

PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2240
Tender Reference Number CT2139/2025
Tender Name “Tender for the Supply, Delivery, and Installation of Playground Equipment and Ancillary Works At Salina National Park. Re-Issue of CT2097/2025”

The Public Contracts Review Board (hereinafter the ‘Board’ or the ‘PCRB’) convened a public hearing on the 6th May, 2026 to hear the appeal as filed by the appellant High Rock Limited (hereinafter the ‘Appellant’) on the 27th January, 2026, and after taking cognisance of:

The tender document for the ‘Tender for the Supply, Delivery, and Installation of Playground Equipment and Ancillary Works At Salina National Park. Re-Issue of CT2097/2025’ (hereinafter referred to as the “Tender Document”);

The minutes of the proceedings dated 6th May, 2026 which are being reproduced hereunder:

Case 2240

644-CT2139/2025 – Tender for the Supply, Delivery, and Installation of Playground Equipment and Ancillary Works at Salina National Park

On the 6th May 2026, the Public Contracts Review Board (PCRB) composed of Dr Ana Thomas as Chairperson, Dr Vincent Micallef and Mr Keith Victor Grech as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – High Rock Limited

Dr Matthew Paris	Legal Representative
Dr Zack Esmail	Legal Representative
Dr Florian Durousset	Company Representative
Ms Camille Lovillat	Company Representative

Contracting Authority – Ambjent Malta

Dr Daniel Inguanez	Legal Representative
Dr Ramona Galea	Legal Representative
Mr Francis Farrugia	Representative of Ambjent Malta
Mr Patrick Siteri	Chairperson
Mr Paul Galea	Secretary
Mr Neil Lassus	Evaluator
Mr Joseph Farrugia	Evaluator

Minutes:

The Chairperson Dr Ana Thomas welcomed the parties.

Initial statement by Dr Paris

Dr Paris stated that the appellant is a foreign Director of High Rock Ltd a Maltese company and asked permission so that the hearing would be done in the English language.

There were no objections from all the parties and the Board acceded to the request.

The Chairperson declared that regarding the application concerning the Contracting Authority's reply, she noted that the appellant has asked a representative of the Public Contracts Review Board to testify and invited Ms. Amy Borg in order to hear her testimony first and after to start off with the hearing as usual.

Dr Paris suggested that the partes should listen to all the evidence and then take one decision at the end.

The Chairperson clarified that the decision regarding whether the reply is *fuori termine* or not, will be in the final judgement.

Dr Inguanez stated that although the Contracting Authority's reply contains some documentation; that documentation was already in the tender files and is still available to the Board and there is reference to it. He confirmed that apart from that documentation, the C.A. has no further evidence to produce, and therefore it is a question of whether the reply is formally embedded in the appeal file or not.

At this stage the Chairperson invited the parties to deliver their opening submissions.

Opening Submissions:

Dr Paris for the appellant: High Rock Limited

Dr Paris stated that he will not be addressing the *fuori termine* matter, but will do so after hearing the evidence and at the end with the final submissions.

Dr Paris stated that the appeal is rather simple and he explained that if one is compliant to a tender's specifications, then one is admitted to the next phase for evaluation of the financial bid and if not, it means exclusion. In this case he insisted, two HRL bids, and 5 other bids were excluded but the appellant insists that firstly its bids are compliant and cancellation is not required and secondly,

the way how the cancellation has been administered, lacks what is mandatory in terms of the reasoning and in terms of the information that should have been given to all the objectors, especially to High Rock Limited and as such the Contracting Authority, is not in compliance with legislation.

Exclusion of HRL

Dr Paris contended that the appellants' request for information was not upheld and this has been registered by HRL as a grievance. He continued that the Contracting Authority decided that HRL is not compliant and therefore is excluded as it did not give a warranty of two years on the moving parts for playing equipment and which had to be filled by bidders in a technical offer form asking for a mandatory warranty period.

Dr Paris contended that HRL confirmed its compliance with documentation i.e. literature in the technical offer form which is of a Note 3 status and where no changes are allowed and which it is still to establish whether the literature falls under note 2.

Dr Paris insisted that the Technical Evaluating Committee misinterpreted a document within HRL's submission and understood that the appellant is not giving the two-year warranty required and as a result, they decided to exclude. This has led HRL to their second grievance, which relates to the clarification.

Dr Paris reiterated that the decision to exclude without at least giving HRL the opportunity to explain, runs counter to Article 39 of the public procurement regulations because it is a disproportionate action. He continued that once HRL's offer is compliant, and once HRL was not given the opportunity, the appellant strongly believes that the appeal should be upheld, and the PCRB refers back the matter to the evaluation committee as composed or as composed through a different composition, so that they can reevaluate based on the actual information and on the actual submissions of HRL.

The Chairperson invited Dr Inguanez for the Department of Contracts and the Contracting Authority to submit his initial submissions.

Dr Inguanez drew the attention to one of the Contracting Authority's pleas and which is of a preliminary nature regarding the fact that the appellant made two similar bids in this tender except for the price. However, Dr Inguanez stated that in its appeal, HRL does not identify whether it is appealing with respect to both bids or a single bid in spite of the fact that the deposit has only been paid for a single bid.

Dr. Paris confirmed that both bids were paid and the appellant did submit on which bid he is making his objection. He continued that he could confirm that

HRL clarified that point way back months ago, so he thinks that that matter has been fully addressed. He confirmed that the fee was €3,474.

Dr Inguanez stated that the Contracting Authority was not informed of this clarification.

Dr Paris stated that he is very disappointed that the Director of Contracts with his reply submitted documents which are not reflective of reality and in fact the letter of rejection that HRL received was one document with two IDs dated 20th January 2026.

He also referred to documents CA5 and CA6, which are dated 7th January 2026.

Dr Paris continued that the documents submitted by the Department of Contracts are not reflective of this letter and they are two separate exclusions, and since with different dates, someone needs to explain this situation.

Dr Inguanez explained that in the Contracting Authority's preparation to this defence, these rejection letters which are attached as CA5 and CA6 were found in the internal files of the Department of Contracts. and if these were not submitted, then these should be discarded and the Contracting Authority should stick to whatever the appellant has received as the proper rejection letter is what the appellant received.

Dr Inguanez continued that these were drafted by the Department of Contracts. and he doesn't know the person who drafted them, and also, he doesn't know whether it was these letters that were issued to the appellant or the other letter. He admitted that there could have been a genuine mistake.

The Chairperson referred to the proper refusal letter in her possession and declared that she will verify with the original but wanted to know the position on what the Contracting Authority is going to declare vis-à-vis CA5 and CA6.

Dr Inguanez confirmed that the proper rejection letter is indeed the one of the 20th of January 2026 and that documents CA5 and CA6 were simply draft documents and not official ones and they have never been notified to the applicant; however, he stated that the Contracting Authority's plea still stands in its entirety.

Dr Paris explained that the appellant is not insisting on the second bid but on No 447 and this had been clarified months ago.

The Chairperson invited Dr Inguanez to continue with his initial submissions.

Dr Inguanez explained that 3 of the technical specifications requesting a warranty shall be provided in accordance with the special conditions on page 17

in Article 58.1 which details the clear conditions of this warranty and where one of the conditions is that it is a warranty to be provided by the manufacturer of the actual equipment that is 4BC.

Dr. Inguanez continued that HRL submitted a document by Kompan A/S and a separate document under the letterhead of Furniture Industry. He explained that these are CA3 and CA4 of the Contracting Authority's reply and invited the PCRB to make an exercise like the one done by the Evaluation Committee to verify these with the technical literature which manufacturer has provided the equipment and then after identifying the manufacturer, **one** has to check if that manufacturer has provided the warranty for two years as this is the reason for the rejection of HRL's bid.

Dr Inguanez stated that a warranty by any third party or by themselves could not be provided as once one compares the technical specification with the literature one can see that there is no link as the technical literature does not prove the declaration that they have made in their technical offer, and this is the main issue.

Witness

At this point The Chairperson invited Dr Paris to call his witness

Dr Paris called Ms Amy Borg (ID 0150102L) the representative of the PCRB to testify.

To questions by the Chairperson Ms Amy Borg declared that HRL's appeal was received on the 27th January 2026 at 6.28 pm, and she personally was the one who filed and processed it the next day, on the 28th January 2026 at 8:04 am. She continued that it was also sent to the DOC and the Contracting Authority at that time. She also stated that the letter of objection was received on the 27th but processed on the Tuesday, 28th January 2026. She confirmed that she affixed the appeal to the notice board of the PCRB a few minutes later at 8:10am. She also confirmed that she has email correspondence which shows this series of events, which emails were exhibited.

After consulting the emails, the Board explained that Doc AB1, is the email from Dr. Matthew Paris dated 27th January 2026, 6:28PM whereby he attached his appeal. AB2 is an email by Ms Borg dated 28th January 2026 8:04am whereby she informed the Department of Contracts of the appeal and that she indicated that it was filed Tuesday 28th but in truth it should have been Tuesday 27th as this is just a typo. Ms Borg agreed.

Answering further questions Ms Borg confirmed that Doc AB3 is the email where Dr. Paris on Wednesday 28th is saying that they indicated a date in the appeal erroneously and should be 27th not 30th and that Doc AB4 is the email whereby Ms Borg informed the DOC of this correction while indicating that AB4 is a

screenshot whereby she is showing that on the 28th of January, she also uploaded the objection to the website of the PCRB.

The Board declared that AB5 is the email by means of which Dr. Inguanez on behalf of the state advocate filed the reply 9th February 2026 at 8:39am and all the documents and AB6 is the another email.

Ms. Borg agreed and stated that the PCRB sent the reply to the appellant a few minutes later to the contracting authority, to Dr. Paris and Dr Ismael.

Ms Borg confirmed that HRL submitted their objection on the 27th of January at 6:28, 18:28 was processed on the 28th of January 2026 at 8:04am and both uploaded on the website at about 8:10 am on the same day.

Answering to another question by Dr Inguanez she confirmed that their appeal was received on the 27th of January and processed on the 28th.

The Chairperson invited Dr Paris to call his next witness.

Dr Paris called Mr Patrick Spiteri (112078M) to take testify.

Answering questions by Dr Paris, Mr Spiteri stated that he is Senior Manager within Ambjent Malta and acted as Chairman of the Adjudication Board together with Neil Lassos, Carl Fenech and Joseph Farrugia as evaluators with Paul Galea was the secretary.

To further questions by Dr Paris, Mr. Spiteri stated there were seven (7) bids and confirmed that two of them were submitted by the appellant and the Evaluation Board evaluated the tender holistically together with the secretary who was always present. Mr Spiteri explained that the Adjudicating Board first evaluated the administrative part, then the technical, but they did not go into the merits of the financial aspect. Mr. Spiteri clarified that as regards the other bids two (2) were administratively non compliant while the others were technically non-compliant. Mr Spiteri also confirmed that clarifications were made about administrative and technical issues submissions to other bidders.

As regards HRL's bid No 447, which is the main issue during the hearing, Mr. Spiteri stated that there was a clarification/rectification in relation to the technical aspect and a rectification in relation to the administrative part.

Answering questions by the Board regarding bid No 447 Mr Spiteri stated that as regards the rectification on the administrative part this was sufficient and that is why the Adjudication Board asked for a technical clarification after. As regards the technical issues Mr Spiteri recalled that this involved C4 spray protection, some measurements, confirmation that the screws had plastic cap on them, and that there were several clarifications and these can be found in roughly 13 pages

and all clarifications were sent to all bidders which technically were the same questions. As regards HRL's submissions as replies in relation to the clarifications or rectifications Mr Spiteri stated that they answered to all questions.

To further questions by Dr Paris regarding the technical offer form Mr Spiteri recalled that the technical offer form was completed, submitted in accordance with the requirements but there were no requests for the manufacturer's warranty as this was specifically in the special conditions which forms an integral part of the contract.

At this point Dr Paris asked whether the technical offer form deviated in any way from the tender requirement or was it fully compliant from a technical offer form perspective.

The chairperson asked Mr Spiteri to clarify whether the Adjudicating Committee saw any discrepancy between the technical offer form and what was submitted in the technical part where there is a list "yes" or "no" requirement to be ticked by the bidder for compliancy.

Mr Spiteri stated that that part was addressed properly.

Answering another question by the Chairperson if there was any discrepancy between that form and what he saw as the literature supporting that form, Mr. Spiteri answered that this concerns the submission of the literature list, but the issue here is about the warranty which was not requested neither in the literature list as it was mentioned in the special conditions.

At this stage Dr Paris stated that when it comes to the second part, which is the technical offer, one needs to submit in compliance with the technical offer requirements, a number of documentations. He asked Mr Spiteri what additional documents in addition to the technical offer form had to be submitted to supplement the technical offer.

Dr Paris explained that his question was what was the obligation of any economic operator in this tender in full compliance with the technical offer and besides the technical offer form, *"minn xiex kellu jkun kompost l-offerta teknika tal-obblaturi?"*

Mr Spiteri answered that there was a long list of specifications that the Contracting Authority requested for displaying equipment in the technical offer that they had to be in line with the submissions.

At this point Dr Paris asked what else was a bidder had to submit besides the technical offer form and what else to be compliant?

Mr Spiteri answered that besides the technical offer form a bidder had to submit a literature list and this had to be according to the specifications.

At this stage Dr Paris reiterated that the two components making the formed part of the technical offer were the fully completed technical offer and the literature list. The technical offer form was, fully compliant but referring to the second issue he asked what literature was to be submitted by the offeror.

At this point the Chairperson asked Mr Spiteri if the warranty was excluded from this literature list.

Mr Spiteri explained that the warranty had to be submitted in the special conditions and not in the literature list.

At this stage Dr Paris felt he had to explain his questions in Maltese and asked:

“Offerta teknika kienet komposta minn, jekk fhimt sew sa issa, minn żewġ elementi, element numru wieħed huwa t-technical offer form. Dak stabbilixxena li kien compliant. Il-porzjon l-ieħor, jekk fhimt sew, kien li jkellu jagħtik numru ta’ dokumenti. Dawn in-numru ta’ dokumenti minn fejn joħorgu?”

Mr Spiteri answered that these *“Joħorgu mill-parti teknika.”*

To another question by Dr Paris Mr Spiteri stated there were a large number of documents.

At this point the Chairperson indicated that Dr Paris was referring to the literature list, note 2, and consisting of two pages while clarifying that there were 17 documents in number so any economic operator submitting a bid, needed technical offer form note 3, and a literature list note 2. She also explained that one finds the item number, description, and which clause it ties to in the tender document.

Mr Spiteri confirmed the Chairperson’s clarification.

At this point Dr Paris clarified that the two components making the formed part of the technical offer were the fully completed technical offer and the literature list and at this stage it has been established that, the technical offer form was fully compliant.

Mr Spiteri confirmed this statement.

At this stage Dr Paris explained that he was now addressing the second part, that is, what literature was to be submitted by the offeror.

To a question by Dr Paris Mr Spiteri that in the technical offer form, there was no mention whatsoever of the manufacturer of the warranty and it was not required in the literature list. He continued that the Adjudication Board issued a rectification against what was not according to the specifications and that a document submitted as part of the literature list, could have been rectified.

At this point Dr Paris asked if the evaluation committee excluded High Rock Limited on any of the documents submitted in relation to the technical offer form or the literature list. Mr Spiteri replied that the Adjudicating Board issued rectifications which were replied by HRL.

At this point the Chairperson repeated a question by Dr Paris and asked if the Adjudicating Board disqualified as technically non-compliant High Rock Ltd's bid 447 with respect to anything listed in his technical offer form, which now has been established as a no, because they were fine and now with respect to the literature list, did you disqualify in any way in respect to the literature list?

Mr Spiteri did not agree and stated that it was not regarding anything after the clarification was issued.

Dr Paris intervened and stated that the exclusion is not in relation to the form, is not in relation to the literature, but asked if it is related to documentation, or other documentation not being part of the technical offer.

Mr. Spiteri replied that the Adjudication Board did not request it as the warranty declaration in the literature list was in the special conditions. He continued that the Board found a declaration stating that the company Kompan cannot give a two-year warranty on the moving parts for every playing equipment that is less than 200m from seawater or chlorinated water. He explained that the equipment was to be near the sea water and several other open chlorinated waters.

Answering questions by the Chairperson Mr Spiteri continued that this declaration, submitted with the literature list, and which was not requested in the literature list, and that this went against the special conditions that were requested in the tender document.

To a further question by the Chairperson Mr Spiteri explained that the warranty was not requested as part of the literature list. He continued that the tender mechanism did not let the adjudicating committee to ask, to clarify this declaration since it wasn't requested and continued that the Evaluation Board even asked for advice from the Department of Contracts and tried on several occasions to find ways on how can we ask for a rectification or confirmation to this request and if we did so this would have been unfair to the other bidders. Mr Spiteri confirmed that the exclusion was based on this point.

At this stage Dr Paris asked in what ways was an economic operator expected to show compliance with the requirement of the manufacturer's warranty in the tender document.

Mr Spiteri answered that if HRL didn't submit this declaration, the evaluation would have gone through as the declaration halted all the tendering process because it is against the special conditions.

At this point Dr Paris asked "Jiena ma kellix obbligu bl-ebda mod li nuri compliance ma' dak ir-rekwizit, qed ngħid sew? Mr Spiteri agreed.

Dr Paris then asked how was this document submitted to the Contracting Authority. Mr Spiteri answered that the document was submitted in the third part of the literature list and is addressing Kompan whose products amount to roughly 80% or 90 %. To another question by Dr Paris why the Adjudicating Board did not ask for a clarification or rectification Mr Spiteri answered that since the warranty was not asked for, the Board couldn't refer to note 2 or note 3 as we couldn't ascertain under which these falls and after consulting the Department of Contracts the Adjudicating Committee took the responsibility to decide.

At this point Mr Spiteri agreed to the Chairperson's suggestion that Iġifieri it-technical evaluation committee iddeċida illi dan id-dokument mhux support kien għandu u għaldaqstant, għax ma kienx mitlub, ma ridx jikjarifika jew jirrettifika fuqu, però u dan l-istess dokument kien il-bażi tad-deċiżjoni biex neskeduhom u fhassejna illi din id-dikjarazzjoni kienet fha tħalli repercussions aktar 'il quddiem li kieku għe awarded, kemm waqt l-implementazzjoni u wara l-manutenzjoni tal-playing equipment u kemm minn bidders oħra.

To further questions Mr Spiteri confirmed that he saw documents CA3 and CA4 because they were within the submissions of HRL but were in the original submission before any clarifications theoretically they were not required.

To a question by Dr Paris as to what did the evaluation committee establish regarding CA3 Mr Spiteri answered that all that the warranty requested in the special conditions regarded the years, and what was submitted here are exactly the same as what was requested in the special conditions which eventually will form part of the contractual agreement. He continued that If this document was submitted alone, the Adjudication Board would have gone to the brand which is indicated as Furniture Industry.

As regards CA4 Mr Spiteri stated that he saw it in HRL's submission in its original bid and the exclusion referred to the failure of the playing and gym equipment since they have moving parts about which there is no 2-year guarantee on them and if one is excluding the 2 year warranty on moving parts, the gym is part of the equipment.

At this point Dr Paris referring to the rejection letters of the 7th and the 20th January 2026 asked Mr Spiteri to state if there is any reference to the plying and gym equipment.

The Chairperson referred to CA5 in the rejection letter of the 7th January 2026 and pointed out that there was not mention of the gym. To this statement Mr Spiteri stated that that must have been an oversight.

Dr Inguanez stated that that was an internal document of the DOC, and he was not sure if the adjudicating committee ever saw the document, since finally the rejection letter was the one on the 20th January.

At this point the Chairperson referring to Doc CA7, the rejection letter dated 7th January and clarified that the one that was actually issued and received by High Rock, is dated 20th January 2026 the evaluation committee noted that the warranty declaration submitted by the bidder is not acceptable in terms of no warranties given for moving parts provided that the playing structures are installed less than 200m from shore. In view of this, the TEC can not consider the bid for further evaluation per general rules governing tenders Article 9.4.

At this point the Chairperson again pointed out that gym is not mentioned here.

Mr Spiteri again confirmed that it was an oversight but insisted that the gym has moving parts since after discussions the adjudicating board decided that gym is part of the playing and that its equipment has moving parts and the board wanted to be assured that there was warranty on the moving parts as well.

Dr Paris referred to document CA4 and asked if this document make reference to playing equipment and where can this be found. To this question Mr Spiteri answered that it states products installed which implies indirectly, to playing equipment because HRL submitted the literature of Kompan and this document is from Kompan however Mr Spiteri confirmed that the words “playing equipment” are not mentioned directly.

Dr Paris finally asked if Mr Spiteri has any recollections or information available at hand, whether in any other documentation it is mentioned that a 2-year warranty is being given as part of the literature list.

To this question Mr Spiteri answered in the negative.

Answering questions by Dr. Inguanez, Mr Spiteri stated that from the two documents CA3 and CA4 the warranties do not indicate exactly the equipment supplied by Furniture Industry and equipment supplied by Kompan. Mr Spiteri continued that the TEC went through the other documentation supplied in the literature list and verified which equipment specifically was being supplied by the both companies and even went on the website of the suppliers, of the

manufacturer to verify everything. He also confirmed that knew that the playing equipment is being supplied by Kompan because it went through the other technical literature, which was submitted in its bid, and they even had the logo on the submissions.

Re-examination by Dr Paris

Referring to the submission by High Rock Dr Paris asked whether Kompan was only supplying playing equipment or there were other elements. To this question Mr Spiteri stated that in terms of the submission by High Rock Limited, Kompan were the suppliers of playing equipment and there were other elements as part of the submission.

Dr. Paris called Mr. Florian Durousset Director of High Rock Limited 0196543A Director of High Rock Limited to take the stand. Mr Durousset stated that Kompan was supplying HRL the flooring as well as the play equipment and that the mentioned documents were not required and HRL had to submit technical data sheets. Mr Durousset continued that every technical data sheet of Kompan, comes with the warranty and so there are warranties stated on each and every document, which was submitted with the bid. In relation to the playing equipment on which HRL was excluded Mr Duousset declared that HRL made references to warranty periods and if one takes the literature list one finds that there is the technical data sheet of the item stating Kompan on Page 6, that is in the first item called Giant L. Mr Durousset continued that on page 3 there is something called warranty information and here you have the details for each and every component of the play equipment and that the panel in HGPE or lifetime warranty, the decks are warranted 10 years, the ropes and nets which are moving 10 years, the spare parts warranty 10 years, and the steel-post lifetime.

At this stage Dr Paris declared that he had no more questions.

Referring to technical data sheet L, Dr Inguanez asked whether the mentioned number of warranty conditions make any specific mention of where the product is installed.

Mr. Durousset stated that he was involved in the submission and all of the data sheets and that there were none mentioned.

The Board asked if there was one in this aspect were the warranty for less than 2 years. Mr Durousset stated that there were no warranties less than 2 years as the minimum was two years and it is written down for the movable parts and the rope and nets are ten years and rope and net are part of the moving part, because a rope and a net move.

Final submissions by Dr Paris

Dr Paris started by declaring that items CA5 and CA6 have been withdrawn and agreed that the letter of exclusion is dated on the 20th January 2026. He continued that he is drawing a distinction between the initial documentation submitted and the letter of exclusion due to the difference of the dates and that they were sent separately to the same bidder but for the 2 two different bids submitted by HRL on the 7th January. He also noted that during this hearing he learnt that this was an internal document

Dr Paris explained that on the 20th, what was meant to be disseminated as two separate documents, ended up being one document, being sent out to the same bidder, under the same heading and asking him to submit one appeal with one deposit.

At this point Dr Paris accused the Department of Contracts and the Director of not being fair since the Contracting Authority tried to raise what it invited HRL to do as a preliminary plea and as a result the Contracting Authority is trying to benefit from its own deficiency by even declaring which tender ID HRL is availing of in terms of this appeal, and that was fully adhered to. Dr Paris continued that the Contracting Authority's insistence that there is a sort of deficiency in HRL's objection is once again below the belt and the Board should not uphold this attitude.

Addressing the fuori temine grievance Dr Paris stated that the appellant is withdrawing that grievance.

Dr Paris referred to the rejection which had different reasons for rejection from what has been notified on the 20th, on the 7th and irrespective of that, it seems that the reason for rejection is different to what has been communicated to HRL and that is a breach which should be resend for evaluation He also referred to Regulation 242, Regulation 270, Regulation 272 which are very specific on what needs to be stated in relation to cancellation and exclusion and these he insisted have not been adhered to by the Adjudication Committee.

Dr Paris contended that what was requested was a technical offer form with no mention of the warranty and technical documentation to substantiate that technical offer and these were the two components which all the seven bids should have been evaluated on.

He Explained that this board evaluated matters which were not part of the technical requirements of the tender and which did not form part of what was supposed to be submitted by the bidder and insisted that to use such methods to evaluate, to exclude, and to cancel the tender leads to a second breach that is that of the doctrine of self-limitation.

Dr Paris stated that he was surprised that the TEC took 6 months to try to save the tender and if HRL's documentation formed part of the technical literature,

and whether it has been confirmed or not that they formed part of the technical literature; what they should have done if they found a discrepancy, they could have easily asked for a clarification. He continued that if the documentation formed part of the technical literature or not this could have been substituted as since when something is of a note two status there is the ability to rectify as rectification allows changes, to modify, to submit new documentation within a prescribed window, within a prescribed time frame, generally of five working days.

Dr Paris stated that the exclusion is the most extreme decision taken and this leads to the third breach and that is of Regulation 39 of the Subsidiary Regulation 601.03. besides the doubt weather we submitted something which is not in accordance with the tender requirements. He contended that in reality, HRL's offer is fully compliant and that there is no real need for rectification, or verification to save HRL's bid.

Dr Paris explained that Kompan provided HRL with products both for playing equipment flooring as Kompan is HRL's manufacturer and supplier for both elements. He reiterated that the bidder made specific reference to the two documents which are and do form part of the submission of HRL's economic operator, but are enclosed as CA3 and CA4 of the reply by the Department of Contracts. He continued that CA3, verbatim, is exactly what they requested, specifically making reference to playing equipment, to gym equipment, to the years and the warranty requested. Dr Paris contended that if there was any misunderstanding to address, this was the document which gives the necessary comfort because this document specifically spells out what the Contracting Authority requested in relation to 58.1.

The chairperson clarified that the point mentioned by Dr Paris is A4BC. 58.1

Dr. Paris continued that in this document, which was not required there is no mention of playing equipment. He continued that the technical evaluation committee, at first insistently refused to reply but eventually stated that this was mentioned, indirectly, because they deduced that given that Kompan is the supplier of the playing equipment the evaluation committee deduced it is also making reference to it.

Dr Paris insisted that for transparency's sake one either includes in clear details or one doesn't and in this particular case there is no reference to the playing equipment. He continued that if they had once again in their mind that they deduced indirectly understood, they would have easily asked that question. Dr Paris insisted this appeal, this objection, this exclusion, this cancellation is totally uncalled for, because in the first place, in the original submission, it was very clear, and secondly, we were compliant in the original submission and thirdly. HRL fully adhered to their obligations in terms of the technical offer in the original submission.

At this point Dr Paris again referred to policy number 40 and insisted that if there was some level of misunderstanding one can refer to policy number 40, which, mandates clarification to clarify to request and if a clarification was made it would have saved the tender.

Dr Paris also referred to a judgment, dated 2nd April 2025, Case2091and which refers to CCT 2007/2021 and made a reference to it in relation to the clarification and the possible discrepancy in that particular case. He explained that there were two documents, the technical offer form stating one thing and another document stating exactly the opposite and this board declared that in that particular case, the extreme decision to exclude was not proportionate but an effort to ask for a clarification would have addressed the issue and satisfied the minimum requirements.

Dr Paris also referred to another case Green Building Solutions Limited versus Festivals Malta Agency, Department of Contracts on the 11th November 2025, Court of Appeal, Superior Courts, 246/25/1 page 22 paragraph 59 whose reply makes reference also to one particular element which indicates that one's offer is a pre-contractual arrangement and which ties one down to a situation where, if in the end one does not fulfil one's obligation, then there could be an issue.

And while quoting from the court's decision he stated that it is the contracting authority's obligation that the warranty granted the moment that something is submitted fulfils the obligations therein. And if it fails, it has a new obligation as a contracting authority to either enforce penalties, to either ensure that you blacklist and do anything that is within the remit of the not technical evaluation committee now, but of the contracting authority to ensure fulfilment of the obligation.

At this stage Dr Paris concluded that this situation requires re-evaluation by a newly composed evaluation committee one, because they failed to understand the remit and two, because the evaluation board failed to understand what their obligations are.

Referring to page 17 of the tender document Dr Paris stated that the chairperson of the committee declared that the warranty should not have formed part of the submission and in the tender document it states that warranty shall be submitted at the tendering stage with the tender document.

Dr Paris continued that the adjudicating committee got the basics wrong meaning that they did not even understand the basics. Dr Spiteri explained that he made a trillion questions based on what should have been submitted that is the way how they adjudicated, the way how they evaluated, and these were not based on what the tender required, but what they thought that the tender required and this means that this is an evaluation which can never be saved, an evaluation which is flawed, an evaluation which is based on a number of

inconsistencies, an evaluation which is based on mistakes. Dr Paris ended by declaring that there are so many questions unanswered, there is evidence calling for evaluation it's so clear that an evaluation, a re-evaluation is merited in this context.

Final submissions by Dr Inguanez

Dr Inguanez firstly addressed the issue of whether the original bid of High Rock Ltd can be considered technically compliant. He contended that the technical offer form did not require any warranty per se but confirmed that High Rock's submission in terms of technical offer form was satisfactory but however when it comes to the technical literature list, the technical literature list also does not require any particular literature referring to the warranty. He continued that as regards this issue High Rock's bid was also satisfactory but however High Rock Ltd decided voluntarily to submit these two documents, one by Furniture Industry and one by Kompan, which are the CA3 and CA4 documents.

Dr Inguanez reiterated that High Rock Ltd, in its technical literature, submitted also these two documents, which are the warranty declarations of furniture industry and the warranty declaration of Kompan. Furniture Industry's declaration clearly reproduces the text of the Article 58.1 of the Special Conditions, so in that case, it is satisfactory; but Kompan literally says the opposite that is, that they are not going to give warranty for any moving parts installed within 200 meters of the sea. Dr Inguanez explained that this was the reason why the technical evaluation committee was obliged by law to take the steps it did as the warranty, is in fact requested in the technical specifications A at page 19 of the special conditions and this is a case where the warranty is being requested at tendering stage and the contracting authority did not require any proof of it at tendering stage.

Dr Inguanez explained that, that obligation will subsist at contract execution stage and the contracting Authority did not request any proof at the tender evaluation stage but at this stage already, there are the technical specifications, section 3, being note 3 documents, and the supplementary literature confirming that that is not being satisfied.

Dr Inguanez continued that Kompan which provided a lot of the moving parts declared in document CA4 specifically stated that as the manufacturer, it was not giving any warranty to any of its products being installed within 200 meters.

As regards Furniture Ltd, Dr Inguanez stated that it made no reference in those technical data sheets to where these moving parts will be installed and its declaration supplements that information, where it specifically states a "no" so the reasonable interpretation is that Furniture Industry gives specific warranties as per technical data sheets, but in this case, once they were notified that these

moving parts are being installed next to the sea, they were expressly excluding to give the warranty.

Dr Inguanez reaffirmed that it is perfectly clear that technically, High Rock Ltd was not compliant and even though, had they not even submitted these warranty declarations, the contracting authority would have had no mechanism of finding this non-compliance out at that stage, and would have gone to contract execution, and then that problem would have cropped up at the contract execution stage and once the criterion was not satisfied the decision was to reject it at this stage.

Dr Inguanez referred to the Green Building Solutions judgement and stated that this case is not comparable to the present one as this was a works contract where the bidders were requested to give a projected timeline involving a maximum of a number of months and the bidder had submitted a projected timeline, which was much less than the maximum number of months, and the contracting authority had considered that that is an unrealistic timeline and rejected for that reason. He continued that in that case, the court stated that a minimum number of months was not established by the Contracting Authority. Dr Inguanez continued that in this case, High Rock Limited is simply non-compliant because it declared clearly that it is its manufacturer that does not have the necessary warranty and it would have been comparable to Green Building Solutions had, in that case, the projected timeline been greater than the minimum.

Dr Inguanez then addressed the clarification and rectification issue and stated that firstly, a clarification and rectification is not simply an invitation for one to change one's bid. He explained that the case law of the ECJ and the case law of the PCRB consistently stated that a clarification is issued where there is an obvious clerical mistake and a rectification is issued in order to supplement missing information and in this case, there is no clarification or rectification to be made.

Dr Inguanez contended that the manufacturer Kompan has literally stated clearly that he will not give a warranty and the Contracting Authority cannot give High Rock Limited the opportunity to supplement their playing equipment with another manufacturer because that would have changed the technical offer itself and that would be unfair on other bidders. He continued that the Contracting Authority could not even give HRL an opportunity to negotiate with Kompan to offer another warranty which would have accepted the 200 meters distance from the sea because that would have changed the technical offer and the requirement that is being breached is not even a technical literature requirement.

Dr Inguanez stated that it is true that the Contracting Authority found out this non-compliance from the technical literature, but the technical literature was

simply supplementing the technical offer and the warranty is required as a technical specification under section 3 which is note 3.

To a hypothetical question by the Chairperson. Dr Inguanez declared that if the warranty which was not required but still provided under the list had been changed to a suitable warranty, the contracting authority was determined that a change in the technical offer. would have been a change in the technical offer and that is simply substituting a current offer with another offer.

Dr Inguanez reiterated that if one examines Kompan's declaration, there is no misunderstanding or clerical error or mistake or room for interpretation as Kompan simply stated that their products do not come with that type of warranty.

Dr Inguanez explained that the appellant is submitting that the reason for rejection is different from that of the Contracting Authority's, because it doesn't mention the gym equipment in the reason for rejection. The Contracting Authority submits that this is a baseless argumentation as the rejection letter of the 20th of January specifically states the warranty.

Dr Inguanez ended his submission by stating that High Rock Limited has not provided a warranty as requested under the special conditions and even if part of the equipment was covered by other warranties or did not require that warranty, the fact remains that Kompan's moving parts are not; so there is no room to make a difference between gym equipment and other equipment but simply the warranty requested was not provided.

At this point the Chairperson thanked all the parties and concluded the hearing."

The written pleadings as filed by High Rock Limited on the 27th January, 2026 (with a stamp dated 28th January, 2026), together with proof of payment of a deposit in the amount of €3,475.00, wherein it held as follows:

"REASONED LETTER OF OBJECTION

Whereas the Department of Contract (hereinafter "DoC") issued a call for tender 'for the supply, delivery, and installation of playground equipment and ancillary works at Salina National Park'

Whereas Messrs. High Rock Limited (hereinafter "HRL" and/or 'the appellant company') submitted a bid for this procedure.

Whereas, by means of a letter dated 20th January 2026, the Appellant company was informed that that its offer was being rejected:

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

Whereas the same letter proceeded to inform HRL that the tender is being recommended for cancellation, as follows:

"However, I regret to inform you that this tendering procedure is being cancelled in line with Article 18.3 (a) of the General Rules Governing Tendering where it is stated that: Cancellation may occur where the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all"

Whereas HRL through a request for information dated 26th January 2026, requested the DoC to supplement its rejection cum cancellation, which request was answered to on the 27th January 2026.

Whereas the Appellant company feels aggrieved by the decision to recommend the rejection and the cancellation of the tender, and is hereby submitting its objection within the stipulated time-frame and accompanied with the relative payment (copy of confirmation of payment enclosed as DOC1), in accordance with inter alia article 270 of Subsidiary Legislation 601.03 (hereinafter the PPR), and this based on the following grievances:-

1. Preliminary observation

1.1 It is the submission of the appellant company that the letter dated 20th January 2026 fails to satisfy the mandatory requirements set out in Regulation 272 of S.L. 601.03 ("PPR").

1.2 In terms of Regulation 272 of the PPR, it is incumbent upon the DoC, at a minimum, to provide: (i) a summary of the relevant reasons relating to the rejection of the tender, as contemplated under Regulation 242; (ii) the reasons and findings for the cancellation of the call for tenders; and (i) a precise and unequivocal statement of the applicable standstill period.

1.3 The impugned letter manifestly fails to provide any reasons whatsoever for the cancellation of the call for tenders, other than a generic statement, particularly in circumstances where: (i) all tenders submitted fell within the estimated procurement value and were therefore financially worthwhile; (ii) no fewer than seven (7) offers were submitted, evidencing effective competition; and (iii) at least two (2) of the submitted tenders were fully compliant with the minimum technical specifications.

1.4 It is pertinent to recall that a recent judgment of the Court of Appeal, *Agins Stone Works Limited v. Kunsill Lokali Valletta et* (8 April 2025, Rik. Nru. 65/2025/1), unequivocally held that decisions cancelling a call for tenders must expressly set out both the reasons and the findings underpinning such decision. The Court held as follows:

"F'dan ir-rigward il-liġi tgħid fir-Regolament 15(3) tar-Regolamenti dwar Kuntratti Pubbliċi li d-deċiżjoni li twassal għall-kancellament tas-sejba trid issir bil-miktub u jrid ikun fiha s-sejbiet u r-raġunijiet li wasslu biex din tkun inbarġet. Minn kliem il-liġi għalhekk iddeċiżjoni ta' kancellament ta' sejba jrid ikun fiha mbux biss irraġunijiet li wasslu t-thassir tas-sejba iżda jrid ikun fiha anke s-sejbiet (findings)." [emphasis added]

1.5 Finally, it must be noted that the DoC elected to issue a single, combined letter to the appellant company purporting to (i) reject both of the appellant's offers and (ii) cancel the call for tenders, without providing any justification for the latter. This approach further resulted in misleading instructions being given to the economic operator, insofar as the letter incorrectly stated that a

single deposit of €3,475 was payable in order to lodge an objection, when in fact such deposit is payable per submitted offer, as opposed to the erroneous indication contained in the following extract:

"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 at the Public Contracts Review Board... against a deposit of €3,475."

2 Wrong evaluation - Appellant's Bid is technically compliant

2.1 The combined letter, inter alia, states as follows:

"The Evaluation Committee noted that the warranty declaration submitted is not acceptable since no warranty is given for the moving parts, given that the playing structures are being installed less than 200 metres from the shore. In view of this, the TEC cannot consider the bid for further evaluation in terms of Article 9.4 of the General Rules Governing Tenders. The TEC observed that High Rock Ltd altered and deviated from the warranty requirements set out in the special conditions of the tender document."

2.2 The appellant company categorically refutes the above allegation in its entirety. The appellant's offer(s) are fully compliant with the tender document specifications. In particular, and contrary to the Technical Evaluation Committee's (TEC) assertion, the appellant has provided a two-year warranty on all moving parts, in full conformity with the requirements set out in the tender documentation. Accordingly, the rejection of the appellant's bid on this ground is wholly unjustified and unfounded.

2.3 For ease of reference, an extract from the tender document, specifically page 17, is reproduced hereunder:

(B) Warranty

The play equipment shall be warranted by the manufacturer for the following m periods from the date of purchase:

- a) 10 years on the structure.
- b) 5 years on all other materials (Excluding Colour stability for safety Floor
- c) 2 years on the moving parts.
- d) 2 years for the colour stability of safety flooring.

Extract from the tender document

2.4 For ease of reference, an extract from the appellant company's submission is enclosed hereunder, clearly confirming full compliance with the warranty requirements:

...

2.5 Thus, and thereby, the appellant company submit that, the rejection of the offer by the Contracting Authority is mistaken and thereby should be revoked.

3 Wrong evaluation - Evaluation committee failed to seek clarification

3.1 The third grievance concerns the TEC's failure to seek clarification. In accordance with Procurement Policy Note No. 40, and the overarching principle of good administration, where

documentation is discrepant, ambiguous, or unclear, the TEC is required to request the concerned economic operator to provide the necessary clarifications within an appropriate time limit, rather than resorting to the extreme measure of exclusion

- 3.2 *The facts of the case clearly indicate that, had the TEC failed to identify the warranty requirement within the appellant's initial submission, this matter should have been addressed through a clarification request. A simple clarification in this scenario would have been sufficient to confirm full compliance with the tender requirements. The TEC's decision to proceed directly to exclusion, instead of availing itself of this corrective mechanism, constitutes a disproportionate application of the rules and runs counter to the principles of procedural fairness and transparency that underpin public procurement.*
- 3.3 *By failing to adopt this less onerous and proportionate approach, the TEC effectively deprived the appellant of its right to a fair evaluation process, thereby breaching both the principles of good administrative conduct and the duty of care incumbent upon the TEC in the execution of its evaluative functions.*
- 3.4 *This position is further supported by the judgment of the Court of Justice of the European Union in Tideland Signal Ltd v Commission of the European Communities (Case T-211/02), wherein the Court held that:*

"In response to the Commission's argument that its Evaluation Committee was under no obligation to seek clarification from the applicant, the Court held that the power set out in section 19.5 of the Instructions to Tenders must, in accordance with the Community law principle of good administration, be accompanied by an obligation to exercise that power in circumstances where clarification of a tender is clearly both practically possible and necessary."

4. Cancellation - unnecessary

- 4.1 *The appellant company submits that the decision to cancel the call for tenders was neither necessary nor justified. The two (2) offers submitted by HRL Rock Limited were fully compliant with the tender specifications and fell well within the estimated procurement value range. In these circumstances, the fundamental conditions required to proceed with the award process were clearly met, and there existed no objective basis to warrant the cancellation of the tender procedure.*
- 4.2 *Notwithstanding the above, the decision to cancel the tender was taken without any clear or reasoned explanation being provided. While HRL expressly reserves all its rights to submit additional grievances should further information or justification be disclosed at a later stage, its position remains that the cancellation decision is arbitrary, disproportionate, and contrary to the principles governing public procurement.*
- 4.3 *Accordingly, HRL maintains that the cancellation of the call for tenders is erroneous in both fact and law and respectfully submits that such decision should be revoked, allowing the procurement procedure to proceed in accordance with the applicable regulations and principles of fair and open competition.*

5. Cancellation - breaches proportionality principle

5.1. *The cancellation of a tender must be strictly necessary and applied only as a measure of last resort. While it is acknowledged that the Director retains the discretion to cancel a tender procedure, such discretion becomes significantly more limited once the prices submitted by the economic operators have been disclosed, in order to safeguard the principles of transparency, equal treatment, and legitimate expectations.*

5.2. *This was the essence of the Court of Appeal judgment in the names of Cateressence Limited (C-49407) v. Ministeru tal-Intern u Sigurtà Nazzjonali; idDirettur Ġenerali (Kuntratti); u James Caterers Limited (C-30139), wherein it was held that:*

"Dan il-fattur anti-kompetitiv, li ċertament jikser il-par condicio tal-oblaturi, jegħleb kull vantagg li jista' jinkiseb - u jekk hemm xi vantagg, ma ntweriex x'inbu - bit-thassir tas-sejba għal offerta. Iservi biss biex jagħti vantagg lil min, sa issa, l-offerta tiegħu żammha mistura, li ċertament huwa kontra l-ispiritu tal-ghoti ta' kuntratti pubbliċi."

5.3. *With regards to disclosure of prices, the Court of Appel in the decision in the names of, Melchior Dimech v Ministeru għall-finanzi u Xogħol et², it was held:*

"Fi żgur, mbijiex indikattiva s-soluzzjoni proposta mill-appellant li ssejba għandha tiġi mbassra kollha kemm hi. Soluzzjoni bħal din twassal biex jiġi mfixxkel il-proċess tal-kompetizzjoni minhabba li llum il-prezzijiet tal-oblaturi ekonomiċi huma mikxufa u għalhekk l-oblaturi jafu x'inbu l-prezz tal-oblaturi l-oħra u b'hekk ikunu jistgħu ibiddlu l-offerta tagħhom jekk kemm-il darba ssir sejba ġdida" [added emphasis]

5.4. *Likewise, the ECJ, in the case Tideland Signal v Commission³ held that:*

"... the principle of proportionality requires that measures adopted by the community institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives pursued and that where there is a choice between several appropriate measures recourse must be had to the least onerous.."

NOWTHEREFORE, whilst reserving the right to put forward any other submissions, HRL hereby requests the PCRB:

- i. To order the defendants, or whosoever, to:
 - a. revoke the letter/recommendation dated 20th January 2026, by virtue of which the offer of HRL has been recommended for rejection; and
 - b. revoke the letter/recommendation dated 20th January 2026, by virtue of which tender CT2139/2025 has been recommended for cancellation.
- ii. To order the defendants, or whosoever, to re-instate the appellant company, and through a newly composed evaluation committee reevaluate the tenders.
- iii. To refund the deposit paid in its entirety.
- iv. To do anything else which is conducive and necessary for the proper execution of the above requests.

HRL is hereby reserving the right to present further evidence, both orally or in writing, during the hearing.”

The written joint reply as filed by the Department of Contracts and Ambjent Malta on the 9th February, 2026 (hereinafter the ‘Contracting Authority’) wherein it held as follows:

“Joint Reply of the Department of Contract and of Ambjent Malta to the appeal of High Rock Ltd re. CT2139/2025 Tender for the Supply, Delivery, and Installation of Playground Equipment and Ancillary Works at Salina National Park, Re-Issue of CT2097/2025

Preliminary

1. *By means of its objection, High Rock Ltd raises three grievances:*
 - (a) *That the contracting authority incorrectly rejected its bid having found it to be technically non-complaint insofar as High Rock Ltd declared in its bid that no warranty is being offered for moving parts of structures installed less than 200m from the shore;*
 - (b) *That the contracting authority should have given the opportunity to High Rock Ltd to clarify its bid;*
 - (c) *That the cancellation of the tender procedure is unnecessary and disproportionate.*
2. *The Department of Contracts and Ambjent Malta deem all grievances raised to be unfounded.*

Facts

3. *The Department of Contracts, on behalf of Ambjent Malta, published the call for tenders in question on the 26th of May 2025 with the estimated procurement value of €695,000.*
4. *Under 'Section 3- Technical Specifications' the call for tenders (p. 19) requires that:*

"The warranty shall be provided in accordance with the Special Conditions."

5. *Art. 58.1 of the Special Conditions (p. 17) of the public contract to be awarded imposes, inter alia, the following obligation on the eventual contractor:*

"The play equipment shall be warranted by the manufacturer for the following minimum periods from the date of purchase:

c) 2 years on the moving parts."

6. *By the end of the clarification period, the 15th of June 2025, four clarifications were requested by potential bidders. These requests were answered by means of two Clarification Notes published on the 10th of June 2025 and on the 20th of June 2025, respectively (herewith attached and marked Doc. CA1 and Doc. CA2). None of the clarification requests raised any issue with the obligation of providing a manufacturer's warranty for 2 years from date of purchase on the moving parts.*

7. *By the deadline for the submission of bids, seven (7) bids were received. Two (2) of these bids were submitted by High Rock Ltd having the tender ID Number 000229447 and 000229449.*
8. *In both of its bids, High Rock Ltd submitted two declarations. The first is entitled 'Guarantee Clause', is provided by Furniture Industry and reproduces the obligation of Art. 58.1 of the Special Conditions verbatim (herewith attached and marked Doc. CA3). The second is entitled 'Near Water Installations', is provided by Kompan A/S and declares that: "Products installed in direct contact with chlorinated water or saltwater or products installed within 200 meters from the shore are not covered by the Kompan A/S warranty for any defects caused by corrosion. Specially designed products upgraded to corrosion class C4 prior to the delivery, installed within 200 meters from the shore shall be covered only against structural failure caused by corrosion (excluding moving parts) according to the warranty period for each product type set out in the general warranty, but for a maximum of 10 years. For parts that do not rust, the warranty period remains unchanged." (herewith attached and marked Doc. CA4).*
9. *The tender evaluation committee considered that by submitting this second declaration in its bids High Rock Ltd was altering and deviating from the obligation imposed by Art. 58.1 of the Special Conditions. It therefore did not consider the bids of High Rock Ltd further as is prescribed by Art. 9.4 of the General Rules Governing Tenders.*
10. *The rest of the bids were also deemed to be technically non-compliant by the tender evaluation committee. Therefore, the procurement procedure has been cancelled.*
11. *The Department of Contracts issued a letter for each of the seven (7) bids, informing the respective bidder that its bid was being rejected for being technically non-compliant and that the procurement procedure was being cancelled in line with Art. 18.3(a) of the General Rules Governing Tenders also citing its text:*

"Cancellation may occur where the tender procedure has been unsuccessful, namely where no qualitatively or financially worthwhile tender has been received or there has been no response at all."

12. *High Rock Ltd received, on the 20th of January 2026, two (2) letters (herewith attached and marked Doc. CA5 and CA6, respectively), one for each of its bid, which both informed that the respective bid was being rejected on the basis of Art. 9.4 of the General Rules Governing Tenders, and that the procurement procedure was being cancelled on the basis of Art. 18.3(a) of the General Rules Governing Tenders. In both letters, for each of its bids, High Rock Ltd was informed of its right to file an objection to that decision, against a deposit of €3,475.*
13. *On the 27th of January 2026, High Rock Ltd filed a single objection. Together with its objection letter High Rock Ltd paid a deposit of €3,475. The objection letter does not identify in respect of which bid it is being filed.*

First Plea: the objection of High Rock Ltd is either ambiguous in contravention of the requirement of Reg. 270 of the Public Procurement Regulations (PPRs) or invalid according to Reg. 273 of the PPRs

14. *High Rock Ltd's request for remedies is directed at a single bid in that it requests the Board to revoke the decision "...by virtue of which the offer of HRL has been recommended for*

rejection". In its premises the rejection letter often addresses the offer, in the singular, without specifying which of the bids it is referring to. However, in certain instances, it refers to its "offer(s)" or the "two (2) offers submitted by HRL Rock Limited". Despite not expressly limiting the appeal to one of its offers High Rock Ltd has only deposited €3,475.

15. The objection has either been drawn up in contravention of Reg. 270 of the PPRs or is invalid in terms of Reg. 273. The objection must be corrected since it does not state whether it seeks to impugn the decision to reject bid no. 000229447 or the decision to reject bid no. 000229449. If on the other hand, the intention was to seek to impugn both decisions in a single objection, then, that objection is irregular insofar as two objections should have been filed in terms of Reg. 270 of the PPRs and two deposits of €3,475 should have been made. In the latter case, the objection is invalid as per Reg. 273 of the PPRs.
16. As High Rock Ltd rightly observes in para. 1.5 of its letter of objection, the deposit of €3,475 is payable per submitted offer, if the objection relates to both offers. It is quite incomprehensible how High Rock Ltd correctly understood this and yet claims that the rejection letters it received gave it "misleading instructions". In any case, the claim that it has been misled is rejected. The Department of Contracts sent High Rock Ltd two letters, one for each bid, informing it of the decision to reject the respective bid. Those letters clearly state it has a right to object to those decisions, respectively, in each case against a deposit of €3,475.
17. It follows then that the objection cannot even be entertained unless its deficiencies are remedied by High Rock Ltd either by:
 - (a) Clearly identifying whether the objection seeks to impugn the decision to reject bid no. 000229447 or the decision to reject bid no. 000229449; or
 - (b) Clearly identifying that the objection seeks to impugn both decisions in relation to both of its bids no. 000229447 and no. 000229449, and paying a further deposit of €3,475.

Second Plea: High Rock Ltd's claim that its bid is technically compliant is unfounded

18. The condition that the bidders provide a two-year warranty on moving parts is not solely a condition for technical compliance indicated under 'Section 3- Technical Specifications' the call for tenders (p. 19) but it is a contract condition, Art. 58.1 of the Special Conditions (p. 17), imposed upon the eventual contractor.
19. The declaration from Kompan A/S clearly deviates from Art. 58.1 of the Special Conditions. By means of that declaration High Rock Ltd gave notice that, should it win the contract, Art. 58.1 of the Special Conditions would be further qualified by the conditions specified by Kompan A/S, namely, that the warranty would not cover moving parts of structures installed within 200 meters from the shore.
20. A tender offer in itself already constitutes a (pre-)contractual relationship between the bidder and the contracting authority. The bid is the promise, on the part of the bidder, that it will perform the contract to the level and quality specified in the bid. In fact, the special conditions in all call for tenders, as is the case here (Art. 3.1 p. 8), specify that the public contract is not only made up of the signed agreement, the special conditions and the general conditions, but also of the contractor's technical offer and the documentation submitted by the contractor in the procurement procedure. If the contract is signed with High Rock Ltd, it could rely on the

declaration of Kompan A/S to detract from the strict warranty obligation of Art. 58.1 of the Special Conditions.

21. *It is for this reason that Art. 9.4 of the General Rules Governing Tenders stipulates that:*

*"...the tenderer accepts in full and in its entirety, the content of this tender document... 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.**"*

22. *In its grievance High Rock Ltd conveniently makes no mention of the declaration by Kompan A/S and relies solely on the declaration by Furniture Industry. That the latter declaration does not deviate from the Special Conditions imposed by the call for tender is not contested. But the fact remains that the declaration by Kompan A/S also forms part of High Rock Ltd's offer. Once it is part of its bid, that declaration will form part of the contract and the Department of Contracts and Ambjent Malta cannot simply ignore it.*

23. *For completeness's sake, should High Rock Ltd have not understood the extent of the warranty which was being requested it had every opportunity to request a clarification. It would then have been in a position to consider whether it was in a position to perform the contract without using Kompan A/S manufactured structures.*

24. *It follows then that both of High Rock Ltd's bids are technically non-compliant and cannot be considered further in terms of Art. 9.4 of the General Rules Governing Tenders.*

Third Plea: High Rock Ltd's claim that it should have been given the opportunity to clarify its bid is unfounded

25. *By means of this grievance High Rock Ltd gives the impression that the tender evaluation committee somehow failed to identify the warranty requirement in its bid. It therefore argues that, had it been given the opportunity to clarify its bid the tender evaluation committee would have been directed to the declaration provided by Furniture Industry.*

26. *High Rock Ltd, again, ignores the declaration submitted by Kompan A/S. Contrary to what High Rock Ltd may believe, the tender evaluation committee identified both the declaration provided by Furniture Industry and that provided by Kompan A/S. The issue was not that the former declaration was overlooked but rather that, by the latter declaration, High Rock Ltd had effectively altered the contractual conditions proposed rendering its bids non-compliant.*

27. *One cannot but conclude then that a clarification request would have had no utility in the present case.*

28. *This grievance is, for this reason, also unfounded.*

Fourth Plea: High Rock Ltd's claims that the cancellation of the call for tenders is unnecessary and disproportionate are also unfounded

29. *As indicated in the rejection letters, the cancellation of the procurement procedure is premised on the fact that all participating bids were deemed to be non-compliant. The cancellation*

decision in itself is therefore dependent on the Board's decision with respect to the issue of the warranty on moving parts.

30. *Given that the rejection of both of High Rock Ltd's bids was warranted, this grievance is also unfounded. In view of the above considerations, the Department of Contracts and Ambient Malta requests that this Board:*

- (i) dismiss all of the grievances raised by High Rock Ltd;*
- (ii) confirm the rejection decision and the cancellation decision; and*
- (iii) order that the deposit paid by High Rock Ltd not be refunded.”*

The opening and closing submissions of the Appellant and the Contracting Authority as delivered by their legal representatives;

The witnesses produced and documents presented;

Considers;

This Board notes that the Appellant has brought forward four (4) main grievances, the first two relating to an alleged wrong evaluation made by the Tender Evaluation Committee, and the latter two grievances tied to the cancellation of the tender procedure, that it was not only unnecessary but also disproportionate.

A. Contracting Authority's Plea – Ambiguous Appeal

This Board further notes that in its reply the Contracting Authority raised a plea regarding the Appellant's appeal, that it is ambiguous referring to both of its bids in the singular without having singled out which bid it is appealing from. The Contracting Authority pointed out that the Appellant paid one singular deposit in the amount of €3475.00, and in Paragraph 17 of its appeal, the Contracting Authority stated as follows:

“the objection cannot even be entertained unless its deficiencies are remedied by High Rock Ltd either by:

- a. Clearly identifying whether the objection seeks to impugn the decision to reject bid no. 000229447 or the decision to reject bid no. 000229449; or*
- b. Clearly identifying that the objection seeks to impugn both decisions in relation to both of its bids no. 000229447 and no. 000229449, and paying a further deposit of €3,475.”*

The Contracting Authority further produces two documents marked as CA5 and CA6, both dated 7th January, 2026 which separately reject both of the Appellant's bids (000229447 and 000229449) to sustain its plea. These documents were annexed to the Contracting Authority's reply to this appeal.

During the hearing of this appeal when confronted with the fact that the Appellant never received Documents CA5 and CA6 and that the Appellant only received one singular letter of rejection dated 20th January, 2026 relating to, and rejecting both bids, the Contracting Authority stated that these documents CA5 and CA6 must have been drafts.

It results to this Board that the documents produced by the Contracting Authority, CA5 and CA6, do not form part of the procurement file and as such they will be disregarded. In this case, the Appellant received one decision, regarding two bids, and was invited to appeal from the decision (the letter of rejection) and to support said appeal with a deposit of €3,475.00. The Appellant was therefore misled by the Contracting Authority's singular decision dated 20th January, 2026 and the contents thereof, and this Board cannot comprehend why the Contracting Authority chose not to keep the rejection letters separate, more so when two separate refusals were evidently already drafted.

Furthermore, and more importantly, it results to this Board that when prompted, the Appellant did clarify that its appeal relates to bid 000229447. Therefore, using the Contracting Authority's own metric, once the Appellant clearly identified which bid the Appellant's appeal relates to, nothing prevents this Board from entertaining the present appeal.

The only misleading factors in this respect are a) the Contracting Authority's attempt to use two draft decisions as though they were the decisions circulated to the Appellant (but later clarified during the hearing of this appeal) and b) the Contracting Authority's indication in the letter of rejection that the deposit relating to an appeal for that singular decision is €3,475.00, when in fact it would have been double had the Appellant elected to appeal in respect of both bids!

In view of the foregoing, particularly the Appellant's clarification that it is appealing on bid 000229447, this Board finds that the Appellant's appeal is sufficiently clear.

Therefore, the Contracting Authority's plea in this respect is being rejected as wholly unfounded.

B. Wrong Evaluation

The Appellant argues that the Tender Evaluation Committee (hereinafter the "TEC") did not evaluate the Appellant's bid correctly because a) the bid is technically compliant and b) the TEC did not ask for a clarification. The Appellant argues that it was never requested to provide evidence of warranties, and further that the 'additional' documentation provided which the TEC found fault with, could be clarified or even changed.

This Board refers to Page 17 of the Tender Document, which clearly states that for the play equipment, the warranty for the moving parts must be for a period of two (2) years. The Appellant's bid features several play equipment with moving parts as offered by the manufacturer Kompan. Whilst the technical literature provided as part and parcel with the Appellant's bid refers to a two (2) year warranty for moving parts in the play equipment manufactured by Kompan and as offered by the Appellant, **strangely, the Appellant chose to also submit an unrequired document issued by Kompan explicitly stating that the warranty would not cover moving parts of structures installed within 200 meters from the shore.** It is uncontested between the Parties that this procurement process features structures to be installed within 200 metres from the shore. That established, the explicit statement that Kompan *qua* manufacturer **will not** grant a warranty for moving parts within 200 metres from the shore, cannot and should not go unnoticed. The TEC was therefore correct in considering the Appellant's bid as technically non-compliant, as it was the Appellant itself which provided the fatal document. The document which the Appellant itself produced clearly and explicitly qualified that the normal two (2) year warranty for moving parts, in this case, is inapplicable. This Board, having reviewed the letter provided by the Appellant from Kompan, finds that there is nothing unclear or ambiguous in the wording of that letter. Faced with such an explicit declaration from the horse's mouth, this Board finds that the TEC was not incorrect

in its assessment that the Appellant's bid is technically non-compliant and further that no clarification was necessary.

Therefore, the Appellant's grievances in this respect are being rejected.

C. Cancellation of the Tender

Given the fact that the tender was unsuccessful owing to no qualitatively worthwhile bids, and in line with what was decided above, the cancellation of this tender procedure was merited in line with Rule 18.3.(a) of the General Rules Governing Tenders. From the evidence as produced before this Board, and from the procurement file as a whole, this Board considers that in the circumstances, the Contracting Authority was neither incorrect nor did it act disproportionately when cancelling the tender procedure in line with the General Rules Governing Tenders.

Therefore, the Appellant's grievances in this respect are also being rejected.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to reject the Contracting Authority's first plea, and to reject the appeal filed by High Rock Limited in its entirety.

The Board further decides not to re-imburse the deposit paid by High Rock Limited.

Dr Ana Thomas
Chairperson

Dr Vincent Micallef
Member

Mr Keith Victor Grech
Member

Wednesday 17th June, 2026.