

PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2247
Tender Reference Number CPSU6399/25
Tender Name “Tender for the Supply of Sterilization Reels (Various Sizes)”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 15th May, 2026 to hear the appeal as filed by the appellant Technoline Limited (hereinafter the ‘Appellant’) on the 17th April, 2026, and after taking cognisance of:

The tender document for the ‘Tender for the Supply of Sterilization Reels (Various Sizes)’ (hereinafter referred to as the “Tender Document”);

The minutes of the proceedings dated 15th May, 2026 which are being reproduced hereunder:

“Case 2247 – 666 – CPSU 6399/25 – Tender for the Supply of Sterilization Reels (Various Sizes).

The Tender was issued on the 16th of September 2025, and the closing date was 7th of October 2025.

The estimated value of the tender, excluding VAT, was €110,000

On 17th April 2026, Technoline Limited, lodged an appeal against Central Procurement and Supplies Unit (CPSU)– the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 15th of May 2026, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Maria Cardona and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €550 was paid.

There were Eight bids.

The attendance for this public hearing was as follows:

Appellant – Technoline Limited

Dr Jonathan Abela Fiorentino – Legal Representative.

Dr Kristen Camilleri – Legal Representative.

Mr Nicholas Sammut – Company Representative.

Mr Bjorn Bartolo – Company Representative.

Contracting Authority – Central Procurement and Supplies Unit (CPSU)

Dr Alexia Farrugia Zrinzo– Legal Representative.

Dr Leon Camilleri -- Legal Representative.

Ms Kirsty Agius – Chairperson.

Mr Jonathan Pullicino-- Secretary.

Mr Steve Mizzi – Evaluator.

Mr Nathan Grech – Evaluator.

Recommended Bidder – Medina Healthcare Ltd

Dr Zack Esmail – Legal Representative. (online).

Opening Statements

The Chairperson welcomed the parties present and formally opened Case Number 2247 in the records of the PCRB. The Chairman identified the Appellant as Technoline Limited, the Contracting Authority as the Central Procurement and Supplies Unit (CPSU), and representative of the recommended bidder, Medina Healthcare Ltd.

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

Initial Submissions

Initial Submissions by Dr Jonathan Abela Fiorentino (for the Appellant)

Dr Abela Fiorentino noted that the appellant was arguing that the conclusion reached by the CPSU was factually incorrect. The first grievance was ‘Compliance with CE Marketing Requirement’.

The second point was ‘Inconsistency of Placement Requirement with Applicable Standard’, where the appellant was questioning whether this request was consistent with the applicable European Standards.

The third grievance was ‘Disproportionate and Formalistic Assessment’. Regarding the CE marking, the appellant argued that the decision of the Evaluation Committee was disproportionate and unjustified.

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

Dr Camilleri noted that the tender request was very clear. The CE marking had to be printed or stamped on the inner carton or on the plastic roll. They were not disputing the CE certificate. The appellant could have contested the requirement, if they believed that the CE marking should not have been there, through a procedure prior to the closing date of the tender.

The tender was adjudicated according to the confirmed parameters, since there was no pre-contractual appeal.

Initial Submissions by Dr Zack Esmail (for the Recommended Bidder)

Dr Esmail noted that the appeal was under Regulation 270, and if the appellant had any issue regarding the requirements, they could have filed a pre-contractual remedy under Regulation 262.

Witness:

Mr Nicholas Sammut (ID no. 246065M) – Summoned by Dr Jonathan Abela Fiorentino

Mr Sammut has been working with Technoline for the last 27 years as Business Development Manager and takes care of the medical division. He was involved in this tender. They received only one clarification request, which was an enquiry regarding how the packet is opened. There were no enquiries regarding the CE marking.

Cross-Examination by Dr Zack Esmail

Dr Esmail confirmed with the witness that the CE marking of their product was on the outside of the box.

Witness:

Ms Maria Teresa Rojas Casademunt (PAS 858357) – Summoned by Dr Jonathan Abela Fiorentino.

Dr Abela Fiorentino stated that the CV of the witness had already been provided to the Board. Ms Rojas has more than thirty years of experience in sterilisation packaging in hospitals, with a background in regulatory affairs.

She worked with Bolsaplast Company as a Sales Manager. They produce sterilisation packaging and are based in Spain, providing products to more than 50 countries worldwide. They supply products to Technoline.

Dr Abela Fiorentino quoted:

“There was a discrepancy in relation to specification 2.9, whereby specifications indicate that the CE marking must be printed or stamped on the inner carton or the plastic roll. However, the samples received have the CE marking printed only on the outside of the carton box. The marking does not appear on the inner carton or on the plastic roll, as requested. Therefore, the bid is deemed as technically non-compliant”.

And asked Ms Rojas for her opinion.

Ms Rojas said that the Regulation of medical products is governed firstly by the MDR, then ISO 13458, followed by 11607 and, within this norm, the EN 868 series from 1 to 10. Series 5 relates to the production of sterilisation packets.

There is paragraph 4.6.1.4, which states that the CE marking is not mandatory to be printed on packaging intended for hospitals, as this can create a problem for the user.

The Board asked whether Bolsaplast and Ms Rojas, in their experience, disagreed with this being made a mandatory requirement.

The witness said that it could not be a mandatory requirement, as it was against the Law. She added that she could not give a personal opinion, as she always adheres to the Law.

The Board asked whether it was impossible to have the printing inside the package.

The witness said that their company prints the CE mark on the label outside and that there were companies that printed it on the inner carton, but they were not complying with the Law.

Cross-Examination by Dr Leon Camilleri.

Dr Camilleri asked about the witness's familiarity with Tender 6399/25.

She replied that she had read the specifications with the Maltese dealers.

Dr Camilleri quoted: "The CE marking must be printed or stamped on the inner carton or the plastic roll".

He asked the witness which norms were being breached.

The witness referred to EN 868-5, paragraph 4.6.1.4, which states: "systems placed on the market for delivery to Healthcare facilities, which is in the case of a hospital, shall not be supplied individually labelled with a CE logo and/or with a symbol".

Dr Camilleri stated that the requirement was for the CE marking to be printed on the inner roll, not individually, and asked the witness whether this was permissible under the regulations.

Dr Camilleri said that the witness was quoting from EU Regulation 2017/745 and EN 868-5. She replied that it was not mandatory to have an inner CE sticker on the reels. All the information, including the Lot number, expiry date, and company name, is on the inside of the inner reel.

Witness:

Mr Nathan Grech (ID No. 278697M) – Summoned by Dr Leon Camilleri

Mr Grech worked at the CSSD at Mater Dei and was in charge of the sterilisation of instruments for the theatres. He has been carrying out this role for two and a half years. Dr Camilleri noted that Mr Grech was an evaluator. The bid was technically non-compliant, as the marking was not on the inner carton or the plastic roll, as requested.

He explained that a piece is cut from the roll, which then serves as a pouch for the instrument to be sterilised after it is sealed. The CSSD receives the roll in a box, and the CE marking was on the box instead of on the roll. The product of the recommended bidder had the CE marking on the rolls. It was on the inner carton roll, not on every individual pouch.

There are different sizes of rolls, and some are used more frequently. The CSSD receives the rolls without the boxes, and it was convenient to have the CE marking on the inner carton of the rolls.

They usually have the Production and Expiry dates and the CE markings. The witness was not involved in the drafting of the tender, but certain protocols had to be followed.

Cross-Examination by Dr Jonathan Abela Fiorentino.

Dr Abela Fiorentino agreed with the witness that the bid was rejected because there was no CE marking on the inner roll, as requested in the specifications.

Final Submissions

Final Submissions by Dr Jonathan Abela Fiorentino (for the Appellant)

Dr Jonathan Abela Fiorentino said that this was a simple case. The testimony of the witnesses showed how the decision of the Committee was incorrect. The rejection letter was not in accordance with the specifications. It appeared that the recommended bidder and the CPSU had completely missed the point.

Regarding the first grievance, specification 2.9, 'must have CE marking printed or stamped on the inner carton/plastic roll', was only a clause and was 'not mandatory'.

The CE marking was on the package of the product. In the rejection letter, the CPSU did not contest that the CE marking was on the packaging but stated that the “CE marking must be printed or stamped on the inner carton or plastic roll”. This was factually incorrect. He quoted:

“It will be demonstrated that CE marking was not on plastic roll but elsewhere”.

There was no need for demonstration, because Technoline acknowledged that the marking was not on the plastic roll. CPSU wrote in its answer: “Therefore product was not in compliance with 2.9”. He continued to quote:

“Specification 2.9 was specific and did not merely require that the product is CE certified or that there is a CE Marking anywhere on the product – the specification requested that the CE marking is printed or stamped on the inner carton/plastic roll. A CE marking anywhere else on the packaging of the product would mean non-compliance with the said specification”.

He said that this was false. He quoted from the letter by Medina:

“In this regard, Specification 2.9 of the Tender clearly and unambiguously stipulates that the product must not only bear CE marking, but that such marking must be printed and stamped on the inner carton and/or plastic roll”.

He insisted that this was not mandatory and was factually incorrect.

“The clarification provided failed to offer the necessary assurance or to establish that the product offered complies with the tender requirements”.

There was no need for clarification, as the product was fully compliant with the specification requested. The appeal should therefore be upheld.

Regarding the second grievance, ‘Inconsistency of Placement Requirement’, the CE marking should be placed on the outer packaging rather than on the sterilisation components, which is consistent with the applicable European standards.

Dr Abela Fiorentino stated that Document B was exhibited with all the restrictions. They were not saying that this could not be done, but rather that the CE marking on the roll was restricted by the applicable standards.

The standards apply to all developed countries worldwide. The CPSU’s reply was that “Technoline is factually incorrect because such standard does not exist”; however, the standard does exist, and it was worrying that the CPSU appeared unaware of it.

The CPSU also stated that “such grievance should have been brought up during the applicable timeframe”; however, there was no need for clarification since the requirement was not mandatory. He quoted:

“Once this time frame lapsed there is a juris et de juris presumption that the specifications as published have been accepted and thus whoever submits an offer should observe such specifications”.

And:

“The objector also had ample time to ask for clarifications as per procurement procedure on this matter and indeed chose to do so in certain matters but failed to seek clarification and/or guidance on the issue of the place of the CE mark for which it is now objecting and arguing that the specifications as published are not in line with industry standard and practices”.

He added that the specifications were in line with the applicable standard, as the requirement in 2.9 was not mandatory. The CPSU’s reply was irrelevant. Medina’s reply stated that the “statement advanced was incorrect”, but this was untrue because the regulation exists.

Technoline was not challenging the specifications; rather, it was Medina and the CPSU who were interpreting them incorrectly.

The third grievance, ‘Disproportionate and Formalistic Assessment’, was based on the placement of the CE marking, which was present on a fully compliant product and in line with international standards. The Evaluation Committee ought to have recognised that the CE marking complied with EU standards. The conclusions reached by the CPSU and the recommended bidder were entirely incorrect.

Submissions by Dr Leon Camilleri (for the Contracting Authority)

Dr Camilleri referred to Dr Abela Fiorentino’s statement that the CPSU did not know the regulations. He added that it was also worrying that the appellants did not contest specification 2.9 through an appeal under Regulation 262 of the PPR, which clearly provides that if a law is not being complied with, there was ample time to file an appeal.

The appellant stated that this was not mandatory. This was evidently a misprint; however, when the appellant wrote “yes”, they were submitting themselves to that specification.

The criteria were clear: “must have CE marking printed or stamped on the inner carton”. The witness testified that the CE marking was on the outer box.

The appeal concerned the position of the CE marking. Ms Rojas stated that their company printed other information on the inner roll. No regulation was being ignored if the CE marking was also included. In fact, the evaluator testified that there were other submitted products with the CE marking on the roll.

The evaluator noted that the reel would be used for a long period of time, and since the CE marking was on the outer box, those sterilising the tools would not have the reassurance of seeing the CE marking. In light of the above, the objection ought to be rejected.

Submissions by Dr Zack Esmail (for the Recommended Bidder)

Dr Esmail said that it had first been argued that there was no need for this Clause, and then it was argued that it was illegal and against European Standards. It appeared that the issue had been unnecessarily complicated. Clause 2.9 required that the CE marking be placed in a specific location, and the appellant's product was not compliant. The appellant's witness stated that it was against the norm and did not know whether any other products had the CE marking on the roll.

The product supplied by Medina Healthcare and those of other bidders were compliant. If the appellant had any dispute regarding this requirement, they could have filed a pre-contractual remedy. They were now attempting to change the rules of the game after the game had finished. The recommended bidder was awarded the tender because they were fully compliant. This was not a formalistic assessment, and the Evaluation Committee had to abide by the tender requirements.

Replica by Dr Jonathan Abela Fiorentino (for the Appellant)

Dr Abela Fiorentino stressed that there was no need for a pre-contractual remedy regarding Clause 2.9. Dr Camilleri had mentioned that there was a misprint. Technoline's reply was not simply "Yes", but "yes as per specifications as per literature", as the requirement was not mandatory. This was presented in Document J, page 4.

Replica by Dr Leon Camilleri (for the Contracting Authority)

Dr Camilleri stated that since there was no issue with Clause 2.9 and the appellant marked it as "Yes", the requirement should have been followed. He said that "Yes" was answering Question G and quoted:

"Confirmation by Tenderer that Model Offered Complies with requirements (Yes/No)".

"Yes, as per specifications' was answering Question H", and he quoted:

“Details on the Offer’s specifications for the respective requisite”.

And ‘yes as per literature’ was answering Question 1”, and he quoted:

“Reference in the technical literature where this is being stated/shown (if applicable)”.

The literature was there to corroborate the specification and compliance.

Conclusion of the Hearing

The Chairperson, Dr Ana Thomas, thanked all parties present and formally concluded the hearing. The Board would communicate its decision in due course.”

The written pleadings as filed by Technoline Limited on the 17th April, 2026, together with proof of payment of a deposit in the amount of €550.00, wherein it held as follows:

“Subject: Tender for the Supply of Sterilization Reels (Various Sizes)

We write on behalf of Technoline Limited [C-4250 — Tender ID 233635] of 51, Edgar Bernard Street, Gżira GZR 1703 [hereinafter "Appellant"] in relation to the above-captioned tender proceedings. By means of the present we are filing an objection following the recommendation for award of said tender, formal notification of which was received by Appellant by means of an email and relative attachment dated 10th April, 2026 [letter attached as Document T1]. This appeal is being filed in accordance with the rules set out in the Public Procurement Regulations ["PPR"].

1.0 Facts of the case

This objection refers to a tender procedure run by the Central Procurement and Supplies Unit ["CPSU" or the "Contracting Authority"] which was meant to lead to the award of a contract for the supply of Sterilization Reels (various sizes). The tender for the supply of Sterilization Reels (various sizes) (specifically in paragraph 6.1) established that "The sole award criterion will be the price. The contract Will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria."

On the 10th April, 2026, the Appellant received a notification informing it that its offer was being rejected. The letter, submitted to Appellant by email, stated as follows:

Further to samples received, there was a discrepancy in relation to Specification 2.9, whereby specifications indicate that the CE marking must be printed or stamped on the inner carton or the plastic roll. However, the samples received have the CE marking printed only on the outside of the carton box. The marking does not appear on the inner carton or on the plastic roll, as requested. Therefore, the bid is deemed as technically non-compliant.

The Appellant, however contends that the offer awarded the tender is not technically the cheapest price, and that the conclusion reached by the CPSU (or the evaluation committee appointed by it) is factually incorrect. The CPSU based its decision on an erroneous interpretation and evaluation of the technical capabilities of the selected bidder's supply, as will be demonstrated below.

2.0 Grounds of Appeal

In the light of the factual background provided above, Appellant is putting forward this objection, which is based on the following considerations.

2.1 Compliance with CE Marking Requirement

The tender specifications require the presence of the CE marking. The Appellant's product satisfies this requirement, as the CE marking is clearly affixed on the product packaging submitted with the offer. The marking is visible, identifiable, and fulfils its function of demonstrating regulatory compliance,

2.2 Inconsistency of Placement Requirement with Applicable Standards

The placement of the CE marking on the outer packaging, rather than on the internal sterilisation components, is consistent with applicable European standards and established industry practice. Requiring the CE marking to be printed directly on such internal elements is not aligned with these standards and goes beyond what is necessary to demonstrate compliance.

2.3 Disproportionate and Formalistic Assessment

The rejection of the bid is based solely on the specific placement of the CE marking, despite the fact that the marking is present and the product is fully compliant in substance. Such an approach gives precedence to a purely formal requirement over the actual objective of the specification, namely the demonstration of conformity through CE marking. In these circumstances, the conclusion of technical non-compliance is disproportionate and unjustified.

2.4 Concluding remarks

By focusing exclusively on the specific placement of the CE marking, despite the undisputed presence of such marking on the product packaging, the Evaluation Committee adopted an overly formalistic approach to the assessment of compliance with specification 2.9. The Appellant's offer was therefore compliant in substance and should not have been rejected on this basis.

The rejected decision is therefore debased by a material error of assessment and should be annulled.

REQUEST

In the light of the above, this Board is respectfully requested to set aside the award in relation to the above-captioned tender procedure, and to order instead that the contract be awarded to the Appellant and/or to give any further orders or remedies which the Board deems fit. For the same reasons, Appellant requests that the deposit paid on the filing of this appeal be returned.

Appellant reserves the right to make further submissions during an eventual hearing.”

The written reply as filed by the Central Procurement and Supplies Unit on the 23rd April, 2026 (hereinafter the 'Contracting Authority') wherein it held as follows:

"Re: Objection – 666 - CPSU6399/25 - Tender for the Su I of Sterilization Reels (Various Sizes)"

Reply of the Central Procurement and Supplies Unit (CPSU) on behalf of the Department of Health as the Contracting authority to the reasoned application lodged by Technoline Limited (the Objector).

A call for tenders for the Supply of Sterilization Reels (Various Sizes) was issued by CPSU on the 16th of September 2025.

A number of bids were submitted and following an evaluation process the tender was recommended for award to Medina Limited (the recommended bidder).

The objector's offer was not recommended for award since it was found to be technically non-compliant for the following reason:

Further to samples received. There was a discrepancy in relation to specification 2.9, whereby specifications indicate that the CE marking must be printed or stamped on the inner carton or the plastic roll. However, the samples received have the CE marking printed only on the outside of the carton box. The marking does not appear on the inner carton or on the plastic roll, as requested. Therefore, the bid is deemed as technically non-compliant.

The Objector filed an objection based on 4 grounds of appeal.

CPSU humbly disagrees with the grievance raised and is hereby presenting its reply.

Submissions

On the First Ground of Appeal - Compliance with CE Marking requirement

- 1. The objector in this ground of appeal argues that product fulfils the CE marking requirement since the CE marking is clearly affixed to the product packaging.*
- 2. CPSU submits that, it is not contesting the fact that the product offered was CE certified and it may also be the case that the product offered by the objector was CE marked in a clear manner on the packaging, however tender technical criterion 2.9 requires that the product "Must have CE marking printed or stamped on the inner carton/plastic roll"*
- 3. As will be demonstrated to the Board, the CE marking of the product offered by the objector was not on the inner carton or plastic roll, but was elsewhere, thus the offered product was not in compliance with technical specification 2.9;*
- 4. Specification 2.9 was specific and did not merely require that the produce is CE certified or that there is a CE marking anywhere on the product - the specification requested that the CE marking is printed or stamped on the inner carton/plastic roll. A CE marking anywhere else on the packaging of the product would mean noncompliance with the said specification.*

5. For this reason, this first ground of objection should be rejected.

On the Second Ground of Appeal - Inconsistency of Placement Requirement with the Applicable Standards.

6. The objector states that the placement of the CE marking on the outer packaging rather than on the internal sterilisation components is inconsistent with the applicable European standards and established industry practice.

7. This is factually incorrect since such standard does not exist and there are manufacturers which produce their products with prints on the inner carton/plastic roll. There is nothing which is non sterile having such marks on the on the inner carton/plastic roll.

8. Moreover it is important to note that in the environments where the sterilisation reels are used, the box is not allowed for hygiene reasons.

9. Additionally, CPSU submits that such grievance should have been brought up during the applicable time frame for the filing of an action in terms of regulation 262 of the Public Procurement Regulations before the closing time for the submission of offers. Once this time frame lapsed there is a juris et de juris presumption that the specifications as published have been accepted and thus whoever submits an offer should observe such specifications.

10. The objector also had ample time to ask for clarifications as per procurement procedure on this matter and indeed chose to do so in certain matters but failed to seek clarification and/or guidance on the issue of the place of the CE mark for which it is now objecting and arguing that the specifications as published are not in line with industry standards and practices.

11. This has been also the position taken by our Court of Appeal. In fact in the decision of the 10th of January 2023 in the names *All Clean Services Limited v. Ministeru għall-Edukazzjoni et*, the Court states that:

a. *Din il-Qorti taqbel ma' dak li osserva l-Bord li kull min kien interessat, jekk ma kienx jaqbel ma' xi kundizzjoni fis-sejba, skont ir-Regolamenti applikabbli, seta' aïixxa, bilmezz li jagħtu l-istess Regolamenti, biex jipprova jimpunja dik jew dawk il-kundizzjonijiet. Mhux leëitu li l-oblatur iħalli l-proċessgħaddej, u wara, jekk jitlef il-kuntratt, jallega li kundizzjoni fis-sejba ma kelliex tkun hemm għax "kompletament irrilevanti".*

b. *Hu veru li l-kundizzjonijiet tax-xogħol tal-baddiema huma regolati b'lijijiet obra, u hemm regolamenti li jagħtu poter lill-awtorità kompetenti tissindika fuq dawl il-kundizzjonijiet, perà, dan l-icien ikun argument li kellu jittressaq fl-istadju preparatorju għall-proċess tal-għażla tal-oblatur preferut jekk ir-rekwiżiti ta' ftehim kollettiv huwa parċi mill-kundizzjonijiet li kellhom jiju sodisfatti minn kull oblatur, is-soċjetà appellanti kellha taderixxi ruħha ma' dak rikjest. Din il-Qorti osservat diversi drabi li dak rikjest fid-dokumenti tas-sejba għall-offerti jridu jiju kollha sodisfatti. (Added emphasis)*

12. Similarly, in the decision of the Court of Appeal in the names *Vassallo Builders Ltd v. Wasteserv Malta Ltd et* decided on the 6th of May 2025 it was stated that:

„jekk VBL debrilha li r-rekwiżiti inkwistjoni kien illegali, hija setgħet tattakka dalc il-kriterju fl-istadju ta' qabel I-gheluq tas-sottomissjoni tal-offerti, u dan bilmod kif imsemmi f'Regolament 262 Regolamenti dwar I-Alkwiżt Pubbliku. La hija naqset milli caghmel hekk, u s-sejba għall-offerti kienet tobbligaba tressaq kopja tal-«Final or Provisional Acceptance Certificate or equivalent», mela allura, VBL kienet marbuta li tressaq tali dokumentazzjoni, anke jekk debrilha li dik iddokumentazzjoni ma kinitx mehtieja minhabba s-setgħat tal-kumitat tal-valwazzjoni li jwettaq ilverifiki kollha mehtieja, jew inkella għaliex dak il-kumitat seta' jsib linformazzjoni minn fuq I-internet (Added emphasis)

13. For all these reasons, CPSU submit that this second ground of appeal should also be rejected.

On the Third Ground of Appeal - Disproportionate and Formalistic Assessment and on the Fourth Ground of Appeal - Concluding Remarks.

14. In this third grievance the objector argues that the product that it has offered is fully compliant in substance and that the disqualification is disproportionate.

15. CPSU submits that the objector cannot state that the product is fully compliant when it is evident that the CE mark is not printed or stamped on the inner carton/plastic roll, in breach of clause 2.9 of the Technical Specifications

16. Moreover with reference to the question of proportionality, and the question of substance over form, it is important that this Board also understands that clause 2.9 was not made capriciously but for a reason.

17. The outer pack of a sterilisations strips roll cannot be moved in the theatres, and thus the only way that a clinician can ensure CE certification before using the product is by referring to the inner carton/plastic roll.

18. The print/stamp of the CE Certification on the inner carton/plastic roll is a specification in itself and not merely intended for a proof of CE Certification, which is another specification which although related, is not one and the same with the requirement for CE Certification, which is a requirement in all medical devices. Having the CE mark elsewhere is thus irrelevant for the purposes of specification 2.9 as it is not intended to merely prove CE Certification!

19. For all these reasons, CPSU submit that the third and fourth ground of appeal should also be rejected.”

The written reply as filed by the Medina Healthcare Limited on the 24th April, 2026 (hereinafter the ‘Preferred Bidder’) wherein it held as follows:

“Whereas, the Central Procurement and Supplies Unit (hereinafter CPSU) issued a call for tenders for the Supply of Sterilisation Reels (Various Sizes)

Whereas, Messrs. Medina Healthcare Limited (hereinafter "recommended bidder") were recommended for award by virtue of a letter dated 10th April 2026

Whereas, by means of a letter dated 17th April 2026, Technoline Limited (hereinafter "appellants") filed an objection with the Public Contracts Review Board (hereinafter "PCRB")

Whereas the recommended bidder is submitting its reply, in accordance with article 276[c] of the public procurement regulations (hereinafter "PPR"), as follows:-

1. Reply No: 1 Compliance with CE Marking Requirement

1.1. The Appellant's first grievance relates to CE marking, asserting that its product is CE compliant. However, no explanation is provided as to how the product offered satisfies the specific requirements set out in the tender document.

1.2. In this regard, Specification 2.9 of the Tender clearly and unambiguously stipulates that the product must not only bear CE marking, but that such marking must also be printed and stamped on the inner carton and/or plastic roll.

1.3. The grievance fails to explain how the discrepancy identified by the Technical Evaluation Committee (hereinafter "TEC") is incorrect, namely the inconsistency between the Technical Offer Form and the sample submitted. It appears that the TEC afforded the Appellant the opportunity to clarify its position; however, the clarification provided failed to offer the necessary assurance or to establish that the product offered complies with the tender requirements.

2. Reply No:2 Inconsistency of Placement Requirement with Applicable Standards

2.1. The recommended bidder makes it clear that the statements being advanced are incorrect and thereby should be rejected both in fact and in law.

2.2. In any case, and without prejudice to the above, the statement now being advanced is clearly belated and, in any event, ought properly to have been raised at an earlier stage, either by way of a request for clarification during the tender process or through the appropriate procedural avenue in terms of Regulation 262 of S.L. 601.03. The procurement framework provides clear mechanisms to challenge or seek clarification of tender conditions within defined timeframes, thereby safeguarding transparency and equal treatment among all economic operators. A failure to avail oneself of these mechanisms within the prescribed period renders any subsequent objection procedurally improper.

2.3. Moreover, by electing to participate in the tender under the conditions as published, the Appellant must be deemed to have accepted those conditions in their entirety. It is well established that a bidder cannot, after submission, seek to challenge or reinterpret the very terms upon which it chose to compete. To allow such a course of action would undermine legal certainty and the integrity of the procurement process, as well as prejudice other participants who complied with the tender requirements as issued.

3. Reply No: 3 Disproportionate and Formalistic Assessment

3.1. With all due respect, what is being characterised as a formalistic assessment is, in reality, nothing more than strict adherence to the tender specifications.

3.2. *On the point, the recommended bidder refers to the doctrine of self-limitation a principle which was also discussed at length in the PCRB decision with number Case 1665 of 2021 [27th December 2021], wherein this Honourable Board held that:*

"This Board opines that the Evaluation Committee did not observe the principle of Self-Limitation when it deemed the Appellant's offer as technically non-compliant when it adjudged the equipment of the Appellant company on issues not included within the Tender Dossier"

3.3. *In view of the above, any departure by the TEC from the established criteria would constitute a breach of this doctrine, as it would entail an assessment based on specifications and conditions not contemplated in the tender document.*

NOWTHEREFORE, whilst reserving the right to put forward further submissions, the recommended bidder is hereby requesting the PCRB to reject the appeal filed by the appellant."

The opening and closing submissions of the Appellant, the Contracting Authority and the Preferred Bidder as delivered by their legal representatives;

Considers;

This Board notes that the Appellant has brought forward three (3) main grievances – the first that the Appellant's product complies with the CE marking requirement, the second that the tender requirement requiring the CE marking on the internal sterilisation components is not aligned with applicable standards, and thirdly that the rejection of the bid on the placement of the CE marking is a disproportionate and formalistic assessment.

A. Compliance with CE marking requirement

Here the Appellant argues that its product does have a CE marking on its packaging, and that the marking is visible, identifiable and that it fulfils its function. The Contracting Authority submitted that whilst it is uncontested that the product offered by the Appellant was CE certified, the product was not only required to be certified but also for the CE marking to be printed or stamped on the inner carton/plastic roll. The same submission was made by the Preferred Bidder in its reply.

In final submissions on the point, the Appellant argued further that this requirement under Clause 2.9. was the only requirement, which was not mandatory, therefore, the Contracting Authority should not have excluded its bid on a non-mandatory requirement. The Contracting Authority particularly on this point conceded that this was evidently a mis-print and raised the argument that if the Appellant believed it was not mandatory, why did the Appellant confirm in its technical offer form that it DID fulfil this requirement as enlisted in 2.9.? The Contracting Authority further argues that if the Appellant really believed it was not mandatory, why did it answer YES rather than NO?

This Board has reviewed this particular requirement regarding the required positioning of the CE marking, which is found on Page 19 of the Tender Document, under Section 3 – Specifications, Clause 1.1., an extract of which is being reproduced below:

SECTION 3 - SPECIFICATIONS (Note 3)

1.1. Product specifications

Item reference in Section 3 - the Specifications Section			
Item Name and description:	Sterilization Reels		
S-Code:	EQ21530 - Size: 75 mm (±5mm) width EQ21531 - Size: 100 mm (±5mm) width EQ21534 - Size: 120 mm (±5mm) width EQ21553 - Size: 150 mm (±5mm) width EQ21557 - Size: 200 mm (±5mm) width EQ21532 - Size: 250 mm (±5mm) width EQ34324 - Size: 350 mm (±5mm) width EQ21558 - Size: 300 mm (±5mm) width EQ21561 - Size: 420 mm (±5mm) width		
Spec No	Description of Specifications as required by the Contracting Authority	Unit of Parameter	Contracting Authority Requirement (Mandatory / Optional)

2.9	Must have CE marking printed or stamped on the inner carton/plastic roll.		
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This Board has further reviewed the Technical Offer Form provided to economic operators to be filled and produced by them as part of their bid. The relevant sections shall also be reproduced hereunder:

Tenderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication. The information/technical specifications provided in the below table shall not be subject to rectifications.

Technical requirements as per Section 3 - Technical Specifications of the tender dossier:

Item reference in Section 3 - the Specifications Section						
Item Name and description:	Sterilization Reels					
S-Code:	EQ21530 - Size: 75 mm (±5mm) width EQ21531 - Size: 100 mm (±5mm) width EQ21534 - Size: 120 mm (±5mm) width EQ21553 - Size: 150 mm (±5mm) width EQ21557 - Size: 200 mm (±5mm) width EQ21532 - Size: 250 mm (±5mm) width EQ34324 - Size: 350 mm (±5mm) width EQ21558 - Size: 300 mm (±5mm) width EQ21561 - Size: 420 mm (±5mm) width					
Brand:						
Model Number:						
Catalogue Reference:						
Spec No	Description of Specifications as required by the Contracting Authority	Unit of Parameter	Contracting Authority Requirement (Mandatory / Optional)	Confirmation by Tenderer that Model Offered Complies with requirements (Yes/No)	Details on the Offer's specifications for the respective requisite	Reference in the technical literature where this is being stated/shown (if applicable)

2.9	Must have CE marking printed or stamped on the inner carton/plastic roll.						
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This Board further notes the classification of the Technical Offer Form as Note 3, as well as the note on the front page of the same form advising economic operators of the significance of such:

“N.B. The Key Experts Form (including Self-declaration form for Key Experts and the Statement re Availability), CVs and Literature List are subject to Note 2. Any other components of the technical offer are under Note 3.”

This Board further refers to Rule 16.3. of the General Rules Governing Tenders v.10 which holds as follows:

“16.3 Part 3: Technical Compliance

*Submissions which have qualified under Part 2 shall have their technical offer evaluated to ensure compliance with Clause 5(C) of the Instructions to Tenderers. In order to be considered for this Evaluation, tenderers must submit a completed Technical Offer. **Literature may also be requested with the technical offer so that the Evaluation Committee will corroborate the technical compliance of the offers.***

Wherever, experience requirements are requested in the procurement document and the tenderer provides a list of clients, the Evaluation Committee reserves the right to verify the information and documentation provided, by contacting directly the respective clients mentioned by the tenderer.

Without prejudice to the possibility of requesting rectifications vis-a-vis Literature, if the Literature submitted with the Technical Offer does not corroborate the offer submitted, the tenderer shall be disqualified. (Added emphasis of the PCRB).

After having reviewed the entirety of the Tender Document as well as the Appellant’s bid, deems that it is uncontested that the CE marking on the Appellant’s product as offered is not on the inner carton/plastic roll as per Specification 2.9., and that it is equally uncontested that the Appellant answered YES in its reply to Specification 2.9. within the Technical Offer Form.

The Appellant attempts to argue that it’s ‘yes’ to that requirement is qualified as it states that it is per the literature provided, but this Board must disagree with this argument. Whilst the Appellant is right in stating that Specification 2.9. is the only specification where it is not clearly denoted as to whether the specification is mandatory or optional in the Tender Document, this Board notes that apart from the use of the word “must” used in the wording of Specification 2.9., it was the Appellant itself in its written appeal before this Board that complained of the requirement imposed being inconsistent with European standards. It is also of note that the Appellant failed to mention this non-mandatory factor in its grievances, which raises some doubt as to whether the Appellant even considered this fact before submitting its bid, and before filing its appeal before this Board. If the Appellant did in fact consider the requirement non-mandatory and optional before it submitted its bid, this Board must question why the Appellant failed to simply mark its Technical Offer Form with a NO rather than confirming compliance to a requirement which in its opinion is not mandatory but was only optional.

Given the fact that the Appellant consciously chose to indicate its compliance to specification 2.9. in its Technical Offer Form, i.e. that the CE marking is in fact on the product's inner carton/plastic roll, which choice is not rectifiable under Note 3, then it follows that the Appellant should have offered a product with the said marking on the inner carton/plastic roll and should have been also reflected in the literature produced with the Appellant's bid. The fact that the literature produced, and effectively the product offered, did not in fact comply with the specification 2.9. and did not match the reply given in the Appellant's technical offer form, meant that the Tender Evaluation Committee had no option but to determine that the Appellant's bid is technically non-compliant in line with Rule 16.3. of the General Rules Governing Tenders and consequently be disqualified.

Therefore, this grievance is being rejected.

B. Inconsistency of Placement Requirement with Applicable Standards

Within this grievance the Appellant argues that the placement of CE marking on the inner component is not consistent with applicable standards and produced an expert witness to testify on this matter. The Contracting Authority argues that the inner carton/plastic roll is sterile unlike the product's packaging and placing the CE marking on the other packaging is what is inconsistent with European standards. The Contracting Authority further argues that the Appellant had ample time to address this requirement and should have utilised its right of action per Regulation 262 of the Public Procurement Regulations.

This Board hereby refers to settled case-law on the matter, such as the judgment in the names **'Truevo Payments Limited v. Direttur tal-Kuntratti et'** Court of Appeal (Superior Jurisdiction) dated 30th June, 2021:

"7. Mhux l-istess jista' jinghad fil-kuntest tal-aggravju l-iehor tas-soġjeta` issa appellanti, dak marbut mal-inammissibilita` tal-azzjoni in vista tar-rimedju ikkontemplat fir-Regolament 262 aktar qabel indikat. Hu car li l-ilmenti tas-soġjeta` Credorax Ltd huma diretti lejn il-procedura wżata u ma humiex marbuta mas-sustanza tal-offerta. Din is-soġjeta` qed tilmenta mill-użu tal-procedura tal-ghoti tal-kuntratt b'negozjati, fuq il-mod kif gie imfassal il-proċess ta' din il-procedura u li ma kienx hemm l-approvazzjoni tad-Direttur tal-Kuntratti għall-użu ta' din il-procedura. Dawn it-tlett aggravji li abbażi taqghom il-kumpanija appellata Credorax Ltd pprezentat l-appell taqgha jirrigwardjaw materji illi kienu jeżistu sa mill-bidu nett tal-procedura in kwistjoni, u għal dawn l-ilmenti kienu jeżistu rimedji taht ir-Regolament 262. Dawn l-ilmenti kellhom jittressqu qabel id- data tal-ghelug ta' sejha għall-kompetizzjoni u mhux , bhal fil-każ tallum, wara dik id-data, u sabansitra wara d-deċiżjoni dwar l-ghoti tal-kuntratt.

*8. Saret referenza għas-sentenza tal-Qorti tal-Gustizzja tal-Unjoni Ewropea tat-12 ta' Frar, 2004 , fil-każ fl-ismijiet **Grossman Air Service, Bedarfsluftfahrtunternehmen GmbH & Co. KG v. Republik Österreich (C-230/02, CJEU)** fejn fost il-konkluzjonijiet milhuqa jinghad is-segwenti:*

"1. Articles 1(3) and 2(1)(b) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, must be interpreted as not precluding a person from being regarded, once a public contract has been awarded, as having lost his right of access to the review procedures provided for by the Directive if he did not participate in the award procedure for that contract on the ground

that he was not in a position to supply all the services for which bids were invited, because there were allegedly discriminatory specifications in the documents relating to the invitation to tender, but he did not seek review of those specifications before the contract awarded.”

(Sottolinear ta' din il-Qorti).

9. Jidber ċar mill-premess illi darba li, anke f'dan il-każ, il-kuntratt ġie rakkomandat u s-soġjeta` Credorax Ltd naqset li tfittex ir-rimedju opportun skond il-liġi qabel l-gbeluq tat-terminu għall-preżentata tal-offerta, ma tistax aktar tappella biex tressaq l-aggravji tagħha.”

This Board further refers to the judgment delivered on the 10th March, 2026 by the Court of Appeal (Superior Jurisdiction) in the names ‘**Camilleri Paris Mode Limited vs. Dipartiment tal-Kuntratti et'** where it was held that:

“19. Meta qieset il-fatti ta' dan il-każ, din il-Qorti tqis li dan l-aggravju ma jimmeritax li jiġi milqugh u dan għal diversi raġunijiet. **Qabel xejn, din il-Qorti sejra tissottolinja xi prinċipji korollari li għandhom jiġu meqjusa fl-isfond fattwali ta' dan il-każ.** Awtorità kontraenti mhijiex mogħtija l-jedd li tiddel jew timmodifika l-kriterji tal-għoti ta' kuntratt matul il-proċedura talgħotja (vide Każ - 278/14 SC Enterprise Focused Solutions SRL vs. Spitalul Județean de Urgență Alba Iulia decizi mill-Qorti tal-Gustizzja tal-Unjoni Ewropea fis-16 ta' April, 2015).

20. Daqs kemm awtorità kontraenti ma tistax twarrab offerta fuq raġunijiet li ma jkunux previsti fid-dokument tas-sejba (vide Labo-Pharm Ltd v. Il-Kummissarju tal-Pulizija nomine et decizi mill-Qorti tal-Appell fid-29 ta' Marzu, 2019), daqstant iehor ma tistax min-naha l-obra taċċetta offerta li ma tkunx toqghod ma' dak mitlub fis-sejba (vide Projeġte Global Limited v. Ministru Għal Għandex et decizi mill-Qorti tal-Appell fis-16 ta' Lulju, 2018).

21. Jaqa' fuq l-offerent stess li joqghod ma' dak mitlub fis-sejba, b'dan li huwa ma jistax joqghod jippretendi li l-awtorità kontraenti għandha toqghod issalvalu l-offerta jekk din tkun irregolari (vide J & J Gauci Granite Limited v. Grand Harbour Regeneration Corporation plc decizi mill-Qorti tal-Appell fl-20 ta' Marzu, 2023 u Steelshape Limited v. Direttur tal-Kuntratti et decizi mill-Qorti tal-Appell fis-7 ta' Awwissu, 2013).

22. Fil-każ odjern, l-awtorità kontraenti harġet sejba bi speċifikazzjonijiet partikolari. L-appellanta għet mitluba tagħmel kejarifika fil-15 ta' Lulju 2025 u dan sabiex tikkorrabora l-offerta teknika tagħha. Madanakollu, fit-tweġiba tagħha, l-appellanta naqset li tipprowdi spjegazzjoni li l-istandard meħtieġ kien ser jintlabaq. Huwa inutli li jiġi argumentat li dak l-istandard ma kienx japplika għal prodott iżda għal bini u għalbekk ġie skartat mill-appellanta. **Li kellha tagħmel l-appellanta semmai kien li tiehu l-passi li kellha a dispożizzjoni tagħha ai termini tarregolament 262 tal-Legislazzjoni Sussidjarja 601.03.**

23. Infatti, fis-sentenza mogħtija minn din il-Qorti bekk kif diversament komposta fl-10 ta' Jannar, 2023 fl-ismijiet All Clean Services Limited (C 39278) v. Ministeru għall-Edukazzjoni, l-iSport, iż-Żgħażaġh, ir-Ricerka u l-Innovazzjoni et intqal li:

“6. Din il-Qorti ma taqbilx mal-aggravju tas-soġjeta` appellanti. Largument li meqjus ir-rekwiżiti l-obra mitluba fis-sejba u n-natura tax-xogħol li kellu jitwettaq, din il-kundizzjoni “bi kompletament irrilevanti”, hija fiergħa u bla bażi. **Rilevanti jew le.**

dik il-kundizzjoni kienet tiffirma parti mis-sejha, u jekk l-istess kundizzjoni ma avvertax ruħha, is-soċjetà appellanti ma tistax tilmenta fuq il-punti żejda li ħadu l-oblaturi l-oħra li wettqu dik il-kundizzjoni.

7. Din il-Qorti taqbel ma' dak li osserva l-Bord li kull min kien interessat, jekk ma kienx jaqbel ma' xi kundizzjoni fis-sejha, skont ir-Regolamenti applikabbli, seta' aġixxa, bil-mezzi li jagħtuh l-istess Regolamenti, biex jipprova jimpunja dik jew dawke il-kundizzjonijiet. Mhux leċitu li l-oblatur iħalli l-proċess għaddej, u wara, jekk jitlef il-kuntratt, jallega li kundizzjoni fis-sejha ma kellhiex tkun hemm għax "kompletament irrilevanti".

8. Hu veru li l-kundizzjonijiet tax-xogħol tal-baddiema huma regolati b'liġijiet obra, u hemm regolamenti li jagħtu poter lill-awtorità kompetenti tissindika fuq dawke il-kundizzjonijiet, però, dan kien ikun argument li kellu jitrassaq fl-istadju preparatorju għall-proċess tal-għażla tal-oblatur preferut. Jekk ir-rekwiżit ta' ftehim kollettiv huwa parti mill-kundizzjonijiet li kellhom jigu sodisfatti minn kull oblatur, is-soċjetà appellanti kellha taderixxi ruħha ma' dak rikjest. Din il-Qorti osservat diversi drabi li dak rikjest fid-dokumenti tas-sejha għall-offerti jridu jigu kollha sodisfatti. Mhux regolari li tgħid li kundizzjoni partikolari kienet biss "add on" u oblatur jista' jinjoraha, għax min jipparteċipa jrid isegwi dak mitlub fiddokumenti."

24. Fid-deċiżjoni tas-26 ta' Ottubru 2022 fl-ismijiet Koperattiva Għawdxija tal-Indafa Pubblika Limitata v. Kunsill Reġjonali Għawdex et ġie sottolinejat l-importanza tar-regolament 262 tal-Legġislażzjoni Sussidjarja 601.03 u ntqal:

"Fi ftit kliem, dan ir-regolament jippermetti l-ksib ta' rimedju qabel l-għeluq tas-sejha għall-hames raġunijiet:

- (a) meta jirriżultaw klawsoli jew deċiżjonijiet li huma impossibbli li jwettqu;
- (b) meta jirriżultaw kwistjonijiet dwar offerti bil-mezzi teknici;
- (c) meta jkun hemm speċifikażzjonijiet diskriminatorji;
- (d) biex jitnehhew jew jigu korreguti klawsoli żbaljati jew ambigwi; u
- (e) meta s-sejba għall-kompetizzjoni hija kontra l-liġi."

25. Fil-kawża deċiżja fit-30 ta' Ġunju 2021 fl-ismijiet Truevo Payments Limited (C62721) v. Direttur tal-Kuntratti et ingħad:

"Mhux l-istess jista' jingħad fil-kuntest tal-aggranjuri l-iehor tas-soċjeta` issa appellanti, dak marbut mal-inammissibilita` tal-ażzjoni in vista tarrimedju ikkontemplat fir-Regolament 262 aktar qabel indikat. Hu ċar li lilmenti tas-soċjeta` Credorax Ltd huma diretti lejn il-proċedura wżata u ma humiex marbuta mas-sustanza tal-offerta. Din is-soċjeta` qed tilmenta mill-użu tal-proċedura tal-għoti tal-kuntratt b'negozjati, fuq ilmod kief ġie infassal il-proċess ta' din il-proċedura u li ma kienx hemm lapprovażzjoni tad-Direttur tal-Kuntratti għall-użu ta' din il-proċedura. Dawn it-tlett aggranjuri li abbażi tagħhom il-kumpanija appellata Credorax Ltd ppreżentat l-appell tagħha jirrigwardjaw materji illi kienu jeżistu sa mill-bidu nett tal-proċedura in kwistjoni, u għal dawn l-ilmenti kienu jeżistu rimedji taht ir-Regolament 262. Dawn l-ilmenti kellhom jitrassqu qabel id-data tal-għeluq ta' sejba għall-kompetizzjoni u mhux , bhal filkaż tallum, wara dik id-data, u sabansitra wara d-deċiżjoni dwar l-għoti tal-kuntratt.

8. Saret referenza ghas-sentenza tal-Qorti tal-Gustizzja tal-Unjoni Ewropea tat-12 ta' Frar, 2004, fil-każ fl-ismijiet *Grossman Air Service, Bedarfsflugfabrikunternehmen GmbH & Co. KG v. Republik Österreich* (C230/02, CJEU) fejn fost il-konklużjonijiet milbuqa jinghad is-segventi:

“1. Articles 1(3) and 2(1)(b) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, must be interpreted as not precluding a person from being regarded, once a public contract has been awarded, as having lost his right of access to the review procedures provided for by the Directive if he did not participate in the award procedure for that contract on the ground that he was not in a position to supply all the services for which bids were invited, because there were allegedly discriminatory specifications in the documents relating to the invitation to tender, but he did not seek review of those specifications before the contract awarded.”

9. Jidber ċar mill-premess illi darba li, anke f'dan il-każ, il-kuntratt gie rakkomandat u s-soċjeta` Credorax Ltd naqset li tfittex ir-rimedju opportun skond il-liġi qabel l-gheluq tat-terminu għall-preżentata tal-offerta, ma tistax aktar tappella biex tressaq l-aggravji tagħha.”

26. Din il-Qorti taqbel pjenament ma' dawn il-prinċipji u la l-appellanta naqset li tfittex ir-rimedju opportun qabel l-gheluq tat-terminu għall-preżentata tal-offerta, ma tistax issa tingeda b'din il-proċedura f'dan listadju. Addirittura f'dan il-każ, mhux talli ma ġietx adoperat il-proċedura ai termini tar-regolament 262 fuq riferit, iżda minkejja li l-appellanta nġhatat l-opportunita' li tressaq kjarifika dwar l-offerta tagħha, din xorta wabda ma kkonformatx ruħha. Huwa prinċipju assodat li jekk ir-regoli tassejha jitolbu certu prodott b'certu speċifikazzjonijiet, l-offerenti għandhom joqogħdu għal dawk ir-regoli u joffru prodott skont l-ispeċifikazzjonijiet hemm mitluba. Huwa dak li kellha tagħmel l-appellanta.” (Added emphasis of the PCRB).

It does not result to this Board that the Appellant utilised the remedy available to it under Regulation 262(1)(c) of the Public Procurement Regulations, therefore, it cannot now post-award complain of the specifications within tender requirements running contrary to European standards. If this Board were to decide otherwise, it would be unfair to all the other economic operators which have equally participated and accepted the tender requirements. Once an economic operator such as the Appellant participates in a tender and submits a bid, it is thereby accepting the tender requirements as they are.

Therefore, the Appellant's second grievance is also being rejected.

C. Disproportionate and Formalistic Assessment

The Appellant argues that the approach undertaken by the Contracting Authority is giving precedence to a purely formal requirement over the actual objective of the specification, which in the Appellant's opinion is demonstration of conformity through CE marking. The Contracting Authority argues that the Specification 2.9. was not only there to ensure CE certification, but CE certification on the item which ultimately enters the site where a clinician may ensure CE certification given that the outer packaging is left in the stores and never enters the sterile environment which the product is destined to be in and to be used in.

On this point the Board finds that whilst the Contracting Authority has proven that the requirement of marking on the inner roll is required not simply to ensure CE certification, it further finds that the Tender Evaluation Committee did not act disproportionately in regard to the Appellant when disqualifying its bid based on non-compliance.

Therefore, the Appellant's third grievance is also being rejected.

DECIDE

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

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

Dr Ana Thomas
Chairperson

Dr Maria Cardona
Member

Mr Lawrence Ancilleri
Member

Friday 26th June, 2026.