

PUBLIC CONTRACTS REVIEW BOARD

Case 2259 – CT2021/2026 – Framework Contract for the Provision of Temperature-Controlled Transportation Services by Drone for Routine and Critical Medical and/or Pharmaceutical Consignments between Malta and Gozo Healthcare Venues for the Ministry for Health (MFH)

21st July 2026

The Board,

Having noted the letter of objection filed by Mr Kevin Micallef, JV Representative, on behalf of Miracles Unmanned Solution JV (TID 000241220) (hereinafter referred to as the appellant), filed on the 28th May 2026;

Having also noted the letter of reply filed by Dr Alexia Farrugia Zrinzo and Dr Leon Camilleri, acting for and on behalf of the Central Procurement and Supplies Unit (CPSU) (hereinafter referred to as the Contracting Authority), and by Dr Audrey Marlene Buttigieg Vella, acting for and on behalf of the Department of Contracts (hereinafter referred to as the DoC), filed on the 8th June 2026;

Having also noted the letter of reply filed by Dr Neil Gauci and Dr Terence Cassar acting for and on behalf of Seasus Limited (hereinafter referred to as the Recommended Bidder) filed on the 11th June 2026;

Having heard and evaluated the testimony of the witness Mr Frank Wang (British Passport No. 146587054), Technical Expert, as summoned online by Mr Brian Farrugia for and on behalf of the appellant;

Having heard and evaluated the testimony of the witness Dr Analiza Abdilla (ID No. 515887M), Representative of Transport Malta, as summoned by Mr Brian Farrugia for and on behalf of the appellant;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 14th July 2026 hereunder reproduced.

Minutes

Case 2259 – CT2021/2026 – Framework Contract for the Provision of Temperature-Controlled Transportation Services by Drone for Routine and Critical Medical and/or Pharmaceutical Consignments between Malta and Gozo Healthcare Venues for the Ministry for Health (MFH).

The Tender was issued on the 13th of February 2026, and the closing date was 9th of April 2026.

The estimated value of the tender, excluding VAT, was €998,400.

A deposit of €4,992 was paid.

There were four bids.

On 28th May 2026, Miracles Unmanned Solution JV lodged an appeal against Central Procurement and Supplies Unit (CPSU) – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 14th of July 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Miracles Unmanned Solution JV

Mr Kevin Micallef – JV Representative (Online)

Mr Brian Farrugia – JV Representative

Contracting Authority – Central Procurement and Supplies Unit (CPSU)

Dr Alexia Farrugia Zrinzo – Legal Representative

Dr Leon Camilleri – Legal Representative

Mr Joseph Abela – Chairperson

Mr Mario Farrugia – Secretary

Mr James Agius – Evaluator

Ing James Grima – Evaluator

Mr Robert Cassar – Evaluator

Mr Raymond Bartolo – Specification Drafter

Ms Graziella Portelli – Specification Drafter

Dr Danika Marmara – End User Representative (Public)

Department of Contracts

Dr Audrey Marlene Buttigieg Vella – Legal Representative

Recommended Bidder – Seasus Ltd.

Dr Neil Gauci – Legal Representative

Dr Matteo Pullicino – Legal Representative

Mr Kenneth Bone – Company Representative

Mr Mario Demanuele – Company Representative

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2259 in the records of the PCRB. The Chairman identified the Appellant as Miracles Unmanned Solution JV, the Contracting Authority as Central Procurement and Supplies Unit (CPSU), and the Recommended Bidder as Seasus Ltd.

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

Initial Submissions

The Chairman, Mr Kenneth Swain, noting that the Appellant was not represented by a lawyer, explained the procedure of the hearing.

Initial Submissions by Mr Brian Farrugia (for the Appellant)

Mr Farrugia said that there was an issue, as the witnesses from China could not use Zoom because it was banned. They requested to join the hearing using Teams. Mr Farrugia had sent this information to the PCRB that morning and was promised assistance in connecting via Teams. In the meantime, a list of the participating persons was sent; two of these were the technical experts.

Mr Farrugia stated that he was the one who had delivered the document and asked the witness, Mr Frank Miao, to enter online and explain it further. Mr Farrugia noted that he had sent the report that morning as a matter of last resort. The report was translated into English in case of any miscommunication.

The Chairman declared that he had not opened or read the report. He was giving a copy to the Contracting Authority's representative, Dr Leon Camilleri. Mr Swain emphasised that the invitation for the hearing had been issued on 9 June, and he verbalised:

“Please note that if any of the interested parties intend to present any additional documents, these are to be circulated to all parties concerned, at least three working days before the date fixed for the hearing.”

Mr Farrugia admitted that it was he who had instigated the report, as a last resort, in case there was a problem with the link.

Dr Leon Camilleri objected to the submission of the report.

At this stage, the Board upheld the objection of the CPSU, and the report was not to form part of the Acts, since the procedure had been known to the Appellant for more than a month. The Chinese witnesses could still take part in the hearing.

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

Dr Leon Camilleri stated that this objection, which was in accordance with Regulation 270 of the PPR, should not be used to discuss the specifications of the offer. There was a remedy available, which had not previously been used, and the specifications had never been contested. Dr Camilleri wished to discuss the evaluation.

Mr Brian Farrugia stated that the report was technical in nature and related to the submitted appeal.

The Chairman noted that the Board had already given its directions regarding the report. He read the information sheet passed to him by the Contracting Authority. The publication date for the call for tenders was 13 February 2026, and the closing date for the call for tenders was 9 April 2026.

There had been more than two-thirds of the two months available for seeking clarification or filing an appeal, as provided by Regulation 262. This appeal was in accordance with Regulation 270, and the Board would scrutinise and decide the matter after the hearing, following the closing date of the bids. The Evaluation Committee would then proceed accordingly. There were other remedies that could have been pursued within the prescribed time limit. The witnesses were to give their testimony in line with Regulation 270. The witness was to answer the questions put by Mr Brian Farrugia.

Mr Farrugia remarked that the principal witness, who had prepared the report, did not speak English and that Mr Frank Miao was to act as translator.

The Chairman stated that the Board was sitting as a Tribunal acting as a Court of First Instance, and the report did not form part of the Acts. Under the procedures of Maltese law, the proceedings could only be conducted in either Maltese or English.

Witness Testimony

Mr Frank Wang (British Passport No. 146587054), Technical Expert for the Appellant, summoned online by Mr Brian Farrugia

Mr Brian Farrugia asked the witness to elaborate on the principal technical findings regarding the minimum payload, and why the technical comment on the tender was that there was a discrepancy, from a technical and physical perspective, concerning the operation of such a drone with a minimum payload of 10 kg.

Dr Camilleri objected, stating that they were there to discuss the manner in which the evaluation had been carried out, not the specifications.

Mr Farrugia said that their technical expert had found that a payload of 10 kg was not compliant with the specifications in the tender.

The Chairman said that the grievances had been submitted with the written appeal. There had then been the initial submissions by the CPSU. Following the answers to the grievances by the CPSU and the preferred bidder, which were made in the form of a preliminary plea, the Board had given its direction. This appeal was at the end of Regulation 270, not Regulation 262. Therefore, the Board was to scrutinise the work of the Evaluation Board.

Every economic operator could have used two remedies within the prescribed time limit: seeking clarification from the Authority, which could either have resulted in an amendment, or filing an appeal under Regulation 262 of the PPR. It was not the appropriate time to discuss these matters. The Board was upholding the preliminary plea by the preferred bidder and the submissions by the CPSU and therefore could not accept comments concerning the drafting of the tender.

Mr Farrugia commented that, for clarity's sake, the issue of the payload affected the issue of the licence. He wanted to ask the representatives of Transport Malta to testify as to the type of licence issued for a drone carrying a 10 kg payload. He understood the legal point and the references to the Articles quoted, but the impact concerned the type of licence available in Malta. This was a critical part of the tender document.

The Chairman suspended the testimony of Mr Frank Wang until further notice, and a witness from Transport Malta was called to testify.

Dr Analiza Abdilla (ID No. 515887M), Representative of Transport Malta, summoned by Mr Brian Farrugia

Mr Farrugia asked whether, in her opinion, the licence issued for the drone was in line with the specifications of the tender and whether the payload was covered by that licence.

Dr Camilleri objected and asked Mr Farrugia to be more specific in his questions.

Mr Farrugia said that both the technical report and the appeal stated that the payload specified in the tender could not be flown under the requested specifications. He asked whether the drone would be safe with that payload, given that the drone would be carrying a load.

Dr Alexia Zrinzo objected to the question and stated that the question put to Transport Malta did not correspond with the grievances before the Board. There was no upper limit to this.

Mr Farrugia said that the licence formed part and parcel of the tender.

Dr Alexia Zrinzo stressed that the grievances concerned the evaluation, not any alleged difficulty with the specifications.

Mr Farrugia said that the grievance related to the payload mentioned in the tender document, which was lower than the capability of a drone designed to carry that payload. Had there been a third party who, after reading the specifications, concluded that their drone had larger hardware than that requested, and who possessed a licence to operate a higher-category drone, that party might have decided not to participate.

The Evaluation Committee did not appear to have taken this into consideration.

Dr Abdilla answered that Malta follows the EASA regulations. There are three categories of drones. If a drone exceeds a maximum take-off weight of 25 kg, irrespective of the payload, it falls within the specific category referred to in the tender.

Cross-examination by Dr Leon Camilleri

Dr Camilleri noted that a drone weighing less than 25 kg, but capable of operating beyond the visual line of sight, would also fall within the same category.

Final Submissions

Final Submissions by Mr Brian Farrugia (for the Appellant)

Mr Farrugia noted that the appeal was based on the technical aspects of the hardware. The issue concerning the licence arose from the same appeal because his client held a higher-category licence than was required. He submitted that his client's hardware could carry more weight. The appeal was largely based on a technical error in the tender itself. The proof was contained in the report, which had not been accepted.

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

Dr Camilleri rested on the answer already submitted. Neither grievance had been proved in this appeal.

Final Submissions by Dr Neil Gauci (for the Recommended Bidder)

Dr Gauci rested on the answer already submitted. It appeared that the Appellant did not know which grievances to rely upon. Accordingly, neither grievance had been proved.

Conclusion of the Hearing

The Chairman, Mr Kenneth Swain, thanked all parties present and formally concluded the hearing. The Board would communicate its decision in due course.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 14th July 2026.

Having noted the objection filed by Miracles Unmanned Solution JV (hereinafter referred to as the Appellant) on 28th May 2026, refers to the claims made by the same Appellant with regards to the tender of reference CT2021/2026 listed as case No. 2259 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Mr Brian Farrugia
Appearing for the Contracting Authority:	Dr Leon Camilleri & Dr Alexia Farrugia Zrinzo
Appearing for the Department of Contracts:	Dr Audrey Marlene Buttigieg Vella
Appearing for the Recommended Bidder:	Dr Neil Gauci & Dr Matteo Pullicino

Whereby, the Appellant contends that:

a) ***Grievance 1 - The Tender Specification is Technically Defective and Ultra Vires***

The Appellant's engineering assessment, supported by its technical experts, demonstrates conclusively that the combined payload and operational requirements set out in the tender specification cannot be satisfied by any UAV platform operating within the regulatory envelope covered by a standard Light UAS Operator Certificate.

The inescapable engineering conclusion is that any UAV platform capable of carrying a combined payload in excess of 28kg will, by definition, have a Maximum Take-Off Weight (MTOV⁴) substantially above 25kg. This is not a matter of regulatory interpretation — it is a matter of physics and airworthiness engineering. Under Commission Implementing Regulation (EU) 2019/947 and the associated EASA regulatory framework, UAV operations at this MTOW threshold require certification, authorisation, and operational frameworks that are materially more rigorous than those associated with a standard Light UAS Operator Certificate. The SORA process applicable to

such operations would, in all probability, result in a SAIL III or SAIL IV classification, requiring correspondingly more stringent authorisation pathways under Transport Malta.

The Department of Contracts therefore published a tender specification that simultaneously demands operational performance requiring a higher-grade certification pathway, while specifying a suitability threshold - the LUC - that is categorically insufficient to cover those very operations. This internal contradiction renders the suitability requirement in Clause 58(a) defective on its face and ultra vires the operational requirements of the tender itself.

b) ***Grievance 2 — The Specification Fails to Address the Hardware/Operator Distinction***

The regulatory framework governing UAV operations distinguishes between two distinct layers of compliance: (i) the airworthiness and capability of the UAV platform (hardware); and (ii) the licensing and certification of the operator/pilot (software and human element). These are legally and operationally separate requirements.

The suitability criterion in Clause 5B(a) addresses only the operator certification layer, through the LUC requirement. The tender specification contains no corresponding suitability criterion addressing UAV platform capability, airworthiness certification, or hardware payload capacity. This is a fundamental structural omission. The hardware is the binding constraint in this procurement. No level of operator certification can compensate for a UAV platform that is physically incapable of carrying the required payload. By failing to specify platform capability as a suitability criterion - and instead specifying only operator certification at a level insufficient for the operational profile — the Department of Contracts has designed a selection process that is both incomplete and internally inconsistent.

This structural omission, combined with the payload analysis set out under Ground I above, means that the suitability framework established by the tender cannot reliably identify bidders who are genuinely capable of performing the contract. Disqualifying the Appellant on the basis of this defective criterion compounds the error.

c) ***Grievance 3 - Breach of the Principles of Proportionality and Equal Treatment***

The Appellant operates UAV platforms with payload capabilities that meet and exceed the operational requirements of this tender. As a consequence, the Appellant holds certifications and operational authorisations commensurate with - and in material respects superior to — the standard LUC specified in Clause 5B(a). The Appellant's higher-grade certification is not a deficiency, it is direct evidence of a more qualified operator.

To disqualify a bidder whose operational certifications, exceed the specified threshold, on the basis that those certifications do not take the precise form specified, is disproportionate and contrary to the principle of equal treatment. The purpose of a suitability criterion is to establish a minimum floor of technical and regulatory capability. A bidder whose capabilities and certifications are demonstrably above that floor must be treated as meeting the suitability requirement, even if the form of their certification differs from that specified.

Furthermore, applying the LUC requirement as an absolute and inflexible threshold — without any consideration of equivalent or superior regulatory compliance - is disproportionate in the context of a procurement whose actual operational demands, as demonstrated above, exceed the regulatory scope of the LUC entirely. This approach elevates procedural formalism above substantive capability assessment, in direct conflict with the objectives of EU public procurement law.

d) ***Grievance 4 - Failure to Engage with the Substance of the Rectification Submission***

The Appellant's rectification submission of the 7th May 2026 advanced detailed technical and regulatory arguments demonstrating the deficiencies in the tender specification's suitability framework. These were not mere commitments to future compliance - they were substantive legal and engineering arguments going to the validity of the criterion itself. The disqualification letter of 18th May 2026 makes no reference to, and does not engage with, the substance of those arguments. It characterises the Rectification Submission solely as a commitment to provide documentation after contract award, which is a mischaracterisation of its content. This failure to consider material submissions constitutes a procedural error rendering the decision flawed and susceptible to review.

e) ***Grievance 5 - The Professional Declaration Form Expressly Permits Post-Award Provision of Documentation***

The Appellant draws the Board's attention to a matter of fundamental procedural consistency that, in the Appellant's submission, directly undermines the legal basis for the disqualification decision. As part of the standard tender documentation for CT2021/2026, all bidders-including the Appellant-were required to execute a Professional Declaration Form (the Declaration). The Declaration, which forms an integral part of the tender process administered by the Department of Contracts, contains the following express commitment: *"I, the undersigned, hereby declare and commit myself to, in case of award, provide the Contracting Authority (CA) with the necessary valid documentation which attests that the proposed Key Experts has/have been duly authorised by the relevant official body to operate the requested and indicated profession in Malta. / also confirm that the aforementioned documentation shall be made available to the CA within one (1) month from notification of contract award (letter to successful bidder) date."*

The Declaration further provides that, in the event the named authorisation is not made available within the stipulated timeframe, the Key Expert/s being proposed shall be substituted without further delay within two working days of notification. For contracts carrying BPQR award criteria - as is the case here - the alternative Key Expert proposed shall fulfil or exceed the qualifications of the one proposed at tender submission stage.

The existence and terms of this Declaration are deeply significant. The Department of Contracts itself designed and required a mechanism whereby certain professional authorisations and documentation need not be held at tender submission stage, but may be committed to and provided within one month of contract award.

The Appellant executed this Declaration. Its commitment - both within the Declaration and within the Rectification Submission -to obtain the necessary Transport Maita operational authorisation and all related certifications prior to commencement of operations is entirely consistent with, and indeed directly supported by, this standard procurement instrument.

The Department of Contracts cannot, without manifest inconsistency, simultaneously:

- a. design and require a Professional Declaration Form that expressly permits post-award provision of professional authorisation documentation; and
- b. disqualify a bidder for committing to provide regulatory authorisation documentation following contract award.

To do so applies two contradictory standards within the same procurement process: accepting post-award commitment as sufficient under the Declaration while rejecting substantively identical commitment as insufficient under the Rectification process. This selective and inconsistent application of procedural standards constitutes a breach of the principle of equal treatment and a manifest error of process. The Appellant respectfully submits that the Declaration Form constitutes an express acknowledgement by the contracting authority that post-award provision of authorisation documentation is a legitimate and accepted mechanism within this procurement. Applied consistently, that mechanism should have been extended to the Appellant's commitment to obtain Transport Maita authorisation and the disqualification decision should not have been made.

This Board also noted the Contracting Authority's and DOC's Reasoned Letter of Reply filed on 8th June 2026 and its verbal submission during the hearing held on 14th July 2026, in that:

a) ***On the First Grievance - Alleged Technical Defect and Ultra Vires Specification***

The Objector alleges that the Tender Specification is technically defective and ultra vires on the basis that the combined payload and operational requirements purportedly necessitate UAV operations exceeding the regulatory scope of a Light UAS Operator Certificate (LUC) or a Specific Category Operational Authorization. The DOC and CPSU respectfully submit that the objection in question has been filed in terms of regulation 270 of the Public Procurement Regulations and thus the remit of this Honourable Board is not to decide on any defective specifications but to decide on the evaluation process on the basis of the specifications as published which have been accepted by all bidders the moment they submitted their offer. If the Objector had any reservation on any of the published specifications, a remedy in terms of regulation 262 of the Public Procurement Regulations was available, however the objector did not make use of this remedy, and thus cannot at this stage of the tender process complain' about defective specifications.

Without prejudice to the above submissions, DOC and CPSU submit that this grievance is also unfounded substantively as will be further explained below. The Objector's argument is premised

on the assertion that the Tender Document requires UAV platforms capable of carrying a combined payload in excess of 28 kg, thereby necessarily resulting in a higher Maximum Take-Off Weight (MTOW) and triggering a more onerous regulatory regime. This premise is incorrect and is not supported by the Tender Document or the Clarifications issued. The Tender Document establishes a minimum payload requirement of 10 kg, which requirement is explicitly stated as mandatory. While additional evaluation marks may be awarded for increased payload capacity (eg. minimum of 15kg or 20 kg), such scoring criteria do not alter the baseline requirement and do not impose any mandatory payload beyond 10kg.

The inclusion of additional scoring for enhanced capacity constitutes a standard Best Price-Quality Ratio (BPQR) evaluation mechanism, encouraging improved performance where available, but does not impose an obligatory operational threshold. The Objector further asserts that a 10 litre medically compliant container inherently weighs approximately 14 kg prior to loading, and proceeds to aggregate such assumed weights to derive a combined payload exceeding 28 kg. This line of argument is not grounded in the Tender Document. The Tender Document requires that the UAV cargo compartment be capable of accommodating certified medical transport containers with a minimum volume of 10 litres. Clarification Note No 1 published on 10th March 2026 clarified that the minimum internal volume requirement of 10 litres refers to the cargo hold of the drone, not to individual containers (refer to Q&A 20).

However:

- No weight or volume per container is specified anywhere in the Tender Document
- No standardised container design is prescribed; and
- No requirement is imposed as to insulation type, thermal structure, or cooling configuration over and above the standards and certifications mentioned in the specifications.

Accordingly, the Objector's conclusion of a 14 kg container weight is entirely extraneous to the procurement documentation and reflects a unilateral design assumption rather than a requirement of the tender. The Objector further builds its argument on the assertion that each UAV must simultaneously carry two fully loaded, thermally isolated containers (chilled and ambient), thereby doubling the payload. This interpretation is likewise unsupported.

The Tender Document and subsequent Clarifications require that the system be capable of handling mixed consignments (eg. chilled 2-8°C and ambient 15-25°C) without cross-contamination or temperature deviation. This requirement is clearly functional in nature, relating to:

- segregation of medical items;
- preservation of temperature conditions; and
- operational integrity of transport.

At no point does the Tender Document mandate the simultaneous carriage of two independent full-capacity containers or define a cumulative or duplicated payload configuration. The Objector's conclusion that two 14 kg containers must be carried simultaneously is therefore based on an assumed configuration which is not required by the Tender Document.

When the Tender Document is read as a whole, and together with the issued Clarifications, it is evident that: • The only mandatory quantitative requirements are a minimum payload of 10kg, and a cargo hold with a minimum volume of 10L; • Container requirements are neither volume-based, nor weight-based; • Mixed consignments relate to functional capability, not payload multiplication; • No provision imposes a minimum combined payload approaching the values asserted by the Objector.

It Follows that the Objector's "28 kg payload" conclusion is not derived from the Tender Document, but from a speculative combination of assumptions regarding container design, loading configuration, and operational methodology. The Objector's regulatory argument—namely that the Tender Specification necessarily requires UAV operations falling outside the scope of a LUC or Specific Category Operations Authorization—is entirely dependent on the above erroneous payload assumption. Given that the Tender Document does not require such payload levels; and does not prescribe any specific MTOW or operational envelope, the assertion that the procurement mandates operations beyond the scope of the specified regulatory framework does not arise. On the contrary, the Tender Document expressly defines, under Clause 5B(a), the applicable suitability requirement, namely that the Contractor be in possession of: • an EASA-approved (or equivalent) Operations Manual for Specific Category UAS operations, and/or • a Light WAS Operator Certificate (LIC). This clearly establishes that the procurement is situated within the Specific Category regulatory framework.

In the absence of any requirement mandating operational parameters beyond those defined in the Tender Document, there is no basis to conclude that compliance with such regulatory framework would be insufficient.

Moreover, the Objector alleges that an internal contradiction exists between the operational performance required and the suitability threshold (Clause 5B(a)). This allegation is entirely dependent on the assumed (and unsubstantiated) payload escalation. Once that assumption is set aside, as explained above, it becomes clear that: • the technical requirements remain within the scope of the stated minimum • the suitability requirement properly reflects the regulatory framework applicable to such operations. In view of the above submissions it is thus evident that no inconsistency exists between the operational requirements of the Tender Document and the suitability criteria.

b) ***On the Second Grievance: Alleged Failure to Address the Hardware/Operator Distinction***

The Appellant asserts that the Tender Specification is structurally defective on the basis that it allegedly addresses only the operator certification layer while omitting corresponding suitability requirements relating to UAV platform capability. DOC and CPSU refer to the submissions made in paragraphs 2,3 and 4 of this reply which shall apply to this grievance as well since this is an objection in terms of regulation 270 of the PPR and not a pre-contractual remedy in terms of regulation 262.

Without prejudice to the above DOC and CPSU submit also that this second grievance is unfounded substantively and is based on a mischaracterisation of both the structure and the content of the Tender Document. At the outset, it is important to emphasise that public procurement law requires a clear distinction between exclusion grounds, selection criteria, and award criteria. Under the Public Procurement Regulations, contracting authorities are required to ensure that criteria relating to the capacity of the economic operator are not conflated with criteria relating to the evaluation of the tender or the proposed solution.

In line with this framework, the Tender Document was deliberately structured as follows: • Suitability (Clause 5B(a)) addresses the regulatory and legal capacity of the economic operator, namely the requirement to be in possession of an EASA-approved Operations Manual for Specific Category operations and/or a Light UAS Operator Certificate (LUC); • Technical and Professional Ability (Clause 5B(c)) addresses the experience and capability of the economic operator in delivering services of a similar nature and complexity; and • The evaluation process, comprising the assessment of Key Experts, the Live Stream Demonstration, and the Technical Evaluation, address the performance of the proposed solution, including all mandatory technical, operational, and functional requirements such as UAV platform capability, cargo compartment requirements, operational resilience, environmental tolerances, redundancy and safety systems, and payload performance.

Accordingly, the absence of UAV hardware capability as a formal suitability criterion does not constitute an omission, but rather reflects a deliberate and legally compliant separation of exclusion, selection, and award/evaluation criteria, consistent with both the Tender Document and established procurement principles.

The Appellant further links this alleged structural omission to the payload analysis advanced under the first grievance. The Contracting Authority has already addressed, in detail, the erroneous assumptions underpinning that analysis. In particular: • the Tender Document does not prescribe any aggregated payload scenario; • it does not define container weights; and • it does not require simultaneous duplication of consignments.

In view of the above, the Appellant's conclusion that platform capability represents a "binding constraint" exceeding regulatory thresholds is based on assumptions not grounded in the Tender Document. Thus, the premise underpinning the alleged structural defect falls away. In conclusion, the DOC and CPSU submit that: • the Tender Document clearly addresses both operator certification and platform capability, albeit through different and appropriate evaluation stages; • there is no omission in respect of hardware requirements; • the evaluation framework is internally consistent and aligned with procurement practice; and • the Appellant's argument is predicated on a misunderstanding of both the Tender structure and the technical requirements.

c) ***On the Third Grievance. Alleged Breach of the Principles of Proportionality and Equal Treatment***

The Appellant contends that its exclusion constitutes a breach of the principles of proportionality and equal treatment on the basis that it holds regulatory authorizations which allegedly exceed, or are superior to, those required under Clause 58(a), and should therefore have been deemed compliant. This submission is unfounded both in fact and at law as will be further proven. At the outset, it must be emphasised that the suitability requirement under Clause SB(a) constitutes a clear and mandatory eligibility condition, requiring that bidders be in possession of: • an EASA-approved (or equivalent) Operations Manual for Specific Category UAS operations; and/or • a Light UAS Operator Certificate (LUC).

As clarified during the procurement process, this requirement was to be demonstrated at submission stage, subject only to the limited clarifications/rectification regime applicable under the Tender Document.

Following such process, the Evaluation Committee determined that the Appellant's submission, as clarified, did not satisfy the substance of the requirement as defined under the suitability criteria, and was therefore non-compliant. The Appellant's argument that its allegedly "higher" or "superior" certification should have been accepted as equivalent or exceeding the stated requirement is incompatible with the principle of equal treatment. The General Rules Governing Tenders in clause 5.5 provide that: *"5.6 Where in the tender document a standard, brand or label is quoted, it is to be understood that the Contracting Authority will accept equivalent standards, brands or labels. However, it will be the responsibility of the respective bidders, at tendering stage, to prove that the standards, brands or labels they quoted are equivalent to the standards, brands or labels requested by the Contracting Authority."*

The Objector failed to prove that the equivalence of the certification provided even following a request for clarification. In procurement proceedings all bidders must be assessed on the basis of the criteria as defined in the Tender Document; and any equivalence must be proven by the same bidder, and if one is claiming a more superior certification, the same bidder must prove to the highest extent of proof that the certification offered encompasses the elements of the certification requests, something which the objector failed to do.

The Appellant further argues that the application of Clause 5B(a) was disproportionate, as it allegedly privileged formal compliance over substantive capability.

This argument cannot be sustained for various reasons. The principle of proportionality requires that procurement criteria be: • appropriate to the subject matter of the contract and • not excessive in relation to the objective pursued.

In the present case: • the requirement for possession of Specific Category operational authorization (via Operations Manual and/or LUC) is directly linked to the regulated nature of UAV operations within an EU Member State; and • constitutes a minimum regulatory threshold, not an excessive or restrictive requirement.

Proportionality does not allow for the substitution of clearly defined eligibility conditions with alternative qualifications, even if these are asserted to be more advanced unless sufficiently proven.

The argument of substance over form certainly cannot be used in the current situation where such a highly regulated, innovative and complex service is being procured. The objector was duty bound once accepting all tender criteria by submitting an offer, to strictly comply with the tender criteria so that the evaluation committee will be able to adjudicate between comparable offers in line with the principles of equal treatment of bidders and self limitation.

As already addressed, the Appellant was afforded the opportunity to clarify and/or rectify its submission in accordance with the applicable rules (including Note 2) however failed to sufficiently address the request for clarification raised. Following this process the Appellant's submission was assessed in the light of the documentation provided; and it was determined that the information submitted did not demonstrate equivalence to, nor fulfillment of, the requirement under Clause 5B(a).

Accordingly, the disqualification did not arise from a formalistic application of the criteria, but from a substantive failure to meet the defined suitability requirement, as assessed after allowing for clarification.

The Appellant's proportionality argument is also linked to the assertions made under Ground I, namely that the operational profile of the tender exceeds the regulatory scope of the specified suitability requirement. The DOC and CPSU have already demonstrated that such assertions are based on assumptions not grounded in the Tender Document. In the absence of any requirement imposing operational parameters exceeding the defined scope, there is no basis to suggest that the suitability requirement was insufficient or misaligned with the procurement.

In light of the above, the Contracting Authority submits that:

- the suitability requirement was clear, objective, and uniformly applicable to all bidders: • the Appellant was afforded the same opportunity as all other bidders to demonstrate compliance, including through the clarification/rectification stage;
- the assessment carried out by the Evaluation Committee was based on the documentation submitted and in accordance with the Tender Document; and
- no discretionary or unequal treatment was afforded to any bidder.

Accordingly, the exclusion of the Appellant does not constitute a breach of the principles of proportionality or equal treatment and this grievance ought to be rejected in its entirety as well.

d) ***On the Fourth Grievance - Alleged Failure to Engage with the Substance of the Rectification Submission***

The Appellant alleges that the evaluation committee failed to properly consider the substance of its Rectification Submission and that this constitutes a procedural error affecting the legality of the decision. This allegation is unfounded in fact and at law as will be proven. At the outset, it is necessary to clarify that the evaluation committee did, in fact, engage with and assess the Rectification Submission in accordance with the applicable tender rules. In line with the provisions of the Tender Document including the operation of Note2, bidders were afforded the possibility

to clarify elements of their submission; and rectify deficiencies, to the extent permitted within the applicable framework, particularly with reference to documentation. The Appellant availed itself of this opportunity and submitted additional documentation and explanations in response to the request for clarification/rectification.

The Evaluation Committee duly assessed the submission in its entirety and following an assessment of the Rectification Submission, it was determined that: • the documentation and explanations provided did not demonstrate compliance with, nor equivalence to, the requirement under Clause 5B(a); and • the deficiency identified at submission stage therefore remained outstanding in substance.

Accordingly, the Appellant's submission, even as clarified, did not satisfy the suitability requirement and the disqualification followed from that substantive non-compliance. It is therefore incorrect for the Appellant to suggest that its submission was dismissed as a mere commitment to future compliance. Rather, the Committee assessed the material provided and concluded that it did not meet the requirement as defined in the tender at time of submission, and as requested by the same tender.

e) ***On the Fifth Grievance - Alleged Inconsistency Arising from the Professional Declaration Form***

The Appellant submits that the Professional Declaration Form permits the submission of documentation and that, consequently, its disqualification for not providing regulatory authorisation at tender stage is inconsistent and unlawful. This grievance apart from being frivolous and vexatious, is a total misinterpretation of both the content and the scope of the Declaration. The Professional Declaration Form is a standard document used within the procurement process to address the professional status and authorisations of KeyExperts proposed under the tender. As expressly stated in its wording, the Declaration refers to documentation attesting that Key Experts are duly authorised by the relevant professional bodies; and the possibility of providing such documentation post-award within a specified timeframe. The Declaration is therefore clearly limited in scope to individual professional qualifications and warrants and the administrative verification of such qualifications following contract award. It does not extend to, nor regulate, operator-level regulatory authorisations required for the performance of UAV operations.

The Appellant's argument conflates two fundamentally distinct elements of the procurement framework, namely: • professional authorisations of individuals (Key Experts); and • regulatory authorisation of the economic operator to carry out UAV operations.

The Appellant's interpretation would effectively extend the scope of the Professional Declaration Form to allow the post-award fulfilment of mandatory eligibility criteria. Such interpretation is Incorrect and contrary to the structure of the Tender Document.

Suitability requirements under Clause 5B(a) must be met at submission stage, are subject only to the limited clarification/rectification mechanism (as already applied) and cannot be satisfied

through post-award commitments. To accept such an approach would fundamentally alter the nature of selection criteria and would undermine the integrity of the procurement process.

The Appellant further alleges that the Contracting Authority has applied inconsistent standards by:

- permitting post-award submission under the Declaration; while
- rejecting the Appellant's commitment to provide regulatory authorisation post-award.

The two situations are not comparable: • The Declaration concerns supporting documentation for Key Experts, which may be verified administratively following contract award. Although the key expert still acedes to be competent at time of submission. • Clause 5B(a), by contrast, concerns a substantive precondition of eligibility, namely the operator's regulatory authorisation to carry out the activity forming the subject of the contract.

Accordingly, the Contracting Authority has applied distinct provisions to distinct requirements, each in accordance with its purpose and scope.

The Contracting Authority submits that: • all bidders were subject to the same requirements and documentation framework • the Professional Declaration Form was applied consistently and within its intended scope; and • no bidder was permitted to defer compliance with mandatory suitability requirement under the selection criteria to post-award stage.

To accept the Appellant's position would have resulted in preferential treatment, in breach of the principles of equal treatment, self limitation and the general rule that bidders must be compliant with the mandatory requirements at time of submission of offers.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

Preliminary Observation: Regulation 262 versus Regulation 270

- Grounds 1 to 3 are, in substance, a challenge to the design of Clause 5B(a) and the suitability framework of the Tender, not to the manner in which the Evaluation Committee applied it.
- The call for tenders was published on 13th February 2026 and closed on 9th April 2026. The Appellant did not file an application under Regulation 262 within that period to challenge Clause 5B(a); it submitted an offer on the basis of the published specification instead.
- This Board so ruled at the hearing of 14th July 2026, upholding the Recommended Bidder's preliminary plea and directing that comments on the drafting of the Tender would not be entertained in proceedings brought under Regulation 270.

- A tenderer who disagrees with a condition of the call and lets the process continue cannot, having lost the contract, turn round and impugn that condition: *All Clean Services Limited v Ministeru għall-Edukazzjoni et, App. Ċiv. 340/22/1*, 10 January 2023.
- Grounds 1 and 2, and Ground 3 insofar as it attacks the design of the LUC threshold, are accordingly not entertained.

For completeness, the Board has also considered whether Grievances 1 to 3 would succeed on the merits.

Grievance 1: The Tender Specification is Technically Defective and Ultra Vires

- The Appellant's case rests on an assumed combined payload in excess of 28kg, two containers of over 14kg each, said to require an MTOW above 25kg outside the scope of a standard LUC.
- The only mandatory quantitative requirements in the Tender are a minimum payload of 10kg and a minimum cargo hold volume of 10 litres, the latter expressly confirmed by Clarification Note No. 1, Answer No. 20, to mean the cargo hold as a whole, not per container. No container weight, insulation structure, or dual full-capacity-container configuration is prescribed anywhere in the Tender.
- Clause 5B(a) itself contemplates the Specific Category framework generally, not only the most basic form of LUC, and Clarification Note No. 1, Answer No. 11, confirms no MTOW was prescribed.
- The technical report the Appellant sought to rely on for its 28kg/MTOW calculation was excluded from the acts at the hearing after the Contracting Authority's objection. No other evidence was produced to substantiate the calculation.
- This ground was answered in detail in the Contracting Authority's and Recommended Bidder's Reasoned Replies; the Appellant did not put its payload calculation to any witness, and Dr Analiza Abdilla's testimony went only to the general MTOW/category threshold, not to whether this Tender's 10kg minimum compels a greater than 25kg MTOW.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 2: The Specification Fails to Address the Hardware/Operator Distinction

- The Appellant contends Clause 5B(a) addresses only operator certification and omits any suitability criterion for platform hardware.
- Regulation 217(1) PPR confines selection criteria to suitability, financial standing, and technical/professional ability; Clause 5B(a) falls under the first head. Platform capability, payload,

cargo hold, vibration/shock tolerance, is separately assessed through the technical evaluation, Key Expert requirements and live demonstration, matters of award/BPQR scoring, not selection.

- This is a criticism of how the Tender was structured, not of any act of the Evaluation Committee, and was not the subject of any witness testimony at the hearing; it was answered only in the Contracting Authority's Reasoned Reply, which the Appellant did not rebut at the hearing.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 3: Breach of the Principles of Proportionality and Equal Treatment

- The Appellant claims its own certification exceeded the Clause 5B(a) threshold and that disqualification for lacking the specified form of certification was disproportionate.
- It is the bidder's responsibility to prove equivalence, not the Contracting Authority's to disprove it: *Steelshape Limited v Direttur tal-Kuntratti et, App. Civ. 175/2013/1*, 7 August 2013. The Appellant's Rectification Submission of 7th May 2026 did not identify or produce any authorisation said to be equivalent; it argued instead that Clause 5B(a) was wrong.
- Clarification Note No. 3, Answer No. 4, confirms the Operations Manual and/or LUC had to be possessed at submission stage, a point the Appellant does not dispute, only resists.
- No witness gave evidence of the Appellant's alleged equivalent certification, and the excluded technical report cannot fill that gap. This ground, too, was answered only in the Contracting Authority's Reasoned Reply and went unchallenged by any evidence at the hearing.
- Accepting an unproven equivalence claim from the Appellant, while other bidders produced the documentation as published, would itself be unequal treatment, not a cure for it.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 4: Failure to Engage with the Substance of the Rectification Submission

- The Appellant contends the disqualification letter mischaracterised its Rectification Submission as a mere commitment to future compliance.
- The Contracting Authority's Reasoned Reply states that the Rectification Submission was assessed in full and found not to demonstrate compliance or equivalence, and this was not disputed by any witness or documentary evidence at the hearing; the point was not explored in oral testimony at all.

- A submission arguing that a criterion is wrong is not evidence of compliance with it. The Board has no basis, absent any contrary evidence, to depart from the Contracting Authority's account of how the Rectification Submission was handled.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 5: The Professional Declaration Form Expressly Permits Post-Award Provision of Documentation

- The Appellant argues that, since the Professional Declaration Form allows post-award submission of Key Expert authorisation documents, its own disqualification for lacking Clause 5B(a) authorisation at submission stage was inconsistent.
- The Professional Declaration Form, on the Contracting Authority's unrebutted account, concerns only the individual professional authorisation of named Key Experts, verifiable administratively after award; Clause 5B(a) is a suitability precondition of the economic operator itself, required at submission stage under Clarification Note No. 3, Answer No. 4.
- This ground was not raised in any witness testimony and was addressed only in the Contracting Authority's Reasoned Reply, which the Appellant did not contest at the hearing. No evidence was produced that any other bidder was permitted to defer Clause 5B(a) compliance.
- The two instruments serve different functions and are not comparable; no inconsistency or breach of equal treatment arises.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Furthermore, the Board notes that of the five grievances raised, only Grievance 1 was substantively tested through witness testimony at the hearing; Grievances 2 to 5 rested entirely on the written pleadings and were met, point for point, in the Contracting Authority's and Recommended Bidder's Reasoned Replies, without contrary evidence from the Appellant.

The Board,

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

- Upholds the Preliminary Plea raised by the Recommended Bidder on procedural grounds, and does not entertain Grievances 1 and 2, and the part of Grievance 3 challenging the design of Clause 5B(a), under Regulation 270,
- Does not uphold Appellant's Letter of Objection and contentions,
- Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Dr Ing. Damien Gatt
Member