

An investigation of
contracts awarded by the
Ministry for Home Affairs
and National Security
to Infinite Fusion
Technologies Ltd

Report by the
Auditor General
December 2019

This report has been prepared under sub-paragraph 9(a) of the First Schedule of the Auditor General and National Audit Office Act, 1997 for presentation to the House of Representatives in accordance with sub-paragraph 9(b) of the First Schedule of the said Act.

A handwritten signature in black ink, appearing to read 'CD', with a long horizontal stroke extending to the right.

Charles Deguara
Auditor General

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List of Abbreviations

AG	Auditor General
CCF	Corradino Correctional Facility
CCTV	closed-circuit television
CIO	Chief Information Officer
CfR	Commissioner for Revenue
CoRRS	Centre of Residential Restorative Services
CSA	Correctional Services Agency
DAS	Departmental Accounting System
DCS	Director Corporate Services
DG	Director General
DoC	Department of Contracts
FSS	Final Settlement System
GCC	General Contracts Committee
LAN	local area network
MFIN	Ministry for Finance
MHAS	Ministry for Home Affairs and National Security
MITA	Malta Information Technology Agency
NAO	National Audit Office
PAC	Public Accounts Committee
PS	Permanent Secretary
SSC	Social Security Contributions
VAT	value added tax
YOURS	Young Persons Offenders Unit

Executive Summary

1. In December 2015 and December 2016, the Ministry for Home Affairs and National Security (MHAS) awarded two contracts to Infinite Fusion Technologies Ltd for the upgrading of the network at the Corradino Correctional Facility (CCF) and other related sites. The contracts were directly awarded to the Contractor through negotiated procedures for an aggregate value of €1,038,400. Following allegations of wrongdoing in the media, on 19 April 2017, the Minister for Home Affairs and National Security, the Hon. Carmelo Abela, requested the Public Accounts Committee to refer the matter to the Auditor General. Through this audit, the National Audit Office (NAO) sought to determine whether the reasons cited for the allocation of the works through these contracts were justified, ascertain the basis for the selection of Infinite Fusion Technologies Ltd, and establish whether Government's interests were duly safeguarded and value for money secured.
2. In the NAO's understanding, good practice dictates that procurement involving the disbursement of considerable public funds is supported through the appropriate analysis of needs, the evaluation of alternatives and a reasonable basis for the identification of the selected contractor. In the Office's review of the MHAS' disbursement of public funds through the contracts awarded to Infinite Fusion Technologies Ltd these elements were lacking.
3. Although the MHAS maintained that the CCF lacked a proper network, resulting in frequent outages, documented evidence justifying the need for the works undertaken through the first contract entered into was not provided by the MHAS and the CCF. The NAO was not furnished with any correspondence exchanged or reports drawn up highlighting the frequent and major disruptions in service and the need to address this matter.
4. The additional works undertaken through the second contract further attested to the poor planning process that characterised the initial commissioning of works. The justification for the additional works cited by the MHAS was partly the address of variations arising from the first contract and partly the result of a broadening in the scope of the project to include other sites. These shortcomings were compounded by the poor interface between the CCF and the MHAS in the management of these changes.
5. An element that could have contributed to ensuring value for money was the independent determination of the value of the works that were to be undertaken through the first and second contract. The MHAS relied on bills of quantities arrived at by Infinite Fusion Technologies Ltd rather than an independent assessment of the works required.

6. Part of the review undertaken by the NAO was whether procurement was undertaken in compliance with the Public Procurement Regulations. The NAO acknowledges the security-related concerns that motivated the MHAS in seeking exemption from the Regulations, yet simultaneously deems the advice provided by the Department of Contracts (DoC) as valid in that the works could not be declared secret or in the national interest. Instead, the DoC recommended that works were to be contracted through a negotiated procedure, citing technical reasons. Whether the security concerns cited by the MHAS, valid as they were, qualified as technical reasons is debatable; however, resort to a negotiated procedure allowed the CCF to contract the required works without disclosing information deemed sensitive.
7. However, the MHAS did not source other quotations from suppliers of their choice, which would have been in line with the negotiated procedure adopted. This would have afforded a greater degree of certainty that value for money was ascertained. Cognisant of the security considerations that might have influenced the decision to limit the process of procurement to one contractor, the NAO maintains that this factor should not serve as the basis of omission of other measures that could have better safeguarded Government's efforts at securing value for money, particularly through the sourcing of multiple quotations.
8. The first contract entered into by the MHAS and Infinite Fusion Technologies Ltd on 18 December 2015 corresponded to works valued at €461,103. The contracted works were to be completed within six months. The NAO ascertained that €461,103 were paid; however, the works were not concluded within the stipulated timeframe, with the final invoice paid in December 2016. This Office contends that while certain reasons cited by the MHAS justifying the delay could not have been foreseen, others certainly could have been anticipated had the works been appropriately planned.
9. This Office's attention was drawn to the proximity of invoices raised and payments effected in December 2015, most notable being an invoice for €161,186 dated 24 December 2015 and paid that same day. Although the MHAS indicated that the procurement process was expedited in view of the end-of-year savings that could be allocated to the project, the NAO maintains an element of reservation regarding payments effected without the appropriate certification of supplies received.
10. Another element of concern related to the certification of completed works, which although stipulated as a requirement of the contract, was not undertaken by the MHAS in a manner deemed appropriate by the NAO. Aside from approval for payment noted on invoices, no documentation substantiating the receipt of supplies was provided to the NAO. This concern assumes more significance when one considers that, in one instance, a significant payment for labour was effected in advance. In this Office's opinion, these shortcomings attested to the poor contract management practices employed by the MHAS in its oversight of these works.

11. The NAO's attention was also drawn to the inconsistencies between the declaration regarding social security contributions and taxes payable by Infinite Fusion Technologies Ltd attached to the contract and source information obtained from the Commissioner for Revenue (CfR). Based on information obtained from the CfR, the NAO understood that Infinite Fusion Technologies Ltd had pending tax and social security contribution-related dues, as well as outstanding value added tax, at the time of signing of the contract. Although provisions arising from the Public Procurement Regulations do not preclude economic operators from participating in public contracts on the basis of such dues, the NAO deemed the inconsistency in that declared a matter of concern. Infinite Fusion Technologies Ltd indicated that it had an agreement with the CfR; however, the NAO established that this agreement corresponded to dues that the Company had accumulated up to 2012. This Office noted that the agreement did not cover additional dues that arose between 2013 and 2015 and deemed submissions by Infinite Fusion Technologies Ltd as misleading.
12. As at October 2019, works commissioned through the second contract dated 28 December 2016 had not been completed. Of the contracted amount of €577,296, payments of €472,526 were effected, with pending works, estimated at €100,000, expected to be completed by December 2019. Bearing in mind that the contract stipulated completion by October 2017, the envisaged revised target date was deemed indicative of poor planning and weak contract management on the part of the MHAS and the CCF.
13. Similar to the first contract, the NAO noted the proximity of invoice and payment dates, particularly those issued in December 2016. Of notable concern was that €397,356 was paid by the MHAS prior to the signing of the contract on 28 December 2016. Although the MHAS contended that the approval of the DoC had already been obtained, that the items invoiced were delivered and that advanced payment was made to utilise remaining funds, the NAO's strong reservations regarding the timing of payments persist. This Office's reservations are based on the fact that these disbursements of public funds were not regulated by a contract, entailed the advance payment of €68,000 in labour, and no documentation corresponding to supplies reportedly delivered was retained. It was also noted that no performance guarantee was requested with regard to the second contract. In the NAO's opinion, these factors needlessly exposed the MHAS to risks that were not to be borne by Government.
14. The NAO's concerns relating to the poor contract management practices employed by the MHAS were aggravated following the testing carried out by this Office on certain items procured. The discrepancy in the amount of copper cable procured with that utilised, the significant difference in fail rates between that cited by Infinite Fusion Technologies Ltd and that registered by MITA, and warranty-related anomalies were of particular concern to this Office.

15. In addressing the terms of reference, the NAO is of the understanding that the reasons cited for the allocation of works through a negotiated procedure were justified in terms of the sensitivity and the security considerations of the premises where the works were to be carried out. However, this Office is of the opinion that the basis for the selection of Infinite Fusion Technologies Ltd was questionable in terms of the circumstances within which the Contractor was selected, as well as the fact that no other suppliers of the MHAS' choice were approached to submit a quotation for the works. Finally, the NAO deems Government's interests not to have been adequately safeguarded and value for money far from ascertained, largely due to the poor management manifested throughout the process of procurement and in the implementation of works.

Chapter 1

Introduction

1.1 Request by the Public Accounts Committee

- 1.1.1 On 19 April 2017, the Minister for Home Affairs and National Security, the Hon. Carmelo Abela, requested the Chair Public Accounts Committee (PAC), the Hon. Tonio Fenech, to submit for the review of the Auditor General (AG) two direct contracts awarded by his Ministry after allegations of wrongdoing were made. According to the correspondence, the direct contracts, awarded in 2015 and 2016 by the Ministry for Home Affairs and National Security (MHAS) to Infinite Fusion Technologies Ltd, were for the upgrading of the network at the Corradino Correctional Facility (CCF). It was further indicated that direct contract approvals were granted on 14 December 2015 and 14 December 2016, and the relevant contracts were entered on 18 December 2015 and 28 December 2016. The values of the contracts were for €390,766 and €489,234, exclusive of value added tax (VAT), respectively. The works that were to be carried out through the first direct contract entailed the upgrading of the network at the CCF. Under the second direct contract, the continuation of the upgrading of the network at the CCF, and works at the Forensic Section at Mount Carmel Hospital and the Young Persons Offenders Unit (YOURS) at Mtaħleb were to be carried out.
- 1.1.2 Based on a review of press coverage on the matter preceding the request submitted by the Minister for Home Affairs and National Security, the NAO understood that the allegations of wrongdoing centred on that Maltese and EU law on public procurement barred government and public bodies from entering into procurement contracts with companies that had not paid their taxes. Moreover, it was alleged that a direct contract of this magnitude indicated mischievous and fraudulent intentions and created an unequal playing field. Other sources cited the lack of experience of Infinite Fusion Technologies Ltd in the area, as well as security concerns relating to the work undertaken. In a rebuttal of allegations made, among other points raised, the Minister cited that the need to upgrade the IT systems at the CCF was highlighted in a report on the Facility in 2015.
- 1.1.3 The matter was referred by the Chair PAC for the attention of the AG on 28 April 2017. The National Audit Office (NAO) noted that the issue was first raised in the House of Representatives following a parliamentary question put by the Hon. Jason Azzopardi on 27 February 2017. In the House sitting of 3 April 2017, the Hon. Minister for Home Affairs and National Security gave details of the contracts awarded by the MHAS, two of which are the subject of this audit.

- 1.1.4 The NAO set the terms of reference that would be adopted as the basis of the audit to be undertaken. In this regard, this Office was to:
- a. determine whether the reasons cited for the allocation of the works through these contracts were justified;
 - b. ascertain the basis for the selection of the contractor who was awarded the works; and
 - c. establish whether Government's interests were safeguarded and value for money was secured.

1.2 Methodology

- 1.2.1 This audit was conducted in accordance with Article 9(a) of the First Schedule of the Auditor General and National Audit Office Act (Act XVI, 1997) and in terms of practices adopted by the NAO. Pertinent legislation reviewed included the Public Procurement Regulations (Subsidiary Legislation 174.04), which were then applicable.
- 1.2.2 Findings presented in this report are based on the documentation submitted to the NAO. In this regard, initial documentation was submitted by the MHAS, the ministry responsible for the CCF. This was supplemented with information sourced from the Commissioner for Revenue (CfR), the Malta Information Technology Agency (MITA) and the Department of Contracts (DoC), the entity responsible for the approval of contracts awarded through negotiated procedures. This Office reviewed the contracts entered into with Infinite Fusion Technologies Ltd on 18 December 2015 and 28 December 2016. Moreover, payments made to the Contractor were verified against transactions recorded by the MHAS in the Departmental Accounting System (DAS).
- 1.2.3 Aside from documentation reviewed, the NAO held interviews with officials who were directly involved in this procurement. These were the Permanent Secretary (PS) MHAS, the Director General (DG) (Strategy and Support) MHAS and the Chief Information Officer (CIO) MHAS. The NAO sought to obtain the views of the DG Correctional Services Agency (CSA), which agency was responsible for the management of the CCF; however, the DG CSA could not attend due to other commitments. A meeting was also held with Infinite Fusion Technologies Ltd. All the interviews held were transcribed by the NAO and a copy submitted to the interviewees, who were requested to endorse the transcript and submit clarifications, if required. A site inspection at the CCF was also carried out by the NAO for which the DG CSA was present.
- 1.2.4 It must be noted that all public officials referred to in this report are cited by their designation at the time being reported on. Furthermore, all amounts cited in this report are inclusive of VAT unless otherwise indicated.

- 1.2.5 In line with its guiding principles of independence, fairness and objectivity, the NAO sought to ensure that the allegations brought to its attention were duly scrutinised and the resultant findings objectively reported on. The relevant documentation and information required were, to the best of the NAO's knowledge, made available to this Office by the various parties. The NAO's findings and conclusions are based solely and exclusively on the evaluation of such documentation and information supplied, and the evidence at its disposal. The NAO sought to identify any shortcoming or irregularity and put forward recommendations essentially meant to ensure that the best use of public resources is made.
- 1.2.6 In undertaking this audit, the NAO adhered to its policy of processing requests submitted to the AG by the PAC in a chronological order, according to the date of request.

Chapter 2

The contracts awarded to Infinite Fusion Technologies Ltd

2.1 Request for the approval of upgrading works

- 2.1.1 On 20 November 2015, the Procurement Manager MHAS informed the PS MHAS that the CCF needed to upgrade its network, through the installation of new networks for data and telephony, as well as a closed-circuit television (CCTV) system. The budgeted value of the project was indicated as €400,000, excluding VAT. It was proposed that, in view of the sensitivity and the high security level of the premises as a prison, the procurement was to be excluded from the then applicable Public Procurement Regulations. Specifically cited was Article 17.1(c) thereof. According to this Article, as cited in the request for approval, the Public Procurement Regulations were not to apply to 'public contracts, which are declared to be secret when their performance must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the EU Member State concerned, or when the protection of the essential interests of the Member States so require'. In this respect, the endorsement of the PS MHAS was sought prior to referral for approval in principle from the DG DoC and the Ministry for Finance (MFIN).
- 2.1.2 The NAO sought to understand the circumstances leading to the request for the upgrading of the CCF network, specifically seeking to establish when and how the need for the upgrading works originated. Despite requests for documentation made by this Office that attested to this requirement, the MHAS provided no records of requests submitted or correspondence exchanged. However, in verbal submissions made to the NAO, the CIO MHAS indicated that significant problems relating to the CCF network started to emerge in 2014, which were initially addressed through stop-gap measures. The PS MHAS informed the NAO that the Secretariat of the then Minister MHAS, the Hon. Emanuel Mallia, was involved in meetings wherein the situation was being monitored. Aside from the PS MHAS and the Ministry's Secretariat, also present for these meetings were other officials of the MHAS and the CCF. According to the CIO MHAS, the situation at the CCF was characterised by frequent outages, which culminated in a major outage in 2015. Following a meeting with the Secretariat of Minister MHAS,¹ the CIO MHAS was directed to assume responsibility for the works required to upgrade the network. An initial assessment of the required works was carried out shortly thereafter.

¹ It must be noted that between 2014 and 2015, the Minister responsible for Home Affairs and National Security changed, with the Hon. Carmelo Abela assuming office on 9 December 2014.

- 2.1.3 Enquiries regarding the need for the upgrading works were also made with the DG CSA. This Office was informed that no documentation justifying the need to upgrade the network was available as the decision was taken during meetings for which no records were retained. Similar to that stated by the MHAS, the NAO was informed that, at the time, the CCF lacked a proper network and that the temporary measures implemented were resulting in frequent network outages, leaving the CCF personnel and inmates without telephony services. This led to the prioritisation of the project, with the initial project aim being the network restructuring of CCF, in order to minimise outages.
- 2.1.4 This Office also sought to determine the basis of the budget established for the project. According to the MHAS, this was based on a bill of quantities submitted by the contractor selected to carry out the works following a site-plan plotting exercise. This exercise was carried out by the CIO MHAS, in consultation with CCF staff and the contractor, and served to define and quantify the requirements. Furthermore, evaluations and comparisons with online price listings of various vendors were undertaken by the Ministry, to ensure value for money. The MHAS deemed the cost of hardware as fair and reasonable, and in line with market prices. Notwithstanding that stated, no documentation substantiating the process that led to the independent establishment of value was provided by the MHAS to the NAO.
- 2.1.5 In addition, the NAO enquired with regard to the regulatory and policy framework that classified the CCF in terms of sensitivity and security considerations. The MHAS acknowledged that there were no specific policies or guidelines in this regard; however, considered this classification as de facto standard. In addition, the DG CSA cited the Prisons Regulations (Subsidiary Legislation 260.03), which outlined the general sensitivity and security provisions that were to regulate the operations of the CCF.
- 2.1.6 Additional context to that stated by the MHAS and the CCF was provided in correspondence dated 22 October 2015 submitted by a local integrated telecommunications company to the PS MHAS. According to this correspondence, the MHAS had requested a quote for and an evaluation of the expansion of the network infrastructure at the CCF. However, in view of its stretched resources and the timelines discussed, the company was not able to meet the request and quote for the project.
- 2.1.7 According to the MHAS, no similar enquiries were made with other service providers. The reason cited by the Ministry was that the company in question had a sound knowledge of the existing network setup and of the premises. Moreover, it was contended that opting for other suppliers would have involved additional costs necessary to bridge the existing network and telephony infrastructure. In addition, the MHAS made constant reference to the security considerations that limited its disclosure of requirements to the minimum number of potential contractors possible.
- 2.1.8 The NAO was informed by the MHAS that the telecommunications company originally contacted was given the opportunity to review the plans in order to assess whether it

was able to carry out the work involved. According to the Ministry, during discussions held at the MHAS, officials of the telecommunications company were accompanied by employees of its sub-contractors. The company subsequently indicated that it was unable to undertake the assignment and verbally recommended one of its sub-contractors for the work. The MHAS accepted this recommendation and initiated discussions with the sub-contractor indicated, namely Infinite Fusion Technologies Ltd. Although no record of discussions held was retained by the MHAS, this account of events was confirmed by the telecommunications company and the sub-contractor. In clarifications submitted by the telecommunications company, it was stated that due to the timelines of the project and the additional complexity of having to work in a high security environment, it was not feasible for the company to carry out the works. Furthermore, the company confirmed that it was standard practice to involve its sub-contractors at quotation stage in order for them to evaluate the works that need to be undertaken and for them to quote for such works.

- 2.1.9 The MHAS indicated that meetings were subsequently held with representatives of Infinite Fusion Technologies Ltd to determine the works required. Aside from the CIO MHAS and the Contractor, officials from the Secretariat of Minister MHAS and the CCF were present. No records of these meetings were retained; however, based on that stated by the MHAS, the Secretariat officials sought to keep track of progress registered with respect to this project, while the CCF officials provided input with regard to the project's requirements. It was through these meetings that the extent of works was established, which later served as the basis for authorisation sought in terms of public procurement and the bill of quantities drawn up as part of the contractual agreement.
- 2.1.10 In justifying the basis for the selection of Infinite Fusion Technologies Ltd, the MHAS maintained that this contractor had previously provided other services to the CCF as a sub-contractor of the telecommunications company. Therefore, according to the Ministry, this Contractor was familiar with the premises and the network setup. The DG CSA further stated that the selection of Infinite Fusion Technologies Ltd was a unanimous decision taken by all the stakeholders involved, understood by the NAO as referring to the MHAS and the CCF. The NAO confirmed that the Ministry had previously engaged this contractor; however, the works provided did not relate to the CCF. This was corroborated by the sub-contractor, who further claimed that works provided to the CCF were carried out by one of the employees of Infinite Fusion Technologies Ltd, who was seconded to the telecommunications company for works related to the telephony system at the CCF. Reference to DAS indicated that payments were made to this Contractor by the MHAS from at least 2009.
- 2.1.11 The approval of the PS MHAS was granted on the same day of the request, that is, 20 November 2015. In this regard, in view of the sensitivity of the premises and due to security considerations, the Procurement Manager MHAS was instructed to seek direct contract approval from the DoC.

2.2 Department of Contracts approval

- 2.2.1 On 24 November 2015, the Procurement Manager MHAS requested the DoC to approve the procurement of the upgrading works and its exemption from the provisions of the Public Procurement Regulations in terms of Article 17.1(c) thereof. A reminder was submitted to the DG DoC on 2 December 2015.
- 2.2.2 The next correspondence traced by the NAO was an email by the Director Corporate Services (DCS) MHAS to the Director Operations DoC dated 7 December 2015. In this correspondence, the request for approval was reiterated; however, exemption was now being requested in terms of Article 67(c) of the Public Procurement Regulations. In this regard, Article 67(c) states that, “A contracting authority may award its public supply contracts by negotiated procedure without prior publication of an EU contract notice, in the following cases: ... (c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator”. The approval of the General Contracts Committee (GCC) was sought to enter into negotiations with Infinite Fusion Technologies Ltd for the upgrade of the network. Works were estimated to cost €400,000 and funds were available under the MHAS information and communication technology capital vote for 2015 and 2016. The NAO noted that this correspondence captured the first documented reference to Infinite Fusion Technologies Ltd.
- 2.2.3 A point of clarification is warranted with regard to the MHAS’ initial reference to a ‘direct contract’ and its later reference to a ‘negotiated procedure’. The Public Procurement Regulations define ‘direct contracts’ as “contracts awarded without recourse to a prior call for competition” while ‘negotiated procedures’ are defined as “those procedures whereby contracting authorities consult the economic operators of their choice and negotiate the terms of a contract with one or more of these”. According to the Public Procurement Regulations, procurement through direct contracts is only possible when the value of that to be procured is less than €120,000. When the value of that procured exceeds this threshold, procurement must be undertaken through other methods, including open or restricted procedures, competitive dialogue and negotiated procedures. In this case, the MHAS opted for procurement of supplies through a negotiated procedure, citing Article 67(c) as the basis for its decision.
- 2.2.4 The NAO sought to understand the reasoning behind the change from Article 17.1(c) to Article 67(c) of the Public Procurement Regulations and requested relevant documentation from the MHAS and the DoC. According to the CIO MHAS, the Ministry was directed by the DoC to amend the reference to Article 17.1(c). While networks were not exempt from the provisions of the Regulations, Article 67(c) was to be cited in view of the security considerations and the sensitivity of the premises in question. Notwithstanding this, no documentation was provided by the MHAS in support of the DoC’s instructions for this revision. Nonetheless, that stated by the CIO MHAS was corroborated in a reply by the DoC

wherein the NAO was informed that since Article 17.1(c) was not relevant for this negotiated procedure, the MHAS was instructed to submit a fresh request in terms of the applicable article of the Public Procurement Regulations, that is, Article 67(c). In submissions to this Office, the MHAS expressed reservations regarding the DoC's stance in the applicability, or otherwise, of provisions that exempted the CCF from the Public Procurement Regulations on grounds of security considerations.

- 2.2.5 The request by the DCS MHAS was referred to the DoC GCC by the Director Operations DoC through a memorandum dated 7 December 2015. According to the memorandum, the MHAS sought authorisation to enter into a negotiated procedure for the upgrade of the network at the CCF with Infinite Fusion Technologies Ltd for the price of €400,000, excluding VAT. The upgrade was required to cater for more CCTV surveillance and for a new project related to the Offenders Management System. The works involved plans of where and how the network was to be upgraded, which information was deemed sensitive especially when considering the consequences should such information be made public. Moreover, the request was endorsed by the PS MHAS and was being submitted in terms of Regulation 67(c) of the Public Procurement Regulations. In view of these considerations, the approval of the GCC was being sought.
- 2.2.6 The matter was discussed during the GCC meeting of 14 December 2015. According to the minute prepared by the Secretary GCC, the Committee had considered the memorandum dated 7 December 2015 and the recommendation therein. Approval was granted in terms of Regulation 67(c) of the Public Procurement Regulations. The approval was subsequently endorsed by the DG DoC.
- 2.2.7 On 14 December 2015, the Director Operations DoC informed the DCS MHAS that the GCC had discussed the request and approval was granted to the Ministry to enter into a negotiated procedure with Infinite Fusion Technologies Ltd for the upgrading of the network at the CCF for an estimated cost of €400,000. The approval was granted in terms of Article 67(c) of the Public Procurement Regulations. The approval was made subject that:
- a. the supplies in question were absolutely necessary;
 - b. the most cost effective (value for money) basis was taken into consideration when submitting the request; and
 - c. funds were available.
- 2.2.8 According to correspondence also dated 14 December 2015 by the DCS MHAS, the CIO MHAS was to inform the DCS MHAS of the price and works negotiated with Infinite Fusion Technologies Ltd in order that final approval from the DoC to award the contract be sought.

2.3 The contract with Infinite Fusion Technologies Ltd

- 2.3.1 On 18 December 2015, a contract was entered into between the PS MHAS and Infinite Fusion Technologies Ltd. The contract was for the general upgrade of the network at the CCF and included the routing of the incoming CCTV system. Works were to be completed within six months from the date of the contract, that is, by 17 June 2016. The consideration payable for the works, and the remedy of any defects, was set at €390,766 and included taxes and other duties and discounts, but excluded VAT. The value was based on a bill of quantities submitted by the Contractor. Payment for delivered items was to be made on the presentation of the relevant invoices, with the balance payable on final certification. Also stipulated was that the Contractor was to provide the MHAS with a performance guarantee equivalent to four per cent of the contract value, that is, €15,631.² Failure to complete the execution of the contract within the specified timeframe was to result in the withdrawal of the amount of the performance guarantee. Included with the contract was the bill of quantities referred to earlier therein. The NAO was informed that works did not commence prior to the conclusion of security clearances carried out by the CCF, which entailed verifications by the Malta Security Service.
- 2.3.2 The contract was supported with a declaration by Infinite Fusion Technologies Ltd that it was not bankrupt or under administration. Moreover, it had not been convicted criminally or found guilty of professional misconduct. According to the declaration, Infinite Fusion Technologies Ltd was up to date in the payment of social security contributions (SSC) and other taxes. This latter element of the declaration assumes relevance in terms of Articles 50.1(e) and 50.1(f) of the Public Procurement Regulations, which indicate that any economic operator may be excluded from participating in a public contract in the event of failure to fulfil obligations relating to the payment of SSC and taxes.
- 2.3.3 The NAO sought to verify that stated with regard to the payment of SSC and taxes. In this respect, queries were made with the PS MHAS in order to determine what checks were undertaken to ascertain the veracity of the statements in the declaration. In reply, the Ministry stated that annual financial statements for years ending 2010 to 2015, together with original Court and VAT declarations, were provided by Infinite Fusion Technologies Ltd. However, the latter declarations were no longer available at the MHAS as the original documents were submitted in response to a parliamentary question.
- 2.3.4 The NAO sought to independently ascertain the position of Infinite Fusion Technologies Ltd with regard to the payment of SSC and other taxes through queries to the CfR. According to the documentation submitted by the CfR, as at end 2014, Infinite Fusion Technologies Ltd had pending amounts relating to company tax, and final settlement system (FSS) tax and SSC. Moreover, a VAT compliance certificate was not issued to Infinite Fusion Technologies in December 2015, as at the time, the Contractor had an outstanding balance.

² The NAO verified that the four per cent performance guarantee was in line with prevailing requirements emanating from Procurement Policy Note No. 22 issued by the DoC on 30 November 2015.

- 2.3.5 This anomaly was brought to the attention of the MHAS and Infinite Fusion Technologies Ltd. The MHAS maintained that, as a general practice, the Ministry did not question bidders' submissions and had no reason to doubt the veracity of the declaration submitted by the Contractor. On the other hand, Infinite Fusion Technologies Ltd informed the NAO that outstanding balances were covered by an agreement with the CfR and were therefore in line with that declared.
- 2.3.6 The NAO sought to obtain supporting evidence from Infinite Fusion Technologies Ltd. To this end, the Contractor provided this Office with documentation dated 26 November 2013, wherein the payment of dues accrued between 2010 and 2012 were regulated with the CfR. This Office noted that amounts payable in terms of tax and SSC accumulated from 2013 onwards were in fact pending at the time of the declaration. The CfR confirmed that these dues were settled in 2018.
- 2.3.7 In addition, the NAO verified the payments made by the MHAS to Infinite Fusion Technologies Ltd in terms of the contract entered into on 18 December 2015. Invoices for a total amount of €461,103, inclusive of VAT, were submitted by Infinite Fusion Technologies Ltd; these were subsequently approved for payment by the CIO MHAS (Figure 1 refers).

Figure 1 | Amounts paid in terms of the contract dated 18 December 2015

Invoice No.	Invoice date	Details	Payment date	Amount (€)
4296	24/12/2015	Supplies	24/12/2015	161,186
4298	24/12/2015	copper cable	28/12/2015	11,523
4299	24/12/2015	copper cable	28/12/2015	13,827
4587	02/05/2016	Supplies	20/05/2016	112,047
4801	06/10/2016	Supplies	19/10/2016	57,897
4807	17/10/2016	Supplies	10/11/2016	24,931
4939	05/12/2016	supplies and labour	12/12/2016	79,692
Total				461,103

- 2.3.8 This Office established that the invoices raised by Infinite Fusion Technologies Ltd were approved by the CIO MHAS. The NAO sought to verify the process whereby works and supplies invoiced were certified by the MHAS prior to payment being effected. According to the CIO MHAS, invoices were certified correct after the delivery of items was verbally confirmed by CCF officials on site. It was not possible for this Office to verify that stated as no documentation evidencing the process was maintained.
- 2.3.9 The NAO's attention was drawn to the proximity of certain invoice and payment dates, with the first three invoices and payments of particular concern. When this matter was brought to the attention of the MHAS, the CIO MHAS indicated that the procurement process was expedited in view of the end-of-year savings that could be allocated to the project.

- 2.3.10 Another element of concern related to the certification of completed works, which although stipulated as a requirement of the contract, was not provided to this Office. Notwithstanding this, according to the MHAS, all network points were tested and certified in accordance with the networks' standards of procedures, with MITA commissioned to perform quality assurance testing and configure all the network switches. This testing was performed when the works on the network were finalised. According to the CIO MHAS, in some cases, minor faults were identified through this testing which were rectified by the Contractor.
- 2.3.11 The NAO also sought to verify whether the works related to the network upgrade at CCF, commissioned through the contract dated 18 December 2015, were undertaken within the stipulated timeframe. According to the DG CSA, the project was not completed within the six months indicated in the contract. The main reasons cited were changes in the scope of the project, as well as an epidemic outbreak within the CCF that halted works for approximately two months. Other factors which contributed to the delay resulted from the set-up of the divisions within the CCF and the specific nature of the premises. Factors which delayed works in the divisions were that works had to stop for approximately two hours every afternoon, the fact that the Contractor had to be accompanied by a prison guard at all times and this was not always possible due to a lack of staff, and the nature of the prison walls with works sometimes requiring the intervention of architects.
- 2.3.12 This Office's attention was also drawn to the fact that the cost of works invoiced precisely tallied with the value of the contract despite the changes in scope and the difficulties encountered in the execution of the project. This tally was deemed anomalous by the NAO and enquiries were made with regard to whether any variations arose in the works undertaken. The MHAS and Infinite Fusion Technologies Ltd confirmed that variations did arise, which partly led to the need for the second contract entered into by the parties. According to the MHAS and the Contractor, the variations were attributable to the considerable discrepancies arising from inaccurate site plans made available to the Contractor, which had entire floors missing or did not reflect the existing layout, necessitating additional works. Variations also arose from additional works deemed necessary by the CCF and that were not originally envisaged, partly the result of revisions in project specifications following changes in the headship of the CCF. These additional works related to the CCF as well as other sites under the responsibility of the CSA.
- 2.3.13 The NAO sought to better understand the gradual changes effected in terms of project scope. Documentation capturing the MHAS' oversight of the project was provided to this Office. In its review, the NAO established that, on 3 March 2016, the CIO MHAS assigned a project manager to keep track of progress registered and assist with troubleshooting. The Project Manager MHAS immediately highlighted shortcomings in terms of the quality of the works undertaken, difficulties in coordinating the works with other aspects of the prison's operations, as well as variations arising from inaccurate plans, unforeseen complications and the addition of extra works. As early as 28 March 2016, the CIO MHAS acknowledged

that control over the project was inadequate, with the lack of proper input by the business owner, that is, the CCF, cited as a primary factor in this respect. Based on the documentation reviewed by this Office, it was ascertained that the MHAS maintained visibility over project progress through the regular reports drawn up by the Project Manager MHAS.

2.4 Additional requirements

2.4.1 On 11 October 2016, the Director CCF informed the CIO MHAS that changes were required to the local area network (LAN) that was being implemented at the CCF.³ According to the Director CCF, “drastic changes and additions, including additions to cover areas which had been left uncovered in the original plans”, were needed. Cited in the correspondence was that changes to the proposed set-up were required in view of the additional measures that were being implemented in all areas of the CCF, the YOURS at Mtaħleb and the Forensic Unit at Mount Carmel Hospital. These measures resulted in requirements that were not included in the bill of quantities submitted by the contractor in relation to the first contract, namely:

- a. CCTV structure cabling requirements;
- b. structural extensions or newly built areas;
- c. movement of all network cabinets within the Administration Block data room to another designated area due to the exponential growth of the project;
- d. the LAN upgrade supporting the new CCTV initiative at the Forensic Unit;
- e. the LAN supporting the new CCTV initiative at YOURS; and
- f. network interoperability between all the above three sites to cater for data, telephony and CCTV purposes.

2.4.2 It was further stated that after lengthy discussions with all the parties involved, understood by the NAO as referring to the MHAS, the CCF and Infinite Fusion Technologies Ltd, the additional cost to cater for the holistic network setup within all three sites, including preparatory structural works for the CCTV set-up, was estimated at €480,000, exclusive of VAT. According to that stated, this was to be a significant investment through which the CCF would have a state-of-the-art network that would facilitate operations for years to come.

2.4.3 The request by the Director CCF was forwarded by the CIO MHAS to the DG (Strategy and Support) MHAS and the DCS MHAS. In this correspondence, the CIO MHAS requested assistance to obtain MFIN approval, through the DoC, to cover the approximate cost involved. According to this correspondence, the amount of €480,000 was based on the requirements listed in paragraph 2.4.1 and on the basis of anticipated future changes, but did not take into consideration any abrupt change requirements that could have a drastic effect on the proposed project scope.

³ In January 2016, a new Director CCF was appointed. This change in management contributed to changes in the scope of the project.

- 2.4.4 On 13 October 2016, the DG (Strategy and Support) MHAS informed the PS MHAS that approval from the DoC would be sought for the amount of €480,000, excluding VAT, should there be no objections. The PS MHAS approved the request on the same day.
- 2.4.5 On 8 December 2016, a request was submitted by the DCS MHAS to the DG DoC, seeking the latter's approval for the Ministry to enter into a negotiated procedure with Infinite Fusion Technologies Ltd for the continuation of the upgrade of the network at the CCF, the YOURS complex and the Forensic Unit. The cost of these additional works was approximately €480,000, excluding VAT, bringing the total value of the upgrading works to €880,000, exclusive of VAT. The works involved were those referred to in the request made by the Director CCF on 11 October 2016. Cited in the correspondence to the DG DoC was that the request was being submitted in terms of Article 67(c) of the Public Procurement Regulations.
- 2.4.6 Approval to enter into a negotiated procedure with Infinite Fusion Technologies Ltd for an estimated cost of €880,000 was granted by the DoC GCC on 14 December 2016. According to this correspondence, the GCC had discussed the request and approval, in terms of Article 67(c) of the Public Procurement Regulations, was granted subject that:
- a. the supplies were absolutely necessary;
 - b. the most cost effective (value for money) basis was taken into consideration; and
 - c. funds were available.
- 2.4.7 It is to be noted that the approval by the GCC for €880,000 included the value of the initial contract entered into by the MHAS. The DoC confirmed that the true value of the second contract that was approved by the GCC was of €480,000, excluding VAT. According to the DoC, the €880,000 cited was an oversight.
- 2.4.8 On 28 December 2016, a contract was entered into between the PS MHAS and Infinite Fusion Technologies Ltd. The contract covered the additional general upgrade of the network at the CCF, the Centre of Residential Restorative Services (CoRRS) (formerly the YOURS complex at Mtaħleb) and the Forensic Unit. Works included:
- a. CCTV structure cabling requirements;
 - b. structural extensions or newly built areas;
 - c. movement of all network cabinets within the Administration Block data room to another designated area;
 - d. the LAN upgrade supporting the new CCTV initiative at the Forensic Unit;
 - e. the LAN upgrade supporting the new CCTV initiative at the CoRRS; and
 - f. network interoperability between the three sites to cater for data, telephony and CCTV purposes.

- 2.4.9 Works were to be completed within ten months from the date of the contract, that is, by 27 October 2017. The consideration due for the works and for the remedy of any defects therein amounted to €489,234, and included taxes and other duties and discounts but excluded VAT. This amount was based on a bill of quantities drawn up by Infinite Fusion Technologies Ltd that was attached to the contract. Specified was that payment for delivered items was to be made on presentation of the relative invoices, while the remaining balance was to be paid on final certification.
- 2.4.10 In its review of the contract, the NAO identified a discrepancy between the value of the contract, cited as €489,234, and the value quoted in the bill of quantities attached thereto, cited as €479,526. Both amounts were exclusive of VAT. The MHAS and Infinite Fusion Technologies Ltd were unable to explain this discrepancy.
- 2.4.11 Furthermore, the NAO noted that, in this second contract, no performance guarantee was requested from the supplier. In reply to a query raised by this Office, the MHAS informed the NAO that since this service comprised a direct contract, and hence not subject to the general conditions that govern public procurement, no performance guarantee was requested. The MHAS further contended that a performance guarantee was not necessary as payments were only effected by the Ministry once the equipment was delivered.
- 2.4.12 The payments made by the MHAS to Infinite Fusion Technologies Ltd in terms of the contract entered into on 28 December 2016 were verified by the NAO. As at end September 2019, the MHAS was invoiced the amount of €472,526 (Figure 2 refers).

Figure 2 | Amounts paid in terms of the contract dated 28 December 2016

Invoice No.	Invoice date	Details	Payment date	Amount (€)
4960	20/12/2016	supplies	22/12/2016	159,750
4983	22/12/2016	supplies and labour	27/12/2016	237,606
5559	06/11/2017	supplies and labour	24/11/2017	75,170
Total				472,526

- 2.4.13 The CIO MHAS approved for payment the invoices raised by Infinite Fusion Technologies Ltd in respect of this contract. The NAO enquired as to the process of verification of works and supplies invoiced undertaken prior to payment. According to the MHAS, verifications undertaken were in line with those carried out with respect to the first contract. Notwithstanding that stated, the MHAS did not provide any documentation evidencing a reconciliation of received supplies against invoiced amounts.
- 2.4.14 The NAO's attention was drawn to the proximity of invoice and payment dates with respect to the initial two payments. Of greater concern was the fact that these two payments, accounting for €397,356 of the €577,296 contract, were paid by the MHAS prior to the signing of the contract with Infinite Fusion Technologies Ltd. When queried on the irregularity of these payments, the CIO MHAS indicated that the DoC had already approved

the contract that was to be entered into and that its signing had been delayed due to the unavailability of the PS MHAS. The CIO MHAS maintained that the procured supplies had already been delivered and therefore payments were expedited in view of the availability of funds at year-end.

2.4.15 This Office verified whether Infinite Fusion Technologies Ltd had pending dues in terms of company tax, FSS tax, SSC and VAT. The NAO established that as at end 2015, Infinite Fusion Technologies Ltd had an outstanding balance of company tax. A balance was also pending with respect to FSS tax and SSC. Bearing in mind that the contract was entered into on 28 December 2016, as at November 2016, Infinite Fusion Technologies Ltd also had an outstanding balance in respect of VAT.

2.4.16 Enquiries were also made regarding the completion of works, or otherwise, within the stipulated timeframe. According to the DG CSA, the scheduled works were not completed by the stipulated timeframe, citing changes in requirements.⁴ Notwithstanding this, the DG CSA stated that, while the network setup was fully operational from all CSA sites, some adjustments were necessary to reach optimal redundancy requirements.

2.4.17 The NAO reviewed documentation made available by the CIO MHAS that indicated that a similar set-up employed in the oversight of the first contract was retained for the works undertaken through the second contract, with the Project Manager MHAS submitting regular reports on progress registered. Generally, issues identified were resolved following the coordination of efforts with Infinite Fusion Technologies Ltd; however, the NAO's attention was drawn to instances when progress on the project stalled due to the Contractor's failure to allocate adequate resources.

2.4.18 Of note to the NAO was a progress report submitted by the Project Manager MHAS to the CIO MHAS on 4 October 2017, wherein reference was made to shortcomings identified in relation to the testing of copper cables, one of the more material items procured under these contracts. Noted in this report was that certain tests undertaken at CoRRS were missing while attention was also drawn to instances where a complete pass was not obtained. This Office's review of testing undertaken by Infinite Fusion Technologies Ltd at the CCF and the Forensic Unit during the course of works indicated that all testing carried out resulted in a 100 per cent pass, while that for CoRRS reflected the concerns raised by the Project Manager MHAS.

2.4.19 The NAO sought to corroborate that indicated in the testing undertaken by Infinite Fusion Technologies Ltd through the review of the results of tests undertaken by MITA. MITA was engaged by the MHAS, through an agreement signed on 1 February 2018, to conduct quality assurance testing of the network installed at the CCF and the other sites. From the 10 per cent sample that was tested by MITA, equivalent to 371 copper ports of the total

⁴ The DG CSA replaced the Director CCF and assumed office in June 2018.

3,500 ports, a fail rate of 35 per cent was detected. Based on these results and considering that these figures were on a 10 per cent sample, MITA indicated that it was highly likely that there would be network connectivity issues across these new network points.

- 2.4.20 Following the conclusion of the quality assurance testing, on 20 July 2018, the Project Manager MHAS enquired with MITA as to the apparent anomaly between the certification reports submitted by Infinite Fusion Technologies Ltd, which indicated a pass, and the testing undertaken by MITA, which resulted in a significant failure rate. In view of this, MITA advised the MHAS that a third-party contractor be engaged to perform 100 per cent testing in the presence of a representative from the Ministry. These results were to be forwarded to MITA for further analysis and guidance.
- 2.4.21 The NAO enquired with the CIO MHAS whether the recommendation by MITA was implemented. The CIO MHAS indicated that this was not acted on as the recommendation was deemed superfluous and a waste of public funds. In addition, the CIO MHAS maintained that checks on the ports classified as failed by MITA testing were listed as a marginal pass by the Contractor. Marginal passes were considered sufficient and suitable for the CCF's requirements. Where complete fail results were noted, the MHAS reached an agreement with Infinite Fusion Technologies Ltd that these should be rectified and retested. The CIO MHAS stated that all failures bar one had been addressed, with that pending to be attended to by the Contractor once works resumed.
- 2.4.22 The CIO MHAS' dismissal of concerns that emerged following the quality assurance testing drew the attention of the NAO. When these concerns were referred to MITA, this Office was informed that ultimate responsibility for the project rested with the CIO MHAS. Bearing in mind the evident discrepancy in fail rates between that cited by Infinite Fusion Technologies Ltd and that registered by MITA, the NAO fails to understand the CIO MHAS' dismissal of the advice provided by MITA for full testing to be undertaken by a third-party. In this case, third-party testing would have addressed any concerns regarding the quality of the work carried out by the Contractor.
- 2.4.23 Aside from the concern regarding quality assurance testing brought to the attention of the CIO MHAS on 4 October 2017, other issues were identified by the Project Manager MHAS during oversight of the project. These included the fact that metal trunking was not continued or bonded inside the wall perforations and that plastic trunking installed above the soffit was left open. Reference was also made to surge protector failures that impacted CCTV cameras. While certain issues remained unaddressed, others were escalated to the Contractor or, in the case of identified damages, these were to be repaired by the Contractor under warranty.
- 2.4.24 The NAO carried out a reconciliation of the copper cable installed at the CCF, CoRRS and the Forensic Unit by comparing the testing-related documentation submitted by Infinite Fusion Technologies Ltd corresponding to all works undertaken at the sites, with the total amounts

of copper cable procured, as cited in the two bills of quantities. This Office identified this item for testing based on the materiality of the expense, which exceeded €260,000 over the two contracts, and on the quantities procured. The bills of quantities accounted for 172,325 metres and 137,555 metres of copper cable, resulting in a total procured amount of 309,880 metres. The testing documentation submitted by the Contractor indicated that 139,264 metres were utilised at the CCF, 5,822 metres at the Forensic Unit, and 13,845 metres at the CoRRS, for a total of 158,931 metres. When one compares the amount procured, 309,880 metres, with the amount utilised, 158,931 metres, a discrepancy of 150,949 metres arises. The NAO sought an explanation regarding this anomaly from the CIO MHAS, who stated that the Ministry was aware of the matter and that this was part of a rigorous reconciliation process that was being undertaken with respect to the project. Despite that stated, this shortcoming serves to emphasise the poor contract management and weak control exercised over changes to the procured works, with the NAO's concerns validated when one considers the materiality of the discrepancy noted. The value of the copper cable that was unaccounted for, based on the Contractor's rates as stated in the bills of quantities, amounted to approximately €107,000.

2.4.25 In addition, the NAO verified warranty details relating to the network switches purchased for the CCF through the contracts entered into with Infinite Fusion Technologies Ltd as registered in the inventory provided by the CIO MHAS. The cost of the switches, as charged by the Contractor on the bills of quantities, was approximately €73,000. The warranties that were verified by this Office related to the core, power over ethernet and other switches. The warranty start date was established by this Office through reference to the manufacturer's online warranty check facility. The NAO established that the warranties of the power over ethernet and other switches were activated at a time that was considered consistent with the dates of the contracts. However, an element of concern persisted with respect to the core switches. While the core switches were inventoried by the MHAS on 17 March 2017, the NAO noted that the warranty of the devices started on 12 November 2012, way before the contract through which these items were procured was entered into in December 2016. This anomaly cast doubt on whether the procured items were new. These doubts were referred to the CIO MHAS who informed the NAO that this issue was part of the review and reconciliation process that the Ministry was undertaking. The CIO MHAS maintained that corrective measures had already been established with Infinite Fusion Technologies Ltd. Notwithstanding that stated by the CIO MHAS, the Office's concerns persist.

2.4.26 Although the contracted works were to be completed by October 2017, the MHAS informed the NAO that certain works were still pending as at October 2019. The MHAS and Infinite Fusion Technologies Ltd indicated that the value of outstanding works was estimated at €100,000. According to the Contractor, the pending works were contingent on the completion of other civil works being undertaken at the CCF. The Ministry indicated December 2019 as the likely completion date.

Chapter 3

Analysis and Conclusions

3.1 Timeline of key events

3.1.1 The NAO reviewed the processes whereby the MHAS procured network-related works that were to be undertaken by Infinite Fusion Technologies Ltd at the CCF and other sites. Works were contracted through two contracts for the aggregate value of €1,038,400 and entered into on 18 December 2015 and 28 December 2016. Hereunder is a timeline of key events (Figure 3 refers).

Figure 3 | Timeline of key events

unknown	The CIO MHAS held a meeting with a telecommunications company wherein a network-related works project at the CCF was discussed. Also present was Infinite Fusion Technologies Ltd, a sub-contractor of the company.
22 October 2015	The telecommunications company informed the PS MHAS that it was not able to quote for the project; however, recommended its sub-contractor to undertake the works.
20 November 2015	Request by the Procurement Manager MHAS to the PS MHAS that the CCF needed to upgrade its network. The budgeted value of the project was €472,000.
24 November 2015	Approval by the PS MHAS granted.
unknown	The Procurement Manager MHAS requested the approval of the DoC in terms of Article 17.1(c) of the Public Procurement Regulations, which allowed for the exemption of procurement from these Regulations in terms of security considerations.
unknown	The DoC rejected the request for exemption in terms of Article 17.1(c) submitted by the MHAS and recommended resort to a negotiated procedure.
7 December 2015	The DCS MHAS requested the approval of the DoC in terms of Article 67(c) of the Public Procurement Regulations, which allowed for procurement through a negotiated procedure in view of technical reasons. Reference was made to the selection of Infinite Fusion Technologies Ltd as the contractor and an estimate of works amounting to €472,000.
14 December 2015	The request by the DCS MHAS was referred to the DoC GCC.
14 December 2015	The DoC GCC granted approval for procurement in terms of Article 67(c).
18 December 2015	The DoC informed the DCS MHAS of the GCC's approval.
18 December 2015	A contract was entered into between the PS MHAS and Infinite Fusion Technologies Ltd for network-related works at the CCF amounting to €461,103. Works were to be completed by June 2016.
24 December 2015	The first payment with respect to the first contract, amounting to €161,186, was effected. Other payments were made on 28 December 2015, 20 May 2016, 19 October 2016 and 10 November 2016, in aggregate amounting to €220,225.
11 October 2016	The Director CCF informed the CIO MHAS that changes were required to the network-related works being undertaken at the CCF and that additional works were necessary at other sites. These works were estimated at €566,400.
13 October 2016	The DG (Strategy and Support) MHAS informed the PS MHAS that approval from the DoC was to be sought with respect to the additional network-related works required at the CCF and other sites.
13 October 2016	The PS MHAS approved the request for additional network-related works.
8 December 2016	The DCS MHAS sought the approval of the DoC to enter into a second negotiated procedure with Infinite Fusion Technologies Ltd. The estimated value of the works was €566,400.

12 December 2016	The final payment with respect to the first contract, amounting to €79,692, was effected. This payment represented the completion of works under the first contract.
14 December 2016	The DoC GCC granted the MHAS approval to enter into a second negotiated procedure with Infinite Fusion Technologies Ltd.
22 December 2016	The first payment for the second contract, amounting to €159,750, was effected. It must be noted that the second contract had not yet been signed.
27 December 2016	The second payment for the second contract, amounting to €237,606, was effected. It must be noted that the second contract had not yet been signed.
28 December 2016	The second contract was entered into between the PS MHAS and Infinite Fusion Technologies Ltd for additional network-related works at the CCF and other sites amounting to €577,296. Works were to be completed by October 2017.
19 April 2017	Minister MHAS requested Chair PAC to refer the two contracts awarded by the MHAS to Infinite Fusion Technologies Ltd for the review of the NAO.
31 October 2019	Works relating to the second contract had not yet been completed. Works were envisaged for completion by December 2019.

■ initial developments
■ first contract
■ second contract

3.2 Analysis and conclusions

3.2.1 In the NAO’s understanding, good practice dictates that procurement involving the disbursement of considerable public funds is supported through the appropriate analysis of needs, the evaluation of alternatives and a reasonable basis for the identification of the selected contractor. In the Office’s review of the MHAS’ disbursement of public funds through the contracts awarded to Infinite Fusion Technologies Ltd these elements were lacking.

Identification of works required

3.2.2 Although the MHAS maintained that the CCF lacked a proper network, resulting in frequent outages, documented evidence justifying the need for the works undertaken through the first contract entered into on 18 December 2015 was not provided by the MHAS and the CCF. The NAO was not furnished with any correspondence exchanged or reports drawn up highlighting the frequent and major disruptions in service and the need to address this matter.

3.2.3 The additional works undertaken through the second contract entered into by the MHAS on 28 December 2016 further attest to the poor planning process that characterised the initial commissioning of works through the first contract. The basis of justification for the additional works cited by the MHAS was partly the address of variations arising from the first contract and partly the result of a broadening in the scope of the project to include other sites. Notwithstanding the justifications made by the MHAS, the NAO is of the opinion that better planning, particularly in relation to works that could have readily been anticipated through a site survey, would have contributed to the better overall management of the project.

- 3.2.4 An element that could have contributed to ensuring value for money was the independent determination of the value of the works that were to be undertaken through the first and second contract. In the case under review, the MHAS relied on bills of quantities arrived at by Infinite Fusion Technologies Ltd rather than an independent assessment of the works required. The NAO is of the understanding that the objective verification and measurement of the extent of works required prior to commissioning would have further ensured that public funds were disbursed in an effective and cost-efficient manner.
- 3.2.5 Another concern that emerged in the NAO's review of this project related to the changes in project scope that substantially increased the volume of works required, rendered evident in the value of the second contract. The changes were in part the result of shortcomings in the planning process, for instance those arising from inaccurate plans, and in part driven by the evolving requirements of the CCF. These shortcomings were compounded by the poor interface between the CCF and the MHAS in the management of these changes.

Determination of applicable procurement regulations

- 3.2.6 Part of the review undertaken by the NAO entailed ascertaining whether procurement was undertaken in compliance with the applicable regulations. Initially, the MHAS sought exemption from the Public Procurement Regulations citing Article 17.1(c), which relates to public contracts declared secret or in the national interest. Subsequently, the MHAS requested the authorisation of the DoC for procurement to be undertaken in terms of a negotiated procedure, citing Article 67(c), which allows award to a particular economic operator for technical or artistic reasons, or the protection of exclusive rights. While the change from exemption to negotiated procedure was not clearly documented, the NAO established that this change was attributed to the DoC, who had informed the MHAS that network-related works could not be exempted from the Public Procurement Regulations on the basis of Article 17.1(c).
- 3.2.7 Having reviewed the context of the procurement undertaken by the MHAS, the NAO acknowledges the security-related concerns that motivated the Ministry in seeking exemption from the Public Procurement Regulations, yet simultaneously deems the advice provided by the DoC as valid in that the works could not be declared secret or in the national interest. Whether the security concerns cited by the MHAS, valid as they were, qualified as technical reasons is debatable; however, resort to a negotiated procedure allowed the CCF to contract the required works without disclosing information deemed sensitive.

Choice of contractor

- 3.2.8 In the NAO's opinion, the basis of selection of Infinite Fusion Technologies Ltd was somewhat unusual, the result of circumstances wherein a telecommunications company, ordinarily engaged by the MHAS to carry out such works, recommended one of its sub-contractors for the works.

3.2.9 The MHAS failed to source other quotations from suppliers of its choice, which would have been in line with the negotiated procedure adopted and would have afforded a greater degree of certainty that value for money was ascertained. Cognisant of the security considerations that might have influenced the decision to limit the process of procurement to one contractor, the NAO maintains that this factor should not serve as the basis of omission of other measures that could have better safeguarded Government's efforts at securing value for money, particularly through the sourcing of multiple quotations.

Contractual compliance and the implementation of works

3.2.10 The first contract entered into by the MHAS and Infinite Fusion Technologies Ltd on 18 December 2015 corresponded to works valued at €461,103. The contracted works were to be completed within six months. The NAO ascertained that €461,103 were paid; however, the works were not concluded within the stipulated timeframe, with the final invoice paid in December 2016. This Office contends that while certain reasons cited by the MHAS justifying the delay could not have been foreseen, others certainly could have been anticipated had the works been appropriately planned.

3.2.11 Another element of concern related to the certification of completed works, which although stipulated as a requirement of the contract, was not undertaken by the MHAS in a manner deemed appropriate by the NAO. Aside from approval for payment noted on invoices, no documentation substantiating the receipt of supplies was provided to the NAO. This concern assumes more significance when one considers that, in one instance, a significant payment for labour was effected in advance. In this Office's opinion, these shortcomings attest to the poor contract management practices employed by the MHAS in its oversight of these works.

3.2.12 The NAO's attention was also drawn to the inconsistencies in the declaration regarding SSC and taxes payable by Infinite Fusion Technologies Ltd attached to the contract dated 18 December 2015 with source information obtained from the CfR. Based on information obtained from the CfR, the NAO understood that Infinite Fusion Technologies Ltd had pending tax and SSC-related dues at the time of signing of the contract. Although provisions arising from the Public Procurement Regulations do not preclude economic operators from participating in public contracts on the basis of such dues, the NAO deemed the inconsistency in that declared a matter of concern. Infinite Fusion Technologies Ltd indicated that it had an agreement with the CfR; however, the NAO established that this agreement corresponded to dues that the Company had accumulated up to 2012. This Office noted that the agreement did not cover additional dues that arose between 2013 and 2015 and deemed submissions by Infinite Fusion Technologies Ltd as misleading.

3.2.13 As at October 2019, works commissioned through the second contract had not been completed. Of the contracted amount of €577,296, payments of €472,526 were effected, with pending works, estimated at €100,000, expected to be completed by December 2019.

Bearing in mind that the contract stipulated completion by October 2017, the envisaged revised target date was deemed indicative of poor planning and weak contract management on the part of the MHAS and the CCF.

3.2.14 While the first contract provided for a performance guarantee, the NAO noted that the second contract did not. This Office is of the understanding that this procurement was effected through a negotiated procedure, which required the provision of a performance guarantee by Infinite Fusion Technologies Ltd. The obligation imposed on contractors for the provision of a performance guarantee safeguards Government's interests when procuring works such as those contracted by the MHAS, and it is in this context that the NAO maintains that this requirement should have been adhered to.

3.2.15 The NAO's concerns relating to the poor contract management practices employed by the MHAS were aggravated following the testing carried out by this Office on certain items procured. The discrepancy in the amount of copper cable procured with that utilised evidenced incompetent contract management, particularly when one considers the materiality of the adverse variance, the fact that the Contractor was paid in advance and that this anomaly could have been readily detected as the information necessary was in hand. Aside from quantity-related shortcomings, other concerns identified by the NAO related to the quality of work carried out. The significant difference in fail rates between that cited by Infinite Fusion Technologies Ltd and that registered by MITA was one such quality-related concern. The NAO fails to understand the CIO MHAS' dismissal of the advice provided by MITA for full testing to be undertaken by a third-party, which testing would have allayed any concerns regarding the quality of the work carried out by the Contractor. Other testing by the NAO that raised an element of concern related to the core switches, whose warranty was activated way before the contract through which these items were procured was entered into. This anomaly cast doubt on whether the procured items were new.

Payments

3.2.16 The NAO ascertained that all payments relating to the first contract, amounting to €461,103, were paid. However, this Office's attention was drawn to the proximity of invoices raised and payments effected in December 2015, most notable being an invoice for €161,186 dated 24 December 2015 and paid that same day. Although the MHAS indicated that the procurement process was expedited in view of the end-of-year savings that could be allocated to the project, the NAO maintains an element of reservation regarding payments effected without the appropriate certification of supplies received.

3.2.17 An additional concern that emerged in the review of payments made was the fact that the cost of works tallied perfectly with the initial estimate set by Infinite Fusion Technologies Ltd in its bill of quantities, despite the considerable changes in scope and the difficulties

encountered in the execution of the project. The MHAS and Infinite Fusion Technologies Ltd confirmed that variations did arise, which were charged to the second contract entered into by the parties. The NAO is of the opinion that these variations were the result of shortcomings in the initial design and planning of the project and a subsequent creep in scope. Moreover, documentation that would have allowed this Office to understand the gradual changes effected was altogether absent.

3.2.18 Payments relating to the second contract amounted to €472,526 of the €577,296 contracted. Similar to the first contract, the NAO noted the proximity of invoice and payment dates, particularly those issued in December 2016. Of notable concern was that €397,356 were paid by the MHAS prior to the signing of the contract on 28 December 2016. Although the MHAS contended that the approval of the DoC had already been obtained, that the items invoiced were delivered and that advanced payment was made to utilise remaining funds, the NAO's strong reservations regarding the timing of payments made persist. This Office's reservations are based on the fact that these disbursements of public funds were not regulated by a contract, entailed the advance payment of €68,000 in labour, and no documentation corresponding to supplies reportedly delivered were retained. In the NAO's opinion, these factors needlessly exposed the MHAS to risks that were not to be borne by Government.

Addressing the terms of reference

3.2.19 In addressing the terms of reference, the NAO is of the understanding that the reasons cited for the allocation of works through a negotiated procedure were justified in terms of the sensitivity and the security considerations of the premises where the works were to be carried out. However, this Office is of the opinion that the basis for the selection of Infinite Fusion Technologies Ltd was questionable in terms of the circumstances within which the Contractor was selected, as well as the fact that no other suppliers of the MHAS' choice were approached to submit a quotation for the works. Finally, the NAO deems Government's interests not to have been adequately safeguarded and value for money far from ascertained, largely due to the poor management manifested throughout the process of procurement and in the implementation of works.

2018 - 2019 (to date) Reports issued by NAO

NAO Work and Activities Report

April 2019 Annual Report & Financial Statements 2018 - Work and Activities

NAO Audit Reports

December 2018 Report by the Auditor General on the Public Accounts 2017

December 2018 Performance Audit: An evaluation of the regulatory function of the Office of the Commissioner for Voluntary Organisations

January 2019 An Investigation of Visas issued by the Maltese Consulate in Algiers

March 2019 Performance Audit: A Review on the Contract for Mount Carmel Hospital's Outsourced Clerical Services

June 2019 Joint Audit: An Evaluation of the Community Work Scheme

July 2019 Cooperative Audit: Are adequate mechanisms in place for the designation and effective management of Marine Protected Areas (MPAs) within the Mediterranean Sea?

October 2019 Information Technology Audit: The Effective use of Tablets in State, Church and Independent Primary Schools

October 2019 Follow-up Reports by the National Audit Office 2019

November 2019 Report by the Auditor General on the Workings of Local Government for year 2018

November 2019 Performance Audit: An analysis of issues concerning the Cooperative Movement in Malta

November 2019 Report by the Auditor General on the Public Accounts 2018