PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number	**2248**
Tender Reference Number	**CPSU6399/2025**
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 Reactilab Ltd (hereinafter the 'Appellant') on the 17th April, 2026 (with a stamp dated 19th 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 2248 – 668 – 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 19th April 2026, Reactilab Ltd, lodged an appeal against Central Procurement and Supplies Unit (CPSU)– the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.*
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> *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.*
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> *A deposit of €550 was paid.*
>
> *There were Eight bids.*
>
> *The attendance for this public hearing was as follows:*
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> ***Appellant – Reactilab Ltd***
>
> *Dr John L. Gauci – Legal Representative.*
> *Mr Stephan Debono – Company Representative.*
> *Ms Nour Benmatoug – Company Representative.*
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> ***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 2248 in the records of the PCRB. The Chairman identified the Appellant as Reactilab Ltd, the Contracting Authority as the Central Procurement and Supplies Unit (CPSU), and representative of the recommended bidder, Medina Healthcare Ltd.

Initial Submissions

The Chairperson minuted that both parties had no initial submissions and agreed to proceed with calling the first witness.

Witness:

Mr Stephen Debono (ID No. 47373M), summoned by Dr John Gauci.

Dr Gauci began by quoting:

"Specification 2.8 – Expiry date must be printed or stamped on the inner carton/plastic roll. The bidder stated that the expiry date to be printed 'on the pouch label' rather than inner carton/plastic roll as indicated in the technical offer form. Since the technical offer form falls under Note 3, it is non-rectifiable and therefore, the bid is deemed as technically non-compliant".

He then asked the witness to explain the use of a sterilization reel. Mr Debono, Director of Reactilab Ltd., brought a sample to demonstrate.

The Board asked whether the outer carton formed part of the product.

The witness explained that the reels are usually packed in larger boxes containing six or eight units and that the reels are available in various sizes. These are used at the CSSD, where hand tools used by medical personnel are sterilized and packed before being required in operating theatres. The reels come with labels on the outer box, labels on the plastic bag holding the reels,

and labels on every individual roll. These labels contain the batch number, shelf life, and all other relevant product details.

The witness stated that identification is present at every stage. Dr Gauci asked why they had indicated in the documentation that the expiry date was to be printed on the pouch label. Mr Debono explained that Reactilab was referring to the label on the large plastic bag holding the reels. Every label on that bag contained the manufacturer's name, catalogue number, product information and description, item number, lot number, UDI, and expiry date.

The UDI demonstrated that the product was certified and traceable. The witness offered to leave the sample with the Board.

The Board asked whether the sample was identical to the one submitted with the bid.

Mr Debono replied that he was showing a single reel and that the reels usually also carry a label on the inner bag.

Dr Zrinzo from the CPSU noted that, in this case, the samples had not been presented to the Evaluation Committee.

Dr Gauci produced photographs of the samples showing the manufacturing and expiry dates on both the outer and inner pouches.

The Board observed that the exclusion had been based on the inner markings.

The witness agreed and stated that no samples had been requested.

Document SD was marked as the outer label and Document SD1 as the inner label.

The witness explained that, in their technical offer form, they had indicated that labels were present throughout the entire packaging chain and had therefore answered "Yes" to Clause 2.8, which stated:
“Expiry date must be printed or stamped on the inner carton/plastic roll”.

Although this was a mandatory requirement, they answered "Yes" and added "Expiry date on the pouch label", referring to the outer pouch label, and submitted photographs. The requirement referred to the "inner plastic roll" and did not mention the core of the roll. Consequently, the wording was open to different interpretations.

The Board asked why they had specified that the expiry date was on the pouch label but had not also specified that it appeared on the inner roll.

Mr Debono replied that the requirement should have referred specifically to "the inner core of the sterilization reel" instead of using the word "roll". He explained that the product consists of the outer carton, the pouch containing the sterilization reels, and the reels themselves with labelled cores.

He confirmed that their product complied with the requirement. The product is CE-marked, complies with ISO standards, and is accompanied by all the certificates referred to in Clause 2.9.

The witness further explained that it was important for all information, including the expiry date, to appear on every reel because the product is used in a medical setting where traceability is essential.

In the event of a malfunction, the product must be identifiable so that appropriate action can be taken.

The Board asked whether the literature submitted with the offer indicated that the expiry date appeared on the inner core roll.

The witness presented the labels that had been submitted with the offer and stated that they did not specify their exact placement.

Dr Gauci asked whether this information had been specifically requested in the technical questionnaire.

The witness replied that the term "core" was never mentioned; the requirement merely stated that the expiry date should be stamped on the "inner carton roll", which they understood to refer to the pouch.

The Chairperson marked Document SD2, Document SD3, and Document SD4.

Cross-Examination by Dr Leon Camilleri

Dr Camilleri agreed with the witness that the product consists of a roll, a plastic bag (referred to as a pouch by the appellant), and an outer carton box.

The witness stated that the correct term for the roll holding the sterilization reel was "core".

Dr Camilleri referred to the wording, "the expiry date must be printed on the inner carton or plastic roll", and argued that the plastic bag, referred to as a pouch, could never be described as a roll.

The witness disagreed and stated that if the CPSU intended to require the expiry date to appear on the inner core of the reel, the requirement should have been drafted more clearly, as its wording allowed for several interpretations.

Mr Debono stated that he had completed the bid together with a colleague. He disagreed with Dr Camilleri's suggestion that they had specifically referred to the pouch label because they knew the pouch label was not the inner plastic roll. Mr Debono added that, had the Evaluation Committee requested a sample, the matter would have been clarified immediately. He reiterated that the product contained labels in three separate locations.

The Board referred to Document SD2 as showing the outer carton and to Document SD4 as showing the rim of the sterilization reel with ISO-related data but without the expiry date. The labels shown in Document SD3 appeared on the outer pouch and on the core of the reel.

Dr Camilleri asked why Reactilab Ltd. had stated "expiry date on the pouch label" rather than indicating that it was also on the reels.

The witness admitted that the information provided was incomplete but maintained that the reel itself was still stamped. He believed he had answered in that manner because, according to their interpretation of Clause 2.8, the inner carton constituted the relevant identifier.

He added that the technical specification did not mention the core and that this was misleading. There was therefore no need to seek clarification. Had there been a separate clause specifically requiring the expiry date to be printed on the inner core of the sterilization reel, they would simply have answered "Yes".

Witness:

Mr Nathan Grech (ID No. 278697M), summoned by Dr Leon Camilleri.

Mr Nathan Grech, an evaluator, works at the CSSD at Mater Dei Hospital as a Senior Charge. He supervises the sterilization of tools used in operating theatres and regularly uses the product in question.

He explained that by "inner carton" they meant the inner roll, which may be made of plastic. The appellant's bid was rejected because the Evaluation Committee understood that the expiry date would appear only on the pouch label.

He stated that it was very important for the expiry date to be stamped on the inner carton because reels come in different sizes and are used over varying periods. The Committee based its decision solely on the documents submitted.

The Board referred to the three labels submitted by the appellant and asked where the Committee believed they were affixed.

The witness replied that the Committee concluded that the labels were affixed to the outer pouch. Once the pouch is discarded, the labels would no longer be available. He added that, for hygiene reasons, only the reel enters the CSSD; neither the plastic bag nor the outer carton enters the sterilization area. Even after reviewing the photographs, the Committee interpreted the labels as being affixed to the outer packaging.

Cross-Examination by Dr John Gauci

Dr Gauci asked whether; after hearing the appellant's testimony regarding the product, the witness still maintained the same interpretation or whether he now considered the product compliant.

Dr Camilleri objected, arguing that the evaluator could only assess the information available at the time of evaluation.

Dr Esmail also objected.

Dr Gauci rephrased the question and asked whether, having heard the testimony, the witness now considered the product compliant.

Dr Camilleri objected again.

Dr Esmail objected on the basis that the witness was being asked to adjudicate the product during the hearing.

The Board observed that it would be inappropriate to compel the witness to express such an opinion.

Dr Gauci then reformulated the question and asked whether the Committee had excluded the appellant because it believed the expiry-date label would not be present on the inside of the reel.

The witness replied that the Committee's interpretation was that the label would be affixed only to the outside and that they had not been provided with any photograph showing the label affixed inside the reel. He confirmed that the labels had been reviewed during the evaluation and that he had not been involved in drafting the tender.

Dr Gauci referred to Clauses 2.6 and 2.6.1, noting that they contained more precise references, such as "Edges of Reel".

Dr Camilleri asked what the question was.

Dr Gauci asked the witness to confirm that some parts of the specification used more specific terminology.

The witness replied that the only carton associated with the reel was the inner carton. However, Dr Gauci pointed out that the word "reel" did not appear in Clause 2.8.

The witness responded that the tender itself concerned sterilization reels. He could not confirm whether all products were packaged differently, as product receipt was handled by store personnel.

Re-Examination by Dr Leon Camilleri

Dr Camilleri asked what the innermost component of the reel was.

The witness replied that once the plastic material ends, the only remaining component is the carton or plastic roll. He added that the reels supplied by Brand A and Brand B were practically identical.

Further Question by Dr John Gauci

Referring to Clause 4.11 of the tender document, Dr Gauci quoted:

"1 sterilization reel has to be provided for performance qualification testing which will be undertaken by CSSD at its own expense at evaluation stage".

He asked why no sample had been requested despite the mandatory nature of the clause.

The witness replied that the Committee did not consider it necessary to request a sample.

Final Submissions

Final Submissions by Dr John Gauci (for the Appellant)

Dr Gauci submitted that the rejection resulted from an interpretation that the appellant had failed to offer the requested feature. Clause 2.8 had been interpreted as requiring the expiry date to appear on the inner core.

However, the appellant had answered "Yes" to that requirement. Mr Debono had testified that, had he been specifically asked whether the expiry date also appeared on the core, he would have answered "obviously", given the legal requirements applicable to medical devices.

Furthermore, Clause 4.11 required CSSD, at its own expense, to obtain a sample for testing. Nevertheless, the witness confirmed that no sample had been requested.

Had the sample been examined, the evaluator would have realised that the product complied with the applicable requirements. Accordingly, the exclusion should be overturned, and the appellant readmitted to the procedure.

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

Dr Camilleri argued that the distinction between "core" and "inner carton roll" was an artificial attempt to create doubt regarding the evaluation. Clause 2.8 clearly stated that the expiry date had to be stamped on the inner carton.

The appellant had not understood the requirement when it stated, "expiry date on pouch label". A pouch could never be considered "inner".

The relevant column was entitled "Details on the Offer's Specification for the Respective Requisite", meaning that bidders were required to provide details demonstrating compliance.

The technical offer form was not intended to be corroborated by the sample; rather, the sample was intended to corroborate the technical offer. The appellant expressly declared that the expiry date appeared on the pouch label. Since this fell under Note 3, a rectification could not be requested.

Referring to Clause 4.11, he quoted:

"1 sterilization reel has to be provided for performance qualification testing which will be undertaken by CSSD at its own".

He argued that this related solely to performance qualification testing and not to compliance with other technical requirements. Since, based on the documents submitted, there was no expiry date on the reel, performance testing was unnecessary.

The appellant had declared at submission stage that the expiry date appeared on the pouch. Therefore, the Evaluation Committee's decision should be upheld.

Submissions by Dr Zack Esmail (for the Recommended Bidder)

Dr Esmail submitted that the Evaluation Committee had decided the matter solely on the basis of the documents submitted. The appellant was non-compliant ab initio, and procurement rules do not permit bidders to introduce new information after the closing date.

Accordingly, the Evaluation Board should confirm the Evaluation Committee's decision.

Replica by Dr John Gauci (for the Appellant)

Dr Gauci argued that the case was being presented as though the bidder were non-compliant or attempting to alter a specification by offering something less than what was requested. This was not the case.

The bidder was compliant and had confirmed compliance by answering "Yes", rather than 'No but' had photographs of the product been specifically requested, the matter would have been simpler.

Alternatively, a paid sample or roll should have been requested in accordance with Clause 4.11.

The appellant's product was compliant and should be afforded another opportunity during the evaluation process.

Replica by Dr Leon Camilleri (for the Contracting Authority)

Dr Camilleri observed that reliance on Clause 4.11 had not formed part of the original grounds of appeal.

He further noted that the General Rules provide that the Evaluation Committee is not obliged to seek clarification and may proceed directly to a decision where a product is considered non-compliant.

Conclusion of the Hearing

The Chairperson, Dr Ana Thomas, thanked all parties present and formally concluded the hearing."

The written pleadings as filed by Reactilab Ltd on the 17th April, 2026 (with a stamp dated 19th April, 2026), together with proof of payment of a deposit in the amount of €550, wherein it held as follows:

"Reasoned Letter of Objection by Reactilab Ltd (C 56095) (Tender ID 233525) (hereinafter 'the Objector');

Respectfully submits:

1. <u>Introduction</u>

The present objection arises from the decision of the Contracting Authority to exclude the Objector from the tendering procedure on the basis of alleged technical noncompliance with Specification 2.8 of the Technical Specifications.

By communication dated 10 April 2026, the Contracting Authority notified the Objector of its exclusion, stating as follows:
"Reason for Rejection: Spec 2.8 - Expiry date must be printed or stamped on the inner carton / plastic roll. The bidder stated that expiry date to be printed 'on the pouch label rather than inner*

carton/plastic roll as indicated in the technical offer form. Since the technical offer form falls under Note 3, it is nonrectifiable and therefore, the bid is deemed as technically non-compliant."

The Objector considers that the reasoning reflected in the above indicates a mischaracterisation of the offer and an unduly restrictive reading of the specification in question.
In particular, the evaluation appears to have been carried out on the basis of a strict comparison of terminology, without adequate regard to the actual configuration of the product, the documentation submitted, and the functional purpose underlying the requirement itself.
Unfortunately, this has led to a situation in which a requirement that is, in practice, satisfied has nonetheless been treated as if it were not.

It is important to underline that the Objector's offer was, in all material respects, complete and responsive to the requirements of the tender dossier. The issue which has led to the present exclusion does not concern any deficiency in the product offered, nor does it relate to performance, safety, or compliance with applicable standards.

On the contrary, it seems to arise from the manner in which the placement of the expiry date within the product's packaging was described, and the interpretation subsequently placed on that description by the Contracting Authority.

It is equally relevant to note that the information concerning the labelling of the product was not absent or unclear in substance. The Objector clearly indicated the presence of the expiry date within the packaging of each individual unit and provided supporting documentation to that effect.
The issue raised by the Contracting Authority is not that something was missing, but how the requirement was interpreted.

Indeed, Objector will show that the exclusion of its offer is based on a wrong interpretation of Specification 2.8, a failure to distinguish properly between clarification and rectification, and an approach that is not proportionate when considering the actual nature of the product offered.
In view of the above, the Objector respectfully asks this Honourable Board to review the matter in its proper context, taking into account both the substance of the requirement and the practical realities of the product's packaging and use, and to set aside the decision to exclude its offer.

First Grievance: Misinterpretation and unduly restrictive application of Specification 2.8

The exclusion of the Objector is based exclusively on the Contracting Authority's reading of Specification 2.8, namely that the expiry date was required to be "printed or stamped on the inner carton / plastic roll", and that the Objector's indication in the Technical Offer Form that the expiry date is "on the pouch label" constitutes a deviation from that requirement.

With all due respect, such conclusion proceeds from an interpretation which is unduly narrow and overly formalistic, and which fails to appreciate the actual configuration of the product offered and the practical purpose which the specification is intended to serve.

By its very nature, the product in question is not supplied as a single, isolated unit, but as part of a structured packaging system. Each sterilization reel is individually contained within a pouch which forms part of the inner packaging of the product and which accompanies the reel through storage, handling, and use. It is at this level that the expiry date assumes its real operational significance. The Objector's product clearly provides for the expiry date to be indicated on the label

affixed to each such pouch, thereby ensuring that the relevant information is directly associated with each individual reel and remains visible, accessible, and traceable in practice.

Against this background, the distinction drawn by the Contracting Authority between "inner carton / plastic roll" and "pouch label" is not one which reflects any substantive deficiency in the product or in the information provided, but rather one which arises solely from the terminology used in the Technical Offer Form.

The requirement set out in Specification 2.8 is plainly directed towards ensuring that the expiry date is clearly indicated within the packaging of the product in a manner which guarantees traceability and usability. That objective is fully met in the Objector's offer. The expiry date is present at the level of the immediate packaging associated with each unit, and there is no suggestion that such information is absent, obscured, or otherwise deficient.

The approach taken by the Contracting Authority does not look at whether the requirement was actually met. Instead, it focuses only on a strict comparison of wording, which in this case does not reflect how the product is really packaged.

In these circumstances, the Objector submits that the finding of non-compliance is based on a misunderstanding of the offer and a wrong interpretation of the specification. As a result, an offer has been excluded even though, in practical terms, it meets the requirement. This, with respect, cannot be justified.

Second Grievance: Failure to properly distinguish between clarification and rectification

Even if one assumes, for the sake of argument, that the way the expiry date was described in the Technical Offer Form could have been read differently, the Objector submits that the Contracting Authority should not have moved straight to disqualification without first seeking a clarification.

The exclusion notice relies heavily on the fact that the Technical Offer Form falls under Note 3 and is therefore considered "non-rectifiable". However, this approach confuses rectification with clarification, and applies the former in a situation which clearly falls within the scope of the latter.

In this case, the relevant information was clearly provided. The Objector stated that the expiry date appears on the pouch label and also submitted the corresponding labelling as part of the technical documentation. The issue identified by the Contracting Authority does not arise from missing or incomplete information, but from how that information was described. In other words, this was not a case where something was not submitted, but rather a matter of how the same information was expressed.

A request for clarification in such circumstances would not have entailed any alteration to the substance of the offer, nor the introduction of new elements. It would simply have allowed the Objector to confirm, by reference to the documentation already submitted, that the expiry date is indeed present within the inner packaging of each unit and to explain how the packaging configuration corresponds to the requirement in question.

This is precisely the type of situation in which clarification serves its intended purpose, namely to elucidate and confirm the content of an offer, as opposed to rectification, which would involve modifying it.

By treating the matter as one of automatic non-compliance on the basis of Note 3, the Contracting Authority has effectively erroneously adopted a rigid approach which excludes any possibility of engaging with the substance of the submission. The result is that a point which could readily have been clarified, without prejudice to the integrity of the procedure, has instead been used as a basis for exclusion.

In these circumstances, the Objector submits that the Contracting Authority should have availed itself of the possibility to seek clarification, particularly in view of the fact that the relevant documentation was already in its possession. Its failure to do so has led to an outcome which does not reflect the actual content of the offer and which, for that reason, is vitiated.

Third Grievance: Disproportionate exclusion and failure to assess substantive compliance

The Objector submits that the decision to exclude its offer is disproportionate and does not reflect a proper assessment of the requirement in substance. The issue identified does not relate to the performance, safety, functionality or suitability of the product, but only to how the placement of the expiry date was described in the Technical Offer Form. In practice, the expiry date is clearly shown on each unit, is easily visible, and allows full traceability throughout use.

In these circumstances, the requirement under Specification 2.8 is effectively met. The Contracting Authority, however, has taken a strictly literal approach to the wording used, without considering whether the purpose of the requirement has actually been fulfilled. This leads to a result which does not reflect how the product is used in practice or the objective of the specification.

Public procurement should not focus only on formal wording, but on whether an offer meets the requirements in a real and practical way. Where the requirement is met in substance, and there is no issue in terms of traceability, safety or usability, it is not consistent with the principles of the process to exclude an offer based only on how something is described, when this has no impact on the product itself.

In this respect reference is made to the judgment delivered on the 30th October 2015 by the Court of Appeal (App Nru 281/2015) in the names: Fire-tech Limited (C17901) et v. Dipartiment tal-Kuntratti:

> *Ghalkemm huwa minnu illi, biex tithares it-trasparenza u ma jkunx hemm diskriminazzjoni, ir-regoli ghandhom jitharsu b'mod uniformi u prevedibbli, u ssoéèettivitå u d-diskrezzjonalitå jitnaqqsu kemm jista' jkun, madankol/u I-prinéipju ta' proporzjonalitåjrid illi mhux kull nuqqas ikollu I-istess konsegwenza, iida din ghandha tiddependi mill-gravitå tan-nuqqas u mill-konsegwenzi tieghu, partikolarment jekk jaghtix vantaéä lil min jonqos jewjoh/oqx preéudizzju lil oblaturi ohra.*

In the present case, we have an offer which meets the requirement in all material respects but which has been excluded on a purely formal basis.

In the circumstances, the Objector submits that the decision to exclude its offer is disproportionate, does not reflect a proper assessment of substantive compliance, and should therefore be set aside.

2. Conclusion

In view of the foregoing, it is respectfully submitted that the decision of the Contracting Authority to exclude the Objector's offer is not justifiable, in that: i) it is founded on an interpretation of Specification 2.8 which is unduly restrictive, ii) fails to reflect the substance of the requirement, and iii) does not consider properly the documentation and information actually submitted by the Objector.

The evaluation, as carried out, does not engage with the practical and operational realities of the product offered, nor does it assess whether the requirement jn question has been satisfied in a meaningful and functional manner. Instead, it proceeds on the basis of a rigid comparison of terminology which, in the present circumstances, leads to an outcome that is disconnected from the purpose of the specification and the objectives of the procurement process.

The Objector has demonstrated that the expiry date is clearly indicated within the inner packaging of each individual unit, thereby ensuring full visibility and traceability, and that the requirement underlying Specification 2.8 is therefore satisfied. Thus, it is submitted that the conclusion of non-compliance is accordingly based on a mischaracterisation of the offer and on a failure to distinguish between matters of form and matters of substance.

3. Demands

In these circumstances, the Objector respectfully requests this Honourable Board to:

i. uphold the present objection and declare that the decision of the Contracting Authority to exclude the Objector's offer on the basis of alleged non-compliance with Specification 2.8 is unfounded;
ii. order the setting aside of the said decision;
iii. order that the Objector's offer be re-admitted to the procedure;
iv. recommend that tender is awarded to Objector being the cheapest compliant bidder;
v. order that the deposit paid by the Objector in connection with the present objection be refunded;
vi. grant such further or other remedy as this Honourable Board may deem appropriate in the circumstances.

Objector reserves the right to make further submissions and bring forward evidence and witnesses at the sitting/s set by this Honourable Board for the hearing of this appeal."

The written reply as filed by the Central Procurement and Supplies Unit on the 21st April, 2026 (with a stamp dated 23rd April, 2026) (hereinafter the 'Contracting Authority') wherein it held as follows:

" 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 Reactilab Ltd (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:

"Spec 2.8 - Expiry date must be printed or stamped on the inner carton/plastic roll. The bidder stated that expiry date to be printed 'on the pouch label' rather than inner carton/plastic roll as indicated in the technical offer form. Since the technical offer form falls under Note 3, it is non-rectifiable and therefore, the bid is deemed as technically non- compliant"

The Objector filed an objection based on 3 grounds of appeal.

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

Submissions

On the Introduction

1. *In it's introductory paragraphs the objector states that "The issue which has led to the present exclusion does not concern any deficiency in the product offered, nor does it relate to performance, safety or compliance with applicable standards."*

2. *CPSU rebuts this claim since the product offered was in breach, ex admissis of the technical specification number 2.8 which states that: Expiry date must be printed or stamped on the inner carton/plastic roll.*

3. *The objector was so aware that its product was not in line with the said requirement that that it has felt the need to indicate that the expiry date will be 'on the pouch label'.*

On the First Grievance: Misinterpretation and unduly restrictive application

4. *The objector in this ground of appeal argues that the exclusion of the objector's offer is based on the incorrect interpretation of specification 2.8 and argues that the interpretation adopted fails to appreciate the configuration and use of the offered product and the reason behind such specification.*

5. *CPSU respectfully disagrees with this argument. The specification was very clear and it states that: Expiry date must be printed or stamped on the inner carton/plastic roll.*

6. *The reason for such requirement was imposed since the outer packaging of the reels is not permitted in sterile environments and this it is important that the expiry date is visible on the inner roll, since a reel is used over a span of time;*

7. *Without prejudice to the above CPSU submits that once a specification is published and not contested, the evaluation committee is bound to follow such specifications ad litteram;*

8. *Failing to follow the specifications ad litteram would result in a breach of the principle of self limitation and that of equal treatment of bidders;*

9. *The Court of Appeal in the case Alexis Sciberras vs Direttur tal-Kuntratti et, decided on the 27th of October 2021 quoted Nexans France v. European Joint Undertaking for ITER and the Development of Fusion Energy (T-415/10) decided on the 20th of March 2013 which stated that "It must be borne in mind at the outset that where, in the context of a call for tenders, the contracting authority defines the conditions which it intends to impose on*

tenderers, it places a limit on the exercise of its discretion and, moreover, cannot depart from the conditions which it has thus defined in regard to any of the tenderers without being in breach of the principle of equal treatment of candidates. It is therefore by reference to the principles of self-limitation and respect for equal treatment of candidates that the Court must interpret the tender specifications" (Added emphasis)

10. *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.*

11. *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 expiry date for which it is now objecting;*

12. *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 ghall-Edukazzjoni et, the Court states that:*

> *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 dawk il-kundizzjonijiet. il-kuntratt, Mhux leċitu li l-oblatur ikalli l-proċess għaddej, u wara,jekk jitlef "kompletament jallega li kundizzjoni fis-sejha ma kellhiex tkun hemm għax irrilevanti".*
>
> *Hu veru li l-kundizzjonijiet hemm regolamenti tax-xogħol tal-haddiema huma regolati b'liġijiet oħra, u li jagħtu poter lill-awtorità kompetenti tissindika fuq dawk il-kondizzjonijiet, għall-proċess però, dan kien ikun argument li kellu jitressaq fl-istadju preparatorju parti tal-għażla tal-oblatur preferut. Jekk ir-rekwiżit ta'ftehim kollettiv huwa mill-kundizzjonijiet li kellhom jiġu sodisfatti minn kull oblatur, is-soċjetà appellanti li dak kellha taderixxi ruħha ma' dak rikjest. Din il-Qorti osservat diversi drabi li dak ir-rikjest rikjest fid-dokumenti tas-sejħa għall-offerti jridu jiġu kollha sodisfatti. (Added emphasis)*

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

> *... jekk VBL dehrilha li r-rekwiżit inkwistjoni kien illegali, hija setgħet tattakka dak il-kriterju fl-istadju ta' qabel l-għeluq tas-sottomissjoni mod tal-offerti, u dan bil- kif imsemmi fRegolament 262 Regolamenti dwar l-Akkwist Pubbliku. La hija naqset milli tagħmel hekk, u s-sejħa għall-offerti kienet tobbligaha tressaq kopja tal-«Final or Provisional Acceptance Certificate or equivalent», mela allura, VBL kienet dokumentazzjoni marbuta li tressaq tali dokumentazzjoni, anke jekk dehrilha li dik id- ma kinitx mehtieġa minħabba s-setgħat tal-kumitat tal- evalwazzjoni li jwettaq ilverifiki kollha mehtiega, jew inkella għaliex dak il-kumitat seta'jsib linformazzjoni minn fuq l-internet. (Added emphasis)*

14. For these reason as will be further substantiated of objection during the sitting, this first ground should be rejected.

<u>On the Second Ground of Appeal – Failure to distinguish between clarification and rectification</u>

15. The objector states that the contracting authority should have asked for a rather than immediate disqualification.

16. The technical evaluation committee is well aware about the distinction between clarification and rectification, however in such case where non-compliance evident, a clarification was so would have been futile since the reply to any clarification request would have not changed the position of the expiry date.

17. The General Rules Governing Tenders in clause 16.3 provide that:

Note No rectification 3 in Clause shall be allowed in respect of the documentation as accompanied by 5 of the Instructions to Tenderers. Only clarifications on the shall submitted be allowed information in respect of the latter may be requested. No clarifications where there is no doubt that the submitted technical offer does not comply to the requested specifications. (added emphasis)

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

<u>On the Third Ground of Appeal - Disproportionate substantive exclusion and failure to assess compliance.</u>

19. In this third grievance the objector argues that the decision of CPSU was disproportionate.

20. CPSU requirements respectfully disagrees and submits that if it had to depart from the breaching the of specification 2.8, the Technical Evaluation Committee would be principles of self limitation and equal treatment of bidders.

21. CPSU refers to its submission with reference to the first ground if appeal in this objection, which shall apply equally in defence to this third ground as well.

22. For these reasons, CPSU submit that this third ground of appeal should also be rejected.

CPSU hereby reserve its 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 the of the above decision, the objection lodged by the objector ought to be rejected in full, whilst the decision of the Evaluation Committee confirmed, and the relevant deposit forfeited.
CPSU will however not object hearing to the refund of the deposit if the appeal is withdrawn before the hearing."

The written reply as filed by Medina Healthcare Limited on the 27th April, 2026 (hereinafter the 'Preferred Bidder') wherein it held as follows:

"LETTER OF REPLY

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

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

Whereas, by means of a letter dated 17th April 2026 [submitted 20th April 2026], Reactilab Ltd (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 as follows:-

1. ***Reply No:1 Misinterpretation and unduly restrictive application of specification 2.9***

1.1 The Appellant's first grievance relates to an alleged misinterpretation of provision 2.8, which requires the following

	2.8	Expiry date must be printed or stamped on the inner carton/ lastic roll.	N/A	Mandatory
Extract from tender document				

The grievance is premised on the assertion that substance should prevail over form, and that the Technical Evaluation Committee (hereinafter "TEC") adopted an unduly strict interpretation of the relevant requirement.

1.2 While the Appellant challenges the interpretation adopted, it fails to explain why it did not seek to address this issue either through a request for clarification prior to submission of its offer and/or by availing itself of the precontractual remedies available under Regulation 262 of S.L. 601.03.

1.3 The procurement framework establishes clear and time-bound mechanisms for challenging or seeking clarification of tender conditions, thereby ensuring transparency, legal certainty, and equal treatment among all economic operators. A failure to make use of such mechanisms within the prescribed timeframes renders any subsequent objection procedurally improper.

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

2. ***Reply No: 2 Failure to properly distinguish between clarification and rectification***

2.1 A request for clarification is not a mandatory obligation on any Contracting Authority. Conversely, tenderers are under a duty to ensure that their submissions are compliant ab initio, in accordance with Regulation 62(1) of S.L. 601.03.

2.2 The Appellant appears to expect that the Contracting Authority ought to remedy deficiencies in its offer by requesting clarifications. However, clarifications constitute a discretionary tool which the TEC may, but is not obliged to, utilise where it deems appropriate, necessary, and proportionate.

2.3 In any event, and without prejudice to the above, any clarification would not have altered the outcome of the evaluation. The Appellant's offer was, and remains [irrespective of any clarification process] non-compliant with the tender requirements.

3. Reply No:3 Disproportionate exclusion and failure to assess substantive compliance

3.1 The Appellant characterises the actions of the TEC as "disproportionate" and as failing to "reflect a proper assessment of the requirement in substance." This third grievance is, in essence, a reiteration of the first grievance, seeking to impugn the TEC's decision through an ex post facto reinterpretation of a clearly worded requirement.

3.2 Such an approach is impermissible and should not be entertained at this stage. Any deviation from the established tender requirements would constitute a clear breach of the principle of self-limitation. As previously held by this Honourable Board in Case 1665 of 2021 (27 December 2021):

'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 light of the foregoing, any departure by the TEC from the established evaluation criteria would amount to a breach of this doctrine, as it would necessarily 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 as follows:

A. Misinterpretation and Unduly Restrictive Application of Specification 2.8.

The Appellant in its first grievance attributes its disqualification on the Contracting Authority's reading of Specification 2.8. and their interpretation that the Appellant's indication that the expiry date is *"on the pouch label"* constitutes a deviation from that requirement.

Said interpretation is narrow and overly formalistic in the Appellant's opinion, and further that the product is not a single, isolated unit which forms part of a packaging system i.e. a reel within a pouch, and, that the expiry date assumes its real operational significance on the pouch.

The Contracting Authority on the other hand argues that the specification was very clear when it required the expiry date to be stamped on the inner carton/plastic roll. The reasoning behind this requirement was due to the fact that the outer packaging does not enter a sterile environment where the required reels are used and the expiry dates needs to be visible on the inner roll given that it is used over a period of time. The Contracting Authority further argues that the Appellant should have raised issue with the requirement during the applicable time-frame by using its right of action under Regulation 262 of the Public Procurement Regulations.

The Preferred Bidder likewise argues that the Appellant should have sought to address the issue either by requesting a clarification prior to submitting its offer or by availing itself of the pre-contractual remedies by means of Regulation 262 of the Public Procurement Regulations. The fact that the Appellant participated in the tender meant that the Appellant accepted the tender requirements in their entirety.

This Board understands that the mandatory requirement as set out in the Tender Document is based on operational requirements within the Central Sterile Services Department, and after having seen the wording of the specification deems that it is sufficiently clear that the printing or stamping of the expiry date of the reel must be on the inner roll. There is absolutely no doubt that only one inner roll exists in this type of product, and further no doubt that the Appellant's product does not satisfy this specification but features the expiry date on the pouch within which the roll is found. Therefore, it follows that the Tender Evaluation Committee correctly regarded the Appellant's bid as technically non-compliant.

Regarding the Appellant's failure to utilise the remedy available to it under Regulation 262 of the Public Procurement Regulations, this Board has pronounced itself on this matter on numerous occasions, referring to copious jurisprudence on the matter which has been constant throughout the years. Regulation 262(1)(d) in particular caters for the remedy available to prospective tenderers to remove ambiguities of a particular clause included in a call for competition. The fact that the Appellant participated in the procurement process and submitted its bid without having first ironed out any issue it may have had with the positioning of the printed or stamped expiry date, essentially meant that it was accepting this requirement as is. This Board deems that it is now futile to argue that the expiry date on the pouch should be considered as enough, because in terms of the Tender Document it is definitely not enough.

For completeness sake, this Board 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 milqugħ u dan għal diversi raġunijiet.* ***Qabel xejn, din ilQorti sejra tissottolinja xi prinċipji korollari li għandhom jiġu meqjusa flisfond fattwali ta' dan il-każ.*** *Awtorità kontraenti mhijiex mogħtija l-jedd li tbiddel jew timmodifika l-kriterji tal-għoti ta' kuntratt matul il-proċedura talgħotja (vide Każ - 278/14 SC Enterprise Focused Solutions SRL vs. Spitalul Judeţean de Urgenţă Alba Iulia deċiż mill-Qorti tal-Ġustizzja tal-Unjoni Ewropea fis-16 ta' April, 2015).*

20. Daqskemm awtorità kontraenti ma tistax twarrab offerta fuq raġunijiet li ma jkunux previsti fid-dokument tas-sejħa (vide Labo-Pharm Ltd v. Il-Kummissarju tal-Pulizija nomine et deċiża mill-Qorti tal-Appell fid-29 ta' Marzu, 2019), daqstant iehor ma tistax min-naha l-oħra taċċetta offerta li ma tkunx toqgħod ma' dak mitlub fis-sejħa (vide Projekte Global Limited v. Ministru Għal Għawdex et deċiża mill-Qorti tal-Appell fis-16 ta' Lulju, 2018).

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

22. Fil-każ odjern, l-awtorità kontraenti ħarġet sejħa bi speċifikazzjonijiet partikolari. L-appellanta ġiet mitluba tagħmel kjarifika fil-15 ta' Lulju 2025 u dan sabiex tikkorrabora l-offerta teknika tagħha. Madanakollu, fit-tweġiba tagħha, l-appellanta naqset li tipprovdi spjegazzjoni li l-istandard mehtieġ kien ser jintlaħaq. Huwa inutli li jiġi argumentat li dak l-istandard ma kienx japplika għal prodott iżda għal bini u għalhekk ġie skartat mill-appellanta. ***Li kellha tagħmel l-appellanta semmai kien li tieħu l-passi li kellha a dispożizzjoni tagħha ai termini tarregolament 262 tal-Leġislazzjoni Sussidjarja 601.03.***

This Board, having seen the mandatory status of Specification 2.8. (the printing of the expiry date on the inner carton/plastic roll), the fact that the Appellant's product does not have this feature, and the the fact that the Appellant did not utilise the remedy available to it under Regulation 262 of the Public Procurement Regulations, finds that the Tender Evaluation Committee was correct in deciding to exclude the Appellant's bid after determining that it is technically non-compliant.

Therefore, the Appellant's grievance is being rejected.

B. Failure to Properly Distinguish between Clarification and Rectification

In this grievance, the Appellant argues that the Contracting Authority should not have immediately decided on disqualifying the Appellant's bid without first requesting a clarification, and that the exclusion relies on the fact that the Technical Offer Form is non-rectifiable and falls under Note 3, whereas in this circumstance a clarification of already submitted information could have been sought.

The Contracting Authority countered that a clarification would have been futile as non-compliance was self-evident and that Rule 16.3. of the General Rules Governing Tenders states that *"No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications."*

The Preferred Bidder further argues that requests for clarifications are not mandatory, they are a discretionary tool to be utilised where deemed appropriate, necessary and proportionate rather than to remedy the Appellant's deficiencies.

This Board, having seen Rule 16.3. of the General Rules Governing Tenders v.10[1], having seen the entirety of the Tender Document, the Appellant's bid and the acts as compiled before this Board, determines that the Tender Evaluation Committee was not incorrect in arriving at the conclusion that the Appellant's bid is technically non-compliant due to the positioning of the expiry date, neither was it incorrect in not asking for a clarification on the information submitted, as the fact that the Appellant's product was lacking the expiry date on the inner carton/plastic roll was sufficiently clear requiring no clarity. In other words, for the Appellant to succeed, it would have needed to rectify not only the Technical Offer Form but also offer a different product altogether, featuring the expiry date printed or stamped on its inner roll (which roll may be made of plastic or carton). This Board holds that this decision by the Tender Evaluation Committee is correct in the circumstances.

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

C. Disproportionate Exclusion/Failure to Assess Substantive Compliance

The Appellant argues that the decision to exclude the Appellant's bid is a disproportionate one which does not reflect a proper assessment of the requirement in substance. The Appellant argues further that the Contracting Authority has taken a strictly literal approach to the wording of the requirement when the requirement is effectively met. The Contracting Authority, and effectively the Preferred Bidder, countered that had the Tender Evaluation Committee departed from the requirement as stipulated in Specification 2.8., it would have breached the principle of self-limitation.

This Board agrees with the Contracting Authority and the Preferred Bidder on this point, that the Tender Evaluation Committee did absolutely nothing untoward when it determined that the Appellant's product is technically non-compliant due to the expiry date not being featured in the position where it was requested. An interpretation other than this 'strict' interpretation would have breached the principle of equality between economic operators and would have run contrary to the principle of self-limitation.

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 Reactilab Ltd in its entirety.

The Board further decides not to re-imburse the deposit paid by Reactilab Ltd.

Dr Ana Thomas	**Dr Maria Cardona**	**Mr Lawrence Ancilleri**
Chairperson	**Member**	**Member**

Friday 26th June, 2026.

[1] Page 17: "Only clarifications on the submitted information in respect of the latter may be requested. No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications."