

PUBLIC CONTRACTS REVIEW BOARD

Appeal Reference Number 2116
Tender Reference Number SPD3/2024/066/Lot 2
Tender Name 'Services – Framework Contract for the Delivery, Hiring, Setting up and Dismantling of Marquees Tents to be utilised in Various Events in 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 Jean Paul Zerafa (hereinafter the 'Appellant') on the 5th December, 2024, and after taking cognisance of:

The e-procurement document for the 'Services – Framework Contract for the Delivery, Hiring, Setting up and Dismantling of Marquees Tents to be utilised in Various Events in 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 2116 SPD3/2024/066/Lot2 Framework Contract for the Delivery, Hiring, Setting Up and Dismantling of Marquees Tents to be Utilised in Various Events in Gozo.

The tender was issued on the 8th October 2024, and the closing date was the 8th November 2024. The estimated value of the tender, excluding VAT, was €105,300.00. On the 5th December 2024, Jean Paul Zerafa lodged an appeal in accordance with Regulation 270 of the Public Procurement Regulations. A deposit of €527 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 – Jean Paul Zerafa

Dr Jonathan Mintoff – Legal Representative.
Mr Jean Paul Zerafa – the Appellant.

Contracting Authority – The Ministry for Gozo and Planning

Dr Tatiane Scicluna Cassar – Legal Representative.
Ms. Dorianne Borg – Chairperson.
Mr. Christopher Pisani – Secretary.
Mr. George Camilleri – Evaluator.

Mr. Victor Mercieca – Evaluator.

Mr. Joseph Grima – Evaluator.

Recommended Bidder –Venscic Ltd. (C75093)

Mr. Franco Scicluna – Company Representative.

Department of Contracts.

Dr Mark Anthony Debono – Legal Representative.

Witnesses:

Ms. Ruth Grima – Malta Business Registry.

Mr. Joseph Debono – Commissioner for Revenue.

Opening Statements

Dr Ana Thomas, Chairperson of the Public Contracts Review Board (PCRB), welcomed the parties to the hearing.

Preliminary Points

On 5th December 2024, Dr Jonathan Mintoff, representing Jean Paul Zerafa, submitted a letter of objection against Venscic Ltd, requesting access to their technical offer.

Dr Thomas referred to Article 270 of the relevant legislation, which states: *“May file an appeal by means of an objection before the PCRB, which shall contain a very clearly manner, the reasons for their complains.”*

She asked Dr Mintoff to specify what is being contested. He replied that the objection applied to all clauses, as he required the information to support his appeal. He insisted on access to the full technical literature to use in proceedings before the Court of Appeal. The Chairperson reminded him that the full technical documentation will not be disclosed in an indiscriminate manner, unless a clear legal basis is provided and unless it is particularly relevant to the case.

Mr Franco Scicluna, Managing Director of Venscic Ltd, explained that the appeal had stalled the tendering process. In the interim, the Ministry issued hand quotations, awarding a tender to the appellant in December 2024. Since then, all tenders had been awarded to Venscic Ltd.

Dr Mintoff maintained that although such documents are not public, he required a review of the technical evaluation.

Dr Tatiane Scicluna Cassar, representing the Contracting Authority, objected, arguing that Dr Mintoff was requesting confidential information. She noted his reliance on the *Southlease* case but pointed out that he failed to mention the Court of Appeal's clarification that only relevant information may be disclosed.

She quoted from the case *Varec SA v État Belge*:

'It follows that in the context of a review of a decision taken by a contracting authority in relation to a contract award procedure, the adversarial principle does not mean that the parties are entitled to unlimited and absolute access to all of the information relating to the award procedure concerned which has been filed with the body responsible for the review. On the contrary, that right of access must be balanced against the right of other economic operators to the protection of their confidential information and their business secrets'

The following was minuted with respect to the sequence of the oral hearing:

"The Appellant and Contracting Authority are agreeing to hear evidence on the third grievance as brought forward and shall be reserving their submissions on the provision of particular technical information related specifically to second grievance at a later stage."

Witness

Ms Ruth Grima (ID: 108100L) – Summoned by Dr Mintoff

Ms Grima, employed at the Malta Business Registry (MBR), confirmed the details of Company No. 75093, corresponding to Venscic Ltd. She presented the official registry extract, which included the registered address, shareholding structure, directors, secretary, legal representatives, auditors, and recent documents.

Dr Mintoff asked whether any filings were submitted after the appeal deadline of 8 November 2024. Ms Grima confirmed that the accounts were received on 20 August 2024, despite being due on 24 November 2023. Regarding the 2023 accounts, she could not confirm their status. She explained that MBR allows a grace period of 10 months plus 42 days before penalties apply. She was unaware if the accounts were approved by any fiscal department prior to submission. They are then processed and uploaded in the system. She could not answer questions on corporate tax.

Cross-examination by Dr Mark Anthony Debono

He asked whether the “10 months plus 42 days” policy is stated in the tender documentation. Ms Grima replied that it is an internal MBR policy and not found in the tender.

Witness:

Mr Joseph Debono (ID: 691760M) – summoned by Dr Jonathan Mintoff.

Mr Debono, a Senior Principal Officer, at the Commissioner for Revenue, (CFR) was questioned by Dr Mintoff regarding income tax, social security, and VAT contributions.

Dr Thomas read a letter dated 5 May and clarified that the summons requested information on tax status, compliance, and arrears. Mr Debono presented the relevant documents.

Dr Mark Anthony Debono objected, citing the General Rules Governing Tenders, which stipulates that such compliance certificates should only be requested after the award process. He quoted:

“Prior to signature, the recommended tenderer will be invited to demonstrate or corroborate the SPD.”

Dr Mintoff countered that the Preferred Bidder had declared tax arrears in his submissions, but the evidence suggested otherwise.

Mr Debono confirmed that the tax compliance certificate (dated 8 May 2025) indicated a pending return for the year 2023/2024 and an outstanding liability of €27,042. He could not confirm whether returns were pending as of 8 November 2024.

Dr Thomas requested the assessment date for the 2023 fiscal year but was informed by Mr Debono that such information could not be provided during the hearing.

Dr Scicluna Cassar pointed out that the tender value was below €500,000, and no financial statements had been requested.

Dr Mintoff insisted that tax arrears were present on 8 November and asked whether the CFR had any payment agreements with the company. Mr Debono could not answer, as this information had not been requested. Dr Mintoff asked the Board to see Regulation 193, of public procurement regulations.

Mr Franco Scicluna asked whether CFR tokens appear in tax rebate statements.

Dr Thomas clarified that a tax balance was due.

Dr Debono asked whether the Preferred Bidder could have accepted the contract if debts had to be settled in advance. Mr Debono could not confirm.

Witness:

Ms Dorianne Borg (ID: 256588M) – Summoned by Dr Jonathan Mintoff.

Dr Mintoff asked Ms Borg in her capacity as Chairperson of the Evaluation Committee, what the Preferred Bidder had declared concerning Lot 2. Ms Borg explained that bidders must tick boxes on the e-tendering platform to confirm eligibility; otherwise, submission is not permitted. False declarations are subject to penalties.

Mr Franco Scicluna confirmed that the tax balance must be regularized by contract signing.

Dr Debono asked whether the committee could request documents beyond the ESPD. Ms Borg replied in the negative.

With no technical representative present regarding the second grievance, Ms Borg continued to testify.

Dr Mintoff questioned her on the technical specifications (size, dimensions, material) of the tents. Ms Borg confirmed that the bidder provided all required details, including rectified measurements and design sketches, in the technical offer form. No clarifications were issued apart from the rectification. She quoted:

'Rectification by submitting a design drawing sketches of the proposed 12/10marquis stands to collaborate your technical offer'.

The preferred bidder submitted all specifications in the technical offer form, including photos, sketches and colour. The literature submitted was the same as indicated. There were no clarifications, except the rectification mentioned. She stated that the material was declared to be fire-retardant PVC, and this was not independently verified.

Mr Scicluna asked if failure to meet the requirements at signing would incur penalties. She confirmed.

Dr Debono noted that the technical literature was provided under Note 2. Ms Borg stated no request for rectification was issued.

In view of this testimony, Dr Mintoff declared that he is withdrawing the first grievance of the appeal.

Final Submissions

Final submissions by Dr Jonathan Mintoff

Dr Mintoff focused on the third grievance, acknowledging the limits of the Evaluation Committee in verifying fiscal compliance. He stressed that the public authority has a duty to safeguard public funds. Both MBR and CFR representatives showed that the Preferred Bidder had documentation shortcomings. He cited Regulation 193 of the Public Procurement Regulations:

'An economic operator shall likewise be excluded from participation in Procurement Procedure where the Authority responsible for the tendering process is aware that the economic operator is in breach of its obligations related to the payment of taxes and social contributions and when this has been established by local or foreign juridical administrative decision having a binding final effect. The authorities responsible for the tendering process are also entitled to exclude an economic operator from participation in a procurement procedure, if they can demonstrate by a proper means that the economic operator is in breach of its obligations relating to the payments of taxes or social contributions. Even in the absence of a local or foreign judicial administrative decision. The term appropriate means under this regulation includes any certificate, declaration or document issued by a competent entity which demonstrates the economic operator is in breach of its obligation related to the payment of taxes and social contributions.'

He argued that the tax certificate clearly shows non-compliance and false declarations, which should lead to exclusion. He reminded what Dr Debono said, that the Contracting Authority has the facility to ask for the compliance certificates after the expiry date of the tender. This happens when the tender price exceeds €500,000. If my client had not objected, the Authority would not have realised that there were mishaps and would have to restart the process. The regulations are there to be abided.

He referenced European Court case C-387/14, which states that any deviation from the submitted technical literature constitutes a new offer, making the bid inadmissible. Although note 2 permits variation, it does not permit diversions.

Final Submissions by Dr Tatiane Scicluna Cassar

Addressing the third grievance, she distinguished between the roles of the Evaluation Committee and the tax authorities. The Evaluation Committee was not obligated to verify tax documents or financial statements. That responsibility lies with the SPD prior to contract signing. There was no proof regarding the other grievances, they are only based on mere assumptions, considered opinions and serious doubts

The Contracting Authority was not going to award blindly public funds without checking tax and seeing that all is compliant. The Contracting Authority was not obliged to get into the tax issue as this was not within the parameters of this appeal.

Dr Mintoff mentioned Case 131/16 that was decided on May 11, 2017, regarding technical literature slightly different, new offer.

Final submissions by Mr Franco Scicluna

He rejected Dr Mintoff's assumption that the tent material was non-compliant. He noted that for the past six months, the Ministry of Culture in Gozo had issued quotations due to the blocked tender. He claimed the fire-retardant nature of his product had been proven when someone attempted to set it on fire in Pjazza Tokk. One must never assume.

Final submission by Dr Mark Anthony Debono

On the second grievance, he stated there was no evidence that the Preferred Bidder's offer constituted a new offer.

He cited *Case C-54/2021, Anthea Polska v. Others*, decided on 17 November 2022, which ruled that commercially sensitive information must remain confidential. The evaluation committee had acted within regulations and could not request documents outside the scope of the ESPD before contract signing.

He also referred to *Met Biologics Ltd v. Ultramap Ltd* (March 14, 2025), which underlined the importance of fair competition and allowed bidders to settle debts in accordance with Regulation 193(4).

Conclusion

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

The written pleadings as filed by Jean Paul Zerafa on the 5th December, 2024, together with proof of payment of a deposit in the amount of €527.00, wherein it held as follows:

"Letter of objection by Jean Paul Zerafa, of 'Spring Blossom', Triq is-Sitta u Gboxrin ta' Jannar 1855 Ghajnsielem, Ghawdex, and holder of identity card number 317380(M)

Humbly submits:-

Mr. Jean Paul Zerafa (hereinafter referred to either as the "Objector" or "Appellant"), (Tender ID 000218017) of Spring Blossom', Triq is-Sitta u Gboxrin ta' Jannar 1855 Ghajnsielem, Ghawdex and holder of identity card number 317380(M), whilst making reference to the above captioned call for Tender, is hereby submitting a formal objection in relation to the same call for

Tenders, limited to LOT 2. 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 said procurement exercise was split into two lots, and this appeal is being filed limitedly with respect to Lot 2; 09:30;*
- *Whereas the closing date for the submission of offers was on 08/11/2024*
- *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 and the Public Procurement Legislation and Regulations;*
- *Whereas by means of a communication dated 25th November 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 Tender to VENSCIC LTD (C 75093) - VAT No. MT23283402;*
- *Whereas, by means of an email sent on the 29th November 2024 to outlined email address of the Contracting authority, the objector requested further information in accordance with Regulation 40 the Public Procurement Regulations, and in line with recent decision of the Court of Appeal and of this Honourable Board (a copy of which is attached hereto and marked as Doc. "B");*
- *Whereas, by means of an email sent on the 3rd December 2024 the Contracting Authority provided a partial reply in connection with the bid of the recommended tenderer, and stated "Confidential Information and thus cannot be disclosed" (a copy of which is attached hereto and marked as Doc. "C");*
- *Whereas Mr. Zerafa 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 (€527). A copy of confirmation of the payment is attached hereto and marked as Doc. "D");*

OBJECTION

The Objector humbly submits to this Honourable Board, that the above captioned call for Tenders 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 Tenders 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 Tender to a bidder whose bid was not (administratively, technically, financially) compliant and failed to verify and adhere to its duties and obligations in terms of the Public Procurement Regulations together with the Directive 2014/24/EU.

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:

1. Failure to Provide information

This grievance is of a preliminary nature.

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 one request, one dated 29th November 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:

“..."

I refer to Regulations of the Public Procurement Regulations, recent judgements of the Court of Appeal (namely "South Lease Limited vs Central Procurement and Supplies Unit et" decided on the 22/06/2022) and, in virtue of the same, my client is hereby requesting the following information/documentation from the Contracting Authority in relation to the preferred bidder (Both for LOT 1 & LOT 2):

- (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, and if there is any reliance, on whom the preferred bidder shall rely;*
- (c) Documentation submitted by the economic operators attesting to their compliance with the selection criteria;*
- (d) Technical information; and*
- (e) Technical Offer & Literature;*
- (f) All other information and documentation that is not deemed confidential."*

Please note that my client is considering appealing the decision of the Contracting Authority/evaluation board dated 5th December 2024, and

the requested information is crucial for my client prior to the appeal deadline. Therefore, you are kindly requested to treat this request with urgency."

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.

Under the Directive 2014/24/EU, contracting authorities must adhere to principles of transparency and equal treatment. They must provide adequate information to ensure that all tenderers can exercise their rights effectively.

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 ragun. 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 tagħha 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-kaz tiegħu, u l-parti l-obra, speċjalment fejn ikun hemm dettalji teknici, trid tipprowdi dik l- informazzjoni u mhux tinbeba wara n-natura kummerċjali kunfidenzjali tal- informazzjoni. Speċjalment f'kazijiet 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 tagħha. Jekk l- informazzjoni li tkun se tingħata tkun sensitiva, il-Bord jista' jordna li l-informazzjoni tkun accessibli biss għalibha 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-kaz 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.

Similarly, the Objector refers to a recent decision of this Honourable Board, (Case No. 2036 decided 28th November 2024), in which this Honourable Board did provide the Objector with all technical data (including the Literature) prior to the hearing of this case.

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 Honourable Board deems relevant and ancillary;

2. 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 Tenders document, which raises questions about its ability to fulfil 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.*

3. The Preferred Bidder's – Tax Compliance – Grounds of Exclusion

Without prejudice to the other grievances

On this point, the Objector refers to Regulation 193 et seq of the Public Procurement Regulations with respect to the grounds of Exclusion of a bidder for failing to abide with obligations' concerning taxes or social contributions.

Article 57 of Directive 2014/24/EU and Part VI of Malta's Public Procurement Regulations outline mandatory exclusion criteria. These include non-compliance with tax obligations, unless the economic operator has rectified the situation (selfcleaning) or the non-compliance is minor.

Thus, a Contracting Authority must verify compliance with exclusion criteria during the evaluation process. If credible evidence suggests the preferred bidder has outstanding tax liabilities, the authority is obligated to exclude them.

The preferred bidder in this case is a limited liability company, thus, certain critical financial information is publicly available. The objector did view such and is providing an extract of the same:

Extract 1 (Taken on the 5th December 2024) from the Malta Business Registry website”

...

“Extract 2 (Taken on the 5th December 2024) from the Malta Business Registry website”

...

“It is evident that the preferred bidder has failed to meet its statutory obligations regarding the filing of financial audited accounts, with the most recent submission to the Malta Business Registry being for the year 2021. This delay raises significant concerns about the bidder's compliance with financial regulations and its overall standing.

Given the importance of tax compliance and financial transparency in public procurement processes, the evaluation board and the contracting authority had a clear obligation to thoroughly assess the preferred bidder's position in this regard. Non-compliance with statutory filing requirements may indicate broader issues, including potential irregularities in tax payments, financial instability, or a lack of adherence to legal obligations, all of which could compromise the successful execution of the contract. Whilst ensuring that there are no other exclusionary grounds in terms of Regulation 192 et seq of the PPR.

*As part of the submission, each bidder is requested to complete the ESPD (European Single Procurement Document), this in the tender response format. Part B of the Exclusion Criteria relates to the payment of taxes or social security contributions. Ultimately, it is **"the Economic Operator's responsibility to ensure that the correct information is reflected in the ESPD tender response format for the above criteria"** Vide Page 5 of the Tender Dossier. Thus, if the Preferred bidder did submit that the Economic Operator met all the obligations relating to the payment of taxes or social security contributions, given the lack of submission of financial audited accounts, the Contracting Authority had a duty to ascertain that the preferred bidder the veracity of such a declaration in the ESPD.*

*The contracting authority must ensure that the bidder not only has the technical and operational capacity to fulfil the contract but also demonstrates good governance and compliance with legal requirements, **whilst ensuring that there are no exclusion grounds with respect to a bidder.** Failure to do so may expose the authority to reputational damage, legal challenges, and financial risks associated with engaging with a non-compliant entity. Therefore, the evaluation board was duty-bound to examine the preferred bidder's financial and tax compliance thoroughly before proceeding with the award.*

Ultimately, any failure by the contracting authority to evaluate the preferred bidder's tax compliance rigorously, as it would undermine Directive 2014/ 24/ EU's objectives.

CONCLUSION:

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, ensure that factual declarations were submitted by the Preferred Bidder, ensure that there are not grounds of exclusion of the preferred bidder, and which 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, the Contracting Authority, 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 and the recent decisions of the Court of Appeal and of this Honourable Board;
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 11th December, 2025 (hereinafter the ‘Contracting Authority’) wherein it held as follows:

“The Contracting Authority respectfully submits that:

First and foremost, it is to be outlined, that during this stage of the proceedings, the Public Procurement Regulations does not permit the Technical Evaluation Committee and/or the Contracting Authority to disclose any direct administrative or/and technical information on the particular offer submitted by the recommended bidder other than that permitted by Art 40 of the said regulations.

- a) *On this basis, with regards to the first grievance presented by the Appellant, that is, failure on behalf of the Contracting Authority to provide information; the Contracting Authority respectfully contests this assertion. In fact, the Contracting Authority provided a written reply to the Appellant that aligns with the legal requirements of Article 40 of the Public Procurement Regulations, that was enough to answer the Appellant's query. In view of the fact, that part of the information requested therein was confidential in nature, such information could not be provided by the Contracting Authority. The Contracting Authority confirms that points (a) to (d) requested by the Appellant were addressed in accordance with Article 40 of the Public Procurement Regulations, as they fall within the scope of information that the law permits to be disclosed. However, points (e) and (f) are not explicitly mentioned in Article 40 and pertain to matters treated as confidential under the applicable legal framework. Therefore, the Contracting Authority did not disclose this information in order to comply with its duty to maintain confidentiality and protect sensitive information.*

The Contracting Authority's reply included all the following information that was available and could be disclosed at that time. In fact, the Contracting Authority replied as follows:

“In line to Article 40. (1) of the Public Procurement Regulations, Subject to the obligations established under these regulations and, or any other law obliging the Director, the contracting authority and the Ministerial Procurement Unit to disclose information, a contracting authority, the Director or the Sectoral Procurement Directorate shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

(2) Without prejudice to the other provisions of these regulations, the following information shall not be considered as confidential:

(a) the name of the bidders and the individual names of the members of a group of economic operators who submitted a particular tender;

(b) the name of the sub-contractors;

(c) documentation submitted by economic operators attesting that they comply with selection criteria; and

(d) technical information which is already made available in public.

(3) Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure.

In view of the above, specifically Article 40.2 of the Public Procurement Regulation, please note the following details:

(a) The name of the bidders and the individual names of the members of any group of economic operators who submitted a particular tender; - VENSIC LTD (C 75093), a registered company with the Malta Business Registry.

(b) The name of the sub-contractors, and if there is any reliance, on whom the preferred bidder shall rely; - No sub-contractors are listed as part of the bid.

(c) Documentation submitted by the economic operators attesting to their compliance with the selection criteria; - No ESPD requested nor particular selection criteria, i.e. Not Applicable

(d) Technical information; - No technical information that is already made available in public, i.e. not applicable

(e) Technical Offer & Literature; and - Confidential Information and thus cannot be disclosed.

Finally, reference is also made to Regulation 40(2) of the PPR which refers to information that is not considered of a confidential nature. At this stage the Board feels and directs that the information requested by the Appellant is of no relevance to his case and if given will be merely in answer to the quest of a fishing expedition and would be prejudicial to the preferred bidder."

Given the striking similarities between this present case and the decision cited above, the Contracting Authority believes that the Honourable Board's reasoning is directly applicable to the present case.

b) This second 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. The appellant's claims regarding the preferred's bidder lack of compliance with specifications and declarations on sub-contracting and reliance on third parties are based solely on assumptions and conjecture, as acknowledged in their own statement; "based on a considered opinion" and "there are serious doubts". Such assertions, without substantiating evidence, do not constitute valid grounds for challenging the Contracting Authority's decision. The evaluation process was conducted in full compliance with the applicable laws and procedures, ensuring that all requirements, were met by the preferred bidder.

Contrary to the Appellant's claims suggesting serious doubts regarding whether subcontracting was appropriately declared, the Contracting Authority would like to clarify that the preferred bidder did not need to sub-contract any part of the work. All the required materials and resources are owned by such bidder, demonstrating their ability to fulfil the contract requirements independently and in full compliance with the tender requirements. The Contracting Authority would like to contend that the literature list accompanying the questionnaire only requested designs, drawings, or sketches for each tent. While specifications were not explicitly required, the preferred bidder voluntarily submitted specifications, and the tents offered were assessed as compliant with the tender requirements.

The Contracting Authority would like to refer to a recent decision of this Honourable Board (Case No. 2036- MGP EQ 41/2024, decided on the 28th of November, 2024) whereby several grievances were not considered due to the Appellant's failure to provide any supporting proof. As a matter of fact, the board contended;

Fibre Connections - the preferred bidder duly included these in its offer. Once no proof was provided by the appellant to support his own claim that the preferred bidder 'does not have the requested fibre connection', this Board opines that it is not to consider this grievance any further.

b) Microphones -this Board notes that the preferred bidder duly submitted what was requested in this procurement procedure. Again, this Board also approved the circulation of details such as the brand and model of the microphone offered by the preferred bidder and no arguments were made to substantiate the claims made.

(f) All other information and documentation that is not deemed confidential- Not Applicable"

The Contracting Authority would like to emphasize that the Appellant has requested information beyond what is mandated by law for disclosure. While the Contracting Authority acknowledges the Appellant's interest in obtaining further details, the Contracting Authority's responsibility is to adhere strictly to the legal framework, which balances the need for transparency with the obligation to protect confidential and sensitive information.

Contrary to the statement in the objection letter, the questionnaire did not require the brand name and model of the tent. Instead, the questionnaire explicitly asked for the following details: length, width, height, material and colour.

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.

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 which does not include the information requested by the Appellant.

The Contracting Authority would like to refer to a decision of this Honourable Board (Case No. 1946-SPD3/2023/059, decided on the 5th of December, 2023) in which this Honourable Board stated the following:

“As regards the South Lease vs CPSU et al case, this Board wishes to record and clarify that in paragraph 7, the Court of Appeal stated the following “L-avversarju pero ghandu dritt jitolb mill-parti l-obra kull informazzjoni marbuta mal-kaz u rilevanti ghal materja quddiem il Board”. This Board strongly emphasises the word “rilevanti”.

Despite the fact that the Appellant filed a grievance headed “Concerns regarding the preferred Bidder’s compliance” the Board notes that this grievance lacks the specific reasons mentioned in Regulation 270 of the PPR which states “may file an appeal by means of an objection before the PCRB which shall contain in a very clear manner the reasons for their complaints”. At this stage the Board also refers to the case Varec SA vs Etat Belgie where in paragraph 51 the following is stated:

“It follows that in the context of a review of a decision taken by a contracting authority in relation to a contract award procedure, the adversarial principle does not mean that the parties are entitled to unlimited and absolute access to all of the information relating to the award procedure concerned which has been filed with the body responsible for the review. On the contrary, that right of access must be balanced against the right of other economic operators to the protection of their confidential information and their business secrets.”

This precedent highlights the importance of substantiating claims with evidence, which is equally relevant in the present matter. Thus, the Technical Evaluation Committee determined that the preferred bidder satisfied all the necessary criteria. Therefore, the appellant cannot carry out assumptions on such bidder when it does not have any information about it. If the Appellant has concrete evidence to support their claims, it should be presented for consideration. In the absence of such evidence, these allegations remain speculative and unsubstantiated.

The Contracting Authority would like to clarify and asserts once again that the preferred bidder fully met all the required specifications outlined in the tender document and found that the preferred bidder adhered to all the requirements set forth in the tender process.

Therefore, in light of the speculative and unsubstantiated nature of these allegations, the Contracting Authority respectfully requests the Honourable Board to dismiss the Appellant’s second grievance as unfounded.

c) As regards to the third grievance, it is important to note that, as specified in the tender document, the criteria regarding the economic and financial standing of bidders were listed as ‘not applicable’. Consequently, in line with Section 5B.b of the applicable regulations” 5B.(b) Economic and Financial Standing (Note 2): Not applicable”, the Contracting Authority was not required to review or assess the financial accounts of the bidders as part of the evaluation process. This approach complies fully with the requirements of the tender and the applicable legal framework.

On the other hand, if the tender had required the submission of financial accounts and the bidder failed to provide them, then, this would have constituted a valid ground for concern. The Contracting Authority confirms that all the requested documentation and information were provided by the preferred bidder in accordance with the tender requirements.

In view of the above, the Technical Evaluation Committee and the Contracting Authority confirms once again that the financially cheapest offer by Venscic Ltd 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.

Furthermore, given that the services solicited by this Call for Tenders pertain to events scheduled for the coming days, the Contracting Authority respectfully requests that this appeal be treated with urgency by the Public Committee Review Board. This request for an expedited review is made considering the significant financial and reputational damages that the Contracting Authority would incur should the event face postponement or cancellation.”

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

The witnesses as brought forward by the Appellant, their testimonies and documents exhibited by them;

Considers;

This Board notes that the Appellant has brought forward three (3) grievances, the first of a preliminary nature with respect to disclosure of information and which grievance was withdrawn during the hearing of the appeal, the second with respect to the Preferred Bidder’s compliance or lack thereof, and the third with respect to the tax compliance of the Preferred Bidder or lack thereof and it being a ground for exclusion.

This Board shall not consider the Appellant’s first grievance in view of the fact that his legal representative Dr Mintoff declared that he is withdrawing said grievance following the testimony of the Chairperson of the Evaluation Committee Ms Dorianne Borg.

With respect to the second grievance, this Board finds that nothing from the acts of the proceedings or from the witnesses produced indicates that the Preferred Bidder was lacking in terms of technical compliance, on the contrary the Chairperson of the Evaluation Committee Ms Dorianne Borg testified that the Preferred Bidder complied with all the technical requirements. It is of note that the Appellant bases his second grievance 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 in this case:

“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. In this present appeal, it results that the Appellant went on a fishing expedition to try find a fault in the technical offer and technical literature as provided by the Preferred Bidder but did not manage.

This Board, therefore, determines that this second grievance is wholly unfounded.

Considers further;

With respect to the Appellant's third grievance, it emerged through the testimony of Mr Joseph Debono Meli representing the Commissioner for Revenue that the Preferred Bidder has tax arrears, and essentially that a balance is due to the Commissioner for Revenue. This Board shall quote verbatim from the Public Procurement Regulations, Subsidiary Legislation 601.03 of the Laws of Malta (the 'PPR'), particularly Regulation 193 Sub-Regulations 1 and 4:

“(1) An economic operator shall likewise be excluded from participation in a procurement procedure where the authority responsible for the tendering process is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a local or foreign judicial or administrative decision having final and binding effect.”

“(4) The exclusion mentioned under this regulation shall no longer apply if the economic operator fulfils his obligations by paying or by entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines”

The key word in Regulation 193 Sub-Regulation 1 of the PPR is 'aware'. This Board finds that from the evidence which was brought before it, the Contracting Authority was not aware of the economic operators missing tax returns and/or payments, and even if so, nothing would have excluded the opportunity for the economic operator in question i.e. the Preferred Bidder to demonstrate that it has entered into a binding arrangement with a view of paying the amounts due in terms of Regulation 193 Sub-Regulation 4 of the PPR. In any case, evidence that this binding arrangement does or does not exist was not brought before this Board.

This Board further finds that the failure to be up-to-date with filings on the Malta Business Registry *qua* a limited liability company does not fall within the grounds of exclusion as outlined in Regulations 191, 192, 193 and 194 of the PPR, *ergo* this is not a ground of exclusion. Nonetheless, it did not emerge from the acts of the proceedings or from testimonies of the witnesses heard and the documents exhibited that the Tender Evaluation Committee were aware of the standing of the Preferred Bidder with the Malta Business Registry.

Therefore, the Board finds that this third grievance is also unfounded.

DECIDE

The Board, in view of the foregoing and on the basis of the considerations as outlined above, declares and decides to reject the appeal as brought forward by the Appellant Jean Paul Zerafa in its entirety and hereby confirms the award notice and letter of rejection both dated 25th November, 2025 as issued by the Sectoral Procurement Directorate.

Dr Ana Thomas
Chairperson

Mr Keith Victor Grech
Member

Mr Lawrence Ancilleri
Member