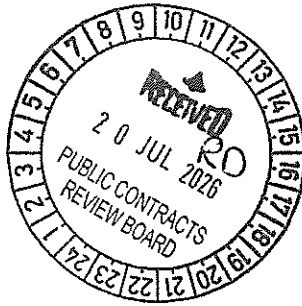




**Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana VLT2000**

20 July 2026

Dear Sirs,

**RE: TENDER FOR THE SUPPLY AND DELIVERY OF FOUR (4) X-RAY MACHINES FOR THE
COURT SERVICES AGENCY (SPD5/2026/012) (THE “TENDER”)**

1. We have been instructed by **Suratek Limited (C-44989)** to file an objection in terms of Regulation 270 of the Public Procurement Regulations (the **PPR**) to the decision of the Court Services Agency (the **Contracting Authority**) in the above-captioned Tender on 10 July 2026.

A. EXECUTIVE SUMMARY

2. The Appellant is aggrieved by the decision of the Contracting Authority and the Sectorial Procurement Directorate of 10 July 2026 (the **Letter of Rejection**) to disqualify its bid as technically non-compliant with the tender specifications.
3. Firstly, the absence of a mark in Row 9 and Row 49 of Suratek’s technical offer form was an obvious clerical error capable of clarification or rectification and which resulted in a disproportionate disqualification.
4. Secondly, the double-ticking in Row 23 of Suratek’s technical offer form was an obvious clerical error capable of clarification or rectification and which resulted in a disproportionate disqualification.
5. Thirdly, the Contracting Authority failed to disclose the brand and manufacturer of the X-ray machine offered by the recommended bidder.

B. FACTUAL BACKGROUND TO THE TENDER

6. On 6 April 2026, the Contracting Authority published the above-captioned Tender for Supply, Delivery, Installation, and Commissioning of Four (4) X-Ray Machines, including the dismantling and disposal of four (4) existing X-Ray Machines for the Court Services Agency.

7. The Tender carried an estimated procurement value of €174,000 and was to be 'awarded to the tenderer submitting the cheapest-priced offer satisfying the administrative and technical criteria' (Section 6 of the Tender).
8. By the closing date of 8 May 2026, the Contracting Authority had received 5 offers. Suratek submitted a financial offer of €137,320, with APCO Limited as the recommended bidder (APCO) submitting an offer of €152,811.72.
9. On 10 July 2026, Suratek received the Letter of Rejection claiming that its offer was non-compliant because it had failed to mark a 'Yes' or a 'No' for Item 9, Item 23, and Item 49.
10. The corresponding requirements for Item 9, Item 23, and Item 49, were the following:

9	System Performance and Imaging (Clause 3)	Conveyor load capacity: at least 165 kg (evenly distributed).	I / WE CONFIRM [☐] YES / [☐] NO	
23	Operational Features (Clause 4)	Equipped with an automatic voltage regulator (AVR)	I / WE CONFIRM [☐] YES / [☐] NO	
49	Environmental and Physical Requirements (Clause 9)	Enclosure rating: minimum IP20.	I / WE CONFIRM [☐] YES / [☐] NO	

11. The alleged reasons for non-compliance were:

"the absence of a clear Yes or No response in the Technical Offer Form in the following:

*Item 9 - System Performance and Imaging (Clause 3),
Item 23 - Operational Features (Clause 4),
Item 49 - Environmental and Physical Requirements (Clause 9)".*

12. In the Letter of Rejection, the Contracting Authority informed Suratek that the Tender was being recommended for award to APCO for the price of €152,811.72.
13. For the reasons expounded in this letter of objection, the Appellant is aggrieved by the Contracting Authority's decision of 10 July 2026.

C. FIRST GRIEVANCE: THE ABSENCE OF A MARK IN ROW 9 AND ROW 49 OF SURATEK'S TECHNICAL OFFER FORM WAS AN OBVIOUS CLERICAL ERROR CAPABLE OF CLARIFICATION OR RECTIFICATION AND WHICH RESULTED IN A DISPROPORTIONATE DISQUALIFICATION

14. Suratek is aggrieved by the Contracting Authority's decision because Suratek's offer was compliant with the tender specifications.
15. The product offered satisfies all the technical specifications in *Section 3 – Specifications* of the Tender. That is to say, Suratek's X-ray machine:
 - a. has a conveyor load capacity of 165 kilograms;
 - b. is equipped with an automatic voltage regulator; and
 - c. has a minimum enclosure rating of IP20.
16. In fact, the reason for rejection is administrative in nature rather than technical. The Contracting Authority excluded Suratek's bid because Suratek did not clearly mark a 'Yes' or a 'No' in 3 out of the 65 rows comprising the Technical Offer Form.
17. Essentially, Suratek's bid was disqualified because of 3 missing or misplaced symbols in the Technical Offer Form—a form which, for all intents and purposes, is drawn up by the Contracting Authority and completed by the bidder itself as a self-declaration.
18. By this decision, the Contracting Authority excludes a cheaper substantively compliant offer over clerical omissions of no consequence to the substance of Suratek's bid, and binds itself to pay €15,491.72 more for the identical product.
19. That result is irreconcilable with the sole award criterion of the Tender: the cheapest offer satisfying the administrative and technical criteria. It is a result that breaches the principle of economy and good administrative behaviour.
20. The concept of an obvious clerical error is the historical predecessor to the current procurement framework and practice which accepts rectifications and clarifications to tender submissions. It is this concept that originally allowed contracting authorities to rectify those mistakes in a tender which have no bearing on the substance of an offer.
21. In *Antwerpse Bouwwerken*,¹ the General Court held that the Commission had rightly found that the omission of the accompanying price for a line item was a 'mere oversight' which was capable of being 'easily resolved':

¹ Case T-195/08, *Antwerpse Bouwwerken vs European Commission*, judgement delivered by the General Court (Fifth Chamber) on 10 December 2009, para. 74.

*It follows that the Commission was right to find that the omission of a price for Item E 9.26 in the cost estimation summary accompanying Company C's tender **constituted a simple clerical error in that tender or, at the very least, an ambiguity having a simple explanation and capable of being easily resolved.** In the light of the points raised in paragraphs 68 to 73 above, **the obvious conclusion is that the missing price** for Item E 9.26 of the cost estimation summary for Company C's tender cannot be different from the price bid by that undertaking for Item E 9.13 (EUR 903,69) and that it **was a mere oversight** that Company C did not state that price for Item E 9.26.*

22. That is exactly the case here. As regards the requirement for the product to have a conveyor load capacity of at least 165 kilograms (Row 9, Technical Offer Form) and the requirement for a minimum enclosure rating of IP20 (Row 49, Technical Offer Form), Suratek expressly indicated *where* in the technical literature for its product the Contracting Authority could find proof of these technical specifications:

Item No.	Reference in Section 3 of the tender document Technical Specifications	Description of the item being offered	Please confirm agreement or otherwise that the adjacent technical specification meets the requested	<u>Include below in the space provided page number of literature showing item being offered</u>
9	System Performance and Imaging (Clause 3)	Conveyor load capacity: at least 165 kg (evenly distributed).	I / WE CONFIRM [☐] YES / [☐] NO	165 kgs DOC 2 p1
49	Environmental and Physical Requirements (Clause 9)	Enclosure rating: minimum IP20.	I / WE CONFIRM [☐] YES / [☐] NO	DOC 1 p2

23. The references to 'DOC 2' and 'DOC 1' in the fifth column are references to the technical literature that was submitted by Suratek as part of its bid. As this Board will be able to discern from the procurement file, 'DOC 1' corresponds to the technical data sheet and 'DOC 2' corresponds to more detailed 'Technical Specifications' of the product.
24. Therefore, the Technical Evaluation Committee (TEC) has committed a manifest error of assessment in failing to confirm whether Suratek's product was compliant with the technical specifications and to verify the cross-references cited by Suratek in its Technical Offer Form, opting instead for the most onerous route of disqualification.
25. It had already been established in *Antwerpse* that a contracting authority cannot disqualify a bid where the information requested is found elsewhere in the same bid.² The Court of Appeal

² Ibid 1. See paragraphs 12 – 13 and 75 – 77.

expressly confirmed this principle earlier this year. In *Europharma*,³ the appellant had not included the brand and manufacturer of the product on offer in the Technical Offer Form. However, these details were provided elsewhere in the bid—in that case, in the Declaration of Conformity amendment.

26. Furthermore, the decision to disqualify Suratek's bid on the basis of an obvious clerical error cannot but be disproportionate in nature. Suratek's omission of a 'tick' next to 'Yes' in Row 9 and Row 49 of the Technical Offer Form did not confer any advantage on it. Nor did it prejudice the other bidders in this Tender.
27. Incidentally, prior to the filing of its own letter of objection, Suratek has become aware that an objection has already been lodged against the Contracting Authority's decision by Mediterranean Protection Solutions. The latter's grievance appears to concern an identical obvious clerical error, in that its bid was disqualified because it failed to mark a 'Yes' or a 'No' in the Technical Offer Form.
28. For the avoidance of doubt, Suratek would not object if Mediterranean Protection Solutions were also given the opportunity to clarify or rectify the obvious clerical error that it committed. This would be in-keeping with the principle of equal treatment.
29. In view of the foregoing, Suratek humbly demands this Honourable Board to uphold its first grievance and to revoke the decision of the Contracting Authority with respect to its alleged non-compliance in terms of Row 9 and Row 49 of the Technical Offer Form.

D. SECOND GRIEVANCE: THE DOUBLE-TICKING IN ROW 23 OF SURATEK'S TECHNICAL OFFER FORM WAS AN OBVIOUS CLERICAL ERROR CAPABLE OF CLARIFICATION OR RECTIFICATION AND WHICH RESULTED IN A DISPROPORTIONATE DISQUALIFICATION

30. The same principle applies to Suratek's second grievance. In the case of Row 23 of the Technical Offer Form, bidders were asked to indicate whether the X-ray machine on offer is equipped with an automatic voltage regulator.
31. Suratek marked a 'Yes' in Row 23 to indicate that its X-ray machine is equipped with an automatic voltage regulator.
32. However, it also inadvertently ticked 'No' in Row 23 with the inevitable result that the TEC could not discern, on the basis of the Technical Offer Form, whether Suratek's product was equipped with an automatic voltage regulator.

³ Ref. No. 445/2025/1, *Europharma Limited vs CPSU et*, judgement delivered by the Court of Appeal on 29 January 2026.

33. Again, this was a case of an obvious clerical error, although the error itself differs from that in Row 9 and Row 49 of the Technical Offer Form.
34. The ambiguity could have been resolved by a clarification request asking Suratek to confirm whether the correct choice was a 'Yes' or a 'No'. If the latter, then the TEC, in line with the principle of self-limitation, would have had no choice but to disqualify Suratek's offer.
35. If Suratek confirmed that it meant to exclusively mark 'Yes' in Row 23, then Suratek's compliance would have been restored rather than sacrificed over a trivial defect, an error of form, in its bid.
36. This clarification exercise would not have advantaged Suratek in any way. Nor would it have disadvantaged the other bidders in the race, or prejudiced fair competition. Suratek remained bound by the manufacturer, brand and model of the X-ray machine tendered in its offer.
37. Therefore, the TEC's decision to disqualify Suratek was the most onerous route available and, as such, disproportionate. As the Court of Appeal has consistently held in recent jurisprudence, the purpose of the procurement cannot be defeated by disqualifying a cheaper offer on the basis of a *żball venjali*.
38. Even if, for the sake of argument, a rectification was required, this was not precluded by the fact that the Technical Offer Form is marked as a Note 3 document. As the Court of Appeal held in *Krypton Chemists*,⁴ obvious clerical or formal errors can be rectified as long as such correction does not prejudice competition and does not alter the substance of the offer submitted:
- ir-rettifika tista' ssir biss jekk l-ommissjoni jew żball ikunu manifesti, klerikali jew formali, u dawn la jaffettwaw il-kompetizzjoni u lanqas ma jbiddu s-sustanza tal-offerta bħal bdil fil-prezz, fl-ispeċifikazzjonijiet tekniċi, jew fl-elementi essenzjali.*
39. In that case, the Court went on to describe the appellant's disqualification over a shortcoming that had no practical effect as 'disproportionate', particularly when the objective of the tender was to find the cheapest technically-compliant offer.
40. That is precisely the case that Suratek is submitting to this Board's adjudication. The decision to disqualify its bid when it could have been afforded the opportunity to confirm that it meant to exclusively tick 'Yes' was disproportionate.
41. For these reasons, Suratek humbly demands this Honourable Board to accede to its second grievance and to revoke the decision of the Contracting Authority.

⁴ Ref. No. 322/2025/1, *Krypton Chemists Limited vs Central Procurement and Supplies Unit et*, judgement delivered by the Court of Appeal on 13 November 2025, para. 30.

E. THIRD GRIEVANCE: THE CONTRACTING AUTHORITY FAILED TO DISCLOSE THE BRAND AND MANUFACTURER OF THE X-RAY MACHINE OFFERED BY THE RECOMMENDED BIDDER

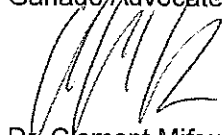
42. The Contracting Authority and the Sectorial Procurement Directorate were also requested by Suratek to disclose the brand and manufacturer of the X-ray machine tendered by APCO.
43. To date, neither the Contracting Authority nor the Sectorial Procurement Directorate has provided this information.
44. The non-confidential nature of the requested information is recognised at law, and has been repeatedly confirmed by EU and Maltese judgements alike. According to Regulation 40(2) PPR: *the following information shall not be considered as confidential: (d) technical information which is already made available in public.*
45. The brand and the manufacturer of the X-ray machine tendered by APCO do not constitute commercially sensitive information or a trade secret which, if disclosed, may prejudice APCO's legitimate commercial interests.
46. So much so that the other objector to the Contracting Authority's decision, Mediterranean Protection Solutions, willingly identified and disclosed the brand and manufacturer of its own X-ray machine in paragraph 8 of its letter of objection.
47. This information is required for Suratek to determine whether to raise additional grievances regarding the compliance or otherwise of the recommended bidder.
48. The fact that Suratek was not provided with this information impedes the effective exercise of its remedies in accordance with the PPR.
49. Therefore, apart from requesting this Honourable Board to order the Contracting Authority to disclose the requested information, Suratek is hereby fully reserving its right to file additional grievances in light of such disclosure.
50. In view of the foregoing, Suratek humbly demands this Honourable Board to order the Contracting Authority to disclose the brand and manufacturer of the X-ray machine tendered by APCO.

THEREFORE, in view of the above and for other reasons that may be brought in due course at law, Suratek humbly demands that this Public Contracts Review Board:

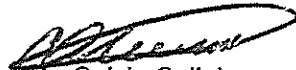
- (a) orders the disclosure of the brand and manufacturer of the X-ray machine tendered by APCO as the recommended bidder;
- (b) declares that the letter of rejection is unfounded in fact and at law and revokes it;

- (c) revokes the recommendation of award made in favour of APCO Limited;
 - (d) sends the Tender back to the evaluation committee for re-evaluation, orders the re-integration of Suratek's bid in the re-evaluation, which re-evaluation is to implement the PCRB's findings;
 - (e) orders the deposit paid by Suratek on the filing of its appeal to be refunded,
- subject to any declaration or order that it deems fit and opportune.

Yours sincerely,
Ganado Advocates



Dr. Clement Mifsud-Bonnici
(cmifsudb@ganado.com)



Dr. Calvin Calleja
(ccalleja@ganado.com)

Calvin Calleja

From: Calvin Calleja
Sent: 16 July 2026 17:17
To: 'Dalli Adrian at Department of Contracts'
Cc: Clement Mifsud-Bonnici; 'courts.csa@courtservices.mt'
Subject: Ref. No. SPD5/2026/012 - Tender for the Supply and Delivery of 4 X-Ray Machines for the Court Services Agency
Attachments: 2026 07 10 - Letter of Rejection.pdf

Dear Dr. Grech, Mr. Dalli,

We are writing to you on behalf of our clients **Suratek Limited** in connection with the above-captioned tender.

Reference is hereby being made to the letter of rejection dated 10 July 2026 informing our clients that the tender is being recommended for award to APCO Limited.

Our client is asking for the disclosure of **the brand, the model and the manufacturer** of the product submitted by APCO.

The brand and the manufacturer of the recommended product are not confidential in terms of Regulation 40(2)(d) of the Public Procurement Regulations, specifically, since they constitute "*technical information which is already made available in public*". There is no trade secret or commercial sensitivity which might be disclosed if these information components are disclosed. Nor is the technical literature confidential in terms of Regulation 40(2)(c) since it is "*documentation submitted by economic operators attesting that they comply with selection criteria*".

We are requesting this information to ensure that our client is placed in a position where it is able to exercise its right to an effective and rapid remedy. Please disclose this information by **tomorrow morning** given that the deadline to appeal lapses on Monday 20 July.

Regards,

Calvin Calleja

Senior Associate



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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. Giselle Galea Gusman
 Printed on: 20/07/2026 - 11:09
 Document ID: 29096605

Transaction details

Payer's name: SURATEK LTD.

Payee type: Personal Payee

Is the payee a joint beneficiary: No

Payee name: Cashier

Payee surname: Malta Government

Relation: Professional Service

Reason: Other

Payment details: 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: Insert the beneficiary bank BIC manually

Bank's BIC: MALTMTMT

Beneficiary address: No

From account: Overdraft (EUR) 4001881246 0

Charges should be paid by: Shared - I pay BOV charges; 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: 182456948