

PUBLIC CONTRACTS REVIEW BOARD

Case 2175 – CT2216/2023 – Tender for the Provision of Environmentally Friendly Cleaning Services and Hygiene Equipment to all Buildings and Outside Areas on the Campuses of University of Malta, The Junior College and other University Designated Sites – Lot 3

3rd November 2025

The Board,

Having noted the letter of objection filed by Dr Matthew Paris and Dr Zackariah Esmail acting for and on behalf of **AGV Non Ferrous Malta Ltd**, (hereinafter referred to as “*the Appellant*”) filed on the 29th September, 2025;

Having also noted the letter of reply filed by Dr Carlos Bugeja acting for and on behalf the **University of Malta** (hereinafter referred to as “*the Contracting Authority*”) filed on the 9th October, 2025;

Having heard and evaluated the testimony of the witness Ms Claire Saliba (Chairperson of the Evaluation Committee) summoned by Dr Zackariah Esmail acting for and on behalf AGV Non Ferrous Malta Ltd;

Having heard and evaluated the testimony of the witness Mr Chris Galea (Representative of the DIER) as summoned by Dr Carlos Bugeja;

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 28th October, 2025 hereunder-reproduced.

Minutes

Case 2175 – Objection -CT2216/2023 – Tender for the Provision of Environmentally Friendly Cleaning Services and Hygiene Equipment to all Buildings and Outside Areas on the Campuses of University of Malta, The Junior College and other University Designated Sites.

The tender was issued on the 19 th September 2023, and the closing date was the 24th of October 2023. The estimated value of the tender, excluding VAT, was €442,686.40

On 29th September 2025 AGV Non-Ferrous Malta Ltd., lodged an appeal against the University of Malta. – the Contracting Authority. In accordance with Regulation 270 of the Public Procurement Regulations. The appellant objected since the tender was Administratively not compliant.

On the 28th of October 2025, the Public Contracts Review Board (PCRB), composed of Mr. Kenneth Swain as Chairperson, Dr Vincent Micallef and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

A deposit of €2,213,43 was paid.

There were Nine bids.

The attendance for this public hearing was as follows:

Appellant –AGV Non-Ferrous Malta Ltd. (C49243).

Dr Zack Esmail – Legal Representative.

Ms Gillian Seymour – Company Representative.

Contracting Authority – University of Malta.

Dr Carlos Bugeja – Legal Representative.

Ms Claire Saliba – Chairperson.

Mr Glen Buttigieg – Secretary.

Preferred Bidder – Floorpul Ltd (37550)– invited but did not attend.

Department of Contracts

Dr Audrey Marlene Buttigieg Vella – Legal Representative. Invited but did not attend.

Opening Statements.

Mr. Kenneth Swain, Chairperson of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, AGV Non-Ferrous Malta Ltd., and the Contracting Authority, the University of Malta.

Initial Submissions.

Initial Submissions by Dr. Zack Esmail (for the Appellant).

Dr. Zack Esmail stated that the objection concerns an interesting legal point. The tender, issued in 2023, was divided into four lots, and the objection relates to Lot 3. The tender did not require an *Employment Agencies Licence* at the time, and the award was granted to AGV Non-Ferrous Malta Ltd. However, the tender was later re-evaluated, and AGV Non-Ferrous Malta Ltd. received a letter of rejection, with the award being reassigned to Floorpul Co. Ltd.

Since this requirement was not requested at the submission stage, the Contracting Authority could not exclude AGV Non-Ferrous Malta Ltd. solely on the basis of the Employment Licence. The Contracting Authority had other means to address this matter.

Initial Submissions by Dr. Carlos Bugeja (for the Contracting Authority).

Dr. Bugeja agreed with the sequence of events presented but not with the interpretation of their consequences. He explained that the relevant law came into effect on 1 April 2024, and maintaining the original award would have resulted in signing an *illegal contract*.

Dr. Bugeja stated that the situation involved *overriding mandatory provisions* — the University had to either comply with the law or act unlawfully. These provisions were rooted in public policy. It was

neither the University's fault nor that of the Appellant; however, failing to withdraw the recommendation would have resulted in an *illegal award*.

Witnesses.

Ms. Claire Saliba (ID 376174M) — Summoned by Dr. Zack Esmail.

Ms. Saliba, a Senior Executive at the University and Chairperson of the Evaluation Committee, testified that there were three evaluators: Mr. Lawrence Gellel, Dr. Chris Spiteri, and Ms. Rita Sant, with Mr. Glen Buttigieg serving as Secretary.

All lots were evaluated separately. Lot 3 was originally awarded to Simply Clean, but after re-evaluation was granted to AGV Non-Ferrous Malta Ltd., as the second compliant bidder. During re-evaluation, the University requested Employment Agency Licences by email, following the directions of the Department of Contracts (DOC). Instead, AGV Non-Ferrous Malta Ltd. responded by email, referring to a *Transfer of Company*.

The Chairman asked whether this request was included in the tender's terms and conditions.

Ms. Saliba replied that the bidding process had commenced before the introduction of the legal notice, and AGV Non-Ferrous Malta Ltd. did not possess the required licences. On 29 March 2025, the Contracting Authority requested proof of this licence, as required by the DOC and the General Contracts Committee (GCC).

The Chairman clarified that the tender was issued in 2023, the new requirement came into force on 1 April 2024, and entities were given two months to regularise their position.

Ms. Saliba further explained that the University requested a *transfer of company* for Lots 3 and 4. This was done under the direction of the Department of Contracts. She added that a representative from the Department of Contracts would have been helpful as a witness, since they had instructed all bidders to regularise their companies. The Department of Contracts had also instructed the University to re-evaluate both Simply Clean and AGV Non-Ferrous Malta Ltd., as both were deemed administratively non-compliant without the required licence.

The Chairman asked if AGV Non-Ferrous Malta Ltd. was administratively compliant before the re-evaluation. The Board understood that AGV Non-Ferrous Malta Ltd. had been compliant to the extent of having been initially awarded the tender. Subsequently, however, when the new licence requirement came into effect, the Department of Contracts instructed the University to verify the licences — and the Appellant failed to provide them.

Dr. Esmail asked what happened regarding the *request for assignment*.

Ms. Saliba stated that if AGV Non-Ferrous Malta Ltd. had held the required licences, they would have remained compliant. Instead, they requested a *Transfer of Business*. She explained that although the award had already been made, failure to submit the requested licences rendered the contract invalid.

Dr. Esmail confirmed that when the University received a *request for assignment* concerning Lot 4, AGV Non-Ferrous Malta Ltd. was also asked to submit one for Lot 3. For tenders exceeding €500,000, the DOC requires certain certificates. Since AGV Non-Ferrous Malta Ltd. had to regularise its position on Lot 3, it was easier to request an assignment.

The second evaluation assessed administrative, technical, and financial criteria. The Contracting Authority verified online that Floorpul Co. Ltd. held the required licence as indicated by the DOC.

Cross-Examination by Dr. Carlos Bugeja.

Ms. Saliba explained that the Department of Contracts wanted all companies to be compliant. The transfer request for Lot 4 was accepted by the DOC, but the one for Lot 3 was not. The reason was that in Lot 4, the contract had already been signed, allowing a transfer of company. In Lot 3, since the contract had not yet been signed and the required document was missing, the transfer was not allowed, and the bid was deemed non-compliant.

Mr. Chris Galea (ID 45577M) — Summoned by Dr. Carlos Bugeja.

Mr. Chris Galea, Head of Operations, testified that the Employment Agencies Regulations 2023 (452.130) came into force on 1 April 2024, with a two-month transition period, becoming enforceable from 1 June 2024. These regulations required contractors to be licensed.

There are three types of licences: *Recruitment Agencies*, *Temporary Work Agencies*, and a third category where the contractor maintains direction and control over workers. The previous law focused mainly on recruitment; therefore, the new regulations were introduced to ensure all agencies and contractors were licensed and employment conditions were properly regulated.

These regulations required due diligence before issuing licences, ensuring contractors met strict conditions. Licences could be revoked if contractors breached laws or engaged in offences such as sexual harassment, human trafficking, or paedophilia.

Licences are ongoing and subject to review based on feedback from relevant entities, including the Police. A Working Committee evaluates all applications and may revoke or reject licences. Documentation includes tax compliance certificates, proof of operating premises, and qualifications of the competent manager. After evaluating, they recommend that the offer could be approved.

Dr. Bugeja asked the witness to present two licences — one for Floorpul Ltd. and one for AGV HR Management Ltd.

The Chairman, however, found this evidence irrelevant.

Final Submissions.

Final Submissions by Dr. Zack Esmail.

Dr. Esmail requested to raise a new grievance regarding Ms. Saliba's testimony, asserting that the Evaluation Committee, the DOC, and the Contracting Authority acted *ultra vires* in the re-evaluation of the tender.

The Chairman suggested that this point could form part of his final submissions, noting that Ms. Saliba's testimony had been clear.

Dr. Esmail maintained that the Appellant had heard of the re-evaluation's merits for the first time through her testimony and wished to substantiate his plea.

Dr. Bugeja replied that the Evaluation's decision was based solely on one point and that he was not obliged to address its merits.

The Chairman observed that the appeal was limited and related to a *breach of the principle of self-limitation*. As this had already been discussed, he suggested proceeding.

Dr. Esmail withdrew the plea, noting that no blame was being directed at the University or any party. The objective was to examine the re-evaluation process.

He explained that the Contracting Authority had requested the licence, and in its correspondence with the DOC, requested documents such as the ESPD. The same process applied to Lot 4, and therefore AGV Non-Ferrous Malta Ltd. had to do the same for Lot 3. However, in September 2025, AGV Non-Ferrous Malta Ltd. was informed that its award had been withdrawn and, following re-evaluation, granted to Floorpul Ltd.

Dr. Esmail argued that the Evaluation Committee breached the principle of *self-limitation* by introducing a new requirement that had not been part of the original tender. While the licence was indeed important, exclusion and re-evaluation based on it violated this principle.

He further stated that the Evaluation Committee deemed Floorpul compliant based solely on an online search, without confirmation from the bidder. AGV Non-Ferrous Malta Ltd. was evaluated on a criterion that had not been previously required and was unknown at the time of tender submission.

Since the law changed after the tender's issue, the Contracting Authority should have cancelled and reissued the tender, rather than exclude the Appellant and re-evaluate on new grounds. This was the basis of the Appellant's grievance.

Final Submissions by Dr. Carlos Bugeja.

Dr. Bugeja began by stating that no one was questioning Floorpul Ltd.'s capacity. The awarded bidder's licence had been verified online, and an additional confirmation email was sent on 25 February 2025 at 12:01 p.m. The online system used — employmentagency.gov.mt — is an official, continuously updated registry, similar to the Malta Business Registry.

The rejection of AGV Non-Ferrous Malta Ltd.'s recommendation was due solely to the requirements of the new law. Both the Directive and the Public Procurement Regulations require the Contracting Authority to adhere to the law throughout the process.

Although the licence was not originally requested, by the time the contract was to be signed, the University could either award the tender to a compliant bidder or sign an *illegal contract*.

It was unfortunate for both the University and AGV Non-Ferrous Malta Ltd. that a new law of such public importance had been introduced. The law's objective — protecting workers — was of paramount public interest and public policy. Malta had long faced issues with foreign workers arriving without valid employment, which this law sought to remedy.

Dr. Bugeja added that legal reforms inevitably create unequal situations but not *legal discrimination*. He cited the European Court of Human Rights case *Maggio vs. Italy*, where it was held that disparities resulting from new legislation do not necessarily amount to discrimination. One cannot imagine, what would happen if something happened to the workers at the University and their contract was illegal. Lot 4 was requested to be regulated also, after the contract was signed.

He concluded by noting that while AGV Non-Ferrous Malta Ltd. had offered the lowest price, the University could not accept the *cheapest* bid if it meant entering into an *illegal contract*.

Conclusion of the Hearing.

With no further arguments presented, Chairman Mr. Kenneth Swain thanked all parties and formally concluded the session.

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 28th October, 2025.

Having noted the objection filed by Dr Matthew Paris and Dr Zackariah Esmail for and on behalf of AGV Non Ferrous Malta Ltd [TID 200372] (hereinafter referred to as "*the Appellant*") on 20th September, 2025, refers to the claims made by the same Appellant with regard to the tender of reference CT2216/2023 – *Tender for the Provision of Environmentally Friendly Cleaning Services and Hygiene Equipment to all Buildings and Outside Areas on the Campuses of University of Malta, The Junior College and other University Designated Sites - AGV* listed as case No. 2175 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Zackariah Esmail

Appearing for the Contracting Authority: Dr Carlos Bugeja

Whereby, **the Appellant contends** that:

a) **Breach of Self Limitation Principle -**

The sole reason for the withdrawal of award was stated as being: "*The offer is Administratively Not Compliant, since the Economic Operator TID 200372- AGV Non-Ferrous Malta Ltd does not possess the requisite license at the time of the re-evaluation.*"

Whilst the letter of rejection does not specify the details of the '*requisite license*', such license is being interpreted as being the Employment Agency License by virtue of the Employment Agency License as enacted by Legal Notice 2023.

The tender in question was issued and thereby the bidding process commenced prior to the coming into force of the Employment Agencies Regulations introduced by Legal Notice 270 of 2023. As such, the evaluation committee's reliance on the licensing requirements contained in those

Regulations to invalidate the Applicant's award constitutes retroactive application of new regulatory requirements and thereby a breach of the self-limitation principle.

The appellant company thereby submits that the Evaluation Committee breached the principle of self-limitation when withdrawing the award of the appellant solely on the employment license, which license was not required at submission stage.

It is a foundational principle that administrative and regulatory changes which impose new obligations or sanctions should not be applied retroactively to conduct that pre-dated the change, absent clear and express statutory language to that effect. This principle is part of the broader notion of legal certainty and legitimate expectations recognized in domestic and international doctrine.

In the PCRB decision with number *Case 1665 of 2021* [27th December, 2021], this Honourable Board held that: *'This Board opines that the Evaluation Committee did not observe the principle of Self-Limitation when it deemed the Appellant's offer as technically noncompliant when it adjudged the equipment of the Appellant company on issues not included within the Tender Dossier'*

This Board also noted the Contracting Authority's **Reasoned Letter of Reply** filed on the 9th October 2025 and its verbal submission during the hearing held on 28th October, 2025, in that:

- a) The University of Malta ("University") disagrees with the objection and humbly requests that it be rejected for the reasons set out below, for those that may emerge at the hearing, and for any other reasons this Board may determine.
- b) The recommendation was withdrawn because, at the time of re-evaluation, AGV did not hold the requisite Employment Agency licence required by law. This is an eligibility deficiency that persists at award stage and is fatal to administrative compliance. The Employment Agencies Regulations, 2023 (S.L. 452.130) were issued on 23 Nov 2023 and came into force on 1 April 2024, with entities in scope given until June 2024 to obtain the licence. From that point on, operators supplying labour/outsourcing services needed a valid licence. This is not a matter of retrospective application but a matter of present-time eligibility in view of a matter of law (enacted outside the University's power or control). A licence is an individual administrative authorisation issued by a competent authority that permits an activity which would otherwise be unlawful or prohibited, subject to conditions, and it be disputed that tenderers must meet the legal baseline that the service they are proposing to provide are not illegal or afflicted by illegality. It is obvious that it was not the University's fault that the law came into force mid-procedure, and yet, the University had to abide by the law. Indeed, a reading of the law reveals that this law is a matter of public policy, which certainly could not be ignored; put simply, not withdrawing the recommendation would have

resulted in an illegal award. In short, the University chose the only lawful path: any award to an unlicensed operator would have been illegal.

- c) The Employment Agencies Regulations (S.L. 452.130) exist to standardise and license Malta's recruitment, temporary-work and outsourcing operators, imposing fit-and-proper and competence thresholds, financial safeguards (e.g., bank-guarantee), and conduct rules (notably the ban on charging candidates), so that job-seekers are protected and the labour market functions transparently and fairly.
- d) As a matter of public policy, the regime curbs abusive intermediation, ensures only vetted operators can supply labour (including where third-country nationals are involved), and ties compliance to downstream processes (e.g., agencies must hold a DIER licence before submitting single-permit applications), thereby aligning private agency activity with the State's responsibility to protect workers and uphold orderly employment relations.
- e) The Employment Agency licensing regime therefore pursues overriding reasons of public interest. As such, licensing is public policy in nature, and a contracting authority cannot lawfully award a public contract to an operator lacking a licence where the activity requires one. Doing so would expose the authority to illegality risk, supervisory censure, and potential ineffectiveness of the purpose of the tender.
- f) Ensuring that the recommended bidder holds all mandatory authorisations at award is standard procurement due diligence. It is not retroactive punishment for past conduct; it is a prospective check that the operator is presently eligible to perform the contract. It must also be stated that AGV's reliance on the doctrine of "*self-limitation*" is misplaced. The principle constrains a contracting authority from adding criteria outside the tender dossier; it does not prevent the authority from verifying current legal eligibility (licences/authorisations) before award. Verifying possession of a mandatory licence at award is not an '*additional criterion*'; it is verification of legal capacity to perform the contract. Indeed, article 18(2) of the Directive 2014/24/EU, creates a very specific direction: "*Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X*". It matters not that the law came into force at a later stage; as was stated by the CJEU in *Tim Spa* (C-395/18- 30 January 2020): "*In that regard, it should be borne in mind, first, that the contracting authorities must, throughout the procedure, observe the principles of procurement set out in Article 18 of Directive 2014/24*".
- g) The requirement is that compliance with all laws is at all stages, throughout the procedure. Even if AGV recasts its point as "*legal certainty*", there is no vested right to contract award prior to conclusion of the procedure, and public authorities may require compliance with updated regulatory baselines serving a general interest (orderly labour market/licensing). The ECtHR has affirmed several times that while the rule of law guards against arbitrary and capricious retroactivity,

the legislature/administration is not in principle precluded from applying new frameworks prospectively - and interventions are assessed against compelling general-interest reasons and proportionality.

- h) For instance, in *Maggio and Others vs Italy* (46286/09, 6286/09, 52851/08, 53727/08, 54486/08, 56001/08, 31 May 2011, § 74-31/08/2011), it was alleged that discrimination occurred in view of the fact a new law rendered his situation less favoured. The Court found no discrimination in this respect, as new laws (that can change the situation of some subjects) are a natural part of the progression in society. The Court stated that it: "*...considers that this is an inevitable consequence of introducing new regulations to replace previous schemes. Thus, in the present case, bearing in mind the margin of appreciation afforded to States in this sphere, the impugned cut-off date can be deemed reasonably and objectively justified. 74. The fact that the impugned cut-off date arose out of legislation enacted pending the first applicant's proceedings for the determination of his pension does not alter the above conclusion for the purposes of the examination under Article 14.*"
- i) The University's withdrawal of AGV's recommendation was the only lawful course, given AGV's failure to hold the mandatory Employment Agency licence at award stage; any contrary award would have been ultra vires and unlawful.

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 witnesses duly summoned, will now consider Appellant's grievances as follows in their entirety.

- a) In the appeal filed by **Messrs. AGV Non-Ferrous Malta Ltd** (hereinafter referred to as "the Appellant" or "AGV") against the **University of Malta** (hereinafter referred to as "the Contracting Authority" or "the University"), the Board, having examined the acts of the case, the parties' submissions, and all relevant documents, hereby delivers the following decision.
- b) By means of a letter dated the 14th of March, 2025, the Appellant was informed that its offer had been recommended for award. Subsequently, by a letter dated the 19th of September, 2025, the same Appellant was informed that the award in its favour was being withdrawn, and that the offer submitted by Messrs. Floorpul Co. Limited was being recommended instead. Feeling aggrieved by this reversal, the Appellant duly filed its appeal within the statutory timeframe, accompanied by the requisite deposit, alleging that the withdrawal of the award was unlawful and contrary to the fundamental principles of procurement law.
- c) The Appellant's main grievance concerns the application of the Employment Agencies Regulations, 2023, introduced by Legal Notice 270 of 2023. The Appellant contends that the tender

process commenced prior to the promulgation and entry into force of this Legal Notice, and that the tender dossier did not at any stage require possession of an Employment Agency Licence. Accordingly, the Appellant maintains that the Evaluation Committee's subsequent reliance on the said Regulations to disqualify its bid constitutes a retroactive application of law and a breach of the principles of self-limitation, legal certainty, and legitimate expectations.

- d) The Contracting Authority, through its legal representatives, opposed this line of reasoning. It argued that the Employment Agencies Regulations came into force on the 1st of April, 2024 and granted a transitional period of two months, expiring on the 1st of June, 2024, for first-time applicants to regularise their position. As of the date of re-evaluation in September 2025, the Appellant had not yet obtained the requisite licence, which rendered its offer administratively non-compliant. The University further submitted that this was not a case of retrospective application but a matter of legal necessity, i.e. the award could not lawfully be made to an unlicensed operator, as to do so would contravene public policy and expose the Contracting Authority to illegality. The University thus maintained that its only lawful course of action was to withdraw the recommendation in favour of AGV.
- e) The Board has given due consideration to the submissions of both parties and has examined the applicable legal and factual framework. It is not in dispute that the tender process was initiated prior to the coming into force of Legal Notice 270 of 2023. It is equally undisputed that the tender dossier did not stipulate the possession of an Employment Agency Licence as a precondition for participation or award. Moreover, the Appellant was duly recommended for award prior to the effective date of the said Legal Notice.
- f) Legal Notice 270 of 2023 expressly provides that *"the provisions of these Regulations shall come into force on the 1st April, 2024,"* granting a further transitional period of two months to first-time applicants to obtain the necessary licence. It follows that, if the tender was launched prior to that date, the new licensing requirement could not have applied at the time of submission or evaluation, as the law had not yet taken effect.
- g) In administrative law, it is a long-established rule that legislation and administrative measures are presumed to operate prospectively, not retrospectively. The principle of non-retroactivity precludes an authority from imposing new obligations or sanctions on conduct lawfully undertaken under a prior regime, unless the legislature expressly provides otherwise. This principle lies at the heart of legal certainty, which demands that the law be both predictable and knowable, allowing persons to organise their affairs in reliance on the framework existing at the time. It also underpins the doctrine of legitimate expectation, which safeguards the trust that individuals may reasonably place in the continuity of administrative practice.
- h) In the present case, the Board considers that the Evaluation Committee's reliance on the Employment Agencies Regulations to withdraw the award constituted the introduction of a new substantive requirement after the close of the tender process. The principle of *self-limitation* dictates

that an administrative authority is bound by the rules it has set for itself. It may not alter or expand those rules mid-process to the detriment of participants. By disqualifying the Appellant on the basis of a licence that was not required at the time of submission, the Evaluation Committee acted in contravention of that principle and in disregard of the requirement of legal certainty.

- i) This Board recalls the classical maxim *tempus regit actum* i.e. that time governs the act. Administrative acts must be assessed in accordance with the law in force at the moment they are carried out. To do otherwise would undermine the integrity of the tendering process and erode the confidence of economic operators in the stability of public administration. The Appellant was therefore entitled to expect that its offer would be evaluated solely in accordance with the conditions and legal framework prevailing at the time of submission. The Board thus finds merit in the Appellant's complaint that the withdrawal of the award constituted an unlawful retroactive application of a subsequent legal requirement.
- j) Nevertheless, while the Board upholds the Appellant's grievance in principle, it must also address the current legal reality. The University has correctly observed that, by operation of law, the performance of the contract now requires possession of a valid Employment Agency Licence. Whatever the fairness of the Appellant's position at the time of submission, it remains incontrovertible that no public authority can lawfully conclude a contract with an operator lacking the necessary authorisation. To do so would contravene the public policy purpose of the Employment Agencies Regulations and expose the Contracting Authority to illegality.
- k) The Board is thus faced with a procedural impasse. On the one hand, the Appellant's disqualification was procedurally flawed and contrary to established principles of administrative law. On the other hand, the University is now legally precluded from awarding the contract to the Appellant in its present unlicensed state. In these circumstances, the Board considers that a return to the evaluation stage would serve no useful purpose and would not restore compliance with the law as it currently stands.
- l) Accordingly, the Board deems it appropriate, in the exercise of its powers, to invoke ***Regulation 90(3) of the Public Procurement Regulations (Subsidiary Legislation 601.03)***, which provides as follows:

“In its decision the Review Board shall have the power to cancel the tendering process if it appears to it that this is the best solution in the circumstances of the case; in this case no party shall have any right to request damages because of the decision cancelling the call.”

- m) The Board considers that the change in the legal framework constitutes an exceptional circumstance which renders the continuation of this procedure impossible in law and unjustified in practice. To compel the University to proceed further would be to require it to act in breach of a statutory regime of public order.

- n) For these reasons, the Board concludes that, while the Appellant’s legal argument is well-founded and the principle of self-limitation has indeed been breached, the contract cannot now be lawfully concluded. Consequently, the appropriate and equitable remedy is not to order re-evaluation but to cancel the procedure altogether.
- o) In view of all the foregoing, the Board hereby **upholds** the appeal in principle, **declares** that the withdrawal of the award was not in conformity with the tender conditions as they stood at the time of submission, and **orders**, pursuant to **Regulation 90(3) of the Public Procurement Regulations (S.L. 601.03)**, that the **tender procedure be cancelled in its entirety**.

The Board,

Having evaluated all the above and based on the above considerations, concludes and decides in relation to Lot 3:

- a. To uphold Appellant’s Letter of Objection and contentions;
- b. Not to confirm the decision of the Evaluation Committee in its entirety;
- c. Not to uphold the first request/demand for re-evaluation but essentially upholds the second request demanding the board “*to do anything which is conducive and necessary for the proper execution of the above requests*”. To this effect the Board **orders**, pursuant to **Regulation 90(3) of the Public Procurement Regulations (S.L. 601.03)**, that the **tender procedure be cancelled in its entirety**;
- d. Directs that the deposit paid by Appellant to be reimbursed in full.

Mr Kenneth Swain
Chairman

Dr Vincent Micallef
Member

Mr Lawrence Ancilleri
Member