BEFORE THE PUBLIC CONTRACTS REVIEW BOARD

Mediterranean Protection Solutions Limited (C 48030) (TID 000242568) (Hereinafter 'Objector')

vs.

(i) **Sectoral Procurement Directorate** (Hereinafter 'Contracting Authority')

and

(ii) **Apco Limited (TID 000242578)** (Hereinafter 'Recommended Tenderer')

Re: SPD5/2026/012 SUPPLIES – TENDER FOR THE SUPPLY AND DELIVERY OF FOUR (4) X-RAY MACHINES FOR THE COURT SERVICES AGENCY

Reasoned Objection by Mediterranean Protection Solutions Limited (C 48030) (TID 000242568);

Respectfully submits:

A. Decision under objection and scope of this objection

1. By letter dated 10 July 2026, the Contracting Authority informed the Objector that its offer had been found technically non-compliant due to "the absence of a clear Yes or No response in the Technical Offer Form in Item 59 – X-Ray Machine 2: Infeed Rollers (Front)". No other ground of administrative or technical non-compliance was identified in the regret letter.

2. The same notification stated that the procurement was recommended for award to APCO Limited for €152,811.72 excluding VAT. The Objector had submitted a price of €120,524.00 excluding VAT and was the lowest-priced tenderer.

3. The Objector accepts that Item 59 was inadvertently left without a tick in either box. It did not answer "No", propose an alternative, qualify its offer or reserve a right to exclude the relevant roller. This was one isolated clerical omission in a seven-page Technical Offer Form containing sixty-five items.

4. The Objector does not seek to add a new product, accessory, quantity, price, specification, document or technical solution after the deadline. Its case is that the inclusion and acceptance of the front roller for Machine 2 were already objectively ascertainable from the tender submitted before closing. A clarification would merely have made express what the original offer, read as a whole, already contained.

5. This distinction is decisive. Note 3 prohibits rectification but expressly permits clarification of submitted information. The Contracting Authority treated the omission as if nothing within the submitted offer answered the question. That conclusion is inconsistent with the structure and contents of the Objector's offer and with the principles laid down by the Court of Appeal in its Superior Jurisdiction.

B. The tender and the Objector's submitted offer

1. The subject of the tender was the supply, delivery, installation and commissioning of four X-ray machines, including the dismantling and disposal of four existing machines for the Court Services Agency.

2. Clause 3.1 of Section 1 made the procurement indivisible. It provided in unequivocal terms:

3. *"This tender is not divided into lots, and tenders must be for the whole of the quantities indicated. Tenders will not be accepted for incomplete quantities."*

4. The reason given for the indivisible contract was that one supplier was required to ensure technical compatibility, consistent performance, unified maintenance and clear responsibility for the security screening systems across the Court facilities.

5. Section 3 was itself marked Note 3. It stated that all offers submitted under the tender were to comply with the technical requirements set out therein. Article 24.2 of the Special Conditions further provided that the supplies were to be complete in all aspects and satisfy Section 3.

6. Section 3 required four front infeed roller sets and four rear outfeed roller sets. The front infeed roller specification for Machines 1, 2, 3 and 4 was the same: one set measuring 110 cm × 71 cm, positioned before the scanner tunnel to allow convenient loading and steady movement into the X-ray system.

7. The rear outfeed roller specification for Machines 1, 2 and 3 was also the same: one set measuring 210 cm × 71 cm. The rear roller for Machine 4 was one set measuring 110 cm × 71 cm.

8. The Objector offered four machines of one and the same brand and model, namely ASTROPHYSICS INC. XIS-6040.

9. In Items 57 to 64 of the Technical Offer Form, the Objector expressly confirmed "Yes" for seven of the eight roller sets. In particular, it confirmed "Yes" for the front infeed

rollers of Machines 1, 3 and 4, all having exactly the same description and dimensions as the front infeed roller for Machine 2. It also confirmed "Yes" for every rear roller, including Machine 2's rear roller.

10. Only Item 59 was left unticked. There is no "No" response and there is nothing anywhere else in the tender suggesting that Machine 2 was to be supplied without the same front infeed roller confirmed for the other three machines.

11. The manufacturer's literature submitted with the offer identified "Entry/Exit Roller Tables" as an available feature of the offered XIS-6040. It confirms that the offered model could be configured with the required tables. It is relied upon only as corroborative capability evidence, not as the sole proof of the accepted quantity or price.

12. The Financial Bid Form required one unit rate for each complete X-ray system. It did not contain separate price lines for individual front or rear rollers. The Objector quoted €30,131.00 per system for four systems, producing a single and unqualified total of €120,524.00 excluding VAT.

13. The Objector did not enter a nil rate for Machine 2's front roller, deduct its value, reserve a further payment or qualify the total price. The submitted price was for the whole indivisible quantity and configuration required by the tender.

14. Article 3.1 of the Special Conditions placed the Contracting Authority's technical specifications above the Contractor's technical offer in the order of precedence. This is not invoked as a substitute for completing the Technical Offer Form. It is, however, further confirmation that the Objector's unqualified offer for the whole contract could not reasonably be interpreted as excluding one mandatory front roller.

C. The omission did not leave the substance of the offer open

1. The Evaluation Committee was required to read the tender as a whole. Item 59 did not exist in a vacuum. It formed part of eight consecutive and interrelated roller entries within an indivisible offer for four machines of the same make and model.

2. The documents submitted by the deadline fixed the answer to Item 59. The Objector had tendered for the complete quantity; accepted every other roller requirement; accepted the identical front roller requirement three times; accepted Machine 2's rear roller; offered an identical scanner model for all four machines; and submitted one unqualified lump-sum price.

3. There was no commercial or technical choice left for the Objector to exercise after opening. It could not use a clarification to select between two products, change the dimensions, increase the price or add an accessory not previously included. The only clarification consistent with the original tender was that Item 59 was intended to read "Yes".

4. The decision instead attributes a substantive negative meaning to a blank box notwithstanding that the Objector did not tick "No" and notwithstanding every objective indication to the contrary. It effectively interprets the tender as an offer for three complete machines and one machine without a front roller, even though incomplete quantities were expressly prohibited and no such qualification appeared in the offer.

5. The issue is therefore not whether a bidder may supply genuinely missing technical information after closing. It may not. The issue is whether the requested confirmation was already present, by necessary and objective implication, in the information submitted before closing. On these particular facts, it was.

D. Applicable legal principles

1. The contract notice records that the procedure is governed by Directive 2014/24/EU. Article 18(1) of that Directive provides:

2. *"Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner."*

3. The Objector accepts the principles of equal treatment, transparency and self-limitation. A contracting authority cannot waive a mandatory requirement for one tenderer or permit an offer to be changed after opening. Those principles, however, do not require the authority to disregard information actually submitted or to impose exclusion where a limited clarification would not alter the offer or confer any competitive advantage.

4. The proportionality assessment requires attention to the nature of the omission, whether the substantive information already exists, whether the offer would remain unchanged, whether the tenderer could gain any unfair choice or advantage and whether exclusion is necessary to protect the procurement process.

5. The tender itself preserves the distinction between the two procedures. Note 3 states: "No rectification shall be allowed. Only clarifications on the submitted information may be requested." The words "submitted information" therefore require the whole submission to be examined, not merely the empty space in one particular row.

6. A rectification would introduce or correct something not objectively contained in the original tender. A clarification explains, identifies or confirms something already contained in it. The Objector's grievance falls within the latter category.

E. Applicable jurisprudence

1. Reference is made to *Katari Holdings Limited illum magħrufa bħala Plan Property Holdings Limited (C70860), Golden Care Limited (C-89549) u Katari Developments*

Limited illum magħrufa bħala Plan Developments Limited (C89550) formanti l-Joint Venture Katari Hospitality JV v Malta Investments & Economic Advisory Ltd. (C10175) bħala suċċessur ta' Malta Strategic Partnership Projects Limited (C-64764) wara amalgamazzjoni; Benny Ltd (C65709) u Eden Leisure Group Limited (C4529) bħala formanti l-Joint Venture Valletta Luxury Projects; u European School of English Limited (C19714) bħala membru ta' Iconic Hotel Malta – Nobu Consortium, Court of Appeal (Superior Jurisdiction), Appell Ċivili 119/2026/1, decided on 25 June 2026 by the Chief Justice Mark Chetcuti, Mr Justice Christian Falzon Scerri and Madam Justice Josette Demicoli.

2. At paragraph 81 the Court stated the rule in terms which directly address this objection:

> *"Kemm hu hekk, huma ħafna l-każijiet li fihom ingħad li fejn il-kumitat tal-evalwazzjoni jkun jista' jikseb jew jislet l-informazzjoni rilevanti minn parti oħra tal-offerta, il-kumitat tal-evalwazzjoni m'għandux iwarrab offerta għas-sempliċi raġuni li l-informazzjoni ma tkunx ingħatat f'dik il-parti preċiża li tintalab, jew inkella fil-forma eżatta kif mitluba (ara Europharma Limited v. Central Procurement and Supplies Unit et mogħtija mill-Qorti tal-Appell fid-29 ta' Jannar, 2026, u Bonnici Bros. Projects Ltd et v. Onor. Ministru għas-Saħħa noe et mogħtija mill-Qorti tal-Appell fit-30 ta' Lulju, 2018)."*
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> *Katari Holdings et, App. Ċiv. 119/2026/1, para. 81, pp. 28–29.*

3. Indeed, *Katari Holdings* holds that the Evaluation Committee must obtain or infer relevant information from another part of the offer rather than exclude merely because it was not placed in the precise field or exact form requested. Here the relevant answer is inferable from, and fixed by, seven neighbouring roller confirmations and the rest of the original offer.

4. Reference is also made to *Europharma Limited (C1822) v (i) Central Procurement and Supplies Unit fi ħdan il-Ministeru għas-Saħħa u l-Anzjanità Attiva; (ii) Dipartiment tal-Kuntratti; u (iii) Associated Equipment Limited (C9340) għal kull interess li jista' jkollha, Court of Appeal (Superior Jurisdiction)*, Appell Ċivili 445/2025/1, decided on 29 January 2026 by the Chief Justice Mark Chetcuti, Mr Justice Robert G. Mangion and Madam Justice Simone Grech.

5. *Europharma* concerned a Note 3 Technical Offer Form in which the mandatory fields for brand, model number and catalogue reference had been left completely blank. The information nevertheless appeared elsewhere in the tender submitted before closing. At paragraph 29 the Court held:

> *"Issa fil-każ odjern, it-Technical Offer Form ma kellhiex inserita l-informazzjoni meħtieġa u ċjoè ma kien hemm imniżżel xejn fit-tabella ntitolata 'Brand', 'Model Number' u 'Catalogue Reference'. Dawn il-partijiet mill-formula tħallew kompletament vojta mis-soċjetà appellanta. Madankollu, fil-każ odjern ma jistax*

jiġi injorat il-fatt li l-informazzjoni li kienet nieqsa fit-Technical Offer Form kienet tinsab preżenti fl-offerta magħmula, peress li kienet tinsab fid-Declaration of Conformity Amendment. Għalhekk, fil-każ odjern, ma kienx hemm sitwazzjoni fejn li kieku ntalbet kjarifika, kienet ser tkun qed tintalab informazzjoni ġdida. L-informazzjoni ġa kienet hemm preżenti iżda kienet inserita f'parti oħra tal-offerta u mhux fit-Technical Offer Form. Għalkemm huwa rekwiżit mandatorju li tali informazzjoni tingħata proprju fit-Technical Offer Form (u din ma ngħatatx f'dik il-formula), il-proċedura tal-kjarifika setgħet f'dan il-każ tiġi utilizzata, għaliex fir-realtà ma kienet ser tiżdied l-ebda informazzjoni ġdida f'din l-offerta, sempliċiment kien ser jiġi ċċarat fejn l-informazzjoni rikjesta kienet tinsab."

Europharma, App. Ċiv. 445/2025/1, para. 29, pp. 13–14.

6. At paragraphs 35 and 36, the Court applied proportionality to the information contained elsewhere in the original offer:

"35. Din il-Qorti tqies li l-għan ewlieni wara s-sejħa għall-offerti de quo agitur ma kinitx li l-Awtorità kontraenti toqgħod tfettaq u tfittex ix-xagħra fl-għaġina sabiex telimina l-konkorrenza. L-iskop wara din il-proċedura kien sabiex l-awtorità kontraenti takkwista 2 mobile therapeutic machines with reduced environmental impact bl-orħos prezz. L-iskwalifika tas-soċjetà appellanta minħabba li l-isem tal-manifattur u l-model number ġew indikati fid-Declaration of Conformity Amendment u mhux ukoll fit-Technical Offer Form mhijiex meħtieġa biex titħares il-kompetizzjoni ġusta ġaladarba tali informazzjoni ġa kienet ingħatat f'dik l-offerta. In oltre, il-fatt li l-informazzjoni kienet kontenuta fid-Declaration of Conformity Amendment minflok fit-Technical Offer Form ma kienx jaffetwa s-sustanza tal-offerta ta' Europharma Limited kif ukoll lanqas ma kien jagħti xi vantaġġ lil Europharma Limited fuq l-oblaturi l-oħra. Lanqas ma kellu impatt fuq l-awtorità kontraenti. Fil-fehma ta' din il-Qorti, l-iskwalifika tal-offerta tas-soċjetà appellanta fuq raġuni bħal din, hija miżura sproporzjonata meta wieħed iqis li jekk din tiġi attwata, din tista' twassal biex jintilef l-għan ewlieni tas-sejħa li l-kuntratt jingħata lil min għamel l-orħos offerta. Infatti, il-prezz offrut mis-soċjetà appellanta kien ta' €243,287.44 mentri dak offrut minn Associated Equipment kien ta' €384,321.71.

36. Għalhekk fil-fehma tal-Qorti ma jkunx qiegħed jitħaddem il-prinċipju tal-proporzjonalità jekk offerta vantaġġuża tiġi mwarrba għas-sempliċi fatt li l-informazzjoni rikjesta kienet ingħatat f'parti oħra tal-offerta u mhux fil-parti fejn kellha tiġi nserita. Is-sitwazzjoni kienet tkun ferm differenti li kieku din l-informazzjoni ma kinitx tirriżulta minn imkien fl-offerta magħmula, liema sitwazzjoni ma tirrispekkjax il-fatti li għandha quddiemha din il-Qorti."

Europharma, App. Ċiv. 445/2025/1, paras. 35–36, pp. 16–18.

7. The Court allowed the appeal, revoked PCRB Case 2164, annulled the exclusion and award, and ordered the tender to be reinstated. The operative part states:

"Għaldaqstant għal dawn ir-raġunijiet, il-Qorti qiegħda tilqa' l-appell billi (i) tordna t-tħassir u r-revoka tad-deċiżjoni tal-Bord ta' Reviżjoni dwar Kuntratti Pubbliċi f'każ 2164 tal-14 ta' Ottubru 2025; (ii) tilqa' l-oġġezzjoni ntavolata minn Europharma Limited fl-1 ta' Settembru 2025; (iii) tordna t-tħassir tal-iskwalifika ta' Europharma Limited u l-għoti tal-kuntratt lill-Assiciated Equipment Limited, kif imfissra mid-Dipartiment tal-Kuntratti bid-deċiżjoni tat-22 ta' Awwissu 2025. Minflok il-Qorti qiegħda tordna li l-atti għandhom imorru lura għand id-Dipartiment tal-Kuntratti sabiex dan jerġa' joħroġ aġġudikazzjoni ġdida, wara li jerġa' jdaħħal lura l-offerta ta' Europharma Limited."

Europharma, App. Ċiv. 445/2025/1, decision, p. 18.

8. *Europharma* directly answers the proposition that a blank field in a Note 3 Technical Offer Form must invariably lead to exclusion. The Court held otherwise where the information already existed elsewhere in the original tender. The present facts are, if anything, more tightly connected: the identical front roller was expressly accepted three times in the same sequence of the same Technical Offer Form, seven of the eight interrelated roller entries were accepted, and the whole indivisible quantity was offered at one unqualified price.

9. Reference is also made to the judgment of the Court of Appeal in its Superior Jurisdiction in *Krypton Chemists Limited (C-8933) v Central Procurement and Supplies Unit u Cherubino Limited (C-3677),* Appell Ċivili 322/2025/1, decided on 13 November 2025 by the Chief Justice Mark Chetcuti, Mr Justice Christian Falzon Scerri and Madam Justice Josette Demicoli.

10. At paragraphs 23 and 24, the Court explained the balance between strict compliance and proportionality:

"23. Din il-Qorti tagħraf li kwistjoni marbuta mal-iskwalifika ta' offerti pubbliċi hija waħda li titlob bilanċ delikat bejn fuq in-naħa l-waħda l-ħarsien tal-prinċipji ta' trasparenza, trattament indaqs u konformità mal-kundizzjonijiet tas-sejħa u fuq in-naħa l-oħra t-tħaddim tal-kunċett tal-proporzjonalità ta' dawn il-prinċipji sabiex b'hekk ma jiġux imfixkla u mxejna l-kompetizzjoni ġusta u l-għan ewlieni li jinkiseb l-aħjar akkwist.

24. Il-ġurisprudenza Maltija u Ewropea f'dan il-qasam ittenni li l-awtoritajiet kontraenti għandhom jimxu b'mod strett mal-kundizzjonijiet stabbiliti fid-dokumenti tas-sejħa, iżda fl-istess waqt għandhom jikkunsidraw ukoll il-gravità tan-nuqqas u l-effett tiegħu fuq il-kompetizzjoni. Ifisser dan li l-awtorità kontraenti għandha d-dmir li tiddistingwi bejn irregolaritajiet formali u dawk sostanzjali. Irregolarità minuri, bħalma huma żbalji klerikali jew nuqqasijiet li ma jolqtux il-

kompetizzjoni ġusta, jistgħu jiġu msewwija taħt il-prinċipju tal-proporzjonalità, sakemm dan ma jwassalx għal vantaġġ kompetittiv mhux xieraq."

Krypton, App. Ċiv. 322/2025/1, paras. 23–24, pp. 9–10.

11. At paragraph 29, the Court defined clarification and its lawful limits:

"Kjarifika hija l-azzjoni li permezz tagħha l-awtorità kontraenti tista' titlob spjegazzjoni jew interpretazzjoni fuq informazzjoni li tkun diġà ġiet sottomessa mal-offerta. Naturalment il-proċedura tal-kjarifika ma tistax tintuża biex dak li jkun idaħħal informazzjoni ġdida jew biex ibiddel is-sustanza tal-offerta. Il-Qorti tal-Appell fis-sentenza Rockcut Limited v. Direttur Ġenerali tad-Dipartiment tal-Kuntratti deċiża fil-25 ta' Ġunju, 2018 stabbiliet li ma tistax tingħata kjarifika ta' tagħrif li ma jkunx ingħata għaliex il-kjarifika sservi biss biex tagħmel aktar ċar tagħrif li jkun diġà mogħti iżda li ma huwiex ċar biżżejjed. Kif ingħad fis-sentenza Steelshape Ltd v. Direttur tal-Kuntratti deċiża fis-7 ta' Awwissu, 2013, dak li offerent għandu jgħid, għandu jgħidu mal-offerta u mhux jippretendi li jkun mistoqsi d-dettalji tal-modus operandi tiegħu. Kjarifika, għalhekk hija limitata għal spjegazzjoni ta' elementi diġà preżenti fl-offerta, mingħajr ma tinbidel il-kompożizzjoni tagħha."

Krypton, App. Ċiv. 322/2025/1, para. 29, pp. 12–13.

12. The Court then applied that distinction to information which, although defective in one place, already appeared in other parts of the technical offer. Paragraphs 33 and 34 state:

"33. Terġa' u tgħid, it-tibdil tat-tikketta b'waħda aktar ċara u leġibbli ma kien ħa jbiddel xejn mill-kontenut tal-offerta ta' Krypon. Dan għaliex il-karatteristiċi tal-prodott offrut minn Krypton kien diġà provdut f'partijiet oħra tal-offerta teknika. Mhux hekk biss, għad li l-istampa oriġinali tat-tikketta kienet imżellġa sew, dan ma jfissirx li t-tagħrif imniżżel fit-tikketta ma seta' jinqara xejn. Bi ftit sabar, wieħed jista' jiddeċifra x'hemm mitkub fuq l-istampa, speċjalment jekk wieħed ikabbar l-istampa permezz ta' zooming. B'hekk il-kumitat tal-għażla kieku jrid jista' jqabbel ukoll jekk l-istampa l-ġdida li għandha tkun ċara u leġibbli għandhiex l-istess kontenut bħall-istampa oriġinali li kienet imżellġa.

34. F'dawn iċ-ċirkostanzi, din il-Qorti qiegħda tasal għall-fehma li l-iskwalifika ta' Krypton għar-raġunijiet biss li din provdiet tikketta li ma kinitx ċara hija waħda ħażina għaliex il-kumitat tal-għażla kellu jagħtiha l-opportunità tippreżenta stampa tat-tikketta aktar ċara u leġibbli permezz tal-proċedura tal-kjarifika. B'żieda ma' dan, din il-Qorti tqis ukoll li hija miżura sproporzjonata li twarrab offerta minħabba nuqqas li ma kellu ebda effett prattiku, aktar u aktar meta tqis illi l-iskop tal-eżerċizzju huwa li jinkiseb l-aħjar u l-orħos servizz f'kondizzjoni ta' ugwaljanza bejn oblatur u ieħor."

Krypton, App. Ċiv. 322/2025/1, paras. 33–34, pp. 14–15.

13. The Court allowed the appeal, annulled the PCRB decision, the exclusion and the award, and ordered reintegration and clarification. The operative part reads:

"Għaldaqstant għal dawn ir-raġunijiet, il-Qorti qiegħda tilqa' l-appell ta' Krypton Chemists Limited billi tħassar is-sentenza tal-Bord ta' Reviżjoni dwar Kuntratti Pubbliċi, tħassar l-iskwalifika ta' Krypton Chemists Limited u tħassar ukoll l-għoti tal-kuntratt lil Cherubino Limited. Minflok il-Qorti qiegħda tordna li l-atti għandhom imorru lura għand l-awtorità kontraenti sabiex din terġa' toħroġ aġġudikazzjoni ġdida, wara li terġa' ddaħħal lura l-offerta ta' Krypton Chemists Limited u tagħtiha l-opportunità li tiċċara l-offerta tagħha billi tibdel l-istampa tat-tikketta mżellġa li għaddiet mal-offerta tagħha bi stampa oħra."

Krypton, App. Ċiv. 322/2025/1, decision, p. 16.

14. The principle emerging from *Krypton* is not that Note 3 may be ignored. It is that a defect may be clarified when the unchanged substantive information is already found elsewhere in the submitted technical offer and the clarification gives no advantage and changes nothing. That is precisely the Objector's case.

15. An especially close analogy is found in *Ballut Blocks Services Limited (C-8360) v (1) Onorevoli Ministru għar-Riżorsi u l-Affarijiet Rurali et; (2) Direttur tal-Kuntratti; u (3) C & F Building Contractors Limited u Schembri Infrastructures Limited eżerċenti l-kummerċ bl-isem ta' Aquatics Joint Venture, Court of Appeal (Superior Jurisdiction), Appell Ċivili 440/2012/1*, decided on 31 May 2013 by the Chief Justice Silvio Camilleri, Mr Justice Giannino Caruana Demajo and Mr Justice Noel Cuschieri.

16. In *Ballut Blocks* the price was missing from the required Tender Form. The Court nevertheless held that exclusion was disproportionate because the price was objectively determinable from the Bills of Quantities forming part of the same offer. At paragraphs 19 to 25 it held, inter alia:

"19. Il-qorti tagħraf is-siwi tas-sottomissjonijiet ta' Aquatics fis-sens illi ħarsien kostanti, uniformi u skrupluż tal-kondizzjonijiet tas-sejħa għal offerti iwassal għal trasparenza, ċertezza u prevedibilità tad-deċiżjonijiet kif ukoll inaqqas il-marġini ta' arbitrarjetà. Madankollu, tagħraf ukoll illi għandha qabel xejn tara x'inhu l-għan ewlieni tas-sejħa għal offerti għax ma' dan għandha tkejjel il-proporzjonalità tal-miżuri meħuda biex jinkiseb.

20. Ma tistax ma taqbilx mas-sottomissjoni ta' Ballut illi l-għan tas-sejħa għal offerti huwa illi l-kuntratt jingħata lil min jagħmel l-orħos u l-aħjar offerta: "32.2.The contract will be awarded to the cheapest priced tender satisfying the administrative and technical criteria."

21. Għandu jingħad ukoll illi għan ieħor tal-proċedura għal sejħa pubblika għal offerti huwa illi titħares il-kompetizzjoni ħielsa biex ebda oblatur ma jingħata vantaġġ inġust fuq ħaddieħor."

Ballut Blocks, App. Ċiv. 440/2012/1, paras. 19–21, pp. 10–11.

"23. Il-qorti ma tarax illi huwa meħtieġ biex jinkiseb il-għan mixtieq illi tiġi skwalifikata l-offerta ta' Ballut, u dan għal żewġ raġunijiet. Qabel xejn, il-prezz indikat fl-offerta ma huwiex neċessarjament finali. Finali jkun il-prezz li jinħadem mill-bills of quantities, li, kif tixhed il-klawsola 31.2, jista' ma jkunx jaqbel ma' dak indikat fl-offerta. Għalhekk, it-trasparenza li toħroġ mal-ftuħ tal-offerti tista' tkun illużorja, u l-ħtieġa għaliha għalhekk ma hijiex daqstant impellenti.

24. It-tieni raġuni hija illi Ballut ma kisbet ebda vantaġġ kompetitiv bin-nuqqas tagħha. Li kieku kien possibbli li tikseb dak il-vantaġġ, il-qorti kienet tasal biex tgħid illi l-iskwalifika hija neċessarja biex titħares il-kompetizzjoni ġusta, iżda ma ntwera ebda mod kif Ballut setgħet kisbet xi vantaġġ b'dak li għamlet jew, aħjar, b'dak li naqset li tagħmel.

25. Fil-fehma tal-qorti, għalhekk, mhux biss l-iskwalifika ma kinitx meħtieġa biex jinkisbu l-għanijiet tas-sejħa għal offerti, fosthom il-ħarsien tal-kompetizzjoni ġusta, iżda anzi wasslet biex jista' jintilef il-għan li l-kuntratt jingħata lil min għamel l-orħos offerta. Għal din ir-raġuni l-qorti hija tal-fehma illi l-iskwalifika tal-offerta ta' Ballut ma kinitx miżura proporzjonata."

Ballut Blocks, App. Ċiv. 440/2012/1, paras. 23–25, pp. 10–11.

17. At paragraph 28 the Court added:

"Għalkemm, kif sewwa tgħid Aquatics, iċ-ċirkostanzi fil-każ tallum ma humiex identiċi, hemm xebh biżżejjed biex il-qorti tista' tgħid illi meta hemm mezz, taħt il-klawsola 31.2 tal-kondizzjonijiet tas-sejħa, biex jiġi msewwi żball ovvju li ma ta ebda vantaġġ kompetitiv, għamel sew il-kumitat ta' evalwazzjoni illi sewwa dak l-iżball, u għamel ħażin il-Bord ta' Reviżjoni li sab illi l-offerta ta' Ballut ma kinitx tiswa."

Ballut Blocks, App. Ċiv. 440/2012/1, para. 28, p. 11.

18. *Ballut Blocks* is important because a mandatory entry was absent from the particular form, yet its answer could be determined objectively from another document within the original offer. The Court refused to treat the empty field in isolation. Here, similarly, the answer to Item 59 is objectively determined by the indivisible quantity,

the seven related confirmations, the identical front roller descriptions and the unqualified total price.

19. In *Rockcut Limited (C10164) v Id-Direttur Ġenerali tad-Dipartiment tal-Kuntratti; l-Awtorità dwar it-Trasport f'Malta; u RM Construction Limited (C60040)*, Court of Appeal (Superior Jurisdiction), Appell 49/2018, decided on 25 June 2018 by the Chief Justice Joseph Azzopardi, Mr Justice Giannino Caruana Demajo and Mr Justice Noel Cuschieri, the entire technical questionnaire was missing and was subject to Note 3.

20. The Court held that the decisive factual inquiry was whether the information requested in the missing questionnaire had already been submitted elsewhere. At paragraphs 14 to 16 it stated:

> *"14. Jekk tassew it-tagħrif mogħti fit-technical questionnaire jinsab f'partijiet oħra tal-offerta, u ma jżid xejn aktar, mela s-sanzjoni li titwarrab l-offerta għax ma ntbagħatx il-questionnaire tkun waħda sproporzjonata fiċ-ċirkostanzi, għax in-nuqqas ikun biss wieħed formali u mhux ta' sostanza. Billi jitħalla li jinġieb il-questionnaire ukoll wara li jkunu nfetħu l-offerti ma jagħti ebda vantaġġ kompetitiv lill-oblatur għax b'hekk ma jkun qiegħed jinbidel jew jiżdied xejn fl-offerta, u ma tkun qiegħda ssir ebda diskriminazzjoni kontra l-oblaturi l-oħra.*
>
> *15. Jekk, min-naħa l-oħra, fit-tweġibiet għall-questionnaire jingħata tagħrif jew jingħataw impenji li ma jkunux ingħataw f'partijiet oħra tal-offerta, mela jekk jitħalla li jippreżenta l-questionnaire wara li jkunu nfetħu l-offerti l-oblatur ikun qiegħed jitħalla jibdel jew iżid mal-offerta oriġinali tiegħu, u b'hekk jingħata vantaġġ kompetitiv bi preġudizzju għall-oblaturi l-oħra.*
>
> *16. Sewwa qalet Rockcut mela illi 'l-kwistjoni li kellha tiġi investigata kienet jekk l-informazzjoni mitluba fit-technical questionnaire kinetx sottomessa f'partijiet oħra tal-offerta jew le'."*

Rockcut, Appell 49/2018, paras. 14–16, p. 8.

21. The Court also explained the limit of clarification at paragraphs 22 and 23:

> *"22. Iżda ma tistax tingħata kjarifika ta' tagħrif li ma ngħatax; kjarifika sservi biss biex tagħmel aktar ċar tagħrif ġà mogħti li iżda ma huwiex ċar biżżejjed.*
>
> *23. Il-kjarifika li setgħet tagħmel Rockcut kellha tkun tal-asserzjoni tagħha illi t-tagħrif mitlub fil-questionnaire kien ġà mogħti fl-offerta."*

Rockcut, Appell 49/2018, paras. 22–23, p. 9.

22. *Rockcut* ultimately failed because it did not prove precisely where the missing information appeared elsewhere. The present case is different on that decisive fact.

The Objector identifies the precise submitted material: Clause 3.1; Section 3; Items 57, 58 and 60 to 64; the common brand and model; the Literature List; and the Financial Bid Form. Those documents fix the scope of the offer without any new post-closing information.

23. The cited Court of Appeal (Superior) case-law produces a coherent test. First, the Board must identify whether the allegedly missing answer already exists in the original tender when read as a whole. Secondly, it must determine whether clarification would change or add anything. Thirdly, it must ask whether the tenderer would obtain a competitive advantage or retain a choice after opening. Fourthly, it must apply exclusion proportionately.

24. The answer was already present here. Section 3 demanded four front rollers. Clause 3.1 required the entire quantity. The Objector accepted the identical front roller in Items 57, 61 and 63 and accepted every rear roller. It offered four identical XIS-6040 scanners and one unqualified price for the complete contract.

25. Nothing would be changed. A clarification could not alter the make, model, dimensions, quantity, configuration or price. The Objector would remain bound to supply Machine 2 with one front infeed roller set measuring 110 cm × 71 cm at the original total price.

26. No competitive choice or advantage would arise. The Objector could not see the competing prices and then decide which roller to offer or how much to charge. Its only lawful answer was the answer already necessarily contained in its original tender.

27. The clarification could have been narrowly framed. The Evaluation Committee could have asked the Objector to identify the parts of its submitted tender showing whether the front roller for Machine 2 formed part of the offer and to confirm that no amendment to the product, quantity or price was proposed.

28. Such a request would respect Note 3, because it would concern submitted information. It would also permit the Evaluation Committee to compare the answer against the original tender and reject any attempt to introduce something new.

29. The Contracting Authority instead assumed substantive non-compliance from one blank tick without carrying out the inquiry mandated by Rockcut and applied in Ballut Blocks, Krypton, Europharma and Katari Holdings. It did not explain what new technical information would be introduced, what competitive choice the Objector would gain or why the original offer could reasonably be interpreted as excluding one mandatory roller.

30. Reference is also made to jurisprudence delivered by this Board.

31. Indeed, the Board has itself upheld an objection on closely analogous facts in PCRB Case 1653, CT 2263/2019, Evolve Limited's objection against the University of Malta,

decided on 14 January 2022. The bidder had mistakenly identified a safety cabinet at Item 18 instead of the same movable underbench unit already offered in consecutive Items 16 and 17. The same unit price also appeared in the Financial Bid Form. The Contracting Authority argued that the mistake fell under Note 3.

32. The Board nevertheless concluded, in the following terms reproduced verbatim from the official decision:

"The Board opines, that should the Contracting Authority have opted for such an approach, in this specific case, it would not have constituted a new offer by the Appellant. This is an obvious case of a 'genuine human error'"

PCRB Case 1653, decision of 14 January 2022, p. 6.

33. The Board upheld the grievances, cancelled the award and rejection letters, ordered the bid to be reintegrated and re-evaluated, and directed that the deposit be refunded. The same reasoning applies with greater force here: Item 59 is surrounded by seven positive answers for the same family of roller components, including three positive answers to the identical front-roller requirement.

34. The Objector is aware of, and addresses directly, the recent decisions in PCRB Case 2174, *Silvercraft Product Limited v Water Services Corporation*, concerning WSC/T/019/2025, decided on 5 December 2025, and PCRB Case 2187, *Franco Scicluna v Malta Tourism Authority*, concerning SPD2/2025/056, decided on 1 December 2025.

35. In Case 2174 the unanswered question required the bidder to confirm that a filter housing could withstand a differential pressure of 2 bar. The Board found that the tender contained no submitted technical answer from which that performance characteristic could be established. It therefore treated the later "Yes" as a new answer.

36. It is submitted, respectfully, that Case 2174 is distinguishable from the present case. Item 59 does not ask for an independent and unique performance characteristic. It repeats, for Machine 2, the identical front roller requirement expressly accepted for Machines 1, 3 and 4 within a single indivisible configuration. Moreover, all the remaining roller entries were accepted and the complete quantity was offered for one price.

37. Indeed, Case 2187 itself identified the correct test in the following terms:

"Therefore, it follows, that the Appellant's argument would only succeed if this Board determines that the confirmation required in Items 6 and 7 in the Technical Offer Questionnaire constituted already 'submitted information'."

PCRB Case 2187, decision of 1 December 2025, p. 11.

38. It is worth noting that the Board rejected the objection in Case 2187 because Items 6 and 7 required distinct express commitments by the economic operator, including adherence to GPP criteria and acceptance of changes in dates or locations. The Board held that those commitments were not found elsewhere in the bidder's own offer.

39. The present case, however, falls on the other side of the test stated by the Board. The confirmation required by Item 59 constituted already submitted information for the reasons and precise documentary references identified above. It concerns a physical component repeated across four machines, not a new promise regarding future changes or a unique performance capability.

40. The Objector does not contend that every blank Yes/No answer is clarifiable. Its case is deliberately narrow and fact-specific. The result depends on the unusually repetitive structure of Items 57 to 64, the identical front roller requirement, the indivisible quantity and the unqualified price.

41. Therefore it is submitted that neither Case 2174 nor Case 2187 displaces the authoritative appellate reasoning in Katari Holdings, Europharma, Krypton, Ballut Blocks and Rockcut. Properly understood, the PCRB decisions are consistent with those judgments because they turn on whether the missing information was already submitted. Here it was.

H. Proportionality, effective competition and the financial difference

1. The sole award criterion was the cheapest price satisfying the administrative and technical criteria. The Objector's offer was €120,524.00 excluding VAT, while the recommended offer was €152,811.72 excluding VAT.

2. The recommended offer is therefore €32,287.72 more expensive, approximately 26.8% above the Objector's price. The Objector accepts that price cannot cure genuine technical non-compliance. The difference is nevertheless relevant once the alleged defect is shown to have no substantive or competitive effect.

3. As the Court of Appeal stressed in *Katari Holdings*, *Europharma*, *Krypton* and *Ballut Blocks*, proportionality protects both equal competition and the public objective of obtaining the best compliant offer. Excluding the lowest tenderer over an isolated omission whose answer was already fixed by the tender does not further either objective.

4. A limited clarification would preserve equal treatment because the Objector could obtain no new choice, advantage or opportunity to improve its offer. Exclusion, by contrast, causes the Contracting Authority to recommend an offer costing €32,287.72 more without identifying any difference in the roller configuration actually offered.

I. Conclusion

1. The rejection decision rests on an isolated reading of Item 59. It does not evaluate the Objector's tender as a whole and does not apply the distinction between clarification and rectification laid down by the Court of Appeal.

2. The front infeed roller for Machine 2 was already objectively included in the submitted scope, quantity, configuration and price. Confirmation of that fact would not add to or alter the offer. The failure to request clarification and the resulting exclusion were therefore unlawful and disproportionate.

J. Demands

For all the reasons set out above, the Objector respectfully requests that this Honourable Board:

i. annul the decision declaring the Objector's offer technically non-compliant;

ii. annul the recommendation for award in favour of APCO Limited;

iii. order the reinstatement of the Objector's offer in the evaluation process;

iv. order the refund of the deposit paid for this objection; and

v. grant any other remedy which this Honourable Board considers just and appropriate in the circumstances.

The Objector reserves the right to make further submissions and to present evidence at the hearing/s set by this Board in relation to this present Objection.

Dr. John L. Gauci LL.D

Bank of Valletta p.l.c
Registration Number: C 2833
Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Pay third party

Printed by: Mrs. ELAINE SAMMUT
Printed on: 16/07/2026 - 09:30
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Transaction details

Payer's name:	MEDITERRANEAN PROTECTION SOLUTONS LTD
Payee type:	Corporate Payee
Company name:	Cashier Malta Government
Relation:	Retail
Reason:	Other
Payment details:	Objection Deposit SPD5.2026.012
Currency:	EUR - Euro
Beneficiary IBAN/Account:	MT55MALT011000040001EURCMG5001H
Beneficiary IBAN/Account type:	Valid IBAN of country - Malta
Bank name:	Other bank
Bank address / Bank's BIC:	Let the bank apply the beneficiary bank BIC
Beneficiary address:	No
From account:	Overdraft-GBF (EUR) 4002178912 4
Charges should be paid by:	Shared - I pay BOV charges; beneficiary pays the beneficiary bank charges
Amount:	EUR 870.00
BOV to transfer the money:	as soon as possible
Receiving bank to get the money as:	normal priority payment
FPAD Result:	The name you entered is very similar to our records: CASHIER MALTA GOVERNMENT CALL ACCOUNT - GENERAL. If you continue without correcting it, the payment may be sent to the wrong person,and recovery may not be possible as it could result in fraud. This Verification of Payee check will not block the payment, but it is simply providing additional security. Please verify the payment details with the recipient before proceeding.
Saved template:	no

Additional information

Credit amount:	EUR 870.00
Debited amount (excluding charges):	EUR 870.00
Estimated amount to be withdrawn from account:	EUR 871.00
Transaction charge:	EUR 1.00

Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	182262667