PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number	**2270**
Tender Reference Number	**CT2371/2025**
Tender Name	**Framework Contract for the Supply of Vascular Atherectomy Devices**

The Public Contracts Review Board (hereinafter the 'Board' or the 'PCRB') convened a public hearing on the 17th September 2026 to hear the appeal as filed by the appellant (hereinafter the 'Appellant') on the 4th August 2026, and after taking cognisance of:

The tender document for the 'Framework Contract for the Supply of Vascular Atherectomy Devices' (hereinafter referred to as the "Tender Document");

The minutes of the proceedings dated 17th September 2026 which are being reproduced hereunder:

> "**Case 2270 – 692 – CT2371/2025 – Framework Contract for the Supply of Vascular Atherectomy Devices.**
>
> The Tender was issued on the 26th of November 2025, and the closing date was 8th January 2026.
>
> The estimated value of the tender, excluding VAT, was €692,626.00
>
> On the 4th of August 2026, E.J.Busuttil lodged an appeal against Central Procurement and Supplies Unit (CPSU) – the Contracting Authority.
>
> On the 17th of September 2026, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas as Chairperson, Mr Keith Victor Grech and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.
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> A deposit of €3,463.00 was paid.
>
> There were Two bids.
>
> The attendance for this public hearing was as follows:
>
> Appellant – E.J.Busuttil.
>
> Dr Massimo Vella – Legal Representative.
> Mr Neil Bugeja – Company Representative.
> Mr Ian Rapa – Company Representative.
>
> Contracting Authority – Central Procurement and Supplies Unit (CPSU).
>
> Dr Leon Camilleri – Legal Representative.

Ms Bernice Gauci – Chairperson.
Ms Roberta Saliba – Secretary.
Mr Thomas Borg Barthet – Evaluator
Ms Maria Gauci – Evaluator.
Mr Matthew Grima – Evaluator.
Mr Marvin Grech – Specs Drafter.

Recommended Bidder – A.T.G Co. Ltd.

Dr Keith Borg – Legal Representative.
Mr Oliver Attard – Company Representative.

Opening Statements

The Chairperson welcomed the parties present and formally opened Case Number 2270 in the records of the PCRB. The Chairperson, Dr Ana Thomas read the following decree regarding the request for the disclosure of the financial bid contained in the technical form.

"Having seen reply of the Central Procurement and Supplies Unit (the 'Contracting Authority') dated 11th August 2026 whereby the CPSU stated that it "again intends to re-evaluate the tenders";

Having seen the reaction of EJ Busuttil Limited (the 'Appellant') dated 12th August 2026 whereby the Appellant requested confirmation as to whether any clarification, explanation to confirmation was sought from or provided by the recommended bidder in relation to the discrepancy between the product code stated in the Financial Bid Form and the Technical Offer Form and to be provided copies of the relevant correspondence;

Having seen the documentation circulated by the Contracting Authority to the Appellant;

Having seen the Appellant's email dated 3rd September 2026 whereby it requested a copy of the recommended bidder's technical offer and financial bid;

Having seen the replies of the Department of Contracts, the Contracting Authority and ATG Company Ltd (the 'Recommended Bidder') dated 10th September 2026;

Considers:

This Board refers to Regulations 40(1), 40(2) and 242(3) of the Public Procurement Regulations, Subsidiary Legislation 601.03. of the Laws of Malta, and the contents thereof particularly in relation to the disclosure of technical or trade secrets and confidential aspects of a tender, hereby considers that the

disclosure of the Recommended Bidder's technical offer and financial bid will inevitably lead to the divulging and disclosure of the Recommended Bidder's confidential and commercially sensitive submissions in relation to this procurement process.

Therefore, this Board hereby rejects the request made by the Appellant dated 3rd September 2026 and orders the continuance of the hearing of this appeal".

Initial Submissions

Submissions by Dr Massimo Vella (for the Appellant)

Dr Massimo Vella stated that this tender concerned the Framework Contract for the Supply of Vascular Atherectomy Devices. It resulted from the decree that a particular atherectomy code, 140151, stated in the financial bid of the Preferred Bidder, did not exist.

This was a Note 3 item, which did not allow rectifications, and the offer of the Preferred Bidder should therefore have been disqualified. However, the Evaluation Committee requested a clarification to rectify the mistake.

He referred to the judgment in Trackwell Fims against the Contracting Authority, 609/24/1, delivered on 13th March 2025. He stated that there was a distinction between a rectification and a clarification. One could not disguise a rectification under the cloak of a clarification.

Fundamentally, there was a code number that did not exist, and this mistake could not be rectified. The tender had a certain perimeter within which adjustments could be made, and the Evaluation Committee had to remain within that perimeter.

The manner in which this tender was evaluated went against the jurisprudence of the Court of Appeal.
The Chairperson asked for the Appellant's reaction regarding the third re-evaluation.

Dr Vella stated that there was a mistake in the financial bid, which could not be rectified, and the bid should therefore have been disqualified.

Submissions by Dr Leon Camilleri (for the Contracting Authority)

Dr Leon Camilleri noted that the Court of Appeal had delivered decisions stating that, when a bidder was clear in his submissions, the offer should be preserved. He also referred to the element of proportionality. All the codes of the Preferred Bidder were included in his offer, although some code numbers did not match

from one document to another. Following the clarification, the Evaluation Committee was satisfied that the offer was compliant and remained unchanged.

Dr Thomas noted that the clarification had taken place during the second evaluation process. The Contracting Authority had intended to proceed with a re-evaluation if there was agreement. The Chairperson asked whether the Contracting Authority would appoint a new Evaluation Committee.

Submissions by Dr Keith Borg (for the Recommended Bidder)

Dr Borg stated that there had been a clerical error: instead of 140151, the correct code was 414151. This typing error appeared in the financial offer and not in the technical offer, which was fully integrated. There had been a transposition error in the financial bid.

Dr Borg referred to Case 1181, Bezzina Maritime Services Ltd v Transport Malta, CT2039/2017. This Board had decided that a clerical error which did not alter the substance of a technical requirement should not invalidate a submission. In this case, the error did not alter the technical offer.

The decision stated that, since the error did not affect the price or the manner of execution of the works, there was no need to disqualify the bid. He also referred to Case Cassar Petroleum Ltd v Gozo Channel Ltd, 362/2014/1, where the Board insisted that the exclusion of a bid should be assessed with reference to the applicable award criterion, which was not affected and therefore could not justify exclusion.

A discrepancy resulting from a genuine human error did not warrant the exclusion of an offer.

Replica by Dr Massimo Vella

Dr Vella noted that the terms 'Proportionality' and 'Clerical error' were being mentioned. However, there was a clear restriction stating, 'no rectification'. The Court of Appeal had always been clear on this matter, and allowing such a correction would change the conditions of the offer.

It appeared that the incorrect number in the financial offer had been replaced with the correct one. That constituted a rectification, not a clarification, and was therefore not permissible.

Replica by Dr Keith Borg

Dr Borg stated that the descriptions of the product specifications were identical, appearing alongside both the correct code and the erroneous code.

Replica by Dr Leon Camilleri

Dr Camilleri acknowledged that the tender had clear parameters. He referred to a judgment of the Court of Appeal, Europharma v CPSU, 445/2025, dated 29th January 2026, in which the technical offer form had been left blank.
The Evaluation Board had recommended that the bid be set aside. The PCRB had agreed; however, the Court of Appeal had stated:

"Għalhekk fil-fehma tal-Qorti ma jkunx qiegħed jitħaddem il-prinċipju tal-proporzjonalità jekk offerta vantaġġuża tiġi mwarrba għas-sempliċi fatt li l-informazzjoni rikjesta kienet ingħatat f'parti oħra tal-offerta u mhux filparti fejn kellha tiġi nserita. Is-sitwazzjoni kienet tkun ferm differenti li kieku din l-informazzjoni ma kinitx tirriżulta minn imkien fl-offerta magħmula, liema sitwazzjoni ma tirrispekkjax il-fatti li għandha quddiemha din il-Qorti".

Because the code was in the literature in the declaration of conformity. In this case, the correct code was included in the tender. A clarification had been requested, and the Evaluation Committee had recommended the bid after verifying the code offered. The recommendation should therefore be upheld.

Dr Camilleri stated that the evaluation would be conducted without prejudice to any admission that an incorrect evaluation had taken place at that stage.

Dr Thomas stated that this was agreed. However, the Board understood that, without prejudice to the second evaluation, regardless of whether anything had been done correctly or incorrectly, there was agreement that a third evaluation should be conducted.

Dr Camilleri stated that the Contracting Authority was ready to conduct a new evaluation, without any implication or declaration that the previous evaluation had been incorrect. Once the objector wished to pursue the objection, the Contracting Authority would insist that the recommendation, as it stood, be confirmed.

Dr Vella stated that there was a difference between the case mentioned by Dr Camilleri and the case under consideration. In the case referred to, the technical offer had been left blank, and the relevant information could be obtained from another part of the offer.

Here, the scenario was different. The bidder had not left the relevant section blank but had entered a code, which was incorrect and had to be corrected through a rectification rather than a simple clarification.

Dr Vella mentioned a case in which he had participated, involving Ballut Blocks, dating back approximately 20 years. It had been stated that it was better to have

nothing than to have an error, and this was the fundamental difference between that case and the case being discussed.

Dr Leon Camilleri acknowledged that there were numbers that did not match; however, the offer was never taken. This is what led for the recommendation of the Evaluation Committee.

Conclusion of the Hearing

As no further arguments were presented, the Chairperson thanked all parties and formally concluded the hearing. The Board would communicate its decision in due course."

The written pleadings as filed by on the E.J. Busuttil Limited dated 4th August, 2026, together with proof of payment of a deposit in the amount of €3,463.00, wherein it held as follows:

"*The Secretary, Public Contracts Review Board*

Date: Tuesday 4th August 2026
Re: Objection in terms of the Public Procurement Regulations, S.L. 601.03
CT2371/2025 - Framework Contract for the Supply of Vascular Atherectomy Devices

On behalf of ***E.J. Busuttil Limited*** *(the "Objector"), the undersigned hereby lodges this objection before the Public Contracts Review Board pursuant to the Public Procurement Regulations, S.L. 601.03, including the provisions governing objections to proposed award decisions, following the re-issued decision again recommending award to* ***A.T.G. Co. Ltd****.*

This objection arises from the same procurement procedure previously considered by the Board and follows the position adopted on 13 February 2026 that the tenders were to be re-evaluated by a new evaluation committee. That re-evaluation was intended to address the defects and concerns previously raised concerning the original evaluation and award.

Notwithstanding that process, the same substantive recommendation has been re-issued. The issue is not whether the product code at the centre of the dispute could be found in an external catalogue. The issue is whether the bidder's own tender documents lawfully and consistently identified the product alleged to satisfy the tender requirements, and whether any evaluation committee had power to disregard or cure an admitted inconsistency in that respect after submission.

Factual Background
Following notification of the original award decision, the Objector requested the manufacturer and product codes for the item recommended for award, strictly for the purpose of verifying compliance with the tender's mandatory technical specifications. CPSU subsequently identified the manufacturer as Spectranetics Corp., USA and communicated, inter alia, Catheter Atherectomy Code 140-151 as one of the codes taken from the Financial Bid submitted by the recommended bidder.

Upon review, the Objector was unable to identify code 140-151 in the manufacturer's official catalogues or in any recognised sources. For avoidance of doubt and for full transparency, the Objector sought express reconfirmation from CPSU as to whether this was indeed the code submitted. CPSU replied in writing: "That is the code provided by the bidder."

The Objector's concern was therefore not speculative. It was from the outset an objective issue of verifiability and consistency within the bidder's own submission. Crucially, in ATG's own reasoned reply in the earlier proceedings, the recommended bidder expressly acknowledged that there was "indeed, a typo in code 140- 151" in the submitted Financial Bid Form and asserted that the correct code "should have read 414-151."

Accordingly, the bidder's own submission contained inconsistent product identifiers across Note 3 documents. That fact is no longer in dispute. It follows that the Technical Offer Form and the Financial Bid Form did not contain the same product identifier for at least one product reference.

Grounds of Objection

1. ***The inconsistency could not lawfully be cured after submission***

A re-evaluation by a new committee must mean what it says: a fresh, lawful, independent reassessment of the tenders as submitted. It cannot be used as a mechanism to preserve a prior outcome while ignoring the very inconsistency that gave rise to the objection.

The central question is not whether the committee considered the discrepancy important. The question is whether the Public Procurement Regulations permitted the committee to disregard, reconcile, or cure an inconsistency in the bidder's own submission after the deadline for tender submission had expired.

The Evaluation Committee derives only those powers conferred by the Public Procurement Regulations and the tender conditions. It possesses no residual discretion to repair substantive defects in a bidder's submission merely because it considers the outcome commercially sensible or proportionate.

2. ***The tender was not objectively coherent***

Public procurement is built on equal treatment, transparency, and proportionality. Those principles require that bids be assessed on the basis of submissions that are clear, internally coherent, and objectively verifiable at the time of submission and evaluation.

Here, the bidder's own documents did not consistently identify the product offered. One formal tender document contained code 140-151, which CPSU expressly confirmed had been provided by the bidder. The bidder itself later admitted that this was incorrect and that the code should have been 414-151.

That does not eliminate the defect. It confirms it. A tender that identifies the offered product inconsistently core bid documents is not a tender that can simply be read through or forgiven after the fact. Public procurement law requires the offer to stand or fall on what was submitted, not on what the bidder later asserts it intended to submit.

3. ***Clarification does not authorise correction***

The anticipated defence is that the issue was merely clerical and could be addressed by clarification. That contention is misconceived. Clarification may explain an ambiguity. It does not permit an

evaluation committee to replace, disregard, or rewrite a bidder's definitive declaration in a formal bid document.

The issue is not a spelling mistake in the abstract content. The issue is an admitted inconsistency between two tender documents that identify the product by different codes. That is a matter of substance, not form. Arithmetic corrections may be permissible where they are truly arithmetic, but they do not extend to changing product codes in the bidder's own submitted documents.

This objection raises an issue extending beyond the present procurement. It concerns the legal limits of clarification where a bidder's own core tender documents contain inconsistent product identifiers. If post submission alteration of product identifiers is tolerated here, the inevitable precedent will be that future evaluation committees may authorise similar changes whenever a bidder later claims that a different code was meant. That cannot be what the Regulations permit. The Board is respectfully invited to state clearly, and for future reference, where the line is drawn between a minor clerical error and a material change to the product offered. The Objector submits that changing a product code as submitted by a bidder falls beyond any permissible clerical correction or legitimate scope of evaluation.

Even if the Technical Offer Form consistently identified product code 414-151, that does not cure the contradiction created by the bidder's own Financial Bid Form. Public procurement law does not permit the evaluation committee to resolve a material inconsistency by choosing the bidder's preferred version of its submission after the deadline has passed.

If, as now suggested, the intended product was 414-151, then the inevitable question is simple: what price was the Contracting Authority proposing to contractually purchase it, given that 414-151 does not appear in the Financial Bid Form submitted? This goes directly to the integrity of the award, the identity of the item priced, and the lawfulness of any purported acceptance of the bidder's offer.

4. Equal treatment was undermined

Allowing one bidder's inconsistent product identification to be retrospectively normalised undermines equal treatment. Every tenderer is required to submit a clear and accurate offer, capable of direct evaluation as filed. The recommended bidder cannot lawfully be given the benefit of a relaxed standard after the discrepancy was identified and brought to the authorities' attention.

The Regulations must be applied uniformly to all economic operators. A bidder whose own binding tender documents contain inconsistent product identifiers cannot lawfully be evaluated by reference to a version of its offer different from that submitted.

5. The re-evaluation did not cure the defect

The fact that the Contracting Authority agreed that the tenders were to be re-evaluated by a new committee is significant. It confirms a requirement for genuine reconsideration, not mere repetition.

If the renewed recommendation reaches the same conclusion without properly addressing the admitted inconsistency in the bidder's cited codes, serious doubt arises as to whether the re-evaluation fulfilled its purpose in substance rather than in form. A re-evaluation does not enlarge the powers of the evaluation committee. It remains confined to the tenders as submitted and cannot lawfully validate an award by departing from the bidder's own definitive declarations in a binding Note 3 tender document.

Legal Basis
This objection is filed pursuant to the Public Procurement Regulations, S.L. 601.03, including the provisions governing objections before the Public Contracts Review Board and the requirement that the grievance be clearly stated and accompanied by the prescribed deposit.

Further, the governing legal framework requires contracting authorities to treat economic operators equally and without discrimination and to act in a transparent and proportionate manner. Those principles are reflected in the Maltese Regulations and in Article 18 of Directive 2014/24/EU.

In the present case, the renewed award offends those principles because the recommended bidder's offer, as documented in the exchanges already on record, contained a product code that CPSU expressly confirmed had been provided by the bidder, yet which the bidder itself later admitted was erroneous. An award resting on that discrepancy, or on any post-submission correction of it, lacks the objective certainty and equal treatment safeguards required by law.

The issue before the Board is not whether the recommended bidder intended to offer product code 414-151. The issue is whether the bidder submitted a tender in which its own binding documents consistently identified that product. Those are legally distinct questions. Public procurement law evaluates tenders as submitted, not as subsequently corrected, explained, or hypothetically intended.

Whether characterised as interpretation, clarification or confirmation, the legal effect is the same if the evaluation proceeds on a basis different from the product identifier declared in the Financial Bid Form.

Remedies Requested
For the foregoing reasons, the Objector respectfully requests that the Public Contracts Review Board:

1. *Suspend the award in relation to CT2371/2025 pending determination of this objection.*
2. *Declare the re-proposed award null and without effect, on the basis that the offer relied upon is affected by an unresolved discrepancy in the identification of the tendered product.*
3. *Declare that the admitted inconsistency within the recommended bidder's tender could not lawfully be cured by clarification or otherwise regularised during evaluation.*
4. *Order such further re-evaluation or other corrective measure as the Board deems just and lawful, strictly based on the tenders as submitted and in accordance with the principles of transparency, equal treatment, and objective verifiability.*
5. *Grant such ancillary or consequential relief as the Board may consider appropriate in the circumstances.*

Reservation of Rights
The Objector reserves all rights at law, including the right to supplement these submissions and to produce further documentation, legal argument, and evidentiary material as may be necessary during the proceedings."

The written reply as filed by the Central Procurement and Supplies Unit (CPSU) dated 10th August 2026 (with a stamp dated 11th August 2026) (hereinafter the 'Contracting Authority') wherein it held as follows:

"IN THE PUBLIC CONTRACTS REVIEW BOARD

10th August 2026

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

Reply of the ***Central Procurement and Supplies Unit (CPSU)*** *on behalf of the Department of Health to the reasoned application lodged by EJ Busuttil Ltd (the objector).*

On the 26th of November 2025 a call for tenders for the Supply of Vascular Atherectomy Devices was issued.

A number of bids were submitted and a recommendation was made in favour of the offer ***TID 237618*** *of* ***A.T.G CO. LTD****, being the cheapest priced offer satisfying the administrative and technical criteria;*

The objector's offer was not recommended for award since the recommended offer was cheaper.

The Objector filed its objection based on a number of grievances.

CPSU devided to re-evaluate the tenders without prejudice to the decision of an eventual evaluation committee.

A new evaluation committee was appointed and and the bids were re-evaluated. A recommendation was made in favour of the offer ***TID 237618 of A.T.G CO. LTD****, being the cheapest priced offer satisfying the administrative and technical criteria.*

The Objector filed another objection based on a number of grievances.

For the avoidance of any doubt, CPSU again intends to re-evaluate the tenders. This decision is being taken without admission of any responsibility and without prejudice to the eventual decision of a new evaluation committee, which shall conduct the re-evaluation process.

CPSU also request that a decision is delivered without holding a hearing unless objected to or contrary requested by the objector or any interested party, and in such case CPSU submits itself to the decision of this Honourable Board."

The written reply as filed by A.T.G Co. Ltd dated 13th August 2026 (hereinafter the 'Recommended Bidder') wherein it held as follows:

"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.

C. Reply to the Objector's Grounds

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, inappropriate 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."*

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

Considers;

This Board notes that the Appellant has brought forward one (1) main grievance, namely that the Preferred Bidder indicated a code in its Financial Bid Form which does not exist, and therefore does not and cannot match the code of the product offerred. The Appellant further argues that the Evaluation Committee was incorrect when requesting a clarification from the Preferred Bidder, given

that the Preferred Bidder's clarification was tantamount to a rectification and was not permissible. The Appellant insists that the Preferred Bidder could not clarify the code "140-151" because it was incorrect.

The Contracting Authority's reply to the Appellant's appeal before this Board was such that it simply signalled its intention of re-evaluating the bids without admission of any responsibility and without prejudice to the eventual decision of a new evaluation committee. Whilst the Contracting Authority did not submit any form of defence to the grievance raised and arguments made by the Appellant in its appeal, in the oral hearing before this Board the Contracting Authority changed its stance and insisted that this Board should confirm the evaluation made and therefore the decision taken.

The Preferred Bidder in its reply before this Board argues that the tender must be read as a whole and cannot be rendered incoherent by *"an isolated slip in one document"*. The Preferred Bidder argues that in this instance, the Preferred Bidder is not changing its offer substantively, the product and price remains unaltered.

This Board, having reviewed the Tender Document, must immediately underline that the Financial Bid Form (like the Technical Offer Form) was designated as a Note 3 item, and as such *"No rectifications shall be allowed. Only clarifications on the submitted information may be requested."* Note 2 items on the other hand permit clarifications to clarify/rectify any *"incorrect and/or incomplete documentation, and/or submit any missing documents"*. The different scope and permitted uses of clarifications as opposed to rectifications is a subject matter which this Board, and the Court of Appeal in its Superior Jurisdiction, have had to deal with more often than desired. It must be made abundantly clear, that items identified in a tender dossier as Note 3 items can only be clarified based on already submitted information, but cannot change the bid in and of itself. Neither can data within a Note 3 item be corrected or amended to be completed. A bid does not comprise only of the product offered, but is built on the basis of documents such as the Technical Offer Form and the Financial Bid which are documents which carry a lot of significance. The data within both forms must necessarily be in sync. From the documents available to this Board, it appears that the Evaluation Committee requested a clarification in respect of more than one discrepancy.[1]

This Board must necessarily delve into the difference between a clarification and a rectification, and hereby refers to the recent judgment in the names '**Krypton Chemists Limited (C-8933) v. Central Procurement and Supplies Unit et**' dated 13th November, 2025 delivered by the Court of Appeal (in its Superior Jurisdiction) which dealt with this distinction precisely:

> *"27. Ma hemmx għalfejn ngħidu, il-prinċipju tal-proporzjonalità għandu jiġi applikat b'mod li jħares l-għanijiet tal-proċess tal-akkwist pubbliku, jiġifieri, li l-kuntratt jingħata lil min jagħmel l-orħos u l-aħjar offerta, mingħajr ma jinkisru l-prinċipji ta' trattament ugwali u trasparenza. Tali prinċipju però m'għandux jintuża bħala pretest biex offerta irregolari tiġi salvata, jekk dan iwassal għal vantaġġ kompetittiv li mhux xieraq.*
>
> *28. Hija rilevanti hafna wkoll f'dan il-qasam tal-liġi d-distinzjoni li teżisti bejn kjarifika u rettifika.*
>
> *29. **Kjarifika hija l-azzjoni li permezz tagħha l-awtorità kontraenti tista' titlob spjegazzjoni jew interpretazzjoni fuq informazzjoni li tkun diġà ġiet***

[1] *"The following discrepancies were noted between the Declaration of Conformity, Technical Offer, and Financial Bid of Section 1 – Article 5B and 5C:"*

***sottomessa mal-offerta**. Naturalment il-proċedura tal-kjarifika ma tistax tintuża biex dak li jkun idaħħal informazzjoni ġdida jew biex ibiddel issustanza tal-offerta. Il-Qorti tal-Appell fis-sentenza Rockcut Limited v. Direttur Ġenerali tad-Dipartiment tal-Kuntratti deċiża fil-25 ta' Ġunju, 2018 stabbiliet li ma tistax tingħata kjarifika ta' tagħrif li ma jkunx ingħata għaliex il-kjarifika sservi biss biex tagħmel aktar ċar tagħrif li jkun diġà mogħti iżda li ma huwiex ċar biżżejjed. Kif ingħad fis-sentenza Steelshape Ltd v. Direttur tal-Kuntratti deċiża fis-7 ta' Awwissu, 2013, dak li offerent għandu jgħid, għandu jgħidu mal-offerta u mhux jippretendi li jkun mistoqsi d-dettalji tal-modus operandi tiegħu. **Kjarifika, għalhekk hija limitata għal spjegazzjoni ta' elementi diġà preżenti fl-offerta**, mingħajr ma tinbidel il-kompożizzjoni tagħha.*

*30. **Rettifika, min-naħa l-oħra, hija l-azzjoni li tippermetti lill-awtorità kontraenti titlob korrezzjoni ta' żbalji jew ommissjonijiet**. **Tali rettifika hija permessa li ssir sakemm din ma tkunx ġiet espliċitament esklużа fiddokument tas-sejħa**. **Ifisser dan, li jekk skont id-dokument tas-sejħa ma tistax issir rettifika mela allura l-awtorità kontraenti tkun miżmuma milli titlob rettifika għaliex l-awtorità kontraenti hija marbuta mal-kundizzjonijiet tas-sejħa, b'dana li jekk hija ma tħarishomx hija tkun qiegħda tivvantaġġa offerent fuq ieħor** (ara Projekte Global Ltd v. Kunsill Lokali Marsaskala deċiża mill-Qorti tal-Appell fis-7 ta' Ottubru, 2014 fejn offerta li ma kinitx akkumpanjata minn garanzija xierqa ma setgħetx tiġi rettifikata għaliex tali rettifika kienet projbita mill-kundizzjonijiet tas-sejħa). Minbarra dan, irrettifika tista' ssir biss jekk l-ommissjoni jew żball ikunu manifesti, klerikali jew formali, u dawn la jaffettwaw il-kompetizzjoni u lanqas ma jbiddlu ssustanza tal-offerta bħal bdil fil-prezz, fl-ispeċifikazzjonijiet tekniċi, jew flelementi essenzjali, Hekk pereżempju fis-sentenza AIB Insurance Brokers Ltd v. Awtorità dwar it-Trasport ta' Malta deċiża fis-27 ta' Ottubru, 2021, il-Qorti tal-Appell aċċettat rettifika ta' dokument nieqes li ma kienx essenzjali u ma biddilx l-offerta.*

31. Imbaddem dan kollu għall-każ tal-lum, din il-Qorti tqis li n-nuqqas fl-istampa tat-tikketta provdut minn Krypton ma taħa l-ebda vantaġġ u ma ħoloq ebda preġudizzju għall-oblaturi l-oħra. Il-problema fl-istampa kienet biss li din ma kinitx ċara biżżejjed u għalhekk ma setgħetx tinqara faċilment. Nuqqas bħal dan seta' faċilment jiġi msewwi permezz ta' kjarifika għaliex kif rajna aktar kmieni, il-proċedura tal-kjarifika hija aċċettabbli li tintuża meta t-tagħrif mogħti mill-offerent ma jkunx ċar biżżejjed." (Added emphasis of the PCRB).

On this subject-matter, this Board refers to the judgment in the names '**Trackwell FiMS noe vs. Id-Direttur Ġenerali tal-Kuntratti et**' delivered by the Court of Appeal in its Superior Jurisdiction on the 13th March, 2025, also referred to by the Appellant in its submissions, wherein the Court's considerations were as follows:

*"43. Issa filwaqt li huwa kollu minnu li hemm sentenzi ta' din il-Qorti li huma fis-sens, li l-offerent m'għandux jiġi skwalifikat fuq in-nuqqas tal-għotja ta' xi tagħrif mitlub fid-dokument tas-sejħa, **jekk kemm-il darba l-kumitat ta' evalwazzjoni jkun jista' jikseb dak it-tagħrif minn xi parti oħra tad-dokumenti li jiġu sottomessi bħala parti minn dik l-offerta** (ara f'dan issens Bonnici Bros Projects Ltd et v. Ministeru Għas-Saħħa et mogħtija mill-Qorti tal-Appell fit-30 ta' Lulju, 2018, u Rockcut Limited v. Id-Direttur Ġenerali tad-Dipartiment tal-Kuntratti et mogħtija mill-Qorti tal-Appell fil-25 ta' Ġunju, 2018), **fl-istess waqt, huwa daqshekk ieħor magħruf sewwa fil-ġurisprudenza, li meta r-regolamenti tas-sejħa jitolbu b'mod espress ċertu tip ta' dokument, dak id-dokument għandu jingħata bil-mod ta' kif ikun mitlub, u dan sal-għeluq taż-*

żmien għall-offerti *(ara f'dan is-sens: Derek Garden Centre Co Ltd v. Direttorat għall-Akkwist Settorjali et mogħtija mill-Qorti tal-Appell fit-30 ta' Lulju, 2024 u Melchiore Dimech v. Ministeru għall-Finanzi u x-Xogħol et mogħtija mill-Qorti tal-Appell fit-30 ta' Novembru, 2023).*

44. ***Kemm hu hekk, ingħad kemm-il darba li hija fir-responsabbiltà ta' kull offerent li jobdi l-kundizzjonijiet tas-sejħa bħala «a reasonable well informed and normally diligent tenderer», u għalhekk, ġaladarba r-regoli tas-sejħa inkwistjoni kienu jimponu fuq l-offerenti l-obbligu li jressqu kopja tal-kontijiet finanzjarji għas-snin 2020, 2021, u 2022, Trackwell kellha tiżgura li tressaq id-dokumenti finanzjarji tagħha għal dawn it-tliet snin sħaħ u mhux għal sentejn minnhom biss*** *(ara f'dan il-kuntest Attard Farm Supplies Limited v. Korporazzjoni għas-Servizzi tal-Ilma mogħtija mill-Qorti tal-Appell fid-29 ta' Awwissu, 2023).* ***Fis-sewwa, ir-regoli tassejħa għalhekk qegħdin hemm, u sewwasew sabiex jiġu mħarsa u mhux biex jiġu mwarrba*** *(ara Legacy Ventures Limited v. Direttur Ġenerali tal-Kuntratti et mogħtija mill-Qorti tal-Appell fit-30 ta' Lulju, 2024).*

45. Wieħed għandu wkoll jifhem u japprezza, li daqskemm l-offerenti għandhom joqogħdu attenti li jippreżentaw dak kollu li jkun intalab minnhom fid-dokumenti tas-sejħa, huwa daqshekk ieħor importanti li dawk mgħobbija bir-responsabbiltà li jgħarblu l-offerti, jiġifieri l-membri tal-kumitat ta' evalwazzjoni, għandhom jimxu skrupolożament mal-kundizzjonijiet li jkunu ġew imniżżlin fid-dokument tas-sejħa (ara Reactilab Limited v. Korporazzjoni għas-Servizzi tal-Ilma et mogħtija mill-Qorti tal-Appell fid-19 ta' Ottubru, 2023).

46. ***Dan għaliex, meta fil-kuntest ta' proċedura ta' sejħa għall-offerti, l-awtorità kontraenti tfassal il-kundizzjonijiet li bi ħsiebha timponi fuq l-offerenti, hija tkun qiegħda tillimita l-eżerċizzju tas-setgħa diskrezzjonali tagħha bil-quddiem — b'dana li hija ma tkunx tistax tmur lura mill-kundizzjonijiet tas-sejħa, mingħajr ma tikser il-prinċipju tat-trattament indaqs bejn l-offerenti*** *(ara Polaris Marine Services Co Ltd v. Direttur Ġenerali tal-Kuntratti et mogħtija mill-Qorti tal-Appell fit-29 ta' Awwissu, 2023 u Quattro Labs Limited pro et noe v. Malta College of Art, Science and Technology mogħtija mill-Qorti tal-Appell fit-13 ta' April, 2018).*

47. Bi thaddim ta' dawn il-prinċipji għall-fatti ta' dan il-każ, din il-Qorti tqis li ġaladarba l-awtorità kontraenti talbet lill-offerenti sabiex jippreżentaw il-kontijiet finanzjarji tagħhom għas-snin 2020, 2021 u 2022, u ***l-awtorità kontraenti ħabbret minn qabel li n-nuqqas tat-tressiq ta' xi wieħed minn dawk id-dokumenti kellu jiġi kkastigat bis-sanzjoni kiefra taliskwalifika awtomatika****, mela allura bin-nuqqas tagħha, jiġifieri dak li ma tippreżentax il-kontijiet finanzjarji għas-sena 2021, Trackwell waddbet ilġebla fuq saqajha, u ma halliet l-ebda għażla oħra f'idejn il-kumitat ta' evalwazzjoni, għajr dik li jiskwalifikaha mill-proċedura tal-akkwist."* (Added emphasis of the PCRB).

It does not fall within this Board's remit or competence to determine whether the Preferred Bidder's bid is compliant or otherwise, however from an overview of the arguments brought forward, it appears that the Appellant's complaint is justified insofar as it argues that no clarification may lead to the correction of data in the Preferred Bidder's Financial Bid. In line with constant jurisprudence

on the matter, the correction of data within a Note 3 item would be considered as a rectification, not a clarification.

In view of the foregoing, it would be prudent for a newly composed evaluation committee to evaluate the bids afresh.

Therefore, the Appellant's grievance is being upheld in line with the considerations above.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to partially uphold the appeal filed by E.J. Busuttil Limited by deciding to:

i) Revoke the Award Notice and Letter of Rejection dated 28th July, 2026;
ii) Orders that the Contracting Authority appoint a newly composed Evaluation Committee to evaluate the bids afresh; and
iii) Orders the immediate re-imbursement of the deposit paid by E.J. Busuttil Limited in its entirety.

Dr Ana Thomas	**Mr Keith Victor Grech**	**Mr Lawrence Ancilleri**
Chairperson	**Member**	**Member**

Thursday 29th October, 2026.