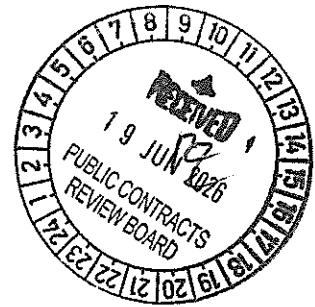


The Secretary
Public Contracts Review Board
Department of Contracts
Notre Dame Ravelin
Floriana VLT2000
info.pcrb@gov.mt



19th of June 2026

Esteemed Chairman and Board Members,

Reference:

CT2345/2024 – (CPSU0692-2022)

Subject:

Tender for the purchase of qty 2 high-frequency jet ventilator units for the medical imaging departments at Mater Dei Hospital with a reduced environmental impact (“the tender”)

Tender ID: 222471

Objection to the (second) recommendation for award following a re-evaluation by a newly composed evaluation board

1.0 Introduction

I write on behalf of HospiMalta Ltd (“**Appellants**”), in my capacity as a director of the company, in order to object to the decision of the contracting authority, following a second evaluation by a newly composed evaluation board, to recommend the award for to the “cheapest-compliant” bid, being the second of three offers, as communicated by means of a letter dated 9th of June 2026, sent by the Department of Contracts (“**DoC**”), attached and marked ‘Doc. A’.

Two bidders participated in this procurement process with a total of three bids as per ‘Doc. B’. The first-cheapest bid was found to be non-compliant, whereas out of the remaining two bids, the contracting authority decided that the second-cheapest bid is compliant, subsequently recommending the award accordingly.

2.0 Facts and Grounds for Objection

When the appellants received the recommendation for award, they requested information from the Central Procurement and Supplied Unit (“**CPSU**”), relating to the make and model of the recommended device.

CPSU entertained this request on the 11th of June 2025, confirming that it was for a jet ventilator model *Monsoon 4* from Thora Tech GmbH, as can be seen in the attached document marked ‘Doc.C’

2.1 – First Ground

The appellants contend that they had already successfully objected to technical compliance of **this same exact bid** successfully, *Case 2150* ‘Doc.D’, with the Board ruling that it:

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

This current recommendation is in absolute defiance and contrary to the Board’s binding ruling of the 11th of June 2025 since *Monsoon 4* was already declared to be non-compliant. Such a conclusion violates the principle of *res judicata* and is therefore inherently vexatious.

2.2 – Second Ground

The appellants also contend that **tender mandatory compliance is evaluated on the bid as submitted**. The Board stressed this principle in many rulings, including *Case 2147* of the 29th September 2025, wherein it ruled that:

“It is a well-established principle under Maltese procurement law that mandatory requirements stipulated in the tender dossier apply **ab initio**, meaning from the very outset of the process. **Failure to submit a mandatory document or meet a mandatory condition at tendering stage results in automatic disqualification, irrespective of the substantive merit of the bid.** This principle has been consistently upheld by the PCRB, for instance in case 2074, where the Board reaffirmed that omissions relating to ab initio requirements cannot be rectified post-submission.”

Therefore, any mandatory requirements of this tender need to be satisfied and met at tendering stage. This implicitly means that such mandatory criteria cannot be perfected or give the opportunity to the bidder to enhance his offer at a later stage, rendering it technically compliant. Such a course of action would amount to a flagrant deflection from the fundamental principles of public procurement such as equal treatment and non-discrimination.

3.0 Remedies and Requests

In view of all that is being submitted above and in view that the third-cheapest offer for the TwinStream DUO jet ventilators no technical compliance were mentioned and hence being

deemed as technically compliant, this Distinguished Board, is being respectfully requested, unless the Contracting Authority, a sua sponte and ex proprio motu, elects to admit the charges and re-evaluate the tenders, as it has done in several instances in the past, including amongst others in the proceedings for CT2004/2024; the following: -

(a) To decide this case **summarily** without the need of an oral hearing, provided that the Board has already ruled technical non-compliance for the same model being recommended for the second time. Such request is being made in the interests of **procedural economy, good administration and the avoidance of unnecessary delay**;

(b) To annul the current recommendation as per letter dated 9th June 2026 and order the re-evaluation of the tenders, which shall be conducted by a newly composed evaluation committee strictly upon the guidelines of this Honorable Board;

(c) To give any further orders or remedies as it deems fit, opportune and proper;

(d) To order the refund of the deposit paid, reference to 'Doc. E' whatever the outcome of this appeal.

(e) To decide this case **summarily** without the need of an oral hearing, provided that the Board has already ruled technical non-compliance for the same model being recommended for the second time. Such request is being made in the interests of **procedural economy, good administration and the avoidance of unnecessary delay**. To assert and confirm that Monsoon 4 as offered by the recommended bidder does not meet the technical specifications requested in the tender document, aligned with and as already ruled in the preceding objection for this same tender in *Case 2150* and without the need of any further considerations.

The Appellants explicitly save their right to request further information from the Contracting Authority and to present any further evidence at a later stage, which evidence does not exclude public officers in the employ of the Contracting Authority being called as witnesses.

Yours sincerely,



Avv. Adriano Spiteri

Attached Documents:

Doc. A	Letter of the second recommendation of award following re-evaluation
Doc. B	Summary of tender bids
Doc. C	CPSU's reply as to the make/model of the recommended model (following re-evaluation)
Doc. D	The Board's decision for Case 2150 dated 11th of June 2025
Doc. E	Deposit. Bank of Valletta document ID 180810321



Bank of Valletta p.l.c
 Registration Number: C 2833
 Registered Office: 58 Zachary Street, Valletta VLT 1130 - Malta

Pay third party

Printed by: Mr. Adriano Spiteri
 Printed on: 19/06/2026 - 08:47
 Document ID: 28748488

Transaction details

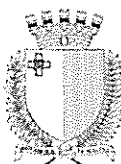
Beneficiary Name & Surname / Company / Group name:	Public Contracts Review Board
Relation:	Professional Service
Reason:	Other
Payment details:	Objection. Tender CT2345/2024 following second evaluation as ordered
Currency:	EUR - Euro
Beneficiary IBAN/Account:	MT55MALT011000040001EURCMG5001H
Beneficiary IBAN/Account type:	Valid IBAN of country - Malta
Bank name:	Other bank
Bank address / Bank's BIC:	Let the bank apply the beneficiary bank BIC
Beneficiary address:	No
From account:	HospMalta Limited (EUR) 5002216448 2
Charges should be paid by:	Shared - I pay BOV charges; Public Contracts Review Board pays the beneficiary bank charges
Amount:	EUR 5,085.00
BOV to transfer the money:	as soon as possible
Receiving bank to get the money as:	normal priority payment
FPAD Result:	The name you entered does not match our records. If you continue, the payment may be sent to the wrong person, and recovery may not be possible as it could result in fraud. This Verification of Payee check will not block the payment, but it is simply providing additional security. Please verify the payment details with the recipient before proceeding.
Saved template:	no

Additional information

Credit amount:	EUR 5,085.00
Debited amount (excluding charges):	EUR 5,085.00
Estimated amount to be withdrawn from account:	EUR 5,089.00
Transaction charge:	EUR 4.00

Transaction result

Status:	Your instructions have been processed successfully.
Transaction ID:	180810321



09th June 2026

HospiMalta Ltd
TID 222471

REFERENCE: CT2345/2024

**SUBJECT: TENDER FOR THE PURCHASE OF QTY 2 HIGH-FREQUENCY JET
VENTILATOR UNITS FOR THE MEDICAL IMAGING AND THE ENT
DEPARTMENTS AT MATER DEI HOSPITAL WITH A REDUCED
ENVIRONMENTAL IMPACT**

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the tender submitted by your company was not successful since the criteria for award of this tender was the cheapest priced offer satisfying the administrative and technical criteria.

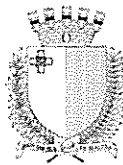
The tender was recommended for award to **TID 222381 Evolve Ltd. for the amount of €582,885.00 excluding VAT**, this being the cheapest priced tender satisfying the administrative and technical criteria.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of Friday 19th June 2026 against a deposit of €5,085.00.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1601 – MALTA



DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1601 – MALTA

Contact Number: +356 2378 1001

e-Mail: info.contracts@gov.mt

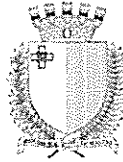
website: www.contracts.gov.mt

The official schedule can be accessed on the website: www.etenders.gov.mt.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely,

Wendell Mifsud
f/ Director General (Contracts)



09th June 2026

HospiMalta Ltd
TID 222470

REFERENCE: CT2345/2024

SUBJECT: TENDER FOR THE PURCHASE OF QTY 2 HIGH-FREQUENCY JET VENTILATOR UNITS FOR THE MEDICAL IMAGING AND THE ENT DEPARTMENTS AT MATER DEI HOSPITAL WITH A REDUCED ENVIRONMENTAL IMPACT

Dear Sir/Madam,

Thank you for participating in the above-mentioned tender procedure. However, I regret to inform you that the offer submitted by your company was found to be technically non-compliant as follows:

“The technical offer submitted by the bidder shows clearly that it does not meet specifications Para 2.4,2.5 and 2.8.2 as requested in this tender dossier. NOT technically acceptable.”

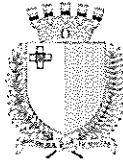
The tender was recommended for award to **TID 222381 Evolve Ltd. for the amount of €582,885.00 excluding VAT**, this being the cheapest priced tender satisfying the administrative and technical criteria.

If you intend to object to this decision, the Public Procurement Regulations allow for an official objection which in this case has to be lodged electronically with the Public Contracts Review Board by sending an email on: info.pcrb@gov.mt by noon of Friday 19th June 2026 against a deposit of €5,085.00.

Payments are to be made through bank transfer in terms of the following details:

Name of Account Holder	Cashier Malta Government
Name of Bank	Central Bank of Malta
Address of Bank	Castille Place, Valletta
Account Number	40001EUR-CMG5-001-H
BIC	MALT MT MT
IBAN Code	MT55MALT011000040001EURCMG5001H
Bank Code	01100

**DIPARTIMENT TAL-KUNTRATTI
Notre Dame Ravelin
Floriana FRN 1601 – MALTA**



**DEPARTMENT OF CONTRACTS
Notre Dame Ravelin
Floriana FRN 1601 – MALTA**

Contact Number: +356 2378 1001

e-Mail: info.contracts@gov.mt

website: www.contracts.gov.mt

The official schedule can be accessed on the website: www.etenders.gov.mt.

Although we have not been able to make use of your services on this occasion, I trust that you will continue to take an active interest in our initiatives.

Yours sincerely,

Wendell Mifsud
f/ Director General (Contracts)



Opened Tender Details

CFT TITLE:

**CT2345/2024 - TENDER FOR THE PURCHASE OF
QTY 2 HIGH-FREQUENCY JET VENTILATOR
UNITS FOR THE MEDICAL IMAGING AND THE
ENT DEPARTMENTS AT MATER DEI HOSPITAL
WITH A REDUCED ENVIRONMENTAL IMPACT
(Status: Evaluation)**

CFT CA UNIQUE ID:

CT2345/2024

NUMBER OF ENVELOPES:

1

DATE OF PUBLICATION/INVITATION:

14/01/2025 08:50

CLOSING DATE:

18/02/2025 09:30

OPENING DATE:

18/02/2025 10:00

SORT: FINANCIAL VALUE (EUR) ↑ ▾

Single	HospiMalta Ltd	View Historical Data	222470	572,920.00
Single	HospiMalta Ltd	View Historical Data	222470	572,920.00
Single	Evolve Ltd.	View Historical Data	222381	582,885.00
Single	Evolve Ltd.	View Historical Data	222381	582,885.00
Single	HospiMalta Ltd	View Historical Data	222471	882,060.00
Single	HospiMalta Ltd	View Historical Data	222471	882,060.00

Recommendation Attachment

SORT: EVAL. ROUND (A-Z) ▾

2

08/07/2025 12:28

[Download](#)

DOC 757 2026 : e-Tendering CFT Automated Notification - [CFT:11778657, Cft CA Unique ID: CT2345/2024] Announce Results

From : Info at Department of Contracts <info.contracts@gov.mt>
To : Info @Hospimalta <info@hospimalta.com>
Cc : Information at ODPM - CPS <info.cpsu@gov.mt>, Info at Department of Contracts <info.contracts@gov.mt>
Date : Thu, 11 Jun 2026, 02:09:50 PM +02:00

Mr.Spiteri,

Kindly find here under the information requested.

Brand:	Thora Tech GmbH (ex Accutronic)
Model Number:	MONSOON 4 SINGLE *ARGC ACUDis
Catalogue Reference:	AMS.214001

Regards,

Franklin Borg
RSSL Employee
Department of Contracts

t +356 2378 1330 e franklin.borg@gov.mt
www.finance.gov.mt | www.publicservice.gov.mt | fb.com/servizzpubbliku

MINISTRY FOR FINANCE

NOTRE DAME RAVELIN,
FLORIANA, MALTA

Kindly consider your environmental responsibility before printing this e-mail

From: Info @Hospimalta <info@hospimalta.com>
Sent: Thursday, 11 June 2026 12:14
To: Information at ODPM - CPS <info.cpsu@gov.mt>; Info at Department of Contracts <info.contracts@gov.mt>
Subject: Fwd: e-Tendering CFT Automated Notification - [CFT:11778657, Cft CA Unique ID: CT2345/2024]
Announce Results
Importance: High

CAUTION: This email originated from OUTSIDE the Government Email Infrastructure. DO NOT CLICK LINKS or OPEN attachments unless you recognise the sender and know the content is safe.

Dear Sir/Madam,

In consideration of an appeal we kindly request the make and model of the model recommended for award.

Kind Regards,

--

Adriano Spiteri



Registration Address

HospitaMalta Ltd
7, Triq il-Pleġġu, Birkirkara BKR4473, Malta

Operational/ Shipping Address

HospitaMalta Ltd
212, Triq San Giljan, Birkirkara BKR2806, Malta

P: +356 27046515 | M: +356 99494574 | <https://hospitalmalta.com>
VAT/EORI: MT31448730 | Company Reg.: C-109951

This email and any attachments are intended solely for the recipient(s) and may contain personal data or confidential information protected under the General Data Protection Regulation (GDPR). If you are not the intended recipient, please notify the sender immediately and delete this email. Unauthorized use, disclosure, or distribution of this email or its contents is prohibited.

In accordance with GDPR, please do not forward this email to any external domains or third parties without prior written consent from the sender. Sharing personal data without appropriate authorization may result in a breach of GDPR principles, including the lawful basis for processing personal data. By receiving this email, you agree to adhere to the confidentiality and data protection requirements set out in this notice. Thank you for your understanding and cooperation.

[Quoted text hidden]

PUBLIC CONTRACTS REVIEW BOARD

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

29th September 2025

The Board,

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

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

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

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

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

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

Minutes

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

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

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

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

A deposit of €5,085.00 was paid.

There were three Bids.

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

The attendance for this public hearing was as follows:

Appellant – HospiMalta Ltd. (MT31448730).

Dr Chris Mizzi – Legal representative.

Dr Adriano Spiteri – Company Representative.

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

Dr Leon Camilleri – Legal Representative.

Dr Alexia J Farrugia Zrinzo - Legal Representative.

Ms Cynthia Schembri – Chairperson.

Dr Stephan Sciberras – Evaluator.

Dr Keith Borg Xuereb – Evaluator (online).

Mr Jimmy Bartolo – Evaluator.

Ms Marika Cutajar – CPSU Representative.

Recommended Bidder – Evolve Ltd. (MT1801-7906)

Dr Clement Mifsud Bonnici – Legal Representative (online)

Ms Kim Tabone – Legal Counsel.

Mr Christopher Busuttil Delbridge – Company Representative.

Mr Franco Gatt – Company Representative.

Mr Mark Mizzi – Company Representative.

Mr Adrian Balghy – Company Representative.

Opening Statements

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

Initial Submissions

Initial Submissions by the Appellant

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

Initial Submissions by the Contracting Authority

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

Initial Submissions by the Recommended Bidder

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

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

Witness Testimonies

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

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

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

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

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

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

The tender, however, requires:

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

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

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

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

Cross-Examination by Dr Clement Mifsud Bonnici

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

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

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

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

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

Cross-Examination by Dr Adriano Spiteri

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

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

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

This UPS is used to support life supporting system disconnection.

Referring to Page 6 of the manual Dr Spiteri quotes:

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

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

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

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

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

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

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

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

Final Submissions

Final Submissions by the Appellant (Dr Chris Mizzi)

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

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

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

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

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

Final Submissions by the Contracting Authority (Dr Leon Camilleri)

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

Replica by Dr Mizzi

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

Replica by Dr Camilleri

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

Conclusion of the Hearing

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

End of Minutes

Hereby resolves:

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

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

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

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

Appearing for the Recommended Bidder: Dr Clement Mifsud Bonnici

Whereby, the Appellant contends with respect to:

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

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

12 Technical Specification

12.1 Settings and Ranges

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

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

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

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

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

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

Second Ground of Appeal - Auxiliary Flow

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

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

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

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

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

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

The Board,

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

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

Mr Kenneth Swain
Chairman

Dr Ing. Damien Gatt
Member

Mr Lawrence Ancilleri
Member