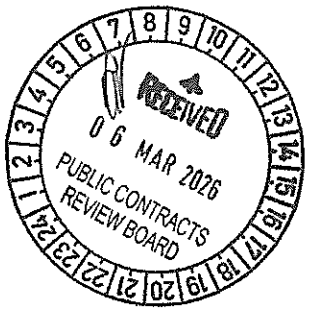


Today 6 March 2026

Secretary
Public Contract Review Board
Notre Dame Ravelin
Floriana

Re. CT3021/2024 ("Services Tender for the Customisation and Implementation of an Off-the-Shelf Courts Management Information System for the Court Services Agency")

REPLY by the Court Services Agency

Introduction

These submissions are filed on behalf of the Contracting Authority in reply to the appeal lodged by the Appellant challenging the proposed award decision under CfT CT3021/2024 concerning the procurement of services for the customisation and implementation of an off-the-shelf Courts Management Information System. The appeal advances four principal grounds which, respectfully, are unfounded both in fact and in law. The arguments advanced by the Appellant proceed largely from a mischaracterisation of the legal framework governing public procurement, a misunderstanding of the evaluation methodology expressly published in the tender dossier, and an attempt to substitute disagreement with professional evaluation for illegality.

At the outset, it must be emphasised that public procurement review is not an appellate reassessment of technical merit. The role of the reviewing body is confined to determining whether the Contracting Authority acted within the legal framework established by the Public Procurement Regulations and the published tender documents. Provided the evaluation committee applied the announced criteria consistently, transparently, and

without discrimination, the Board ought not replace the evaluators' technical judgment with that of a disappointed bidder.

The Contracting Authority respectfully submits that the evaluation process adhered strictly to the Public Procurement Regulations, the tender dossier, and the principles of equal treatment and transparency. The appeal therefore fails on each ground raised.

The proposed award was reached through the Best Price-Quality Ratio methodology expressly published in the tender dossier, with the technical component carrying the majority weighting. The Appellant's offer was not excluded as non-compliant; it was evaluated and placed second on the overall BPQR outcome. The Appellant here is merely disagreeing with the evaluators' assessment of qualitative readiness and completeness.

It must first be stated that it is now settled that the function of the PCRB cannot substitute the discretion of the evaluation committee unless the evaluation committee's decision was unreasonable. This reflects, in substance, what in Administrative Law is known as "the Wednesbury approach". In UK administrative law, the Wednesbury standard is a high-threshold ground of judicial review: a court will intervene only where a public authority's decision is so unreasonable - so irrational in its outcome - that no reasonable authority, properly directing itself, could have arrived at it. Originating in an English case in the name of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948]*, this doctrine focuses on the legal fact that at appellate stage, it is not whether the reviewing body would have reached a different conclusion, but whether the decision falls outside the range of responses open to a reasonable decision-maker.

The Maltese Court of Appeal had decided in a similar manner. *In Saniclean Joint Venture vs. Saint Vincent de Paul Long Term Care Facility (Appeal No. 97/2020, decided on 20th July 2020)*, the Court stated: "Il-qorti tara li kollox ma' kollox l-evalwazzjoni li għamel il-kumitat ta' l-għażla kienet raġonevoli u l-board ma kellux jissotwixxi id-diskrezzjoni tiegħu għal dik tal-kumitat" (The court sees that overall the evaluation made by the selection committee was reasonable and the board should not substitute its discretion for that of the committee). In *Executive Security Services Limited vs. Aġenzija Servizzi (Appeal No. 205/2021, decided on 7th March 2022)*, the Court reiterated: "Qabel xejn irid issir referenza għal prinċipju kardinali f'materja

simili illi fejn l-evalwazzjoni li jkun għamel il-kumitat tal-għażla kienet raġonevoli għalhekk il-board jew tribunal tat-tieni istanza m'għandux jissostitwixxi iddiskrezzjoni tagħhom għal dik tal-kumitat" (First of all, reference must be made to the cardinal principle in similar matters that where the evaluation made by the selection committee was reasonable, therefore the board or tribunal of second instance should not substitute their discretion for that of the committee).

The PCRB is humbly requested to determine this matter with the above principle firmly in mind, namely that the Board's function is not to substitute its own assessment for that of the Evaluation Committee, but to intervene only where a demonstrable legal defect is shown and the decision impugned falls outside the range of outcomes reasonably open to a properly directed decision-maker.

A. First Ground of Appeal – Disclosure and Alleged Breach of Effective Judicial Protection

The first ground of appeal concerns alleged non-disclosure of documents requested by the Appellant. The Appellant attempts to frame this issue as one of effective judicial protection, suggesting that without access to extensive documentation belonging to the successful tenderer it cannot properly challenge the award decision. This proposition is legally unsustainable.

It must be said however that the first grievance raised by the Appellant does not, in substance, impugn the Evaluation Committee's assessment, the comparative scoring exercise, or the proposed award decision adopted by the Contracting Authority; rather, it concerns a subsequent and collateral request for documentation addressed to the Department of Contracts after the evaluation process had been concluded and the result communicated. In these circumstances, even on the Appellant's own framing, the complaint is not directed at any alleged defect in the award decision as such, but at the handling of an administrative request made to a separate authority in the post-decision phase, governed by its own statutory duties and limitations (including confidentiality safeguards). It follows that this point, as pleaded, cannot constitute a ground of challenge to the legality of the award

decision of the Contracting Authority, nor can it be used to impugn the validity of an evaluation and award process in respect of which no concrete illegality is identified.

Therefore, the first ground of appeal, which does not even refer to the decision appealed, shall be set aside.

Without prejudice to the above, it should be stated that the Public Procurement Regulations establish a carefully calibrated balance between transparency and confidentiality. Regulation 40(1) of the Regulations expressly provides that contracting authorities shall not disclose information designated as confidential by economic operators, including technical or trade secrets and confidential aspects of tenders. This provision is mandatory. It reflects the fundamental reality that procurement procedures depend upon bidders being able to submit commercially sensitive material without risk that competitors will subsequently obtain access to proprietary solutions.

The Appellant's request extends precisely into those protected domains. Requests for full technical submissions, system architecture descriptions, demonstrations, implementation methodologies, pricing structures, and credentials necessarily encompass information forming part of the intellectual and commercial core of the preferred bidder's tender. Disclosure of such material would undermine competition and directly contravene Regulation 40.

Regulation 40(2), however, identifies categories which are not confidential, including the identity of bidders, subcontractors, and documentation evidencing compliance with selection criteria. The Department of Contracts has adopted precisely the approach envisaged by the Regulations: disclosure of non-confidential information sufficient to explain the outcome, while protecting genuinely confidential material. This represents compliance, not obstruction.

Moreover, Regulation 242 confirms that the obligation owed to unsuccessful tenderers is to provide reasons and the relative advantages of the winning tender, not to disclose the entirety of a competitor's offer. The Regulations expressly permit withholding information

where disclosure would prejudice legitimate commercial interests or distort competition. The Appellant's interpretation would render these provisions meaningless.

It must further be observed that the tender dossier itself imposed strict confidentiality obligations concerning demonstrations and system access credentials. Demonstrations were intended solely as verification tools for evaluators and were explicitly stated to be treated with strict confidentiality. Any disclosure to competitors would defeat the purpose of that clause and expose proprietary systems to undue risk.

Indeed, the breadth of the documentation sought by the Appellant confirms why the complaint is misconceived: much of what is being demanded consists of material that, by its nature, reproduces or reveals the confidential aspects of a competitor's tender, including technical know-how, trade secrets, system design and commercially sensitive pricing structures. The Public Procurement Regulations do not merely allow such information to be withheld; they impose a positive legal obligation not to disclose where disclosure would prejudice legitimate commercial interests or fair competition. In other words, to accede to the request in the form made would not be an act of "transparency" but would expose the authority responsible for tendering to acting in breach of the very same law that governs its operations.

The Appellant's reliance on general references to principles in the EU directive does not alter this conclusion. EU Directives are implemented domestically through the Public Procurement Regulations, which represent the operative legal framework and therefore, exclusive reliance on the Directive is legally incorrect. The balance between transparency and confidentiality is already embedded within Maltese law.

The Appellant cannot rely on abstract principles to override explicit local statutory provisions.

Accordingly, the Department of Contracts acted lawfully, according to the criteria established by *C-54/21 Antea Polska S.A., and Others*, according to the Public Procurement Regulations, and according to principles established by the PCRB and the CJEU - in

providing sufficient explanatory information while refusing disclosure of confidential or commercially sensitive materials.

Therefore, the first ground of appeal should be dismissed.

B. Second Ground of Appeal – Alleged Undisclosed Criteria and Evaluation under Criterion C1

The Appellant next alleges that the evaluation committee applied undisclosed or modified award criteria when assessing Criterion C1. This allegation is directly contradicted by the tender documentation itself.

The tender dossier unequivocally provides that each technical offer would be evaluated solely in accordance with the published award criteria and associated weighting, and that no other award criteria would be used. The methodology was clearly disclosed: a best price-quality ratio with a 70% technical and 30% financial weighting. All bidders participated on that basis.

The Appellant's complaint arises not from the introduction of new criteria but from dissatisfaction with the evaluators' qualitative assessment. Public procurement law draws a clear distinction between illegality and disagreement. Evaluation necessarily involves professional judgment, particularly where qualitative aspects such as usability, coherence, scalability, and methodological robustness are assessed.

It must be stated that CJEU has held that an evaluation committee must be able to have some leeway in carrying out its task and, thus, it may, without amending the contract award criteria set out in the tender specifications or the contract notice, structure its own work of examining and analysing the submitted tenders (see judgment of 21 July 2011 in *Evropaïki Dynamiki v EMSA, C-252/10*, not published, EU:C:2011:512, paragraph 35). It has also been stated that "That leeway is also justified by practical considerations. The contracting authority must be able to adapt the method of evaluation that it will apply in order to assess and rank the tenders in accordance with the circumstances of the case." See *Case C-6/15, TNS Dimarso NV.*

It is further important to correct a recurring insinuation in the appeal regarding the demonstration. The tender dossier is explicit that "no qualitative score is associated with the demonstration" and the demonstration was envisaged as a verification tool to confirm (or, where necessary, test) the assertions made in the written submission; it was not a separate, scored criterion and it was never treated as such. In the present case, the Appellant's points were not reduced because of any alleged "default" during the demonstration, nor because the demonstration attracted an adverse "mark"; rather, the evaluation outcome flowed from the evaluators' documented finding that the Appellant's submission did not provide the required depth of comprehensive, feature-specific information and that key elements remained insufficiently substantiated in the tender documentation. In other words, the demonstration did not operate as a standalone scoring event: it merely reflected and confirmed the underlying deficiency identified in the written proposal - namely, the absence of the level of detail and substantiation required by the published criteria.

With respect, the Evaluation Report itself answers the Appellant's complaint as to why its score under the relevant functional/scalability assessment was materially lower: the Evaluation Committee recorded that the Appellant "did not provide comprehensive detail of the available functionalities" in the write-up, but instead only a brief description with very minimal detail, and that even during the demonstration the Appellant "only provided a superficial overview" and was unable to provide comprehensive details of the functionalities; the Committee further noted concrete shortcomings going to substance and not presentation, including that the case-management "life cycle" described was not an actual case journey for each action within the case lifecycle, that the public portal user interface shown was essentially based on submission of electronic forms and not a direct in-system e-filing service (with the interface being described as "manually quite laborious for e-filers"), and that the virtual sittings feature was presented as an autonomous module with minimal or no integration with the actual system (necessitating manual upload of data). In the same vein, the Evaluation Report also records that for Criminal Records Management the Appellant's offering was very basic, and that the bail management feature lacked functionalities expressly referenced by the evaluators (including bail history, temporary bail conditions, and editing of bail conditions). In other words, the lower score was not the

product of any undisclosed criterion or any punitive "demo score", but flowed from the evaluators' documented finding that the Appellant's submission and demonstration did not substantiate the expected depth of functional completeness, integration and operational readiness required by the published criterion, and that several key elements were either insufficiently evidenced, functionally limited, or presented in a manner indicating material reliance on manual workarounds and/or non-integrated modules.

The tender dossier required structured submissions within an approximate word range while encouraging the use of diagrams, charts, and supporting material. The limitation was therefore not restrictive but organisational. Bidders retained multiple means of conveying technical depth concisely. The Appellant's suggestion that brevity requirements prevented adequate explanation is inconsistent with the tender instructions themselves. In those circumstances, the issue is not one of permitted length, but of the extent to which the space and format available were used to address the matters that were decisive for the assessment under the published criteria.

The evaluation report indicates that scoring differences arose from the level of detail and completeness provided. Points were not reduced arbitrarily nor because of any demonstration default. Rather, scores reflected missing or insufficiently substantiated information within the written submission. This is entirely consistent with the evaluation grid, which required clarity, internal coherence, and demonstrable completeness.

It is also relevant that the Appellant's appeal itself extends to extraordinary length while reiterating general procurement principles without direct connection to the specific evaluation findings. The extensive nature of the appeal inadvertently illustrates the evaluative concern: the difficulty lay not in word limits but in the ability to present structured and substantiated explanations within the format requested.

C. Third Ground of Appeal – Criterion C2 and Readiness of Functionalities

The third ground concerns scoring under Criterion C2, specifically relating to system readiness and the availability of certain functionalities. Here again, the tender dossier provides decisive guidance.

The evaluation grid explicitly states that points would be awarded based on the readiness of functionalities, assessed individually, with the total score reflecting operational completeness.

Readiness was central to this procurement because the subject matter was not the speculative development of a future platform, but the customisation and implementation of an off-the-shelf Courts Management Information System, intended to be deployed within defined timeframes, integrated with existing governmental infrastructure, and relied upon operationally with minimal delivery risk, even due to external regulatory and funding obligations. In that context, the published evaluation logic necessarily privileges demonstrable operational maturity over aspirational capability – this evident from the Note to C2, as will be shown.

The distinction between what is *already available and working* and what is *contingent on post-award customisation or future development* is therefore not a secondary technical nuance; it is an essential procurement safeguard inherent to off-the-shelf implementations.

It is precisely for this reason that the tender documentation required points to be awarded based on the readiness of functionalities, with each feature assessed individually and the overall score reflecting completeness and operational status. Against that framework, the Evaluation Committee did not take issue with the Appellant's solution in the abstract; rather, it recorded that the Appellant did not sufficiently evidence present operational readiness across the required functional set. The Evaluation Report notes that the Appellant's description and demonstration did not supply comprehensive, feature-specific substantiation of workflows, integrations and system behaviour, and that certain elements were presented at a high level or in a manner indicating dependence on manual processes, non-embedded modules, or further work before full operational deployment.

Moreover, and importantly, this conclusion is corroborated by the Appellant's own functional mapping: the Appellant's bid itself indicates that a substantial portion of the required functionalities were not presented as fully operational "out of the box", but as available with customisation, and that at least one key requirement was marked as not yet

available. In an off-the-shelf procurement, those classifications are not benign labels; they are direct indicators of reduced readiness. "Available with customisation" necessarily entails additional build/configuration, testing, and integration effort before the functionality becomes operational in the Contracting Authority's environment, while not yet available ("will be available") denotes a higher degree of uncertainty and delivery risk. In those circumstances, the Evaluation Committee was bound - indeed required - by the published scoring logic to treat the Appellant's offering as less ready than an offering demonstrating higher immediate completeness and embedded operational status, and to reflect that reduced operational maturity in the score. This logic is reflected in the score awarded.

As a result, functionalities available out-of-the-box logically score higher than those requiring customisation or future development. This distinction is fundamental to procurement of off-the-shelf solutions.

Indeed, this is supported by Note to C2 (a note which is seemingly overlooked by the Appellant), that states that:

"Points will be awarded based on the readiness of all functionalities. Each feature will be assessed individually, and the total score will reflect the overall completeness and operational status."

This cannot be clearer – readiness was assessed as per this Note.

The Appellant did not receive zero points. Rather, the evaluation committee awarded a partial score reflecting that certain functionalities were indicated as "will be available" or dependent upon customisation. In particular, the criminal records functionality constituted a complex requirement involving integrations, authentication mechanisms, and portal redevelopment. Where readiness was not fully demonstrated, a reduced score was not only permissible but required under the published methodology.

Importantly, the same assessment logic was applied uniformly across all bidders. The committee evaluated readiness consistently in accordance with Note C2 of the tender dossier. The allegation of unequal treatment is therefore unsupported.

The Appellant's argument effectively seeks to equate promised future capability with present operational readiness. The tender dossier deliberately distinguished between these categories to allow meaningful comparison between solutions. The evaluation committee merely applied that distinction as instructed.

D. Fourth Ground of Appeal – Alleged Blacklisting and Integrity Concerns

The final ground alleges that the recommended consortium ought to have been excluded due to alleged integrity concerns. This argument fundamentally misunderstands the legal concept of exclusion and blacklisting and builds a grievance based on mere allegations and news reports.

Under the Public Procurement Regulations, mandatory exclusion arises only where there exists a conviction by final judgment for specified offences. Allegations, investigations, or media reports do not satisfy this threshold. The Regulations intentionally adopt an objective legal standard to prevent arbitrary exclusion based on unproven claims.

The Public Procurement Regulations draw a clear procedural distinction between (i) exclusion from a particular procurement and (ii) blacklisting as a system-wide sanction. Exclusion is applied within the procurement by the Contracting Authority on the basis of the exclusion grounds (including, in the mandatory cases, a final conviction for the specified offences; and, in the discretionary cases, other serious grounds), and it operates only for that procedure - with the contracting authority obliged to ensure that no contract is awarded where an operator (or proposed subcontractor) is caught by an exclusion or blacklisting ground, and to require replacement of any subcontractor so affected, failing which the tender must be rejected. Blacklisting, by contrast, is not a tender-by-tender decision but a separate, formal process commenced by the competent authority (principally the Director) through a registered/judicial notification setting out the grounds, after which the operator has a strict right of challenge before the Commercial Sanctions Tribunal within the statutory time-limit; if no objection is filed, the blacklisting becomes final and has the effect of barring the operator from any public procurement (whether directly, as subcontractor, or within a consortium) for the prescribed period. Critically, therefore, the mere assertion that an

operator is "subject to criminal proceedings" is not, of itself, equivalent to a final conviction; it may inform the contracting authority's risk assessment and the application of any discretionary exclusion grounds (subject always to procedural fairness and proportionality), but the more severe, general prohibition of blacklisting only crystallises through the dedicated statutory procedure and the remedies provided for before the specialised tribunal.

The evaluation committee did not ignore the issue raised. On the contrary, clarifications were requested, self-declarations reviewed, and independent due diligence conducted. The resulting assessments identified no red flags and confirmed that no exclusion ground was triggered. External verification processes likewise yielded no findings warranting exclusion. Indeed, any allegations were eventually dismissed.

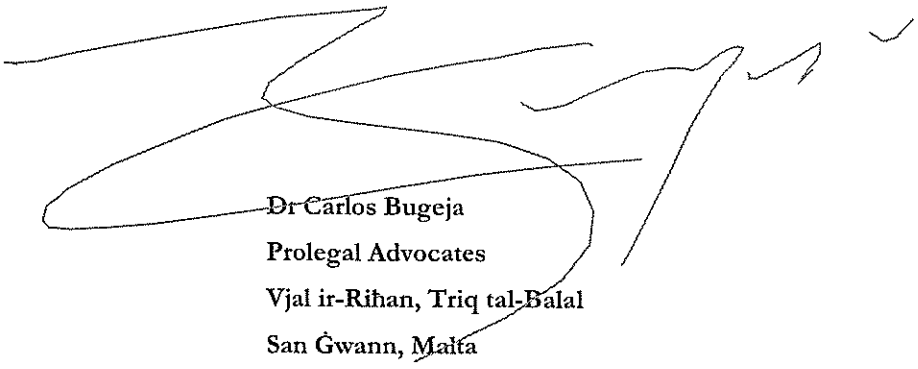
Furthermore, it must be stated that blacklisting is not an informal label but a legal status resulting from a defined procedure and determination by competent authority. No such determination exists in this case. The Appellant's attempt to transform allegations into exclusion grounds therefore lacks legal basis.

Conclusion

Taken cumulatively, the appeal reflects disagreement with the outcome rather than illegality in the process. The Contracting Authority respected the published evaluation framework, protected confidentiality as required by law, applied scoring criteria consistently, and undertook appropriate due diligence concerning integrity matters.

Public procurement requires certainty, fairness, and respect for both transparency and commercial confidentiality. The process followed in this procurement embodies those principles. The evaluation committee exercised its technical judgment within the boundaries established by the tender dossier and the Public Procurement Regulations.

For these reasons, the Contracting Authority respectfully requests that the Public Contracts Review Board dismiss the appeal in its entirety and confirm the proposed award decision.



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