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Public Contracts Review Board

Notre Dame Ravelin,

Floriana,

Malta

Sent by email on: info.pcrb@gov.mt

19 October, 2026

In the acts of the objection filed by Securital Solutions Limited (TID 342655) in connection with CT2047/2026 - Tender for the Leasing of Fixed Radar Speed Meters and Data Processing Applications at Various Sites in Malta for the Local Enforcement Systems Agency (LESA) ["the Tender Procedure"]

Reasoned reply by the Recommended Bidder EngiNe S.p.A (TID 243652) ['**the Recommended Bidder**']

Respectfully submits:

A. Introduction

By means of the present, EngiNe S.p.A [the "**Recommended Bidder**" or "**EngiNe S.p.A**"] will be replying to the Letter of Objection submitted by Securital Solutions Limited ["**Securital**" or "**the Appellant**"] following the decision communicated to it by Local Enforcement Systems Agency ["**the Contracting Authority**"] on the 29th of September,

2026 ["**the Decision**"] by virtue of which the Appellant was informed that its offer was not the most economically advantageous and that the Tender had been recommended for award to the Recommended Bidder.

Securital's appeal is based on two grievances related to the following matters:

i. The Contracting Authority allegedly failed to disclose the information requested by the appellant.
ii. The Recommended Bidder's financial offer appears to be abnormally low.

While reserving its right to make further submissions on each of the grievances at an eventual hearing, the Recommended Bidder will, in the present submission, address both grievances raised by the Appellant.

As a general observation prior to going into the said grievances, however, the Recommended Bidder notes that Securital does not put forward any reasonable, credible or substantiated basis for putting EngiNe S.p.A.'s offer into question and, instead, embarks on a quest to uncover any scrap of information that might just be useful for its purpose of attacking the award. The Appellant does not present *"reasons for complaints.... in a clear manner"* as required by the Public Procurement Regulations but merely generic requests for information in what is clearly a "shot in the dark". This is tantamount to an abuse of the remedies afforded by law and recognised by jurisprudence, and should not be abetted by the Board.

B. Submissions on the First Grievance

By means of its first grievance, Securital seeks disclosure of a substantial range of information and documentation, amounting, in substance, to a request for access to the majority of the procurement file. This request is however, understated in its appeal and is described merely as a request for information *"on the Recommended Tenderer and its bid, on*

the evaluation process and on the examination, if any, of the Recommended Tenderer's apparently abnormally low financial offer".

The Recommended Bidder contests Securital's requests for disclosure on three principal grounds: (i) the Appellant has already been provided with the essential information sufficient for the purposes of its appeal; (ii) each individual request merits rejection for the reasons set out below; and (iii) in any event, the requests, taken as a whole, constitute a fishing expedition, lacking the specificity and proportionality required of a targeted request for disclosure.

B.1 The Information and Documentation Provided is Sufficient for the Appellant to Exercise its Right to An Effective Review

The Appellant contends that the failure of the Contracting Authority and/or the Department of Contracts to respond to its request for information, dated the 6th of October 2026, prevents it from exercising its right to an effective remedy.

The Recommended Bidder contests this allegation. The letter of rejection provided the Appellant with sufficient information to understand and effectively challenge the award decision. Indeed, the letter of rejection:

i. Identifies the Recommended Bidder and the reasons for its selection;
ii. Clearly outlines the reasons for the rejection of the Appellant's bid;
iii. Provides a comparative table of the scores awarded to both bidders with the respective justifications.

Accordingly, the letter of rejection adequately substantiated the award decision and enabled the Appellant to exercise its right of appeal in an informed manner. Furthermore, the letter of rejection went above and beyond by providing the justifications and comments underpinning the scores awarded to the Recommended Bidder under the respective evaluation criteria. These comments, in themselves, disclosed substantial information concerning the contents and merits of the Recommended Bidder's bid.

The Recommended Bidder submits that the obligation to provide reasons for an award decision is not absolute and must be reconciled with the equally important obligation to protect the confidential and commercially sensitive information contained in competing tenders. Indeed, the right to an effective remedy cannot be construed as conferring upon an unsuccessful bidder an unrestricted right of access to the contents of a competing tender.

In this regard, the Recommended Bidder maintains that the relevant consideration is whether the information furnished to the Appellant was sufficient to enable it to understand the reasons underlying the award decision and to effectively challenge the same. It follows that, where sufficient reasons have already been provided, as is the case in the current proceedings, the refusal to disclose further information does not amount to a breach of the Appellant's right to an effective remedy.

This principle was expressly recognised by the Court of Justice of the European Union in *Varec SA v Belgian State* (Case C-450/06), wherein the Court emphasised that the effectiveness of procurement review procedures must be reconciled with the protection of business secrets and the preservation of fair competition. The Court acknowledged that the unrestricted disclosure of information relating to competing tenders could prejudice the legitimate commercial interests of economic operators and undermine the integrity of competition. Consequently, even where confidential information is relevant to the determination of an appeal, it does not necessarily follow that such information must be disclosed to the opposing bidder.

The Appellant further alleges that the requested information is essential for the purposes of substantiating its second ground of appeal. However, this contention is contradicted by the very fact that the Appellant has already formulated and submitted a detailed grievance in this regard. In fact, the Appellant's second grievance, concerning the allegedly abnormally low offer submitted by the Recommended Bidder, is even more extensive and detailed than its first grievance.

The Recommended Bidder submits that the Appellant's ability to formulate such a detailed grievance demonstrates that it was already in possession of sufficient information to effectively challenge the award decision, without requiring further disclosure of

information and documentation. Moreover, the relevant documentation will be available to this Honourable Board, which is competent to examine the same and make the appropriate determinations on the merits of the grievance.

B.2 Each Individual Request for Information Merits Rejection

The Recommended Bidder submits that the individual requests for information advanced by the Appellant are unjustified, concern confidential information and should be rejected. Each request will be addressed separately below, having regard to the nature of the information sought and the reasons why its disclosure is neither warranted nor necessary in the circumstances of the present case.

a. **The list of principal services of a similar nature** including major projects involving the supply, installation, operation or maintenance of monitoring, traffic enforcement or security systems;

   The list of principal services of a similar nature contains commercially sensitive information, the disclosure of which to a direct competitor operating within the same market could prejudice the Recommended Bidder's legitimate commercial interests. In particular, such information would enable competing economic operators to identify the Recommended Bidder's existing clients and contractual relationships, thereby potentially exposing it to the risk of client solicitation and the poaching of existing or prospective contracts. Furthermore, the disclosure of such information would reveal the duration and anticipated expiry of contractual engagements, allowing competitors to identify potential future business opportunities and strategically target the Recommended Bidder's clients.

   Furthermore, the list of principal services was made available to the Evaluation Committee, which duly examined and assessed its contents to verify compliance with the relevant tender requirements. The same documentation will also be available to this Honourable Board for its examination and determination, should the need arise.

b. **Copies of the documents**, including the completed List of Projects, **submitted by the Recommended Tenderer as evidence of the successful implementation of 3 or more relevant projects completed between 2021 and 2025**, demonstrating comparable scale and complexity.

In this regard, the Recommended Bidder reiterates the submissions made above concerning the commercially sensitive nature of the list of principal services and the potential prejudice that its disclosure could cause to its commercial interests. The documents requested by the Appellant, including the completed List of Projects, contain further details concerning the Recommended Bidder's previous contractual engagements, clients and technical experience, the disclosure of which to a direct competitor would confer an unwarranted competitive advantage.

Furthermore, the Recommended Bidder submits that the Appellant has not raised any grievance concerning its compliance with the requirement to have successfully implemented at least three relevant projects between 2021 and 2025.

In any event, the documentation in question was submitted to and examined by the Evaluation Committee for the purpose of verifying compliance with the relevant tender requirements and will also be available to this Honourable Board for its examination, should the need arise.

c. **A copy of the Recommended Tenderer's European Single Procurement Document (ESPD)**, even if it is integrated within the Tender Preparation Tool.

The Recommended Bidder humbly submits that the Appellant's request for the disclosure of its European Single Procurement Document (ESPD) bears no relevance to the grounds of appeal advanced by the Appellant. Furthermore, the Recommended Bidder submits that its ESPD contains commercially sensitive information pertaining to the Recommended Bidder and its offer, as this Honourable Board will be in a

position to ascertain upon examination of the document. In the absence of any specific and substantiated grievance warranting its disclosure, the Recommended Bidder submits that there is no justification for granting the Appellant access to such information.

In any event, the Recommended Bidder further submits that its ESPD was duly made available to the Evaluation Committee for the purposes of assessing and verifying compliance with the applicable tender requirements. Moreover, the said document will likewise be available for scrutiny by this Honourable Board in the course of these proceedings. Accordingly, the Recommended Bidder maintains that the disclosure of its ESPD to the Appellant is neither necessary nor justified in the circumstances of the present appeal.

d. The identity of the sub-contractors nominated by the Recommended Tenderer in its bid, if any.

The Recommended Bidder submits that the details concerning its subcontractors are confidential and should not be disclosed. The disclosure of their identities would place the Appellant, being a competitor in the same field, in a position to approach and potentially poach such subcontractors. Furthermore, these subcontractors possess inside knowledge of the product offered by the Recommended Bidder to the Contracting Authority, including its technical specifications, functionality and operation, the disclosure of which could confer an unfair competitive advantage upon the Appellant.

Moreover, just as the Recommended Bidder is not privy to the details of the subcontractors proposed by the Appellant in its tender, the Appellant should not be entitled to obtain the corresponding information concerning the Recommended Bidder's tender. It is precisely through the mutual protection of such commercially sensitive information that the principle of equal treatment between competing tenderers is safeguarded.

e. **The identity of Key Experts nominated by the Recommended Tenderer in its bid, including their curriculum vitae.**

The Recommended Bidder similarly submits that the details concerning its Key Experts are confidential and should not be disclosed. The disclosure of their identities would place the Appellant, being a competitor in the same field, in a position to approach and potentially poach such key-experts. Furthermore, these key-experts possess inside knowledge of the product offered by the Recommended Bidder to the Contracting Authority, including its technical specifications, functionality and operation, the disclosure of which could confer an unfair competitive advantage upon the Appellant.

Moreover, just as the Recommended Bidder is not privy to the details of the key experts proposed by the Appellant in its tender, the Appellant should not be entitled to obtain the corresponding information concerning the Recommended Bidder's tender. It is precisely through the mutual protection of such commercially sensitive information that the principle of equal treatment between competing tenderers is safeguarded.

f. **A copy of the documentation, including technical literature, submitted by the Recommended Tenderer to corroborate the compliance of its offer.**

The Recommended Bidder submits that the documentation submitted to substantiate technical compliance, together with the accompanying technical literature, contains commercially sensitive information which should not to be disclosed to competing economic operators. Such documentation may reveal information which has commercial value beyond the scope of the present tender. The disclosure of such information to a competitor such as the Appellant, could prejudice the Recommended Bidder's competitive position in future procurement procedures.

Furthermore, the disclosure of such information could undermine the Recommended Bidder's commercial interests and distort fair competition by enabling competitors to gain access to technical information which would otherwise remain unavailable to them. Consequently, the Recommended Bidder's ability to distinguish its proposed solutions from those of competing economic operators in future tendering procedures would be significantly diminished.

g. **The identity of the members comprising the Tender Evaluation Committee** (TEC) and their academic and professional qualifications.

In this regard, the Recommended Bidder defers to the submissions of the Contracting Authority and the Department of Contracts concerning this specific request and ultimately to the determination of this Honourable Board. Nevertheless, the Recommended Bidder emphasises that the Appellant has not raised any grievance concerning the composition of the Technical Evaluation Committee (TEC), nor has it provided any justification warranting the disclosure of the identities of its members.

h. **The identity of the technical advisors to the TEC and their academic and professional qualifications.**

In this regard, the Recommended Bidder defers to the submissions of the Contracting Authority and the Department of Contracts concerning this specific request and ultimately to the determination of this Honourable Board.

i. **An IT audit report identifying the audit logs in relation to this procurement procedure**

The Recommended Bidder submits that the Appellant's request for the IT Audit Report concerning the entirety of the procurement procedure is excessively broad and based on hypothetical considerations. Appellant's exercise is aimed solely at identifying

potential (albeit, in EngiNe's S.p.A.'s view, inexistent) irregularities upon which to base further grievances. Such a request is neither justified nor necessary for the effective exercise of the Appellant's right to a procurement remedy. Furthermore, the Appellant has failed to provide any justification demonstrating the relevance or necessity of the requested documentation.

j. **Any request for explanations sent by the TEC to the Recommended Tenderer in terms of Regulation 243 of the PPR regarding the apparently abnormally low financial offer.**

In this regard, the Recommended Bidder defers to the submissions of the Contracting Authority and the Department of Contracts concerning this specific request and ultimately to the determination of this Honourable Board.

k. **The explanations, and any supporting evidence, submitted by the Recommended Tenderer in reply to any request made by the TEC under Regulation 243 of the PPR to explain the price or costs proposed in its financial offer.**

The Recommended Bidder humbly submits that the explanations provided in response to the request made by TEC pursuant to Regulation 243 of the PPR, concerning the prices and costs proposed in its financial offer, should not be disclosed as they are commercially sensitive and confidential. Furthermore, the disclosure of such information would undermine fair competition by granting the Appellant access to commercially valuable information concerning the Recommended Bidder's pricing structure, cost considerations and commercial approach, which would otherwise remain unavailable to competing economic operators. Such disclosure could place the Appellant at an undue competitive advantage in future procurement procedures and diminish the Recommended Bidder's ability to distinguish its offers from those of its competitors. Nonetheless, the commercial value of such information extends beyond the present tender, and its disclosure could therefore confer an undue competitive

advantage upon the Appellant, whilst diminishing the Recommended Bidder's ability to compete effectively in the same market.

Furthermore, the Recommended Bidder emphasises that the explanations submitted by the Recommended Bidder will be available to this Honourable Board for its examination and assessment. Accordingly, this Honourable Board will be in a position to independently scrutinise the explanations provided and determine whether the Recommended Bidder's financial offer satisfies the applicable requirements, without necessitating the disclosure of commercially sensitive information to the Appellant. The Recommended Bidder therefore submits that the Appellant's right to an effective remedy can be adequately safeguarded through the Board's examination of the relevant documentation, whilst preserving the confidentiality of the Recommended Bidder's legitimate commercial interests.

l. **The assessment carried out by the TEC, on any replies submitted by the Recommended Tenderer in response to any requests for explanations in terms of Regulation 243 of the PPR, to determine that the financial offer tendered by the Recommended Tenderer is not abnormally low.**

In this regard, the Recommended Bidder reiterates its submissions concerning the confidential and commercially sensitive nature of the explanations provided under Regulation 243. Indeed, the TEC's assessment of such explanations may itself contain or reveal commercially sensitive information concerning the Recommended Bidder's pricing structure, cost considerations and commercial strategy. Consequently, the disclosure of the assessment could indirectly expose the very information which should remain confidential, thereby prejudicing the Recommended Bidder's legitimate commercial interests and potentially conferring an undue competitive advantage upon the Appellant.

Furthermore, the Recommended Bidder submits that the Appellant has already formulated a detailed grievance concerning the allegedly abnormally low nature of the

Recommended Bidder's financial offer. The Appellant has therefore not demonstrated why disclosure of the TEC's assessment in its entirety is necessary for the effective exercise of its right of appeal.

In any event, the TEC's assessment, together with the explanations furnished by the Recommended Bidder, will be available to this Honourable Board for its examination. The Board will therefore be in a position to independently determine whether the TEC properly assessed the explanations provided and whether the decision to accept the Recommended Bidder's financial offer was justified, without requiring the disclosure of commercially sensitive information to the Appellant.

B.3 An Unwarranted Fishing Expedition in Search of Irregularities

The Appellant's extensive requests for information amounts to nothing more than an unwarranted fishing expedition aimed at identifying potential irregularities within the tender procedure upon which to base further grievances.

Such requests go well beyond what is necessary to safeguard the Appellant's right to an effective remedy and if acceded to, would seriously prejudice the confidentiality of the Recommended Bidder's commercially sensitive information, particularly given that the Appellant is a direct competitor operating within the same market.

Furthermore, the Recommended Bidder strongly contests the Appellant's assertion that its requests for information are proportionate and limited to what is indispensable for the effective exercise of its right of appeal. On the contrary, the Appellant seeks the disclosure of an extensive range of documents and information, much of which bears no relevance to any grievance actually advanced in Securital's appeal. As already demonstrated, the Appellant was provided with sufficient information to understand the outcome of the evaluation process and to formulate detailed grounds of appeal. Accordingly, the breadth of the information now being sought cannot be justified on the basis of an alleged infringement of its right to an effective remedy.

Indeed, the Appellant goes so far as to request the disclosure of the explanations and supporting documentation furnished by the Recommended Bidder in response to the Technical Evaluation Committee's requests under Regulation 243 of the Public Procurement Regulations. Such documentation contains commercially sensitive information concerning the Recommended Bidder's financial offer, including the underlying pricing considerations and commercial arrangements, the disclosure of which to a direct competitor could significantly prejudice its legitimate commercial interests and undermine fair competition.

The Recommended Bidder maintains that the nature and extent of the Appellant's requests demonstrate an attempt to obtain access to the Recommended Bidder's tender documentation for the purpose of conducting its own reassessment of the bid, in the hope of identifying some alleged deficiency or manifest error in the Evaluation Committee's assessment. However, the right to an effective remedy cannot be interpreted as granting an unsuccessful bidder an unrestricted entitlement to scrutinise a competitor's tender in search of potential grounds upon which to challenge the award decision.

Furthermore, the Recommended Bidder respectfully submits that the purpose of the present review proceedings is not (and should not be) for this Board to conduct a fresh technical evaluation of the tenders or to substitute the assessment of the Technical Evaluation Committee with that of this Honourable Board.

As consistently recognised in established jurisprudence, particularly in *Cherubino Limited vs Direttur (Generali) tal-Kuntratti et (426/2014/1), X-Clean Ltd vs St. Vincent de Paul Long Term Facility et (98/19)* and *Executive Security Services Ltd v s Agenzija Servizzi.Gov (205/21/1)* neither this Honourable Board nor the Court of Appeal is vested with the specialised technical expertise required to undertake such an assessment. Rather, the scope of these proceedings is to determine whether the evaluation process was conducted lawfully and in accordance with the applicable procurement regulations, **without substituting the technical judgment of the Evaluation Committee** with an independent reassessment of the bids.

C. Submissions on the Second Grievance

By means of its second grievance, the Appellant is claiming that the financial offer submitted by the Recommended Tenderer is abnormally low. In support of this contention, the Appellant subdivides its grievance into four distinct arguments, namely:

i. that the Contracting Authority was duty-bound to request an explanation in respect of the allegedly abnormally low financial offer;
ii. that the Contracting Authority was required to verify the said offer;
iii. that the Contracting Authority failed to provide adequate reasons for its decision to accept the Recommended Tenderer's financial offer; and
iv. that, in any event, the Recommended Tenderer's financial offer should have been rejected.

C.1 The Contracting Authority's Obligation to Request an Explanation and Verify the Recommended Tenderer's Allegedly Abnormally Low Financial Offer

The Appellant submits that where a financial offer appears to be abnormally low, a Contracting Authority is statutorily bound to request an explanation from the tenderer concerned. In support of this argument, the Appellant quotes *verbatim* Regulation 243(1) of the Public Procurement Regulations, which imposes an obligation on the Contracting Authority to request explanations from a tenderer whose financial offer appears to be abnormally low:

> "Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services."

In this regard, the Recommended Bidder is in agreement with the Appellant and acknowledges that this is indeed the correct procedure which a Contracting Authority is required to follow when faced with an allegedly abnormally low offer.

Regulation 243(3) of the PPR goes on to provide that a failure by an economic operator to submit its explanations within the written timeframe imposed by the Contracting Authority shall be deemed as an acknowledgment by the economic operator that its tender is abnormally low.

On the other hand, where an explanation is duly provided, the Contracting Authority is under a **positive obligation** not to reject the tender on the basis of its allegedly abnormally low price unless the explanations provided are deemed unsatisfactory. The Regulation expressly provides that the Contracting Authority may only reject the tender where the evidence supplied does not satisfactorily account for the low level of the price or costs proposed, taking into account the elements referred to in sub-regulation (2).

It therefore remains within the prerogative of the Contracting Authority to determine whether the explanations provided by the economic operator *"satisfactorily account for the low level of price or costs proposed"*.

This is precisely what occurred in the present case. In fact, during the evaluation process, EngiNe S.p.A was notified by the Contracting Authority that the Evaluation Committee had noted that the financial offer submitted in response to the financial requirements set out in Clause 5 D(i) of Section 1 – Instructions to Tenderers was substantially lower than the estimated value of the tender as determined by the Contracting Authority. Accordingly, EngiNe S.p.A was afforded the opportunity to justify and explain how it was in a position to submit such a financial offer, in accordance with the provisions of the above-quoted Regulation 243 of the PPR.

EngiNe S.p.A duly replied to the said request, providing the necessary justifications and detailed explanations concerning its financial offer, in full compliance with the requirements of the Public Procurement Regulations. Evidently, and as may be inferred

from the subsequent recommendation for award, the explanations provided by EngiNe S.p.A were considered satisfactory by the Evaluation Committee.

The Recommended Tenderer, in its detailed response, which is available to this Honourable Board, duly justified and explained the basis upon which its financial offer was calculated, demonstrating that the price offered was not abnormally low, is economically sustainable, is costed properly, can be performed in accordance with the tender requirements and applicable legal obligations and complies in full with the Public Procurement Regulations. The explanation provided does not rely solely on generic statements and arguments, but includes a specific breakdown of costs substantiating the price offered.

In this context, reference is made to Regulation 243 of the Public Procurement Regulations, which sets out the procedure when an offer is, potentially, "abnormally low". The purpose behind this regulation is that of ensuring that, in the execution of the contract, should the contractor requests additional payments or attempt to be released from its contractual obligations because the contract would no longer make economic sense for it, the explanations it would have previously provided to the Contracting Authority would be binding on the bidder.

Consequently, it is not the Contracting Authority that should then continue to investigate the successful bidder's price, as long as it is able to determine that the competitive price is results from credible reasons and is not based on predatory pricing or unrealistic considerations.

C.2 The Contracting Authority's Alleged Failure to Provide Adequate Reasons for Accepting the Recommended Tenderer's Financial Offer

The Appellant further contends that the Contracting Authority failed to provide adequate reasons for its decision to accept the Recommended Bidder's financial offer, notwithstanding that the latter was approximately 53% lower than the estimated procurement value. In support of this contention, the Appellant relies on the judgment of

the Court of Justice of the European Union in *European Commission v Sopra Steria Benelux and Unisys Belgium* (Case C-101/22 P).

The Recommended Bidder contends that the obligation to provide reasons must not be confused with an unrestricted entitlement on the part of an unsuccessful bidder to obtain the entirety of the explanations submitted by a competing economic operator, or the complete internal assessment carried out by the Evaluation Committee.

In this regard, reference must be made to Article 55(3) of Directive 2014/24/EU, which expressly recognises that a Contracting Authority may withhold certain information concerning the award of a contract where its disclosure would prejudice the legitimate commercial interests of an economic operator or might prejudice fair competition between economic operators.

Furthermore, the Recommended Tenderer respectfully submits that a clear distinction must be drawn between the obligation to assess and verify an allegedly abnormally low financial offer and the obligation to communicate the reasons underlying that assessment to an unsuccessful tenderer.

As already explained above, in the present case the Contracting Authority did not simply accept the Recommended Bidder's financial offer without further consideration. On the contrary, the Evaluation Committee expressly identified the difference between the financial offer submitted by EngiNe S.p.A and the estimated procurement value, requested the necessary explanations in accordance with Regulation 243 of the PPR, and subsequently considered the detailed justifications provided by the Recommended Bidder.

The fact that the Contracting Authority ultimately proceeded to recommend EngiNe S.p.A for the award of the contract demonstrates that the financial offer was not accepted without scrutiny, but rather following the procedure specifically envisaged under the applicable regulatory framework.

In this context, it is apt to refer to **Veridos, C-669/20, of 15 September 2022, para. 47**, where the Court of Justice observed that:

> "...the fact that a tender is not considered to be 'abnormally low', without that being the subject of specific reasoning, cannot, as such, give rise to annulment of the procedure for the award of a contract, since the legislator of the **Union has not imposed an obligation on contracting authorities to adopt an explicit and reasoned decision finding the absence of abnormally low tenders.**"

Moreover, the mere fact that the Appellant may be dissatisfied with the information communicated to it does not, in itself, establish that the Contracting Authority failed to carry out the requisite assessment, much less that the Recommended Bidder's financial offer was abnormally low or ought to have been rejected.

Accordingly, whilst the Recommended Bidder acknowledges the importance of the obligation to provide adequate reasons, it is respectfully submitted that such an obligation cannot be interpreted as conferring upon the Appellant an unrestricted right to scrutinise the entirety of a competing bidder's commercially sensitive financial justifications, nor the detailed reasoning of the Contracting Authority insofar as such reasoning would necessarily entail the disclosure of commercially sensitive and confidential information.

It is difficult to envisage how the Contracting Authority could provide any further reasons beyond those already communicated in its letter of rejection without, in the process, disclosing commercially sensitive and confidential information concerning the Recommended Tenderer's pricing structure, cost calculations and other commercial considerations forming the basis of its financial offer.

C.3 The Appellant's Allegation that the Recommended Bidder's Offer Should Have Been Rejected

The Appellant further argues that, even if the Recommended Bidder submitted an explanation and even if the Contracting Authority duly assessed the explanation provided and documented its decision to accept the financial offer, the Recommended Bidder's financial offer should nevertheless have been rejected.

It is respectfully submitted that this argument constitutes nothing more than a desperate attempt by the Appellant to cast doubt on the Recommended Bidder's financial offer, in the hope that some allegation might ultimately find favour with this Honourable Board.

Indeed, the Appellant's argument as to why the Recommended Bidder's financial offer ought not to have been accepted is premised on two considerations, namely:

i. "Based on the Appellant's understanding of the Tender"[1]; and
ii. "According to the Appellant's best estimates"[2].

It is therefore evident that the Appellant's allegations are based solely on its own subjective understanding, assumptions and estimates, rather than on any concrete or objectively substantiated evidence demonstrating that the Recommended Bidder's financial offer is abnormally low or incapable of being performed.

In this regard, the Recommended Bidder wishes to emphasise two important and well-established principles.

First, the mere fact that a financial offer is competitive, or indeed substantially lower than the estimated value of a tender, does not necessarily render that offer abnormally low. A financially competitive offer is not, by that fact alone, an abnormally low offer.

Second, as acknowledged in Recital 103 of Directive 2014/24/EU, while an offer which appears to be abnormally low might be based on technically, economically or legally unsound assumptions or practices, this is not necessarily the case. The mere fact that a financial offer appears to be abnormally low does not necessarily mean that it is, in fact, abnormally low or economically unsustainable.

In its detailed explanation submitted to the Contracting Authority, which is available to this Honourable Board, the Recommended Bidder duly explained and substantiated the basis of its financial offer, demonstrating not only that the price submitted is economically viable

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[1] Paragraph 45 of Securital's Objection
[2] Paragraph 46 of Securital's Objection

and sustainable, but also that it enables the proper and effective performance of all the services required under the tender procedure, whilst ensuring full compliance with the applicable contractual obligations and the quality standards offered.

Additionally, it is of fundamental importance to emphasise that the Recommended Bidder is itself a manufacturer of the product that will be supplied and on which its offer is based. In this regard, it is entirely reasonable that a manufacturer operating on such a scale would benefit from economies of scale, direct control over production costs, and operational efficiencies which a system integrator, such as the Appellant, may not necessarily be in a position to achieve. This further explains why the Appellant's own cost estimates and underlying assumptions may differ significantly from those of EngiNe, without such differences in any way implying that the Recommended Bidder's offer is economically unsustainable or abnormally low.

Accordingly, the Appellant cannot reasonably expect its own understanding of the tender requirements or its unilateral estimates of the costs involved to prevail over the detailed explanations furnished by the Recommended Bidder and duly assessed by the Contracting Authority. The mere fact that the Appellant may have arrived at different cost estimates does not, in itself, establish that the Recommended Bidder's financial offer is abnormally low, nor does it constitute a valid ground for rejecting the same. The Recommended Bidder further submits that EngiNe's position as a manufacturer renders the protection of its proprietary technology, industrial know-how, internal cost structures and other commercially sensitive information all the more critical. The disclosure of such information to a direct competitor could result in significant commercial prejudice to the Recommended Bidder, extending well beyond the scope of the present tender procedure and potentially undermining its competitive position in the wider market.

D. Conclusion

Without prejudice to the above, it is respectfully submitted that this Honourable Board should be wary of any attempt by the Appellant to rely on its grievance concerning the

allegedly abnormally low financial offer as a pretext to embark on a fact-finding mission on a bid made by its competitor.

It has been consistently held in several decisions of the Public Contracts Review Board and the Courts that, for an appeal to be admissible, the appellant must identify *"specific points... to justify any doubts and suspicions on how the evaluation process was carried out or on the technical offer submitted by the preferred bidder"* (*vide*, inter alia, the decision delivered in **Case 1873 on 29th May 2023**).

In the absence of specific and well-founded concerns, the Appellant cannot reasonably expect this Honourable Board to undertake a fresh evaluation of the Recommended Tenderer's offer, or to effectively order a rerun of the evaluation process, merely in the vague hope of uncovering some inconsistency or shortcoming which might serve to justify the cancellation of the award.

In conclusion, and while the Recommended Bidder reserves the right to make further submissions and bring any evidence it deems necessary, it is submitted that the Appellant's objections should be rejected, and that the Decision recommending the award to EngiNe S.p.A should be confirmed.

Yours sincerely,

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