PUBLIC CONTRACTS REVIEW BOARD

Case 2281 - SPD3/2026/026 - Tender for the Provision of Accessible Passenger Transport Services with Drivers for Wheelchair Users and Other Clients of Santa Marta Day Centre within the Ministry for Gozo (hereinafter the "Tender");

23rd November 2026

The Board,

Having noted the Letter of Objection filed by **Paul Borg** (hereinafter referred to as ***"the Appellant"***) on the 13th September, 2026, the said Letter of Objection being dated the 11th September, 2026;

Having also noted the Reasoned Letter of Reply filed by the **Ministry for Gozo** (hereinafter referred to as ***"the Contracting Authority"***), dated the 18th September, 2026 and received by the Board on the 22nd September, 2026;

Having noted that the acts before the Board do not contain a Reasoned Letter of Reply filed by **Speedway Garage** (hereinafter referred to as ***"the Recommended Bidder"***);

Having heard the testimony of **Ms Nadia Gatt**, Chairperson of the Evaluation Committee, as duly summoned by Dr Joshua Grech on behalf of the Appellant.

Having taken cognisance and evaluated all the acts and documentation filed, including the documentation pertaining to the call for tenders forwarded in terms of regulation 276(d) of the Public Procurement Regulations, as well as the submissions made by the representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 17th November, 2026, hereunder-reproduced.

Minutes

Case 2281 – SPD3/2026/026 – Tender for the Provision of Accessible Passenger Transport Services with Drivers for Wheelchair Users and Other Clients of Santa Marta Day Centre within the Ministry for Gozo.

The Tender was issued on the 16th of June 2026, and the closing date was 17th July 2026.

The estimated value of the tender, excluding VAT, was €134,600.00

On the 13th of September 2026, Mr Paul Borg, lodged an appeal against The Ministry for Gozo – the Contracting Authority.

On the 17th of November 2026, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Mr Keith Victor Grech and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €673.00 was paid.

There were Two bids.

The attendance for this public hearing was as follows:

Appellant – Mr Paul Borg.

Dr Joshua Grech – Legal Representative.

Mr Paul Borg – Company Representative.

Mr Godfrey Borg – Company Representative.

Contracting Authority – Ministry for Gozo.

Dr Tatiane Scicluna Cassar – Legal Representative.

Mr Ruben Cassar – Head of Contracting Authority.

Ms Nadia Gatt – Chairperson.

Ms Janice Borg – Secretary.

Mr Pierre Galea – Evaluator.

Ms Alicia Anna Fava – Evaluator.

Mr. Rober Xerri – Evaluator.

Recommended Bidder – Speedway Garage.
Dr Zack Esmail – Legal representative.
Mr Emanuel Cutajar – Company representative.
Mr Andrea Buttigieg – Company representative.

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2281 in the records of the PCRB. The Chairman identified the Appellant as Mr Paul Borg, and the Contracting Authority as The Ministry for Gozo, and acknowledged the presence of representatives of the Recommended Bidder, Speedway Garage.

Initial Submissions.

Initial Submissions by Dr Joshua Grech for Mr Paul Borg, the appellant.

Dr Joshua Grech stated that the issue in this appeal was a formal one. The tender was considered technically non-compliant because not all the details of the vehicles that were to be used had been entered on the technical offer form.

However, in the same submission, the bidder had provided all the vehicle logbooks in the same dossier. Since there was no lack of proportionality or unfairness towards the other bidders, the appellant felt that his bid was technically compliant.

Initial Submissions by Dr Tatiane Scicluna Cassar for the Ministry for Gozo, the Contracting Authority.

Dr Scicluna Cassar, representing the Contracting Authority, noted that the requested tender offer form was not to be considered together with the other documents as a whole. The appellant stated that the information had been submitted in the accompanying documents instead of in the technical offer form.

The technical offer form was mandatory, and the Board could not proceed with the evaluation of the tender. This fell under Note 3 and could not be rectified.

The appellant had failed to complete Items 1 and 2 of the tender offer form and was therefore considered technically non-compliant.

The Board could not request additional information, she stated.

"The bidders who fail to complete in full, submit and upload requested information, will be deemed as non-compliant".

The appellant knew all the rules. Had the situation been the other way round, with the information provided in the technical offer form instead of in the dossier, the Board would have requested a rectification.

Initial Submissions by Dr Zack Esmail for Speedway Garage, the Recommended Bidder.

Dr Esmail noted that the appellant admitted that the technical offer form had not been fully completed. The fact that they had presented only the logbooks did not confirm that the vehicle was allocated to the contract. Had the Contracting Authority accepted this form, it would have been ignoring the self-limitation, to the disadvantage of the other bidders who had completed the form.

Dr Esmail noted that the appellant had referred to the Europharma case in his appeal.

Witness:

Ms Nadia Gatt, ID No. 7085G, summoned by Dr Joshua Grech.

Ms Gatt, the Chairperson of the Evaluation Committee, was shown the relevant documents.

Verbal statement by the Chairman:

"*Ms Nadia Gatt qed tigi murija Dokument li jinsab in atti, sabiex tikkonferma o meno, bil-gurament jekk, dak id-dokument, esebit flimkien mar-rikors tal-appellant, kienx effettivament fil pakkett tal-informazzjoni, mghotija mill-appellant lura meta ssottometta t-Tender Bid tieghu".*

Ms Gatt confirmed that all the documents had been present during the evaluation. She stated that, since neither the number plates nor the seating capacity had been indicated on the form, she could not confirm which vehicles had been submitted.

She admitted that the information had been provided in the other documents.

The Chairman declared that there were no cross-examination by any of the parties.

Final Submissions.

Final Submissions by Dr Joshua Grech for Mr Paul Borg, the appellant.

Dr Grech stated that the technical offer form should not be considered in isolation under Note 3. There was the question of '*substance over form'*. There seemed to be an unnecessary formality from an economic perspective. Lately, even the courts had stated that, where possible, the whole situation should be considered.

This case had a delicate financial element which would have been advantageous to the public. The appellant's offer was 16% lower, equivalent to twenty thousand euros less than the bid submitted by the preferred bidder.

The Public Procurement process should consider '*form over substance'* and not '*substance over form*'. The information was all available. Dr Grech referred to the case of Europharma Ltd. VS Central Procurement, where there was no reason to disqualify the bidder since all the information had been submitted.

The appellant was not expecting a rectification, as this would have lacked fairness and proportionality. However, since the information concerning all the vehicles was available, the Evaluation Board could have established that the offer was valid.

The circumstances in this appeal were the same as those in the other case mentioned, and the appellant's offer should therefore be accepted and the appeal upheld.

Final Submissions by Dr Tatiane Scicluna Cassar for the Ministry for Gozo, the Contracting Authority.

Dr Scicluna Cassar referred to the Chairperson's testimony, noting that there was no link between the photographs and the technical offer form, as they had not been mentioned in the form. The technical offer form carried weight, as it contained a declaration requiring the bidder to provide the vehicles.

The form was technically non-compliant and had to be rejected. The Board could not proceed with the evaluation, regardless of whether the offer was the lowest-priced one. The appellant could not disregard the PPR rules.

In the Europharma case, the merits were different. She quoted from Case 1780:

"Any change that would have resulted in making the bid/offer technically compliant would have been a rectification, something which was not possible. Hence in the opinion of this Board, the Evaluation Committee correctly discarded the appellant's offer as technically non-compliant".

Final Submissions by Dr Zack Esmail for Speedway Garage, the Recommended Bidder.

Dr Esmail noted that the appellant was arguing that the technical offer form should be disregarded, greater attention should be given to the financial bid, and the additional formality should be removed. He did not agree with Dr Grech. However, he understood the implications of the Europharma case, which made it difficult for the Board to decide on such cases. He understood that these cases could give rise to doubts.

In the Europharma case, there was a Declaration of Conformity which was requested to corroborate something that was already available. The logbooks alone did not corroborate anything. The Europharma case could not be used as a basis for accepting any lack of information.

This would lead to disregarding all the PPR regulations and tender documents and simply choosing the lowest-priced bidder. That was not the situation in this case, where the appellant was claiming that the requested information was available elsewhere.

Replica by Dr Joshua Grech.

Dr Grech referred to the importance of the photographs and the technical offer form, as mentioned by Dr Scicluna Cassar. The appellant had submitted an official document relating to the vehicles, together with copies of the paid licences for all the vehicles. All this information had been uploaded onto the specified platform and was relevant to the tender.

In the Europharma case, the technical offer form had been left empty. He quoted Point 29:

"Issa fil-kaz odjern, it-technical offer form ma kelliex inserita l-informazzjoni mehtiega u cjoe ma kien hemm imnizzel xejn fit-tabella ntitolata 'Brand', 'Model Number' u 'Catalogue Reference'. Dawn il-partijiet mill-formula thallew kompletament vojta mis-socjeta appellanta. Madankollu, fil-kaz odjern ma jistax jigi injorat il-fatt li l-informazzjoni li kienet nieqsa fit-Technical Offer Form kienet tinsab prezenti fl-offerta maghmula, peress li kienet tinsab fid-Declaration of Conformity Amendment".

This was the same situation as in the present case, where the information was available in the official documents.

Replica by Dr Tatiane Scicluna Cassar.

Dr Scicluna Cassar stated that the fact that the information was available was not being contested, but the Europharma case did not have the same merits as the present case.

In this case, there was another bidder who had failed to indicate the brand of the equipment submitted. More than one bid had been found technically non-compliant. The bidder had failed to complete the form in full and could not blame the Board but had to take full responsibility for its mistake.

Conclusion of the Hearing.

With no further arguments presented, the Chairman, Dr Vincent Micallef, thanked the parties and formally concluded the hearing.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 17th November, 2026.

Having noted the objection filed by Paul Borg (hereinafter referred to as "the Appellant") on the 13th September, 2026, refers to the claims made by the same Appellant with regard to the tender of reference SPD3/2026/026 – Tender for the Provision of Accessible Passenger Transport Services with Drivers for Wheelchair Users and Other Clients of Santa Marta Day Centre within the Ministry for Gozo (hereinafter the "Tender"); listed as case No. [●] in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Joshua Grech
Appearing for the Contracting Authority:	Dr Tatiane Scicluna Cassar
Appearing for the Recommended Bidder:	Dr Zack Esmail

Whereby, **the Appellant contends** that:

Letter of Objection of Paul Borg

Re: SPD3/2026/026 - Tender for the Provision of Accessible and Low-Emission Passenger Transport Services with Drivers for Wheelchair Users and other clients of Santa Marta Day Centre within the Ministry for Gozo

Friday, 11th September, 2026

Dear Sir,

By virtue of this Letter of Objection, Paul Borg of Flat 1, Bells Court, Triq l-Arc. Pietru Pace, Rabat, Gozo, holder of Identity Card Number 52060(G) bearing Tender I.D. 246064, makes reference to the above mentioned call for tenders and is hereby submitting a formal objection in relation to the same tender.

Facts of the Case

- The Department of Contracts issued a Call for Tenders for the Provision of Accessible and Low-Emission Passenger Transport Services with Drivers for Wheelchair Users and other clients of Santa Marta Day Centre within the Ministry for Gozo;

- That by virtue of a communication dated 4th September, 2026, the objector was informed that the offer submitted was not technically compliant;
- The main reason given was since the technical offer form was not fully completed since the technical offer form is non-rectifiable, the offer was not considered as technically non-compliant;
- That notwithstanding such reason, the offer submitted by the appellant contained all the information including log-books and documentation relative to vehicles to be used to render these services;
- That consequently by virtue of the same letter of the 4th September, 2026, the procurement was recommended for award to 246058 - Speedway Garage for the amount of €143,875 excluding VAT;
- The objector felt aggrieved by the mentioned decision of the Contracting Authority and therefore is availing himself of the right granting to him in terms of Law and is filing an objection regarding the aforementioned decision within the established time-frame as communicated in the same letter and together with the required deposit of six hundred and seventy-three Euro (€673) as per Document 'A';

The Objection

- The required information regarding the vehicle make and model was never missing from the technical offer; rather, it was submitted as an integral part of the tender dossier and was easily identifiable within the accompanying documentation.
- The bidder explicitly provided the vehicle log books with the original submission, ensuring the technical data existed within the offer the moment the call for tenders closed.
- This scenario is completely distinct from situations where a bidder entirely fails to submit mandatory documentation, because the relevant vehicle details were readily available to the Evaluation Committee during the evaluation stage. In fact a copy of the whole dossier submitted with the tender is being herewith attached as Doc. A for ease of reference;
- The omission of data from the specific Technical Offer Form is strictly a matter of presentation and document placement, not a substantive flaw, as the specific vehicles proposed for the contract execution were already fully and transparently disclosed.
- The objector makes reference to the judgement of the Court of Appel in the names Europharma Limited vs Central Procurement and Supplies United fi hdan il-Ministeru ghas-Sahha u l-Anzjanita'

Attiva et (Rik. Nru. 445/2025) decided on the 29th January, 2026. In the said judgement the Court observed as follows:

> *"Fil-fehma tal-Qorti, ma jkunx qieghed jithaddem il-principju tal-proporzjonalita' jekk offerta vantaggjuza tigi mwarrba ghas-semplici fatt li l-informazzjoni rikjesta kienet inghatat f'parti ohra tal-offerta u hux fil-parti fejn kellha tigi nserita. Is-sitwazzjoni kienet tkun ferm differenti li kieku din l-informazzjoni ma kenitx tirrizulta minn imkien fl-offerta maghmula, liema sitwazzjoni ma tirrispekkjax il-fatti li ghandha quddiemha din il-Qorti."*

- In fact, as mentioned before the information was already existant in a submitted offer;
- Because the make and model could be extracted directly from the log books, asking the bidder to indicate the location of this data constitutes a simple clarification, not an full rectification.
- The decisive legal threshold is whether accepting the information requires introducing new data or amending the bid's substance; since the log books were already present, no new vehicle, make, model, or specification would be introduced;
- The principle of equal treatment and proportionality remains entirely uncompromised because the bidder stands to gain no competitive advantage.
- The vehicle details documented in the log books were permanently fixed upon submission and could not be altered through any subsequent clarification process.
- The principle of proportionality strictly requires authorities to distinguish between a substantive failure of compliance and a purely formal defect.
- The Court in the judgement mentioned above has reaffirmed that disqualification is highly disproportionate when the necessary information is provided in another part of the bid, especially when the omission neither affects competition, prejudices other bidders, nor alters the offer's fundamental substance.
- The bidder acted transparently and in utmost good faith, deliberately including the log books as documentary evidence to ensure no material information was concealed or withheld for a later stage.
- It was entirely reasonable for the bidder to assume the Evaluation Committee would examine the tender dossier in its entirety, particularly since the supporting documents expressly contained the required technical data.
- Public procurement processes must not be reduced to a purely formalistic exercise that ignores the foundational objectives of transparency and fairness.

- Evaluation practices must align with established jurisprudence prioritizing substance over form, ensuring that the assessment focuses on the substantive content of the offer rather than rigidly penalizing the exact placement of data within specific forms.
- It is being further submitted that the offer submitted by the objector was in the amount of €123,988 being the cheapest bid, whilst the next bid is of €143,875. To this end there is a discrepancy between the two offers of twenty thousand Euro equivalent to 16% over such bid;
- In the same above-mentioned judgement, the Court also re-iterated that:

> *"Fil-fehma ta' din il-Qorti, l-iskwalifika tal-offerta tas-socjeta' appellanta fuq raguni bhal din, hija mizura sproporzjonata meta wiehed iqis li jekk din tigi attwata, din tista' twassal biex jintilef l-ghan ewlieni tas-sejha li l-kuntratt jinghata lil min ghamel l-orhos offerta";*

In view of the above, and for any further reasons which may be brought forward during the hearing of this appeal, whilst reserving the right to make further submissions and present further evidence, the appellant humbly requests that this Honourable Board revokes the decision of the Contracting Authority of the 4th September, 2026 whereby the offer has been considered not technically compliant and awards the tender to the objector Paul Borg, whilst giving any such orders and directives as may be necessary in relation to the procurement process relative to the tender in question.

Av. Joshua Grech

List of Witnesses

1. All members of the Evaluation Committee (to Testify on this Call for Tenders procedure during all stages, including but not limited to the pre-drafting stage, drafting stage, pre-publication of the Tenders stage, and adjudication stage);
2. The objector;
3. Representative of the Malta Business Registry
4. Representatives of the Department of Contracts;
5. All the witnesses indicated by the other parties to these proceedings which the appellant makes his for all intents and purposes;
6. Other witnesses which the appellant is not aware of, therefore they are being reserved; and
7. Other witnesses permissible by Law are being reserved.

List of Documents

Dok. A Copy of Dossier submitted by objector

Dok. B Copy of Judgement by Court of Appeal in the names Europharma Limited vs Central Procurement and Supplies Unit fi hdan il-Ministeru ghas-Sahha u l-Anzjanita' Attiva et

This Board also noted the Contracting Authority's Reasoned Letter of Reply dated the 18th September, 2026 and received by the Board on the 22nd September, 2026, [and its verbal submission during the hearing held on the 17th November, 2026, in that:

Reasoned Letter of Reply for Objection - SPD3/2026/026 Tender For The Provision of Accessible Passenger Transport Services with Drivers for Wheelchair Users and other clients of Santa Marta Day Centre within the Ministry for Gozo.

Dear Chairman and Members of the Board,

The Ministry for Gozo (hereinafter referred to as 'the Contracting Authority') is hereby submitting its reasoned letter of reply following the objection lodged by Paul Borg holder of identity card number (52060G) (hereinafter referred to as the "Appellant") on the 11th of September 2026.

In this reply, the Contracting Authority shall address the objection of the Appellant and shall state the grounds upon which the objection cannot be upheld by this Honourable Board and at the same time confirm the recommended award in favour of Speedway Garage.

Submissions

Whereas, in its reasoned letter of objection, the Appellant grounds its challenge primarily on a single grievance, namely that its offer was rejected on the basis that certain information was allegedly omitted, whereas the Appellant contends that the information requested was, in fact, duly provided and was never missing.

The Contracting Authority respectfully submits that:

As a preliminary point, the Contracting Authority wishes to draw attention to a material omission in the documentation submitted by the Appellant. Whilst the Appellant refers to "Document A" as the Tender Dossier and has attached various documents thereto, the Technical Offer Form, which lies at the core of the issues raised in the present objection, was not completed in its entirety. In particular, certain mandatory information required by the form was omitted.

First and foremost, while the Appellant was administratively compliant, its submission did not meet the required technical standards. Compliance with technical requirements is a prerequisite to

progressing to the subsequent financial stage. Accordingly, since the Appellant was not technically compliant, the evaluation could not proceed further.

In its correspondence dated 4th September 2026, the Contracting Authority informed the appellant that, the submitted offer was deemed technically not compliant. The Authority clearly stated that "the main reason" for this non-compliance was that, since the technical offer form had not been fully completed and, since the technical offer form was non-rectifiable, the offer was considered as technically non-compliant.

The Appellant bases his objection solely on the argument that information omitted from the Technical Offer Form could allegedly be identified from other supporting documentation forming part of his original tender submission.

The Authority would further emphasise that the Appellant left the first two boxes of the Technical Offer Form uncompleted. The Technical offer form falls within the requirements classified under Note 3, and consequently, the omission could not be rectified after the submission deadline.

In this regard, the contracting Authority would like to point out that in the "Tenderer's Technical Offer Form (Note 3)", there is stated clearly that:

> *"The technical offer falls under Note3, thus, the information/technical specifications provided shall not be subject to rectifications. Therefore, bidders that fail to complete in full, submit and upload the requested information will be deemed as non-compliant and will result in disqualification of their offer. The items being offered in the technical offer must be in conformity with the specifications requested under Section 3 - Technical Specifications and/or the Financial Bid Form."*

In addition to the general rules Clause 5 (c) (I) of the Instructions to Tenderers provide that:

> *"Tenderer's Technical Offer Form in response to specifications (is) to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided."*

It is therefore important to note that the requirement to complete and submit the technical offer form in the prescribed manner was not merely procedural or a matter of presentation, but constituted a specific requirement of the tender. The appellant was therefore fully informed of this condition, as it was clearly outlined in the tender documentation.

It is also pertinent to note that all other bidders submitted compliant technical offers and did not omit any of the mandatory information required under the Technical Offer Form. In the present case, the provisions cited above clearly demonstrate that the Contracting Authority was precluded from seeking clarification, as the information requested had not been provided in full. Specifically, Items 1 and 2 of the Technical Offer Form were left blank. The omission of such mandatory information rendered the

technical offer non-compliant and justified its rejection in accordance with the applicable procurement regulations and the requirements of the Tender Dossier.

In this regards, it is pertinent to refer to Case 1780 - CT2391/2021 - Supplies - Supply, Installation, Commissioning and Testing of a Virtual Environment and SAN Solution to the Water Services Corporation, decided on 29th August 2022. In this case, the Public Contracts Review Board observed the following:

> *"Any change that would have resulted in making the bid/ offer technically compliant would have been a rectification, something which was not possible. Hence, in the opinion of this Board, the Evaluation Committee correctly discarded the Appellant's offer as technically non-compliant. A clarification would not have 'solved' the issue at hand and any further action by the Evaluation Committee would have been going against a fundamental principle of public procurement, i.e. Self-Limitation. Also a level playing field between all economic operators participating in the tender procedure would have been shattered."*

The contracting authority would also like to make reference to the case: 'Rockcut Limited vs Malta Industrial Parks Ltd et (Court of Appeal decided on 31st May 2019) whereby it stated:

> *'Jekk ir-regoli tas-sejħa jimponu l-preżenza ta tali tagħrif, hu mistenni li offerenti li jieħdu sehem f'dik is-sejħa joqogħdu għal dawk ir-regoli. Wara kollox ir-regoli tas-sejħa qegħdin hemm biex jiġu mħarsa u mhux biex jiġu mwarrba. Biex jiġi żgurat il-ħarsien ta' dawn il-prinċipji, l-awtorita' kontraenti hija obbligata li tosserva strettament il-kriterji li hija stess tkun stabbiliet (ara fdan is sens is-sentenza tad-29 ta' April 2004, il-Kummijsjoni v. CAS Succhi Di Frutta S.p.A, C-496/99, puntu5)".*

In the present case, any request for clarification would have had the effect of allowing the Appellant to provide information that was omitted from the Technical Offer Questionnaire. Such a course of action would have been impermissible, as it would have amounted to the submission of missing information after the tender closing date rather than the clarification of information already provided. Furthermore, it would have placed the other bidder, who duly submitted a fully completed Technical Offer Questionnaire, at an unfair and unjustified disadvantage, thereby undermining the principles of equal treatment, transparency, and fair competition that govern public procurement procedures.

Accordingly, the Appellant failed to complete and submit two of the mandatory fields of the Technical Offer Form namely "licence registration Nos of Vehicles being offered to render these services" and "Seating Capacity of Vehicles being offered to render these services". As a result, material information required by the Technical Offer Form was omitted from the Appellant's response. The fact that similar information may have appeared elsewhere in the tender submission is entirely immaterial, as the

Appellant failed to provide the mandatory responses where expressly required. The relevant fields were left blank, and the required answers were not provided. The Technical Offer was therefore incomplete, non-compliant, and liable to rejection in accordance with the Tender Dossier and the applicable procurement regulations.

Permitting missing information to be subsequently identified and incorporated from accompanying documentation would effectively allow the Appellant to supplement or complete its Technical Offer after the submission deadline. In the circumstances, this would constitute a rectification of the submitted Technical Offer, rather than a clarification of information already contained therein, and would therefore be contrary to the express prohibition applicable to Note 3 requirements.

The Technical Offer Form is a fundamental document, contrary to the Appellant's attempt to minimise its significance. It contains critical declarations that determine whether an offer qualifies for further consideration and potential award. The Technical Offer document clearly stipulates that tenderers who fail to adhere to requirements, complete and upload all requested information shall be deemed non-compliant and shall not be considered further for final adjudication. Moreover, it is expressly stated that the information and technical specifications provided in the technical questionnaire are not subject to rectification.

This approach is fully aligned with established PCRB jurisprudence, such as PCRB Appeal No. 2174/2023 (Cassar Ship Repair Ltd vs Department of Contracts) and PCRB Appeal No. 1248/2020 (V. & G. Enterprises Ltd vs Enemalta plc), which consistently confirm that mandatory technical requirements must be complied with at the time of submission and cannot be remedied ex post facto without breaching the principles of equal treatment and transparency, particularly where the tender documents expressly prohibit rectification.

Furthermore, it is not for a tenderer to determine, on its own accord, which requirements of the tender are applicable, material or capable of being disregarded. It is the Contracting Authority, through the tender documents, which establishes the applicable requirements, technical specifications and parameters against which all bids are to be assessed.

A tenderer cannot unilaterally choose to leave essential information blank or omit information expressly required within the relevant section of the technical offer, on the assumption that such information is either unnecessary or may be inferred from information provided elsewhere in its submission. Such an approach would effectively permit a tenderer to substitute its own interpretation of the tender requirements for those established by the Contracting Authority.

In the present case, the information left blank by the Appellant concerned material requirements which formed part of the technical evaluation. The fact that certain information may have been included

elsewhere in the bid does not cure the failure to provide the required information in the manner and context stipulated by the tender documentation.

The case relied upon by the Appellant in support of its objection is readily distinguishable from the present circumstances. In fact, in that case (Rik. No: 445/2025/1: Europharma Limited vs Central Procurement and Supplies United), the Court observed that:

> *"30. In parentesi, nonostante li mhuwiex kompitu ta' din il-Qorti li tezamina l-offerta ta' Associated Equipment Limited, huwa interessanti jigi notat ukoll li fl-offerta ta' Associated Equipment Limited (fol 86 et seq) lanqas kien hemm imnizzel il-brand, izda tali offerta ma gietx ikkunsidrata bhala technically non-compliant."*

The Appellant's reliance on the above-cited case is misplaced. That case is clearly distinguishable on its facts. As acknowledged by the Court, another bidder in the same procurement procedure had also failed to indicate the brand of the equipment offered, yet its bid was not considered technically non-compliant. The Court's comments were therefore directed at an apparent inconsistency in the evaluation of competing bids.

No such inconsistency arises in the present case. The successful bidder complied in full with the technical requirements of the Tender Dossier and duly completed the Technical Offer Form, including all mandatory fields. By contrast, the Appellant left mandatory sections unanswered and failed to provide information expressly required by the Technical Offer Questionnaire. The circumstances are therefore fundamentally different, and the authority relied upon by the Appellant provides no support whatsoever for its position.

The Authority also takes note of the Appellant's statement that "The principle of equal treatment and proportionality remains entirely uncompromised because the bidder stands to gain no competitive advantage." The issue is not confined to whether the Appellant would derive a substantive competitive advantage from the consideration of the omitted information. Rather, the relevant question is whether permitting the omission to be remedied after the tender submission deadline would constitute an impermissible rectification of the Technical Offer. In the present case, it plainly would.

The Tender Dossier expressly provides that no rectifications are permitted in respect of the requirements falling under Note 3. Consequently, the Appellant cannot invoke the principle of proportionality in a manner that would override the clear and unambiguous provisions of the Tender Dossier. The principles of proportionality and equal treatment must be applied harmoniously, and the former cannot be relied upon to circumvent mandatory tender requirements or to permit one tenderer to rectify material omissions after the deadline for submission.

Furthermore, all other bidders successfully provided the information and specifications required under the Technical Offer Form, thereby demonstrating that the requirements were neither impossible to satisfy nor disproportionate in nature. To permit the Appellant to remedy its omission after the closing date would therefore undermine the principles of equal treatment, transparency, and fair competition by placing the Appellant in a more favourable position than tenderers who complied with the Tender Dossier from the outset. Accordingly, the Appellant's argument is unfounded and must be rejected.

With respect to the Appellant's submission of "deliberately including the logbooks as documentary evidence to ensure no material information was concealed or withheld for a later stage", the Contracting Authority wishes to clarify that providing all documents, does not in itself ensure compliance.

Upon review, it was determined that the Appellant's submission failed to fully meet the technical criteria and specifications set out in the tender specifically because required information was left blank by the Appellant. Completeness of submission alone does not equate to technical compliance.

The Appellant further contends that "the principle of proportionality strictly requires authorities to distinguish between a substantive failure of compliance and a purely formal defect." It appears that, on this basis, the Appellant alleges that the principle of proportionality was breached during the evaluation process and, further, that the Contracting Authority acted disproportionately by failing to take into account information allegedly provided elsewhere in the bid.

The Contracting Authority firmly rejects these assertions in their entirety. The evaluation process was conducted in strict accordance with the applicable legal and regulatory framework and the requirements of the tender documents. The same evaluation criteria and requirements were applied uniformly and consistently to all bidders, without distinction.

The Technical Evaluation Committee carefully examined the submissions and verified that the preferred bidder satisfied the applicable technical requirements. In contrast, the Appellant's submission failed to satisfy the prescribed technical standards. The Appellant further submits that "public procurement processes must not be reduced to a purely formalistic exercise that ignores the foundational objectives of transparency and fairness." While the Contracting Authority does not dispute the importance of these principles, it is for the Appellant to substantiate its allegation that the Authority acted unfairly or without transparency. A mere assertion of unfairness, cannot suffice. In the present case, the requirements were clearly established in the tender documents and applied equally to all bidders.

Moreover, the primary goal of public procurement legislation is to ensure that services meet required standards at the best possible price. In this context, and in light of the evaluation, the offer submitted

by Speedway Garage proved to be the most economically advantageous, is confirmed to be compliant on administrative, technical, and financial grounds.

With respect to the Appellant's assertion that its offer was the cheapest, it is stated that the preferred bidder's offer was deemed financially viable by the Technical Evaluation Committee. All requirements were met, and the principles governing public procurement were strictly adhered to.

The PCRB has consistently reaffirmed that the lowest price is not decisive in isolation and that an offer can only be considered once it is fully compliant from an administrative and technical standpoint.

Although not the lowest-priced offer, the preferred bidder's figures were considered reasonable, feasible, within budget, and fully compliant with the applicable Procurement Regulations.

It must be emphasized that the role of the Technical Evaluation Committee is not solely to identify the lowest price, but to seek the most economically advantageous offer, provided that all administrative, technical, and financial criteria are fully satisfied.

This principle has been expressly endorsed by the PCRB, which has repeatedly held that an Evaluation Committee would be acting unlawfully if it were to prioritise price over compliance with mandatory tender requirements.

Furthermore, the primary objective of public procurement legislation is to ensure that the public receives supplies or services that meet the required standards and specifications at the best possible value for money.

Conclusion

Therefore, for the reasons mentioned above, the respondent Contracting Authority humbly requests that this Honourable Board should reject and dismiss all arguments submitted by the Appellant, thereby dismissing the objection in toto and to re-confirm the decision of the Evaluation Committee for the reasons given.

Dr Tatiane Scicluna Cassar, Director, Legal & Compliance Directorate, Ministry for Gozo

This Board also noted that no Reasoned Letter of Reply by the Recommended Bidder, Speedway Garage, forms part of the acts of these proceedings.

CONSIDERATIONS OF THE BOARD

THIS BOARD, after having examined the acts of the appeal in their entirety, namely the Letter of Objection filed on the 13th September 2026 together with its Document A (a copy of the dossier submitted by the Appellant) and Document B (a copy of the judgment of the Court of Appeal in *Europharma Limited v. Central*

Procurement and Supplies Unit fi ħdan il-Ministeru għas-Saħħa u l-Anzjanità Attiva et), the Reasoned Letter of Reply of the Contracting Authority dated the 18th September 2026, the documentation pertaining to the call for tenders forwarded in terms of regulation 276(d) of the Public Procurement Regulations, namely the Tender Document, the Opening Report, the Evaluation Report dated the 21st August 2026 together with the correspondence annexed thereto, the two offers as submitted on the Government's e-Procurement Platform and their respective file indices, the Award Notice and the letters of the 4th September 2026, the General Rules Governing Tenders, and the minutes of the sitting of the 17th November, 2026, and the submissions recorded therein and the testimony of Ms Nadia Gatt, Chairperson of the Evaluation Committee, will now consider the grievances advanced by the Appellant, the reply of the Contracting Authority to each of them, and the considerations of the Board on each, in the order in which they are pleaded, after setting out the principles by which it is guided and the material facts which emerge from the record.

Preliminary statement. The Contracting Authority characterises the objection as resting "primarily on a single grievance". The Board agrees that the objection is directed against one decision, namely the decision of the 4th September 2026 declaring the Appellant's offer technically non-compliant.

The objection nonetheless advances four distinct lines of argument, each supported by its own submissions, and each answered in turn by the Contracting Authority. For clarity, and so that each submission receives a reasoned answer as regulation 93(3) of the Public Procurement Regulations requires, the Board considers them as four grievances, in the order in which they appear in the objection.

A. Preliminary Considerations

The appeal and the competence of the Board

A.1 The Award Notice and the letter addressed to the Appellant, both dated the 4th September 2026, informed tenderers that any objection was to be lodged with the Public Contracts Review Board "by 12:00hrs (noon) of 14th September 2026" against a deposit of €673.

The Letter of Objection, dated the 11th September 2026, bears the stamp of the Board of the 13th September 2026, and the Information Sheet completed by the Contracting Authority records the 13th September 2026 as the date of filing. The objection was therefore filed within the ten calendar days prescribed by regulation 271 of the Public Procurement Regulations, S.L. 601.03 (the "PPR").

The deposit of €673, the payment of which on the 11th September 2026 is documented in the bank printout annexed to the objection, corresponds to 0.50 per cent of the estimated value of €134,600 set by the Contracting Authority, as regulation 273 of the PPR requires.

"271. The objection shall be filed within ten calendar days following the date on which the contracting authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period." (Regulation 271 of the PPR)

"273. The objection shall only be valid if accompanied by a deposit equivalent to 0.50 per cent of the estimated value set by the contracting authority of the whole tender … provided that in no case shall the deposit be less than four hundred euro (€400) or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision." (Regulation 273 of the PPR)

A.2 The Appellant is a tenderer whose offer was rejected, and the objection is directed against that rejection and the consequent recommendation to award the Tender to the Recommended Bidder at the price of €143,875 exclusive of VAT. The estimated value of the Tender exceeds five thousand euro (€5,000). The Board is accordingly competent to hear and determine the appeal in terms of regulation 270 of the PPR.

"270. Where the estaimated value of the public contract meets or exceeds five thousand euro (€5,000) any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints." (Regulation 270 of the PPR)

The function and the standard of review of the Board

A.3 By regulation 276(h) of the PPR the Board is to decide, after evaluating all the evidence and after considering all submissions put forward by the parties, whether to accede to or to reject the appeal, or even to cancel the call; and by regulation 93(3) it is to indicate the reasons upon which its decision is taken.

The Board is a body of review. It does not conduct the evaluation anew, nor does it substitute its own technical appreciation of an offer for that of the Evaluation Committee. Its task is to verify, upon the record, whether the Evaluation Committee applied the conditions of the call lawfully and consistently, in observance of the principles of equal treatment, transparency and proportionality enshrined in regulation 39(1) of the PPR.

"(h) after evaluating all the evidence and after considering all submissions put forward by the parties, the Public Contracts Review Board shall decide whether to accede or reject the appeal or even cancel the call if it appears to it that this is best in the circumstances of the case." (Regulation 276(h) of the PPR)

"(3) The decision of the Review Board shall be rendered in writing, be signed by all members and be dated. In its decision the Review Board shall indicate the reasons upon which such decision was taken." (Regulation 93(3) of the PPR)

"39. (1) Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner." (Regulation 39(1) of the PPR)

The present appeal does not call upon the Board to review a technical appreciation. It raises a question of law, namely whether, upon the true construction of the conditions of the call and of the governing rules, an omission in the Technical Offer Form, in respect of information which is otherwise present in the offer, could lawfully be addressed by a request for clarification, or necessarily entailed the rejection of the offer.

Burden of proof and the evidential position

A.4 Regulation 270 of the PPR requires that an objection "shall contain in a very clear manner the reasons for their complaints". It is, therefore, in the first place for the Appellant to specify, and to establish, the facts upon which its grievances rest. In this appeal, however, the material facts are documentary and are, in their essentials, not in dispute. It is common ground that Items 1 and 2 of the Appellant's Technical Offer Form were left blank; the objection itself speaks of "the omission of data from the specific Technical Offer Form". What is in dispute is the legal consequence of that omission in the light of the remainder of the Appellant's offer.

A.5 The acts before the Board do not contain a Reasoned Letter of Reply by the Recommended Bidder. The Board accordingly determines the appeal upon the objection, the reply of the Contracting Authority, the documentation forwarded under regulation 276(d) of the PPR, the testimony of Ms Nadia Gatt, Chairperson of the Evaluation Committee and the submissions made at the sitting of the 17th November, 2026.

Self-limitation and the reasonably well-informed and normally diligent tenderer

A.6 Once a contracting authority publishes the conditions of a call it is bound by them, no less than the tenderers. The Contracting Authority has rightly invoked the principle of self-limitation, citing *Rockcut Limited v. Malta Industrial Parks Ltd et* (Court of Appeal, 31st May 2019), to the effect that the rules of the call "qegħdin hemm biex jigu mħarsa u mhux biex jiġu mwarrba".

The Court of Appeal restated the same principle, by reference to regulation 39 of the PPR, in *European Dynamics Luxembourg S.A. u European Dynamics S.A., formanti l-konsorzju European Dynamics Consortium v. LexNova Consortium et* (Appeal No. 291/2026/1, judgment of the 13th October 2026):

> *"Tabilħaqq meta fil-kuntest ta' proċedura ta' sejħa għall-offerti, l-awtorità kontraenti tiddefinixxi l-kundizzjonijiet li bi ħsiebha timponi fuq l-offerenti, hija tillimita ruħha fl-eżerċizzju tas-setgħa diskrezzjonali tagħha, b'dan għalhekk li hija ma tistax tmur lura minnhom mingħajr ma tikser il-prinċipju tat-trattament indaqs bejn l-offerenti" (Appeal No. 291/2026/1, p. 72)*

Self-limitation, however, binds the Contracting Authority to the whole of the conditions it has published, including those which define the instruments available to the Evaluation Committee.

The same conditions which classify the Technical Offer under Note 3 provide, in the same breath, that under Note 3 "[o]nly clarifications on the submitted information may be requested". The principle of self-limitation does not, therefore, answer the question in this appeal; it frames it. The question is whether the request which the Appellant says should have been made would have been a clarification on the submitted information, which the conditions permit, or a rectification, which they forbid.

> *"38. (1) The procurement document shall be written in clear and unambiguous terms so as to enable all interested parties to understand properly the terms and conditions of the process." (Regulation 38(1) of the PPR)*

Eligibility *ab initio* and the limits of clarification and rectification

A.7 Regulation 62(1) of the PPR requires that an economic operator be in possession of all the requirements stipulated in the procurement documents by the closing date; regulation 62(2), which transposes Article 56(3) of Directive 2014/24/EU, permits the contracting authority, in terms of the procurement document, to request the economic operator to "submit, supplement, clarify or complete" information or documentation which is or appears to be incomplete or erroneous, provided that such requests are made in full compliance with the principles of equal treatment and transparency.

> *"62. (1) Without prejudice to Part VI and regulation 235(2), the authority responsible for the tendering process must ensure that an economic operator must ab initio be eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same.*
>
> *(2) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities in terms of the procurement document may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit: Provided that such requests are made in full compliance with the principles of equal treatment and transparency."* (Regulation 62(1) and (2) of the PPR)

A.8 The General Rules Governing Tenders (the "GRGT"), which the Tender expressly complements in their latest version applicable on the date of its publication (Section 4.5 of the Tender Document), and which are cited in this decision from version 4.10 of August 2024, govern the technical stage of the evaluation in Clause 16.3, which provides, in respect of documentation classified under Note 3:

> *"No rectification shall be allowed in respect of the documentation as accompanied by Note 3 in Clause 5 of the Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be requested. No clarifications shall be allowed where there is no doubt that the submitted technical offer does not comply to the requested specifications." (Clause 16.3 of the GRGT)*

Clause 15.2 of the GRGT adds that requests for clarification "may in no circumstances alter or try to change the price or content of the tender, except for rectifications as allowed in terms of what is stipulated in the procurement document".

A.9 Procurement Policy Note #40 of the Department of Contracts ("Evaluation Stage – Clarification and Rectification Requests", issued on the 1st June 2023), which is addressed to all evaluation committees, defines the two instruments in terms which bear directly on this appeal:

> *"Clarification Request – Inquiry generated by Evaluation Committees, aimed at being provided with an indication of where one can find the necessary information on selected aspects of a particular Procurement / Concession Submission." (Procurement Policy Note #40, Section 3)*
>
> *"Rectification Request – Inquiry generated by Evaluation Committees, aimed at being provided with information / documentation of selected aspects of a particular Procurement / Concession Submission that was either missing from submission, or submitted incomplete or incorrect." (Procurement Policy Note #40, Section 3)*

The same Note lists, among the shortcomings which evaluation committees may address by a request for clarification, the following:

> *"Unidentified: Unsure where a requirement is being satisfied. – Indicate where (as well as quote, cite and reference) in the original Submission, the specific requirement is being addressed." (Procurement Policy Note #40, Section 4, Clarification Request Letters)*

It also cautions that "any required mandatory information / documentation which was not originally submitted with the Procurement / Concession Submission will disqualify the bidder unless the said information / documentation is subject to Note 2, thus, rectifiable", and that bidders "should not be given the opportunity to modify / add information to their Procurement / Concession Submission with the scope of presenting a compliant bid" (Section 4). The decisive words in that caution are "not originally submitted with the … Submission".

A.10 The Standard Operating Procedures / Guidelines for Tender Evaluation Committees (Directive 01/2016, Document A) direct, at paragraphs 3.8.2.5 and 3.8.2.6:

> *"3.8.2.5 All documentation submitted must be analysed in detail. It should be noted that any documents, specification, etc. that were required but not submitted will disqualify the tenderer and further evaluation cannot take place.*
>
> *3.8.2.6 The Committee cannot request tenderers for any information that was not submitted with the documents. The Committee can only seek clarifications from tenderers where the information submitted is not sufficiently explicit and clear." (Standard Operating Procedures / Guidelines for Tender Evaluation Committees, paras. 3.8.2.5–3.8.2.6)*

B. The Material Facts Emerging from the Record

The Tender and its conditions

B.1 The Tender, issued by the Department of Contracts through its Sectoral Procurement Directorate with the Community, Inclusion and Services Directorate within the Ministry for Gozo as final beneficiary, concerns a framework contract for up to two years for the provision of three transport vehicles with drivers: two vehicles equipped with a fully functional automatic wheelchair lifter, each accommodating at least four wheelchair-bound clients, three clients and two care workers, and one vehicle for non-wheelchair-bound clients with a minimum of sixteen seats (Clause 1.2 of the Instructions to Tenderers). The estimated procurement value is €134,600 exclusive of VAT (Clause 1.3). The deadline for the submission of tenders was the 17th July 2026 at 09:30hrs (Clause 2).

B.2 Clause 5(C) of the Instructions to Tenderers provides:

> *"(C) Specifications (i) Tenderer's Technical Offer in response to specifications to be submitted online through the prescribed Tender Response Format and by using the Tender Preparation Tool provided. (Note 3) The Technical Offer shall include the following: 1. A Technical offer questionnaire whereby the tenderer declares that he shall be abiding by the technical specifications and that all materials to be used during the works covered by this tender/contract shall conform to the Specifications listed under Section 3 – Technical Specifications of the Tender Dossier. 2. Declaration (to be completed through the online response format).(Note 3) (ii) Literature as per Form marked 'Literature List' to be submitted with the Technical offer at tendering stage. The scope of the literature is to corroborate a fully compliant technical offer. (Note 2)" (Clause 5(C) of the Instructions to Tenderers)*

The Notes to Clause 5 provide, in so far as relevant:

"2. Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification. 3. No rectifications shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification. Requests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained." (Notes to Clause 5 of the Instructions to Tenderers)

By Clause 6.1, "[t]he sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria."

B.3 The Tenderer's Technical Offer Form (Note 3) provides, in its preamble:

"The technical offer falls under Note3, thus, the information/technical specifications provided shall not be subject to rectifications. Therefore, bidders that fail to complete in full, submit and upload the requested information will be deemed as non-compliant and will result in disqualification of their offer." … "Failure to fill-in the mandatory technical offer table below will result in disqualification of the offer. Bidders are to note that statements in the affirmative means that the corresponding specification is being met. A negative statement means that the specification is NOT met and hence the item will be deemed as technically non-compliant." (Tenderer's Technical Offer Form)

Item 1 of the table reads "License Registration Nos. of Vehicles being offered to render these services", and Item 2 reads "Seating Capacity of Vehicles being offered to render these services", each with the reference "Section 3: Terms of Reference". Items 3 to 18 are declarations of conformity with the Terms of Reference, to be answered by the statement "I/We confirm". The table has a further column headed "Reference where relevant information is being included in the technical literature."

Section 3 of the Tender (Terms of Reference), at paragraph 6.3(viii), requires the Contractor to provide "[d]ocumentation and permits for all vehicles, including Transport Malta logbook, licenses, and insurance certificates, available for inspection by the Contracting Authority."

The offers received

B.4 The Opening Report records two offers: Speedway Garage (Offer ID 000246058), submitted on the 16th July 2026 at 18:57:23, at €143,875.00; and Paul Borg (Offer ID 000246064), submitted on the 16th July 2026 at 22:53:23, at €123,988.00.

B.5 The Technical Offer Form uploaded by the Appellant, as listed in the file index of its offer, leaves the "Bidder's reply" column of Items 1 and 2 blank. Against each of Items 3 to 18 the Appellant entered "X I/We confirm". Those confirmations include Item 10 (compliant and fully equipped vehicles, including an automatic wheelchair lift and safety harnesses for wheelchair-bound transport and a fully

functional stepper for the non-wheelchair-bound service), Item 11 (adequate space in each wheelchair vehicle for a minimum of four wheelchair-bound clients, three seated clients and two care workers, and, without wheelchair users, not less than eleven passenger seats at the back while retaining the tail lift) and Item 12 (a minimum of sixteen passengers for the non-wheelchair-bound service).

B.6 The file index of the Appellant's offer shows that, against the criterion "Kindly upload literature as per Article 5C(ii) of Section 1 in the tender document and as per Literature list", the Appellant uploaded a document entitled "literature documents with photos.pdf". That document, which also forms part of Document A annexed to the objection, contains, among other things, the vehicle registration certificates (logbooks) of three vehicles, namely:

(a) **KPY067**, make Ford, described as a minibus with tail lift, in respect of which the entry "Number of sitting passengers, driver and wheelchair users" (S.1) reads 18;

(b) **LPY086**, make Mercedes Benz, described as a Sprinter 516 minibus, in respect of which the same entry reads 21; and

(c) **JPY085**, make Ford, described as a Transit minibus with tail lift, in respect of which the same entry reads 18;

together with certified copies of Transport Malta community licences relating to the said vehicles, certificates of motor insurance, a written declaration by Godfrey Borg whereby the use of vehicles JPY085 and LPY086 is granted to Paul Borg, and photographs.

The evaluation

B.7 On the 7th August 2026 the Evaluation Committee, through its Chairperson, sought the guidance of the Assistant Director (Sectoral Procurement), in the following terms:

> *"The Evaluation Committee is currently evaluating a tender and, during the technical evaluation, it was noted that one of the bidders omitted to complete the first two boxes of the Technical Offer Form. The information required in these two boxes was not entered directly in the Technical Offer Form, however, the same information is readily available and can be clearly identified from the supporting documents submitted by the bidder as part of the literature list. In view of the above, the Evaluation Committee would appreciate your guidance as to whether such an omission should be considered grounds for disqualification, particularly given that the Technical Offer Form forms part of the tender requirements, or whether the offer may still be considered further on the basis that the required information was already submitted and is readily ascertainable from other documentation forming part of the bidder's original submission." (E-mail of the Evaluation Committee, 7th August 2026)*

The reply, given on the same day, reads:

> *"In principle, information should be provided as requested in the tender documentation. Regarding the technical offer form, this falls under note 3, so we cannot rectify any information. Only a clarification can be made, which in this case, we understand that is not applicable as we are dealing with missing information that was mandatorily requested to be inputted. Please note that the above is being provided for guidance purposes only. The ultimate assessment and decision remain within the remit and responsibility of the Evaluation Committee." (E-mail of the Assistant Director (Sectoral Procurement), 7th August 2026)*

B.8 On the same 7th August 2026 the Evaluation Committee, with the approval of the Sectoral Procurement Directorate, sent the Recommended Bidder a request for rectification in respect of "Missing Internal and External photos of Vehicle SPY220 being offered, showing any accessibility features as per Section 3 Terms of Reference", to which the Recommended Bidder replied on the 9th August 2026. The Evaluation Clarifications Report forming part of the record lists that request alone; the record does not show any request, whether for clarification or for rectification, addressed to the Appellant.

B.9 The Evaluation Report (summary date 21st August 2026) records, in respect of the Appellant, that it was administratively compliant and that:

> *"The Evaluation Committee carried out an exercise to determine the technical compliance of the offer received. However, during the evaluation process, it was noted that the bidder failed to complete the the Technical Offer Form in full. As a result, the bid was found to be technically non-compliant and could not be considered further." (Evaluation Report, technical evaluation of Offer ID 000246064)*

In respect of the Recommended Bidder, the Report records that its offer was administratively, technically and financially compliant, and that its financial offer "was compared to the budget available and was found to be 6.89% over the estimated budget". A commitment of additional funds was sought and confirmed on the 21st August 2026, and the Evaluation Committee recommended the award to the Recommended Bidder at €143,875 exclusive of VAT, "this being the cheapest compliant offer". The Report does not record any assessment by the Committee of the documentation which, in its own e-mail of the 7th August 2026, it had described as containing "the same information".

B.10 By letter of the 4th September 2026 the Department of Contracts informed the Appellant that its offer "was not technically compliant", for the following reason: "The Technical Offer Form was not fully completed. Since the Technical Offer Form is non-rectifiable, the offer was considered as technically non-compliant." The Award Notice of the same date records that the Departmental Contracts Committee agreed with the recommendation to award the Tender to Speedway Garage at €143,875 exclusive of VAT.

C. First Grievance – The Information Required by the Technical Offer Form Was Not Missing from the Offer

The grievance of the Appellant

C.1 By its first grievance the Appellant submits that the required vehicle information "was never missing from the technical offer" but was "submitted as an integral part of the tender dossier and was easily identifiable within the accompanying documentation"; that the vehicle log books were provided with the original submission, "ensuring the technical data existed within the offer the moment the call for tenders closed"; that the case is "completely distinct from situations where a bidder entirely fails to submit mandatory documentation"; and that the omission from the Technical Offer Form is "strictly a matter of presentation and document placement, not a substantive flaw".

The reply of the Contracting Authority

C.2 The Contracting Authority replies that the Appellant left Items 1 and 2 of the Technical Offer Form blank, namely the "licence registration Nos of Vehicles being offered to render these services" and the "Seating Capacity of Vehicles being offered to render these services"; that the Technical Offer Form is a Note 3 document which "shall not be subject to rectifications"; that the requirement to complete the form "in the prescribed manner was not merely procedural or a matter of presentation"; that "[t]he fact that similar information may have appeared elsewhere in the tender submission is entirely immaterial"; and that "providing all documents, does not in itself ensure compliance".

Legal considerations of the Board

(i) The information actually omitted

C.3 The Board observes at the outset that the objection speaks of the vehicle "make and model", whereas the fields left blank were Item 1 (licence registration numbers of the vehicles offered) and Item 2 (seating capacity of the vehicles offered). The Technical Offer Form did not ask for make and model. The inaccuracy does not, however, affect the substance of the grievance, which is that the vehicle information required by the form was contained in the log books submitted with the offer; the Contracting Authority understood it in that sense, and answered it by reference to Items 1 and 2. The Board considers the grievance accordingly.

(ii) Whether the information was present in the offer at the closing date

C.4 The record establishes that the Appellant's offer, as uploaded before the closing date, contained the registration certificates of three vehicles, KPY067, LPY086 and JPY085, each stating the registration number of the vehicle and, under entry S.1, the "[n]umber of sitting passengers, driver and wheelchair

users" (paragraph B.6 above). The Tender requires three vehicles (paragraph B.1 above), and three registration certificates were submitted. The registration numbers and the seating capacities of the vehicles were, therefore, present in the offer at the closing date. They were not entered in the place where the form required them to be entered.

C.5 The Board does not need to rely on its own reading of the documents alone. The Evaluation Committee itself, in its e-mail of the 7th August 2026, recorded that "the same information is readily available and can be clearly identified from the supporting documents submitted by the bidder as part of the literature list", and that "the required information was already submitted and is readily ascertainable from other documentation forming part of the bidder's original submission" (paragraph B.7 above). That is a contemporaneous finding of fact by the very body charged with the evaluation, made before it received the guidance of the Sectoral Procurement Directorate. Nothing in the Evaluation Report, in the reply of the Contracting Authority, or elsewhere in the record contradicts it.

C.5A In furtherance, that documentary position was confirmed, on oath, by the person best placed to speak to it. At the hearing of the appeal, learned counsel for the Appellant, Dr Joshua Grech, summoned Ms Nadia Gatt, the Chairperson of the Evaluation Committee, and asked her to confirm whether the documentation exhibited in the acts of these proceedings, being the documentation which ought to have been reflected in the Technical Offer Form, had or had not been made available to the Evaluation Committee, notwithstanding that it was not specifically referred to in that form.

The Chairperson confirmed in the affirmative. She testified, under oath, that the documents in question formed part of the Appellant's tender-submission package, that they were accordingly before the Evaluation Committee, and that they had merely been left out of the Technical Offer Form itself.

In point of fact, therefore, the Chairperson confirmed that the information was available to, the Committee, but was not reproduced in the Technical Offer Form. For its part, the Appellant has never contested that the information was omitted from the Technical Offer Form; that much is common ground between the parties.

The significance of the Chairperson's testimony is, accordingly, not that it establishes the omission, which is admitted, but that it places beyond doubt, from the mouth of the Committee's own Chairperson and upon oath, that the substance of the information was present in the offer at the closing date, a matter upon which the Evaluation Report is otherwise silent (paragraph B.9 above). The Board takes that sworn confirmation into consideration accordingly.

C.6 The Contracting Authority's submission that the information was "omitted" is correct in one sense only, namely that it was omitted from the form. It is not correct in the sense in which regulation 62(1) of the PPR, Procurement Policy Note #40 and paragraph 3.8.2.6 of the Standard Operating Procedures

use the concept, namely information "not **originally** submitted with the … Submission" or "not submitted with the **documents**". The distinction is decisive, and the Board returns to it under the Second Grievance.

(iii) What the Board does not decide

C.7 The Board emphasises the limits of this finding. It finds that the registration numbers and seating figures of the three vehicles were present in the offer. It does not find that those vehicles satisfy the Terms of Reference, including the configurations described in Clause 1.2 of the Instructions to Tenderers and in Items 10 to 12 of the Technical Offer Form. That is a matter of technical appreciation which the Evaluation Committee has not yet undertaken, and which it is not for the Board to undertake in its place.

Finding of the Board on the First Grievance

C.8 The Board finds that, although Items 1 and 2 of the Appellant's Technical Offer Form were left blank, the information which those Items required, namely the registration numbers and the seating capacities of the vehicles offered, was contained in the Appellant's offer at the closing date, in the registration certificates submitted as literature, as the Evaluation Committee itself recorded on the 7th August 2026. The First Grievance is upheld to that extent.

D. Second Grievance – A Request to Indicate the Location of the Information Would Have Been a Clarification, Not a Rectification

The grievance of the Appellant

D.1 By its second grievance the Appellant submits that, because the information "could be extracted directly from the log books, asking the bidder to indicate the location of this data constitutes a simple clarification, not an full rectification"; that "[t]he decisive legal threshold is whether accepting the information requires introducing new data or amending the bid's substance"; that "no new vehicle, make, model, or specification would be introduced"; that the vehicle details documented in the log books "were permanently fixed upon submission and could not be altered through any subsequent clarification process"; and that equal treatment "remains entirely uncompromised because the bidder stands to gain no competitive advantage". It relies on *Europharma Limited v. Central Procurement and Supplies Unit et* (Court of Appeal, App. Civ. 445/2025/1, judgment of the 29th January 2026).

The reply of the Contracting Authority

D.2 The Contracting Authority replies that it "was precluded from seeking clarification, as the information requested had not been provided in full"; that any request for clarification "would have amounted to the submission of missing information after the tender closing date rather than the clarification of information already provided"; that permitting the information "to be subsequently identified and incorporated from accompanying documentation would effectively allow the Appellant to supplement or complete its Technical Offer after the submission deadline", which would be a rectification contrary to the prohibition attaching to Note 3; that the relevant question "is whether permitting the omission to be remedied after the tender submission deadline would constitute an impermissible rectification of the Technical Offer"; and that such a course would place "the other bidder, who duly submitted a fully completed Technical Offer Questionnaire, at an unfair and unjustified disadvantage". It relies on the Board's decision in Case 1780 (29th August 2022), on *Rockcut Limited v. Malta Industrial Parks Ltd et* (Court of Appeal, 31st May 2019), on PCRB Appeals No. 2174/2023 and No. 1248/2020, and it seeks to distinguish *Europharma* on the basis of paragraph 30 of that judgment.

Legal considerations of the Board

(i) The instrument permitted by the conditions of the call

D.3 The Tender, the GRGT and the PPR do not prohibit every request addressed to a tenderer in respect of a Note 3 document. They prohibit rectification and permit clarification "on the submitted information" (Note 3 to Clause 5; Clause 16.3 of the GRGT; regulation 62(2) of the PPR). The question is therefore one of characterisation: whether a request asking the Appellant to indicate where, in its original submission, the registration numbers and seating capacities of the vehicles offered are to be found, would have been a clarification on submitted information or a rectification.

D.4 Procurement Policy Note #40 answers that question in terms. A clarification request is an inquiry "aimed at being provided with an indication of where one can find the necessary information"; and, where an evaluation committee is "[u]nsure where a requirement is being satisfied", the appropriate letter is a clarification request asking the bidder to "[i]ndicate where (as well as quote, cite and reference) in the original Submission, the specific requirement is being addressed" (paragraph A.9 above). A rectification request, by contrast, seeks information "that was either missing from submission, or submitted incomplete or incorrect". The request in issue falls squarely within the former definition. It would not have invited the Appellant to supply anything; it would have invited it to point to what it had already supplied.

D.5 The same characterisation follows from the judgment of the Court of Appeal in *Krypton Chemists Limited v. Central Procurement and Supplies Unit et* (13th November 2025), as reproduced in *Europharma*, on the distinction between clarification and rectification:

> *"29. Kjarifika hija l-azzjoni li permezz tagħha l-awtorità kontraenti tista' titlob spjegazzjoni jew interpretazzjoni fuq informazzjoni li tkun diġà ġiet sottomessa mal-offerta. Naturalment il-proċedura tal-kjarifika ma tistax tintuża biex dak li jkun idaħħal informazzjoni ġdida jew biex ibiddel is-sustanza tal-offerta. … Kjarifika, għalhekk hija limitata għal spjegazzjoni ta' elementi diġà preżenti fl-offerta, minħajr ma tinbidel il-kompożizzjoni tagħha." (Krypton Chemists Limited v. Central Procurement and Supplies Unit et, Court of Appeal, 13th November 2025, para. 29, as quoted in Europharma, App. Civ. 445/2025/1, para. 28)*

The registration numbers and the seating figures of the Appellant's vehicles were "**elementi diġà preżenti fl-offerta**". A request to identify them would not have altered the composition of the offer.

(ii) The judgment of the Court of Appeal in Europharma

D.6 In *Europharma* the Technical Offer Form, classified under Note 3, required the tenderer to state the brand, model number and catalogue reference of the equipment offered, and stated that "[t]enderers that fail to complete and upload the requested information will be deemed as non-compliant and will not be considered further for final adjudication. This information/technical specification provided in the below table shall not be subject to rectifications." The tenderer left those columns "kompletament vojta", but the manufacturer and model number appeared in a Declaration of Conformity Amendment forming part of its offer. The Court held:

> *"Madankollu, fil-każ odjern ma jistax jiġi injorat il-fatt li l-informazzjoni li kienet nieqsa fit-Technical Offer Form kienet tinsab preżenti fl-offerta magħmula, peress li kienet tinsab fid-Declaration of Conformity Amendment. Għalhekk, fil-każ odjern, ma kienx hemm sitwazzjoni fejn li kieku ntalbet kjarifika, kienet ser tkun qed tintalab informazzjoni ġdida. L-informazzjoni ġa kienet hemm preżenti iżda kienet inserita f'parti oħra tal-offerta u mhux fit-Technical Offer Form. Għalkemm huwa rekwiżit mandatorju li tali informazzjoni tingħata proprju fit-Technical Offer Form (u din ma ngħatatx f'dik il-formula), **il-proċedura tal-kjarifika setgħet f'dan il-każ tiġi utilizzata**, għaliex fir-realtà ma kienet ser tiżdied l-ebda informazzjoni ġdida f'din l-offerta, sempliċiment kien ser jiġi ċċarat fejn l-informazzjoni rikjesta kienet tinsab." (Europharma Limited v. Central Procurement and Supplies Unit et, Court of Appeal, App. Civ. 445/2025/1, 29th January 2026, para. 29)*

D.7 The facts of the present appeal are, in every material respect, those of *Europharma*. In both cases the Technical Offer Form was a Note 3 document; in both, its own text warned that failure to complete it would lead to disqualification and excluded rectification; in both, the relevant fields were left entirely

blank; and in both, the information required by those fields was present elsewhere in the offer submitted before the closing date. The Contracting Authority's submission that the information was required "in the manner and context stipulated by the tender documentation" is the submission which the Court considered and rejected when it acknowledged that "huwa rekwiżit mandatorju li tali informazzjoni tingħata proprju fit-Technical Offer Form", and nonetheless held that the clarification procedure could be used.

D.8 The Contracting Authority seeks to distinguish *Europharma* on the strength of paragraph 30 of that judgment, in which the Court noted that the offer of the recommended bidder in that case also lacked the brand and had not been treated as non-compliant. The Board is unable to accept that distinction. The Court introduced that observation expressly "*In parentesi*" and "nonostante li mhuwiex kompitu ta' din il-Qorti li teżamina l-offerta ta' Associated Equipment Limited". The reasoning upon which the Court decided the appeal is set out in paragraphs 29, 35 and 36, none of which depends upon any inconsistency in the treatment of the two offers. The Court, moreover, distinguished the authorities relied upon by the respondents in that case precisely on the ground on which the present case is to be distinguished from those relied upon by the Contracting Authority:

> *"Għalhekk iċ-ċirkostanzi f'dawn il-każijiet ma kinux jikkombaċjaw ma' dawk li għandha quddiemha din il-Qorti, fejn kif ġa ġie ampjament spjegat l-informazzjoni rikjesta kienet ippreżentata iżda mhux fit-Technical Offer Form." (Europharma, App. Civ. 445/2025/1, para. 31)*

D.9 The doctrine of binding precedent does not obtain in Maltese law. The Board is, however, a review body whose decisions are subject to appeal before the Court of Appeal under regulation 284 of the PPR, and consistency and legal certainty in the application of the procurement rules require that the Board give full effect to the considered pronouncements of that Court on materially identical facts. The Board does so in this case.

(iii) The authorities relied upon by the Contracting Authority

D.10 The passage of Case 1780 quoted by the Contracting Authority concerns a situation in which "[a]ny change that would have resulted in making the bid/ offer technically compliant would have been a rectification". The Board does not depart from that principle. It does not apply here, because no change to the Appellant's offer was required: the registration numbers and the seating figures were already in it. As to PCRB Appeals No. 2174/2023 and No. 1248/2020, the Contracting Authority describes them as confirming that "mandatory technical requirements must be complied with at the time of submission and cannot be remedied *ex post facto*". The Board accepts that proposition, which is that of regulation 62(1) of the PPR; but its premise, namely a requirement not complied with at the time of submission,

is absent here. All three decisions, moreover, **precede** the judgment of the Court of Appeal in *Europharma* of the 29th January 2026.

D.11 The passage from *Rockcut Limited v. Malta Industrial Parks Ltd et* states the principle of self-limitation, which the Board has accepted at paragraph A.6 above. For the reasons there given, that principle binds the Contracting Authority to the clarification mechanism which its own conditions establish, no less than to the prohibition of rectification.

(iv) Equal treatment and the guidance of the Sectoral Procurement Directorate

D.12 The Contracting Authority submits that a request for clarification would have placed the other bidder at a disadvantage. The Board does not agree. A clarification confined to identifying information already in the offer could not have allowed the Appellant to change the vehicles offered, their registration numbers or their seating capacities, all of which were fixed by the registration certificates uploaded before the closing date. Equality of treatment is not infringed by a request which confers no opportunity to improve the offer; it is infringed by a request which does. The Court of Justice has held that a contracting authority may ask tenderers to clarify their tenders "without, however, requesting or accepting any amendment to the tenders", provided that it treats tenderers equally and fairly, "in such a way that a request for clarification cannot appear unduly to have favoured or disadvantaged the tenderer or tenderers to which the request was addressed" (Case C-599/10 *SAG ELV Slovensko a.s. and Others v Úrad pre verejné obstarávanie*, judgment of 29th March 2012, ECLI:EU:C:2012:191).

D.13 The Board has also considered the line of authority of the Court of Justice which precludes the admission, after the time limit, of documents which were not included in the initial tender (Case C-387/14 *Esaprojekt sp. z o.o. v Województwo Łódzkie*, judgment of 4th May 2017, ECLI:EU:C:2017:338) and which permits exclusion where a document required on pain of exclusion was not annexed to the bid (Case C-42/13 *Cartiera dell'Adda SpA v CEM Ambiente SpA*, judgment of 6th November 2014, ECLI:EU:C:2014:2345). Those authorities concern documents which were absent from the tender. They do not touch the present situation, in which nothing would have been admitted after the closing date.

D.14 The guidance of the Sectoral Procurement Directorate of the 7th August 2026 rested on the premise that the case was one of "missing information that was mandatorily requested to be inputted". With respect, that premise is contradicted by the Evaluation Committee's own description of the facts, given in the very e-mail to which the guidance replied, that "the same information is readily available and can be clearly identified from the supporting documents" and further corroborated under oath by the testimony of Ms Nadia Gatt, Chairperson of the Evaluation Committee. The guidance, moreover, was expressly "provided for guidance purposes only", the "ultimate assessment and decision" remaining

with the Evaluation Committee. The Evaluation Report does not record that the Committee made any assessment of its own on the point; it records only that the bidder "failed to complete the the Technical Offer Form in full".

D.15 Finally, the last sentence of the relevant passage of Clause 16.3 of the GRGT, under which no clarification is allowed "where there is no doubt that the submitted technical offer does not comply to the requested specifications", does not stand in the way. The Appellant's Technical Offer Form contains no negative statement; it contains affirmative confirmations against every specification in Items 3 to 18, and the Evaluation Committee did not find that any specification was not met. The Committee was, on its own account, in doubt as to how to proceed, not satisfied that the offer did not comply.

Finding of the Board on the Second Grievance

D.16 The Board finds that a request asking the Appellant to indicate where, in its original submission, the information required by Items 1 and 2 of the Technical Offer Form was to be found, would have been a clarification on the submitted information, permitted by Note 3 to Clause 5 of the Instructions to Tenderers, by Clause 16.3 of the GRGT and by regulation 62(2) of the PPR, and not a rectification; that such a request would not have permitted the introduction of any new information or any alteration of the substance of the offer; and that the Evaluation Committee, by treating the omission as incapable of being addressed otherwise than by rectification, misapplied the conditions of the call. The Second Grievance is upheld.

E. Third Grievance – Proportionality, Substance over Form and the Good Faith of the Appellant

The grievance of the Appellant

E.1 By its third grievance the Appellant submits that "[t]he principle of proportionality strictly requires authorities to distinguish between a substantive failure of compliance and a purely formal defect"; that, as held in *Europharma*, disqualification is highly disproportionate when the necessary information is provided in another part of the bid; that it "acted transparently and in utmost good faith, deliberately including the log books as documentary evidence"; that "[i]t was entirely reasonable for the bidder to assume the Evaluation Committee would examine the tender dossier in its entirety"; and that public procurement "must not be reduced to a purely formalistic exercise".

The reply of the Contracting Authority

E.2 The Contracting Authority replies that the Appellant "cannot invoke the principle of proportionality in a manner that would override the clear and unambiguous provisions of the Tender Dossier"; that

proportionality and equal treatment "must be applied harmoniously"; that the other bidder provided the information in the form, "thereby demonstrating that the requirements were neither impossible to satisfy nor disproportionate in nature"; that a tenderer "cannot unilaterally choose to leave essential information blank … on the assumption that such information is either unnecessary or may be inferred from information provided elsewhere"; that "[c]ompleteness of submission alone does not equate to technical compliance"; and that it is for the Appellant to substantiate any allegation of unfairness.

Legal considerations of the Board

(i) The principle of proportionality and its limits

E.3 Regulation 39(1) of the PPR requires contracting authorities to "act in a transparent and proportionate manner". The Board agrees with the Contracting Authority that proportionality cannot be invoked to rewrite the conditions of the call or to save an offer which does not comply with them; the circumstances in which it prevents the rejection of an offer for an irregularity are, in the words of the Court of Appeal in *Servizzi Malta Limited v. Direttur tal-Kuntratti et* (15th July 2019), as quoted in *Europharma*, "limitati" and "eċċezzjonali", and it may never serve to allow a tenderer "effettivament jitħalla jvarja l-offerta tiegħu".

E.4 The present case, however, does not call for proportionality to override a condition of the call. The conditions of the call themselves provided the less drastic course, namely a clarification on submitted information (Part D above). Proportionality operates here in its ordinary function, as a criterion for choosing between two courses which the rules allow: to clarify, or to reject. The Court of Appeal has explained that function in *Europharma*, by reference to its earlier judgments:

> *"Il-prinċipju ta' proporzjonalità jitlob illi offerta ma titwarrabx minħabba kull irregolarità, tkun xi tkun, meta hemm soluzzjonijiet anqas drastiċi li, iżda, ma jmorrux kontra prinċipji oħra bħal ma huma dak ta' trattament indaqs u trasparenza." (Servizzi Malta Limited v. Direttur tal-Kuntratti et, Court of Appeal, 15th July 2019, as quoted in Europharma, App. Civ. 445/2025/1, para. 34)*
>
> *"L-iskwalifika tas-soċjetà appellanta minħabba li l-isem tal-manifattur u l-model number ġew indikati fid-Declaration of Conformity Amendment u mhux ukoll fit-Technical Offer Form mhijiex mehtieġa biex titħares il-kompetizzjoni ġusta galadarba tali informazzjoni ġa kienet inġħatat f'dik l-offerta. In oltre, il-fatt li l-informazzjoni kienet kontenuta fid-Declaration of Conformity Amendment minflok fit-Technical Offer Form ma kienx jaffettwa s-sustanza tal-offerta ta' Europharma Limited kif ukoll lanqas ma kien jagħti xi vantaġġ lil Europharma Limited fuq l-oblaturi l-oħra. Lanqas ma kellu impatt fuq l-awtorità kontraenti." (Europharma, App. Civ. 445/2025/1, para. 35)*

> *"Ghalhekk fil-fehma tal-Qorti ma jkunx qiegħed jitħaddem il-prinċipju tal-proporzjonalità jekk offerta vantaġġuża tiġi mwarrba għas-semplici fatt li l-informazzjoni rikjesta kienet inġabatat f'parti oħra tal-offerta u mhux fil-parti fejn kellha tiġi nserita. Is-sitwazzjoni kienet tkun ferm differenti li kieku din l-informazzjoni ma kinitx tirriżulta minn imkien fl-offerta magħmula, liema sitwazzjoni ma tirrispekkjax il-fatti li għandha quddiemha din il-Qorti." (Europharma, App. Civ. 445/2025/1, para. 36)*

E.5 The Court of Appeal has also held, in construing the conditions of a call for transport services in which the vehicle logbooks were relevant, that their interpretation should be consonant with the need for the conditions of the call to facilitate, and not to stifle, competition:

> *"Din l-interpretazzjoni hija wkoll konformi mal-ħtieġa illi l-kondizzjonijiet tas-sejħa jaġevolaw u mhux joħonqu l-kompetizzjoni." (Leone Grech v. Jobsplus et, Court of Appeal, Appeal No. 66/2023/1, 31st May 2023, p. 19)*

(ii) Application to the present case

E.6 The rejection of the Appellant's offer was not necessary to protect fair competition, since the information was already in the offer and could not be changed. The placing of that information in the registration certificates rather than in Items 1 and 2 did not affect the substance of the offer, conferred no advantage on the Appellant over the Recommended Bidder, and had no impact on the Contracting Authority, which had before it, from the closing date, the very documents which paragraph 6.3(viii) of the Terms of Reference requires the Contractor to keep available for its inspection. In those circumstances the rejection of the offer, in preference to the clarification which the conditions of the call permitted, was a disproportionate measure within the meaning of regulation 39(1) of the PPR, as interpreted in *Europharma*.

E.7 The Contracting Authority's observation that the Recommended Bidder completed the form, and that the requirement was therefore not impossible to satisfy, is correct but does not meet the point. Proportionality is not concerned with whether a requirement could be met, but with whether the consequence attached to a particular failure to meet it in the prescribed form is necessary to achieve the aims of the procedure. Nor does the Board accept that the Appellant "unilaterally" chose to leave the fields blank "on the assumption that such information is … unnecessary"; there is no evidence of any such choice, and the record shows no more than an omission.

(iii) Good faith and the examination of the offer in its entirety

E.8 The Board attaches no independent legal weight to the Appellant's good faith. Compliance is assessed objectively, and good faith neither cures a non-compliance nor is required to establish compliance. The Board does, however, accept the Appellant's submission that it was entitled to expect its offer to be

examined in its entirety. Paragraph 3.8.2.5 of the Standard Operating Procedures directs that "[a]ll documentation submitted must be analysed in detail", and Clause 5(C)(ii) of the Instructions to Tenderers describes the literature as submitted "to corroborate a fully compliant technical offer". The Evaluation Committee did examine the literature: that is how it came to record, on the 7th August 2026, that the information was "readily available and can be clearly identified" therein.

Finding of the Board on the Third Grievance

E.9 The Board finds that, the conditions of the call permitting a clarification on the submitted information, the rejection of the Appellant's offer without such a clarification, for an omission in the Technical Offer Form of information which was present elsewhere in the offer, was a disproportionate measure contrary to regulation 39(1) of the PPR. The Third Grievance is upheld, save that the Board attaches no independent legal weight to the plea of good faith.

F. Fourth Grievance – The Price Differential between the Two Offers

The grievance of the Appellant

F.1 By its fourth grievance the Appellant submits that its offer, at €123,988, was "the cheapest bid, whilst the next bid is of €143,875", a difference of "twenty thousand Euro equivalent to 16% over such bid", and relies on the passage in *Europharma* in which the Court held that disqualification for such a reason "tista' twassal biex jintilef l-għan ewlieni tas-sejħa li l-kuntratt jingħata lil min għamel l-orħos offerta".

The reply of the Contracting Authority

F.2 The Contracting Authority replies that "the lowest price is not decisive in isolation and that an offer can only be considered once it is fully compliant from an administrative and technical standpoint"; that the Recommended Bidder's offer was "deemed financially viable" and was "reasonable, feasible, within budget, and fully compliant"; that the role of the Evaluation Committee "is not solely to identify the lowest price, but to seek the most economically advantageous offer"; and that an Evaluation Committee would act unlawfully if it were to prioritise price over compliance with mandatory requirements.

Legal considerations of the Board

F.3 The Board agrees with the Contracting Authority that price cannot save a non-compliant offer. Under Clause 6.1 of the Instructions to Tenderers the contract is to be awarded to "the cheapest priced offer satisfying the administrative and technical criteria"; the lowest price is relevant only among compliant

offers. The Fourth Grievance cannot, therefore, stand as an independent ground for annulling the decision.

F.4 Two observations are nevertheless called for. First, the sole award criterion in this Tender was price (Clause 6.1); the reference in the Contracting Authority's reply to "the most economically advantageous offer" **must be read in that light**. Secondly, the price differential is relevant, as it was in *Europharma*, to the assessment of proportionality undertaken in Part E. The record shows that the Appellant's offer of €123,988 was €19,887 lower than that of the Recommended Bidder (that is, 16.04 per cent of the Appellant's price, or 13.82 per cent of the Recommended Bidder's price), and 7.88 per cent below the estimated value of €134,600; whereas the Recommended Bidder's offer exceeded the estimated value by 6.89 per cent and required the commitment of additional funds (paragraph B.9 above). The Board does not say that these figures make the Appellant's offer compliant; they show what was at stake in the choice between a clarification and a rejection.

Finding of the Board on the Fourth Grievance

F.5 The Board finds that the price of the Appellant's offer cannot of itself establish its compliance or found the annulment of the decision, and to that extent rejects the Fourth Grievance; the price differential has, however, been taken into account in the assessment of proportionality in Part E.

G. The Demands of the Appellant, the Consequences of the Board's Findings and the Deposit

The demands of the Appellant

G.1 The Appellant requests that the Board (a) revoke the decision of the Contracting Authority of the 4th September 2026 whereby its offer was considered not technically compliant; (b) award the Tender to the Appellant; and (c) give "any such orders and directives as may be necessary in relation to the procurement process".

The consequences for the decision and the recommendation

G.2 For the reasons given in Parts C, D and E, the decision declaring the Appellant's offer technically non-compliant cannot stand, and with it falls the recommendation to award the Tender to the Recommended Bidder, which rested upon the premise that the Recommended Bidder's offer was "the cheapest compliant offer". The appeal is accordingly to be acceded to in terms of regulation 276(h) of the PPR.

G.3 The consequence of this decision is that the Appellant's offer is reinstated in the procedure at the stage at which it was rejected. Consistently with the principles set out in this decision, it will be for the

Evaluation Committee to address to the Appellant, should it consider it necessary, a request for clarification confined to the indication, by reference to its original submission, of where the information required by Items 1 and 2 of the Technical Offer Form is to be found, without the admission of any new information; to evaluate the technical compliance of the Appellant's offer on the basis of its original submission, including whether the vehicles offered satisfy the Terms of Reference; and, should the offer be found technically compliant, to proceed to its financial evaluation, followed by a fresh recommendation, which will itself be subject to the right of objection under regulation 271 of the PPR.

G.4 The Board cannot accede to the demand that the Tender be awarded to the Appellant. Regulation 276(h) of the PPR confines the Board's decision to acceding to or rejecting the appeal, or cancelling the call. Moreover, the Appellant's offer has not yet been evaluated technically on its merits or financially, and the Board will not anticipate that evaluation. The Court of Appeal in *Europharma* itself, having upheld the appeal, did not award the contract but remitted the acts to the Department of Contracts for a new adjudication after the reinstatement of the appellant's offer.

The deposit

G.5 Regulation 273 of the PPR provides that the deposit "may be refunded as the Public Contracts Review Board may decide in its decision", and regulation 93(4) requires the Board to "recommend on whether any deposit submitted by a party should be refunded, in whole or in part, or not". The appeal has succeeded on its principal object, namely the annulment of the decision declaring the Appellant's offer technically non-compliant; the demand that is rejected, namely that the Tender be awarded to the Appellant, is one which the Board could not grant in any event. The Board therefore recommends the refund of the deposit in full, namely €673.

H. Summary of the Considerations of the Board

H.1 The Board summarises its considerations as follows:

(a) **Preliminary matters.** The objection was filed in time and with the correct deposit; no Reasoned Letter of Reply by the Recommended Bidder forms part of the acts; and the appeal raises a question of law on documentary facts which are not in dispute in their essentials.

(b) **First Grievance.** Items 1 and 2 of the Appellant's Technical Offer Form were left blank, but the registration numbers and seating capacities of the vehicles offered were present in the offer at the closing date, in the registration certificates submitted as literature, as the Evaluation Committee itself recorded on the 7th August 2026. Upheld to that extent.

(c) **Second Grievance.** A request to indicate where in the original submission that information was to be found would have been a clarification on submitted information, permitted by Note 3, Clause 16.3 of the GRGT and regulation 62(2) of the PPR, and not a rectification, in accordance with Procurement Policy Note #40 and with the judgment of the Court of Appeal in *Europharma*. Upheld.

(d) **Third Grievance.** The rejection of the offer, in preference to the clarification permitted by the conditions of the call, was disproportionate within the meaning of regulation 39(1) of the PPR. Upheld, save as to the plea of good faith, to which no independent legal weight is attached.

(e) **Fourth Grievance.** Price cannot of itself establish compliance; the price differential is relevant only to proportionality. Rejected as an independent ground.

(f) **Consequences and deposit.** The appeal is acceded to; the decision of the 4th September 2026 and the recommendation for award are annulled; the Appellant's offer is reinstated in the evaluation; the demand for the award of the Tender to the Appellant is rejected; and the Board recommends the refund of the deposit in full.

I. Conclusion and *Decide*

The Board, having evaluated all the above and based on the above considerations, and in terms of regulation 276(h) of the Public Procurement Regulations (S.L. 601.03), concludes and decides:

a) To accede to the Appellant's appeal, upholding the First, Second and Third Grievances, the Third save as to the plea of good faith, to which no independent legal weight is attached, and rejecting the Fourth Grievance as an independent ground of annulment, the price differential having been taken into account in the assessment of proportionality, all for the reasons set out in the considerations above;

b) To revoke the decision of the Ministry for Gozo, communicated to the Appellant on the 4th September 2026, whereby the Appellant's offer (Offer ID 000246064) was declared technically non-compliant; and likewise, to revoke the recommendation, published in the Award Notice of the 4th September 2026, for the award of Tender SPD3/2026/026 to Speedway Garage (Offer ID 000246058) at the price of €143,875 exclusive of Value Added Tax;

c) To order the Ministry for Gozo to reinstate the Appellant's offer in the evaluation process at the technical stage, and to re-evaluate the tenders by a newly constituted Evaluation Committee in accordance with the conditions of the call and the considerations of this decision with any clarification addressed to the Appellant being confined to the indication, by reference to its original submission, of where the information required by Items 1 and 2 of the Technical Offer Form is to be found, without

the admission of any new information, and to do all else which is conducive and necessary for the proper execution of the above orders, any fresh recommendation for award being subject to the period for objection prescribed by regulation 271 of the Public Procurement Regulations;

d) To decline the demand that the Tender be awarded to the Appellant, the Board's decision being confined to the outcomes provided by regulation 276(h) of the Public Procurement Regulations, and the Appellant's offer remaining to be evaluated in accordance with paragraph c) above;

e) Directs that the deposit paid by the Appellant be fully reimbursed, in terms of regulation 273 and regulation 93(4) of the Public Procurement Regulations.

Dr Vincent Micallef **Chairman**	**Mr Lawrence Ancilleri** **Member**	**Mr Keith V Grech** **Member**