PUBLIC CONTRACTS REVIEW BOARD

Case 2218 – MSPP/01/2023 – Request for Proposals – Regeneration, Design, Management, Operation, Maintenance and Handback of Old Fish Market Site, Valletta as Superior Quality Tourism Accommodation and Additional Amenities including Berthing Facilities

3rd June 2026

The Board,

Having noted the letter of objection filed by Dr John Gauci for and on behalf of Bonnici Bros Ltd, (hereinafter referred to as the appellant) filed on the 14th October 2024;

Having also noted the letter of reply filed by Dr Antoine Cremona, Dr Clement Mifsud Bonnici and Dr Calvin Calleja on behalf of Ganado Advocates acting for and on behalf of the Malta Strategic Partnership Projects Ltd (hereinafter referred to as the Contracting Authority) filed on the 24th October 2024;

Having also noted the letter of reply filed by Dr Matthew Paris Anthony Debono acting for and on behalf of Carmelo Stivala Group (hereinafter referred to as the Recommended Bidder) filed on the 23rd October 2024;

Having heard and evaluated the testimony of the witness Professor Saviour Formosa (Chairperson of the Evaluation Committee) as summoned by Dr John Gauci acting for Bonnici Bros Ltd;

Having heard and evaluated the testimony of the witness Ing Victor Bonello (Key Expert of the Appellant) as summoned by Dr John Gauci acting for Bonnici Bros Ltd;

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 sittings of the 16th December 2025, 19th February 2026 and 22nd April 2026 hereunder-reproduced.

Minutes

Case 2218 - MSPP/01/2023 –Request for Proposal for A Works Concession for the Regeneration, Design, Management, Operations, Maintenance and Handback of the Old Fish Market Site, Valletta, as Superior Quality Tourism Accommodation and Additional Amenities Including Berthing Facilities.

The Call for Tenders was published on the 18th of March 2023, and the closing date was the 30th of August 2023.

The estimated value of the tender, excluding VAT, was €474,155,765.

Bonnici Bros Ltd lodged an objection against Malta Strategic Partnerships Projects Limited — the Contracting Authority — now officially known as Government Investments Limited (C10575), in accordance with Regulation 270 of LN 352.2016.

A deposit of €50,000 was paid by the Appellant.

There were two bids.

FIRST DAY – December 16th, 2025.

On the 16th of December 2025, at 08:00 am, the PCRB convened for an administrative case management hearing.

The Board was composed of:

- Mr. Kenneth Swain – Chairman
- Dr Vincent Micallef – Member
- Ing. Dr Damien Gatt – Member

Attendance:

Appellant: Bonnici Bros. Ltd.

- Dr John L Gauci – Legal Representative.

Contracting Authority. Malta Strategic Partnerships Projects Limited

- Dr Clement Mifsud Bonnici – Legal Representative.
- Dr Calvin Calleja – Legal representative.

Recommended Bidder: Carmelo Stivala Group

- Dr Matthew Paris – Legal representative. (online)
- Dr Zack Esmail – Legal Representative

Case Management Meeting Summary

The Chairman opened the meeting by stating that it was a Case Management Meeting, specifically convened to determine the appropriate dates for the commencement and conclusion of this appeal.

Mr Swain explained that, for the most part, in this case, the Appellant is requesting information relating to seven points; the Contracting Authority is prepared to share information which the Board approves for circulation; while the Recommended Bidder is presenting a strong defence, in which null preliminary pleas were raised.

a. The Chairman noted that a hearing was required to address the preliminary points raised by the Recommended Bidder as well as the request for information of the appellant.
b. Should the preliminary pleas be upheld and the request for information rejected the case would be closed.
c. This Board will decide whether certain information should be disclosed to the Appellant, and sufficient time will be granted to the Contracting Authority to provide this information to the

Appellant.

d. The Appellant will be given a time limit within which to decide whether to terminate the case or raise new grievances.

d. The Recommended Bidder and the Contracting Authority will be given a time limit to submit their responses.

At the first hearing, the Board will assess why such information is required, what information should be shared, whether it should be shared in full or in a reduced form, and which of the seven points should be disclosed. The Board will hear all parties and, following its evaluation, will decide which information should be shared with the parties.

Following a cordial discussion among all parties, the following was agreed:

- Thursday, 19th February 2026 will be dedicated to a first hearing.
- The Board will issue its interim decree on Friday, 27th February 2026.
- The Contracting Authority will provide the information which the Board approves for circulation by Monday, 9th March 2026.
- The Appellant will submit his reply by Friday, 20th March 2026.
- The Recommended Bidder and the Contracting Authority will submit their replies by Monday, 30th March 2026.
- As regards to further hearing dates, it was agreed that the appeal will continue to be heard on Wednesday, 22nd April 2026 and Thursday, 23rd April 2026.

Dr Zack Esmail stated that the Contracting Authority had provided information to the Appellant in its reply.

Dr John L. Gauci confirmed that they had received nothing.

Dr Clement Mifsud Bonnici clarified that this referred to the rejection letter. He then made a verbal statement:

"Il- Contracting Authority tista tivverbalizza li ma nghatat l-ebda 'nformazzjoni lil appellant ghar-'request for information' li dahhal qabel ma jaqa l-kaz".

The Chairman confirmed that there was nothing additional beyond what was contained in the letter of rejection.

Dr Gauci asked whether there had been a change in the Contracting Authority, stating that a later reply would have sufficed.

Dr Esmail requested a copy of the rejection letter.

Dr Clement Mifsud Bonnici stated that they had no objection.

Dr Esmail made a formal request, to which the Appellant raised no objection.

Dr Clement Mifsud Bonnici stated that, upon receipt of the decree, they would send a copy.

Adjournment

The Chairman thanked all parties for their participation and formally adjourned the appeal to 19th February 2026 at 10:30 am.

SECOND DAY – February 19th, 2026.

On February 19th, 2026, at 10:30 am, the PCRB reconvened, for an administrative sitting following the first hearing held on the 16th of December 2025.

The Board was composed of:

- Mr. Kenneth Swain – Chairman
- Dr Vincent Micallef – Member
- Ing. Dr Damien Gatt – Member

The attendance for this public hearing was as follows:

Appellant – Bonnici Bros Ltd.
Dr John L. Gauci – Legal Representative.
Mr David Bonnici – Company Representative.

Contracting Authority – Government Investments Limited (C10575)
(formerly Malta Strategic Partnerships Projects Limited)
Dr Clement Mifsud Bonnici – Legal Representative.
Dr Calvin Calleja – Legal Representative.
Dr Mathew Farrugia – Legal Representative.
Mr Robert Falzon – Contracting Authority Representative.

Preferred Bidder – Carmelo Stivala Group.
Dr Matthew Paris – Legal Representative.
Dr Zack Esmail – Legal Representative.
Mr Michael Stivala – Company Representative.
Ms Abigail Stivala – Company Representative.

Opening Statements.

Mr Kenneth Swain, Chairman of the Public Contracts Review Board, welcomed the parties present and formally opened the case entitled 501–MSPP/01/2023 in the records of the PCRB. The Chairman identified the Appellant as Bonnici Brothers Ltd, the Contracting Authority as Government Investments Limited, formerly Malta Strategic Partnerships Projects Limited, and acknowledged the presence of the representatives of the Preferred Bidder, Carmelo Stivala Group. The Chairman explained that, as agreed upon by all parties during the case management meeting, this hearing was convened to address submissions regarding the request for information, the submissions of the Contracting Authority and the Preferred Bidder, and the preliminary plea presented by the Recommended Bidder. The Chairman proposed that proceedings commence with the Preliminary Plea, followed by the Appellant's response, and thereafter the Appellant's submissions regarding the request for information.

Procedural Discussion.

Dr Paris referred to a written submission (rikors) sent by Dr Gauci on the evening of the 18th of February 2026 and asked Dr Gauci to clarify what correction was being requested, noting that no lawful articles appeared to support such a request. Dr Gauci explained that two identical articles exist in both the Public Procurement Regulations and the Concessions Regulations, and that the Appellant sought confirmation from the PCRB as to whether the requested correction of the reference to those particular articles would be accepted.

Dr Mifsud Bonnici objected to the introduction of the rikors at this stage. He emphasised the importance and scale of the project and the considerable time the appeal had already taken and contended that the Appellant had been aware of the Recommended Bidder's position for several months. He further noted that the rikors issue had not been raised at the parties' previous meeting, at which a procedure and timetable had been agreed, and on this basis, he objected to departing from the agreed agenda. Dr Paris concurred and insisted that the hearing address the request for information, which was the matter for which the Preferred Bidder had specifically prepared, proposing that the rikors issue be deferred to a later stage.

The Chairman declared that, in order to remain practical, the parties were to adhere to the agreed schedule and initially determined that the Board would hear the Preliminary Plea and the rikors together before deciding on both simultaneously. Following further discussion, Dr Paris indicated that, should the document of the 18th of February be accepted, the Preferred Bidder's eccezzjoni ta' nullità would effectively become redundant, and he therefore proposed that the present hearing be confined solely to the request for information, with the rikors correction matter to be addressed at a later stage in accordance with the agreed schedule. Dr Mifsud Bonnici ultimately concurred with this proposal.

The Chairman thereupon decided as follows:

- The Contracting Authority and the Preferred Bidder would be permitted to provide written replies to Dr Gauci's document within a timeframe to be formally announced.
- Submissions on the *rikors* were not to be presented during this hearing and were deferred to the next scheduled meeting on the 22nd of April 2026.
- The present hearing would address exclusively the issue of the request for information.

Dr Mifsud Bonnici proposed that the written responses be submitted by Friday, 27th February 2026, and that the Board's degrit be communicated by the 9th of March 2026. The Chairman accepted this proposal. At this juncture, Dr Gauci noted changes in the name of the Contracting Authority, and Dr Mifsud Bonnici confirmed that the entity formerly known as Malta Strategic Partnerships Projects Limited had officially become Government Investments Limited.

Prior to the commencement of initial submissions, Dr Paris raised a preliminary matter concerning an email sent on the 5th of January by Dr Calleja, which had enclosed the letter of rejection together with two evaluation reports, namely the scoring sheets of the Carmelo Stivala Group and Bonnici Brothers Ltd. Dr Paris sought clarification as to whether these documents had been provided to all parties at that stage, or only at the point of exclusion alongside the letter. Dr Mifsud Bonnici confirmed that the documents had been sent together with the letter. The Chairman then invited Dr Gauci to proceed with his initial submissions.

Initial Submissions.

Initial Submissions by Dr John L. Gauci (for the Appellant).

Dr Gauci explained that during the standstill period, and prior to Bonnici Brothers Ltd lodging its appeal, the Appellant had requested a number of documents and information from the Contracting Authority upon being informed that it had not been identified as the recommended bidder. This

request was made in order to enable the Appellant to evaluate, in the first instance, whether the Recommended Bidder possessed the necessary documentation to satisfy the eligibility criteria required to be awarded the concession, and the Appellant had indicated, in general terms, which documents were considered relevant for this purpose.

Dr Gauci noted that the Request for Proposals had imposed strict requirements on bidders, with some criteria capable of attracting a score of zero and leading to exclusion in the event of non-compliance. The Appellant was therefore particularly interested in understanding how the Preferred Bidder had attained certain scores. Dr Gauci also identified additional matters under scrutiny: whether the Preferred Bidder's proposal had met the minimum eligibility and technical requirements of the concession; whether the documents submitted in respect of pedestrian safety and environmental sustainability — both constituting potential grounds for exclusion — were compliant; whether the Recommended Bidder had provided the required methods for restoration; and whether the Recommended Bidder had submitted the required energy performance certificate.

Dr Gauci indicated that the Appellant had interpreted the Contracting Authority's response as conveying that the requested documents ought to have been sought on the day of exclusion rather than several days later, and that they would have been provided had a timely request been made. He submitted that the Contracting Authority was therefore expecting the PCRB to issue an order requiring it to disclose the documents in question. Dr Gauci emphasised that the information sought was not confidential in nature — it did not concern financial studies, revenue projections, or commercial strategies. Rather, the Appellant sought confirmation of specific factual matters, such as whether the Preferred Bidder had submitted a binding certificate, whether it had provided the required key experts to satisfy the qualification requirements, and how the relevant financial ratios had been met. Dr Gauci also noted the Appellant's interest in ascertaining whether the Preferred Bidder was relying on third-party entities or solely on its own resources to meet the concession's requirements, submitting that this type of information would also serve to satisfy the PCRB that the relevant documents and eligibility criteria had in fact been fulfilled by the Preferred Bidder.

Initial Submissions by Dr Matthew Paris (for the Preferred Bidder).

Dr Paris stated that, notwithstanding all prior agreements regarding the schedule of hearings, he remained uncertain as to the precise nature of the matters to be addressed at the present hearing. He submitted that the Board should first verify whether a formal application requesting the disclosure of information had in fact been lodged, as he contended that no such application existed. Dr Paris identified the four reliefs sought in the Appellant's appeal, namely: the cancellation of the recommendation for the award and the letter of exclusion; a determination as to whether the Recommended Bidder had met the minimum eligibility and technical requirements; the reinstatement of the Appellant in the tendering process; and reimbursement on the grounds that the Contracting Authority had acted incorrectly. He stressed that these were the only reliefs formally requested in the appeal, that no request for information had been placed before the Board, and that the Board could not deliberate on matters not formally before it.

Dr Paris addressed the legal basis on which the requests for information had been made to the Contracting Authority, expressing difficulty in characterising the appeal as either one for information or one against exclusion. He acknowledged that Regulation 270 of the Public Procurement Regulations and Regulation 106 permit an appeal against any decision of a Contracting Authority, including a refusal to disclose requested information. He argued, however, that no such objection had been formally filed in the present case, and that what had been lodged was an objection against exclusion. He further submitted that if a right to information from the Board existed, this did not arise from an abstract order of the PCRB to the Contracting Authority, but had to be grounded in a formal application that was not present here. He referred to the judgment in Case *Antea Polska S.A. v Państwowe Gospodarstwo Wodne Wody Polskie* (C-54/21), emphasising the principle that the relationship

between a bidder and a Contracting Authority is founded on trust, whereby information submitted by an economic operator is retained by the authority and not exposed to third parties, and declared that he would object to any request or mechanism that would result in the exposure of information not relevant to the reliefs sought.

Dr Paris noted that the requests for information had been transmitted to the Contracting Authority by email on the 10th and 11th of October and queried whether the recent *rikors* was intended to correct those requests, to extend their scope, or to do something else entirely, noting that an extension would not be permissible. He further submitted that the requests had been made under Article PPR 601.03, which he argued was wholly inapplicable to a works concession, the governing instrument being the Concessions Directive as reflected in PPR 601.09. Dr Paris identified three articles within the Concessions Regulations that govern requests for information — Articles 63.1.2, 80.1.2.3, and 108 — and submitted that none of these supported the information sought in the emails of the 10th and 11th of October, nor the other matters referenced in the appeal, including pedestrian safety, environmental strategy, accessibility reports, and the restoration method statement.

Dr Paris described the items that, by virtue of Article 80.2, are not to be treated as confidential and are available to tenderers upon request: the name of the bidder and individuals involved, the names of subcontractors, documentation attesting compliance with selection criteria, and technical information already in the public domain. He submitted that the Contracting Authority had in fact exceeded its obligations by providing the Appellant not only with its own evaluation grid but also with that of the Recommended Bidder, together with the name of the successful bidder, the grounds for the Appellant's rejection, the scores awarded for each criterion, and the price offered by the Preferred Bidder — which was substantially higher than that of the Appellant — along with the relevant calculations. With respect to Article 80 Sub-Regulation 1, Dr Paris argued that at the time the objection had been filed, the fifteen-day period within which the Contracting Authority is required to respond to a written request for information had not yet elapsed, rendering the request premature. He therefore concluded that Article 80 was effectively inapplicable, that the request appeared to have been grounded in Article 63, which did not support the information sought, and that there was accordingly no substantive request for information properly before the Board on which it could adjudicate.

Initial Submissions by Dr Clement Mifsud Bonnici (for the Contracting Authority).

Dr Mifsud Bonnici noted the PCRB's observation that the positions adopted by the Contracting Authority and the Recommended Bidder were not necessarily identical, while acknowledging the difficulty faced by the Contracting Authority in determining whether requested information was of a confidential nature, given that such information did not originate from the Contracting Authority itself. Following the Preferred Bidder's submissions, however, Dr Mifsud Bonnici confirmed that the Contracting Authority was now satisfied that the information sought was of a confidential nature.

Dr Mifsud Bonnici submitted that before the question of confidentiality could be addressed, it was first necessary to consider whether the information sought was relevant to the grievances set out in the Appellant's objection. He concurred with the analysis presented by Dr Paris to the effect that none of the four grievances contained a formal request for information, nor an appeal against the Contracting Authority's decision not to disclose information. He submitted that the Board's jurisdiction was therefore limited to either rejecting or upholding the appeal, and that accepting the disclosure request risked rendering any decision *ultra petita* or *extra petita*. Dr Mifsud Bonnici referred to Case 927/19 (*Polska*), in which the court held that a decision by a Contracting Authority to refuse disclosure of information was itself subject to judicial review, and that such a decision should have been the subject of a separate appeal. He noted that the formal requirement to request information — as established in that judgment — was not reflected in the present appeal, as the Board could verify upon review of the submissions.

Dr Mifsud Bonnici described the information that the Contracting Authority had already voluntarily provided to the Appellant, which he submitted exceeded the authority's obligations: the scoring results of the Recommended Bidder, the names of the parties and their rankings, the price offered by the Preferred Bidder, the relevant calculations under the applicable regulations, and explanations of the scores awarded for each criterion. He noted that no justification for the individual scores had been provided, as such justifications could carry an element of confidentiality insofar as they referred to the technical offer of the bidder. He submitted that this information had provided the Appellant with a sufficient basis to decide whether to lodge an appeal, yet the Appellant had proceeded to seek further disclosure.

Dr Mifsud Bonnici submitted that the core of the matter concerned the Appellant's requests relating to the technical offer of the Recommended Bidder. He explained that a technical offer was not in the public domain — it was not technical literature publicly available from suppliers, but a submission specifically tailored to address the technical specifications of a tender, as stated at the outset of the Concessions Regulations. He referred to Case 536 of the 3rd of June 2024 (*Med Company v PCA*), in which the Board had refused disclosure of technical specifications on grounds of confidentiality, and urged the Board not to depart from that established position. He specifically addressed the Appellant's request for the Energy Design Rating Certificate, noting that the request concerned the certificate itself rather than merely confirmation of whether it had been submitted, and that the remaining requests related to trade secrets and strategically sensitive information embedded in the Preferred Bidder's technical offer. Dr Mifsud Bonnici argued that disclosure of such information would reveal the Carmelo Stivala Group's approach to bid preparation, thereby undermining its competitive position in future procurement exercises. He concluded by characterising the requests as a fishing expedition and submitted that the information sought lacked sufficient relevance to the grievances formally set out in the appeal.

Conclusion of the Hearing.

The Chairman thanked all parties for their attendance and submissions. He reminded the parties that proceedings would continue in accordance with the agreed schedule, with written replies on Dr Gauci's document to be submitted by Friday, 27th February 2026, the Board's *degrit* to follow by the 9th of March 2026, and the next hearing on the *rikors* to take place on the 22nd of April 2026. The Chairman formally declared the hearing closed.

THIRD DAY – April 22nd, 2026.

On April 22nd, 2026, at 09:00 am, the PCRB reconvened, sitting following the second hearing held on the 19th of February 2026.

The Board was composed of:

- Mr. Kenneth Swain – Chairman
- Dr Vincent Micallef – Member
- Ing. Dr Damien Gatt – Member

The attendance for this public hearing was as follows:

Appellant – Bonnici Bros Ltd.
Dr John L. Gauci – Legal Representative.
Mr Gilbert Bonnici – Company Representative.

Contracting Authority – Government Investments Limited
(formerly Malta Strategic Partnerships Projects Limited)
Dr Clement Mifsud Bonnici – Legal Representative.
Dr Calvin Calleja – Legal Representative.
Prof. Saviour Formosa – Chairperson.
Mr Sharlo Camilleri – Evaluator.
Mr Matthew Vella – Evaluator.
Mr Robert Falzon – Contracting Authority Representative
Ms Franciana Cassar -- Contracting Authority Representative
Dr Matthew Farrugia – Secretary.

Preferred Bidder – Carmelo Stivala Group.
Dr Matthew Paris – Legal Representative.
Dr Zack Esmail – Legal Representative.
Mr Michael Stivala – Company Representative.
Ms Abigail Stivala – Company Representative.
Mr Damien Psaila – Company Representative.

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2218 in the records of the PCRB. The Chairman identified the Appellant as Bonnici Brothers Ltd, the Contracting Authority as Government Investments Limited, formerly Malta Strategic Partnerships Projects Limited, and acknowledged the presence of the representatives of the Preferred Bidder, Carmelo Stivala Group.

Opening Submissions

The Chairman said that the Board was referring to the application filed by the appellant, Dr John Gauci, on February 18th, 2026. The answers of the Contracting Authority and the Recommended Bidder had been submitted. The Board asked all parties whether they had any further submissions to make before it proceeds to decide on the appeal.

Dr Vincent Micallef noted that the appeal concerned the correction in citation from 601.03 to 601.09, with a closing date of February 18th. This had been required by Dr Paris during the last hearing.

Mr Swain said that since there were no further submissions, the Board was ready to deliver its decision.

"Il-Bord jaghmel referenza ghar-rikors intavolat mill appellant u pprezentat fir- 18 ta Frar 2026 fejn debitament jitlob lil dan il-Bord jiddeciedi sabiex javtorizzah ivarja n-nomenklatura referibbli ghal legislazzjoni sussidjarja 601.03 fir-rikors promutur billi minflok jiccita legislazzjoni sussidjarja 601.09 kulfejn dak citat huwa skorrett fir-rikors promutur u kwalsija document ancillary relatat mal mertu ta dan l-appell.

Il-Bord qieghed jilqa t-talba".

Mr Swain noted the time frames allocated for the hearing as being today and tomorrow, stating that he wished to hear all witnesses on one day and the final submissions on the second day. All parties

expressed their preference to conclude the hearing in one day. Mr Swain continued by stating that following the interim decree by the Board and the agreements reached during the hearings, a disclosure for information had been issued, and the appellant submitted additional grievances on March 20th. There were also replies to these grievances by the other two parties.

Dr Clement Mifsud Bonnici wished to make two preliminary points. He clarified that the grievances forming the objections of the appellant had now been superseded.

Dr John Gauci said that they were additional to them, as indicated in the note.

The Chairman stated that the document of March 20th clearly indicated that they were additional.

Dr Mifsud Bonnici said that the issue was that, when the Board comes to decide, there could be a problem if it had to rule again on the grievances, as this could lead to further appeals.

Mr Swain assured that the Board's decision would include all the points mentioned and encapsulate everything.

Dr Micallef said that the concept of non-disclosure is ormai redundant, since the decree had already been issued.

Dr Gauci noted that the first grievance referred to a cancellation due to lack of information, while the second grievance concerned confirmation of whether the Recommended Bidder was compliant or not.

The Chairman reiterated that the Board's decision would address all the points.

Witness

Professor Saviour Formosa (ID No. 306268M), summoned by Dr Gauci.

Prof. Formosa, Chairperson of the Evaluation Board, stated that Dr Matthew Farrugia was the secretary, and the evaluators were Mr Sharlo Camilleri, Mr Godwin Mifsud, and Mr Matthew Vella. All three evaluators were Permanent Secretaries in different Ministries, responsible for administrative duties, including evaluation and drafting of tenders.

All members of the Board were chosen by the MSPP. The evaluation process begins with the administrative stage, where it is determined whether bids are eligible for evaluation, followed by the technical stage where elements are assessed and marks assigned, and finally the financial stage.

Dr Gauci asked whether the members of the Evaluation Board were sufficiently competent to determine technical issues or whether advice had been sought from external experts.

The witness replied that advice was sought from experts, namely Dr Gordon Cordina representing E-Cubed and Architect Janice Borg, who provided technical input.

Regarding the first grievance about the EPC (Energy Performance Certificate), the witness stated that it concerned the efficiency of the building and its design rating. He added that he was not involved in drafting the tender.

Referring to page 14/16 of the RFP, "Facilities and Capital Investments", the witness said that Note 3 stated that *"No rectification shall be allowed, only clarifications may be requested,"* although it also mentioned details.

Referring to the document submitted by the preferred bidder and the note of the Contracting Authority dated March 9th, 2026, clause .7, Dr Gauci asked Prof. Formosa to confirm Document R4, which had been listed as R3 in the note.

Prof. Formosa confirmed that this was the only document provided by the preferred bidder.

Dr Gauci asked whether a clarification had been requested, given Note 3.

The witness replied in the negative. He explained that when clarification was needed, the committee would pass the request to the secretary, who would then upload it on the ePPS. The R4 document provided an indication regarding the EPC; however, it was not the proper certificate with classifications A, B, or C.

Discussions by the Evaluation Board were conducted on every element; however, the witness could not recall what had been said specifically about the EPC.

Dr Gauci asked the witness to consult the minutes of the meetings, and the Chairman instructed the secretary to provide them. There had been twenty-five meetings in total.

Dr Mifsud Bonnici noted that the witness had been given an extract from the evaluation report.

Prof. Formosa stated that the Committee reviewed the technical report by Architect Borg and based its decision on it. He clarified that he was reviewing the Evaluation Report rather than the minutes. The Evaluation Board discussed the input provided by the technical expert. The expert stated:

"Going through the document, the undersigned trace only the original one pager, which included information summarized in the 1st paragraph of section 1.1".

The expert was tasked to *"review a design rating, on energy performance certificate of the proposed building design".* The expert had been provided with Terms of Reference covering all technical aspects.

Dr Gauci requested the email sent to the expert.

Dr Mifsud Bonnici objected, stating that the method of transmission (email, post, or hand delivery) was irrelevant.

The Chairman ruled that the Terms of Reference were relevant. These consisted of three pages, and copies were distributed to all parties.

Prof. Formosa read the Terms of Reference.

Dr Gauci asked for the response provided by the architect regarding the design rating EPC.

Prof. Formosa quoted:

"The bidder makes reference that an Energy performance Certificate will be required. Such certificate has not yet been formulated. Reference is made of the intention of obtaining a green building certification".

Dr Micallef noted that, therefore, a clarification had been requested.

Dr Gauci reminded the witness that he had previously testified that no clarification had been requested.

Prof. Formosa stated that his recollection had improved after reviewing the documents.

Mr Swain noted that the witness was correcting his earlier testimony, confirming that a clarification had indeed been issued.

Dr Gauci requested the date of the clarification and the response provided by the Recommended Bidder.

Dr Matthew Paris objected to the disclosure of any confidential information.

The Chairman accepted the appellant's request to view the clarification response, while upholding Dr Paris's objection and requesting that any confidential information be redacted if necessary. The request included the extract of the technical expert's report, the date of the clarification issued to the Recommended Bidder, and the response.

Dr Mifsud Bonnici noted that the Recommended Bidder had classified all documents as confidential. The clarification was issued in June with a deadline of June 18th, 2024. The question was:

"Can the economic operator indicate to the EAC the location of the Design Rating Energy Performance Certificate of the proposed building design".

and the answer was:

"Environmental performance in addressed in design rating Energy Performance certificate in the attached report. Facilitates and Capital Investment.pdf".

which was the R4.

Mr Swain stated that an extract of the witness's reading, marked as FM1, would be sent via the PCRB email to all parties.

Dr Gauci asked Prof. Formosa why the clarification had been issued.

The witness replied that the certificate had been required but was not submitted with the offer. The appellant had submitted all certificates. Regarding the scoring grid, the witness explained that evaluators reviewed all elements, from 1A to 4D, both mandatory and add-ons, including all requests and responses from both bidders. Points were then awarded based on each bidder's submissions.

Dr Gauci asked whether any advice had been sought regarding the ambjentali criteria, Environmental Impact Green Systems.

Prof. Formosa replied that the evaluators relied on feedback from experts.

Dr Gauci referred to the evaluation breakdown letter attached to the rejection letter sent to the appellant.

Prof. Formosa noted that the recommended bidder had been awarded 4 out of 5 points for the criterion *"Alternative Energy Generation*". The score was based on strong input regarding capital expenditure and mechanical engineering design schemes, particularly passive energy conservation measures. The bid was assessed holistically. Full points were not awarded due to the absence of solar panel proposals. The other alternative was to give 3 points to the recommended bidder and 4 points to the appellant. It was proposed that to get energy from a restrictive place this needed to be assessed further, so the Board assessed not only energy generation but also cumulative energy loss.

Dr Gauci asked what the witness understood by "*alternative generation".*

The witness replied that this could include solar or wind energy and must be compatible with a coastal building. The recommended bidder proposed a passive, holistic approach to green energy systems. This aligned with the requirements outlined by Architect Borg, who stated:

"An environmental strategy showing how the proposed scheme will be utilizing energy efficient measures so that the proposed development is responsible, green design based on key sustainable objectives".

Mr Swain noted that this appeared in the fifth bullet point of the Terms of Reference.

Prof. Formosa added that Architect Borg further stated:

"Brief reference is made to the technologies available which include geothermal, solar, wind, hydroelectricity and biomass. However, it is stated that 'Given the space limitations and restrictions imposed on site, alternative energy generation is not deemed to be feasible for this proposed development'. Instead, Energy-saving integrated building design will be opted for".

Her response was based on the documents available to her.

Dr Gauci referred to document R2.

Dr Mifsud Bonnici noted that this had already been quoted.

The Chairman stated that, if necessary, the extract from Architect Borg's response would be circulated to all parties as Document FM2.

Dr Gauci expressed concern that the recommendation provided by Architect Borg mirrored the statement of the recommended bidder word for word.

Prof. Formosa reread Architect Borg's response and reiterated that she had no role in awarding points.

Dr Gauci asked how the scoring decision had been reached unanimously, particularly regarding the conclusion that *"Alternative energy generation is not deemed to be feasible for this proposed development".*

The witness stated that all decisions taken were unanimous among the three voting members.

Dr Gauci asked why the bidder was not given a zero after his submission.

Mr Swain asked Dr Gauci to rephrase.

Dr Gauci asked how the bidder was given 4 points when he submitted that alternative energy generation could not be provided.

Dr Mifsud Bonnici stated that the witness had already testified why those points were given, and that the transcript shows the position of the Evaluation Committee.

Dr Gauci rebutted that the witness was given the opportunity to correct what he had previously said on another matter. He again asked why 4 out of 5 points were given to a bidder for something that was not to be done.

The Chairman asked the witness to repeat the answer to the question.

Prof. Formosa said that the argument was that when both bids were evaluated, and the issue of possibility by both bidders arose, the Committee considered the holistic approach of passive energy conservation and the green system approach.

Cross-Examination by Dr Clement Mifsud Bonnici (for the Contracting Authority).

Regarding the evaluation phase, Dr Mifsud Bonnici referred to page 7 of the tender, stages 1 and 2 of clause 5, and confirmed with the witness that these concerned the administrative part. The technical part was stage 3, *'Evaluation of Proposals'*. Referring to page 14, '*Facilities and Capital Investments',* he quoted:

"Tenderers are requested to give details about their investment and operation plans for the Superior Quality Tourism Accommodation Establishment with Additional Amenities including Berthing Facilities. The information provided is to be divided into the following sections".

The witness agreed with Dr Mifsud Bonnici that the Committee considered the advice given by architect Borg; however, it was the Committee that decided on the evaluation. The evaluators concluded that the bidder had submitted the necessary information regarding the design rating and Energy Performance Certificate of the proposed building design.

Cross-Examination by Dr Matthew Paris (for the Recommended Bidder).

Dr Paris stated that stages 1 and 2, namely the Administrative Evaluation and selection criteria evaluation, constituted the eligibility part. Stage 3 was the technical part, and stage 4 was the financial part, as referred to on page 7, clause 5.2. He asked the witness about page 14 and under which criteria it fell.

The witness stated that it satisfied stage 3. Referring to page 19, clause 6.1, the witness quoted:

"The BPQR is established by weighting technical quality against price on a 60/40 basis. This is done by multiplying:
The technical scores awarded to the offers by 0.60

The financial scores awarded to the offers by 0.40

Each technical offer will be evaluated in accordance with the award criteria and the associated weighting as detailed in the evaluation grid of this tender document (Article 6.3). No other award

criteria will be used. The award criteria will be examined in accordance with the requirements as indicated in the Terms of Reference".

Dr Paris understood that the technical part could be evaluated only by grid 6.3 and asked whether the EPC document was included in this grid.

The witness answered in the negative.

Dr Paris stated that the EPC certificate should not have been considered according to the Evaluation Grid.

The witness confirmed that it was not mentioned in the grid.

Witness
Ing. Victor Bonello (ID no. 526364M), summoned by Dr John Gauci.

Ing. Victor Bonello was engaged by Bonnici Bros. as key expert 6 on electricity, while another engineer was responsible for the mechanical aspect. They were both consulted regarding the submission of the RFP.

Ing. Bonello stated that page 16 requested a '*design rating energy performance certificate of the proposed building design'.* The EPC concerns the energy efficiency of a building. The BRO provides courses to become an energy performance assessor.

The methodology is based on software into which the characteristics of a building are entered, such as walls, ceilings, windows, lighting, air conditioning, and hot water usage. The data is then submitted to the BRO, which evaluates the information provided, and if satisfactory, a certificate is issued upon payment of €75.

In this case, the building was to be renovated and was certified as Design Rating. The certificate is issued with a date and a specific number and is valid for ten years. The two EPCs for this project were issued in August 2023. Two EPCs were required because Blocks A, B, C, and D were joined, while Block F was located on the other side of the road and required a separate EPC.

Both certificates were given to Bonnici Bros. and should have been submitted as requested in the RFP. The Design Rating process differs for existing buildings, where measurements such as wall thickness, window materials, and glass thickness can be taken on site.

When dealing with a design, measurements must be taken from the plans, and information must be obtained regarding how apertures will be constructed, the glass specifications, insulation thickness, and other relevant details.

Cross-Examination by Dr Clement Mifsud Bonnici (for the Contracting Authority).

The witness stated that both the Asset Rating EPC and the Design Rating EPC take approximately 40–50 hours to complete. The government fee is €75 for each certificate, while the engineer is paid between €4,000 and €5,000 per certificate. The certificate includes a colour-coded scale indicating energy efficiency, ranging from red (least efficient) to A and A+. In this case, the rating was 35A Green, indicating efficiency.

Final Submissions

Final Submissions by Dr John Gauci (for the Appellant).

The matter began when the appellant was notified that his bid was unsuccessful and that the Recommended Bidder was Carmelo Stivala Group Ltd.

The appellant requested documents relating to how the recommended bidder complied with the RFP requirements, particularly eligibility and technical criteria. Bonnici Bros. Ltd. filed an appeal despite not having this information.

The original grievances show that the appellant requested the cancellation of the award due to lack of information, or alternatively, that the Board verify whether the recommended bidder complied with the RFP criteria, the eligibility criteria and the technicality. If not, the appellant requested cancellation of the recommendation, reinstatement in the process, and a refund of the deposit.

The Contracting Authority responded that an objector seeking information should have requested it immediately, not days after receiving the rejection letter. Subsequently, the Board ordered that the information be provided, and the Contracting Authority complied.

Upon reviewing the information, the appellant identified further grievances, mainly due to the absence of a document required in the RFP, indicated as Note 3 on pages 14 to 16: the Design Rating Energy Performance Certificate of the Proposed Building Design. He quoted from page 43 of the RFP:

"Shall have the same meaning assigned to it in the energy performance of building regulations 2018".

Legal Notice 47 of 2018 defines the EPC as *"a certificate issued by an EPB assessor, recognized by the BCA, or a person designated by it and authorised to act on its behalf. The methodology used by the ePPS assessor shall confer with the methodology Regulation 4".*

This project involves a building design with calculations, characteristics, and specifications. This is what was requested by the Contracting Authority in the RFP. The recommended bidder argued that only information was required, not the document itself. The following day, the Contracting Authority adopted the same position. However, this interpretation is not supported by the RFP or by the testimony of the Evaluation Committee Chairperson.

The conduct of the evaluators and the position of architect Borg were also questioned. When presented with the R4 document of the recommended bidder, consisting of four lines, they consulted architect Borg, who confirmed that it was not a Design Rating EPC, stating:

"Going Through the document, the undersigned could trace only the original one pager (page 107) which included the information summarised in the first paragraph in this Section 1.11".

The Evaluation Committee requested the certificate, yet the recommended bidder did not indicate its whereabouts. The Contracting Authority adopted the same interpretation. The Chairperson of the Evaluation Committee testified that he was not the Authority.

Ing. Bonello confirmed that the EPC is issued by the BRO to an assessor. This document was essential and could not be supplied through rectification. Although clarification was requested, the document was never presented. It is therefore clear that the recommended bidder did not submit the required certificate as defined by law and the RFP.

A second grievance concerned alternative energy generation. Together with the rejection letter, there was the grid for points. The Recommended Bidder stated in Document 2 that *'alternative energy generation is not deemed to be feasible for this proposed development'* yet was awarded 4 out of 5 points. Questions arise as to whether the bidder was compliant. The Chairperson testified that all votes were unanimous. Without this document, disqualification could have followed, and the appellant should have been recommended.

Final Submissions by Dr Clement Mifsud Bonnici (for the Contracting Authority).

The Design Rating certificate is a matter of interpretation. The tender must be examined as drafted and applied by the Committee. Agreement or disagreement falls within the test of error of assessment.

The Board cannot substitute itself for the Evaluation Committee, although mistakes may occur. The tender requested *"to give details about, and to provide information in the following sections".*

The certificate itself was not explicitly requested. Dr Mifsud Bonnici referred to the Chalet case, 2090, of April 2025.

The Evaluation Committee found that the bidder was not compliant with the minimum requirements of the BPQR. He quoted:

"The Board finds that the RFP does not explicitly require the submission of documentation for non-key experts at the tendering stage. As a result, the expectation that such documents should be submitted during the tendering process, as suggested by the Contracting Authority, was unreasonable and cannot serve as grounds for exclusion".

The tender must be interpreted based on whether the requirement was explicit. Accepting the appellant's argument would introduce an overly restrictive technical specification.

Prof. Formosa referred to the Evaluation Report to illustrate the Committee's final position, and Dr Mifsud Bonnici quoted:

"In relation to the final section under this criterion which related to the Design Energy performance Certificate, the same technical report was consulted by the Committee. The Evaluators took note of the provided guidance unthoroughly and analysed the actual submissions. It was considered that both bidders provided the requested information in relation to the intended building certificate".

The information provided in four lines was considered sufficient, as it indicated a clear commitment to obtaining a Green Building Certificate. Ing. Bonello testified that the colour green denotes efficiency.

The principle of proportionality applies; even if the certificate had been required, its absence could be overlooked, and the offer would remain valid. Although the recommended bidder scored fewer technical points than the appellant, the BPQR must be considered. The appellant's financial offer exceeded the other by €23 million, potentially rising to €31 million with inflation. Whether it is Note 2 or Note 3 is ultimately irrelevant, as there is the Principle of Proportionality, and there were cases in the Court of Appeal where note 3 was ignored.

Referring to Case Polaris/Marine 3029/2023/1, where the principle concerned a request for a logo on the steering, this bid was 300K and there was a 100K difference with the other bid. The Court's

sentence stated that it was a small mistake, and one should not ignore the offer, especially where there was a 100K difference.

At this scale, we have an offer with a 31 million difference that is to be excluded because of a certificate that would cost 3K and €75. The Principle of Proportionality should save the offer. We are being stuck on a shopping list line which is one of six points.

Referring to Alternative Energy Generation, where the appellant did not address the preliminary exception, he wants to discredit the Evaluation, and the Board has to determine whether he agrees or not with the Evaluation Committee.

Dr Mifsud Bonnici believes that if someone does not agree with two aspects of a complex evaluation, one cannot invalidate the evaluation as a whole. If the appellant is correct about those two points, the case should be heard again by the same Evaluation Committee, without changing the members to justify the Evaluation. Even if the appellant is right, there will be no impact on the scoring.

Final Submissions by Dr Matthew Paris (for the Recommended Bidder).

Dr Paris stated that he always submits to the decisions of the Board, but he needed to comment on the appeal. Automatically, the Board, without stating so, rejected the appeal by the recommended bidder when they requested the nullity of the initial appeal and the request for the information, since they were all inciting an unlawful law.

The point is that the whole appeal cannot be acknowledged in the context of what the appellant is requesting, which is the cancellation of the decision. Going forward, there will be appeals about lack of information, but there is already a decree. The information of the recommended bidder is now available to everyone, without access to the information of the appellant.

The appellant had no right to submit a new grievance. Law 60109/Reg.106 states that every grievance should be submitted within ten days, and there was no request made to the Board for a new grievance. All the additional grievances sent by a note should not be determined by this Board, as the Board has not even pronounced itself on whether these grievances are accepted.

This appeal was flawed from the beginning: first, the request for information by the Contracting Authority; second, the request that was inciting an unlawful law; and now, there is no request for the treatment of the new grievances by this Board. The law states that there is only 10 days, and all the grievances are fuori termine.

Referring to page 2, point 1.2 of our answer, he mentioned the status of the appellant. The appellant should have been excluded because his financial offer does not reflect the tender documents' request. Some weeks ago, this Board decided to exclude an offer because the financial offer was redacted. This point was not addressed.

Dr Paris said that he who alleges has to prove. It was said that the evaluators were not correct in their evaluation; however, none of them were called to testify. This lack should not be attributed either to the recommended bidder or to the Contracting Authority. The points were given by the evaluators, not by Prof Formosa, who was the Chairperson. There are only doubts, not certainty, and the doubts were not addressed, as they were not solid. It does not merit that the appeal be upheld when it was flawed and lacked proof.

Referring to pages 83 to 93 about the work method statement, pages 99 to 101 about the construction management plan, and pages 102 to 105 about the health and safety plan, Dr Paris stated that these were never mentioned.

Prof Formosa explained how they gave 4 points to the recommended bidder, and the appellant tried to stop him when he mentioned the comparative aspect. In every analysis there is comparison. There was no proof as to why the 4 points were incorrect; therefore, the grievance should be overturned.

Referring to the EPC, his colleague isolated parts while questioning Prof Formosa, and the context changed. The main issue was the requests in the offer. The self-limitation states that one must be judged according to the regulations at hand, note 3 point 2, which refers to the technicality requests, an executive summary, and a business plan, and talks about Proposed Capital Investment, which is also note 3.

The BRO is not to draft the EPC. "*Tenderers are to draw up an investment plan."*

This was imposed by the person who drafted the tender on the bidder.

"*The information provided is to be divided into the following sections."* If they wanted the correct interpretation of the request, instead of Prof Formosa, they should have summoned the Contracting Authority who drafted the tender. That lack of proof is not attributed either to the recommended bidder or to the Contracting Authority, but to those who are alleging that the interpretation is incorrect without providing any proof.

The Board does not have the necessary comfort that the interpretation is incorrect. The only way to change this decision is to exercise the Board's discretion and change the Evaluation Committee's decision, always without proof.

Page 19, clause 6.1, in the second paragraph states: *"each technical offer,"* and page 10, stage 3, states: "*only technical offers and financial offers submitted by tenderers which have been deemed technically compliant shall be evaluated at stage 4.*" Page 10 lists the components of the technical offer:

"1. Key expert form; the Statement of Availability Form; the Self-declaration form for Key Experts (relating to public employees); and CVs."

Page 14, *"Facilities and Capital Investments*," has two parts: the "*Executive Summary and Business Plan"* and the "*Proposed Capital Investment."*

Page 19 dictates: "*Each technical offer will be evaluated in accordance with the award criteria and the associated weighting as detailed in the evaluation grid of this tender document (Article 6.3). No other award criteria will be used."*

The moment someone decides to use a different judgment from what is written in the tender, we will be going against the request of the tender and regulation 39 of 60103, which forms part of the Concession Contracts Regulation.

Prof Formosa could not find points referring to the EPC. In the Chalet case, the exclusion took place because there was an indicative reference in the evaluation grid form which was mandatory. In this case, there is no mandatory requirement, and therefore the prospects of the appellant cannot be upheld.

Page 21 states:

"*It is up to the Tenderer to identify the most appropriate length of the write-up/description in respect of each criterion below as applicable, with the proviso that the write-up/description should address all requirements accordingly."*

The length is superfluous. He quoted from page 20:

"*The offer achieving the highest qualitative and technical score will be awarded 100% of the technical weight. The other offers will be awarded scores in proportion to the offer with the highest qualitative and technical score as per the formula below."*

The Recommended Bidder cannot be excluded on something that does not exist. He quoted from page 43:
"*The Design Rating Energy Performance Certificate shall have the same meaning assigned to it in the Energy Performance of Buildings Regulations, 2018, L.N. 47 of 2018."*

Article 2 of the law has no definition of the Design Rating Energy Performance Certificate. There is a definition of Design Rating and another for Energy Performance. For some reason, these were amalgamated for this tender. A pre-contractual remedy could have been sought.

Dr Paris was not defending the Evaluation Committee's actions but defending a valid offer, with all the requirements requested, according to the law in its totality. Since there is no proof, the Board should decide, like the Contracting Authority and the Evaluation Committee, that the offer is valid, and the appeal should be rejected in its entirety.

Replica by Dr John Gauci.

Dr Gauci clarified that the additional grievances were submitted later because the Board gave a new date to allow time to review the exhibited documents. There was no procedural deficiency. The request was already in the original appeal, which was: "*determine whether the recommended bidder met the minimum eligibility and technical requirements in accordance with the RFP specifications; should the recommended bidder be found non-compliant, the Board is respectfully requested to declare the award null and void and cancel the recommendation to award the contract."*

Regarding doubts, Dr Gauci stated that they now had proof. Referring to the sticker in the Polaris case and whether it should be affixed to the steering wheel or the cabin, Dr Gauci insisted that in this case the document in question was essential. There was also Case KPMG of 2017, where the Supreme Court stated that for the court to accept an irregularity, it had to be minor, clerical, manifest, and without harm to fair competition. He also referred to Case Vassallo Builders of 2025 regarding certifications and documents.

Dr Gauci mentioned that the fact that the certificate was listed as "*Design Rating Energy Performance Certificate"* did not mean that there was no definition for the certificate. This argument should be rejected.

Replica by Dr Clement Mifsud Bonnici.

Dr Paris mentioned that he was not going to address proportionality, because he was convinced of his position. Referring to Case Bessui JV 379/2025, where Dr Mifsud Bonnici was convinced about the

interpretation of the tender, neither the Board nor the Supreme Court agreed with it. However, the court accepted the argument of rectification and proportionality in paragraph 83, and he quotes:

"Huwa principju magħruf sewwa fil-ġurisprudenza li l-iskwalifika tal-offerta għandha ssir biss għal raġunijiet li jissemmew fid-dokument tas-sejħa."

This certificate was something minor, and that is why the Principle of Proportionality should be applied. The financial gap between both bidders is 23 million, resulting in 31 million with inflation. A document costing 3K is minor, and its absence should not result in rejection.

Conclusion of the Hearing

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 18th March 2026.

Having noted the objection filed by Bonnici Bros Ltd (hereinafter referred to as the Appellant) on 14th October 2024, refers to the claims made by the same Appellant with regards to the tender of reference MSPP/01/2023 listed as case No. 22xx in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr John Gauci
Appearing for the Contracting Authority:	Dr Clement Mifsud Bonnici & Dr Calvin Calleja
Appearing for the Recommended Bidder:	Dr Matthew Paris

PART A — THE PROCEEDINGS: BACKGROUND AND PROCEDURAL SEQUENCE

This decision addresses all matters arising in proceedings before the Public Contracts Review Board in Case 2218, concerning a challenge by Bonnici Bros Ltd to the recommendation for award of Tender Reference MSPP/01/2023, being a Request for Proposals for a Works Concession for the Regeneration, Design, Management, Operation, Maintenance and Handback of the Old Fish Market Site, Valletta, as Superior Quality Tourism Accommodation and Additional Amenities including Berthing Facilities.

The proceedings have developed in two distinct but connected phases.

The first phase, addressed in Parts A through G of this Decision, concerns the original objection filed by Bonnici Bros Ltd on the 14th October 2024 and the replies thereto, the Board's interim disclosure orders, and the procedural framework within which those orders were made.

The second phase, addressed in the remaining Parts of this Decision, concerns the additional grievances filed by the Appellant on the 20th March 2026 following the disclosure ordered by the Board, and the additional replies filed by the Contracting Authority and the Recommended Bidder. The two phases are closely connected: the additional grievances are a direct consequence of the disclosure ordered in the first phase, and the substantive findings of this Decision on the merits of the additional grievances flow from the factual foundation established in the first.

A.1 The Parties

The Appellant is Bonnici Bros Ltd (C 3905). The First Respondent is the Contracting Authority, initially Malta Strategic Partnership Projects Limited (C-64764) and subsequently re-designated as Malta Government Investments Limited. The Second Respondent is the Recommended Bidder, Carmelo Stivala Group (TID 197716), represented by Dalli Paris Advocates, 189 Marina Suites, Marina Street, Pietà.

A.2 The Tender and the Award Decision

The tender MSPP/01/2023 was published by the Contracting Authority for a works concession for the regeneration, design, management, operation, maintenance and handback of the Old Fish Market Site, Valletta. The concession term was 65 years. The evaluation was conducted on a 60/40 basis, weighted respectively between technical and financial criteria.

Two bids were submitted: one by the Appellant, Bonnici Bros Ltd, and one by the Recommended Bidder, Carmelo Stivala Group. Following evaluation by the Technical Evaluation Committee, the Recommended Bidder was recommended for award. By letter dated the 4th October 2024, the Contracting Authority notified both tenderers of the outcome. The Recommended Bidder was notified of the recommendation in its favour, and the Appellant received a letter of rejection.

From the letter of rejection and the evaluation breakdown disclosed to the parties, the scores were as follows: the Recommended Bidder achieved an overall score of 99.33 points, comprising an average

technical score of 89 out of 100 translated to 59.33 out of 60 and a financial score of 40 out of 40, based on its annual financial offer of €592,440. The Appellant achieved an overall score of 76.37 points, comprising a technical score of 90 out of 100 translated to 60 and a financial score of 16.37 out of 40, based on its annual financial offer of €242,435.

A.3 The Pre-Appeal Request for Information and the Filing of the Original Objection

Upon receipt of the letter of rejection on the 4th October 2024, the Appellant, through its representative Mr Gilbert Bonnici, submitted a request for non-confidential information to the Contracting Authority on the 10th October 2024, pursuant to what it identified as Regulation 242(2)(c) of the Public Procurement Regulations (S.L. 601.03). The request identified seven specific categories of information: (1) eligibility; (2) context and landscape; (3) pedestrian safety; (4) environmental strategy; (5) accessibility report; (6) restoration method statement; and (7) energy performance, i.e. specifically requesting a copy of the Design Rating Energy Performance Certificate or equivalent document.

A follow-up reminder was sent by Dr John L. Gauci on behalf of the Appellant on the 11th October 2024. No response was received from the Contracting Authority prior to the expiry of the ten-day objection period.

The Appellant filed its Reasoned Objection on the 14th October 2024, within the ten-calendar-day period prescribed by Regulation 106 of S.L. 601.09, the Concession Contracts Regulations. The deposit was duly paid.

PART B — THE ORIGINAL OBJECTION

B.1 The Three Grievances as Filed

Grievance 1: Failure of the Contracting Authority to Provide Requested Information

The Appellant's first grievance was that the Contracting Authority failed to respond to the formal request for non-confidential information submitted on the 10th October 2024 and the follow-up of the 11th October 2024. The Appellant submitted that this failure constituted a breach of its right to access non-confidential information and raised concerns regarding the transparency of the evaluation process. The Appellant relied on Regulation 40(2) of the Public Procurement Regulations, which designates certain categories of information as non-confidential, including documentation submitted by economic operators attesting compliance with selection criteria.

The Appellant relied also on the decision of the Court of Appeal in South Lease Limited (C 65614) v Central Procurement and Supplies Unit et (Appeal Number 72/22/1, 22 June 2022), in which the Court held that every party before a quasi-judicial tribunal has the right to all relevant information pertaining to the case, and that, where information is sensitive, the Board may order it to be made accessible only to the parties in

the proceedings in sealed envelope, and that the opposing party nonetheless has the right to request all information related to the case and relevant to the subject matter before the Board.

Grievance 2: Lack of Assurance Regarding Compliance with Minimum Requirements

The Appellant's second grievance was that, without the requested information, it was unable to assess whether the Recommended Bidder had complied with the minimum eligibility and technical requirements of the RFP. The Appellant identified five specific areas of uncertainty: eligibility criteria; the extent to which the proposed development respected the historical character of the site; pedestrian safety and environmental sustainability measures; restoration method and accessibility; and, critically, whether the bid included a Design Rating Energy Performance Certificate as required by the RFP.

The Appellant submitted that this inability to verify compliance undermined the principles of fairness, transparency, and equal treatment enshrined in both the Public Procurement Regulations and Directive 2014/24/EU.

Grievance 3: Irregularity in the Award Process

The third grievance characterised the Contracting Authority's failure to respond as a procedural irregularity that significantly undermined the transparency and fairness of the award process. The Appellant relied on both European Court of Justice jurisprudence and the Maltese Court of Appeal judgment cited above in support of the proposition that the withholding of non-confidential information violates the fundamental principles of public procurement.

B.2 The Demands of the Original Objection

The Appellant requested the Board to: (1) cancel the recommendation for award due to the procedural irregularity caused by the Contracting Authority's failure to provide the requested information; (2) alternatively, determine whether the Recommended Bidder met the minimum eligibility and technical requirements, and if found non-compliant, declare the award null and void; (3) reinstate the Appellant in the RFP process, or alternatively direct a fresh evaluation; and (4) order the refund of the deposit paid.

B.3 The Board's Observations on the Original Objection

The Board notes, at the outset, a point raised by the Recommended Bidder in its initial reply regarding the applicable law. The Appellant's original objection referenced Regulation 242(2)(c) of the Public Procurement Regulations (S.L. 601.03) as the basis for its request for information and described itself as an objection "*in accordance with the Public Procurement Regulations.*" The Recommended Bidder submits that this reference is incorrect, since the applicable regulations governing this concession award procedure are the Concession Contracts Regulations S.L. 601.09, not S.L. 601.03.

The Board accepts that S.L. 601.09 is the applicable regulatory framework for this concession, as confirmed by Article 1.9 of the RFP itself. The reference to S.L. 601.03 in the pre-appeal request for information and in the body of the original objection was therefore technically incorrect.

However, the Board does not regard this error as vitiating the objection or rendering it null and void. The substance of the objection, i.e. a challenge to the recommendation for award of concession MSPP/01/2023 on grounds of transparency and compliance with the tender requirements, was clear and unambiguous. The Appellant identified the correct tender reference, the correct Contracting Authority, the correct Recommended Bidder, and the correct subject matter.

The mislabelling of the applicable subsidiary legislation does not affect the Board's jurisdiction, which is conferred by S.L. 601.09 and exercised in relation to the subject matter of the objection, not the regulation cited in the header of the request for information.

The Board notes in this regard that Regulation 106 of S.L. 601.09 requires that an objection contain, in a very clear manner, the reasons for the complaint. The original objection satisfied that requirement. The identification of the wrong subsidiary legislation number in the pre-objection information request does not constitute a failure to state reasons and does not go to the admissibility of the objection.

The Recommended Bidder's application to declare the objection null and void on this basis is accordingly rejected.

PART C — THE CONTRACTING AUTHORITY'S INITIAL REPLY

C.1 Summary of Positions

The Contracting Authority filed its reply on the 24th October 2024. It advanced three positions.

First, on Grievance 1, the Contracting Authority submitted that it had already provided the Appellant with sufficient information to enable the latter to decide whether to file a reasoned objection, noting that the letter of rejection contained the name of the Recommended Bidder, the relative advantages of the recommended bid, the scores achieved on each criterion and sub-criterion, the financial offer and the BPQR result, and the reasons for rejection of the Appellant's proposal.

The Contracting Authority submitted that the benchmark is what is objectively sufficient to launch an appeal, not what the appellant subjectively believes should be enough. It further indicated that it had no objection to the disclosure of the non-confidential information requested, provided that such disclosure was effected pursuant to a decree of this Board authorising and instructing it accordingly.

Second, on Grievance 2, the Contracting Authority submitted that an appellant cannot use a request for information as a means of carrying out a second round of evaluation. It submitted that the alleged infringement must precede and give rise to the request for information, not the other way around. It relied on the consistent jurisprudence of the Board and the Court of Appeal to the effect that neither the Board

nor the Court of Appeal possesses the expertise to substitute the decision-making power legally vested in contracting authorities and their appointed tender evaluation committees.

Third, on Grievance 3, the Contracting Authority submitted that Grievances 2 and 3 were in substance the same and should both be rejected. It reiterated that non-disclosure at the pre-appeal stage did not amount to a procedural irregularity, and that disclosure would be made pursuant to a Board decree.

The Contracting Authority requested the Board to: (a) issue a decree deciding whether it was obliged to disclose the information requested; and (b) reject the second and third grievances.

C.2 The Board's Assessment of the Contracting Authority's Initial Position

The Board notes the Contracting Authority's cooperative stance in relation to disclosure: it did not resist the principle of disclosure but made it conditional on a Board decree. The Board further notes that the Contracting Authority's characterisation of Grievances 2 and 3 as substantively identical is accurate in one respect in that both grievances derive from the same underlying factual premise, namely the inability of the Appellant to verify compliance due to the absence of information.

However, the Board does not consider this overlap to be a basis for dismissing either grievance outright. The two grievances address different dimensions of the same problem since Grievance 2 is directed at the substantive compliance of the Recommended Bidder's bid, while Grievance 3 is directed at the procedural regularity of the evaluation process. They are analytically distinct even if they arise from the same factual root.

The Contracting Authority's submission that the alleged infringement must precede the request for information, and that an appellant cannot use an information request as a vehicle for a second evaluation, is accepted as a correct statement of general principle.

However, the Board does not read the Appellant's original grievances as seeking to conduct a second evaluation. The Appellant was seeking to obtain information sufficient to assess whether a specific and defined mandatory requirement, the Design Rating EPC, had been met, and whether other documented compliance requirements had been satisfied. That is a legitimate objective of the procurement review remedy, not a disguised application for a re-evaluation.

PART D — THE RECOMMENDED BIDDER'S INITIAL REPLY

D.1 Summary of Positions

The Recommended Bidder, Carmelo Stivala Group, filed its reply on the 23rd October 2024. It advanced four preliminary positions and one substantive reply.

First, on the applicable law, the Recommended Bidder submitted that the RFP was governed by S.L. 601.09, not S.L. 601.03, and that references to S.L. 601.03 in both the pre-appeal information request and the

objection itself were incorrect. On this basis, the Recommended Bidder requested the Board to declare the objection null and void. It further submitted that, as a consequence, the information request was also null and void, having been founded on an inapplicable legislative provision.

Second, the Recommended Bidder submitted that Demand 4.2 of the original objection, the demand for a determination of the Recommended Bidder's compliance with minimum eligibility and technical requirements, was inadmissible, since the objection contained no substantiation of how the Recommended Bidder had failed to satisfy those requirements. It relied on Regulation 106 of S.L. 601.09 for the proposition that an objection must contain in a very clear manner the reasons for the complaint, and submitted that the objection did not satisfy that standard in relation to this demand.

Third, the Recommended Bidder submitted that the pre-appeal information requests of the 10th and 11th October 2024 were null and void ab initio as they were based on S.L. 601.03 rather than S.L. 601.09.

The plea on the deposit will be tackled in due course in the body of this final decision.

In relation to the plea in substance, the Recommended Bidder relied on the CJEU judgment in Antea Polska (C-54/21, 17th November 2022) for the proposition that the principal objective of EU procurement rules is to ensure undistorted competition, and that contracting authorities must not release information relating to public procurement procedures which could be used to distort competition. It further submitted that the information requested by the Appellant was excessive and disproportionate, going beyond what Regulation 63 of S.L. 601.09 provides for.

D.2 The Board's Assessment of the Recommended Bidder's Initial Position

On the nullity of the objection based on the wrong applicable law:

This submission is rejected for the same reasons set out in Part B.3 above. The mislabelling of the applicable subsidiary legislation in the pre-appeal information request and in the body of the objection does not render the objection null and void. The objection was correctly filed before this Board, within time, in relation to the correct tender, and containing the reasons for the complaint in the manner required by Regulation 106 CCR. The error was one of citation, not of substance or jurisdiction.

On the nullity of the information requests:

The pre-appeal information requests of the 10th and 11th October 2024 were directed to the Contracting Authority, not to this Board. They were part of the Appellant's pre-objection correspondence. The applicable regulation under which a successful tenderer may request information from the contracting authority is Regulation 63 of S.L. 601.09, which mirrors the provisions of Regulation 242 of S.L. 601.03 in substance. The Board does not regard the citation of the wrong regulation in those letters as depriving the

requests of their legal effect or as rendering the subsequent objection defective. The Contracting Authority understood what was being requested and responded to it in substance.

On the inadmissibility of Demand 4.2:

The Recommended Bidder's submission that Demand 4.2 lacks substantiation has force as a general observation. The original objection did not, and could not at that stage, identify specific instances of non-compliance by the Recommended Bidder, because the Appellant had no access to the Recommended Bidder's submission.

The Board accepts that Regulation 106 CCR requires reasons to be stated in a clear manner, but that requirement must be read contextually. Where an appellant has been denied pre-objection information, its ability to particularise its grievances is correspondingly limited. The original objection identified the specific category of compliance concern, the EPC, eligibility, accessibility, restoration method, with sufficient precision to identify the subject matter of the challenge and to enable the Contracting Authority and the Recommended Bidder to understand what was being challenged. That is sufficient to satisfy the Regulation 106 standard in the circumstances of this case. The inadmissibility plea is rejected.

On the Antea Polska citation and the anti-competition disclosure argument:

The Recommended Bidder invokes Antea Polska (C-54/21) for the proposition that contracting authorities must not release information that could distort competition, and that the Appellant's information requests were excessive and disproportionate. The Board does not dispute the accuracy of the passage quoted from Antea Polska.

However, it observes that the Recommended Bidder has selected the passage from the judgment that addresses the concern about competitive distortion without acknowledging the passage, at paragraph 85 of the same judgment, which holds that where full access to information is refused, the contracting authority must nonetheless grant the tenderer access to the essential content of that information so that observance of the right to an effective remedy is ensured.[1] Antea Polska strikes a balance; it does not privilege one side of that balance over the other. The Board returns to this judgment in its analysis of the additional grievances.

[1] Paragraph 85 - In the light of all the foregoing considerations, the answer to the second, third and fourth questions is that Article 18(1), Article 21(1) and Article 55 of Directive 2014/24 must be interpreted as meaning that the contracting authority must, in order to determine whether it will refuse a tenderer whose admissible tender has been rejected access to the information which other tenderers submitted concerning (i) their relevant experience and the references relating thereto, (ii) the identity and professional qualifications of the persons that they have proposed to perform the contract or the sub-contractors and (iii) the design of the projects to be performed under the public contract and the manner of performance of that contract, assess whether that information has a commercial value outside the scope of the public contract in question, where its disclosure might undermine legitimate commercial concerns or fair competition. The contracting authority may, moreover, refuse to grant access to that information where, even though it does not have such commercial value, its disclosure would impede law enforcement or would be contrary to the public interest. A contracting authority must, where full access to information is refused, grant that tenderer access to the essential content of that information, so that observance of the right to an effective remedy is ensured.

PART E — THE BOARD'S INTERIM DISCLOSURE ORDERS

Following the filing of the replies by the Contracting Authority and the Recommended Bidder, and having considered all submissions on the question of disclosure, the Board issued its interim decrees on the 27th February 2026 and the 4th March 2026 directing the Contracting Authority to disclose information and documentation relating to the Recommended Bidder's bid.

The disclosure was directed in response to the seven categories of information identified in the Appellant's original request of the 10th October 2024, subject to appropriate confidentiality safeguards in respect of commercially sensitive and proprietary material.

The decrees were contested by the Recommended Bidder, which by letter of the 6th March 2026 asserted blanket confidentiality over the entirety of its submission. The Contracting Authority rejected that blanket claim as legally untenable, correctly noting that it was generic, unjustified and contrary to the Board's decrees, which permitted only objectively justified and specifically reasoned redactions or confidentiality safeguards applied on an item-by-item basis.

The Contracting Authority disclosed the material on the 9th March 2026, on an outside-counsel-eyes-only basis, together with an explanatory note (the "MIEA Note") addressing each of the seven disclosure categories in turn. The documents disclosed were marked R-1 through R-6.

The significance of the Board's disclosure orders to the substantive analysis that follows is threefold.

First, the orders confirm that the Appellant was entitled to information that had not previously been provided to it, thereby vindicating the substance of Grievance 1 of the original objection.

Second, the disclosure produced material that revealed, for the first time, the specific content of the Recommended Bidder's submission in relation to the EPC requirement and the Alternative Energy Generation criterion, the matters that form the subject of the first and second additional grievances.

Third, the partial and selective character of the disclosure, and the extent of the redactions applied, gave rise to the third and fourth additional grievances, which concern the adequacy of the documentation disclosed and the Appellant's ability to verify compliance with other mandatory deliverables.

The Board's findings on each of these matters are set out in the remaining Parts of this Decision, which address the additional grievances in the order in which they were raised.

PART F — DETERMINATION OF THE ORIGINAL GRIEVANCES

F.1 Grievance 1: Failure to Provide Non-Confidential Information

The Board upholds this grievance. The Contracting Authority's failure to respond to the Appellant's requests of the 10th and 11th October 2024 before the expiry of the objection deadline, whilst not constituting a fundamental infringement in itself, given that the Contracting Authority indicated its willingness to disclose pursuant to a Board decree, did place the Appellant at a material informational disadvantage at the time of filing its original objection.

The Appellant was compelled to file a necessarily general objection on the basis of incomplete information, reserving the right to particularise its grievances upon receipt of the requested material.

The Board's interim disclosure orders of the 27th February and 4th March 2026 gave effect to the Appellant's right to the information in question. The full consequences of the disclosure so ordered are addressed in the remaining Parts of this Decision, which determine the additional grievances that arose from that disclosure.

F.2 Grievance 2: Lack of Assurance Regarding Compliance with Minimum Requirements

This grievance, as formulated in the original objection, was necessarily general in character, reflecting the Appellant's informational limitations at the time of filing.

The Appellant identified five specific areas of concern: (i) whether the Recommended Bidder satisfied the eligibility criteria; (ii) whether the proposed development respects the historical character of the Old Fish Market site; (iii) whether adequate pedestrian safety and environmental sustainability measures were proposed; (iv) whether compliant restoration method and accessibility documentation was submitted; and (v) whether the bid included a Design Rating Energy Performance Certificate as expressly required by the RFP.

Following the Board's disclosure orders and the subsequent review of the disclosed material marked R-1 through R-6, the Appellant was in a position to formulate these concerns as specific, evidenced additional grievances. Those additional grievances were filed on the 20th March 2026 and are determined in the body of this Decision.

The Board sets out below how each area of concern identified in the original Grievance 2 is addressed in this Decision, so that the parties can follow the thread from the original objection to the final determination without ambiguity.

The Design Rating Energy Performance Certificate concern

The Appellant's concern that the Recommended Bidder may not have submitted a Design Rating Energy Performance Certificate as required by the RFP is the subject of the Board's most extensive analysis in this Decision. The Board finds, for the detailed reasons set out under the heading "PART I — WHAT DOCUMENT R-4 IS AND WHAT THE LAW REQUIRES" and the Parts that follow it through to and

including "PART IX — OVERALL CONCLUSION," that the Recommended Bidder did not submit a valid Design Rating EPC and that the Contracting Authority erred in treating the submission as compliant. This finding is decisive to the outcome of the proceedings. The Appellant's concern in this regard was well-founded and is upheld.

The environmental scoring concern

The Appellant's concern about the environmental criteria, in particular the scoring awarded to the Recommended Bidder under the Alternative Energy Generation criterion, is addressed under the heading "PART X — SECOND ADDITIONAL GRIEVANCE: MANIFESTLY ERRONEOUS SCORING UNDER THE ALTERNATIVE ENERGY GENERATION CRITERION." The Board finds that the award of 4 out of 5 points to a bid that expressly excluded all alternative energy generation was manifestly erroneous. This concern was well-founded and is upheld.

The restoration method, work method statement, construction management plan and health and safety plan concern

The Appellant's concern that the disclosed documentation did not establish compliance with these mandatory technical deliverables is addressed under the heading "PART XI — THIRD ADDITIONAL GRIEVANCE: FAILURE TO DEMONSTRATE COMPLIANCE WITH OTHER MANDATORY TECHNICAL DELIVERABLES."

The Board does not make a finding of non-compliance at this stage, because the disclosed material does not positively establish either compliance or non-compliance in relation to these specific deliverables. The Board instead directs that this question be specifically verified and documented as part of any fresh evaluation. The concern was legitimate and is partially upheld in the manner described in that Part.

The transparency and informational access concern

The Appellant's concern about the continued lack of transparency and its impact on the ability to verify compliance is addressed under the heading "PART XII — FOURTH ADDITIONAL MATTER: LACK OF TRANSPARENCY AND THE PRINCIPLES OF EQUAL TREATMENT."

The Board shares, in significant measure, the concern articulated by the Appellant and directs that any fresh evaluation be conducted in a manner that is fully documented, rigorously applied, and capable of withstanding subsequent scrutiny.

Eligibility and historical character of the Old Fish Market site

These two concerns were raised in the original objection but were not developed into specific additional grievances following the disclosure. The Board addresses them directly here.

On eligibility, the Contracting Authority has confirmed, both in its initial reply and in its Additional Reply, that the Recommended Bidder satisfied all eligibility requirements. The Appellant, having reviewed the

disclosed documentation, did not advance a specific additional grievance on eligibility. No affirmative evidence of non-compliance with the eligibility criteria has been placed before the Board. The Board accordingly accepts the Contracting Authority's confirmation that the eligibility requirements were met. This aspect of Grievance 2 is not upheld.

On the historical character of the site, Document R-1, being the Accessibility and Pedestrian Safety section of the Recommended Bidder's Technical Offer, covering pages 78 to 82, addresses the Recommended Bidder's approach to the site's context, pedestrian interfaces, heritage interfaces, and ground floor connectivity.

The Appellant did not advance a specific additional grievance on this point following review of that document. The Board finds no basis on the available evidence to make a finding that the Recommended Bidder's proposal was non-compliant with the requirement to respect and enhance the historical and cultural context of the site. This aspect of Grievance 2 is not upheld.

F.3 Grievance 3: Irregularity in the Award Process

The Appellant's third grievance alleged that the Contracting Authority's failure to respond to the pre-appeal requests for information constituted a procedural irregularity undermining the transparency and fairness of the award process, in breach of the principles of equal treatment, non-discrimination and transparency enshrined in EU procurement law and in the applicable domestic regulations.

This grievance has two dimensions, which the Board addresses separately:

(i) The procedural dimension: failure to respond to the information requests

This dimension is upheld. As the Board has found under Grievance 1 above, the Contracting Authority's failure to respond to the Appellant's requests of the 10th and 11th October 2024, before the expiry of the ten-day objection period, placed the Appellant at a material informational disadvantage at the time of filing its objection.

The Appellant was compelled to frame its challenge in general terms, reserving the right to particularise its grievances upon receipt of information it was legitimately entitled to obtain. The Board's disclosure orders of the 27th February and 4th March 2026 remedied that situation and confirmed that the Appellant's right to access that information was well-founded.

(ii) The substantive dimension: irregularity in the evaluation and recommendation for award

The Appellant's broader allegation was that the award process was irregular not merely because of the Contracting Authority's failure to provide information, but because the evaluation itself was fundamentally flawed, in that the Recommended Bidder was recommended for award notwithstanding substantive non-compliance with the mandatory requirements of the RFP.

This dimension of Grievance 3 is also upheld, for the following reasons which are set out in full in the Parts of this Decision that follow.

First, the Board finds that the Recommended Bidder did not submit a Design Rating Energy Performance Certificate capable of satisfying the mandatory requirement expressly imposed by the RFP, and that the Contracting Authority erred in treating the submission as compliant.

This finding is set out under the heading "PART I — WHAT DOCUMENT R-4 IS AND WHAT THE LAW REQUIRES" and the Parts that follow through to the heading "PART IX — OVERALL CONCLUSION", where the Board determines that the failure to submit a compliant EPC is a substantive absence incapable of rectification, and that the evaluation and recommendation for award were vitiated accordingly.

Second, the Board finds that the award of 4 out of 5 points to the Recommended Bidder under the Alternative Energy Generation criterion was manifestly erroneous, the Recommended Bidder having expressly and categorically excluded all forms of alternative energy generation from its proposal.

This finding is set out under the heading "PART X — SECOND ADDITIONAL GRIEVANCE: MANIFESTLY ERRONEOUS SCORING UNDER THE ALTERNATIVE ENERGY GENERATION CRITERION."

Third, the Board finds that these two irregularities, considered individually and cumulatively, are incompatible with the principles of transparency, equal treatment, and objectivity that govern public procurement under Maltese law and the applicable regulatory framework. That conclusion, and the operative orders of the Board in consequence, are set out under the heading "PART XIII — OVERALL DISPOSITION AND ORDERS OF THE BOARD."

PART G — THE ADDITIONAL GRIEVANCES: PROCEDURAL CONTEXT AND THE BOARD'S RULINGS ON ADMISSIBILITY

G.1 The Filing of the Additional Grievances

Following the disclosure ordered by the Board's decrees of the 27th February and 4th March 2026, the Appellant reviewed the documents marked R-1 through R-6 together with the explanatory note submitted by the Contracting Authority. Having done so, the Appellant filed a Note of Additional Grievances on the 20th March 2026 through its legal counsel.

The additional grievances were expressly stated to be submitted further to and in addition to the original grievances, without prejudice thereto.

Four additional grievances were advanced. The first concerned the alleged non-submission by the Recommended Bidder of a Design Rating Energy Performance Certificate as required by the RFP. The second concerned the manifestly erroneous scoring awarded to the Recommended Bidder under the

Alternative Energy Generation criterion. The third concerned the failure of the disclosed documentation to demonstrate the Recommended Bidder's compliance with other mandatory technical deliverables, including a Work Method Statement, a Construction Management Plan, and a Health and Safety Plan. The fourth concerned the continued lack of transparency in the disclosure process and its impact on the Appellant's ability to verify the compliance of the recommended bid.

The Recommended Bidder filed its Additional Reply on the 27th March 2026. The Contracting Authority filed its Additional Reply on the 30th March 2026.

G.2 The Preliminary Objection of the Recommended Bidder: Admissibility of the Additional Grievances

In its Additional Reply, the Recommended Bidder raised a preliminary procedural objection: that the Appellant had filed the Note of Additional Grievances without first seeking authorisation from this Board to do so, in breach of Regulation 107 of the Concession Contracts Regulations S.L. 601.09, which prescribes a ten-calendar-day time limit for the filing of written objections. The Recommended Bidder submitted that only where the Board expressly authorises the submission of new grievances may any extension be contemplated, and that the Board should therefore dismiss the additional grievances as procedurally inadmissible.

The Board does not uphold this preliminary objection on two-fold basis.

Firstly, the ten-day time limit prescribed by Regulation 106 CCR governs the filing of the original objection and runs from the date of the award decision. It was designed to ensure that procurement challenges are initiated promptly. It was not designed to, and does not, govern the situation where this Board has itself ordered mid-proceedings disclosure and new material is placed before the parties for the first time as a direct result of that order. To apply the time limit as a bar to grievances that the disclosure made possible for the first time would reduce the Board's own disclosure power to a procedural formality without practical consequence. It would deny the Appellant the very remedy that the disclosure orders were intended to make effective. The preliminary objection is accordingly rejected.

Secondly, the Board had already authorised the submission of additional grievances and their respective replies as clearly shown in the minutes forming an integral part of this decision and indeed provided timelines during the first management meeting held on the 16th December, 2025, where all parties were duly present.

G.3 The Submission of the Recommended Bidder on the Appellant's Own Financial Bid

The Recommended Bidder raised a further preliminary matter: that the Appellant's own financial offer of €242,435, expressed as a Grand Total, is either non-compliant with the minimum yearly concession fee of €208,250 per annum, or alternatively that the Financial Bid Form was incorrectly completed. The Recommended Bidder relied on PCRB Decisions 2131 and 2132 of the 12th March 2026 in support of the proposition that such a defect is not capable of rectification.

The Board notes this submission. It is advanced in the context of a reply to the Appellant's challenge and not by way of a formal cross-appeal.

The question of the Appellant's own bid compliance is not a matter that falls within the scope of the additional grievances, which are directed exclusively at the evaluation of the Recommended Bidder's submission. Whether the Appellant's bid is or is not compliant is a matter that would fall to be considered in any fresh evaluation conducted pursuant to the orders issued at the conclusion of this Decision. A party is not disentitled from challenging the lawfulness of an evaluation process merely because its own bid may have deficiencies.

The validity of the evaluation process is a matter of public interest that transcends the competitive position of any individual tenderer. This submission does not therefore constitute a bar to the consideration of the additional grievances on their merits.

G.4 The Preliminary Plea of the Contracting Authority: Exhaustion of Rights

In its Additional Reply, the Contracting Authority submitted that by filing the Note of Additional Grievances on the 20th March 2026, the Appellant had exhausted its right to raise further grievances, and that no further disclosures would be made.

The Board notes this submission. It accepts the general principle that the procurement review process must be conducted within defined procedural limits and that an appellant should not be permitted to pursue disclosure on an open-ended basis indefinitely.

However, the Board does not accept that the Appellant's right to raise additional matters is wholly extinguished by the filing of the Note of Additional Grievances, nor that the Board's own power to direct further transparency measures in the context of a fresh evaluation is curtailed by a unilateral declaration by the Contracting Authority. Whether any further disclosure is warranted is a matter for the Board to determine in the context of any fresh evaluation it directs.

G.5 The Board's Ruling on Admissibility

For the reasons set out in sections G.2 through G.4 above, the Board rules that the four additional grievances filed by the Appellant on the 20th March 2026 are procedurally admissible and proceeds to determine them on their merits in the Parts that follow.

The first additional grievance, concerning the Design Rating Energy Performance Certificate, is determined under the heading "PART I — WHAT DOCUMENT R-4 IS AND WHAT THE LAW REQUIRES" and the Parts that follow it through to "PART IX — OVERALL CONCLUSION."

The second additional grievance, concerning the Alternative Energy Generation scoring, is determined under the heading "PART X — SECOND ADDITIONAL GRIEVANCE: MANIFESTLY

ERRONEOUS SCORING UNDER THE ALTERNATIVE ENERGY GENERATION CRITERION."

The third additional grievance, concerning the Work Method Statement, Construction Management Plan, and Health and Safety Plan, is determined under the heading "PART XI — THIRD ADDITIONAL GRIEVANCE: FAILURE TO DEMONSTRATE COMPLIANCE WITH OTHER MANDATORY TECHNICAL DELIVERABLES."

The fourth additional grievance, concerning transparency and the adequacy of the disclosure, is determined under the heading "PART XII — FOURTH ADDITIONAL MATTER: LACK OF TRANSPARENCY AND THE PRINCIPLES OF EQUAL TREATMENT."

The Board's operative orders, flowing from all its findings on both the original and additional grievances, are set out under the heading "PART XIII — OVERALL DISPOSITION AND ORDERS OF THE BOARD."

1. NON-COMPLIANCE WITH MANDATORY REQUIREMENT TO SUBMIT A DESIGN RATING ENERGY PERFORMANCE CERTIFICATE

By virtue of this Board's decrees of the 27th February and the 4th March, 2026, the Contracting Authority was directed to disclose information and documentation relating to the bid recommended for award to the Appellant, Bonnici Bros Ltd.

Following that disclosure, and having reviewed the documents marked R-1 through R-6 together with the explanatory note filed by Malta Government Investments Limited as Contracting Authority ("the MIEA Note"), the Appellant has submitted a Note of Additional Grievances through its legal counsel.

The additional grievances are expressly stated to be submitted further to, and in addition to, the grievances already raised in the original objection, without prejudice thereto.

The Board is mindful that the additional grievances were, of necessity, not available to the Appellant at the time of the original objection. They arise directly from the disclosure ordered by this Board and could not have been formulated or particularised without access to the information which the Contracting Authority had, until that disclosure, withheld.

This procedural circumstance does not diminish the legal force of the grievances; on the contrary, the fact that disclosure was required by order of this Board in order to bring these matters to light is itself a circumstance of some significance when assessing the conduct of the Contracting Authority in the evaluation process.

For the purposes of orderly analysis, the Board addresses each additional grievance in turn, in the order in which it was raised by the Appellant and as replied to by the Contracting Authority and the Recommended Bidder.

PRELIMINARY MATTERS

A. The Procedural Objections Advanced by the Recommended Bidder

A.1 Non-Acquiescence and Reservation of Rights

By its Additional Reply filed on the 27th March 2026, the Recommended Bidder, Carmelo Stivala Group ("CSG"), has, as a preliminary matter, expressly reserved its position that the proceedings before this Board are procedurally defective and that the original objection filed by the Appellant is null and void in whole or in part. CSG further reserves its right to appeal the Board's prior disclosure orders.

The Board takes note of this reservation. It has been made consistently throughout these proceedings, and the Board has addressed it in its earlier decrees. It does not call for any fresh determination at this stage. The Board's jurisdiction to hear and determine the present objection has been established by its own prior rulings, and that jurisdiction is not displaced by a continuing reservation, however firmly maintained. The procedural legitimacy of the current proceedings is not in issue before the Board in the present decision.

A.2 The Objection that the Appellant Filed Additional Grievances Without Prior Authorisation

CSG advances a second and more substantive procedural objection: that the Appellant filed its Note of Additional Grievances on the 20th March 2026 without first seeking this Board's authorisation to do so, in breach of Regulation 107 of S.L. 601.09 (the Concession Contracts Regulations, "CCR"). CSG submits that the ten-calendar-day time limit prescribed by Regulation 106 CCR is peremptory, that no extension is permissible except upon the Board's express authorisation, and that the Board should therefore dismiss the additional grievances as procedurally inadmissible.

The Contracting Authority does not advance this particular objection in its own reply.

The Board has considered this submission carefully and declines to uphold it, for the following reasons.

First, the procedural framework governing the admission of additional grievances following a Board-ordered disclosure must be read in its proper context. The present proceedings are not a case in which the Appellant has attempted to introduce new grievances of its own initiative, beyond the scope of the original objection, in order to expand the ambit of the appeal. The additional grievances arise directly and exclusively from the documentary disclosure that this Board itself ordered by its decrees of the 27th February and the 4th March 2026. Without those orders, and without the disclosure that followed from them, the additional grievances could not have been formulated. They were, by their nature, unavailable to the Appellant before the disclosure was made.

Second, the requirement in Regulation 106 CCR that objections be filed within ten calendar days is directed, in its primary application, at the original objection arising from the notification of the award decision. Its purpose is to ensure that procurement review proceedings are initiated promptly and do not unduly delay the conclusion of the procurement process. It is not directed at, and was not designed to govern, the situation that arises when a review body itself orders mid-proceedings disclosure and new factual material is thereby placed before the parties for the first time.

Third, this Board's power to conduct procurement review proceedings effectively necessarily implies a power to manage those proceedings in a manner that gives effect to the purpose of the review, namely the identification and correction of infringements of the procurement rules. Where the Board orders disclosure precisely because it has determined that an appellant is entitled to access information in order to assess and pursue its grievances, it would be fundamentally inconsistent with that determination to then refuse to admit the grievances that the disclosure makes possible. Such an approach would reduce the Board's disclosure power to an empty formality and deprive appellants of the effective remedy that both European and Maltese procurement law guarantee.

Fourth, the Board notes that it was open to CSG to raise this procedural objection before the Board at an appropriate interlocutory stage and to seek a ruling on admissibility before the substantive submissions were filed. CSG chose instead to file full substantive replies to all four additional grievances while reserving this procedural position. The Board considers, in any event, that the procedural objection is without foundation for the reasons stated above, and it accordingly proceeds to consider the additional grievances on their merits.

Fifth, the Board reiterates that it had already authorised the submission of additional grievances and their respective replies as clearly shown in the minutes forming an integral part of this decision and indeed provided timelines during the first management meeting held on the 16th December, 2025, where all parties were duly present.

A.3 The Submission that the Appellant's Own Financial Bid is Non-Compliant

CSG advances, as a further preliminary matter, the submission that the Appellant's own financial offer of €242,435 renders the Appellant's bid non-compliant with the minimum yearly concession fee of €208,250

per annum, a figure which, multiplied over 65 years, yields a minimum Grand Total of €13,536,250. CSG points out that the Appellant's financial offer of €242,435, expressed as a Grand Total, falls drastically short of the minimum required if read as a yearly figure incorrectly totalled, or alternatively, that the Financial Bid Form was incorrectly completed, constituting a non-rectifiable Note 3 defect.

CSG further relies on PCRB Decisions 2131 and 2132, dated 12th March 2026, in which this Board held that correcting an already-expressed commercial figure would run counter to the Principle of Self-Limitation.

The Board notes this submission. It is made in the context of a reply to the Appellant's objection and not by way of a formal counter-objection or cross-appeal. The Board observes that the question of the Appellant's own bid compliance is not a matter that falls within the scope of the additional grievances currently before it, which are directed exclusively at the compliance and evaluation of the Recommended Bidder's submission.

The Board further observes that whether the Appellant's bid is or is not compliant is a matter that would fall to be determined if and when the evaluation is revisited in light of this Decision's findings. It is not a matter that this Board is required to resolve in order to adjudicate upon the Appellant's grievances, nor does the Appellant's alleged non-compliance, if established, provide any basis for disregarding or dismissing grievances that are otherwise well-founded in law and on the evidence.

A party challenging the lawfulness of an evaluation and recommendation for award is not disentitled from doing so merely because its own bid may have deficiencies. The validity of the evaluation process is a matter of public interest that transcends the competitive position of any individual tenderer. The Board accordingly does not regard CSG's submission on this point as a bar to the admission or consideration of the Appellant's additional grievances.

PART I — WHAT DOCUMENT R-4 IS AND WHAT THE LAW REQUIRES

Document R-4 is a narrative description contained within the Environmental and Technical section of the Carmelo Stivala Group's tender submission for the works concession for the regeneration of the Old Fish Market Site, Valletta (Tender Reference: 501-MSPP/01/2023).

The document, produced by StQP / Stivala Group — design.engineer.manage, runs to two pages and consists of a cover page bearing the title "*Design Rating Energy Performance Certificate*" followed by a single page of explanatory narrative. That narrative acknowledges the EPC regulatory framework, states that energy-efficient measures will be taken into account at the design stage, and notes an aspiration toward green building certification.

The document is not, however, an EPC. It does not perform the function of an EPC, and it does not satisfy any of the formal requirements that Maltese law prescribes for a valid EPC to come into existence.

Under S.L. 623.01, the Energy Performance of Buildings Regulations (L.N. 47 of 2018, as amended by Legal Notices 134 of 2020, 409 of 2021, 231 of 2022 and 305 of 2023), the legal obligations governing new buildings and their design-rating EPCs are set out principally in Regulations 12, 13, 14, 15, 21 and 23. The governing provision for the present analysis is Regulation 14(3), which provides as follows:

> *"As from the date indicated in this sub-regulation, a person or agent acting on behalf of the owner who commissions the design of a new building shall have in his possession an EPC based on the design rating of the building and in the form prescribed by these regulations just prior to obtaining a full development permit from the Planning Authority."*

This provision applies in relation to dwellings whose development permit application was submitted after 2nd January 2009, and to all other buildings whose development permit application was submitted after 1st June 2009. The Old Fish Market Site falls squarely within the latter category.

The critical phrase is "*just prior to obtaining a full development permit.*" The design-rating EPC is therefore a pre-permit instrument. It must exist as a registered document before the development permit is applied for, and it must have been issued by a registered independent EPB assessor. It is not, and has never been, a document that can be produced as a component of a tender submission *in lieu* of an actual registered certificate.

The *ad validitatem* condition is separately stated in Regulation 14(2):

> *"To be valid, the EPC shall be obtained from an independent EPB assessor after it is registered with the Building and Construction Authority."*

Two conditions must therefore be met simultaneously for any document to constitute a valid EPC: (i) it must be obtained from an independent EPB assessor; and (ii) it must be registered with the Building and Construction Authority before being issued.

Regulation 21(4)(a) reinforces this by providing that an endorsed EPC shall not be issued by the assessor to the building owner or his agent unless and until it is accepted in the register maintained by the BCA.

Document R-4 satisfies neither condition. It was produced by StQP, which is the Stivala Group's own design and engineering consultancy, not an independent EPB assessor, and it has never been submitted to, still less registered with, the BCA.

PART II — THE DISTINCTION BETWEEN AN EPC, A COMPLIANCE CERTIFICATE AND AN ENVIRONMENTAL STRATEGY

A further source of confusion in Document R-4 is that it conflates several distinct legal instruments which S.L. 623.01 treats as entirely separate obligations arising at different stages of the development process.

The Design Rating EPC

The Design Rating EPC, required under Regulation 14(3), is the instrument at issue in the present analysis. It is prepared by a registered independent EPB assessor on the basis of the pre-construction design drawings and plans. It quantifies the projected energy performance of the building as designed, expressed as a numeric indicator of primary energy use in kWh/(m²·y) and a CO_2emissions-based energy rating assigned to a prescribed energy performance band (A+ through G), as calculated using the Simplified Building Energy Model (iSBEMmt), the BCA-approved methodology for non-residential buildings under Regulation 4 of the Energy Performance of Buildings Regulations, together with a corresponding CO_2 emissions figure in kg CO_2/m²·yr. It must be in the prescribed form, issued by a BCA-registered assessor and registered with the BCA before the full development permit is obtained. It bears a unique certificate number, the assessor's registration number, the assessor's signed declaration and official stamp, and a validity period of ten years.

The Compliance Certificate

The Compliance Certificate is a wholly different instrument governed by Regulation 7(1), which provides:

> *"The compliance certificate drawn up by the responsible architect/engineer has to be submitted by the owner to the Building and Construction Authority within one month of completion and before the use of the building."*

The Compliance Certificate is drawn up not by an independent EPB assessor but by the responsible architect or engineer of record. It is a post-construction instrument confirming that the completed building was constructed in accordance with the design on which the design-rating EPC was based. It arises at a different stage of the project lifecycle, is addressed to a different authority, and has a different legal purpose. Document R-4 confuses these two instruments and compounds the confusion by presenting what is, in substance, neither as if it were the first.

The Environmental Strategy

A third distinct layer is the environmental strategy. The RFP specification required, at page 15, "*an environmental strategy showing how the proposed scheme will be utilising energy efficient measures so that the proposed development is a responsible, green design based on key sustainable objectives.*"

That requirement was addressed by Document R-2, the Environmental Strategy and Impact section of the CSG Technical Offer, covering pages 69 to 77. Document R-2, while substantive in its treatment of energy-saving measures including LED lighting, passive design techniques, heat recovery systems, insulated pipework, inverter-driven pumps, mechanically ventilated spaces and waste management, is an environmental strategy document. It does not purport to be an EPC, nor could it be.

Under Regulation 12(1) of S.L. 623.01, an EPC must express the energy performance of the building as a quantified numerical rating on a prescribed scale. Document R-2 contains no iSBEMmt-generated energy rating derived from the building's calculated CO_2emissions intensity, no CO_2 emissions figure in kg $CO_2/m^2 \cdot yr$, no Building Primary Energy Use figure in $kWh/(m^2 \cdot y)$, no prescribed A+ to G energy performance band, no independent EPB assessor, and no BCA registration. It may satisfy the environmental strategy requirement in the tender specification; it does not and cannot satisfy the EPC requirement.

Green Building Certification

The aspiration toward green building certification noted at the conclusion of Document R-4 warrants separate consideration. Document R-4 states that "*it is intended that green building certification would be considered for the proposed development.*" This statement is entirely aspirational. Green building certification schemes operate independently of S.L. 623.01 and are not recognised under Maltese law as equivalent to or substituting for a registered Energy Performance Certificate.

They may supplement a tender submission and add evaluative value where the evaluation criteria reward sustainability ambition, but their pursuit does not discharge the statutory obligation to obtain and register a design-rating EPC with the BCA prior to the full development permit. An aspiration to consider green building certification at some future point in the design process cannot, as a matter of law, stand in the place of an instrument that the law requires to exist before the development permit is even applied for.

PART III — THE REGULATORY FRAMEWORK: KEY PROVISIONS OF S.L. 623.01

For completeness and reference, the five key provisions of S.L. 623.01 directly relevant to this analysis are set out below.

Regulation 13(4) — Design Rating EPC for Buildings Sold or Rented Prior to Construction

> *"Where a building is sold or rented out prior to construction, the seller shall provide a design rating EPC for the building, and which in such case shall be handed over to the buyer or tenant, at the latest, before the date of entering the promise of sale, deed or rent agreement. A copy of the design rating EPC shall also be attached to the promise of sale/deed. If alterations which change the energy performance characteristics of the building have been made during construction, a new EPC has to be provided to the buyer or tenant."*

Regulation 14(2) — Validity Condition

> *"To be valid, the EPC shall be obtained from an independent EPB assessor after it is registered with the Building and Construction Authority."*

Regulation 14(3) — Design Rating EPC Before Development Permit

> *"As from the date indicated in this sub-regulation, a person or agent acting on behalf of the owner who commissions the design of a new building shall have in his possession an EPC based on the design rating of the building and in the form prescribed by these regulations just prior to obtaining a full development permit from the Planning Authority: (a) in relation to dwellings whose development permit application was submitted after 2nd January 2009; and (b) in relation to all other buildings whose development permit application was submitted after 1st June 2009."*

Regulation 15(4) — Asset Rating EPC Post-Construction

> *"If after the construction of the building or the installation of mechanical and electrical services in new buildings it results that such construction or installation of services is different from the design on which a design rating EPC has been obtained, a new EPC based on the asset rating of the building shall have to be secured by the owner before the expiry of the periods indicated in regulation 14(4) or before the building is used."*

Regulation 7(1) — Compliance Certificate

> *"The compliance certificate drawn up by the responsible architect/engineer has to be submitted by the owner to the Building and Construction Authority within one month of completion and before the use of the building."*

PART IV — Mandatory Elements of a Valid EPC under S.L. 623.01 (L.N. 47 of 2018, as amended by Legal Notices 134 of 2020, 409 of 2021, 231 of 2022 and 305 of 2023)

The content of Document R-4 can be assessed against the mandatory elements of a valid EPC as prescribed by S.L. 623.01 by reference to the table hereunder illustrated.

The following table sets out each mandatory element, its statutory authority, its presence in the sample EPC, and its presence in Document R-4. Each finding in the Document R-4 column is based on this Board's own reading of the disclosed document.

Mandatory Element	Regulatory Source in S.L. 623.01	What the Law Requires	Present in Document R-4
1. Issued by an EPB assessor recognised by the BCA	*Reg. 2(2), definition of "energy performance certificate"*	The EPC must be the product of an assessment carried out by a person registered with the BCA as an EPB assessor and authorised to act on	**ABSENT. Document R-4 was produced by StQP, the Recommended Bidder's in-house design consultancy. StQP is not a registered EPB assessor.**

Mandatory Element	Regulatory Source in S.L. 623.01	What the Law Requires	Present in Document R-4
		its behalf. The methodology used must conform with that adopted under Regulation 4.	
2. Produced by an independent EPB assessor	*Reg. 2(2), definition of "independent energy performance assessor"; Reg. 14(2)*	The assessor must not be an employee of the owner or any contractor responsible for the construction, finishing, or installation of mechanical or electrical services of the building.	**ABSENT. StQP is the Recommended Bidder's design and engineering consultancy, a contractor responsible for the construction and engineering services of the proposed building. It is structurally disqualified under the Regulation 2(2) definition.**
3. Registered with the BCA before issue; unique BCA certificate number	*Reg. 14(2); Reg. 21(4)(a); Reg. 29(3a); Reg. 2(2), definitions of "EPC register" and "EPC record"*	The EPC must be registered with the BCA and assigned a unique registration number before being issued to the person who commissions it. An endorsed EPC shall not be issued unless and until it is accepted in the BCA register.	**ABSENT. Document R-4 contains no BCA certificate number, no registration reference, and no indication of any submission to or communication with the BCA. It has no legal existence as a registered EPC instrument.**
4. Calculation of energy performance using the prescribed methodology (iSBEMmt for non-residential buildings; EPRDM for dwellings)	*Reg. 2(2), definition of "energy performance certificate" (methodology conformity); Reg. 4; Schedule I*	The energy performance must be calculated using the iSBEMmt (for non-residential buildings) or the EPRDM (for dwellings), being the prescribed computational methodologies under Regulation 4 and Schedule I.	**ABSENT. Document R-4 contains no reference to the iSBEMmt or EPRDM, no building geometry data, no thermal envelope data, no mechanical systems data, and no computational outputs of any kind. No calculation was performed.**

Mandatory Element	Regulatory Source in S.L. 623.01	What the Law Requires	Present in Document R-4
5. Calculated energy performance figure (EPB) expressed as primary energy use in kWh/m² per year, assigned to an energy performance band	*Reg. 12(1) (EPC to include the EPB); Reg. 2(2), definition of "energy performance of a building (EPB)"; Reg. 4 and Schedule I, para. 1 (primary energy figure in kWh/m²/y)*	The EPC must include the EPB — the calculated amount of energy in kWh/m² per year produced by application of the prescribed methodology — and reference values enabling comparison against minimum energy performance requirements.	**ABSENT. Document R-4 contains no energy performance figure, no primary energy indicator, no kWh/m² value, and no band assignment. The only reference to energy performance is a general narrative acknowledgement that energy-efficient measures will be taken into account.**
6. CO_2 emissions indicator ($kgCO_2/m^2/yr$)	*Schedule I, para. 3; BCA prescribed EPC form implementing the iSBEMmt methodology for non-residential buildings*	Schedule I, paragraph 3 provides that the competent authority may define additional numeric indicators including greenhouse gas emissions produced in $kgCO_2eq/(m^2.y)$. The BCA's prescribed EPC format for non-residential buildings includes a CO_2 emissions indicator as a standard output of the iSBEMmt calculation.	**ABSENT. Document R-4 contains no CO_2 figure of any kind.**
7. Reference values showing energy performance compared to minimum requirements	*Reg. 12(1)*	The EPC shall include reference values such as minimum energy performance requirements, enabling owners or tenants to compare and assess the building's energy performance against	**ABSENT. Document R-4 contains no reference values and no comparative energy performance indicators of any kind.**

Mandatory Element	Regulatory Source in S.L. 623.01	What the Law Requires	Present in Document R-4
		the applicable minimum standards.	
8. Advisory report with cost-effective improvement recommendations	*Reg. 12(3); Reg. 15(2); Reg. 2(2), definition of "advisory report"*	The EPC shall include recommendations for the cost-optimal or cost-effective improvement of the energy performance of the building, based on an actual energy performance assessment carried out by the EPB assessor.	**ABSENT. Document R-4 contains no advisory report. No energy performance assessment was carried out; therefore no recommendations based on such an assessment can exist.**
9. Property identification sufficient for BCA registration	*Reg. 14(2); Reg. 29(3a); BCA EPC system requirements*	BCA registration of an EPC necessarily requires the property to be identified so that the EPC record can be linked to it on the EPC register — full property address, floor area, and, where applicable, Planning Authority development permit reference.	**ABSENT. Document R-4 refers to the "Old Fish Market, Valletta" in general terms but contains no property address, no floor area, no Planning Authority development permit reference, and no identifying details of the kind required for BCA registration.**
10. Date of issue and ten-year validity period	*Reg. 15(1)*	An EPC issued under S.L. 623.01 is valid for ten years from the date of first issue, provided that no major renovation or alteration occurs. It must therefore bear a date of first issue from which the validity period runs.	**ABSENT. Document R-4 bears no date of EPC issue, no validity start date, and no ten-year expiry date. These elements are absent because no EPC was ever issued.**
11. Identity and BCA registration number of the EPB assessor;	*Reg. 2(2), definition of "EPB assessor" (registration with*	Regulations 2(2), 14(2) and 25 establish that the	**ABSENT. Document R-4 bears the name of StQP / Stivala Group -**

Mandatory Element	Regulatory Source in S.L. 623.01	What the Law Requires	Present in Document R-4
assessor's signed declaration and official stamp	*BCA); Reg. 14(2); Reg. 25; Reg. 21(4)(a); BCA prescribed EPC form*	EPC must be obtained from a registered independent EPB assessor. Regulation 21(4)(a) requires the endorsed EPC to be accepted in the BCA register before issue. The BCA's prescribed form requires the assessor's name, BCA registration number, signed declaration and official stamp to appear on the face of the certificate.	**design.engineer.manage, but contains no EPB assessor name, no BCA assessor registration number, no signed declaration and no official stamp.**
12. In the form prescribed by S.L. 623.01	*Reg. 14(1); Reg. 14(3)*	Regulations 14(1) and 14(3) each require that the EPC be "in the form prescribed by these regulations" — the standardised BCA certificate format incorporating the energy performance band, scale bar, primary energy figure, CO_2 rating, advisory report, and assessor identification.	**ABSENT. Document R-4 does not resemble, and could not be mistaken for, the prescribed form of an EPC. It is a two-page narrative document. It satisfies none of the formal requirements of the prescribed form.**

Document R-4 satisfies zero of the twelve mandatory elements prescribed by S.L. 623.01 for a valid Energy Performance Certificate. The absence is total and comprehensive, extending to every element: the identity and independence of the assessor, the BCA registration, the prescribed calculation methodology, the calculated energy performance output, the reference values, the advisory report, the property identification required for registration, the validity period, and the prescribed form.

PART V — THE THREE FATAL DEFICIENCIES

First: Document R-4 is not an EPC; it is a description of an EPC

Regulation 14(3) requires that the person commissioning the design of a new building shall have "*in his possession an EPC based on the design rating of the building.*" Document R-4 states that "*a design-rating EPC **shall** be prepared.*" The use of the future tense is dispositive. The obligation under Regulation 14(3) is framed as one requiring present possession, whereas Document R-4 acknowledges the requirement and defers performance to a future date. The obligation has not been discharged; it has been acknowledged and deferred. These are fundamentally different legal positions.

Second: There is no registered independent EPB assessor

Regulation 14(2) makes validity conditional upon the EPC being obtained from an independent EPB assessor. The definition of "*independent energy performance assessor*" in Regulation 2(2) of S.L. 623.01 explicitly excludes persons who are employees of the owner or of any contractor responsible for the construction, finishing or installation of mechanical or electrical services.

Document R-4 was produced by StQP, which forms part of the Stivala Group's in-house design and engineering operation, not an independent third-party EPB assessor. Even setting aside the total absence of any assessor credentials, registration number or declaration in Document R-4, the document could not constitute a valid EPC even in principle, because it was produced by a person who falls within the statutory exclusion from independence.

Third: The document has never been registered with the BCA

Regulation 21(4)(a) provides that an endorsed EPC shall not be issued by the assessor to the building owner or his agent unless and until it is accepted in the register maintained by the Building and Construction Authority.

There is no certificate number in Document R-4, no reference to any BCA registration process, and no indication that the document was ever submitted to the BCA. Without BCA registration, the document has no legal existence as an EPC regardless of its content or title. This is not a curable defect; it goes to the existence of the instrument itself.

PART VI — THE TENDER DOCUMENTATION AS THE DIRECT SOURCE OF THE MANDATORY EPC OBLIGATION

1. Preliminary Observation: The Primacy of the Tender Documentation

Before turning to the clarification exchange and the conduct of the evaluation, it is necessary to establish, as a matter of primary analysis, that the obligation to submit a Design Rating Energy Performance

Certificate did not arise by implication, by inference, or by analogy with the regulatory framework under S.L. 623.01. It arose, directly and unambiguously, from the text of the tender documentation itself.

The Request for Proposals imposed that obligation in express terms, and it did so in two distinct places and in two distinct registers, one operative and prescriptive, the other definitional and technical, each of which independently compels the conclusion that the EPC was a mandatory component of the bid.

2. The Operative Requirement: Page 16 of the Request for Proposals

The first and principal source of the obligation is found at page 16 of the Request for Proposals, under the heading "*Proposed Capital Investment (Note 3).*" That section is framed as a composite requirement directing all tenderers to draw up an investment plan of defined scope and content, specifying the precise categories of information that the plan must contain. It is not an aspirational or indicative guideline; it is a prescriptive instruction addressed to all economic operators on equal terms, forming part of the conditions of participation.

Within that prescriptive framework, the tender documentation identifies by way of enumeration the specific components that the investment and operation plan must address. One of those components, set out explicitly and without qualification, is the following:

> *"A Design Rating Energy Performance Certificate of the proposed building design."*

The formulation admits of no ambiguity. The indefinite article, "*A Design Rating Energy Performance Certificate*", is the language of requirement. The word "*certificate*" is a legal and technical term of art under the Maltese regulatory framework: it denotes a specific, formally constituted instrument issued by a registered independent assessor and registered with the Building and Construction Authority.

The tender documentation did not ask tenderers to describe their intentions in relation to energy performance or to acknowledge that one would be obtained in the future. It asked them to provide one, as a component of their submission, on the same footing as the other enumerated items in the capital investment section.

This requirement appears not in a section dealing with environmental aspirations or sustainability credentials but in the capital investment section, concerned with the tangible, documented, and verifiable foundations of the tenderer's capacity to deliver the concession. The placement is deliberate and legally significant. The Design Rating EPC is an instrument of investment planning because it quantifies, by reference to a regulated and independent methodology, the energy performance characteristics of the building that the tenderer proposes to construct.

3. The Definitional Reinforcement: Page 43 of the Request for Proposals

The second source of the obligation is found at page 43 of the Request for Proposals:

"The Design Rating Energy Performance Certificate shall have the same meaning assigned to it in the Energy Performance of Buildings Regulations, 2018, L.N. 47 of 2018."

By incorporating by reference the definition contained in L.N. 47 of 2018, the Contracting Authority deliberately and explicitly aligned the contractual obligation with the full technical and legal content of the instrument as defined under Maltese law.

The tender documentation did not create a bespoke or loosely defined notion of "*energy performance documentation*" susceptible of satisfaction by a narrative or a statement of intent. It adopted, wholesale, the statutory definition, and with it all the formal requirements that Maltese law prescribes for a valid EPC to come into existence.

The consequence is legally decisive. When the RFP requires "*A Design Rating Energy Performance Certificate*" and then provides that that term "*shall have the same meaning assigned to it in the Energy Performance of Buildings Regulations, 2018,*" it is requiring by reference an instrument that: (i) has been issued by an independent EPB assessor; (ii) is registered with the BCA before being issued; (iii) bears a unique BCA-registered certificate number; (iv) expresses the building's energy performance, using the **iSBEMmt** calculation engine, the BCA-approved methodology for non-residential buildings under Regulation 4 of the Energy Performance of Buildings Regulations — as an energy rating derived from the building's calculated CO_2 emissions intensity and assigned to a prescribed energy performance band on the A+ to G scale, with the certificate separately reporting the underlying Building CO_2 Emissions in kg $CO_2/m^2 \cdot yr$ and the Building Primary Energy Use in $kWh/m^2 \cdot yr$; (v) records the CO_2 emissions figure; (vi) includes an advisory report with recommendations for improvement; (vii) identifies the property with full address and floor area details; (viii) records the date of issue and the ten-year expiry date; and (ix) carries the assessor's signed declaration and official stamp.

A tenderer who read the RFP could not have been in any doubt that what was required was a registered instrument in the form prescribed by S.L. 623.01, not a narrative equivalent or a descriptive substitute.

4. The Composite Effect of the Two Provisions

Read together, the operative requirement at page 16 and the definitional provision at page 43 produce a composite obligation of unambiguous content and binding force. The operative provision establishes that the EPC is a required component of the bid. The definitional provision establishes precisely what kind of instrument must be provided and, by implication, what will not suffice. The two provisions are entirely consistent and mutually reinforcing: the first says what must be submitted; the second says what it must be.

The Contracting Authority could have required "*a description of the proposed building's energy performance characteristics*" or "*a document demonstrating the tenderer's approach to energy efficiency.*" It required neither. It required a Design Rating Energy Performance Certificate in the meaning given to that term by the Energy

Performance of Buildings Regulations. That choice of language forecloses all argument that a narrative statement or a description of future intentions could suffice.

5. The Significance of the Placement Within Note 3

The page 16 requirement is expressly designated as "*Note 3*" and appears as part of a detailed, itemised specification of the content that the investment plan must contain. In the law of public procurement, specifications within a tender document that prescribe the content of required submissions are constitutive of the conditions of participation. A tenderer who fails to provide an element that the specification expressly and individually identifies within an enumerated list of required components is a tenderer who has not complied with the tender conditions, regardless of the substantive quality of the other elements of the submission.

The principle at stake is that of the self-binding character of tender specifications, which the European Court of Justice articulated with particular clarity in Manova (C-336/12) at paragraph 40: it falls to the contracting authority to comply strictly with the criteria which it has itself laid down. A tender specification that expressly requires the submission of a Design Rating Energy Performance Certificate, and that defines that instrument by reference to its statutory meaning, gives rise to a legitimate expectation on the part of all tenderers that non-compliance with that requirement will be treated as disqualifying. To treat non-compliance as acceptable, let alone as equivalent to compliance, is to betray that expectation and to infringe the principle of equal treatment that underpins the entire procurement process.

6. Conclusion of This Part

The obligation to submit a Design Rating Energy Performance Certificate in the course of this tender was not implied, inferred, or imported from the regulatory framework. It was explicitly imposed by the tender documentation itself, at page 16, as a named and individually identified component of the required investment and operation plan, and was given technical and legal precision by the definitional provision at page 43, which incorporated by reference the full statutory meaning of the instrument as defined under S.L. 623.01.

No tenderer who read the RFP with professional attention could have understood that obligation as capable of satisfaction by a narrative description, an acknowledgement of future intent, or a document produced by its own in-house consultancy and bearing none of the formal attributes that Maltese law prescribes as conditions of validity and existence.

7. The Contracting Authority's Interpretation of the RFP Requirement

By its Additional Reply, the Contracting Authority advances the submission that the RFP did not require the submission of an actual Energy Performance Certificate but required only that tenderers "*give details about*" and "*provide information on*" the EPC-related requirement, contending that the language of the RFP is "*unequivocal*" in this interpretation.

The Board rejects this interpretation. The Contracting Authority's reading isolates the general introductory framing of the Capital Investment section from the specific enumerated items that follow within that section. The introductory framing describes the general character of the exercise, drawing up an investment plan, while the enumerated components describe the specific content the plan must contain.

The specific always governs the general in the construction of detailed technical specifications. The definite instrument prescribed, "*a Certificate*", is not a species of information. It is a formally constituted legal instrument whose existence, validity conditions, prescribed form, and mandatory content are all defined by reference to Maltese legislation expressly incorporated by the RFP itself.

The Contracting Authority also relies on the principle in Case C-19/00, SIAC Construction, that tender requirements are to be understood as they would be read by a "*reasonably well-informed and duly diligent tenderer.*"

The Board accepts this principle but draws the opposite conclusion from its application. A reasonably well-informed and duly diligent tenderer, reading the requirement for "*A Design Rating Energy Performance Certificate*" against the definitional provision at page 43 incorporating the statutory meaning of that term, would have understood, unambiguously, that what was required was a registered instrument in the prescribed form, not a narrative description.

The Appellant itself so understood the requirement, and it is the Appellant's reading that is legally correct. The fact that the Recommended Bidder may have understood the requirement differently establishes, at most, that it proceeded on an incorrect understanding of what was required. That incorrect understanding cannot retrospectively redefine the requirement as it was written. This submission is accordingly rejected.

PART VII — THE TENDER SPECIFICATION AND THE CLARIFICATION EXCHANGE

The question whether the EPC was expressly required by the tender specification is resolved beyond doubt by two distinct pieces of evidence.

First, the text of the RFP itself, also at page 15, contains the following requirement: "*An environmental strategy showing how the proposed scheme will be utilising energy efficient measures so that the proposed development is a responsible, green design based on key sustainable objectives.*" As noted in Part II above, this requirement was addressed by Document R-2 and relates to the environmental strategy, not to the EPC. The two requirements are separate and distinct.

The second and more decisive piece of evidence is the clarification exchange between the Evaluation Committee and the Carmelo Stivala Group on the 18th June 2024. Under the heading "*Clarification Technical 3*", the EAC posed the following question:

Q: Can the Economic Operator kindly indicate to the EAC ***the location of the Design Rating Energy Performance Certificate*** *of the proposed building design.*

To which the CSG replied:

A: Environmental performance is addressed in design rating, Energy Performance certificate in the attached report. Files Associated to Reply: Facilities and Capital Investment.pdf

The clarification question is itself conclusive evidence that the tender document required the submission of a Design Rating EPC. The EAC asked specifically for the "*location*" of the EPC, not for a description of energy-saving intentions, not for a narrative acknowledgement that an EPC would be prepared, but for the location within the submitted documentation of the EPC itself. This framing carries the clear inference that the EPC was a required component of the bid documentation and that the EAC was actively looking for it within the CSG's submission.

The CSG's response directed the EAC to the whole of the Facilities and Capital Investment report, within which Document R-4 (pages 106–107) represents the entirety of what was submitted under that heading. That response was not responsive to the question. The EAC asked for the location of the EPC; what it received was a reference to a document that is not an EPC by any legal standard.

The significance of the clarification exchange is twofold. It confirms that the tender specification required submission of a Design Rating EPC as a mandatory component of the bid. And it confirms that the CSG's position was, and remains, that Document R-4 constitutes adequate compliance with that requirement, a position which, for all the reasons set out in these considerations, is legally untenable.

PART VIII — ASSESSMENT OF DOCUMENTS R-1 THROUGH R-6 AND THE MIEA NOTE

Preliminary Observation: The Procedural Context

Documents R-1 through R-6 and the MIEA Note form part of the disclosure exercise ordered by the PCRB by decrees of the 27th February and 4th March 2026. The Contracting Authority disclosed these documents to outside counsel on both sides on a RESTRICTED — OUTSIDE-COUNSEL-EYES-ONLY basis on 9 March 2026.

The Recommended Bidder had asserted by letter of the 6th March 2026 that all information submitted by it was confidential and proprietary, resisting wholesale disclosure. The MIEA Note expressly rejected that blanket position as "*generic, unjustified and in any case contrary to this Board's decrees which only permitted objectively justified and specifically reasoned redactions or confidentiality safeguards applied on an item-by-item basis.*"

Document R-1 — Accessibility and Pedestrian Safety (pages 78–82 of the CSG Technical Offer)

This document addresses accessibility planning, road layout (Quarry Wharf Road, Lvant Road), hotel and marina drop-off areas, ground floor connection plans, interfaces between the site and public spaces, and interior design considerations including sensory experience and smart technology integration. It contains no reference whatsoever to energy performance, EPCs, or any related instrument. It is entirely irrelevant to the EPC question.

Document R-2 — Environmental Strategy and Impact (pages 69–77 of the CSG Technical Offer)

This document is heavily redacted on grounds of commercial sensitivity. What remains visible addresses water supply management, alternative energy generation, circular economic measures, humidity prevention, energy-saving integrated building design, and energy-saving measures including LED lighting, motion sensing, air conditioning units, inverter driven pumps, insulated pipework, heat-recovery ventilation units, mechanically ventilated spaces and waste management.

Two observations are critical. First, this document does contain substantive energy efficiency content which goes considerably further than Document R-4. However, it does not constitute an EPC. What is described is a collection of design intentions and engineering proposals for energy-saving measures. Under Regulation 12(1) of S.L. 623.01, an EPC must express the energy performance of a building as a quantified numerical rating on a prescribed scale. Document R-2 contains no iSBEMmt-generated energy rating derived from the building's calculated CO_2 emissions intensity, no CO_2 emissions figure in kg $CO_2/m^2 \cdot yr$, no Building Primary Energy Use figure in kWh/($m^2 \cdot y$), no prescribed A+ to G energy performance band, no independent EPB assessor, and no BCA registration. It is an environmental strategy document, rightly disclosed by the Contracting Authority in response to Request 4 (Environmental Strategy) rather than Request 7 (EPC).

Second, the heavy redactions applied to Document R-2 are themselves telling. The Contracting Authority redacted the commercially sensitive specifics of the energy strategy while leaving the general framework visible. This confirms that whatever was redacted was proprietary technical content, not a registered EPC, because a registered EPC is a public instrument of record that by its nature cannot be treated as confidential commercial information. Had a registered EPC existed anywhere in the CSG bid, it would not have been susceptible to a confidentiality claim, as it would already be a public document on the BCA register.

Document R-3 — Restoration Method Statement (pages 94–98 of the CSG Technical Offer)

This document sets out detailed methodologies for restoring the masonry fabric of the heritage structures on the site, addressing vegetation removal, surface cleaning, removal of metal inserts, electrical installations and metal fixtures, stone repair and replacement, plastic repair techniques, pointing using lime-based mortars, and restoration of apertures. It does not refer to energy performance or EPCs and is entirely irrelevant to the EPC question.

Document R-4 — Design Rating: Energy Performance Certificate (pages 106–107 of the CSG Technical Offer)

This document has been the subject of full analysis throughout this Decision. As established, it contains only a cover page bearing the title "*Design Rating — Energy Performance Certificate*" and a narrative page

acknowledging that an EPC is required and stating that energy-efficient measures shall be taken into account and that a design-rating EPC shall be prepared. It is not an EPC.

Document R-5 — Email from Ganado Advocates to Dalli Paris, 5th March 2026

This is the Contracting Authority's disclosure letter attaching documents responsive to the Appellant's seven requests for information. Request 7 was expressly framed as a request for "*a copy of the Design Rating Energy Performance Certificate or equivalent document for the proposed building design.*" The Contracting Authority's response to Request 7, as set out in the MIEA Note, was to disclose Document R-4 as the item responsive to that request. This is an admission of the highest legal significance, addressed immediately below.

Document R-6 — Letter from Dalli Paris to Ganado Advocates, 6th March 2026

This is the CSG's response, asserting blanket confidentiality over the entire bid under Article 63 of S.L. 601.09 and Clause 22.2 of the General Rules Governing Tenders, citing also the judgment of the Court of Justice of the European Union in Antea Polska S.A. v Państwowe Gospodarstwo Wodne Wody Polskie (Case C-54/21). It does not engage with the substance of any individual document and does not refer to the EPC question whatsoever. A document cannot become an EPC by virtue of being declared confidential, nor can a document's fundamental legal deficiencies as an EPC be cured by asserting that it is commercially sensitive. The Contracting Authority correctly rejected the blanket claim as legally untenable.

The MIEA Note: Contracting Authority's Submission on Disclosure (filed 9th March 2026)

This is the most legally significant document in the bundle. On Request 7 specifically, at page 7 of the MIEA Note, the Contracting Authority states:

> *"The Contracting Authority is disclosing an unredacted extract of the Recommended Bidder's submission on 'Design Rating: Energy Performance Certificate' which can be found on pages 106–107 from the Recommended Bidder's Technical Offer: Facilities and Capital Investment dated 30th August, 2023. The exhibit is marked as Document R-3."*

It should be noted that the MIEA Note contains a typographical error at this point, referring to the exhibit as "Document R-3" when it is in fact Document R-4, Document R-3 being the Restoration Method Statement. The Contracting Authority evidently intended to refer to the document headed "*Design Rating Energy Performance Certificate*," which is Document R-4.

This passage establishes three facts of the highest legal consequence.

First, the Contracting Authority has itself identified Document R-4, pages 106–107 of the CSG Technical Offer, as constituting the entirety of what the Recommended Bidder submitted in response to the tender requirement for a Design Rating EPC. There is no suggestion anywhere in the MIEA Note, or in any of

the other disclosed documents, that a separately registered BCA-endorsed EPC was submitted anywhere else in the CSG bid.

Second, the Contracting Authority discloses Document R-4 as responsive to Request 7 without any commentary, qualification, or acknowledgement that it does not in fact constitute a valid EPC. The Contracting Authority has, apparently, treated Document R-4 as adequate for the purposes of the tender evaluation.

Third, the MIEA Note confirms at page 2 that "*This Board has access to the Recommended Bidder's bid in its totality.*" The PCRB therefore has the independent means to verify whether any other document in the CSG bid constitutes or contains a valid EPC. If no other document does, and there is no indication in any of the disclosed material that one exists, then the absence of a valid design-rating EPC is established as a matter of record.

PART IX — OVERALL CONCLUSION

None of the seven documents disclosed, R-1 through R-6 and the MIEA Note, individually or collectively constitutes a valid Energy Performance Certificate within the meaning of S.L. 623.01. Document R-4 is the only document in the bundle that purports to address the EPC requirement. It does not satisfy that requirement: it has no BCA registration number, no independent EPB assessor, no calculated energy performance figure, no CO_2 rating, no scale bars, no property-specific data, no assessor declaration and no expiry date. It is a statement of future intent, not a registered instrument.

Document R-2, while the most substantive energy-related document in the bundle, is an environmental strategy and energy-saving design document. It does not purport to be an EPC and contains none of the elements of the prescribed form. The remaining documents; R-1, R-3, R-5 and R-6, do not refer to energy performance at all.

Whilst Regulation 14(3) of S.L. 623.01 prescribes, *ad validitatem*, that a design-rating EPC registered with the Building and Construction Authority must be in the possession of the person commissioning a new building before the obtaining of a full development permit, the jurisdiction of this Board is not engaged at the level of regulatory compliance with S.L. 623.01 as such.

The Board's remit is to assess whether the mandatory requirements of the tender documentation were observed by the Recommended Bidder and properly enforced by the Contracting Authority in the course of the evaluation. That question is answered by the tender documentation itself and by the conduct of the evaluation, not by the Building Regulations.

In this tender, the RFP required the submission of a Design Rating EPC as a mandatory component of the bid, a requirement confirmed beyond doubt by the EAC's own Clarification Technical 3 of the 18th June 2024, in which the Evaluation Committee specifically asked the Recommended Bidder to indicate the

location of the Design Rating Energy Performance Certificate within its submission. The failure to submit a compliant EPC in response to that mandatory requirement is therefore a matter of non-compliance with the tender conditions, squarely within the appellate jurisdiction of this Board and fully assessable in the context of the present proceedings.

The Contracting Authority has disclosed Document R-4 as responsive to the Appellant's request for the Design Rating EPC, and has done so without caveat. The question that now falls squarely and unavoidably before the Board is whether, as a matter of objective fact and law, Document R-4 is capable of satisfying the mandatory EPC requirement of the RFP. That is a question of compliance to be answered by reference to the tender documentation and the applicable regulatory framework, and it is to that question that the Board now turns.

The Proportionality Argument of the Contracting Authority

The Contracting Authority advances, as a second and alternative line of argument, the proposition that even if the RFP did require the submission of an actual Energy Performance Certificate, which it maintains it did not, a decision by the Technical Evaluation Committee to disqualify the Recommended Bidder on that basis would have been a misapplication of the principle of proportionality.

The Contracting Authority bases this argument on the substantial financial differential between the two bids: the Recommended Bidder submitted a financial offer of €592,440 per annum compared to the Appellant's €242,435, generating an additional contribution of approximately €22,750,325 over the 65-year concession period, rising to approximately €31,828,281 when compound inflation indexation at 1% per annum is applied.

The Contracting Authority further relies on the Court of Appeal's decision in Cassar Petroleum Services and on the Polaris Marine judgment, in support of the proposition that the TEC is required to look beyond the formal designation of a requirement and to undertake a case-by-case proportionality exercise.

The Board has considered this argument with care. It cannot be accepted, for the following reasons.

First, the principle of proportionality in public procurement operates within defined limits and does not authorise a contracting authority to waive compliance with a mandatory tender requirement on the grounds that the non-compliant tenderer has submitted a more attractive financial offer. The CJEU has consistently held that the obligation to treat tenderers equally and to assess their submissions on the basis of the criteria established in the tender documentation is unconditional. It applies regardless of the financial consequences of disqualification. A contracting authority that waives a mandatory requirement in favour of the financially stronger bidder does not apply proportionality; it subverts equal treatment in the guise of proportionality.

Second, the cases cited by the Contracting Authority address the situation where a tenderer has omitted to include a document that it could, in principle, have produced at the relevant time, and where the document

in question can be furnished without altering the substance of the tender, in essence, a genuine procedural irregularity in the presentation of a document that pre-existed and could have been submitted.

They do not apply where, as in the present case, the document did not exist and could not have existed at the time of submission, because no independent EPB assessor had conducted the requisite assessment, no energy performance calculation had been performed, and no BCA registration had been effected.

Proportionality may permit the admission of a missing document that exists and can be produced without altering the competitive position of the tenderer. It does not authorise the effective creation of a document after the deadline, or the substitution of a narrative description for a formally constituted legal instrument.

Third, the financial differential, whilst substantial, is an irrelevant consideration in the assessment of whether a mandatory tender requirement has been met. If the financial premium offered by a non-compliant tenderer were a permissible basis for waiving mandatory requirements, the mandatory character of those requirements would be entirely illusory. That result is incompatible with the principles of equal treatment and transparency.

Fourth, the proportionality argument advanced by the Contracting Authority, if accepted, would mean that the Contracting Authority acknowledges the non-submission of the EPC while arguing that disqualification would be disproportionate.

The RFP itself, at Section 6.3, provides in express terms that a bid which "*does not meet all minimum requirements*" shall be disqualified. A Contracting Authority that argues, after the fact, that it would be disproportionate to apply its own mandatory requirements to a non-compliant bidder has abandoned the principle of self-limitation which is a cornerstone of procurement law.

The proportionality argument is accordingly rejected in its entirety.

DECISION OF THE BOARD

I. On the Nature of the Mandatory Requirement

The Board, having carefully considered the totality of the submissions advanced by the parties, the documentary evidence disclosed pursuant to its decrees of the 27th February and 4th March 2026, and the applicable regulatory and jurisprudential framework, is satisfied that the matter before it admits of no uncertainty in its resolution.

The tender documentation imposed upon all economic operators the obligation to submit a Design Rating Energy Performance Certificate as a constituent element of their technical offer. That this was a mandatory requirement is placed beyond all reasonable doubt by the conduct of the Evaluation Committee itself: in its Clarification Technical 3 of the 18th June 2024, the EAC specifically directed the Recommended Bidder to indicate the precise location within its submission of the Design Rating EPC.

A contracting authority does not invite a tenderer to locate a document unless that document was required to be there. The answer given, directing the EAC to the entirety of the Facilities and Capital Investment report, was wholly unresponsive to the question posed and incapable of curing the fundamental deficiency, since no registered Design Rating EPC existed anywhere within the Recommended Bidder's submission.

II. On the Principle of Strict Compliance with Self-Imposed Tender Conditions

The law governing this question is settled at the level of the Court of Justice of the European Union. In Ministeriet for Forskning, Innovation og Videregående Uddannelser v Manova A/S, Case C-336/12, ECLI:EU:C:2013:647, the Court articulated two complementary propositions that together govern the present case.

First, at paragraph 30, the Court confirmed the fundamental rule that comparable situations must not be treated differently and that different situations must not be treated in the same way, unless such treatment is objectively justified.

Second, at paragraph 40, the Court held in express terms that it falls to the contracting authority to comply strictly with the criteria which it has itself laid down, and that this obligation is unconditional where the tender documentation has required provision of the missing particulars or information on pain of exclusion.

That principle was affirmed and consolidated in Cartiera dell'Adda SpA v CEM Ambiente SpA, Case C-42/13, ECLI:EU:C:2014:2345, decided on the 6th November 2014. The Court reiterated that a contracting authority must comply strictly with the criteria which it has itself established and is accordingly required to exclude any economic operator who has failed to provide a document or information required under the terms of the tender documentation, on pain of exclusion. The Court further held that where the contracting authority takes the view that the omission in question is not a purely formal irregularity, it cannot permit the tenderer subsequently to remedy that omission in any manner after the expiry of the deadline for the submission of bids.

This principle is the juridical expression of the twin pillars upon which the entire edifice of European public procurement law is erected, namely the principles of equal treatment and transparency.

The failure to submit a valid, registered Design Rating EPC is not a purely formal irregularity susceptible of rectification. It is a substantive absence. A formal irregularity within the meaning of the Manova–Cartiera dell'Adda line of authority is one going to the presentation or authentication of information which pre-existed the deadline and was genuinely available to the tenderer.

The non-existence of a registered EPC is of an entirely different character: it is not a question of form but of substance; not of presentation but of existence. At the time of submission, no independent EPB assessor had assessed the building design, no certificate had been issued, no calculation had been performed, and no registration had been effected with the BCA. Document R-4 does not merely present these facts inadequately; it does not present them at all, because they did not exist.

III. On the Obligation of the Contracting Authority

Once a document has been designated as a mandatory component of a tender, the Contracting Authority possesses no residual discretion to waive compliance with that requirement in favour of one tenderer without simultaneously extending an equivalent indulgence to all others.

To do so constitutes an infringement of the principle of equal treatment, which demands that comparable situations must not be treated differently unless such treatment is objectively justified. The Contracting Authority evaluated the Recommended Bidder's submission and recommended award in circumstances where no registered Design Rating EPC had been submitted.

In so doing, it treated as compliant a submission which was not, and treated the Recommended Bidder more favourably than the standard which the tender documentation itself demanded and which the Appellant was equally bound to observe.

IV. On the Impossibility of Retrospective Validation

The submission of a description of an EPC, however technically articulate, cannot operate as a proxy for the instrument itself. Document R-4 states in terms that a Design Rating EPC shall be prepared, the language of prospective intention, not of present compliance. The obligation imposed by the tender documentation was an obligation of result, not of endeavour. The Recommended Bidder assumed an *obbligazione di risultato* and discharged it with an *obbligazione di mezzi*, a substitution that no amount of technical eloquence can legitimise.

Moreover, since a valid EPC under S.L. 623.01 can only be issued by an independent EPB assessor, StQP, being the Recommended Bidder's own consultancy, was, by operation of Regulation 2(2) of S.L. 623.01, structurally incapable of issuing a valid EPC in respect of this project at any stage, let alone at the time of bid submission. The independence requirement is not a technicality; it is the mechanism by which the regulatory framework preserves the integrity and objectivity of the certification process.

V. Conclusion

In the result, this Board finds that the Recommended Bidder's submission did not include a Design Rating Energy Performance Certificate capable of satisfying the mandatory requirement of the tender documentation. The Contracting Authority erred in treating that submission as compliant.

Pursuant to the principles of equal treatment and transparency and the obligations flowing therefrom, as authoritatively articulated by the Court of Justice in Manova (C-336/12, para 40) and Cartiera dell'Adda (C-42/13, paras 42 and 45), and consistently with the established principle that bidders who fail to comply with mandatory requirements are to be disqualified, the Board upholds the Appellant's grievance on this ground.

The Board accordingly directs that the evaluation be revisited with a view to determining the appropriate remedy in light of this finding, having regard to all remaining grounds of appeal which this decision does not foreclose.

PART X — SECOND ADDITIONAL GRIEVANCE: MANIFESTLY ERRONEOUS SCORING UNDER THE ALTERNATIVE ENERGY GENERATION CRITERION

Preliminary Plea of Inadmissibility: The Contracting Authority's Utility Argument

The Contracting Authority raises a preliminary plea that the second additional grievance is inadmissible because it would have no "*utility*" to the outcome of the appeal. The argument runs as follows: even if the Recommended Bidder should have been awarded zero points rather than four under the Alternative Energy Generation criterion, the mathematical effect on the overall scoring would be to reduce the Recommended Bidder's total from 99.33 to 96.7 points, while the Appellant's overall score would remain unchanged at 76.37 points. The ranking would therefore not change, and accordingly, the Board's determination of this grievance would have no utility to the outcome of the appeal.

The Contracting Authority relies, in support of this plea, on the judgments of the First Hall Civil Court in Logos Societa Cooperativa, the Court of Appeal in Sandro Caruana v. Kunsill Lokali Marsa, and the General Court of the EU in Proof IT SIA v EIGE.

The Board declines to uphold this preliminary plea, for two distinct reasons.

First, the utility doctrine, as applied in the authorities cited by the Contracting Authority, operates at the level of the appeal as a whole and addresses the question of whether a ground of appeal is capable of affecting the outcome for the appellant in the specific and concrete sense that, if the ground succeeds, the appellant stands to benefit.

The doctrine is not a basis for refusing to consider a ground of appeal that forms part of a cumulative picture of evaluative irregularity, where that picture, taken as a whole, is of direct relevance to the appropriate remedy.

In the present case, the Board has already found, in its determination of the first additional grievance, that the evaluation and recommendation for award are vitiated by a fundamental irregularity going to the mandatory compliance of the Recommended Bidder's bid.

The consequence of that finding is that the evaluation must be revisited and conducted afresh. In that context, the question of whether the Alternative Energy Generation criterion was applied correctly and lawfully is directly relevant to the scope and conduct of any fresh evaluation. A finding of manifest error under this criterion goes to the reliability and rigour of the evaluation process as a whole, and it is material to the direction that the Board will give in relation to the fresh evaluation. It does not, therefore, lack utility in the relevant sense.

Second, the utility doctrine does not operate to place a manifest error beyond review simply because the error, considered in arithmetic isolation, would not alter the final ranking.

The purpose of procurement review is not limited to changing the winner of a specific award. It encompasses ensuring that public procurement procedures are conducted in accordance with the principles of transparency, equal treatment, and objectivity.

Where a score appears, on the face of the record, to attribute near-maximum marks to a feature that the bidder has expressly excluded, the question of whether that outcome is consistent with the published evaluation criteria is of systemic significance, regardless of whether it alters the final placing.

To refuse to examine such a question on grounds of utility would be to insulate the issue from review whenever the margin of victory is sufficiently large, a result that is incompatible with the effective judicial protection guaranteed by EU procurement law. The Board accordingly proceeds to determine the second additional grievance on its merits.

A. The Criterion and the Award of Points

The evaluation grid set out at Section 6.3 of the Request for Proposals identifies, under the heading "*2 Environmental Impact – Green Systems,*" a sub-criterion designated criterion 2(b), entitled "*Alternative Energy Generation.*"

That sub-criterion is classified as an "*Add on Criteria*" carrying a maximum of five points. The scoring instruction associated with it reads as follows: "*The business plan includes effective methods of alternative and environmentally friendly energy generation to be incorporated into the design and operation of the establishment. (5 points).*"[2]

From the evaluation breakdown disclosed by the Contracting Authority in the letter of rejection communicated to the Appellant on the 4th October 2024, it results that the Recommended Bidder was awarded a score of 4 out of a possible 5 points under this criterion. The Appellant submits that this scoring is irreconcilable with the contents of the Recommended Bidder's own submission, and that the only score capable of lawful attribution in the circumstances is zero.

B. The Content of the Recommended Bidder's Submission on Alternative Energy

Document R-2, which constitutes the Environmental Strategy and Impact section of the Recommended Bidder's Technical Offer (pages 69–77) and which was disclosed pursuant to the Board's decrees as

[2]The evaluation grid is reproduced at Section 6.3 of the Request for Proposals. Criterion 2(b), entitled "Alternative Energy Generation", is designated as an "Add on Criteria" and carries a maximum of 5 points. The scoring instruction reads: "The business plan includes effective methods of alternative and environmentally friendly energy generation to be incorporated into the design and operation of the establishment. (5 points)." The designation as "Add on Criteria" is of procedural significance only: unlike mandatory criteria, a score of zero on an add-on criterion does not result in automatic disqualification of the bid. The designation does not, however, licence the award of points in the absence of compliance with the criterion as formulated.

responsive to the Appellant's Request, addresses the question of alternative energy generation in terms that are explicit and unequivocal.

The relevant passage states, without qualification, that alternative energy generation is "*not deemed to be feasible for this proposed development,*" having identified the most efficient forms of renewable energy, geothermal, solar, wind, hydroelectricity and biomass, and attributed their exclusion to the space limitations and restrictions imposed on site.[3] No qualification, partial exclusion, or conditional inclusion of any alternative energy source appears elsewhere in the disclosed documentation.

This is not a statement of partial or conditional limitation. It is a categorical exclusion. The Recommended Bidder did not propose any alternative or renewable energy measure whatsoever. It did not propose a reduced or attenuated engagement with the criterion, but it expressly disengaged from it in its entirety. The statement is not buried or equivocal; it appears in the Environmental Strategy section as a considered position, and no countervailing content appears elsewhere in the disclosed documentation that might qualify or modify it.

In the face of that record, the award of 4 out of 5 points under criterion 2(b) is not merely generous; it is legally inexplicable. A score of 4 out of 5 on a criterion assessing the inclusion of "*effective methods of alternative and environmentally friendly energy generation*" cannot rationally be awarded to a submission that has expressly excluded all such methods. The scoring has no intelligible foundation in the content of the submission as disclosed.

C. The Legal Character of the Error

The Board is acutely conscious of the margin of appreciation that public procurement law generally affords to contracting authorities and their evaluation committees in the exercise of technical and qualitative judgement. The Court of Justice of the European Union has consistently recognised that, in assessing technical offers, evaluation committees are entitled to exercise evaluative discretion, and that review bodies should not substitute their own assessment for that of the committee on questions of degree or nuance.

[3]Document R-2 (Environmental Strategy and Impact, pages 69–77 of the CSG Technical Offer) states at page 71 as follows: "The most efficient forms of renewable energy, considered as alternative energy technologies are geothermal, solar, wind, hydroelectricity and biomass. Given the space limitations and restrictions imposed on site, alternative energy generation is not deemed to be feasible for this proposed development."

However, that margin of appreciation has defined limits. It does not extend to the award of points for compliance with a criterion where the submission, on its face, explicitly excludes compliance with that criterion entirely.

The distinction between evaluative discretion, which is permissible, and the award of points in the absence of any basis for doing so, which is not, is well established in the jurisprudence of the Court of Justice. Discretion implies a range of legitimate choices between defensible options; it does not encompass choices that are objectively indefensible by reference to the content of the submission being evaluated.

The evaluation is fundamentally flawed in that it attributes qualitative merit to content which does not exist within the successful tender. This is not an assessment of the tender submitted, but an impermissible reconstruction of it.

EU procurement law requires that tenders be evaluated strictly on their contents and by reference to pre-disclosed criteria, without recourse to assumptions or undisclosed considerations.[4]

By awarding marks for elements not evidenced in the tender, the Contracting Authority has, in effect, introduced undisclosed sub-criteria and/or relied on extraneous considerations, thereby breaching the principles of transparency and equal treatment.

This defect is compounded by the prohibition on post-submission modification of tenders, as articulated in Case C-599/10 SAG ELV Slovensko, which precludes any attempt to supplement or infer missing elements after the deadline.

The error identified in this case does not fall within the category of debatable scoring, the kind of qualitative assessment that might reasonably result in a score of, say, three rather than four, or four rather than five, depending on the evaluator's reading of a substantive proposal. It falls into a categorically different class, i.e. the award of a near-maximum score for a feature that the submitting party has itself confirmed is entirely absent from its proposal.

No margin of appreciation, however generously construed, can accommodate that outcome. A score that contradicts the express content of the submission being evaluated is not an exercise of discretion but it is a departure from the criterion as formulated and an abandonment of the evaluative function altogether.

[4] Case C-19/00 SIAC Construction; Case C-331/04 ATI EAC.

The Appellant is therefore correct in characterising the award of 4 out of 5 points under criterion 2(b) as manifestly erroneous, in the juridical sense that the term "*manifest error*" carries in public procurement review proceedings: an error which is apparent from the face of the record, which requires no speculation or inference beyond what the disclosed documents themselves establish, and which no legitimate exercise of evaluative judgement could have produced.

The Appellant submits that the scores awarded are not supported by, and in certain respects are irreconcilable with, the actual content of the successful tender. It is settled case-law that contracting authorities must evaluate tenders strictly on the basis of their contents and by reference to pre-disclosed criteria, in a manner that is objective, transparent, and verifiable (see Case C-19/00 SIAC Construction).

That requirement necessarily precludes the attribution of marks for elements which are not evidenced in the tender or which rest on assumption rather than demonstrable content.

Moreover, while limited clarification may be permissible, EU law precludes any post-deadline supplementation or modification of a tender which would alter its substance[5], such that evaluators cannot cure omissions by inference during the scoring process.

In circumstances where the evaluation gives rise to objective and serious indications of inconsistency between the marks awarded and the material actually submitted, it is incumbent upon the contracting authority to demonstrate that the award procedure was conducted in full compliance with the applicable rules and with the principles of equal treatment and transparency.[6] In the absence of such justification, the evaluation cannot stand.

The Contracting Authority's and Recommended Bidder's Substantive Defences on the Alternative Energy Scoring

Both the Contracting Authority and the Recommended Bidder advance, on the merits of the second additional grievance, the proposition that the TEC's award of 4 out of 5 points under the Alternative Energy Generation criterion was a lawful and proportionate exercise of evaluative discretion, notwithstanding the Recommended Bidder's express statement that alternative energy generation was "*not deemed to be feasible.*"

[5] Case C-599/10 SAG ELV Slovensko.
[6] Case C-538/13 eVigilo.

The Contracting Authority submits, in particular, that the Recommended Bidder's proposal did not simply reject alternative energy; rather, it did so within the context of renewable energy sources, provided a reason for the exclusion (space limitations and site restrictions), and went on to propose alternative measures under adjacent criteria, notably the Energy-Saving Integrated Building Design and Energy Saving Measures sub-criteria. It further submits that the Recommended Bidder's proposal utilises at least six passive design techniques and various sustainable mechanical and engineering design schemes.

The Contracting Authority relies on the recent Court of Appeal judgment in Europharma (29th January 2026) for the proposition that a TEC cannot evaluate submissions in isolation from other parts of the proposal and must consider the tender holistically.

The Recommended Bidder, for its part, submits that it fully completed the tender requirements and that the Contracting Authority, in the exercise of its discretion, awarded 4 out of 5 points, a score that reflects both the evidence provided and the professional judgment of the evaluation committee. It further submits that no serious and manifest error has been demonstrated by the Appellant and that the review process should not substitute the discretion of the evaluation committee.

The Board has considered these arguments carefully. They do not alter its conclusion, for the following reasons.

The Europharma principle, that a TEC must consider a bidder's submission holistically and not in isolation, is an accurate statement of the law of qualitative evaluation. It applies where a bidder's proposal across multiple criteria needs to be read as a coherent whole in order to understand the quality and depth of its approach.

It does not, however, extend so far as to permit the attribution of points under a specific named criterion on the basis of content that the bidder has expressly excluded from that criterion and addressed elsewhere under different criteria.

The evaluation grid in this tender was structured precisely to allocate marks to defined and distinct subjects, and the principle of holistic evaluation must operate within that structure, not against it.

If the Recommended Bidder's energy-saving measures under sub-criteria (d) and (e) were of merit, those measures attracted their own scores under those criteria. They could not simultaneously serve as the basis for a score of 4 out of 5 under sub-criterion (b), which is expressly directed at "*effective methods of alternative and environmentally friendly energy generation*", a category from which the Recommended Bidder had categorically disengaged.

The holistic evaluation principle enables a TEC to consider the overall coherence and internal consistency of a proposal. It does not create a mechanism by which marks allocated to one specific subject can be transferred or carried over to a different subject simply because the tenderer's performance under adjacent

criteria was strong. Such an approach would undermine the structure of the evaluation grid and deprive tenderers of the certainty that their proposals will be assessed against the criteria as published.

The Contracting Authority's observation that the Recommended Bidder gave a reason for excluding alternative energy, i.e. site constraints, does not assist its case. The scoring instruction for criterion 2(b) assessed whether "*the business plan includes effective methods of alternative and environmentally friendly energy generation to be incorporated into the design and operation of the establishment.*" A business plan that expressly excludes all such methods does not include them, regardless of the reason given for their exclusion. The reason for the exclusion is relevant to whether the exclusion was reasonable or commercially defensible, but it does not transform an "*absence*" into a "*presence*".

Nor does the existence of the Recommended Bidder's broader sustainability proposals across other sub-criteria alter the position. Those proposals were assessed, and attracted marks, under the criteria to which they were relevant. The question before the Board is whether criterion 2(b) was correctly scored, and the answer to that question must be found by reference to the content of the Recommended Bidder's submission on criterion 2(b) itself. That content, as disclosed, is unambiguous because alternative energy generation was considered and rejected as not feasible. No mark can rationally be attributed to a criterion whose subject matter has been expressly excluded.

The Board accordingly rejects both the Contracting Authority's and the Recommended Bidder's substantive arguments on this point and adheres to its finding that the award of 4 out of 5 points under criterion 2(b) is manifestly erroneous.

D. The Board's Assessment of the Broader Scoring Concerns

The Appellant raises, as a subsidiary matter, a broader concern about the scoring awarded to the Recommended Bidder under other environmental criteria, specifically the criteria relating to Circular Economic Measures and Energy-Saving Integrated Building Design, and the extent to which the supporting material, as disclosed, appears to consist of general and descriptive statements rather than project-specific or innovative solutions.

The Board has considered this submission with care. It accepts the general proposition that where the scores awarded to a recommended bidder under a given criterion are substantially higher than those awarded to other tenderers in respect of comparable or analogous submissions, and where the disclosed material does not readily explain the differential, a legitimate concern arises as to the consistency and objectivity of the evaluation. The Appellant's observation that certain sections of the Recommended

Bidder's disclosed submission in these areas consist of statements of a general character is not without foundation.

However, the Board must exercise caution in drawing broader conclusions from the necessarily partial disclosure that has been made available in these proceedings.

The material disclosed to the Appellant pursuant to the Board's decrees is, by the terms of the MIEA Note itself, an extract of the Recommended Bidder's submission selected as responsive to defined requests for information. It does not represent the entirety of the Recommended Bidder's Technical Offer. It is therefore not possible for the Appellant, on the basis of the disclosed extracts alone, to conclude with the same degree of certainty that attaches to the Alternative Energy finding, that the scores awarded under the Circular Economy and Energy-Saving Integrated Building Design criteria are vitiated by manifest error.

The Board notes, moreover, that the heavy redactions applied to Document R-2, while serving a legitimate purpose in protecting commercially sensitive technical content, have the consequence of limiting the ability of the Appellant to verify the adequacy of the scoring.

E. Conclusion on the Second Additional Grievance

The Board upholds the Appellant's second additional grievance in relation to the award of 4 out of 5 points under criterion 2(b), Alternative Energy Generation. The award of that score to a submission that expressly and categorically excluded all forms of alternative energy generation from the proposed development is manifestly erroneous and irreconcilable with the criterion as formulated in the evaluation grid.

The Board further notes that this finding, whilst formally distinct from the EPC grievance determined in Parts I through IX above, reinforces the overall conclusion that the evaluation process as applied to the Recommended Bidder's submission was attended by material irregularities which, whether considered individually or cumulatively, are incompatible with the principles of transparency, equal treatment and objectivity that govern public procurement under Maltese law and the applicable regulatory framework.

The subsidiary concerns advanced by the Appellant in relation to the scoring under the Circular Economy and Energy-Saving Integrated Building Design criteria are not, at this stage, upheld as discrete findings of manifest error.

They are, however, duly noted as concerns which the Board expects to be addressed in the course of any fresh evaluation directed by this Decision as it is not the function of the PCRB to substitute itself for the Technical Evaluation Committee in conducting the detailed scoring under the Circular Economy and Energy-Saving Integrated Building Design criteria. The Board's role is supervisory, noting concerns for consideration in any fresh evaluation, without entering into the substantive functions of the TEC.

PART XI — THIRD ADDITIONAL GRIEVANCE: FAILURE TO DEMONSTRATE COMPLIANCE WITH OTHER MANDATORY TECHNICAL DELIVERABLES

A. The Deliverables in Question

The Appellant's third additional grievance concerns a number of mandatory technical deliverables which the RFP required tenderers to include in their technical offers and in respect of which, the Appellant submits, the disclosed documentation does not demonstrate that the Recommended Bidder's submission was either complete or compliant.

The deliverables specifically identified are: (i) a Work Method Statement; (ii) a Construction Management Plan; and (iii) a Health and Safety Plan.[7]

All three are expressly enumerated in the operative specification at page 15 of the RFP under the heading "*Proposed Capital Investment (Note 3).*" As with the Design Rating EPC, each appears as a named and individually identified component of the investment and operation plan that all tenderers were required to submit. All three fall within the scope of Note 3, which provides that no rectification shall be allowed and that only clarifications on submitted information may be requested.

[7]The RFP specification for Technical Deliverables appears at pages 14–17 of the Request for Proposals under the heading "2. Facilities and Capital Investment — Proposed Capital Investment (Note 3)." The deliverables expressly enumerated include, *inter alia*: a Work Method Statement which shall include structural alterations works, new build, electro-mechanical works and finishing works; a Construction Management Plan clearly defining the methodologies to be implemented including access, noise and waste; a Health and Safety Plan; and various other technical documentation. All of these fall within Note 3, to which the prohibition on rectification expressly applies.

B. The State of the Disclosure

The Board observes, as a preliminary matter, that the disclosure ordered by its decrees of the 27th February and the 4th March, 2026, was directed at the seven specific requests for information formulated by the Appellant in its original objection.

Those seven requests were focused, respectively, on eligibility, context and landscape, pedestrian safety, environmental strategy, accessibility, restoration method statement, and energy performance. None of those requests was specifically directed at the Work Method Statement, the Construction Management Plan, or the Health and Safety Plan.[8]

As a consequence, the MIEA Note does not address, and the disclosed documents do not include, any extract from those sections of the Recommended Bidder's Technical Offer that would have corresponded to these three deliverables.

The absence of any reference to them in the disclosed material is therefore a function of the scope of the disclosure ordered, which was shaped by the Appellant's own requests, framed before the contents of the submission were known, rather than necessarily an indication that those documents were not submitted.

The Preliminary Plea of Time-Bar and the Onus of Proof

On the time-bar plea

The Contracting Authority raises, by way of preliminary plea, the submission that the third additional grievance is time-barred. Its argument proceeds by stating that the Work Method Statement, the Construction Management Plan, and the Health and Safety Plan were not amongst the seven categories of

[8]The MIEA Note, of the 9th March, 2026, addresses each of the seven requests for information in sequence. The Note discloses, in respect of Requests 3 and 5 (Pedestrian Safety and Accessibility), Document R-1; in respect of Request 4 (Environmental Strategy), Document R-2; in respect of Request 6 (Restoration Method Statement), Document R-3; and in respect of Request 7 (Design Rating EPC), Document R-4. No document is disclosed in the MIEA Note in response to any request corresponding to a Work Method Statement, a Construction Management Plan, or a Health and Safety Plan. The Contracting Authority's Note does not address the disclosure of these documents, and no exhibit corresponding to any of them is identified.

information and documentation that the Appellant requested in its pre-appeal Request for Information or in its original objection of October 2024.

The Board did not order the disclosure of those documents in its interim decrees. Accordingly, the Contracting Authority submits, the Appellant is out of time to raise grievances concerning those deliverables at this stage of the proceedings.

The Board has noted, in Section B above, that the absence of those three deliverables from the disclosure bundle is a direct consequence of the Appellant's own choices in framing its original requests. The Appellant did not request the Work Method Statement, the Construction Management Plan, or the Health and Safety Plan, and accordingly, the Board did not order their disclosure, and they do not feature in the bundle of documents marked R-1 through R-6.

In that sense, the Contracting Authority's factual premise is accurate because the Appellant's third grievance does not arise from anything that the disclosure process revealed. It arises, rather, from what the disclosure process did not reveal, an absence, and the inference that the Appellant draws from that absence.

The question for the Board is accordingly a narrower and more specific one, i.e. whether the ten-calendar-day time limit prescribed by Regulation 106 CCR operates as a procedural bar to the admission of a grievance of this character, i.e. one which does not arise from a new document disclosed in the course of proceedings, but which arises from the Appellant's assessment, following review of the disclosure bundle as a whole, that certain mandatory deliverables have not been evidenced.

The Board does not accept that the time limit prescribed by Regulation 106 CCR operates as such a bar in the present circumstances, for the following reason.

Regulation 106 CCR governs the filing of the original objection and directs that it be filed within ten calendar days of the date of the decision by which the appellant is aggrieved. In the present case, that decision was the notification of the award and the letter of rejection communicated on the 3rd February 2024. That time limit was duly observed by the Appellant. Its purpose is to ensure that procurement challenges are initiated promptly, with minimum disruption to the procurement process, and that contracting authorities are not exposed to stale claims advanced long after the award decision.

The time limit is not, however, directed at the subsequent evolution of grievances in the course of proceedings that the review body itself has opened and is actively managing. Once the Board has exercised its jurisdiction, ordered disclosure, and received submissions from all parties, the procedural framework governing the conduct of those proceedings is within the Board's own regulatory competence. The Board is not obliged to refuse consideration of a grievance raised by an appellant in the course of ongoing proceedings on the basis that it falls outside the original objection, where that grievance is a direct and legitimate consequence of the material available to the parties following the Board's own procedural steps.

The present grievance does not seek to initiate a new and separate appeal, nor does it introduce a category of complaint that is wholly unconnected to the subject matter of the original objection. It relates to the completeness and compliance of the Recommended Bidder's technical offer, precisely the subject matter of the original proceedings.

The Board considers that to apply the ten-day time limit as a bar to such a grievance, raised in the course of ongoing proceedings and directed at the same subject matter, would be an unduly technical application of a provision whose purpose is to prevent the belated initiation of new challenges, not to foreclose the orderly development of submissions within existing ones.

The time-bar plea is accordingly rejected. The Board notes, however, that this rejection rests on procedural grounds specific to the management of existing proceedings and does not imply any endorsement of the substantive merits of the third grievance, which the Board addresses in sections C and D below on the basis that it rests upon informational absence rather than affirmative disclosed evidence of non-compliance.

On the onus of proof

The Contracting Authority further submits that the burden of establishing non-compliance rests exclusively on the Appellant and that there is no rule inverting that burden onto the Contracting Authority in procurement review proceedings. It submits that the Appellant has adduced no evidence of non-compliance and that an assertion grounded in silence cannot displace the ordinary rules of proof.

The Board partially accepts this submission as a statement of general principle. An appellant bears the burden of substantiating the grievances it advances. In the present case, however, the Board considers that the application of that principle requires qualification.

The qualification is this. The Appellant's inability to adduce positive evidence of non-compliance with the three deliverables in question is not a consequence of investigative failure or forensic weakness on its part. It is a structural consequence of the opacity of the evaluation process and the limited scope of the disclosure that has been made.

The Contracting Authority has confirmed, both in these proceedings and in its Additional Reply, that the Recommended Bidder complied with all mandatory requirements. If that is so, the appropriate response to the Appellant's concern is not to invoke the burden of proof but to demonstrate the fact of compliance.

The Board observes that a contracting authority which has evaluated bids and recommended an award should, in principle, be in a position to confirm, by reference to its own evaluation records, whether mandatory deliverables were submitted and assessed. Where a review body directs that question to a contracting authority, and where the contracting authority responds by invoking the burden of proof rather than by pointing to the documents, the Board is entitled to treat that response as insufficient and to direct further steps accordingly.

The Board's finding on the third grievance, and the direction it gives in consequence, are set out in sections C and D of this Part.

C. The Scope of the Board's Inquiry at This Stage

The Appellant's submission on this grievance is framed with appropriate caution. It does not assert positively that these deliverables were absent from the Recommended Bidder's submission; it submits that the Contracting Authority has failed to demonstrate that they were submitted and evaluated in accordance with the RFP, and that the burden of demonstrating compliance rests on the Contracting Authority.

The Board accepts the Appellant's submission that the burden of establishing compliance with mandatory tender requirements does not fall upon the challenging party. In proceedings before this Board, where the Contracting Authority is required to justify its evaluation and recommendation for award, it falls to the Contracting Authority to demonstrate that it applied the mandatory requirements of the tender specification to all tenderers and that the recommended bid satisfied those requirements.

The Appellant, having been denied access to the relevant documentation prior to these proceedings, cannot be expected to disprove compliance with requirements in relation to which it has received no information.

However, the Board is also conscious that this grievance, as currently formulated, rests upon a gap in the disclosure rather than upon affirmative evidence of non-compliance.

Unlike the EPC grievance, where the disclosed material positively identified the document submitted in response to the mandatory requirement and that document was demonstrably inadequate, and unlike the Alternative Energy grievance, where the disclosed submission explicitly stated that the relevant measures were not being proposed, the position in relation to the Work Method Statement, the Construction Management Plan, and the Health and Safety Plan is one of informational absence rather than affirmative deficiency.[9]

[9]See Case C-42/13, Cartiera dell'Adda SpA v CEM Ambiente SpA, ECLI:EU:C:2014:2345, at paragraphs 44–45. The Court distinguished between a "purely formal irregularity" which may, in certain circumstances, be cured by a request for clarification, and a substantive absence which cannot. The failure to submit a required document falls within the latter category and cannot be addressed by any process of clarification or rectification after the bid deadline. The Board applied this distinction in its analysis of the EPC grievance above and applies it with equal force to the present grievance.

The Board is mindful of the principle, well established in the administrative and public procurement law of the Member States and consistently affirmed at the level of the Court of Justice, that review bodies should not make findings of non-compliance in the absence of adequate evidence, even where the absence of evidence is the result of opacity on the part of the Contracting Authority.

The appropriate response to informational opacity is to require transparency, not to draw inferences adverse to the party whose documents have not been disclosed.

D. The Board's Finding and Direction

In the circumstances, the Board does not make a finding, at this stage, that the Recommended Bidder's submission was non-compliant in respect of the Work Method Statement, the Construction Management Plan, or the Health and Safety Plan. The evidence before the Board is insufficient to support such a finding, and this Board declines to speculate as to the contents of documents that have not been placed before it.

However, the Board considers that the Appellant's concern in this regard is legitimate and well-founded as a matter of procedural principle. The inability of the Appellant to verify compliance with these mandatory requirements is a direct consequence of the Contracting Authority's failure, prior to the filing of the original objection, to provide the Appellant with any meaningful information about the recommended bid. The opacity that generated the need for disclosure orders, and that continues to limit the Appellant's ability to assess compliance with the tender conditions, is not a neutral circumstance.

Accordingly, whilst the Board does not uphold this grievance as a discrete finding of non-compliance, it directs that compliance with these mandatory technical deliverables be specifically verified and documented as part of any fresh evaluation ordered herein, and that the Appellant be afforded an opportunity to make representations thereon.

PART XII — FOURTH ADDITIONAL MATTER: LACK OF TRANSPARENCY AND THE PRINCIPLES OF EQUAL TREATMENT

The Appellant raises, as a fourth and overarching matter, a concern about the continued lack of transparency in the disclosure process and its impact on the Appellant's ability to verify the compliance of the recommended bid with the mandatory requirements of the RFP.

The Appellant submits that the disclosure, as made, consists of summaries, extracts, and commentary rather than the underlying tender documentation itself, and that this approach prevents adequate verification.

The Board shares, in significant measure, the concern articulated by the Appellant. Transparency is not merely a procedural aspiration in the law of public procurement but it is a constitutive principle without which the principle of equal treatment cannot be given practical effect.

A tenderer who has invested resources in a competitive process and who has been informed that a rival submission has been preferred is entitled, within the limits imposed by legitimate confidentiality claims, to sufficient information to understand why that preference was made and to assess whether the evaluation was conducted in accordance with the published criteria. The purpose of the Board's disclosure orders was precisely to give effect to that entitlement.

The Board notes that the Contracting Authority made a genuine effort to comply with its disclosure obligations within the framework of those orders, and that the MIEA Note reflects considered engagement with the competing demands of transparency and confidentiality.

The Board further notes that the Recommended Bidder's attempt to assert blanket confidentiality over the entirety of its submission was correctly and firmly rejected by the Contracting Authority as legally untenable. Nevertheless, the redactions that remain, and the partial character of the disclosure, have inevitably limited the ability of the Appellant to conduct the verification that the present proceedings require.

The Contracting Authority's and Recommended Bidder's Responses on Transparency

Both the Contracting Authority and the Recommended Bidder resist the Appellant's fourth grievance on related grounds. The Contracting Authority submits: first, that the actual submissions were disclosed where appropriate and that only proprietary or commercially sensitive content was redacted pursuant to the Board's own decrees; second, that the purpose of the procurement remedy is not to carry out a re-evaluation of the TEC's assessment, and that neither the Board nor the Court of Appeal possesses the requisite

expertise to do so; and third, that the Appellant is not entitled to carry out a "*verification exercise*" of the Recommended Bidder's compliance.

The Recommended Bidder similarly submits that the Appellant's pursuit of further information is excessive, disproportionate, and incompatible with the principles of confidentiality and proportionality, noting that the Appellant now possesses practically the full offer of the Recommended Bidder, whilst the Recommended Bidder remains entirely unaware of the content of the Appellant's own bid.

The Board accepts, to a significant degree, the proposition that a procurement review body does not possess the technical expertise to substitute its own evaluation for that of a specialist technical committee, and that the purpose of the review is not to conduct a fresh technical assessment of competing bids. The Board has applied this principle consistently in its approach to the scoring concerns raised by the Appellant under the Circular Economy and Energy-Saving Integrated Building Design criteria, in respect of which it has declined to make discrete findings of manifest error.

The Board also accepts that commercially sensitive and proprietary information in the Recommended Bidder's submission is entitled to protection, and that redactions applied by the Contracting Authority, provided they were made on a specifically reasoned, item-by-item basis and not as a blanket assertion, were in principle permissible. The Contracting Authority correctly rejected the Recommended Bidder's blanket confidentiality claim as legally untenable, and the Board commends that approach.

However, the Board does not accept the proposition that the Appellant is entirely disentitled from meaningful access to information sufficient to assess the compliance of the Recommended Bidder's bid with the mandatory requirements of the RFP.

Member States possess the obligation to ensure that decisions taken by contracting authorities in award procedures, including concession award procedures, may be reviewed effectively and, in particular, as rapidly as possible, on the grounds that such decisions have infringed Union law in the field of public procurement or national rules implementing that law.

That requirement of effectiveness is not satisfied by a remedy that is merely formal or theoretical. A review right that cannot be exercised in practice because the applicant lacks the information necessary to identify and substantiate a specific infringement is not an effective remedy within the meaning of that provision.

This principle has been given authoritative expression by the Court of Justice of the European Union in Case C-54/21, Antea Polska SA and Others v Państwowe Gospodarstwo Wodne Wody Polskie, decided by the Fourth Chamber on the 17th November 2022, ECLI:EU:C:2022:888.

In Antea Polska, the Court held, that it is permissible for Member States to strike a balance between the confidentiality of procurement information and other legitimate interests, including that of ensuring access to information, in order to ensure the greatest possible transparency in public procurement procedures.

The Court further held, that a contracting authority cannot simply accept a tenderer's assertion that specific information has commercial value and must therefore be kept confidential, but must conduct its own assessment of each item. Most directly applicable to the present proceedings, the Court held that where a contracting authority refuses full access to information, it must nonetheless grant the unsuccessful tenderer access to the essential content of that information so that observance of the right to an effective remedy is ensured.

Antea Polska therefore does not stand for the proposition that confidentiality claims prevail over the right to an effective remedy. It stands for the contrary proposition, that is to say that, where full disclosure is legitimately withheld, disclosure of the essential content remains mandatory. The Recommended Bidder cannot invoke a judgment that imposes a residual obligation of essential-content disclosure in support of the absolute proposition that no further access to information is permissible.

The Board notes also the earlier authority of Case C-450/06, Varec SA v Belgian State,[3] in which the Court of Justice held that the protection of confidential information in procurement proceedings does not entirely displace the right to an effective remedy, and that the review body must have access to the full body of information in order to assess, on an informed basis, whether a confidentiality claim is properly made and what degree of disclosure is required to give effect to the applicant's review rights.

Applying these principles to the present case, the Board observes the following. The disclosure that has been made, whilst representing a genuine effort by the Contracting Authority to comply with the Board's orders, has been partial in character, heavily redacted in places, and, as the Board has noted in its analysis of the EPC and Alternative Energy grievances, sufficient only to reveal the surface of the Recommended Bidder's submission.

The redactions applied to Document R-2 in particular, which is the document most directly relevant to the environmental and energy scoring that the Appellant challenges, have limited the Appellant's ability to verify whether the scores awarded under those criteria are supported by substantive and compliant proposals.

The Board accepts that the Contracting Authority has not acted in bad faith in implementing the disclosure. The Board's concern is not with the Contracting Authority's conduct but with the structural adequacy of the disclosure as a basis for meaningful review. Where the disclosed material is insufficient to enable an appellant to assess compliance with mandatory requirements, the appropriate response is not to conclude that the appellant is disentitled to further access but to direct, within the framework of the fresh evaluation proceedings, that the Contracting Authority specifically verify and document compliance in a manner capable of withstanding scrutiny.

On the Recommended Bidder's observation that the Appellant now holds its full offer whilst it remains unaware of the Appellant's bid, the Board acknowledges the asymmetry. However, that asymmetry is an inherent and legally accepted feature of procurement review proceedings, in which the challenging party must necessarily have access to the awarded bid in order to identify and prove infringements. It does not constitute a legal bar to disclosure, nor does it diminish the Appellant's entitlement under the Directive to a remedy that is effective in practice and not merely in form.

The Board's directions on the transparency and disclosure question are set out in the Disposition section of this Decision.

The Board considers that the tension between transparency and confidentiality, which is inherent in all procurement review proceedings, has not been fully resolved in the disclosure exercise conducted to date.

The Contracting Authority's Submission that the Appellant Has Exhausted Its Right to Additional Grievances and that No Further Disclosures Will Be Made

The Contracting Authority submits, in the concluding section of its Additional Reply, that by filing the Note of Additional Grievances on the 20th March 2026, the Appellant has exhausted its right to raise further grievances, and that the Contracting Authority has disclosed all information and documentation ordered by the Board's interim decrees and will not be making any further disclosures. It requests the Board not to entertain or consider any attempt by the Appellant to elicit further information.

The Board takes note of this submission. It accepts the general principle that the procurement review process must be conducted within defined procedural bounds and that an appellant should not be permitted to pursue disclosure on an open-ended basis indefinitely.

However, the Board does not accept that the Appellant's right to raise additional matters, which the Appellant itself preserved in its Note of Additional Grievances by way of a reservation of further rights, has been wholly and finally extinguished.

The Board's power to manage the review proceedings, including by directing further disclosure where the interests of justice require, is not curtailed by a unilateral declaration by one party to the proceedings. Whether any further disclosure is warranted will be a matter for the Board to determine in the context of the fresh evaluation it has directed.

To the extent that the Contracting Authority's submission is intended to convey that it has acted in good faith in implementing the Board's disclosure orders and that it considers those obligations to have been discharged, the Board accepts that characterisation of the Contracting Authority's conduct of the disclosure exercise. The Board's findings in this Decision do not impugn the good faith of the Contracting Authority in implementing the disclosure. They address the substantive inadequacy, in the Board's assessment, of the Recommended Bidder's bid as evaluated and recommended for award.

PART XIII — OVERALL DISPOSITION AND ORDERS OF THE BOARD

A. Summary of Findings

This Board has, in the course of this Decision, considered all grievances advanced by the Appellant, both those raised in the original objection filed on the 14th October 2024 and those raised in the Note of Additional Grievances filed on the 20th March 2026 following disclosure. The Board's findings are as follows.

On the original objection — procedural and preliminary matters:

The Recommended Bidder's application to declare the original objection null and void on the ground that it cited S.L. 601.03 rather than S.L. 601.09 as the applicable regulatory framework is rejected. The error was one of citation, not of substance or jurisdiction. The objection was correctly filed before this Board, within time, in relation to the correct tender, and contained the reasons for the complaint in the manner required by Regulation 106 of S.L. 601.09. The Recommended Bidder's associated application to declare the pre-appeal information requests of the 10th and 11th October 2024 null and void on the same ground is likewise rejected.

The Recommended Bidder's submission that Demand 4.2 of the original objection the demand for a determination of the Recommended Bidder's compliance with minimum requirements, was inadmissible for want of substantiation is rejected. Where an appellant has been denied pre-objection information, its ability to particularise its grievances is correspondingly limited.

The original objection identified the specific categories of compliance concern with sufficient precision to identify the subject matter of the challenge and to enable the Contracting Authority and the Recommended Bidder to understand what was being challenged.

On the original Grievance 1 — failure to provide non-confidential information:

This grievance is upheld. The Contracting Authority's failure to respond to the Appellant's requests of the 10th and 11th October 2024 before the expiry of the objection deadline placed the Appellant at a material informational disadvantage at the time of filing its original objection, compelling it to frame a necessarily general challenge on the basis of incomplete information.

The Board's interim disclosure orders of the 27th February and 4th March 2026 gave effect to the Appellant's right to the information in question.

On the original Grievance 2 — lack of assurance regarding compliance with minimum requirements:

This grievance is upheld in part. Following the Board's disclosure orders and the subsequent review of the disclosed material, the Appellant was in a position to formulate specific additional grievances on the EPC, the Alternative Energy Generation scoring, and the mandatory technical deliverables.

Those grievances are determined below. In relation to the two areas of concern from the original Grievance 2 that were not developed into additional grievances following disclosure, i.e. eligibility and the historical character of the site, the Board finds as follows:

On eligibility, the Contracting Authority has confirmed that the Recommended Bidder satisfied all eligibility requirements, no affirmative evidence of non-compliance has been placed before the Board, and this aspect of Grievance 2 is not upheld.

On the historical character of the site, Document R-1 addresses the Recommended Bidder's approach to the site's context and heritage interfaces, the Appellant did not advance a specific additional grievance on this point, and this aspect of Grievance 2 is not upheld.

On the original Grievance 3 — irregularity in the award process:

This grievance is upheld in both its dimensions.

On the procedural dimension, the Contracting Authority's failure to respond to the pre-appeal information requests placed the Appellant at a material informational disadvantage, constituting a procedural irregularity in the conduct of the award process.

On the substantive dimension, the award process was irregular because the evaluation itself was fundamentally flawed, as determined in the findings on the additional grievances set out below.

On the additional grievances — preliminary and procedural matters:

The Recommended Bidder's preliminary objection that the additional grievances were filed without prior Board authorisation, in breach of the ten-day time limit prescribed by Regulation 106 CCR, is rejected.

The additional grievances arise directly and exclusively from the documentary disclosure that this Board itself ordered and could not have been formulated without it. Applying the time limit as a bar to grievances that the disclosure made possible for the first time would reduce the Board's disclosure power to a procedural formality without practical consequence.

The Recommended Bidder's submission that the Appellant's own financial offer of €242,435 renders the Appellant's bid non-compliant, and that this constitutes a bar to consideration of the additional grievances, is rejected. The question of the Appellant's own bid compliance is not within the scope of the additional

grievances, falls to be considered if and when a fresh evaluation is conducted, and does not disentitle the Appellant from challenging the lawfulness of the evaluation process.

The Contracting Authority's submission that by filing the Note of Additional Grievances the Appellant has exhausted its right to raise further grievances and that no further disclosures will be made is noted but not accepted as a curtailment of the Board's own power to direct further transparency measures in the context of any fresh evaluation.

On the first additional grievance — non-submission of a Design Rating EPC:

This grievance is upheld. As determined in Parts I through IX of this Decision, the Recommended Bidder's technical offer did not include a Design Rating Energy Performance Certificate capable of satisfying the mandatory requirement expressly imposed by the RFP at page 16, read together with the definitional provision at page 43. Document R-4, identified by the Contracting Authority as the entirety of what was submitted in response to that requirement, is not an Energy Performance Certificate within the meaning of the RFP or of S.L. 623.01. It satisfies none of the twelve mandatory elements required for a valid EPC. The failure to submit a compliant EPC is a substantive absence, not a formal irregularity, and is incapable of rectification. The Contracting Authority erred in treating the Recommended Bidder's submission as compliant.

The Contracting Authority's proportionality argument, that disqualification would be disproportionate given the financial differential of approximately €31,828,281 over the concession period, is rejected. The financial premium offered by a non-compliant tenderer is an irrelevant consideration in the assessment of whether a mandatory tender requirement has been met. Proportionality does not authorise the effective creation after the deadline of a document that did not exist at the time of submission.

On the second additional grievance — manifestly erroneous scoring under the Alternative Energy Generation criterion:

This grievance is upheld. As determined in Part X of this Decision, the award of 4 out of 5 points to the Recommended Bidder under criterion 2(b) of the evaluation grid is manifestly erroneous. The Recommended Bidder's own submission expressly and categorically excluded all forms of alternative energy generation from the proposed development. The award of a near-maximum score for a criterion whose substance the Recommended Bidder had explicitly disavowed cannot be reconciled with any lawful exercise of evaluative discretion.

The Contracting Authority's argument that the TEC applied the Europharma holistic evaluation principle and was entitled to consider the Recommended Bidder's broader sustainability proposals under adjacent criteria is rejected. The holistic evaluation principle does not create a mechanism by which marks allocated

to one specific named criterion can be transferred to a different criterion simply because the tenderer's performance under adjacent criteria was strong.

The subsidiary concerns raised by the Appellant regarding the scoring under the Circular Economy and Energy-Saving Integrated Building Design criteria are noted but are not upheld as discrete findings of manifest error. They are duly noted as concerns to be addressed in the course of any fresh evaluation.

On the third additional grievance — failure to demonstrate compliance with the Work Method Statement, Construction Management Plan, and Health and Safety Plan:

This grievance is not upheld as a discrete finding of non-compliance. The evidence before the Board is insufficient to support such a finding, the absence of these documents from the disclosure bundle being a consequence of the scope of the Appellant's own original requests rather than positive evidence of non-compliance.

The Contracting Authority's time-bar plea in relation to this grievance is rejected: the grievance arises in the course of ongoing proceedings from a gap in the disclosure rather than constituting a belated new challenge.

The Contracting Authority's submission that the burden of proof rests exclusively on the Appellant is accepted as a general statement of principle, but qualified in the present circumstances by the structural opacity of the disclosure. The Board directs that compliance with these three mandatory deliverables be specifically verified and documented as part of any fresh evaluation, and that the Appellant be afforded an opportunity to make representations thereon.

On the fourth additional matter — lack of transparency:

The Board shares, in significant measure, the Appellant's concern. Transparency is a constitutive principle of public procurement law without which equal treatment cannot be given practical effect.

The Contracting Authority made a genuine effort to comply with the Board's disclosure orders, and the MIEA Note reflects considered engagement with the competing demands of transparency and confidentiality.

The Recommended Bidder's blanket confidentiality claim was correctly rejected by the Contracting Authority. However, the redactions that remain, and the partial character of the disclosure, have limited the Appellant's ability to conduct meaningful verification.

The Board's directions on this matter are incorporated in its orders below, directing that any fresh evaluation be conducted in a manner that is fully documented, rigorously applied, and capable of withstanding subsequent scrutiny.

The Recommended Bidder's invocation of Antea Polska (C-54/21) in support of an absolute confidentiality claim is rejected: that judgment requires disclosure of the essential content of information even where full access is withheld, and does not support the proposition that no further access is permissible.

B. Cumulative Effect of the Established Irregularities

The Board considers it appropriate to address, before issuing its orders, the cumulative character of the irregularities found, viewed across the full arc of these proceedings.

The finding on the EPC grievance would, of itself, be sufficient to vitiate the evaluation and the recommendation for award. The mandatory requirement to submit a Design Rating EPC was unambiguous; its non-fulfilment is not susceptible of cure; and the RFP expressly provided that a bid which did not meet mandatory requirements was to be disqualified.

The finding on the Alternative Energy scoring, whilst arising under an add-on criterion that carries no disqualifying consequence in itself, compounds the irregularity by demonstrating that the evaluation process, as applied to the Recommended Bidder's submission, was not conducted with the rigour and objectivity that the principles of transparency and equal treatment require.

A process that awards a near-maximum score for the inclusion of measures that the bidder has expressly excluded is a process that has departed from the published evaluation criteria in a manner that materially distorts the comparative assessment of the competing bids.

These two findings do not stand in isolation. They must be read in the context of the earlier and foundational finding, arising from the original Grievance 1 and the procedural dimension of Grievance 3, that the Contracting Authority's failure, at the pre-appeal stage, to respond to the Appellant's legitimate requests for non-confidential information placed the Appellant at a material informational disadvantage and compelled it to frame its original challenge in terms necessarily more general than the circumstances warranted.

The opacity that generated the need for this Board's disclosure orders is not a neutral background circumstance. It is itself an irregularity in the conduct of the award process, and it forms part of the cumulative picture that the Board is required to assess.

That cumulative picture is further reinforced, rather than qualified, by the concerns noted without definitive resolution, the scoring under other environmental sub-criteria, and the partial and incomplete character of the disclosure, and by the Board's direction in relation to the three mandatory technical deliverables whose compliance remains unverified.

The overall effect is that the Board is not in a position to have confidence that the recommendation for award issued by the Contracting Authority was the product of a lawful, rigorous, and objective evaluation conducted in accordance with the RFP and the applicable procurement principles. The irregularities established are not peripheral or minor. They go to the heart of the evaluation: the mandatory compliance of the recommended bid with the technical requirements of the tender, and the integrity of the scoring process by which that bid was assessed.

C. The Replies of the Contracting Authority and the Recommended Bidder: Overall Assessment

Having addressed each of the principal arguments advanced in the initial replies and in the Additional Replies of the Contracting Authority and the Recommended Bidder in the relevant Parts of this Decision, the Board considers it appropriate to make a final observation of a general character.

Both the Contracting Authority and the Recommended Bidder are represented by experienced and distinguished counsel who have advanced their respective positions with skill and thoroughness across the full duration of these proceedings, from the initial replies of October 2024 through to the Additional Replies of March 2026. The Board has given full and careful consideration to all submissions made at every stage. It respectfully disagrees with those submissions, for the reasons set out in the course of this Decision, which it does not find it necessary to repeat.

The Board notes, in particular, the following.

The Contracting Authority's initial reply correctly identified the applicable regulatory framework as S.L. 601.09, raised a legitimate general principle about the limits of information requests, and indicated willingness to disclose pursuant to a Board decree. Those positions were duly noted and, where legally well-founded, accepted by the Board.

The Contracting Authority's Additional Reply mounts a comprehensive defence of the evaluation and the recommendation for award. That defence is, as the Board has found, unpersuasive on the two central issues, namely the EPC requirement and the Alternative Energy scoring. It does not address, with any substantive engagement, the core finding that emerges from the Board's analysis: that Document R-4 satisfies zero of the twelve mandatory elements required for a valid EPC under S.L. 623.01, and that the Contracting Authority has itself acknowledged Document R-4 as the entirety of what was submitted in response to that mandatory requirement. The most significant dimension of the Contracting Authority's position, the proportionality argument, has been addressed and rejected in the body of this Decision.

The Recommended Bidder's initial reply raised the applicable law point, the nullity applications, and the Antea Polska confidentiality argument. The applicable law point and the nullity applications were rejected for the reasons set out in Parts B and D of this Decision. The Antea Polska argument was noted as

accurately reflecting one passage of that judgment while omitting the countervailing obligation, established at paragraph 85 of the same judgment, to disclose the essential content of information where full access is withheld.

The Board applied Antea Polska in its full and balanced terms, as it was required to do, and rejected the selective reading advanced in favour of blanket confidentiality. The Recommended Bidder's Additional Reply is characterised by a consistent reservation of procedural rights and an equally consistent substantive denial that any infringement has occurred.

The Board does not doubt the good faith of that position, but it is required by the evidence and the law to reach a different conclusion. The procedural objections advanced by the Recommended Bidder have been addressed and rejected. The substantive defences of the Recommended Bidder's compliance with the EPC requirement and the validity of the Alternative Energy scoring have likewise been addressed and rejected.

The Board:

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

1. To uphold the grievances filed by the Appellant in relation to: the original Grievance 1 (failure to provide non-confidential information); the original Grievance 3 in both its procedural dimension (the Contracting Authority's failure to respond to the pre-appeal requests for information) and its substantive dimension (irregularity in the evaluation and recommendation for award); the first additional grievance (non-submission of a Design Rating Energy Performance Certificate constituting a mandatory and non-rectifiable requirement of the RFP); and the second additional grievance (manifestly erroneous scoring of 4 out of 5 points under the Alternative Energy Generation criterion in circumstances where the Recommended Bidder expressly and categorically excluded all forms of alternative energy generation from its proposal).
2. To uphold the original Grievance 2 in part, specifically in relation to the concern regarding the Design Rating Energy Performance Certificate, the concern regarding the environmental scoring, and the concern regarding the continued lack of transparency, all of which are addressed through the findings on the additional grievances and the operative orders below; and to reject the original Grievance 2 insofar as it concerns eligibility (the Contracting Authority having confirmed compliance and no affirmative evidence of non-compliance having been placed before the Board) and the historical character of the Old Fish Market site (the Appellant having advanced no specific additional grievance on this point following review of Document R-1).
3. To reject the third additional grievance as a discrete finding of non-compliance in relation to the Work Method Statement, the Construction Management Plan, and the Health and Safety Plan, the disclosed material being insufficient to establish such a finding, the absence of these documents

from the disclosure bundle being a consequence of the scope of the Appellant's own original information requests rather than positive evidence of non-compliance; whilst directing, in the operative orders below, that compliance with these mandatory deliverables be specifically verified and documented as part of the fresh evaluation, and that the Appellant be afforded an opportunity to make representations thereon.

4. In relation to Original Demand 1 of the original objection (cancellation of the recommendation for award solely on the ground of the Contracting Authority's failure to provide the requested information): to decline to grant this demand in the narrow form in which it was advanced, the procedural failing having been remedied through the Board's interim disclosure orders of the 27th February 2026 and the 4th March 2026, and outright cancellation on that ground alone not being a proportionate remedy independently of the substantive findings; whilst noting that the relief ultimately sought by the Appellant is fully achieved through the operative orders below flowing from the substantive findings on the additional grievances.
5. In relation to Original Demand 2 of the original objection (a determination by the Board as to whether the Recommended Bidder met the minimum eligibility and technical requirements, and a declaration that the award is null and void if found non-compliant): to grant this demand. The Board finds, for the reasons set out in Parts I through IX of this Decision, that the Recommended Bidder's technical offer did not include a Design Rating Energy Performance Certificate capable of satisfying the mandatory requirement expressly imposed by the RFP. The Recommended Bidder's bid did not meet a mandatory and non-rectifiable minimum requirement of the RFP, and the Contracting Authority erred in treating it as compliant.
6. In relation to Additional Demand i (Primary) of the additional grievances (exclusion of the Recommended Bidder from the procedure and annulment of the recommendation for award on the ground of failure to submit a Design Rating EPC): to uphold this demand in substance. The Recommended Bidder's failure to submit a valid Design Rating Energy Performance Certificate constitutes non-compliance with a mandatory and non-rectifiable requirement of the RFP. In terms of Section 6.3 of the RFP, such non-compliance triggers disqualification. The operative relief is annulment of the recommendation for award and a direction for fresh evaluation as set out below.
7. In relation to Additional Demand ii (Subordinate) of the additional grievances (setting aside of the recommendation for award on the ground of the cumulative effect of the irregularities identified, and a direction for fresh evaluation): to uphold this demand in substance. The cumulative effect of the established irregularities, taken as a whole, warrants the setting aside of the recommendation for award and a direction that the evaluation be conducted afresh in accordance with the findings and directions of this Decision. The precise modalities of the fresh evaluation, including the composition of the evaluating body, are set out in the operative order below.
8. To annul the notice of award in favour of the Recommended Bidder, Carmelo Stivala Group (TID 197716), dated the 3rd February 2024.

9. To annul the letter of rejection dated the 4th October 2024 sent to the Appellant.
10. To reinstate the Appellant in the RFP process for Tender Reference MSPP/01/2023.
11. To order the Contracting Authority to conduct a fresh evaluation of all bids submitted in response to Tender Reference MSPP/01/2023 through the same Technical Evaluation Committee, applying the evaluation criteria and mandatory requirements of the RFP in full compliance with the applicable procurement principles and with the findings and directions of this Decision; and directing in particular that: (a) the mandatory requirement to submit a Design Rating Energy Performance Certificate under Note 3 of the RFP, as defined by reference to S.L. 623.01, be applied strictly to all bids without exception and without recourse to proportionality considerations based on the financial attractiveness of any bid; (b) compliance with the Work Method Statement, the Construction Management Plan, and the Health and Safety Plan be specifically verified and documented, and that the Appellant be afforded an opportunity to make representations thereon; (c) the evaluation grid be applied strictly by reference to the content of the submissions as originally tendered, without recourse to assumptions, inferences, or the transfer of marks between distinct and separately designated criteria; and (d) the evaluation be fully documented and conducted in a manner capable of withstanding subsequent scrutiny.
12. To order that the deposit paid by the Appellant be refunded in full.

Kenneth Swain	**Dr Vincent Micallef**	**Ing. Dr Damien Gatt**
Chairperson	**Member**	**Member**