

PUBLIC CONTRACTS REVIEW BOARD

Case 2120 – CT2000/2024 – Tender for Provision, Design, Implementation, Maintenance and Support of an Integrated Tax and Customs Administration System (ITCAS) for the Malta Tax and Customs Administration

21st July 2025

The Board,

Having noted the letter of objection filed by Dr Clement Mifsud Bonnici, Dr Antoine Cremona and Dr Calvin Calleja on behalf of Ganado Advocates acting for Netcompany SA, (hereinafter referred to as the Appellant) filed on the 28th February 2025;

Having also noted the letter of reply filed by Mr Leonidas Bardis and Mr Constantinos Velentzas acting for and on behalf of European Dynamics, (hereinafter referred to as the Recommended Bidder) filed on the 10th March 2025;

Having also noted the letter of reply filed by Dr Vincienne Vella and Dr Audrey Marlene Buttigieg Vella acting for the Malta Tax and Customs Administration (MTCA) (hereinafter referred to as the Contracting Authority) and the Department of Contracts filed on the 9th March 2025;

Having heard and evaluated the testimony of the witness Mr James Mansueto (Member of the Evaluation Committee) as summoned by Dr Clement Mifsud Bonnici acting for the Appellant.

Having heard and evaluated the testimony of the witness Mr Albert Vella (Chairperson of the Evaluation Committee) as summoned by Dr Clement Mifsud Bonnici acting for the Appellant.

Having heard and evaluated the testimony of the witness Mr Konstantinos Velentzas (Representative of European Dynamics) as summoned by Dr Clement Mifsud Bonnici acting for the Appellant.

Having heard and evaluated the testimony of the witness Mr Konstantinos Velentzas (Representative of European Dynamics) as summoned by Dr Lorna Mifsud Cachia acting for the Recommended Bidder.

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

Having noted and evaluated the minutes of the Board sitting of the 12th June 2025 hereunder-reproduced.

Minutes

Case 2120 CT2000/2024 – Tender for Provision, Design, Implementation, Maintenance and Support of an Integrated Tax and Customs Administration System (ITCAS) for the Malta Tax and Customs Administration

The tender was issued on the 14th of February 2024, and the closing date was the 23rd of May 2024.

The estimated value of the tender, excluding VAT, was €68,000,000.

On 28th February 2025, Netcompany S.A. (TID 210569) lodged an appeal against the Malta Tax and Customs Administration (MTCA) and Department of Contracts – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations. The appellant's bid was rejected.

A deposit of €50,000 was paid.

There were four bids.

On the 12th of June 2025, the Public Contracts Review Board (PCRB), composed of Mr. Kenneth Swain as Chairman, Dr Vince Micallef, and Mr. Keith Victor Grech as members, convened a public hearing to consider the appeal.

Attendance

Appellant: Netcompany S.A. (TID 210569)

- Dr. Clement Mifsud Bonnici – Legal Representative
- Dr. Calvin Calleja – Legal Representative
- Dr. Kelly Cini – Legal Representative
- Ms. Zinovia Prokopidou – Company Legal Representative
- Ms. Niki Kosti – Company Representative

Contracting Authority: Malta Tax and Customs Administration

- Dr Vincienne Vella – Legal Representative
- Dr Daniel Inguanez – Legal Representative
- Mr. Albert Vella – Chairman
- Mr. Aldo Farrugia – Evaluator
- Mr. James Mansueto – Evaluator
- Mr. Joseph Schembri Kamm – Evaluator
- Mr. Pierre Vella – Company representative
- Mr. Gordon Micallef – Advisor
- Ms. Marica Xuereb – Advisor

Department of Contracts

- Dr. Audrey Marlene Buttigieg Vella – Legal Representative

Recommended Bidder: European Dynamics Consortium (TID 000210571)

- Dr. Lorna Mifsud Cachia – Legal Representative
- Dr. Marcus Degiorgio – Legal Representative
- Ms. Polyxeni D. Gkaintatzi – Company Representative
- Mr. Kostantinos Velentzas – Company Representative (online)

Opening Statements and Procedural Matters

The Chairman welcomed the parties and invited the legal representative of the appellant to make initial submissions.

Preliminary Matters

Conflict of Interest Declaration

Dr. Vincienne Vella raised a preliminary point that one of the TEC members realized from emails that Dr. Kelly Cini is the partner of his son. Dr. Daniel Inguanez clarified: *"We are just declaring it for all intend and purposes, but we do not think there is any conflict of course but we just wanted to declare it for everyone to know"*. The declaration was made for transparency purposes, with the TEC member only discovering this connection during the week of the hearing through emails.

Both the appellant and recommended bidder confirmed they had no issues with this declaration. Dr. Clement Mifsud Bonnici stated: *"I have absolutely no doubt as to Dr. Cini integrity and also to TEC members. So, I take it that they have not discussed the case with each other"*. Dr. Vella confirmed: *"They didn't even know, he realized from the E-Mails"*.

Price Adjustment Disclosure

Dr. Lorna Mifsud Cachia disclosed that there was an error in how the final price figure was entered on the portal, not in the Excel file. She stated: *"Yesterday we realized that there was a mistake in the way that the actual final figure was entered on the website in the sense in the portal, not in the Excel file"*.

Dr. Mifsud Bonnici acknowledged: *"I do appreciate opposing counsels sort of volunteering, at the last minute but still appreciate it"*, with Dr. Mifsud Cachia responding: *"Now we realized it only yesterday"*.

Camera Requirement

The Chairman directed Mr. Konstantinos Velentzas to switch on his camera during the proceedings, stating: *"you must have your camera switched on during all of these proceedings"*, as required for all participants.

Initial Submissions

Appellant's Submission (Netcompany S.A.)

Dr. Calvin Calleja outlined the appellant's goal: *"our goal is to convince this board that there is a case on the balance of probability for the contracting authority's decision to be revoked and for the tender process to go back for revaluation"*. He noted that they would keep their initial submissions brief, trusting that the Board had already reviewed the written submissions and case file in preparation.

Three Main Points Addressed

1. Preliminary Plea Response

Dr. Calleja categorically rejected European Dynamics' preliminary plea that Netcompany lacks legal standing, stating the interested party was *"laboring under a misapprehension of procurement law and of the right to a rapid and effective remedy in terms of the Remedies Directive"*. He explained that Regulation 270 creates three categories of appellants: *"the tenders themselves, any person having or having had the right or having had an interest in the contracting authority's decision and any person who has been harmed or who effectively risks being harmed by that decision"*. He emphasized that these three categories are *"slightly wider than those admitted in the remedies directive itself"* and that the Maltese Legislature deliberately *"decided to decouple these two requirements and to allow both persons who have an interest, or persons who have been harmed by the contracting authority's"*

decision to lodge an appeal". He referenced the Credorax judgment, noting that "the law does not speak of harm and interest but of harm or interest".

2. Response to Allegations

The appellant addressed European Dynamics' allegations, stating they *"serve a two-fold purpose. Firstly, to challenge Net Companies' legal standing to fight this appeal... and secondly to cause harm to the appellant and to its interests"*. Dr. Calleja emphasized that *"these allegations are completely irrelevant and immaterial to this appeal"*, noting that the Board had already recognized their irrelevance in its decree on 5th June regarding disclosure of information.

He clarified that while these allegations cause harm to the appellant, *"we are not here trying to add to the workload of this board"* as the matters *"can be dealt with, and they are being dealt with by the first whole civil court"* through a judicial protest and lawsuit already filed.

3. Grounds of Appeal Overview

The appellant outlined five formal grounds of appeal, with the first already dealt with by the Board. The remaining four grounds focus on:

- **Second Ground:** European Dynamics' list of principal services falls short of tender conditions
- **Third Ground:** Reference projects submitted do not meet technical and professional ability criteria
- **Fourth Ground:** *"the arithmetic correction which the tender evaluation Committee carried out visa vie each tenderer... this arithmetic correction should have invariably resulted in an increase and price hike but somehow it had the diametrically opposite effect for European Dynamics"*
- **Fifth Ground:** *"how this evaluation fell short of the legal requirements and of the standard that is expected of tender evaluation committees in terms of the principle of good administrative behavior"*

Contracting Authority's Submission

Dr. Daniel Inguanez agreed with the appellant that the Board should *"stick strictly to the evaluation itself"* regarding allegations between parties, understanding why statements were raised but agreeing they *"may be other proceedings dealing with those things"*.

However, the Contracting Authority supported the preliminary plea of inadmissibility raised by the recommended bidder. Dr. Inguanez argued: *"If the board goes through the grievances of the appellant 1 by 1, they are all grievances attacking the decision to award the contract to the recommended bidder. They have raised no grievance or no argument that they should still be in the race"*.

He stated that *"we do not see any discrepancy between the Remedies Directive and Maltese law"* and emphasized that the Remedies Directive aims to *"provide speedy remedies and remedies which do not needlessly torpedo procurement review processes"*. He referenced ECJ Case C-100/12 Fast web, stating: *"if the bidder is contesting the fact that he was rejected, then he has an interest and he had an interest. Once he has been rejected and he is no longer contesting this. then he has no interest at all"*.

Recommended Bidder's Submission (European Dynamics)

Dr. Lorna Mifsud Cachia addressed the inadmissibility plea and defended bringing evidence to the Board's attention, arguing: *"This is not just a simple lawsuit between two private individuals... here, we are also acting as fiduciaries, all of us, even we, the lawyers, as fiduciaries of the state"*. She emphasized that *"the state depends on the procurement system"* and they cannot *"just be accused of making allegations as though we went on Facebook or on social media to attack our counterparties"*.

Price Adjustment Clarification

Dr. Mifsud Cachia provided detailed explanation of the fourth grievance regarding price adjustments:

- **Original Excel sheet submission:** €30,717,662.08
- **Adjusted figure (upward):** €30,968,028.21
- **Manual entry error in tender response form:** €32,022,496.23

She explained: *"There was a clerical error... when the officer was uploading the tender, the actual figure he wrote... was of 32,022,496.23. However, the financial bid form with the arithmetical calculations was the correct form"*. She clarified that *"the adjustment made was a correct one according to the calculations which were forwarded by the contracting authority to the client"* and that *"the evaluation then was carried out on the actual figure in the tender, the financial bid form, not on the figure manually entered in the system"*.

The Chairman summarized: *"Rather than having a situation from 32 million going down to 30.9 million. Your argument is that from 30.7 million it went up to 30.9 million"* - an upward adjustment of approximately €250,000.

Additional Arguments on Other Grievances

Dr. Mifsud Cachia maintained that their tender *"is eligible, we have the necessary experience, we have the necessary references"* in response to the appellant's challenges.

Reply Submission by Appellant

Dr. Mifsud Bonnici rebutted the government's position on admissibility, calling it *"ridiculous, for the simple reason that it was government itself that transposed the directive"*. He emphasized three material changes made by the Maltese legislator:

1. **Decoupling of interest and harm requirements:** *"if you had to look at Article 1.3 of the Remedies Directive, interest or harm are two cumulative requirements"*
2. **Recognition that any tenderer can lodge an appeal:** *"the legislator recognized that a tenderer or a candidate can lodge an appeal. Whether the tenderer has submitted a non-compliant bid is irrelevant"*
3. **Reference to the Credorax case** where *"someone who didn't even submit a bid and was allowed to do the appeal"*

He also pointed out that they received a rejection letter with *"no issue raised on our compliance with the selection criteria"*, questioning: *"is government changing the position now? And if so, I need to receive an updated letter of rejection and then the standstill bid will start occurring again"*.

Final Round of Responses

Dr. Inguanez maintained the position, stating: *"They were technically non-compliant... are they even a tenderer any longer once they have not appealed from their technical compliance? They are not even in the race anymore"*. He argued: *"Once they did not submit an appeal on their technical compliance, they have accepted that they are not part of the race anymore"*.

Ms. Polyxeni Gkaintatzi (for European Dynamics) raised the inadmissibility issue based on invalid references, presenting Exhibit Number One - a revocation letter from Danish authorities dated 13th March 2025. She stated that the letter explicitly stated that *"the project reference has not yet entered into production"* and that *"their consent has been recalled"*. The letter stated that *"the information contained in this reference letter is incorrect since the information that Net Company services and deliveries in relation to DMS Import, Export and Transit systems is not true and does not correspond to the actual delivery"*.

She emphasized that *"neither the import system nor the export system has been delivered in accordance with the contract until this time"* and noted that *"the appellant filed a list of documents, a*

list of exhibits out of the set time limit, having already reviewed our documents and in spite of this has not replied".

Chairman's Direction on Preliminary Plea

The Chairman decided to follow the precedent of the Support Services case of the Court of Appeal of Malta, stating the Board would *"decide on this point at the very end after hearing the witnesses and final submissions on all the grievances"* and that *"the final decision will be delivered afterwards on all, including this preliminary plea"*.

Witness Testimonies

Testimony of Mr. James Mansueto (ID 497684M) – TEC Member

Background

Mr. Mansueto introduced himself as having been a public servant since 2006, working first at the Ministry for Agriculture, then Ministry for Finance until 2022-2023, briefly in the private sector, and then joining the Malta Tax Administration Authority.

Role and Appointment

He confirmed he was chosen as an evaluator by the Commissioner for Tax and was appointed when his name was entered on the ePPS system after providing his CV.

Conflict of Interest Confirmation

The witness confirmed he had no prior connection to the tender and no conflicts of interest.

Technical Advisors and Evaluation Process

Mr. Mansueto confirmed that the evaluation committee engaged 7 to 10 technical advisors to assist with the evaluation process. He stated that these advisors were *"formally appointed"* but acknowledged he did not personally see the appointment documentation.

When asked about the selection process for technical advisors, Mr. Mansueto explained: *"It was a collective idea, I mean, collective discussion, and we decided to... We were reviewing the tender, and then of course we had to, we decided that we need additional expertise"*. He confirmed that the identification and appointment process was handled *"through the chair"*.

Evaluation Methodology

Regarding the evaluation process, Mr. Mansueto clarified: *"Each one of us had to work separately, so basically, we had to review each bid separately, on its own... We had to review all bids. Each one of us had to review all the bids"*. He confirmed that each evaluator came up with their own scoring independently.

Technical Advisor Reports and Comments

When questioned about comments in the evaluation documents, Mr. Mansueto confirmed he did not draft comments such as *"a single response bit fuzzy, but generally ok"* and *"a bit sketchy"*. He stated these comments were *"an input from an expert"* - meaning the technical advisors drafted these comments, which were then incorporated by the evaluation committee.

Evaluation Meetings

Mr. Mansueto testified that the evaluation committee held *"twenty or more"* meetings, all conducted *"in person"* and lasting approximately *"2 hours"* each. When asked about minutes, he confirmed *"Yes, yes of course there are minutes"*.

Arithmetical Corrections

Regarding the price adjustment issue, Mr. Mansueto explained: *"there was this cell where it was it was, there was an, a figure and next to it, the number of quarters and these, this figure had to be multiplied by the number of quarters. The number of quarters listed in the original Excel sheet was 4. But that had to be 20"*. He confirmed this correction was applied uniformly to all bidders.

Cross-Examination of Mr. Mansueto

By Dr. Vincienne Vella: Clarified that minutes were indeed kept of the evaluation meetings.

By Dr. Lorna Mifsud Cachia: Confirmed that the price adjustment *"was the same adjustment, not in quantity of course, but in procedure, the same adjustment you applied to all the other bidders"*. Mr. Mansueto explained that the error was discovered through clarification documents before evaluation began.

Regarding CV verifiability issues, Mr. Mansueto stated: *"this issue with the verifiable reference was an issue across the board except for one of the bidders"* and that it had *"very, very, very little"* impact on the evaluation, with non-verifiable CVs receiving *"one point less"*.

Testimony of Mr. Albert Vella (ID 475264M) – Chairman of Evaluation Committee

Background and Role

Mr. Vella introduced himself as Chief Information Officer at the Ministry for Finance for over 21 years, serving as chairperson of the evaluation committee. He described his role: *"I was in charge of coordinating the whole process basically, coordinating the work of the evaluators as well and the experts that have been engaged and trying to ensure that we have a fair process as much as possible and we keep the same standards for each of the bidders"*.

Technical Advisors - Comprehensive List

Mr. Vella provided a detailed list of all technical advisors engaged:

External Advisors:

- Two experts from MITA: Pierre Vella and Marica Xuereb (for clarifications and technical questions)
- RSM: Gordon Micallef (for due diligence on companies and key experts)
- Two IMF experts: Peter Manhard (taxation) and Jean Michel Mattei (customs)
- Additional IMF expert: Aare Lapõnin (cloud architecture and web backups)

Internal MTCA Directors:

- Christopher Magri (Director General for Customs)
- Shaun Agius (Director for Operations)
- Andrew Buhagiar (Director Tax Services)
- Peter Grima (Director for Accounts)
- Manfred Barbara (Director General for Compliance)

Appointment Process

Mr. Vella confirmed the proper appointment procedure: *"we suggested the names. The names were even submitted as well to the permanent secretary of the Ministry for approval and then we submitted the names to the Director General of Contracts for their eventual approval to act as technical advisors for this board"*. All advisors signed *"declarations of conflict of interests and independence"*.

Evaluation Process Details

Mr. Vella confirmed the committee held *"about 24 meetings in all"* and explained the complexity of the evaluation: *"the BPQR... consists of a large spreadsheet consisting of a main sheet and there are about 12 different sheets full of markings which totals thousands of marks"*.

Selection Criteria Evaluation

When asked about contacting end-clients for project references, Mr. Vella stated: *"No, we did not enter, we did not contact the end clients"*.

Documentation and Comments

Regarding the evaluation comments, Mr. Vella confirmed he authored the NC-BPQR Scores document and explained: *"In some cases, it was part, it was I who did the comments. In some cases, we relied on comments provided by experts, especially for the very highly technical areas"*.

Technical Compliance

Importantly, when asked about the appellant's technical compliance, Mr. Vella confirmed: *"In, not technically non-compliant, no... Compliant, fully compliant"*.

Cross-Examination of Mr. Vella

By MS. Polyxeni Gkaintatzi: Multiple questions were objected to by Dr. Mifsud Bonnici as *"irrelevant to the Grounds of Appeal"* and upheld by the Chairman. The witness confirmed they *"treated them all the same, we received the letter, and we took them in good faith, and we did not contact any end-clients"*.

Testimony of Mr. Konstantinos Velentzas (ID 002708840A) – European Dynamics Managing Director

Background

Mr. Velentzas testified online as Managing Director of European Dynamics Luxembourg and *"Managing Director of the whole group, the European Dynamics group"*.

Denmark Contract Details

Regarding the Denmark project, Mr. Velentzas confirmed European Dynamics had *"nominated two subcontractors"* but stated: *"These were candidates, subcontractors, we did not use them at all, we did not use BDO at all, DXC at all"*. He confirmed Hellenic Telecommunications Organization (OTE) had *"2%"* participation but *"so far in fact they have not done anything"*.

Contract Performance and Value

Mr. Velentzas testified that *"98% of the work was delivered by European Dynamics Luxembourg S.A and European Dynamics Greece"*. When asked about the contract value, he stated: *"The value of the services that we provided to them by the 31st of December 2023... is 118 plus something million Danish crowns and depending on the exchange rate that you use, this amount is very close to 16 million euro"*.

Subcontractor Notification

When asked if the Danish authority was formally notified about subcontractor withdrawal, Mr. Velentzas confirmed: *"Of course, and this is confirmed by the letter, the attestation letter that they sent to us, which states that European Dynamics and European Dynamics Luxembourg delivered 98% and OTE 2%. Absolutely, we informed them"*.

Cross-Examination of Mr. Velentzas

By Dr. Lorna Mifsud Cachia: Clarified that the Denmark project value was "118 million Danish crowns" which "no matter which exchange rate we use during this period, the amount is in the range of 15.9 million euro, very close to 16 million euro".

Additional Testimony on References

When recalled as a witness by the recommended bidder, Mr. Velentzas provided comprehensive details on all three reference projects:

1. **Denmark:** 15.9 million euros (118 million Danish crowns)
2. **Tajikistan:** 8+ million euros (noting it was "one project" funded through different phases)
3. **Zimbabwe:** 8+ million dollars (80% of total \$10.6 million contract)

He confirmed: "if we add 16, 15.9 million for Denmark... plus 8 plus million dollars for Zimbabwe plus 8 plus million dollars for Tajikistan, the amount is close to 30 million, so about 25. This means that the three criteria... the three references fulfil the criteria of MTCA".

Final Submissions

Appellant's Final Submissions (Dr. Clement Mifsud Bonnici)

Preliminary Matters

Dr. Mifsud Bonnici formally withdrew the fourth ground of appeal, stating this was based on European Dynamics' clarification. He focused his submissions on the second and third grounds of appeal.

Second Ground of Appeal - Formal Compliance with ESPD Requirements

Technical Selection Criterion Context

Dr. Mifsud Bonnici provided detailed background on the technical selection criterion, explaining that bidders were required to cite "a maximum of three" projects that had to comply with specific requirements. He noted: "They could have done less, but a maximum of three".

The critical requirement was that "This information is to be submitted, uploaded online through the tender response format tender structure". He acknowledged it was "not unheard of that bidders would upload a standalone document constituting a list of principal services" but emphasized that "bidders had to make a self-declaration of the projects that they are citing".

Chronological Development of the Issue

Dr. Mifsud Bonnici explained the chronology of how this ground developed:

Initial Request for Information: The appellant requested information before launching the appeal, seeking three pieces of information. The government provided:

- Three bullet points with just project titles
- ESPD by European Dynamics
- ESPD by UN Networks

Specific Issue with Denmark Project: The appellant's concern was specifically with the Denmark project, not the Tajikistan or Zimbabwe projects. In UN Networks' ESPD, there was declaration that projects were present, but "when we went through the ESPD for European Dynamics with a fight to come, we did not find any reference to the Denmark project".

Search Methodology: The appellant conducted both manual and electronic searches: *"we even ran searches on the document to see if there are references to the Denmark project. We ran, searched them, ICS2, Denmark, Danish Ministry, Customs Control. And there were no hits"*.

European Dynamics' Response: European Dynamics maintained in their response that they *"did provide the list of principal services"*, leading the appellant to suspect information might not have been disclosed.

Board's Disclosure Order: Following the Board's disclosure order, the government responded: *"the information previously submitted had already been redacted due to confidentiality. No further information is available in this regard"*.

Legal Significance of Self-Declarations

Dr. Mifsud Bonnici emphasized the legal importance of self-declarations: *"what the tender has requested, what the government has requested, is a self-declaration from the bidder. It wanted your declaration that you comply. It wanted you to put your neck on the line and confirm that the projects are compliant with the requirements"*.

He distinguished this from reference letters: *"The reference letter is a declaration by a third party, the client, and for that reason, it cannot be accepted"*. The reference letter served a different purpose - *"to provide a reference of satisfactory outcome from the end client"* - not to corroborate compliance with requirements.

Procedural Remedy Sought

Dr. Mifsud Bonnici clarified this was a rectifiable issue but required proper process: *"That doesn't mean that European Dynamics offer is to be rejected outright... if at all, and this is why we're asking for re-evaluation, go back to re-evaluation, and this issue is addressed to a note of rectification"*.

He emphasized the Board's proper role: *"This board cannot simply disregard this issue because it's rectifiable. It's not this board's place to replace the tender evaluation committee"*.

Third Ground of Appeal - Project Reference Compliance

Five Cumulative Requirements

Dr. Mifsud Bonnici outlined five requirements for project references:

1. **Implementation and Operation:** Projects must be *"implemented and in operation"* (cumulative requirements)
2. **Reference Period:** Implementation and operation within 2017 to 2023
3. **Project Limit:** Maximum of three projects
4. **Aggregate Value:** Total value exceeding €25 million
5. **Minimum Individual Value:** At least one project with minimum €15 million

He noted the importance of the three-project limit: *"there's a reason for that"* - to ensure *"the big players, the players that are winning the 15 million contracts and that are able to deliver this project"* rather than operators with *"25 million, but spread out on 20 contracts"*.

Zimbabwe Project - Detailed Analysis

Issue 1 - Implementation Timeline

The reference letter dated 13th May 2024 *"should have raised the red flag for the tender evaluation committee"* because there was *"no indication by when the project was implemented and in operation"*. Even the self-declaration in the ESPD showed *"the end date that was given was 13th May 2024, and not the end of December 2023"*.

Issue 2 - Core Functionality Completion

Dr. Mifsud Bonnici referenced clarification note answer 12 which stated projects must be *"implemented and in operation with respect to standard functional requirements"* - the core deliverables.

He cited the Zimbabwe tax authority's own description in the reference letter that described tasks as *"main deliverables"*, noting that if *"14 to 17 are ongoing, that should have triggered something"* for the evaluation committee.

African Development Bank Documentation: The appellant obtained independent verification through African Development Bank reports, as *"this project was funded by the African Development Bank"*. A report published 4th April 2024 showed *"only release 1, which covered items from 1 to 11... have been implemented and in operation by the end of 2023"*.

The report indicated *"the formal launch of the system is being planned for quarter to 2025"*.

Mandatory Nature of Modules: The appellant examined the original Zimbabwe tender dossier to verify whether incomplete modules were mandatory:

- Tax agent's module: mandatory
- Revenue forecasting: mandatory
- Case management: mandatory
- Risk and compliance module: mandatory

Malta Tender Requirements: The appellant noted these same modules were required in the Malta tender, with compliance management described as *"a critical objective and a core function"*.

Issue 3 - Contract Value Discrepancy

The appellant identified discrepancies in the award publication notice showing *"the total contract price for the whole duration of the contract... was 10.2 million US dollars, which... would roughly come to 9.27 million euros"*.

The ESPD contained *"two fields... a total amount and a specific amount"*. The appellant argued the total amount should reflect total contract value while the specific amount should reflect *"the value of what has been implemented and in operation within the reference period"*.

Tajikistan Project - Contract Separation Analysis

Two Separate Contracts: The appellant argued the reference letter clearly showed *"two projects"* with *"two separate contracts with two reference numbers"*. The first contract concluded in February 2020 while the second started in November 2022.

Temporal Gap: The gap between contracts was significant: *"it could very well be that the second contract would have been awarded to a completely different economic operator"*.

Different Procurement Processes: The contracts were procured differently - the first through *"an open tender process"* funded by the World Bank, while the second was *"awarded through a direct selection"*.

Completion Status: Documentation suggested *"the project has not even, the second one has not even been completed yet"* with *"the actual contract completion remains open"*.

Denmark Project - Value Calculation Challenge

Freedom of Information Request: The appellant obtained contract value information showing 118 million Danish krona, calculated as *"15.9 million, so very close to this, a 16 million figure"*.

Required Deductions:

- **2% Partner Stake:** For Hellenic Telecommunications Organization
- **Subcontractor Contributions:** Two subcontractors were nominated, and *"if, let's say, in a, I think, de minimis scenario, one would have attributed even as low as 4% to these subcontractors, you could go down below the 15 million figure"*.

Rationale for Deductions: *"in procurement, you can rely on your experience... insofar as you or that other party has actually performed the contract"* and should only account for *"up to the percentage of your stake in the project"*.

Research Methodology Defense

Dr. Mifsud Bonnici defended their extensive research: *"by all means, I'm not saying that the Tender Evaluation Committee should have done the research that we did. We all know what the constraints of self-limitation are but that's why there are processes like this"*.

He noted the evaluation committee *"did not reach out to end clients"* and emphasized that while they had *"technical advisors... with respect to the technical offer and the financial offer, with something that is also technical, like the technical selection criteria, we were not assisted by anyone"*.

Contracting Authority's Final Submissions (Dr. Daniel Inguanez)

Technical Advisor Role and Evaluation Process

Dr. Inguanez provided detailed explanation of the technical advisor role, quoting Guidelines for Tender Evaluation Committees 2024, Section 1.12, fourth paragraph:

"If the appointed consultant or technical advisor is external to government, so in this case we are only speaking of the people from IMF, he or she shall draw up a technical report, which shall not form part of the evaluation report".

The guidelines specify: *"the TEC shall formulate its own opinion on the merits of the bids, and if deemed necessary, it shall reproduce parts of the technical report in the evaluation report as part of its own evaluation"*.

He testified that *"the chairman testify, and this is exactly what they did"* - the evaluation committee took expert comments and included them as their own opinion when they agreed.

Experience Requirements Interpretation

Dr. Inguanez characterized the appellant's submissions as *"an exercise in trying to restrict the wording of the condition of the projects"*. He emphasized the tender required *"a list of principal services of a similar nature or implemented systems that can be configured into an integrated tax administration system. Designed, developed, tested, and in production and are in operation"*.

Key Principle: *"What the tender dossier required was that the project as a whole is in operation"*. The client letters *"all three of them, even the one of Zimbabwe... testifies to the fact from the end client himself that the system as a whole is in operation"*.

Value Assessment Methodology

Dr. Inguanez argued against detailed percentage calculations: *"this is also quite irrelevant because the tender dossier required the value of the project... should I take, once I am satisfied that this project is implemented, should I take into consideration which percentage value has been completed, which percentage value is not? And I submit that you should not go into this level of detail"*.

Legal Precedent: He cited Case 1692 CT 2244/2021 (14th March 2022) involving a tender for *"professional services of an architect for general consultancy. Concert hall extension, Facade Teatro Manuel"*. The Board *"overturned the rejection of the bidder"* when the tender document *"did not specifically require the bidder to indicate the completed part of the project"*.

Regulatory Objectives: He referenced Regulation 200-2022 public procurement regulations, arguing the experience requirement's objective was ensuring *"this contractor, if chosen, will be an adequate partner"* rather than detailed project analysis.

Tajikistan Project Defense

Regarding the Tajikistan contracts, Dr. Inguanez argued: *"the tender dossier requires a project, not specific contracts, a project"*. He noted the contracts were *"one is phase one, a phase one contract. The other is a phase two contract for the same project"*.

Reference Letter Reliability

Dr. Inguanez defended the evaluation committee's approach: *"how far should an evaluation committee go? I mean, you can check and recheck and verify and recheck until end of time. The rule always is in administrative law, reasonableness"*.

He concluded: *"Was it reasonable for the evaluation committee to rely on these reference letters and on the tender dossier wording? I think it is clear that it is a resounding yes"*.

Recommended Bidder's Final Submissions (Dr. Lorna Mifsud Cachia)

Opening Criticism

Dr. Mifsud Cachia questioned the appellant's approach: *"I couldn't help but wondering whether he wanted to be in the seat of the Technical Evaluation Committee to award the tender to his own clients" because "the way that all the submissions were moulded and the way that the tender dossier itself has been interpreted by his clients... was very clearly wrong"*.

ESPD Documentation Defense

Lack of Proof: *"there is absolutely no proof that the information was not tendered in the ESPD. Indeed, as a matter of fact, it was tendered in the ESPD"*.

Experience in Tendering: She emphasized their clients' credentials: *"our clients are experienced in tendering all over the world. It doesn't mean that little human error doesn't happen, but when we are talking about an ESPD we all know, those of us in public procurement know, how serious such document is"*.

Document Availability: *"from a mere looking over at the ESPD it is very clear that the information relating to the Danish reference was there"*.

Tender Requirements Interpretation

Dr. Mifsud Cachia read extensively from the tender dossier: *"tenders shall provide with a reference of satisfactory outcome from the end client for the three projects quoted for both implementation and maintenance and support"*.

Primary Objective - Satisfaction: *"What does the authority here want to achieve? It wants to achieve, first of all, satisfaction. It is useless that you bring me a project that you've done, and your end client is not satisfied with that project"*.

Comparative Client Satisfaction: She noted that satisfaction *"which Net Company can't say it has, because the original attestation issued has been withdrawn and recalled and we have filed it in our evidence last Friday"*.

Project vs. Contract Distinction

Fundamental Difference: *"We're talking about projects. It is the client who determines whether it is one on 20 projects, not the appellants"*.

Practical Examples: *"There are projects even in Malta which are divided in phases. If the project were to end halfway, it's not a project, it's half a project"*.

Funding vs. Project Unity: *"In one case, the funding was divided into two different funds, fine, but the project was just one"*.

Implementation vs. Completion Analysis

Dr. Mifsud Cachia emphasized the tender language: *"The above list is to include projects successfully implemented during the last years being 2017 to 2023"*. She argued: *"these words are important. Words have meaning, obviously. And the words successfully implemented mean exactly that"*.

Key Distinction: *"Nowhere in these criteria is there written that the project has to be concluded". Instead, the requirement was that "the project has been implemented. That is, that the client knows what they are buying and what they have bought".*

Specific Criteria Analysis: She detailed the tender requirements, noting Point 4: *"a minimum of one package has to be currently in use and implemented in the stated period above, and which can be reused through parameterization, configuration, and adaptive work".*

Project-Specific Responses

Zimbabwe Project: She dismissed concerns about ongoing modules: *"It makes us feel as though we were worried by some documents submitted and somehow, we needed to save face. We do not need to save face".* The amended letter was provided *"to adding further clarity"* not to save face.

Tajikistan Project: She reiterated: *"they are making the reference to two contracts, not two contracts. It was one project".*

Denmark Project: She confirmed the value calculations: *"even if the 2% were to be taken out of the 15.8 million... 2% of 15.6, 15.8 million will not reduce the level to less than 15 million euros".*

Technical Evaluation Committee Defense

Dr. Mifsud Cachia defended the evaluation committee's approach: *"In good faith, we took the references at face value. But that's important. Why in good faith? Because the technical evaluators... knew from the way even that the letters were written and the information submitted by the tender that those references could not have been untrue".*

Discretionary Contact Authority: She noted the tender provision: *"the bidder is giving consent to the Evaluation Committee, so that the latter may, if deemed necessary, contact the respective clients... It's clear as day that the TEC... was within its legal and administrative legal rights... not to contact the referees".*

Core Functions Compliance

Dr. Mifsud Cachia stated: *"all the core function requirements required by the tender were all present in the projects which we submitted as references in their implementation phase. The projects... were all fully implemented at the time of 31st December 2023".*

Additional Submissions by Ms. Polyxeni Gkaintatzi

Evidence Quality Assessment

Ms. Gkaintatzi criticized the appellant's evidence: *"all of them, apart from two official attestations provided by the Danish authorities, all the others come from unknown sources".*

She noted: *"I didn't see a mere document, a mere official document stating that one or even more of these reference letters were recalled or was not true or was inaccurate or something like this".*

Danish Authority Interactions

Appellant's Prior Request: *"the appellant had already submitted a relevant request in order to be informed about the total value of our services".*

Misleading Request: *"The appellant tried to mislead, let's say, and requested the paid amounts, invoiced ones... We had invoiced a higher amount, and they wanted to be disclosed about the amount paid".*

Official Attestation: *"We submitted a... an official attestation, clearly clearly stating that the invoiced and approved services was of the total amount of 118 million Danish Kroner".*

Disclosure Obligations

Ms. Gkaintatzi argued the appellant had *"the obligation to inform about the recall of this reference letter since March 2025 when it received this letter"* under *"the relevant Directive 24 of 2014"*.

Tajikistan Project Completion

She referenced a World Bank Group report of July 15, 2024, showing *"this project is completed. This project was completed according to the report of July 15, 2024, which means quite earlier"* than the estimated completion date.

Financial Comparison

Ms. Gkaintatzi noted the financial aspects: *"the preferred bid with a high technical offer offered the financial despite the error, the human error made... €30 million 900 approximately Euros... whereas the appellant has offered a financial offer a \$44, 529,000"*.

Appellant's Concluding Remarks (Dr. Clement Mifsud Bonnici)

Implementation and Operation Requirements

Dr. Mifsud Bonnici clarified: *"Within the reference period, the projects had to be implemented and in operation. And that is so for three reasons"*:

1. **Opening Paragraph Context:** *"The opening paragraph of the list of principal services says so"*
2. **Contextual Reading:** *"When you read this statement that has been quoted more than once, it says the above list. So, it's obvious that that statement is being done within the context of the opening paragraph"*
3. **Maintenance and Support:** *"when we speak about the reference letters, it says that it has to be reference for satisfactory outcome from the end client for the three projects quoted for both the implementation and maintenance and support. Maintenance and support, it comes in the operation phase"*

Value Attribution Principle

He argued against full value attribution for incomplete work: *"you'd be attributing experience to someone that doesn't have it. Because you need to have invoiced, done the work, and invoiced, and you have to show for it"*.

Regulatory Support: *"even if you had to read the first requirement, it says the total aggregate value of all projects carried out during the mentioned period. So, it's obvious that government only wanted the value of what has been carried out"*.

Research Methodology Defense

Dr. Mifsud Bonnici defended their investigative approach: *"I think our, let's say, investigations, I put them, have been belittled as Google searches. I think there was also an invitation that you shouldn't get into detail... And these are submissions and invitations that someone who doesn't want you to look would make"*.

Final Clarification by Dr. Mifsud Cachia

Dr. Mifsud Cachia provided a final clarification: *"I've always in my submissions stated that implemented in operations and I read consistently throughout my submissions from the tender document. Again, they're trying to spin around my words. I never said that the project shouldn't be in operation"*.

Conclusion of Hearing

Chairman Mr. Kenneth Swain thanked all parties and formally concluded the session. The case was reserved for judgment on all grounds of appeal and the preliminary plea of inadmissibility.

End of Minutes

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 12th June 2025.

Having noted the objection filed by Netcompany SA (hereinafter referred to as the Appellant) on 28th February 2025, refers to the claims made by the same Appellant with regard to the tender of reference CT2000/2024 listed as case No. 2120 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Clement Mifsud Bonnici, Dr Antione Cremona & Dr Calvin Calleja
Appearing for the Contracting Authority:	Dr Vincienne Vella
Appearing for the Interested Party:	Dr Lorna Mifsud Cachia & Dr Marcus Degiorgio
Appearing for the Department of Contracts:	Dr Audrey Marlene Buttigieg Vella

Whereby, the Appellant contends that:

a) The Contracting Authority failed to disclose information requested by the appellant

The Appellant submits that the Contracting Authority failed to disclose the Requested Information (defined below) prior to the Appeal and that the Requested Information is necessary for the Appellant to be able to exercise effectively its remedies at law.

The Appellant has the right to the information and documentation requested in order to be able to exercise its right to a rapid and effective remedy. The right to effective review depends on the disclosure of sufficient information to enable the appellant to determine whether the contracting authority's decision of 18 February 2025 is vitiated by errors or unlawfulness.

The Contracting Authority refused to disclose the following information:

- a) The Recommended Tenderer's Organisation & Methodology submissions in terms of the Technical Offer, including the Recommended Tenderer's submission for Category 1 –

Planning, Project Governance and Methodology, specifically under Criterion 1.1 entitled 'Resource Planning and Strategic Project Management'.

- b) A copy of the documentation, including technical literature, submitted by the Recommended Tenderer to corroborate its technical compliance in satisfaction of its Organisation & Methodology submissions in terms of the Technical Offer.
- c) The Recommended Tenderer's submissions for Category 3 – ITCAS Features and Capabilities, including:
 - i. 3.1 Applied Technology – Technology Stack;
 - ii. 3.2 System Architecture & Software Architecture;
 - iii. 3.3 System Configurability;
 - iv. 3.4 Data Access and Historisation; and
 - v. 3.5 Completeness against functional requirements
- d) A copy of the documentation, including technical literature, submitted by the Recommended Tenderer to corroborate its technical compliance in satisfaction of its category 3 – ITCAS Feature and capabilities submissions.
- e) The Recommended Tenderer's demo submission in terms of clause 3.5.2 as per annex 1 marked demonstration List.
- f) The identity of Key Experts nominated by the Recommended Tenderer in its bid, including, their curriculum vitae.
- g) The identity of the members comprising the Tender Evaluation Committee (TEC) and their academic and professional qualifications.
- h) The identity of the technical advisors to the TEC and their academic and professional qualifications
- i) Extracts from the minutes of the meetings of the TEC which concern the evaluation of Netcompany's bid.

The appellant contends that these requests do not concern confidential information or information that may otherwise be prejudicial to the legitimate commercial interests of an entity or to fair competition.

There is no valid reason for withholding such information. Apart from breaching the principle of transparency, the failure to disclose is effectively depriving the Appellant of its right to exercise a rapid and effective remedy in this matter.

Even if the Requested Information contains confidential information, the Contracting Authority had to communicate the essential content of that information in a neutral summary form. Something the Contracting Authority simply did not do, despite a specific invitation to do so.

The Appellant humbly demands this Honourable Board to order the Contracting Authority to disclose the Requested Information and to declare that the time period for raising additional grounds of appeal with regard to any one of the Requested Information does not start to lapse until the information is provided.

b) The Recommended Bidder's list of principal services does not comply with the Tender conditions

On 21 February 2025, the Appellant requested the Contracting Authority to disclose the list of principal services of a similar nature to COTS or implemented systems that can be configured into an integrated Tax Administration System, with or without Customs Related Software Development which have been implemented (designed, developed, tested and in production) and are in operation quoted by the Recommended Bidder.

On 26 February 2025, the Contracting Authority provided the following list:

- a) Customs Control and Reporting System and ICS 2 Gateway for The IT and Development Agency of the Danish Ministry of Taxation
- b) Design, Supply, and Installation of Tax and Revenue Management System (TaRMS) for the Zimbabwe Revenue Authority
- c) Procurement of a Tax management information system for the Republic of Tajikistan (Tax Committee under the Government of the Republic of Tajikistan)

On this basis, the Appellant cannot but submit that the list of principal services submitted by the Recommended Bidder does not include the minimum information that was required by the Technical Selection Criterion and which would have enabled the tender evaluation committee to verify compliance of that list and projects with the Technical Selection Criterion.

In particular, the list of principal services submitted by the Recommended Bidder, as quoted by the Contracting Authority, did not include:

- a) The value of the services carried out on the project
- b) The period within which the project was carried out
- c) A confirmation that the project has been implemented and in operation

- d) Whether the project was carried out by the Appellant or by its sub-contractor on whom the Appellant relied upon for the purpose of satisfying this requirement.

c) The Recommended Bidder's projects do not satisfy the Technical Selection Criterion

The Appellant further submits that the projects submitted by the Recommended Bidder do not, in any event, satisfy the requirements set out in the Technical Selection Criterion.

The projects to be cited must have at least met the following:

- a) implemented (designed, developed, tested and in production) and are in operation
- b) implemented during the last 7 years, being 2017 – 2023
- c) The total aggregate value of all projects carried out during the mentioned period shall not be less than €25,000,000, but one had to be €15,000,000
- d) No more than 3 projects had to be quoted

The Appellant contends that while the Recommended Bidder, being the European Dynamics Consortium, was seemingly awarded the Denmark Project, while the Zimbabwe Project and the Tajikistan Project were purportedly awarded to a third party, being a subcontractor from Armenia. The Denmark Project was not for a national tax administration system, while the Zimbabwe and Tajikistan Projects purportedly were. Therefore, the Recommended Bidder did not cite any direct experience in the implementation of a national tax administration system and had to rely on the capacity of another entity to execute the projects involving national tax administration systems.

As already explained, “as far as the Contracting Authority is concerned, an experienced Recommended Tenderer will not have the coverage for the complexity of the Taxation Domains (as stated above) or no experience in the Taxation System” this will be a (severe) disadvantage for the Appellant.

Against this context, and based on the information available to the Appellant, these projects do not satisfy the requirements of the Technical Selection Criterion. This is so for the following reasons:

- a) The Zimbabwe Project has not been implemented and clearly not in operation in full. The Technical Selection Criterion expressly required that the projects have been “implemented (designed, developed, tested and in production) and are in operation”. The Zimbabwe Revenue Authority, in its reference letter, indicates at least 4 aspects of the Zimbabwe Project which have not been implemented and which are not in operation:
 - a) Revenue Forecasting (status – ongoing).
 - b) Case Management (status – ongoing).

- c) Debt Management Auditing, Compliance and Risks Management (status – ongoing).
 - d) Integration with targeted government agencies (status – ongoing).
- b) The Zimbabwe Project has not been implemented and in operation by 2023. For the reasons mentioned in the preceding paragraph, the Zimbabwe Project fails to satisfy the Technical Selection Criterion in so far as the project should have been implemented by 2023.
- c) Three of the projects miss the minimum threshold of €15,000,000 which had to be satisfied by 1 project. There is no indication on the value of the Denmark Project which has been carried out until 2023. Based on the information available to the Appellant, the Recommended Bidder carried out services in the Denmark Project up to €4.9 million by April 2022. The Appellant submits that it is unlikely that the Recommended Bidder carried out services in the Denmark Project which met the €15 million threshold by 2023. Furthermore, based on the ESPD responses submitted by the Recommended Bidder's subcontractor, neither the Zimbabwe Project nor the Tajikistan Project meet this threshold.
- d) The Recommended Bidder, with respect to the Tajikistan Project, cites 2 projects and not one. This totals the number of projects cited by the Recommended Bidder to 4. (Requirement: up to 3 projects must be cited). The reference letter issued by the Tax Committee under the Government of the republic of Tajikistan expressly mentions two contracts: TJTARP/G/ICB and TRO/D8350/DS/2022/01.

d) The Recommended Bidder's Financial Offer inexplicably and unjustifiably decreased *ex post facto*

The Appellant submits that the Recommended Bidder's financial offer was inexplicably and unjustifiably decreased following the deadline for the submission of bids.

The tender procedure closed on 23 May 2024. According to the Opened Tender Details, the financial value of the Recommended Bidder's offer was €32,022,496.23. However, the recommendation of award published on 18 February 2025 revealed that the Recommended Bidder's award was substantially reduced to €30,968,028.21—a difference of €1,054,468.02.

The Contracting Authority confirmed that the revision followed an arithmetical correction but did not give any reason to justify this substantial decrease in price other than stating that an arithmetical correction was requested of all bidders.

The Appellant is aware of the clarification note 16 published on 13 May 2024 which advised bidders of an arithmetical correction that would take place after the closing date for tenders. However, the Appellant submits that this arithmetical correction could not have accounted for a price differential in excess of a million Euro.

Therefore, the Appellant is concerned that the Contracting Authority has not applied the same yardstick to all bidders.

e) The Technical Evaluation was not carried out correctly

The Appellant is particularly aggrieved by the comments made by the tender evaluation committee on the evaluation of the Appellant's as well as the Recommended Bidder's technical offer. These comments reveal an insufficiently detailed, and at times superficial, evaluation.

It is submitted that the scant details provided in the evaluation grid fall short of the good administration principle as well as rules and policies set in place by the Department of Contracts as the Central Government Authority

The Appellant has identified numerous inaccuracies and inconsistencies in the evaluation of its technical offer which will become apparent during the proceedings. These include:

- i. Evaluation Criteria 1.1.4 – 1.1.5;
- ii. Evaluation Criteria 1.2.2;
- iii. Evaluation Criteria 1.3.1 – 1.3.2;
- iv. Evaluation Criteria 1.5.1 – 1.5.2;
- v. Evaluation Criteria 3.2.3;
- vi. Evaluation Criteria 3.2.5;
- vii. Evaluation Criteria 3.3; and
- viii. Evaluation Criteria 3.4.1 – 3.4.2

Further, the Appellant is aggrieved by comments drafted by the tender evaluation committee which use informal terms, ambiguous adjectives, are rife with the conditional and at times contradictory, on the lines of:

- a) "A single response bit fuzzy, but generally OK"
- b) "Largely OK"
- c) "Comprehensive, but unsure if the requirement [redacted] is correctly understood"
- d) "Not overly convincing, some responses not specifically addressed, but it could work"
- e) "A bit sketchy"
- f) "Some sketchy and inadequate responses, but it could be adequate"

The Appellant submits that these deficiencies in the evaluation of the Appellant's technical offer give rise to serious doubts as to the integrity and correctness of the evaluation as a whole and whether the Recommended Bidder's offer was properly evaluated.

This Board also noted the Contracting Authority's and the Department of Contract's Joint Reasoned Letter of Reply filed on 9th March 2025 and its verbal submission during the hearing held on 12th June 2025, in that:

a) The Contracting Authority failed to disclose information requested by the appellant

The Contracting Authority and the Department of Contracts emphasise that any right to access information during a procurement appeal is not absolute and is subject to several considerations, including the need to maintain confidentiality, protect commercially sensitive data, and ensure the integrity of the competitive process. The Contracting Authority's and the Department of Contracts discretion to withhold certain information is fully consistent with its legal obligation under the Maltese procurement law, balancing transparency with the imperative to safeguard fair competition among bidders.

Therefore the Contracting Authority and the Department of Contracts do not in principle object to the production of evidence which is overlapping or related thereto with the exception of confidential information within the meaning of Reg. 40 of the Public Procurement Regulations (PPRs) and of information, which if disclosed, would impede law enforcement or would otherwise be contrary to public interest, would prejudice the legitimate commercial interests of particular economic operator, whether public or private, or might prejudice fair competition between economic operators, as provided in Reg 242(4) of the PPRs.

Furthermore, the Contracting Authority and the Department of Contracts are of the view that the requests made by Netcompany SA were more an attempt to acquire information about the preferred bidder rather than an instrument to enable it to appeal.

Referring to the Antea Polska judgment of the European Court of Justice, the Contracting Authority and the Department of Contracts submit that there exists no right to request information to be able to better reply to an appeal application lodged by an aggrieved bidder as Netcompany SA claims. The right to request information does not equate to some sort of discovery process whereby a tenderer may access other tenderer's files in order to conduct an evaluation itself.

Finally, the appellant, also requested the identity of Key Experts including their curriculum vitae, the identity of the members comprising the Tender Evaluation Committee (TEC) and their academic and professional qualifications and the identity of the technical advisors to the TEC and their academic and professional qualifications.

The Contracting Authority and the Department of Contracts do not object to the production of the experts/members/advisors as witnesses, if any part to the proceedings duly summons them according to the procedure laid down in Reg. 92 of the PPRs. However, the Contracting Authority and the Department of Contracts object to any questions relating to their experience and qualifications for the simple reason this information is not relevant to the present appeal.

With respect to the identity of the TEC members and the identity of the Experts the TEC appoints, the Contracting Authority and the Department of Contracts contends that such is the sole prerogative of the authorities and that unless the Appellant can establish that there exist reasonably grounded suspicions as to the partiality of the technical experts, or any TEC members, any line of questioning which is in the nature of ad hominem attacks intended to bring into doubt the competence of the decision-maker, rather than challenging the administrative decision itself, is inadmissible. The Contracting authority and the Department of Contract makes reference to the decision of the European Ombudsman in Case 393/2015/MDC of the 19th December 2016.

b) The Recommended Bidder's list of principal services does not comply with the Tender conditions

The Contracting Authority maintains that the Appellant is not privy to the evaluations of the other bidders, therefore not aware of the information submitted to the Contracting Authority. The Contracting Authority confirms that the technical selection criteria were met by the recommended bidder.

c) The Recommended Bidder's projects do not satisfy the Technical Selection Criterion

The Contracting Authority asserts that the Appellant is only making assertions based on incomplete information and contends that some of the information was not shared due to confidentiality reasons.

Contrary to what the Appellants is claiming, the Contracting Authority asserts that after the Evaluation Committee has meticulously carried out its evaluation on all the bidders, it has found the preferred bidder to be administratively and technically complaint with the technical Selection Criteria, Section 5(c) sub paragraph (a) to which the Appellant is making reference.

d) The Recommended Bidder's Financial Offer inexplicably and unjustifiably decreased *ex post facto*

The Price quoted by the selected bidder on the ePPS was higher than the total quoted on their financial bid. The TEC was directed to consider as final the price quoted on the financial bid form.

Further to the above, and as per clarification notes 13 and 14, the binding price on the financial bid form for each bidder had to be arithmetically adjusted due to an error in one of the formulas

related to Help Desk Support. Following this adjustment, the affected bidders had their quoted price revised upwards in proportion to the impact. After the adjustments were finalised, all affected bidders were advised through the ePPS and all agreed with their revised financial values.

e) The Technical Evaluation was not carried out correctly

With reference to paragraph 73 of the letter of rejection the Appellant failed to substantiate its claims as regards the inaccuracies and inconsistencies in the evaluation of the Technical Offer in relation to the items cited in the same paragraph.

Furthermore, comments mentioned in paragraph 74 of the appeal do not reflect any significant weakness in the reply given by the appellant, as evidenced by the marks awarded wherever such comments were made. Moreover, the marks associated with the same comments represent only a small fraction of the total marks available to any bidder, with this section (3.51 Functional Specifications) having a maximum of 2429 marks. Of these, the Appellant was awarded 2283.67, which equates to 141.03 out of the 150 marks available. Additionally, the total marks available in the BPQR amount to 640 which include the 150 marks for section 3.51. Here the Appellant was awarded 567.69 marks out of 640. Consequently, the impact of the marks related to the referenced comments is very minimal – considering that each mark has an impact of less than 0.0096% on the BPQR – when considering the multiple percentage deductions required to arrive at the final score. This impact is further diminished, given that the technical criteria carry a weight of 70%.

Furthermore, The Contracting Authority asserts that in procurement processes where the award criterion is the BPQR, the case law has also confirmed that the evaluation board must necessarily undertake a subjective exercise and, consequently, has an element of discretion or leeway which should not be, as a rule, disturbed. To support this argument the Contracting Authority makes reference to SaniClean joint Venture v. St Vincent de Paul Long term Facility decided by the Court of Appeal on the 20th July 2020 (App No. 97/20) and Executive Security Services Ltd. V. Agenzija Servizz Gov et decided on 7th March 2022 (App No. 205/21/1).

Thus, the Contracting Authority contends that the fifth grievance of the Appellant cannot be successful unless the Appellant proves that the allotment of points by the evaluation board was unreasonable and the result of a manifest error of assessment.

This Board also noted the Recommended Bidder's Reasoned Letter of Reply filed on 10th March 2025 and its verbal submission during the hearing held on 12th June 2025, in that:

a) Inadmissibility of the present Appeal filed by the Appellants

The recommended Bidder claims that:

- (a) the Export and Transit System of Denmark, assigned to the Appellant, was never put in operation before June 2024, as well as that the Import system of Denmark, also assigned to the latter, has not been ready yet.
- (b) The contract no. 2017/S 082-158922 assigned to the Appellant, which concerns a Debt Collection system does not cover all the functionalities of a Tax System, as required by the Tender specifications of the present procurement.

Thus, none of the above assignments could be proposed as a valid reference by the Appellant in order to qualify as tenderer. Therefore, the Recommended Bidder claims that should the Appellant have presented the said assignments as project references, its tender is to be disqualified. In such case, the Appellant suffers no harm by the award decision at issue, since the contract could in no case be assigned to the latter and, consequently, the Appellant has no legitimate interest to appeal against it.

The Appellant did not show, as it should in order for this Appeal to be admissible, that it has met the selection criteria described in the tender specifications in order to qualify for the said procurement, and, therefore, in which way it was harmed by the award decision of the contracting Authority.

Finally, the mere fact that the Appellant “disagrees” with the award of the contract to the Respondents does not suffice to provide it with the required *locus standi* to file the said appeal. In this respect, it is also to be said that the Appellant, while engaging in detailed analysis of the alleged “non-compliance” of the tender of the Respondents with the tender conditions, it makes no reference either to the tender submitted by itself or to the reasons why the latter should be preferred as recommended bid.

b) Reply to the first Ground of Appeal: Principle of Confidentiality and the legitimate interest of the Respondents to protect their “business secrets”

The Recommended Bidder maintains that the principle of transparency is not absolute and it cannot be divorced from another very important principle – The principle of proportionality.

Furthermore,, the principle of transparency does not mean that the Contracting Authority is to hand over to the Appellant (in this case) all the documentation provided by the Recommended Bidder. In itself, this approach would be disproportionate because of the confidentiality of the information itself.

c) Reply to the Second Ground of Appeal: Contradictory and, in any case, unfounded allegation regarding the principal services offered by the Respondents

The Recommended Bidder submit that the Contracting Authority provided all necessary information in its response and hence the Appellant have no valid reason or ground of appeal and this is because the information was indeed provided as stipulated hereunder:-

- 1) For the Danish Project as part of the online questionnaire;
- 2) For the Tajikistan Project and Zimbabwe Project as part of the ESPD document of the subcontractor.

In all three (3) cases, the value, period, certificate, role of the partner/subcontractor and description of activities in the particular reference project were presented.

d) Reply to the Third Ground of Appeal: The Recommended Bidder's Projects do satisfy the Technical Selection Criterion

The Recommended Bidder submits that their submission did satisfy the Technical Selection Criteria.

- 1) Contrary to what the Appellant submitted in paragraph 49, the Tax System quoted has been delivered in production, according to the terms of the contract and it covered the following:
 - a) Supply, installation and configuration of Server systems for Main and Disaster recovery data-centers of ZIMRA (status – completed and in production)
 - b) TIN Registration (incl. e-registration) (status – completed and in production)
 - c) Registration of all tax types (status – completed and in production)
 - d) Return Filing (all tax types) (status – completed and in production)
 - e) Payment processing (all tax types) (status – completed and in production)
 - f) Tax Refunds (all tax types) (status – completed and in production)
 - g) Revenue Accounting (all tax types) (status – completed and in production)
 - h) Taxpayer Accounting (all tax types) (status – completed and in production)
 - i) Debt Management (MVP) (status – completed and in production)
 - j) User Management (status – completed and in production)
 - k) Interfacing with external systems (status – completed and in production)
 - l) Integration with other internal systems (status – completed and in production)
 - m) Tax Agents Module (status – completed and in production)

The contract in question also concerned four additional accessory functionalities which are presented and which are not directly related with a core Tax System. These additional functionalities were delivered later, in line with the terms of the Contract.

We reiterate that the components that have been put in production refer to a complete Tax System that is used to allow the Government to Collect Taxes, as stipulated in the CfT. It is important to underline that **the requirement for the references in the tender specifications of the MTCA, was for a Tax System and not specific functionality beyond those of a core Tax System.**

In this sense we make reference to page 9 of the Tender dossier, whereby the following is described:

- i. Reference must concern a *“COTS or implemented system that can be configured into an integrated Tax Administration System, with or without Customs Related Software Development which have been implemented (designed, tested and in production) and are in operation”*.
- ii. Be a *“project quoted should be in the business domain of Taxation, namely Direct Tax, VAT, or customs”*.

Furthermore, the Tender Specifications present, for functional requirements) that:

- Three (3) marks will be given, if already implemented in another tax administration, out of box, and requires minor configuration and in line with the plan (bidder to provide screenshots)
- Two (2) marks will be given, if not implemented in another tax administration, out of box with configuration and in line with plan (Bidder to provide screenshots), and
- One (1) mark will be given, if function has to be coded from scratch and in line with plan.

This shows that it is absolutely acceptable that certain functions may not be already implemented for another Tax Administration.

- 2) Appellant’s submissions, that the Zimbabwe project allegedly has not been implemented and in operation by 2023 (in paragraphs 49-50) is also untrue, since the said system is in production and this is certified by the competent contracting authority. **The fact that this system entered in production was announced officially in the context of a ceremony which took place in September 18, 2025.**
- 3) With respect to the contentions contained in paragraph 51 of the Appeal, it must be said that the project value is currently 286,124,000 DKK, of which 129,549,487 DKK are specifically for the requested period. The equivalent in Euro is approximately 17,365,900 EUR.
- 4) Reference made to paragraph 52-53, the Tajikistan Project was completed through two (2) consecutive contracts, a is customary in the public sector. As it is clearly stipulated, the second contract is merely an upgrade of the same system. The name of the second contract is self-explanatory *“upgrading and expanding the ITMIS”*. The first part of the project was funded by the

World Bank and, after expiration of the funds, the local government continued enhancements of the same system within the scope of another assignment.

- 5) In response to paragraph 55 of the letter of appeal, the preferred bidder maintains that total budget for the reference period for all three (3) projects is more than €34,000,000 being:
 - a. €17.4 million – Denmark Project
 - b. €9.9 million – Zimbabwe Project
 - c. €7.6 million – Tajikistan Project (€4.7 million – Main Contract, €2.9 million – upgrade)

Even if only one of the contracts of the Tajikistan Project is to be considered, the total remains still significantly above the threshold of €25,000,000.

- e) Reply to the Fourth Ground of Appeal: No inexplicable or unjustified ex post facto decrease of the Financial Offer of the Respondents but an arithmetical revision recommended by the Contracting Authority to all tenderers through the ePPS due to an arithmetical error in the Financial Offer Excel Template**

There was an arithmetical error in the Financial Offer Excel Template which was communicated to all tenderers through ePPS. The way the ground of appeal submissions have been drafted seem to imply misleadingly that there was something untoward in the manner in which the actual arithmetical revision was carried out by the Contracting Authority. This cannot be further from the truth and it is ignoble on the part of the Appellants to draft this ground as they did. Each tenderer had the right to verify the amended financial offer and approve it.

- f) Reply to the Fifth Ground of Appeal: The Technical Evaluation was carried out diligently, in good faith and in full observance of good governance and the PPR**

It is not the remit of neither the Courts nor this Board to evaluate any tender. This has been a fundamental principle which proved to be at the core of a number of decisions of this Board. Reference was made to Case No. 1026, 1084 and 1119. Also reference to the decision by the honourable Court of Appeal on the 14th February 2017 between Cateressence Limited ET vs id-Direttur tal-Kuntratti.

It follows that the key question, therefore, is not how the evaluation allotted marks and took notes. The key question is whether it observed the proper procedure for doing so. There is nothing in the whole procedure, including in the Appellant's appeal, that somehow gives the impression that the Technical Evaluation Committee did not perform its obligations well. If the Appellant failed to read properly the information submitted to them or any other element of the procedure, that is certainly not imputable to the Technical Evaluation Committee.

Such Ground of Appeal is certainly ambiguous and unclear and not the evaluation carried out by the TEC. Particularly in paragraphs 72 to 74 of the Appeal, but throughout the whole ground of Appeal, really, the Appellant fail to explain the reasons underlying their real grievance. They say in paragraph 72, that the Technical Evaluation Committee gave “scant details” without making reference thereto. In paragraph 73, they make reference to “inaccuracies and inconsistencies” in a general and abstract way, without specifying them. The Appellant just mentions in this paragraph the numbers of some of the evaluation criteria stating that they were not evaluated properly without any further clarification. And in paragraph 74 of the Appeal, the Appellant take a snapshot of a few words of the Technical Evaluation Committee and project unto them inefficiency and lack of good governance without really explaining why.

The Recommended Bidder claims that no amount of detail would render this ground of appeal substantiated because it is clear that the Technical Evaluation Committee carried out its obligation.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties, including the testimony of the witness duly summoned, will now consider Appellant’s grievances as follows in their entirety.

Preliminary plea by the Recommended Bidder – Alleged lack of legitimate interest

In its preliminary plea, the Recommender Bidder claims that, had the Denmark project been included in the Appellant’s submission, the Appellant’s bid would not have been technically compliant. As such, the Appellant would not qualify as a tenderer and consequently, its submission should therefore be disqualified. According to the Recommended Bidder, the consequence of this disqualification is that the Appellant could not have been awarded the contract and, thus, suffered no prejudice as a result of the award decision. Accordingly, the Appellant lacks a legitimate interest in pursuing the appeal.

The Recommended Bidder further argues that, for the appeal to be admissible, the Appellant was obliged to submit evidence before this Board substantiating that:

- 1) It satisfied the selection criteria to qualify for the tender and that its failure to do so undermines the Appellant’s claim of having suffered harm due to the award decision.
- 2) It provides compelling reasons for why its offer appellant should be preferred over that of the recommended bidder.

In contrast, the Appellant relies on regulation 270 of the Public Procurement Regulations (PPRs), which transposes the provisions of the EU Remedies Directive. The Appellant submits that this legal framework recognises three categories of persons who may lodge an appeal, namely:

- 1) Tenderers
- 2) Any person who has or has had an interest in the Contracting Authority decision
- 3) Any person who has been harmed or risks being harmed by the Contracting Authority's decision

The Appellant further maintains that unlike the EU Remedies Directive, Regulation 270 of the PPRs, extends the right of appeal to any person who either have or have had an interest in the procurement process **or** [Board emphasis] who have been, or risks being, harmed by the decision in question. In support of this argument, the Appellant refers to the judgement of the Court of Appeal dated 30 June 2021 in the case of **Truevo Payments Limited v Direttur tal-Kuntratti, Ministeru għall-Finanzi u x-xogħol u Credorax Bank Limited**, Appeal no 95/21/1, where the court held that:

“Din il-Qorti rat ir-Regolament 270 tal legislażzjoni Sussidjarja li jgħati dritt ta appell lil fost oħrajn, “any person, having or having had an interest of who has been harmed or risks being harmed by an alleged infringement or by any decision taken”. Il Board ibbaża d-decisjoni tiegħu fuq dan ir-Regolament, u din il-Qorti tara li dan ir-Regolament huwa wiesa biżżejjed biex jgħati nteress lis-soġjeta Credorax ltd tapella mid-decisjoni tal Kumitat Evalwattiv.”

Having carefully considered the parties' submissions, the Board is compelled to reject the preliminary plea raised by the Recommended Bidder in the reply dated 10 March 2025 for the following reasons:

- 1) The plea appears to rest on unsubstantiated assumptions regarding the merits of the appellant's bid. The appellant was found to be technically compliant by the Evaluation Committee. Accordingly, this Board finds no reason to give weight to the Recommended Bidder's contention on this point.
- 2) The PPRs define a tenderer as “an economic operator that has submitted a tender” without making this contingent on whether the bid was found technically compliant during the evaluation stage. Therefore, the mere assertion of technical non-compliance does not disqualify the appellant from being considered a party with or having had interest or a party who has been or risks being harmed by the decision. The Appellant, having submitted a bid, qualifies as a Tenderer under the PPRs and under Regulation 270, is entitled to appeal the Contracting Authority's decision.
- 3) Furthermore, Regulation 270 does not impose a precondition requiring the Appellant to:
 - a. Prove that, in its bid submission, the Appellant itself met the selection criteria to be eligible to qualify for the tender and that failing to do so the appellant failed to provide sufficient grounds on how the Appellant was harmed by the award decision, and
 - b. Make references to reasons why the appellant should be preferred over the recommended bidder.

Appellant's contention relating to the failure of the Contracting Authority to disclose information requested

On 21 May 2025, Netcompany S.A. submitted an application requesting that the Board direct the Contracting Authority to disclose certain information and documentation referred to in its application for the benefit of the Appellant and/or the Appellant's legal counsel, , prior to the hearing scheduled for 12 June 2025.

The Recommended Bidder filed its reply on 29 May 2025, and the Board issued its decree on this matter on 3 June 2025.

Subsequently, on 3 June 2025, Netcompany S.A. submitted a further application for disclosure of information. The Recommended Bidder and the Contracting Authority filed their respective replies on the 4 and 5 June 2025, respectively. The Board issued a decree on 5 June 2025, addressing this second request, which was duly complied with by the Contracting Authority.

In view of the fact that the merits of this grievance have already been addressed by a prior decree issued by this Board, no further consideration is warranted at this stage.

Recommended Bidder's submission fall short of the tender conditions

The appellant maintains that the tender dossier, in Section 5(B)(c)(a) - Technical and professional ability – Performance of services, asked the bidders to produce a list of principle services by citing a maximum of three projects. This information had to be submitted online through the tender response format. The appellant therefore asserts that the bidders had to make a **self-declaration** [*Board Emphasis*] of the projects being cited and they had to provide minimum information so that the Tender Evaluation Committee could verify compliance with those requirements. From the requests for information and information obtained thereto, the Appellant contends that such self-declaration/list of principle services was not submitted. Being a note 2 requirement, the Appellant is therefore requesting the Board to send back to revaluation for the Tender Evaluation Committee to adopt proper procedure by asking for a rectification from the Recommended Bidder.

In their reply, both the Contracting Authority and the Recommended Bidder rebuts the appellant argument by stating that all necessary information requested were in fact submitted.

Upon review of the relevant documentation and testimonies, the Board notes that although the appellant claims that a self-declaration or a list of principle services was not submitted, it failed to substantiate its claims in front of this Board by basing its claims on assumptions. During the hearing, the Appellant failed to address this issue and only made reference to such claim during its initial and final submissions. Therefore, the Board has no reason to doubt the procedure adopted by the Tender Evaluation Committee.

Furthermore, the Board points out that **even if** the Recommended Bidder did in fact fail to submit this list, it does not automatically follow that the Tender Evaluation Committee shall send a rectification request. The Board here find it opportune to refer to Court of Appeal's decision of the 30 July 2018 in the names of **Bonnici Bros Projects Ltd et v. Ministru Ghas-sahha et** and the decision of the 25th June 2018 in the names of **Rockcut Limited v. Id-Direttur Generali tad-Dipartiment tal-Kuntratti et** where the Court of Appeal held that:

“L-offerent m'ghandux jigi skwalifikat fuq in-nuqqas tal-għotja ta xi tagħrif mitlub fid-dokument tas-sejba, jekk kemm il-darba l-kumitat ta' evalwazzjoni jkun jista jikseb dak it-tgħarif min xi parti obra tad-dokumenti li jigu sottomessi bhala parti minn dik l-offerta.”

Consequently, based on the above reasons, the Board does not uphold the Appellant's contention.

Recommended Bidder's reference projects fall short of the technical selection criteria

The appellant maintains that the tender document required that the bidders to meet the following 5 requirements amongst others:

- 1) The bidders had to cite a maximum of three projects and these three projects
- 2) Quoted projects had to be implemented (designed, developed, tests and in production) and are in operation.
- 3) Quoted projects had to be successfully implemented during the last 7 years, being 2017 – 2023
- 4) The total value of the quoted projects shall not be less than €25,000,000.
- 5) One of the quoted projects listed is to have a minimum value of €15,000,000.

The Appellant submits the following with respect to the projects submitted by the Recommended bidder:

The Zimbabwe Project

- 1) Whether the project was **implemented and in operation** by the end of 2023.

The reference letter, dated 13 May 2024, did not contain any indication by when the project was implemented and in operation. It is the appellant submission that this project was not implemented **in full** by 2023 and that the amended reference letter presented to the Board today also confirms the Appellant's submission.

Based on the self-declarations submitted by IUNetworks LLC, there is no peace of mind that the project falls within the reference period. In the ESPD, the end date that was submitted was the 14 May 2024, which exceeds the end of 2023.

- 2) Some of the **core functions** were not implemented and in operation by the end of 2023.

The appellant draws the Board attention to clarification Note 8, Answer 12 (ii), whereby, when asked about what constitutes fully implemented, the Contracting Authority reply was that the

project must have been implemented and in operation with respect to standard functional requirements and that enhancements there is no need to fall within the reference period.

Reasons:

- 1) The Tax authority in Zimbabwe described the tasks as being main deliverables. 14 to 17 are ongoing. Tender evaluation Committee did not ask for any clarifications, they did not contact the end client.
- 2) The core items do not comply with the cumulative requirement that the project had to be implemented and in operation. Reference is again made to the reference letter, whereby items 1 to 12 there is no indication that the items were in operation (the second requirement) and items 14 to 17 failed on both implementation and in operation requirements. Item 13, although in the reference letter it is showing as completed and in production, the appellant maintains that this item was not implemented and in operation by the end of 2023.
- 3) The Appellant quoted the African Development Bank Implementation Progress and Results Report, dated 4 April 2025, to substantiate its claim. In particular, pages 4-5 state the following:
“The Release 1 (front Office functionalities and e-Services) went live on 06.10.2023 and 06.12.2023;” – Items 1 to 12 of the reference letter.
“Release 2 (implementation of Tax Agent Module) went live on 01.03.2024” - Item 13
“Release 3 (Back-end Functionalities Modules and external Integrations (Government Agencies)) went live on 01.10.2024”
“Currently, Zimra is working on the finalisation and deployment of the Risk and Compliance Module and the integration of the system with other external systems.
“The Formal Launch of TARMS is being planned for Q2, 2025”
- 4) The appellant also made reference to parts of the tender document, and claims that the modules that were not completed were all mandatory and consequently had to be implemented and in operation by the end of 2023.
- 3) The Appellant finally claims that in the award publication notice for the project, the total contract price for the whole duration of the contract was USD10.2 million. The appellant is doubting the submissions made by the preferred bidder since the amount quoted is USD10.5 even though substantial core functions have not yet been delivered.

On the other hand, the contracting authority refutes the contentions of the appellant. It makes a reference to the tender requirement Technical and professional ability – Performance of service: Section 5(B)(c)(a), which states the following:

*“List of principal services **of a similar nature** [Board Emphasis] to COTS or implemented systems that can be configured into an integrated Tax Administration system, with or without Customs Related Software Development which have been implemented (designed, developed, tested and in production) and are in operation.”*

The Contracting Authority asserts that what the tender document required is that the project as a whole is in operation and all reference letters testify to the fact from the clients themselves that the system as a whole is in operation. In the Zimbabwe project, there were some items which were still ongoing, however the project as a whole is in implementation. Therefore, on this ground, according to the Contracting Authority, the Appellant’s contention is unfounded by the wording of the Tender document itself.

The Contracting Authority maintains that the Appellant has undergone an exercise to reduce the value of the contract by the uncompleted works. The tender dossier in the respect required the value of the projects and not the value of completed works. The Contracting Authority submits that the Evaluation committee was not therefore required to go into such detail and that according to the Public Procurement Regulations, the objective of these requirements is that if chosen, the contractor would be an adequate partner, it would have the necessary financial standing and the necessary experience. It is the Contracting Authority view, that such objective does not allow the Tender Evaluation committee into nitpicking to the level of detail as to the value of completed works or relying on google searches to try and reduce the value quoted by the Recommended Bidder.

The Contracting Authority makes reference to the decision of this Board dated 14 March 2022 in case no. 1962 – *CT2244/2021 – Tender for Professional Services of an architect for general consultancy concert Hall Extension façade at Teatru Manuel*, where the Board held that once the Tender document did not specifically required the bidder to indicate the completed part of the project and proof the completed part of the project than the objectives of the PPRs and of this requirement are met.

The Board cannot but agree with the Contracting Authority based on the following:

- 1) Tender requirement Technical and professional ability – Performance of service: Section 5(B)(c)(a) explicitly requested services of a “*similar nature*”. This is proof that the Contracting Authority did not require the bidders to submit projects that exactly mimics the requirements of the tender. Therefore, the Tender document allowed for the possibility of functions to be missing from the quoted projects.
- 2) The Appellant made submissions that the Zimbabwe project was **not fully implemented and in operation** [Board Emphasis] by the end of 2023.

Clarification Note 8, Answer 12 (ii), explicitly states that the system:

“must be in full operation and is still ongoing in terms of having enhancements rather than implementation of standard functional requirements”

Therefore, the clarification note makes it clear that the Contracting Authority will allow for certain non-standard functions or enhancements to standard functions not to be fully implemented and in operation by the end of 2023 for projects that started within the reference period.

- 3) The Appellant also made submissions stating that certain “core” functions were not completed in the reference period and therefore in breach of clarification note 8. The Appellant seem to arrive at this conclusion by correlating the term “core functions” with the “main deliverables” of the Zimbabwe project and also correlating the term with the “mandatory requirements” of this Tender document. Although, the Board understands the Appellant submission, that clarification note 8 introduced an element of ambiguity, this Board categorially disagrees with such direct inference. Main deliverables in a contract or Mandatory requirements in a tender does not necessarily correlate with “core” or “standard” function of a system. It can be the case, for instance that non-core functions are still designated as mandatory simply because the Contracting Authority requires that function to be implemented. Furthermore, it is the opinion of this Board that a core function is a feature in the system that without it the Tax administration system would not function. Therefore, rather whether the function is a mandatory or not, what one need to consider is if it is “essential” for the proper running of the system.
- 4) Furthermore, from a review of the tender document and related clarifications/rectifications, the Board notes that the Contracting Authority did not specify what constitutes “standard” or “core” functions. The Board finds it opportune to make reference to the decision of this Board dated 2 April 2025 in case no. 2090 – ***MSPP/01/2022 – Request for Proposal (RFP) is for a works concession for the regeneration and Design, Management, Operation, Maintenance and Transfer Back of the ex-Chalet (Sliema) site (the “Site”) as a Superior Quality Catering and Entertainment Establishment***, where the Board held that:

“If the Contracting Authority intended to specify training requirements on topics such as effective communication, active learning, and other customer service skills, it should have made it clear in the tender documentation. Since such specifics were not included, the Board finds that the appellant’s submission, which include relevant training descriptions, should be deemed compliant with the overarching requirement of a training plan.”

This holds also for this case. The fact that release 1 (front Office functionalities and e-Services) went live by the end of 2023, without compromising the running of the Tax system, indicates that all essential/core functions for the performance of the system were implemented. Consequently, The Contracting Authority was right in its decision not to disqualify the Recommended Bidder.

The Tajikistan Submissions

The Appellant contends that the reference submitted in relation to the Tajikistan project encompasses two distinct contractual arrangements and not one. This argument is primarily based on the fact that the reference letter cites two separate contract numbers, with a notable temporal gap between the conclusion of the first contract (12 February 2020) and the Award of the second contract (8 November 2022). On this basis, the Appellant submits that the contracts should be treated as two separate projects which, when aggregated with other the other projects, would breach the tender’s express limitation that each bidder may cite more than three projects. Accordingly, the Appellant maintains that the Recommended Bidder should have elected to retain only one of the two contracts in its submissions, and that the matter should be referred back to the Evaluation Committee for proper reassessment.

In response, the Contracting Authority and the Recommended Bidder assert that the Tender documentation requires the submission of projects, not individual contracts. They submit that when considered in their entirety and in context, the two contractual engagements form part of a single, continuous project implemented in multiple phases. This interpretation is supported, in their view, by both the contents of the reference letter and the structure of the contractual documentation, which collectively illustrate that the two contracts are functionally and operationally linked. Furthermore, it was submitted that even if the value of the larger contract were to be excluded from consideration, the remaining cited projects would still collectively meet the threshold value requirement of €25 million.

Having considered the submissions, this Board is of the opinion that an accurate determination of this issue requires recourse to the purpose and intent of the procurement requirements as set out in the tender dossier. This particular tender seeks offers from bidders for the *“Provision, Design, Implementation, Maintenance and Support of an Integrated Tax and Customs Administration System (ITCAS) [Board emphasis] for the Malta Tax and Customs Administration (MTCA)”*. Furthermore, Section 5(B)(c)(a) - Technical and professional ability – Performance of services, does not impose a limitation that the referenced projects should consist of only one contract. In this regard, this Board concurs with the position advanced by the Recommended bidder, that a project may comprise multiple contractual instruments, including those covering different implementation phases, provided that they pertain to the same overarching project objective.

Upon review of the reference letter, the Board is satisfied that the two contracts in question are sequentially related and are both directed toward the development and implementation of a unified Tax Administration System in Tajikistan. Furthermore, since the Tender Document does not restrict multiple contracts to be considered as a project, then the Board find the Appellant’s contention to be without merit and declines to uphold the objection.

The Denmark Project

The Appellant referred to the requirement set out in Section 5(B)(c)(a) of the tender dossier, which stipulated that at least one of the projects listed must have a minimum value of fifteen million euro (€15,000,000). The Appellant made reference to a reference letter dated 8 April 2022, and contended that, based on the exchange rate used by the Recommended Bidder, the value of services rendered as at that date amounted to approximately €5 million. The Appellant questioned how, over the subsequent one year and eight-month period (i.e., up to 31 December 2023), the remaining €10 million could have been exhausted under the same contract.

Additionally, the Appellant pointed to the reference letter disclosed during the discovery process, which indicated that 2% of the project was carried out by a subcontractor (Hellenic Telecommunications). The Appellant also cited the results of a freedom of information request submitted to the Danish Authority, which revealed that the total value of services rendered up to 31 December 2023 amounted to DKK 118,822,430.28. After converting this sum and accounting for the 2% executed by a subcontractor, the Appellant itself acknowledged that the project value stood at approximately €15.6 million—thus meeting the stated threshold.

Nevertheless, the Appellant raised concerns over the possibility of the Recommended Bidder having engaged additional subcontractors beyond those disclosed. It was argued that if even 4% of the contract's value were attributed to other subcontractors, the net value attributable to the Recommended Bidder might fall below the €15 million threshold. The Appellant therefore maintained that there were sufficient doubts to warrant referral of the matter back to the Evaluation Committee for re-assessment.

In reply, the Contracting Authority submitted that the €15 million threshold remained satisfied even under the Appellant's own calculations. This assertion was further corroborated by the testimony of Mr. Valentzas, who confirmed the figures and scope of execution.

Having examined the matter, the Board finds that the Appellant has failed to provide sufficient or credible evidence demonstrating that the Denmark project falls short of the minimum value requirement stipulated under Section 5(B)(c)(a). On the contrary, the Appellant's own figures confirm that the project meets or marginally exceeds the required value.

The Board further observes that the Appellant's claims regarding the possible engagement of other subcontractors are entirely speculative. No substantive evidence was presented to establish:

1. That additional subcontractors were, in fact, engaged beyond the 2% attributed to Hellenic Telecommunications; and
2. That the cumulative value of services performed by such hypothetical subcontractors would reduce the effective value of the project to below the €15 million threshold.

Finally, the Board emphasises the relevance of the principle of self-limitation in public procurement law. This principle requires that the evaluation of tenders be conducted strictly in accordance with the criteria and requirements set out in the tender dossier. The Board is satisfied that the Evaluation Committee acted in accordance with this principle, and no procedural irregularities or evaluative inconsistencies have been identified upon review of the documentation, submissions, and oral testimony.

Accordingly, for the reasons stated above, the Board finds no merit in the Appellant's grievance concerning the Denmark project and does not uphold this ground of appeal.

The Recommended bidder's financial offer was inexplicably and unjustifiably decreased ex post facto

The Appellant initially contested the apparent post-submission reduction of the Recommended Bidder's financial offer. It was submitted that the originally published value of the Recommended Bidder's offer, as reflected by the Opened Tender Details, was €32,022,496.23. However, the subsequent recommendation of award, published on 18 February 2025, indicated a revised figure of €30,968,028.21, a difference of €1,054,468.02.

In response, The Contracting Authority clarified that the discrepancy arose due to a divergence between the amount entered on the ePPS system and the figure submitted in the formal financial bid form. The Evaluation Committee, in line with established procurement procedures, was instructed to rely on the price indicated in the signed financial bid form as the definitive offer value.

During the sitting held on 12 June 2025, the Appellant formally withdrew the grievance concerning the alteration of the Recommended Bidder's financial offer ex-post facto. Accordingly, the Board shall refrain from considering this matter any further.

The technical evaluation was not carried out correctly

Initially, the Appellant is particularly aggrieved by the comments made by the tender evaluation committee on the evaluation of the Appellant's as well as the Recommended Bidder's technical offer. These comments, according to the Appellant, reveal an insufficiently detailed, and at times superficial, evaluation.

In contrast, the Contracting Authority maintains that the key question is whether it observed the proper procedure, not how the evaluation allotted marks and took notes. There is nothing in the whole procedure, including in the Appellant's appeal, that somehow gives the impression that the Technical Evaluation Committee did not perform its obligations well. If the Appellant failed to read properly the information

submitted to them or any other element of the procedure, that is certainly not imputable to the Technical Evaluation Committee.

During the sitting held on 12 June 2025, the Appellant formally withdrew the grievance concerning the ambiguous and/or superficial nature of the notes of the Evaluation Committee supporting the allotted marks. Accordingly, the Board shall refrain from considering this matter any further.

The Board,

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

- a) Not to Uphold the preliminary plea by the Recommended Bidder in respect to alleged lack of legitimate interest
- b) Not To Uphold the following Appellant's contentions:
 - a. The Recommended Bidder's list of principal services does not comply with the Tender conditions
 - b. The Recommended Bidder's projects do not satisfy the Technical Selection Criterion
- c) Abstains from considering further the following Appellant's contentions, after formal withdrawal by the Appellant:
 - a. The Contracting Authority failed to disclose information requested by the appellant
 - b. The Recommended Bidder's Financial Offer inexplicably and unjustifiably decreased *ex post facto*
 - c. The Technical Evaluation was not carried out correctly
- d) Upholds the Contracting Authority's decision; and
- e) Directs that the deposit paid by the Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Mr Keith Victor Grech
Member