

PUBLIC CONTRACTS REVIEW BOARD

Case 2198 – Objection 618 – SPD5/2025/023 – Tender for the Provision of Audit Services for the Malta International Contemporary Art Space.

16th December, 2025

The Board,

Having noted the *Letter of Objection* filed by Dr Anna M. Cordina Zammit acting for and on behalf of **Mr John Zammit** (hereinafter referred to as “*the Appellant*”) filed on the 3rd November, 2025;

Having also noted the *Reasoned Letter of Reply* filed by Ms Diane Degabriele acting for and on behalf of the **Malta International Contemporary Art Space** (hereinafter referred to as “*the Contracting Authority*”) filed on the 5th November, 2025;

Having also noted the additional Note of Submission filed by Dr Anna M. Cordina Zammit acting for and on behalf of John Zammit & Associates (hereinafter referred to as “*the Appellant*”) dated 16th November, 2025;

Having heard and evaluated the testimony of the witness Ms Kathleen Pellicano Casaletto testifying for and on behalf of the Malta International Contemporary Art Space (hereinafter referred to as “*the Contracting Authority*”);

Having heard and evaluated the initial submissions of Mr Andrew Fenech acting for and on behalf of the Borg Galea & Associates (hereinafter referred to as “*the Recommended Bidder*”);

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

Having noted and evaluated the minutes of the Board sitting of the 11th December, 2025, hereunder-reproduced.

Minutes

Case 2198 SPD5/2025/023 – Tender for the Provision of Audit Services for the Malta International Contemporary Art Space.

The tender was issued on the 30th of May 2025, and the closing date was the 26th of June 2025.

The estimated value of the tender, excluding VAT, was €24,000

On 3rd of November 2025 John Zammit & Associates “Audit and Assurance Ltd”. lodged an appeal against Malta International Contemporary Art Space. — the Contracting Authority. In accordance with Regulation 270 of the Public Procurement Regulations.

On the 11th of December 2025, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Dr Ing. Damien Gatt and Mr. Keith Victor Grech, as members, convened a public hearing to consider the appeal.

A deposit of €400 was paid.

There were Six bids.

The attendance for this public hearing was as follows:

Appellant – John Zammit & Associates “Audit and Assurance Ltd”. (C104557).

Dr Anna Cordina – Legal Representative.

Mr John Zammit -- Company Representative.

Contracting Authority – Malta International Contemporary Art Space.

Ms. Phyllis Muscat -- Head of Contracting Authority.

Ms Diane Degabriele – Chairperson.

Ms Kathleen Pellicano Casaletto – Evaluator.

Ms Lorraine Berry – Evaluator.

Ms Mariella Azzopardi – Evaluator.

Recommended Bidder – Borg Galea Audit Ltd. (C79290).

Mr. Andrew Fenech – Company Representative.

Opening Statements

Dr Vincent Micallef, Chairman of the Public Contracts Review Board, welcomed the parties present, namely the Appellant, John Zammit & Associates (Audit and Assurance) Ltd.; the Contracting Authority, Malta International Contemporary Art Space (MICAS); and the Recommended Bidder, Borg Galea & Associates.

Initial Submissions

Initial Submissions by Dr Anna Cordina Zammit (for the Appellant)

Dr Zammit stated that Dr Patrick Galea, the legal representative for John Zammit & Associates (Audit and Assurance) Ltd., was absent due to duties in court. A note of submission had been sent, and they were standing by the same notes and documents.

Initial Submissions by Ms Kathleen Pellicano Casaletto (for the Contracting Authority)

Ms Pellicano Casaletto stated that the Contracting Authority had sent emails and reminders, but no response was received. She added that the actions of the Contracting Authority were in line with the procurement procedures.

Initial Submissions by Mr Andrew Fenech (for the Recommended Bidder)

Mr Andrew Fenech, a company representative of Borg Galea & Associates, stated that they were notified as the second compliant bidder and confirmed their commitment.

Witnesses

Mr John Zammit (ID No. 441662M), summoned by Dr Anna Cordina Zammit.

Mr John Zammit is a Director of John Zammit & Associates (Audit and Assurance) Ltd. He stated that they were awarded the tender by a margin of €500; however, there was a problem with communications. Emails were being sent to MBR, but these were being “bounced” back. Due to heightened data security, the computer system treated the emails as spam.

Mr Zammit explained that he had to redirect the email to an alternative address, and meanwhile a period of time had elapsed. He stated that the company currently has another five tenders and has never encountered similar problems. Normally, he would have been given the opportunity to react. He added that the email for the appeal was sent on 31 October, but the Contracting Authority did not receive it. Mr Zammit then phoned and was provided with a second email address.

Ms Kathleen Pellicano Casaletto (ID No. 350490M), self-testified.

Ms Pellicano Casaletto stated that the tender was awarded to John Zammit & Associates (Audit and Assurance) Ltd., and on 10 September the Contracting Authority sent the contract to be signed.

No response was received, and on 22 September the Authority sent a reminder, as the Sectoral Procurement Directorate (SPD) required the signed contract. On 23 September, an email was sent with a deadline of 26 September. Again, no response was received. Subsequently, on 29 September, an email was sent by the Sectoral Procurement Directorate (SPD) stating:

“I am writing this email to inform you that if any damages are incurred because of the second cheapest i.e. Borg Galea Audit Limited, these shall be paid by yourself”.

The second cheapest bidder was awarded the tender, and on 27 October the SPD was approached by John Zammit & Associates (Audit and Assurance) Ltd. By that time, the SPD had already prepared the addendum to the Evaluation Report for the second cheapest bid.

Ms Marianne Borg from the SPD informed John Zammit & Associates (Audit and Assurance) Ltd. on 28 October that the decision was to be upheld and that the second bidder had therefore been awarded the tender. Mr John Zammit was informed that he had the right to appeal.

Ms Pellicano Casaletto stated that she was not informed that any email had “bounced”. She further explained that she had even called a mobile number obtained from the ePPS address, but no one answered. She emphasised that stipulated deadlines had been given and that the Authority had to act to ensure continuity.

Cross-Examination by Dr Anna Cordina Zammit

Dr Zammit acknowledged that telephones and emails are technological tools and asked whether a registered letter had been sent in such cases. Ms Pellicano Casaletto replied that the procedure was to communicate through emails registered with ePPS, in line with SPD procedures.

The Recommended Bidder had no questions at this stage.

Final Submissions by Dr Anna Cordina Zammit

Dr Zammit stated that everyone is aware that technology, while efficient, can fail. In a precarious situation, a registered letter should have been sent, especially when no response was received from an interested bidder. She added that in court cases, a message is sent for the signature of a decree and that it is not advisable to rely solely on technology.

Conclusion of the Hearing

With no further arguments presented, Chairman Dr Vincent Micallef thanked the parties and formally concluded the session.

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 11th December, 2025.

Having noted the objection filed by Mr John Zammit (hereinafter referred to as “*the Appellant*”) on the 3rd of November, 2025, refers to the claims made by the same Appellant with regard to the tender of reference – *SPD5/2025/023 – Tender for the Provision of Audit Services for the Malta International Contemporary Art Space* listed as case No. 2198 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Dr Anna M Cordina Zammit

Appearing for the Contracting Authority:

Ms Diane Degabriele

Appearing for the Recommended Bidder

Mr Andrew Fenech

Whereby, the Appellant contends that:

We are writing on behalf of my client, Mr. John Zammit, to formally lodge an appeal under Regulation 273 of the *Public Procurement Regulations (S.L. 601.03)* in relation to the award decision for tender SPD5/2025/023.

We respectfully submit that the decision communicated by the Contracting Authority, stating that the award notice "*shall stand*" despite acknowledged technical difficulties, warrants review. While we appreciate the importance of procedural compliance, we contend that the circumstances in this case merit equitable consideration.

Facts and considerations

The Contracting Authority has acknowledged the existence of technical difficulties that affected our client's ability to receive and respond to contractual communications in a timely manner.

These difficulties, which were beyond our client's control, materially impacted his ability to comply with post-award requirements.

Notably, during the most recent attempt to correspond on 27th October, 2025, the email sent by our client was '*bounced back*'. It was only after contacting the department *via* the telephone numbers printed on the correspondence (*attached herewith*) that our client was instructed to redirect the email to an alternative address, which had not previously been communicated.

The rigid application of procedural timeframes, without due regard to these exceptional circumstances, undermines the principles of transparency, proportionality, and equal treatment that underpin public procurement law. We therefore humbly request that the *Public Contracts Review Board*:

1. Review the award process and the Contracting Authority's handling of post-award communications;
2. Assess whether the technical difficulties experienced by our client constitute sufficient grounds to reconsider the award decision;
3. Determine whether the Contracting Authority's refusal to revisit the award is consistent with the spirit and letter of the *Public Procurement Regulations*. Please find enclosed the following supporting documentation: - Copy of the Contracting Authority's communication dated 24th October, 2025; -

Evidence of the technical issues encountered, including the bounced email and call log; We trust that the Board will give this matter its urgent and impartial consideration.

This Board also noted the **Contracting Authority's Reasoned Letter of Reply** filed on the 5th November 2025, and its verbal submissions during the hearing held on the 11th December, 2025, in that:

We are writing to formally present the reasoning behind the reassignment of *Tender SPD5/2025/023- Tender for the Provision of Audit Services for the Malta International Contemporary Art Space* re letter of objection by John Zammit and Associates (Audit and Assurance) Ltd submitted on the 3rd November, 2025. The tender was initially awarded to John Zammit and Associates (Audit and Assurance) Ltd.

Following the award, the draft contract was sent to the Economic Operator (EO) on the 10th September, 2025 for signature. No response was received, and a follow-up email was sent on the 22nd September, 2025. A further reminder was issued on the 23rd September, 2025, clearly stating a deadline of the 26th September, 2025 for submission of the signed contract. Despite these repeated attempts, no communication or signed documentation was received from the Economic Operator.

On the 29th September, 2025, MICAS issued a final notice to the Economic Operator, stating that the deadline had passed and that any damages incurred due to the need to proceed with the second cheapest offer would be borne by the Economic Operator.

Consequently, a re-evaluation was conducted, and the tender was awarded to the second cheapest compliant bidder, Borg Galea Audit. On the 27th October, 2025, John Zammit and Associates contacted the SPD, claiming that previous communications had been lost or redirected to spam due to a server issue. While we acknowledge the possibility of technical difficulties, MICAS maintain that it is the responsibility of the EO to ensure timely receipt and response to contractual communications, especially following multiple reminders. SPD responded to the EO on the 28th October, 2025, confirming that the award notice for Borg Galea Audit shall stand. The EO was reminded that despite the alleged technical issues, the lack of engagement and failure to meet the stipulated deadlines necessitated the reassignment of the contract to ensure continuity and compliance with procurement regulations. We trust that this explanation clarifies the rationale behind the decision and confirms that all actions taken were in line with procurement procedures and in the best interest of MICAS.

This Board also noted the further Note of Submissions filed by the Appellant dated the 16th November, 2025, whereby the Appellant further contends that:

Note of submission

This Note of Submissions is filed on behalf of Mr. John Zammit (hereinafter “*the Appellant*”) in connection with his appeal lodged on 31st October, 2025 under *Regulation 273 of the Public Procurement Regulations (S.L. 601.03)* concerning the award decision of *Tender SPD5/2025/023* issued by the Ministry for Finance and Employment (“the Contracting Authority”).

This submission arises from a simple but crucial question - *Should a contractor lose an award because of a technical error in the Contracting Authority’s own communication system?* And to this Mr. John Zammit submits that the answer must be *no*. The principle of proportionality, which is the very foundation of our procurement system, demands fairness where circumstances beyond a bidder’s control disrupt due process.

The Appellant respectfully submits that the award notice, which was allowed to “*stand*” notwithstanding the acknowledged technical communication difficulties affecting the Appellant’s correspondence, is inconsistent with the principles of proportionality, transparency, and equal treatment that underpin public procurement law.

Background

- i. Following the recommendation for award under *SPD5/2025/023*, the Appellant experienced verified technical difficulties that materially impeded his ability to receive and respond to contractual communications.
- ii. On 27th October, 2025, the Appellant’s email to the Contracting Authority was returned as undeliverable (“bounced”). Upon telephonic follow-up, he was advised to use an alternative email address, which had not been previously communicated.
- iii. The Appellant acted promptly and in good faith once aware of the alternative contact channel. The point being made is that **only** after phoning the department did he learn that messages had to be sent to a *different address*, which was never previously communicated.
- iv. Despite acknowledging these difficulties, the Contracting Authority maintained that “*the award notice shall stand.*”

- v. This rigid stance contradicts both fair administration and the Board's own precedents.

These events are evidenced by the attached correspondence already filed, call logs, and the Contracting Authority's own admission of technical issues.

Legal Framework

The appeal is grounded in *Regulation 273(1)* of *S.L. 601.03*, which empowers the Board to review alleged breaches of procurement principles and to take any measures necessary to restore legality and fairness.

Relevant principles include:

- i. Proportionality and Equal Treatment (*Article 18(1), Directive 2014/24/EU*)
- ii. Good administration and the duty to act fairly, as recognised in both EU and Maltese procurement case law
- iii. Transparency
- iv. Good faith in administration
- v. PCRБ jurisprudence, which provides that technical or administrative irregularities outside a bidder's control do not justify forfeiture or cancellation where corrective measures are available

If one had to analyse case law such as EU case law (e.g., *C-599/10 SAG ELV Slovensko*) makes clear that contracting authorities must not use formalities in a way that defeats genuine competition or equity. In this case, the Appellant was prevented from complying due to a problem outside his control, which was acknowledged by the very entity enforcing the deadline.

Relevant Precedents

SPD4/2022/164 (Case 2153)

The tender was initially awarded to UNEC in 2023 and cancelled only in 2025, after the recommended bidder failed to sign the contract. The Board noted that cancellation at such a late stage was

disproportionate; the proper procedure was to revert to the next-ranked bidder in accordance with evaluation results.

CT/2200/2011 (Case 530)

The first-ranked bidder (*Mediterranean Insurance Brokers Ltd*) declined to sign the contract after discovering an error in their price submission. The Contracting Authority appropriately offered the award to the second-ranked bidder. The PCRB upheld this corrective approach as consistent with fair administration and continuity of the tender process.

Additional Analogous Precedents

- i. *CT2247/2021 (Case 2056)* – correction of erroneous initial recommendation.
- ii. *CT2281/2020 (Case 1941)* – adjustment following scoring correction.
- iii. *SPD6/2020/041 (Case 1838)* – failure to submit certificates post-award → award shifted.
- iv. *CT2074/2019 (Case 1697)* – irregularities found during due diligence → award shifted.
- v. *CT2063/2018 (Case 1592)* – financial failure post-recommendation → award moved to next eligible bidder.

These confirm a consistent PCRB principle: *where the recommended bidder faces post-award issues not amounting to fault or fraud, the appropriate action is to preserve fairness by allowing correction or passing the award to the next eligible tenderer, not to cancel or disregard legitimate participation.*

Application to Present Case

The Appellant's inability to comply within the stipulated timeframe arose solely from a technical fault acknowledged by the Contracting Authority. Rigid enforcement of deadlines under these circumstances constitutes a disproportionate administrative act and undermines the equal treatment principle.

Given past PCRB practice, the appropriate response would have been to grant a short rectification period or, alternatively, to reconsider the award decision with fairness to all participants.

Relief Sought

The Appellant respectfully requests that the Board:

1. Annul the Contracting Authority's decision to maintain the award notice under *SPD5/2025/023*;
2. Direct the Contracting Authority to re-evaluate the post-award communication process, taking into account the technical failures documented;
3. Order the adoption of a proportionate corrective measure—whether by reopening communications or, if necessary, reconsidering the award in line with tender evaluation results and established PCRБ jurisprudence.

Supporting Documentation

- i. Copy of formal appeal dated 31 October 2025
- ii. Email bounce-back record and call log
- iii. Contracting Authority communication dated 24 October 2025
- iv. PCRБ rulings: Cases 2153, 530, 2056, 1941, 1838, 1697, and 1592 (referenced)

The PCRБ's Own Precedents Support Flexibility

- i. *SPD4/2022/164 (Case 2153)*: When the top bidder failed to sign, the tender was cancelled, the Board questioned proportionality, noting the proper step was to revert to the next eligible bidder.
- ii. *CT/2200/2011 (Case 530)*: When the winner withdrew due to an honest mistake, the award was simply passed on.
- iii. *SPD6/2020/041, CT2074/2019, CT2063/2018*, and others: the pattern is clear — *fair correction trumps rigid formality*.

The Board has consistently endorsed flexibility where fairness and transparency so require.

Conclusion

Mr. Zammit did everything reasonably possible. He reached out, followed up by phone, and submitted evidence of the bounced messages. The failure was not his but it was administrative. Yet, instead of correcting course, the Contracting Authority chose to close the door. That decision undermines the principle of proportionality and creates unequal treatment between bidders who happen to encounter technical obstacles and those who do not.

The Appellant does not ask for special treatment but only for *equal* treatment. He humbly requests that the Board:

1. Recognise that the communication fault prevented proper compliance;
2. Set aside the award notice as vitiated by administrative error; and
3. Direct the Authority to reopen or reissue the award process fairly or proceed with the award ensuring that no bidder is penalised for systemic technical issues.

This would align perfectly with the Board's approach in prior cases, as being pragmatic, proportionate, and grounded in equity. The *Public Contracts Review Board* has always stood as a safeguard against procedural unfairness. In this matter, the Board's intervention is not only justified but it is necessary.

For these reasons, Mr. John Zammit respectfully submits that the Board uphold this appeal, annul the contested award decision, and issue appropriate corrective directions to the Contracting Authority.

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.

The Appellant contests the Contracting Authority's determination to maintain the award of *Tender SPD5/2025/023* in favour of *Borg Galea Audit*, asserting that "*technical difficulties*" impeded the Appellant's ability to engage in post-award communications and comply with mandatory timelines.

In approaching this matter, the Board recognises that it cannot confine its analysis solely to the *Public Procurement Regulations*. While the Regulations provide the overarching legal structure for procurement processes, the practical mechanics of notification, contract acceptance, post-award obligations, and re-award procedures are governed in detail by the *General Rules Governing Tenders (GRGT v4.10, August 2024)*.

Accordingly, the Board shall reproduce the relevant provisions of the *GRGT* in full, as these rules are integral to a proper and comprehensive assessment of the Appellant's claims and to ensuring that the principles of transparency, proportionality, and equal treatment are upheld throughout the procurement process.

To this effect, before addressing the grievances, the Board shall reproduce in full the relevant provisions of the *General Rules Governing Tenders (GRGT v4.10, August 2024)*, as relied upon by the parties. The Board reproduces the relevant provisions of the *GRGT* in full, as these govern notification, contract acceptance, post-award obligations, and re-award procedures.

The *GRGT* establishes that the Contracting Authority shall notify the successful tenderer in writing of a recommendation for award, pending any appeal being lodged.

Part IX of the *Public Procurement Regulations* allows any tenderer concerned to file an appeal within ten calendar days following notification, accompanied by a deposit of between €400 and €50,000. The filing of an appeal suspends the award procedure and precludes the conclusion of the contract for the period of ten calendar days. The procedure for submitting and determining appeals is detailed, encompassing public notification, opportunity for written reply, forwarding of documentation to the Board, oral hearings, and final determination of the appeal.

Unsuccessful bidders are to be notified with the evaluation outcome, including the award criteria, name of the successful tenderer, recommended price, reasons for non-selection, and deadlines for filing objections. Recommendations are published online where applicable.

Contractual obligations post-award is governed by *GRGT*. After the lapse of the appeals period, the successful tenderer must accept the contract through the Government's e-procurement platform within two working days. Failure to do so allows the Contracting Authority to revoke the award and recommend the next bidder, including the right to seize the bid bond or claim any difference between the tendered price and the awarded price. Subsequent clarifications, submission of documents evidencing non-exclusion, and signing of the contract with the performance guarantee must occur within prescribed timelines. Only the signed contract constitutes an official commitment on the part of the Authority.

Appellant's Grievances

The Appellant asserts that technical issues impeded the receipt and acknowledgement of post-award communications. Specifically, the email sent on the 27th October, 2025 was returned undelivered, and the alternative address provided by the Contracting Authority had not been previously communicated. The Appellant submits that the failure to consider these circumstances as, "*exceptional*" and "*excusable*", breaches the principles of proportionality and fair treatment.

The Appellant further submits that procedural deadlines were applied rigidly, disregarding the equitable circumstances created by technical problems, and that the Contracting Authority should have revisited the award following subsequent clarification.

Contracting Authority's Response

The Contracting Authority acknowledges the possibility of technical difficulties but insists that economic operators bear the responsibility of ensuring functional communication channels during the procurement process. It notes that three communications were issued on the 10th, 22nd, and the 23rd September, 2025, containing explicit instructions and deadlines. The Appellant did not respond. The Authority maintains that the reallocation of the contract to *Borg Galea Audit* was justified, proportionate, and necessary to ensure project continuity.

The Authority further observes that public procurement cannot be indefinitely suspended to accommodate delays arising from internal system failures. Once the contract was reassigned and notified, the Authority became *functus officio*. *Post-factum* explanations cannot justify reopening the award absent evidence of manifest error or illegality.

Board's Considerations

The Board finds that in the *GRGT*, an economic operator bears full responsibility for ensuring reliable communication. While technical issues may occasionally arise, the *onus* remains on the operator to exercise diligence, particularly post-award. Multiple reminders and a final notice on the 29th September, 2025 establish a pattern inconsistent with the required standard of diligence.

Timeline analysis reveals that the Appellant received multiple notifications between the 10th and the 23rd September, 2025, with a final deadline of the 26th September, 2025 for acceptance. The first communication from the Appellant following the technical issues occurred on the 27th October 2025, well beyond the two working days prescribed under the *GRGT*.

The *GRGT* expressly states:

"If the contractor fails to comply with this obligation the... Contracting Authority can revoke the award and recommend the next bidder."

Furthermore:

“If the selected tenderer fails to sign and return the contract... the Contracting Authority may consider the acceptance of the tender to be cancelled... The tenderer whose tender has been evaluated and ranked second may be recommended for award.”

The legal architecture is therefore unequivocal, *i.e.* the burden lies squarely upon the operator to maintain functional communication channels and to respond promptly.

The Board observes that the Authority afforded ample opportunity to regularise the situation. Extending deadlines further would have risked breaching procurement timelines, undermining equal treatment among bidders, and contravening the *GRGT* provisions governing acceptance, contract execution, and re-award.

While the Appellant’s alleged server malfunction is plausible, it does not displace the operator’s duty of diligence. A prudent operator, aware of an ongoing procurement, would ensure redundancy, alternate email routing, regular system checks, or active follow-up.

Timeline Analysis

For all intents and purposes this Board is reproducing the timeline of this process. The relevant timeline is as follows:

- **10th September, 2025** First communication from Authority
- **22nd September, 2025** Reminder issued
- **23rd September, 2025** Second reminder issued
- **26th September, 2025** Deadline for signing/acceptance
- **29th September, 2025** Final notice issued
- **Early October 2025** Contract reallocated to next compliant tenderer.
- **27th October, 2025** Appellant’s first communication following a month of silence.

As stated above, under the *GRGT*, the operator had two working days to accept the award. Even if we assume the most generous reading, the failure to respond to *multiple reminders spanning over a number of weeks* cannot be construed as timely.

By the time the Appellant resurfaced on 27th October 2025, the Authority had already acted in accordance with the *GRGT* and had initiated the reassignment process, which necessarily triggers the following:

- a new evaluation step;
- a new recommendation; and
- a new appeals period of 10 calendar days

The Appellant's action was therefore manifestly out of time.

Proportionality and Equity

The principle of proportionality requires that administrative measures must be appropriate, necessary, and not excessive.

The Authority issued (i) three reminders, (ii) a final notice, and (iii) waited beyond the mandatory deadlines before reallocating.

To ignore those delays would have jeopardised compliance with the *GRGT*, *i.e.* timely acceptance and signing and the relevant provisions of the *Public Procurement Regulations* of *SL 601.03* in relation to the appeals and standstill periods.

The Authority acted transparently and without arbitrariness.

The Board reasserts that the *GRGT* reinforces this finality:

“Only the signed contract will constitute an official commitment... The tenderer whose tender has been evaluated and ranked second may be recommended for award... followed by a new appeals period of 10 calendar days.”

Once that cycle is triggered, the original bidder cannot re-enter the process, unless it is proven that the Contracting Authority had, in the circumstances, failed to observe strict compliance to the *PPR*'s or the provisions of the *GRGT*, which, in the present case, no shred of evidence pointing to such non-compliance was produced before this Board.

The Board's Analysis of the Additional Note of Submissions filed by the Appellant dated the 16th November, 2025

Having revisited the entire record, including the appeal, the Contracting Authority's submissions, the applicable provisions of the *Public Procurement Regulations* and the *General Rules Governing Tenders (GRGT)*, and the subsequent Note of Submissions dated the 16th November 2025, the Board considers it prudent to restate its reasoning with reference to the aforementioned Board's considerations with clarity and precision.

Once and again, the additional submissions do not alter the legal and factual architecture of the dispute. Rather, they invite the Board to interrogate whether the Contracting Authority's actions, taken in the face of an alleged technical failure, were disproportionate or inconsistent with principles of fair administration. The appellant's argument centres on the notion that a bidder should not forfeit an award due to

communication breakdowns. This framing, while rhetorically appealing, does not withstand scrutiny when measured against the established obligations of economic operators within the *GRGT* framework.

As already stated above, the *GRGT* is unequivocal. Upon the lapse of the standstill period, the successful bidder must accept the award within two working days *via* the official e-procurement platform. This obligation is neither optional nor flexible. It forms part of the statutory machinery ensuring continuity and legal certainty in public procurement. The responsibility for ensuring reliable communication channels lies squarely, and explicitly, with the economic operator. The procurement regime cannot operate on shifting sands, nor can it suspend post-award procedures indefinitely while awaiting sporadic, belated contact from a recommended bidder.

The timeline is decisive. Between the 10th September and the 29th September, 2025, the Contracting Authority issued three reminders and a final notice. The appellant remained entirely silent. The first communication from the appellant arrived on the 27th October, 2025, after the expiry of all mandatory deadlines and well after the Authority had lawfully proceeded to reallocate the contract to the next eligible bidder. At that stage, the Authority was *functus officio* regarding the original award, and the procedural cycle had already progressed to a new recommendation and a new appeal window. Once this re-award process is triggered, the initial bidder cannot be retro-fitted back into the procedure.

The appellant's additional submissions place significant emphasis on a single bounced email and an alternative address allegedly not previously communicated. Even if the Board were to assume that such a malfunction did occur, this does not displace the operator's fundamental duty to monitor the e-procurement platform, to maintain redundancy in communication systems, and to follow up proactively where an award is pending. A bidder participating in a public procurement process, especially one aware that post-award obligations are imminent, cannot rely exclusively on a single email account nor remain passive. Due diligence is not merely encouraged but it is a condition of participation.

As to the appellant's invocation of *PCRB* jurisprudence, the Board finds the analogies unpersuasive. The cited cases concern situations where irregularities arose during evaluation, or where bidders voluntarily withdrew, or where post-award clarifications revealed errors requiring correction. None involved circumstances where a recommended bidder failed to respond to multiple formal notifications over an extended period and resurfaced only after the re-award process had concluded. The Board has never held that administrative flexibility permits the resurrection of a bidder who has allowed the entirety of the *GRGT* timeframes to elapse unheeded. Indeed, to permit such elasticity would undermine the principles of equal treatment, legal certainty, and procedural discipline.

The principle of proportionality does of course require that administrative acts must be appropriate, necessary, and not excessive. However, proportionality does not serve as a sanctuary for bidders who, through their own inaction or system failures internal to their organisation, fall outside the procedural

timelines. The Contracting Authority issued reminders, a final notice, and waited beyond the strict periods imposed by the *GRGT*. To extend that indulgence further would have jeopardised compliance with statutory deadlines and exposed the Authority to accusations of favouritism or procedural deviation. In procurement, fairness applies to *all* bidders, including the second-ranked tenderer who is entitled to expect that procedural rules will be followed consistently.

The appellant's suggestion that the Authority ought to have "*reopened communications*" or revisited the award after *circa* a month's silence misconceives the nature of procurement finality. Once a new award cycle begins, the structure of the Regulations prohibits revisiting the original recommendation. Only annulment on grounds of manifest illegality or evaluative error could justify such a step, and none is present in this case.

Accordingly, after reviewing the additional submissions with the utmost care, the Board finds no basis upon which to alter its above-mentioned original reasoning or conclusion. The tardiness in communication cannot be attributed to administrative fault in a manner that would warrant the extraordinary remedy of setting aside a lawfully reassigned award.

Synopsis

1. The Appellant's technical difficulties, though unfortunate, stem from its own infrastructure and do not displace its procurement obligations.
2. The Contracting Authority acted strictly within the *GRGT* and the *Public Procurement Regulations*, issued ample reminders, and operated proportionately.
3. The timelines were not respected by the Appellant. Its only communication arrived a full month after deadlines had elapsed and after the Authority had legally moved on.
4. There is no ground in law or procedure to overturn the reassigned award.

Decision and Orders

For the foregoing reasons, the Board dismisses the appeal filed by *John Zammit & Associates (Audit and Assurance) Ltd* and confirms the Contracting Authority's decision to maintain the award of Tender *SPD5/2025/023* in favour of *Borg Galea Audit*.

The Board finds that the Contracting Authority complied with the *Public Procurement Regulations* and the *GRGT*, respected the principles of transparency, equal treatment, and proportionality and exercised its discretion fairly, lawfully, and in the public interest.

The Board,

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

- a. Not to uphold the Appellant's (*John Zammit & Associates (Audit and Assurance) Ltd*) grievances in their entirety;
- b. Confirms the decision of the Contracting Authority to maintain the award of *Tender SPD5/2025/023* in favour of *Borg Galea Audit*
- c. Directs that the deposit paid by Appellant not to be reimbursed.

Dr Vincent Micallef
Chairman

Mr Keith Victor Grech
Member

Ing. Dr Damien Gatt
Member