



7 August 2026

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

Dear Chairman,

Re: FRAMEWORK CONTRACT FOR THE PROVISION OF INCONTINENCE DIAPERS, PULL-UPS, PADS AND INCO-SHEETS FOR SAINT VINCENT DE PAUL – REF. CT2159/2026 (the Tender)

1. We have been instructed by our clients, **Krypton Chemists Limited (C8933)** (the **Claimant**), to lodge an application in terms of Regulation 262 of the Public Procurement Regulations (PPR) in connection with the above-captioned Tender.

A. Executive Summary

2. The Claimant's objection is straightforward: the Contracting Authority has unlawfully bundled materially different incontinence products into a single indivisible tender notwithstanding this Board's previous decision in Case 1731 of 27 May 2022, where comparable supplies were held to require separation into lots, including in respect of specialised categories such as bariatric products. That conclusion is also consistent with established public-sector practice over recent years, where similar tenders for diapers, pull-ups, pads and inco-sheets have been divided into separate lots or ranges. Against that background, the present Tender departs from both PCRb guidance and historical procurement practice without any adequate or evidence-based justification.
3. The practical effect of the Contracting Authority's approach is to artificially narrow competition by excluding economic operators who can supply some, but not all, of the required products, even though the procurement could readily be structured in a manner which preserves operational efficiency while allowing genuine competition between suppliers. The later reliance on clinical, logistical and patient-safety concerns is unsatisfactory: these concerns were absent from the first iteration of the tender and only appeared after the Claimant drew attention to the

previous PCRB decision. This strongly indicates that the new justification has been reverse-engineered ex post to defend an already-taken decision not to split the Tender into lots, rather than reflecting a genuine procurement need.

4. The tender submission deadline is on 25 August 2026. On this basis, the deadline for the filing of any application in terms of Regulation 262 of the PPR lapses on Sunday 9 August 2026.

B. Factual Background

5. This Tender is the second iteration of the same procurement. On 14 April 2026, the Department of Contracts published, for and on behalf of the same Contracting Authority, a call for tenders bearing reference number CT2104/2026 (the **First Tender**) for the supply of the same incontinence products, in the same estimated quantities, over the same twelve (12) month period, and at the same estimated value.
6. The First Tender was subsequently cancelled and re-issued as this Tender.
7. On 10 July 2026, the Department of Contracts published the above-captioned Tender for and on behalf of Saint Vincent de Paul (the **Contracting Authority**) for the supply of no less than 16 items:¹

Item No	Item Description	Estimated Quantity Required for twelve (12) months period
1	Adult Diapers Moderate Absorbent - Medium (M)	4,940
2	Adult Diapers Moderate Absorbent - Large (L)	77,220
3	Adult Diapers Moderate Absorbent - Extra Large (XL)	191,880
4	Adult Diapers Heavy - Medium (M)	358,800
5	Adult Diapers Heavy - Large (L)	220,740
6	Adult Diapers Heavy - Extra Large (XL)	330,720
7	Adult Diapers Heavy - Extra Extra Large (XXL)	13,312
8	Adult Diapers Heavy - Extra Extra Extra Large (XXXL)	8,320

¹ Tender Dossier, Section 3, Clause 9, pages 21—22.

Item No	Item Description	Estimated Quantity Required for twelve (12) months period
9	Female Disposable Pads 500mls	360
10	Female Disposable Pads 900mls	11,760
11	Male Disposable Pads	1,344
12	Adult Pull-Up Small	1,176
13	Adult Pull-Up Medium	16,632
14	Adult Pull-Up Large	45,120
15	Adult Pull-Up Extra Large	14,112
16	Inco Sheets (60 X 90cm)	1,244,880

8. The estimated financial value of this Tender is €4,092,677.28.

9. Save in one respect, the First Tender and this Tender are, to the Claimant's knowledge, materially identical. The single material difference between them is the reason given by the Contracting Authority for its decision not to divide the procurement into lots.

10. In the First Tender, the Contracting Authority justified that decision in the following terms:

It is necessary that all supplies required be rendered by one (1) Economic Operator to mitigate risks, optimise performance, reduce costs, and nurture a professional partnership.

11. On 15 April 2026, the day following the publication of the First Tender, the Claimant filed a clarification request with the Contracting Authority challenging its decision not to divide the First Tender into lots, and drawing express attention to this Board's decision in Case 1731 of 27 May 2022. The Contracting Authority never answered that request.

12. Now, according to Clause 3.1 of *Section 1 – Instructions to Tenderers* of this Tender, the Contracting Authority decided not to split the Tender into lots for an entirely different reason, namely:

Allowing multiple suppliers to deliver directly to the facility would create operational, clinical, and logistical risks. Given the size of Saint Vincent de Paul, the vulnerability of its residents, and the delivery requirements, having more than one supplier could disrupt continuity of care, increase delivery errors, and negatively affect infection control and patient safety.

13. The Claimant requested a clarification from the Contracting Authority on its decision not to split the Tender into lots:

With reference to Section 1.3.1 'This tender is not divided into lots, and tenders must be for the whole of quantities indicated. Tenders will not be accepted for incomplete quantities', please refer to Case No. 1731 (attached), published by the Public Contracts Review Board (PCRB) on 27 May 2022 which emphasises that Adult Diapers and Bariatric Diapers (Item No. 7 and Item No. 8) are to be split into Lots. Kindly revert by Wednesday 5th August 2026, otherwise we will have no other option but to proceed with a Pre-Contractual Remedy, in line with Public Procurement Regulations (PPR).

14. Pursuant to the Claimant's request, the Contracting Authority published Clarification Note 1 on 5 August 2026:

Answer No. 2: *It is to be noted that Saint Vincent de Paul caters for elderly and highly dependent residents, consisting of 35 wards and currently accommodating approximately 950 residents. With reference to Clause 11 of Section 3 – Technical Specifications, which states that:*

11: Responsibilities of the Contractor

11.1 The successful contractor shall be responsible for the transportation, loading, unloading, and delivery of supplies.

11.2 Deliveries shall be made directly to all Saint Vincent de Paul (SVP) wards and stores, at the locations indicated by the Officer in Charge. Allowing multiple suppliers to deliver directly to the facility would introduce significant operational, clinical, and logistical risks. Given the size and complexity of Saint Vincent de Paul, the vulnerability of its resident population, and the delivery schedules stipulated in the tender document, the involvement of more than one supplier would affect the continuity of care, increase the risk of delivery errors, and negatively impact in infection control and patient safety. Furthermore, the Contracting Authority draws the attention of prospective bidders to Section 1 – Instructions

to Tenderers, Article 5: Selection and Award Requirements, (C) Technical and Professional Ability – Subcontracting Proportion, for further guidance in this regard.

15. In view of the above, the Claimant had no option but to file this application in terms of Regulation 262 of the PPR based on the following grounds of objection.

C. GROUND OF OBJECTION: THE DECISION NOT TO SPLIT THE TENDER INTO LOTS IS DISCRIMINATORY AND UNLAWFUL

16. The Claimant submits that the tender specifications which do not split the Tender into lots and which bundle different and, or specialised items within the "whole of quantities" to be supplied are discriminatory and unlawful. This is so for the following reasons.
17. **First**, these tender specifications favour economic operators who manufacture and/or supply *all* of the items, namely, diapers, disposable pads, pull-ups and inco sheets, including, specialised items for bariatric patients to the detriment of economic operators who do not manufacture and/or supply such items—effectively foreclosing them from their relevant market.
18. In a similar case involving the same items subject-matter of this Tender, namely **Case 1731 decided on 27 May 2022**, this PCRB agreed that the tender in that case should have been issued in lots splitting diapers for paediatric and bariatric separately from the rest of the items.
19. **Second**, the Contracting Authority's decision not to split the Tender in lots is in conflict with Government's practice, over the past 5 years, to split similar tenders for similar supplies into lots. For example:
- a. *CPSU 1876/25 - Tender for the Supply of Incontinence Items*² split pull-ups from disposable pads.
 - b. *CT2011/2025 - Framework Contract For The Supply, Delivery And Distribution Of Incontinence Products For Senior Citizens And Persons With Disabilities For The Ministry For Gozo And Planning*³ split diapers, pull-ups and inco sheets in 3 different ranges: paediatric, adult and bariatric.

² <<https://www.etenders.gov.mt/epps/cft/prepareViewCfTWS.do?resourceId=12452136>>.

³ <<https://www.etenders.gov.mt/epps/cft/prepareViewCfTWS.do?resourceId=11839367>>.

- c. CT2238/2023 - *The Supply, Delivery and Distribution of Incontinence Products for Senior Citizens and Persons with Disabilities in Malta - Active Ageing and Community Care*⁴ split diapers, pull-ups and inco sheets in 3 different ranges: paediatric, adult and bariatric.
 - d. SPD3/2022/045 - *Framework agreement for the provision of incontinence diapers, pull-ups, pads and inco-sheet for senior citizens and persons with special needs for the Ministry for Gozo*⁵ split diapers, pull-ups, disposable pads and inco sheets in one lot, with dedicated lots for diapers for paediatric and bariatric.
20. **Third**, the tender specifications are at odds with the Contracting Authority's duties in Regulation 39 of the PPR to "treat economic operators equally and without discrimination" and to design the procurement model in such a way that "artificially narrows competition". These duties emanate from the fundamental general principles of public procurement law as developed by the EU Directives and case-law of the Courts of Justice of the European Union.
21. As opined by AG Stix-Hackl in C-247/02 *Sintesi SpA* on 1 July 2004:
32. *The Court has consistently held that the directives, just like Community law in general, are designed, first, to eliminate practices that restrict competition and, second, to open up the procurement market concerned to competition, that is to say to ensure free access in particular for undertakings from other Member States.*
33. ***The principle of competition is therefore one of the fundamental principles of Community law on the award of public contracts.***
34. ***It fulfils several protective purposes. Firstly, the principle of competition is aimed at relations between the undertakings themselves, that is to say the candidates or tenderers. There is to be parallel competition between them when they respond to a call for tenders.***
35. ***Secondly, the principle of competition concerns the relationship between the contracting authorities which must be classified as undertakings and the undertakings, in particular the conduct of a contracting authority in a dominant position on the market vis-à-vis the undertakings or of an undertaking in a dominant***

⁴ < <https://www.etenders.gov.mt/epps/cft/prepareViewCfTWS.do?resourceId=10318417>>.

⁵ < <https://www.etenders.gov.mt/epps/cft/prepareViewCfTWS.do?resourceId=8864457>>.

position on the market vis-à-vis the contracting authority, and the assessment of that conduct in the light of Article 82 EC.

36. Thirdly, the principle of competition is designed to protect competition as an institution.

22. The Claimant submits that the principle of competition is of constitutional importance to public procurement and it is important that competition on the market—whether public or a neighbouring private market—is fostered. If there is no or limited competition, it is the contracting authority which suffers by obtaining higher offers, bad quality supplies or services or possibly no offers at all.
23. **Fourth**, the Contracting Authority must have split the Tender into lots to promote genuine competition, and therefore, the Tender is in conflict with the objectives of the EU Directives and of the PPR.
24. On this point relating to Lots, the PPR reads as follows:

Regulation 33

Contracting authorities may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots.

Regulation 34

Where a tender has an estimated value which falls under regulation 9(1)(b), contracting authorities shall provide an indication of the main reasons for their decision not to subdivide into lots, which shall be included in the procurement documents or the individual report referred to in regulation 113.

25. In summary, while a contracting authority enjoys a margin of discretion to determine whether: (a) to issue a procurement procedure with separate lots; and (b) if it does issue such a procedure, the size and subject-matter of such lots, if a contracting authority elects not to issue a tender which is not separated by lots, it must justify itself why it is doing so. This is known as the divide-or-explain rule.

26. In this case, the justifications cited by the Contracting Authority are not adequate. The Contracting Authority provided 5 reasons for not splitting the Tender into lots: (i) operational, clinical and logistical risks, (ii) disruption to the continuity of care, (iii) increase in delivery errors, and (iv) negative impact on infection control and (v) patient safety.
27. Those reasons were then repeated, essentially verbatim, in Clarification Note 1 in response to the Claimant's request for clarification as to why the Tender had not been divided into lots.
28. Respectfully, the Board should also bear in mind the nature of the supplies subject-matter of this Tender. This is a procurement for the supply and delivery of incontinence products. It is not a procurement involving complex, highly technical and sensitive medical equipment or highly regulated medical devices, where issues of technical compatibility, interoperability, or highly specialised administrative and technical processes might legitimately justify the appointment of a single supplier.
29. The Contracting Authority has not substantively explained why the supply of different categories of diapers, pull-ups, pads, or inco-sheets by different economic operators would inherently give rise to the operational and patient-safety concerns relied upon. This is particularly so when similar procurements have historically been divided into lots across the public sector, including for the supply of substantially the same categories of products, without any apparent concern that such arrangements would jeopardise patient safety, continuity of care, infection control, or operational efficiency
30. Furthermore, all 5 reasons may, in any case, be achieved through a Tender split into lots with the right contractual framework in place. These 5 reasons, even if valid (*quod non*), may be achieved through other more proportionate means.
31. The Contracting Authority's invocation of patient safety and disruption to continuity of supply is unfounded. There is nothing preventing the Contracting Authority from organising the tender responsibilities in a manner which minimises operational, clinical and logistical risks. As the Court of Appeal stated in *Pharma-Cos*,⁶ the Contracting Authority may even determine the conditions applicable to an ex post joint venture between contractors appointed under different lots.

⁶ Rif. Nru. 434/22/1, *Pharma-Cos Limited vs Services Gozo Directorate et*, judgement delivered by the Court of Appeal on 14 February 2023, para. 8.

32. In addition, the Contracting Authority will deprive itself of the cheapest financial offer because it will have less economic operators competing against each other, and therefore, potentially higher price and possibly inferior service levels.
33. **Fifth**, the reason now advanced by the Contracting Authority is not a reason at all, but an ex post facto rationalisation constructed in response to the Claimant's clarification request submitted on 15 April 2026 in the previous iteration of the Tender.
34. In fact, the Tender requirements are similar—if not identical, but the justification for not splitting into lots has changed substantively. Between 14 April 2026 and 10 July 2026, the Contracting Authority's stated basis for refusing to divide an identical procurement into lots morphed from commercial propositions, namely risk mitigation, optimisation of performance, reduction of costs and the nurturing of a "professional partnership", to clinical propositions, namely continuity of care, delivery errors, infection control and patient safety.
35. There is no identified change in the Tender's operational circumstances, in the profile or clinical needs of the residents, or in the delivery requirements of the procurement between 14 April 2026 and 10 July 2026, still less any change capable of explaining why patient safety and continuity of care were absent from the Contracting Authority's reasoning in April, but became decisive in July.
36. This can only mean that the Contracting Authority has reverse-engineered this justification *ex post*, having anticipated—as is indeed the case—that the Claimant would again request the Tender to be split into lots to encourage and increase competition and in a sheer attempt to procure a justification which can better withstand this Board's scrutiny.
37. With respect, Krypton requests this Board to see through the Contracting Authority's stated justification and to draw the necessary inferences and conclusions from an overnight change in the justification against splitting the Tender into lots.
38. **Sixth**, the availability of subcontracting does not answer the Contracting Authority's obligation to justify its refusal to divide the Tender into lots.
 - a. The obligation in Regulation 34 of the PPR is an obligation to give the main reasons for the decision not to subdivide into lots. It is not discharged by pointing to the separate mechanism of sub-contracting to mitigate the consequences of that decision. The question before this Board is whether the decision was justified, not whether its effects may be circumvented.

- b. Sub-contracting is not a substitute for lots. The right to sub-contract is a bidder's right to organise its own performance. It does not create intra-lot competition and does not cure the artificially narrowing effect of an undivided tender.
 - c. The Contracting Authority cannot answer that defect by requiring bidders to depend on private arrangements with third parties. That is no substitute for a procurement structure which itself promotes genuine competition.
39. For these reasons, the Claimant requests the Board to order the amendment and/or removal, as the case may be, of the above-mentioned tender conditions in terms of Regulation 262 of the PPR, including paragraphs (a), (c) and (e) thereof.

THEREFORE, for the above-mentioned reasons and for any further reasons which may be brought during the proceedings, the Claimant respectfully requests this Board:

- a. to declare that the Contracting Authority's decision not to divide the Tender into lots, including but not limited to the bundling of distinct items within the "whole of quantities", is unlawful and/or discriminatory, and consequently to order that decision to be set aside and/or removed from the Tender by any means necessary, including but not limited to the correction or cancellation of the Tender;
- b. to order the refund in full of the deposit paid upon the filing of this application in terms of Regulation 262(2) of the PPR.

saving any declaration, order or decree that the Board deems fit in the circumstances.

Yours sincerely,
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Eurozone-SEPA payment

You have authorised this payment

The status for payment 60347IF000HX is: Forward dated instruction received by bank

Pay from	KRYPTON CHEMISTS LTD MT MTHBMTCA006-050587-001 EUR
Instruction reference number	60347IF000HX
Transaction type	SEPA Credit Transfer
Total amount	EUR 20,463.39
Expected value date	Fri 07 Aug 2026 This is the date we expect to debit your account. Please ensure that the debit account has enough funds, otherwise the payment will be rejected.
Total entries	1

Transactions

Entry	Beneficiary	Transaction information	Amount (EUR)
1	Beneficiary name: Cashier Malta Government IBAN: MT55MALT011000040001EURCMG5001H Reference: CT2159/2026		20,463.39

Time of report: 07 Aug 2026 05:43:56 GMT