the proceedings. The Board would be left to determine the additional grievances on the basis of the Appellant's submissions alone, in respect of an extension of the proceedings that the Appellant itself solicited. That outcome would be inconsistent with the most elementary requirements of the equality of arms and would expose any consequent decision of the Board to the criticism that it had been arrived at without the substantive participation of the responding parties on a material part of the case.

It is no answer that the Respondents could, as a matter of fact, have replied within ten calendar days had they wished to do so. The point is not that the Respondents could not have replied earlier; it is that the regulatory framework does not impose that obligation upon them in respect of additional grievances filed by leave, and the Board, when granting that leave, did not itself impose a specific reply timeframe. In the absence of a procedural directive issued by the Board, no statutory term operated against the Respondents which they may be said to have breached.

The Board observes, for the avoidance of doubt, that it remains within its competence in any future case to fix a specific reply timeframe at the moment leave is granted to file additional grievances. It would be entirely consistent with the Board's procedural management powers to do so, and the present decision should not be read as suggesting otherwise. That, however, was not done in the present proceedings, and it was not requested by the Appellant. In its absence, the Respondents' filing of the 21st April 2026 cannot properly be characterised as *fuori termine* in any sense recognised by the Public Procurement Regulations.

VI. DISPOSITION

In view of the foregoing, the Board orders as follows:

(a) The Appellant's application of the 29th April 2026 is rejected.

(b) The reply filed by the Central Procurement and Supplies Unit and the Department of Contracts on the 21st April 2026, in answer to the Appellant's additional grievances of the 9th March 2026, is declared procedurally admissible and shall be considered by the Board on its merits in the determination of the substantive appeal.

(c) The proceedings shall continue in accordance with the directions of this Board.

On the Conduct of the Evaluation by a Sole Evaluator and the Composition of the Evaluation Function under the Standard Operating Procedures of the Department of Contracts

I. The procedural origin of the matter and its resolution upon the produced evidence

In the course of the sitting of this Board held on the 30th April 2026, the Appellant procured the testimony of Mr Adrian Spiteri, who had been duly summoned in his capacity as evaluator on behalf of the Central Procurement and Supplies Unit.

From that testimony there emerged, upon the face of the record and to the knowledge for the first time of Dr Matthew Paris acting for and on behalf of the Appellant, that the evaluation of the tender procedure under examination had been conducted by Mr Spiteri alone, and that the determination to recommend the cancellation of the procedure under Article 18.3(d) of the General Rules Governing Tendering had, in consequence, been arrived at upon the assessment of a single evaluator unsupported by the concurring views of any colleague.

Upon that fact being established on the record, Dr Paris invited this Board to enquire of the Contracting Authority and of the Department of Contracts whether the necessary exemption had been granted by the Director General (Contracts) for the conduct of the evaluation by a single evaluator, in lieu of the collegial composition of the evaluation function which the Standard Operating Procedures of the Department prescribe.

The representatives of the Contracting Authority and of the Department of Contracts indicated, with proper candour, that they were not in a position to answer that enquiry from the floor of the sitting. The Board accordingly verbalised the procedural order reproduced in the Schedule to this Part, by which the Contracting Authority and the Department of Contracts bound themselves to produce the documentary evidence of the exemption, if it existed, by the 8th May 2026, and by which the Appellant was granted, in the event that the exemption did not exist or that he was not satisfied with the outcome of the reply, until the 13th May 2026 to present an application raising the new grievance, that period to run from the 8th May 2026, with a corresponding faculty in the Contracting Authority to reply by the 20th May 2026.

The documentary evidence so directed has since been formally received by this Board and notified to the Appellant. It comprises two items of correspondence emanating from the Director General (Contracts), the operative terms whereof are reproduced *ad litteram* in the Schedule to this Part.

The reserved question is, in consequence, no longer a matter held over for future determination but a matter ripe for, and now resolved by, this Decision. The Board records its determination of that question in Part IV below, after first setting out, in Parts II and III, the regulatory standard against which the produced evidence falls to be assessed.

II. The composition of the evaluation function under the Standard Operating Procedures

The composition of a Tender Evaluation Committee in Maltese public procurement is governed not by inference from the General Rules Governing Tendering but by the express provisions of the Standard Operating Procedures: Guidelines for Tender Evaluation Committees (version 1.9, December 2022), issued by the Department of Contracts in discharge of its regulatory function under Subsidiary Legislation 601.03. The SOP is the operative instrument of the Department on this matter, and its provisions are binding upon Contracting Authorities engaged in the conduct of evaluation processes administered under the General Rules.

Section 1.2 of the SOP establishes the architectural rule. It provides, in terms which admit of no ambiguity, that *"Contracting Authorities must nominate the members of the TEC (minimum of five persons) for approval and association through the ePPS … Unless otherwise approved by the Director of Contracts, a TEC shall consist of a Chairperson, a Secretary and a minimum of three (3) or any odd number of evaluators".*

The provision lays down a peremptory minimum, sets the default architecture of the Committee, and identifies the sole authority by which a departure from that architecture may be sanctioned, namely the Director General (Contracts). It does so as a matter of mandatory rule (*"must"*), not of administrative recommendation. It is to be observed at the outset, and the observation governs the whole of the analysis which follows, that the rule and the power to dispense with it are laid down in one and the same sentence: the three-evaluator architecture is the default, not the absolute, and the SOP itself identifies the authority empowered to authorise a departure from it.

Section 1.9 of the SOP supplies the necessary completion of the foregoing rule by clarifying the function of the Chairperson and the Secretary: *"The Chairperson and Secretary do not have voting rights; their main task is to guide and assist the members of the TEC".* It follows that, of the minimum five persons required by section 1.2, three must be voting evaluators in the strict sense, and that any reference in the SOP to *"evaluators"* in the plural must be read as referring to those three or more voting members upon whose adjudication the substantive determinations of the Committee depend.

Section 1.3 of the SOP is also relevant in that it identifies, exhaustively, the only situations in which a smaller composition is permitted. It allows for a Committee of three members in respect of Calls for Quotations

and the establishment phase (Phase 1) of a Dynamic Purchasing System, and even there it preserves the requirement that the minimum number of voting evaluators be an odd number.

The provision is silent in respect of open-procedure tenders of the kind here under examination, and that silence is, in the context of an instrument constructed by reference to expressly enumerated exceptions, eloquent. Open-procedure procurement is governed by the architectural rule of section 1.2, and a departure from it in such a procedure is therefore lawful only where the saving clause of section 1.2 has been duly invoked by the Director General (Contracts).

Section 2.15 of the SOP supplies what is, perhaps, the most fundamental of the structural requirements of the evaluation function: *"Adjudication of offers must be carried out by each evaluator independently"*. The provision presupposes, as a matter of its very intelligibility, a plurality of evaluators conducting independent adjudications whose subsequent convergence (or, as the case may be, divergence) is itself the procedural mechanism by which the principles of objectivity, impartiality and equal treatment, mandated by Regulation 39(1) of Subsidiary Legislation 601.03 and Article 18(1) of Directive 2014/24/EU, are operationally secured. The collegial requirement of section 2.15, like the architectural requirement of section 1.2, is nonetheless expressly subject to the dispensing power vested in the Director General (Contracts); it is not an absolute beyond the reach of the exemption which the SOP itself contemplates.

The structural assumption of plurality is reinforced by the templates and grids appended to the SOP. Annex II, which is the template request issued by the Department of Contracts to Contracting Authorities for the nomination of TEC members, instructs the Authority to nominate "*a minimum of five (5) officers (including a Chairperson and Secretary) to sit on the Evaluation Committee*", and tabulates the nomination form by reference to the slots Chairperson, Secretary, Evaluator, Evaluator, Evaluator. Annex III, which is the obligatory Evaluation Grid, is constructed on the explicit basis of three columns, headed "*Evaluator 1*", "*Evaluator 2*" and "*Evaluator 3*", from whose individual scorings an "*Average Technical Score*" is derived. These templates describe the default architecture; they do not, and by their nature cannot, exclude the operation of the express saving in section 1.2, which exists precisely in order to authorise a departure from the default that the templates assume.

The aggregate effect of the foregoing provisions is that the conduct of an evaluation in respect of an open-procedure tender by a single evaluator stands, on the face of the SOP, in apparent tension with the default architecture prescribed by sections 1.2 and 2.15, and calls, if it is to be sustained, for justification by reference to the express saving contained in the closing words of section 1.2, namely the prior approval of the Director General (Contracts).

The default is not, however, immutable. The provision is, by its own terms, a default and not an absolute: it prescribes the collegial composition "*unless otherwise approved by the Director of Contracts*". The question for this Board is not, therefore, whether the Committee departed from the default architecture, plainly it did, but whether that departure was "*otherwise approved by the Director of Contracts*" within the meaning of the saving.

To that question, the relevant documentary evidence having now been produced, the Board turns in Part IV below.

III. The rationale for collegiality and its operational significance

The insistence of the SOP upon a collegial composition of the evaluation function is not formal but substantive, and the rationale for it bears recording in the present setting, the more so because the conclusion ultimately reached by this Board is that the collegial requirement was, in this case, lawfully dispensed with.

A finding that a safeguard has been validly waived is the more securely made when the value of the safeguard has first been stated at its full strength. The collegiality of the evaluation function is the procedural guarantor of the principles of objectivity, impartiality and equal treatment which animate the public procurement framework as a whole.

The deliberation of three minds upon the same record introduces into the evaluation a discipline of cross-examination, of mutual correction and of recorded disagreement which a single mind, however conscientious or expert, cannot of itself supply. It is the structural protection against the inadvertent consolidation of an idiosyncratic reading of the documentation, against the unconscious operation of evaluator bias, and against the silent absorption of error in matters that are, by their nature, contestable.

Where the determination of the Committee takes the form, not of an award upon comparative merits, but of a recommendation to cancel the procedure altogether for an alleged discrepancy in the tender documentation, the value of that collegial discipline is not diminished but heightened.

The cancellation of a public procurement is a measure of last resort, attended by the proportionality concerns articulated by the Court of Appeal in Cateressence Limited and in Melchiore Dimech, and a recommendation to that effect is, *a fortiori*, the more deserving of the safeguard which a multi-member committee, deliberating independently and reducing its conclusions to recorded form, is uniquely positioned to provide. The specific concern of the SOP at section 2.15 with the independence of the adjudication, taken with the prescription at sections 1.2 and 1.9 of three voting evaluators, is the regulatory expression of that institutional intuition.

To these structural considerations there falls to be added a further consideration of regulatory coherence which, although tangential to the principal point, is not without its weight. Section 4.3 of the SOP empowers the Departmental Contracts Committee, the Sectoral Procurement Directorate, the Department of Contracts and the General Contracts Committee to cancel a procurement procedure where evaluation-stage clarifications or rectifications were issued without the requisite approvals.

The provision is concerned with an irregularity of a different order from the one presently under examination, but the principle which animates it, namely that procedural propriety in the conduct of the

evaluation is a matter of the highest importance, is of broader application. It is precisely because the collegiate principle is of such substantive importance that the SOP entrusts the power to dispense with it to the Director General (Contracts) alone, and to no subordinate officer; and it is for the same reason that this Board has examined the evidence of the asserted dispensation with corresponding rigour, to which examination it now proceeds.

IV. The resolution of the reserved question upon the produced evidence

The Board, having reserved at the sitting of the 30th April 2026 the question whether the evaluation of the offers in CT 2033/2024 was conducted by a sole evaluator without the exemption required by the closing words of section 1.2 of the SOP, and having directed the production of the documentary evidence bearing upon that question, now records its determination of the reserved question in the light of the materials produced by the Contracting Authority and the Department of Contracts and formally received by this Board and notified to the Appellant.

As stated above, two items of correspondence have been produced, and their operative terms are reproduced ad litteram in the Schedule to this Part. The first is an electronic mail exchange of the 5th and 6th April 2024, by which the nomination of the Tender Evaluation Committee was submitted by the Department of Contracts to the Director General (Contracts) "*for your kind approval*", and by which the Director General returned his approval in the terms "*No objection in line with Contracting Authority recommendation*".

The second is an electronic mail exchange of the 23rd, 24th and 25th July 2025, by which a single substitution within that Committee, i.e., the replacement of the original Chairperson, who had ceased to be employed by the Contracting Authority, by a successor Chairperson, was submitted to the Director General "*for your green light*", and by which the Director General again returned his approval in the identical terms.

The legal significance of those communications falls to be assessed against the terms of the saving in section 1.2. That saving prescribes no form. It does not require that the approval of the Director General be expressed in any particular formula; it does not require that the approval recite the words of section 1.2, nor that it advert in terms to the three-evaluator default, nor that it be styled an "*exemption*" or a "*dispensation*".

The saving requires one thing, and one thing only: that the departure from the default architecture be "*otherwise approved by the Director of Contracts*". The questions for the Board are therefore, first, whether the composition placed before the Director General was, on its face, a composition that departed from the default architecture of section 1.2; and secondly, whether the Director General, with that composition before him, approved it.

As to the first question, the nomination slate submitted to the Director General on the 5th April 2024 set out, in tabulated form, the constitution of the proposed Committee. It identified a Chairperson, a Secretary,

and a single Evaluator. The departure from the section 1.2 default was therefore not latent but patent as it appeared upon the very face of the instrument submitted for approval.

This is a matter of cardinal importance to the analysis. Where the irregularity for which dispensation is required is apparent on the face of the document placed before the dispensing authority, the approval of that document is necessarily an approval given with knowledge of the departure; and an approval given with knowledge of the departure is, in law and in substance, an approval of the departure itself.

The Director General was not invited to approve a Committee described in the abstract; he was invited to approve a named slate which, by its own tabulation, contained one evaluator and not three. His approval cannot rationally be read as an approval of every feature of the slate except the very feature which the slate, on its face, disclosed.

As to the second question, the response of the Director General of the 6th April 2024 was unequivocal. He stated that he had "*no objection in line with Contracting Authority recommendation*". The phrase is neither equivocal nor conditional. It is an unqualified concurrence in the composition recommended by the Contracting Authority.

The recommended composition was a single-evaluator composition. The concurrence of the Director General therefore attached to, and operated upon, that composition as recommended, single evaluator and all.

The Board accordingly finds that the communication of the 6th April 2024 constitutes an approval, by the Director General (Contracts), of a Committee departing from the section 1.2 default, given with the departure patent upon the face of the instrument approved, and that it satisfies the saving in the closing words of section 1.2 according to that provision's own terms.

That conclusion is materially reinforced, and not merely repeated, by the second communication. When, in July 2025, it became necessary to substitute the Chairperson, the matter was referred once more to the Director General, "*for your green light*", and the Director General again returned his approval in the identical formula.

The architecture of the Committee in respect of which that second approval was given remained, as the produced correspondence shows, a single-evaluator architecture. The Director General therefore approved the single-evaluator composition not once but twice, on two separate occasions more than fifteen months apart, the second occasion arising after the first had had ample opportunity to be revisited had revision been thought necessary.

The repetition forecloses any suggestion that the original approval was inadvertent or that the single-evaluator feature passed unnoticed. The dispensation contemplated by section 1.2 was, on the evidence, given, and given deliberately.

It follows that the apparent tension identified in Part II above, that an evaluation conducted by a sole evaluator stands, on the face of the SOP, in tension with the default architecture of sections 1.2 and 2.15, is, upon the evidence now produced, fully resolved. The departure from the default architecture was "*otherwise approved by the Director of Contracts*" within the precise meaning of the saving in section 1.2, on each of the two occasions on which that authority was seised of the composition of this Committee.

The Board so finds. There is, in consequence, no irregularity in the regulatory composition of the Tender Evaluation Committee, and the apprehension expressed at the sitting of the 30th April 202, that the finding of the Technical Evaluation Committee might prove to be the product of a body constituted in breach of the SOP, does not, on the evidence, materialise.

There is, moreover, a second and independent ground upon which the reserved question falls to be resolved against the Appellant, and the Board records it because it fortifies the conclusion already reached upon the documentary merits and would sustain that conclusion even were the foregoing analysis of the saving to be doubted.

By the verbal reproduced in the Schedule to this Part, this Board did not leave the sole-evaluator point at large. It created a defined and time-limited procedural faculty: The Contracting Authority and the Department of Contracts bound themselves to produce the exemption evidence by the 8th May 2026; and the Appellant was granted, *in the event that the exemption did not exist or that he was not satisfied with the outcome of the reply*, until the 13th May 2026 to present an application/rikors raising the new grievance, that period running from the 8th May 2026.

The right to ventilate the single-evaluator grievance was thus not unconditional; it was a conditional and peremptory faculty, created and circumscribed by this Board in open session, at the express instance of the Appellant's own legal representative, who had himself requested precisely that mechanism.

The condition precedent to which that faculty was subject has been satisfied: the documentary evidence was produced by the Contracting Authority and the Department of Contracts and was formally received by this Board and notified to the Appellant. The Appellant did not thereafter present a rikors raising the new grievance within the period allowed to him. The faculty reserved to him lapsed by its own terms. That non-exercise is not a neutral silence.

Upon the procedural architecture which this Board itself laid down, and which the Appellant himself sought, it is a positive election not to contest the sufficiency and regularity of the exemption once that exemption had been disclosed. A party who reserves the right to object to a matter, who is granted a tailored and defined period within which to object, and who allows that period to elapse without objecting, is taken to have acquiesced in the matter as disclosed, and cannot thereafter be heard to contend that it remains live.

The Board is careful to characterise that acquiescence with precision. The single-evaluator grievance was at no stage formally pleaded upon the record; it existed only as a faculty reserved by the verbal. The juristic consequence of its non-exercise is therefore not the waiver of a grievance validly raised, but the acquiescence of the only party with standing to dispute the exemption in the sufficiency and regularity of that exemption as produced.

The Board accordingly holds the reserved question to be resolved upon two independent and mutually reinforcing grounds: first, and principally, upon the documentary merits, the single-evaluator composition having been validly authorised by the Director General (Contracts) under the express saving in section 1.2 of the SOP; and secondly, and in the alternative, upon the Appellant's procedural acquiescence, the Appellant having declined the defined opportunity, afforded to him at his own request, to contest the sufficiency of that exemption. Either ground would suffice; together they place the matter beyond serious contention.

For the avoidance of doubt, the Board records that the precise calendar correspondence between the production of the evidence and the lapse of the Appellant's faculty, that is, the dates on which the evidence was produced and notified and the date on which the period for the filing of a rikors expired without such a filing, appears from the acts and the registry of these proceedings, and the foregoing finding of acquiescence is entered upon the footing of that record.

Two consequences follow for the substantive determinations of this Board, and the Board records them with the same candour with which the contrary contingency was anticipated when the matter was reserved.

In the first place, the passages of this Decision that attribute to the finding of the Technical Evaluation Committee a measure of evidential deference do not require recalibration. That recalibration was foreshadowed only as a contingency in the event of the sole-evaluator point being established; that contingency has not eventuated.

The deference accorded to the Committee's finding rested upon the assumption that the finding was the product of a Committee constituted in accordance with the SOP; the evidence establishes that the Committee was so constituted, the single-evaluator composition having been validly authorised by the Director General under the express saving in section 1.2. The evidential weight attributed to the Committee's finding, in particular within the analysis of the Third Grievance, accordingly stands as expressed in this Decision and requires no qualification on this account.

The Board adds, for completeness, that even were that evidential weight to be left wholly out of account, the Board's independent textual and structural analysis of the discrepancy under Article 18.3(d), conducted upon the documentary record and not derived from the recommendation of the evaluator, would remain intact and self-sustaining.

In the second place, the apprehended second procedural defect, i.e. an irregularity in the formation of the impugned act, additional to and conceptually independent of the failure-to-give-reasons defect adjudicated under the First Grievance, does not arise.

There being no irregularity in the composition of the body that produced the cancellation recommendation, there is no defect in the formation of that act to be set beside the defect in its communication. The procedural-formal plane of the analysis is occupied, as regards the impugned act, by the failure-to-give-reasons defect alone. The analytical framework set out in the Synthesis below therefore applies to that single defect without the augmentation which the contrary finding would have required, and the operative orders of this Decision are made on that footing and require no consequential adjustment on account of the reserved question, which is hereby finally resolved.

The Board records, finally and for the avoidance of doubt, that this determination is consonant with, and renders unnecessary any qualification of, the Board's own independent textual and structural analysis of the alleged discrepancy within the meaning of Article 18.3(d) of the General Rules Governing Tendering, which analysis was at all times the work of this Board upon the documentary record and not derivative of the recommendation of the evaluator. That analysis stands undisturbed.

The present determination establishes only, but conclusively, that the body which produced the cancellation recommendation was regularly constituted, the departure from the default architecture of section 1.2 of the SOP having been duly approved by the Director General (Contracts) in accordance with the express saving contained in that provision, and the Appellant having in any event acquiesced in that exemption by declining the defined opportunity to contest it.

Nothing in this Part is, or is to be taken as, a reflection adverse to the personal conduct of Mr Spiteri or of any officer of the Contracting Authority or of the Department of Contracts; the matter was one of regulatory composition alone, and it is resolved in favour of regularity.

SCHEDULE TO PART IV

The verbal of the Board and the operative terms of the documentary evidence produced pursuant to the procedural directions, reproduced *ad litteram*.

A. The verbal of the Board, recorded at the sitting of the 30th April 2026, reproduced ad litteram

"Il-Bord jisma t-talba tal-appellant, inkwantu referibbli, evidenza gdida naxxenti mid-deposizzjoni tas-sur Adrian Spiteri, fejn intqal illi l-istess Spiteri, kien l-uniku evalwatur li evalwa din l-offerta.

L-appellant talab lil Bord invista ta din il-prova gdida, illi jigi koncess lilu, awtorizzazzjoni ta dan il-Bord, sabiex jindirizza dan il-punt, u konsegwentament jintavola aggravju ulterjuri, kemm il-darba, dan jkun mehtieg, u kemm il darba li l-istess appellant, talab konferma mal-Awtorita Kontraenti u mad-Dipartiment tal-Kuntratti, biex tingieb il-prova tal-ezenzjoni,

kemm il-darba tezisti fejn jigi ppruvat jekk kienx hemm approvazzjoni sabiex din l-offerta tigi evalwata minn evalwatur wiehed. F'kaz li m'hemmx din il-prova tal-ezenzjoni, l-appellant talab biex izid aggravju fuq dan il-punt.

L-Awtorita Kontraenti u d-Dipartiment tal-Kuntratti qed jimpenjaw irwiehhom sabiex sat 8 ta' Mejju 2026, jghaddu din l-informazzjoni o meno lil-appellant u lil dan il-Bord, kemm il-darba din l-ezenzjoni tezisti. Dan il-Bord ghandu jghaddi biex jghati d-decizzjoni, finali tieghu.

F'kull kaz li din l-ezenzjoni, ma tezistix jew l-appellant ma jkunx sodisfatt, bl-ezitu tar-risposta, l-appellant qieghed illum jigi koncess lilu illi sat-13 ta' Mejju 2026, jipprezenta rikors li jitratta l-aggravju l-gdid, liema dekors ta zmien jiskatta mit-8 ta' Mejju 2026 illi l-Awtorita Kontraenti qieghed jigi koncess lilha li tipprezenta r-risposta taghha sa l-20 ta' Mejju.

Illi fis-seduta ta' llum, 30 ta' April 2026, il-partijiet trattaw l-aggravju u l-eccessjonijiet kollha, salv biss s-sottomissjonijiet li titratta l-aggravju l-gdid.

Il-Bord qieghed ukoll jiddeferixxi dan l-appell ghal skop ta nformazzjoni ghas 26 ta Mejju (b'dan illi l-partijiet qed jigu ezentati li jattendu)".

B. The first approval of the Director General (Contracts), reproduced ad litteram

Electronic mail of the Department of Contracts to the Director General (Contracts) of the 5th April 2024 (Mr Ismael Alfalah, Assistant Manager, to Mr Adrian Dalli, Director General Contracts): *"Dear Mr. Dalli, Director General Contracts, Evaluation Committee Nominees are being sent for your kind approval."* The nomination slate so submitted tabulated: Chairperson — Maria Camilleri; Secretary — Julia Pirotta; Evaluator — Adrian Spiteri (one only); Contract Manager 1 — Julia Pirotta.

Reply of the Director General (Contracts), Mr Adrian Dalli, of the 6th April 2024: *"No objection in line with Contracting Authority recommendation."*

C. The second approval of the Director General (Contracts), reproduced ad litteram

Electronic mail referring the substitution of the Chairperson to the Director General (Contracts) of the 24th July 2025 (Ms Ninette Gatt, Senior Manager, Office of the Director General, to Mr Adrian Dalli, Director General): *"Dear DG, Change in TEC member as per below referred for your green light please. Marika Cutajar will be replacing Maria Camilleri since the latter no longer works at CPSU. … Her CV is being saved on the P Drive and it is confirmed that she is a public officer."*

Reply of the Director General (Contracts), Mr Adrian Dalli, of the 25th July 2025: *"No objection in line with Contracting Authority recommendation. Regards"*

Note: the Maltese-language verbal is reproduced exactly as it appears in the minutes of the sitting, including its orthography and diacritical irregularities; no editorial correction has been applied, the principle being that a verbal reproduced *ad litteram* is reproduced as recorded.

On the Pre-Submission and Post-Submission Distinction in the Cancellation of Public Tenders

I. The submission as advanced by the Appellant

Dr Paris submitted, on behalf of the Appellant, that the discretion of the Department of Contracts and of the Contracting Authority to cancel a public tender, although undoubted in principle, is governed in the manner of its exercise by the principles of equal treatment, transparency and proportionality, and that the latitude with which the discretion may properly be exercised varies in inverse proportion to the procedural maturity of the procurement at the moment when cancellation is invoked.

The Appellant accordingly drew, and pressed upon this Board, a distinction between the cancellation of a tender effected before the deadline for the submission of offers (the "*pre-submission cancellation*") and that effected after the said deadline has expired and the offers have been opened in accordance with Article 13 of the General Rules Governing Tendering (the "*post-submission cancellation*").

The submission was that the discretion of the contracting authority is broader in the former case and considerably more circumscribed in the latter, with the consequence that a post-submission cancellation, to be lawful, must clear a higher evidential and analytical threshold than a pre-submission cancellation would be required to clear.

II. The doctrinal foundation of the distinction

The distinction so drawn is not a forensic improvisation. It rests upon a coherent body of jurisprudential and academic authority and is, in the considered view of this Board, sound in principle. Its foundation lies in the recognition that the procedural maturity of a procurement procedure alters the character of the legal interests engaged by its termination and, with them, the calibration of the proportionality analysis required to justify the act.

Before the deadline for the submission of offers expires, the procurement procedure remains a public invitation in respect of which no economic operator has yet committed its commercial position. Such latent interests as exist on the part of prospective tenderers are confined to the expectation that the procedure will be conducted in a manner consistent with the principles of equal treatment and transparency, an expectation which the cancellation of the procedure does not, of itself, defeat: the cancellation removes the invitation but does not, prior to submission, betray any disclosure that economic operators have themselves been induced to make.

The competitive cards remain in the hands of those who hold them; no commercial intelligence has crossed the line of disclosure; and the contracting authority, in cancelling, returns the field to the position which obtained before the publication of the contract notice.

In this setting, the discretion of the authority is exercised upon a procedural slate that is, in substance, blank, and the proportionality analysis required to justify a cancellation may be conducted with comparative latitude, subject always to the requirements of reasoned justification and of compliance with the regulatory grounds set out in Article 18.3 of the General Rules Governing Tendering and Regulation 15 of Subsidiary Legislation 601.03.

Once the deadline for the submission of offers has expired and the offers have been opened, however, the procedural posture of the procurement is fundamentally and irrevocably altered. The economic operators that have submitted offers have, by the very act of submission, transferred to the contracting authority a body of commercial intelligence the value of which lies precisely in its confidentiality *vis-à-vis* their competitors. They have disclosed their pricing structures, their commercial strategies, the manner in which they intend to compete in the market for the relevant supply or service, and, in many cases, the technical configurations and innovations by which they propose to differentiate their offers.

The opening of the offers in public session under Article 13.2 of the General Rules Governing Tendering, in particular, transposes the tendered prices from the realm of confidential intelligence to that of publicly recorded fact. After that moment, the cancellation of the procedure operates upon a field upon which the competitive cards have, in substance, been laid upon the table; and any subsequent procurement conducted in respect of the same requirement risks being conducted in the shadow of a body of pricing intelligence which is no longer confidential to the operator who generated it.

III. The practical consequences of the distinction for the present case

The legal consequence of the foregoing is that the contracting authority that resorts to a post-submission cancellation bears a correspondingly heavier burden of justification than the authority that resorts to a pre-submission cancellation.

The post-submission cancellation must satisfy this Board, upon the record placed before it, that no measure short of cancellation would have sufficed to remedy the defect identified, that the alternative remedies otherwise available within the regulatory framework, in particular the requesting of clarifications under Article 15 and the correction of arithmetical errors under Article 17 of the General Rules Governing Tendering, would not, upon proper consideration, have been adequate to the cure of the defect, and that the cancellation, when invoked, is genuinely the *ultima ratio* and not merely the most administratively expedient course among those theoretically open to the authority.

The burden, in short, is one of substantive demonstration; it is not discharged by the bare invocation of Article 18.3(d) of the General Rules Governing Tendering or by the mere assertion that a discrepancy in the tender documentation existed.

That said, and lest the principle so articulated be taken further than the law in fact carries it, the heightened scrutiny which a post-submission cancellation invites is not equivalent to a presumption against the lawfulness of such a cancellation.

The discretion of the contracting authority remains a discretion conferred by law, and where its exercise is grounded upon a defect in the tender documentation that affects the comparability of the offers received and that is not, by the nature of the defect, susceptible of cure by any of the alternative remedial measures open to the authority within the four corners of the regulatory framework, the cancellation may be sustained even where it is effected after the opening of the offers.

The principle of proportionality is not the principle of leniency; it is the principle of fit between the means employed and the end pursued, and where the end pursued is the preservation of the integrity of a procurement procedure that has been compromised in its very instruments, the means of cancellation may, upon proper analysis, be the only proportionate remedy available to the contracting authority.

The pre-submission and post-submission distinction is, in the result, properly understood as a doctrinal calibration of the proportionality enquiry rather than as a substantive bar to the post-submission cancellation as such.

It is a structural reminder that the discretion to cancel, although granted in identical terms by Article 18.3 of the General Rules Governing Tendering at every procedural moment, falls to be exercised against an evidential horizon that grows progressively more demanding as the procedure progresses.

The Board's response to the application of that calibration to the facts of the present case is set out in the analysis of the second grievance and in the corresponding parts of the Considerations, and it is to those parts of the Decision that the Appellant is referred for the reasoned conclusion of the Board upon the record before it.

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.

Introduction

This Board is called upon to determine the legality of the decision taken by the Department of Contracts and the Central Procurement & Supplies Unit to cancel the above-mentioned call for tenders by letter dated 23rd January, 2026. The cancellation was stated to be in terms of Article 18.3(d) of the General Rules

Governing Tendering, which provides that "*Cancellation may also occur where there is a discrepancy in the tender document.*"

The Appellant advances two principal grievances: **first**, "*Failure to give reasons for the cancellation*"; **second**, "*Cancellation – unnecessary, breaches proportionality principle and anti-competitive.*" By subsequent application, the Appellant also sought leave to submit an additional grievance following the disclosure of the specific discrepancy relied upon by the Contracting Authority.

The Board has considered the Public Procurement Regulations (Subsidiary Legislation 601.03), Directive 2014/24/EU of the European Parliament and of the Council of the 26th February, 2014 on public procurement, the Charter of Fundamental Rights of the European Union, the General Rules Governing Tendering, and the jurisprudence of both the Maltese superior courts and the Court of Justice of the European Union.

On the First Grievance – "Failure to give reasons for the cancellation"

The Appellant contends that the notification of cancellation failed to comply with Regulation 272 of Subsidiary Legislation 601.03 and did not contain the reasons and findings required by law.

Regulation 272 PPR [which cross-refers to regulation 242] provides that contracting authorities shall, inform candidates and tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract. Rejection decisions shall include a summary of the relevant reasons. These provisions must be interpreted consistently with Regulation 39(1), which mandates that contracting authorities act in a transparent manner.

These domestic provisions transpose Article 55(2) of Directive 2014/24/EU[1], which requires contracting authorities to inform tenderers of the reasons for rejection of their tender and the characteristics and relative advantages of the successful tender.

Although Article 55 refers explicitly to award decisions, the obligation to state reasons forms part of the broader principle of transparency inherent in Article 18(1) of Directive 2014/24/EU[2], which provides that

[1] 55(2). On request from the candidate or tenderer concerned, the contracting authority shall as quickly as possible, and in any event within 15 days from receipt of a written request, inform:
(a) any unsuccessful candidate of the reasons for the rejection of its request to participate,
(b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in Article 42(5) and (6), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements,
(c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement,
(d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

[2] 18(1). Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

Moreover, Article 41(2)(c) of the Charter of Fundamental Rights of the European Union[3] guarantees the right to good administration, including "*the obligation of the administration to give reasons for its decisions.*" That obligation is binding upon national authorities when implementing Union law, including in the field of public procurement.

The cancellation letter of the 23rd January, 2026, merely cited Article 18.3(d) of the General Rules Governing Tendering and stated that cancellation may occur where there is a discrepancy in the tender document. It did not identify the discrepancy, did not explain its materiality, and did not set out any findings of fact. The Contracting Authority admitted in its Reasoned Reply that the detailed reason was "*mistakenly omitted.*"

The Court of Appeal in *Agius Stone Works Limited v Kunsill Lokali Valletta et* (8th April, 2025, Rik. Nru. 65/2025/1) confirmed that a cancellation decision must contain both the reasons and the findings underpinning it. The rationale is evident in that an economic operator cannot effectively exercise its right of challenge under Regulation 270 if the legal and factual basis of the impugned act is unknown.

The subsequent disclosure of reasons in the Reasoned Reply cannot retroactively validate a defective notification. The legality of the act must be assessed at the time of its adoption and communication. To hold otherwise would dilute the mandatory nature of Regulation 272 and undermine the effectiveness of review procedures guaranteed by Directive 89/665/EEC, as amended.

This Board therefore finds that the cancellation letter was issued in breach of Regulation 272 and Regulation 242 of Subsidiary Legislation 601.03, read in conjunction with Regulation 39(1), Article 18(1) and Article 55 of Directive 2014/24/EU, and Article 41 of the Charter. The first grievance is well founded.

On the Second Grievance – "*Cancellation – unnecessary, breaches proportionality principle and anti-competitive*"

The Appellant argues that cancellation was unnecessary and disproportionate, particularly in light of the disclosure of prices. It invokes the principle of proportionality as recognised in *Tideland Signal Ltd v*

The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.

[3] A*rticle 41(2)*
This right includes:
(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
(c) the obligation of the administration to give reasons for its decisions.

Commission (Case T-211/02), and the concerns expressed by the Maltese Court of Appeal in *Cateressence Limited v Ministeru tal-Intern u Sigurtà Nazzjonali et* and *Melchiore Dimech v Ministeru ghall-Finanzi u Xoghol et*.

The Board accepts that cancellation after the opening of financial offers is not to be undertaken lightly. The discretion to cancel is not unfettered. It must comply with Regulation 39(1)[4] PPR and Article 18(1)[5] of Directive 2014/24/EU, which enshrine equal treatment, transparency, and proportionality.

The discrepancy identified by the evaluation committee concerns the fact that Article 1.1 of the Tender Dossier stated an estimated quantity of "*2160 vials x 2ml or equivalent*," whereas the Financial Bid Form indicated that evaluation would be carried out on the basis of the "*Cheapest offer per millilitre.*" The total required volume, namely 4,320ml, was not expressly harmonised across both documents.

The Court of Justice has consistently held that the principles of equal treatment and transparency require that all the conditions and detailed rules of the award procedure be drawn up in a clear, precise and unequivocal manner in the contract notice or tender specifications so that all reasonably well-informed and normally diligent tenderers can understand them in the same way and interpret them uniformly.

This was articulated, *inter alia*, in *SIAC Construction Ltd v County Council of the County of Mayo* (Case C-19/00) and reaffirmed in *ATI EAC Srl v ACTV Venezia SpA* (Case C-331/04), where the bottom line in this judgement holds that *all* award criteria, including any sub-criteria and relative weightings, must be clearly published and applied objectively and equally to every bidder, so that transparency and equal treatment are maintained throughout the procurement process.

If the unit of quantity and the unit of evaluation are not consistently expressed, the risk arises that tenderers will structure their pricing differently. In pharmaceutical procurement, the distinction between unit-based pricing (per vial) and volume-based pricing (per millilitre) is not semantic. It directly affects economic calculation, margin structuring, and competitiveness.

The Appellant maintains that the evaluation criterion merely clarified the methodology and that no discrepancy existed. However, where the total volume was not explicitly stated as the evaluation baseline, and where the dossier simultaneously referenced vials and per millilitre evaluation, ambiguity was objectively capable of generating divergent interpretations. The evaluation committee's finding that bidders interpreted the documentation differently and that offers were not comparable has not been effectively rebutted by evidence to the contrary.

[4] 39(1) Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

[5] ibid

The principle of proportionality requires that the chosen measure be appropriate and necessary to attain the legitimate objective pursued. The objective here was to preserve equal treatment and ensure objective comparability of offers. The Court of Justice in *Tideland Signal Ltd v Commission* stated that where there is a choice between several appropriate measures, recourse must be had to the least onerous. However, a measure cannot be considered disproportionate merely because it is severe. It must be unnecessary or manifestly excessive.

In the present circumstances, proceeding with evaluation despite structural ambiguity would have risked breaching equal treatment under Regulation 39(1) PPR and Article 18(1) of Directive 2014/24/EU. Post-submission clarification altering the economic structure of bids would have infringed the prohibition against substantial modification of tenders after submission, a principle recognised in *Manova A/S v Dansk Byggeri* (Case C-336/12), which restricts the scope of permissible clarifications. *Manova* doesn't say "*no clarifications ever*", but it sets the boundaries tightly. Contracting Authorities can invite post-submission clarifications only on very narrow, genuinely clerical points, and they must do so without altering the substantive ***offer*** or giving unfair advantage. Anything beyond that, and you're running headlong into equal treatment and transparency breaches.

The jurisprudence in *Cateressence Limited* cautions against anti-competitive effects of cancellation after price disclosure. However, cancellation becomes anti-competitive where it confers an unjustified advantage or conceals irregularity. In the present case, the discrepancy emanated from the tender documentation itself and affected all participants equally. Cancellation restores a level playing field rather than distorts it.

Accordingly, this Board finds that the cancellation was grounded upon a material discrepancy within the meaning of Article 18.3(d) of the General Rules Governing Tendering.[6]

It was appropriate and necessary to safeguard the principles of equal treatment and transparency under Regulation 39 PPR and Article 18(1) of Directive 2014/24/EU. The second grievance is therefore not well founded.

[6] 18.3 Cancellation may also occur where:

(a) the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all;

(b) the economic or technical parameters of the project have been altered;

(c) exceptional circumstances or force majeure render normal performance of the project impossible;

(d) where there is a discrepancy in the tender document;

(e) there have been irregularities in the procedure, in particular where these have prevented fair competition;

(f) the only administratively and technically compliant offer is deemed to be an abnormally low tender.

On the Third Grievance – "*No discrepancy in Tender Document*"

The Appellant sought leave under Regulations 90(1) and 90(4) PPR to submit an additional grievance following disclosure of the detailed reason for cancellation.

Given that the reason was not included in the original notification and that the Contracting Authority declared no objection to such filing, this Board granted leave and has considered the additional arguments as part of the substantive challenge.

Whether a Discrepancy Existed within the Tender Documentation

By Note filed on the 10th March, 2026, Cherubino Limited advanced, in accordance with the leave granted by this Board by decree, an additional grievance to the effect that no discrepancy in fact existed within the tender documentation for CT2033/2024, and that the Technical Evaluation Committee's conclusion to the contrary was therefore erroneous.

The Appellant submits that the expression "*2160 vials x 2ml or equivalent*" in Article 1.1 of the Tender Dossier is arithmetically equivalent to a total volume of 4,320ml, and is thus entirely consistent with the per-millilitre evaluation criterion stated in the Financial Bid Form. It further contends that the clarification process eliminated any residual uncertainty, and that the absence of any pre-tender objection under Regulation 262 of S.L. 601.03 confirms that the documentation was clear and unambiguous.

The Board has examined these submissions with care and rejects the additional grievance for the following reasons.

I. The Applicable Legal Standard

The principles of equal treatment and transparency impose a positive obligation upon contracting authorities to ensure that all conditions and detailed rules of a procurement procedure are drawn up in a manner that is clear, precise and unequivocal, so that all reasonably well-informed and normally diligent tenderers may understand them in the same way and interpret them uniformly.

That obligation was articulated with particular authority by the Court of Justice of the European Union in *Commission v CAS Succhi di Frutta* (Case C-496/99 P, EU:C:2004:236), where the Court held at paragraph 115 that the principle of transparency implies that all conditions and detailed rules of an award procedure must be formulated clearly in advance in the contract notice or specifications, precisely to allow all reasonably informed tenderers to understand their exact significance and to interpret them in the same

way.[7] The Court further confirmed that the contracting authority must adhere strictly to the criteria it has itself laid down.

It follows from this line of authority that the question before this Board is not whether a mathematically literate reader can derive the total volume from the packaging specification. It is the narrower and more precise question of whether the tender documentation, read in its entirety, conveyed a single, unambiguous quantitative baseline from which normally diligent economic operators would structure their financial offers in a uniform and comparable manner.

II. The Nature of the Alleged Discrepancy

Article 1.1 of the Tender Dossier expressed the estimated quantity as "*2160 vials x 2ml or equivalent.*" The Financial Bid Form directed that evaluation would be conducted based on the "*Cheapest offer per millilitre.*"

These two formulations are not legally equivalent, even if they are arithmetically related. The former describes a packaging configuration, a number of units each containing a specified volume. The latter describes a unit rate applied to the net content of those units by volume.

In the context of pharmaceutical procurement, this distinction is commercially material. An economic operator pricing per vial, per unit or per packaging configuration adopts a different commercial structure from one pricing per millilitre of net content, even if the total derived volume is identical.

The margin calculation, cost allocation and risk exposure differ depending upon which unit of account is treated as primary. The fact that the total volume is arithmetically derivable does not eliminate the ambiguity; it merely confirms that both interpretations lead to the same aggregate quantity, whilst leaving open the question of the unit basis upon which individual prices were computed.

III. The Evidence of Non-Comparability

The finding of the Technical Evaluation Committee, disclosed in the Contracting Authority's Reasoned Reply and not disputed by any subsequent evidence, was that tenderers had in fact interpreted the documentation differently, and that the offers submitted were not comparable on the basis of a single, uniform quantitative framework.

[7] In Case C-496/99 P, the Court held that the principle of transparency requires all conditions and detailed rules of the award procedure to be clearly, precisely, and unequivocally set out in the contract notice or specifications. This ensures all reasonably informed, diligent tenderers can interpret them uniformly and allows the contracting authority to effectively verify compliance with the criteria.

That finding is a finding of fact grounded in the actual bids received. It constitutes the most cogent available evidence that the documentation failed the standard of clarity required by Article 18(1) of Directive 2014/24/EU and paragraph 115 of *Succhi di Frutta*. No evidence has been placed before this Board to rebut the TEC's finding of non-comparability. The Appellant has confirmed only the correctness of its own offer; **it has not demonstrated that all other participating economic operators priced their bids on an equivalent quantitative basis**.

III(A). The Structural Defect in the Financial Bid Form

The Board would not, in any event, dispose of the Third Grievance upon the textual analysis already conducted without addressing a further dimension of the discrepancy which the Contracting Authority has placed before it in its Additional Reply of the 21st April 2026, and which independently sustains the conclusion already reached.

That further dimension concerns not the relationship between two clauses of the tender documentation, but a defect embedded in the very instrument by which the financial offers of the participating economic operators were to be expressed, computed, and aggregated.

The Contracting Authority submits, and the Board accepts upon the uncontested record before it, that the Financial Bid Form issued in respect of CT 2033/2024 contained an arithmetical formula designed to operate upon a per-millilitre quantitative basis. The columns of the Form required the participating economic operator to declare a price per pack, the number of millilitres per vial, and the quantity of vials per pack; the formula thereupon generated an aggregated total which would be carried forward to the financial section of the online tender response format. The Form was, in its construction, calibrated for a tender in which the unit of account both at the input stage and at the aggregation stage was the millilitre.

The tender presently under examination, however, was structured around vials of two millilitres each. The Contracting Authority has demonstrated, by means of a worked illustration, that the operation of the formula upon a two-millilitre vial systematically produces an aggregated total equal to one-half of the true commercial value of the offer.

By way of the example given, a pack price of two hundred euro, multiplied across an estimated quantity of two thousand one hundred and sixty vials, yields a true aggregate of four hundred and thirty-two thousand euro, whereas the formula, as constructed, generates an aggregate of two hundred and sixteen thousand euro. The Board accepts this demonstration as establishing, on the balance of the evidence before it, that the Financial Bid Form did not, on its own terms, permit the accurate expression of an economic operator's offer in respect of the product actually being procured.

The legal consequence of this finding requires careful articulation. The discrepancy identified in Part II of this analysis was a discrepancy in the textual relationship between Article 1.1 of the Tender Dossier and the evaluation criterion stated in the Financial Bid Form.

The defect now under consideration is of a different and, in the opinion of this Board, more acute character. It is not a defect of textual ambiguity capable of being resolved by interpretation, however careful; it is a defect of structural operation embedded in the instrument by which the financial offers were to be reduced to a comparable form. The two defects are not alternatives, in that they are cumulative, and each compounds the other.

The textual ambiguity between Article 1.1 and the evaluation criterion left it open to economic operators to form differing views as to the unit basis upon which to compute their offers; the structural defect in the Financial Bid Form ensured that, whatever view was formed, the instrument provided to capture that offer would not faithfully express it.

The Board has further considered, and accepts, the Contracting Authority's submission that no procedurally compliant route existed by which a participating economic operator could have generated a correct aggregated total within the four corners of the Financial Bid Form as issued. Two notional courses present themselves, and each is foreclosed.

The first course would have been the unilateral modification of the Form itself, whether by removal of the formula or by substitution of the stated quantity of two thousand one hundred and sixty vials with the equivalent four thousand three hundred and twenty millilitres. That course is not open to an economic operator under the established law of public procurement, the Financial Bid Form being a standard instrument of the procurement procedure whose integrity is a matter of legal record.

The second course would have been the insertion of fictitious values into the columns of the Form designating the millilitres per vial and the vials per pack, calibrated so as to produce, by the operation of the formula, an aggregate corresponding to the true commercial value of the offer. That course is no less foreclosed, in that it would have required the participating economic operator to misrepresent, on the face of the Form, the technical specifications of the product offered; it would have produced a Form which, on its terms, declared something other than what the operator in fact intended to supply; and it would have placed any operator who declined to engage in such misrepresentation at a systematic competitive disadvantage in relation to any operator who was prepared to do so.

It follows that the structural defect in the Financial Bid Form did not merely render the offers received non-comparable upon a uniform quantitative basis. It rendered the procedure incapable, by the proper operation of its own instruments, of generating offers that were both formally correct and economically faithful. That is a defect which goes to the heart of the integrity of the tender procedure and which engages

the obligations of equal treatment and transparency under Article 18(1) of Directive 2014/24/EU and Regulation 39(1) of Subsidiary Legislation 601.03 with particular force.

This further finding fortifies, rather than displaces, the conclusion already reached on the basis of the textual analysis in Part II and the evidence of non-comparability examined in Part III. It provides an independent and self-sufficient ground upon which the cancellation of CT 2033/2024 under Article 18.3(d) of the General Rules Governing Tendering is sustained.

The discrepancy contemplated by that provision was, in the present case, both textual and structural, and the cancellation responded to a defect that could not have been cured by clarification, by interpretation, or by any course of conduct lawfully open to the participating economic operators.

It is also right to record, in this connection, that the structural defect under consideration was no part of any conduct attributable to the Appellant, and the Board's findings in this Part are not, and should not be read as, a criticism of the Appellant's bid. The discrepancy emanated from the tender documentation itself and operated uniformly upon every economic operator that participated in the procedure.

That observation is consistent with the Contracting Authority's own acknowledgement, recorded in its Reasoned Letter of Reply of the 10th February 2026, that the discrepancy in the tender documents was in no way imputable to the Appellant, and it informs the Board's disposition in respect of the reimbursement of the deposit, to which it will return in the operative dispositive of this Decision.

IV. On the Clarification Process

The Appellant argues that the clarification requests issued during evaluation, and the responses provided thereto, eliminated any residual uncertainty as to the financial offers submitted. This submission cannot be accepted.

It is settled EU procurement law that the principles of equal treatment and transparency prohibit any negotiation between a contracting authority and a tenderer during the evaluation stage, and that, as a general rule, a tender may not be amended after submission.

The Court of Justice confirmed in *Ministeriet for Forskning, Innovation og Videregående Uddannelser v Manova A/S* (Case C-336/12, EU:C:2013:647, paragraph 36) that a contracting authority may request clarification only on a limited and specific basis, and that any clarification must not lead to what is in substance a new or materially amended tender.

The purpose of permissible clarification is to confirm and verify, not to reconstruct the economic basis of an offer to render it comparable with others that were structured differently from the outset.

In the present circumstances, the effect of any clarification directed at reconciling divergently structured offers would inevitably have been to establish a common economic baseline that did not exist at the time of submission. That exercise goes beyond verification; it is, in the opinion of this Board, a reconstruction. It would produce a comparison not of the offers as submitted, but of a notional adjusted version of those offers, which is precisely what equal treatment prohibits. The clarification provided by the Appellant confirms only its own offer; it does not cure the structural non-comparability of the tender field as a whole.

V. On the Absence of Pre-Tender Challenge

The Appellant relies upon the absence of any objection under Regulation 262 of S.L. 601.03 before the submission of tenders as evidence that the documentation was sufficiently clear. This argument, whilst not without some evidential weight, is ultimately unpersuasive.

Regulation 262 provides a remedy for economic operators who wish to challenge procurement documentation before the submission deadline. Its purpose is protective and enabling, not limitative. The failure of any operator to avail itself of that remedy prior to submission does not constitute a waiver of the right to rely upon a defect in subsequent proceedings, nor does it provide any conclusive evidence that the documentation was unambiguous.

Economic operators who proceeded to submit bids on the basis of their own reading of the dossier had no practical incentive to challenge before the closing date: each operator had formed a view as to the correct interpretation and was content to proceed upon that view. The very fact that different operators formed different views, as evidenced by the TEC's finding, is perfectly consistent with the absence of pre-tender challenge. Silence before submission does not cure ambiguity after opening.

VI. Conclusion on the Additional Grievance

For the foregoing reasons, this Board finds that a material discrepancy existed within the tender documentation within the meaning of Article 18.3(d) of the General Rules Governing Tendering, consisting of the failure to express the quantity and evaluation baseline in a single, clear and unequivocal manner consistent with the transparency obligation under Article 18(1) of Directive 2014/24/EU and paragraph 115 of *Succhi di Frutta* (C-496/99 P).

The Technical Evaluation Committee's finding of non-comparability of offers was well-founded in the evidence and has not been rebutted. The additional grievance is accordingly rejected on its merits.

Conclusion and Orders

The Board determines that the cancellation letter of the 23rd January, 2026 was procedurally defective for failure to state the reasons and findings required by Regulation 272 and Regulation 242 of Subsidiary

Legislation 601.03, read in conjunction with Regulation 39(1), Article 18(1) and Article 55 of Directive 2014/24/EU, and Article 41 of the Charter of Fundamental Rights of the European Union. In that respect, the first grievance is upheld.

However, the Board further determines that the underlying decision to cancel Tender CT2033/2024 pursuant to Article 18.3(d) of the General Rules Governing Tendering was lawful, proportionate, and necessary to preserve equal treatment and objective comparability of tenders, in conformity with Regulation 39 of Subsidiary Legislation 601.03 and Article 18(1) of Directive 2014/24/EU. The second grievance, as well as the additional grievance, are rejected on the merits.

SYNTHESIS OF THE BOARD'S FINDINGS AND THE COHERENCE OF THE DISPOSITION TO FOLLOW

Before proceeding to its formal disposition, the Board considers it appropriate to draw together the threads of the analysis set out in the preceding parts of this Decision and to articulate, in synthesis, the relationship between the findings already made on each of the three grievances and the operative orders which will follow.

The exercise is not one of repetition. It is undertaken in recognition that the disposition to be entered into hereunder, taken on its face, may appear to harbour an internal tension between the upholding of the Appellant's first grievance and the simultaneous confirmation of the Contracting Authority's decision to cancel the tender in question. The Board takes the view that no such tension in fact subsists, and explains hereunder why that is so.

I. The Findings of the Board, in Synthesis

The Appellant placed before this Board three distinct grievances.

The first was that the Contracting Authority had failed to give adequate reasons for its decision to cancel CT 2033/2024 — Tender for the Supply of Eribulin 0.44mg/ml Solution for Injection, contrary to Regulation 272 read with Regulation 242 of Subsidiary Legislation 601.03.

The second was that the cancellation was, in any event, unnecessary, disproportionate, and contrary to the principles governing the exercise of the discretion to cancel a procurement procedure once financial offers have been disclosed.

The third grievance, raised by way of additional submissions filed on the 9th March 2026 with leave of this Board following the Contracting Authority's disclosure of its reasons in the Reasoned Letter of Reply, was that no discrepancy in fact existed within the tender documentation, with the consequence that the factual premise of the cancellation under Article 18.3(d) of the General Rules Governing Tendering was unsound.

To these grievances, the Appellant joined a demand that the administrative deposit paid in respect of the appeal be reimbursed in full.

Upon a comprehensive evaluation of the submissions, the documentary record, the testimony of the witnesses heard, and the applicable legal framework, the Board has reached the following conclusions on the merits, the reasoning whereof is fully articulated in the relevant parts of this Decision and is hereby adopted in this section by reference.

In relation to the **first grievance**, the Board has found that the cancellation letter of the 23rd January 2026 was procedurally defective for failure to state the reasons and findings required by Regulation 272 read with Regulation 242 of Subsidiary Legislation 601.03, read in conjunction with Regulation 39(1) of the Public Procurement Regulations, Article 18(1) and Article 55 of Directive 2014/24/EU, and Article 41 of the Charter of Fundamental Rights of the European Union.

The duty to give reasons is not a matter of administrative courtesy. It is a foundational requirement of good administration, derived from the principles of transparency and effective judicial review, and is owed to every economic operator who has participated in a procurement procedure and whose legitimate expectations are affected by its outcome.

The Contracting Authority did not meet that standard in the present case, a fact expressly conceded by it in its Reasoned Letter of Reply, and the Appellant's grievance on this score is therefore well founded and is upheld.

In relation to the **second grievance**, the Board has found, on the basis of the analysis set out in the corresponding part of this Decision, that the cancellation of CT 2033/2024 was grounded upon a material discrepancy within the meaning of Article 18.3(d) of the General Rules Governing Tendering, and that the cancellation was a measure that was appropriate and necessary in order to safeguard the principles of equal treatment and transparency mandated by Regulation 39(1) of the Public Procurement Regulations and Article 18(1) of Directive 2014/24/EU.

The cancellation neither offended against the principle of proportionality nor disclosed any anti-competitive character of the kind contemplated by the line of authority invoked by the Appellant. The second grievance is accordingly rejected on its merits.

In relation to **the third additional grievance**, the Board has found, again for the reasons set out in the corresponding part of this Decision, that a material discrepancy did exist within the tender documentation, comprising both a textual element, between the manner in which the estimated quantity was expressed in Article 1.1 of the Tender Dossier and the basis upon which evaluation was directed to be carried out under the Financial Bid Form, and a structural element, embedded in the operation of the Financial Bid Form itself, the formula whereof was calibrated for a per-millilitre basis and, when applied to the two-millilitre vials in fact required by the procurement, systematically generated an aggregated total equal to one-half of the true commercial value of the offer.

The arithmetical derivability of the total volume from the packaging configuration does not cure the want of a single, unequivocal quantitative baseline. The finding of the Technical Evaluation Committee that the offers received were not comparable on a uniform quantitative basis is a finding of fact grounded in the actual bids and has not been rebutted before this Board.

The clarification process did not, and could not, retrospectively reconstruct a comparable economic baseline; and the absence of any pre-tender challenge under Regulation 262 does not constitute evidence of unambiguity. The third grievance is therefore rejected on its merits.

The substantive consequence of the foregoing findings on the second and the third grievances, taken together, is that the cancellation of CT 2033/2024 is, in the substantive judgment of this Board, sustained. The cancellation was justified in fact and lawful in law.

There remains, for completeness of this synthesis, the question reserved at the sitting of the 30th April 2026 concerning the conduct of the evaluation by a sole evaluator. That question has, upon the documentary evidence produced to and received by this Board and notified to the Appellant, been resolved in the manner set out in Part IV of the section of this Decision headed "*On the Conduct of the Evaluation by a Sole Evaluator*".

The Board there found, first and principally, that the single-evaluator composition of the Tender Evaluation Committee was validly authorised by the Director General (Contracts) under the express saving contained in the closing words of section 1.2 of the Standard Operating Procedures, the departure from the default architecture having been patent upon the face of the nomination slate which that authority twice approved; and secondly, and in the alternative, that the Appellant in any event acquiesced in the regularity and sufficiency of that exemption, the Appellant having declined the defined and time-limited opportunity, afforded to him at his own request by the verbal of this Board, to contest it by way of a further rikors.

The consequence of that resolution for the present synthesis is a simple one and is recorded here so that the analysis which follows may proceed without qualification: no second procedural defect attaches to the formation of the impugned act. The procedural-formal plane, as it bears upon the cancellation, is occupied by the failure-to-give-reasons defect alone, and the distinction between the procedural and the substantive planes which the Board now proceeds to articulate falls to be applied to that single defect and to no other.

II. The "*Procedural*" and the "*Substantive*" Planes are Distinct

It is at this juncture that the apparent tension referred to in the opening of this synthesis must be addressed in principled terms. Analysing only the operative dispositive may, at first glance, bring about a difficulty to reconcile the upholding of the first grievance with the confirmation of the cancellation and might beg for the question: *if the Appellant has prevailed on its first grievance, why does the cancellation stand? If the cancellation stands, in what sense has the Appellant prevailed?*

The answer lies in a distinction which is fundamental to administrative review and which has been consistently applied by reviewing courts and tribunals throughout the common European legal space. It is

the distinction between the procedural-formal review of an administrative act and the substantive review of that same act. The two operate on different planes and address different questions.

The procedural-formal plane is concerned with the manner in which an administrative decision is taken and communicated. It asks whether the decision-maker has discharged the procedural duties incumbent upon it, i.e. whether it has acted within its powers, whether it has observed the rights of those affected, whether it has given adequate reasons capable of being subjected to review, and whether the decision has been arrived at in a manner consistent with the principles of good administration.

The duty to give reasons under Regulation 272 of Subsidiary Legislation 601.03, Article 55 of Directive 2014/24/EU, and Article 41 of the Charter of Fundamental Rights belongs squarely within this plane.

The substantive plane, by contrast, is concerned with the content of the decision itself. It asks whether, on a proper appreciation of the facts and the applicable legal framework, the decision is one which the decision-maker was entitled to take. A decision may, on its substance, be entirely justified; and yet it may be procedurally defective because it has been inadequately reasoned, or inadequately communicated, or arrived at in breach of some other procedural safeguard.

Conversely, a decision may be impeccably reasoned and procedurally faultless, and yet substantively wrong. The two planes are independent of one another, and a reviewing body may, and routinely does, reach different conclusions on each.

A finding of inadequate reasoning is, on this analysis, a finding *of* something rather than a finding *against* the substantive decision. It identifies a defect in the manner of the decision's articulation, but it does not, of itself, establish that the decision was wrong on its merits.

The reviewing body, having identified the procedural defect, is not thereby committed to annulling the substantive act. It may, and where the substance of the decision is independently sound, it ordinarily should, give effect to the procedural finding through means proportionate to the nature of the breach, while leaving the substantive decision undisturbed.

III. The Application of this Distinction to the Present Disposition

Applying that distinction to the present case, the structure of the Board's disposition becomes transparent and, the Board ventures to suggest, internally coherent.

The Board's upholding of the first grievance operates on the procedural-formal plane. It establishes that the Contracting Authority breached its duty to give adequate reasons for the cancellation. That finding is not contingent upon, and does not depend for its validity upon, the substantive correctness or otherwise of the cancellation itself.

It would have been the same finding had the cancellation been substantively unjustified, and it is the same finding now that the cancellation has been found to be substantively justified. The vice identified by the first grievance is a vice in the manner of the decision, not in its content. The cancellation letter of the 23rd

January 2026 said too little, not too much, and what too little it said could not, on the case-law of the Court of Appeal in Agius Stone Works Limited v. Kunsill Lokali Valletta et and on the requirements of Article 41 of the Charter, sustain the act communicated by it.

The Board's rejection of the second and the third grievances, and the corresponding confirmation of the cancellation, operate on the substantive plane. They record the Board's independent assessment that, on the merits, the cancellation of CT 2033/2024 was both factually founded and legally warranted. That assessment has been arrived at by the Board on the basis of the record placed before it in these proceedings, in which the substance of the cancellation, i.e. the existence and materiality of the discrepancy under Article 18.3(d) of the General Rules Governing Tendering, and the proportionality of the cancellation as a remedial measure, has been fully ventilated, examined, and tested with the participation of all parties.

The Board pauses to underline the significance of that last observation. The procedural defect identified under the first grievance has not impeded the Board's ability to conduct its substantive review. The proceedings before this Board have themselves served as the forum in which the underlying reasons for the cancellation have been articulated by the Contracting Authority, scrutinised by the Appellant, and adjudicated by the Board.

The Appellant has had the benefit of the disclosure made in the Reasoned Letter of Reply; it has availed itself of the opportunity, by leave of this Board, to advance an additional grievance directed at the substance of the discrepancy invoked; and it has been heard at length on every aspect of the cancellation's justification. In substance, the procedural defect committed at the moment of communication on the 23rd January 2026 has been remedied, in the only manner now available, by the conduct of these very review proceedings.

The two findings are therefore not in tension, but they are complementary. They are, indeed, the only intellectually honest disposition open to the Board on the record before it. To have rejected the first grievance would have been to deny the procedural irregularity which the record discloses and which the Contracting Authority itself has expressly conceded. To have annulled the cancellation on the strength of that procedural irregularity, in circumstances where the cancellation is substantively justified and where the procedural defect has, in practice, been remedied through the conduct of these very proceedings, would have been to elevate form over substance and to grant the Appellant a windfall to which, on the merits, it is not entitled.

Worse, it would have been to direct the Contracting Authority to revive a procurement procedure which the Board has independently determined to be vitiated by a discrepancy that prevented an objectively comparable evaluation of the offers received, an outcome that would itself have offended against the very principles of equal treatment and transparency upon which the cancellation was, in substance, founded.

IV. The Proportionate Redress of the Procedural Breach

It remains to be addressed how the procedural breach which the Board has found should be redressed. The Board considers that the appropriate redress is twofold and that it is fully achieved by the operative orders which follow.

In the first place, the breach is redressed by the very fact of its formal recognition in this Decision. The Appellant came before this Board with a specific procedural complaint, namely that the cancellation letter of the 23rd January 2026 had been issued without the reasons and findings required by law, and the Appellant has succeeded in establishing that complaint.

The Board's express finding that the Contracting Authority failed in its duty to give adequate reasons is itself a vindication of the Appellant's right to be told, in proper form and in due time, why the procurement in which it had participated was being terminated. That finding stands on the record of this Decision and constitutes binding adjudicative recognition of the breach.

It also serves a wider, prophylactic function in that it places contracting authorities upon notice that the standard articulated by the Court of Appeal in Agius Stone Works Limited v. Kunsill Lokali Valletta et is to be observed in full, and that the practice of communicating cancellation by reference to a regulatory provision unaccompanied by the underlying reasons and findings cannot be sustained.

In the second place, the breach is redressed by the order for the full reimbursement of the administrative deposit paid by the Appellant. The reimbursement of the deposit is the procedural marker by which this Board records that the Appellant has substantially prevailed on a material point of complaint, notwithstanding that the substantive procurement outcome has been left undisturbed.

It is, in effect, an acknowledgement that the Appellant was justified in invoking the jurisdiction of this Board and that it should not, having succeeded in establishing the procedural irregularity, bear the financial cost of having done so. The Board observes that this order is fully consistent with the position adopted by the Contracting Authority itself, which, in its Reasoned Letter of Reply, declared that it raised no objection to the refund of the deposit in view of the omission of the reasons from the cancellation letter and of the fact that the discrepancy in the tender documents was in no way imputable to the Appellant.

The Board records that concession with approbation, and gives effect to it in the operative dispositive.

Taken together, the formal finding of breach and the refund of the deposit constitute redress that is proportionate to the nature of the irregularity established. The breach was a breach of the duty to give reasons and it was not a breach which, on the facts of this case, has caused the cancellation itself to be unwarranted.

The redress is calibrated accordingly. Any greater remedy, in particular, the annulment of the cancellation and the consequent revival of a procurement procedure that this Board has, on independent analysis, found

to be substantively flawed, would be disproportionate, would not correspond to the actual harm suffered by the Appellant, and would offend against the principles upon which the cancellation was rightly grounded.

V. Conclusion

It is in light of the foregoing synthesis that the operative dispositive of this Decision is to be read. The Board has been careful, in arriving at that dispositive, to give separate and conscious adjudicative attention to the procedural and the substantive aspects of the matters placed before it.

The findings made on those two planes are independently arrived at, are independently sustainable, and are mutually consistent. There is no contradiction between the upholding of the first grievance and the confirmation of the cancellation; nor is there any contradiction between the rejection of the second and third grievances and the order for the refund of the Appellant's deposit. Each element of the disposition stands on its own reasoning and contributes, with the others, to a coherent whole.

The Board accordingly proceeds to its formal disposition, on the understanding that the operative orders which follow are to be read as the expression, in formal terms, of the analysis articulated above and in the preceding parts of this Decision.

The Board,

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

a) To confirm, for the reasons set out in the Partial Decision delivered in these proceedings, that the Appellant's application of the 29th April 2026 (alleged *fuori termine* filing of the Reply of the 21st April 2026) is rejected, and that the said Reply is procedurally admissible and has been duly considered on its merits in the determination of this appeal;
b) To uphold the first grievance of the Appellant in its entirety, the Board finding that the Contracting Authority breached its duty to give adequate reasons for the cancellation of the tender in question;
c) To reject the second grievance submitted by the Appellant;
d) To reject the third, additional grievance submitted by the Appellant;
e) To determine and resolve the question reserved at the sitting of the 30th April 2026 concerning the conduct of the evaluation by a sole evaluator, the Board finding, upon the documentary evidence produced to and received by it and notified to the Appellant, that the single-evaluator composition of the Tender Evaluation Committee was validly authorised by the Director General (Contracts) under the express saving contained in the closing words of section 1.2 of the Standard Operating Procedures, and that the Appellant has in any event acquiesced in the regularity and sufficiency of that exemption by declining the defined opportunity afforded to him to contest it; in consequence whereof no irregularity attaches to the composition of the evaluation function and no further procedural defect attaches to the formation of the impugned act;

f) Notwithstanding the procedural defect found in respect of the First Grievance, and the reserved question concerning the composition of the evaluation function having been resolved in favour of the regularity of that composition, to uphold the substantive decision of the Contracting Authority to cancel CT 2033/2024 — Tender for the Supply of Eribulin 0.44mg/ml Solution for Injection, the cancellation being, on the merits and for the reasons set out in this Decision, justified in substance on grounds both textual and structural; and

g) Upholds the Appellant's third demand and orders that the administrative deposit paid by the Appellant to be fully reimbursed in accordance with the applicable Regulations.

Dr Vincent Micallef	**Mr Lawrence Ancilleri**	**Dr Ana Thomas**
Chairman	**Member**	**Member**