PUBLIC CONTRACTS REVIEW BOARD

Case 2276 – SPD6/2025/112 – Framework Contract for the Provision of Health and Safety Project Supervisor Services across various Transport Malta Sites in Malta, Gozo and Comino – Lot 2 (Gozo and Comino Sites).

22nd October, 2026

The Board,

Having noted the Letter of Objection filed by Dr Alexander Schembri LL.D. of Thake Desira Advocates acting for and on behalf of CenterLine Services Limited (hereinafter referred to as "the Appellant") filed on the 11th September, 2026;

Having also noted the Reasoned Reply filed by Av. Sarah Caruana acting for and on behalf of the Authority for Transport in Malta (hereinafter referred to as "the Contracting Authority"), dated the 14th September, 2026 and received by the Board on the 16th September, 2026;

Having also noted the letter filed by Mr Karl Attard, Director, acting for and on behalf of MAKS Engineering Ltd (hereinafter referred to as "the Recommended Bidder"), received by the Board on the 17th September, 2026;

Having heard and evaluated the testimony of the witness Mr Daniel Dimech, Chairperson of the Technical Evaluation Committee testifying for and on behalf of the Appellant;

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 20th October, 2026, hereunder-reproduced.

Minutes

Case 2276 – SPD6/2025/112 – Services – Framework Contract for the Provision of Health and Safety Project Supervisor Services Across Various Transport Malta Sites in Malta, Gozo and Comino – Lot 2 (Gozo & Comino Sites).

The Tender was issued on the 30th of April 2026, and the closing date was 21st May 2026.

The estimated value of the tender, excluding VAT, was €15,630.00

On the 11th of September 2026, CenterLine Service Limited, lodged an appeal against Transport Mata – the Contracting Authority.

On the 20th of October 2026, the Public Contracts Review Board (PCRB), composed of Dr Vincent Micallef as Chairman, Mr Keith Victor Grech and Mr Lawrence Ancilleri as members, convened a public hearing to consider the appeal.

A deposit of €400.00 was paid.

There were Four bids.

The attendance for this public hearing was as follows:

Appellant – CenterLine Services Limited.

Dr Alexander Schembri – Legal Representative.

Mr Alfred Buhagiar – Company Representative.

Contracting Authority – Transport Malta.

Dr Sarah Caruana – Legal Representative.

Mr. Daniel Dimech – Chairperson.

Ms. Cherie-Anne Caruana – Evaluator.

Ms. Sabrina Busuttil – Evaluator.

Mr. Shaun Farrugia – Evaluator.

Mr. Aaron Zammit – Evaluator.

Mr Kieron Saviour Bugeja – Legal.

Recommended Bidder – MAKS Engineering.

Ing. Maurizio Schembri Galea – Company Representative.

Opening Statements

The Chairman welcomed the parties present and formally opened Case Number 2276 in the records of the PCRB. The Chairman identified the Appellant as CenterLine Service Limited and the Contracting Authority as Transport Malta and acknowledged the presence of representatives of the Recommended bidder, MAKS Engineering.

Initial Submissions

The Chair noted that two appeals were to be heard. For procedural purposes, the evidence presented in Case 2275 would also be applicable to Case 2276.

Verbal statement by Dr Micallef:

"*Il-Bord ghamel referenza ghaz-zewg appelli inkwantu referibbli Lot 1 u Lot 2. Il-partijiet kollha qablu, li t-testimonjanza deposta fl-appell ta Lot 1 ghandha tkun res applikabbli wkoll ghal appell f'Lot 2 ghal finijiet ta ekonomizzar fil-proceduri".*

In this appeal, the Contracting Authority wished to re-evaluate the process. The appellant wished to obtain a decision without a hearing. However, the preferred bidder was entitled to pursue its complaint unless the appeal was withdrawn.

The appellant did not wish to withdraw the appeal and proceeded with the hearing.

Submissions:

Submissions by Dr Alexander Schembri (for the appellant).

Dr Alexander Schembri stated that, during the evaluation process, the Contracting Authority had requested a clarification. CenterLine Services Ltd. submitted its response on the same day. However, in its decision, the Evaluation Board stated that 'the bidder did not reply', and consequently, the appellant was excluded.

The Contracting Authority was aware that CenterLine Services Ltd. had replied within the stipulated time; however, the response had not been forwarded to the Evaluation Committee.

Submissions by Dr Sarah Caruana (for the Contracting Authority).

Dr Sarah Caruana proposed that the Chairperson of the Evaluation Board be summoned to testify.

Witness:

Mr Daniel Dimech (ID No. 22995M), summoned by Dr Alexander Schembri.

Mr Daniel Dimech, from Transport Malta, was the Chairperson of the Evaluation Committee. He stated that the Authority had requested clarification from CenterLine Services Ltd. regarding its abnormally low offer. Other clarifications and a rectification had also been requested from MAKS and other bidders.

Mr Dimech noted that the system usually displays an attachment containing the response. In this case, no responses had been uploaded, and the Committee had therefore been required to proceed with the evaluation without a response from CenterLine Services Ltd.

The system had misled the Evaluation Committee by failing to display the submitted response.

Mr Dimech clarified that the response had been submitted on the same date, 8th July 2026, on which the request for clarification had been sent.

Conclusion of the Hearing

There being no further questions from the Contracting Authority or the preferred bidder, the Chair stated that the decision would apply to both cases. Chairman Dr Vincent Micallef thanked the parties and formally concluded the session.

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 20th October, 2026.

Having noted the objection filed by CenterLine Services Limited (hereinafter referred to as "the Appellant") on the 11th of September, 2026, refers to the claims made by the same Appellant with regard to the tender of reference – SPD6/2025/112 – Framework Contract for the Provision of Health and Safety Project Supervisor Services across various Transport Malta Sites in Malta, Gozo and Comino – Lot 2 (Gozo and Comino Sites) listed as case No. 700 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Alexander Schembri

Appearing for the Contracting Authority: Dr Sarah Caruana

Appearing for the Recommended Bidder: Ing. Maurizio Schembri Galea

Whereby, the Appellant contends that:

> We write on behalf of CenterLine Services Limited ["Objector"], with company registration number C 115255, with its registered office address at 15, Triq Id-Dar tal-Kleru, Birkirkara, and are directed to refer to the decision dated 4th September 2026 - a copy of which is being herewith attached (DOC: A) - by means of which Objector's bid was found to be not financially compliant.
>
> Objector feels aggrieved by the decision in question, and is consequently filing the present notice of objection in terms of the provisions of the Public Procurement Regulations (S.L. 601.03).
>
> The required deposit of €400.00 was duly paid by Objector, as per transaction note herewith attached (DOC: B).
>
> In brief, the facts of this case are as follows:
>
> a) The tender in caption was issued for the provision of health and safety project supervisor services across various transport malta sites in Malta, Gozo and Comino, and, according to clause 6.1 of the tender document: "*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*";
>
> b) MAKS Engineering ["Preferred Bidder"] submitted a bid amounting to €12,740.00, excluding Value Added Tax, whereas Objector submitted a bid amounting to €10,700.00 excluding Value Added Tax;
>
> c) Clearly, therefore, Objector's bid was cheaper than that of the Preferred Bidder;

d) Notwithstanding the above, Objector was not awarded the tender in caption since it was decided that Objector's bid was not financially compliant on the basis of one (1) sole reason, namely:

> "*A clarification request was sent to economic operator with regards to the abnormally low offer. The bidder did not reply hence was found financially non-compliant*"

Objector's grievances in connection with the decision of the 4th September 2026 are, in brief, the following:

1. In this case, Objector did, indeed, receive an evaluation clarification request (DOC: C) on the 9th July 2026 at 9:17 AM (DOC: D);

   Notwithstanding the fact that Objector was given until the 16th July 2026 at 17:00 in order to file a response to the said request (DOC: E), Objector actually filed its response on the 9th July 2026 at 8:58 PM (DOC: F), by means of which it informed as follows:

   > "*CenterLine Services Limited (CLS) works with a very efficient internal system that keeps our costs low, while still delivering the required services. Everyone involved in the Health & Safety Project Supervisor duties is a direct employee of CLS, so we do not use subcontractors or pay any external mark-ups. This makes our workflow faster, clearer, and easier to manage. Because our team follows the same procedures, works are streamlined, and we can cover the Transport Malta sites in Malta, Gozo, and Comino without unnecessary overheads*"

   Clearly, therefore, Objector did not only reply to the evaluation clarification request of the 9th July 2026, but actually replied on the same day that this same request was sent, that is on the 9th July 2026;

   Therefore, the decision of the 4th September 2026 is factually incorrect, since Objector did, in fact, reply to the evaluation clarification request in question;

2. Without prejudice to the above, Objector's offer of €10,700.00 was not abnormally low, given, amongst others, that the Preferred Bidder's offer of €12,740.00 was only €2,040.00 or 16.01% higher than that of Objector;

3. Without prejudice to the above, the decision of the 4th September 2026 is totally unfounded, both as a matter of fact and as a matter of law, since Objector submitted the cheapest priced offer satisfying all administrative and technical criteria;

4. Without prejudice to the above, the decision of the 4th September 2026 is totally unfounded, both as a matter of fact and as a matter of law, as will further result during the course of these proceedings;

For the above reasons, Objector humbly requests that the decision of the 4th September 2026 is revoked in its entirety, and for all intents and purposes of law, and that Objector's bid is reintegrated in the evaluation process, thus enabling the award of the tender in caption to the cheapest technically and financially compliant bidder in accordance with law.

This Board also noted the **Contracting Authority's** Reasoned Reply dated the 14th September, 2026 and received by the Board on the 16th September, 2026, signed by Av. Sarah Caruana, and its verbal submissions during the hearing held on the 20th October, 2026, in that:

Whereby the Authority informs this Honourable Board that during the evaluation committee's evaluation process, the Objector's response to the evaluation board's clarification request was not *prima facie* available to the evaluation committee. Therefore, and at that stage, and from the information available to it at the time, the evaluation committee concluded that the Objector did not lodge a response, hence moved to discard the Objector's bid.

Whereby, the Authority informs this Honourable Board that it intends to re evaluate the offers in question.

This decision is being taken without any admission of responsibility whatsoever, and without prejudice to the eventual decision of the evaluation committee which shall conduct the re-evaluation process.

The Authority also requests that a decision is reached without holding a hearing, unless objected to by the Objector or any interested third party, and in such case, the Authority submits itself to the decision of this Honourable Board.

This Board also noted the letter filed by the **Recommended Bidder**, MAKS Engineering Ltd, received by the Board on the 17th September, 2026 and signed by Mr Karl Attard, Director, headed "Formal Objection by Interested Third Party, Request for Hearing and Request for Relevant Documentation", and its verbal submissions during the hearing held on the 20th October, 2026, in that:

We refer to the reasoned replies submitted by the Authority for Transport in Malta, dated 14 September 2026, in connection with the objections lodged by Centreline Services Limited concerning the above-referenced procurement procedure.

MAKS Engineering Ltd, being an interested third party in the above procurement procedure, hereby formally objects to the Authority's request that the matter be determined without the holding of a hearing.

We note that, according to the Authority's reasoned replies, Centreline Services Limited's response to the Evaluation Board's clarification request was not available to the Evaluation Committee during the evaluation process and that, on the basis of the information available to it at the time, the Evaluation Committee concluded that no response had been submitted and consequently proceeded to discard the respective bid.

We further note that the Authority has now stated its intention to re-evaluate the offers in question.

In this respect, MAKS Engineering Ltd has a direct interest in any decision which may result in the reopening and/or re-evaluation of the offers and which may consequently affect the outcome of the procurement procedure and the position of the respective tenderers.

Accordingly, MAKS Engineering Ltd respectfully objects to the matter being determined without a hearing and requests that the Public Contracts Review Board affords MAKS Engineering Ltd the opportunity to participate in the proceedings and make its submissions before any decision is taken concerning the objection and/or the proposed re-evaluation.

Furthermore, MAKS Engineering Ltd wishes to formally reserve its position in relation to the proposed re-evaluation. In particular, MAKS respectfully requests that the circumstances surrounding the clarification request and response, including the date, time, manner and channel through which the clarification response was submitted and received, and the reasons why such response was not available to the Evaluation Committee at the material time, be properly established and considered before any determination is made which may alter the outcome of the original evaluation.

For this purpose, and insofar as legally permissible and subject to any applicable confidentiality requirements, MAKS Engineering Ltd respectfully requests access to and/or disclosure of the relevant documentation and records necessary for it to understand and make informed submissions concerning the circumstances in question, including, where permissible:

- the clarification request issued to Centreline Services Limited;
- the relevant clarification response and its date and time of submission;
- the available records evidencing receipt of such response;
- the relevant correspondence and/or system records concerning its submission and receipt; and
- any other relevant documentation or information establishing why the response was not available to the Evaluation Committee during the original evaluation.

Where any document cannot be disclosed in full due to confidentiality or other applicable restrictions, MAKS Engineering Ltd respectfully requests that the relevant non-confidential information, appropriately redacted documentation, or procedural information be made available insofar as permissible, so that MAKS may properly understand and address the basis upon which the proposed re-evaluation is being considered.

MAKS Engineering Ltd further respectfully requests that any re-evaluation, if ultimately directed or permitted, be carried out strictly in accordance with the applicable procurement rules and the principles governing equal treatment, transparency and fairness between all participating tenderers, without affording any tenderer an opportunity to alter or supplement its offer beyond what is lawfully permissible.

For the avoidance of doubt, MAKS Engineering Ltd expressly reserves all its rights and remedies in relation to the objection proceedings, the proposed re-evaluation, any subsequent evaluation decision, and any other decision which may affect its position in the procurement procedure.

In view of the above, MAKS Engineering Ltd respectfully requests that:

1. A hearing be held before the Public Contracts Review Board determines the matter;
2. MAKS Engineering Ltd be recognised and notified as an interested party and be afforded the opportunity to participate and make appropriate submissions;
3. The circumstances surrounding the clarification response, including its submission, receipt and non-availability to the Evaluation Committee, be properly established and considered;
4. The relevant documentation and records referred to above be made available to MAKS Engineering Ltd, insofar as legally permissible, prior to the hearing and/or within such timeframe as will allow MAKS a reasonable opportunity to consider the same and make its submissions;
5. No determination concerning the proposed re-evaluation be made without MAKS Engineering Ltd being afforded the opportunity to make its representations on matters which may affect its position in the procurement procedure; and
6. MAKS Engineering Ltd's rights and remedies remain fully reserved in respect of the objection proceedings, any re-evaluation and any subsequent procurement decision.

This Board, after having examined the relevant documentation to this appeal and heard submissions made by all the interested parties including the testimony of the witnesses duly summoned, will now consider Appellant's grievances as follows in their entirety.

At the outset, the Board observes that the Appellant is a tenderer whose tender for Lot 2 was rejected at the financial stage of the evaluation, and that the present appeal is a complaint of the kind which regulation 87(b) of the Public Procurement Regulations (S.L. 601.03) (hereinafter "the Regulations") places within the function of this Board, namely:

> "It shall be the function of the Review Board to address in particular:"
>
> "(b) complaints raised by tenderers or candidates relating to exclusions, non-compliant offers, contract award decisions or cancellations of a procurement procedure after the closing date and time set for the submission of the said call;"

The decision impugned is that notified to the Appellant by letter dated the 4th September, 2026, issued by the Sectoral Procurement Directorate, which states that the Appellant's procurement proposal for Lot 2 – Gozo and Comino Sites "was Not Financially Compliant" and that the procurement was recommended for award to MAKS Engineering for the price of €12,740.00 excluding VAT. Regulation 271 of the Regulations provides:

> "The objection shall be filed within ten calendar days following the date on which the contracting authority or the authority responsible for the tendering process has by fax or other electronic means sent its proposed award decision or the rejection of a tender or the cancellation of the call for tenders after the lapse of the publication period."

The Information Sheet records the 4th September, 2026 as the date on which tenderers were notified of the award recommendation, and the 11th September, 2026 as the date on which the Appellant filed its notice of objection. The objection was thus filed seven calendar days after the notification, and within the period prescribed by regulation 271 (the letter of the 4th September, 2026 itself indicating noon of Monday, the 14th September, 2026 as the time-limit).

The Appellant, being a tenderer whose tender was rejected, is a person entitled to file an appeal in terms of regulation 270 of the Regulations, which further requires that the objection "shall contain in a very clear manner the reasons for their complaints". The appeal is admissible.

As to the deposit, regulation 273 of the Regulations provides:

> "The objection shall only be valid if accompanied by a deposit equivalent to 0.50 per cent of the estimated value set by the contracting authority of the whole tender or if the tender is divided into lots according to the estimated value of the tender

> set by the contracting authority for each lot submitted by the tenderer, provided that in no case shall the deposit be less than four hundred euro (€400) or more than fifty thousand euro (€50,000) which may be refunded as the Public Contracts Review Board may decide in its decision."

The estimated value of Lot 2 is €15,630.00 excluding VAT (clause 1.3 of the Tender Document; Information Sheet). Half of one per cent of that value is €78.15, which is below the statutory minimum; the deposit due in respect of Lot 2 is therefore €400.00, the letter of the 4th September, 2026 itself stating that an objection is to be lodged "against a deposit of € 400.00".

The Appellant exhibited, as DOC: B, a Bank of Valletta printout of a payment of EUR 400.00 to Cashier Malta Government described as "Deposit on behalf of CenterLine Services Limited for Lot 2", bearing Transaction ID 185179784 and the status "Your instructions have been received and will be reviewed. Please do not re-submit this payment."

The Board further recalls the procedural directions already given in Cases 699 and 700, namely: (i) that the Contracting Authority's request that a decision be reached without a hearing, being conditional upon there being no objection from the Appellant or from any interested party, was not acceded to once the Recommended Bidder objected, having regard to regulations 89(1), 90(2), 93(1) and 276(e), (f) and (h) of the Regulations; (ii) that MAKS Engineering Ltd was recorded as an interested party in both cases; (iii) that the documentation pertaining to the call was to be forwarded to the Board in terms of regulation 276(d), the Recommended Bidder's request for documents being reserved for the hearing with regard to regulation 40, and no documents being released in the meantime; and (iv) that the award process stands suspended in terms of regulations 274 and 275, any re-evaluation proceeding only if and as directed by the Board in its decision.

In reaching its conclusions the Board has examined: the Information Sheet; the Tender Document of SPD6/2025/112 (Departmental e-procurement document, version 2.8); the General Rules Governing Tenders, version 4.10, August 2024 (hereinafter "the GRGT"); Procurement Policy Note #40, 'Evaluation Stage – Clarification and Rectification Requests', issued on the 01.06.2023 (hereinafter "PPN #40"); the Opening Report; the Evaluation Report dated the 30/07/2026; the letters of the 4th September, 2026 to the Appellant and to the Recommended Bidder; the documents exhibited by the Appellant to its objection (DOC: A to F); and the bids submitted by the Appellant and by the Recommended Bidder. The Board has further examined the note dated the 15th October, 2026, filed by the Contracting Authority, and the document marked "Doc TM1" which accompanies it.

Cross-reference of testimony. The Board notes that the present case (Case 700 – Lot 2) and Case 699 (Lot 1) arise out of the same call for tenders, SPD6/2025/112, the same evaluation process and the same clarification procedure, and involve the same Appellant, the same Contracting Authority and the same Recommended Bidder.

In the interests of procedural economy, and in order to avoid both the repetition of testimony and the risk of inconsistent findings upon identical facts, the Board directs that the testimony of the witnesses heard in Case 699 (Lot 1) be cross-referred to, and be deemed to form part of the record of, the present case (Case 700 – Lot 2), without the need for any such witness to be recalled or to repeat his or her deposition; and the Board has duly taken that testimony into account in its evaluation of the facts in this case. No party is thereby deprived of the opportunity to make its case, regulation 90(2) of the Regulations requiring the Board to ensure that "during the public hearing all interested parties are given the opportunity to make their case", and regulation 92(3) providing that "All evidence tendered by witnesses that are produced before the Review Board shall be transcribed and put in writing in the records of the proceedings".

The questions which the Board is called upon to determine are accordingly the following: (1) whether the sole ground upon which the Appellant's tender was rejected, namely that the Appellant did not reply to the clarification request, is established; (2) whether, as the Appellant contends, its offer could not be regarded as abnormally low; (3) whether the Appellant is entitled to a determination that it submitted the cheapest compliant offer; (4) whether the fourth grievance affords a ground for adjudication; and (5) the consequences which follow, including the position of the intended re-evaluation, the request of the Recommended Bidder and the deposit.

Appellant's Grievances

The Appellant's case rests upon the following premises, which the Board records as pleaded: (a) that, in terms of clause 6.1 of the Tender Document, price is the sole award criterion and the contract is to be awarded to the tenderer submitting the cheapest priced offer satisfying the administrative and technical criteria; (b) that the Recommended Bidder's offer is of €12,740.00 and the Appellant's offer is of €10,700.00, both excluding VAT, so that the Appellant's offer is the cheaper by €2,040.00; and (c) that the Appellant's offer was set aside on one sole ground, namely the statement that a clarification request had been sent with regard to an abnormally low offer and that the bidder did not reply.

Upon those premises the Appellant advances four grievances:

1. That the Appellant did receive the evaluation clarification request on the 9th July, 2026 at 9:17 AM (DOC: C and D), was given until the 16th July, 2026 at 17:00 to respond (DOC: E), and in fact responded on the 9th July, 2026 at 8:58 PM (DOC: F), so that the decision of the 4th September, 2026 is factually incorrect.
2. That, without prejudice to the above, the Appellant's offer of €10,700.00 was not abnormally low, the Recommended Bidder's offer being only €2,040.00, or 16.01%, higher.
3. That, without prejudice to the above, the decision is unfounded in fact and in law since the Appellant submitted the cheapest priced offer satisfying all administrative and technical criteria.

4. That, without prejudice to the above, the decision is unfounded in fact and in law "as will further result during the course of these proceedings".

The Appellant requests that the decision of the 4th September, 2026 be revoked in its entirety and that its bid be reintegrated in the evaluation process, so as to enable the award of the tender to the cheapest technically and financially compliant bidder in accordance with law.

Contracting Authority's Response

The Contracting Authority's Reasoned Reply does not contest that the Appellant sent a response to the clarification request, nor the date and time at which the Appellant says it was sent. Its position is, in substance, fourfold.

First, that during the evaluation committee's evaluation process the Appellant's response "was not prima facie available to the evaluation committee". Second, that, on "the information available to it at the time", the evaluation committee concluded that the Appellant had not lodged a response and, therefore, discarded its bid. Third, that the Authority "intends to re evaluate the offers in question", a decision taken "without any admission of responsibility whatsoever" and without prejudice to the eventual decision of the evaluation committee conducting the re-evaluation. Fourth, that a decision be reached without a hearing unless an objection is made by the Appellant or an interested third party, in which case the Authority submits itself to the decision of the Board.

The Reply does not address the Appellant's second and third grievances.

By a note dated the 15th October, 2026, signed by Av. Sarah Caruana, the Contracting Authority further presented a document marked "Doc TM1", stating that it was presented "for the perusal of all parties and of this Honourable Board" and that it "is being attached in order to substantiate the evaluation committee's conclusion in this tender".

Recommended Bidder's Position

The Recommended Bidder's letter, headed "Formal Objection by Interested Third Party, Request for Hearing and Request for Relevant Documentation", is directed principally at the procedure. It objects to the matter being determined without a hearing; asserts a direct interest in any decision which may result in the reopening or re-evaluation of the offers; reserves its position in relation to the proposed re-evaluation; requests that the circumstances surrounding the clarification request and response, including the date, time, manner and channel of its submission and receipt and the reasons why it was not available to the evaluation committee, be established before any determination is made; requests access to the relevant documentation, insofar as legally permissible; and requests that any re-evaluation, if directed, be carried out strictly in accordance with the applicable rules and the principles of equal treatment, transparency and fairness,

"without affording any tenderer an opportunity to alter or supplement its offer beyond what is lawfully permissible".

The letter does not assert that the Appellant failed to respond to the clarification request, and does not advance submissions on the Appellant's second, third and fourth grievances.

Board's Considerations

A. The documentary record

The Board has first established, from the documents before it, the following chronology. The entries drawn from the Appellant's exhibits are so indicated; the Board notes that no party has challenged the authenticity or accuracy of those exhibits, nor any of the facts which they record.

- 30th April, 2026 – publication of the call for tenders; 21st May, 2026 – closing date (Information Sheet).
- 21st May, 2026 – opening of offers. The Opening Report records, for Lot 2 – Gozo and Comino Sites, the following prices: the Appellant, €10,700.00; MAKS Engineering, €12,740.00; 9 Lives Health and Safety Consultant, €43,900.00; 9ONE Health and Safety Consultancy, €29,400.00.
- 17th June, 2026 – first meeting of the evaluation committee; 20th July, 2026 – second meeting; 30th July, 2026 – third meeting and date of the Evaluation Report (Evaluation Report).
- Thursday, 9th July, 2026, 9:17 AM – the clarification request for Lot 2 is posted on the e-procurement platform (ePPS), the automated notification of the platform being timed "Jul 9, 2026, 9:17 AM" (DOC: C and D). The ePPS clarification record exhibited as DOC: E shows, as its deadline, "16/07/2026 17:00", the request being recorded as one "for" "Clarification".
- Thursday, 9th July, 2026, evening – the Appellant's response is recorded within the same ePPS clarification record under the entry "Response Date (1)" as "09/07/2026 20:58" (DOC: E), and the platform's automated notification of a clarification response is timed "Jul 9, 2026, 8:58 PM" (DOC: F).
- 4th September, 2026 – letters to the Appellant and to the Recommended Bidder; 11th September, 2026 – objection filed; 14th September, 2026 – Contracting Authority's Reasoned Reply, received by the Board on the 16th September, 2026; 17th September, 2026 – Recommended Bidder's letter received by the Board; 15th October, 2026 – note of the Contracting Authority presenting Doc TM1; 20th October, 2026 – hearing.

The clarification request (DOC: C), issued in the name of the Evaluation Committee, Transport Malta, states the reason for which it was made in the following terms:

> "Your offer is priced at €10,700.00 excluding VAT and is being considered substantially lower than the estimated value of the tender as determined by the Contracting Authority."

It requests the Appellant "to justify and provide a rationale behind the price proposed in relation to the services being procured", asks it also to confirm that it has understood "all the respective specifications and conditions listed in the procurement documents", makes reference to regulation 243 of the Regulations, and invokes Note 3 of the Instructions to Tenderers. It provides that the information is "to be submitted through the appropriate Electronic Public Procurement (ePPS) module", and concludes with the following warning:

> "Failure to send a written reply with the required explanations, within the stated timeframe, shall be deemed as acceptance that the offer is abnormally low. Additionally, in line with General Rules Governing Tenders, failure to reply shall result in the tender offer not being considered any further and thus automatically disqualified."

The estimated value of Lot 2 is €15,630.00 excluding VAT. The Appellant's offer is €4,930.00 (31.54%) below that value and the Recommended Bidder's offer is €2,890.00 (18.49%) below it; the two remaining offers are above it, which the Evaluation Report expressly notes.

The Evaluation Report records that all four tenderers passed the eligibility stage; that the Appellant's technical offer was found compliant, no clarifications having been deemed necessary; and that, as to the financial offers of the two lowest tenderers in Lot 2, the following was recorded. For the Recommended Bidder:

> "The tendering committee evaluated the financial offer and found it compliant. No rectifications were deemed necessary."

and for the Appellant:

> "A clarification request was sent to economic operator with regards to the abnormally low offer. The bidder did not reply hence was found financially non compliant."

The Evaluation Report's final recommendation designates the Recommended Bidder's offer as "the Cheapest Compliant Offer deemed as fair and reasonable (Price Award)".

Three features of the record deserve to be noted. First, the Evaluation Report states no comparison or method by which the Appellant's offer was regarded as abnormally low, the comparison with the estimated value of the tender appearing only from the clarification request itself. Second, the Evaluation Report records that the Recommended Bidder's offer for Lot 2 was found compliant, no clarification being

recorded in respect of it, and it does not disclose the criterion by which that offer was not, and the Appellant's offer was, regarded as appearing abnormally low. Third, as to the Appellant, the Report records the absence of a reply but, naturally, no assessment of any explanation. The Contracting Authority, for its part, does not suggest that any assessment of the Appellant's explanations took place.

Doc TM1 is a screen capture of the "Evaluation Clarifications" tab of the Clarifications section of the ePPS for Tender SPD6/2025/112, which states that it is "Displaying all 4 matches". It lists four entries: (a) Clarification ID 4, a clarification request for Lot 1 addressed to the Recommended Bidder, whose description states "Your offer is priced at €38,305 excluding VAT", against which an answer attachment entitled "SPD6-2025-112_Lot1_Clarification_Reply_MAKS.pdf" and the date 22/07/2026 15:31:57 are shown; (b) Clarification ID 3, a clarification request for Lot 2 addressed to the Appellant, whose description states "Your offer is priced at €10,700.00 excluding VAT", with no answer attachment, and the date 08/07/2026 15:07:45; (c) Clarification ID 2, a clarification request for Lot 1 addressed to the Appellant, whose description states "Your offer is priced at €37,450.00 excluding VAT", with no answer attachment, and the date 08/07/2026 15:03:09; and (d) Clarification ID 1, a rectification request addressed to 9 Lives Health and Safety Consultant, with an answer attachment and the date 24/06/2026 11:57:08.

A flag appears in the "Status" column against each of the four entries. The legend printed beneath the list identifies five flags, each of a different colour: "Answered", "Unanswered", "Pending Approval", "Pending Deadline" and "Draft". The flag against every entry, including the two entries relating to the Appellant, is green, being the colour of the flag which the legend identifies with "Answered". The "Answer Attachment" column is blank against both entries relating to the Appellant, and the document does not reproduce the text of any response. The screen carries, further, the controls "READ CLARIFICATION RESPONSE" and "DOWNLOAD CLARIFICATION RESPONSES".

The date column of Doc TM1 shows 08/07/2026, at 15:03:09 and at 15:07:45 respectively, against the Appellant's two entries, whereas the platform's notification exhibited as DOC: D is timed 9th July, 2026, 9:17 AM, and the deadline recorded in DOC: E is 16/07/2026 17:00. The Board does not find it necessary to determine what event that column records against each entry, since the Appellant's response, entered on the 9th July, 2026, falls within five working days of the request whether that period is reckoned from Wednesday, the 8th July, 2026 (expiring on Wednesday, the 15th July, 2026) or from Thursday, the 9th July, 2026 (expiring on Thursday, the 16th July, 2026).

B. The legal and contractual framework

Regulation 243 of the Regulations, headed "Abnormally Low Tenders and Variant Solutions", provides in its relevant parts:

> "(1) Contracting authorities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services."
>
> "(2) The explanations may in particular relate to:"
>
> "(a) the economics of the manufacturing process, of the services provided or of the construction method;"
>
> "(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;"
>
> "(c) the originality of the work, supplies or services proposed by the tenderer;"
>
> "(d) compliance with obligations established in regulations 13(m) and 16(k);"
>
> "(e) compliance with obligations referred to in regulation 60;"
>
> "(f) the possibility of the tenderer obtaining State aid."
>
> "(3) Failure by the economic operator to send his explanations within the written time-frame imposed by the contracting authority, shall be deemed as acceptance from the economic operator that his tender is abnormally low."
>
> "(4) The contracting authority shall assess the information provided by consulting the tenderer. It may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in sub-regulation (2)."

The regulation thus establishes a sequence of three distinct stages, each with its own legal condition: first, an obligation on the contracting authority, arising where a tender appears abnormally low, to require the economic operator to explain its price (sub-regulation (1)); secondly, a consequence attaching to the economic operator's failure to send its explanations in time (sub-regulation (3)); and thirdly, where explanations are provided, an obligation to assess them, coupled with a power of rejection which is confined to the case in which the evidence supplied does not satisfactorily account for the price (sub-regulation (4)). The Board observes that neither regulation 243, nor the Tender Document, nor the GRGT, nor PPN #40 prescribes a numerical threshold or formula by which a tender is to be regarded as abnormally low.

This accords with the case-law of the Court of Justice. In ***Case C-669/20 Veridos GmbH v Ministar na vatreshnite raboti na Republika Bulgaria and Mühlbauer ID Services GmbH – S&T*** (Fourth Chamber, 15th September 2022, ECLI:EU:C:2022:684), the Court interpreted Articles 38 and 49 of Directive 2009/81/EC, observing (paragraph 31) that its interpretation could be transposed to the essentially identical provisions of Directive 2014/24/EU.

It noted that EU law does not define an 'abnormally low tender'; that it is for the Member States and the contracting authorities to determine the method of calculating the anomaly threshold, provided that the method is objective and non-discriminatory; and that whether a tender is abnormally low is assessed in relation to the service concerned, taking into account all relevant factors (paragraphs 33 to 35, referring to Joined Cases C-285/99 and C-286/99 Lombardini and Mantovani and to Case C-568/13 Data Medical Service).

As to the Tender Document, clause 1.3 provides, with regard to the estimated procurement value:

> "The purpose of this value shall be the guidance of prospective bidders when submitting their offer and is not to be considered as a binding capping price."
>
> "Therefore, the published Estimated Procurement Value is not restrictive and final on the Contracting Authority. Economic Operators are free to submit financial offers above or below the Estimated Procurement Value. However, the Contracting Authority reserves the right to accept or reject Financial Offers exceeding the Estimated Procurement Value."

Clause 6.1 provides:

> "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."

The Financial Offer, and the filled-in Financial Bid Form, required by clause 5(D) of the Instructions to Tenderers are each marked "(Note 3)", and the Notes to Clause 5 provide with regard to Note 3:

> "No rectification 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."

The GRGT, for its part, provides in clause 15.2 that requests for clarification of tenders and the responses to them must be made through the Government's e-procurement platform (www.etenders.gov.mt) and that:

> "They may in no circumstances alter or try to change the price or content of the tender, except for rectifications as allowed in terms of what is stipulated in the procurement document or to correct arithmetical errors discovered by the evaluation committee when analysing tenders, in accordance with Clause 17 below."

In respect of the financial evaluation, clause 16.4 of the GRGT provides:

> "No rectifications shall be allowed in respect of the documentation as accompanied by Note 3 in Clause 5 of the Instructions to Tenderers. Only clarifications on the submitted information in respect of the latter may be eventually requested."
>
> "Clarification 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."

PPN #40, described in its own terms as "a Government-wide policy", states that "all communication with the Economic Operators in their capacity as bidders, shall be fully documented and audit trailed", and continues:

> "Contracting Authorities / Entities are reminded that the deadline for a Clarification / Rectification Response shall be calculated on a 5-day working week (Monday to Friday) from the 'date and time' the Clarification / Rectification Request is dispatched."
>
> "Clarification / Rectification Requests shall specify the shortcoming and / or the unclear / conflicting information noted by the Evaluation Committee."

Finally, regulation 39(1) of the Regulations provides:

> "Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner."

and regulation 62(3) 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."

The Board also finds it instructive to recall the reasoning of the Court of Justice of the European Union, under the corresponding obligation in Article 55 of Directive 2004/18/EC, in ***Case C-599/10 SAG ELV Slovensko a.s. and Others v Úrad pre verejné obstarávanie*** (Fourth Chamber, 29 March 2012, ECLI:EU:C:2012:191). The Court held, at paragraph 29, that:

> "the existence of a proper exchange of views, at an appropriate time in the procedure for examining tenders, between the contracting authority and the tenderer, to enable the latter to demonstrate that its tender is genuine, constitutes a fundamental requirement of Directive 2004/18, in order to prevent the

> contracting authority from acting in an arbitrary manner and to ensure healthy competition between undertakings"

and, at paragraph 31, that "the contracting authority must set out clearly the request sent to the tenderers concerned so that they are in a position fully and effectively to show that their tenders are genuine". The Court added, at paragraph 32, that it is for the national court "to ascertain, having regard to all the documents in the file placed before it, whether the request for clarification enabled the tenderers concerned to provide a sufficient explanation of the composition of their tender".

The Board draws from that judgment no more than the proposition, which is consistent with regulation 243 of the Regulations, that the exchange between the contracting authority and the tenderer on an apparently abnormally low tender is a safeguard against arbitrariness, and that a proper exchange of views with the tenderer is to precede the rejection of a tender on that ground.

The Court of Justice has since applied the same requirement under Article 69 of Directive 2014/24/EU. In ***Case C-367/19 Tax-Fin-Lex d.o.o. v Ministrstvo za notranje zadeve*** (Fourth Chamber, 10th September 2020, ECLI:EU:C:2020:685), the Court held, at paragraph 31, that:

> "since a tender at a price of EUR 0.00 could be classified as an abnormally low tender within the meaning of Article 69 of Directive 2014/24, where a contracting authority is presented with such a tender, it must follow the procedure provided for in that provision and ask the tenderer to explain the amount of the tender."

The Court added (paragraphs 32 to 34) that the contracting authority must consult the tenderer, and may reject the tender only where the evidence supplied does not satisfactorily account for the low price, in compliance with the principles of equal treatment, non-discrimination, transparency and proportionality set out in Article 18(1) of that Directive.

C. The Appellant's first grievance: that the Appellant did respond to the clarification request

The only reason given for the rejection of the Appellant's tender, both in the Evaluation Report and in the letter of the 4th September, 2026, is that "The bidder did not reply". The ground is, therefore, one of fact: that no reply was given. A rejection resting upon a single factual premise stands or falls with that premise.

That is also how regulation 243 frames the matter. By sub-regulation (3), what is deemed to be an acceptance that the tender is abnormally low is the "Failure by the economic operator to send his explanations within the written time-frame imposed by the contracting authority".

Two elements are thus required: that the economic operator failed to send its explanations, and that it so failed within the time-frame imposed. The provision turns on the sending of the explanations by the economic operator. It makes no reference to their availability to, or their retrieval by, the evaluation committee. Since it attaches an adverse consequence to inaction, the provision is to be applied only where

each of its conditions is fully met; and the risk that a response duly sent is not brought to the attention of the evaluation committee is not one which sub-regulation (3) allocates to the tenderer, whose burden, under that provision, is confined to the act of sending within the time-frame.

The time-frame applicable is five working days from notification (Note 3 to Clause 5 of the Tender Document; clause 16.4 of the GRGT), calculated, in accordance with PPN #40, on a 5-day working week (Monday to Friday) from the date and time at which the request is dispatched. A request dispatched on Thursday, the 9th July, 2026 thus attracts a time-limit expiring on Thursday, the 16th July, 2026; and that is the deadline which the ePPS clarification record states, namely "16/07/2026 17:00" (DOC: E). The Board has regard also to the date of 8th July, 2026 shown in Doc TM1, as set out under heading A: the Appellant's response of the 9th July, 2026 falls within the time-frame on either reckoning.

The documents exhibited by the Appellant establish the following. The request was posted on the ePPS on the 9th July, 2026 at 9:17 AM. The Appellant's response, whose text is reproduced in the objection, was lodged on the same platform and appears within the same ePPS clarification record as the Authority's own request, bearing the date and time 20:58 on the 9th July, 2026, that is, within a matter of hours of the request and seven days before the deadline; and the platform's automated notification of a clarification response is timed 8:58 PM of that day. The response was thus sent through the ePPS, which is the channel the request itself prescribed and which clause 15.2 of the GRGT requires, and within the time-frame imposed.

The Contracting Authority does not dispute any of this. Its Reasoned Reply states that the Appellant's response was "not prima facie available to the evaluation committee" and that the committee's conclusion was reached "from the information available to it at the time".

That is a statement as to what the committee had before it; it is not a statement that the Appellant failed to send a response, and the Authority does not say so. The Recommended Bidder, for its part, asks that the circumstances be established, but does not assert that no response was sent, nor that it was sent late or through another channel. The Board has accordingly established them, from the documents, under the foregoing paragraph.

Testimony of Mr Daniel Dimech. The Board has regard, further, to the testimony, given on oath at the sitting of the 20th October, 2026, of Mr Daniel Dimech, Chairperson of the Technical Evaluation Committee, which, as directed above, forms part of the record of the present case. Mr Dimech was summoned by the Appellant for the purpose of verifying and ascertaining whether or not the Contracting Authority had in fact received the Appellant's response to the clarification request.

Mr Dimech confirmed on oath that the Appellant had indeed sent its response to the clarification request. He further testified that the issue in dispute derived from the digital system, which misled the Technical Evaluation Committee. It was for that reason that the Contracting Authority stated, in its Reasoned Reply, that the Appellant's response "was not prima facie available to the evaluation committee".

The Board attaches particular weight to this testimony, which comes from the Chairperson of the very committee whose conclusion that "The bidder did not reply" is impugned in these proceedings. It accords with the documentary record set out above, from which it results that the Appellant's response was lodged on the ePPS on the 9th July, 2026, and with the position of the Contracting Authority, which does not contest that a response was sent.

The testimony thus confirms, on oath and from the Chairperson of the Contracting Authority's own evaluation committee, that the Appellant did send its explanations, and that the conclusion that no reply had been given did not arise from any omission on the part of the Appellant, but from the digital system which misled the Technical Evaluation Committee. As stated above, regulation 243(3) turns on the sending of the explanations by the economic operator, and the risk that a response duly sent is not brought to the attention of the evaluation committee is not one which that sub-regulation allocates to the tenderer.

This conclusion accords with the manner in which the Court of Appeal has allocated the risk of a failure in transmission. Where the failure was attributable to the tenderer, the Court has placed its consequences upon the tenderer. In ***Cassar Fuel Limited v. Gozo Channel (Operations) Limited et*** (Appell 5/20, Court of Appeal, 13th July 2020), where the original bid bond had been sent by unregistered post and never arrived, the Court held (p. 8):

> "Darba hija hadet ir-riskju li tibghat tali dokument bil-posta mhux registrata, allura ghandha tkun hi li trid tbati l-konsegwenzi tal-fatt li dan id-dokument ma wasalx fil-post fejn kellu jasal."

In ***Specialist Group Cleaners Limited et v. Central Procurement and Supplies Unit tal-Ministeru tas-Saħħa et*** (Appell 320/2020/1, Court of Appeal, 25th February 2021), where files uploaded through the electronic system could not be opened and the tenderer had been alerted that something was wrong, the Court held (p. 16):

> "il-fatt li f'xi waqt kien imwissi li kien inħoloq problema tefa' fuqu l-oneru li jaċċerta ruħu li l-files waslu fejn kellhom jaslu u li waslu sew. Ukoll fl-aħjar ipotesi, mhux nieqes element ta' ħtija fuq Salus."

In ***Al-Nibras for Science & Technology Limited v. Onorevoli Ministru tal-Edukazzjoni et*** (Appell 358/18, Court of Appeal, 12th March 2019), where the file uploaded in reply to the evaluation committee's request was a zero length file, the Court confirmed the rejection of the offer, observing (p. 10):

> "Ma giex ippruvat li kien hemm difett fis-sistema. Ghalhekk, qal sew il-Bord li dan id-dokument ma kienx jiswa bhala risposta ghall-ittra ta' rettifika tal-kumitat tal-ghazla."

None of those circumstances is present here. The Appellant sent its response through the ePPS, the channel prescribed by the request itself and by clause 15.2 of the GRGT; its response appears, with its text, in the ePPS clarification record (DOC: E); no party has suggested that the Appellant was alerted to any difficulty in its transmission; and, far from a defect in the system being unproven, the Chairperson of the evaluation committee has testified on oath that it was the digital system which misled the committee. The principle stated by the Court of Appeal in ***Messrs. Power Cables Malaysia SDN BHD v. Korporazzjoni Enemalta et*** (Appell 130/2015/1, Court of Appeal, 13th July 2015), in the different context of bid bonds which had expired owing to a delay in the award not attributable to the tenderers, is apposite (p. 9):

> "Madankollu, l-oblaturi illi mxew kif riedu minnhom il-kondizzjonijiet tas-sejħa għal offerti ma għandhomx u ma jistgħux jiġu penalizzati minħabba nuqqas tad-Dipartiment."

The Board finds that the Appellant sent its explanations on the 9th July, 2026, through the ePPS, within the time-frame imposed. The Board expresses no view as to why the response was not available to the evaluation committee: the Contracting Authority has not explained it, and an explanation is not an element of regulation 243(3). The Board notes only that, on the Evaluation Report's own dates, the committee's second and third meetings (the 20th and the 30th July, 2026) took place after the date on which the Appellant sent its response. The Board makes no assessment of the content of the response: whether it is a satisfactory account is the matter which regulation 243(4) reserves for assessment, and which was not undertaken.

The Board has examined whether Doc TM1, which the Contracting Authority presented "in order to substantiate the evaluation committee's conclusion in this tender", substantiates the conclusion that the Appellant did not reply. It does not, for the following reasons.

First, nothing in the document states or shows that no response was received: the entry relating to the Appellant's request for Lot 2 (Clarification ID 3) is marked with the flag which the legend printed on the same screen identifies with "Answered", and not with that which it identifies with "Unanswered".

Second, the absence of an answer attachment against that entry does not show that no response was sent: the Appellant's response, as exhibited in DOC: E, was entered as text under the entry "Response (1)"; regulation 243(3) speaks of the economic operator's explanations without prescribing that they be given by attachment; and the request itself called for "a written reply with the required explanations", to be submitted "through the appropriate Electronic Public Procurement (ePPS) module", without stipulating that the reply be given by attachment.

To treat the absence of an attachment as a failure to reply would, moreover, be to hold the Appellant to a requirement which the clarification request did not contain. The Court of Appeal has repeatedly held that a contracting authority is bound by the conditions which it has itself laid down. In ***X Clean Limited v. Id-***

Dipartiment tal-Kuntratti et (Appell 314/2025/1, Court of Appeal, 11th November 2025), the Court stated (p. 19):

> "Dan proprju għaliex, hekk kif l-awtorità kontraenti tfassal il-kundizzjonijiet li tkun biħsiebha timponi fuq l-offerenti, hija tkun qiegħda tillimita bil-quddiem is-setgħat diskrezzjonali tagħha, b'dan li ma tkunx tista' tmur lura minnhom, mingħajr ma tikser il-prinċipji tat-trattament indaqs tal-offerenti u dak tat-trasparenza"

The Court of Justice has held to the same effect, in ***Case C-27/15 Pippo Pizzo v CRGT Srl*** (Sixth Chamber, 2nd June 2016, ECLI:EU:C:2016:404), at paragraph 42, that "a contracting authority must comply strictly with the criteria which it has itself established. That consideration applies *a fortiori* where an exclusion from the procedure is concerned."; and, in point 2 of the operative part, that the principle of equal treatment and the obligation of transparency preclude "an economic operator from being excluded from a procedure for the award of a public contract as a result of that economic operator's non-compliance with an obligation which does not expressly arise from the documents relating to that procedure or out of the national law in force".

Third, the document does not reproduce the text of any response, and is therefore not capable of showing that the Appellant's response had not been received. The Board makes no finding as to why the evaluation committee did not take the Appellant's response into account: Doc TM1 does not address that question and, as already stated, an explanation is not an element of regulation 243(3). Doc TM1 accordingly does not displace the Board's finding that the Appellant sent its explanations within the time-frame imposed; on its face it is consistent with it.

It follows that the factual premise upon which the Appellant was found financially non-compliant is not established, and that the consequence which regulation 243(3) attaches to a failure to send explanations within the time-frame, and which clause 16.4 of the GRGT and the clarification request itself attach to a failure to reply, cannot be invoked against the Appellant. Nor could the Appellant's tender have been rejected under regulation 243(4), which permits rejection only "where the evidence supplied does not satisfactorily account for the low level of price or costs proposed", since the evidence supplied, on the Contracting Authority's own showing, was never assessed.

The Court of Appeal reached the same conclusion, under regulation 29 of the Regulations then in force (L.N. 296 of 2010), in ***Dimbros Limited v. Alfred Galea u Kunsill Lokali Msida*** (Appell 205/15, Court of Appeal, 30th October 2015). There, a local council had rejected the cheapest offer as too low without first asking in writing for details of its constituent elements and verifying them by consulting the tenderer, as the proviso to that regulation required. The Court held (pp. 6 and 7):

> "Ukoll jekk il-Kunsill kellu s-setgħa li jwarrab l-orħos offerta, dik is-setgħa seta' jinqeda biha biss jekk, qabel, ikun mexa kif trid il-liġi; la ma mexiex kif trid il-liġi, mela ma kellux is-setgħa li jwarrab l-orħos offerta u kien proċeduralment ultra vires."
>
> "Għalhekk, ukoll li kieku fil-meritu kien minnu illi l-offerta ta' Dimbros kienet "b'mod xejn normali" baxxa għax-xogħol li għandu jsir, il-Kunsill ma kellux is-setgħa li jimxi kif mexa."

In the present case, likewise, the Appellant's tender was rejected without the assessment of its explanations which regulation 243(4) requires.

The rejection of a tender on the ground that no explanations were given, when explanations were given in time, is moreover irreconcilable with the duty to act "in a transparent and proportionate manner" under regulation 39(1), and with the requirement of PPN #40 that communications with bidders be "fully documented and audit trailed".

The first grievance is accordingly upheld.

D. The Appellant's second grievance: that the Appellant's offer was not abnormally low

The Appellant argues that its offer cannot be abnormally low since the Recommended Bidder's offer is only €2,040.00, or 16.01%, higher. For accuracy, the Board records that €2,040.00 is 16.01% of the Recommended Bidder's offer of €12,740.00, and 19.07% of the Appellant's own offer of €10,700.00; the difference is immaterial to the point.

Regulation 243(1) obliges contracting authorities to require an explanation "where tenders appear to be abnormally low in relation to the works, supplies or services". The test is thus anchored in the services tendered for. The sub-regulation does not tie it to the difference between the two lowest tenders, and the Board is not persuaded that the proximity of two offers establishes, of itself, that neither could so appear. The Appellant's argument, moreover, does not engage with the basis which the clarification request itself stated, namely that the offer was "substantially lower than the estimated value of the tender as determined by the Contracting Authority". The proximity of the two lowest offers is, rather, a circumstance which a tenderer may put forward in the explanations it gives under regulation 243(2) and (4).

The Court of Justice has said as much. In ***Case C-669/20 Veridos GmbH v Ministar na vatreshnite raboti na Republika Bulgaria and Mühlbauer ID Services GmbH – S&T*** (cited above), the Court held, at paragraph 37, that:

> "Comparison with other, competing tenders, however useful it may be in certain cases for the purpose of identifying any anomalies, cannot constitute the sole criterion used by the contracting authority in that regard."

The Court of Appeal, for its part, in ***X Clean Limited (C-69875) v. Dipartiment għall-Anzjanità Attiva u Kura fil-Komunità et*** (Appell 126/2021/1 and Appell 127/2021/1, Court of Appeal, both of 31st August 2021), considered the estimated value set by the contracting authority a more logical point of comparison than the highest offer, and held that the contracting authority's discretion in this regard remains subject to review by the Board and by the Court (p. 9 of each judgment):

> "Jingħad qabel xejn illi huwa aktar loġiku li l-prezz tal-offerta jitqabbel mal-prezz stmat mill-awtorità kontraenti milli mal-prezz tal-ogħla offerta."
>
> "Għalkemm il-Bord ta' Reviżjoni fid-deċiżjoni tiegħu jgħid illi "it is in the contracting authority's discretion to determine whether a bid is abnormally low or otherwise" il-mod kif l-awtorità tinqeda b'din id-diskrezzjoni jibqa' sindakabbli mill-bord stess u mill-qorti."

The Board further observes that clause 1.3 of the Tender Document leaves economic operators free to offer below the estimated procurement value, which is expressly not a binding capping price; but that provision does not displace regulation 243, and nothing in it relieves a contracting authority of the obligation which that regulation imposes where an offer appears abnormally low.

The Board notes that, for Lot 2, the Evaluation Report records a clarification only in respect of the Appellant's offer, which is €4,930.00 (31.54%) below the estimated value, the Recommended Bidder's offer, which is €2,890.00 (18.49%) below it, having been found compliant without clarification. The Appellant has not pleaded unequal treatment, and the Board makes no finding upon it. It observes only that the Evaluation Report does not disclose the criterion applied, and that regulation 39(1) requires that criterion to be applied equally; that requirement is reflected in the direction given below for the re-evaluation. Doc TM1, which states that it is "Displaying all 4 matches", shows no clarification request addressed to the Recommended Bidder in respect of Lot 2, which is consistent with the Evaluation Report on that point.

The Appellant, moreover, did not challenge the clarification request; on its own case it complied with it. Whether the Appellant's tender is in fact abnormally low, or whether its explanations satisfactorily account for its price, is a matter which regulation 243(4) entrusts, in the first place, to the contracting authority, and which the evaluation committee has not yet determined.

The Court of Appeal has drawn the same distinction between the stage at which an explanation is required and the stage at which it is assessed. In ***Star Fuels Limited v. WasteServ Malta Limited u Ph. Borg Limited*** (Appell 450/2023/1, Court of Appeal, 22nd January 2024), applying regulation 243 of the Regulations, the Court observed (p. 22):

> "Għandu jingħad ukoll illi f'dan l-istadju l-kwistjoni ma hijiex jekk il-prezz huwiex hekk baxx illi l-offerta għandha titwarrab iżda biss jekk huwiex hekk baxx illi

> jiskatta l-obbligu illi "l-awtoritajiet kontraenti għandhom jesiġu li l-operaturi ekonomiċi jispjegaw il-prezz jew l-ispejjeż … … …"."

and in ***Medbiologix Company Limited vs. Ultramap Ltd, Enemalta plc u Direttur Ġenerali tal-Kuntratti*** (Appell 625/23/1, Court of Appeal, 14th March 2024), a case under regulation 174 of S.L. 601.05, the Court was careful to add (p. 23):

> "B'daqshekk din il-Qorti mhijiex qiegħda tgħid illi l-prezz ta' Ultramap Ltd għandu jiġi mwarrab għax huwa baxx b'mod mhux normali. Li qiegħda tgħid din il-Qorti huwa biss li l-prezz ta' Ultramap Ltd huwa baxx biżżejjed, illi dwaru hemm bżonn spjegazzjoni u verifika skont il-liġi"

The Board does not anticipate that assessment. The second grievance, which in any event does not bear upon the sole ground on which the Appellant's tender was rejected, affords no independent ground for the relief sought and is not upheld.

E. The Appellant's third grievance: that the Appellant submitted the cheapest priced offer satisfying all criteria

Clause 6.1 of the Tender Document makes the award to the tenderer submitting "the cheapest priced offer satisfying the administrative and technical criteria". The Evaluation Report records that the Appellant's eligibility was in order and its technical offer compliant, and the Opening Report and the Evaluation Report confirm that its price (€10,700.00) is the lowest of the four, below that of the Recommended Bidder (€12,740.00). The only ground on which the Appellant did not qualify for award is the financial non-compliance addressed under the first grievance.

The Board is nevertheless not in a position to declare that the Appellant's offer is a compliant offer. The financial evaluation of the Appellant's offer was concluded on a ground which, as found above, is not established, with the result that the assessment which regulation 243(4) requires, of the explanations provided, has not yet been carried out. Regulation 243(4) entrusts that assessment to the contracting authority, and the Board's powers on an appeal are those stated in regulation 276(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."

The Court of Appeal has consistently held that the Board, as a review body, does not take the place of the evaluation committee. In ***Kerber Securities Ltd v. Wasteserv Malta Ltd u Signal 8 Security Services Malta Limited*** (Appell 162/2014/1, Court of Appeal, 30th July 2014), the Court stated (p. 15):

> "Il-Bord bhala tribunal ta' revizjoni ma jistax jissostitwixxi d-diskrezzjoni moghtija mil-ligi lill-Kumitat ta' Evalwazzjoni."

It is true that in that case, price being the sole award criterion, the Court held that the cheapest offer satisfying the administrative and technical criteria had to prevail (p. 16) and ordered that the tender be awarded to the appellant (p. 19). There, however, the Court found that the Board's view that the low rates offered could lead to precarious conditions was unsupported by the evidence, whereas here the assessment which regulation 243(4) requires has not yet been made. In ***Simply Clean Limited v. Il-Kunsill Lokali ta' Bormla, u Ronald Bezzina*** (Appell 290/2024/1, Court of Appeal, 3rd September 2024), the Court held (p. 11):

> "Kif jixhed ismu, il-Bord huwa wieħed ta' «reviżjoni» u la l-evalwazzjoni mill-ġdid tal-offerti kienet għadha ma saritx, il-Bord ma setax jaqbad u jagħmel minn jeddu dak ix-xogħol li kien għadu jrid isir mill-Kumitat tal-Evalwazzjoni."

and, in ordering a re-evaluation, it stated (p. 12):

> "il-Qorti tħoss li għandha tiċċara li din id-deċiżjoni m'għandhiex, b'xi mod jew ieħor, tinftiehem li l-offerta ta' Simply Clean Limited hija teknikament konformi."

Likewise, in ***Dimbros Limited v. Alfred Galea u Kunsill Lokali Msida*** (cited above), the Court upheld the Board's order that the cheapest offer be re-evaluated rather than that the contract be awarded to it, the contracting authority having still to consider matters which it had not yet considered (p. 7); and in ***Star Fuels Limited v. WasteServ Malta Limited u Ph. Borg Limited*** (cited above), the Court, having found that an explanation ought to have been required, ordered that the selection be made afresh after the contracting authority had required and considered that explanation (p. 25):

> "Għal dawn ir-raġunijiet il-qorti tilqa' l-appell: tħassar id-deċiżjoni tal-Bord ta' Reviżjoni tas-16 ta' Awissu 2023 u tħassar ukoll l-għażla tal-oblatur: tordna li l-għażla ssir mill-ġdid wara li l-awtorità kontraenti tesiġi u tqis l-ispjegazzjoni li jrid ir-reg. 243 tal-L.S. 601.03."

The relief which the Appellant seeks is itself framed accordingly, namely the revocation of the decision of the 4th September, 2026 and the reintegration of its bid in the evaluation process, so as to enable the award to the cheapest technically and financially compliant bidder in accordance with law. The third grievance is therefore well-founded only to the extent that the Appellant's tender, having passed the administrative and technical stages and being the lowest priced, was entitled to have its explanations assessed before any decision on its financial compliance was taken; it is upheld to that extent, and no further.

F. The Appellant's fourth grievance

The fourth grievance asserts that the decision is unfounded in fact and in law "as will further result during the course of these proceedings". Regulation 270 requires an objection to contain "in a very clear manner the reasons for their complaints". A reservation of this kind identifies no reason and no provision, and affords the Board nothing upon which to adjudicate separately. The objection contains no particulars of any further ground, and the fourth grievance is not upheld.

G. The Contracting Authority's reply and its intention to re-evaluate

The Contracting Authority's statement that its evaluation committee proceeded on the information available to it at the time, coupled with its intention to re-evaluate the offers, is in substance an acknowledgement that the factual premise of the rejection cannot be sustained. The Board takes note that this is stated without admission of responsibility; the question of responsibility is not before the Board, and the absence of an admission does not alter the Authority's own account of what the committee had before it. The Authority's note of the 15th October, 2026 adds that Doc TM1 is presented to substantiate the evaluation committee's conclusion. For the reasons given under heading C, the Board finds that the document does not substantiate the conclusion that the Appellant did not reply, and it does not therefore alter the Board's assessment in this paragraph.

The Authority's intention to re-evaluate cannot, however, have effect while the appeal is pending. Regulation 274 of the Regulations provides:

> "The Secretary of the Public Contracts Review Board shall immediately notify the Director, the Sectoral Procurement Directorate and, or the contracting authority, as the case may be, that an objection had been filed with his authority thereby immediately suspending the award procedure."

and regulation 275, in its second sentence, that:

> "The award process shall be completely suspended if an appeal is eventually submitted."

As the Board has already directed, any re-evaluation may proceed only if and as directed by the Board in its decision. An intention to re-evaluate, announced in a reply to an appeal, does not render the appeal devoid of object: regulation 93(3) requires the Board to render its decision in writing and to "indicate the reasons upon which such decision was taken", and regulation 276(h) requires it to decide the appeal after evaluating all the evidence and considering all the submissions of the parties. The Board, having found the sole ground of rejection unestablished, accordingly proceeds to determine the appeal and to define the extent to which, and the terms upon which, a re-evaluation is to take place.

The Court of Appeal has held that the Board is bound to decide the complaints put before it, and that a development in the course of the appeal does not relieve it of that duty. In ***Support Services Limited v. Central Procurement and Supplies Unit – Gozo General Hospital et*** (Appell 302/16, Court of Appeal, 15th December 2016), where the recommended bidder had withdrawn while the appeal was pending and the Board had recommended a fresh call for tenders without deciding the objection, the Court held, under the Regulations then in force (pp. 7 and 8):

> "Dan ifisser li, kif korrettament sottomess mis-socjeta` rikorrenti, il-Bord ghandu l-obbligu [shall] li jiddeciedi l-appell pprezentat quddiemu wara debita konsiderazzjoni tal-ilmenti kif kontenuti fl-ittra mibghuta mill-istess socjeta` u ma jistax, bhal kif ghamel fil-kaz prezenti, jinjora dawn l-ilmenti, u jaghti decizjoni li skont il-ligi mhi decizjoni xejn, ghax ma hemmx dikjarazzjoni espressa li tghid li l-appell gie michud."
>
> "il-fatt li s-socjeta` intimata Omnicare ghazlet li, fil-mori tal-appell quddiem il-Bord, tirrifjuta l-ghotja u tohrog mill-process, huwa irrelevanti u ma jnaqqas xejn mill-obbligu legali tal-Bord li jittratta u jiddeciedi dwar l-ilmenti tas-socjeta` rikorrenti"

H. The Recommended Bidder's submissions

The Recommended Bidder's objection to the matter being decided without a hearing, and its recognition as an interested party, have been dealt with in the Board's procedural directions recalled above, and the Recommended Bidder has been afforded the opportunity to make its case, as regulation 90(2) requires.

The Board notes that the Recommended Bidder does not assert that the Appellant sent no response, and that its request is that the circumstances of the response be established, namely its date, time, manner and channel. The Board has established them under heading C above, from the ePPS records exhibited, the date, time and manner of sending being relevant precisely because regulation 243(3) turns on the sending of the explanations within the time-frame, and clause 15.2 of the GRGT requiring that such responses be made through the e-procurement platform. The facts on which the Board's decision rests are not contested by any party.

As to the Recommended Bidder's request for documents, which the Board reserved, the Board begins from regulation 276(b) of the Regulations, which provides that "the appeal of the complainant shall also be affixed to the notice-board of the Public Contracts Review Board and shall be communicated by fax or by other electronic means to all participating tenderers".

The first four categories of documents requested by the Recommended Bidder (the clarification request, the response and its date and time, and the records of receipt and submission) correspond in substance to

the documents which the Appellant exhibited to its objection as DOC: C to F, and the Board has set out their material content in this decision. Regulation 40(1) of the Regulations provides:

> "Subject to the obligations established under these regulations and, or any other law obliging the Director, the contracting authority and the Ministerial Procurement Unit to disclose information, a contracting authority, the Director or the Sectoral Procurement Directorate shall not disclose 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."

The Recommended Bidder's remaining request concerns records which would explain why the response was not available to the evaluation committee. The Board's findings rest upon facts which no party contests, and the explanation is not an element of regulation 243(3); the release of further documents is accordingly not necessary for the Recommended Bidder to understand the grounds of this decision, or to make its submissions upon it. The Board has therefore found no occasion to determine whether any further document requested contains information designated as confidential within the meaning of regulation 40(1), and the request is not acceded to.

In so deciding, the Board has had regard to the approach of the Court of Appeal, which has treated the question whether further information must be released as turning on whether the information already available suffices for the party concerned to make its case. In ***Saviour Galea, Joseph Galea u Christian Galea f'isimhom u f'isem Galea Cleaning Solutions JV v. Kunsill Lokali Ħal Lija u WM Environmental Limited*** (Appell 209/2024/1, Court of Appeal, 16th July 2024), the Court framed the question thus (p. 9):

> "Il-kwistjoni essenzjalment hija waħda ta' fatt: it-tagħrif mogħti mill-awtorità kontraenti – dak li ngħad fl-ittra tas-7 ta' Frar 2024 u, imbagħad, siltiet mir-rapport tal-evalwazzjoni tal-offerti – kienx biżżejjed biex l-appellanti setgħet tressaq appell motivat sew, jew kienx meħtieġ aktar tagħrif."

and in ***European Dynamics Luxembourg S.A. u European Dynamics S.A., formanti l-konsorzju European Dynamics Consortium v. LexNova Consortium et*** (Appell 291/2026/1, Court of Appeal, 13th October 2026), where the Board had refused disclosure of information protected by regulation 40(1), the Court held (p. 53):

> "Li kellu jsir kien li semmai tiġi tal-anqas identifikat aggravju li jkun jinħtieġ l-iżvelar ta' xi parti mill-informazzjoni sensittiva u mbagħad jiġi eżaminat jekk tali aggravju jimmeritax li jwassal għal tali żvelar."

The Court of Justice has likewise held, in ***Case C-450/06 Varec SA v Belgian State*** (Third Chamber, 14 February 2008, ECLI:EU:C:2008:91), at paragraph 51, that "the adversarial principle does not mean that the parties are entitled to unlimited and absolute access to all of the information relating to the award procedure concerned which has been filed with the body responsible for the review."

The Board notes further that the Contracting Authority has itself presented Doc TM1 "for the perusal of all parties", thereby placing before the Recommended Bidder an extract of its own ePPS clarification list, and that the Board's findings upon that document are set out under heading C.

The Recommended Bidder further requests that any re-evaluation be carried out in accordance with equal treatment, transparency and fairness, and without allowing any tenderer to alter or supplement its offer. The Board agrees with the principle, which is stated in regulation 39(1) and in regulation 62(3) of the Regulations, in clause 15.2 of the GRGT and in Note 3 to Clause 5 of the Tender Document, all quoted above. The Board accordingly directs, in the terms set out in the decision below, that the re-evaluation shall be confined as follows:

(i) to the financial evaluation of the Appellant's offer, consisting of the assessment, in terms of regulation 243(4), of the explanations that the Appellant sent in response to the clarification request, such assessment being documented and audit trailed in accordance with PPN #40;

(ii) without affording the Appellant any opportunity to alter or try to change the price or the content of its tender (regulation 62(3); clause 15.2 of the GRGT), the price of €10,700.00 remaining as submitted;

(iii) without affording any opportunity to repeat or supplement the clarification already requested, requests concerning a previous request dealing with the same shortcoming not being entertained (Note 3 to Clause 5); and

(iv) with the Appellant's explanations being assessed solely by reference to the elements referred to in regulation 243(2) and (4), the same standard being applied as would be applied to any tenderer in conformity with regulation 39(1), and the criterion applied being stated in the documented assessment.

Those limits reflect settled case-law. The Court of Justice has held that "as a general rule, a tender cannot be amended after it has been submitted, whether at the request of the contracting authority or at the request of the tenderer" (***Case C-131/16 Archus sp. z o.o. and Gama Jacek Lipik v Polskie Górnictwo Naftowe i Gazownictwo S.A***, Eighth Chamber, 11th May 2017, ECLI:EU:C:2017:358, paragraph 27), and, in the context of a restricted procedure, that "The principle of equal treatment of tenderers and the obligation of transparency resulting therefrom preclude, in that procedure, any negotiation between the contracting authority and one or other of the tenderers." (***Case C-599/10 SAG ELV Slovensko a.s. and Others v Úrad pre verejné obstarávanie***, cited above, paragraph 36). The Court of Appeal has held to

the same effect in ***Bart Enterprises Limited v. Il-Kap Ezekuttiv, Sptar Generali ta' Ghawdex et*** (Appell 363/2014/1, Court of Appeal, 6th February 2015) (p. 8):

> "It-trasparenza fi process aggudikattiv jitlob li kull offerent jigi meqjus a bazi tal-offerta kif maghmula, u salv il-kaz ta' kjarifiki ta' dettal, ebda offerent ma ghandu jinghata l-opportunita` li jirranga l-offerta tieghu biex b'hekk jasal li jilhaq ir-rekwiziti mitluba."

As to the third of those limits, in ***Sultech & Co v. Ministeru għal Għawdex, Direttorat għall-Iżvilupp Reġjonali EkoGħawdex, u Anthony Mercieca*** (Appell 99/2020, Court of Appeal, 10th August 2020), concerning an evaluation which the Court had ordered to be carried out afresh, the Court held (p. 3):

> "Dak li ġà ġie kjarifikat ma hemmx għalfejn jiġi kjarifikat mill-ġdid, u ma kien hemm ebda ħtieġa li l-kumitat tal-għażla jitlob li jingħata tagħrif li ġà ngħata lilu. Dan ma jfissirx li l-proċess ta' evalwazzjoni ma sarx mill-ġdid"

In ***Bonnici Bros Projects Limited u Shapoorji Pallonji (Malta) Limited, it-tnejn formanti l-konsorzju SP BB International JV v. Onorevoli Ministru għas-Saħħa et*** (Appell 234/2018, Court of Appeal, 30th July 2018), where an offer had been rejected because clarification requests, sent to the e-mail address of a former employee, had not been answered, the Court confirmed the Board's decision and ordered that the selection of offers be carried out afresh, taking that offer into account together with the valid offers (p. 13), and observed (p. 10):

> "Naturalment, jekk in-nuqqas ta' FMM li jagħti l-kjarifiki meħtieġa ma jistax, bla ma jagħti vantaġġ kompetittiv lil FMM, jissewwa f'dan l-istadju – issa li l-offerti kollha huma miftuħa u magħrufa – dan ikun fattur ieħor li jkollu jqis il-kumitat tal-għażla meta l-każ jerġa' jiġi quddiemu."

No such difficulty arises in the present case, since the explanations to be assessed are those which the Appellant sent on the 9th July, 2026, and the re-evaluation is confined to them.

As to the composition of the body which is to carry out the re-evaluation, the Regulations define an Evaluation Committee as "boards or committees appointed by contracting authorities with the purpose of evaluating tenders received and for making recommendations thereon", and regulation 17(3) provides that "When the Evaluation Committee is appointed by the Sectoral Procurement Directorate it has to prepare the evaluation report and communicate the said report to the mentioned Unit".

The appointment of an evaluation committee being thus a matter for the contracting authority or the Sectoral Procurement Directorate, as the case may be, no provision brought to the Board's attention precludes the appointment of a committee for the purposes of a re-evaluation directed by the Board. No

allegation of bias or partiality has been made against the members of the committee which evaluated Lot 2, and the Board makes no finding of that kind.

The Board considers nevertheless that the re-evaluation ought to be entrusted to a newly constituted evaluation committee, none of whose members sat on the committee which evaluated Lot 2 in the first instance. The rejection of the Appellant's tender rested on a premise which the Board has found unestablished and the cause of which the Contracting Authority has not explained; the Evaluation Report records no assessment of the Appellant's explanations; and the duties of equal treatment and transparency under regulation 39(1) call for an assessment under regulation 243(4) which is, and is seen to be, undertaken afresh, rather than by the body whose conclusion that no reply had been given the Board has found to be unfounded. That course also answers the concern, expressed by the Recommended Bidder, that the re-evaluation be conducted with strict fairness as between tenderers.

The Court of Appeal has itself directed such a course. In ***South Lease Limited v. Central Procurement and Supplies Unit et*** (Appell 72/22/1, Court of Appeal, 22nd June 2022), it sent the case back so that the offers would be evaluated afresh by persons not previously involved (p. 9):

> "peress li din il-Qorti mhix sejra tissuplixxi d-diskrezzjoni taghha dwar l-ghazla flok il-kumitat evalwattiv, sejra tibghat il-kaz lura lill-kumitat evalwattiv biex dan, b'nies godda fuq il-kumitat, jerga' jevalwa fuq l-offerti sottomessi."

and in ***Simply Clean Limited v. Dipartiment tal-Kuntratti, Kummissarju tal-Pulizija u AGV HR Management Ltd*** (Appell 34/2026/1, Court of Appeal, 30th April 2026), the Board's order for a re-evaluation by a new evaluation committee was left standing.

Nothing in this decision pre-empts the outcome of the assessment which regulation 243(4) entrusts to the evaluation committee. The Recommended Bidder's reservation of its rights and remedies is noted.

In this respect the Board is guided by the judgment of the Court of Appeal in ***Simply Clean Limited v. Dipartiment tal-Kuntratti, Kummissarju tal-Pulizija u AGV HR Management Ltd*** (cited above), in which the Court held (pp. 15 and 16):

> "F'xenarji bħal dawn fejn l-aċċettazzjoni ta' xi ilment iġib miegħu l-konsegwenza tat-tħassir ta' kull deċiżjoni li setgħet ittieħdet mill-kumitat tal-għażla, fosthom l-għarbiel tal-offerti nfushom, u kull deċiżjoni marbuta ma' xi skwalifika ta' offerent, mal-allokazzjoni ta' xi marki jew mal-għotja ta' kuntratt favur xi offerent, il-Bord jew il-Qorti tal-Appell għandhom joqogħdu lura milli jidħlu fil-kwistjoni dwar jekk il-kumitat tal-għażla jkunx iddeċieda tajjeb jew le."
>
> "Tajjeb jew ħażin la l-Bord iddeċieda li għandha ssir evalwazzjoni ġdida tal-offerti minn kumitat tal-għażla kompost minn membri ġodda li ma kellhomx sehem fl-

> evalwazzjoni, mela allura huwa kellu jieqaf hemm u mhux jagħti direttivi kif l-offerta ta' Simply Clean Limited għandha tiġi evalwata mil-lenti tal-kriterji fuq imsemmija."

It is for that reason that the Board has refrained, under heading D, from expressing any view as to whether the Appellant's offer is abnormally low, or whether its explanations satisfactorily account for its price.

I. The decision of the 4th September, 2026 and the recommended award

The letters of the 4th September, 2026 communicated, in a single decision, both the rejection of the Appellant's tender and the recommendation of the award of Lot 2 to the Recommended Bidder; and the latter was expressly founded on the former, the Recommended Bidder's offer being described as the cheapest priced offer satisfying the administrative and technical criteria.

The Evaluation Report likewise designates it as the cheapest compliant offer. Once the rejection of the lowest priced offer is found to rest on an unestablished ground, and the assessment of that offer's explanations has not been carried out, the recommendation of the award in favour of the Recommended Bidder cannot stand.

The Appellant, moreover, requests the revocation of the decision in its entirety. The Board will therefore revoke the decision in respect of Lot 2 in both its parts. The Contracting Authority is bound, by regulation 268, to abide by the decision of the Board in the shortest time possible, and any fresh decision resulting from the re-evaluation will be a decision to which regulations 242(1), 270 and 271 of the Regulations apply.

J. The deposit

Regulation 93(4) of the Regulations provides:

> "In its decision the Review Board shall recommend on whether any deposit submitted by a party should be refunded, in whole or in part, or not."

The Board takes into account that the Appellant has succeeded on the first grievance, which was the only ground on which its tender was rejected; that the Contracting Authority itself has acknowledged that the Appellant's response was not available to its evaluation committee; and that the revocation of the decision and the re-evaluation sought by the Appellant are being granted. In those circumstances the Board considers that the deposit of €400.00 paid in respect of Lot 2 should be refunded in full. The Board takes into account, further, that the document which the Contracting Authority itself presented to substantiate the evaluation committee's conclusion, Doc TM1, does not substantiate it.

Synopsis

1. The Appellant's tender for Lot 2 was rejected on one ground only: that it did not reply to a clarification request concerning an abnormally low offer.

2. Regulation 243(3) of the Regulations attaches its consequence to a failure to send explanations within the time-frame imposed; the time-frame was five working days, which, on a request dispatched on Thursday, the 9th July, 2026, expired on Thursday, the 16th July, 2026.

3. The Contracting Authority does not dispute that the Appellant responded; it states that the response was not prima facie available to its evaluation committee. The ePPS records exhibited show that the Appellant's response was lodged on the 9th July, 2026, through the platform, within the time-frame; the sole ground of rejection is therefore not established. The Authority's own document, Doc TM1, records the Appellant's clarification request as "Answered" and does not substantiate the committee's conclusion that no reply was given.

4. The Appellant's second grievance affords no independent ground for relief, regulation 243(4) entrusting to the contracting authority the assessment of the explanations; the third is upheld only to the extent that the Appellant's explanations had to be assessed before its financial compliance was decided; the fourth is unparticularised.

5. The decision of the 4th September, 2026 is revoked in respect of Lot 2. The re-evaluation is to be carried out by a newly constituted evaluation committee, is confined to the assessment of the explanations already sent, may not alter the price or content of any tender, and is to apply to the Appellant the standard required by regulation 39(1).

6. The Recommended Bidder's request for documents is not acceded to, and the deposit is to be refunded.

Decision and Orders

For the foregoing reasons, the Board upholds the appeal filed by CenterLine Services Limited in respect of Lot 2 of Tender SPD6/2025/112, revokes the decision of the 4th September, 2026 in so far as it found the Appellant's offer financially non-compliant and recommended the award of Lot 2 to MAKS Engineering Ltd, and directs the re-evaluation of the Appellant's financial offer, by a newly constituted evaluation committee and within the limits set out below.

The Board finds that the sole ground upon which the Appellant's tender was rejected, namely that the Appellant did not reply to the clarification request, was not established; that the response of the Appellant was sent within the time-frame imposed; and that the assessment required by regulation 243(4) of the Public Procurement Regulations was not carried out. The Board further finds that Doc TM1, presented by the Contracting Authority to substantiate the evaluation committee's conclusion, does not substantiate the conclusion that the Appellant did not reply.

The Board,

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

a. To uphold the Appellant's (CenterLine Services Limited) first grievance; to uphold its third grievance to the extent stated in the considerations; and not to uphold its second and fourth grievances;

b. To accede to the appeal, in terms of regulation 276(h) of the Public Procurement Regulations, and, in consequence, to revoke the decision of the 4th September, 2026 in respect of Lot 2, both as regards the finding that the Appellant's offer was financially non-compliant and as regards the recommendation of the award of Lot 2 to MAKS Engineering Ltd;

c. To direct the Contracting Authority to cause a newly constituted evaluation committee, none of whose members sat on the evaluation committee which evaluated Lot 2 in the first instance, to re-evaluate, in the shortest time possible, the financial offer of the Appellant for Lot 2 of Tender SPD6/2025/112, such re-evaluation being the only step in the award process authorised by this decision, and being confined to the following:

   (i) the assessment, in terms of regulation 243(4) of the Public Procurement Regulations, of the explanations which the Appellant sent on the 9th July, 2026 in response to the clarification request;

   (ii) no alteration of the price or of the content of the Appellant's tender, the price remaining €10,700.00 excluding VAT;

   (iii) no repetition of, and no opportunity to supplement, the clarification already requested;

   (iv) the assessment of the Appellant's explanations solely by reference to the elements referred to in regulation 243(2) and (4), the same standard being applied as would be applied to any tenderer, and the criterion applied being stated in the documented assessment; and

   (v) the documentation and audit trailing of the assessment in accordance with PPN #40, and the communication of the resulting decision to all tenderers in accordance with regulation 242(1) of the Public Procurement Regulations;

d. Not to accede to the request of the Recommended Bidder, MAKS Engineering Ltd, for the release of documents; and

e. To recommend, in terms of regulation 93(4) of the Public Procurement Regulations, that the deposit of €400.00 paid by the Appellant in respect of Lot 2 be refunded in full.

Dr Vincent Micallef	Mr Lawrence Ancilleri	Mt Keith V. Grech
Chairman	Member	Member