

PUBLIC CONTRACTS REVIEW BOARD

Case 2271 - CT2350/2025 - Tender for the Provision of Civil Works, Mechanical and Electrical Services and Finishing Works using Environmentally Friendly Products for the Gozo College, Gharb Primary School, Gozo (hereinafter the "Tender");

7th October 2026

The Board,

Having noted the Letter of Objection filed by **Legacy Ventures Limited** (hereinafter referred to as ***"the Appellant"***) filed on the 29th May, 2026;

Having also noted the Reasoned Letter of Reply filed by the Foundation for Tomorrow's Schools ***et*** (hereinafter referred to as ***"the Contracting Authority"***) filed on the 8th June, 2026;

Having also noted the Reasoned Letter of Reply filed by Dr Daniel Calleja acting for and on behalf of **Elzan Construction Ltd** (hereinafter referred to as ***"the Recommended Bidder"***) filed on the 15th June, 2026, which was declared inadmissible by the Decree of the Board of the 17th June, 2026;

Having heard and evaluated the testimony of the witness **Mr Franco Costa**, as summoned by the Appellant;

Having heard and evaluated the testimony of the witness **Mr Martin Azzopardi**, as summoned by the Appellant;

Having heard and evaluated the testimony of the witness **Ing. Melchisedech Zarb**, as summoned by the Appellant;

Having heard and evaluated the testimony of the witness **Mr Vijeesh Thavakkara Kooloth**, as summoned by the Appellant;

Having heard and evaluated the testimony of the witness **Franco Costa** testifying for and on behalf of the Foundation for Tomorrow Schools ***et*** as summoned by the Contracting Authority;

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

Having noted and evaluated the minutes of the Board sitting of the 22nd September, 2026 hereunder-reproduced.

Minutes

Case 2271 – CT2350/2025 – Tender for the Provision of Civil Works, Mechanical and Electrical Services and Finishing Works using Environmentally Friendly Products for the Gozo College, Gharb Primary School, Gozo.

The Tender was published on the 30th of October 2025, and the closing date was the 4th of December 2025.

The estimated value of the tender, excluding VAT, was €2,850,000.

A deposit of €14,250 was paid.

There were six bids.

On the 29th of May 2026, Legacy Ventures Limited lodged an appeal against the Foundation for Tomorrow's Schools – the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

On the 22nd of September 2026, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Dr Maria Cardona and Mr Keith Victor Grech as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – Legacy Ventures Limited

Legal Representative

Mr Martin Azzopardi – Company Representative

Mr Vijeesh Thavakkara Kooloth – Company Representative

Contracting Authority – Foundation for Tomorrow's Schools

Legal Representative

Dr Zack Esmail – Legal Representative

Mr Franco Costa – Chairperson

Ms Alexia Sammut – Secretary

Perit Duncan Mifsud – Evaluator

Perit Joseph Cachia – Evaluator

Ing. Melchisedech Zarb – Evaluator

Recommended Bidder – Elzan Construction Limited

Dr Daniel Calleja – Legal Representative

Legal Representative

Ing. Simon Mizzi – Company Representative

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2271 in the records of the PCRB, in relation to tender CT2350/2025. The Chairman identified the appellant as Legacy Ventures Limited, the Contracting Authority as the Foundation for Tomorrow's Schools, and acknowledged the presence of representatives of the Recommended Bidder, Elzan Construction Limited.

The Chairman observed that the appeal had been accompanied by a large number of requests, replies and decrees, and invited the parties to introduce the appeal as usual, after which the Board would deal with the outstanding issue arising from the decrees.

Preliminary Issue – Disclosure of Documents

The Appellant informed the Board that the appellant's witness was waiting outside the hall and asked that any other witnesses do likewise.

The Appellant then raised a preliminary point. In its latest note of the 6th of August 2026, the appellant had listed a number of documents which formed part of the disclosure ordered by the Board and which the Contracting Authority had declared it was exhibiting, but which had not in fact been passed on to the appellant. It identified these as the Eurovent certificate, the AUX model schedule, the Public Register material, and the rated capacity schedule. It asked that the Board first verify whether these documents had been passed on to the Board itself and, since they had been declared as disclosed, that the appellant be given a copy.

The Contracting Authority offered to send the documents by email immediately so that they could be printed. The Chairman asked the Appellant to indicate the documents so that they would form part of the acts. The Appellant requested a short recess to confirm the position with the appellant's technical persons.

Following the short recess, the Contracting Authority stated that, having verified with its client, the three documents being released were those which the Contracting Authority considered not to be commercially sensitive. The other documentation referred to by the Appellant was considered commercially sensitive and was not being released. The Chairman observed that the three certificates appeared to be the same document, but with different serial numbers relating to different models.

The Appellant stated that the appellant had requested the list of models and the entries in the public register showing that each model was covered by the respective certificate and asked who was stating that this information was confidential and why. The Chairman indicated that the question could be put to a witness.

The Contracting Authority stated that the models had already been submitted well before this sitting and that the appellant had access to them. The document now provided was not simply a declaration of the model but a confirmation of it. It could not understand what further information was being requested and suggested that the appellant be given time to carry out its verification. The Appellant replied that the appellant had been told it would receive four items, but had received only one, the others being withheld as confidential, contrary to what the Contracting Authority had declared in its note.

The Contracting Authority objected to the manner in which the proceedings were being conducted by the Appellant. The appellant was entitled to test the evaluation through the witnesses, and it was then for the Board to decide whether the evaluation had been carried out correctly. However, the evaluation was already being reviewed before the Contracting Authority had even presented its case, and the veracity of its documentation was being called into question.

The Recommended Bidder raised a procedural point. The grievances were crystal clear. Some of them concerned the appellant's own shortcomings, which could not be remedied through the Recommended Bidder's documents, while the one grievance concerning an alleged shortcoming of the Recommended Bidder did not indicate the need for any particular document to substantiate it. No further document could therefore be requested at this stage. It added that the information in question could be obtained by scanning the QR code on the document itself. The Chairman asked whether the information could indeed be extracted from the QR code.

The Appellant stated that its legal representative was not a technical person, although the appellant's technical witnesses were outside the hall, whereas the Recommended Bidder had its technical persons seated beside it. The documents had been procedurally ordered by the Board, which had reproached the Contracting Authority for not providing them. The Contracting Authority had then stated that they had been provided, yet they were never received.

The Chairman made it clear that the Board does not look favourably upon situations in which an appellant comes before it without the documents it requires to pursue its appeal. Drafting an appeal presents its own difficulties, and where documents are not being provided and an appellant is finding it difficult to motivate its appeal, the Board does not appreciate it. The Chairman therefore requested that any documents which should be provided be passed on, so that the appeal could proceed.

The Contracting Authority, while expressing its respect for the Board's position, described the appellant's request for information as, if anything, more than extensive and exaggerated, and stated that both the request and the Contracting Authority's reply had been exhibited as part of the Contracting Authority's reply to the appeal. The request had no basis under Regulation 40, Regulation 242 or Regulation 272 of the Public Procurement Regulations, and the Contracting Authority had given what it was obliged to give. When a bidder entrusts a contracting authority with confidential information, that authority has no right to divulge it and is obliged to safeguard it. Regulation 40 sets out the type of information to which one is entitled, and the Contracting Authority had released all such information immediately upon the request and exhibited it in full with its reply.

The Contracting Authority continued that the grievances were essentially three. As regards the appellant's exclusion, the reasons given were those of the Evaluation Committee as set out in the evaluation report, and no further information existed. The appellant had a right to have its offer re-evaluated, but any re-evaluation was for the Board to carry out, not the parties. A losing party would always be at a disadvantage, since it had no right to its competitor's offer. Were the Contracting Authority to disclose more than it was obliged to, the protection of the law would fall away, and the obligations of professional secrecy, including those under Article 257 of the Criminal Code, would be triggered, exposing the officials concerned personally. What was being sought was a balancing act.

The Contracting Authority stated that it did not recall the Board reproaching it. It objected to the manner in which requests had been widened over the course of the proceedings, which, in effect, stretched the ten-day objection period, to the detriment of transparency and equal treatment. The appellant had a powerful tool at its disposal, namely the witnesses, and the Board had consistently held that the basic, non-confidential information should be given, with the rest being elicited through examination and cross-examination. The brand and model, the subcontractors, the value of the offers, the identity of the winning bidder and the reasons for the exclusion were not commercially sensitive and had been given. Everything else had been withheld as proprietary, and the evaluators would be available to explain why.

The Contracting Authority referred to the South Lease judgment of the 31st of January 2022, in which only the brand and model had been requested, the PCRB had refused disclosure, and the Court of Appeal had, for the first time, opened the door to some form of disclosure. It also referred to the judgments of the Court of Justice of the European Union in Antea Polska and Varec, and to a decree delivered in 2021, in which the court, in a 34-page decree, struck a balance on commercially sensitive information by granting access to the lawyers only, in confidence. The purpose was to ensure that proceedings were not used to gain visibility of how a competitor works. In the Contracting Authority's opinion, it had given all the information it could, not because it did not wish to give more, but because it could not.

The Appellant replied that its complaint at this stage was a simple one. In Annex A to the Contracting Authority's note, on DalliParis letterhead, the Contracting Authority had declared that, following the Board's orders, it was providing a redacted certificate, the disclosed identifier, the rated capacity schedule, a redacted extract of the public Eurovent register and an independent verification of the listing. The appellant had today been told that, of those documents, only one was being provided. He requested the Board, in view of that annex, to make its conclusions and orders before the hearing proceeded.

The Contracting Authority noted that all parties had access to the annex. The Chairman invited Mr Franco Costa to take the witness stand.

Witness Testimony on the Preliminary Issue

Testimony of Mr Franco Costa (ID no. 345774M) (Chairperson, Evaluation Committee) — Summoned by the Appellant

Mr Costa was sworn in and confirmed that he would tell the truth, the whole truth, and nothing but the truth.

Mr Costa stated that the Contracting Authority had said it would release, in terms of Annex C, the Eurovent certificate. The Eurovent certification was among the documents required at tendering stage and was listed in the Literature List, which formed part of the tender document and contained a list of products and documents. The public register referred to by counsel was referenced in the Literature List itself. The Eurovent certification was not a document but a link to a public register, www.eurovent-certification.com/en, in which one enters the model submitted by the bidder and the register shows whether or not that model is Eurovent certified. The register was accessible worldwide, and the Evaluation Committee had gone further by releasing the certificate itself to the appellant.

Questioned by the Appellant as to what was confidential in the document, Mr Costa explained that the certificate given was a different document. It was a certificate produced specifically for the project, generated when the bidder enters certain values. It had been redacted because it contained details of commercial value and sensitivity which had nothing to do with the objection, namely the name of the project and some other details. Compliance could in any case be checked by entering the model in the register.

Asked about the remaining pages of the document marked as page 1 of 4, Mr Costa declared that the Evaluation Committee had received only that page 1, which in itself confirmed that the model submitted by the Recommended Bidder was up to specification. The Committee had needed no further document, since that certificate in itself exhausted compliance. Mr Costa offered to show the Board the unredacted version on his laptop, and the Contracting Authority offered to pass a complete copy to the Board.

The Chairman recorded that, at this sitting of the 22nd of September 2026, Mr Costa exhibited product performance rating certificates marked Document FC1, Document FC2 and Document FC3, relating respectively to models ARV-H250/SR1MVB, ARV-H280/SR1MVB and ARV-H500/SR1MVB.

Asked by the Appellant to which of the Recommended Bidder's five offers each certificate related, Mr Costa stated that the same documents had been submitted for all five bids submitted by the Recommended Bidder.

The Chairman then directed that the hearing proceeds with the appeal.

Hearing of the Appeal

Initial Submissions

Submissions by the Appellant

The Appellant stated that the appeal was based on three principal points. The first was the exclusion of the appellant itself, which rested on one reason only, namely that one of the projects cited by the appellant was not accepted as being of the nature required by the call, having been classified as residential. The appellant would bring evidence to show that it should never have been excluded on this ground. The second concerned the fact that the Recommended Bidder had submitted five offers and that, in the appellant's view, the manner in which these multiple bids were submitted and then evaluated, or not evaluated, ran directly counter to the rules governing public procurement. Finally, there was the issue of whether the recommended offer was compliant with the mandatory technical requirements. It would bring its evidence in that order: the director of the appellant company on the project, then evidence on the multiple bids, and finally a technical witness on the compliance of the recommended bid.

Submissions by the Contracting Authority

The Contracting Authority agreed that the appeal addressed three matters. The first, the alleged lack of information, had already been dealt with. On the exclusion, the purpose of the appeal was to overturn the decision to exclude the appellant. The Contracting Authority was not procuring a block of apartments or a tower, but a school in Gozo as part of a government school programme. The mandatory requirement referred to projects "of a similar nature", and the tender did not stop there but defined what this meant. The Contracting Authority was obliged to evaluate on the basis of what it had declared beforehand. The Foundation had no difficulty working with anyone; this was a race with fixed parameters, and while the cheapest offer should win, it had to be the cheapest compliant offer.

As regards the evaluation of the Recommended Bidder, the Contracting Authority stated that Article 3.1 of the General Rules Governing Tenders provided that where a bidder submits more than three non-identical offers, the evaluation committee is to consider only the three cheapest and discard the rest, which is precisely what the Evaluation Committee had done. On the alleged non-compliance, it was not clear what was being alleged against the Recommended Bidder. The Board's role was to review the evaluation, and the Contracting Authority had no difficulty with scrutiny; it had five persons available and ready to testify that they had acted correctly and according to the rules.

Submissions by the Recommended Bidder

The Recommended Bidder stated that the three grievances were in reality articulated as five. On the first grievance, relating to the multiple bids, it associated itself fully with the Contracting Authority, since the procedure cited by the appellant did not reflect what actually resulted; the Evaluation Committee had handled

the bids in the appropriate manner, as was evident chronologically from the Contracting Authority's own reply. On the second grievance, the exclusion of the Cityways project, a residential project might have some commercial elements, but that did not make it a commercial project; letting out a residential building involves a commercial element, but that does not make the building commercial. If the appellant was unhappy with the way the requirement was described, it could have sought a clarification or a remedy before the closing date, which it did not do. The grievance on technical compliance was of procedural interest only, since the appellant was not claiming that a wrong decision had been taken, but that a meaningful explanation had not been provided. The Board had on several occasions held how much information had to be given for a party to be able to appeal, and in this case the Evaluation Committee's decision and its explanation to the parties had been crystal clear.

Witness Testimonies

Testimony of Mr Martin Azzopardi (ID no. 0437819L) (Owner, Legacy Ventures Limited) — Summoned by the Appellant

Mr Azzopardi was sworn in and confirmed that he would tell the truth, the whole truth, and nothing but the truth. With the agreement of the parties, he testified in English.

Mr Azzopardi stated that he was the owner of the appellant company. Asked by the Appellant to describe the Cityways project, he stated that it was one of the company's first projects, with a value of around €500,000 to €700,000. It involved façade works and full electrical works in a building with a large number of units **some** 250 to 300 units, including 70 units for the Housing Authority, and included all the common parts, the plastering and marble works of the façades and apertures, the substation, culverts and planters. The internal works included the common parts consisting of 3 staircases, the garages and storage units, The company had also fully finished the 70 units of apartments within the development for the Housing Authority

The common parts included three staircases, involving gypsum works, marble works, skirting, plastering and painting, the common areas leading to the apartments, three or four floors of garages and the stores. It was a large project which lasted two years. Mr Azzopardi was heavily involved in managing the problems on site, as the client had not planned the project properly, the finishing works started late, there were penalties in relation to the Housing Authority, and many subcontractors were working on top of each other. He managed the project and was, at the time, also employed by the client.

The works also covered the service shafts, involving plastering and painting. The electrical works were a full installation, since there was no electrical infrastructure on site; the plans were constantly being changed, and many issues had to be resolved among the contractors. The works included the substation, including ordering the metalwork and the doors for the substation and coordinating with Enemalta. At roof level, the works included the building of the roof boundary wall and waterproofing membrane, plastering and related works. His role was to solve problems, engage subcontractors, and liaise with contractors, engineers and the client's housing requirements. The trades on site included waterproofing, electricians, plumbers, tilers, carpenters and others. He described the project as complicated but one from which he had learnt a lot, and of which he was still very proud.

Asked what had been submitted regarding this project and whether the Contracting Authority had made any request, Mr Azzopardi stated that he was not the one who had submitted the tender, as he was more of a hands-on person and the submission had been prepared by his staff. He did not recall any request from the Contracting Authority.

Cross-examination by the Contracting Authority

The Contracting Authority asked whether the company had submitted a List of Projects with its original tender submission, Mr Azzopardi initially stated that he did not know, as he had not prepared the submission himself. He then stated that, as far as he knew, the tender required the submission of a number of projects and that this is what the company had done. He did not know whether the Contracting Authority had requested the company to rectify its position for failing to submit the list, nor which projects had eventually been submitted, and could not recall them offhand. He stated that the company's procurement team consisted of four persons, including Mr Vijeesh, Mr Ilio, Mr Dean Wells and Mr Renoi, all employed by the company. He recalled that the tender requirement referred to a value threshold and mentioned infrastructure projects, public spaces and commercial projects, which the company had listed. He did not know which projects were listed to satisfy this requirement. He could check but did not have any knowledge.

Cross-Examination by the Recommended Bidder.

Mr Azzopardi stated that the company had been set up in 2021/ 2022. During this period, he had worked on two FTS projects, at Santa Luċija and tar-Rabat school, as a subcontractor with AG Group and worked on both projects. He did not know offhand whether these had been included in the list submitted, noting that the company had many projects and had listed only a few. Questioned about the Public projects that they had listed, Mr Azzopardi answered that it was the same person that had listed them, who could answer.

Testimony of Mr Franco Costa (ID no. [345774M]) (Chairperson, Evaluation Committee) — Recalled under the same oath by the Appellant

Mr Costa confirmed that he was testifying under the same oath.

Mr Costa stated that he had chaired the Evaluation Committee, with Ms Alexia Sammut as Secretary, and that the technical members were two periti and an engineer, namely Ing. Melchisedech Zarb, engineer, and Perit Joe Cachia and Perit Duncan Mifsud. All of them, including the Secretary, had extensive experience in public projects and in the evaluation of tenders.

Asked what offers the Recommended Bidder had submitted, Mr Costa stated that it had submitted five offers. In line with Article 3 of the General Rules Governing Tenders, which allows a contracting authority to accept only three multiple bids, the Committee had disqualified the two highest-priced offers and retained the three cheapest. The Appellant referred to the list of bids, namely TID 236573 at approximately €3.39 million and TID 236557 at approximately €3.691 million, which had been excluded, and TID 236558 at approximately €2.793 million, TID 236568 at approximately €3.005 million and TID 236560 at approximately €3.147 million, which were retained. Mr Costa confirmed that the two excluded bids had not been opened or passed on to the technical members.

Mr Costa stated that the evaluation was carried out in three phases, the eligibility phase, the technical phase and the financial phase, and that the three retained bids passed through each phase and were considered individually. The bids were given to the members to check compliance, after which the Committee met and discussed the findings as a whole.

As regards any comparison between the three bids, Mr Costa stated that, at the technical stage, the Committee had to ascertain that the three offers were technically different, since the General Rules Governing Tenders required the Committee to evaluate three bids which were technically and financially non-identical. That verification was carried out, and it was found that the offers submitted by Elzan were technically different. The

technical offer comprised the documents requested in the Literature List, some twenty documents in all. At the technical evaluation stage, the Committee established that the technical offers in the three Elzan bids were different and therefore could not disqualify any of them. In the Literature List, the bidder had to submit items such as the Eurovent certification, PPR pipes, paint, aluminium apertures, computers, timber doors and landscaping, and between one offer and another there were six items which differed. The remaining items were the same across the three bids evaluated.

Asked when the decision that the remaining bids were non-identical was taken, Mr Costa stated that it was taken immediately at the start of the technical phase, since the original submissions contained different material. He explained that the Committee does not keep minutes in that manner but uses a large Excel schedule in which the points are recorded, and after each meeting the Secretary circulates an email summarising the main decisions among the Committee members. The Appellant put to the witness that there was nothing in the file showing that the bids were found not to be identical, and that this may have been discussed only after the appeal was filed. Mr Costa replied that the matter had been discussed during the meeting.

Cross-examination by the Recommended Bidder.

Asked on the Cityways project, and following a question from the Chairman, Mr Costa confirmed that Legacy Ventures Limited had not submitted a List of Projects at tendering stage. Given that the value of the tender exceeded half a million euro, the Contracting Authority was obliged to request such experience. During the eligibility phase, the Committee identified this shortcoming and, with the approval of the Department of Contracts, to which every rectification is subject, issued a rectification request. The documents then submitted were not in line with the requirements, and the Committee could not continue asking the bidder further questions.

Mr Costa stated that the tender document required the bidder to “*state the number of successfully completed works projects of similar nature, being large-scale commercial or public projects involving M&Es or Finishing works successfully completed during the last three (3) years*”. One of the projects submitted was Cityways, which the submitted document itself clearly described as residential, a block of flats. At evaluation stage, the Committee could not move the goalposts or change the criteria of the published tender. He described the appellant’s situation as the result of mistake after mistake. Asked by the Appellant what these mistakes were, Mr Costa stated that the appellant had had the opportunity to seek a clarification, and to submit the documents at tendering stage, but did not, and thereby lost the opportunity; under the principle of self-limitation, the Committee could not keep asking questions to bring the bidder into line.

Cross-examination by the Contracting Authority.

Mr Costa confirmed that the List of Projects had been submitted at rectification stage, during the eligibility phase. The closing date for the submission of offers was the 4th of December 2025, with the tenders opened half an hour later. Asked for the date of the rectification request, Mr Costa explained that rectification letters are uploaded onto the ePPS, which automatically sets the closure date, and that this is recorded in the evaluation report. The Contracting Authority suggested that the rectification request was issued on the 6th of January 2026, and Mr Costa stated that the reply was received on the 13th of January 2026. The List of Projects submitted was undated.

Mr Costa stated that the appellant had submitted three projects. The first was the Mercury Tower project, described as works involving internal finishing, construction of the façade infrastructure and other services, at St Julian’s, valued at €5.6 million. The second was Cityways, described as “*infrastructure construction, finishing and*

drainage works of a residential building block”, valued at €546,868.53. The third was the C’est Lavie Boutique project, involving works on a guest house including the construction of walls and plastering, valued at approximately €177,000. Mr Costa confirmed that these descriptions had been written by the bidder itself in its original submission.

Mr Costa further stated that each project had to be accompanied by a short portfolio, a sequence of photographs attesting the execution of the project, together with a description. The portfolio submitted for Cityways again described the project as residential, stating that Cityways Kappara was a planned residential property development. The Committee excluded the project because there was no reference, in the description or in the documents submitted, to the project being a public or commercial project.

Asked why a further rectification was not requested, Mr Costa stated that, first, a rectification had already been requested, and the Committee could not request another, and secondly, the submission was clear; rectifications or clarifications are requested where something is unclear, and this was not the case. The Committee could not continue asking questions in order to bring the bidder into line with the requirements.

Testimony of Ing. Melchisedech Zarb (ID no. 196776M) (Evaluator) — Summoned by the Appellant

Ing. Zarb was sworn in and confirmed that he would tell the truth, the whole truth, and nothing but the truth.

Ing. Zarb stated that he was a member of the Evaluation Committee which reviewed the bids. The Secretary would set up meetings and pass the material to the members, who would check it and then discuss it together in Committee before reaching a final position. As regards the Recommended Bidder, the Committee evaluated the three cheapest offers which remained. The process began with eligibility, with the technical aspects coming at the final stage.

As regards TID 236558, the cheapest Elzan offer, Ing. Zarb stated that the Committee had requested rectifications concerning key experts, literature and information on the Green Public Procurement (GPP) criteria. On the key experts, the Committee had observed that the qualification submitted for the proposed Site Manager, Mr Kurt Gauci, was a diploma, whereas the tender required MQF level 4; the bidder was asked to replace him, and he was eventually replaced by Mr Wayne Scerri. The bidder was requested to submit an updated key expert form, CVs, copies of qualifications, a statement of availability, the self-declaration form related to public employees where applicable, and the professional declaration form. For the Mechanical Engineer, Dr Ing. Simon Mizzi, and for the Health and Safety Practitioner, Mr Peter Micallef, the bidder was requested to submit the declaration form related to public employees.

On the literature, the Committee requested information on the timber fire doors, asking the bidder to show where, in the literature submitted, it could be seen that the doors complied with the specified requirements, including solid beech natural timber, architraves of a minimum of 90mm and a minimum thickness of 15mm, a fixed panel with 8mm wired glass, an automatic door closer, solid beech timber frames, high pressure laminate (HPL), heavy duty brushed steel hinges and a vision panel. This did not mean that the product was deficient, but that the Committee had not found the information in the submission or it was not clear. He explained that the Technical Offer Form falls under Note 3 and could not be rectified, whereas the literature falls under Note 2 and could be rectified; accordingly, the bidder was asked to submit documentation or to indicate where the information could be found in the documentation already submitted. Asked when the information was received, Ing. Zarb, after consulting the Secretary, stated that it was received on the 25th of March 2026

At this point, the Contracting Authority, on behalf of the Contracting Authority, objected to questions being put in respect of bids which were not the subject of the appeal, and requested the Board to direct the appellant to limit its questions to the decision appealed from.

Verbal.

“FTS qiegħda toggezzjona fil konfront tad domandi li qegħdin isiru fil konfront ta’ bids li ma humiex mertu ta dan l-appell u għaldaqstant titlob lil dan il-Bord biex jidderiegi lil appellant jgħamel domandi limitatament fil konfront ta dak li jappella minnu”.

The Recommended Bidder associated itself with the objection, adding that it was unheard of for an evaluation committee to be asked to justify its assessment of bids which had been removed from the process, rather than of the excluded bidder itself.

“The Recommended Bidder jassocja ruħha ma dak li qed jgħid il-kollega. Hija ‘unheard of’ illi ngħamlu deżamina ta dak illi għamel il-bord ta’ evalwazzjoni fuq dak illi tneħħa fil process, mbux fuq dak li baqa jew fuq dak li gie eskluż. Qatt ma kien hemm okkażżjoni wabha quddiem dan il-Bord fejn l ‘Evaluation Committee’ intalab jiggustifika jew jixhed fuq dokumenti pertinenti ma ‘bid’ diga maqlugħa sakemm mbux ta l-‘excluded bidder’ innifsu”.

The Appellant submitted that the appellant’s first grievance was clear and addressed all of the Recommended Bidder’s bids, the number of bids which remained in the race, how the Evaluation Committee went from five bids to three, and the modus operandi of the Recommended Bidder, within the framework of the Public Procurement Regulations and the applicable rules, including Article 3.1 of the General Rules Governing Tenders.

“Għan nom ta l-appellant jirrileva li l-enwiel aggranjū ta’ l-appellant huwa car in kwantu jolqot il-bids kollha tar ‘Recommended bidder’ in -numru ta’ bids li thallaw fit-tigrija u kif ukoll l-evalwazzjoni tal-kumitat ta l-evalwazzjoni u x’istharreg il-kumitat ta l-evalwazzjoni biex wasal illi minn 5 ‘bids’ iħalli 3 fit-tigrija u anke l-‘modus operandi’ ta l-offerent rakkomandat dejjem fil qafas tar-regolamenti dwar il-kuntratti pubblici u r-regoli applikabbli ‘nkluz l-artiklu 3.1 ta l-istess regoli”.

The Recommended Bidder rebutted that the first grievance, as titled and as concluded at paragraph 2.9 of the objection, concerned whether the recommended bid should have been discarded, and that no evidence could be brought on matters not covered by the grievances.

The Chairman referred to the first demand in the letter of objection, which sought disclosure of, inter alia, *“the Article 3.1 multiple-bid analysis concerning all Elzan submissions; the reasons why lower-priced Elzan submissions were not recommended, the evaluation record and reasons concerning the objectors list of projects and the assessments, the projects experience compliance matrix for the recommended tenderer. The compliance matrix for TID 236560, the Eurovent GPP EU echo label paint, toilet sanitary ware, curtain...”*, observed that reference was thereby made to the multiple bids, and directed the Appellant to continue with its questions.

Ing. Zarb stated that a single rectification letter was sent in respect of TID 236558, covering the key experts, the literature and the GPP criteria. As regards TID 236568, the same questions were put, in respect of the same key experts. As regards the GPP criteria, for the first bid the Committee requested information on the computer, the landscaping and the stage curtains, while for this bid it requested information on the landscaping only, since the other information was already found in the literature. After initially stating otherwise, Ing. Zarb clarified that the bidder did not reply to the rectification requests in respect of TID 236558 and TID 236568, which were the two cheapest, and that it replied fully in respect of TID 236560.

As regards TID 236560, the key experts were the same three, namely the Site Manager, the Mechanical Engineer and the Health and Safety Practitioner, and the persons were the same: Mr Kurt Gauci, later replaced by Mr

Wayne Scerri, Dr Ing. Simon Mizzi and Mr Peter Micallef. The same matters were raised regarding the timber fire doors and the timber doors, among other items.

Ing. Zarb confirmed that he participated, together with the Committee, in the decision on the bids. The two highest bids were not even examined and were technically discarded. The three remaining Elzan bids were evaluated together with the other bids. Since the bidder did not reply in respect of TID 236558 and TID 236568, those bids fell automatically.

Asked what, apart from price, differed between the three bids, Ing. Zarb stated that he recalled that the documents relating to the GPP criteria were different, and that the documents submitted with the bids at the outset were different. He stated that he was an engineer and that the other two technical members were periti, and that the GPP criteria were discussed by the Committee jointly. The Contracting Authority objected that the witness had sat on the Evaluation Committee as an evaluator and not in his capacity as an engineer, and that if the appellant wished an engineer to explain GPP it should produce one. Ing. Zarb stated that his role on the Committee was that of evaluator, not of a lawyer or a GPP consultant, and explained that GPP criteria are requirements set by government so that certain products are of a certain level or quality and not harmful, giving as an example the requirement that a computer monitor be Energy Star rated.

Asked by the Appellant whether the monitor model differed between the three bids, Ing. Zarb stated that the information might not have been provided, but the product documentation was different. The Recommended Bidder objected that the monitor model was commercially sensitive and that the line of questioning amounted to a fishing expedition, since the questioning had started on the key experts and was now moving on in an attempt to find something. The Appellant replied that it was seeking to establish whether the three bids were the same, and that the witness need only state whether the monitor was the same model without naming it. The Chairman directed the witness to answer whether the model was the same, without stating what it was. Ing. Zarb stated that it could be that the brand and model were the same, but that the manner in which the documentation was provided was different, and that he would need to verify.

The Chairman directed that the witness be passed the laptop to verify, warned those present not to make comments while a witness was testifying, and called a ten-minute recess.

On resuming, Ing. Zarb stated that the Committee had received a reply only in respect of the third bid and therefore could not know the position in respect of the other two. The Committee had not asked for the model; it had asked about the GPP criteria, namely the minimum energy performance for computers and for monitors. This item was not included in the Technical Offer Form but, as a GPP requirement, the Committee had to request the information. Ing Zarb read what they had asked for:

“Minimum energy performance for computers applicable to stationery and mobile computers the calculated typical energy consumption, ETEC for each piece of each equipment delivered as part of the contract must be part or equal to the maximum ETEC requirement”.

The reply should have included the model and the information, but no reply was received for the first two bids.

Asked what differed between the three bids, Ing. Zarb stated that one of the six documents was the GPP information on computers, which was missing. Others were the landscaping, where information was given in one bid and not in another; the stage curtains, also in relation to the GPP criteria; the document on building design, construction and management for major renovation works; and the installation and commissioning of building energy systems, where the documentation was somewhat different. He was unable to state from memory what the difference was and did not have that information with him.

Testimony of Mr Vijeesh Thavakkara Kooloth (ID no.02243598A) (Electrical Engineer, Legacy Ventures Limited) — Summoned by the Appellant

Mr Thavakkara Kooloth was sworn in and confirmed that he would tell the truth, the whole truth, and nothing but the truth. He testified in English.

Mr Thavakkara Kooloth stated that he worked with Legacy Ventures Limited as an electrical engineer, providing technical support on the company's projects, and that the company worked as a team.

Asked by the Appellant to explain the Eurovent certification, he stated that it is a third-party certification ensuring that products work according to the relevant standards; Eurovent checks the particular model of the machine proposed for compliance with those standards and publishes approved models on its website, where compliance can be checked by entering the model number.

As regards the computers and monitors, he stated that he had reviewed the documents received from the Contracting Authority regarding the recommended bid. The GPP criteria required an energy efficiency rating for the monitors, which was not found in the reply. The datasheet submitted for the computer did not reflect the required standards, namely IEC 62623:2012, and the minimum energy performance for the monitors was not found in the documentation. In his view, the computer offered was not technically compliant. He was reading from the tender document GPP.

Cross-examination by the Contracting Authority.

Mr Thavakkara Kooloth stated that he worked for the company for three years. He was involved in the drafting of the submission and worked as a team and discussed submissions internally. Asked whether he knew that the company had not submitted a List of Projects with its offer and had submitted it later, he confirmed. He confirmed that Cityways was a block of apartments, that it was included as one of the three projects submitted, and that the tender required three projects completed within a particular time period.

Cross-examination by the Recommended Bidder.

Mr Thavakkara Kooloth confirmed that his expertise was in electrical engineering and that no one with expertise in computing was present. The Recommended Bidder put to him that he could not establish whether the Recommended Bidder's submission was or was not technically compliant, but only that he had not seen certain information. The witness maintained that the computer offered was not technically compliant, since the datasheet did not reflect the technical requirements of the GPP document.

The Recommended Bidder requested a confrontation between the witness and Mr Costa, submitting that the witness's evidence was, in its opinion, untrue, and that the alleged non-compliance had not even been raised as a grievance. The Appellant objected that there were no grounds for a confrontation, since Mr Costa had not testified on the point. The Contracting Authority stated that Mr Costa was about to testify in any case. The Recommended Bidder stated that it would await Mr Costa's testimony before pursuing the request. The Chairman thanked the witness and asked him to step down.

Testimony of Mr Franco Costa (ID no. 345774M) (Chairperson, Evaluation Committee) — Recalled under the same oath by the Contracting Authority

Mr Costa confirmed that he was testifying under the same oath.

Asked by the Contracting Authority to explain how and why the three Elzan bids were technically different, Mr Costa stated that the Committee had prepared a schedule of the three Elzan bids evaluated. The Technical

Offer Form falls under Note 3 and cannot be rectified, while the Literature List falls under Note 2 and can be rectified. The documents required in the Literature List are technical documents forming part of the technical bid and included the VRF outdoor unit with its Eurovent certification, composite PPR pipes, paint, aluminium apertures, timber fire doors and timber doors. They also included six further items: computers and monitors; landscaping; stage curtains; the GPP document on building design, construction and management for major renovation works; the installation and commissioning of building energy systems; and the demolition waste management plan. These six documents, among others required at tendering stage, were different in each of the three bids.

In the cheapest offer, the bidder submitted, for the computers, landscaping, stage curtains, building design and installation items, documents which were not related to what was being requested. In the second offer, it submitted documents which were related to the subject matter and were completely different from those in the first offer. In the third offer, it submitted further documents on these six items, which again differed from both the first and the second offers. This was evident immediately upon opening the technical packages of the three Elzan bids, and the three offers were technically non-identical. Each had certain shortcomings rectifiable under Note 2, and the rectification letters also differed, since the shortcomings differed from one bid to another. The bidder replied only in respect of the third offer. These facts are documented on the ePPS.

Asked about the GPP allegation, Mr Costa explained that GPP is a commitment which Malta has with the European Union for sustainability and the circular economy, so that the products used by government comply with sustainability criteria. Before a tender is issued, the Contracting Authority identifies the items for which GPP criteria are mandatory and includes those criteria in the technical specifications, and the tender is reviewed by the GPP compliance unit of the Ministry to ensure that the requirements are reproduced word for word. In this project, the computer formed part of the CCTV system, which requires a central computer tower and monitor to store and access the camera footage. By way of proportion, the item represented approximately 0.04% of the contract value.

Mr Costa explained that, to establish the typical energy consumption of a PC, the PC must be assembled and then tested; such computers are generally assembled locally from individual components. The GPP criteria specifically provided that these documents were to be submitted at delivery stage, not at tendering stage, referring to each piece of equipment *“delivered as part of the contract”*, and no bidder was asked to submit them at tendering or evaluation stage. He added that he was a computer studies teacher by profession some twenty years ago.

Mr Costa referred to Department of Contracts Circular No. 06/2022 on the implications of the second national action plan on Green Public Procurement, which provides that *“In the vast majority of instances, the Verification Documents shall be presented as part of the Economic Operator’s submission, specifically in the form of Technical Literature.”* The circular goes on to state that in some instances the verification documents are to be submitted prior to contract signing or at implementation stage, and this was the case for certain GPP items, including the computer and the stage curtains.

Asked about the appellant’s witness’s evidence that the documentation disclosed showed non-compliance, Mr Costa stated that the documentation submitted by Elzan and subsequently sent to the appellant was that of the computer case, which was itself compliant, as it could accommodate the components required to run the CCTV system. He also explained that not all items in the Literature List were included in the Technical Offer Form; certain items had been extracted and placed in the Technical Offer Form, and the six items mentioned were not Note 3 items.

Cross-examination by the Recommended Bidder.

Mr Costa confirmed that, apart from the technical documents, bidders were required to submit declarations, including warranty declarations and declarations of GPP and technical compliance, by which the bidder declared that it would be technically compliant.

Cross-examined by the Appellant.

The Appellant asked where its interpretation that the certification would be provided later came from, Mr Costa stated that it came from the GPP criteria themselves, which refer to each piece of equipment delivered as part of the contract. The Appellant read out the verification requirement under clause 3.5.7.05 (Client Workstation) of the technical specifications: *“Tenderers must report the Typical Energy Consumption (ETEC) value, based on testing and calculations according to the IEC standard 62623:2012.”* Mr Costa stated that this could not be done at tendering stage, as it required the computer to be assembled and tested. Asked whether he knew that the appellant had in fact done so, Mr Costa stated that he did not know, since the Committee had not evaluated the appellant’s offer technically; the appellant had been excluded at the eligibility stage because of the Cityways project, and its technical package was not opened.

The Appellant further read that “Products holding a relevant Type I Ecolabel or a label from another labelling scheme fulfilling the specified requirements will be deemed to comply. Alternative test results obtained by accredited ISO17025 test bodies according to the IEC 62623:2012 standard are accepted as proof of compliance.” It suggested to the witness that the circular was an internal document and did not form part of the tender. After locating the CCTV specifications, Mr Costa confirmed that the GPP requirement was related to, and complemented, that technical specification.

Questioned further by the Recommended Bidder, who read that *“The calculated Typical Energy Consumption (ETEC) for each piece of equipment delivered as part of the contract must be less than or equal to the Maximum ETEC requirement”*, Mr Costa confirmed that the Committee understood this to refer to the contract or execution stage. He added that the term “tenderers” in the GPP document was not used accurately; for example, the GPP criteria for textiles also refer to the tenderer providing a declaration upon award and upon delivery of the finished article, meaning that “tenderer” in the GPP criteria also means the contractor, after award.

The Contracting Authority declared that it had no further questions for Mr Costa and no further evidence. The Recommended Bidder declared, for formality, that it had no evidence to produce.

Final Submissions

Final submissions by the Appellant

The Appellant submitted that the appellant’s case had been proven through the testimony heard and the documentation exchanged, much of it following the Board’s orders and the decrees issued during the summer. On the first grievance, relating to the multiple bids, it invited the Board to examine all the documentation of the Recommended Bidder, including the discarded bids, and requested that these form part of the acts so that the Board would have a full picture. Article 3.1 of the General Rules Governing Tenders allows bidders to submit up to three multiple bids, provided they are non-identical both technically and financially. From the testimony of Mr Costa and Ing. Zarb, it emerged that the bids were not only not different, but that their shortcomings were practically the same. The key experts were the same in all the bids, with only one substitution, from Mr Kurt Gauci to Mr Wayne Scerri, and the differences were merely documents missing

from the offers. The Recommended Bidder, given the choice through the rectification process, ignored the requests made in respect of the two cheapest bids and replied only in respect of the more expensive one.

The Appellant submitted that the explanation given at the hearing reflected a certain rethinking. In documentation submitted by the Contracting Authority as part of a disclosure annexed to the Board's decree of the 18th of June 2026, the Contracting Authority had stated that it could not determine whether the bids were identical, whereas today it was stated that six documents differed. The bids had to be genuinely non-identical; the rules did not allow a bidder to submit the same tender for the same thing, with the same persons, and then choose which bid to pursue at rectification stage. It invited the Board to scrutinise the three offers.

On the Cityways project, the Appellant stated that the Board had, in its decrees, remarked strongly that the Contracting Authority had not explained why the project was excluded. Cityways was a block of apartments and was residential in the sense that people would live there, but it was not merely a few flats with a staircase; it involved common parts, infrastructure, a substation and drainage. The tender did not require school experience; it required projects of a similar nature, being large-scale commercial or public projects involving M&Es or finishing works, completed between 2022 and 2024, with three projects of a cumulative value of €4 million and one project of €2 million, which the Mercury Tower project satisfied. There had been some five pages of rectification requests on the Recommended Bidder's bids, yet these were not described as mistake after mistake.

On the GPP criteria, the Appellant submitted that the tender document required the certificate to be provided by the tenderer at tender stage, not later, and that the appellant had provided it. Interpreting "tenderer" as "contractor" amounted to two weights and two measures. The argument that the computer represented only 0.04% of the contract value should be discarded, since a mandatory requirement had to be met irrespective of its value, and a level playing field had to apply to all. The appellant had been excluded on the interpretation of a particular word, while an attempt was made to save the Recommended Bidder. It submitted that the three principal grievances had been proven and requested the Board to grant the remedies sought.

Final submissions by the Contracting Authority

The Contracting Authority submitted that the appellant received the letter of exclusion on the 22nd of May 2026, and that Regulation 270 of the Public Procurement Regulations allows ten days within which to decide whether to appeal. The appellant submitted its request for information on the 28th of May 2026, only three days before the deadline, consisting of nine pages of requests. Despite the late request, the Contracting Authority replied immediately, giving as much information as it could at law without breaching its obligations of confidentiality. In its experience, it had not seen such a degree of transparency, yet the other side remained insatiable.

During the Contracting Authority's submissions, one of the members of the Board, Mr Keith Victor Grech, had to withdraw from the sitting after feeling sick. The Chairman noted that the proceedings had reached the final submissions, with the appellant having concluded and the Contracting Authority and the Recommended Bidder remaining, and the parties agreed that the hearing continue with the members present.

The Contracting Authority continued that, ironically, the only grievance which could be discussed at the hearing was based entirely on information which the Contracting Authority itself had released. On the exclusion, Mr Azzopardi had been unable to say what the tender required, and his approach appeared to be that any project submitted was sufficient. However, the tender required projects of a similar nature and defined these as large-scale commercial or public projects. The Contracting Authority was building a school. The existence of

common parts did not make a project commercial; the project was of a residential nature, and it was the appellant itself, not the Contracting Authority, which described it as residential, both in the List of Projects and in the portfolio. If the appellant had experience in schools, it should have declared it. It had initially submitted nothing and was given the opportunity to rectify but did not remedy the shortcoming.

The Contracting Authority referred to the Court of Appeal judgment in *NQUAYMT Konsorzju kompost minn Bonnici Bros. Services Limited u Korfezdeniz Ins Taah. San. Ve Tic. Ltd. Sti v. Aġenzija għall-Infrastruttura Malta* (35/22/1) of the 22nd of June 2022, which held that “L-eċċess fil-manjanimità u fit-tfittix sabiex jiġu salvati offerti akkost ta’ kollox mhux espressjoni ta’ proporzjonalità imma huwa sproporzjon kontra min kien compliant mill-bidu nett.” It submitted that the Evaluation Committee had been fair to the appellant in giving it the opportunity to remedy its shortcoming, and that the exclusion respected the doctrine of self-limitation. It also referred to the Court of Appeal judgment in *Legacy Ventures Limited v. Direttur Ġenerali tal-Kuntratti* 22/2024/1, of the 30th of July 2024, in which the same appellant was told that it could not expect an evaluation committee to depart from the rules it had bound itself to.

On Article 3.1, the Contracting Authority submitted that the rule required bids to be identical both financially and technically, cumulatively, for the consequence of exclusion to arise. There was no debate that the financial offers differed, and the Chairperson of the Evaluation Committee had testified under oath that the technical offers were also different, on six points, so much so that the rectification requests themselves differed. It read Article 3.1 and submitted that the Evaluation Committee had followed it to the letter: of five offers, it discarded the two most expensive without opening them, evaluated the remaining three, established that they were not identical, and one of them became the recommended offer. Had it excluded them, the Recommended Bidder would have had a legitimate complaint.

On the GPP criteria, the Contracting Authority submitted that any bidder who found a requirement unclear could have sought a clarification or, alternatively, used the pre-contractual remedy under Regulation 262 of the Public Procurement Regulations, neither of which was done. The call made it clear that the documentation was to be submitted at the stage when the product is delivered, as confirmed by the circular referred to by Mr Costa. The law, at Regulation 245, also recognised conditions for the performance of contracts, being requirements to be met upon award of the contract rather than upon submission of the offer, a matter on which the Board had decided in many instances. This was not an argument of proportionality but one based on the regulations and the circular. The Foundation was fully open to scrutiny, and its Chairperson, Secretary and Evaluation Committee had done their job properly.

Final submissions by the Recommended Bidder

The Recommended Bidder stated that it associated itself with the Contracting Authority’s submissions. On the first grievance, it noted that the General Rules Governing Tenders use the term “non-identical” rather than “substantially different”, thus setting the minimum threshold. Two persons may share many characteristics without being identical, and the Chairperson of the Evaluation Committee had testified that, as soon as the bids were opened, it was evident that they were not identical. That grievance could not therefore stand.

On the second grievance, the Recommended Bidder stated that it was now admitted that Cityways was a block of flats, and the complications which Mr Azzopardi had described did not change what was being built. The appellant’s own engineer had been unable to defend the point. Planning and construction law distinguished between commercial and residential development, and the appellant had not satisfied the requirement. As to the grievance on technical compliance, it submitted that the appellant had brought no evidence in support of it at all. All the grievances should therefore be rejected and the appeal dismissed.

Replica by the Appellant

The Appellant stated that it agreed that the Board should read the Court of Appeal judgment of the 30th of July 2024 in the names of Legacy Ventures Limited, including as regards the interpretation of the GPP criteria and the stage at which such requirements must be satisfied.

Conclusion of the Hearing

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 22nd September, 2026.

Having noted the objection filed by Legacy Ventures Limited (hereinafter referred to as “*the Appellant*”) on the 29th May, 2026, refers to the claims made by the same Appellant with regard to the tender of reference CT2350/2025 - *Tender for the Provision of Civil Works, Mechanical and Electrical Services and Finishing Works using Environmentally Friendly Products for the Gozo College, Gharb Primary School, Gozo (hereinafter the "Tender")*; listed as case No. 2271 in the records of the Public Contracts Review Board.

Appearing for the Appellant:

Legal Representative of the Appellant

Appearing for the Contracting Authority:

Legal Representative of the Contracting Authority

Appearing for the Recommended Bidder

Dr Daniel Calleja and the Legal Representative of the Recommended Bidder

Whereby, **the Appellant contends** that:

1. Introduction and Background

- 1.1 Legacy Ventures Limited (hereinafter the “*Objector*”) hereby lodges a formal objection before the Public Contracts Review Board (hereinafter the “*PCRB*” and/or the “*Board*”) in terms of Regulation 270 *et seq.* of the Public Procurement Regulations, S.L. 601.03, against: (i) the decision declaring the Objector administratively non-compliant; and (ii) the recommendation to award the Tender to Elzan Construction Ltd, TID 236560.
- 1.2 The Objector participated in the Tender as TID 236563. The Tender concerns the provision of civil works, mechanical and electrical services and finishing works using environmentally friendly products for the Gozo College, Gharb Primary School, Gozo.

- 1.3 By letter dated 22nd May 2026, the Department of Contracts informed the Objector that its offer was allegedly “*administratively non-compliant*” because the “*Cityway Project*” submitted in the List of Projects was considered residential in nature and, therefore, allegedly not satisfying the requirement for “*large-scale commercial or public projects*”.
- 1.4 By the same communication, and by the award schedule published on the 22nd May 2026, tenderers were informed that during the session held on the 21st May 2026, the General Contracts Committee recommended the award of the Tender to Elzan Construction Ltd, TID 236560, for the price of €3,147,910.83 excluding VAT. The deposit indicated is €14,250 and the objection deadline is Monday, 1st June 2026.
- 1.5 The public opening information available to the Objector showed, *inter alia*, a number of submissions by Elzan Construction Ltd, namely TID 236557 (€3,691,108.33), TID 236558 (€2,793,980.72), TID 236560 (€3,147,032.13 according to the opening information), TID 236568 (€3,005,864.39), and TID 236573 (€3,390,133.63). The same opening information showed the Objector’s bid as TID 236563 at €3,499,423.57.
- 1.6 The Objector made an urgent written request for information and reasons. The request asked, in particular, for the Contracting Authority to explain how the multiple-bid rule was applied to the several Elzan submissions, why lower-priced Elzan bids were not recommended, how the recommended bid complied with the mandatory technical specifications, how the Objector’s project experience was assessed, and how the price discrepancy was treated.
- 1.7 No substantive answer to that request was provided by the time this reasoned objection had to be filed. The Objector has therefore been constrained to file this objection in order to preserve its legal rights, whilst also requesting this Honourable Board to order the necessary disclosure as a preliminary and interim remedy.
- 1.8 In summary, the Objector asserts that the decision and recommendation are unlawful for the following reasons:-
- 1.8.1 the recommended tenderer appears to have submitted more than three bids, thereby directly engaging Article 3.1 of the General Rules Governing Tenders;
- 1.8.2 the Contracting Authority has not explained which Elzan bids were considered, which were discarded, which were non-identical, and why a bid which was not Elzan’s lowest submission came to be recommended;

- 1.8.3 the Objector was rejected on an unduly narrow, subjective and unexplained interpretation of the “*large-scale commercial or public projects*” requirement, without clarification being sought in relation to the Cityways Project;
- 1.8.4 the Objector was denied the information required to understand and contest the recommendation and the rejection;
- 1.8.5 there are material unanswered issues concerning mandatory Note 3 technical compliance by the recommended tender, including Eurovent certification, paint/GPP/EU Ecolabel compliance, toilets and sanitary ware, HPL toilet cubicles, curtains, stage drapery, roller blinds and other environmentally friendly products;
- 1.8.6 there are unanswered issues concerning Key Experts and whether the same Key Experts and technical resources were used across several Elzan bids; and
- 1.8.7 there are unanswered issues concerning the price discrepancy between the opening information and the award schedule.

2. First Grievance – Multiple Bids; the Recommended Bid Should Not Have Been Recommended and Should Be Discarded

- 2.1 Article 3.1 of the General Rules Governing Tenders provides that bidders may submit up to three multiple bids, but only if such bids are non-identical both technically and financially. It further provides that, where a bidder submits more than three non-identical bids, the Evaluation Board will only consider the first three cheapest offers submitted, irrespective of their administrative, technical and financial compliance, and that all other bids submitted by that tenderer will be automatically disqualified.
- 2.2 This is not a decorative rule. It is a competition rule. It exists to prevent one economic operator from multiplying its chances in a manner which places other tenderers at an unfair disadvantage. It also protects the price ranking in a tender where the sole award criterion is price.
- 2.3 On the public information available, Elzan Construction Ltd appears to have submitted five bids. *De minimis*, therefore, the Evaluation Committee was duty bound to address and record:-
 - 2.3.1 whether the five Elzan submissions were true multiple bids or merely ePPS upload fragments;
 - 2.3.2 whether each of them was non-identical both technically and financially;
 - 2.3.3 which were the first three cheapest Elzan bids;
 - 2.3.4 which Elzan bids were automatically disqualified;

- 2.3.5 whether TID 236560 had its own complete and independently compliant technical offer, literature, certificates, samples and Key Expert package; and
- 2.3.6 whether the same technical offer, method statement, programme, literature, Eurovent certificates, GPP evidence, product data, subcontractors and/or Key Experts were simply recycled across the Elzan bids.
- 2.4 The first three cheapest Elzan submissions, on the opening information available to the Objector, appear to be TID 236558 (€2,793,980.72), TID 236568 (€3,005,864.39) and TID 236560 (€3,147,032.13 according to the opening information). TID 236560 was not the lowest Elzan submission. That immediately raises the question: why were the lower Elzan bids not recommended?
- 2.5 If the answer is that the lower Elzan bids were technically or administratively non-compliant, the Objector is entitled to know the reasons. If the answer is that they were identical or not genuinely non-identical, then the same analysis may contaminate TID 236560. If the answer is that they were discarded under Article 3.1, the Contracting Authority must show how that conclusion was reached.
- 2.6 Reference is made to *JGS Contractors Limited v Housing Authority et al* (Recommended Bidder: *Green Building Solutions Limited*), PCRB Case No. 2176, Tender Reference TWO 3/2025, decided by the Public Contracts Review Board on the 3rd November 2025, where the Board considered the same multiple-bid regime. The Board held that Article 3.1 operates both as a permissive clause and as a restrictive safeguard. It stated:-

“In its plain and ordinary meaning, this provision establishes a clear limitation on the number and nature of tenders that a bidder may lawfully submit within the same procurement process.”

“All other tenders beyond this threshold are to be automatically disqualified.”

“Thus, the Article operates both as a permissive clause (authorising up to three non-identical submissions) and as a restrictive safeguard (prohibiting the submission of more than three non-distinct offers). It reflects a deliberate legislative intent to maintain procedural fairness, prevent strategic bid variation, and preserve the integrity of the evaluation process.”

(emphasis added)

- 2.7 The same principle follows from the well-established doctrine of self-limitation. Once a Contracting Authority publishes the rules of a call, it is bound by them as much as every bidder is. In *Trackwell FiMS noe v. Id-Direttur Ġenerali tal-Kuntratti et al*, decided by the Court of Appeal, Superior Jurisdiction, on the 13th March 2025, the Court restated the point in the following terms:-

“Fis-senwa, ir-regoli tas-sejba għalhekk qeghdin hemm, u senwasew sabiex jiġu mharsa u mhux biex jiġu mwarra.”

“Wiehed ghandu wkoll jifhem u jappreżza, li daqskemm l-offerenti ghandhom joqogħdu attenti li jippreżentaw dak kollu li jkun intalab minnhom fid-dokumenti tas-sejba, huwa daqshekk iehor importanti li dawke mgħobbija bir-responsabbiltà li jgħarblu l-offerti, jiġifieri l-membri tal-kumitat ta' evalwazzjoni, ghandhom jimxu skrupolożament mal-kundizzjonijiet li jkunu ġew imniżżlin fid-dokument tas-sejba.”

(emphasis added)

- 2.8 The Objector therefore submits that TID 236560 could not lawfully be recommended unless the Evaluation Committee first verified that the bid was one which Article 3.1 allowed to be considered, and unless it also verified that TID 236560 was technically and financially non-identical, complete, and compliant in its own right.
- 2.9 In the absence of such proof, the recommendation cannot stand. The recommended bid should have been discarded; or, at the very least, it cannot continue to be treated as valid unless and until the Contracting Authority produces the Article 3.1 analysis and this Board is satisfied that the analysis was lawful.

3. Second Grievance – The Objector’s Project List; Cityways was Excluded on an Unduly Narrow, Subjective and Unexplained Interpretation

- 3.1 By letter dated 22nd May 2026, the Objector was told that its offer was administratively non-compliant because the “*Cityway Project*” submitted in the List of Projects “*includes infrastructure construction, finishing, and drainage works for a residential building block*”, and because the Tender allegedly requested “large-scale commercial or public projects”.
- 3.2 The rejection is legally and factually unfounded. The Tender did not state “*non-residential projects only*”. It did not state that a private development project, a residential block, or a building block carried out on a commercial basis for a corporate developer could never qualify. Nor did it define “*commercial*” by reference to planning use class, end-use, title of development, or absence of residential units.
- 3.3 The relevant criterion required bidders to state the number of successfully completed works projects of similar nature, “*being large-scale commercial or public projects involving M&Es or Finishing works*” successfully completed during the years 2022 to 2024. The same provision required at least three projects, a cumulative value of not less than €4,000,000 excluding VAT, and one project of not less than €2,000,000 excluding VAT.
- 3.4 The Objector submitted three projects in its List of Projects, namely: Mercury Tower, Cityways, and *C’est Lavie Boutik*. The submitted list identified Mercury Tower as a mixed-use development including

residential apartments, a luxury hotel, retail and dining spaces, a public piazza and leisure amenities, with works involving internal finishing, facade infrastructure and other services, valued at €5,661,864.31. The Cityways project was described as involving infrastructural construction, finishing and drainage works of a residential building block, valued at €546,868.53. *C'est Lavie Boutik* was described as a boutique hotel finishing project involving construction of walls, plastering, painting and MEP works of guest rooms, valued at €177,100.02.

- 3.5 Objector expressly stated that the cumulative value of the three projects was €6,385,832.86 including VAT, equivalent to €5,411,722.76 excluding VAT, and that Mercury Tower exceeded €2,000,000 excluding VAT. The issue raised by the Evaluation Committee was therefore not the total value threshold, nor the one-project €2,000,000 threshold. The issue was the Committee's classification of Cityways as residential in nature.
- 3.6 The Objector respectfully submits that the Committee's approach is too simplistic. A project may be residential in its end-use and still be a commercial construction project in its procurement, execution, scale, client, market and contractor context. A multi-unit building block undertaken for a corporate developer is not equivalent to minor domestic works for a homeowner. Moreover, the rejection letter itself accepts that Cityways included infrastructure construction, finishing and drainage works. These are precisely works of the type relevant to the present Tender.
- 3.7 If the Contracting Authority intended to exclude every project containing residential units, or every project whose final use was residential, this should have been clearly stated in the Tender. It was not. The criterion was drafted in broader language and linked the experience to the nature of the works, including M&Es or finishing works, rather than to a rigid planning classification.
- 3.8 This is not a request to substitute a new project after closing. The Objector does not seek to introduce a fourth project. The point is different: the Evaluation Committee had before it a project already submitted, already supported by a portfolio, and already signed off in the required list. If the Committee considered the description ambiguous, incomplete or insufficiently explicit as to whether the project qualified as "*commercial*" or as a project of similar nature, the Committee ought to have clarified that issue before resorting to outright exclusion.
- 3.9 This is particularly so because the project list and technical/professional ability documentation fall under Note 2. The Evaluation Committee had already issued a rectification request to the Objector in relation to the List of Projects and the portfolio. The Objector replied. Having then formed a subjective view on the Cityways classification, the Committee did not ask any further clarification as to the nature, scope, execution, client, common areas, infrastructural elements, finishing elements, drainage works, MEP interface, scale or commercial-development context of the Cityways project.

- 3.10 Procurement Policy Note No. 40, “*Evaluation Stage – Clarification and Rectification Requests*”, issued by the Department of Contracts, is clear. Where submitted information/documentation is, or appears to be ambiguous, contrasting or not sufficiently explicit and clear, Contracting Authorities/Entities, in their capacity as Evaluation Committees, shall request the concerned Economic Operators to clarify the necessary information/documentation within the appropriate time limit. Such clarification would not have changed the Objector’s bid. It would only have explained the already submitted Cityways project.
- 3.11 The point is not only procedural. It is also one of substantive interpretation. The Court of Appeal, Superior Jurisdiction, in *South Lease Limited v. Central Procurement and Supplies Unit et*, decided on the 22nd June 2022, held, in the context of an unclear tender requirement, that an economic operator should not be penalised on the strength of a clause which is not clear in meaning. The Court stated:-

“Jista jkun li l-hsieb tal-awtorità kontraenti kien [...] pero jekk hu bekk dan il-hsieb ma ghex espress fid-dokument tas-sejba, u oblatur ma ghandux jiġi penalizzat fuq is-sabha ta’ klawnsola li mbix cara fit-tifsira taghha.”

(emphasis added)

- 3.12 The same judgment is directly relevant here. If the Contracting Authority’s intention was to exclude residential building-block projects in all circumstances, this intention was not expressed in the Tender. The Objector should not be penalised on the basis of a narrow interpretation that was not clearly and objectively disclosed to tenderers before submission.
- 3.13 The Objector therefore submits that its exclusion should be revoked. In the alternative, the matter should be remitted for a fresh assessment by a newly constituted Evaluation Committee, with the Objector’s bid re-instated and with clear directions that the Cityways project must be assessed objectively, by reference to the wording of the Tender, the works actually carried out, the submitted portfolio, and any permissible clarification on the already-submitted project.

4. Third Grievance – Failure to Provide Information and Reasons; Request for Preliminary and Interim Remedy

- 4.1 The Objector did not sit on its rights. It asked for urgent information, precisely because the statutory objection period is short and because the issues under review cannot be assessed from the rejection letter and award schedule alone.
- 4.2 The information sought is not peripheral. It goes to the heart of the decisions under appeal: the multiple-bid analysis, the reasons why lower Elzan bids were not recommended, the reasons and assessment behind the Objector’s alleged administrative non-compliance, the compliance matrix for

TID 236560, the technical literature and certification relied upon, the Key Expert matrix, the price correction record, and the budget/value-for-money assessment.

- 4.3 No substantive reply was forthcoming. The Objector is therefore being forced to litigate in the dark. That is procedurally unfair, particularly in a technical tender where the legality of the award may turn on the very literature, certificates, models, samples, project lists and compliance matrix that the Objector has not been allowed to review.
- 4.4 The notification to the Objector does not cure this defect. It provides a single reason in relation to Cityways and then states that TID 236560 was the cheapest priced tender satisfying the administrative and technical criteria. It does not explain how TID 236560 satisfied those criteria. It does not explain how Article 3.1 was applied. It does not explain the lower Elzan bids. It does not explain the price discrepancy. It does not explain the Objector's request for information.
- 4.5 The Objector therefore requests that, as an interim and preliminary remedy, this Honourable Board orders the Department of Contracts, the Contracting Authority and/or the Foundation for Tomorrow's Schools to disclose, before the hearing and within a short timeframe, the non-confidential, redacted or confidentiality-protected evaluation record necessary for the proper prosecution of this objection, and to allow the Objector to supplement this objection thereafter.

5. Fourth Grievance – Mandatory Technical Compliance of TID 236560, Including Eurovent, GPP/Ecolabel, Toilets, Curtains and Product Certification

- 5.1 Without prejudice to the preceding grievances, the recommendation is also unsafe because the Objector has not been provided with any meaningful explanation as to how TID 236560 satisfied the mandatory technical specifications.
- 5.2 This Tender is not a simple price exercise. It is a works tender involving civil works, mechanical and electrical services, finishing works, and environmentally friendly products. The tender documents expressly refer to Technical Specifications.zip as containing the minimum technical requirements. The technical offer documents listed under Clause 5(C)(i) are mandatory Note 3 documents. The literature is intended to corroborate a fully compliant technical offer. Samples, where requested, also serve to corroborate technical compliance.
- 5.3 The recommended bid therefore had to be supported by a technically compliant tender-stage offer, including product literature, catalogues, certificates, declarations, test reports and/or samples where required. Post-award approvals cannot be used to cure a non-compliant or unsupported tender-stage offer.

- 5.4 The Objector requested, but has not received, a product-by-product compliance table for TID 236560. This is of particular importance in relation to the following items:-
- 5.4.1 Eurovent certification for split systems and VRF systems, including the specific model references, official manufacturer catalogues, Eurovent listing, COP/EER/SEER data, certificate dates and compliance with the requirement that valid Eurovent certifications be issued not older than one month from submission;
 - 5.4.2 paints and painting works, including EU Ecolabel/GPP compliance, EN 13300, EN 1062-1, EN 927-1, VOC limits, CLP hazard classification, hazardous-ingredient restrictions, spreading-rate evidence, weathering/fungal/algal resistance, Safety Data Sheets, batch test certification and waste-management plan;
 - 5.4.3 toilets, sanitary ware and water-saving fittings, including BS EN 997 or equivalent, dual-flush and disabled-toilet flush volumes, cistern water-saving devices, sanitary ware for persons with special needs, tap flow limiters, warranties, and technical literature;
 - 5.4.4 HPL toilet cubicles, including EN 438:2005 or equivalent, 12mm to 13mm panel thickness, exterior-grade HPL where required, Grade 304 stainless steel section bars and all required hardware;
 - 5.4.5 curtains, stage drapery and fire curtains, including CE marking, fire-safety certification, B1 flame-retardant requirements, BS 5867 Part 2 Type B & C or equivalent, E60/EN 1634-1 requirements where applicable, fire-retardant treatment, labelling, textile GPP, REACH evidence, durability testing and warranty/spare-parts declarations;
 - 5.4.6 roller blinds/classroom blinds, including blackout or light-filtering fiberglass fabric, UV non-fading performance according to ISO 105-B02, flame resistance according to BS 5867-2:2008, EN 13501-1, NFPA 701 or equivalent, fabric weight where applicable and sample/literature evidence; and
 - 5.4.7 other environmentally friendly products and GPP items across the specifications, including mechanical systems, PV systems, landscaping, synthetic turf, chain-link fencing, flooring, waterproofing, timber items, fire-rated doors, aluminium works, lighting systems and ELV/CCTV systems.
- 5.5 The Objector is not asserting, without seeing the file or the documentation, that every one of the above items is necessarily non-compliant. Rather, the grievance is that the Contracting Authority recommended the award without giving any reasons or disclosure as to how mandatory compliance was established. If the bid was supported only by generic literature, expired certificates, non-model-

specific certificates, non-equivalent labels, absent samples, or post-submission documents, then the bid was not capable of lawful recommendation.

- 5.6 Accordingly, the recommendation should not stand unless the Contracting Authority can demonstrate, through the evaluation record, that TID 236560 complied with all mandatory technical specifications at tender stage, and that any clarifications, rectifications, sample requests or post-submission documents were handled strictly in accordance with the Tender and the General Rules.

6. Fifth Grievance – Key Experts and the Technical Identity of the Elzan Bids

- 6.1 The Tender required, at bidding stage, Key Expert Forms, Statements of Availability, declarations where applicable, up-to-date CVs, and copies of qualifications, licences and warrants. The Key Experts included the Site Manager, Mechanical Engineer, Electrical Engineer, Contractor's Warranted Perit, Health and Safety Practitioner and Site Technical Officer.
- 6.2 The Tender permitted Key Expert 4 and Key Expert 6 to be represented by the same person, provided all qualifications and experience requirements were satisfied. It then stated that all other Key Experts cannot occupy more than one role.
- 6.3 The Objector does not submit that the Tender expressly required a different set of Key Experts for each multiple bid. However, if the same Key Expert package, same Statements of Availability, same programme, same method statement and same technical resources were used across five Elzan submissions, that is highly relevant to whether the bids were genuinely non-identical technically and whether each bid was independently compliant.
- 6.4 For this reason, the Evaluation Committee had to verify and record whether TID 236560 had its own compliant Key Expert package and whether the same Key Experts were relied upon across the other Elzan bids. This information has not been provided.
- 6.5 If any Key Expert documentation was missing or non-compliant at tender stage, and was later completed by an impermissible rectification, the bid should have been rejected. If the same Key Experts and technical resources were used to create several nominally different bids, that matter should have formed part of the Article 3.1 analysis.

7. Sixth Grievance – Price Discrepancy

- 7.1 The opening information available to the Objector shows TID 236560 at €3,147,032.13. The award schedule recommends the same TID at €3,147,910.83. The discrepancy is €878.70.

- 7.2 The Objector has not been provided with the arithmetical correction record, the corrected BOQ lines, the legal basis for the correction, or confirmation that the correction was accepted by Elzan Construction Ltd in accordance with the General Rules.
- 7.3 This is not an academic point. In a tender where the sole award criterion is price, and where the recommended tenderer submitted multiple bids, even a relatively small correction may affect ranking, multiple-bid sequencing, and the identification of the cheapest compliant offer.

8. Refund of Deposit and Reservation of Rights

- 8.1 Without prejudice to all other grievances, the Objector was compelled to file this objection in circumstances where the Contracting Authority did not provide the information requested, despite the urgency created by the objection deadline.
- 8.2 The Objector therefore requests the refund of the deposit paid in conjunction with this objection. This is justified independently of the final merits, because the Objector was compelled to come before the Board, *de minimis*, to obtain the reasons and information to which it is entitled.
- 8.3 In *Borg Bros Limited v. Ministeru għall-Familja u Solidarjeta' Soċjali et*, decided by the Court of Appeal on the 27th June 2014, the Court expressly recognised that a party may be justified in bringing proceedings to obtain the explanation to which it is entitled.
- 8.4 The Objector reserves all rights to supplement this objection, produce further evidence, raise additional grievances arising from the evaluation file and/or documentation and seek any further remedy available at law.

9. Demands

For the foregoing reasons, and whilst reserving the right to submit further observations and evidence, the Objector respectfully requests that the Public Contracts Review Board:

- i. As a preliminary and interim remedy, orders the Department of Contracts, the Contracting Authority and/or the Foundation for Tomorrow's Schools, before the hearing and within such short timeframe as this Board deems fit, to disclose to the Objector the non-confidential, redacted or confidentiality-protected evaluation record necessary for the effective prosecution of this objection, including: the Article 3.1 multiple-bid analysis concerning all Elzan submissions; the reasons why lower-priced Elzan submissions were not recommended; the evaluation record and reasons concerning the Objector's List of Projects and the Cityways assessment; the project-experience compliance matrix for the recommended tenderer; the compliance matrix for TID

- 236560; the Eurovent, GPP/EU Ecolabel, paint, toilet/sanitary ware, HPL, curtain/textile, blinds and other product-certification evidence; the Key Expert compliance matrix; the clarification, rectification, sample and arithmetical-correction records; and the EPV/budget/value-for-money assessment. The Objector further requests that it be granted a reasonable opportunity to supplement this objection following such disclosure;
- ii. Upholds this reasoned objection and annuls and overturns: (a) the decision declaring the Objector's offer administratively non-compliant; and (b) the recommendation/decision to award Tender CT2350/2025 to Elzan Construction Ltd, TID 236560;
 - iii. Declares that Article 3.1 of the General Rules Governing Tenders was breached or, at minimum, was not shown to have been lawfully applied; declares that any Elzan submissions which were not eligible for consideration under Article 3.1 had to be discarded; and orders the Contracting Authority to discard TID 236560 if it is not shown to be one of the bids lawfully capable of consideration, if it is not genuinely non-identical technically and financially, or if its compliance depended on documentation, certificates, samples, Key Experts, product literature or information submitted or completed after the tender deadline in a manner not permitted by the Tender;
 - iv. In the alternative, and without prejudice to the preceding demands, remits the procurement to the proper evaluation stage for a fresh and lawful evaluation by a newly constituted Evaluation Committee, with directions to apply Article 3.1 *ad unguem*, to identify and discard all ineligible/non-compliant Elzan submissions, to re-instate and re-evaluate the Objector's bid including the Cityways project by reference to the actual wording of the Tender and any permissible clarification on the already-submitted project, to evaluate the lower-priced bids according to the Tender and General Rules, to verify mandatory Note 3 and product-specific compliance, and to issue a fresh reasoned recommendation followed by a fresh objection period;
 - v. Orders the refund of the deposit paid by the Objector; and grants any other declaration, order, direction or remedy which this Honourable Board considers appropriate in the circumstances.

This Board also noted the Contracting Authority's **Reasoned Letter of Reply** filed on the 8th June, 2026 and its verbal submission during the hearing held on the 22nd September, 2026, in that:

Whereas, the Department of Contracts (hereinafter “DOC”) issued a call for tenders “for the provision of civil works, mechanical and electrical services and finishing works using environmentally friendly products for the Gozgo college, Gharb Primary School, Gozgo” with Foundation for Tomorrow's Schools as beneficiary (hereinafter “FTS”).

Whereas, Messrs. Legacy Ventures Limited (*hereinafter “LVL”*) in accordance with reg. 270 of subsidiary legislation 601.03 (*hereinafter “PPR”*) submitted an objection on the 29th May 2026, requesting, *inter alia*, to revoke the recommendation for award to Elzan Construction Ltd (*hereinafter “ECL”*)

Whereas, for all intents and purposes, FTS rebuts all the claims and allegations made by LVL.

Now, therefore, FTS is filing its reply in accordance with reg. 276 of PPR, based on the following observations:

- 1. Grievance No. 1: Multiple bids: The Recommended Bid should not have been recommended and should be discarded**

Reply No. 1: The grievance is unfounded and should be rejected

Reg. 39 PPR – Article 3.1 GRGT

- 1.1 The General Rules Governing Tenders (*hereinafter “GRGT”*) in article 3.1 establishes that:

“Bidders may submit up to three (3) multiple and non-identical (technically and financially) bids for a tender. In cases where bidders submit more than three (3) non-identical bids, the evaluation board will only consider the first three (3) cheapest offers submitted - irrespective of their administrative, technical and financial compliance. All other bids submitted by the tenderer will be automatically disqualified.”

- 1.2 Indeed, ECL submitted multiple bids, and the Technical Evaluation Committee (*hereinafter “TEC”*). In full adherence with the GRGT, the TEC considered the three (3) cheapest offers, whilst it disqualified the remaining bids. The three (3) cheapest bids submitted by ECL are the following:

TID 236558	€2,793,980.72
TID 236568	€3,005,864.39
TID 236560	€3,147,032.13

- 1.3 The recommended bid for award by ECL is TID 236560, which is the third (3rd) cheapest offer as per the above schedule, and thereby respecting the permutations introduced by article 3.1, thereby the claim by LVL is factually incorrect and unsustainable.
- 1.4 In view of the aforesaid, and whilst reserving its rights to the fullest extent permissible to submit additional pleas in relation to this grievance, FTS respectfully requests this Honourable Board to reject this grievance as it is unfounded both in fact and in law.

2. **Grievance No. 2: The objector's project list: Citways was excluded on an unduly narrow, subjective and unexplained interpretation**

Reply No. 2: The grievance is unfounded and should be rejected

Reg. 39 PPR – Reg. 62 PPR

- 2.1 LVL complains that that exclusion on the basis of the fact that it failed the eligibility criteria is “*legally and factually unfounded*” – FTS stands firmly by the decision of the TEC, and this since the requirement was clear and unambiguous.
- 2.2 The Contracting Authority requested a form entitled '*List of Projects*' to be filled out by the economic operators. This form was not submitted by the bidder. The TEC, in accordance with “*Note 2*”, invited LVL to rectify its missing information within “*five working days*”, an opportunity which LVL failed to fully adhere to, since the project it proposed was not in accordance with the tender requirements.
- 2.3 The tender, in page 6, requested:

(c) Technical and Professional Ability (Note 2)
a. State the number of **successfully completed works projects** of similar nature, being large-scale **commercial** or **public projects** involving M&Es or Finishing works successfully completed during the last three (3) years, namely between 2022-2024 which satisfy the following criteria:
i. the minimum number of projects must not be less than three (3) projects. Each Project listed must be accompanied by **a brief portfolio** which shall include photos of the different phases of the project up to commissioning.
ii. the cumulative value of all the works projects listed in (a) above must not be less than €4,000,000 (excl. VAT).
iii. One (1) of the projects listed in (a) above must not be less than €2,000,000 (excl. VAT);
This information shall be included in the Form marked as “List of Projects” in accordance to point (ii) below.
Extract from the tender document page 6

- 2.4 LVL'S initial failure was not remedied appropriately, since the project it presented does not conform to the tender requirements and this since it presented a residential project as opposed to a commercial project. LVL expectation is to widen the scope of the tender requirement *ex post* and admit its submission. This expectation is in breach the self-limitation principle, infringes transparency and breaches reg. 39 of PPR.
- 2.5 Reference is hereby being made to Court decision in the names of **22/2025/1 Vassallo Builders Ltd (TID 000210886) v. Wasteserv Malta Ltd (C-30560) et.** which makes it amply clear that the TEC cannot depart from what is specifically requested in the tender document.
- 2.6 The court judgment held that:

“VBL jehtigilha tifhem ukoll li meta r-regolamenti tas-sejba jitolbu b'mod espress certu tip ta' dokumentazzjoni, dik id-dokumentazzjoni għandha tingħata bil-mod ta' kif ikun mitlub, u dan sal-għeluq taż-żmien għall-offerti (ara f'dan is-sens Legacy Ventures Limited v. Direttur Generali tal-Kuntratti et, mogħtija mill-Qorti tal-Appell fit-30 ta' Lulju, 2024). Taqa' fir-responsabbiltà ta' kull offerent li jobdi l-kundizzjonijiet tas-sejba bhala «a reasonable well informed and normally diligent tenderer», u għaldaqstant, għaladarba r-regoli tas-sejba inkwistjoni kienu jimponu fuq l-offerenti li jressqu kopja tal-«Final or Provisional Acceptance Certificate or equivalent», VBL kienet obbligata li tressaq dik id-dokumentazzjoni, u mbux tippretendi li setgħet tgħaddi mingħajrha jew inkella tressaq dak li jfettlilha (ara Freemond Limited v. L-Aġenzija għas-Servizzi tal-Qorti et, mogħtija mill-Qorti tal-Appell fl-20 ta' Marzu, 2023)”.

- 2.7 Finally, reference is also being made to **35/22/1 NQUAYMT konsorzju kompost minn (i) Bonnici Bros. Services Limited (C57464) u (ii) Korfezdeniz ins Taah. San. Ve Tic. Ltd Sti, soċjeta` estera v.(i) Aġenzija għal Infrastruttura Malta**

“L-eċċess fil-manjaminita` u fit-tfittix sabiex jiġu salvati offerti akkost ta' kollox mbux espressjoni ta' proporzjonalita` imma huwa sproporzjon kontra min kien “compliant” millbidu nett.”

The expectation of the appellant company is nothing more than an excessive expectation which breaches the principles of equal treatment and level-playing field.

- 2.8 In view of the aforesaid, and whilst reserving its rights to the fullest extent permissible to submit additional pleas in relation to this grievance, FTS respectfully requests this Honourable Board to reject this grievance as it is unfounded both in fact and in law.

3. Grievance No. 3: Failure to provide information and reasons; Request for preliminary and interim remedy

Reply No. 3: The grievance is unfounded and should be rejected

Reg. 40 PPR – Reg. 242 PPR– Reg. 272 PPR

- 3.1 FTS rejects this grievance, as it is not only factually incorrect, but the expectation of LVL is to be given information and be granted information and documents which it has no right.
- 3.2 Primarily, it must be stated that the rejection to LVL was made on the 22nd May 2026, yet the request for information (hereinafter “RFP”) was only submitted with FTS/DOC on the 28th May 2026, i.e. three (3) days before the objection deadline of 1st June 2026. Notwithstanding the above, FTS replied for such RFI on the 29th May 2026, by providing all such information which is due to an interested party, in compliance with reg. 40, 242 and 272 of the PPR. For ease of reference, a copy of the RFI and the ensuing reply are hereby being enclosed as DOC1 and DOC2, respectively.

- 3.3 It must however be stated that, in terms of information to be released, reg. 40 of PPR specifically indicates the following information which may be disclosed:

“(a) the name of the bidders and the individual names of the members of a group of economic operators who submitted a particular tender;

(b) the name of the sub-contractors;

(c) documentation submitted by economic operators attesting that they comply with selection criteria; and

(d) technical information which is already made available in public.”

- 3.4 In addition, additional guidance is derived from the judgment of the European Court of Justice in *Antea Polska* (17th November 2022, C-54/21, EU:C:2022:888), which mandates an obligation on the Contracting Authority to safeguard the interests of economic operators that disclosed confidential information, trade secrets and other privileged information under the premise that this shall be safeguarded from unwarranted disclosure.

- 3.5 In view of the aforesaid, and whilst reserving its rights to the fullest extent permissible to submit additional pleas in relation to this grievance, FTS respectfully requests this Honourable Board to reject this grievance as it is unfounded both in fact and in law.

4. Grievance No. 4: Mandatory technical compliance of TID 236560, including eurovent, GPP/Ecolabel, Toilets, Curtains and Product Certification

Reply No. : **The grievance is unfounded and should be rejected**

- 4.1 The grievance is unclear as to the specific allegations. In any event, FTS confirms that the recommended bidder fully complies with the tender specifications. The TEC conducted its evaluation in accordance with its obligations and complied with the doctrine of self-limitation.
- 4.2 In view of the aforesaid, and whilst reserving its rights to the fullest extent permissible to submit additional pleas in relation to this grievance, FTS respectfully requests this Honourable Board to reject this grievance as it is unfounded both in fact and in law.

5. Grievance No. 5: Key Experts and the Technical Identity of the Elzan Bids

Reply No. 5: **The grievance is unfounded and should be rejected**

- 5.1 The grievance is unclear as to the specific allegations. In any event, FTS confirms that the recommended bidder fully complies with the tender specifications. The TEC conducted its evaluation in accordance with its obligations and complied with the doctrine of self-limitation.

5.2 In view of the aforesaid, and whilst reserving its rights to the fullest extent permissible to submit additional pleas in relation to this grievance, FTS respectfully requests this Honourable Board to reject this grievance as it is unfounded both in fact and in law.

6. Grievance No. 6: Price Discrepancy

Reply No. 6: The grievance is unfounded and should be rejected

6.1 FTS notes the “*price discrepancy*” allegation being made, notably the difference between the opening figure attributed to TID 236560 on ePPS (€3,147,032.13) and the recommended price stated in the award schedule (€3,147,910.83). FTS confirms that the change is attributable to an arithmetical correction, which change was done in strict compliance with normative standards.

6.2 In view of the aforesaid, and whilst reserving its rights to the fullest extent permissible to submit additional pleas in relation to this grievance, FTS respectfully requests this Honourable Board to reject this grievance as it is unfounded both in fact and in law.

7. Observations in relation to the deposit paid

7.1.1 In accordance with reg. 270 *et. seq.* of the PPR, it is the prerogative of this Honourable Board to declare and to determine the outcome of the deposit paid.

7.1.2 For all intents and purposes, FTS hereby declares that, if LVL withdraws its objection in a timely manner and well before the PCRB sittings, it will have no objection whatsoever for the refund of the deposit paid in its entirety.

***NOW, THEREFORE,** whilst reserving the right to put forward any other submission, FTS is hereby requesting this Honourable Board to reject in its entirety the objection of LVL, and this under such terms and under such conditions, which this Honourable Board deems fit and opportune.*

28th May 2026

To: The Director General (Contracts)

By email to: info.contracts@gov.mt, adrian.dalli@gov.mt, and

Foundation for Tomorrow's Schools

By email to: procurement.fts@gov.mt

WITHOUT PREJUDICE AND SUBJECT TO ALL RIGHTS

URGENT REQUEST FOR REASONS AND INFORMATION

CT2350/2025 - Tender for the Provision of Civil Works, Mechanical and Electrical Services and Finishing Works using Environmentally Friendly Products for the Gozo College, Gharb Primary School, Gozo

We write on behalf of Legacy Ventures Limited, tenderer in CT2350/2025 - Tender for the Provision of Civil Works, Mechanical and Electrical Services and Finishing Works using Environmentally Friendly Products for the Gozo College, Gharb Primary School, Gozo.

This request is made urgently, without prejudice and subject to all rights, including Legacy Ventures Limited's right to file an objection before the Public Contracts Review Board.

We refer to the award recommendation published on 22nd May 2026, whereby the General Contracts Committee recommended the award of the above tender to Elzan Construction Ltd - TID 236560, at the price of €3,147,910.83 excluding VAT. The same notification states that any objection must reach the Public Contracts Review Board by not later than Monday, 1st June 2026, accompanied by the prescribed deposit of €14,250.

Given the imminent objection deadline, we request a reply by not later than 12 pm on Friday, 29th May 2026. This request is necessary for Legacy Ventures Limited to understand the basis of the recommendation and to decide whether to exercise its right of objection.

1. Request for detailed reasons and evaluation record

Kindly provide the detailed reasons for the proposed award to Elzan Construction Ltd - TID 236560, including the non-confidential extracts of the evaluation report, compliance matrix, technical evaluation, financial evaluation and any clarification/rectification correspondence relied upon by the Evaluation Committee.

If any part of the evaluation record or the recommended tenderer's submission is considered confidential, kindly provide a redacted version or an anonymised compliance table sufficient to allow Legacy Ventures Limited to understand how the recommended bid was found compliant.

2. Mandatory administrative, selection and technical compliance of TID 236560

Please confirm, clause by clause, how Elzan Construction Ltd - TID 236560 satisfied all mandatory administrative, selection, technical and financial requirements of the tender documents. In particular, please provide the compliance basis for the following:

- a. the declarations concerning the required service activity licences for demolition, excavation and piling, and construction, including any subcontractor declarations where applicable;
- b. the exclusion and blacklisting criteria under the ESPD;
- c. the economic and financial standing requirements, including audited financial statements for 2022 to 2024, turnover requirements, going-concern confirmation and unqualified audit opinion;
- d. the technical and professional ability requirements, including the list of similar works projects, auditor confirmation, project values, client/project details and any verification carried out by the Evaluation Committee;
- e. the subcontractor details and percentage of works to be subcontracted, including whether any subcontractor was relied upon to satisfy selection criteria;
- f. the mandatory tender-stage technical offer documents listed under Clause 5(C)(i), namely the Technical Offer Form, Construction Management Plan, Preliminary Workplan and Programme of Works / Gantt Chart based on critical path analysis, Quality Assurance and Control Programme, Health and Safety Plan, Works Method Statement, declaration concerning certifications/documentation to be provided during execution, Literature List and supporting technical literature, and any Samples List or samples requested during adjudication.

Please confirm whether all mandatory Note 3 documents were submitted with the original tender submission. If any clarification was requested, kindly identify the date, wording, document concerned, response received and the legal/procedural basis on which the response was accepted.

Please also confirm that no missing Note 3 document was rectified, completed or supplied after the tender submission deadline, and that no impermissible post-submission alteration of the technical offer occurred.

3. Specific compliance with Technical Specifications and product literature

The tender documents identify Technical Specifications as containing the minimum technical requirements. We therefore request a product-by-product and item-by-item compliance table showing how TID 236560 complied with those specifications.

For each relevant BOQ/specification item, kindly identify:

- a. the relevant specification reference;
- b. the make, model, manufacturer and product proposed by TID 236560;
- c. the catalogue, literature, certificate, declaration, test report, datasheet or sample relied upon;

- d. whether the evidence was submitted with the original tender, by clarification, by rectification, by sample request, or only after recommendation;
- e. whether an equivalent standard, brand, label or certificate was relied upon;
- f. the proof of equivalence submitted by the recommended tenderer; and
- g. whether the Evaluation Committee treated any requirement as capable of being satisfied only after award or during execution.

4. Air-conditioning / mechanical systems - Eurovent certification

Please confirm how TID 236560 complied with the Eurovent requirements in the Technical Specifications, including in particular:

- a. Specification 3.8 - Split System, Rev A, including the requirement that the split system and related equipment, where applicable, must be Eurovent certified;
- b. the requirement that the Eurovent certification be shown on the manufacturer's official catalogue;
- c. the requirement that the full catalogue be submitted showing clearly the models selected by the bidder together with the Eurovent certification;
- d. the requirement that the selected models be listed on the Eurovent website;
- e. the requirement that manufacturer-countersigned data is not accepted;
- f. the requirement that units without Eurovent certification are not accepted;
- g. the requirement that valid Eurovent certifications be issued not older than one month from the time the offer was submitted;
- h. Specification 3.9 - VRF System, Rev A, including the equivalent Eurovent certification, catalogue and listing requirements for the VRF system and related equipment;
- i. the specific split-unit and VRF models proposed by TID 236560;
- j. the date of issue and model references of each Eurovent certificate relied upon;
- k. the manufacturer catalogues relied upon;
- l. the official COP, EER and SEER values relied upon;
- m. confirmation that the proposed units complied with the specified noise, refrigerant, warranty, spare-parts, local-distribution and CE requirements; and

- n. whether any Eurovent certificate, catalogue, product model, COP/EER/SEER value or technical data was clarified, supplemented or changed after tender submission.

5. Paints, painting works, EU Ecolabel and GPP compliance

Please confirm how TID 236560 complied with Specification 11 - Painting, Rev A, including the Green Public Procurement requirements and the requirements concerning paints, varnishes and coatings.

For each paint system proposed by the recommended tenderer, please identify the make, product name, manufacturer, catalogue/datasheet and evidence submitted for:

- a. internal walls, floors and ceilings, including compliance with EN 13300 and with the ecological and performance criteria adopted by the EU for the Eco-Label for internal paints and varnishes;
- b. external masonry and concrete, including compliance with EN 1062-1 and the required dry-film thickness class;
- c. exterior and internal wood paint systems, including compliance with EN 927-1;
- d. internal and external metalwork coatings, including the applicable metalwork specification;
- e. fire classification requirements, including EuroClass requirements where applicable;
- f. batch test certification;
- g. Safety Data Sheets;
- h. white pigment content limits;
- i. VOC limits and the supporting VOC calculations or test reports, including ISO 11890-2 or ISO 17895 where applicable;
- j. CLP hazard classification evidence, confirming that the final products are not classified as acutely toxic, specific target organ toxicants, carcinogenic, mutagenic, toxic for reproduction or hazardous to the aquatic environment within the prohibited classifications;
- k. hazardous-ingredient restrictions, including preservatives, APEOs, phthalates, formaldehyde and metals;
- l. spreading-rate evidence and relevant ISO 6504 / equivalent test reports;
- m. weathering resistance for outdoor paints;
- n. fungal and algal resistance for outdoor paints;
- o. packaging/container compliance; and

- p. the required waste-management plan for paint leftovers, paint stripping, cleaning of equipment, hazardous waste handling and minimisation of unused paint.

Please specify whether compliance was accepted because the proposed products actually held the EU Ecolabel for paints and varnishes, or whether the Evaluation Committee accepted equivalent calculations, SDSs, manufacturer declarations and/or third-party test reports instead.

If equivalent proof was accepted, please provide the non-confidential extracts showing how equivalence was assessed.

6. Toilets, sanitary ware, water-saving fittings and HPL toilet cubicles

Please confirm how TID 236560 complied with Specification 3.2 - Plumbing, Sanitary Ware and Bathroom Accessories, Rev C, including:

- a. the proposed sanitary ware make/model and confirmation of compliance with BS EN 997 or equivalent;
- b. the wash-hand-basin drain outlet requirement, including the specified combined filter and the prohibition on discharging through a full-bore outlet;
- c. the requirements for sanitary ware for persons with special needs, including compliance with local regulations, the latest K.N.P.D. guidelines and the UK Doc M requirement referred to in the specification;
- d. confirmation that handles and grab rails for special-needs toilets are stainless steel;
- e. confirmation that flushing units are dual-flush, with maximum 4 litres full flush and 2.6 litres urine flush;
- f. confirmation that disabled toilets are single 4 litre flush;
- g. confirmation that water cisterns include water-saving devices achieving the specified 30% saving;
- h. confirmation that toilet seats are rigid type, with stainless steel hinges and soft-closing mechanism;
- i. confirmation that all water taps, including kitchenette taps, include water-saving inserts or flow limiters achieving the specified water saving and maximum flow requirements;
- j. confirmation of the required warranties, including the minimum warranty for ceramic products and brassware products; and
- k. the technical literature submitted at tender stage for all the above items.

Please also confirm compliance with Specification 127 - Toilet Cubicles - High Pressure Laminate (HPL) Panels, including:

- a. exterior-grade self-supporting HPL for exteriors;
- b. compliance with EN 438:2005 or equivalent;
- c. panel thickness of 12mm to 13mm, as required by the BOQ/specification;
- d. stainless steel section bars, Grade 304 or better;
- e. moisture resistance;
- f. non-porous, scratch-proof, easy-clean and hygienic surface characteristics;
- g. adjustable feet;
- h. hinges, locks and emergency opening system;
- i. coat hooks and toilet-roll holders; and
- j. the manufacturer literature, datasheets and samples, if any, relied upon by the Evaluation Committee.

7. Curtains, stage drapery, fire-safety certification and GPP textile requirements

Please confirm how TID 236560 complied with Specification 3.18 - Stage Curtains, Rev B, including:

- a. CE marking and compliance with fire-safety regulations;
- b. the requirement that the stage curtains be supplied by an established Malta/Europe firm able to provide support or after-sales service;
- c. the requirement that the curtains be manufactured by a manufacturer of international repute with a certified track record;
- d. the detailed design submitted for the works, including plans, elevations, side elevations, fixtures, ancillaries, dimensions, layouts and anticipated loadings;
- e. the proposed fabric/product for the front curtain, valance, legs, borders, travellers, tabs, scrims, backdrops and cycloramas, where applicable;
- f. compliance with the specified fire ratings, including B1 flame-retardant according to DIN 4102, BS 5867 Part 2 Type B & C or equivalent, and E60 heat-stabilised fabric achieving 60-minute fire integrity in accordance with EN 1634-1, where applicable;
- g. certification for fire-retardant treatment;
- h. permanent labelling identifying the flame-retardant treatment applied;

- i. evidence of weight, colour fastness, acoustic absorption, abrasion resistance and pilling resistance;
- j. the proposed track and draw mechanism, including motorised-operation features where applicable;
- k. for any fire curtain or fire-rated textile element, compliance with the required fire-resistance, reliability, self-closing durability and product certification standards;
- l. GPP textile compliance, including Type I ecolabel or EU Ecolabel evidence, where relied upon;
- m. REACH declarations and restricted-substance evidence;
- n. laboratory testing evidence for final textile products, where required;
- o. durability testing evidence;
- p. warranty and spare-parts declarations; and
- q. any manufacturer declarations or equivalent proof accepted by the Evaluation Committee.

Please identify whether any curtain, fabric, fire certificate, GPP declaration or textile test report was submitted only after tender submission, and, if so, the basis on which this was accepted.

8. Roller blinds / classroom blinds

Please confirm how TID 236560 complied with Specification 105 - Roller Blinds and Mini Blinds, including:

- a. the proposed fabric and whether it is 100% blackout fiberglass fabric or light-filtering fiberglass fabric, as required by the BOQ;
- b. dimensional stability;
- c. cleanability and suitability for moist wiping;
- d. UV non-fading performance according to ISO 105-B02;
- e. flame resistance according to BS 5867-2:2008, EN 13501-1, NFPA 701 or equivalent;
- f. the blackout fabric approximate weight of 450g/m², where applicable;
- g. the roller mechanism, chain operation, fittings and aluminium tube requirements; and
- h. the product literature or sample relied upon by the Evaluation Committee.

9. Other environmentally friendly / GPP products and specifications

Since the tender is expressly for works using environmentally friendly products, please confirm how TID 236560 complied with all GPP, ecolabel, environmental, REACH, VOC, recycled-content, hazardous-

substance, product-longevity, warranty and product-certification requirements across the Technical Specifications and BOQ.

This should include, where applicable, photovoltaic systems, mechanical systems, landscaping, synthetic turf, chain-link fencing, flooring, waterproofing, timber items, fire-rated doors, aluminium works, lighting systems, ELV/CCTV systems and any other specified product category containing environmental or certification requirements.

For each such item, kindly identify whether the Evaluation Committee relied upon:

- a. an EU Ecolabel certificate;
- b. another Type I ecolabel;
- c. a manufacturer declaration;
- d. a Safety Data Sheet;
- e. a third-party test report;
- f. a technical catalogue;
- g. a sample; or
- h. another form of proof.

10. Clarifications, rectifications, samples and post-submission changes

Please identify whether Elzan Construction Ltd - TID 236560 was asked to clarify, rectify, supplement or change any of the following after tender submission:

- a. technical literature;
- b. certificates;
- c. Eurovent certificates;
- d. EU Ecolabel / GPP evidence;
- e. Safety Data Sheets;
- f. product models;
- g. manufacturer catalogues;
- h. BOQ product references;
- i. samples;

- j. declarations;
- k. Key Expert documentation;
- l. subcontractor information;
- m. the programme of works;
- n. the Construction Management Plan;
- o. the Method Statement;
- p. the QA/QC Programme; or
- q. the financial offer / BOQ.

For each such request, kindly provide:

- a. the date and text of the request;
- b. the date and text of the reply;
- c. the document or item concerned;
- d. whether the matter was treated as a clarification, rectification, sample request or arithmetical correction;
- e. the legal/procedural basis for acceptance; and
- f. confirmation that the reply did not alter, complete or improve a non-compliant tender after the submission deadline.

11. Key Experts

Please confirm, in relation to TID 236560, the Key Experts nominated for each required role, namely:

- a. Site Manager;
- b. Mechanical Engineer;
- c. Electrical Engineer;
- d. Contractor's Warranted Perit;
- e. Health and Safety Practitioner; and
- f. Site Technical Officer.

For each Key Expert, please provide or confirm:

- a. the role nominated;

- b. the qualification, warrant, licence or registration relied upon;
- c. years of post-warrant or professional experience where applicable;
- d. Statement of Availability;
- e. CV;
- f. Key Expert Form;
- g. Declaration for Key Experts relating to public employees, where applicable;
- h. MFHEA equivalence letter, where applicable;
- i. whether any MFHEA documentation was requested during evaluation;
- j. whether any Key Expert was replaced or supplemented during evaluation; and
- k. whether the Key Expert was nominated in any other Elzan bid or in any other economic operator's bid.

Please also confirm whether any Key Expert was nominated for more than one role. If so, please identify the specific clause relied upon. In particular, please confirm that only the roles expressly allowed by the tender documents were combined, and that all other Key Experts did not occupy more than one role.

If personal data cannot be disclosed, kindly provide an anonymised role-by-role compliance matrix sufficient to explain the Evaluation Committee's finding of compliance.

12. Multiple bids submitted by Elzan Construction Ltd

The opening information available on ePPS appears to show that Elzan Construction Ltd submitted more than three bids for this tender, including the following:

TID	Tenderer	Opening price available on ePPS
236557	Elzan Construction Ltd	€3,691,108.33
236558	Elzan Construction Ltd	€2,793,980.72
236560	Elzan Construction Ltd	€3,147,032.13 according to opening information available to us
236568	Elzan Construction Ltd	€3,005,864.39
236573	Elzan Construction Ltd	€3,390,133.63

The General Rules Governing Tenders provide that bidders may submit up to three non-identical multiple bids and that, where more than three non-identical bids are submitted, only the first three cheapest offers are to be

considered, irrespective of administrative, technical and financial compliance, with all other bids automatically disqualified.

In this regard, please confirm:

- a. the complete list of all bids submitted by Elzan Construction Ltd, with TID numbers and prices;
- b. whether each Elzan submission was treated as a separate multiple bid;
- c. whether each Elzan submission was considered technically and financially non-identical;
- d. which Elzan bids were considered by the Evaluation Committee;
- e. which Elzan bids were automatically disqualified under the multiple-bid rule;
- f. why TID 236560 was treated as eligible for evaluation and recommendation;
- g. whether any Elzan submissions were treated as identical, duplicate, alternative, invalid or otherwise not constituting separate non-identical multiple bids;
- h. whether all Elzan bids contained separate technical offers, separate Literature Lists and separate product submissions;
- i. whether separate samples were requested/provided for each Elzan bid, where samples were required;
- j. whether the same Key Experts, subcontractors, technical submissions, method statements, programmes, product literature or certificates were used across multiple Elzan bids; and
- k. if the same Key Experts or technical components were used across multiple Elzan bids, how the Evaluation Committee concluded that the bids were non-identical technically and financially.

13. Lower-priced Elzan bids and sole award criterion

The tender's sole award criterion is price, with award to the cheapest priced offer satisfying the administrative and technical criteria.

The opening information available to us appears to show that Elzan Construction Ltd submitted bids lower than the recommended TID 236560, namely TID 236558 at €2,793,980.72 and TID 236568 at €3,005,864.39.

Please therefore explain why those lower-priced Elzan submissions were not recommended. For each lower-priced Elzan bid, please confirm whether it was:

- a. administratively non-compliant;
- b. technically non-compliant;
- c. financially non-compliant;

- d. automatically disqualified under the multiple-bid rule;
- e. rejected due to missing or non-corroborating literature;
- f. rejected due to missing or non-corroborating samples;
- g. rejected due to Key Expert non-compliance;
- h. rejected due to product/specification non-compliance;
- i. rejected due to arithmetical correction or non-acceptance of correction; or
- j. excluded for any other reason.

Please provide the specific reasons, clauses and evaluation findings for each such rejection or exclusion.

14. Price discrepancy / arithmetical correction

The opening information available to us shows TID 236560 at €3,147,032.13, whereas the award schedule states the recommended price as €3,147,910.83.

Please explain this discrepancy and confirm:

- a. whether the discrepancy resulted from an arithmetical correction;
- b. whether the XML tender structure, BOQ or uploaded financial bid prevailed;
- c. which BOQ items or totals were corrected;
- d. whether the corrected amount was communicated to Elzan Construction Ltd;
- e. whether Elzan Construction Ltd accepted the correction within the applicable timeframe;
- f. whether the correction affected the ranking of Elzan's multiple bids; and
- g. whether the correction affected the ranking of all tenderers.

Kindly provide the relevant non-confidential extracts of the arithmetical-correction record.

15. Request for urgent disclosure

Given the strict objection deadline of Monday, 1st June 2026, we request that the Contracting Authority provide the requested information immediately.

If the full documentation cannot be provided within the requested timeframe, kindly provide, at minimum:

- a. the compliance table/matrix for TID 236560;
- b. the reasons why lower-priced Elzan bids were not recommended;

- c. the application of the multiple-bid rule to Elzan's submissions;
- d. the explanation for the price discrepancy;
- e. the Eurovent compliance evidence;
- f. the paint/GPP/Ecolabel compliance evidence;
- g. the toilets/sanitary ware/HPL compliance evidence;
- h. the curtains/GPP/fire-certification compliance evidence; and
- i. the Key Expert compliance matrix.

My clients reserves the right to rely on any refusal, failure, delay or insufficiency in the information provided in support of any objection or other remedy available at law.

REQUEST FOR INFORMATION DATED 28th MAY 2026

CT2350/2025 — Tender for the Provision of Civil Works, Mechanical and Electrical Services and Finishing Works using Environmentally Friendly Products for the Gozo College, Gharb Primary School, Gozo

Foundation for Tomorrow's Schools (hereinafter “*FTS*” and/or “*Contracting Authority*”) acknowledge receipt of your request for information dated 28th May 2026, submitted on behalf of Legacy Ventures Limited.

Hereunder please find the replies and the submission by the Contracting Authority:-

1. Timing of the request

The Contracting Authority notes and that the rejection to Legacy Ventures Limited was made on the 22nd May 2026, yet the present request for information (hereinafter “*RFP*”) was only submitted on the 28th May 2026, i.e. three (3) days before the objection deadline of 1st June 2026. The RFI includes nine (9) pages of requests which renders the turnaround time impossible to sustain.

2. Legal considerations

Without prejudice to the above stated, it must be stated that the legal framework governing the Contracting Authority's obligations in respect of the disclosure of information is set out in Subsidiary Legislation 601.03, (*hereinafter referred to as “S.L.601.03” and/or “PPR”*) and in particular Regulation 40 thereof, which imposes a the duty of confidentiality.

Regulation 40 specifically indicates the following information which may be disclosed:

“(a) the name of the bidders and the individual names of the members of a group of economic operators who submitted a particular tender;

(b) the name of the sub-contractors;

(c) documentation submitted by economic operators attesting that they comply with selection criteria; and

(d) technical information which is already made available in public.”

In addition, additional guidance is derived from the judgment of the European Court of Justice in *Antea Polska* (17th November 2022, C-54/21, EU:C:2022:888), which mandates an obligation on the Contracting Authority to safeguard the interests of economic operators that disclosed confidential information, trade secrets and other privileged information under the premise that this shall be safeguarded from unwarranted disclosure.

3. Disclosure of information

The Contracting Authority has considered the RFI, and in view of the above considerations, the following information, in accordance with and in strict compliance to reg. 40 of PPR, is hereby disclosing the following information:-

Reg. 40 (2) (a)	<i>the name of the bidders and the individual names of the members of a group of economic operators who submitted a particular tender;</i>
Comment by FTS	<i>This information was not requested, however and in any case, this information is publicly available.</i>
Reg. 40 (2) (b)	<i>the name of the sub-contractors;</i>
Comment by FTS	<i>Kindly note that the sub-contractors proposed by the recommended bidder are Road Construction Co. Limited and Richard Cauchi. In relation to question number 2(e) of the RFI, and in view of the legal considerations above indicated, and unless authorised by the recommended bidder, and/or ordered by any supervening authority, any other request in relation to the sub-contractors is being rejected.</i>
Reg. 40 (2) (c)	<i>documentation submitted by economic operators attesting that they comply with selection criteria; and</i>
Comment by FTS	<i>It is hereby confirmed that, the economic operator complied with all the selection criteria. In relation to question number 2 of the RFI, it is hereby being confirmed that the recommended bidder complied with all the selection criteria therein mentioned, including but not limited to all Note 2 and Note 3 requirements. In view of the legal considerations above indicated, and unless authorised by the recommended bidder, and/or ordered by any supervening authority, any other request in relation to the selection criteria is being rejected.</i>
Reg. 40 (2) (d)	<i>technical information which is already made available in public</i>
Comment by FTS	<i>Whilst confirming that the offer by the recommended bidder is technically compliant in accordance with all the tender specifications, in view of the legal considerations above indicated, and unless authorised by the recommended bidder, and/or ordered by any supervening authority, any other request in relation to the technical criteria is being rejected.</i>

4. Price discrepancy

The Contracting Authority notes the “price discrepancy” claim being made in the RFI, notably the difference between the opening figure attributed to TID 236560 on ePPS (€3,147,032.13) and the recommended price stated in the award schedule (€3,147,910.83). The Contracting Authority confirms that the change is attributable to an arithmetical corrections, which change was done in strict compliance with normative standards.

This Board also noted the **Recommended Bidder’s Reasoned Letter of Reply** filed on the 15th June, 2026, in that:

Elzan Construction Limited (hereinafter "*Elzan*"), in its capacity as the bidder recommended for award, respectfully files the present reply and submits as follows:

PRELIMINARY OBSERVATIONS

At the outset, Elzan respectfully submits that the objection filed by Legacy Ventures Limited is unfounded both in fact and in law and ought ultimately to be dismissed.

Elzan maintains that the recommendation for award was lawfully made and that none of the grievances advanced by the Objector establish any breach of the Public Procurement Regulations, the General Rules Governing Tenders, or the requirements of the tender dossier.

Elzan proceeds to address the individual grievances raised by the Objector.

FIRST GROUND OF OBJECTION – ALLEGED BREACH OF ARTICLE 3.1 OF THE GENERAL RULES GOVERNING TENDERS

This grievance is unfounded.

The Objector alleges that Elzan submitted multiple bids and suggests that Article 3.1 of the General Rules Governing Tenders may have been breached.

However, the Objector has failed to produce any evidence demonstrating that the bid recommended for award was ineligible for consideration or that the provisions of Article 3.1 were breached.

Article 3.1 expressly contemplates the submission of multiple non-identical bids and regulates the manner in which such bids are to be considered.

The Objector has not produced any evidence demonstrating that the bids considered during the evaluation process were identical, that an ineligible bid was considered, or that the recommended bid fell outside the parameters established by the applicable procurement rules.

The grievance should therefore be rejected.

SECOND GROUND OF OBJECTION – THE CITYWAYS PROJECT

The Objector seeks to challenge the determination that the Cityways Project relied upon by it did not satisfy the experience requirements established by the tender dossier. This grievance concerns the Objector's own bid and does not identify any deficiency whatsoever in Elzan's bid.

In any event, the eligibility and experience requirements were clearly established in the tender dossier and were known to all economic operators from the outset.

The Evaluation Committee was entitled and indeed obliged to assess the projects submitted by each bidder against the requirements established by the tender documentation.

The fact that the Objector disagrees with the outcome of that assessment does not render the assessment unlawful.

Nor can the Objector seek, after the conclusion of the evaluation process, to broaden or reinterpret the experience requirements in a manner more favourable to its position. The grievance is therefore devoid of merit and should be rejected.

THIRD GROUND OF OBJECTION – ALLEGED FAILURE TO PROVIDE ADEQUATE INFORMATION

The Objector appears to contend that it is entitled to disclosure of technical evaluation records, technical documentation and information relating to competing bids.

Elzan respectfully submits that such contention is misconceived.

At the outset, it is important to distinguish between information which is in the public domain and information which is not. The technical documentation, technical specifications, technical methodologies, technical literature, certifications, compliance documentation and other technical information forming part of Elzan's tender submission are not in the public domain and, in any event, constitute commercially sensitive and confidential information belonging to Elzan.

The fact that a tender is submitted within the context of a public procurement procedure does not, of itself, place the technical contents of that tender in the public domain. Nor does the fact that the Evaluation Committee examined and assessed such documentation render the underlying technical information part of the public domain.

The technical aspects required by the tender dossier were duly examined, assessed and evaluated by the competent Evaluation Committee. The Committee was entrusted with the task of determining whether the technical requirements established by the tender dossier had been satisfied and reached its conclusions following that evaluation process. The fact that the technical requirements were assessed by the Evaluation

Committee does not alter the position that the underlying technical information remains outside the public domain.

Elzan further submits that the technical information contained within its tender submission constitutes commercially sensitive and confidential information which is not in the public domain. Such information forms part of Elzan's technical know-how, procurement methodology, compliance approach and commercial expertise developed and utilised for the purposes of participating in public procurement procedures and commercial projects.

If information of this nature, which is not in the public domain and which is commercially sensitive and confidential, were to be disclosed to the Objector or otherwise made available beyond the limits established by law, such disclosure could confer upon the Objector, or indeed any other economic operator, a technical and commercial advantage in relation to future tenders, procurement procedures or commercial contracts. Competitors would thereby gain access to technical information, methodologies, compliance strategies and documentation developed and submitted by Elzan for the purposes of the present procurement procedure.

Information that is not in the public domain should not be rendered public merely because an unsuccessful bidder seeks access to it following the conclusion of the evaluation process.

It is precisely for these reasons that Elzan did not place such technical information in the public domain and maintains that it should continue to be treated as commercially sensitive and confidential information falling outside the public domain, thereby benefiting from the protection afforded by the applicable procurement framework and by the principles safeguarding fair competition between economic operators.

By contrast, the financial offer submitted within the procurement procedure forms part of the information that is capable of entering the public domain through the procurement process and through the mechanisms established by the applicable procurement rules. The financial offer is therefore distinguishable from the technical information submitted as part of the tender documentation, which remains outside the public domain.

The extent of any disclosure to which the Objector may be entitled is governed by the Interim Decree issued by this Honourable Board and by the applicable provisions of the Public Procurement Regulations. Any disclosure process must therefore be conducted strictly within those parameters and cannot serve as a basis for converting information which is not in the public domain into information that is placed in the public domain.

In any event, the Objector bears the burden of proving the breaches alleged in its objection. The Objector has, to date, failed to identify any substantive irregularity capable of affecting the validity of the recommendation for award.

Accordingly, this grievance is unfounded and should be rejected.

FOURTH GROUND OF OBJECTION – ALLEGED TECHNICAL NON-COMPLIANCE

The Objector raises various allegations concerning Eurovent certification, environmental requirements, GPP requirements, Ecolabel compliance, paints, sanitary ware, HPL cubicles, curtains, blinds, technical literature, certifications and other technical specifications.

Elzan categorically rejects all such allegations.

The allegations advanced by the Objector concern matters forming part of Elzan's technical submission, namely information that is not in the public domain and which furthermore constitutes commercially sensitive and confidential information. The relevant technical documentation was examined and evaluated by the competent Evaluation Committee for the purpose of determining compliance with the tender requirements. The fact that such documentation was evaluated does not render it part of the public domain, nor does it deprive it of its confidential and commercially sensitive character and which, if disclosed, could provide a technical advantage in future procurement procedures or commercial engagements.

The competent Evaluation Committee examined the tender submissions and concluded that Elzan satisfied the applicable technical requirements.

To date, the Objector has not produced evidence demonstrating any actual instance of technical non-compliance.

Elzan therefore maintains that this grievance is devoid of merit and should ultimately be rejected.

FIFTH GROUND OF OBJECTION – KEY EXPERTS AND ALLEGED IDENTITY OF BIDS

The allegations concerning Key Experts and the alleged identity of bids are unsupported by evidence.

The Objector has not demonstrated that any expert nominated by Elzan failed to satisfy the requirements established by the tender dossier.

Nor has the Objector demonstrated that any bid submitted by Elzan was rendered inadmissible or otherwise non-compliant under the applicable procurement rules.

Elzan maintains that all requirements of the tender dossier were satisfied and that this grievance should likewise be dismissed.

SIXTH GROUND OF OBJECTION – ALLEGED PRICE DISCREPANCY

The Objector alleges that there exists a discrepancy between the price indicated at opening stage and the price ultimately considered.

The Objector has not demonstrated that any correction applied was unlawful, irregular or capable of affecting the outcome of the procurement procedure.

Nor has the Objector demonstrated that any bidder suffered prejudice as a result of the alleged discrepancy.

The grievance is entirely speculative and provides no basis for disturbing the recommendation for award.

CONCLUSION

The Objector has failed to establish any breach of the Public Procurement Regulations, the General Rules Governing Tenders, or the provisions of the tender dossier.

The recommendation for award followed a procurement process conducted in accordance with the applicable legal and regulatory framework and was reached following an evaluation undertaken by the competent Evaluation Committee.

None of the grievances advanced by the Objector establish any basis upon which the recommendation for award may lawfully be disturbed.

Accordingly, Elzan Construction Limited respectfully requests this Honourable Board to:

- (i) reject the objection in its entirety;
- (ii) confirm the recommendation for award in favour of Elzan Construction Limited;
- (iii) reject all requests for relief sought by the Objector; and
- (iv) make such further orders as this Honourable Board may deem appropriate in the circumstances.

PRELIMINARY INCIDENTS DETERMINED BY THE BOARD PRIOR TO THE HEARING ON THE MERITS

In the interval between the filing of the written pleadings and the appointment of this appeal for hearing upon the merits, preliminary incidents arose for the determination of the Board, each of which the Board disposed of by interlocutory decree.

The Board records those incidents, together with the requests that occasioned them and the decrees by which they were determined, in the chronological order in which they arose, for the completeness of the record and that the rights of all the parties may appear.

Nothing in the present record, and nothing in any of the decrees hereunder reproduced, constitutes an expression of opinion upon the merits of the six grievances advanced by the Objector or upon the lawfulness of the recommendation for award, all of which remain expressly reserved to the substantive hearing.

10th JUNE 2026 — INTERIM DECREE

Preliminary Incident I — The Objector’s demand for a preliminary and interim remedy, and the Interim Decree of the 10th June 2026

By paragraph 9(i) of its objection, corresponding to its Third Grievance, the Objector advanced a discrete demand for a preliminary and interim remedy, namely an order directing the Department of Contracts, the Contracting Authority and/or the Foundation for Tomorrow’s Schools to disclose, before the hearing, the evaluation record said to be necessary for the effective prosecution of the objection.

The terms of that demand appear in full at paragraph 9(i) of the objection reproduced above, and the rebuttal of the Contracting Authority is contained in Reply No. 3 of its Reasoned Letter of Reply, likewise reproduced above.

The Board, having convened to determine that demand alone, disposed of it by the following Interim Decree, reproduced verbatim:

THE PUBLIC CONTRACTS REVIEW BOARD

(constituted in accordance with Part II of the Public Procurement Regulations, S.L. 601.03)

Composed of: Dr Vincent Micallef (Chairman), Dr Maria Cardona (Member) and Mr Keith Victor Grech (Member)

Case CT 2350/2025

Legacy Ventures Limited

(the “Objector” / “LVL”)

vs

The Department of Contracts

and

Foundation for Tomorrow’s Schools

(the “Contracting Authority” / “FTS”)

In the matter of the tender for the provision of civil works, mechanical and electrical services and finishing works using environmentally friendly products for the Gozo College, Gharb Primary School, Gozo

INTERIM DECREE

upon the Objector's demand for a preliminary and interim remedy (Grievance No. 3 and paragraph 9(i) of the objection)

The Board, having convened to determine the preliminary and interim demand advanced by the Objector at paragraph 9(i) of its objection (corresponding to Grievance No. 3);

Having seen the objection filed by the Objector on the 29th May 2026, accompanied by the prescribed deposit of €14,250 (regulation 273 of the PPR), against the proposed award, published on the 22nd May 2026, of the above-mentioned tender to Elzan Construction Ltd (TID 236560) at the price of €3,147,910.83 (exclusive of value added tax);

Having seen the Urgent Request for Reasons and Information addressed on behalf of the Objector to the Director General (Contracts) and to the Contracting Authority on the 28th May 2026 ("the RFI", exhibited as DOC 1), and the reply of the Contracting Authority thereto dated 29th May 2026 (exhibited as DOC 2);

Having seen the Reasoned Reply of the Contracting Authority, and in particular Reply No. 3 thereof;

Having seen the Public Procurement Regulations (Subsidiary Legislation 601.03) ("the PPR") and the General Rules Governing Tenders, version 4.10 of August 2024 ("the GRGT"), together with the documents exhibited and the submissions of the parties;

Premising that the present Decree is interlocutory in nature and is confined to the demand for a preliminary and interim remedy; that it determines neither the merits of Grievances Nos. 1, 2, 4, 5 and 6 nor the lawfulness of the recommendation for award, all of which are expressly reserved to the substantive hearing; and that nothing herein is to be construed as an expression of opinion upon those merits;

A. The subject-matter of the present incident

1. *By its objection, the Objector advances six grievances and, at paragraph 9(i), a discrete demand for a preliminary and interim remedy, namely an order for the pre-hearing disclosure of the evaluation record. It is that demand alone, together with the rebuttal contained in Reply No. 3 of the Contracting Authority, that falls to be determined by the present Decree.*

B. The demand (paragraph 9(i))

2. *The Objector requests the Board, as a preliminary and interim remedy and before the hearing, to order the Department of Contracts, the Contracting Authority and/or the Foundation for Tomorrow's Schools to disclose, within such short timeframe as the Board may deem fit, the non-confidential, redacted or confidentiality-protected evaluation record said to be necessary for the effective prosecution of the objection, comprising: (a) the Article 3.1 GRGT multiple-bid analysis concerning all the submissions of Elzan Construction Ltd; (b) the reasons for*

which the lower-priced Elzan submissions were not recommended; (c) the evaluation record and reasons concerning the Objector's List of Projects and the assessment of the project relied upon (referred to variously as "Cityways" / "Citways"); (d) the project-experience compliance matrix for the recommended tenderer; (e) the compliance matrix for TID 236560; (f) the Eurovent, GPP / EU Ecolabel, paint, toilet and sanitary-ware, HPL, curtain and textile, blinds and other product-certification evidence; (g) the Key Expert compliance matrix; (h) the clarification, rectification, sample and arithmetical-correction records; and (i) the estimated project value, budget and value-for-money assessment. The Objector further requests liberty to supplement the objection following such disclosure.

C. The reply of the Contracting Authority (Reply No. 3)

3. *The Contracting Authority resists the demand upon five grounds: (3.1) that the Objector seeks information and documents to which it has "no right"; (3.2) that the RFI, submitted on the 28th May 2026, three days before the objection deadline of the 1st June 2026, was nonetheless answered on the 29th May 2026 in compliance with regulations 40, 242 and 272 of the PPR; (3.3) that regulation 40 of the PPR confines the information "which may be disclosed" to the four categories there enumerated; (3.4) that the judgment of the Court of Justice of the European Union in Antea Polska (17th November 2022, Case C-54/21, EU:C:2022:888) obliges it to safeguard confidential information and trade secrets from unwarranted disclosure; and (3.5) that the grievance ought accordingly to be rejected.*

In DOC 2, the Contracting Authority disclosed the names of the recommended tenderer's sub-contractors (Road Construction Co. Limited and Richard Cauchi) and confirmed compliance with the selection criteria, while rejecting "any other request in relation to the selection criteria" and "any other request in relation to the technical criteria".

D. The relevant legal framework

4. *The Board is empowered, by regulation 90(4) of the PPR, "to take such interim measures as it shall deem fit"; by regulation 90(6), it is vested with "all such powers as are, by the Code of Organization and Civil Procedure, vested in the Civil Court, First Hall"; by regulation 90(1) it may "order or permit amendments of written pleadings"; and, upon the request of a party, it may summon witnesses and order the production of evidence (regulation 92).*
5. *Regulation 40(1) of the PPR establishes the duty of confidentiality, the contracting authority being precluded from disclosing information "designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders".*

Regulation 40(2) provides, conversely, that the following "shall not be considered as confidential": (a) the name of the bidders and of the members of a group of economic operators; (b) the name of the sub-contractors; (c)

- “documentation submitted by economic operators attesting that they comply with selection criteria”; and (d) “technical information which is already made available in public”.*
6. *Regulation 242(2) entitles, upon written request: at (b), any unsuccessful tenderer to “the reasons for the rejection of its tender”; and, at (c), any tenderer “that has made an admissible tender” to “the characteristics and relative advantages of the tender selected”. Regulation 242(3) permits the withholding of information the release of which “would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or might prejudice fair competition between economic operators”. By regulation 272, the communication of the proposed award is to be accompanied by “a summary of the relevant reasons relating to the rejection of the tender as set out in regulation 242”.*
 7. *Clause 19.2 of the GRGT provides that an unsuccessful bidder “shall be notified with the outcome of the evaluation process” and provided with, inter alia, the criteria for award (i), the name of the successful tenderer (ii), the recommended price of the successful bidder (iii), “the reasons why the tenderer did not meet the technical specifications / notification that the offer was not the cheapest” (iv), and the appeal deadline and deposit (vi)—(vii). Clause 14 of the GRGT preserves the secrecy of the evaluation, but only “before the notification of award” (14.1) and “unless otherwise permitted or required by law” (14.2).*
 8. *Clause 16 of the GRGT, read with Notes 1, 2 and 3 to Clause 5 of the Instructions to Tenderers, governs rectification and clarification: rectification of missing or incorrect documentation is permissible under Note 2 within five working days, whereas “no rectification shall be allowed in respect of the documentation as accompanied by Note 3”, only clarification being possible. Clause 15 regulates clarifications, and Clause 17 the correction of arithmetical errors. Clause 22.1 subjects personal data to the Data Protection Legislation, including Article 28 of the General Data Protection Regulation.*
 9. *Finally, regulation 276(d) obliges the authority responsible for the tendering process to “within ten days forward to the chairman of the Public Contracts Review Board all documentation pertaining to the call for tenders in question including files and tenders submitted”, the appeal being determined, under regulation 276(h), “after evaluating all the evidence and after considering all submissions put forward by the parties”.*

E. Considerations of the Board

10. *As to Reply 3.1 (“no right”) and the competence of the Board. The contention that the Objector seeks relief to which it has no right, and the tacit premise that such relief lies beyond the Board’s reach, are both unfounded. The Board is expressly empowered by regulation 90(4) to take such interim measures as it deems fit, is invested by regulation 90(6) with the powers of the Civil Court, First Hall, which comprehend the power to order the production of documents, and may, under regulation 92, compel the production of evidence. The demand is therefore squarely within the Board’s competence. Moreover, the premise that the Objector has “no right” to any*

information is contradicted by regulations 242(2)(b) and 272 of the PPR and by Clause 19.2(iv) of the GRGT, which confer upon an unsuccessful tenderer a clear entitlement to the reasons for the rejection of its own tender.

11. *As to Reply 3.2 (timing). That the RFI was submitted three days before the objection deadline is acknowledged; but the lateness of an information request neither extinguishes the statutory entitlements of an unsuccessful tenderer nor curtails the powers of this Board.*

It is further observed that the Objector was nonetheless able to articulate, on the 29th May 2026, a detailed objection traversing six grievances, a circumstance which the Board will weigh in calibrating the extent and urgency of any disclosure, but which does not defeat the entitlement itself.

12. *As to Reply 3.3 (the construction of regulation 40). The Board cannot accept that regulation 40(2) measures exhaustively the information “which may be disclosed”. That sub-regulation enumerates, on the contrary, the information which “shall not be considered as confidential”; it is a floor beneath which confidentiality may not be claimed, not a ceiling above which disclosure is precluded.*

It follows, in particular, that the documentation attesting the recommended tenderer’s compliance with the selection criteria is, by force of regulation 40(2)(c), not confidential; and that technical information already in the public domain is, by force of regulation 40(2)(d), likewise not confidential. To that extent, the Contracting Authority’s blanket refusal in DOC 2 of “any other request in relation to the selection criteria” is itself inconsistent with regulation 40(2)(c).

13. *As to Reply 3.4 (Antea Polska) and the secrecy of the procedure. The authority invoked by the Contracting Authority is double-edged. While the Court of Justice affirmed the protection of genuine trade secrets and confidential information, it held, in substance, that a contracting authority may not treat in a general manner all or virtually all of the information as confidential, that it must assess whether the information in question genuinely possesses a confidential character, and that, even where disclosure is lawfully refused, the essential content of the information must be communicated to the unsuccessful tenderer so as not to deprive it of an effective remedy.*

The blanket refusal of “any other request” in DOC 2 performs no such assessment and communicates no such essential content. Nor does Clause 14 of the GRGT avail the Contracting Authority: its secrecy obligation operates “before the notification of award”, which has occurred, and is in any event qualified by the words “unless otherwise permitted or required by law”, the appeal-stage entitlements and the powers of this Board being precisely such law.

14. *As to the effective adjudication of the appeal. The Board is conscious that, by regulation 276(d), the entire documentation pertaining to the call for tenders, including the files and the tenders submitted, is in any event forwarded to the Board, the appeal being determined upon all the evidence under regulation 276(h).*

The effective adjudication of the objection is thereby secured independently of any disclosure to the Objector, and the Board may itself scrutinise from that file the material which it would be inappropriate to release to a competing economic operator.

15. *As to the calibration of the relief, grievance by grievance. Reconciling the entitlements of the Objector with the protection of the recommended tenderer's confidential interests under regulation 40(1) and regulation 242(3), the Board considers it just to accede to the demand in part, as follows: (i) the reasons for the rejection of the Objector's own tender (Grievance No. 2), being the matter most directly within its entitlement, are to be disclosed in full; (ii) the documentation attesting the recommended tenderer's compliance with the selection criteria, including its project experience (Grievances Nos. 2 and 4), is to be disclosed by force of regulation 40(2)(c); (iii) technical information already in the public domain (Grievance No. 4) is to be disclosed by force of regulation 40(2)(d); (iv) the application of Article 3.1 of the GRGT to the Elzan submissions and the reasons the cheaper submissions were not recommended (Grievance No. 1), and the arithmetical-correction and clarification/rectification records (Grievances Nos. 1, 4 and 6), are to be disclosed in summary, anonymised or redacted form; and (v) the recommended tenderer's proprietary technical and commercial documentation and the personal data of its Key Experts (Grievances Nos. 4 and 5) are not to be disclosed wholesale, but only as to their essential content.*

The Objector's entitlement under regulation 242(2)(c) to the characteristics and relative advantages of the selected tender is, the Objector having been set aside at the selection stage, contingent upon its having made an "admissible tender", a matter contested and reserved to the hearing; the Board accordingly does not, at this stage, order disclosure under that head beyond the regulation 40(2) categories.

F. Decree

For the foregoing reasons, the Board, acceding in part and rejecting in part the demand advanced at paragraph 9(i) of the objection (Grievance No. 3):

- (1) Declares that the demand is within its competence, the Board being empowered to take such interim measures as it deems fit (regulation 90(4) of the PPR), vested with the powers of the Civil Court, First Hall (regulation 90(6)), and competent to order the production of evidence (regulation 92); and rejects, accordingly, the contention in Reply 3.1 that the Objector seeks relief to which it has no right;*
- (2) Holds that regulation 40(2) of the PPR enumerates information which shall not be treated as confidential and does not constitute an exhaustive measure of the information that may be disclosed (Reply 3.3 being rejected to that extent); that the documentation attesting compliance with the selection criteria is non-confidential under regulation 40(2)(c) and technical information already in the public domain is non-confidential under regulation*

40(2)(d); and that the blanket refusal in DOC 2 of “any other request in relation to the selection criteria” is inconsistent with regulation 40(2)(c);

- (3) *Holds that a blanket refusal of disclosure is incompatible with the principle in Antea Polska (Case C-54/21), which requires the assessment of the genuinely confidential character of each item and the communication of the essential content of any information lawfully withheld (Reply 3.4 being qualified accordingly); and that the secrecy obligation under Clause 14 of the GRGT, operating only before the notification of award and “unless otherwise permitted or required by law”, does not preclude the disclosure hereby ordered;*
- (4) *Holds that the lateness of the RFI (Reply 3.2) neither extinguishes the statutory entitlements of the Objector nor curtails the powers of the Board;*
- (5) *Orders the Department of Contracts and/or the Contracting Authority to disclose to the Objector, within five (5) working days from the notification of this Decree, the following, save and except as provided in paragraph (7) below:*
 - (a) *(Grievance No. 2) the summary of the relevant reasons for the rejection of the Objector’s own tender, in terms of regulations 242(2)(b) and 272 of the PPR and Clause 19.2(iv) of the GRGT, and in particular the evaluation reasoning concerning the Objector’s List of Projects and the assessment of the eligibility of the project it relied upon (“Cityways” / “Citways”);*
 - (b) *the information enumerated in regulation 40(2)(a) and (b) of the PPR (the names of the bidders and of the sub-contractors), in so far as not already furnished in DOC 2;*
 - (c) *(Grievances Nos. 2 and 4) the documentation submitted by the recommended tenderer attesting its compliance with the selection criteria, including its technical and professional ability and project experience (Clause 5(C), Note 2, and the List of Projects), the same being non-confidential by force of regulation 40(2)(c), subject only to the redaction of personal data or third-party particulars not necessary to demonstrate compliance;*
 - (d) *(Grievance No. 4) the technical information already made available in public relied upon by the Evaluation Committee, the same being non-confidential by force of regulation 40(2)(d), including (where applicable) the Eurovent certifications appearing on the manufacturer’s public listing, the EU Ecolabel / Type I ecolabel registrations, and the published standards relied upon;*
 - (e) *(Grievance No. 1) the application of Article 3.1 of the GRGT to all the submissions of Elzan Construction Ltd, identifying which submissions were considered and which were automatically disqualified, and the reasons for which the lower-priced submissions (TID 236558 at €2,793,980.72*

and TID 236568 at €3,005,864.39) were not recommended notwithstanding the price-based award criterion, in summary, anonymised or redacted form;

- (f) (Grievance No. 6) the record of the arithmetical correction effected in respect of TID 236560, being the variance between the opening figure of €3,147,032.13 and the recommended price of €3,147,910.83, pursuant to Clause 17 of the GRGT;*
 - (g) (Grievances Nos. 1 and 4) a statement of the existence, dates and legal basis of any clarification or rectification requested of the recommended tenderer (Clauses 15 and 16 of the GRGT and Notes 2 and 3 to Clause 5), and of whether any documentation accompanied by Note 3 was altered, completed or supplied after the deadline for submission, the confidential content thereof being withheld;*
 - (h) (Grievance No. 4) a compliance matrix for TID 236560 communicating the essential content of the technical-compliance findings (Eurovent, GPP / EU Ecolabel, paint, toilets and sanitary ware, HPL cubicles, curtains and textiles, blinds and product certification), in anonymised or redacted form;*
 - (i) (Grievance No. 5) an anonymised, role-by-role Key Expert compliance matrix (Site Manager, Mechanical Engineer, Electrical Engineer, Contractor's Warranted Perit, Health and Safety Practitioner and Site Technical Officer), the personal data of the individuals being withheld pursuant to Clause 22.1 of the GRGT and regulations 40(1) and 242(3) of the PPR;*
- (6) As regards the estimated value of the tender (budget) and the value-for-money assessment, records that the estimated value is the Contracting Authority's own figure and does not constitute confidential information of a competing economic operator, but that, its relevance under Clause 18 of the GRGT being confined to the discretionary power of the Contracting Authority to accept, reject or cancel where the financial offers exceed the estimated value, a circumstance which founds no automatic ground of illegality and which is not the subject of any pleaded grievance, the Board declines to order its disclosure as an interim measure, without prejudice to the right of the Objector to raise the matter at the hearing, the said figure being in any event comprised in the documentation forwarded under regulation 276(d) of the PPR;*
- (7) Excepts from the order in paragraph (5), and rejects the demand in so far as it seeks the wholesale pre-hearing disclosure to the Objector of, any information which the Contracting Authority is entitled to withhold as confidential within the meaning of regulation 40(1) of the PPR, namely technical or trade secrets and the confidential aspects of tenders, or which falls within regulation 242(3), being information the release of which would prejudice the legitimate commercial interests of a particular economic operator or might prejudice fair competition; and, in particular, the recommended tenderer's proprietary product literature, datasheets, certificates not in the public domain, samples, method statements, programmes of works, and the personal data of its Key Experts;*

- (8) *Directs that, where any document falls only partly within the excepted categories, it be disclosed in redacted or anonymised form communicating its essential content; and that, where redaction is insufficient to protect the confidential character of the information, the document not be disclosed to the Objector but be retained and examined by the Board itself from the documentation forwarded to the Chairman under regulation 276(d) of the PPR;*
- (9) *Grants the Objector liberty, following such disclosure, to file a supplementary note strictly confined to the matters thereby disclosed, within three (3) working days of receipt thereof, the Board exercising for that purpose its power under regulation 90(1) of the PPR to permit the amendment of pleadings; and reserves to the Contracting Authority and to any interested party the corresponding right of reply;*
- (10) *Confirms that the suspension of the award procedure occasioned by the filing of the objection (regulations 274 and 275 of the PPR) subsists, and that the complete documentation pertaining to the call for tenders is in any event to be forwarded to the Chairman in terms of regulation 276(d) of the PPR;*
- (11) *Expressly reserves the merits of Grievances Nos. 1, 2, 4, 5 and 6, and the lawfulness of the recommendation for award, to the substantive hearing, nothing in this Decree constituting an expression of opinion thereon; and*
- (12) *Reserves the question of the deposit, to the final decision (regulation 273 of the PPR).*

Thus decreed by the Public Contracts Review Board this 10th day of June 2026.

The said Interim Decree of the 10th June 2026 stands confirmed.

11th AND 16th JUNE 2026 — EXCHANGE BETWEEN THE CONTRACTING AUTHORITY AND THE RECOMMENDED BIDDER

Compliance with the Interim Decree — disclosure effected by the Contracting Authority

As a preliminary to its compliance with limb (5)(d) of the Interim Decree (technical information already in the public domain), the Contracting Authority addressed the recommended bidder, through its counsel, by the following exchange of electronic communications:

Electronic communication of the Contracting Authority to the recommended bidder — 11th June 2026

Good afternoon Dr Calleja,

I hope this email finds you well.

Reference is hereby being made to the enclosed interim decree by the Public Contracts Review Board in relation to the release of certain information relating to the bid of the recommended bidder, i.e. your client.

Reference is specifically being made to point 5(d), notably the following:

“(Grievance No. 4) the technical information already made available in public relied upon by the Evaluation Committee, the same being non-confidential by force of regulation 40(2)(d), including (where applicable) the Eurovent certifications appearing on the manufacturer’s public listing, the EU Ecolabel / Type I ecolabel registrations, and the published standards relied upon;” (added emphasis)

In view of the above, can you kindly let us know which part of the technical offer is “... already made available in public ...” or whether the full technical offer is confidential and thereby nothing is in the public domain.

In view of the limited time available to adhere with the interim decree, you are kindly requested to provide this information to the undersigned by not later than 1 working.

Thanks and regards

The Contracting Authority

Reply of the recommended bidder — 16th June 2026

Good afternoon

I believe none of the technical specifications submitted by either the objector or the successful bidder are made public.

The publication of technical information is not required at the tendering stage. Only the financial bid summary is made publicly available.

Furthermore, disclosing the technical specifications of either party would involve the release of commercially sensitive information.

Thanks

Daniel

Av. Daniel Calleja, Carmelo Galea Associates, Advocates

15, 16 AND 17th JUNE 2026 — TIMELINESS OF THE RECOMMENDED BIDDER’S REPLY; DECREE OF THE 17th JUNE 2026

Preliminary Incident II — The timeliness of the recommended bidder’s Reasoned Reply, and the Decree of the 17th June 2026

The recommended bidder, Elzan Construction Ltd, filed its Reasoned Reply, bearing date, and stamped as received by the Board, on the 15th June 2026. By electronic communication of the 16th June 2026 addressed to

the Secretary of the Board, the Objector, acknowledging receipt of that Reply and reserving its rights and position, requested the Board to verify whether the Reply had been filed within the time-limit prescribed by regulation 276(c) of the Public Procurement Regulations. That communication was in the following terms:

Electronic communication of the Appellant — 16th June 2026

Dear Ms Vella,

Thank you. Receipt is acknowledged.

It would appear, subject to the Board's verification of the relevant dates, that the Reply may have been filed outside the applicable statutory time-limit.

Without prejudice to my client's rights and position, I respectfully request the Board to verify whether the Reply filed on behalf of Elzan Construction Limited was filed within the time-limit prescribed by Regulation 276(c) of the Public Procurement Regulations, S.L. 601.03 and to issue any decree that the Board deems fit in this respect.

Best regards,

The Appellant

The Board, upon that request and upon the face of its own acts, determined the question of timeliness by the following Decree, reproduced verbatim:

Decree of the 17th June 2026

THE PUBLIC CONTRACTS REVIEW BOARD

(constituted in accordance with Part II of the Public Procurement Regulations, S.L. 601.03)

*Composed of: Dr Vincent Micallef (Chairman), Dr Maria Cardona (Member) and Mr Keith Victor Grech
(Member)*

Case CT 2350/2025

Legacy Ventures Limited

(the "Objector" / "LVL")

vs

The Department of Contracts

and

Foundation for Tomorrow's Schools

(the "Contracting Authority" / "FTS")

and

Elzan Construction Ltd

(the “Recommended Bidder” / “ECL”)

Tender for the provision of civil works, mechanical and electrical services and finishing works using environmentally friendly products for the Gozo College, Gharb Primary School, Gozo

DECREE

upon the timeliness and admissibility of the Reasoned Reply filed by the Recommended Bidder, Elzan Construction Ltd

The Board, having convened to determine the timeliness and admissibility of the written reply filed by the recommended bidder, Elzan Construction Ltd, in the present appeal;

Having seen the objection filed by the Objector on the 29th May 2026, accompanied by the prescribed deposit of €14,250 (regulation 273 of the PPR), against the proposed award, published on the 22nd May 2026, of the above-mentioned tender to Elzan Construction Ltd (TID 236560) at the price of €3,147,910.83 (exclusive of value added tax);

Having seen that the appeal was affixed to the notice-board of the Public Contracts Review Board, and communicated by electronic means to all participating tenderers, the recommended bidder among them, on the 1st June 2026 (regulation 276(b) of the PPR);

Having seen the Reasoned Reply of the Contracting Authority, filed with, and stamped as received by, the Board on the 8th June 2026;

Having seen the Reasoned Reply of the recommended bidder, Elzan Construction Ltd, bearing date the 15th June 2026 and stamped as received by the Public Contracts Review Board on the 15th June 2026;

Having seen the electronic communication of the 16th June 2026 addressed to the Secretary of the Board by the Appellant, whereby the Objector, acknowledging receipt of the Reasoned Reply of the recommended bidder and reserving its rights and position, observes that, subject to the Board's verification of the relevant dates, the said Reply may have been filed beyond the applicable statutory time-limit, and respectfully requests the Board to verify whether the Reasoned Reply filed on behalf of Elzan Construction Ltd was filed within the time-limit prescribed by regulation 276(c) of the Public Procurement Regulations (S.L. 601.03), and to issue such decree as it may deem fit in that respect;

Having seen the Public Procurement Regulations (Subsidiary Legislation 601.03) (“the PPR”) and the General Rules Governing Tenders, version 4.10 of August 2024 (“the GRGT”), together with the documents exhibited and the acts of the appeal;

Premising that the present Decree is interlocutory in nature and is confined to the question of the timeliness and admissibility of the written reply of the recommended bidder; that it determines neither the merits of the six grievances

advanced by the Objector nor the lawfulness of the recommendation for award, all of which are expressly reserved to the substantive bearing; and that nothing herein is to be construed as an expression of opinion upon those merits;

A. The subject-matter of the present incident

1. *By its objection filed on the 29th May 2026, the Objector advances six grievances against the decision declaring its offer administratively non-compliant and against the recommendation for the award of the tender to the recommended bidder, Elzan Construction Ltd (TID 236560). The recommended bidder is an interested party within the meaning of regulation 276 of the PPR and, in that capacity, filed a written Reasoned Reply. The present Decree determines a single, discrete and anterior question: whether that reply was filed within the peremptory period prescribed by regulation 276(c) of the PPR, or whether, as the chronology discloses, it was filed fuori termine.*

B. The relevant chronology

2. *The material dates are not in dispute and appear from the acts of the appeal:*
 - (a) *on the 22nd May 2026, the proposed award of the tender to the recommended bidder, at the price of €3,147,910.83 (exclusive of value added tax), was published and notified to tenderers;*
 - (b) *on the 29th May 2026, the Objector filed its objection before this Board, accompanied by the prescribed deposit of €14,250 (regulation 273 of the PPR);*
 - (c) *on the 1st June 2026, the appeal was affixed to the notice-board of the Public Contracts Review Board and communicated by electronic means to all participating tenderers, the recommended bidder among them, in terms of regulation 276(b) of the PPR;*
 - (d) *on the 8th June 2026, the Contracting Authority filed its Reasoned Reply, that is, within the period prescribed by regulation 276(c) of the PPR;*
 - (e) *on the 15th June 2026, i.e. fourteen calendar days after the affixing of the appeal, the recommended bidder filed its Reasoned Reply, which bears that date and is stamped as received by the Board on the same day.*

C. The governing legal framework

3. *The reply of an interested party to an appeal is governed by regulation 276(c) of the PPR, which provides that the contracting authority and any interested party may, “within ten calendar days from the day on which the appeal is affixed to the notice board of the Review Board and uploaded where applicable on the government’s e-procurement platform, file a written reply to the appeal”.*

4. *Three features of that provision are presently material. First, it embraces “any interested party”; the recommended bidder, in whose favour the award is proposed, is the paradigm of such a party, and its right to reply is conferred and circumscribed by that very provision. Secondly, the period is expressed in calendar days, and not in working days; Saturdays, Sundays and public holidays are accordingly comprised within its reckoning and neither interrupt nor extend it. Thirdly, the dies a quo from which the period runs is “the day on which the appeal is affixed ... and uploaded”, namely the 1st June 2026.*
5. *The computation of the period follows the settled rule dies a quo non computatur, dies ad quem computatur: the day of the triggering event (the 1st June 2026) is not counted, the period running from the day following. Reckoned in that manner, the ten calendar days commenced on the 2nd June 2026 and expired on the 11th June 2026, i.e., a Thursday and an ordinary working day, so that no question of extension to a succeeding working day can arise. Even were one to adopt the stricter construction and to count the 1st June itself as the first day, the period would have expired yet earlier, on the 10th June 2026; the conclusion reached below holds a fortiori upon either computation.*
6. *The peremptory character of these time-limits is not in doubt. The time-limits governing the appeal procedure are of public order: they secure the equal treatment of economic operators (regulation 39 of the PPR), the orderly and expeditious conduct of the review, and the legal certainty of all participants. The same principle of self-limitation that binds a contracting authority to the rules of its own call binds the parties, and this Board, to the procedural rules of the appeal; a period prescribed by law is not capable of enlargement by the unilateral default of the party bound to observe it.*
7. *It is observed, in this regard, that the Contracting Authority, subject to the very same provision and the very same period, filed its Reasoned Reply on the 8th June 2026, well within time. The period of ten calendar days was thus both applicable to, and capable of timely observance by, the parties to the appeal; the recommended bidder’s failure to file within it is attributable to no defect, ambiguity or obscurity in the rule, but to its own delay.*

D. Considerations of the Board

8. *Applying the foregoing to the admitted chronology, the position admits of no doubt. The appeal having been affixed and communicated on the 1st June 2026, the period prescribed by regulation 276(c) of the PPR for the filing of a written reply expired, at the latest, on the 11th June 2026. The Reasoned Reply of the recommended bidder, Elzan Construction Ltd, bears date the 15th June 2026 and is stamped as received by the Public Contracts Review Board on the 15th June 2026, that is to say, four calendar days after the expiry of the period upon the more generous computation (and five days upon the stricter), and fourteen calendar days after the affixing of the appeal. The reply was, in consequence, filed fuori termine.*

9. *A written reply filed beyond the peremptory period prescribed by regulation 276(c) cannot be admitted to the acts of the appeal. To receive and to act upon a reply filed out of time would defeat the very purpose of the prescribed period; would offend the equal treatment of the parties, and in particular of the Objector, who is entitled to ascertain, within the statutory timetable, the case it has to meet; and would be irreconcilable with the principle of self-limitation by which this Board is itself bound. The Board is accordingly constrained to declare the said reply inadmissible and to direct that it be not taken into consideration in the determination of the appeal.*
10. *That conclusion attaches to the written pleading alone, and not to the standing of the recommended bidder as an interested party. The recommended bidder remains a participant in the proceedings; it is to be informed of the date or dates appointed for the hearing of the appeal in terms of regulation 276(e) of the PPR; and the present Decree is without prejudice to such procedural position as it may lawfully enjoy at that hearing, which the Board expressly reserves.*

E. Decree

For the foregoing reasons, the Board:

- (1) Declares that the reply of an interested party to an appeal is governed by regulation 276(c) of the PPR, and must be filed within ten calendar days from the day on which the appeal is affixed to the notice-board of the Public Contracts Review Board and, where applicable, uploaded on the government's e-procurement platform;*
- (2) Holds that the recommended bidder, Elzan Construction Ltd, is an interested party within the meaning of regulation 276 of the PPR, and that its written reply is governed by, and confined within, the period prescribed by regulation 276(c);*
- (3) Holds that, the appeal having been affixed to the notice-board of the Board and communicated to all participating tenderers on the 1st June 2026, the period prescribed by regulation 276(c) of the PPR expired, at the latest, on the 11th June 2026, the period being reckoned in calendar days and the dies a quo not being counted;*
- (4) Declares that the Reasoned Reply of the recommended bidder, Elzan Construction Ltd, bearing date, and stamped as received by the Board on, the 15th June 2026, was filed fuori termine, being four calendar days beyond the expiry of the said period and fourteen calendar days after the affixing of the appeal;*
- (5) Declares the said Reasoned Reply of the recommended bidder inadmissible, and orders that it be not admitted to the acts of the appeal nor taken into consideration by the Board in the determination of the merits;*
- (6) Records that the Reasoned Reply of the Contracting Authority, filed on the 8th June 2026, was filed within the period prescribed by regulation 276(c) of the PPR and is admissible;*
- (7) Declares that the present Decree attaches to the written pleading alone, and not to the standing of the recommended bidder as an interested party, which remains entitled to be informed of the date or dates appointed for the hearing*

in terms of regulation 276(e) of the PPR, the Board expressly reserving the recommended bidder's procedural position at that hearing;

- (8) Confirms that the suspension of the award procedure occasioned by the filing of the objection (regulations 274 and 275 of the PPR) subsists, and that the complete documentation pertaining to the call for tenders is in any event to be forwarded to the Chairman in terms of regulation 276(d) of the PPR;*
- (9) Expressly reserves the merits of the six grievances advanced by the Objector, and the lawfulness of the recommendation for award, to the substantive hearing, nothing in this Decree constituting an expression of opinion thereon; and*
- (10) Reserves the question of the deposit to the final decision (regulation 273 of the PPR).*

Thus, decreed by the Public Contracts Review Board this 17th day of June 2026.

By the said Decree of the 17th June 2026, the Reasoned Reply of the recommended bidder, having been filed *fuori termine*, **was declared inadmissible and ordered not to be taken into consideration in the determination of the merits. It is reproduced in the body of the present decision above solely for the completeness of the record, and not as a pleading admitted to the acts or weighed by the Board upon the merits.**

17th AND 18th JUNE 2026 — REQUESTS OF THE CONTRACTING AUTHORITY; FURTHER DECREE AND DECLARATION OF THE 18th JUNE 2026

Preliminary Incident III — The requests of the Contracting Authority, the Further Decree of the 18th June 2026, and the Declaration of the Secretary

Subsequent to the Decree of the 17th June 2026, the Contracting Authority, by electronic communication of the 17th June 2026 addressed to the Secretary of the Board, advanced three procedural requests, observing that a copy of the Objector's communication of the 16th June 2026 had not been served upon it and that the said Decree had been rendered before the Board had received the position of all the parties. That communication was in the following terms:

Electronic communication of the Contracting Authority — 17th June 2026

Good morning,

Email and contents therein have been noted with thanks.

Reference is made to the decision, in particular the part which states that, "Having seen the electronic communication of the 16th June 2026 addressed to the Secretary of the Board by the Appellant, whereby the Objector, acknowledging receipt of the Reasoned Reply of the recommended bidder and reserving its rights and position, observes that, subject to the Board's verification of the relevant dates, the said Reply may have been filed beyond the applicable statutory time-limit, and respectfully requests the Board to verify whether the Reasoned Reply filed on behalf of Elzan Construction Ltd was filed within the time-limit prescribed by regulation 276(c) of the Public Procurement Regulations (S.L. 601.03), and to issue such decree as it may deem fit in that respect"

In view of the fact that a copy of this communication was not served onto FTS, and that a decision was handed before taking into account the position of all the parties, FTS requests that:-

- 1. A copy of the electronic communication by the Appellant is provided.*
- 2. A declaration is provided by the secretariat of the PCRB, as to when (a) it uploaded the objection to the notice board and the online portal (b) a copy of the objection was sent to the recommended bidder*
- 3. A record in the acts of the case is made, that a decision was handed without the board having heard the position of all parties and evidence provided in this regard.*

FTS is hereby reserving all of its rights to the fullest extent permissible at law.

Thanks and regards

The Contracting Authority

The Board disposed of those three requests by the following Further Decree, reproduced verbatim:

Further Decree of the 18th June 2026

THE PUBLIC CONTRACTS REVIEW BOARD

(constituted in accordance with Part II of the Public Procurement Regulations, S.L. 601.03)

*Composed of: Dr Vincent Micallef (Chairman), Dr Maria Cardona (Member) and Mr Keith Victor Grech
(Member)*

Case CT 2350/2025

Legacy Ventures Limited

(the "Objector" / "LVL")

vs

The Department of Contracts

and

Foundation for Tomorrow's Schools

(the "Contracting Authority" / "FTS")

and

Elzan Construction Ltd

(the "Recommended Bidder" / "ECL")

Tender for the provision of civil works, mechanical and electrical services and finishing works using environmentally friendly products for the Gozo College, Gharb Primary School, Gozo

FURTHER DECREE

upon the requests advanced by the Contracting Authority subsequent to the Decree of the 17th June 2026

The Board, having convened to dispose of the procedural requests advanced by the Contracting Authority, the Foundation for Tomorrow's Schools, subsequent to the Decree of this Board of the 17th June 2026;

Having seen the acts of the appeal, and in particular its own Decree of the 17th June 2026, whereby the Board, upon a discrete and anterior question, declared the Reasoned Reply of the recommended bidder, Elzan Construction Ltd, to have been filed fuori termine and inadmissible, the said Reply having been received by the Board on the 15th June 2026, that is, fourteen calendar days after the affixing of the appeal on the 1st June 2026, and four calendar days after the expiry, at the latest, of the period prescribed by regulation 276(c) of the Public Procurement Regulations;

Having seen the electronic communication of the 17th June 2026 addressed to the Secretary of the Board on behalf of the Contracting Authority, whereby the Contracting Authority, having taken note of the said Decree, and observing that a copy of the electronic communication of the Appellant had not been served upon it and that the said Decree was rendered before the Board had received the position of all the parties, respectfully requests this Board: (i) that a copy of the said electronic communication of the Appellant be furnished to it; (ii) that the secretariat of the Board declare (a) the date upon which the objection was affixed to the notice-board of the Board and uploaded upon the government's e-procurement platform, and (b) the date upon which a copy of the objection was communicated to the recommended bidder; and (iii) that a record be entered in the acts of the case to the effect that the said Decree was rendered without the Board having heard the position of all the parties; the Contracting Authority reserving all its rights;

Having seen the Public Procurement Regulations (Subsidiary Legislation 601.03) ("the PPR"), and in particular regulations 39 and 276 thereof, together with the General Rules Governing Tenders, version 4.10 of August 2024 ("the GRGT"), and the documents exhibited and the acts of the appeal;

Premising that the present Decree disposes solely of the procedural requests advanced by the Contracting Authority subsequent to the Decree of the 17th June 2026; that it neither reopens nor determines the merits of the six grievances

advanced by the Objector, nor the lawfulness of the recommendation for award, all of which remain expressly reserved to the substantive hearing; and that nothing herein derogates from the operative findings of the Decree of the 17th June 2026;

A. The requests of the Contracting Authority

1. *By its communication aforesaid, the Contracting Authority advances three requests, which the Board addresses in turn. The Board states, at the outset, that it discerns in none of the three any cause to revisit the operative findings of its Decree of the 17th June 2026; and that it accedes to each, not by way of any concession upon the regularity of that Decree, but in the interest of the completeness of the record and of full transparency towards all the parties. The Board is the more readily disposed to accede to them for the reason that, the timeliness of the recommended bidder's Reasoned Reply being a matter of objective record, none of the requests is capable of disturbing the result.*

B. The first and second requests: disclosure and certification

2. *The first request, that a copy of the electronic communication of the Appellant of the 16th June 2026 be furnished to the Contracting Authority, is entirely proper, and is acceded to. The communication in question is an act of the proceedings, of which the Contracting Authority, as a party to the appeal, is entitled to be apprised. The Board accordingly directs the Secretary to furnish a copy thereof to the Contracting Authority and, that no asymmetry of information may subsist among the parties, to the recommended bidder.*
3. *The second request, that the secretariat certify the date upon which the objection was affixed to the notice-board of the Board and uploaded upon the government's e-procurement platform, and the date upon which a copy of the objection was communicated to the recommended bidder, is likewise acceded to, and the Board directs the Secretary to issue a formal declaration to that effect. The Board observes, in this regard, that the dates so to be certified already appear from the Decree of the 17th June 2026, the appeal having been affixed to the notice-board of the Board and communicated by electronic means to all participating tenderers, the recommended bidder among them, on the 1st June 2026 (regulation 276(b) of the PPR). The certification now directed will place that chronology beyond any conceivable doubt; and the Board entertains no apprehension that it will do otherwise than confirm the dies a quo upon which its Decree proceeds.*

C. The third request, and the regularity of the Decree of the 17th June 2026

4. *The third request, that a record be entered in the acts to the effect that the Decree was rendered without the Board having heard the position of all the parties, the Board accedes to, and does so without the least difficulty. The Board has no occasion to resist the recording of an accurate procedural observation, for the recording of it neither disturbs, nor is capable of disturbing, the operative findings of the Decree. It is fitting, nonetheless, that the Board*

set out, for the completeness of the record and lest the observation be apprehended as more than it is, the considerations which render it innocuous to the result.

5. *First, the question determined by the Decree of the 17th June 2026 was neither a contested question of fact nor a contested question of law, but the application of a peremptory time-limit to dates appearing, incontrovertibly, from the acts of the Board itself. The dies a quo, the affixing and communication of the appeal on the 1st June 2026, is evidenced by the notice-board of the Board and by the electronic communication effected in terms of regulation 276(b); the terminus, the receipt of the recommended bidder's Reasoned Reply on the 15th June 2026, is evidenced by the date borne upon that Reply and by the Board's received-stamp affixed thereto. Between those two dates there is, and can be, no controversy; the computation that separates them is purely arithmetical. There was, in consequence, no issue joined between the parties upon which the Board was called to adjudicate inter partes; there was an objective fact of record to be ascertained, and the Board ascertained it.*
6. *Secondly, the time-limit prescribed by regulation 276(c) is peremptory and of public order. It secures the equal treatment of economic operators (regulation 39 of the PPR), the orderly and expeditious conduct of the review, and the legal certainty of all participants. A time-limit of that character is one which a tribunal is competent, and indeed bound, to ascertain and to apply of its own motion; its observance is not committed to the disposition of the parties, nor can the silence or default of a party waive or enlarge it. It follows that the communication of the Appellant of the 16th June 2026 did no more than invite the Board to perform an exercise which it was in any event empowered and obliged to undertake ex officio upon the face of its own acts. The Board would have been entitled to raise the matter proprio motu; that it was prompted to do so detracts nothing from the regularity of its having done so.*
7. *Thirdly, and decisively as regards the Contracting Authority, the Decree of the 17th June 2026 determined nothing whatever adverse to the Contracting Authority. On the contrary, the Decree expressly recorded that the Reasoned Reply of the Contracting Authority, filed on the 8th June 2026, was filed within the period prescribed by regulation 276(c) and is admissible. The only pleading affected by the Decree was that of the recommended bidder; and the standing of the recommended bidder as an interested party, together with its procedural position at the substantive hearing, was expressly preserved and reserved by the Decree itself. The Contracting Authority, whose own reply stands admitted, suffers no prejudice from the Decree, and the principle of audi alteram partem, properly understood, is in no manner offended as against it.*
8. *Fourthly, the Decree of the 17th June 2026 is, and is expressed to be, interlocutory. It determines neither the merits of the six grievances nor the lawfulness of the recommendation for award, which it reserves in their entirety to the substantive hearing. At that hearing, all the parties, the Objector, the Contracting Authority and the recommended bidder alike, will be fully heard, in terms of regulation 276(e) and (h) of the PPR, upon every*

matter properly within the compass of the appeal. The audi alteram partem principle is thus not merely respected but structurally guaranteed by the very procedure which the Decree leaves intact.

9. *For these reasons, the Board records the observation of the Contracting Authority as requested, while declaring, with equal clarity, that the recording of it leaves the operative findings of the Decree of the 17th June 2026 wholly undisturbed. The Reasoned Reply of the recommended bidder was received on the 15th June 2026; the period prescribed by regulation 276(c) expired, at the latest, on the 11th June 2026; the Reply was, and remains, filed fuori termine and inadmissible. That conclusion follows from the calendar, and the calendar is not amenable to submission.*

D. Decree

For the foregoing reasons, the Board:

- (1) *Accedes to the first request of the Contracting Authority, and directs the Secretary of the Board to furnish to the Contracting Authority a copy of the electronic communication of the Appellant of the 16th June 2026, and, that no asymmetry of information may subsist among the parties, to furnish a copy thereof likewise to the recommended bidder;*
- (2) *Accedes to the second request, and directs the Secretary of the Board to issue a formal declaration certifying (a) the date upon which the objection was affixed to the notice-board of the Board and, where applicable, uploaded upon the government's e-procurement platform, and (b) the date upon which a copy of the objection was communicated by electronic means to the recommended bidder;*
- (3) *Accedes to the third request, and accordingly directs that the electronic communication of the Contracting Authority and the present Decree be entered in the acts of the case, and records the observation of the Contracting Authority that the Decree of the 17th June 2026 was rendered before the Board had received the position of all the parties upon the question of the timeliness of the recommended bidder's Reasoned Reply;*
- (4) *Declares that the recording of the said observation in no manner disturbs the operative findings of the Decree of the 17th June 2026, the timeliness of the recommended bidder's Reasoned Reply being determined by the objective and uncontroverted dates appearing from the acts of the appeal, and the said Reply remaining filed fuori termine and inadmissible;*
- (5) *Affirms and confirms the Decree of the 17th June 2026 in its entirety;*
- (6) *Reiterates that the said Decree is interlocutory, and that the merits of the six grievances advanced by the Objector, the lawfulness of the recommendation for award, and the procedural position of all the parties at the substantive hearing, are reserved, all the parties being entitled to be fully heard at that hearing in terms of regulation 276(e) and (h) of the PPR;*

- (7) Takes note of the reservation by the Contracting Authority of its rights; and
- (8) Reserves the question of the deposit, and the merits of the appeal, to the final decision (regulation 273 of the PPR).

Thus, decreed by the Public Contracts Review Board this 18th day of June 2026.

In execution of the first and second directions of the said Further Decree, the Assistant Manager of the Board issued the following Declaration, reproduced *verbatim*:

Declaration of Ms Graziella Vella, Assistant Manager — 18th June 2026

THE PUBLIC CONTRACTS REVIEW BOARD

(constituted in accordance with Part II of the Public Procurement Regulations, S.L. 601.03)

Case CT 2350/2025

Legacy Ventures Limited (Objector)

vs

The Department of Contracts and Foundation for Tomorrow's Schools (Contracting Authority)

and

Elzan Construction Ltd (Recommended Bidder)

DECLARATION OF THE SECRETARY

OF THE PUBLIC CONTRACTS REVIEW BOARD

issued pursuant to the Further Decree of the Board of the 18th June 2026

I, the undersigned, Graziella Vella, Assistant Manager of the Public Contracts Review Board, having been directed by the Further Decree of the Board of the 18th June 2026 to issue a formal declaration certifying the dates hereinafter specified, and having examined the acts, the registers and the records of the above-mentioned appeal, do hereby certify and declare as follows:

1. *The objection of Legacy Ventures Limited against the proposed award of the above-mentioned tender was filed before the Public Contracts Review Board on the 29th May 2026, accompanied by the prescribed deposit (regulation 273 of the Public Procurement Regulations).*
2. *The said objection was affixed to the notice-board of the Public Contracts Review Board on the 1st June 2026, and was uploaded on the Government's e-procurement platform on the 1st June 2026.*

3. *In terms of regulation 276(b) of the Public Procurement Regulations, the said objection was communicated by electronic means to all participating tenderers on the 1st June 2026; and a copy of the said objection was, on the same date, the 1st June 2026, communicated by electronic means to the recommended bidder, Elzan Construction Ltd.*
4. *Pursuant to the first direction of the said Further Decree, a copy of the electronic communication of the Appellant of the 16th June 2026, addressed to the Secretary of the Board on behalf of the Objector, is furnished herewith to the Contracting Authority and, that no asymmetry of information may subsist among the parties, likewise to the recommended bidder.*

This declaration is issued in the exercise of my function as Assistant Manager of the Public Contracts Review Board, for the purposes and within the parameters of the Further Decree of the 18th June 2026, and is to be entered in the acts of the case.

Issued this 18th day of June 2026.

By the said further Decree of the 18th June 2026, the Board acceded to each of the three requests of the Contracting Authority in the interest of the completeness of the record, while declaring that the recording of the Contracting Authority's observation in no manner disturbs the operative findings of the Decree of the 17th June 2026, which Decree the Board affirmed and confirmed in its entirety.

CONTRACTING AUTHORITY'S DISCLOSURE UNDER THE INTERIM DECREE

The Contracting Authority thereupon furnished to the Objector its response to the disclosure order, structured by reference to paragraph (5) of the Interim Decree, in the following terms:

- (a) As to limb (5)(a) (the reasons for the rejection of the Objector's own tender), the Contracting Authority stated that the Objector had already been informed by the letter of rejection issued by the Department of Contracts, the relevant abstract whereof reads:

"The Cityway Project submitted in the List of Projects, includes infrastructure construction, finishing, and drainage works for a residential building block, is considered non-compliant with the tender requirements. The tender document specifically requests large-scale commercial or public projects, and since the Cityway Project is residential in nature, it does not meet this criterion and should therefore be excluded from the qualifying list of projects."

- (b) As to the sub-contractors of the recommended bidder, the Contracting Authority repeated the abstract previously furnished:

"Kindly note that the sub-contractors proposed by the recommended bidder are Road Construction Co. Limited and Richard Cauchi."

(c) As to limb (5)(c), the Contracting Authority furnished the List of Projects (Note 2) submitted by the recommended bidder. The particulars there appearing (the columns identifying the contractor, the client and the project location having been redacted in the copy furnished) are the following:

Completion date	Project description (as furnished)	Value (excl. VAT)
31/01/2023	Design and Build, Test and Commission, RO Plant at Hondoq ir-Rummien, Limits of Qala, Gozo	€643,865.40
20/12/2024	Embellishment of Sannat square including construction and mechanical and electrical works	€2,825,810.20
01/09/2022	Construction of Industrial Units & Infrastructural Works at tal-Hofra Xewkija — works included Excavation, Construction, Mechanical, Electrical and Finishing Works	€5,210,788.56
01/11/2022	Leasing of Premises to house Gozo Regional Development Authority	€190,000.00
22/12/2023	Mechanical and Electrical Installations for the Bank of Valletta Back office in Triq Giorgio Borg Olivier, Victoria, Gozo	€241,423.00

(d) As to limb (5)(d), the Contracting Authority, relying upon the position communicated by the recommended bidder in the exchange reproduced above, stated that none of the technical literature submitted by either the Objector or the recommended bidder is made public, and that disclosure thereof would involve the release of commercially sensitive information, the non-disclosure being applied pursuant to regulation 40(1) of the PPR, whereunder the contracting authority “*shall not disclose information forwarded to it by economic operators which they have designated as confidential*”.

(e) As to limb (5)(e) (the application of Article 3.1 of the GRGT), the Contracting Authority stated that the first three cheapest bids submitted by Elzan Construction Ltd were considered for evaluation, and that the two dearest (TID 236573 and TID 236557) were automatically disqualified, the evaluation of the three cheapest being as follows:

TID	Bidding price	Administrative evaluation	Technical evaluation
TID 236558	€2,793,980.72	Compliant	Bidder was requested to provide missing and incorrect literature (Note 2). Bidder did not reply, hence the bid was disqualified.
TID 236568	€3,005,864.39	Compliant	Bidder was requested to provide missing and incorrect literature (Note 2). Bidder did not reply, hence the bid was disqualified.

TID	Bidding price	Administrative evaluation	Technical evaluation
TID 236560	€3,147,032.13	Compliant after rectification	Bidder was requested to provide missing and incorrect literature (Note 2). Bidder replied satisfactorily, hence the bid was deemed to be technically compliant.

The Contracting Authority added that, following the above, the Evaluation Committee could not determine whether the bids were identical.

(f) As to limb (5)(f) (the arithmetical correction), the Contracting Authority stated that the Evaluation Committee observed arithmetical errors in Bills 4, 6, 7, 9, 10, 12 and 15, the sums whereof were revised as follows:

Bill	Original (€)	Revised (€)
Bill 4 (Civil & Restoration)	463,104.82	463,647.68
Bill 6 (Gypsum & Suspended Ceiling Works)	70,430.35	70,490.90
Bill 7 (Tiling & Marble Works)	250,706.90	250,725.26
Bill 9 (HPL Partition Works)	11,204.62	11,453.67
Bill 10 (Steel Works)	176,795.43	176,492.99
Bill 12 (Aluminium Apertures)	112,232.84	112,556.72
Bill 15 (Landscaping)	298,012.64	297,999.08

(g) As to limb (5)(g) (the clarification, rectification and sample records), the Contracting Authority furnished the following schedule of requests:

Type / Note	Request	Economic operator	Date	Remark
Clarification (Note 3)	08 Clarification Request (236560) Elzan Construction Ltd	Elzan Construction Ltd	24/04/2026 09:02:20	Arithmetic correction which only necessitated a confirmation from the bidder
Samples (Note 3)	07 Sample Request (236560) Elzan Construction Ltd	Elzan Construction Ltd	09/04/2026 10:59:52	Submission of sample which was deemed to be technically compliant
Rectification (Note 2)	06 Rect-Clar (236560) Elzan Construction Ltd	Elzan Construction Ltd	16/03/2026 14:14:46	Rectification during technical compliance phase

Type / Note	Request	Economic operator	Date	Remark
Rectification (Note 2)	05 Rect-Clar (236568) Elzan Construction Ltd	Elzan Construction Ltd	16/03/2026 14:13:30	Rectification during technical compliance phase
Rectification (Note 2)	04 Rect-Clar (236558) Elzan Construction Ltd	Elzan Construction Ltd	16/03/2026 14:12:37	Rectification during technical compliance phase
Rectification (Note 2)	03 Rectification Request (236563) Legacy Ventures Ltd	Legacy Ventures Limited	06/01/2026 08:37:59	Rectification during administrative compliance phase
Rectification (Note 2)	02 Rectification Request (236565) Next Construction Ltd	Next Construction Ltd	06/01/2026 08:35:54	Rectification during administrative compliance phase
Rectification	01 Rectification Request (236560) Elzan Construction Ltd	Elzan Construction Ltd	06/01/2026 08:33:10	Rectification during administrative compliance phase

(h) As to limb (5)(h) (the technical-compliance matrix for TID 236560), the Contracting Authority furnished the following matrix, recording that only the items there listed were requested as part of the literature:

Description	Ref. (Tech. Specs)	Compliant
VRF Outdoor Unit, VRF Indoor Units, Wired Controllers, HVAC Central Controller & Heat Exchange Unit with DX Coil	3.9	Y
EUROVENT Certification from https://www.eurovent-certification.com/en	3.9	Y
Submit schedule indicating derated Cooling Capacity (note OU derating condition in specification)	3.9	Y
Composite PPR Pipes including WRAS certification	3.2	Y
Plastic Emulsion Paint for internal use including EN 13300 certificate and ECO Label	11	Y
Aluminium Apertures with Thermal Break	16	Y
Timber Fire Doors	134	Y
Timber Doors	17/38	Y
Lifting Platform including CE conformity declaration certificate and mode of conformity assessment procedure (Machinery Regulations 2009; Machinery Directive 2006/42/EC)	3.30.008	Y
Computers and Monitors	3.5.7.05	Y

Description	Ref. (Tech. Specs)	Compliant
Landscaping	160.5	Y
Stage Curtains	3.18.05	Y
Building Design, Construction and Management — Major Renovation works	170	Y
Installation and commissioning of building energy systems	170	Y
Demolition waste audit and management plan	170	Y
Construction Management Plan	NA	Y
Preliminary Workplan and Programme of Works	NA	Y
Quality Assurance and Control Programme	NA	Y
Health and Safety Plan	NA	Y
Works Method Statement	NA	Y

(i) As to limb (5)(i) (the anonymised, role-by-role Key Expert compliance matrix), the Contracting Authority furnished the following:

Key Expert	Position	Nationality	Age	Years' experience	Compliant
KE 1	Site Manager	Maltese	34	7	Y
KE 2	Mechanical Engineer	Maltese	43	20	Y
KE 3	Electrical Engineer	Maltese	38	15	Y
KE 4	Contractor's Warranted Perit	Maltese	31	7	Y
KE 5	Health and Safety Practitioner	Maltese	56	25	Y
KE 6	Site Technical Officer	Maltese	53	25	Y

22nd JUNE 2026 — SUPPLEMENTARY NOTE; 23rd JUNE 2026 — DECREE; 30th JUNE 2026 — REPLY AND FURTHER INTERIM DECREE

The disclosure aforesaid having been furnished by the Contracting Authority to the Objector, the Objector, availing itself of the liberty granted by paragraph (9) of the Interim Decree of the 10th June 2026, filed a Supplementary Note on the 22nd June 2026, that is, within the three (3) working days there prescribed, strictly confined to the matters thereby disclosed. That Supplementary Note is reproduced *verbatim*:

Supplementary Note of the Objector — 22nd June 2026

PCRB Case No. 678

**RE: CT2350/2025 – Tender for the Provision of Civil Works, Mechanical and Electrical Services and Finishing Works using Environmentally Friendly Products for the Gozo College, Gharb Primary School, Gozo;
Legacy Ventures Limited**

vs

Foundation for Tomorrow's Schools

Supplementary note of Legacy Ventures Limited (hereinafter 'the Objector') filed pursuant to paragraph (9) of the Interim Decree delivered by the Public Contracts Review Board on the 10th June 2026.

Respectfully submits:

1. Introduction and scope of this Supplementary Note

- 1.1 Reference is made to the Interim Decree delivered by this Honourable Board on the 10th June 2026, whereby the Board acceded in part to the Objector's request for preliminary disclosure.
- 1.2 By paragraph (9) of the said Decree, this Honourable Board granted the Objector liberty to file a supplementary note, strictly confined to the matters disclosed pursuant to the Decree, within three working days from receipt thereof.
- 1.3 The present Supplementary Note is accordingly being filed within the period established by this Honourable Board and is confined to the information and documentation subsequently disclosed by the Contracting Authority, namely the document entitled "*F. Decree – (5)*", the redacted List of Projects submitted by the recommended tenderer, and the correspondence concerning the alleged confidentiality of the technical information submitted by the recommended tenderer.
- 1.4 The Objector maintains in full the grievances, demands and reservations contained in its Reasoned Objection filed on the 29th May 2026. The present Note supplements those grievances in view of the facts disclosed after the objection was filed.
- 1.5 The Objector respectfully submits that, whilst the Contracting Authority has provided *some* of the information requested, the disclosure constitutes only partial compliance with the Interim Decree. Moreover, certain statements contained in the disclosure raise further and serious concerns regarding the evaluation process and the lawfulness of the recommendation for award.

2. Partial compliance with the Interim Decree

- 2.1 The Interim Decree ordered the Contracting Authority to disclose, amongst other matters, the evaluation reasoning concerning the rejection of the Objector's Cityways project, the documentation attesting the recommended tenderer's compliance with the selection criteria, the technical information already available in the public domain, the application of Article 3.1 of the General Rules Governing Tenders, the reasons why the lower-priced Elzan submissions were not recommended, the arithmetical-correction and clarification or rectification records, and compliance matrices communicating the essential content of the technical and Key Expert findings.
- 2.2 The Board further directed that, where any document fell only partly within the protected categories, it was to be disclosed in redacted or anonymised form communicating its essential content.
- 2.3 The information supplied by the Contracting Authority goes some way towards identifying the steps taken by the Evaluation Committee. It confirms which Elzan submissions were considered, which were automatically disqualified, why the two lower-priced Elzan submissions were not recommended, the mathematical basis of the arithmetical correction and the dates of certain rectification, sample and clarification requests.
- 2.4 However, in several material respects, the Contracting Authority has provided only the final conclusion reached by the Evaluation Committee and not the reasoning or essential content upon which that conclusion was based. A statement that a particular requirement was marked "Y" does not explain what product, model, certificate, document or standard was evaluated, when the relevant evidence was submitted, or why the Evaluation Committee concluded that the requirement was satisfied.
- 2.5 Similarly, the repetition of the same sentence contained in the original rejection letter concerning Cityways does not amount to disclosure of the "*evaluation reasoning*" ordered by this Honourable Board.
- 2.6 The Objector accordingly submits that the Interim Decree has been complied with only in part and that the outstanding matters remain directly relevant to the grievances under consideration.

3. Supplement to Grievance No. 1 – Multiple bids

- 3.1 The disclosure confirms that Elzan Construction Ltd submitted five bids. It further confirms that TID 236573 and TID 236557 were automatically disqualified, while the three cheapest submissions considered by the Evaluation Committee were TID 236558, TID 236568 and TID 236560.
- 3.2 The Objector acknowledges that this information confirms that TID 236560 was one of the three cheapest Elzan submissions and was therefore not amongst the two bids automatically discarded solely by reason of their ranking.

- 3.3 The disclosure also states that TID 236558 and TID 236568 were administratively compliant but were later disqualified because Elzan Construction Ltd did not reply to requests concerning missing and incorrect literature. TID 236560, on the other hand, replied to a corresponding request and was subsequently considered technically compliant.
- 3.4 However, immediately following this information, the Contracting Authority makes the following express statement:
- Following the above reasons the EC could not determine whether the bids were identical.*
- 3.5 This statement is highly material. Article 3.1 does not merely regulate the number and price order of multiple bids. It expressly provides that multiple bids must be non-identical both technically and financially.
- 3.6 The fact that the three bids carried different prices may establish a financial difference, but it does not establish technical non-identity. Likewise, the inability of the Evaluation Committee to determine whether the bids were identical cannot be equated with a positive finding that the bids were technically non-identical.
- 3.7 It was incumbent upon the Evaluation Committee to satisfy itself, on the basis of the tenders submitted by Elzan Construction Ltd, that the bids which it proceeded to consider satisfied the mandatory condition of technical and financial non-identity. This could not be presumed merely because the bids carried different prices or because two of them were later disqualified for failure to reply to requests concerning literature.
- 3.8 The disclosure does not identify any material technical distinction between TID 236558, TID 236568 and TID 236560. It does not state whether the bids proposed different products, systems, methodologies, programmes, Key Experts, method statements, technical literature, specifications or samples. On the contrary, the Contracting Authority expressly states that the Evaluation Committee could not determine whether the bids were identical.
- 3.9 This is not a minor procedural matter. The requirement that multiple bids be technically and financially non-identical is a condition governing their lawful submission and consideration. If the Evaluation Committee could not establish that condition, it is unclear on what basis the bids were treated as valid multiple tenders under Article 3.1.
- 3.10 The Objector therefore respectfully requests this Honourable Board to examine the complete technical submissions of TID 236558, TID 236568 and TID 236560 from the documentation forwarded under Regulation 276(d), and to determine whether the three submissions were genuinely technically non-identical, what the material differences between them were, and whether the same products, literature,

Key Experts, method statements, programmes or other technical resources were used across the submissions.

- 3.11 Should technical non-identity not be affirmatively established, the Objector submits that Article 3.1 was not lawfully satisfied and that the consequences prescribed by the General Rules Governing Tenders must follow.

4. Supplement to Grievance No. 2 – Cityways and the project-experience assessment

- 4.1 The Interim Decree expressly ordered disclosure of the evaluation reasoning concerning the Objector's List of Projects and the assessment of the eligibility of Cityways.
- 4.2 In purported compliance with that order, the Contracting Authority has simply repeated the original reason already communicated to the Objector, namely that Cityways involved infrastructure, finishing and drainage works for a residential building block and was therefore considered not to satisfy the requirement for large-scale commercial or public projects.
- 4.3 No further evaluation reasoning has been provided. In particular, the Contracting Authority has not explained how the term "*commercial*" was interpreted, whether it was interpreted exclusively by reference to the final planning use of the development, or why a multi-unit development undertaken for a corporate developer could not constitute a commercial construction project.
- 4.4 Nor has the Contracting Authority explained whether the scale, value, complexity and actual nature of the works were considered; whether the infrastructure, drainage and finishing works were considered similar to those required by the present Tender; whether every project containing residential units was treated as automatically ineligible; or why a clarification concerning the already submitted project was not requested before the Objector's outright exclusion.
- 4.5 The redacted List of Projects of the recommended tenderer identifies five projects, but the disclosure does not state which three were relied upon to satisfy the minimum three-project requirement or provide the reasoning by which each project was considered to satisfy the relevant criterion.
- 4.6 This is directly relevant to equal treatment. The Objector was excluded because one of its three listed projects was considered ineligible. It is therefore necessary to establish which projects submitted by the recommended tenderer were treated as qualifying and whether the same interpretation and level of scrutiny were applied consistently to all economic operators.
- 4.7 The Objector does not, merely from the redacted list, assert that any particular project submitted by the recommended tenderer was necessarily non-compliant. The issue is that the evaluation reasoning necessary to verify consistency and equal treatment remains undisclosed.

- 4.8 The Objector therefore maintains that the Contracting Authority has not fully complied with the part of the Interim Decree concerning the evaluation reasoning for Cityways and the recommended tenderer's project experience. The Objector respectfully requests the Board to examine the underlying evaluation records and determine whether the project criterion was interpreted and applied uniformly.

5. Supplement to Grievance No. 4 – Technical compliance, public information and rectification

- 5.1 The Interim Decree ordered disclosure of the technical information already available in the public domain and relied upon by the Evaluation Committee, expressly referring, where applicable, to Eurovent certifications appearing on the manufacturer's public listing, EU Ecolabel or Type I ecolabel registrations, and the published standards relied upon.
- 5.2 The disclosed correspondence shows that the Contracting Authority referred this matter to the recommended tenderer's legal representative and asked whether any part of the technical offer was already publicly available. The reply was that none of the technical specifications submitted by either party were believed to be public and that disclosure would involve commercially sensitive information.
- 5.3 That reply does not address the order made by this Honourable Board. The Board did not order the disclosure of the complete technical offer on the basis that the offer itself had been published. It ordered disclosure of technical information which was independently available in the public domain and which had been relied upon by the Evaluation Committee.
- 5.4 Whether a particular product appears on the Eurovent public register or holds a publicly verifiable EU Ecolabel registration is an objective fact. It does not depend upon whether the recommended tenderer designated the tender document containing that information as confidential.
- 5.5 Moreover, the duty to determine whether particular information is genuinely confidential rests upon the Contracting Authority. It cannot be delegated to the recommended tenderer, and a blanket assertion by the recommended tenderer cannot replace the item-by-item assessment required by the Interim Decree.
- 5.6 The disclosure identifies "*EUROVENT Certification*" and "*Plastic Emulsion Paint for internal use including EN 13300 certificate and ECO Label*" as compliant by inserting the letter "Y". However, it does not identify the manufacturer, model, certificate number, registration reference, issuing body, certification date or public listing relied upon.
- 5.7 Such an entry communicates only the conclusion reached by the Evaluation Committee. It does not communicate the essential content of the evidence upon which the conclusion was based. At minimum, the essential content could have been provided without disclosing prices or proprietary methodology by identifying the relevant manufacturer or product family, the certificate or registration reference, the

issuing body, the applicable standard and whether the evidence was submitted with the original tender or during rectification.

- 5.8 The disclosed matrix is also incomplete when compared with the categories expressly identified in the Interim Decree. The Board referred to Eurovent, GPP and EU Ecolabel, paint, toilets and sanitary ware, HPL cubicles, curtains and textiles, blinds and product certification. The matrix contains no identifiable compliance findings for toilets and sanitary ware, HPL toilet cubicles or roller and classroom blinds. Other items, including stage curtains, timber doors and the lifting platform, are simply marked “Y” without communicating the essential content of the finding.
- 5.9 The statement that only the listed items were requested as part of the literature also requires explanation, given that the Tender contained numerous product-specific requirements and required literature to corroborate a compliant technical offer.
- 5.10 The disclosure further confirms that all three Elzan bids considered by the Evaluation Committee were the subject of requests dated the 16th March 2026 concerning missing and incorrect literature. TID 236558 and TID 236568 were disqualified because no reply was submitted, whereas TID 236560 was accepted after Elzan Construction Ltd replied satisfactorily.
- 5.11 However, the disclosure does not identify what literature was missing or incorrect, what product or requirement was affected, or what documentation was subsequently supplied in relation to TID 236560. It therefore remains impossible to determine whether the reply merely confirmed compliance which existed at the tender closing date or whether it completed or altered an incomplete technical offer after submission.
- 5.12 The description of the request as a “*Note 2 rectification*” is not, on its own, sufficient to establish its legality. Even where rectification under Note 2 is permitted, the Evaluation Committee must establish that the economic operator was compliant *ab initio* and possessed the required qualification, product or technical characteristic by the closing date.
- 5.13 The disclosure also identifies a Note 3 sample request dated the 9th April 2026, but does not identify the item sampled, the specification concerned, what the sample was intended to corroborate or the essential content of the resulting technical finding.
- 5.14 Furthermore, the Contracting Authority has not expressly stated whether any document accompanied by Note 3 was altered, completed or supplied after the submission deadline, notwithstanding that the Interim Decree specifically ordered such a statement.

- 5.15 For these reasons, the Objector respectfully submits that the information supplied does not fully satisfy the parts of the Interim Decree concerning public technical information, essential technical-compliance findings and clarification or rectification records.

6. Key Experts and arithmetical correction

- 6.1 The Contracting Authority has provided an anonymised table identifying the six Key Expert roles, nationality, age, years of experience and a conclusion that each expert was compliant.
- 6.2 The Objector acknowledges that this constitutes partial compliance with the relevant part of the Interim Decree. However, the Tender did not assess Key Expert compliance solely by reference to age and years of experience. It required specific qualifications, warrants, registrations, professional licences and Statements of Availability.
- 6.3 The table does not identify, even in anonymised form, the qualification or registration basis upon which each expert was found compliant. It does not confirm whether the Site Manager held the required MQF or EQF qualification, whether the engineers and Contractor's Perit held valid local warrants, whether the Health and Safety Practitioner was properly registered, or whether the Site Technical Officer was included in the relevant Building and Construction Authority register.
- 6.4 Disclosure of the category of qualification, warrant or registration, together with confirmation that it was valid at the closing date, would not require the disclosure of the identity of any individual. The Objector therefore submits that the Key Expert matrix communicates only part of the essential compliance finding.
- 6.5 As regards the price discrepancy, the Contracting Authority has identified corrections affecting Bills 4, 6, 7, 9, 10, 12 and 15. The disclosed adjustments mathematically reconcile the opening price of €3,147,032.13 with the recommended price of €3,147,910.83, being a net increase of €878.70.
- 6.6 The Objector acknowledges that the numerical discrepancy has therefore been explained. However, the disclosure does not include the communication of the corrected price to Elzan Construction Ltd, the recommended tenderer's confirmation or acceptance of the corrected amount, or the date upon which that acceptance was given.
- 6.7 The Objector therefore requests that the acceptance record and its timing be verified by this Honourable Board from the documentation forwarded under Regulation 276(d).

7. Demands

For the foregoing reasons, and without prejudice to the Reasoned Objection and the demands contained therein, the Objector respectfully requests that this Honourable Board:

- i. admits and incorporates this Supplementary Note as an amendment and supplementation of Grievances Nos. 1, 2, 3, 4, 5 and 6, pursuant to paragraph (9) of the Interim Decree and Regulation 90(1) of the Public Procurement Regulations;
- ii. takes formal note that the disclosure constitutes only partial compliance with the Interim Decree, and orders the Contracting Authority to provide, in redacted, anonymised or summary form, the outstanding essential content concerning the Cityways evaluation, the projects relied upon by the recommended tenderer, the technical differences between the Elzan bids, the relevant Eurovent and Ecolabel identifiers, the missing and incorrect literature submitted through rectification, the Note 3 sample, the Key Expert qualification basis and the acceptance of the corrected financial offer; or, where the Board considers that any such material cannot safely be disclosed, examines the unredacted documentation itself and communicates its essential content to the Objector;
- iii. determines, following examination of the complete tender file, whether the three Elzan submissions were genuinely non-identical technically and financially, particularly in view of the Contracting Authority's express statement that the Evaluation Committee could not determine whether the bids were identical, and applies the consequences prescribed by the General Rules Governing Tenders should technical non-identity not be established;
- iv. determines whether the Cityways criterion and all technical, rectification and Key Expert requirements were applied lawfully, consistently and equally, and draws such inference as it considers appropriate from any failure to disclose or substantiate the findings ordered by the Interim Decree; and
- v. upholds the original Reasoned Objection and grants the remedies requested therein, together with the refund of the deposit and any other declaration, order, direction or remedy which this Honourable Board considers appropriate in the circumstances.

The Appellant

The Board records the said Supplementary Note of the 22nd June 2026 as forming part of the acts of the appeal, the same having been filed within the period prescribed by paragraph (9) of the Interim Decree of the 10th June 2026. The assessment of the matters therein raised, and of the contention that the disclosure effected constitutes only partial compliance with the Interim Decree, is reserved in its entirety to the substantive hearing and to the final decision.

The Board records the foregoing disclosure as forming part of the acts of the appeal. The assessment of the disclosed material, and in particular its bearing upon the First Grievance (Article 3.1 of the GRGT and the genuine non-identity of the recommended bidder's submissions) and upon the Second, Fourth, Fifth and Sixth Grievances, is reserved in its entirety to the substantive hearing and to the final decision.

Following the filing of the Supplementary Note, and before proceeding to consider its contents, the Board determined that the principles of audi alteram partem and equality of treatment required that all the parties be afforded the opportunity to reply thereto. The Board accordingly, by the following Decree, reproduced verbatim, invited the Contracting Authority, the Department of Contracts and the recommended bidder to file their replies to the Supplementary Note within three (3) calendar days:

Decree of the 23rd June 2026 inviting the parties to reply to the Supplementary Note

THE PUBLIC CONTRACTS REVIEW BOARD

(constituted in accordance with Part II of the Public Procurement Regulations, S.L. 601.03)

Composed of: Dr Vincent Micallef (Chairman), Dr Maria Cardona (Member) and Mr Keith Victor Grech (Member)

Case CT 2350/2025

Legacy Ventures Limited

(the “Objector” / “LVL”)

vs

The Department of Contracts

and

Foundation for Tomorrow’s Schools

(the “Contracting Authority” / “FTS”)

and

Elzan Construction Ltd

(the “Recommended Bidder” / “ECL”)

In the matter of the tender for the provision of civil works, mechanical and electrical services and finishing works using environmentally friendly products for the Gozo College, Gharb Primary School, Gozo

DECREE

upon the Objector’s Supplementary Note of the 22nd June 2026, inviting the parties to file their replies thereto

Having seen the objection filed by the Objector on the 29th May 2026, accompanied by the prescribed deposit of €14,250 (regulation 273 of the PPR), against the proposed award of the above-mentioned tender to Elzan Construction Ltd (TID 236560) at the price of €3,147,910.83 (exclusive of value added tax);

Having seen its own Interim Decree of the 10th June 2026, whereby the Board, acceding in part to the Objector's demand for preliminary disclosure (Grievance No. 3), ordered the Department of Contracts and/or the Contracting Authority to effect the disclosure therein specified, and, by paragraph (9) thereof, granted the Objector liberty to file a supplementary note strictly confined to the matters thereby disclosed, within three (3) working days of receipt thereof, reserving to the Contracting Authority and to any interested party the corresponding right of reply;

Having seen the Supplementary Note of the Objector filed on the 22nd June 2026, pursuant to the said liberty, whereby the Objector contends that the disclosure effected by the Contracting Authority constitutes only partial compliance with the Interim Decree, supplements its grievances in the light of the matters disclosed, and advances the demands set out at paragraph 7 thereof;

Considering that, the said Supplementary Note having been admitted to the acts, the principles of audi alteram partem and equality of treatment require that the Contracting Authority, the Department of Contracts and the recommended bidder be afforded the opportunity to reply thereto before the Board proceeds further;

Considering that the matter is one of procedural order, the Board being empowered to regulate the conduct of the proceedings before it and to permit the amendment of, and reply to, the pleadings, and that the present Decree determines nothing as to the merits of the grievances or of the said Supplementary Note, all of which remain expressly reserved;

Decree

For the foregoing reasons, the Board:

- (1) Records the filing, on the 22nd June 2026, of the Objector's Supplementary Note, and admits the same to the acts of the appeal;*
- (2) Invites the Contracting Authority (the Foundation for Tomorrow's Schools), the Department of Contracts and the recommended bidder (Elzan Construction Ltd) to file, each in so far as it may be concerned, their respective replies to the said Supplementary Note;*
- (3) Directs that any such reply be filed within three (3) calendar days from the date of the present Decree, and be confined to the matters raised in the Supplementary Note;*
- (4) Directs the Secretary of the Board to notify the present Decree, together with a copy of the Supplementary Note, to all the parties to the appeal simultaneously, and to enter a note of the date and time of service in the acts of the case;*
- (5) Reserves to the Objector the right of reply to any matter that may be raised in answer to its Supplementary Note;*
- (6) Confirms that the suspension of the award procedure occasioned by the filing of the objection subsists; and*

- (7) *Reserves the merits of the appeal, the contents and demands of the Supplementary Note, and the question of the deposit, to the further consideration and final decision of the Board.*

Thus, decreed by the Public Contracts Review Board this 23rd day of June 2026.

By the said Decree, the Board invited the Contracting Authority, the Department of Contracts and the recommended bidder to file their replies to the Supplementary Note within three (3) calendar days from the date thereof, reserving to the Objector its own right of reply. The Board records the said Decree as forming part of the acts of the appeal.

Reply by the Foundation for Tomorrow's Schools dated 23rd June 2026 to the Objector's Supplementary Note, with Table of Compliance with the Interim Decree of 10th June 2026

The Foundation for Tomorrow's Schools (hereinafter "FTS") categorically rejects as unfounded the Objector's allegations that the Contracting Authority failed to observe or disregarded the interim order, in full or in parte, of this Honourable Board. FTS fully appreciates the gravity of such an allegation; as a government entity, any failure to adhere to the Board's instructions would constitute a serious breach of its obligations. Consequently, FTS respectfully requests this Honourable Board to formally confirm that the Foundation has, in fact, complied with all its obligations.

To this end, please find attached a detailed breakdown confirming the aforementioned compliance.

Finally, noting that the Objector has utilised its supplementary note to expand upon or enhance its original grievance, FTS respectfully requests that this Honourable Board grants the Foundation the opportunity to submit a formal reply thereto, in the interest of the principles of natural justice and the right to a fair hearing.

Decree dated 10th June 2026	Reply FTS dated 17th June 2026	Complaint by Legacy Ventures Ltd (LVL)	Further reply by FTS
Decree 5(a) Summary of relevant reasons for rejection of tender	This has been provided in the rejection letter, and once again reproduced in the reply dated 17/6/2026. The text provided is verbatim what is included within the evaluation report. FTS fully complied with the interim decree.	LVL requests additional information about the reasoning for its exclusion from the procurement procedure.	The tender document requested specifically "large scale commercial or public projects" involving M&Es or finishing works. LVL failed to submit the required list of projects by the tender deadline submission. The TEC requested LVL to rectify its position, and LVL submitted a project which is neither "commercial" nor "public", which itself described as follows "residential building blocks",

Decree dated 10th June 2026	Reply FTS dated 17th June 2026	Complaint by Legacy Ventures Ltd (LVL)	Further reply by FTS
			“residential property” and “owner-occupiers” – This is not compliant and no further rectifications can be requested since a previous rectification on this matter was requested.
Decree 5(b) Name of sub-contractors	These have been provided through the FTS reply 17/6/2026 FTS fully complied with the interim decree.	No complaint about this matter	No further comments by FTS.
Decree 5 (c) List of projects is complaint with selection criteria	The document, in redacted version, of the list of projects has been provided in the FTS reply dated 17/6/2026. FTS fully complied with the interim decree.	LVL complains that FTS “does not state which three were relied upon to satisfy the minimum three-project requirement” and “the reasoning by which each project was considered to satisfy the relevant criterion”	All projects were considered complaint with the exception of the “Leasing of Premises to house Gozo Regional Development Authority”. The decree did not request FTS to issue the reasoning for accepting the said projects, but only the documentation submitted.
Decree 5 (d) The technical information already made available in public	FTS requested the recommended bidder to disclose which parts of the technical information was available in public. Elzan Construction Limited confirmed that none is in the public domain. FTS fully complied with the interim decree.	LVL complains that FTS failed to adhere to the interim decree and makes specific reference to Eurovent public register, EU Ecolabel, etc.	FTS makes reference to reply 5 (h) which explicitly addressed the matters which LVL is now complaining about. Thereby the complaint is not justified.
Decree 5 (e) Multiple-bids	FTS provided the replies through its reply dated 17/6/2026. FTS fully complied with the interim order.	No complaints have been submitted.	No further comments by FTS.
Decree 5 (f) Arithmetical errors	FTS provided the replies through its reply dated 17/6/2026. FTS fully complied with the interim order.	LVL complains that the communication between the TEC and the recommended bidder was not provided.	The interim decree did not request the release of the communication between the TEC and the recommended bidder. Thereby the complaint is not justified.

Decree dated 10th June 2026	Reply FTS dated 17th June 2026	Complaint by Legacy Ventures Ltd (LVL)	Further reply by FTS
Decree 5 (g) A statement of existence, legal basis, dates of clarifications/rectifications	FTS in its reply dated 17/6/2026, provided a table, listing the status [whether clarification or rectification], the date and time, the economic operator involved, and remarks in the form of justification. FTS fully complied with the interim order.	No complaints have been submitted.	No further comments by FTS.
Decree 5 (h) Matrix with Technical-compliance findings	FTS in its reply dated 17/6/2026, provided a technical-compliance matrix as ordered. FTS fully complied with the interim order.	LVL is now additionally requesting FTS to “identify the manufacturer, model, certificate number, registration reference, issuing body, certification date or public-listing relied upon”	The interim decree did not request the release of the information which is now being requested by virtue of the supplementary note dated 22/06/26. FTS fully complied with the interim decree. Thereby the complaint is not justified.
Decree 5 (i) Key Expert compliance matrix	FTS in its reply dated 17/6/2026, provided an “anonymised, role-by-role key-expert compliance matrix” confirming compliance, whilst withholding personal data	LVL is now requesting “the qualification or registration basis upon which each expert was found compliant. It does not confirm whether the Site Manager held the required MQF or EQF qualification, whether the engineers and Contractor’s Perit held valid local warrants, whether the health and Safety Practitioner was properly registered, or whether the Site Technical Officer was included in the relevant Building and Construction Authority register”	The interim decree did not request the release of the information which is now being requested by virtue of the supplementary note dated 22/06/26. FTS confirmed and re-confirms that all of the key expert are fully compliant with the tender requirements. Thereby the complaint is not justified.

Preliminary Observations of the Recommended Tenderer, Elzan Construction Limited (C64806), dated 24th June 2026, on the Objector's Supplementary Note

The Recommended Tenderer, Elzan Construction Limited (C64806), respectfully submits that the Supplementary Note filed by the Objector ought not to be admitted insofar as it exceeds the limited scope authorised by the Interim Decree delivered by this Honourable Board on the 10th June 2026.

The Interim Decree expressly permitted the filing of a supplementary note confined to matters arising from the disclosure ordered by the Board. The purpose of such authorisation was to allow the Objector to comment upon information disclosed pursuant to the Interim Decree and not to afford an opportunity to reformulate, amend, supplement or enlarge the grounds of objection originally filed.

The Recommended Tenderer submits that the Supplementary Note filed by the Objector goes substantially beyond the purpose and limits established by the Interim Decree. Rather than merely commenting upon the information disclosed, the Objector introduces fresh allegations, advances new arguments, seeks additional findings, requests further investigative measures and expands the remedies sought. The effect is not supplementary but transformative, resulting in a material alteration of the scope and substance of the proceedings originally instituted before this Honourable Board.

Permitting the Supplementary Note in its present form would effectively circumvent the mandatory time limits established under the Public Procurement Regulations. The statutory objection period exists to ensure legal certainty, procedural fairness, finality of pleadings and equality of arms between economic operators. It is not open to an objector to introduce fresh grounds of challenge after the expiry of those mandatory time limits under the guise of a supplementary submission.

The leave granted by the Interim Decree was expressly limited. The Objector was authorised to file observations strictly confined to matters arising from the information disclosed pursuant to the Board's order. Such leave cannot be interpreted as granting the Objector an opportunity to amend, reformulate or enlarge the scope of its original objection.

A review of the Supplementary Note demonstrates that the Objector has gone well beyond commenting upon the disclosed documentation. It introduces fresh allegations, advances new arguments, seeks additional findings, requests further disclosure, requests the examination of documentation not previously requested and effectively recasts the scope of the original objection.

Allowing such an approach would undermine the mandatory procedural framework established by the Public Procurement Regulations. It would create an impermissible procedural advantage whereby an objector is permitted to review documentation disclosed during the proceedings and thereafter formulate new grounds of challenge which were not pleaded within the statutory objection period.

Such a result would be particularly unjust in circumstances where procedural time limits have throughout these proceedings been treated as strict and mandatory. The principles of consistency, equal treatment and procedural fairness require that the same standard be applied equally to all parties.

In this regard, the Recommended Tenderer respectfully notes that procedural requirements have been relied upon rigorously throughout these proceedings, notwithstanding circumstances where effective notification was disputed. It would therefore be manifestly unfair and contrary to the principle of equality of arms if the Objector were now permitted to enlarge its case, introduce new grounds of challenge and seek additional remedies outside the statutory time limits established by law.

The Recommended Tenderer submits that to permit such additions at this stage would cause substantial prejudice and would effectively allow the Objector to amend its appeal after having obtained the benefit of disclosure. Such a course would be incompatible with the principles governing public procurement remedies and would undermine the procedural safeguards established by the Public Procurement Regulations.

Accordingly, the Recommended Tenderer respectfully requests this Honourable Board to:

- (i) declare inadmissible all portions of the Supplementary Note which go beyond observations strictly arising from the information disclosed pursuant to the Interim Decree;
- (ii) disregard any new grounds of objection, allegations, factual assertions, requests for investigation, requests for disclosure or remedies which were not contained in the original objection;
- (iii) limit its consideration to the grounds and arguments validly raised within the original objection and any observations strictly consequential upon the documentation disclosed pursuant to the Interim Decree.

Decree of the 24th June 2026 on the Foundation for Tomorrow's Schools' Request for Leave to File a Formal Reply to the Objector's Supplementary Note

THE PUBLIC CONTRACTS REVIEW BOARD

(constituted in accordance with Part II of the Public Procurement Regulations, S.L. 601.03)

Composed of:

Dr Vincent Micallef (Chairman), Dr Maria Cardona (Member) and Mr Keith Victor Grech (Member)

Case CT 2350/2025

Legacy Ventures Limited

(the "Objector" / "LVL")

The Department of Contracts and Foundation for Tomorrow's Schools

(the "Contracting Authority" / "FTS")

and

Elzan Construction Ltd

(the "Recommended Bidder" / "ECL")

In the matter of the tender for the provision of civil works, mechanical and electrical services and finishing works using environmentally friendly products for the Gozo College, Gharb Primary School, Gozo

DECREE

upon the request of the Foundation for Tomorrow's Schools of the 23rd June 2026 for leave to file a formal reply to the Objector's Supplementary Note

Having seen the Objector's Supplementary Note of the 22nd June 2026, filed pursuant to the liberty granted by paragraph (9) of the Board's Interim Decree of the 10th June 2026;

Having seen the Board's own Decree of the 23rd June 2026 (hereinafter "the Invitation Decree"), whereby, upon admitting the said Supplementary Note to the acts of the appeal and in observance of the principles of audi alteram partem and equality of treatment pursuant to Regulation 39 of the Public Procurement Regulations, S.L. 601.03, the Board issued specific and unambiguous directions to all parties in connection with the said Supplementary Note;

Having seen the letter of the Foundation for Tomorrow's Schools dated the 23rd June 2026, filed by the Contracting Authority, whereby FTS, whilst categorically rejecting as unfounded the Objector's allegations of non-compliance with the Board's Interim Decree, requests that this Honourable Board grant the Foundation the opportunity to submit a formal reply to the Objector's Supplementary Note;

Having considered the terms of the said letter of FTS of the 23rd June 2026 and, in particular, the request therein contained for leave to file a formal reply to the Objector's Supplementary Note;

Considering that the Invitation Decree of the 23rd June 2026 had already, expressly and unambiguously, granted to the Foundation for Tomorrow's Schools, together with all other parties to these proceedings, the very leave which FTS now purports to request, by ordering, at paragraph (2) thereof, as follows:

and, at paragraph (3) thereof, as follows:

"(2) Invites the Contracting Authority (the Foundation for Tomorrow's Schools), the Department of Contracts and the recommended bidder (Elzan Construction Ltd) to file, each in so far as it may be concerned, their respective replies to the said Supplementary Note;"

“(3) Directs that any such reply be filed within three (3) calendar days from the date of the present Decree, and be confined to the matters raised in the Supplementary Note;”

Considering further that the said directions were issued in the exercise of the Board’s procedural authority to regulate the conduct of the proceedings before it and were, from the moment of their delivery, operative and binding upon all parties, including FTS, without any further leave, authorisation, or application being required from any party for that purpose;

Considering that the leave now sought by FTS to file a reply to the Supplementary Note had therefore already been granted by virtue of paragraphs (2) and (3) of the Invitation Decree and that the request, whilst made in good faith, is accordingly unnecessary, as the right to file the said reply subsisted and subsists independently of any further direction from this Board;

DECREE

For the foregoing reasons, the Board:

- (1) Confirms and records, for the avoidance of any doubt, that the right of the Foundation for Tomorrow’s Schools to file a formal reply to the Objector’s Supplementary Note of the 22nd June 2026 had already been unconditionally granted by paragraphs (2) and (3) of the Board’s Invitation Decree of the 23rd June 2026, and that no further leave, authorisation, or application was required for that purpose;*
- (2) Notes that the request contained in FTS’s letter of the 23rd June 2026 is, in substance, already satisfied by the operative terms of the said Invitation Decree, and accordingly requires no separate or additional order from this Board;*
- (3) Reiterates that, pursuant to paragraph (3) of the Invitation Decree, any reply by FTS to the Supplementary Note is to be confined to the matters raised therein, and is to be filed within the time limit prescribed by that Decree or, in the event that the said period has elapsed by reason of the filing of this present request, within a further period of three (3) calendar days from the date of notification of the present Decree;*
- (3) Confirms that the suspension of the award procedure occasioned by the filing of the objection (Regulations 274 and 275 of the PPR) subsists; and*
- (4) Reserves the merits of the appeal, the contents and demands of the Supplementary Note, and the question of the deposit, to the further consideration and final decision of the Board.*

Thus, decreed by the Public Contracts Review Board this 24th day of June 2026

Having seen the Contracting Authority’s Reply dated 30th June, 2026 wherein the Contracting Authority submitted:

ADDITIONAL REPLY BY FOUNDATION FOR TOMORROW'S SCHOOLS

1. *Whereas* this is an additional reply by the Foundation for Tomorrow's School (Hereinafter FTS).
2. FTS rebuts in their entirety all the new allegations made by Legacy Venture Limited as being unfounded, incorrect and based on a wrong premise.
3. FTS reiterates that the evaluation by the technical evaluation committee (hereinafter TEC) was done correctly, in full compliance with all the tender specifications and fulfilled its obligations to treat all economic operators equally.
4. The expectations of the objector were, are and seem to persist that it should be treated differently than anyone else. For the record, it was its doing to fail to submit the appropriate documentation in the first place. It subsequently submitted a project which is not compliant with the tender requirements. Faced with such a situation, the TEC had no other alternative to cure the repeated failure by the objector. The expectation at this stage is to be granted more time to cure its own mistakes, a possibility which is not contemplated in the General Rules Governing Tenders and/or in the tender document.
5. Finally, FTS wishes to clarify that, its evaluation fully adhered to regulations 39 and 62 of the Public Procurement Regulations, afforded the same opportunities to all participants and treated all parties equally. Whilst the actions of the objector might not have been intentional, the TEC cannot depart from the self-limitation doctrine, else not it would create a breach towards the other participants that were complaint *ab initio*.
6. The above is being said on a strictly without prejudice basis to the original reply submitted by FTS and to all verbal submissions which it will submit throughout the PCRb sitting

Following the filing of the Supplementary Note and the relative Additional Reply of the Contracting Authority, the Board examined its contents and examined, limb by limb, the order it had made by paragraph (5) of its Interim Decree of the 10th June 2026 against the disclosure effected by the Contracting Authority. The Board found that the Contracting Authority had provided such information only in part: it had complied with limbs (b), (c), (e), (f) and (i), but had failed, wholly or in part, to comply with limbs (a), (d), (g) and (h). Accordingly, and upon the demand advanced by the Objector at paragraph 7(ii) of its Supplementary Note, the Board disposed of the matter by the following Further Interim Decree, reproduced verbatim:

Further Interim Decree of the 30th June 2026

THE PUBLIC CONTRACTS REVIEW BOARD

(constituted in accordance with Part II of the Public Procurement Regulations, S.L. 601.03)

*Composed of: Dr Vincent Micallef (Chairman), Dr Maria Cardona (Member) and Mr Keith Victor Grech
(Member)*

Case CT 2350/2025

Legacy Ventures Limited

(the “Objector” / “LVL”)

vs

The Department of Contracts

and

Foundation for Tomorrow’s Schools

(the “Contracting Authority” / “FTS”)

and

Elzan Construction Ltd

(the “Recommended Bidder” / “ECL”)

In the matter of the tender for the provision of civil works, mechanical and electrical services and finishing works using environmentally friendly products for the Gozo College, Gharb Primary School, Gozo

FURTHER INTERIM DECREE

*upon the Contracting Authority’s compliance with paragraph (5) of the Interim Decree of the 10th June 2026, and
upon the Objector’s Supplementary Note of the 22nd June 2026*

The Board, having reconvened to determine whether the disclosure effected by the Contracting Authority constitutes due compliance with the order contained in paragraph (5) of the Interim Decree of the 10th June 2026, the Objector having contended, by its Supplementary Note, that such compliance is partial only;

Having seen the objection filed by the Objector on the 29th May 2026, accompanied by the prescribed deposit of €14,250 (regulation 273 of the PPR), against the proposed award, published on the 22nd May 2026, of the above-mentioned tender to Elzan Construction Ltd (TID 236560) at the price of €3,147,910.83 (exclusive of value added tax);

Having seen its own Interim Decree of the 10th June 2026, whereby the Board, acceding in part to the Objector’s demand for preliminary disclosure (Grievance No. 3), ordered the Department of Contracts and/or the Contracting Authority, by paragraph (5) thereof, to disclose to the Objector, within five (5) working days, the matters enumerated at limbs (a) to (i) of that paragraph, save and except as provided in paragraph (7);

Having seen the disclosure effected by the Contracting Authority in purported compliance with the said order, comprised in the document entitled “F. Decree – (5)”, together with the redacted “List of Projects” of the recommended bidder annexed thereto;

Having seen the electronic correspondence exchanged between counsel for the Contracting Authority and counsel for the recommended bidder of the 11th and 16th June 2026, whereby the Contracting Authority enquired which part of the technical offer was already in the public domain, and the recommended bidder replied that none of the technical specifications of either party is made public and that disclosure would involve commercially sensitive information;

Having seen the Supplementary Note of the Objector filed on the 22nd June 2026, pursuant to the liberty granted by paragraph (9) of the Interim Decree and within the three (3) working days there prescribed, whereby the Objector contends that the disclosure constitutes only partial compliance with the Interim Decree and identifies the matters said to remain outstanding;

Having seen the Additional Reasoned Letter of Reply of the Contracting Authority of the 30th June 2026;

Having seen the Public Procurement Regulations (Subsidiary Legislation 601.03) (“the PPR”) and the General Rules Governing Tenders, version 4.10 of August 2024 (“the GRGT”), together with the documents exhibited and the acts of the appeal;

Premising that the present Decree is interlocutory in nature and is confined to the question of compliance with the order for disclosure; that it determines neither the merits of the six grievances advanced by the Objector nor the lawfulness of the recommendation for award, all of which remain expressly reserved to the substantive hearing; and that nothing herein is to be construed as an expression of opinion upon those merits;

A. The order made by the Interim Decree

1. *By paragraph (5) of the Interim Decree of the 10th June 2026 the Board ordered the disclosure, within five (5) working days, of the following: (a) the summary of the reasons for the rejection of the Objector’s own tender, and in particular the evaluation reasoning concerning its List of Projects and the assessment of the eligibility of the project relied upon (“Cityways”); (b) the names of the bidders and of the sub-contractors; (c) the documentation attesting the recommended tenderer’s compliance with the selection criteria, including its project experience; (d) the technical information already made available in public relied upon by the Evaluation Committee, the same being non-confidential by force of regulation 40(2)(d), including the Eurovent certifications appearing on the manufacturer’s public listing, the EU Ecolabel / Type I ecolabel registrations, and the published standards relied upon; (e) the application of Article 3.1 of the GRGT to all the submissions of the recommended bidder; (f) the record of the arithmetical correction effected in respect of TID 236560; (g) a statement of the existence, dates and legal basis of any clarification or rectification requested of the recommended tenderer, and of whether any documentation accompanied by Note 3 was altered, completed or supplied after the deadline for submission;*

(h) a compliance matrix for TID 236560 communicating the essential content of the technical-compliance findings; and (i) an anonymised, role-by-role Key Expert compliance matrix.

B. The disclosure effected by the Contracting Authority

2. *By the document “F. Decree – (5)” the Contracting Authority furnished the following: at (a), the abstract of the rejection letter concerning the Objector’s “Cityways” project; at (b), the names of the recommended bidder’s sub-contractors (Road Construction Co. Limited and Richard Cauchi); at (c), the redacted “List of Projects” of the recommended bidder; at (d), a statement that, the recommended bidder having indicated that none of the technical literature of either party is public, no technical literature was disclosed, the same being withheld under regulation 40(1); at (e), the application of Article 3.1, recording that the three cheapest submissions of the recommended bidder were considered, that TID 236573 and TID 236557 were automatically disqualified, that TID 236558 and TID 236568 were disqualified for failure to reply to Note 2 literature requests, and that TID 236560 was compliant after rectification; at (f), the bill-by-bill arithmetical correction (Bills 4, 6, 7, 9, 10, 12 and 15); at (g), a schedule of clarification, sample and rectification requests with their dates and Note classification; at (h), a compliance matrix for TID 236560 recording each listed item as compliant by the letter “Y”; and at (i), an anonymised, role-by-role Key Expert compliance matrix.*
3. *At limb (e), the Contracting Authority added the express statement that “following the above reasons the EC could not determine whether the bids were identical”. At limb (h), it added the statement that “only the above listed items were requested as part of the literature”.*

C. The contention of the Objector

4. *By its Supplementary Note the Objector acknowledges that the disclosure goes some way towards identifying the steps taken by the Evaluation Committee, and accepts as compliant the disclosure concerning the sub-contractors, the application of Article 3.1 at the level of ranking, the arithmetical correction, and the role-by-role Key Expert matrix. It contends, however, that the Contracting Authority has, in several material respects, furnished only the conclusion reached by the Evaluation Committee and not the reasoning or essential content ordered, and that limbs (a), (d), (g) and (h) remain, in part, unsatisfied.*

D. Considerations of the Board

5. *The Board has compared, limb by limb, the order contained in paragraph (5) of the Interim Decree with the disclosure effected. It is satisfied that limbs (b), (c), (e), (f) and (i) have been complied with: the sub-contractors have been named (b); the recommended tenderer’s List of Projects has been furnished in redacted form (c); the application of Article 3.1 at the level of ranking and disqualification has been disclosed (e); the arithmetical*

correction has been disclosed bill by bill (f); and the anonymised, role-by-role Key Expert matrix has been furnished (i). To that extent the order has been obeyed.

6. *As to limb (d), the Board is constrained to record, and to deplore, a plain failure of compliance. The Board ordered the disclosure of the technical information already made available in public relied upon by the Evaluation Committee, having itself determined that information of that character is non-confidential by force of regulation 40(2)(d), and having instanced the Eurovent certifications appearing on the manufacturer's public listing, the EU Ecolabel / Type I ecolabel registrations, and the published standards relied upon. The Contracting Authority disclosed none of it. It treated the entire technical offer as confidential under regulation 40(1) upon the unilateral assertion of the recommended bidder, communicated by the latter's counsel on the 16th June 2026, that "none of the technical specifications ... are made public". That course is doubly objectionable: first, because the duty to assess whether particular information is genuinely confidential rests upon the Contracting Authority and may not be delegated to the economic operator whose interest it is to resist disclosure; and secondly, because the Contracting Authority's own compliance matrix at limb (b) records reliance upon "EUROVENT Certification" drawn from the public Eurovent register (the matrix itself citing the address www.eurovent-certification.com), upon an "EN 13300 certificate and ECO Label", upon "WRAS certification", and upon a "CE conformity declaration" under the Machinery Directive, each of which is, by its nature, a public register entry or a published standard. The blanket withholding of information which the Board had already declared non-confidential, and which the Contracting Authority itself relied upon from public sources, is not compliance with limb (d) but its negation.*
7. *As to limb (g), the Contracting Authority furnished the schedule of clarification, sample and rectification requests, with their dates and Note classification, and to that extent complied. It did not, however, furnish the express statement, separately and specifically ordered, of whether any documentation accompanied by Note 3 was altered, completed or supplied after the deadline for submission. That statement remains outstanding.*
8. *As to limb (h), the Board ordered a matrix communicating the essential content of the technical-compliance findings. The matrix furnished records each item by the bare letter "Y", and communicates no essential content whatever; neither the manufacturer or product family, nor the certificate or registration reference, nor the issuing body, nor the applicable standard, nor whether the evidence was submitted with the original tender or upon rectification. A finding of compliance reduced to a single letter is the conclusion of the exercise, not its essential content. The matrix is, moreover, silent upon three of the categories the Board expressly enumerated, i.e. toilets and sanitary ware, HPL toilet cubicles, and roller and classroom blinds. The Contracting Authority stating only that "only the above listed items were requested as part of the literature", without addressing how compliance with those enumerated categories was established. To that extent limb (h) is not satisfied.*

9. *As to limb (a), the Contracting Authority furnished the abstract of the rejection letter and thereby disclosed the reason for the exclusion of the Objector's tender. It furnished, however, no evaluation reasoning beyond the conclusion already communicated: it did not explain how the requirement of "large-scale commercial or public projects" was construed, nor why a project described as comprising infrastructure, finishing and drainage works was held not to satisfy it, nor whether the scale, value or nature of the works was weighed. The evaluation reasoning ordered by limb (a) is therefore furnished only at the level of the bare conclusion.*
10. *The Board adds, for the avoidance of doubt, that the express statement disclosed at limb (e), i.e. that the Evaluation Committee "could not determine whether the bids were identical", is a disclosure made, and not a disclosure withheld; the bearing of that statement upon the lawfulness of the application of Article 3.1 of the GRGT is a matter of merit, which the Board does not here determine and which it expressly reserves to the substantive hearing.*
11. *The Board records that, by paragraph (8) of the Interim Decree, where any document falls only partly within the confidential categories it is to be disclosed in redacted or anonymised form communicating its essential content, and that, where redaction is insufficient, the document is to be retained and examined by the Board itself from the documentation forwarded under regulation 276(d) of the PPR. The Contracting Authority has invoked confidentiality without performing the item-by-item assessment which that paragraph, and the principle in *Antea Polska* (Case C-54/21), require of it.*

E. Decree

For the foregoing reasons, the Board:

- (1) *Declares that the disclosure effected by the Contracting Authority in the document "F. Decree – (5)" constitutes compliance with limbs (b), (c), (e), (f) and (i) of paragraph (5) of the Interim Decree of the 10th June 2026, but partial compliance only with limbs (a), (g) and (h), and non-compliance with limb (d);*
- (2) *Deplores the failure of the Contracting Authority to comply with limb (d) of the said order, the Contracting Authority having withheld in their entirety, upon the unilateral assertion of the recommended bidder and under regulation 40(1), items of technical information which the Board had already declared non-confidential by force of regulation 40(2)(d), and which the Contracting Authority itself relied upon from public registers and published standards; and declares that the determination of confidentiality is the Contracting Authority's own non-delegable duty;*
- (3) *Orders the Department of Contracts and/ or the Contracting Authority to disclose to the Objector, within five (5) working days from the notification of the present Decree, and save and except as provided in paragraph (7) of the Interim Decree, the following outstanding matters:*

- (a) *(limb (d)) the technical information already made available in public relied upon by the Evaluation Committee in respect of TID 236560, identifying, for each relevant item, the manufacturer or product family, the model or product reference, and the corresponding public source, in particular the Eurovent certification as it appears upon the public Eurovent register (including the model reference and date), the EU Ecolabel or Type I ecolabel registration (including its registration reference), the WRAS certification, the CE / Machinery-Directive conformity documentation in so far as publicly available, and the published standards (including EN 13300 and any other standard) relied upon, the proprietary content of the technical offer being withheld;*
- (b) *(limb (h)) a revised compliance matrix for TID 236560 communicating, for each listed item, the essential content of the technical-compliance finding, namely the manufacturer or product family, the certificate or registration reference, the issuing body, the applicable standard, and whether the evidence was submitted with the original tender or upon clarification or rectification, in anonymised or redacted form; and an express statement of the manner in which compliance was established, or was not required to be established, in respect of the categories of toilets and sanitary ware, HPL toilet cubicles, and roller and classroom blinds;*
- (c) *(limb (g)) the express statement, separately ordered, of whether any documentation accompanied by Note 3 (and, in particular, the documentation the subject of the sample request of the 9th April 2026 and the clarification request of the 24th April 2026 in respect of TID 236560) was altered, completed or supplied after the deadline for the submission of tenders;*
- (d) *(limb (a)) the evaluation reasoning, beyond the bare conclusion already communicated, concerning the assessment of the eligibility of the Objector's "Cityways" project, including the manner in which the requirement of "large-scale commercial or public projects" was construed and applied;*
- (4) *Directs that the assessment of whether any item of information is genuinely confidential within the meaning of regulation 40(1) of the PPR be conducted by the Contracting Authority itself, item by item, and not be delegated to the recommended bidder; that it be conducted in conformity with the principle in Antea Polska (Case C-54/21), which precludes the treatment in a general manner of all or virtually all of the information as confidential and requires, even where disclosure is lawfully refused, the communication of the essential content of the information withheld;*
- (5) *Directs that, where any document falls only partly within the confidential categories, it be disclosed in redacted or anonymised form communicating its essential content; and that, where redaction is insufficient to protect the confidential character of the information, the document be retained and examined by the Board itself from the documentation forwarded to the Chairman under regulation 276(d) of the PPR;*

- (6) *Grants the Objector liberty, following such further disclosure, to file a supplementary note strictly confined to the matters thereby disclosed, within five (5) working days of receipt thereof; and reserves to the Contracting Authority and to the recommended bidder the corresponding right of reply;*
- (7) *Confirms that the suspension of the award procedure occasioned by the filing of the objection (regulations 274 and 275 of the PPR) subsists, and that the complete documentation pertaining to the call for tenders is in any event to be forwarded to the Chairman in terms of regulation 276(d) of the PPR;*
- (8) *Expressly reserves the merits of Grievances Nos. 1, 2, 4, 5 and 6, and in particular the bearing, upon the application of Article 3.1 of the GRGT, of the Evaluation Committee's recorded inability to determine whether the recommended bidder's submissions were identical, and the lawfulness of the recommendation for award, to the substantive hearing, nothing in this Decree constituting an expression of opinion thereon; and*
- (9) *Reserves the question of the deposit to the final decision (regulation 273 of the PPR).*

Thus, decreed by the Public Contracts Review Board this 1st day of July 2026.

By the said Further Interim Decree of the 1st July 2026, the Board declared the disclosure effected by the Contracting Authority to constitute partial compliance only, deplored the failure of the Contracting Authority to comply with limb (d) of the Interim Decree of the 10th June 2026, and ordered the further disclosure therein specified within five (5) working days; the said Decree being interlocutory, the merits of the six grievances and the lawfulness of the recommendation for award remain expressly reserved to the substantive hearing. The Board records the said Decree as forming part of the acts of the appeal.

Additional Reply by the Foundation for Tomorrow's Schools to the Further Interim Decree of the 30th June 2026, with Submissions on the Eurovent, EU Ecolabel, WRAS and CE Marking Documentation

Reference is being made to the additional interim decree issued by this Honourable Board by which Foundation for Tomorrow's School (hereinafter 'FTS') was ordered to publish further information to the Objector, within five (5) working days. In full compliance with that order, FTS encloses herewith the documents and information responsive to the Board's direction.

FTS notes the Board's statement "deploring" the Contracting Authority's alleged failure to adhere to the previous interim decree. Whilst FTS respectfully acknowledges the Board's concerns, we must state unequivocally that FTS did in fact comply with the previous decree and published strictly the information that was in the public domain and/or requested. At no time did FTS withhold information that was publicly available, nor did it breach or fail to observe its obligations under the earlier order. FTS (and its counsel) fully respects the authority of the PCRB.

For clarity on specific items addressed by the Board:

- Eurovent certification

Contrary to the suggestion that this is publicly available, the Eurovent certification produced for this tender by the recommended bidder is proprietary and was prepared specifically in relation to the tender requirements. A redacted copy is enclosed for the Board's review and confirmation. FTS submits that this document is not in the public domain; it is for the Board to determine whether and to what extent it should be disclosed to the Objector. Either way, FTS respects the position of PCRB.

- EU Ecolabel:

There is no public registry entry corresponding to the certification referenced. The information provided by the recommended bidder is not in the public domain. FTS encloses the related material for the Board's consideration and determination on disclosure. Either way, FTS respects the position of PCRB.

- WRAS:

To clarify, WRAS documentation was not requested by the Objector in its original request for information and/or through the objection. In any event, FTS is enclosing the relevant WRAS documents.

- CE marking:

The documentation relating to CE marking is likewise not contained in any public registry. Moreover, as expressly provided in the tender document, CE marking operates as a contract performance criterion and is not required to be submitted at the tendering stage.

FTS places all enclosed documents before this Honourable Board and invites the Board to determine, in its absolute discretion, whether such documents (or parts thereof) should be released to the Objector, and if so, to what extent and subject to any redactions the Board considers appropriate. Either way, FTS respects the position of PCRB.

We reiterate our absolute respect for the Board and for the interim orders issued. FTS remains committed to full cooperation with the Board's process and stands ready to provide any further clarification or documentation the Board may request.

Decree of the 23rd July 2026 on the Additional Reply of the Foundation for Tomorrow's Schools dated 7th July, 2026: Assessment of Confidentiality to Be Undertaken by the Contracting Authority, Not the Board

THE PUBLIC CONTRACTS REVIEW BOARD

(constituted in accordance with Part II of the Public Procurement Regulations, S.L. 601.03)

Composed of:

Dr Vincent Micallef (Chairman), Dr Maria Cardona (Member) and Mr Keith Victor Grech (Member)

Case CT 2350/2025

Legacy Ventures Limited

(the “Objector” / “LVL”)

vs

The Department of Contracts and the Foundation for Tomorrow’s Schools

(the “Contracting Authority” / “FTS”)

and

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(the “Recommended Bidder” / “ECL”)

In the matter of the tender for the provision of civil works, mechanical and electrical services and finishing works using environmentally friendly products for the Gozo College, Gharb Primary School, Gozo

DECREE

upon the Additional Reply of the Foundation for Tomorrow’s Schools of the 7th July 2026, whereby the Contracting Authority places certain documents before the Board and invites the Board to determine their disclosure to the Objector

Having seen the Board’s Interim Decree of the 10th June 2026, whereby the Board ordered the calibrated disclosure to the Objector of the information therein specified;

Having seen the Board’s Further Interim Decree of the 30th June 2026 (hereinafter “the Disclosure Decree”), whereby the Board, having had recourse to the principles enunciated by the Court of Justice of the European Union in Antea Polska (Case C-54/21, 17th November 2022), and having deplored the partial compliance of the Contracting Authority with the said Interim Decree of the 10th June 2026, ordered the Contracting Authority to disclose to the Objector, within five (5) working days, the further information therein specified, subject to the redaction of any part thereof that should be shown to be genuinely confidential;

Having seen the Additional Reply by the Foundation for Tomorrow’s Schools of the 7th July 2026, filed by the Contracting Authority, whereby FTS, professing full compliance with the Disclosure Decree and enclosing documents said to be responsive thereto, namely the Eurovent certification, the EU Ecolabel material, the WRAS documentation and the CE

marking documentation, places the said documents before the Board and, in the concluding paragraph of the said Reply, submits as follows:

“FTS places all enclosed documents before this Honourable Board and invites the Board to determine, in its absolute discretion, whether such documents (or parts thereof) should be released to the Objector, and if so, to what extent and subject to any redactions the Board considers appropriate.”

Considering that the Disclosure Decree did not remit to this Board the question whether the information there identified is or is not confidential, but, on the contrary, determined that the said information was to be disclosed to the Objector, subject only to the redaction of any part thereof that should be demonstrated to be genuinely confidential;

Considering that, in accordance with the principles of transparency and of confidentiality which govern the award of public contracts, and as this Board had occasion to observe in the Disclosure Decree upon the authority of Antea Polska (Case C-54/21), the assessment of whether information furnished by an economic operator is genuinely confidential falls, in the first place, upon the contracting authority, as the holder and mediator of that information;

Considering that, upon the self-same authority, a contracting authority may not content itself with the bare assertion of confidentiality advanced by a tenderer, but is bound to require that the economic operator demonstrate the genuinely confidential character of the information which it claims should be withheld, and thereafter itself to determine what may, and what may not, lawfully be disclosed;

Considering that it follows, as a necessary consequence, that the sifting of the documents, the ascertainment, item by item, of that which is confidential and that which is not, is a function reposed by law in the Contracting Authority, and not in this Board; the office of the Board in the matter being one of review, namely to superintend and, where necessary, to correct the assessment of the Contracting Authority, and not to perform that assessment in the Authority's stead;

Considering that the course adopted by FTS, namely, to deposit the documents en bloc with the Board and to invite the Board to determine, in its “absolute discretion,” which of them, or which parts of them, are to be released, cannot be received as compliance with the Disclosure Decree; for to accede to that invitation would be to invert the allocation of functions ordained by law, relieving the Contracting Authority of the very duty cast upon it and transforming this Board from the reviewer of the Authority's confidentiality assessment into the primary author and executant of that assessment, a role which neither the Public Procurement Regulations nor the principle of effective review assign to it;

Considering that this Board has already, by the Disclosure Decree, determined which information is to be disclosed, and that what is now required is not a fresh adjudication by the Board upon the confidential character of each document, but the discharge by the Contracting Authority of its subsisting obligation, namely to examine each document, to disclose forthwith to the Objector all that is not confidential, and, in respect of any part for which confidentiality is genuinely maintained, to identify it with precision, to justify the claim by concrete and specific reasons, and to propose the redactions by which the non-confidential substance may nonetheless be conveyed to the Objector;

Considering, accordingly, that the mere production of the documents to the Board, unaccompanied by any classification or reasoned confidentiality assessment on the part of the Contracting Authority, neither discharges the obligation imposed by the Disclosure Decree nor divests the Contracting Authority of its primary responsibility; and that this Board declines, for the reasons aforesaid, to substitute its own judgement for the primary assessment which it is for the Contracting Authority to make;

Considering that the foregoing is without prejudice to the power of this Board, in the exercise of its reviewing jurisdiction, to examine any claim of confidentiality advanced by the Contracting Authority, to reject any such claim as it should find to be unsubstantiated, and to order such further disclosure to the Objector as the principles of transparency, equality of treatment and effectiveness may require;

Considering, finally, that this Board, mindful of the respect for its authority which the Contracting Authority has itself repeatedly professed, and reposing full confidence in the good faith of the Contracting Authority, deems it both sufficient and fitting, at the present juncture, to call upon the Contracting Authority itself to undertake the assessment which the law confides to it, and to give faithful and complete effect to the Disclosure Decree already pronounced by this Board, rather than for this Board to arrogate to itself a function that is not its own;

DECREE

For the foregoing reasons, the Board:

- (1) Calls upon the Contracting Authority (the Foundation for Tomorrow's Schools) to assess, itself and in the first instance, whether and to what extent the information in question is genuinely confidential, and to give faithful and complete effect to the Disclosure Decree already pronounced by this Board;*
- (2) Directs, to that end, the Contracting Authority to examine each and every document and item of information placed before the Board by its Additional Reply of the 7th July 2026, including, without limitation, the Eurovent certification, the EU Ecolabel material, the WRAS documentation and the CE marking documentation, and to determine, in respect of each, whether and to what extent it is genuinely confidential;*
- (3) Directs the Contracting Authority to disclose to the Objector, forthwith and in any event within five (5) working days from the date of notification of the present Decree, the whole of the information so examined that is not confidential;*
- (4) Directs that, in respect of any document or part thereof for which confidentiality is maintained, the Contracting Authority shall, within the same period, (a) identify each such document or part with precision; (b) state, in respect of each, the concrete and specific reasons upon which the claim of confidentiality is founded, it being insufficient to rely upon a bare assertion of confidentiality whether on the part of the Contracting Authority or of*

the recommended bidder; and (c) propose the redactions or, where appropriate, a summary of the essential content, by which the non-confidential substance may be communicated to the Objector;

- (5) *Declares that the deposit of the said documents with the Board, accompanied by an invitation to the Board to determine in its absolute discretion which of them are to be released, does not of itself constitute compliance with the Disclosure Decree, the primary duty of assessing the confidential character of the information and of effecting the disclosure of that which is not confidential resting upon the Contracting Authority and not upon this Board;*
- (6) *Reserves to the Board, upon receipt of the Contracting Authority's classification and reasoned assessment, the power to review any claim of confidentiality and to order such further disclosure as it may deem warranted;*
- (7) *Confirms that the suspension of the award procedure occasioned by the filing of the objection (Regulations 274 and 275 of the Public Procurement Regulations) subsists; and*
- (8) *Reserves the merits of the appeal, together with all other matters and the question of the deposit, to the further consideration and final decision of the Board.*

This Board does not doubt that the Contracting Authority, faithful to the respect for the Board's authority which it has itself professed, will give prompt, willing and complete effect to the present Decree.

Thus decreed by the Public Contracts Review Board this 23rd day of July 2026.

Second Supplementary Note of the Objector (Legacy Ventures Limited), dated 6th August 2026, following the Further Disclosure Circulated on 30th July 2026 under the Decree of 23rd July 2026

Filed pursuant to paragraph (6) of the Further Interim Decree of 1st July 2026 and following the further disclosure circulated on 30th July 2026

Respectfully submits:

1. Introduction and limited scope of this Note

- 1.1 Reference is made to the Objector's Reasoned Objection filed on the 29th May 2026, the Interim Decree of this Honourable Board of the 10th June 2026, the Objector's first Supplementary Note of the 22nd June 2026, the Further Interim Decree of the 1st July 2026, and the subsequent Decree of the 23rd July 2026 concerning the Contracting Authority's further compliance with the disclosure ordered by the Board.
- 1.2 By paragraph (6) of the Further Interim Decree, the Board granted the Objector liberty, following further disclosure, to file a supplementary note strictly confined to the matters thereby disclosed within

five working days of receipt. On the 30th July 2026, the Board circulated the note entitled ‘Reply by Foundation for Tomorrow’s Schools to the Decree of the 23rd July 2026’, together with the electronic folder ‘Technical Documentation (2)’. This Note is filed pursuant to that liberty.

- 1.3** The Objector maintains in full its original grievances, demands and reservations. The observations below are deliberately confined to the latest FTS note and to the documents actually circulated with it. They are also framed with caution: where the disclosed material supports a finding of compliance, that fact is expressly acknowledged; where it does not, the Objector requests that the Board examine the original tender file and the ePPS audit trail.

2. The documents actually circulated and the continuing gaps in disclosure

- 2.1** The ZIP file circulated to the Objector contains eight PDF files only: ‘Computer.pdf’; ‘Paint.pdf’; WRAS directory extracts ‘2305521.pdf’ and ‘2305522.pdf’; and four landscaping files, namely ‘Hygrometer.pdf’, ‘SoilImproverTechSpec.pdf’, ‘ac_page2.pdf’ and ‘certificate of conformity NFR240430_EN.pdf’.
- 2.2** Annex A to the latest FTS note states that FTS is disclosing the proposed AUX brand and models, the relevant Eurovent public-register reference and a redacted Eurovent certificate. None of those items appears in the electronic folder received by the Objector. There is no Eurovent certificate, no AUX model schedule, no public-register extract or reference and no schedule of derated cooling capacity.
- 2.3** This may be an inadvertent omission in the circulation of the documents rather than a failure by FTS to file them with the Board. In either case, however, the Objector cannot examine documents which it has not received, and the disclosure described by FTS has not, as a matter of fact, been made available to the Objector.
- 2.4** The latest FTS note also does not contain the revised technical-compliance matrix ordered by the Further Interim Decree. Annex A is a confidentiality-assessment schedule dealing with four selected headings only. It does not state, for the full range of items ordered by the Board, the manufacturer or product family, certificate or registration reference, issuing body, applicable standard, and whether the evidence was submitted with the original tender or through clarification or rectification.
- 2.5** Moreover, the latest response remains silent on three matters expressly ordered by the Board: the fuller evaluation reasoning concerning Cityways; the express statement whether any Note 3 documentation, including the material connected with the requests of the 9th and 24th April 2026, was altered, completed or supplied after the deadline; and the manner in which compliance was established, or was not required to be established, for toilets and sanitary ware, HPL toilet cubicles, and roller or classroom blinds.

3. Eurovent certification and the AUX HVAC systems

- 3.1** The Eurovent requirement was model-specific and time-specific. Clause 3.8.10 of the Split System specification required the Eurovent certification to appear on the manufacturer's official catalogue, the full catalogue to identify the models selected by the bidder, those models to appear on the Eurovent website, and valid certifications issued not earlier than one month before submission. Specification 3.9 imposed the same essential requirements for the VRF system.
- 3.2** FTS identifies only the brand 'AUX' and 'various models'. It does not disclose the model references, certificate date, public-register reference, or the distinction between the split-system models governed by Specification 3.8 and the VRF models governed by Specification 3.9. Without those particulars it is impossible to verify that the actual models tendered were publicly listed and covered by a valid certificate at the closing date.
- 3.3** The Objector's technical team has also reviewed FTS's confidentiality position. It confirms that a derated-capacity schedule is, in substance, a technical calculation showing the available outdoor-unit capacity in relation to the connected indoor units. It is necessary to verify the proposed system design and does not, in itself, disclose tender pricing or commercial terms. If any bidder-specific identifier or genuinely proprietary detail requires protection, the essential technical content can be communicated in redacted form, as the Board has already directed.
- 3.4** The Objector therefore requests the Board to verify whether the Eurovent documents described by FTS were filed but omitted from circulation. If so, they should be circulated immediately in the redacted form proposed by FTS. If not, the Board should itself examine the original certificates, official catalogues, selected-model list, certificate dates and derated-capacity schedule from the complete tender file and determine whether TID 236560 was compliant at the closing date.

4. The disclosed computer document does not establish the mandatory workstation and monitor requirements

- 4.1** The latest electronic folder includes a 52-page file entitled 'Computer.pdf'. FTS does not explain this document in its note or Annex A, notwithstanding that its inclusion indicates that it formed part of the technical material produced for consideration.
- 4.2** The document is a product and assembly manual for a Mini-ITX computer chassis or case. It records case dimensions, motherboard and power-supply compatibility and assembly instructions. It does not identify or certify a complete client workstation, the processor, memory, storage, graphics capability, operating system, monitor, or the environmental and energy characteristics required by the Tender.

- 4.3 Specification 3.5.7 required a dedicated CCTV workstation and monitor and imposed specific GPP verification requirements. Tenderers were required to report the Typical Energy Consumption value on the basis of IEC 62623:2012. Compliance could be shown through a relevant Type I Ecolabel or equivalent qualifying label, or through test results from an ISO/IEC 17025 accredited laboratory. The monitor was separately required to satisfy the prescribed energy-efficiency class and other GPP requirements.
- 4.4 The Objector's technical team confirms that the disclosed computer document contains no Type I Ecolabel certification, no equivalent environmental-label certificate, no IEC 62623:2012 ETEC report, no ISO/IEC 17025 accredited laboratory result and no evidence concerning the required monitor. Accordingly, the document actually disclosed does not corroborate compliance with the computer and monitor requirements.
- 4.5 The Board is therefore requested to inspect the original submission and any Note 2 rectification relating to this item. If the Evaluation Committee had additional compliant evidence before it, that evidence and its timing should be identified. If the only literature relied upon was the disclosed chassis manual, the finding of technical compliance cannot be sustained.

5. Paint and EU Ecolabel documentation

- 5.1 The only paint document circulated is the technical data sheet for KRAFT Master Eco, an internal ecological emulsion paint. The data sheet contains relevant technical information, including VOC and wet-scrub values, and states that the product fulfils EU Ecolabel criteria.
- 5.2 However, neither the actual EU Ecolabel certificate nor its licence or registration reference has been disclosed. The manufacturer's statement in a technical data sheet is not the same as the certificate or public registration which FTS says it has disclosed and which the Board ordered to be identified.
- 5.3 The technical team further confirms that the bundle contains no technical data sheet for the exterior paint system. Specification 11 covers both internal and external paint applications and contains separate requirements for external masonry, concrete and other surfaces. The latest disclosure therefore does not show what exterior product was proposed or how its compliance was established.
- 5.4 The Board is accordingly requested to verify from the original tender file the EU Ecolabel licence or registration relied upon, the exterior paint literature, and whether these documents were submitted with the original tender or only through the rectification procedure. If they were introduced after the deadline, the Board should determine whether the process merely evidenced an already identified compliant product or instead completed the technical offer after submission.

6. WRAS and landscaping documents

- 6.1** The Objector's technical team has verified the two WRAS directory extracts and confirms that the ATP TORO pipework and fittings appearing therein are WRAS approved. The Objector does not pursue an allegation of non-compliance on the basis of the WRAS documents now disclosed.
- 6.2** The technical team has likewise raised no specific technical objection arising from the four landscaping documents circulated. The Objector therefore does not rely on those documents as a separate ground of technical non-compliance. This acknowledgement does not, however, cure the outstanding Eurovent, computer, paint, Note 3 and disclosure issues identified above.

7. The ordered Note 3 statement and other evaluation findings remain outstanding

- 7.1** The Further Interim Decree required an express statement whether any documentation accompanied by Note 3, particularly documentation connected with the sample request of the 9th April 2026 and the clarification request of the 24th April 2026, was altered, completed or supplied after the submission deadline. FTS has still not provided that statement.
- 7.2** This omission is material. Note 2 literature could be clarified or rectified only to corroborate an offer which was compliant *ab initio*. Documentation governed by Note 3 could not be rectified and could only be clarified where compliant information had already been submitted. The Board should therefore compare the original TID 236560 submission with every later request and response and determine whether products, models, certificates or technical solutions were merely explained or were introduced or completed after the deadline.
- 7.3** FTS has also not supplied the further Cityways reasoning ordered by the Board, nor the revised findings concerning toilets and sanitary ware, HPL cubicles, and roller or classroom blinds. The bare earlier conclusion does not answer how the project-experience criterion was construed or whether it was applied consistently, while the absence of the technical findings prevents the Objector from understanding how those mandatory categories were evaluated.

8. Overall effect and the continuing Article 3.1 issue

- 8.1** The Objector does not contend that every document disclosed is defective. It expressly accepts the WRAS evidence and raises no specific complaint from the landscaping material. The remaining concern is whether the Evaluation Committee established every mandatory technical requirement at the proper procedural stage on the basis of the tender actually submitted.
- 8.2** The latest disclosure does not establish that position. The Eurovent evidence described by FTS is absent from the circulated bundle; the computer document is only a chassis manual and does not

address the mandatory workstation and monitor GPP criteria; the actual EU Ecolabel registration and exterior paint evidence remain undisclosed; and the ordered Note 3 statement and other compliance findings remain outstanding.

- 8.3** These matters particularise the Objector's existing grievance that the recommendation cannot safely stand unless the complete record demonstrates a compliant tender *ab initio* and a lawful use of clarification and rectification. The separate Article 3.1 grievance, including the Evaluation Committee's recorded inability to determine whether the Elzan submissions were identical, remains expressly reserved for the substantive hearing and is not cured by the latest technical disclosure.

9. Demands

For the foregoing reasons, without prejudice to the Reasoned Objection, the first Supplementary Note and all the relief already sought, the Objector respectfully requests that this Honourable Board:

- (i)** admits this Second Supplementary Note pursuant to paragraph (6) of the Further Interim Decree and incorporates it as a further particularisation of the grievances already pleaded;
- (ii)** records that the latest disclosure remains incomplete, in particular because the Eurovent documents described by FTS were not circulated and because the revised compliance matrix, the express Note 3 statement, the further Cityways reasoning and the findings concerning toilets, sanitary ware, HPL cubicles and roller or classroom blinds remain outstanding; and orders the immediate circulation of any documents filed but omitted, or alternatively examines the unredacted originals itself under Regulations 92 and 276(d);
- (iii)** determines from the complete tender file and ePPS audit trail whether TID 236560 was compliant at the closing date, with particular reference to the model-specific Eurovent requirements, the computer and monitor GPP evidence, the EU Ecolabel registration and exterior paint system, and whether subsequent rectification, sample or clarification procedures merely explained an already compliant tender or impermissibly completed it after submission;
- (iv)** should the complete record fail to establish tender-stage compliance with the mandatory requirements, upholds the relevant grievances, annuls the recommendation in favour of TID 236560 and grants the consequential relief already requested; alternatively, remits the procurement for a fresh and lawful evaluation by a newly constituted Evaluation Committee; and
- (v)** maintains the suspension of the award procedure, orders the refund of the deposit and grants any other declaration, order, direction or remedy which it considers appropriate in the circumstances.

The Board

Having seen the Second Supplementary Note filed by the Objector on the 6th August 2026, pursuant to the liberty granted by paragraph (6) of the Board's Further Interim Decree of the 30th June 2026, following the further disclosure circulated by the Board on the 30th July 2026;

Having seen that, by the said paragraph (6), the Board reserved to the Contracting Authority and to the recommended bidder the corresponding right of reply;

The Board hereby directs that the said Second Supplementary Note shall be taken up and addressed during the sitting of the 22nd September, 2026, when the Objector, the Contracting Authority, the Department of Contracts and the recommended bidder shall be heard thereon, in observance of the principles of *audi alteram partem* and equality of treatment;

The Board reserves to its further consideration and final decision all questions as to the admissibility, scope and merits of the said Note and of the demands made therein.

CONSIDERATIONS OF THE BOARD

THIS BOARD, after having examined the acts of the appeal in their entirety, namely the Objection filed on the 29th May 2026, the Reasoned Reply of the Contracting Authority filed on the 8th June 2026, the Interim Decree of the 10th June 2026 and the further decrees reproduced above, the disclosures effected by the Contracting Authority, the Supplementary Note of the 22nd June 2026 and the Second Supplementary Note of the 6th August 2026, the documentation forwarded to the Chairman in terms of regulation 276(d) of the Public Procurement Regulations, the Tender, the General Rules Governing Tenders, version 4.10 of August 2024 (the “GRGT”), the Evaluation Report dated the 11th May 2026 with its annexes, the Opening Report, the rectification and clarification requests and the replies thereto, the Literature List, the Technical Offer Form, the minutes of the sitting of the 22nd September 2026 and the testimony and submissions recorded therein, will now consider the six grievances advanced by the Objector, the reply of the Contracting Authority to each of them, and the oral submissions of the Recommended Bidder, in the order in which the grievances were pleaded, after setting out the principles by which it is guided.

Preliminary statement. The Board declares, at the very outset, that, on the basis of its Decree of the 17th June 2026, affirmed by its Further Decree of the 18th June 2026, whereby the Reasoned Reply filed by the Recommended Bidder on the 15th June 2026 was declared to have been filed *fuori termine* and inadmissible, the written submissions of the Recommended Bidder will not be taken into account, nor will they be reproduced or referred to in the body of this decision from this point onwards.

The Board will take into consideration only the oral submissions made at the sitting of the 22nd September 2026 by the Recommended Bidder.

A. Preliminary Considerations

The appeal and the competence of the Board

- A.1 The Objection was filed on the 29th May 2026, that is, within the ten calendar days prescribed by regulation 271 of the Public Procurement Regulations, S.L. 601.03 (the “PPR”) from the notification of the proposed award of the 22nd May 2026, and was accompanied by a deposit of €14,250, being 0.50 per cent of the estimated value of €2,850,000 set by the Contracting Authority (regulation 273). The Opening Report records seven offers opened on the 4th December 2025: five by Elzan Construction Ltd (TID 236557, 236558, 236560, 236568 and 236573), one by Next Construction Ltd (TID 236565, €3,344,046.02) and one by the Objector (TID 236563, €3,499,423.57). The minutes of the sitting record, at their outset, that “[t]here were six bids”; the Board follows the Opening Report.

The Objection was filed by a tenderer whose offer had been declared administratively non-compliant, and is directed both against that decision and against the recommendation to award the Tender to Elzan Construction Ltd (TID 236560, €3,147,910.83 exclusive of VAT). The Board is competent to hear and determine such an appeal in terms of regulations 87(b) and 270 of the PPR. The estimated value of the Tender being in excess of €143,000, the procurement was administered by the Director of Contracts in terms of regulation 9(1)(b), and the provisions of the PPR applicable to such procurement, including regulations 61(2) and 241, are those which the Board applies.

The function and the standard of review of the Board

- A.2 By regulation 276(h) of the PPR the Board is to decide, “after evaluating all the evidence and after considering all submissions put forward by the parties”, whether to accede to or to reject the appeal, or even to cancel the call if it appears to it that this is best in the circumstances of the case; and by regulation 93(3) it is to indicate the reasons upon which its decision is taken. The Board is a body of review. It does not conduct the evaluation anew, nor does it substitute its own assessment of tenders for that of the Evaluation Committee. Its task is to verify, upon the evidence before it, whether the Contracting Authority and its Evaluation Committee have applied the conditions of the call lawfully and consistently, in observance of the principles of equal treatment, transparency and proportionality enshrined in regulation 39(1) of the PPR.

Where the impugned decision rests upon a technical appreciation of the compliance of a product or of a document with the specifications, the Board will intervene only where the appreciation is shown

to be manifestly erroneous, to rest upon a misreading of the Tender, or to have been reached in breach of the procedural rules which bind the Evaluation Committee.

“(h) after evaluating all the evidence and after considering all submissions put forward by the parties, the Public Contracts Review Board shall decide whether to accede or reject the appeal or even cancel the call if it appears to it that this is best in the circumstances of the case.” (Regulation 276(h) of the PPR)

“(2) The tenderer must be selected in a transparent manner and according to a prescribed procedure.” (Regulation 39(2) of the PPR)

Burden of proof and the evidential position of the parties

- A.3 Regulation 270 of the PPR requires that an objection “shall contain in a very clear manner the reasons for their complaints”. It is, therefore, in the first place for the Objector to specify, and to establish, the facts upon which each of its grievances rests. The Board applies that principle with due regard to the informational asymmetry which is inherent in the review of tender evaluations, in which the evaluation record lies with the Contracting Authority and the competing offer with the Recommended Bidder.

It is in order to redress that asymmetry that the Board ordered the calibrated disclosure reflected in its decrees, that the entire documentation of the call is forwarded to the Chairman under regulation 276(d), and that the Contracting Authority is bound by regulation 241(5) to “document the progress of all procurement procedures” and to keep “sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations”.

“... any tenderer or candidate concerned, or any person, having or having had an interest or who has been harmed or risks being harmed by an alleged infringement or by any decision taken including a proposed award in obtaining a contract, a rejection of a tender or a cancellation of a call for tender after the lapse of the publication period, may file an appeal by means of an objection before the Public Contracts Review Board, which shall contain in a very clear manner the reasons for their complaints.” (Regulation 270 of the PPR)

“(5) ... Contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations ...” (Regulation 241(5) of the PPR)

- A.4 Once, however, an objector has been enabled by those means to test the evaluation, it cannot discharge its burden by observing that the Contracting Authority has not demonstrated that every requirement

of the Tender was met, nor by inviting the Board to draw adverse inferences which are not tethered to proven facts. A grievance which, in its own terms, does not assert any non-compliance but asks that compliance be demonstrated (as the Objector candidly acknowledges at paragraph 5.5 of the Objection) is a grievance as to information, and is considered as such. Conversely, where the Objector has adduced evidence of a specific shortcoming, it is for the Contracting Authority to answer it by evidence, and the Board weighs the evidence on both sides.

Self-limitation, equal treatment and the reasonably well-informed and normally diligent tenderer

- A.5 Once a contracting authority publishes the conditions of a call it is bound by them, no less than the tenderers. The Objector has rightly invoked, at paragraph 2.7 of the Objection, the judgment of the Court of Appeal (Superior Jurisdiction) in *Trackwell FiMS noe v. Id-Direttur Ġenerali tal-Kuntratti et*, in which the Court affirmed that the rules of the call are there “sabiex jiġu mharsa u mhux biex jiġu mwarrba”, and that the members of the evaluation committee “għandhom jimxu skrupolożament mal-kundizzjonijiet li jkunu ġew imnizzlin fid-dokument tas-sejha”. That principle of self-limitation is the necessary corollary of the principles of equal treatment and transparency (regulation 39 of the PPR): a contracting authority which departs from its own conditions, whether to the advantage or to the detriment of a tenderer, treats tenderers unequally, and does so in a manner which they could not foresee.

“39. (1) Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.” (Regulation 39(1) of the PPR)

“38. (1) The procurement document shall be written in clear and unambiguous terms so as to enable all interested parties to understand properly the terms and conditions of the process.” (Regulation 38(1) of the PPR)

- A.6 The same principle binds the tenderers. The Contracting Authority has relied, at paragraph 2.6 of its Reply, upon the passage of the judgment of the Court of Appeal in *Vassallo Builders Ltd v. Wasteserv Malta Ltd et*, which in turn refers to *Legacy Ventures Limited v. Direttur Ġenerali tal-Kuntratti et* and to *Freemond Limited v. L-Aġenzija għas-Servizz tal-Qorti et*, to the effect that where the rules of the call expressly require a certain documentation, it is to be furnished as requested and by the closing date, it being the responsibility of every tenderer to comply with the conditions of the call “bħala «a reasonable well informed and normally diligent tenderer»”.

The Board adopts that standard. The conditions of a call are construed objectively, according to the meaning which a reasonably well-informed and normally diligent tenderer would give to them, having regard to their wording, their context and their purpose; regulation 38(1) of the PPR requires that they

be written “in clear and unambiguous terms so as to enable all interested parties to understand properly the terms and conditions of the process”, and the Objector has correctly recalled, at paragraph 3.11 of the Objection, the pronouncement of the Court of Appeal in *South Lease Limited v. Central Procurement and Supplies Unit et* that a tenderer is not to be penalised on the strength of a clause the meaning of which is not clear. That canon applies, evenhandedly, to all tenderers; it presupposes, however, a genuine uncertainty which a reasonably well-informed and normally diligent tenderer could not resolve by ordinary methods of construction or by the means which the procedure itself provides (regulation 38(2) and (4), and regulation 262 of the PPR).

The requirement of eligibility *ab initio* and the limits of clarification and rectification

- A.7 Regulation 62(1) of the PPR provides that the authority responsible for the tendering process “must ensure that an economic operator must *ab initio* be eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same”.

Regulation 62(2) permits, “in terms of the procurement document”, a request that an economic operator “submit, supplement, clarify or complete the relevant information or documentation” where it “is or appears to be incomplete or erroneous or where specific documents are missing”, but only “in full compliance with the principles of equal treatment and transparency”; and regulation 62(3) provides that the financial bid “cannot be changed with the exception for the correction of evident arithmetic errors as may be allowed in the procurement document”.

“62. (1) Without prejudice to Part VI and regulation 235(2), the authority responsible for the tendering process must ensure that an economic operator must ab initio be eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same. (2) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous or where specific documents are missing, contracting authorities in terms of the procurement document may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit: Provided that such requests are made in full compliance with the principles of equal treatment and transparency. (3) The financial bid cannot be changed with the exception for the correction of evident arithmetic errors as may be allowed in the procurement document.” (Regulation 62 of the PPR)

- A.8 The Tender and the GRGT give effect to those provisions through a graduated regime which the Board applies as written. Under the Notes to Clause 5 of the Instructions to Tenderers, documentation designated as Note 2 may be the subject of a request to “clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification”;

documentation designated as Note 3 admits of no rectification, “[o]nly clarifications on the submitted information” being possible; and the Notes conclude that “[r]equests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained”.

Clause 16.1 of the GRGT adds that, in evaluating the information submitted following a request for rectification, “the Evaluation Committee must ensure that an economic operator is *ab initio* eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same”, and that failure to reply within the five working days “shall result in the tender offer not being considered any further”.

“2. Tenderers will be requested to either clarify/rectify any incorrect and/or incomplete documentation, and/or submit any missing documents within five (5) working days from notification. 3. No rectifications shall be allowed. Only clarifications on the submitted information may be requested. Tenderers will be requested to clarify the submitted information within five (5) working days from notification. Requests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained.” (Notes 2 and 3 to Clause 5 of the Instructions to Tenderers)

*“In evaluating the information submitted by the tenderer following a request for a rectification, the Evaluation Committee must ensure that an economic operator is *ab initio* eligible to qualify for a tender and must consequently be in possession of all the requirements stipulated in the procurement documents by the closing date for the submission of the same.” (Clause 16.1 of the GRGT)*

“Rectification replies must be submitted within five (5) working days from notification, and will be free of charge: failure to comply shall result in the tender offer not being considered any further.” (Clauses 16.2 and 16.3 of the GRGT)

- A.9 It follows that a clarification may explain what a tenderer has submitted, and a rectification may supply or correct documentation evidencing a situation which existed at the closing date; neither may be employed to introduce, after the closing date, an element which the tender did not contain and which the tenderer did not possess by that date, nor to convert a non-compliant offer into a compliant one. That is the principle, consonant with the equal treatment of tenderers, which the Court of Justice has repeatedly affirmed in recognising that a contracting authority may invite a tenderer to clarify or to supply a missing document, provided that the request does not result in the submission of what is in substance a new tender (Case C-599/10 *SAG ELV Slovensko*; Case C-336/12 *Manova*).

The procedural position of the Recommended Bidder

- A.10 By its Decree of the 17th June 2026, affirmed by the Further Decree of the 18th June 2026, the Board declared the Reasoned Reply of the Recommended Bidder, filed on the 15th June 2026, to have been filed *fuori termine* in breach of regulation 276(c) of the PPR, and directed that it be not taken into consideration in the determination of the appeal. That Decree attached “to the written pleading alone, and not to the standing of the recommended bidder as an interested party”, whose procedural position at the hearing was expressly reserved. The Board has accordingly not taken into account, and does not reproduce or refer to, any written submission of the Recommended Bidder. It has, on the other hand, taken full cognisance of the oral submissions made at the sitting of the 22nd September 2026 by the Recommended Bidder, being an interested party entitled to attend and to be heard (regulations 89(1) and 276(e) and (h) of the PPR); and those submissions, which are summarised in each Part below, are weighed on their own merits. The Recommended Bidder produced no evidence.

The admissibility and scope of the Supplementary Notes

- A.11 The Board has considered whether the Supplementary Notes remain within the liberty granted by paragraph (9) of the Interim Decree of the 10th June 2026 and whether, if admitted, they would allow the Objector to enlarge its objection after the expiry of the time-limit of regulation 271. It finds that they do not.

Regulation 90(1) of the PPR empowers the Board “to order or permit amendments of written pleadings”; the Board exercised that power by paragraph (9) of the Interim Decree and by paragraph (6) of the Further Interim Decree, granting leave to file notes “strictly confined to the matters thereby disclosed”, within periods which the Objector observed (the Supplementary Note was filed on the 22nd June 2026, within the three working days prescribed; the Second Supplementary Note on the 6th August 2026, within the five working days prescribed from the circulation of the 30th July 2026), reserving the right of reply to the other parties, who have been heard.

The discipline of the time-limit of regulation 271 is thereby respected, for the Board has not allowed the introduction of any ground of objection which was not already within the six grievances pleaded; it has allowed the particularisation of those grievances in the light of information which the Objector could not have had when it filed and which it received only because the Board ordered its disclosure. Nor is there any inconsistency with the strict enforcement of the time-limit of regulation 276(c): the latter is a statutory time-limit which the Board has no power to enlarge, whereas the leave to amend rests upon a statutory power which the Board has exercised on stated conditions.

- A.12 The Board accordingly admits the Supplementary Note and the Second Supplementary Note to the extent that they particularise the grievances already pleaded and comment upon the matters disclosed; it disregards, in each, any assertion or request which would introduce a distinct ground of objection not comprised in the six grievances, and any request for the Board to conduct a general investigation of the tender file.

Where, in Part E below, the Board treats the Objector's particulars on the computer and monitor requirement as falling within the Fourth Grievance, it does so for the reasons there given.

The conduct of the hearing and the objections to the evidence

- A.13 Two objections to the line of questioning were raised at the hearing. The first, by the Contracting Authority and supported by the Recommended Bidder, was that the Objector ought not to examine the members of the Evaluation Committee on bids of the Recommended Bidder which were not the subject of the appeal. The Chairman overruled it, observing that the first demand of the Objection itself sought disclosure of the Article 3.1 analysis concerning all the submissions of the Recommended Bidder.

The Board confirms that ruling: whether the recommended bid was one which Article 3.1 of the GRGT allowed to be considered cannot be determined without ascertaining how the Evaluation Committee proceeded from five bids to three, and in what respects those three differed. The Recommended Bidder's submission that no evidence could be brought on matters not covered by the grievances is answered by the same consideration, the First Grievance being, by its very title and by paragraphs 2.3 and 2.8 of the Objection, a grievance about the application of Article 3.1 to all the submissions of the Recommended Bidder.

- A.14 The second objection, that the question whether the monitor model was the same in the three bids called for commercially sensitive information, was resolved by the Chairman's direction that the witness answer whether the model was the same without naming it, which is the manner in which the Board has throughout reconciled the entitlement of an objector to test the evaluation with the protection of regulation 40(1) of the PPR. The request of the Recommended Bidder for the confrontation of Mr Vijeesh Thavakkara Kooloth with Mr Franco Costa was reserved by counsel until after the testimony of the latter and was not thereafter pursued.

The composition of the Board and the order of treatment

- A.15 The minutes record that, during the final submissions of the Contracting Authority, Mr Keith Victor Grech had to withdraw from the sitting after feeling unwell, and that the parties agreed that the hearing continue with the members present.

- A.16 The Board treats the grievances in the order in which they were pleaded. It observes that the question whether the Objector, whose own offer was set aside at the stage of selection, retains a juridical interest in challenging the compliance of the offer of the Recommended Bidder is a question which logically follows the Second Grievance.

The Board does not find it necessary to determine that question. Every grievance was fully pleaded, supported by evidence and argued, the Objector's interest under regulation 270 being in any case that of a tenderer who "has been harmed or risks being harmed" by the decision taken; and, a decision of the Board being subject to review, the Board considers it proper that each grievance be determined upon its merits.

B. First Grievance – Multiple Bids: the Recommended Bid Should Not Have Been Recommended and Should Be Discarded

The grievance of the Objector

- B.1 By its First Grievance (paragraphs 1.8.1, 1.8.2 and 2.1 to 2.9 of the Objection, as supplemented by paragraph 3 of the Supplementary Note and paragraph 8 of the Second Supplementary Note) the Objector contends that the Recommended Bidder submitted five bids, so that Article 3.1 of the GRGT was engaged; that the rule is "not a decorative rule" but "a competition rule" which protects the price ranking in a tender whose sole award criterion is price; that the Evaluation Committee was bound to verify and to record whether the five submissions were true multiple bids and not mere upload fragments, whether each was non-identical technically and financially, which were the three cheapest, which were automatically disqualified, whether TID 236560 had its own complete and independently compliant technical offer, and whether the same technical offer, literature, certificates, product data, subcontractors or Key Experts were recycled across the bids; that TID 236560 was not the lowest of the Recommended Bidder's bids, so that it must be asked why the lower bids were not recommended; and that, the Contracting Authority having itself stated in its disclosure that "the EC could not determine whether the bids were identical", the condition of non-identity was not shown to have been satisfied.
- B.2 The Objector relies upon the decision of this Board in *JGS Contractors Limited v Housing Authority et* (Case No. 2176, Tender TWO 3/2025), in which Article 3.1 is said to have been described as operating "both as a permissive clause (authorising up to three non-identical submissions) and as a restrictive safeguard (prohibiting the submission of more than three non-distinct offers)", and upon the principle of self-limitation. It asks that TID 236560 be discarded unless the Contracting Authority shows that it is one of the bids lawfully capable of consideration and that it is genuinely non-identical technically

and financially or, alternatively, that the procurement be remitted to a newly constituted Evaluation Committee with directions to apply Article 3.1 *ad unguem* (demands (iii) and (iv)).

- B.3 At the hearing the Appellant submitted, in its final submissions, that from the testimony of Mr Costa and Ing. Zarb it emerged that the bids were not only not different but that their shortcomings were practically the same; that the Key Experts were the same in all the bids, with a single substitution; that the differences consisted merely of documents missing from the offers; that the Recommended Bidder, “given the choice through the rectification process”, ignored the requests made in respect of the two cheapest bids and replied only in respect of the more expensive; that the explanation given at the hearing reflected “a certain rethinking” of the statement in the Contracting Authority’s disclosure that it could not determine whether the bids were identical; and that the rules did not allow a bidder to submit the same tender, with the same persons, and then to choose which bid to pursue at rectification stage. He invited the Board to examine the three offers and to cause the documentation of all the bids of the Recommended Bidder, including those discarded, to form part of the acts.

The reply of the Contracting Authority

- B.4 In Reply No. 1 (paragraphs 1.1 to 1.4) the Contracting Authority states that the Recommended Bidder submitted multiple bids; that the Evaluation Committee, “[i]n full adherence with the GRGT”, considered the three cheapest (TID 236558 at €2,793,980.72, TID 236568 at €3,005,864.39 and TID 236560 at €3,147,032.13) and disqualified the remaining bids; that the recommended bid is the third cheapest of the Recommended Bidder’s offers, “thereby respecting the permutations introduced by article 3.1”; and that the claim of the Objector is factually incorrect and unsustainable.

By its disclosure under limb (5)(e) of the Interim Decree it added that TID 236573 and TID 236557, the two dearest, were automatically disqualified; that TID 236558 and TID 236568 were administratively compliant but, the Recommended Bidder having been requested to provide missing and incorrect literature (Note 2) and not having replied, were disqualified; that TID 236560 was compliant after rectification; and that “[f]ollowing the above reasons the EC could not determine whether the bids were identical”. In its table of the 23rd June 2026 it recorded, as to limb (5)(e), that no complaint of non-compliance had been submitted.

- B.5 At the hearing the Contracting Authority submitted that Article 3.1 requires the bids to be identical both financially and technically, cumulatively, for the consequence of exclusion to arise; that there was no debate that the financial offers differed; that the Chairperson of the Evaluation Committee had testified under oath that the technical offers also differed, on six points, so much so that the rectification requests themselves differed; that the Evaluation Committee followed the rule to the letter, discarding the two most expensive offers without opening them, evaluating the remaining three and

establishing that they were not identical; and that, had it excluded them, the Recommended Bidder would have had a legitimate complaint.

The oral submissions of the Recommended Bidder

- B.6 The Recommended Bidder associated itself with the submissions of the Contracting Authority. It submitted that the procedure cited by the Objector did not reflect what actually resulted, the Evaluation Committee having handled the bids appropriately as appeared chronologically from the Contracting Authority's own reply; that the GRGT use the term "non-identical" and not "substantially different", thereby setting the minimum threshold, two persons being capable of sharing many characteristics without being identical; that the Chairperson of the Evaluation Committee had testified that, as soon as the bids were opened, it was evident that they were not identical; and that, as the grievance was titled and as concluded at paragraph 2.9 of the Objection, it concerned whether the recommended bid should be discarded.

The evidence

- B.7 Mr Franco Costa, Chairperson of the Evaluation Committee, testified that the Recommended Bidder submitted five offers; that, in line with Article 3 of the GRGT, the Committee disqualified the two highest-priced (TID 236573 at about €3.39 million and TID 236557 at about €3.691 million) and retained the three cheapest (TID 236558, TID 236568 and TID 236560); and that the two excluded bids were not opened or passed on to the technical members.

The evaluation proceeded in three phases, eligibility, technical and financial, the three retained bids being considered individually and the findings then being discussed by the Committee as a whole. At the technical stage the Committee had to ascertain that the three offers were technically different, since the GRGT required the Committee to evaluate three bids which were technically and financially non-identical; that verification was carried out; and the offers were found to be technically different.

The Literature List comprises some twenty items, and between one offer and another six items differed, the others being the same: computers and monitors; landscaping; stage curtains; the Green Public Procurement ("GPP") document on building design, construction and management for major renovation works; the installation and commissioning of building energy systems; and the demolition waste management plan.

In the cheapest offer the Recommended Bidder submitted, for those six items, documents unrelated to what was requested; in the second, documents related to the subject-matter and completely different from those of the first; in the third, further documents, again different from both. This was evident upon opening the technical packages. The rectification letters themselves differed, since the

shortcomings differed from one bid to another, and the Recommended Bidder replied only in respect of the third offer.

B.8 Asked when the decision that the retained bids were non-identical was taken, Mr Costa stated that it was taken immediately at the start of the technical phase. He explained that the Committee does not keep minutes in that manner but uses a large Excel schedule in which the points are recorded, and that after each meeting the Secretary circulates an email summarising the main decisions; he later stated that the Committee had prepared a schedule of the three bids evaluated. The Appellant put to him that there was nothing in the file showing that the bids were found not to be identical and that the matter may have been discussed only after the appeal was filed; Mr Costa replied that the matter had been discussed during the meeting.

B.9 Ing. Melchisedech Zarb, an evaluator, testified that the three Elzan bids were evaluated together with the other bids; that the two highest were not even examined; that for TID 236558 the Committee requested, by a single rectification letter, rectifications concerning the Key Experts, the literature and the GPP criteria (the computer, the landscaping and the stage curtains); that for TID 236568 the same questions were put in respect of the same Key Experts but, as regards GPP, only on the landscaping, “since the other information was already found in the literature”; that for TID 236560 the Key Experts were the same three and the same persons; that the Recommended Bidder did not reply in respect of TID 236558 and TID 236568, which fell automatically, and replied fully in respect of TID 236560; and that, as to what differed between the bids, he recalled the documents on GPP, including the computers (missing in one of them), the landscaping (information given in one bid and not in another), the stage curtains, the document on building design, construction and management and the installation and commissioning of building energy systems, where the documentation was “somewhat different”, although he could not state from memory in what the difference consisted.

Explaining the Committee’s inability to know the position as regards the other two bids, he said that “the Committee had received a reply only in respect of the third bid and therefore could not know the position in respect of the other two”.

B.10 The documents disclosed by the Contracting Authority record that the three requests of the Evaluation Committee for the rectification of the technical offers of TID 236558, TID 236568 and TID 236560 (items 04, 05 and 06 of the schedule of requests) were issued on the 16th March 2026 at 14:12:37, 14:13:30 and 14:14:46 respectively; that the prices of the three bids at opening were those stated above; and that, by the correction of arithmetical errors in Bills 4, 6, 7, 9, 10, 12 and 15, the price of TID 236560 rose by a net €878.70, from €3,147,032.13 to €3,147,910.83, the bills affected being identified one by one.

Legal considerations of the Board

(i) The text and structure of Article 3.1 of the GRGT

B.11 Article 3.1 of the GRGT, in the version applicable to the Tender, provides:

“Bidders may submit up to three (3) multiple bids which should all be non-identical (technically and financially) for a tender. In cases where bidders submit more than three (3) non-identical bids, the evaluation board will only consider the first three (3) cheapest offers submitted - irrespective of their administrative, technical and financial compliance. All other bids submitted by the tenderer will be automatically disqualified.”

B.12 The same Article continues that “‘multiple bids’ here does not refer to instances where a single bid is divided into multiple submissions”, and reserves the right of the Contracting Authority to disqualify any submission which leads to “any form of conflict of interest, collusion, or improper practice”. Article 3.4 closes with the sanction: “Non-abidance to Articles 3.1, 3.2, 3.3 and 3.4 by Economic Operators in their composition and submissions shall lead to the outright disqualification of all of the bids in question.”

The Board notes that the formulation of Article 3.1 reproduced at paragraph 1.1 of the Reply of the Contracting Authority (“multiple and non-identical (technically and financially) bids”) differs in its wording from the text of the GRGT, v4.10, upon which all the parties and the Board’s own decrees have proceeded (Section 4.5 of the Tender incorporating the General Rules Governing Tendering); the Board applies the latter, the difference being without consequence for the outcome.

B.13 The provision thus performs two distinct functions, which the passage of Case No. 2176 cited by the Objector correctly describes as the permissive and the restrictive. By the first it admits a tenderer to submit up to three multiple bids on the condition that they are non-identical, technically and financially. By the second it caps the number of bids of one tenderer which may be considered at three, selected by price, and provides that all others fall automatically, “irrespective of their administrative, technical and financial compliance”. The purpose of the rule, as the Objector rightly observes, is to prevent a single economic operator from multiplying its chances in a manner which would prejudice the other tenderers or distort the price ranking; the Board adds that a rule which restricts the right of a tenderer to participate is to be applied according to its terms, neither extended beyond them nor attenuated.

(ii) The application of the restrictive limb

B.14 The restrictive limb was applied correctly, and the Objector no longer contends otherwise: it acknowledges, at paragraph 3.2 of its Supplementary Note, that the disclosure confirms that TID 236560 “was one of the three cheapest Elzan submissions and was therefore not amongst the two bids

automatically discarded solely by reason of their ranking”. The five bids, in ascending order of the prices at opening, were TID 236558 (€2,793,980.72), TID 236568 (€3,005,864.39), TID 236560 (€3,147,032.13), TID 236573 (€3,390,133.63) and TID 236557 (€3,691,108.33). The three cheapest were TID 236558, TID 236568 and TID 236560; TID 236573 and TID 236557 fell automatically.

Article 3.1 does not require, as to the bids which fall by operation of its second sentence, any examination of their compliance, which it expressly renders irrelevant; the Board therefore finds nothing irregular in the evidence of Mr Costa and Ing. Zarb that those two bids were neither opened nor passed to the technical members, and the request that their documentation form part of the acts is not necessary to the determination of the grievance and is not acceded to.

The arithmetical correction of TID 236560 (Part G below) does not alter the ranking, the corrected price of €3,147,910.83 remaining below that of TID 236573.

- B.15 The question which the Objector poses at paragraphs 2.4 and 2.5 of the Objection, namely why the two lower-priced bids were not recommended, has also been answered. Clause 6.1 of the Instructions to Tenderers provides that “[t]he contract will be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria”. TID 236558 and TID 236568 were the cheaper of the Recommended Bidder’s bids but did not satisfy the technical criteria, because the requests for the rectification of missing and incorrect literature (Note 2) were not answered within the five working days, whereupon, as Clause 16.1 of the GRGT provides, “failure to comply shall result in the tender offer not being considered any further”.

They were not disqualified under Article 3.1 but by the operation of the rectification regime of the Tender and of the GRGT. The explanation sought by the Objector at paragraph 2.5 of the Objection is accordingly the first of the three alternatives which it itself formulated, namely that the lower bids were technically non-compliant.

“6.1 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.” (Clause 6.1 of the Instructions to Tenderers)

(iii) The qualitative limb: the nature of the condition and the standard applied by the Board

- B.16 The first sentence of Article 3.1 states a condition of the lawful submission of multiple bids. Whether that condition is satisfied is an objective question of fact, which does not depend upon the appreciation of the Evaluation Committee nor upon the form in which the Committee records its conclusion.

The Evaluation Committee is, of course, bound to verify, in accordance with regulation 61(2)(a) of the PPR, that “the tender complies with the requirements, conditions and criteria set out in the

procurement documents”, and Article 3.1 is one such condition. But the Board, which has before it the entire documentation of the call and the sworn evidence of the members of the Committee, is not confined to reviewing the record which the Committee made: it is in a position to verify for itself whether the condition was in fact met, and this is the manner in which the Board approaches the question.

- B.17 The parties are divided on the construction of the expression “non-identical (technically and financially)”. The Contracting Authority submits that identity in both respects, cumulatively, is required for exclusion to follow, so that, on that reading, bids differing financially but not technically would not attract exclusion. The Objector, for its part, submits that a difference in price may establish a financial difference but does not establish technical non-identity (paragraph 3.6 of its Supplementary Note), and relies on the observation, in Case No. 2176, that the Article reflects the intention to prevent “strategic bid variation”.

The Board need not resolve that divergence in the abstract, for it is satisfied that the three bids considered were non-identical in both respects, and therefore satisfied the more demanding of the two constructions.

It records, however, three points of construction on which it has formed a view and which guide its assessment. First, the threshold fixed by the text is non-identity, and not substantial difference: the Board cannot add to the rule words which it does not contain, and in this respect it agrees with the submission of the Recommended Bidder. Secondly, non-identity is assessed upon the content of the bids and not upon their form: bids which differ only in their file names, in their ordering or in the labels attached to them are, in substance, identical. Thirdly, the technical non-identity which the rule demands is a difference in the content of the technical submission which is capable of bearing on the evaluation of its compliance.

- B.18 The Board is further satisfied that the Literature List forms part of the technical submission for those purposes. The Tender requires the Literature to be “submitted with the Technical Offer at tendering stage”, its scope being “to corroborate a fully compliant technical offer” (Clause 5(C), Note 2), and Clause 16.3 of the GRGT provides that literature may be requested with the technical offer “so that the Evaluation Committee will corroborate the technical compliance of the offers”.

That the Literature falls under Note 2, and is therefore rectifiable, whereas the Technical Offer Form falls under Note 3, does not remove it from the technical content of the bid, to which Article 3.1 refers when it speaks of bids which are non-identical “technically”. The Board accordingly does not accept the implication in the Objector’s submission that differences confined to the documents of the Literature List are, for that reason alone, immaterial.

(iv) Assessment of the evidence on the non-identity of the three bids

- B.19 Upon the evidence the Board makes the following findings. The three retained bids were financially non-identical: their prices differed, between successive bids, by €211,883.67 and €141,167.74. They were also, upon the evidence, technically non-identical in the sense stated. Mr Costa testified, specifically and consistently, that six items of the Literature List differed from bid to bid, that the documents submitted for those items in the cheapest bid were unrelated to what was requested, that those in the second were related to the subject-matter and different from the first, and that those in the third were different again.

That testimony is corroborated, in part, by the documents. The Evaluation Committee's requests for rectification of the 16th and 17th March 2026 to TID 236558, TID 236568 and TID 236560 are not identical. The request to TID 236568 raises, under GPP verification, only the drip irrigation system (Specification 160.15/3.2), and adds that the Statement of Availability of the Health and Safety Practitioner was not provided; the requests to TID 236558 and TID 236560 raise, under GPP verification, computers and monitors, landscaping, stage curtains, paint and the building design, construction and management items. Ing. Zarb confirmed the same difference in the same areas, although he could not recall in what the difference consisted.

The Board records, equally, that the requests to TID 236558 and TID 236560 are in substance the same, so that the documents establish that the packages of TID 236568 differed from those of the other two, but do not by themselves establish a difference between TID 236558 and TID 236560. As to those two, the Board relies upon the specific and consistent testimony of Mr Costa and Ing. Zarb that the documents submitted in six items of the Literature List differed, and upon the Evaluation Report, which records the Committee's own characterisation of the Recommended Bidder's bids as non-identical (page 3 and 4 of the Report).

- B.20 The burden of establishing identity, which is the premise of the sanction of Article 3.4, rests upon the Objector, and the evidence that it has been able to bring is that the shortcomings recorded in the requests to TID 236558 and TID 236560 were practically the same. That circumstance is consistent with identity but does not establish it, since two packages may share the same deficiencies and yet differ in the documents submitted for the same items, as the witnesses testified.
- B.21 The Objector also contended that the key persons were the same in all the bids and that the Recommended Bidder's two cheaper bids were left to lapse by the Recommended Bidder's own election.

Neither circumstance alters the above finding. As to the former, the sharing of Key Experts across bids is considered in Part F below, where the Board finds that the GRGT contemplate and permit it;

it is therefore not, in itself, a fact which defeats technical non-identity, which is established by other content. As to the latter, there is no provision of the Tender, of the GREGT or of the PPR which prohibits a tenderer who has submitted up to three multiple bids from answering a request for rectification in respect of one only, and the consequence of its silence as to the others, namely that they are no longer considered, is prescribed by Clause 16.1 of the GREGT and was applied.

It is a consequence which fell upon the Recommended Bidder alone, which thereby forfeited the two lower prices, and the Objector, whose own price was higher than all three, has not demonstrated any prejudice to itself arising from it. The Board draws no inference as to the motive of the Recommended Bidder, none being necessary to the determination of the grievance and none being open upon the record.

- B.22 The Objector's further suggestion (paragraph 2.3.1 of the Objection) that the five submissions may have been mere "ePPS upload fragments" of a single bid is excluded by the evidence: each of the five bore its own TID and its own price, and the three retained bids were each evaluated and each the subject of a separate rectification request. They were separate bids within the meaning of Article 3.1 and not parts of a divided single bid.

(v) The statement that the Evaluation Committee "could not determine whether the bids were identical"

- B.23 The Objector places considerable weight upon the sentence, appended by the Contracting Authority to its disclosure under limb (5)(e), that "[f]ollowing the above reasons the EC could not determine whether the bids were identical", and submits that an inability to determine identity cannot be equated with a positive finding of non-identity.

The Board agrees with that proposition of principle. It does not accept the attempt, made through the evidence of Ing. Zarb, to reconcile that sentence with the testimony of Mr Costa that the decision that the retained bids were non-identical was taken "immediately at the start of the technical phase". A reply to a rectification request, received after the closing date, cannot bear upon whether bids were identical as submitted, which is the only question that Article 3.1 poses.

Either the Committee had determined the question upon the packages as submitted, as Mr Costa swore, or it had not been in a position to determine it, as its own disclosure states. The two statements are, on their terms, irreconcilable, and the Board does not strain to reconcile them. The Evaluation Report does not resolve the matter: it describes the two dearest bids as "more than three (3) non-identical bids", but records no comparison of the three retained bids, and no contemporaneous record of the date or the content of the Committee's determination has been produced.

The Board therefore does not rest its finding upon the evidence of Mr Costa as to when the decision was taken, and the inconsistency is one of the matters which it weighs in assessing the reliability of the Contracting Authority's evidence generally.

- B.24 The Board is not persuaded by the Objector's characterisation of the evidence given at the hearing as a "rethinking". The testimony of Mr Costa that the matter was discussed in the Committee at the start of the technical phase is not contradicted by any contemporaneous document; it is merely not corroborated by one.

The Board notes in this respect that the Committee's determination that the bids were non-identical was a decision at a stage of the procedure, and that regulation 241(5) of the PPR imposes upon the Contracting Authority the duty to keep "sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on communications with economic operators and internal deliberations".

The absence, in the record disclosed to the Objector, of a written note of the determination under Article 3.1 is a shortcoming of documentation which the Board records, and which the Contracting Authority would be well advised to avoid in the future. It does not, of itself, vitiate the recommendation: the remedy for a failure of documentation which has not prejudiced the review is that the review proceeds upon the evidence available, as has been done here.

(vi) The consequence provisions and the remaining submissions

- B.25 The sanction of Article 3.4, the outright disqualification of all the bids in question, would have followed had the three bids been found identical. Since identity has not been established, the sanction is not engaged, and no ground has been shown, under Article 3.1 or Article 3.4, upon which TID 236560 falls to be discarded. The Objector's submission that the recommended bid was nevertheless required to be "complete, and compliant in its own right" is, as a proposition, not in dispute: it is the requirement of regulation 61(2)(a) of the PPR and of Clause 6.1 of the Instructions to Tenderers that the recommended bid satisfy the administrative and technical criteria. Whether TID 236560 did so is the subject of the Fourth, Fifth and Sixth Grievances, which the Board considers below; it is not a matter which Article 3.1 adds to.
- B.26 Finally, the Board observes that the Objector's principal reliance upon the self-limitation of the Contracting Authority (paragraph 2.7 of the Objection) is, as a matter of principle, well founded, but that the Contracting Authority, in applying the cap of Article 3.1 and the rectification regime exactly as published, did precisely what that principle requires of it. The evaluation of the First Grievance discloses no departure from the conditions of the call.

Finding of the Board on the First Grievance

- B.27 For the foregoing reasons the Board finds that the Evaluation Committee applied Article 3.1 of the GRGT to the five bids of the Recommended Bidder correctly, in that it considered the three cheapest and automatically disqualified the two dearest; that the three bids considered were financially non-identical and that, upon the evidence of the Committee's members and the documents, the Objector has not established that they were technically identical; that the lower-priced bids were not recommended because they fell, for failure to reply to the requests for rectification, under Clause 16.1 of the GRGT, and not under Article 3.1; that the absence of a contemporaneous written record of the Committee's determination, and the contradiction between its disclosure and the testimony of its Chairperson, are shortcomings which do not of themselves affect the lawfulness of the recommendation; and that no ground has been shown for discarding TID 236560 under Article 3.1 or Article 3.4. The First Grievance is accordingly rejected, without prejudice to the findings in Parts E and F, which are independent of it.

C. Second Grievance – The Objector's List of Projects: Cityways was Excluded on an Unduly Narrow, Subjective and Unexplained Interpretation

The grievance of the Objector

- C.1 By its Second Grievance (paragraphs 1.8.3 and 3.1 to 3.13 of the Objection, as supplemented by paragraph 4 of the Supplementary Note and paragraph 7.3 of the Second Supplementary Note) the Objector contests the decision declaring it administratively non-compliant because the "Cityway Project" submitted in its List of Projects, which "includes infrastructure construction, finishing, and drainage works for a residential building block", was considered not to satisfy the requirement for "large-scale commercial or public projects". It submits that the Tender did not state "non-residential projects only", nor define "commercial" by reference to planning use class, end-use or title of development; that its three projects, namely Mercury Tower (€5,661,864.31), Cityways (€546,868.53) and *C'est Lavie Boutique* (€177,100.02), amounted cumulatively to €6,385,832.86 including VAT, equivalent to €5,411,722.76 excluding VAT, so that the issue raised by the Evaluation Committee was neither the total value threshold nor the threshold of €2,000,000 for one project; that a project may be residential in its end-use and yet be a commercial construction project in its procurement, execution, scale, client, market and contractor context, a multi-unit building block undertaken for a corporate developer not being equivalent to minor domestic works for a homeowner; that, the project list falling under Note 2 and the Evaluation Committee having already issued a rectification request on that list, the Committee ought to have sought a clarification on the nature, scope and context of the already-

submitted project before resorting to exclusion, as Procurement Policy Note No. 40 requires where information “is, or appears to be ambiguous, contrasting or not sufficiently explicit and clear”; and that, in the light of the pronouncement of the Court of Appeal in *South Lease*, it should not be penalised on the strength of a clause which is not clear in meaning.

It asks that the exclusion be revoked or, alternatively, that its bid be re-instated and the matter remitted to a newly constituted Evaluation Committee.

- C.2 In its Supplementary Note and Second Supplementary Note the Objector adds that the Contracting Authority, in compliance with limb (5)(a) of the Interim Decree, merely repeated the reason already communicated, without explaining how “commercial” was construed, whether the scale, value and nature of the works were weighed, whether every project containing residential units was treated as ineligible, or why a clarification was not sought; and that the redacted List of Projects of the Recommended Bidder does not show which three of its five projects were relied upon, so that consistency and equal treatment cannot be verified, although it does not assert that any such project was non-compliant.

At the hearing the Appellant submitted that Cityways was residential “in the sense that people would live there” but was not merely a few flats with a staircase, involving common parts, infrastructure, a substation and drainage; that the Tender required not school experience but projects of a similar nature; that the Mercury Tower project alone satisfied the threshold of €2,000,000; that the Board had in its decrees remarked strongly that the Contracting Authority had not explained the exclusion; and that there had been some five pages of rectification requests on the Recommended Bidder’s bids, yet these were not described as “mistake after mistake”.

The reply of the Contracting Authority

- C.3 By Reply No. 2 (paragraphs 2.1 to 2.8) the Contracting Authority maintains that the requirement was clear and unambiguous; that the Objector failed to submit the List of Projects with its tender and was invited, under Note 2, to rectify within five working days, an opportunity which it failed fully to utilise, since the project it proposed was not in accordance with the tender requirements, being a residential and not a commercial project; that the Objector’s expectation is to widen the scope of the requirement *ex post*, in breach of the principle of self-limitation, of transparency and of regulation 39 of the PPR; and it relies on *Vassallo Builders Ltd v. Wasteserv Malta Ltd et* and on *NQUAYMT Konsorzju kompost minn Bonnici Bros. Services Limited u Korfeżdeniż Ins Taab. San. Ve Tic. Ltd. Sti v. Aġenzija għall-Infrastruttura Malta*, in which the Court of Appeal held that “[l-]eċċess fil-manjanimità u fit-tfittix sabiex jiġu salvati offerti akkost ta’ kollox mhux espressjoni ta’ proporzjonalità imma huwa sproporzjon kontra min kien compliant mill-bidu nett”.

In its table of the 23rd June 2026 it adds that the Tender requested specifically “large scale commercial or public projects” involving M&Es or finishing works; that the project submitted was itself described by the Objector as “residential building blocks”, “residential property” and “owner-occupiers”; and that no further rectification could be requested, a previous rectification on the matter having been requested. It further states that, of the five projects listed by the Recommended Bidder, all were considered compliant with the exception of the “Leasing of Premises to house Gozo Regional Development Authority”.

- C.4 At the hearing the Contracting Authority submitted that it was not procuring a block of apartments or a tower but a school in Gozo as part of a government school programme; that the mandatory requirement referred to projects “of a similar nature” and that the Tender defined what that meant; that it was obliged to evaluate on the basis of what it had declared beforehand; that Mr Azzopardi had been unable to say what the Tender required; that the existence of common parts did not make a project commercial; that it was the Objector itself, and not the Contracting Authority, which described the project as residential, both in the List and in the portfolio; that, if the Objector had experience in schools, it should have declared it; that it had initially submitted nothing and, given the opportunity to rectify, did not remedy the shortcoming; that the Evaluation Committee had been fair in giving that opportunity; and that the exclusion respected the doctrine of self-limitation, referring also to the judgment of the Court of Appeal in *Legacy Ventures Limited v. Direttur Ġenerali tal-Kuntratti* of the 30th July 2024, in which the same Objector was told that it could not expect an evaluation committee to depart from the rules it had bound itself to.

The oral submissions of the Recommended Bidder

- C.5 The Recommended Bidder submitted that a residential project might have some commercial elements but that this did not make it a commercial project; that the letting out of a residential building involves a commercial element but does not make the building commercial; that, were the Objector unhappy with the way the requirement was described, it could have sought a clarification or a remedy before the closing date, which it did not do; that it was now admitted that Cityways was a block of flats and that the complications described by Mr Azzopardi did not change what was being built; that the Objector’s own engineer had been unable to defend the point; and that planning and construction law distinguish between commercial and residential development.

The evidence

- C.6 Mr Martin Azzopardi, owner of the Objector, described Cityways as one of the company’s first projects, of a value of some €500,000 to €700,000, comprising façade works and full electrical works

in a building of some 250 to 300 units, of which 70 were for the Housing Authority, the Objector having fully finished those 70 apartments; the common parts (three staircases, garages, stores and service shafts), the substation, culverts and planters; a project lasting two years and involving many subcontractors.

He stated that he had not himself prepared the tender submission, which was prepared by his staff, and he did not recall any request from the Contracting Authority. In cross-examination he did not know whether a List of Projects had been submitted with the original tender or which projects had eventually been listed, and he could not say which projects had been listed to satisfy the requirement relating to public or commercial projects.

C.7 Mr Vijeesh Thavakkara Kooloth, electrical engineer of the Objector and a member of its procurement team, confirmed that the Objector had not submitted a List of Projects with its offer and had submitted it later; that Cityways was a block of apartments; that it was one of three projects submitted; and that the Tender required three projects completed within a particular period.

C.8 Mr Costa testified, in answer to the Recommended Bidder and to the Chairman, that the Objector had not submitted a List of Projects at tendering stage and that, the value of the Tender exceeding half a million euro, the Contracting Authority was obliged to request such experience; that during the eligibility phase the Committee identified the shortcoming and, with the approval of the Department of Contracts, to which every rectification is subject, issued a rectification request; that the documents then submitted were not in line with the requirements; and that the Committee could not continue to ask questions in order to bring the bidder into line, the Tender requiring “large-scale commercial or public projects” and the Committee being unable to “move the goalposts”.

In answer to the Contracting Authority he confirmed that the List of Projects was submitted at rectification stage, the request having been issued, as the Contracting Authority suggested, on the 6th January 2026 and the reply received on the 13th January 2026, the List being undated; that the Objector submitted three projects, namely Mercury Tower (described as works involving internal finishing, construction of the façade infrastructure and other services, at St Julian’s, valued at €5.6 million), Cityways (described as “infrastructure construction, finishing and drainage works of a residential building block”, valued at €546,868.53) and C’est Lavie Boutique (works on a guest house including the construction of walls and plastering, valued at approximately €177,000), the descriptions having been written by the bidder itself; that the portfolio submitted for Cityways again described the project as residential, stating that Cityways Kappara was “a planned residential property development”; that the Committee excluded the project because there was no reference, in the description or in the documents submitted, to its being a public or commercial project; and that a further rectification was

not requested because one had already been requested and because the submission was clear, clarifications being requested where something is unclear.

- C.9 The documents disclosed by the Contracting Authority show that the requests for rectification of the administrative submissions of the Recommended Bidder (TID 236560, item 01), of Next Construction Ltd (TID 236565, item 02) and of the Objector (TID 236563, item 03) were issued on the 6th January 2026 at 08:33:10, 08:35:54 and 08:37:59 respectively.

Legal considerations of the Board

(i) The requirement as published and the framework within which it is to be read

- C.10 Clause 5(B)(c) of the Instructions to Tenderers, headed “Technical and Professional Ability (Note 2)”, required each tenderer to:

“State the number of successfully completed works projects of similar nature, being large-scale commercial or public projects involving Me&Es or Finishing works successfully completed during the last three (3) years, namely between 2022-2024 which satisfy the following criteria: i. the minimum number of projects must not be less than three (3) projects. Each Project listed must be accompanied by a brief portfolio which shall include photos of the different phases of the project up to commissioning. ii. the cumulative value of all the works projects listed in (a) above must not be less than €4,000,000 (excl. VAT); iii. One (1) of the projects listed in (a) above must not be less than €2,000,000 (excl. VAT)”.

- C.11 Selection criteria relating to technical and professional ability are authorised by regulations 217 and 222 of the PPR, regulation 222(2) permitting a contracting authority to require “a sufficient level of experience demonstrated by suitable references from contracts performed in the past”, regulation 224 requiring that “the required conditions of participation” be indicated, and regulation 232(a)(i) identifying, as a means of proof, “a list of the works carried out”.

The requirement must be “related and proportionate to the subject-matter of the contract” (regulation 217(2)). The proportionality and the relevance of the requirement were, however, matters which could be contested only within the first two thirds of the time allocated for the submission of offers, by means of the application provided for by regulation 262(1)(a), (c) and (d) of the PPR, or clarified through the request for additional information provided for by regulation 38(2) and by Clause 2 of the Instructions to Tenderers, the deadline for which was the 17th November 2025.

The Objector did neither, and the Board is not seised of the question whether the requirement was well-conceived. It is seised only of the question whether the Evaluation Committee construed and applied it as published.

(ii) The construction of “large-scale commercial or public projects”

- C.12 The Board finds that the requirement is neither unclear nor open to the construction which the Objector places upon it. In its ordinary meaning the adjective “commercial”, as applied to a construction project, qualifies the project by reference to the nature and use of the works, and is conventionally contrasted with “residential”.

In the clause under consideration it is placed alongside “public”, so that the two categories together describe projects which are either promoted for commercial use or for a public purpose, and it is linked, by the words “of similar nature”, to the works which are the subject-matter of the Tender. The Contracting Authority was entitled to require, as proof of the capacity to carry out the M&E and finishing works which are the subject of the Tender, experience in large-scale projects of those two categories.

- C.13 The reading proposed by the Objector, according to which a project is “commercial” if it is carried out for a corporate developer in a commercial context, would deprive the word of any limiting effect, for virtually every construction contract entered into by a contractor with a private client is a commercial transaction in that sense; the rule that every word of an instrument is to be given effect, and the structure of the clause itself, which distinguishes “commercial” from “public” and not from “domestic”, are inconsistent with it.

The submissions of the Contracting Authority and of the Recommended Bidder that a residential building does not become a commercial one because its construction, sale or letting involves commercial activity, are, in the Board’s view, well founded. The criterion refers to the nature of the project, not to the commercial motive of whoever promotes it. The Board adds that the Objector’s contention that the Tender did not state “non-residential projects only” inverts the test: the Tender stated what was required, namely “commercial or public”, and a tenderer is not entitled to assume that what was not stated as excluded is thereby included.

“Project Name: Cityways. Cityways-Kappara is a planned residential property development in the sought-after Kappara area of San Ġwann, Malta, designed to offer modern, well-finished living spaces ... catering to both owner-occupiers and investors ... Project Brief: We took care of Works involving Infrastructural construction, finishing, and drainage works of a residential building block. ... Project Value: 546,868.53 ... Client: PRA Construction Limited.” (List of Projects submitted by the Objector on the 13th January 2026, Project Reference-2)

- C.14 The Board has considered the pronouncement of the Court of Appeal in *South Lease Limited v. Central Procurement and Supplies Unit et*, quoted at paragraph 3.11 of the Objection, to the effect that, if the

intention of the contracting authority was not expressed in the tender document, a tenderer is not to be penalised on the strength of a clause which is not clear in its meaning. The principle is accepted.

It is, however, not engaged. The clause is clear; and the Objector itself, in the very documents which it submitted, described Cityways as “infrastructure construction, finishing and drainage works of a residential building block” and, in the portfolio, as “a planned residential property development”, and as “catering to both owner-occupiers and investors”.

A tenderer which characterises its own project in terms of the very category from which the clause distinguishes “commercial” was not in any genuine uncertainty as to the nature of what it was submitting. The dispute is not one of fact, which the Appellant conceded when it stated that Cityways “was residential in the sense that people would live there”, nor of the meaning of an obscure term, but of a legal classification, which the Board resolves against the Objector.

- C.15 The Objector asks whether every project containing residential units was treated as ineligible. The evidence shows that this was not the case. The Objector itself described Mercury Tower as a mixed-use development including residential apartments, a luxury hotel, retail and dining spaces, a public piazza and leisure amenities (paragraph 3.4 of the Objection); the reason communicated to it for its exclusion concerned the Cityways project alone, and the Objector acknowledges (paragraph 3.5 of the Objection) that the issue raised by the Evaluation Committee was neither the cumulative value nor the threshold for one project.

The Committee thus did not apply a rigid rule excluding every project with a residential element; it distinguished projects by their nature, and treated as non-compliant the one which the tenderer itself described as residential. The Board finds no subjectivity in that exercise: the Committee applied the words of the Tender to the description which the tenderer had supplied.

(iii) The matters not before the Evaluation Committee

- C.16 Mr Azzopardi gave evidence that 70 of the apartments in Cityways were finished for the Housing Authority and that the works included a substation, culverts and planters. The Board has attentively considered whether that evidence could alter the position, for a project for a public authority might, in principle, be a public project. It finds that it cannot.

First, none of those facts was stated in the Objector’s List of Projects, in its portfolio or in the Objection; the Objector discloses them for the first time at the hearing.

Secondly, and decisively, regulation 62(1) of the PPR and Clause 16.1 of the GRGT oblige the Evaluation Committee to assess a tenderer upon what it has submitted by the closing date, and the review of the Board is a review of the lawfulness of that assessment; the Board cannot find the

Committee at fault for not taking into account information which was not placed before it, nor can it permit a tenderer to supplement its offer at the hearing with matters which the Committee was never given. To do otherwise would breach the equal treatment of the tenderers who submitted all they were required to submit in time.

Thirdly, the evidence concerns a part of the project (70 of some 250 to 300 units), whereas the List described the project as a whole as a residential building block. The Board therefore does not determine whether the part for the Housing Authority could constitute a public project, the question not being one which was before the Evaluation Committee.

(iv) The failure to seek a further clarification

- C.17 The Objector's principal procedural contention is that the Evaluation Committee, having requested a rectification of the List of Projects, ought to have sought a further clarification of the Cityways project before excluding it. The Board does not agree, for five reasons.

First, the Tender itself, at the close of the Notes to Clause 5, provides that "[r]equests for Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained", and the shortcoming concerned, namely the failure to evidence the experience required by Clause 5(B)(c), was the very subject of the request of the 6th January 2026. The Committee was therefore bound, by the Tender it had published, not to issue a second request, and the Tender is a rule by which the Committee, as well as the tenderers, is bound.

Secondly, regulation 62(2) of the PPR confers a faculty ("may request"), exercisable "in terms of the procurement document" and "in full compliance with the principles of equal treatment and transparency", and does not impose a duty to continue to request until a tenderer is brought into compliance.

- C.18 Thirdly, a clarification presupposes something unclear. Procurement Policy Note No. 40, as the Objector itself cites it, calls for a request where the information "is, or appears to be ambiguous, contrasting or not sufficiently explicit and clear". The Board finds that the information submitted was perfectly explicit and clear: it stated, three times, that the project was residential. The Evaluation Committee's Chairperson testified, in terms which the Board finds reasonable, that clarifications are requested where something is unclear and that here it was not.

Fourthly, the clarification which the Objector says should have been sought, as to "the nature, scope, execution, client, common areas, infrastructural elements, finishing elements, drainage works, MEP interface, scale or commercial-development context" of the project, would not have clarified what had been submitted; it would have invited the Objector to supply, after the closing date, facts which it had

not stated and a characterisation which it had not made. That is not a clarification but a supplementation of the offer, which the limits of regulation 62 and of the rule of eligibility *ab initio* do not allow. The statement of the Objector that the clarification “would not have changed the Objector’s bid” is, with respect, not borne out by the very purpose for which it says that the clarification was necessary, which was to change the Committee’s classification of a project from residential to commercial.

- C.19 Fifthly, the Objector does not seek to substitute a fourth project; it expressly disclaims that (paragraph 3.8 of the Objection), and it would not in any event have been permissible. Without Cityways, the List contained two further projects, fewer than the minimum of three which Clause 5(B)(c)(i) prescribes; and the Tender did not authorise the Committee to count a project which did not satisfy the nature required in order to make up the number.

(v) Equal treatment, proportionality and the “mistake after mistake” remark

- C.20 The Objector pleads that the Recommended Bidder received some five pages of rectification requests and yet was not described as having committed “mistake after mistake”. The Board does not find in that comparison any breach of equal treatment. The schedule of requests shows that each of the three tenderers whose administrative submissions required rectification, namely the Recommended Bidder (TID 236560), Next Construction Ltd (TID 236565) and the Objector (TID 236563), received a request in the same phase of the evaluation, within minutes of each other, on the 6th January 2026, the request to the Recommended Bidder concerning only the percentage of works to be subcontracted, as recorded in the Evaluation Report; and the further requests made to the Recommended Bidder in the technical phase concerned different matters, namely the literature, the Key Experts and the GPP information, the Objector not having shown that any of them repeated a previous request on the same shortcoming.

Equality of treatment requires that persons in the same situation be treated alike, and the Objector has not shown that the Recommended Bidder was, in any comparable respect, allowed by the Committee a second opportunity to remedy the same shortcoming. As to the project experience of the Recommended Bidder, the Contracting Authority applied the criterion to it as well, for it treated as non-compliant its project entitled “Leasing of Premises to house Gozo Regional Development Authority”, which, by its description, was a leasing and not a works project; and the Objector, which acknowledges that it does not assert that any other of those projects was non-compliant (paragraph 4.7 of its Supplementary Note), has not discharged its burden of showing that the criterion was applied unequally.

C.21 The Board does not adopt the observation of Mr Costa that the Objector's situation was "the result of mistake after mistake", which is a characterisation and not a ground, and on which its decision does not rest. The decision rests upon the objective record: the Tender required three qualifying projects; the Objector listed three; and one of them, by the Objector's own description, did not satisfy the nature required.

The principle of proportionality, on which the Objector implicitly relies, does not authorise a contracting authority to re-write the conditions it has published in order to save a tender, and the Court of Appeal's observation in *NQUAYMT*, quoted by the Contracting Authority, that excessive generosity in saving offers at all costs is not an expression of proportionality but a disproportion to the detriment of the tenderer who was compliant from the outset, is, in this context, apposite.

The Board also notes that the Evaluation Committee was fair to the Objector in affording it, in the same phase as the others, an opportunity to supply the List which it had omitted altogether, an opportunity which, in terms of the Tender, could be afforded once.

(vi) The reasons given and the alleged failure to explain the exclusion

C.22 The Objector submits that the exclusion was "unexplained", and the Board itself, in its Further Interim Decree, found that the Contracting Authority had complied only partially with limb (5)(a) of the Interim Decree, having disclosed no evaluation reasoning beyond the conclusion already communicated. That finding stands. It does not, however, avail the Objector upon this grievance. The notification of the 22nd May 2026 communicated the operative reasons, in compliance with regulations 242(2)(b) and 272 of the PPR and Clause 19.2(iv) of the GRGT: the project was considered to include infrastructure construction, finishing and drainage works for a residential building block; the Tender requested large-scale commercial or public projects; the project was residential in nature; it was therefore excluded from the qualifying list.

Those reasons were intelligible, and the Objector understood and contested them with precision, as its Objection shows. The further reasoning which the Board ordered was then furnished by the testimony of the Chairperson of the Evaluation Committee, which was given on oath, tested in cross-examination and which the Board has set out above. An incompleteness in the reasons communicated before the hearing, which has been cured by the evidence heard, and which has not prevented the Objector from putting its case in full, does not render the decision unlawful, if the decision is, as the Board has found, correct in substance.

Finding of the Board on the Second Grievance

- C.23 The Board finds that Clause 5(B)(c) of the Instructions to Tenderers required three projects of the nature there described; that the Objector's own List and portfolio described Cityways as residential; that the Evaluation Committee was entitled to conclude that a residential building block is not a "large-scale commercial or public project"; that it was neither bound nor permitted by the Tender, by the GRGT or by regulation 62 of the PPR to seek a further rectification or clarification of the same shortcoming or to receive after the closing date the facts which the Objector now puts forward; that the criterion was applied equally; and that the reasons for the exclusion, communicated on the 22nd May 2026 and completed at the hearing, were adequate.

The exclusion of the Objector's offer was lawful. The Second Grievance and demands (ii)(a) and (iv) of the Objection, in so far as they depend upon it, are rejected.

D. Third Grievance – Failure to Provide Information and Reasons; the Request for a Preliminary and Interim Remedy

The grievance of the Objector

- D.1 By its Third Grievance (paragraphs 1.6, 1.7, 1.8.4 and 4.1 to 4.5 of the Objection, supplemented by paragraphs 2 and 5 to 7 of the Supplementary Note and paragraphs 2 and 7 of the Second Supplementary Note) the Objector contends that it urgently requested information and reasons, that none was forthcoming before the objection had to be filed, that it was thereby "forced to litigate in the dark", that the notification provides a single reason in relation to Cityways and states only that TID 236560 was the cheapest tender satisfying the administrative and technical criteria without explaining how, and it requested, as a preliminary and interim remedy, the disclosure of the non-confidential, redacted or confidentiality-protected evaluation record (demand (i)).

By its Supplementary Notes it submits that the disclosure ordered by the Board was effected only in part and that the Board should require the outstanding essential content or examine the unredacted documents itself and draw such inference as it considers appropriate from any failure to disclose or substantiate (demands (ii) and (iv) of the Supplementary Note, and (ii) of the Second Supplementary Note); and, independently of the merits, it requests the refund of the deposit.

The reply of the Contracting Authority

- D.2 By Reply No. 3 (paragraphs 3.1 to 3.5) the Contracting Authority maintains that the Objector expects information and documents to which it has no right; that the rejection was notified on the 22nd May 2026 whereas the request for information was submitted on the 28th May 2026, three days before the

objection deadline of the 1st June 2026, and consisted of nine pages, but was nonetheless answered on the 29th May 2026 (documents DOC 1 and DOC 2) in compliance with regulations 40, 242 and 272 of the PPR; that regulation 40 of the PPR indicates the information which may be disclosed, being the names of the bidders, the names of the sub-contractors, documentation attesting compliance with the selection criteria and technical information already public; and that the judgment of the Court of Justice in *Antea Polska* (Case C-54/21) obliges the Contracting Authority to safeguard the confidential information of economic operators.

D.3 In the course of the proceedings the Contracting Authority furnished the disclosures reproduced above; in its table of the 23rd June 2026 it maintained that it had fully complied with the Interim Decree and that the Objector was requesting what the Decree had not ordered; and, by its Additional Replies of the 30th June and the 7th July 2026, it contended that the Eurovent certification produced for the Tender is proprietary and prepared specifically for it, that no public registry entry corresponds to the EU Ecolabel certification referred to, that the documentation relating to CE marking is not contained in any public registry and, in the Tender, “operates as a contract performance criterion”, and it placed the documents before the Board, inviting it to determine in its absolute discretion whether and to what extent they should be released.

D.4 At the sitting the Contracting Authority objected to the manner in which the proceedings were being conducted, submitted that the appellant is entitled to test the evaluation through the witnesses and that it is then for the Board to decide whether the evaluation was correct; that the request for information was extensive and exaggerated and had no basis under regulations 40, 242 or 272; that when a bidder entrusts a contracting authority with confidential information, the authority has no right to divulge it and is obliged to safeguard it, the professional secrecy obligations, including those under Article 257 of the Criminal Code, being otherwise triggered, exposing the officials concerned personally; that the brand and model, the subcontractors, the value of the offers, the identity of the winning bidder and the reasons for exclusion are not commercially sensitive and had been given; that the widening of the requests stretched the ten-day period to the detriment of transparency and equal treatment; and it referred to the judgment of the Court of Appeal in *South Lease*, to *Antea Polska* and *Varec* and to a decree in which access to commercially sensitive information was granted to the lawyers only, in confidence.

In its final submissions it added that the Objector had submitted its request three days before the deadline and that, despite that, the Contracting Authority had replied immediately and given as much information as it could at law, and that the only grievance which could be discussed was based entirely on the information which the Contracting Authority itself had released.

The oral submissions of the Recommended Bidder

- D.5 The Recommended Bidder submitted at the outset that the grievances were crystal clear, that some concerned the Objector's own shortcomings, which could not be remedied through the Recommended Bidder's documents, and that the one grievance concerning an alleged shortcoming of the Recommended Bidder did not indicate the need for any particular document to substantiate it, so that no further document could be requested at that stage; that the information on the Eurovent certification could be obtained by scanning the QR code on the document itself; and that the grievance on technical compliance was of procedural interest only, since the Objector was not claiming that a wrong decision had been taken but that a meaningful explanation had not been provided, the Evaluation Committee's decision and its explanation to the parties having been crystal clear in the light of what the Board had on several occasions held as to how much information has to be given for a party to be able to appeal.

The procedural history and the evidence

- D.6 The Board has set out, in the Preliminary Incidents reproduced above, the decrees by which it determined the Objector's demand for disclosure. By the Interim Decree of the 10th June 2026 it held that the demand was within its competence (regulations 90(4), 90(6) and 92); that regulation 40(2) enumerates the information which "shall not be considered as confidential" and is a floor beneath which confidentiality may not be claimed and not a ceiling above which disclosure is precluded; that the blanket refusal in DOC 2 of any other request in relation to the selection or technical criteria was inconsistent with regulation 40(2)(c) and incompatible with the principle in *Antea Polska*, which requires the assessment of the genuinely confidential character of each item and the communication of the essential content of information lawfully withheld; and that the lateness of the request neither extinguished the Objector's entitlements nor curtailed the Board's powers; and it ordered the calibrated disclosure set out in its paragraph (5), subject to the exceptions of paragraphs (7) and (8).

By the Further Interim Decree it declared that the Contracting Authority had complied with limbs (b), (c), (e), (f) and (i), had complied partially with limbs (a), (g) and (h) and had not complied with limb (d), deplored that failure, and declared that the determination of confidentiality is the Contracting Authority's own non-delegable duty; and by the Decree of the 23rd July 2026 it declared that the deposit of the documents with the Board, accompanied by an invitation to determine in its absolute discretion which should be released, did not constitute compliance, directing the Contracting Authority to assess each item itself.

- D.7 At the hearing the Objector complained, as a preliminary matter, that of four documents which the Contracting Authority had declared in Annex A to its note that it was exhibiting (the Eurovent

certificate, the AUX model schedule, the public register material and the rated capacity schedule) it had received only one.

The Contracting Authority stated that, having verified with its client, the three documents being released were those which the Contracting Authority considered not to be commercially sensitive and that the others were considered commercially sensitive. Mr Costa, testifying on the point, stated that the Eurovent certification is not a document but a link to a public register, in which one enters the model submitted and the register shows whether or not that model is certified; that the register is accessible worldwide; that the certificate given to the Objector was a different, project-specific document, redacted as to the name of the project and other details of commercial value; and that the Committee had received only page 1 of 4 of the certificate, which in itself confirmed that the model was up to specification.

He exhibited product performance rating certificates, marked FC1, FC2 and FC3, relating respectively to models ARV-H250/SR1MVB, ARV-H280/SR1MVB and ARV-H500/SR1MVB, and stated that the same documents had been submitted for all five bids of the Recommended Bidder.

The Chairman observed that the three certificates appeared to be the same document with different serial numbers relating to different models. Mr Thavakkara Kooloth, the Objector's witness, himself explained that the Eurovent register publishes the approved models and that compliance can be checked by entering the model number.

Legal considerations of the Board

(i) The entitlement to information and reasons

- D.8 The Board has already held, and confirms, that the premise of Reply No. 3.1, that the Objector has “no right” to information, is unfounded. A tenderer whose offer is rejected is entitled to be informed, on request and within fifteen days, of “the reasons for the rejection of its tender” (regulation 242(2)(b) of the PPR); the communication of the proposed award is to be accompanied by “a summary of the relevant reasons relating to the rejection of the tender” (regulation 272); and Clause 19.2 of the GRGT provides that an unsuccessful bidder is to be told the criteria for award, the name of the successful tenderer, its recommended price, “the reasons why the tenderer did not meet the technical specifications/ notification that the offer was not the cheapest”, the deadline for filing an appeal and the deposit required. The Objector received those items. As to its own exclusion, the reasons were given in the notification of the 22nd May 2026, as the Board has found in Part C.

- D.9 The Objector's further entitlement, under regulation 242(2)(c), to be informed of "the characteristics and relative advantages of the tender selected" is conferred upon a "tenderer that has made an admissible tender", a matter which the Board reserved in its Interim Decree.

The Regulations do not define an "admissible tender"; but they define "unacceptable tenders" as including "tenders submitted by tenderers that do not have the required qualifications" (regulation 2). The Board has found that the Objector's offer was properly set aside for failure to satisfy a selection criterion. It follows that the Objector was not, under regulation 242(2)(c), entitled as of right to the characteristics and relative advantages of the selected tender. The Board nonetheless acceded to the Objector's demand for the disclosure of the information specified in its decrees, not by virtue of regulation 242(2)(c), but in the exercise of its powers under regulations 90(4), 90(6) and 92, as an incident of the effective review of the lawfulness of the recommendation, which the Objector, having a right of appeal under regulation 270, was entitled to pursue with the means necessary to do so.

(ii) Confidentiality and its limits

- D.10 Regulation 40(1) of the PPR precludes a contracting authority from disclosing "information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders", but expressly "[s]ubject to the obligations established under these regulations and, or any other law obliging ... the contracting authority ... to disclose information".

An order of the Board made under regulations 90 and 92 is such an obligation. Regulation 40(2) provides that, without prejudice to other provisions, four categories "shall not be considered as confidential", including "(c) documentation submitted by economic operators attesting that they comply with selection criteria" and "(d) technical information which is already made available in public". Regulation 242(3) permits the withholding of information where its release "would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or might prejudice fair competition between economic operators". Clause 14 of the GRGT preserves the secrecy of the evaluation, but "before the notification of award" and "unless otherwise permitted or required by law".

- D.11 The Board has applied the judgment of the Court of Justice in *Antea Polska* (Case C-54/21), upon which the Contracting Authority itself relied, in the sense in which it was invoked in the Interim Decree: the protection of genuinely confidential information and trade secrets is a legitimate objective, but a contracting authority may not treat as confidential, in a general manner, all or virtually all of the information submitted by a tenderer; it must assess whether the information genuinely has a confidential character; and, even where disclosure is lawfully refused, the essential content of the

information must be communicated to the unsuccessful tenderer so as not to deprive it of an effective remedy. The reference by the Contracting Authority to the obligations of professional secrecy is noted.

Those obligations protect confidential information; they do not require that a contracting authority treat all information as confidential, nor do they displace a disclosure ordered by a competent tribunal in accordance with law and limited by the calibrations which the Board itself imposed.

The Board, which possesses the powers of the Civil Court, First Hall (regulation 90(6)), has at its disposal such protective modalities as the circumstances may require, including disclosure in redacted, summary or anonymised form, disclosure limited to counsel, and the examination by the Board itself of the unredacted documents, on which it relies in this appeal.

- D.12 The Board confirms its finding that the assessment of the confidential character of an item of information is, in the first place, the duty of the contracting authority, which holds and mediates the information, and that the duty cannot be delegated to the economic operator whose interest it is to resist disclosure. The position adopted by the Contracting Authority in its disclosure of limb (d), under which the whole of the technical literature of both parties was treated as non-public and confidential upon the unilateral assertion of the recommended bidder, did not discharge it. The course taken in its reply of the 7th July 2026, depositing the documents with the Board and inviting it to determine in its absolute discretion what should be released, was an inversion of the allocation of functions. The Board repeats its disapproval of both.

(iii) The timing of the request

- D.13 The Board maintains its finding that the lateness of the request of the 28th May 2026 neither extinguishes the statutory entitlements of an unsuccessful tenderer nor curtails the powers of the Board. It does, however, take it into account in two respects. The Objector had at its disposal a notification dated the 22nd May 2026 and a ten-day period; having waited six days before addressing a request which, the Contracting Authority states, ran to nine pages, it cannot attribute to the Contracting Authority the whole of the consequent shortage of time. And the Board also takes into account that the Contracting Authority did reply on the day following the request, albeit in terms which were, in great part, blanket refusals.

The Board considers that, in view of these two circumstances, the timing of the request cannot found a complaint of lack of reasons which is wholly unqualified, but does not excuse the Contracting Authority's lack of an item-by-item assessment of confidentiality.

(iv) The compliance of the Contracting Authority with the orders of the Board

- D.14 The Board reiterates the findings of its Further Interim Decree and of the Decree of the 23rd July 2026. It must record that the position of the Contracting Authority, that it had “fully complied” with the Interim Decree, is not in accord with those findings, and that the observation, in its table of the 23rd June 2026, that the Interim Decree did not order the release of the manufacturer, the model, the certificate number or the qualification basis of the Key Experts, is not an answer to the Further Interim Decree, which did. The final position is as follows.

The Contracting Authority disclosed the names of the sub-contractors, the redacted List of Projects of the Recommended Bidder, the application of Article 3.1, the bill-by-bill arithmetical correction and the role-by-role matrix of the Key Experts, which the Board found to comply with the corresponding limbs. It did not, so far as the acts disclose, furnish the revised compliance matrix ordered by the Further Interim Decree, nor the express statement as to whether any Note 3 documentation was altered, completed or supplied after the closing date, nor the complete evaluation reasoning as to Cityways, nor the statement as to how compliance for toilets and sanitary ware, HPL toilet cubicles and roller blinds had been established or was not required to be established; and the documents which it said that it was exhibiting were not all circulated.

The Board has in Parts C and E considered each of those matters on the evidence, including the testimony of the members of the Evaluation Committee, and the Board has the tender file itself. It therefore does not make any further order for disclosure, but it declares that, to the extent stated, the Contracting Authority did not comply with its orders, and takes that circumstance into account on the question of the deposit.

(v) The consequence of the deficient disclosure for the lawfulness of the recommendation

- D.15 The Objector invites the Board to draw “such inference as it considers appropriate from any failure to disclose or substantiate the findings ordered”. The Board declines to do so, for four reasons.

First, the right to information and reasons is instrumental: it serves the effective exercise of the right of appeal, and the remedy for its infringement is the provision of what was withheld, or the substitution of the Board’s own examination, not, of itself, a ground for acceding to the appeal against an award the lawfulness of which can be verified.

Secondly, the Board has the entire file and has been able to verify the material matters directly.

Thirdly, the Objector, assisted by the disclosure that was made, by the testimony of the members of the Evaluation Committee and by its own technical witness, was able to put its case fully at the hearing.

Fourthly, to draw from the non-disclosure of an item of information, of which part is lawfully confidential, the inference that the item would have established non-compliance would be conjecture, and would convert a procedural default into a finding on the merits without proof, in disregard of the burden which the Objector bears. Where, however, the conduct of the Contracting Authority has bearing on the weight of its assertions, the Board has weighed them accordingly, as appears in the passages on the evidence in Parts B and E.

Finding of the Board on the Third Grievance

- D.16 The Board finds that the Contracting Authority was obliged to give, and gave, the reasons for the rejection of the Objector's tender, in the notification of the 22nd May 2026 and in the testimony at the hearing; that its refusal in DOC 2 of any further information on the selection and technical criteria, treating them in a blanket manner as confidential, was inconsistent with regulations 40(2) and 242 of the PPR and with the principle in *Antea Polska*; that its compliance with the Interim Decree and with the Further Interim Decree was, to the extent set out above, partial and in one respect nil, and has been deplored; that the determination of confidentiality is its own non-delegable duty; but that those failings, which the Board's decrees and the hearing have remedied sufficiently to allow the Objector to prosecute its appeal, do not affect the lawfulness of the recommendation to award.

The Third Grievance is upheld to the extent of the declarations above and is otherwise rejected. Demand (i) of the Objection, having been determined by the decrees, is spent; and the requests in demands (ii) and (iv) of the Supplementary Note and in demand (ii) of the Second Supplementary Note for further orders and for the drawing of inferences are, for the reasons given, not acceded to. The question of the deposit is addressed in Part H.

E. Fourth Grievance – Mandatory Technical Compliance of TID 236560, Including Eurovent, GPP/Ecolabel, Toilets, Curtains and Product Certification

The grievance of the Objector

- E.1 By its Fourth Grievance (paragraphs 1.8.5 and 5.1 to 5.6 of the Objection, as particularised by paragraph 5 of the Supplementary Note and by paragraphs 2 to 8 of the Second Supplementary Note) the Objector submits that the recommendation is “unsafe” because it has not been given any meaningful explanation of how TID 236560 satisfied the mandatory technical specifications; that the technical offer documents listed under Clause 5(C)(i) are mandatory Note 3 documents, that the Literature is intended to corroborate a fully compliant technical offer, and that post-award approvals cannot cure a non-compliant or unsupported tender-stage offer; and it lists the categories in respect of

which it has received no product-by-product compliance table, namely Eurovent certification for split and VRF systems, paints and EU Ecolabel/GPP compliance, toilets, sanitary ware and water-saving fittings, HPL toilet cubicles, curtains, stage drapery and fire curtains, roller and classroom blinds, and other environmentally friendly products and GPP items including photovoltaic, landscaping and ELV/CCTV systems.

The Objector states that it “is not asserting, without seeing the file or the documentation, that every one of the above items is necessarily non-compliant” (paragraph 5.5), and asks that the recommendation not stand unless the Contracting Authority demonstrates, through the evaluation record, that TID 236560 complied with all mandatory technical specifications at tender stage and that any clarification, rectification, sample request or post-submission document was handled strictly in accordance with the Tender and the General Rules (paragraph 5.6).

- E.2 Following the disclosure, the Objector particularised the grievance. By its Supplementary Note it contended that the matrix furnished by the Contracting Authority communicated only the letter “Y” and no essential content; that it was silent on toilets and sanitary ware, HPL cubicles and roller blinds; that the Note 2 rectification and the Note 3 sample and clarification requests were not explained; and that it remained impossible to determine whether the reply to the rectification request “merely confirmed compliance which existed at the tender closing date” or “completed or altered an incomplete technical offer after submission”.

By its Second Supplementary Note it submitted, on the basis of the eight documents circulated on the 30th July 2026, that the Eurovent documents described by the Contracting Authority had not been circulated; that the Eurovent requirement of Specifications 3.8 and 3.9 was model-specific and time-specific; that the document “Computer.pdf” is a 52-page assembly manual for a Mini-ITX computer chassis containing no Type I Ecolabel, no IEC 62623:2012 report, no ISO/IEC 17025 laboratory result and no evidence concerning the required monitor; that the paint documentation consisted of a technical data sheet of “KRAFT Master Eco” stating that it fulfils the EU Ecolabel criteria, without the certificate or registration reference; that it does not pursue any allegation of non-compliance on the basis of the WRAS or landscaping documents; and that the Note 3 statement and the findings on toilets, HPL cubicles and blinds remain outstanding. It asks the Board to determine from the complete file whether TID 236560 was compliant at the closing date.

- E.3 At the hearing Mr Vijeesh Thavakkara Kooloth, electrical engineer, testified on the basis of the documents received from the Contracting Authority that the GPP criteria required an energy-efficiency rating for monitors which he did not find; that the datasheet submitted for the computer did not reflect

the required standard, IEC 62623:2012; and that in his view the computer offered was not technically compliant.

In cross-examination he confirmed that his expertise was in electrical engineering and that no one with expertise in computing was present, and he maintained that the datasheet did not reflect the technical requirements of the GPP document. In its final submissions the Appellant submitted that the Tender required the certificate to be provided by the tenderer at tender stage; that the Objector had provided it; that interpreting “tenderer” as “contractor” amounted to two weights and two measures; that the argument that the computer represented about 0.04 per cent of the contract value should be discarded, a mandatory requirement having to be met irrespective of its value; and that the Objector had been excluded on the interpretation of a particular word, while an attempt was made to save the Recommended Bidder.

The reply of the Contracting Authority

- E.4 By Reply No. 4 (paragraphs 4.1 and 4.2) the Contracting Authority states that the grievance is unclear as to the specific allegations; that it confirms that the Recommended Bidder fully complies with the tender specifications; and that the Evaluation Committee conducted its evaluation in accordance with its obligations and with the doctrine of self-limitation.

In its disclosure under limb (5)(h) it furnished a matrix of twenty items, each marked “Y”, recording that only those items were requested as part of the literature. By its Additional Reply of the 7th July 2026 it stated, as to the Eurovent certification, that it is proprietary and was prepared specifically for the tender; as to the EU Ecolabel, that there is no public registry entry corresponding to the certification referenced; and, as to CE marking, that “as expressly provided in the tender document, CE marking operates as a contract performance criterion and is not required to be submitted at the tendering stage”.

- E.5 At the hearing the Contracting Authority submitted that any bidder who found a requirement unclear could have sought a clarification or used the remedy under regulation 262 of the PPR, neither of which was done; that the call made it clear that the documentation was to be submitted at the stage when the product is delivered, as confirmed by the circular referred to by Mr Costa; that regulation 245 of the PPR also recognises conditions for the performance of a contract, being requirements to be met upon award rather than upon the submission of the offer, a matter on which the Board had decided in many instances; and that this was not an argument of proportionality but one based on the regulations and the circular.

The oral submissions of the Recommended Bidder

- E.6 The Recommended Bidder submitted that the grievance on technical compliance was of procedural interest only, the Objector not claiming that a wrong decision had been taken but that a meaningful explanation had not been provided; that the Objector's witness could not establish that the Recommended Bidder's submission was not technically compliant but only that he had not seen certain information; that the alleged non-compliance as to the computer had not even been raised as a grievance; that the monitor model was commercially sensitive and the questioning a fishing expedition; and, in its final submissions, that the Objector had brought no evidence in support of the grievance at all.

The evidence

- E.7 Mr Costa explained that GPP is a commitment which Malta has with the European Union for sustainability and the circular economy; that, before a tender is issued, the Contracting Authority identifies the items for which GPP criteria are mandatory and includes them in the technical specifications, the tender being reviewed by the GPP compliance unit of the Ministry to ensure that the requirements are reproduced word for word; that the computer formed part of the CCTV system and represented approximately 0.04 per cent of the contract value; that to establish the typical energy consumption of a personal computer it must be assembled and then tested; that the GPP criteria specifically provided that the documents were to be submitted at delivery stage, referring to each piece of equipment "delivered as part of the contract"; and that no bidder was asked to submit them at tendering or evaluation stage.

He referred to Department of Contracts Circular No. 06/2022, which provides that "[i]n the vast majority of instances, the Verification Documents shall be presented as part of the Economic Operator's submission, specifically in the form of Technical Literature", and goes on to state that in some instances the verification documents are to be submitted prior to contract signing or at implementation stage, which he said was the case for certain items including the computer and the stage curtains.

He added that the documentation submitted by the Recommended Bidder and sent to the Objector was that of the computer case, which was itself compliant as it could accommodate the components required to run the CCTV system; and that the Committee had not evaluated the Objector's technical offer, which was not opened.

- E.8 In cross-examination the Appellant read the verification requirement of clause 3.5.7.05, namely that "Tenderers must report the Typical Energy Consumption (E TEC) value, based on testing and

calculations according to the IEC standard 62623:2012”, and that products holding a relevant Type I Ecolabel are deemed to comply and alternative test results of accredited ISO 17025 bodies are accepted as proof.

Mr Costa answered that it could not be done at tendering stage as it required the computer to be assembled and tested, that the Committee understood the criterion, which speaks of equipment “delivered as part of the contract”, to refer to the contract or execution stage, and that the term “tenderers” in the GPP document was not used accurately, the GPP criteria for textiles also referring to a declaration by the tenderer upon award and upon delivery.

- E.9 Ing. Zarb testified that the Technical Offer Form falls under Note 3 and could not be rectified, whereas the literature falls under Note 2; that, in the rectification, the Committee had asked about the GPP criteria, namely the minimum energy performance for computers and monitors, which was not an item of the Technical Offer Form but which, as a GPP requirement, the Committee had to request, the reply having to include the model and the information; and that no reply was received for the first two bids.

He read the Committee’s request: “Minimum energy performance for computers applicable to stationery and mobile computers the calculated typical energy consumption, ETEC for each piece of each equipment delivered as part of the contract must be part or equal to the maximum ETEC requirement”.

- E.10 The documents in the acts show the following. The Committee’s request to TID 236560 was submitted for approval on the 16th March 2026, approved on the 17th March 2026 and published on the 17th March 2026, with a deadline of the 25th March 2026 at 23:59; the Recommended Bidder replied on the 25th March 2026 at 18:28, within the time. Under the heading “Computers and Monitors” the reply comprised three documents: a declaration of warranty dated the 23rd March 2026 (in terms “in full conformity with the contract specifications as stipulated in Section 3.5.7.05”), a declaration of spare-parts availability and disassembly instructions dated the 23rd March 2026, and a 52-page manufacturer’s assembly manual for a computer chassis. The Evaluation Report records that the Committee “reviewed the rectification responses and the submitted samples and concluded that the EO is Technically compliant”.

Legal considerations of the Board

(i) The scope of the grievance and its particularisation

- E.11 The Fourth Grievance, as pleaded, is in part a grievance of information and in part a grievance as to the tender-stage compliance of TID 236560. The Board has dealt in Part D with the information aspect.

As to the substance, it has weighed the objection of the Recommended Bidder that the computer and monitor point “had not even been raised as a grievance”. The Objection did, at paragraphs 5.4.7, 5.5 and 5.6, refer to “other environmentally friendly products and GPP items across the specifications”, including “ELV/CCTV systems”, and asserted that if the bid “was supported only by generic literature ... or post-submission documents, then the bid was not capable of lawful recommendation”, and that the recommendation could not stand unless TID 236560 was shown to have complied “with all mandatory technical specifications at tender stage”.

The Objector could not have identified, within the ten days of regulation 271, the content of literature which it had not seen; it identified it upon the disclosure which the Board ordered. The Board accordingly considers that the computer and monitor point is a particularisation within the compass of the Fourth Grievance, and not a new ground, and admits it as such under regulation 90(1) of the PPR, which empowers the Board “to order or permit amendments of written pleadings”. The burden of showing a non-compliance remains with the Objector, subject to the answering evidence which the Contracting Authority was bound to supply.

(ii) The tender-stage technical submission under the Tender

- E.12 Clause 5(C)(i) of the Instructions to Tenderers lists the documents of the technical offer, to which the Technical Offer Form (Note 3) belongs, and provides:

“All above listed documents are of a mandatory nature and must be provided. Failure to submit the above documents will disqualify the submitted offer (Note 3).” (Clause 5(C)(i) of the Instructions to Tenderers)

- E.13 Clause 5(C)(iii) and (iv) further provide, as to the Literature and the Samples:

“Literature as per Form marked ‘Literature List’ to be submitted with the Technical Offer at tendering stage. The scope of the literature is to corroborate a fully compliant technical offer. (Note 2)”

“Samples as per Form marked ‘Samples List’ may be requested during the adjudication stage to supplement the technical offer submitted. If requested, the Samples must be submitted within five (5) working days of being notified to do so. (Note 3) If Samples are not submitted within the specified timeframe offer will not be considered further.”

- E.14 The Literature List itself, which forms part of the procurement document, bears the heading “CT2350/2025 – Literature to be submitted with Technical Offer (Note 2)”. It lists, in its first part, the VRF units, the Eurovent certification and the schedule of derated cooling capacity (Specification 3.9), the composite PPR pipes, the internal paint “including EN 13300 certificate and ECO Label”, the aluminium apertures, the timber fire doors, the timber doors and the lifting platform, and, under

the heading “Green Public Procurement”, continues with the items “Computers and Monitors” (Specification 3.5.7.05), landscaping, stage curtains and paint.

It provides that “[t]he submission shall be in a structured form and is to be in the same sequence as listed hereunder”, that “[t]he use of FTS drawings or compilation of information by the bidder (copy and paste from websites etc.) Is not considered as technical literature and thus, will not be considered”, and that “photos submitted as manufacturer’s technical literature shall not suffice. Literature must include the respective detailed manufacturer’s technical literature”.

- E.15 The Tender distinguishes this tender-stage corroboration from the documentation due after the award, which is the subject of Article 8.8 of the Special Conditions (“[t]echnical documents such as product specifications, data sheets and literature (in line with Article 39 below)”, testing and commissioning reports), of Article 39.4 (information on “any and/or all the materials and items included in the Technical Specifications and/or Bill of Quantities apart from those submitted at Tendering stage”) and of Article 40.8 and 40.9 (tests and test certificates on completion).

The items of the Literature List are, by the terms of the Tender, those which the tenderer had to evidence at tender stage; the items which it does not list, such as toilets and sanitary ware, HPL toilet cubicles and roller blinds, were not required to be evidenced by literature at tender stage, and the absence of such literature is not a non-compliance. The Objector, which did not seek clarification of the List, cannot claim that it was required.

(iii) The rectification and the Note 3 documents

- E.16 The Committee’s request to TID 236560 stated:

“Moreover, the EC observed that the GPP Verification for the below Literature was not submitted for the below listed items. Kindly rectify your position by submitting the documents as detailed hereunder: Green Public Procurement ... Computers and Monitors ... Verification: Tenderers must report the Typical Energy Consumption (ETEC) value, based on testing and calculations according to the IEC standard 62623:2012. Products holding a relevant Type I Ecolabel or a label from another labelling scheme fulfilling the specified requirements will be deemed to comply. Alternative test results obtained by accredited ISO17025 test bodies according to the IEC 62623:2012 standard are accepted as proof of compliance. ... Minimum energy performance for monitors ... Verification: For each model delivered, the tenderer must provide the valid Energy Label issued according to the EU’s Energy Labelling framework Regulation (2017/1369). Products labelled as Class A, B, C or D will be deemed to comply.” (Request 06 Rect-Clar (236560), published the 17th March 2026)

“Tenderers who fail to rectify and clarify the shortcomings identified in this communication within the stipulated period shall be deemed to be non-compliant.” (Ibid.)

- E.17 As to the Note 3 documents, the disclosed schedule of requests records, as regards TID 236560, a sample request (item 07), described as “Submission of sample which was deemed to be technically compliant”, and a clarification request (item 08), described as “Arithmetic correction which only necessitated a confirmation from the bidder”.

Clause 5(C)(i) of the Instructions to Tenderers designates the Technical Offer as Note 3, and Note 3 to Clause 5 provides that “[n]o rectifications shall be allowed. Only clarifications on the submitted information may be requested”.

Clause 5(C)(iv) provides that “Samples as per Form marked ‘Samples List’ may be requested during the adjudication stage to supplement the technical offer submitted. If requested, the Samples must be submitted within five (5) working days of being notified to do so. (Note 3)”.

Clause 5(D)(i) designates the Financial Offer as Note 3 and provides that, where the financial bid form consists of a Bill of Quantities, the total may be “arithmetically worked out and/or corrected if, as, and when necessary / applicable”.

Ing. Zarb testified that the Technical Offer Form falls under Note 3 and could not be rectified, whereas the literature falls under Note 2 and could be. The Committee’s request to TID 236560 of the 17th March 2026 concerns the Key Experts (Note 2), the Literature (Note 2) and the GPP Verification; it does not concern the Technical Offer Form, and it states that “[w]here any of the below items were included in the Technical Offer Form under Note 3, and a brand/model is entered by the bidder, even though Literature falls under Note 2, this does not mean that the brand/model can be rectified or changed during the Literature rectification process”.

No request for rectification of the Technical Offer Form appears in the schedule of requests. The sample request is a request which Clause 5(C)(iv) expressly authorises, and the clarification request is one which Note 3 and Clause 5(D)(i) permit.

(iv) Eurovent certification

- E.18 The Literature List requires, under Bill 32 (items 32.1, 32.2, 32.3, 32.8 and 32.9, Specification 3.9), “VRF Outdoor Unit, VRF Indoor Units, Wired Controllers, HVAC Central Controller & Heat Exchange Unit with DX Coil”; “EUROVENT Certification from <https://www.eurovent-certification.com/en>”; and “Submit schedule indicating derated Cooling Capacity (Note OU derating condition in specification)”.

The Technical Offer Form (Note 3), at the row “To Confirm Certification of ALL Outdoor Units”, requires “EUROVENT Certification from <https://www.eurovent-certification.com/en> . Failure of which will result in automatic disqualification”, and its declaration 5 states “The Economic Operator declares that all AC units installed will be Eurovent Certified.”, answered “Yes”.

The Technical Offer Form in the acts under the file name “01” enters, as brand, “AUX” and, as model, “Multiple AUX ARV-H280/H250/H500_SR1MVB”, both for the HVAC System and against that row; the certificates FC1, FC2 and FC3 exhibited by Mr Costa at the hearing relate to models ARV-H250/SR1MVB, ARV-H280/SR1MVB and ARV-H500/SR1MVB.

The Committee’s requests of the 17th March 2026 to TID 236558, TID 236568 and TID 236560 raise no shortcoming as to the VRF or Eurovent items, and the reply of the Recommended Bidder of the 25th March 2026 to TID 236560 contains no folder or document relating to them. The requirement being one of the Technical Offer Form (Note 3), it could not have been the subject of rectification, and the Committee made no request in respect of it.

Mr Costa testified that the Eurovent certification is a link to a public register, accessible worldwide, in which the model submitted is entered; that the Committee received page 1 of 4 of the certificate; that he exhibited FC1, FC2 and FC3; and that the same documents had been submitted for all five bids of the Recommended Bidder.

Mr Thavakkara Kooloth, the Objector’s witness, explained that the register publishes the approved models and that compliance can be checked by entering the model number.

The Objector contends that the requirement is model-specific and time-specific. It adduced no evidence that any of the three models is not listed in the register, that any of the certificates fails the requirement which it asserts, or that the derated cooling capacity schedule is deficient.

The Contracting Authority’s failure to circulate, before the hearing, the documents which its Annex A declared it was exhibiting is a failure of disclosure addressed in Part D; of those documents, only the certificates FC1 to FC3 are recorded as exhibited at the hearing. The Board finds that non-compliance of the Eurovent requirement is not established.

(v) Computers and monitors (Specification 3.5.7.05)

- E.19 This is the item on which the Objector produced evidence of a specific non-compliance, and on which the Board has reached a firm conclusion. The Literature List, in the part headed “Green Public Procurement”, provides, under “Computers and Monitors”:

“Minimum Energy performance for computers ... Applicable to stationary and mobile computers. The calculated Typical Energy Consumption (ETEC) for each piece of equipment delivered as part of the

contract must be less than or equal to the Maximum ETEC requirement. Verification: Tenderers must report the Typical Energy Consumption (ETEC) value, based on testing and calculations according to the IEC standard 62623:2012. Products holding a relevant Type I Ecolabel or a label from another labelling scheme fulfilling the specified requirements will be deemed to comply. Alternative test results obtained by accredited ISO17025 test bodies according to the IEC 62623:2012 standard are accepted as proof of compliance.”

“Minimum energy performance for monitors ... Applicable to computer displays. The Energy Efficiency Index for each model delivered as part of the contract must be in the range of Energy Classes A-D ... Verification: For each model delivered, the tenderer must provide the valid Energy Label issued according to the EU’s Energy Labelling framework Regulation (2017/1369). Products labelled as Class A, B, C or D will be deemed to comply.”

- E.20 The Contracting Authority contends that the verification of these requirements fell due at the stage of delivery. The Board rejects that contention, for six reasons.

First, the verification clauses are contained in a document which the Tender itself heads “Literature to be submitted with Technical Offer (Note 2)”, and Clause 5(C) of the Instructions to Tenderers requires the Literature “to be submitted with the Technical Offer at tendering stage” in order “to corroborate a fully compliant technical offer”.

Secondly, the verification clause is addressed to “Tenderers”, who “must report” the ETEC value, and, for monitors, to “the tenderer”, who “must provide the valid Energy Label”; the Board does not accept the evidence of Mr Costa that “tenderers” in this document means the contractor after award.

Thirdly, the same document shows that, where verification was intended to follow award or delivery, it said so in terms: the cotton origin “will be verified upon delivery”; the supplier’s monitoring data are to be provided “upon award”; the REACH Article 33(2) declaration is to be provided “upon delivery of the finished article(s)”; the durability reports are to be provided “upon delivery of the goods”.

The verification of the ETEC value of computers and of the Energy Label of monitors contains no such qualification, and the omission, in a document which uses the qualification when it is meant, is deliberate.

- E.21 Fourthly, the Committee itself treated the verification as due at tender stage. By its request of the 17th March 2026, under the Note 2 rectification regime, it observed that “the GPP Verification for the below Literature was not submitted” and demanded the verification, under pain of being “deemed to be non-compliant”, and Ing. Zarb testified that the Committee asked for these documents and expected the model and the information.

The evidence of Mr Costa that “no bidder was asked to submit them at tendering or evaluation stage” is contradicted by the Committee’s own letter, and the Board prefers the document. The Contracting Authority cannot, having required the verification at tender stage in respect of the Recommended Bidder, contend before the Board that it was not required at that stage.

Fifthly, the impossibility which Mr Costa invoked, that the ETEC value can be established only by assembling and testing the computer, is answered by the verification clause itself, which deems to comply a product holding a relevant Type I Ecolabel or another qualifying label, and accepts the test results of an accredited ISO 17025 body; a tenderer could offer a product so labelled or so tested, and, as to monitors, the Energy Label is, by regulation, a document which accompanies the product and is available for any model.

- E.22 Sixthly, the contention based upon regulation 245 of the PPR is without foundation. That regulation provides:

“245. Contracting authorities may lay down conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of regulation 239(4) and (5) and indicated in the call for competition or in the procurement documents. Those conditions may include economic, innovation-related, environmental, social or employment-related considerations.” (Regulation 245 of the PPR)

- E.23 A condition of performance must be “indicated in the call for competition or in the procurement documents” as such. The procurement documents indicate the ETEC verification and the Energy Label, not as a condition of performance, but as literature to be submitted with the technical offer.

As to Circular No. 06/2022 of the Department of Contracts, it is not suggested that it formed part of the procurement documents, and, even as Mr Costa described it, it states that in the vast majority of instances the verification documents are to be presented with the tender. It cannot vary the terms of a call which the Contracting Authority published and by which, in accordance with the principle of self-limitation, it is bound.

- E.24 The question which remains is whether the Recommended Bidder furnished the verification. It did not. The reply of the 25th March 2026 consisted, for this item, of a declaration of warranty, a declaration of spare-parts availability and disassembly instructions, and the assembly manual of a computer chassis. None of those documents is an ETEC value, a Type I Ecolabel or another qualifying label, or an accredited test report; none identifies a monitor; and none is a valid Energy Label. They respond to the warranty and reparability verifications which appear under the same heading, but not to the energy-performance verifications, which are distinct.

That the chassis “could accommodate the components required to run the CCTV system”, as Mr Costa stated, is a statement about the capacity of the case and not about the energy consumption of any computer. The Committee’s finding that the Recommended Bidder was technically compliant could therefore only be reached by treating a mandatory verification, which it had itself demanded, as satisfied by documents which do not address it. That is not a margin of technical appreciation; it is a departure from the conditions of the call, and a manifest error.

- E.25 The consequences follow from the Tender, the GRGT and the PPR. The Recommended Bidder had the opportunity of rectification, which it used; the Tender provides that a request on the same shortcoming “shall not be entertained” a second time, and Clause 16.1 of the GRGT that failure to comply with a rectification “shall result in the tender offer not being considered any further”.

The tender of the Recommended Bidder did not, at the stage when it ought to have been compliant, satisfy the requirement. Regulation 61(2)(a) of the PPR permits an award only if “the tender complies with the requirements, conditions and criteria set out in ... the procurement documents”, and regulation 2 defines “irregular tenders” as “tenders which do not comply with the procurement documents”. Clause 6.1 of the Instructions to Tenderers restricts the award to the cheapest offer “satisfying the administrative and technical criteria”. TID 236560 did not satisfy them.

- E.26 The submission that the computer represents about 0.04 per cent of the contract value does not alter that conclusion. The Tender made the requirement mandatory, and a mandatory requirement is not dispensed with because its object is of small value; the Appellant is right on that point, and Mr Costa’s observation is not a legal criterion. Nor can the Board accept the invocation of proportionality.

The Court of Appeal observed in *NQUAYMT*, as the Contracting Authority itself recalled in answer to the Second Grievance, that excessive generosity in seeking to save offers at all costs “mhux espressjoni ta’ proporzjonalità imma huwa sproporzjon kontra min kien compliant mill-bidu nett”. The principle which the Contracting Authority invoked against the Objector, and which the Board has applied against it in Part C, applies equally to the Recommended Bidder.

The Objector’s submission that the Contracting Authority applied two weights and two measures is, in this respect, well founded: the Objector’s offer was excluded because a project did not satisfy a requirement as the Tender worded it, whereas the Recommended Bidder’s offer was found compliant although a requirement which the Tender worded, and the Committee itself demanded, was not satisfied.

(vi) Paints, the EU Ecolabel, and the WRAS and landscaping documents

- E.27 The Literature List requires, for the internal paint, the “EN 13300 certificate and ECO Label” and, under GPP for paint, documentation and test reports for the criteria there listed, many of which are deemed satisfied by a product which has been awarded the EU Ecolabel for paints and varnishes.

The Technical Offer Form furnished in the acts enters “Kraft” “Master Eco” and, in respect of the EN 13300 certificate and the Eco label, “See LitList TSDS and TDS”; the reply of the 25th March 2026 contains technical and safety data sheets of that product and a management plan for unused paint.

The Objector observes that the data sheet states that the product fulfils the EU Ecolabel criteria but that no certificate or registration reference was disclosed, and the Contracting Authority states that there is no public registry entry corresponding to the certification referenced.

The Board is not in a position, on the evidence before it, to find the paint item non-compliant: the Objector adduced no evidence that the product does not meet the criteria, and regulation 54(3) of the PPR requires a contracting authority which requires a label to “accept all labels that confirm that the works, supplies or services meet equivalent label requirements”. Since the recommendation falls for the reason given in paragraph (v), the Board does not pursue the point. As to the exterior paint system raised in the Second Supplementary Note, the Objector adduced no evidence that TID 236560 offered an exterior paint system, and non-compliance in that respect is not established. As to the WRAS documents and the landscaping documents, the Objector does not pursue any allegation of non-compliance, as it acknowledges.

(vii) The remaining items

- E.28 As to toilets and sanitary ware, HPL toilet cubicles and roller and classroom blinds, the Board finds, for the reasons given in paragraph (ii), that they were not items of the Literature List, that their absence from the matrix disclosed is explained, and that the Objector, which does not assert their non-compliance, has not shown any. As to CE marking, the statement of the Contracting Authority that the Tender treats it as a contract performance criterion must be read subject to the Literature List, which required, for the lifting platform (Specification 3.30.008), the CE conformity declaration and the mode of conformity assessment procedure; the Objector has not alleged any non-compliance of that documentation.

Finding of the Board on the Fourth Grievance

- E.29 The Board finds that the Literature List required, with the technical offer and under Note 2, the ETEC verification for computers and the valid Energy Label for monitors; that the Evaluation Committee itself demanded that verification from the Recommended Bidder by its rectification request of the 17th

March 2026; that the reply of the Recommended Bidder furnished neither; that the finding that TID 236560 was technically compliant in respect of the item “Computers and Monitors” (Specification 3.5.7.05) was contrary to the conditions of the call and manifestly erroneous; and that TID 236560 does not, in consequence, satisfy the technical criteria within the meaning of Clause 6.1 of the Instructions to Tenderers and of regulation 61(2)(a) of the PPR. The Fourth Grievance is upheld to that extent. It is otherwise rejected, the Objector not having established any other non-compliance with a mandatory tender-stage technical requirement.

F. Fifth Grievance – Key Experts and the Technical Identity of the Elzan Bids

The grievance of the Objector

- F.1 By its Fifth Grievance (paragraphs 1.8.6 and 6.1 to 6.5 of the Objection and paragraph 6 of the Supplementary Note) the Objector recalls that the Tender required, at bidding stage, Key Expert Forms, Statements of Availability, declarations where applicable, up-to-date CVs and copies of qualifications, licences and warrants for the six Key Experts; that Key Expert 4 and Key Expert 6 could be represented by the same person, all other Key Experts being unable to occupy more than one role; and, while it does not submit that the Tender required a different set of Key Experts for each multiple bid, it contends that, if the same Key Experts and technical resources were used across five bids, that is relevant to whether they were genuinely non-identical technically and whether each was independently compliant; that the Committee had to verify and record whether TID 236560 had its own compliant package; and that, if any Key Expert documentation was missing or non-compliant at tender stage and was later completed by an “impermissible rectification”, the bid should have been rejected.

In its Supplementary Note it acknowledges that the anonymised matrix is a partial compliance, but submits that it identifies only age and years of experience and not the qualification, warrant or registration upon which each expert was found compliant. At the hearing the Appellant emphasised that the Key Experts were the same in all bids, with a single substitution, from Mr Kurt Gauci to Mr Wayne Scerri.

The reply of the Contracting Authority and the oral submissions of the Recommended Bidder

- F.2 By Reply No. 5 the Contracting Authority states that the grievance is unclear as to the specific allegations, confirms that the Recommended Bidder fully complies with the tender specifications, and states that the Evaluation Committee conducted its evaluation in accordance with its obligations and with the doctrine of self-limitation.

In its disclosure it furnished an anonymised role-by-role matrix recording each of the six Key Experts as compliant (Site Manager, Maltese, 34, seven years; Mechanical Engineer, Maltese, 43, twenty years; Electrical Engineer, Maltese, 38, fifteen years; Contractor's Warranted Perit, Maltese, 31, seven years; Health and Safety Practitioner, Maltese, 56, twenty-five years; Site Technical Officer, Maltese, 53, twenty-five years), and in its table of the 23rd June 2026 it stated that the interim decree did not order the release of the qualification basis.

The Recommended Bidder associated itself with the submissions of the Contracting Authority on technical identity and submitted, in its final submissions, that the Objector had brought no evidence in support of its grievance on technical compliance and that all the grievances should be rejected.

The evidence

- F.3 Ing. Zarb testified that the Committee observed that the qualification submitted for the proposed Site Manager, Mr Kurt Gauci, was a diploma whereas the Tender required MQF Level 4; that the bidder “was asked to replace him”, and that he was eventually replaced by Mr Wayne Scerri; and that, for the Mechanical Engineer, Dr Ing. Simon Mizzi, and the Health and Safety Practitioner, Mr Peter Micallef, the bidder was requested to submit the declaration form related to public employees.

The documents in the acts show that the Committee's request to TID 236560 described the qualification submitted for the Site Manager as “a BTEC Level 3 Extended Diploma in Construction and the Built Environment”, and continued: “Kindly submit the required Level 4 qualification documents. Otherwise, you may rectify by nominating a new key expert who meets all tender requirements, together with all the relative information/ documentation ...”. The reply of the 25th March 2026, in respect of the Site Manager, comprised a Statement of Availability of Perit Wayne Scerri, in which the name of the tenderer is entered as “Elzan Construction Ltd” and which is dated the 23rd March 2026; a Public Employees Declaration Form and a Professionals Declaration Form, each marked “N/A”; his Warrant; and his Curriculum Vitae. The Curriculum Vitae records a Bachelor of Science in Built Environment Studies (MQF Level 6), a Master of Engineering with Management (MQF Level 7), a warrant of April 2019, and a work history, the last entry of which is employment with CS Design from March 2020 to December 2023; it does not mention the Recommended Bidder.

Legal considerations of the Board

(i) The Key Expert requirements and the sharing of Key Experts across bids

- F.4 Clause 5(C)(ii) of the Instructions to Tenderers provides:

“(ii) Key Experts (Note 2) Tenderers are to substantiate their claims, in respect to the proposed Key Expert/s, by complying with and submitting the following at bidding stage: • Key Experts Form, • the Statement of Availability Form, • the Declaration form for Key Experts (relating to public employees) – as applicable, • Relevant up-to-date CVs, • Copy of qualification/ licences/ warrants certificate/s”

F.5 The Key Expert 1 (Site Manager) is to hold “a valid Qualification from an Educational Institution, at MQF/EQF Level 4 (or equivalent), in Construction or Civil Engineering or in M&E Installations or in a comparable professional qualification”; the Mechanical and Electrical Engineers and the Contractor’s Warranted Perit are to be warranted, with five years of post-warrant experience; the Health and Safety Practitioner is to be registered with the OHSA as a Competent Person; and the Site Technical Officer is to be BCA-registered or a warranted Perit; with the proviso that “[a]ll other key experts cannot occupy more than one role”.

F.6 Nothing in those provisions requires, or forbids, that the same Key Experts be nominated in the several bids of a tenderer who submits multiple bids under Article 3.1 of the GRGT, and the GRGT contemplate that a Key Expert be nominated in more than one bid. Article 3.4 provides: “when one participates as a Key Expert only, he/she can then be nominated by more than one Economic Operator”.

If a Key Expert may lawfully be nominated by several economic operators, it cannot be unlawful, and the Board does not find it indicative in itself of a technical identity of bids, that a single economic operator nominate the same Key Experts in its multiple bids. The Objector itself accepts that the Tender did not require a different set for each bid. The commonality of the Key Experts does not defeat the non-identity which the Board has found in Part B, and does not show that any bid was non-compliant. The evidence of Ing. Zarb, which the Board accepts, is that the Key Experts were common to the bids considered.

(ii) The replacement of the proposed Site Manager

F.7 The Objector pleaded, at paragraph 6.5 of its Objection, that if any Key Expert documentation was non-compliant at tender stage and “was later completed by an impermissible rectification”, the bid should have been rejected, and, at paragraph 5.6, that rectifications be handled strictly in accordance with the Tender and the General Rules.

The facts now in the acts fall squarely within those pleas, and the Board must determine them. The Site Manager proposed by the Recommended Bidder did not hold the qualification which the Tender prescribed for the role; the Committee invited the Recommended Bidder, as an alternative to submitting a Level 4 qualification for the person proposed, to nominate “a new key expert”; and the

Recommended Bidder nominated Perit Wayne Scerri, whose Statement of Availability is dated the 23rd March 2026.

- F.8 Regulation 62(2) of the PPR permits a request to “submit, supplement, clarify or complete the relevant information or documentation” where it “is or appears to be incomplete or erroneous or where specific documents are missing”, and the Notes to Clause 5 apply to “incorrect and/or incomplete documentation” and “missing documents”.

A new person is not a document, and the nomination of a different Key Expert is not the correction of the documentation of the Key Expert proposed. The Tender prescribes that the Key Experts be proposed, with their documentation, “at bidding stage”, so that the persons proposed form part of the offer, and the Tender allows the nomination of replacement Key Experts in one case only, set out in the closing paragraphs of Clause 5(C)(ii):

“In the event of Legislative Changes in relation to Key Experts’ Educational and Professional Qualifications, ... occurring prior to Contract Signing, and which were not accounted for in the Procurement Document, shall necessitate that the Recommended Awardee/s submits new and/or updated Key Experts’ Qualifications, Certification and Documentation in compliance with the relevant new Legislative requirements. Should such Legislative Changes affect the eligibility of proposed Key Experts, the Recommended Awardee/s shall be granted, within a stipulated timeframe, the opportunity to rectify their position by nominating replacement Key Experts ...” (Clause 5(C)(ii), closing paragraphs, of the Instructions to Tenderers)

- F.9 The case of Legislative Changes provided for in the closing paragraphs of Clause 5(C)(ii) is not this case: it is confined to Legislative Changes in relation to Key Experts’ educational and professional qualifications occurring prior to Contract Signing, and it is addressed to “the Recommended Awardee/s”. No other provision of the Tender authorises a tenderer to nominate a replacement Key Expert. The express provision of the single case in which a replacement may be nominated excludes the implication of a general faculty to do so. Regulation 62(1) of the PPR and Clause 16.1 of the GRGT, quoted in Part A, require that the tenderer “be in possession of all the requirements stipulated in the procurement documents by the closing date”.
- F.10 The Site Manager proposed in the tender of the Recommended Bidder was Mr Kurt Gauci, whose qualification, a BTEC Level 3 Extended Diploma in Construction and the Built Environment, is recorded by the Committee as not satisfying the MQF/EQF Level 4 which the Tender requires. Perit Wayne Scerri was not proposed in that tender. The Statement of Availability submitted in his respect, a document which Clause 5(C)(ii) requires the tenderer to submit “at bidding stage”, is entered in the name of the tenderer and bears the date of the 23rd March 2026, which is after the closing date of the

4th December 2025; and his Curriculum Vitae does not mention the Recommended Bidder. A Key Expert who was not proposed at bidding stage, and for whom the Statement of Availability required at bidding stage is dated after the closing date, was not proposed within the tender as submitted, and the tenderer who nominates him constitutes, after the closing date, a team which it had not proposed.

- F.11 The Board has considered that the Committee itself invited that course. Its request to the Recommended Bidder stated: “Kindly submit the required Level 4 qualification documents. Otherwise, you may rectify by nominating a new key expert who meets all tender requirements, together with all the relative information/ documentation ...”. The correspondence of the Department of Contracts of the 16th March 2026 records that “[t]he attached Technical Rectifications related to the Literature, Key Experts, and GPP Criteria were approved”, and that “[a]pproval of the attached was also provided following the opinion received from the State Advocate”; it does not state the content of that opinion. An invitation of a contracting authority, and the approval of it, cannot dispense with a condition of the call which the Contracting Authority has published, and the principle of self-limitation, which binds the Committee to the Tender, forbids that the Committee offer, in its requests to the Recommended Bidder, a faculty which the Tender does not give.
- F.12 No evidence was adduced at the hearing that Perit Scerri was at the disposal of the Recommended Bidder on the 4th December 2025, and the only Statement of Availability in his respect in the reply of the Recommended Bidder bears the date of the 23rd March 2026.
- F.13 The requests that the Mechanical Engineer and the Health and Safety Practitioner submit the declaration form relating to public employees concern documentation which the Tender lists “as applicable”, and fall within Note 2; the Objector does not contend otherwise, and the Board finds no irregularity in them. Neither does it find that the other Key Experts of TID 236560 are shown to be non-compliant.

Finding of the Board on the Fifth Grievance

- F.14 The Board finds that the nomination by a tenderer of the same Key Experts in its multiple bids is not prohibited by the Tender or the GRGT, Article 3.4 of which contemplates that a Key Expert be nominated by more than one economic operator, and does not in itself show the technical identity of the bids; that the requests addressed to the Recommended Bidder for the public employees declarations were within Note 2; that the Site Manager proposed in the tender of the Recommended Bidder, Mr Kurt Gauci, held a BTEC Level 3 Extended Diploma and not the MQF/EQF Level 4 qualification which Clause 5(C)(ii) requires; that the invitation to the Recommended Bidder to nominate a new Site Manager, and its nomination of Perit Wayne Scerri, whose Statement of Availability is dated the 23rd March 2026, after the closing date of the 4th December 2025, were not permitted by the Tender, the

GRGT or regulation 62 of the PPR; and that TID 236560 therefore did not satisfy Clause 5(C)(ii) of the Instructions to Tenderers at the closing date. The Fifth Grievance is upheld to that extent, and otherwise rejected.

G. Sixth Grievance – Price Discrepancy

The grievance of the Objector and the reply of the Contracting Authority

- G.1 By its Sixth Grievance (paragraphs 1.8.7 and 7.1 to 7.3 of the Objection and paragraphs 6.5 to 6.7 of the Supplementary Note) the Objector points out that the opening information shows TID 236560 at €3,147,032.13 whereas the award schedule recommends the same TID at €3,147,910.83, a difference of €878.70; that it was not given the arithmetical correction record, the corrected lines, the legal basis or confirmation that the correction was accepted by the Recommended Bidder; and that, the price being the sole award criterion and the recommended tenderer having submitted multiple bids, even a small correction may affect the ranking. After the disclosure it acknowledges that the numerical discrepancy has been explained, the adjustments to Bills 4, 6, 7, 9, 10, 12 and 15 mathematically reconciling the two figures to a net increase of €878.70, and its remaining complaint is that the communication of the corrected price to the Recommended Bidder, its acceptance and the date of that acceptance have not been shown. By Reply No. 6 the Contracting Authority confirms that the change is attributable to an arithmetical correction “done in strict compliance with normative standards”, and it disclosed the bill-by-bill correction and the clarification request of the 24th April 2026. No submission on this grievance is recorded in the minutes of the hearing.

Legal considerations of the Board

- G.2 Regulation 62(3) of the PPR, quoted in Part A, permits a change of the financial bid only for “the correction of evident arithmetic errors as may be allowed in the procurement document”. The Tender, at Clause 5(D)(i), provides that “[t]he above does not apply in instances wherein the financial bid form consists of a Bill of Quantities (BoQ) ... where the total can be arithmetically worked out and/or corrected if, as, and when necessary / applicable”, and Clause 17 of the GRGT provides:

“(b) where there is a discrepancy between a unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will prevail; ... (d) where a rate or price has been entered, but no total has been inputted, the rate is to be multiplied by the quantity published to derive the total; (e) where there is an error in addition in the Grand Total, the evaluation committee will adjust with the correct amount.” (Clause 17.1 of the GRGT)

“17.3 The amount stated in the tender will be adjusted by the Evaluation Committee in the event of error, and the tenderer will be bound by that adjusted amount. In this regard, the Evaluation Committee shall communicate the revised price to the tenderer through a confirmation request via the ePPS. If the tenderer does not accept the adjustment within five (5) working days, his/ her tender will be rejected and his tender guarantee forfeited (if applicable).” (Clause 17.3 of the GRGT)

- G.3 The Board has verified the arithmetic disclosed. The seven corrections are +€542.86 (Bill 4), +€60.55 (Bill 6), +€18.36 (Bill 7), +€249.05 (Bill 9), –€302.44 (Bill 10), +€323.88 (Bill 12) and –€13.56 (Bill 15), which sum to +€878.70; and €3,147,032.13 plus €878.70 is €3,147,910.83.

The corrections operate in both directions, which is consistent with the correction of errors and not with the improvement of an offer. The confirmation request, No. 08, was published on the 24th April 2026 with a deadline of the 4th May 2026, and the Recommended Bidder replied on the 2nd May 2026 at 08:54, in these terms: “we accept and confirm the arithmetic corrections of Bills 4, 6, 7, 9, 10, 12 and 15, subsequently with the Grand Total corresponding to the updated figure of €3,147,910.83”. The acceptance was therefore given within the five working days of Clause 17.3. The price discrepancy did not, moreover, affect the ranking: the corrected price remains below that of the two dearest bids of the Recommended Bidder and below the Objector’s offer of €3,499,423.57. No prejudice has been shown.

Finding of the Board on the Sixth Grievance

- G.4 The Board finds that the difference of €878.70 results from the correction of arithmetical errors in seven bills, permitted by regulation 62(3) of the PPR, by Clause 5(D)(i) of the Instructions to Tenderers and by Clause 17 of the GRGT; that it was communicated to and accepted by the Recommended Bidder within the time; and that it did not alter the ranking. The Sixth Grievance is rejected.

H. The Deposit and the Consequences of the Board’s Findings

The consequences for the award

- H.1 Regulation 276(h) of the PPR empowers the Board to “accede or reject the appeal or even cancel the call”, and regulation 90(3) provides:

“(3) In its decision the Review Board shall have the power to cancel the tendering process if it appears to it that this is the best solution in the circumstances of the case; in this case no party shall have any right to request damages because of the decision cancelling the call.” (Regulation 90(3) of the PPR)

- H.2 The Board has found that TID 236560 did not satisfy, at the closing date, the technical criteria of the Tender, on two independent grounds, the first concerning the item “Computers and Monitors” (Part E) and the second the Site Manager (Part F). Clause 6.1 of the Instructions to Tenderers restricts the award to the cheapest offer “satisfying the administrative and technical criteria”, and regulation 61(2)(a) of the PPR to a tender which “complies with the requirements, conditions and criteria set out in ... the procurement documents”. The appeal is accordingly to be acceded to in so far as it is directed against the recommendation to award the Tender to Elzan Construction Ltd (TID 236560).
- H.3 It is for the authority responsible for the tendering process, in the first place, to draw the consequences of this decision. Unless there is an appeal, the decision of the Board “shall be final and shall constitute an executive title” (regulation 93(5) of the PPR), and any new recommendation for award will be subject to the period for objection prescribed by regulation 271.

The Board observes that, upon the findings in this decision and the evaluation as recorded in the Evaluation Report, the other offers of the Recommended Bidder fell, TID 236558 and TID 236568 by failure to reply to the rectification requests (Clause 16.1 of the GRGT) and TID 236557 and TID 236573 by the operation of Article 3.1 of the GRGT; the offer of the Objector was set aside for the reason given in Part C; and the offer of Next Construction Ltd (TID 236565) is recorded in the Evaluation Report as administratively non-compliant.

The deposit

- H.4 By paragraph 8 of the Objection, the Objector requests the refund of the deposit paid, independently of the merits, relying on *Borg Bros Limited v. Ministeru għall-Familja u Solidarjetà Soċjali et*, as recognising that a party may be justified in bringing proceedings to obtain the explanation to which it is entitled. By paragraph 7 of its Reply the Contracting Authority leaves the determination of the deposit to the Board.
- Regulation 273 of the PPR provides that the deposit “may be refunded as the Public Contracts Review Board may decide in its decision”, and regulation 93(4) requires the Board, in its decision, to “recommend on whether any deposit submitted by a party should be refunded, in whole or in part, or not”.
- H.5 The Objector’s offer was excluded for a deficiency of its own, and its request for information was submitted six days after the notification and three days before the expiry of the objection period. But the objection achieved its principal object of impugning the award: the appeal has been acceded to, against the recommendation, upon two grounds, which the Objector pleaded, which it could

particularise only upon the disclosure that the Board ordered after the Contracting Authority had refused it in blanket terms, and which the Contracting Authority resisted until the hearing.

The Board has, moreover, upheld the Third Grievance to the extent stated. In those circumstances the Board considers that the Objector should not bear the cost of proceedings which have vindicated the integrity of the procedure, and recommends the refund of the deposit in full, namely €14,250.

I. Summary of the Considerations of the Board

I.1 The Board summarises its considerations as follows:

- (a) **Preliminary matters.** The written submissions of the Recommended Bidder have not been taken into account, only its oral submissions having been considered; the Supplementary Notes are admitted to the extent that they particularise the grievances pleaded; and the evidence has been weighed in accordance with the burden of proof and the standard of review stated in Part A.
- (b) **First Grievance.** Article 3.1 of the GRGT was correctly applied as to the ranking and the automatic disqualification of the two dearest bids; the non-identity of the three bids considered is supported by the evidence of the Evaluation Committee's members and by the documents, although the Committee recorded no determination and its disclosure contradicts the testimony of its Chairperson on the point; the burden of establishing identity, and thus the sanction of Article 3.4, was not discharged. *Rejected.*
- (c) **Second Grievance.** A residential building block is not a "large-scale commercial or public project" within Clause 5(B)(c); the Objector's own List described Cityways as residential; no further rectification of the same shortcoming was permitted; the criterion was applied equally; and the reasons for the exclusion were adequate. The exclusion of the Objector is confirmed. *Rejected.*
- (d) **Third Grievance.** The Contracting Authority's blanket refusal of information and its partial compliance with the orders of the Board were contrary to regulations 40(2) and 242 of the PPR and to the principle in *Antea Polska*, and the determination of confidentiality is its non-delegable duty; no adverse inference is drawn. *Upheld to the extent of the declarations; otherwise rejected.*
- (e) **Fourth Grievance.** The Literature List required, with the technical offer, the ETEC verification for computers and the Energy Label for monitors; the Committee demanded them by its request of the 17th March 2026; the Recommended Bidder furnished neither; and the

finding of compliance of TID 236560 on that item was contrary to the conditions of the call. The remaining particulars are not established. *Upheld in part.*

- (f) **Fifth Grievance.** The nomination of the same Key Experts in several bids is not prohibited; but the nomination of a new Site Manager after the closing date was not a rectification permitted by the Tender, the GREGT or regulation 62 of the PPR. *Upheld in part.*
- (g) **Sixth Grievance.** The difference of €878.70 results from the correction of evident arithmetical errors, accepted by the Recommended Bidder within the time, and did not alter the ranking. *Rejected.*
- (h) **Consequence and deposit.** The appeal is acceded to in so far as it is directed against the recommendation to award the Tender to TID 236560, and is rejected in so far as it is directed against the exclusion of the Objector; and the Board recommends the refund of the deposit in full.

J. Conclusion and *Decide*

- (1) Records that, by reason of the Decree of the 17th June 2026, affirmed by the Further Decree of the 18th June 2026, the written submissions of the Recommended Bidder have not been taken into account, and that only the oral submissions made at the sitting of the 22nd September 2026 by the Recommended Bidder have been considered. The said written reply have been reproduced earlier in this decision solely for the completeness of the record and not as a pleading admitted to the acts or weighed upon the merits, as there explained;
- (2) In terms of regulation 90(1) of the Public Procurement Regulations, admits the Supplementary Note of the 22nd June 2026 and the Second Supplementary Note of the 6th August 2026 to the extent that they particularise the grievances pleaded in the Objection and comment upon the matters disclosed by the Contracting Authority, save in so far as they would introduce a distinct ground of objection not comprised in the six grievances; and thereby disposes of demand (i) of each of the said Notes;
- (3) In terms of regulation 276(h) of the Public Procurement Regulations, accedes in part and rejects in part the appeal filed by the Objector on the 29th May 2026, as set out below;

The grievances

- (4) Rejects the First Grievance;

- (5) Rejects the Second Grievance;
- (6) Upholds the Third Grievance to the extent only that it declares (a) that the blanket refusal of information on the selection and technical criteria in the Contracting Authority's reply of the 29th May 2026 was inconsistent with regulations 40(2) and 242 of the Public Procurement Regulations and with the principle in Antea Polska (Case C-54/21); (b) that the Contracting Authority complied only partially, and in one respect not at all, with the Interim Decree of the 10th June 2026 and the Further Interim Decree of the 1st July 2026; and (c) that the determination of the confidential character of information is the non-delegable duty of the Contracting Authority; and rejects the Third Grievance in all other respects;
- (7) Upholds the Fourth Grievance to the extent that the Recommended Bidder did not furnish, with its technical offer or in response to the rectification request of the 17th March 2026, the verification required by the Literature List for the item "Computers and Monitors" (Specification 3.5.7.05), and that the finding of the Evaluation Committee that TID 236560 was technically compliant in respect of that item was contrary to the conditions of the call; and rejects the Fourth Grievance in all other respects;
- (8) Upholds the Fifth Grievance to the extent that the nomination of a new Site Manager by the Recommended Bidder after the closing date was not a rectification permitted by the Tender, the General Rules Governing Tenders or regulation 62 of the Public Procurement Regulations, and that TID 236560 did not satisfy Clause 5(C)(ii) of the Instructions to Tenderers at the closing date; and rejects the Fifth Grievance in all other respects;
- (9) Rejects the Sixth Grievance;

The outcome of the appeal

- (10) Accedes to the appeal in so far as it is directed against the recommendation for the award of Tender CT2350/2025 to Elzan Construction Ltd (TID 236560) at the price of €3,147,910.83, exclusive of value added tax; and declares that this acceding rests upon **each of the grounds stated in paragraphs (7) and (8) above independently**, either of which, standing alone, suffices to establish that TID 236560 did not satisfy the technical criteria of the Tender at the closing date and could not lawfully be recommended for award;
- (11) Rejects the appeal in so far as it is directed against the decision declaring the Objector's offer (TID 236563) administratively non-compliant, which decision is not disturbed;

The demands of the Objection (paragraph 9)

- (12) Demand (i) (preliminary and interim remedy): declares that the said demand was acceded to in part and rejected in part by the Interim Decree of the 10th June 2026, as supplemented by the Further Interim Decree of the 1st July 2026 and by the Decree of the 23rd July 2026, that the liberty to supplement the objection following disclosure was granted by those decrees and exercised by the Supplementary Note and the Second Supplementary Note, and makes no further order thereon;
- (13) Demand (ii): (a) rejects the demand in so far as it is directed against the decision declaring the Objector's offer administratively non-compliant; (b) accedes to the demand in so far as it is directed against the recommendation to award the Tender to Elzan Construction Ltd (TID 236560), in the terms of paragraph (10) above;
- (14) Demand (iii): rejects the demand, the First Grievance upon which it is founded having been rejected, without prejudice to paragraph (10) above;
- (15) Demand (iv), pleaded in the alternative: rejects the demand, the Second Grievance upon which the re-instatement and re-evaluation of the Objector's offer depend having been rejected, and the Board's decision being confined to the outcomes provided by regulation 276(h) of the Public Procurement Regulations, namely to accede to or to reject the appeal or to cancel the call, the Board not cancelling the call;
- (16) Demand (v): in terms of regulation 273 of the Public Procurement Regulations, decides, and, in terms of regulation 93(4) thereof, recommends, that the deposit of €14,250 paid by the Objector be refunded **in full**. Although the Objector did not succeed upon the challenge to its own exclusion, the appeal has been acceded to against the recommendation for award upon two independent grounds which the Objector pleaded and which it was able to establish only upon the disclosure that the Board was constrained to order after the Contracting Authority had refused it in blanket terms and resisted it until the hearing. The Board, considering that the Objector ought not to bear the cost of proceedings which have vindicated the integrity of the procurement procedure, recommends the refund of the deposit in its entirety; and rejects the demand for any other declaration, order, direction or remedy beyond the declarations stated in this decision;

The demands of the Supplementary Note (paragraph 7)

- (17) Demand (ii): declares that the disclosure effected by the Contracting Authority constituted only partial compliance with the Interim Decree, as stated in paragraph (6) above; and rejects the demand for a further order of disclosure and for the communication by the Board of the essential content of the documentation, the matters in question having been the subject of the Further Interim Decree of the

1st July 2026 and of the Decree of the 23rd July 2026, and having been determined in this decision upon the evidence heard and the documentation in the acts and forwarded to the Chairman under regulation 276(d) of the Public Procurement Regulations;

- (18) Demand (iii): declares that the three Elzan bids considered were financially non-identical, that it has not been established that they were technically identical, and that the consequence prescribed by Article 3.4 of the General Rules Governing Tenders is accordingly not applied;
- (19) Demand (iv): declares that the Cityways criterion was applied lawfully and equally; that the rectification, sample and clarification requests and the Key Expert requirements were applied lawfully save as stated in paragraphs (7) and (8) above; and declines to draw the inference requested from any failure to disclose or substantiate the findings ordered by the Interim Decree;
- (20) Demand (v): upholds the original objection to the extent stated in this decision, and rejects it and the remedies requested therein in all other respects, the question of the deposit being determined in paragraph (16) above;

The demands of the Second Supplementary Note (paragraph 9)

- (21) Demand (ii): records that the Contracting Authority did not circulate, before the hearing, the Eurovent documents which its Annex A declared to be exhibited, and that, so far as the acts disclose, the revised compliance matrix, the express Note 3 statement, the further reasoning on Cityways and the findings on toilets, sanitary ware, HPL cubicles and roller or classroom blinds were not furnished; and rejects the demand for an order of further circulation, the said matters having been determined in this decision upon the evidence heard and the documentation in the acts and forwarded under regulations 92 and 276(d) of the Public Procurement Regulations;
- (22) Demand (iii): declares that TID 236560 did not satisfy, at the closing date, the requirement relating to “Computers and Monitors” (Specification 3.5.7.05) nor Clause 5(C)(ii) of the Instructions to Tenderers as regards the Site Manager, as stated in paragraphs (7) and (8) above; that non-compliance in respect of the Eurovent requirement, the EU Ecolabel evidence and the paint item (including the exterior paint system) has not been established; and that the sample request of the 9th April 2026 and the clarification request of the 24th April 2026 were requests which the Tender authorises;
- (23) Demand (iv): accedes to the appeal in so far as stated in paragraph (10) above, and rejects the remaining relief requested, namely the annulment of the recommendation, the consequential relief already requested and the remittal of the procurement to a newly constituted Evaluation Committee, the Board’s decision being confined to the outcomes provided by regulation 276(h) of the Public Procurement Regulations;

- (24) Demand (v): declares that the suspension of the award procedure resulting from regulations 274 and 275 of the Public Procurement Regulations subsisted pending this decision, and that, in the event of an appeal, regulation 286(2) thereof provides that the process of the call for tenders shall be suspended pending the decision of the Court of Appeal; rejects the demand for a separate order maintaining the suspension; refers, as to the deposit, to paragraph (16) above; and rejects the demand for any other declaration, order, direction or remedy;
- (25) Rejects all other demands of the Objection, of the Supplementary Note and of the Second Supplementary Note which are not expressly acceded to in this decision.

Dr Vincent Micallef
Chairman

Dr Maria Cardona
Member

Mr Keith Victor Grech
Member