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PUBLIC CONTRACTS
REVIEW BOARD

BEFORE THE PUBLIC CONTRACTS REVIEW BOARD

13th August, 2026

Re: Objection 692 – CT2371/2025 – Framework Contract for the Supply of Vascular Atherectomy Devices

Reasoned Reply submitted by the Recommended Bidder, A.T.G. Co. Ltd ("ATG" or "the Recommended Bidder"), to the Letter of Objection filed by E.J. Busuttil Limited ("EJB" or "the Objector") on 4th August 2026

Respectfully submits

A. Introduction and Summary of Position

1. This is the second occasion on which EJB has objected to the recommended award of the above-captioned tender in ATG's favour, and the second occasion on which that objection is founded on the same single point: an admitted transcription error in one of eleven product codes listed in ATG's Financial Bid Form, in which the code "140-151" was recorded instead of "414-151".

2. ATG respectfully repeats, in full, the submissions made in its Reasoned Reply of 13th February 2026, copies of which are already before this Honourable Board and which remain entirely applicable to, and dispositive of, the present objection. Nothing in EJB's Letter of Objection of 4th August 2026 identifies any new fact, any new piece of evidence, or any new legal ground.

3. The Objector does not allege, and has at no stage been able to allege, that the product actually offered by ATG fails to meet the tender's mandatory technical specifications. Its objection is confined to the proposition that a single clerical slip in the Financial Bid Form is incapable of correction or clarification, however immaterial that slip is to price, to technical compliance, or to the identity of the product genuinely offered. That proposition is not supported by the Public Procurement Regulations, by the principle of proportionality, or by the jurisprudence of this Board, as set out below.

B. Procedural Background

4. On 26th November 2025, the Central Procurement and Supplies Unit ("CPSU"), on behalf of the Department of Health, issued the above call for tenders. Following evaluation, the Department of Contracts notified bidders on 27th January 2026 that the tender had been recommended for award to ATG (TID 237618) for the price of €592,477.20 excluding VAT, this being the cheapest priced offer satisfying the administrative and technical criteria.

5. EJB objected on 3rd February 2026, contending that one of the product codes attributed to ATG's offer, code 140-151, could not be identified in the manufacturer's official catalogues and that the offer was accordingly "not objectively verifiable". ATG replied on 13th February 2026, explaining that the code in question had been extracted from the Financial Bid, not from the Technical Offer; that the correct code, 414-151, was consistently and correctly stated in the Technical Offer (Parts 1 and 2) together with the supporting catalogue reference and literature; and that the identity of the product offered was never genuinely in doubt.

6. On 18th February 2026, this Honourable Board (Case 2215), having noted CPSU's Reasoned Letter of Reply indicating its intention to re-evaluate the tender through a newly appointed Evaluation Committee, resolved that it would not consider EJB's objection any further and directed that the deposit paid by EJB be reimbursed.

7. A new Evaluation Committee was thereafter appointed. In the course of its evaluation, and independently of EJB's objection, that Committee itself invited ATG to clarify its submission. ATG replied fully in writing, confirming the correct and compliant code for every line item, including confirmation that 414-151 (not 140-151) was, and had always been, the intended and compliant reference, and explaining that the additional "-02" suffix appearing on two other codes distinguished only between US and non-US market variants of technically identical devices.

8. Following that re-evaluation, the Department of Contracts again recommended the tender for award to ATG, at the same price, by letter dated 28th July 2026. EJB filed the present objection on 4th August 2026, again raising the same 140-151/414-151 discrepancy, this time framed as a legal argument that the discrepancy could never lawfully have been cured by clarification at all.

9. It is material to record that this discrepancy was not a matter that ATG concealed or resisted addressing. It was a minor referencing inconsistency flagged by the Evaluation Committee's own clarification exercise, to every item of which ATG responded fully, promptly, and consistently. The process was conducted transparently, on the record, and equally, in accordance with Article 5 of the Instructions to Tenderers and the general principles of the Public Procurement Regulations, S.L. 601.03.

<u>C. Reply to the Objector's Grounds</u>

Ground 1 — "The inconsistency could not lawfully be cured after submission"

10. This ground mischaracterises what in fact occurred. Nothing in the Financial Bid, the Declaration of Conformity, or the Technical Offer was altered, substituted, or rewritten after the submission deadline. The Technical Offer — Parts 1 and 2 — consistently and correctly identified code 414-151, together with the corresponding catalogue reference and technical literature, from the moment of submission onward. It is only the Financial Bid, a pricing schedule extracted for administrative cross-referencing, that contained the typographical slip.

The Evaluation Committee's clarification exercise did not change the product offered or the price quoted for it; it confirmed, by reference to the bidder's own contemporaneous and unambiguous Technical Offer, which of two internally inconsistent references was the accurate one. That is paradigmatic clarification, not correction of substance.

Ground 2 — "The tender was not objectively coherent"

11. The Objector's own case confirms the opposite. EJB does not dispute that the Technical Offer, in both of its parts, and the supporting literature and catalogue reference, identified a single, coherent, verifiable product throughout. The only incoherence in the record is a one-digit transposition confined to a single administrative cross-reference in the Financial Bid. A tender is to be read and evaluated as a whole; it is not rendered incoherent by an isolated slip in one document where every other document, including the operative Technical Offer on which technical compliance is assessed, is internally consistent and points unambiguously to the same product.

Ground 3 — "Clarification does not authorise correction"

12. ATG agrees, as a matter of principle, that clarification cannot be used to rewrite a bidder's substantive offer, change the product tendered, or alter the price. That principle is not engaged here. No product was changed. No price was changed. What was clarified was which of two internally inconsistent code references, appearing in different documents forming part of the same tender, correctly reflected the product that had already been fully and consistently described, priced, and evidenced by literature at the point of submission. The Public Procurement Regulations and the jurisprudence of this Board (discussed in Section F below) draw a clear distinction between correcting or supplementing the substance of an offer, which is impermissible, and clarifying an ambiguity or resolving an evident, immaterial inconsistency by reference to the bidder's own submitted documents, which is not only permissible but, in appropriate circumstances, required by the principle of proportionality.

Ground 4 — "Equal treatment was undermined"

13. No bidder, including EJB, was treated more or less favourably than any other as a result of this clarification. The clarification exercise conducted by the Evaluation Committee was addressed to referencing discrepancies which the Committee itself identified across ATG's tender documentation, was recorded in writing, and was answered in writing. EJB has not identified, nor could it identify, any respect in which its own offer was assessed to a different or stricter standard than ATG's. Equal treatment requires that like cases be treated alike; it does not require that a bidder whose Technical Offer and supporting literature unambiguously and consistently describe a compliant product be excluded because of an unrelated, evident, one-digit slip in a separate pricing schedule.

Ground 5 — "The re-evaluation did not cure the defect"

14. There was, properly understood, no "defect" capable of curing in the sense EJB suggests, because there was never any doubt, on the face of ATG's Technical Offer, catalogue reference, and literature, as to the product being offered. The re-evaluation did precisely what a genuine re-evaluation should do: a newly constituted Evaluation Committee, independently and without reference to any prior finding, reviewed the tender afresh, itself identified the referencing inconsistencies now complained of (among others), sought and obtained a full written clarification from ATG, and reached the same recommendation for the same substantive reasons as before. That is not repetition without scrutiny; it is independent confirmation, by a different Committee, of the same underlying and undisputed fact: that ATG's Technical Offer describes one clear, compliant, and correctly evidenced product.

D. ATG's Submissions of 13th February 2026 Are Repeated and Remain Determinative

15. For completeness, and because EJB's present objection revives the same underlying grievance, ATG repeats the following submissions made in its Reasoned Reply of 13th February 2026:

- The codes originally queried by EJB were extracted by CPSU from ATG's Financial Bid, not from its Technical Offer, which is the document on which the technical evaluation is in fact conducted.
- There is, indeed, a typographical error in the Financial Bid Form: code "140-151" should have read "414-151".
- The codes were not extracted from, nor did the error appear in, ATG's Technical Offer. Reference to the Technical Offer and its supporting documentation shows that the correct catalogue reference was provided throughout, together with the relevant technical literature, and that the code, catalogue reference, and literature all coincide.
- The identity of the product offered was, and remains, never in doubt, and was therefore evaluated correctly and legitimately by the Evaluation Committee by reference to the Technical Offer.
- In line with procurement best practice and, in particular, the principle of proportionality, a minor clerical or transcription error of this kind should not lead to the exclusion of the most economically advantageous tender where the product being offered is otherwise clearly and consistently identifiable in the technical literature.
- Had there been any genuine doubt in the Contracting Authority's mind as to what was being offered — and there was none — the matter could, and properly did, get resolved through a request for clarification, which is expressly permissible as part of the tender process.

E. This Board Has Already, in Substance, Resolved the Underlying Facts

16. By its decision of 18th February 2026 in Case 2215, this Honourable Board resolved that it would not consider EJB's first objection — raising this identical discrepancy — any further,

notwithstanding that the Board had before it, at that stage, both EJB's objection and ATG's Reasoned Reply. The Board's decision to close that case, and to direct reimbursement of EJB's deposit, was made with full knowledge of CPSU's intention to proceed to a fresh evaluation, and did not require or direct that the fresh evaluation reach any particular outcome as to the code discrepancy — a matter which the Board evidently regarded as capable of lawful resolution through the ordinary evaluation and clarification process.

17. The subsequent re-evaluation, conducted by an independently constituted Evaluation Committee that itself flagged and clarified the discrepancy, has done no more than confirm, through a fresh and proper process, the same conclusion that was always apparent from ATG's Technical Offer: that ATG offered a single, clearly identified, compliant product at the lowest compliant price.

F. Legal Basis and Relevant PCRB Jurisprudence

18. This reply is made pursuant to the Public Procurement Regulations, S.L. 601.03, including the provisions governing objections before the Public Contracts Review Board, and in particular the general principles of equal treatment, transparency, and proportionality reflected in Regulation 3 of S.L. 601.03 and in Article 18 of Directive 2014/24/EU.

19. In PCRB Case 1181 (Bezzina Maritime Services Ltd v Transport Malta, CT 2039/2017, decided 10th August 2018), a bidder's key-experts declaration form was found, after a request for clarification, to have inverted the names of two nominated specialists relative to their designated roles. The Contracting Authority treated this as an impermissible "rectification" of the original offer and cancelled the tender on that basis, among others. This Board disagreed. It found that the switch had not been done intentionally but rather to correct "a careless clerical error, which... does not alter the substance of the objective of the technical requirement", and it expressly invoked "the principle of 'substance over form'", holding that such an error — once shown not to affect the price or the manner of execution of the works — did not justify the exclusion of the bid. The Board declined to uphold the cancellation and ordered the tender to proceed afresh, before a newly constituted evaluation committee. The same reasoning applies with at least equal force here: the transposition of digits in one of eleven codes in ATG's Financial Bid is, on any fair view, a careless clerical error that does not touch the substance of the product technically offered — a product correctly and consistently identified elsewhere in ATG's own Technical Offer.

20. In PCRB Case 1653 (Evolve Ltd v University of Malta, CT 2263/2019, decided 14th January 2022), a bidder's offer referenced a furniture item different from the one called for by the technical specifications, and the Contracting Authority relied on the principle of self-limitation to treat the offer as technically non-compliant. Citing the Court of Appeal's judgment in Cassar Petroleum Services Ltd v Gozo Channel Ltd (362/2014/1), the Board held that the proportionality of excluding a bid falls to be assessed by reference to the applicable award criterion — in that case, as in the present one, price — and found that the

discrepancy was the product of genuine human error. The Board observed that seeking clarification, rather than excluding the bid outright, would not have amounted to permitting a "new offer", and it ordered the bidder's offer to be reintegrated into the tender for re-evaluation by a newly constituted evaluation committee. The present case is, again, a stronger one for ATG: whereas in Evolve the discrepancy concerned the very item to be supplied, here the product offered was never in doubt — it was correctly and consistently described in ATG's Technical Offer throughout, with only a code cross-reference in an ancillary pricing document affected by the slip.

21. ATG anticipates that EJB may seek to draw an analogy with cases in which the Board declined to excuse an error on the ground that it went to the substance of the product offered, rather than to a mere labelling or cross-referencing slip. Any such analogy is misplaced. In those cases, the error appeared in the Technical Offer itself, or reflected the genuine submission of a different, non-compliant product, such that there was no other document in the bidder's own submission capable of resolving the ambiguity. That is precisely the distinction this Board should draw here in ATG's favour: in the present case, the Technical Offer, Parts 1 and 2, together with the supporting catalogue reference and literature, correctly and consistently identified code 414-151 throughout. The error was confined, at all times, to a single administrative cross-reference in the Financial Bid, a document which — as CPSU itself confirmed in the underlying correspondence — was the source from which the queried code was originally extracted, and not the basis of the technical evaluation.

22. Read together, Case 1181 and Case 1653 confirm the following principles, both of which favour rejection of the present objection: (i) an evident, immaterial clerical error which does not alter the substance of the technical requirement, and which does not affect price or the manner of execution, does not justify exclusion of an otherwise compliant offer — substance must prevail over form; and (ii) the principle of proportionality, assessed by reference to the applicable award criterion, may in appropriate circumstances place the Contracting Authority under a positive duty to clarify a genuine human error rather than exclude the bid, provided clarification does not transform the offer into a new one. Both principles apply squarely to the present facts, where the product offered by ATG was, throughout, clearly and consistently identifiable from its Technical Offer, and where the single cross-referencing slip in the Financial Bid did not touch price, technical compliance, or the identity of the product.

G. Conclusion

23. For the reasons set out above, and repeating in full ATG's submissions of 13th February 2026, ATG respectfully submits that EJB's objection of 4th August 2026 discloses no new fact, no new evidence, and no sound legal basis. The product offered by ATG has, at all material times, been clearly, consistently, and objectively identifiable from ATG's Technical Offer, catalogue reference, and supporting literature. The single transcription error in the Financial Bid Form was minor, evident, immaterial to price and to technical compliance, and was properly and

transparently clarified by the Evaluation Committee in accordance with Article 5 of the Instructions to Tenderers and the principle of proportionality.

24. In the circumstances, ATG respectfully requests that this Honourable Board:

- Reject EJB's objection of 4th August 2026 in its entirety;
- Confirm the recommended award of CT2371/2025 to ATG Co. Ltd for the price of €592,477.20 excluding VAT; and
- Grant such further or other relief as the Board may deem just and appropriate in the circumstances.

Reservation of Rights

25. ATG reserves the right to make further submissions and to bring any further evidence it deems necessary in the course of these proceedings.

Yours faithfully,

Paul Camilleri
Director, ATG Co. Ltd