DALLIPARIS
ADVOCATES



20th November 2026

Public Contracts Review Board
Notre Dame Ravelin,
Floriana,
Malta

Cherubino Limited

vs

[1] Department of Contracts

[2] Central Procurement and Supplies Unit

[3] Unimed Procurement Services Ltd

[4] Suratek Limited

CT2367/2024
Tender Name: Tender for the Supply of Three (3) Direct Digital X-Ray Systems with Reduced Environmental Impact for the Mosta, Floriana and Qormi Health Centres of Primary Health

REASONED OBJECTION

189, MARINA SUITES. SUITE 11, MARINA STREET, PIETÀ PTA9041 MALTA T +356 2122 4361 E info@dalliparis.com

Whereas, this is an objection being filed by Cherubino Limited [TID 229844] (hereinafter "Cherubino" and/or "Appellants"), in accordance with, inter alia, Regulation 270 of the Public Procurement Regulations, Subsidiary Legislation 601.03 (hereinafter the "PPR").

Whereas, Cherubino participated in the tender with reference CT2367/2024 (CPSU2124/22), together with other economic operators, following a call issued by the Department of Contracts (hereinafter the "DoC") on behalf of the Central Procurement and Supplies Unit (hereinafter "CPSU" and, together with the DoC, "the Contracting Authority"), for the Supply of Three (3) Direct Digital X-Ray Systems with Reduced Environmental Impact for the Mosta, Floriana and Qormi Health Centres of Primary Health.

Whereas, the sole award criterion of the tender is price, the contract falling to be awarded to "the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria", as Clause 6.1 of the Instructions to Tenderers expressly provides.

Whereas, by means of a letter dated 10th November 2026, the Appellants were informed that their offer was not successful, and that the tender was being recommended for award to **Unimed Procurement Services Ltd** (hereinafter "Unimed" and/or "recommended bidder"):

> *"The tender was recommended for award to **TID 229841 Unimed Procurement Services Ltd for the amount of €808,566.11 excluding VAT**, this being the cheapest priced tender satisfying the administrative and technical criteria"*

Whereas, by virtue of a request for information dated 13th November 2026, the Appellants requested the Contracting Authority to disclose, inter alia in accordance with Regulation 40 of the PPR, whether the recommended bidder had nominated any sub-contractors and, if so, whether any such sub-contractor had also participated in the tender in its own right; and by means of an email dated 19th November 2026 (ref. DOC 1289 2026), the Contracting Authority disclosed that the recommended bidder had not indicated any sub-contractor in its tender submission, but that, following a request for rectification, it named Suratek Limited as its local technical partner, and further confirmed that Suratek Limited had itself submitted two separate offers in the same tender [vide **DOC 2**].

Whereas, by means of an email dated 11th November 2026, in reply to a separate request for information made by the Appellants on 10th November 2026, the Contracting Authority also disclosed that the system offered by the recommended bidder is the Primax International Riviera CSX [vide **DOC 3**].

Whereas, the Appellants feel aggrieved by the aforesaid decision, primarily on the ground that the product offered by the recommended bidder does not satisfy the mandatory technical specifications of the tender, and secondarily on the ground that Suratek Limited participated in the tender both as a tenderer in its own right and as the sub-contractor of the recommended bidder, in breach of the General Rules Governing Tenders, by means of a rectification which unlawfully altered the content of the recommended bidder's offer; and the Appellants hereby lodge their objection within the prescribed time-frame, accompanied by the requisite deposit of €7,042.00 [vide**DOC 1**], on the basis of the following grievances:

1. <u>The product offered by the recommended bidder is not technically compliant - Breach of the principle of self-limitation</u>

1.1 Specification 5.5 of Section 3 of the tender document (Specifications/Terms of Reference), listed under the heading "Accessories", requires "Dual energy exposures (used for example for thoracic bone / soft tissue exposures)". The Contracting Authority itself designated this specification as "Mandatory".

1.2 The technical specifications are a Note 3 document, in respect of which "No rectifications shall be allowed. Only clarifications on the submitted information may be requested" (Note 3 to Clause 5 of the Instructions to Tenderers). Technical literature, on the other hand, is required at tendering stage precisely "to corroborate a fully compliant technical offer" (Clause 5(C)(ii) of the Instructions to Tenderers).

1.3 The Appellants contend that the system offered by the recommended bidder, namely the Riviera CSX, does not satisfy Specification 5.5, in that dual energy exposures are not available on the said model and are not listed among its features or capabilities. Dual energy imaging is not a feature which may be presumed: it requires dedicated hardware and software capable of acquiring sequential exposures at different energy levels and of processing them into separate bone and soft tissue images, and, where available, it is expressly offered as such.

1.4 This constitutes a material technical non-compliance with a mandatory requirement, which ought to have resulted in the disqualification of the said offer at the technical evaluation stage. A mere declaration of compliance cannot cure the absence of the functionality from the product itself; nor, in view of Note 3, could any such shortcoming be remedied by way of rectification or by way of a clarification which in substance adds to the offer a feature which it does not have.

1.5 It follows that the offer of the recommended bidder is not "the cheapest priced offer satisfying the administrative and technical criteria" within the meaning of Clause 6.1 of the Instructions to Tenderers, and that the recommendation for award in its favour cannot be sustained.

1.6 It is a settled principle of public procurement law that the Evaluation Committee is bound by the rules which the Contracting Authority itself laid down in the tender

document. The Evaluation Committee is not at liberty to depart from, relax, re-interpret or disregard those rules at evaluation stage, and must assess every offer strictly against the criteria as published. This is the principle of self-limitation.

1.7 The principle is the corollary of the obligations of equal treatment and transparency enshrined in Regulation 39(1) of the PPR, which provides that "Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner", and of the obligation under Regulation 39(2) of the PPR that the tenderer "must be selected in a transparent manner and according to a prescribed procedure".

1.8 The doctrine of self-limitation, which has been referred to by this Honourable Board on various occasions, seeks to ensure that tenderers are adjudged only on the basis of the conditions stipulated within the tender document, thereby ensuring predictability and transparency. As held by the General Court of the European Union in Case T-415/10, Nexans France v. European Joint Undertaking for ITER and the Development of Fusion Energy (judgment of the 20th March 2013, para. 80):

> *"It must be borne in mind at the outset that where, in the context of a call for tenders, the contracting authority defines the conditions which it intends to impose on tenderers,* ***it places a limit on the exercise of its discretion and, moreover, cannot depart from the conditions which it has thus defined in regard to any of the tenderers without being in breach of the principle of equal treatment of candidates.*** *It is therefore by reference to the principles of self-limitation and respect for equal treatment of candidates that the Court must interpret the tender specifications, for the purpose of establishing whether, as the applicant maintains, those specifications could permit the Joint Undertaking to accept the deviations."*
>
> [added emphasis]

1.9 The doctrine was applied by the Court of Appeal [Superior] in the judgment in the names Cherubino Limited v. Ministeru għall-Ambjent, l-Enerġija u l-Intrapriża et (App. Ċiv. 139/23/1), decided on the 12th July 2023. There, the offer of Cherubino had been set aside as not being the cheapest, and the contract had been recommended for award to a cheaper offer whose products did not satisfy the requirements of the call. The Court upheld the appeal, revoked the decision of this Honourable Board and of the Evaluation Committee, and held:

> *"Jista' jkun li l-polyester u l-polymide ma humiex espressament eskluż mid-dokumenti tas-sejħa, però,* ***meta l-istess sejħa tinsisti fuq prodotti sostenibbli u eco-friendly, ma jistax ikollok prodotti li ma humiex hekk.*** *[...]* ***mill-bidu nett, meta ssir dikjarazzjoni mill-oblaturi dwar il-materjal, dak dikjarat irid jiġi verifikat mas-sejħa.*** *[...] Peress li l-prodotti offruti mill-offerent preferut kellhom persentaġġ ta' polyester u polymide, l-offerta tiegħu kienet orħos minn dik sottomessa mis-soċjetà appellanti.* ***Dan m'għandux iwassal għaċ-ċirkostanżi li l-orħos offerta tiġi magħżula senz'altru."***

[added emphasis]

1.10 In the present case, the tender document laid down, in clear terms, that the technical specifications are mandatory, that no rectification of the technical offer is permitted under Note 3 to Clause 5 of the Instructions to Tenderers, and that the contract is to be awarded only to the cheapest offer "satisfying the administrative and technical criteria" under Clause 6.1 thereof.

1.11 By recommending for award an offer which does not satisfy mandatory Specification 5.5, the Evaluation Committee went beyond the limits which the Contracting Authority had set for itself, and the principle of self-limitation was breached. As in Cherubino Limited v. Ministeru għall-Ambjent, l-Enerġija u l-Intrapriża et, the fact that the offer of the recommended bidder is the cheapest cannot lead to its selection where the product offered does not satisfy what the tender document itself requires.

1.12 Such a course of action is, moreover, prejudicial to every other economic operator who prepared and priced its offer in good faith on the basis of the requirements as published, including the Appellants. An economic operator who is allowed to offer equipment falling short of the mandatory requirements is necessarily placed in a position to offer a lower price than an economic operator who complies with them in full. The award is thereby distorted in favour of the non-compliant offer.

2. **Breach of Articles 3.3 and 3.4 of the General Rules Governing Tenders - Suratek Limited participated both as a tenderer and as a sub-contractor of the recommended bidder**

2.1 The General Rules Governing Tenders form an integral part of the procurement document, which "complement[s] the latest version of the General Rules Governing Tenders applicable on the date of the publication of this tender" (Section 4.5 of the tender document).

2.2 Article 3.3 of the General Rules Governing Tenders provides that an economic operator may not participate in a tender individually or as a partner in a joint venture/consortium and, at the same time, be nominated as a sub-contractor by another tenderer in the same tender. Article 3.4 thereof allows an economic operator to act as a sub-contractor for any number of tenderers, "provided that it does not participate individually or as part of a joint venture/consortium", and provided that this does not give rise to a conflict of interest, collusion or improper practice.

2.3 The Contracting Authority has confirmed that Suratek Limited submitted two separate offers in its own name in the present tender. It has equally confirmed that, according to the recommended bidder, "Suratek will be authorised to install, commission, service, and maintain its devices" [vide **DOC 2**].

2.4 The installation, commissioning, servicing and maintenance of the X-ray systems are not ancillary to the contract; they form part of its very object. The tender requires the contractor, inter alia, to install the three systems at the Mosta, Floriana and Qormi Health Centres (Specification 1.1), to connect the units to the electrical supply (Specification 4.1), to provide a service report of the installation (Specification 6.1.2), to provide a full risk service and maintenance agreement (Specification 1.2 and Annex A), and to ensure the availability of spare parts "(direct or via other nominated agents)" for the expected service life of the equipment (Article 33 of the Special Conditions).

2.5 An economic operator which is to perform these works on behalf of the recommended bidder is, de facto a sub-contractor, whatever label the recommended bidder may choose to give it. The description of Suratek Limited as an "officially authorized local technical partner" does not alter the substance of the relationship.

2.6 Suratek Limited therefore participated in the same tender both as a tenderer in its own right and as the sub-contractor of the recommended bidder. This is precisely what Articles 3.3 and 3.4 of the General Rules Governing Tenders prohibit. The prohibition exists to safeguard the independence of the offers and to prevent the very risk of collusion and of exchange of information which arises where the same economic operator stands behind more than one offer in the same procedure. The breach is objective in nature, and it is not incumbent on the Appellants to prove that any collusion actually took place.

2.7 The said breach is a further breach of the principles of equal treatment and transparency enshrined in Regulation 39(1) of the PPR and of the principle of self-limitation, since the Evaluation Committee was bound to apply the General Rules Governing Tenders as published.

2.8 The offer of the recommended bidder, as well as the two offers submitted by Suratek Limited, ought therefore to have been excluded from the tender procedure.

3. **The offer of the recommended bidder was unlawfully altered after the closing date by way of rectification**

3.1 Clause 5(B)(c) of the Instructions to Tenderers required tenderers to "Provide data concerning subcontractors and the percentage of works to be subcontracted" in Part IV of the ESPD, and expressly provided that "if the information being requested regarding sub-contracting is left empty, it will be assumed that no sub-contracting will take place (0% subcontracting)".

3.2 The Contracting Authority has confirmed that the recommended bidder "did not indicate any sub-contractor" in its tender submission, and that Suratek Limited was named only "following a request for rectification" [vide **DOC 2**]. On the terms of the tender itself, therefore, the offer of the recommended bidder, as submitted, was an offer involving no sub-contracting whatsoever.

3.3 Article 12.1 of the General Rules Governing Tenders provides that no tender may be amended after the deadline for submission, whilst Article 15.2 thereof provides that clarifications and rectifications may in no circumstances alter or try to change the price or content of the tender. The introduction, after the closing date, of a third party which is to install, commission, service and maintain the equipment is not the correction of an incomplete document; it is a change in the content of the offer.

3.4 Either the offer of the recommended bidder, as submitted, made no provision for the installation, commissioning, service and maintenance required by the tender, in which case it was not compliant; or such provision was added after the closing date, in which case the offer was unlawfully modified. In either case, the offer could not lawfully be recommended for award.

3.5 Moreover, the use of the rectification procedure had the effect of concealing, until after the evaluation, the involvement of Suratek Limited in more than one offer in the same tender, thereby preventing the Evaluation Committee from applying Articles 3.3 and 3.4 of the General Rules Governing Tenders as it was bound to do.

4. Request for the disclosure of documents

4.1 The Appellants do not have access to the technical offer of the recommended bidder, the literature submitted with it, Part IV of its ESPD, the request for rectification addressed to it and its reply, or the evaluation report, all of which are central to the grievances set out above. In terms of Regulation 40(2) of the PPR, the names of sub-contractors and the documents demonstrating compliance with the selection criteria are not confidential.

4.2 The Appellants therefore request this Honourable Board, as a preliminary and interim measure in terms of Regulation 90 of the PPR, to order the Contracting Authority to make the said documents available to the Appellants prior to the hearing, under such conditions of confidentiality as this Honourable Board may deem appropriate, and, should this Honourable Board consider it necessary, to appoint a technical expert to establish whether the Riviera CSX, as offered, supports dual energy exposures as required by Specification 5.5.

NOW, THEREFORE, whilst reserving the right to put forward any other submissions, the Appellants are hereby requesting this Honourable Board to:

i. To order the defendants, or whosoever of them, to revoke the recommendation for award to TID 229841 Unimed Procurement Services Ltd;

Consequently:

i.i To declare that the offer of TID 229841 Unimed Procurement Services Ltd is not technically compliant with mandatory Specification 5.5 of the tender document;

i.ii To declare that Suratek Limited participated in the tender both as a tenderer and as a sub-contractor of the recommended bidder, in breach of Articles 3.3 and 3.4 of the General Rules Governing Tenders;

i.iii To declare that the offer of the recommended bidder was unlawfully altered after the closing date by way of rectification;

i.iv To order the exclusion of the offer TID 229841 Unimed Procurement Services Ltd and of the two offers submitted by Suratek Limited from the tender procedure;

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i.v To order a re-evaluation of the remaining bids by the Evaluation Committee, which committee is to take into account the findings and decisions of this Honourable Board;

i.vi Pending the decision of this Honourable Board, to order the disclosure of the documents referred to in the fourth grievance;

i.vii To refund the deposit paid by the Appellants in its entirety; and

i.viii To do anything else which is conducive and necessary for the proper execution of the above requests.

Cherubino Limited are hereby reserving their right to present further evidence and submissions, both orally and in writing, during the hearing. Additionally, Cherubino Limited are hereby reserving the right to submit additional grievances, once the offer of the recommended bidder and the evaluation report are made available.

Av. Matthew Paris
matthew@dalliparis.com

Av. Zackariah Esmail
zack@dalliparis.com

DOC 1

Proof of payment

19/11/2026	SCT OUTWARDS Cashier Malta Government EUR 7,042.00 Relation: Professional Service Reason: Other TID 229844 CT2367/2024 REF : 2632303056190000-2841954835	EUR -7,042.00

Doc L

Gmail

Zack Esmail <zack@dalliparis.com>

DOC 1289 2026 : CT2367/2024 - Tender for the Supply of Three (3) Direct Digital X-Ray Systems with Reduced Environmental Impact for the Mosta, Floriana and Qormi Health Centres of Primary Health - Request for Information on Brand and Model

Genova Nadine at Department of Contracts <nadine.genova@gov.mt> Thu, Nov 19, 2026 at 11:36 AM
To: "matthew@dalliparis.com" <matthew@dalliparis.com>
Cc: Info at Department of Contracts <info.contracts@gov.mt>, Francis Cherubino <francis.cherubino@cherubino.com.mt>, Zack Esmail <zack@dalliparis.com>

Dear Dr. Paris,

With reference to the question on whether the Recommended Tenderer nominated any sub-contractor/s in its tender submission, the recommended bidder did not indicate any sub-contractor, however following a request for rectification,

the recommended bidder stated that it has an officially authorized local technical partner in Malta which is Suratek Ltd. The recommended bidder states that Suratek will be authorised to install, commission, service, and maintain its devices.

With reference to the second question, CPSU can confirm that Suratek Limited submitted 2 separate non-identical offers.

Regards

Nadine Genova
Customer Care
Department of Contracts

t +356 2378 1326 e nadine.genova@gov.mt
[Quoted text hidden]

MINISTRY FOR FINANCE

NOTRE DAME RAVELIN,
FLORIANA, MALTA

[Quoted text hidden]

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Gmail

Zack Esmail <zack@dalliparis.com>

DOC 1289 2026 : CT2367/2024 - Tender for the Supply of Three (3) Direct Digital X-Ray Systems with Reduced Environmental Impact for the Mosta, Floriana and Qormi Health Centres of Primary Health - Request for Information on Brand and Model

Info at Department of Contracts <info.contracts@gov.mt> Wed, Nov 11, 2026 at 12:12 PM
To: Francis Cherubino <francis.cherubino@cherubino.com.mt>, Info at Department of Contracts <info.contracts@gov.mt>
Cc: Matthew Paris <matthew@dalliparis.com>, Zack Esmail <zack@dalliparis.com>

Mr. Cherubino,

Please find hereunder the information requested.

Brand: Primax International

Model Number: Riviera CSX

Regards,

[Quoted text hidden]