

## **PUBLIC CONTRACTS REVIEW BOARD**

### **Case 1715 – CFT 019-1174/20 (CPSU3648/20) Tender for the Supply of Ready Made Feeds for Preterm and New-born Babies Lot 2**

**13<sup>th</sup> May 2022**

The Board,

Having noted the letter of objection filed by Dr Clement Mifsud Bonnici and Dr Sylvann Aquilina Zahra on behalf of Ganado Advocates acting for and on behalf of Vivian Corporation Ltd, (hereinafter referred to as the appellant) filed on the 8<sup>th</sup> November 2021;

Having also noted the letter of reply filed by Dr Leon Camilleri acting for Central Procurement and Supplies Unit (hereinafter referred to as the Contracting Authority) filed on the 18<sup>th</sup> November 2021;

Having also noted the letter of reply filed by Dr Adrian Mallia on behalf of Michael Kyprianou Advocates acting for and on behalf of Alfred Gera and Sons Ltd (hereinafter referred to as the Interested Party AGS) filed on the 12<sup>th</sup> November 2021;

Having also noted the letter of reply filed by Dr Aloysius Bianchi and Mr Godwin Mangion acting for and on behalf of Malta Competition and Consumer Affairs Authority (hereinafter referred to as the Interested Party MCCA) filed on the 16<sup>th</sup> November 2021;

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

Having noted and evaluated the minutes of the Board sitting of the 28<sup>th</sup> April 2022 hereunder-reproduced.

#### **Minutes**

#### **Case 1715 – CFT 019-1174/20 – Tender for the Supply of Ready Made Feeds for Preterm and Newborn Babies**

#### **LOT 2**

The tender was issued on the 30<sup>th</sup> October 2020 and the closing date was the 22<sup>nd</sup> March 2021. The value of the tender, excluding VAT, was € 124,800 split between Lot 1 - €16,800 and Lot 2 € 108,000.

On the 8<sup>th</sup> November 2021 Vivian Corporation Ltd filed an appeal against the Central Procurement and Supplies Unit as the Contracting Authority requesting that the tender on Lot 2 is cancelled.

A deposit of € 545 was paid.

There were four (4) bidders.

On the 28<sup>th</sup> April 2022 the Public Contracts Review Board composed of Mr Kenneth Swain as Chairman Dr Vincent Micallef and Ms Stephanie Scicluna Laiviera as members convened a public virtual hearing to consider the appeal.

The attendance for this public hearing was as follows:

**Appellant – Vivian Corporation Ltd**

Dr Clement Mifsud Bonnici	Legal Representative
Dr Sylvann Aquilina Zahra	Legal Representative
Ms Denise Borg Manche	Representative
Ms Daniela Galea	Representative
Mr Christian Cachia	Representative

**Contracting Authority – Central Procurement and Supplies Unit**

Dr Leon Camilleri	Legal Representative
Dr Alexia Farrugia Zrinzo	Legal Representative
Mr Hristo Ivanov Hristov	Secretary Evaluation Committee
Mr Donald Micallef	Representative
Ms Doriette Agius	Representative

**Interested Party – Malta Competition and Consumer Affairs Authority**

Dr Aloysius Bianchi	Representative
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**Interested Party – Alfred Gera & Sons Ltd**

Dr Adrian Mallia	Legal Representative
Ms Spiteri Paris	Representative

**Preferred Bidder – Pemix Distributors Ltd**

Mr Joe Camilleri	Representative
Mr Keith Portelli	Representative

Mr Kenneth Swain Chairman of the Public Contracts Review Board welcomed the parties. He noted that since this was a virtual meeting all the parties agreed to treat it as a normal hearing of the Board in line with Article 89 of the Public Procurement Regulations. He then invited submissions.

Dr Clement Mifsud Bonnici Legal Representative for Vivian Corporation Ltd welcomed the participation of the Office of the Malta Competition and Consumer Affairs Authority (MCCAA) which is a truly independent body. He said that Appellant would mainly be relying on the written submissions and went on to state that the Board has heard this appeal before and he

did not intend to repeat the submissions. The point of the appeal was to have a rethink of the method of procurement in this tender by opening it to multiple suppliers. Appellant was requesting a cancellation of this tender under Public Procurement Regulation (PPRs) 90.3. The Court of Appeal gave directions on how the tender should be phrased to meet the findings of the MCCA which had carried out a forensic study of the market. This Report speaks for itself and allows only one avenue of action. The analysis of the market, covered in the report, makes very clear the effect of the present CPSU policy and which gives the present supplier a dominant position in the market.

It is clear that the preferred ready-made feeds, a product which generally cannot be advertised or promoted, has a 'captured market' and is the perfect state for a 'winner takes all' situation. This leads to a consolidation of the secondary market. The Board has to analyse the particular circumstances of this Case subjectively. Those circumstances include the decision of the Court of Appeal, the Report of the Competitions Authority and the effects it has on the market. MCCA offered solutions and these should not be ignored. The Contracting Authority vision in just following the tender requirements is short term as this has led to bidders in previous tenders dropping out and an indication is already there that competition is dropping. It does not make sense for a contracting authority to have one supplier with no alternative source as this puts the authority and parents with no alternative and leads to higher prices being quoted. The principle of parents safety and wellbeing must encourage competition and the decisions in PCRB Cases 1519 and 1579 support this principle of safety.

Dr Leon Camilleri Legal Representative for the Central Procurement and Supplies Unit said that this Case has already been decided by the PCRB and the Court of Appeal and both concluded that the tender parameters fulfill the PPRs obligations. The report by the MCCA which came later has not been ignored but the Authority needs time to digest it, but in the meantime the procurement of the product has to go on – this is an ongoing procedure not a fresh one and it is far preferable to proceed with this tender than to have emergency acquisitions. It is re-iterated that both the PCRB and the Court accept that the process is regular.

Dr Aloysius Bianchi Representative for the Malta Competition and Consumer Affairs Authority stated that he has been employed by the Authority since 2010 and worked on the Report – the scope was to study the market conditions which give a surreal picture. Both the PCRB decision of 29<sup>th</sup> December 2020 and that of the Court of Appeal were mistaken in not considering the characteristics of the market; a one brand policy based on the cheapest price. There is a direct relationship between the use of the product and the market share. Since 2019 the market share of the current supplier has 'exploded' by some 20 to 30 percentage points and there is a big gap between its share when compared to the second supplier. This indicates that there is a direct relationship between the product in use by the hospital and its subsequent use leading to a 'winner takes all' situation. Competition would lead to cheaper prices and there is 'a lack of fair play' as all other market shares decreased except those of the hospital supplier. The claimed lack of administrative capability should not lead to a lack

of competition. The CPSU seems to have ignored the Report and the MCCAAs pleads that the PCRb takes the Report's recommendations on board.

Dr Adrian Mallia Legal Representative for Alfred Gera & Sons Ltd stated that the well-established principle of the PPRs is to promote competition. MCCAAs is best placed to determine the market effects and it is clear from their Report that the present situation is detrimental to the market.

Dr Mifsud Bonnici stated that the MCCAAs Report is 'deafening' in its findings and past decisions must be considered in the light of the time when they happened and before the availability of this detailed Report. Dr Camilleri claims that the Contracting Authority needs time to study this Report but it had several months to do this already. The tender still has some two and a half years to run apart from the time it has already run. A rethink of the procurement policy is required and the Board should deal with the cancellation of the tender not the administration thereof.

Dr Sylvann Aquilina Zahra Legal Representative for Vivian Corporation Ltd said that discretion cannot be arbitrary. The attitude of the CPSU goes against administrative law and it seems to wish to proceed on the same lines. Paragraph 19 of the Court decision restricted the interpretation of the law regarding market dominance by noting that the MCCAAs could intervene if this dominance creates foreclosure of the market. The problem here is that the present position might very well lead to foreclosure which has the effect of the price exploding as there is no competition. The Court did not give the CPSU a free hand to do as they please and paragraph 17 of the Court's decision extends the notion for a wider contest in the selection process.

Dr Camilleri said that the PCRb had to decide if the procurement process was followed correctly. The Appeal Court clearly stated that the existing system should not be disturbed – Appellant is now claiming that the PCRb should overturn the Court's decision – the PCRb is not here to interpret competition but procurement. The claim that there could be price rises is purely hypothetical - it is the abuse of dominance that breaks the law not its possibility. Whilst one recognises the MCCAAs Report this does not overturn the PCRb decisions on procurement. It is emphasised that the decision to proceed with the present process is fully legal, as the Report is not binding and not proof that any law has been broken. There has been no proof that anything irregular happened and the tender decision should not be disturbed.

Dr Mifsud Bonnici pointed out that two events have happened since the Court of Appeal's decision; the publication of the Report and the lack of any attempt to challenge any of its findings. The request under Regulation 90 (3) states that 'if it appears' to be the best solution and is not definitive.

Dr Alexia Farrugia Zrinzo Legal Representative for the Central Procurement and Supplies Unit was of the view that the PCRb was not the forum to discuss the Report. The CPSU adhered to the laws throughout and it is the PCRb's obligation to ensure that those laws are followed.

Dr Aquilina Zahra said that the PPRs do not exist in a vacuum and other factors have to be considered.

There being no further submissions the Chairman thanked the parties and declared the hearing closed.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 28<sup>th</sup> April 2022.

Having noted the objection filed by Vivian Corporation Ltd (hereinafter referred to as the Appellant) on 8<sup>th</sup> November 2021, refers to the claims made by the same Appellant with regard to the tender of reference CFT 019-1174/20 (CPSU 3648/20) listed as case No. 1715 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Clement Mifsud Bonnici &

Dr Sylvann Aquilina Zahra

Appearing for the Contracting Authority: Dr Leon Camilleri

Appearing for the Interested Party AGS: Dr Adrian Mallia

Appearing for the Interested Party MCCA: Dr Aloysius Bianchi

Whereby, the Appellant contends that:

- a) By means of this appeal, it seeks the exceptional remedy that this Lot 2 is cancelled on the basis that it appears to be the best solution in the circumstances of the case and this in terms of Regulation 90(3) of the PPR.
- b) A tender may be cancelled either by the Director of Contracts or by the contracting authority in the prescribed instances in the General Rules Governing Tenders:
  - (a) *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*
  - (b) *the economic or technical parameters of the project have been fundamentally altered;*

- (c) exceptional circumstances or force majeure render normal performance of the project impossible;
  - (d) all technically compliant tenders exceed the financial resources available;
  - (e) there have been irregularities in the procedure, in particular where these have prevented fair competition;
  - (f) the only administratively and technically compliant offer is an unjustified abnormally low offer.
- c) The Appellant submits that the circumstances of this case, in particular, in view of the publication of the MCCA Report, but also given the historical and factual background, merit the cancellation of the Tender and this is so inter alia for the following reasons:
- i. CPSU's insistence to proceed with the recommended award of the Tender is an act of disrespect and contempt towards the authority of the Court of Appeal which has, in no unclear terms, directed CPSU to *"iqis u taghti piż xieraq lill-fehma u parir tad-Direttur Generali (Kompetiżzjoni) dwar l-effetti potenzjalment anti-kompetitivi tal-ghażla tagħha"*
  - ii. CPSU's stubbornness is unmistakably in utter disregard of the OC's authority and responsibilities.
  - iii. The Report, which has been published after this Tender was issued and closed, confirms definitively that CPSU's procurement practices and conduct is having the effect of distorting competition on the markets, both public and private, and therefore, for such harmful effects to be avoided, this Tender should be cancelled.
  - iv. The Report also sets out very clear recommendations on alternative procurement models which either remove completely any distortive impact of CPSU's procurement practices, or at the very least, mitigates the same. The very existence of the Tender is incompatible with those recommendations and fundamentally different from alternative procurement models proposed by the OC in the Report.
  - v. CPSU's procurement practices, including this Tender, and conduct is harmful and to the detriment of the best interests and well-being of the patient-being here the mothers and infants. This is an overriding general principle of public procurement in health tenders and ought to be duly considered by this Honourable Board in its decision.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 18<sup>th</sup> November 2021 and its verbal submission during the virtual hearing held on 28<sup>th</sup> April 2022, in that:

- a) CPSU submits that the request for cancellation of the tender process has already been put forward for the same reason in its action on the basis of regulation 262 of the Public Procurement Regulations filed on the 11<sup>th</sup> of November 2020. This honourable board has already rejected the request for cancellation by means of a decision dated 29<sup>th</sup> December 2020, confirmed by a decision of the Honourable Court of Appeal of the 17<sup>th</sup> of March 2021. On page 8 of the present appeal, the appellant highlights paragraph (b) of clause 18.3 of the General Rules Governing Tenders which provides that:

18.3 *“Cancellation may occur where:*

[..]

*(b) the economic or technical parameters of the project have been fundamentally altered;”*

- b) By the above quoted, the appellant is implying that it is filing the present appeal and requesting the cancellation of this tender cycle because there has been some fundamental alteration in the economic and technical parameters of the project which arose due to the decision of the Court of Appeal and the Report of the Officer of Competition;
- c) CPSU humbly submit with utmost respect to the Office for Competition within the Malta Competition and Consumer Authority that although this report was published on the 13th of September 2021, the gist of report has already been outlined and explained in the testimony of Mr Godwin Mangion, Director General of the Office for Competition, on the 14<sup>th</sup> of December 2020 before this Honourable Board in case 1522. Despite the testimony of Mr Mangion, this Honourable Board still rejected the claim of the appellant.
- d) With regard to the recommendations to the Contracting Authority made as an Obiter Dicta (non-binding recommendation/opinion) by the Honourable Court of Appeal, the same court of appeal still rejected the appeal of the appellants. If there is a party which is disrespecting the Honourable Court of Appeal, it is indeed the appellant who despite a crystal clear and unequivocal judgment, is by the present vexatious appeal trying to obtain a decision which runs counter to a res judicata by the court of appeal.
- e) CPSU submits that the continuation of this tender cycle, is in no way a disrespect to the Office for Competition (even though its decision is not legally binding) and in no way a disrespect towards the Obiter Dicta of the Court of Appeal, but this Honourable Board has to consider that this tender cycle was initiated on the 30th of October 2020, long before the decision of the Court of Appeal of the 17th of March 2021 (which rejected the request for cancellation and ordered the tender process to commence) and long before the non-binding report of the Office for Competition.
- f) CPSU also submit that from the numerous appeals filed by the appellant in the present tender cycle, this Honourable Board can certainly note that the difficulty of the appellants is not that the tender is distorting competition, but rather the motivation of these appeals is solely that the applicant is not the recommended bidder. Moreover, and without prejudice to the above submitted, the CPSU humbly submits that the situations quoted in paragraph 32 of the appeal application, refer to instances where the contracting authority is justified in cancelling a tender, and not the instances where an economic operator may request the cancellation of a tender. Furthermore, the highlighted paragraph (b) in the appeal application, is applicable when parameters change in a way that the scope of the tender has changed and the service/product as specified in the tender document is no longer required. This is surely not the case with

regard to the specifications of the product being procured under this call for tenders - ready-made feeds for preterm or new born babies;

- g) CPSU submit that since the tender process is in conformity with the Law, particularly the Public Procurement Regulations, there is no legal basis for the cancellation of the tender cycle.

This Board also noted the Interested Party AGS' Reasoned Letter of Reply filed on 12<sup>th</sup> November 2021 and its verbal submission during the virtual hearing held on 28<sup>th</sup> April 2022, in that:

- a) AGS is an interested party and therefore permitted to make submissions in terms of Regulation 276(c) of the Public Procurement Regulations (the "PPRs").
- b) AGS submits that the critical issue at stake in these proceedings is whether a contracting authority may design, administer and award a tendering process which has been found, by an official government authority, to be likely if not certain to create an outcome which is contrary to law, insofar as it is harmful to free and fair competition and, ultimately, to consumer welfare.
- c) It is somewhat ironic that - in this particular instance - the violation of law that will be created is a violation of the laws on competition. The irony arises as a result of the fact that the principal aim of the PPRs is, in fact, to promote competition. Indeed, in *Stadt Halle and RPL Recyclingpark Lochau GmbH v Arbeitsgemeinschaft Thermische Restabfall- und Energieverwertungsanlage TREALeun* the European Court stated the following:

*"On this point, the principal objective of the Community rules in the field of public procurement, as stated in connection with the answer to Question 1, should be recalled, namely the free movement of services and the opening-up to undistorted competition in all the Member States. That involves an obligation on all contracting authorities to apply the relevant Community rules where the conditions for such application are satisfied."*

- d) This idea has been explained, even more clearly, in the Opinion of Advocate General Stix-Hackl in the Sintesi case:

*"33. The principle of competition is therefore one of the fundamental principles of Community law on the award of public contracts.*

*36. Thirdly, the principle of competition is designed to protect competition as an institution."*

- e) It is AGS's firm view that the report of the Office clearly indicates that the present procurement process as designed by the contracting authority does not protect competition as an institution – on the contrary, the Office has unambiguously stated that *"the current procurement process adopted by the CPSU distorts competition in the secondary markets"* and *"distorts competition in the secondary markets by providing an unfair advantage to the winning bidder by enabling it to gain significant market share in the secondary retail markets"*

- f) In the light of this, therefore, it is unconscionable for the contracting authority to insist on proceeding with the award of the Tender a designed, and it should be clear that the Tender ought to be cancelled

This Board also noted the Interested Party MCAA's Reasoned Letter of Reply filed on 16<sup>th</sup> November 2021 and its verbal submission during the virtual hearing held on 28<sup>th</sup> April 2022, in that:

- a) The Office for Competition (hereinafter 'the Office') is intervening in these proceedings as an interested party in terms of Regulation 276(c) of the Public Procurement Regulations and is hereby filing its reply.
- b) The Office conducted a sector inquiry in terms of the Competition Act precisely on the market which is the subject matter of these appeal proceedings, i.e. on the supply of infant milk formula for new born babies in the public health sector. The sector inquiry conducted by the Office clearly concluded that the tendering process for the supply of infant formula at Mater Dei Hospital whereby one supplier wins the tender for the procurement of infant formula in the public health service is distorting competition in a number of secondary markets in the private retail market.
- c) As stated in the report of the sector inquiry, the Office considers that public procurement must not be seen as separate and distinct from the competitive effects it may create on the market. Indeed, the public procurement rules were inspired by the desire to promote competition and are built on the principle of competition. As Sanchez-Graells explains: *"Therefore, the clear competition objective guiding public procurement rules and the ensuing obligation of contracting authorities to protect competition as an institution - if not to develop competition in the public procurement field - was synthesised in the principle of competition embedded in EU public procurement directives, and now consolidated in Article 18(1) of Directive 2014/24."*
- d) Therefore, public procurement practices should complement competition rules, something which according to the Office is absent in the procurement practice adopted by the CPSU. In this spirit, Sanchez Graells explains: *"From this perspective, competition requirements should be understood as determining that public procurement rules have to be designed and implemented in such a way that existing competition is not distorted. In other words, it is submitted that public procurement rules cannot generate distortions in the dynamic competition processes that would take place in the market in their absence. Or, even more clearly, public procurement rules must not distort competition between undertakings"*
- e) In its sector inquiry the Office has urged the CPSU to change its current procurement practices to avoid harming competition any further and adopt one of the recommendations of the Office which recommendations seek to promote consumer choice, diversity of supply and sustainable market competition.

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

- a) Initially this Board will list down what information it considers to be most relevant for this case:
- i. In the Board's opinion, the Appellant's case is mainly built around the publication and findings of the Malta Competition and Consumer Affairs Authority ("MCCA") report which was issued post the judgement of the Court of Appeal sentence. The concluding paragraph of the executive summary of said report states *"Following the public consultation period, the Office for Competition is publishing this final sector inquiry report, recommending actions to the Central Procurement and Supplies Unit to better its procurement process for the well-functioning of the secondary markets. The Office has formulated specific recommendations that it considers absolutely necessary, appropriate, and in accordance with the principle of proportionality to create conditions of effective competition."*
  - ii. Court of Appeal 12/2021/1 judgement of 17<sup>th</sup> March 2021 paragraphs 18, 19, 20, 21 and 28 whereby:

*"18. Certament huwa desiderabbli li ma jittbedux inizjattivi li jistghu jwasslu ghal sitwazzjoni fejn operatur ekonomiku ikollu dominanza fis-suq. Relevanti f'dan il-kuntest ix-xieghda moghtija mid-Direttur Generali (Kompetizzjoni) quddiem il-Bord ta' Reviżjoni fis-sens illi "having one sole supplier is distorting competition in the secondary market and creating barriers to entry of other suppliers", u l-parir tiegħu "to have all products available in hospitals and let the mothers choose their brand" u "to have an open procedure with a choice of brands".*

*19. Għandu jingħad, iżda, illi posizzjoni ta' dominanza fis-suq per se ma hijiex bi ksur tal-ligi; huwa l-abbuz ta' dik id-dominanza li jkun bi ksur tal-ligi. Jekk operatur ekonomiku jinqeda bid-dominanza li jgawdi fis-suq biex jimponi prezzijiet aktar milli huwa xieraq, dak ikun bi ksur tal-ligi u l-Awtorità għall-Kompetizzjoni tkun imbagħad tista' tinterjeni.*

*20. Fi kliem ieħor, l-għażla tal-awtorità kontraenti li timxi kif imxiet f'dan il-każ tista' twassal għal sitwazzjoni mhix desiderabbli iżda mhix bil-fors bi ksur tal-ligi, u, jekk twassal għal ksur tal-ligi, jista' jinkiseb ir-rimedju mehtieg fil-waqt opportun.*

*21. F'dawn ic-cirkostanzi, għalhekk, il-qorti ma għandhiex tiddisturba d-diskrezzjoni tal-awtorità kontraenti fil-mod kif din għażlet li tikseb il-prodotti li tehtieg.*

*28. Din il-qorti iżda tkun qieghda tonqos jekk - kompatibilment mad-dmir u s-setgħa tagħha li tara li titħares il-ligi, u li titħares il-ligi kollha mhux biss dik tal-akkwist pubbliku għalkemm dan il-każ tnissel fil-qafas ta' din il-ligi - ma tgħidx li tkun għaqlija l-awtorità kontraenti jekk tqis u tagħti piż xieraq lill-fehma u parir tad-Direttur Generali (Kompetizzjoni) dwar -effetti potenzjalment anti-kompetitivi tal-għażla tagħha."*
- b) The Board notes that the Court of Appeal raised a very important point in paragraph 19 when it said *"19. .... **illi posizzjoni ta' dominanza fis-suq per se ma hijiex bi ksur tal-ligi; huwa l-abbuz ta' dik id-dominanza li jkun bi ksur tal-ligi.** Jekk operatur ekonomiku jinqeda bid-dominanza*

*li jgawdi fis-suq biex jimponi prezizzjiet akbar milli huwa xieraq, dak ikun bi ksur tal-ligi .....*” (Bold & underline emphasis added).

- c) This Board therefore felt it relevant to analyse the findings of the MCCA report and compare them to the conclusions delivered by the Court of Appeal judgement in paragraph 19. The substance of the MCCA report is essentially putting pen to paper the testimony of Mr Godwin Mangion, Director General of the Office for Competition, who testified in front of the Public Contracts Review Board on the 14<sup>th</sup> December 2020 in case 1522. Therefore, both the PCRB and the Court of Appeal have already taken this argument into consideration. Moreover, nowhere in such report is there evidence of such possible abuse by the economic operator with the largest market share. Hence, at this stage, this Board opines that the Contracting Authority is well within its lawful rights to proceed with this tender procedure.

Therefore, this Board does not uphold the Appellant’s grievances.

However, and on a final note, this Board will again emphasize what the Court of Appeal stated in paragraph 28 “..... *ma tgħidx li tkun għaliġa l-awtorità kontraenti jekk tqis u tagħti piż xieraq lill-fehma u parir tad-Direttur Generali (Kampetizzjoni) dwar l-effetti potenzjalment anti-kompetitivi tal-għażla tagħha.*” Due to the potential risks discussed in the report issued by MCCA on 13<sup>th</sup> September, and the possibility of eventual abuse by an economic operator enjoying a monopoly or quasi monopoly in a particular secondary market, the Contracting Authority should revisit future tender procedures and take on board the recommendations of the MCCA.

### **The Board,**

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

- a) Does not uphold Appellant’s Letter of Objection and contentions,
- b) Upholds the Contracting Authority’s decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant not to be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Dr Vincent Micallef**  
Member

**Ms Stephanie Scicluna Laiviera**  
Member