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PUBLIC CONTRACTS
REVIEW BOARD

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 690, by Suratek Limited

Introduction

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

The objection is based on three grievances. The first concerns Suratek's failure to mark either "Yes" or "No" at Items 9 and 49 of the Technical Offer Form. The second concerns Item 23, where Suratek marked both "Yes" and "No" in response to the same technical requirement. The third concerns a request, sent four days before the objection was filed, for disclosure of the brand and manufacturer of the equipment offered by the recommended tenderer.

The first two grievances proceed from a common misconception. The Technical Offer Form was not an administrative checklist whose symbols could be supplied, removed or rearranged after closing without legal consequence. It was a Note 3 document requiring the bidder's own clear and unequivocal declaration of compliance with each technical requirement. Supporting literature could substantiate such a declaration; it could not replace it. Likewise, two contradictory answers could not be converted into one compliant answer after opening without permitting the bidder to select, for the first time, which of its two opposing declarations should bind it.

The tender rules expressly prohibited rectification of Note 3 documentation and permitted only clarification of information already submitted. The Evaluation Committee could neither write the missing declarations on Suratek's behalf nor delete the negative response which Suratek itself entered at Item 23. The defects were therefore substantive and prevented the Evaluation Committee from certifying technical compliance.

The disclosure grievance is separate from the legality of the evaluation decision. The written request was made on 16 July 2026 and the objection was filed on 20 July 2026, well before the fifteen-day period allowed by regulation 242(2) of the Public Procurement Regulations had elapsed. Moreover, the requested information is not automatically non-confidential merely because the manufacturers and products operating in the market may be publicly known. In any event, a post-decision request for information does not establish that the award decision was unlawful, and it cannot reserve an open-ended right to introduce new grievances after the statutory appeal period.

The Contracting Authority respectfully submits that the Evaluation Committee applied the tender documents consistently, transparently and equally to all bidders. Suratek's price was relevant only if its offer first satisfied the mandatory technical criteria. The objection should consequently be dismissed in its entirety.

A. The tender framework and the three admitted defects

The tender concerns the supply, delivery, installation and commissioning of four X-Ray machines, together with the dismantling and disposal of four existing machines. Section 3 of the tender document 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.

The Technical Offer Form required the bidder to confirm, by marking either "Yes" or "No", whether the equipment offered complied with each separately listed requirement. The adjacent literature column served a different purpose: it allowed the bidder to identify the document and page supporting the technical response which it had given.

Suratek's Letter of Rejection identified three entries in respect of which no clear response had been submitted. Item 9 required confirmation that the conveyor load capacity was at least 165 kilograms, evenly distributed. Item 23 required confirmation that the equipment was fitted with an automatic voltage regulator. Item 49 required confirmation that the enclosure rating was at least IP20.

The facts are not disputed. At Item 9 Suratek left both response boxes unmarked, while inserting the literature reference "165 kgs - DOC 2 p1". At Item 49 it again left both response boxes unmarked, while inserting the reference "DOC 1 p2". At Item 23, Suratek did not omit the response: it marked both "Yes" and "No" to the same requirement.

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 provides in express terms: "No rectifications shall be allowed. Only clarifications on the submitted information may be requested." The existence of submitted information is therefore the necessary premise for a clarification. The provision does not authorise the Evaluation Committee to create a missing declaration or to permit a bidder to withdraw one of two contradictory declarations after closing.

Clause 6.1 provides that the contract is to be awarded to the cheapest priced offer satisfying the administrative and technical criteria. The price comparison is therefore subsequent to, and conditional upon, technical compliance. Suratek's offer of EUR 137,320.00 could only compete for award if the mandatory technical declarations had first been completed in a manner allowing the Evaluation Committee to establish compliance.

B. The Technical Offer Form required an unequivocal bidder commitment

Suratek characterises the defects as three misplaced or missing symbols in a form which it describes as administrative in nature. That description overlooks the legal and contractual function of the response column. A "Yes" answer was the bidder's express undertaking that the particular equipment and configuration offered met the stated requirement. A "No" answer was an express indication of non-compliance. A blank entry supplied neither commitment, while a simultaneous "Yes" and "No" supplied two irreconcilable commitments.

The fact that the form was a self-declaration completed by the bidder strengthens, rather than weakens, the Contracting Authority's position. The Evaluation Committee could not make that declaration for Suratek. Nor could supporting material be treated as though it were the bidder's own acceptance of an obligation. The bidder was required both to declare compliance and, where requested, to substantiate that declaration by a literature reference.

The distinction is not formalistic. The Technical Offer Form forms part of the contractual documentation upon award. The Contracting Authority was entitled to know, before award, the precise obligations which the tenderer had accepted. If the mandatory response could be inferred from general product literature, the response column would serve no purpose and every missing or contradictory answer could be reconstructed after opening.

Technical evaluation is not an exercise in selecting the interpretation which preserves a bidder's participation. The Evaluation Committee must be able to certify compliance from the offer submitted by the deadline. It may clarify what the bidder has said; it may not decide what the bidder ought to have said, or invite the bidder to decide after opening which answer it wishes to retain.

C. Items 9 and 49: technical literature does not replace the missing declarations

Suratek relies on the literature references entered in the final column at Items 9 and 49. It submits that "DOC 2 p1" confirms a conveyor load capacity of 165 kilograms and that "DOC 1 p2" confirms an IP20 enclosure rating. Even assuming that the cited pages establish those product characteristics, they do not constitute the clear "Yes" declaration which the form separately required.

There is an essential difference between evidence that a product is capable of meeting a specification and the bidder's contractual commitment that the product, configuration and accessories included in its particular offer will meet that specification. A manufacturer's data sheet describes a product or range. The response column identifies what the economic operator undertakes to supply under the tender at the price submitted.

Suratek's own completion of the form confirms that the two columns were not interchangeable. In sixty-two other rows it considered it necessary to mark a response notwithstanding the existence of supporting documents. The separate requirement to provide a literature reference did not relieve it from giving the requested declaration at Items 9 and 49.

Nor can the Evaluation Committee be criticised for failing to transform the literature references into affirmative answers. The Committee could verify that the cited literature contained the stated figures, but it could not place a tick in the "Yes" box on Suratek's behalf. The missing legal act was not the identification of a number or rating; it was the economic operator's unequivocal acceptance of the relevant obligation.

A request asking Suratek whether the intended answer was "Yes" would not merely identify where existing information appeared. It would permit Suratek to provide, after closing, the declaration which the prescribed form did not contain. The fact that Suratek now states that the omission was clerical is a post-closing explanation of intention, not information which formed part of the original tender.

The Objector also submits that no competitive advantage arose. That test is framed too narrowly. A post-closing opportunity to complete a mandatory declaration is itself an advantage over bidders who submitted complete and unequivocal offers. Equal treatment does not require proof that the bidder altered its price; it also prevents a bidder from perfecting the legal certainty and enforceability of its technical commitments after seeing the outcome of the competition.

D. Item 23: the double-tick could not be resolved by clarification

The position at Item 23 is even clearer. Suratek marked both "Yes" and "No" in response to whether the X-Ray machine was equipped with an automatic voltage regulator. The response therefore contained an express assertion of compliance and an express assertion of non-compliance at the same time.

The objection now states that Suratek intended to mark only "Yes" and that the "No" tick was inadvertent. That explanation was not contained in the tender. At closing, there was no objective basis upon which the Evaluation Committee could privilege one answer and disregard the other. The Committee could not assume that the positive answer represented Suratek's true intention merely because that interpretation would keep the offer in the competition.

A clarification request asking Suratek to select "Yes" or "No" would confer precisely the post-closing choice which the clarification rules are intended to prevent. If Suratek chose "No", the offer would remain non-compliant. If it chose "Yes", the bidder would remove its own express negative response and convert an indeterminate tender into a compliant one. The exercise would therefore change the legal effect of the submitted offer.

The Objector argues that it remained bound by the brand and model offered. That does not resolve the contradiction. Technical features may vary by model variant, configuration, optional accessory or supply package. More importantly, the objection identifies no literature cross-reference at Item 23 which objectively determines which of the two answers was intended. Even the existence of a standard feature in manufacturer literature would not erase the "No" declaration placed in the bidder's own contractual form.

The defect is accordingly not comparable to an obvious transposition, an illegible copy or a missing figure which can be derived arithmetically from the tender. Its correction requires the bidder to retract one of two opposing technical statements. Removing the "No" tick and retaining the "Yes" tick would be a rectification of the technical offer, expressly prohibited by Note 3.

The Objector's formulation - that the error was capable of "clarification or rectification" - also elides the decisive distinction in the tender. Rectification was expressly prohibited. A correction cannot be rendered lawful merely by describing it alternatively as a clarification where its effect is to delete a substantive response and replace an ambiguous commitment with an unequivocal compliant one.

E. The relevance of PCRB Case 2243

The most closely analogous authority is PCRB Case *2243*, SPD7/2025/060, Leasing of 25 A4 Multifunctional (Desktop) and 26 A3 Heavy Duty Multifunctional (Free Standing) Energy-Efficient Imaging Equipment with Reduced Environmental Impact, decided on 19 May 2026. There, the Technical Offer Questionnaire was likewise a Note 3 document and the bidder failed to submit the required clear "Yes" or "No" declarations, while relying upon explanatory material entered elsewhere in the form.

The Board expressly accepted that the response and literature columns served different legal purposes:

> *"The Board accepts the Contracting Authority's submission that the two columns serve entirely distinct purposes: the 'Technical Response from the Bidder' column records the bidder's unequivocal commitment to comply with a requirement, while the 'Reference in Literature' column provides evidential support for that commitment. The Appellant's substitution of explanatory text for a 'Yes' or 'No' declaration does not constitute an equivalent response, and in the absence of an explicit declaration of compliance, the Evaluation Committee was not in a position to infer or assume compliance where no explicit declaration had been made."*

The Board further held that the Technical Offer Questionnaire formed an integral part of the contractual documentation and that the absence of a clear "Yes" or "No" was not a minor or clerical irregularity, but a substantive deficiency. It reasoned that where no compliance declaration had been submitted, there was no submitted information upon which a clarification request could properly be grounded.

That reasoning applies directly to Items 9 and 49. Suratek's literature references may support the technical characteristics of its product, but they do not replace the bidder's unequivocal commitment. Indeed, Case 2243 is stronger than a case involving a completely empty form: the bidder there had inserted "N/A" and explanatory text, yet the Board still held that such material could not stand in place of the required declaration.

The same principle applies, with greater importance, to Item 23. Suratek did not provide an absent but inferable answer; it provided two opposite answers. A clarification selecting one would not explain an existing unequivocal commitment. It would determine which commitment was to survive and would remove the other from the offer.

Case 2243 also confirms that the relative price of a technically non-compliant offer does not make the omission clerical or compel its reinstatement. The Board held that a technically non-compliant bid cannot be considered for award on the basis of price alone. The Contracting Authority was required to apply that same standard consistently in the present tender.

F. Antwerpse Bouwwerken is distinguishable

Suratek relies on Case T-195/08, *Antwerpse Bouwwerken v European Commission*, in which, according to the extract reproduced in the objection, an omitted price for one line item was treated as a simple clerical error or an ambiguity capable of being easily resolved because the missing price could not reasonably differ from the price entered for an equivalent item elsewhere.

That factual premise is absent here. The missing answers at Items 9 and 49 are not figures capable of being derived by arithmetic or copied from an identical priced item. The literature establishes, at most, technical characteristics. It does not contain the bidder's prescribed declaration of acceptance. At Item 23 there is no omission capable of objective derivation at all; the tender contains two opposing answers.

Antwerpse Bouwwerken therefore illustrates, rather than displaces, the relevant dividing line. A correction may be possible where the tender itself objectively fixes the missing content and leaves the bidder no post-closing choice. It is not permissible where the contracting authority must infer a bidder's commitment or ask the bidder which of two contradictory answers it wishes to maintain.

Suratek's contention that the errors had no bearing on the substance of the offer assumes the conclusion which the Technical Offer Form was designed to establish. Whether Suratek accepted the requirements was itself a substantive component of the tender. The Evaluation Committee could not treat the answer as immaterial merely because Suratek now says that the intended result was obvious.

G. Europharma does not permit supporting documents to replace a mandatory declaration

The Objector also invokes *Europharma Limited v Central Procurement and Supplies Unit et*, Civil Appeal No. 445/2025/1, decided on 29 January 2026. On the facts described by Suratek, the missing brand and manufacturer had been expressly stated in another document submitted with the tender, namely the Declaration of Conformity.

That situation is materially different. Brand and manufacturer are objective factual identifiers. If those precise identifiers are expressly stated elsewhere in the same offer, a clarification may point to their location without introducing a new choice or commitment. Items 9, 23 and 49 required the bidder's own declaration as to compliance with particular technical obligations.

The literature references at Items 9 and 49 do not state: "Suratek confirms that its offered equipment complies." They identify documents containing specifications. Item 23 contains both possible declarations. The issue is therefore not where a factual identifier can be found, but whether the bidder made an unequivocal commitment in the prescribed form. It did not.

Europharma cannot be read as abolishing the distinction between a technical response and the evidence supporting that response. Such an interpretation would contradict the recent and factually direct ruling in Case 2243. Properly understood, the cases are coherent:

information expressly submitted elsewhere may be identified; a missing or contradictory bidder commitment may not be created after closing.

H. Krypton does not authorise Suratek to withdraw the "No" response

Suratek relies on *Krypton Chemists Limited v Central Procurement and Supplies Unit et*, Civil Appeal No. 322/2025/1, decided on 13 November 2025, and quotes the proposition that obvious clerical or formal errors may be rectified where the correction does not prejudice competition or alter the substance of the offer, including its price, technical specifications or essential elements.

Even the passage quoted by Suratek does not assist it. Item 23 concerns a mandatory technical specification and the bidder's express acceptance or rejection of that specification. Deleting the "No" response and preserving the "Yes" response changes the legal and technical effect of the offer from contradictory and non-certifiable to unequivocally compliant. It therefore affects an essential element of the tender.

The factual context is also different. In Krypton, as described in the authorities previously considered in this procurement, the underlying product information already existed in the tender and the correction served to make that existing information legible or clear. Here there is no concealed answer waiting to be revealed. Suratek submitted both answers and now asks to choose which one should count.

The clarification proposed by Suratek would also affect competition. It would afford Suratek a post-closing opportunity to remove the answer which causes rejection, after the prices and proposed award had become known. The absence of a change in price is not decisive; the competitive advantage lies in perfecting a mandatory technical commitment after the deadline.

Krypton therefore preserves the distinction applied by the Contracting Authority: an obvious defect may be addressed only where the correction is objectively fixed by the original tender and does not alter an essential element. It does not authorise a bidder to replace an indeterminate technical declaration with a compliant one.

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

The principles relied upon by Suratek apply to all economic operators, not only to the lowest bidder. Other tenderers were required to submit a clear response to every technical requirement before the deadline. Permitting Suratek to complete two missing declarations and to retract one of two contradictory declarations would subject its tender to a different and more favourable standard.

Transparency required the Evaluation Committee to apply the response structure as published. The tender did not state that a literature reference would be deemed a "Yes", nor that where both boxes were ticked the positive answer would prevail. Any such rule introduced after opening would be ad hoc and incapable of being applied predictably to all bidders.

The principle of self-limitation was equally decisive. The Contracting Authority had classified the Technical Offer Form as Note 3 and had expressly prohibited rectification. It could not waive that rule because the price difference was substantial or because the omissions were limited to three out of sixty-five rows. The number of defective entries does not alter their legal character.

There was also a concrete contractual reason for insisting upon certainty. Without an explicit response at Items 9 and 49, and with mutually inconsistent responses at Item 23, Suratek could later seek to rely on the wording of its own Technical Offer Form in a dispute regarding the configuration or obligations included in its price. The purpose of technical evaluation is to eliminate that uncertainty before award.

Proportionality does not require the Contracting Authority to disregard a mandatory requirement. It requires consideration of whether a less restrictive lawful measure exists. No such measure was available here: the only way to preserve the tender was to write the missing answers for Suratek or to allow Suratek to withdraw its negative answer after closing. Both measures were prohibited by the tender rules and equal treatment.

J. The price difference cannot cure technical non-compliance

Suratek submitted a financial offer of EUR 137,320.00 excluding VAT, while APCO Limited was recommended for award at EUR 152,811.72 excluding VAT. The difference is EUR 15,491.72. The Contracting Authority recognises its obligation to obtain value for public funds, but that obligation must be exercised within the published conditions of competition.

Clause 6.1 does not provide that the lowest price prevails irrespective of compliance. It provides for award to the cheapest offer satisfying the administrative and technical criteria. Suratek's offer could enter the financial comparison for award only after the Evaluation Committee had lawfully established that it met the mandatory technical requirements.

The point was recently confirmed by the Court of Appeal in C & F Building Contractors Limited (C-15308) v Department of Contracts, decided on 13 July 2026: "dwar l-argument imressaq brevement mill-appellanta fuq il-fatt li hija kienet ressqet l-irħas offerta, tali kwistjoni hija irrelevanti peress kif inhu ben tajjeb risaput, l-irħas prezz bl-ebda mod ma jikkreja xi dritt awtomatiku li l-offerta tingħata lil tali offerent."

The price difference could not supply the missing declarations, remove the negative answer at Item 23 or justify a special opportunity to perfect Suratek's technical offer. A contrary approach would create a sliding compliance standard under which the cheapest bidder receives greater tolerance than its competitors. That would be inconsistent with equal treatment and the tender's express award sequence.

The Objector's reference to economy and good administration therefore does not alter the result. Sound administration includes adherence to the rules which the Contracting Authority published and upon which all economic operators were entitled to rely.

K. The disclosure grievance is premature and does not invalidate the award decision

The third grievance concerns Suratek's email of 16 July 2026 requesting disclosure of the brand, model and manufacturer of the product offered by APCO Limited. The objection was filed on 20 July 2026, only four days after that request.

Regulation 242(2) provides that, upon a written request, the authority responsible for the tendering process is to provide the information specified therein "as quickly as possible, and in any event within fifteen days from receipt of a written request". At the date of the objection, the statutory period had not expired. Suratek cannot establish a breach of a time-limit which was still running.

The scope of regulation 242 is also material. An unsuccessful tenderer is entitled under regulation 242(2)(b) to the reasons for rejection of its tender. Those reasons were expressly communicated: the absence of a clear response at Items 9, 23 and 49. Regulation 242(2)(c), by contrast, refers to a tenderer that has made an admissible tender and to the characteristics and relative advantages of the selected tender, together with the name of the successful tenderer. Suratek's offer was rejected at the technical compliance stage and the proposed award had not yet crystallised into a concluded contract.

In any event, the third grievance does not identify any error in the evaluation of APCO's tender. Suratek states that it sought the information in order to determine whether it might raise additional grievances. That is not an existing complaint against the award decision; it is a request to investigate whether a complaint might later be formulated. Regulation 270 requires an objection to contain, in a very clear manner, the reasons for the complaints being advanced.

The failure to provide information within the four-day period selected by Suratek cannot render the Letter of Rejection unlawful. The rejection was based upon Suratek's own Technical Offer Form and is entirely independent of the brand or manufacturer offered by APCO. Even if disclosure were eventually ordered, that would not establish that Suratek's tender was compliant or justify its reintegration.

The remedy sought is therefore disproportionate to the grievance. A dispute about the scope or timing of disclosure cannot, without a pleaded and proven evaluation defect, justify revocation of the rejection decision, cancellation of the recommended award or re-evaluation of Suratek's technically defective offer.

L. Regulation 40(2)(d) does not make the requested tender information automatically public

Suratek relies on regulation 40(2)(d), which provides that "technical information which is already made available in public" shall not be considered confidential. The wording is narrower than Suratek suggests. It does not declare all brands, models, manufacturers or technical information to be non-confidential. It applies where the particular technical information is already publicly available.

The fact that a manufacturer markets products publicly does not necessarily make public the separate fact that a particular economic operator selected and offered a specific product, configuration and commercial package in a particular tender. Public availability of a brochure is not the same as public availability of the contents and composition of APCO's tender.

Regulation 40(1) provides that the contracting authority, the Director or the Sectoral Procurement Directorate shall not disclose information forwarded by economic operators which they have designated as confidential, including technical or trade secrets and confidential aspects of tenders. Regulation 242(3) likewise permits information to be withheld where disclosure would prejudice legitimate commercial interests or fair competition.

The requested information must therefore be assessed in its tender context and, where appropriate, in light of the recommended tenderer's confidentiality designations and rights. It cannot be treated as automatically disclosable merely because the name of a manufacturer or the general specifications of a product may be found online.

This does not mean that every product identifier is necessarily confidential. It means that the statutory assessment cannot be bypassed by Suratek's unsupported assertion that regulation 40(2)(d) conclusively determines the issue. The information requested, the context in which it appears, and any commercial sensitivity must first be identified and evaluated.

The comparison with Mediterranean Protection Solutions Limited is misplaced. An economic operator may choose to disclose the brand and manufacturer of its own product in its own objection. That voluntary disclosure does not waive or determine the confidentiality rights of APCO Limited in relation to its separate tender.

M. Suratek cannot reserve a right to add new grievances after the appeal period

At paragraph 49 of the objection Suratek purports to reserve fully its right to file additional grievances after receiving the requested information. Such a reservation cannot extend or disapply the statutory appeal regime.

Regulation 270 requires the objection to contain "in a very clear manner the reasons for their complaints". Regulation 271 requires the objection to be filed within ten calendar days following communication of the proposed award decision or rejection. Those provisions require the Objector to articulate its grounds within the statutory period; they do not provide for a provisional objection followed by new grievances at an indeterminate later date.

Suratek's disclosure request did not suspend or extend the ten-day period. Nor can the Objector preserve jurisdiction by stating that unknown grounds may be introduced later. A complaint against APCO's compliance must identify the alleged non-compliance and the factual and legal basis upon which it is advanced. No such complaint is presently pleaded.

The Board is therefore respectfully requested to determine the objection on the grounds actually filed. The request for an open-ended reservation should be rejected, without prejudice to any specific procedural direction which the Board may lawfully issue concerning documents within the existing proceedings.

N. Conclusion

The objection seeks to reduce three substantive defects in a mandatory Note 3 Technical Offer Form to harmless symbols. That characterisation is inconsistent with the tender documents and with PCRB Case 2243. Items 9 and 49 contained supporting literature references but no bidder declaration. Item 23 contained both the positive and negative declarations. In none of the three cases did the Evaluation Committee receive the clear and unequivocal response required by the form.

The Contracting Authority did not disregard information elsewhere in the tender. It correctly distinguished between product literature and the economic operator's contractual commitment. The former may substantiate a clear response; it cannot provide the response itself. Likewise, a clarification could not resolve Item 23 without allowing Suratek to withdraw its own negative answer and choose the compliant answer after closing.

The authorities cited by Suratek concern defects whose correction was objectively fixed by information already contained in the tender and did not alter an essential element. They do not authorise the creation of missing technical commitments or the deletion of an express contradictory response. Case 2243, which concerns the same type of Note 3 questionnaire and the same distinction between response and literature, is directly applicable.

The disclosure grievance is premature, collateral to the evaluation decision and incapable of supporting the remedies sought. The statutory fifteen-day response period had not expired when the objection was filed; regulation 40(2)(d) does not automatically render the contents of APCO's tender public; and Suratek cannot reserve the right to introduce unspecified new grievances after the ten-day appeal period.

For these reasons, the Contracting Authority respectfully requests that the Public Contracts Review Board dismiss objection 690 in its entirety, confirm the decision declaring Suratek Limited's offer technically non-compliant, uphold the recommendation for award in favour of APCO Limited, reject the request to reserve additional grievances, and direct that the deposit paid by the Objector is not reimbursed.

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