

PUBLIC CONTRACTS REVIEW BOARD

Case 2150 - CT 2345/2024 – Tender for the purchase of qty 2 high-frequency jet ventilator units for the medical imaging departments at Mater Dei Hospital with a reduced environmental impact

29th September 2025

The Board,

Having noted the letter of objection filed by Dr Adriano Spiteri, acting on behalf of Spiteri Legal, acting for and on behalf of HospiMalta Ltd (hereinafter referred to as the "Appellant"), filed on the 18th July 2025;

Having also noted the letter of reply filed by Dr Alexia J Farrugia Zrinzo and Dr Leon Camilleri, acting on behalf of 360 Legal, acting for and on behalf of Central Procurement and Supplies Unit (CPSU) (hereinafter referred to as the "Contracting Authority"), filed on the 28th July 2025;

Having heard and evaluated the testimony of the witness Dr Adriano Spiteri (HospiMalta Ltd Company representative) as summoned by Dr Chris Mizzi acting for HospiMalta Ltd during the hearing on 15th September 2025;

Having heard and evaluated the testimony of the witness Mr Didier Moens as summoned by Dr Clement Mifsud Bonnici acting for Evolve Ltd (hereinafter referred to as the "Recommended Bidder") during the hearing on 15th September 2025;

Having taken cognisance of and evaluated all the acts and documentation filed, as well as the submissions made by the legal representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 15th of September 2025, hereunder reproduced:

Minutes

Case 2150 - CT2345/2024 – Tender for the Purchase of qty 2 High – Frequency Jet Ventilator Units for the Medical Imaging Departments at Mater Dei Hospital with Reduced Environmental Impact

The tender was issued on the 14th of January 2025, and the closing date was the 18th of February 2025.

The estimated value of the tender, excluding VAT, was €1,016,949.00

On 18th July 2025, HospiMalta Ltd (MT31448730), lodged an appeal against CPSU – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

A deposit of €5,085.00 was paid.

There were three Bids.

On the 15th of September 2025, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – HospiMalta Ltd. (MT31448730).

Dr Chris Mizzi – Legal representative.

Dr Adriano Spiteri – Company Representative.

Contracting Authority – Central Procurement and Supplies Unit (CPSU).

Dr Leon Camilleri – Legal Representative.

Dr Alexia J Farrugia Zrinzo - Legal Representative.

Ms Cynthia Schembri – Chairperson.

Dr Stephan Sciberras – Evaluator.

Dr Keith Borg Xuereb – Evaluator (online).

Mr Jimmy Bartolo – Evaluator.

Ms Marika Cutajar – CPSU Representative.

Recommended Bidder – Evolve Ltd. (MT1801-7906)

Dr Clement Mifsud Bonnici – Legal Representative (online)

Ms Kim Tabone – Legal Counsel.

Mr Christopher Busuttill Delbridge – Company Representative.

Mr Franco Gatt – Company Representative.

Mr Mark Mizzi – Company Representative.

Mr Adrian Balghy – Company Representative.

Opening Statements

Mr Kenneth Swain, Chairman of the Public Contracts Review Board, welcomed the parties present: the Appellant, HospiMalta Ltd; the Contracting Authority, Central Procurement and Supplies Unit (CPSU); and the representative of the Recommended Bidder, Evolve Ltd.

Initial Submissions

Initial Submissions by the Appellant

Dr Chris Mizzi stated that this is a supply tender governed by specifications listed in Section 3. Two annexes to these specifications are mandatory. The recommended bid does not meet these criteria, even though it is the lowest-priced offer. The appellants argue that the recommended bid does not match the required specifications.

Initial Submissions by the Contracting Authority

Dr Leon Camilleri, representing CPSU, stated that when comparing the specifications submitted with those requested, the Evaluation Committee concluded that their offer was fully compliant.

Initial Submissions by the Recommended Bidder

Dr Clement Mifsud Bonnici argued that the product is a complex piece of medical equipment. When a manufacturer supplies such equipment to a national health service, it can be adapted to specific local needs. Therefore, one cannot rely solely on published technical literature to claim non-compliance.

He noted that three offers were submitted: one from Evolve, and two from the appellant. Of the latter, one was the cheapest offer and the other the most expensive. Interestingly, the appellant did not contest the rejection of their lowest offer. Dr Mifsud Bonnici suggested that the Board should take into account the appellant's strategy in requesting a re-evaluation.

Witness Testimonies

Testimony of Dr Adriano Spiteri (ID No. 278981M), summoned by Dr Chris Mizzi

Dr Spiteri has worked in the medical equipment sector since 2005 and joined HospiMalta in 2017, representing companies including Paraglide [phonetic]. He referred to the high-frequency jet ventilator units requested. According to him, only two makes are available in Europe: Thora Tech (Medical) and Carl Reiner. Based on the tender specifications, he argued that the Monsoon 3 was the model required.

He explained that the appeal was filed after discovering that the recommended bidder submitted the Monsoon 4. He claimed that this model fails to meet three mandatory parameters.

Dr Mifsud Bonnici objected that the witness should only give factual testimony. The Chairman agreed.

Dr Spiteri continued, noting that under Clause 2.5 the auxiliary flow must be 60L/min or higher, yet the Monsoon 4 manual states 15L/min. Under Clause 2.8.3, in the event of mains failure, the device switches off without an audible alarm. He quoted from the manual:

- *“Indicates a risk of personal injuries and property damage.”*
- *“In the event of power failure, no audible alarm will sound. A black screen and a stopped ventilation indicate a system failure.”*

The tender, however, requires:

- *“Alarms shall be used and defined and shall include at least a power failure alarm.”*

Thus, Dr Spiteri concluded that the Monsoon 4 is not compliant.

Dr Mifsud Bonnici objected to the introduction of new documents after the deadline. The Chairman upheld the objection.

Dr Spiteri further testified that he personally tested the device in power-failure conditions. The only solution would be the use of an external UPS, which is not part of the device, not manufactured by the same company, and not MBR-certified.

Cross-Examination by Dr Clement Mifsud Bonnici

He asked Dr Spiteri whether the appellant had challenged the specifications before submitting its two bids. Dr Spiteri replied that they had not.

Testimony of Mr Didier Moens (ID No. 38GA7001709), summoned by Dr Clement Mifsud Bonnici (online)

Mr Moens, a Belgian national, has worked for over thirty years in high-frequency jet ventilation and is the founder of Innovative, formerly known as Acutronic, and presently known as Thora Tech, the long-standing manufacturer of Monsoon ventilators.

He explained that jet ventilators are used in upper airway surgeries and intensive care, delivering gas without invasive ventilation tubes. Procedures can last from 10 minutes to 3 hours.

Evolve submitted the bid for this tender. Asked for his view on claims of non-compliance, Mr Moens stated that Thora Tech confirmed that any such issues can be resolved, and the device can be made fully compliant.

Cross-Examination by Dr Adriano Spiteri

Dr Spiteri asked about Mr Moens' involvement in the bid. Mr Moens confirmed that he answered technical questions for Evolve but did not see the final offer. He added that:

Mr Moens said that the solutions were offered, both about the battery and the flow, that has been agreed to be set to the expected values in the tender. Thora Tech will implement this derogation; the flow setting is a software story, and the battery backup is electric security. Mr Moens confirmed that he had the verbal authorisation from Thora Tech management to answer the questions. The change in the auxiliary flow does not entail a different updated manual to release in the market. Regarding the battery, it is an interrupted power supply, placed on the device trolley delivered with the jet. There are thousands of Monsoons on the field and most of the time it is not requested, only on demand.

Thora Tech validated a UPS device to work with Monsoon. The UPS has a battery system, in case of interrupted power, and the device will continue normally with an alarm signalling that there is change of power source.

This UPS is used to support life supporting system disconnection.

Referring to Page 6 of the manual Dr Spiteri quotes:

'In the event of power failure, no audible alarm will sound. A black screen and a stopped ventilation indicate a system failure'.

And he asked Mr Moens to check the manual of Monsoon 3 regarding the alarm. Mr Moens answered that in the past, they used to install a nine-volt battery in the device, but presently they put the alarm in the UPS.

Dr Spiteri referred to the manual page 61, The auxiliary flow, and asked how it complies to the tender specification.

Mr Moens answered that 60L/m was not necessary for the operating theatres and they reduced the value to 15L/m as it was more appropriate for interventions in the theatre, however they agreed with Thora Tech that the flow could be set at 60L/m or 70L/m by derogation if requested.

Mr Moens verified that if one disconnects the ventilator from the UPS, there will be no alarm, and the device will stop ventilating.

Dr Spiteri asked whether updated certifications and user manuals would be needed for the changes. Mr Moens answered in the negative.

Dr Mifsud Bonnici objected that the same questions were being asked.

Dr Spiteri verified that Mr Moens was not aware of the offer submitted.

Final Submissions

Final Submissions by the Appellant (Dr Chris Mizzi)

Dr Mizzi expected the Contracting Authority to sustain proof for awarding the bidder. The witness of the awarded bidder did not even know what the bid consisted of, as he did not see the final bid, or the recommendation of the technical offer or any reasons given. The PCRB has no proof about the parameters of the Monsoon 4. Regarding 2.8.3, Monsoon 4 not capable of marking a power failure unless there is a UPS, and the manual shows clearly that the flow is 15L/m.

The specifications requested, were mandatory and they should be observed. The recommended bidder's offer was not compliant.

Final Submissions by the Recommended Bidder (Dr Clement Mifsud Bonnici)

He countered that the appellant failed to provide adequate proof. Their witness could not substantiate his claims. The appellant could have summoned members of the Evaluation Committee but did not. The recommended offer is compliant, as confirmed by Mr Moens. The government required self-declarations and Evolve ticked all requirements as compliant. In the literature submitted in note 2 the Government had asked for a clarification to understand better the incongruence between self-declaration and the technical literature. Where inconsistencies arose, clarifications were requested.

Regarding alarms, he argued that operators would recognise a power failure when the device stops, and functionally equivalent solutions were offered. The UPS solution was part of the bid and can be verified.

Final Submissions by the Contracting Authority (Dr Leon Camilleri)

He reiterated the principle that the burden of proof lies with the appellant. The appellant should have summoned the members of the evaluation committee. The Evaluation Committee properly carried out its role. Unless bids were clearly non-compliant, there was no basis for re-evaluation. No substantive evidence was presented.

Replica by Dr Mizzi

He insisted that Dr Spiteri's testimony, based on firsthand inspection of the product, constituted sufficient proof.

Replica by Dr Camilleri

He maintained that Dr Spiteri testified only about what he observed, not about the bid actually submitted.

Conclusion of the Hearing

With no further submissions, Mr Kenneth Swain thanked all parties and formally closed the session.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 15th of September 2025.

Having noted the objection filed by HospiMalta Ltd (hereinafter referred to as the "Appellant") on the 18th July 2025 and refers to the claims made by the same Appellant with regards to the tender of reference CT2345/2024 listed as case No. 2150 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Adriano Spiteri and Dr Chris Mizzi

Appearing for the Contracting Authority: Dr Alexia J Farrugia Zrinzo and Dr Leon Camilleri

Appearing for the Recommended Bidder: Dr Clement Mifsud Bonnici

Whereby, the Appellant contends with respect to:

Grievance 1: Non-Compliance of Monsoon 4 with Technical Specifications

- The appellants contend that according to its own Instructions for Use, Monsoon 4 (the jet ventilator model offered by the recommended bidder Evolve Ltd) cannot meet the technical specifications as published in the tender document.
- As a matter of fact, Monsoon 4 cannot meet specification 2.8.3 which requires a power failure alarm. This can be confirmed from its own Instruction for Use, attached and marked as "Doc. D" (in the letter of objection): *"In the event of power failure, no audible alarm will sound. A black screen and a stopped ventilation indicate a system failure."*
- Contrary to what was requested in the tender document, the offered unit, which is a critical device that ventilates patients during procedures, not only lacks a power failure alarm, but stops functioning in case of a power failure.
- In addition, Monsoon 4 cannot satisfy requirement 2.5 which calls for an auxiliary gas flow to be present, with flows ranging between 0-60L/min (or better). This can be confirmed from its own Instructions for Use, attached and marked as "Doc. D", reference made to page 61 (refer to letter of objection).

12 Technical Specification

12.1 Settings and Ranges

Jet frequency	Jet 1: 12 - 1600 pulses/min ($\pm 5\%$) Jet 2: 12 - 100 pulses/min ($\pm 5\%$)
Inspiration time	1:1, 1:2, 1:3, 3:1, 2:1
Alarms:	
▪ Pause pressure	10 - 100 mbar ($\pm 5\%$), increment: 5 mbar
▪ Peak Inspiration pressure	10 - 100 mbar ($\pm 2\%$), increment: 5 mbar
Driving pressure	0.1 - 3.5 bar ($\pm 5\%$ from range)
Oxygen concentration	20 - 100 Vol. % ($\pm 3\%$)
Auxiliary Flow	15 L/min ($\pm 5\%$)
Humidity steps	0 - 3 (Increment: 1 step) 0 = no humidification 1 = humidification > 40% 2 = humidification > 50% 3 = humidification > 70%
Heating	Jet tube output temperature up to 37°C
Time required from a volume fraction of 21% oxygen to a volume fraction of 90% oxygen of FIO ₂	2 minutes
A-weighted sound pressure level	< 80 dB
A-weighted sound power level	< 80 dB
Maximum alarm condition delay for the technical alarms	5 seconds

- The Instructions for Use confirm that the auxiliary flow of this ventilator model can reach a maximum of 15L/min (+/-5%) and not 60L/min (or better) as requested.
- The Appellants make reference to section 6 of the tender document "Doc. E" (refer to the letter of objection). According to this section, "*The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria*". The Appellants uphold that the Monsoon 4 ventilator cannot be considered as a model which satisfies the administrative and technical criteria as per tender document CT2345/2024 and this is contrary to its predecessor, Monsoon 3 which Instructions for Use are attached and marked as "Doc. F" (refer to the letter of objection).
- The Appellants also notice, from the Instructions for Use of the predecessor model, that the tender specifications were based on Monsoon 3. It can be seen on page 6 that an audible alarm will sound in the event of power failure and on page 57 of the same document that it had an auxiliary flow of up to 70L/min. This is however not the case with Monsoon 4, which model fails to meet the technical specifications of its predecessor.

The Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 28th July 2025 and its verbal submission during the hearing held on 15th September 2025, in that:

First Ground of Appeal - Non-Compliance with specification 2.8.3 relative to power failure alarm

- The Contracting Authority maintains that the objector's argument regarding non-compliance with clause 2.8.3 of the tender dossier is unfounded. Clause 2.8.3 states: "*2.8 Alarms shall be user-defined, and shall have to include at least the following: 2.8.3 Power failure*"

- Following a clarification request by the evaluation committee on this matter, it was clarified by the recommended bidder that the device being offered will function in such a manner that in case of power failure, the unit will continue to operate, guaranteeing the completion of the procedure along with battery failure alarms on the external battery backup as offered by the recommended bidder.
- Therefore, there was no reason for the evaluation committee to find any non-compliance with clause 2.8.3, and this grievance ought to be rejected.

Second Ground of Appeal - Auxiliary Flow

- The Contracting Authority submits that the objector's contention that the machine offered by the recommended bidder does not respect the specifications relative to 'auxiliary flow' as provided under clause 2.5 of the tender technical specifications is without merit.
- The evaluation committee conducted a thorough evaluation process and, following its request for clarification to the recommended bidder, confirmed that the product offered by the recommended bidder respected the minimum flow specifications as required by the tender document.
- For these reasons, this grievance should also be rejected.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, will now consider Appellant's grievances.

Grievance 1: Non-Compliance with specification 2.8.3 (power failure alarm)

- The tender imposed a mandatory requirement under specification 2.8.3 that "*Alarms shall be user-defined, and shall have to include at least the following: 2.8.3 Power failure*".
- The Evaluation Committee issued a rectification request on 17th March 2025 addressing specification 2.8.3 regarding power failure alarm requirements.
- The Recommended Bidder responded through their supplier's declaration dated 21st March 2025, confirming that "*we can include a battery backup solution at no extra cost so in case of a power failure the unit will still continue to function, which will guarantee the completion of the procedure along with battery failure alarms on the battery backup*".
- It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner when it determined that the external UPS solution with battery failure alarms constituted compliance with specification 2.8.3. This determination was based on a detailed, comprehensive and unambiguous response provided by the Recommended Bidder that directly addressed the specification requirements.
- Therefore, the Board does not uphold the Appellant's grievance on this point.

Grievance 2: Non-Compliance with specification 2.5 (auxiliary flow)

- The tender imposed a mandatory requirement: "*an auxiliary gas flow be present, with flows of between 0–60 L/min (or better),*" and the Evaluation Committee expressly sought "*literature corroborating*" the Tenderer's Technical Offer for specification 2.5 during rectification, warning that failure to rectify would render the offer non-compliant.
- In response, the supplier declaration stated: "*airflow is integral to the main machine*" and that the machine "*is capable of flows up to 3.5 bar,*" but provided no technical literature or conversion data correlating this pressure statement to the volumetric flow requirement of 60 L/min or higher as mandated by specification 2.5.
- The Board further notes that witness testimony revealed auxiliary flow capacity was reduced from 70L/min in the predecessor Monsoon 3 model to merely 15L/min in the offered Monsoon 4, representing a substantial decrease that falls significantly below the tender requirement. While the witness claimed the flow could be adjusted to 60L/min "*by derogation if requested,*" no corroborating technical documentation, updated specifications, manufacturer certifications, or formal derogation confirmations were submitted during the evaluation process to substantiate this capability.
- The Board must ensure procedural compliance rather than substitute its judgment for that of a properly constituted evaluation committee on purely technical assessments. However, it must ensure that mandatory specifications are evidenced by verifiable, corroborating technical literature when specifically requested through rectification proceedings before technical acceptance is reached.
- The Board opines that the absence of manufacturer literature substantiating the 60 L/min (or higher) auxiliary flow (despite the rectification's explicit ask) amounts to a procedural compliance defect in the evaluation procedure documentation.
- Therefore, the Board upholds the Appellant's grievance on this point.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides:

- a) Does not uphold Appellant's Letter of Objection and contentions related to Grievance 1 'Non-Compliance with specification 2.8.3 relative to power failure alarm'
- b) Upholds the Appellant's Letter of Objection and contentions related to Grievance 2 'Non-Compliance with specification 2.5 Auxiliary Flow'.
- c) Revokes the recommendation of award made in favour of the Recommended Bidder;
- d) Directs that the evaluation be reviewed and that a proper evaluation process be conducted, orders the reintegration of the Appellant's bid in the re-evaluation process, with a newly composed evaluation board;
- e) Directs that bidders be requested to extend the validity period of their respective bids, if required;
- f) Directs that the deposit paid by Appellant to be reimbursed in full.

Mr Kenneth Swain
Chairman

Dr Ing. Damien Gatt
Member

Mr Lawrence Ancilleri
Member