PUBLIC CONTRACTS REVIEW BOARD

Case 2192 – Objection 615 – SVT/LC/T/04/2025 - Tender for the Provision and Maintenance of Traffic Signs and Road Markings with maximised lifespan while minimising associated environmental impacts for the Santa Venera Local Council.

10th December, 2025

The Board,

Having noted the *Letter of Objection* filed by Dr Tonio Cachia acting for and on behalf of **B. Grima & Sons Limited** (hereinafter referred to as *"the Appellant"*) filed on the 28th October, 2025;

Having also noted the *Reasoned Letter of Reply* filed by Dr Natalino Caruana De Brincat acting for and on behalf of the **Santa Venera Local Council** (hereinafter referred to as *"the Contracting Authority"*) filed on the 5th November, 2025;

Having heard and evaluated the testimony of the witness Mr Adam Grima as duly summoned by Dr Tonio Cachia acting for and on behalf of the Appellant;

Having heard and evaluated the testimony of the witness Mr Duncan Hall as duly summoned by Dr Lara Attard acting for and on behalf of the Contracting Authority;

Having heard and evaluated the testimony of the witness Ms Tiffany Abela as duly summoned by Dr Lara Attard acting for and on behalf of the Contracting Authority

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 4th December, 2025, hereunder-reproduced.

Minutes

Case 2192 – 615 – SVT/LC/T/04/2025 – Tender for the Provision and Maintenance of Traffic Signs and Road Markings with Maximised Lifespan while Minimising Associated Environmental Impacts for the Santa Venera Local Council

The tender was issued on 21st July 2025, and the closing date was the 27th of August 2025. The estimated value of the tender, excluding VAT, was €80,000

On 28th October 2025, B. Grima & Sons Ltd lodged an appeal against the Santa Venera Local Council, claiming that the winning bid was not administratively and technically compliant, since the winning bidder did not possess a valid BCA Licence issued in terms of Chapter 623 of the Laws of Malta, in accordance with Regulation 270 of the Public Procurement Regulations.

A deposit of €400 was paid.

There were six bids.

On the 4th of December 2025, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Mr Keith Victor Grech and Dr Ing. Damien Gatt as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – B. Grima & Sons Ltd.

Dr Tonio Cachia – Legal Representative
Mr Adam Grima – Company Representative

Contracting Authority – Santa Venera Local Council

Dr Lara Attard – Legal Representative
Ms Tiffany Abela – Executive Secretary
Mr Duncan Hall – Evaluator

Recommended Bidder – 5H Co. Ltd.

Dr Ilenia Agius Debono – Legal Representative
Mr Marco Paul Vella – Company Representative

Opening Statements

Dr Vincent Micallef, Chairman of the Public Contracts Review Board (PCRB), welcomed the parties present, namely the Appellant, B. Grima & Sons Ltd, the Contracting Authority, Santa Venera Local Council, and the Recommended Bidder, 5H Co. Ltd. He invited the parties to identify themselves and those whom they were representing during their submissions for recording purposes. The Chairman then invited Dr Tonio Cachia, representing the Appellant, to commence his submissions.

Initial Submissions.
Initial Submissions by Dr Tonio Cachia (for the Appellant)

Dr Tonio Cachia stated that the merit of the appeal was that the recommended bidder had not submitted the BCA licence, which is mandatory by law, although it was not expressly stated as a requirement in the tender document.

Dr Cachia emphasised that, in the first instance, this licence is required by law and, secondly, that whilst the appellant was uploading its offer, the system requested the presentation of this document. Despite the fact that the appellant could have submitted even an empty sheet, it duly complied with the request. At this stage, the appellant also verified that the preferred bidder did not possess this licence.

Dr Cachia continued by noting that the system had requested the licence, and the appellant insisted that the licence was a requirement. Although the tender was issued as a supply tender, and the CPV code used was for road markings, Dr Cachia contended that if the tender had been designated solely for painting, the Contracting Authority would have been correct in its decision. However, when one examines the tender, including its title and the Bill of Quantities (BOQ), one can see that it includes the provision and maintenance of traffic signs and road markings. This means that there are items beyond mere supplies, such as excavation works and the use of concrete for night traffic signs, which require a BCA licence to be executed.

Dr Cachia contended that such items formed the basis of the appellant's objection, as they constituted the merit of the appeal. At this stage, Dr Cachia referred to a similar case involving the Rabat Local Council, which he insisted the Santa Venera Local Council should have followed.

Initial Submissions by Dr Lara Attard (for the Contracting Authority)

The Chairman invited Dr Lara Attard, representing the Contracting Authority, to present her initial submission. Dr Attard commenced by stating that the Contracting Authority was presenting a preliminary plea and that she would make further submissions after witnesses were called in order to clarify the technical aspects.

Dr Attard declared that this appeal was Fouri Termine and should not be heard. She contended that the rejection letter was issued on 17th October 2025, and the appeal was presented on 28th October 2025, meaning that the mandatory ten-day period for the presentation of appeals had been exceeded.

Dr Attard explained that if the hearing were to continue, she would call the members of the Adjudication Committee to give evidence and explain the reasons leading to their decisions.
Intervention by the Chairman

At this stage, the Chairman informed the appellant that the Board would be including the plea for the preliminary exception together with the merit of the case in its final decision, in accordance with a Court of Appeal judgment involving Support Services Limited.
Intervention by Dr Tonio Cachia

At this stage, Dr Cachia insisted that the email containing the appeal was sent on 27th October 2025.

Further Intervention by the Chairman

The Chairman requested the support staff to produce a printout of the mentioned email, as this had a bearing on the issue of the Fuori Termini raised by the Contracting Authority. Following the presentation of a copy of the email, the Chairman stated that the official seal of the PCRB on the email indicated 28th October 2025, but the email itself showed that it was sent on 27th October 2025.

Further Intervention by Dr Tonio Cachia

Dr Cachia reaffirmed that the letter of objection was sent on a Monday at 14:35 on 27th October 2025. This was confirmed by the Chairman, who stated that the Board would examine the matter further, particularly regarding the working hours of the PCRB support staff.
At this stage, the Chairman invited Dr Lara Attard, representing the Contracting Authority, to present her submission on the merit of the case.

Submission by Dr Ilenia Agius Debono (for the Recommended Bidder)

Dr Ilenia Agius Debono stated that the recommended bidder supported the Contracting Authority's position that the letter of objection was received after the stipulated ten-day period and that the hearing should not proceed.

Dr Agius Debono stated that there was no requirement referring to the need for a BCA licence in the tender document, as suggested by Dr Cachia. She indicated that, following the examination of witnesses and further submissions, more details would be provided regarding:

a. The amendments concerning the use of BCA licences;
b. Who may hold such a licence; and
c. How the requirements of this tender did not necessitate such a licence by contractors applying for this tender.

Witness Testimony

Mr Adam Grima (ID 115080M) – Summoned by Dr Tonio Cachia
Dr Cachia called Mr Adam Grima, Company Representative of B. Grima & Sons Ltd, to take the witness stand. In response to questions by Dr Cachia, Mr Grima stated that he had personally submitted the bid and that the ePPS system had requested a BCA licence to be attached. This included licences for excavations, building, construction, and demolition.
In response to further questions, Mr Grima stated that he had completed the BOQ, which covered the installation of noticeboards involving excavations, road markings falling under construction, and items from Item 96 onwards which referred to supplies. Mr Grima concluded by stating that Bill A, Bill B, and Bill C all included works, supply and road marking, laying, traffic signs supply, and installations.

Mr Duncan Hall (ID No. 46882M) – Summoned by Dr Lara Attard

Dr Lara Attard called Mr Duncan Hall, an evaluator on the Adjudication Committee, as a witness. In response to questions by Dr Attard, Mr Hall explained that, after examining all the documents, it was clear that this was a tender for supplies. He continued by noting that the clause referred to by the appellant was a template issued by the Department of Contracts, namely the XML format, in which the first three words stated that it was for works contracts only. He continued by explaining that there are three types of BCA licences, and the

Department of Contracts must specify which one is required, namely Excavation, Construction, or Demolition.

Mr Hall continued by stating that a Contracting Authority must indicate which of these licences is required for a tender, and in this case, none had been indicated as a requirement because the tender was for supplies.

Mr Hall specified that the tender contained numerous indications and references demonstrating that it was a tender for supplies, as could be seen from certain clauses in the tender itself referring to Provisions of Supplies.

He noted that the Instructions to Tenderers were common to all tenders, but the General Conditions varied between supplies, works, and services tenders. In this case, the Contracting Authority had used the General Conditions for supplies.

In response to further questions by Dr Attard, Mr Hall stated that all authorities publishing calls for tenders must abide by the Department of Contracts' XML Standard Document issued in August 2024, and this clause stipulated, as in this case, that it governed works contracts only.
In response to other questions by Dr Attard, Mr Hall explained that there were four bids, and the other three bidders had not presented the document in question. He continued by noting that the threshold for procurement was different, as the tender fell below the departmental threshold.

Cross-Examination by Dr Tonio Cachia (for the Appellant)

In response to questions from Dr Cachia, Mr Hall stated that he had concluded it was a supplies tender by following the General Conditions set by the Local Council. He confirmed that he had examined the BOQ and continued by noting that there were three types of procurement, and one had to establish which type to use.

Mr Hall explained that the Public Procurement Regulations stipulated that the highest value prevailed, and in this case, the highest value related to supply. When he examined the BOQ, the items relating to works were minimal, and therefore the tender could not be issued for works or services. The template used was therefore that for supplies, as one cannot use two templates simultaneously.

Cross-Examination by Dr Ilenia Agius Debono (for the Recommended Bidder)

In response to her questions, Mr Hall quoted Article 26.1 of the General Conditions, entitled "Methods of Payment," which stated that payments would be made in euro and that this was a unit price supplies contract. Mr Hall also quoted Article 24, "Quality of Supplies," where, in the Modification Clause, one again found references to supplies.

Ms Tiffany Abela (ID No. 258282M) – Summoned by Dr Lara Attard

Dr Attard called Ms Tiffany Abela, Executive Secretary of Santa Venera Local Council, to take the witness stand. In response to questions by Dr Attard, Ms Abela stated that the Contracting Authority had closed the tender system on 17th October 2025, which provided a time limit of ten days for appeals to be lodged; otherwise, the system would not permit its closure.

In response to further questions, Ms Abela explained that the rejection and award letters were sent on 17th October 2025, following the ten-day appeals period. She explained that an appeal had been received by the PCRB, but this had arrived late, as the system had become locked.

Intervention by the Chairman

The Chairman clarified that the PCRB had received the appeal on 27th October 2025 at 14:36, and since the tender's closing date was 17th October, this was within the stipulated period. The official stamp of the PCRB showed 28th October, but in all fairness, the appeal was received by the PCRB on 27th October, and this had also been copied to the Santa Venera Local Council. In response to further questions by Dr Attard, Ms Abela stated that she was not certain but believed that the time limit for the submission of appeals was 12:00 noon.

Further Intervention by the Chairman

At this point, the Chairman intervened and, quoting from correspondence sent by the Santa Venera Local Council, which read: "*Appeals have to be submitted to the Public Contracts Review Board and shall be valid only if accompanied by a deposit equivalent to 0.5 per cent of the value estimated by the Contracting Authority within ten calendar days*," deduced that there was no reference to a specific time limit within the ten-day period in this correspondence.
The Chairman continued by stating that the PCRB had its own working hours, and the Board would take all considerations regarding this issue into account.

Cross-Examination by Dr Ilenia Agius Debono (for the Recommended Bidder)

Dr Ilenia Agius Debono requested and was provided with a copy of the award notice and the rejection letter sent by the Santa Venera Local Council by Ms Abela.

Final Submissions

Final Submissions by Dr Tonio Cachia (for the Appellant)

Dr Cachia stated that he would not discuss the issue of the Fuori Termini and that he understood the Contracting Authority was bound by certain administrative requirements and had to decide which classification was to be used. However, the fact remained that part of the tender required certain works, and even if this was only one item, such as excavation, the law demanded a BCA licence.

At this point, Dr Cachia referred to the case of AGV Non-Ferrous Malta vs The University of Malta, which was similar to the present case, and in which the main issue was the importance of adhering to legal requirements, whether before or after the issuance of tenders.
Dr Cachia explained that the tender document should have been drafted in a more refined and clear manner in order to avoid misinterpretations. If the tender had been specifically designated for supplies only, this appeal would not have been necessary.

Dr Cachia insisted that there were items not falling under the category of supplies and that, according to the BOQ, these items required a licence. He contended that the tender should have been divided between supplies, which do not require a licence, and other works, which do require a licence, or alternatively divided into lots.

Dr Cachia concluded that everyone was obliged to abide by this relatively new law, which mandated this licence. One could not omit this requirement from the tender on the grounds that one had to decide based on the majority of items.

Final Submissions by Dr Lara Attard (for the Contracting Authority)
Dr Attard insisted that the tender was not awarded before the stand-still period. In this case, she explained that the tender had been awarded because, during this period, there had been no appeal.

She provided the example of what occurs at the Law Courts' registry, which closes at 16:00 in the afternoon. She explained that if one presents an appeal at 15:30, it will be registered the following day. She continued by noting that the practice involving PCRB appeals required that appeals reach the PCRB secretariat by 12:00 noon, in the same manner as with other entities. Dr Attard reiterated that the appeal bore an official stamp dated 28th October 2025, and she hoped that no precedent would be established on this issue regarding whether the appeal was valid or not.

Addressing the merit of the appeal, Dr Attard referred to the evidence given by Mr Hall, who explained that there were three types of contracts, and this tender was a contract for supplies. She invited the PCRB to examine how many times the term "supplies" was referenced in the tender document.

Dr Attard insisted that the items in the tender document could not be described as excavation works, nor could these supplies be categorised as works. She stated that it was not their responsibility to interpret the requirements of the tender in a manner that suited particular needs.

Dr Attard concluded her submission by stating that all bidders were aware that they did not need to present this licence, as the tender clearly stated that it was not a contract for works.

Final Submissions by Dr Ilenia Agius Debono (for the Recommended Bidder).

Dr Agius Debono stated that she would leave the issue of the Fuori Termine in the hands of the PCRB but agreed with the position of the Contracting Authority that such rules existed for a reason. Even if the award/rejection notice did not contain specific instructions that the appeal had to be presented by noon on 27th October 2025, the established practice was that appeals must be presented during the opening hours of the registry.

Dr Agius Debono insisted that the fact that the appeal bore an official stamp dated 28th October 2025, rather than 27th October 2025, must be taken into consideration.

Regarding the merit of the appeal, Dr Agius Debono stated that all bidders had prepared their offers and submitted documents according to the nature of the tender, which was designated for the provision and maintenance of road markings and traffic signs. This involved purchasing paint and marking lines on the ground without involving excavations, construction, or demolition.

Dr Agius Debono emphasised that Section 2.1 of the tender stated that the overall objective was the provision of traffic signs, and, as Mr Hall explained, the majority of the requirements concerned road markings. This was repeated in Section 2.2 of the Specific Objectives, where

one found the phrase "*to provide and maintain road markings*," without any reference to construction, excavations, or demolition, which would have required the special licence.
At this point, Dr Agius Debono explained how the law described the three categories of works involving construction, excavations, and demolition. She stated, by way of example, that the types of works requiring a licence were not involved in the requirements of the tender:

a. The tender did not involve the cutting of rock;
b. The tender did not involve the demolition of buildings;
c. The tender did not involve the pulling down of structures.

Dr Agius Debono stated that the appellant, as a contractor, carried out such types of work and naturally possessed a licence to do so, but this tender did not require such works, nor the licence governing them.

Dr Agius Debono concluded her submission by stating that the work to be undertaken in this case did not require a BCA licence, as it involved simple coloured boxes and signs to be drawn on the ground for traffic purposes. The appeal was based on a requirement that had not been requested.

Accordingly, she declared that the recommended bidder should be confirmed as the awarded bidder, as it possessed all the requisites: it was eligible and satisfied the price requirements by being the cheapest compliant bid.

Final Intervention by Dr Tonio Cachia

Dr Cachia stated that the term "*excavation*" was explicitly stated in the BOQ of the tender itself and was not something the appellant had invented.

Conclusion of the Hearing

At this stage, the Chairman thanked all parties for their cooperation, declared the session closed, and stated that the Board would issue its decision shortly.

END OF MEETING MINUTES

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Hereby resolves:

The Board refers to the minutes of the Board sitting of the 4th December, 2025.

Having noted the objection filed by Dr Tonio Cachia (hereinafter referred to as *"the Appellant"*) on the 28th of October, 2025, refers to the claims made by the same Appellant with regard to the tender of reference *SVT/LC/T/04/2025Tender for the Provision and Maintenance of Traffic Signs and Road Markings with maximised*

lifespan while minimising associated environmental impacts for the Santa Venera Local Council listed as case No. 2192 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Tonio Cachia

Appearing for the Contracting Authority: Dr Ilenia Agius Debono

Whereby, the Appellant contends that:

The Objector submitted an offer for the above-captioned tender and their bid was the second lowest bid. Objector's bid was administratively and technically compliant.

The tender was awarded to 5H Limited as the '*Cheapest, Administratively and Technically compliant offer*' as per attached notices dated the 15th October, 2025 (*'Doc. 1 and Doc. 2'*), communicated to applicant on the 17th October, 2025.

Objection

Objector is hereby claiming that the winning bid was not administratively and technically compliant because 5H Limited do not have, and thus could not submit with their offer, a valid BCA Licence issued in terms of *Chapter 623 of the Laws of Malta*.

The BCA Licence was requested at submissions stage online and Objector duly submitted his Licence (*attached 'Doc. 3'*). The BCA Licence is compulsory in order to deliver the works and services requested by the tender, irrespective if it was requested or otherwise.

Requests

Therefore, for the above reasons, Objector humbly requests this Board to:

1) Decide and declare that 5H Limited's offer was not administratively and technically compliant since no BCA Licence issued in terms of *Chapter 623 of the Laws of Malta* was submitted, and no such licence has been granted to the same bidder by the competent authorities.

2) Order the cancellation of the award of this tender to 5H Limited due to them being administratively and technically non-compliant.

3) Award the tender to Objector B. Grima & Sons Ltd as the cheapest, administratively and technically compliant bidder. 4) Order the refund of the deposit of € 400 which has been paid in terms of Article 273 of the Public Procurement Regulations as per attached 'Doc.4'.

This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on the 8th October, 2025, and its verbal submissions during the hearing held on the 5th November, 2025, in that:

We write for and on behalf of the contracting authority Santa Venera Local Council with its office situated at Kumpless Umberto Calosso, St Joseph High Street, Santa Venera (Malta) (hereinafter referred to as the '*Council*') in reply to the letter of objection filed with B. Grima & Sons Limited (hereinafter referred to as the '*Objector*') dated 27th October, 2025, and received by the Board on the 28th October, 2025.

Preliminary plea:

1) That, on the 17th October, 2025, the Council published the award letter on the system which system publication prompted the appeal procedure, with the same being received by the appellant on the 17th October, as confirmed by the submission filed by the Objector.

2) In terms of *article 271* of the *Public Procurement Regulations SL 601.03* it explains that:

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

The Objector submitted his objection on the 28th October, 2025, which date of submission has also been confirmed by the email correspondence sent by Amy Borg in her role as Assistant Manager of the *Public Contracts Review Board.* Consequentially, in the opinion of the Council, such submission was filed beyond the permissible timeframe as specified at law. Therefore, on this preliminary plea alone the Public Contracts Review Board should discard the objection lodged by the Objector.

Pleas in merits:

That, from the documentation received by the Council, it appears that the sole argument raised by the Objector concerns the vexations reasoning that the company recommended for the award of the Tender does not hold licences issued by the Building and Construction Agency (BCA).

That, BCA licences are strictly related to calls for tenders which involve construction works. The tender is divided into three principal sectors: Works, Supplies, and Services. The said licence applies only in cases where the call for tenders falls under the Works category, this Tender is merely for supply of materials (Supplies), as clearly indicated in the documentation published by the Council. The most relevant clause in this regard is found in *Article 26* of the *Special Conditions of the Tender* document.

That, only reference to the BCA licence is found in the Eligibility Section of the standard template (in XML format) published by the Department of Contracts. This template also makes it clear that the said licence is required only for calls for tenders classified as Works tenders. The Tender in subject, ergo the Provision and Maintenance of Traffic Signs and Road Markings with maximised lifespan while minimising associated environmental impacts for the Santa Venera Local Council, is merely for supply of materials (Supplies), as clearly indicated in the documentation published by the Council.

That, moreover the same template published by the Department of Contracts further specifies - which is quite logically - that the contracting authority is to determine which of the following BCA licences are required, namely: (a) Demolition; and/or (b) Excavation and Piling; and/or (c) Construction.

Consequently, the Council made no reference to these licences, given that they were not required for the purpose of this particular Tender considering it was merely for supply of materials (Supplies), as clearly indicated in the documentation published by the Council.

Conclusions:

At the outset, the Council respectfully submits that the objection filed by the Objector should not even be taken into consideration, as it was lodged beyond the legally permissible timeframe. Therefore, on this preliminary plea alone, the *Public Contracts Review Board* should dismiss the objection as inadmissible.

Without prejudice to this preliminary objection and solely in the alternative, the Council further submits that, in light of the foregoing considerations, it is evident that the Objector's arguments rest on a fundamental misinterpretation of the regulatory framework governing public procurement and the applicability of the Building and Construction Agency (BCA) licensing regime. The documentation clearly establishes that the call for tenders in question was issued under the Supplies category only, relating exclusively to the provision of materials and not to any form of construction or building works.

Consequently, the requirements associated with BCA licences-intended strictly for tenders classified as Works-are entirely inapplicable in this context.

Furthermore, both the standard tender template issued by the Department of Contracts and the specific tender documents published by the Council unequivocally confirm that no BCA licence was required for participation in or the award of this procedure. The nature of the contract-concerning tasks such as the renewal of road markings and the installation of signage-does not constitute "*works*" within the meaning of the relevant procurement legislation and therefore falls wholly outside the remit of BCA licensing obligations.

Accordingly, the Council acted correctly and lawfully in its assessment and recommendation for the award of the tender in question. In view of the above and without prejudice to the right to submit further arguments and evidence, the Council respectfully requests this Honourable Board to reject the objection filed by the Objector and to confirm the decision communicated by the Council on the 17th of October, 2025.

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.

I. Introduction

The *Public Contracts Review Board* has considered the appeal lodged by B. Grima & Sons Ltd, together with the Contracting Authority's reasoned reply dated 8th October, 2025 and the oral submissions presented during the hearing of the 4th December, 2025. The Board has examined all documentation placed before it and now proceeds to deliver its adjudication. For clarity and fairness, each grievance raised by the Appellant is addressed individually, followed in turn by the Contracting Authority's reply and the Board's determination.

II. Preliminary Plea Raised by the Contracting Authority

The Contracting Authority advances a narrow, formalistic objection: because the date-stamp on the Letter of Objection reads 28th October, 2025, the submission was *fuori termine* (one day late) and the appeal should not be entertained. The factual matrix, however, is undisputed on the core point. The appeal was transmitted to the Board on the 27th October 2025 at 14:36 and the Board's own PCRB records record that transmission.

The question the Board must decide at this preliminary stage is not a metaphysical one about ink on paper, but a legal one about which event determines compliance with the peremptory time-limit and whether an administrative endorsement inconsistent with the true communication date can lawfully defeat an otherwise timely filing.

The definition and legal character of *fuori termine* denotes that a procedural act was performed after the lapse of a legally prescribed time-limit. Whether lateness is fatal depends on the nature of the time-limit (peremptory vs prescriptive) and applicable procedural rules.

A *peremptory* period admits no extension and, in principle, renders subsequent acts inadmissible unless a rule or equitable principle allows for relief. A *prescriptive* period admits corrective measures. The ten-calendar day period relied upon by the parties is presented here as peremptory, however, the legal consequence of peremptory character is triggered only once the act is objectively shown to have been performed after the period expired.

In this context, the Board will delve into the *iter* of evaluating the act of communication against the administrative endorsement. Where filings are effected by courier, post, or electronic transmission, courts and administrative bodies commonly measure timeliness by actual dispatch or receipt rather than by auxiliary administrative notations. The operative event is the communication that places the receiving authority in possession or knowledge of the document within the prescribed period. Administrative date-stamps perform an evidential role, not (absent contrary rule) a conclusive one.

Where the governing procedural regime contemplates, or permits electronic transmission, the timestamp produced by the sender's system and the receiving body's server logs constitute primary evidence of the moment of communication and receipt. The saving principle is simple in that compliance must be judged against the reality of transmission and receipt, not the occurrence of an erroneous clerical endorsement.

In this context, it is here the Board's duty to investigate the primary evidence, i.e. the PCRB's record and email metadata. The Board's own records show transmission on the 27th October, 2025 at 14:36. The email by which the letter was submitted (as reflected in the Board's files and as copied to the Contracting Authority) provides an unambiguous contemporaneous ledger entry of the time and date of transmission. Email headers, server logs, and system timestamps are objective, machine-generated evidence carrying high probative value. They are, indeed, precisely the sort of contemporaneous records courts and tribunals rely upon to fix temporal events.

In this case and in under this <u>particular circumstance</u>, [emphasis of the Board] the date-stamp on the paper copy is only evidence of the date of administrative processing, not of the date of receipt by the Board. Where there is an express inconsistency between an independent system record of transmission/receipt and a manual administrative endorsement, the latter is vulnerable to correction. The Contracting Authority

bears the burden of establishing the facts that would displace the Board's recorded transmission time. In the present case, it has proffered nothing to show that the Board's electronic record is mistaken and nothing to explain the genesis of the one-day discrepancy beyond the bare date on an administrative stamp.

Absent a plausible explanation for the discrepancy, the Board should treat the contemporaneous electronic record as determinative. The presence of the Contracting Authority on the same copied correspondence corroborates the claimed time and date of communication. The CA was put on notice, contemporaneously, of the submission. That fact militates strongly against the suggestion that the Appellant's rights were prejudiced by late filing.

The Board's considerations in relation to this preliminary plea revolves around the principle of effectiveness and access to justice. Administrative procedural rules exist to facilitate, not to frustrate, the right to effective judicial or quasi-judicial review. A strict adherence to a clerical date on an administrative endorsement that reverses an otherwise timely transmission would frustrate the appellant's access to review and would offend the underlying purpose of the statutory time-limit, which is to ensure rapidness and legal certainty, not to reward clerical error.

Fundamental fairness militates against allowing an erroneous internal date-stamp to operate as a trap. Parties who comply in substance, by transmitting the objection within the allowed period and by informing the opposing party have a reasonable expectation that the Board will respect the actual compliance. To hold otherwise would encourage gamesmanship and procedural skulduggery.

Administrative endorsements are not infallible. Where an administrative error produces a discrepancy and the other party either caused the error or was placed in identical notice by the sender's contemporaneous email (as here), equity and the duty of good administration require that the error not be permitted to prejudice substantive rights.

Waiver/estoppel by the Contracting Authority

By being copied on the contemporaneous email showing the true date/time of transmission, the Contracting Authority had immediate knowledge that the Objection was sent within the ten-day period. To contend later that the filing was late on the basis of an internal stamp is inconsistent with the Contracting Authority's own conduct and is liable to be treated as waived or estopped. The CA cannot simultaneously rely on its own records to show late filing while having been placed on notice at the moment of transmission.

In other words, in the context of the objection allegedly filed *fuori termine*, the Contracting Authority was copied on the timely email. It therefore had actual, contemporaneous knowledge of the true filing date. It

nonetheless later seeks to rely on an administrative date-stamp error to claim lateness. That shift in position is precisely the sort of contradiction estoppel is designed to restrain.

Excluding an appeal on trivial or purely clerical grounds (when the substantive timeliness is established) is disproportionate to the aim served by time limits. The sanction of outright inadmissibility must be reserved for cases where lateness causes prejudice or where a party has sought to deceive, that is not this case.

Rules of evidence and what the Board may (and should) do

In this context, it is once and again the Board's duty to admit and weigh the electronic evidence. The Board should treat the PCRB's record and the email (including full headers and server logs if necessary) as primary evidence of receipt.

If there is any residual doubt, [which in this case the presentation of the email produced by the PCRB's administrative staff, Ms Graziella Vella, was not contested at all, save but for the emphasis by the legal counsel of the CA in relation to the date-stamp], the Board should call for the relevant server logs or system metadata rather than relying on a *prima facie* administrative mark. However, since the email *per se'* was not objected to, the Board sees no reason to delve further into that matter.

The Board should explicitly find that the Letter of Objection was transmitted to the Board on the 27th October, 2025 at 14:36 and that the Board received the same within the ten-calendar-day peremptory period. The Board should further find that the Contracting Authority was copied on the contemporaneous correspondence and therefore had actual knowledge of the date/time of submission.

The Board should explain that the administrative date-stamp reflects internal processing or endorsement and, in the presence of incontrovertible electronic evidence to the contrary, cannot be allowed to displace the electronic record of transmission.

Board's final considerations on the preliminary plea raised

The Board's contemporaneous electronic records show that the Letter of Objection was transmitted to the PCRB on the 27th October, 2025 at 14:36, that transmission being corroborated by the sender's email and associated server metadata, and by the fact that the Contracting Authority was copied on the same correspondence. The ten calendar-day peremptory period is therefore satisfied.

The date-stamp applied by an administrative officer on a printed copy, which bears the date 28th of October, 2025, represents an internal processing endorsement and does not displace objective electronic evidence of the time of receipt. To permit an erroneous administrative endorsement to defeat an otherwise timely

objection would be unfair, disproportionate and contrary to the principles of effective judicial protection and good administration.

The Board emphasises that procedural time-limits must be respected, but they exist to secure orderly administration of justice, not to produce unjust outcomes from clerical mistakes. Where the record discloses clear, contemporaneous proof of timely transmission and the opposing party had immediate notice, the Board should treat the filing as timely. That approach preserves legal certainty while securing fairness and access to the tribunal.

To this effect and in view of the aforementioned considerations, the preliminary plea of *fuori termine* must be rejected. The Board should declare the Objection admissible and proceed to decide the substantive appeal on the merits.

III. Grievance 1 – Appellant's Assertion that its BID was Administratively and Technically Compliant and the Second Lowest

A. The Appellant's Position

The Appellant maintains that it submitted a bid that was both administratively and technically compliant and that the price offered was the second lowest among the tenders received. This assertion is advanced partly to establish *locus standi* and partly to emphasise that, but for the alleged non-compliance of the recommended bidder, the Appellant would be entitled to the award.

B. The Contracting Authority's Reply

The Council does not dispute that the Appellant submitted a valid and compliant bid. However, it notes that the ranking of bids becomes relevant only if the bid placed above the Appellant is found non-compliant. The Council insists that 5H Limited was correctly deemed compliant and therefore the Appellant's position as second lowest is immaterial.

C. The Board's Considerations

The Board concurs that the Appellant's compliance and price ranking, while factually acknowledged, do not in themselves prove any irregularity. They become relevant only if the Appellant succeeds in demonstrating that the recommended bidder was non-compliant. Accordingly, while this grievance is noted, it does not independently advance the Appellant's case and is dealt with in the context of later grievances.

IV. Grievance 2 – Challenge to the Award Declaration of 5H Limited as the Cheapest Administratively and Technically Compliant Bidder

A. The Appellant's Position

The Appellant challenges the declaration that 5H Limited was correctly assessed as the cheapest, administratively and technically compliant bidder. This challenge is intrinsically linked to the allegation that 5H Limited lacked a required BCA licence and therefore could not legally be considered compliant.

B. The Contracting Authority's Reply

The Council maintains that the award was made strictly in accordance with the tender dossier and that 5H Limited satisfied all the criteria set out therein. The Council emphasises that no BCA licence was required under the tender documents and that the assessment of administrative and technical compliance was correctly carried out.

C. The Board's Considerations

The Board notes that this grievance is derivative and cannot be upheld unless the Appellant's substantive allegation, that 5H Limited lacked a mandatory licence, is sustained. The Board therefore turns to the central grievance relating to the applicability of the BCA licensing regime.

V. Grievance 3 – Alleged Non-Compliance of 5H Limited due to Absence of a BCA License

A. The Appellant's Position

This is the principal grievance. The Appellant contends that 5H Limited was not eligible for the award because it did not hold a BCA licence issued under *Chapter 623 of the Laws of Malta*. According to the Appellant, the online tender submission system required such a licence. The Appellant duly provided its own BCA licence and, irrespective of whether explicitly noted in the tender dossier, a BCA licence is compulsory for the types of works allegedly entailed by the tender.

B. The Contracting Authority's Reply

The CA strongly disputes the Appellant's interpretation. It clarifies that BCA licences are required exclusively for tenders classified under the "*Works Category*". The tender in question, as indicated in *Article 26* of *the Special Conditions* and throughout the provisions of the tender documentation, was classified as a Supplies tender. The CA further notes that the standard XML template issued by the Department of Contracts references BCA licences only in the context of Works tenders, specifying demolition, excavation and piling, and construction as the categories falling under such licensing. The CA reiterates that the provision and maintenance of traffic signs and road markings does not constitute construction works under

the relevant legislation. As such, there was no legal requirement for bidders to possess or submit a BCA licence, and 5H Limited cannot be judged non-compliant for not submitting one.

C. The Board's Considerations

The Board has examined the nature of the tender, the relevant legal framework, and the tender dossier. It is evident that BCA licensing obligations arise solely in connection with construction-related activities, as set out in *Chapter 623 of the Laws of Malta*. The procurement system applies these obligations only to Works tenders. The question that arises at this juncture is whether the tender document is to be considered as a "*works*" contract or a "*supplies*" contract. In this context, the Board sees it imperative and pertinent in examining the tender nomenclature used to extract a better understanding and an eventual decision on the matter in issue.

Textual Substantiation: The tender speaks of *supplies*, not *works*

1. *Principle of textual primacy in procurement interpretation*

When construing a tender dossier, the primary and determinative source is the text of the dossier itself. In the absence of ambiguity, the document must be read according to its ordinary meaning. Commercial or technical inferences follow only where the text permits. In public procurement, the classification placed upon a procedure by the Contracting Authority, and reflected in the tender documents, is the starting point for determining the legal regime and any applicable qualification requirements. If the dossier repeatedly and consistently frames the procurement as a *supply* rather than *works*, that framing governs the procedure and the attendant legal consequences.

2. *The dossier's language by reference to specific textual indicia that point to a supply contract*

Two passages from *Section 1* of the *Instructions to Tenderers* are particularly telling. Each example uses explicit, non-equivocal terminology and contains commercial markers typical of supply contracts.

> *2.1 "The place of acceptance <u>of the supplies</u> shall be Santa Venera; the time-limit for the execution of the contract shall be four (4) years; and the INCOTERM2020 applicable shall be Delivery Duty Paid (DDP)."*

Several features of this sentence are decisive:

(a) The word *"supplies"* is used, not a generic term such as *"services"* or *"works"*. The repeated use of the noun *"supplies"* in the operative clause is not rhetorical but it rather identifies the subject-matter of the procurement.

(b) The concept of *"place of acceptance"* is a contractual device commonly associated with contracts for the sale and delivery of goods. It presupposes discrete deliveries and acceptance tests, not the execution of construction works over a site.

(c) The reference to *INCOTERM2020* (*specifically DDP*) is a commercial and legal hallmark of international trade in goods. *INCOTERMs* govern seller/buyer obligations in the delivery and transfer of risk for *goods*. To adopt *DDP* in a dossier is to frame the transaction as the delivery of goods to a named place with the seller bearing duties and costs. This is incompatible with the characteristic legal architecture of construction works contracts.

(d) A *time-limit for execution of four years* (read in conjunction with the aforementioned) may be consistent with long-term supply contracts (for example, recurring deliveries, maintenance of stocked materials, or multi-year supply of consumables). It is not, in itself, indicative of construction works but combined with the other textual markers it reinforces the supplies classification.

Taken together, these elements form a coherent commercial picture, i.e. the Contracting Authority's anticipated deliveries of goods over time under commercial delivery terms, with defined acceptance at a named place, points at the precise vocabulary of a supply contract.

Another reference analysed by the Board is the following tender stipulation:

> *2.2 "No equipment is to be purchased on behalf of the Contracting Authority at the end of this contract. Any equipment related to this contract which is to be acquired by the Contracting Authority must be purchased by means of a separate supply tender procedure."*

This passage has equal, if not greater, probative value.

The clause contemplates *"equipment"* and expressly regulates how *acquisition* of that equipment must occur. If the procurement were framed as works (where plant and equipment are often hired or installed as part of the works), one would not expect an instruction that equipment acquisition shall occur by a *separate supply tender procedure*. Instead, a works tender that anticipated the handover of plant would so state in the works specification or in contract conditions.

The Contracting Authority's own insistence that acquisition of equipment be the subject of a *"separate supply tender"* demonstrates the Authority's understanding and intent that the present procedure is not the mechanism for purchasing capital equipment. That self-same sentence therefore excludes any inference that the present procurement was intended to be a works procurement that might require BCA-style construction licensing.

Practically, the provision prevents the present tender from being used as a vehicle to procure equipment ownership that could only be done through a distinct supplies procedure. The drafters therefore discerned and enforced a conceptual separation between the present procurement and works-type acquisition.

Similarly, the Contract or concession notice – standard regime, referable clause *5.1.1* under the heading Purpose cites the following:

> *5.1.1 Purpose:*
> *Main nature of the contract:*
> *Supplies Main classification (cpv): 34922100 Road markings*

3. *Repetition and consistency is not isolated phrasing but a coherent architecture*

The foregoing passages are not isolated flourishes. The tender repeatedly employs the nomenclature of *"supplies"* and incorporates logistics and commercial instruments (*INCOTERMs*, place of acceptance, separate supply tender for equipment) that are category-specific. In the exercise of statutory or regulatory classification the courts and administrative bodies look for an overall impression, that is to say, the totality of the dossier must be read to see whether it constitutes a works procurement. Here, the cumulative force of the language points resolutely to supplies.

A single stray reference to an activity that might be physical (for example, application of a road marking) cannot, without more, transmute the procurement into works. The Board must read the dossier as an integrated whole, when the Authority defines its own procurement repeatedly as *"supplies"* and adopts deliverable-oriented commercial terms, that self-classification is determinative in the absence of manifest error.

The interpretative approach the Board is hitting at, aligns squarely with the *ejusdem generis* rule, a long-standing canon of construction requiring that individual elements within an instrument be interpreted in light of the general category into which the drafter has placed them. In other words, where the text establishes a clear genus, any particular expressions falling within that context must be read so as to conform to the genus rather than to undermine it.

Applied to the present dossier, the genus is unmistakably that of supplies. The tender is expressly classified as a supplies contract. The operative provisions speak consistently of "*supplies*" and the commercial machinery deployed, as already explained above, (*INCOTERM2020*, place of acceptance, and a requirement for separate supply procedures for any equipment acquisition), all belong inherently to supply-type procurements. These are not incidental turns of phrase. They constitute the framework within which the procurement must be understood.

Against that backdrop, any isolated or incidental reference to a physical activity, such as the application or renewal of road markings, must, under the *ejusdem generis* principle, be construed as belonging to and consistent with the supplies genus established by the document itself. A stray reference cannot, by itself, alter the essential classification of the procurement. To permit such an isolated term to override the cumulative and deliberate language of the dossier would invert the logic of *ejusdem generis*, or rather, reducing the whole concept to pulp. The "*particular*" would be allowed to dominate the "*general*", which is precisely what the rule guards against.

Under this interpretative maxim, the Board is required to consider the totality of the tender documentation and to give effect to the dominant, coherent theme chosen by the Contracting Authority. Here, that theme is clear. The Authority's own terminology, structure, and commercial conditions show that it intended to procure the *"supply and provision"* of traffic signage and related materials, with ancillary maintenance obligations included as part of the supply arrangement. Those ancillary elements cannot re-characterise the procurement as works, any more than routine installation of supplied equipment converts every supplies contract into a construction contract.

Thus, applying *ejusdem generis*, the proper legal conclusion is that the general scheme and consistent nomenclature of the dossier must prevail. The procurement is, in law, a supplies tender, and no construction-related licensing regime, including BCA licensing, can be implied into it without express textual basis.

4. *Functional test in relation to the nature of the obligations described*

Beyond the labels, the Board should consider the function of the obligations the contract imposes. The dossier describes the provision and maintenance of traffic signage and road markings in terms of supply, provision and routine maintenance rather than site-preparatory construction, structural alteration or civil engineering works requiring BCA oversight. In the legal and regulatory context, BCA licensing applies where the contractual obligations amount to construction works, i.e. the carrying out of physical construction, structural assembly or significant alteration on a site. Routine supply and replacement of signage, together with periodic application of markings as specified and managed under supply-style terms, do not ordinarily fall within that definition.

5. *Consequence for bidder qualification and license requirements – A detailed analysis of the Bill of Quantities and its relationship to the Board's Classification*

The Appellant contends that although the tender dossier hints at a supply tender/contract, the Bill of Quantities (BOQ) is the document that substantiates the Appellant's grievance on the merit. To this effect, the Board is constrained to evaluate the terms of the BOQ.

To start with, it is the opinion of the Board that the BOQ is a Quantitative and Commercial Instrument, not a Licensing Mandate.

The Bill of Quantities (BOQ) in a public tender is, by its very nature, a commercial schedule, i.e. an enumeration of items, units, and rates intended to allow tenderers to price their offer. In the opinion of the Board, the BOQ is not a regulatory document, nor is it the legal locus where qualification, licensing, or eligibility conditions are stipulated. In Maltese and broader European procurement practice, licence and qualification requirements must appear in the *Instructions to Tenderers* or in the *Selection/Exclusion criteria*, not in the BOQ.

The BOQ examined by this Board adheres to that tradition. It contains no clause, cross-reference, or textual cue that introduces, implies, or even hints at a BCA licence requirement. Every line item concerns either:

- the *supply* of traffic signs, poles, mirrors, plates, or components; or
- the *routine replacement, re-erection or mounting* of such supplied items.

This commercial enumeration cannot be retrofitted into a licensing obligation unless a clear textual mandate exists.

Furthermore, the nature of the BOQ Items is a supply-led with ancillary installation. A close reading of the BOQ reveals that nearly every entry begins with verbs such as:

- "Erect new…"
- "Re-erect…"
- "Replace…"
- "Supply of…"
- "Secure…"
- "Mount…"
- "Dismantle…"

These are ancillary installation actions inseparable from the supply of the item itself. They fall squarely within the concept of *"supply and provision with installation"*, a well-recognised subtype of supply contracts, common in ICT, electrical equipment, furniture, medical devices, traffic management equipment, and countless other sectors.

The presence of ancillary physical handling does not essentially convert a supply contract into a works contract, any more, by way of example, than the installation of a printer turns a procurement of printers into a construction tender. EU procurement doctrine has long recognised that installation of supplied goods

does not constitute "*execution of works*" and does not fall within the construction licensing regimes unless the works are structural, civil, or site-altering.

The BOQ shows none of the hallmarks of construction works. There is no reference to excavation of trenches, re-surfacing of roads, civil engineering, structural foundations (save for micro-activities inherent to sign-pole installation), architectural design, method statements for works, or other construction-type deliverables that would invoke BCA oversight.

At this juncture, the Board cannot fail to notice the "*micro-construction*" Fallacy and why routine installation cannot be elevated to works. The Appellant appears to rely on certain BOQ entries, e.g., "*excavate hole*", "*fill with concrete*", "*secure pole*", to argue that a BCA licence is required. This argument collapses once the entries are examined in their proper contractual genus.

The BOQ uses language that is typical for minor civil ancillary tasks inseparable from the installation of supplied street furniture. These activities are inherently *de minimis* in scale and accessory to the primary obligation of supply. They neither alter the character of the procurement nor elevate the contract into the domain of construction works.

The European Court of Justice and domestic procurement bodies have consistently held that ancillary tasks do not transform the legal classification of the procurement. Only where the "*principal object"* of the contract is the execution of works, *not* the delivery of goods, does the works regime apply.

Here, the principal object is expressly and repeatedly defined as "*supplies"*, and the BOQ entries fit comfortably within that framework.

Even the BOQ's express cross-reference to technical specifications reinforces supply classification. The BOQ's introductory text states:

> *"The tables that follow give the description of the rates… using the relevant clauses of the Technical Specifications."*

This is inherently significant. It signals that the BOQ is a pricing reflection of the Technical Specifications, not an independent normative instrument capable of introducing unexpressed licensing duties.

The Technical Specifications, as already addressed in the Board's considerations, do not impose BCA-type obligations. The BOQ, as a derivative pricing tool, cannot go beyond what the Specifications require. To argue otherwise would reverse the normative hierarchy of procurement documents, allowing a price schedule to override substantive legal provisions, an interpretation no tribunal could accept.

The Board reiterates that the BOQ uses the vocabulary of supply contracts, not works contracts. The BOQ is dominated by:

- "Supply only" items
- Itemised quantities of signboards, plates, poles, mirrors
- Values expressed solely in unit prices
- No aggregate "works" sections (e.g., no Bill for earthworks, drainage, structures, asphalt, formwork, reinforcement, shuttering, etc.)

Works BOQs typically contain discrete "*work packages*", measurements in cubic/metres squared/metres cubed tied to construction methodologies, and clauses referring to site preparation, method statements, sequencing, civil engineering duties, and compliance with building legislation. None of this appears here.

The BOQ's content is entirely consistent with a supply-with-installation catalogue, not a schedule of civil works.

Moreover, the BOQ contains no operative clause imposing licensing requirements. The structure of the BOQ is purely quantitative:

- Item numbers
- Descriptions
- Quantities
- Rates
- Amounts

Legal requirements, such as mandatory licensing, do not typically appear in this section. And indeed, they do not appear here.

The BOQ neither mentions BCA, construction licences, *Chapter 623*, subsidiary legislation under the *BCA Act*, nor any reference to the *Construction Industry Licensing Regulations*. There is not even an oblique hint.

If the Contracting Authority intended to require a BCA licence, it would have said so expressly, in the portion of the tender where **eligibility requirements** are set out. Silence in the BOQ cannot be inflated into an implicit regulatory condition.

In other words, the BOQ cannot override the explicit legal classification in the Tender Notice and Instructions to Tenderers. The procurement is expressly classified in the *Contract Notice* and in *Section 1* as:

> *"Supplies – CPV 34922100 (Road Markings)."*

A BOQ cannot contradict or displace this classification. Under procurement interpretative canons, including textual primacy, harmonisation, and the *ejusdem generis* principle, the BOQ must be read in conformity with the stated classification. In case of conflict (and there is none), the BOQ must give way to the operative contractual text, not vice versa.

Thus, even if one wished to reinterpret the BOQ as suggestive of works, the law does not permit such reinterpretation to overrule the explicit, repeated classification as supplies.

The BOQ's ancillary installation tasks are purely consistent with Long-Term Supply and Maintenance Contracts. The tender concerns a four-year supply-and-maintenance arrangement, which inherently entails periodic replacements, re-erection of damaged items, and the upkeep of supplied materials. As already stated, this does not transform the arrangement into a construction contract any more than the replacement of a defective lamppost turns an electricity authority's supply contract into a building project.

These ancillary interventions are part of the life-cycle servicing of supplied goods. They sit comfortably within the classification articulated in the tender notice and the Instructions to Tenderers.

The BOQ:

- Contains no textual basis for a BCA licence requirement.
- Reflects routine installation and maintenance of supplied equipment, not construction works.
- Operates strictly as a pricing schedule, not a regulatory instrument.
- Must be interpreted *ejusdem generis* with the tender's overt classification as supplies.
- Cannot, as a matter of procurement law, introduce an unexpressed eligibility requirement.
- Reinforces the procurement's nature as a supply contract with ancillary installation.

Accordingly, the Board is fully justified in concluding that nothing in the BOQ contradicts the Board's determination that this is a supplies contract, and nothing in it can be construed as imposing a BCA licensing requirement.

The Appellant's reliance on the BOQ as proof of a licensing obligation is therefore misconceived, untextual, and legally unsustainable.

It is a basic tenet of procurement law that tender requirements must appear in the dossier. Prospective bidders are entitled to know, in advance, the conditions for participation. Where the dossier itself does not require a BCA licence, and in fact frames the procurement as supplies governed by commercial delivery terms and *INCOTERMs*, it is both procedurally unfair and legally unsound to impose a BCA licence *ex post* as a condition of eligibility. To do so would be to introduce an extraneous, unannounced technical requirement that changes the nature of the procurement after the fact.

6. Short synthesis and conclusion

On a first observation, the dossier uses the word *"supplies"* in clear operative contexts (place of acceptance; time-limit; *INCOTERM2020 DDP*).

On a second observation, it expressly requires that any acquisition of equipment be made by a separate supply tender, thereby excluding equipment purchase from the present procedure.

On a third observation, it adopts commercial delivery language (place of acceptance; *DDP*) that is characteristic of goods contracts and inconsistent with the legal architecture of construction works.

On a fourth observation, the obligations described, i.e. the provision and maintenance of signage and markings, are articulated as supply and maintenance obligations rather than site works requiring BCA licensing.

For these reasons and by reference to the above, the tender dossier, read as a whole, lawfully and manifestly contemplates a supply contract. Consequently, there was no lawful basis to require bidders to hold a BCA licence. The absence of such a licence cannot be treated as administrative or technical non-compliance.

Accordingly, this grievance is unfounded.

VI. Grievance 4 – Request for Cancellation of the Award and Award to the Appellant

A. The Appellant's Position

Relying on its previous allegations, the Appellant requests that the Board annul the award to 5H Limited and instead award the contract to the Appellant, which it insists is the lowest-priced compliant bidder.

B. The Contracting Authority's Reply

The Contracting Authority responds that since 5H Limited was fully compliant and the Appellant's objections are devoid of merit, there is no basis on which to annul the award or award the tender to the Appellant.

C. The Board's Considerations

Against this legal background, the Appellant's request under this grievance, namely, that the award to 5H Limited be annulled and replaced with an award in its favour, is unsustainable. Having found no merit

whatsoever in the underlying allegation of non-compliance, the Board has no lawful ground on which to disturb the existing award.

The relief sought is premised entirely on the assertion that 5H Limited should have been disqualified and that assertion has been definitively rejected. Moreover, and without prejudice to the above, the substantive relief sought, still, cannot be granted.

Accordingly, the award to 5H Limited stands, and Grievance 4 is rejected in its entirety.

VII. Grievance 5 – Request for Refund of the Deposit

A. The Appellant's Position

The Appellant requests the refund of the €400 deposit paid in terms of *Regulation 273* of the *Public Procurement Regulations*.

B. The Contracting Authority's Reply

The Council submits that since the appeal is inadmissible and unfounded, the Appellant is not entitled to the refund of the deposit.

C. The Board's Considerations

The Board notes that deposits are refundable only where an objection is upheld. As the appeal (albeit admissible) is in the alternative, unsubstantiated, the Appellant is not entitled to a refund and the deposit is to be forfeited.

VIII. Conclusion and Decision

The Board looks past the alleged procedural defect, which is now considered as admissible, when examining the substantive grievances in full, the outcome changes. Each ground of complaint collapses under scrutiny.

The central allegation that 5H Limited lacked a mandatory BCA licence is simply not borne out by the tender dossier or the governing legal framework. The procurement is, in both form and function, a supplies contract, consistently drafted, classified, and administered as such. To impose such a requirement now would be legally indefensible.

Since the recommended bidder was correctly deemed compliant, the Appellant's position as the *"second lowest"* carries no legal consequences. With no fault or irregularity established, the Board has no basis, none whatsoever, to disturb the award in favour of 5H Limited.

Lastly, because the appeal is not being upheld, the Appellant has no entitlement to a refund of the deposit. The €400 deposit is accordingly forfeited.

Decision

1. On the preliminary plea of inadmissibility due to the filing of the Letter of Objection, *fuori termine,* the preliminary plea as such is hereby being rejected and consequently the Letter of Objection is declared admissible as it was filed within the statutory period.
2. Without prejudice to the above, and after full consideration on the merits, the Board finds all grievances unfounded.
3. The award of the contract to 5H Limited is hereby confirmed.
4. The Appellant's request for cancellation of the award and re-assignment in its favour is rejected in its entirety.
5. The request for a refund of the deposit is denied, and the deposit is forfeited in accordance with the law.

The case is therefore dismissed in full.

The Board,

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

a. Not to uphold the Contracting Authority's preliminary plea in that the appeal was not filed outside the statutory period and is therefore admissible;
b. Not to uphold the Appellant's (*B. Grima & Sons Limited)* Letter of Objection and contentions in their entirety;
c. Confirms the decision of the Evaluation Committee in its entirety and consequently confirms the Contracting Authority's decision to maintain the award of *Tender for the Provision and Maintenance of Traffic Signs and Road Markings with maximised lifespan while minimising associated environmental impacts for the Santa Venera Local Council*; and
d. Directs that the deposit paid by Appellant not to be reimbursed.

Dr Vincent Micallef	**Mr Keith Victor Grech**	**Ing. Dr Damien Gatt**
Chairman	**Member**	**Member**