



Today 21 July 2026

Secretary
Public Contracts Review Board
Notre Dame Ravelin
Floriana

Re. SPD5/2026/012 ("Tender for the Supply and Delivery of Four (4) X-Ray Machines for the Court Services Agency")

REASONED LETTER OF REPLY by the Court Services Agency to objection 688, by Mediterranean Protection Solutions Limited

Introduction & Preliminary Plea

These submissions are filed on behalf of the Contracting Authority in reply to the reasoned objection lodged by Mediterranean Protection Solutions Limited against the decision declaring its offer technically non-compliant and recommending the award of the above tender to APCO Limited.

As a preliminary plea, and without prejudice to the submissions on the merits, the Contracting Authority submits that the present objection is null and should be outright rejected.

The Objector has not only not cited the Court Services Agency as a respondent in its objection but also directed its objection against the Sectoral Procurement Directorate, while describing that Directorate as the "Contracting Authority". This description is legally incorrect. Regulation 9(1)(c) of the Public Procurement Regulations (L.S. 601.03) expressly distinguishes the Sectoral Procurement Directorate from the contracting authority and provides that procurement falling within the applicable thresholds is to be published,

administered and determined by the Sectoral Procurement Directorate “in the name of the contracting authority”.

The distinction is maintained throughout the appeals procedure. Regulation 274 provides that: “The Secretary of the Public Contracts Review Board shall immediately notify the Director, the Sectoral Procurement Directorate and, or the contracting authority, as the case may be, that an objection had been filed...”

The law therefore expressly recognises the Sectoral Procurement Directorate and the Contracting Authority as separate procedural entities.

Likewise, regulation 276(c) specifically provides that: “...the contracting authority and any interested party may, within ten calendar days ... file a written reply to the appeal”, while regulation 276(e) separately requires the Secretary of the Board to inform the Department of Contracts, the Sectoral Procurement Directorate and the Contracting Authority of the hearing.

In the present procurement, the tender documentation identifies the Court Services Agency as the final beneficiary of the tender and provides that the supplies are being procured for the Court Services Agency. The Court Services Agency is therefore the Contracting Authority whose rights and interests are directly affected by the objection and by any decision which may be delivered by this Board. Notwithstanding this, the Objector failed to cite the Court Services Agency and instead incorrectly attributed the status of Contracting Authority to the Sectoral Procurement Directorate. The objection is consequently directed against an incorrectly designated party and omits the actual Contracting Authority.

For these reasons, the Contracting Authority respectfully requests that this Honourable Board uphold this preliminary plea and declare that the objection is procedurally defective as presently constituted and thus rejects the objection at the outset.

As to the merits, the objection turns on one admitted fact: Item 59 of the Technical Offer Form, requiring a clear "Yes" or "No" response in respect of the front infeed roller for X-Ray Machine 2, was left unanswered.

The Contracting Authority does not contend that the blank answer is to be read as a negative response. Its decision rests on a different and elementary proposition: the Objector did not submit the mandatory declaration of compliance required by the Technical Offer Form. A blank response is neither an acceptance nor a rejection of the requirement. It leaves absent the very commitment which the Evaluation Committee was required to verify before treating the offer as technically compliant.

The Objector seeks to replace that missing declaration with a chain of inferences drawn from the tender dossier, its answers to other rows, the model of machine offered, general manufacturer literature and the aggregate price. That exercise cannot be accepted. It would convert a mandatory, bidder-specific declaration into a rebuttable presumption, oblige the Evaluation Committee to reconstruct an answer which the bidder itself did not give, and permit the Objector after opening to confirm for the first time that the omitted component was included in its technical and financial offer.

The evaluation was conducted in accordance with the published tender documents, the principle of self-limitation, equal treatment and transparency. The Objector's exclusion was not a disproportionate reaction to a harmless typographical error; it was the inevitable consequence of the absence of submitted information in a Note 3 document. The objection should therefore be dismissed in its entirety.

A. The tender framework and the admitted omission

The tender concerns the supply, delivery, installation and commissioning of four X-Ray machines, together with the dismantling and disposal of four existing machines. Clause 3.1 provides that the tender is not divided into lots, that bids must cover the whole of the quantities indicated and that incomplete quantities will not be accepted. Section 3 is expressly designated as a Note 3 document and states that all offers must comply with the technical, operational, safety and maintenance requirements set out therein.

Section 10 of the technical specifications separately identifies eight roller requirements: one front infeed and one rear outfeed roller set for each of the four machines. The front infeed

roller for Machine 2 is not incorporated by reference into the rows relating to Machines 1, 3 or 4. It is stated as a separate requirement, with its own description, dimensions, quantity and placement. Correspondingly, the Technical Offer Form required a separate "Yes" or "No" declaration for each item.

The Objector accepts that it completed the neighbouring roller entries but left Item 59 entirely unticked. It did not write "Yes", and neither did it write "No". It did not insert an explanatory note in that row. The Evaluation Committee was therefore faced with a Technical Offer Form in which the precise declaration requested for Machine 2 was absent.

The Notes to Clause 5 draw a deliberate distinction between documents which may be rectified and Note 3 documents. In relation to Note 3, the tender states: "No rectifications shall be allowed. Only clarifications on the submitted information may be requested." The power to clarify is therefore dependent upon the existence of submitted information. It does not authorise the Contracting Authority to invite a bidder to supply an answer which is absent from the document in which that answer was expressly required.

Clause 6.1 is equally clear that price is the sole award criterion only among offers satisfying the administrative and technical criteria. The Objector's lower price could become relevant only after technical compliance had been established. It could not cure, override or render immaterial the absence of a mandatory technical declaration.

B. The decision does not treat the blank as "No"

A central premise of the objection is that the Contracting Authority attributed a substantive negative meaning to an empty box and thereby interpreted the offer as one for three complete machines and one machine without a front roller. That is not what the decision says and it is not the basis upon which the offer was rejected.

The Evaluation Committee was not required to decide that the Objector intended to exclude the roller. It was required to decide whether the Objector had submitted the unequivocal compliance declaration demanded by the Technical Offer Form. It had not. Technical compliance is not established merely because the Evaluation Committee may

consider one interpretation commercially more likely than another. The bidder bears the responsibility of submitting a complete offer and expressing its commitments in the form prescribed by the tender.

The distinction is decisive. A "No" response would have been an express refusal to comply. A blank response is the absence of any commitment. Both prevent the Evaluation Committee from certifying compliance, though for different reasons. The Objector cannot transform the absence of an answer into a positive answer by arguing that it did not expressly say "No".

Nor was the Evaluation Committee entitled to select the answer which would preserve the Objector's participation. Procurement evaluation is not an exercise in benevolent reconstruction. Where a tender requires a bidder to state "Yes" or "No", the Evaluation Committee cannot substitute its own assumption for the bidder's declaration, particularly where the declaration will form part of the contractual documentation and define the contractor's enforceable obligations.

C. Clause 3.1 does not deem every specific requirement accepted

The Objector places substantial reliance on Clause 3.1, which requires the whole quantity and rejects incomplete quantities. That clause imposes a mandatory obligation upon bidders; it is not a deeming provision which automatically supplies every omitted technical response. It does not state that an offer must be treated as including every item irrespective of how the Technical Offer Form is completed.

The contrary interpretation would deprive the Technical Offer Form of any function. Every bidder could leave individual technical declarations unanswered and later contend that the general requirement to tender for the whole quantity necessarily supplied all missing answers. The separate rows, and the requirement for a separate "Yes" or "No" response, would become redundant. The tender documents must be read coherently: Clause 3.1 requires a complete quantity, while the Technical Offer Form requires the bidder to demonstrate and declare that its offer in fact satisfies each constituent requirement.

It is also incorrect to say that the only possible answer to Item 59 was "Yes". A bidder remained free to submit a technically non-compliant configuration, to omit an accessory, to misunderstand a requirement, or to price the equipment on a different basis. The fact that such an offer would be rejected does not mean that the Evaluation Committee may presume the missing answer. The purpose of the mandatory declaration is precisely to remove that uncertainty before award.

D. The neighbouring answers do not constitute the missing declaration

The Objector argues that it answered "Yes" to the identical front roller requirement for Machines 1, 3 and 4 and to every rear roller requirement. Those answers prove only what they state: that the Objector accepted the specified roller for the particular machine and row concerned. They do not amount to a declaration in respect of Machine 2.

The tender itself treated each machine and each roller position as a separate item. That structure is not accidental. Identical base machines may be supplied with different accessories or configurations, and the tender required the Evaluation Committee to verify each placement and quantity individually. The Objector cannot ask the Board to collapse eight separately requested commitments into one general undertaking after having omitted one of them.

More fundamentally, a declaration of compliance is an act of commitment by the economic operator. It cannot be inferred merely from similarity. A positive response concerning Machine 1 is not the same legal statement as a positive response concerning Machine 2. The Objector's present submission that it always intended Item 59 to read "Yes" is precisely the confirmation which was missing at closing.

E. Manufacturer literature proves capability, not inclusion

The Objector also relies on manufacturer literature describing "Entry/Exit Roller Tables" as an available feature of the ASTROPHYSICS XIS-6040. That material does not establish that the particular roller was included in the Objector's offer. An accessory may be

technically available for a model without being offered, configured, priced or contractually accepted in a particular tender.

Indeed, the objection itself characterises the literature as corroborative capability evidence and not as the sole proof of quantity or price. That concession is fatal to the argument. The literature may show that the machine can be fitted with roller tables; it does not contain the Objector's unequivocal declaration that one front infeed roller set for Machine 2, with the dimensions and placement required by the tender, was included at the submitted price.

Supporting literature serves to substantiate a technical response. It does not replace the response. The Evaluation Committee cannot convert a manufacturer's statement that an accessory is available into the bidder's contractual promise to supply it.

F. The financial offer does not objectively determine the missing answer

The Objector submits that the Financial Bid Form contained one rate for each complete X-Ray system and did not provide separate lines for individual rollers. Far from proving inclusion, the absence of a separate price line means that the financial offer provides no objective arithmetic method by which the Evaluation Committee could determine whether the omitted roller was included in the quoted rate.

A lump-sum or unit rate may encompass all required components, but it may also reflect an incomplete understanding or configuration. The Evaluation Committee cannot know which is the case where the mandatory technical response is blank. There is no bill of quantities calculation, separate unit rate, deduction, description or cross-reference from which the missing declaration can be derived.

The Objector's argument therefore depends on an assumption: because no separate deduction was made, the roller must have been included. Procurement law does not permit technical compliance to be founded on such an assumption where the tender expressly required a direct answer. The aggregate price cannot perform the evidentiary and contractual function of the missing "Yes" declaration.

G. The order of precedence is not a cure for an incomplete technical offer

The Objector invokes Article 3.1 of the Special Conditions, under which the Contracting Authority's technical specifications rank above the contractor's technical offer in the order of precedence of contract documents. That provision cannot assist it.

The order of precedence regulates the interpretation of the contract documents after a valid award. It does not dispense with the prior evaluation of technical compliance, and it does not authorise the Contracting Authority to award a contract to a bidder whose Technical Offer Form omits a mandatory declaration. If the technical specifications automatically cured every omission or contradiction in a bidder's offer, no technical evaluation would be necessary and every tender would be deemed compliant by reference to the Contracting Authority's own specifications.

Article 24.2, which requires the supplies to be complete in all aspects and to satisfy Section 3, is likewise an obligation to be assumed by the successful contractor. The Evaluation Committee first had to establish that the Objector had accepted that obligation in the manner required by the tender. It could not use a general contractual condition to write the missing acceptance into Item 59.

H. A request for clarification would have introduced a new commitment

The Objector seeks to characterise the requested post-closing answer as a clarification rather than a rectification. Labels are not decisive. The legal question is whether the proposed response would merely explain information already submitted or would supply information and commitment which were absent at the deadline.

Here there was nothing in Item 59 to clarify. A request asking the Objector to confirm that the roller was included would give it, after opening, the opportunity to answer "Yes" and thereby assume a contractual obligation which it had not expressly assumed in its Technical Offer Form. That is not an explanation of ambiguous wording; it is the completion of an unanswered mandatory field.

The Objector says that it had no genuine commercial choice because the remainder of its offer supposedly fixed the answer. That assertion is circular. It depends upon the very inference which the Technical Offer Form was designed to avoid. At closing, the Objector had not stated whether it accepted Item 59. Its present confirmation would resolve that uncertainty in its favour and would alter the legal certainty of the offer.

The limitation in Note 3 must therefore be applied according to its text. Clarification may be sought only on submitted information. It cannot be used to create the missing declaration, nor can the Board treat the Objector's post-closing explanation as though it had formed part of the original tender.

I. The Relevance of PCRB Case 2243

The most closely analogous authority is *PCRB Case 2243, Office Group Limited v Service.gov Agency, SPD7/2025/060, decided on 19 May 2026*. There too, the Technical Offer Questionnaire was a Note 3 document and the bidder failed to provide the required clear "Yes" or "No" response. The bidder relied on explanatory material and argued that the Evaluation Committee should infer compliance from the tender as a whole.

The Board rejected that argument. It held that the technical response column records the bidder's unequivocal commitment to comply, while literature or explanatory material merely supports that commitment. In the absence of an explicit declaration, the Evaluation Committee was not entitled to infer or assume compliance. The Board further held that the Technical Offer Questionnaire forms an integral part of the contract documentation and that the absence of a clear "Yes" or "No" was a substantive deficiency, not a minor or clerical irregularity.

The Board also applied the Note 3 rule in the same manner urged by the present Contracting Authority: where no compliance declaration was submitted, there is no submitted information upon which a clarification can be grounded. Allowing the bidder to correct the omission would be unfair to economic operators who submitted complete technical questionnaires and would breach the rules established by the tender document.

The present facts are, if anything, stronger for the Contracting Authority. In Case 2243 the bidder had inserted "N/A" and explanatory text, yet the Board still held that such material could not replace the required declaration. Here Item 59 was left entirely blank. There is even less submitted information capable of clarification.

Case 2243 also disposes of the Objector's reliance on price. The Board held that the relative cost of an offer is irrelevant where that offer does not satisfy the mandatory technical requirements: a technically non-compliant bid cannot be considered for award on the basis of price alone. The same reasoning applies here.

J. The Court of Appeal authorities relied upon by the Objector are distinguishable

The Contracting Authority does not dispute the general principle expressed in *Katari Holdings et v Malta Investments & Economic Advisory Ltd et* that an Evaluation Committee should not discard an offer merely because factual information appears in a different part of the submission, where the relevant information was in fact supplied before closing. The decisive qualification is that the information must already exist in the original tender. Item 59 did not ask for the repetition of an objective fact, such as a model number or catalogue reference. It asked for the Objector's express commitment to comply with a particular requirement. That commitment is not found elsewhere.

The same distinction answers *Europharma Limited v Central Procurement and Supplies Unit et* cited by Objector. On the facts described by the Objector, the omitted brand, model number and catalogue reference appeared expressly in another document submitted with the tender. A clarification could therefore identify the location of factual information already supplied. In the present case, no document contains a "Yes" declaration for Machine 2's front roller. The positive answers for other machines are different declarations, and the brochure establishes only that rollers are available.

In *Krypton Chemists Limited v Central Procurement and Supplies Unit et*, the defect concerned an unclear or illegible label, while the product characteristics and the intended information were already presented elsewhere in the technical offer. Replacing an illegible copy with a

clearer copy did not add a new commitment. A blank compliance response is materially different. There is no obscured answer to reveal; the answer was never given.

Nor is *Ballut Blocks Services Limited v Minister for Resources and Rural Affairs et* analogous. There the missing price in one form was objectively calculable from the Bills of Quantities forming part of the same offer. The result followed by arithmetic and did not depend on a discretionary inference. Here the aggregate price cannot mathematically establish whether a particular accessory was included. There is no calculation which yields the word "Yes".

The principle stated in *Rockcut Limited v Director General, Department of Contracts et* equally supports the Contracting Authority once applied to the facts. The decisive inquiry is whether the information requested in the missing questionnaire was submitted elsewhere. The Objector has not identified an express declaration elsewhere accepting Item 59. General quantity clauses, neighbouring answers and capability literature do not constitute that declaration.

The Objector also invokes PCRB Case 1653 as a case of genuine human error. On the Objector's own description, however, that matter involved a mistaken product identification where the correct unit and same unit price appeared in immediately related entries. The Board could identify the actual offered item from express information in the tender. Here there is no express answer for Item 59. The Objector asks the Board not to identify submitted information, but to infer and then insert a commitment.

The cases cited by the Objector therefore do not establish that every blank field in a Note 3 document is clarifiable. They establish a narrower proposition: where the precise information required is objectively and expressly present elsewhere in the original offer, a clarification may in appropriate circumstances identify or explain it without changing the offer. That factual premise is absent here.

K. The authorities cited by the Board in Case 2243 reinforce the decision

In Case 2243 (already cited by the Contracting Authority) the Board expressly referred to PCRB Cases 2174 and 2187. Those decisions recognise that a Note 3 Technical Offer

Questionnaire performs a distinct evaluation function and that an omitted compliance declaration cannot be supplied after closing where it is not found elsewhere in the bidder's offer. The Evaluation Committee's hands are tied by the tender rules and by equal treatment.

The Objector attempts to distinguish those cases on the ground that Item 59 concerns a repeated physical component rather than a unique performance characteristic or future commitment. That distinction does not alter the legal nature of the required response. The tender separately asked whether the Objector accepted the component for Machine 2. The question was specific, the response format was mandatory, and no response was submitted. Repetition may make the omission understandable; it does not make the missing declaration legally present.

L. Equal treatment, transparency and self-limitation required rejection

The principles invoked by the Objector do not operate only in its favour. Equal treatment and transparency require the Contracting Authority to apply the same published requirements to all bidders. Other economic operators were required to complete every technical response and bind themselves before the deadline. Allowing the Objector to complete Item 59 after opening would give it a procedural opportunity unavailable to bidders who complied from the outset.

The principle of self-limitation is equally important. The Contracting Authority was bound by the Note 3 designation and by the express restriction of clarification to submitted information. It could not waive the requirement, redesignate the omission as a formality, or treat a blank field as though a positive response had been entered. Doing so would replace objective tender rules with an ad hoc assessment of what the bidder probably intended.

There is also a concrete contractual reason for insisting upon the declaration. The Technical Offer Form forms part of the contractual documentation. Without a clear response, the Objector could later dispute whether the particular accessory was included in its price or whether its obligation arose only from a general specification. The purpose of the form is to avoid such ambiguity before award, not to litigate it after contract signature.

The Board in Case 2243 considered this very risk and held that the omission was substantive because a bidder could seek post-award to rely on the absence or wording of its response to resist compliance. The same risk exists here. The Contracting Authority was entitled, and required, to insist upon certainty at the evaluation stage.

M. Proportionality does not require the Contracting Authority to disregard a mandatory omission

Proportionality requires regard to the nature and effect of a defect; it does not confer a general power to overlook mandatory tender requirements. The relevant question is not whether exclusion produces a severe commercial consequence for the Objector, but whether a less restrictive lawful measure was available within the tender rules without adding to or changing the offer.

No such measure was available. A clarification could not merely point to an existing "Yes" elsewhere, because none existed for Item 59. The only way to preserve the offer would have been to allow the Objector to provide the missing answer after closing or to have the Evaluation Committee presume that answer on its behalf. Both courses would undermine equal treatment, transparency and contractual certainty.

The Objector repeatedly describes the omission as isolated and clerical. The number of affected fields is not decisive. A single omitted declaration may be substantive where it concerns a mandatory component and the tender expressly requires a bidder-specific commitment. Case 2243 confirms that the absence of a clear "Yes" or "No" in a Note 3 Technical Offer Questionnaire is not reduced to a clerical irregularity merely because other information or explanations exist.

N. The financial difference cannot cure technical non-compliance

The Objector offered EUR 120,524.00 excluding VAT, while the recommended offer is EUR 152,811.72 excluding VAT. The Contracting Authority recognises its duty to obtain value for public funds. That duty is exercised within the tender conditions, not by awarding to the lowest price irrespective of technical compliance. This was recently confirmed by the

Court of Appeal in the decision of *C & F Building Contractors Limited (C-15308) vs Id-Dipartiment tal-Kuntratti* (13 July 2026): “dwar l-argument imressaq brevement mill-appellanta fuq il-fatt li hija kienet ressqet l-irhas offerta, tali kwistjoni hija rrelevanti peress kif inhu ben tajjeb risaput, l-irhas prezz bl-ebda mod ma jikkreja xi dritt awtomatiku li l-offerta tinghata lil tali offerent.”

Clause 6.1 provides that the contract is awarded to the cheapest offer satisfying the administrative and technical criteria. The order is deliberate. An offer which has not crossed the technical compliance threshold does not enter the price comparison for award. The EUR 32,287.72 difference cannot supply the missing declaration, convert a non-compliant tender into a compliant one, or justify unequal treatment.

The Objector's proportionality argument effectively asks the Board to relax the mandatory rules because the financial saving is substantial. That approach would make compliance depend upon the size of a price differential and would reward the lowest bidder with a special opportunity to perfect its technical offer. Public procurement law does not permit such a sliding standard.

Conclusion

The objection proceeds from a false equivalence between information which can be found elsewhere in a tender and a compliance declaration which was never made. The Objector submitted positive answers for other roller items, general literature showing that roller tables were available, and an aggregate price. None of those documents states that the Objector accepted Item 59 for Machine 2 at the submitted price.

The Contracting Authority did not deem the blank to be "No". It correctly found that the mandatory "Yes" or "No" declaration was absent. Because the Technical Offer Form was a Note 3 document, the missing declaration could not be rectified, and there was no submitted answer capable of clarification. To infer compliance would have contradicted the express response structure, the principle of self-limitation and the equal treatment owed to bidders who completed their offers correctly.

PCRB Case 2243 is directly in point and confirms that the absence of a clear "Yes" or "No" in a Note 3 Technical Offer Questionnaire is a substantive deficiency; supporting information cannot replace the declaration; and price is irrelevant where mandatory technical compliance is not established. The Court of Appeal authorities cited by the Objector concern situations where the precise factual information was expressly present elsewhere in the original tender. They do not authorise the post-closing creation of a contractual commitment.

For these reasons, the Contracting Authority respectfully requests that the Public Contracts Review Board dismiss the objection in its entirety, confirm the decision declaring the Objector's offer technically non-compliant, uphold the recommendation for award in favour of APCO Limited, and direct that the deposit paid by the Objector is not reimbursed.

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