ADDENDUM INVESTIGATION: THE MATER DEI HOSPITAL PROJECT

A REPORT BY THE AUDITOR GENERAL

NAO National Audit Office MALTA

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Addendum Investigation:
The Mater Dei Hospital Project

Report by the Auditor General
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List of Abbreviations

BoQs	Bill of Quantities
CBM	Central Bank of Malta
CEO	Chief Executive Officer
CMC	Cooperativa Muratori e Cementisti
DAS	Departmental Accounting System
DoC	Department of Contracts
E&E	England and England
ECH	EC Harris
FIDIC	Fédération Internationale Des Ingénieurs-Conseils
FMS	Foundation for Medical Services
GoM	Government of Malta
HCLS	Horwath CLS Ltd
HVAC	Heating, ventilation and air conditioning
IMFMT	Italo-Maltese Foundation Monte Tabor
IPC	Interim Payment Certificate
IRB	A joint venture between Impresem SpA, Rainbow Mix Concrete Ltd., and G&P Borg Ltd.
ISSAI	International Standards of Supreme Audit Institutions
JASPERS	Joint Assistance to Support Projects in European Regions
MDH	Mater Dei Hospital
MFIN	Ministry for Finance
MITA	Malta Information and Technology Agency
MoU	Memorandum of Understanding
MTF	Monte Tabor Foundation
NAO	National Audit Office
NSO	National Statistics Office
OECD	Organisation for Economic Cooperation and Development
OPM	Office of the Prime Minister
PMO	Project Management Office
PRO	Public Relations Office
QS	Quantity Surveying
SAMOC	Sir Anthony Mamo Oncology Centre
SMJV	Skanska Malta Joint Venture
SQM	Square Metre
WHO	World Health Organisation

Executive Summary

Introduction

1. In July 2018, the Minister for Finance, the Hon. Prof. E. Scicluna, requested the National Audit Office (NAO) to follow-up the conclusions highlighted in the Report titled 'An Investigation of the Mater Dei Hospital Project', published in May 2018. The Minister for Finance requested this Office to:

    a. continue the Mater Dei Hospital (MDH) investigation through documentation available at Cabinet Office;
    b. prepare a benchmark of the estimated total cost of the MDH compared to similar hospitals abroad; thereby addressing the issue of whether the total project cost of MDH is a fair price or not;
    c. prepare a list of the documents that were originally requested by it; those found and those missing, identifying as well, who was responsible for the upkeep of such documentation; in so doing to clarify that the current FMS has not been responsible of the lack of documentation and that they have fully cooperated with the Investigation.

2. For the purpose of this Report, the cut-off point regarding total project cost was set at end 2008. This date considers that Mater Dei Hospital (MDH) became operational in 2008. By definition, this cut-off date implies that the NAO did not consider the additional facilities that were introduced at the Hospital following this date. Moreover, this Report mainly deals with the design and build element of the Hospital Project. This decision was based as these elements constitute 84 per cent of the total project costs indicated in the 2008 Audited Financial Statements, which amount to €583,102,407.

3. In many aspects, this Report builds on the issues raised by the NAO's 2018 Report on the subject matter. This was possible since most of the documentation requested for the original Report was, to varying degrees, made available for the follow-up review. To this end, this review would like to acknowledge the input of the Cabinet Office and the collaboration of the Foundation for Medical Services (FMS).

Benchmarking MDH design and construction costs

4. The terms of reference for the Addendum Investigation on the MDH project included a benchmarking study whereby the costs incurred to develop the hospital were compared and analysed against expenditure incurred for similar hospitals locally and abroad. This objective presented various methodological limitations namely arising out of MDH's footprint, functions, method of construction and other characteristics which are specific

to this hospital – for instance it being a teaching hospital. These limitations were mitigated through restricting the exercise at hand to solely consider MDH's design and construction phase. Moreover, for the purpose of fulfilling this objective, the NAO engaged the services of experts.

5. Three main evaluative exercises undertaken by the NAO with the support of two expert external consultants, consistently show that the MDH exceeded benchmark costs. The first exercise showed that, when compared to the recently built Sir Anthony Mamo Oncology Centre's (SAMOC) imputed rates, MDH design and construction costs constituted an excess of €97 million over SAMOC-based benchmark costs. Secondly, MDH exceeded SAMOC-based benchmarks by 30 per cent when comparing the project on the basis of design and construction cost per square metre. The third exercise elicited similar results as MDH rates relating to cost per bed were higher than some international and SAMOC-based criteria. In part, MDH's high design and construction rates result as the Hospital exceeds international area per bed benchmarks. This variance between MDH and SAMOC costs as well as other international benchmarks could be attributed to a number of factors. One reason, which could amount to a maximum of 15 per cent of construction costs, relates to the construction method adopted. Nonetheless, other contributory factors such as weaknesses in project management, contract management, and governance also had a negative impact on MDH's design and construction costs.

Preliminary works and the Italo-Maltese Foundation Monte Tabor Contract (1987 – 1997)

6. Following the availability of more information, this review was in a position to build on the issues raised by the May 2018 NAO Report. During the period 1987 to 1997, Government carried out the preliminary work for the introduction of a new Hospital. The concept eventually developed into a specialised new Hospital, with 480-beds and catering for nine specialties. The design and construction contract was awarded through a direct contract to the Italo-Maltese Foundation Monte Tabor (IMFMT) – this Company pertaining to the San Raffaele Group. During this ten-year period, the Hospital project was characterised with various concerns relating to initial planning, contract and project management as well as Government's negotiations with service providers. The following refers:

   a. Comprehensive studies pertaining to the logistical arrangements of providing the national health service hospitalisation services from different locations were not undertaken.

   b. The Contract between FMS and IMFMT had various ambiguous contractual provisions.

   c. Hospital's design plans proved to be a persistent stumbling block and, at the time, continuously delayed the project.

The initial construction phase: the measured contract with Skanska (1995)

7. Following a call for tenders, the new hospital construction contract, which embraced the measured works principle, was awarded to Skanska in September 1995. This award followed Cabinet's direction to overturn the Contracts Committee and Director of Contracts decision to award this Agreement to the most economically advantageous tenderer, as was specified in the tender document and in accordance with the prevailing practice at the time. Cabinet contended that there were other equally and more important factors at play concerning this award, namely political, financial, legal and diplomatic issues.

8. On 9 June 1995, the Courts confirmed the Warrant of Prohibitory Injunction instigated by another bidder, stating that the decision of the Minister for Finance, the Hon. Mr. J. Dalli was 'ultra vires' and ordered that the award to Skanska was to be withheld. However, this Warrant of Prohibitory Injunction was not followed by further court proceedings as stipulated by the Law Courts.

9. The 1995 Contract signed with Skanska showed that the then envisaged 480-bed hospital was to be completed within 30 months at a cost of around €74 million (Lm32 million). At the outset, however, design and preliminary works-related problems influenced the implementation of this construction agreement. The project was already behind schedule and off target in terms of construction progress and budget prior to the 1996 change in Government. The ensuing changes to the Hospital's concept and capacity implied that a significant portion of the works carried out by Skanska up to this period, would eventually be rendered as a sunk cost.

Design and Build Cost-Plus Agreement (2000)

10. The change in Government in 1996 brought with it a radical change in the new Hospital's project design, size and operational concept. Matters became further complicated following the subsequent change in Government in 1998. All of these changes, to varying degrees, contributed to the Memorandum of Understanding (MoU) signed between the FMS and Skanska in December 1998, whereby the project was to continue through a Cost-Plus Agreement where Skanska would be responsible for the new hospital design and construction. The Cost-Plus Agreement was signed in February 2000. At that time the parties agreed a project target value of €216.7 million (Lm93 million)[1] excluding VAT and a completion date of June 2005.

11. In accordance with the benefits provided by such a contract, the cost-plus option was seen as a mechanism to avoid delaying the project further. The parties considered this as a feasible option as the latest hospital designs were still in the process of being developed. However, in such a scenario, the cost-plus option de facto offered stakeholders the motivation to keep changing plans and engaging in additional works.

[1] This amount includes designs and project management fees.

12. This is where the main disadvantages of the cost-plus arrangement kicked in. The continuous changes to the hospital design and plans resulted in significant cost escalation which ultimately led to the termination of the Cost-Plus Contract and adoption of a Lump Sum approach. The value indicated in the Cost-Plus Contract proved to be off-target by a staggering €176 million or 56 per cent of the hospital's final cost noted in the 2008 Audited Financial Statements.

13. This situation resulted since prerequisites to mitigating the risks associated with the effective implementation of a Cost-Plus Contract were not fully effective. The cost control function was the subject of criticism from some FMS senior officials and FMS commissioned reports. Moreover, the implementation of this phase of the project was negatively influenced by other governance-related concerns, namely project management weaknesses, transparency issues and weak audit trails.

The Lump Sum (2005) and Project Closure (2009) Agreements

14. Further to the issues raised in the Gap Analysis Report, issued by FMS in April 2004, FMS and Skanska agreed, in April 2005, to convert the Cost-plus Contract into a Lump-Sum Agreement. Subsequently, in 2009 – that is after the inauguration of the project, FMS and Skanska signed the Project Closure Agreement. In part, the €117 million (Lm50 million) and €5.1 million (Lm2.2 million) excluding VAT pertaining to the respective agreements, can be considered as the costs required for Government to stabilise the project finances and delivery schedule. When considering these latest two contracts the design and construction of the project cost which was estimated to cost around €98 million (Lm42 million) in 1995 increased to €487.7 million (Lm209.4 million) as stated in the 2008 Audited Financial Statements.

15. As outlined in the May 2018 NAO Report, the Project Closure Agreement which prepared for the final settlement between the parties did not fully safeguard Government's interest since the Parties agreed to waive all claims against each other. While at the time this was seen to avoid lengthy litigation procedures involving millions, it was disadvantageous to Government as the likelihood that a project of such magnitude would lead to claims against the contractor is considerable. In due course, this issue came to the fore due to the contentious quality of concrete within the Accident and Emergency Department.

Overall Conclusion

16. The fragmentation of documentation and the passage of time were limitations which this Investigation also had to address. Nonetheless, the wide spectrum of documentation made available by the Cabinet Office, FMS and other governmental entities enabled this Addendum Investigation to expand on the issues raised in the May 2018 NAO Report. To this effect, we acknowledge FMS's input and cooperation.

17. Over the years, the MDH project was subject to various criticisms and had undergone a number of official enquiries. The general thrust of the issues raised had a common denominator – governance-related concerns, namely related to planning, cost control, transparency, project management and not least policy changes in the concept and capacity of the project.

18. The Addendum Investigation positions itself in a similar vein but it also sought to add value by quantifying or discussing the extent of these issues. The limitations referred to in the first paragraph of these concluding comments, at times, restricted the comprehensiveness of the discussion on such findings. Nonetheless, this Addendum Investigation elicited critical information which enables lessons to be learnt from one of Malta's major projects.

19. There is no doubt that the MDH project upgraded, contributed and, to varying degrees, was a catalyst to transform Malta's national health care systems. Nonetheless, the project was characterised by quality, cost and timeliness issues – elements which are synonymous with contract, project management and governance concerns. While appreciating that the nature of major public projects can be conducive to some, if not all, of the issues raised in this Report, in practice many aspects of these shortcomings can be either minimised or avoided. Within this context, this Office reiterates the importance of planning, coordination between all stakeholders from the outset and of the critical importance of having effective control mechanisms in place. This ascertains that projects proceed along their intended path and deliver their intended impact within the budget allocation, facilitating timely corrective action, if and as required.

Chapter 1

Terms of Reference

1.1. Introduction

1.1.1. In July 2018, the Minister for Finance, Hon. Prof. E. Scicluna, requested the National Audit Office (NAO) to follow-up the conclusions highlighted in the Report published by the latter in May 2018 titled "An Investigation of the Mater Dei Hospital Project". This Report, which followed a request by the Minister of Finance in 2015, sought to evaluate the processes leading to the design, building, execution, certification, payment, completion and eventual closure of the Mater Dei Hospital (MDH) project. Therein, the NAO remarked that despite extensive efforts on its part, due to its fragmentation certain information remained unavailable. This prohibited the Office from fully addressing the objectives and scope of the Investigation as requested.

1.1.2. In July 2018, this situation instigated the Minister for Finance to request a follow-up of this Investigation, herein referred to as the Addendum Investigation. This Addendum Investigation Report covers the period up to end 2008, which relates to the when the Hospital started its operations.

1.1.3. In many aspects, this Report builds on the issues raised by the NAO's 2018 Report on the subject matter. This was possible since most of the documentation requested for the original Report was, to varying degrees, made available for the follow-up review. To this end, this review would like to acknowledge the input of the Cabinet Office and the collaboration of the Foundation for Medical Services (FMS).[2]

1.2. Background

1.2.1. The Mater Dei Hospital Project spanned over the period 1987 to 2010. Financial Statements audited by Grant Thornton Malta noted that the total project cost as at end 2008 amounted to €583,102,407. This total includes, land, buildings, medical equipment, furniture and fittings and other related costs. Appendix I refers. The financial statements in question include works referred to in the Project Closure Agreement, which was signed in 2009. There were no other adjusting or significant non-adjusting events between the balance sheet date and the date of the authorisation of the financial statements by the FMS Board on 13 January 2010.

[2] For the purpose of this Report, FMS is going to refer interchangeably to both the Foundation for Medical Services and Foundation for Medical Services and Sciences (as previously known).

1.2.2. This project was characterised by six major phases, namely:

i. the drawing up of preliminary plans as well as the Italo-Maltese Foundation Monte Tabor (IMFMT) contract for the design, construction supervision and operation of a 480-bed specialised hospital (1993[3]);
ii. the measured contract with Skanska[4] for the construction, finishing works and engineering services for the (then) San Raffaele Hospital (1995);
iii. the Memorandum of Understanding with Skanska catering for changes to the project scope and size (1998);
iv. the design and build cost-plus agreement with Skanska (2000);
v. the lump sum contract with Skanska for the replacement of the design and build cost-plus contract (2005); and
vi. the project closure agreement with Skanska (2009).

1.2.3. The ensuing Chapters of this Report present detailed discussions relating to these major project phases.

1.3. Audit scope and methodology

1.3.1. The July 2018 communication by the Minister for Finance, which is attached at Appendix II, requested the NAO to:

a. continue the Mater Dei Hospital (MDH) investigation through documentation available at Cabinet Office;
b. prepare a benchmark of the estimated total cost of the MDH compared to similar hospitals abroad; thereby addressing the issue of whether the total project cost of MDH is fair price or not;
c. prepare a list of the documents that were originally requested by it; those found and those missing, identifying as well, who was responsible for the upkeep of such documentation; in so doing to clarify that the current FMS has not been responsible of the lack of documentation and that they have fully cooperated with the investigation.

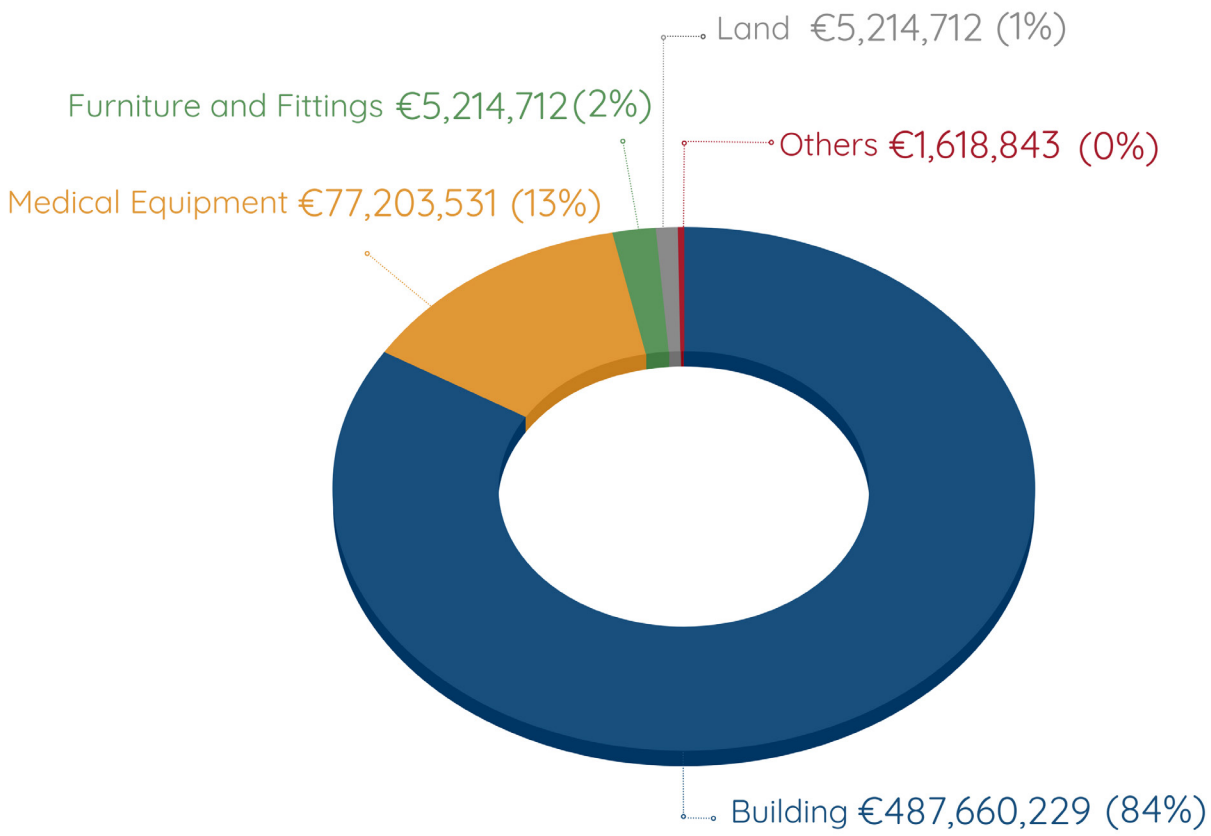
1.3.2. The cut-off point regarding total project cost was set at end 2008. This date considers that MDH became operational in 2008. By definition, this cut-off date implies that NAO did not consider the additional facilities that were introduced at the Hospital following this date.

1.3.3. This Addendum Investigation Report mainly deals with the design and build element of the Hospital Project. This decision was based as these elements constitute €487,660,229 or 84 per cent of the total project costs. As mentioned above, the total cost of the Mater Dei Hospital project as per the 2008 Audited Financial Statements amounted to €583,102,407. Figure 1 refers.

[3] For the purpose of this Report, the initial capacity of the Hospital is taken to be of 480 beds. This is based on Schedule B of the Agreement between FMS and IMTFM.

[4] For the purpose of this Report, Skanska is going to refer to the different consortia the Contractor has entered into during the different phases of the Project.

Figure 1: The total costs of MDH project (2008)



Source: 2008 Audited Financial Statements

1.3.4. The attainment of the aforementioned objectives entailed the following methodological approaches:

a. **Adherence to ISSAIs**: The audit was carried out in accordance with the Guidelines on Best Practice for the Audit of Public / Private Finance and Concessions, International Standards of Supreme Audit Institutions (ISSAI) 5220.

b. **Reconciling documentation requested and received at NAO with respect to the original request by the Minister for Finance in 2015**: This exercise entailed the compilation of the NAO's information requests with respect to the Investigation instigated by the Minister for Finance in 2015. This list was subsequently reconciled with the actual documentation received during the course of the original review. A detailed exposition of this review is attached at Appendix III.

c. **Documentation review**: This audit entailed reviewing documentation maintained and forwarded to this Office by the Cabinet Office for the purpose of the Addendum Investigation. This documentation mainly comprised cabinet minutes, memos and reports submitted for discussion to the Cabinet Office. Moreover, the NAO reviewed documentation maintained by FMS with respect to the MDH project. This documentation comprised of, amongst others, minutes, board resolutions and

payments. The newly available documentation enabled a more comprehensive review of issues raised in the May 2018 NAO Report and elicited various other concerns. The document review also extended to official inquiry report concerning the MDH project which was published in June 2015. However, it is to be noted, that due to the extensive amount of documentation available, this Office selected the information which was deemed most relevant.

d. **Semi-structured interviews**: Considering additional information made available to the NAO, the audit team conducted interviews with incumbent officials from the FMS and the Department of Contracts. The aim of these interviews was to elicit further information or to confirm our understanding on the MDH project.

e. **Comparative analysis of MDH costs with other general hospitals**: This exercise entailed benchmarking MDH costs with recently built local and overseas hospitals. In turn, this exercise necessitated a number of assumptions and cost adjustments (such as those related to inflation within the construction industry) to ensure that the comparative analysis considered, as far as possible, a level playing field. To this end, the NAO sought a number of avenues of enquiry, including communications and information exchange with international organisations (including the World Health Organisation, the Organisation for Economic Cooperation and Development and Joint Assistance to Support Projects in European Regions [JASPERS]). Chapter 2 presents an extensive discussion on the criteria applied and ensuing limitations pertaining to the comparative analysis. For the purpose of this aspect of the Addendum Investigation, the NAO engaged the service of an architect and an economist, both experts in their field, to assist the audit team in technical matters.

1.4. Limitations

1.4.1. Despite the various methodological approaches adopted, this review encountered a number of limitations. These limitations and the mitigating approaches adopted will be discussed in detail in the relevant Chapters. Nonetheless, hereunder is a brief outline of the difficulties encountered:

- **Passage of time**: The conceptualisation of the new hospital project commenced in 1987, or over 33 years ago. The passage of time renders any investigative and auditing work exponentially harder to undertake. This is mainly due to changes in personnel, management responsibilities and distortions in the recollection of events.

- **Data fragmentation**: Over the course of this project, Governmental ministries, departments and entities adopted various systems to maintain documentation. These ranged from manual to the current electronic systems which embrace search facilities. Moreover, FMS documentation was maintained in files which do not always refer to their contents. The transition from manual to electronic registry systems was also

subject to certain limitations concerning file cataloguing as file names and contents were not always referred to accurately or comprehensively. This constituting the main reason for the lack of required documentation made available to the NAO during the first audit. This also increased the risks that this Addendum Investigation would not retrieve important information when conducting file searches based on keywords. Due to the complexity and number of stakeholders involved in the MDH project, the maintenance of documentation was fragmented as it involved many players, such as the Cabinet Office, the Ministries responsible for Finance, Health and Social Policy, FMS and the Department of Contracts.

- **Reconciliation of accounting information**: The NAO could not reconcile the interim payment certificates as well as other financial documentation with the 2008 audited financial statements. Furthermore, a full reconciliation between the line items presented in the audited financial statements and the interim payment certificates was not possible since these sources adopted a different classification of project expenditure. Matters could not be resolved since the auditors, in line with their legally based retention policy, did not maintain the relative working papers.

- **Changes in hospital concept and size**: Major policy shifts following the change in administration in 1996 and in 1998 led to the re-conceptualisation of the hospital scope and size. These circumstances led to further complexities due to changes in contractual arrangements and projected costs.

- **Comparative analysis**: The hospital's scale, design, type and construction methods do not readily lend themselves to comparative analysis. Consequently, the Addendum Investigation was constrained to adopt a number of assumptions to ensure that as far as possible such an evaluation considered a level playing field. This entailed that the scope of the comparative analysis will be mainly limited to the design and construction costs on a square metre and per bed basis.

1.5. Report Structure

1.5.1. Following this Introductory Chapter, the Report proceeds to discuss the following:

a. Chapter 2 presents detailed analysis of the comparative study undertaken to establish the extent to which the MDH capital cost represents a fair value. The Chapter discusses the methodology adopted and ensuing limitations of comparing hospitals' capital costs.

b. Chapters 3 to 6 reflect the arising issues within the six main phases of the project. Consequently, these Chapters follow the chronological order of the development of the main contracts pertaining to this project.

1.5.2. The overall conclusions related to this Investigation are presented in the Report's Executive Summary from page 8 to 12.

Chapter 2

Benchmarking MDH's design and construction costs

2.1. Introduction

2.1.1. The terms of reference of the Addendum Investigation on Mater Dei Hospital (MDH) project included a benchmarking study whereby the costs incurred to develop the Hospital would be compared and analysed against expenditure incurred for similar hospitals locally and abroad. Despite a range of methodological limitations, this study elicited that MDH design and construction costs were comparatively significantly higher than those incurred with respect to Sir Anthony Mamo Oncology Centre (SAMOC) as a surplus of actual costs over benchmark costs of €97 million - or 25 per cent of benchmark costs - materialised. This state of affairs raises further concerns when one considers that the original target value for the design and construction of the 825-bedded hospital was €312 million and the actual cost as per the 2008 audited financial statements amounted to €487.7 million. The variance between the original target value and the final cost is discussed in detail in Chapter 5 of this Report.

2.1.2. Against this backdrop, this Chapter discusses the following:

- methodological limitations;
- benchmarking MDH with SAMOC design and construction costs;
- a comparative analysis based on international standards and actual MDH's design and construction costs on square metre (sqm) and per bed basis.

2.2. Benchmarking MDH costs is subject to a range of methodological limitations

2.2.1. Mater Dei Hospital is a general, acute and teaching hospital. Moreover, it is Malta's main medical centre. At the outset, this establishes MDH's unique characteristics. These elements need to be considered when undertaking benchmarking and comparative analysis exercises, particularly, as most general hospitals abroad do not operate in this 'monopolistic' environment or have the same functions and features as MDH.

2.2.2. Benchmarking and comparative analysis of MDH costs, which focus on the local scene are also subject to a range of limitations. Firstly, the scale of MDH is vastly different from other local recently-built hospitals or medical centres. Secondly, costings information pertaining to privately-developed projects are not readily available. Additionally, these projects were undertaken in different periods, which can at least in part be remediated through statistical

adjustments in accordance with the National Statistics Office (NSO) construction deflator rate.

2.2.3. Other limitations relate to the technical aspect of the hospital design and construction. These include the differences in the construction methods, namely between the construction adopted in MDH and SAMOC. The structural design of MDH was conceived to conform with Italian (UNI) codes in the first phase of construction and to German (DIN) codes in the second phase of construction. On the other hand, SAMOC is designed in accordance with Eurocodes. The latter codes are based on limit state theory which has replaced the older concept of permissible stress design in most forms of civil engineering. Moreover, in the MDH structure, the building is of reinforced concrete construction, comprising precast concrete units ("predalles") with an in situ concrete topping. Conversely, in the case of the SAMOC structure, the building is in situ reinforced concrete slabs and beams construction.

2.2.4. The limitations outlined within this Section were the primary reason justifying the scope adopted by the Addendum Investigation, that is, to focus on the design and construction elements of the project. The benchmarking and comparative analysis exercise also sought to mitigate the above limitations through making the relative adjustments to calculations and a number of assumptions. These adjustments and assumptions will be referred to at specific junctures within this Chapter.

2.2.5. In view of these complexities, the NAO engaged expertise in the fields of economic and architectural engineering. The methodological approaches undertaken to mitigate the limitations discussed herein embrace the prudence concept. Thus, despite the range of limitations, the results and conclusions presented in this Chapter are deemed as appropriately robust for the purpose of this assignment. This assertion also considers the triangulation of different methodological approaches.

2.3. MDH design and construction costs constituted an excess of €97 million over SAMOC-based benchmark costs

2.3.1. A benchmarking exercise with respect to the design and construction costs of Mater Dei Hospital considered the application of unit rates from a comparable project, namely SAMOC, to the physical values[5] pertaining to MDH. Though SAMOC is significantly smaller in size than MDH, it exhibits the following characteristics:

- it presents most of the characteristics applicable in the construction of an acute care hospital;
- it is located in close proximity to MDH; and
- it has been developed through the management and operating structures of Malta's public National Health System.

[5] Physical values refer to the space available in square metres or cubic metres allocated to the project.

2.3.2. The cost benchmark for MDH derived through SAMOC unit rates are furthermore adjusted for the following elements:

- inflationary elements in the costs of construction, arising from the differences in the time periods when the two projects were developed;
- project management costs, which are not included in the SAMOC rates but can be included on a specific basis from the actual contractual arrangements pertaining to MDH;
- adjustments for variations subject to arbitration that are not included in SAMOC unit rates, which would typically arise in this type of projects, and which have indeed been applicable to both projects in practice.

2.3.3. For the scope of this exercise to have a stronger basis of comparability, the cost of land, medical equipment, furniture and fittings and other minor miscellaneous expenses are not being considered.

Benchmarking entailed establishing SAMOC Costs and Unit Rates

2.3.4. SAMOC was developed between 2010 and 2016, at a total design and construction cost of €32.9 million[6], as described in Table 1 below. The Table further specifies the elements involved in the development cost of SAMOC, related physical quantities, and resulting unit rates. This data has been supplied by the Foundation for Medical Services (FMS), and the plausibility of unit rates has been verified by architectural engineering expertise.

Table 1: SAMOC actual design and construction costs

SAMOC Actual Development Costs (€ incl. VAT)		SAMOC physical value (m^3 or m^2)[7]	Rate per unit (€)
Excavation	1,171,353	42,163	27.78
Preliminaries and Design	2,342,884	23,457	99.88
Construction works	4,762,007	23,457	203.02
Finishing works	6,268,988	23,457	267.27
Mechanical and Engineering	15,170,703	23,457	646.77
Substation	1,667,098	23,457	71.07
Road works	547,256	23,457	23.33
Pneumatic Systems	686,151	23,457	29.25
Landscaping	108,862	980	111.08
Surface car park	202,589	2,870	70.59
Total	**32,927,890**		

[6] Total SAMOC costs as per FMS provided data amounted to €53,109,291 (including VAT but excluding arbitration costs).

[7] See Table 3. Moreover, as outlined in Table 4 the physical value are all in m^2 with the exception of 42,163 which is in m^3.

The benchmark exercise shows that MDH construction and design costs were 25 per cent more than SAMOC costs

2.3.5. On the basis of SAMOC unit rates, a benchmark cost for MDH is derived as shown in Table 2 below. The rates per unit shown in the third column are those derived from the SAMOC rate calculations. The MDH physical values attributable to each element of expenditure as shown in Table 2 has been sourced from FMS and confirmed by architectural surveys and quantifications as relevant. The resulting benchmark costs are shown in the first column. These total to €369.1 million.

Table 2: MDH imputed design and construction costs

MDH Imputed Development Costs (€ incl. VAT)		MDH physical value (m^3 or m^2)	Rate per unit (€)
Excavation	13,760,323	495,332	27.78
Preliminaries and Design	26,676,656	267,076	99.88
Construction works	54,221,393	267,076	203.02
Finishing works	71,380,251	267,076	267.27
Mechanical and Engineering	172,737,368	267,076	646.77
Sub-station	18,981,990	267,076	71.07
Road works	2,287,093	98,027	23.33
Pneumatic Systems	7,812,685	267,076	29.25
Landscaping	417,803	3,761	111.08
Surface car park	846,661	11,994	70.59
Total	**369,122,224**		
Professional Fees/Project Management	32,145,353		
Claims/Arbitration extras - 19.7%	72,640,913		
Grand Total	**473,908,490**		

2.3.6. In addition to the sub-total SAMOC costs referred to in Table 2, the project management costs estimated to apply to MDH are included. From available documentation, these are estimated to amount to €32.1 million.[8] Furthermore, an adjustment is made for the net arbitration claims applicable by the contracting party and contractor for deviations from expected contract outcomes. For the case of SAMOC, these are estimated at a net value of €6.5 million[9], which represents 19.7 per cent of total project costs, a percentage that has been confirmed by architectural expertise to be very much within the norm of projects of this entity. The application of this rate implies an additional cost of €72.6 million for the MDH project. This estimate also embraces the prudence concept since the inclusion of net arbitration claims in MDH costs diminishes the variance of design and construction costs when compared to SAMOC. In this case, the prudence concept is invoked as it is assumed that during the arbitration proceedings, the net claims by both parties are actually accepted.

[8] FMS documentation show that MDH project management costs for pre-2000 works amounted to €8.9 million (Lm3.8 million). A further €11.6 million (Lm5 million) were incurred during the cost-plus phase (2000 – 2005) of the project. As no documentation was retrieved for the latter part of the project (2005 to 2008), on the basis of these costs, in accordance with the prudence concept, project management costs were assumed at €11.6 million (Lm5 million). Thus, project management cost is assumed at €32.1 million (Lm13.8 million).

[9] Difference between Arbitration Claim No 5041/2017 of €10.46 million and Counter Claim No 5008/2017 of €3.98 million.

2.3.7. Taking all these elements into account, the design and construction costs of the MDH project would total to €473.9 million. In this regard, however, allowance has to be made for the fact that whereas SAMOC was developed in a period centred around 2014, MDH was developed over a period centred around the year 2003.[10] Therefore it is necessary to apply intervention factors related to the inflation of costs of construction, for which the above-quoted costs for MDH must be deflated in order to derive a more reliable cost benchmark (with the exception of project management costs which already related to the MDH development period).

2.3.8. According to the National Statistics Office, the price deflator for construction costs for Malta (base 2005=100) stood at:

- 87.3 in 2003 (the reference year for the MDH project)
- 107.6 in 2014 (the reference year for the SAMOC project)

2.3.9. This gives a deflation factor of 1.23[11], which applied to the benchmark costs derived above, would give a benchmark cost for MDH at 2003 prices of €390.7 million. This contrasts with the hospital actual cost of the design and construction amounting to €487.7 million as reported in the 2008 Audited Financial Statements. This implies an excess surplus of actual costs over benchmark costs of €97 million, or 25 per cent of benchmark costs.

2.4. Cost overshoots were mainly due to MDH's design as well as project management and governance weaknesses

2.4.1. A desk study was undertaken to determine a general construction rate which would be applicable to the construction of hospitals based on the rate per square metre (sqm) and rate per bed. The study is founded on the presented bills of the SAMOC building. However global building rates are discussed also in order to provide a clear image of the local hospital scenario.

MDH's cost per square metre is 30 per cent higher than SAMOC's equivalent

2.4.2. These evaluations involved a re-measuring exercise from the plans provided of the SAMOC building to determine and establish the areas of the SAMOC building to be used for estimating. The provided bills gave a total internal area of 28,115 sqm which is more than that measured on plan by civil engineering expertise commissioned by NAO (see Table 3 below). The NAO commissioned study determined SAMOC area at a total of 23,456.90 sqm. The difference relates to the exclusion of yards in the area by the NAO-commissioned consultants.

[10] The main project expenditure during the cost-plus contract was incurred between 2000 and 2005. Hence, the year 2003, was considered as the median year during this period.

[11] This deflation factor is derived by dividing the 2014 rate with the 2003 rate.

Table 3: SAMOC Building Areas

SAMOC Areas – Calculated by NAO Appointed Consultants				
LEVELS[12]	Areas in m²			
	INTERNAL	EXTERNAL		
		PARKING	SOFT	ASPHALT
6	341.49	2,861.00	980.00	1,474.10
7	413.47			
8	4,970.48			
9	6,177.88			
10	4,861.28			
11	4,411.39			
12	2,169.88			
13	111.03			
	23,456.90			

Table 4: Determining SAMOC Construction rates

SAMOC Construction Rates inclusive of VAT - 2016[13]				
CONTRACT TITLE	COST INCL. VAT	QTY.	UNITS	RATE
	€			€
Excavation	1,171,353	42,163	cu.m	27.78
Preliminaries and Design	2,342,884	23,457	Sqm	99.88
Construction works	4,762,007	23,457	Sqm	203.02
Finishing works	6,268,988	23,457	Sqm	267.27
M&E	15,170,703	23,457	Sqm	646.77
Substation	1,667,098	23,457	Sqm	71.07
Road Works	547,256	23,457	Sqm	23.33
Pneumatic Systems	686,151	23,457	Sqm	29.25
Landscaping	108,862	980	Sqm	111.08
Surface Car park	202,589	2,870	Sqm	70.59
Sub-Total	**€ 32,927,890**			
4% Project Management Fees[14]	€ 1,317,116			
Claims and Arbitration[15]	€ 6,480,000			
Total	**€ 40,725,006**			

[12] Level 8 being Ground Floor.

[13] Table 4 shows the construction elements of SAMOC in order to derive a crude estimation of the general construction rate of hospital building in Malta. This Table excludes three Linear ACC Bunkers which amounted to €12,247,125.81. Consequently, this item is deducted since it is a use specific item not found in general hospital buildings.

[14] SAMOC's Project Management costs are assumed at four per cent of the design and construction costs (€32,927,890). The Addendum Investigation was unable to retrieve SAMOC's actual project management costs. This assumption considers that the contract type adopted for SAMOC did not require the intensity of project management input as that necessitated by the Cost-Plus Contract adopted for MDH. Hence, the assumed SAMOC's project management cost of four per cent deviates from the actual management costs of 8.7 per cent incurred at MDH.

[15] This assumes an estimate of the pending arbitrations in place as noted in Footnote 9.

2.4.3. The information portrayed in Tables 3 and 4 implies that SAMOC costs and area constitute a rate of €1,736/sqm (at 2016 prices). This rate will serve as the benchmark rate with which MDH's equivalent will be compared to.

2.4.4. The cost per square metre rate for MDH was derived through the approach adopted for SAMOC. Consequently, the NAO appointed consultants determined MDH areas, which were derived from plans provided as noted in Table 5 below.

Table 5: MDH Building Areas

Mater Dei Hospital areas – As verified by NAO consultants				
		Areas in m^2		
LEVELS[16]	INTERNAL AREA	EXTERNAL AREA[17]		
		2014	2013	2009
6	9,762.27			
7	9,762.27			
8	63,011.94			
9	67,290.51			
10	39,387.80	105,485.89	107,605.94	113,783.82
11	36,149.80			
12	19,993.31			
13	14,314.40			
14	6,662.22			
15	741.29			
	267,075.81			

2.4.5. On the basis of the 2008 Audited Financial Statements, the construction costs for MDH can be established at €487.7 million. To this, an inflation factor of 23.2 per cent was applied, on the basis of the construction price deflator compiled by the NSO, to bring the value to a period comparable to the 2016-2018 international benchmarks. A cost figure of €601 million is thereby derived. This implies a cost ratio of €2,250 per square metres.

2.4.6. The foregoing implies that MDH's cost per square metres rate is around 30 per cent more than SAMOC's equivalent. Nonetheless, this cost rate is on the lower side when compared to those for developed countries, as shown in Table 6 below.

[16] Level 10 being Ground Floor.

[17] External Area diminished over time due to additions to the hospital.

Table 6: International Rates for Hospital Construction

Country	Rate	Date of rate
England - London Central General Hospital	€4,425/sqm	2018
Norway	€3,822/sqm	2017
Scotland – General Hospital	€3,556/sqm	2018
U.S.A. - General Rate	€2,602/sqm	2017
Northern Ireland – Regional Hospital	€2,450/sqm	2018
Malta – MDH	€2,250/sqm	Inflated to 2016 – 2018
Malta – SAMOC	€1,736/sqm	2016
Romania	€1,619/sqm	2018

2.4.7. Table 6 notes that Malta's construction rates are much lower than those of the more developed countries, being comparable to Romania's rate and Northern Ireland's regional hospital.

2.4.8. Using MDH and SAMOC as founding case studies, the next phase would be to look at the global scenario in order to highlight any trends or possible markers to act as guidelines when it comes to assessing and estimating the cost for hospital construction.

2.5. MDH's cost per bed exceeds SAMOC rates and international standards

2.5.1. The various documentation researched for the purpose of this Addendum Investigation, note that the construction and assessment of hospital buildings are to consider the following two factors, which heavily affect the overall construction cost of the institution:

i. Number of beds; and
ii. The construction and the heating, ventilation and air conditioning (HVAC) system.

2.5.2. For the purpose of this Addendum Investigation, the focus was primarily on the number of beds and the average area allocated. While not holistic, this approach provided ample indicators concerning MDH's rates relating to the cost per bed and square metre analysis.

2.5.3. Within this context, according to the NHS 'Healthcare Premises cost guides' engineering space allowances should be calculated with caution. The guides provide an overall estimated area of 12 per cent of the Net Internal Area being dedicated to Mechanical and Engineering. Given that MDH has a large floor area of circa 267,076 sqm (as laid out on a land footprint area of 153,000 sqm), this percentage is expected to decrease.

2.5.4. UK standards stipulate that general hospital's usual allocation of area per bed ranges between 65 and 85 square metre. It is of note that the area per bed allocations tend to vary slightly between standards. An example is the basic allocation for beds as per USA standards, which stands at 46 to 56 sqm/bed. Alternatively, the World Health Organisation (WHO) Standards provides the following indicators for hospital building area, excluding the area needed for the staff:

Table 7: Standards as set by WHO for beds/sqm[18]

Hospital Bed Capacity	Building Areas (Sqm)	Area per bed
25	20,000	800sqm/bed
100	40,000	400sqm/bed
200	70,000	350sqm/bed
300	100,000	333sqm/bed

Source: World Health Organisation

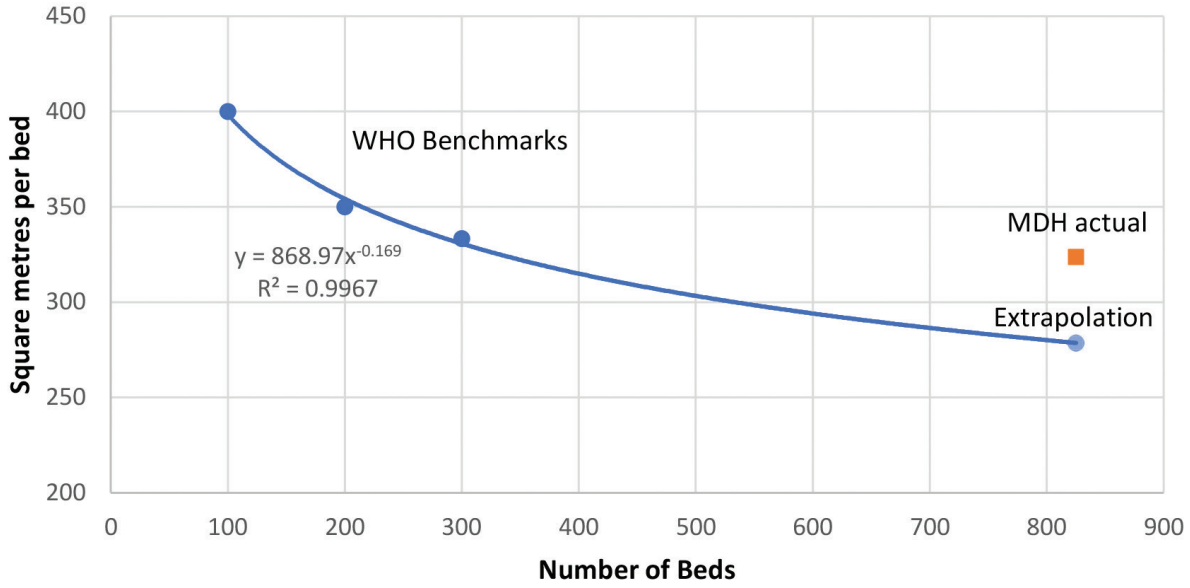
2.5.5. In addition to the above Table, WHO suggests an allocation of building area varying between 12,500 sqm to 40,000 sqm for every 100 additional bed.

2.5.6. This analysis allows an assessment of the size of MDH in relation to the number of beds it provides. The effective area at MDH is estimated at just over 267,000 sqm, hosting 825 beds. This is tantamount to 324sqm/bed.

2.5.7. Figure 2 below presents the relationship from WHO benchmarks in terms of beds provided and sqm/bed for hospitals offering in excess of 100 beds, thereby bearing a measure of comparability with MDH. It subsequently derives a curve of best fit between the area per bed and the number of beds, showing a downward relationship as economies of scale can be enjoyed by larger hospitals in this respect. The curve, bearing a 99.67 per cent coefficient of determination, shows that for every one per cent increase in the number of beds, the area required per bed falls by 0.169 per cent. Extrapolating this relationship to an 825-bed hospital, a value for the sqm per bed of 279 is obtained. Thus, the actual size of 324 sqm/bed is over 16 per cent higher than that which could have been expected through the extrapolation of WHO benchmark data.

[18] District Hospitals: Guidelines for development, WHO, Page 18

Figure 2: Relationship between Hospital Beds and Area



2.5.8. At the margin, as compared to the highest available benchmark of a 300-bed hospital, an 825-bed hospital would be expected to require 24,700sqm per 100 beds. In effect, at the margin, MDH has an area of over 31,800 sqm for every 100 bed, which is on the higher side but still within the 12,500sqm to 40,000sqm indicative range provided by WHO, as referred to earlier on. It is furthermore noted that MDH is a central and strategic facility at the national level and houses a medical school.

2.5.9. The foregoing presents the context within which MDH's cost per bed rate is to be evaluated when compared to international and local benchmarks. It follows that MDH's cost per bed rate would be influenced by its area per bed. According to Spon's Architect's and Builders Price Book 2018, (AECOM, Page 60,)[19] the construction cost per bed of general hospitals ranges from €205,000 to a maximum of €275,000.

2.5.10. As noted earlier in this Chapter, when adjusted to 2018 prices, MDH and SAMOC incurred design and construction costs of €601 million and €40.7 million respectively. Considering that these hospitals accommodate 825 and 113 beds respectively than the cost per bed computes as presented in Table 8 below.

Table 8: Cost per bed (adjusted to 2018 prices)

	MDH	SAMOC	International Benchmark
Cost per Bed	€728,485	€360,398	€205,000 - €275,000

[19] AECOM is the world's premier infrastructure firm, partnering with clients to solve the world's most complex challenges and build legacies for generations to come.

2.5.11. Table 8 shows that the MDH rate for cost per bed significantly exceeds both SAMOC as well as international standards. Apart from the project management and governance issues which will be discussed in the forthcoming Chapters, the high rate relating to design and construction cost per bed is mainly due to the higher area per bed proposed by international standards which prevails at MDH. Areas within MDH which contribute to this state of affairs relate to the Medical School as well as the large foyers and corridors which characterise the Hospital. These elements of the design contribute positively to the hospital environment which complement the medical care provided. However, their inclusion in the design come at a high cost - as reflected by the rate of the design and construction cost per bed. Obviously, this Office was not in a position to carry out further analysis on this matter due to the technical and logistical complexities associated with such an exercise.

2.5.12. Furthermore, MDH costs were, to varying degrees, also influenced by the construction method adopted. The NAO's appointed consultant architectural engineer notes that MDH's construction method adopted (see paragraph 2.2.3), could raise MDH's construction costs line item by up to 15 per cent.

2.6. Conclusion

2.6.1. Despite the various methodological limitations, this Chapter elicited various indicators relating to a range of comparative analysis exercises carried out to benchmark MDH costs. These limitations constrained the Addendum Investigation to limit this analysis to design and construction costs - which nonetheless account for over 84 per cent of the total project cost.

2.6.2. The three main exercises undertaken consistently show that MDH exceeded benchmark costs. The first exercise showed that when compared to SAMOC's imputed rates, MDH design and construction costs constituted excess of €97 million over SAMOC-based benchmark costs. Secondly, MDH exceeded international and SAMOC based benchmarks when comparing the project on the basis of construction cost per square metre. The third exercise elicited similar results as MDH rates relating to cost per bed were higher than international and SAMOC-based criteria. This Chapter raised the point that MDH's design to varying degrees contributed to MDH's high design and construction rates – particularly as the Hospital exceeds international area per bed benchmarks. Nonetheless, other contributory factors to the situation portrayed in this Chapter were also influenced through project management, contract management, and governance concerns as will be discussed in the forthcoming Chapters.

Chapter 3

Preliminary works and the Italo-Maltese Foundation Monte Tabor Contract

3.1. Introduction

3.1.1. This Chapter discusses two main elements of the hospital project during the period 1987 to 1997. Firstly, the discussion revolves around the preliminary work undertaken by Government for the introduction of a new independent alternative hospital service in Malta. This idea was eventually developed into a new specialised hospital which was supposed to comprise 480 beds and to specifically cater for nine different medical specialisation areas. Secondly, this Chapter focuses on the contractual relationship between the Foundation for Medical Services (FMS) and the Italo-Maltese Foundation Monte Tabor (IMFMT) which was responsible for the hospital's original design, its construction supervision and eventual operation of the then envisaged 480-bed specialised hospital (known as the San Raffaele Hospital). As will be noted in the ensuing Chapters of this Report, due to the changes in project scope and size, the initial project concept and preliminary work did not fully feature in the eventual hospital design.

3.1.2. This Chapter focuses on the documentation retrieved from and made available by the Cabinet Office and the FMS during 2019. This enabled this Review to expand on comments made regarding this phase of the project in the NAO's May 2018 Report.

Timeline of key events

3.1.3. The 1987 to 1997 period was characterised by the original project conceptualisation and the implementation of the Italo-Maltese Foundation Monte Tabor Contract. Table 9 provides an illustration of the timeline of key events relating to these two elements.

Table 9: Timeline of key events relating to Preliminary works and the Italo-Maltese Foundation Monte Tabor Contract

Date	Details
3 June 1987	Letter from the Public Relations Office – Istituto Scientifico San Raffaele relating to a request for further collaboration between the Fondazione Centro S. Romanello Del Monte Tabor and the Government of Malta (GoM).
December 1990	FMS Deed of Foundation dated 8 December 1990.
December 1990	Collaboration agreement dated 8 December 1990 between the GoM and the Foundation Centro San Raffaele del Monte Tabor Istituto Scientifico Ospedale San Raffaele.
15 July 1992	Signing of Letter of Intent between FMSS and Italo-Maltese Foundation Monte Tabor (IMFMT) [Schedule A of Frame Agreement].
9 July 1993	Signing of Frame Agreement between FMSS and IMFMT, together with Schedule B - Scope of Work, Schedule C - General Design Criteria and Technical Guidelines and Schedule D - Design Contract General Terms and Conditions. The Foundation was contracted to provide FMSS with the design, construction supervision and operation of a 480-bed specialised hospital.
9 July 1993	Signing of Sub-Contracting Agreement between the IMFMT and Ortesa Spa. The latter were sub-contracted to perform and provide design services.
18 August 1993	Signing of Project Management Contract between FMS and the Project Management Office (PMO), Malta University Services Ltd. The latter were contracted to provide project management services for the construction and fitting out of the San Raffaele Hospital, Malta
2 June 1994	Signing of Construction Supervision Contract between FMSS and the IMFMT. The latter was appointed to carry out general specialist supervision of the construction of the Hospital.
12 October 1994	Signing of Sub-Contracting Agreement between IMFMT and England & England Architects (E&E). The latter were appointed to provide professional services with the task of supervising the works management of the listed areas.
12 October 1994	Signing of Sub-Contracting Agreement between Ortesa Spa and E&E. The latter were appointed the task of the continuation of legal / professional responsibilities as Architect / Civil Engineer according to the provisions of the Maltese law for the construction of the hospital complex named 'San Raffaele Hospital Malta'.
April 1997	Termination of contracts with IMFMT and Ortesa Spa.
17 September 1997	Termination of contract with E&E.
7 July 2000	Signing of Agreement between GoM, FMSS, IMFMT and Ortesa Spa for the payment of €186,350 (Lm80,000) by GoM following the termination of IMFMT and Ortesa Spa earlier in April 1997. This sum was in full and final settlement of any claims whatsoever arising from the relationship between the referred parties.

3.1.4. Against this backdrop, this Chapter outlines how:

- the San Raffaele model influenced initial project plans; and
- the relationship between FMS and the Italo - Maltese Foundation Monte Tabor was influenced by several contractual limitations.

3.2. The San Raffaele model influenced initial project plans

3.2.1. Initial discussions with the Monte Tabor Foundation started on 3 June 1987 when the Public Relations Office (PRO) of the Monte Tabor Foundation (MTF), wrote a letter to the former Prime Minister of Malta, Hon. Dr. E. Fenech Adami, whereby the PRO forwarded a copy of the brochure of the San Raffaele Hospital in Milan and proposed collaboration between the two sides for the provision of advanced medical technology in Malta. Through further documentation provided by the PRO - MTF on 12 August 1987, this collaboration between the two parties started to be developed into the foundation for a scientific institute and private hospital in Malta.

Government's main interest at the time was to have an independent alternative hospital operating in Malta

3.2.2. During the Cabinet meeting of the 30 May 1988, the former Prime Minister informed Ministers that the Istituto Scientifico San Raffaele of Milan was favourably inclined to open a 300-bed hospital in Malta and in the event they would want to purchase some three to five hectares of land on which to build the hospital to their high specifications. Moreover, through a further cabinet meeting held on 4 July 1988 the former Prime Minister informed Ministers that the Istituto reiterated its commitment to open the private hospital in Malta and a delegation was due to come to Malta for discussions at the end of July 1988.

3.2.3. Cabinet Memo presented on 24 February 1989 by the former Minister for Social Policy, Hon. Dr. Louis Galea, former Parliamentary Secretary for Health, Hon. Dr. George Hyzler and former Parliamentary Secretary for the Care of the Elderly, Hon. Dr. John Rizzo Naudi, confirms that Government's main interest at the time was to have an independent alternative hospital operating in Malta. To this end, this Memo referred to four options. However, only two out of the four options – the BUPA offer and the San Raffaele Hospital option – were appropriately detailed. In fact, the proponents of this Cabinet Memo suggested Cabinet to choose one of these options by either:

- Concluding an understanding with BUPA Hospitals Limited; or
- Assuming the responsibility for implementing the establishment of a Scientific Institute and Hospital with a regional dimension (San Raffaele Hospital).

3.2.4. It seemed that the proponents of the Cabinet Memo were more inclined to the San Raffaele Hospital option due to in-depth evaluation of this option in the Memo. At the time, Cabinet decided to explore further these two options.

3.2.5. Cabinet minutes dated 21 May 1990 noted "*that the San Raffaele Institute involvement would enhance the image and the professional level of the new hospital. The Istituto San Raffaele of Milan had an established good name, in addition to hospital management expertise. The participation of San Raffaele might also entice the support of the Italian Government for the hospital and help promote the investment as a regional project*".

The Istituto San Raffaele lobbied Government to expedite the award of a direct contract

3.2.6. In particular, a high ranking official from the Istituto was continuously lobbying for the awarding of a direct order contract and to operate a San Raffaele Hospital in Malta. The new hospital was intended to be operated within a similar concept of the San Raffaele hospitals operated overseas, such as in Milan. Examples of such lobbying is presented hereunder:

- Letter dated 3 June 1987 from PRO – Istituto Scientifico San Raffaele to the then Prime Minister relating to a request for further collaboration between the Fondazione Centro S. Romanello Del Monte Tabor and the Government of Malta (GoM).
- Letter dated 2 May 1990 from PRO – Istituto Scientifico San Raffaele to the then Minister for Social Policy urged for the urgent establishment of a foundation responsible for implementing the hospital project.
- This letter also expressed the Istituto's disappointment for the selection of the Tal-Qroqq area in lieu of other locations which were considered for the building of this hospital – such as Madliena and Bighi. Various correspondence show that key officials from MTFM expressed preference for the Madliena site.
- Letter dated 28 March 1990 from PRO – Istituto Scientifico San Raffaele to the then Prime Minister as well as extracts from minutes of a Cabinet meeting held on 26 February 1990, further stressed the importance of an expedient commencement to the hospital project by linking the possibility of the laying of the hospital's foundation stone to coincide with a Pastoral visit to Malta by the Pope.

The initial focus on specialisations did not fully consider the implications of operating through two locations.

3.2.7. In August 1991, a medical brief presented by Government outlined that nine medical areas of specialisation were needed to broaden medical services in Malta. These nine specialties were diabetes, cardiology and cardiovascular surgery, renal and urology services including transplantation, ophthalmology, genetics, geriatrics, other subspecialties and dentistry. The medical brief referred to the association with Istituto San Raffaele despite that agreement with the latter was not yet signed – which again is indicative of the mind-set at the time.

3.2.8. While this review did not elicit any criticism related to the need of the nine specialties, it did not find documentation which concretely illustrated the logistical arrangements which would coordinate hospital care through various locations, namely Gwardamanġa (Tal-Pieta') and Tal-Qroqq (Msida). The main contention relates to the logistical arrangements required between St. Luke's Hospital and the new hospital particularly with respect to the allocation of human resources between the two venues. Eventually, a number of stakeholders, such as the Medical Association of Malta, Department of Health and medical community formally raised their concerns about this point. Moreover, the issue of providing hospital care through two main centres became one of the major issues influencing Government's policy shift relating to the new hospital's role and size. This issue is discussed further in Chapter 5. Moreover, during the early phase of the project matters were further complicated since there were considerations that the new Hospital would be a private enterprise whereby Government could procure an agreed number of beds for use by national health service patients.

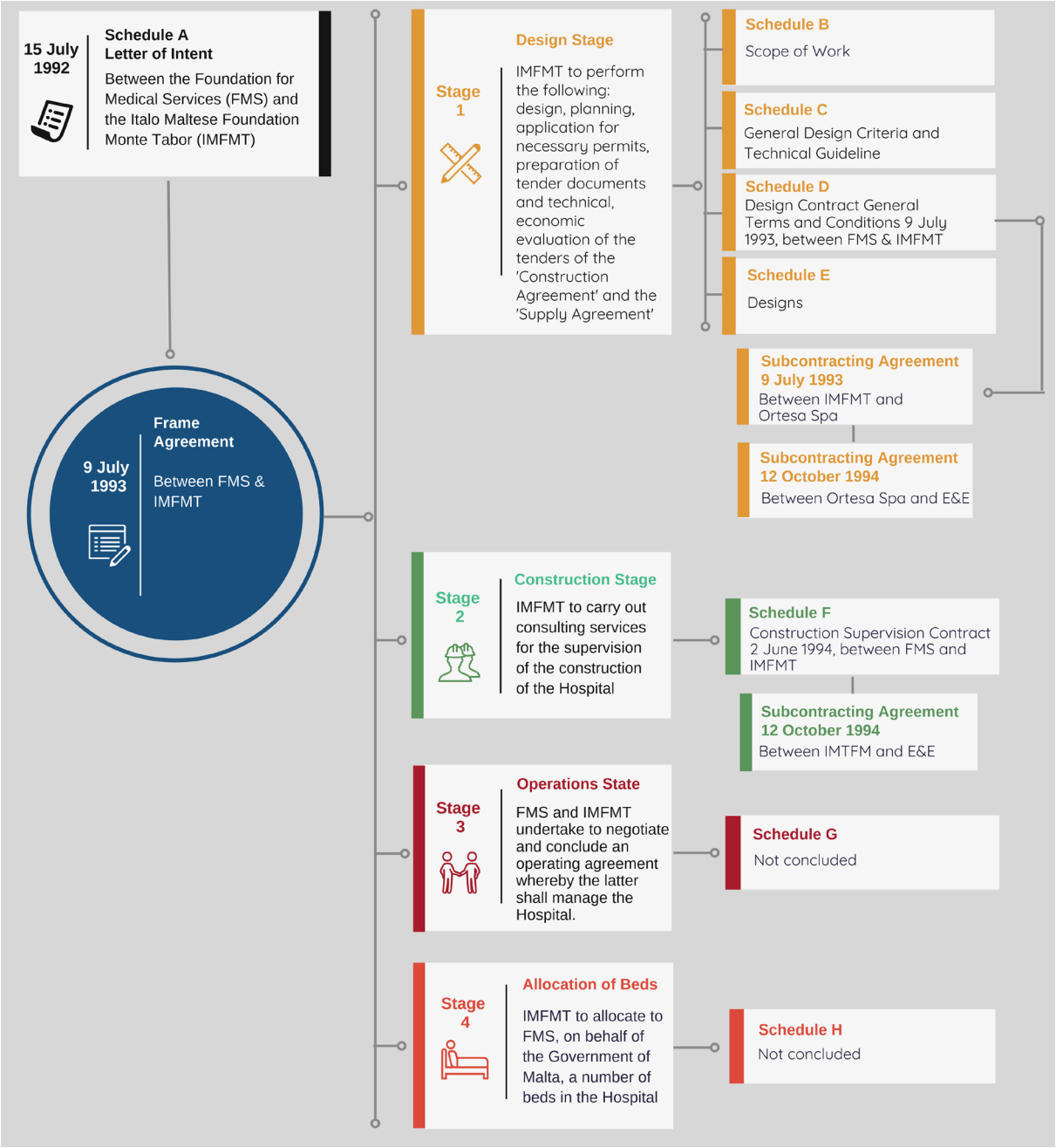
3.3. Relationship between FMS and the Italo-Maltese Foundation Monte Tabor was influenced by several contractual limitations

3.3.1. Following the initial plans and discussions with the Istituto San Raffaele, the next steps towards embarking on the project entailed initiatives related to its design, construction supervision and mode of operation. To this end, Government opted for a direct order contract with the Italo-Maltese Foundation Monte Tabor which represented the Istituto's interests in Malta. The relationship between the parties was defined through:

- The Business Plan 'An Additional Hospital for All' which was developed in August 1991. The plan included a detailed proposal of the co-operation between the public sector and a 'caring' private institution.
- The formation of IMFMT and FMS.
- The letter of intent between FMS and the IMFMT which was signed on 15 July 1992.
- The Frame Agreement between the two parties which was signed on 9 July 1993. The Frame Agreement outlined four stages of the project, namely the design stage, construction stage, operations stage and the allocation of beds arrangement.
- The other sub agreements, including the design agreement, which were also signed on 9 July 1993.
- The other subcontracting arrangements with various subcontractors which were signed on subsequent dates.

3.3.2. Figure 3 provides a graphical illustration of the contractual relationship between the two parties.

Figure 3: An outline of the contractual relationship between FMS and IMFMT



3.3.3. Various problems relating to the early implementation of the new hospital project, such as project management and design issues were, in part, attributed to contractual shortcomings. The following Sections outline the more important concerns elicited through this Addendum Investigation.

The Italo-Maltese Foundation Monte Tabor was not appointed through a call for competitive tender and the total contract value was not specified

3.3.4. IMFMT's appointment as project designers, construction supervisors and hospital operators was carried out through a direct order. It is to be noted that at the time, Government was in possession of a further three proposals – Paragraph 3.2.3. refers. Cabinet approved the

contract and terms of payment on 21 June 1993. The approval outlined that the project would be concluded by around January 1997. The total value of the IMFTM contract could not be determined as various elements within this contract were not formally linked to contractual provisions indicating the applicable rates. The following refers:

- The estimated Design Contract price amounted to €2,795,248 (Lm1.2 million);
- The rates for Contract Supervision were not stipulated in the Agreement;
- The Hospital's Operation and the Allocation of Beds Agreements between the IMFMT and Government remained unsigned. However, according to the Business Plan '*An Additional Hospital for All*', the total management rate that had to be paid by Government for the buying of beds was estimated at €174.94 (Lm75.10) per Patient Bed Night. Based on an 80 per cent occupancy level, for which Government guaranteed payment and the availability of 480 beds, this agreement amounted to an additional annual cost of around €24.5 million (Lm10.5 million) per year. This business plan was however never formalised through a signed Agreement between the parties.

The frame agreement between FMS and IMFMT was not fully concluded

3.3.5. The IMFMT Contract did not adequately address all aspects of expected deliverables associated with the scope of works that was to be undertaken by the Foundation. In some cases, the Addendum Investigation did not find evidence relating to works which were to be delivered by the supplier as a number of Schedules within the Frame Agreement were not included in the IMFMT Contract. This Addendum Investigation was not able to retrieve information as to whether these Schedules were actually drafted as these were not found in the relevant FMS files. On the other hand, various notes indicated that the deadline for such drafts had elapsed. These contractual weaknesses raise concerns since they relate to the most material aspect within the IMFMT Contract.

3.3.6. A case in point relates to the unsigned Operation Agreement (Schedule G) and the Allocation of Beds Agreement (Schedule H) as referred to in the Frame Agreement. The Business Plan 'An Additional Hospital for All' (which is also referred to in the Letter of Intent between the two parties) provided an indication that a Patient Bed-Night Recovery Rate of €174.94 (Lm75.10) was to be paid by Government to IMFMT. Moreover, the plan indicated that, from this rate, €50.92 (Lm21.86) was to be repayable to FMSS to recover the original capital cost. The remaining €124.02 (Lm53.24) was to be retained by IMFMT (representing operating costs and equipment replacements). In the absence of contractual provisions in this regard, on the basis of provisions within the Letter of Intent dated 15 July 1992, the Addendum Investigation understands that these rates were to be applicable to around 80 per cent of the total beds, which were to be at Government's perusal.

In a few cases, contractual clauses did not appropriately safeguard Government's position

3.3.7. In the case of the IMFMT contract, the Addendum Investigation elicited issues whereby the negotiated provisions did not fully safeguard Government's interests. The following refers:

- The Construction Supervision Contract did not stipulate the applicable rate and the payment for services. This Contract stipulated that four posts were to be responsible for the contract supervision including: (1) Hospital Construction Manager; (2) Hospital Services Manager (civil works); (3) Hospital Services Manager (mechanical, electrical, medical equipment); and (4) Hospital Medical Manager. The Addendum Investigation found evidence that at least two of these posts, namely the Hospital Construction Manager and the Hospital Services Manager (civil works), were established. However, this review only managed to elicit some of the payments made to the latter post where such services were being invoiced at the rate of €48.92 (Lm21) per hour respectively. Moreover, it was noted that in the absence of stipulated rates in the Construction Supervision Contract, these payments were being made as per the terms of another different contract - Annex 1 of Schedule D – Design Contract entitled "Operator Schedule of Hourly Rates". These circumstances do not comply with good governance principles. Moreover, this Office does not understand the administrative logic of adopting provisions pertaining to rates stipulated in other agreements.

- Two sub-contracting agreements relating to the same hospital design related services were drawn-up and signed. The first sub-contract was the agreement signed between Ortesa Spa and England & England (E&E) on 12 October 1994 under the Design Contract. The second sub-contract was signed between IMFMT and E&E on the same date under the Construction Supervision Contract. This implies that the latter IMFMT and E&E Contract was unnecessarily drafted and led to subsequent double payment for works carried out under the Ortesa Spa and E&E Agreement. These circumstances materialised despite the provisions of clause 7 of the Supervision Contract on 2 June 1994 between FMS and IMFMT which stipulated that "*No compensation shall be due for the services of the Maltese Architect and Civil Engineer who applied for the necessary permits and who will carry out the necessary supervision and certification required by Maltese Law as such compensation has already been included in the Design Contract*". Nonetheless, payment by FMS was made through both contracts as IMFMT received payment through both sub-contracts which implies an overpayment of at least €79,290 (Lm34,039).

Contractual ambiguities and non-compliance led to payment irregularities

3.3.8. The Addendum Investigation elicited three instances where contractual ambiguities led to payment irregularities. These circumstances pertained to the contractual agreement between FMS and IMFMT and the ensuing sub-agreements. The following refers:

- Annex 1 of the Design Contract (Schedule D of the Frame Agreement) signed between FMS and IMFMT, on 9 July 1993, stipulated a provisional payment of €2.7 million (Lm1.2 million). This amount was to be based on the estimated Design Contract price, namely on agreed ratios of 3.75 and 1.75 per cent of the total costs emanating from the construction and supply agreements respectively. The Design Contract also stipulated that if the construction agreement and / or the supply agreement are not entered into, then the estimated design contract price shall be considered final. Despite the latter provision, FMS affected a payment of €244,584 (Lm105,000) (being based on 60 per cent of 1.75 per cent of an estimated cost of medical equipment of Lm10 million) when the supply agreement was not formally signed and entered into by the Parties. This Office does not understand the rationale for this payment on the following counts. Firstly, a payment was made against uncontracted works. Secondly, the Addendum Investigation did not retrieve any evidence to show that medical equipment was supplied prior to this payment.

- As outlined in Figure 2 above, the Design Agreement between FMS and IMFMT was to be executed by Ortesa Spa through a sub-contract signed on 9 July 1993. The provisional payment referred to in the previous paragraph of €2.7 million (Lm1.2 million) regarding the Estimated Design Contract Price was to be paid in contractually stipulated tranches. These tranches corresponded to design phases, such as 20 per cent of payment upon 30 per cent of the design submission; a further 20 per cent upon acceptance by client of the Final Design and a further 20 per cent of payment upon the execution of the Construction Agreement. However, the Project Management Office (PMO) raised concerns regarding the progress being registered with respect to the Hospital's design. The following extracts from PMO's reports refer:

    - PMO Report 1 (Period from 1 July to 30 September 1994): "*Works on the roads have been delayed in starting due to late revision to the design by ORTESA which could be attributed to them not visiting the site during the design stage"*.

    - PMO Report 4 (Period from 1 December to 31 December 1994): PMO opined that the "designs indicated a lack of familiarity with the site during the preparation of designs, with the result that work has been omitted from the designs".

    - PMO Report 6 (Period from 1 February to 30 April 1995): "*It is a matter of serious concern to the PMO that the design contractor, Ortesa Spa, have been deliberately withholding essential design information which is preventing work from being conducted on site, this action raises the need for a possible further extension of time*" with respect to site preparatory works being undertaken by IRB (a joint venture between Impresem SpA from Italy and Rainbow Mix Concrete Ltd and G & P Borg Ltd. from Malta).

- PMO Report 8 (Period 1 September to 31 December 1995): PMO noted that *"the quality and completeness of the designs remained a major concern. The designers, Ortesa Spa, did not submit the architectural, civil and structural construction drawings by the agreed date, the mechanical and electrical drawings were submitted late and with significant major changes from the designs issued at tender stage. This development reinforces warning given by the PMO regarding possible cost and schedule over runs as a result of the quality of the designs*".

Despite evident design related problems, namely delays, changes and quality issues, FMS affected payment in full. Moreover, these design problems developed into major stumbling blocks that would delay the construction phase as well as lead to administrative and financial implications. These issues will be discussed in detail in the next Chapter.

- FMS and E&E did not have a formal agreement between them relating to the Hospital's design. As outlined earlier, the latter was simultaneously an IMTFM and Ortesa Spa sub-contractor. Nonetheless, upon the termination of IMFMT and Ortesa Spa's contracts in 1997, E&E submitted a number of claims for payments amounting to €38,143 (Lm16,375) on the premise that the company continued rendering design related services to FMS and that it did not receive payment for such services from IMFMT or Ortesa Spa. Similarly, to the previous concerns raised in this Section of the Report, the issue at stake revolving around these circumstances relate to governance. Effecting payments when a formal contract is not in place constitutes mal administration.

The termination agreement between FMS and IMFMT did not fully consider the former's counter claims

3.3.9. The change in Government in 1996 led to a number of policy changes and shifts relating to the hospital's design, concept and capacity. As a result, in April 1997, Government decided to terminate the contract with IMFMT and consequently, with its sub-contractor Ortesa Spa.

3.3.10. At the time of termination of the hospitals' design contracts FMS had commissioned at least three reports by different entities to estimate its potential claims against IMFMT. These three reports, dated between April 1997 and November 1999, highlighted that FMS had adequate justification to instigate claims against IMFMT. In this regard, each report estimated the potential claims as follows:

- Claims in Report 1 - €21,243,993 (Lm9,120,046);
- Claims in Report 2 - €913,459 (Lm392,148); and
- Claims in Report 3 - €5,654,256 (Lm2,427,372).

3.3.11. These potential claims by FMS materialised as the project had run into severe problems, the prime cause of which was the poor performance of Ortesa Spa in the preparation of the design and construction documents, and in the response to Contractors' queries on site. The FMS was facing substantial financial claims from the roads' contractor - a joint venture between Impresem SpA from Italy and Rainbow Mix Concrete Ltd and G & P Borg Ltd. from Malta (IRB Ltd.) - and from Skanska Malta joint venture.

3.3.12. On the other hand, during the FMS Board sitting No. 78, on 30 November 1999, the Chief Executive Officer (CEO) reported that at a meeting with the Minister of Finance, Hon. Mr John Dalli, the latter enquired on the status of the relations between FMS and IMFMT. He had reported that the latter had refused the FMS proposal for 'no payment' from either party. In fact, IMFMT still claimed for a payment of €465,875 (Lm200,000) for the work executed under the Design and Supervision agreements. The CEO reported that he was of the impression that the IMFMT would settle for a payment of €232,937 (Lm100,000). The Ministry of Finance opined that the FMS should endeavour to find an amicable solution on this basis.

3.3.13. Eventually, through an agreement signed on 7 July 2000, Government agreed to pay an additional sum of €186,350 (Lm80,000) following the termination of IMFMT and Ortesa Spa contracts earlier in April 1997. This sum was in full and final settlement of any claims whatsoever arising from the relationship between the IMFMT and FMS. The parties also renounced to any right of action between themselves. This sum was paid despite a scenario where the three aforementioned studies outlined a higher counter claim made by FMS to IMFMT. The Addendum Investigation cannot understand and retrieved no evidence justifying a shift in FMS's negotiating position which started with claims which by far exceeded IMFMT's counter claims.

3.4. Conclusion

3.4.1. This Chapter focused on the new Hospital project conceptualisation, design, and the policy shifts following the change in Government in 1996. During this ten-year period, the Hospital project was dogged with various concerns, relating to initial planning, contract and project management as well as Government's negotiations with service providers. Due to the passage of time as well as documentation gaps and fragmentation, the Addendum Investigation cannot quantify the cost of these elements in financial terms. But, to varying degrees, each of these factors contributed substantially to increase the final cost of the Hospital project either through the ensuing inefficiencies or the subsequent sunk costs when policy changes led to the project's upsizing and re-conceptualisation.

3.4.2. The project's initial planning was conditioned by the San Raffaele Hospital's clinical and business models. However, comprehensive studies pertaining to the logistical arrangements of providing the national health service hospitalisation services from different locations were not undertaken. This gap would eventually become one of the factors which contributed to a shift in the concept and capacity of the Hospital.

3.4.3. Governance related issues emerged very early on in the project's life cycle. IMFMT, San Raffaele's representatives on this project, were awarded the contract for the design, construction supervision and operation of the Hospital through a direct order. This Addendum Investigation noted various elements where contractual provisions were ambiguous. These circumstance delayed works and, in some cases, resulted in erroneous payments. Moreover, such provisions did not always safeguard Government's provision and led to project management concerns and avoidable litigation between the Parties.

3.4.4. Although at a later stage these were to be radically changed, from a project management's point of view, the hospital's design plans were a major stumbling block. The project had run into severe problems, the prime cause of which was the poor performance of Ortesa Spa in the preparation of the design and construction documents, and in the response to Contractors' queries on site.

3.4.5. Policy, planning and contractual shortcomings surfaced again with some prominence as the Hospital project was subject to re-conceptualisation and an increase in size following the change in Government in 1996. This led to the termination of the IMFMT contract where negotiations between the Parties resulted in Government – under a different Administration - incurring a terminal payment of €186,350 (Lm80,000) when there were claims of significantly higher amounts in its favour as well as other pending disputes concerning the original hospital design.

Chapter 4

The initial construction phase: the Measured Contract with Skanska (1995)

4.1. Introduction

4.1.1. This Chapter is concerned with the initial stages of the Hospital's construction. The Construction Contract, which embraced the measured works principle, was awarded to Skanska in September 1995. Initial estimates showed that the 480 bedded hospital was to be completed within 30 months at a cost of around €74 million (Lm32 million). At the outset, however, design and preliminary works related problems influenced the implementation of this construction agreement. The project was already behind schedule and off target in terms of construction progress and budget prior to the 1996 change in Government. The ensuing changes to the Hospital's concept and capacity implied that a significant portion of the works carried out by Skanska up to this period, would be rendered as a sunk cost.

4.1.2. Within this context, this Chapter discusses:

- Cabinet's overruling which led to the measured works Contract being awarded to Skanska;
- Construction progress delays;
- Unfulfilled obligations by the Project Management Office (PMO); and
- Communication problems between the stakeholders involved in the Mater Dei Hospital (MDH) project.

4.2. Cabinet's ruling led to a measured works contract awarded to Skanska

4.2.1. Through Letter of Intent, dated 25 May 1995, the Foundation for Medical Services (FMS) informed Skanska that it had accepted their tender for the "Construction, Finishing and Engineering Services for San Raffaele Hospital, Malta". Through this letter, it was agreed that works were to be completed within 30 months from the date of issue of the Notice to Commence. Subsequently, the Fédération Internationale Des Ingénieurs-Conseils (FIDIC) model-based Contract between the two parties was entered into on 12 September 1995.

4.2.2. The issue at stake relating to this award revolved around Skanska's bid, which was not the cheapest offer as well as the disagreement between the Contracts Committee pertaining to the Department of Contracts (DoC) and the Tender Evaluation Committee regarding the award. The former opted for the cheapest and most expedient project delivery. On the other hand, the latter recommended that the execution of the project be awarded

to Skanska in the premise that the Evaluation Committee had doubts as to whether the cheapest bidder could supply what is required. This decision was based on the Evaluation Committee's terms of reference, which stated:

"*In view of the prior formal pre-qualification of each of the individual tenderers, the tender with the lowest evaluated cost should be considered the most advantageous offer financially. It should be the one recommended, provided that the technical, contractual and administrative aspects are satisfactory. If it is not, a detailed value judgement must be submitted to the Director of Contracts and the Contracts Committee for their consideration*."

4.2.3. As both committees maintained their respective position, the Director of Contracts recommended that the time was opportune for a decision to be taken by Government on this award. The matter was brought to Cabinet's attention by Minister of Finance, the Hon. Mr. John Dalli, through memo dated 19 May 1995. On 22nd May 1995, Cabinet decided to award the contract to Skanska on the basis of legal, financial, political and diplomatic implications.

4.2.4. Cooperativa Muratori e Cementisti (CMC), as the most advantageous bidder contended this decision through court litigation. On 9 June 1995, the Courts confirmed the Warrant of Prohibitory Injunction stating the decision of the Minister of Finance, the Hon. Mr. J. Dalli, was 'ultra vires' and ordered that the award to Skanska was to be withheld. However, this Warrant of Prohibitory Injunction was not followed by further court proceedings as stipulated by the Law Courts. These circumstances raise the following concerns:

a. Cabinet overturned the Contracts Committee and Director of Contracts decision to award this agreement to the most economically advantageous tenderer and endorsed the Evaluation Committee's recommendation. The Cabinet considered other equally important factors other than solely financial implications, even though the DoC remarked that the Evaluation Committee arguments were not sufficiently robust.

b. The cheapest offer for the construction of San Raffaele Hospital was not selected, even though at that time the DoC's practice was to award the tender to the most advantageous bidder. Political, financial, legal and diplomatic issues were considered as more important than making the award to the cheapest offer.

4.2.5. The aforementioned issues raise concerns that in view of the number of stakeholders involved, even at the awarding stage of the contract, several problems hindered its expedient award. Consequently, these issues stalled the construction phase by four months. Moreover, as will be outlined in the next Section, the preparation of the Hospital designs further delayed the timely finalisation of this €74 million contract.

4.3. The implementation of the measured works contract was subject to various delays

4.3.1. The issues relating to the award of the measured works Contract to Skanska stalled the construction phase by four months. Moreover, the project was further prolonged through delays in the preparation of the Hospital designs.

Pre awarding problems influenced the commencement of Skanska's Contract

4.3.2. **Ortesa Spa Designs** - In 1993, FMS appointed the Italo-Maltese Foundation Monte Tabor (IMFMT) as the Hospital designers. In turn, the latter sub-contracted the task to prepare the hospital and surrounding infrastructure designs to Ortesa Spa. The design process was being undertaken concurrently to the tender process relating to the construction of the San Raffaele Hospital Project. However, Ortesa Spa encountered various difficulties in delivering the Hospital's designs. These circumstances led to project delays and influenced the agreement entered into with Skanska, mainly due to the continuous changes in designs which implied that the respective Bill of Quantities (BoQs) as agreed in the 1995 Contract could not be considered as finalised. The following refers:

- PMO Report Number 6 dated 30 April 1995:
    - "*It is a matter of serious concern to the PMO that the design contractor Ortesa have been deliberately withholding essential design information, which is preventing work from being conducted on site, this action raises the need for a possible further extension of time for the preparatory work contractor"*.
    - "*Although it is understood that Ortesa completed the necessary design details they withheld release of essential information which delayed, and continued to delay, the preparatory work contractor's progress"*.
- PMO Report Number 7 dated 31 May 1995: "*Of concern is the apparent total lack of progress by Ortesa in preparing the designs for the main hospital. If suitable quality designs are not produced in the next few weeks, then the most likely consequence will be further delays to the hospital and increased costs"*.
- PMO Report Number 8 dated 31 December 1995: "*The PMO remains extremely concerned about the quality of the designs produced by Ortesa. In particular whether sufficient information has been clearly presented and whether there is consistency between drawings of different engineering disciplines"*.

4.3.3. **Road Construction by Impresem Spa, Rainbow Mix Construction Ltd, G & P Borg (IRB) Joint Venture** – Letter of Acceptance from FMS dated 15 July 1994 awarded a contract to IRB for general site clearance, excavations, geotechnical and geophysical site surveys and the construction of the approaching roads to the San Raffaele Hospital site. Works were to be completed within six months of the Order to Start Works which was issued in August 1994. Contract implementation, however, encountered problems as hospital designs were not concluded by their due date. Consequently, this led to delays in the implementation of these works, which in turn delayed the commencement of construction works by Skanska on the Hospital proper. To this effect, a completion certificate of preparatory works was issued on 28 June 1996.

4.3.4. Notwithstanding, the issues outlined in the preceding paragraph, FMS did not deem it necessary action to halt the project until the designs were concluded and hence the bidders could provide adequate BoQs that reflect the actual designs. This implies that various phases of the project – such as road and hospital construction, proceeded prior to BoQs being finalised. The mitigating factor to such a situation is that the works were being carried out through a measured contract. Nonetheless, proceeding with works when BoQs had not been fully determined is considered as deviating from good practices, particularly as such circumstances are conducive to cost variations.

Further delays mainly due to design issues were also experienced during the execution of the Skanska's Contract

4.3.5. During the execution of the project, the PMO outlined a number of issues with respect to delays being experienced by Skanska. As outlined in the previous Section, these delays were mainly attributed to problems with the continuous changing of designs by Ortesa Spa. The PMO, during this phase, raised the following issues:

- PMO Report Number 8 dated 31 December 1995:
    - "*As a result of changes in designs from the tender stage the contractor has to excavate for an additional floor in the pathology area, delaying the start of concrete works in this area"*.
    - "*The designers issued a complete set of revised specifications, without indicating where the changes had been made. In the PMO's experience it is unprecedented for such changes to be introduced after the contract has been signed. This development, caused by uncontrolled changes to the designs by the designer, may lead to significant claims by the Contractor"*.
    - "*There have been a number of design changes since the tender was issued which may become a basis of a claim by Skanska for variation despite the fact that an agreement was reached between the Contractor and the Client, prior to the issue*

of the Letter of Acceptance, that the Contractor would construct the works to the new revised construction designs".

- PMO Report Number 9 dated 31 January 1996: "*PMO conducted an initial impact assessment of the changes since the tender as documented by ORTESA's revised Bill of Quantities. The PMO concludes that the revisions are so extensive that, at the present time and with the information available, the costs of the project cannot be managed*".

4.3.6. In May 1996, these concerns were referred to the Office of the Prime Minister (OPM). To this end, a series of meetings were held between Ortesa Spa and the Contractor to resolve these issues. The severity of these concerns influenced the degree to which the contractor could abide to the 30-month target stipulated in the 1995 Contract.

Project delays also materialised as Skanska lacked the appropriate level of resources

4.3.7. The Steering Committee Report dated 14 May 1997 stated that the Contractor was at fault as the works had not been progressed sufficiently in accordance with its own time schedule, even in those areas where full information was available. The Committee contended that this was mainly due to the insufficient build-up of resources on site in the early stages of the project.

4.3.8. The Steering Committee reiterated that the Contractor, through his own fault had not progressed the works enough. Moreover, the state of the project drawings by Ortesa Spa were such that they gave Skanska the opportunity to claim that they could not proceed with the works, thus using this situation as an excuse to cover up resource related deficiencies and consequently, delaying the project further.

Change in Hospital designs led to the project being off target in terms of contract value only four months after its award

4.3.9. Contrasting to the situation portrayed by the PMO during the pre-award period, FMS minutes of 24 July 1995 outlined that the changes in design were to have a minimal impact on the BoQs. However, only four months after the contract was signed, that is in January 1996, an initial assessment by the PMO outlined that the revisions in the designs were so extensive that "*the costs of the project cannot be managed*".

4.3.10. This situation continued to prevail in the following years, whereby in August 1997, through Cabinet Memo 113/1997 presented by the former Minister of Health, Care of the Elderly and Family Affairs, Hon. Dr. Michael Farrugia, it was declared that the forecasted final costs at that moment stood at €79.64 million (Lm34.19 million) and that the certified value of works was over €11,646,867 (Lm5 million). Moreover, it was estimated that the project was, by this time, about eight months behind schedule, which amounted to a delay in project timeframe of more than 25 per cent of the stipulated contract closure.

4.3.11. The above implies that problems with the designers had a ripple effect on the whole project in terms of both project costs and timeframes. This also shows the lack of project planning as well as project management issues which materialised during this phase of the project.

Less than half of the projected €74 million relating to the 1995 Measured Contract was expended prior to radical policy shifts

4.3.12. The 1995 Measured Contract between FMS and Skanska for the construction of the San Raffaele Hospital stipulated a final cost of €73,945,229 (Lm31,744,687). However, in 1997, as indicated in 3.3.9, the whole project started to be re-dimensioned due to a shift in government policy where both the hospital scope and its size were altered. As will be further outlined in the next Chapters of this Report, in December 1998, a memorandum of understanding was agreed between the two parties which was subsequently followed by a new contract with Skanska in February 2000. These new arrangements showed a shift in the contractual terms between the two parties. A major alteration was the change from a measured contract to a cost-plus contract.

4.3.13. This shift in policy implied that up to 2003, only around €35.9 out of the €73.9 million Measured Contract were expended. However, a review undertaken for the scope of this Investigation could not determine the extent to which this expenditure was actually reflected in works that featured in the re-dimensioned hospital.

4.4. The Project Management Office did not fulfil all of its contractual obligations

4.4.1. In August 1993, the project management function of the San Raffaele Hospital was entrusted to the Project Management Office (PMO) within the Malta University Services Ltd. This review noted a number of circumstances where obligations by the PMO were not sufficiently undertaken.

4.4.2. A number of reports as well as other correspondence exchanges between BOVIS Europe and the Ministry of Finance highlighted shortcomings concerning the PMO. The Ministry of Finance appointed BOVIS Europe in mid-1996 to audit the project particularly from a financial perspective. These reports outlined that the role of the PMO was not appropriately clarified. Moreover, in a letter by BOVIS Europe to the Permanent Secretary, Ministry of Finance dated 8 May 1996 it was stated that "*the overall level of management resources provided by PMO and FMSS is below what would be expected on such a project. Particular areas of concern are the apparent lack of design management, information control and change control Procedures*".

4.4.3. BOVIS Europe correspondence also indicated that PMO issued instructions to Skanska without any apparent approval by the client and without approval of the variation committee, which could have committed the client to unnecessary additional costs. BOVIS Europe indicated that the Project Manager's authority is limited by clause 2.1 of the

contract such that it is required to obtain specific approval of the Client before exercising any authority under Clauses 51, 52 and 53 of the Contract. These clauses, which cover variations and claims, require the Project Manager to obtain approval before issuing any instruction to execute additional work. In practice, however, the PMO did not always follow these procedures which led to the authorisation of claims by Skanska when these were already covered through the Agreement. A case in point was illustrated through correspondence between BOVIS Europe and the Permanent Secretary, Ministry of Finance dated 5 November 1996. Therein it was stated that the direct cost of these instructions was estimated at over €465,875 (Lm200,000)and as some other authorisations related to the sensitive area of design information, the indirect costs including claims, could be much higher.

4.4.4. Evidence given to the MDH Inquiry Board (June 2015) by the former Director General of the Works Division within the Ministry for the Environment, who also served as a Member of the FMS Board, also criticised the project management function. This evidence outlined that the Project Manager was not exercising his full responsibilities and authority.

4.5. Conclusion

4.5.1. Similarly, to the previous one, the discussion within this Chapter outlined how project management and governance-related concerns contributed to the derailment of the project targets in terms of scheduling, logistics and budgets. Admittedly, some concerns, such as those related to the Hospital's design, were brought forward from the preliminary works undertaken through the IMFMT Agreement. However, rather than these concerns being addressed in time to enable a smooth transition of works to the Skanska measured work Contract, these issues became more exacerbated.

4.5.2. At the outset, the award of the Skanska measured works Contract experienced administrative concerns as it was not the cheapest offer tendered. Cabinet's intervention to overrule decisions reached by the Contracts Committee, was declared as 'ultra vires' by Court. Ultimately, Skanska was awarded the contract as the rival bidder did not follow-up the case.

4.5.3. This phase of the project was also characterised by project management weaknesses, which did not only translate into delays but, in some cases, led to unnecessary or avoidable costs. FMS was fully aware of these shortcomings, yet their complexity proved unsurmountable.

4.5.4. In cases, ineffective communication between stakeholders regarding the Hospital design also proved to be a major stumbling block, which ultimately contributed to scheduling and budgeting overshoots. This is amply illustrated since by 1997, the project was eight months behind schedule, less than half of the projected expenditure had been incurred and projections showed that the project's target value was to be exceeded by over €11.6 million.

Chapter 5

Design and Build Cost-Plus Agreement (2000)

5.1. Introduction

5.1.1. The change in Government in 1996, brought with it a radical change in the new Hospital's project design, size and operational concept. By this time, the implementation of the Skanska measured contract, which was awarded in 1995, was already experiencing overshoots in terms of construction progress, expenditure and budget projections. Matters became further complicated following the subsequent change in Government in 1998. All of these changes, to varying degrees, contributed to the shaping of the project. Nonetheless, the most important development was the Memorandum of Understanding (MoU) signed between the Foundation for Medical Services (FMS) and Skanska in December 1998, whereby the project was to continue through a Cost-Plus Agreement where Skanska would be responsible for the new hospital design and construction. The Cost-Plus Agreement was signed in February 2000.

Against this background, this Chapter discusses the following:

- Two changes in Government administrations resulted into various policy shifts;
- Norman and Dawbarn's design contract was terminated after five months following a subsequent change in Government in 1998; and
- The Design and Build Cost-Plus Contract with Skanska contributed to the project's escalation in project costs.

5.2. Two changes in Government administrations resulted into various policy shifts

5.2.1. The Hospital at Tal-Qroqq was originally conceived and designed to be a 480-bed specialty treatment facility. Following a change in Government administration in October 1996 the new administration made known its intentions and objectives regarding the future of this project. Government decided to proceed with the design and construction of a "New Acute General and Teaching 800-bed Hospital", capable of expansion to 1,000 beds. This Hospital was to be built on the same site of the San Raffaele outfit and would eventually replace in full St. Luke's Hospital. The latter was then to be refurbished and converted into a post-acute care facility.

5.2.2. In addition, a subsequent change in Government in September 1998, brought about another change to the design and scope of the then San Raffaele Hospital. It was eventually decided to proceed with the building of an extended acute general hospital along the lines

put forward by the previous Administration. This decision was followed-up with the signing of an MoU with Skanska in December 1998 whereby the latter would be awarded a Design and build Cost-Plus Contract. While the ensuing paragraphs within this Section seek to discuss these developments in more detail. Table 10 below provides an outline of the key events relating to the Design and Build Cost-Plus Contract.

Table 10: Timeline of key events relating to the Design and Build Cost-Plus Agreement (2000)

Date	Details
September 1995	Signing of Measured Contract with Skanska
October 1996	Change in administration
April 1997	Termination Contracts of Italo-Maltese Foundation Monte Tabor (IMFMT) and Ortesa Spa
June 1998	Appointment of Norman & Dawbarn as designers
September 1998	Change in administration
November 1998	Termination of Norman & Dawbarn
December 1998	Signing of Memorandum of Understanding
February 2000	Signing of Design & Build Cost-Plus Contract

The hospital concept changed to an acute, government operated and managed hospital

5.2.3. Following the change in administration in October 1996, several individuals and associations were commissioned to provide their views on the issue. On 6 February 1997, the former Prime Minister of Malta, Hon. Dr. Alfred Sant, appointed a three-person team, including a consultant at the Management Efficiency Unit, an architect and a representative from the Doctor's Medical Association, to evaluate the implications and identify the most cost-effective solution. This team had to evaluate the three options which were presented to Cabinet by the former Ministry of Health, Care of the Elderly and Family Affairs on 25 March 1997 through Memo 39/97. The following refers:

I. Construction of the hospital at Tal-Qroqq according to the agreed plans (based on the San Raffaele, specialised 437-bed hospital)[20], together with continuation of the refurbishment at St. Luke's Hospital;
II. The hospital at Tal-Qroqq is to be developed into the main acute hospital and St. Luke's Hospital to become the hospital for non-acute patients; and
III. The hospital in Tal-Qroqq to be utilised as a non-acute hospital with further investment to be made for the enlargement of St. Luke's hospital together with continuation of the refurbishments.

5.2.4. A report presented to the Prime Minister was discussed in detail during a meeting held on 24 March 1997 where a unanimous agreement was reached that the second and third options presented should be considered.

[20] The 437-bed figure is as quoted in Memo 39/1997. This amount differs from the 480-bed referred to in the IMFMT Agreement.

5.2.5. Moreover, the Medical Association of Malta, the medical community and the Department of Health were all in agreement that the treatment of acute patients should not be divided between two hospitals operating in parallel. For this reason, the first option was eliminated. It was argued that this option could not be considered due to the lack of human, technical and professional resources. It was also agreed that certain patients could be placed under unnecessary risks under such circumstances.

5.2.6. The document indicated that the second and third options presented the government with the opportunity to either continue with the refurbishment of St. Luke's Hospital whilst downsizing the structure of the hospital at Tal-Qroqq, or, completely changing the size and concept of the hospital at Tal-Qroqq and discontinuing the refurbishment of St. Luke's hospital.

5.2.7. On reviewing the details of Memo 39/97 and the Cabinet Minutes relating to the discussion on this Memo, the Cabinet chose Option 2. This decision considered that despite that Option 2 had been estimated to have a nominal cost of €214,302,353 (Lm92 million) and Option 3 estimated to have a nominal cost of €193,337,992 (Lm83 million), Cabinet minutes outlined that Option 2 had a lower Capital Cost involved for extending the hospital's capacity. Moreover, Cabinet noted that works on San Raffaele Hospital cannot be reversed without incurring heavy financial damages and the site chosen for the new Hospital provided additional opportunities for vertical and horizontal expansion.

Original hospital operators and designer's contract was terminated

5.2.8. The shift in Government policy in April 1997 led to the termination of the contract with the IMFMT and consequently, with its sub-contractors Ortesa Spa. At the time, the contractual relationship between the two parties was under duress mainly due to flawed hospital designs in terms of quality and delays. These problems had a domino effect on the project and delayed works being carried out by other contractors such as Impresem Spa, Rainbow Mix Construction Ltd, G & P Borg (IRB) Joint Venture and Skanska.

5.2.9. These factors, together with the shift in Government policy, brought about following the change in government administration in 1996, led to a re-dimension of the whole hospital project. Government abandoned the original plans by Ortesa Spa and IMFMT to build a 480-bed Hospital. Consequently, Government embarked on a new project for an acute hospital to take up to 1,000 beds and therefore it was not possible to continue with these agreements relating to the original plans. At the time, the original policy shifted to one where the Hospital would be operated and managed by Government.

5.2.10. As outlined in Section 3.3.13 of this Report, the termination of the contractual relationship instigated a number of claims and counter claims between Government and IMFMT. Eventually, following another change of Administration, through an agreement signed on 7 July 2000, Government agreed to pay an additional sum of €186,350 (Lm80,000) following

the termination of IMFMT and Ortesa Spa contracts earlier in April 1997. This sum was in full and final settlement of any claims whatsoever arising from the relationship between the IMFMT and FMS. The parties also renounced to any right of action between themselves. This sum was paid despite a scenario where the three studies referred to in Section 3.3.10, outlined a higher counter claim made by FMS to IMFMT.

5.2.11. The Addendum Investigation cannot understand and retrieved no evidence justifying a shift in FMS's negotiating position which started with claims which by far exceeded IMFMT's counter claims. These claims ranged from €913,459 (Lm392,148) to €21,243,993 (Lm9,120,046).

5.3. Norman and Dawbarn's design contract was terminated after five months following a subsequent change in Government in 1998

5.3.1. Following the termination of Ortesa Spa's contract as the designers of the new Hospital on 4 November 1997, a call for tenders was issued for the engagement of consultancy services with respect to the designs for the new hospital. Following the tendering process, Norman and Dawbarn Limited, which was represented in Malta by M/S Building and Design Consultants, were presented with a Letter of Acceptance dated 9 June 1998 informing them that their bid had been accepted. Their professional fees for this consultancy service were based on a percentage amount of 5.5 per cent of the cost of the project, guaranteed up to a maximum of €9,171,577 (Lm3,937,358).

5.3.2. However, on 11 November 1998, following another change in Government administration, FMS terminated the contract with Norman and Dawbarn Limited by giving a 30-day notice of termination specifically provided for in the relative agreement. Cabinet minutes pertaining to a meeting held on 16 November 1998 show that Ministers agreed that the reason to be given to Norman and Dawbarn regarding the termination of their hospital design contract was to safeguard the national interest. This reason related to the project's new direction. FMS was within their right to terminate the agreement and followed clause 17 of the Contract which stipulates that "*the Client may at any time terminate this Contract by giving notice in writing at least thirty (30) days prior to the date of such termination"*.

5.3.3. This Office was not in a position to confirm what level of contracted works were completed up to the date of termination. However, €3,057,191 (Lm1,312,452)[21] were paid out to Norman and Dawbarn Limited by FMS. This amounts to around one third of the total €9,171,577 (Lm3,937,358) as stipulated in the Contract. Again, this Office was not in a position to confirm whether design works undertaken by Norman and Dawbarn Limited were utilised or contributed to the eventual hospital design completed by Skanska.

[21] NAO Malta (2018). *"An Investigation of the Mater Dei Hospital Project"*, p. 45.

5.4. The Design and Build Cost-Plus Contract with Skanska contributed to the project's escalation in project costs

5.4.1. The shift in policy in late 1998 with regard to the concept of the Hospital brought about two major changes with respect to the Agreement with Skanska. Firstly, the design process was amalgamated with the construction element and both of these project elements became Skanska's responsibility. Secondly, the agreement with Skanska shifted from a 'measured' to a 'cost-plus' contract. These contractual changes were agreed in a Memorandum of Understanding signed between the two parties in December 1998 and later consolidated in the Agreement signed between FMS and Skanska in February 2000. This position contrasted considerably from the previous Government's position. As illustrated by a Memo from the Director of Works to the then Minister for Environment, Hon. Dr. Francis Zammit Dimech, dated 15 September 1998, the cost-plus agreement option was not the negotiation team's preferred option and was, at the time, not to be considered further.

5.4.2. As shown by Cabinet minutes dated 16 November 1998, the decision to opt for a design and build cost-plus arrangement came about after the President of Skanska, had been invited to Malta for discussions on how the project could move ahead in the quickest and most rational way. At the time, Skanska had a number of outstanding claims for delays on the project and had already submitted a design and build offer in 1997. To this end, in December 1998, a series of meetings held between the Ministry of Finance, FMS and Skanska led to the signing of the Memorandum of Understanding.

The cost-plus contract tended to be more advantageous to the contractor rather than FMS

5.4.3. The discussion in the preceding Section outlined that Skanska pressed for a cost-plus contract. At the time this option was seen as a feasible arrangement since project designs (now to be prepared by Skanska itself) were not yet complete. Consequently, the Contractor would have been compelled to ensure that risks associated with changes in designs and plans would be, as far as possible, mitigated. A cost-plus contract means that the price of construction is the costs plus an additional fee, normally designated as profit. It is simply an agreement to pay costs plus profit, all as defined in the contract. This contrasts with a fixed price contract, which is an agreement to construct a building at a set price. The context of the new Hospital project implies that the cost-plus arrangement offered more advantageous benefits to the contractor rather than FMS. The following refers:

- A cost-plus agreement seeks to be budget-friendly for a contractor. Decisions like whether or not to use the best materials, irrespective of actual need, tend to become easier when the cost will not be incurred by the contractor.

- The absence of the project's finalised plans rendered estimating costs more challenging. As a cost-plus agreement is based on the clients' reimbursement of costs incurred, the contractor had mitigated the risk of inaccurate or flawed estimates – which ultimately

impinges on the profit margin - since cost recovery together with a profit margin are guaranteed through the client's reimbursement.

- The contractor has every motivation for the scope of works to be extended as the contractor would be increasing revenues and ultimately profits.

5.4.4. On the other hand, within the context of the new hospital project, the cost-plus project is disadvantageous to the client for the following main reasons:

- The client incurs the risk for paying much more than expected on materials. The contractor also has less incentive to be efficient since they will make profit either way.

- The client may require additional administration or oversight of the project to ensure that the contractor is factoring in the various cost factors. The foregoing may prove to be less of an incentive for the contractor to complete the project in an efficient manner, compared with fixed-price contracts.

- Cost-plus contracts constitute a poor choice for clients with a strict budget due to the greater cost uncertainty than fixed-price contracts. Moreover, as in the case of the new hospital, there was only a target value established rather than a fixed project cost. This type of arrangement does not give contractors an incentive to work efficiently and one cannot ignore the risk that it promotes overspending to get the largest fee possible.

5.4.5. The forgoing implies that clients party to a cost-plus contract can be subjected to higher prices and costs. This situation materialises since the more costs associated with the project, the more "plus" can be charged by the contractor. Thus, there's little incentive to keep costs down unless a cap is put on spending – an element that was not clearly and robustly featured in the Skanska Cost-Plus Contract. This type of contract requires additional monitoring from the client to ensure that only permissible costs are paid and the contractor is exercising adequate overall cost controls. In this regard, FMS had to engage cost controllers in seeking to ensure that the project is completed within target. Unfortunately, this goal did not materialise as the project was delivered late and over budget.

The project's target value considered in the cost-plus contract was underestimated by €176 million

5.4.6. The Cost-Plus Contract, signed in 2000, stipulated that the project's target value was established at €193.8 million (Lm83.2 million). This target value was proposed by Skanska during contract negotiations and catered for 15 separate tasks which were to be undertaken by the Contractor to finalise the new extended hospital. As evidenced by the Contract, FMS agreed to this target value, despite reservations expressed during the negotiation of the Cost-Plus Contract. Thus, the total amount due to Skanska through the Cost-Plus Contract amounted to €216.7 million (Lm93 million). At this juncture, the Addendum Investigation

raises concerns regarding the correctness of this target value in view that the new hospital's designs were not completely finalised.

5.4.7. Despite their initial agreement, over time, FMS began to raise internal concerns as costs submitted by Skanska were rising considerably above the contractually established target value. In this regard, the total construction cost of the hospital project continued to escalate over the years. The 2008 Audited Financial Statements indicate that the final construction cost of the project amounted to €487.7 million (Lm209.4 million) which differs significantly to the projected target value as outlined in the 2000 Cost-Plus Contract. Table 11 refers.

Table 11: Difference between targeted and actual design and construction costs

2000 Cost-Plus Contract	Lm	€
Target Value (excl. Design and Project Management Fee)	**83,213,149**	**193,834,496**
Design Fee (Lump Sum)	4,800,000	11,180,992
Project Management Fee (Total Capping)	5,000,000	11,646,867
Target Value (incl. Design and Project Management Fee)	**93,013,149**	**216,662,355**
VAT Rate (15 per cent)	13,951,972	32,499,353
Total Target Value (incl. VAT)	**106,965,121**	**249,161,708**
1995 Measured Contract - actual costs incurred (incl. VAT)	16,608,507	38,687,414
Other Preliminary Costs	10,373,867	24,164,610
Total Costs	**133,947,495**	**312,013,732**
2008 Audited Financial Statements (Building element)	209,352,536	487,660,229
Over-Budget	**(75,405,041)**	**(175,646,497)**

5.4.8. Table 11 outlines how the original target value of the re-dimensioned hospital did not reflect the actual final costs of the project. When comparing the target value of the hospital (including costs pertaining to the 1995 measured contract and other preliminary costs incurred at the start of the project) to the total final cost in the 2008 Audited Financial Statements, an overbudget of €176 million materialised, which amounts to a variance of over 56 per cent. This issue will be further discussed in the ensuing Chapter of this Report, which discusses the project lump sum and project closure contracts.

An FMS commissioned review of the cost control function elicited various weaknesses

5.4.9. As would be expected in a cost-plus contract scenario, FMS established a cost control function. Letter of acceptance of tender for cost control services with respect to the Design and Build Contract was issued on 2 April 2001 to Horwath CLS Limited & EC Harris. The

fee for the Cost Control Services as outlined in the Terms of Reference and as indicated, as well as accepted by the parties, was set at a rate of 0.8 per cent (inclusive of VAT, charges, travelling office and other expenses) of Works certified on the Design and Build Cost-Plus Contract. In absolute terms, this works out at €1,572,569 (Lm675,104). The Agreement between FMS and Horwath CLS Limited (HCLS) as well as EC Harris (ECH) was signed on 28 May 2001. Thus, the cost-control function was in place, one year and four months into the Cost-Plus Contract.

5.4.10. The Cost controller's primary responsibilities were as follows:

- To ensure that all costs are incurred in accordance with the Contract.
- To ensure the Client's approval is obtained before costs are incurred and to inform the Client of the cost beforehand.
- Carry out all supportive services arising out of the Client's Representative's responsibilities regarding costs.
- To assist the Clients Representative in the negotiation of rates for Variation orders (changes).
- Ensure that the Contractor is taking appropriate action to contain costs.
- Assist the Client's Representative in claims dispute and provide change request analysis, delay impact analysis, claims evaluation or other related services required by the Client.
- To prepare independent forecast expenditures on proposed variations.
- To prepare a full independent compendium of progress and cost reports on a monthly basis.

5.4.11. Shortly after the appointment of the cost controllers, that is on 29 October 2001, FMS appointed Symonds Group Ltd to review the cost control function. In addition to Symonds Group's criticism, other documentation supported the concerns relating to the cost control function. The following refers:

- **Symonds Group report (12 November 2001)**: This Report considered removing ECH/HCLS from the project, however, opted against such a move since: "*We believe this would be a retrograde step. FMS's previously preferred consultants... were vetoed politically. It would look bad politically if they were removed, when they have attained a certain amount of job knowledge … While we have absolutely no doubt in the abilities of all members of the cost control team as professionals, we believe there is a need for more appropriate Quantity Surveying (QS) personnel to be employed to deliver the QS service. The current team composition is not adequate to deliver a satisfactory QS service to FMS and the New Hospital Project ... As cited in August, typically we would expect to see a cost control team of at least 4 QSs, split between pre-contract and post-contract duties*".

- **Letter to President FMS (8 October 2001)** - The letter refers to a memo prepared by the FMS Financial Controller and Project Liaison Officer. The contents of this memo clearly indicate that the Cost Controllers are not performing and safeguarding the Client's interest, both in financial and contractual terms. Therein, the aforementioned officials contended that: "*This situation is untenable! … The role of the Cost Controllers on a cost-plus contract is fundamental for the containment of costs and for the implementation of control procedures to safeguard against cost overruns. After one year and eight months into the Design and Build Contract, the FMS does not have a proper cost control procedure in place! Horwath CLS / EC Harris are still operating around the procedures implemented by Skanska Malta JV. Moreover, the contingent of specialists originally indicated by the Cost Controllers in their tender submission has dwindled down to mere local manpower resources, with very minimal input (if any) by EC Harris. Undoubtedly this is not the way how to conduct a professional cost control exercise on a cost-plus basis contract. In view of the history in the appointment of the Cost Controllers, the Board may wish to consider the performance of Horwath CLS / EC Harris to date, and inform the FMS management of any policy direction in this regard*."

- **Memo 433 from FMS CEO to FMS President (30 October 2001)** – This document, was presented to the Hon. John Dalli and the Hon. Dr Louis Deguara in their former respective capacity of Minister of Finance and Minister of Health. Therein this memo raised the point that a senior member of the cost controllers was cognisant of the concerns relating to the cost control function and on various occasions he stated that he considered leaving the cost controllers team.

5.4.12. The above extracts illustrate clearly that the cost control function was, in the opinion of various stakeholders, not attaining its objectives. Nonetheless, the cost controllers were retained up to early 2005. During their term as cost controllers Horwath CLS Limited & EC Harris were paid a minimum of €1,572,569 (Lm675,104) with retention monies of €69,881 (Lm30,000) being released on 31 March 2005. Following the contract termination of Horwath CLS Limited & EC Harris, the FMS President referred to the recommendation made by Project Manager for FMS to the Steering Committee on 30 March 2005 and the Committee's subsequent approval to recruit a third party as cost controller.

FMS involvement in the selection of Skanska's sub-contractors

5.4.13. Appendix 11 of the Cost-Plus Contract provided that FMS will be part of the Procurement Group responsible for the procurement of all sub-contractors and suppliers. FMS also had veto rights and had to approve all the recommendations submitted by the Procurement Group. This state of affairs implies that FMS has transferred back the risk that is generally handed over to Contractors when engaging third parties to carry out work. Such risks include amongst others operational and financial risks.

5.4.14. FMS were cognisant of the aforementioned state of affairs as evidenced by the Second Status Report to Board Members of The Foundation for Medical Services on Negotiations with Skanska Malta J.V. on a Design and Build Contract dated 30 December 1999. Amongst others, FMS external advisor advice was that "*The Client [FMS] may play an active part in the procurement process but his role should always stop short of the right to procure*".

5.4.15. This Office can understand that this measure was undertaken to limit cost over-runs and ensure the timely completion of the Project. However, as outlined in this Section of the Report, even though such measures were introduced, the Project, during this period, was still subject to cost-escalations and significant delays.

Weak audit trails prohibit a reconciliation of advance payments made to Skanska

5.4.16. Section 14.4 of the 2000 Design and Build Cost-Plus Contract between FMS and Skanska stated that the Contractor was to receive from the Client advance payments to ensure that the contractor had a constant positive cash flow. The Contract further stated that should the payments made by the Contractor under the Contract exceed the amount of the advance payment to be maintained according to Appendix 14, the Client shall make such additional advance payments as may be required to ensure a positive cash flow to the contractor (top-up). It is further stated that if any balance of an advance payment had not been repaid prior to the issue of the taking-over certificate for the works, or prior to termination for any reason, the whole of the balance so outstanding together with interest shall immediately become due and payable by the Contractor to the Client.

5.4.17. The Addendum Investigation sought to test the compliance of the above provisions through a reconciliation of the advance payments made to Skanska in terms of Appendix 14 of the Design and Build Cost-Plus Contract. During the period 2000 to 2004, FMS payments in terms of advance payments and top-ups amounted to €55.2 million (Lm23.7 million). According to contractual provisions and generally accepted practices concerning advance payments, Skanska invoicing was to take cognisance of these advance payments by ultimately off-setting them from invoiced dues.

5.4.18. The reconciliation exercise showed that initially, the method of invoicing complied to the contractual provisions. A system was adopted whereby FMS was issuing a certificate, which enabled effective tracking regarding the status of the advance payments and top-ups. This system was used in parallel to the Interim Payment Certificates (IPCs) approach, which was the main document certifying works carried out by Skanska that ultimately led to the respective payment.

5.4.19. This Office tried to reconcile advance payments and top-ups together with their relevant settlements however, through the documentation maintained by FMS, this Office was not in a position to reconcile the relevant documents from 2001 onwards. To varying degrees, this situation reflects similar concerns in the National Audit Office (NAO) Report of May 2018. The Addendum Investigation notes that the 'advance payment certificate' approach referred to in the preceding paragraph was discontinued. Instead, FMS was considering

top-ups of advance payments solely through the interim payment certificates. In instances, the IPCs referred to collective off-setting and consequently, oversight procedures could not determine whether the advance payments and top-ups as well as their respective settlement was considered.

5.4.20. IPCs 60 and 61, issued in March and April 2005 respectively, show that the unsettled balance of advance payments due to FMS from Skanska amounted to €15.2 million (Lm6.5 million). However, the Addendum Investigation was not able to retrieve further documentation to substantiate this amount. Consequently, this Investigation is not able to determine the correctness of this amount. On the other hand, the Addendum Investigation has not retrieved evidence which show that FMS has recouped this amount.

5.5. Conclusion

5.5.1. The main thrust of the discussion within this Chapter was the Design and Build Cost-Plus Contract between FMS and Skanska. This Contract evolved within a context of policy changes to the new hospital concept and capacity, project delays as well as significant projected budgetary overshoots. The discussion herein also highlighted that the implementation of the Cost-Plus Contract was characterised by a significant underestimation of the project target value. Moreover, given the inherent risks associated with a Cost-Plus Contract, the cost control function in place did not prove to be appropriately robust. The foregoing raises three main issues.

5.5.2. Government's negotiating position to enter into a Cost-Plus Contract was severely influenced by the status of the project at the time. Not only was the project delayed and subject to a significant budgetary overshoot but the Hospital concept and capacity necessitated fresh designs. To avoid delaying the project further, a Cost-Plus Contract was considered as a feasible option as the latest hospital designs were still being developed. In such a scenario, the cost-plus option offered stakeholders the motivation to keep changing plans and engaging in additional works. In turn this resulted in cost escalation which ultimately led to the termination of the Cost-Plus Contract and adopting a Lump Sum approach. The latter will be discussed further in the next Chapter.

5.5.3. As can be expected, the situation portrayed in the previous paragraph led to the underestimation of the project's target value. The value indicated in the Cost-Plus Contract proved to be off-target by a staggering €176 million or 56 per cent of the hospital's final cost noted in the 2008 Audited Financial Statements. In turn this resulted in project management and financing issues.

5.5.4. Governance related concerns also featured in this phase of the project. A prerequisite to the effective implementation of a Cost-Plus Contract, the cost control function, was the subject of criticism from a number of FMS senior officials and FMS commissioned reports. Other governance related concerns pertained to transparency and strong audit trails. Admittedly, the passage of time and data fragmentation can be seen as limiting factors in such exercises. In such circumstances, instances arose where this Investigation was, as in the case of the first NAO Report on this subject,unable to confirm the correctness of some payments made to the contractor.

Chapter 6

The Lump Sum (2005) and Project Closure (2009) Agreements

6.1. Introduction

6.1.1. Thus far this Report has discussed how project costs have continually spiralled beyond the periodically established target values and delays experienced at various phases prolonged the delivery of the new Hospital, now known as Mater Dei Hospital. In view of the financial materiality involved, such a scenario became critical and triggered Government to analyse the unsustainable situation which particularly developed throughout the lifetime of the Skanska Design and Build Cost-Plus Contract between 2000 to 2005. To this end, the Foundation for Medical Services (FMS) and Skanska agreed, in April 2005, to convert the Cost-plus Contract into a Lump-Sum Agreement. Subsequently, in 2009 – that is after the inauguration of the project, FMS and Skanska signed the Project Closure Agreement. In part, the €116,898,486 (Lm50,184,520) and €5,125,000 (Lm2,200,163) pertaining to the respective agreements, can be considered as the costs required for Government to stabilise the project finances and delivery schedule. When considering these latest two contracts the design and construction of the project cost which was estimated to cost around €98 million (Lm42 million)[22] in 1995 increased to €487.7 million (Lm209.4 million) as stated in the 2008 Audited Financial Statements.

6.1.2. Against this background, this Chapter builds on the issues previously presented in the 2018 NAO Report and discusses the following:

- The Gap Analysis confirmed that action was necessary to control the significant escalation of project costs;
- At a cost of €117 million, the Lump Sum Agreement sought to stabilise the project finances and implement the final design;
- A Project Closure Agreement was necessary to cater for €5.1 million worth of variations; and
- The Project Closure Agreement implied that the new Hospital costs exceeded the original targeted contractual values by around five times.

[22] This cost considers the Lm31,744,687 outlined in the 1995 Measured Contract with Skanska and other preliminary costs amounting to Lm10,373,867.

6.2. The Gap Analysis confirmed that action was necessary to control the significant escalation of project costs

6.2.1. The main objective of the Gap Analysis Report, issued in April 2004, was to identify areas and highlight reasons why the Target Value of €193.8 million (Lm83.2 million) provided by Skanska in February 2000 was exceeded. The Gap Analysis Report sought to explain the reasons for variations and cost overruns leading to a projected final cost of €281,243,885 (Lm120,738,000). The same report also proposed a series of recommendations related to 'cost monitoring and control'.

6.2.2. At this juncture, it is to be noted that this Addendum Investigation considered that the projected final cost of €281,243,885 (Lm120,738,000) was underestimated by around €55.5 million (Lm23.8 million) when compared to the Lump Sum Agreement which was signed a year later in April 2005 for a total cost of €336,699,278 (Lm144,545,000).

6.2.3. The Gap Analysis Report concluded and recommended that FMS "*revisits the contractual agreement entered into and attempts to re-negotiate, maybe reach an amicable agreement with the Contractor on a Lump Sum Cost and Time Frame*."

The Gap Analysis Report recommended that FMS strengthens its financial control system

6.2.4. Similarly, to previous comments made in this Report, the Gap Analysis Report reiterated that the Hospital project required a more robust financial control system. The Report refers particularly to the following:

- Receipts and issues to and from site.
- Weighing of material.
- Client re-measurement of works.
- Audit of Contractor's Nominal Ledger (booked costs).
- Client update of Fixed Asset Register.

The Gap Analysis Report cited various key problems leading to the increase in the projected final costs

6.2.5. The Gap Analysis Report provided a detailed review of the issues that were contributing to the increase in project costs. For the purpose of the Addendum Investigation, the National Audit Office (NAO) classified these issues in four main categories, namely design issues, time extension, non-accounted for variables by the Contractor and other factors. It is to be noted that the Addendum Investigation has also elicited these issues as being key to the deviations from project financing and scheduling.

6.2.6. **Design issues**: Design changes, omissions, and additions influenced all of the work packages of the 2000 Design and Build Cost-Plus Contract. Amongst others, the Gap Analysis Report outlined the following concerns with the design function:

a. Inclusion of Block A1/A2 Level 11 and Block E Level 9 East in forecast estimates. These blocks were not included in SMJV's original target value since they did not form part of the Design and Build Cost-Plus Contract.

b. Increase of services and/or functions requested by client (ex: services on Bed Head Units and functions of Nurse Call System).

c. Escalation in quantities and change in sizes of certain items (ex: 13 chillers escalated to 18, huge differences in light fittings, changed size of Main Distribution Boards).

6.2.7. **Time extension**: Extending the project timeframe influenced also the cost incurred. The Gap Analysis Report attributed the following issues to time extensions:

a. An increase in the estimation of working months due to time extension.

b. Significant underestimation of 'operational expenses', most of which were heavily impacted by the project's time extension.

6.2.8. **Non-accounted for variables by the Contractor**: the proposal submitted by the Contractor in the negotiating phase of the Design and Build Cost-Plus Contract, did not consider a number of issues. The Gap Analysis Report, amongst others, identified the following:

a. The increase in the number of staff employed by the Contractor and the creation of new posts were not accounted for in the original base budget.

b. Sub-contractual agreements entered into by Skanska were very often significantly higher than the Contractor's original base budget estimate.

c. Certain technical items were overlooked or not provided for in the Design and Build Cost-Plus Contract.

6.2.9. **Other matters**: The Gap Analysis Report identified other issues that hindered the timely completion of the Hospital project as envisaged in the Design and Build Cost-Plus Contract. The following refers:

a. Insufficient technical detail, which in turn triggered identification of risk by client. More risk averse systems were requested by Client.

b. Differences in quantities emerging on 're-measurement' of work as per sub-contract.

6.2.10. The foregoing implies that after two years following the signing of the Design and Build Cost-Plus Agreement in February 2000, the Contractor has submitted claims significantly higher than the target value envisaged in the same Contract. The Gap Analysis Report reiterates the concerns raised throughout this Addendum Investigation by raising questions regarding the efficacy of contract management, project management, cost control and FMS monitoring. These circumstances were the rationale behind the proposal to move away from the Design and Build Cost-Plus Contract and negotiate a Lump Sum Agreement with Skanska.

6.3. At a cost of €117 million, the Lump Sum Agreement sought to stabilise the project finances and implement the final design

6.3.1. The Lump Sum Agreement constitutes an amendment to the Design and Build Cost-Plus Contract whereby on 12 April 2005, FMS agreed with Skanska on an additional fixed lump sum of €116,898,486 (Lm50,184,520) excluding VAT. At this point, the cost incurred during the Cost-Plus Contract together with this new additional amount increased the total project cost to €336,699,278 (Lm144,545,000) excluding VAT. Moreover, both parties agreed on a new time for completion, that is, 1 July 2007. In practice, both of these targets were missed.

6.3.2. Through the Lump Sum Agreement, both parties "*agreed to compromise and settle all claims to date made under the Main Agreement without limitation, including those relative to time, payment, amounts due and contentions about target value*."

6.4. A Project Closure Agreement was necessary to cater for €5.1 million worth of variations

6.4.1. As its name suggests, the Project Closure Agreement coincided with project conclusion and defined the final settlement. This Agreement was signed in February 2009 and related to variation orders amounting to €5,125,000 (Lm2,200,163) excluding VAT. The Agreement was signed after the opening and operationalisation of the hospital in 2008 and when most of the works included therein had been completed. Moreover, due to the accrual basis of reporting, the value of this Contract was reflected in the 2008 Audited Financial Statements. This implies that the previous Contract, that is the Lump Sum Agreement did not cater for the works and services delivered through these variation orders.

6.4.2. The 'waiver' clause included in the Project Closure Agreement is considered to be more advantageous to the Contractor rather than FMS. This clause stipulated that "*the parties will not be liable whatsoever for all and any further, past, present or future concerns, claims or disputes that the parties have or may have in respect of the Amended Main Agreement and each Party waives with binding effect all its rights in relation to the Amended Main Agreement except in relation to those rights explicitly stated in this Project Closure Agreement*." The favourable bias reaped by the contractor through this clause relates to the waiving of any potential claims which may arise. When considering the financial materiality, the scale and complexity of this project, the likelihood that such a situation materialises is considerable. In practice, the possibility to raise a claim against the Contractor regarding the quality of the concrete within the Hospital's Accidents and Emergency Department resulted as a point of litigation between the parties.

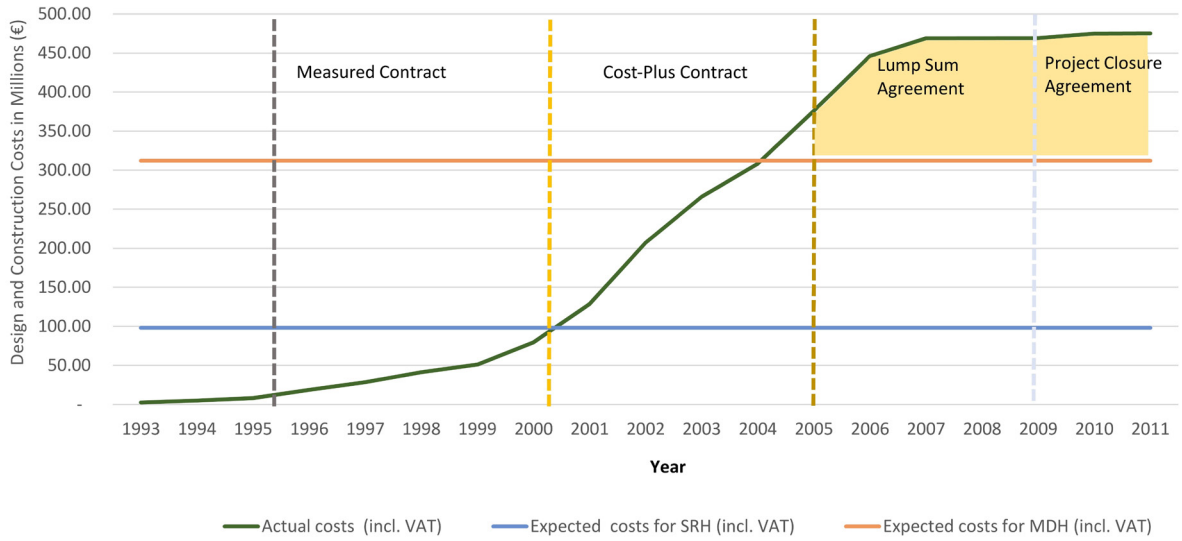
6.4.3. The reciprocal 'waiver' clause featured prominently in the Report of the Mater Dei Hospital Inquiry Board (June 2015) particularly through the testimony provided on 19 May 2015 by the former president of FMS. Therein it is stated that this clause was inserted on the insistence of the contractor and that failure by the Parties to reach an agreement would have led to lengthy arbitration proceedings involving millions of Euros. The former President also noted that the complete waiver within the Project Closure Agreement constitutes naivety on the part of FMS.

6.5. The Project Closure Agreement implied that the costs of the re-dimensioned Hospital exceeded the original targeted contractual values by around five times

6.5.1. Originally, the project construction costs for a 480-bedded specialised hospital were estimated to cost €73.9 million (Lm31.7 million) in accordance with the 1995 Measured Works Contract with Skanska and a further €24.2 million (Lm10.4 million) in design and preliminary costs. The project evolved to an 825-bedded acute and teaching hospital with an estimated total design and build cost of €312 million (Lm133.9 million). At the time of the Project Closure Agreement, project design and construction costs totalled €487.7 million (Lm209.4 million), or nearly one and a half times the estimate at the time of the re-dimensioned hospital.

6.5.2. The foregoing implies that the total design and construction costs of the new Hospital (€487.7 million) exceed the original targeted contractual values (€98.1 million) by around five times. Figure 4 portrays the continuous shift in the hospital's estimated and actual expenditure.

Figure 4: Expected and Actual design and construction costs



6.5.3. Figure 4 clearly shows that the largest variances between the Hospital's envisaged and actual cost occurred during the 2000 to 2005 period, that is when the design and build elements of the project were undertaken through the Cost-Plus Contract.

6.5.4. Aside from budgetary overruns, the hospital project was also considerably delayed. Originally, the plans were for the construction of a 480-bedded hospital to be delivered by April 1998. This did not materialise and a new target delivery date for the construction of a newly scoped 825-bedded hospital was targeted for June 2005. The Lump Sum Agreement also included a revised targeted completion date where the project was to be completed by July 2007. Eventually the project was completed in 2008. This date marks 15 years from when the first agreement regarding the hospital project was signed between Government and the Italo-Maltese Foundation Monte Tabor. On the other hand, the project marked a delay of three years from when the reconceptualised project was expected to be delivered.

6.6. Conclusion

6.6.1. This Chapter discussed the Lump Sum and Project Closure Agreement. In many instances, the issues presented in this Chapter reflect and build on the conclusions of the NAO Report published in May 2018. Within this context, the Gap Analysis Report highlighted that the Design and Build Cost-Plus Contract was destabilising the project finances as well as delivery deadlines. The Lump Sum Agreement sought to rationalise these elements of the project, but this came at a significant cost.

6.6.2. The Project Closure Agreement prepared for the final settlement between the parties. This Agreement did not fully safeguard Government's interest since the Parties agreed to waive all claims against each other. While at the time this was seen to avoid lengthy litigation procedures involving millions, it was disadvantageous to Government as the likelihood that

a project of such magnitude would lead to claims against the contractor are considerable. In due course, this issue came to the fore due to the contentious quality of concrete within the Accident and Emergency Department.

6.6.3. The Project Closure Agreement formally denotes the conclusion of the project. There is no doubt that the project significantly upgraded and contributed to Malta's national health systems. Nonetheless, the project was characterised by extensive quality, cost and timeliness issues – elements which are synonymous with sound project management and good governance concerns.

Appendices

Appendix I: Total project cost based on the 2008 Audited Financial Statements

4 Property, plant and equipment

	Land	Buildings	Medical equipment	Furniture and fittings	Electrical installation	Site office equipment	Renal unit works	Total
	€	€	€	€	€	€	€	€
Carrying amount								
At 1 January 2008	5,108,353	485,530,673	-	-	1,117,923	272,550	-	492,029,499
Additions	106,359	2,129,556	-	-	-	-	-	2,235,915
Reclassified from long-term contracts	-	-	75,444,243	11,405,092	-	-	228,370	87,077,705
Reclassified from long-term receivable	-	-	1,759,288	-	-	-	-	1,759,288
At 31 December 2008	**5,214,712**	**487,660,229**	**77,203,531**	**11,405,092**	**1,117,923**	**272,550**	**228,370**	**583,102,407**
At 1 January 2007	5,108,353	449,754,850	-	-	1,117,923	126,950	-	456,108,076
Additions	-	35,775,823	-	-	-	145,600	-	35,921,423
At 31 December 2007	**5,108,353**	**485,530,673**	**-**	**-**	**1,117,923**	**272,550**	**-**	**492,029,499**

Administration and general overhead costs capitalised as building costs in 2008 amounted to € 14,692,012 (2007: € 12,902,358)

Appendix II: Minister for Finance request to carry-out a follow-up of the report 'An Investigation of the Mater Dei Hospital Project'

MINISTER FOR FINANCE
MAISON DEMANDOLS, SOUTH STREET, VALLETTA, MALTA

27th July 2018

Mr. Charles Deguara
Auditor General
National Audit Office
Notre Dame Revelin
Floriana FRN 1600
Malta

Auditor General,

Reference is being made to the NAO's findings mentioned in the Report "An Investigation of the Mater Dei Hospital Project" and the subsequent meeting on the same subject matter, held on 30th May 2018, the minutes for which were agreed by both parties on the 9th instant.

On the 12th June of 2015, I had requested the National Audit Office (NAO) to investigate the Mater Dei Hospital Project. The investigation had to cover the process leading to the design, building, execution, certification, payment, completion and closure of the Mater Dei Hospital (MDH). The investigation was requested following the findings of the report of Mater Dei Inquiry Board, headed by Justice Emeritus Dr Philip Sciberras.

In your report, you had emphasised that throughout the investigation you were faced with lack of important documentation such as the complete transaction listing that was considered important for this investigation.

I would like to re-iterate that at no stage of the investigation was I informed in writing by the NAO about the difficulties being encountered. Nor was the Cabinet Secretary approached with regards to Cabinet decisions related to the project.

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MINISTER FOR FINANCE
MAISON DEMANDOLS, SOUTH STREET, VALLETTA, MALTA

Be that as it may, and as agreed in our meeting of the 30th May of this year, I am hereby requesting the National Audit Office to:

- continue their investigation at Cabinet Office to gather further information on the MDH project;

- to prepare a benchmark of the estimated total cost of the MDH compared to similar hospitals abroad; thereby addressing the issue of whether the total project cost of MDH is a fair price or not;

- to prepare a list of the documents that were originally requested by it; those found and those missing, identifying as well, who was responsible for the upkeep of such documentation; in so doing to clarify that the current FMS has not been responsible for the lack of documentation and that they have fully cooperated with the investigation.

The Government expects the outcome of these findings to be presented in another report.

Yours sincerely,

Prof Edward Scicluna
Minister for Finance

Appendix III: Reconciliation between documents requested and received by the original Investigation

Introduction

This Appendix deals with the third objective within the terms of reference for this Addendum Investigation concerning the Mater Dei Hospital (MDH) project, which was requested by the Minister for Finance, Hon. Prof. E. Scicluna, on 27 July 2018. To this effect, the Minister for Finance requested the National Audit Office (NAO) to provide details of documentation that was originally requested by the latter for the purpose of MFIN's Investigation request in 2015. This request also entailed that the NAO distinguishes between information referred and not received while identifying who was responsible for the upkeep of such documentation.

To satisfy this objective, the NAO reconciled requests for documentation with respect to the original Investigation (published in 2018) with hard and soft copies of documentation received and held internally. The reconciliation also encompassed the exchange of emails between this Office and Governmental entities involved in the MDH design and construction project.

NAO requests for information in conjunction with the May 2018 NAO Report

For the purpose of the original Investigation (published in 2018), the NAO made 27 requests for information to government entities. These requests, which exclude subsequent reminders, were made during the period May 2016 and March 2017. The NAO's request were mainly addressed to the Foundation for Medical Services (FMS), as the entity entrusted with MDH project management, the Ministry for Finance (MFIN), Department of Contracts (DoC), the Ministry responsible for Health (2015 – 2017), the Treasury Department, the Malta Information and Technology Agency (MITA) and Mater Dei Hospital. In total, these Government entities only fully addressed three of the 27 requests. The remaining 24 requests remained either partially addressed or entirely not addressed. The three fully addressed information requests, related to invoices and payments through the Departmental Accounting System (DAS). The FMS, the Ministry responsible for Health and MITA provided this information, which concerned the design and construction of MDH. A further eight of the 27 NAO requests for information remained partially addressed. These partial submissions mainly related to tendering and ensuing contracts concerning the hospital's design and construction, MFIN files dealing with project funding mainly through the Italian Protocol, DAS payments, project accounts and Interim Payment Certificates (IPCs).

The foregoing implies that 16 of the 27 NAO requests for information related to the May 2018 NAO Report regards to the following:

a. Cabinet decisions with respect to approvals and alterations pertaining to the Hospital's design and construction;

b. Authorisations concerning the lump sum and project closure agreements;
c. The feasibility studies undertaken regarding the original and subsequent hospital designs;
d. Variation orders;
e. FMS payroll and office costs;
f. Transaction listing of all payments relating to MDH's design, construction and finishing;
g. Central Bank of Malta (CBM) statements relating to a special account pertaining to the MDH project;
h. MDH asset and plant register;
i. Site inspections by FMS;
j. Documentation relating to works not carried out according to standards;
k. Penalties invoked on contractors for contract breaches;
l. Composition of committees/boards and setting up of Project Management Office;
m. Accounting records from the Departmental Accounting System pertaining to the period 1996 to 2008/ hospital inventory; and
n. Information as to whether the inquiry report, titled "Report of the Mater Dei Inquiry Board" dated June 2015, was referred to the Police and the Attorney General for any further action.

Generally, shortcomings in filing systems restricted information referral to the NAO for the purpose of the May 2018 Report

Correspondence maintained at NAO in conjunction with the May 2018 Report show that the main reason for the non-submission of requested documentation is attributable to weaknesses in filing systems operated by the Government entities involved in the MDH project. A case in point relates to the filing system pertaining to the MDH project at the FMS. The Foundation's communication with this Office in December 2016 and February 2017 included references to problems in locating specific files since the FMS maintained project documentation in several hundreds of arch lever files and unlabelled boxes. Along the same lines, other entities involved in this project claimed that filing system weaknesses in their organisations ranged from incomplete document registers to the introduction of new electronic registry systems. Regardless of these filing system limitations, this Office reiterates that this situation contrasts sharply with that faced by the Inquiry Board presided by Justice Emeritus Philip Sciberras in June 2015 which was provided with key documentation such as technical reports, relevant contracts and agreements, monthly works progress reports, and correspondence exchanges.

Table 12 below shows the main reason provided by a number of Governmental entities for not submitting the requested information to the NAO.

Table 12: Entities' reasons for not submitting the requested information

Entity	Reason
DoC	a. This Department remarked that the NAO request for tender documentation was too generic despite that, in part, the latter's communication made specific information requests. b. The electronic file system introduced at this Department did not include all files previously registered on the card system.
FMS	a. File referencing listed a large number of files under one heading. b. File titles were not properly detailed. c. The registry system listed the location of some files as 'unknown'. d. Some files were not stored in the location indicated by the Registry system. e. During the original Investigation, FMS was still in the process of cataloguing MDH documentation maintained in 207 boxes. f. Similarly, to the preceding point, FMS was in the process of registering around 800 to 1,000 arch lever files.
MFIN	a. Files relating to funds made available for the project through the Italian Protocol could not be traced.
Treasury	a. The administrative capacity was not available to retrieve MDH payment records spanning from 1989 to 2005 and 2010 to 2011.

Conclusion

This Appendix discusses the main reasons which prohibited information requested by the NAO regarding the original MDH Investigation. At the time, the resulting information gaps precluded the May 2018 NAO Report from discussing and quantifying an array of issues concerning the MDH project. Following major documentation management initiatives by FMS together with the collaboration of the Cabinet Office, the Addendum Investigation received most of the information requested previously. To this end, we acknowledge the input of the Cabinet Office and the FMS. Despite the newly available information, this Office remained at times restricted from delving deeper or presenting more comprehensive discussions as these entities informed the NAO that some documents could not be located.

2019 - 2020 (to date) Reports issued by NAO

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NAO Audit Reports

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November 2019	Report by the Auditor General on the Workings of Local Government 2018
November 2019	Performance Audit: An analysis of issues concerning the Cooperative Movement in Malta
December 2019	Report by the Auditor General on the Public Accounts 2018
December 2019	An investigation of contracts awarded by the Ministry for Home Affairs and National Security to Infinite Fusion Technologies Ltd
January 2020	Performance Audit: Community Care for Older Persons
February 2020	Performance Audit: Assessing the Public Transport Conract and Transport Malta's visibility on the service
March 2020	Information Technology Audit: ICT Across Local Councils
March 2020	The disposal of the site formerly occupied by the Institute of Tourism Studies
April 2020	A review of the ethical framework guiding public employees