

# **PUBLIC CONTRACTS REVIEW BOARD**

## **Case 2221 – SPD1/2024/147 – Tender Construction of Substation, Switch Room and Generators Room and the Respective Underlying Substructure Works using Environmentally Friendly Material and Processed at the SLC UoM**

**30<sup>th</sup> March 2026**

The Board,

Having noted the letter of objection filed by Dr Carl Grech on behalf of Fenech & Fenech on behalf of C&F Building Contractors Limited, (hereinafter referred to as the appellant) filed on the 11<sup>th</sup> December 2025;

Having also noted the letter of reply filed by Dr Carlos Bugeja acting for and on behalf of the University of Malta (hereinafter referred to as the Contracting Authority) filed on the 18<sup>th</sup> December 2025;

Having heard and evaluated the testimony of the witness Ms Claire Saliba (Member of the Evaluation Committee) as summoned by Dr Carlos Bugeja acting for the Contracting Authority.

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

Having noted and evaluated the minutes of the Board sitting of the 24<sup>th</sup> February 2026 hereunder-reproduced.

### **Minutes**

#### **Case 2221 Objection – SPD1/2024/147 – Tender Construction of Substation, Switch Room and Generators Room and the Respective Underlying Substructure Works Using Environmentally Friendly Material and Processed at the SLC UOM.**

The Tender was issued on the 11th of April 2025, and the closing date was 26th May 2025.

The estimated value of the tender, excluding VAT, was €446,134.

On 11th of December 2025, C&F Building Contractors Ltd., lodged an appeal against The University of Malta – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 24th of February 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Mr Keith Victor Grech and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €2230.67 was paid.

There were Two bids.

The attendance for this public hearing was as follows:

### **Appellant – C&F Building Contractors Ltd**

Dr Carl Grech – Legal Representative

Mr Rennie Schembri – Company Representative

Mr Johann Farrugia – Company Representative.

### **Contracting Authority – University of Malta.**

Dr Carlos Bugeja – Legal Representative

Dr Oriella de Giovanni – Legal Representative

Ms Claire Saliba – Chairperson

Mr Glen Buttigieg – Secretary

Prof. Alex Torpiano – Evaluator

Ms Mary Anne Borg -- SPD1 Representative(online)

Ms Maria Borg -- SPD1 Representative(online)

### **Preferred Bidder – Bava Ltd.**

Dr Alessandro Lia – Legal Representative.

Ms Shannon Camilleri – Company Representative.

### **Opening Statements**

The Chairman welcomed the parties present and stated that Mr Keith Victor Grech would be following the proceedings online. He formally opened Case Number 2221 in the records of the PCRB. The Chairman identified the Appellant as C&F Building Contractors Ltd., the Contracting Authority as the University of Malta, and acknowledged the presence of representatives of the preferred bidder, BAVA Ltd. The Chairman invited the legal representative for the Appellant to make the initial submissions.

The Chairperson invited the legal representative for the appellant to make the initial submissions.

### **Initial Submissions**

#### **Initial Submissions by Dr Carl Grech (for the Appellant)**

Dr Grech noted that the issue in this case was whether the Contracting Authority (CA), the University, had the right to request a Tax Compliance Certificate and insist on the production of a recent Tax Compliance Certificate. The Appellants insist that the CA added a requirement that went beyond what was indicated in the tender document and in the law.

This tender was valued at €450K, and even the law would not require a Tax Compliance Certificate. The certificate submitted by C&F was compliant, showing honoured agreements with the tax

department. The addition of this request was excessive and disproportionate and renders their rejection illegal. Their offer was the cheapest.

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

Dr Bugeja did not agree with Dr Grech that the Tax Compliance Certificate is not required by law, because Dr Grech is quoting e-Certis, which is reference 2 of the EU. It is not Maltese law, and it is not a requirement for a tender. However, even if e-Certis were to be considered, they would still request a compliance certificate since the amount exceeds €500K.

The certificate submitted was not a compliance certificate but a compliance status letter, showing due tax and payments, but not a compliance certificate. The other reason for rejection was that the contract had to be accepted within two days and remained unaccepted.

#### **Witness Testimonies**

##### **Ms Claire Saliba (ID no. 376174M) summoned by Dr Carlos Bugeja (for the Contracting Authority)**

Ms Saliba stated that this tender had previously been awarded to C&F, and the SPD requested a compliance certificate. C&F agreed to accept the award on the ePPS, and they had to upload these documents, but they did not. The SPD phoned and sent emails on October 13th and November 14th. According to Article 20 of the General Rules, the documents should have been uploaded within two days. They did not even make an acceptance on the ePPS. The SPD asked the CA to proceed with the second bidder.

##### **Cross-Examination by Dr Carl Grech (for the Appellant)**

Dr Grech stated that the Appellants had in fact uploaded a certificate dated June 24th, 2025.

Ms Saliba said that the certificate was not accepted by the SPD because, first, it was not uploaded within one month, and second, it was not compliant. She agreed that the certificate stated that the agreements with the tax department were honoured. This was not contested. The certificate should have been uploaded by the 3rd of October 2025, yet it was dated June 24th, 2025.

##### **Cross-Examination by Dr Alessandro Lia (for the Recommended Bidder)**

Dr Lia noted that the tender closed on May 26th, 2025. The award letter was approved as final on October 3rd, 2025, and there was no appeal. On December 1st, 2025, C&F was informed that the award was withdrawn. Dr Lia requested a copy of the withdrawal letter, which letter was given.

Ms Saliba reminded the Board that emails were sent to C&F requesting the upload of the certificates, and a final letter was sent informing C&F that the award would be given to the second bidder.

#### **Final Submissions**

##### **Final Submissions by Dr Carl Grech (for the Appellant)**

Dr Grech stated that C&F had annexed the summary bill of quantities of Document B in their submissions. The value of the tender was €450K and not €500K. Therefore, they fall under what e-Certis dictates, and he quotes:

*"At the tender submission stage, a self-declaration is required to be submitted by the economic operators. The certificate is submitted only by the successful tenderer at the signature of the contract. This is only asked for tenders with a value of 500,00-euro net of VAT or more".*

Therefore, the compliance certificate did not apply in this case. Referring to Article 233 of the PPR, he quotes:

*"With a view to facilitating cross-border tendering, the Government of Malta shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis established by the Commission is constantly kept up to date".*

This is contrary to what the CA is alleging. The Maltese Regulation recognizes e-Certis as an intra-Community tool, and the PPR could not ignore this EU-level tool regarding certification. In this case, a Tax Compliance Certificate was not needed by the preferred bidder, as the value of the tender was less than €500K.

Dr Grech admitted that the Tax Compliance Certificate was submitted and dated June 2025, one month after the closing of the tender stage. It certified that the preferred bidder was tax compliant, with agreements honoured with the tax department. The counterpart referred in its answer to Regulation 193 of the PPR, where bidders had to be tax compliant. The Appellant referred to the same Regulation 193, sub-article 3, and he quotes:

*"The term 'appropriate means' under this regulation includes any certificate, declaration or documentation issued by a competent entity which demonstrates that the economic operator is in breach of its obligations relating to the payment of taxes and, or social security contributions.*

*The exclusion mentioned under this regulation shall no longer apply if the economic operator fulfils his obligations by paying or by entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines".*

Referring to Case 1705 IM 009/2021, Polidano Brothers vs Infrastructure Malta, he quotes:

*"Henceforth, the crux of the matter rests on whether the Appellant company did in fact supply such a requested certificate or otherwise. From the documentation reviewed by this Board, such a certificate issued to the Appellant company and in the hands of the Contracting Authority reads "which amounts is covered by agreements that are not being honoured".*

In that case a certificate was submitted stating that the agreement was not being honoured, contrary to this case where the agreements were being honoured. The certificate was valid, and when the certificate was submitted C&F was in line with tax compliance and should not have been rejected on this basis.

The exclusion letter states that C&F did not accept the tender; however, they did accept the tender, and the SPD did not accept the Tax Certificate, which was compliant. The Appellant made a further submission arguing that this constituted a lack of proportionality, as the CA was adding requests that were not required by law.

Another submission by C&F concerned the merits of separate contracts and projects between C&F and the University with amounts of almost four million euros. This situation renders the preferred

bidder in a difficult financial state. The CA is, on one side, in arrears with the Appellant, placing it in a more difficult financial situation, and on the other hand is insisting on a Tax Compliance Certificate which was not required.

### **Final Submissions by Dr Carlos Bugeja (for the Contracting Authority)**

Dr Bugeja stated that he did not wish to discuss the issue of arrears mentioned by Dr Grech but noted that the amounts mentioned were more than 70%. There is an ongoing dispute, and it is not fair to justify a shortcoming by C&F by referring to this dispute.

Regulation 193 refers to exclusions on tax issues but does not relate to the dates of certificates. e-Certis is a tool with a different function and not a tool establishing exclusion requirements, referring to Article 61 of Directive 24/14. He stated that e-Certis is an "online repository of certificates".

e-Certis facilitates cross-border tendering in the EU. It is not a tool that creates binding requirements on Maltese Contracting Authorities, and he quotes:

*"With a view to facilitating cross-border tendering, Member States shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis established by the Commission is constantly kept up to date.*

*Contracting Authorities shall have recourse to e-Certis and shall require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis".*

The appeal was based on the argument that e-Certis states that the Tax Certificate is required only when the value is €500K, and since Maltese law states otherwise and the amount was less than €500K, a Tax Certificate should not have been requested. However, e-Certis was not intended to create thresholds but to serve as a repository of documents.

The estimated tender value, including add-ons, was €535,360.90. Maltese law does not establish any threshold, and reference must be made to Article 193 of the PPR.

Referring to Article 20.1 of the General Rules Governing Tenders, version 4.10, he quotes:

*"After the lapse of the appeals period and pending that no objections have been received and/or upheld, the successful tenderer is obliged to accept the contract through Governments e-procurement platform within two (2) working days from when he is notified to do so. If the contractor fails to comply with this obligation the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority can revoke the award and recommend the next bidder".*

Several emails were sent by the SPD and the University, but the tender was not accepted by C&F as required. The issue of financial loss is irrelevant to the Board and is very complex. If the Appellant believes that it is not being paid by the University in an unjust manner, there are other remedies available. Dr Bugeja stated that it was in bad taste to refer to this issue in the first place.

### **Final Submission by Dr Alessandro Lia (for the Recommended Bidder)**

Dr Lia stated that the issue of proportionality was not relevant. This appeal was not an appeal from an award decision following an evaluation where one bidder was selected instead of another based on the tender document criteria.

In this case there was an un appealed decision by C&F and therefore a confirmed award, and there was no need to refer to the tender document. This was a post-award situation where the reasons arise from the rules, and the letter of the law applies.

The Board must determine whether the University, based on General Rule 20 and Regulation 193, acted correctly in withdrawing the award after time had passed. General Rule 20 provides that right; therefore, there is no issue of proportionality or arrears.

C&F adopted two positions: one stating that there was no need for a certificate and the other stating that they were compliant with the certificate submitted. The CA had every right to ensure that the contractor was compliant with the fiscal authorities, especially for a tender of approximately half a million euros.

Referring to the Lascaris Wharf case, this issue was analysed and the Board had stated that the Tax Compliance Certificate was required, and the appeal was withdrawn.

The CA has the discretion to request the certificate regardless of the amount. The CA reactivated the procedure for C&F to accept, but they did not, which triggered Regulation 20 of the General Rules with a fixed date from the tender. This appeared to be a desperate argument, but the regulations apply equally to everyone.

#### **Replica by Dr Carl Grech**

Dr Grech stated that both the University and BAVA were focusing on what happened after the rejection. In the appeal, the Appellants argued that the rejection had no legal basis, as they were tax compliant. The Board had to determine whether this rejection was acceptable, and what happened afterwards was irrelevant.

#### **Replica by Dr Carlos Bugeja**

Dr Bugeja reminded the Board that the certificate was dated June 24th, 2025, whereas the award was in October 2024.

#### **Closing**

The Chairman thanked all parties present, and the Board would now consider everything that was heard and stated during the hearing and would communicate its decision in due course.

End of Minutes

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**Hereby resolves:**

The Board refers to the minutes of the Board sitting of the 24<sup>th</sup> February 2026.

Having noted the objection filed by C&F Building Contractors Limited (hereinafter referred to as the Appellant) on 11<sup>th</sup> December 2025, refers to the claims made by the same Appellant with regards to the tender of reference SPD1/2024/147 listed as case No. 2221 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Carl Grech
Appearing for the Contracting Authority:	Dr Carlos Bugeja
Appearing for the Recommended Bidder:	Dr Alessandro Lia

Whereby, the Appellant contends that:

- a) ***1<sup>st</sup> grievance – The Evaluation Committee’s reason for withdrawal is ab initio inapplicable in relation to the appellant’s bid***

The crux of the Committee's decision recommending that the Appellant's award be withdrawn revolves around the Committee's requirement that the Appellant was to submit — amongst other pertinent documentation — a Tax Compliance Certificate.

The main point of contention for this ground of appeal is that subsequent to the Appellant's submittal of a recent compliance certificate issued by the Malta Tax and Customs Administration (the 'MTCA'), and after an elapse of 2 months with no feedback, the Committee rejected that certificate, arguing that now being 2-months old, the certificate was no longer valid and thus necessitated a more recent one.

While the Appellant did indeed comply by sending a tax compliance certificate, it should be pointed out that the necessity of the submittal of a tax compliance certificate actually only arises if the tender is equal to or exceeds the value of €500,000. This emanates clearly from the European Commission's e-Certis website, which details the circumstances under which a Tax Compliance Certificate is to be retrieved and reviewed by the Contracting Authority:

The 'Description' section of the same page clearly states that:

At the tender submission stage, a self-declaration is required to be submitted by the economic operators. The certificate is submitted only by the successful tenderer at the signature of the contract. This is only asked for tenders with a value of 500,000 euro net of VAT or more. This Certificate is obtained from the IRD Division (Contact Person Ms. Joanne Farrugia Ciantar Tel. +356 22962755)

However, the Appellant's tender value is less than €500,000, as evidenced through Document B. This document clearly outlines the contract value as €450 051.12 and thus falling outside the requirement of submitting a tax compliance certificate. It thus results that the Appellant acted further and beyond its submission requirements, and should therefore not be penalised for submitting a valid compliance certificate in any event and whatever the reason may be.

Furthermore, it is clear from the 'linked criteria' section of the same page that this requirement pertains to the fulfilment of 'payment of taxes', which requirement is directly linked to Regulation 193 of the PPR . It is also worth pointing out that the e-Certis website is explicitly mentioned and catered for in both the Public Procurement Directive as well as the PPR. In fact, the PPR states the following:

*233. (1) With a view to facilitating cross-border tendering, the Government of Malta shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis established by the Commission is constantly kept up-to-date. (2) Contracting authorities shall have recourse to e-Certis and shall require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis.*

Therefore, all information pertaining to certifications and which are detailed in the e-Certis website are also valid, binding and cannot be neglected, especially where the aforementioned threshold of €500,000 is not disputed or contradicted in any way under the PPR or the CCR.

The fact that the Committee required a tax compliance certificate even more recent than 2 months is all the more unfair when considering that per the eCertis website, the Appellant should never have been requested in the first place to submit the tax compliance certificate. All that should have been required was a self-declaration, with the Appellant going above and beyond by providing the compliance certificate.

Furthermore, it is also relevant to consider that at the time of the submission of the tax compliance certificate, that certificate was as recent as it could have been. It was only due to an elapse of 2 months that the Commission replied to the Appellant and further requested a new tax compliance

certificate. This should have never been requested due to what is clearly stated in e-Certis website with regards to Tax Compliance Certificates.

- b) ***2<sup>nd</sup> grievance – Without prejudice to the first grievance, the evaluation committee’s reasons for withdrawal lacks legal basis and as such, the appellant complied with all legal requirements -***

As already outlined in the first ground of appeal, the Committee's recommendation for withdrawal centres around their requirement that the tax compliance certificate had to be a recent one, and that the Appellant's tax compliance certificate dated 2 months old was insufficient.

The appellant again emphasises on the point that the eCertis website makes it abundantly clear that tax compliance certificates are only asked for tenders with a value of €500 000 net of VAT or more. This threshold was neither reached nor exceeded by the Appellant's bid.

In any case, and without taking away from the validity of the first ground of appeal, the applicable laws and regulations do not even cater for what constitutes 'recent' or 'updated' documentation. Here, one must make reference to Regulation 193 et seq of the Public Procurement Regulations (the 'PPR' — S.L. 601.03), which is the main Regulation in relation to Economic Operators' duty to be tax compliant.

This Article is to be read in tandem with the provisions of Regulation 230 of the PPR. Again, nowhere do any of the regulations from the CCR or the PPR stipulate a particular requisite as to 'very recent' documentation. Notwithstanding this point, the Appellant contends that a tax compliance certificate issued just 2 months prior to the Committee's decision should have constituted sufficient evidence as provided for in Regulation 230. For the purposes of determining the applicability or otherwise of Regulations 193 and 194 (a) in terms of Regulation 230, the contracting authority is bound ("shall") to accept certificates issued by the competent domestic authority with regards to tax matters.

In the present case, there is no doubt that the Compliance Certificate issued by the Malta Tax and Customs Administration satisfies the requisites under Regulation 230. It thus follows that certificate constitutes admissible evidence for the absence of any of the grounds of exclusion in Regulation 193 as well as 194. Furthermore, in the present case, Article 193 (4) applies perfectly in light of the MTCA's specific declaration that in relation to the pending 'income tax', the Taxpayer (being the Appellant) "has submitted all returns and has a pending liability €1,243,848 which is covered by an agreement that is being honoured." The same is stated in relation to the pending

'PE' , whereby the MTCA also stated that "Taxpayer has submitted all returns and has a pending liability of €2,507, 469.00 covered by agreements that are being honoured."

The fact that said agreements exist and were being honoured at least as of circa 2 months ago amounts to an "*entering into a binding arrangement with a view to paying the taxes or social security contributions due*" per 193 (4). This is an interpretation which has already been considered and accepted by the PCRB, primarily in its case Case 1705.

It is therefore clear that from an *au contrario sensu* reading of the Board's considerations in the above case, the Board had discarded the appellant company's compliance certificate in terms of Regulation 193 (4) since the agreements which the appellant had entered into and presented before the Committee "are not being honoured".

Therefore, this Board has already conceded that the entering into agreements entered into falls squarely within the exception provided for under Regulation 193 (4).

The Compliance Certificate issued with regards to the appellant company in the present case made it clear that the pending tax dues are being covered by agreements with the intention of paying said dues. Therefore, the appellant company's tax situation at the time of submittal fell perfectly in line with Regulation 193 (4) and its interpretation given by the PCRB, and consequently, the lack of tax compliance is not a present or valid ground of exclusion in this case.

This argument further holds water when considering that the sole principal reason for the Committee's recommendation of withdrawal is "due to the Economic Operator's failure to accept the award through e-PPS". This reasoning is factually incorrect, since as already established, the Appellant had indeed accepted the award through the e-PPS system by submitting, *inter alia*, a recent tax compliance certificate. The above reasoning has only been given by the Committee since in its opinion, that certificate did not constitute an updated certificate, and it hence deemed the e-PPS procedure incomplete even though this was not really the case.

c) ***3<sup>rd</sup> grievance – Without prejudice to the foregoing grievances, the Evaluation Committee's reason for withdrawal is disproportionate, opaque and lacks legal clarity -***

In addition, and without taking away from the validity of the previous two grievances, the Committee's decision to request another and more updated tax compliance certificate by the appellant is arbitrary and runs counter to the basic rules of fairness which regulate tender proceedings, namely the principles of proportionality, transparency and clarity.

These rules are inter alia laid out in Article 3 of Directive 2014/23 and domestically by virtue of Article 60 of the CCR: "*60 (1) Contracting authorities and contracting entities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner* "

As regards the principle of proportionality, this Board has repeatedly held that, in order to establish whether the actions of a Contracting Authority comply with that principle, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they go beyond what is necessary to achieve it. However, the committee's certificate requirement is arbitrary, unfounded at law and consequently led to a disproportionate, unfair, and opaque procurement process. In the present circumstances it was unnecessary and completely disproportionate to request a tax compliance certificate even more recent than that presented by the Appellant, first and foremost since this should not have been requested at all in light of the reasons given in the first and second grievance, and also since there should be no reason why a contracting authority ought to refine the validity of a tax compliance certificate which although at the time of submission was as recent as it could have possibly been, currently it is nonetheless a mere 2 months old. Furthermore, since this requirement does not arise from any law, the Committee's sudden and unexpected insistence on the production of a very recent tax compliance certificate also amounts to a violation of the principles of transparency and clarity.

This ambiguous requirement led to a situation where a qualified bidder did not have a fair opportunity to compete on a level playing field as in the case at hand the Contracting Authority created unclear requirements "on the go" which are not justified under any legal provision, and subsequently disqualified the Appellant bidder even though it went above and beyond what was legally required of it and submitted a tax compliance certificate, the only issue being that this certificate was a mere 2 months old.

- d) ***4<sup>th</sup> grievance – Without prejudice to the foregoing grievances, the Contracting Authority itself, i.e. The University of Malta, has paced the appellant under serious financial strain due to its arrears of payment***

Notwithstanding the above, and should this Honourable Board deem that the Committee's recommendation was legally justified, clear, transparent and proportionate, the Appellant nonetheless contends that the Contracting Authority, i.e. the University of Malta, is a debtor of the Appellant company to the tune of €3,771,135.83. It should be immediately evident that such an outstanding balance puts the appellant under serious financial strain. It is therefore unfair and against the spirit of the law that ultimately, the Appellant loses a tender which it had already been awarded due to reasons solely imputable to the Contracting Authority itself. In conclusion on this

ground, it follows that the Board should acknowledge this fact which is of great relevance to the reason as to why the Evaluation Committee recommended that the award of the tender in question is to be instead awarded to BAVA Limited.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 18<sup>th</sup> December 2025 and its verbal submission during the hearing held on 24<sup>th</sup> February 2026, in that:

a) ***Introduction***

At the outset, the University of Malta (hereinafter "UoM") submits that the Appellant's principal argument - namely that the Contracting Authority was precluded from verifying tax compliance by reference to the Maltese e-Certis entry - is legally misconceived and rests on a fundamental misunderstanding of the applicable legal framework governing exclusion-ground verification.

The guiding and binding rule in this regard is Regulation 193 of the Public Procurement Regulations (S.L. 601.03). It is Regulation 193, and not the content of any external database or reference website, which governs when, how and on what basis a contracting authority may verify compliance with exclusion grounds, including compliance with tax obligations, prior to the confirmation of an award.

e-Certis, by contrast; is a non-binding reference tool established under Article 61 of Directive 2014/24/ EU for a different and ancillary purpose, namely, to assist contracting authorities in identifying the types, names and issuing authorities of certificates and documentary evidence that exist within the administrative systems of the Member States. It is not designed to regulate procurement procedure, to set verification thresholds, or to restrict statutory powers conferred by national law. Indeed Article 61 of the Directive introduces e-Certis as a mere "online repository of certificates (e-Certis)" and not as some kind of requirement legal tool.

It makes it clear that:

*"1. With a view to facilitating cross-border tendering, Member States shall ensure that the information concerning certificates and other forms of documentary evidence introduced in e-Certis established by the Commission is constantly kept up-to-date.*

*2. Contracting authorities shall have recourse to e-Certis and shall require primarily such types of certificates or forms of documentary evidence that are covered by e-Certis.*

*3. The Commission shall make available all language versions of the ESPD in e-Certis."*

The legal hierarchy governing the present procurement is therefore clear. EU secondary legislation and its national transposition - in particular Regulation 193 PPR - prevail over all ancillary instruments, particularly those who have a mere repository purpose. These are followed by the *lex specialis* of the procedure, namely the tender dossier itself. e-Certis occupies a purely auxiliary and informational role and cannot amend, qualify or override either the Public Procurement Regulations or the tender conditions.

As already stated, this position flows directly from Article 61 of Directive 2014/24/EU, which provides that contracting authorities shall "have access to" and "use" e-Certis as a reference. The Directive does not confer legal and normative force on e-Certis, nor does it elevate it above national procurement legislation. Any interpretation to the contrary would amount to a mistaken inversion of the legislative hierarchy.

Accordingly, even if the Maltese e-Certis entry indicates that a Tax Compliance Certificate is ordinarily requested only for tenders exceeding €500,000 net of VAT, such indication reflects general administrative practice rather than a binding legal rule, and cannot operate to displace or limit the Contracting Authority's powers and duties under Regulation 193 PPR.

It follows that e-Certis cannot, as a matter of law, prevail over the Public Procurement Regulations or the tender dossier. The Evaluation Committee was therefore required to act in accordance with Regulation "193 PPR and was not bound — nor restricted — by guidance appearing on the e-Certis platform, which serves a different and ancillary function within the procurement framework.

b) ***The duty to verify exclusion grounds***

Without prejudice to the above, the UoM submits that the impugned decision was firmly grounded in Regulation 193 of the Public Procurement Regulations, which confers upon contracting authorities a clear and autonomous power to verify exclusion grounds prior to the confirmation of an award. Regulation 193 establishes the two-stage mechanism central to the EU procurement system. At the first stage, economic operators submit a self-declaration through the ESPD confirming that no exclusion grounds apply, including those relating to the payment of taxes. At the second stage, the contracting authority is expressly entitled to verify the accuracy and reliability of that declaration before proceeding to award. This verification power is not contingent upon tender value, nor is it displaced by administrative conventions reflected in reference tools such as Regulation 193 is framed in deliberately broad terms and permits verification at any time prior to award where the Contracting Authority considers such verification necessary. In this context, the UoM was entitled - and indeed obliged - to satisfy itself that the Appellant was compliant with its

tax obligations at the material time according to the instructions given by the SPD. The UoM could not lawfully proceed to confirm the award if it was not satisfied, based on objective and verifiable material, that a mandatory exclusion ground did not apply.

It must be stated that in any case, the SPD (within the margin afforded by Regulation 193, as aforesaid) expressly instructed that such certificates are to be no older than one (1) month from when they're submitted (appellant mentions two months, but it's really four months), and further instructed the UoM not to accept uploaded certificates which are older than that. The SPD guidance is clear that certificates falling outside this timeframe or not duly verified are to be considered invalid for evaluation purposes. In this case, the certificate relied upon (24 June 2025) was evidently older than one month, and there is no record of any subsequent verification by the contracting authority. The certificate was therefore invalid under the SPD, and the tenderer could not be deemed compliant. Furthermore, the letter of 15 October 2025 is clearly not a valid tax compliance certificate. In any event, even if the tax certificate were to be considered valid, the appellant failed to accept the contract within the time strictly prescribed by Article 20.1 of the General Rules Governing Tenders (Version 4.10). This was not done despite the SPD sending various reminders to the appellant to do so.

The appellant's inaction, in any manner justifies the UoM's decision to withdraw the bid. Indeed, in the letter of 11 December 2025, no mention is made on the issue of the tax certificate.

c) ***No obligation - and no power - to seek clarification or permit rectification***

The UoM respectfully submits that the Appellant's contention that the Committee ought to have sought "clarification" or permitted the submission of additional documentation is misconceived. The power to seek clarification under the Public Procurement Regulations is limited and exceptional: it is intended to clarify ambiguities or minor incompleteness within the material already submitted, not to allow an economic operator to remedy substantive deficiencies, still less to introduce new documents or new compliance evidence to cure shortcomings relating to mandatory requirements and/or exclusion grounds. To do so would amount, in substance, to an impermissible post-deadline rectification and would undermine the fundamental procurement principles of equal treatment and transparency.

In any event, and without prejudice to the above, the UoM did not act arbitrarily. As will be shown, the Appellant was sent various reminders to accept the contract in terms of Article 20.1 of the General Rules Governing Tenders (Version 4.10). Whilst such reminders do not constitute a "clarification" exercise, they confirm that the UoM acted consistently, afforded the Appellant the

opportunity to comply with the clear procedural obligation imposed by Article 20.1, and proceeded only after the Appellant nevertheless failed to accept the contract within the prescribed timeframe.

d) ***Alleged Financial Loss***

The UoM further submits that the Appellant's references to alleged financial loss, debt and commercial strain are legally irrelevant and factually extraneous to the present procurement procedure. It is evident from the Appellant's own submissions that the losses and debt being invoked do not arise from the tender under review, nor from any act or omission of the Contracting Authority in the context of this procedure. Rather, they relate to a separate and distinct contractual relationship, governed by its own terms and factual matrix. Such matters fall entirely outside the jurisdiction of the Public Contracts Review Board, whose role is confined to reviewing the legality of procurement decisions taken within the specific call for tenders under challenge. The Board is not empowered to adjudicate disputes, liabilities or alleged debts arising from other contracts.

Moreover, the financial assertions advanced by the Appellant are based on unilateral calculations, unsupported by verification and detached from any contractual entitlement arising under the tender in question. No contract was concluded, no payment mechanism crystallised, and no vested rights arose.

To the extent that the Appellant believes it is owed sums of money, or has suffered loss in relation to another contract, the proper forum for such claims is the Civil Courts, where issues of contractual performance breach, causation and quantum may be examined in accordance with the ordinary rules of evidence and procedure.

In this regard, the UoM without entering into the merits of any separate contractual relationship, that the Appellant's portrayal of itself as a party suffering financial prejudice is selective and incomplete. It is a matter of record that in relation to other works invoked by the Appellant, issues have arisen concerning the Appellant's own performance and compliance with contractual obligations. These matters are disputed, fact-sensitive, and entirely extraneous to the present procurement procedure, and it would therefore be inappropriate for the Board to be invited to draw conclusions based on a one-sided account of events.

Accordingly, all arguments relating to alleged loss, debt or financial strain arising from other contractual arrangements are inadmissible, irrelevant, and incapable of affecting the legality of the decision under review, and should be disregarded in their entirety.

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This Board, after having examined the relevant documentation, heard the submissions made by all parties, and evaluated the testimony of the witness duly summoned, shall proceed to consider the first, second and third grievances collectively, in view of their intrinsic interconnection.

At the outset, the Board notes that the core issue underlying the grievances raised by the Appellant revolves around two fundamental questions, namely:

1. Whether the Contracting Authority was entitled to request a Tax Compliance Certificate, and
2. Whether the Contracting Authority was further entitled to require that such certificate be recent and up-to-date.

The Appellant's position is essentially that the Contracting Authority exceeded both the requirements of the tender dossier and the applicable legal framework. In particular, the Appellant contends that, given that the value of the tender was below €500,000, no obligation existed at law to submit a Tax Compliance certificate, and that any such request was therefore excessive and disproportionate.

The Appellant further maintains that, in any event, the certificate submitted was compliant, in that it confirmed that although tax liabilities existed, these were subject to binding agreements which were being honoured.

In this respect, the Appellant submits that:

*“Our exclusion, based on the fact that our acceptance of tender was conditioned by the submissions of this ulterior tax compliance certificate was excessive and render our rejection as legally unfounded.”*

On the other hand, the Contracting Authority contests this interpretation and submits that reliance on e-Certis as a source of binding legal thresholds is misplaced, given that such tool serves merely as a repository of information and does not override the provisions of Maltese law, in particular the Public Procurement Regulations.

The Board considers that the starting point for its analysis must be the applicable legal framework governing public procurement, in particular:

- The General Rules Governing Tenders forming part of the Tender dossier, and
- The Public Procurement Regulations (S.L. 601.03)

### **On the Request for a Tax Compliance Certificate**

The Board first considers the question of whether the Contracting Authority was entitled to request a Tax Compliance Certificate, and whether such request was lawful and proportionate.

In this regard, the Board considers Regulation 193 of the Public Procurement Regulations, which provide that:

*“193 (1) An economic operator shall likewise be excluded from participation in a procurement procedure where the authority responsible for the tendering process is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and where this has been established by a local or foreign judicial or administrative decision having final and binding effect.*

*193 (2) The authorities responsible for the tendering process are also entitled to exclude an economic operator from participation in a procurement procedure if they can demonstrate by **any appropriate means [Board Emphasis]** that the economic operator is in breach of its obligations relating to the payment of taxes and social security contributions, even in the absence of a local or foreign judicial or administrative decision.*

*193 (3) The term “appropriate means” under this regulation includes any certificate, declaration or documentation issued by a competent authority which demonstrate that the economic operator is in breach of its obligations relating to the payment of taxes and, or social security contributions.*

*194 (4) The Exclusion mentioned under this regulation shall no longer apply if the economic operator fulfils his obligations by paying or by entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines.*

From the above, it is evident that the Contracting Authority is not only entitled, but indeed obliged, to ensure that the successful tenderer does not fall within any of the exclusion grounds, including those to tax compliance.

Furthermore, Regulation 193(2) expressly allows a Contracting authority to rely on “any appropriate means” to verify such compliance.

### **On the issue of “Recency” of the Certificate**

The Board now considers whether the requirement for a recent certificate was justified. In this respect, the Board observes that the public procurement procedures must ensure not only formal compliance, but also actual and current compliance.

A certificate which is several months old may only reflect the position at the date of its issuance, without providing assurance that the economic operator remains compliant at the time when the contract is to be concluded.

The Board therefore considers that the requirement for a certificate not older than one month is reasonable, proportionate and consistent with the objective of safeguarding public funds and ensuring the reliability of the contractor.

## **On E-Certis**

The Board further agrees with the Contracting Authority that e-Certis does not constitute a source of binding legal obligations. Rather, as also recognised in EU law, it is an informational tool intended to facilitate cross-border procurement, and cannot override the provisions of national law or the tender dossier. Accordingly, any reference to thresholds contained within e-Certis cannot operate to restrict the powers conferred upon the Contracting Authority by Regulation 193 of the PPR.

## **On the Reason of Rejection**

In this regard, the Board first notes that the General Rules Governing Tenders clearly establish the obligations incumbent upon the successful Tenderer following notification of award. In particular, paragraph 20.1 provides that:

*“20.1 After the lapse of the appeals period and pending that no objections have been received and/or upheld, the successful tenderer is obliged to accept the contract through Government’s e-procurement platform within (2) working days from when he is notified to do so. If the contractor fails to comply with this obligation the Central Government Authority/Sectoral Procurement Directorate/Contracting Authority can revoke the award and recommend the next bidder. In this circumstance the bidder who has failed to accept the offer through Government’s E-Procurement Platform shall forfeit the bid-bond. Where there is no Bid Bond the economic operator shall be liable for the payment of any difference between his/her offer and the awarded offer.”*

From the evidence adduced, and in particular the testimony of Ms Claire Saliba, the Board notes that notwithstanding the strict two-day period established by the above provision, the Appellant was afforded additional opportunities by the Contracting Authority, including repeated reminders by email and telephone, to regularise its position and complete the acceptance process through the e-PPS system.

However, it results that the Appellant failed to formally accept the contract within the prescribed framework. The Board therefore finds that the Appellant was in breach of a clear procedural obligation arising directly from the tender conditions.

In light of the above consideration, the Board finds that:

- 1) The Contracting Authority was entitled to request a Tax Compliance Certificate
- 2) The Contracting Authority was further entitled to require that such certificate be recent, and
- 3) The Appellant failed to comply with its obligation to accept the contract within the prescribed time

Accordingly, the Board does not uphold the first, second and third grievances raised by the Appellant.

This Board shall now proceed to consider the fourth grievance. In this regard, the Appellant submits that the Contracting Authority has placed it under serious financial strain due to outstanding payments arising from separate contractual relations. On the other hand, the Contracting Authority submits that such allegations are extraneous to the present proceedings and fall outside the scope of the Board's jurisdiction.

#### **On the Financial strain arising from separate contractual relations**

The Board agrees with the position of the Contracting Authority. It is well established that the jurisdiction of the Public Contract Review Board is limited to the review of decisions taken in the context of the procurement procedure under appeal.

Any disputes relating to separate contractual relationships, alleged debts, or financial claims fall outside the remit of this Board and are to be pursued before the competent civil courts. Accordingly, the arguments advanced by the Appellant in this respect are inadmissible and cannot have any bearing on the legality of the decision under review.

#### **The Board,**

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

- a) To reject the Appellant's grievances;
- b) To uphold the decision of the Contracting Authority to withdraw the initial award in favour of the Appellant.
- c) To uphold the decision of the Contracting Authority to award SPD1/2024/147 – Tender Construction of Substation, Switch Room and Generators Room and the Respective Underlying Substructure Works using Environmentally Friendly Material and Processed at the SLC UoM to Bava Limited; and
- d) Directs that the deposit paid by the Appellant shall not be reimbursed.

**Mr Kenneth Swain**  
Chairman

**Mr Keith Victor Grech**  
Member

**Mr Lawrence Ancilleri**  
Member