

Foundation for Tomorrow's Schools: Regularity Audit on Procurement

Report by the Auditor General

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List of Abbreviations

€	Euro
AG	Auditor General
BoQ	Bill of Quantities
BSS	Boys' Secondary School
DCC	Departmental Contracts Committee
DG	Director General
DoC	Department of Contracts
DOI	Department of Information
dpc	Damp proof course
EPDM	Ethylene Propylene Diene Monomer
FTS	Foundation for Tomorrow's Schools
GCC	General Contracts Committee
GPP	Green Public Procurement
GSS	Girls' Secondary School
Lm	Maltese Lira
MEDE	Ministry for Education and Employment
MEEF	Ministry of Education, Employment and the Family
MFEI	Ministry of Finance, the Economy and Investment
MFIN	Ministry for Finance
MSDEC	Ministry for Sustainable Development, the Environment and Climate Change
MTCE	Ministry for Tourism, Culture and the Environment
n/a	not available
NAO	National Audit Office
NAP	National Action Plan
OPM	Office of the Prime Minister
uPVC	Unplasticised Polyvinyl Chloride
VAT	Value Added Tax

Executive Summary

Executive Summary

1. Procurement is an area where government departments, agencies and other public bodies can potentially achieve significant savings and improvements, thereby releasing resources that can be invested elsewhere. In this audit, the National Audit Office (NAO) examined the procurement practices employed by the Foundation for Tomorrow's Schools (FTS). In particular, this Office reviewed a number of contracts awarded by the Foundation in 2012 and 2013. In the main, these contracts related to construction and refurbishment works carried out in government-owned primary and secondary schools.
2. During 2012 and 2013, FTS awarded 140 contracts, which in sum accounted for a contract value of €9.6 million. The audit focused on aspects relating to compliance to procurement legislation, inconsistencies in contract management, cost variations as well as delays in completion dates, and based this review upon a sample of 22 projects, which represented a total contract value of in excess of €1.4 million. The selection of the audit sample was based on a number of criteria, including the extent of variations incurred, the repeat award to the same contractor, as well as an element of random sampling.
3. A number of shortcomings were identified, with audit concern centring upon instances of significantly higher FTS estimates compared to the tender bids received, considerable changes in the scope of planned works, substantial extras and variations, and notable delays in the completion of works, among others.
4. The deviation of compliant bids from the FTS estimate drew NAO's attention. Of particular interest were those cases featuring an estimate that was significantly higher than all compliant bids received, which was often indicative of the Foundation's poor awareness of market rates. This in turn poses a risk to FTS's ability to safeguard and ensure value for money in executing its procurement function and undoubtedly impacts upon the wider financial performance of the Foundation. In other cases, bids submitted at below going market rates were indicative of the benefits of open procurement methods, which promote competitive pricing among contractors, ultimately resulting in a reduced financial outlay by Government.
5. Another shortcoming identified related to the significant changes in project design, evidenced by the substantial changes with respect to the Bills of Quantities. The underlying implication of this concern was that the project had been poorly planned,

which then necessitated changes during the implementation phase. A certain element of variations is understandable and inevitable, especially with respect to large and complex projects; however, a number of cases reviewed were straightforward projects and yet incurred notable variations. Although these variations did not necessarily result in considerable cost overruns, they are indicative of poor planning.

6. Delays were experienced with respect to a considerable number of projects, with responsibility at times attributable to FTS and at other times to shortcomings on the part of the contractors involved. In the former case, delays arising out of FTS action indicate poor planning and management of project implementation. On the other hand, NAO noted that delays caused by the various contractors were never followed up by the imposition of delay charges and penalties as contemplated in the contract. Such delays not only impact upon FTS's planned execution of works, but also present the risk of disrupting scholastic operations if not completed within the established timeframes.
7. The resort to direct contracts should be restricted to instances of genuine urgency and unforeseen circumstances and not serve as a safety net for poor planning and ineffective management. While certain direct contracts reviewed satisfied these criteria, others clearly did not, as contracted works could have been anticipated, appropriately planned for and undertaken through open procurement methods. Other shortcomings identified with respect to these three direct contracts included the lack of an appropriately drawn-up FTS estimate, failure to obtain more than one quotation, the sourcing of quotations after the award of the direct contract had already been effected, and the retention of incomplete documentation.
8. An instance where FTS drew up an estimate at just under the €120,000 threshold for departmental tenders was noted by NAO. In this case, all bids submitted were considerably over this estimate and works were, in fact, awarded at a contract value in excess of €160,000. Moreover, additional works of over €50,000 were later added to bring the total cost to over €210,000. Although NAO acknowledged the fact that the approval of DoC was sought both prior to the award of the contract and once the commissioning of additional works was required, this Office questioned whether, given that the estimate was close to the departmental threshold, this tender should have been issued through the Department of Contracts at the outset.
9. Notwithstanding the various shortcomings identified, a number of positive aspects relating to FTS's procurement function emerged. At a general level of analysis, NAO noted that the documentation retained by FTS was complete and maintained in a highly organised manner. In terms of compliance to procurement procedures and regulations, FTS exhibited a consistent adherence to all facets and requirements posed.
10. Although the perspective of analysis undertaken by this Office with respect to the cases reviewed mainly centred on the role played by FTS, NAO is well aware that the Foundation's project management responsibility may at times be challenging. Managing the Foundation's multiple stakeholders, be they clients or otherwise, directly impacts upon the effective execution of assigned projects. While the report highlights several of the Foundation's shortcomings, such issues must be seen within their wider context.

11. In light of the above, NAO puts forward the following recommendations:
- a. FTS should endeavour to establish estimates that, as far as possible, accurately reflect the works required and market rates, thereby allowing for better financial management and planning, as well as serving as a reliable benchmark against which to compare the bids received.
 - b. The Foundation should endeavour to clearly identify all of the works that are required on a particular project to avoid changes in scope. Changes in scope, especially during project implementation, pose a significant risk to value for money considerations as these invariably lead to variations exposing FTS to a weakened position in terms of negotiating with the already engaged contractor.
 - c. In circumstances where variations inevitably arise, FTS should ensure that the appropriate procedure of endorsing such expenditure is adhered to. Therefore, FTS should seek relevant authorisation when required and independently estimate the cost of such additional works and services, thereby safeguarding the project's value for money.
 - d. FTS should enforce delay charges and penalties in cases of gross discrepancies between agreed and actual project completion dates attributable to contractors' shortcomings, as invariably contemplated in the contractual agreements that the Foundation enters into.
 - e. The utilisation of direct contracts should be kept to a bare minimum and only resorted to in cases of genuine urgency. Nevertheless, when resorting to direct contracts, FTS should draw up an estimate of works or services required, invariably obtain quotations from more than one contractor prior to the award of contract and retain complete documentation of all of the above and the process as a whole.

Chapter 1

The Foundation for Tomorrow's Schools: A Contextual Backdrop

Chapter 1 – The Foundation for Tomorrow’s Schools: A Contextual Backdrop

1.1 Review of Procurement Practices employed by the Foundation for Tomorrow’s Schools

1.1.1 Procurement is an area where government departments, agencies and other public bodies can potentially achieve significant savings and improvements, thereby releasing resources that can be invested elsewhere. With this in mind, the National Audit Office (NAO) regularly carries out reviews of procurement activities of public-funded organisations, identifying shortcomings and making recommendations to ensure that value for money is achieved. In this audit, NAO examined the procurement practices employed by the Foundation for Tomorrow’s Schools (FTS). In particular, this Office reviewed a number of contracts awarded by the Foundation in 2012 and 2013. In the main, these contracts related to construction and refurbishment works carried out in government-owned primary and secondary schools.

1.2 The Foundation

1.2.1 The FTS, an entity within the portfolio of the Ministry for Education and Employment (MEDE), was established in 2001 with the specific mission to provide specialist support to the Education Division in the building, maintenance, restructuring, upgrading and embellishment of schools. The Foundation was set up following a Cabinet Decision, with the main objective of transforming primary and secondary schools into ‘Tomorrow’s Schools’ in line with the guiding principles of the National Curriculum requirements. In particular, the National Curriculum states that learning environments are important features of the educational fabric, and that there is an intimate relationship between the physical conditions, the allocated space and the educational resources allowed by specific learning environments, and the development of student attitudes and behaviour. Inevitably, the rebuilding and/or refurbishment of schools, particularly those at secondary level, had to be undertaken to improve the public school estate thereby catering for the ever-increasing requirements posed by developments in education. Furthermore, the need for larger new schools became more acute with the introduction of the college concept, enacted through the legislative amendment of the Education Act in 2006 and, more recently, the introduction of co-education colleges.

1.2.2 The FTS was established by virtue of a deed dated 10 May 2001. The deed states that, *“The Government has felt the need that there be an institution in Malta which, in collaboration with the Division of Education, develops and manages innovative*

systems for the construction, refurbishment, and maintenance of schools and other educational institutions, including systems of sustainable funding for the fulfilment of this aim ...”.

1.2.3 According to its statute, the Foundation is, inter alia, bound to:

- a. *“efficiently and cost-effectively manage and finance the ongoing development, building, upgrading and refurbishment [of schools] ...”;*
- b. *“ensure the proper keeping of management accounts ...”;*
- c. *“follow established public procurement procedures ...”;* and
- d. *“be subject to the direction of the Minister responsible for finance in matters involving financial considerations and commitments ...”.*

1.2.4 As indicated in its constituent instruments, FTS is able to:

- a. *“receive funds or other property, movable or immovable from Government, international organisations, foundations, commercial entities, banks, individuals or any other source ...”;* and
- b. *“borrow and raise funds ...”.*

1.2.5 In line with the above provisions, and the Foundation’s primary objective to *“offer an alternative, more efficient and cost effective approach to undertaking and financing the ongoing development, upgrading and refurbishment of state schools ...”*, FTS sought ‘alternative’ financing arrangements to the more conventional allocation of public funds through the annual budgetary process. In fact, in 2004, FTS - with the approval of the Ministry of Finance and the Ministry of Education - reached an agreement to secure long-term financing facilities required to enable the Foundation to implement its school construction, extension and refurbishment programme following negotiations with local commercial banks. The Ministry of Finance guaranteed bank loans/overdrafts up to €7.22 million (Lm3.1 million) annually to cover interest payments and the eventual refund of the borrowed funds. However, FTS indicated that such an arrangement had been modified prior to the latest sanction, with its outstanding loan converted into a revolving loan arrangement. Accordingly, under this arrangement, the FTS was bound to pay only the interest due. This arrangement was also required to finance the new campus at the Malta College of Arts, Science and Technology, the management of which was entrusted to the FTS. The Foundation is, nonetheless, bound to follow government’s financial and procurement regulations, unless otherwise authorised.

1.2.6 Since its setting up, FTS has undertaken a vast array of projects in many primary and secondary state schools. These include the building of new schools, major refurbishments and the construction of school halls, sports facilities and recreational areas. St Benedict’s College at Kirkop is regarded as the Foundation’s flagship and the standard on which other schools are built. To date, several schools have been completed, including St Ignatius New Boys’ Secondary School (BSS) Qormi, St Margherita New BSS Cospicua, the BSS at Victoria, Gozo, the BSS at Ta’ Żokrija, Mosta and the Pembroke New Primary School.

1.2.7 Other projects undertaken by FTS include the construction of various school halls, such as those at Mqabba, Kirkop and Marsaxlokk, in line with Government’s policy to have schools serving also as community centres. Major refurbishment was carried out on a number of existing schools to address issues of accessibility, open spaces, resource rooms and laboratories and staff facilities. Such works include the construction of extensions at the primary schools in Marsaskala and Siggiewi and the Mrieħel Girls’ Secondary School (GSS), the redevelopment of the Luqa Primary

School, refurbishment of Adelaide Cini GSS, Hamrun, the building of a new lecture block at Giovanni Curmi Higher Secondary School in Naxxar and major conversion works at Sir Adrian Dingli Girls' Junior Lyceum in Pembroke. The Foundation has upgraded recreational open spaces in a number of schools, including the installation of synthetic turf surfaces and floodlighting systems.

1.2.8 As from 2005, following approval by the Foundation's Board of Directors, FTS started charging up to a maximum of 10 per cent on the capital additions in schools to cover the Foundation's expenses relating to capital projects. This expenditure, which prior to 2005 was included in the capital expenditure on schools, is now being charged as an administration expense. Administrative expenses for 2012 and 2013 were €769,538 and €927,332, respectively, attributable to an increase in staff complement and other extraordinary expenses. Prior to 2005, all tangible fixed assets, which were constructed or purchased for the benefit of the various schools, were capitalised and shown in the balance sheet as fixed assets pertaining to the Foundation. As from 2005, such assets are transferred to the respective schools once these are finalised and certified.

1.2.9 Works undertaken by FTS on the construction and improvement of schools are funded through capital funds financed through bank loans guaranteed by the Government. The Ministry for Finance (MFIN), in its budgetary estimates provides for amounts that in turn are used to finance the capital repayment and interest of the bank loans. Such funds, receivable by FTS, amounted to €6,600,000 and €1,650,000 for 2012 and 2013, respectively. The €6,600,000 allocation in 2012 was utilised for expenditure that the Foundation incurred with respect to the construction and improvement of schools. On the other hand, in 2013, MEDE made the necessary arrangements to utilise the €1,650,000 required to settle the interest due. Furthermore, in 2013, MEDE arranged for a moratorium in which case, the allocation was fully utilised to finance interest payable on bank loans. In addition, FTS receives from Government an annual recurrent contribution that, for the years under review, amounted to €314,000 and €280,000 (in 2012 and 2013, respectively).

1.2.10 The FTS is administered by a Board of Directors and headed by a Chairperson. In 2013, the Foundation employed 23 officers.

1.3 Contracts Awarded by FTS in 2012 and 2013

1.3.1 During 2012, FTS procured works, supplies and services through 67 contracts, which were awarded to 48 contractors. The combined contract value amounted to €4,924,054 (including VAT¹).² Four other calls for tender were made during the year; however, in one instance no offers were received, in another the contract was not awarded, and in the remaining two instances FTS refused all offers. Except for four direct contracts, all works were procured following a public call for tenders. The direct orders were in respect of the services of the Occupational Health and Safety Authority; the hire of a crane; the installation of sun tubes³ at FTS; and an Environment Impact Study update in respect of demolition and construction works at St Benedict's College. The contract values for these direct orders were €6,800, €1,909, €6,391 and €9,440, respectively. The final cost of two of the projects was similar to the original contract value. In one instance, at €6,400, the final cost was in fact lower than the original contract value of €6,800. In the remaining direct order, the initial contract value of €9,440 was exceeded by €1,416, for a final cost of €10,856.

¹ All figures presented in this report are inclusive of VAT, unless otherwise specified.

² For categorisation purposes, the year of procurement is based upon the date of issue of the Tender Originators Form.

³ Sun tubes are physical structures utilised in the distribution of natural light to indoor environments.

- 1.3.2 Other procurement during the year was made following a call for tenders. This mainly involved the supply and installation of fixtures and fittings; the supply of classroom and laboratory furniture; the installation and commissioning of lifts; the installation of solar water heating and photovoltaic systems; alteration, construction, tiling and finishing works in various schools; mechanical and electrical services; gypsum partitions; resurfacing and landscaping works; chain link fencing; the installation of safety rubber tiles and synthetic surfaces; and the testing of concrete from various sites.
- 1.3.3 The final value of the works undertaken amounted to €3,939,710; this, however, does not include the final cost of four contracts (with an aggregate contract value of €994,014) which are yet not finalised. Extras and variations valued at €572,355 – or 14.5 per cent of the final cost of works – were incurred on these projects. Again, this amount excludes total cost variations for the unfinished projects. All of the above presented figures are correct as at end September 2014.
- 1.3.4 In 2013, FTS awarded 73 tenders to 47 different contractors for an aggregate contract value of €4,714,940. Eight other calls for tender were made during the year; however, in two instances, the tender was cancelled, in four others, the contract was not awarded, and in the remaining two instances, FTS refused all offers. Except for ten direct orders, all contracts were awarded following a public call for tenders. The direct orders were for the hire of skips and cranes, repairs to sewer mains, the installation of EPDM rubber tiles, repairs to electrical installations at the GSS Žejtun, the painting of the playground at St Clare's College, quantity surveying services, sports equipment and a Traffic Impact Study in connection with the Kirkop New GSS. The total contract value of these direct orders was €79,614. No variations were incurred with respect to these direct contracts and all projects had been finalised as at end September 2014.
- 1.3.5 The rest of the works were contracted following open calls for tenders. Contracts were for construction works; the supply and installation of synthetic turf, rubber and fencing; resurfacing and landscaping works; the supply and installation of mechanical, electrical and air-conditioning services; the manufacture, supply and installation of steel works; timber and aluminium apertures and partitions; plumbing systems; tiling, finishing and waterproofing works; the supply, delivery and installation of furniture and the provision of cleaning services.
- 1.3.6 The value of the works undertaken with respect to completed projects amounted to €1,998,478; this, however, does not include the cost of works, with a value of €1,719,133, undertaken with regard to 24 yet unfinished contracts (corresponding to an aggregate contract value of €3,548,209). Extras and variations valued at €297,491 – or eight per cent of the cost of works undertaken to date – were incurred on these projects. Again, this amount excludes total cost variations for the unfinished projects. All of the above presented figures are correct as at end September 2014.

1.4 Sample of Contracts Reviewed and other Methodological Considerations

- 1.4.1 The audit focused on a sample from all the works undertaken by FTS in 2012 and 2013. Documentation in respect of the contracts awarded by the Foundation was reviewed, from the initial Tenders Originators Form drawn up at the start of the project through to its execution and completion. The audit focused on aspects relating to compliance to procurement legislation, inconsistencies in contract management, cost variations and delays in completion dates. The NAO reviewed 22 projects (16 per cent) out of a total of 140 contracts awarded by FTS in 2012 (67) and 2013 (73).

1.4.2 The selection of the above-indicated 22 projects followed three distinct streams:

- a. Cases selected on the basis of pre-defined criteria;
- b. Cases selected on the basis of award to the same contractor; and
- c. Cases selected on a random basis.

As indicated in Table 1, the total contract value corresponding to the cases selected amounted to €1,417,547, which is equivalent to 15 per cent of the total contract value (€9,638,994) with respect to tenders issued by FTS during 2012 and 2013.

Table 1: Overview of Cases Reviewed and Criteria for Selection

Details of Selection	Number of Cases Reviewed	Contract Value (€)
Cases selected on the basis of pre-defined criteria	5	896,871
Cases selected on the basis of award to the same contractor	7	245,523
Cases selected on a random basis	10	275,153
Total	22	1,417,547

1.4.3 A detailed account outlining the method of selection of cases in each of the three streams is presented in Chapter 2; however, the following serves as a brief overview, illustrating the most salient aspects of the rationale employed in the selection and outlining key points emerging therefrom.

1.4.4 Five cases out of the 22 that were reviewed as part of this audit were selected based on five separate pre-defined criteria established to address areas that were considered of most risk. These areas related to the extent of extras and variations resorted to and the award of contracts by direct order.

1.4.5 In addition, a number of contracts were selected based on the frequency of award to the same contractor. Based on this criterion, NAO reviewed seven contracts awarded to Central Power Installations Ltd for an aggregate contract value of €245,523. In this case, NAO sought to ascertain that the award was justifiable and consistent with procurement regulations. This Office also considered the value of variations incurred in these contracts to establish whether the value of offers made by this Contractor were consistently/intentionally kept low only to be recovered through variations.

1.4.6 Finally, 10 contracts out of the Foundation's 2012-2013 projects population were selected on a random basis. This selection was intended to complement the various contracts selected and reviewed based on pre-defined criteria. In so doing, NAO sought to ascertain as comprehensive an understanding as possible of FTS's procurement function.

1.5 Green Public Procurement

1.5.1 In December 2011, the Director General (DG) (Contracts) issued a circular to all government ministries and departments in connection with policies regarding Green Public Procurement (GPP). In the circular, DG (Contracts) explained that GPP was a process whereby public authorities sought to procure goods, services and works with a reduced environmental impact throughout their life cycle when compared to goods, services and works with the same primary function that would otherwise be procured. Public procurement was increasingly being used as a means to implement policy decisions and government had committed itself to implementing GPP targets for 18 product and service groups. According to the circular, GPP was to be implemented in an organised manner with effect from January 2012. The Office of the Prime Minister (OPM), which had the overall responsibility for coordinating GPP in Malta, was to monitor GPP initiatives and take the necessary policy decisions, while

the Department of Contracts (DoC) was to implement procedures to ensure that GPP formed part of the mainstream public procurement process and complied with the respective public procurement regulations.⁴ In this regard, with effect from January 2012, all calls for tenders, including departmental tenders and those published by DoC, had to be supported by the Tender Originators Form. This form was revised in order to address issues related to GPP. Originators of departmental tenders were to submit a scanned signed copy of this form to OPM.

- 1.5.2 Contracts Circular 21/2011 indicated that all tenders would be subject to audit with regard to GPP compliance. In respect of departmental tenders, the Departmental Contract Committees (DCC) of each Ministry were directed not to approve the award of tenders for the chosen GPP products or services without the confirmation that the mandatory technical specifications had been adopted. With effect from January 2012, the procurement of paper, IT equipment, textiles, as well as gardening products and services had to be fully compliant with GPP criteria. Procurers of these products or services were to ensure that when the tender specifications were drafted, these were based on the GPP criteria. The application of GPP criteria for the procurement of cleaning products and services, transport, furniture, food and catering services, electricity, construction, mobile phones, combined heat and power, thermal insulation, wall panels, hard floor coverings, windows, glazed doors and skylights, street lighting and traffic signals, and road construction and traffic signs was voluntary during 2012, but was nonetheless strongly encouraged. GPP criteria and guidance for these product groups were available on the GPP website.
- 1.5.3 The evaluation of the offers received was to remain in accordance with the published tender conditions. The principles of public procurement continued to apply. Evaluation Committees were therefore to ensure that the award of tenders was based on fairness, transparency and non-discrimination. However, every bidder would now have to compete on the basis of the adopted green technical specifications.

⁴ The principle of Green Public Procurement was formally incorporated into Malta's policy framework at a strategic level in 2005. Following the 2008 general elections, this function was transferred from the Ministry for Rural Affairs and the Environment to the Ministry for Tourism, Culture and the Environment (MTCE), which was tasked with the development of the GPP National Action Plan (NAP). The NAP, compiled in collaboration with DoC and other stakeholders, was approved by Cabinet in November 2011, and came into force as from January 2012. Responsibility for this function shifted in accordance with Ministry-level restructuring, eventually moving from OPM to MTCE. Following the change in administration in 2013, the GPP function was transferred to the Ministry for Sustainable Development, the Environment and Climate Change (MSDEC).

Chapter 2

Cases Reviewed

Chapter 2 – Cases Reviewed

2.1 Cases Selected on the Basis of Pre-Defined Criteria

- 2.1.1 Five cases out of the 22 that were reviewed as part of this audit were selected based on risk criteria established by the audit team. In essence, the first criterion utilised by NAO in establishing risk was the extent of variations incurred, arrived at by comparing the project's particular contract value to its corresponding final cost. Here, NAO sought to determine the factors that led to such variations, whether these variations could have been anticipated through better planning, and whether value for money was ascertained. Two contracts were selected on this basis following the ranking of all projects undertaken by FTS, effectively representing the contracts with the greatest variations in absolute terms and in percentage terms. As represented in Table 2, the two contracts selected in this respect were the 'Tender for Resurfacing Works at Sir Adrian Dingli GSS, St Clare's College, Pembroke' and the 'Tender for Resurfacing Works at the Police Academy, Ta' Kandja'.
- 2.1.2 In the first case, while the original contract value was that of €163,115, the final cost of the project amounted to €210,550, resulting in extras and variations of €47,435. The difference between the original contract value and the final amount paid was the largest increase in absolute terms documented for the FTS 2012-2013 project population, and was equivalent to a 29 per cent variation over the original contract value.
- 2.1.3 In the second contract, at €76,728, the total cost of works carried out was €23,429 over the original contract value of €53,299. Although not the largest variation in absolute terms, at 44 per cent over contract cost, this was the highest percentage variance registered in the FTS 2012-2013 project population. It is unclear whether this variance was due to additional works required or rather to omissions in the original scope of works that were not taken into consideration when the original bills of quantities (BoQ) were drawn up.
- 2.1.4 The second criterion utilised by NAO also focused upon the variations incurred by FTS projects; however, importantly, the second criterion adopted a slightly different perspective to the first in that no comparison was drawn between the originally contracted value and the corresponding final cost. The resultant focus of this criterion

centred on the magnitude of extra works/services and variations undertaken, which (in cases of significant relative proportion to the contract value) implied a considerable change in terms of the scope of works/services engaged. Once again, two contracts were selected on this basis following the ranking of all projects undertaken by FTS, effectively representing the contracts with the largest volume of extra works/services and variations in absolute and percentage terms. The two contracts selected on this basis were the 'Tender for the Construction of New Sports Facility on the Grounds of Maria Assumpta and Adelaide Cini Girls Secondary Schools, Hamrun' and the 'Tender for the Supply and Installation of Aluminium Works at Dun Ġużepp Xerri Primary School, St Julians' (Table 2 refers).

- 2.1.5 In the first of these contracts, although the original value was €590,135 and the actual cost of works carried out amounted to €618,718, the value of extras and variations carried out was €241,394. Therefore, although in terms of absolute value variations amounted to just €28,583, or five per cent over the original contract value, at €241,394 (or 41 per cent of contract value) the actual value of extra works undertaken and variations carried out was substantial. This is possibly indicative of major changes in project design, which may be attributable to weak project planning. Moreover, this amount of extras and variations did not include additional claims made by the Contractor for costs incurred for the period that works were suspended due to revisions in project design. These additional costs amounted to €48,542; however, according to FTS, no payments in respect of this claim were made.
- 2.1.6 The second contract was reviewed in view of the considerable volume, in percentage terms, of extras and variations carried out on the project. According to the original estimate drawn up, the total cost of works that were to be carried out under cover of this tender was €83,305. Notwithstanding this estimate, works were awarded to the cheapest compliant tenderer for €47,935. The final cost of certified works was €49,983, which was €2,048 over the contract value. Nonetheless, this contract accounted for the largest percentage of extra works and variations carried out. In fact, the aggregate value of extras and variations, including both 'over' and 'under' Items, was €12,402. This represents a 26 per cent variance against the contract value of €47,935. However, in the detailed list of contracts for 2012 and 2013 initially provided by FTS, the value of extras and variations related to this contract was indicated as €27,818. This would have increased the percentage of extras and variations to 58 per cent of the contract value, making this the contract with the highest percentage of such extras and variations. This percentage value was the basis of NAO's selection of contracts on a pre-defined criterion, in this case the contract with the highest percentage variances. However, a detailed review of the documentation made available in connection with these works, particularly the Letter of Acceptance and the final BoQ, indicated that, in actual fact, the aggregate value of extras and variations was €12,402 and not €27,818. Clarifications in this regard were sought from FTS; however, no reply was provided by the Foundation.
- 2.1.7 The third and final criterion employed by NAO was limited to direct contracts awarded by FTS during the period under review. The ranking undertaken in this sense was based on magnitude, with the largest direct contract awarded selected for further scrutiny. In this case and as indicated in Table 2, the direct contract selected was the 'Painting of the Playground at St Clare's College, Pembroke', which amounted to €42,387.

Table 2: Cases Selected based on Pre-Defined Criteria

Risk Criterion		FTS Contract
Greatest variation from contract value to final cost	in absolute terms	FTS 004-13 – Tender for Resurfacing Works at Sir Adrian Dingli GSS St Clare's College Pembroke Using Environmentally Sound Construction Methods and Materials
	in percentage terms	FTS 056-13 – Tender for Resurfacing Works at the Police Academy, Ta' Kandja Using Environmentally Sound Construction Methods and Materials
Largest volume of extra works/services and variations	in absolute terms	FTS C02-12 – Tender for the Construction of New Sports Facility on the Grounds of Maria Assumpta and Adelaide Cini Girls Secondary Schools, Hamrun
	in percentage terms	FTS 017-13 – Tender for the Supply and Installation of Aluminium Works at Dun Ġużepp Xerri Primary School, St Julians
Largest direct contract		DO 01-08-13 – Painting of the Playground at St Clare's College, Pembroke (ex Sir Adrian Dingli Girls Junior Lyceum)

2.1.8 An overview of the estimated cost, contract value and final cost of each of the five contracts selected based on the above-described criteria is reproduced in Table 3 for ease of reference.

Table 3: Overview of Costs with respect to Cases Selected on the basis of Pre-defined Criteria

Tender	Estimated Cost (€)	Contract Value (€)	Final Cost (€)
FTS 004-13 – Tender for Resurfacing Works at Sir Adrian Dingli GSS St Clare's College Pembroke Using Environmentally Sound Construction Methods and Materials	133,977	163,115	210,550
FTS 056-13 – Tender for Resurfacing Works at the Police Academy, Ta' Kandja Using Environmentally Sound Construction Methods and Materials	62,225	53,299	76,728
FTS C02-12 – Tender for the Construction of a New Sports Facility on the Grounds of Maria Assumpta and Adelaide Cini Girls Secondary Schools, Hamrun ¹	800,147	590,135	618,718
FTS 017-13 – Tender for the Supply and Installation of Aluminium Works at Dun Ġużepp Xerri Primary School, St Julians	83,305	47,935	49,983
DO 01-08-13 – Painting of the Playground at St Clare's College, Pembroke (ex Sir Adrian Dingli Girls Junior Lyceum)	n/a	42,387	42,387
Total ²	1,079,654	896,871	998,366

Notes:

1. The final cost of FTS C02-12, amounting to €618,718 does not include the claim made by the Contractor relating to the suspension of works, which amounted to €48,542, as FTS stated that such a claim was not paid.
2. The estimated total cost does not take into account DO 01-08-13, for no record of such an estimate was provided to this Office.

FTS 004-13 – Tender for Resurfacing Works at Sir Adrian Dingli GSS St Clare's College Pembroke Using Environmentally Sound Construction Methods and Materials

2.1.9 This contract was chosen on an ad hoc basis to be part of the sample of cases reviewed in view of the considerable extra cost incurred over and above the original contract value. The original contract value was that of €163,115 while the final cost of the project amounted to €210,550. The difference between the original contract value and the final amount paid, which equated to €47,435, was the largest increase documented for the FTS 2012-2013 project population, and was equivalent to a 29 per cent variation over the original contract value. This was indicative of major changes in project design, which may be attributable to weak project planning.

2.1.10 A Tender Originators Form for Resurfacing Works at Sir Adrian Dingli GSS, St Clare's College, Pembroke, quoting an estimated price based on a BoQ prepared by the designated FTS Project Leader of €133,977, was raised on 7 May 2013. The completion period of the contract was specified at four calendar weeks. On 7 May 2013, FTS contacted MEDE requesting approval for the publication of the call for tenders for this project. The Minister's endorsement was obtained on this letter, indicating approval to proceed with the call for tenders. The Form, and later the draft tender,

were referred to the GPP officer within MSDEC in terms of DoC Circular 21/2011. Following an exchange of emails between FTS and the GPP Office, FTS implemented the changes suggested by the latter and, on 14 May 2013, the tender was deemed compliant with GPP criteria for road construction.

2.1.11 The tender notification for these works was published on 17 May 2013 in the Government Gazette and on the FTS website. The tender document indicated that sealed tenders were to be received by 10 June 2013 and that bidders were not required to submit information regarding their economic and financial standing. On the other hand, bidders were required to submit evidence of relevant experience in the execution of works of at least two projects of a similar nature over the previous five years.

2.1.12 An Evaluation Committee, consisting of a Chairperson and two members, was set up. All three members, as well as the Project Leader, signed a Declaration of Impartiality and Confidentiality.

2.1.13 By the closing date, five bids had been submitted. Figure 1 presents the bid values in comparison to the FTS estimate.

Figure 1: Overview of FTS 004-13 Tender Bids Submitted



2.1.14 The Evaluation Report indicated that all bids were deemed administratively and technically compliant. The cheapest offer of €163,115, submitted by Philip Agius & Sons Ltd, was chosen as the winning bid.

2.1.15 In view of the fact that the recommended offer, despite being the cheapest, still exceeded the threshold for departmental tenders of €120,000, the Evaluation Report was forwarded to DoC on 14 June 2013 for the General Contracts Committee’s (GCC) approval of the award recommendation. In turn, DoC requested that certain shortcomings in the report be addressed and a new Evaluation Report drawn up before this is forwarded to the GCC. DoC further requested FTS to clarify the set-up of the Evaluation Committee and the role of the Senior Architect designated as Project Manager. DoC also pointed out that, in the Administrative Compliance Grid, the Evaluation Committee Chair was listed as both Chair and Evaluator despite the

fact that a chairperson should be a non-voting member. DoC also explained that the evaluation of offers must be carried out independently by each evaluator, with each drawing up a separate Technical Report. Moreover, DoC highlighted the need for all the members of the Evaluation Committee, including the Chair and the Secretary, to sign the Declaration of Impartiality and Confidentiality. Though declarations were signed by the Chair and the two members, no such declaration was initially signed by the Secretary.

2.1.16 FTS immediately followed DoC's instructions and appointed two new members on the Evaluation Committee, who joined the incumbent Chair and the other members in drawing up a new evaluation report. This was dated 20 June 2013. The two new members, as well as the Secretary, signed the required Declaration of Impartiality and Confidentiality. Every Evaluator completed the technical compliance grid. The final recommendation was the same as that of the initial evaluation report, that is for Philip Agius & Sons Ltd to be awarded the contract.

2.1.17 On being forwarded this second report, on 26 June 2013, DoC notified FTS that it acknowledged that previous shortcomings had been rectified and that DoC and GCC endorsed the report's recommendation.

2.1.18 On 26 June 2013, DoC published a notice indicating that the DG (Contracts) had agreed with the recommendation to award the tender to the lowest priced compliant bidder. Objections were to be received by 2 July 2013. There was no documentation showing that each bidder was individually notified of this intent to award notice. No objections, however, were lodged by the closing of the objection period. The Letter of Acceptance was issued to Philip Agius & Sons Ltd on 5 July 2013. The Contractor was requested to start works on 21 August 2013.

2.1.19 NAO noted that the original estimate of the cost of these works was just under the €120,000 threshold for departmental tenders. It was also noted that all the bids submitted were considerably over this estimate and works were, in fact, awarded at a contract value of €163,115. Moreover, a variation of €50,576 was later added to bring the total cost of works to over €210,000. Although NAO acknowledged the fact that the approval of DoC was sought both prior to the award of the contract and once the commissioning of additional works was required, this Office questioned whether, given that the estimate was close to the departmental threshold, this tender should have been issued through DoC at the outset.

2.1.20 The first interim certificate sent by the Contractor was for €120,820, which amount, less a five per cent retention, was certified and paid on 3 October 2013. The second certificate quoted €159,974. Payment for this amount, less the five per cent retention and less the previous payment, was forwarded to the Contractor on 28 October 2013. However, NAO noted that quantities for a number of Items in the second certificate were less than those stated in the first interim BoQ (Table 4 refers).

Table 4: FTS 004-13 Comparison of Certificates of Payment

Item	Description	Rate (€)	Quantity per BoQ 1	Quantity per BoQ 2	Difference (No.)	Difference (€)
2.03	Supply and install precast concrete kerbs	14.00	70.00	57.00	13.00	182.00
2.04	Supply, transport, lay and compact sub-base material	12.50	100.00	0	100.00	1,250.00
2.05	Supply, transport, lay and compact Type 1 granular base course material	14.50	200.00	121.64	78.36	1,136.22
	Total					2,568.22

2.1.21 Requested to comment on the above apparent discrepancies, FTS stated that BoQ 1 and BoQ 2 were based on assumed quantities of works carried out as at that date, while BoQ 3 was based on the actual measurement of works carried out. NAO's technical advisor indicated that this is an accepted industry practice, particularly in view of difficulties in determining, with precision, the extent of works carried out, and due to the principle of retention.

2.1.22 Substantial divergences between contracted and actual quantities in a number of Items were also noted in the second interim certificate, which was issued upon completion of works as per Letter of Acceptance. Quantities above those originally agreed to were billed for two Items, that is: 378.73 extra units for Item 2.02 (Scarify existing road surface with planar equipment) and 11 extra units for Item 2.09 (Extra over for working around and modifying projections). Quantities below those originally agreed to were billed for the other seven Items, and three extra Items, not originally included, were added. The rates for the extra Items were deemed "fair and reasonable" by the Project Leader and approved by the FTS Chief Financial Officer and General Manager. NAO's independent review of such rates confirmed that stated by FTS. A comprehensive representation of all the Items where variances between the original amounts and those billed were registered, as well as extra Items contracted, is provided in Tables 5, 6 and 7.

Table 5: FTS 004-13 Itemisation of Extra Works Undertaken

Item	Description	Original Quantity	Certified Quantity	Rate (€)	Value of 'Extras' (€)
2.02	Scarify existing road surface with planar equipment	400.00	778.73	14.90	5,643.08
2.09	Extra over for working around and modifying projections	10.00	21.00	50.00	550.00
	Total				6,193.08

Table 6: FTS 004-13 Items Not Originally included in Letter of Acceptance

Item	Description	Certified Quantity	Rate (€)	Value (€)
V1	Extra for sweeping after scarifying	4,909.89	1.40	6,873.85
V2	Extra over Item 2.09 for modification of manholes	9.00	46.00	414.00
V3	Excavate trench in compacted ground, replace water service pipe, and backfilling of trench	50.00	12.00	600.00
	Total			7,887.85

Table 7: FTS 004-13 Itemisation of Works Not Undertaken

Item	Description	Original Quantity	Certified Quantity	Rate (€)	Value of 'Unders' (€)
2.01	Excavation in loose material/soil up to rock level	630.00	358.51	12.75	3,461.50
2.03	Supply and install precast concrete kerbs	200.00	57.00	14.00	2,002.00
2.04	Supply, transport, lay and compact sub-base material (Type A)	420.00	0	12.50	5,250.00
2.05	Supply, transport, lay and compact Type 1 granular base course material	225.00	121.64	14.50	1,498.72
2.06	Supply and spray tack coat	5,400.00	5,208.68	1.20	229.58
2.07	Supply, transport, lay and compact dense hot combined base/wearing course mixture	5,400.00	5,208.68	24.20	4,629.94
2.08	Rotary saw cutting	50.00	0	3.00	150.00
	Total				17,221.74

2.1.23 NAO considers the substantial differences in quantities represented in Tables 5, 6 and 7 as indicative of poor pre-tender survey and investigation of the area where works were to be carried out.

2.1.24 As indicated in Table 8, the total value of works as per original BoQ and subsequent variations incurred thereto amounted to €159,974. However, this figure does not reflect the final cost of the tender as upon completion of the originally planned works, it was found necessary to extend the original contract to include additional works. The value of these works amounted to €50,576, equivalent to 31 per cent of the original contract value (Table 8 refers). Approval from DoC to resurface an area that was not originally incorporated in the contract was sought on 6 November 2013, after the necessary authorisation of Chair FTS and Permanent Secretary MEDE was obtained. In its reply dated 7 December 2013, DoC requested further information from FTS, including:

- a. justification for the urgent and unforeseen circumstances resulting in these additional works;
- b. specification as to whether this variation is made up of BoQ Items and/or new rates;
- c. confirmation of the Contractor's agreement to the new rates (if any); and
- d. confirmation that these additional works were necessary for the completion of the original contract.

Table 8: Overview of FTS 004-13 Costs Incurred

Details	Cost of Works (€)
Cost of Works as per Original BoQ	163,115.00
Cost of Extra Quantities in Items as per Original BoQ	6,193.08
Cost of Variations Not Envisaged in the Original BoQ	7,887.85
Cost of Deductions made from the Original BoQ	(17,221.74)
Total Cost of Works	159,974.19
Cost of Additional Works	50,575.79
Final Cost of Works	210,549.98

2.1.25 In their reply, FTS explained that the additional works related to the formation of a ring road surrounding the school. The Foundation indicated that €46,323 covered Items already featuring in the original contract, while €4,253 covered Items not featuring in the original BoQ. FTS confirmed that the rates had been agreed to by the Contractor. Nonetheless, NAO questioned whether these additional works should have been considered as an extension of the original resurfacing works and why these were not included in the original design. FTS affirmed that the decision to construct the ring road was taken during project implementation; however, no explanation was provided by the Foundation as to why these works were not originally planned for at the design stage.

2.1.26 DoC granted the approval for additional works on 23 January 2014, on condition that the works were necessary, that the most cost-effective method was considered, and that funds were available. The third certificate for the final BoQ of €210,550, which is the summation of the previous works amounting to €159,947 and the additional works amounting to €50,576, was issued on 27 January 2014. Since there was no documentation of the award of these extra works to the Contractor, it could not be ruled out that approval for the variation of €50,576 for these additional works was sought after the works had initiated. The third payment was made on 17 February 2014 for €48,047 (€210,550 less five per cent retention and less the two previous payments made).

2.1.27 The schedule of works exceeded well beyond the four weeks stipulated in the tender document. The longer duration can be partly justified by the extension in the scope of works, with the incorporation of the formation and resurfacing of the ring road in the project. However, these additional works do not explain the delay in the execution of the original works contracted. No penalties were imposed on the Contractor for delays.

2.1.28 When queries were raised with FTS with respect to the non-imposition of delay charges, the Foundation claimed that delays were attributable to the asphaltting works, which were dependent upon the completion of other civil works that were being carried out by other contractors. NAO was unable to ascertain the veracity, or otherwise, of explanations put forward by FTS, as the documentation retained in file did not provide a clear account of the progress of the project.

FTS 056-13 – Tender for Resurfacing Works at the Police Academy, Ta' Kandja Using Environmentally Sound Construction Methods and Materials

2.1.29 The tender for re-surfacing works at the Ta' Kandja Police Academy was another of the tenders that met pre-defined criteria, with this case selected in light of its substantial variations from contract value to final cost in percentage terms. At €76,728, the total cost of works carried out was €23,429 over the original contract value of €53,299. Although this is not the largest variation in absolute terms, at 44 per cent over contract cost, this is the highest percentage variance registered in the FTS 2012-2013 project population. In terms of project management services provided, and contrary to all other cases reviewed, the Foundation's client with respect to tender FTS 056-13 was the Department of Police and not MEDE.

2.1.30 On 13 November 2013, FTS drew up a Tender Originators Form for re-surfacing works at the Police Academy at Ta' Kandja, using environmentally sound construction methods and materials. According to the Form, funds were available through bank facilities provided to FTS, which are financed through periodic government capital vote tranches. The cost of works was estimated at €62,225, and works were to be completed within four weeks. Tender specifications were drawn up based on GPP criteria and a copy of the Tender Originators Form was submitted to OPM as required. According to the detailed estimate of tender, works consisted of Preliminary and Preparatory Works (BoQ 1) and Roadworks (BoQ 2). The prior approval of the Minister MEDE and Chair FTS for the publication of this tender was duly obtained.

2.1.31 The call for tenders for the works in question was published in the Government Gazette on 19 November 2013. The closing date for the submission of offers was 3 December 2013. According to the tender document, the sole award criterion was price, and works were to be awarded to the lowest priced, compliant tenderer.

2.1.32 By the deadline, three offers were received, illustrated in terms of relevance and proximity to the original FTS estimate in Figure 2.

Figure 2: Overview of FTS 056-13 Tender Bids Submitted



Note: The tender bid depicted in grey was deemed technically non-compliant.

2.1.33 An Evaluation Committee was duly set up and all members on the Committee signed the required Declaration of Impartiality and Confidentiality. As specified in the tender document, bids were initially evaluated against an administrative compliance grid prior to the assessment of the technical component. According to the Evaluation Committee's report dated 16 December 2013, all bids received were found to be administratively compliant. One of the bids received, however, was deemed not to be technically compliant on the basis that:

- a. Although the tenderer submitted a list of past works carried out, all the works were of a different nature than those required in this tender; the proof of acceptance was therefore not acceptable.
- b. Technical literature for Item 1.1 – Mix Design Certificate of Combined Base/Wearing Course – was not acceptable since the tenderer failed to submit all the required literature.

2.1.34 The Evaluation Committee concluded that the cheapest compliant offer was that submitted by Philip Agius & Sons Ltd at the price of €53,299, and recommended that the tender be awarded to this Contractor. The evaluation report was referred for the approval of the DCC within MEDE. The DCC concurred with the recommendation of the Evaluation Committee although it recommended that an appeals period be granted in terms of Article 21 of the Public Contracts Regulations, 2010. All bidders were individually informed of the award decision and the Notice of Intent to Award Departmental Tenders was duly published by FTS on 2 January 2014. No objections were received within the five working days allowed for the lodgement of appeals.

2.1.35 On 10 January 2014, FTS issued the Letter of Acceptance to the Contractor for a total cost of €53,299. Works were to be completed within four weeks from the Order to Start Works. This was issued on 15 January 2014 and works were to commence on 22 January 2014. Works, therefore, had to be finalised by 19 February 2014.

2.1.36 A first and final payment certificate was drawn up by the FTS Architect coordinating the works. According to this payment certificate, works to the value of €76,728 were carried out, against a contract value of €53,299. This was, in fact, €23,429 over the contract amount. This difference was made up of increases and decreases in original quantities contracted and the inclusion of other Items not initially provided for in the contract. No changes in rates were noted.

2.1.37 According to the final payment certificate, extra quantities were incurred across a number of Items, all reproduced in Table 9.

Table 9: FTS 056-13 Itemisation of Extra Works Undertaken

Item	Description	Original Quantity	Certified Quantity	Rate (€)	Value of 'Extras' (€)
1.01	Excavation in loose material/soil up to rock level	60.00	189.49	9.37	1,213.32
1.02	Cast in situ reinforced concrete Grade C30	4.00	4.13	192.00	24.96
1.04	Construct external boundary wall	15.00	68.97	45.00	2,428.65
1.05	Extra over Item 1.04 for infill	15.00	46.62	25.00	790.50
1.06	Cast in situ reinforced concrete coping Grade C25	1.50	1.68	350.00	63.00
1.07	Render surface of external concrete blockwalls, beams, columns and lintels	40.00	158.93	14.25	1,694.75
1.08	Supply and apply two coats of approved smooth paint for external use	40.00	127.05	4.13	359.51
1.09	Supply and install precast concrete kerbs	30.00	79.70	17.75	882.18
2.01	Supply, transport, lay and compact sub-base material (Type A)	200.00	574.70	10.00	3,747.00
2.04	Supply, transport, lay and compact dense hot combined base/wearing course mixture	1,725.00	2,132.55	21.50	8,762.33
2.05	Rotary saw cutting	50.00	103.30	3.50	186.55
	Total				20,152.75

2.1.38 In addition to the extra Items listed in Table 9, a number of other Items were not included in the BoQ enclosed with the Letter of Acceptance; nonetheless, these Items were incorporated into the project of works (Table 10 refers).

Table 10: FTS 056-13 Items Not Included in Original BoQ

Item	Description	Certified Quantity	Rate (€)	Value (€)
3.01	Cast in situ concrete gutter Grade C20	48.60	9.75	473.85
3.02	Supply, transport and lay 1 x 110mm uPVC heavy duty pipe	3.00	29.60	88.80
3.03	Formation of 110mm uPVC heavy duty down pipe	1.00	113.41	113.41
3.04	Extra over for breaking into existing Manhole side wall	1.00	70.00	70.00
3.05	Supply and lay 100mm thick, in situ, C25 concrete mix in floor	163.49	17.95	2,934.65
3.06	Supply and lay A252 BRC Fabric Mesh	184.85	5.85	1,081.37
3.07	Oversite excavation in any type of ground	13.00	26.00	338.00
3.08	Penetration grade bitumen as joint sealant	103.30	2.95	304.74
3.09	Extra over Item 1.01 for transport and dumping	189.49	8.95	1,695.94
	Total			7,100.75

2.1.39 The above increases were partly mitigated by decreases in quantities in a number of Items, reproduced in Table 11 for ease of reference.

Table 11: FTS 056-13 Itemisation of Originally Planned Works Not Undertaken

Item	Description	Original Quantity	Certified Quantity	Rate (€)	Value of 'Unders' (€)
1.03	Supply and lay one layer, horizontal, bituminous based, fibre reinforced, Hi Load, 4mm minimum thickness, damp proof course	8.00	0	9.00	72.00
2.02	Supply, transport, lay and compact Type 1 granular base course material	600.00	383.26	14.70	3,186.08
2.03	Supply and spray tack coat	1,725.00	0	0.25	431.25
2.06	Extra over for working around and modifying projections	12.00	9.00	45.00	135.00
	Total				3,824.33

2.1.40 The total value of works carried out was, therefore, as presented in Table 12.

Table 12: Overview of FTS 056-13 Costs Incurred

Details	Cost (€)
Cost of works as per original BoQ	53,298.66
Cost of extra quantities in Items as per original BoQ	20,152.75
Cost of variations not envisaged in the original BoQ	7,100.75
Cost of deductions made from the original BoQ	(3,824.33)
Total cost of works	76,727.83

2.1.41 Of the final cost of works, the amount of €55,964 was settled on 5 June 2014. Written instructions circulated internally within FTS indicated that the approval of the Minister was to be sought for the difference between the value of contracted works and final cost. However, actual correspondence to this effect was not maintained in file and queries addressed to FTS for the provision of such documents remained unanswered.

2.1.42 From documentation made available in respect of these works, it was noted that:

- a. At €76,728, the total cost of works carried out was 44 per cent over the contract value. It is unclear whether this variance was due to additional works instigated by the Department of Police, or rather due to omissions in the original scope of works that were not taken into consideration when the original BoQs were drawn up by FTS. NAO considers it difficult to justify these variations on the basis that these could not be foreseen. Such a divergence from the original tender indicates a lack of proper project planning.
- b. From documentation made available it appears that FTS were requesting the Department of Police to refund some of the costs incurred in respect of extra works carried out. However, it was unclear what the justification for this request was and whether, in fact, such a refund was made.
- c. According to the Letter of Acceptance dated 10 January 2014, works were to be completed within four weeks from the Order to Start Works, which was 22 January 2014. Based on these dates, works therefore had to be carried out by 19 February 2014. However, it was noted that the final BoQ certifying completed works was dated 22 May 2014, representing a delay of over three months from the stipulated completion date. According to NAO's technical advisor, factoring in the time required to complete the extra works assigned to the Contractor would reduce the three-month delay by approximately three weeks, yet would not account for all of the delay. No documentation made available in connection with

this tender indicated the reason(s) for this considerable delay and whether delay charges were levied against the Contractor as per Clause 2.10 of the Contract. Comments in this regard were sought from FTS; however, no explanations were forthcoming.

- d. No prior certification that the rates for the additional Items were fair and reasonable was found. This was deemed essential since these Items were not included in the original BoQ and, therefore, rates for these had not been previously established and approved. NAO sought to independently verify the rates charged for these Items, and aside from Item 3.03, which was above going market prices, all other rates were deemed fair and reasonable.

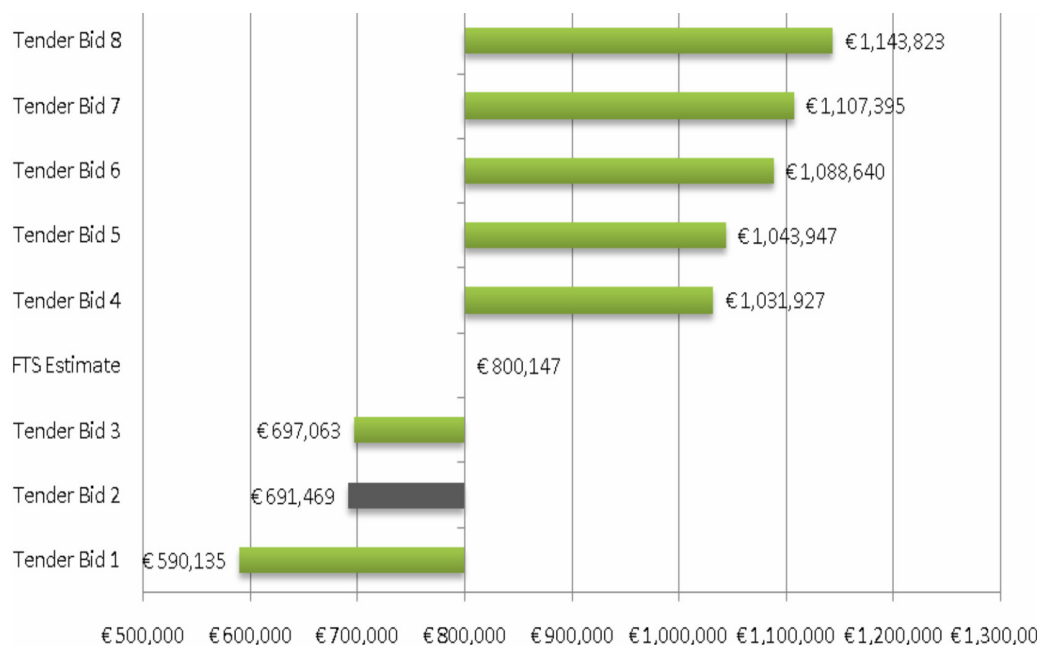
FTS C02-12 – Tender for the Construction of New Sports Facility on the Grounds of Maria Assumpta and Adelaide Cini Girls Secondary Schools, Hamrun

2.1.43 This contract was reviewed in view of the considerable value of extras and variations carried out on the project. Although the original contract value was that of €590,135 and the actual cost of works carried out amounted to €618,718, the value of extras and variations carried out was €241,394. Therefore, although in terms of absolute value variations amounted to just €28,583, or a reasonable five per cent over the original contract value, at €241,394 (or 41 per cent of contract value) the actual value of extra works undertaken and variations carried out was substantial. This is possibly indicative of major changes in project design, which may be attributable to weak project planning. Moreover, this amount of extras and variations did not include additional claims made by the Contractor for costs incurred for the period that works were suspended due to revisions in project design.

2.1.44 On 25 July 2012, a Tender Originators Form was raised for the construction of a new sports facility on the grounds of the Maria Assumpta and Adelaide Cini Girls Secondary Schools, in Hamrun. According to the Estimate of Works included in the Form, the estimated cost of the works was €800,147 and works were to be funded from Item 7035 – Construction/Upgrading Works and Equipment for Sports Facilities under the then Ministry of Education, Employment and Family (MEEF). Works were to be completed within 15 calendar weeks and comprised of preparatory and demolition works, concrete works, masonry and blockwork, as well as roofing, waterproofing and drainage works. An allocation of €14,000 was included for dayworks. The approval of Minister MEEF, Chair FTS, the DG at the Ministry of Finance, the Economy and Investment (MFEI) and the Accounting Officer at the Kunsill Malti għall-iSport was obtained. The draft tender was referred for the vetting of the DoC prior to publication. The relevant approval was granted on 7 August 2012. The draft tender was also referred to the GPP Officer within OPM in terms of DoC Circular 21/2011. Nonetheless, notwithstanding the fact that these works fell within the scope of the GPP criteria for construction-related procurement, such criteria were not mandatory and therefore not included in this tender.

2.1.45 The tender was published through the DoC on 17 August 2012 and the closing date for the submission of offers was 9 October 2012. The deadline for the request for clarifications was 24 September 2012 and the last date for the issue of clarifications was 3 October 2012. Offers were to be submitted as per the requirements of the open, one-package type tender. Clarifications were circulated among all prospective bidders as required by the pertinent contracts regulations. An Evaluation Committee was set up and duly approved by the DG (Contracts) on 25 September 2012. Declarations of Impartiality and Confidentiality were signed by all the members of the Committee.

Figure 3: Overview of FTS C02-12 Tender Bids Submitted



Note: The tender bid depicted in grey was deemed administratively non-compliant.

2.1.46 By the closing date, nine offers were received. Figure 3 provides an overview of the bids submitted to FTS in relation to the call for tenders.

2.1.47 All tender submission forms were appropriately completed and included the requisite signed tenderer's declaration and bid bond. Therefore, all offers proceeded to the next phase of the evaluation process.

2.1.48 Offers submitted were further assessed according to Administrative and Technical Evaluation grids to review compliance of each of the tenders with the requirements of the tender dossier. One of the offers was considered administratively non-compliant and therefore eliminated at this stage of the process. All the remaining eight offers conformed to the technical requirements, meeting the required specifications. Prices tendered ranged between €590,135 and €1,200,099, which were 74 per cent and 150 per cent of the original tender estimate of €800,147, respectively. The Evaluation Committee recommended that the tender be awarded to the lowest compliant bidder, namely Elbros Construction Ltd, for the price of €590,135, inclusive of all expenses that may be applicable. The contract was signed by the DG (Contracts) - on behalf of FTS - and the Contractor on 7 December 2012. As per Order to Start Works, works were to commence as from 17 December 2012 and had to be completed within fifteen calendar weeks as stipulated in the tender, that is end March 2013.

2.1.49 On 27 February 2013, the Contractor submitted a claim for an extension to the period of execution, citing the following reasons:

- a. On instructions of FTS, actual work on site commenced on 11 January 2014 due to some minor issues that FTS had with the former tenant of the site; this resulted in a delay of 25 days.
- b. Persistent rainy weather resulted in a 20-day delay to the programme of works; this claim was substantiated by detailed weather reports for mid-January to mid-February 2013. However, it is noted that the source of these reports was not indicated.

- c. Works on some areas of the site had to be put on hold as third party horses were still being kept in boarded areas within the site; this required a change in the logistics of the works and resulted in a further delay of six days.
- d. During the execution of works, undocumented drainage pipes were encountered. Since these were damaged, the Contractor was instructed to halt works until FTS could assess whether more services were in the construction site. This resulted in an 11-day delay.

2.1.50 In view of the above, the Contractor included an amended programme of works indicating the effects that these had on the progress of the works. The Contractor extended the completion date to 12 June 2013. It is noted that there was no other related correspondence in file to indicate the position taken by FTS with regard to the above claims and whether the Contractor's request for extension of time was totally or partially approved. When queried on the above request, FTS asserted that these claims were not approved; however, no supporting documentation evidencing FTS's stand was submitted to NAO.

2.1.51 On 10 April 2013, FTS instructed the Contractor to suspend works on site with immediate effect until further written instructions. Although no reasons for this were cited in the letter to the Contractor, other correspondence indicated that the Santa Venera Local Council and the Fireworks Committee had reservations with regard to the design of the ground and structural changes to the stand were recommended. The revised plans were approved by MEDE and work resumed on 30 April 2013. NAO queried whether such difficulties could have been foreseen; yet, according to FTS, the then Permanent Secretary MEDE only referred the matter to the Foundation after the Order to Start Works had been issued. The Foundation was, therefore, not in a position to anticipate such problems arising in this regard.

2.1.52 On 20 June 2013, the Contractor submitted a claim for losses incurred during the stand-by period since the Company was not in default of the notice to suspend works. The claim was for a total amount of €48,542 in respect of salaries and wages paid to the Construction Manager, the Foreman, three Heavy Plant Drivers, three Skilled Labourers and four Unskilled Labourers for 12 days. The claim also included apportioned costs in respect of heavy equipment on site, namely two hydraulic excavators and a bulldozer. No other correspondence was found to indicate whether FTS, fully or in part, endorsed this claim. When further clarifications regarding this matter were sought, FTS stated that the Contractor was not paid for this claim, as such payments would have featured under Dayworks. Notwithstanding explanations provided by FTS, this Office considers the absence of documentation indicating the outcome of this claim as a shortcoming on the part of the Foundation.

2.1.53 The Contractor was also requested to submit an estimate of costs for the temporary suspension of works due to "*feast fireworks on site*". Workings submitted on 16 July 2012 indicated eight days' salaries and wages in respect of personnel working on the project and nine days' charges for the plant on site. The total cost amounted to €29,644. No other correspondence was found to indicate whether, in this case, works were actually suspended. When further queries regarding the matter were made, FTS again stated, "*... it does not result ... that any payments were effected in lieu of this claim.*" However, no documentation substantiating this was forwarded and, therefore, NAO was unable to ascertain whether works were actually suspended, or otherwise.

2.1.54 Construction on the sports facility was completed on 24 September 2013. It was noted that, despite a revised completion date, there was still a considerable delay in the finalisation of works. Although this is partly explained by the several instances of suspension of works cited above, the delay cannot be wholly attributed to these breaks in execution. It was difficult for NAO to determine to what extent, bar the suspension period, the changes in project design affected the completion date. Requests to FTS for the factors that led to the delay in completion remained unanswered. No penalties for delay were imposed, and once again, FTS failed to furnish NAO with the reasons for the non-imposition of such charges.

Figure 4: FTS C02-12 Project Completion Timeline



Note 1: The requested extension to 12 June 2013 would be further extended to 3 July 2013 given FTS's suspension of works for a period of three weeks.

2.1.55 According to the final payment certificate drawn up by FTS's Architect in charge of the project, the total value of works carried out amounted to €618,718, against an original contract value of €590,135. In absolute values, variances on this project amounted to just €28,583 or five per cent over the contract value; however, the value of extras and variations carried out as indicated in the final payment certificate amounted to €241,394, or 41 per cent of contract value. A more detailed review of extra works undertaken and variations revealed that these are the result of substantial divergences between contracted and actual quantities in a number of Items. No changes in rates were noted and relevant VAT receipts were provided.

2.1.56 According to the final payment certificate, the 'extras' were incurred in the Items presented in Table 13.

Table 13: FTS C02-12 Itemisation of Extra Works Undertaken

Item	Description	Original Quantity	Certified Quantity	Rate (€)	Value of 'Extras' (€)
1.01	Oversite excavation of agricultural soil	16,000.00	26,763.73	0.96	10,333.18
1.05	Supply, spread and compact backfill material	16,000.00	21,311.00	2.05	10,887.55
1.06	Supply, spread and compact between foundation walls	15,000.00	15,741.00	2.05	1,519.05
2.02	Cast in situ Grade C20 concrete	800.00	872.95	9.74	710.53
2.04	Grade C25 concrete in reinforced ground slab	1,000.00	7,851.78	8.77	60,090.11
2.06	Grade C25 concrete in suspended in situ reinforced slab	900.00	911.59	16.63	192.74
2.08	Grade C30 concrete in cast in situ reinforced concrete spreaders	5.00	7.50	278.57	696.43
2.09a	Supply and lay in position high yield steel bar reinforcement	4,000.00	14,552.69	1.45	15,301.40
2.10a	Supply and lay in position steel mesh fabric Type A252	1,000.00	8,252.73	3.79	27,487.85
2.11a	Manufacture, supply, transport and lay precast prestressed hollow core slabs	130.00	564.93	69.79	30,353.76
3.05a	Supply and lay hollow concrete blockwork walls 175mm thick	400.00	460.94	13.85	844.02
3.05d	Supply and lay hollow concrete blockwork walls 460mm thick	1,000.00	2,928.94	30.74	59,295.62
3.06	Extra over item 3.05d for infill	300.00	1,387.74	9.68	10,529.32
3.07	Extra over item 3.05c for infill	400.00	431.75	9.68	307.34
4.02	Grade C25 concrete in 125mm thick unreinforced concrete roof screed	800.00	1,080.00	14.29	4,001.20
4.03	Supply, lay and torch-weld 4mm thick polyester reinforced waterproofing membrane	1,200.00	1,326.71	7.26	919.91
5.02c	Supply and fix horizontal heavy duty uPVC pipe 300 mm diameter	60.00	165.00	22.76	2,389.80
5.08a	Supply and fix horizontal heavy duty uPVC pipe 110mm diameter	60.00	296.00	4.94	1,165.84
5.08c	Supply and fix horizontal heavy duty uPVC pipe 200mm diameter	125.00	174.00	9.11	446.39
5.09	Extra for 100mm thick Grade C20 concrete surround to pipes	125.00	526.00	9.78	3,921.78
	Total				241,393.83

2.1.57 As stated earlier, despite the fact that the value of extra works undertaken amounted to €241,193, this was not reflected in an analogous increase in the final cost of works. This was mainly due to decreases in other Items that offset the additional cost of extras, presented in Table 14 for ease of reference.

Table 14: FTS C02-12 Itemisation of Originally Planned Works Not Undertaken

Item	Description	Original Quantity	Certified Quantity	Rate (€)	Value of 'Unders' (€)
1.02	Excavation of trench up to rock level	1,700.00	1,376.83	6.81	2,200.79
1.03	Excavation in rock for reservoir	1,000.00	800.00	9.35	1,870.00
1.04	Excavation in rock up to required levels	400.00	270.98	13.31	1,717.26
1.08	Supply and spray tack coat	8,000.00	0	0.19	1,520.00
1.09	Supply, transport, lay and compact course mixture 70 mm thick	8,000.00	0	12.46	99,680.00
2.01	Backfill between walls and rockface with lean mix concrete	250.00	133.38	28.73	3,350.49
2.03	Cast in situ reinforced concrete Grade C30	300.00	255.26	97.35	4,355.44
2.05	Extra over Item 2.04 for power float finish	200.00	0	0.66	132.00
2.07	Grade C30 concrete in cast in situ reinforced lintels	15.00	12.65	233.94	549.76
2.09b	Supply and lay in position high yield steel bar 8-12mm diameter	2,000.00	1,575.00	1.46	620.50
2.10b	Supply and lay in position steel mesh fabric Type B503 mesh	1,800.00	0	5.58	10,044.00
2.10c	Supply and lay in position steel mesh fabric Type C503 mesh	1,000.00	694.00	4.51	1,380.06
2.12	Supply and lay 1000 gauge uPVC sheeting	1,000.00	687.29	1.19	372.75
2.13	Supply, lay and spread 3/8" sand chippings under floor slab	1,000.00	525.95	2.42	1,147.20
2.14	Manufacture, supply, transport and lay precast reinforced concrete slabs 1000 x 500 x 125mm	220.00	0	26.77	5,889.40
3.01a	Supply and lay softstone masonry walls 230mm thick below dpc level	200.00	68.36	12.90	1,698.16
3.01b	Supply and lay softstone masonry walls 460mm thick below dpc level	200.00	111.05	25.79	2,294.02
3.01c	Supply and lay softstone masonry walls 690mm thick below dpc level	2,100.00	1,904.12	36.89	7,226.01
3.02	Supply and lay one layer fibre reinforced damp proof course along walls	550.00	95.83	7.26	3,297.27
3.03a	Supply and lay softstone masonry walls 175mm thick	50.00	0	13.96	698.00
3.03b	Supply and lay softstone masonry walls 230mm thick	100.00	0	16.31	1,631.00
3.03c	Supply and lay softstone masonry walls 380mm thick	50.00	0	27.92	1,396.00
3.03d	Supply and lay softstone masonry walls 500mm thick	800.00	0	32.60	26,080.00
3.04	Extra over softstone wall to prepare for fine pointing	1,000.00	0	5.49	5,490.00
3.05b	Supply and lay hollow concrete blockwork wall 230mm thick	600.00	250.67	15.38	5,372.70
3.05c	Supply and lay hollow concrete blockwork wall 380mm thick	200.00	0	27.69	5,538.00
3.08	Extra over softstone walls for the formation of a fascia	500.00	213.62	10.82	3,098.63
4.01	Supply, lay and spread 3/8" franka stone chippings roof screed	50.00	0	3.20	160.00
4.04	Construct 75mm x 75mm coved triangular fillet between edges of concrete roof screed and parapet walls	50.00	0	0.96	48.00
5.01	Excavation to form trenches for service ducts up to 2.0m high and 1.2m wide	500.00	246.48	14.95	3,790.12

5.02a	Supply and fix heavy duty uPVC pipe 200mm diameter	80.00	5.00	9.52	714.00
5.02b	Supply and fix heavy duty uPVC pipe 250mm diameter	240.00	120.00	15.23	1,827.60
5.03a	Supply and fix heavy duty uPVC pipe 150mm diameter	100.00	9.00	6.77	616.07
5.04	Construct 350mm x 350mm inspection boxes	10.00	8.00	50.72	101.44
5.05	Construct manholes, internal dimensions 600mm x 600mm x 600mm (rain water)	10.00	0	251.97	2,519.70
5.06	Supply and install 200mm x 200mm galvanized steel gratings	70.00	0	14.93	1,045.10
5.08b	Supply and fix heavy duty uPVC pipe 125mm	110.00	0	5.73	630.30
5.10	Construct manholes, internal dimensions 600mm x 600mm x 600mm (sewage)	10.00	6.00	251.97	1,007.88
5.11	Supply and install 100mm diameter gully trap	10.00	0	6.63	66.30
5.12	Break into, connect new drains and make good existing sewer manholes	1.00	0	553.25	553.25
	Sub-total				211,729.20
	Dayworks	14,000.00	12,919.00		1,081.00
	Total				212,810.20

2.1.58 The above changes in quantities are indicative of either initial poor project planning where works required were not clearly quantified, or the result of extensive changes in project design. Although documentation made available indicated that the stand was modified, it is doubtful that these modifications triggered the substantial variations (both over and under) listed above. According to FTS, these variations were partly attributable to MEDE's request to effect changes in the structural orientation of the stand. Unfortunately, the Foundation stated that it was not in a position to furnish a more detailed explanation as the FTS Project Leader responsible for the project was no longer employed with the Foundation.

2.1.59 On 11 June 2014, FTS contacted the Contractor regarding urgent repairs required on sewer works that were originally carried out as part of the above tender. The estimated cost of repairs was €8,000. The Contractor submitted a response on 17 June 2014, stating that the assigned Site Manager was not aware of the sewage pipes referred to by FTS. Requested to report on developments on the matter, FTS stated that the required works had since been carried out and the Foundation was coordinating with the Water Services Corporation regarding the settlement of dues.

2.1.60 Based on the information provided to NAO, payments for a total amount of €618,718 were made by FTS. The relative VAT receipts were issued by the Contractor.

FTS 017-13 – Tender for the Supply and Installation of Aluminium Works at Dun Ġużepp Xerri Primary School, St Julians

2.1.61 This contract was reviewed in view of the considerable volume, in percentage terms, of extras and variations carried out on the project. According to the original estimate drawn up, the total cost of works that were to be carried out under cover of this tender was €83,305. Notwithstanding this estimate, works were awarded to the cheapest compliant tenderer for €47,935. The final cost of certified works was €49,983, which was €2,048 over the contract value. Nonetheless, this contract accounted for the largest percentage of extra works and variations carried out.

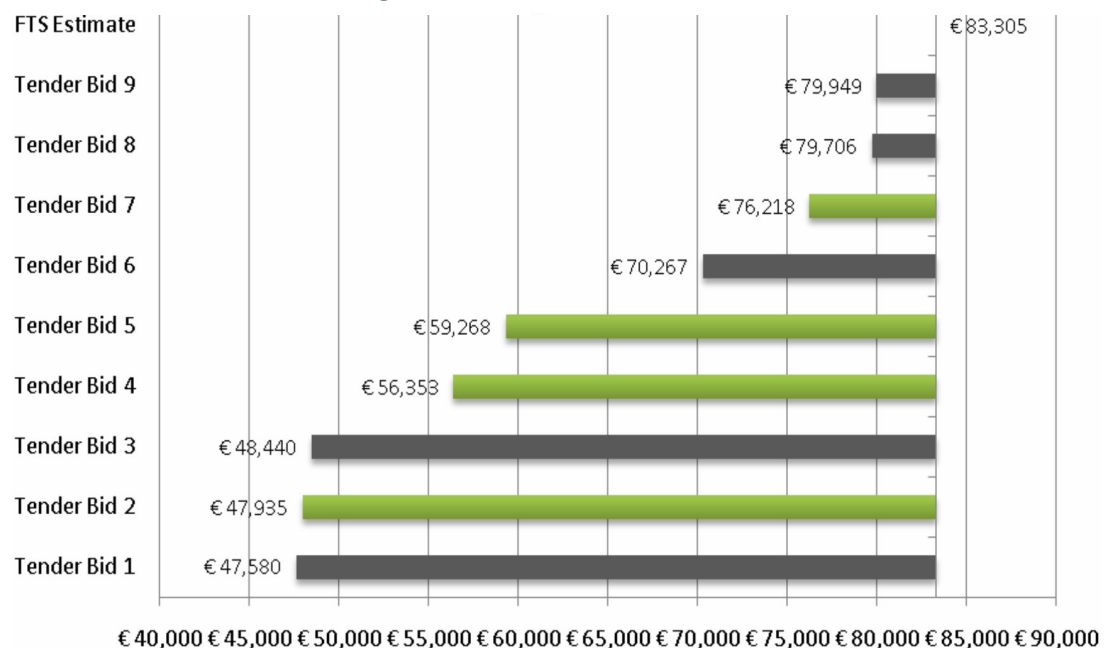
2.1.62 On 22 May 2013, a Tender Originators Form was raised by FTS indicating that a call for tenders for the supply and installation of aluminium works at Dun Ġużepp Xerri Primary School, St Julians was to be issued. Funding was available by means of banking facilities sanctioned to FTS, financed out of periodic government capital vote

tranches made to the Foundation. The cost of works was estimated at €83,305, and works had to be completed within six weeks. As indicated in the Tender Originators Form, specifications were not drawn up based on GPP criteria. Nevertheless, this was unessential since this tender did not fall within the scope of GPP. The call for tenders was duly authorised by Minister MEDE and Chair FTS.

2.1.63 According to the BoQ included in the tender document, external doors and windows of various dimensions and specifications were being procured as per drawings supplied. An advert for the works in question was published in the Government Gazette on 28 May 2013. The deadline for requests for additional information was 12 June 2013, and the last date on which any such information was to be issued was 14 June 2013. A clarification meeting and site visit for interested tenderers was to be held on 10 June 2013. The deadline for the submission of offers was 21 June 2013. As indicated in the tender document, the sole award criterion was price. The contract was to be awarded to the cheapest priced tender that satisfied the administrative and technical specifications set out in the tender document.

2.1.64 By the closing date for the submission of offers, nine bids were received. Prices ranged from the cheapest at €47,580 to the highest-priced bid at €79,949, as indicated in Figure 5.

Figure 5: Overview of FTS 017-13 Tender Bids Submitted



Note: Tender bids depicted in grey were deemed either administratively or technically non-compliant.

2.1.65 One of the bidders failed to fill in and sign Annex 2 (Occupational Health and Safety Declaration Waiver and Indemnity) of the tender and was requested to rectify this shortcoming against a penalty of €50. The bidder amended the required Annex and his offer was reintegrated in the process. An Evaluation Committee was duly set up and Declarations of Impartiality and Confidentiality were signed by all the members on the Committee.

2.1.66 According to the evaluation report dated 27 June 2013, the bids received were assessed against the administrative and technical criteria specified in the tender to determine compliance. One of the bids was deemed administratively non-compliant since no participation fee was enclosed with the offer and was disqualified at this stage of the evaluation process. The remaining eight bids were subsequently reviewed

from a technical perspective. However, four of the bids were deemed technically non-compliant on the basis that the tenderers failed to submit all the technical literature required. The remaining bids were technically compliant, and were listed according to price, that is, €47,935, €56,353, €59,268 and €76,218, respectively. The Evaluation Committee concluded that the cheapest administratively and technically compliant bid was that submitted by Calibre Industries Ltd at the price of €47,935. The Committee recommended the award of the tender to this Company.

2.1.67 A copy of the evaluation report was submitted to DCC within MEDE on 27 June 2013. On 10 July 2013, DCC endorsed the conclusion of the Evaluation Committee and approved the award of tender to the recommended bidder, Calibre Industries Ltd.

2.1.68 On 12 July 2013, FTS informed the bidders that the Notice of Intent to Award had been issued and that the tender was being awarded to the bidder who had submitted the lowest-priced bid satisfying requirements. Disqualified bidders were also informed of the reasons for their disqualification. The Letter of Acceptance was subsequently issued on 22 July 2013, after the lapse of the appeals period granted in terms of Article 21 of the Public Procurement Regulations. As per Order to Start Works dated 31 July 2013, works were to commence on 7 August 2013 and had to be completed within six calendar weeks, that is, by 18 September 2013. However, it was noted that the final BoQ certifying completed works was dated 3 April 2014. According to the final certification, the value of works carried out amounted to €49,983. Interim payments were made by FTS on 16 September 2013, 1 October 2013, 18 November 2013 and 10 April 2014 for the amounts of €29,245, €9,667, €4,260 and €4,312, respectively. The five per cent retention fee of €2,499 was unpaid. Relative invoices were duly issued by the Contractor.

2.1.69 NAO makes the following observations on the planning of the works in question and the subsequent execution of this contract:

- a. It is noted that the initial estimate of the cost of works drawn up by FTS was higher than the value of all the offers received. While FTS's estimate was €83,305, the offers received ranged between €47,580 and €79,949. The cheapest offer was in fact €35,725, or 43 per cent, less than the estimated cost. At €79,949, the highest offer received was still €3,356, or 4 per cent, cheaper than the original estimate. This raises significant doubts on the accuracy and reliability of the initial estimate as drawn up by FTS. It is to be noted that the tender was awarded to the tenderer who submitted the cheapest compliant bid of €47,935. This was €35,370, or 42 per cent, less than the original FTS estimate. When requested to comment on this disparity FTS acknowledged that it was conservative in the drawing up of the estimate and that it envisaged higher bids than those actually received.
- b. According to the Letter of Acceptance dated 22 July 2013, works were to be completed within six calendar weeks from the Order to Start Works, which was 7 August 2013. Based on these dates, works therefore had to be carried out by 18 September 2013. However, it was noted that the final BoQ certifying completed works was dated 3 April 2014, representing a delay of over six months from the stipulated completion date. No documentation made available in connection with this tender indicated the reason(s) for this considerable delay. When comments in this regard were sought from FTS, it was stated that the Project Leader in charge of these works was no longer employed with the Foundation; however, issues with the Head of School hindered the progress of the works resulting in inevitable delays. Notwithstanding the reason provided by FTS, in NAO's view, the explanation provided does not justify the six-month delay.

- c. Article 21 of the General Conditions of Contract stipulated that, “... if the work is not completed and delivered within the time specified in the contract, the Contractor shall be liable to a penalty of €200 per day up to the day on which the work is delivered.” However, notwithstanding this proviso, the same Article also stipulated that “... Government may remit such penalty, wholly or in part, if it is satisfied that the delay could not have been avoided ...”. Again, documentation made available to NAO did not indicate whether delay charges were levied. Requested to give the reasons for the levy/waiver of such charges, FTS stated that no delay charges were imposed, indicating that the issues cited in (b) were contributing factors for this decision.
- d. It was noted that quantities as per final BoQ for a number of Items differed from those stipulated in the Letter of Acceptance. However, no changes in rates were effected. Variations in quantities, both over and under, were made in the Items presented in Table 15.

Table 15: Item-based Analysis of Variations in FTS 017-13

Item	Description	Original Quantity	Quantity Billed	Rate (€)	Value of 'Extras' (€)	Value of 'Unders' (€)
1.03	Single leaf door glazed panel Type D3	3.00	22.00	270.00	5,130.00	
1.06	Extra over sum for door stoppers and door stays for all doors	6.00	25.00	5.00	95.00	
1.07	Extra over sum for heavy duty hydraulic door closure	2.00	0	50.00		(100.00)
1.08	Extra for "Emergency Panic" lock bolt	2.00	0	160.00		(320.00)
2.01	Sliding aluminium window Type W2	15.00	7.00	130.00		(1,170.00)
2.03	Sliding aluminium window Type W10	10.00	2.00	188.00		(1,504.00)
2.04	Sliding aluminium window Type W3	5.00	2.00	192.00		(576.00)
2.05	Sliding aluminium window Type W4	6.00	5.00	245.00		(245.00)
2.07	Sliding aluminium window Type W8	6.00	2.00	253.00		(1,012.00)
2.12	Dismantling and disposal of existing apertures	125.00	100.00	10.00		(250.00)
V1	Extra over item W7	0	20.00	100.00	2,000.00	
Sub-total					7,225.00	(5,177.00)
Aggregate Value					12,402.00	
Net Value of Variations					2,048.00	

2.1.70 The aggregate value of extras and variations, including both over and under Items, was €12,402. This represents a 26 per cent variance against the contract value of €47,935. However, in the detailed list of contracts for 2012 and 2013 initially provided by FTS, the value of extras and variations related to this contract was indicated as €27,818. This would have increased the percentage of extras and variations to 58 per cent of the contract value, making this the contract with the highest percentage of such extras and variations. This percentage value was the basis of NAO's selection of contracts on a pre-determined criterion, in this case the contract with the highest percentage variances. However, a detailed review of the documentation made available in connection with these works, particularly the Letter of Acceptance and the final BoQ, indicated that, in actual fact, the aggregate value of extras and variations was €12,402 and not €27,818. Clarifications in this regard were sought from FTS; however, no explanations were provided.

DO 01-08-13 – Painting of the Playground at St Clare's College, Pembroke (former Sir Adrian Dingli Girls' Junior Lyceum)

2.1.71 These works were reviewed in consideration of the fact that the value of these works were the highest awarded by means of direct contract.

2.1.72 Following enquiries made by FTS, on 23 August 2013, the Koperattiva Tabelli u Sinjali tat-Traffiku submitted a quotation for the painting and signage of the playground at St Clare's College, Pembroke. Prices were given for the basketball, volleyball, netball, handball and tennis pitches, discus, shot, long jump and track lines as well as the remaining outdoor area. Details of quantities required and unit prices were given. The quotation, for a total of €42,387, also specified ordering and payment terms that included a 35 per cent non-refundable deposit and a three per cent interest charge if the balance was not paid within a month of delivery/execution of works.

2.1.73 On 26 August 2013, FTS sought the approval of the MFIN for the placing of a direct order with the Koperattiva, citing urgency and the new requirements of the school following its conversion to a 'mixed' school for the Foundation's resort to a direct contract. FTS further stated that the request was being made on a one-time basis and had been certified as fair and reasonable by one of the Foundation's architects. MFIN queried the nature of the works involved since the price quoted by the Koperattiva was considered to be "on the high side." To this end, the Direct Orders Section within MFIN requested that FTS provide confirmation, by an architect, that the quoted price was equitable. Further details were provided by an FTS Architect, indicating that special, solvent-based, rough, acrylic paint – similar to that used for road markings – would be used for the sport grounds. Moreover, more than one coat of paint was to be applied. In view of these considerations, an FTS Architect certified that the price quoted by the Koperattiva was fair and reasonable. Following these clarifications, on 28 August 2013, MFIN granted approval for the placing of a direct contract on condition that:

- a. funds are available;
- b. FTS ensures that the painting services are actually and unavoidably required;
- c. FTS is satisfied that the cost is fair and reasonable and that the best value for money is being attained, with the costs being incurred justifying the inputs involved;
- d. the amount of €42,387 inclusive of VAT is in no way exceeded; and
- e. the related works are provided on time and the final payment is effected following completion of services satisfactory to FTS in all respects.

2.1.74 Furthermore, FTS was to ensure that the award of the direct contract was published in the Government Gazette in terms of Regulation 20(2) of the Public Procurement Regulations and in accordance with the instructions issued through MFEI Circular 11/2011. The relative Letter of Acceptance was issued by FTS to the Koperattiva on 28 August 2013.

2.1.75 In view of concerns raised by MFIN with regard to the cost of works, NAO sought to establish whether the rates quoted were fair and reasonable. According to advice sought by this Office, rates for such works ordinarily vary from €5.90/m² to €6.20/m², depending on the absorbance of the type of surface upon which the paint is applied. In this case, the quoted rate was within these parameters.

2.1.76 On the basis of documentation reviewed, works commenced on 17 September 2013 and were completed on 20 September 2013. Certification of the completed works was provided by the assigned FTS Project Leader, following which, payment was effected. The relevant VAT receipts issued by the Contractor were retained in file.

2.1.77 The following observations with regard to this direct contract were noted by NAO:

- a. Despite the considerable cost of the works in question, only one quotation from one single contractor was sought by FTS. According to FTS, works had to be

carried out within a short timeframe given that the school was a pilot project for co-education. Moreover, the Koperattiva had intimated the willingness to finish the works in the restricted time available. Notwithstanding the short timeframe envisaged, NAO maintains that other quotations could have been sourced simultaneously, thereby ensuring that no unnecessary delays would impact on the completion of the required works.

- b. Without going into the merits of this particular case, urgency is often cited as grounds to bypass open tendering procedures that, admittedly, can be more cumbersome and time consuming. Nonetheless, direct contracts should only be resorted to in genuine instances that warrant the foregoing of more open, fair and transparent procurement procedures.

2.2 Cases Selected on the Basis of Frequency of Award to Same Contractor

2.2.1 The second category of cases selected for review was identified on the basis of frequency of award to the same contractor. Based on this criterion, NAO reviewed seven contracts awarded to Central Power Installations Ltd, the Contractor awarded the most tenders from the FTS project population for 2012-2013, and accounting for an aggregate contract value of €245,523. In this case, NAO sought to ascertain that the award was justifiable and consistent with procurement regulations. This Office also considered the value of variations incurred in these contracts to ascertain whether the value of offers made by this Contractor were consistently/intentionally kept low only to be recovered through variations. Table 16 provides an overview of the seven contracts awarded by FTS to the Contractor, presenting the estimated cost, contract value and final cost of each.

Table 16: Overview of Costs with respect to Cases Selected on the basis of Frequency of Award

Tender	Estimated Cost (€)	Contract Value (€)	Final Cost (€)
FTS 061-12 – Tender for the Supply and Installation of Mechanical and Electrical Services at the Child Care Centre, San Ġwann (Madonna tal-Mensija)	66,723	52,025	53,562
FTS 001-13 – Tender for the Supply, Delivery and Commissioning of a Ventilation System at the Hall of the Customer Care Unit, Education Directorate, Floriana ¹	8,823	7,643	n/a
FTS 005-13 – Tender for the Supply and Installation of Mechanical and Electrical Services for the New Classrooms at Lily of the Valley Girls' Secondary School, Mosta	41,144	32,763	30,871
FTS 046-13 – Supply and Installation of Air-Conditioning System at the Education Department, Level 2, Floriana	57,330	55,979	55,979
FTS 047-13 – Tender for the Supply and Installation of Mechanical and Electrical Services at the Education Department, Level 2, Floriana ²	84,327	65,655	46,458
FTS 052-13 – Tender for the Supply and Installation of a Centralised Variable Refrigerant Flow Air-Conditioning System at the Foundation for Tomorrow's Schools Offices, Pembroke	29,188	25,958	25,840
DO 01-07-13 – Repairs of Electrical Installation inside the Switchroom at the Girls' Secondary School, Zejtun ³	n/a	5,500	5,500
Total	287,535	245,523	218,210

Notes:

1. Works in relation to FTS 001-13 have not yet been finalised and therefore, no record of the final cost was made available to NAO.
2. FTS 047-13 related works have not yet been completed and the final cost of €46,458 is in fact the amount that has been paid to date. Further payments in this respect are due.
3. The estimated total cost does not take into account DO 01-07-13, for no record of such an estimate being devised by FTS was provided to this Office.

2.2.2 On the basis of documentation reviewed, the award of these seven contracts adhered to the stipulated procurement procedures. In three of the tenders, the Contractor submitted the cheapest offer. However, in the case of three other tenders, all lower-priced bids were deemed administratively or technically non-compliant. The remaining contract reviewed was awarded by means of a direct contract.

FTS 061-12 – Tender for the Supply and Installation of Mechanical and Electrical Services at the Child Care Centre, San Ġwann (Madonna tal-Mensija)

2.2.3 On 27 November 2012, FTS published a tender for the supply and installation of mechanical and electrical services at a childcare centre situated in San Ġwann (Madonna tal-Mensija). According to the estimate of works, drafted by the assigned FTS Project Leader, the estimated cost of works was €66,723, with a forecasted completion period of six weeks. Authorisation to publish a call for this tender was only granted by Chair FTS on 26 November 2012, despite instructions to the Department of Information (DOI) for the publication of the tender being sent on 23 November 2012. The instructions to DOI were also sent prior to obtaining the acknowledgment from the GPP Office (received on 28 November 2012) that the tender fell out of the GPP scope.

2.2.4 By 17 December 2012, the closing date for the submission of offers, three bids were received. All bids received were originally lower than the FTS estimate; however, following checking for arithmetical correctness, the relativity of bids received to the estimate was revised as indicated in Figure 6.

Figure 6: Overview of FTS 061-12 Tender Bids Submitted



2.2.5 Administrative compliance was ascertained by the Evaluation Committee Chair, who deemed all three bids to be administratively compliant. On the other hand, the technical compliance of all three tender bids was established by the assigned Project Leader and recorded in the Technical Evaluation Grid. The Evaluation Committee, duly supported these evaluations in the Evaluation Report, dated 18 December 2012. The three Evaluators (the Chair and two other members), the Secretary, as well as the

Project Leader signed a Declaration of Impartiality and Confidentiality. The Evaluation Committee selected the cheapest offer, which was that submitted by Central Power Installations Ltd at €52,025.

- 2.2.6 The file was forwarded to the Support Services Division at MEDE for the referral to the DCC on 20 December 2012. Approval of the DCC for the award of the tender to Central Power Installations Ltd was sourced on 28 December 2012.
- 2.2.7 All the bidders were informed of the Notice of Intent to Award Departmental Tenders, and none of the bidders lodged a complaint or appealed the decision arrived at by the FTS Evaluation Committee and published in the Notice of Intent to Award Departmental Tenders published on 2 January 2013.
- 2.2.8 On 10 January 2013, FTS issued the Letter of Acceptance to Central Power Installations Ltd. The Order to Start Works was issued on 16 January 2013 and works were to commence on 23 January 2013 and be finalised within a period of six weeks, that is, by 6 March 2013. Works were not completed within the stipulated deadline, as on 2 April 2013, FTS submitted instructions to its bank for the extension of the validity of the corresponding bank guarantee from 10 April 2013 to 10 July 2013. However, documents retained in file indicate that the project was completed shortly thereafter, that is, the final payment was effected on 18 April 2013.
- 2.2.9 The total amount billed was €53,562, implying a variation of €1,537 over the contracted value of €52,025. In absolute terms, the €1,537 is negligible, and only equivalent to a three per cent variation over the contracted amount. However, detailed analysis of the items billed revealed more extensive changes to the quantities originally contracted. Reductions in terms of quantities billed with respect to certain Items amounted to €3,254, while additional quantities relating to other Items amounted to €4,791.
- 2.2.10 The review of rates by NAO's technical advisor indicated that while many of the rates were fair and reasonable, with some actually cheaper than the average cited in the open market, certain Items were considerably higher than the going rates.
- 2.2.11 When queries were raised with FTS, the Foundation claimed that since the value of variations were below the five per cent threshold, no further explanations were sought at the time. Notwithstanding the explanation provided, NAO maintains reservations as to whether FTS appropriately planned the works that were to be undertaken as part of this project, particularly in view of the notable variations in terms of the Items.

FTS 001-13 – Tender for the Supply, Delivery and Commissioning of a Ventilation System at the Hall of the Customer Care Unit, Education Directorate, Floriana

- 2.2.12 A Tender Originators Form for the supply, delivery and commissioning of a ventilation system intended for the Customer Care Unit within the Education Directorate was raised on 22 April 2013. The FTS Project Leader estimated that the tender would cost approximately €8,823, with an allowance of six weeks for the completion of works. Further to the approvals obtained from Chair FTS and the GPP Office on 22 April 2013 and 14 May 2013 respectively, the Foundation published the tender notice corresponding to this project on 17 May 2013. Potential bidders were informed that sealed tenders would be received up to 12 June 2013.
- 2.2.13 By the tender closing date, two bids had been submitted. The appointed Evaluation Committee was composed of a Chair and two Evaluators, who all signed a Declaration of Impartiality and Confidentiality. The designated Project Leader also signed such

Declaration. Figure 7 provides an overview of the bids submitted with respect to this call for tenders.

Figure 7: Overview of FTS 001-13 Tender Bids Submitted



2.2.14 An Administrative Compliance Grid was drawn up and signed by the Evaluation Committee Chair. Both bids received were certified as administratively compliant and therefore qualified for the subsequent technical evaluation. The Project Leader's technical evaluation denoted that the bids submitted were also technically compliant. In the evaluation of the winning bidder's experience as a contractor, the Project Leader stated that this bidder had already performed similar works to FTS's satisfaction. In this case, the Technical Evaluation Grid was only signed by the Project Leader.

2.2.15 An Evaluation Report based on the above information was subsequently submitted to the MEDE DCC on 20 June 2013. The FTS Evaluation Committee recommended that the tender be awarded to the cheapest compliant bid, that is, that submitted by Central Power Installations Ltd, at €7,643. The DCC found no objection with respect to the evaluation carried out by the FTS Committee and approved the relevant award of tender.

2.2.16 FTS published its Notice of Intent to Award this tender on 1 July 2013, informing all bidders in the process. The tender was subsequently awarded on 9 July 2013, with no objections submitted in the interim period. According to the Order to Start Works, the Contractor was to commence works on 23 July 2013. These works had to be completed within a period of six weeks as stipulated in the tender, that is, by 3 September 2013.

2.2.17 Although works were to be completed by the first week of September 2013, NAO noted that no works seemed to have been completed after approximately a lapse of one year. The only documentation retrieved following the Order to Start Works consisted solely of extensions of the bank guarantee. No indication of any completed work was found in the documentation provided to NAO. The original bank guarantee, which expired on 10 October 2013, was extended to 10 January 2013, then to 10 April 2014, and finally to 10 July 2014. Furthermore, no evidence was found indicating the imposition of penalties or delay charges being levied at the Contractor by the Foundation. As at end September 2014, no other documentation was forthcoming despite requests made to FTS.

FTS 005-13 – Tender for the Supply and Installation of Mechanical and Electrical Services for the New Classrooms at Lily of the Valley Girls’ Secondary School, Mosta

2.2.18 A Tender Originators Form for the supply and installation of mechanical and electrical services at Lily of the Valley GSS was raised on 15 May 2013. The value of the contract, based on a BoQ drawn up by the assigned FTS Project Leader, was estimated at €41,444. The Project Leader also estimated that works would be completed within six weeks. The approval of Minister MEDE and Chair FTS for the publication of this tender was obtained on 17 May 2013. FTS also contacted the GPP Office and solicited its opinion with respect to this tender, with the latter reverting on 22 May 2013, stating that FTS could proceed with the publication as far as GPP was concerned. As per FTS instructions issued to DOI on this same date, the tender was published on the Government Gazette dated 24 May 2013. Potential bidders were informed that sealed tenders would be received up to 17 June 2013.

2.2.19 Three queries were raised by two of the prospective bidders, which were addressed by FTS through the publication and circulation of clarification notes. NAO noted that one of the queries raised related to the guarantee period of a water heater, which was stipulated at 15 years. The prospective bidder seeking clarification on this asked if the guarantee period should read five years, as per normal practice. In an internal FTS communication thread, it was established that the guarantee period was to be amended to read five years. However, in the clarification note corresponding to this query, FTS left this guarantee period at 15 years.

2.2.20 By the tender closing date, seven bids had been submitted. An Evaluation Committee was appointed and was composed of a Chair, Secretary and three Evaluators. All members of the Evaluation Committee, the Secretary and the designated Project Leader signed the Declaration of Impartiality and Confidentiality. Figure 8 provides an overview of the bids submitted with respect to this call for tenders relative to the FTS cost estimate.

Figure 8: Overview of FTS 005-13 Tender Bids Submitted



Note: Tender bids depicted in grey were deemed technically non-compliant.

- 2.2.21 An Administrative Compliance Grid was compiled and signed by the Evaluation Committee Chair on 17 June 2013, at which point all bids were deemed administratively compliant. Following the ascertainment of administrative compliance, the Evaluators proceeded with the compilation of a Technical Evaluation Grid. The three Evaluators were consistent in their submissions, all dated 25 June 2013, observing that six of the bids were technically non-compliant, while one was technically compliant.
- 2.2.22 A day later, that is, on 26 June 2013, the FTS Project Leader submitted the Technical Evaluation Report for the Evaluation Committee's consideration. Once again, the Technical Evaluation Report was consistent with the aforementioned Technical Evaluation Grid submissions, with all the bids, except for one, deemed technically non-compliant. The Technical Evaluation Report provided further detail in this respect, with the basis for the reported technical non-compliance attributed either to the failure to submit the required technical literature, or due to non-conformity with established technical specifications, or a combination of both.
- 2.2.23 An Evaluation Report based on the above information and similarly dated 26 June 2013 was drawn up and submitted to the MEDE DCC for its review. The Report detailed the reasons put forward by FTS with regard to the technical non-compliance of the six tender bids. The FTS Evaluation Committee recommended that the tender be awarded to the second cheapest and only compliant bid, that is, Tender Bid 2 (Figure 9 refers), submitted by Central Power Installations Ltd, at the quoted price of €32,763. The DCC approved the Evaluation Committee's recommendation to award the tender to the only remaining administratively and technically compliant bid.
- 2.2.24 NAO verified the technical basis upon which these six bids were considered technically non-compliant and was of the opinion that all exclusions were justified, as bidders failed to either submit all the literature that had been requested, or submitted literature that indicated that Items proposed were not according to specifications.
- 2.2.25 FTS subsequently published its Notice of Intent to Award this tender on 9 July 2013, informing all bidders in the process and detailing the reasons corresponding to their technical non-compliance, where applicable. The tender was awarded on 17 July 2013, with no objections submitted in the interim period. As per the Order to Start Works, the project was to commence on 22 August 2013 and had to be completed within a period of six weeks as stipulated in the tender, that is, by 3 October 2013.
- 2.2.26 Although works were to be completed by the first week of October 2013, the final payment certificate was dated 29 October 2013. Documentation relating to and accounting for the minor delays incurred was noted in the first payment certificate, where the Project Leader stated that some of the works were unforeseen due to demolition works that had to be executed for connection points between the old and new parts of the school. In this note, the Project Leader also stated that, as a result, additional quantities had to be included in the actual BoQ. NAO considers this as a shortcoming that could have been avoided had the necessary pre-tender planning been undertaken with more attention.
- 2.2.27 According to the final payment certificate drawn up by the FTS Project Leader, the total value of works carried out amounted to €30,871, against an original contract value of €32,763. In terms of absolute values, variances on this project amounted to €1,892, or the equivalent of six per cent, under the contract value; however, the value of extras and variations carried out as indicated in the final payment certificate amounted to €5,947, the equivalent of 19 per cent of the contract value. A more

detailed review of extra works undertaken and variations revealed that these are the result of a number of divergences between contracted and actual quantities. No changes in rates were noted.

2.2.28 According to the final payment certificate, the 'extras' were incurred in the following Items (Table 17 refers):

Table 17: FTS 005-13 Itemisation of Extra Works Undertaken

		Quantity	Quantity		'Extras' (€)
1.00.1	1 Light points on one switch	2.00	6.00	30.00	120.00
1.00.2	2 Light points on one switch	1.00	2.00	50.00	50.00
1.00.3	5 Light points on one switch	1.00	2.00	100.00	100.00
1.00.5	8 Light points on one switch	2.00	4.00	170.00	340.00
1.00.8	8 Light points on two 2-way switches and one intermediate switch	1.00	2.00	200.00	200.00
1.02.1	Double switched socket outlets 13A	71.00	87.00	30.00	480.00
1.03.2	Supply and fix 100x50mm uPVC trunking including covers, corners and edges above soffit level for electrical power and lighting circuits according to drawings and specifications	125.00	277.00	9.00	1,368.00
2.01.4	Supply and install in trunking UTP Cat5e cable between DATA point and patch panel	1,120.00	1,299.00	0.80	143.20
2.01.5	Supply and install in classroom, conduit 25mm chased in wall connecting a 3x3 box at each end, one at high level above interactive screen level and one near datapoint, as per drawings	7.00	52.00	30.00	1,350.00
2.01.7	Supply and install in IT cabinet, 1U – 1UTP Patch Panel x 24 way and 1U cable management	1.00	2.00	45.00	45.00
3.04.2	15mm pipe system fixed direct	25.00	28.00	2.00	6.00
3.04.3	15mm pipe system chased in wall	75.00	77.00	4.00	8.00
3.04.5	Isolating valve 22mm	2.00	8.00	20.00	120.00
3.04.6	Isolating valve 15mm	2.00	4.00	20.00	40.00
3.04.7	Chrome plated angle valves ½ inch BSP	12.00	16.00	3.00	12.00
3.06.1	Supply and fix barrel-type buffer tanks 500 ltrs in white or light-cream HDPE sanitised, food-grade plastic complete with all associated pipework, headers, valving, pipework and connections according to drawings and specification. Rate to include transport and crantage	1.00	3.00	190.00	380.00
3.06.2	Supply and fix in buffer tanks ball float valve ½ inch, all brass body and plastic float	1.00	3.00	25.00	50.00
V.01.1	2 electricians x 8 hours at €17 per hour	0	16.00	17.00	272.00
	One plumber x 4 hours at €17 per hour	0	4.00	17.00	68.00
	One assistant to plumber x 6 hours €15	0	6.00	15.00	90.00
V.03.1	Upgrade of barrel-type buffer tanks 500 litres to 1,000 litres in Item 3.06.1	0	3.00	135.00	405.00
V.04.1	Connect new drains systems to existing in riser shafts consisting of 110mm diameter uPVC drain pipes including the assembling of temporary, safe and certified steel scaffolding system and disassembling	0	2.00	150.00	300.00
	Total				5,947.20

2.2.29 As stated earlier, despite the fact that the value of extra works undertaken amounted to €5,947, this was not reflected in a corresponding increase in the final cost of works. This was mainly due to equivalent decreases in other Items that offset the additional cost of extras, as delineated in Table 18:

Table 18: FTS 005-13 Itemisation of Originally Planned Works Not Undertaken

Item	Description	Original Quantity	Certified Quantity	Rate (€)	Value of 'Unders' (€)
1.00.10	Phase wire 1.5mm ² on each emergency light unit inverter connection	13.00	12.00	18.00	18.00
1.00.11	One ceiling fan point control by and including one fan speed controller	20.00	13.00	30.00	210.00
1.01.1	Switch one gang one way	11.00	10.00	3.75	3.75
1.03.1	Supply and install uPVC cable management trunking for power circuits above bench level including back-plates, corners, end-plates and covers according to drawings and specifications	35.00	11.00	10.00	240.00
1.05.1	Supply and lay in high-level PVC trunking bunch of single cores to energise distribution board - 16mm ²	65.00	45.00	11.00	220.00
1.06.1	Supply and fix Type A luminaires	55.00	36.00	86.00	1,634.00
1.06.2	Supply and fix Type AE luminaires	11.00	6.00	136.36	681.80
1.06.3	Supply and fix Type B luminaires	49.00	15.00	44.00	1,496.00
1.06.4	Supply and fix Type BE luminaires	10.00	3.00	95.00	665.00
1.06.9	Supply and install ceiling mounted fan as specified	20.00	16.00	75.00	300.00
2.01.3	Supply and install in trunking and conduit UTP Cat5e cable between telephone points	690.00	410.00	0.80	224.00
2.01.6	Supply wall-hung type, telephone set and connect to RJ45 socket outlets including telephone patch leads	11.00	0	50.00	550.00
2.01.9	Supply and install in IT cabinet 4 port fibre optic tray with full accessories	2.00	0	80.00	160.00
2.01.11	2 M – 50/125 fibre optic patch leads grey colour	2.00	0	15.00	30.00
2.01.15	Splice and connect all 4 pairs of optic fibre cable	8.00	0	53.00	424.00
2.01.16	Test and certify all fibre optic cable connections in fibre optic trays both sides and submit certification document as PDF format and printed hard copy	8.00	0	29.00	232.00
2.05.1	Supply and fix 100 x 50mm uPVC trunking including covers, corners and edges above soffit level for Extra Low Voltage Systems according to drawings and specifications	155.00	115.00	0	0
2.05.2	Supply and lay fibre optic cable 4 pair (8 core) 50/125um multimode strands and as specified, for data network, in uPVC sleeves above soffit level in corridors	145.00	0	0	0
3.04.1	22mm pipe system fixed to blockwork	450.00	428.00	3.50	77.00
3.05.1	Gulley 110mm	2.00	1.00	6.50	6.50
3.05.2	uPVC pipe 110mm buried in ground	12.00	11.00	10.00	10.00
3.05.3	uPVC pipe 110mm fixed to blockwork	27.00	26.00	18.00	18.00
3.05.4	uPVC pipe 50mm buried in ground	26.00	25.00	4.00	4.00
3.05.6	150mm x 150mm x 50mm floor drain	2.00	1.00	35.00	35.00
3.06.5	Supply and install, above soffit level, extraction system including in-line fan in cluster toilet	1.00	0	600.00	600.00
	Total				7,839.05

2.2.30 To NAO, the above changes in quantities are indicative of poor project planning, with the required works not clearly identified or quantified. Finally, NAO also noted that the relevant invoices or VAT receipts were not found in file.

FTS 046-13 – Supply and Installation of Air-Conditioning System at the Education Department, Level 2, Floriana

2.2.31 On 24 July 2013, a Tender Originators Form was raised for the supply and installation of an air-conditioning system at the Education Department in Floriana. The estimated value of the contract, based on a BoQ prepared by the designated project leader, was that of €57,330. Works were to be completed in an estimated six-week period. The approvals of Minister MEDE and Chair FTS were also obtained on 24 July 2013. As per FTS instructions issued to DOI on this same date, the tender was published on the Government Gazette dated 26 July 2013. Potential bidders were informed that sealed tenders would be received up to 10am on 9 August 2013.

2.2.32 The two queries raised by one of the prospective bidders were addressed by FTS through the publication and circulation of clarification notes. By the tender closing date, seven bids had been submitted. An Evaluation Committee was appointed and was composed of a Chair, Secretary and three Evaluators. All members of the Evaluation Committee, the Secretary and the designated Project Leader signed the Declaration of Impartiality and Confidentiality. Figure 9 provides an overview of the bids submitted with respect to this call for tenders.

Figure 9: Overview of FTS 046-13 Tender Bids Submitted



Note: Tender bids depicted in grey were deemed either administratively or technically non-compliant.

2.2.33 An Administrative Compliance Grid was compiled and signed by the Evaluation Committee Chair. One bid (Tender Bid 3) was deemed to be administratively non-compliant due to an incompletely filled tender form. NAO verified the source document, and on the basis of information retained in the FTS file, confirmed that sub-parts A and B of the Tender Form were incomplete.

2.2.34 On the other hand, a Technical Report was drafted by the assigned Project Leader, while technical compliance was addressed in the Technical Evaluation Grid signed by the Evaluation Committee Evaluators and the Project Leader. Two bids, that is, Tender Bid 1 and Tender Bid 2 were deemed technically non-compliant. NAO verified the

technical basis upon which these two bids were considered technically non-compliant and was of the opinion that the reasons for elimination were justified, with Tender Bid 1 not including all the required technical literature, and Tender Bid 2 offering equipment that was not according to specifications.

- 2.2.35 An Evaluation Report based on the above information was eventually submitted to the MEDE DCC on 26 August 2013. The report made reference to the administrative non-compliance of Tender Bid 3, as well as to the technical non-compliance of Tender Bids 1 and 2. Therefore, the FTS Evaluation Committee recommended that the tender be awarded to the cheapest compliant bid, that is, Tender Bid 4, submitted by Central Power Installations Ltd at the quoted price of €55,979.
- 2.2.36 The DCC provided feedback to FTS on 29 August 2013, noting that sub-part A of the Tender Form submitted by the recommended Contractor was incomplete. The DCC also remarked that the table utilised in the case of the joint venture/consortium submissions had erroneously been completed, albeit indicating that the Contractor bore full and sole responsibility for the implementation of the project.
- 2.2.37 In light of DCC's feedback, the FTS Evaluation Committee submitted a second evaluation report, dated 4 September 2013, wherein the points raised regarding the preferred bidder were addressed. The Evaluation Committee confirmed that the offer submitted by Central Power Installations Ltd was still considered administratively compliant and that the Committee was maintaining its original recommendation that the tender be awarded to this bidder. Following the submission of the second evaluation report, DCC approved the recommended award on 11 September 2013. This Office requested further clarifications from FTS on the apparent incongruity in the evaluation of offers since Bidder 3 was eliminated from the process on administrative shortcomings similar to those of the Central Power Installations Ltd, who was nonetheless deemed administratively compliant and was ultimately awarded the contract. The Foundation maintained that Bidder 3 did not fill in any details in Part 1 Section 2 of the tender form whereas the winning Bidder had, although misplaced, filled in all the details including the name of the company and a confirmation of the total leadership of the project. This was in line with Clause 16.1 Note 3 of the tender form wherein it was stated that; *"No rectification shall be allowed. Only clarifications on the submitted information may be requested."*
- 2.2.38 The FTS published its Notice of Intent to Award this tender on 16 September 2013, informing all bidders in the process. The tender was eventually awarded on 24 September 2013, with no objections submitted in the interim period. As per the Order to Start Works, works were to commence on 8 October 2013 and had to be completed within a period of six weeks as stipulated in the tender, that is, by 19 November 2013.
- 2.2.39 Although works were to be completed by mid November 2013, the interim certificates retrieved in file were dated 27 November 2013 and 16 December 2013, with the final certification dated 12 February 2014. Under the assumption that certification of works and the Contractor's request for final payment closely followed the project's completion, no documentation accounting for the delays incurred was noted in file. No penalties or delay charges were levied at the Contractor by the Foundation.
- 2.2.40 Review of the awarded rates by NAO's technical advisor indicated that such rates were fair and reasonable. The total amount billed was equal to the contract value. Documentation of cheques for the total amount less the five per cent retention fee, together with the relative invoices and VAT receipts submitted by the Contractor, were found in file.

FTS 047-13 – Tender for the Supply and Installation of Mechanical and Electrical Services at the Education Department, Level 2, Floriana

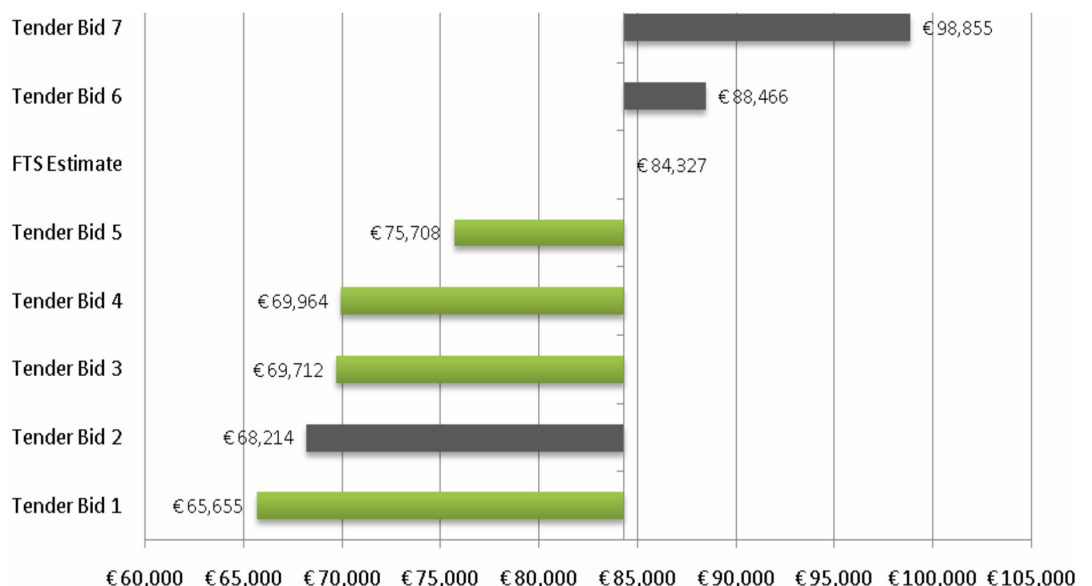
2.2.41 On 24 July 2013, a Tender Originators Form was raised for the supply and installation of mechanical and electrical services at the Education Department. The estimated value of the contract, based on a BoQ prepared by the designated FTS Project Leader was that of €84,327, while the estimated completion time was set at six calendar weeks. The request for approvals from Minister MEDE and Chair FTS for the publication of the tender were submitted on 24 July 2013. The approvals were obtained in due course. NAO noted that the estimated price quoted in the letter to Minister MEDE was €1,000 less than that cited in the tender estimate. As per FTS instructions issued to DOI on this same date, the tender was published on the Government Gazette dated 26 July 2013.

2.2.42 The Tender Originators Form was referred to the GPP Office on 25 July 2013 in terms of DoC Circular 21/2011. The GPP Office replied on 26 July 2013, giving FTS the authorisation to proceed with the publication of the tender, as it did not fall under the scope of GPP. This indicates that instructions were sent to DOI prior to obtaining the authorisation from the GPP Office.

2.2.43 Queries, raised by three of the prospective bidders, were addressed by FTS through the publication of clarification notes. The third clarification note informed prospective bidders of a site meeting scheduled on 6 August 2013. This site meeting was only attended by the prospective bidder who had requested the site visit.

2.2.44 By 9 August 2013, the tender closing date, seven bids had been submitted. Five of the bids were below the FTS estimates of €84,327 (Figure 10 refers). An Evaluation Committee was appointed and was composed of a Chair, Secretary and three Evaluators. All members of the Evaluation Committee, the Secretary and the designated Project Leader signed the Declaration of Impartiality and Confidentiality.

Figure 10: Overview of FTS 047-13 Tender Bids Submitted



Note: Tender bids depicted in grey were deemed either administratively or technically non-compliant.

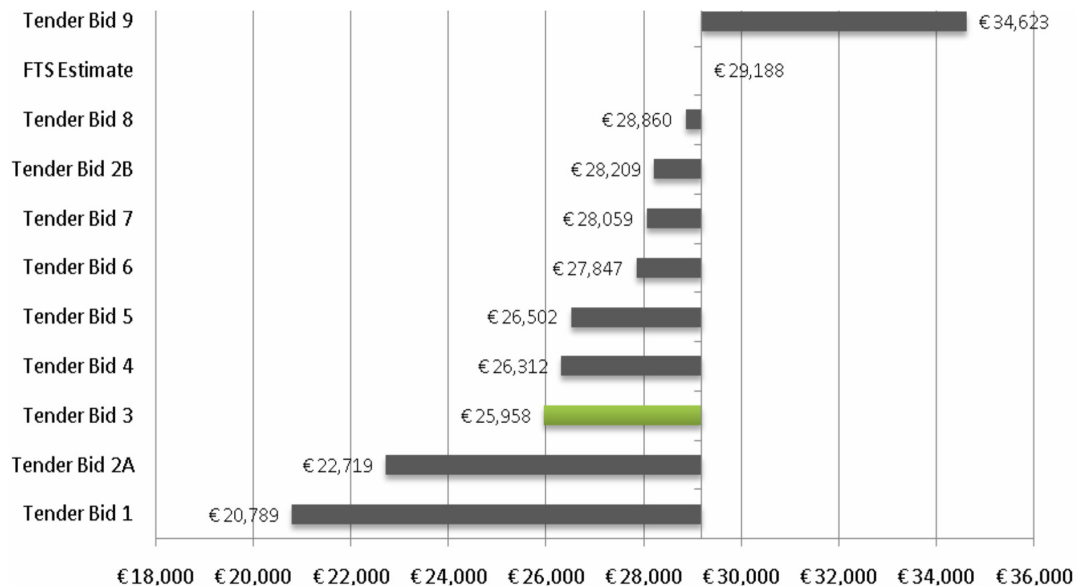
- 2.2.45 The Evaluation Report indicated that one bid was administratively non-compliant due to Part 1 Section 2 of the Tender Form not having been filled in, and two bids were considered technically non-compliant due to the submission of incomplete or incorrect technical literature. NAO sought to verify the validity of exclusion and confirmed that the basis of non-compliance for each of the offers determined by the Evaluation Committee was justified. The cheapest offer of €65,655, submitted by Central Power Installations Ltd, was chosen as the winning bid.
- 2.2.46 The Evaluation Report was referred for the approval of the DCC within MEDE on 20 August 2013. The DCC informed FTS on 21 August 2013 that it was in agreement with the recommendation of the Evaluation Committee to award the tender to Central Power Installations Ltd.
- 2.2.47 All bidders were individually informed of the award decision and, where applicable, of the reason for their disqualification. The Notice of Intent to Award Departmental Tenders was duly published by FTS on 23 August 2013. The Letter of Acceptance was issued to the Contractor by FTS on 2 September 2013. The Order to Start Works was issued on 9 September 2013 and works were to commence on 16 September 2013 and to be finalised within a period of six weeks, that is, by 28 October 2013.
- 2.2.48 The four interim certificates do not indicate the addition of any extra Items. Despite no apparent changes to the original plan, the work schedule was not adhered to. At the time of reporting, the bank guarantee expiry date had been extended three times from 3 December 2013, to 3 March 2014, to 3 June 2014, and finally to 3 September 2014. Notwithstanding the considerable delay registered, four payments totalling €46,458 had been effected, and no record of charges or penalties relating to the significant delay in terms of project completion were noted in file. When queries were raised by NAO as to what factors contributed to this delay and the reason why no delay charges were levied at the Contractor, FTS failed to provide any explanations.

FTS 052-13 – Tender for the Supply and Installation of a Centralised Variable Refrigerant Flow Air-Conditioning System at the Foundation for Tomorrow's Schools Offices, Pembroke

- 2.2.49 A Tender Originators Form for the supply and installation of a centralised variable refrigerant flow air-conditioning system at the FTS offices was raised on 1 November 2013. The value of the contract, based on a BoQ drawn up by the designated FTS Project Leader, was estimated at €29,188. The Project Leader also estimated that works would be completed within six weeks. The approval of Minister MEDE and Chair FTS for the publication of this tender was obtained on 1 November 2013. FTS also contacted the GPP Office and solicited its opinion on the tender in question. The GPP Office reverted on 4 November 2013, three days after the instructions for publication were sent to DOI, stating that FTS could proceed with the publication as far as GPP was concerned. The tender was published on the Government Gazette dated 5 November 2013. Potential bidders were informed that sealed tenders would be received up to 25 November 2013.
- 2.2.50 Three clarification notes were issued by FTS on 8, 14 and 15 November 2013. The first clarification served to inform interested bidders that a clarification meeting was to be held on the 14 November 2013, the second clarification consisted of amendments made to part of the BoQ and one drawing, while the third clarification consisted of answers to queries raised by the potential bidders. No documentation was found with regard to these questions; however, such questions may have been made during the clarification meeting of 14 November 2013. All three clarification notes were duly published on the relevant section of the FTS website 10 days prior to the closing date.

2.2.51 By the tender closing date, ten bids had been submitted by nine bidders. An Evaluation Committee was appointed and was composed of a Chair, Secretary and three Evaluators. All members of the Evaluation Committee and the designated Project Leader signed the Declaration of Impartiality and Confidentiality. Figure 11 provides an overview of the bids submitted with respect to this call for tenders, denoting their relative proximity to the FTS estimate.

Figure 11: Overview of FTS 052-13 Tender Bids Submitted



Note: Tender bids depicted in grey were deemed either administratively or technically non-compliant.

2.2.52 An Administrative Compliance Grid was compiled and signed by the Evaluation Committee Chair. Five of the bids were deemed administratively non-compliant on the basis of incomplete documentation. Furthermore, a Technical Report was drafted by the assigned Project Leader, while a Technical Evaluation Grid was signed by the Evaluation Committee Evaluators and the Project Leader. All the bids, except for that submitted by the winning bidder, were deemed technically non-compliant. NAO verified the technical basis upon which the remaining six bids were considered technically non-compliant and was of the opinion that the Evaluation Committee was justified in its decision.

2.2.53 An Evaluation Report based on the above information was drawn up and forwarded to the MEDE DCC for its review. The report detailed the reasons put forward by FTS with regard to the administrative and technical non-compliance of the various tender bids. With regard to administrative non-compliance, the reason put forward with respect to the elimination of these bids was that the tender documents submitted did not feature the updated BoQ that had been circulated in the second clarification. On the other hand, the remaining bids bar one, were deemed technically non-compliant for failing to submit a declaration stating that the system that was to be supplied was guaranteed for a period of 24 months. The FTS Evaluation Committee recommended that the tender be awarded to the third cheapest and only compliant bid, that is, Tender Bid 3 (Figure 12 refers), submitted by Central Power Installations Ltd, at the quoted price of €25,958. The DCC's approval was obtained on 18 December 2013.

2.2.54 FTS subsequently published its Notice of Intent to Award Departmental Tender on 2 January 2014, informing all bidders in the process and detailing the reasons corresponding to their administrative and/or technical non-compliance, where applicable. The tender was awarded on 10 January 2014, with no objections submitted

in the interim period, except for a query raised by one of the bidders, which was clarified without delay. As per the Order to Start Works, works were to commence on 21 January 2014 and had to be completed within a period of six weeks, that is, by 4 March 2014.

2.2.55 Although works were to be completed by the first week of March 2014, the final payment certificate was dated 23 May 2014. No documentation accounting for this delay was noted in the files corresponding to this tender.

2.2.56 Review of the tendered rates by NAO's technical advisor indicated that the cited rates were fair and reasonable. Further to this, NAO noted that five variations were recorded on the final payment certificate, two of which were related to deductions of supplies, installation and connection charges (equivalent to €737), and the rest consisting of extra supplies, as well as installation and connection charges (amounting to €619). The overall variation amount resulted in a final billed amount of €25,840, that is, €118 lower than the original contract value. NAO noted that, although the Contractor submitted the relevant invoices, no VAT receipts were provided in view of the works executed and items supplied in relation to this contractual agreement.

DO 01-07-13 – Repairs of Electrical Installation inside the Switchroom at the Girls' Secondary School, Žejtun

2.2.57 In July 2013, urgent repairs were required following a minor fire accident at a switchroom that controlled ground lighting and other areas at the GSS in Žejtun. From the limited documentation made available to NAO, it appears that FTS requested Central Power Installations Ltd to carry out an on-site inspection to determine what repair works were required. On 25 July 2013, the Contractor submitted a detailed quotation, listing all the works involved. These included the removal of all damaged electrical equipment and the supply, installation and testing of the new installation. Quantities and rates per item were also indicated. According to the quotation, the total cost of works amounted to €5,500.

2.2.58 Quoted rates and values were reviewed by the FTS Engineer in charge and were found to be fair and reasonable. A Purchase Requisition was duly raised by FTS and, on 30 July 2013, a Letter of Acceptance was issued for the works and amount as per the quotation submitted by the Contractor. In view of the circumstances surrounding this direct contract, NAO sought further assurance from its technical advisor with respect to the proximity of quoted rates to market prices. To this end, NAO's technical advisor confirmed that the rates were generally fair and reasonable.

2.2.59 On 8 August 2013, the Contractor issued an invoice for €5,500 in respect of the repair works carried out. This was duly endorsed by the FTS Engineer in charge who certified that the *"works were carried out to completion according to direct order"*. The invoice was settled by FTS on 20 August 2013, with the relevant VAT receipt issued by the Contractor on 9 September 2013.

2.2.60 The following observations with regard to this direct contract were noted by NAO:

- a. Although urgency allowed for the placing of a direct contract, only one quotation from a single contractor was sought. According to FTS, the process had to be expedited due to the extreme urgency of the works in question. Notwithstanding the justification presented by FTS, NAO maintains that other quotations for the same repair works could have been obtained in parallel, therefore, not delaying the required works.

- b. FTS did not draw up an initial estimate of the works and costs involved, and instead relied on the works and rates as quoted by the Contractor. Although these were endorsed by the FTS Engineer in charge, they could not be assessed against any other estimations by FTS or other contractors. Requested to comment further, FTS stated that its Engineer confirmed that the rates for the works in question were “fair and reasonable”, indicating that the Foundation was satisfied to rely on such a confirmation.
- c. A Purchase Requisition Form for the works in question was raised. However, although the Form was duly authorised by the Project Manager, this was undated. It was therefore impossible to determine when the Requisition Form was raised. The FTS again confirmed that purchase requisition forms are usually undated because these are accompanied by dated quotations.

2.3 Cases Selected on a Random Basis

2.3.1 A series of ten tenders, selected on a random basis, were reviewed by NAO. This selection was intended to complement the various contracts selected and reviewed on the basis of pre-defined criteria. In so doing, NAO sought to ascertain as comprehensive an understanding as possible of FTS’s procurement function. The list of cases selected on a random basis is presented in Table 19.

Table 19: List of Tenders Selected on a Random Basis

Tender	Estimated Cost (€)	Contract Value (€)	Final Cost (€)
FTS 006-12 – Supply and Delivery of Computer Furniture for St Ignatius College New Girls’ Secondary School, Ħandaq L/O Qormi	36,225	28,767	28,767
FTS 009-12 – Supply and Delivery of Furniture for Art, Ceramic, Food Laboratories and Kitchenettes at St Ignatius College New Girls’ Secondary School, Ħandaq L/O Qormi	90,320	87,353	88,715
FTS 017-12 – Supply and Installation of Aluminium Apertures at Għargħur Primary School	53,550	36,000	37,503
FTS 046-12 – Supply, Delivery and Installation of a Chemical Fume Cupboard and Chemical Storage Cabinet for the New Girls’ Secondary School, Ħandaq L/O Qormi	14,385	10,688	10,688
FTS 059-12 – Tender for Finishing Works at the Child Care Centre, San Ġwann (Madonna tal-Mensija)	43,060	33,617	33,110
FTS 009-13 – Tender for Timber Doors for the Vincenzo Borg Brared Boys’ Secondary School, St Theresa College, Birkirkara	38,696	30,000	29,207
FTS 026-13 – Tender for the Supply and Installation of Synthetic Surface at the Primary School, Senglea	27,500	14,845	15,074
FTS 029-13 – Tender for the Supply and Installation of Synthetic Surface at the Primary School, Kalkara	25,130	15,549	15,834
FTS 038-13 – Tender for Finishing Works on Façade at the Primary School, (St Sebastian) Qormi	26,365	15,571	20,583
DO 01-02-13 – Direct Order for Renewing and Repairs of Sewer Mains and Drains at the FTS Offices, Pembroke	n/a	2,763	2,763
Total	355,231	275,153	282,244

2.3.2 Table 20 also provides an overview of the estimated costs of the various projects reviewed, relevant contract values and final cost incurred. In terms of the aggregated totals, immediately apparent is the discrepancy between FTS estimates and their corresponding contract value as well as the final project cost, with aggregated estimates 29 and 26 per cent more than the contract and final amounts, respectively.

FTS 006-12 – Supply and Delivery of Computer Furniture for St Ignatius College New Girls’ Secondary School, Ħandaq L/O Qormi

2.3.3 On 9 February 2012, FTS published a tender for the supply and delivery of computer furniture for St Ignatius College New Girls’ Secondary School in Ħandaq, limits of Qormi. An FTS Architect, who was appointed Project Leader, carried out an estimate of the cost of this project, which was set at €36,225.

2.3.4 A clarification note was sent to all prospective bidders following queries raised with respect to certain technical specifications. Such clarifications were also published on the FTS website prior to the tender closing date.

2.3.5 Three bids were submitted, all of which were deemed to be administratively and technically compliant by the FTS Evaluation Committee (Figure 12 refers). In light of this information, the Evaluation Committee selected the cheapest offer, which was that submitted by Krea (Malta) Limited at €28,767.

Figure 12: Overview of FTS 006-12 Tender Bids Submitted



2.3.6 The Technical Report and the Technical Evaluation Grid were signed by the Project Leader/Architect, while the Administrative Compliance Grid was signed by the Evaluation Committee Chair. On the other hand, the Evaluation Report was signed by the Committee’s three members. FTS published its Notice of Intent to Award this tender to the Contractor selected by the Evaluation Committee on 16 March 2012 and eventually awarded the tender on 27 March 2012, with no objections submitted in the interim period. The Order to Start Works was issued by FTS on 3 April 2012, with works actually due to commence on 11 April 2012.

2.3.7 Somewhat ambiguous is correspondence submitted by FTS to the GPP Office on 18 April 2012. With the contract already awarded, FTS submitted a Tender Originators Form to the GPP Office for their consideration. A GPP officer replied, stating that

the tender was not compliant with the GPP criteria that apply to this product group; however, adhering to such criteria for this product group was not mandatory for this tender. NAO notes that while adherence to GPP criteria may not have been mandatory for this product group, it would have been far more sensible to request guidance from the GPP Office prior to the issue and award of such a tender rather than post fact.

2.3.8 Although the Contractor's tender submission stated that the item procured would be supplied within eight weeks, that is, by 6 June 2012, the project was completed in mid-November 2012. Hence, instead of the stipulated eight-week timeframe, the project was completed within 31 weeks, resulting in a delay of 23 weeks.

2.3.9 Despite the considerable delay, the only enforcement-related record retained in file was a letter sent by FTS on 2 October 2012. This correspondence submitted to the Contractor stated that apart from the fact that not all the delivered furniture was according to the specifications set out in the tender document, the progress of work was not to FTS's expectations since the Contractor had failed to meet the deadline stipulated in terms of the completion period. FTS proceeded to state that, in the circumstances, the Foundation reserved the right to charge fees for delay in terms of the contract entered into. Notwithstanding the delays incurred, NAO's review of payments made indicates that no such fees were charged and the Contractor was paid in full (€28,767). In addition, no further reference regarding the discrepancy in specifications with respect to the furniture that was delivered was noted in the FTS file reviewed.

2.3.10 When queried as to the cause of the delay and the non-imposition of delay charges, FTS stated that the delivery and installation of furniture could not be made before finishing works, which were being carried out by other contractors, were completed. In NAO's opinion, this explanation is incongruent with the correspondence submitted on 2 October 2012, which clearly reproves the Contractor for shortcomings relating to delivery and specifications. On the latter aspect, FTS claimed that all items were eventually delivered but some of the items had to be rectified to meet tender specifications, resulting in other delays. Once again, NAO maintains notable reservations as to the plausibility of the explanation put forward by FTS, particularly in view of the aforementioned correspondence exchanged with the Contractor.

FTS 009-12 – Supply and Delivery of Furniture for Art, Ceramic, Food Laboratories and Kitchenettes at St Ignatius College New Girls' Secondary School, Ħandaq L/O Qormi

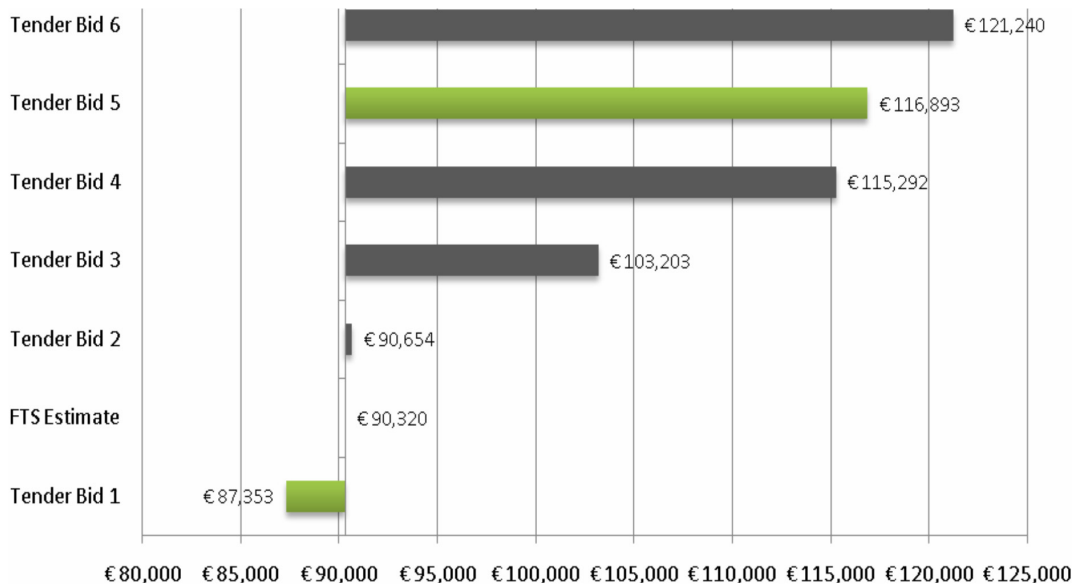
2.3.11 On 17 February 2012, FTS published a tender notification for the supply and delivery of furniture for art, ceramic, food laboratories and kitchenettes intended for use by St Ignatius College New Girls' Secondary School in Ħandaq, limits of Qormi. The FTS Architect, appointed as Project Leader with respect to this tender, estimated the cost of this project at €90,320. The supply and delivery of procured items was to be carried out within a period of twelve weeks.

2.3.12 A clarification note was issued on 1 March 2012 and made available to all prospective bidders as required by the pertinent contracts regulations. All FTS Evaluation Committee members as well as the assigned Project Leader signed the relevant Declaration of Impartiality and Confidentiality.

2.3.13 By the tender's closing date, that is, 13 March 2012, six bids had been submitted (Figure 13 refers). The Evaluation Report, issued on 27 March 2012, indicated that not all bids were compliant with the stipulated tender conditions, and in fact, the Committee deemed four out of the six bids submitted as technically non-compliant.

Reasons put forward with respect to the cited cases of non-compliance related to shortcomings in the submission of documentation, with the required technical literature not submitted, or submitted in an inadmissible language. NAO considers the reasons put forward by the Evaluation Committee as suitable justification in the elimination of non-compliant bids. In light of such circumstances, the Evaluation Committee selected the most favourably priced eligible offer, which was that submitted by Krea (Malta) Limited at €87,353.

Figure 13: Overview of FTS 009-12 Tender Bids Submitted



Note: Tender bids depicted in grey were deemed to be technically non-compliant.

2.3.14 The Technical Report and the Technical Evaluation Grid were signed by the Project Leader/Architect, while the Administrative Compliance Grid was signed by the Evaluation Committee Chair. Finally, the Evaluation Report was signed by all three Committee members. FTS published its Notice of Intent to Award this tender to the Contractor selected by the Evaluation Committee on 5 April 2012 and eventually awarded the tender on 16 April 2012, with no objections submitted in the interim period. The Order to Start Works was issued by FTS on 25 April 2012, with works actually due to commence on 3 May 2012.

2.3.15 Somewhat ambiguous is the correspondence submitted by FTS to the GPP Office on 18 April 2012. With the contract already awarded, FTS submitted a Tender Originators Form to the GPP Office for their consideration. A GPP officer replied, stating that the tender was not compliant with the GPP criteria that apply to this product group; however, adhering to such criteria for this product group was not mandatory for this tender. NAO notes that while adherence to GPP criteria may not have been mandatory for this product group, it would have been far more sensible to request guidance from the GPP Office prior to the issue and award of such a tender rather than post fact.

2.3.16 Although the Contractor's tender submission stated that the item procured would be supplied within nine weeks, that is, by 5 July 2012, the project was completed on 29 January 2013. Hence, instead of the stipulated nine-week timeframe, the project was completed within 39 weeks, implying a delay of 30 weeks.

2.3.17 In this context, on 2 October 2012, FTS sent correspondence to the Contractor stating that apart from the fact that not all delivered furniture was according to the specifications set out in the tender document, the progress of work was not to FTS's expectations since the Contractor had failed to meet the deadline for completion. FTS

proceeded to state that, in the circumstances, the Foundation reserved the right to charge fees for delay in terms of the contract entered into. Notwithstanding the delays incurred, NAO's review of payments made indicates that no such fees were charged and the Contractor was paid in full. In addition, no further reference regarding the discrepancy in specifications with respect to the furniture that was delivered was noted in the FTS file reviewed.

- 2.3.18 When queried as to the cause of the delay and the non-imposition of delay charges, FTS stated that the delivery and installation of furniture could not be made before finishing works, which were being carried out by other contractors, were completed. In NAO's opinion, this explanation is incongruent with the correspondence submitted on 2 October 2012, which clearly reproves the Contractor for shortcomings relating to delivery and specifications. On the latter aspect, FTS claimed that all items were eventually delivered but some of the items had to be rectified to meet tender specifications, resulting in other delays. Once again, NAO maintains notable reservations as to the plausibility of the explanation put forward by FTS, particularly in view of the aforementioned correspondence exchanged with the Contractor.
- 2.3.19 Reconciliation of the invoiced amounts against the original tender submission indicated an increase in cost of €1,362. FTS payment-related workings retained in file indicated that this variation was attributable to an increase in quantities corresponding to three items. Aside from these payment-related workings and the corresponding FTS authorisation for payment of same, no supporting documentation was found with respect to the raising of a request for changes to quantities purchased.

FTS 017-12 – Supply and Installation of Aluminium Apertures at Ġhargħur Primary School

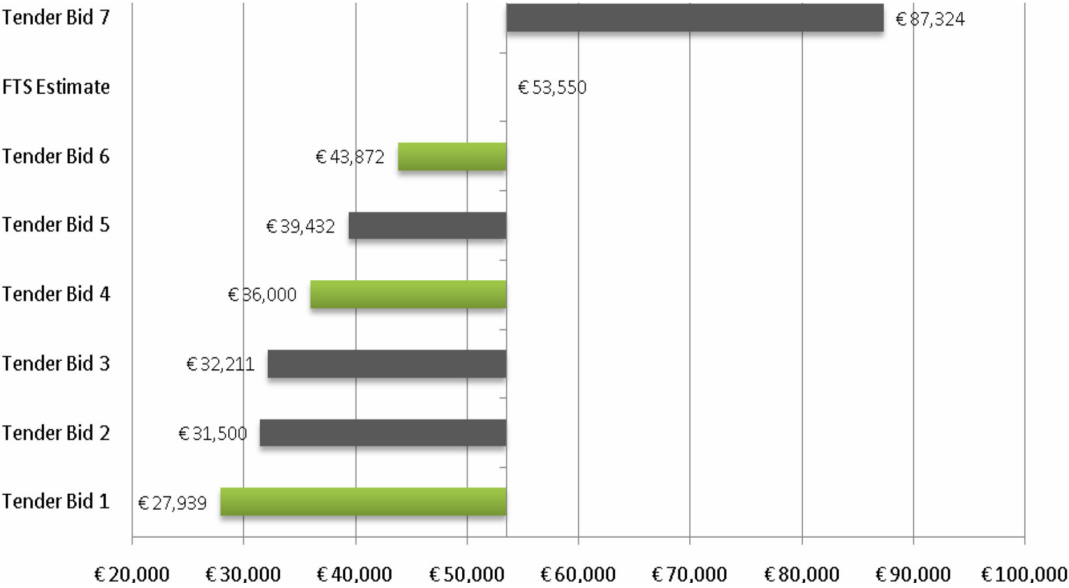
- 2.3.20 On 15 March 2012, FTS raised a Tender Originators Form for the supply and installation of aluminium apertures at Ġhargħur Primary School. The designated FTS Project Leader prepared the relevant BoQ and estimated the cost of the project to amount to €53,550. The required completion period was stipulated at five calendar weeks. After obtaining the relevant authorisation from Chair FTS, the tender was published on 20 March 2012.
- 2.3.21 The tender document indicated that bidders were not required to submit information regarding their economic and financial standing, but on the other hand, were required to submit information on their technical capacity, by forwarding evidence of relevant experience in execution of works of a similar nature over the previous five years. Bidders would be considered to be technically compliant if they had completed a minimum of two similar projects in the previous five years. Administratively and technically compliant bids were then to be evaluated on the basis of the price, with the contract being *“awarded to the cheapest price tender satisfying the administrative and technical criteria.”*
- 2.3.22 By the tender bid submission deadline, that is, 4 April 2012, FTS had received seven bids. A three-person Evaluation Committee was entrusted with the adjudication of offers received. The administrative compliance of all bids received was determined by the Evaluation Committee Chair, who compiled a grid analysing submissions made. All bids were deemed to be administratively compliant.
- 2.3.23 On the other hand, the assigned Project Leader provided technical assistance, drafting a Technical Report and compiling a Technical Evaluation Grid to this effect. In essence, the technical input provided highlights the basis of non-compliance, with one bid deemed so due to the failure to include details of similar works completed in the previous five years. Another two bidders submitting incomplete technical literature,

while another bidder stated that works would be completed within six weeks (and not within the stipulated completion period of five weeks). NAO’s review of the bids confirmed the position adopted by the Evaluation Committee and therefore considers the determination of non-compliance as correct. The Project Leader’s Technical Report concludes by indicating that, *“the cheapest tenderer ... Amabile Galea & Sons Ltd conforms to the tender specifications and submitted all the information requested.”*

2.3.24 Figure 14 presents an overview of the bids received by FTS with respect to this tender, indicating their technical compliance, or otherwise. The distribution of the bids received relative to the FTS estimate raises NAO’s concern as to the estimate’s accuracy and reliability. Aside from Tender Bid 7, which is clearly an outlier (on account of it being 63 per cent costlier than the FTS estimate and a staggering 313 per cent costlier than the lowest priced bid), all the other bids were less than the FTS estimate. The cheapest offer was in fact equivalent to 52 per cent of the FTS estimate, while the highest offer received (excluding the outlying bid) was €9,678 less than the Foundation’s estimated cost.

2.3.25 NAO’s further analysis with respect to the discrepancy arising between the FTS estimate and the awarded bid was due to two factors, namely, that the Foundation’s estimate was overstated, while the selected bid was well below market rates.

Figure 14: Overview of FTS 017-12 Tender Bids Submitted



Note: Tender bids depicted in grey were deemed technically non-compliant.

2.3.26 The compliance-related issues identified in the Technical Report were mirrored in the Evaluation Committee’s report dated 13 April 2012. Adopting the precise same views as expressed by the FTS Project Leader, the Committee recommended that the tender be awarded to the lowest-priced compliant bid, that is, to Amabile Galea & Sons Ltd, at the submitted amount of €27,939.

2.3.27 The Evaluation Committee members and the assigned Project Leader signed the relevant Declaration of Impartiality and Confidentiality, while the Evaluation Report was submitted to the MEDE DCC for approval, which was eventually granted on 18 April 2012.

2.3.28 With the Evaluation Committee Report already submitted for DCC’s endorsement, on 17 April 2012, FTS submitted a Tender Originators Form to the GPP Office. A GPP officer replied, stating that the tender was not compliant with the GPP criteria that

apply to this product group; however, adhering to such criteria for this product group was not mandatory.

2.3.29 Following DCC's approval, the Notice of Intent to Award this tender was made publicly available on 19 April 2012, and all seven bidders were informed of its issuance.

2.3.30 The tender was awarded on 27 April 2012, at which point the Contractor was sent the Letter of Acceptance and requested to present a bank guarantee equivalent to 10 per cent of the total contract value within seven calendar days from the receipt of the afore-indicated correspondence. The required bank guarantee was not received by FTS by the stipulated deadline of 7 May 2012, and therefore, the Foundation submitted a reminder to the Contractor, stating that the deadline for submission was being extended to 9 May 2012. However, FTS also indicated that should the bank guarantee not be submitted as per the revised timeframes, then the Foundation would consider the contract abandoned.

2.3.31 No bank guarantee was submitted by the Contractor, and therefore FTS drafted a second Evaluation Report, dated 15 May 2012. The Evaluation Committee commented that since the bank guarantee was never forthcoming no other option was available but to recommend that the tender be awarded to the second cheapest administratively and technically compliant bid, namely that submitted by Alu. Care Mosta Ltd for the price of €36,000. The recommendation of DCC was being sought in this respect.

2.3.32 The DCC approval was obtained on 23 May 2012, resulting in FTS issuing another Notice of Intent to Award Departmental Tenders on 28 May 2012, indicating that the tender had now been awarded to Alu. Care Mosta Ltd for the total price of €36,000. All the bidders, except for the original Contractor, were informed of this issuance.

2.3.33 The new Contractor was sent the Letter of Acceptance on 21 June 2012, and the required bank guarantee was submitted to FTS within the stipulated timeframe. The Order to Start Works was issued on 3 July 2012, indicating that commencement of works proper was scheduled for 10 July 2012. As per tender submission, works were to be completed within a period of five weeks, that is, by 14 August 2012. However, works still had not been finalised by 15 October 2012, on which date FTS submitted correspondence to the Contractor indicating that they had breached Article 2.01 of the contract conditions and urging them to complete the works by 19 October 2012. In addition, FTS highlighted the fact that they reserved the right to charge fees for delays in terms of Article 2.10 of the contract. From the evidence retained in file, NAO could not identify any penalties imposed upon the Contractor in this respect.

2.3.34 The documents provided for NAO's review do not provide a clear and precise account of when the works were actually completed. However, it is evident that the 19 October 2012 revised target was not achieved, as on 24 October 2012, FTS submitted correspondence to its bank, whereby a request was made for the bank guarantee to be extended to 31 January 2013. As already indicated, no specific date of completion was recorded, yet the invoice presented by the Contractor and the final certificate issued by FTS indicated the first week of December 2012 as the likely period within which the project would be completed. Under this assumption, the total delay experienced with respect to the original established deadline of 14 August 2012 was that of approximately 16 weeks. Again, no evidence retained in file indicates the imposition of penalties or charges contemplated in terms of the contract in force by FTS.

2.3.35 The final cost of the contracted works amounted to €37,504, representing a 4.2 per cent variation over the original contract value of €36,000. FTS issued a payment of

€35,629 on 21 December 2012 and eventually released the pending retention money of €1,875 on 19 December 2013. The relevant VAT receipts were issued.

FTS 046-12 – Supply, Delivery and Installation of a Chemical Fume Cupboard and Chemical Storage Cabinet for the New Girls' Secondary School, Ħandaq L/O Qormi

2.3.36 FTS published a tender notification for the Supply, Delivery and Installation of a Chemical Fume Cupboard and Chemical Storage Cabinet at the St Ignatius College New Girls' Secondary School in Ħandaq, limits of Qormi, on 27 July 2012. The FTS Project Leader assigned to this project carried out an estimate of requirements, which amounted to €14,385.

2.3.37 Two days prior to the publication of the tender notification, FTS contacted the GPP Office for their comments with respect to this tender, as per Contracts Circular 21/2011. The GPP Office stated that this particular tender did not fall under the scope of GPP.

2.3.38 Only one bid was submitted, which bid was deemed by the FTS Evaluation Committee to be administratively and technically compliant. Furthermore, the bid offer was lower than the estimated cost. In light of this information, the Evaluation Committee accepted the bid, which was that submitted by Levo Laboratory Services Ltd at €10,688.

2.3.39 NAO's review of the bid received, particularly in comparison to the FTS estimate, illustrates a discrepancy of approximately 25 per cent, with the received bid €3,697 less than the Foundation's estimate. This Office's technical advisor confirmed that the initial estimate was overstated.

2.3.40 The Technical Report and the Technical Evaluation Grid were signed by the Project Leader/Architect, while the Administrative Compliance Grid was signed by the Evaluation Committee Chair. On the other hand, the Evaluation Report, dated 27 September 2012, was signed by the three Evaluation Committee members.

2.3.41 FTS published its Notice of Intent to Award this tender to the Contractor selected by the Evaluation Committee on 10 October 2012 and eventually awarded the tender on 18 October 2012. The Order to Start Works was issued by FTS on 26 October 2012, with works actually due to commence on 2 November 2012. The Contractor's indicated seven-week period of completion appears to have been adhered to, as an undated invoice was received by the Foundation on 21 December 2012. To this end, the corresponding final payment certificate was subsequently issued on 7 January 2013 and settled on 9 January 2013. FTS issued a payment of €10,164 on 9 January 2013 and eventually released the €534 pending retention money in January 2014. The relevant VAT receipts issued by the Contractor were retained in file.

FTS 059-12 – Tender for Finishing Works at the Child Care Centre, San Ġwann (Madonna tal-Mensija)

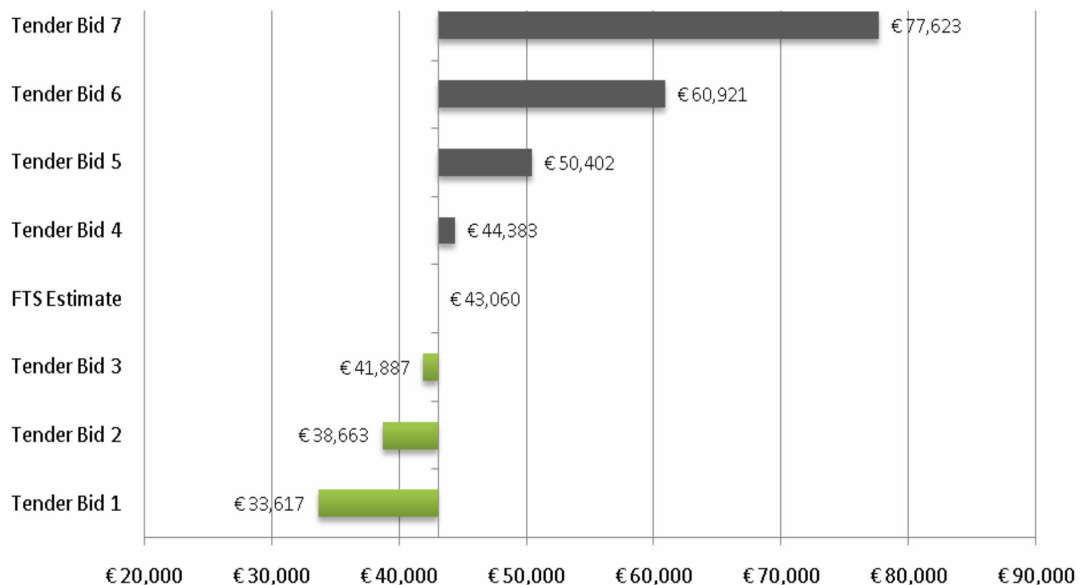
2.3.42 On 26 November 2012, a Tender Originators Form was raised for finishing works at the Child Care Centre situated in San Ġwann (Madonna tal-Mensija). The estimated value of the contract, based on a BoQ prepared by the designated FTS Project Leader was that of €43,060. Works were to be completed in an estimated four-week period. The approval of Chair FTS was also obtained on 26 November 2012. As per FTS instructions issued to DOI on 23 November 2012, the tender was published in the Government Gazette and on the FTS website on 27 November 2012.

2.3.43 The Tender Originators Form, and later, the draft tender, were referred to the GPP Office within MSDEC in terms of DoC Circular 21/2011. Contact with the GPP Office was first made on 26 November 2012, the same date the tender was published online. On 4 December 2012, the GPP Office informed FTS that although non-compliant with the GPP criteria for hard floor coverings, FTS were able to proceed with the publication of the tender, as compliance was non-mandatory. NAO notes that while adherence to GPP criteria may not have been mandatory, good practice would require GPP guidance to be sought prior to the issue of such a tender.

2.3.44 The tender document indicated that sealed tenders were to be received by 18 December 2012 and that the bidders were not required to submit information regarding their economic and financial standing. On the other hand, bidders were required to submit evidence of relevant experience in the execution of works of at least two projects of a similar nature over the previous five years.

2.3.45 By the closing date, seven bids had been submitted. Figure 15 presents the bid values in comparison to the FTS estimate.

Figure 15: Overview of FTS 059-12 Tender Bids Submitted



Note: Tender bids depicted in grey were deemed either administratively or technically non-compliant.

2.3.46 The Evaluation Committee Chair as well as its two other members, together with the assigned Project Leader, signed the Declaration of Impartiality and Confidentiality.

2.3.47 Offers submitted were further assessed according to Administrative and Technical Evaluation grids to review compliance of each of the tenders with the requirements of the tender dossier. One of the offers was considered administratively non-compliant and was therefore eliminated at this stage of the process. The bidder had submitted a conditional offer, stating, in the tender bid, that the quoted price was based on the assumption that the specified works would remain unchanged. However, the tender document had clearly indicated that the prices quoted were to be fixed, irrespective of any variations, in terms of changes in the quantity of any work included in the contract. Consequently, the Evaluation Committee had to reject the tender. Three of the bids were deemed technically non-compliant on the basis that the technical literature submitted was incomplete.

2.3.48 As stated in the Evaluation Report, the Evaluation Committee recommended the award of the tender to the company which had submitted the cheapest administratively and technically compliant bid – Makaw Ltd, at the price of €33,617.

2.3.49 The Notice of Intent to Award was issued on 10 January 2013, and all bidders were duly informed. Non-compliant bidders were also informed of the reasons for their disqualification. There is no evidence that any of the bidders lodged a complaint or appealed the decision further to its publication. The Letter of Acceptance was sent on 18 January 2013, and as per Order to Start Works, the project was due to commence on 29 January 2013, with an envisaged four-week completion period.

2.3.50 It was noted that most of the quantities of the items billed in the final certificate varied from the contracted quantities (Table 20 refers). Quantities above those agreed in the Letter of Acceptance were billed for eight items, quantities below those agreed in the Letter of Acceptance were billed for the other five items, and one extra item, relating to the installation of a metal frame gypsum partition with one 12.5mm normal gypsum board on each side, was included. The contracted quantities were only equal to the actual quantities used for two items, suggesting poor project planning.

Table 20: FTS 059-12 Item-based Analysis of Variations

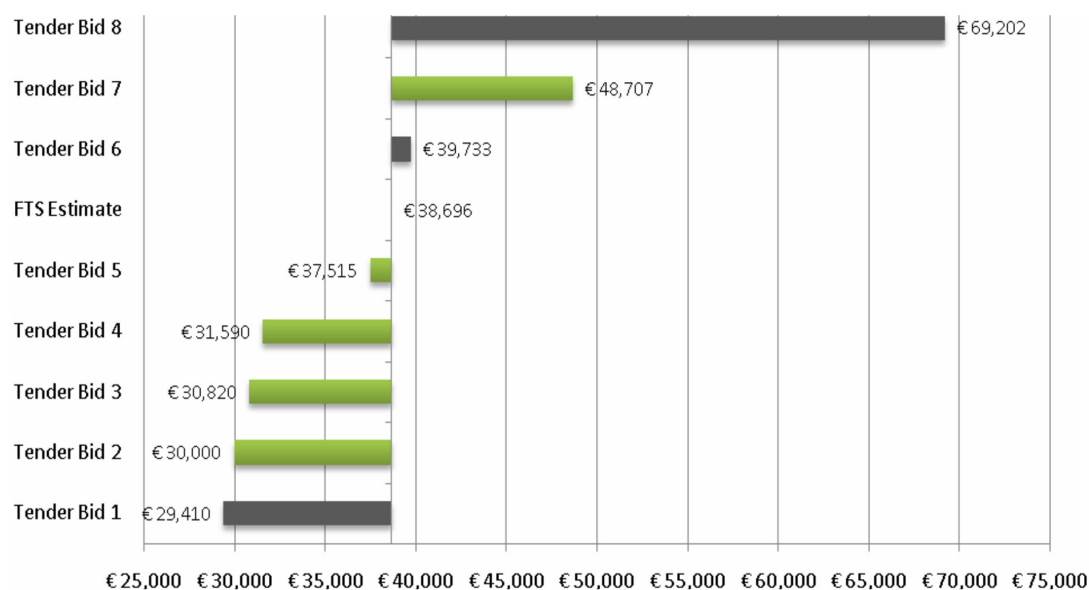
Item	Description	Original Quantity	Certified Quantity	Rate (€)	Variations (€)	
1.01	Pointing of joints of external masonry block walls	270.00	302.99	7.50	247.43	
1.02	Supply and application of approved sealer on external masonry wall	270.00	302.99	2.00	65.98	
1.04	Rendering of internal walls with two coats gypsum basecoat and finishing coat in a plumb smooth finish	570.00	642.32	4.00	289.28	
1.05	Rendering surface of external concrete blockwalls, beams, columns and lintels with proprietary render known as GR1000	300.00	772.86	5.00	2,364.30	
1.06	Rendering surface of external concrete blockwalls with proprietary render known as Graffiato	75.00	0	5.00		(375.00)
1.07	Supply and application of 2 coats of plastic emulsion paint on gypsum rendered walls	570.00	657.32	1.20	104.78	
1.08	Supply and application of 2 coats of approved smooth paint for external use on GR1000 surfaces	300.00	772.86	3.30	1,560.44	
2.01	Supply, transport and lay 9mm gres ceramic floor tiles	550.00	424.00	21.00		(2,646.00)
2.02	Supply, transport and lay gres ceramic skirting tiles	250.00	194.75	5.50		(303.88)
2.04a	Supply, transport and lay 20mm thick marble window outer sills	4.00	8.38	106.00	464.28	
2.04b	Supply, transport and lay 20mm thick marble window inner sills	11.00	15.58	95.00	435.10	
2.05	Supply, transport and lay 20mm granite door sills	12.00	1.47	88.50		(931.91)
2.06	Supply, lay and grout glaze white or mono colour ceramic wall tiles	100.00	84.80	30.00		(456.00)
3.01	Supply and lay mineral fibre suspended ceiling	450.00	367.17	10.00		(828.30)
3.02	Supply and installation of gypsum metal frame ceiling system	30.00	0	21.00		(630.00)
3.03	Supply and installation of gypsum vertical risers, bulkheads	10.00	0	15.00		(150.00)
V1	Extra Gypsum Works	0	8.00	35.00	280.00	
	Sub-total Variations				5,811.59	(6,321.09)
	Net Variations					(509.50)

- 2.3.51 Despite the high number of variations, the total project cost, at €33,110, was slightly lower than the contract value of €33,617.
- 2.3.52 The project was finalised in the stipulated period, and the request for the release of the bank guarantee was sent on 15 April 2013, before its expiry date (21 April 2013). Full payment was effected.

FTS 009-13 – Tender for Timber Doors for the Vincenzo Borg Brared Boys' Secondary School, St Theresa College, Birkirkara

- 2.3.53 On 17 May 2013, FTS published a tender entailing the procurement of timber doors for the Vincenzo Borg Brared Boys' Secondary School, which forms part of St Theresa College in Birkirkara. An FTS Architect, who was appointed Project Leader, carried out an estimate of the cost of this project, amounting to €38,696. Prior to its publication, Minister MEDE approved the call for tenders.
- 2.3.54 FTS sent an email to the GPP Office on 13 May 2013, asking it to review the Tender Originators Form and to direct any arising queries it may have with respect to the document submitted to the Foundation. A GPP officer replied on 14 May 2013, stating that this particular tender did not fall under the scope of GPP and that FTS could proceed with the publication.
- 2.3.55 By the tender's closing date, that is, 11 June 2013, eight bids had been submitted. The members of the FTS Evaluation Committee, including its Chair, as well as the assigned Project Leader, signed a Declaration of Impartiality and Confidentiality. Furthermore, the Project Leader signed the Technical Report and the Technical Evaluation Grid, while the Evaluation Committee Chair signed the Administrative Compliance Grid. On the other hand, the two Evaluation Committee members, as well as the Evaluation Committee Chair, signed the Evaluation Report.
- 2.3.56 Out of the eight bids that were submitted, two were deemed technically non-compliant, while one was administratively non-compliant. NAO reviewed the basis of disqualification and considered such action as justified, particularly in view of the fact that not all the required information was submitted. In this context, and in view of the information made available through the bids that were submitted, the Evaluation Committee selected the cheapest offer that was technically and administratively compliant. The winning bid corresponded to that submitted by Cachia Woodworks, which stood at €30,000, and amounted to 77.5 per cent of the tender estimate. Only one of the technically and administratively compliant bid offers was above (by 25.86 per cent) the estimate put forward by FTS. The Foundation informed all eight bidders of the Notice of Intent to Award, and none of the bidders lodged a complaint or appealed the decision further to its publication. Figure 16 provides an overview of the tender bids submitted to FTS in relation to the Foundation's original estimate.
- 2.3.57 NAO directed particular attention at verifying whether another bid, priced at €29,410 (therefore more favourable than the one eventually selected), was correctly deemed as non-compliant by the Evaluation Committee. Based on information made available to this Office, the decision to consider this bid as technically non-compliant was correct, as the required technical literature was not submitted as requested.

Figure 16: Overview of FTS 009-13 Tender Bids Submitted



Note: Tender bids depicted in grey were deemed either administratively or technically non-compliant.

2.3.58 A review of the submitted rates by NAO’s technical advisor indicated that the FTS estimate accurately reflected market rates, while a number of bids received were lower than the standard rates.

2.3.59 The Order to Start Works was issued on 12 July 2013 and works were to commence on 19 July 2013. The Contractor completed the works within the stipulated timeframe although the total cost of works carried out was valued by the FTS Architect in charge at €29,207. The Contractor concurred with this valuation and, on 28 November 2013, declared that he accepted the quantities as included in the final payment certificate and that no further claims above the cumulative value of works indicated therein would be made. FTS issued interim payments of €22,755 and €4,992 on 13 September 2013 and 4 October 2013 respectively. On 21 November 2013, the Foundation released the retention fee of €1,460 since the Contractor furnished a Bank Guarantee for the equivalent amount. The relevant VAT receipts for the initial two payments made by FTS were issued by the Contractor; it was however noted that no VAT receipt for the final amount of €1,460 was furnished.

FTS 026-13 – Tender for the Supply and Installation of Synthetic Surface at the Primary School, Senglea

2.3.60 On 14 June 2013, FTS published a tender for the supply and installation of a synthetic surface at the Senglea primary school. The required authorisation had been obtained from Minister MEDE and FTS Chair. An FTS Architect, who was appointed Project Leader, estimated the cost of this project at €27,500.

2.3.61 By the tender closing date, that is, 2 July 2013, three bids had been submitted. Administrative compliance was ascertained by the Evaluation Committee Chair, who deemed all three bids as compliant in this respect. On the other hand, the technical compliance of all three tender bids was established by the Evaluation Committee, duly supported by the assigned Project Leader. All three Evaluators, the Evaluation Committee’s Chair and Secretary, as well as the Project Leader signed a Declaration of Impartiality and Confidentiality.

2.3.62 The Evaluation Report, dated 10 July 2013, indicates that all bids submitted were below the FTS tender estimate of €27,500. The offers received ranged from €14,485 to €19,890, with the highest offer a notable €7,610 cheaper than the Foundation's original estimate. In the circumstances, the Evaluation Committee selected the cheapest offer, which was that submitted by Projekte Global Ltd at €14,845. Of note is the fact that the selected bid amounted to an equivalent of 54 per cent of the FTS estimate. Figure 17 provides an overview of the bids submitted to FTS in relation to this tender.

Figure 17: Overview of FTS 026-13 Tender Bids Submitted



2.3.63 Approval of DCC was sought and sourced on 17 July 2013. The contract was awarded on 29 July 2013, and as per Order to Start Works, the project was due to commence on 12 August 2013, with a six-week completion period envisaged. The project appears to have been completed according to the established timeframe, as an email submitted by the Project Leader to the Contractor on 26 September 2013 refers to its completion. A final certificate for the amount of €15,074 in respect of works executed was drawn up by the Foundation's project leader, indicating only minor variations (€228), equivalent to an extra eight meters squared included in the final BoQ. Payment, less the relative five per cent retention (€754), was effected on 30 September 2013 and the Contractor duly issued a VAT receipt on 9 October 2013.

2.3.64 This Office queried FTS on the inflated estimation of the cost of works drawn up by the Foundation, which, as stated above, was significantly higher than all the offers received. According to FTS, contractors were submitting bids that were normally below market prices. These were accepted provided that the bids were deemed technically compliant. Moreover, FTS contended that this type of trade was a competitive one with a limited number of tenderers who were decreasing mark-ups with the aim of securing contracts. Notwithstanding the explanations put forward by FTS, this Office maintains that the original estimate drawn up by the Foundation was above market rates.

FTS 029-13 – Tender for the Supply and Installation of Synthetic Surface at the Primary School, Kalkara

2.3.65 FTS published a tender document for the supply and installation of a synthetic surface at St Margaret College, Kalkara Primary School, on 14 June 2013. An FTS Architect, who was appointed Project Leader, carried out an estimate of the cost of this project,

amounting to €25,130. NAO noted that approval from Minister MEDE to publish a call for this tender was granted on 17 June 2013, that is, three days following the publication of the tender notice. Instructions to DOI for the publication of the tender were sent on 13 June 2013.

2.3.66 By the closing date, that is, 2 July 2013, three bids had been submitted. Administrative compliance was ascertained by the Evaluation Committee Chair, who deemed all three bids as compliant in this respect. On the other hand, the technical compliance of all three tender bids was established by the Evaluation Committee, duly supported by the assigned Project Leader. All three Evaluators, the Evaluation Committee’s Chair and Secretary, as well as the Project Leader, signed a Declaration of Impartiality and Confidentiality.

2.3.67 The Evaluation Report, dated 10 July 2013, indicates that all bids submitted were below the FTS tender estimate of €25,130. The offers received ranged from €15,549 to €21,715, with the highest priced offer €3,415 less than the Foundation’s original estimate. In this context, the Evaluation Committee selected the cheapest offer, which was that submitted by Projekte Global Ltd at €15,549. Of note is the fact that the selected bid amounted to an equivalent of 62 per cent of the FTS estimate. Similar justifications to those in FTS 26-13 were made by FTS when NAO queried the inflated estimation of the cost of works initially drawn up by the Foundation. Once again, notwithstanding explanations provided by FTS, NAO maintains that the initial estimate was overstated. Figure 18 provides an overview of the bids submitted to FTS in relation to this Tender.

Figure 18: Overview of FTS 029-13 Tender Bids Submitted



2.3.68 The DCC’s approval was sought and eventually obtained on 17 July 2013. The contract was awarded on 29 July 2013, and as per Order to Start Works, the project was due to commence on 12 August 2013, with a six-week completion period envisaged. Although the project was to be completed by 23 September 2013, documentary evidence retained in file indicated that this target was not attained. In fact, the project’s final certification indicated that the works had been delayed by approximately 12 weeks. According to FTS, the delay in completion was due to corrective action that had to be taken by the Contractor after “wearing problems” became visible when the synthetic surface was first laid in September 2013. No immediate action to settle these pending issues was taken by the Contractor and the matter remained unresolved

until December 2013. A final certificate, implying that works were now satisfactorily carried out, was drawn up by the Foundation's Project Leader on 18 December 2013 for the amount of €15,834. Notwithstanding the fact that the delay in execution was attributable to the quality of work carried out, FTS did not impose any delay charges on the Contractor. No reasons for this waiver were given by FTS.

2.3.69 Payment for works executed was effected on 19 December 2013, with only minor variations (€285), equivalent to an extra ten metres squared included in the final BoQ. Payment, less the relative five per cent retention (€792), was effected on 19 December 2013 and the Contractor duly issued a VAT receipt on 7 January 2014.

FTS 038-13 – Tender for Finishing Works on Façade at the Primary School, (St Sebastian) Qormi

2.3.70 On 21 June 2013, FTS published a tender for the undertaking of finishing works upon the façade of the San Bastjan Primary School in Qormi. An FTS Architect, who was appointed Project Leader, estimated the cost of this project at €26,365.

2.3.71 Preceding the publication of this tender, and in line with Contracts Circular 21/2011, on 11 June 2013, FTS sent an email to the GPP Office attaching the relevant tender documents therewith for their consideration. FTS resent the email on 19 June 2013. A response to this email was provided by the GPP Office on 20 June 2013, which response presented instructions for FTS to:

- a. Include the applicable GPP criteria for the project in the tender document;
- b. Include the means of verification in the tender document; and
- c. Amend the tender title to reflect the inclusion of the GPP criteria.

2.3.72 To this end, the GPP Office forwarded the relevant section of the applicable guidance sheet for FTS's ease of reference. An FTS official replied to the email on 26 June 2013, stating that the tender document had been published shortly after the Foundation had made its second request to the GPP Office. Hence, the above observations made by the GPP Office could not be included in the tender document.

2.3.73 By the closing date, that is, 5 July 2013, 10 bids had been submitted and all were deemed to be administratively as well as technically compliant by the FTS Evaluation Committee. The Committee's Chair, Secretary, Evaluators and the chosen Project Leader signed a Declaration of Impartiality and Confidentiality. In light of the bids submitted, the Evaluation Committee selected the cheapest offer, which was that submitted by Solergia at €15,571.25. Of interest is the fact that this bid amounted to 59 per cent of the original tender estimate, while five of the bids submitted were well above the estimate cost of works required. All the bidders were informed of the Notice of Intent to Award, and none of the bidders lodged a complaint or appealed the decision arrived at by the FTS Evaluation Committee. Figure 19 provides an overview of the bids submitted to FTS in relation to the tender estimate originally compiled by the Foundation.

2.3.74 The Project Leader/Architect signed the Technical Report and the Technical Evaluation Grid. The three Evaluators also signed the latter, while the Evaluation Committee Chair signed the Administrative Compliance Grid. Finally, the Evaluation Committee Chair, Secretary and Evaluators all signed the Evaluation Report.

Figure 19: Overview of FTS 038-13 Tender Bids Submitted



2.3.75 The Order to Start Works was issued by FTS on 5 August 2013 and identified 12 August 2013 as the official date of commencement of the contracted works. In the tender bid submitted, the Contractor had stated that the works procured would be completed within a period of five weeks, that is, by 16 September 2013. As at end January 2014, these works were still incomplete, hence accounting for a delay of in excess of 20 weeks. The documentation retained in file indicated that works were termed complete in the correspondence exchanged in mid-February 2014.

2.3.76 Queries were raised by NAO as to the considerable delays registered. According to FTS, the Contractor was unable to work for an extended period of time due to the weather (all works were to be carried out on the façade and therefore outside), due to health and safety issues and the fact that it was not possible to work on Saturdays due to the local market (that was held in close proximity to the school). Furthermore, once school started, works were not allowed to be carried out during school hours for health and safety reasons. These factors gave the Contractor a limited time window in which to work and caused inevitable delays.

2.3.77 NAO's review of payments made in this respect highlighted certain discrepancies. While the contracted amount was that of €15,571, the final BoQ presented by the Contractor amounted to €20,583, that is, a variation of €5,012 (equivalent to 32 per cent of the originally contracted amount).

2.3.78 A partial explanation with respect to this variation is provided through a letter, dated 14 February 2014, addressed to the MEDE. In this correspondence, FTS requested Minister MEDE's approval for variations incurred in order to settle final payment with the Contractor. In essence, the variation described in this correspondence entailed the re-categorisation of a stretch of wall measuring 325m² from a '*fuq il-fil*' finish (charged at €4.95/m²) to a plastering and painting finish (charged at €19.21/m²). The difference in rates was therefore that of €14.26/m², and applying such a rate difference to the quoted 325m² area resulted in a variation of €4,634.50.

2.3.79 NAO raised queries with FTS as to whether this re-categorisation could have been avoided had the need for plastering at below ground level been foreseen and catered for at planning stage. To this end, FTS asserted that this could not have been foreseen

since it was only once works had begun and the stone surface sanded down that it was evident that the under-layer was heavily stained and therefore impossible to restore. NAO considers the explanation put forward by FTS as valid and reasonable.

- 2.3.80 Aside from this explanation, other discrepancies noted by NAO persisted. According to the Letter of Acceptance, the surface area upon which the various finishing works were to be carried out amounted to 1,895m². However, the quantity billed by the Contractor was that of 2,017m², which gives rise to a discrepancy of 122m². The 122m² discrepancy is categorised as follows, with 67m² corresponding to the *'fuq il-fil'* finish category and 55m² corresponding to the plastering and painting finish. Applying the respective rates to each of the discrepant subcategories results in a variation of €1,388, which, based on the documentation retained in file, was not specifically approved. According to FTS, this discrepancy was due to the fact that the original quantities were taken without consideration of the window lintel undersides and window jambs, which had to be included and were eventually accordingly factored in.
- 2.3.81 Finally, NAO noted that VAT receipts were issued by the Contractor on 9 October 2013, 21 February 2014 and 4 March 2014. These corresponded to a total amount of €19,554, which represents the total sum due less the five per cent retention.

DO 01-02-13 – Direct Order for Renewing and Repairs of Sewer Mains and Drains at the FTS Offices, Pembroke

- 2.3.82 In January/February 2013, FTS sought quotations for urgent repairs of sewer mains and drains at the Foundation's offices in Pembroke. Quotations were sourced from three different contractors, who submitted estimations for the works required amounting to €2,763, €3,215 and €3,543 respectively.
- 2.3.83 On 2 February 2013, FTS issued a Letter of Acceptance to Mr Joseph Tanti who, at €2,763, had submitted the cheapest quotation. An undated Purchase Requisition form was also duly raised and authorised by the Project Manager.
- 2.3.84 An invoice for €2,763 in respect of the works in question was submitted by the Contractor on 18 February 2013. Works were certified as *"carried out according to Purchase Order"* by the FTS Engineer in charge. The value of works was as per Letter of Acceptance and the invoice was settled by FTS on 4 March 2013, with the corresponding VAT receipt issued by the Contractor on 6 March 2013.
- 2.3.85 From the documentation made available by FTS in connection with this direct contract, a number of shortcomings were identified, which could have potentially undermined the integrity of this procurement process. It was noted that:
- a. Documentation maintained/forwarded to this Office was not complete, rendering certain aspects of this process difficult to verify.
 - b. NAO could not establish the date on which quotations were sought from contractors. Documentation made available indicated that at least one of the quotations was sought on 31 January 2013. Another request for quotes was dated 5 February 2013; however, it could not be ascertained whether this was the original request or whether this was a reminder to an earlier request made. In the case of the selected Contractor, no documentation of the request for quotation was found. It was therefore impossible for this Office to establish that quotations were, in fact, sought on the same day, thereby wholly ruling out any irregularity or possibly collusion with contractors. Further queries raised by NAO with respect

to this issue, although indirectly addressed, failed to indicate when the actual requests for quotations were made.

- c. Although documentation made available indicated that an initial BoQ for the works required was drawn up by FTS, no estimate of the cost of works involved was found. Despite the cost of works carried out not being substantial, quotations received ranged from €2,763 to €3,543, with the highest quotation received 28 per cent over the cheapest tendered. FTS confirmed that no estimate of the cost of works was drawn up; however, no reasons for this were put forward. In light of the above, NAO sought to establish the proximity of quoted rates to market prices. To this end, NAO's technical advisor indicated that the cited rates were lower than standard rates.
- d. Although the Letter of Acceptance was issued on 2 February 2013, it was noted that the quotations by the two unsuccessful tenderers were submitted to FTS on 5 and 6 February 2013 respectively. As stated in (b), lack of documentation made it impossible for NAO to determine the date on which the quotations were sought. The fact that the Letter of Acceptance was issued prior to the receipt of the other quotations renders this shortcoming more serious.
- e. A Purchase Requisition form for the works in question was raised. However, although the requisition form was duly authorised by the Project Manager, this was undated. It was therefore impossible to determine when the requisition form was raised, although the fact that the value of works was the same as that actually tendered indicated that the Purchase Requisition form was possibly raised after the actual award. According to FTS, purchase requisition forms are usually undated since these are accompanied by dated quotations. FTS further contended that this case was "*unique in nature*" due to the extreme urgency involved and the fact that the Foundation's offices could not be utilised until the required works were carried out.

Chapter 3

Conclusions and Recommendations

Chapter 3 – Conclusions and Recommendations

3.1 Conclusions

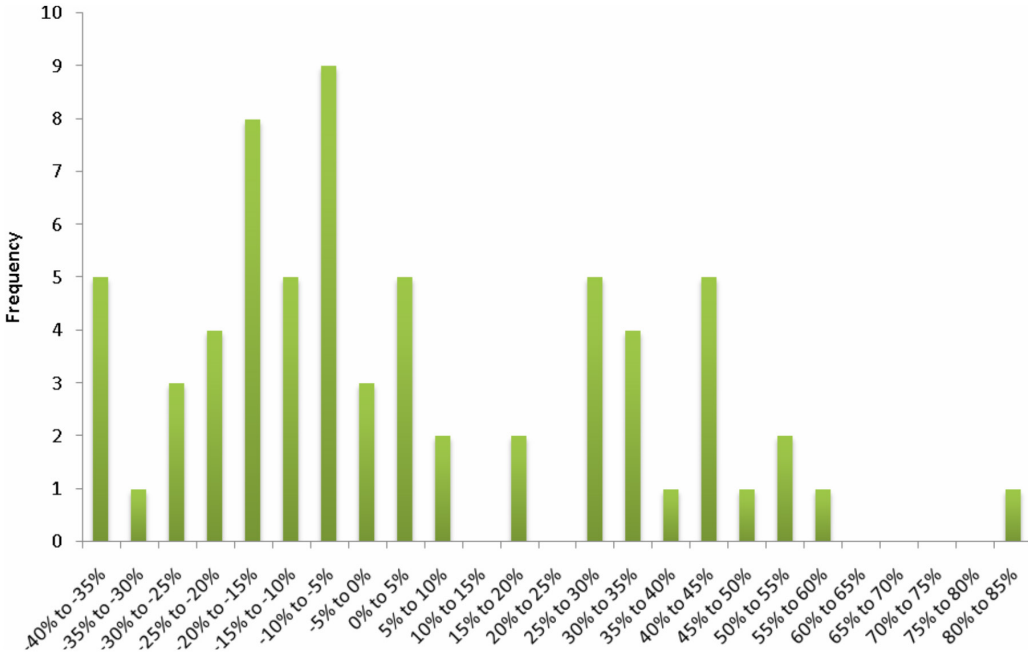
- 3.1.1 This audit focused on the regularity of procurement undertaken by FTS and, to this end, entailed the review of 22 contracts accounting for a total contract value in excess of €1.4 million. The selection of the audit sample was based on a number of criteria, including the extent of variations incurred, the repeat award to the same contractor, as well as an element of random sampling. This approach allowed NAO to comprehensively review practices employed and identify shortcomings emanating therefrom.
- 3.1.2 At a general level of analysis, NAO noted that the documentation retained by FTS was complete and maintained in a highly organised manner. In terms of compliance to procurement procedures and regulations, FTS exhibited a consistent adherence to all facets and requirements posed. To this end, this Office considers the procurement function at FTS to be well-managed and a marked improvement over previous audits undertaken by the NAO, particularly those undertaken in 2005.
- 3.1.3 Notwithstanding the improvement registered, a number of shortcomings were also identified. Generally, audit concern centred upon the instances of significantly higher FTS estimates compared to the tender bids received, considerable changes in the scope of planned works, substantial extras and variations, and notable delays in the completion of works without the application of corresponding sanctions.
- 3.1.4 Although the perspective of analysis undertaken by this Office with respect to the cases reviewed mainly centred on the role played by FTS, NAO is well aware that the Foundation's project management responsibility may at times be challenging. Managing the Foundation's multiple stakeholders, be they clients or otherwise, directly impacts upon the effective execution of assigned projects. While the report highlights several of the Foundation's shortcomings, such issues must be seen within their wider context.
- 3.1.5 As indicated, the deviation of compliant bids from the FTS estimate drew NAO's attention, with five out of the 22 cases reviewed featuring an estimate that was significantly higher than all other compliant bids received. Particular reference is hereby made to the following cases: FTS 017-12, FTS 017-13, FTS 026-13, FTS 029-13 and FTS 052-13. In another case, that is, FTS 004-13, the FTS estimate was considerably lower than all compliant bids submitted. In NAO's understanding, this is indicative of

poor awareness of market rates, which in turn poses a risk to the Foundation’s ability to safeguard and ensure value for money in executing its procurement function.

3.1.6 In other cases reviewed by NAO, namely, FTS 006-12, FTS 017-12, FTS 009-13, FTS 038-13, FTS 047-13 and DO 01-02-13, bids were submitted at below going market rates. In this Office’s opinion, this is indicative of the benefits of open procurement methods, which promote competitive pricing among contractors, ultimately resulting in a reduced financial outlay by Government. In the specific case of FTS 017-12, a combination of factors prevailed, with an overstated estimate and favourably priced bids resulting in the significant divergence between the estimated and actual cost of works.

3.1.7 Figure 20 presents all compliant bids received by FTS with respect to the 22 cases reviewed and presents the disparity in the value of the bid in comparison to the FTS estimate in percentage terms. As rendered evident, 66 per cent of the compliant bids were below the FTS estimate, with 21 out of 67 bids being 15 per cent, or more, below the estimate. This indicates an area that merits attention and improvement, as inadequate project estimation impacts upon the wider financial performance of the Foundation.

Figure 20: Overview of the Percentage Difference of All Compliant Bids relative to the FTS Estimate



3.1.8 Another shortcoming identified related to the significant changes in project design, evidenced by the substantial changes with respect to the BoQ. The underlying implication of this concern was that the project had been poorly planned, which then necessitated changes during the implementation phase. A case in point was that of FTS 004-13, which featured the addition of a ring road that was not originally planned. Another case was that presented in FTS C02-12, where the design of a stand at the new sports facility on the grounds of Maria Assumpta Adelaide Cini GSS in Hamrun was changed after the contract had already been awarded.

3.1.9 A certain element of variations is understandable and inevitable, especially with respect to large and complex projects; however, a number of cases reviewed were straightforward projects and yet incurred notable variations. NAO noted that variations resulted from the addition and deduction of Items, as well as the introduction of new Items without a significant and corresponding change in scope. Although these

variations did not necessarily result in considerable cost overruns, they are indicative of poor planning. Among other cases, the most evident in terms of this shortcoming were: FTS 017-13, where changes in quantities of a number of aluminium apertures were noted; FTS 056-13, where substantial changes in quantities together with the addition of new Items was noted in relation to the resurfacing works at the Police Academy at Ta' Kandja; and FTS 061-12, where a number of Items relating to mechanical and electrical services were amended.

3.1.10 Furthermore, NAO noted that in FTS 056-13 the inclusion of new Items of expenditure was effected with no documented approval issued a priori. The implication of such a shortcoming is that the rates corresponding to such Items had not been certified as fair and reasonable prior to their commissioning, heightening the evident risk of jeopardising value for money.

3.1.11 Delays were experienced with respect to a considerable number of projects, with responsibility at times attributable to FTS and at other times to shortcomings on the part of the contractors involved. In the former case, delays arising out of FTS action indicate poor planning and management of project implementation. On the other hand, NAO noted that delays caused by the various contractors were never followed up by the imposition of delay charges and penalties as contemplated in the contract. Such shortcomings were illustrated in FTS C02-12 (25-week delay), FTS 004-13 (23-week delay), FTS 017-13 (28-week delay), FTS 038-13 (22-week delay), FTS 047-13 (44-week delay) and FTS 001-13, which had been pending for over a year and was still incomplete at the time of reporting. Moreover, in FTS 006-12, FTS 009-12 and FTS 017-12, warnings issued by the Foundation regarding the imposition of charges and penalties were not followed up despite the considerable delays registered. Such delays not only impact upon FTS's planned execution of works, but also present the risk of disrupting scholastic operations if not completed within the established timeframes.

3.1.12 NAO is of the opinion that the resort to direct contracts should be restricted to instances of genuine urgency and unforeseen circumstances and not serve as a safety net for poor planning and ineffective management. While DO 01-02-13 (repairs of sewers mains and drains) and DO 01-07-13 (repairs of electrical installation) satisfy these criteria, DO 01-08-13 clearly does not, as the painting of a large school playground, at a cost of over €42,000, is a task that can be anticipated, appropriately planned for and contracted through open procurement methods. Other shortcomings identified with respect to these three direct contracts include:

- a. The lack of an appropriately drawn-up FTS estimate;
- b. The failure to obtain more than one quotation, even in cases where urgency was cited;
- c. The sourcing of quotations after the award of the direct contract had already been effected; and
- d. Incomplete documentation retained relating to the direct contract.

3.1.13 In FTS 004-13, NAO noted that the original estimate of the cost of works was just under the €120,000 threshold for departmental tenders while all bids submitted were considerably over this estimate and works were, in fact, awarded at a contract value in excess of €160,000. Moreover, additional works of over €50,000 were later added to bring the total cost to over €210,000. Since there was no documentation of the award of these extra works to the Contractor, it could not be ruled out that approval for this variation was sought after the works had initiated.

- 3.1.14 Although NAO acknowledged the fact that the approval of DoC was sought both prior to the award of the contract and once the commissioning of additional works was required, this Office questioned whether, given that the estimate was close to the departmental threshold, this tender should have been issued through DoC at the outset. While this Office considers rates established in FTS 004-13 as somewhat lower than standard market rates, these were consistent with rates for roadworks in force at the time through Transport Malta's Framework Agreement⁵. Despite consistency with the Framework Agreement, this tender was issued at a time when the Agreement had already been in place for two years, with rates rendered somewhat obsolete due to increases in the price of bituminous products. In view of the fact that asphaltting works were the major Item in this tender, minor variation in terms of rate would have resulted in a significant impact upon the tender bids submitted, accentuating the divergence from the FTS estimate. Notwithstanding all of the above, this Office considers FTS's decision to base roadwork rates on an active Government Agreement as a valid approach in establishing the project estimate.
- 3.1.15 Furthermore, in this case, NAO's attention was drawn to the fact that quantities cited in the second BoQ were in fact less than those cited in the first BoQ. Requested to comment on the above apparent discrepancies, FTS stated that BoQ 1 and BoQ 2 were based on assumed quantities of works carried out to date, while BoQ 3 was based on the actual measurement of works carried out. NAO's technical advisor indicated that this is an accepted industry practice, particularly in view of difficulties in determining, with precision, the extent of works carried out, and due to the principle of retention.
- 3.1.16 With respect to FTS 046-13, NAO considers the manner in which DCC and FTS executed their functions as a case of good practice. DCC's scrutiny of the FTS Evaluation Report was instrumental in ensuring that conclusions regarding the compliance, or otherwise, of tender bids arrived at therein were correct. On the other hand, FTS provided detailed explanations regarding the rationale employed in determining compliance, which clearly referred to the stipulated tender requirements.
- 3.1.17 In the case of FTS C02-12, an additional expense of approximately €49,000 was claimed by the Contractor as a result of FTS's suspension of works due to circumstances that could have been anticipated by the Foundation and accordingly addressed prior to the commissioning of works. FTS stated that the Contractor was not paid for this claim although no supporting documentation countering the Contractor's written claim was provided for NAO's review. This Office considers the absence of documentation indicating the outcome of this claim as a shortcoming on the part of the Foundation.
- 3.1.18 Other shortcomings noted by NAO with respect to the cases reviewed, albeit not consistently manifested, were the following:
- a. In one case reviewed, NAO noted that the authorisation of Chair FTS was obtained after the publication of the tender had been effected;
 - b. Resort to GPP-related approval was at times sought after the tender had been published, thereby undermining the tender's possible adherence to GPP requirements;
 - c. NAO noted that potential bidders were required to sign a common sheet as proof of collection of the tender documents. Since interested parties were privy to whom other interested bidders were, the risk of collusion was present. This risk has now been eliminated following the shift to the downloading of the document directly from the FTS website;

⁵ The Framework Agreement, administered by Transport Malta, which came into force in 2011, established a comprehensive overview of items relating to roadworks and the maximum rates chargeable by contractors for these items.

- d. The Evaluation Committee was not always composed as required, with the Committee Chair voting when the position should have been non-voting;
- e. Although in the absolute majority of cases, the Declaration of Impartiality and Confidentiality was signed by all members of the Evaluation Committees, there were a number of instances where such Declaration was not duly completed;
- f. The administrative compliance of bids was determined by the Evaluation Committee Chair rather than all members of the Committee; and
- g. Each Evaluator did not independently carry out the required technical evaluation, with one technical report drawn up instead.

3.2 Recommendations

- 3.2.1 In light of the above, NAO recommends that FTS should endeavour to establish estimates that accurately reflect the works and services required, thereby allowing for better financial management and planning, as well as serving as a reliable benchmark against which to compare the bids received. The Foundation should carry out detailed market research to establish current rates, thereby ensuring the compilation of estimates that are more accurate.
- 3.2.2 Aside from the aforementioned rate-related considerations, attention should also be directed towards the design element of projects undertaken. FTS should endeavour to clearly identify all of the works that are required on a particular project to avoid changes in scope. NAO considers that changes in scope pose a significant risk to value for money considerations as these invariably lead to variations exposing FTS to a weakened position in terms of negotiating with the already engaged contractor.
- 3.2.3 In circumstances where variations inevitably arise, FTS should ensure that the appropriate procedure of endorsing such expenditure is adhered to. Therefore, FTS should seek relevant authorisation when required and independently estimate the cost of such additional works and services, thereby safeguarding the project's value for money.
- 3.2.4 NAO recommends that FTS should enforce delay charges and penalties in cases of gross discrepancies between agreed and actual project completion dates attributable to contractors' shortcomings, as invariably contemplated in the contractual agreements that the Foundation enters into.
- 3.2.5 The utilisation of direct contracts should be kept to a bare minimum and only resorted to in cases of genuine urgency. Nevertheless, when resorting to direct contracts, FTS should draw up an estimate of works or services required, invariably obtain quotations from more than one contractor prior to the award of contract and retain complete documentation of all of the above and the process as a whole.
- 3.2.6 In cases where FTS estimates are close to the €120,000 departmental threshold, this Office is of the opinion that the Foundation should err on the side of caution and refer such tenders to DoC, thereby avoiding the eventuality of resorting to DoC at a later stage in the procurement process. The immediate referral of such tenders to DoC imbues the process with a greater degree of scrutiny, contributes towards good governance and averts possible difficulties arising when shifting from a departmental to a DoC tender.

3.2.7 Finally, NAO recommends that the various facets and stages of the procurement process be completed in line with established regulations and requirements. To this end, FTS should:

- a. Ensure that the relevant authorisations are obtained as required;
- b. Coordinate with the GPP Office prior to the publication of tenders;
- c. Establish Evaluation Committees in accordance with prevalent requirements;
- d. Ascertain that all members appointed to Evaluation Committees sign the relevant Declaration of Impartiality and Confidentiality; and
- e. Undertake administrative and technical evaluations as stipulated and guided by the DoC's Standard Operating Procedures / Guidelines for Tender Evaluation Committees.

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