

PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2115
Tender Reference Number MGP eQ 59/2024
Tender Name Equotation for The Hiring, Installation and Operation of a Public Address (Pa) System for the Levant Gozo Music Fest 2024 Taking Place at Xewkija Gozo

The Public Contracts Review Board (hereinafter the 'Board' or the 'PCRB') convened a public hearing on the 2nd June, 2025 to hear the appeal as filed by the appellant Ronnie Dimech (hereinafter the 'Appellant') on the 11th September, 2024, and after taking cognisance of:

The e-procurement document for the 'Services - Equotation for The Hiring, Installation and Operation of a Public Address (Pa) System for the Levant Gozo Music Fest 2024 Taking Place at Xewkija, Gozo' (hereinafter referred to as the "Tender Document");

The minutes of the proceedings dated 2nd June, 2025 which are being reproduced hereunder:

'PUBLIC CONTRACTS REVIEW BOARD

Case 2115 MGP eQ 59/2024 – Services – Equotation for The Hiring, Installation and Operation of a Public Address (Pa) System for the Levant Gozo Music Fest 2024 Taking Place at Xewkija Gozo.

The tender was issued on the 25th July 2024, and the closing date was the 7th August 2024.

The estimated value of the tender, excluding VAT, was €9,000.

On the 11th September 2024, Ronnie Dimech lodged an appeal in accordance with Regulation 270 of the Public Procurement Regulations. A deposit of 400 Euro was paid. There were two bids.

On the 2nd June 2025, the Public Contracts Review Board (PCRB), composed of Dr Ana Thomas, as Chairperson, Mr Lawrence Ancilleri and Mr. Keith Victor Grech as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Ronnie Dimech

Dr Jonathan Mintoff – Legal Representative.

Mr Ronnie Dimech – the Appellant.

Contracting Authority – Ministry for Gozo and Planning

Dr Tatiane Scicluna Cassar – Legal Representative.

Ms. Dorianne Borg – Chairperson.

Mr. Anthony Vella – Board Secretary.
Mr. George Camilleri – Evaluator.
Mr. Michael Piscopo – Evaluator.
Ms. Mario Cauchi – Evaluator.
Mr. Daniel Sultana – Procurement Unit Representative.

Recommended Bidder – Antoine Debrincat (Pro Stage Sound)

Dr Joshua Grech – Legal representative.
Mr. Antoine Debrincat – Preferred Bidder.

Opening Statements

Dr Ana Thomas, Chairperson of the Public Contracts Review Board, welcomed the parties and enquired whether Dr Mintoff intended to begin by calling the individual who drafted the quotation. If not, the person would be asked to leave the room.

Dr Mintoff responded that it depended on the accessibility of the documents. If the available information was sufficient, he would not need to call the drafting individual.

Dr Joshua Grech, representing the preferred bidder, stated that he had no objection, provided that the proceedings adhered to the parameters set out in Article 40 of the Public Procurement Regulations. He referenced PCRB Case 2036, where limited information was disclosed to the appellant based on Commercial Code 34.

Dr Tatiane Scicluna Cassar agreed with Dr Grech and emphasised that Dr Mintoff was seeking more information than what is allowed under Article 40—specifically, access to the technical offer form. She noted that technical information already available to the public is what Article 40(2)(d) refers to, and this has already been disclosed by the Contracting Authority.

The Chairperson reminded the parties that on 5th September, the appellant had requested the names of the bidders, any subcontractors, documentation submitted by the economic operators to demonstrate compliance with selection criteria, technical information, or any other non-confidential material. The Contracting Authority had responded that the names of the bidders were publicly accessible via the ePPS system, there were no subcontractors involved, no selection criteria were applicable, and no technical information was publicly available.

Dr Scicluna Cassar confirmed this.

Dr Mintoff emphasised that questions 1 to 7 of the technical form referred only to the brand and model. He cited the *Southlease* case, arguing that brand and model information is not confidential. He stressed that this was important, as technical literature might not correspond with the brand or model declared.

The Chairperson asked whether the appellant required a recess and reiterated the need for clarity on the way forward.

Dr Scicluna Cassar maintained that the technical form is never distributed publicly.

Dr Grech cautioned that the appeal must not be allowed to turn into a “fishing expedition.” He argued that the appellant was speculating whether the preferred bidder had submitted the required documentation, which was an unfounded and defective assertion.

After deliberation, Chairperson Dr Ana Thomas decreed as follows:

“This Board takes cognisance of the request made by the appellant dated 5th May, 2025 by means of an email, that is a request for the provision of information namely the ESPD and the *“full and completed technical offer form and the literature submitted”*.”

The Board notes that the ESPD was not required as part of the offer.

The Board also acknowledges the exchange of correspondence between the appellant’s legal representative and the Director of the Legal Services Directorate, dated 5th and the reply dated 9th September 2024, attached with the appeal. It further notes that the names of tenderers are publicly accessible through the ePPS system, there are no subcontractors in this case, and no technical information has been made publicly available.

In view of the above, and in accordance with Regulation 40 of the Public Procurement Regulations (Subsidiary Legislation 601.03, Laws of Malta), the appellant’s request as made via email dated 5th May 2025 is rejected.”

Dr Mintoff on behalf of the Appellant minuted the following:

“With reference to the decree issued by this Honourable Board to have full access to the full technical offer, including brand names and models proposed by the preferred bidder, which request was rejected by this Honourable Board. The objector will be appealing from this point, and any further submissions or evidence produced in this appeal will be made without prejudice to the same.”

Initial Submissions

Initial submissions by the Contracting Authority

Dr Tatiane Scicluna Cassar noted that the appellant was raising preliminary issues, mainly the alleged failure to provide information. She emphasised that the matter at hand was to assess whether the Contracting Authority had acted fairly. The identity of the quotation drafter or assumptions made were irrelevant. She added that the appellant's case was based on mere speculation. Regarding pricing, she stated that the rate submitted was competitive but not abnormally low. She cited the *Kerber* Court of Appeal, arguing that concerns about low pricing influencing tender outcomes were unfounded, particularly because this was a service contract, not a supply tender.

Initial submissions by the Preferred Bidder

Dr Joshua Grech argued that the grievances raised were frivolous. He pointed out that the timeframe for appeal had lapsed and that the appeal appeared to be an attempt to hinder the preferred bidder from performing the awarded contract. The tender was eventually re-issued via a direct order.

Witness

Mr Mario Cauchi (ID.no. 24187G) -- Summoned by Dr Jonathan Mintoff.

Mr Mario Cauchi, an electrical engineer and technical member of the evaluation committee, confirmed that the preferred bidder was technically compliant. The proposed literature aligned with Section 3 of the tender specifications.

Dr Mintoff questioned whether the bidder's system covered a frequency range of 30 Hz to 20,000 Hz. Dr Thomas intervened to clarify, and Mr Cauchi confirmed compliance.

Dr Mintoff asked if the evaluation committee verified that the brand and model of the system met the range. Mr Cauchi stated that the literature submitted was deemed equivalent to the tender requirements. Dr Mintoff requested details about the PA system. Dr Scicluna Cassar objected but agreed to provide the information if directed by the Board. Dr Mintoff insisted that he was ready to ask the Board to appoint an expert, as per regulation 90 sub article 1, to see the authenticity of the product without his knowledge.

The Board directed Mr Cauchi to disclose the brand and model: Electrovoice XLC127DVX, which, on its own, had a lower frequency of 50 Hz. However, combined with other components, the system achieved the required range of 30–20,000 Hz.

Dr Mintoff argued that the technical form required one complete model, not a combination of systems. He asked whether additional technical sheets had been

submitted. Mr Cauchi confirmed that in item one the number of Hz indicated on the technical offer, without the extra data sheet, was 50—20,000 Hz. A PA system needs several components to materialise. He mentioned that a second data sheet, for a subwoofer with a range of 30—135 Hz, was submitted. Together, the system achieved the necessary range.

When asked whether all components were of the same brand, Mr Cauchi replied yes, but with different model numbers.

Dr Mintoff emphasised that if components individually don't reach the required range, they shouldn't qualify. Mr Cauchi disagreed but admitted that no technical calculations had been made during evaluation—they were satisfied with the literature alone.

Dr Mintoff enquired if there were more competent persons regarding sound. Mr. Cauchi named Mr Michael Piscopo.

Cross-Examination by Dr Scicluna Cassar

Mr Cauchi read from the specifications that the requirement was for a “High Quality flown Line Array 3- or 4-Way Stereo Speaker system including Subwoofers,” indicating that the complete system was what mattered, not the individual parts.

Cross-Examination by Dr Joshua Grech

Dr Grech referred to Clause 3, ‘Covering a frequent range between 30Hz and 20,000 HZ confirming that the evaluation showed the complete system met the frequency range. Mr. Cauchi confirmed.

Re-Examination by Dr Mintoff

Dr Mintoff asked whether combining components changed their frequency range. Mr Cauchi maintained that the system met requirements according to the literature.

Witness

Mr Michael Piscopo (ID.no. 308398M) -- Summoned by Dr Jonathan Mintoff)

Mr Piscopo, an electronic technician and evaluation committee member, confirmed that the system's combined frequency range was compliant. When asked if clarifications were sought from the preferred bidder, he confirmed they were not.

Cross-Examination by Dr Grech

Mr. Piscopo, confirmed that the Contracting Authority requested a Main PA 3 – 4 Way system Stereo Speaker, with a desired range. The Preferred Bidder submitted a PA system with all the components, that met the requirements. He confirmed that the technical literature presented was from the manufacturer.

Dr Mintoff asked whether the literature's authenticity had been verified online. Mr Piscopo said the evaluation relied solely on the documents provided.

Final Submissions

Final Submissions by Dr Jonathan Mintoff

Dr Mintoff referred to Note 3 on the technical form:

“No rectifications shall be allowed. Only clarifications on the submitted information may be requested.”

The Preferred Bidder submitted one model that did not satisfy the specifications. He was confident that there will be difficulties when the PA system is amalgamated with the other components. There are available systems, in the market, without components that reach the same Hz. There was no need for two models. The Board should not permit the Contracting Authority to accept what was not submitted. He emphasized that the objector could not have known about this combination without access to the documents.

He outlined four grievances:

1. First grievance: The Board already ruled on the disclosure request.
2. Second grievance: The appeal process extended beyond the contract's execution timeframe.
3. Third grievance: *'A prospective bidder must be administratively and technically compliant at the time of submission of the tender and not only be fully compliant should the tender be awarded to him'.*

This principle is issued in procurement policy note 40, where only one model was indicated in the technical offer, so the preferred Bidder was not compliant.

4. Fourth grievance: The financial offer was abnormally low, and he quotes regulation 243:

'Contracting Authorities shall require economic operators to explain'

There were two bidders, and the Contracting Authority should have clarified regarding the discrepancy concerning the abnormally low price. The Contracting Authority was at a disadvantage to make a clarification as there was not enough

time for the execution of the contract. The Contracting Authority made the decisions hastily without evaluating.

Final submissions by Dr Tatiane Scicluna Cassar

She argued that Dr Mintoff's interpretation was incorrect. Instead of looking at the quotation and seeing the request he is splitting the components individually and saying that they do not reach the requests. A PA system is made up of a number of components that is a whole. There was no proof, only assumptions. The board believed in the documents presented and thought that the bidder was administratively and technically compliant and since the criteria was the price, he was given the award.

Final submissions by Dr Joshua Grech

Escaping reality is wrong. A PA system was requested, not a subwoofer, a stereo or a microphone only. When one amalgamates all the components, they fall under the range requested. If trust in the submitted documentation is absent, then every procurement could be challenged. The internet is not a definitive source for verification. The bidder could be penalised if the information submitted is incorrect.

Concluding Remarks by Dr Jonathan Mintoff.

Dr Mintoff concluded by noting that if the Board had to believe that the PA system is one whole, why did the Preferred Bidder indicate one part only in the evaluation form and quotes:

'Therefore, bidders that fail to complete in full submit and upload the requested information, will be deemed as non-compliant and will result in the disqualification of their offer.'

It was the Preferred Bidder choice to submit only one part.

Conclusion of the Hearing

With no further arguments presented, Chairperson Dr Ana Thomas thanked the parties and formally concluded the session.'

The written pleadings as filed by Ronnie Dimech on the 11th September, 2024, together with proof of payment of a deposit in the amount of €400.00, wherein it held as follows:

“Letter of objection by Ronnie Dimech, holder of Maltese Identity card number 0011179G trading as Power Sound

Humbly submits:-

Mr. Ronnie Dimech (hereinafter referred to either as the "Objector" or "Appellant"), (Tender ID 214126), of Our Lady, Ċnus Street, Żebbuġ, Gozo, and holder of Maltese Identity Card No. 0011179G, whilst making reference to the above captioned call for Quotation, is hereby submitting a formal objection in relation to the same call for Quotation. Thus, he is availing of the right granted to him in virtue of Regulation 270 et. seq. of the Public Procurement Regulations (Subsidiary Legislation 601.03 of the Laws of Malta) - Public Procurement Regulations "PPR", this following the objection lodged

Facts of the Case:

- Whereas the Contracting Authority, for the above-captioned procurement procedure is the Ministry for Gozo and Planning, and on page 1 of the procurement document the email address of the same contracting authority is outlined as follows procurement.mgoz@gov.mt;
- Whereas the Criteria for Award (Para. 6.1) was the price (i.e. the bidder submitting the cheapest priced offer satisfying the administrative and technical criteria);
- Whereas the closing date for the submission of offers was on 07/08/2024 09:30am;
- Whereas the Objector has submitted his offer within the period for submissions.
- Whereas the Objector's offer is the cheapest offer that satisfies the Award Criteria;
- Whereas by means of a communication dated 4th September 2024, (a copy of which is attached hereto and marked as Doc. "A"), the Objector was notified by the Contracting Authority the Evaluation Board has recommended the award of this quotation to Pro Stage Sound;
- Whereas, by means of an email sent on the 5th September 2024 to outlined email address of the Contracting authority, the objector requested further information in accordance with Regulation 40 the Public Procurement Regulations (a copy of which is attached hereto and marked as Doc. "B");
- Whereas, by means of an email sent on the 9th September 2024 the Contracting Authority provided a partial reply in connection with the bid of the recommended tenderer (a copy of which is attached hereto and marked as Doc. "C");
- Whereas, by means of an additional email sent on the 9th September 2024 to outlined email address of the Contracting authority, the objector requested further information in accordance with Regulation 40 the Public Procurement Regulations (a copy of which is attached hereto and marked as Doc. "D");
- Whereas, by means of an email sent on the 10th September 2024 the Contracting Authority's only response was that the information requested is considered confidential and cannot be disclosed, in relation to the bid of the recommended tenderer (a copy of which is attached hereto and marked as Doc. "E");
- Whereas Mr. Dimech feels aggrieved by such decision of the Contracting Authority and is availing himself of the right granted to him in terms of the law and consequently is filing an

objection regarding the aforementioned decision. This within the established time-frame, and together with the required deposit of four hundred Euro (€400). A copy of confirmation of the payment is attached hereto and marked as Doc. "F");

OBJECTION

The Objector humbly submits to this Honourable Board, that the above-captioned call for Quotation was not evaluated according to Law and the evaluation was in breach of principles of natural justice. This, as will be further outlined during the hearing of the said objection. Moreover, the call for quotation dossier clearly stated that the Award Criteria quoted above however, the Contracting Authority and/or Evaluation Committee unilaterally decided to ignore this criterion and awarded the quotation to a bidder whose bid was not administratively, technically and financially compliant.

Lastly, the Contracting Authority and/or Evaluation Board did not adopt a consistent approach when evaluating the offers submitted nor did they abide with the quotation documentation;

In view of the above, the following grievances are being raised by the appellant in this Objection:

The objector has the following grievances which are of a preliminary nature.

1. Failure to Provide information

Whilst the Contracting Authority may argue that such is not a grievance per se, the Objector want to express his concern and disappointment to the lack of information provided by the Contracting Authority to this request for information (as outlined further above).

This has prejudiced the Objector's right to a fair hearing. Therefore, in view of the above, the Objector is as of now, hereby reserving his rights to the fullest extent possible, including but not limited to submit additional grievances and/or to file judicial procedures for the safeguard of their rights and interests which have been hitherto breached and jeopardized.

By virtue of two requests, one dated 5th September 2024 and another dated 9th September 2024, the Objector requested further information in accordance with Regulation 40 of the Public Procurement Regulations. In the said request the Objector requested the following information:

"...

- (a) The name of the bidders and the individual names of the members of any group of economic operators who submitted a particular tender;*
- (b) The name of the sub-contractors;*
- (c) Documentation submitted by the economic operators attesting to their compliance with the selection criteria;*
- (d) Technical information; and*
- (e) All other information and documentation that is not deemed confidential."*

AND

"1. Whether the preferred bidder "prostage sound", is the partnership that is registered bearing Partnership no P 2089? Such is being requested as no information is not publicly available on the etenders website.

2. Whether the preferred bidder indicated that it will rely on the capacities of other entities (i.e. reliance) not just subcontracting? If in the affirmative, kindly provide the relevant details.

3. As per Clause 5, of the tender dossier the specifications deems that the technical offer and the literature are an integral part of the selection criteria. Thus, you are kindly requested to provide the full and completed technical offer form and the literature submitted by the preferred bidder with all the brand and model to be used by the preferred bidder..."

The Contracting Authority provided very limited information about the preferred bidder and the rest of the highly relevant and required information requested was not provided as the said Contracting Authority considered it as confidential.

In view of the above, reference is being made to the decision of the Court of Appeal (Superior Jurisdiction) in the names "South Lease Limited vs Central Procurement and Supplies Unit et" decided on the 22/06/2022, where the said Court of Appeal stated the following:

"7. Dwar il-mertu tal-appell, din il-Qorti tara li, għallanqas f'uhud mill- aggrarji, is-socjeta rikorrenti għandha raġun. L-ewwelnett, jidber li l- Bord ma ppermettiex li s-socjeta rikorrenti tippreżenta dokumenti u ssaqsi domandi biex turi li l-vetturi tal-offerta tal-oblatur preferut u taġġha huma tal-istess għamla. Il-Bord irrifjuta din it-talba peress li l- informazzjoni kienet, skont hu, "of a commercially sensitive nature." Din il-Qorti ma taqbilx ma' dan l- argument peress illi kull parti fi kwistjoni quddiem Tribunal kwazi gudiżzarju (kif inhu l-Bord in kwistjoni) għandu dritt għal kull informazzjoni rilevanti għall-każ tiegħu, u l-parti l-obra, speċjalment fejn ikun hemm dettalji teknici, trid tipprovi dik l- informazzjoni u mhux tinbeba wara n-natura kummerċjali kunfidenzjali tal- informazzjoni. Speċjalment f'każijiet ta' din ix-xorta fejn, hafna drabi, l- għażla ddur fuq l- istruttura teknika tal-offerta, kull parti għandha obbligu li tikxef dak kollu li hu rilevanti u relatat mal-offerta taġġha. Jekk l- informazzjoni li tkun se tingħata tkun sensitiva, il-Bord jista' jordna li l-informazzjoni tkun accessibli biss għaliha u għall-partijiet fil-kwistjoni, u li ma jinbargux kopji tad-dokumenti relattivi, iżda jibqgħu issigillatijf' envelop għall-użu biss kifingħad. L-avversarju, pero, għandu dritt jitolb mill-parti l-obra kull informazzjoni marbuta mal-każ u rilevanti għallmaterja quddiem il-Bord. Wara kollox, is-socjeta appellanti tgħid li hi riedet informazzjoni dwar l-għamla tal-vetturi li l-konsorzju Health JV taspira li jkunu fit-toroq Maltin, u allura din l-informazzjoni ma' tista' qatt tkun meqjusa ta' natura kunfidenzjali."

The Objector in this case is requesting various documentation regarding the Preferred Bidder's bid, including the Technical Offer Form, which required the bidder to provide only the brand name and model of the requested equipment. Therefore, the Objector's request falls strictly within the parameters of the Court of Appeal's above-cited decision, where the make and model of a vehicle were not considered confidential information.

In view of the aforesaid, the Objector is hereby requesting this Honourable Board, through an interim measure in accordance with reg. 90 (4) of Public Procurement Regulations, and in any case prior to the scheduled hearing, to order the Contracting Authority, to release the information requested as per the second request and also to provide copies of all documentation that this honorable Board deems relevant and ancillary;

2. Concerns regarding the entire procurement procedure

Without prejudice to the other grievances

The Objector has to outline that as per the Quotation dossier, (more specifically Clause 1.2) it was outlined as follows

"The place of acceptance of the services shall be near Xewkija Heliport, Xewkija, Gozo. The time-limits for the execution of the contract shall be from set-up until dismantling - between Tuesday 10th September 2024 to Saturday 14th September 2024, .."

The Objector was notified of the award of the procurement exercise/quotation subject to this objection to a third party by means of a notice issued on the 4th of September 2024. In accordance with the Public Procurement Regulations, any party aggrieved by such a decision is entitled to file an appeal/objection within ten (10) calendar days from the date of the decision. The deadline for lodging the appeal will, therefore, lapse after the intended commencement and execution of the contractual services subject of the said procurement exercise.

Moreover, the Objector wishes to formally express concern and disappointment regarding the lack of adequate information provided by the Contracting Authority in response to the request for information, as outlined above. As a result, the Objector was compelled to submit this objection without having access to all necessary details. Furthermore, irrespective of the outcome or the potential success in challenging this procurement process, the services subject to this objection will have been rendered redundant, as they would have already been executed by a third party by the time the objection is heard and ultimately decided. Thus, the Objector who was a participant in the said procurement procedure will not have the opportunity to offer its services in connection with the services required as per the procurement exercise.

On this point the Objector refers to various Case law of the Court of Justice of the European Union (CJEU) which highlighted key principles surrounding procedural fairness, transparency, and the rights of bidders to challenge procurement decisions effectively. The Court ruled that review procedures must allow for meaningful access to justice and an effective right to appeal.

The said situation raises concerns about effective judicial protection.

While the Contracting Authority may contend that this issue does not constitute a grievance in the strict sense, the Objector respectfully requests that this Honourable Board address the matter nonetheless.

The objector has the following additional grievances which are regarding the nature of the preferred bidder's bid

3. Concerns regarding the preferred Bidder's Compliance

Without prejudice to the other grievances

The Objector wishes to emphasize, based on a considered opinion (from the information available to the Objector thus far), that the preferred bidder's offer lacks compliance for the following reasons:

- i. *The bidder does not possess the required Specifications (as outlined in Section 3 and in the Technical Offer Form) stipulated in the Quotation document, which raises questions about its ability to fulfill the contract obligations.*
- ii. *There are serious doubts as to whether subcontracting and/or reliance on third parties were appropriately declared, in accordance with applicable legislation.*
- iii. *A previous decision by this Honourable Board articulated that "A prospective bidder must be administratively and technically compliant at the time of submission of the tender and not only be 'fully compliant' should the tender be awarded to them." This principle is also highlighted in Procurement Policy Note ("PPN") #40, which states, "Economic Operators must initially possess all the requirements laid out in the Procurement/Concession Documents." This aligns with European Court of Justice (ECJ) case law.*
- iv. *Additionally, there exist irregularities in the Preferred Bidder's offer and/or submission which is not in conformity with the requirements, that compromise the integrity of the selection process.*

4. *The Preferred Bidder's bid is abnormally low*

Without prejudice to the other grievances

The Objector humbly submits that the Preferred Bidder's bid is abnormally low. The price submitted by the preferred bidder is significantly below the industry standard, raising substantial concerns about their ability to fulfill the contractual obligations without compromising on quality, compliance with regulations, or the long-term viability of the project. An abnormally low bid not only distorts fair competition but also poses risks regarding the financial sustainability and performance of the contract. The Objector respectfully requests this Honourable Board to conduct a thorough review of the preferred bidder's submission to ensure it complies with the required standards and does not compromise the integrity of the procurement process.

In view of the above, and whilst reserving the right to make further submissions and present further evidence (especially in view of the fact that Objector has requested further information), the appellant humbly requests this Honourable Board:

1. *Preliminary: In accordance with reg. 90(4), to order the defendants, or whosoever of them, to disclose any and all the information requested by the Objector in the first request and in the second request and to provide the Objector with copies of all the documents referred to by them, and this in compliance with their obligations in accordance with Regulation 40 of Subsidiary Legislation 601.03;*
2. *to order the Contracting Authority not proceed with the contract execution until a final decision is given to this Objection;*
3. *to order the fresh evaluation, through a newly appointed evaluation committee;*
4. *to order the full reimbursement of the deposit paid by the objector; and*
5. *Alternatively, issue any other declarations, orders, or directives deemed pertinent to the procurement process related to the tender in question."*

The written reply as filed by the Ministry for Gozo and Planning on the 20th September, 2025 (hereinafter the 'Contracting Authority') wherein it held as follows:

“The Contracting Authority respectfully submits that:

First and foremost, at this stage the Technical Evaluation Committee nor the Contracting Authority cannot disclose any direct administrative and technical information on the particular offer submitted by the recommended bidder.

a. Still, as regards to the first grievance presented by the Appellant, that is, failure to provide information on behalf of the Contracting Authority; the Contracting Authority submits that it's not accurate to state that the required information was not provided. As per Document 'C' presented and submitted by the same appellant, the Contracting Authority furnished all the information that was available and could be disclosed at that time. In fact, the Contracting Authority replied as follows:

"MGP is hereby listing the items and replying in the following manner:

- Information in (a) can be found on the ePPs website;*
- There are no sub-contractors;*
- There was no selection criteria in the equotation in question;*
- There is no technical information which is already made available in public. Therefore that information cannot be provided.*

Therefore, at no point did the Contracting Authority act in breach of Article 40 of the Public Procurement Regulations, as all information requested was duly provided in accordance with the applicable requirements.

Regarding Document "D" submitted and mentioned in the appellant's submission, the information requested therein was confidential in nature and this was the reason it was not provided. Further to this, Article 19.2 of the 'General Conditions Governing Tendering' provides an exhaustive list of the documents/information that can be passed over to the unsuccessful bidders and does not list the information requested by the Appellant.

It follows that the Contracting Authority is outrightly objecting to the Appellant's request where it is requesting access to a number of documents pertaining to the preferred bidder.

b) As regards to the second grievance raised by the Appellant, the Contracting Authority respectfully contends that this grievance does not constitute a valid legal basis for challenge. Furthermore, the Appellant did have an effective and clear viable method to appeal. The Contracting Authority further contends that it cannot understand how the issue of the deadline for lodging the appeal can form part of the objection to this appeal when the merits of the case relate to the issue of whether the Contracting Authority has adjudicated the tender correctly or not.

Moreover, the alleged procedural faults in the procurement procedure, cited in the appeal are not relevant to the core evaluation process, nor do they have any bearing on the final outcome of the tender evaluation. Thus, this grievance cannot serve as a legitimate basis for invalidating the Technical Evaluation Committee's decision.

c) This third grievance of the Appellant is unfounded, since, it is based on mere assumptions regarding the preferred's bidder ability to meet the required specifications without providing any concrete evidence to support these claims. Such assumptions do not reflect the objective findings of the Technical Evaluation Committee, which determined that the preferred bidder satisfied all the necessary criteria. Thus, the appellant cannot carry out assumptions on such bidder when it does not have any information about it.

The Contracting Authority would like to clarify and asserts that the preferred bidder fully met all the required specifications outlined in the quotation document, and where necessary sought clarifications from each bidder. The responses provided by both bidders were thoroughly considered in the final decision.

The preferred bidder's submissions demonstrated full compliance with the administrative, technical and financial criteria. Every aspect of the bid was carefully reviewed, and the Technical Evaluation Committee found that the preferred bidder adhered to all the requirements set forth in the tender process. While the Contracting Authority understands that concerns raised after installation could be valid, the appellant's objections are based solely on assumptions rather than on any tangible issues observed during or after the installation process.

Therefore, in view of the above, the Contracting Authority respectfully submits that the Honourable Board dismiss the appellant's point as unfounded.

d) As regards to the fourth grievance, the preferred bidder's offer was the lowest from all bids, and the Technical Evaluation Committee was satisfied as it was financially viable. The preferred bidder's requirements were all met, and the principles of the procurement process were strictly adhered to from the preferred bidder's end. The Committee's conclusions were accurate and in line with the established criteria and according to technical specifications.

While the bid was lower than that of the appellant, the figures were deemed reasonable and feasible, within budget and according to the Procurement Regulations.

Also, the role of the Technical Evaluation Committee is to seek the most economical price, provided that all submission criteria are met. In CJEU Case C-367/19, it was held that an offer, even one as low as zero (0), can be considered abnormally low but cannot be excluded without giving the bidder a chance to justify it. In CJEU Case C-285/99 it was also held that even if the offer appears abnormally low the result is not disqualification but a request to justify the offer.

Furthermore, as stated in UK Courts SRCL vs. National Health Commission Board (EWHC 1985)", the Contracting Authority has the discretion to decide what constitutes a low bid. There is nothing inherently wrong with accepting a bid at the lowest price, as long as it meets the required standards. This principle was upheld in 'Court of Appeal Case 162/2014/1 (Kerber Securities vs. Wasteserv)", where it was ruled that the question of profit is irrelevant and stated the following:

"Inoltre, l-osservazzjoni tal-Bord li r-rati baxxi offruti setgħu jwasslu għal prekarjat sabiex jiġu implimentati l-kundizzjonijiet tat-tender; mbijiex sostnuta anzi hija kontradetti mill-provi, stante li l-Bord stess irrikonoxxa li, għalkemm marginali, birrati offruti setgħa jsir profitt albejt marginali, u kief fuq gja' spjega, il-profitt mhux neccessarjament l-uniku fattur wara l-offerti." 2t "Dan ifisser li, jekk il-kriterji amministrattivi u tekniċi jiġu sodisfatti mid-diversi offerenti, allura dak li jirbah huwa l-irbas tender, u la l-Kumitat tal-Evalwazzjoni u lanqas il-Bord ta' Reviżjoni ma jistgħu jinjoraw jew jiddipartixxu minn din il-kundizzjoni tassattiva tat-tender: Għalhekk ladarba jirriżulta li s-soġjeta appellanti u s-soġjeta' appellata Signal issodisfaw il-kundizzjonijiet amministrattivi u tekniċi, allura kellha bilfors ["shall"] tipprevali l-irlias offerta, u cioè' dik tas-soġjeta appellanti."

Furthermore, the primary goal of public procurement legislation is to ensure that the public receives services or supplies that meet the required standards and specifications, at the best possible price. In this present case, the bid is not abnormally low; it is simply more competitive than that of the appellant. Also, it is the appellant's burden to prove that the financial offer was abnormally low.

In view of the above, the Technical Evaluation Committee and the Contracting Authority confirms once again that the financially cheapest offer by Pro Stage Sound is considered to be fully administrative, technically and financially compliant to the published terms and conditions.

Therefore, for the reasons mentioned above, the respondent Contracting Authority humbly requests that this Honourable Board should reject and dismiss all arguments submitted by the Appellant, thereby dismissing the objection in toto and to re-confirm the decision of the Evaluation Committee for the reasons given.”

The oral submissions of the Appellant, the Contracting Authority and the Preferred Bidder as delivered by their legal representatives; and

The testimonies of the witnesses Mario Cauchi and Michael Piscopo;

Considers;

This Board notes that the Appellant has brought forward four (4) grievances, the first relating to the Contracting Authority’s failure to provide information, the second concerning the ‘concerns regarding the entire procurement procedure, the third concerning ‘concerns regarding the preferred bidder’s compliance’ and the fourth concerning the preferred bidder’s abnormally low bid.

This Board must immediately underline the fact that the Appellant’s grievances as set forth in his appeal dated 11th September, 2024 are based on several assumptions, speculations and suppositions made by the Appellant and/or legal counsel to the Appellant which seem not to be concrete and well-founded complaints as this Board is accustomed to dealing with. By way of example, the Board refers to the following excerpts from the Appellant’s written pleadings:

“The bidder does not possess the required Specifications” – without saying which;

“There are serious doubts as to whether subcontracting and/or reliance on third parties were appropriately declared” – without saying why;

*“there exist irregularities in the Preferred Bidder’s offer **and/or** submission” – without saying what irregularity, where it lies and why it may be considered so.*

This may be construed to be a fishing-expedition akin to a fisherman placing a very wide net in the sea hoping to catch anything that may come his way, and in this case the Appellant *qua* fisherman latched onto a minute defect, yet a defect nonetheless, which defect only came to the fore during the public hearing of this appeal and through the testimony of Mario Cauchi. Having said that, this Board feels that it is not responsible to file appeals in a vague, wide, all-encompassing manner, and that every appellant must have reasonable grounds to believe that his grievances are well-founded, and not hope that during the oral hearing of an appeal a defect may be discovered to back up his grievances as already previously set forth in writing.

With respect to the first grievance, the Appellant in his final submissions remarked that that grievance was ‘resolved’ during the public hearing on the 2nd June, 2025, when this Board rejected the request for the Appellant to have unlimited and indiscriminate access to the **“full and completed technical offer form and the literature submitted”** as made by means of an email dated 5th May, 2025 to the PCRB. The Board in its decree as delivered in the hearing of this appeal on the 2nd June, 2025, concerned specifically the request by email, and should not be interpreted to be a partial judgment on the grievances as set forth in this appeal.

During the hearing of the witnesses, and in line with jurisprudence on the matter however, the members of the evaluation committee in question were directed by this Board to disclose certain makes and models as offered by the Preferred Bidder and it is through this direction that the first grievance of a preliminary nature was resolved. It was also through this disclosure that it came to light that the technical offer form and the technical literature as submitted by the Preferred Bidder did not 'match' perfectly, in that it resulted that the Preferred Bidder outlined the make and model of one component of the PA system whilst he indicated the make but not the model of the second component of the PA system. This Board understands that when 'connected' together, the first and second component as proposed by the Preferred Bidder made up a complete PA System to the satisfaction of the evaluation committee and as backed up by the technical literature as presented in his bid. Notwithstanding this omission on the part of the Preferred Bidder in his technical offer form, the evaluation committee expressed its reliance on the technical literature which factually complied with the tender specifications. However, strictly speaking, there existed a flaw in the offer put forward by the Preferred Bidder in that the technical offer form and the technical literature did not match up, yet this finding loses effect when one considers that the event in question has now passed and this procurement procedure 'died a natural death' the moment the underlying event took place. Therefore, the Appellant's third grievance finds some comfort in this finding. It is the result of this which must now be determined.

With respect to the fourth grievance regarding an abnormally low bid, this Board finds nothing untoward or abnormal in the value of the bid as preferred. No proof substantiating this grievance was submitted by the Appellant.

This Board must underline the fact that the present appeal as filed before this Board may serve as nothing more than a 'post-mortem' evaluation of this procurement process, and the evaluation carried on by the relevant committee as appointed. This more so when the event in question passed.

This Board, is composed and regulated in terms of the Public Procurement Regulations, Subsidiary Legislation 601.03 of the Laws of Malta (the 'PPR') and as such is bound to observe the regulations as stipulated therein. This Board refers to Regulations 271 and 276 of the PPR, which state as follows:

"271. The objection shall be filed within ten calendar days following the date on which the contracting authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period."

"276. The procedure to be followed in submitting and determining appeals as well as the conditions under which such appeals may be filed shall be the following:

- (a) any decision by the General Contracts Committee, the Sectoral Procurement Directorate or the Special Contracts Committee or by the contracting authority, shall be made public by affixing it to the notice-board of the Department of Contracts, the Sectoral Procurement Directorate or of the office of the contracting authority, as the case may be, or by uploading it on government's e-procurement platform prior to the award of the contract if the call for tenders is administered by the Department of Contracts;*
- (b) the appeal of the complainant shall also be affixed to the notice-board of the Public Contracts Review Board and shall be communicated by fax or by other electronic means to all participating tenderers;*

- (c) **the contracting authority and any interested party may, within ten calendar days** from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government's e-procurement platform, **file a written reply to the appeal**. These replies shall also be affixed to the notice board of the Review Board and where applicable they shall also be uploaded on the government's e-procurement platform;
- (d) **the authority responsible for the tendering process shall within ten days forward to the chairman of the Public Contracts Review Board all documentation pertaining to the call for tenders in question including files and tenders submitted;**
- (e) the secretary of the Review Board shall inform all the participants of the call for tenders, the Department of Contracts, the Sectoral Procurement Directorate and the contracting authority of the date or dates, as the case may be, when the appeal will be heard;
- (f) when the oral hearing is concluded, the Public Contracts Review Board, if it does not deliver the decision on the same day, shall reserve decision for the earliest possible date to be fixed for the purpose, but not later than six weeks from the day of the oral hearing."

For the benefit of all the Parties the Board is hereby summarising the timeline of events relative to this procurement process hereunder:

- Letter of Award – 04.09.2024
- Letter of Rejection – 04.09.2024
- Dates of Event – 10.09.2024 up to and including 14.09.2024
- Letter of Appeal – 11.09.2024
- Appeal Deadline – 13.09.2024
- Reply to the Appeal – PCRБ stamp reads 20.09.2024
- Reply Deadline – 23.09.2024

In view thereof, it was impossible for this Board to schedule this appeal, hear it and decide it before the event took place. This Board is further bound to hear, evaluate and decide upon appeals before it by relying not only on the evidence as brought forward during the public hearing held for such a purpose, but this Board must decide on an appeal based on the grievances brought forward by an appellant which are and should be intrinsically read and decided upon together with the requests (*talbiet*) of the appellant. In this case in particular, apart from the preliminary request, the request related to the deposit and the vague all-encompassing fifth and final request, the Appellant is requesting this Board to:

"to order Contracting Authority not proceed with the contract execution until a final decision is given to this Objection;"; and
"to order the fresh evaluation, through a newly appointed evaluation committee".

This Board, whilst having considered the grievances proper and the merits of this appeal, finds that it is precluded from ordering the Contracting Authority not to proceed with the contract execution until a final decision is given because the event in question commenced a day before this appeal was even filed and further that it would be wholly futile and a waste of resources to order a fresh evaluation of the bids for an event which took place approximately ten (10) months ago.

Due to the temporal circumstances of this case, this Board's hands are tied, and to address the Appellant's second grievance, this Board agrees that it would have been more fitting of the Contracting Authority to organise the tendering process in such a way to afford at least enough time for an appeal to be filed, heard and decided.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to abstain from taking further cognisance of the 1st request, rejects the 2nd, 3rd and 5th requests made by the Appellant Ronnie Dimech, however in view of the particular circumstances of this process, particularly the timeline, this Board is hereby acceding to the Appellant's 4th request and hereby orders the full and immediate re-imbusement of the deposit paid by the Appellant Ronnie Dimech in the amount of four hundred Euro (€400.00).

Dr Ana Thomas
Chairperson

Mr Keith Victor Grech
Member

Mr Lawrence Ancilleri
Member