PUBLIC CONTRACTS REVIEW BOARD

Case 2256 – 672 / CT2274/2025 – Tender for the Regeneration of an Existing Car Park and Creation of a New Public Garden in Bormla, using Environmentally Friendly Methods and Materials

21st July 2026

The Board,

Having noted the letter of objection filed by Dr Carl Grech on behalf of Fenech & Fenech Advocates acting for and on behalf of C & F Building Contractors Ltd, (hereinafter referred to as the appellant) filed on the 27th April 2026;

Having also noted the letter of reply filed by Dr Audrey Marlene Buttigieg Vella on behalf of InariLaw acting for and on behalf of Project Green (hereinafter referred to as the Contracting Authority) and the Department of Contracts (hereinafter referred to as the DoC), filed on the 6th May 2026;

Having also noted the letter of reply filed by Dr Matthew Paris on behalf of DalliParis Advocates acting for and on behalf of Vassallo Builders Limited (hereinafter referred to as the Recommended Bidder), filed on the 7th May 2026;

Having heard and evaluated the testimony of the witness Perit Edward Magro (ID No. 564780M), company representative, as summoned by Dr Carl Grech for and on behalf of C & F Building Contractors Ltd (hereinafter referred to as the Appellant);

Having heard and evaluated the testimony of the witness Mr Johann Farrugia (ID no. 225874M), company representative, as summoned by Dr Carl Grech for and on behalf of the Appellant;

Having heard and evaluated the testimony of the witness Mr Keith Buttigieg (ID No. 8879M), chairman of the evaluation committee, as summoned by Dr Jonathan Thompson for and on behalf of Project Green (hereinafter referred to as the Contracting Authority);

Having heard and evaluated the testimony of the witness Perit Benjamin Vassallo (ID No. 559493M), evaluation member, as summoned by Dr Jonathan Thompson for and on behalf of the Contracting Authority;

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

Having noted and evaluated the minutes of the Board sitting of the 3rd July 2026 hereunder reproduced.

Minutes

Case 2256 Objection – 672 / CT2274/2025 – Tender for the Regeneration of an Existing Car Park and Creation of a New Public Garden in Bormla, using Environmentally Friendly Methods and Materials.

The Tender was issued on the 12th of October 2025, and the closing date was the 9th of December 2025.

The estimated value of the tender, excluding VAT, was €10,857,823.75.

A deposit of €50,000 was paid.

There were ten bids.

On the 27th of April 2026, C & F Building Contractors Ltd. lodged an appeal against Project Green – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 3rd of July 2026, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – C & F Building Contractors Ltd

Dr Carl Grech – Legal Representative

Dr Andrea Vella – Legal Representative

Mr Johann Farrugia – Company Representative

Mr Rennie Schembri – Company Representative

Perit Edward Magro – Company Representative

Contracting Authority – Project Green

Dr Jonathan Thompson – Legal Representative (Online)

Mr Keith Buttigieg – Chairman

Mr Owen Aquilina – TEC Secretary

Mr Dorian Bugeja – Evaluator

Perit Benjamin Vassallo – Evaluator

Ms Jessica Galea – Evaluator

Department of Contracts

Dr Marlene Buttigieg Vella – Legal Representative

Recommended Bidder – Vassallo Builders Limited

Dr Matthew Paris – Legal Representative

Mr Jonathan Buttigieg – Company Representative

Mr Pio Vassallo – Company Representative

Observer

Dr Alec Sladden

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2256 in the records of the PCRB. The Chairman identified the Appellant as C & F Building Contractors Ltd., the Contracting Authority as Project Green, and the Recommended Bidder as Vassallo Builders Limited.

The Chairman, Mr Kenneth Swain, opened the meeting by informing both parties that Mr Lawrence Ancilleri, a member of the PCRB, was participating online. Dr Carl Grech for C&F Building Contractors Ltd., and Dr Jonathan Thompson for the Contracting Authority both raised no objection.

The Chairman invited the legal representative for the Appellant to make the initial submissions.

Initial Submissions

Initial Submissions by Dr Carl Grech (for the Appellant)

Dr Grech stated that the appellants had two grievances: first, that the Programme of Works exceeded the period allowed by four days; and second, that the Department of Contracts determined that the Appellant's Method Statements were not compliant with Legal Notice 136 of 2019.

Dr Grech explained that, regarding the first grievance, the first item of the Programme of Works submitted concerned "*contract award and mobilisation*" with a period of three weeks. The Department of Contracts did not consider that the period of 106 weeks did not commence with the "*Contract Award*" but from the "*Commencement Date*". The matter could have been resolved through a clarification, and the appellant would not have been technically non-compliant.

Article 31 states that:

" *The order to start works will be issued within eight (8) weeks from last signature of the contract* ".

Referring to Article 11.1, sub-article 1 of the tender, he quoted:

"Following award of the Contract, a meeting shall be held between the Contractor and the CA supervisor and/or representatives to discuss any specific time issues. The Contractor shall provide an updated detailed Programme of Works, reflecting the decisions taken during this meeting. Refer to Article 15 of these conditions for more details about the Programme of Works".

He also quoted Article 15:

"Following award of the Contract, the Contractor shall provide an updated detailed Programme of Works in the form of a Gantt Chart, as per Article 11.11(A)(i) of these conditions".

He further quoted Article 15.4:

"Where the Contractor updates the Programme of Works, approval of an updated Programme of Works does not directly lead to an Extension of Contract Performance. Extension of Time shall be covered by a separate approval".

The appellants were not referring to mobilisation but to the part of the item concerning "*Contract Award*". They were disqualified because, according to the Contracting Authority's reasoning, they exceeded the period by four days.

In the second grievance, the CA stated that the submitted "*Method Statements*" did not fully meet the requirements of Legal Notice 136 of 2019 regarding the avoidance of damage to third parties' properties. The appellants submitted three Method Statements covering the demolition works, excavation works, and construction works. These were endorsed by the contractor's architect, who was the key expert on the project. All the Method Statements conformed to the requirements of L.N. 136 of 2019 and contained all the information requested in the tender.

The CA argued, in relation to the excavation method statement, that a description of the affected zone with a dimensioned plan had not been provided, and that the limits and depth of excavation, together with a shaded and dimensioned affected zone, were also not provided. These were not requirements of the tender, but requirements drawn from the Legal Notice, and the contractor would have needed further information to satisfy these requirements.

Such information related to the description of the adjacent properties and the geotechnical characteristics of the site. The contractor would only have this information after being selected. There is a high wall belonging to the Palumbo Shipyard adjacent to the site, and no geotechnical study was provided to the bidders. At that stage, the contractor could only state that he would observe the Legal Notice and could not provide a dimensioned plan.

The contract, in Article 11, states that both the *"Programme of Works*" and the "*Works Method Statements"* are to be updated versions of those submitted with the tender, within a three-week period from contract signing. These statements by the contractor would then be submitted to the BCA for approval.

There might be a need to stop the works, update the "*Method Statement*", and seek further approval from the BCA. The Works Method Statements have to be kept up to date throughout the entire duration of the works contract. The appellant should not have been disqualified when the CA had failed to provide sufficient information during the preliminary phase for the Method Statement that it was expecting.

A clarification would have resolved everything, and this was the only way to demonstrate that the appellant's submission was technically compliant.

Initial Submissions by Dr Jonathan Thompson (for the Contracting Authority)

Dr Thompson stated that both grievances were based on facts. The Board would determine whether the requirements had been complied with or not. The appellant failed to comply with the requirements of the tender and was now trying to remedy the deficiencies. If the Board finds that the appellant's submission did not satisfy the required criteria, then the decision of the Contracting Authority was justified.

Initial Submissions by Dr Matthew Paris (for the Recommended Bidder)

Dr Paris stated that the appellant was not contesting the offer submitted by Vassallo Builders but was instead trying to save his own offer. It was clear that the appellant's submissions did not satisfy the tender requirements. The appellant expected that a clarification should have been requested; however, he could have sought clarification of any difficulties during the tender period. It appeared that he had submitted a Works Method Statement that was insufficient.

He had to engage the necessary experts and provide the required assurances before the tender deadline. He exceeded the permitted period in his Programme of Works, to the disadvantage of the other bidders, who had submitted compliant bids.

Regarding the "*Programme of Works*", he exceeded the permitted period, and the Technical Evaluation Committee had no option but to disqualify the bid.

Witness Testimonies

Perit Edward Magro (ID No. 564780M), summoned by Dr Carl Grech

Perit Magro, an architect, has been working with C&F Building Contractors for the last twenty years and was the key expert on the project. He confirmed that he signed and endorsed the Works Method Statements in accordance with Legal Notice 136 of 2019 and the information available during the tender process.

This required the avoidance of damage to third parties. The excavation method statement involved many unknowns, and additional information was required to prepare a detailed statement. One had to consider the houses on one side, which are old and might have a basement. There was the Palumbo wall on the other side and a tunnel passing underneath the square. The condition of the rock also had to be tested.

No geotechnical report was included in the tender documents. Such a report provides three indications: the height of the backfill material until reaching the rock bottom, the quantity of fissures in the Franka Stone, and the strength of the rock that would eventually support the site. The absence of this information limited the Method Statement.

He quoted:

"Prior to the start of the Works the Contractor's Perit shall submit detailed Works Method Statements of each major activity whether directly controlled or subcontracted. The Works Method Statements shall be subject to review and approval of the Contracting Authority. Method Statements for BCA approvals are to be prepared on a when required basis".

This contract was not a "*design and build*" contract. The Perit had to take over from Perit Edwin Mintoff, who had made the application to the Planning Authority. Information such as the design parameters and assumptions was required, and that is why a detailed works method statement was requested during the contract.

The statements submitted by the appellants were preliminary method statements. According to the Legal Notice, a detailed statement would have been provided at the construction stage. Perit Magro could not check the condition of the houses at the tender stage or conduct a trial pit to assess the need for a detailed statement. In the bid, there is a distinction between what is requested in the tender and what will be submitted later. Perit Magro quoted the role of the Contractor's Perit:

"Shall be legally responsible as a Warranted Perit of the works and the site under the Contract and any surrounding third-party property and act as the Architect in Charge. The Perit needs to sign the Change of Architect form and submit to the Planning Authority upon Contract and prior to any works".

He said that there was a clarification about the key role of the Key Expert, and the answer by the CA was, and he quoted:

"Interested bidders shall be notified that the architect responsible for the construction drawings has to remain responsible for the structure. Said drawings are included within the permit documents. The structural drawings have been issued with the tender. The contractor is to follow these drawings".

The Perit had to comply with the plans of the civil package in the tender. One of the questions concerned the lines and levels of the excavations; however, these were already shown in the plans. He quoted:

"The bidder is to submit a works method statement as required by LN 136 of 2019 prepared, signed and endorsed by Contractor's Perit. The works method statement must clearly show how the contractor intends to carry out the works taking into consideration the nature of the site and adjacent properties, the programme of the works and the plant and equipment required to carry out the works".

These were all mentioned in the appellants' method statements. For example, the requirement to consider the nature of the site and the adjacent properties was addressed under the heading *'Description of Sites'*. The excavation notes and the construction notes requested were also included under the heading *'Description of Sites'*.

In their method statements, they had a section entitled 'Sequence of Works', where every item was listed individually. For example, under *'Plant & Equipment'*, they listed concrete pumps and mixers, mobile towers, scaffolding, etc.

Regarding the demolition, the witness exhibited a photo of the site and explained that the site has a bus stop and a small kiosk in the middle, with no risk to third parties.

The Chairman asked for a copy of the photo to be given to all parties and marked as C&F 1.

Regarding the excavation, he quoted:

"*The depths and limits of excavation, required by point 2(a) and (b) of the Fifth Schedule, which obliges the Perit to identify both the horizontal limits and the vertical depth of each part of the excavation*".

He said that Plan SED-001-00 was included in the civil drawings of the tender, and the appellant agreed with this, as stated in their Method Statements.

Dr Carl Grech quoted:

"The excavation method statement lacks the following:

a) Description of the affected zone with a dimensioned plan.
b) Limits and depths of excavation.
c) Shaded and dimensioned affected zone".

Perit Magro explained the procedure for the BCA. A Method Statement is not something cast in stone. No changes can be made unless one has the approval of the BCA. A preliminary method statement is prepared first, and then it is expanded with more information, which is not available at the tender stage. For example, Perit Magro did not know the condition of the rock in the tunnel or the phasing of the excavation.

Perit Magro did not think that the lack of information could have been resolved through a clarification because the investigations required a long time. Dr Grech quoted:

"A shaded representation of the affected zone, as expressly required by point 2(c) of the Fifth Schedule, which distinguishes between the excavation footprint and the wider zone of potential structural influence".

The witness said that this was the same as what had been written in a letter sent in April.

Dr Grech quoted:

"A signed declaration by the responsible Perit stating whether ground improvement or underpinning is required, and if not, providing reasons, as expressly required by point 7 of the Fifth Schedule".

The witness said that he could not provide a signed declaration when he did not know whether ground improvement or underpinning would be required.

Perit Magro quoted the following passages from the Contracting Authority's reply:

"The Sixth Schedule expressly requires that such checks be either documented or, where information is unavailable, accompanied by a formal declaration whereby the responsible Perit assumes full professional responsibility.

Structural checks demonstrating that the existing surrounding structures are capable of sustaining any additional loads imposed by the proposed construction works".

He said that this case was different because the area was a stand-alone structure.

Cross-examination by Dr Jonathan Thompson

Dr Thompson put it to Perit Magro that the Appellant's Method Statements were generic template statements which did not adequately address the particular project. Perit Magro disagreed and maintained that they were preliminary Method Statements addressing all the requirements applicable at tender stage.

Dr Thompson asked where it was stated that preliminary statements had been requested.

The witness said that Clause 11.11, Number 3, in the Special Conditions stated this.

Dr Thompson insisted on knowing where, in the tender, an inferior method statement had been requested.

The witness said that their method statements were based on the information provided at the tender stage. In fact, the tender stated, "*these will be detailed at the construction phase*".

He was expecting to receive more information on the Palumbo wall, the surrounding houses, and the condition of the tunnel.

Cross-examination by Dr Matthew Paris

Dr Paris confirmed with Perit Magro that the Appellant had not sought clarification during the tender period.

Mr Johann Farrugia (ID no. 225874M), summoned by Dr Carl Grech

Mr Farrugia was a Director of C&F Building Contractors. He said that the Programme of Works did not exceed the stipulated period because every project starts from the Commencement Notice. The first item was clearly Contract Signing and Mobilisation therefore, the commencement would take place in between. The issue of the four days could have been clarified through a request for clarification.

C&F has been contracting for the last 30 years, and the witness has worked with the company since the beginning.

Dr Grech asked what usually happens with contracts of this sort.

Dr Thompson intervened, objecting to the hypothetical question and referring to the clear facts of the issue.

The Board noted that the grievance was clear and that it had to decide on the appeal in question.

Dr Grech referred to Article 11.11 and stated that an updated Programme of Works was to be submitted within three weeks of contract signing.

The witness noted that, once the tenderer becomes the contractor, a new sequence for the Programme of Works will be discussed within the time stipulated in the tender. It is at that stage that all the requirements of the contract become apparent, whereas before then, one can only make assumptions.

Cross-examination by Dr Jonathan Thompson

Dr Thompson confirmed with the witness that the Gantt Chart presented, dated 2 March 2026, indicated a duration of 535 days.

Re-examination by Dr Carl Grech

Referring to the Gantt Chart, the witness said that the duration of the project starts from the commencement, which means that the project had not yet started since there had been no contract award.

Mr Keith Buttigieg (ID No. 8879M), summoned by Dr Jonathan Thompson

Mr Buttigieg, the Chairman of the Evaluation Committee, stated that, regarding the Programme of Works submitted by the appellant, the period of 106 weeks exceeded that stipulated in Article 32. There was no ambiguity. It totalled 747 calendar days, amounting to 106 weeks and 4 days.

The inclusion of a mobilisation period indicated that the contract would have commenced.

Cross-examination by Dr Carl Grech

Dr Grech agreed with the witness that the contract commenced on the commencement date, as stipulated in the Special Conditions.

Perit Benjamin Vassallo (ID No. 559493M), summoned by Dr Jonathan Thompson

Perit Benjamin Vassallo was one of the evaluators on the Evaluation Committee. He noted that the method statements were requested in order to assess the tenderer's detailed methodology and assumptions, and to evaluate their relevance to the Programme of Works. Any necessary information could have been obtained.

Information such as the geotechnical information report and the geotechnical design report could have been obtained from the geotechnical map of Malta, which is available online. The plans already available could also have been resubmitted.

L.N. 136 of 2019 contains schedules indicating the information to be submitted in the method statement for the BCA. The plan in Schedule 5 shows a section of the adjacent properties together with the excavation depths; however, this was not submitted.

The Evaluation Committee could not determine which properties would be affected. The tunnel was also a third party, and the associated risks had to be analysed. One could not assume whether the condition was good or serious, or whether underpinning might be required.

The Programme of Works reflects what is stated in the method statement. There was a lack of information, and the risks relating to the demolition could have been declared. Liability could have been assumed, and the method statement updated accordingly. All the items mentioned could have been provided at that stage, based on the information available.

Cross-examination by Dr Carl Grech

Dr Grech noted that Perit Vassallo had referred to the geotechnical map of Malta; however, he stated that it only identified the type of rock. Perit Vassallo replied that the map also showed the fissures, fault lines, and their interpretation. The presence of cavities could have been inferred from the fault lines shown on the map.

The risk associated with making assumptions would be greater because of the limited information available; however, one could still prepare a report as part of a method statement. The map indicated the vicinity of the cavities.

Dr Grech stated that the geotechnical map of Malta did not indicate the amount of backfill material above the rock.

Perit Vassallo stated that, based on the information provided, one could make assumptions. The BCA would require verification through the Perit's declaration. The plan included in the document package provided sufficient information to identify the affected excavation zone. This plan could have been annexed to the Perit's report.

The Method Statement referred generally to the submitted drawings but did not identify the particular plan relied upon. Perit Vassallo stated that the drawing referred to in the Method Statement was not the affected-zone plan required by L.N. 136 of 2019. He maintained that the relevant plan contained in the tender documentation could have been used to identify the affected zone, the affected properties and the associated risks and conditions.

Perit Vassallo stated that the shaded and dimensioned affected zone was determined by reference to a 45-degree line, thereby identifying the area deemed to fall within the affected zone under the law. The required affected-zone plan had not been submitted, and he disagreed that its identification depended merely on assumptions.

Final Submissions

Final Submissions by Dr Carl Grech (for the Appellant)

The position of the Contracting Authority regarding the first grievance was that, since the Programme of Works submitted exceeded the prescribed period by four days, it did not comply with the tender requirements. The duration of the contract starts from the date of the commencement notice. The Programme of Works submitted included a pre-commencement period before the commencement notice, and therefore this period should not have been included in calculating the duration of the Programme of Works.

Mobilisation takes place after commencement. The mobilisation period should have been computed within the 106 weeks; however, the period before the contract award should have been excluded, as it was a pre-commencement period. Had a clarification been requested, the appellant would have clarified the matter with the Contracting Authority, and the submitted programme would have remained precisely the same.

In the clarification, the appellant would have explained how part of the three-week period formed part of the 106 weeks. According to the Contracting Authority, the Programme exceeded the limit by four days on a two-year contract. The Authority could not disqualify the appellant without first seeking clarification.

Regarding the method statements, and based on the testimony of both Periti, the Contracting Authority was expecting a tick-box exercise based on assumptions. This was confirmed by Perit Vassallo, who stated that, where information was unavailable, assumptions had to be made. The appellant's position regarding the method statements was that they were intended to comply with all the requisites established by law and to be updated when more information became available.

The appellant was excluded because of a lack of information that the Contracting Authority itself did not possess, based on assumed information, and on a prerequisite that went beyond what was requested in the tender.

Our position was that we understood the tender, submitted satisfactory documentation, took into consideration the Legal Notice requiring the method statement to be updated when further information became available, and acknowledged our legal obligation that the method statements had to be approved by the BCA.

The tender did not permit the contractor to carry out investigations at the tender stage. The appellant was disqualified for a lack of information and for something that could not have been done. Article 7 of the Legal Notice requires excavation, demolition, and construction method statements to be submitted two weeks before the commencement of any works.

In this context, the contractor submits the preliminary documentation to the Contracting Authority. Most of the matters referred to were not tender prerequisites but legal requirements, which state "*not later than two weeks before commencement of works*".

Article 7(4) of the Legal Notice states that information relating to contiguous structures and adjacent properties is also required two weeks before the commencement of the works.

The appellant submitted the cheapest bid, while the recommended bidder's offer was approximately €780,000 more expensive. Could the Contracting Authority exclude the appellant without seeking clarification and award the contract to a tenderer whose bid was approximately €780,000 higher?

Could the Contracting Authority exclude us without seeking clarification and award the contract at almost €800,000 more? We submit that it could not. In these circumstances, we respectfully submit that our appeal should be upheld.

Final Submissions by Dr Jonathan Thompson (for the Contracting Authority)

Dr Thompson stated that the Board was there to apply and interpret public procurement law and the manner in which public tenders and bids are evaluated. Both grievances were based on facts, and the Board had to determine whether the appellant was compliant where the prescribed period had been exceeded. The second grievance concerned whether the documents submitted satisfied the tender requirements.

The period for performance of the contract could not exceed 106 calendar weeks. Clause 5(c)i, Note 3, required a work plan and Programme of Works in the technical offer in the form of a Gantt Chart. This Gantt Chart could not indicate a project duration exceeding that specified in Article 32.

The witness confirmed that the days indicated commenced from the commencement date. The appellant sought to create ambiguity by submitting a Gantt Chart using terminology relating to contract award and mobilisation, without deducting those milestones from the programme proposed by the bidder.

The commencement date was clear. The appellant was attempting to hold the Contracting Authority responsible for, and to remedy by way of clarification, shortcomings in its own bid. That was their decision. Under Note 3, rectification was not permissible. A clarification could not amend what had already been submitted. There was no legal basis that could oblige the Contracting Authority to do so.

One had to adhere to the rules, and an error could not be converted into a right to seek clarification.

The method statements were required, and every bidder was obliged to comply with those requirements. The appellant had the right to seek clarification before the closing date for submissions and to remedy anything that was unclear. However, this was not done, and a document was submitted as a method statement consisted merely of a declaration by the Perit.

The tender document requested three method statements, and the Perit on the Evaluation Committee explained their relevance. Every method statement is based on assumptions that are subsequently refined upon commencement of the works. The appellant considered that certain information did not need to be provided and argued that, since L.N. 136/19 requires the method statement to be submitted two weeks before commencement, they were not obliged to submit the required document.

The method statement provides the criteria, parameters, and description of what is required. The appellant questioned whether such a method statement was necessary, despite it being expressly required by the tender. That was their decision. They did not even use the plans that had been provided.

The fact that they were excluded because they were technically non-compliant did not justify selecting them merely because their price was lower. That would amount to setting aside the technical compliance required by the tender in favour of a lower price. Public procurement requires bidders to comply with the tender requirements. In this case, the Gantt Chart contained clear dates, and the method statements were required to comply with L.N. 136/19.

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

Dr Paris stated that the Programme of Works submitted by C&F exceeded the prescribed time limit and that this should result in the exclusion of the bid.

Referring to Green Building Solutions Ltd v Festivals Malta Agency et (Court of Appeal, App. Ċiv. 246/25/1, 11 November 2025), Dr Paris submitted that, where the Contracting Authority established a fixed time limit, offers had to comply with that limit. He distinguished that case on the basis that the Programme of Works there was shorter than the permitted maximum, whereas C&F's Programme of Works in the present case allegedly exceeded the stipulated period.

Allowing otherwise would create a disproportionate situation compared with all the other bidders who complied with the prescribed time limit. The Contracting Authority determined the time allowed, and bidders were obliged to comply with it. C&F could have sought clarification under Regulation 262 regarding the time limit.

All bidders were obliged to comply with the 106-week period. The Evaluation Committee had to decide on the basis of the documents submitted under Note 3, which could not subsequently be altered. In reality, C&F were not compliant, and the appeal should therefore be dismissed. They could not expect the Evaluation Committee to solve their problem.

Regulation 262 states that the offer must be compliant *ab initio*, although Notes 1, 2, and 3 allow certain adjustments. However, Article 5 of the tender does not permit adjustments. Page 8 states "*must abide and have a duration as specified by article 32",* which requires compliance with the 106-week period.

There appeared to be an impression that this was merely a contract performance criterion, to be complied with once the bidder became the contractor. That was not the case. The bidder had to comply with the tender requirements at the submission stage. That is what all the other bidders did.

C&F took a risk, and that risk carried consequences. Perit Magro described their work method statement as preliminary. This was not what the tender requested, and therefore they were not compliant.

Dr Paris referred to Public Procurement Note 40 (PPN 40), which provides for clarification where submitted information is ambiguous, contradictory or insufficiently explicit. He submitted that those circumstances did not arise in the present case.

Dr Paris stated that the appellant's position throughout the hearing amounted to "*help me to save my bid*". The work method statements lacked the required information because they were described as preliminary, and the Programme of Works exceeded the prescribed time limit. The fact that their bid was cheaper was irrelevant.

The principle of proportionality, as applied in the Evans Building case, requires that the information requested *ab initio* be contained within the offer itself. In this case, all three work method statements lacked information that could not be found elsewhere in the submission.

At one stage, the witness stated that insufficient information had been provided to prepare the work method statements. Later, the argument was that there was no need to refer to the excavation notes. The question remained: was the offer compliant with the tender requirements? If not, then the offer could not be saved.

Replica by Dr Carl Grech

Dr Grech stated that their offer was compliant and had been incorrectly classified as technically non-compliant. Their offer was unlawfully rejected and should have been upheld. Dr Grech emphasised that they had not made a mistake and did not require saving; rather, they were prepared to submit any missing documentation. It had not been submitted because the necessary information had not been provided by the Contracting Authority.

The submissions made by C&F were compliant. The Festivals Malta case concerned the adequacy of the Programme of Works, and the argument in that case was entirely different. In the present case, the Programme of Works had to commence from the commencement date and run for 106 weeks.

Conclusion of the Hearing

The Chairman, Mr Kenneth Swain, thanked all the parties present and formally concluded the hearing.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 3rd July 2026.

Having noted the objection filed by C&F Building Contractors Ltd (hereinafter referred to as the Appellant) on 27th April 2026, refers to the claims made by the same Appellant with regards to the tender of reference CT2274/2025 listed as case No. 2256 in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Carl Grech
Appearing for the Contracting Authority:	Dr Jonathan Thompson
Appearing for the Recommended Bidder:	Dr Matthew Paris

Whereby, the Appellant contends that:

a) First grievance – The appellant's submitted programme of works does not really exceed the 106 week period, and the department of contracts should have requested a clarification in this regard.

The first ground for refusal stated by the Department is that the bidder's PoWs exceeds the period allowed 106 weeks by 4 days as specified under Article 32 of the Special Conditions. Article 32 of the Special Conditions stipulates the following: *"The performance period of the Contract shall be one hundred and six (106) calendar weeks from the Commencement Date indicated on the Order to Start Works, and subsequently five (5) year maintenance services commencing from date of provisional acceptance."*

In this regard, the Appellant contends that the first reason given for the refusal of the awarding of the tender is only a result of the Contracting Authority's own failure to properly interpret Article 32 of the Special Conditions and to make use of the measures provided for in the Tender Document and General Rules. This is being said since the duration of 535 days stated by the Appellant in the PoWs includes within it the duration for "contract award and mobilisation", i.e. the first project-task category from the 30 tasks outlined in the Programme of Works. It therefore results that the Authority's conclusion that the Appellant's PoWs exceeds the 106-week timeline by 4 days is factually incorrect and stems from a mistaken reading of the POW and Article 32 of the Special Conditions, which in turn makes it clear that the 106-week period is to start running from Commencement Date, and therefore does not include the contract-award period, which precedes the commencement date.

Therefore, this matter could have easily been resolved by means of requesting a clarification, through which the Appellant would have had the opportunity to explain and clarify the above to the Authority. The fact that the Authority failed to request a single clarification in this regard should not lead to the Appellant being deprived of this tender, particularly since a clarification would have amply demonstrated to the Department that the 535 total days listed by the Appellant in its PoWs included a period that precedes the Commencement Date, which therefore should not have been computed towards the allowed period of 106 weeks.

Therefore, a clarification would have been the perfect remedy for both the Appellant as well as the Authority; all the Contracting Authority truly required on this point was that the Appellant at least explains how much of the 3-weeks duration pertains solely to the contract-award period, which period preceeds the commencement date, and which period does not fall within the 106-week period. Article 32 of the Special Conditions specifically states that this period is to start running from Commencement Date.

The fact that the Authority failed to request a clarification on this point led to a violation of one the central conditions of this tendering process, namely that the tender is awarded to the cheapest bidder. Here the Board is invited to give the appropriate consideration to the fact that the bid of the recommended bidder (Vassallo Builders Limited) is valued at circa €780,000 more than the bid submitted by the Appellant Company. To consider an alleged excess of 4 days to a 530-day period as a sufficient ground to spend an extra €780,000 out of the public coffers is outright unreasonable, unjust and grave.

In light of the above, the appellant invites this Honourable Board to determine whether the acceptance of another tender which costs circa €780.000 more than the Appellant's offer is proportionate or reasonable when considering that one of the main grounds behind this decision was the alleged excess of the imposed time-limit by 0,0075% - an excess which as already outlined above should not have even been considered in light of the wording of Article 32 of the Special Conditions.

In conclusion on this ground, the Authority's decision to refuse of the awarding of the cheapest tender on an incorrect interpretation of the contract was highly disproportionate, unreasonable, contradicts the Department's duty to award the bid to the cheapest bidder, and in any event, such ground does not even subsist due to Article 32 of the Special Conditions limiting the performance period to start running only from the Commencement Date and not date of contract award. This lack of proportionality becomes even more evident when considering that Clause 15.2 imposes on the chosen contractor to provide an updated detailed Programme of Works.

This requirement is then reiterated in Clause 11.1 of the Tender Document. Furthermore, the submitted programme of works demonstrates a total duration well within this overall timeframe. Thus the identified deviation arose solely from the incorrect interpretation of specific start and finish dates or calendar alignment, rather than a substantive exceedance of the intended contract period. The programme submitted clearly demonstrates the Contractor's capacity to complete within the intended timeframe, and the slight variance ought to have been the subject of a request for clarification rather than outright disqualification. Thus disqualification on this basis ought to be considered disproportionate, particularly when assessed in conjunction with an otherwise complete and compliant technical submission.

b) ***Second grievance – The department of contracts was incorrect to determine that the appellant's method statements were non-compliant with legal notice 136 of 2019, or with the tender requirements overall.***

Without prejudice to the first aggrievance, the Appellant also humbly contends that the method statements submitted by it during tender stage should have been deemed technically compliant, since these were sufficient and in conformity with what the Contracting Authority is requesting from the bidders at the present stage of the tender process. The tender required three works method statements, catering respectively for demolition works, excavation & piling works, and construction works, copies of which are herewith attached and marked as DOCS. C&F 2, 3 and 4. These method statements were prepared and endorsed by the Contractor's Perit. demonstrating how the works would be carried out having regard to the nature of the site, adjacent properties, sequencing, and plant/equipment. The appellant's submittal addressed these aspects, including site constraints, proximity to third-party structures, utilities, sequencing, H&S controls, and QA measures. The Contracting Authority argues that the submitted method statements do not fully meet the requirements set out in Legal Notice 136 of 2019. At the outset one needs to note that all three method statements submitted to the Contracting Authority all expressly declare that the method statements are subject to all the requirements of L.N. 136 of 2019 and all the prerequisites indicated in the tender document.

However, the Evaluation Committee appears to have assessed the submissions against a significantly higher level of detail (e.g. dimensioned excavation zones, excavation depths, geotechnical interpretation, underpinning strategy, and supporting drawings), which were not explicitly requested within the tender documentation and which no tenderer could have reasonably submitted correctly at such a preliminary stage of the process. Thus, the above results from overly restrictive or disproportionate interpretation of the requirements, particularly because updated method statements are contractually required post-award at inception stage.

A reading of L.N. 136 of 2019 shows that this legislation is a generic framework, and does not really lay out the detailed requisites outlined by the Authority in the Recommendation Letter of the 17th of April 2026.

In fact, the Authority outlines a number of bulleted requirements which according to it were not satisfied in the method statements under scrutiny. However, Regulation 7 of L.N. 136 - which treats the submittal of method statements - in turn requires that: *"7. (1) Not later than two (2) weeks before the commencement of any works of excavation demolition or construction, the perit in charge of the project shall submit the relative method statement in accordance with the Fourth, Fifth and Sixth Schedules"*

The Authority's list also includes several conditions relating to the description of adjacent properties, and the manner in which the works are to be carried out in light of the construction site's surroundings. However, similarly to subsection (1).

Therefore, it results that L.N. 136 necessitates the submittal of the necessary method statements latest by 2 weeks prior to the Commencement of Works. On this basis alone, one questions how the Authority can justify requesting a high-level and complete works method statements at evaluation stage, when L.N. 136 of 2019 itself expects that the relative method statements are to be completed just a few weeks prior to the commencement date (as opposed to the date of contract award).

Therefore, the level of detail and information expected by the Authority at such a premature juncture of the tendering process is excessive, disproportionate and unreasonable in light of the wording of L.N. 136 of 2019 which clearly indicates that the high-level method statements expected by the Department may be submitted at a much later stage, specifically by not later than 2 weeks before the commencement works.

This is further demonstrated by the fact that the Fourth, Fifth and Sixth Schedule start off by requiring the Contractor to state The Commencement date of the works". However, how could the Appellant at tender stage have been expected to state the Commencement Date when according to Article 32 of the Tender Document, this date is only given by the Contracting Authority in the order to start works, which order is only given within 8 weeks from last signature of the contract.

More specifically, the Items 4(b) and (d) of the Fifth Schedule consist of activities which in practice only take place after the awarding of the tender. For instance, Item 4 (b) mentions ground investigation reports whereas 4 (d) mentions the commissioning of such reports as well as the requirement of borehole drilling - which can only take place after the commencement of works. Therefore, the Schedules are clearly drafted in a manner showing that the legislator does not expect the prospective contractor - at tender stage - to list each and every single detail outlined in Schedules Four, Five and Six, just as the Contracting Authority expected from the Appellant. The above viewpoints are also substantiated by Regulation 26 of the L.N. which provides for exemptions from submittal of the method statement.

In light of Regulation 26, what sense does it make for the Authority to demand such a level of detail in the method statement, when the architect responsible may certify that a method statement is not even required at all, and this just before the start of works?

The above amply demonstrates that the Authority has jumped the gun by imposing such onerous conditions relating to the method statements at a stage where the legislation cited by the Authority itself makes it clear that the evaluation period of the tender stage is too early to demand absolute and total compliance with all of the requirements of the Legal Notice.

Moreover, and without prejudice to the foregoing, it was incorrect for the Authority to state that "the submitted method statements do not fully meet the requirements of LN 136 of 2019", and this primarily since in all of its submitted method statements, the Appellant had categorically labelled its project as the *"Regeneration of an Existing Car Park and Creation of a New Public Garden in Bormla Prepared in accordance with LN 136 of 2019"*.

More specifically, in the Excavation & Piling Works method statement, the Appellant declared that *"All works shall follow the tender drawings. specifications, and the requirements of LN 136:2019"* vide page 1 of that method statement under the Scope of Works heading. In the Construction Works method statement, the Appellant declared that one of the responsibilities of Perit Edward Magro is to: *"Ensures compliance with LN 136 of 2019"* as seen in page 2 of the same method statement.

In addition to the above, the Appellant company did indeed submit sufficient detail and information in all its method statements, and this in a manner consistent with both the tender document and the Regulations of L.N. 136 of 2019. To demonstrate this, the Appellant will highlight each of the bulleted reasons given by the Authority, and rebut each reason by citing from the respective method statements and the Legal Notice itself: *a. "The bidder had to submit a works method statements as required by L.N. 136 of 2019 prepared, signed and endorsed by Contractor's Perit"*

As already stated above, not only were all the method statements prepared, signed and endorsed by an architect (Perit Edward Magro), but each statement contained unequivocal declarations that the entirety of the project would be carried out in compliance with L.N. 136 of 2019. In addition, the statements make it clear that the Perit and Health & Safety Officer are tasked with ensuring that the project is carried out in full compliance with the same Legal Notice. *b. The method statements do not clearly show how works will be carried out considering site nature, adjacent properties, programme, and required plant/equipment*

Here the Appellant once again highlights Regulation 7(4) which makes it clear that specifications in accordance with the Fourth, Fifth and Sixth Schedule are required only by not later than 2 weeks before the commencement of works, therefore at a stage far more advanced than the current period considering that the order to start works has not yet been issued since this must be issued within 8 weeks from last signature of the awarding contract (per Article 32 of the Tender Document), which contract cannot yet be signed.

In any case, the method statements identify the precise manner and methods in which the works will be carried out while taking account of the site's unique risks and challenges, as well as the plant and equipment to be used. Furthermore, the programme is clearly laid out in the PoWs, and every method statement contains a 'Sequence of Works' section. *C. The Demolition method statement fails to identify the risks and measures to safeguard stability of ongoing works and contiguous structures/terrain*

The method statement for Demolition Works clearly acknowledges the particular risks intrinsic to this project in the 'Description of the Site' section of the same statement. Therefore, it follows that the methodology of soft and hard demolition and methodology all detailed in pages 2 and 3 of the method statement have been considered in light of the risk factors specified in the same document. d. The excavation method statement lacks the following: *a) Description of the affected zone with a dimensioned plan. b) Limits and depths of excavation. c) Shaded and dimensioned affected zone. Furthermore, within the Method Statement, the ground conditions description missing, including geological map data or relevant surrounding information.*

It is clear that the above can only be reliably carried out, ascertained and obtained after the procurement stage and after the signing of the contract. This arises from the Tender Document itself, as per Article 35.8.

Article 35.9 similarly provides for a 30% increase in works for a wide list of reasons, which cater for new issues of a geological nature, re-measurements, and changes in the work methodologies, including *"Additional works that are complimentary in nature to those originally envisaged and required in order to execute the project in its entirety". "Additions which would render the project more economically feasible or cost optimal",* and *"Changes instigated through developments of the process in functional requirements within the original scope of works as requested by the project beneficiary during the course of works"*

Therefore, Articles 35.8 and 35.9 clearly indicate that the necessary excavation works are conditional on actual ground conditions which may only be properly ascertained during execution of the project which will take place upon commencement of the works. At tender stage, the Contractor can only describe the approach, but cannot provide finalised geotechnical data, since excavation limits are dependent on actual discovered conditions, and premature fixing of dimensions would be speculative if not potentially misleading.

The fact that under Art. 35.9 there may be *"minor revisions in the original plans resulting from measurements re-take"* is further proof that obtaining the requested information in the excavation method statement is premature and impractical and the tender evaluation stage. *e. A geotechnical investigation was not mentioned to be carried out within the methodology submitted.*

As previously stated, it was expressly declared that the method statements were being carried out in line with L.N. 136 of 2019, which caters for the requirement of carrying out geotechnical investigations prior to the start of excavation works. Additionally, and without prejudice to this, the Evaluation Committee has failed to request even a clarification about this point. Furthermore, this statement made by the Authority erroneously presupposes that a geotechnical investigation is mandatory even at tender stage. Such assumptions arise neither from the Tender Document nor from S.L. 136 of 2019. Since there is no clause necessitating a geotechnical investigation prior to submitting the tender bid, such a requirement cannot be used to justify refusal to award the tender to the Appellant.

Again, this is a question of clarification and therefore should not have been automatically applied as one of the grounds for refusing to award the Appellant with the tender contract. Moreover, the Appellant's method statements do not exclude or deny the possibility of either ground improvement or underpinning. In any event, attender stage, and prior to excavation and exposure of foundations, such determination cannot responsibly be made. The Appellant's methodology does not exclude underpinning but rather reserves that decision to the execution stage under Perit supervision in accordance with Articles 35.8 and 35.9 of the Tender Document. *g. The proposed excavation methodology is not supported by documents showing phasing, starting point, excavation levels, or safeguards against instability of structures in the affected zone*

This condition imposed by the Contracting Authority presumably arises from Item 8 of the Fifth Schedule, which states:

8. proposed methodology of excavation, supported by any other documentation as may be required which should specify:

(a) where the excavation is to be started from;

(b) any phasing required to achieve the required rock buttressing;

(c) the levels that should be attained in each stage of the excavation;

(g) the precautions and safeguards to be adopted:

(i) against instability of structures falling within the affected zone;

As seen, Item 8 clearly makes mention of *"other documentation"* only *"as may be required"*. While the Contracting Authority has deemed the provision of documentation to be determinative, the wording of Item & shows that this is only provisional. Therefore, neither can Item 8 be used as a justification to refute the awarding of the tender. *h. The building works method statement fails to include precautions and safeguards for contiguous structures*

With regards to building/construction method statement, the Sixth Schedule makes mention of contiguous structures under Item 5(a) and (c): *5. Proposed methodology, supported by any other documentation as may be required, which should specify: (a) the risks involved after taking account of the structural condition of the construction itself and contiguous structures; [...] (c) measures to safeguard the stability of the works being undertaken, the stability of contiguous structures or terrain as the case may be.*

The Construction method statement actually does contain a list of the risks specific to this project, as evidently seen in the "Description of the Site" section of the document, which lists the following risk factors:

Description of the Site

The site is situated within a compact urban area in Bormla, characterised by:

• *Adjacent residential buildings*

• *Narrow road access in Triq il-Monsinjur Panzavecchia and nearby streets*

• *Existing public pathways that must remain safe*

• *Proximity to third-party structures*

• *Limited storage area requiring just-in-time delivery*

• *Existing underground utility networks*

In conclusion, Legal Notice 136 of 2019 governs execution, and therefore its provisions should not be utilised for the purposes of deciding on tender eligibility. This requirement is even more disproportionate when considering that Clause 11.11 of the Tender Document.

Additionally, by creating a requirement that was not in per se one of the requirements of the Technical Specifications, the Evaluation Committee was not only not acting proportionately, as the goal posts were effectively moved ex post facto but were further, through this request illegally excluding tenderers who were in effect technically compliant and unfairly giving an advantage to other parties, who as is evident from the offers submitted, could only then participate with items of furniture that are already in production, but at higher rates.

The evaluation committee in this case has not taken any measure to ensure that competition is not distorted by requesting documentation that was not required in the tender, Rather, when taking note of the technical specifications, there should have been no doubt that by requesting this documentation it was giving an advantage to some parties over others, with substantial potential for distortion of competition.

This Board also noted the Contracting Authority's and DoC's Reasoned Letter of Reply filed on 6th May 2026 and its verbal submission during the hearing held on 3rd July 2026, in that:

a) *First grievance - Programme of Works exceeding 106 calendar weeks*

<u>*Mandatory nature of the execution period and evaluability of the Programme of Works*</u>

Article 32 of the Special Conditions lays down, in clear and unequivocal terms, a mandatory and non-derogable execution period for the works forming the subject of this tender. It expressly provides that "the performance period of the Contract shall be one hundred and six 106) calendar weeks from the Commencement Date indicated on the Order to Start Works." This provision is framed in absolute terms and does not admit of any qualification, flexibility or tolerance. The maximum duration of one hundred and six (106) calendar weeks thus constitutes a fixed constraint imposed uniformly on all bidders and forms an essential parameter of the procurement. This mandatory constraint is reinforced and operationalised at evaluation stage by Clause 5(C)(i)(3) of the Instructions to Tenderers, which obliges bidders, as part of their Technical Offer, to submit a detailed Workplan and Programme of Works in the form of a Gantt Chart produced through critical path analysis. That clause further provides, in express terms, that the Programme of Works "must abide by the constraints indicated in the technical specifications and have a duration as specified in Article 32 of the Special Conditions." The submission of a Programme of Works compliant with the stipulated maximum execution period is therefore not aspirational or indicative in nature, but a mandatory requirement expressly linked to Article 32 and made subject to technical evaluation. The Programme of Works submitted at tender stage constitutes an evaluation document forming an integral part of the Technical Offer and must be assessed strictly as submitted. Neither the tender documents nor the applicable procurement rules permit the Contracting Authority or the Evaluation Committee to treat the Programme as provisional, adjustable or subject to subsequent reconfiguration for the purposes of compliance. Any reliance on post-submission reinterpretations, exclusions of activities, recharacterisation of phases, or substantive amendments that would alter the overall duration proposed by the bidder would directly undermine the mandatory nature of the constraint laid down in Article 32 and expressly incorporated into Clause 5(C)(i)(3). The Evaluation Committee was therefore bound, as a matter of law and procedure, to assess the Programme of Works on its face value and to verify strict compliance with the stipulated maximum duration at the moment of submission.

<u>*Objective non-compliance of the submitted Programme of Works*</u>

An examination of the Programme of Works submitted by the Appellant demonstrates, in an objective and uneguivocal manner, that it provides for a total execution period of five hundred and thirty-five (535) days, commencing on 2 March 2026 and concluding on 17 March 2028, as expressly indicated within the Programme itself. When calculated on a calendar basis, this duration corresponds to one hundred and six 106) weeks and four (4) days. The Programme therefore exceeds the maximum execution period of one hundred and six (106) calendar weeks stipulated under Article 32 of the Special Conditions. This conclusion is not dependent on interpretation, inference, or evaluative discretion, but flows directly from the dates and duration expressly set out in the Appellant's own submission. The Programme of Works is a self-contained document forming part of the Technical Offer and must be assessed as submitted, without adjustment, exclusion of activities, or recharacterisation of time periods. The tender documents do not permit the Contracting Authority of the Evaluation Committee to reinterpret or recalibrate an otherwise non-compliant programme in order to bring it within the stipulated maximum duration. In these circumstances, the Evaluation Committee had no margin of appreciation but was obliged to conclude that the Appellant's Programme of Works exceeded the maximum duration allowed by the tender. Any alternative approach would have entailed disregarding the explicit timelines proposed by the Appellant, thereby conferring an unwarranted advantage not available to other bidders and infringing the principles of equal treatment and transparency. The finding of non-compliance was therefore inevitable, objective and consistent with the manner in which all bids were assessed, and did not involve any subjective judgment or selective application of the tender requirements.

Irrelevance of the "Mobilisation Period" Argument

The Appellant contends that the initial three-week period shown in its Programme of Works reiates to *"contract award and mobilisation"* and should therefore be excluded from the calculation of the total execution period. This contention is, however, legally and factually unsustainable when assessed against the tender documentation and the Programme of Works as submitted. In the first place, the tender documents do not provide for any mechanism whereby bidders are permitted to retrospectively re-engineer, reclassify or disaggregate elements of their submitted Programme of Works in order to bring an otherwise non-compliant timeline within the stipulated execution period. The Programme of Works forms part of the Technical Offer and is required to be fully compliant at the moment of submission. In any event, and in direct contradiction to the Appellant's argument, the Appellant's own Programme of Works expressly incorporates the mobilisation period within both the critical path and the overall project duration. The start and end dates proposed by the Appellant are clear and unambigueus, and no differentiation is made within the Programme itself between "mobilisation" and execution for the purposes of calculating the total project duration. The Evaluation Committee was therefore bound to assess the Programme exactly as presented and could not lawfully disregard a time period which the Appeilant itself had chosen to include within its scheduling logic. Acceptance of the Appellant's approach would, moreover, set an untenable precedent whereby bidders could artificially extend the execution period by the simple expedient of re labelling portions of their Programme of Works after the fact, thereby undermining the principles of transparency, equal treatment and comparability which underpin public procurement procedures. Such an approach would place compliant bidders at an unfair disadvantage and would erode legal certainty by allowing mandatory requirements to be diluted through semantic manoeuvring. it is further submitted that the Public Contracts Review Board and the Maltese courts have consistently held that where a tender document expressly lays down a mandatory requirement, any failure to comply with that requirement constitutes a material deviation which cannot be ignored, reinterpreted or remedied after submission without infringing the fundamental principles governing public procurement. Accordingly, where a maximum execution period is fixed by the tender documents as a mandatory constraint, a Programme of Works which objectively exceeds that period must, as a matter of law, be treated as non-compliant, irrespective of how the bidder later seeks to characterise individual phases of the programme.

Inapplicability of the Clarification mechanism

It is immediately submitted that the excess identified in the Appellant's Programme of Works does not arise from any ambiguity, lack of clarity, or internal inconsistency within the submitted documentation. On the contrary, the dates of commencement and completion, together with the overall duration of the Programme of Works, are clearly and expressly stated by the Appellant itself. The resulting duration exceeds the maximum period allowed by the tender in an objective and numerical sense, leaving no scope for interpretative doubt or clarification as to what was proposed. In these circumstances, there was no lawful basis upon which the Evaluation Committee could have resorted to a request for clarification. A clarification mechanism exists solely to elucidate aspects of a bid that are unclear or ambiguous, not to correct, adjust or reinterpret elements which are plainly stated but non-compliant. It cannot be used to amend or compress timelines expressly proposed by a bidder, to disregard or excise activities already incorporated into the Programme of Works, nor to allow the substitution of the submitted programme with a revised or re-engineered version that would differ substantively from that originally tendered. To permit such an exercise under the guise of clarification would amount, in substance, to allowing the bidder to rectify a material non-compliance after submission. This is expressly prohibited by the tender documentation. Clause 5(C) of the Instructions to Tenderers draws a clear and deliberate distinction between permissible clarifications, which may explain existing information, and impermissible rectifications, which would alter the content, scope or compliance status of a tender. Any post-submission intervention aimed at curing the excessive duration of the Programme of Works would fall squarely within the latter category. Moreover, allowing the Appellant to adjust its Programme of Works following submission would have the effect of affording it an opportunity to improve or regularise its offer after the submission deadline, an opportunity not available to other bidders whose programmes were assessed strictly as submitted. Such an approach would undermine the principles of equal treatment and transparency and would distort the level playing field that the tender procedure is designed to preserve. The Evaluation Committee was therefore correct in refraining from seeking any clarification in this regard and in assessing the Programme of Works on the basis of its clear and unequivocal contents. Given that the non-compliance arose from an objective exceedance of a mandatory execution period, it could not lawfully be remedied through clarification without breaching the tender rules and the fundamental principles governing public procurement procedures.

b) ***Second grievance – Non-Compliance of Method Statements with L.N. 136 of 2019 and Tender Requirements***

Mandatory nature of the Method Statement requirements and applicability of LN. 136 at tender stage

Clause 5(C)(i)(4) of the tender documentation expressly required bidders, as part of their Technical Offer, to submit three distinct Method Statements at tender stage. These Method Statements were not sought as indicative outlines or preliminary intentions, but as substantive technical documents forming an integral part of the evaluation process. The tender further stipulated that each Method Statement had to be prepared, signed and formally endorsed by the Contractor's Perit, thereby confirming that professional responsibility was being assumed at the point of submission. Moreover, the tender required that these Method Statements clearly and concretely demonstrate how the works were to be executed, having specific and express regard to the prevailing site conditions, the proximity and protection of adjacent third-party properties, the sequencing and constraints arising from the submitted Programme of Works and the plant and equipment proposed to be deployed in the execution of the contract. The level of detail required was therefore deliberately such as to enable an informed technical assessment of feasibility, safety and compliance at evaluation stage. In this context, compliance with Legal Notice 136 of 2019 was neither optional nor capable of being postponed to a post-award stage. The tender documentation expressly incorporated L.N. 136 into the technical requirements governing the submission of Method Statements, thereby elevating statutory compliance from a future contractual obligation to an immediate condition of technical admissibility. Once LN. 136 was expressly referenced and required to be observed in the preparation of the Method Statements submitted with the Technical Offer, its provisions, in particular the detailed requirements set out in its relevant Schedules, became binding evaluation criteria applicable at tender stage. Any failure to comply with those requirements could therefore not be treated as a matter capable of later rectification or regularisation but constituted a substantive technical non-compliance affecting the admissibility of the bid. It follows that the Evaluation Committee was required, and indeed obliged, to assess the submitted Method Statements against the requirements of bath Clause 5(C)(i)(4) of the tender and the applicable provisions of L.N. 136 of 2019 as incorporated therein. To have treated statutory compliance as something that could be deferred until after the award would have been contrary to the express wording of the tender documents, would have undermined the technical evaluation framework established by the Contracting Authority and would have resulted in unequal treatment between bidders who submitted fully compliant Method Statements and those who did not.

LN. 136 of 2019: Substantive Requirements were not met

a. Excavation Method Statement

The excavation method statement submitted by the Appellant does not satisfy several mandatory requirements laid down in the Fifth Schedule of Legal Notice 136 of 2019, which prescribes the minimum information that must be included in any method statement dealing with excavation works in proximity to third-party property. in particular, the statement falls to include:

i. A dimensioned plan identifying the affected zone, as required by point 2 of the Fifth Schedule, which mandates a schematic, dimensioned representation of the affected zone of the excavation;
ii. The depths and limits of excavation, required by point 2(a) and (b) of the Fifth Schedule, which obliges the perit to identify both the horizontal limits and the vertical depth of each part of the excavation;
iii. A shaded representation of the affected zone, as expressly required by point 2(c) of the Fifth Schedule, which distinguishes between the excavation footprint and the wider zone of potential structural influence;
iv. Identification of third-party properties falling within the affected zone, required by point 2(d) of the Fifth Schedule, which is central to the risk-based protection regime underpinning L.N. 136 of 2019;
v. A declared geotechnical basis, whether by reference to the Geological Map of the Maltese islands, pre-existing investigations, or site-specific ground investigation, as required by point 4(a) to (d) of the Fifth Schedule;
vi. A signed declaration by the responsible perit stating whether ground improvement or underpinning is required, and if not, providing reasons, as expressly required by point 7 of the Fifth Schedule; and
vii. A phasing methodology describing how excavation would be carried out so as to achieve the required rock buttressing, as required by point 8(b) and (c) of the Fifth Schedule.

These elements are not optional or discretionary matters of presentation. They constitute core statutory safeguards expressly required by L.N. 136 of 2019 in order to enable a proper assessment of risk to third-party property and public safety. Their absence means that the excavation method statement does not meet the minimum threshold imposed by law and cannot be regarded as compliant.

(b) Demolition Method Statement

While the demolition method statement is generally descriptive in nature, it likewise fails to meet the level of technical specificity required by the Fourth Schedule of Legal Notice 136 of 2019. In particular, the statement does not adequately identify:

viii. The specific risks posed to contiguous or immediately adjacent structures, as required by point 3(a) and point 3(b) of the Fourth Schedule; and

ix. The technical measures and safeguards adopted to protect the stability of third-party property during demolition, as required by point 3(c), point 3(d), and point 3(g) of the same Schedule.

The Fourth Schedule requires more than a generic description of demolition activities; it requires a structured, risk-driven methodology demonstrating how demolition will be carried out without endangering adjoining structures. The omission of these elements constitutes a substantive departure from the statutory framework imposed by L.N. 136 of 2019.

(c) Construction Method Statement

The construction method statement similarly does not satisfy the requirements of the Sixth Schedule of Legal Notice 136 of 2019, which governs method statements for building works. In particular, it fails to include:

x. Explicit precautions and safeguards against instability of contiguous structures, as required by point S(c) and point 5(h)(iii) of the Sixth Schedule; and

xi. Structural checks demonstrating that existing surrounding structures are capable of sustaining any additional loads imposed by the proposed construction works, as required by points 2, 3 and 4 of the Sixth Schedule.

The Sixth Schedule expressly requires that such checks be either documented or, where information is unavailable, accompanied by a formal declaration whereby the responsible perit assumes full professional responsibility. The absence of both the checks and the corresponding declaration results in non-compliance with mandatory statutory requirements.

The Appellant's Interpretation of Legal Notice 136 of 2019 is erroneous and unsustainable

The Appellant's contention that Legal Notice 136 of 2019 allows for a distinction between so-called "preliminary" and "final" method statements for the purposes of procurement is misconceived and finds no support whatsoever in the text, structure or purpose of the Legal Notice. LN. 136 of 2019 does not recognise, either expressly or implicitly, a two-tier system of method statements whereby a bidder may submit materially incomplete or non-compliant documentation at tender stage and defer substantive compliance to a later phase. On the contrary, the Legal Notice defines a "method statement" as a technical document prepared by a perit assuming professional responsibility and prescribes in mandatory terms the minimum content required for each category of works. Nothing in LN. 136 of 2019 supports the proposition that compliance with these requirements may be partial, provisional or deferred.It is correct that Regulation 7 of L.N. 136 of 2019 establishes a latest deadline by which method statements must be submitted prior to the commencement of works. However, that provision sets a statutory backstop for regulatory enforcement; it does not restrict contracting authorities from requiring earlier submission or fuller compliance where this is justified by the nature of the procurement. Regulatory deadlines establish minimum obligations, not ceilings on procurement requirements. in works contracts involving excavation, demolition and construction in proximity to third-party property, public safety and the protection of neighbouring structures are not ancillary concerns, but central risk factors. It was therefore entirely legitimate, rational and lawful for the Contracting Authority and the Department of Contracts to require full technical compliance with L.N. 136 of 2019 at tender stage in order to assess feasibility, safety and risk as part of the technical evaluation. The Appellant's argument also disregards the express wording of the tender documents, which clearly elevated compliance with LN. 136 of 2019 from a general future statutory obligation to an immediate condition of technical admissibility. The tender expressly required bidders to submit method statements at tender stage, prepared, signed and endorsed by the Contractor's Perit and prepared in accordance with L.N. 136 of 2019. The Appellant’s interpretation would thus require the Board to accept that mandatory statutory content, expressly incorporated into the tender as an evaluation requirement, could be ignored or treated as aspirational at the very stage when technical compliance was being assessed. Such an approach would not only undermine the integrity of the procurement process but would also erode the principles of equal treatment, transparency and legal certainty which the public procurement regime is designed to safeguard. The Evaluation Committee was therefore correct in rejecting that interpretation and in assessing the Appellant's method statements against the full and substantive requirements of Legal Notice 136 of 2019 at tender stage, as expressly required by the tender documentation.

No introduction of extraneous or undisclosed requirements

It is submitted that the Evaluation Committee did not introduce, apply or rely upon any requirements that were extraneous to, or inconsistent with, the tender documentation. The technical assessment was conducted strictly on the basis of criteria and obligations that were clearly identified in the call for tenders and made binding on all bidders from the outset. At no stage were additional standards imposed, nor were the requirements interpreted in a manner that extended beyond what was expressly stipulated in the tender. The technical deficiencies identified in the Appellant's submission correspond directly and exclusively to requirements that were already embedded in the tender framework. in particular, they arise from the substantive obligations imposed by the schedules to Legal Notice 136 of 2019, which the tender expressly required bidders to comply with at the stage of submission of their technical offers, as well as from Clause 5(C)(i)(4) of the tender document itself, which mandated the submission of method statements prepared, signed and endorsed by the Contractor's Perit in accordance with that Legal Notice. The Evaluation Committee therefore confined itself to verifying compliance with pre-existing and clearly articulated requirements, rather than deriving or superimposing new evaluative benchmarks. Moreover, the approach adopted by the Evaluation Committee was applied uniformly across all participating economic operators. The same standard of compliance was enforced in respect of all bids, as is evident from the evaluation report, which records that other bidders were likewise found to be technically non-compliant for analogous shortcomings. This consistent and even-handed application of the tender requirements further confirms that the Appellant was not subjected to any differentiated, arbitrary, or post-hoc criteria, but was assessed in accordance with the same objective standards applicable to every participant in the procurement procedure.

c) ***Proportionality and the Irrelevance of Price in the Absence of Technical Compliance***

The principle that a public tender be awarded to the economically most advantageous or lowest-priced offer operates only within the universe of bids that are first found to be compliant with the administrative and technical requirements laid down in the tender documents. Price comparison is not an autonomous or overriding criterion, but a downstream exercise which presupposes that the offers being compared satisfy all mandatory conditions of participation and technical admissibility. Once an offer is found to be technically non-compliant with mandatory requirements expressly prescribed by the tender documents, it is, as a matter of law and established procurement practice, excluded from further consideration. At that stage, the financial value of the offer becomes legally irrelevant, as the procurement framework does not permit contracting authorities to trade compliance for price or to compensate substantive technical deficiencies through economic advantage. To do otherwise would distort the evaluation process by re-introducing non-compliant bids into a comparative exercise from which they are, by definition, excluded. Accepting a bid which is technically deficient merely on the basis that it is financially cheaper would expose the Contracting Authority to manifest illegality. Such an approach would breach the principles of equal treatment and transparency by disadvantaging bidders who complied in full with the tender requirements, while conferring an unwarranted benefit on a bidder who did not. It would further undermine legal certainty and expose the Authority to a substantial risk of successful challenge and potential liability, both at pre-contractual stage and following contract award. The Evaluation Committee therefore acted correctly and proportionately in treating technical compliance as a precondition to price evaluation and in refusing to allow price considerations to override mandatory technical requirements.

This Board also noted the Recommended Bidder's Reasoned Letter of Reply filed on 7th May 2026 and its verbal submission during the hearing held on 3rd July 2026, in that:

a) ***First grievance –***

The Appellant's Programme of Works does not comply with the tender requirements Reg. 2, 39, 62, 287, and 224 of S.L. 601.03.

Programme of Works

The Recommended Bidder categorically rejects the first grievance raised by the Appellant Company and submits that the same is entirely without merit, both in fact and in law. The position advanced by the Appellant is factually incorrect and is therefore ought to be dismissed in its entirety. Article 32 of the Special Conditions is clear and unambiguous, It stipulates that the performance period of the Contract shall be one hundred and six (106) calendar weeks' from the Commencement Date, It is a mandatory and peremptory condition of the tender, and compliance therewith is a sine qua non for any offer to be considered technically compliant. It is not disputed, indeed, it is expressly acknowledged within the letter of objection itself that the Programme of Works (hereinafter "PoW") submitted by the Appellant indicates a total project duration of 535 days. On any reasonable reading, 535 days exceeds 530 days by 5 days. The non-compliance is self-evident on the very outset through a simple mathematical exercise. The Appellant now seeks to argue, *expost facto*, that the three-week task labelled "Contract award and mobilisation" should be excluded from the computation on the basis that it precedes the Commencement Date. The Appellant itself chose to include it within its PoW and to assign it a defined duration. Having made that choice freely and deliberately, the Appellant cannot now seek to unilaterally exclude those weeks from the total duration as it so pleases, in order to guise such defect, as an evaluation mishap - as the saying goes, *'tipprova traqqa' l pannu bil-qara' hamra''*. For all intents and purposes, the question before this Honourable Board is whether the proposed completion period complies with the maximum allowable duration prescribed by Article 32. The answer in the present case is unequivocally in the negative. Reference is hereby being made to the Court of Appeal judgment in the names of Green Building Solutions Ltd v. Festivals Malta Agency et}, (hereinafter 'Green Building judgment'). The facts related thereto are the polar opposite to this present case: the appellant's POW was shorter than the contractual period and the concern of the Technical Evaluation Committee (hereinafter "TEC") was whether the proposed timeline was achievable, in the present case, the situation is diametrically opposite: the Appellant, *ex admissis* declared that it's PoW is longer than what the tender permits - thereby necessitating an exclusion. There is no ambiguity, no question of feasibility, and no room for interpretation. Whilst in the Green Building judgment, the TEC where questioning on whether works could realistically be completed ahead of schedule, in the present case the TEC faced nothing more than a straightforward arithmetical comparison between the duration stated in the PoW and the maximum permitted under Article 32 of the Special Conditions. The PoW fails that comparison and consequently the exclusion was mandatory. The Court of Appeal in Green Building judgement further confirmed the well-established principle, rooted in the earlier decision of Rockcut Ltd v. Malta Industrial Parks Ltd et decided on the 31st of May 2019, that the rules of a tender are there to be observed and not to be set aside, and that the contracting authority is obliged to apply strictly the criteria which it itself has established. In the case in question, it is thus clear and unequivocal that the appellant failed to satisfy the mandatory criteria, and the Honourable Board need not go further in this regard.

Failure to seek clarification

The Appellant's contention that the TEC ought to have sought a clarification before proceeding to disqualification is equally without merit and must be rejected - whilst the argument has some validity, it is imperative to verify the utility of such clarification - it is the position of the recommended bidder that such a clarification would have changed nothing in the course of this procurement procedure! Reference is hereby being made to the Court of Appeal in JV Healthcare Limited v. Cherubino Ltd, Central Procurement and Supplies Unit u Dipartiment tal-Kuntratti. In this case, the Court held that it was not incumbent upon the contracting authority to attempt to salvage a non-compliant offer, and that the clarification mechanism cannot be used to transform a non-compliant submission into a compliant one. In the words of the Court: *"Kull offerta trid issegwi dak mitlub fis-sejha. Dak kontenut fis-summary of product characteristics huwa dak li jorbot u huwa dak Il huwa vinkolanti u li ghandu sostenn legali [...] ma tarax li kien hemm ebda kjarifika x'tintalab mill-kumitat ta' evalwazzjoni peress li kif gustament sar, inghata i-piz dovut lid-dokument legali."* In this matter, the non-compliance is not ambiguous, not dependent on the interpretation of a technical document, and not capable of resolution by means of explanation. The Appellant's PoW states, a duration that exceeds the contractual limit. A clarification cannot alter what is written in a document already submitted. It cannot change 535 days to 530, It cannot retroactively amend the Appellant's offer. The clarification mechanism exists to resolve genuine ambiguity, not to remedy a clear and substantive non-compliance. To permit a clarification in these circumstances would be to allow the Appellant to effectively alter the substance of its offer post-submission, in breach of the principles of equal treatment and transparency which underpin all public procurement.

With regard to the Appellant's proportionality argument, grounded in the alleged price differential of approximately €780,000 between the two offers, the Recommended Bidder submits that this plea is entirely irrelevant and thus also ought to rejected. The principle of proportionality cannot be invoked to compel a contracting authority to accept a technically non-compliant offer. Technical compliance is a threshold requirement which must be satisfied before any financial evaluation may take place. The Court of Appeal in Green Building made clear that the contracting authority is bound by the conditions of its own tender documentation, and cannot depart from them in the name of financial expediency or any other consideration. In any event, the proportionality argument advanced by the Appellant is not only legally untenable but also factually inapplicable on the very premise upon which it is constructed. The doctrine of proportionality in public procurement presupposes the existence of a defect that is minor, peripheral, or clerical in nature, one which does not go to the substance of the offer. In the present case, there is no such defect. The Appellant's Programme of Works exceeds the maximum contractual period as stated on the face of the document itself. This is not a matter of interpretation, oversight, or ambiguity. It is a substantive, self-evident, and unambiguous non-compliance. Where there is no irregularity to be weighed, the proportionality principle simply does not arise. There is nothing to save, nothing to remedy, and nothing to balance. The question of proportionality is therefore entirely irrelevant to the present proceedings. The judgments invoked by the Appellant in support of its proportionality argument are equally inapplicable. The Appellant relies, in particular, on Europharma Limited vs Central Procurement and Supplies Unit and Polaris Marine Services Co Ltd vs Direttur Generall tal-Kuntratti for the proposition that disqualification is disproportionate where the irregularity is minor and the non-compliant tenderer submitted the cheapest offer.

However, in each of those cases, the Court was addressing a situation where the alleged non-compliance was of a formal, marginal, or curable nature. None of those elements exist in the present scenario. The non-compliance in the present case is not formal; it is substantive. The preconditions upon which those judgments rest simply do not exist in these proceedings, and the Appellant cannot transpose their conclusions to a materially different set of circumstances. The price differential of approximately 780,000 between the two offers, upon which the Appellant places considerable emphasis, is also equally irrelevant to this analysis. The Appellant conflates the outcome of a lawful exclusion with an alleged lack of proportionality. The fact that the compliant offer is more expensive is not a ground of review. It is the inevitable and entirely legitimate consequence of the procurement rules being applied correctly. To accept the Appellant's reasoning would be to hold that a non-compliant tenderer can insulate itself against exclusion simply by submitting a lower price, a proposition that is fundamentally inconsistent with the principles of equal treatment and the integrity of the procurement process, and one that finds no support in the applicable legal framework or in any of the authorities cited by the Appellant. Furthermore, if the Evaluation Committee were to entertain the appellants' demands, such derogation from the tender specifications would have resulted in a direct breach of the principle of Self Limitation, deviating from the very rules it had established.

Departing from the tender document would have conferred an unlawful advantage upon the Appellant to the detriment of all other tenderers who complied with Article 32 and structured their offers accordingly. The Recommended Bidder, for its part, submitted a fully compliant offer in the expectation that the rules of the tender would be applied uniformly and without exception. Any departure from that position, at the behest of a non-compliant competitor, would constitute a manifest breach of the principle of equal treatment and would expose the entire procurement to challenge. The Evaluation Committee was therefore not only entitled but legally obliged to exclude the Appellant's offer. Accordingly, the first grievance raised by the Appellant is entirely unfounded both in fact and in law, and must be rejected in its entirety. The TEC acted correctly, in full accordance with the tender documentation, and in line with the most recent and binding jurisprudence of the Court of Appeal, in determining that the Appellant's offer was technically non-compliant on the basis of its POW.

b) ***Second grievance -***

The Appellant's Method Statements are non-compliant Reg. 2, 39, 62, 217, 224 and 262 of S.L. 601.03

Binding requirement on all tenderers

It is well established that any economic operator having objections to the terms, conditions, or requirements of a tender document is required to raise such concerns at the appropriate stage, either by submitting a request for clarification or by availing itself of the pre-contractual remedies provided under regulation 262 of S.L. 601.03. These mechanisms are specifically designed to ensure transparency, equal treatment, and the timely resolution of any alleged deficiencies in the procurement process prior to the submission of tenders. In the present case, the appellant failed to exercise any of the remedies available to it within the prescribed timeframes. No clarification requests were submitted, nor was any pre-contractual objection lodged in accordance with the applicable legal framework. Consequently, the economic operator must be deemed to have accepted the terms and conditions of the tender as published, without reservation. In view of the foregoing, the appellant [an all-other economic operators] is now fully bound by the contents of the tender document. Any deviation from the stipulated requirements, whether substantive or formal, cannot be justified at this stage and must necessarily result in exclusion, in line with the principles of equal treatment, transparency, and strict compliance governing public procurement procedures. At this stage, it is entirely misconceived and futile for the Appellant to allege that the requirement in question was excessive, disproportionate, or improperly designed. Such arguments ought to have been raised at the appropriate procedural stage, namely prior to the submission of tenders, through the mechanisms expressly provided for under the applicable procurement framework. Having failed to do so, the Appellant cannot now seek to retrospectively challenge the validity or appropriateness of a requirement which it had the opportunity to contest earlier. The requirement in question is clear, mandatory, and binding, and must be adhered to without reservation by all participating tenderers. Any failure to comply cannot be cured or justified post-submission. Notably, the recommended bidder has complied fully with the said requirement, thereby reinforcing the principle that the criteria were both capable of being met and applied consistently. Accordingly, any deviation therefrom must inevitably result in exclusion, in line with the fundamental principles governing public procurement.

Technical offer is of a Note 3 status

It is to be emphasised that the assignment of a Note 3 status within the tendering process signifies that the respective submission is final and not subject to any modification, clarification, or supplementation. This classification is intended to safeguard the principles of transparency and equal treatment, by ensuring that no tenderer is afforded the opportunity to alter or improve its bid after submission. In the present case, the technical offer has been assigned a Note 3 status, and as such, it must be assessed strictly on the basis of the documentation originally submitted. Accordingly, no changes, additions, or rectifications may be considered or permitted at this stage, and any attempt to do so would constitute a dear breach of the procurement rules and the fundamental principles governing the procedure.

Non-compliance with Legal Notice 136 of 2019

VBL acknowledges that it does not have full visibility of the appellant's tender submission, and is therefore not in a position to make a comprehensive assessment of the offer as filed. Notwithstanding this limitation, VBL reserves the right to address such aspects of the submission as have come to its attention in the course of these proceedings, and does not concede any point that falls outside its current knowledge. What can however be stated with confidence is that the mere declaration by the appellant that its work method statements are "in accordance with Legal Notice 136 of 2019" does not, of itself, establish or demonstrate actual compliance with that Legal Notice. A self-declaration of compliance is not a substitute for compliance itself. The work method statements must satisfy the requirements of LN 136 of 2019 not merely in form, i.e., by containing the requisite headings, declarations or references, but, critically, in substance. It is the substantive content of those statements that must reflect genuine adherence to the obligations imposed by the Legal Notice, and it is against that standard that the appellant's submission falls to be assessed.

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.

Grievance 1: The Programme of Works and the absence of a clarification request

- The Appellant contends that its Programme of Works did not exceed the permitted performance period because the first activity, described as "Contract award and mobilisation," included a period preceding the Commencement Date, and that a clarification would have enabled it to demonstrate this.

- Clause 5(C)(i)(3) of the Tender Document required the Technical Offer to include a Workplan and Programme of Works in the form of a Gantt Chart produced through critical path analysis, which "*must abide by the constraints indicated in the technical specifications and have a duration as specified in Article 32 of the Special Conditions*." Article 32.1 in turn provided that "*the performance period of the Contract shall be one hundred and six (106) calendar weeks from the Commencement Date indicated on the Order to Start Works, and subsequently five (5) year maintenance services commencing from date of provisional acceptance*."

- The Programme submitted by the Appellant ran from 2nd March 2026 to 17th March 2028, an elapsed period of 746 calendar days. One hundred and six calendar weeks amount to 742 days. On the dates the Appellant itself selected, the Programme therefore exceeded the stipulated maximum by four days, the same shortfall identified by the Department of Contracts in its original ground of refusal and acknowledged by the Appellant in its own Letter of Objection.

- The scheduling software's reference to a "535-day" duration does not alter this conclusion. Article 32.1 measures the performance period in calendar weeks running from the Commencement Date, not in a software-generated duration metric, and it is the calendar dates the Appellant itself entered that determine compliance.

- The first activity in the Programme, described as "Contract award and mobilisation," ran from 2nd to 20th March 2026. The Programme did not identify a Commencement Date, did not separate the contract-award period from the mobilisation period, and did not indicate what portion, if any, of that combined three-week activity preceded the Commencement Date. The Appellant's own Letter of Objection confirms this: it states that a clarification would have allowed it to explain how much of the three-week period "pertains solely to the contract-award period", an admission that this allocation could not be read from the Programme as submitted.

- At the hearing, Mr Johann Farrugia confirmed that the Gantt Chart, dated 2nd March 2026, showed a duration of 535 days, and explained that a new sequence would only be discussed once the tenderer became the contractor. A revision made after award cannot establish that the technical offer, as submitted, was compliant on the closing date. Mr Keith Buttigieg, Chairman of the Evaluation Committee, testified that the Programme exceeded the period stipulated in Article 32 and that the inclusion of a mobilisation activity indicated that performance was treated, within the Programme itself, as already commencing.

- Articles 11.11 and 15.2, which require the successful tenderer to submit an updated Programme of Works after award, do not dispense with the obligation to submit a compliant Programme at tender stage; they regulate the updating of an already-compliant submission during implementation. Table 1 to Article 11.11 confirms this directly, listing both the Programme of Works and the Works Method Statements as documents due three weeks after contract signing and expressly marked "Updated versions of tender submission", updated versions, not first-time submissions. Article

15.4 reinforces the point, providing that "*approval of an updated Programme of Works does not directly lead to an Extension of Contract Performance*."

- The Court of Appeal in Green Building Solutions Ltd v Festivals Malta Agency et, App. Ċiv. 246/2025/1, decided 11th November 2025, held that a period expressed in a tender as a time-limit for execution is a maximum, and that a Programme cannot be found non-compliant merely because it proposes completion in less time than that maximum. The present case is the converse: the dates the Appellant itself selected exceed, rather than fall short of, the maximum period fixed by Article 32.

- Regulation 62(1) of the Public Procurement Regulations (S.L. 601.03) requires that an economic operator be "*ab initio... in possession of all the requirements stipulated in the procurement documents*" by the closing date. The Programme formed part of the Appellant's Technical Offer under Clause 5(C)(i)(3) and was designated Note 3, which the Tender Document defines as follows: "*No rectifications shall be allowed. Only clarifications on the submitted information may be requested*." Procurement Policy Note 40 is to like effect: a clarification may address information already submitted "*but which is deemed as not sufficiently explicit and clear*," and may not be used to add information with the effect of curing an otherwise non-compliant submission.

- The Court of Appeal in Krypton Chemists Limited v Central Procurement and Supplies Unit et, App. Ċiv. 322/2025/1, decided 13th November 2025, distinguished clarification from rectification: clarification allows an explanation of information already present in the offer but cannot introduce new information or change the substance of the offer, whereas rectification permits correction of an omission or error only where the tender documents do not exclude it. No reading of the Programme as submitted discloses what portion of the three-week combined activity preceded the Commencement Date; a response supplying that allocation would add a temporal division not apparent on the face of the document, and would therefore fall outside what a Note 3 clarification may achieve.

- The Evaluation Committee was not obliged to invite the Appellant to restructure or reinterpret its own Programme after the closing date. To do so would have given the Appellant an opportunity not available to bidders whose programmes complied with Article 32 as submitted, contrary to Regulation 39 of the Public Procurement Regulations, which requires the Contracting Authority to "*treat economic operators equally and without discrimination and... act in a transparent and proportionate manner*."

- The Appellant's reliance on proportionality, and on the circa €780,000 differential between its own offer and that of the Recommended Bidder, does not alter this conclusion. Clause 6.1 of the Tender Document provided that "*the sole award criterion will be the price. The contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria*." Price is therefore compared only among technically compliant offers, and a non-compliant offer does not re-enter that comparison merely because it is cheaper.

- The decisions relied upon by the Appellant, including Europharma Limited v Central Procurement and Supplies Unit et, App. Ċiv. 445/2025/1, concerned information that had already been supplied elsewhere in the tenderer's own offer and could be identified, by clarification, without adding anything new. The defect here is different in kind: it concerns the duration and chronological composition of the Programme itself, not a piece of information misplaced within an otherwise complete submission.

- It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner and in no way transgressed the principle of self-limitation.

Therefore, the Board does not uphold the Appellant's first grievance.

Grievance 2: Compliance of the Works Method Statements with the Tender Document and L.N. 136 of 2019

- The Appellant contends that the three Works Method Statements submitted for demolition, excavation and piling, and construction were sufficient at tender stage and could be developed into more detailed statements following award.

- Clause 5(C)(i)(4) of the Tender Document required three Works Method Statements, one for Demolition, one for Excavation and Piling, and one for Construction, and provided that "*the bidder is to submit a works method statement as required by LN 136 of 2019 prepared, signed and endorsed by Contractor's Perit.*" The same clause required that the statements "*must clearly show how the contractor intends to carry out the works taking into consideration the nature of the site and adjacent properties, the programme of the works and the plant and equipment required to carry out the works.*"

- The Board considers that the words "*as required by LN 136 of 2019*" incorporated into the tender the material requirements of the Fourth, Fifth and Sixth Schedules to the Avoidance of Damage to Third Party Property Regulations (S.L. 623.06). This did not require the Appellant to possess every item of information obtainable only through investigations that could take place after award; it did require a substantive, project-specific methodology based on the information available at tender stage, identifying the assumptions made and the investigations still needed. A general declaration that the works would be performed in accordance with L.N. 136 of 2019 could not substitute the plans, assessments, methodology and safeguards required by the Tender Document and the relevant Schedules.

- The excavation method statement identified nearby residential buildings, the Palumbo Dockyard boundary wall, underground utilities and "z," and referred to excavation in controlled layers, trench boxes and continuous monitoring. Nevertheless, it did not include: the schematic and dimensioned plan required by item 2 of the Fifth Schedule, showing the excavation limits, the depth of each part of the excavation, the shaded and dimensioned affected zone and the third-party properties falling within that zone; an adequate description of the ground conditions based on the sources identified in item 4, including the Geological Map of the Maltese Islands, available surrounding information or an indication that the necessary site investigation would be commissioned; or the location from which excavation would commence, any phasing necessary to achieve rock buttressing, the levels to be attained during each stage and the specific precautions against instability required by item 8.

- The statutory definition of "excavation affected zones" is contained in regulation 3 of the Avoidance of Damage to Third Party Property Regulations. It provides for the affected zone to extend horizontally from the limits of the excavation by a distance not exceeding the corresponding excavation height. Figure 2.1 of the Fifth Schedule expressly illustrates that methodology by showing the outer limits of the affected zone as lines drawn at 45 degrees from the excavation.

- The Board therefore agrees with Perit Benjamin Vassallo that the methodology for determining the affected zone was already clearly and objectively established by L.N. 136 of 2019. Once the limits and depths of excavation were known, application of the 45-degree lines shown in Figure 2.1 enabled the affected zone to be plotted, shaded and dimensioned and the properties falling within that zone to be identified. The exercise was not dependent upon a subjective assessment by the evaluator or upon the completion of a future geotechnical investigation.

- Perit Vassallo further testified that the relevant drawings and plans included in the tender package could have been used to prepare the affected-zone plan, identify the affected properties and state the assumptions underlying the proposed methodology.

- The Board agrees with Perit Vassallo that the information supplied with the tender provided an adequate basis for preparing the affected-zone plan. By applying the methodology expressly illustrated in Figure 2.1 to the excavation limits and levels contained in the civil-works drawings, the Appellant could have prepared the required plan and identified the properties potentially affected. The plan could subsequently have been refined if later investigations disclosed different conditions. The possibility of later refinement did not justify omitting the affected-zone plan altogether.

- Item 7 of the Fifth Schedule requires a reasoned declaration only where ground improvement or underpinning is considered unnecessary. The Board does not, therefore, treat the absence of that declaration, taken alone, as an independent non-compliance without first establishing that the condition in item 7 applied. Nevertheless, the Appellant's Method Statement left the need for ground improvement or underpinning unresolved. Perit Magro confirmed that he could not make that determination without further information. That evidence, considered together with the other omissions, supports the conclusion that the submitted document remained a preliminary outline rather than the substantive excavation methodology required by the tender.

- The Demolition Method Statement identified nearby residential properties and the Palumbo Dockyard boundary wall. It also provided for a condition survey, controlled breaking, the use of hand tools near third-party walls and services, and the use of a concrete saw near sensitive boundaries. Those measures did not, however, amount to an identification of risks after consideration of the structural condition of the works and contiguous structures, as required by items 2 and 3(a) of the Fourth Schedule. Nor did the statement adequately specify the safeguards against instability of the works, the parts being demolished and contiguous structures required by items 3(c) and 3(g).

- Perit Vassallo stated that the risks relating to demolition could have been identified on the basis of the information available and subsequently refined when further information became available. The Board agrees that the possibility of later refinement did not dispense with the tender-stage obligation to identify the known structural risks and the safeguards proposed to address them.

- The Construction Method Statement contained a general description of the site, a sequence of activities, plant and equipment, health-and-safety measures and quality-control procedures. It did not, however, assess the risks after taking account of the structural condition of the proposed works and contiguous structures, as required by item 5(a) of the Sixth Schedule. It also did not specify adequate measures and precautions to safeguard the stability of the works, contiguous structures and surrounding terrain, as required by items 5(c), 5(h)(i) and 5(h)(iii).

- At the hearing, Perit Magro described the three documents as preliminary Method Statements. He also confirmed that the investigations he considered necessary could not have been completed through a clarification exercise because they would require time. His evidence confirms that the missing material consisted of substantive plans, assessments, determinations and safeguards that had not already been included in the Technical Offer, rather than information that was merely unclear or insufficiently identified.

- Article 11.11 of the Tender Document does not alter that conclusion. Table 1 describes the Programme of Works and Works Method Statements to be submitted following award as: "*Updated versions of tender submission*.". Article 11.11(A)(iii) separately requires detailed Works Method Statements for major activities before commencement of the works and provides for Method Statements required for BCA approval to be prepared when necessary. These provisions permit refinement and updating during implementation. They nevertheless presuppose the existence of tender-stage Method Statements containing the material technical information required for the evaluation of the offer.

- Articles 35.8 and 35.9, dealing with repetitions, additional works and circumstances encountered during implementation, likewise do not excuse the identified omissions. Those provisions recognise that actual geological conditions may require subsequent contractual changes. They do not eliminate the obligation to use the available drawings and geological information, state the assumptions being made, identify the investigations that would be required and submit the plans and risk-based methodology expressly requested at tender stage.

- Regulation 7(1) of the Avoidance of Damage to Third Party Property Regulations fixes the regulatory deadline by which a Method Statement must be submitted to the competent authority before commencement of the works. It does not prevent a contracting authority from requiring an earlier Method Statement for the separate purpose of evaluating a tenderer's methodology, assumptions and treatment of risks.

- Regulation 26 does not assist the Appellant. Any exemption depends upon the Perit certifying, with clear reasons, that the structural interventions will not affect third-party property. No Regulation 26 certificate formed part of the Appellant's Technical Offer. Moreover, the Appellant's Method Statements acknowledged nearby residential properties and the Palumbo Dockyard boundary wall, while the hearing evidence also identified an underground tunnel. The possible future availability of an exemption could not displace the independent tender requirement to submit the three Works Method Statements.

- The Works Method Statements formed part of the Technical Offer and were designated Note 3. Clause 5 of the Tender Document and Procurement Policy Note 40 permit a clarification of information already submitted where it is ambiguous, contradictory or not sufficiently identified, but not the introduction of substantive new material. A request identifying which tender drawing the Appellant had relied upon would not itself have supplied the missing affected-zone plan, ground-condition assessment, structural-risk analysis, or stability safeguards.

- Insofar as the Appellant challenges the legality, clarity or practicability of the published requirement itself, regulation 262 of the Public Procurement Regulations provided a remedy before the closing date. No regulation 262 application was produced or identified in these proceedings. The Appellant's offer must therefore be assessed against the tender requirement as published.

- The Appellant's lower price cannot override the applicable technical requirements. Regulation 62(1) of the Public Procurement Regulations requires an economic operator to be, by the closing date, in possession of all the requirements stipulated in the procurement documents. Clause 6.1 of the Tender Document further provided that the contract would be awarded to the cheapest offer satisfying the administrative and technical criteria. Price comparison therefore arises only between technically compliant offers.

- It is the opinion of this Board that the Evaluation Committee assessed the Appellant's submission against requirements expressly set out in Clause 5(C)(i)(4) of the Tender Document and in the legislation incorporated by that clause, without introducing a new or undisclosed evaluation criterion.

Therefore, the Board does not uphold the Appellant's second grievance.

The Board,

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

a) Does not uphold Appellant's Letter of Objection and contentions,
b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
c) Directs that the deposit paid by Appellant not to be reimbursed.

Mr Kenneth Swain
Chairman

Mr Lawrence Ancilleri
Member

Dr Ing. Damien Gatt
Member