PUBLIC CONTRACTS REVIEW BOARD

Case 2229 – CT3021/2024 – Services Tender for the Customisation and Implementation of an off-the-shelf Courts Management Information System for the Court Services Agency

30th June 2026

The Board,

Having noted the letter of objection filed by Mr Leonidas Bardis and Mr Konstantinos Velentzas on behalf of European Dynamics Consortium, (hereinafter referred to as the appellant) filed on the 27th February 2026;

Having also noted the letter of reply filed by Dr Carlos Bugeja on behalf of Prolegal Advocates acting for and on behalf the Court Services Agency (hereinafter referred to as the Contracting Authority) filed on the 6th March 2026;

Having also noted the letter of reply filed by Dr Daniel Inguanez acting for and on behalf the Department of Contracts (hereinafter referred to as the DoC) filed on the 6th March 2026;

Having also noted the letter of reply filed by Dr Clement Mifsud Bonnici, Dr Antoine Cremona and Dr Calvin Calleja on behalf of Ganado Advocates acting for and on behalf LexNova (hereinafter referred to as the Recommended Bidder) filed on the 9th March 2026;

During the first Board sitting (15th April 2026), having heard and evaluated the testimony of the witness Ms Mariella Pulis (ID no. 224281M), as summoned by Dr Clement Mifsud Bonnici for and on behalf of LexNova Consortium (hereinafter referred to as the Preferred Bidder);

During the first Board sitting (15th April 2026), having heard and evaluated the testimony of the witness Mr Marvin Muscat (ID no. 91793M), as summoned by Dr Clement Mifsud Bonnici for and on behalf of LexNova Consortium (hereinafter referred to as the Preferred Bidder);

During the first Board sitting (15th April 2026), having heard and evaluated the testimony of the witness Mr Konstantinos Velentzas (ID no. AP140279, Athens, Greece), as summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for and on behalf of European Dynamics Consortium (hereinafter referred to as the Appellant).

Having also noted the decree of this Board dated 27th April 2026 ordering disclosure, as subsequently clarified by communication of 4th May 2026.

Having also noted the Supplementary Grievances filed by Mr Leonidas Bardis and Mr Konstantinos Velentzas on behalf of European Dynamics Consortium, filed on the 14th May 2026, pursuant to the said decree and the submittals made thereunder;

Having also noted the letter of reply filed by Dr Daniel Inguanez and Dr Ramona Galea acting for and on behalf the Department of Contracts, filed on the 21st May 2026, in response to the Supplementary Grievances;

Having also noted the letter of reply filed by Dr Carlos Bugeja on behalf of Prolegal Advocates acting for and on behalf the Court Services Agency (hereinafter referred to as the Contracting Authority), filed on the 22nd May 2026, in response to the Supplementary Grievances;

During the second Board sitting (8th June 2026), having heard and evaluated the testimony of the witness Ms Mariella Pulis (ID no. 224281M), Chairperson of the Tender Evaluation Committee, as summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for and on behalf of European Dynamics Consortium, hereinafter referred to as the Appellant;

During the second Board sitting (8th June 2026), having heard and evaluated the testimony of the witness Mr Marvin Muscat (ID no. 91793M), member of the Tender Evaluation Committee, as summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for and on behalf of European Dynamics Consortium, hereinafter referred to as the Appellant;

During the second Board sitting (8th June 2026), having heard and evaluated the testimony of the witness Mr Konstantinos Velentzas (Passport no. AY 0057919), Managing Director of European Dynamics, as summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for and on behalf of European Dynamics Consortium, hereinafter referred to as the Appellant;

During the second Board sitting (8th June 2026), having heard and evaluated the testimony of the witness Mr Marius Mifsud (ID no. 77578M), member of the Tender Evaluation Committee, as summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for and on behalf of European Dynamics Consortium, hereinafter referred to as the Appellant;

During the second Board sitting (8th June 2026), having heard and evaluated the testimony of the witness Ms Charmaine Bugeja (ID no. 281174M), member of the Tender Evaluation Committee, as summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for and on behalf of European Dynamics Consortium, hereinafter referred to as the Appellant;

During the second Board sitting (8th June 2026), having heard and evaluated the testimony of the witness Mr Tripodianos (ID no. AE 466444), representative of European Dynamics, as summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for and on behalf of European Dynamics Consortium, hereinafter referred to as the Appellant;

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 1st Board sitting of the 15th April 2026 hereunder-reproduced.

Having noted and evaluated the minutes of the 2nd Board sitting of the 8th June 2026 hereunder-reproduced.

Having noted and evaluated the minutes of the 3rd Board sitting of the 9th June 2026 hereunder-reproduced.

Meeting Minutes for the 1st Board sitting on the 15th of April 2026

Case 2229 Objection – CT3021/2024 – Services Tender for the Customisation and Implementation of an Off-the-Shelf Courts Management Information System for the Court Services Agency

Publication of The Call for Tenders	5th September 2024
Closing date was	26th November 2024
Estimated value of the tender, excluding VAT, was	€10,000,000
Deposit paid	€50,000

There were nine bids.

On the 15th of April 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Mr Keith Victor Grech and Dr Ing. Damien Gatt as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – European Dynamics

Dr Joseph Camilleri	Legal Representative
Mr Kyle Decelis	Legal Representative
Dr Polyxeni D. Gkaintatzi	Company Representative
Mr Konstantinos Velentzas	Company Representative (Online)

Contracting Authority – Court Services Agency

Dr Carlos Bugeja	Legal Representative
Ms Mariella Pulis	Chairperson
Mr Marvin Muscat	Evaluator
Mr Marius Mifsud	Evaluator
Ms Charmaine Bugeja	Evaluator
Mr Daniel Mifsud	Secretary

Department of Contracts

Dr Daniel Inguanez	Legal Representative
Dr Ramona Galea	Legal Representative

Preferred Bidder – LexNova Consortium

Dr Clement Mifsud Bonnici	Legal Representative
Dr Calvin Calleja	Legal Representative
Mr Conrad Aquilina	Consortium Representative
Mr Clayton Axisa	Consortium Representative
Mr Wayne Pisani	Consortium Representative

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2229 in the records of the PCRB.

The Chairman identified the Appellant as European Dynamics Consortium, the Contracting Authority as the Court Services Agency, and acknowledged the presence of representatives of the Department of Contracts and the Recommended Bidder, LexNova. The Chairman informed the parties that the hearing would serve three purposes.

First, a case management meeting to agree on dates. Second, to hear submissions on the preliminary plea of the Recommended Bidder. Third, to hear submissions on the Appellant's first ground of appeal, namely the request for information.

The Chairman urged the cooperation of all parties so that the hearings would proceed in an efficient manner.

Case Management: Procedural Dates

Following discussion amongst all parties, the following procedural timetable was agreed:

27th April 2026: The Board to issue its decision on the request for information.

4th May 2026: Deadline for the Contracting Authority to furnish information in accordance with the Board's decree.

14th May 2026: Deadline for the Appellant to submit additional grievances based solely on new information disclosed pursuant to the Boards decree.

The Chairman noted that no grievances would be accepted on matters already known to the Appellant prior to the decree. The following dates where announced:

25th May 2026: Deadline for the Contracting Authority, the Department of Contracts, and the Recommended Bidder to reply to any new grievances.

8th June 2026: Second hearing, reserved for the whole day, to hear all witnesses of the Appellant, the Contracting Authority, and the Recommended Bidder.

9th June 2026: Final hearing, reserved for final submissions.

A decision on the preliminary plea would be issued together with the final judgment of the proceedings.

The Chairman then invited the parties to proceed to the second item on the agenda, that is the preliminary plea of the Recommended Bidder and requested that all parties introduce themselves for benefits of the recording.

<u>Morning Session tackling the Preliminary Plea</u>

Witness Testimony

Testimony of Ms Mariella Pulis (ID: 224281M) (Chairperson, Tender Evaluation Committee) — Summoned by Dr Clement Mifsud Bonnici

Ms Pulis was sworn in and confirmed that she would tell the truth, the whole truth, and nothing but the truth.

Ms Pulis confirmed that she served as Chairperson of the Tender Evaluation Committee. She identified the three evaluators as Mr Marius Mifsud, Mr Marvin Muscat, and Ms Charmaine Bugeja, with Mr Daniel Mifsud serving as Secretary. She confirmed that no technical consultants had been engaged.

Dr Mifsud Bonnici directed the witness to the letter of rejection issued to European Dynamics Consortium on the 17th of February 2026, specifically in relation to Criterion J2 (Innovation and Future Enhancements). Ms Pulis confirmed that this criterion was mandatory and carried a maximum of two points. She confirmed that the minimum requirements for this criterion required the bidder to provide

some information on the exploration and integration of emerging technologies, including artificial intelligence, machine learning, and blockchain, for enhanced efficiency and security.

Dr Mifsud Bonnici read out the justification from the letter of rejection, which stated that the bidder, in contrast with the actual write-up provided, had not demonstrated any actual or future readiness for innovation technologies such as artificial intelligence, machine learning, blockchain, or automation features in supporting business and judicial decisions and future innovation.

Ms Pulis confirmed that this justification was the outcome of the evaluation she had chaired. Ms Pulis confirmed that, in her assessment, the Appellant had met the minimum requirements for Criterion J2, as the bidder had mentioned a few details that were considered valid by the evaluation committee.

Having referred to the Appellant's bid, Ms Pulis identified that the submission addressed points including document processing and analysis, artificial intelligence, data integrity, decentralised identity management, and dynamic risk assessments, covering Criterion J2 across approximately seven pages. She stated that, while the content was valid, it was minimal and did not demonstrate sufficient readiness.

When asked to elaborate on what the evaluation committee had expected and what had been found lacking, Ms Pulis indicated that this was a technical question which she was not in a position to answer in her capacity as Chairperson, as her role concerned the administrative management of the process rather than the technical assessment.

Intervention by the Chairman

The Chairman noted the limitation of the witness' role and invited Dr Mifsud Bonnici to indicate whether he wished to continue with Ms Pulis or proceed to a technically qualified evaluator.

Dr Mifsud Bonnici requested that Ms Pulis' testimony be suspended and that one of the technical evaluators be called.

Intervention by Dr Camilleri

Dr Camilleri, on behalf of the Appellant, concurred that a technical witness would be of assistance to all parties.

The Chairman suspended Ms Pulis, testimony accordingly and noted that the next witness would be called from amongst the evaluators: Mr Marvin Muscat, Mr Marius Mifsud, and Ms Charmaine Bugeja.

Mr Marvin Muscat was called to the witness.

Testimony of Mr Marvin Muscat (ID: 91793M) (Technical Evaluation Committee Member) — Summoned by Dr Clement Mifsud Bonnici

Mr Muscat was sworn in and confirmed that he would tell the truth, the whole truth, and nothing but the truth. He confirmed that he could proceed in the English language and identified himself as a member of the Tender Evaluation Committee.

Criterion J2 — Innovation and Future Enhancements

Dr Mifsud Bonnici invited Mr Muscat to address the evaluation committee's conclusion that the Appellant had not demonstrated any actual or future readiness for innovation technologies, including artificial intelligence, machine learning, and blockchain.

Mr Muscat confirmed that while the Appellant had mentioned innovation technologies in its write-up, the demonstration had not confirmed that the system was ready to implement such technologies. He characterised the write-up as high level and low in detail and stated that the committee had been unable to verify whether the proposed integration was feasible to be done or ready to be done.

When questioned on how a seven-page submission could be considered high level and low in detail, Mr Muscat clarified that the pages contained only highlights and that the committee had been unable to verify the feasibility or readiness of the technologies described. He confirmed that the actual criterion required the bidder to demonstrate a commitment to innovation and continuous improvement with a clear roadmap of future enhancements and upgrades, rather than merely describing integration. He confirmed that the submission addressed the main points of the criterion at a high level but lacked sufficient detail to confirm readiness, and that the score was reduced accordingly.

Criterion B4 — Testing Programme

Dr Mifsud Bonnici directed Mr Muscat to Criterion B4, which required the bidder to provide a complete testing programme in accordance with Article 4.4.4 of the tender.

Mr Muscat confirmed that this was a mandatory criterion carrying three points. He stated that the minimum requirements required the bidder to address all points set out in Article 4.4.4 which relates to Article 15.6 and especially to Article 4.6 of the special conditions, and that a submission omitting any one of those points would not constitute a complete testing programme.

Mr Muscat confirmed that the evaluation committee had identified five shortcomings in the Appellant's submission. He clarified that the maximum score of three points required a submission that went over and above the requirements, while failure to address all points in Article 15.6 would result in a reduction in points. A complete failure to provide any submission would result in disqualification. He confirmed that the Appellant had satisfied the minimum requirements and had been awarded two out of three points rather than being disqualified.

Criterion B1 — Project Plan

Dr Mifsud Bonnici directed Mr Muscat to Criterion B1, which required the bidder to provide a detailed project plan outlining tasks, responsibilities, and timelines. Mr Muscat confirmed that this was a mandatory criterion carrying four points. He stated that the minimum requirements included the outlining of responsibilities for all stakeholders and officers involved, along with tasks and timelines. He confirmed that the committee's expectation was that responsibilities be assigned to all tasks and all relevant persons, not only the key experts.

A single request for clarification had been issued during the evaluation, covering three points on the technical offer, including B1 and B4. Mr Muscat confirmed that the clarification had specifically requested the Appellant to identify, from within its existing submission, where the responsibilities had been set out, as no new information was permitted. In response, the Appellant directed the committee to sections of the original offer. Having reviewed those cross-references, the committee found that only the responsibilities of the Project Manager and the Solutions Architect had been identified.

At this point Dr Mifsud Bonnici ended his questions. The Chairman invited Dr Camilleri to Cross examine Mr Muscat.

Cross examination by Dr Camilleri

Answering questions from Dr Camilleri, Mr Muscat confirmed he had technical knowledge and stated that he is an IT executive in the Ministry for Justice and has been working in IT for at least eight years; he added that another member of the Tender Evaluation Committee, Mr Marius Mifsud, is also a technical expert.

Referring to Criterion J2, Mr Muscat affirmed that that the findings of the TEC were in contrast with the actual write-up and the bidder did not demonstrate the integration of emerging technologies, but the actual write-up was indeed detailed enough to meet the minimal requirements of the tender.

Mr Muscat confirmed that the write-up contained the information which was requested but according to the TEC it did not exceed the maximum, this besides the other issue that the demo did not support enough or did not reflect the content of the write-up and this is why the TEC gave one point instead of the maximum 2 points.

Mr Muscat reiterated that that the real issues were both the demo and the write-up.

At this point Dr Camilleri suggested that the wording in the report of the TEC does not say that the write-up was low detailed or of high level but states that the demo does not reflect the write-up but Mr Muscat stated that he had nothing to add to this suggestion.

At this stage Mr Muscat stated that to Dr Camilleri's question i.e. if the tender requirements stated that on each part on each section, bidders had to provide a write-up of approximately 1,000 to 2,000 words, he thinks that this requirement is found in the evaluation grid in the tender document.

Intervention by Dr Carlos Bugeja

At this point Dr Bugeja objected to a question by Dr Camilleri who asked if exceeding seven pages would most likely lead to exceeding also the 2,000-word limit.

Intervention by Dr Mifsud Bonnici

Dr Mifsud Bonnici also objected to Dr Camilleri's line of questioning as the word count of the appellant or recommended bidder is completely irrelevant to the preliminary plea as this is not about the scoring obtained by the preferred bidder but the omission of the appellant and it is not about the score. He stated that he is emphasizing that there is an omission and therefore a zero score.

Intervention by the Chairman

The Chairman upheld the objection and stated that the issue of the word limits will be tackled when the parties come to the merits in future sessions for the understanding is that since there is a mandatory criterion, the recommended bidder is trying to establish whether the minimum requirements were met or not.

The Chairman invited Dr Carlos Bugeja, on behalf of the Contracting Authority, to cross-examine Mr Muscat. Dr Bugeja indicated that he had no questions for the witness.

The Chairman similarly invited Dr Daniel Inguanez, on behalf of the Department of Contracts, to cross-examine Mr Muscat. Dr Inguanez indicated that he had no questions for the witness.

Continuation of Cross-Examination by Dr Camilleri

On Criterion J2, Mr Muscat confirmed that the Tender Evaluation Committee's position was that the Appellant should not be excluded on this criterion.

Dr Camilleri then referred to the clarification issued on 8th May 2025 concerning Criterion B4 and the related testing requirements. Mr Muscat confirmed that, in response, the Appellant identified where the requested information could be found in its offer. He also confirmed that the committee reviewed those references and considered the submission compliant but awarded a reduced score of two out of three points because it was not sufficiently detailed. He added that, had the submission been non-compliant, it would have received zero points and been disqualified.

Mr Muscat further confirmed that, although the submission was reviewed against sections 1.3, 1.4, and 1.5 of Document 1.6B (Plan and Methodology), the committee considered certain details to be missing or insufficiently developed, which justified the reduction in marks.

On Criterion B1, Dr Camilleri suggested that the reference to responsibilities was intended to address the allocation of responsibilities between the contracting authority and the service provider, rather than the internal assignment of tasks to individual experts.

Mr Muscat disagreed, stating that the requirement extended to all stakeholders and all tasks, not merely the interaction between the contracting authority and the contractor. He confirmed that, even after the clarification response, the committee found that only the Project Manager and the Solutions Architect had been identified as responsible parties, which was insufficient, and that a reduced score of three points had been awarded and it was expected that for each task and for each responsibility there should be the assignment of the actual human resources or the actual officers involved.

When asked by Dr Camilleri to confirm that the 1,000 to 2,000-word requirement applied to Criterion B1, Mr Muscat stated that he did not know where the requirement was located, that it was not in the tender, and that the evaluation grid contained no mention of word counts. When Dr Camilleri referred him specifically to Section 6.3, Mr Muscat maintained that there was no mention of word limits in relation to Criterion B1 and stated that Section 6.3 contained nothing to that effect. The Chairman then intervened, directing Mr Muscat to page 3 of the tender document, whereupon Mr Muscat acknowledged the provision at the top of that page.

Intervention by Dr Polyxeni D. Gkaintatzi (for the Appellant)

Dr Gkaintatzi identified herself as a lawyer registered with the Athens Bar Association and a representative of the Appellant and wanted to ask Mr Muscat if he is an IT expert and if he had other experiences in such a complex IT System.

Objections by Dr Bugeja and Dr Mifsud Bonnici

They objected to a line of questioning regarding the witness' prior experience evaluating complex IT systems, arguing that the preliminary plea concerned the sufficiency of the Appellant's submission rather than the competence of the evaluation committee.

Intervention by Dr Camilleri

Dr Camilleri reiterated that the Evaluation Committee found the appellant's offer as being compliant when it is in fact not compliant, and that involves also an element of technical expertise, so it is relevant to understand the technical expertise on the evaluation committee.

Intervention by the Chairman

At this stage the Chairman upheld the objection made by the Contracting Authority.

Continuation of Cross examination by Dr Gkaintatzi

To questions by Dr Gkaintatzi, Mr Muscat confirmed that he had worked for the Ministry of Justice for 8 years and had evaluated other tenders for other systems for other entities in the Justice Department. He also confirmed that he was present at the demo presented by European Dynamics and based on both the documentation and the demonstration, the committee had concluded that the Appellant had not demonstrated the integration of artificial intelligence or other emerging technologies into the proposed solution, and that recordings of the demonstration existed.

To questions about criterion B1, Mr Muscat answered that European Dynamics had a complete testing program except those points mentioned in the TEC's justification and that is why they deducted marks.

Dr Gkaintatzi began questioning the witness about the TEC's justification, particularly the references to the level of detail as "basic" or "very minimal." Dr Mifsud Bonnici interrupted, insisting that the Appellant cite the specific justification and direct a precise question to it, as he considered the line of questioning unclear.

Intervention by Dr Camilleri

Dr Camilleri stated that the question was clear as it was for the witness to confirm whether the concern on the part of the TEC was an issue of the level of the detail not of the offer of being compliant.

Intervention by the Chairman

The Chairman indicated that this area was already covered by Dr Camilleri in his cross examination.

On Criterion B4, Dr Gkaintatzi sought to establish whether the committee's use of the terms very minimal and very basic, referred solely to the level of detail rather than to non compliance. Mr Muscat confirmed that the justification identified specific shortcomings across the sub-criteria. In respect of sub-criteria 2D and 2E, he confirmed that the Appellant had not provided any process details for the review of test issues. He also confirmed that the reduced score applied across all sub-criteria of B4, not only to 2D and 2E, and that the concern throughout was the level of detail provided.

On Criterion B1, Dr Gkaintatzi asked whether bidders could alter the responsibilities of key experts as defined in the tender dossier. Mr Muscat confirmed that each company had a different structure and management hierarchy, and that the requirement was for a comprehensive project plan assigning responsibilities across all tasks and stakeholders.

He reiterated that the committee's finding was that only the Project Manager and the Solutions Architect had been identified as responsible parties, which did not cover all stakeholders.

Intervention by the Chairman

The Chairman noted that this line of questioning substantially covered ground already addressed by Dr Camilleri and directed the parties to coordinate their questioning in the interest of efficiency.

To further questions by Dr Gkaintatzi regarding points 2D and 2E, Mr Muscat answered that the bidder had not provided any process details and that the reduced score was awarded because the Appellant did not meet the standard for full marks, as explained in the justification. He added that the justification gave different reasons across the sub-criteria, including criterion 2F, which he said contained only very basic and minimal detail.

At this stage Dr Gkaintatzi asked if there was a possibility of a bidder changing the responsibilities defined in the tender dossier about the key experts so as to present other responsibilities, Mr Muscat repeated that as already mentioned in the TEC's justification, that responsibilities to persons, the project manger and solutions architect do not include all the stakeholders.

Intervention by the Chairman

The Chairman invited Dr Mifsud Bonnici to re-examine the witness

Re-examination by Dr Mifsud Bonnici

Dr Mifsud Bonnici referred Mr Muscat to page 10 of the BPQR section, which states that submissions would be evaluated in terms of the appropriateness and relevance of the proposed approach, conciseness, internal coherence, and level of detail. Mr Muscat confirmed that the committee had expected structured and coherent submissions enabling it to verify that the bidder could meet the tender requirements and carry out actual implementation. He noted that a well-structured submission would have reduced the need for clarification requests.

Mr Muscat confirmed that one request for clarification had been issued on the technical offer, covering three points. Referring to European Dynamics response on page 4, 2E of Article 15.6 of the Special Conditions, where allegedly the missing information was located, Mr Muscat confirmed that the Appellant had not provided any new information in its clarification response but had only cross-referenced sections already forming part of the original submission.

Mr Muscat confirmed that in its clarification response, the Appellant had not provided new information but had cross-referenced at least three different sections of the original technical offer. He described this as not the ideal way to submit a technical offer, though the committee had reviewed all cross-references in order to give the benefit of the doubt.

End of cross examination by Dr Mifsud Bonnici

At this point, the Chairman asked Dr Mifsud Bonnici if he had other witnesses. Dr Mifsud Bonnici declared that he had concluded his questions to Ms Pulis and Mr Muscat as regards the preliminary plea.

At this point the Chairman asked if there were any other witnesses.

Dr Camilleri asked Mr Konstantinos Velentzas to take the witness stand.

Testimony of Mr Konstantinos Velentzas (ID: AP140279, Athens, Greece) (Managing Director, European Dynamics Luxembourg — Summoned by Dr Joseph Camilleri

Mr Velentzas appeared via video link from Athens, Greece. He was sworn in and confirmed that he would tell the truth, the whole truth, and nothing but the truth. Mr Velentzas confirmed that he is the Managing Director of European Dynamics Luxembourg and that he was personally involved in the preparation of the tender. He stated that he follows all tenders of the group that are based on its own products and that he had participated in the team that defined the future readiness component of the bid, specifically in relation to Criterion J2.

Criterion J2 — Innovation and Future Enhancements

Mr Velentzas stated that the European Dynamics group employs approximately 1,200 experts operating across 40 countries on four continents, serving exclusively the government sector and deploying advanced technologies including artificial intelligence, machine learning, and blockchain. He cited the group's role as main supplier to the European Maritime Safety Agency, where very advanced artificial intelligence is deployed to monitor global and Mediterranean maritime traffic, as an example of its technical capabilities.

Regarding the bid, Mr Velentzas confirmed that the Appellant had presented within its submission both the level of innovation embedded in its e-platform product and its readiness to deploy further innovations. He stated that the Appellant had covered its innovation and future readiness exhaustively within the prescribed 2,000-word limit and expressed that he was unable to identify what the evaluation committee could have considered missing in terms of readiness or innovation.

Technical Demonstration

Mr Velentzas clarified that the demonstration was not left to the discretion of bidders but was required to follow a mandatory scenario set out in the tender specifications. He confirmed that he had been passively present during the official demonstration and actively present during the rehearsal conducted the evening prior, and that both presentations had followed the same scenario step by step.

He confirmed that the demonstration had specifically showcased two uses of artificial intelligence: first, the weighting of a case, whereby the system evaluates a submitted case and determines which judicial process should be followed and assigns it to the appropriate channel; and second, the use of AI for the selection of judges, whereby the system evaluates the profile and availability of judges and recommends the most suitable judge for a given case. He stated that these were the two elements requested in the mandatory demonstration scenario and that both had been demonstrated.

Mr Velentzas noted that upon conclusion of the demonstration, no negative comments had been made by the evaluators, who acknowledged that everything in the mandatory scenario had been demonstrated, and that no additional demonstration had been requested. He further noted that, in accordance with the tender specifications, the demonstration system had been left open to the evaluators for six months and remained available beyond that period. He stated that, following checks with the group's system administrators, it was his understanding that the evaluators had not accessed the demonstration system at any point after the live presentation.

Mr Velentzas also noted that while the tender specifications did not permit bidders to record the official demonstration, an audio recording of the rehearsal conducted the day prior was available and the Appellant was prepared to deliver this to the Board.

End of Mr Velentzas testimony.

Intervention by the Chairman

At this point the Chairman declared that there were no more witnesses and invited the parties to present their Final Submissions on the Preliminary Plea.

Final Submissions

Submissions by Dr Clement Mifsud Bonnici (for the Preferred Bidder, LexNova)

Dr Mifsud Bonnici opened by clarifying the scope and purpose of the preliminary plea. He explained that the plea was raised specifically and exclusively in respect of the second and third grounds of appeal filed by the Appellant, both of which concerned the Appellant's contention that it should have received a higher score on specific criteria. He noted that the utility of those two grounds was contingent on the Appellant being awarded a higher BPQR score, which, if achieved, could alter the outcome of the tender in its favour. The preliminary plea therefore served as an exit route for the Board in respect of those two grounds, without prejudice to the continuation of proceedings on the fourth ground of appeal and any new grounds arising from disclosure.

Dr Mifsud Bonnici submitted that the applicable standard of review was that of manifest error of assessment. He stated that the Board's function was not to substitute the discretion of the Tender Evaluation Committee but to identify the scoring methodology, assess whether it had been reasonably applied, and quash the decision where it had not. He submitted that in respect of each of the three criteria i.e. J2, B4 and B1 under consideration, the scoring methodology had not been reasonably applied, and that the case was not one of interpretation but one that was, in his submission, clear on its face.

He referred to page 10 of the tender dossier, which stated that where minimum requirements are not met, the offer will be deemed technically non-compliant. He further referred to Clarification Note 2, Question 4, in which the Contracting Authority had confirmed that failure to meet the minimum criteria would result in zero points being allocated and disqualification of the bid. Dr Mifsud Bonnici submitted that upholding the preliminary plea on any one of the three criteria would be sufficient to render the second and third grounds of appeal without utility.

Dr Mifsud Bonnici invited the Board to first identify the scoring methodology, then to assess whether the scoring methodology was reasonably applied by the TEC and if this was not reasonably applied then to quash that decision because in such a scenario, they did not follow the scoring methodology.

Dr Mifsud Bonnici continued that it is a clear case of how the bidder submitted its offer and how the evaluation should have been done leading to the fact that it is easy for the board to agree that the criterion should have been given a zero score.

Criterion J2 — Innovation and Future Enhancements

Dr Mifsud Bonnici submitted that the minimum requirement for Criterion J2 was that the bidder provides how it intended to integrate the emerging technologies described in the criterion. He argued that this had not been included in the Appellant's submission. He acknowledged that the submission may have addressed how the bidder was exploring emerging technologies but maintained that the requirement to explain how those technologies would be integrated had not been satisfied. He submitted that this was a matter of substance, not volume, and that the concern raised by the Appellant regarding page count and word limits missed the point entirely and zero points should have been allocated. He noted that the evaluator had confirmed on at least two occasions that the integration of emerging technologies had not been demonstrated, and that the testimony of the Appellant's own representative had not identified where in the original technical offer the integration of emerging technologies had been addressed. He invited the Board to review the submission directly and form its own view.

Criterion B4 — Testing Programme

Dr Mifsud Bonnici submitted that the minimum requirement for Criterion B4 was unambiguous, as the criterion itself called for a complete testing programme in full compliance with Article 4.4 of the terms of reference, which referred to Article 15.6 of the special conditions. He submitted that the bidder was required to comply with all requirements set out in Article 15.6 and that, based on the justification, at least two points, sub-criteria 2D and 2E, had been completely omitted from the Appellant's submission. He noted that the evaluator had confirmed on oath that the submission was not complete and had initially acknowledged that satisfaction of all requirements in Article 15.6 constituted the minimum threshold before later appearing to characterise full compliance as the maximum.

Dr Mifsud Bonnici submitted that the Appellant's clarification response, which had been selectively disclosed with only the two relevant points left un-redacted, would upon reading vindicate the evaluation committee's conclusions in respect of sub-criteria 2D and 2E.

Criterion B1 — Project Plan

Dr Mifsud Bonnici submitted that the minimum requirement for Criterion B1 was equally clear from the criterion itself, which required a detailed project plan outlining tasks, responsibilities, and timelines. He submitted that the requirement extended beyond the responsibilities of key experts as generically described in the tender; the Appellant was required to explain how the key experts and stakeholders would interact with one another within the project plan, including how they would liaise with the Contracting Authority in the customisation and implementation of a system of this nature and complexity. He submitted that this detail was entirely absent from the Appellant's submission and remained absent even after the clarification opportunity had been provided, with only the responsibilities of the Project Manager and the Solutions Architect having been identified.

On this point Dr Mifsud Bonnici reiterated that the appellant should have been given a zero and should have been found technically non-compliant.

Conclusion

Dr Mifsud Bonnici submitted that on any one of the three criteria, the Appellant should have been awarded a zero score and found technically non-compliant. He submitted that in those circumstances, the second and third grounds of appeal — which concern scoring on those very criteria — would have no utility, since any increase in score would make no difference to the eventual BPQR outcome. He confirmed that the case would continue in respect of the fourth ground of appeal and any new grounds arising from disclosure. He indicated that he would not repeat the case law on the concept of utility already cited in the reply, noting that the Board was familiar with the relevant local procurement case law and Court of Justice case law on the matter.

End of Dr Mifsud Bonnici submission. At this point the Chairman invited Dr Camilleri to submit his final submissions

Submissions by Dr Joseph Camilleri (for the Appellant, European Dynamics)

Dr Camilleri indicated his intention to follow a printed presentation covering both the preliminary plea and the request for information, of which copies had been prepared for distribution.

Intervention by Dr Mifsud Bonnici

Dr Mifsud Bonnici objected to the submission of the document, arguing that it constituted a note of detailed written legal submissions rather than a presentation in the conventional sense, and that he had not been given advance notice of its contents.

Intervention by the Chairman

The Chairman upheld the objection, noting that the Board had accepted written final submissions on only one or two occasions in five years, that the document was voluminous, and that accepting it would require time to be afforded to all other parties to do likewise, which was inconsistent with the case management dates already agreed. The Chairman assured Dr Camilleri that all arguments raised would be taken into consideration by the Board and reflected in the minutes and eventual judgment.

The mentioned documents were distributed back to the appellant.

Intervention by Dr Gkaintatzi

Dr Gkaintatzi noted, for the record, that a similar presentation had been admitted in Case 2120 and raised this in the interest of equality of arms. She stated that it was a power point presentation.

Declaration by the Chairman

The Chairman acknowledged the point but confirmed that the direction stood, and the document was returned to the Appellant. He contended that this was a separate case which has already been decided even in the Court of appeal.

Procedural Objection to the Preliminary Plea

Dr Camilleri submitted that the preliminary plea was procedurally improper. He argued that, despite being styled as a preliminary plea, the submission made by the Recommended Bidder constituted a direct attack on the evaluation committee's conclusions in respect of the Appellant's offer. He continued that what the recommended bidder is arguing is that the conclusions of the TEC should be changed in so far as the three points mentioned are concerned.

He submitted that for the Board to uphold such an argument, it would need to be faced with a formal appeal containing a request to revoke, wholly or partially, the conclusions of the contracting authority. No such appeal had been filed by the Recommended Bidder. He contended that the subject matter of the present proceedings was not whether the Appellant's tender was compliant, but rather the evaluation of the Preferred Bidder's tender and the scoring methodology applied.

Dr Camilleri referred to the judgment in Netcompany S.A. v. Dipartiment tal-Kuntratti et, decided by the Court of Appeal on 11th November 2025, which, he submitted, established that it is procedurally improper for a respondent to raise in reply issues relating to the admissibility or validity of the counterparty's bid without filing a formal appeal or counterclaim. He submitted that the true exit route available to the Board was not the preliminary plea raised by the Recommended Bidder, but rather the inadmissibility of that plea itself. He acknowledged that whatever positions the parties may have taken in previous proceedings should not be used against them, particularly where a final judgment of the Court of Appeal pointed in a specific direction.

Without prejudice to the foregoing procedural objection, Dr Camilleri addressed the substantive arguments raised by the Recommended Bidder on each of the three criteria, for the purpose of confirming that the evaluation committee had been correct in its approach and conclusions. He submitted that, if anything, the evaluation committee had not been overly generous and that the Appellant should in fact have been awarded higher points — a matter reserved for the merits stage.

Criterion J2 — Innovation and Future Enhancements

Dr Camilleri submitted that the Recommended Bidder's argument on Criterion J2 was based on a misconception and a misinterpretation of the evaluation committee's findings. He drew the Board's attention to the fact that the evaluation committee's written justification had never described the write-up as high level or low in detail.

The reference to the write-up being lacking in detail had emerged during the hearing, in the course of examination, rather than from the evaluation report itself. What the evaluation committee had actually stated was that, in its view, the demonstration had not supported the content of the write-up, a distinct and materially different finding.

He submitted that the Board had access to the seven pages of the Appellant's technical offer addressing Criterion J2 and would be in a position to confirm that explicit reference had been made to artificial intelligence, blockchain, and biometric authentication. He submitted that the requirements had been met and that the evaluation committee's assertion that the elements were not demonstrated was in itself unfounded, having regard to both the write-up and the contents of the demonstration, as explained by Mr Velentzas.

He referred the Board to paragraphs 78 to 81 of the Appellant's appeal for the more detailed technical arguments on this criterion.

Criterion B4 — Testing Programme

Dr Camilleri submitted that the arguments on Criterion B4 were based on a manifestly erroneous and selective reading of the evaluation committee's conclusions. He noted that a clarification request had been issued on 8th May 2025 and that the Appellant had replied by identifying, within its existing submission, the sections where the relevant elements could be found. He acknowledged that the evaluator had described this approach as not ideal but confirmed that the information had been located, accepted as compliant, and awarded a score of two out of three points — well beyond the minimum pass mark.

He submitted that criticism of the level of detail was not equivalent to a finding of non-compliance, and that the evaluation committee itself had expressly acknowledged compliance in respect of sub-criteria 2F, 2G and 2H, finding that information had been provided, albeit concisely. On sub-criteria 2D and 2E, he submitted that the allegations of non-compliance were unfounded and directed the Board to the following sections of the Appellant's bid:

- Plan and Methodology document (Document 1.6) Section 1.3 — Establishes a daily testing cadence and identifies Azure as the central platform for test management, issue tracking, and schedule visibility.
- Section 1.4 (Factory Acceptance Testing) — Expressly describes the report format, including a reference to a test report covering the test session, requirements and specifications, environment data, types and reports per type, testing and requirements coverage, and a conclusive pass-or-fail verdict.
- Section 1.5 (User Acceptance Testing) — Includes a test plan with progress tracking, daily schedules, real-time updates, and access to a test issue management log, establishing a structured classification system for test issues with a defined resolution process and ranking of critical issues.
- Section 1.2 — Identifies Azure as the system through which test cases are stored as distinct work items.

Dr Camilleri submitted that it was not possible to understand how, in the face of these sections, one could conclude that the testing programme requirements had not been addressed or that the offer was incomplete. He reiterated that the issue of word limits remained relevant context, as the contracting authority had itself imposed a limit of approximately 1,000 to 2,000 words per criterion, necessarily requiring concise explanations.

Criterion B1 — Project Plan

Dr Camilleri submitted that the Recommended Bidder had misconstrued the requirements of Criterion B1. He noted that the criterion required a detailed project plan outlining tasks, responsibilities, and timelines, but that nowhere in the tender documents was it stated that this project plan should set out the allocation of responsibilities for each and every individual key expert, nor was any specific format prescribed. He submitted that the reference to responsibilities was intended to refer primarily to the allocation of responsibilities between the contracting authority and the service provider as stakeholders, rather than to the internal job descriptions of individual key experts.

He further submitted that the responsibilities of the key experts had already been set out in the tender documents themselves under the key expert criteria, and that there was therefore no requirement

for the project plan to repeat that information. He argued that any such repetition would, particularly within the context of the applicable word limit, constitute redundant content rather than additional value.

Dr Camilleri referred the Board to the Gantt chart presented as Document 1.3B (Plan and Methodology) in the Appellant's technical offer, which he submitted identified which activities were attributed to the contracting authority and which fell under the contractor's responsibility. He submitted that if the contracting authority had intended bidders to present a detailed breakdown of responsibilities for each individual key expert, it would have said so expressly in the tender documents. The absence of such a requirement confirmed, in his submission, that the Recommended Bidder had misread the tender documents, a misreading which itself raised further questions about the Recommended Bidder's own understanding of the tender requirements.

He concluded that the evaluation committee had been correct in finding the Appellant's offer compliant on all three criteria and reiterated the procedural objection that the preliminary plea as raised was inadmissible in its entirety.

Intervention by Dr Gkaintatzi

Dr Gkaintatzi submitted that, on the correct interpretation of the criterion, the party that had failed to comply was the Preferred Bidder, which had in her submission exposed itself to a finding of non-compliance in its own tender.

She connected this directly to the Appellant's outstanding request for disclosure, stating that the Appellant required the documents submitted by the Preferred Bidder in reply to this criterion precisely in order to verify whether such a deficiency existed.

She confirmed that the Appellant reserves the right to add a supplementary ground of appeal in the event that the Preferred Bidder had either repeated the responsibilities already defined in the tender dossier, or had altered those responsibilities — which she submitted could itself constitute non-compliance, or had failed to include the distribution of responsibilities between the parties in its tender, which she submitted would equally amount to non-compliance on its part.

Final submissions by Dr Carlos Bugeja (for the Contracting Authority, Court Services Agency)

Dr Bugeja noted at the outset that the submissions heard during the course of the hearing had overlapped substantially with the merits of the main appeal and indicated that he would not address each item individually.

Distinction Between Insufficiency and Non-Compliance

Dr Bugeja drew a clear distinction between the Recommended Bidder's argument and the Contracting Authority's position. He submitted that Dr Mifsud Bonnici's argument was not that the Appellant's submissions were insufficient in degree, but rather that they were so deficient as to warrant exclusion. The Contracting Authority's position was that, while the Appellant's offer had been thin in certain respects, it had not been so lacking as to justify disqualification. He emphasised the difference between a submission that does not provide enough and one that provides nothing at all, submitting that the present case fell into the former category.

Procedural Objection to the Form of the Plea

Dr Bugeja addressed the procedural propriety of the preliminary plea. He acknowledged the principle established in Court of Justice of the European Union case law, including Fast web (C-100/12), PFE (C-

689/13), and Lombardi (C- 333/18), that once the legality of an award has been opened to scrutiny, a successful tenderer is entitled to question the legality of the appellant's offer in the same proceedings. He accepted that the Recommended Bidder had a legitimate interest in scrutinising the Appellant's bid.

However, Dr Bugeja submitted that his concern was not with whether such scrutiny should be permitted, but with the form in which it had been brought. He submitted that the appropriate procedural vehicle was a counterclaim or cross-appeal, and that no such counterclaim had been filed in the present proceedings. In his view, a preliminary plea was not the correct mechanism through which to contest the compliance of the Appellant's offer.

Scope of the Preliminary Plea and the Lombardi Principle

Dr Bugeja further submitted that the preliminary plea proceeded on the assumption that a finding of non-compliance against the Appellant would necessarily result in the dismissal of the appeal. He cautioned the Board against accepting that premise.

Referring to Lombardi (C-333/18, paragraph 24), he noted that the Court of Justice had stated that a counterclaim brought by a successful tenderer cannot bring about the dismissal of an action for review brought by an unsuccessful tenderer where the validity of the bids submitted by each operator is challenged in the course of the same proceedings, since in such a situation each competitor can claim a legitimate interest in the exclusion of the other's bid, which may lead to a finding that the contracting authority is unable to select any lawful bid. He submitted that this scenario, while regrettable, remained a possible outcome and that the preliminary plea therefore could not serve as the sole basis for dismissing the main appeal.

Dr Bugeja confirmed that the Contracting Authority maintained its position as set out in its reply: the Appellant's offer had been deficient in quality in certain respects but had been correctly found compliant by the evaluation committee, and the points awarded reflected that assessment. He concluded by stating that the Contracting Authority would address the merits of the main appeal in due course.

End of Dr Bugeja's submission

At this stage the Chairman invited Dr Inguanez to submit his submission.

Submissions by Dr Daniel Inguanez (for the Department of Contracts)

Dr Inguanez addressed the Board directly on the merits of the preliminary plea. He framed the Recommended Bidder's position as follows: that Criteria J2, B4, and B1, being mandatory criteria, must be wholly and completely satisfied, and that failure to do so should result in a score of zero and consequent disqualification. He respectfully disagreed with that position.

The BPQR Framework and the Proper Use of Discretion

Dr Inguanez submitted that the starting point was that the present tender was evaluated on a Best Price-Quality Ratio basis, under which evaluators are afforded a degree of leeway and discretion, and the criteria themselves may be inherently subjective as this is a matter of quality. He submitted that in the present case, the evaluation committee had concluded that the Appellant had submitted what was requested, but not to a sufficient quality to merit full points, and had reduced the score accordingly. He argued that if the Board were to accept the Recommended Bidder's reasoning, that any deficiency in substance or detail on a mandatory criterion should result in a zero score, it would effectively render the Best Price-Quality Ratio framework meaningless, and procurement would revert

in practice to a lowest-price model. He submitted that a zero score was appropriate only where a submission was completely irrelevant or entirely absent, and that the justifications provided by the evaluation committee were sufficiently clear to explain why points had been reduced rather than withheld entirely.

The Evidential Value of Witness Testimony in Procurement Proceedings

Dr Inguanez took the opportunity to make a broader observation about the conduct of procurement litigation, noting its relevance to the evidence heard during the course of the day. He observed that a pattern had emerged in the examination of witnesses whereby evaluators were asked to confirm the point allocations for each criterion, information already set out in the tender document. He submitted that this line of questioning was of no utility. If the evaluator confirmed the correct figure, nothing had been added. If the evaluator stated an incorrect figure, it was equally irrelevant, as the evaluation must be assessed against the tender document itself rather than against any statement made from the witness stand.

Dr Inguanez submitted that it was of significant concern that conclusions about the correctness of an entire evaluation process were being drawn from the performance of a witness at the hearing. He emphasised that the administrative decision is the justification as recorded in the evaluation report, and that is what must be scrutinised. An evaluator cannot, through testimony, supplement or add new reasons to that decision, nor can an evaluator's apparent uncertainty at the witness stand be treated as evidence that the evaluation was conducted incorrectly. He noted that this approach had been adopted in proceedings both before the Board and before the Court of Appeal, and submitted that it produced no utility for any of the parties involved.

Dr Inguanez concluded by submitting that if the justification itself is sufficiently clear and is not ambiguous, then that is the administrative decision, and it stands. If the justification is ambiguous, that is where review is warranted. He submitted that an appeal which cannot be grounded in an attack on the justification itself should not have been brought, and that the time spent hearing evaluators reconstruct their reasoning months after the fact served no legitimate procedural purpose.

Rebuttal by Dr Clement Mifsud Bonnici (for the Preferred Bidder, LexNova)

Dr Mifsud Bonnici offered a number of points in reply to the submissions made by the other parties.

Procedural Objection — Absence of a Counterclaim

Dr Mifsud Bonnici addressed the argument that the Recommended Bidder ought to have filed a formal appeal or counterclaim rather than raising a preliminary plea. He submitted that this was not correct in the circumstances. He noted that upon receiving communication of the outcome of the evaluation, the Recommended Bidder had been notified that it was the successful bidder and had been awarded the corresponding score. In those circumstances, it could not have appealed. The preliminary plea had been raised only in response to the letter of rejection disclosed by the Appellant upon filing its appeal. He further submitted that there was no provision in law requiring a party wishing to raise an issue on the utility of a ground of appeal to do so by means of a formal appeal, and that no such requirement could be implied.

Distinction from the Netcompany S.A. Judgment

Dr Mifsud Bonnici addressed what he described as a misinterpretation of the Court of Appeal judgment in Netcompany S.A. v. Dipartiment tal-Kuntratti et. He submitted that in that case, the plea of inadmissibility raised before the Board had been of a fundamentally different character. It had

argued that the appellant had submitted a non-compliant bid on the selection criteria and therefore had no right to appeal at all.

He noted that the Fast web judgment confirms, consistently with the Board's own case law, that even a bidder with a defective or non-compliant bid retains the right to challenge an award decision. That principle was not in dispute.

However, Dr Mifsud Bonnici submitted that the present preliminary plea was materially distinct. It did not seek to deprive the Appellant of its right to appeal entirely. It was targeted specifically at the utility of the second and third grounds of appeal, on the basis that if the Appellant should have been excluded on any one of the three criteria in question, those grounds, which seek a higher score on those same criteria, would serve no purpose, as any higher score would make no difference to the BPQR outcome. He submitted that the Appellant's right to pursue its remaining grounds of appeal was not affected by this plea.

Dr Mifsud Bonnici also noted, in his personal capacity as a lawyer, that it is entirely proper for lawyers to take different positions in different cases, as that is an expression of the rule of law and the nature of legal practice. A party, on the other hand, is not entitled to take different positions depending on the situation at hand, and if it does so, it is fair game for another party to make a submission on it.

Criterion J2 — Integration of Emerging Technologies

Dr Mifsud Bonnici submitted that despite submissions lasting over an hour, no party had explained in clear and specific terms where in the Appellant's technical offer it had been set out how the emerging technologies would be integrated into the proposed solution. He submitted that this information was simply not there. He maintained that it was entirely proper in judicial review proceedings before this Board to summon evaluators and probe the reasoning behind a letter of rejection, and that it was for evaluators to be prepared to testify. He submitted that on this point alone, the Board was entitled to intervene, and that this was not a matter of technical assessment or interpretation, if a bidder had not provided how it intended to integrate the emerging technologies, it had not met the minimum requirements of Criterion J2 and should have been disqualified.

Criterion B4 — Testing Programme

Dr Mifsud Bonnici submitted that it was significant that the references cited by the Appellant in its oral submissions in support of compliance with sub-criteria 2D and 2E were entirely different from the references that had been provided by the Appellant in its response to the clarification request at the time of the evaluation. He submitted that the evaluation committee had been guided by the clarification response actually submitted, and that on the basis of that response, the committee had been correct to conclude that there was an omission in respect of sub-criteria 2D and 2E. He submitted that it was not appropriate for the Appellant to introduce new references at the hearing stage and expect the Board to conduct its own technical review on that basis.

Closing Clarification by Dr Joseph Camilleri (for the Appellant, European Dynamics)

Dr Camilleri offered a number of clarifications in response to the final points raised by Dr Mifsud Bonnici.

On the question of whether a party or a lawyer may take different positions in different proceedings, Dr Camilleri submitted that where the courts have established a clear legal principle, any party is entitled to rely on that judgment, irrespective of what position may have been taken by any party in earlier proceedings.

On the Netcompany S.A. judgment, Dr Camilleri rejected what he described as a misrepresentation of the ratio of that decision. He submitted that the Court of Appeal's exclusion of the plea of inadmissibility in that case had not been decided on the merits of the plea itself, but on a specific procedural principle: that a respondent cannot, through its reply, attack the admissibility or validity of the offer made by the appellant. He noted that Dr Bugeja had articulated this point with clarity, the issue was not whether the Recommended Bidder had a right in principle to raise an admissibility plea based on the contents of the Appellant's offer, but whether the Recommended Bidder, not being the appellant in these proceedings, was in a position to do so at all.

Dr Camilleri further submitted that characterising the preliminary plea as going solely to admissibility and utility, rather than to the merits, did not resolve the fundamental difficulty: in order to establish that the second and third grounds of appeal lack utility, the Recommended Bidder necessarily required this Board to find that the technical evaluation committee had been wrong in its assessment of the Appellant's offer. This cannot be done in the case because the recommended bidder is not the appellant. He submitted that this finding could not be sought by the Recommended Bidder in the present proceedings, as there was only one appellant before the Board, and that was European Dynamics Consortium.

Response by Dr Clement Mifsud Bonnici (for the Preferred Bidder, LexNova)

Dr Mifsud Bonnici, in a brief rejoinder, referred the Board specifically to paragraph 30 of the Netcompany S.A. judgment, submitting that the point decided in that case concerned a situation where the Preferred Bidder had failed to appeal from the PCRB's decision to the Court of Appeal, a distinct procedural stage, and had nothing to do with the award decision itself. He submitted that the judgment was therefore distinguishable on its facts from the present proceedings.

The Chairman confirmed that the Board would review all cited judgments and technical submissions in detail before proceeding and called a short recess.

Part 2: Afternoon Session Hearing on the First Grievance regarding Disclosure of Information

Preliminary Remarks and Witness Intentions

The Chairman opened the afternoon session by inquiring whether any witnesses would be called.

Dr Camilleri confirmed that Mr Velentzas, who had already testified in the morning session, would be recalled addressing the purpose and relevance of the Appellant's documentation requests.

Dr Camilleri noted that the requests had been characterised in recent correspondence as a fishing expedition; and even a trolling expedition. While acknowledging the touch of humour, he stated that Mr Velentzas would explain that the requests were substantive and grounded in founded suspicions rather than in any speculative purpose.

Intervention by the Chairman

The Chairman invited Dr Camilleri to indicate whether he wished to make initial submissions before proceeding to the witness;

Dr Camilleri confirmed that he would proceed directly to the witness to avoid repetition.

Intervention by Dr Inguanez

Reconsideration of Position by the Contracting Authority and Agreed Disclosures

Prior to the testimony, Dr Inguanez informed the Board that the Contracting Authority had reconsidered its position on a number of points in the Appellant's application for the disclosure of information and proposed to resolve those points by consent, leaving only the contested items for the hearing. Following discussion, the Contracting Authority, the Department of Contracts, and the Preferred Bidder reached agreement on the following:

- Point A1 (ESPD): The Contracting Authority agreed to disclose the European Single Procurement Document of the Preferred Bidder. Dr Mifsud Bonnici consented, noting that if the submission had been made using a tender response form rather than a separate ESPD, that form should be disclosed instead, subject to redactions for personal details.

- Point A2 (Reference Letters): Disclosure was agreed in respect of reference letters regarding reliance on third parties, subject to redaction of commercially sensitive information and personal data.

- Point A3 (Consortium Documentation): Dr Mifsud Bonnici confirmed that no subcontractors had been nominated and that there were therefore no documents to disclose beyond those already covered under Point A1.

- Point D (Key Experts): The Contracting Authority and LexNova agreed to disclose the curricula vitae of key experts, with identities fully redacted to ensure that the experts remained non-identifiable, in accordance with paragraphs 77 to 79 of the relevant authority cited by Dr Mifsud Bonnici.

- Point F1 (ISO Certificates): LexNova raised no objection to the disclosure of these certificates.

- Point H (Tender Evaluation Committee Members): The names, roles, and qualifications of the Tender Evaluation Committee members were considered moot, given that their identities had already been disclosed in the course of the morning session.

Intervention by the Chairman

The Chairman confirmed that Points A1, A2, A3, D, F1, and H were effectively resolved. The Appellant confirmed that it had no objection to the redaction of key expert identities. The Board proceeded to consider the remaining contested items.

Additional Requests by the Appellant

At this point, Dr Gkaintatzi introduced additional requests arising from developments during the proceedings, noting that the original request had been filed on 18th February 2026, the day following the delivery of the rejection letter, and that the additional requests had arisen in light of the Preferred Bidder's reply and the submissions made during the morning session.

In addition to the original request under Point C for the Preferred Bidder's demonstration recording, the Appellant requested the disclosure of its own official demonstration recording, which had been recorded by the Contracting Authority, to be made available to counsel only, so as to enable the Appellant to extract specific relevant parts. The Appellant confirmed that it possessed only recordings of its rehearsals and that the official recording was necessary to respond to the Preferred Bidder's preliminary plea in connection with Criterion J2.

Intervention by the Chairman

The Chairman stated that he would need to hear replies by the Contracting Authority and DOC because for sure they would have had reasons for writing the tender as it was written.

Intervention by Dr Camilleri

Dr Camilleri clarified that although these sections had been discussed in the context of the preliminary plea, the request for additional requirements are needed for the purposes of the appeal proceedings, also in the light of the submissions which have been made by the respective parties and directed at the merits of the appeal rather than the resolution of the preliminary plea itself.

Continuation of Dr Gkaintatzi intervention

Dr Gkaintatzi then outlined the additional technical sections required from the Preferred Bidder's offer:

- Criterion C1 (Available Functionalities): The Appellant requested the template completed by the Preferred Bidder, in order to perform calculations verifying whether the scoring gap — eight out of ten compared to three out of ten —was justified by the percentage of readiness declared.

- Criterion C2 (Word Count Verification): The Appellant requested the Preferred Bidder's write-up in order to verify whether the mandatory 1,000 to 2,000-word limit had been respected.

- Criterion B1 (Project Plan): The Appellant sought the Preferred Bidder's reply to confirm whether stakeholder responsibilities had been included, omitted, or improperly altered relative to the definitions set out in the tender dossier.

- Criteria B4 (Testing Programme), I1 (User Interface), and J2 (Innovation): The Appellant requested these write-ups to verify compliance with the minimum requirements and the word count limit, for the common reason of establishing whether the Preferred Bidder had exceeded the word limit in all these criteria, as well as for specific reasons particular to each criterion. Dr Gkaintatzi explained that these specific requests had not been anticipated at the time of the original disclosure request, as the Appellant had not then expected that the Preferred Bidder might have failed the minimum requirements, and that the suspicions which gave rise to these requests had arisen only upon reading the Preferred Bidder's reply.

Intervention by the Chairman

At this point the Chairman invited the Preferred Bidder and the Contracting Authority to submit any comments as regards Dr Gkaintatzi's intervention

Objections by the Preferred Bidder

Dr Mifsud Bonnici objected to the additional requests on the grounds that they had been made at the last minute, 37 days having elapsed since LexNova had filed its reply. He submitted that if additional requests were necessary, they should have been submitted by means of a formal written application in the ordinary course of proceedings. He continued that the new requests are already covered in the requests for the technical offer.

Interventions by Dr Camilleri

Dr Camilleri stated that, apart from the technical issues related to the preliminary plea, the hearing had not yet reached a stage at which evidence on the merits had commenced. He reiterated that this request was not premature and addressed the need to obtain these documents, noting that the alternative would be to put questions to a technical witness to obtain the same information.

Intervention by Dr Gkaintatzi

Dr Gkaintatzi noted for the record that she had previously attempted to file the additional requests in writing but had been informed by the Board's secretariat that no further written requests should be filed at that stage.

Board Ruling on Additional Requests

The Chairman ruled that, having regard to the first three and a half hours of the hearing, no new information had come to light sufficient to justify entertaining the additional requests at that juncture. He noted that any new grounds of appeal may only be introduced if new information comes to light during the hearings, and that the word count issue, while acknowledged, could be addressed at a later stage without requiring the immediate disclosure of all technical write-ups.

Dr Camilleri formally requested that the ruling be minuted and reserved the Appellant's right to oppose it accordingly.

The Chairman confirmed that this would be recorded.

Board Observations and Procedural Directions

The Chairman explained that all grievances are listed in a detailed manner within a 10-day period and that in five years of chairing the Board, he had not received as many pre-hearing communications as had been sent in the present case. He reminded all parties that the spirit of the law intends for cases to be heard and concluded efficiently, ideally within a single sitting, and that adherence to this principle was a matter to which the Board was required to give effect.

The Chairman reiterated that any new grievances that can be added can only be added once any new information comes to light in some part of the hearing. He confirmed that the remaining hearing would focus on the original outstanding contested disclosure requests and directed the parties to proceed accordingly.

Intervention by Dr Gkaintatzi

Dr Gkaintatzi stated that, in her concluding submissions on the preliminary plea, she had explicitly noted that the Appellant had doubts as to whether the Preferred Bidder had complied with the relevant criterion. She explained that the responsibilities of key experts had been explicitly set out in the tender dossier and that no bidder could change them. She submitted that the word "responsibilities" in the criterion referred to the responsibilities between the stakeholders, meaning between the contracting authority and the contractor. She advanced two alternative grounds of concern: first, that if the Preferred Bidder had described responsibilities other than those explicitly set out in criterion K, it would be evident that it had not complied with the tender requirements; and second, that if the Preferred Bidder had limited itself to describing the responsibilities of key experts without providing the distribution of responsibilities between the contracting authority and the contractor, then a mandatory part of the requirement would not have been met. She submitted that it was therefore crucial to have the Preferred Bidder's reply on Criterion B4. She further noted that

the 1,000 to 2,000-word limit was a mandatory requirement and that it was important to establish whether the Evaluation Committee had awarded a high score to the Preferred Bidder despite non-compliance with that requirement, as this would amount to the application of undisclosed criteria.

Intervention by Dr Camilleri

Dr Camilleri stated that the reason why this information was being requested was not linked to the preliminary appeal but to the actual merits of the appeal. He noted that these points had arisen in the context of the explanations given during testimony in connection with the preliminary plea, but that the Appellant was not requesting them because they were required to decide the preliminary plea.

Objection by the Contracting Authority

Dr Bugeja submitted on behalf of the Contracting Authority that nothing that had transpired during the hearing had given rise to the additional requests, and that their substance was already encompassed within the existing requests under consideration.

Objection by Dr Mifsud Bonnici

Dr Mifsud Bonnici insisted that that this request has no utility at all.

Intervention by the Chairman

The Chairman stated that, from what the Board had heard during the morning session, no new information had come to light which would allow additional requests for information to be entertained and declared that the hearing would continue with the remaining points.

He invited Dr Camilleri to call further witnesses.

Intervention by Dr Camilleri

Dr Camilleri insisted that this decision is to be minuted. The Chaiman agreed. Dr Camilleri asked for the testimony of Mr Velentzas (online).

Witness Testimony

Testimony of Mr Konstantinos Velentzas (Recalled) — Summoned by Dr Camilleri (for the Appellant, European Dynamics)

The Chairman reminded Mr Velentzas, appearing by video link from Athens, that he remained under oath from the morning session. Mr Velentzas confirmed this.

Dr Camilleri directed Mr Velentzas to address why the specific documentation had been requested, and in particular why those requests were based on founded suspicions rather than on a vague or speculative search for shortcomings.

Mr Velentzas confirmed that he is an electrical engineer specialising in information technology and therefore possesses a technical understanding of the products that goes beyond administrative management. He stated that European Dynamics does not require competitor information to compete effectively, given its long-standing role as supplier to the European Commission, the European Prosecutor's Office, and various national judiciaries. He noted that the LexNova solution is based on software developed by a company called Synergy, which had previously sought to cooperate with European Dynamics, a proposal that European Dynamics had declined. He observed that Synergy's publicly available information on artificial intelligence had first appeared in late November

2025, raising questions as to whether comparable capabilities had been available or demonstrated at the time of the tender evaluation.

Mr Velentzas submitted that the requests concerned Criteria I1 and J2 in particular, where he contended there was nothing commercially confidential, and that the Appellant was prepared to disclose its own corresponding submissions. He argued that the significant disparity in scores, for example, three out of ten compared to eight out of ten, was not substantiated by the available evaluation material and could not be explained on the basis of publicly available market information. He maintained that the information requested was necessary to verify whether the evaluation had been conducted with equal treatment, particularly in relation to the word count constraints applicable to all bidders.

Intervention by Dr Bugeja

Dr Bugeja objected to this presentation and stated that this is not an advert of what European Dynamics does. He asked why European Dynamics want information on A1, A2, A3, A4 and A5 to make an effective appeal.

Intervention by Dr Mifsud Bonnici

Dr Mifsud Bonnici insisted that feelings had no bearing on the hearing and that evidence must be relevant to the first ground of appeal. He submitted that nothing presented had been relevant and that the witness was making submissions that were uncorroborated.

Intervention by Dr Camilleri

Dr Camilleri explained that the point at issue was why the witness had concluded that there were grounds to contest the validity of the offer of the recommended bidder, and that very specific documents were needed to prove those suspicions.

Intervention by the Chairman

The Chairman directed Mr Velentzas to focus specifically on the outstanding contested requests, Points B, C, E, F2, and G, and to address why that information was necessary without elaborating further on the comparative merits of the respective products.

Continuation of Mr Velentzas testimony

Mr Velentzas stated that, based on publicly available information, the Preferred Bidder did not offer anything more than the Appellant, and that there was no material justifying the significant difference in scores. He stated that all the material requested, especially Criteria I1 and J2 but also C, B, and G, was important to demonstrate three things: that the Appellant offered more, that its offer was fully compliant, and that it had respected the 1,000 to 2,000-word limit. He added that the Preferred Bidder had admitted in its documents that it had not respected that requirement, and raised the issue of equal treatment, noting that it was not acceptable for the Appellant to receive a low score on grounds of insufficient detail if it had respected the word limit while the Preferred Bidder had received a high score despite potentially exceeding it. Mr Velentzas confirmed that all the requested information was important to understand the basis for the significant scoring gap and to verify whether equal treatment had been applied across bidders.

Cross-Examination of Mr Velentzas by Dr Daniel Inguanez (for the Department of Contracts)

Dr Inguanez confirmed that Mr Velentzas's conclusions regarding the Preferred Bidder's capabilities were based solely on publicly available information from YouTube, LinkedIn, and the Synergy

corporate website. Mr Velentzas confirmed this and clarified that he was not asserting that the Preferred Bidder had not offered something more in its tender submission, but that he did not know what had been offered, which was precisely why the disclosure of those documents was being requested. The Chairman thanked Mr Velentzas and confirmed that no further witnesses would be called.

Final Submissions

Submissions by Dr Joseph Camilleri (for the Appellant, European Dynamics)

Dr Camilleri addressed the Board on the general principles governing the disclosure of documents, noting that the Board was well versed in striking the appropriate balance between the protection of confidentiality and the requirements of equality of arms, access to justice, and the right to an effective remedy. He referred to previous proceedings before this Board in which European Dynamics had been involved, in which the Board had ordered various documents to be made available, with confidentiality addressed through mechanisms such as provision to counsel only or appropriate redaction.

He submitted that the documentation requests were not based on a vague hope of finding shortcomings, but on founded suspicions arising from the significant disparity in scores that could not be explained on the basis of publicly available information.

He confirmed that the requests had been made originally prior to the filing of the appeal, in order to understand what had been offered and to identify any available remedies, and that the first grievance arose directly from the Contracting Authority's failure to respond.

On the technical offer write-ups, Dr Camilleri submitted that these were indispensable to assess whether the evaluation committee had correctly applied the Best Price-Quality Ratio methodology and whether the Preferred Bidder had been awarded higher marks despite potentially exceeding the word count limit. He submitted that no bidder should receive additional points for breaching a tender requirement. He noted that parts strictly confidential could and should be redacted, but that redactions should not undermine the Appellant's ability to verify compliance with the tender requirements or its right to an effective remedy.

On the demonstration recordings, Dr Camilleri submitted that access to both the Appellant's and the Preferred Bidder's recordings was necessary to verify that the evaluation committee had correctly assessed the live presentations. He noted that the Appellant had not been permitted to record the demonstration and therefore did not have access even to its own recording, which was held solely by the Contracting Authority.

On the financial bid form, Dr Camilleri submitted that this was necessary to verify that the financial evaluation had followed the pricing template and methodology set out in the tender documents.

On the full evaluation reports, Dr Camilleri submitted that the scoring in certain identified areas was inexplicable and that access to the evaluation reports was the only means of understanding the reasoning behind the scores and determining whether the disparity was justified. He noted that the Appellant had not challenged the scoring across all criteria, but specifically in those areas where the results made no sense at face value.

On the clarification requests and replies, Dr Camilleri submitted that this information was necessary to verify transparency and equal treatment, and sound administration and specifically to ascertain whether the Preferred Bidder had been permitted to modify or improve its offer beyond permissible limits.

On the GDPR questionnaire, Dr Camilleri submitted that this was requested to confirm that the evaluation committee had properly verified conformity with data protection obligations.

On the Tender Evaluation Committee members, Dr Camilleri noted that while the names had been provided during the hearing, the Appellant requested the right to question the members regarding their background and experience at the merits stage, as was consistent with general practice before this Board.

Dr Camilleri concluded by reiterating that the Contracting Authority's agreement on several points confirmed that some of the originally requested information was not, in fact, controversial, which made it difficult to understand why that information had not been provided at the outset. He emphasised that the Contracting Authority's complete silence had amounted to an implicit refusal, which had given rise directly to the first grievance. He further submitted that this silence had also caused the Appellant to potentially miss other grievances which it could not have identified without the requested documents.

Supplementary Comment by Dr Polyxeni D. Gkaintatzi (for the Appellant)

Dr Gkaintatzi stated that she wished to underline that through the Appellant's initial request, the whole technical offer submitted by the Preferred Bidder had been requested, and that the reference to Criterion B4, for example, was not a new request introduced during the hearing but formed part of that original request. The Chairman confirmed that this was reflected in the initial report. Dr Gkaintatzi added that as regards the customisation detail, she could see no basis for a confidentiality objection, since it had been a sample format common to all bidders, and that there was therefore no ground for confidentiality objections in that respect.

Interventions by Dr Bugeja and Dr Camilleri

Dr Bugeja pointed out that that it was mentioned that there was no information that the meeting was being recorded. He stated that a letter sent to all parties indicated the date for the viewing of the demo and that it will be recorded.

Dr Camilleri confirmed that the Appellant was aware that the demonstration had been recorded, and clarified that the Appellant's position had simply been that it had not been permitted to make its own recording during the session.

At this point the Chairman invited Dr Inguanez to submit his final submissions.

Submissions by Dr Daniel Inguanez (for the Department of Contracts)

Dr Inguanez requested that the Board apply the two-part test established in Antea Polska (C-54/21, paragraphs 71 and 103) in assessing each disclosure request. The first element, the harm test, requires assessment of whether disclosure would prejudice legitimate commercial interests or distort fair competition.

The second element, the effective remedy test, requires assessment of whether the information is strictly necessary to enable an effective challenge to the administrative decision.

On the technical offer write-ups, Dr Inguanez submitted that the technical offer was commercially sensitive, as it contained proprietary solutions and innovations developed at the discretion of the bidder. In order to assess the usefulness of this information for European Dynamics one has to make reference to the appeal.

On the word count concern specifically, he proposed that the Board itself verify the word counts of both bidders on the relevant criteria, without granting the Appellant direct access to the competitor's technical solution. He submitted that the justification of verifying the word count did not warrant disclosure of the underlying technical content.

On the demonstration recordings, Dr Inguanez noted an inconsistency in the Appellant's request. European Dynamics had requested its own demonstration recording while simultaneously seeking LexNova's recording yet had indicated it wished to extract only specific parts of its own. He submitted that this confirmed that even the Appellants own demonstration revealed commercially sensitive technical information, which engaged the harm test under Antea Polska. He maintained that the core of the grievance was a question of law regarding the evaluation committee's justification and did not require disclosure of either recording. He confirmed that the Department had no objection to the Appellant receiving a copy of its own demonstration recording, subject to consideration of how it would be used in the proceedings.

On the GDPR questionnaire, Dr Inguanez submitted that this document revealed LexNova's technical suppliers and internal data processing policies, and was therefore commercially sensitive. He noted that no grievance directly addressed GDPR compliance as such.

On the full evaluation file, citing Evropaïki Dynamiki v. European Commission, Dr Inguanez submitted that there was no general right to access an entire administrative file, and that only information strictly necessary to render the appeal effective should be disclosed.

On the Tender Evaluation Committee members, Dr Inguanez reiterated that the European Ombudsman regards the disclosure of evaluators' identities as a breach of personal data. Since the members had testified voluntarily, the identity issue was moot. He questioned the relevance of their qualifications and reserved the right, in the event of an order to disclose them, to seek a corresponding order for European Dynamics to identify and provide the qualifications of the persons who had prepared its bid.

Submissions by Dr Clement Mifsud Bonnici (for the Preferred Bidder, LexNova)

Dr Mifsud Bonnici submitted that the outstanding disclosure requests were wide in scope, untargeted, and disproportionate, and that the information provided to the Appellant at the time of rejection, including the full justification for each criterion, had been sufficient to identify the grounds of appeal and to preserve the effectiveness of the judicial remedy. He submitted that what the Appellant was in fact requesting was for the Board to subcontract its investigative function to the Appellant, which was contrary to the established role of the Board as a reviewing authority rather than an investigator.

He referred to Regulations 272 and 242, subparagraph 2, which set out the minimum information to be provided to an unsuccessful bidder, and submitted that the Contracting Authority had provided more than the law required. He noted, in that regard, that the detailed criterion-by-criterion justifications furnished to the Appellant were, in his personal view, commercially sensitive and should not have been disclosed, though they had been, and that in any event the Appellant had received sufficient information to identify its grounds of appeal.

On the financial bid form, Dr Mifsud Bonnici submitted that this was among the most commercially sensitive categories of information in a procurement procedure, as it disclosed the bidder's pricing strategy, unit costs for post-implementation maintenance and support, and milestone-based financial breakdowns. He submitted that disclosure would expose the Preferred Bidder's commercial strategy and would risk facilitating collusion and coordinated conduct in breach of competition law.

On the GDPR questionnaire, he confirmed that the document contained sensitive information regarding internal data processing policies and technical suppliers, and was commercially sensitive for the same reasons.

On the technical offer, demonstration recordings, and evaluation report, Dr Mifsud Bonnici submitted that disclosure should be refused on three grounds arising from Regulation 242, subparagraph 3, and referred the Board to the South Lease judgment of the Court of Appeal in support of this position. First, that disclosure would be contrary to the public interest, as it would undermine the trust of private sector bidders in the confidentiality of their technical submissions, which is fundamental to the integrity of the public procurement system. Second, that the technical offer contained proprietary information representing a legitimate commercial interest of the Preferred Bidder, which had not been placed in the public domain and which a competitor, by the Appellant's own admission, actively monitored. Third, that disclosure of technical information would risk prejudicing fair competition, in potential breach of competition law. He submitted that the demonstration was an illustration of the technical offer and was therefore covered by the same considerations, and that the evaluation report, insofar as it contained summaries of the technical content, was equally commercially sensitive.

He further noted, in respect of clarifications and rectifications, that no clarification had been issued on the technical offer of the Preferred Bidder because the offer had been cohesive and clear, and that in any event any clarifications relating to technical criteria would be covered by the same commercial sensitivity principles.

He referred to the Netcompany S.A. proceedings before this Board, in which comparable requests, including for the technical offer, technical literature, and demonstration had been refused, and submitted that the requests in the present case were even broader in scope.

Intervention by Dr Gkaintatzi

Dr Gkaintatzi stated that it was not the provisions of the Directive but Article 47 of the Charter of Fundamental Rights of the European Union, which is directly applicable and constitutes primary law, that was at issue. She submitted that this provision prevails over national laws and that it was precisely this right that European Dynamics, as the Appellant, relied upon. If the necessary documents were not provided, it was this right that would be violated, rather than any provision of the Directive. She reiterated that, even if there were a discrepancy between a provision of a Directive and the national provision, the latter should be interpreted in accordance with EU law.

She further noted that she had not heard anything addressed in respect of the customisation detail and insisted that the format had been the same for all bidders, such that there could be no objection to its disclosure, and that one of the three options should have been selected.

She referred to Case 1973 of 2024 (PCRB), which decreed that "in order to ensure that the evaluation process meets the standards of transparency and sound administration, it is essential to know the professional qualifications of the evaluator." She stated that because the subject matter concerned a very complex IT system, proven expertise and experience on the part of the evaluators needed to be verified.

Clarification on Demonstration Recording by Dr Carlos Bugeja (for the Contracting Authority)

Dr Bugeja clarified for the record that the invitation letter giving the date for the demonstration had explicitly stated in its last line, in bold, that the meeting would be recorded, a copy of which formed part of the agenda documents. He noted this to address what he characterised as a suggestion that

the recording had been made without the bidders' knowledge and stated that he would not comment on what the misunderstanding reflected about the reading of the tender documents.

Dr Camilleri confirmed that the Appellant was aware of this. The Chairman intervened to clarify that the Appellant's request was simply for a copy of the recording. Dr Camilleri confirmed this, stating that the Appellant's position had been that it had not been permitted to make its own recording during the session. Dr Bugeja acknowledged the clarification.

Closing

The Chairman thanked all parties present for their submissions and formally concluded the hearing.

End of Minutes for the 1st Board Sitting

Meeting Minutes for the 2nd Board sitting on the 8th of June 2026

On June 8th, 2026, at 09:00 am, the PCRB reconvened, for a hearing following the first hearing held on the 15th of April 2026.

The Board was composed of:

- Mr. Kenneth Swain – Chairperson
- Dr Ing Damien Gatt – Member
- Mr Keith Victor Grech – Member

The attendance for this public hearing was as follows:

Appellant – European Dynamics Consortium.

Dr Joseph Camilleri – Legal Representative.

Mr Kyle Decelis – Legal Representative.

Dr Polyxeni D. Gkaintatzi – Company Representative.

Mr Konstantinos Velentzas – Company Representative. (online).

Contracting Authority – Court Services Agency

Dr Carlos Bugeja – Legal Representative.

Dr Ismael Vella – Legal Representative.

Ms Mariella Pulis – Chairperson.

Mr Marvin Muscat – Evaluator.

Mr Marius Mifsud – Evaluator.

Ms Charmaine Bugeja – Evaluator.

Department of Contracts

Dr Daniel Inguanez – Legal Representative.

Dr Ramona Galea – Legal representative.

Preferred Bidder – LexNova Consortium.

Dr Clement Mifsud Bonnici – Legal Representative.

Dr Calvin Calleja – Legal Representative.

Mr Clayton Axisa -- Consortium Representative.

Mr Tilen Levin – Consortium Representative. (online).

Mr Artush Ghandilyan – Consortium Representative. (online).

Opening Statements

The Chairman welcomed the parties present for this second hearing Case number 2229 in the records of the PCRB and formally opened the session. The Chairman identified the Appellant as European Dynamics Consortium, the Contracting Authority as Court Services Agency and acknowledged the presence of the representative of the Recommended Bidder, LexNova Consortium.

The Chairman noted that a number of submissions, additional documentation, grievances and replies had already been filed in the proceedings and indicated that these need not be restated during the hearing in the interest of efficiency. Dr Joseph Camilleri agreed that the parties should proceed directly with the hearing of witnesses, with submissions to be made at the end. He informed the Board that the Appellant intended to examine members of the Evaluation Committee, beginning with the Chairperson and technical members, and also indicated that Mr Velentzas, representative of the Appellant company, was available to testify. The Chairman confirmed that the order of witnesses would be left to the Appellant.

Witness Testimony

Testimony of Ms Mariella Pulis (ID: 224281M) (Chairperson, Tender Evaluation Committee) - Examined by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for the appellant

Ms Pulis was called to testify and was examined by Dr Joseph Camilleri on behalf of the Appellant.

Role of the witness and composition of the Evaluation Committee

Ms Pulis confirmed that her role in the evaluation of the tender was that of Chairperson of the Evaluation Committee. She confirmed that, in her role as Chairperson, she had no voting rights. She stated that her role was to see that what was being discussed was within the procedure.
When asked what she understood by "within the procedure", Ms Pulis stated that this referred to the procedure of the marking scheme, including the maximum and minimum marks, whether a requirement was mandatory, and whether it was an add-on.

Ms Pulis stated that she had worked in procurement for the past fifteen years and had served as Chairperson on several tenders. She confirmed that she did not have specific training or experience in IT matters, stating that this was why technical experts formed part of the Evaluation Committee.

Ms Pulis confirmed that two of the evaluators had a technical background in IT. When Dr Camilleri referred to Mr Marvin Muscat and Mr Marius Mifsud, Ms Pulis confirmed that these were the technical persons in IT. She also confirmed that Ms Charmaine Bugeja was an evaluator, worked at the Court Services Agency, and knew the "as-is" and what "to-be" was needed.

Involvement in drafting and external expertise

Ms Pulis stated that she was not aware whether any members of the Evaluation Committee had been involved in the drafting of the tender documents. When asked to clarify whether she knew that they were not involved or whether she did not know, Ms Pulis stated that she did not know.

In relation to the technical aspects and the evaluation of the technical aspects of the offer, Ms Pulis confirmed that the Evaluation Committee did not rely on any external technical expertise. She stated that there was no need for any external expert.

Evaluation and marking process

Ms Pulis explained that the marking process was followed as written in the tender. She stated that the maximum was given where the information presented met and exceeded all the minimum requirements, and that 100% was given when the submission exceeded the requirements.

Ms Pulis stated that the evaluators discussed and agreed on the mark. She added that, if there had been an instance where the evaluators did not agree, the average should have been taken. When asked whether there were any such disagreements in this case, Ms Pulis stated that the marks were agreed in all cases. She confirmed that the reference to the average was a statement of the procedure and that there was no need to apply it in this case.

When asked whether different bidders could all receive the maximum marks or whether the marks were calculated as a ratio or average after comparing bids, Ms Pulis stated that the bid was compared to the tender and not to the other bids. She confirmed that the requirements of the tender were checked and marks were given on that basis.

Consortia and joint ventures

In relation to consortia or joint ventures, Ms Pulis stated that the tender documents did not require each party to indicate which section of the tender, or which specific obligations, it would be responsible for. She stated that the consortium was taken as a whole, as the bidder.

Ms Pulis further stated that the key experts and their roles were listed, so that one could determine from where and which role was being carried out. Dr Camilleri put to her that, where key experts were indicated, it was possible to identify which key experts would be responsible for what. Ms Pulis answered in the affirmative. Dr Camilleri then put to her that, other than that, the consortium would be responsible jointly. Ms Pulis confirmed that this was so.

Word-count requirement and description of functionalities

Dr Camilleri asked Ms Pulis about the issue of word limits and the description of functionalities, and whether any discussion had been held between the members of the Evaluation Committee touching upon the issue of word limits and whether they had been respected. Ms Pulis stated that the tender clearly said that the word count had to be approximate, and that therefore there was no need.

When Dr Camilleri reminded the witness that the tender referred to approximately 1,000 to 2,000 words and asked whether the actual word counts indicated in the tender document had been taken into account, Ms Pulis stated that they had not. She stated that there was no need as long as it was not very few words. When asked what she understood by “very few words”, she answered “less than 1,000, maybe, more or less.”

Dr Camilleri asked whether Ms Pulis considered the limit to be 3,000 words. Ms Pulis stated that there was no limit because it was not written.

Intervention by Dr Clement Mifsud Bonnici

At this point, Dr Clement Mifsud Bonnici objected that the question was direct and very leading. Dr Camilleri stated that he was trying to understand because he considered the answers to be contradictory. Dr Mifsud Bonnici stated that, since this was examination-in-chief, that form of questioning was not permissible.

Following the objection, Dr Camilleri rephrased the question and asked Ms Pulis what she understood by "approximate". Ms Pulis answered that it was "like the average." Dr Camilleri then referred again to the specific wording "approximately 1,000 to 2,000 words" and asked whether that changed her reply and what she meant by "average" in that context. Ms Pulis stated that the Evaluation Committee had not done the word count, that there was no need because the requirement was approximate, and that there was no listed limit or minimum expressed as "not less than". She stated that, since the wording was approximate, there was no need to do the word count.

When Dr Camilleri asked whether the Evaluation Committee had actually done the word count, Ms Pulis answered in the negative. Dr Camilleri then stated that he had no further questions at that stage.

Cross examination by Dr Clement Mifsud Bonnici

Dr Mifsud Bonnici asked Ms Pulis whether the tender dossier and the clarifications nowhere provided for the express disqualification of a bidder if the write-up was in excess of a word count. Ms Pulis agreed. Dr Mifsud Bonnici then asked whether, on the other hand, the tender dossier, specifically in relation to the Best Price-Quality Ratio (BPQR), expressly provided that a bidder would be disqualified if the minimum requirements were not met. Ms Pulis agreed. Dr Mifsud Bonnici then stated that he had no further questions.

Re-examination by Dr Joseph Camilleri

Dr Camilleri indicated that he wished to ask one question regarding the experience requirement in the selection criteria. When Dr Camilleri began his question by asking Ms Pulis to confirm whether any of the bidders had done something, Dr Mifsud Bonnici objected that the question could not start in that manner and that it should be indirect. The Chairman directed Dr Camilleri to rephrase the question.
Dr Camilleri then asked whether any of the bidders were asked for clarifications about the experience quoted. Ms Pulis answered in the affirmative. When Dr Camilleri asked for details, the Chairman stated that, if need be, Ms Pulis could be provided with extracts of the evaluation report and indicated that the answers were to be given accordingly.

Clarifications on experience and eligibility

Ms Pulis stated that various bidders were asked about eligibility. Dr Camilleri confirmed with the witness that this was not restricted to one bidder. In relation to ongoing projects referred to by bidders, Dr Camilleri asked how the Evaluation Committee approached the matter and whether it considered the value of ongoing projects. Ms Pulis stated that the committee took into consideration the years. When asked what she meant by "years", she stated that this referred to the period between 2019 and 2023, and that post-implementation was also included, as listed in the tender. When asked how the values of ongoing projects were calculated if they were taken into account, Ms Pulis stated that the total was taken.

Questions by Dr Polyxeni D. Gkaintatzi

Dr Polyxeni D. Gkaintatzi asked whether clarifications had been requested on the value of the services already provided. Ms Pulis stated that clarifications had not been requested directly on the value. She added that, if a reference was not included as eligible, the bidder had to provide a new submission including the new value.

Intervention by Dr Clement Mifsud Bonnici and the Chairman

Dr Gkaintatzi then asked whether the crucial factor for the Evaluation Committee was only the nominal value and nothing more. Dr Mifsud Bonnici objected that the question was very direct and stated that it was not how it was to be done. The Chairman directed that the question be replaced.

Dr Gkaintatzi asked whether the Evaluation Committee took into account the whole value of a contract even if the contract had just begun. Dr Mifsud Bonnici again objected and asked that the question be tried again. The Chairman directed that the question be rephrased.

Dr Gkaintatzi then asked which value of the contract was crucial. Ms Pulis answered that it was the value of the experience. When asked whether this meant the actual value of the actual services provided or the whole value, Ms Pulis answered, "Of the whole bidder. As a whole." When Dr Gkaintatzi asked whether she meant the whole reference project, Ms Pulis answered in the affirmative.

Intervention by the Chairman

The Chairman indicated that the cross-examination was to be on the points that had been raised during the examination.

Cross examination by Dr Clement Mifsud Bonnici

Dr Mifsud Bonnici asked Ms Pulis whether the technical and professional ability for which the projects were cited formed part of the selection and eligibility criteria. Ms Pulis answered in the affirmative.
Dr Mifsud Bonnici asked whether, in the case of the selection criteria, what the Tender Evaluation Committee had to do was to rely on the bidders' self-declarations in the ESPD and in the bid. Ms Pulis answered in the affirmative, referring to the ESPD and the reference of the professional ability.

Dr Mifsud Bonnici then asked whether, with respect to the value of the project, the committee relied on the value indicated by the bidders for a given project. Ms Pulis answered in the affirmative.

Dr Mifsud Bonnici further asked whether, as part of the evaluation, the committee verified that the value included by the bidder met the minimum aggregate value of the criterion. Ms Pulis answered in the affirmative. Dr Mifsud Bonnici then stated that he had no further questions.

The Chairman thanked Ms Pulis.

Testimony of Mr Marvin Muscat (ID: 91793M) (Evaluator, Tender Evaluation Committee) — Summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for the appelant

Role of the witness and professional background

Dr Joseph Camilleri asked Mr Muscat to state his involvement in the evaluation of the tender. Mr Muscat stated that he was an evaluator.

When asked about his background and what led to his being chosen as evaluator, Mr Muscat stated that he is an ICT executive at the Ministry for Justice. He stated that he had over ten years of experience in ICT and that he had been at the Ministry for Justice since 2018.

Approach to the technical evaluation and marking

Dr Camilleri asked Mr Muscat to describe how the technical aspects of the tender were approached, including whether individual members gave marks, whether the matter was discussed between members, and whether the technical members mainly gave opinions on technical aspects.

Mr Muscat stated that the Evaluation Committee compared the submissions of the bidders with the tender requirements, discussed the submissions, and gave the marks.

Dr Camilleri referred to the earlier evidence of the Chairperson of the Evaluation Committee concerning an average and asked whether the average approach had been used in this case. Mr Muscat answered in the negative. He stated that the submissions were discussed between the members of the Evaluation Committee and that the committee arrived at a mark.

Criterion C2 — functionalities and readiness of the system

Dr Camilleri referred Mr Muscat to the specific evaluation of the functionalities of the systems provided and asked whether he remembered what mark had been given to the Appellant, European Dynamics Consortium, out of ten. Mr Muscat stated that he would need to see the file in order to remember.

After identifying the criterion as C2, Dr Camilleri stated that he was referring to the aspect relating to functionalities and readiness of the system. Mr Muscat asked for the question to be repeated. Dr Camilleri asked whether Mr Muscat could confirm the mark given to the Appellant in respect of C2.

Intervention by Dr Carlos Bugeja and the Chairman

Dr Carlos Bugeja stated that, if Dr Camilleri had the marks in front of him, he could put the figure directly to the witness because the mark was an objective fact appearing from the documents. The Chairman agreed that the witness could then confirm the mark.

Dr Camilleri stated that the answer was three out of ten. The Chairman stated that he would not expect the witness to remember all the marks and permitted the direct question. Mr Muscat then confirmed, upon finding the evaluation report, that the evaluation report stated that the mark was three out of ten.

Dr Camilleri asked whether Mr Muscat remembered how the committee had arrived at the mark of three out of ten. Mr Muscat stated that the committee evaluated the submission and agreed on the readiness of the bidder.

Dr Camilleri asked how many functionalities had to be taken into account in order to arrive at the mark. Mr Muscat stated that he could not remember exactly and that there were many functionalities listed, describing it as a whole exhaustive list. The Chairman asked whether these would at least have been verified. Mr Muscat stated that there were over forty, something around fifty, and queried whether it could have been forty-eight.

Following further comments that the number was an objective fact, Dr Camilleri put the number forty-eight to the witness. Mr Muscat confirmed.

Readiness, out-of-the-box functionality, customisation, and future availability

Dr Camilleri referred to the Appellant's bid and stated that, with regard to the functionalities, some were indicated as available out-of-the-box, some as available with customisation, and one feature, specifically relating to criminal records, was indicated as "will be available" with a specific date. He asked Mr Muscat to explain how marks were allocated with reference to those different indications.

Mr Muscat stated that marks were allocated as a whole. He stated that he considered the overall readiness of the bidder and not each individual functionality separately, referring also to the note in the evaluation criteria which stated that points would be awarded based on the readiness of all functionalities.

Dr Camilleri asked whether any formula, percentage, or other method had been applied to calculate readiness. Mr Muscat stated that the committee considered, overall, how many functionalities were already available, how many were available with customisation, and how many would need to be available in the future. He stated again that, as the note provided, marks were allocated on overall readiness and not on one functionality or another. He confirmed that specific marks were not allocated to specific functionalities, and that the issue was how ready the bidder was to implement the whole solution.

When Dr Camilleri asked whether there had been any specific formula to arrive at the final mark, Mr Muscat answered in the negative and stated that the committee assessed the overall readiness of the bidder.

Dr Camilleri asked whether any functionalities were given greater weight than others, and, if so, which. Mr Muscat stated that where a functionality was very crucial and needed to be implemented as a crucial function, this would have reduced the mark as regards the readiness of the bidder.

When asked whether he had a specific function in mind or remembered identifying any function as crucial, Mr Muscat referred to criminal records as an example, stating that it captured all the outcomes of court sentences and related matters. He stated that there were many other functions and that he could not list them all.

Dr Camilleri asked Mr Muscat, as a person with IT experience, what the difference was between "out-of-the-box" and "available with customisation". Mr Muscat stated that out-of-the-box meant ready to use, whereas available with customisation meant that programming, implementation, and coding

would be required in order to customise according to the needs of the Contracting Authority, and that it would take longer to implement.

Demonstration of the system

Dr Camilleri referred Mr Muscat to the demo which had to be provided by individual bidders and asked whether he had watched it. Mr Muscat answered in the affirmative.

Dr Camilleri asked what the technical Evaluation Committee expected to see during the demo. Mr Muscat stated that the committee expected to see that the proposed system met the functionalities and requirements of the Contracting Authority. When asked to explain further what the demo was expected to show, Mr Muscat answered that it was expected to show the functionality.

Innovation, artificial intelligence, and emerging technologies

Dr Camilleri then referred to the innovation and artificial intelligence requirements as one of the technical aspects. He asked how, as a member of the Evaluation Committee, Mr Muscat expected to identify the artificial intelligence and innovative elements in the different bids.

Mr Muscat stated that the committee did not compare bids against each other but compared each bid with the requirements. Dr Camilleri accepted that confirmation and clarified that he was asking how, as an expert, Mr Muscat realised or assessed the use a specific bidder was making, or would be making, of artificial intelligence or similar technologies, and from which parts or aspects of the bid he would expect to understand that the bidder would be using such technologies.

Mr Muscat stated that the committee saw the write-up and the demo. When asked how, in the demo itself, the use of artificial intelligence would be recognised, Mr Muscat stated that something should be demonstrated and that, as he recalled, it was "very, very poorly demonstrated."

Dr Camilleri asked how, in those bids where the use of artificial intelligence was seen, this was confirmed or shown, and how a demo could show that a system was actually based on artificial intelligence technology. Mr Muscat stated that this could be done by showing a test case and the actual outcome of the artificial intelligence procedure.

Continuation of examination by Dr Polyxeni D. Gkaintatzi

Dr Polyxeni D. Gkaintatzi asked Mr Muscat whether, as an IT professional, he had ever evaluated such a complex system before or whether this was the first one. Mr Muscat stated that, as an IT professional, he had seen hundreds of systems and that, as an evaluator, he had been involved in other tenders besides this one.

When Dr Gkaintatzi asked which systems those were, the Chairman stated that there was no need to go into such specifics. Mr Muscat stated that they were many IT tenders.

Methodology applied to Criterion C2

Dr Gkaintatzi asked what methodology had been applied in awarding the score under Criterion C2, stating that she had not fully understood the methodology applied. Mr Muscat stated that, if a bidder

had a number of functionalities available with customisation or not available, that reduced the readiness of the bidder.

Dr Gkaintatzi asked whether the committee had calculated how many functionalities were ready. Mr Muscat answered in the negative and stated again that no calculations had been done and that the overall readiness of the bidder had been evaluated.

Dr Gkaintatzi stated that, according to the tender, the score should be proportional and asked whether the award of three out of ten meant that the system was ready at a percentage of thirty per cent.

Intervention by Dr Clement Mifsud Bonnici, Dr Carlos Bugeja, and the Chairman

Dr Clement Mifsud Bonnici objected that the question was misleading and that the tender did not say anything to that effect. Dr Carlos Bugeja asked that the part of the tender referring to proportionality be quoted.

Dr Gkaintatzi referred to the Evaluation Grid, section 6.3, page 10, and to the wording that points shall be awarded in such a manner as to reflect, in a proportionate manner, the level of effort undertaken to exceed the minimum requirement. Dr Carlos Bugeja stated that this was different from what was being suggested. Dr Mifsud Bonnici added that there was another rule which applied to C2.

Dr Gkaintatzi asked whether the scoring was not proportionate and stated that there were two interpretations. The Chairman directed that the question be rephrased. Dr Gkaintatzi then asked whether the scoring awarded during the evaluation was proportionate.

Dr Carlos Bugeja stated that it was necessary to understand what “proportionate” meant, as there seemed to be an interpretation of proportionality with which he disagreed. He suggested that a different word should be used in order to understand the system, leaving the interpretation of the term to be discussed later.

The Chairman allowed the question to be rephrased but noted that both the Chairperson of the Evaluation Committee and Mr Muscat had confirmed the manner in which the committee carried out the scoring of the criterion.

Dr Gkaintatzi asked whether, according to the evaluation, the Appellant’s system was ready at a percentage of thirty per cent. Mr Muscat began to answer that it was not “as an actual”. The Chairman stated that the marks given were three out of ten as a statement of fact.

Dr Camilleri stated that, although the mark of three out of ten reflected thirty per cent of the full mark on the documents, the Appellant was asking whether there was a particular procedure leading to that choice. Dr Carlos Bugeja stated that the question should be whether proportionality had been applied qualitatively or quantitatively, and that the witness was saying that it was a qualitative exercise.

The Chairman stated that the witnesses had already given their answer as to how they arrived at the mark of three out of ten and that the matter could be addressed in submissions. Dr Gkaintatzi then rephrased the question by referring to forty-eight functionalities, with twenty-seven available out-of-the-box, twenty available under customisation, and one available on a defined date, and asked whether this could be evaluated as ready at thirty per cent according to the assessment.

The Chairman allowed the question. Mr Muscat stated that, as he had already explained, the committee evaluated readiness as a whole across all functions. He stated that each feature was assessed individually, the weight of each feature was assessed, and the whole functionalities were evaluated as the total readiness of the bidder to implement the system.

Criminal records functionality

Dr Gkaintatzi referred to the criminal records functionality and to Mr Muscat's evidence that it was crucial. She asked whether there was any indication in the tender that some functionalities were more important than others. Mr Muscat stated that, with regard to criminal records, review of the tender showed almost two or three pages of requirements, which clearly indicated that it was crucial.

Dr Gkaintatzi asked whether there was an explicit indication that criminal records prevailed over the other functionalities. Dr Mifsud Bonnici stated that the witness had already answered the question. The Chairman asked Mr Muscat to confirm his previous answer. Mr Muscat stated that the more requirements there were, the more important the functionality was.

Dr Gkaintatzi asked whether the criminal records functionality was a single functionality or a dual one, in the sense of whether it had two parts. Mr Muscat asked what was meant by two parts. Dr Gkaintatzi referred to a main functionality and an enhancement functionality. Mr Muscat stated that he did not understand how criminal records could be divided into parts because it was a functionality in its own right, although within one functionality there could be many requirements which could be divided into parts.

Dr Gkaintatzi then clarified that she was asking whether the criminal records functionality had one or two entries within the forty-eight functionalities. Mr Muscat stated that the issue was that every requirement was being referred to as a functionality, whereas the tender requested a whole system and not parts of systems.

Dr Gkaintatzi asked whether the Appellant's bid indicated that the criminal records functionality was ready or not. Mr Muscat stated that it was not ready and that the status was marked as "will be available." Dr Gkaintatzi stated that she had the tender in front of her and could see that one of them was marked as ready under customisation, and asked Mr Muscat to confirm. Mr Muscat stated that he would need to see the bid.

Intervention by Dr Carlos Bugeja, Dr Clement Mifsud Bonnici, and the Chairman

Dr Carlos Bugeja asked for the scope of the questions to be clarified, stating that the questions appeared to be testing the memory of a member of an evaluation board several months after the evaluation. Dr Mifsud Bonnici stated that the witness was being tripped up. Dr Carlos Bugeja stated that he would object to questions testing memory rather than asking for an explanation of something being referred to the witness.

The Chairman stated that the matter was factual. He referred to page 11 of the tender document, where bidders had to list whether the function was available out-of-the-box, available with customisation, would be available and when, or was not available. He also stated that, where something was indicated as available with customisation, points were reduced on the basis that it was not fully ready. The Chairman indicated that a question as to why it was not considered already ready

would be legitimate, but that a question testing whether the witness remembered a particular entry would not be legitimate.

Dr Gkaintatzi rephrased the question and asked whether the committee had taken into account that the main part of the functionality was available under customisation. The Chairman restated the question as whether Mr Muscat had taken into consideration that the specific functionality was listed as available with customisation rather than "will be available and when" or "available out-of-the-box."

Mr Muscat stated that he needed to find the bid because almost two years had passed. Dr Gkaintatzi indicated that the relevant pages were 38 and 39. After locating the relevant part of the bid, Mr Muscat stated that the Appellant had divided the criminal records functionality into two parts, and that this was why he then recalled why Dr Gkaintatzi had been referring to two parts. He stated that it was one functionality.

Mr Muscat stated that the bid listed "Criminal records, basic functionality" as marked "will be available" and "Criminal records, complete functionality, including integrations and enhancements" as also marked "will be available". The Chairman asked whether this meant "will be available out-of-the-box" or "will be available with customisation". Mr Muscat clarified that the bid in fact contained three or four options, namely: "will be available out-of-the-box"; "available with customisation"; "will be available in the future"; and "not available". The Chairman confirmed that both items fell under the third option, namely "will be available and when". Mr Muscat confirmed that a date was given.
Dr Gkaintatzi asked whether the enhancement of the main functionality could have been ready earlier, or whether the bidder could have had that functionality ready out-of-the-box or under customisation without first receiving the relevant specifications and instructions from the Contracting Authority.

Dr Carlos Bugeja objected that the question was hypothetical. Dr Gkaintatzi stated that the matter appeared in the bid and in the tender dossier and asked whether there was any indication that the enhancements of the criminal records functionality could only be implemented after instructions from the Contracting Authority to be provided in due course. Dr Mifsud Bonnici objected that the question was leading and unfair to the witness and stated that the premise and wording were unclear.

The Chairman asked whether Mr Muscat had understood the question. Mr Muscat stated that he had understood it "so and so", and the Chairman asked him to answer. Mr Muscat stated that, if the contract required enhancements other than those listed in the tender, that would be different, but that the question concerned the actual functionality. He stated that even in the Appellant's bid the wording was "criminal records complete functionality", with the addition "including integrations and enhancements", and that the bidder stated that the complete functionality would be available. He added that the main functionality was marked as "will be available".

Dr Gkaintatzi stated that the main one was clearly the criminal records complete functionality and that she had understood that there was a nuance of assessment. Dr Carlos Bugeja stated that this was a matter for submissions. The Chairman asked whether there were any further questions for the witness on that point.

Artificial intelligence functionality and automated features

Dr Gkaintatzi moved to the artificial intelligence functionality and asked what the difference was between artificial intelligence functionality and an automated feature. Mr Muscat referred to Criterion J2 and looked for the relevant requirement.

Mr Muscat stated that the Evaluation Grid was clear and required the bidder to provide how it was exploring and integrating emerging technologies such as artificial intelligence, machine learning, and blockchain for enhanced efficiency and security. He stated that this was how the committee assessed how those technologies were integrated and actually formed part of the system.

When Dr Gkaintatzi again asked for a simple technical explanation of the difference, Mr Muscat stated that the difference could be found by a simple search, that he knew the difference but was not a dictionary, and that, as an evaluator, his role was to assess what type of artificial intelligence, machine learning, blockchain, and other innovative technologies the bidder was going to integrate into the system.

Dr Gkaintatzi asked how the committee could confirm that the bidder had included artificial intelligence capabilities in its technical bid. Mr Muscat stated that there was something, but that it was "very, very poor". When asked more generally how a bid could be verified as including artificial intelligence capabilities, Mr Muscat stated that this had already been asked by Dr Camilleri, and that the committee saw the write-up and the demo.

Intervention by Dr Clement Mifsud Bonnici and the Chairman

Dr Gkaintatzi asked whether the demo was used for scoring purposes. Dr Mifsud Bonnici objected that the question was direct. The Chairman upheld the objection.

Dr Gkaintatzi then referred to the justification stating that artificial intelligence capabilities were not demonstrated and to Mr Muscat's description of the demonstration as poor. She asked whether "poor" meant that there was no artificial intelligence capability at all or that the committee was not satisfied with the functionality. Mr Muscat stated that he did not understand the question. The Chairman asked him to reply. Mr Muscat stated that what was there was very minimal and that this was why the committee classified it as it did when it reviewed the write-up.

Dr Gkaintatzi asked whether this meant that there was an artificial intelligence capability but that it was not sufficient. Mr Muscat stated that it was subject to the Evaluation Board's review of the submission, that the justification in the evaluation report set out the position, and that this was why the mark was given.

Dr Gkaintatzi asked whether the committee had verified, in technical terms, that this was an artificial intelligence capability. Mr Muscat answered in the affirmative and referred to the notes of the demo and to the write-up. When asked whether he had any doubt about the artificial intelligence capability demonstrated by the Appellant, Mr Muscat referred to the reply of the Contracting Authority's lawyer and stated that not all artificial intelligence is classified as artificial intelligence.

Dr Gkaintatzi asked whether there was any definition in the tender of which categories of artificial intelligence applied. Mr Muscat answered in the negative and stated that the bidder had to demonstrate how it was exploring and integrating emerging technologies.

Dr Gkaintatzi suggested that, in conclusion, the Appellant had demonstrated artificial intelligence capabilities but minimally. Mr Muscat stated, "If they did, or they provided them very minimally." Dr Gkaintatzi again put that the Appellant had provided the capabilities but that these were minimal. Mr Muscat stated that this was subject to the Evaluation Board's review of the submission.

Dr Carlos Bugeja objected to the repeated leading questions, stating that the same question was being put in different ways. When Dr Gkaintatzi began a further question, Dr Carlos Bugeja objected again. Dr Mifsud Bonnici also intervened, and the Chairman noted that this was examination-in-chief.

Dr Gkaintatzi asked whether, if an evaluator had any doubt about the artificial intelligence capabilities demonstrated, there was a mechanism by which they could be verified. Mr Muscat stated that there were the Evaluation Grid and the requirement, that the committee evaluated the bid against the requirement aided by the demo, and that the committee was not satisfied. He stated that the justification was there.

Dr Gkaintatzi asked whether, if the committee wanted to see the demo again, there was a way to reassess it. Mr Muscat stated that, if the committee had to do so, it could, but that it did not have to. He stated that the demo was recorded and could have been reviewed "hundreds of times", but that the committee had reached its decision and was clear about it, and that the justification supported it.

When Dr Gkaintatzi began to ask who would be consulted in case of doubt, Mr Muscat stated that there was no doubt. The Chairman noted that Mr Muscat had said the demo was recorded.

Cross examination by Dr Carlos Bugeja

Dr Carlos Bugeja asked Mr Muscat whether he agreed that the demo on its own did not have an allocated score. Mr Muscat answered in the affirmative.

Dr Carlos Bugeja asked whether an insufficient write-up could not be cured by the demo. Mr Muscat answered in the affirmative.

Dr Carlos Bugeja asked whether Mr Muscat agreed that not every automated function is artificial intelligence. Mr Muscat answered in the affirmative.

Dr Carlos Bugeja put to Mr Muscat that not every automatic function is what is known as artificial intelligence and that automatic functions had existed for years without being artificial intelligence. Mr Muscat agreed, stating that not all functions are artificial intelligence.

Cross examination by Dr Clement Mifsud Bonnici

Dr Clement Mifsud Bonnici returned to Criterion C2 and to Mr Muscat's evidence that the Evaluation Committee had evaluated readiness as a whole, and that the complete criminal records functionality was crucial and very important.

Dr Mifsud Bonnici referred Mr Muscat to the tender dossier. Starting from page 10, he referred to the last paragraph on that page in the highlighted box, which stated that, apart from the documentation provided, when assigning points, consideration would also be given to whether the requested functionality was fully available within the solution or still needed to be developed. He asked whether this was one of the indications in the tender which led Mr Muscat to conclude that he had to review the readiness of the solution as a whole. Mr Muscat answered that it was one of them.

Dr Mifsud Bonnici then referred to page 11, under Criterion C2, and to the note stating that points would be awarded based on the readiness of all functionalities. He asked whether this was another

point considered in concluding that the readiness of the functionalities had to be reviewed as a whole. Mr Muscat answered in the affirmative.

Dr Mifsud Bonnici also referred to the end of that note, which stated that if any single function was not available, it would receive zero points and be disqualified. He asked whether this was another basis for Mr Muscat's conclusion. Mr Muscat answered in the affirmative.

Criminal records as a crucial functionality

Dr Mifsud Bonnici then addressed the second point, namely the basis on which Mr Muscat had concluded that the complete criminal records functionality was crucial. He referred to the functionalities at issue, and Mr Muscat indicated a page reference. Dr Mifsud Bonnici referred to pages 72 and 73 and stated that the criminal courts file was being considered.

Dr Mifsud Bonnici referred to Mr Muscat's earlier evidence that the functionality was crucial because there was a lot of detail in the tender dossier. He asked whether there were over two pages of detail on that function. Mr Muscat answered in the affirmative and stated that, as already stated, the requirements stretched over two pages for criminal records.

Dr Mifsud Bonnici asked whether criminal records was the only functionality in the functions addressed in sections 4.3 and 4.4 which was split into two, namely "Criminal records, basic functionality" on page 72 and "Criminal records, complete functionality, including integrations and enhancements" on page 73. He suggested that it was split into two because the complete functionality was crucial and very important. Mr Muscat answered in the affirmative.

Dr Mifsud Bonnici asked Mr Muscat to confirm that it was the only functionality that was split, and that he had read this split to mean that the complete functionality was crucial and very important. Mr Muscat confirmed this and stated that the complete functionality was, of course, crucial.

Dr Mifsud Bonnici then stated that he wished to correct something heard earlier and asked whether the first item spoke of "basic functionality" and not "main functionality". Dr Gkaintatzi queried whether the word was "basic" or "main". Dr Mifsud Bonnici asked for the grounds of any objection. Mr Muscat confirmed that on page 72, under point F, the wording was "Criminal records, basic functionality."

Dr Mifsud Bonnici suggested that the basic functionality essentially concerned migration of the current system into the system to be developed by the provider, and that this was the status quo and the reason why it was called basic. Mr Muscat answered in the affirmative and stated that the contractor was expected to migrate data from the current criminal records system to the new criminal records function.

Dr Mifsud Bonnici asked whether, in the case of the Appellant, the crucial functionality of criminal records complete functionality was not available and was going to be available later that year. Mr Muscat answered in the affirmative, stating that it was available in the future and that the Appellant had given the actual date.

Dr Mifsud Bonnici finally referred to page 17, being the specifications for the demo, and read from the second sentence of the first paragraph, which stated that special attention would be allocated to specified matters, including point 6, "Criminal records management." He asked whether Mr Muscat

had taken that to mean that criminal records was a crucial and important functionality for the tender drafters. Mr Muscat answered in the affirmative.

Dr Mifsud Bonnici stated that he had no further questions. The Chairman thanked Mr Muscat.

Testimony of Mr Konstantinos Velentzas (Passport No. AY 0057919) (Managing Director of European Dynamics) — Summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for the appellant

Mr Velentzas confirmed that he was present. Upon being asked to state his name and surname, he identified himself as Konstantinos Velentzas. When asked for a form of identification, he stated that he was the Managing Director of European Dynamics. Upon being asked for the number of his passport or identification document, he produced his passport and stated that the passport number was AY 0057919. He was sworn in and stated that he would tell the truth, the whole truth, and nothing but the truth.

Role of the witness within the Appellant consortium

Dr Joseph Camilleri noted that Mr Velentzas had already testified previously and asked him to remind the Board of his involvement within the Appellant consortium, European Dynamics.

Mr Velentzas stated that he was involved in the preparation of the tender. He stated that he is always involved when European Dynamics prepares tenders based on its own products, and that in the present case he was part of the preparation of the tender in a quality assurance role.

When asked how long he had been involved in European Dynamics, Mr Velentzas stated that he had been involved for more than thirty years.

Dr Camilleri asked Mr Velentzas to explain his general role within the European Dynamics Group. Mr Velentzas stated that the group has two managing directors, namely himself and Dr Bardez, as well as certain country managers, including Mr Macris in Belgium. He stated that his role is to take care of the business development of the group in certain geographical areas and also to monitor the group's product policy. He added that, in the present case, since the tender was based on a product of the company, he was involved in detail.

The Themis-E product and European Dynamics' experience in justice systems

Dr Camilleri asked Mr Velentzas to state the name of the product on which the offer was based and to give general details about its features.

Mr Velentzas stated that he is an electrical and mechanical engineer with postgraduate studies in information technology, and that he is an expert in that regard.

Mr Velentzas stated that European Dynamics has been involved for many years in justice and courts case management within the judiciary sector. He stated that the company has developed technology for a wide range of customers in that area, many of which are extremely complex, multilingual, and reliant on different locations.

By way of example, Mr Velentzas referred to the European Prosecutor's Office, stating that European Dynamics is the main supplier of the case management system for the European Prosecutor. He stated that this system is more complex than what was requested in the tender under consideration. He also

referred to work with the cartel and Competition Commission in Germany, with judiciary customs in Germany, and in the field of intellectual property. He stated that European Dynamics has very long experience in that domain.

Mr Velentzas stated that, about two and a half years earlier, European Dynamics decided to develop a product and designed and built a product called Themis-E.

Proposed evidence concerning Greek research and innovation certification

Mr Velentzas began to refer to an application made during the first week of July of the previous year, approximately one week after the demonstration delivered to the evaluators in the context of the tender. He stated that the application was filed before the Greek Secretariat General for Research and Innovation, within the Ministry of Development in Greece. He stated that European Dynamics submitted the product, together with hundreds, if not thousands, of pages of technical documentation, source code, manuals, and other material, for evaluation.

Intervention by Dr Carlos Bugeja

Dr Carlos Bugeja intervened and asked about the relevance of this evidence, stating that the information was additional information not contained in the tender documents.

Dr Camilleri then asked Mr Velentzas to explain the relevance of the application to the present appeal.

Mr Velentzas stated that the Greek authorities had evaluated the product through a special committee composed of senior academic persons and persons responsible for research and innovation, with the aim of verifying its innovation, mainly in areas such as artificial intelligence. He stated that, if the committee concluded that the product was innovative and fit for production, it would issue a certificate. He stated that such a certificate had been received a few weeks earlier and that it had also been announced that this would be published in the Government Gazette in Greece.

Dr Carlos Bugeja again objected and asked how information which had transpired at that stage could be relevant to what the Board of Evaluators had decided six months earlier.

Dr Camilleri submitted that the matter was relevant because the Appellant sought to show that there were innovative aspects to the same product. He stated that he had copies of the certificate issued by the Greek Government and that, in his view, the certificate was relevant because it related to the innovative aspects of the product being referred to in the proceedings. He stated that whether the Board would ultimately agree with, or adopt, the conclusions of the Greek Government was a matter for the merits, but that the Appellant should not be denied the opportunity to make the point. He stated that the Appellant's point was that a system described as not having any meaningful innovation or artificial intelligence had, in another forum, been recognised and given substantial tax rebates because of its innovative aspects.

Dr Carlos Bugeja objected on the basis that the matter had been decided by a committee which could not be questioned in the proceedings, that it had evaluated the product after the tender evaluation, and that the Board had no further information other than what the witness was saying.

Ruling by the Chairman

The Chairman upheld the objection. He stated that the Board did not know whether the submission made in Greece was similar, identical, or different to the one submitted before the Evaluation Board in the present tender. He also stated that the Board had repeatedly held that comparisons with other tenders, even in Malta, are not relevant evidence, and that the matter had to be assessed on what had been presented and submitted to the evaluators.

The Chairman further stated that the Board could not question or verify the reasoning behind the decision of the evaluation body in Greece, while in the present proceedings detailed questions were being asked about the evaluation carried out in Malta. He stated that the issue was relevance and that the Board agreed with the argument brought forward by the Contracting Authority. The Chairman stated that it was not within the remit of the Board to check the tendering and procurement process conducted in Greece and directed the parties to proceed accordingly.

Innovative aspects, word-count limitation, and preparation of the bid

Dr Camilleri then asked Mr Velentzas, without going into the issue of the Greek Government or its conclusions, to state generally whether there were any innovative aspects in the court system product, Themis-E, as a person involved in the bid submitted to the Maltese authorities.

Mr Velentzas stated that he did not wish to dwell on the Greek Government issue, while adding that European Dynamics could demonstrate the timestamp of its submission and what had been submitted. He stated that Themis-E is an innovative product and that this was supported by many things. He then stated that he understood that the proceedings concerned a call for tenders and that what counted was how the evaluators assessed the product, and whether they had committed a manifest error of assessment.

Mr Velentzas stated that European Dynamics prepared the tender, followed the instructions of the tender specifications, and prepared the demonstration to address, point by point, what was indicated in the tender specifications.

He stated that the Appellant had a restriction, namely the requirement to respect the 1,000 to 2,000 word limitation. He stated that a lot of work was carried out and that he was present. He stated that, from experience, where contracting authorities impose ceilings in terms of word count, those ceilings are strict and must be respected. He stated that the Appellant initially had a document of 8,000 words and progressively reduced it to 2,000 words, while trying to ensure that all aspects were covered. He stated that this related to the Appellant's answers to the different points within the award criteria concerning the demonstration.

Preparation and conduct of the demonstration

Mr Velentzas stated that the demonstration was prepared in line with the topics in the tender specifications and that a rehearsal was held the day before, as the company customarily does. He referred to a similar demonstration carried out a couple of years earlier in the field of taxation, where a strict time limit of one and a half hours had to be followed. He stated that the Appellant tried to be ready to follow a similar scope in the present tender.

Mr Velentzas stated that he was present at the rehearsal and that the Appellant went through all points and was ready. He stated that the demonstration then took place and, as he also saw in the recording, the Appellant did not receive any remark from the evaluators. He stated that, usually, when evaluators see problems or matters which they do not like or do not understand, they ask questions. He stated that in the Appellant's case no question was asked, and that when the Appellant asked whether the evaluators had seen everything and whether there were any comments, there was no comment, no question, and no concern.

Mr Velentzas stated that it was a surprise for the Appellant when the results were received and the evaluation referred to problems.

Mr Velentzas stated that there was a problem related to readiness and that it also surprised the Appellant that it could not map the specifications against the comments received in the evaluation. He stated that, if the evaluation is proportionate, one has to count, in terms of readiness, the functionalities which are ready and those which are not.

Mr Velentzas stated that the Appellant had been extremely honest when marking functionalities as available out-of-the-box, available with minor customisation, and in one case not marked as ready or customisable because, according to him, the tender specification stated that no action should be taken before input was received from the Contracting Authority and that the specifications themselves stated that this would be completed in October 2026. He stated that, if another bidder stated that it already had something out-of-the-box where the specifications required waiting for input, then in his view that bidder either committed an error or was not being truthful.

Content and duration of the demonstration

Dr Camilleri asked Mr Velentzas to describe, in a few words, the content of the demonstration and what it actually showed.

Mr Velentzas stated that he did not remember the demonstration by heart. He stated that there was a section in the specifications stating that during the demonstration the bidder had to show a number of items, which he recalled as being five, six, or seven points. He stated that the Appellant reviewed those points and, following them, presented scenarios while navigating through the system. He stated that the scenarios showed how the system functioned. He further stated that nobody told the Appellant during the demonstration that it was not doing something correctly, that there was a problem, or that something had been missed.

Dr Camilleri asked how long the demonstration lasted. Mr Velentzas stated that the Appellant had been advised before the demonstration that it could last a few hours, from the morning until the early afternoon, and that there was a break. He stated that the session involved not only the demonstration itself but also an introduction, presentation slides, and other elements.

Mr Velentzas stated that he remembered that the Appellant finished about an hour and a half before the deadline set by the evaluators. He stated that the evaluators had an hour and a half more at their disposal to ask further questions, including on artificial intelligence, instead of reaching conclusions afterwards. He then began to make comments regarding the evaluators' duties.

Intervention by the Chairman

The Chairman intervened and reminded Mr Velentzas that, as a witness, he was required to answer the questions put to him and not to make submissions of his own. When Mr Velentzas stated that he could not hear, the Chairman repeated that it was important that he answer and remain within the limits of the questions put forward by Dr Camilleri, and not make submissions of his own. Mr Velentzas acknowledged this.

ISO certifications submitted by the Appellant

Dr Camilleri then referred Mr Velentzas to the Appellant's bid and asked him to comment on the ISO certification of the Appellant and on what had been provided.

Mr Velentzas stated that the Appellant provided full ISO certifications of all members of its consortium and stated that this was a contractual obligation.

Dr Camilleri asked Mr Velentzas to explain why he was saying that it was a contractual obligation to provide ISO certificates for each member of the consortium.

Intervention by Dr Clement Mifsud Bonnici and the Chairman

Dr Clement Mifsud Bonnici objected, stating that the Board was not concerned with the witness's interpretation of the bid or tender terms. He stated that the witness could testify on matters he had witnessed, such as the demonstration or what was done in the bid, but not on his opinion or interpretation of the tender terms.

Dr Camilleri clarified that he was not asking for an interpretation of the contract, but why the Appellant's bid had included the ISO certificate of each member. Dr Mifsud Bonnici stated that if the witness offered an interpretation of the tender, he would object immediately.

The Chairman upheld the objection and reframed the question as why European Dynamics had submitted ISO certificates for both parties. He directed the witness to stick to the question as put by Dr Camilleri.

In reply, Mr Velentzas stated that tenderers are invited to provide certificates in order to demonstrate that they follow an acceptable, standardised quality process and that delivery will rely on this. He stated that, where a consortium is involved, each member of the consortium must present ISO certification together with the consortium leader. He began to refer to ISO Article 8.4.

The Chairman then intervened and stated that the Appellant, consisting of both parties to the consortium, had provided their ISO certificates, and that what had been submitted by the Recommended Bidder was also not being contested. He stated that these statements of fact were clear before the Board and that Mr Velentzas should not continue further on the matter, which was ultimately a matter of legal opinion and interpretation. The Chairman stated that the parties would make submissions on the point and that the Board would decide. He further stated that the facts were clear and that enough information had been obtained from Mr Velentzas on the ISO point.

Questions by Dr Polyxeni D. Gkaintatzi on the consortium members

Dr Polyxeni D. Gkaintatzi asked a factual question, stating that the Appellant consortium consisted of European Dynamics SA and European Dynamics Luxembourg SA, and asked whether there was an allocation of tasks between those two companies.

Mr Velentzas answered in the affirmative and stated that a consortium cannot exist without an allocation of tasks between its members.

Dr Gkaintatzi clarified that she was asking whether the Appellant had provided any document allocating tasks and whether any such document had been included in the bid. Mr Velentzas stated that he did not remember. The Chairman indicated that this was enough on that point.

Other Maltese tenders and the word-count requirement

Dr Camilleri then asked Mr Velentzas whether there had been other tenders for similar systems in Malta recently and what he could say about them. Mr Velentzas did not hear the question and Dr Camilleri repeated it, asking whether there were similar tenders regarding IT systems in Malta and whether there was any particular point he wished to make.

Mr Velentzas began to refer to a concurrent tender. The Chairman indicated that he would uphold the objection. Dr Camilleri stated that the Appellant had a very specific point to make, but the Chairman stated that he was not seeing the relevance of the question and directed Dr Camilleri to put another question.

Dr Camilleri then asked whether, with regard to the word-count requirement previously mentioned by the witness, this was a requirement which Mr Velentzas had come across in any other similar tender.

Mr Velentzas referred to a concurrent tender in Malta which he stated had recently been launched by the Attorney General's Office. He stated that it was almost a copy-paste of the same specifications, and that while preparing an answer for that tender, the Appellant noticed that there was also a limitation of 1,000 to 2,000 words and a reference that all members of the consortium had to have ISO certification. He stated that the concurrent tender was then cancelled and relaunched, and that the Appellant noticed that two elements had changed, namely that the 1,000 to 2,000 word count had been changed to 5,000 words, and another element on which he was interrupted.

Objection by Dr Carlos Bugeja and ruling by the Chairman

Dr Carlos Bugeja objected on the basis of relevance.

The Chairman interrupted Mr Velentzas and explained that, when there is an objection from another lawyer, he must intervene and decide on it. The Chairman upheld the objection.

The Chairman stated that the Board did not have before it the other tender being referred to and that he would not retrieve that other tender or compare specifications. He stated that the Evaluation Board for the tender under consideration, apart from the general procurement regulations, general rules, policy notices, and other applicable instruments, had the specific tender dossier before it. He stated that it was the interpretation and final decision of that Evaluation Board which the Public Contracts

Review Board was interested in assessing, and not what another Evaluation Board was doing in another tender which the Board did not know had been published, cancelled, or otherwise.

Request by Dr Camilleri to minute the point and to exhibit a letter

Dr Camilleri asked that his request be minuted and that a formal decision be given on it.

The Chairman, Mr Kenneth Swain, gave the go-ahead, stating that the request could proceed by all means, and noted that the Secretary would take note of everything.

Dr Camilleri stated: "*What I would like is to minute my request, and have then a formal decision minuted... So the request is as follows. It will start off with an explanation of background. The appellant has information about a particular call for tenders, which was very clearly based on the same format as this particular call for tenders, it was issued by the Attorney General's Office, and it was issued earlier this year. Now, we have clear information, because it's public information, that this particular call for tenders was cancelled and then reissued with changed parameters, which very strangely changed specifically the points that are being raised in this appeal, whether it is word count, whether it's the issue of ISO. The points that are the subject of this appeal have been reflected in an amended call for tenders. We fully understand that obviously this board will not decide on, there's no appeal yet on this other tender, but we feel that it is significant that this call was cancelled and reissued addressing precisely the points that we are raising in this appea*l."

Dr Camilleri further stated: "*I ask please, if not for Mr Velentzas to testify about this, at the very least, to exhibit a letter of complaint that was sent about this other tender to this board, again, not to decide on matters relating to the other tender, but to show that the points that are being made in this appeal appear to have been taken seriously by other contracting authorities, that's my point. The same precise points."*

Dr Gkaintatzi added that the tender dossier in the two cases was, according to her, more or less the same and involved the same evaluation grid. She stated that the two issues changed were the word count and the ISO issue under discussion, and that the Department of Contracts had again issued it. She stated that it was a matter of integrity.

Replies by the other parties

Dr Carlos Bugeja stated that the matter was a new additional item and that the Contracting Authority's objection stood.

Dr Daniel Inguanez, for the Department of Contracts, objected on the basis that this was a point of fact which was totally irrelevant to the current call for tenders which was the subject of the appeal. He stated that, whether confirmed or otherwise, the facts alleged by the Appellant would not change either the evaluation which should have been conducted by the Evaluation Committee or the determination of the Board.

Dr Clement Mifsud Bonnici stated that he restated the objection of the Department of Contracts. He added that, in his view, it fitted within what he described as a pattern of European Dynamics as a serial litigant, alleging that whenever it loses a tender it comes up with a conspiracy theory.

Dr Gkaintatzi asked Dr Mifsud Bonnici to withdraw his comment and described it as defamatory. Dr Mifsud Bonnici stated that it was a factual observation and that he was entitled to make that assertion. The Chairman directed the parties to finish.

Decision on the request and conclusion of the testimony

The Chairman stated that he would allow the introduction of the letter mentioned by Dr Camilleri.

The Chairman then commented that decisions by the Board are taken on a regular basis and eventually also by the Court of Appeal, and that parties take note of such judgments. He stated that, after every tender, experience plays a part in proceedings and that the Department of Contracts had changed general rules governing tenders after a number of decisions. Dr Inguanez confirmed that this was often done.

The Chairman stated that, if the Contracting Authority in the other tender wished to change certain specifications, that was entirely up to it. He stated that he was not expressing an opinion on the subject matter of the present appeal at that stage.

Dr Camilleri stated that, on the Appellant's part, there were no further questions. The Chairman asked whether the Contracting Authority had any cross-examination of the witness. No cross-examination was conducted. The Chairman thanked Mr Velentzas for his time.

Testimony of Mr Marius Mifsud (ID: 77578M) (Evaluator) — Summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for the appellant

The Chairman called the next evaluator, Mr Marius Mifsud. Mr Mifsud identified himself as Marius Mifsud, ID 77578M.

Role of the witness and technical background

Dr Joseph Camilleri stated that some of the questions would cover similar ground to the previous witnesses and asked Mr Mifsud to explain his involvement in the evaluation of the tender on the technical side.

Mr Mifsud confirmed that he was an evaluator.

When asked about his technical experience in the field of IT, Mr Mifsud stated that he had ten years of experience with the Government in IT.

Dr Camilleri asked how many members of the Evaluation Committee had a technical background in IT. Mr Mifsud stated that two members had such a background.

Approach to the technical evaluation and allocation of marks

Dr Camilleri asked how the technical aspects were evaluated, including whether the members discussed the evaluation, whether specific points were given, and whether an average was worked out.

Mr Mifsud stated that the decision was taken between all members of the Evaluation Committee, including the non-technical members. He stated that matters such as the out-of-the-box options were taken into consideration.

Dr Camilleri asked generally how marks were given in the various areas. Mr Mifsud stated that the marks depended on the submission of, in this case, European Dynamics.

When asked whether each member came up with a specific mark which was then averaged, Mr Mifsud initially asked which question was being referred to. The Chairman clarified that the question was being asked in general, in order to understand the context of how the Evaluation Board carried out its business.

Mr Mifsud stated that the committee discussed matters between them, saw the flaws, evaluated together, and came up with a mark. By way of example, he stated that if one member said six and another said eight, an average would be made, or something to that effect.

Dr Camilleri asked whether the different individual marks would have been minuted or whether only the final mark would have been recorded. Mr Mifsud stated that only the final figure was noted down.

Dr Camilleri asked whether the different views on marks formed part of the discussion. Mr Mifsud stated that this was part of the evaluation.

Criterion C2 — functionalities and readiness of the system

Dr Camilleri referred to the issue of the functionalities, their availability, and the status attributed to them. He asked whether any specific formula was followed to arrive at the marks out of ten which were awarded to bidders.

Mr Mifsud stated that, as had been stated by Mr Marvin Muscat, the committee took into consideration what was truly out-of-the-box, what was available with customisation, and another criterion. He stated that these matters were all taken into consideration.

When asked whether any specific points were allocated for specific functionalities or whether any percentages were worked out, Mr Mifsud stated that the committee worked out the markings based on the criteria he had mentioned.

Dr Camilleri asked whether a general mark was given. Mr Mifsud stated that, if there were, for example, seven suppliers, the same marking system was used for every supplier.

Dr Camilleri clarified that he was asking about Criterion C2, which referred to the different functionalities and their availability, and asked how the different functionalities were assessed when arriving at a mark out of ten.

Mr Mifsud stated that there was a calculation. When asked for the exact type of calculation, he stated that he had forgotten the exact kind of calculation and did not remember exactly. He confirmed that there was a calculation and that there was a set calculation which was used for all suppliers.

When asked whether the calculation was based on the number of functionalities, Mr Mifsud stated that this was so because there was a difference between a functionality being ready out-of-the-box and one which would be ready with customisation, and that these attracted different markings.

When asked whether the calculation was in the form of any formula, Mr Mifsud stated that he had forgotten the details. When asked whether the calculation was indicated in the call for tenders, Mr Mifsud stated that it was not, and that it was the committee's evaluation process. He confirmed that the committee came up with the calculation as part of the evaluation process.

Criterion J2 — innovation, artificial intelligence, machine learning, and blockchain

Dr Camilleri referred to the issue of innovation in the bids and noted that the tender document referred to examples of innovative elements, including artificial intelligence, machine learning, and blockchain. He asked Mr Mifsud, as an expert, to explain the distinction between artificial intelligence and machine learning and how the evaluators were in a position to determine what use was being made of those elements by the bidders.

Mr Mifsud stated that machine learning is where there is artificial intelligence and it is learning from inputs. When asked whether machine learning is part of artificial intelligence or distinct from it, Mr Mifsud stated that he wished to state it carefully so as not to be inaccurate, and said that he was not certain, but that, according to his knowledge, machine learning is a mechanism behind artificial intelligence.

When Dr Camilleri asked what Mr Mifsud meant when he said "we would look it up," Mr Mifsud stated that he meant the exact detail of what it does, and that he was not an expert in those mechanisms exactly. He stated that he did not have a background specifically in artificial intelligence, while also stating that artificial intelligence forms part of IT.

Dr Camilleri asked whether there is a difference between artificial intelligence and blockchain. Mr Mifsud answered in the affirmative and stated that blockchain is a database, but a more complex one, because it is three-dimensional.

Dr Camilleri asked how the evaluators looked at the offers to determine whether there was the presence or use of artificial intelligence, machine learning, or blockchain.

Mr Mifsud stated that, from the documentation, there was not any meaningful artificial intelligence, and that this was also the case in the demonstration. He stated that, during the demonstration, when the evaluators asked about it, an example was given that if a document of a court case is saved, the system is only suggesting what kind of hearing it is and not exactly what it is. He described this as very basic artificial intelligence. He stated that he noted this during the demonstration.

Word-count requirements

Dr Camilleri referred to the issue of word count and asked whether Mr Mifsud, as an evaluator, looked into the word counts of the explanations given by the different tenderers.

Mr Mifsud stated that the tender says that the word count is approximate, and that the tender document did not require adherence exactly to those ranges.

When asked whether there was any word-count range which he considered unacceptable, Mr Mifsud stated that there was not, because the committee read every document to the last word.

Dr Camilleri asked whether the write-ups of the different bidders, irrespective of their word counts, were read and taken into account in their totality. Mr Mifsud confirmed this. He further confirmed that the word count did not affect the markings and that it was not taken into consideration for marking purposes.

Dr Camilleri asked whether marks were given depending on whether the explanation was within the 2,000-word limit or above it. Mr Mifsud stated that this was not done.

Questions by Dr Polyxeni D. Gkaintatzi on the J2 write-ups

Dr Polyxeni D. Gkaintatzi asked two additional questions. She referred to Mr Mifsud's statement that it was not only in the demonstration that he had not found anything resembling artificial intelligence, but also in the write-up, and asked whether she had understood correctly. Mr Mifsud answered in the affirmative.

Dr Gkaintatzi asked whether Mr Mifsud had before him documents I-25-J and I-26-J from the Appellant's bid. Mr Mifsud stated that he did not have them. Dr Gkaintatzi offered to provide them and Mr Mifsud asked which section was being referred to. The Chairman clarified that the documents were I-25-J and I-26-J.

Dr Gkaintatzi stated that, according to the rejection letter, the problem was identified in the demonstration and not in the write-up. She asked Mr Mifsud to confirm whether the documents provided were part of the bid submitted by the Appellant.

Mr Mifsud confirmed document I-25. Dr Gkaintatzi stated that the write-up mentioned these functionalities and asked whether it had been taken into account during the evaluation.

The Chairman reframed the question as whether Mr Mifsud, as an evaluator, had taken into consideration the two documents placed before him when conducting the evaluation. Mr Mifsud answered in the affirmative. He added that, if read carefully, they were mostly definitions of technologies. The Chairman confirmed that the question was whether the documents had been taken into account, and Mr Mifsud again stated that they had been taken into account.

Criterion J2 — future readiness and expected content

Dr Gkaintatzi asked what bidders were requested to provide under Criterion J2. Mr Mifsud stated that the criterion required how the bidder explores and integrates emerging technologies such as machine learning.

Dr Gkaintatzi referred to future readiness and asked whether Mr Mifsud confirmed this. Mr Mifsud stated that he could read the criterion and then confirmed that Criterion J2 concerned future readiness and how the bidder is ready to apply emerging technologies.

When asked whether the distinction was taken into account in evaluating the bids, Mr Mifsud answered in the affirmative.

Dr Gkaintatzi asked what the evaluators expected to see in that part of a submission in order to award the maximum score. Mr Mifsud stated that he would not speak for the whole evaluation team but would speak for himself. He stated that what he personally wanted to see was something which was going to actually be used in the application required by the courts.

Dr Gkaintatzi then asked whether Criterion J2 concerned already applied technologies or future functionalities and how the tenderer was ready to apply them, and referred to the distinction between Criteria J1 and J2. Mr Mifsud confirmed that the distinction had been taken into account.

Intervention by Dr Daniel Inguanez

Dr Daniel Inguanez intervened and stated that the proper question should be why points were decreased in his client's bid, rather than asking what the evaluators were expecting. He stated that

asking what points would have been awarded for a hypothetical submission was speculative. He further stated that the evaluation comments indicated that these points were not presented to the evaluators during the evaluation.

The Chairman asked whether there were any further questions to the witness.

Further questions by Dr Polyxeni D. Gkaintatzi on AI expertise and sources consulted

Dr Gkaintatzi referred to Mr Mifsud's statement that he was not an artificial intelligence expert and asked how, notwithstanding his IT expertise, he could evaluate the artificial intelligence capabilities, and whether any advisor was consulted.

Mr Mifsud stated that he had not said that he knew nothing about IT, but rather that he was not an expert in artificial intelligence specifically. He stated that those were two different things.

Dr Gkaintatzi then asked whether, when evaluating the artificial intelligence capabilities, Mr Mifsud used any advisor, published reference material, or information in the public domain to assist him. Mr Mifsud stated that he reviewed the write-up.

Dr Gkaintatzi asked Mr Mifsud to confirm that he had reviewed documents I-25-J and I-26-J. Mr Mifsud confirmed this.

Cross examination by Dr Clement Mifsud Bonnici

The Chairman asked whether there was any cross-examination. Dr Daniel Inguanez stated that there was no cross-examination on behalf of the Department of Contracts. Dr Clement Mifsud Bonnici then proceeded to cross-examine Mr Mifsud.

Dr Mifsud Bonnici asked Mr Mifsud to refer to page 10 of the tender dossier and stated that he was interested in Mr Mifsud's consistent position on the word count.

Dr Mifsud Bonnici asked whether Mr Mifsud agreed that the tender dossier did not contain any provision stating that, if a bidder exceeded a word count or word limit, the bid would be disqualified. Mr Mifsud answered: "Exactly."

Dr Mifsud Bonnici then asked whether the tender dossier, on page 10, specifically stated that if the minimum requirements were not met, bids would be disqualified. Mr Mifsud answered in the affirmative.

Dr Mifsud Bonnici referred to page 11 and Criterion C2 and asked whether the note to Criterion C2 stated that, if any single functionality was not available, the bid would be disqualified. Mr Mifsud answered in the affirmative.

Dr Mifsud Bonnici then referred to pages 12 and 13 and asked whether, on the ISO certificate, if ISO certification was not submitted by the bidder, the bidder would be disqualified. Mr Mifsud answered in the affirmative.

Dr Mifsud Bonnici asked whether, in those instances, there was a clear and express provision stating that the bidder would be disqualified if those criteria were not met, while there was no equivalent requirement on the word count. Mr Mifsud answered: "Exactly." Dr Mifsud Bonnici stated that he had no further questions.

Further question by Dr Polyxeni D. Gkaintatzi and objection

Dr Gkaintatzi asked to put one additional question. The Chairman allowed one additional question.

Dr Gkaintatzi asked whether there was any document in the Preferred Bidder's submission allocating tasks between the members of its consortium, stating that she did not seek details but only a yes or no answer.

Dr Mifsud Bonnici objected to the question on the basis that it did not arise from the cross-examination. Dr Gkaintatzi stated that re-examination does not need to arise solely from cross-examination and that the question was relevant to the ISO issue. Dr Mifsud Bonnici stated that re-examination must arise from the cross-examination.

The Chairman agreed with the objection and asked whether there was anything further. The witness was thanked and excused.

Testimony of Ms Charmaine Bugeja (ID: 281174M) (Evaluating Member, Tender Evaluation Committee) — Summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for the appellant

Ms Charmaine Bugeja identified herself as Charmaine Bugeja, ID 281174M. The Chairman then directed that the hearing proceed.

Role of the witness and background within the Court Services Agency

Dr Joseph Camilleri asked Ms Bugeja what her involvement had been in the Evaluation Committee. Ms Bugeja stated that her involvement was as an evaluating member.

Dr Camilleri noted that it had already been heard that Ms Bugeja was not one of the technical persons on the Evaluation Committee and asked what she contributed to the evaluation, what her role was, and what her background was.

Ms Bugeja stated that she had been appointed because she had been an employee of the Court Service Agency for 34 years, with the last five years in an administrative role. She stated that she knew the business of the agency, knew what it is as it stands today, and knew what she would expect it to be in the future.

Criterion C2 — readiness of the system and evaluation approach

Dr Camilleri stated that he wished to ask Ms Bugeja questions about the evaluation process and referred to the previous witnesses. He referred specifically to how marks were given and to the evidence that, especially in relation to the functionalities issue, there had been some sort of calculation, although one of the witnesses had stated that he could not remember exactly how it worked. Dr Camilleri asked whether Ms Bugeja knew anything about this and, if so, whether she could explain how that part of the evaluation proceeded.

Ms Bugeja asked whether the question concerned a particular functionality or all of them. Dr Camilleri clarified that he was asking generally, when assessing Criterion C2 and the readiness of the system.

Ms Bugeja stated that, when the committee was evaluating a particular functionality, and all the other functionalities, it saw the write-up submitted by each bidder. For the particular functionality, the

whole board discussed the matter and then gave points according to the overall readiness of each functionality.

Dr Camilleri asked whether there was, or was not, any specific calculation or formula. Ms Bugeja stated that no formula was used and that there was no calculation whatsoever. She stated that it was one overall mark for every particular functionality.

Dr Camilleri asked whether specific points were given on each functionality or whether the committee took them holistically and gave one final mark. Ms Bugeja stated that the whole board gave one final mark for each functionality. She stated that, if it met and exceeded the requirements, full marks were given; if it did not meet or exceed, the points were given after discussion and according to the tender dossier.

Dr Camilleri then referred specifically to Criterion C2, readiness of the functionalities, under which European Dynamics had been awarded three marks out of ten. He noted that it had already been established from the documents that there were 48 functionalities and that the mark of three out of ten referred to the readiness of the system as a whole. Ms Bugeja confirmed this.

Dr Camilleri asked whether, before arriving at the three out of ten for the readiness issue as a whole, the committee had given some sort of points to each functionality individually and then worked that out. Ms Bugeja stated that this had not been done. She stated that the committee evaluated the matter as a whole, considering those functionalities which "will be available", those which were already available, and those under customisation, and then gave one final overall mark.

Dr Camilleri asked whether there was no specific formula or calculation. Ms Bugeja confirmed that there was not.

Word-count requirements

Dr Camilleri referred to another point already addressed by previous witnesses and asked whether Ms Bugeja confirmed what her colleagues had stated on the issue of word count.

Ms Bugeja stated that the tender stated approximately 1,000 to 2,000 words, which meant that the words were not counted exactly. She stated that images were included and that it was not only text, but also designs, diagrams, and charts. She stated that the word count of those designs could not be counted.

Dr Camilleri asked whether the word count was not taken into account and did not affect the marking. Ms Bugeja stated that it did not affect the marking and that the requirement was approximate.

ISO certificates submitted by the Recommended Bidder

Dr Camilleri referred to the ISO certificates and noted that the Appellant had requested copies of the ISO certificates submitted by the Recommended Bidder, and that these had been circulated prior to the hearing. He asked Ms Bugeja to confirm whether the copies of the certificates circulated by the Contracting Authority were the same copies that were taken into account in the evaluation.

Ms Bugeja confirmed that they were the same.

Questions by Dr Polyxeni D. Gkaintatzi on allocation of tasks within the Preferred Bidder consortium

Dr Polyxeni D. Gkaintatzi asked whether, apart from those ISO certificates, the Preferred Bidder had provided any document allocating tasks between the members of the consortium.

Ms Bugeja stated that she was not really understanding the question. Dr Gkaintatzi clarified that the Preferred Bidder had submitted one ISO certificate, meaning only one of its members, and asked whether that certificate was accompanied by any document allocating tasks between the members of the consortium, or whether Ms Bugeja could check if she could not remember.

Ms Bugeja reviewed the documents and asked for the question to be repeated. Dr Gkaintatzi asked whether there was any document indicating the allocation of tasks between the members of the consortium. Ms Bugeja asked whether the question was being asked in the context of the submission of ISO certificates. She then answered in the negative.

Dr Gkaintatzi asked whether, when evaluating the bid of the Preferred Bidder, it was evident who was doing what and whether this could be understood from the bid. Ms Bugeja asked whether the question referred to the key experts. Dr Gkaintatzi stated that it could refer to key experts or generally.

Ms Bugeja stated that, from the Preferred Bidder's side and from the key experts, one could know what and who was doing what. Dr Gkaintatzi asked whether there were key experts from both the leader and one of its partners and whether key experts from both could be identified.

Ms Bugeja stated that there was enough information within the documents submitted in connection with the key experts. When asked whether key experts were provided by the leader and by another partner, Ms Bugeja stated that she would have to read through all of the documentation again and could not answer simply yes or no without going back to the documents and reading every line.

The Chairman stated his understanding that the key experts had been submitted by the bidder as one consortium. Ms Bugeja confirmed that they were submitted by the bidder.

Dr Gkaintatzi asked whether it was not, for example, only one entity which provided its experts. Ms Bugeja stated that the experts were provided by the bidder, which was one consortium. When Dr Gkaintatzi asked whether the experts were provided from all of their partners, Ms Bugeja stated that it was one bid from the whole consortium.

Intervention by Dr Carlos Bugeja and further questioning on consortium allocation

Dr Carlos Bugeja intervened and stated that this was the purpose of Article 58.

Dr Gkaintatzi stated that the witness had confirmed that there was no document allocating tasks, and that the witness had then said that it was obvious from the key experts that some experts were provided by the leader and some by another partner. Dr Gkaintatzi asked whether the witness could somehow understand who was doing what.

Ms Bugeja stated that she could not say yes or no at that point, and that if there were enough time to review all the documentation on the key experts again, she would be able to answer.

The Chairman stated that, as he understood it, the key experts were submitted by LexNova and that there did not appear to be anything specific stating that a particular key expert was from one entity or another.

Dr Gkaintatzi explained why she was asking the question, referring to Court of Justice of the European Union case law and stating that, in order for it to be acceptable for a bidder to provide only one ISO certificate, the allocation of tasks must be explicit. She stated that she was trying to understand how the evaluators concluded that the certificates were acceptable without a clear indication of the allocation of tasks within the Preferred Bidder's submission, and that she would elaborate on the legal point in submissions.

Dr Carlos Bugeja stated that Regulation 58, concerning consortia, and Regulation 235, concerning reliance, were being conflated. He stated that, under Maltese law, disclosure of who would be doing what is required only when reliance is made under Regulation 235, not when a consortium is established under Regulation 58. He further stated that, under Maltese law, a consortium does not need to have a legal structure or produce documents setting out who will do what.

Dr Gkaintatzi stated that she was reserving her right to make legal submissions and was trying to understand whether, when evaluating the bid, the evaluators took into account any indication that a particular task would be performed by one entity and another task by another entity.

Dr Carlos Bugeja stated that the witness had already answered. Dr Gkaintatzi stated that she was trying to understand whether the tasks were mixed and whether key experts were provided by Lex Nova, Synergy, and Grant Thornton, and asked whether Ms Bugeja could confirm that key experts were provided by more than one party.

Ms Bugeja stated that, when seeing all the documents submitted by Lex Nova, the committee saw them as one whole, namely documents submitted by one bidder. She stated that the committee gave the points as though it was one document.

Dr Gkaintatzi asked whether, when the committee saw that the ISO certificates were from Synergy, it considered whether all relevant activities would be performed only by Synergy. Dr Carlos Bugeja objected that the witness had said that the consortium was taken as a whole and that the question had already been answered.

The Chairman stated that the witness had already answered and that what remained were legal submissions on the point.

Further questions on word count and intervention by the Chairman

Dr Gkaintatzi asked one further question on the word limit and asked whether Ms Bugeja noticed, when evaluating, any excess of the word limit. Dr Carlos Bugeja objected that the question was leading. The Chairman stated that the topic had already been covered.

Dr Gkaintatzi asked whether a bidder would be penalised if there was an excess of the word limit. Dr Carlos Bugeja objected that the question was hypothetical. Dr Gkaintatzi then referred specifically to Criteria C1 and C2 and to disclosure of information made by the Contracting Authority. She stated that, in C1 and C2, the Preferred Bidder had exceeded the word limit by approximately two to three times, and clarified that this was from the write-up alone, without including the word count of

diagrams, charts, and similar material. She asked whether Ms Bugeja understood this when evaluating.

Ms Bugeja answered in the affirmative and stated that, since the tender indicated that the word count was approximate, the committee had no issue with that. When Dr Gkaintatzi clarified that she was asking whether the witness understood that there was an excess and not what the tender was saying, Ms Bugeja stated that the committee did not take the excess of the word count into account.

Dr Clement Mifsud Bonnici noted that the witness was under examination-in-chief. The Chairman asked whether there were any questions in cross-examination.

Cross examination by Dr Carlos Bugeja

Dr Carlos Bugeja referred to the demonstration and to Ms Bugeja's experience in the court system in Malta, which she had stated was 34 years. Ms Bugeja confirmed that this was 34 years.

Dr Bugeja asked what Ms Bugeja could notice when looking at the European Dynamics demonstration.

Ms Bugeja stated that the courts use a system, which she identified as the eCourts system, a platform provided by European Dynamics. She stated that, during the demonstration, she literally saw the same system that is currently used.

Ms Bugeja stated that the intention of having a new case management system in the courts was that the courts needed to upgrade, both for the digital courts and for the public portal, which is called eCourts. She stated that, during the demonstration, she saw the same system currently in use.

Re-examination by Dr Polyxeni D. Gkaintatzi on the demonstration

Dr Gkaintatzi referred to the point raised in cross-examination and asked whether, when Ms Bugeja said that it was the same, she meant that the new requirements included in the tender were not covered.

Ms Bugeja stated that she had been asked about the demonstration and was answering about the demonstration. She stated that the demonstration showed the same system that is currently in use and that some of the write-ups were also the same as the courts system, though not all of them.

Dr Gkaintatzi asked whether Ms Bugeja was saying that the demonstration did not include the new requirements included in the tender. Ms Bugeja stated that it included the functionalities written in the dossier, but that most of it was a replica of today's system. She stated that she recalled that there had been a break so that European Dynamics could give additional examples, and that after the lunch break the evaluators still saw the same eCourts and courts system.

Dr Gkaintatzi asked whether, by saying "the same system", the witness meant that the tender requirements were not covered. The Chairman clarified that they were speaking about the demonstration. Ms Bugeja asked for the question to be repeated.

Dr Gkaintatzi asked whether the new tender had the same requirements as the previous system already in place. Ms Bugeja eventually answered that not all of them were the same.

Dr Gkaintatzi asked whether Ms Bugeja meant that the bid submitted by the Appellant did not cover the minimum requirements. Ms Bugeja answered: “Not in every functionality.” She added that some functionalities were met and exceeded, and that this was why the bidder was given full points for those.

Dr Gkaintatzi stated that this was not stated in the rejection letter and that she was trying to understand. Dr Carlos Bugeja stated that the witness had not said that the Appellant’s bid was not qualifying.

Intervention by the Chairman

The Chairman stated that there appeared to be a communication issue. He summarised his understanding that the demonstration which Ms Bugeja saw of the Appellant was, according to her statement, very closely similar to the interface of the current system. Ms Bugeja confirmed that it was very closely similar.

The Chairman further stated that some of the functionalities, as had been heard at length, were going to be available at a later stage and that the economic operator could state by when, within a number of months. He stated that he would assume that those functionalities which were marked “will be available” would not have been visible in the demonstration because they had yet to be developed, and that this was how European Dynamics could still have been compliant overall, while certain functionalities would not have been possible to demonstrate. The Chairman stated that this was his understanding.

Demonstration requirements and specific functionalities shown

Dr Gkaintatzi asked whether specific functionalities were required in the demonstration or whether all 48 requirements had to be demonstrated. She asked whether the bidder was obliged to include all functionalities in the demonstration.

Ms Bugeja stated that, effectively, in the demonstration, the current case management was shown, but not all the requested functionalities were shown in the demonstration.

Dr Gkaintatzi referred to six functionalities mentioned as mandatory and asked whether those were the minimum required, and whether it was not required for a bidder to demonstrate all functionalities. Ms Bugeja asked to check the tender.

Ms Bugeja asked whether Dr Gkaintatzi was referring to page 17 of the tender dossier. Dr Gkaintatzi and the Chairman confirmed that reference was being made to page 17.

Ms Bugeja stated that the evaluators saw the case management, the data management, the dashboard, the virtual hearings settings, which were not that elaborate, nor was the artificial intelligence. She stated that the public portal was the one in use today, namely the eCourts system, and that criminal records management was also included. She stated that it was only a minimal demonstration.

Cross examination by Dr Clement Mifsud Bonnici

The Chairman asked whether, on that point, there was any need for cross-examination. Dr Clement Mifsud Bonnici proceeded with a brief question on the demonstration.

Dr Mifsud Bonnici asked whether criminal records management was one of the requirements expected to be seen in the demonstration. Ms Bugeja answered in the affirmative.

Dr Mifsud Bonnici asked whether criminal records management was a crucial and very important area. Ms Bugeja answered in the affirmative.

Dr Mifsud Bonnici asked whether, in the Appellant's demonstration, there was nothing to show for criminal records management. Ms Bugeja answered: "No. Nothing."

Dr Mifsud Bonnici stated that he had no further questions. The Chairman thanked Ms Bugeja.

Testimony of Mr Tripodianos (ID: AE 466444)— Summoned by Dr Joseph Camilleri and Dr Polyxeni D. Gkaintatzi for the appellant

Mr Tripodianos identified himself by surname and gave ID number AE 466444. He was sworn in and confirmed that he would tell the truth, the whole truth, and nothing but the truth.

Role of the witness within European Dynamics and involvement in the tender

Dr Joseph Camilleri asked Mr Tripodianos what his role was within the European Dynamics Consortium. Mr Tripodianos stated that he holds a diploma in Information and Communication Systems Engineering and a Master of Science in Information Systems, together with certifications in project and programme management.

Mr Tripodianos stated that he had been working with the company for 19 years in various positions. He stated that he was currently leading a team of more than 60 developers, engineers, architects, and business analysts, and that he had worked on more than 30 government projects in various countries, including Malta.

Mr Tripodianos stated that he was the project manager for the provision of a case management system for the Courts of Justice in Malta and that he had also managed the project development of the European Public Prosecutor's Office case management system. He stated that these were the two projects mentioned as references in the tender in question. He further stated that he had participated in preparing more than 50 tenders, including the tender under discussion.

Dr Camilleri asked what Mr Tripodianos's involvement had been with regard to the tender under discussion and whether it had been a personal involvement. Mr Tripodianos stated that he was the manager responsible for the design, development, and support of the product on which the offer was based.

Mr Tripodianos further stated that, as the manager of the product and in accordance with the company's usual practice when a product is being offered, the responsible manager is involved in the whole preparation of the bid. He stated that he played the leading role in preparing the tender and the related demonstration.

THEMIS-E platform and distinction from the existing Maltese e-Courts system

Dr Camilleri asked Mr Tripodianos to give a general description of the product, THEMIS-E, and its relevance to the court system being requested in the call for tenders.

Mr Tripodianos stated that THEMIS-E is a platform which was used as the basis of the offer. He stated that European Dynamics had experience in several e-courts and case management systems across Europe for the judiciary and prosecutors, including EPPO, the Cartel Office in Germany, BOIP, and others. He stated that THEMIS-E is a platform for case management systems in the judiciary, and that this was the connection with the tender.

Dr Camilleri referred to earlier testimony that European Dynamics already supplies the e-Courts system to the Courts of Justice in Malta and asked whether the current system was also THEMIS-E or was different.

Mr Tripodianos stated that the current system was not the same system. He stated that European Dynamics was offering a completely new system, fully up to date technologically, whereas the current system uses more or less legacy technologies that are being maintained. He stated that what was offered through THEMIS-E was a completely new system.

Mr Tripodianos added that European Dynamics leveraged its experience in THEMIS-E and its experience with the Courts of Malta. He stated that, for example, the company had adopted a familiar user interface to make it easier for users to transition from the current system to the new one, and also retained overall workflows and ideas which it considered applicable and which should remain.

Approach taken by European Dynamics to the word-count requirements

Dr Camilleri stated that he wished to ask about the issue of word counts in the tender offer. He clarified that he was not seeking the witness's interpretation of the word-count requirement, but rather how the issue was approached in practice.

Mr Tripodianos stated that word count is a familiar term and a familiar restriction imposed by contracting authorities, and that European Dynamics knew how to handle it. He stated that the answers were revised in a manner intended to restrict them to under 2,000 words.

Mr Tripodianos stated that meetings were held with the sales department and that, as the technical department, they explained that they would have preferred to use more extensive texts. He stated that all concerned jointly concluded that they had to follow the rules in order not to be penalised with a lower score or even be excluded from the tender for non-compliance.

Mr Tripodianos stated that the parties internally also discussed and recognised that everyone had to abide by the same terms and limitations. He stated that European Dynamics therefore sought to fit the necessary information into what he described as a stringent limit and had to triage information by necessity.

Mr Tripodianos stated that lengthy drafts provided by the technical team were thoroughly reviewed, and that only the information considered absolutely necessary was selected iteratively so that the points required by the tender were covered. He stated that the selection was tedious and frustrating because it did not allow the team to present the proposed solution and technical approach in the level of detail that it would otherwise have wished, but that European Dynamics had to abide by the terms of the tender and did so.

Dr Camilleri asked which departments within the European Dynamics Consortium were involved in the internal discussions on tailoring the explanations to a maximum of 2,000 words. Mr Tripodianos stated that these were his department, the technical delivery department, and the sales department.

Dr Camilleri asked what the decision on what to leave out was based on. Mr Tripodianos stated that the guiding principle was the tender specifications. He stated that the team carefully checked what was identified and required in the tender specifications as necessary, and that the review process was based on necessity.

Mr Tripodianos stated that the original draft answer was approximately 8,000 words long and that trimming it down to the 2,000-word limit required very high effort. He stated that the team had to check and re-check every requirement to ensure that it had been properly addressed.

Mr Tripodianos stated that the first priority was to ensure that all mandatory elements required in the tender dossier were covered. He stated that European Dynamics retained only the information considered essential or demonstrating compliance with those requirements. He stated that only after the team was satisfied that the mandatory requirements had been covered, and if any remaining word allowance was available, additional information could be included.

Criteria C1 and C2 and coverage of functionalities

Dr Camilleri asked Mr Tripodianos to focus specifically on Criteria C1 and C2, with reference to the description of functionalities and the description of readiness and asked how the word count was approached in those areas of the bid.

Mr Tripodianos stated that serious effort had to be invested with the sales department to produce a version starting from approximately 8,000 words and trimmed down to approximately 2,000 words. He stated that it would have been preferable to use a larger word count, such as 5,000 or 6,000 words, especially for Criteria C1 and C2, and also for Criterion B1.

Mr Tripodianos stated that, in the context of Criterion B1, the bidder was required to provide a detailed project plan outlining tasks, responsibilities, and timelines, which required extensive text. He also referred to another criterion requiring a testing programme to ensure efficient and complete user acceptance testing. He stated that European Dynamics was constrained by the 2,000-word limit, but provided a full and complete response.

Dr Camilleri asked what was meant by a full and complete response, particularly with regard to the functionalities, and whether all functionalities referred to in the tender documents had been addressed. Mr Tripodianos stated that every functionality and every requirement in the tender dossier had been covered in full.

Readiness of the system and classification of functionalities

Dr Camilleri asked whether the offer was a system designed from scratch for the Maltese courts or whether it was based on an existing system. Mr Tripodianos stated that it was not designed from scratch, and that it was based on the Themis-E platform, which he described as a commercial off-the-shelf system and as the outcome of an internal research and development process.

Mr Tripodianos stated that the Themis-E platform had been validated by the General Secretariat for Research and Innovation in Greece for its maturity and innovative character. He stated that European Dynamics had delivered to the General Secretariat a set of documents extending to thousands of pages, had carried out extensive testing with it, and had allowed it to see the application over a validation and review period of approximately 10 months. He stated that less than a month earlier,

the General Secretariat had confirmed the quality of the platform and its innovative character, and that this would also be published in the Official Gazette.

Dr Camilleri then asked about the readiness of the system and the tender requirement that bidders indicate whether each feature was available out-of-the-box, available with customisation, or not yet available. He asked Mr Tripodianos to explain the difference between "available out-of-the-box" and "available with customisation".

Mr Tripodianos stated that "available out-of-the-box" means a functionality that can be immediately used. He stated that "available with customisation" means a functionality where the necessary infrastructure is already in place, but where some fine-tuning in the code or discussions with the client are required in order to adapt it to the specifics of the particular users or use case.

Dr Camilleri asked how a feature not yet available differs from a feature available with customisation and asked whether "available with customisation" meant that it was not yet available. Mr Tripodianos stated that this was not correct.

Mr Tripodianos stated that "available with customisation" refers to a feature that is almost ready and where all the necessary tools are in place, requiring only fine-tuning so that it works in the manner required by the specific client. He stated that such a feature is there and needs approximately 10 days of work, more or less, to complete and make it available for production. He stated that, where a feature is not yet available, a significant amount of work is needed, including design, analysis, documentation, agreement with the client on what needs to be built, and then building and testing.

Criminal records functionality and "will be available" classification

Dr Camilleri referred to the only requirement in the offer which was indicated as "will be available", namely the criminal records functionality including integrations and enhancements, and noted that European Dynamics had given the availability date as the 22nd of October 2026. He asked why this had been indicated as "will be available" rather than "available with customisation".

Mr Tripodianos referred to parts of the tender dossier, specifically section 4.3.13, which he stated described the functionality. He stated that the section provided that the designs were provided for reference purposes only. He also stated that the specimen documents provided in the annex were expected to be transformed as part of a digital delivery service, not the one under tendering.

Mr Tripodianos stated that this was a functionality whose detailed requirements were expressly to be refined during milestone 1 of the project, and that therefore it could not honestly be described as already available in a finished or near-finished form in any product.

Mr Tripodianos further stated that the tender dossier required integration with the ECRIS and specified that this would happen during the latter stages of the project. He stated that the whole functionality was planned in the tender dossier for delivery during milestone 4, the final milestone of the project. He stated that this showed the extent of analysis required with the courts.

Mr Tripodianos stated that European Dynamics therefore referred to the functionality as "will be available" in October because the Contracting Authority required it to be presented in that way in the tender specifications. He stated that the functionality could not be delivered before an analysis phase had taken place and guidelines had been received from the Contracting Authority.

Intervention by the Chairman

The Chairman directed that the witness state the facts as they were and noted that submissions would be made at the end.

Dr Camilleri then brought the witness back to the specific offer made by European Dynamics and asked whether he remembered how many features were available out-of-the-box and whether these referred to core functionalities required in the call for tenders.

Mr Tripodianos stated that the tender dossier referred to 48 required functionalities. He stated that, out of these 48, 27 were ready out-of-the-box in the European Dynamics offer. He stated that another 20 were partially ready, but because they were not ready in the exact manner in which the functionalities were grouped in the tender specifications, they were indicated as requiring some customisation. He stated that there was one case marked as "will be available".

Mr Tripodianos stated that, in overview, 27 out of 48, or 56% of the required functionalities, were ready out-of-the-box without customisation; 20 out of 48, or 41%, were available with customisation; and only 1 out of 48, or 2%, was marked as "will be available".

The Chairman again directed that the facts be stated and that submissions would be made later by the lawyers.

Dr Camilleri returned to the criminal records functionality and asked whether any part of that functionality was already available in the THEMIS-E software. Mr Tripodianos stated that most of the features tentatively described in that part of the document had the infrastructure there and that the means to integrate with external systems were there. He stated, however, that European Dynamics could not finalise and conclude the functionality before having a full analysis phase.

Dr Camilleri asked how European Dynamics was in a position to indicate a specific date by which the functionality would be available, given that it still required development. Mr Tripodianos stated that the date was based on the timeframe provided in the tender dossier. He stated that the functionality was to be delivered at milestone 4, near the end of the 28-month period of phase one of the project, and that, working through the timeline prescribed in the tender dossier, European Dynamics arrived at October as a feasible date to prepare the functionality.

Dr Camilleri asked whether any of the requirements of the tender documents had been indicated as not met or impossible to meet. Mr Tripodianos stated that no such requirements were indicated, and that all requirements had been classified as out-of-the-box available, available with customisation, or will be available.

Artificial intelligence, machine learning, blockchain, and automated features

Dr Camilleri stated that Mr Tripodianos had earlier described THEMIS-E as having been recognised as innovative and clarified that he would not go into the decision by the Greek authorities again. He asked what innovative features were included in THEMIS-E specifically in relation to what was requested in the tender documents, which referred to innovation and artificial intelligence.

Mr Tripodianos stated that the tender specifications required artificial intelligence capabilities, which he recalled as being under Criteria J1 and J2. He stated that European Dynamics demonstrated the use

of artificial intelligence capability by using text descriptions of cases to produce a classification of the case nature and to assign a judiciary.

Dr Camilleri asked for a brief explanation of the difference between artificial intelligence, machine learning, and blockchain. Mr Tripodianos stated that artificial intelligence is an umbrella term referring to the capability of machines to act and appear to reason with human intelligence, including learning, reasoning, problem solving, perception, and decision making.

Mr Tripodianos stated that machine learning is a subset of artificial intelligence which allows machines to produce results through their own learning process, without specific step-by-step instructions. He stated that blockchain is a different term with a different meaning, referring to an immutable ledger recording information which cannot be changed without leaving a trace, and that it is also the foundation of Bitcoin and related digital currencies.

Dr Camilleri asked whether there is a difference between automated features and artificial intelligence. Mr Tripodianos stated that there is. He stated that automation can be done with or without artificial intelligence. He stated that automation without artificial intelligence requires specifying each step of a process and providing step-by-step instructions on how to handle a set of data, whereas automation with artificial intelligence relies on artificial intelligence itself to determine what steps need to be followed to handle a set of data, without step-by-step instructions being provided.

Intervention by the Chairman on the scope of evidence regarding artificial intelligence

Dr Camilleri stated that it was being alleged by the other parties that the proposal and system did not include any meaningful artificial intelligence, and asked what Mr Tripodianos had to say about that.

Mr Tripodianos stated that "meaningful AI" is not a meaningful technical term and that he could not understand what that was supposed to mean. The Chairman then intervened and asked whether evidence on that point had already been closed during the case management hearing when the preliminary plea was debated.

Dr Camilleri stated that the question referred to the merits and not to the preliminary plea. The Chairman referred to the J criteria and to the allegation of Lex Nova, and distinguished between the issue of compliance with minimum requirements and the eighth grievance concerning the scoring given by the Evaluation Committee. He stated that, if the question was on that basis, it could proceed, but if it was based on the allegation made during the case management hearing that the Appellant did not meet the minimum requirements, that was a closed chapter. Dr Camilleri clarified that it was not that point.

The Chairman further noted, without deciding the matter at that stage, that there may be an issue that the grievance could be time-barred, and directed that the questioning proceed.

Artificial intelligence features in the offer and demonstration

Dr Camilleri asked what Mr Tripodianos could say about the inclusion of artificial intelligence in the product being offered.

Mr Tripodianos stated that artificial intelligence was present, as demonstrated. He stated that two artificial intelligence features were demonstrated: extracting the case nature from the case summary

and automatically assigning a judiciary. He confirmed that artificial intelligence is used for those features.

Dr Camilleri asked whether artificial intelligence was referred to in the write-ups provided as part of the technical offer. Mr Tripodianos stated that it was, and that artificial intelligence was explained to the extent permitted. He stated that it was described and presented in the demonstration.

Dr Camilleri asked what features relating to artificial intelligence were specifically shown during the demonstration. Mr Tripodianos stated that the classification of case nature and judiciary assignment were shown.

Dr Camilleri asked how artificial intelligence is used in those features. Mr Tripodianos stated that, in the first case, namely classification of case nature, artificial intelligence uses the case summary text to understand the appropriate case nature to be assigned to a case. He stated that, in the second case, artificial intelligence takes into account various factors relating to judiciary officers, such as their experience in cases similar to the case in question, their availability, and workload distribution, in order to assign a case to the appropriate judiciary.

Dr Camilleri asked how the use of artificial intelligence in a system would be assessed by looking at a demonstration. Mr Tripodianos stated that, in the demonstration, European Dynamics was required to show the functions of the system, and that this was what it did. He stated that European Dynamics showed a couple of cases with different case summaries entered into the relevant field, and that the system automatically, through the use of artificial intelligence, understood and classified the cases accordingly. He stated that, for judiciary assignment, European Dynamics filled in information for a sample case and let the system determine which judiciary to assign.

Dr Camilleri asked whether, if one had doubts while looking at a demonstration about whether artificial intelligence was actually being used, there was a way to double-check this apart from what was visible on the screen.

Mr Tripodianos stated that this is not directly straightforward and that it is not easy to understand what is happening behind the scenes, or whether artificial intelligence or another mechanism is involved. He stated that people accustomed to seeing artificial intelligence would probably recognise such features, which he compared to news sites producing short summaries of articles or programmes such as Adobe Acrobat offering a condensed version of a longer text. He stated that the same mechanism was being used.

Clarifications, testing environment, and access after the demonstration

Dr Camilleri asked whether, as a technical person involved in the bid, Mr Tripodianos remembered whether any clarifications were sought by the Contracting Authority from European Dynamics regarding the use of artificial intelligence, or whether the company was ever asked to clarify, explain, or provide further detail about the technical solutions.

Mr Tripodianos stated that there was some discussion about the use of the functionality, how useful it would be, and who could make use of it, but there was no discussion about whether artificial intelligence was behind the scenes. He stated that, if there had been any questions, European Dynamics was present and available to discuss.

Mr Tripodianos stated that European Dynamics could have provided sample scenarios or asked the evaluators to provide case summaries that would demonstrate the system classifying a case accordingly. He further stated that the system was available for six months after the demonstration for users or the Evaluation Committee to check on their own.

Dr Camilleri asked what was meant by the system being available for six months. Mr Tripodianos stated that, as a requirement of the tender dossier, European Dynamics had to make a version of the system available online for six months after the demonstration, so that the Evaluation Committee could access it and confirm that what had been demonstrated was there, was working, and was not a fabrication.

Dr Camilleri asked whether Mr Tripodianos was aware whether this was accessed by the evaluators. Mr Tripodianos stated that he had reviewed the access logs and could confirm that the environment was never accessed for verification of the artificial intelligence features.

Further questions by Dr Polyxeni D. Gkaintatzi on the testing environment

Dr Polyxeni D. Gkaintatzi referred to the environment mentioned by Mr Tripodianos and asked whether he meant something different from the recorded demonstration, namely a testing environment.

Mr Tripodianos stated that the demonstration was performed on a server accessible to the European Dynamics team and also to the Evaluation Committee. He stated that the same server and the same system remained online for six months, available for further access and evaluation by the committee.

Dr Gkaintatzi asked whether this was a testing environment and not just a demonstration, and whether one could go in and see how the system worked. Mr Tripodianos answered in the affirmative and stated that it was fully operational.

Blockchain

Dr Camilleri asked one final question on the issue of blockchain. Mr Tripodianos stated that European Dynamics did not demonstrate blockchain, but that it was not required to demonstrate blockchain.

Dr Gkaintatzi asked why. Mr Tripodianos stated that there was no requirement in the tender dossier to demonstrate blockchain specifically. He stated that the requirement was to demonstrate artificial intelligence, machine learning, or blockchain capability, and that European Dynamics demonstrated artificial intelligence through the use of machine learning.

Dr Gkaintatzi asked whether this was an option. Mr Tripodianos answered in the affirmative.

Cross examination

The Chairman asked whether there would be cross-examination. Dr Carlos Bugeja and Dr Clement Mifsud Bonnici indicated that there was no cross-examination. The Chairman thanked Mr Tripodianos for his time.

Closing

The Chairman thanked all parties present and invited them to make their final submissions during the sitting scheduled for the following day.

End of Minutes for the 2nd Board Sitting

Meeting Minutes for the 3rd Board sitting on the 9th of June 2026

On June 9th, 2026, at 09:00 am, the PCRB reconvened, for a hearing following the second hearing held on the 8th of June 2026.

The Board was composed of:

- Mr. Kenneth Swain – Chairperson
- Dr Ing Damien Gatt – Member
- Mr Keith Victor Grech – Member (online).

The attendance for this public hearing was as follows:

Appellant – European Dynamics Consortium.

Dr Joseph Camilleri – Legal Representative.

Mr Kyle Decelis – Legal Representative.

Dr Polyxeni D. Gkaintatzi – Company Representative.

Mr Konstantinos Velentzas – Company Representative. (online).

Contracting Authority – Court Services Agency

Dr Carlos Bugeja – Legal Representative.

Ms Mariella Pulis – Chairperson.

Department of Contracts

Dr Daniel Inguanez – Legal Representative.

Preferred Bidder – LexNova Consortium.

Dr Clement Mifsud Bonnici – Legal Representative.

Dr Calvin Calleja – Legal Representative.

Mr Clayton Axisa -- Consortium Representative.

Mr Tilen Levin – Consortium Representative. (online).

Opening Statements

The Chairman welcomed the parties present for this third hearing Case number 2229 in the records of the PCRB and formally opened the session. The Chairman identified the Appellant as **European Dynamics Consortium**, the Contracting Authority as **Court Services Agency** and acknowledged the presence of the representative of the Recommended Bidder, **LexNova Consortium.**

The Chairman, Mr Kenneth Swain, opened the meeting by informing the parties that Mr Keith Victor Grech, a member of the PCRB, was participating online. Dr Joseph Camilleri for **European Dynamics Consortium,** Dr Carlos Bugeja for the Contracting Authority, Dr Daniel Inguanez for the Department of Contracts and Dr Clement Mifsud Bonnici for **LexNova Consortium** raised no objection.

The Chairman then directed that the sitting would proceed with final submissions and indicated that each party would be afforded forty-five minutes for its submissions. The Chairman invited the Appellant to commence its submissions and stated that he had no preference as to the order in which the parties would proceed thereafter, indicating that this would be left to the parties.

Before commencing submissions, Dr Joseph Camilleri, on behalf of the Appellant, informed the Board how the Appellant intended to proceed. He stated that, having taken note of the Board's directions given during the previous sitting, he and his colleague would be sharing the submissions between them and would not be addressing the same grievances. He indicated that his colleague would begin by addressing certain grievances, including the grievance concerning the ISO certificate and matters relating to the selection criteria, following which Dr Camilleri would address the remaining grievances.

The Chairman acknowledged this indication and invited the Appellant to proceed.

Final Submissions

Submissions by Dr Polyxeni D. Gkaintatzi (for the Appellant, European Dynamics Consortium)

Dr Gkaintatzi addressed two issues on behalf of the Appellant: first, the selection and eligibility criterion concerning the performance of services of the specified type, and secondly, the ISO certificate requirement.

Eligibility criterion relating to services of a similar nature

Dr Gkaintatzi submitted that the Preferred Bidder had failed to satisfy the eligibility criterion relating to the performance of services of the specified type.

She referred to the tender documentation, which required bidders to provide a list of principal services of a similar nature, namely the implementation of management solutions within the justice and courts domains, including post-implementation services, maintenance and support, and to state the value of two services of similar nature effected within the past five years, namely between 2019 and 2023. She noted that the minimum aggregate value required by the tender was not less than EUR 3,000,000 for the quoted period.

Dr Gkaintatzi stated that there was no dispute that, through various clarification notes, the Contracting Authority had confirmed that both completed and ongoing projects could be used as references. She submitted, however, that those clarification notes had not altered the value threshold requirement. She clarified that the Appellant was not arguing that ongoing projects were ineligible. On the contrary, the Appellant accepted that a bidder could rely on completed projects, ongoing projects, or a combination of both. What remained unchanged throughout the tender process, according to the Appellant, was that the bidder had to demonstrate an aggregate value of at least EUR 3,000,000 for the quoted period, namely 2019 to 2023.

Dr Gkaintatzi submitted that the wording of the tender was important because the tender did not refer to the total nominal value of a project, but to the value of the services provided during the quoted period. She therefore argued that, where a project had commenced before 2019 or continued beyond 2023, the bidder had to identify the portion of that project value which was actually performed and invoiced within the relevant reference period.

She submitted that this interpretation was supported by the wording of the tender itself and by the clarification process. She referred to clarification notes 3, 5, 6, 7, 9, 16 and 19, through which the issue had been repeatedly raised by economic operators. She referred in particular to clarification note 16, which expressly asked whether projects that had started before 2019 could be used as references

provided that only the portion completed during the reference period was considered. The reply referred to Section 1, Article 5B, and stated that bidders were to provide the requested information for a minimum of two implemented or ongoing similar-nature projects within the past five years, between 2019 and 2023. Dr Gkaintatzi submitted that the Contracting Authority therefore confirmed the eligibility of such projects but never stated that bidders could simply rely on the total contract value irrespective of when the services were performed.

Accordingly, Dr Gkaintatzi submitted that even where a project was ongoing or had commenced before 2019, the bidder still had to demonstrate that the value of services delivered during the relevant period met the EUR 3,000,000 threshold. She submitted that this information had not been provided by the Preferred Bidder. She further submitted that, as emerged from the testimony of the evaluation committee members during the previous sitting, there was no indication in the tender submission identifying the value attributable to the period 2019 to 2023. According to Dr Gkaintatzi, the evaluation committee considered such information unnecessary and therefore did not verify compliance with this requirement. She submitted that this position was incompatible with the tender dossier itself.

Dr Gkaintatzi submitted that the issue was not whether the Preferred Bidder had projects of sufficient overall value, but whether the Preferred Bidder had demonstrated compliance with the specific eligibility criterion established by the tender documentation. She submitted that the Preferred Bidder had not done so, and that the Contracting Authority had not sought any clarification capable of establishing whether the threshold had in fact been met.

Reference to PCRB Case 1692 and distinction drawn by the Appellant

Dr Gkaintatzi referred to the Department of Contracts' reliance, in its reply to the Appellant's supplementary grievances, on this Board's decision in PCRB Case 1692 — CT2244/2021, concerning the Teatru Manoel consultancy tender. She submitted that that case was materially different. She noted, by coincidence, that the matter had been chaired by the same Chairman.

Dr Gkaintatzi stated that in Case 1692 — CT2244/2021, the Contracting Authority had issued clarification notes which effectively created a contradiction between the tender dossier and the evaluation approach ultimately adopted. The Board had found that bidders had been led to believe that ongoing projects could be relied upon and were then penalised for doing precisely that. She referred to the Board's statement that the Appellant in that case had been misguided by the Contracting Authority, having first been allowed to submit information relating to ongoing projects and then deemed non-compliant for doing so. She further referred to the Board's statement that, once prospective bidders had been allowed to provide information on ongoing projects, it was inconceivable for them to be eliminated from the tendering process for abiding by the same rules adopted by the Contracting Authority.

Dr Gkaintatzi submitted that this was not the situation before the Board in the present proceedings. The Appellant fully accepted that ongoing projects were eligible and did not contest this. The question, according to the Appellant, was different: whether the Preferred Bidder had demonstrated that the aggregate value of services performed during the relevant period exceeded EUR 3,000,000. She submitted that no contradiction existed in the tender documentation on that point, and that the requirement had remained constant throughout the tender process.

Clarification and absence of information within the Preferred Bidder's submission

Dr Gkaintatzi submitted that the Preferred Bidder had failed to provide the necessary information. She then addressed the issue of clarification. She stated that the Board has repeatedly held, including in Case 2120, Netcompany S.A. versus European Dynamics, that clarification is only required where the missing information cannot be derived from the tender submission itself. She also referred to the Court of Appeal decisions in Bonnici Bros Projects Limited versus Minister for Health and in Rockcut Limited

v. Id-Direttur Ġenerali tad-Dipartiment tal-Kuntratti et, in which it was held that a tender should not be disqualified for failure to provide information requested in the documentation where the evaluation committee could obtain that information from another part of the documents submitted as part of the tender.

Dr Gkaintatzi submitted that this principle assisted the Appellant and not the Preferred Bidder. She stated that, since there was no indication anywhere in the Preferred Bidder's bid, as the evaluation committee members had admitted during the previous sitting and as the Contracting Authority itself had acknowledged in its reply, the evaluation committee deemed it unnecessary to request any clarification on the aggregate value within the quoted period. She submitted that there was no other document within the Preferred Bidder's submission from which the evaluation committee could determine what portion of the reference projects corresponded to services performed during the period 2019 to 2023, nor whether the EUR 3,000,000 threshold had been satisfied.

Dr Gkaintatzi submitted that the relevant information was absent from the tender of the Preferred Bidder, that the evaluation committee could not derive it from elsewhere in the tender, and that this had been admitted during the previous sitting. She submitted that the Preferred Bidder had therefore failed to demonstrate compliance with the mandatory eligibility criterion and, for that reason alone, its tender ought to have been declared non-compliant and excluded from further evaluation.

ISO certification requirement

Dr Gkaintatzi then addressed the Preferred Bidder's alleged failure to satisfy the ISO certification requirement. She submitted that the Appellant's position was twofold. First, as a matter of law, the Preferred Bidder could not validly rely upon the ISO certificates of another consortium member for the purpose of satisfying the requirement. Secondly, and in any event, even if such reliance were legally permissible, which the Appellant contested, the Preferred Bidder had failed to establish the conditions necessary for such reliance and was therefore non-compliant.

Dr Gkaintatzi submitted that ISO certifications are governed by Article 62 of Directive 2014/24/EU and are not capacities which may be relied upon under Article 63, as transposed in Maltese law. She submitted that the Directive draws a clear distinction between technical and professional ability, economic and financial standing, and quality assurance and environmental management standards. She stated that this distinction is reflected in separate provisions: Article 62 is specifically dedicated to quality assurance standards and environmental management standards, whereas Article 63 governs reliance on the capacities of other entities.

Dr Gkaintatzi submitted that Article 63 expressly permits reliance on third-party capacities only in relation to the selection criteria referred to in Article 58, namely economic and financial standing and technical and professional ability. She emphasised that Article 63 contains no reference to Article 62 and submitted that this omission was significant. Had the legislator intended quality assurance certifications to be capable of being borrowed or relied upon in the same manner as technical capacity or professional experience, it would have said so expressly. Instead, the Directive regulates quality assurance certifications separately under Article 62 and omits any cross-reference to Article 63.

On that basis, Dr Gkaintatzi submitted that a literal interpretation led to only one conclusion, namely that quality assurance certifications are not capacities capable of being relied upon through another entity in the same manner as economic, technical or professional capacities. She submitted that the Preferred Bidder was therefore required to satisfy the ISO certification requirement in its own right and, on that basis alone, should have been excluded.

Alternative submissions on reliance and allocation of tasks

In the alternative, and in any event, Dr Gkaintatzi submitted that even if the Board were to conclude that reliance on another consortium member's ISO certifications was permissible, which the Appellant denied, the Preferred Bidder still failed because the tender did not establish any link between the entity holding the certifications and the actual performance of the activities to which those certifications related.

Dr Gkaintatzi referred to the judgment of the Court of Justice of the European Union in Case C-592/21, ĒDIENS & KM.LV v Ieslodzījuma vietu pārvalde, as the governing authority on this issue. She submitted that the Court held expressly that a group of economic operators bears the burden of demonstrating that it satisfies the qualitative selection criteria, and that the burden is entirely on the tenderer. It is not for the Contracting Authority to assume how the contract will eventually be performed.

Dr Gkaintatzi further submitted that, most importantly, the Court held that where reliance is placed upon the capacities or experience of a particular member of a group or consortium, such reliance is permissible only where the activities for which those capacities are required will actually be performed by that member. She referred to the Court's statement that, where it is established that the performance of the activities for which experience is required will be entrusted to a single member of that group, the tender group may rely only on the experience of that member.

Dr Gkaintatzi submitted that the principle was clear: there must be a demonstrable functional link between the entity whose capacity, experience or certification is relied upon and the actual performance of the relevant contractual activities. She submitted that this link was completely absent in the present case.

She submitted that the evidence heard by the Board during the previous sitting confirmed this position. According to Dr Gkaintatzi, the evaluation committee members expressly admitted that no document allocating tasks between the consortium members had been submitted. She further submitted that they admitted that the key experts proposed for execution of the contract were being provided by both the consortium leader and the entity holding the ISO certifications. She characterised those admissions as fatal to the Preferred Bidder's position.

Dr Gkaintatzi submitted that if key personnel are supplied by different consortium members, and if the consortium seeks to rely upon certifications held by only one of those members, then it becomes essential to identify which member will perform which activities. She stated that no such allocation existed. She referred to the letter of intent disclosed by the Contracting Authority and submitted that it contained no division of responsibilities. In particular, it did not specify which member would perform the certified activities, which member would be responsible for the relevant services, which tasks would be carried out under the certified quality management system, or whether the entity holding the ISO certifications would perform those activities at all. She submitted that, in short, there was no operational allocation of responsibilities.

Dr Gkaintatzi submitted that the Contracting Authority therefore had no basis upon which it could verify compliance with the requirement. She stated that this was precisely the type of situation addressed by the Court of Justice. She further submitted that the Court had held that consortium membership or joint and several liability cannot replace proof of actual performance responsibilities. What matters, according to the Appellant, is not the legal structure of the consortium, and Dr Gkaintatzi noted that the Appellant did not contest that a consortium is not required to have a legal entity, but rather the demonstrated allocation of tasks.

Dr Gkaintatzi submitted that in the present case there was no demonstrated allocation of tasks. She submitted that the position advanced by the evaluation committee during the previous sitting effectively amounted to an admission that compliance had been assumed rather than demonstrated.

She stated that compliance cannot be presumed, but must be proven. Since the tender documents contained no allocation of tasks and no functional nexus between the certified entity and the performance of the relevant activities, she submitted that the Preferred Bidder had failed to discharge its burden of proof.

Accordingly, Dr Gkaintatzi submitted that even if reliance on another consortium member's ISO certifications were legally permissible, which the Appellant denied, the Preferred Bidder had failed to establish the conditions necessary for such reliance. For that reason, also, she submitted that the tender ought to have been declared non-compliant and excluded from the procurement procedure.

Submissions by Dr Joseph Camilleri (for the Appellant, European Dynamics Consortium)

Dr Camilleri then addressed the remaining grievances on behalf of the Appellant. Before entering into the merits of the technical evaluation, he addressed two grievances from the Appellant's original submission.

Lack of disclosure of information

Dr Camilleri stated that the first of these grievances concerned the lack of disclosure of information. He noted that this had been partly addressed in view of the Board's directions and the production of certain documentation. However, he stated that the Appellant's rights on this point remained reserved, in view of the fact that some of the documentation requested had still not been released. He stated that he was making this point solely for the sake of correctness, so that the Appellant would not be understood to have renounced or waived this grievance in any way.

Fourth ground of appeal concerning Synergy International

Dr Camilleri then addressed the fourth ground of appeal. He stated that this ground concerned the Appellant's position that the Recommended Bidder should be excluded on the basis that one of its participants, specifically Synergy International, was involved in criminal proceedings in another jurisdiction outside Malta. He stated that, in those proceedings, a number of government officials and key officials of that consortium participant were being tried for criminal acts relating precisely to a public procurement process.

Dr Camilleri stated that the Appellant was aware of the respondents' argument that the proceedings were still ongoing, that there had been no final determination, and that there was therefore no formal blacklisting of the participant. He referred to the submissions made in the appeal, where the Appellant had explained why, in its view and in terms of applicable European directives and principles, this should be taken into account.

Dr Camilleri further noted that the tender concerned a system to be provided to the Courts of Justice in Malta. He submitted that it was, in the Appellant's view, ironic that the Recommended Bidder in a tender for a system to be provided to the civil and criminal courts of Malta should itself include a participant involved in ongoing criminal proceedings. He emphasised that these were not merely investigations or allegations, but ongoing criminal proceedings, and submitted that this point should not be ignored.

Overview of remaining technical grievances

Dr Camilleri then turned to the remaining grounds of appeal, which he stated related essentially to the technical evaluation carried out by the evaluation committee. He said he would briefly refer to the grievances before addressing certain points more generally, since several of the Appellant's complaints concerning the evaluation system were common to different grievances.

He stated that the second ground of appeal concerned Criterion C1, where the evaluation committee stated that the Appellant had provided only a very brief description of the functionalities of its system and awarded it 1 mark out of 5. He stated that the third grievance concerned Criterion C2, relating to the readiness of the system offered. He noted that much of the evidence given during the previous sitting had addressed this point, where the Appellant had been awarded 3 marks out of 10, compared with 8 marks out of 10 awarded to the Recommended Bidder.

Dr Camilleri also referred to the seventh grievance, concerning the issue of the word count or, as the Appellant described it, the word limit. He stated that this was intrinsically related to the Appellant's grievances on the evaluation of C1 and C2. Finally, he referred to the eighth grievance, concerning Requirement J2, where the Appellant had again been penalised on the basis that it had allegedly failed to show the use of emerging technologies such as artificial intelligence, machine learning or blockchain.

Background to the evaluation and margin between the bidders

Before addressing those grievances, Dr Camilleri provided background. He stated that the tender concerned a court IT system of substantial value. There were two bidders: the Recommended Bidder, which proposed a solution at a value of EUR 7.8 million, and the Appellant, whose proposed solution was EUR 2 million lower, at EUR 5.8 million. He stated that the price difference was immediately evident and was reflected in the percentage points granted to the parties in relation to the financial offer, where the Appellant had scored well.

Dr Camilleri submitted that, notwithstanding the financial offer, when one considers the technical evaluation, the Recommended Bidder was ultimately selected on the basis of a total difference in marks of approximately 3.3 percentage points. He stated that if the difference had been much larger, the parties might not have been before the Board. He clarified that the Appellant was not submitting that the cheaper offer should automatically be selected, since the procedure was not one in which the lowest price was determinative. However, he submitted that where the difference in marks was very slim, it was even more important to determine whether the evaluation had been carried out correctly.

Review by the Board and manifest error of assessment

Dr Camilleri then addressed the applicable standard of review. He stated that the Appellant was fully aware of the applicable case law, including cases establishing that this Board and the courts should not generally substitute their discretion for that of the members of the evaluation committee where technical expertise is involved. He submitted, however, that this did not mean that the Board should not examine the process, the reasons given by the evaluation committee, and the arguments made in light of the evidence heard during the previous sitting, in order to determine whether there had been a manifest error of assessment.

Dr Camilleri referred to the Court of Appeal judgment in Attard Farm Supplies Limited versus Corporation Services, where he stated that this principle was mentioned. He stated that the judgment provides that the Board should not substitute its technical judgment for that of the evaluation committee except where serious and convincing reasons are shown to reveal that the evaluation is wrong or dubious. He added that the case also refers to European case law confirming the principle while also affirming that an exercise may be carried out to determine whether there has been a manifest error.

Dr Camilleri also referred to Steel Shape Limited versus Director of Contracts, decided by the Court of Appeal on the 7th of August 2013. He stated that this case is generally relied upon to confirm the principle that the Board should not replace the technical discretion of the evaluation committee. He noted, however, that in that case the Court of Appeal nevertheless examined the specific marks given

in the procurement process and assessed whether the marks awarded made sense in confirming the conclusions of the evaluation committee.

Dr Camilleri clarified that the Appellant was not asking for a rerun of every aspect of the evaluation. The Appellant's complaints were directed specifically at Requirements C1, C2 and, through the additional grounds raised, J2. He stated that this did not necessarily mean that the Appellant agreed with the marks granted in all other requirements or with the marks granted to the Recommended Bidder in all other sections. These specific sections had been cited because, in the Appellant's view, there had been a blatant shortcoming in the evaluation as carried out.

Criterion C1 and the description of functionalities

Dr Camilleri began with the second grievance, concerning Criterion C1. He stated that the Appellant had been awarded only 1 mark out of 5 on the basis that it had allegedly given only a brief description of functionalities. He described this as 20% of the available marks. He stated that, as explained in the appeal, the Appellant disagreed that it had failed to provide a sufficiently detailed description. According to the Appellant, it covered all functionalities and described the features of the system. Dr Camilleri submitted that the Appellant had met the requirement and that this alone should have deserved considerably more than 20% of the marks.

Dr Camilleri then stated that the issue of word count arose directly in this context. He submitted that a contracting authority could not impose a word count which severely limited the opportunity of a bidder to provide full and detailed explanations and then penalise that bidder on the basis that its explanation was not detailed enough.

Word count / word limit grievance

Dr Camilleri stated that the word count issue had been developed in greater detail in the Appellant's seventh grievance. He submitted that, throughout the procedure, the Appellant had requested details about the word count of the Recommended Bidder's offer because it needed to understand how the Recommended Bidder could be described as having given exhaustive descriptions and explanations, while the Appellant was penalised for not being detailed enough after having provided an explanation within the word count indicated in the tender.

Dr Camilleri noted that the original position of the Contracting Authority in its reply had been to deny that the Recommended Bidder had exceeded the word count indicated in the tender. He stated that the Contracting Authority also replied that, if there was a word limit, it applied to all parties, and that if the Appellant found it difficult to provide detailed descriptions because of the word count, the same would have applied to the Recommended Bidder. He submitted that, when it eventually transpired that the Recommended Bidder had greatly exceeded the 2,000-word limit, the position of the Contracting Authority changed.

Dr Camilleri stated that the position now being taken was that the word "approximate" meant that no bidder was actually bound by any word limit, and that the word count was simply indicative. He noted that the Appellant continued to refer to it as a word limit, while the respondents referred to it as a word count.

Dr Camilleri then addressed the interpretation of the word count or word limit as indicated in the call for tenders. He stated that the tender referred to the use of approximately 1,000 to 2,000 words for each functionality. He submitted that the word "approximate" was not a legal term, but that analogies could be drawn. He referred to the Civil Code concept of "circa", which he described as similar to "approximate", and stated that this would suggest roughly plus or minus 5%. He further referred to the context of university submissions and assignments where a word count is indicated, stating that the usual practice is to treat "approximate" as meaning plus or minus 10%. He said that even if one were

generous and allowed 15% or 20%, the Recommended Bidder's explanations had exceeded the 2,000-word limit by two and a half times, reaching approximately 5,000 words.

Dr Camilleri further submitted that the tender did not merely refer to approximately 2,000 words but to a range of 1,000 to 2,000 words. He submitted that, by indicating a range, the tender documents reinforced the concept that the 2,000-word figure was an upper limit and not an average. Otherwise, he submitted, there would have been no need to indicate the range.

Dr Camilleri stated that the word count had been the subject of several clarifications. He submitted that it was therefore surprising to hear a member of the evaluation committee say that the word count had not been checked because the presence of the word "approximate" meant that it was not important. He also referred to confirmation given during the previous sitting that excess words had not affected the marks awarded and that the full submission had been taken into account in its entirety even where it exceeded 2,000 words.

Dr Camilleri submitted that the result was a situation where one bidder, the Appellant, acted correctly and abided by the word limit clearly indicated in the call for tenders, while the Recommended Bidder did not observe that word count. He noted that the Board had access to the remainder of the Recommended Bidder's submission and could verify whether the word limit had also been exceeded in other sections. He submitted that the Recommended Bidder was given higher marks because its explanations were more detailed and comprehensive, while the Appellant was penalised because its explanations were found not to be detailed enough.

Dr Camilleri referred to the evidence of the Appellant's technical witness, who had explained the limitations imposed by the word count and stated that the original explanations prepared by the sales and technical teams of European Dynamics had been in the region of 8,000 words, which had to be reduced to 2,000. Dr Camilleri submitted that the Appellant was penalised precisely for complying with that limitation.

Dr Camilleri then addressed the Preferred Bidder's position that the tender documents did not state that explanations exceeding 2,000 words would lead to exclusion. He stated that the Appellant disagreed and considered the rule clear, with consequences for non-observance. However, he submitted that even if, for the sake of argument, the Recommended Bidder was correct that it should not be excluded, it was certainly unfair for a bidder to be rewarded for breaking the rules while another bidder was penalised for doing its best to abide by the tender requirements.

Dr Camilleri submitted that this raised serious issues relating to equality of treatment, fairness and transparency. He stated that where a rule in tender documents is clear, it must be applied equally and consistently to all parties. He submitted that the word count issue, even if there were no other issues involved, vitiated the evaluation. He further submitted that it certainly made the award of 1 out of 5 under Criterion C1 on grounds of insufficient detail manifestly wrong and evidently unfair.

Criterion C2 and readiness of the system

Dr Camilleri then addressed Criterion C2, which concerned the readiness of the system offered by the Appellant. He noted that evidence given during the previous sitting established that there were 48 functionalities. Of these, 27, representing 56%, were ready out-of-the-box. A further 20 were available with customisation. Members of the evaluation committee had sought to argue that "available with customisation" meant that significant work was required to obtain a fully workable system. Dr Camilleri referred, however, to the evidence of the Appellant's representative, who stated that customisation involved work but that the basic structure was already in place and that customisation would take approximately 10 days, not months.

Dr Camilleri stated that there was only one feature marked as "will be available". He further stated that the requirement in question was split into two parts: one, which he described as the main requirement already available, and another which, as declared in the tender documents themselves, relied on future information to be provided by the Contracting Authority and was accordingly marked as "will be available".

In that context, Dr Camilleri asked whether there were any tenable grounds for the Appellant being granted only 3 out of 10. He stated that the questions put to the evaluation committee members during the previous sitting were intended to understand why only 3 marks out of 10 had been awarded. He stated that no explanation had been given which changed the Appellant's position.

Dr Camilleri referred to the evidence of one evaluation committee member, whom he believed to be Mr Mifsud, who stated that a calculation had been used in allocating the marks, but who was not certain what the calculation was or whether it was quantitative or qualitative. Dr Camilleri submitted that this was unclear. He added that the other evaluation committee members had contradicted that evidence and stated that there had been no calculation and no formula, but simply a holistic mark.

Dr Camilleri submitted that, where a bidder is granted only 3 out of 10, it is not acceptable to say merely that a holistic mark was given, without explanation, without derivation from a method set out in the tender documents, and on the basis of an approach allegedly devised by the technical evaluation team.

Dr Camilleri stated that the purpose of the evidence given during the previous sitting regarding the THEMIS-E product offered by the Appellant was not to demonstrate that it was the best system on the market. He accepted that the evaluation must be considered in the context of the particular tender. However, he submitted that where a system is recognised, established and used by several major players, and is awarded marks of 3 out of 10 or 1 out of 5, and where the evaluation committee's explanations are not satisfactory, this gives rise to serious concern.

Requirement J2 and emerging technologies

Dr Camilleri finally addressed the issue of emerging technologies under Requirement J2. He stated that experts had testified that artificial intelligence was used as part of the system, that machine learning was used, and that this had been shown in the demonstration. He also referred to the technical expert's explanation that it can sometimes be challenging to assess the extent to which artificial intelligence is used in a system.

Dr Camilleri submitted that the Appellant was not certain, from the testimony heard during the previous sitting, how the technical members of the evaluation committee assessed the presence or otherwise of artificial intelligence. He referred to a witness who had honestly stated that he was well versed in IT but was not an AI expert. Dr Camilleri submitted that if a bidder is to be penalised for lack of artificial intelligence, the Appellant would expect the relevant evaluator to be an expert in artificial intelligence.

Dr Camilleri further referred to the testimony of the Appellant's technical representative that no further clarifications had been sought on the presence of artificial intelligence or innovative technology in the Appellant's proposal. He also referred to evidence that the testing environment had been made available to the evaluation committee for six months after the demonstration, with no indication that any attempt had been made to access it or check how it worked.

Dr Camilleri submitted that this might have been acceptable if the evaluation committee had been satisfied. However, he submitted that it was inconsistent to accuse the Appellant of not having used artificial intelligence in its proposal while apparently making no attempt to properly assess that aspect of the submission.

Conclusion of submissions by Dr Camilleri

Dr Camilleri concluded by stating that the Appellant had focused on three particular areas and submitted that there had been grave shortcomings in the assessment by the evaluation committee of those specific areas, particularly when considered together with the word count issue, which in the Appellant's view had severely penalised it.

Dr Camilleri repeated that the difference in total marks between the Appellant and the Recommended Bidder was very slim. He submitted that this made it even more important for the Board to scrutinise the process and to review whether the Appellant's concerns were reasonable. He stated that the Appellant believed its concerns were real and reasonable, and thanked the Board.

Submissions by Dr Carlos Bugeja (for the Contracting Authority, Court Services Agency)

Dr Bugeja appeared for the Court Services Agency and stated that he would not address the first grievance, which had been decided at least at that stage. He indicated that he would address the remaining grounds, namely Grounds 2 to 4 and the additional Grounds 5 to 8.

General position on the role of the PCRB and the nature of the appeal

Dr Bugeja submitted that the Appellant had conceded, for want of a better word, that its tender had been assessed, that it had received marks, and that it had placed second. He submitted that, in substance, the appeal was asking the Board to re-mark the technical evaluation under the best price-quality methodology. He stated that this was not a function of the PCRB, which is not a second evaluation committee.

Dr Bugeja submitted that the PCRB intervenes only where there is a legal defect and, as he stated had been conceded by Dr Camilleri, where there is a serious, manifest and, as the Board adds in several of its decisions, unreasonable decision. He submitted that these three tests were clearly not met.

Dr Bugeja reminded the Board that the tender concerned a court management information system involving issues of technicality, functionality, integration readiness, security and case management. He submitted that these were technical aspects upon which the evaluation committee had decided.

Dr Bugeja stated that although Dr Camilleri had said that the Appellant was not asking for a rerun of the technical appreciation of the evaluation committee, he respectfully disagreed. He submitted that, from the submissions made during the sitting, from the questions put during the previous sitting, and from the appeal itself, it was evident that what was being contested were the marks awarded. He submitted that there was no legal point and that the substance of the complaint was why the Appellant had received 3 out of 10 when, in its view, it should have received 7, 8 or 9.

Dr Bugeja referred in this regard to PCRB Cases 2120, 2145, 2084 and TNS Dimarso NV v Vlaams Gewest, CJEU Case C-6/15, as well as to case-law of the Court of Justice of the European Union, which he submitted had established that the evaluation committee enjoys a margin of appreciation in qualitative best price-quality scoring, provided that it does not alter the criteria. He stated that, had the evaluation committee altered the criteria, the Board would certainly have jurisdiction to examine the scoring system. He submitted that this was not the case in the present matter, and that the Board reviews legality and reasonableness but does not re-mark technical preferences.

Dr Bugeja further stated that he had noted a pattern during the previous sitting and that this had again been referred to during the sitting. He submitted that the matter was not an exercise in testing the memory abilities of the technical members. He stated that during the previous sitting he had mentioned that the decision had been taken six months earlier, and that he had then been corrected to the effect that it had been taken two years earlier. He submitted that what had to be assessed was

whether, at the time the decision was given and not with hindsight, the decision was one that should lead the Board to intervene on the basis of seriousness, manifest defect or unreasonableness.

Ground 2 - Criterion C1

On Ground 2, Dr Bugeja stated that the Appellant was arguing that the evaluation committee had applied an altered criterion under C1 and that the low mark awarded was arbitrary or disproportionate. He submitted that the second part of that argument was a matter into which the PCRB could not go.

Dr Bugeja submitted that Criterion C1 required a comprehensive and detailed description of the functionalities in relation to the requirements of the tender. He submitted that the evaluation committee had not created a new standard, but had assessed the substance, the detail, the integration and the completeness of the Appellant's submission. He submitted that this fell squarely within the technical margin of appreciation afforded to an evaluation committee.

Dr Bugeja then addressed what he described as a central misunderstanding concerning the demonstration. He stated that, from the way the appeal had been written and from the submissions made during the sitting, it appeared that the Appellant's position was that the demonstration had a separate scoring. He submitted that it did not. He stated that the demonstration was only intended to demonstrate what was already present in and given by the write-up, and that this was clear from the tender dossier itself.

Dr Bugeja referred to evidence given during the previous sitting that the evaluation committee had not asked questions during the demonstration. He stated that there was no obligation in the tender documents for the evaluation committee to ask questions. He submitted that the demonstration was not an interview, not a coaching session, not a second chance to do something not already given in the write-up, and not a workshop in which the evaluation committee had to guide the bidder as to what was required or what had to be improved.

Accordingly, Dr Bugeja submitted that any contestation about what had happened during the demonstration was essentially irrelevant. He stated that the tender expressly provided that no qualitative score was associated with the demonstration. He submitted that the comments concerning the demonstration did not arise from a separate demonstration mark, but that the demonstration served only to confirm whether the assertions made in the write-up were substantiated by the system shown.

Ground 3 - Criterion C2 and readiness of the system

Dr Bugeja then addressed Ground 3, relating to Criterion C2 and the readiness of the system. He stated that the Appellant's argument, as he understood it, was that readiness should have been scored arithmetically, so that if there were 48 items and around half were ready, the score should have been around 58%. He submitted that this was not the test in the tender dossier.

Dr Bugeja submitted that Criterion C2 did not state that evaluators were to count functions mechanically or mathematically and divide by the total number of items. He referred to the testimony of the witnesses, who had all stated that they took readiness as a whole. He referred to Note 2 to Criterion C2, which stated that points would be awarded based on the readiness of all functionalities, not the readiness of each functionality in isolation. He submitted that the total score was therefore to reflect overall completeness and operational status, and that this was a qualitative technical assessment, not a calculator exercise.

Dr Bugeja then addressed the argument that some functions were available, others were available with customisation, and others were not yet available. He submitted that a function available out-of-the-box is clearly not the same as a function available with customisation. He stated that the fact that

the Appellant had indicated certain functions as requiring customisation did not resolve the question of readiness. A function available with customisation, because the Appellant itself indicated it as such, was not the same as a function that was presently operational. He submitted that available with customisation meant configuration, build, testing and related work.

Dr Bugeja referred to Dr Camilleri's submission that certain functionality would have been available within a few weeks or days. He submitted that this was not evident from the tender document and that it was not open, two years later, to say that it would have been available quickly when the tender document contained nothing to indicate the level of readiness of functions marked as available with customisation.

Dr Bugeja submitted that this distinction was central to the procurement because the tender sought the customisation of an off-the-shelf case management system. He stated that the title of the tender itself expressly referred to off-the-shelf. He submitted that the fact that available with customisation was being presented as equivalent to off-the-shelf, when the title of the tender demonstrated the Contracting Authority's preference, was telling.

Dr Bugeja also submitted that a distinction applied not only to this grievance but to all grievances, namely the distinction between compliance, which avoids disqualification, and scoring well. He stated that the Appellant had not been disqualified; rather, it had scored poorly in some areas because some functionalities were not readily available in a tender whose title referred to off-the-shelf availability.

Ground 4 - Criminal proceedings and integrity

Dr Bugeja then addressed Ground 4. He stated that Dr Camilleri had accepted that there was no conviction of any members of the consortium. He submitted that, for a person to be precluded from bidding, there is a procedure at law, namely blacklisting. He stated that blacklisting is not decided by the Contracting Authority through informal means, but is a formal legal status arising from a formal legal procedure.

Dr Bugeja submitted that the blacklisting procedure had not been invoked. He stated that blacklisting is not an informal label but a statutory process, as explained in PCRB Case 2143. He submitted that any concern about integrity which does not arise from a formal blacklisting procedure carries no argument before the Board. He further submitted that the Appellant was effectively inviting the Board to impose, indirectly, a blacklisting-type consequence where the legal procedure had not occurred, and that he believed there were no grounds for such a procedure to be initiated.

Dr Bugeja further stated that the integrity issue had not arisen for the first time in the appeal. He stated that it had begun more than a year earlier, when a letter had been received by European Dynamics alleging grounds against the integrity of one of the bidders. He submitted that the Contracting Authority had not ignored the matter. It had sought clarification, conducted a verification exercise and carried out due diligence, and the result had not established a ground of exclusion, whether in material terms or according to law. He submitted that, had the Contracting Authority excluded an economic operator which at law should not have been excluded, the parties would have been before the Board in a different capacity.

Ground 5 - ISO certification

Dr Bugeja then addressed the fifth ground, concerning ISO certification. He stated that the Appellant argued that every member of the consortium had to hold ISO 27001 and ISO 9001 certifications in its own name and made arguments concerning the wording of Criterion F3.

Dr Bugeja submitted that Criterion F3 stated that the bidder was required to provide the ISO certifications or equivalent. He stated that the criterion awarded 2 points for one certificate, 4 points for both, and 0 if no certificates were presented. He submitted that the tender did not state that each

consortium member had to hold each certificate. It did not say “each member”; it said “the bidder”. He submitted that, where there is a consortium, the bidder is one person for the purposes of the tender process, namely the consortium. He submitted that the tender does not become stricter merely because the bidder is composed of more than one economic operator.

Dr Bugeja stated that, had the intention been to require every consortium member to hold each certificate, the tender dossier would have been in breach of the directive and of Maltese law, both of which encourage and facilitate participation by more than one economic operator as a consortium. He stated that this is reflected in Regulation 58 of Subsidiary Legislation 603.

Dr Bugeja referred to PCRB Case 2131, decided earlier in the same year, where he submitted that the Board had recognised that a group of economic operators can form a tender. He emphasised that the logic of a consortium is that one or more parties lend each other different competences and capabilities. He submitted that this is the purpose of a consortium, and that if two members of a consortium were each required individually to hold the same qualities and certificates, the point of a consortium would disappear.

Dr Bugeja then addressed the Appellant’s reference to joint and several liability. He submitted that joint and several liability is relevant to contractual liability, not qualification. He stated that it becomes relevant if and when the contract is signed, making both members jointly and severally liable towards the Contracting Authority. He submitted, however, that this does not mean that each member must individually hold the same competences, licences and certificates, because the bidder is one bidder.

Dr Bugeja referred to Regulation 58(1) of the Public Procurement Regulations, which provides that groups of economic operators, including temporary associations, may participate in procurement procedures and shall not be required by contracting authorities to assume a specific legal form in order to submit a tender. He submitted that the law therefore starts from a position of openness and loose group participation, rather than from an assumption that each member must be a fully self-standing replica of the consortium.

Dr Bugeja also distinguished Regulation 58 from Regulation 235, which reflects Article 63 of the directive. He submitted that Regulation 58 concerns consortia, whereas Regulation 235(1) concerns reliance on third parties, allowing an economic operator which is itself the bidder to rely on the capacities of other entities regardless of the legal nature of the links between them. He submitted that, where there is a consortium, there is one bidder, while under Regulation 235 there is also one bidder but that bidder relies on other persons who are not themselves bidders. He submitted that these are two distinct situations and that there was a confusion between these two forms of collaboration under procurement law.

Dr Bugeja referred to Case C-94/12, the Swm Costruzioni judgment of the Court of Justice, which he stated provides the best definition of a consortium in European procurement law. He submitted that the direction of procurement law is the opposite of that advanced by the Appellant. The law permits combination in two forms: either through a consortium, which is one bidder, or through reliance on third parties. He submitted that the Appellant’s arguments were more relevant to the situation of a bidder relying on a third party, and not to a consortium.

Dr Bugeja further submitted that the tender dossier did not state that each member of the consortium must hold the ISO certificate. He submitted that, since the tender did not state this, it would be unjustified and unjust to expect the Preferred Bidder to possess something which was not required. He referred to Pippo Pizzo and CJEU Case C-27/15, which he submitted establish that a bidder cannot be excluded or penalised for breach of an obligation which does not arise from the procurement documents.

Dr Bugeja submitted that the argument that each consortium member must have an ISO certificate was not found in the tender documents, and that the argument that roles must be clearly segregated was likewise not found in the tender. He submitted that Regulation 58 allows a brief, often one-page, joint venture or consortium agreement, and provides that the allocation of tasks may be regulated after the tender is awarded. He submitted that requiring a lengthy document specifying what each member would do and what each would be responsible for would be restrictive and contrary to the rules, the directive and Regulation 58.

Ground 6 - Reference projects

Dr Bugeja then addressed the sixth ground, which concerns reference projects and technical and professional capacity in respect of services of a similar nature. He submitted that the Appellant was taking a narrow approach to the wording of the tender dossier. He repeated that a limitation not found in the tender dossier cannot be imposed upon a bidder.

Dr Bugeja stated that the Appellant argued that one of the projects relied upon by LexNova had begun before the quoted period and another continued after it, and that the value should have been broken down by year, entity and services performed. He submitted that the tender did not state this. He further submitted that large-scale court management systems are not one-day assignments, and may begin before a quoted period, continue through it, and remain ongoing. He stated that such projects are long-term projects requiring maintenance, upgrades, implementation and ongoing support.

Dr Bugeja submitted that the Preferred Bidder's position on this point was entirely consistent with what the tender contemplated. He also noted that the Appellant had criticised, although not during the sitting, the collaboration with another entity. He submitted that the previous experience requirement did not require solitary performance, and that such a requirement would again amount to a restrictive interpretation not appearing from the tender documents. He also referred to contestation on whether clarification should have been sought, submitting that there is a limit to how many clarifications can be requested and that there is no obligation on the evaluation committee to seek clarification, as discussed in PCRB Case 2134 of 2025.

Ground 7 - Word count

Dr Bugeja then addressed the seventh ground, concerning the word count, which he noted Dr Camilleri had called a word limit and which he said he would continue to call a word count. He submitted that the distinction mattered because the Appellant had started from a premise that was contested.

Dr Bugeja addressed Dr Camilleri's submission that the Contracting Authority had shifted its position. He disagreed and referred to the reply at page 8, where it was stated that the tender dossier required structured submissions with an approximate word range while encouraging the use of diagrams, charts and supporting material. The reply stated that the limitation was therefore organisational and not restrictive, and that bidders retained multiple means of conveying technical depth concisely. He further referred to the statement in the reply that the issue was not one of permitted length, but of the extent to which the space and format available were used to address the matter. Dr Bugeja submitted that the Contracting Authority had not changed its position and had consistently treated the word count as an approximate, guiding and organisational guide.

Dr Bugeja then addressed Dr Camilleri's reference to the concept of "circa" under Maltese law. He stated that he considered "circa" to be one of the greatest myths under Maltese law. He said that, as a lecturer on the contract of sale, he informs students that what they thought they knew before entering law school is a legal myth. He submitted that there is no such thing as "circa" as a general magic rule under Maltese law. It appears only in a specific passage of the Civil Code concerning the contract of sale and only there. He stated that notaries have used it for a long time, but that it does

not appear elsewhere in Maltese law as a general principle. He submitted that the percentages derived from that analogy by Dr Camilleri therefore had no legal basis.

Dr Bugeja submitted that the answer to Ground 7 begins with the wording of the tender dossier. Clause 6.3 requested write-ups of approximately between 1,000 and 2,000 words. He submitted that the word "approximately" matters and that the tender did not say "shall not exceed". He stated that he had seen tender documents which use the expression "shall not exceed", and that the Board had also decided cases concerning such wording.

Dr Bugeja submitted that the tender documents also encouraged the use of diagrams, charts and other supporting material as part of a broader organisational picture. He stated that the tender imposed no exclusion and no mark reduction for exceeding the range. He submitted that the tender did not create a disqualification sanction for exceeding the guidance. He again referred to Pippo Pizzo, submitting that the Board should not impose a penalty or sanction which does not clearly arise from the tender documents themselves. He submitted that the Appellant was asking the Board to create, almost ex post facto, a disqualification or mark reduction, and that it was not entirely clear from the Appellant's submissions whether the position was that LexNova should have been disqualified or had its marks reduced because of the word count. In either case, he submitted, the tender did not support such a conclusion.

Dr Bugeja submitted that the Contracting Authority had evaluated the tender as written. He stressed that if the Appellant had difficulty understanding what "approximately between 1,000 and 2,000 words" meant, it had a remedy at law, namely a pre-contractual remedy under Article 262 of the relevant legislation. He submitted that this remedy was not exercised, and that the Appellant could not come before the Board at that stage and say that it had been misguided by the wording.

Dr Bugeja referred to the evidence of one witness during the previous sitting, who had stated that had he known he could exceed 2,000 words, he would have given a better explanation. Dr Bugeja submitted that if any bidder had any doubt as to what that meant, the remedy existed and was not used.

Dr Bugeja submitted that the procurement was not a word-counting procurement. He stated that the Contracting Authority had accepted, even before the Board, the exercise of counting each and every submission, but that this should not be misread. He submitted that the Appellant had been penalised in marks because the detail required was absent. He referred again to the Contracting Authority's reply, stating that the expression of a matter in a few words is itself a skill, and added that perhaps, if that skill had existed, the parties would all have finished the previous day.

Ground 8 - Criterion J2 and emerging technologies

Dr Bugeja then addressed the eighth ground, concerning Criterion J2. He stated that Criterion J2 required bidders to explain whether integrated emerging technologies, such as artificial intelligence, machine learning and blockchain, would form part of the system provided. He noted that the Appellant relied heavily on the demonstration and stated that the same answer he had given earlier applied.

Dr Bugeja referred to a question he had asked one of the witnesses during the previous sitting, namely whether any form of automation constitutes artificial intelligence. He stated that one of the evaluation committee members had acknowledged that it does not, and that one of the Appellant's own representatives had also agreed that automation is a broad concept. He submitted that, within their discretion and technical assessment, the evaluation committee members decided to score the Appellant as they did. He submitted that this was their discretion and constituted a technical appreciation that was not unreasonable, not manifestly defective and not seriously lacking.

Conclusion of submissions by Dr Bugeja

Dr Bugeja concluded by submitting that all grounds failed for the same reason, namely that they did not disclose any legal defect. He submitted that the appeal asked the Board to re-evaluate technical matters and to infer illegality from the disclosure issue, from the treatment of future availability, from a tender that explicitly mentions off-the-shelf in its title, from a requirement that every consortium member should have duplicate certificates when they form one single bidder, and from a request to create sanctions for a word count which the tender itself did not contain. For these reasons, he respectfully requested the Board to deny the appeal.

Submissions by Dr Daniel Inguanez (for the Department of Contracts)

The Chairman then invited the Department of Contracts to proceed.

Dr Inguanez addressed the Board and stated that his submissions would largely consist of add-ons and reactions to what the Appellant had submitted. He stated that, otherwise, the Department of Contracts would rely on its written replies and on what had already been submitted by the Contracting Authority. He indicated that he would follow the order adopted by European Dynamics.

Project references

Dr Inguanez first addressed the project references and the ISO certificates, which had been addressed by Dr Gkaintatzi.

On project references, Dr Inguanez stated that the argument advanced by European Dynamics was that, while the call for tenders, including the clarifications, clearly stated that ongoing projects were eligible, the question was whether the Contracting Authority should have considered, for the purpose of calculating the EUR 3,000,000 aggregate value, only the value of services provided between 2019 and 2023, excluding services before and after that period, or whether, having accepted ongoing projects, it should take the nominal value of the whole contract.

Dr Inguanez stated clearly that the Department of Contracts and the Contracting Authority had taken the nominal value of the contract. He submitted that their position was that ongoing projects were eligible and that their nominal value was taken. He stated that the important point was that the aggregate value of those projects amounted to EUR 3,000,000 and that the projects were ongoing during the quoted period.

Dr Inguanez referred to the Teatro Manoel case, which had already been relied upon in the Department's reply. He noted that there had been a reaction from the other side that the cases were not exactly the same, but he explained why the principles applied. In that case, the call for tenders referred to completed projects within a period of time, which he believed was a five-year period. In a clarification note, the Department of Contracts had stated that it would take into consideration ongoing projects. As in the present case, neither the call for tenders nor the clarification notes contained any indication as to whether ongoing projects meant only the value of services provided within that period or the nominal value of the whole project. In that case, the evaluation committee had excluded the tenderer on the basis that, if only the value of services offered in the quoted period were considered, the aggregate value threshold had not been met. Dr Inguanez stated that the PCRB had rejected that position.

Dr Inguanez submitted that the reasoning was that a contracting authority is allowed to exclude ongoing projects, which in that case and in the present case it did not do. It is also allowed to specify that it wants only the value of services within the quoted period, but it is equally allowed not to specify this. He submitted that in the Teatro Manoel case and in the present case, there was no such specification. He stated that the principle is not that ongoing projects must always be valued at their

nominal contract value, but rather that the Contracting Authority should specify in detail what it is looking for in the call for tenders and clarification notes.

Dr Inguanez submitted that where the specification is simply that ongoing projects will be accepted, without more, the nominal value is what is taken. If the specification states that ongoing projects will be accepted only to the extent of the value of services rendered within the quoted period, then that specific rule is established. He submitted that there was no such specification either in the Teatro Manoel case or in the present case.

Dr Inguanez then addressed a further point. He referred to a clarification note, which he had mentioned in his reply and which Dr Gkaintatzi had also referenced, where an economic operator had raised the question and, within that question, indicated whether only the value of services within the quoted period should be considered. He acknowledged that the Department of Contracts' reply did not explicitly answer yes or no. He stated that the Board was therefore faced with the question of how to interpret an answer which simply stated that ongoing projects would be accepted. In the Department's opinion, if the Department did not specify, even when directly prompted with the question, that only services within the quoted period were to be counted, it was fairly clear that the nominal value was being referred to.

ISO certificates

On the ISO certificates, Dr Inguanez stated that the point made by European Dynamics was that one consortium member held the ISO certificates, and that the question posed was whether the evaluation committee had checked that that consortium member would actually perform the related work or the related aspect of the tender. He stated that this was the line of questioning which had emerged during the previous sitting.

Dr Inguanez submitted that the premise was fundamentally flawed, because European Dynamics was making the mistake, already explained by Dr Bugeja, of confusing reliance on third parties with a bidder who is part of a joint venture or consortium.

Dr Inguanez submitted that, under law, economic operators should be allowed as freely as possible to arrange their economic relations with each other. He stated that, in practice, under the general rules governing tenders in Malta, there are three main forms of cooperation, with the distinction lying in the contractual liability entailed by each.

First, he referred to subcontracting. In that arrangement, the main contractor is directly liable to the Contracting Authority, with the subcontractor indirectly liable, although provisions exist whereby the Contracting Authority may engage directly with the subcontractor if needed. He described this as a buffer zone between the subcontractor and the Contracting Authority.

Secondly, Dr Inguanez referred to reliance on third parties. He stated that in such an arrangement the Contracting Authority has a relationship only with the contractor and does not even know who the third parties are except through the letter of undertaking, which is usually requested. He stated that the purpose of that letter is to ensure that the third party, while not directly liable to the Contracting Authority, commits to being available throughout the execution of the contract. The Contracting Authority can sue the contractor, and the contractor may then go against the third party, but the contractor remains responsible vis-a-vis the Contracting Authority.

Thirdly, Dr Inguanez referred to group undertakings, which he stated was the situation in the present case, where joint and several liability applies. He explained that the Contracting Authority can proceed against any single member of the consortium, and that they are liable for the whole contract and not merely for their allocated part. Even if one member was assigned one task and another member a different task under the joint venture agreement, the Contracting Authority has full assurance of

liability against any single member. He submitted that this is the most direct form of exposure, as members are fully exposed to direct contractual liability, and that this must be borne in mind.

Dr Inguanez then addressed Case C-592/21, *ĒDIENS & KM.LV* PS v *Ieslodzījuma vietu pārvalde* and *Iepirkumu uzraudzības birojs*, which had been cited by Dr Gkaintatzi. He stated that the Department of Contracts did not agree with the interpretation placed upon it by the Appellant. He explained that in that case the issue was a single bidder, without any form of cooperation, which had submitted a bid and, in the professional experience criterion, had relied on the experience of two subsidiary companies without declaring reliance or forming a joint venture. The bidder had argued that the companies were connected, within the same economic unit, and questioned why it could not rely on the professional experience of its subsidiaries.

Dr Inguanez submitted that the Court of Justice replied by first stating that if the law allows reliance on third parties, this may be done subject to the conditions under Article 63 of the directive, namely proof that the third party is committed throughout the duration of the project. The Court then stated that if such reliance is permitted at all, it would be disproportionate not to allow a parent company and its subsidiaries to rely on each other's capacities. However, even in that scenario, the Court stated that the Contracting Authority may request proof that the subsidiaries are bound throughout the duration of the contract. Dr Inguanez also referred to a point of Latvian law concerning whether a parent company is bound to make good the liabilities of its subsidiaries.

Dr Inguanez submitted that none of those issues arise in the present case because here there is a group of companies submitting as a joint venture, as a single bidder, with joint and several liability. He submitted that all the issues addressed in *ĒDIENS & KM.LV* PS do not arise here.

Dr Inguanez concluded on the ISO certificates by submitting that there was no issue with one member of the group having submitted the certifications. He stated that the important point was that, for any deficiency of that member of the group, any member of the group would be liable. He submitted that this was the whole point.

Criminal proceedings

Dr Inguanez then addressed the grievance concerning criminal proceedings. He stated that, as had already been submitted, there is a statutory procedure at law, namely blacklisting, and under Maltese law either a final criminal conviction exists or it does not. He stated that in the present case the complaint had been taken seriously. Due diligence checks had been undertaken through third parties to verify whether there was a final conviction anywhere. The result was that there was no final conviction of any member of the consortium.

Dr Inguanez stated that this fact was not contested by the other side, either during the sitting or during the hearing. He submitted that European Dynamics' point was that there were pending proceedings and some degree of doubt. He submitted that under Maltese law this is not sufficient. He referred to the BESSUI JV judgment and stated that the reasoning of the Court of Appeal in that case could essentially be applied directly to the present case.

Word count

On the word count, Dr Inguanez submitted that the issue comes down to what is meant by "approximate". He stated that no one could contest that the word "approximate" is included in the tender, and therefore no one could say that 2,000 words or 1,000 words were limits in the strict sense. He submitted that the problem is what "approximate" means.

Dr Inguanez stated that the other side, by discussing percentages, was trying to raise doubts as to whether a 5,000-word write-up could be considered approximate. He submitted, however, that the issue was not really whether LexNova wrote 5,000 words. He stated that the narrative being

constructed by European Dynamics was that it had been penalised for not providing enough detail and that, had it considered, as LexNova apparently did, that it had more leeway under the approximate word count, it would have included that detail and attracted more marks.

Dr Inguanez submitted that, upon looking at the evaluation committee's justification, the Board would see that the issue was not merely lack of detail. He stated that the justification referred to a number of points which could not genuinely be remedied by any number of words.

Dr Inguanez read from the justification of Criterion C1, stating that the case management, including case lifecycle, was not an actual case journey and that the user had to switch between modules. He submitted that no number of words could remedy that point if the system did not have that functionality.

He then referred to a further point in the justification, namely that public portal users were based on the submission of a series of electronic forms and that it was not a direct e-filing service. He submitted that this was what the evaluation committee found in front of it as the product being offered, irrespective of word count or word limit, and that no number of words could have changed the service being offered.

Dr Inguanez also referred to the justification stating that the virtual hearings feature was presented as an autonomous module with minimal or no integration with the actual system, requiring users to manually upload data from the external module to the actual system. He asked whether any number of words could have changed that or changed the software being offered.

He further referred to a point concerning the criminal records management system, which lacked functionalities such as bail history, temporary bail conditions and editing of bail conditions. He submitted that, were he sitting on the PCRB, he would expect the Appellant to show that, had it had enough words or 5,000 words as LexNova had, it could have addressed these issues. He submitted that these were software issues which could not be addressed with words but only by changing the software.

Functionalities and readiness

Dr Inguanez then addressed the question of functionalities and whether they were available, available with customisation or otherwise. He stated that the tender document and evaluation grid provided that these must be assessed individually and that scoring would reflect overall completeness and operational status. He submitted that the call for tenders therefore directed the evaluation committee to make an individual assessment of each functionality but then continued by referring to overall completeness.

Dr Inguanez submitted that this was a qualitative evaluation. He stated that if one of the functionalities was truly not complete, for example the bail management system, and the date submitted by European Dynamics was years away while other functionalities were available out-of-the-box, the Contracting Authority could still consider whether there was overall completeness. He stated that the Contracting Authority wanted a whole case management system, not merely some functionalities or nine out of ten. He submitted that the holistic approach by the evaluation committee, although it sounds abstract because it is qualitative, was mandated by the terms of the tender themselves.

Dr Inguanez concluded with one final point. He submitted that the identification of whether a functionality was available out-of-the-box, available with customisation, or otherwise was based on the bidders' own self-declarations. He stated that, therefore, there could be no contestation, at least not from the bidder who had made those declarations, as to whether those functionalities were truly available or not.

Further Reply Submissions Following Final Submissions

Intervention by the Chairman - allocation of time

Following the conclusion of the oral submissions of the parties, the Chairman noted that approximately two and a half hours of submissions had been heard and that most of the points had already been addressed.

Dr Polyxeni D. Gkaintatzi indicated that she wished to make some very short comments in order to avoid misunderstandings. Dr Clement Mifsud Bonnici formally objected, stating that the Appellant had been given forty-five minutes, had exceeded that time by approximately five minutes, and that counsel for the other parties had remained below their time limits. He submitted that allowing further comments would violate the procedural directions agreed during the previous hearing.

Dr Joseph Camilleri stated that this was a matter for the Board to decide. The Chairman indicated that he had heard enough, and Dr Camilleri remarked that the time indication was approximate. The Chairman invited the parties to take the matter lightly and directed that no new arguments would be permitted. He allowed each side three minutes only and stated that he would use a stopwatch. The Chairman also noted that the Board had heard the submissions in significant detail and congratulated all parties, stating that their submissions had been of a high standard.

Reply by Dr Polyxeni D. Gkaintatzi (for the Appellant, European Dynamics Consortium)

Dr Gkaintatzi stated that she would not comment on remarks made concerning misleading arguments and would move forward.

ISO certificates and consortium reliance

Dr Gkaintatzi addressed the ISO certificate issue and stated that there had been a significant misunderstanding regarding the judgment of the Court of Justice of the European Union which she had quoted. She submitted that the case was exactly the same in the sense that the party involved there was also a consortium, namely *ĒDIENS & KM.LV* PS v *Ieslodzījuma vietu pārvalde* and *Iepirkumu uzraudzības birojs*.

She stated that, in that tender, there had again been no explicit requirement that any bidder or any member of the consortium had to comply individually with the relevant selection criteria or submit individual proof covering those criteria. She reiterated that quality assurance certificates should not be confused with professional and technical capacity and should not be treated as selection criteria.

Dr Gkaintatzi further submitted that, even if the ISO certificate requirement were to be treated as a selection criterion, she had not heard any answer as to whether the requirement of allocation of tasks had been satisfied. She stated that she was hearing for the first time from the Preferred Bidder that there was an allocation of tasks, whereas the Tender Evaluation Committee had suggested during the previous sitting that there was no such document and no such indication.

She submitted that no allocation of tasks was clear. She further stated that, if key experts were provided by both members, it was not an answer to rely on the fact that both parties had joint liability. She submitted that this was precisely what the Court had clarified in paragraph 33 of the judgment of the Court of Justice, namely that the fact that partners in a consortium are jointly and severally liable towards third parties, including the contracting authority, cannot affect the assessment of the criterion relating to the relevant professional experience of those partners at the stage of selecting candidates in a public procurement procedure. She submitted that it was therefore not sufficient to state that there was no need to prove allocation of tasks.

Dr Gkaintatzi referred to CT3007/2026, which concerned the Office of the Attorney General case-management system tender and was cancelled, and submitted that the tender was subsequently reissued (as CT3028/2026), by quoting and clarifying provisions relating to joint ventures, consortia, and groups of economic operators.

Intervention by the Chairman

At this stage, the Chairman intervened and stated that the Board would go through all the cases mentioned and would make its assessment as to whether or not they applied to the respective grievances. He assured the parties that the Board would go through everything.

Dr Gkaintatzi indicated that she wished to move on to other points. Dr Mifsud Bonnici noted that her time had expired. The Chairman then indicated that Dr Mifsud Bonnici would also be allowed a brief reply within the same three-minute limit.

Brief Reply by Dr Clement Mifsud Bonnici (for the Preferred Bidder, LexNova Consortium)

Dr Mifsud Bonnici replied first on the issue of allocation of tasks. He submitted that, in his view, the allocation of tasks was clearly stated in the bid. He added that, even if it were not clearly stated, this would still be a note-to issue and would therefore lead the Appellant nowhere, as it would be very easily rectifiable.

The Chairman noted that the Board had the full bid and would be going through it.

Dr Mifsud Bonnici then addressed the tender of the Attorney General referred to by Dr Gkaintatzi. He submitted that the Preferred Bidder's position was that Government did not need to clarify the matter because the general rules were already very clear. He added that, perhaps because of the present appeal and in order to avoid vexatious litigation, Government may have felt the need to clarify the matter in that tender.

Dr Mifsud Bonnici concluded his brief reply, and the Chairman thanked him.

Closing

The Chairman thanked all parties present

End of Minutes for the 3rd Board Sitting

Hereby resolves:

The Board refers to the minutes of the Board sittings of the 15th April 2026, 8th June 2026 and the 9th of June 2026.

Having noted the objection filed by European Dynamics Consortium (hereinafter referred to as the Appellant) on 27th February 2026, refers to the claims made by the same Appellant with regards to the tender of reference CT3021/2024 listed as case No. 2229 in the records of the Public Contracts Review Board.

For the 1st Board Sitting on the 15th of April 2026

Appearing for the Appellant:	Dr Joseph Camilleri, Mr Kyle Decelis & Dr Polyxeni D. Gkaintatzi
Appearing for the Contracting Authority:	Dr Carlos Bugeja
Appearing for the Department of Contracts:	Dr Daniel Inguanez & Dr Ramona Galea
Appearing for the Recommended Bidder:	Dr Clement Mifsud Bonnici & Dr Calvin Calleja

For the 2nd Board Sitting on the 8th of June 2026

Appearing for the Appellant:	Dr Joseph Camilleri, Mr Kyle Decelis & Dr Polyxeni D. Gkaintatzi
Appearing for the Contracting Authority:	Dr Carlos Bugeja
Appearing for the Department of Contracts:	Dr Daniel Inguanez & Dr Ramona Galea
Appearing for the Recommended Bidder:	Dr Clement Mifsud Bonnici & Dr Calvin Calleja

For the 3rd Board Sitting on the 9th of June 2026

Appearing for the Appellant:	Dr Joseph Camilleri, Mr Kyle Decelis & Dr Polyxeni D. Gkaintatzi
Appearing for the Contracting Authority:	Dr Carlos Bugeja
Appearing for the Department of Contracts:	Dr Daniel Inguanez
Appearing for the Recommended Bidder:	Dr Clement Mifsud Bonnici & Dr Calvin Calleja

Whereby, the Appellant contends that:

a) ***First Ground of Appeal: Disclosure of information requested by the Appellant.***

The contested award decision is vitiated by a serious and autonomous illegality consisting in the absolute failure of the Contracting Authority to disclose the information lawfully requested by the Appellant following notification of the award decision, dated 17 February 2026. On 18 February 2026, immediately after receipt of the award decision recommending LexNova as Recommended Bidder, the Appellant, which ranked second in the procedure, submitted a detailed and formal request for disclosure of documentation strictly necessary to assess the legality of the award decision and to determine whether grounds existed for initiating review proceedings. The request concerned documentation relating to compliance with exclusion and selection criteria, including the ESPD and reference documentation of the Recommended Bidder and its consortium members or subcontractors, the technical offer submitted by the Preferred Bidder, in particular under Award Criteria C.1 and C.2, the Demo and the corresponding evaluation sheets, the CVs of the Key Experts, the Financial Bid Form, the mandatory ISO certificates and the GDPR Questionnaire, the full evaluation reports, the identity and professional qualifications of the members of the Tender Evaluation Committee and any external experts and any clarifications requested from and replies submitted by the Recommended Bidder.

The request was reasoned, proportionate and strictly limited to what was indispensable for the exercise of the Appellant's right to effective judicial protection. It expressly acknowledged that strictly confidential elements, if any, could be redacted, provided that such redactions were duly justified and did not render the remedy ineffective. Nevertheless, the Contracting Authority has not replied to date at all. No partial disclosure was made, no justification was provided for not making this documentation and/or information available and no specific confidentiality grounds were invoked. This amounts to a de facto, absolute refusal to grant the Appellant access to the requested information.

This conduct constitutes a blatant violation of our rights under EU and national public procurement law. In particular, Article 1, paragraph 1 and 3 of Directive 89/665 requires that decisions taken by contracting authorities be subject to effective and rapid review and that remedies be available to any person having or having had an interest in obtaining a contract and who has been or risks being harmed by an infringement. The Court of Justice has consistently held that these provisions are intended to guarantee full respect for the right to an effective remedy under Article 47 of the Charter. The Court clarified that where a contracting authority refuses to disclose information, the reviewing court must examine whether that refusal deprived the applicant of the possibility of bringing an effective action and must ensure restoration of that right.

In the present proceedings, the Contracting Authority has not merely refused to disclose allegedly confidential elements, but has failed to disclose any information whatsoever concerning the winning tender. The dispute, therefore, does not concern the classification of specific items as confidential, but rather the total absence of information regarding the successful tender. As matters stand, the Appellant, despite its reasonable concerns about the offer of the Recommended Bidder, as will be explained further on, do not even know whether the winning tenderer has appointed subcontractors, if these subcontractors were eligible, whether and how the winning tender complies with the award criteria or how the winning tender fulfils the functional and technical requirements, according to the tender dossier. In these circumstances, the Appellant is manifestly unable to verify whether the evaluation carried out by the Contracting Authority is compatible with the award criteria or whether the qualitative assessment of the winning tender is lawful, consistent and non-discriminatory.

As matters stand, the Appellant does not know whether the winning tenderer relied on subcontractors and, if so, whether they satisfied exclusion and selection criteria, whether the technical offer complies with Award Criteria C.1 and C.2, whether the qualitative assessment adhered strictly to the published methodology, whether the mandatory ISO certificates and GDPR Questionnaire were valid and compliant, whether the demonstration phase was evaluated within the limits of the tender dossier, whether the Financial Bid was assessed in accordance with the prescribed template or whether the Tender Evaluation Committee possessed the necessary technical expertise to assess a complex IT system implementation project.

The right to effective judicial protection cannot be reduced to a purely formal possibility of lodging an appeal devoid of factual foundation. A remedy that must be exercised in ignorance of the essential elements of the decision challenged is illusory. The Contracting Authority's conduct therefore constitutes a breach of Article 1, paragraph 1 and 3 of Directive 89/665, Article 55 of Directive 2014/24/EU, the principles of transparency, equal treatment and sound administration and, above all, the fundamental right to an effective remedy guaranteed by Article 47 of the Charter. This failure to disclose is not a procedural irregularity of secondary importance. It is an autonomous and decisive illegality affecting the very possibility of review of the award decision. As confirmed by the Court of Justice in the above cited case-law, where failure to disclose deprives an economic operator of the possibility of bringing an effective action, the reviewing body must ensure restoration of that right, including, where necessary. annulment of the award decision or the reopening of time limits following full disclosure. In the present case, the deprivation is total. The Appellant has been denied access to all the requested information concerning the winning tender. The award decision must therefore be annulled on this ground alone. In the alternative, the Appellant respectfully requests this Honourable Board to order the Contracting Authority to disclose the requested information and to declare that the Appellant be granted with a new time

limit, within which they will be enabled to supplement or resubmit their Appeal on the basis of the information thus disclosed.

b) ***Second Ground of Appeal: Criterion C.1***

The evaluation of the Appellant's tender under Criterion C.1 "C. Functional Requirements & Scalability- 1. Provide a comprehensive detail of the available functionalities in relation to the requirements as stipulated within the tender document. (Reference to Section 3 - Article 4.3 and 4.4)" constitutes a blatant violation of the principles of equal treatment and transparency. The score awarded on the above criterion is arbitrary, disproportionate and based on the application of undisclosed or altered criteria. In particular, the Recommended Bidder was awarded the maximum score of five (5) out of five (5) under this criterion, with a telegraphic justification "requirements met", whereas the Appellant was awarded a score of only one (1) out of five (5). However, such a striking discrepancy in scoring cannot be objectively justified on the basis of the published award criteria. The evaluators' comments reveal that the assessment was conducted on the basis of considerations that were neither expressly provided for in the tender documentation nor previously disclosed to the tenderers. The reasoning further discloses manifest errors of assessment and an arbitrary application of the evaluation methodology. Accordingly, the evaluation under this criterion is vitiated by violations of the principles of self-limitation, transparency, equal treatment and proportionality and must be set aside.

More specifically, according to the contested decision, the above score attributed to the Appellant was based *expressis verbis* on the following reasoning set out by the evaluators: *"The bidder did not provide comprehensive detail of the available functionalities, within the writeup the bidder only provided a brief description of the functionalities with very minimal detail. During the demonstration the bidder only provided a superficial overview of the available functionalities again failed to provide comprehensive details of the functionalities. Furthermore, the bidder did not provide a demonstration to substantiate functionalities such as: The Case management including the case life cycle is not an actual case journey for each action within the case lifecycle the user has to switch between modules and search for the specific case to edit the case. The public portal user interface as demonstrated, is based on submission of a series of electronic forms for e-filing and not a direct in system e-filing service, the interface provided is manually quite laborious for e-filers. The virtual sittings feature was presented as an autonomous module with minimal or no integration with the actual system where users have to manually upioad data from the external module to the actual system. The Criminal Records Management, bidder provide the very basic functionality and the bail management feature lacks functionalities such as bail history, temporary bail conditions and editing of bail conditions.".*

However, this assessment, apart from being internally contradictory, since the evaluators explicitly state, on the one hand, that the Appellant *"did not provide a demonstration to substantiate functionalities"* and, on the other hand, that such functionalities *"were demonstrated"* and *"presented",* disregards the express instructions contained in both the Section 6.3 *"Evaluation Grid"* of the tender dossier

together with the relevant Clarification Notes, which, according to Regulation 38 paragraph 5 PPRI, form an integral part of the tender documentation and the instructions provided through the tender dossier on the "Demo". Notably, according to the tender documents, tenderers were required to comply with a strict word limitation, which objectively prevented them from providing extensive descriptive analysis of the forty-eight (48) functionalities. At the same time, the demonstration phase, as expressly indicated in the tender documentation, could not influence or alter the scores to be attributed to the tenderers.

Strict word limitation, according to Section 6.3 "Evaluation Grid" and Clarification Notes No. 13, 17 and 19.

As explicitly stated in Section 6.3 "Evaluation Grid" of the tender dossier (see page 10, Annex 3): *"Bidders are requested to submit their writeups of approximately between 1000 to 2000 words for each criterion. Documentation must include chart (eg. Gantt Charts) or/ and designs to elaborate better the presented write-ups…."*

This word limit was further confirmed by no less than three clarification notes issued by the Contracting Authority during the tender procedure (see Annexes 4a-4c). These clarifications explicitly reinforced that the maximum word count of two thousand (2,000) words per criterion remained binding and that bidders were expected to present their responses within this framework. In particular, during the clarifications period, specific questions regarding the extent of detail permissible for the award subcriteria, including Criterion C.1, were submitted to the Contracting Authority seeking confirmation on whether additional explanatory content beyond the word limit could be provided. The responses received unequivocally upheld the original specifications, confirming that the two thousand (2,000)-word maximum was strict and non-negotiable,

Given the above, the word limit of approximately one to two thousand (1,000-2,000) words per sub criterion is explicitly imposed by the tender specifications, which required a concise, telegraphic description of the forty-eight (48) functionalities rather than a detailed exposition. The only permitted exclusions from this limit were the table of contents, the list of acronyms and any charts included in the offers. Indeed, this restriction results in an average of approximately forty-two (42) words per functionality. It was therefore objectively impossible, within the parameters set by the tender specifications, to provide more extensive technical elaboration. Had the Contracting Authority intended that tenderers submit more detailed information, it was obliged to explicitly exempt this criterion from the word limit or to issue a clarifying note to that effect. No such exemption or clarification was provided in the tender dossier or in any official communication. Consequently, any criticism of the evaluators for allegedly "insufficient detail" constitutes a manifest error and a breach of the principles of self-limitation, equal treatment and transparency. In full compliance with this requirement, the Appellants submitted its response to Criterion C1 in document *"1.7 C - FUNCTIONAL REQUIREMENTS & SCALABILITY.docx",* describing forty-eight (48) functionalities within one thousand eight hundred ninety words (1,890) words,

excluding the explanatory text accompanying the relevant screenshots. The submission, which included the corresponding screenshots for illustrative purposes, comprised a total of seventeen (17) pages. It is therefore submitted that the criticism levelled at the Appellant, namely that it provided only *"brief descriptions"* is manifestly unfounded, because it was the word limit imposed in the tender documents that, of itself, required that descriptions be brief as, otherwise, the word limit would have been exceeded and thus not respected. Appellant should not be penalized for conscientiously observing the requirement set out in the tender documents. Indeed, this criticism by the evaluators implies that other bidders that scored better than the Appellant gave more detailed explanations which would, in itself imply that they exceeded the two thousand (2,000) word limit. This raises a legitimate question, namely - what did the Recommended Bidder do to achieve full marks (5/5) compared to the Appellant (1/5)? Did it observe the word limit? And if not, was it actually rewarded for breaking the rules? Verification of compliance with the strict word limitation by the Preferred Bidder, whether by the Appellant or by this Honourable Board, will only be possible upon disclosure of the requested information by the Contracting Authority.

Sole Purpose of the Technical Online Demonstration (Demo), according to the tender dossier: exclusively verification of functionality and not scoring.

As also explicitly stated in the tender dossier (see Annex 3, p. 17), under the title "Demo": *"The CA may also request tenderers to provide a technical online demonstration of their solution during the evaluation to confirm all the assertions made in the tender submission. [...] The list of features to be demonstrated for each of these modules will be the same features as listed in Section 3 of this document. The evaluating board will go through this list, on a one-by-one basis, to verify the compliance of the functionality of the solution being proposed. The Solution that will be used by the bidder during this demonstration must be identical to the one that the bidder is tendering with. If it is not this will result in the disqualification of the bid. No qualitative score is associated with the demonstration. The offer may be deemed as not being considered further if the Contracting Authority deems that the demonstration results contrast negatively with the documentation/assertions made in the tender submission and bidders will not be given a second chance to demonstrate their solution. The dates and times for the online demonstration, set to Malta time, will be communicated by the Contracting Authority (CA) at least ten (10) calendar days in advance through a Microsoft Teams invitation. The demonstration must not exceed eight (8) hours and will be recorded. This session will serve to verify the tenderer's technical bid and will be treated with strict confidentiality. Any clarification requests from the evaluation board will be included as part of the bidder's technical submission. [..]".*

Given the above, it is clear that the technical online demonstration could not be used as a basis for evaluation or the assignment of scores. The tender dossier expressly limits the purpose of the demonstration to the verification of the functionalities described in the tender submission. No qualitative score is associated with the demonstration and the evaluating board's role was strictly to confirm that the solution presented in the demo matched the submitted documentation. Any

use of the demonstration as a basis for scoring would constitute a clear breach of the tender rules, as it would improperly introduce an undisclosed criterion and contradict the explicit instructions of the tender dossier. In this respect, it must be noted that, pursuant to the principle of self-limitation, the Contracting Authority, by establishing and publishing the tender specifications, evaluation criteria and related requirements, as well as by clarifying them through Clarification Notes, has expressly limited the scope of its demands vis-à-vis the tenderers. The Contracting Authority is, therefore, legally bound by the terms and conditions set forth in the tender documentation, as clarified, and cannot lawfully impose additional or divergent obligations on the tenderers beyond those clearly specified.

If the Contracting Authority indeed intended to narrow, extend or otherwise modify the conditions for evaluation under any award criterion, it should have done so *expressis verbis* through the tender documentation prior to the submission of bids. Any deviation from the published criteria, as clarified in writing by the Contracting Authority, would constitute unequal treatment of the tenderers, in breach of the fundamental principles governing public procurement, including transparency and equal access. Since the Contracting Authority expressly confirmed, through the above-mentioned Clarification Notes, that the word limitation applied to all subcriteria without exception and that the demonstration was to be used solely for verification purposes, with no qualitative scoring associated, it was legally bound to adhere to these requirements during the evaluation of the technical offers, in accordance with the principle of self-limitation.

The above interpretation of the principle of self-limitation is fully compliant with the relevant national jurisprudence in similar cases but also reflects settled case-law of the European Court of Justice. More precisely, as it was held by the European Court of Justice in the case C-6/05, Medipac-Kazantzidis AE v. Venizelio-Pananio (ECLI:EU:C:2007:337, p. 53-54), the principle of equal treatment of tenderers and the obligation of transparency, which apply in every tender procedure, preclude, in order to avoid arbitrariness, the contracting authority *"from rejecting a tender which satisfies the requirements of the invitation to tender on grounds which are not set out in the tender specifications and which are relied on subsequent to the submission of the tender"*.

In light of the above, tenderers undoubtedly cannot be assessed on the basis of expectations or interpretations of the Contracting Authority that were neither explicitly required in the tender dossier nor clarified prior to submission. Accordingly, by evaluating the Appellant's tender on the basis of undisclosed expectations, by disregarding the strict word limit and by using the demonstration for qualitative scoring purposes, the Contracting Authority breached both the published award criteria and the fundamental principles of public procurement. The reliance on undisclosed award criteria, the failure to adhere to the mandatory word limitation and the improper use of the demonstration for evaluation purposes constitute fundamental procedural defects which, in themselves, justify the annulment of the award decision or, alternatively, the recalculation of

scores strictly in accordance with the published award criteria. In any event and without prejudice to the foregoing, even in the highly unlikely scenario that the evaluation methodology applied were to be considered compliant with the tender dossier, quod non, the outcome would still be vitiated by a manifest error of assessment. According to the contested decision, the evaluators allegedly identified shortcomings in a total of only five (5) functionalities out of forty-eight (48). Such limited observations, even if assumed arguendo to be valid, could not reasonably or proportionately justify the attribution of a score of one (1) out of five (5) under the relevant criterion. Unless certain functionalities had a different weight, which would be irregular since again it was unknown to the tenderers. The discrepancy between the alleged minor shortcomings and the extremely low score awarded is objectively unjustifiable and disproportionate. Last but not least, the Appellant observes that, while its response under criterion C1 was characterised as *"not detailed",* the Recommended Bidder's response was described as detailed (!). This is surprising, given that tenderers were required to provide an answer of between one thousand (1,000) and two thousand (2,000) words, which, in practical terms, allows only limited space per functionality. The Appellant fails to see how, within those strict parameters, any tenderer could have provided a materially more detailed response than its own. As stated above, one may reasonably and legitimately infer that, if the Preferred Bidder indeed submitted a substantially more comprehensive answer under this criterion, it most likely exceeded the maximum limit of two thousand (2,000) words. This Honourable Board is therefore respectfully requested, for this additional reason, to order disclosure of the relevant part of the Preferred Bidder's technical offer, in particular its response to criterion C1, so as to enable the Appellant to verify whether the word count of its tender complies, for each sub-criterion (and especially criterion C1), with the prescribed ceiling of two thousand (2,000) words. Should such non-observance of the prescribed word limit be established, the Appellant reserves the right to introduce additional grounds of appeal in this respect.

c) ***Third Gound of Appeal: Criterion C.2***

The evaluation of the Appellant's tender under Criterion C.2 *"C. Functional Requirements & Scalability 2. Provide customisation detail for each specified function within the tender document. (Article 4.3 and 4.4)"* constitutes a blatant violation of the principles of equal treatment, transparency and proportionality. The score awarded on the above criterion is based on the application of undisclosed or altered criteria and a manifest error of assessment.

In particular, the Recommended Bidder was awarded the notably high score of eight (8) out of ten (10) under this criterion, with the justification that *"The bidder has functions with the status marked as available with customization."*. In other words, the Recommended Bidder was deducted only two (2) points for having a number of functionalities requiring customization, whereas the Appellant was awarded a score of merely three (3) out of ten (10) on the basis that they had *"a function with the status marked as will be available"*.

Such a striking discrepancy in scoring is manifestly disproportionate to the actual level of readiness of the respective systems and cannot be objectively justified by reference to the published award criteria. The evaluation fails to demonstrate how functionalities described as "available with customization", which by definition also require further development or adaptation, could warrant an almost full score, while a single functionality described as "will be available" results in a dramatic reduction of seven (7) points. The contested decision provides no reasoned explanation establishing a rational, proportionate and transparent link between the alleged shortcomings identified and the scores awarded. In the absence of such reasoning, the scoring appears arbitrary and inconsistent with the principle that points must reflect, in a proportionate manner, the degree to which the tender meets or exceeds the minimum requirements. What is more, the evaluators entirely disregarded the fact that the tender dossier itself presupposed the later availability of this specific functionality. The functionality marked as *"will be available"* was the only one expressly structured as an enhancement to another basic module and is expressly intended to be developed and customized eventually upon receipt of feedback from the Contracting Authority, in accordance with the project implementation timetable. Accordingly, the Appellant did nothing more than faithfully reflect the staged implementation model prescribed by the tender documentation. To penalize it for accurately adhering to that structure, amounts to a manifest error of assessment and a clear misinterpretation, indeed a distortion, of the very requirements established by the Contracting Authority itself.

More precisely, according to the tender dossier (see Annex 3, page 11), under this criterion, the tenderers should *"2. Provide customisation detail for each specified function within the tender document. (Article 4.3 and 4.4). For each function the bidder shall indicate whether: the function is available out of the box, available with customisation, will be available (and when), not available - (O points - disqualified). Note: Points will be awarded based on the readiness of all functionalities. Each feature will be assessed individually, and the total score will reflect the overall completeness and operational status. If any single functionality is not available, will receive zero points and be disqualified."*.

As explicitly further clarified in this respect in Section 6.3 "Evaluation Grid" of the tender dossier (see page 10, Annex 3), *"Unless otherwise stipulated in the criteria in themselves (as some of the criteria already include a gradation of points), the scoring shall take place across a range of points from 'O' to 100%. If the contents of the documentation meet and exceeds all minimum requirements thus, offering a higher quality bid, higher points will be allotted up till 100% (Full Score). Such points shall be awarded in such a manner to reflect in a proportionate manner the level of effort undertaken to exceed the minimum requirements."*. In other words, the evaluation mechanism is expressly based on the principle of proportionality. The score awarded must reflect, in a rational and graduated manner, the extent to which a tender meets and exceeds the minimum requirements. Minor or isolated shortcomings cannot reasonably justify an exceptionally low score and the proportion of functionalities requiring customization should be taken into account in the overall assessment. Points must be allocated in a manner that demonstrates a clear, objective and

proportionate correlation between the qualitative merits of the offer and the numerical score awarded. Any failure to maintain such proportionality constitutes a manifest error of assessment and a breach of the evaluation methodology set forth in the tender dossier. Moreover, with respect to the functionality that the Appellant declared as "will be available", it must be emphasized that its staged implementation was fully in accordance with the tender specifications. In particular, according to Section 2 "Special Conditions" of the tender dossier, Article 18.2 *"Phase 1 - Analysis, development, testing and Go-Live of all functionalities", "The period of execution is twenty-eight (28) months from the commencement order as specified in Article 18.1 and shall be delivered over the following milestones; L...] Milestone 2: Set up of test and live environments. Customization, testing and commissioning of the below functionalities: [..] Criminal Records Basic Functionality |...] Milestone 4: Customization, testing and commissioning of the below functionalities and roll-out of the complete solution including integration testing and user training as required: [...] Criminal Records Integrations and Enhancements (...] At the end of milestones 2, 3 and 4 and at the contractor's full responsibility, all the functionalities to be delivered as above should be deployed after passing User Acceptance (UAT) testing. The contractor should have provided to the satisfaction of the Contracting Authority the necessary testing, hands on practical training, operation manuals and online user guides.".*

In other words, the Appellant declared the above functionality as *"will be available"* in accordance with the tender specifications. This functionality, which is the only separate supplementary module (Functionality 39) of another basic module out of the forty-eight (48) functionalities listed, was scheduled to become available on a defined date following the delivery of the basic *"Criminal Records functionality*" (Functionality 38). It is, therefore, evident that tenderers were required to obtain input from the Contracting Authority during the implementation phase before the implementation of this functionality. By design, this functionality follows the customization of Functionality No. 38 and represents the only two-stage feature, i.e. a basic version followed by an enhanced version. Consequently, there is no reasonable basis to consider that this functionality could have been *"available"* earlier, and the Appellant should not have been penalized for accurately reflecting this staged implementation. It is clear that the Preferred Bidder could not possibly offer anything better here under the circumstances and there was therefore no basis for a reduction in points, let alone such a considerable deduction.

It is evident from the above table, which was completed and submitted by all tenderers through their tenders, that the Appellant offered twenty-seven (27) out of forty-eight (48) functionalities as *"immediately available out of the box"* (ie. 56% of the features), twenty (20) functionalities as "available with customization" (i.e. 42% of the features) and only one (1) functionality, scheduled for availability on 22.10.2026 (i.e. 2% of the features), in accordance with the instructions and the milestones set out in the tender dossier. Importantly, the latter functionality requires, as analysed above, customization upon implementation of the corresponding basic functionality. Therefore, the overall readiness of the Appellant's system is fully comparable to that of the Recommended Bidder and cannot reasonably be assessed as being far behind or, in any case, at a mere thirty

percent (30%) level. The Contracting Authority has failed to provide the Appellant with the relevant table from the Recommended Bidder's submission, despite the Appellant's formal request dated 18.02.2026 (see Annex 2b) Consequently, the appellant was unable to perform a direct comparison of the readiness and availability of functionalities between the two tenders. Notwithstanding this, the Appellant possesses extensive knowledge of the justice / Courts market, including the Armenian market, where it is a government contractor and is familiar with the product offered by the Recommended Bidder through direct engagement and commercial discussions with the key partner of the said consortium, ie. Synergy International Systems Inc. As evidenced by correspondence with executives of the latter (see indicatively Annex 5), the Appellant had access to presentations, product factsheets and webinar recordings of the product offered by the Recommended Bidder, which demonstrate that said system does not provide the same level of out-of-the-box readiness as the Appellants' solution. The Appellant, therefore, respectfully reiterates its request that the Contracting Authority disclose the Recommended Bidder's response under Criterion C.2, including the detailed table of functionalities, in order to allow a proper, objective and proportional comparison between functionalities that are immediately available and those requiring customization. For the avoidance of any misconception, this request is by no means to be regarded as a "fishing expedition", but is grounded on reasonable and justifiable concerns about the Recommended Bidder's offer. These concerns are based on the Appellant's knowledge of the market and of the product used by the key partner of the latter.

Given the above, it is evident that the total scores awarded under this criterion (Appellant: 3/10 and Recommended Bidder: 8/10) do not accurately reflect the actual level of readiness of the respective systems, nor do they constitute a genuine comparative assessment of the two solutions in terms of functionality availability and customization requirements. The scoring appears disconnected from the factual implementation status and the disparity between the scores is so extensive that it exceeds any form of reasonable margin of discretion. It fails to consider the extent to which the required functionalities are already available out-of-the-box or require only limited customization. Consequently, the evaluation does not demonstrate a coherent, objective and proportionate comparison between the competing solutions. It is wholly unreasonable to assign a score of three (3) out of ten (10) to a system where ninety-eight percent (98% of the functionalities are already available and less than half of them require customization. In comparison, the Appellant's solution is objectively more ready than the solution of the Recommended Bidder. Even without access to the corresponding table from the

Recommended Bidder, market knowledge and experience in the field of justice / eCourts systems, including familiarity with the Recommended Bidder's product, allow the Appellant to assume that the readiness of its system is substantially higher. Moreover, the readiness of the Appellant's

solution is clearly not at a level as low as thirty percent (30%, thereby demonstrating, in any case, a manifest error of assessment by the evaluators.

Furthermore, the scoring is inconsistent with the tender dossier, which explicitly provides that the enhanced functionality (Functionality No. 39) is to follow the customization of the basic functionality (Functionality No. 38), in accordance with the project milestones. Penalizing the Appellant for adhering to this staged implementation constitutes a manifest error of assessment, unequal treatment and a clear misinterpretation of the tender requirements. In light of the above, the Appellant respectfully requests that the Board annul the contested evaluation and the resulting award decision based on the grievance that the Contracting Authority failed to apply the award Criterion C.2 proportionately, objectively and in strict accordance with the tender specifications and the evaluation methodology laid down in the tender dossier. Alternatively, the Appellant requests that the Board order the recalculation of the scores awarded under this Criterion, strictly in accordance with the published award criteria and the evaluation framework set out in the tender documentation, so as to accurately reflect the actual readiness of the Appellant's system, the correct sequencing and staged implementation of functionalities and the proportion of features already available versus those requiring customization.

d) ***Fourth Ground of Appeal: Non-exclusion criteria***

The Appellant further submits that the contested award decision is unlawful on the additional ground that the key partner of the consortium of the Recommended Bidder does not fulfil the applicable non-exclusion criteria relating to professional integrity and reliability, as required under the tender dossier and the governing public procurement More specifically, according to Article 57 paragraph 4 c) of the Directive 2014/24/EU, *"Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations: [...J(c) where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable".* According to settled case-law of the Court of Justice of the European Union, the concept of "professional misconduct", for the purposes of that provision, covers all wrongful conduct which has an impact on the professional credibility of the operator at issue and not only the infringements of ethical standards in the strict sense of the profession to which that operator belongs (see, to that effect, judgment in Forposta and ABC Direct Contact, EU:C:2012:801, paragraph 27, and Case C-470/13, Generali-Providencia Biztositó Zrt v Közbeszerzési Hatóság Közbeszerzési Döntóbizottság, ECLI:EU:C:2014:2469, paragraphs 35-36). In those circumstances, the commission of an infringement of the competition rules or a criminal offense, in particular where such actions are penalised by a fine, constitute cause for exclusion under Article 57 paragraph 4 c) of Directive 2014/24/EU. The above provision is fully aligned with Recital 101 of the same Directive.

Further to the above, in Section 1 "Instructions to Tenderers", Article 5 "Selection and award requirements" of the tender dossier, it is explicitly stated that: *"B) Exclusion (including Blacklisting) and Selection Criteria - information to be submitted through the European Single Procurement Docanent (ESPD) in the tender response format (Note 2). The Exclusion (including Blacklisting) criteria are to be completed by the Economic Operator in the ESPD (Tender response format) under Part II titled 'Exclusion Grounds' which includes the following: Grounds relating to Criminal Convictions, Grounds relating to the payment of taxes or social security contributions, Grounds relating tu insolvency, conflicts of interests or professional misconduct, Purely national exclusion grounds."* (see Annex 4, page 5).

Given the above and taking into account publicly available information regarding the key member of the consortium of the Recommended Bidder, ie. Synergy International Systems Inc., and its management, including ongoing criminal proceedings for corruption and fraud in the context of public procurement in Armenia, the Appellant respectfully submits that the Recommended Bidder does not satisfy the integrity and reliability requirements established by both the tender dossier and EU law. Accordingly, the Contracting Authority was obliged to exclude this economic operator under Article 57, paragraph 4 c) of Directive 2014/24/EU.

In concrete terms, according to information available in the public domain / press Annexes 6a-6e), the founder / beneficial owner of this company, the Minister and Deputy Minister of Finance of Armenia and five (5) executives of the above company (ie. eight people in total), were arrested last year for corruption in public tendering in Armenia. According to the same sources, most of them were also imprisoned.

The said case of fraud concerned a call for tenders, where Synergy International Systems Inc. and a number of third parties manipulated a tender, breaching the law, causing a serious harm to the national budget of Armenia. Some employees of the said company involved testified about circumstances that were essential to criminal proceedings in order to achieve a preferential treatment and were released from prison. However, the alleged beneficial owner of the company and other representatives as well as the Deputy Minister remain imprisoned or house arrested? In this respect, the Appellants respectfully submit that the Contracting Authority had a duty to verify that all participants, including the Recommended Bidder's above key partner, complied with the non-exclusion criteria relating to professional integrity and reliability, as expressly required under the tender dossier and the applicable public procurement law. However, to date, the Contracting Authority has not disclosed any information regarding investigations undertaken or confirmations obtained from the Recommended Bidder concerning the ongoing criminal proceedings and potential prior exclusions affecting the Recommended Bidder.

Additional irregularities identified in the evaluation process and reservation for submission of additional grounds of appeal

The Appellant further submits that it has identified additional irregularities in the evaluation process. Purely indicatively, according to the tender specifications, tenderers should under Criterion I.1: "Demonstrate how the solution will provide an intuitive user interface design for easy navigation and accessibility". The evaluators provided the following comment to justify the scoring of the Appellant's technical offer: "The virtual sittings feature was presented as an autonomous module with minimal or no integration with the actual system where users have to manually upload data from the external module to the actual system". This comment clearly shows that the evaluators used a new, unknown criterion. The Appellant stresses that the virtual sittings feature is in fact integrated in the system it provided, which forms part of the case management module. Through this module, meetings regarding a specific case can be managed, notifications to participants are sent and the links to join a meeting are made available. The evaluators comment negatively the approach presented by the Appellant to upload the meeting notes as a case document in the Case Management module, instead of adding them automatically to the case documents. However, this is nowhere in the tender dossier set as requirement. What is more the Appellant stresses that the solution offered includes also this mode. With this in mind it is clear that the evaluators committed another serious error of assessment, using a new and unknown criterion.

A similar situation is observed in the case of Criterion J.2, under which tenderers were requested to: *"Provide how the Bidder is exploring and integrates emerging technologies such as artificial intelligence, machine learning, and blockchain for enhanced efficiency and security"*. The evaluators made the following comment and awarded only one (1) point to the Appellant: *"The bidder, in contrast with the actual writeup provided, did not demonstrate any actual or future readiness for innovation technologies such as artificial intelligence, machine learning, and blockchain or automation features in supporting business and judiciary decisions and future innovation as requested."*

From the above comment, it is clear that the evaluators disregarded the tender of the Appellant and thus they committed a manifest error of assessment, since, in contrast to what the evaluators reported, the Appellant demonstrated in its tender innovative technologies, such as the following: (a) Machine Learning: the Case Nature of a case/ police report can be automatically classified through its description, using machine learning, and (b) Automation: a Case is automatically assigned to a Judiciary, based on their availability/experience. With the above in mind, at least two (2) of the areas flagged as allegedly missing (i.e. Al and machine learning), were clearly offered by the Appellant, and this demonstrates a manifest error of assessment.

However, in the absence of the full evaluation reports requested but not to date provided by the Contracting Authority and the complete reasoning underpinning the scoring awarded to both its technical offer and the Preferred Bidder's one, it is not in a position to articulate all corresponding grounds of appeal with the required precision. The Appellant therefore reserves its right to raise further and more detailed pleas upon disclosure of the complete evaluation documentation.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 6th March 2026 and its verbal submission during the hearing held on 15th April 2026, in that:

a) ***Introduction -***

At the outset, it must be emphasised that public procurement review is not an appellate reassessment of technical merit. The role of the reviewing body is confined to determining whether the Contracting Authority acted within the legal framework established by the Public Procurement Regulations and the published tender documents. Provided the evaluation committee applied the announced criteria consistently, transparently, and without discrimination, the Board ought not replace the evaluators' technical judgment with that of a disappointed bidder. The Contracting Authority respectfully submits that the evaluation process adhered strictly to the Public Procurement Regulations, the tender dossier, and the principles of equal treatment and transparency: The appeal therefore fails on each ground raised. The proposed award was reached through the Best Price-Quality Ratio methodology expressly published in the tender dossier, with the technical component carrying the majority weighting. The Appellant's offer was not excluded as non-compliant; it was evaluated and placed second on the overall BPQR outcome. The Appellant here is merely disagreeing with the evaluators' assessment of qualitative readiness and completeness. It must first be stated that it is now settled that the function of the PCRB cannot substitute the discretion of the evaluation committee unless the evaluation committee's decision was unreasonable. This reflects, in substance, what in Administrative Law is known as "the Wednesbury approach". In UK administrative law, the Wednesbury standard is a high-threshold ground of judicial review: a court will intervene only where a public authority's decision is so unreasonable - so irrational in its outcome - that no reasonable authority, properly directing itself, could have arrived at it. Originating in an English case in the name of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948],* this doctrine focuses on the legal fact that at appellate stage, it is not whether the reviewing body would have reached a different conclusion, but whether the decision falls outside the range of responses open to a reasonable decision-maker.

b) ***First Ground of Appeal - Disclosure and Alleged Breach of Effective Judicial Protection***

The first ground of appeal concerns alleged non-disclosure of documents requested by the Appellant. The Appellant attempts to frame this issue as one of effective judicial protection, suggesting that without access to extensive documentation belonging to the successful tenderer it cannot properly challenge the award decision. This proposition is legally unsustainable. It must be said however that the first grievance raised by the Appellant does not, in substance, impugn the Evaluation Committee's assessment, the comparative scoring exercise, or the proposed award decision adopted by the Contracting Authority; rather, it concerns a subsequent and collateral request for documentation addressed to the Department of Contracts after the evaluation process had been concluded and the result communicated. In these circumstances, even on the Appellant's

own framing, the complaint is not directed at any alleged defect in the award decision as such, but at the handling of an administrative request made to a separate authority in the post-decision phase, governed by its own statutory duties and limitations (including confidentiality safeguards). It follows that this point, as pleaded, cannot constitute a ground of challenge to the legality of the award decision of the Contracting Authority; nor can it be used to impugn the validity of an evaluation and award process in respect of which no concrete illegality is identified. Therefore, the first ground of appeal, which does not even refer to the decision appealed, shall be set aside. ithout prejudice to the above, it should be stated that the Public Procurement Regulations establish a carefully calibrated balance between transparency and confidentiality. Regulation 40(1) of the Regulations expressly provides that contracting authorities shall not disclose information designated as confidential by economic operators, including technical or trade secrets and confidential aspects of tenders. This provision is mandatory. It reflects the fundamental reality that procurement procedures depend upon bidders being able to submit commercially sensitive material without risk that competitors will subsequently obtain access to proprietary solutions.

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

Regulation 40(2), however, identifies categories which are not confidential, including the identity of bidders, subcontractors, and documentation evidencing compliance with selection criteria. The Department of Contracts has adopted precisely the approach envisaged by the Regulations: disclosure of non-confidential information sufficient to explain the outcome, while protecting genuinely confidential material. This represents compliance, not obstruction. Moreover, Regulation 242 confirms that the obligation owed to unsuccessful tenderers is to provide reasons and the relative advantages of the winning tender, not to disclose the entirety of a competitor's offer. The Regulations expressly permit withholding information where disclosure would prejudice legitimate commercial interests or distort competition. The Appellant's interpretation would render these provisions meaningless. It must further be observed that the tender dossier itself imposed strict confidentiality obligations concerning demonstrations and system access credentials. Demonstrations were intended solely as verification tools for evaluators and were explicitly stated to be treated with strict confidentiality. Any disclosure to competitors would defeat the purpose of that cause and expose proprietary systems to undue risk.

Indeed, the breadth of the documentation sought by the Appellant confirms why the complaint is misconceived: much of what is being demanded consists of material that, by its nature, reproduces or reveals the confidential aspects of a competitor's tender, including technical know-how, trade secrets, system design and commercially sensitive pricing structures. The Public Procurement

Regulations do not merely allow such information to be withhold; they impose a positive legal obligation not to disclose where disclosure would prejudice legitimate commercial interests or fair competition. In other words, to accede to the request in the form made would not be an act of "transparency" but would expose the authority responsible for tendering to acting in breach of the very same law that governs its operations. The Appellant's reliance on general references to principles in the EU directive does not alter this conclusion. EU Directives are implemented domestically through the Public Procurement Regulations, which represent the operative legal framework and therefore, exclusive reliance on the Directive is legally incorrect. The balance between transparency and confidentiality is already embedded within Maltese law. The Appellant cannot rely on abstract principles to override explicit local statutory provisions. Accordingly, the Department of Contracts acted lawfully, according to the criteria established by C-54/21 Antea Polska S.A., and Others, according to the Public Procurement Regulations, and according to principles established by the PCRB and the CJEU – in providing sufficient explanatory information while refusing disclosure of confidential or commercially sensitive materials. Therefore, the first ground of appeal should be dismissed.

c) ***Second Ground of Appeal - Alleged Undisclosed Criteria and Evaluation under Criterion C1***

The Appellant next alleges that the evaluation committee applied undisclosed or modified award criteria when assessing Criterion C1. This allegation is directly contradicted by the tender documentation itself. The tender dossier unequivocally provides that each technical offer would be evaluated solely in accordance with the published award criteria and associated weighting, and that no other award criteria would be used. The methodology was clearly disclosed: a best price-quality ratio with a 70% technical and 30% financial weighting. All bidders participated on that basis. The Appellant's complaint arises not from the introduction of new criteria but from dissatisfaction with the evaluators' qualitative assessment, Public procurement law draws a clear distinction between illegality and disagreement. Evaluation necessarily involves professional judgment, particularly where qualitative aspects such as usability, coherence, scalability, and methodological robustness are assessed.

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

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

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

The tender dossier required structured submissions within an approximate word range while encouraging the use of diagrams, charts, and supporting material. The limitation was therefore not restrictive but organisation!. Bidders retained multiple means of conveying technical depth

concisely. The Appellant's suggestion that brevity requirements prevented adequate explanation is inconsistent with the tender instructions themselves. In those circumstances, the issue is not one of permitted length, but of the extent to which the space and format available were used to address the matters that were decisive for the assessment under the published criteria.

The evaluation report indicates that scoring differences arose from the level of detail and completeness provided. Points were not reduced arbitrarily nor because of any demonstration default. Rather, scores reflected missing or insufficiently substantiated information within the written submission. This is entirely consistent with the evaluation grid, which required clarity, internal coherence, and demonstrable completeness. It is also relevant that the Appellant's appeal itself extends to extraordinary length while reiterating general procurement principles without direct connection to the specific evaluation findings. The extensive nature of the appeal inadvertently illustrates the evaluative concern: the difficulty lay not in word limits but in the ability to present structured and substantiated explanations within the format requested.

d) ***Third Ground of Appeal - Criterion C2 and Readiness of Functionalities***

The third ground concerns scoring under Criterion C2, specifically relating to system readiness and the availability of certain functionalities. Here again, the tender dossier provides decisive guidance. The evaluation grid explicitly states that points would be awarded based on the readiness of functionalities, assessed individually, with the tot score reflecting operational completeness. Readiness was central to this procurement because the subject matter was not the speculative development of a future platform, but the customisation and implementation of an off-the-shelf Courts Management Information System, intended to be deployed within defined timeframes, integrated with existing governmental infrastructure, and relied upon operationally with minimal delivery risk, even due to external regulatory and funding obligations. In that context, the published evaluation logic necessarily privileges demonstrable operational maturity over aspirational capability - this evident from the Note to C2, as will be shown. The distinction between what is already available and working and what is contingent on post-award customisation or future development is therefore not a secondary technical nuance; it is an essential procurement safeguard inherent to off-the-shelf implementations.

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

Moreover, and importantly, this conclusion is corroborated by the Appellant's own Functional mapping: the Appellant's bid itself indicates that a substantial portion of the required functionalities were not presented as fully operational out of the box", but as available with customisation, and that at least one key requirement was marked as not yet available. In an off-the-shelf procurement, those classifications are not benign labels; they are direct indicators of reduced readiness. "Available with customisation" necessarily entails additional build/configuration, testing, and integration effort before the functionality becomes operational in the Contracting Authority's environment, while not yet available ("will be available") denotes a higher degree of uncertainty and delivery risk. In those circumstances, the Evaluation Committee was bound - indeed required - by the published scoring logic to treat the Appellant's offering as less ready than an offering demonstrating higher immediate completeness and embedded operational status, and to reflect that reduced operational maturity in the score. This logic is reflected in the score awarded.

As a result, functionalities available out-of-the-box logically score higher than those requiring customisation or future development. This distinction is fundamental to procurement of off-the-shelf solutions. Indeed, this is supported by Note to C2 (a note which is seemingly overlooked by the Appellant), that states that: *"Points will be awarded based on the readiness of all functionalities. Each feature will be assessed individually, and the total score will reflect the overall completeness and operational status."*

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

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

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

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

e) ***Fourth Ground of Appeal - Alleged Blacklisting and Integrity Concerns***

The final ground alleges that the recommended consortium ought to have been excluded due to alleged integrity concerns. This argument fundamentally misunderstands the legal concept of exclusion and blacklisting and builds a grievance based on mere allegations and news reports. Under the Public Procurement Regulations, mandatory exclusion arises only where there exists a conviction by final judgment for specified offences. Allegations, investigations, or media reports

do not satisfy this threshold. The Regulations intentionally adopt an objective legal standard to prevent arbitrary exclusion based on unproven claims.

The Public Procurement Regulations draw a clear procedural distinction between (i) exclusion from a particular procurement and (i) blacklisting as a system-wide sanction.

Exclusion is applied within the procurement by the Contracting Authority on the basis of the exclusion grounds (including, in the mandatory cases, a final conviction for the specified offences; and, in the discretionary cases, other serious grounds), and it operates only for that procedure - with the contracting authority obliged to ensure that no contract is awarded where an operator (or proposed subcontractor is caught by an exclusion or blacklisting ground, and to require replacement of any subcontractor so affected, failing which the tender must be rejected. Blacklisting, by contrast, is not a tender-by-tender decision but a separate, formal process commenced by the competent authority (principally the Director) through a registered/judicial notification setting out the grounds, after which the operator has a strict right of challenge before the Commercial Sanctions Tribunal within the statutory time-limit, if no objection is filed, the blacklisting becomes final and has the effect of barring the operator from any public procurement (whether directly, as subcontractor, or within a consortium) for the prescribed period. Critically, therefore, the mere assertion that an operator is "subject to criminal proceedings" is not, of itself, equivalent to a final conviction; it may inform the contracting authority's risk assessment and the application of any discretionary exclusion grounds (subject always to procedural fairness and proportionality, but the more severe, general prohibition of blacklisting only crystallises through the dedicated statutory procedure and the remedies provided for before the specialised tribunal.

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

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

This Board also noted the Department of Contract's Reasoned Letter of Reply filed on 6th March 2026 and its verbal submission during the hearings held on Board sittings of the 15th April 2026, 8th June 2026 and the 9th of June 2026, in that:

a) ***First Grievance: disclosure of requested information***

This grievance, of a preliminary nature, raises two distinct issues. First is the issue of whether the requested information should have been disclosed or not. And secondly is the issue of whether, in

the case where the requested information should have been disclosed, the Appellant has been denied an effective remedy.

On the first issue, the point of departure must be to consider the objective which underlies the authorities obligation to disclose certain information on the bid recommended for award. According to the judgment of the European Court of Justice (ECJ in the Antea Polska Case (17 November 2022, C-54/21, EU:C:2022:888, para. 103) that objective is to *"enable any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement to challenge effectively and rapidly decisions taken by contracting authorities".*

This objective is embodied in Art. 242(2) of the Public Procurement Regulations which, in particular, provides that a contracting authority must inform an unsuccessful tenderer of the reasons for the rejection of its bid and *"the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer".* In the present case, the relative best price/quality ration (BPQR) scorings of the Appellant's own bid and of the Preferred Bidder's bid have been disclosed to the Appellant. The has allowed the Appellant to compare the relative characteristics and advantages of the winning bid with its own.

The proof that the objective underlying disclosure has been met in this case is the Appellant's second and third grievances. These grievances are precisely the result of that comparison which the Appellant was allowed to do with the information already disclosed. The appeal application reveals the Appellant's true intention of conducting a full evaluation of the selected bid itself. The Appellant is not requesting access to information but it is rather requesting the power to conduct a full valuation of the bids itself and to question the competence of the tender evaluation committee.

The ECJ has already made it clear in the Ispas Case (9 November 2017, EU:C:2017:843, para. 35-36) (albeit relating to defence in tax inspections), that a party's right to appeal or to defend oneself in litigation does not mean that it has a right to access whatever information it wants*: "Indeed, according to settled case-law of the Court, the general principle of EU law of respect for the rights of the defence is not an unfettered prerogative but may be restricted, provided that the restrictions in fact correspond to objectives of public interest pursued by the measure in question... such restrictions, enshrined in national law, may, in particular, be designed to protect requirements of confidentiality or professional secrecy, which are liable to be infringed by access to certain information and certain documents. "*

Specific to the public procurement field, the ECJ has stated unequivocally in Evropaiki Dynamiki v. European Commission (20 September 2011, C-561/10 P, EU:C:2011:598, para. 25): *"it does not follow... that, upon written request from an unsuccessful tenderer, the contracting authority is under an obligation to provide it with a full copy of the evaluation report. "*

Regarding the competence of the tender evaluation committee, while the assertion is firmly rejected, this is simply not relevant to any review of the award decision and should not be entertained by this Board. After all, a competent and expert committee may still, despite its

qualifications, inadvertently take an unreasonable or arbitrary decision. Should that decision not, therefore, be quashed just because the committee was composed of competent persons to the Appellant's liking? In the same manner, if a tender evaluation committee lacking certain expertise or qualifications take a perfectly reasonable decision, should that decision be quashed just because the Appellant would have preferred it if that same decision was arrived at by more competent persons?

In this respect the Appellant's appeal is premised on a fundamentally unsound attack ad hominem. It is the evaluation itself which is subject to review, not the character or qualifications of the tender evaluation committee members. It is only where suspicions as to the integrity or the possibility of a conflict of interests on the part of a tender evaluation committee member are raised that their identity becomes of any genuine use to the review of the award decision.

As to the second issue, even assuming for the sake of the argument that the Appellant was entitled to access the information it requested, its claims that it has been, or will be, denied effective judicial protection are unfounded. The Appellant is presently challenging the non-disclosure of the information it has requested and, this being an administrative decision after the lapse of the tender publication period, is subject to this Board's review under Reg. 270 of the Public Procurement Regulations.

While the Department of Contracts reiterates that permitting the Appellant to access the whole procurement file in order for it to conduct its own evaluation is not in keeping with objectives justifying disclosure, should this Board's decision be unfavorable to this stance the disclosure of that information may be ordered by the Board within these proceedings. The Appellant's rights for an effective remedy are thus, in any case, safeguarded. Therefore, under no circumstance can this preliminary grievance be the basis for the review of the actual award decision.

b) ***Second Grievance: The evaluation of Criterion C1.1***

Criterion C1.1 requested bidders to: *Provide a comprehensive detail of the available functionalities in relation to the requirements as stipulated within the tender document. (Reference to Section 3 - Article 4.3 and 4.4).*

The Preferred Bidder obtained the maximum of five (5) points whereas the Appellant obtained one (1) point. The tender evaluation committee's decision to allot a single point to the Appellant is grounded on the following justification:

The bidder did not provide comprehensive detail of the available functionalities, within the writeup the bidder only provided a brief description of the functionalities with very minimal detail. During the demonstration the bidder only provided a superficial overview of the available functionalities again failed to provide a comprehensive details of the functionalities. Furthermore, the bidder did not provide a demonstration to substantiate functionalities such as: The Case management including the case life cycle is not an actual case journey for each action within the case lifecycle the user has to switch between modules and search for the specific case to edit the case. The public portal user interface as demonstrated, is based on submission of a series of electronic forms for e-filing and not a direct in system e-filing service, the interface provided is manually quite laborious for e-filers. The virtual sittings feature was presented as

an autonomous module with minimal or no integration with the actual system where users have to manually upload data from the external module to the actual system. The Criminal Records Management, bidder provide the very basic fictionality and the bail management feature lacks functionalities such as bail history, temporary bail conditions and editing of bail conditions.

The Appellant takes issue with this decision on two grounds. Firstly, it questions how any bidder could have provided extensive technical elaboration given the mandatary word limits of a minimum of 1,000 words and a maximum of 2,000 words, and whether the Preferred Bidder's write-up truly respected that word limit. Secondly, the Appellant contends that the technical online demonstration of the bidders' respective solution could be used as a basis for the allotment of the BPQR scores.

Regarding the word limit, this was imposed on all bidders equally. If the Appellant felt that the word limit made it extremely difficult for it to present its solution, that difficulty existed for all bidders in the same manner at the outset. The general principles of equal treatment, transparency and self-limitation, as enshrined in Reg. 39(1) and (2) of the Public Procurement Regulations, have thus been respected.

The allegation that the Preferred Bidder's writeup exceeded the 2,000 word limited is firmly rebutted. Unlike a 'cheapest compliant' award criterion, the BPQR award criterion inherently requires comparative qualitative evaluation to differentiate between compliant submissions and award marks proportionate to demonstrated quality, detail, and evidential strength. That the tender evaluation committee found the Preferred Bidder's bid to be more detailed and substantiated is not unreasonable in itself. It is worth noting, in fact, that the appeal application does not address the deficiencies of its bid which the evaluation committee's justification highlights.

Regarding the second issue in relation to the demo, the Appellant relies on this text on page 17 of the tender dossier - "No qualitative score is associated with the demonstration" - to argue that the evaluation committee could not take into account any consideration of the demo when allotting the BPQR scores. Based on this text, on the same page of the tender dossier - *"The Solution that will be used by the bidder during this demonstration must be identical to the one that the bidder is tendering with. If it is not this will result in the disqualification of the bid."* - the Appellant also argues that the sole purpose of the demo was to confirm that the solution presented in the demo matched the submitted documentation.

These contentions are unfounded.

The tender dossier also provides that: *"The list of features to be demonstrated for each of these modules will be the same features as listed in Section 3 of this document. The evaluating board will go through this list, on a one-by-one basis, to verify the compliance of the functionality of the solution being proposed."* Section 3 includes the Terms of Reference which detail the functionalities and upon which the bidders were allotted points. In fact, Criterion C1.1 cross-references to Art. 4.3 and 4.4 of the Terms of Reference. The evaluation committee was correct to take into account the demonstration, or lack of, for a number

of functionalities. That "no qualitative score is associated with the demonstration" means that demo was not scored in itself, but this does not exclude that the evaluation committee verify the bidders write-up with their respective demos and allot scores accordingly. In fact, points were reduced not for any quality or deficiency in the Appellant's demo but rather because the demo verified the lack of comprehensiveness of the Appellant's solution. This method of evaluation was both disclosed in the tender dossier and applied equally to all bidders.

c) ***Third Grievance: The evaluation of Criterion C2***

While still permitting the evaluation committee to score within a range, the Note to this criterion makes it clear that more points were to be awarded the more the solution nears overall completeness and operational status. The criterion itself creates four categories of "readiness" of the solution, with the first being ready out of the box and last being not available. It was clear to all bidders that the points were to be allotted in this paradigm.

The Preferred Bidder obtained eight (8) points with the justification "The bidder has functions with the status marked as available with customization". The Appellant obtained three (3) points with the justification "The bidder has a function with the status as will be available". Given that the Preferred Bidder's solution is, overall, more "ready" necessitates a higher scoring. The Appellant argues that its one functionality which was marked as "will be available" will not be required until a later stage in the project. While it is true that the project might be implemented in stages, the BOPR grid does not take this into account. To the contrary, Criterion C2 mandates that preference is given to solutions which are the most "ready" across the board without distinguishing between functionalities that may be required to be implemented earlier than others.

In terms of the tender dossier, it was not for the bidders to stagger the readiness of their solution according to the chronology of implementation. The tender dossier unambiguously gives preference to the solution which is, overall, the most "ready". Therefore, contrary to its claims, it is the Appellant itself which is attempting to introduce a new scoring methodology which did not exist in the tender dossier.

d) ***Fourth Grievance: whether there exist grounds to exclude the Preferred Bidder***

The Appellant relies on Art. 57(4)(c) of the Classic Procurement Directive. The flaw in the Appellant's argumentation is that not only does Art. 57(4)(c), being a Directive provision, lack direct effect but it is also a discretionary ground which depends entirely on the respective Member State's transposition:

"Contracting authorities may exclude or may be required by Member States to exclude from participation in a procurement procedure any economic operator in any of the following situations:……

(c) where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable; ".

It follows that even if, for the sake of the argument, the Preferred Bidder is guilty of grave professional misconduct and even if Art. 57(4)(c) of the Directive is, incorrectly, given direct effect, the Contracting Authority is not obliged to exclude the Preferred Bidder.

Considering how that provision has been transposed to Maltese law, the Appellant's fourth grievance is even more baseless. Reg. 199(b) of the Public Procurement Regulations, which transposes Art. 57(4)(c) of the Directive, provides that:

"The Director is empowered to black list an economic operator from participating in a procurement procedure where: (b) the economic operator has been convicted of an offence concerning his professional conduct by a judgment which has the force of res judicata in accordance with the laws of Malta, which renders its integrity questionable;".

A number of consequences flow from this transposition.

Firstly, rather than give the discretion to the contracting authorities on a case-by-case basis, the Maltese legislature has opted to require the contracting authorities to exclude economic operators who are blacklisted by the Director of Contracts. As a matter of fact, the Preferred Bidder is not blacklisted.

Secondly, *"guilty of grave professional misconduct"* in Art. 57(4)(c) has been defined under the Public Procurement Regulations as meaning criminally guilty, that is where there has been a criminal conviction having the force of res judicata. The Appellant itself confirms in its appeal application that there has been no criminal conviction against the members forming the Preferred Bidder consortium or against or any natural person having powers of representation and/or control of those members. The information relied upon by the Appellant merely alludes to ongoing criminal proceedings.

Thirdly, the Director of Contracts is "empowered" to blacklist an economic operator having been convicted of such crime. Therefore, even where a criminal conviction having the force of res judicata exists, the Director of Contracts is not obliged to blacklist. The ground remains discretionary.

All of the above points have been confirmed by the Court of Appeal's judgment in BESSUI JV konsorzju kompost minn (i) United Equipment Company (UNEC) Ltd (C10827) u (ii) ISD Company Limited (C67005) v. Dipartiment tal-Kuntratti et (15 January 2026, appeal no. 379/2025/1). Therefore, there exist no grounds to exclude the Preferred Bidder on the basis of grave and professional misconduct.

This Board also noted the Recommended Bidder's Reasoned Letter of Reply filed on 9th March 2026 and its verbal submission during the hearing held on 15th April 2026, 8th June 2026 and the 9th of June 2026, in that:

a) ***First Ground of Appeal – Commercially Sensitive and Confidential Information cannot be Disclosed***

i) Essential and Sufficient Information has already been provided

By means of its first ground of appeal, European Dynamics alleges that the Contracting Authority or the Department of Contracts's decision not to reply to its request for information on 18 February 2026 constitutes a breach of its right to a rapid and effective remedy. This allegation could not be further from the truth. European Dynamics has already been provided with sufficient information to enable it to determine whether it should exercise its right to a rapid and effective remedy in the letter of rejection that it received a day earlier on 17 February 2026. Indeed, LexNova is presently replying to an appeal which raises three substantive grievances and spans no fewer than 37 pages. If European Dynamics were truly facing a situation where the so-called 'deprivation of information' is to such an extent that it cannot utilise its remedy, its appeal would be grounded on a solitary grievance of the Contracting Authority or the Department of Contracts's failure to provide additional information. European Dynamics gives the false impression that it has not been provided with the essential information it needs to assess whether to exercise its right to an effective and rapid remedy.

This is not the case. In its letter of rejection, European Dynamics has already been provided with:

• the reason for rejection;

• the table setting out the scoring allocated to European Dynamics and to LexNova with respect to their technical and financial offers;

• the successful tenderer and the reasons for its selection; and

• the scoring table, including the TEC's comments / justifications, on European Dynamics's offer.

• European Dynamics has also been provided with the scoring table, including the TEC's comments / justifications, of LexNova as the preferred bidder.

As this Board will know, it is neither regular nor customary for the other bidders to be provided with the TEC's comments to the preferred bidder's offer. LexNova is raising this to the attention of this Honourable Board to stress that European Dynamics had already been provided with the essential and sufficient information to enable it to determine whether to exercise recourse to its procurement remedy, more than it is regular or customary in a letter of rejection. The legal threshold is that a bidder must be provided with the information which is essential to enable it to seek effective review. European Dynamics's grievance must therefore be assessed against this legal threshold. Otherwise, as seems to be the case, in highly competitive industries the price of an appeal to the Board to obtain sensitive information from competitors might be a really low price to pay to lay hands on such important information. In European Dynamics's case, lodging such sorts of

appeals seems to be a distinct chapter of a business plan. That said, and on the strict merits of this case, once European Dynamics has been provided with this information, it is wrong and unlawful for it to claim a breach of its right to a rapid and effective remedy on the basis that its request for information was-rightly, so-turned away by the Contracting Authority and the Department of Contracts. The jurisprudence of the Court of Justice of the European Union (JEU) makes it clear that contracting authorities and review bodies must refuse access to confidential aspects of competing tenders where disclosure would prejudice legitimate commercial interests or distort competition. In Varec the Court expressly cautioned that allowing such disclosure would risk enabling bidders to obtain commercially valuable information about their competitors, and could even encourage the lodging of appeals for the sole purpose of gaining access to competitors' business secrets. This is exactly the tactic employed by European Dynamics in an attempt to guilt-trip the Contracting Authority and the Department of Contracts into giving it information to which it is not entitled. It has framed its entire information request as being 'indispensable'. As this Board will understand, when everything is indispensable, then in truth, nothing is.

(ii) Each specific Information Request should be Rejected

As has already been stated, European Dynamics is requesting information and/or documentation concerning the following categories of information. Despite its all-encompassing expedition, it has failed to substantiate or justify why it is requesting each specific piece of information, or even to outline the bare bones of an alleged grievance in relation to each.

• Technical Offer (especially Award Criteria C.1 and G.2). For obvious reasons, information on LeNova's technical offer cannot, and should not, be disclosed. It contains commercially sensitive and confidential information which, if it lands in the hands of a competitor on the same market, could very well give European Dynamics access to information which has a commercial value outside of this contract, and which could potentially and probably reduce its competitive edge vis-a-vis other calls for tenders and where its disclosure would undermine legitimate commercial concerns or fair competition? If this information were to be disclosed, LeNova would invariably be less able to distinguish itself from its competitors, at least from European Dynamics and any other bidder who decides to participate or follow this process.

• Demonstration (Demo). Any disclosure of the demo would give European Dynamics access to the ins and outs of its technical offer lock, stock and barrel, rendering negligible its ability to distinguish its product from that of its competitors in future calls. European Dynamics itself acknowledges the irreversible harm' that such disclosure could cause to LexNova in these Tender proceedings. in its reply to an application for disclosure filed by another appellant in Case 2120, European Dynamics-as the recommended bidder for that tender-firmly rebuts an identical request made the appellant, claiming:

"if European Dynamics' technical designs and tender, as well as its demonstration video, fall in the hands of [the appellant), they will cause to European Dynamics a serious and irreversible harm. [The appellant] argues in a very insincere manner that il could have access only to non-confidential parts of the information, when it very well knows that there is nothing "non-confidential" in what it is requesting."

• Key Experts. LexNova humbly submits that the details regarding its Key Experts are also confidential and should not be disclosed. The disclosure of the identity of these key experts will place European Dynamics in a position to poach them. Furthermore, these key experts have inside knowledge of the product offered by LexNova to the Contracting Authority and how it works. Even European Dynamics acknowledged this risk and that it would be, to say the least, untoward for the identities of the key experts to be disclosed. Just as LeNova is not privy to the details of the key experts which European Dynamics has proposed in its offer, European Dynamics should not be privy to the details of the key experts proposed by LeNova. This is how equal treatment is assured and guaranteed.

• Financial Offer. The financial offer should not be disclosed for the same reason that LexNova's technical offer should not be disclosed. How the preferred bidder structured its financial offer is of no concern to European Dynamics, especially where the appellant has failed to put forward and substantiate a single allegation of a manifest error assessment in this respect.

• GDPR Questionnaire. The GDPR Questionnaire, even though it was requested as part of the selection criteria, contains confidential and commercially sensitive information about internal data processing policies and strategies of LexNova. This should be evident from the detailed information provided by LexNova as expressly requested by the GDR Questionnaire. Yet again, European Dynamics has failed to put forward and substantiated a single allegation of a manifest error assessment in this respect.

•Evaluation Reports. The evaluation report necessarily discusses confidential and commercially sensitive aspects of a bidder's offer. Nor is it necessary or essential for the appellant to exercise its procurement remedy. It should not be disclosed, especially when European Dynamics has failed to justify or substantiate its request in this regard.

• TEC Members and External Experts. LexNova will defer to the Contracting Authority and the Department of Contracts' reply on this specific request. With that said, European Dynamics has not raised any allegation with regard to the composition of the evaluation committee. Nor is it correct for European Dynamics to request the disclosure of the individuals comprising the TEC without justifying such request. In its reply in Case 2120, European Dynamics lambasted an identical request advanced by their competitor, stating that ordering disclosure would "convey a wrong message" and prevent future evaluation committees from exercising their duties with peace of mind.

(iii) The RFI is a Fishing Expedition and is Anything but Targeted and Proportionate

European Dynamics's request for information smacks of not a fishing but a trawling expedition. Any such disclosure would seriously prejudice the integrity and confidentiality of LexNova's business information, particularly if it is in the hands of a competitor such as European Dynamics which does not shy away from using previous business dealings to its advantage and against the very economic operators with whom it sought to strike a deal in the past case in point-the submission in evidence of Annex 5. Furthermore, LexNova submits that European Dynamics's assertion that its request for information was proportionate and limited to what it deemed to be indispensable to the exercise of its remedy is egregious. European Dynamics requested no less than 8 categories of information, requesting access to all the information and documents submitted by LexNova as part of its bid, including the financial offer and the technical offer to boot, including the demonstration. European Dynamics goes as far as to request the disclosure of the clarification and rectification requests sent by the TEC to LexNova and the latter's replies thereto, without even bothering to justify the reason behind this request. European Dynamics is upfront about its motive for embarking on a trawling expedition. It wishes to conduct a reassessment of the bid submitted by LexNova so that it could find what, in its view, could pass for a manifest error in the TEC's assessment, and argue for the reduction of points, or worse, disqualification of its competitor. European Dynamics uses 'verification' or a variant of the term a combined 13 times in its request for information and first grievance, The verb is used in relation to the Contracting Authority's evaluation. As this Board knows, the raison d'être of this procurement remedy is not to carry out a verification or a re-evaluation of the TEC's assessment. According to established jurisprudence, neither the Board nor the Court of Appeal possesses the requisite expertise to undertake this exercise.

(iv) A Case of Double Standards: European Dynamics is Hoisted by its Own Petard

At this stage, LexNova respectfully invites this Board to take a trip down memory lane. It is indeed striking that in Case 2120, where the roles were reversed and the appellant in that case asked for information on similar, if not identical, aspects of the bid submitted by European Dynamics, albeit the scope of the information requested was significantly narrower, European Dynamics's response was that "[the appellant] argues in a totally unfounded and disrespectful manner that the evaluator did not do their job correctly. European Dynamics went as far as to claim that the request for information in Case 2120, which included exactly the same pieces of information that European Dynamics now wants to elicit from the Contracting Authority or the Department of Contracts, *"exceeds any tolerable limit of decency and audacity".*

European Dynamics, specifically with respect to a request for information for specific parts (and not the whole-as is being requested in this case) of its technical offer, claimed that it *"is confidential and could not be disclosed, since they constitute the "core" of our technical solution offered and have been the outcome of efforts of many years and that its business would be irremediably destroyed"."*

European Dynamics went as far to claim that the appellant in that case *argues in a very. insincere manner that it could have access only to non-confidential parts of the information, when it very well known that there is nothing "non-confidential" in what it is requesting"* This submission exposes European Dynamics's double standards and hypocrisy. While when defending a disclosure request on a specific part of its technical offer, it argued that everything is confidential, in this case, European Dynamics have no qualms to be "insincere" and to request all of LexNova's technical offer, in so far as it serves its objectives. LexNova will object to European Dynamics's request for its technical offer and financial offer tooth and nail. By way of a concluding point, European Dynamics's actual request for information of 18 February 2026 is not included as a supporting document. LexNova will rely on the text to the information request as reproduced by European Dynamics in its reply, reserving its rights to raise additional pleas and to make further submissions following the production of the actual information request in full by European Dynamics.

b) ***Preliminary Plea: Second and Third Grounds of Appeal are Inadmissible at Law because they have No Utility to the Outcome of this Appeal***

In brief, and by means of the second and third grounds of appeal, European Dynamics is claiming that its bid should have been given a higher technical score. European Dynamics claims that if it obtains a mere 4 points, then it would rank first. LexNova submits that, even if in arguendo, European Dynamics were right (which it is not), its bid should have been disqualified because on at least 3 criteria it should have received a nil score and deemed technically non-compliant. On this basis, the second and third ground of appeal, if upheld, would not change the recommendation of the Tender to LexNova, and therefore, those grounds have no utility to the outcome of this appeal. Clause 6.1 of the Tender provided that the award criteria will be based on the BPQR with a weighting ratio of 70% to the technical aspect of the offer and a weighting ratio of 30% to the financial aspect of the offer. Clause 6.2 of the Tender are clearly and unambiguously stated that: *"…….. If the minimum requirements are not met, the offer will be deemed as Technically non-Compliant and disqualified."*

Now, with respect to the following 3 mandatory criteria:

• *"J.2. Provide how the Bidder is exploring and integrates emerging technologies such as artiffcial intelligence, machine learning, and blockchain for enhanced efficiency and security."* which carried a maximum of 2 points.

• *"B.4. Provide a complete testing program to ensure efficient and complete User Acceptance Testing, (Article 4,4.4)"* which carried a maximum of 4 points.

• *"B.1. Provide a detsiled project plan outlining tasks, responsibilities, and timelines"* which carried a maximum of 4 points.

European Dynamics should have received a nil score because it appears that it did not meet the minimum requirements, and therefore, should have been disqualified.

This is so for the following 3 reasons.

First, with respect to criterion J.2, it appears that European Dynamics's write-up did not address at all the minimum requirements detailed in this criterion, namely, "how the Bidder is exploring and integrates emerging technologies such as artificial intelligence, machine learning, and blockchain for enhanced efficiency and security". On this basis, European Dynamics should have been given a 0 score, and hence, its offer should have been deemed technically non-compliant and disqualified.

Second, with respect to criterion B.4., it appears that European Dynamics did not submit a write-up which complied with the minimum requirements detailed in Article 4.4.4 of the Terms of Reference and Article 15.6 of the Special Conditions. The criterion at issue specifically required a "complete testing programme". On this basis, European Dynamics should have been given a 0 score, and hence, its offer should have been deemed technically non-compliant and disqualified.

Third, with respect to criterion B.1, it appears that European Dynamics's write-up did not address the minimum requirements detailed in this criterion, namely, "a detailed project plan outlining [...] responsibilities". European Dynamics appears to have only outlined the responsibilities of 2 out of 10 key experts. European Dynamics appears to have omitted any detail on the allocation of responsibilities to:

• Key Expert 2: Business Systems Analyst / Legal Expert

• Key Expert 4: IT Infrastructure and Security Architect

• Key Expert 6: Two (2) Software Developers

• Key Expert 7: Two (2) Technical Support Specialist

• Key Expert 8: Training Specialist

On this basis, European Dynamics should have been given a 0 score, and hence, its offer should have been deemed technically non-compliant and disqualified.

In a hypothetical scenario where, European Dynamics is given additional points on its technical score because the second and third grounds of appeal are upheld (quad non, European Dynamics's offer would still be deemed technically non-compliant and therefore be disqualified. LexNova would still be re-confirmed as the first ranking bidder. Therefore, this Board's decision on the second and third grounds of appeal will have no utility to the outcome of this appeal. The requirement of "utility" of a ground of appeal is founded in both EU and Maltese procedural law.

In view of the above, LexNova submits that, in any case, European Dynamics is not harmed by the allegations made in the second and third grounds of appeal because the outcome of the evaluation would not change even if European Dynamics is right on those grounds which it isn't. Therefore,

the second and third grounds of appeal should be dismissed as inadmissible, irrespective of the merits.

c) ***Second Ground of Appeal: European Dynamics Does Not Merit a Higher Score on Criterion C.1***

On the merits, by means of the second ground of appeal, European Dynamics argues that it should have been given a higher score on Criterion C.1. European Dynamics claims that the Contracting Authority applied undisclosed or changed award criteria. LexNova submits that European Dynamics's grievance is unfounded. This is so for the following reasons. European Dynamics put forward 2 key arguments to sustain this second ground of appeal. First, European Dynamics argue that the Tender provided for a maximum word limitation of 2,000 words for each write-up, and therefore, European Dynamics was constrained from submitting a comprehensive detailed submission on Criterion C1. Second, European Dynamics argue that the demonstration should not have been used by the TEC for BPQR scoring. LexNova disagrees because: the Tender's BPQR methodology exceed the minimum requirements in the law and was clear and unambiguous on the award criteria and their application (i); the Tender provided for an approximate word count and not a maximum threshold (ii); the Tender expressly allowed the use of the demonstration in the BPQR scoring (iii; and European Dynamics is attempting to shift the blame for its own deficient submission on the evaluation and the award criteria (iv).

(i) The BPQR Method in the Tender was clear and unambiguous and exceeded Minimum Requirements in the Law

The Tender was clear and unambiguous on how scoring on all criteria, in particular, Criterion C1, was to apply:

• First, Bidders were requested to submit write-ups, charts and, or designs for each criterion.

• Second, *"[t]he content of the documentation must meet all minimum requirements as detailed with in the Tender document."*

• Third, *"[t]the scoring shall take place across a range of points from "0' to 100%".*

• Fourth, *"if the contents of the documentation meet and exceeds all minimum requirements thus, offering a higher quality bid, higher points will be allotted up till 100% (Full Score). Such points shall be awarded in such a manner to reflect in a proportionate manner the level of effort undertaken to exceed the minimum requirements."*

Therefore, European Dynamics, as any other reasonably well-informed and normally diligent tenderer,ᵖ was put on notice that it cannot obtain a *"Full Score"* if its offer did not *"meet and exceed all minimum requirements"* and did not offer *"a higher quality bid"*.

In any case, it must be said that, as a matter of EU and Maltese public procurement law, there is no obligation on a contracting authority to disclose a detailed, granular scoring methodology for each criterion as European Dynamics suggests.

The BPQR award methodology in the Tender complies with the requirements of the law which only require:

• The disclosure of the relative weighting (score) for each criterion while in this case the Tender went further and detailed the scoring methodology. This is not a strict requirement, in fact, where weighting is not possible for objective reasons, the Tender may indicate the criteria in decreasing order of importance without assigning any weighting. The law permits further flexibility, specifically, weightings may be expressed by providing for a range with an appropriate maximum spread. Even though there is no legal obligation to do so, the Tender provided a range of "0 to 100%" for each weighting (score).

• The criteria are linked to the subject-matter of the public contract in question"_ the criteria are linked to the subject-matter to the Tender, and in any case, no claim has been raised in this regard.

• The criteria do not confer unrestricted freedom of choice on the tender evaluation committee and comply with the general principles of public procurement.

The BPQR scoring methodology certainly did not confer unfettered and unrestricted discretion on the TEC, but in line with Cateressence, the TEC's justifications on the scoring allocated to European Dynamics would corroborate that they *"adhered to the established criteria and abided by the parameters outlined in the call for tenders"*.

Therefore, European Dynamics's claim that the TEC applied undisclosed or altered award criteria or have committed a manifest error of assessment in applying the award criteria is without merit.

(ii) The Tender Provided for an Approximate Word Count and Not Maximum Threshold

It is not the case that the Tender imposed a strict word count for the write-ups. The Tender provided that write-ups had to be *"approximately between 1000 to 2000 words"*. This was restated in Clarification Note 17 which spoke of "approximate word counts" and reconfirmed in Clarification Note 19. Iin any case, European Dynamics could have deployed "chart (e.g. Gantt Charts) or/and designs to elaborate better the presented write-ups". These charts or designs were not to be counted as part of the word count. Presumably, European Dynamics did not do so, or at best, did not use them effectively.

(iii) Tender Expressly Allowed the Use of the Demonstration in the BPQR Scoring

The Tender expressly allowed the TEC to refer to the demonstration as part of the BPQR scoring. The Tender, in Clause 6.3 of Section 1, made it clear that *"[a]part from the documentation provided, when*

assigning points, consideration will also be given to: [..] the extent of ease of use (user friendliness) of the various functions within the proposed system, which will be verified during a demonstration". Therefore, European Dynamics's claim that the demonstration could not be used for evaluation purposes is wrong. In any case, at worst, there is no provision in the Tender which barred the TEC from referring to the demonstration in its BPQR scoring. This is so for a good reason. The TEC could not carry out the BPQR scoring in a vacuum and ignore the demo. Had the TEC ignored the demonstration, it would have been accused of acting contrary to the principles of public procurement.

(iv) European Dynamics is Attempting to Shift the Blame for its Own Deficient submissions on the Evaluation and the Award Criteria

European Dynamics conveniently attempts to the shift the blame for its inability to provide a detailed submission on Criterion C1 on this non-existent word count. This is not the first time European Dynamics has attempted this argument. In T-477/15 European Dynamics Luxembourg SA and others vs European Chemicals Agency (ECHA), European Dynamics was aggrieved, amongst other things, with the TEC's low scoring on a criterion because European Dynamics submitted a scant submission which did not contain a sufficient number of examples. European Dynamics argued that the justifications made by the TEC on the sufficient number of examples was an altered and undisclosed award criteria. Very much like it is doing so here. The General Court of the European Union rejected European Dynamics's arguments. The Generai Court heid that: *"it must be recalled that an evaluation committee must be able to have some leeway in carrying out its task" and that the evaluation committee "may, without amending the contract award criteria set out in the tender specifications or the contract notice, structure its own work of examining and analysing the submitted tenders".*

It then concluded that the evaluation committee's *"comments relating to insufficient examples or details in the tender submitted by the European Dynamics consortium are indissociably linked to the assessment of the award criteria."*

European Dynamics never appealed this decision before the Courts of Justice of the European Union, and therefore, LexNova will infer that it agrees with it.

Sanchez Graells has commented the following on case T-477/15.42: *"Thanks to the never-ending litigation efforts of European Dynamics, the EU Courts have recently added two decisions to the growing acquis on the duty to state reasons in the context of public procurement. [….] In my view, the G's Judgment in [T-477/15] should be welcome. Mainly for two reasons. First, it avoids the dangerously prescriptive approach that would have underpinned a consideration that each example (or the number of examples) needs to be linked to a specific award criterion-which would have made the design of award criteria and tender formats impossibly complex and constraining. Second, because it recognises that, regardless of the break-up of criteria into sub-criteria, evaluation committees can (and / would say should) carry out the evaluation on the basis of their overall or holistic assessment of the tenders. Again, the opposite approach would be excessively constraining, and would result in an artificial split of the tenders into different sub-*

dimensions in a manner that could rend the evaluation process moot or exceedingly complicated. So, on the whole, this is a good example of pragmatic approach by the GC".

European Dynamics's arguments are recycled and, just like in case T-477/15, completely without merit and ought to be rejected. On a concluding note, LexNova notes that it is not privy to the evaluation carried out by the EC. It is for the Department of Contracts and the Contracting Authority to address European Dynamics's allegations on the evaluation. On this basis, LexNova reserves the right to raise additional arguments or defences once details, if any, on the evaluation are made known to it. Therefore, save for LexNova's plea of inadmissibility, this second ground of appeal is unfounded on the merits and should be rejected.

d) ***Third Ground of Appeal: European Dynamics does not Merit a Higher Score on Criterion C.2***

On the merits, by means of the third ground of appeal, European Dynamics argues that it should have been given a higher score on Criterion C.2. European Dynamics again claims that the Contracting Authority applied undisclosed or changed award criteria. LexNova submits that European Dynamics's grievance is unfounded. This is so for the following reasons. By means of its third ground of appeal, European Dynamics alleges that the evaluation of Criterion C.2 was conducted in breach of the principles of equal treatment, transparency and seif-limitation, and that the score attributed to its tender is arbitrary and disproportionate. In particular, European Dynamics challenges the fact that its offer obtained a score of three points out of ten under this criterion, whereas the offer submitted by LexNova obtained eight points. European Dynamics contends that the deduction of seven points from its score is excessive and seeks to portray the functionality it classified as "will be available" as a minor enhancement which did not justify such a deduction. Lexnova disagrees because: the TEC allocated points on Criterion C.2 in accordance with the hierarchy of readiness in the Tender (i); the allocation of points on Criterion C.2 was proportionate (ii); European Dynamics's self-serving assertion that its offer was more out-of-the-box ready is false (iii).

(i) TEC allocated points in accordance with the Hierarchy of Readiness in the Tender

European Dynamics's third ground of appeal rests on a misunderstanding of the structure and purpose of the evaluation framework established in the Tender. Criterion C.2 required bidders to choose 1 out of 3 types of operational statuses for each functionality, that is, whether that functionality was: (a) already available within the proposed solution, (b) available with customisation, or (c) would only become available following future development. Any solution that failed to include even one of the mandatory functionalities, where such functionality could not be developed or implemented, would be disqualified. The Contracting Authority therefore established a clear and unambiguous rule. It was immaterial whether only one out of forty-eight functionalities would not

be available. The absence of a single mandatory functionality would suffice to trigger the disqualification of the offer. The Tender established a clear hierarchy of readiness. The scoring attributed by the TEC must have reflected this hierarchy.

First, Clause 6.3 of the Tender provided that *"when assigning points, consideration will also be given to: [...] whether the requested functionality is fully available within the solution or sill needs to be developed".*

Second, and specifically with respect to Criterion C.2, the Tender provided: *Points will be awarded based on the readiness of all functionalities. Each feature will be assessed individually, and the total score will reflect the overall completeness and operational status (emphasis added). If any single functionality is not available, will receive zero points and be disqualified.*

The evaluation established that European Dynamics had at least one mandatory functionality that was not yet available and was instead classified as "will be available". By contrast, all the functionalities mandatorily required in the Tender are already available within LexNova's system, albeit a few require customisation.

(ii) The Allocation of Points Under Criterion C.2 was Appropriate

European Dynamics further seeks to invoke the principle of proportionality in order to argue that the deduction of seven points from its score was excessive. LexNova humbly submits that this principle offers no solace to bidders whose grievance lies in their disagreement with the score attributed to their offer by the TEC. The allegation of disproportionate scoring by the TEC is rooted in a misunderstanding of how proportionality operates in procurement. This Board will know that to measure proportionality, the act or omission in question must be assessed against the rationale of the Tender, that is, the subject-matter of the procurement. The subject-matter of this Tender is the acquisition of an *"off-the-shelf courts management information system"* and its customisation and implementation. The hierarchy embedded in the Tender reflects the underlying objective of the procurement procedure. Solutions offering functionalities already available out-of-the-box were preferred, solutions requiring customisation were acceptable but less optimal, whereas functionalities that would only become available at a future stage represented the lowest degree of operational readiness. The act complained of is the fact that the TEC attributed fewer points to European Dynamics's offer under Criterion C.2, in accordance with the Tender's hierarchy of readiness and its stated preference for functionalities that are available out-of-the-box or through customisation over functionalities that would only become available at a future stage. Therefore, it is difficult to understand how European Dynamics can claim that the TEC acted arbitrarily and disproportionately. On the contrary, LexNova submits that it would have been disproportionate and unfair to the other bidders for the TEC to be more lenient with European Dynamics in the allocation of points to its offer in terms of Criterion C.2.

(iii) European Dynamics's Self-Serving Assertion that its offer was more out-of-the-box ready is False

European Dynamics nevertheless asserts that its solution is objectively more "out-of-the-box ready" than that of LexNova. This assertion is entirely speculative. The only persons who have examined and assessed both technical offers in their entirety are the members of the TEC. According to the scores recorded in European Dynamics's letter of rejection, the TEC concluded that LexNova's solution demonstrated a higher degree of readiness under Criterion C.2. The scoring attributed by the TEC - eight points for LexNova and three points for European Dynamics - therefore constitutes the only objective comparative assessment available in these proceedings. European Dynamics's contrary assertion amounts to nothing but a self-serving disagreement with that assessment. European Dynamics also attempts to support its position by referring to alleged discussions between representatives of Synergy and European Dynamics which took place in or around 2022. These discussions are said to demonstrate that European Dynamics's solution was more "out-of-the-box ready". Such discussions-and their production before this Board whose only remit is to determine and decide on issues relating to procurement procedures-are entirely irrelevant in the context of this appeal. Without prejudice to the foregoing, such discussions between Synergy International Systems Inc., one of the partners to the LexNova consortium, and European Dynamics, appear to have taken place in 2022. Nor do they even concern the parties to the relevant consortia, that is, the European Dynamics consortium and the LexNova consortium. Furthermore, the correspondence which allegedly took place has absolutely nothing to do with the solutions proposed by LexNova or by European Dynamics within the context of this Tender. LexNova invites this Board to treat and accord Annex 5 the probationary value that it deserves, that is to say, none. On a concluding note, LexNova notes that it is not privy to the evaluation carried out by the TEC. It is for the Department of Contracts and the Contracting Authority to address European Dynamics's allegations on the evaluation. On this basis, LexNova reserves the right to raise additional arguments or defences once details, if any, on the evaluation are made known to it. Therefore, save for LexNova's plea of inadmissibility, this third ground of appeal is unfounded on the merits and should be rejected.

e) ***Fourth Ground of Appeal: Lexnova is Not Blacklisted, and in any case, Cannot be Excluded***

By means of its fourth ground of appeal, European Dynamics, in essence, argues that the Recommended Bidder should have been excluded because it has been found guilty of grave professional misconduct in terms of Article 57(4)(c) of Directive 2014/24/EU. LexNova submits that European Dynamics's grievance is unfounded. This is so for the following 5 reasons.

First, the Contracting Authority could not have excluded LexNova's bid because none of the economic operators forming part of the consortium are blacklisted in terms of Regulation 199 of

the PPR. In Bessui, Malta's Court of Appeal held that *"according to our law, for an evaluation committee to excludes a tenderer on the grounds of misconduct, it is necessary to that tenderer has been blacklisted."*

Second, Article 57(4)(c) of Directive 2014/24/EU does not have direct effect and may not be invoked directly by European Dynamics.45 European Dynamics may only invoke the provisions in the PPR. There is no provision in the PR providing for mandatory or discretionary exclusion of an economic operator on the basis of grave professional misconduct, unless that economic operator is subject to a blacklisting decision.

Third, it is for European Dynamics to prove that LexNova or any one of its members have been found guilty of professional misconduct. European Dynamics, to date, has only submitted uncorroborated press reports which do not constitute proof and fall short of the best evidence rule under Maltese civil procedural law.

Fourth, even if (i Article 57(4)(c) of Directive 2014/24/EU has direct effect any (il) one of the members of LexNova has been found guilty of professional misconduct, quod non, the exclusion under that provision is discretionary and not mandatory. Further, the Contracting Authority cannot decide to exclude such an economic operator without, first, allowing that economic operator to clarify its position in line with the principle of proportionality, and second, allowing that economic operator to exhaust the self-cleaning process in Article 57(6) of Directive 2014/24/EU.

Fifth, European Dynamics's real intent behind this fourth ground of appeal is to defame and mudsling LexNova. This is European Dynamics's playbook in litigation. LexNova reserves all rights and remedies against European Dynamics and its directors in this regard.

Therefore, this fourth ground of appeal is unfounded and should be rejected.

f) ***Disagreement with the TEC's Scoring in Terms of Criterions I.1 and Criterion J.2 Do Not Constitute Irregularities or Even Grievances***

In the final section of its appeal, European Dynamics advances a series of loosely formulated and gratuitous allegations under the heading Additional irregularities identified in the evaluation process and reservation for submission of additional grounds of appeal. These appear to constitute the low-hanging fruit which European Dynamics places before this Board in what can only be described as an opaque attempt to secure two additional points: one under Criterion I.1 (out of a maximum of two points) and another under Criterion 1.2 (also out of a maximum of two points). LexNova respectfully submits that this section of the appeal is procedurally and substantively deficient. European Dynamics does not formulate a concrete grievance capable of judicial determination. Instead, it merely raises vague suspicions regarding the evaluation of certain criteria and purports to reserve the right to raise additional arguments at a later stage of the proceedings. This is incompatible with the procedural framework governing objections before this

Honourable Board. An appellant is required to set out, clearly and precisely, the alleged illegality affecting the contested decision together with the factual and legal grounds upon which the grievance is based. A mere reservation of unspecified grievances cannot serve as a substitute for a properly substantiated plea. Moreover, European Dynamics simply alleges that the TEC erred in the assessment of its bid vis-à-vis Criterion I.1 and Criterion J.2 and expects the Board to take its word for it. It does not offer up a single shred of evidence to substantiate its allegation that it should have been accorded an additional point each in terms of these 2 requirements. Instead, European Dynamics confines itself to expressing general dissatisfaction with the evaluation carried out under certain criteria, most notably Criterion I.1 and Criterion J.2. In doing so, European Dynamics appears to treat the procurement remedy as a vehicle for contesting any scoring outcome with which it disagrees. That, however, is not the purpose of this remedy. The right to seek review exists where a tenderer identifies a concrete and substantiated grievance affecting the legality of the evaluation, not merely where it disagrees with the score attributed to its offer. Without prejudice to the foregoing, LexNova respectfully invites this Honourable Board not to entertain these. alleged additional grievances", since they do not form part of the grievances properly raised by European Dynamics in its appeal. In the alternative, should the Board decide to consider them on their merits, LexNova respectfully submits that they should be dismissed in their entirety. LexNova further reserves its right to raise additional pleas should these alleged irregularities be clarified during the course of the proceedings or should European Dynamics seek to adduce evidence in support of them.

This Board also noted the Appellant's Reasoned Letter of Reply filed on 14th May 2026, submitted further to the Decree of this Honourable Board dated 27th April 2026 ordering disclosure, and arising directly and limitedly from the information and documentation disclosed on 4th May 2026, in that:

Submissions on the Supplementary Grievances

> **FIFTH GROUND OF APPEAL: Violation of the mandatory requirements of the tender dossier, the principles of equal treatment and transparency, as enshrined in Regulation 39 paragraphs 1 and 2 PPR, and the obligation of the Contracting Authority to reject non-compliant tenders, due to the Recommended Bidder's failure to provide the mandatory ISO Certificates required under Criterion F.3 of the tender dossier.**

Upon review of the documentation provided by the Contracting Authority, the Appellant submits that the contested award decision is further vitiated by a serious and autonomous irregularity consisting in the failure of the Preferred Bidder to comply with a mandatory requirement regarding the submission of ISO Certificates. In particular:

As explicitly stated in **Section 6.3** ***"Evaluation Grid" of the tender dossier (see page 10, Annex 3 of the Appeal): "[…] In view that criteria are set as MANDATORY, it is compulsory that bidders submit all relevant documentation for each criteria listed here below. If a score of '0' shall be***

allotted to a mandatory criterion the bid shall be disqualified. If the minimum requirements are not met, the offer will be deemed as Technically non-Compliant and disqualified.".

Further to the above, criterion *F.3 "Quality & Infosec"** explicitly requires that "The bidder is to Provide:- a) ISO 27001 (Information Security Management System) valid certification or equivalent (2 points) OR/AND b) ISO 9001 (Quality Management System) valid certification or equivalent. (2 points)". As it is also explicitly clarified in the tender dossier, "It is to be noted that for the above criterion if one certificate is presented the bidder shall obtain 2 points whilst if both certificates are presented the bidder shall obtain 4 points. If no certificates are presented the bidder shall be allotted a score of '0' and shall be consequently disqualified.".

From the documentation disclosed, it emerges that the Preferred Bidder is a consortium composed of three (3) separate economic operators, namely: a) Synergy International Systems Inc. ("Synergy") b) Dakar Enterprises Limited ("Dakar") and c) Grant Thornton Malta ("Grant Thornton"), as evidenced from the redacted Letter of Intent, dated 20.11.2024, submitted by the Preferred Bidder and disclosed to the Appellant (see Annex I).

The same documentation further confirms that all consortium partners expressly undertook joint and several liability for the performance of the contract, both through the said Letter of Intent (Annex I, page 2) and through the declarations contained in the extract of the Preferred Bidder's ESPD disclosed to the Appellant (see Annex II), under Criterion 1.1.1.1., wherein the consortium partners expressly declared and confirmed as follows: "(In case of a Joint Venture/Consortium/Group of Economic Operators) We confirm, as a partner in the consortium, that all partners are jointly and severally liable by law for the performance of the contract, that the lead partner is authorised to bind, and receive instructions for and on behalf of, each member, and that all partners in the joint venture/consortium are bound to remain in the joint venture/consortium for the entire period of the contract's performance. […]".

Notwithstanding the above, the material disclosed by the Contracting Authority as purported compliance with Criterion F.3 consists solely of a document entitled "F3.a ISO 27001 Certificate", comprising a cover page bearing the image of Themis and the logo of Grant Thornton followed by a second page depicting an alleged ISO 27001 certificate issued in the name of Synergy, which is illegible, incomplete and lacking essential particulars required for verification, including validity period, accreditation information and clear identification details (see Annex IIIa), as well as a document entitled "F3.b ISO 9001 Certificate", similarly comprising a cover page and a second page depicting an alleged ISO 9001 certificate issued in the name of Synergy, which is likewise illegible and incapable of proper verification (see Annex IIIb). No ISO certifications issued in the name of Dakar or Grant Thornton were disclosed to the Appellant.

Acting in good faith, the Appellant reasonably assumed that the foregoing deficiencies may have resulted from an administrative or disclosure error on the part of the Contracting Authority. The Appellant accordingly raised the issue by email dated 07.05.2026, requesting the Contracting Authority, inter alia, to

(a) confirm that all ISO Certificates submitted by the Preferred Bidder had been duly disclosed and that no additional certificates exist, (b) in relation to Grant Thornton Malta, provide the complete and actual ISO certification, given that the document disclosed appears to be limited to a cover sheet and/or otherwise incomplete and (c) retransmit the ISO Certificates attributed to Synergy in a legible and verifiable format, as the copies circulated are of such poor quality that their contents cannot be properly read, assessed or relied upon. To date, no response has been received to the said correspondence.

All the foregoing, whether considered individually or cumulatively, demonstrates a manifest failure on the part of the Preferred Bidder to establish compliance with the mandatory requirements of Criterion F.3 and, concomitantly, a failure on the part of the Tender Evaluation Committee and/or the Contracting Authority to properly verify and assess such compliance in accordance with the tender dossier and the applicable public procurement framework. In particular:

First, the Appellant is unable to verify whether the purported ISO certifications allegedly submitted by Synergy were valid and effective at the time of tender submission, nor the identity of the issuing bodies, nor whether such bodies constitute duly accredited conformity assessment bodies in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council establishing the requirements for accreditation and market surveillance relating to the marketing of products and the applicable EU framework governing accreditation and conformity assessment. The apparent failure to even verify the validity of the alleged certificates through the QR verification mechanism provided further undermines the authenticity, reliability and probative value of the documents disclosed, as well as the transparency, traceability and verifiability of the evaluation process.

In the event that the documentation disclosed to the Appellant corresponds to the documentation actually submitted by the Preferred Bidder in purported satisfaction of Criterion F.3, and there was no deficiency in the uploading and disclosure process effected by the Contracting Authority, then the same manifest deficiencies, illegibility and absence of verifiable accreditation details ought necessarily to have led the Tender Evaluation Committee and/or the Contracting Authority not to accept such certificates as valid or sufficient evidence of compliance with the said mandatory requirement. In such circumstances, the Tender Evaluation Committee and/or the Contracting Authority ought necessarily to have concluded that the Preferred Bidder had failed to satisfactorily demonstrate compliance with the mandatory requirements of the tender dossier and, consequently, to have rejected the Preferred Bidder's tender as technically non-compliant for this reason alone.

However, even assuming in arguendo that the alleged ISO certificates submitted in the name of Synergy were valid and capable of verification, quod non, this would still not suffice to render the Preferred Bidder's tender compliant with Criterion F.3, since, in any case, no corresponding ISO certifications were submitted in the name of the remaining consortium members, namely Dakar and Grant Thornton. Each economic operator forming part of the Preferred Bidder's consortium remained individually responsible for demonstrating compliance with the mandatory requirements of the tender dossier, including Criterion F.3

relating to ISO certifications. This is all the more so considering that ISO 9001 and ISO 27001 certifications constitute inherently entity-specific compliance certifications attesting to the existence, implementation and operation of certified quality management and information security management systems within the specific legal entity to which the certification is issued. By their very nature, such certifications cannot be presumed, transferred, extended or "borrowed" by separate legal entities participating in the same consortium unless the tender dossier expressly permits such reliance.

This is not the case here, since no such provision exists in the present procurement procedure. On the contrary, the tender dossier treats the consortium explicitly as jointly and severally liable in its entirety and does not provide for any allocation of distinct, segregated or autonomous contractual responsibilities among consortium members capable of justifying partial reliance on the certifications of a single entity alone. The above is further reinforced by Section 3, paragraph 6.3 of the tender dossier, where tenderers are expressly discouraged from structuring consortium arrangements on the basis of fixed percentages or segregated portions of contractual obligations among consortium members.

Accordingly, the documentation disclosed demonstrates that the Preferred Bidder failed to submit valid, verifiable and compliant ISO certifications in satisfaction of the mandatory requirements of Criterion F.3 of the tender dossier. In particular, the only alleged ISO certifications disclosed were purportedly issued solely in the name of Synergy, the validity, authenticity and accreditation of which remain incapable of verification on the basis of the incomplete, illegible and unverifiable documentation disclosed by the Contracting Authority, while no corresponding ISO certifications whatsoever were submitted or disclosed in relation to the remaining consortium members, namely Dakar and Grant Thornton. Such manifest deficiencies constitute a clear and material failure to comply with an express mandatory requirement of the tender dossier, with the result that the Preferred Bidder ought to have been awarded a score of "0" under Criterion F.3 and consequently disqualified and rejected as technically non-compliant. Instead, the Tender Evaluation Committee and/or the Contracting Authority unlawfully accepted the Preferred Bidder's tender as compliant and eligible for award despite such manifest non-compliance, in breach of the mandatory provisions of the tender dossier, Regulation 39, paragraphs 1 and 2 of the PPR and the fundamental principles of equal treatment, transparency and non-discrimination governing public procurement procedures.

In view of all the foregoing, the Contracting Authority's decision of 17 February 2026 is unlawful and, therefore, should be annulled and set aside in its entirety.

SIXTH GROUND OF APPEAL: Failure of the Preferred Bidder to satisfactorily demonstrate compliance with the mandatory technical and professional capacity requirements of the tender dossier (eligibility criterion) concerning the mandatory prior experience in similar projects, in breach of the tender specifications, Regulation 39 PPR and the principles of transparency, equal treatment and sound administration

Upon review of the documentation disclosed by the Contracting Authority pursuant to the decree of this Honourable Board, the Appellant submits that the contested award decision is further vitiated by an additional and autonomous irregularity concerning the Preferred Bidder's failure to satisfactorily demonstrate compliance with the mandatory technical and professional ability requirements set out in the tender dossier.

In particular, according to the eligibility criterion (c), under the heading "Technical and Professional Ability" (see page 6 of the tender dossier), bidders were expressly required to demonstrate the mandatory prior experience through the "Performance of services of the specified type", namely, as explicitly stated in the tender dossier: "Please provide a list of principal services of a similar nature being the implementation of Management Solutions within the justice and courts domains including post-implementation services (maintenance and support) […].".

More specifically, tenderers were required to state the value of at least two (2) services of a similar nature as described above effected within the past seven (5) years (2019-2023), the minimum aggregate value of which must not be less than three million euros (€3,000,000) for the quoted period. The tender dossier further required tenderers to provide, inter alia, the client's details, concise project description, list of services, implementation dates, contract value and business reference letters.

From the documentation disclosed to the Appellant, it emerges that the Preferred Bidder relied exclusively on two (2) reference projects in order to satisfy the above mandatory eligibility requirement. However, the information disclosed is manifestly insufficient to establish compliance with the minimum threshold required under the tender dossier.

In particular, in relation to Reference Project No. 1, the Preferred Bidder expressly declared that Synergy "in collaboration with another company" implemented the PNG-IECMS product. The identity of the collaborating company has been redacted from the disclosed documents. What is more, according to the Preferred Bidder's own submission (see Annex IV), the project commenced in 2018, prior the quoted period, and remained ongoing beyond 2023 at the time of tender submission, being still in the phase of technical support and maintenance. The total declared contract value for the entire duration of the project and for the entirety of the services allegedly provided thereunder, including services not necessarily performed solely by Synergy but also by the collaborating entity, is stated to amount to approximately two and a half million United States Dollars (USD 2,522,721.02). The said amount allegedly encompasses both the principal implementation contract and the ongoing maintenance and support services. However, the disclosed documentation wholly fails to identify what specific portion of that amount corresponds to services actually performed by Synergy itself and, moreover, what portion thereof falls within the relevant eligibility period of 2019-2023, as expressly required by the tender dossier.

This deficiency is particularly material given that the tender specifications required the Preferred Bidder itself to demonstrate the minimum aggregate value through qualifying services performed during the

specified period and not merely to rely on the global value of a broader and ongoing multi-party project extending beyond the eligibility period.

The deficiency is not remedied by the corresponding business reference letter, dated 12.07.2022, disclosed to the Appellant, since the said reference letter merely confirms the existence and implementation of the project in generic terms and does not specify: (a) the share of the contract attributable to Synergy; (b) the value corresponding to the period 2019–2023; (c) the scope of services actually provided by Synergy; or (d) whether Synergy independently performed the services relied upon for qualification purposes.

Similar deficiencies arise in relation to Reference Project No. 2. According to the disclosed documentation, this project concerns the implementation of Synergy's IECMS product and a total contract value of approximately five million two hundred thousand United States Dollars (USD 5,227,464.84) is declared (see Annex IV). However, the documentation again fails to specify whether the project was implemented solely by Synergy or jointly with other economic operators, as was expressly the case in Reference Project No. 1. More importantly, the disclosed material confirms that the contract commenced in December 2020 and remained ongoing up to the present date (May 2026). Consequently, the Preferred Bidder again failed to demonstrate what exact portion of the declared contract value corresponds to services actually performed during the relevant eligibility period of 2019-2023, as expressly required under the tender dossier.

Equally, the corresponding reference letter disclosed to the Appellant is generic, brief and devoid of the information necessary to verify compliance with the minimum financial threshold required by the tender specifications. In particular, it does not identify the value attributable to the qualifying reference period, nor does it clarify the actual extent of Synergy's participation and performance under the project.

In light of the foregoing and in the absence of any disclosed clarification request or supplementary verification conducted by the Contracting Authority, the Appellant is unable to ascertain whether the above manifest deficiencies were ever clarified by the Preferred Bidder during the evaluation procedure and whether the Tender Evaluation Committee possessed sufficient verified information to lawfully conclude that the mandatory eligibility requirement was indeed satisfied.

What clearly emerges from the disclosed documentation is that the Preferred Bidder was required to demonstrate that, during the eligibility period 2019–2023, the value of qualifying services actually performed by Synergy and attributable to it exceeded, in aggregate, the minimum threshold of three million euros (€ 3,000,000), corresponding approximately to more than three million and a half United States Dollars (USD 3,520,000). However, based on the disclosed material, this has not been demonstrated by the Preferred Bidder, as required. On the contrary, the documentation raises serious and objective doubts as to whether the qualifying threshold was ever satisfied at all.

In those circumstances, and in the absence of clear, verifiable and objective evidence demonstrating compliance with the mandatory technical and professional capacity requirements of the tender dossier, the Contracting Authority was under, at the very least, an obligation to seek precise and adequate clarifications

from the Preferred Bidder concerning the actual value attributable to its consortium partner, Synergy, the relevant qualifying period, and the extent of Synergy's own participation in the cited reference projects. In the absence of such clarifications and supporting evidence, the Preferred Bidder ought to have been excluded from the procurement procedure as failing to satisfactorily demonstrate compliance with the applicable eligibility requirements. The decision of the Tender Evaluation Committee and/or the Contracting Authority to nevertheless accept the Preferred Bidder as technically and professionally compliant constitutes a manifest error of assessment, a breach of the mandatory provisions of the tender dossier and a violation of Regulation 39(1) and 39(2) of the Public Procurement Regulations as well as the principles of transparency, equal treatment and sound administration governing public procurement procedures.

The contested award decision of the Contracting Authority dated 17 February 2026 is, therefore, unlawful and liable to be annulled for this additional and independent reason as well.

SEVENTH GROUND OF APPEAL: Manifest violation of the principle of equal treatment, transparency and self-limitation, as enshrined in Regulation 39 paragraphs 1 and 2 PPR, due to the systematic breach of the word limit by the Preferred Bidder and the application of undisclosed or changed award criteria – arbitrary and disproportionate scoring by the Contracting Authority in relation with the evaluation of its write-ups.

The Appellant further to its Second Ground of Appeal which is mainly focused on the evaluation of Criterion C.1, hereby further submits, following disclosure of the word counts under Criteria C.1 and C.2, pursuant to the Decree of this Honourable Board and the overall submissions of the Preferred Bidder through its reply to the Appeal and during the first hearing, that the evaluation of the Preferred Bidder is vitiated by a serious and autonomous illegality arising from material non-compliance with the mandatory word-limit requirements set out in the tender dossier, in conjunction with breaches of the principles of equal treatment, transparency and self-limitation.

It is now established that the Preferred Bidder submitted write-ups significantly exceeding the prescribed limit, namely four thousand nine hundred twelve (4,912) words under Criterion C.1 and five thousand one hundred ninety-one (5,191) words under Criterion C.2 (see Annex V), thereby exceeding approximately three (3) times the word limit set in the tender dossier (!). These deviations are not marginal but substantial and constitute a clear breach of the binding submission framework established by Section 6.3 of the Evaluation Grid and Clarification Notes No. 13, 17 and 19, which expressly confirm the mandatory nature of the one to two thousand (1,000–2,000) word limit per sub-criterion.

The Appellant submits that this irregularity cannot be viewed in isolation. It arises within a broader and systemic pattern emerging from the procedural record, including the Preferred Bidder's submissions, preliminary pleas and oral statements during the hearing, particularly in relation to Criteria B.1, B.4 and J.2. These elements, taken together, strongly indicate that the same disregard for the word-limit requirement

likely extends beyond Criteria C.1 and C.2, notwithstanding that disclosure has, to date, been limited to those criteria alone.

This inference is reinforced by the conduct of the Preferred Bidder during these proceedings, notably its stated intention to object "tooth and nail" to any request for disclosure of word counts under other criteria (see also in this respect the Preferred Bidder's reply, paragraph 50). Such an approach cannot reasonably be justified by confidentiality considerations alone, particularly in relation to purely quantitative data such as word counts, which do not reveal any substantive technical or commercial content. The Appellant submits that this conduct is consistent with a deliberate attempt to prevent scrutiny of compliance with mandatory procedural rules, precisely because such scrutiny would likely confirm systematic non-compliance with the imposed word limits and, therefore, non-compliance of the write-ups and overall technical offer with the tender dossier.

This conclusion is further supported by the contradictory position adopted by the Contracting Authority (Department of Contracts) in its Reply dated 06.03.2026, in particular paragraphs 2.4 and 2.5 thereof, where it explicitly stated that: "Regarding the word limit, this was imposed on all bidders equally. If the Appellant felt that the word limit made it extremely difficult for it to present its solution, that difficulty existed for all bidders in the same manner at the outset. The general principles of equal treatment, transparency and self-limitation, as enshrined in Reg. 39(1) and (2) of the Public Procurement Regulations, have thus been respected. The allegation that the Preferred Bidder's writeup exceeded the 2,000-word limit is firmly rebutted. Unlike a 'cheapest technically compliant' award criterion, the BPQR award criterion inherently requires comparative qualitative evaluation. […]".

In other words, the Contracting Authority denied the breach of the word limit by the Preferred Bidder, while simultaneously defending the higher scoring awarded on the basis of alleged greater detail and substantiation. In light of the subsequently disclosed word counts, that position is now objectively untenable, as it is evident that such alleged "greater detail" was achieved through material breach of the mandatory submission constraints.

In this context, the issue is not one of qualitative assessment or drafting style, but of strict compliance with mandatory procedural rules designed to ensure equal footing among tenderers. A tenderer cannot lawfully be rewarded for exceeding binding submission limits, particularly where other tenderers, including the Appellant, have strictly complied with those limits and structured their submissions accordingly. Any such approach fundamentally distorts the comparability of tenders and undermines the integrity of the evaluation process.

The Appellant further submits that the Preferred Bidder's attempt to challenge the Appellant's submissions under Criteria B.1 and B.4 on the basis of alleged lack of detail is misconceived, as it effectively penalises compliance with the same word-limit restrictions that the Preferred Bidder itself appears to have disregarded. This results in a manifest inversion of the principles of equal treatment and self-limitation.

Properly understood, the emerging factual matrix raises a serious issue of unequal treatment: while the Appellant complied strictly with the mandatory word-limit requirements, the Preferred Bidder appears to have benefited from material non-compliance, thereby securing an unlawful competitive advantage across key technical criteria. In effect, this approach leads to a situation where a bidder which manifestly and repeatedly breached a clear procedural rule (in this case, word count) not only was not reprimanded for its breach, but was rewarded with much higher points, while bidders who kept their replies within the requested word count were given lower points and censured for not giving "detailed" explanations.

Purely, indicatively, the Preferred Bidder has sought to argue that the Appellant's write-up under Criterion B.1 allegedly failed to meet the minimum requirements set out in Article 4.4.4 of the Terms of Reference and Article 15.6 of the Special Conditions, basing this contention on a deliberate conflation between, on the one hand, "a complete testing programme" including the minimum essential details required under the tender dossier, and, on the other hand, an exhaustive and overly detailed testing programme, which could not in any event be accommodated within the strict word-limit of one to two thousand (1,000–2,000) words imposed by the tender documentation.

In substance, the Preferred Bidder's argument is premised on the erroneous assumption that greater narrative detail necessarily equates to compliance or higher quality. However, such a position is fundamentally incompatible with the binding constraints of the procurement framework. If, as the Preferred Bidder alleges, its own response under this criterion was more detailed than that of the Appellant, then such alleged additional detail could only have been achieved by exceeding the mandatory word limit, which applied equally to all tenderers, as was likewise the case under Criteria C.1 and C.2, where the same pattern of non-compliant expansion beyond the prescribed word limits is now evident.

A similar approach is also evident in relation to Criterion B.4. In particular, the Preferred Bidder contends that, beyond the allocation of tasks between the Contracting Authority and the contractor required under Criterion B.4, the Appellant ought to have further specified the tasks of key experts within its write-up. This argument is, of course, misconceived. It disregards the internal structure of the tender dossier, under which the roles and responsibilities of key experts are specifically and exhaustively regulated under Criterion K of the Technical Specifications. Any requirement to duplicate such information under Criterion B.4 would not only be unnecessary but would also risk creating overlap and inconsistency within the evaluation framework. Ironically, the Contracting Authority's own insistence in its reply on the fact that "the word count applied to all bidders" and its clumsy attempt to hide the fact that the Preferred Bidder greatly exceeded the word count, further confirms Appellant's submission.

Conversely and more importantly, the reasoning advanced by the Preferred Bidder ultimately exposes potential non-compliance within its own submission. To the extent that it suggests the inclusion of extensive or additional content beyond what is strictly required by the relevant criteria, it raises a serious question as to compliance with the mandatory word-limit restrictions. Indeed, the inclusion of such supplementary material, particularly where it is not expressly required by the tender dossier, would, by its

very nature, be incompatible with strict adherence to the one to two thousand (1,000–2,000) word limit and therefore indicative of a systemic breach of the submission constraints.

Accordingly, far from supporting the Preferred Bidder's position, these arguments reinforce the Appellant's submission that compliance with mandatory procedural limits was not uniformly respected and that any perceived "greater detail" in the Preferred Bidder's submission is, in reality, consistent only with an unlawful expansion beyond the permitted word threshold.

It follows that the evaluation of the Preferred Bidder under Criteria C.1 and C.2, but also under further criteria is unlawful and vitiated by manifest breach of mandatory requirements. Furthermore, in light of the indications arising from the procedural record, there are serious grounds to believe that the same defect also extends to other criteria, including B.1, B.4, and J.2, thereby undermining the integrity of the entire evaluation process. Since this Honourable Board has at its disposal the complete technical offer of the Preferred Bidder, it is in a position to readily verify the above, particularly in circumstances, as in the case at issue, where the Appellant has been explicitly denied access to the relevant disclosure at this stage of the proceedings.

With the above in mind, the Appellant submits that the irregularities identified point to one of two equally serious conclusions. Either the evaluation process was conducted in a manner which knowingly and deliberately afforded an undue advantage to the Preferred Bidder, in full awareness that such approach was incompatible with the principles of equal treatment, transparency and self-limitation governing public procurement procedures; or, alternatively, the members of the Tender Evaluation Committee did not possess, or did not adequately exercise, the necessary diligence, preparation and technical familiarity with the requirements of the tender dossier to properly assess compliance in relation to a complex IT system of the nature at issue.

In either scenario, the outcome is the same: there exists a blatant and material breach of the applicable procurement rules and fundamental principles governing the award procedure. Such breach has resulted in a distorted and unreliable evaluation process, undermining the integrity, objectivity and comparability of the tenders submitted and, thereby vitiating the award decision under challenge in its entirety.

EIGHTH GROUND OF APPEAL: Violation of the principle of equal treatment, transparency and self-limitation, as enshrined in Regulation 39 paragraphs 1 and 2 PPR, due to the application of undisclosed or changed award criteria in conjunction with manifest error of assessment – arbitrary scoring in relation with the evaluation of Criterion J.2

The Appellant, under Section III of its Appeal under the heading "Additional irregularities identified in the evaluation process and reservation for submission of additional grounds of appeal" (see paragraphs 78-81 of the Appeal), had expressly indicated that, beyond the grounds initially pleaded, it had identified further irregularities which it reserved the right to raise upon disclosure of the relevant information. Such is the

case with respect to Criterion J.2. Following disclosure, including the Appellant's demonstration ("Demo"), the Appellant is now in a position to formally and definitively raise a supplementary ground of appeal in respect of the said criterion. In particular:

Under Criterion J.2, tenderers were required to: "Provide how the Bidder is exploring and integrates emerging technologies such as artificial intelligence, machine learning, and blockchain for enhanced efficiency and security". The evaluators awarded the Appellant only one (1) point and stated that: "The bidder, in contrast with the actual writeup provided, did not demonstrate any actual or future readiness for innovation technologies such as artificial intelligence, machine learning, and blockchain or automation features in supporting business and judiciary decisions and future innovation as requested." (see the relevant comment in the contested decision of the Contracting Authority, in Annex 1 of the Appeal).

As a preliminary point, the Appellant reiterates, as already advanced under its second ground of appeal, that the tender dossier expressly provides (see page 17 thereof, under the section "Demo") that the online demonstration is not to be used as an independent basis for evaluation or scoring. The purpose of the Demo is strictly limited to verifying that the functionalities presented correspond to those described in the technical submission. No qualitative scoring element is attached to the Demo, and the evaluation committee's role is confined to verification of conformity with the submitted offer. Any reliance on the Demo as a basis for reducing scores constitutes a clear breach of the tender dossier, amounts to the introduction of an undisclosed and, therefore, impermissible, evaluation criterion, and is in breach of the principle of self-limitation governing procurement procedures.

Without prejudice to the above, and more importantly, the evaluation under Criterion J.2 is in any event vitiated by a manifest error of assessment, irrationality and a failure to properly, objectively and exhaustively consider the content of the Appellant's technical offer, including the Demo materials as disclosed. The evaluators' conclusion is directly contradicted by the actual content of the Appellant's submission.

In particular, the Appellant refers to and relies upon the relevant extract of its Demo, which clearly and unequivocally demonstrates the integration and operational deployment of technologies falling squarely within the scope of Criterion J.2 (see mp4 in Annex VI). Specifically, the Appellant demonstrated machine learning functionality through automated classification of case or police report typology based on narrative descriptions, using machine learning techniques, as well as automation functionality whereby cases are dynamically assigned to judicial officers based on predefined parameters including availability, workload and experience. These functionalities fall squarely within the scope of artificial intelligence and machine learning as contemplated by the award criterion and constitute concrete evidence of both current operational capability and future-ready system architecture.

In these circumstances, the evaluators' assertion that the Appellant "did not demonstrate any actual or future readiness" is objectively unsustainable and irreconcilable with the content of the Appellant's submission. The evaluation thus discloses a misreading, mischaracterisation and/or disregard of essential

elements of the Appellant's tender. Such defect exceeds the limits of evaluative discretion and constitutes a manifest error of assessment, rendering the scoring arbitrary, irrational and unlawful. Properly applying the criterion and taking into account the disclosed Demo, no reasonably diligent evaluation committee, possessing the requisite expertise and acting in accordance with the tender rules and principles of sound administration, could have concluded that the Appellant failed to demonstrate AI and machine learning capabilities, where such capabilities were expressly and demonstrably presented (!).

Accordingly, the evaluation under Criterion J.2 is vitiated by the application of undisclosed sub-criteria in conjunction with manifest error of assessment, irrationality and breach of the obligation to conduct a proper, coherent and evidence-based evaluation in accordance with the published award methodology and the principles of transparency, equal treatment and proportionality. The Appellant, therefore, submits that the score awarded under Criterion J.2 is unlawful, must be annulled and revised following a lawful re-evaluation of the Appellant's tender on the basis of its actual content, including the verification prescribed with the demonstration materials.

This Board also noted the Reply of the Department of Contracts filed on 21st May 2026, in response to the four additional grievances raised by European Dynamics Consortium following the disclosure ordered by the Board's Decree of 27th April 2026, in that:

By means of its application of the 14th May 2026, European Dynamics Consortium (the Appellant) raises four additional grievances:

- (i) That Lex Nova's bid does not comply with Criterion F.3 of the call for tenders having not submitted the necessary ISO certification;
- (ii) That Lex Nova's bid does not comply with the eligibility criteria relating to professional experience;
- (iii) That Lex Nova's bid does not comply with Criterion C1 since the word limits were exceeded;
- (iv) That in its evaluation of Criterion J2, the Tender Evaluation Committee incorrectly deducted points from the Appellant's bid for failing to demonstrate any actual or future readiness.

The Department of Contracts submits that all four grievances are unfounded and ought to be dismissed.

a) Fifth Grievance: ISO Certification

5.1. By this grievance the Appellant firstly puts to question whether the ISO 9001 and 27001 certificates submitted by LexNova could be taken as valid since these are, according to the Appellant, incomplete lacking validity period, accreditation information and clear identification details.

5.2. Both certificates submitted by LexNova clearly show that they were issued to Synergy International Systems, Inc. by International Technical Alliance and both are valid until the 12th December 2027.

5.3. By this grievance the Appellant raises a second issue, that is, whether LexNova as a consortium can rely on the accreditation given to one of its members.

5.4. The members of LexNova consortium are jointly and severally bound to the execution of the contract as acknowledged by the Appellant itself. Criterion F.3 required that the "bidder" has in its possession ISO 9001 and 27001 certification. In consortium bidding the "bidder" is taken to be the consortium as a whole in keeping with the objectives of removing unnecessary hurdles to access to procurement markets as specified in Recital 15 of Directive 2014/24:

"It should be clarified that groups of economic operators, including where they have come together in the form of a temporary association, may participate in award procedures without it being necessary for them to take on a specific legal form."

5.5. The bidder being LexNova consortium, as a whole, it must follow that LexNova could rely on certification acquired by only one of its members. It also follows from the fact that its members are jointly and severally liable towards contract execution, that the fact that the ISO certification is held by a single member of the group poses no risk to the contract execution.

b) Sixth Grievance: Technical and Professional Ability Criterion of Past Experience

6.1. The call for tenders required bidders to provide a list of two services of a similar nature as the object of the contract to be awarded effected within the past five years (2019-2023) and having a minimum aggregate value of €3,000,000.

6.2. LexNova relied upon two past projects:

Reference 1
Period of execution: 20.03.2018 – 13.05.2024 (main contract and end of technical support); 16.10.2023 – ongoing (re-engineering, upgrade and technical support).
Financial value: USD 2,522,721.02, equivalent to €2,170,549.17 at current rate of exchange.

Reference 2
Period of execution: 10.12.2020 – 30.04.2023 (main contract); 01.05.2023 – 31.05.2026 (ongoing technical support).
Financial value: USD 5,277,464.84, equivalent to €4,540,730.75 at current rate of exchange.

The aggregate value of both projects is €6,711,279.92.

6.3. For both of Lex Nova's references, the Appellant identifies two issues. The first issue consists of the allegation that the first project was executed by Synergy International Systems in collaboration with another company and the complaint that the second project does not specify that Synergy International Systems executed the project on its own or together with other undertakings. The second issue is that the quoted period for the first project commenced before 2019 and continued beyond 2023, and the quoted period for the second project continued beyond 2023, and there is no specification of the value attributable to the 2019-2023 period.

6.4. Regarding the first issue, the Appellant claim incorrectly quotes the reference letter as referring to a project executed by *"Synergy, in collaboration with [another company]"* when in fact the reference letter refers to a project executed by *"Synergy, in collaboration with [the contracting authority]"*. Therefore, this ground for objecting to Lex Nova's Reference 1 is factually unfounded. For Reference 2, again there was no mention in the references of a second undertaking. Both end clients provided their reference letters identifying Synergy Systems International as the contractor. This information suffices for the purpose of evaluating the past experience selection criterion.

6.5. Regarding the second issue, this Board is being effectively asked to decide between two interpretations of the technical and professional ability criterion in cases where an ongoing project is cited. The first possible interpretation is that the minimum aggregate value of €3,000,000 must be satisfied solely by reference to the value of that ongoing project which has been executed within the years 2019-2023 thereby excluding the value of services which have been offered before the year 2019 and after the year 2023. The second interpretation is that, even where the cited project is an ongoing one, the minimum

aggregate value of €3,000,000 may be satisfied by reference to the global value of the project notwithstanding that some of that value may have been rendered by services performed before the year 2019 or after the year 2023.

6.6. The past experience criterion has been supplemented by a number of clarifications:

Clarification Note #3

Question No.[01]: Reference Clarification
Our understanding is that by 'effected' you mean ongoing (i.e. signed within the specified period and being under execution). Pls clarify whether our understanding is correct, or whether you mean completed, i.e. having a user acceptance for all contract deliverables.

Answer No.[01:
Reference to Section 1, Article 5.B.c.i.a, the bidder shall provide the requested information for a minimum of two (2) implemented or/and ongoing similar nature projects within the past FIVE (5) years between 2019 and 2023.

Question No.[02]: Reference Duration
The requirement for the reference states "State the value of two (2) services of a similar nature as described above effected within the past seven (5) years (2019-2023)". What is the correct effected period 5 or 7 years?

Answer No.[02]:
Prospective bidders are to refer to Answer No. of this Clarification Request – quote part thereof - the past FIVE (5) years between 2019 and 2023.

Clarification Note #5

Question No[01.:
With reference to section 5 (B) (c) (i) (a) of the tender document there is the following: "State the value of two (2) services of a similar nature as described above effected within the past seven (5) years (2019-2023): the minimum aggregate value must not [be less than] 3,000,000 for the quoted period (Note 2)". In the criteria to be provided for each of the two services, the tenderer must state the start and end date of the implementation. Can one of the two services requested have an implementation start date of early 2024 and an implementation end date of quarter 1 2025?

Answer No.[01]:
Reference to Section 1 - Article 5.B.c.i.a, the bidder shall provide the requested information for a minimum of two (2) implemented or/and ongoing similar nature projects within the past FIVE (5) years between 2019 and 2023.

Clarification Note #6

Question No.[01]: Technical and Professional Ability

On page 6/86 of the Tender Dossier we read: "State the value of two (2) services of a similar nature as described above effected within the past five (5) years (2019-2023): the minimum aggregate value must not be less than €3,000,000 for the quoted period". We understand that projects which started before this five-year period, and which are either ongoing or were finished during this period can also be used. Please confirm or clarify.

Answer No.[01]:

Prospective bidders are to refer to Answer No 1 of Clarification Note No 5.

Clarification Note #7

Question No.[01]: Technical and Professional Ability

Could you kindly confirm whether projects that have been and still are in the maintenance and support phase during the specified period, but were originally implemented before 2019, would qualify as eligible services for this requirement? We believe that such projects should qualify, particularly as this tender itself covers a 9-year period, during which the maintenance and support phases are integral to the successful delivery of the solution.

Answer No.[01]:

Prospective bidders are to refer to Answer No 1 for Clarification Note No 5.

Clarification Note #16

Question No.[01]: Technical and professional ability

With reference to Answer No 1 of Clarification Note No 5: "Reference to Section 1 - Article 5.B.c.i.a, the bidder shall provide the requested information for a minimum of two (2) implemented or/and ongoing similar nature projects within the past FIVE (5) years between 2019 and 2023." We understand that ongoing projects, which span the specified 5-year period (i.e. 2019 – 2023), but started earlier (e.g. in 2018), are eligible, provided that only the portion of the project completed within the reference period (2019-2023) is considered. Please confirm if projects started before 2019, which fulfil all other requirements, are eligible.

Answer No.[01]:

Reference to Section 1 Article 5.B.c.i.a, the bidder shall provide the requested information for a minimum of two (2) implemented or/and ongoing similar nature projects within the past FIVE (5) years between 2019 and 2023.

6.7. Clarification Notes 3, 5, 6 and 7 all confirm that *"implemented or/and ongoing similar nature projects within the past FIVE (5) years between 2019 and 2023"* are eligible projects to satisfy the past experience criteria. The ordinary meaning of the quoted phrase is that both: (a) projects implemented at any point between

2019 and 2023; and (b) projects still ongoing at any point between 2019 and 2023; would satisfy the past experience criterion.

6.8. None of the answers to Clarification Notes 3, 5, 6 and 7 specify that in the case that bidders cite ongoing projects, it is only the value of the services rendered between 2019 and 2023 that shall be taken into account to calculate the minimum aggregate value of €3,000,000. To the contrary, the five-year period qualification is strictly attached to the point in time when a project has been implemented or was still ongoing rather than to the value of services rendered.

6.9. The question raised in Clarification Note 16 specifically asks whether ongoing projects are to be taken into account *"provided that only the portion of the project completed within the reference period (2019-2023) is considered."* Nevertheless, the reply is clear in that it clarifies that projects ongoing at any point between 2019 and 2023 shall be considered eligible projects without restricting that eligibility to any caveat regarding the portion of services rendered within that time period.

6.10. Case 1692 – CT2244/2021 – *Tender for Professional Services of an Architect for General Consultancy, Concert Hall, Extension of Costume House and Restoration of Priory of Navarre Façade at Teatru Manoel (Lot 1)*, decided by this Board on the 14th of March 2022, dealt with very similar facts. The past experience criterion in that call for tenders required bidders to state: *"State the value of Architecture and Structural Engineering services in Historical Buildings Related Projects of a similar nature as described above completed during the last five (5) years (being 2016 – 2020): the minimum value..."*. The Department of Contracts had then issued this clarification note:

"Question No 8: Eligibility criteria: are ongoing projects valid? Answer No 8: If proof can be submitted that the ongoing projects within the last five (5) as indicated in Section 1, Clause 5 (c), these can be considered valid. Otherwise kindly abide by the requirements in the specific clauses."

6.11. In that case the Tender Evaluation Committee had rejected a bid on the grounds that the bidder had not substantiated how the minimum value required was satisfied by the value of the completed works, excluding the value of the ongoing works. This Board annulled the rejection decision and ordered that the bid is re-evaluated reasoning that while the clarification note had clearly admitted ongoing projects as eligible projects, it had not specified that the minimum value then had to be satisfied solely with reference to the portion of completed works.

6.12. That same reasoning applies here. The clarifications confirm that ongoing projects are eligible without any requirement to submit proof of the extent of completed services and their value. The plain language meaning that bidders must be expected to have reasonably understood is that any two projects having a global minimum value of €3,000,000, even if yet ongoing, would satisfy this criterion.

6.13. Apart from the plain meaning of the past experience requirement, the underlying objective behind that requirement also militates in favour of this interpretation. Reg. 222 of the Public Procurement Regulations explains that contracting authorities may impose such a requirement to ensure that economic

operators are able *"...to perform the contract an appropriate quality standard"*. It would be contrary to this objective if services which have been offered before the year 2019 and after the year 2023 are not taken into account to satisfy the minimum value even though client references confirm satisfactory performance and, therefore, confirmation that the bidder does indeed have the capacity to execute the contract to an appropriate quality standard.

6.14. Finally, to further confirm this fact, if one had to attribute a pro rata value of each project so as to only take into account a value which corresponds to the 2019 - 2023 period, the aggregate value would still be way over the minimum of €3,000,000. For the first project that value, for 60 months out of the quoted 72 months, would be €1,808,790.98. For the second project that value, for 35 months out of the quoted 64 months, would be €2,483,212.13. Added together the resulting aggregate value would be of €4,292,003.11. This continues to re-affirm that LexNova does indeed offer the capacity to execute the contract to an appropriate quality standard. The objectives of Regulation 222(1) of the Public Procurement Regulations are thus met.

c) Seventh Grievance: The Evaluation of Criterion C1 — Word Limits

7.1. This grievance is a restatement of the Appellant's arguments regarding the imposition of word restrictions in the bidders' submissions already made in the context of its second grievance. The Department of Contracts refers to the pleas and submissions already raised in reply to the second grievance and re-states them here.

d) Eighth Grievance: The Evaluation of Criterion J2 — Demonstrability of Future Readiness and the Use of the Demo

8.1. This grievance is not grounded on any new point of fact that was disclosed by the Contracting Authority on the order of this Board. To the contrary, it is expressly grounded on the text of the call for tenders itself and upon the justifications given by the Tender Evaluation Committee for the deduction of points of the Appellant's bid with respect to Criterion J2. As such this grievance has been submitted beyond the ten-day time limit prescribed by Regulation 271 of the Public Procurement Regulations. The grievance should therefore be rejected as inadmissible.

8.2. Without prejudice to the inadmissibility of the grievance, while this grievance refers to Criterion J2 it reiterates the same arguments that the Appellant has already made with respect to the evaluation of Criterion C1.1 and C2 in the context of its second and third grievances. Therefore, in the merits the Department of Contracts refers to the pleas and submissions already raised in reply to the second and third grievances and re-states them here.

This Board also noted the Reply of the Court Services Agency filed on 22nd May 2026, in response to the supplementary grievances raised by European Dynamics Consortium following the disclosure ordered by the Board's Decree of 27th April 2026, in that:

Before addressing the supplementary grievances individually, the Contracting Authority respectfully observes that the Appellant's further submissions do not alter the essential character of the appeal. They remain, in substance, an attempt to transform disagreement with technical evaluation into alleged illegality. The Appellant repeatedly proceeds by inference from redacted or partially disclosed documents, by speculation as to what the Evaluation Committee did or did not verify, and by inviting this Honourable Board to substitute its own technical assessment for that of the appointed evaluators. That is not the function of procurement review.

The proper question is not whether the Appellant, with the benefit of hindsight and access to another tenderer's documentation, would have preferred a different mark. The question is whether the Evaluation Committee acted within the limits of the published tender framework, applied the same criteria to all tenderers, and reached conclusions which were reasonably open to it on the material before it. This is, in substance, a high-threshold administrative review standard: the Board is not invited to mark the tenders afresh, but to determine whether the award decision is vitiated by a legal defect, a manifest error, unequal treatment, or a departure from the tender dossier.

The supplementary grievances should also be read against the important distinction between disclosure for the purposes of an appeal and the actual evaluation file available to the Evaluation Committee. The fact that a document disclosed to the Appellant is redacted, incomplete from the Appellant's perspective, or not convenient for competitive scrutiny, does not mean that the Evaluation Committee did not have, consider, or verify the relevant material. Redaction is not evidence of absence. Nor can the Appellant convert confidentiality safeguards, which are expressly contemplated and required by the Public Procurement Regulations, into an independent ground of annulment.

It is in that context that the Contracting Authority replies to the further grounds raised.

a) Fifth Ground of Appeal — Alleged Non-Compliance with Criterion F.3 concerning ISO 27001 and ISO 9001 Certificates

The Appellant's fifth ground is premised on an incorrect reading of Criterion F.3 and on an unjustified attempt to impose requirements which do not appear in the tender dossier.

Criterion F.3 required the bidder to provide ISO 27001 valid certification or equivalent, and/or ISO 9001 valid certification or equivalent. The tender dossier then expressly provided that if one certificate is presented the bidder obtains two points, if both certificates are presented the bidder obtains four points, and if no certificates are presented the bidder is allotted a score of zero and consequently disqualified. This wording is important. The criterion does not state that every member of a consortium must hold

both certifications. It does not state that each economic operator forming part of a consortium must submit its own separate ISO 27001 and ISO 9001 certificates. It does not state that the absence of a certificate in the name of every consortium member is equivalent to "no certificates" being presented. The Appellant's argument therefore impermissibly attempts to rewrite the tender. The tender speaks of "the bidder" presenting the relevant certification. In the case of a consortium, the bidder is the consortium submitting the tender through its declared members and lead operator. Where a certificate is submitted by a member whose role is directly relevant to the software solution, system implementation, information security, or quality management aspects of the tender, the requirement is not rendered nugatory merely because the same certification is not duplicated in the name of every other consortium participant.

The Appellant seeks to rely on the fact that the consortium members assumed joint and several liability. That point assists the Contracting Authority rather than the Appellant. Joint and several liability is a mechanism of contractual responsibility. It ensures that the Contracting Authority is protected in the performance of the contract and that the consortium members remain bound for the execution of the obligations undertaken. It does not transform every award or technical criterion into an obligation that must be separately and identically satisfied by each member of the consortium, unless the tender dossier expressly says so. There is no such express requirement here.

Nor does the nature of ISO certification alter that conclusion. It may well be that ISO 27001 and ISO 9001 certifications are entity-specific in the sense that they attest to the management systems of the certified entity. However, the legal consequence of that fact depends on the tender wording. If the Contracting Authority had intended that each consortium member must individually hold both certificates, it could have said so. It did not. The tender instead provided a scoring rule based on whether certificates were presented. The Appellant cannot now introduce an additional hidden condition and then complain that the Evaluation Committee failed to apply it.

This is further confirmed by the structure of the tender dossier itself. Under Clause 5, "Quality Assurance Schemes and Environmental Management Standards" were expressly stated to be not applicable as a separate selection requirement. The ISO certificates were instead included in the technical evaluation grid under "Quality & Infosec", with their own specific scoring rule.

The Appellant also complains that the disclosed copies were allegedly illegible or incapable of verification. That submission confuses the disclosure copy with the evaluation file. The question before this Honourable Board is not whether the Appellant was able, from a redacted or scanned copy disclosed after the award, to conduct its own verification exercise to its satisfaction. The question is whether the Evaluation Committee had before it certificates which it was entitled to treat as satisfying Criterion F.3. If the Board considers it necessary, the proper course is not to infer non-compliance from the Appellant's inability to verify the documents, but to examine the original documents forming part of the procurement file.

In any event, the Appellant's complaint that the certificates could not be verified is factually overstated. The ISO certificates were capable of verification through their respective certificate numbers, which remained legible in the documentation provided to the Appellant. The fact that the Appellant may have preferred a clearer copy, or may have wished to see every ancillary detail without limitation, does not mean that the certificates were unverifiable, still less that they were invalid or that the Evaluation Committee was not entitled to rely upon them. The relevant point is that the certification details necessary for verification were apparent from the disclosed material, and in any event the original procurement file remained available to the Evaluation Committee and, if necessary, to this Honourable Board.

The Appellant's further contention that the Evaluation Committee was required to verify the QR code or otherwise record in the evaluation report every step of verification is equally unsustainable. The tender dossier did not prescribe such a formal verification method. An evaluation committee is not obliged to produce a forensic audit trail for every document reviewed, unless the tender or the law imposes such an obligation. What matters is whether the committee was satisfied, on the basis of the documents before it, that the tender met the applicable requirement.

In any event, the Appellant's argument is ultimately circular. It says that the documents disclosed to it are not sufficient for it to verify compliance, and then asks the Board to infer that the Evaluation Committee itself failed to verify compliance. That inference does not follow. It is particularly unsafe in a procurement procedure where certain documents are, by their nature, commercially or technically sensitive and where disclosure to competitors is necessarily controlled.

For these reasons, the fifth ground should be rejected. The Appellant has not identified any tender clause requiring ISO certification in the name of every consortium member. It has not shown that no certificates were submitted. It has not shown that the Evaluation Committee applied the criterion unequally. At most, it has raised speculative and uncertain doubts based on the format of post-award disclosure. That is not a basis for annulling the award decision.

b) Sixth Ground of Appeal — Alleged Failure to Demonstrate Technical and Professional Capacity

The sixth ground is likewise based on an excessively narrow and artificial interpretation of the tender dossier.

Clause 5(c) of the tender dossier required tenderers to provide a list of principal services of a similar nature, namely implementation of management solutions within the justice and courts domains, including post-implementation services, maintenance and support. Tenderers were required to state the value of two services of a similar nature effected within the relevant period, with a minimum aggregate value of three million euro for the quoted period, and to provide details such as client name, contact person, scope, services provided, number of users, implementation dates, contract value, and reference letters.

The Appellant attempts to transform that requirement into a far more rigid exercise than the tender itself required. It argues that because one project commenced before the quoted period, or because another project remained ongoing, the references could not be relied upon unless the Preferred Bidder itemised, with accounting precision, the portion of value attributable to each calendar year and to each participating entity. That is not what the tender says.

The tender expressly included post-implementation services, maintenance and support within the relevant category of qualifying experience. That wording is significant. Maintenance and support are, by their nature, often ongoing and may continue after the initial implementation phase. A project that commenced before the beginning of the quoted period is not automatically irrelevant if qualifying services were provided during the relevant period. Similarly, a project that remained ongoing after the relevant period is not automatically irrelevant if implementation, maintenance, support, or other qualifying services were effected within the period.

The Appellant's construction would produce a commercially unrealistic result. It would exclude precisely the type of long-term justice-sector management system experience which the tender sought to capture. Complex court management systems are not usually single-day or short-duration exercises. They commonly involve implementation, configuration, integration, user support, maintenance, and post-implementation services over a number of years. The tender recognised this reality by expressly referring to post-implementation services, maintenance and support. The Appellant cannot now ask the Board to read that language out of the tender.

Nor does the reference to collaboration with another company invalidate the experience relied upon. The tender did not require that each reference project must have been performed by one economic operator acting entirely alone. It required evidence of principal services of a similar nature. In modern ICT and court-management projects, collaboration, consortium delivery, subcontracted elements, and multi-operator implementation are not unusual. What matters is whether the tenderer demonstrated relevant experience sufficient to satisfy the technical and professional capacity requirement. The Evaluation Committee was entitled to assess that question on the basis of the material submitted, including the reference letters and the details forming part of the tender response.

The Appellant's argument also rests heavily on what it says it could not ascertain from the disclosed material. Again, that is not the test. The fact that the Appellant was not given a fully unredacted commercial and technical breakdown of the Preferred Bidder's prior projects does not mean that the Evaluation Committee lacked sufficient information. A competitor is not entitled to receive every detail necessary to conduct its own parallel due diligence into another bidder's experience, especially where such information may involve third-party clients, contract values, commercial arrangements, and confidential project structures.

The tender dossier also expressly provided that, by listing end clients, the tenderer gave consent for the Evaluation Committee to contact those clients if it deemed necessary, and that the Evaluation Committee

reserved the right to request additional documentation. The language is discretionary. It says that the committee may contact clients if it deems necessary; it does not impose an obligation to do so in every case. It says that the committee reserves the right to request additional documentation; it does not require the committee to request additional documentation where the submitted material is already considered sufficient.

The Appellant's submission that the absence of disclosed clarification requests shows an unlawful evaluation is therefore misplaced. If the committee considered the documents sufficient, there was no obligation to seek clarification. If reference letters and project details were submitted and were assessed as satisfying the requirement, the committee was not required to manufacture doubts simply because a competitor later wished to interrogate the matter further.

It is also relevant that the Appellant itself refers to substantial project values in relation to the two reference projects. The supplementary grievance does not demonstrate that the aggregate threshold was not met. It merely speculates that some portion of the project value may fall outside the quoted period, or may be attributable to another entity, and then asks the Board to treat that speculation as proof of non-compliance. That is not a proper basis for annulling an award decision.

The correct position is that the Evaluation Committee had to determine, on the basis of the tender response and supporting documents, whether the Preferred Bidder had shown sufficient technical and professional capacity through qualifying justice/court management system experience. That is precisely the sort of evaluative assessment which lies within the committee's margin of appreciation, provided it is exercised consistently and within the tender terms.

The Appellant has not shown that the committee applied an undisclosed criterion, ignored a mandatory requirement, or accepted an experience reference that the tender expressly prohibited. It has only shown that it would have liked more unredacted information and a more granular breakdown. That is not enough.

The sixth ground should accordingly be dismissed.

c) Seventh Ground of Appeal — Alleged Systematic Breach of Word Limit

The seventh ground concerns the alleged word count of the Preferred Bidder's submissions under Criteria C.1 and C.2. This ground is overstated, both legally and factually.

The starting point must be the actual wording of the tender dossier. Clause 6.3 stated that bidders were requested to submit write-ups of approximately between 1,000 and 2,000 words for each criterion. The language used was not the language of strict exclusion. It was not stated that any word beyond 2,000 would be ignored. It was not stated that exceeding 2,000 words would lead to disqualification. It was not stated that a tenderer would receive zero points for exceeding an indicative length. By contrast, where the tender dossier intended a disqualification consequence, it said so expressly - *expressio unius est exclusio alterius*.

The clause also expressly stated that documentation must include charts, designs, and similar material to elaborate better the presented write-ups. Therefore, the evaluation framework was not based on a simplistic arithmetical count of words. It was based on the substance, appropriateness, relevance, coherence, and level of detail of the material submitted. That is confirmed by Clause 6.3 itself, which states that submissions would be evaluated in terms of appropriateness and relevance of the proposed approach, conciseness, internal coherence, and level of detail.

The Appellant's argument wrongly treats the indicative word range as though it were a rigid pass/fail eligibility criterion. It was not. The purpose of the word guidance was organisational: to encourage structured, concise, and standardised submissions. It was not intended to operate as a trap leading automatically to exclusion, especially in a complex ICT procurement where bidders were also required to include charts, designs, functional explanations, and technical material.

Even assuming, for the sake of argument, that a particular write-up exceeded the indicative word range, that does not automatically establish unequal treatment. The Appellant must show that the Evaluation Committee rewarded non-compliance with a mandatory rule, applied a different standard to one tenderer, or based its evaluation on material which ought not to have been considered. It has not done so. The mere existence of a word-count screenshot does not establish how the evaluators treated the material, what was counted as the relevant write-up, whether the count included headings, labels, tables, repeated requirement text, diagrams, captions, or other technical material, or whether any excess had any causal effect on the scoring.

More importantly, the Appellant's submission misunderstands why its own score was lower. The issue identified by the Evaluation Committee was not that the Appellant wrote fewer words. The issue was that the Appellant did not provide comprehensive detail of the available functionalities, and that several important aspects remained insufficiently explained or insufficiently evidenced. The evaluation was qualitative. A short submission may be excellent if it is precise, complete and substantiated. A long submission may be poor if it is diffuse or irrelevant. The point is not volume. The point is whether the tenderer gave the Evaluation Committee the relevant information required by the criterion.

The Appellant now seeks to use the alleged word limit as a shield against the committee's finding that its own submission lacked sufficient detail. That cannot be accepted. If the Appellant chose to use the available format in a manner that did not adequately address the matters that were decisive under the published criteria, it cannot later say that it was prevented from doing so by the word guidance. The tender permitted and indeed required the use of charts and designs. It required relevant and coherent detail. It did not oblige bidders to waste the available space on generalities, peripheral assertions, or material not directly responsive to the criterion.

Put simply, the word-count guidance did not excuse a bidder from providing the information necessary to substantiate its offer. It also did not prohibit the Evaluation Committee from giving credit to a tenderer

whose submission, taken as a whole, better demonstrated functional readiness, integration, completeness, scalability, and operational maturity.

The Appellant's allegation of a "systematic" breach is not at all supported by evidence. It is a merely argumentative conclusion drawn from the Appellant's dissatisfaction with the outcome.

The Contracting Authority further submits that the Appellant's position is internally inconsistent. On the one hand, it says that the demonstration could not be qualitatively scored and that the written submissions controlled the evaluation. On the other hand, it seeks to rely on its own demonstration to supplement or correct what was missing from its written submission. Similarly, it says that strict word limits prevented greater explanation, but then complains that the committee should have credited matters allegedly shown elsewhere. These positions cannot all stand together. The published framework required bidders to submit sufficiently clear and substantiated technical responses. The Evaluation Committee evaluated those responses. That is precisely what the tender required.

The seventh ground should therefore be rejected.

d) Eighth Ground of Appeal — Criterion J.2 and Alleged Failure to Recognise AI / Machine Learning Readiness

The eighth ground concerns Criterion J.2, which required bidders to provide how they are exploring and integrating emerging technologies such as artificial intelligence, machine learning, and blockchain for enhanced efficiency and security.

This ground again rests on a mischaracterisation of the role of the demonstration and of the criterion itself.

The tender dossier expressly stated that no qualitative score was associated with the demonstration. The purpose of the demonstration was to verify the assertions made in the tender submission. It was not a separate scored event. It was not an opportunity to introduce, for the first time, material which had not been adequately explained in the written technical offer. It follows that the Appellant cannot rely on the demonstration both ways. It cannot argue, when convenient, that the demonstration cannot be used to reduce or affect scoring, and then argue, when convenient, that the same demonstration required the evaluators to increase or revise the score under J.2.

The Evaluation Committee was entitled to assess Criterion J.2 primarily by reference to the written submission and to use the demonstration only as a verification tool. If the written submission did not sufficiently explain how emerging technologies such as artificial intelligence, machine learning, and blockchain were being explored or integrated into the solution, the Appellant could not cure that deficiency by pointing to isolated features shown during the demonstration and labelling them as AI or machine learning.

The distinction is important; not every automated function is artificial intelligence. Not every rule-based allocation mechanism is machine learning. Not every classification feature, without adequate explanation

of model, data, training, integration, governance, security, auditability, and operational deployment, demonstrates meaningful AI or machine learning readiness within the meaning of Criterion J.2. The criterion was not asking whether the bidder could show a generic automation feature. It was asking the bidder to provide how it is exploring and integrating emerging technologies for enhanced efficiency and security, within a section specifically dealing with innovation and future readiness.

The Appellant refers to alleged automated classification of case or police report typology and dynamic assignment of cases to judicial officers based on predefined parameters such as availability, workload, and experience. Even if such features were shown, the Evaluation Committee was not bound to treat them as sufficient proof of AI or machine-learning readiness. A dynamic assignment tool based on predefined parameters may simply be rules-based workflow automation. A classification function may be a useful feature, but unless properly substantiated as machine learning, and unless integrated into a coherent innovation roadmap and operational architecture, it does not necessarily satisfy the higher qualitative expectations of Criterion J.2.

This is especially so in a court-management context. The use of artificial intelligence or machine learning in judicial and court-administration systems raises obvious issues of explainability, auditability, security, data protection, bias, governance, human oversight, and integration with judicial decision-support processes. A reasonable Evaluation Committee was entitled to expect more than a general demonstration of automation. It was entitled to expect a properly substantiated explanation of actual or future readiness, including how such technologies would be responsibly integrated into the proposed solution.

The score awarded to the Appellant under J.2 must also be viewed in context. The Appellant was not necessarily treated as having submitted nothing at all. Rather, the committee awarded limited credit while recording that the submission did not demonstrate the level of actual or future readiness required. That is a technical evaluative judgment. The Appellant may disagree with it, but disagreement is not illegality.

The Appellant's formulation - that no reasonably diligent evaluation committee could have reached that conclusion - is untenable. On the contrary, it was reasonably open to the Evaluation Committee to conclude that the Appellant's material did not sufficiently evidence meaningful AI, machine learning, blockchain, or innovation readiness as required by the criterion. That conclusion is not irrational. It is not arbitrary. It is not contrary to the tender dossier. It is precisely the kind of qualitative assessment entrusted to the Evaluation Committee.

Nor does the eighth ground identify any undisclosed sub-criterion. The committee did not apply a hidden test. It assessed the degree to which the Appellant had provided how it explores and integrates emerging technologies. That is the published criterion. The fact that the committee expected substance, readiness, and credible integration does not make the assessment undisclosed. Those are inherent in the criterion itself.

The eighth ground should therefore also be rejected.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances.

General Legal Framework

Fundamental principles

- Contracting authorities are required to treat economic operators equally and non-discriminatorily and to act in a transparent manner: Article 18(1) of Directive 2014/24/EU, transposed by Regulation 39(1) and (2) of the Public Procurement Regulations (S.L. 601.03, hereinafter "PPR"). Equality of treatment and transparency require, in particular, that tenderers be in a position of equality both when they formulate their tenders and when those tenders are assessed by the contracting authority: *SIAC Construction Ltd v County Council of the County of Mayo*, Case C-19/00, paragraph 34.

Role of this Board — standard of review

- This Board exercises a supervisory, not appellate, jurisdiction over technical evaluations conducted by an Evaluation Committee acting under a Best Price-Quality Ratio (BPQR) framework. The Board does not re-mark tenders and does not substitute its own technical assessment for that of the Evaluation Committee.
- The Board will intervene only where the Evaluation Committee: (i) applied a criterion not published in the procurement documents; (ii) altered the published criteria or their relative weighting after submission of tenders; (iii) treated tenderers unequally; or (iv) committed a manifest error of assessment, meaning an error so clear and significant that a reasonable evaluation committee, properly directed, could not have reached the same conclusion.
- This standard is confirmed by the Court of Appeal of Malta in *Steelshape Limited v Direttur tal-Kuntratti et*, App. Ċiv. 175/2013/1, 7 August 2013, and in *Attard Farm Supplies Limited v Korporazzjoni għas-Servizz tal-Ilma (Water Services Corporation) et, App. Ċiv. 249/23/1, 29 August 2023*. While neither judgment precludes the Board from examining specific marks to verify whether the committee's reasoning is sustainable, both confirm that the Board should not replace the technical discretion of the Evaluation Committee with its own.
- The same approach has been confirmed in the domestic context of BPQR evaluations by the Court of Appeal in *SaniClean Joint Venture v St Vincent de Paul Long Term Care Facility*, App. Ċiv. 98/20, 20 July 2020, and *Executive Security Services Ltd v Agenzija Servizz Gov et*, App. Ċiv. 205/21/1, 7 March 2022, both of which hold that evaluation committees conducting BPQR assessments must necessarily undertake a subjective qualitative exercise and are therefore afforded an element of discretion or leeway not to be disturbed as a rule.

Evaluation committee leeway — BPQR assessment methodology

- It is well established that an evaluation committee must be able to have some leeway in carrying out its task: it may, without amending the contract award criteria set out in the tender specifications or the contract notice, structure its own work of examining and analysing the submitted tenders. This principle was confirmed in *Evropaïki Dynamiki v EMSA*, Case C-252/10 P, EU:C:2011:512, paragraph 35, and further elaborated in *TNS Dimarso NV v Vlaams Gewest*, Case C-6/15, paragraphs 27–32.
- In *TNS Dimarso* the Court of Justice held: (i) that a contracting authority is not required to bring to the attention of tenderers, in the contract notice or the tender specifications, the method of evaluation it will apply to assess and rank the tenders (paragraph 27); (ii) that an evaluation committee must be able to have leeway to structure its own work (paragraph 29); and (iii) that whatever method is applied may not have the effect of altering the award criteria or their relative weighting (paragraph 32).
- The same principle was applied against the present Appellant in another procurement context. In *European Dynamics Luxembourg SA and others v European Chemicals Agency*, Case T-477/15, the General Court of the European Union rejected arguments by European Dynamics that an evaluation committee had applied altered or undisclosed criteria by assessing the sufficiency of examples in a technical submission, concluding that this was a legitimate exercise of the committee's evaluative leeway within the published criteria.

Non-amendment of tenders and evaluation of submitted content

- A clarification request may be addressed to a tenderer to seek explanation of submitted content; it may not be used to allow a tenderer to supplement or substantially alter an offer, nor may it remedy the absence of a mandatory document or information whose production was required by the tender: *SAG ELV Slovensko*, paragraph 40; *Archus and Gama*, paragraphs 31 and 33.

This Board applies these principles throughout its assessment of the scoring-related grievances below.

Preliminary Plea: Utility of the Second and Third Grounds of Appeal

Nature of the plea and procedural position

- By means of its preliminary plea, the Preferred Bidder (LexNova) submitted that the Appellant's Second and Third Grounds of Appeal, concerning Criteria C.1 and C.2 respectively, were inadmissible for lack of utility. It argued that even if the Appellant were awarded additional marks under those criteria, its tender would in any event have been disqualified because it should have received zero marks on Criterion J.2, Criterion B.4, and Criterion B.1.
- A preliminary objection to this plea was raised by the Appellant, supported in substance by the Contracting Authority and the Department of Contracts, on the ground that LexNova had not filed a formal appeal or counterclaim and therefore could not, through a reply, effectively reverse the Evaluation Committee's finding that the Appellant was compliant on those criteria. The Appellant relied in particular on the judgment of the Court of Appeal in *Netcompany S.A. v Dipartiment tal-Kuntratti et*, App. Ċiv. 367/2025/1, 11 November 2025.

The Board addresses the procedural and substantive dimensions of this plea in turn.

The Fastweb/PFE/Lombardi line and the right to challenge a competitor's bid

- It is now settled, following *Fastweb SpA v Azienda Sanitaria Locale di Alessandria*, Case C-100/12; *Puligienica Facility Esco SpA (PFE) v Airgest SpA*, Case C-689/13 (Grand Chamber); and *Lombardi Srl v Comune di Auletta*, Case C-333/18, that a successful tenderer has a legitimate interest in challenging an unsuccessful tenderer's bid in the course of review proceedings. Where the legality of an award decision has been opened to scrutiny, each party may have an interest in the exclusion of the other's bid, which may ultimately lead to a finding that the contracting authority is unable to select any lawful bid and must restart the procedure.
- Specifically, the Court in Fastweb SpA v Azienda Sanitaria Locale di Alessandria, Case C-100/12, paragraph 33, confirmed that a counterclaim brought by a successful tenderer cannot bring about the dismissal of an action for review brought by an unsuccessful tenderer where the validity of both bids is challenged in the same proceedings on identical grounds, since in such a situation each competitor may claim a legitimate interest in the exclusion of the other's bid. The Court's subsequent judgments in Puligienica Facility Esco SpA (PFE), Case C-689/13, and Lombardi Srl v Comune di Auletta, Case C-333/18, confirm and extend this principle. This Board therefore accepts the principle that LexNova, as Preferred Bidder, has in principle an interest in challenging the compliance of the Appellant's bid.

  Procedural vehicle: preliminary plea versus formal counterclaim

- The question is whether the Preferred Bidder may pursue that interest through a preliminary plea filed within its reply to the appeal, or whether it was required to file a formal counterclaim or cross-appeal. The Appellant relied on the Court of Appeal judgment in *Netcompany S.A. v Dipartiment tal-*

Kuntratti et, App. Ċiv. 367/2025/1. In that judgment, the Court of Appeal held, at paragraph 30, that a respondent cannot through its reply in the appeal proceedings attack the admissibility or validity of the appellant's bid where it has not itself appealed the award decision or filed a formal counterclaim.

- LexNova sought to distinguish *Netcompany* on the basis that the plea in that case concerned a party that had not appealed the PCRB's decision to the Court of Appeal at all, which it submitted was a distinct procedural stage. The Board accepts that the facts of *Netcompany* are not identical; the procedural context before this Board is that of first-instance PCRB review rather than appellate proceedings. However, the underlying principle, that a party seeking to challenge the compliance of an appellant's bid must do so through the appropriate procedural vehicle and not merely by means of a reply, reflects a principle of procedural fairness of general application.
- The preliminary plea as framed does not seek only to resist the appeal. It seeks an affirmative finding by this Board that the Evaluation Committee was wrong not to disqualify the Appellant on Criteria J.2, B.4 and B.1, a finding which, if made, would have the practical effect of reversing part of the impugned evaluation decision, to the Preferred Bidder's benefit. For the Board to make such a finding on a preliminary plea, in the absence of a formal counterclaim, would in effect permit a Preferred Bidder to secure an affirmative alteration of the evaluation record without complying with the procedural requirements that govern appeals before this Board. The Board considers this to be procedurally inappropriate, consistently with the principle stated in *Netcompany*.

Note: As to the substantive question, namely whether the Appellant's tender ought to have been disqualified on Criteria J.2, B.4, or B.1, that question does not fall for determination in this appeal in the absence of an admissible counterclaim or other proper procedural vehicle advanced by the Preferred Bidder. The Board therefore expresses no view on it.

For these reasons, the preliminary plea raised by the Recommended Bidder is rejected on procedural grounds.

Grievance 1: Request for Disclosure of Information

- The Board notes that the decision on this grievance was communicated to the parties on 27th April 2026 and was subsequently clarified by communication of 4th May 2026. For the purposes of the present decision, and in order to avoid unnecessary repetition of the Board's earlier decree and clarification, the relevant outcome of that decision is set out below in summary form.

- The grievance concerned the Appellant's request for disclosure of documentation relating to the Preferred Bidder's eligibility, technical offer, demonstration, key experts, financial offer, ISO certificates, GDPR questionnaire, evaluation reports, and the composition of the Tender Evaluation Committee.

- In relation to eligibility and selection documentation, the Board ordered disclosure of the ESPD(s) of the Preferred Bidder and each member of its consortium, the reference letters relied upon for technical and professional capacity, and documentation identifying the consortium members. Such disclosure was ordered subject to the redaction of personal data and strictly confidential commercial information. The Board also noted LexNova's confirmation that no subcontractors had been nominated.

- In relation to the technical offer under Criteria C.1 and C.2, the Board did not order disclosure of the substantive technical offer, accepting that it contained commercially sensitive and proprietary information protected under Regulation 40(1) of the Public Procurement Regulations. However, the Board ordered disclosure of the word count of the Preferred Bidder's write-ups under Criteria C.1 and C.2, since the word count did not reveal the substance of the technical solution, was directly relevant to the Appellant's grievance, and was necessary to enable the Appellant to verify whether the applicable word-limit requirement had been observed.

- In relation to the demonstration, the Board ordered disclosure of the Appellant's own official demonstration recording to the Appellant only, since the Department of Contracts had raised no objection to such disclosure. The Board did not order disclosure of LexNova's demonstration recording, accepting that it revealed the Preferred Bidder's technical solution and was commercially sensitive.

- In relation to the Preferred Bidder's key experts, the Board ordered disclosure of their CVs, subject to anonymisation and the redaction of names and any information by which the experts could be individually identified. This was considered sufficient to balance the Appellant's right of review with the protection of personal data.

- In relation to the financial offer, the Board rejected the request. It held that the Appellant had not raised a specific and substantiated grievance concerning the financial evaluation methodology, that the total financial offer had already been disclosed, and that the detailed pricing breakdown retained

independent commercial value and was not necessary for the effective exercise of the Appellant's remedy. The request was, in any event, incompatible with Regulation 40(1) of the Public Procurement Regulations.

- In relation to the ISO Certificates and GDPR Questionnaire, the Board ordered disclosure of the ISO Certificates, since no objection was raised to their disclosure. The Board rejected disclosure of the GDPR Questionnaire, accepting that it contained commercially sensitive information concerning internal data-processing policies, strategies and systems architecture, and that disclosure was not necessary for the effective exercise of the Appellant's remedy.

- In relation to the evaluation reports, the Board rejected the request for full disclosure. It held that the Appellant had already been provided with the relevant scores and justifications sufficient to understand and pursue its grievances, and that full disclosure of the evaluation reports would go beyond what was necessary and risk exposing commercially sensitive aspects of the Preferred Bidder's offer.

- In relation to the Tender Evaluation Committee and any external experts, the Board noted that the names of the TEC members and external experts had been disclosed during the hearing of 15th April 2026. The request was therefore considered moot.

- Accordingly, the Contracting Authority and the Department of Contracts were ordered to provide the documentation falling within the upheld parts of the request, namely the eligibility and selection documentation, the word count for Criteria C.1 and C.2, the Appellant's own demonstration recording, the anonymised CVs of the Preferred Bidder's key experts, and the ISO Certificates.

- By clarification communicated on 4th May 2026, the Board further confirmed that its decision of 27th April 2026 was final and that it would not revisit or supplement its orders under the requests already determined. The Board also rejected the request for disclosure of any clarifications or rectifications sought from the Preferred Bidder and the replies received thereto, on the basis that such documentation formed part of the procurement dialogue and, at that stage of the proceedings, constituted commercially sensitive information falling within Regulation 40(1) of the Public Procurement Regulations.

For these reasons, Grievance 1 was upheld only in part and rejected in all other respects.

Grievance 2: Criterion C.1 — Available Functionalities

The Appellant's case

- The Appellant contends that the award of 1 mark out of 5 under Criterion C.1 was arbitrary, disproportionate, and based on undisclosed or altered criteria. It connects this grievance to the word-count issue addressed under Grievance 7, submitting that it was penalised for a brevity compelled by its compliance with the approximate word range in the Evaluation Grid. It further contends that the Evaluation Committee's justification is internally inconsistent, stating, on the one hand, that no demonstration was given to substantiate certain functionalities while describing those same functionalities elsewhere as having been demonstrated, and that the demonstration was thereby used as an additional, undisclosed basis for criticism, contrary to the tender dossier's confinement of the demonstration to verification with 'no qualitative score... associated' with it..

What Criterion C.1 required

- Criterion C.1, as published in Section 6.3 of the Evaluation Grid, required bidders to "*provide a comprehensive detail of the available functionalities in relation to the requirements as stipulated within the tender document (Reference to Section 3 – Article 4.3 and 4.4).*" The Evaluation Grid stated that submissions would be assessed for "*appropriateness and relevance of the proposed approach with a conciseness, internal coherence and with a level of detail*," and that when assigning marks, the committee would also consider the relevance of the description, the level of understanding of each requirement, and the ease of use of the various functions as verified during the demonstration. These are qualitative elements. Criterion C.1 did not prescribe a formula for translating them into a mark.

The Board's assessment

- The Evaluation Committee awarded 1 out of 5 marks. Its written justification identified specific substantive shortcomings: the case management lifecycle was not shown as an actual case journey with users having to switch between modules; the public portal was based on submitting electronic forms rather than a direct in-system e-filing service; virtual hearings were presented as an autonomous module with minimal or no integration with the actual system requiring manual upload of data; criminal records management presented only very basic functionality; and bail management lacked bail history, temporary bail conditions, and the ability to edit bail conditions. These are content-based assessments going to the quality and integration of the solution described, not to the length of the write-up.
- The Board accepts the submission advanced by the Department of Contracts in final submissions: word count and content quality are distinct matters. The Evaluation Committee's concerns related to specific functional characteristics of the solution as described and demonstrated. Additional words without additional substantive content on those specific points would not have remedied those concerns. The Appellant has established only that its write-up was shorter; it has not

established that the identified qualitative deficiencies in the substance and integration of the functionalities described were caused by brevity or would have been cured by a longer submission.

- The argument that the Evaluation Committee's justification is internally inconsistent, or that it relied on the demonstration as an additional basis for criticism beyond its verification role, is not sustainable. Section 6.3 of the Evaluation Grid expressly stated that "*bidders will not be given a second chance to demonstrate their solution*." The demonstration served to verify assertions made in the technical offer; it could not supply what was absent from the written submission. The Evaluation Committee was correct to use the demonstration as a verification tool, and its findings that the demonstration reflected rather than remedied the written offer's limitations are consistent with this framework.
- The Appellant submits that the Evaluation Committee applied undisclosed or altered criteria. The Board rejects this submission. Applying the principles from TNS Dimarso (C-6/15), assessing whether "comprehensive detail" has been provided as to the substance, coherence and integration of functionalities is inherent in the criterion itself. The specific concerns identified by the Evaluation Committee, the case management lifecycle, the public portal interface, virtual hearings, and criminal records management are all expressly referenced in the published procurement documents at Section 3, Article 4.3.11(b) (case management), Article 2.1 and the Section 1, Article 6.3 demonstration module list (public portal), Article 4.3.11(d) (virtual hearings), and Article 4.3.13(f) (criminal records management) of the Terms of Reference. They cannot be characterised as undisclosed criteria: they arose directly from the published tender requirements.
- Nor does the fact that the Evaluation Committee's justification identified concerns in a limited number of functionalities, against a total of forty-eight, establish that an undisclosed weighting was applied. Criterion C.1, as set out above, called for a qualitative assessment of comprehensive detail, coherence and level of understanding; it did not require, and the Evaluation Grid did not state, that marks be allocated by arithmetical reference to the proportion of functionalities criticised. The five matters identified by the Evaluation Committee concerned core functional areas central to the system's case-management lifecycle, public-facing services, virtual hearings, criminal records and bail management, rather than isolated minor features. The Board reads those matters as the substantive reasons illustrating why the Evaluation Committee considered the description and demonstration insufficiently comprehensive overall, not as an exhaustive or weighted tally in which each unmentioned functionality necessarily carried equal value. This approach is consistent with the Board's treatment of the analogous arithmetical argument under Criterion C.2 below.
- Unequal treatment has not been established. The Appellant has produced no evidence that the Evaluation Committee applied a materially different interpretive standard to its offer than to that of the Preferred Bidder under Criterion C.1. Evidence of a disparity in scores, without more, does not constitute evidence of unequal treatment.

- Applying the standard of review confirmed in Steelshape and Attard, the Board is not satisfied that the Appellant has demonstrated that the Evaluation Committee applied an undisclosed criterion, altered Criterion C.1, treated the Appellant unequally, or committed a manifest error of assessment. The score of 1 out of 5 reflects the Evaluation Committee's technical assessment of the content and substantiation of the Appellant's description of available functionalities, conducted within the framework of the published criterion.

The Board does not uphold this grievance.

Grievance 3: Criterion C.2 — Readiness of Functionalities

The Appellant's case

- The Appellant contends that the award of 3 marks out of 10 under Criterion C.2 failed to reflect its readiness profile: 27 of 48 functionalities declared out-of-the-box (56%), 20 with customisation (41%), and only 1 as "will be available" (2%). It submits that the Evaluation Committee must have applied an undisclosed methodology, that the scoring gap between the Appellant (3/10) and the Preferred Bidder (8/10) is disproportionate and unexplained, and that the one "will be available" functionality cannot justify a reduction of this magnitude.

What Criterion C.2 required and permitted

- Criterion C.2, as published in Section 6.3, required bidders to provide customisation detail for each specified function and to indicate one of three readiness statuses: available out-of-the-box; available with customisation; or "will be available" with an indicated future date. The published note to the criterion stated clearly: "*Points will be awarded based on the readiness of all functionalities. Each feature will be assessed individually, and the total score will reflect the overall completeness and operational status.*" An additional note provided: "*If any single functionality is not available, will receive zero points and be disqualified.*" The criterion directed a holistic qualitative assessment; it did not prescribe a mathematical formula, an equal weighting per functionality, or a direct proportional translation of readiness categories into marks.

The Board's assessment

- The Appellant's arithmetical argument, that 56% of functionalities being out-of-the-box should have produced a substantially higher score, does not correspond to the criterion as drafted. Equal weighting of each functionality was not required and was not stated. The criterion's direction that "*the total score will reflect the overall completeness and operational status*" expressly called for a holistic assessment, not a mechanical tabulation of readiness categories.
- The one functionality marked as "will be available", the criminal records complete functionality including integrations and enhancements, is not a peripheral feature of this system. It is among the most substantive deliverables of the tender. It is addressed across Articles 4.1.1, 4.3.13(f) and (g) of the Terms of Reference, spans Milestones 2 and 4 of Article 18.2 of the Special Conditions, and encompasses the digitalisation of the national criminal records system, integration with ECRIS and ECRIS TCN, the redevelopment of the kondotti.gov.mt portal, self-provisioning of conduct certificates, and integration with e-ID, e-IDAS and the Government Payment Gateway. A functionality of this scale and centrality that is declared as "will be available" rather than already operational cannot reasonably be treated as equivalent for scoring purposes to a minor administrative function marked out-of-the-box. The tender dossier's allocation of over two pages to criminal records requirements, and the express listing

of criminal records management as a mandatory demonstration module in Section 6.3 (page 17), confirmed its centrality to the subject matter of the contract. The Evaluation Committee was entitled to reflect this in its holistic assessment.

- Applying the principles from TNS Dimarso (C-6/15), the absence of a disclosed mathematical formula does not render the evaluation unlawful where the published criterion calls for a holistic qualitative assessment. The Evaluation Committee remained within the published framework of Criterion C.2.
- The distinction between the three readiness categories is material in the context of this tender, the customisation and implementation of an off-the-shelf Courts Management Information System. A functionality already operational within the proposed solution is not equivalent to one requiring customisation, configuration, integration or testing before deployment. "Available with customisation" indicates a lower level of present readiness than out-of-the-box; "will be available" indicates a lower degree still. The Evaluation Committee was entitled to regard these distinctions as qualitatively significant in a tender expressly titled "customisation and implementation of an off-the-shelf" system, where readiness was the central scoring dimension.
- A compliance finding and a high score are distinct matters. A tender may satisfy minimum threshold conditions and still receive a reduced score where its overall operational readiness is assessed as weaker than a competing offer. This distinction is fundamental to the BPQR model. The Appellant's case conflates these two dimensions.
- Unequal treatment has not been established. There is no evidence that a different standard of readiness assessment was applied to the Preferred Bidder's offer than to the Appellant's under Criterion C.2.
- Applying the standard of review established in the General Legal Framework, the Board is not satisfied that the Appellant has demonstrated that the Evaluation Committee acted outside the published criterion, applied an undisclosed formula, treated the Appellant unequally, or committed a manifest error of assessment. The score of 3 out of 10 reflects the Evaluation Committee's qualitative assessment of the overall readiness, completeness and operational status of the Appellant's proposed system.

The Board does not uphold this grievance.

Grievance 4: Alleged Criminal Proceedings / Integrity Concerns (Synergy International)

The Appellant's case

- The Appellant contends that the Recommended Bidder should have been excluded on the ground that one of its consortium participants, Synergy International Systems Inc., was the subject of ongoing criminal proceedings in another jurisdiction involving acts connected with public procurement. The Appellant relies principally on Article 57(4)(c) of Directive 2014/24/EU (discretionary exclusion for grave professional misconduct rendering integrity questionable) and invites the Board to find that this ground should have been acted upon by the Contracting Authority.

Mandatory exclusion — Regulation 192

- Regulation 192(1) of the PPR provides for mandatory exclusion where the economic operator has been the subject of a conviction by final judgment having the nature of res judicata for the listed offences. Regulation 192(2) extends this to members of the administrative, management or supervisory body or persons with powers of representation or control. No such conviction having the force of res judicata was established before the Board in respect of any member of the Recommended Bidder's consortium. Pending proceedings are not equivalent to a final conviction, and Regulation 192 is not engaged.

The blacklisting procedure — Regulations 199 to 203

- The formal mechanism under Maltese procurement law for addressing professional misconduct of the type alleged is the blacklisting procedure under Regulations 199 to 203 of the PPR. Regulation 199 empowers the Director of Contracts, and only the Director, to blacklist an economic operator in specified circumstances, including conviction of an offence concerning professional conduct with the force of res judicata rendering integrity questionable (Regulation 199(b)). Regulations 200 to 202 require formal notification, the right to object before the Commercial Sanctions Tribunal, and the opportunity to advance self-cleaning measures. Regulation 203(2) confirms that only once blacklisted may an operator be excluded from public contracts. No blacklisting decision was taken or was in force in respect of any member of the Recommended Bidder's consortium.
- The Court of Appeal of Malta confirmed in BESSUI JV konsorzju kompost minn United Equipment Company (UNEC) Ltd u ISD Company Limited v Dipartiment tal-Kuntratti et, App. Ċiv. 379/2025/1, 15 January 2026, that under Maltese law the exclusion of a tenderer on the ground of grave professional misconduct operates exclusively through the blacklisting mechanism vested in the Director of Contracts, and that an evaluation committee has no independent duty to investigate, seek clarification, or exclude a tenderer on the basis of alleged grave professional misconduct, even where the underlying allegation is verifiable from publicly available material, absent an actual blacklisting decision or a final conviction having the force of res judicata. The

Court of Appeal expressly quashed a lower finding to the contrary, holding that an evaluation committee should not consider excluding a tenderer on this basis and need not seek clarification regarding it. In the present case, the Contracting Authority in fact went beyond what BESSUI requires of it: it nonetheless sought clarification, reviewed self-declarations, and conducted independent due diligence, and the result disclosed no final conviction, no blacklisting decision, and no ground of exclusion.

Article 57(4)(c) of the Directive — discretionary exclusion ground

- The Court of Justice has recognised in several contexts that the concept of "grave professional misconduct" under what is now Article 57(4)(c) of Directive 2014/24/EU encompasses a range of conduct bearing on an operator's professional credibility: *Forposta SA and ABC Direct Contact sp. z o.o. v Poczta Polska SA*, Case C-465/11 (unlawful early termination of a public contract); *Generali-Providencia Biztosító Zrt v Közbeszerzési Hatóság Közbeszerzési Döntőbizottság*, Case C-470/13 (infringement of competition rules). It is further established by Vossloh Laeis GmbH v Stadtwerke München GmbH, Case C-124/17, that an economic operator invoking self-cleaning measures must cooperate with the Contracting Authority to demonstrate restored reliability, and must be afforded the opportunity to do so before exclusion (Article 57(6) of Directive 2014/24/EU).
- The Board notes two additional difficulties with the Appellant's reliance on Article 57(4)(c). First, Article 57(4)(c) is a discretionary ground: it permits exclusion where the Contracting Authority "can demonstrate by appropriate means" the relevant misconduct. The exercise of this discretion belongs to the Contracting Authority, not to this Board. The Board's role is to review whether the contracting authority's decision was unreasonable or vitiated by manifest error. The Contracting Authority conducted its own verification exercise, sought clarification, and did not find the threshold met. No evidence has been produced to establish that this conclusion was unreasonable.
- Second, and separately, the Maltese PPR does not expressly transpose Article 57(4)(c) as a standalone discretionary exclusion provision equivalent in structure to the mandatory grounds under Regulation 192. The operative mechanism for professional misconduct concerns under Maltese procurement law, to the extent not captured by Regulation 192, remains the blacklisting procedure under Regulations 199 to 203. Whether Article 57(4)(c) has direct effect in Maltese law and could be directly invoked against the PPR is a question the Board need not resolve: even on the most favourable reading, its application requires a Contracting Authority's individualised assessment using appropriate means. That assessment was conducted; its conclusion was that the threshold was not met. The Board cannot substitute its judgment for the Contracting Authority's on this discretionary point without a demonstrated manifest error.
- To exclude the Recommended Bidder on the basis advanced would impose a blacklisting-type consequence without either the formal statutory procedure or the procedural safeguards,

notification, right to object, self-cleaning opportunity that the PPR requires, and in the absence of the individualised assessment that Vossloh Laeis demands.

The Board does not uphold this grievance.

Grievance 5: ISO Certification — Criterion F.3

The Appellant's case

- The Appellant contends that the Recommended Bidder failed to satisfy Criterion F.3 on two grounds: (i) that the ISO certificates disclosed were held by Synergy International only and not by all consortium members (Dakar and Grant Thornton having no certificates), and (ii) that in any event no demonstration was provided that the certified entity (Synergy) would perform the activities to which those certifications relate, as required by the principle in Case C-592/21 (ĒDIENS).

Structural location of ISO certification in the tender

- Section 1, Article 5.B.d of the Instructions to Tenderers expressly records "Quality Assurance Schemes and Environmental Management Standards — Not Applicable" as a selection criterion under Section 1, Article 5(B). ISO certification was therefore not a selection and eligibility requirement but appeared exclusively as an award-scoring criterion under Criterion F.3 in the Section 6.3 Evaluation Grid. This is significant: the consequences of non-compliance with an award scoring criterion (reduced marks) differ from the consequences of non-compliance with a mandatory selection criterion (exclusion). Criterion F.3's own scoring rule confirms this distinction: it provides a binary outcome of 2 or 4 points if certificates are submitted, and 0 leading to disqualification only if no certificates at all are presented.

What Criterion F.3 required and the consortium framework

- Criterion F.3 required "the bidder" to provide ISO 27001 and/or ISO 9001 valid certification. The criterion used the term "the bidder" throughout. It did not state that every consortium member must hold the certificates individually, nor that a task-allocation document was required as a precondition.
- Under Regulation 58(1) of the PPR, groups of economic operators, including temporary associations, may participate in procurement procedures and shall not be required to assume a specific legal form. Where the bidder is a consortium, references to "the bidder" in the procurement documents are references to the consortium as a whole, unless the documents expressly provide otherwise. Regulation 58(2) permits contracting authorities to specify how groups are to meet requirements, where justified by objective reasons. No such specification was made for Criterion F.3.
- Regulation 234 of the PPR addresses the production of quality-assurance certificates by "the economic operator". It does not, however, govern the present question by itself: Criterion F.3 is not a selection criterion concerning economic and financial standing or technical and professional ability, to which the reliance mechanism under Regulation 235 applies; it is, as established above,

an award-scoring criterion. The relevant question is therefore not whether the consortium may rely on the capacities of its members under Regulation 235, but what Criterion F.3, on its own wording, required the bidder to submit. As established above, Criterion F.3 required "the bidder" to provide ISO 27001 and/or ISO 9001 certification, and under Regulation 58 the consortium itself is "the bidder". The tender documents did not require each consortium member to hold the certificates individually, nor did they require a member-by-member allocation of certified activities as a condition for the award of points.

- The primary authority for this conclusion is the principle from Pippo Pizzo v CRGT Srl, Case C-27/15: an economic operator must not be excluded or penalised for failure to comply with an obligation that does not clearly arise from the procurement documents. To read into Criterion F.3 a requirement of member-by-member certification, or of a formal task-allocation document, would introduce conditions not stated in the tender after the submission deadline, contrary to the principle of self-limitation and transparency.
- This is further confirmed by the principle from Manova A/S, Case C-336/12, paragraph 40: a Contracting Authority must comply strictly with the criteria it has itself laid down. Where the procurement documents did not require each consortium member to hold the certificates individually as a condition for the award of points under Criterion F.3, the Evaluation Committee could not introduce such a requirement retrospectively. The Board cannot do so either.

The ĒDIENS argument

- The Appellant's reliance on ĒDIENS & KM.LV, Case C-592/21, must be assessed carefully. In that case the Court held that where a tenderer relies on the capacities of a particular member of a group for professional experience requirements tied to the performance of specific activities, those activities must actually be performed by that member. The ratio of ĒDIENS is directed at experience-based capacity requirements specifically, professional experience in performing defined works or services.
- ISO 27001 and ISO 9001 certifications are not experience-based capacity requirements. They are quality management and information security management certifications attesting to systemic organisational standards operative within the certified entity's processes. They do not, by their nature, prescribe that a particular certified person must perform particular activities. They attest to the quality management and security management systems within an organisation. Criterion F.3 did not link the award of points to the performance of specified activities by the certified entity. The factual and legal context is therefore materially different from ĒDIENS, and the case does not apply.
- The Evaluation Committee treated the consortium's submission as a single bid and assessed the ISO certificates as a whole. No evidence was produced demonstrating that a stricter standard was

applied to the Appellant than to the Recommended Bidder, or that the Recommended Bidder was awarded points without having submitted the certificates specified by the criterion.

The Board does not uphold this grievance.

Grievance 6: Technical and Professional Capacity — Reference Projects

The Appellant's case

- The Appellant contends that the Recommended Bidder failed to satisfy the selection criterion under Section 1, Article 5.B.c.i.a, requiring at least two services of a similar nature, implementation of management solutions within the justice and courts domain, including post-implementation services, with a minimum aggregate value of €3,000,000 within the period 2019–2023. The Recommended Bidder relied exclusively on two reference projects, both performed by its consortium member Synergy International Systems Inc. ("Synergy"). It submits that: (i) for both reference projects, the disclosed documentation fails to identify what portion of the declared contract value corresponds to services performed within the 2019–2023 period, since both projects extend beyond that window (one commencing in 2018, the other remaining ongoing to the present); and (ii) in relation to Reference Project No. 1 specifically, Synergy performed the project "in collaboration with another company" whose identity was redacted, such that the disclosed material does not establish what portion of the declared value is attributable to Synergy's own performance as distinct from its collaborator's.

Textual inconsistency and the applicable reference period

- The Board notes a textual inconsistency in Section 1, Article 5.B.c.i.a of the Instructions to Tenderers, which refers to "the past seven (5) years (2019–2023)." The figure "seven" does not correspond to either the bracketed "(5)" or the stated range, which is in fact five years inclusive (2019–2023); "seven" is the erroneous figure. Where a selection criterion is ambiguous on its face, the principle of transparency requires that the ambiguity be resolved in the manner most favourable to competition. A contracting authority cannot rely on its own ambiguous drafting to impose a strict exclusionary condition. The Board proceeds on the basis confirmed by the testimony of Ms Mariella Pulis and by Clarification Notes 3, 5, 6, 7 and 16 that 2019–2023 was the operative reference period and that both implemented and ongoing projects were eligible.

The apportionment question for ongoing projects

- The central legal question is whether, having accepted that ongoing projects are eligible, the Contracting Authority was required to demand apportionment of project values to the period 2019 to 2023, rather than accepting the global or nominal contract value.
- Neither the PPR nor the tender dossier as clarified imposed an express condition requiring bidders to apportion the value of ongoing projects to the qualifying period. Clarification Notes 3, 5, 6, 7, 9, 16 and 19 addressed eligibility questions. Clarification Note 16, which specifically asked whether only the portion completed within the reference period should be considered, received an answer confirming eligibility for such projects under Section 1, Article 5.B.c.i.a without stating that apportionment of value was required. Where the specification accepted ongoing projects without

imposing an express apportionment condition, it would be contrary to the principles of transparency and legal certainty to impose such a condition after tenders were submitted.

- This Board addressed an analogous situation in PCRB Case 1692: CT2244/2021. In that case the Board held that where a Contracting Authority admitted ongoing projects as eligible but did not specify that only the value of services performed during the reference period would count, a bidder should not be penalised for relying on the project value as permitted by the clarification. The same principle applies here.
- The testimony of Ms Mariella Pulis confirmed that the Evaluation Committee took the total declared contract values into account for ongoing projects and verified that the aggregate met the €3,000,000 threshold. The Department of Contracts confirmed that even on a pro rata basis the aggregate value of the reference projects would have exceeded that threshold.

Collaborative projects

- The selection criterion did not require solitary performance or isolation of each consortium member's individual contribution to a reference project, in the absence of an express requirement to that effect. The fact that Reference Project No. 1 was performed by Synergy "in collaboration with another company" does not, without more, disqualify reliance on its declared value: the criterion required the bidder (here, the consortium relying on Synergy's experience) to demonstrate the requisite aggregate value of similar-nature services, not to isolate the precise contractual share of each participant in a third-party collaboration.
- The Evaluation Committee operated on the basis of self-declarations submitted through the ESPD process, and the testimony heard by this Board confirms that, while clarifications on eligibility were sought from various bidders, no clarification was specifically requested on value. The Board does not consider this a defect: the Evaluation Committee verified that the aggregate declared value met the threshold, and the Department of Contracts has independently confirmed that, even apportioning each reference project's value to the months falling within 2019–2023, the resulting aggregate still exceeds €3,000,000 by a substantial margin. In those circumstances, the absence of a value-specific clarification request did not deprive the Evaluation Committee of a sufficient basis to verify compliance, and the Appellant has not produced evidence establishing that the declared values were inaccurate, fabricated or materially overstated, which is what would be required to challenge a self-declaration accepted by an evaluation committee acting within the published criterion

The Board does not uphold this grievance.

Grievance 7: Word Count / Word Limit

The Appellant's case

- Following the Board's disclosure decree of 27 April 2026, the word counts of the Preferred Bidder's write-ups under Criteria C.1 and C.2 were ordered disclosed. The disclosed counts revealed that the Preferred Bidder submitted approximately 4,912 words under Criterion C.1 and 5,191 words under Criterion C.2, approximately 2.5 times the 2,000-word upper boundary of the stated range. The Appellant contends: (i) that the 1,000 to 2,000-word range constituted a binding upper limit; (ii) that the Preferred Bidder's excess constituted a breach of a mandatory tender requirement; and (iii) that it was contrary to equal treatment for the Evaluation Committee to take into account content submitted beyond that range while criticising the Appellant for insufficient detail.

Construction of the word-count provision

- Section 6.3 of the Evaluation Grid states: "Bidders are requested to submit their writeups of approximately between 1000 to 2000 words for each criterion. Documentation must include chart (e.g. Gantt Charts) or/and designs to elaborate better the presented write-ups."

- The word "approximately" is not superfluous. Its ordinary meaning in this context signals a guiding range, not an absolute ceiling. The tender dossier contained no language equivalent to "shall not exceed", "maximum", "any text beyond 2,000 words shall be disregarded", or "failure to observe the word range shall result in disqualification or a reduction in marks." No sanction of any kind, whether exclusion, mark reduction, or disregard of excess content was attached to exceeding the approximate range.

- The obligation to include charts, Gantt charts and designs alongside the write-up expressly contemplated content beyond prose words. A response of 1,800 words accompanied by a Gantt chart and architectural diagrams differs materially in informational content from 1,800 prose words alone. The word range was intended to structure and discipline the prose narrative; it was not the sole or principal measure of technical submission content.

- Clarification Notes 13, 15, 17 and 19 referred to "approximately" word counts and confirmed that charts and designs were to supplement the write-ups; Note 15 in particular records a bidder asking directly whether the range could be exceeded to provide sufficient detail, to which the Contracting Authority responded only by repeating the original "approximately between 1000 to 2000 words" language, declining to impose a firm ceiling even when squarely invited to do so. None of these notes imposed a strict maximum or stated a consequence for excess. Where the tender dossier does not itself provide for a sanction, the Board cannot create one after the fact. This is confirmed by the principle from Pippo Pizzo (C-27/15): an economic operator must not be excluded or

penalised for failure to observe an obligation that does not clearly arise from the procurement documents.

- The Department of Contracts further submitted, through Dr Bugeja, that even if the Appellant considered the phrase "approximately between 1,000 and 2,000 words" to be unclear, Regulation 262 of the PPR afforded it a pre-contractual remedy: a reasoned application before this Board, exercisable within the first two-thirds of the period allocated for the submission of offers, to correct errors or remove ambiguities in a particular term or clause of the procurement documents. No such application was made. The Board accepts that this materially weakens the Appellant's present submission that it was misguided by the wording and consequently constrained itself to a brevity it would not otherwise have chosen. A bidder who considers a term of the tender dossier to be genuinely unclear, and who is potentially disadvantaged by that lack of clarity, has a specific statutory avenue to seek correction or clarification before the submission deadline; having elected not to use it, and having proceeded to submit its write-ups on its own understanding of the range, the Appellant cannot now invoke that same uncertainty, after the event, as a ground to challenge the evaluation of a competitor who read the same wording differently and was not penalised for doing so.

- The Board has heard evidence from Ms Mariella Pulis, Mr Marius Mifsud and Ms Charmaine Bugeja, each of whom confirmed that the Evaluation Committee did not conduct a word count, did not treat content beyond the approximate range as inadmissible, and did not reduce marks for exceeding the range. The word count was not treated as a marking factor; submissions were read in their entirety.

The SAG ELV / Archus principle

- The tender as submitted, including content beyond the approximate word range, is the document that must be evaluated. Since the tender dossier contained no express rule requiring the disregard of content beyond the approximate range, the Evaluation Committee was not amending, supplementing or negotiating with the Preferred Bidder when it read that content: it was evaluating the tender placed before it. The obligation not to amend tenders post-submission does not require an evaluation committee to disregard part of what was submitted. On the contrary, to disregard submitted content in the absence of an express exclusion rule would itself be arbitrary and contrary to the principle of evaluating the actual offer. The same underlying concern — that the tender being evaluated must correspond to the one actually submitted, neither augmented nor diminished — underlies, by analogy, *SAG ELV Slovensko*, C-599/10, paragraph 40, and *Archus and Gama*, C-131/16, paragraph 31: just as a contracting authority may not use a clarification request to manufacture, in substance, a tender different from the one actually submitted, it should not treat part of a tender that was in fact submitted as though it had not been submitted at all.

Causal link between word count and the Appellant's score

- The Board accepts the submission of the Department of Contracts: the qualitative shortcomings identified by the Evaluation Committee under Criterion C.1, relating specifically to the case management lifecycle, the public portal interface, virtual hearings and criminal records management were substantive deficiencies in the content and integration of the functionalities described, not merely in the length of the response. These concerns are about the absence of sufficient explanation and substantive analysis on specific technical matters. Additional words addressing different or unrelated content would not have remedied those specific deficiencies. The Appellant has not established the causal link it asserts: it has shown only that its write-up was shorter, not that brevity caused the identified substantive concerns. These are distinct matters.

- The Appellant further submits that this irregularity is part of a broader pattern extending to Criteria B.1, B.4 and J.2, and that the Preferred Bidder's stated intention to resist disclosure of word counts under those criteria evidences a deliberate attempt to conceal systemic non-compliance. The Board does not accept that this argument requires it to undertake a comparative word-count exercise across other criteria. Given the Board's finding that the approximate word range carried no attached sanction and was not treated by the Evaluation Committee as a basis for exclusion or mark reduction even where exceeded, whether the Preferred Bidder's submissions under other criteria also exceeded that range is not, on this record, capable of establishing an independent illegality. The Preferred Bidder's litigation posture regarding further disclosure requests is a matter going, at most, to the scope of the Board's earlier disclosure decree, and does not itself constitute evidence of unlawful conduct in the evaluation that is separate from the word-count question already addressed above.

- The Board observes, as a matter of good drafting practice, that where a Contracting Authority intends to impose a strict maximum word limit with defined consequences for non-compliance, both the limit and its consequences should be stated without ambiguity. That was not done in this tender. The Appellant's concern is legitimate as a drafting observation for future tenders but does not constitute a legal defect on which the Board may intervene in the present proceedings.

The Board does not uphold this grievance.

Grievance 8: Criterion J.2 — Emerging Technologies, Artificial Intelligence, Machine Learning and Blockchain

Admissibility — time-bar

- The Department of Contracts submitted that this grievance was time-barred under Regulation 271 of the PPR, which requires grievances to be filed within ten days of receipt of the rejection letter. The Appellant received the letter of rejection on 17 February 2026; Grievance 8 was submitted on 14 May 2026 as part of the supplementary grievances following the disclosure decree. The Department submitted that the Appellant was aware of the J.2 evaluation from the outset and could have raised it within the ten-day period.

- The Board notes the Appellant's submission that Grievance 8 could only properly be framed following disclosure of its own official demonstration recording, which it contends was necessary to identify and substantiate the full extent of the evaluation error. The Board accepts that the original ten-day period would in principle have been sufficient to frame a grievance on Criterion J.2, since the rejection letter contained the justification and the score. However, the Board also notes that the supplementary grievance as framed refers in material part to matters arising from the disclosure ordered by the Board's own decree, including the ability to compare the Appellant's own demonstration against the TEC's justification.

- The Board considers that where a grievance concerns evaluation of a bidder's own submission and becomes more precisely articulable following disclosure of information that the contracting authority was required to provide, procedural fairness may require that the grievance be treated as timely if it could not have been fully articulated without that disclosure. However, the Board considers it unnecessary to resolve this question definitively, because Grievance 8 fails on the merits in any event.

What Criterion J.2 required

- Criterion J.2, as published in Section 6.3, awarded up to 2 marks for how "the Bidder is exploring and integrates emerging technologies such as artificial intelligence, machine learning, and blockchain for enhanced efficiency and security." The demonstration requirements in Section 6.3 (page 17) listed "The use of AI in supporting business and judiciary decisions" as a module to be verified, confirming that AI capability was a substantive element of the technical assessment. The Evaluation Committee awarded 1 out of 2 marks, with the justification: "The bidder, in contrast with the actual write-up provided, did not demonstrate any actual or future readiness for innovation technologies such as artificial intelligence, machine learning, and blockchain or automation features in supporting business and judiciary decisions and future innovation as requested."

The role of the demonstration in scoring Criterion J.2

- A preliminary point requires clarification. The tender dossier expressly provides that "no qualitative score is associated with the demonstration," and that a negative contrast between the demonstration and the written submission may render the offer "not being considered further", a binary consequence going to exclusion, not a graduated input into a score. The Appellant submits that the Evaluation Committee's justification, which states that the bidder "in contrast with the actual write-up provided, did not demonstrate any actual or future readiness," shows that the demonstration was itself used as the basis for reducing the J.2 mark, contrary to this framework. The Board does not read the justification this way. "Demonstrate" is used here in its ordinary evidentiary sense, consistent with the wording of Criterion J.2 itself ("Provide how the Bidder is exploring and integrates..."), and the justification, read as a whole, reflects the Evaluation Committee's assessment of the adequacy of the written submission, not an independent finding generated by the live demonstration. The demonstration's role, consistently with the framework addressed in Grievance 2 above, remained confined to verifying what had already been asserted in writing; it did not operate as a separate scoring event and was not relied upon to reduce the mark below what the written offer alone would have warranted.

The Board's assessment

- The Evaluation Committee awarded a non-zero score under J.2. This indicates that some relevant material was acknowledged. The assessment was therefore one of degree, whether the submission demonstrated the level of actual integration and future readiness required for full marks, not whether any AI-related content was present at all.

- The Appellant relies on features shown in the demonstration, specifically, the classification of case nature from a text description and the automated assignment of matters to judicial officers based on predefined parameters (availability, workload, experience). The Board accepts that these features were referenced in the written offer and shown during the demonstration. The Evaluation Committee's non-zero score is itself consistent with this.

- However, not every automated function constitutes artificial intelligence or machine learning within the meaning of an innovation and future-readiness criterion. An automated case assignment based on predefined parameters, such as availability and workload, may constitute rules-based workflow automation rather than machine learning in the technical sense. A case classification feature, while potentially useful, does not by itself demonstrate AI or machine learning readiness in an innovation criterion unless adequately substantiated by technical detail, for example as to the model, training methodology, data integration, governance, auditability or operational deployment architecture. The Evaluation Committee, acting within its technical margin of appreciation, was

entitled to assess whether the features shown and described crossed the threshold from conventional automation into AI or machine learning for the purposes of this criterion.

- As established in the General Legal Framework, the demonstration could only verify what the written offer contained. It was not a separately scored event and could not cure a written offer found insufficiently detailed on the AI integration point. The Evaluation Committee's finding that the written offer, taken together with the demonstration, did not demonstrate "actual or future readiness for innovation technologies" at the level required was a technical evaluative judgment falling within the committee's margin of appreciation.

- The Appellant has not produced expert evidence or any other sufficient basis to establish that the Evaluation Committee's assessment constitutes a manifest error. A dispute about whether specific automated features constitute AI or machine learning in the technical sense is precisely the type of question on which the Evaluation Committee which reviewed both the written offer and the live demonstration has primary evaluative authority, subject only to manifest error review.

- Applying the standard of review established in the General Legal Framework, and consistently with Steelshape and Attard, the Board is not satisfied that the Appellant has demonstrated a manifest error of assessment, unequal treatment, or the application of an undisclosed criterion under Criterion J.2. The score of 1 out of 2 falls within the Evaluation Committee's technical margin of appreciation.

- The Board notes that this assessment is confined to the Appellant's own challenge to the mark it received, and does not revisit or prejudge the distinct question addressed in the Board's treatment of the Preliminary Plea above, namely whether a stricter assessment of Criterion J.2 could have warranted disqualification. That question was not raised, pleaded or argued in this grievance and, for the reasons given above, does not fall for determination in this appeal.

The Board does not uphold this grievance.

The Board,

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

- Rejects the Preliminary Plea of the Preferred Bidder, on procedural grounds.
- Upholds Grievance 1 only in part, as set out above, and rejects it in all other respects. The Board's decree of 27 April 2026 and its clarification of 4 May 2026 stand.
- Does not uphold Grievance 2 (Criterion C.1).
- Does not uphold Grievance 3 (Criterion C.2).
- Does not uphold Grievance 4 (criminal proceedings / integrity concerns regarding Synergy International).
- Does not uphold Grievance 5 (ISO certification — Criterion F.3).
- Does not uphold Grievance 6 (reference projects / technical and professional capacity).
- Does not uphold Grievance 7 (word count / word limit).
- Does not uphold Grievance 8 (Criterion J.2 — emerging technologies, AI, machine learning and blockchain).
- Upholds the Contracting Authority's decision in the recommendation for the award of the tender to LexNova Consortium.
- Directs that, having regard to the fact that the Preliminary Plea and the substantive grievances on the merits were not upheld, and notwithstanding the partial upholding of Grievance 1 on a discrete procedural disclosure matter not going to the merits of the award, the deposit paid by the Appellant in connection with this objection shall not be refunded, in the exercise of the Board's discretion under Regulation 273 of the PPR.

Mr Kenneth Swain	**Mr Keith Victor Grech**	**Dr Ing. Damien Gatt**
Chairman	**Member**	**Member**