PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number	**2203**
Tender Reference Number	**CT2291/2024**
Tender Name	**"Re-issue - Tender for the Supply of Fully Automated System for the Analysis of Biochemical Tests"**

The Public Contracts Review Board (hereinafter the 'Board' or the 'PCRB') convened a public hearing on the 9th January, 2026 and on the 4th February, 2026 to hear the appeal as filed by the appellant E.J. Busuttil Limited (hereinafter the 'Appellant') on the 2nd December, 2025, 9th January, 2026 and the 4th February, 2026, and after taking cognisance of:

The tender document for the 'Re-issue - Tender for the Supply of Fully Automated System for the Analysis of Biochemical Tests' (hereinafter the 'Tender Document');

The minutes of the proceedings dated 2nd December, 2025, 9th January, 2026 and the 4th February, 2026 which are being reproduced hereunder:

"**PUBLIC CONTRACTS REVIEW BOARD**

CT2291/2024 – Tender for the Supply of Fully Automated System for the Analysis of Biochemical Tests (Re-Issue)

On the 2nd December 2025, at 08:30 am, the PCRB convened online for an administrative case management hearing.

The Board was composed of:

- Dr Ana Thomas – Chairperson
- Dr Maria Cardona – Member
- Mr Keith Victor Grech – Member

Attendance:

Appellant: E.J Busuttil

- Dr Alessandro Lia – Legal Representative. (online).

Contracting Authority. Central Procurement Supplies Unit (CPSU)

- Dr Leon Camilleri – Legal Representative. (online).
- Dr Alexia J. Farrugia Zrinzo – Legal Representative. (online)

Recommended Bidder: Vivian Corporation.

- Dr Clement Mifsud Bonnici – Legal Representative. (online).
- Dr Calvin Calleja – Legal Representative. (online).

Department of Contracts.

- Dr Audrey Marlene Buttigieg Vella – Legal representative. (online).

Case Management Meeting Summary

The Chairperson opened the meeting by stating that it was a Case Management meeting, specifically convened to determine the ideal dates for the commencement and conclusion of this appeal. Dr Thomas suggested the 9th January 2026. All parties agreed on this date and although they all think that one hearing might be enough, Dr Camilleri suggested to have a second date to make sure that this case would be concluded, in these two sittings.

It was agreed that the dates of the hearing of the appeal are Friday 9th January 2026 from 11.00am till 15.00hrs and a second day reserved for a possible continuation, to be Wednesday 4th February 2026 from 10.00am till 13.00pm.

Adjournment.

The Chairperson thanked all parties for their participation and formally adjourned the appeal to 9th January 2026, at 11:00am.

SECOND DAY – January 9, 2026

On January 9, 2026, at 11:00 am, the PCRB reconvened to continue considering the appeal following the Case management hearing held on the 2nd December 2025.

The Board was composed of:

- Dr Ana Thomas – Chairperson
- Dr Maria Cardona – Member
- Mr Keith Victor Grech – Member

The tender was issued on the 10th November 2024, and the closing date was the 18th February 2025.

The estimated value of the tender, excluding VAT, was €47,674,323

On the 29th September 2025 E.J Busuttil Limited lodged an appeal against Central Procurement and Supplies Unit (CPSU) – the Contracting Authority. In accordance with Regulation 270 of the Public Procurement Regulations.

On the 9th of January 2026, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Dr Maria Cardona and Mr Keith Victor Grech, as members, convened a public hearing to consider the appeal.

A deposit of €50,000 was paid.

There were four bids.

The attendance for this public hearing was as follows:

Attendance:

Appellant: E.J Busuttil.(C10135).

- Dr Alessandro Lia – Legal Representative.
- Mr Edwin Busuttil – Company Representative.
- Mr Aaron Grima – Company Representative.

Contracting Authority. Central Procurement Supplies Unit (CPSU)

- Dr Leon Camilleri – Legal Representative.
- Dr Alexia J. Farrugia Zrinzo – Legal Representative.
- Ms Krystle Refalo – Chairperson.
- Mr Mario Farrugia – Secretary.
- Mr. Jesmond Debono – Evaluator.
- Mr Justin Grima – Evaluator.
- Mr Ian Brincat -- Specifications Drafter.

Recommended Bidder: Vivian Corporation

- Dr Clement Mifsud Bonnici – Legal Representative.
- Dr Calvin Calleja – Legal Representative.
- Ms Denise Borg Manche -- Company Representative.
- Ms Rodianne Conti – Company Representative.
- Mr Charlon Ellul – Company Representative.

Interested Party – Cherubino Ltd.(C3677).

- Dr Matthew Paris – Legal Representative. (on-line).
- Dr Francis Cherubino – Company Representative. (on-line).
- Dr David Cherubino – Company Representative. (on-line).

Department of Contracts:

- Dr Audrey Marlene Buttigieg Vella. – Legal Representative

Proceedings

Opening Statements

Dr. Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, E.J Busuttil, the Contracting Authority, Central Procurement and Supplies Unit (CPSU), the Preferred Bidder, Vivian Corporation Limited and the Interested Party, Cherubino Ltd.

Procedural Matters

Dr. Lia requested that a witness who was not in Malta be permitted to testify online via video link while another witness was being called.

Dr. Mifsud Bonnici raised a procedural point regarding the presence of evaluators and tender drafters in the hearing room. He stated that evaluators normally remain present and requested guidance from the board regarding the drafters.

Dr. Lia stated that he preferred that the evaluators not be present during the hearing.

Dr. Mifsud Bonnici submitted that it was the board's practice that evaluators remain present and questioned why there should be a departure from this practice.

The Chairperson stated that she preferred that witnesses to stay outside until they are called. She clarified that the law is clear that witnesses should not be in the room when the hearing is heard, meaning they stay outside until they are called by anyone who wishes.

Dr. Camilleri submitted that the party in a case is always present throughout the entire hearing and that if it were a company, it would have a representative.

The Chairperson clarified that the evaluators are not the party.

Dr. Mifsud Bonnici formally requested that VIVIAN's objection be registered in the minutes. He stated that the objection was based on two points: that the tender evaluation committee is the party in procedures of this type and therefore they should remain present, and that this is the board's practice as proceedings have always been conducted before this board. He stated he had not heard the justification for departing from this practice.

Dr. Buttigieg Vella stated that the Department of Contracts also objected.

Dr. Camilleri, on behalf of CPSU, objected to the request that the evaluation committee not be present throughout the entire hearing, given that in these procedures the practice has always been that as representative of the contracting authority in the proceedings, the same committee is present for the entire hearing. Dr. Camilleri further objected that a decree was given without the parties being given the chance to respond.

Dr. Mifsud Bonnici raised another procedural point regarding the request for a witness to testify virtually. He stated that no notice was given of this request and that as far as he knew, the board's direction is that witnesses testify viva voce before the board.

Dr. Lia stated that the witness was in Greece.

Dr. Mifsud Bonnici objected that the request was being made at the hearing and that the board was not given notice of it beforehand. He further stated that a formal request must be made and that parties need to be heard on such a request before the board proceeds.

Dr. Lia stated that he had been given a decree by the board previously where he was not given the names of the evaluating committee. He stated that the witness was in a foreign country and needed to testify by video link, which is allowed even in courts, and should be allowed under the more relaxed formalities of the board.

Dr. Buttigieg Vella, on behalf of the Contracts Department, objected to the request that the evaluation committee not be present, given that it represents CPSU.

Board Decree on Witness Presence.

The board, after considering the request made seduta stante by Dr. Lia in representation of E.J. Busuttil that the witnesses who would be produced during the session to give their deposition, being evaluation committee members and specification drafters, not remain in the room during the hearing of other witnesses, accepted the request and ordered that these members vacate the room.

Dr. Camilleri raised a procedural point regarding the presence of the secretary, noting that if the request was that witnesses not remain in the room, he did not know if their testimony would be requested. He stated that normally in a case, he consults his client who would be next to him, but there would be no representative present. Dr. Farrugia Zrinzo stated she would not have a client next to her.

Dr. Lia stated that the secretary would not testify if he had no involvement in anything other than taking minutes.

Dr. Camilleri stated that the secretary might be asked to testify and did not wish to be in a position where the secretary could not testify because he was present at the session.

Dr. Lia suggested a practical approach: he would ask the Chairperson four questions and after finishing with her, she could stay inside.
Dr. Camilleri requested that the Secretary be present.

Dr. Lia stated that if the Secretary confirmed he had no involvement except taking minutes, he could stay.

Dr. Farrugia Zrinzo stated that she might need the Secretary to come up and testify.

Dr. Mifsud Bonnici noted there was a clear direction from the board and that once Dr. Lia finished with a witness, the witness could stay inside.

Dr. Farrugia Zrinzo confirmed there would be no objection in case they needed witnesses as their own witnesses.

Request for Video Link Testimony

Dr. Lia formally requested on behalf of E.J. Busuttil that a technical witness who was in Greece testify via video link.

Dr. Camilleri stated that although CPSU understands such requests are normally made before the session, in view of the urgency of the tender, it remitted itself to the board's decision.

Dr. Buttigieg Vella stated that the Contracts Department remitted itself to the board's decision on the matter.

Dr. Mifsud Bonnici stated that VIVIAN objected to the request.

Board Decree on Video Link Testimony.

The board, after considering the request made by Dr. Alessandro Lia seduta stante that a technical witness testify online given that she was in Greece, after considering VIVIAN Corporation's objection and the fact that the Department of Contracts and CPSU remitted themselves, accedes to the request.

Witness Testimony.

Mr. Mario Farrugia (ID 200585M) – Summoned by Dr. Alessandro Lia

Dr. Lia asked Mr. Farrugia what his involvement in the tender was.

Mr. Farrugia stated he was Secretary of the Evaluation Committee.

Dr. Lia asked what his role as secretary of the Evaluation Committee entailed.

Mr. Farrugia stated his role was to see that the evaluation was done as it should be.

Dr. Lia asked what involvement he had in practice.

Mr. Farrugia stated that in practice he would hold meetings, organize the meetings, and be present when evaluation matters were discussed.

Dr. Lia asked if he had involvement in the considerations that the evaluating committee were taking.

Mr. Farrugia stated no.

Dr. Lia asked if his work was therefore to take the minutes only.

Mr. Farrugia stated minutes and advice. He clarified that advice was in the sense that if there was a problem on something about procurement, he could give advice.

Dr. Lia asked what advice he gave in this case.

Mr. Farrugia stated he gave advice on the BPQR, as it was a very complex tender.

Dr. Lia asked for advice on the procurement process that had to do with the appeal. He stated that the main points of the appeal were about the disqualification of E.J. Busuttil because of certain particular points in the tender which were marked as mandatory.

Mr. Farrugia confirmed this was correct.

Dr. Lia asked what advice Mr. Farrugia gave about those certain particular points.

Mr. Farrugia stated that the advice he gave was that if there was a specification that was mandatory and the offer did not fall under the specification, they had the right to disqualify that entire offer. He stated this was procurement advice.

Dr. Lia asked about the first point, which was about clause 7.18, and whether Mr. Farrugia was aware of the two points.

Mr. Farrugia stated he was aware because he read the objection and also the specifications.

The Chairperson asked if he had any documents, he needed to make reference to.

Mr. Farrugia stated he had a laptop but noted the tender was enormous.

Dr. Lia read mandatory clause 7.18, which stated that bidders are allowed to provide instrumentation that does not form part of the planned fully automated system as long as certain criteria are fulfilled, and there were four points. He asked what advice Mr. Farrugia gave about this clause.

Mr. Farrugia stated it was a mandatory clause, and the evaluation committee gave him their recommendation that he had to include in the evaluation report, and he agreed with it.

Dr. Lia asked about the interpretation of points A, B, C, D of clause 7.18, and whether the Secretary gave advice.

Mr. Farrugia stated no.

Dr. Lia asked to confirm.

Mr. Farrugia stated there was no need because they are self-explanatory and very simple. He stated they are criteria that need to be fulfilled in order to opt for an alternative platform.

Dr. Lia asked about the meaning of clause 7.18 B, which stated, "no more than 10,000 tests per year on the 7th year of each analyte as per workload data in Table 2A is affected," and whether Mr. Farrugia gave advice or opinions about that condition.

Mr. Farrugia stated there was no need.

Dr. Lia asked about Mr. Farrugia's profession.

Mr. Farrugia stated he was a Mater Dei employee and takes care of the procurement of the pathology department.

Dr. Lia asked what involvement Mr. Farrugia had in the letters sent to bidders, such as letters of disqualification and responses to clarifications.

Mr. Farrugia stated he had no involvement in them, neither in their writing nor in their sending.

Dr. Lia asked about responses that came after the filing of the appeal, including the request of E.J. Busuttil about the disclosure of the names of committee members, and whether Mr. Farrugia had involvement.

Mr. Farrugia stated no.

Dr. Mifsud Bonnici objected that this was privileged.

The Chairperson stated it was a bit irrelevant and apart from being privileged, was not relevant to the appeal properly.

Dr. Lia stated that if Mr. Farrugia did not have involvement, he did not have involvement.

The Chairperson stated that the appeal had five or six grievances and she needed to hear about those, nothing more and nothing less. She instructed Dr. Lia to stick to the facts.

Cross examination by Dr. Leon Camilleri (for CPSU).

Dr. Camilleri asked Mr. Farrugia to clarify that the evaluators are medical professionals or people who work on medical equipment, and he as the person responsible for procurement who was appointed as secretary gives guidance on the procurement process per se, not on the technical recommendations.

Mr. Farrugia agreed.

Cross-examination by Dr. Clement Mifsud Bonnici (for VIVIAN Corporation Limited).

Dr. Mifsud Bonnici asked whether Mr. Farrugia could tell from what he saw during the evaluation if clause 7.18 was interpreted in a particular way to E.J. Busuttil and differently to the other bidders.

Mr. Farrugia stated that the clause was very clear, and anyone could understand, even a non-medical or science person. He stated that there was a number, and if that number was exceeded, the bidder could not apply for that clause. He stated that clause 7.18 was an option to use an alternative platform, which is a separate machine from the rest of the tender. He stated that if a bidder was going to use that option, they needed to satisfy the four criteria that follow, one of them being numbers, and there was no room for interpretation.

Dr. Mifsud Bonnici asked if it was the case that only VIVIAN was compliant with clause 7.18.

Mr. Farrugia stated no, not only VIVIAN.

Dr. Mifsud Bonnici asked if there was someone else.

Mr. Farrugia stated that not only was VIVIAN compliant, but there were also two bidders with three offers, that is two out of three were compliant.

Dr. Mifsud Bonnici stated he had no further questions.

The Chairperson asked if there was any re-examination.

Dr. Lia stated no, since Mr. Farrugia had no technical involvement.

The Chairperson asked Dr. Lia to verbalize that he had no objection to Mr. Farrugia remaining in the room.

Dr. Lia stated he had no objection that Mr. Farrugia stay in the room, already since he confirmed he had no involvement in the technical considerations.

The Chairperson stated for the record that E.J. Busuttil, after hearing the testimony of witness Mario Farrugia, declared that it had no objection that the same witness stay in the room during the hearing of this appeal and also had no objection that Mr. Farrugia eventually be called to testify by CPSU, reproduced by CPSU, already since he confirmed he had no technical involvement.

Dr. Mifsud Bonnici confirmed VIVIAN Corporation Limited also had no objection.

Ms. Krystle Refalo (ID: 165885M) – Summoned by Dr. Alessandro Lia

Dr. Lia asked what Ms. Refalo's involvement in the tender and her work was.

Ms. Refalo stated she was associated as Chairperson and was involved in the final stage after the evaluation was done.

Dr. Lia asked her to clarify the last part.

Ms. Refalo stated she was involved in the final stage at the end after they did the evaluation.

Dr. Lia asked if she was not involved before.

Ms. Refalo stated that in the Chair position, when they send how the work will be divided, she was from the beginning Chairperson, but since she was not technical in these things, she would not be involved.

Dr. Lia asked what her involvement in practice was.

Ms. Refalo stated nothing, just at the end to close the conclusion of the evaluation.

Dr. Lia asked what closing the conclusion meant.

Ms. Refalo stated that when all the evaluations are done, she submits how they are overall concluded on the e-PPS, through the electronic system only.

The Chairperson asked if she was not involved in the meetings that the evaluators had.

Ms. Refalo stated no.

Dr. Lia asked if she was not even present.

Ms. Refalo stated she would be present but would be the least involved because she was not a technical person.

Dr. Lia asked if she did not express any opinion.

Ms. Refalo stated no, because she did not understand and did not speak.

Dr. Lia asked if administratively she had left that in the Secretary's hands, as a process.

Ms. Refalo stated everything was in the Secretary's hands because he was technical in them.

Cross examination by Dr. Leon Camilleri (for CPSU).

Dr. Camilleri asked Ms. Refalo to clarify that her role was purely administrative, that there were evaluators who made the technical considerations, the secretary had his role, and her role was an administrative one to close the formality of the process.

Ms. Refalo confirmed this was correct.

Dr. Mifsud Bonnici stated he had no cross-examination.

Dr. Lia stated that Ms. Refalo could stay if she wished.

Dr. Mifsud Bonnici raised a procedural point that Cherubino was also present and technically since they were a party, each time they should see if someone had cross-examination.

The Chairperson noted that Cherubino had the ability to participate.

The Chairperson stated for the record that E.J. Busuttil, after hearing the testimony of witness Krystle Refalo, declared that it had no objection that the same witness stay in the room during the hearing of this appeal and also had no objection that Ms. Refalo be called to testify produced by CPSU, already since she confirmed she had no technical involvement. VIVIAN Corporation Limited also had no objection to this.

Mr. Justin Grima (ID: 476379M) – Summoned by Dr. Alessandro Lia

Dr. Lia asked Mr. Grima what his involvement in the tender was and what his work normally is.

Mr. Grima stated that he was an evaluator in this tender and that he works as a lab scientist at the Immunoassay Laboratory.

Dr. Lia asked him to describe, in general, the evaluation procedure once the bids arrived.

Mr. Grima stated that they started with eligibility, then proceeded to the technical evaluation, and finally to the financial evaluation, and that the matter being discussed was related to a technical specification.

Mr. Grima explained that the evaluation committee took each offer and evaluated it individually.

He stated that, since it was a very large tender with a lot of material, they created common platforms where they placed all the material, each evaluator carried out their own evaluation, and they held regular meetings.

Dr. Lia referred to clause 7.18 concerning standalone systems and asked whether this clause was mandatory.

Mr. Grima stated that clause 7.18 was mandatory for whoever chose to make use of that clause, meaning for bidders who did not have the automated system satisfying everything and who therefore proposed standalone instrumentation for certain tests.

The parties clarified that clause 7.18 applies where a bidder offers standalone instrumentation for specific tests not covered by the total laboratory automation system.

Dr. Lia indicated that for current purposes they would focus specifically on the IgG CSF test.

Dr. Lia asked what difficulties, if there were any, Mr. Grima and his colleagues encountered in interpreting clause 7.18 and what they did if they encountered difficulties.

Mr. Grima stated that he personally did not find difficulties.

He stated that he understood that the four criteria in clause 7.18 (A, B, C, and D) had to be satisfied by any standalone instrumentation that was not part of the total laboratory automation system.

He described these criteria as conditions that must be fulfilled if clause 7.18 is used.

Dr. Lia summarised that a standalone system must not affect more than a specified set of tests and that HbA1c is excluded, noting that the present discussion did not concern HbA1c but IgG CSF.

Mr. Grima agreed that HbA1c was excluded and that the discussion concerned the IgG CSF test.

Dr. Lia referred to the four criteria, noting that some of them (such as the number of analytical platforms and the requirement that instrumentation be new) did not present difficulty in the case of the appellant.

He then read out clause 7.18(b), which states that the standalone instrumentation may be used as long as "no more than 10,000 tests per year on the 7th year of each analyte as per workload data in Table 2A is affected," and asked what this clause meant for him as evaluator.

Mr. Grima stated that it meant that the number of tests per year may not exceed 10,000.

He explained that one cannot have 10,001 or 10,002 tests per year for the relevant analyte.

Dr. Lia asked what exactly cannot exceed 10,000 tests per year and requested clarification.

Mr. Grima explained that the IgG CSF test forms part of certain tests that, for them, could not be on standalone, as this was one of the specifications, and that there is a specific workload table, Table 2A, which lists the number of tests per year and how they increase over the years.

Mr. Grima stated that, in the case of IgG CSF, he believed that by the fifth or sixth year the number of tests exceeded 10,000.

Dr. Lia indicated that, according to his reading, the IgG CSF test exceeded 10,000 tests in the fifth year.

Dr. Lia asked what the tender required when it stated that the standalone system is allowed only if the number of tests does not exceed 10,000 per year.

Mr. Grima replied that any standalone machine which is not part of the total laboratory automation system cannot have loaded on it a test which exceeds 10,000 tests per year.

Dr. Lia asked whether, in the case of the appellant, the standalone system that was offered (the NEPH 630) would exceed 10,000 tests per year for IgG CSF.

Mr. Grima stated yes, because the NEPH 630, which is for IgG CSF only and is not part of the total laboratory automation system, would be used for a test that, according to the workload table, exceeded 10,000 tests per year.

Dr. Lia asked whether the number of tests to be carried out was indicated by the hospital.

Mr. Grima stated that the number of tests is dictated in the specifications and not by the machine itself, and that the machine can support many more tests than the specified workload.

Dr. Lia referred the witness to Table 2A in the tender document, which lists the analytes and the predicted workload over a seven-year period for MDH.

He read the figures for IgG CSF, indicating that the test would be 10,620 in year five, 11,683 in year six, and so forth, with a total over seven years of about 68,000 tests.

Dr. Lia asked whether the condition that there be no more than 10,000 tests per year meant that certain tests could not be placed on standalone if they exceeded 10,000 tests according to the table.

Mr. Grima agreed, stating that clause 7.18 requires that, if a standalone system is used, the test placed on it must not exceed 10,000 tests per year, and that this is one of four cumulative criteria.

He stated that there are also other criteria relating to cases where there are between 5,000 and 10,000 tests, in which a backup instrument is required, and that there were instances where other economic operators provided a single machine because the amounts did not exceed 5,000 tests per year.

He explained that these were examples and not directly related to the IgG CSF test.

Dr. Lia asked whether, if the tests amounted to 12,000 in the seventh year, the provision of two standalone instruments would make a difference in the evaluation.

Mr. Grima replied that the criterion is 10,000 tests per year and that even if two standalone instruments are provided, if the number of tests exceeds 10,000, a system that is not part of the total laboratory automation system cannot be accepted.

He explained that if the workload is between 5,000 and 10,000 tests, a second instrument can be provided, but once the number of tests exceeds 10,000, a standalone system cannot be used.
He added that, in that case, one must have a system that is part of the total laboratory automation system.

Dr. Lia asked whether the restriction is related to the test itself rather than the machine.

Mr. Grima stated that it is related to certain tests and not to the product itself and that other economic operators found ways to comply by offering tests which did not exceed the thresholds.
He gave an example of another test, not IgG CSF, which another economic operator placed on a machine where the amounts never exceeded 10,000 tests per year up to 2031.

He explained that, as long as the test remains below the threshold, a standalone system may be used in line with the criteria.

Dr. Lia asked about Mr. Grima's work in the hospital laboratory and whether he performs the IgG test.

Mr. Grima stated that he works at the hospital laboratory but does not personally perform the IgG test, although he knows what it is.

When Dr. Lia asked questions about the clinical context and about IgG being performed together with another test, there were objections that these questions were outside the witness' capacity as evaluator.

The Chairperson indicated that the witness cannot answer on matters he does not work on.

Dr. Lia and the Board then moved to discuss clause 7.23 and, in particular, clause 7.23.2.

Mr. Grima explained that clause 7.23 concerns certain tests where a result is needed on the same day and that clauses 7.23.1 and 7.23.2 operate differently from clause 7.18.

He stated that, in his understanding, clause 7.23.2 is post-contractual.

He explained that all the prior clauses, including 7.18, apply at evaluation stage and that compliance with them is assessed at that stage, whereas clause 7.23.2 concerns an option that may be exercised after contract award.

He stated that if, during the contract, technology becomes available which allows a particular test (for example IgG CSF) to be performed on the main automated system rather than on a standalone system, the supplier would have the option to switch the test from the standalone system to the main system.

He emphasised that this option is only available if the bidder was already compliant at evaluation stage with the criteria for standalone use and that clause 7.23.2 does not allow a non-compliant offer under clause 7.18 to become compliant later.

He confirmed that clause 7.23.2 applies only for tests that satisfy the relevant criteria at evaluation stage, such as tests whose workload is between 5,000 and 10,000 tests per year and which are performed on a standalone system.

He added that clause 7.23.2 gives the option, after contract award, to move such tests onto the main total laboratory automation system if technology becomes available.

Dr. Lia then referred to clause 7.23.3.2 and to the requirement that certain tests, such as HCG, have results available “within one day.”

He asked whether the tender document used the words “calendar day” or “working day.”

Mr. Grima stated that, to his knowledge, the tender document does not use the term “calendar day” and he did not recall seeing “working day”, though he remembered that there was no reference to “calendar day” in that context.

He explained that, in hospital practice, the hospital operates 24 hours a day, 7 days a week, and that for urgent tests—such as HCG—the expectation is a very quick turnaround.

He stated that for urgent tests, it does not occur to them to leave the tests pending because, for example, it is a Sunday.

He explained that, from the hospital's perspective, "one day" is understood in the context of a 24-hour operation, although he acknowledged that this was his understanding and not his role as drafter.

Dr. Lia asked whether Mr. Grima was involved in the clarifications issued during the tendering stage.

Mr. Grima stated that he became an evaluator when the evaluation data were handed to him and that he did not handle clarifications during the tendering stage.

He stated that he did not answer clarification questions and was not sure whether he had any involvement at that stage.

He explained that clarification questions and answers were part of the tender dossier, and that during evaluation he read the documentation, but he would need to see a specific clarification to say if he remembered it.

Dr. Lia referred him to Clarification Note 4 and, in particular, to a question regarding whether the IgG test should be considered routine or emergency.

Mr. Grima stated that he did not recall that question from memory.

Dr. Lia then referred him to Table 5 in the tender document, which lists tests and indicates whether they are routine or urgent.

Mr. Grima stated that, according to his recollection, IgG is listed as routine in that table.

Dr. Lia asked whether, in Clarification Note 4, IgG CSF was indicated as emergency and 24/7.

After being provided with Clarification Note 4, Mr. Grima read question 3 and answer 3 and stated that the answer indicates that IgG CSF must be done on a 24/7 basis as part of the CSF biochemistry, and that it must be included as a test within that service.

He noted that the answer refers to the need to have IgG CSF as part of a 24/7 CSF biochemistry service and does not use the terms routine or urgent.

He stated that, for the hospital, 24/7 means that the test is performed 24 hours a day, 7 days a week, and that this is more than routine in their practice.

He gave an example where some tests, such as thyroid function tests, may be routine in the sense that it is not clinically problematic if results are issued the next day, whereas HCG tests have an urgency that does not allow for such delays.

He explained that HCG can relate to pregnancy as well as to tumor markers and is therefore treated as urgent in practice.

When asked whether 24/7 is routine or urgent, he stated that 24/7 is, in their practice, more than routine.

He reiterated that he did not draft the wording and that questions about the drafting should be addressed to the drafters.

He confirmed that he was not involved in writing the clarification responses.

He stated that he did not know exactly how the words “routine” and “urgent” were intended in the table and that, in his view, the tables showing current frequency and analyzer distribution have a distinct purpose from the clauses dealing with workload thresholds.

He noted that Table 5 is titled as a table of current frequency and analyzer test distribution at the clinical chemistry laboratory and that it reflects the current situation.

He added that circumstances can arise where a test which is usually routine becomes urgent, and that clinicians decide on such matters.

Cross examination by Dr. Leon Camilleri (for CPSU)

Dr. Camilleri summarized the effect of clause 7.18(b) and asked whether the understanding was that tests placed on an alternative platform cannot be tests which, by the seventh year, reach 10,000 tests per year, and that such tests must instead be performed on the main platform.

Mr. Grima agreed.

Dr. Camilleri asked whether this clause stands on its own and had to be satisfied whenever an alternative test is provided.

Mr. Grima agreed that it is a separate clause that must be satisfied in such cases.

Dr. Camilleri then referred to the situation after contract award, stating that if technology later allows a test to be performed on the main platform, the contractor can propose to transfer it from the alternative platform to the main system.

Mr. Grima agreed and stated that this is what clause 7.23.2 is about.

Dr. Camilleri had no further questions.

Cross examination by Dr. Clement Mifsud Bonnici (for VIVIAN Corporation Ltd.)

Dr. Mifsud Bonnici asked how many economic operators submitted bids and how many were compliant with clause 7.18.

Mr. Grima stated that there were four economic operators, that some bidders had more than one offer, and that all other offers, except that of E.J. Busuttil, reached compliance either by using or not using clause 7.18.

He explained that some bidders did not use clause 7.18 and carried out all tests on the main system, while others used clause 7.18 but remained within the criteria.

He confirmed that E.J. Busuttil alone did not comply with the clause.

Dr. Mifsud Bonnici asked whether E.J. Busuttil, in its bid, admitted that its IgG test would exceed 10,000 tests by the seventh year.

Mr. Grima stated that, in the tender response documentation submitted by E.J. Busuttil, it was written that the relevant test exceeded the 10,000-test threshold and that a percentage of the workload was also indicated.

He clarified that he did not arrive at this conclusion solely by doing calculations himself, but that E.J. Busuttil's own documentation indicated that the test exceeded 10,000 tests per year, and he then checked this against the workload table.

He confirmed that the number of tests exceeded 10,000 per year.

Dr. Mifsud Bonnici asked about clause 7.23.2 and whether Mr. Grima interpreted this clause as applying after contract signature.

Mr. Grima confirmed that he interpreted clause 7.23.2 as post-contractual and that there was no disagreement about this interpretation among the evaluators.

Dr. Mifsud Bonnici asked whether E.J. Busuttil, in its offer, used the option in clause 7.23.2 and stated that, if it won the contract, it would transfer the test to the fully automated system.

Mr. Grima stated that E.J. Busuttil did not do so and that nothing was written to that effect in their bid.

He reiterated that clause 7.23.2 did not apply in their case because, as he understood it, a bidder must first be compliant with clause 7.18 in order to benefit from the option in clause 7.23.2.

He confirmed that E.J. Busuttil's IgG CSF test was offered on the NEPH 630, which is standalone, and that clause 7.23.2 did not come into play for that test.

Dr. Mifsud Bonnici asked whether Mr. Grima was aware that, in the general conditions of supply, "day" is defined as calendar day.

Mr. Grima acknowledged this.

Dr. Mifsud Bonnici had no further questions.

Re-examination by Dr. Alessandro Lia (for the Appellant)

Dr. Lia returned to the IgG test and asked Mr. Grima to confirm that, in deciding whether E.J.

Busuttil's offer was compliant or not, the analysis was based on the workload of the test itself as shown in Table 2A, and not on the capacity of the standalone machine.

Mr. Grima confirmed this.
He stated that the analysis was carried out by looking at Table 2A, which lists the analytes and the predicted workload over a seven-year period, and by checking whether the IgG CSF test exceeded 10,000 tests per year in the seventh year.

He confirmed that, because the test exceeded 10,000 tests per year and because it was not to be performed on the total laboratory automation system, the offer was found non-compliant.

Dr. Lia thanked the witness.

The Chairperson thanked Mr. Grima.

There followed a brief exchange about whether Mr. Grima should remain in the room.

The Chairperson indicated that, given his workload, he could leave if not needed further, and the hearing moved on.

Mr. Ian Brincat (ID: 31375M) – Summoned by Dr. Alessandro Lia
Dr. Lia asked Mr. Brincat what his task in the tender was and what his normal work is.

Mr. Brincat stated that in this tender he was the technical specifier, the person who wrote and helped set the specifications, and that he is a medical laboratory scientist and scientific head of the Clinical Chemistry Laboratory at Mater Dei Hospital.

Dr. Lia asked whether Mr. Brincat had any involvement in tender 2337/24 for a protein analysis kit and equipment.

Mr. Brincat stated that he had no involvement at all in that tender.

Dr. Lia turned to clause 7.18 and asked whether clause 7.18(b) means that a standalone system may only be offered for a test which, according to Table 2A, is predicted not to exceed 10,000 tests per year in the seventh year.

Mr. Brincat confirmed that this is correct.

Dr. Lia asked who prepared Table 2A and on what basis.

Mr. Brincat explained that Table 2A is based on predictions derived from historical workload data, looking at the number of tests performed from year to year and predicting how much will be done over the seven-year tender period.

He stated that the purpose was to avoid a situation where quantities expected for seven years are reached in the first two or three years.

He added that, besides past data, they also considered anticipated future needs of the country and the health sector.

Dr. Lia asked who actually did the work of producing the predicted numbers.

Mr. Brincat explained that, because of the importance and value of the tender, the data were passed to Dr. Vince Marmara, who, based on the information given to him, worked out predictions of how quantities might increase from year to year over the seven-year period.

He stated that these values were then further adjusted to take account of possible future needs and unknowns, confirming that the figures were augmented beyond the statistical projections.

Dr. Lia asked about the “real” historical data on the IgG test, such as how many tests were actually carried out in 2023 and 2024, and who collected such data.

Mr. Brincat stated that within the Clinical Chemistry section at Mater Dei there are staff responsible for collecting such statistics and that, in principle, it is possible to know how many IgG tests were performed in those years.

He confirmed that he did not, at the time of the hearing, perform a comparison exercise between actual 2025 data and the predicted value (7,254 tests) in Table 2A.

He stated that when he prepared the tender he worked with the data provided to him by staff responsible for data collection and by those involved in the predictive exercise.

Dr. Lia asked whether, after drafting the terms of reference, Mr. Brincat's involvement ended, or whether he was also involved in clarifications.

Mr. Brincat stated that, as draft of the specifications, he was involved in answering clarification questions relating to those specifications, because he knew why the clauses were written in a particular way.

Dr. Lia referred him to Clarification Note 4, question 3, concerning the IgG test.

Mr. Brincat confirmed that he was involved in the response.

Dr. Lia pointed out that the IgG test in this tender relates to cerebrospinal fluid (CSF), whereas a different tender involved a blood test.

He asked whether the CSF IgG test and the blood IgG test are carried out simultaneously and for the same diagnostic purpose.

Mr. Brincat stated that the two tests are not necessarily performed simultaneously.
He added that questions which are purely clinical are better answered by the clinical lead of the section, Dr. Gerald Buhagiar, since his own competence is scientific rather than clinical, and he did not wish to give inaccurate clinical information.

Dr. Lia asked whether, in drafting CT2291/2024, he took account of the specifications in tender 2337/24.

Mr. Brincat stated that he did not and that tender 2337/24 is for a totally different section with which he has no involvement.

Dr. Lia then referred to the reply in Clarification Note 4 in which the IgG CSF test is said to "need to be performed on a 24/7 basis" as part of CSF biochemistry and asked what was meant.

Mr. Brincat stated that CSF samples may arrive at any time of day or night, seven days a week, and that the result is needed immediately.

Dr. Lia then referred him to Table 5 of the tender document, where tests are classified as routine and/or urgent, and pointed out that IgG is listed as “routine”.

He asked why, if the result is needed immediately, the test was not marked as urgent.

Mr. Brincat explained that the IgG test can also be performed in circumstances where it is not urgent and may be worked as routine.

He stated that some tests (for example glucose) are marked as routine/urgent because they may be requested urgently; in contrast, IgG CSF may be requested as part of a set of tests where the CSF portion is urgent, but the test itself also has routine uses.

He explained that when CSF samples are requested urgently together with other tests, the urgency of the clinical situation requires that all requested CSF tests be performed without delay, but that does not necessarily mean that the IgG test is always classified as urgent in the table.

Dr. Lia asked whether “routine” means “urgent”.

The Chairperson intervened and clarified that routine is not the same as urgent.

Mr. Brincat confirmed that routine does not mean urgent.

Dr. Lia asked why, in the clarification, he effectively described IgG CSF as needing 24/7 availability while the table lists it as routine.

Mr. Brincat stated that he did not change any category; rather, the clarification answered a request to use equipment from another section over which he had no jurisdiction.

He explained that they could not rely on another tendered system, because that other contract might expire during the term of this tender.

He stated that the clarification emphasized the need for 24/7 availability as part of the CSF biochemistry service, but the classification in Table 5 remained based on how the test may be requested in different clinical contexts.

Dr. Lia asked whether, when preparing the predictions in Table 2A, the distinction between routine and urgent tests was taken into account.

Mr. Brincat stated that the predictions concern total numbers of tests and do not depend on whether a test is requested as routine or urgent, since in either case the same test is performed and counted once.

The Chairperson summarized that Mr. Brincat based himself on predictions supplied by Dr. Marmara and by clinicians and asked how much he had augmented those figures.

Mr. Brincat replied that the increase in numbers was based on clinical judgement about potential future needs and that clinicians could best explain the medical reasoning.

He stated that he did not simply add a fixed percentage but took account of potential scenarios that clinicians considered realistic.

He confirmed that he relied on baseline data supplied by staff who collect statistics as part of their duties and then on the predictive work done with Dr. Marmara.

Dr. Lia asked whether the “real” data for IgG were in his hands as raw statistics, separate from the predicted table.

Mr. Brincat replied that, at the time of drafting, he had the data that were provided to him and that these were incorporated into the table; he did not have a separate set of past-year figures in front of him at the hearing.

He confirmed that the actual numerical data in Table 2A were those he had available when the tender was being prepared and that he did not, at that time, carry out a post-hoc comparison between predictions and real figures for 2025.

Dr. Lia asked whether, as head of the section, he personally performs the IgG test.

Mr. Brincat stated that in his current role he does not personally carry out the tests; he is responsible for the section, but other staff perform the actual analyses.

Cross examination by Dr. Leon Camilleri (for CPSU)

Dr. Camilleri asked whether, between the publication of the tender and the closing date for offers, any objection or challenge was raised regarding the numbers in Table 2A or any other specification.

Mr. Brincat stated that no such objection was received before the closing date.

Cross-examination by Dr. Clement Mifsud Bonnici (for the Recommended Bidder)

Dr. Mifsud Bonnici referred to Clarification Note 4, question 3, and asked whether the request for clarification was submitted by E.J. Busuttil.

Mr. Brincat stated that, at the time of receiving clarification requests, they do not know which economic operator submitted them and that he therefore did not know who had asked that question.

Dr. Mifsud Bonnici then suggested that the protein analysis kit tender mentioned in the clarification had been won by E.J. Busuttil and asked whether Mr. Brincat now knows this.
Mr. Brincat stated that he now knows that E.J. Busuttil won that tender.

Dr. Mifsud Bonnici asked about clause 7.23.3.2 concerning third-party laboratories and noted that the general conditions of supply form part of the procurement documentation.
He asked what Mr. Brincat had in mind when he wrote that HCG tumor marker results from third-party laboratories must be available within “one day”.

Mr. Brincat stated that the hospital and the department operate 24 hours a day, seven days a week, and that for them “one day” means within that 24-hour period, regardless of weekends or public holidays.

He explained that it was obvious to those working in the field that “one day” does not refer to business hours only and that there was no need to specify calendar day or working day.

He stated that the reference to third-party laboratories was not limited to laboratories in Malta, as the intention was to keep the tender as competitive as possible and allow suppliers who could not provide the test on their own systems to offer it through third-party laboratories anywhere, provided that all criteria in the tender were satisfied.

Re-examination by Dr. Alessandro Lia (for the Appellant)

Dr. Lia asked, in light of the explanation on urgent and routine tests, what “one day” means in clause 7.23.3.2.

Mr. Brincat explained that “urgent” refers to tests whose result should be available within about one hour from sample arrival, whereas “routine” tests are normally issued within hours and, in any event, not more than one day.

He stated that some tests are subject to longer acceptable turnaround times (e.g. several days) where clinically appropriate, and that these are expressly specified in the tender.

He then explained the clinical importance of the HCG tumor marker test.

He stated that HCG is used to monitor certain tumors and to assess the effectiveness of treatments such as chemotherapy or radiotherapy, and that it is also used in the context of organ transplantation to ensure that donors do not have undetected tumors.

He stressed that in such cases time is important and that results must be available within one day so that transplantation decisions can be made without undue delay.

He stated that, although HCG is classified as a routine test in Table 5, its clinical use requires a one-day turnaround time, and that this is why clause 7.23.3.2 sets that requirement.

He clarified that, in this context, the test remains classified as routine but has a strict one-day turnaround requirement; it is not classified as urgent in the sense of having a one-hour turnaround.

He reiterated that urgent tests are those where results should be available within about one hour worldwide, whereas the HCG requirement is one day.

The Chairperson summarized that the classification in Table 5 was based on his professional judgement and asked whether there was anything in that classification he would change.

Mr. Brincat replied that there was nothing he would change; tests marked as urgent are those needing results within one hour, and the table was also meant to help bidders estimate reagent needs and the number of analysers required.

He explained that tests marked as urgent must be loaded on at least two analyzers to ensure continuity if one system fails.

The Chairperson read the explanatory note at the bottom of Table 5, which states that the data reflect current practice, may change after award, and that analytes performed as routine/urgent must be loaded on at least two different modules; Mr. Brincat confirmed that this reflected his intentions.

Re-cross examination by Dr. Leon Camilleri (for CPSU)

Dr. Camilleri asked for confirmation that the “one day” requirement for HCG refers to 24 hours from the time the test is requested, regardless of day of the week.

Mr. Brincat confirmed this.

The hearing then moved on to the discussion about remaining witnesses and future sittings.

Dr. Gerald Buhagiar (ID: 0269163M) – Summoned by Dr. Alessandro Lia

Dr. Buhagiar stated that he is a consultant pathologist at Mater Dei Hospital in charge of the Clinical Biochemistry section and that, together with his senior staff, he identifies departmental needs, follows directions from hospital and CPSU management, anticipates future medical requirements, and helps draft tender specifications so that the service can continue.
He explained that his role in this tender was a mix of drafting and overseeing specifications, working, among others, with Mr. Ian Brincat on the required technical specifications.

Dr. Lia referred him to Table 2A, row 47, which lists predicted annual workloads for the IgG CSF test (for example 7,250 tests in 2025 and 7,979 in 2026), and asked for the clinical use of the IgG CSF test on its own.

Dr. Buhagiar stated that cerebrospinal fluid (CSF) surrounds the brain and that IgG in CSF indicates inflammatory states that may explain neurological deterioration.

He said that patients can deteriorate neurologically for various reasons (vascular, age-related, infectious, and others) and that IgG production in CSF shows a local inflammatory problem in the central nervous system.

Asked about the relationship between IgG CSF and IgG serum, he stated that serum IgG is unlikely to affect IgG in CSF because of the blood–brain barrier; CSF and brain behave as a separate compartment.

He explained that, to distinguish between problems localised to the brain and systemic problems affecting the whole body, one is specifically interested in what is happening within the central nervous system.

When asked in which instances spinal IgG is used together with serum IgG, he replied that, in practice, clinicians request combinations of tests according to clinical needs and that the laboratory acts on those requests; as he is not a neurologist, he could not give a detailed clinical protocol and considered that such matters are determined by the clinicians.

Dr. Lia asked about Dr. Buhagiar's involvement in the prediction values in Table 2A.
Dr. Buhagiar stated that, following instructions from hospital management to issue a tender combining immunoassays and routine tests, they had to plan for rapidly increasing test numbers due to several factors: rapid population growth, a more defensive medical practice with more tests ordered to confirm and

exclude conditions, and changes in disease patterns (diseases occurring at younger ages).

He explained that, to predict future workloads, the then CEO, Mr. Ivan Falzon, engaged statistician Dr. Marmara, who used past figures to estimate an average anticipated growth of about 11% per year.

The department applied this growth rate to pre-Covid figures and then further adjusted projections as drafting continued, including when the tender changed from a five-year to a seven-year term, leading to compounded increases and the figures seen in Table 2A.

He stated that, at the time early projections were made, they did not initially anticipate some tests exceeding 10,000 per year, but the long drafting period and the extension of the tender duration led to higher predicted values.

He added that delays in issuing the tender meant that each year's update effectively shifted the 7-year horizon forward, increasing the projected totals.

Dr. Lia queried comments Dr. Buhagiar had made about the appeal text describing the 10,000-test figure as "grossly inflated" and about insinuations of favoring someone.

The Chairperson indicated that opinions about the appeal wording were irrelevant and refocused the discussion on what was actually done to arrive at the figures.

In response, Dr. Buhagiar stated that the department attempted to open the tender to as many suppliers as possible, rather than restricting it to a small number of major analysers, and that, in his view, the approach was intended to be inclusive, not favoring a particular supplier.

The Chairperson asked what he had to say about the allegation that the 10,000-test value was inflated.

Dr. Buhagiar replied that it was not his intention to inflate values and that the figures reflected attempts to anticipate increased demand due to population growth, changing disease patterns, and more extensive use of tests by clinicians.

He noted that, when a test like CSF IgG is costly, it is important to ensure that sufficient funds are available throughout the tender period; otherwise, once funds are exhausted, the service would be jeopardized.

Dr. Lia asked why, if the tender aimed to open the market and allowed standalone systems to accommodate suppliers who could not use the main

analyzers for all tests, the restriction of 10,000 tests was introduced in clause 7.18.

Dr. Buhagiar replied that the drafting also had to reflect the practical constraints of the Biochemistry department, including limited staff.

He stated that he is already about ten staff members short of the full complement and that using secondary platforms, especially if not fully linked into the automated system and data flows, would require staff the department does not have.

He said that, over the next seven years, he expects staffing problems to increase rather than decrease and that, therefore, limits such as the 10,000-test threshold were introduced so that the department would not be overwhelmed and "crack" under the operational load.

Dr. Lia asked about the 11% annual increase and whether applying that rate backward from the 2025 prediction would approximately give the real 2024 data.

Dr. Buhagiar answered that more or less this would be the case, and stated that, had the tender remained a five-year tender and not been delayed, they would never have reached 10,000 tests for IgG within the tender period; however, continued delays mean that thresholds will rise further in future.

Cross examination by Dr Leon Camilleri (CPSU)

In cross-examination, Dr. Camilleri asked Dr. Buhagiar to confirm that the predictions in Table 2A were based on more than just population growth.

Dr. Buhagiar confirmed that they rested on three pillars: population growth, more defensive and medico-legal driven testing (more tests to exclude conditions), and the observed growth of certain diseases and changes in disease patterns.
Dr. Camilleri asked whether there had been preliminary market consultation and a previous publication of the tender and whether feedback from those exercises had contributed to the current tender, including the alternative platform mechanism.

Dr. Buhagiar confirmed that there had been prior consultation and that the alternative platform mechanism was one of the tools used to accommodate as many suppliers as possible and increase competition.

Dr. Camilleri asked whether, before the closing date for offers, any objections or clarifications were submitted on the numbers in Table 2A.

Dr. Buhagiar stated that no objection of that sort was filed and that, at the time, it appeared that everyone accepted the figures and specifications.

Dr. Mifsud Bonnici stated that he had no questions in cross-examination.

The Chairperson thanked Dr. Buhagiar, and the hearing then moved on to further procedural matters and the next witness.

Procedural Matters Following Dr. Buhagiar's Testimony

Dr. Lia renewed his request for data on actual test volumes, stating that he needed it after Christina's testimony and even now after Dr. Buhagiar's evidence.

Dr. Farrugia Zrinzo stated that a formal request needed to be made and that CPSU would object to it.

Dr. Camilleri confirmed that CPSU had already objected and that the Board had not yet decided on the request.

The Chairperson noted that no decision had been made on the data request.

Dr. Lia asked whether the preferred bidder would present its representative or whether he should call her.

Dr. Camilleri confirmed that the representative was present and had come in.

Dr. Farrugia Zrinzo stated that, if necessary, she would inform the doctors.

Dr. Lia clarified that he meant witnesses from those outside.

The Chairperson stated that everyone appeared ready.

Dr. Mifsud Bonnici requested that it be verbalized that Dr. Lia would not ask more questions to the evaluators.

Dr. Lia confirmed that he did not need the evaluators further.

Ms. Christina Tsepi (Greek Passport no. AT2805323) – Summoned by Dr. Alessandro Lia

Ms. Tsepi stated that she currently works for Siemens Healthineers in the diagnostics department as marketing manager for Greece, Malta, and Cyprus.

At the time of the tender, she was product specialist and assisted E.J. Busuttil by

providing technical documentation and guidance for the technical sections of the tender submission.

Dr. Lia asked Ms. Tsepi to explain, from a product perspective, the standalone equipment offered by E.J. Busuttil and the reason for disqualification.

Ms. Tsepi stated that the tender specifications clearly required coverage of a certain number of tests, including IgG in cerebrospinal fluid (CSF). She explained that calculations were made combining the required test volume over seven years with the throughput capacity of the latest available instrument model (Atellica NEPH 630).

She stated that, because the IgG CSF assay was not available on the main automated platform analysers at that time and could only be run on this specific standalone instrument, two identical backup instruments were offered to meet the tender's backup requirement and test volume.
Dr. Lia asked whether the IgG CSF test was considered in conjunction with a serum (blood) test.

Ms. Tsepi stated there was no such specification in the tender; the requirement was strictly for CSF.

Dr. Mifsud Bonnici objected that Ms. Tsepi was being asked to give expert opinion and needed to establish her expertise, particularly on Malta-specific data.

Ms. Tsepi stated that, as product specialist (then and now), she specializes in specific Siemens instruments and products, knows their technical capabilities and limitations, and provides guidance on them.

The Chairperson asked about Ms. Tsepi's qualifications.

Ms. Tsepi stated she is a biochemist with a master’s in biotechnology, has worked for Siemens for nearly 20 years, and was previously a field application specialist providing scientific support, instrument installation, training, and after-sales support for chemistry and immunology departments, including nephelometric instruments like the one offered.

Dr. Mifsud Bonnici maintained his objection, stating Ms. Tsepi lacked expertise on Malta's predicted test figures.

Dr. Lia confirmed he was not asking about predictions by Dr. Buhagiar or Dr. Marmara, but about why Siemens recommended the standalone solution despite the 10,000-test threshold.

Dr. Lia asked whether Siemens was involved in the 2025 protein analysis tender.

Ms. Tsepi confirmed Siemens was involved but she was not personally responsible for it.

Dr. Lia asked why Siemens indicated the standalone instrument for IgG CSF despite the 10,000-test limit.

Ms. Tsepi stated the instrument's throughput was sufficient to handle over 10,000 tests per year with two units, as it was dedicated solely to that one test.

Dr. Lia referred to a passage in E.J. Busuttil's tender submission stating that IgG CSF exceeded 10,000 tests per year (0.055% of total workload) and asked whether she assisted in writing that declaration.

Ms. Tsepi stated she did not prepare that specific impact/percentage calculation, as was done by a team measuring capacity and workload.

Dr. Lia asked why Siemens did not offer IgG CSF on the main automated system.

Ms. Tsepi stated the assay for CSF sample type was not available on the automated platform at tender time but is now available. She noted clause 7.23.2 allowed transfer to the main system if/when it became available during the contract.

Cross examination by Dr. Leon Camilleri (for CPSU)

Dr. Camilleri asked whether Siemens manufactures a main platform system capable of running IgG CSF.

Ms. Tsepi confirmed Siemens supports the test but explained that third-party reagents require platform-specific validation testing, which was not complete at tender time. She stated the testing is now complete and the assay is officially available on automated platforms.

Dr. Camilleri asked whether Siemens had previously run IgG CSF on main systems for clients.

Ms. Tsepi stated that, where available and documented, the capability exists and systems are running the test.

Cross examination by Dr. Clement Mifsud Bonnici (for VIVIAN Corporation Ltd.)

Dr. Mifsud Bonnici asked whether, as of the February 2025 tender closing date, Siemens offered a main platform (beyond the standalone offered) capable of running IgG CSF.

Ms. Tsepi stated the Atellica NEPH 630 offered was the latest model capable of running the assay with reference technology.

Dr. Mifsud Bonnici referred to the BN II system and asked whether it was available in February 2025 and offered in E.J. Busuttil's bid.

After objections and Board direction, Ms. Tsepi confirmed the BN II system was available but was not offered in this tender.

Dr. Mifsud Bonnici asked whether the BN II system can process IgG CSF.

Ms. Tsepi confirmed it can.

Re-examination by Dr. Alessandro Lia (for the Appellant)

Dr. Lia asked whether the BN II system satisfies the tender requirements.

Ms. Tsepi stated that, to the extent of her involvement, it did not fully satisfy all requirements. She clarified she was not responsible for final instrument selection decisions, which consider multiple criteria.

Re-cross examination by Dr. Clement Mifsud Bonnici (for VIVIAN Corporation Ltd.)

Dr. Mifsud Bonnici asked whether the BN II system could be integrated into E.J. Busuttil's main platform offer.

After extensive debate on relevance, confidentiality, and prior Board refusals to disclose bid details, Ms. Tsepi stated she could not confirm integration capability. She explained connectivity information was confidential at tender time (under development) but is no longer restricted now that development is complete.

The Chairperson noted the allegation that specifications favoured a particular bidder and that evidence showed E.J. Busuttil had alternatives but chose not to offer them.

Dr. Lia indicated no further purpose would be served by pursuing integration details.

Procedural Discussion

Dr. Lia indicated he would call a VIVIAN representative to explain their recently submitted documentation (reasons for exhibiting materials from competitors like SNIBE, DiaSorin, Fortress, and Randox).

Dr. Mifsud Bonnici made no objection to a VIVIAN witness but sought limits to prevent a "fishing expedition."

Dr. Lia also renewed his request for actual IgG CSF test volume data (2022–2025) from Mater Dei Hospital.

Dr. Mifsud Bonnici: I have an objection and I will explain why. So, on the data, we do not think he should summon anyone for this data because it is irrelevant as the tender specs are closed.

Secondly, Dr. Buhagiar already gave the answer the appellant wanted, he explained that if you take the first year and reduce it by about 11% you get to the raw data, so he already has the raw data in his hands. He doesn't need another witness, that is the problem, because it's irrelevant.

CPSU and VIVIAN objected, arguing the tender specifications closed upon offer submission, data is irrelevant post-facto, no timely pre-hearing request was made, and proceedings should remain expeditious.

The Chairperson directed Dr. Lia to submit a formal email specifying witnesses/documents needed for the next sitting and indicated the Board would issue an interim decree on the data request.

Adjournment

The Chairperson thanked all parties for their participation and explained that she would issue a decree on pending matters.

It was agreed by all parties that the hearing would close at the next meeting.

Dr. Thomas formally adjourned the appeal to Wednesday, 4th February 2026 at 10:00am.

THIRD DAY – February 4, 2026

On February 4, 2026, at 10:00 am, the PCRB reconvened to continue considering the appeal following the hearing held on the 9th of January 2026.

The Board was composed of:

- Dr Ana Thomas – Chairperson
- Dr Maria Cardona – Member
- Mr Keith Victor Grech – Member

Attendance:

Appellant: E.J Busuttil.(C10135).

- Dr Alessandro Lia – Legal Representative.
- Mr Edwin Busuttil – Company Representative.
- Ms Claire Busuttil – Company Representative.

Contracting Authority. Central Procurement Supplies Unit (CPSU)

- Dr Leon Camilleri – Legal Representative.
- Dr Alexia J. Farrugia Zrinzo – Legal Representative.
- Mr Mario Farrugia – Secretary.
- Mr. Jesmond Debono – Evaluator.
- Mr Justin Grima – Evaluator.
- Mr Neville Borg – Evaluator.
- Mr Ian Brincat -- Specifications Drafter.
- Dr Gerald Buhagiar – Specifications Drafter.

Recommended Bidder: Vivian Corporation. (C68).

- Dr Clement Mifsud Bonnici – Legal Representative.
- Dr Calvin Calleja – Legal Representative.
- Ms Denise Borg Manche -- Company Representative.
- Ms Rodianne Conti – Company Representative.
- Mr Charlon Ellul – Company Representative.

Interested Party – Cherubino Ltd.(C3677).

- Dr Kayleigh Borg – Legal Representative. (on-line).

Department of Contracts:

- Dr Audrey Marlene Buttigieg Vella. – Legal Representative.

Proceedings.

Opening Statements.

Dr. Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, E.J Busuttil, the Contracting Authority, Central Procurement and Supplies Unit (CPSU), the Preferred Bidder, Vivian Corporation Limited and the Interested Party, Cherubino Ltd.

Witness:

Mr Thomas Cutajar (ID No. 131362M), summoned by Dr Alessandro Lia.

Mr Cutajar works in Biochemistry and is in charge of the procurement of stocks. He provided the statistics used in the tender. He presented two documents, namely *Table 2025* and the *Manual CSF*, indicating a total workload of 5,950 for 2024. He stated that the figures presented were those used in the preparation of the tender.

He was not involved in the drafting of the tender; however, it was assumed that the tender would be issued in 2025, and the calculations were therefore based on the year 2024.

Dr Thomas asked whether he knew when the tender was published, and the witness replied in the negative.

Dr Lia stated that the tender was published on the 10th of November 2024 and therefore the data indicated was not factual, since the table covered the period from January to December 2024.

He stated that the tender was re-issued and that there was another one for 2023. Other witnesses had testified that an exercise was carried out using statistics prepared by Mr Vincent Marmara.

He asked the witness which data was used: whether it was based on previous years' or the actual data plus 10%. The Board requested from the witness the actual data used in the tender.

Dr Leon Camilleri intervened and stated that the decree requested was clear: 'data used in consideration'.

The Chairperson agreed with the witness that he had provided the 2024 data and had given it to Mr Brincat and the originators to be used in the considerations for drafting the specifications.

Dr Camilleri noted that the witness had worked on an average twelve-month period.

Dr Lia confirmed with the witness that he had forwarded the email regarding the CSF to the originators.

Dr Thomas asked the witness to sign document TC1.

Dr Mifsud Bonnici explained the second document, stating that the numbers were issued during the reconciliation procedure of the consumables of the tests, which were batched to match the quantities in the tenders.

Dr Lia declared that he had no further evidence to produce and rests his case.

Witness:

Mr Ian Brincat (ID No. 31375M), summoned by Dr Leon Camilleri.

Mr Brincat was involved in the drafting of the tender and was asked to explain the reason for its re-issue. The Committee first issued a PMC to assess whether suppliers could meet the specified needs. He informed Ms Thomas that this occurred in 2018.

Mr Brincat stated that following the issue of the PMC, they received a number of requests and clarifications from suppliers. A meeting was also held with Techno Line, which helped in identifying specifications and pre-market consultations. This resulted in the first version of the tender. The Committee then received further clarifications, and after these were evaluated, the tender was re-issued. The Board's aim was to have a competitive tender to ensure the best service at the best price.

Dr Camilleri noted that this was not something that occurred frequently.

Mr Brincat stated that the success of this tender equated to the success of the National Health Service (NHS) in Malta. The Committee addressed the clarifications and aimed to implement the best compatible process within the system.

The Chairperson noted that therefore, tender version 1 was withdrawn, re addressed and re issued.

Mr Brincat noted that the hospital administration requested the amalgamation of two separate systems. This was difficult, if not impossible, for any supplier to cover all the needs listed. No tests could be removed simply because one or more suppliers could not offer a specific solution.

Dr Thomas requested further explanation.

Mr Brincat explained that, at present, both systems are covered by two manufacturers. The vast majority of tests are offered by all major suppliers; however, certain tests cannot be performed on a particular manufacturer's system. Consequently, after amalgamation, supplier A, B, or C might not be able to cover all the requested tests. Therefore, the Board included a clause allowing suppliers to use a stand-alone system—for example, a main system with a conveyor belt and an apparatus that carries the blood sample for testing and then proceeds elsewhere.
Most of the conveyors in use are open systems, meaning they are not linked to a particular brand but are compatible with different brands. Suppliers were given the option to use a differently branded apparatus from the parent

company that could attach to the conveyor belt. To avoid excluding alternatives, a stand-alone system was also proposed, which would not be attached to the conveyor belt but would still perform the required tests.

This option was conditional but available. Another option was outsourcing, whereby suppliers could engage reliable third-party laboratories to perform the tests. Conditions were imposed to ensure quality. The aim was to maintain a competitive tender, driven by the principle of achieving the best system and quality at the best price.

Dr Camilleri stated that the tender included certain limitations on the number and quantity of tests that could be performed on an alternative system or outsourced, and he asked for the reasons behind these limitations.

Mr Brincat explained that limitations applied to both the stand-alone system and outsourcing.

With both systems amalgamated, approximately 5,000 samples are processed in twelve hours. For efficiency, it was important to limit manual handling steps. One of the innovations of the tender was the introduction of a conveyor belt, which is not currently in use. Reducing handling is essential, particularly when certain tests are required up to 3,000 times per day, compared to others that are less frequently needed. The numbers are therefore crucial. Currently, they are at a loss, as demand has outgrown capacity.

The limitations on outsourcing were different, as they involved turnaround times for results, which could vary from hours to days depending on the clinical application of each test. Some tests require immediate clinical decisions, while others can tolerate delays when there are no clinical risks.

Cross-examination by Dr Clement Mifsud Bonnici

Dr Mifsud Bonnici agreed with the witness that a fully automated system was required. The witness stated that the current system performs the necessary tests; however, the new system would eliminate manual handling from the moment the blood sample is received from the ward until the final results are issued. The number of tests has increased significantly, making it impossible to continue using the current system, which involves many manual steps that slow down the process. Human intervention takes longer, especially for tests originating from the Casualty Department.

Dr Mifsud Bonnici stated that the advantages of an automated system would therefore be the elimination of human intervention and faster results. The limitations placed on stand-alone instruments and outsourced tests were intended to support automation.

Dr Mifsud Bonnici stated that there were four manufacturers operating in open systems: Abbott, Siemens, Snipe, and Roche. The witness confirmed that he was involved in drafting the tender and responding to clarifications submitted by bidders. There were no allegations that the tender favoured one supplier over another. There were no clarifications regarding the figures in tables "2A and 2B", nor regarding the outsourced turnaround times for tests.

Dr Lia raised concerns regarding witnesses remaining in the hall.

The Chairperson pointed out that it was previously minuted that the Appellant had no issue with witnesses remaining in the room after they had testified during the previous hearing.

Witness:

Mr Mario Farrugia (ID No. 200585M), summoned by Dr Leon Camilleri.

Mr Farrugia acted as secretary and took notes. He explained that six offers were received from four different suppliers. Three offers were compliant with the mandatory requirements, and since this was a BPQR procedure, a points-based system was applied. These consisted of three offers from two suppliers, each proposing different main systems.

The table presented formed part of a contract under a negotiated procedure in 2024 for clinical chemistry, serving as a stopgap between one year and another.

Referring to row 51, '45 kits of IGGCSF X 150 tests' totalled approximately 6,000 tests. This demonstrated that the test figures correlated. The tender was issued by Clinical Chemistry, and the witness, as procurement officer, extracted the data that was later provided via email.

The Chairperson requested the witness to sign the extract of the negotiated procedure, marked MF1.

Cross-examination by Dr Alessandro Lia

Dr Lia clarified that there were two main systems of different brands that were mandatory compliant.

Witness:

Mr Edwin Busuttil (ID No. 755053M), summoned by Dr Leon Camilleri.

Mr Busuttil, the appellant and Managing Director of E.J. Busuttil Ltd., stated that the company had submitted clarifications prior to the closing date of the tender, but he was unaware of the details. He did not know whether the company had

filed any pre-contractual appeal before the PCRB, nor whether the clarifications were answered.

Cross-examination by Dr Clement Mifsud Bonnici

Dr Mifsud Bonnici asked who had worked on the bid. The witness replied that individuals from Siemens assisted with the bid, together with Mr Aaron Grima and his secretary, Mrs Debbie Vella.

Mr Edwin Busuttil was consulted prior to the submission of the appeal, along with other directors.

The witness was unaware that bidders could lodge an appeal before the PCRB challenging the specifications prior to the closing date of the tender.

Final Submissions

Final submissions by Dr Alessandro Lia (for the appellant)

Dr Lia stated that he would explain the grievances one by one. The first grievance was procedural.

The letter sent to E.J. Busuttil stated at its outset 'Company found to be administratively non complaint'.

The preferred bidder responded with 'u ajma'. The Board, being the PCRB, decides tenders involving millions and functions as a court. A certain level of rigidity must therefore be exercised.

The administrative compliance of E.J. Busuttil was never contested. The refusal letter constituted the decision from which this appeal stemmed and was defective. He referred to certain sentences and agreed with the other parties that they did not concern this Board; however, all sentences were recently quoted by Judge Mark Simiana.

Referring to the case *Alfred Desira vs Josef Spagnol*, the judge disregarded considerations beyond the two paragraphs contained in the rejection letter. Since the decision was defective, the letter was also defective, together with all the resulting consequences.

The second grievance concerned the alleged impermissibility of the appeal due to Clause 262.

The appellant never requested a pre-contractual remedy. Regulation 262 of the PPR states 'may' and not 'shall'. In fact, it does not specify the consequences of

failing to exercise this right within the same regulation. This party is stating that the tests of transparency, equal treatment, and non-discrimination are the fundamental pillars. The Board must review not only the bid within the procurement process, but the entire process as a whole, together with all the documentation.

The tender document was presented as a BPQR, consisting of the administrative, price, and technical sections. The technical section was further split into two parts: mandatory requirements and the optional. 90% of the requests where all mandatory, and the insignificant add-ons were put there to call it a BPQR. However, this was not, in fact, a BPQR. The Board had to take into account the way the tender was designed and how it obliged bidders, since the tenders submitted were not to be evaluated on a scale from 0 to 100, but rather on whether the requirements were met or not. This constituted a binary method. This eliminated the discretion that every Evaluation Committee in a BPQR should have. In this case, the evaluator had no leeway due to the binary test. This ties into the third grievance.

The refusal of E.J. Busuttil regarding the AGG should be read in conjunction with request clause 7.23.2. A witness stated that this was a post-award contract. This condition was open to interpretation, because it states that one could correct the stand-alone system at any time in order to align with the principle of having a fully automated system. Therefore, the stand-alone system was included as a contingency, in case there was a possibility that not everyone could satisfy the automation requirement.

Dr Lia cited decisions, including those of the ECJ, stating that whatever the conditions, even if logically they can only be satisfied during the execution of the contract, such clauses are still pre-award conditions. The condition stating that the bidder could offer something different from what was submitted is also a pre-award clause and gives the bidder the right to vary. This interpretation should prevail over the rejecting letter issued to E.J. Busuttil.

The fourth grievance concerns the third-party laboratory. E.J. Busuttil indicated that this would be carried out within 24 hours, excluding Sundays and Public Holidays. He referred to rule 11.82 of 71 of the Council regarding European Union directives. He cited Article 3.4 and quoted:

“Where the last day of a period expressed, otherwise than is a Public Holiday, Sunday or Saturday, the period shall end with an expiry of the last hour of the following working day”.

In the General Conditions, it is stated that “unless otherwise specified day is a calendar day”.

This party was not requested to provide hours, but days — specifically, one day. In the table, certain tests were indicated as routine tests, while others were marked as urgent, resulting in inconsistency. The basic principle that the Board should apply when assessing these grievances is rooted in the fundamental pillars of transparency, non-discrimination, and equal treatment.

The decision taken was affected by inconsistency, multiple interpretations, and procedural arguments concerning a defective letter.

Referring to the fifth grievance, it was stated that it was important to note that the preferred bidder satisfied all the conditions of the tender. Reference was made to an appeal during the time of Mr Cassar, where the Board decided that the technical analysis of the preferred bidder was of no interest to the appellant. However, the Court of Appeal, in the case *OK Ltd. vs Director of Contracts* of 18 July 2017, held that the Board had "abdicated" its duties by failing to assess whether the preferred bidder's product was technically compliant.

Courts of Appeal may decide one way or another, but what is most important is the positive law in Regulation 262, which states "we may". Since it is discretionary, the procedure may be used but is not obligatory, and the same article does not state what would happen if it were not used.

Dr Lia stated that this Board should consider their grievances favourably.

Final Submissions by Dr Leon Camilleri (for the Contracting Authority)

Dr Camilleri, with regard to the first grievance concerning inconsistency in the letter of non-compliance, conceded that the deficiency was technical rather than administrative and was merely a written mistake. The reason provided was technical, and it was evident that the refusal was based on technical grounds. The remedy adopted was clear, as was the rejection letter outlining the reasons. Therefore, there was no prejudice to the appellants, and this should not affect the recommended award.

The second grievance referred to Regulation 262. The word "may" implies discretion. If a party feels prejudiced, they have the right to appeal; if they do not, they effectively waive that right. Article 270 of the PPR clearly addresses decisions taken post-closing and proposed awards.

This action was post-award. Any action that could have been taken before the closing date was renounced voluntarily, as the appellants were aware of the tender and their own witness stated that clarifications had been issued. They chose not to proceed under Article 262 and later claimed that the clarification was unclear or intended for a specific individual.

Court judgments have stated that action should be taken before the closing date. Dr Camilleri referred to his colleague's assertion that the tender was "camouflaged" to favour the cheapest compliant bidder, appearing as a BPQR and tailor-made for Vivian Corporation. However, the tender included mandatory and discretionary criteria for the Evaluation Committee. The Contracting Authority consulted key stakeholders during the preparation of the tender and issued it accordingly. Subsequently, it was cancelled and reissued to improve competition, resulting in six offers, three of which were compliant with the mandatory criteria. One was selected as the recommended bidder. Therefore, the tender was certainly not tailor-made, as alleged.

Regarding the third grievance, there was a creative interpretation of the technical criteria. It was argued that clauses 7.23.2 and 7.23.1 allowed for the addition of a system to the main platform post-award. However, the tender specified which tests could be added. One criterion stated that the test should not exceed 10,000 tests in the seventh year, allowing the bidder to use an external system instead of integrating it into the main platform.

If, at a later stage, the supplier determines that the test can be performed on the main platform, this would be possible. Tenderers needed to be aware of this possibility. Clauses 7.23.2 and 7.23.1 applied only to tests below the 10,000 thresholds. Paragraph 44 of the appeal included testimony explaining how numbers were calculated and adjusted to account for increased testing. Dr Buhagiar explained that population growth and increased testing for preventative purposes had significantly increased testing volumes.

The fourth grievance concerned the interpretation of "one day". The General Conditions specify that one day means a calendar day. Witnesses, who were scientists and clinical professionals, testified about the urgency of tests. The tender parameter required one day, and for the hospital, every calendar day is considered a working day.

The fifth grievance, titled "The satisfaction or otherwise of all conditions by the preferred bidder", was unsupported by witness testimony from the appellant. The appellant failed to present evidence to prove that the recommended bidder was truly compliant. As such, the plea remained uncontested.

The sixth plea concerned the deposit paid. The basic principle applied was that the objector should forfeit the deposit.

Final Submissions by Dr Clement Mifsud Bonnici (for Vivian Corporation Ltd.)

Dr Mifsud Bonnici stated that excessive focus on detail caused parties to miss the bigger picture, and he expressed concern that such an appeal had been lodged. In the first grievance, the appellants argued that discipline was required in drafting rejection letters, yet in the third and fourth grievances, where they

themselves were non-compliant with specifications, they argued against strict application. The second grievance alleged that the tender was issued for Vivian Corporation, while simultaneously claiming that Vivian Corporation was non-compliant.

Regarding the first grievance, he relied on the reply to the appeal and referred to the Kazistika of the ECJ case-law, specifically Uniplex, which establishes that the minimum requirement is the provision of essential reasons.

In the second grievance, the appellant failed to raise the exception concerning Vivian Corporation Ltd. having three assets, the argument of the 262, the submitting of a bid under the Governing Rules of Tenders, agreeing with the procurement documentation, and that this grievance had no utility to the appellant.

On Regulation 262, the term "may" is also used in Regulations 270 and 277. Remedies in law are discretionary and subject to conditions, which the appellant failed to consider. The appellant was asking the Board to depart from its position of the last ten years. ECJ case-law, including Grossmann, clarifies that remedies are ineffective if raised at an advanced stage of the tender process. The Board is invited to note both the exceptions and the merit.

Regarding the allegation of a tailor-made tender, it was made without proof. The appellants were the only disqualified bidders. The first tender was withdrawn and reissued, and Mr Brincat confirmed that there were four manufacturers in the market. The appellants failed to take steps to substantiate their claims.

Dr Mifsud Bonnici rejected the argument that a BPQR cannot include mandatory technical specifications or discretion. The Government may request minimum requirements, but better systems may score higher. The tender allowed bidders to calculate scoring points per criterion, and the law requires criteria to be listed in descending order of importance.

The third and fourth grievances did not affect the outcome of the evaluation. The appellants were disqualified on two mandatory criteria. There were two pages about the technical aspect, the conformity with the mandatory specs and the BPQR. Even after scoring, they would not have surpassed Vivian Corporation Ltd. in either score or price.

These issues fell under "manifest error of assessment". Citing *Net Company vs DOC* (367/2025/1), paragraphs 47–48, he stated that evaluation committees should be afforded wide discretion in technical matters. The tender was clear and stated:

"Should any offers not meet any of the minimum specs listed in the tables below, they shall be deemed as non-compliant".

Similarly, in *X Clean vs DOC* (314/2025/1), the court held that where a tender is clear, there is no discretion. The appellant assumed how the tender should be interpreted and attempted to exclude the IGG from the scope through clarifications, without invoking Regulation 262.

Referring to *V.J. Salamone vs DOC* (18/2024/1), paragraph 27, where Vivian Corporation gave the calculations of how many medicines the government had to buy. The Government disqualified this case as he wanted the reservation of medicine that he had made. He quoted:

"Tassew dak li jholl u jorbot, mhumiex l-assunzjonijiet ta' xi parti dwar x'inhu l-aħjar għall-Awtorità Kontraenti, iżda l-ispeċifikazzjonijiet li effettivament jkunu mniżżla fid-dokument."

Clause 7.23.32 was referenced, with testimony confirming that the appellants did not avail themselves of this option. In relation to the fourth grievance, about the 'manifest error of assessment' testimony confirmed that hospital operations run daily, and proportionality could not salvage the appellants' offer.

Mr Brincat had said, that the limitations were there for the purpose of the tender and for concessions for a fully automated system.

The Board has the competence to decide or refuse an appeal under Regulation 276H. Referring to *X Clean vs St Vincent de Paul* (98/19), the court held that the Board is not an inquisitor tasked with finding proof but must assess the arguments presented. The appellants alleged non-compliance without evidence.

Dr Mifsud Bonnici concluded that all grievances should be rejected on grounds of both exceptions and merit, noting that even if the appellants succeeded, they would only gain one point and still rank second.

Final Submission by Dr Kayleigh Borg (for Interested Party – Cherubino Ltd.)

Dr Borg stated that the proceedings revealed contrasting positions among the parties. She referred to Article 207, which empowers the Board to reject, cancel, or accept a tender if it is unclear, and she agreed with the cancellation of the tender.

Final Remarks by Dr Leon Camilleri

Dr Camilleri stated that, following the testimonies of all evaluators and Mr Brincat, the tender parameters and outcome were clear. There was no basis for cancelling the tender, which was vital for the hospital.

Conclusion of the Hearing

With no further submissions, Dr Ana Thomas thanked all parties and formally concluded the session."

The written pleadings as filed by E.J. Busuttil Limited on the 29th September, 2025, together with proof of payment of a deposit in the amount of €50,000.00, wherein it held as follows:

> *"1. By means of the present, E.J. Busuttil Limited (EJB) is complaining in terms of law against the decision of the Contracting Authority to deem EJB as "administratively noncompliant" by means of a letter dated 19th September 2025 in view of the Authority's assertion that EJB was non-compliant with cluases 7.18 and 7.23.3.2 of the Tender Document.*
>
> *2. In its letter, the Contracting Authority decided that EJB should be disqualified and stated as follows:*
>
> > *1. As per Tender Document, mandatory clause 7.18 Bidders are allowed to provide instrumentation that does not form part of the planned fully automated system i.e. instrumentation which will be stand alone as long as the following criteria are fulfilled: b. No more than 10,000 tests/year on the 7th year of each analyte as per workload data in table 2a is affected (Low volume assays). As per technical offer submitted (NOTE 3), you replied "Instrumentation that does not form part of the planned fully automated system is the following: (a.) Two (2) Atellica® NEPH 630. The systems are offered for the execution of one (1) assay: (b.) Only one (1) assay: Immunoglobulin G (IgG) in Cerebrospinal fluid with more than 10, 000 tests/year on the 7th year of each analyte as per workload data in table 2a is affected. The proportion of total workload affected is 0.055percent." Offer not technically compliant since standalone platforms (instrumentation that does not form part of the planned fully automated system) cannot be used for assays with more than 10,000 tests/year on the 7th year of each analyte as per workload data in table 2a.*
> >
> > *2. As per tender document, mandatory criteria, clause 7.23.3.2, "The 3rd party laboratory must meet the following criteria i.e. it must be equipped with analysers, including obligations of back -up systems and kits that conform with the specifications outlined within the same tender; the responsibility for the issuing of the results must devolve to the Pathologist responsible for that lab. The only analytes that can be out - sourced are those for which the turn -around -time is being defined; turn -around times (from receipt of the sample at MDH to receipt of the result by MDH) must be in accordance with the following requirements i.e. pre -eclampsia testing (4 hours), HCG - Tumour Marker (1 day), bone -markers (7 days), Growth hormone (7 days), IGF -1 (7 days), 17 -OH Progesterone (7 days) and Androstendione (7 days) Tenderers are reminded that inability to provide any service on any of these assays is an automatic disqualification." As per technical offer (NOTE 3), bidder replied, "One (1) assay will be sent out of the laboratory for execution. (Table 2a / No 76) which is Total Human Chorionic Gonadotropin (tumour marker). The Test will be sent to HSE laboratory which located here in Malta which follow the specifications listed in the tender. The Turn Around Time to conduct this test at the 3rd Party laboratory will be that of 24 hours excluding Sundays and public holidays."*

This proposal does not meet the mandatory requirements of Clause 7.23.3.2 of the tender, which stipulates a maximum turnaround time of 24 hours for HCG-Tumour Marker testing, without exception. By excluding Sundays and public holidays, the bidder's stated turnaround time cannot guarantee compliance with the required timeframe. Consequently, the offer is deemed not technically compliant and is disqualified in accordance with the tender's mandatory criteria.

3. EJB feels aggrieved by the reasons given by the Contracting Authority, amongst other grounds, and is hereby filing this formal objection to the said decision and evaluation process for the following grounds:

FIRST GRIEVANCE - Inconsistency in the Letter of Non-Compliance

4. Preliminarily, EJB registers that the letter of non-compliance dated 19th September 2025 contains an inconsistency which renders it invalid.

5. At the outset, the letter states that the "company was found to be administratively noncomplianf". This constitutes the decision or "decide" of the Contracting Authority. The reasons or "considerandi" then explain that the reasons are actually technical and not administrative.

6. Even though the Contracting Authority is not a 'court' or 'tribunal', and rules of decide and considerandi are not strictly applicable to it, however, being a decision by an administrative body, which strongly effects the rights and obligations of parties who would have submitted themselves to it, EJB humbly submits that similar rules should be used by way of analogy.

7. In fact, Maltese Courts have repeatedly, and for decades, reiterated that "il giudicato è costituito dal dispositivo e non dalla motivazione della sentenza" (Francesca Aquilina vs Neg. Giuseppe Gasan et, decided by the Court of Appeal in its Superior Jurisdiction on the 5th November 1934). This decision goes on to state that, however, it is logical that the interpretation of the 'decision' should be seen in the light of the considerations (or reasons) given by that Court - only in case of doubt. 8. The same has been stated in a number of other decisions, such as Filippo Farrugia Gay et vs Sac. Angelo Farrugia (decided by the Court of Appeal in its Superior Jurisdiction on the 12th November 1919); Charmaine CAmileri vs Eugenio sive Gino Abdilla et (decided by the Court of Appeal in its Inferior Jurisdiction on the 12th January 2005) and Wisq Nobbli Baruni Lino Testaferrata Bonici vs Nobbli Josephine Testaferrata Bonici (decided by the Court of Appeal in its Superior Jurisdiction on the 12th May 1958). In all of these decisions, amongst others, Maltese Courts have stressed that the decide - that is - the operative part of the decision - can be interpreted by referring to the considerations or the reasons given - albeit only in case of doubt and only in cases where the decide (the operative part) should be interpreted.

9. In this case, it is amply clear, that the operative part not only requires no interpretation - since it speaks of an "administrative non-compliance" - but it is also diametrically contrasting with the considerations (or the reasons) which in turn, speak of technical non-compliance.

10. Since no administrative reasons were given in the 'body' of the decision given by the Contracting Authority, the notice of non-award should be deemed invalid.

11. Moreover, being an 'administrative non-compliance' - Note 3 is not applicable, and instead Note 1 or Note 2 is usually and commonly applied to such administrative matters. In fact, in this

tender, it appears that, save for technical matters, Note 2 applies - which obliges the Contracting Authority to request a rectification or clarification, and further allows changes in the same tender.

12. For this reason, the letter of non-award issued on the 19th September 2025 against EJB should be deemed invalid and consequently, without invoking any other re-evaluation - EJB should be deemed the most advantageous economic operator.

SECOND GRIEVANCE - Preliminarily, and without prejudice to the first grievance, the public call was in reality a tender evaluated by "price", satisfying the administrative and technical conditions, camouflaged as a BPQR procedure, intended to favour ONE economic operator and make those conditions MANDATORY and NOT part of the BPOR procedure

13. EJB immediately (and without hesitation) anticipates ANY argument made by the Contracting Authority and any opposing economic operator that it is fully aware of the provisions of Regulation 262 of the Public Procurement Regulations and which grant any economic operator the right to contest any illegal, irregular or anti-competitive clause or condition before the date of closing of submissions.

14. The grievance of EJB goes well beyond that principle. However, before delving into the substance of this second grievance, EJB is hereby giving a résumé of the facts surrounding this grievance.

15. Both requirements in 7.18 and 7.23.3.2 in the Tender Document can only be satisfied in their entirety by one economic operator - being the preferred bidder - who has an arrangement (potentially exclusive) with Roche Diagnostics. Vivian Corporation, on the other hand, has already many ongoing services being granted to Mater Dei Hospital. The Tender Document, in fact, assumes that certain services (such as a 24/7 laboratory service) can be conducted - the only place doing so, being the public hospital in Malta. Moreover, the equipment required to be supplied by 7.18 (the alternative to the automated solution) albeit a clause seemingly permitting other economic operators (other than Roche Diagnostics) to make their offer, conditions the stand-alone equipment with requirements that can only be met by one economic operator.

16. Now moreover, the tender document, as drafted, contains the core technical requirements curiously indicated as the 'minimum requirements' - whilst only indicating addons as point-carrying elements. In fact at the beginning of Section 3, there is the following quote, which however seems to fail to indicate that the greatest majority of technical conditions are - as the Contracting Authority indicates them - "absolute requirements" - certainly not in line with the normal BPQR procedure: This will be a 7 year tender which will be offered on a basis of the most advantageous system (Best Price to Quality Ratio). Hence it is partly determined on a system of points. Wherever discretional points are awarded, these will be appropriately depicted. The quality to price spread is a 60:40 mix i.e. there is a 40% weighting awarded to price and 60% awarded to exceeding all of the department's mandatory requirements. All other aspects of the tender that are not awarded points are absolute requirements and failure to meet these criteria carries an automatic disqualification.

17. In fact, almost the entire tender is built on this binary evaluation - if you satisfy it, you qualify, if you do not, you are disqualified. On page 9 et sequitur, of the Tender Document, there is a copy of the Evaluation Grid, which basically lists a number of sub-criteria all indicated as 'add-ons' except for the first one which states "Minimum requirements as specified in Sections 3, Technical Specifications" - which states that "Marks for this mandatory will be allotted as either 0% or 100%. If a score of '0' is allotted to any of the criteria - the bid shall be disqualified.".

18. From these "absolute" or "minimum" conditions, some of them - namely the two that are given in the letter dated 19th September 2025 - are tailored for Roche Diagnostics, as represented by the preferred bidder. No other company is able to satisfy these requirements and indeed - EJB is sure that none did - specifically because of the technical specifications that can be satisfied solely by that economic operator.

19. EJB is aware of the provisions of regulation 262, and which allows the so called "precontractual remedy" - but this does not, and should not eliminate any judicial review that this Board should carry out, in order to ascertain that there has been no illegality and no irregularity at all stages of the procurement process.

20. Analogically, the Remedies Directive (89/665/EEC) specifically states that Member States should adopt review procedures that are not only effective and rapid, but that they should guarantee full protection of rights at all stages of the procedure. This principle is certainly not unknown nowadays - and certainly cannot be deemed to have been removed with the modern replacements to this Directive. If an economic operator wishes to identify discriminatory or disproportionate criteria only after the deadline for submission, denying review would undermine effectiveness.

21. EJB humbly submits that this rationale is still visible in Regulation 262 of the Public Procurement Procedure since it specifically states that prospective candidates and tenderers MAY use the remedy before closing date of a call for competition. Nowhere in the regulations, does it state that that candidate is obliged to do so, or that failing to do so would result in a forfeiture of those rights - thus allowing - discrimination, lack of transparency, and irregularities - being the pillars of EU public procurement. In fact this was decided in C-81/98 in the Alcatel Austria case, which states that effective judicial protection is required at every stage of procurement; as well as in C-91/08 Wall AG, which decision stressed that remedies must be available whenever an infringement occurs.

22. Saying that the PCRB is unable to assess and review the discrimination, and irregularities that make up this tender process would mean that the PCRB is being told that, even in the absence to any regulation stating otherwise, transparency and equal treatment should be breached. Logically, if a tender condition is unlawful or discriminatory, that breach continues to taint the procedure even after closing.

23. Indeed, this was the position in C-19/00 SIAC Construction which stated that principles of transparency and equal treatment should govern the whole process, not just the presubmission stages; and in C-199/10 SAG ELV Slovensko, the Court stated that the contracting authority must treat all tenderers fairly at every stage.

24. Now it is also true that EJB 'submitted' itself to the tender document and placed its bid. It did this, though, in the light of the obviously conflicting clauses with respect to the first reason for refusal, and the favourably interpretable clause in connection with the second reason for refusal. For this reason, this grievance must be read in conjunction with the third and fourth grievances.

25. It is also important to state that, should this Board reject this grievance, stating that nonadherence with the remedy or procedure contemplated in regulation 262 (clearly formulated with the word "may") it would be annihilating the concept of an effective remedy to a nontransparent, discriminatory or irregular procedure (or award), contrary to Article 47 of the EU Charter and to

the ECHR and Maltese Constitutional equivalents. The ongoing illegality should make the principle (rather than the remedy) admissible at any stage of the procurement procedure.

26. All of this is being said even within the context of a BPQR procedure, which was not truly BPQR. As stated already, no BPQR process attaches points only to add-ons. Whilst it is understood, that add-ons would characterise a 'better' bidder than another - it does not make sense, nor is it congruent with the idea of a BPQR procedure, to have the entire bulk or core of the tender rendered in a binary fashion, whilst having only the embellishing elements, that would grant different points to the different bidders.

27. EJB humbly submits that the procedure was drafted in this fashion, in order to achieve what indeed, it ended up achieving so far - that is - having Roche Diagnostics and its Maltese representative the preferred bidder.

28. For better or for worse, the so-called pre-contractual remedy cannot be interpreted in a way that precludes the Board from delving into matters that are clearly discriminatory. At the end of the day, it appears that - according to the Contracting Authority, and with relation to the first reason for refusal - despite the existence of clause 7.23.1 and 7.23.2, which textually seems to allow the contractor to change the equipment for which EJB was disqualified in the first reason for refusal, even on the FIRST day of the contract, the contracting authority appears to have interpreted this clause as - nonetheless - requiring the unachievable condition.

29. In addition to all the considerations made above, this interpretation was not privy to EJB prior to the submission date, and therefore should not prohibit EJB from appealing in relation to the discriminatory nature of clause 7.18 (read with 7.23.1 and 7.23.2) should the same interpretation be adopted.

THIRD GRIEVANCE - In substance, and without prejudice the first reason given by the Contracting Authority is unfounded

30. Without prejudice to the above, and in the merits, the clause which is being invoked by the Contracting Authority with respect to the first reason for disqualification is clause 7.18 which states as follows:

> *7.18 Bidders are allowed to provide instrumentation that does not form part of the planned fully automated system i.e. instrumentation which will be stand alone as long as all of the following criteria are fulfilled:*
>
> *a. No more than 8 analytes are affected (excluding HbAlc).*
>
> ***b. No more than 10,000 tests/year on the 7th year of each analyte as per workload data in table 2a is affected (Low volume assays).***
>
> *c. No more than 2 different types of analytical platforms are required for the analysis of these analytes.*
>
> *d. The instrumentation is brand new and fully automated.*

Supplementary marks are awarded for those tenders which most closely meet the requirements of reaching the full service through the main analysers as per Appendix A number 16.

31. It appears that the part which EJB's offer fails to meet is paragraph (b), since it was expressly declared, in EJB's offer, that in the 7 year there will be more than 10,000 tests/year.

32. Now it is true that clause 7.18 falls under "Section 3 - Specifications/Terms Reference" which are, therefore, indicated as 'NOTE 3'.

33. The reason given in the letter of disqualification of 19th September, the Contracting Authority stated that "Offer not technically compliant since standalone platforms (instrumentation that does not form part of the planned fully automated system) cannot be used for assays with more than 10,000 tests/year on the 7th year of each analyte as per workload data in table 2a."

34. In its offer, EJB stated that "Instrumentation that does not form part of the planned fully automated system is the following: (a.) Two (2) Atellica® NEPH 630. The systems are offered for the execution of one (1) assay: (b.) Only one (1) assay: Immunoglobulin G (IgG) in Cerebrospinal fluid with more than 10, 000 tests/year on the 7th year of each analyte as per workload data in table 2a is affected. The proportion of total workload affected is 0.055percent."

35. Whilst this may, prima facie, seem as an admission of non-compliance, clauses 7.23.1 and clause 7.23.2 are to be interpreted as allowing the economic operator to 'deviate' from this clause. It is also pertinent to state that even these clauses (namely 7.23.1 and 7.23.2) are indicated as 'mandatory' by the Contracting Authority - and they state as follows:

> *7.23.1 For those assays where the annual consumption is predicted to be less than 10,000 by year 7 of the contract period (low-volume assays), the provided fully automated analytical platform need not be a bench-top but could be free-standing. However, if the annual consumption >5000 and < 10,000 an identical back-up system must be provided. It is required that any such equipment can be fully interfaced with the Laboratory Information System. If the technology exists for interfacing of the equipment with the track system this will be considered a mandatory requirement.*
>
> *7.23.2 If during the term of the contract a kit becomes available for analysis on the main analytical module, supplier will be allowed to provide this alternative. If the supplier in agreement with the contracting authority, decides to shift the analysis from the secondary platform onto the main platform, and this leads to the decommissioning of the secondary platform, the lease will be adjusted pro-rata to reflect this change.*

36. It therefore appears that these clauses, contrary to what clause 7.18 states, allow the economic operator to substitute the kit in such a way that the analysis is shifted from the secondary platform onto the main platform.

37. It is also important to mention that the impacted analyte is trivial or de minimis in volume (~0.055% of total workload). Public procurement review fora consistently assess whether deviations are material and capable of distorting competition or the core deliverable. A purely quantitative threshold should not be applied mechanistically where the impact is negligible and controllable via contract management. This submission is also being made in the light of the previous grievances made above.

38. If clause 7.23.1 and 7.23.2 were drafted in order to 'allow' other economic operators (besides Roche Diagnostics or Vivian Corporation) to bid for this tender, then such conditions should actually allow such bidders in complying with one of them - since the Contracting Authority was fully aware that only Roche Diagnostics could comply with the requirement of having a particular assay on the automated system, whilst all others, as long as compliant with the rest of the requirements, would have to do so on a free-standing analytical platform. The tender itself, therefore, anticipates post-award migration to the main module as kits become available. Clause 7.18 should be read harmoniously with 7.23.1-7.23.2. A rigid pre-award exclusion frustrates that design and chills innovation over a 7-year horizon.

39. EJB anticipates from now that the Contracting Authority might state that, whilst 7.18 is a condition intended for the tenderers, 7.23.1 and 7.23.2 are intended for the contractor - thus making them a performance condition, or a post-award condition, rather than a tendercondition.

40. This Board has, in a number of occasions, stated that if that condition forms part of the tender document, and if that condition is indicated to be complied with in the same tender document, then it is also a tender condition.

41. In Case 1786 of the Public Contracts Review Board delivered on the 19th September 2022 it was stated as follows:

> *This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witness duly summoned, will now consider Appellant's grievances. a) Terms used - "Contractor" vs "Prospective Bidder" - Initially this Board will delve into the argumentation as presented by Appellant whereby it is a non-contested fact that Clarification Note 2 uses the term "Contractor" and therefore, in essence, the reasoning of the Appellant is that any requirements emanating from such clarification note would only be 'required' post award of contract. This Board will outright declare that it does not agree with such a viewpoint. Page 31 of the tender dossier uses the term 'contractor ad nauseum and therefore, this Board opines, is not a term which is used for the first time in the clarification note 2 that could have made such interpretation ambiguous. It is also this Board's opinion that clarification note 2 is very clear and that within it, the term "Contractor" is also to include prospective bidder when it states "This method statement shall be subject to prior approval by the Contracting Authority." (bold & underline emphasis added) The 'method statement' is a document which was required by all prospective bidders at bidding stage.*
>
> *b) Technical specifications vs Performance conditions - without the need to repeat itself, this Board has already provided reasoning above that the term 'contractor' in clarification note 2 is also to be understood to include economic operators taking part in such tender procedure. Therefore, it goes without saying that any requirements in clarification note 2 are to be taken as technical specifications, i.e. to be part of economic operators bid for eventual technical compliance assessment. Moreover, it is imperative to point out that clarification note 2 also included the term "..... a clarification note which is construed to form an integral part of the tender document." Therefore, any requirements set by it need to be complied with in order for a bid to be technically compliant.*

42. EJB is therefore pre-empting any defence raised by the counterparty in the sense that performance conditions must be adhered to even at bidding stage. In this sense, therefore, the condition of 7.23.1 and 7.23.2 are also applicable pre-award - and therefore, since incompatible, the most favourable interpretation to the bidder must be applied.

43. This means that truly, although the Contracting Authority's interpretation of clause 7.18 would disqualify EJB, 7.23.2 allows EJB to qualify, since this would allow EJB to change the equipment or specifications for which 7.18 applies to another one in terms of 7.23.2. Since the interaction between clauses 7.18, and 7.23.1 and 7.23.2 is reasonably debatable, the interpretation must favour competition and bidders, not exclusion.

44. Finally, and also in relation to this grievance, EJB submits that the values of 10,000 tests/year is a grossly inflated "estimation". It is, as will be amply explained in this appeal, that the values given by the Contracting Authorities are merely inflated 'predictions'. Even the Contracting Authority itself is relying on predictions which are grossly inflated and absolutely overestimated, as the anticipated growth of approximately 10% every year over the duration of the tender period (condition 1.1, page 27) is dared to be considered unconnected with the reality at hand based on publications and reviews (ie. Measurement of IgG in CSF is clinically relevant when investigating neurological and neuroinflammatory diseases (e.g., multiple sclerosis, GBS, CIDP, meningitis, neurosyphilis)).

45. For all these reasons, and without prejudice to the other grievances, EJB humbly submits that the first reason for refusal should be revoked. FOURTH GRIEVANCE - Also in the merits, and also without prejudice, the second reason given by the Contracting Authority is also unfounded

46. With respect to the second reason given by the Contracting Authority, the relevant condition was 7.23.3.2 which states:

The 3rd party laboratory must meet the following criteria i.e. it must be equipped with analysers, including obligations of back -up systems and kits that conform with the specifications outlined within the same tender; the responsibility for the issuing of the results must devolve to the Pathologist responsible for that lab. The only analytes that can be out -sourced are those for which the turn - around -time is being defined; turn around times (from receipt of the sample at MDH to receipt of the result by MDH) must be in accordance with the following requirements i.e. pre -eclampsia testing (4 hours), HCG - Tumour Marker (1 day), bone -markers (7 days), Growth hormone (7 days), IGF -1 (7 days), 17 -OH Progesterone (7 days) and Androstendione (7 days) Tenderers are reminded that inability to provide any service on any of these assays is an automatic disqualification...

47. To this requirement EJB answered:

> *"One (1) assay will be sent out of the laboratory for execution. (Table 2a/ No 76) which is Total Human Chorionic Gonadotropin (tumour marker). The Test will be sent to HSE laboratory which located here in Malta which follow the specifications listed in the tender. The Turn Around Time to conduct this test at the 3rd Party laboratory will be that of 24 hours excluding Sundays and public holidays."*

48. To this submission, the CA stated:

This proposal does not meet the mandatory requirements of Clause 7.23.3.2 of the tender, which stipulates a maximum turnaround time of 24 hours for HCG-Tumour Marker testing, without exception. By excluding Sundays and public holidays, the bidder's stated turnaround time cannot guarantee compliance with the required timeframe. Consequently, the offer is deemed not technically compliant and is disqualified in accordance with the tender's mandatory criteria.

49. Whilst it is true that the requirement stated that the tumour marker testing is to be ready in 1 day without specifying whether it is one working day or one calendar day, it is also true that EJB specifically stated that the 24hrs exclude Sundays and public holidays.

50. It is imperative to note that the requirement set under clause 7.23.3.2 of the tender does not specify whether the day is a calendar day, or a working day. In view of this, the principle of the most favourable interpretation for the bidder should be adopted, especially when a submission in good faith, as that of EJB has been clearly identified.

51. It is obvious that no private third-party laboratory would be ready to conduct these tests - especially since the test in question is NOT of an urgency that requires a strict 24 hour result - on Sundays or Public Holidays. Requiring an uninterrupted 'calendar day' - or - more precisely (if that is what the Tender Document required) - 24 hours, for the test for the HCG tumour marker across Sundays and public holidays is impracticable.

In Table 5 of page 45, the test number 74 (HCG (tumour marker)" is clearly stated by the tender authorities not to be considered as "urgent", but only as "ROUTINE"; procurement rules must be applied in a way that preserve competition and realistic market capacity.

52. Moreover, it is pertinent to note that the Tender Dossier does not state 24 hours, thus outlining a more precise timeframe - but states one day. Should the tender dossier (as for other tests) have mentioned the specific hours required, EJB would have been construed to abide by the hours. In this case, since the requirement is that of a day, it is obvious that the requirement one that should be in line with employment laws and the employment conditions of third party laboratories in Malta. is

53. It is obvious - from what EJB is understanding - that the preferred bidder is delegating this 'problem' to Mater Dei Hospital - since it is already an incumbent operator on the public health institution in Malta.

54. By way of interpretation, in terms of ***Regulation 1182/71 of the Council****, it is expressly stated that "Where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day" (****Article 3 (4)****). In this sense, the EU Regulation states that when a period is expressed in "days" (as is the one subject to this matter), then it will not include Sunday or Saturday, or Public Holidays. 55. EJB went further than this, and included Saturdays. EJB is aware that this Regulation is applicable to acts of the Council or Commission passed pursuant to the Treaty, but it should definitely be taken as an analogical interpretation even in this context, which at the end of the day, relates to procurement, which is a subject matter strongly regulated by EU law.*

56. For these reasons, due to the ambiguity, the analogical interpretation, and the principle that doubts should always favour the bidder, EJB strongly submits that this second reason for refusal should be revoked.

FIFTH GRIEVANCE - The satisfaction, or otherwise of all conditions by Preferred Bidder

57. Simultaneously with this letter of objection, EJB is requesting a disclosure of the evaluation report made for its bid, as well as those made for the preferred bidder.

58. EJB has the right, and is therefore interested in knowing what the conclusions made by the Contracting Authority are in relation to the grounds which it gave EJB for its refusal.

59. EJB does not believe, other than a usage of the public sector to satisfy the conditions, that the preferred bidder could satisfy the conditions for which EJB appears to have been disqualified or any other conditions stated in the tender. (Not only the ones for which EJB has been disqualified)

60. For these reasons, EJB is also contesting the bid made by the preferred bidder in its entirety, and will be in a position to make further submissions and raise further grievances as soon as the Contracting Authority has disclosed the said evaluation reports and evaluation grids of both EJB and those of the preferred bidder.

SIXTH GRIEVANCE - The Deposit

61. Finally, and this absolutely without prejudice to the above grievances, should the Board unfavourably consider all of the above grievances, it should not withhold the deposit made by EJB.

62. First of all, the deposit is a considerable one that should not be taken lightly, and in any case, the grievances made by EJB are not frivolous or vexatious - to the contrary - EJB believes that the grievances are founded, and merit the revocation of the award granted to the preferred bidder, or the revocation of the letter of non-award as explained above.

REQUEST

Therefore, in view of the above and for other reasons that may be adduced at law, together with any other reasons that may result in the course of these proceedings, EJB respectfully requests this Board to:

i. take the necessary temporary measures so as to prevent further prejudice to EJB, including, inter alia, by ordering the suspension of the Contracting Authority's decision dated 19th September 2025 in virtue of which the abovementioned contract was awarded to Vivian Corporation Limited.

ii. orders that the Contracting Authority's decision dated 19th September 2025 is invalid and considers it as ineffective for all purposes at law.

iii. alternatively, and without prejudice to the second request, orders that the Contracting Authority's decision dated 19th September 2025 be revoked and confirms that EJB has satisfied all administrative and technical requirements of the tender.

iv. orders that the contract be awarded to EJB as the most advantageous bidder satisfying all administrative and technical criteria of the tender, or in default, orders that EJB's offer is declared fully compliant, is reintegrated in the evaluation process and that a fresh evaluation is carried out.

v. further orders that EJB's deposit paid pursuant to these procedures is reimbursed."

The written joint reply as filed by the Department of Contracts and the Central Procurement and Supplies Unit dated 8th October, 2025 (with a stamp dated 9th October, 2025) (hereinafter the referred to as the 'Contracting Authority' or 'CPSU') wherein it held as follows:

> *"Reply of the Department of Contracts (DOC) as the Central Government Authority, and of the Central Procurement and Supplies Unit (CPSU) on behalf of the Department of Health as the Contracting authority to the reasoned application lodged by E.J Busuttil Ltd (the objector).*
>
> *A call for tenders for the for the Supply of Fully Automated System for the Analysis of Biochemical Tests was issued on the 10th of November 2024*
>
> *A number of bids were submitted and following an evaluation process the tender was recommended for award to Vivian Corporation Limited (the recommended bidder).*
>
> *The award criteria was on a Best Price Quality Ratio (BPQR) and the tender contained a number of mandatory criteria and optional criteria.*
>
> *The Objector's offer was rejected on the basis of technical compliance, with the reason being the below:*
>
> *1. As per Tender Document, mandatory clause 7.18 Bidders are allowed to provide instrumentation that does not form part of the planned fully automated system l.e. instrumentation which will be stand alone as long as the following criteria are fulfilled: b. No more than 10,000 tests/year on the 7th year of each analyte as per workload data in table 2a is affected (Low volume assays). As per technical offer submitted (NOTE 3),you replied "Instrumentation that does not form part of the planned fully automated system is the following: (a.) Two (2) Atellica® NEPH 630. The systems are offered for the execution of one (1) assay: (b.) Only one (1) assay: Immunoglobulin G (IgG) in Cerebrospinal fluid with more than 10, 000 tests/year on the 7th year of each analyte as per workload data in table 2a is affected. The proportion of total workload affected is 0.055 percent." Offer not technically compliant since standalone platforms (instrumentation that does not form part of the planned fully automated system) cannot be used for assays with more than 10,000 tests/year on the 7th year of each analyte as per workload data in table 2a.*
> *2. As per tender document, mandatory criteria, clause 7.23.3.2, "The 3rd party laboratory must meet the following criteria i.e. it must be equipped with analysers, including obligations of back-up systems and kits that conform with the specifications outlined within the same tender; the responsibility for the issuing of the results must devolve to the Pathologist responsible for that lab. The only analytes that can be out-sourced are those for which the turn-around-time is being defined; turn-around times (from receipt of the sample at MDH to receipt of the result by MDH) must be in accordance with the following requirements ie. pre-eclampsia testing (4 hours), HCG-Tumour Marker (1 day), bonemarkers (7 days), Growth hormone (7 days), IGF-1 (7 days), 17-OH Progesterone (7 days) and Androstendione (7 days) Tenderers are reminded that inability to provide any service on any of these assays is an automatic disqualification." As per technical offer (NOTE 3), bidder replied, "One (1) assay will be sent out of the laboratory for execution. (Table 2a/ No 76) which is Total Human Chorionic Gonadotropin (tumour marker). The Test will be sent to HSE laboratory which located here in Malta which follow the specifications listed in the tender. The Turn Around Time to conduct this test at the 3rd Party laboratory will be that of 24 hours excluding Sundays and public holidays."*

This proposal does not meet the mandatory requirements of Clause 7.23.3.2: of the tender, which stipulates a maximum turnaround time of 24 hours for HCG-Tumour Marker testing, without exception. By excluding Sundays and public holidays, the bidder's stated turnaround time cannot guarantee compliance with the required timeframe. Consequently, the offer is deemed not technically compliant and is disqualified in accordance with the tender's mandatory criteria.

The objector felt aggrieved with the decision of the evaluation committee and filed its objection.

DOC and CPSU humbly disagree with the grievance raised and are hereby presenting their reply.

Submissions

On the First Grievance: Inconsistency in the Letter of Non-Compliance

1. *In this grievance the objector states that there is an inconsistency in the rejection letter and that as a consequence the letter of award should be considered as invalid.*

2. *The objector builds this argument on an interpretation of a number of judgments of the Civil Courts.*

3. *Both the objector and this Honourable Board know very well that the Contracting Authority and the Department of Contracts are not judicial authorities let alone superior courts, and thus the rules of civil procedure being cited are not applicable to the case in question.*

4. *Moreover, and without prejudice to the above the objector makes a number of suppositions on what constitutes the decide and what constitutes the body of the decision.*

5. *Without prejudice to the above, DOC and CPSU submit that the lengthy reason for rejection was clearly written so much so that the objector filed an appeal on six grievances.*

6. *The reason for rejection is clearly a technical, as ex admissis declares by the objector, so much so that the objection filed is predominantly of a technical nature.*

7. *Moreover and without prejudice to the above DOC and CPSU submission that in one sentence in the letter of rejection, there is mistakenly written that the offer was administratively not compliant, certainly does not annul and does'not void the whole rejection letter, considering especially that the reasons for rejection were very clear.*

8. *In a different situation where there was a mistake in the letter of rejection since the title for the tender used was different than that for which the rejection was being sent, a mistake which is of a more serious nature, this Honourable Board still upheld the validity of the rejection letter! This was done in case 1660 decided on the 21st of December 2021 where this Board stated that:*

   The Board upholds this grievance of Appellant where it makes reference to the correct disclosure of the 'title' / 'subject matter' of the Rejection Letter. However, this Board notes that the reference number and reasons for rejection provided were correct and therefore the Appellant

had enough information to base its appeal. Hence, this Board does not uphold the part of the grievance whereby the Appellant is requesting this Board to declare this Rejection Letter as null and void.

9. *Moreover, with the above cited decision, this Honourable Board confirmed that what truly matters is the reasons for rejection, and these reasons have been provided in a very clear manner.*

10. *For the above reasons, DOC and CPSU submit that this first grievance ought to be rejected. On the Second Grievance: The Public Call was in reality a tender evaluated by price camouflaged as a BPQR intended to favour one economic operator*

11. *The award criteria for this tender was BPQR and not lowest price. This has been clearly demonstrated in the tender document with a 60:40 ratio in favour of the technical criteria as per clause 6. Criteria for award in section 1, Instruction to Tenderers*

12. *The tender document included a number of mandatory criteria and a number of addon criteria. The objector is alleging that the mandatory criteria were set to favour a particular supplier, an allegation which the Contracting Authority strongly rebuts.*

13. *The mandatory criteria are imposed in the tender so that the contracting authority ensures that its essential requirements are met, and then any additional or optional requirements would add value to the economic operator's offer thereby contributing to the selection of the most economically advantageous offer on the basis of the BPQR ratio.*

14. *The objector anticipated the defence of the DOC and CPSU in this same grievance when stating that the grievance goes beyond the principle of contesting the specifications before closing time for offers in terms of regulation 262 of the Public Procurement Regulations.*

15. *DOC and CPSU understand well' the above-mentioned anticipation, and this: is because any difficulty relating to allegedly discriminatory or illegal conditions is to be addressed before closing time for offers. Once an economic operator renounces to its right to present a remedy before closing time in terms of regulation 262 of the Public Procurement Regulations, it is presumed that all the conditions of the tender have been accepted, and the economic operator would be duty bound to fulfil all mandatory criteria. The objector had ample time to ask for clarifications as per protocol and indeed chose to do so in certain matters but failed to seek clarification and/or guidance on the 2 issues for which he is now objecting.*

16. *This has been also the position taken by our Court of Appeal. In fact in the decision of the 10th of January 2023 in the names All Clean Services Limited v. Ministeru ghall-Edukazzjoni et, the Court states that:*

7. Din il-Qorti taqbel ma' dak li osserva I-Bord li kull min kien interessat,jekk ma kienx jaqbel ma' xi kundizzjoni fis-sejha, skont irRegolamenti applikabbli, seta' agixxa, bilmezzi li jaghtuh l-istess Regolamenti, biex jipprova jimpunja dik jew dawk il- kundizzjonijiet. Mhux lecitu li l-oblatur ihalli l-proċess ghaddej, u warą, jekk jitlef ilkuntratt, jallega li kundizzjoni fis-sejha ma kellhiex tkun hemm ghax "kompletament irrilevanti".

8. Hu veru li l-kundizzjonijiet tax-xogħol tal-ħaddiema huma regolati bligijiet oħra, u hemm regolamenti li jaghtu poter lill-awtorità kompetenti tissindika fuq dawk ilkondizzjonijiet, però, dan kien ikun argument li kellu jitressaq fl-istadju preparatorju għall-proċess tal-għażla tal-oblatur preferut. Jekk ir-rekwiżit ta' ftehim kollettiv huwa parti mill-kundizzjonijiet li kellhom jiġu sodisfatti minn kull oblatur, is-soċjetà appellanti kellha taderixxi ruħha ma' dak rikjest. Din il-Qorti osservat diversi drabi li dak rikjest fid-dokumenti tas-sejħa għall-offerti jridu jiġu kollha sodisfatti.

17. *Similarly, in the decision of the Court of Appeal in the names Vassallo Builders Ltd v. Wasteserv Malta Ltd et decided on the 6th of May 2025 it was stated that:*

... jekk VBL dehrilha li r-rekwiżit inkwistjoni kien illegali, hija setgħet tattakka dak ilkriterju fl-istadju ta' qabel l-għeluq tas-sottomissjoni tal-offerti, u dan bilmod kif imsemmi fRegolament 262 Regolamenti dwar l-Akkwist Pubbliku. La hija naqset milli taghmel hekk, u s-sejħa għall-offerti kienet tobbligaha tressaq kopja tal-«Final or Provisional Acceptance Certificate or equivalent», mela allura, VBL kienet marbuta li tressaq tali dokumentazzjoni, anke jekk dehrilha li dik id-dokumentazzjoni ma kinitx mehtieġa minħabba s-setgħat tal-kumitat tal-evalwazzjoni li jwettaq ilverifiki kollha mehtieġa, jew inkella għaliex dak il-kumitat seta' jsib linformazzjoni minn fuq 1- internet.

18. *Without prejudice to the above, DOC and CPSU would like to reply to the allegations made by the objector. The specifications were certainly not drafted for Vivian Corporation or for Roche Diagnostics, so much so that there were 3 offers submitted by two different economic operators which fulfilled the mandatory requirements of the tender. Another economic operator also fulfilled the criteria which objector failed to meet but was rejected for other reasons.*

19. *In his letter of objection, the bidder raises a series of allegations regarding the nonmandatory criteria, seemingly to cast doubt on their clarity and to suggest ambiguity in the relevant clauses. This assertion is unfounded, as the clauses in question are clear and unambiguous. Contrary to what the objector is stating, the non-mandatory clauses were included to enable wider participation in the tendering process. These clauses were intended to allow for certain tests to be conducted externally from the main system or even outsourced in some instances, thereby attracting bidders having platforms which do not cover all analytes. These options are not mandatory in nature. Economic operators may choose whether or not to avail themselves of such options without the risk of disqualification, and in contrary to what is stated in the objection, the purpose of these provisions is to increase participation and not to limit it.*

20. *From the first to the second issue of the tender, the requirements under these clauses were broadened as a result of a series of bidder clarifications. By way of example, the maximum number of analytes permitted on an alternative platform was increased from six to eight following a clarification by a bidder who pointed qut that such limit would exclude him and potentially others from participation. The process between the first and second issue extended over several months, during which the objector never raised any objection or clarified regarding the 10.000-test limit or the 1 day turnaround time for tumour marker HCG*

21. *Both the recommended bidder and the second-ranked bidder invoked these clauses 7.18 (invoked for an alternative platform) or clause 7.23.3.2. (invoked to outsource a test) to*

accommodate the test list, while, by contrast, one ofthe bidders, submitted two offers that did not necessitate reliance on either clause 7.18 or clause 7.23.3.2.

22. *The objector asserts that only Roche is capable of meeting the "absolute requirements" when referring to clause 7.18 or clause 7.23.3.2.. If the objector, by referring to 'absolute requirements,' is alluding to the criteria listed under Clause 7.18, this interpretation is incorrect. In fact, two separate bidders made ususe of these criteria in order to offer an alternative platform for tests which were not available on the main platform, while a third bidder did not need to rely on Clause 7.18, as their main platform was capable of accommodating all analytes listed. Furthermore, Clause 7.23.3.2 is not exclusive to Roche, in fact, the objector himself invoked this clause to outsource a test to a third-party laboratory.*

23. *For the above stated reasons, this second grievance ought to be rejected as well*

On the Third Grievance: The First Reason given by the Contracting Authority is unfounded.

24. *The contracting authority stated that "the offer is not technically compliant since standalone platforms (instrumentation that does not form part of the planned fully automated system cannot be used for assays with more than 10000 tests/year on the 7th year of each analyte as per workload data in table 2a)."*

25. *The Objector offered one test on an alternative platform which will have more than 10,000 tests per year in quantity on the 7th year.*

26. *The objector argues that clauses 7,23.1, and 7.23.2 allow for a deviation from clause 7.18. This is not true and very misleading. DOC and CPSU submit that there is no ambiguity between clauses 7.18, 7.23.1, and 7.23.2, as each provision addresses a distinct scenario.*

27. *Clause 7.18 sets out the criteria under which bidders may provide alternative platforms for tests not available on the main platform. Clause 7.18 specifies mandatory criteria if bidders choose to offer alternative platforms. Only if the bidder will be using clause 7.18 to offer an alternative platform, then clause 7.23.1 and 7.23.2 can be used. Clause 7.23.1 grant bidders further flexibility as to the type of equipment that may be offered, expressly allowing such platforms to be either benchtop or free-standing, whilst clause 7.23.2, permits bidders to transfer tests from the alternative platform to the main platform during the contract period, should this become available.*

28. *This mechanism reduces the supplier's costs of maintaining a separate analytical platform and facilitates the consolidation of tests onto a single system.*

29. *The objector argues that EJB was disqualified based on its submission of an alternative platform, of which, under Clause 7.23.2, can be potentially modified during the contract period. However, the fact that the tender allows tests carried out on alternative platforms, to be subsequently integrated into the main system (as per clause 7.23.2) does not imply that CPSU can accept alternative platforms if the number of tests exceeds 10,000 per year in the*

seventh year. More importantly, the reason for disqualification was that, from the outset, Clause 7.18 was not satisfied due to the projected number of tests exceeding 10,000. Offers are evaluated based on the conditions at the closing date of the tender, not on potential changes or developments during the contract period.In paragraph 37 the objector also states that the impact of the test "CSF IgG" is negligible due to its low numbers. However, the laboratory does not assess impact on the basis of test volumes but rather on the clinical significance of the analysis. Since CSF samples are known to be precious, of limited volume, arid difficult to obtain, it is imperative that the laboratory maximises the use of the small quantity available. Accordingly, in those situations where CSF IgG is requested together with other parameters, it is essential that all tests be performed on the same platform.

30. *This approach avoids splitting the sample across multiple systems, reduces the risk of sample exhaustion or handling errors, ensures consistency of results, and safeguards the clinical reliability of the analysis for the patient's benefit.*

31. *In addition to the above, as already submitted in the reply to the second grievance, the objector always had the option to file an application in terms of regulation 262 of the PPR and complain on the quantities indicated in the tender and not argue at this stage that the amount of tests is de minimis!*

32. *DOC and CPSU submit that the question as to whether clauses 7.23.1 and 7.23.2 are tender conditions or contractual .conditions is superfluous. All tender conditions become contractual conditions, and all contractual conditions are in the tender as the bidder would need to know the terms of the contract before bidding. The contractor making use of an external platform will have the right to make use of such clauses.*

33. *Clause 7.23.1 simply provides flexibility regarding the type of equipment offered and the need to provide a backup system for the alternative equipment, a requirement which can be fulfilled by everyone. Clause 7.23.2, in turn, permits bidders to transfer tests from the alternative platform to the main platform during the contract period, a possibility likewise open to all bidders. The objector is, in a very creative way, trying to interpret these clauses in a bidding/pre-award scenario, however it is very clear that these clauses will be referred to and applied, especially clause 7.23.2, at contract execution stage.*

34. *For the above stated reasons, this third grievance ought to be rejected as well.*

On the Fourth Grievance: The Second Reason given by the Contracting Authority is unfounded.

35. *This grievance revolves around the interpretation of the word 'day'.*

36. *Clause 7.23.3.2 provides a number of turnaround times for different tests, if the contractor would be using a third party laboratory for particular tests, including a one day timeframe for HCG Tumour Markers.*

37. *The objector answered to this specification in the Technical offer that "the turn around time to conduct this test at the 3rd party laboratory will be that of 24 hours excluding Sundays and public holidays.'*

38. *The noncompliance'was recommended since the tender document did not provide for any exception for Sundays and public holidays, but just used the word 'day'.*

39. *As this Honourable Board appreciated, the hospital operates continuously on a 24/7 basis, consistent with section 1.10 of this tender document, which specifies that "Suppliers must be capable of providing comprehensive service coverage 24 hours a day, 7 days per week for the duration of the tender."*

40. *It is a known fact that third-party laboratories may offer on-call services for tests requested outside normal office hours. The solution proposed by the bidder does not meet the tender requirements.*

41. *The Cambridge dictionary dictionary defines the word day as 'a period of 24 hours, especially from twelve o'clock one night to twelve o'clock the next night' whilst the Oxford Dictionary defines day as "In early use: the period of time between one sunrise and the next. Later: a period of 24 hours, as reckoned from a definite:or given point (conventionally midnight); a period corresponding to one complete revolution of the earth on its axis."2*

42. *The objector argues that the tender simply stated one day and not 24 hours, and thus attempts to make the argument that its offer fulfils the specification. Other than the argument that what is obvious need not be stated, DOC and CPSU submit that 'all tenderers must participate in tender processes with the utmost good faith. If the objector was not certain on what the duration of a day was according to the tender, the objector could have always submitted a request for clarification and the contracting authority would have further clarified.*

43. *With reference to the argument that Table 5 indicates that the tumour marker HCG as 'routine' rather than 'urgent', and thus the results are not required in 24 hours, CPSU submit that this is completely not true and unfounded. Had this test been requested as urgent, the turnaround time would have been one hour, not one day, and this as will be further explained by the clinicians during the hearing.*

44. *Furthermore, the HCG tumour marker is routinely requested in the context of organ transplantation, including cadaver-to-live recipient procedures. In such cases, the provision of timely results, regardless of Sundays or public holidays, is critical to ensure organ viability and organ recipient ṣafety and the effectiveness of the transplant process.*

45. *The service being. requested under this tender comes with cléarly defined specifications that must be met by the bidder. It is not the responsibility of the contracting authority to adapt its operations to accommodate the work practices of any third-party laboratory engaged to provide this service, but it is the duty of the bidder to comply with the specifications once confirmed.*

46. For the above stated reasons, this fourth grievance ought to be rejected as well.

On the Fifth Grievance: The satisfaction, or otherwise of all conditions by Preferred bidder

47. DOC and CPSU have disclosed to date all information which had be disclosed according to law.

48. As the objector knows very well, the evaluation report is the remit of the evaluation committee and is never disclosed to the bidders for reasons of commercial sensitivity and confidentiality.

49. Moreover, the review of the evaluation will be done by this Honourable Board and not by the objector and the Board has a copy ofthe evaluation report.

50. Moreover, the rejection of the objector's offer has already been disclosed in the letter of rejection, and the objector naturally already possesses its own technical offer.

51. The objector in this grievance also contradicts itself by stating that the preferred bidder could not satisfy the conditions for which the objector has been disqualified or other conditions in the tender,when earlier it has been making submissions that the tender was drafted for the recommended bidder's benefit.

52. The objector here întends to make a fishing expedition by leaving an open window to contest the bid of the recommended bidder. DOC and CPSU submit that this is noti permissible as regulation 270 of the PPR provides that the objection "shall contain in a very clear manner the reasons for their complaints."

53. DOC and CPSU submit that the evaluation process was properly conducted and the recommendation was made after the evaluation committee confirmed that all tender criteria were met and after giving the necessary points in the BPQR process.

54. For the above stated reasons, this fifth grievance ought to be rejected as well.

On the Sixth Grievance: The Deposit

55. DOC and CPSU submit that as a general rule if an appeal is not upheld the deposit should be forfeited. In this case DOC and CPSU insist that if the requests are not. upheld the deposit should also be forfeited, especially since it is evident that the complaints of the objector are of a pre-contractual nature and should not have been raised at this stage of the procurement process.

56. Without prejudice to the above DOC and CPSU do not object to the full refund of the deposit if the objection is withdrawn before the sitting.

DOC and CPSU hereby reserve their right to present further evidence and submissions both written and orally to further substantiate their reply in relation to the said objection throughout the hearings.

In view of the above, the objection lodged by the objector ought to be rejected in full,. whilst the decision of the Evaluation. Committee confirmed, and the relevant deposit forfeited."

The written reply as filed by Vivian Corporation Limited on the 9th October, 2025 (hereinafter the 'Preferred Bidder') wherein it held as follows:

"1. We have been instructed by VIVIAN Corporation Limited ("VIVIAN") to lodge this reply in terms of Regulation 276 of the Public Procurement Regulations (the "PPR") in connection with the above-captioned Tender and in response to the appeal lodged by E.J. Busuttil Limited ("EJ Busuttil") on 29 September 2025 (the "Appeal").

A. EXECUTIVE SUMMARY

2. EJ Busuttil's Appeal is hopeless and should be rejected. EJ Busuttil's bid has been, correctly, rejected because it was not compliant with the technical specifications. EJ Busuttil knew its bid was technically non-compliant and its bid contains unequivocal admissions of such.

3. EJ Busuttil has no hope that its challenge to the reasons for rejection will be successful. So much so, that the main grounds of Appeal, being the third and fourth ground of appeal, are buried within the Appeal behind a textbook smokescreen.

4. EJ Busuttil is now at, the very last minute, arguing that certain conditions in the Tender were discriminatory in favour of VIVIAN. This claim is false because at least 1 other bidder complied with all technical specifications.

5. In any case, this claim is inadmissible and of no utility to EJ Busuttil at this late stage. EJ Busuttil deliberately failed to exercise the remedy in terms of Regulation 262 of the PPR. Therefore, EJ Busuttil cannot now re-open the conditions of the Tender.

6. The Appeal also attempts to revoke the letter of rejection on a minor clerical error which had no impact on the effectiveness of EJ Busuttil's remedy in terms of Regulation 270 of the PPR. This claim is without merit.

7. Unfortunately, the Appeal will unnecessarily delay the implementation of a project which is of strategic national importance to Malta's national health service.

8. VIVIAN will set out its reply as follows:

FACTUAL BACKGROUND
FIRST GROUND OF APPEAL: EJ BUSUTTIL'S RIGHT TO AN EFFECTIVE REMEDY REMAINS UNPREJUDICED
INADMISSIBILITY OF THE SECOND GROUND OF APPEAL: EJ BUSUTTIL'S GRIEVANCE IS TIME-BARRED, AND IN ANY CASE, WAIVED AND OF NO UTILITY
SECOND GROUND OF APPEAL: ON THE MERITS, THE TENDER IS NOT DISCRIMINATORY

THIRD GROUND OF APPEAL: EJ BUSUTTIL OFFERED AN ASSAY WHICH EXCEEDS 10,000 TESTS PER YEAR BY YEAR 7
FOURTH GROUND OF APPEAL: EJ BUSUTTIL OFFERED A MARKER WHICH WOULD NOT HAVE BEEN TESTED ON SUNDAYS AND PUBLIC HOLIDAYS
INADMISSIBILITY OF FIFTH GROUND OF APPEAL: EJ BUSUTTIL'S GRIEVANCE IS NOT CLEAR
FIFTH GROUND OF APPEAL: EJ BUSUTTIL'S GRIEVANCE IS FALSE AND INCONSISTENT
SIXTH GROUND OF APPEAL: THE DEPOSIT SHOULD NOT BE REFUNDED

B. FACTUAL BACKGROUND

9. This Tender concerns the supply of a fully automated system for the analysis of biochemical tests, to be installed at Mater Dei Hospital and Gozo General Hospital. The project is designed to run for 7 years and will provide state-of-the-art laboratory equipment and services, ensuring that Malta's national health service has access to the latest technology for patient diagnostics.

10. The new system will be capable of handling over 3,800 samples per day, with anticipated annual growth of 10%. This capacity is essential to meet the increasing demands of Malta's national health service, supporting both routine and urgent testing fora wide range of medical conditions. The system's scalability ensures that the health service can continue to deliver timely and accurate results as the population's needs evolve.

11. Needless to say, that this project is of strategic national importance. By investing in a fully automated solution, the Government is prioritising efficiency, reliability, and patient safety. The system will reduce manual intervention, minimise errors, and enable continuous 24/7 laboratory operations. This will directly benefit patient care, allowing clinicians to make faster and better-informed decisions.

12. Ultimately, this tender represents a significant step forward for Malta's national health service. It will modernise laboratory infrastructure, improve diagnostic capabilities, and help ensure that patients across Malta and Gozo receive the best possible care, now and in the future.

13. It is against this context that EJ Busuttil's appeal is to be decided.

14. VIVIAN strongly rebuts EJ Busuttil's Appeal and the grievances raised therein. The 6 grounds of appeal raised by EJ Busuttil are either inadmissible at law, and, or, in any case, unfounded on the merits. These grounds of appeal will be dealt with in turn below.

C. FIRST GROUND OF APPEAL: EJ BUSUTTIL'S RIGHT TO AN EFFECTIVE REMEDY REMAINS UNPREJUDICED

15. By means of the first ground of appeal, EJ Busuttil claims that the letter of rejection it received on 19 September 2025 is invalid because it contains an "inconsistency". The issue is that the letter-which VIVIAN has not seen-allegedly claims that EJ Busuttil was "administratively non-compliant", but the reasons for rejection relate to EJ Busuttil's technical non-compliance and not administrative non-compliance.

16. VIVIAN submits that this first ground is nothing but a red herring.

17. The letter of rejection received by EJ Busuttil complies with the minimum requirements in the law and jurisprudence. The law requires that the letter of rejection contains "the reasons for the rejection of its tender". These reasons were clearly provided, and EJ Busuttil quoted them verbatim in its Appeal.

18. The case-law cited by EJ Busuttil is inapplicable to the issue at stake. The test, as established by jurisprudence of the Courts of Justice of the European Union ("CJEU") is whether the "essential reasons"2 as provided enable the bidder to "come to an informed view as to whether there has been an infringement of the applicable provisions and as to the appropriateness of bringing proceedings."3 The reasons provided EJ Busuttil with sufficient information to be able to decide whether it should exercise the remedy in terms of Regulation 270 of the PPR-which it did, raising no less than 5 grounds of appeal.

19. On this basis, the letter of rejection is not invalid, and certainly, not due to a mere clerical error. In fact, EJ Busuttil identified the reasons for rejection as "technical" and was able to submit its Appeal. EJ Busuttil was not prejudiced in any way due to this clerical error.

20. Therefore, this first ground of appeal is unfounded and should be rejected.

D. INADMISSIBILITY OF THE SECOND GROUND OF APPEAL: EJ BUSUTTIL'S GRIEVANCE IS TIME-BARRED, AND IN ANY CASE, WAIVED AND OF NO UTILITY

21. By means of the second ground of appeal, EJ Busuttil argues that certain conditions in the Tender are discriminatory and favour VIVIAN. Nevertheless, as shall be explained below, it is not clear what remedy EJ Busuttil is after by raising this grievance.

22. VIVIAN submits that this second ground of appeal is inadmissible at law because:
a. EJ Busuttil has failed to exhaust the remedies at law which may have been available to it to address the alleged discrimination in the Tender conditions;
b. in any case, EJ Busuttil acquiesced to any condition drafted in the Tender when it submitted its bid;
c. further, there is no utility to EJ Busuttil's grievance.

23. First, EJ Busuttil failed to challenge the allegedly discriminatory Tender conditions prior to the submission of its bid. EJ Busuttil could have resorted to an application in terms of Regulation 262 of the PPR.

24. The Court of Appeal has consistently refused to consider grievances on the procurement procedure raised by bidders at a late stage and after bids are submitted:

> *"Ma kellhiex l-appellanti titfa' l-offerta tagħha u wkoll thalli li jingħalaq il-proċess tal-evalwazzjoni tal-offerti qabel ma tfittex rimedju jekk dehrilha li dak il-proċess kien milqut b'ambigwitajiet".4*

In Truevo Payments Limited vs Direttur tal-Kuntratti et, the Court of Appeal similarly deemed inadmissible grievances relating to an alleged procedural irregularity of a procurement procedure which were known to the aggrieved bidder before the closing date for the submission of bids 5

25. However, EJ Busuttil claims that such an interpretation as adopted by the PCRB and by the Court of Appeal in the past on Regulation 262 of the PPR would "annihilate the concept of an effective remedy". EJ Busuttil's claim is legally wrong.

26. The CJEU has already had the opportunity, over 20 years ago, to clarify that limiting challenges to the tender conditions to a time prior to the submission of bids "does not impair the effectiveness" of the Remedies Directive. The CJEU further held:7

> *37. It must be pointed out that the fact that a person does not seek review of a decision of the contracting authority determining the specifications of an invitation to tenderwhich in his view discriminate against him, in so far as they effectively disqualify him from participating in the award procedure for the contract at issue, but awaits notification of the decision awarding the contract and then challenges it before the body responsible, on the ground specifically that those specifications are discriminatory, is not in keeping with the objectives of speed and effectiveness of Directive 89/665. This case was even endorsed by the Court of Appeal in Truevo.8*

27. Therefore, EJ Busuttil's attempt to revisit established jurisprudence of the PCRB, the Court of Appeal and the CJEU on this issue is hopeless and without merit.

28. Second, EJ Busuttil waived any reservation or objection that it may have had on the drafting of the Tender once it submitted its bid.

29.The General Rules Governing Tenders provide that EJ Busuttil has accepted "in full and in its entirety" the content of the procurement documentation and that EJ Busuttil's reservations on the procurement procedure are "waived" as a result of submitting a bid.9

30. This is also admitted by EJ Busuttil itself: "it is also true that EJB 'submitted' itself to the tender document and placed its bid".10

31. Third, EJ Busuttil will derive no utility from this second ground of appeal.

32. Even if EJ Busuttil is right that conditions in the Tender are discriminatory (quod non), EJ Busuttil has sought no remedy in connection with this second ground. EJ Busuttil has not asked for any conditions in the Tender to be set aside or removed. EJ Busuttil has not asked for the cancellation of the Tender. EJ Busuttil has simply asked for the revocation of the Contracting Authority's decision to reject its bid.

33. On this basis, even if EJ Busuttil is right, and this second ground of appeal is upheld, EJ Busuttil would derive no utility from such a ruling.

34. The requirement of "utility" of a ground of appeal is founded in EU and Maltese procedural law. The key judgment which sets out this requirement within the context of public procurement proceedings is Logos Societa Cooperativa vs Direttur Generali tal-Kuntratti:11

> *Il-bazi ta` kull azzjoni civili li minnha ghandu jiddipartixxi kull dibattiment huwa l-interess guridiku tal-partijiet. [...] L-interess jimmaterjalizza ruhu fl-utilita` finali li l-ezitu tal-kawza jkollu ghall-attur. [...] Sabiex tiehu konjizzjoni ta` kawza, ilQorti*

> *trid ghalhekk tkun konvinta li l-attur ikollu l-iskop li jirkupra l-oggett jew beneficcju ta` xi jedd moghti lilu bil-ligi, u li fil-fehma tieghu jkun gie vjolat [...]*

35. The Court of Appeal has consistently declined to consider grounds of appeal which are not of any utility to the appeal. A case in point is Sandro Caruana v. Kunsill Lokali Marsa decided by the Court of Appeal.12

36. Similarly, 13 and where the rejection of the ground of appeal is fatal to the viability of the appellant's bid, the Court of Appeal has also refused to consider subsequent grounds of appeal because it would not change the outcome of the award.

37. In Specialist Group Cleaners Limited et vs CPSU et, the Court of Appeal held:

> *22. Billi dan huwa bizzejjed biex titwarrab l-offerta tal-appellanti, ma jibqax mehtieġ li nqisu l-aggravji l-ohra; ukoll jekk dawn jintlaqghu, xorta l-offerta ma tistax titqies li tiswa la hemm dokumenti essenzjali nieqsa.14*

38. The CJEU has taken a similar position with respect to procurement challenges. In Proof IT SIA vs EIGE, the General Court considered that the appellant's argument for a higher score on award criteria was ineffective because "it would not have affected the assessment of its tender' 15

39. Therefore, this second ground of appeal should be rejected, irrespective of the merits of the issue.

E. SECOND GROUND OF APPEAL: ON THE MERITS, THE TENDER IS NOm DISCRIMINATORY

40. On the merits, VIVIAN submits that EJ Busuttil's second ground of appeal is based on a flawed premise that only VIVIAN could have satisfied certain conditions in the Tender.16 EJ Busuttil is "sure" that no other company satisfied these conditions.17 This is simply false.

41. As confirmed in paragraph 18 of the reply filed by the Contracting Authority, other economic operators submitted bids which were deemed technically compliant with the criteria which EJ Busuttil failed to meet.

42. This fact alone undermines EJ Busuttil's claims. There were other manufacturers whose systems were able to satisfy the so-called "absolute" requirements in the Tender.

43. Therefore, even on the merits, this second ground of appeal is unfounded and should be rejected.

F. THIRD GROUND OF APPEAL: EJ BUSUTTIL OFFERED AN ASSAY WHICH EXCEEDS 10,000 TESTS PER YEAR BY YEAR 7

44. By means of its third ground of appeal, EJ Busuttil argues that the first reason for rejection is incorrect. EJ Busuttil claims that its bid complied with Clause 7.18 of Section 3, Technical Specifications of the Tender. VIVIAN submits that EJ Busuttil's grievance is unfounded. It will explain and this is so for the following reasons.

45. First, EJ Busuttil admits that its own bid contained an admission that its bid was not compliant. On this basis alone, EJ Busuttil forced the hand of the tender evaluation committee to

reject its bid. The TEC was duty bound do so in line with the principles of equal treatment, self-limitation and transparency.

46. EJ Busuttil knew its bid was not compliant. Clause 7.18 is clear and unambiguous. Further, this requirement was confirmed, repeatedly, in clarifications posted by the Contracting Authority specifically on the assay at issue-Immunoglobulin G (IgG) in Cerebrospinal fluid. In these clarifications,18 the Contracting Authority made it clear that this assay was within the scope of the Tender. This was despite attempts, presumably made by EJ Busuttil, to exclude this assay from the scope of the Tender. VIVIAN cannot but submit that EJ Busuttil attempted to carve out this assay from scope because it knew that its bid was technically not compliant.

47. On this basis, EJ Busuttil's statement, in its bid, that Immunoglobulin G (IgG) in Cerebrospinal fluid has more than 10,000 tests/year by the 7th year is a deliberate disagreement with and deviation from the technical specifications. This would constitute grounds for rejection on its own right in line with the General Rules Governing Tenders:

> *No account can be taken of any reservation in the tender as regards the tender document; any disagreement, contradiction, alteration or deviation shall lead to the tender offer not being considered any further.19*

48. Second, EJ Busuttil relies on what is evidently a performance condition, being Clause 7.23.2 of Section 3 of the Tender, to argue that it could have substituted the kit for Immunoglobulin G (IgG) in Cerebrospinal fluid later. Clause 7.23.2 clearly speaks of the "supplier" and not of the "bidder". Clause 7.18 refers to "bidders". Further, Clause 7.23.2 is clearly referring to a circumstance which might transpire during the lifetime of the contract: "[i]f during the term of the contract".

49.More crucially, EJ Busuttil has not, and cannot, give any reassurance or guarantee that the kit for Immunoglobulin G (IgG) in Cerebrospinal fluid will become available. At the same time, EJ Busuttil wants to rely on this performance condition to justify its admission of technical non-compliance.

Third, EJ Busuttil also argues that the issue of technical non-compliance is "trivial or de minimis in volume". But, what EJ Busuttil does not say is that if its bid is accepted despite this technical non-compliance, the Tender's objective of full laboratory automation for high volume assays would not be achieved. Therefore, the TEC's decision to reject EJ Busuttil's bid is correct, reasonable and fully consistent with the objective of the Tender.

50. Fourth, EJ Busuttil further argues that the value of 10,000 tests/year is a "grossly inflated estimate". On this basis, EJ Busuttil expects that it is not bound by Clause 7.18. With all due respect, if EJ Busuttil was of the view that the figure of 10,000 tests/year was inflated for Immunoglobulin G (IgG) in Cerebrospinal fluid, it had a remedy to exercise, which it did not do. EJ Busuttil cannot now, ex post facto, expect preferential treatment in the interpretation and application of Clause 7.18.

51. Therefore, this third ground of appeal is unfounded and should be rejected.

G. FOURTH GROUND OF APPEAL: EJ BUSUTTIL OFFERED A MARKER WHICH WOULD NOT HAVE BEEN TESTED ON SUNDAYS AND PUBLIC HOLIDAYS

52. By means of its fourth ground of appeal, EJ Busuttil argues that the first reason for rejection is incorrect. EJ Busuttil claims that its bid complied with Clause 7.23.3.2 of Section 3, Technical Specifications of the Tender. VIVIAN submits that EJ Busuttil's grievance is unfounded. It will explain and this is so for the following reasons.

53. First, and once again, EJ Busuttil expressly acknowledged in its own bid that it was not compliant. It could hardly have done otherwise, knowing full well that the TEC would inevitably reject its offer on grounds of technical non-compliance. Unable to meet the Tender requirements, EJ Busuttil sought instead to pre-empt the outcome by openly admitting its shortcomings and attempting to conceal them in plain sight. Quite rightly, this strategy failed.

54.On this basis alone, EJ Busuttil forced the hands of the tender evaluation committee to reject its bid. The TEC was duty bound do so in line with the principles of equal treatment, selflimitation and transparency.

55. On this basis, EJ Busuttil's statement, in its bid, that HCG-Tumour Marker testing cannot be done on Sundays and public holiday is a deliberate disagreement with and deviation from the technical specifications. This would constitute grounds for rejection on its own right in line with the General Rules Governing Tenders:

> *No account can be taken of any reservation in the tender as regards the tender document; any disagreement, contradiction, alteration or deviation shall lead to the tender offer not being considered any further.20*

56. Second, EJ Busuttil claims that Clause 7.23.3.2 must have been referring to a "working day" and not to a "calendar day". This assertion is not only unfounded and intended exclusively to serve EJ Busuttil's interests, but it is in direct contradiction with the definition of "day" in the Glossary section to the General Conditions for Supply Contracts v4.8 which expressly and unequivocally states that any reference to "day" means "calendar day".

57. EJ Busuttil further claims that there is a principle of the most favourable interpretation in favour of the bidder. There is no such principle. In fact, EJ Busuttil cites no precedent to corroborate its claim.

58. According to the law, tender conditions must be drafted in clear and unambiguous terms.21 Clause 7.23.3.2 could not have been clearer: turnaround for HCG Tumour Marker was for 1 day.

59. Further, in accordance with jurisprudence of the CJEU, tenders are to be drafted "in such a way as to allow all reasonably well-informed and normally diligent tenderers to interpret them in the same way".22 This was established by SIAC-the very case quoted by EJ Busuttil. VIVIAN submits that any reasonably well-informed and normally diligent tenderer knows the vitality and importance of an HCG-Tumour Marker and that's why the Tender established a 1 day turnaround.

60. Any other interpretation of Clause 7.23.3.2 would only favour EJ Busuttil.

61. In any case, EJ Busuttil's interpretation is simply non-sensical. If it is the case that Clause 7.23.3.2 would have been referring to working days and not calendar days, then (i) HCG Tumour

Markers need not be processed on Saturdays too; and (ii) pre-eclampsia testing, whose turnaround is 4 hours, does not need to be processed outside business hours either.

62. Therefore, this fourth ground of appeal is unfounded and should be rejected.

H. INADMISSIBILITY OF FIFTH GROUND OF APPEAL: EJ BUSUTTIL'S GRIEVANCE IS NOT CLEAR

63. By means of the fifth ground of appeal, EJ Busuttil claims that it "does not believe [...] that the preferred bidder could satisfy" the conditions in the Tender. But, EJ Busuttil does not substantiate its claim.

64. EJ Busuttil's grievance does not satisfy the mandatory requirement in the law that the grievance must be set out "in a very clear manner". EJ Busuttil has not even identified one single instance of a potential technical non-compliance.

65. On this basis alone, EJ Busuttil's fifth ground of appeal is inadmissible.

66. EJ Busuttil is evidently attempting a fishing expedition. VIVIAN will not tolerate any such attempts and will object to every instance where the disclosure of information is sought which is either confidential or irrelevant to the other grounds of appeal.

67. Therefore, this fifth ground of appeal should be rejected, irrespective of the merits of the issue.

I. FIFTH GROUND OF APPEAL: EJ BUSUTTIL'S GRIEVANCE IS FALSE AND INCONSISTENT

68. On the merits, VIVIAN submits that EJ Busuttil's fifth ground of appeal is simply baseless and unfounded.

69. Ironically, EJ Busuttil's fifth ground directly contradicts its claims in the second, third and fourth ground of appeal that the Tender conditions were discriminatory because only VIVIAN could have satisfied them. A claim which was already debunked earlier.

70. Therefore, even on the merits, this fifth ground of appeal should be rejected.

J. SIXTH GROUND OF APPEAL: THE DEPOSIT SHOULD NOT BE REFUNDED

71. By means of the sixth ground of appeal, EJ Busuttil seeks the refund of the deposit irrespective of the outcome of the case. This is simply wrong.

72. The refund of the deposit should follow the principle customarily applied by the PCRB, that is, that costs follow the event.

73. If EJ Busuttil's Appeal is not successful, the deposit should not be refunded.

74. On a concluding note, VIVIAN will not object to the refund of the deposit paid by EJ Busuttil if the Appeal is withdrawn in good time before the hearing to be scheduled by this Honourable Board.

THEREFORE, VIVIAN requests this Board to:

a. reject the appeal in its entirety; and
b. order the deposit paid by EJ Busuttil not to be refunded,

subject to any declaration or order that it deems fit and opportune."

The opening and closing submissions of the Appellant, the Contracting Authority and the Preferred Bidder as delivered by their legal representatives, as well as the closing submissions of Cherubino *qua* interested party;

The witnesses summoned and documents presented;

Considers;

This Board notes that the Appellant has brought forward six (6) grievances which shall be considered in order.

A. Inconsistency in the Letter of Rejection Dated 19th September, 2025

The Appellant raises a grievance regarding the Contracting Authority's letter of rejection dated 19th September, 2025 (hereinafter the "Letter"). The Appellant argues that the Contracting Authority's "*decide"* consists of the phrase *"your company was found to be administratively non-compliant"* which does not match with the ensuing recommendations. To substantiate its argumentation, the Appellant referred to a spate of jurisprudence regarding when one may interpret the operative part of a decision by referring to the considerations, but that in this case the operative part of the decision requires no interpretation and that it diametrically contrasts with the considerations.

The Contracting Authority and the DOC on the other hand argues that the mistake in the Letter does not annul the entirety of the Letter, and that what is important is that the reasons for rejection were provided in a very clear manner.

The Preferred Bidder argues that the Letter complies with the minimum requirements in the law and jurisprudence and that in line with that opined by Attorney General Kokott in the Uniplex CJEU judgment C-406/08, what is imperative is that the bidder in question comes to an informed view as to whether there has been an infringement of the applicable provisions and as to the appropriateness of bringing proceedings.

This Board, having reviewed the Letter, whilst it must immediately express its disappointment in the evident oversight in the Letter, deems that what is essential when faced with inconsistencies of this manner and nature, is whether or not the Appellant suffered enough of a prejudice to be able to somehow impair its right to effectively exercise his right to review. This Board, from the acts of the proceedings as well as all witnesses heard and legal argumentation brought forward, determines that the Appellant was never placed in a prejudicial position when it came to defending its interests post-rejection. The Appellant submitted an appeal in time, accompanied by the correct deposit and raised six (6) separate grievances, four (4) of which relate directly to the merits.

Therefore, the Appellant's first grievance is being rejected.

B. Tender Camouflaged as a BPQR Procedure Intended to Favour One Economic Operator

In its second grievance, the Appellant alleges amongst many things that this procurement process was in reality evaluated by price satisfying the administrative and technical conditions camouflaged as a BPQR procedure with the specific intention to favour one economic operator. The Appellant states that requirements 7.18 and 7.23.3.2. can only be satisfied by the Preferred Bidder. The Appellant whilst recognising the remedy set forth in Regulation 262 of the Public Procurement Regulations, argues that this should not eliminate judicial review by this Board to determine whether there were illegalities or irregularities during the procurement process.

The Contracting Authority argues that that the Appellant should have indeed utilised the remedy available to it under Regulation 262 of the PPR if it wishes to address allegations of discriminatory or illegal conditions. The Contracting Authority further argues that the tender conditions were definitely not designed for the Preferred Bidder so much so that two economic operators with three offers submitted fulfilled the mandatory requirements, and further that with reference to Clause 7.18 two bidders offered an alternative platform, whilst the third did not rely on it as the main platform was capable of accommodating all analytes listed. Furthermore, Clause 7.23.3.2. is not exclusive to Roche, so much so that the Appellant itself involved this clause to outsource a test to a third party laboratory.

The Preferred Bidder here submitted that this grievance is inadmissible because the Appellant failed to exhaust its remedies at law which were available to address discrimination, that the Appellant acquiesced to the tender conditions when it submitted its bid, and that there is no utility to the Appellant's grievance.

It results to this Board that in actual fact, two economic operators with three bids actually fulfilled all mandatory criteria which the Appellant is alleging can only be fulfilled by the Preferred Bidder. Therefore, this fact alone refutes the alleged intention that the Contracting Authority somehow framed this tender, skewing the requirements to suit one economic operator in particular.

Furthermore, with reference to the parties' submissions relating to the remedy available to economic operators under Regulation 262 of the PPR, this Board shall quote the relevant section of the law below:

> *"(1)* ***Prospective candidates and tenderers may, within the first two-thirds of the time period allocated in the call for competition for the submission of offers, file a reasoned application before the Public Contracts Review Board:***
>
> *(c)* ***to remove discriminatory technical, economic or financial specifications which are present in the call for competition****, in the contract documents, in clarifications notes or in any other document relating to the contract award procedure; or*
>
> (Added emphasis of the PCRB).

Whilst the Appellant is right to underline that it is **an optional** remedy as imparted by the word *"may"*, this does not mean that therefore this remedy remains available at a different stage. On this point the Contracting Authority and the Preferred Bidder are wholly correct in their argument that the Appellant should have utilised its remedy under Regulation 262 of the PPR to attack any alleged discriminatory features in the Tender Document at the available juncture, they are also right to state

that the Appellant acquiesced to the conditions as found within the Tender Document the moment the Appellant submitted its bid.

On this point this Board shall refer to the constant and settled case-law on the matter namely, the judgment in the names '**Truevo Payments Limited v. Direttur tal-Kuntratti et**' Court of Appeal (Superior Jurisdiction) dated 30th June, 2021:

> *"7. Mhux l-istess jista' jingħad fil-kuntest tal-aggravju l-ieħor tas-soċjeta` issa appellanti, dak marbut mal-inammissibilita` tal-azzjoni in vista tar-rimedju ikkontemplat fir-Regolament 262 aktar qabel indikat. Hu ċar li l-ilmenti tas-soċjeta` Credorax Ltd huma diretti lejn il-proċedura wżata u ma humiex marbuta mas-sustanza tal-offerta. Din is-soċjeta` qed tilmenta mill-użu tal-proċedura tal-għoti tal-kuntratt b'negozjati, fuq il-mod kif ġie imfassal il-proċess ta' din il-proċedura u li ma kienx hemm l-approvazzjoni tad-Direttur tal-Kuntratti għall-użu ta' din il-proċedura. Dawn it-tlett aggravji li abbażi tagħhom il-kumpanija appellata Credorax Ltd pprežentat l-appell tagħha jirrigwardjaw materji illi kienu jeżistu sa mill-bidu nett tal-proċedura in kwistjoni, u għal dawn l-ilmenti kienu jeżistu rimedji taħt ir-Regolament 262. Dawn l-ilmenti kellhom jitressqu qabel id- data tal-għeluq ta' sejħa għall-kompetizzjoni u mhux , bħal fil-każ tallum, wara dik id-data, u saħansitra wara d-deċiżjoni dwar l-għoti tal-kuntratt.*
>
> *8. Saret referenza għas-sentenza tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea tat-12 ta' Frar, 2004 , fil-każ fl-ismijiet* ***Grossman Air Service, Bedarfsluftfahrtunternehmen Gmbh & Co. KG v. Republik Österreich (C-230/02, CJEU)*** *fejn fost il-konklużjonijiet milħuqa jingħad is-segwenti:*
>
> *"1. Articles 1(3) and 2(1)(b) of Coucil Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Coucil Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, must be interpreted as not precluding a person from being regarded, once a public contract has been awarded, as having lost his right of access to the review procedures provided for by the Directive if he did not participate in the award procedure for that contract on the ground that he was not in a position to supply all the services for which bids were invited, because there were allegedly discriminatory specifications in the documents relating to the invitation to tender, but he did not seek review of those specifications before the contract awarded."*
>
> *(Sottolinear ta' din il-Qorti).*
>
> *9. Jidher ċar mill-premess illi darba li, anke f'dan il-każ, il-kuntratt ġie rakkomandat u s-soċjeta` Credorax Ltd naqset li tfittex ir-rimedju opportun skond il-liġi qabel l-għeluq tat-terminu għall-preżentata tal-offerta, ma tistax aktar tappella biex tressaq l-aggravji tagħha."*

This Board further refers to a recent judgment delivered on the 10th March, 2026 by the Court of Appeal (Superior Jurisdiction) in the names '**Camilleri Paris Mode Limited vs. Dipartiment tal-Kuntratti et**' where it was held that:

> *"19. Meta qieset il-fatti ta' dan il-każ, din il-Qorti tqis li dan l-aggravju ma jimmeritax li jiġi milqugħ u dan għal diversi raġunijiet.* ***Qabel xejn, din ilQorti sejra tissottolinja xi prinċipji korollari li għandhom jiġu meqjusa flisfond fattwali ta' dan il-każ****. Awtorità kontraenti mhijiex mogħtija l-jedd li tbiddel jew timmodifika l-kriterji tal-għoti ta' kuntratt matul il-proċedura talgħotja (vide Każ - 278/14 SC Enterprise Focused Solutions SRL*

vs. Spitalul Județean de Urgență Alba Iulia deċiż mill-Qorti tal-Ġustizzja tal-Unjoni Ewropea fis-16 ta' April, 2015).

20. Daqskemm awtorità kontraenti ma tistax twarrab offerta fuq raġunijiet li ma jkunux previsti fid-dokument tas-sejħa (vide Labo-Pharm Ltd v. Il-Kummissarju tal-Pulizija nomine et deċiża mill-Qorti tal-Appell fid-29 ta' Marzu, 2019), daqstant iehor ma tistax min-naħa l-oħra taċċetta offerta li ma tkunx toqgħod ma' dak mitlub fis-sejħa (vide Projekte Global Limited v. Ministru Għal Għawdex et deċiża mill-Qorti tal-Appell fis-16 ta' Lulju, 2018).

21. Jaqa' fuq l-offerent stess li joqgħod ma' dak mitlub fis-sejħa, b'dan li huwa ma jistax joqgħod jippretendi li l-awtorità kontraenti għandha toqgħod issalvalu l-offerta jekk din tkun irregolari *(vide J & J Gauci Granite Limited v. Grand Harbour Regeneration Corporation plc deċiża mill-Qorti tal-Appell fl-20 ta' Marzu, 2023 u Steelshape Limited v. Direttur tal-Kuntratti et deċiża mill-Qorti tal-Appell fis-7 ta' Awwissu, 2013).*

22. Fil-każ odjern, l-awtorità kontraenti ħarġet sejħa bi speċifikazzjonijiet partikolari. L-appellanta ġiet mitluba tagħmel kjarifika fil-15 ta' Lulju 2025 u dan sabiex tikkorrabora l-offerta teknika tagħha. Madanakollu, fit-tweġiba tagħha, l-appellanta naqset li tipprovdi spjegazzjoni li l-istandard mehtieġ kien ser jintlaħaq. Huwa inutli li jiġi argumentat li dak l-istandard ma kienx japplika għal prodott iżda għal bini u għalhekk ġie skartat mill-appellanta. ***Li kellha tagħmel l-appellanta semmai kien li tieħu l-passi li kellha a dispożizzjoni tagħha ai termini tarregolament 262 tal-Leġislazzjoni Sussidjarja 601.03.***

23. Infatti, fis-sentenza mogħtija minn din il-Qorti hekk kif diversament komposta fl-10 ta' Jannar, 2023 fl-ismijiet All Clean Services Limited (C 39278) v. Ministeru għall-Edukazzjoni, l-iSport, iż-Żgħażagħ, ir-Riċerka u l-Innovazzjoni et intqal li:

> *"6. Din il-Qorti ma taqbilx mal-aggravju tas-soċjetà appellanti. Largument li meqjus ir-rekwiżiti l-oħra mitluba fis-sejħa u n-natura taxxogħol li kellu jitwettaq, din il-kundizzjoni "hi kompletament irrilevanti", hija fiergħa u bla bażi.* ***Rilevanti jew le, dik il-kundizzjoni kienet tifforma parti mis-sejħa, u jekk l-istess kundizzjoni ma avveratx ruħha, is-soċjetà appellanti ma tistax tilmenta fuq il-punti żejda li ħadu l-oblaturi l-oħra li wettqu dik ilkundizzjoni****.*
>
> ***7. Din il-Qorti taqbel ma' dak li osserva l-Bord li kull min kien interessat, jekk ma kienx jaqbel ma' xi kundizzjoni fis-sejħa, skont ir-Regolamenti applikabbli, seta' aġixxa, bil-mezzi li jagħtuh l-istess Regolamenti, biex jipprova jimpunja dik jew dawk il-kundizzjonijiet. Mhux leċitu li l-oblatur iħalli l-proċess għaddej, u wara, jekk jitlef il-kuntratt, jallega li kundizzjoni fis-sejħa ma kellhiex tkun hemm għax "kompletament irrilevanti".***
>
> *8. Hu veru li l-kundizzjonijiet tax-xogħol tal-ħaddiema huma regolati b'liġijiet oħra, u hemm regolamenti li jagħtu poter lill-awtorità kompetenti tissindika fuq dawk il-kondizzjonijiet, però, dan kien ikun argument li kellu jitressaq fl-istadju preparatorju għall-proċess tal-għażla tal-oblatur preferut. Jekk ir-rekwiżit ta' ftehim kollettiv huwa parti mill-kundizzjonijiet li kellhom jiġu sodisfatti minn kull oblatur, is-soċjetà*

appellanti kellha taderixxi ruħha ma' dak rikjest. Din il-Qorti osservat diversi drabi li dak rikjest fid-dokumenti tas-sejħa għall-offerti jridu jiġu kollha sodisfatti. Mhux regolari li tgħid li kundizzjoni partikolari kienet biss "add on" u oblatur jista' jinjoraha, għax min jipparteċipa jrid isegwi dak mitlub fiddokumenti."

24. Fid-deċiżjoni tas-26 ta' Ottubru 2022 fl-ismijiet Koperattiva Għawdxija tal-Indafa Pubblika Limitata v. Kunsill Reġjonali Għawdex et ġie sottolinejat l-importanza tar-regolament 262 talLeġislazzjoni Sussidjarja 601.03 u ntqal:

"Fi ftit kliem, dan ir-regolament jippermetti l-ksib ta' rimedju qabel lgħeluq tas-sejħa għall-ħames raġunijiet:

(a) meta jirriżultaw klawsoli jew deċiżjonijiet li huma impossibbli li jitwettqu;
(b) meta jirriżultaw kwistjonijiet dwar offerti bil-mezzi tekniċi;
(c) meta jkun hemm speċifikazzjonijiet diskriminatorji;
(d) biex jitneħħew jew jiġu korreġuti klawsoli żbaljati jew ambigwi; u
(e) meta s-sejħa għall-kompetizzjoni hija kontra l-liġi."

25. Fil-kawża deċiża fit-30 ta' Ġunju 2021 fl-ismijiet Truevo Payments Limited (C62721) v. Direttur tal-Kuntratti et ingħad:

"Mhux l-istess jista' jingħad fil-kuntest tal-aggravju l-ieħor tas-soċjeta` issa appellanti, dak marbut mal-inammissibilita` tal-azzjoni in vista tarrimedju ikkontemplat fir-Regolament 262 aktar qabel indikat. Hu ċar li lilmenti tas-soċjeta` Credorax Ltd huma diretti lejn il-proċedura wżata u ma humiex marbuta mas-sustanza tal-offerta. Din is-soċjeta` qed tilmenta mill-użu tal-proċedura tal-għoti tal-kuntratt b'negozjati, fuq ilmod kif ġie imfassal il-proċess ta' din il-proċedura u li ma kienx hemm lapprovazzjoni tad-Direttur tal-Kuntratti għall-użu ta' din il-proċedura. Dawn it-tlett aggravji li abbażi tagħhom il-kumpanija appellata Credorax Ltd pprežentat l-appell tagħha jirrigwardjaw materji illi kienu jeżistu sa mill-bidu nett tal-proċedura in kwistjoni, u għal dawn l-ilmenti kienu jeżistu rimedji taħt ir-Regolament 262. Dawn l-ilmenti kellhom jitressqu qabel id-data tal-għeluq ta' sejħa għall-kompetizzjoni u mhux , bħal filkaż tallum, wara dik id-data, u sabansitra wara d-deċiżjoni dwar l-għoti tal-kuntratt.

8. Saret referenza għas-sentenza tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea tat-12 ta' Frar, 2004 , fil-każ fl-ismijiet Grossman Air Service, Bedarfsluftfahrtunternehmen Gmbh & Co. KG v. Republik Österreich (C230/02, CJEU) fejn fost il-konklużjonijiet milhuqa jingħad is-segwenti:

"1. Articles 1(3) and 2(1)(b) of Coucil Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Coucil Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, must be interpreted as not precluding a person from being regarded, once a public contract has been awarded, as having lost his right of access to the review procedures provided for by the Directive if he did not participate in the award procedure for that contract on the ground that he was not in a position to supply all the services for which bids were invited, because there were allegedly discriminatory specifications in the documents relating to the invitation to tender, but he did not seek review of those specifications before the contract awarded."

9. Jidher ċar mill-premess illi darba li, anke f'dan il-każ, il-kuntratt ġie rakkomandat u s-soċjeta` Credorax Ltd naqset li tfittex ir-rimedju opportun skond il-liġi qabel l-għeluq tat-terminu għall-preżentata talofferta, ma tistax aktar tappella biex tressaq l-aggravji tagħha."

26. Din il-Qorti taqbel pjenament ma' dawn il-prinċipji u la l-appellanta naqset li tfittex ir-rimedju opportun qabel l-għeluq tat-terminu għallpreżentata tal-offerta, ma tistax issa tinqeda b'din il-proċedura f'dan listadju. Addirittura f'dan il-każ, mhux talli ma ġietx adoperatat il-proċedura ai termini tar-regolament 262 fuq riferit, iżda minkejja li l-appellanta ngħatat l-opportunita' li tressaq kjarifika dwar l-offerta tagħha, din xorta waħda ma kkonformatx ruħha. Huwa prinċipju assodat li jekk ir-regoli tassejha jitolbu ċertu prodott b'ċertu speċifikazzjonijiet, l-offerenti għandhom joqogħdu għal dawk ir-regoli u joffru prodott skont l-ispeċifikazzjonijiet hemm mitluba. Huwa dak li kellha tagħmel l-appellanta." (Added emphasis of the PCRB).

It does not result to this Board that the Appellant utilised the remedy available to it under Regulation 262(1)(c) of the Public Procurement Regulations, therefore, it cannot now post-award complain of discriminatory tender requirements. If this Board were to decide otherwise, it would be unfair to all the other economic operators which have equally participated and accepted the tender requirements. Once an economic operator like the Appellant participates in a tender and submits its bid, it is thereby accepting the tender requirements as they are.

Therefore, the Appellant's second grievance is also being rejected.

C. First Reason Given by Contracting Authority is Unfounded

In its third grievance, without prejudice to the first two grievances, the Appellant argues that whilst it appears that part of the Appellant's offer fails to meet the requirements of paragraph b of Clause 7.18., Clause 7.23.1 and Clause 7.23.2. are to be interpreted as allowing the economic operator to deviate from this clause as these too are indicated as mandatory. The Appellant also raises issue that the values indicated of 10,000 tests per year are a grossly inflated estimation.

The Contracting Authority states that the Appellant offered one test on an alternative platform which will have more than 10,000 tests per year on the 7th year, and argues that it is untrue and misleading to state that 7.23.1 and 7.23.2 allow for a deviation from 7.18. The Contracting Authority explains what these clauses set out in paragraph 27 of its reasoned reply as follows:

"*Clause 7.18 sets out the criteria under which bidders may provide alternative platforms for tests not available on the main platform. Clause 7.18 specifies mandatory criteria if bidders choose to offer alternative platforms. Only if the bidder will be using clause 7.18 to offer an alternative platform, then clause 7.23.1 and 7.23.2 can be used. Clause 7.23.1 grant bidders further flexibility as to the type of equipment that may be offered, expressly allowing such platforms to be either benchtop or free-standing, whilst clause 7.23.2, permits bidders to transfer tests from the alternative platform to the main platform during the contract period, should this become available.*"

The Preferred Bidder also states that the Appellant itself has admitted its non-compliance to Clause 7.18. and further argues that the Appellant is relying on a performance condition in Clause 7.23.2. which clearly refers to the "supplier" and not the "bidder". The Preferred Bidder further argues that with respect to the Appellant's allegation that the value is a grossly inflated estimate, it had its chance

to exercise its remedy and cannot now *ex post facto* expect preferential treatment in the interpretation and application of Clause 7.18.

From a review of the Appellant's bid and the testimony of members of the Tender Evaluation Committee, it emerges clearly that the Appellant failed to satisfy the requirement as mandated by Clause 7.18(b) and the Appellant itself declared that *"Only one (1) assay: Immunoglobulin G (IgG) in Cerebrospinal fluid with more than 10, 000 tests/year on the 7th year of each analyte as per workload data in table 2a is affected. The proportion of total workload affected is 0,055%".* The Appellant is incorrect in arguing that Clause 7.23.1. or Clause 7.23.2. served as a deviation from the requirement under Clause 7.18.

With respect to the Appellant's argument regarding the 'inflated' estimate, whilst from the testimonies of the highly qualified and experienced persons involved in the drafting of the tender as well as its evaluation it does not result to this Board that the estimate was inflated in any way, this Board deems that any perceived inflation would only serve to benefit the Appellant in this case, because if for argument's sake and only for argument's sake the value "was inflated just a bit more than it was", the Appellant would become compliant with Clause 7.18. because the Appellant was over the 10,000 tests/per year, not under… Therefore, whilst this Board deems that the argument is somewhat illogical, this Board holds that if the Appellant wished to attack the figures in Table 2a, the data it is based on as well as the methodology used to arrive at the value of 10,000 tests/year, the Appellant had every opportunity to do so by utilising the remedy available to it under Regulation 262 of the PPR. Given that the Appellant failed to do so, the Appellant tacitly accepted the value as found within the Tender Document when it submitted its bid and equally participated in the procurement process as did other bidders. This Board referring again to the Camilleri Paris Mode judgment of the 10th March, 2026 quotes the Court of Appeal's words verbatim:

> "*Din il-Qorti taqbel ma' dak li osserva l-Bord li* ***kull min kien interessat, jekk ma kienx jaqbel ma' xi kundizzjoni fis-sejħa****, skont ir-Regolamenti applikabbli,* ***seta' aġixxa****, bil-mezzi li jagħtuh l-istess Regolamenti,* ***biex jipprova jimpunja dik jew dawk il-kundizzjonijiet****.* ***Mhux leċitu li l-oblatur iħalli l-proċess għaddej, u wara, jekk jitlef il-kuntratt, jallega li kundizzjoni fis-sejħa ma kellhiex tkun hemm****"* (Added emphasis of the PCRB).

Therefore, in view of the above considerations, this Board finds that the Appellant's fourth grievance is also unfounded as is being rejected.

D. The Second Reason Given by Contracting Authority is Unfounded

In its fourth grievance, the Appellant argues that the requirement in Clause 7.23.3.2. does not specify whether the one (1) day referred to therein is a calendar day or a working day. The Appellant concedes that in its reply, it stated that the turnaround time will be of 24 hours but will exclude Sundays and public holidays. The Appellant argues that requiring a result for HCG tumour market across Sundays and public holidays is impracticable, and further that the test is not classified as urgent but as a routine test. The Appellant closes off its written pleadings on this grievance by arguing that due to ambiguity, any doubts should favour the bidder.

The Contracting Authority replies that the hospital operates 24/7, and as per Section 1.10 of the Tender Document, suppliers should be capable of providing the service 24 hours a day, 7 days a week. Regarding the routine vs. urgent argument, the Contracting Authority holds that if it required an urgent test, the turnaround time requested would have been that of one hour, not one day.

The Preferred Bidder submitted that in the Glossary of the General Conditions for Supply Contracts v4.8. defines a day as a calendar day. Furthermore, the Preferred Bidder holds that Clause 7.23.3.2. could not have been clearer when establishing a one-day turnaround. In line with jurisprudence of the CJEU, the Preferred Bidder argues that any reasonably well informed and normally diligent tenderer knows the vitality and importance of an HCG tumour marker and hence why a one-day turnaround was established in the Tender Document.

After considering all evidence as brought before this Board, as well as the entirety of the procurement file, it results that as correctly pointed out by the Contracting Authority and as explained under oath by Mr Ian Brincat, who explained that as per Clause 7.23.3.2. one day meant 24 hours, irrespective of Sundays and public holidays. Mr Brincat explained that had it been classified as urgent, it would have meant that the result should be available within the hour, rather than the day. Nothing in the Tender Document suggests that Sundays and public holidays are excluded for the purposes of turnaround deadlines, and nothing in the circumstances should have led a reasonably well-informed and normally diligent tenderer as the Appellant to assume otherwise.

This Board finds that the Appellant's argument regarding the impracticality of requiring such a result across Sundays and public holidays to be wholly unfounded. Mr Brincat testified to the clinical importance of the HCG tumour marker test, utilised in scenarios where an organ donor must be tested to determine any previously undetected tumours prior to transplants, as well as to determine the effectiveness of radiotherapy and chemotherapy for patients taking such treatment. This Board finds that the HCG tumour marker tests are in fact utilised in very serious and pressing circumstances, therefore **it is far from impracticable** for the Contracting Authority to require a one day turnaround for this result. This Board finds that given the clinical context as explained by Mr Brincat, it would be inappropriate to delay the results due to Sundays and/or public holidays.

For this reason, the Tender Evaluation Committee was correct in determining that the Appellant was technically non-compliant due to the Appellant's failure to comply with a 24 hour turn around, 7 days a week, irrespective of whether the day falls on a Sunday and/or public holiday.

Therefore, the Appellant's fourth grievance is being rejected.

E. The Preferred Bidder's Compliance with Tender Requirements

In this fifth grievance, the Appellant submits that it *"does not believe, other than a usage of the public sector to satisfy the conditions, that the preferred bidder could satisfy the conditions for which EJB appears to have been disqualified"*.

The Contracting Authority argues that this grievance indicates the Appellant's intention to carry on a fishing expedition by leaving an open window to contest the bid of the Preferred Bidder, and that this falls foul of Regulation 270 of the PPR which requires that an objection contains "in a very clear manner the reasons for their complaints". The Preferred Bidder argues that this grievance is baseless and unfounded.

This Board finds that not one shred of evidence was brought before it to shed any doubt on the Preferred Bidder's compliance and its position as recommended bidder. This Board finds that the Appellant seems to have thrown in this fifth grievance *just in case* something results during the hearing of this appeal which may hint at the Preferred Bidder's non-compliance with the tender requirements. This is being said because even from the way the Appellant worded its fifth grievance, it does not in

any way, shape or form inform the Board which condition it has its doubts on, or why it does not believe that the Preferred Bidder could satisfy all the conditions…

To this Board, it results that this grievance is wholly unfounded and is being rejected.

F. Refund of the Deposit Paid by the Appellant

In its sixth grievance, the Appellant requests the refund of the deposit paid even in the eventuality of this Board not upholding any of the grievances raised. The Contracting Authority and the Preferred Bidder disagree with the Appellant.

In view of the fact that the Appellant did not succeed in any of the grievances raised before this Board, this Board hereby **decides not to re-imburse the deposit paid by the Appellant**.

As a parting note, this Board refers to the judgment in the names '**Bessui JV vs. Dipartiment tal-Kuntratti et**' decided by the Court of Appeal in its Superior Jurisdiction as delivered on the 15th January, 2026 wherein it commented on the tone in which acts were written and presented before it:

> *"126. Qabel ma tgħaddi għad-deċiżjoni finali tagħha, din il-Qorti jkollha tistqarr li tinsab pjuttost soġġbiena bit-ton ta' kondixxendenza li Jiangxi Ganfeng għażlet li tfassal bih ir-rikors tal-appell. Għalkemm il-Qorti tista' tifhem li din setgħet ħassitha pprovokata bil-kliem li tniżżel fid-dahla tal-ittra tal-oġġezzjoni tal-konsorzju BESSUI, din il-Qorti xorta waħda tistenna lill-partijiet li jressqu l-atti quddiemha li jġibu ruħhom b'mod xieraq, u jgħidu biss dak li għandhom jgħidu bla ma jonqsu mir-rispett lill-istituzzjonijiet."*

This Board, with reference to the proceedings as held before it, must underline that no matter how contentious the legal points raised between economic operators are, and no matter the heightened stakes in any legal proceedings, proceedings should be held in serenity, and free from condescending comments particularly between legal counsel.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to reject the appeal as filed by E.J. Busuttil Limited in its entirety, and further decides not to re-imburse the deposit paid by E.J. Busuttil Limited.

Dr Ana Thomas	**Dr Maria Cardona**	**Mr Keith Victor Grech**
Chairperson	**Member**	**Member**

Wednesday 18th March, 2026.