NAO
National Audit Office
MALTA

The contract awarded to the JCL and MHC Consortium by the St Vincent de Paul Residence for the management of four residential blocks through a negotiated procedure

Report by the Auditor General
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List of Abbreviations

AG	Auditor General
CCE	CareMalta Group Ltd & CaterEssence Ltd
DG	Director General
DoC	Department of Contracts
DOI	Department of Information
FMS	Foundation for Medical Services
GCC	General Contracts Committee
HACCP	Hazard Analysis Critical Control Point
ITS	Institute of Tourism Studies
JCL	James Caterers Ltd
MDH	Mater Dei Hospital
MEAT	Most Economically Advantageous Tender
MFCS	Ministry for Family, Children's Rights and Social Solidarity
MFIN	Ministry of Finance
MFSS	Ministry for the Family and Social Solidarity
MHC	Malta Healthcare Caterers Ltd
MoU	Memorandum of Understanding
NAO	National Audit Office
NSO	National Statistics Office
OJEU	Official Journal of the European Union
PAC	Public Accounts Committee
PCP	Public Church Partnership
PCRB	Public Contracts Review Board
PPP	Public Private Partnership
PSDAA	Parliamentary Secretary for Rights of Persons with Disability and Active Ageing
RPI	Retail Price Index
SVP	St Vincent de Paul Residence
VAT	value added tax

Executive Summary

1. On 28 August 2018, the Opposition Members of Parliament on the Public Accounts Committee (PAC) submitted correspondence to the Auditor General requesting an investigation regarding the award of a contract for the management of a 500-bed extension to the St Vincent de Paul Residence (SVP), that was yet to be constructed.

2. In correspondence submitted to the PAC on 30 September 2019, the National Audit Office (NAO) set its terms of reference. The terms focused on the procurement process and the contractual framework entered into with the JCL and MHC Consortium for the provision of comprehensive services to the SVP and the management of four newly constructed blocks at the Residence through which residential care to older persons was to be provided.

3. In early to mid-2014, several reports regarding the SVP's kitchen highlighted its dismal state. Following a memorandum to Cabinet in June 2014, presented by the Parliamentary Secretary for Rights of Persons with Disability and Active Ageing (PSDAA pre-2017), Cabinet decided that the kitchen should be closed and that, as an interim measure, an extension should be made to the contract through which the Mater Dei Hospital serviced its catering requirements. In addition, Cabinet proposed several options intended to address in a more definite manner the SVP's catering requirements. On 8 July 2014, a direct contract, valued at €2,702,700, was entered into by the SVP with Malta Healthcare Caterers Ltd (MHC) for the provision of meals over a six-month period. This direct contract was extended several times until November 2017, by which date a total disbursement of €13,162,331 had been made.

4. While the direct contract was an interim measure, a longer-term solution was sought through a call for tenders. To this end, a call for a public private partnership for the provision of comprehensive services was issued by the Department of Contracts (DoC) on 10 November 2015. Through this call, the SVP sought to secure its catering requirements in terms of daily meals to be provided to its residents and staff, and the reconstruction of its kitchen. However, bidders were to also provide an additional investment at no cost to the SVP, the nature of which was not defined in the call.

5. By the closing date of 7 January 2016, bids were submitted by the JCL and MHC Consortium and the CCE Joint Venture. The evaluation process relating to the technical aspect of the bids was completed on 24 May 2016 and endorsed by the General Contracts Committee (GCC) later that day. Both bids were deemed technically compliant; however, the bid submitted by the JCL and MHC Consortium was allocated more marks than that submitted by the CCE Joint Venture. Shortly after the evaluation of the technical aspect, the CCE Joint Venture lodged an appeal with the Public Contracts Review Board and subsequently lodged another with the Court of Appeal. Both appeals were rejected. With this outcome, the evaluation of the financial component of the bids could proceed and, on 29 March 2017, the Evaluation

Committee concluded its assessment and recommended that the contract be awarded to the JCL and MHC Consortium. The bid by the Consortium comprised a daily price for meals per person of €12.72, excluding VAT, over a ten-year period extendable by five years, the construction of a fully furnished kitchen at no cost to the SVP and an additional investment of approximately €29,000,000. This additional investment entailed the construction of two residential blocks at the SVP, which would increase capacity by 252 beds, and an annual cash contribution of €1,500,000 over the ten-year contract term. The GCC approved the award of the tender for comprehensive services on 4 April 2017.

6. In parallel with and intricately tied to this process was another contract that the JCL and MHC Consortium would secure, whereby the SVP entered into a negotiated procedure with the Consortium for the assignment of management services relating to the blocks that were to be constructed. Negotiations held between May and November 2017 resulted in significant changes to the parameters of the additional investment, which was altered from two blocks and a cash payment to the construction of four blocks. Also changed was the timeframe within which the blocks were to be constructed, revised from an unspecified completion date to finalisation within 36 months. However, these changes were contingent on Government consenting to the award of the management of the four blocks to the Consortium for a period of 15 years, at a discounted rate of six per cent over that incurred by the SVP.

7. The SVP, as the contracting authority, the DoC, as the regulator of public procurement, and the Ministry for the Family and Social Solidarity (MFSS), in its function of oversight of entities falling under its responsibility, fulfilled different roles in driving this process forward. However, ultimately all contributed, albeit to varying degrees, to the eventual endorsement of the proposal submitted by the Consortium to manage these blocks. The modality of award of the agreement for management services to be provided by the Consortium was through recourse to a negotiated procedure. Under a negotiated procedure, which can only be resorted to in specific circumstances cited in the Public Procurement Regulations, Government can enter into negotiations directly with a particular economic operator without the need to engage in any form of open competitive procurement. In this case, the reasons cited for resort to a negotiated procedure were that competition was absent for technical reasons and due to urgency brought about by events not in the control of the SVP.

8. The procurement process came to an end in November 2017 through entry into several contracts that were to regulate the comprehensive services and management services that the JCL and MHC Consortium was to provide to the SVP. A Memorandum of Understanding between the SVP and the Consortium was signed on 10 November 2017, wherein matters relating to how the blocks were to be delivered were clarified. Shortly thereafter, on 14 November 2017, a contract for the provision of comprehensive services to the SVP and to demolish, build and equip a fully furnished kitchen at the Residence was entered into by the DoC, on behalf of the MFSS, and the Consortium. Through an addendum signed on the same day of entry of the contract by the same parties, it was agreed that the cash contribution forming part of the additional investment was to be replaced with the construction of two

additional blocks, thereby increasing capacity by a further 252 beds. The blocks were to be completed within three years from signing. Finally, a Management Service Agreement was entered into by the SVP and the Consortium on 14 November 2017. This Agreement governed the management services that were to be provided by the Consortium with respect to the 504 beds housed within the four blocks. The rates that were to be charged by the Consortium to the SVP were €99.17 daily per resident per occupied bed and €92.39 daily per resident per available bed. The approximate comprehensive value of the Agreement entered into by the SVP with the Consortium through a negotiated procedure was in excess of €274,000,000.

9. The construction of the four blocks was completed between July and October 2020 and rendered operational shortly thereafter. The NAO established that from the date of commencement of the contract for comprehensive services up to end 2020, the SVP paid the JCL and MHC Consortium in excess of €13,500,000. In addition, over the period July to December 2020, the Consortium invoiced the SVP a total of approximately €7,700,000 for management services provided at the four residential blocks constructed by the Consortium.

10. Hereunder are the salient conclusions arrived at by the NAO with respect to this procurement process.

11. The NAO concluded that the call for tenders was justified as there was an urgent need to upgrade of the kitchen and the catering facilities within the SVP. Although the need for an interim measure until the procurement process was finalised is not contested, this Office's attention was drawn to the repeated extensions of the direct contract awarded to the MHC in this regard, which extensions could have been avoided had the tendering process been more expeditiously managed. This Office maintains that these extensions breached that reasonably approved by the DoC and Cabinet, in that the direct contract was protracted well beyond the term approved and greatly exceeded the value indicated.

12. The NAO is of the opinion that the issue of the call for tenders for comprehensive services at the SVP was appropriately authorised by Cabinet, and by MFIN in terms of budgetary clearance. Notwithstanding this, certain concerns persist. Of note to the NAO was the evidence reviewed of meetings held by the SVP prior to the issue of the call for tenders. During these meetings, the MHC expressed interest in a tender that was yet to be issued – one that the contractor would eventually secure – and the SVP highlighted the possibility of the refurbishment of the kitchen being assigned to the contractor in exchange for a ten-year catering contract. This was ultimately reflected in the call for tenders issued by the SVP. It is in this context that the NAO's reservations regarding the possible prior understanding between the SVP and the MHC emerge.

13. The NAO understood that the objectives of the call for tenders were mainly determined by the SVP, although guidance from the DoC was sought to ensure compliance with the Public Procurement Regulations. No concerns emerge in relation to the technical requirements for the catering and the construction of the kitchen. However, this Office's attention was drawn

to the financial element of the catering service to be sourced. The NAO is of the opinion that the €12.72 capping for the daily price for meals per person inflated the cost of catering to compensate for the other elements of the tender, namely, the construction of the kitchen and the additional investment at 'no cost' to the SVP.

14. With respect to the additional investment, the NAO understood that this innovative concept was intended to obtain increased benefit to Government. Despite enquiries with the PSDAA (pre-2017), the CEO SVP and the DG DoC, this Office was unable to determine with any certainty how the additional investment component originated, notwithstanding that this was a critically important and innovative element of the call for tenders. Moreover, this Office has reservations as to why no parameters that were to guide potential tenderers formulate the additional investment that was to be provided were set. The NAO maintains that this omission allowed for the distortion of the level playing field that should be ensured in public calls for tender, where all effort is ordinarily made to streamline and standardise bidding parameters to ensure transparency, equal treatment and proportionality. This concern assumes greater relevance when one considers the disproportionate weighting assigned to the additional investment element in the evaluation criteria. This Office is of the opinion that the financial weighting as allocated was not aligned to the objectives of the call for tenders. While the additional investment may have addressed other needs that the SVP had, the NAO maintains that this was not the main objective of the call for tenders; therefore, this should have been accordingly reflected in the weightings assigned.

15. The concept of an additional investment at no cost to the contracting authority, as applied in this case, is in the NAO's opinion, fallacious, for in a transaction of such significant value with commercial interests, nothing is ever secured for free. It is reasonable and inevitable for this Office to assume that the cost to the bidders of the additional investment was to be recovered in other elements of the commercial transaction. In this case, bidders could recover the additional investment by factoring this cost into the pricing of the provision of meals or through other related agreements.

16. Another aspect of concern that the NAO sought to assess was whether the inclusion of an additional investment at no cost to the contracting authority in this public tender was in line with procurement legislation. While the DoC indicated that no legislation precluded the additional investment, the NAO maintains reservations in relation to the concept of a gift at no cost to Government. The DoC's affirmation that this concept was not challenged by bidders offers no assurance to the NAO as to its legitimacy. This Office maintains that the onus in ascertaining regularity rested with the DoC. This was particularly relevant since the additional investment was an innovative concept that therefore warranted legal guidance, perhaps internally, through the DoC's legal experts, or externally through recourse to the Attorney General's Office. This Office is of the opinion that the inclusion of the additional investment, while not ostensibly illegal, created a situation whereby this element of this public call for tenders lacked definite provisions and regulations against which it could be assessed. Complications in this respect are not limited to the process of assessment but readily extend

to the implementation phase, since the absence of defined parameters inevitably created risks in the execution of the contract.

17. The NAO ascertained that the two offers submitted by the stipulated deadline were in line with the requirements set out in the call for tenders and therefore proceeded to the evaluation stage of the procurement process. In the NAO's understanding, the evaluation process was generally carried out in line with the prescribed procedures, resulting in the tender submitted by the JCL and MHC Consortium being deemed the most advantageous offer to Government by the Evaluation Committee. While the NAO has no adverse comments on the evaluation process, this Office maintains serious reservations with respect to the additional investment.

18. The NAO's concerns are affirmed when one considers the preference in the weighting assigned to the additional investment in the assessment of the financial offers. Taking the offer by the JCL and MHC Consortium as the basis of analysis, the approximate tendered value of the additional investment was €29,000,000 while the cost of the meals was €57,000,000. Despite the considerable difference between the two, the additional investment was assigned a significantly higher weighting. This anomaly is aggravated when one considers that the €57,000,000 cost of meals corresponds to the ten-year contract term, and that this value could increase substantially should the term be extended by the optional period of five years permitted in the contract. This imbalance in weighting is evocative of offers where a very low price on heavily weighted elements and higher prices for lower weighted elements are made. It is in this context that this Office maintains that this was a flaw in the price scoring formula adopted.

19. Another aspect of concern emerges when one considers that more than half of the value of the contract was to be returned to Government as an additional investment. In this Office's opinion, the questionable situation where €29,000,000 of a €57,000,000 contract is returned to Government as a gift may readily be traced back to the anomalous design of the tender.

20. Although the substitution of the annual cash payments with the construction of an additional two blocks did not result in changes in terms of value, in that the cost of the additional blocks was estimated on a par with the amounts that were to be paid to Government, this gave rise to other obligations that Government was constrained to assume. This was because the change in the nature of the additional investment was contingent on Government awarding the management of the additional blocks to the Consortium. While it can be argued that Government was gaining from this substitution, in that the completion of the blocks within three years from contract signing as against cash payments over a ten-year period accelerated Government's realisation of the additional investment, Government had to concede the management of the blocks to the JCL and MHC Consortium for this to happen. This obligation not only put an added onus on Government, in that it now had to enter into negotiations for the provision of this service, but also rendered it at the willing mercy of the Consortium in that Government could not explore more advantageous ways of managing the additional blocks.

21. The NAO sought to understand how the decision to assign the management of the blocks to the JCL and MHC Consortium through a negotiated procedure was arrived at, the basis of any analysis undertaken and who was responsible. Despite the significant materiality of the management services that were to be outsourced, the NAO had severely limited visibility of the considerations that were discussed and the reasons that ultimately led to the decision to award the management of the blocks to the Consortium. In this context, this Office had to rely solely on that stated by those involved based on recollections of developments that had taken place several years prior.

22. This Office takes a serious view of this lack of documentation in respect of services procured directly with no justifiable restrictions to competition and that involved an estimated €274,000,000 in public funds. The fact that key decisions taken were not appropriately documented detracted from the transparency that should characterise public procurement. The NAO's concerns regarding the evident failures in transparency assume further relevance when one considers the discriminatory procurement process pursued by the SVP and endorsed by the MFSS and the DoC, which decreased the chances of Government obtaining good value through restrictions to open competition.

23. According to the DoC, in feedback provided to the SVP, while the conversion of the additional investment from one form to another could be transacted under the call for tenders for comprehensive services that had been issued, entry into an agreement for the provision of management services could not be considered as part of this tender, as the services constituted a fundamental departure from the terms of the tender and altered its value. The NAO understood this feedback by the DoC as the source from where recourse to an alternative procurement method for the management of the additional blocks, that is, the negotiated procedure subsequently entered into, originated.

24. Of concern to the NAO is that the MFSS, the SVP and the DoC made the decision to pursue the offer proposed by the JCL and MHC Consortium and assign it the management of the new blocks without due consideration. Notwithstanding that the SVP sought an independent computation of the cost per resident being incurred at the Residence, the NAO maintains that this should have been determined prior to any decisions made, rather than when the decision to assign the management to the Consortium had effectively been taken. Instead, the parties representing Government solely sought to make minimal savings on the expenditure borne by the SVP through a discount that was to be given by the Consortium on these costs.

25. In this regard, the SVP engaged an audit firm that established that the SVP incurred an occupied and an available bed per night rate of €105.50 and €98.29, respectively, in 2016. The relevance of these rates is that they served as the basis for the discounted rates that were to be charged by the JCL and MHC Consortium. Although established independently by an audit firm, any savings claimed by the SVP in entrusting the management of the blocks to the Consortium must inevitably be considered in the context that the rates established were inherently laden with inefficiencies, resultantly false and overstated. This should not

be construed as a criticism of the work of the audit firm, for it performed its assignment according to the parameters set and the information made available by the SVP.

26. While the NAO is cognisant of the fact that the conversion of the annual cash contribution by the Consortium to the construction of an additional two blocks was conditional on the Consortium being awarded the management of all four blocks, this Office maintains that other options were available to the SVP in relation to the utilisation of the additional investment that had been secured. This Office is of the opinion that the optimal course of action in this respect was for the SVP to issue a call for tenders to generate offers from potential service suppliers willing to manage the additional blocks. Through this approach, the SVP could have obtained valuable information on the availability of other service providers and up to date market price information prior to committing the management of the additional blocks to the JCL and MHC Consortium.

27. A straightforward exercise that could have been carried out was the benchmarking of the rate offered by the JCL and MHC Consortium against the rates charged by private homes for the elderly for the purchase of beds by Government. The SVP did not question the rates established by the Consortium in respect of occupied and available beds per night, but solely rested on the fact that the Consortium had offered savings on the operational cost per resident being incurred by the Residence. No analysis as to what Government was being charged for highly dependent residents in other private care homes, or against other homes for the elderly run as PPPs with Government, was undertaken. A comparative analysis carried out by the NAO indicated that the rates charged by these homes were significantly lower than those proposed by the Consortium.

28. While this Office acknowledges that the medical requirements of the SVP's residents are more intensive than those catered for by other homes, it is noted that medical care, nursing specialities and other allied services are not catered for under the Management Service Agreement entered into with the JCL and MHC Consortium for the management of the blocks. Although the NAO concedes that the medical profile of the Residence's population may necessitate a higher degree of care provided for under the Agreement when compared to that provided at other residential homes, this discrepancy in terms of the higher degree of care required was not quantified, captured or defined by the SVP, thereby limiting the NAO from factoring an adjustment in its comparison to other homes.

29. The discounted price agreed with the JCL and MHC Consortium and cited in the Management Service Agreement was €99.17 daily per resident per occupied bed and €92.39 daily per resident per available bed. When comparing with 2016, the year on which the rates cited in the Agreement were based, the difference between the rates paid by Government to the Consortium and those paid by Government to private contractors from whom beds were procured is stark. The average daily rate that Government was paying private contractors for persons with a high dependency in 2016 was €51.06 per occupied bed night. The highest daily rate paid by Government to a particular home in 2016 was €63 per occupied bed night.

30. The Management Service Agreement allowed for the revision of rates charged by the JCL and MHC Consortium. In November 2020, that is, by the handover of the blocks, the rates were revised to €118.44 and €110.35 for occupied and unoccupied bed nights, respectively. Comparing the revised rates charged by the Consortium to the average daily rate charged by service providers under the Buying of Beds Scheme in 2020 results in a sustained significant discrepancy, which detracts from the value for money sought by the SVP through its agreement with the Consortium. While the average daily rate for a highly dependent resident per occupied bed was €65.13 in homes, that secured by the SVP with the Consortium stood at €118.44. Similarly discrepant is the rate charged by the highest priced home, which was €70 daily per occupied bed, that is, a difference of approximately €50 per resident per day when compared to the rates levied by the Consortium. The stark contrast between rates paid for beds sourced through other operators and those paid for beds provided by the Consortium is evident.

31. Although the rates levied by the Consortium are significantly higher than those of the other homes reviewed, the difference between the occupied and unoccupied bed rate is merely of €8.09 in the case of the Consortium. This difference averages at approximately €45 for the other homes. In other words, the Consortium charges 93 per cent of the occupied bed rate for its unoccupied beds, while the other homes charge an average of 32 per cent.

32. While the addition of approximately 500 beds contributed directly to Government's efforts at reducing the waiting list for the provision of residential care to highly dependent older persons, significant doubts as to whether value for money was secured persist. The award of a contract valued in excess of €270,000,000 through a negotiated procedure, rather than an open call, stifled any scope for competition that would have otherwise been generated. This in turn bore a direct impact on the pricing of the service being provided. The NAO maintains that the fact that the SVP failed to comprehensively consider other business models for the management of the additional blocks, other than directly assigning this to the JCL and MHC Consortium, calls into question whether the most appropriate procurement option was determined. This concern assumes greater relevance when one considers the extent of public funds committed without a comprehensive analysis of all viable options being undertaken.

33. Three points of concern emerge when considering the developments leading to entry into the Management Service Agreement through a negotiated procedure. First, despite the instructions by the Permanent Secretary MFSS and the DoC, the SVP – as the contracting authority – failed to obtain the required clearance from MFIN regarding the availability of funds.

34. Second, conspicuously absent was any form of political authorisation endorsing Government's commitment to a project worth in excess of €274,000,000 and entered into through direct negotiations with one contractor, that is, the JCL and MHC Consortium. The NAO established that the agreement for the management of the additional blocks at the SVP was not brought to the attention of Cabinet despite the materiality of the expenditure and the fact that this project was one of national importance.

35. Of concern to the NAO was that, having sought insight from all Ministers and Parliamentary Secretaries involved, this Office concluded that no political authorisation to enter into a negotiated procedure with the Consortium was requested and provided. Considering the extent of the project, its materiality, its significance in view of the increase in capacity of existing facilities, and the fact that negotiations had been underway for several months, the NAO deems incredulous how this project did not draw the attention of the Parliamentary Secretaries responsible for care provided to older persons. Even if the project was never directly referred to the Parliamentary Secretaries, their failure to enquire as to the regularity of this procurement is in clear breach of their duty arising from the political post held. Although multiple references were made to the role of the DoC in providing comfort as to the regularity of the procurement undertaken by means of a negotiated procedure, the NAO asserts that the role of this Department is that of ensuring adherence to the Public Procurement Regulations. It is certainly not the role of the DoC to provide political direction on projects undertaken by Government.

36. Third and most grave among the concerns identified is that, in the NAO's understanding, the basis cited as justification for the authorisation of resort to a negotiated procedure was in breach of legislative provisions. According to Article 154(1)(b)(ii) of the Public Procurement Regulations, the negotiated procedure without prior publication may be used for public service contracts "where the services can be only supplied by a particular economic operator… as competition is absent for technical reasons." This Office finds no relevance to the application of this Article since the management of the additional blocks at the SVP could have readily been undertaken by other operators. The NAO finds no reason why the contractor who erected the premises should be awarded their management, and therefore, no technical reason for the absence of competition exist.

37. Urgency in terms of Article 154(1)(c) of the Public Procurement Regulations was to satisfy the requirements of this Article in that, "where in so far as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority". Notwithstanding the reference to urgency, this Office maintains that, in this case, such urgency was certainly not justified as the blocks were to be under construction for at least 18 months, during which the SVP had time to procure the management services through an open procedure. In view of this, the NAO deems the authorisation by the GCC as illegitimate, since no real urgency existed that merited the procurement that involved hundreds of millions of euros and bound Government for a lengthy period. Having reviewed all the instances permitting resort to a negotiated procedure, including those cited in the request to the DoC, the NAO is of the opinion that none applied to the circumstances of this case, thereby possibly leading to the invalidity of the procurement undertaken. Although the DoC assumes primary responsibility for endorsing the negotiated procedure, the NAO is of the opinion that the SVP cannot shift all the responsibility on the former and neglect the fact that it was the owner of this project.

38. Requests for approval for the direct sourcing of management services made by the SVP to the DoC were directed through the Permanent Secretary MFSS, who endorsed the request. This Office is of the opinion that a ministry should, in addition to its many other functions, provide an element of oversight to the departments and entities that fall within its portfolio, making the necessary enquiries as and when deemed necessary. In this case, this Office maintains that the Permanent Secretary MFSS did not provide adequate direction, with the input provided solely serving to endorse a procurement process that was flawed and in breach of legislative provisions.

39. The NAO takes a more serious view in the case of the DoC since it "is responsible for the administration of the procurement procedures as laid down in the Public Procurement Regulations … [and] shall deliver an efficient and effective service to both economic operators and contracting authorities alike. Besides, the Department of Contracts shall ensure that there is no discrimination between economic operators and that all economic operators are treated equally and transparently." This Office criticises the DoC for, through its endorsement of this negotiated procedure, the Department was in fact discriminating against other economic operators that could have readily bid for and provided the services that Government sought to procure. This concern assumes relevance when one considers that it is the DoC's duty and obligation at law to ensure that economic operators are treated equally and transparently.

40. In sum, the NAO maintains that the SVP, the MFSS and the DoC acted in breach of legislative provisions when requesting or sanctioning recourse to a negotiated procedure for the management of the new blocks at the SVP on the basis of urgency. While the prescribed actions were apparently carried out, these were in breach of the Public Procurement Regulations, thereby possibly leading to the invalidity of the procurement undertaken. Further aggravating matters is that Government was committed to a disbursement of hundreds of millions of euro without the required budgetary clearance being sought by the SVP from MFIN. Worse still is that a commitment of this magnitude and importance was entered into without the sanction of Cabinet or the Parliamentary Secretaries directly responsible for the SVP.

41. Of note is that, in November 2020, at handover, the daily rates for occupied and unoccupied beds increased from €99.17 and €92.39, respectively, to €118.44 and €110.35, respectively. This revision accounted for an increase in bed rates of approximately 20 per cent. Of concern to the NAO was that the mechanism of revision in rates accentuated cost inefficiencies already in place and brought to the fore new pitfalls of waste of public funds. As at the time of reporting, the revision to the rates for 2021 had not been effected.

42. The NAO's attention was drawn to the classification of the project on the Government balance sheet and the implication that this had on public finances. In this case, such classification meant that the capital expenditure related to the project was to be recorded as a gross fixed capital formation for Government, with an impact on the fiscal balance, and a corresponding increase in Government's debt. As at the third quarter of 2020, the cumulative impact of the SVP extension was €35,600,000. Although clearance by MFIN was not sought by the SVP prior to entry into the Management Service Agreement, given that the relevant agreement was entered into, MFIN was left with no alternative but to allocate the required budget to honour the commitments made. To this end, a provision was made in the budgetary estimates as from 2020.

Chapter 1| Introduction

1.1 Request by the Public Accounts Committee

1.1.1 On 28 August 2018, the Opposition Members of Parliament on the Public Accounts Committee (PAC) submitted correspondence to the Auditor General (AG) for an investigation regarding the award of a contract for the management of a 500-bed extension to the St Vincent de Paul Residence (SVP), that was yet to be constructed. The request was signed by the Hon. Dr Beppe Fenech Adami, Chair PAC, the Hon. Kristy Debono and the Hon. Claudio Grech, as members of the Committee (Appendix A refers).

1.1.2 Noted in the correspondence were several developments relating to the matter, namely that:

a. on 5 August 2018, a newspaper reported that Government had awarded a direct order of a value of €250,000,000 to Malta Healthcare Caterers Ltd (MHC) and James Caterers Ltd (JCL) for the management of the 500-bed extension that was to be constructed at the SVP;

b. on 6 August 2018, the Minister for Finance stated that he had not approved a direct order as reported in the media, even though a notice to this effect had in fact been published in the Government Gazette dated 20 July 2018;

c. on 7 August 2018, Government, through a press release issued by the Parliamentary Secretariat for Persons with Disability and Active Ageing, negated that a direct order had been awarded. It was further stated that Government resorted to a negotiated procedure for the award of a contract that was substantially different to that for which a tender had originally been issued on 10 November 2015; and

d. on 23 August 2018, according to another newspaper article, the Department of Information (DOI) countered that stated by the Parliamentary Secretariat for Persons with Disability and Active Ageing, in that the Secretariat attempted to give the impression that the notification published in the Government Gazette for a direct order valued at €250,000,000 was an error by the DOI. The DOI clarified that its work was that of publishing information submitted by ministries and public entities, as was done in this case.

1.1.3 The members of the PAC drew the attention of the National Audit Office (NAO) to Legal Notice 174.04 Public Procurement Regulations, as amended, specifically citing articles 150 to 156, which outlined the instances when a negotiated procedure could be resorted to, namely:

a. where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests; or

b. where the works can be supplied only by a particular economic operator for any of the following reasons:
   i. the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
   ii. competition is absent for technical reasons; or
   iii. the protection of exclusive rights, including intellectual property rights,

   provided that the exceptions set out in subparagraphs (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement; or

c. where in so far as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority; or

d. for new works consisting in the repetition of similar works entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such works are in conformity with a basic project for which the original contract was awarded pursuant to a procedure for which a call for competition has been published in accordance with these regulations.

1.1.4 In conclusion, the members of the PAC asserted that it was evident that there existed scope for an investigation to determine whether Government adhered to the Public Procurement Regulations. Therefore, the members of the Committee requested that, in terms of article 9(a) of the Auditor General and National Audit Office Act, an inquiry into the contract valued at €250,000,000 awarded for the management of the extension of the SVP that was yet to be constructed be undertaken.

1.1.5 In correspondence submitted to the PAC on 30 September 2019, the AG referred to the request for the audit of the contract awarded to the companies MHC and JCL, valued at €250,000,000, for the management of a 500-bed extension that was yet to be constructed at the SVP. Following preliminary work undertaken, the NAO set the following terms of reference:

a. review of the tender issued on 10 November 2015 by the Department of Contracts (DoC) titled 'Public private partnership for the provision of comprehensive services to St

Vincent de Paul Residence', which services comprised catering, the demolition, building and equipment of a kitchen, and an unspecified additional investment;

b. analysis of the agreement entered into by the DoC on behalf of the Ministry for the Family and Social Solidarity (MFSS), and the JCL and MHC Consortium on 14 November 2017, wherein the Consortium agreed to provide the comprehensive services and defined the additional investment as the construction of two blocks at the Residence and a cash contribution of €15,000,000 over a ten-year period;

c. examination of the Memorandum of Understanding (MoU) entered into between the SVP and the JCL and MHC Consortium on 14 November 2017, wherein the additional investment was further defined;

d. evaluation of the subsequent addenda entered into by the DoC on behalf of the MFSS, and the JCL and MHC Consortium, wherein contractual terms were revised, which included the replacement of the cash contribution with the construction of an additional two blocks; and

e. analysis of the Management Service Agreement entered into by the SVP and the JCL and MHC Consortium on 14 November 2017 following a negotiated procedure, wherein the Consortium was to provide management and catering services to the residents and staff of the four blocks.

1.2 Care for the elderly: A contextual review

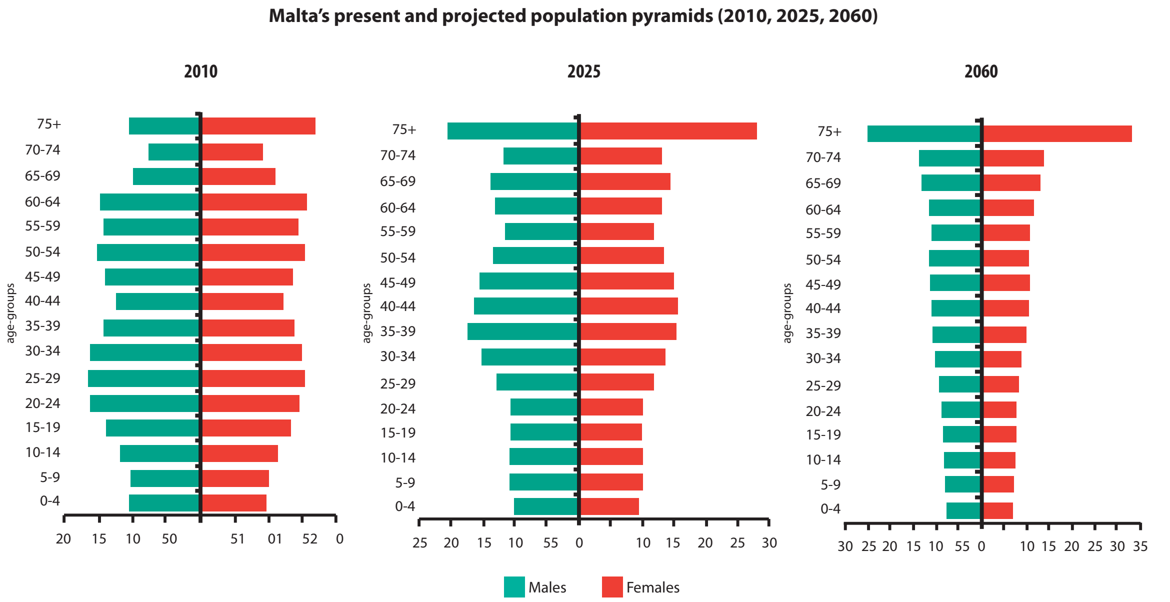
1.2.1 The decision to extend the SVP's facilities by 500 beds and the subsequent management thereof came at a significant cost to Government. In this context, the NAO considered it essential for this development to be seen within the broader policy framework of efforts intended to meet the requirements of care for the elderly.

1.2.2 In view of the critical importance cited with respect to the need to increase capacity at the SVP and the significant public funds that were to be disbursed through the contract under review, the NAO sought to understand whether this project was in line with the objectives that the party elected to Government had planned for. To this end, this Office reviewed the 2013 electoral manifesto of the Partit Laburista. Cited as a measure in this document was that the services and infrastructure at the SVP would be improved.[1] This measure allowed for interpretation in view of its broad applicability to any aspect of the SVP's operations. The NAO did not consider the 2017 electoral manifesto as relevant to this process as all key decisions had already been taken by the time the outcome of the election was announced.

[1] Inkomplu ntejbu s-servizzi u l-infrastruttura fir-residenza San Vinċenz de Paule.

1.2.3 Another perspective of analysis adopted by the NAO was that focusing on policies and strategies that guided the care of older persons. Central in this regard is the National Strategic Policy for Active Ageing 2014-2020. Captured in this Policy are the demographic changes to the Maltese population, with projections clearly indicating a trajectory of an ageing society (Figure 1 refers).

Figure 1: Malta's population pyramids, 2010, 2025 & 2060



Source: National Strategic Policy for Active Ageing, 2014-2020

1.2.4 The National Strategic Policy for Active Ageing is based on three main tenets, that is, active participation in the labour market, participation in society and independent living. The latter bears indirect relevance to this audit. The Policy addresses several aspects relating to independent living, foremost among which is the facilitation of access to community care services, possible through the establishment of a variety of access points and the provision of advice, information and coordinated pathways to professional assessment. In addition, the Policy brings to the fore the importance of ensuring alternative community care settings to cater for the needs of older persons. This would facilitate the move towards age friendly communities. The Policy deems this possible through the creation of the necessary structures for communities to integrate their social services and voluntary organisations through home services, day centres and intergenerational initiatives that serve the social and security needs of older adults and caregivers living in that community. The maximisation of autonomy in long-term care is another important element outlined in the Policy, with the decision to move to long-term care often an urgent one based on a recent decline in health, cognition or function. Of interest is that the Policy acknowledged that the limited availability of beds in nursing facilities creates a market that naturally favours the interests of the proprietor, which situation served to highlight the need to implement national minimum standards for care homes.

1.2.5 This situation was addressed through the introduction of National Minimum Standards for Care Homes for Older People, which was published by the Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing in September 2015. The standards were applicable to all care homes for older people and addressed the multiple facets of this form of service. Aside from identifying the principles that were to underpin the provision of care, the standards elaborated on the home's obligations, health and personal care, the daily life and social activities of the elderly, complaints and protection, the environment and facilities, staffing considerations as well as the management and administration of homes. The relevance of these standards to this review is that a baseline in terms of minimum service levels that all operators were to comply with was defined.

1.2.6 The final policy document that relates to the care of older persons is the National Strategy for Dementia in the Maltese Islands 2015-2023, also issued by the Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing in April 2015. While the overarching aim of this Strategy was to enhance the quality of life of individuals with dementia, their caregivers and family members, several strands of intervention were cited. These were increasing awareness and understanding of dementia, improving timely diagnosis and early intervention, the development of a workforce specialised in patient-centred dementia care, the improvement of treatment and care, promotion of the best ethical approaches to dementia management and care, and the promotion and fostering of research in the field. Among other interventions, of relevance to this review was the emphasis on the provision of specialised long-term care as a means of improving treatment.

1.2.7 The NAO then sought to understand how Government's policies and strategies were implemented. During the period of interest to the NAO, the care for the elderly fell under the responsibility of the MFSS and the Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing, later redesignated as the Ministry for Family, Children's Rights and Social Solidarity (MFCS) and the Parliamentary Secretariat for Persons with Disability and Active Ageing. In this context, this Office reviewed the annual departmental reports issued by the ministry or parliamentary secretariat responsible for the care of older persons between 2013 and 2019. The 2013 report captures the change in administration, thereby accounting for possible shifts in priorities, while the 2019 report was the latest available. These reports provided a high-level perspective on the key developments registered with respect to the provision of residential care.

1.2.8 Of interest to the NAO were statistics presented in several of the annual reports regarding bed capacity in Government homes and beds procured through the public private partnership (PPP) and public church partnership (PCP) schemes. While the capacity in Government homes remained constant between 2015 and 2019, that sourced through the PPP and PCP schemes increased considerably, from a capacity of 911 beds in 2015 to 1,647 beds in 2019. This resulted in an increase in total bed capacity from 1,855 in 2015 to 2,597 in 2019. However, this development was mirrored by a similarly significant increase in the number of applications received for entry into residential care, up from 1,316 in 2015 to 1,757 in 2019. Although the increase in admissions was considerable, effectively doubling from 2015 to 2019 (442 to 899), the discrepancy between applications received and admissions persisted (Figure 2 refers).

Figure 2: Bed capacity, applications for residential care and admissions, 2015-2019

	2015	2016	2017	2018	2019
Beds in Government homes	944	950	950	950	950
Beds in PPP/PCP scheme	911	1,136	1,237	1,357	1,647
Total number of beds	1,855	2,086	2,187	2,307	2,597
Applications received	1,316	1,489	1,639	1,649	1,757
Admissions	442	579	721	645	899

Source | Annual departmental reports, 2015-2019

1.2.9 Acknowledged in the annual report of 2015 were the management-related challenges that the Department for the Elderly and Community Care faced in light of the increase in residential care provided to older persons through the PPP scheme. Concerns raised in this regard were varied, ranging from complaints about the catering service provided, difficulties in communication and the distance that relatives had to travel for visitation. Notable developments intended to address the challenge of managing a service that was no longer solely provided by Government were registered between 2016 and 2018. According to the 2016 report, the Department undertook a study to determine the level of care required in residential care homes, which was essential in establishing the costs incurred in caring for older persons with different levels of dependency. Linked to this study was the tool developed in 2017, intended to allow for the measurement of the level of services provided by residential care homes. This tool, referred to as the 'Home Profiling Quality Matrix', was to aid Government in the purchase of bed capacity and eventually lead to the classification of residential care homes. A record of this tool being utilised is then evident in the 2018 annual report, wherein it was stated that six residential care homes were assessed in this manner.

1.2.10 Aside from statistics relating to capacity as well as applications and admissions for residential care, the annual departmental reports provide critical insight in terms of use of service. The number of residents in Government homes for older persons (Figure 3 refers) as well as residents in homes under the PPP and PCP schemes (Figure 4 refers) were specified on a home-by-home basis in the reports covering the period 2013 to 2019. Two trends are immediately apparent. While the number of residents in Government homes for older persons has remained stable at around the 950 mark, the number of residents in homes under the PPP and PCP schemes has increased by approximately threefold, that is, from 496 to 1,411. The interest of the private sector in supplying capacity to Government is clear in this respect.

Figure 3: Residents in Government homes for older persons

Home	2013	2014	2015	2016	2017	2018	2019
Cospicua	135	136	134	136	135	134	136
Floriana	44	46	46	46	46	46	46
Mellieha	179	179	179	180	180	181	180
Mosta	66	68	68	68	68	69	68
Msida	64	64	64	64	64	66	64
Mtarfa	122	124	120	123	122	121	123
Zammit Clapp Hospital	129	128	128	129	129	129	129
Zejtun	203	204	198	204	199	229	204
Total	**942**	**949**	**937**	**950**	**943**	**975**	**950**

Source | Annual departmental reports, 2013-2019

Figure 4: Residents in homes under the Public Private Partnership and Public Church Partnership Schemes, 2013-2019

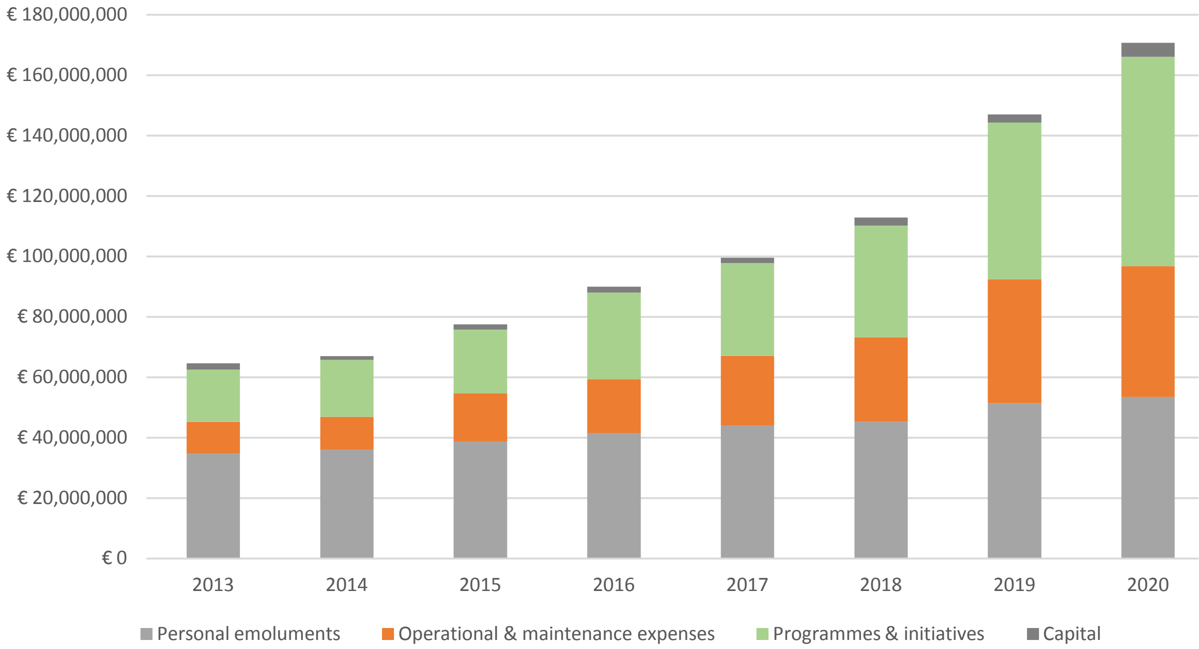
Home	2013	2014	2015	2016	2017	2018	2019
Casa Arkati	58	115	115	115	127	141	127
Casa Francesco	0	0	8	35	43	52	47
Casa Leone	30	37	51	57	59	62	78
Casa Paola	0	0	0	0	55	110	107
Casa Pinto	0	0	0	0	0	0	57
Casa San Paolo	0	0	134	134	191	197	191
Casa Serena	92	94	79	81	93	94	57
Central Home	91	94	93	93	95	101	100
Dar Sant Anna	21	36	21	28	30	33	29
Golden Care Home	0	0	0	0	0	0	57
Holy Family Home	14	16	19	24	42	42	64
Residenza San Guzepp	0	0	0	0	0	96	0
Roseville	80	80	80	93	95	96	95
Saura Home	16	18	23	23	36	40	45
St Elizabeth Home	0	0	0	50	133	199	145
St Thomas Community Living	0	0	0	0	0	0	67
Villa Messina	71	78	78	78	145	147	145
Villa San Lawrenz	0	0	18	26	40	40	0
Prince of Wales	23	0	0	0	0	0	0
Total	**496**	**568**	**719**	**837**	**1,184**	**1,450**	**1,411**

Source | Annual departmental reports, 2013-2019

1.2.11 While the focus of our reporting is on residential care, one must also acknowledge the centrality of efforts intended to facilitate independent living through services provided within the community setting. Several initiatives aimed at encouraging and extending independent living were elaborated on in the annual reports cited, which efforts serve to mitigate the burden on residential care.

1.2.12 The provision of care to older persons by Government is only possible through the allocation of public funds. A review of the budgetary allocations for the years 2013 to 2020 illustrates the significant commitment in funds directed towards this endeavour. The allocation of €65,000,000 in 2013 increased to a staggering €171,000,000 by 2020 (Figure 5 refers). Most notable is the fourfold increase in operational expenditure (from approximately €10,500,000 to €43,300,000) and programmes and initiatives (from approximately €17,400,000 to €69,200,000).

Figure 5: Elderly and community care budget allocation, 2013-2020



1.2.13 Between 2013 and 2018, the budgetary allocation for the elderly and community care, excluding the SVP, comprised several cost centres, namely, Administration, Homes and Community Care. In 2019, these cost centres were consolidated under one cost centre, namely, the Active Ageing and Community Care Department. The overall increase in the budget allocated to this Department is evident in Figure 6, with an increase from approximately €32,700,000 in 2013 to €88,800,000 in 2020.

Figure 6: Active Ageing and Community Care Department budget allocation, 2013-2020

	Personal emoluments (€)	Operational & maintenance expenses (€)	Programmes & initiatives (€)	Capital (€)	Total (€)
2013	11,075,600	3,189,700	17,350,000	1,069,000	32,684,300
2014	10,946,000	2,824,000	18,869,000	110,000	32,749,000
2015	11,600,000	3,452,500	21,069,000	350,000	36,471,500
2016	12,202,200	4,003,000	28,685,000	650,000	45,540,200
2017	13,362,300	9,066,200	30,785,000	500,000	53,713,500
2018	12,856,000	12,159,500	36,939,000	700,000	62,654,500
2019	14,854,300	12,140,400	51,889,000	750,000	79,633,700
2020	15,235,100	12,145,500	59,249,000	2,150,000	88,779,600

1.2.14 The other cost centre that forms part of the elderly and community care budget was the SVP, which by and large accounts for half of the allocation assigned to this vote. A similar trend to that noted with respect to the Active Ageing and Community Care Department was registered in the budget allocated to the SVP. The Residence's allocation increased from approximately €32,000,000 in 2013 to €82,000,000 in 2020 (Figure 7 refers).

Figure 7: Saint Vincent de Paul Residence budget allocation, 2013-2020

	Personal emoluments (€)	Operational & maintenance expenses (€)	Programmes & initiatives (€)	Capital (€)	Total (€)
2013	23,622,400	7,314,300	26,000	1,000,000	31,962,700
2014	25,128,000	7,980,000	-	1,125,000	34,233,000
2015	27,074,000	12,571,500	-	1,400,000	41,045,500
2016	29,303,800	13,831,000	-	1,250,000	44,384,800
2017	30,658,700	13,966,800	-	1,250,000	45,875,500
2018	32,390,000	15,774,500	-	2,000,000	50,164,500
2019	36,525,700	28,866,600	-	2,000,000	67,392,300
2020	38,206,900	31,166,500	10,000,000	2,550,000	81,923,400

1.2.15 Governance of the SVP is entrusted to a Consultative Management Board composed of a Chair, Deputy Chair, the Residence's Chief Executive Officer (CEO), three Members and a Secretary. The terms of reference of the Board comprise the provision of guidance and recommendations in connection with:

a. ensuring that the Residence provides a high quality social and health care service;

b. guaranteeing that the rights of older persons at the SVP are respected;

c. assuring that the SVP is characterised by good working conditions and working environment, and that adequate investment in human capital is made;

d. policies intended to prevent and report on elder abuse;

e. organising and directing SVP resources to ensure the cost-effectiveness and long-term sustainability of provided services;

f. setting and monitoring of quality-of-care benchmarks; and

g. creating internal policy directions in line with the National Policy for Active Ageing: Malta 2014-2020.

1.2.16 The day-to-day running of the Residence is overseen by a CEO. The SVP offers various services intended to support the quality of life of its residents. The services are provided by a multi-disciplinary team and comprise medical and nursing care, nursing specialities which include nutritional, dementia and infection control, a dental clinic, physiotherapy and occupational therapy services, as well as podiatry, speech therapy and a day clinic. Other in-house support services provided relate to supply of pharmaceutical requirements, portering and social work. The Residence offers specialised care to individuals with dementia, with several wards designated to such care.

1.3 Methodology

1.3.1 This audit was conducted in accordance with Article 9(a) of the First Schedule of the Auditor General and National Audit Office Act (Act XVI, 1997) and in terms of practices adopted by the NAO. Pertinent legislation reviewed were the Public Procurement Regulations (Legal Notice 296 of 2010), which governed procurement up to October 2016, effectively regulating the tender for comprehensive services issued by the DoC. However, also of relevance were the Public Procurement Regulations (Legal Notice 352 of 2016), which subsequently came into force and regulated the negotiated contract entered into by the SVP.

1.3.2 Findings presented in this report are based on the documentation submitted to the NAO. Requests for documentation were mainly made to the SVP and the DoC, given their pivotal role throughout this procurement. This Office sought further information from the MFCS, the Ministry for Finance (MFIN), the Cabinet Office, the Active Ageing and Community Care Department, the DOI, the National Statistics Office (NSO) and the Foundation for Medical Services.

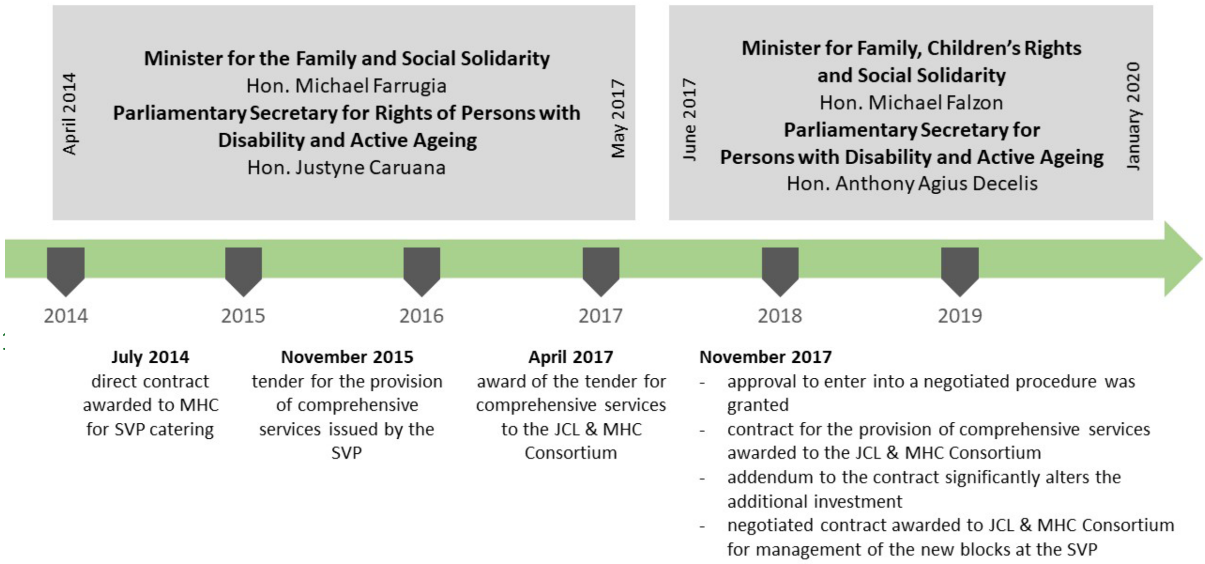
1.3.3 Aside from documentation reviewed, in line with established procedures, the NAO held interviews, taken under oath, with persons who were directly involved in the tender for comprehensive services and the negotiated contract, both awarded to the JCL and MHC Consortium. These included the Minister, the Hon. Michael Farrugia, as well as the former Parliamentary Secretaries responsible for the SVP, that is, the Hon. Justyne Caruana (hereinafter referred to as PSDAA pre-2017) and the Hon. Anthony Agius Decelis (hereinafter referred to as PSDAA post-2017). Meetings were also held with the Permanent Secretary

MFCS (referred to as Permanent Secretary MFSS when reporting on matters prior to June 2017), the CEO SVP and other SVP officials, the Director General (DG) DoC and other officials from the Department, and representatives of the JCL and MHC Consortium. All the interviews held were transcribed by the NAO and a copy was submitted to the interviewee, who was requested to endorse the transcript and submit clarifications, if required. It must be noted that, unless otherwise indicated, officials cited in this report are referred to according to their designation at the time of reporting.

1.3.4 Clarifications were also sought from other persons who had limited involvement in this procurement. Specific reference is made to the incumbent Minister and a former Parliamentary Secretary responsible for the SVP, namely, the Hon. Michael Falzon and the Hon. Silvio Parnis, respectively. Enquiries were also made with the Chair SVP Consultative Management Board.

1.3.5 An element of clarification is necessary due to the several changes in ministerial portfolios responsible for the SVP during the period of interest to the NAO, that is, from mid-2014 to end 2019. Figure 8 provides an overview of these changes and highlights how key developments relating to the procurement processes that led to the award of the tender for comprehensive services and the negotiated contract to the JCL and MHC Consortium spanned across the terms of several ministers and parliamentary secretaries. It must be noted that, despite the changes to the ministerial portfolios, the Permanent Secretary MFSS, later redesignated as the Permanent Secretary MFCS, remained in office throughout.

Figure 8: Changes to ministerial portfolios and key procurement-related developments



were, in most cases and to the best of the NAO's knowledge, made available to this Office by the various parties. The NAO's findings and conclusions are based solely and exclusively on the evaluation of such documentation and information supplied, and the evidence at its disposal. The NAO sought to identify any possible shortcoming or irregularity and put forward recommendations essentially meant to ensure that the best use of public resources is made.

1.3.7 In undertaking this audit, the NAO adhered to its policy of processing requests submitted to the AG by the PAC in a chronological order, according to the date of request.

Chapter 2| The tender for the supply of comprehensive services to the Saint Vincent de Paul Residence

2.1 General provisions of the call for tenders

2.1.1 A call for tenders for a PPP for the provision of comprehensive services to the SVP was issued on 10 November 2015 by the DoC on behalf of the Residence. An advert for the tender was published in the Government Gazette under the charge of the Parliamentary Secretariat for the Rights of Persons with Disability and Active Aging on the same day. Furthermore, a contract notice was issued in the Official Journal of the European Union (OJEU) as Contract Notice 2015/S 220-401198, under the title Malta-Floriana: Catering services. According to the contract notice, dated 13 November 2015, the tender was issued as an open procedure and was classified as a service contract. Participation was free of charge.

2.1.2 The aims of the tender were twofold, that is:

a. the provision of catering services to the SVP; and

b. the demolishing of the existing kitchen and the building and equipping of a fully furnished new kitchen at the Residence.

2.1.3 According to the call for tenders, through a PPP, the supplier was to set up, integrate and manage a system that was to provide all catering services at the SVP. The supplier was also to operate a reliable and effective meal ordering system and services for transporting meals from the supplier's processing unit to the SVP wards and the staff dining room. Furthermore, the supplier was to be responsible for the collection of swill, dirty trolleys, dishes, cutlery and crockery and their return in a clean condition to the respective wards.

2.1.4 The term for the provision of catering services was for 10 years, with the option of a five-year extension. Government was to pay a fixed rate for the meals per person for the duration of the contract, adjusted only by the rate of inflation. Comprehensively, the price per person per day for breakfast, lunch and dinner was not to exceed €12.72, excluding VAT.

2.1.5 With regard to the kitchen, the supplier was to complete its construction within three months from the award of the contract and was to fully equip the kitchen within six months from the date of award. According to the call for tenders, the supplier had the right to exploit this investment for the duration of the contract by utilising the kitchen for the preparation of meals for other public catering services entrusted to the supplier; however, this was not in any way to jeopardise the smooth running of the catering services at the SVP.

2.1.6 A timetable, indicating the dates and deadlines for the key stages in the process that was to lead to the selection of the winning bidder, was set out in the call (Figure 9 refers). Prospective bidders were to submit their offers online through the DoC's e-tender portal.

Figure 9: Timetable for the tendering process

Date	Action
10 November 2015	issue of the call for tenders
19 November 2015	clarification meeting/site visit
16 December 2015	closing date for the submission of requests for clarification
30 December 2015	closing date for the publication of replies to requests for clarification
7 January 2016	closing date for the submission of tenders
7 January 2016	tender opening session
14 January 2016	deadline for the submission of an original bank guarantee

2.2 Eligibility and selection criteria

2.2.1 For tenders to be considered eligible for award, evidence was to be provided demonstrating that the minimum criteria established in the call for tenders were met or exceeded. In terms of eligibility, bidders were to submit a scanned copy online of a bid bond for the amount of €500,000. An original tender guarantee was then to be submitted within five working days from the closing date of the call. Furthermore, bidders were to declare their agreement and compliance with the provisions of the General Rules Governing Tendering, the conditions of the Tender's Declaration and those of the Statement on Conditions of Employment.

2.2.2 The call for tenders also indicated the selection criteria that were to be met by prospective bidders. In terms of financial and economic standing, bidders were to submit the following documentation to meet the minimum requirements:

a. financial statements for the previous three years, showing a minimum annual turnover of €3,000,000; and

b. a statement by a recognised bank certifying a minimum credit facility of €3,000,000 for the duration of the project.

2.2.3 Bidders were also required to provide proof of technical capacity through the submission of the following:

a. a list of deliveries of a similar nature, that is, the provision of comprehensive catering services;

b. the value of such deliveries during the previous five years;

c. a letter of reference from at least one past client for a contract of a similar nature, valued over €5,000,000 and implemented during the previous five years;

d. data concerning sub-contractors and the percentage of work that was to be sub-contracted and which was not to exceed 40 per cent; and

e. a list of key experts proposed for this contract, including a catering operations manager, a quality control and assurance manager, an architect, a structural engineer, a mechanical and electrical engineer and a nutritionist.

2.3 Technical specifications

2.3.1 The technical specifications relating to the catering services and the construction of a kitchen were also stipulated.

Catering services

2.3.2 With respect to the catering services, bidders were to submit their offers in compliance with several criteria explained in detail in the call for tenders. Bidders were also to submit literature relating to the:

a. provision of breakfast and 'cook-chill/freeze – regenerate' catering services for the residents and staff at the SVP;

b. menu ordering system;

c. food trolleys, transportation, related procedures and utensils;

d. collection and cleaning of trolleys, dirty items and swill management;

e. type of food grade boxes and disposable cutlery to be used;

f. comprehensive management of the staff dining room;

g. standards;

h. back-up meals system;

i. management of staff;

j. training session programme to be offered to SVP employees;

k. detailed plan of the cookery sessions;

l. company policy to provide staff with training programmes;

m. detailed organogram related to the provision of catering services;

n. audit system conducted by accredited external bodies in handling customer satisfaction;

o. audit system conducted by accredited external bodies related to day-to-day monitoring;

p. purchasing protocols;

q. declaration by any government entity regarding the number of food poisoning or other mishaps in the last five years or a declaration of no such events by the bidder; and

r. description on the food production of different types of food.

2.3.3 Interested bidders were also required to submit quality assurance systems, including an indication of the technicians involved, especially those responsible for quality control, and a description of the technical facilities and measures that were to be utilised to ensure quality. Bidders were also required to submit the company's organogram, including a statement of the average annual manpower and the number of managerial staff for the previous three years.

2.3.4 The call for tenders provided extensive details about the obligations of the bidder in respect of the catering element that was to be provided. According to the call, bidders were to achieve four main outcomes, that is:

a. a buffet style breakfast and hot and cold buffet meals in the wards and the staff dining room;

b. a reliable ordering and transportation system of meals;

c. a system that ensured the collection of swill and dirty equipment as well as the provision of clean equipment and utensils; and

d. a fully functional staff dining room.

2.3.5 Sample menus for a two-week cycle, intended to serve as a baseline for pricing and planning purposes to bidders, were also specified in the call for tenders. Information in respect of the health standards that were to be in place, and the proper disposal of food waste, were also provided. Additionally, bidders were to submit details of their staff that were to be allocated to the SVP. Moreover, the approval of the SVP was to be obtained in respect of the personnel to be assigned.

2.3.6 The call for tenders also established that the selected bidder was to prepare several progress reports and surveys, namely:

a. monthly reports on all dispensed food, certified by the SVP officers receiving the meals;

b. bimonthly reports on the weekly bacteriological analysis;

c. bimonthly hazard analysis and critical control point checklists;

d. yearly survey by an autonomous third party who was to evaluate the quality of the food being supplied; and

e. a survey by an autonomous third party of the kitchen premises and kitchen equipment, certifying the working condition every six months.

Construction of the kitchen

2.3.7 In respect of the second part of the call for tenders, that is, the construction of the kitchen, bidders were required to submit offers and include technical and shop drawings related to the construction, services, environmental control and heating, ventilating and air conditioning systems, and finishes. Bidders were also required to submit the following documentation:

a. a declaration on whether the kitchen would be completed and operable before the stipulated six-month minimum period;

b. a detailed kitchen maintenance plan for the contract period;

c. details of kitchen appliances and their energy efficiency class rating;

d. technical details regarding vehicles used, carbon footprint transport usage and euro classification of vehicle engine;

e. a description of the air-conditioning installation equipment and its components; and

f. detailed literature on these system installations: ventilation, cold room, fire alarm, intruder alarm, close-circuit television, video intercom, public address, insectocutor and access control.

2.3.8 Bids were also to include a work plan that was to comprise a restoration method statement and a construction method statement. In addition, bidders were to submit a construction management plan describing access to the site and the machinery and equipment that was to be used to facilitate and manage the works. A programme of works, including a graphic works schedule, was also to be submitted. Other submissions relating to technical specifications that were to be made by the bidders were a quality assurance system, a preliminary risk assessment and a health and safety plan.

2.3.9 The call for tenders provided substantial technical specifications concerning the demolition and excavation of the existing main kitchen structure and the building of the new kitchen. Terms relating to working conditions, pollution measures, concrete specifications, sewerage and other pipework, and electrical wiring standards were stipulated in the call.

2.3.10 With respect to the demolition, building and equipping of the new kitchen, the call for tenders established that a project board, under the responsibility of the CEO SVP, was to be set up and was to be responsible for the control of the overall project.

2.4 Additional investment at no cost

2.4.1 As part of their proposal, bidders were to include an additional offer, over and above that established as mandatory in the call for tenders, at no additional cost to the contracting authority. Although no specific requirements as to what this additional investment was to entail were provided, the call for tenders indicated that this investment was to enhance the type of care provided at the SVP, that is, care for a substantial number of dependent residents with complex medical and nursing needs. In the call for tenders, it was noted that the Residence was challenged with an increasing demand due to various longevity factors that were resulting in a growing number of older people with an increased level of dependency due to improvements in care and technology.

2.4.2 In this regard, bidders were requested to submit a detailed proposal of the additional investment and a report by an independent warranted auditor indicating the market price of the investment. At the end of the contract term, the investment was to become the property of the SVP.

2.5 Evaluation

2.5.1 Stipulated in the call for tenders was that the contract was to be awarded to the Most Economically Advantageous Tender (MEAT). This was to be established by weighing technical quality against price on a 60/40 basis. An evaluation committee was to analyse the technical conformity to the terms of reference and technical specifications of those tenders that were deemed administratively compliant. In evaluating the technical offers, each evaluator on the evaluation committee was to award a mark for each criterion/sub-criterion out of a maximum of 100, which was then to be multiplied by the weighting assigned. Bidders were to obtain a technical score of at least 50 per cent or be eliminated. Each technical offer was to be evaluated in accordance with the award criteria and associated weighting as detailed in the call (Figure 10 refers).

Figure 10: Technical evaluation criteria

Evaluation criteria	Maximum score out of 100
Professional standard	
- details of staff ongoing training policy	5
- proposed management and staff structure	10
Overall quality plan	
- audit system conducted by external bodies	10
- purchasing protocols	6
- declaration by any Government entity regarding the number of food poisoning/other mishaps, if any, during the previous five years	10
Food production system	6
Cookery service sessions	15
Contingency plan	
- risk management and contingency plans	10
Building of kitchen, maintenance and rating of low carbon footprint	
- kitchen is operable within a maximum of six months	7
- detailed kitchen maintenance plan for the contract period at no additional cost	7
- kitchen equipment rating A+++	7
- technical details regarding vehicles used	7

2.5.2 The basis of allocating marks in relation to the technical criteria cited in the call for tenders were extensively detailed. By way of example, in the sub-criterion relating to the declaration by a Government entity regarding the number of food poisoning or other mishaps, marks allocated were inversely proportionate to the number of cases reported (Figure 11 refers).

Figure 11: Marking scheme in respect of the food poisoning complaints sub-criterion

Number of complaints	Marks to be awarded
0	10
1	9
2	8
3	7
4	6
5	5
6	4
7	3
8	2
9	1
10	0

2.5.3 The bid with the highest technical score would be awarded 100 per cent of the technical weight. The other bids would be awarded scores in proportion to the offer with the highest technical score, as per the formula:

$$\textit{technical score} = \frac{\textit{average technical score of the respective offer}}{\textit{highest average technical score}} \textit{ x technical weight}$$

2.5.4 The financial offer of eligible tenders was then to be evaluated. The offer was to consist of two elements, that is, the price per meal, assigned 40 per cent of the marks, and the provision of the additional investment, assigned 60 per cent of the marks. The offer with the lowest price per breakfast, lunch and dinner was to be awarded 100 marks with the other offers awarded scores in proportion to the offer with the lowest price, as per the formula:

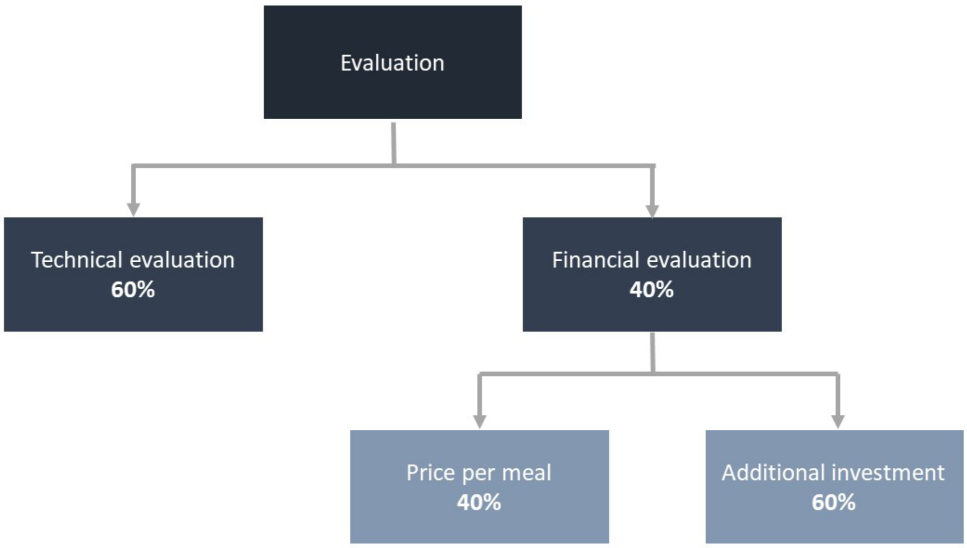
$$\textit{financial score} = \frac{\textit{lowest priced offer}}{\textit{financial offer of the tender under consideration}} \textit{ x 40\% financial weight}$$

2.5.5 Regarding the additional investment over and above the mandatory requirements, the proposed investment with the highest value would be awarded 100 marks. The other proposals were to be awarded scores in proportion to the offer with the highest value, as per formula:

$$\textit{financial score} = \frac{\textit{investment offered of the tender under consideration}}{\textit{highest offer}} \textit{ x 60\% financial weight}$$

2.5.6 The contract was to be awarded to the offer that obtained the highest score combining the respective technical and financial scores. Figure 12 provides a schematic illustration of the assignment of all marks.

Figure 12 | Schematic illustration of the weighting of the evaluation components



2.5.7 By the closing date of the call for tenders, two bids had been submitted. The process of evaluation of these two bids is outlined in the ensuing chapter. Also elaborated on in the following chapter are key developments that led to the issuance of the call, as well as other critical events and decisions taken after the award, which led to the entry of a negotiated contract with the bidder selected as a result of this call.

Chapter 3 | Key issues in relation to the call for tenders for the supply of comprehensive services to the Saint Vincent de Paul Residence

3.0.1 The NAO reviewed the process that led to the issuance of the call for tenders and the subsequent contract awarded to the winning bidder for the provision of comprehensive services to the SVP. The call for tenders was issued on 10 November 2015 and was classified as a PPP service contract. The aims of the tender, as indicated in the call for tenders, were twofold, that is, the provision of catering services to the SVP and the demolishing of the existing kitchen and the building and equipping of a fully furnished new kitchen at the Residence. Bidders were also to provide an additional investment at no cost to the SVP, the nature of which was not defined in the call except that this was to be compatible with the services provided by the Residence. These are this Office's conclusions on this process of procurement.

3.1 The need for alternative ways to provide the catering services at the Saint Vincent de Paul Residence was justified and supported by studies and analysis

3.1.1 The NAO sought to ascertain whether the need to issue a call for tenders for the supply of comprehensive services was justified and supported by studies and analysis. To this end, this Office was provided with several reports, commissioned by the SVP, that evidenced the dire state of the Residence's kitchen and the need for alternative ways to provide the catering services at the SVP.

3.1.2 A risk assessment report dated February 2014, and prepared by a consultancy firm, determined that most of the kitchen areas inspected resulted in a high-risk factor environment. This report aimed to evaluate the potential for injury and to provide risk control measures in accordance with occupational health and safety legislation. Various areas were reviewed, and for each area, risks were identified and graded, and control measures recommended. Included in this risk assessment was information on health and safety measures, fire and fire equipment, the provision of first aid, occupation and other injuries, environmental health, safety, welfare facilities, as well issues relating to physical and mental well-being. Other issues and risks highlighted related to the food trolleys and signage. This assessment was commissioned by the CEO SVP following reports received by the Secretariat of PSDAA on the dismal state of the Residence's kitchen.

3.1.3 Another report was that prepared by the Health Directorate on 12 May 2014 following an inspection carried out some days prior. The report revealed a considerable number of deficiencies in the SVP kitchen, including unhygienic conditions, lack of maintenance, neglect, improper storage conditions and lack of equipment. These deficiencies resulted in an overall risk factor of 61.3 per cent and the state of the kitchen was consequently rated as ''very bad''. Previous inspections conducted by the Directorate had also identified deficiencies at the SVP kitchen; however, none had resulted in such a low classification. This inspection report was the focus of an internal SVP meeting held on the same day of the report, during which it was decided that an analysis of the Health Directorate report was to be undertaken and that the SVP was to engage a Health and Safety Officer to handle these issues.

3.1.4 The need for the refurbishment of the SVP kitchen was also highlighted in a report drawn up by the Institute of Tourism Studies (ITS). On 20 May 2014, the ITS was commissioned by the SVP to draw up a preliminary report regarding the state of the kitchen at the Residence. The main areas that were to be reported on were the:

a. state of the premises and equipment;

b. size and quality of the labour force;

c. efficacy of operations; and

d. capital and running cost estimation.

3.1.5 The main findings of the ITS review pointed to serious shortcomings in the structure, design processes, practices and quality of the labour force. Elaborated on in the review was that the net effect of these problems could have had serious negative ramifications for the social, health and wellbeing of the SVP residents and others who used the Meals on Wheels service. Decades of neglect in maintaining the building, structures and equipment to the required standard had reduced the kitchen and its environs to a major source of potentially damaging health hazards. It was considered a matter of time before a health crisis could develop. The SVP was in constant breach of established health and food hygiene regulations.

3.1.6 The ITS recommended that the SVP considers the following options, namely:

a. to temporarily shut down the kitchen and contract out catering services for one to three years. In the meantime, the SVP could take the opportunity to build/overhaul a new kitchen facility, furnish it with the required equipment, introduce new processes, change work practices and recruit/retrain kitchen and supporting staff. This option could also give the SVP time to carry out due technical exercises to decide on the optimal option available based on a social cost benefit analysis, as well as exploit potential sources of funding for the project;

b. carry out the necessary modernisation of the kitchen piecemeal; or

c. shut down the kitchen permanently and resort to contracting out the catering services.

3.1.7 Furthermore, the ITS maintained that, irrespective of the preferred option, the SVP should seriously consider:

a. taking drastic emergency measures to reduce controllable risk hazards; and

b. temporarily contract out some/all catering services to avoid potential serious health hazards and have the time to explore long-term options based on the necessary studies, including potential funding.

3.1.8 In submissions made to the NAO, the Minister and Parliamentary Secretaries responsible for the SVP, the Permanent Secretary MFSS and the CEO SVP emphasised the dire state of the SVP kitchen, corroborating the reports that had been drawn up in this regard. In addition, reference was also made to an audit report published in 2005, which had highlighted food safety as an aspect of concern and with residents assigning a poor rating to the catering services provided. The Permanent Secretary MFSS noted that no concrete action was taken until the neglect was again highlighted in the reports cited in the preceding paragraphs. According to the CEO SVP, the task of refurbishing the kitchen was initiated by the Residence's maintenance staff; however, the scale of the works required were extensive and beyond the SVP's internal capabilities. Moreover, the CEO SVP highlighted the added complication of having to overhaul the kitchen's operations. The PSDAA (post-2017) contended that the deterioration of the SVP's kitchen was, in his opinion, attributable to the fact that prior to 2013, responsibility for the elderly fell under the portfolio of the Ministry for Health, with most funds allocated towards the completion of the Mater Dei Hospital (MDH). The PSDAA (pre-2017) also noted that Government was facing a situation wherein it did not have enough supply of beds. In fact, she noted that discussions had been underway with the Privatisation Unit in that respect. The improvements in the health sector had led to an aging population and the waiting list for beds was constantly increasing. The PSDAA (pre-2017) noted that the Department for the Elderly had a brief to identify new methods on how to increase the supply of beds and in fact the model of a private-public partnership had been initiated.

3.1.9 Based on the above, the NAO concluded that the need for this call for tenders was justified in terms of several studies and reports commissioned by the SVP. The findings of these reports and studies invariably indicated that there was an urgent need for an upgrade of the kitchen and the catering facilities within the SVP.

3.2 The decisions taken to address the dire situation of the catering services at the SVP in the interim were not always appropriately documented and avoidable delays resulted in repeated extensions of a direct contract intended as a short-term measure

3.2.1 While the dire state of the kitchen at the SVP was sufficiently highlighted through the reports commissioned to third parties and the inspection held by the Health Directorate, the NAO noted that the decisions subsequently taken to address these concerns and determine a way forward were not always appropriately documented.

3.2.2 As an interim measure, the SVP decided to extend the contract for the provision for catering services at the MDH already in place between the Foundation for Medical Services (FMS) and the MHC to cover catering at the SVP. However, there are lacunae in how the decision to extend the MDH contract was arrived at and how this was approved in the diverse structures that oversee the running of the Residence. It is also unclear as to what negotiations were undertaken with the MHC prior to the award of the direct contract.[2]

3.2.3 While the NAO was provided with minutes of meetings that evidenced that the serious shortcomings highlighted in the report by the Health Directorate were discussed by the management of the SVP, no documented information as to how the decision to award a direct contract to the MHC originated was submitted. The first documented reference to the placing of a direct contract was made in an email dated 4 June 2014, submitted to the DG DoC by the SVP, wherein it was indicated that, "a decision has been taken to outsource the catering service as per standing contract with FMS" and that approval was being requested to include the SVP with the FMS contract. While this document captures the fact that the decision to extend the MDH contract had already been taken, how this specific course of action came to be remained unclear to the NAO.

3.2.4 In documentation provided to the NAO by the SVP, this Office noted an undated and unsigned report analysing the costs of in-house catering services against the long-term outsourcing or refurbishment of the kitchen while outsourcing catering. Although the report was undated, it referred to certain issues highlighted in the reports commissioned by the SVP regarding the state of its kitchen and therefore was understood by the NAO as having been drawn up in June 2014. According to this report, the direct and indirect costs incurred by the SVP for the in-house provision of catering services amounted to an annual €3,300,000. However, the immediate capital investment required was of €2,300,000. The alternative, that is, the long-term outsourcing or refurbishment of the kitchen while outsourcing catering management, based on the MDH rates, resulted in a yearly total expense of €4,700,000. It is unclear to the NAO how the analysis presented in this document spurred the SVP to pursue actions subsequently taken.

2 Although reference is made to this procurement as a direct contract, the NAO acknowledges that it was in effect the result of a negotiated procedure. This reference to a direct contract for the supply of catering is intentional, to avoid confusion with the negotiated contract subsequently entered into for the supply of management services between the same parties.

3.2.5 An element of insight as to how the decision to utilise the MDH contract for the Residence's catering requirements was provided by the CEO SVP. The CEO SVP explained that the Residence had initially considered carrying out an in-house refurbishment of the kitchen; however, the required improvements went beyond the mere upgrading of the facilities but also required a drastic overhaul of processes, which could not be met by the SVP. Further elaborating, the CEO SVP indicated to the NAO that it was in this context that advice was provided to the Residence regarding the possible utilisation of the MDH contract.

3.2.6 While the NAO established that the resort to a direct contract was not brought to the attention of the SVP Consultative Management Board, as the only indirect reference to this was made in a Board meeting held after the direct contract had already been awarded, the CEO SVP explained that the Board was of a consultative nature, and although no approval was obtained, the kitchen project had been discussed in several meetings.

3.2.7 The Permanent Secretary MFSS informed the NAO that his involvement in the process leading to the award of the direct contract was marginal and that he was rarely involved in the process. Queried as to what led to its award, the Permanent Secretary MFSS explained that this was due to the urgency associated with the required closure of the SVP kitchen, due to the state that it was in.

3.2.8 The NAO noted that the possibility of outsourcing the catering services as an interim measure was considered by the PSDAA (pre-2017). In a Cabinet memorandum dated 17 June 2014, the PSDAA (pre-2017), through the Minister for the Family and Social Solidarity, indicated that, "… at least some of the catering services can be contracted out temporarily to avoid major concerns involving contamination, infection and food poisoning. Simultaneously, it would give SVP some time to decide on the best way forward depending on serious studies." Moreover, noted in the memorandum was that, "If, on the basis of a social cost benefit analysis, it is retained that SVP should continue to offer in-house catering, the best option is to build a new kitchen on the same site and install modern equipment and accessories." In a meeting with the NAO, the PSDAA (pre-2017) indicated that, following her appointment, she visited the Residence and was immediately informed about the dire situation the SVP kitchen was in. Taking note of the recommendations in reports commissioned shortly after her appointment, the PSDAA (pre-2017) indicated that she brought the issue to the attention of Cabinet. The PSDAA (pre-2017) argued that since the SVP was indirectly viewed as an extension to MDH and that prior to 2013 care for the elderly formed part of the health portfolio, there was an understanding that the FMS contract could be extended to cover the SVP's requirements. The NAO confirmed that clause 16.2 of the MDH contract, dated 14 December 2006, allowed for the FMS to require the MHC to provide catering and ancillary services to any location other than the MDH, the St. Luke's Hospital and Sir Paul Boffa Hospital.

3.2.9 The Minister for the Family and Social Solidarity confirmed his involvement in the presentation of the memorandum to Cabinet, wherein it was recommended that the SVP kitchen be closed immediately as it was a health hazard to its residents and staff. The Minister noted that the only alternative discussed was that of extending the MDH catering contract that the FMS had with the MHC, as an interim measure, until the issuance of a call for tenders for catering services to the SVP. In addition, the Minister indicated that the MDH contract was awarded following a call for tenders and was therefore deemed a suitable alternative in the interim. The Minister maintained that his involvement in this matter was always at a high level.

3.2.10 In reply to the memorandum of 17 June 2014 by the PSDAA (pre-2017), Cabinet granted its approval on 24 June 2014. Cabinet decided that the kitchen was to be closed immediately and that an extension should be made to the MDH contract for a transition period. Moreover, Cabinet proposed three options as a way forward:

a. catering services are farmed out;

b. Government refurbishes the kitchen and a private contractor is engaged to manage it; or

c. engage a private contractor to undertake the kitchen upgrade and manage the catering service.

3.2.11 Nonetheless, the NAO maintains reservations in this regard since the memorandum to Cabinet did not present details relating to the cost of the envisaged direct contract. This Office is of the understanding that the substantial cost involved in this interim measure could have been anticipated when one considers the number of residents and staff for whom catering was to be provided and the duration of this interim measure, expected to last between one to three years. Based on the information made available to the NAO, this Office is of the opinion that Cabinet's approval was inevitably circumscribed, particularly when one considers the limited information regarding the costs involved put forward in the memorandum. Nevertheless, this Office acknowledges the dire situation faced by the SVP in its obligation to urgently cater for its numerous residents and staff, which obligation limited cost considerations.

3.2.12 Prior to the placing of the direct contract, documentation provided to the NAO indicated that the matter was referred to the Permanent Secretary MFIN and the DG DoC. On 4 July 2014, the SVP sought the approval of the DG DoC to include the Residence in the contract for catering services that the FMS had with the MHC. According to the request, the outsourcing costs were approximate to the cost of in-house catering. Citing urgency, on 5 July 2014, the PSDAA (pre-2017) pressed the Permanent Secretary MFIN and the DG DoC for a reply. Following enquiries by the Permanent Secretary MFIN, the SVP indicated that:

a. the direct contract was for six months, until end 2014;

b. the supplier was to provide 1,650 meals daily, of which 1,200 were for the SVP residents, 300 for the Meals on Wheels service and 150 for entitled SVP personnel;

c. the price per meal was €9 per day; and

d. the total cost of the direct contract for the six months was €2,702,700.

3.2.13 On 6 July 2014, the DG DoC gave provisional approval for this procurement "under the Negotiated Procedure (Direct Order) due to the urgency – so that the patients are provided with the necessary meals." Nonetheless, the DG DoC indicated that the General Contracts Committee (GCC) was made aware of this special case and the circumstances involved and that formal approval would be granted in the GCC's next sitting. The DG DoC also advocated the urgent preparation of a public call for tenders so that, within the period of the direct contract, a new contractor is identified. The DoC was to assist the SVP draft the call for tenders.

3.2.14 A direct contract was entered into on 8 July 2014 between the SVP and the MHC. According to the contract, the commencement date was 21 July 2014, and the term was for six months from this date, that is, until 20 January 2015, although the contract could be extended at the sole discretion of the SVP for further terms. The prices and payment terms were defined in an appendix to the contract and the number of meals was indicated as "over 1,840".

3.2.15 The NAO noted that the term of this direct contract was extended several times and was finally terminated on 10 November 2017, four days prior to the signing of the contract agreement corresponding to the tender issued in relation thereto. By this date, the SVP had paid the MHC over €13,000,000 on a direct contract, the value of which was originally set at €2,702,700.

3.2.16 Queries regarding the several extensions to this direct contract were addressed to the stakeholders involved in the process. The PSDAA (pre-2017) noted that the DoC was involved in procurement processes across all ministries, which resulted in a significant strain on the Department's limited resources, leading to delays in the issuance of the call for tenders. Moreover, the drafting process of a tender document, including the vetting carried out directly by the DoC, was a time-consuming process, which, in this case, led to an extension of the interim solution. This was more so since the service concerned was essential and, according to the PSDAA (pre-2017), the contracting authority was left with no alternative but to extend the direct contract awarded. That stated by the PSDAA (pre-2017) was largely mirrored by the CEO SVP, who specifically cited the Residence's dependency on the DoC during the tender drafting process.

3.2.17 A more pragmatic perspective was put forward by the Minister for the Family and Social Solidarity, who indicated that the original recommendation was that of an extension to the MDH contract of between one and three years. The Minister indicated that it was clear that the initial six-month term would not suffice as a timeframe to rectify the situation, hence the extensions sought.

3.2.18 On the other hand, the Permanent Secretary MFSS outlined three reasons leading to the delay in the overall process and therefore the extensions to the direct contract. The Permanent Secretary MFSS cited the scarce resources of the DoC, extraneous factors beyond Government's control, such as the appeals lodged and the fact that negotiations following the tender award extended the process even further.

3.2.19 The NAO maintains that these extensions breached that reasonably approved by the DoC and by Cabinet, in that the direct contract was protracted well beyond the term approved and greatly exceeded the value indicated. While some delays in the contracting of the catering services were justified (particularly those relating to the processing of appeals lodged), others, such as the delayed issuance of the call for tenders, were not.

3.2.20 By way of conclusion, the NAO noted that the dire state of the kitchen at the SVP was adequately highlighted in reports drawn up; however, the decisions taken to address this situation were not always appropriately recorded. Although the urgency of the matter is not contested by the NAO, this Office was limited in its understanding of how the decision to extend the MDH contract originated, of the discussions held internally by the MFSS, the Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing, and the SVP to this effect, and of negotiations undertaken with the MHC. Moreover, the NAO's attention was drawn to the repeated extensions of the direct contract awarded to the MHC as an interim measure, which extensions could have been reduced had the tendering process been more expeditiously managed.

3.3 The issue of the call for tenders for comprehensive services at the SVP was appropriately authorised; however, concerns emerge regarding the possible prior understanding between the SVP and the contractor

3.3.1 The issue of the call for tenders for comprehensive services at the SVP necessitated that relevant authorisation be secured. Authorisation in this respect was to be supported by the SVP Consultative Management Board and the Permanent Secretary MFSS, and sought from the Parliamentary Secretary responsible for the SVP, the DoC and the Budget Office or MFIN. Good governance would dictate that these are important checks in assuring the regularity of expenditure incurred by Government, more so when the disbursement entails considerable public funds, such as this case.

3.3.2 While the issuance of a call for tenders had been referred to in various documents reviewed by the NAO, gaps in the decision-making process were again noted. Despite requests made to the SVP, this Office was not provided with evidence that this matter was brought to the attention of the SVP Consultative Management Board. The only minutes provided in this respect were of the Board meeting held on 21 August 2014. During this meeting, the CEO SVP indicated that the SVP kitchen was one of the projects planned for the coming three years. Another reference made related to the health inspection by the Health Directorate that had concluded that the kitchen was to be closed. This is the only documented evidence provided of the involvement of the Board in this matter. The only insight obtained with regard to the decision to outsource the catering services was highlighted by the CEO SVP in a meeting with this Office, who indicated that, following the damning reports by the Health Directorate and the ITS regarding the state of its kitchen, the Residence had to find alternative ways to provide catering services to its residents, other than in-house catering. According to the CEO SVP, it was decided to outsource this service, similar to what was being done in other hospitals and caring facilities, as this did not form part of the Residence's core business.

3.3.3 Of note to the NAO was a point raised by the Chair SVP Consultative Management Board in the meeting held on 21 August 2014, wherein the following was stated, "…we should discuss with the food contractor the possibility of him refurbishing the kitchen and we could then offer him a contract for ten years." This matter drew the NAO's concern for the food contractor was eventually awarded a ten-year contract that included the refurbishment of the kitchen following a call for tenders. Queried in this respect, the Chair of the Board referred to several meetings wherein the required refurbishment of the SVP kitchen was highlighted. Regarding the meeting of 21 August 2014, the Chair of the Board reiterated that captured in the minutes and provided no further insight in relation to discussions with the contractor and the ten-year contract to be offered. The views of the CEO SVP regarding that stated by the Chair of the Board were also sought by the NAO. The CEO SVP informed this Office that this was a contribution by the Chair of the Board that was not followed up by the SVP. Excerpts of later Board meetings brought to the NAO's attention by the Chair indicated that updates were being provided in relation to the tendering process by the CEO SVP. Notwithstanding that stated by the Chair of the Board and the CEO SVP, the NAO noted that later developments mirrored that foreseen at the meeting of 21 August 2014.

3.3.4 This point assumes further relevance when one considers that stated in a meeting held on 27 June 2014, between the SVP and James Caterers Ltd.[3] The following is an excerpt of the minutes of this meeting, "If James Caterers takes the tender to refurbish the SVPR kitchen, Mr Barbara stated that work will be completed in three months' time." The CEO SVP stated that such meetings were held with the Contractor to discuss logistics in view of the direct contract for catering services. When queried by the NAO on that stated in the minutes, the CEO SVP claimed that the excerpt quoted was an isolated and one-sided comment made by the Contractor; however, she maintained that the state of the kitchen was public knowledge. Referring to the minutes of this meeting, the CEO SVP noted that no reply was made by the Residence's officials and that at no point during this meeting did SVP officials discuss the tender or requirements related thereto. An element of inconsistency emerged in this Office's meeting with the JCL and MHC Consortium. One representative of the Consortium contended that the SVP only sought to collect information regarding timeframes for the refurbishment of the kitchen, while another representative argued that if the Consortium was to refurbish the

[3] Although the minutes refer to James Caterers Ltd, the NAO understood this as reference to the MHC, with whom the SVP was in negotiations with to provide catering as an interim measure. Supporting this understanding is the fact that (1) other representatives of the MHC were present for previous meetings held with the SVP regarding the provision of catering as an interim measure and (2) James Caterers Ltd is a shareholder in the MHC.

kitchen in three months, then it was to be awarded a contract equivalent to that remaining for the MDH contract. Nevertheless, the Consortium maintained that no prior commitment regarding the award of the tender had been received. In turn, the DoC maintained that it was not aware of the involvement of the Consortium in such meetings prior to the issuance of the tender.

3.3.5 In terms of the support that was to be provided by the Permanent Secretary MFSS, the CEO SVP informed the NAO that weekly meetings were held wherein this tender was discussed. Although this was confirmed by the Permanent Secretary MFSS, in that periodical meetings were held with the CEO SVP – as with all other heads within the Ministry – to keep abreast of administrative issues, no minutes of these meetings were retained.

3.3.6 Regarding ministerial authorisation, the NAO was again directed to the Cabinet memorandum dated 17 June 2014. Nonetheless, this Office noted that, in the memorandum, the option that SVP irrevocably outsources the catering services was not presented. According to the memorandum put to Cabinet, "given the current serious state of the kitchen at SVPR which can have serious health, social and political consequences Cabinet is requested to consider the following options and decide on the way forward:

1. Temporarily shut down the kitchen and contract out catering services for one to three years:
   i. This period should provide the opportunity to build/overhaul new kitchen structures facilities; furnish it with the required equipment; introduce new processes; change work practices; and recruit/retrain kitchen and supporting staff.
   ii. It gives SVPR the time to carry out due technical exercises to decide on the optimal option on the basis of a social cost benefit analysis and exploit potential sources of funding the project.
   iii. Until contracting out is operational, immediate and emergency action should be taken to reduce controllable risk hazards.

2. Carry out the necessary modernization of the kitchen piecemeal:
   i. Until contracting out is operational, immediate and emergency measures should be adopted to reduce controllable risk hazards.
   ii. Some of the catering services must be contracted out temporarily while sections are being refurbished."

3.3.7 On 24 June 2014, Cabinet approved that the SVP kitchen was to be closed immediately and that, in the interim, catering is procured through an extension to the MDH contract. Moreover, Cabinet proposed that the following options be considered:

a. the farming out of the catering at the SVP;

b. Government undertakes the refurbishment of the SVP kitchen but contracts out its running; or

c. the upgrade and the running of the SVP kitchen are contracted out.

3.3.8 The NAO noted that, while the long-term outsourcing of catering at the SVP was not put for the consideration of Cabinet through the memorandum, despite this forming part of the options originally put forward to the SVP in a report drawn up by the ITS, this course of action was one of the possible options approved by Cabinet. The SVP was unaware of the reason for this omission.

3.3.9 While Cabinet provided authorisation in principle, outlining the options available to the SVP, no documentation was provided to the NAO regarding the decision of the SVP to outsource the catering service and refurbish the Residence's kitchen. The basis of this decision to proceed with this option and who was involved in arriving at it remained unclear to this Office. The only information provided to the NAO in this respect was a statement by the SVP following queries raised, that the relevant direction on the way forward was given by the PSDAA (pre-2017).

3.3.10 Notwithstanding this lacuna, documentation reviewed by the NAO indicated that the SVP sought the input of the DoC in the drafting of the call for tenders. This Office noted that several meetings were held and correspondence exchanged between the SVP and the DoC leading to the issue of the call. This process was primarily intended to ascertain compliance with the applicable public procurement regulations. The involvement of the PSDAA (pre-2017) at this stage of the process was noted by the NAO, for correspondence exchanged on 13 May 2015 indicated that a meeting had been held between the PSDAA (pre-2017) and the DG DoC regarding the classification of the tender as a works concession.

3.3.11 Regarding the approval by the Budget Affairs Division within MFIN, this Office was provided with a Commitment Form dated 21 October 2015 in line with the procedure for budgetary consideration for tenders issued through the DoC. According to the Commitment Form, the tender's estimated price was €67,878,660, inclusive of VAT. This estimate was based on 1,239 residents and entitled staff with daily meals costing €12.72 each, excluding VAT, for a period of ten years. Nonetheless, this Office noted that in the Commitment Form the tender was referred as a "works concession"; this was revised to a PPP in the notice published by the DoC on the Government Gazette on 10 November 2015. Moreover, reference to demolish, build, and equip a fully furnished new kitchen was also deleted from the title of the tender, which now only referred to a PPP for comprehensive services to the SVP.

3.3.12 The NAO is of the opinion that the issue of the call for tenders for comprehensive services at the SVP was appropriately authorised by Cabinet, following a memorandum submitted by the PSDAA (pre-2017) through the Minister for Family and Social Solidarity. Also of note was that adherence to the Public Procurement Regulations with regard to the call was ascertained through coordination of the SVP with the DoC, while budgetary clearance for expenditure to be incurred under this tender was sought from MFIN. Notwithstanding this, certain lacunae persisted, particularly in terms of the internal endorsement by the SVP of the options put forward to Cabinet and the subsequent determination of the preferred option following Cabinet's clearance of various options available to the Residence. Of concern to the NAO was the evidence reviewed of meetings held by the SVP prior to the issue of the call for tenders, wherein the contractor expressed interest in a tender that was yet to be issued – one that the contractor would eventually secure – and the SVP highlighted the possibility of the refurbishment of the kitchen being assigned to the contractor in exchange for a ten-year catering contract – which was ultimately reflected in the call for tenders issued by the SVP. It is in this context that the NAO's concerns regarding the possible prior understanding between the SVP and the contractor emerge.

3.4 The objectives of the call for tenders were primarily determined by the SVP with guidance from the DoC; however, the additional investment was not defined

3.4.1 The objectives of the call for tenders for the supply of comprehensive services to the SVP were threefold, that is:

a. the provision of comprehensive catering services to the SVP;

b. the demolishing of the existing kitchen and the construction and finishing of a new kitchen; and

c. an additional investment that the supplier was to provide at no cost to the SVP.

3.4.2 When queried as to who had determined the objectives of the call for tenders, the CEO SVP stated these were discussed with the PSDAA (pre-2017) for possible inclusion in one tender. The CEO SVP indicated that the advice of the DoC was sought on the matter and it was confirmed that the call, as envisaged, was in line with the procurement regulations.

3.4.3 According to the CEO SVP, the decision to outsource the catering services was taken since this did not form part of the SVP's core competencies. Queried by the NAO on the need for a new kitchen when it was decided to outsource the catering services, the CEO SVP indicated that Government required an industrial kitchen that could be used in case of emergencies. No funds had been allocated by Government to finance the kitchen refurbishment; therefore, the SVP decided to issue a tender for catering services for a number of years and include the construction of a new kitchen as a requirement. In essence, bidders were to provide a functioning kitchen at no extra cost to the SVP. Nonetheless, according to the CEO SVP, for the tender for catering services to be viable, this was to be issued for a period of ten years. The CEO SVP maintained that this advice was given by the DoC.

3.4.4 Documentation reviewed by the NAO indicated that, as from November 2014, the SVP and the DoC were collaborating on the drafting of the tender document. The first draft of the call for tenders was submitted by the SVP for the DoC's vetting on 27 January 2015. According to this draft, the call was a public service concession for the provision of comprehensive catering services to the SVP and included the demolishing of the existing kitchen and the building of a new one.

3.4.5 From documentation reviewed, this Office noted that the component relating to the additional investment was included for the first time in the draft copy of the tender document submitted to the DoC on 19 October 2015. Among other amendments, the document now included the provision of an additional service or item over and above those mandatory, that is, the catering and the kitchen. The additional investment that bidders were to propose was to be beneficial to the SVP and was to be at no additional cost to the Residence. Although no clear requirements were included as to what this investment was to comprise, the SVP outlined that the Residence provided care for a large number of highly dependent persons with complex medical and nursing needs, and that it was the only long-term care facility to provide such services in Malta. It was further explained that the SVP was challenged with an ever-increasing demand due to diverse longevity factors that were resulting in a growing number of older people with an increased level of dependency. Therefore, the SVP needed to be equipped with the infrastructure, modern technology and supporting services required to successfully accomplish its objectives. No details as to what the additional investment was to comprise were included in this draft document except that the additional investment was to be described in detail in the tenderer's offer. This was to be fully costed at market price and certified by a warranted auditor so that the SVP would be able to calculate the additional value that was being offered. The added investment was to be provided throughout the duration of the contract. At the end of the contract term, the additional investment was to become the property of the SVP at no extra cost.

3.4.6 The NAO sought to understand how this innovative concept of the additional investment came to be and who was responsible and assumed lead in its proposal. Queries to this end were addressed to the several stakeholders involved. According to the Permanent Secretary MFSS, the additional investment was imposed as a social obligation on the contractor who was to be awarded this tender, yet indicated that he was not involved in its formulation. Similarly, the Minister for the Family and Social Solidarity indicated that he was not involved in the concept of an additional investment and was not aware of its source.

3.4.7 In a meeting with the NAO, the CEO SVP indicated that the idea to request a gift from the bidder – later termed the additional investment – originated from the PSDAA (pre-2017). The PSDAA (pre-2017) had directed the CEO SVP to coordinate with the DoC on the matter. In turn, according to the CEO SVP, the DoC had confirmed that this concept was feasible. Discussions had then ensued, between the SVP and the DoC, on whether to leave the idea of an additional investment open to the interpretation of prospective bidders or whether to state specifically what the SVP required in the call for tenders document. The CEO SVP noted that the Residence did not have any funds for capital investment and tenuously claimed that the Residence would secure maximum value through this additional investment. Moreover, the CEO SVP explained that the additional investment was the only element on which a distinction could be made between bidders, since the Residence's requirements were very specific in respect of the catering element.

3.4.8 Despite that stated by the CEO SVP, the PSDAA (pre-2017) was evasive when queried by the NAO whether the concept of the additional investment was an idea that she had originated, arguing instead that her involvement was not in the modality of the process but in providing general political direction. The PSDAA (pre-2017) stated that it was then up to the SVP and the DoC to implement that direction. When pressed on the matter, the PSDAA (pre-2017) ambiguously claimed that the concept of an additional investment was presented to her during a management meeting, indirectly citing the involvement of the SVP and directly citing that of the DoC. Notwithstanding this, the PSDAA (pre-2017) maintained that she was not aware of who initially proposed such a concept. Nevertheless, the PSDAA (pre-2017) affirmed that her general approach was that of maximising value to be secured by Government and that since this additional investment had fit this approach, she had endorsed it.

3.4.9 A third conflicting perspective was provided by the DG DoC. When queried in this respect, the DG DoC indicated that the concept of an additional investment was proposed by the SVP, particularly the CEO SVP. Therefore, despite the NAO's enquiries with all involved, this Office was unable to determine with any certainty how the additional investment component of this tender – a critically important and innovative element – came to be.

3.4.10 The SVP also sought the input of the DoC when determining the evaluation criteria and the weighting that these were to be assigned. In this regard, the NAO noted correspondence dated 23 March 2015 wherein the CEO SVP sought the approval of the Permanent Secretary MFSS to set up a meeting with the DG DoC to discuss the criteria that were to be adopted for the evaluation of offers. On 10 April 2015, the DoC provided the SVP with copies of the MEAT Evaluation Grid that was to serve as guidance. In later correspondence traced, the DoC submitted copies of two tender documents which had utilised similar MEAT criteria that were to assist the SVP establish the evaluation parameters.

3.4.11 Further attesting to the collaboration between the SVP and the DoC in the compilation of the tender document were handwritten minutes of a meeting held on 14 May 2015. According to these minutes, the SVP and the DoC were aware that this was a tender of significant value and was very likely to be appealed, criticised and given media attention; therefore, they needed to be very clear and to be able to defend the decisions taken. The notes indicated that the DoC maintained that the tender was to be simple and transparent. On the other hand, the SVP wanted to obtain the best possible deal in view of the financial outlay and term involved, quality, and the best economical outcome for the Residence. According to the SVP, the call was to be concluded as soon as possible.

3.4.12 The minutes further indicated that two decisions had been made by that point. The first decision related to whether this was a concession for a service or a concession for works. It was unclear from these minutes as to the decision taken in this regard; however, earlier correspondence had clearly indicated that this call for tenders was a works concession. The second decision made related to the evaluation criteria where it was agreed that the MEAT criteria would be used, therefore the best economical deal was to be selected. According to the minutes, 65 per cent of the marks were to be allocated to the technical component and 35 per cent to the financial element. Other issues considered related to the capping of the cost of meals, possibly at €10, and the possible use of the kitchen by the contractor for services other than those provided to the SVP.

3.4.13 The main concern raised during this meeting was that, as a result of the unspecified nature of the additional investment, variant offers would be provided by bidders. Stated in the notes of this meeting were examples of the possible options anticipated in relation to the additional investment, with reference made to the provision of vehicles and that of beds. While the SVP wanted the benefit of this additional investment and to obtain an idea of what the market was willing to offer, it was debated whether the SVP was to provide clear indications in this regard. According to the notes, it was ultimately agreed that the call would not state what the SVP was requesting and to leave that up to the bidders to decide what they were willing to offer.

3.4.14 In submissions made to the NAO, the DG DoC indicated that the Department had requested the SVP to specify the nature of the additional investment. However, according to the DG DoC, the SVP indicated that the call for tenders was clear in that the additional investment was to be of service to the SVP's residents. Moreover, the SVP maintained that leaving this open to the market would not exclude any potential bidders. Furthermore, the Residence had substantial needs and the SVP was content with any investment that could improve its operations. The DG DoC indicated that this was an innovative concept, in terms of procurement, and was acceptable to the Department. When queried as to whether such an open request could lead to issues during evaluation, the DG DoC indicated that his role was to advise contracting authorities, substantiating this argument with the fact that a tender is issued by the Department on behalf of a contracting authority. He further noted that the award and selection criteria were established in the call for tenders and there was no pre-contractual concern expressed by prospective bidders in this respect. A DoC official noted that specifying what the investment was to consist of could have resulted in an advantage to particular bidders involved in similar projects. Leaving the choice of investment up to the bidders created a level-playing field and difficulties cited with respect to the evaluation of different investments could be addressed by awarding the bidder who offered the highest value the most marks. The DG DoC indicated that while concerns eventually emerged in respect of this investment, he noted that this could only be known with the benefit of hindsight; however, the DG DoC conceded that no other requests from contracting authorities proposing an additional investment were subsequently entertained by the Department.

3.4.15 While other exchanges between the SVP and the DoC were noted, of interest was a document dated 9 September 2015 wherein changes to the evaluation criteria were made. The financial element of offers received was now to be allocated 40 per cent of the marks, which in turn was to be divided in 30 per cent for the offer with the lowest price in terms of meals and 70 per cent to that with the highest value in terms of additional investment. Further details were provided with respect to the financial evaluation, namely:

a. price per meal (30 per cent): the offer with the lowest price, which could not exceed €12.72 excluding VAT, for breakfast, lunch and dinner was to be awarded 100 per cent of the financial weight; the other offers would be awarded scores in proportion to the offer with the lowest price; and

b. provision of additional service/s or item (70 per cent): the highest offer was to be awarded 100 per cent of the financial weight. The other offers were to be awarded scores in proportion to the offer with the highest value.

3.4.16 Although not indicated in the document, marks to the technical element were, by default, revised to 60 per cent of the marks. This change in the evaluation criteria was approved by the CEO SVP, who subsequently informed the NAO that this was subject to further approval by the relevant authorities prior to the issuance of the tender.

3.4.17 The NAO observed that in a later draft submitted by the SVP to the DoC on 30 October 2015, the financial element was revised to a weighting of 40 per cent for the price per meal and 60 per cent for the provision of the additional investment. It was unclear who proposed this change; however, this weighting was adopted in the call for tenders that was eventually issued. Other correspondence reviewed mainly related to minor changes made to the tender document, which supported the NAO's understanding that the call was the result of the collaboration of the SVP and the DoC.

3.4.18 This Office's attention was drawn to the establishment of €12.72 as the daily maximum price for meals per person in the call for tenders. In a meeting with the NAO, the DoC indicated that the price was capped in the call to provide direction to the economic operators; however, the Department noted that the capping of €12.72 was determined by the SVP. The DoC noted that the SVP had referred to the price being charged under the MDH contract in determining this rate, who in turn had acknowledged that the catering element was very profitable to the contractor. It was in this context that it was decided to include the construction of the kitchen in the same tender at no cost to Government. The DoC further indicated that, notwithstanding this, the SVP had anticipated that the contractor would still have a substantial margin of profit if rates bid were at the capped price and therefore the Residence had decided to include the provision of an additional investment, also at no cost to Government.

3.4.19 Queries regarding the establishment of the €12.72 capping were directed to the SVP by the NAO. The SVP indicated that a reasonable capping to the price of meals was requested by the DoC, in that a PPP was to contain an element of risk to the contractor. In this regard, the SVP explained that the rate of €12.72 was arrived at based on several considerations, namely:

a. the introduction of the provision of a breakfast and a dessert during meals, which was not included in the MDH contract, which was costed at €2.53 per person per day;
b. the provision of a lunch and dinner costed at €8.92 per person per day, which included additional items with a view to enhance the quality of the catering service at the SVP. The additional items comprised an extra course during lunch (four courses in total) and

an additional two courses during dinner (four courses in total), the supply of cutlery, quality chinaware, vans, trolleys and other equipment to deliver food to the wards, the replacement of broken or lost serving utensils, the setting up of the ordering system and the management of the main staff dining room; and

c. an element to cover the construction of the kitchen, including all the furnishing and equipment, which was costed at €1.27 per person per day.

3.4.20 In the drafting of the call for tenders, the Permanent Secretary MFSS indicated that he had consistently directed the CEO SVP to liaise with the DoC to ensure that the process was in line with the Public Procurement Regulations. The PSDAA confirmed that although she was not directly involved in the drafting of the tender document, she was aware that this was extensively discussed between the DoC and the SVP. Moreover, the PSDAA emphasised that the call for tenders was ultimately endorsed by the DoC. In turn, the CEO SVP indicated that the final decision on how the tender was to be issued ultimately rested with the DoC, although the Residence was in agreement with the tender as issued.

3.4.21 Prior to the publication of the call for tenders, on 23 October 2015, the DoC requested the advice of the European Institute of Public Administration as to whether this tender satisfied the criteria of a PPP. The Institute explained that the key distinction between a PPP and other contracts is not legal, but one related to its financing. A tender would be appropriately classified as a PPP if the initial capital cost is financed by the economic operator who is then reimbursed over the operational period along with service delivery costs through fixed periodic payments by the contracting party. No further correspondence was noted in this respect; however, in reply to a query by this Office, the DG DoC indicated that different procurement procedures were explored. It was ultimately concluded that this call for tenders was a mixed contract between a concession and a public call. The DG DoC stated that, given the limited level of risk involved, it was issued as a simple open procedure.

3.4.22 The notice for the call for tenders, CT 2009/2015 - Public Private Partnership for the provision of comprehensive services to St Vincent de Paul Residence - Parliamentary Secretariat for the Rights of Persons with Disability and Active Aging, was published in the Government Gazette on 10 November 2015.

3.4.23 In conclusion, the NAO understood that the objectives of the call for tenders were mainly determined by the SVP, although guidance from the DoC was sought to ensure compliance with the Public Procurement Regulations. No concerns emerge in relation to the technical requirements for the catering and the construction of the kitchen elements of the tender. However, this Office's attention was drawn to the financial element of the catering service to be sourced. The NAO is of the opinion that the €12.72 capping inflated the cost of catering to compensate for the other elements of the tender, namely, the construction of the kitchen and the additional investment at 'no cost' to the SVP. With respect to the additional investment, the NAO understood that this was intended to obtain increased benefit to Government.

Despite enquiries with all involved, this Office was unable to determine with any certainty how the additional investment component originated, notwithstanding that this was a critically important and innovative element of the call for tenders. Moreover, this Office has reservations as to why no parameters were set to guide potential tenderers formulate the additional investment that was to be provided. The NAO maintains that this omission allowed for the distortion of the level playing field that should be ensured in public calls for tender, where all effort is made to streamline and standardise bidding parameters to ensure transparency, equal treatment and proportionality. This concern assumes greater relevance when one considers the disproportionate weighting assigned to the additional investment element in the evaluation criteria, rendering evaluation all the more problematic. Whereas the tender was justified based on the SVP's catering requirements, the financial weighting attributed secondary importance to this element while primary importance was given to the additional investment.

3.5 While the call for tenders addressed the intended objectives and was in line with applicable regulations, the inclusion of the additional investment was questionable

3.5.1 The call for tenders for the provision of comprehensive services to the SVP primarily comprised the supply of catering and a fully furnished new kitchen. These clearly reflected the needs identified by the SVP and the intended objectives that were to be addressed through the tender. However, bidders were also to make an "additional investment", the nature of which was left unspecified. The NAO noted that while the call was very clear with respect to the requirements for the meals and the technical specifications of the kitchen, no details as to what was expected from the bidders regarding the additional investment were given. The only guidance provided was that this investment was to enhance the type of care provided at the SVP, that is, care for a substantial number of dependent residents with complex medical and nursing needs. Moreover, the additional investment was to be made at no additional cost to the Residence. Irrespective of the rationale provided for its inclusion in the call for tenders, the NAO has serious reservations regarding the entire notion of an additional investment at no cost to the contracting authority.

3.5.2 The NAO maintains that, as a minimum, the call for tenders should have adequately described what bidders could offer as an additional investment. This Office's concerns stem from the fact that since this was not defined, this effectively allowed bidders to propose any investment conceivable. In the call for tenders, the information provided in this regard was extremely brief, unclear and highly subjective. In addition, the SVP failed to set any terms and conditions for this requirement, such as what type of investment was acceptable, an approximate value and timeframes for delivery. Moreover, the fact that bidders could, potentially, offer any type of investment rendered the evaluation process more problematic and, as cited in the preceding paragraphs, distorted the level playing field that should have been afforded to all bidders.

3.5.3 The NAO sought to identify how this innovative element originated and the rationale behind its inclusion in the call for tenders. According to SVP officials, the Residence was in dire need of any type of investment, irrespective of whether this comprised additional beds, motor vehicles or equipment. The CEO SVP maintained that the funding allocated was not sufficient to meet the considerable needs of the Residence and the inclusion of the additional investment permitted the SVP to meet some of these requirements. Moreover, prior to publication, the call for tenders was discussed with the PSDAA (pre-2017); however, no records of these discussions were provided to the NAO. The CEO SVP also indicated that, during a meeting held with the DoC on 14 May 2015, it was agreed that no restrictions in respect of this investment were to be placed on bidders. Nonetheless, the CEO SVP contended that an element of guidance was provided, in the sense that the investment offered was to be compatible with the services offered by the Residence. Moreover, the fact that the DoC had confirmed that this was in line with procurement regulations had provided an added element of comfort to the SVP.

3.5.4 Notwithstanding that stated, the NAO was not provided with any documentation that indicated that any studies were carried out to aid the SVP in determining what optimal additional investment could be obtained. In replies to queries made by this Office, the CEO SVP confirmed that no such analysis was undertaken as the SVP was content with any form of investment since the needs of the Residence were many.

3.5.5 The NAO also sought the views of the DoC on the inclusion of the additional investment in the call for tenders. In replies made to this Office, the DoC clarified that this was proposed by the SVP as the catering part of the call for tenders was deemed extremely profitable to bidders; therefore, the SVP wanted to secure a more balanced outcome to Government through the additional investment. The DoC indicated that, even though the additional investment was not defined, the SVP had requested that this was to be compatible with its requirements at no extra cost to Government. The DoC also referred to the fact that, at the time, there was a dire shortage of beds to cater for the needs of older persons. This had resulted in a high bed occupancy within MDH with persons who could be cared for elsewhere. This, and the increasing demand, had precipitated the need for additional bed capacity outside of the MDH. Nonetheless, the DoC indicated that any type of investment that added value to the financial offer would have been accepted, irrespective of its nature.

3.5.6 The DoC acknowledged that the inclusion of the additional investment was an innovative concept that was contractually unknown. The DG DoC emphasised that, at the time, this concept was deemed beneficial and legal. In the circumstances, the DoC deemed it imperative to oversee this procurement process, especially since no specific terms relating to the additional investment were set. Notwithstanding this, the DoC maintained that certain requirements were placed on the bidders, one of which was the need for the investment to be endorsed by an independent auditor. Moreover, the DoC indicated that despite that this approach to tendering was new, it was not challenged prior to the closing date for the submission of bids, allowable through recourse to the Public Contracts Review Board (PCRB).

3.5.7 Irrespective of that stated by the SVP and the DoC, the NAO maintains that the concept of an additional investment at no cost to the contracting authority, as applied in this case, is fallacious, for in a transaction of significant value with commercial interests, nothing is ever secured for free. It is reasonable and inevitable for this Office to assume that the cost to the bidders of the additional investment was to be recovered in other elements of the commercial transaction. In this case, bidders could recover the additional investment by factoring this cost into the pricing for the provision of meals or through other related agreements. In reality, the SVP would simply be transferring part of its recurrent cost incurred in the procurement of the catering services to fund another expense, possibly of a capital nature. This Office deemed this more of a balancing act, where the bidder would recover this outlay through that charged on the other deliverables, rather than provide an additional investment at no cost.

3.5.8 The NAO also sought to ascertain whether the inclusion of an additional investment at no cost to the contracting authority in a public tender was in line with procurement legislation. This Office could not establish whether this concept was previously included in any other calls for tender and, despite enquiries made, no particular instance was cited. The DG DoC indicated that while the additional investment was not regulated by any specific regulation, no legislation precluded it. Despite that stated by the DoC, that the inclusion of the additional investment was permissible and that the call for tenders was in line with applicable legislation, the NAO maintains reservations in this regard. The DoC's affirmation that this concept was not challenged by bidders offers no assurance to the NAO as to its legitimacy. This Office maintains that the onus in ascertaining regularity rested with the DoC. This was particularly relevant since the additional investment was an innovative concept that therefore warranted legal guidance, perhaps internally, from the DoC's legal experts, or externally through recourse to the Attorney General's Office. This Office is of the opinion that the inclusion of the additional investment, while not ostensibly illegal, created a situation whereby this element of a public call for tenders lacked definite provisions and regulations against which it could be assessed. Complications in this respect are not limited to the process of assessment but readily extend to the implementation phase, since the absence of defined parameters inevitably created risks in the execution of the contract.

3.6 While the evaluation criteria were clearly specified, the considerable weighting assigned to the additional investment was unwarranted

3.6.1 The call for tenders provided a clear explanation of the criteria against which bids submitted were to be evaluated. Regarding the catering services, technical aspects such as professional standards, overall quality plans and food production systems were to be assessed. As regards the kitchen, the technical considerations included building specifications, the maintenance programme and the carbon footprint. The marks allocated for each technical criterion and sub-criterion were also specified in the call. In the assessment of the financial element, two aspects were to be considered, namely, the price per breakfast, lunch and dinner and the value of the additional investment. The lowest daily rate for meals and the proposed investment with the highest value were to be awarded the maximum marks. The contract was to be awarded to the most economically advantageous offer. This was to be established by weighing the technical element and price on a 60/40 basis, respectively.

3.6.2 Bids that were deemed administratively compliant were first to be assessed in terms of their conformity to the technical requirements specified in the call for tenders. Of the maximum 100 marks assigned to technical considerations, 72 were allocated to aspects relating to the catering services, while the remaining 28 were assigned to those relating to the kitchen. Bidders were to obtain at least 50 marks of the technical score or be eliminated. The offer with the highest technical score was to be awarded 100 per cent of the technical weighting, with the other offers awarded scores in proportion to it. The score obtained was then to be multiplied by the weighting assigned to the technical element, that is, 60 per cent of the overall score.

3.6.3 The financial offers of the tenders not eliminated during the technical evaluation were then to be evaluated. Two elements were to be considered during the financial evaluation, that is, the price per meal and the value of the investment. The offer with the lowest daily combined price for breakfast, lunch and dinner, which in any case was not to exceed €12.72 excluding VAT, was to be awarded 100 per cent of the score. This was then to be multiplied by the weighting assigned to price, that is, 40 per cent of the weighting assigned to the financial element. The other offers were to be awarded scores in proportion to the offer with the lowest price. Regarding the additional investment, the proposed investment with the highest value was to be awarded 100 per cent of the score. This was to then to be multiplied by the weighting assigned to the additional investment, that is, 60 per cent of weighting assigned to the financial element. The other proposals were to be awarded scores in proportion to the offer with the highest value in terms of additional investment. The marks awarded with respect to the daily price for meals and the additional investment were then to be summated and assigned an overall weight of 40 per cent. The resulting score would be the mark assigned for the financial element. The cost of construction of the kitchen was not to be factored in the evaluation of the financial element, since this was to be borne by the successful bidder. The contract was to be awarded to the offer that obtained the highest score combining the respective technical and financial scores.

3.6.4 In its review of the call for tenders, the NAO noted that the evaluation criteria were detailed, allowing for little subjectivity. Notwithstanding that the criteria, the scores and the weighting assigned to the technical and financial elements were clearly indicated, the NAO maintains reservations on the weighting allocated to the additional investment. While arguments can be made that support or criticise this allocation, this Office acknowledges that an element of judgement is inevitable. Ultimately, a contracting authority must ensure that any supplier contracted has the technical capabilities to deliver that tendered for, sometimes to the detriment of price.

3.6.5 However, the NAO maintains an element of reserve on how the marks were allocated in the financial element. While, overall, this element was assigned 40 per cent of the weighting, 40 per cent of this was assigned to the price per meals and 60 per cent allocated to the additional investment. This Office is of the opinion that the financial weighting was not aligned with the objectives of the call for tenders. While the additional investment may have addressed other needs that the SVP had, the NAO maintains that this was not the main objective of the call for tenders; therefore, this should have been accordingly reflected in the weightings assigned. When one considers this, the fact that the additional investment was not adequately defined in the call allowing for a high degree of discretion to bidders, and that dissimilar proposals made evaluation problematic, the weighting assigned to the additional investment was considered unwarranted.

3.6.6 The incongruity of the weighting assigned to the additional investment is rendered evident when one calculates the value of the contract as issued. The cost of the catering component, as capped in the call and forecasted over a ten-year period, amounted to €57,524,292 (based on a capped price of €12.72 per person per day and 1,239 daily meals). Although the value of the additional investment on publication of the call for tenders was yet unknown; it is only logical to reason that the value of this investment would not exceed the cost of the catering element. Therefore, the allocation of weights assigned to the catering element and the additional investment was deemed inappropriately balanced by the NAO, creating a flawed emphasis on the additional investment being sought and directly affecting the selection of the bidder.

3.6.7 The NAO sought the views of the SVP on the criteria set for the evaluation of bids. The SVP claimed that these were drawn up following discussions with the DoC, with the agreed evaluation criteria clearly indicated in the call for tenders. According to the SVP, the importance placed on the provision of an additional investment stemmed from the fact that the Residence was sorely in need of enhancing its facilities and services to better cater for its residents and to meet the ever-growing demand for long-term care. The added investment was to be channelled towards meeting these challenges. Moreover, bidders were clearly informed that, at the end of the contract term, the additional investment would become the property of the SVP at no extra cost to the Residence.

3.6.8 The NAO also enquired regarding the exclusion of the cost of the kitchen in the consideration of the financial element in the evaluation criteria. When queried on this matter, the CEO SVP explained that the call for tenders comprised clearly defined and professionally drawn up specifications and drawings, intended to ascertain that the successful bidder delivered a kitchen of the highest standard at whatever cost. The bills of quantities for the kitchen had been made available to interested bidders, who had to abide by the technical specifications therein. The cost of the kitchen construction and furnishing, as per specifications provided by the SVP, were to be borne solely by the successful bidder.

3.6.9 In replies to queries made by the NAO about the evaluation criteria and weightings as stipulated in the call for tenders, the DG DoC stated that, while these had been determined by the SVP, these were considered to be overall objective criteria. Notwithstanding this, the DG DoC acknowledged that in determining weightings an element of subjectivity was inevitable. Nonetheless, the DoC noted that the weightings established in a tender conveyed a message to prospective bidders as to which components were most important to the contracting authority, as these would be allocated the most marks.

3.6.10 Nonetheless, this Office's reservations regarding the weighting assigned to the additional investment persist. These emanate from the fact that this was not the primary objective of the call for tenders, was an innovative concept not previously resorted to, was not regulated, and was not defined in the call for tenders rendering evaluation problematic.

3.7 The clarification process was carried out in line with that established in the call for tenders; however, source documentation was not provided

3.7.1 The call for tenders outlined the clarification process that was to be adopted for addressing queries by prospective bidders. To this end, requests for clarification were to be made by 16 December 2015, to which replies were to be published by 30 December 2015. A clarification meeting/site visit was also to be held for prospective bidders; this was in fact held on 19 November 2015.

3.7.2 The NAO reviewed the clarifications issued by the DoC in connection with this call for tenders. Minutes of the clarification meeting were also published as part of a clarification note dated 3 December 2015. The remaining clarification notes were issued on 1, 10 and 30 December 2015. All clarification notes were uploaded on the e-PPS, the online tendering platform that was accessible to all bidders. All notes were published within the stipulated deadline.

3.7.3 According to the clarification notes published, queries made by prospective bidders mainly related to:

a. requests for an extension to the deadline for the submission of offers, to the timeframe for the delivery of meals from the signing of the contract, and to the delivery of equipment;

b. requests for the provision of site plans and ACAD drawings,

c. requests for additional technical information or specifications; and

d. the possibility of partial submissions or the separate award of the catering element and the construction of the kitchen.

3.7.4 The NAO noted that while no extension to any of the deadlines stipulated in the call for tenders was granted, the requested plans and drawings were made available to prospective bidders, as was additional technical information required. In clarifications made, bidders were also unequivocally informed that the catering and the kitchen were to be awarded to only one economic operator. Regarding this, the NAO enquired whether the possibility of issuing two separate tenders had been considered. According to the CEO SVP, although this had been debated, financial constraints had precluded such an option, particularly in terms of the capital outlay required to refurbish the kitchen.

3.7.5 This Office's attention was drawn to two requests for clarification, wherein bidders enquired on the nature of the additional investment that was to be made. In these requests, bidders expressed concern that while this investment related to "care", this was a broad statement that gave rise to several interpretations as to what exactly this could infer. To this end, the SVP was requested to provide bidders with clear guidelines, parameters and examples of what the additional investment could entail. Clarifications were also requested as to why this element, which was not related to the main aim of the PPP, carried the highest percentage of the financial score as opposed to that allocated for the price of the meals, considered as the primary component of the call. In reply, the DoC directed bidders to refer to the overview of the operations of the SVP provided in the call for tenders. Bidders were to refer to this information when identifying the type of related investment that was to be offered with their bid. Despite the reply, the NAO maintains that this did not provide any direction whatsoever to bidders. The ambiguity associated with the additional investment highlighted by this Office earlier in this report is corroborated by the concerns raised by bidders during the clarification phase of the tender.

3.7.6 It is to be noted that, notwithstanding requests made, the NAO was not provided with the source documentation of the requests for clarification made by the bidders. Consequently, this Office had to rely on the information available on the e-PPS and that provided by the DoC in this regard. This precluded the NAO from ascertaining who put forward the queries, when these were originally made, the exact nature of the queries, whether any other queries were received and whether all queries made were replied to.

3.8 The bids were submitted within the established deadline

3.8.1 The call for tenders stipulated that the deadline for the submission of bids for the provision of comprehensive services to the SVP was 7 January 2016. By this date, two bids were submitted: one by the JCL and MHC Consortium and the other by the CCE Joint Venture.

3.8.2 Stipulated in the call was that bidders were to submit substantial documentation evidencing their compliance with the eligibility criteria, their financial and economic standing and their technical capacity. In addition, bidders were to provide details of the technical specifications in respect of the catering service and the kitchen construction and present a technical offer of an additional investment to the SVP. Bidders were also required to submit a financial offer consisting of the catering service priced on a per person per day basis, which was not to exceed €12.72 excluding VAT, and the value of the additional investment.

The bid by the JCL and MHC Consortium

3.8.3 In its bid, the JCL and MHC Consortium tendered a price of €12.72, excluding VAT, for meals per person per day. This was sub-divided as €0.72 for breakfast, €8.50 for lunch and €3.50 for dinner. Based on a daily quantity of 1,239 residents/entitled personnel, this would result in a daily cost of €15,760, exclusive of VAT, to the SVP.

3.8.4 As requested in the call for tenders, the JCL and MHC Consortium also submitted a costed bill of quantities for the construction of the kitchen, which amounted to €3,109,278. Nonetheless, it is to be noted that the cost of the kitchen was not to be taken into consideration in the evaluation of the bids.

3.8.5 Regarding the additional investment, the JCL and MHC Consortium proposed:

a. an investment of €14,460,000 for the construction of two residential blocks within the present SVP complex, capable of accommodating 252 residents; and

b. a cash payment of €1,500,000 payable at the end of each year of the 10-year concession term, intended as a contribution towards investment or refurbishment-related costs incurred by the SVP; by end of the 10-year period, a total contribution of €15,000,000 would have been made.

3.8.6 In support of its proposal, the JCL and MHC Consortium provided a technical report on the construction of the two residential blocks. According to the report, each block was to house 126 residents, resulting in a total of 252 additional beds. The two blocks were to be linked by a sheltered pathway at ground level to allow access to shared facilities such as the chapel, gym, pool, physiotherapy room, holding room and hall. Each block was to have two wings with an approximately equal number of rooms; one wing was to accommodate eight rooms per floor while the other was to accommodate six on each level. Three isolation rooms were to be provided in each block, one on each floor, to accommodate residents in a critical condition and their relatives. Beds in these isolation rooms were over and above the 252 beds proposed. According to the documentation provided by the Consortium, the design of the blocks was in line with the National Minimum Standards for the Care Homes for Older People, issued by Government in September 2015. Details of the design of the blocks, the facilities to be provided, the square meterage, and the site and floor plans were also submitted.

3.8.7 The JCL and MHC Consortium also provided a budget of the €14,460,000 investment that was to be made in the construction of the residential blocks. The cost of one of the blocks was estimated at approximately €6,600,000, while that of the second block was in the region of €5,000,000. The remainder were professional fees and VAT. A detailed breakdown of the estimated construction costs was also provided (Figure 13 refers).

Figure 13: JCL and MHC Consortium - Estimated cost of the additional Investment - Construction of blocks

Item	Block 1 cost (€)	Block 2 cost (€)
Structure	1,392,869	907,955
Finishes	898,412	655,129
Furniture and fittings	1,183,240	1,052,840
Services (mechanical and electrical)	3,160,000	2,310,000
Total	**6,634,521**	**4,925,924**

3.8.8 Of note was that in its proposal, the JCL and MHC Consortium also indicated that, without conditioning its additional investment offer, the Consortium was interested to enter in negotiations with Government with the aim of taking over the management and operation of the two new additional blocks being provided as part of its offer. The Consortium stated that such a scenario would benefit Government in two ways, namely:

a. the additional bed capacity would be provided at short notice without Government having to find the necessary skilled personnel to manage the blocks and that, given the track record and experience that the Consortium had in providing care for the elderly, the level of care that would be provided would be excellent; and

b. the Consortium would be able to achieve cost efficiencies on the current set-up at the SVP and, on that basis, undertook to offer Government a five per cent saving on the operational cost per resident being incurred by the Residence.

3.8.9 As required in the call for tenders, the JCL and MHC Consortium provided a certification of the costing of the additional offer by an independent audit firm. The audit firm confirmed the costings provided in the technical report.

3.8.10 Comprehensively, by the end of the contract term, the JCL and MHC Consortium would have offered an additional investment of €29,280,000, of which approximately €14,000,000 was for the construction of two residential blocks and €15,000,000 were a cash contribution.

3.8.11 The NAO sought to understand how the JCL and MHC Consortium decided on the nature and extent of the additional investment. In a meeting with this Office, the Consortium stated that the concept was put forward by its Architect, who was a former Opposition Member of Parliament. The Architect explained that he had come up with the idea for the Consortium to propose the construction of the residential blocks after having reviewed the call for tenders, wherein it was indicated that there was an increasing need for beds for older persons. Elaborating in this respect, the Architect informed the NAO that, when serving as Minister under a previous administration, he was aware that Government had identified an area within the SVP's premises for an extension; however, following a change in administration in 2013, this plan was never actioned.

3.8.12 The JCL and MHC Consortium provided further clarification to the NAO on how the value of the additional investment was determined. The Consortium explained that the additional investment was to be funded through the profit element between the rate offered for comprehensive services, that is, €12.72 per person per day for the ten-year contract term, and the cost incurred by the Consortium in providing the catering services. In addition, the Consortium was advised by its Legal Advisor[4] that, since the call for tenders was for the supply of comprehensive services, then the Consortium was able to propose to manage the residential blocks that it was offering to construct as part of its additional investment.

The bid by the CCE Joint Venture

3.8.13 In its bid, CareMalta Group Ltd and CaterEssence Ltd, together forming the CCE Joint Venture, proposed a daily price per person of €10.46, excluding VAT, for meals. Based on a quantity of 1,239 meals per days, this would result in a daily cost of €12,960, exclusive of VAT, to the SVP. A bill of quantities with respect to the construction of the kitchen was also provided. This indicated that the construction cost amounted to €2,872,588.

3.8.14 As stated in the bid, the additional investment proposed by the CCE Joint Venture was twofold, that is:

a. the provision of residential care for highly dependent, intellectually challenged persons, costed at €5,935,023; and

b. IT support to improve the quality aspect of care provision, with a value of €4,970,235.

3.8.15 With respect to the residential care proposed, the CCE Joint Venture noted that this investment was to be provided through a private entity specifically set up to offer a range of services to persons with disability. This entity had the necessary housing, experience and capability to offer services that would significantly benefit persons with disability, and which had a consequent positive effect on their families. Justifying its proposal, the CCE Joint Venture made reference to the 2013 electoral manifesto wherein the party subsequently elected to government had committed itself to the social project of finding accommodation for every person with disability in small-sized, residential homes within the community. In this respect, the CCE Joint Venture was offering a property that was to be converted into an independent supported-living structure for 11 persons with a high level of disability and who at the time resided at the SVP. The economic and social welfare benefits of this proposed investment were also outlined.

3.8.16 Moreover, the CCE Joint Venture offered four operational software systems that were to enhance efficiencies in the operations of long-term institutional care. The hardware and equipment that were to be provided would allow SVP personnel to interact and operate the full functionality of the solutions that were to be provided. Licensing for these systems was also offered for the duration of the ten-year contract term. The CCE Joint Venture provided detailed information about the systems being proposed.

[4] The Legal Advisor to the JCL and MHC Consortium was an Opposition Member of Parliament.

3.8.17 The proposal relating to the additional investment was duly certified by an independent audit firm. In the auditor's report it was stated that, while the assumptions with respect to residential homes were highly subjective, nothing indicated that the estimates put forward did not provide a reasonable basis for the financial information provided. Furthermore, the financial information was properly prepared on the basis of the assumptions made and the value of the additional investment offered was set at market price. With respect to the price of the software solutions, the auditor maintained that, based on the information made available, this was quoted at the prevalent market prices.

3.8.18 In total, the value of the additional investment proposed by the CCE Joint Venture was €10,905,258.

3.8.19 The NAO ascertained that the two offers submitted by the stipulated deadline were in line with the requirements set out in the call for tenders and therefore proceeded to the evaluation stage of the procurement process.

3.9 Although an evaluation committee was set up, this was not constituted within the required timeframe

3.9.1 According to the Standard Operating Procedures/Guidelines for Tender Evaluation Committees, an evaluation committee is to be set up during the publication stage of a tender. Moreover, the head of the contracting authority is to nominate a minimum of five persons to sit on the committee, which should be composed of a Chair, a Secretary and three or an odd number of evaluators. Collectively, the committee should have the competencies required for the evaluation of offers.

3.9.2 In its review, the NAO noted correspondence dated 10 December 2015 wherein the DoC informed the Permanent Secretary MFSS of the need to nominate a minimum of five officials to sit on the evaluation committee with respect to this tender. In this correspondence, the Permanent Secretary MFSS was informed that a curriculum vitae of every nominated member was to be submitted and that those nominated were to satisfy certain criteria of competence, qualifications, technical knowledge, track record, impartiality and conflict of interest. On the same day, the Permanent Secretary MFSS referred the matter to the CEO SVP, the Financial Accounting Manager SVP and the Director Corporate Services MFSS, who were to nominate members to sit on the committee. The NAO ascertained that, on 19 January 2016, the CEO SVP sought, and obtained, the approval of the Permanent Secretary MFSS for the appointment of the members of the evaluation committee. On 25 January 2016, the approval of the DoC was granted. One of the members did not accept the appointment due to personal reasons and was subsequently replaced. The DoC's approval in respect of the new member was obtained on 1 February 2016.

3.9.3 The members nominated to the evaluation committee were the Financial Accounting Manager SVP as Chair, and the Manager Support Services SVP, the Manager Quality Assurance SVP and a Senior Nursing Manager SVP as members. The Manager (Procurement) SVP was appointed as Secretary. Five consultants were also engaged to assist the evaluation committee. These were the CEO SVP, a catering consultant on contract with the SVP, a legal advisor, and an engineer and an architect, both on contract with the MFSS, who were to provide technical input. The Chair, members and consultants were informed of their appointment through email correspondence dated 29 January 2016.

3.9.4 One of the requirements emanating from the Standard Operating Procedures/Guidelines for Tender Evaluation Committees is that the evaluators shall include experts related to the field of expertise associated with the technical specifications of the tender. The Secretary, who is expected to draft the evaluation report, is to be conversant with procurement procedures. The curricula vitae reviewed by the NAO indicated that the members of the evaluation committee had the required competencies. Moreover, the committee was assisted by consultants who were experts in different associated fields, including catering, law, and technical-related matters. This Office also noted that Declarations of Impartiality and Confidentiality were signed by the members of the evaluation committee and the consultants on 11 February 2016.

3.9.5 Regarding the appointment of the evaluation committee, the NAO noted that this was in line with established guidelines. The only significant shortcoming in this regard was that the committee was not set up during the publication stage of the tender, as required by the Standard Operating Procedures/Guidelines for Tender Evaluation Committees. The call for tenders for the provision of comprehensive services to the SVP was published on 10 November 2015 and the deadline for the submission of offers was 7 January 2016; therefore, the committee should have been appointed during this interim. Nonetheless, this Office ascertained that the committee was only set up on 29 January 2016, the date on which the letters of appointment were submitted. This was well after the deadline for the submission of offers.

3.10 The evaluation process was generally carried out in line with the prescribed procedures

3.10.1 Various sources prescribe the procedures that an evaluation process of a public call for tenders is to adhere to. These requirements primarily emanate from the Public Procurement Regulations, the Standard Operating Procedures/Guidelines for Tender Evaluation Committees, Procurement Policy Notes issued by the DoC and the calls for tenders per se. In its review, the NAO noted that, generally, the evaluation process undertaken regarding this call for tenders for the provision of comprehensive services to the SVP adhered to these provisions. These included:

a. ascertaining that the bid bonds are submitted within the stipulated timeframe

In the case of this call for tenders, a bid bond for the amount of €500,000 was to be submitted by the bidders. This guarantee was to be issued by a local Maltese bank or a recognised local financial institution. The guarantee was to remain valid up to, and including, 6 April 2016. The guarantee was to be drawn up in the name of the DG DoC. A scanned copy of the bid bond was to be submitted through the e-PPS while the original bond was to be submitted to the DoC within five days from the closing date of the tender. If these requirements were not met, the bid was to be automatically disqualified.

The NAO noted that the bid bond by the JCL and MHC Consortium was issued by a local bank on 31 December 2015. This was for €500,000 and was valid until 7 April 2016. The bid bond provided by the CCE Joint Venture was also issued by a local bank on 4 January 2016. Similarly, this was for €500,000 and was valid until 6 April 2016.

Subsequent documentation reviewed indicated that original bid bonds were provided by the bidders. These were valid and submitted within the established timeframe.

b . ensuring that the offers submitted are substantially complete

The NAO reviewed the bids submitted on the e-PPS and confirmed that the submissions were mostly complete. However, this Office did not find the Tender Response Format forms and the Tenderer's Technical Offer forms for the two bidders. It was also noted that clarifications made during the evaluation process indicated that the CCE Joint Venture had not submitted a statement from a recognised bank in respect of the required minimum credit facilities. This omission was later rectified by the bidder.

c. that clarifications from bidders are sought in line with the conditions established in the call for tenders and the relevant Policy Notes issued by the DoC

According to the call for tenders, clarifications could be sought from bidders by the Evaluation Committee during the evaluation process. This was also in line with policy set by the DoC. The NAO ascertained that a total of ten clarifications were sought from the two bidders and that replies to these requests for clarification were received.

The clarifications mainly related to the technical specifications in respect of the catering services and the construction of the kitchen. These related to aspects such as the collection and cleaning of trolleys, swill management, proposed type of food grade boxes, electrical current rating and the construction management plan. One rectification was a request to the CCE Joint Venture to submit a statement from a bank in respect of credit facilities amounting to €2,000,000 as required in the 'Selection Criteria' in the call for tenders. This rectification was allowed following approval from the DoC on 15 April 2016 against the payment of an administrative penalty of €50. This was in line with Procurement Policy Note 19 issued by the DoC on 12 October 2015.

d. that the evaluation process is appropriately documented

The NAO noted that, while the evaluation reports provided an adequate overview of the evaluation process, no minutes of the meetings held by the Evaluation Committee were maintained. This requirement emanates from the Standard Operating Procedures/Guidelines for Tender Evaluation Committees, which state that the Secretary to the Evaluation Committee is to maintain minutes of the findings and discussions held during the meetings of the Committee.

In its review, the NAO was provided with handwritten notes in respect of a number of meetings held by the Evaluation Committee. Nonetheless, these were very brief, were not signed and were not approved by the members of the Evaluation Committee. Given these deficiencies, the NAO did not consider these handwritten notes as an adequate record of the proceedings of the Committee. The NAO maintains that the lack of minutes detracted from the requirement that the evaluation process is appropriately documented and curtailed the review undertaken by this Office. In clarifications provided to this Office, the CEO SVP confirmed that the Evaluation Committee did not minute its meetings; however, the Committee's conclusions were ultimately presented in the final report.

e. that the selection and award criteria adopted in the evaluation process are consistent with those cited in the call for tenders

In an email dated 11 February 2016 from the DoC to the Chair and the Secretary Evaluation Committee, guidelines as to how the evaluation process was to be undertaken in respect of this tender were provided. Among other points raised, it was indicated that the evaluation was to be carried out in line with the Public Procurement Regulations, the call for tenders, the relevant Public Procurement Policy Notes issued by the DoC and the Manual for Evaluation Committees.

The NAO noted that the criteria for award established in the call for tenders served as the basis for the evaluation of the two bids received. This Office ascertained that the scoresheets drawn up for each bid by every member of the Evaluation Committee clearly reflected these criteria. Moreover, justifications for the points awarded were included in the scoresheets, providing an understanding of how the points assigned were determined. Based on these considerations, this Office concluded that the criteria adopted in the evaluation process were consistent with those cited in the call for tenders and that no departures from or amendments to these criteria were made.

f. that a final report documenting the conclusions of the Evaluation Committee is drawn up

According to the Standard Operating Procedures/Guidelines for Tender Evaluation Committees, a final report is to be drawn up and read out during the last meeting of the Evaluation Committee. Each member is to initialise each page of the report and sign in full in the 'Signature' section of the evaluation report.

The NAO was provided with two final evaluation reports drawn up by the Evaluation Committee in respect of this call for tenders – one dated 10 May 2016, which described the evaluation of the technical submissions, and another dated 29 March 2017, which reported on the evaluation of the financial offers. This Office considered both evaluation reports as sufficiently detailed, providing the bases for the conclusions arrived at by the Evaluation Committee.

g. that the recommendations of the Evaluation Committee are endorsed by the GCC

The Standard Operating Procedures for Tender Evaluation Committees state that when a tender is issued by the DoC, the evaluation committee is duly bound to recommend the award of the tender to the DoC. The recommendation is then to be endorsed by the GCC.

n the case of the tender of the supply of comprehensive services to the SVP, since the evaluation process was carried out in two distinct stages, the Evaluation Committee sought the approval of the GCC twice. Pursuant to the first evaluation, the Evaluation Committee had recommended that both bids be considered further since both had met the administrative and technical requirements. In this respect, a memorandum was submitted to the GCC on 24 May 2016. On the same day, a meeting of the GCC was held wherein the Committee agreed with the recommendation of opening the financial offers of the two bids.

With respect to the second and final evaluation process, a memorandum to the GCC was submitted on 4 April 2017. In the memorandum, the Evaluation Committee recommended that the contract be awarded to the JCL and MHC Consortium for the daily price of meals of €15,760, excluding VAT, for a ten-year period and the additional investment of €29,280,000, which was the most economically advantageous tender. The GCC approved the Committee's recommendation during a meeting held on 4 April 2017.

The NAO ascertained that the two recommendations made by the Evaluation Committee were subsequently approved by the GCC.

h. that all bidders are notified of the result of the evaluation process

The General Rules Governing Tenders prescribe that, prior to the expiration of the period of validity of tenders, the contracting authority is to notify the successful tenderer that their bid was recommended for award, pending any appeal lodged in terms of the Public Procurement Regulations. Furthermore, unsuccessful bidders are also to be notified of the outcome of the evaluation process, and are to be provided with the following information:

i. the criteria for award;
ii. the name of the successful bidder;
iii. the recommended price of the successful bidder;
iv. the reasons why the tenderer did not meet the technical specifications/ notification that the offer was not the cheapest;
v. the deadline for filing a notice of objection (appeal); and
vi. the deposit required for the lodgement of an appeal.

Following the initial evaluation process, wherein the administrative and technical criteria were assessed, and the approval by the GCC was obtained, the two bidders were informed of the outcome of the evaluation on 24 May 2016. Both bidders were notified of the overall technical score and a detailed breakdown of the scores obtained was provided. The bidders were also informed that this decision was subject to the lodgement of appeals that were to be submitted to the PCRB by 3 June 2016. In the absence of appeals, the financial offers were to be opened on 9 June 2016.

With regard to the final evaluation, both bidders were also informed of the decision of the Evaluation Committee and the subsequent approval by the GCC on 4 April 2017. The letter to the unsuccessful bidder provided an overview of the scores obtained by both bidders and the prices offered, and indicated the ranking of the two submissions. The bidder was informed of the possibility of lodging an objection, which was to be made with the PCRB by 17 April 2017, against a deposit of €58,000. On the other hand, the letter to the successful bidder stated that the GCC had accepted the recommendation for the award of the tender in its favour at the daily price of €15,760, excluding VAT, and the additional investment of €29,280,000. The bidder was informed that this was subject to any appeals lodged.

The NAO established that both bidders were notified of the results of the evaluation process in accordance with the established regulations.

i. that a notice of award is published

The General Rules Governing Tenders stipulate that the recommendations of the GCC shall be published on the notice board of the contracting authority and, whenever possible, also published online. The NAO ascertained that the relevant notices of award in respect of this tender were published by the DoC. Two notices were in fact published - one dated 25 May 2016 regarding the first evaluation process, wherein the administrative and technical requirements were assessed, and another dated 4 April 2017, following the final evaluation of the financial offers. With respect to the publication of the notice of award, the DoC adhered to the established requirements.

3.11 While the evaluation process resulted in the selection of the most economically advantageous offer, the NAO's reservations regarding the additional investment persist

3.11.1 According to documentation reviewed, the tender for the supply of comprehensive services to the SVP was a three-package tender. The Standard Operating Procedures/Guidelines for Tender Evaluation Committees stipulate that, in a three-package system, bids received are to be submitted in three separate packages and evaluated in three distinct stages. In the first package, containing the bid bond, the evaluation committee is to ascertain whether the bond submitted is valid. If a bid bond is deemed invalid, the opening of the second package is suspended until a notice indicating this non-compliance is issued and the non-conformant bidder is informed of the right to appeal. The second package, relating to the technical requirements, is then opened for those bids deemed administratively compliant and which have a corresponding bid bond that is deemed valid. The financial offer, included in the third package, is opened following the technical evaluation for those bids that qualify from this stage of evaluation.

3.11.2 This Office noted that two evaluation reports were drawn up in respect of the tender for the supply of comprehensive services to the SVP; one dated 10 May 2016, which described the evaluation of packages one and two, and another dated 29 March 2017, which reported on the evaluation of package three. The initial evaluation report indicated that a total of nine meetings were held by the Evaluation Committee, including the tenders' opening session, held on 7 January 2016. Meetings were held by the Committee with respect to the evaluation of packages one and two between 11 February 2016 and 10 May 2016. With respect to evaluation of the financial offers, according to the evaluation report dated 29 March 2017, three meetings were held, including the opening session of package three. The meetings held by the Committee with respect to the evaluation of package three occurred between 15 March 2017 and 29 March 2017.

3.11.3 In the evaluation report dated 10 May 2016, the Evaluation Committee noted that, by the stipulated deadline, two submissions were made - one by the JCL and MHC Consortium and the other by the CCE Joint Venture. For bids to be considered eligible, tenderers were to provide evidence that they met or exceeded the minimum criteria established in the call for tenders. Bids were to meet the eligibility criteria, that is, be administratively compliant, as well as the selection criteria, which included proof of the bidder's financial and economic standing. Bidders were also to meet the technical specifications in respect of the catering service and the construction of the kitchen. Moreover, bidders were to submit details of the additional investment they intended to make, as well as a financial offer.

3.11.4 The Evaluation Committee reviewed the bid bonds submitted by the two bidders. In this regard, no clarifications were deemed necessary as both bonds met the set requirements. Having established that both offers were administratively compliant, the Evaluation Committee agreed that these were to be considered further.

3.11.5 The next process was the assessment of the second package of the offers, which comprised the technical submissions. At this stage of the evaluation process, some clarifications were sought from both bidders in respect of the technical specifications for the catering services and the construction of the kitchen. Replies from the bidders were received in time and accepted by the Evaluation Committee.

3.11.6 According to the evaluation report, each member of the Evaluation Committee prepared a score sheet for each bid and assigned marks in line with the technical criteria and sub-criteria indicated in the evaluation grid included in the call for tenders. In the individual score sheets, reference was made to the reports prepared by the consultants engaged to assist the Committee in its technical evaluation of the bids. The consultants had analysed the technical submissions in terms of the established criteria and provided their comments in this respect. These aided the members of the Committee in their assessment of the bids. Moreover, comments recorded by the members on the individual score sheets provided the bases and justifications for the scores awarded. This Office also noted a checklist wherein the members of the Committee ensured that the bidders had provided the necessary literature in line with the requirements of the call for tenders. The individual score sheets were annexed to the evaluation report. The marks awarded to each bid in respect of technical criteria by the members of the Committee are presented in Figure 14.

Figure 14: Individual scoring for the technical criteria by the members of the Evaluation Committee

Bidder	Evaluator 1	Evaluator 2	Evaluator 3	Average Mark
JCL and MHC Consortium	97	96	95	96
CCE Joint Venture	83	81	82	82

3.11.7 Annexed to the evaluation report was a summary of the average mark awarded to both bidders in terms of technical compliance. The average technical score was then weighted in accordance with the weighting of the overall score assigned to the technical element (Figure 15 refers).

Figure 15: Evaluation report - Weighted technical score

Bidder	Final technical score (maximum 100)	Weighted technical score (60 per cent)
JCL and MHC Consortium	96	60.0
CCE Joint Venture	82	51.3

3.11.8 Pursuant to the evaluation of the technical submissions, the Evaluation Committee recommended that both offers be considered further since both had obtained the minimum technical score required, that is, 50 marks. To this end, a memorandum dated 24 May 2016 was submitted to the GCC whereby the Evaluation Committee recommended that the tender by the JCL and MHC consortium and that by the CCE Joint Venture be considered for the financial evaluation. On the same day, the recommendation was endorsed by the GCC.

3.11.9 Also on 24 May 2016, the two bidders were notified of the outcome of the technical evaluation. Both were informed of the scores awarded for each tender in terms of technical compliance and provided with a detailed breakdown of the marks obtained was provided. The bidders were informed that, while the decision was published, this was subject to any official objection that could be submitted to the PCRB by 3 June 2016. In the absence of any objection, package three of the offers was to be opened on 9 June 2016. The schedule of award published by the DoC on 25 May 2016 indicated that the deposit for the lodging of objections was set at €58,000.

3.11.10 An objection was in fact filed with the PCRB by the CCE Joint Venture; however, this, and the subsequent judicial action resorted to, are reported on in detail in section 3.12 of the report. Following the conclusion of the judicial proceedings, an internal minute dated 15 February 2017 submitted by an Assistant Director DoC to the DG DoC referred to the judgement passed on the appeal made. The DG DoC was informed that the SVP could proceed with the financial evaluation of the two tenders for the supply of comprehensive services to the Residence.

3.11.11 On 20 February 2017, the DoC informed the two bidders that the GCC was to proceed with the opening of the financial submissions on 23 February 2017. Documentation noted in file indicated that package three of the two offers were in fact opened on this date.

3.11.12 According to the evaluation report dated 29 March 2017, following the evaluation of packages one and two, the financial offers of the two bids were to be assessed. Both financial offers were found to be compliant when compared with the threshold budget stipulated in the call for tenders, set at €6,787,866 annually, excluding VAT. The Evaluation Committee also verified the arithmetic accuracy of the bids and no errors were noted in this respect.

3.11.13 In the criteria of award in the call for tenders, the financial element was allocated 40 per cent of the overall final score. The financial score was in turn divided in two elements - the price per meal and the value of the investment offered, weighted at 40 per cent and 60 per cent, respectively. The lowest cost of meals and the additional investment with the highest value were to be awarded the maximum marks, with the other offer awarded proportionate marks. The daily cost of meals, the value of the additional investment and the financial scores for the two bids as arrived at by the Evaluation Committee are shown in Figure 16.

Figure 16: Evaluation report - Overall financial score

Bidder	Price of meals		Additional investment		Overall financial score
	Price of meals per day (€)	Weighted score (%)	Value (€)	Weighted score (%)	
JCL and MHC Consortium	15,760	32.89	29,280,000	60	92.89
CCE Joint Venture	12,960	40	10,905,258	37.24[1]	77.24[2]

Notes
1. The NAO noted that the financial weighted score of the CCE Joint Venture should have been 22.35 per cent rather than 37.24 per cent.
2. This Office noted that the total weighted score of the CCE Joint Venture should have been 62.35 per cent.

3.11.14 The overall financial score was then weighted at 40 per cent, resulting in the weighted financial scores as illustrated in Figure 17.

Figure 17: Evaluation report - Weighted financial score

Bidder	Final financial score (maximum 100)	Weighted financial score (40 per cent)
JCL and MHC Consortium	92.89	34.756[1]
CCE Joint Venture	77.24	28.796

Note
1. The NAO noted another error in the calculation of the weighted financial score with respect to the JCL and MHC Consortium. This score should have read 37.156 instead of 34.756.

3.11.15 The score obtained for the financial element of the offers was subsequently added to that obtained in the technical assessment. Adding these two elements, the bid by the JCL and MHC Consortium obtained an overall score of 94.76, while that by the CCE Joint Venture obtained a score of 80.10 (Figure 18 refers).

Figure 18: Evaluation report - Overall score

Bidder	Weighted technical score (60 per cent)	Weighted financial score (40 per cent)	Overall score
JCL and MHC Consortium	60.0	34.756	94.756
CCE Joint Venture	51.3	28.796	80.096

3.11.16 Despite that the ranking was not affected, the NAO noted errors in the calculation of the scores as determined by the Evaluation Committee. Details regarding these errors are provided in Figure 16 and Figure 17. Rectifying the scores awarded to take into account the errors noted results in an overall score of 97.16 for the JCL and MHC Consortium (as opposed to 94.76) and 76.19 for the CCE Joint Venture (as opposed to 80.10) (Figure 19 refers).

Figure 19: Overall scores as determined by the Evaluation Committee and the NAO

Bidder	Overall score (according to the EvaluationCommittee)	Overall score (as arrived at by the NAO)	Ranking
JCL and MHC Consortium	94.756	97.16	1
CCE Joint Venture	80.096	76.19	2

3.11.17 Following the conclusion of the evaluation process, the Evaluation Committee recommended that the tender be awarded to the JCL and MHC Consortium for the price of meals per day as indicated in the bid, that is €15,760 (exclusive of VAT) for the ten-year term of the contract and the additional investment that was to be made by the Consortium valued in excess of €29,000,000, this being the most economically advantageous offer.

3.11.18 The nomination by the Evaluation Committee of the JCL and MHC Consortium as the preferred bidder was referred to the DoC. This was in line with the requirements of the Standard Operating Procedures/Guidelines for Tender Evaluation Committees, which specify that where a tender is issued by the DoC, as in this case, the Evaluation Committee can only recommend the award of the tender to the DoC. The recommendation is to be approved by the GCC.

3.11.19 The GCC gave its approval during a meeting held on 4 April 2017. A schedule of award was duly drawn up and was published on the DoC's website and affixed on a notice board at its premises, accessible to the public for viewing. Moreover, also on 4 April 2017, both bidders were informed of the outcome of the evaluation process. In the letter to the CCE Joint Venture, an overview of the scores obtained by both bidders, the prices offered, and the ranking of the two submissions was included. The CCE Joint Venture was also informed that an objection to this decision could be made with the PCRB by 17 April 2017, against a deposit of €58,000. On the other hand, the letter to the JCL and MHC Consortium indicated that the GCC had accepted the recommendation for the award of the tender in its favour at the price of €15,760.08, excluding VAT, per day and the additional investment of €29,280,000. This was subject to appeal until 17 April 2017. On 17 April 2017, the Secretary PCRB informed the DoC that no objections had been filed in respect of this tender, enabling the parties to proceed with the contract.

3.11.20 Notwithstanding that the tender submitted by the JCL and MHC Consortium was deemed the most advantageous offer to Government, the NAO maintains reservations in this regard. The main concerns emerge from the inclusion of the additional investment at no cost to the contracting authority as a deliverable, a new concept that was included in the tender for comprehensive services to the SVP. Consequently, there are no guidelines that regulate such an investment.

3.11.21 The NAO sought to ascertain whether the evaluation criteria were fairly applied in the assessment of the two bids submitted. This requirement emanates from various sources, including the call for tenders, the Public Procurement Regulations, the relevant Public Procurement Policy Notes issued by the DoC and the Manual for Evaluation Committees, which all indicate that the criteria for evaluation are to be fairly and accurately assigned to the bids being evaluated. In this regard, the NAO noted that bid bonds provided were checked for compliance, that all components and literature requested were submitted, that expertise was sought to assist in the evaluation of offers and that individual assessments by the members of the Evaluation Committee were carried out. While the NAO has no adverse comments on these aspects of the evaluation process, this Office maintain serious reservations with respect to the additional investment.

3.11.22 The NAO noted that, in the call for tenders, no parameters were established for the additional investment that bidders were requested to make. In this respect, bidders could propose anything as long as it was compatible with the services provided by the SVP. This can hardly be construed as providing any guidance to bidders which, although a problem in itself, led to another concern, that of how this additional investment was to be evaluated. This Office maintains that, applying criteria fairly to deliverables that are dissimilar renders evaluation extremely difficult as a comparison between diverse offers is hardly feasible. In this case, this was circumvented by evaluating the additional investment solely on value. Nonetheless, the NAO deemed this a limitation in the evaluation process. While price could be considered as the most straightforward evaluation criteria, this could result in strategic bidding, with tenderers offering a high-value additional investment to ensure that maximum points are obtained while anticipating to secure other works or services. In this case, the possibility of managing the additional blocks offered as the additional investment was already being contemplated, as evidenced in the tender submitted by the JCL and MHC Consortium. While the JCL and MHC Consortium maintained that the possible management of the new blocks would not compromise its offer, the NAO's concerns persist.

3.11.23 The NAO's concerns are heightened when one considers the higher weighting assigned to the additional investment in the assessment of the financial offers. This element was awarded 60 per cent of the overall 40 per cent weighting assigned to the financial offers. Essentially, this rendered the value of the additional investment more important than the cost of daily meals to over 1,100 residents and additional entitled staff for, at least, a ten-year period, when this ought to have been the primary objective of the tender.

3.11.24 Taking the offer by the JCL and MHC Consortium as the basis of analysis, the approximate tendered value of the additional investment was €29,000,000 while the cost of the meals was €57,000,000. Despite the considerable difference between the two, the additional investment was assigned a significantly higher weighting. This anomaly is aggravated when one considers that the €57,000,000 cost of meals corresponds to the ten-year contract term, and that this value could increase substantially should the term be extended for another five years, as permitted in the contract. This imbalance in weighting is evocative of offers where low prices on heavily weighted elements and higher prices for lower weighted elements are made. The NAO's concerns were substantiated by that stated by the Consortium, that informed this Office that the weighting allocated to the additional investment was an indication that Government was willing to pay €12.72 per person per day subject to a substantial investment being given in return. This Office maintains that this was a flaw in the price scoring formula adopted.

3.11.25 Another aspect of concern emerges when one considers that more than half of the value of the contract was to be returned to Government as an additional investment. Queried in this respect, the DG DoC indicated that the offers submitted were evaluated by the Evaluation Committee and that no issues were raised in this respect. The NAO disputes that stated by the DG DoC, in that the responsibility of the Evaluation Committee was limited to the application of the criteria of evaluation that had been set by the DoC and the SVP. On the other hand, the CEO SVP noted that once the tender had been issued and the parameters of evaluation set, then there was no scope for intervention by the Residence. The Permanent Secretary MFSS mirrored this perspective, arguing that the bid submitted by the JCL and MHC Consortium was not within Government's control and could have been driven by other considerations, such as the securing of a greater market share in terms of the care provided to older persons. In this Office's opinion, the situation where €29,000,000 of a €57,000,000 contract is returned to Government as a gift may readily be traced back to the anomalous design of the tender.

3.11.26 If one were to consider the bid submitted by the CCE Joint Venture, the estimated value of the additional investment proposed was nearly €11,000,000, while the cost of meals for the contract term was approximately €47,000,000. On balance, comparing the bid by the CCE Joint Venture to that by the JCL and MHC Consortium, Government was still to gain from the selection of the latter, even though the losing bidder presented a more advantageous offer on the cost of meals component. While the NAO acknowledges this, later developments (reported on in Chapter 4) reinforce this Office's contentions that there always seems to be a trade-off or some covert or implicit cost when one includes concepts such as a gift or the additional investment sought by Government in this case. This Office maintains that an offer of a free good or service with the purchase of another is an oxymoronic tactic that does not necessarily benefit the purchaser.

3.11.27 In sum, the Public Procurement Regulations state that contracting authorities shall determine the award of public contracts on the criteria of either being the most economically advantageous offer or the lowest priced offer compliant with the tender specifications. In this case, the call for tenders clearly indicated that the contract was to be awarded to the most economically advantageous tender. While the NAO is of the opinion that the evaluation process resulted in the selection of the most economically advantageous offer according to the evaluation criteria established in the call for tenders, this Office maintains reservations regarding the evaluation scoring formula employed, particularly that related to the additional investment.

3.12 The Evaluation Committee engaged advisors to assist it in its assessment of the additional investment proposed by the preferred bidder, thereby ensuring an added level of expertise

3.12.1 In an email dated 10 March 2017, the SVP requested the approval of the DoC for the engagement of three consultants to assist the Evaluation Committee in its evaluation of the additional investment proposed by the JCL and MHC Consortium, notwithstanding that bidders were requested to have this part of their offer certified by an independent auditor, which both bidders complied with. Nonetheless, the Evaluation Committee sought to obtain the input of an engineering firm, an architect and an audit firm as an additional safeguard that the proposed investment was sound. Approval for the engagement of these consultants was given by the Director Operations DoC on 27 March 2017.

3.12.2 In reply to queries made by the NAO, the CEO SVP stated that, as an added level of reassurance, the Evaluation Committee sought an independent appraisal of three key aspects related to the additional investment, namely:

a. a cost analysis of the mechanical and electrical engineering works to confirm whether these were in line with market rates and costs for similar developments and in consonance with the National Minimum Standards for the Care Homes for Older People;

b. an analysis of the estimated cost of the building works; and

c. the validity and reasonableness of the discount rate of 1.46 per cent applied by the JCL and MHC Consortium.

3.12.3 The DoC held similar views and informed the NAO that, since the additional investment element comprised 60 per cent of the financial score, the due diligence carried through the independent audit commissioned by the Evaluation Committee on the recommended bid was justified.

3.12.4 This Office's attention was drawn to the reports prepared by the consultants engaged, which were all submitted in March 2017. In the report by the engineer it was confirmed that the indicated mechanical and electrical costs were in line with market rates and costs for similar developments. Furthermore, the cited costs were in line with awarded tender prices for recently refurbished wards at the SVP. The planned works also adhered to the standards outlined in the National Minimum Standards for the Care Homes for Older People. Another report was prepared by the architect engaged, who confirmed that the estimates for the building works, comprising construction, excavation and finishing, including mechanical and electrical works, were fair and reasonable and compared favourably with the then prevailing market prices. Of note was an assumption made in this report that costs in relation to the planning permits for this extension were to be incurred by Government. The financial consulting firm engaged was to ascertain whether the discount rate of 1.46 per cent applied to the project cost by the Consortium was acceptable and in line with the then applicable rates. According to the report, this rate was acceptable and reflected the same risk factors and period duration of the proposed project.

3.12.5 The NAO has no adverse remarks regarding the engagement of these experts. While their engagement resulted in an added cost to the SVP, they provided an added layer of expertise in respect of the evaluation of the additional investment proposed by the preferred bidder.

3.13 The appeal lodged with the Public Contracts Review Board and the legal action taken reaffirmed the outcome of the technical component of the evaluation process

3.13.1 The call for tenders, in line with Regulation 84 of the Public Procurement Regulations, provided for the submission of appeals in respect of this competitive process. The Regulations establish that any tenderer being harmed by an alleged infringement or a decision taken, including a proposed award of a contract, could file a notice of objection with the PCRB.

3.13.2 The NAO ascertained that an objection was filed by the CCE Joint Venture on 2 June 2016, contesting the points assigned to it by the Evaluation Committee in terms of its technical submissions. In its objection, the CCE Joint Venture contested the deduction of points from their technical score and contended that:

a. its technical submissions were fully compliant with the requirements of the call for tenders;

b. the Evaluation Committee was obligated to request any information it considered as incorrect or incomplete from the bidder and failure to do so would constitute a breach in the principle of proportionality; and

c. the criteria employed by the Evaluation Committee in deducting points were either the result of a misinterpretation of the submission or were subjective and vague, contrary to the principles of legal certainty and transparency.

3.13.3 The CCE Joint Venture further noted that the wording in the call for tenders indicated that the Evaluation Committee had a clear duty to seek clarifications or rectifications if it deemed any submission incorrect, incomplete or missing. The CCE Joint Venture reiterated that, in this case, points were needlessly deducted from its technical offer, thereby, going against the principle of proportionality and resulting in a breach of the contractual obligations created by the tender document. Furthermore, the CCE Joint Venture contended that it was awarded full marks when the tender established specific and objective criteria and that points were deducted only in relation to generic and subjective criteria imposed by the Evaluation Committee. This resulted in a direct violation of the principle of transparency.

3.13.4 In view of the above, the CCE Joint Venture requested that the PCRB confirms the instances in the letter of award when it was awarded maximum points and revokes those criteria for which maximum points were not awarded. With respect to the latter, the Joint Venture requested the PCRB to order the Evaluation Committee to reassess those items. The appeal was dated 2 June 2016.

3.13.5 In reply to the allegations made by the CCE Joint Venture, submissions were made by the DG DoC and the SVP on 18 August 2016, objecting to the appeal. The defendants noted that the evaluation criteria for this tender was MEAT and, therefore, was not a matter of a bid solely being technically compliant. It was further noted that, at the tendering stage, the contracting authority had established criteria, which were attributed specific marks, that the evaluation process had to adhere to. The offer submitted by the CCE Joint Venture, evaluated against these benchmarks, had obtained a higher technical score than the minimum required to proceed to the next stage of evaluation.

3.13.6 The DG DoC and the SVP also indicated that the evaluation process was carried out in collaboration with experts and it was not, therefore, the competence of the PCRB to delve into the technical evaluation. With respect to the management and staff structure that was to be proposed by the bidder, the defendants noted that the Evaluation Committee and the technical experts had agreed that the structure put forward by the CCE Joint Venture would lead to a breach of the Hazard Analysis Critical Control Point (HACCP) plan. The bidder had been given the opportunity to clarify the offer, without changing the submission; however, the information submitted was still not compliant with the specifications and therefore the marks assigned were warranted. Similarly, with respect to the food production system, the Evaluation Committee deemed that, while a number of protocols outlined in the bid by the CCE Joint Venture indicated that the HACCP plan would be followed, other protocols either made no reference to this or, if implemented, would clearly breach this plan.

3.13.7 Regarding the purchasing protocols, the Evaluation Committee had noted that the wording cited by the CCE Joint Venture was in breach of the HACCP plan and therefore there was no need for the Evaluation Committee to obtain a clarification as, in this respect, while the offer was complete, it was not of the best quality. In terms of the kitchen maintenance plan, the Evaluation Committee had noted that the fact that the CCE Joint Venture had not submitted plans for a number of items was indicative that these were not going to be carried out and therefore no rectification or clarification was deemed necessary in this respect.

3.13.8 In reply to the contention by the CCE Joint Venture that it was not granted the right to make certain rectifications, the DG DoC and the SVP stated that a rectification was not intended to allow the bidder to change an offer that was technically defective, but to allow economic operators to correct gross clerical mistakes, thereby ensuring that bids are not needlessly disqualified. In conclusion, the defendants brought two points to the attention of the PCRB, namely that:

a. the CCE Joint Venture's offer had not been disqualified but ranked second best from a technical point of view; and

b. had the Evaluation Committee allowed the appellant to change the information submitted, this would have resulted in a breach of equal treatment, proportionality and transparency.

3.13.9 Based on the counter arguments presented, the DoC and the SVP requested the PCRB to reject the appeal in full and allow the continuation of the tender evaluation process.

3.13.10 According to documentation provided to the NAO, the PCRB convened a hearing on 23 August 2016. Present for the hearing were the Chair and the two members of the Board, as well as representatives of the involved parties, namely the JCL and MHC Consortium, the CCE Joint Venture, the SVP and the DoC. The parties to the appeal made oral submissions to the Board in addition to the written submissions made earlier.

3.13.11 On 20 September 2016, the PCRB concluded the appeal. The Board clarified that its jurisdiction was to assess the methodology employed in the evaluation process to ensure that transparency and fairness prevailed. However, the Board was also empowered to investigate any discriminatory technical, economic or financial specifications in the contract documents. In this respect, the Board also considered the technical aspects of the case without assuming the role of an evaluation committee.

3.13.12 The PCRB noted that since the call for tenders allowed bidders to draft their own methodology as to how the product was to be delivered, the onus was on the bidders to clear any doubts or misunderstandings. The Board also referred to the fact that the Evaluation Committee was advised by a catering expert on technical issues. According to this expert, the deficiencies identified and subject of the appeal were in breach of the HACCP plan and were detrimental to the delivery of the desired output.

3.13.13 Regarding the allocation of marks, the PCRB was of the opinion that the way the marks were allocated did not indicate that the conditions in the call for tenders were ambiguous. If that were the case, the CCE Joint Venture could have asked for clarifications prior to the submission. Furthermore, the Board noted that the appellant did not raise any pre-contractual concern on unclear issues. The PCRB also noted that the contracting authority's more detailed explanations of the justifications for rejection were not additional justifications, but an amplification of the evaluation report which was communicated to the CCE Joint Venture.

3.13.14 With respect to the technical expert's submissions, the PCRB indicated that the basis on which the technical opinions were derived was sound and reliable. Furthermore, through the organisational chart submitted, the Evaluation Committee was not able to ascertain whether the CCE Joint Venture would be able to carry out the process to the required standards.

3.13.15 The final point raised by the PCRB referred to plans that the contracting authority could not identify in the submission. The Board noted that if the CCE Joint Venture failed to submit the plans for maintenance, the contracting authority could not ask for clarifications on missing documentation.

3.13.16 In sum, in its decision, the PCRB found against the CCE Joint Venture and did not uphold any of the contentions made by the appellant and consequently the decision of the Evaluation Committee was confirmed. The Board recommended that the deposit paid was not to be reimbursed.

3.13.17 The Public Procurement Regulations outline the procedure that is to be followed in the submission and determination of appeals. Standing regulations require that a process of appeal is adequately documented, with the Secretary recording proceedings of the PCRB. The decision of the Board is to be in writing, signed by all members and dated; moreover, the bases on which the decision is taken is to be indicated. All interested parties are to be notified of the decision of the PCRB.

3.13.18 The NAO sought to establish whether the legislative requirements for the lodgement of objections were adhered to. In this regard, Regulation 84 of the Public Procurement Regulations provides certain provisions that are to be observed for an appeal to be considered valid. Primary requirements entail that:

a. the notice of objection is to be filed within ten calendar days following the date on which the contracting authority sent its proposed award decision; and

b. the notice of objection is to be considered valid only if accompanied by a deposit equivalent to 0.75 per cent of the estimated value of the tender and not less than €1,200 or more than €58,000.

3.13.19 Moreover, following the receipt of an objection, the Secretary to the PCRB is to notify the DG DoC of this, triggering the suspension of the award procedure. This notice is to be made public by the Board no later than the next working day following the date when the objection was filed.

3.13.20 The NAO concluded that the objection submitted by the CCE Joint Venture and the subsequent process undertaken by the PCRB were in line with established provisions and regulations, and that all the necessary documentation in respect of the appeals process was retained.

3.13.21 Apart from referral to the PCRB, legislative provisions allow aggrieved bidders to resort to legal action when contesting the award of public contracts. The Public Procurement Regulations provide that, should a bidder feel aggrieved by the decision taken by the Board, the aggrieved party can appeal to the Court of Appeal (Superior Jurisdiction) in terms of Article 85 (5)(a) of these Regulations.

3.13.22 The CCE Joint Venture appealed the decision of the PCRB on 7 October 2016, wherein the Court of Appeal was requested to uphold its appeal and revoke the decision taken by the PCRB on 20 September 2016 and order that the offer submitted by it be reconsidered. In its appeal, the CCE Joint Venture requested the Court to decide on two issues and to take note of the recording of the appeal held before the PCRB when doing so. The CCE Joint Venture maintained that the published summary of the Board's decision lacked important information that was considered during the appeal. Variances were also noted between the summary and the actual evidence given by one of the technical experts during the sitting of the Board. The CCE Joint Venture stated that the summary omits vital elements that were obtained during the cross-examination of this expert witness. This indicated that the PCRB ignored points brought to light from the cross-examination, which constituted a serious deficiency in the process. The CCE Joint Venture also requested the Court to re-award marks if it concludes that marks were wrongly deducted from its bid.

3.13.23 Counterarguments were made by the defendants, namely, the DG DoC, the Permanent Secretary MFSS, the Minister for Family and Social Solidarity and the JCL and MHC Consortium, wherein the issues raised by the CCE Joint Venture were rebutted. As a preliminary observation, the defendants stated that a decision should not be considered invalid simply because the summary does not present all the evidence brought forward. Reference to several cases was made indicating that, just because a Court does not reproduce evidence in full, it does not mean that the evidence not reproduced was not considered. Furthermore, the defendants maintained that, while the MEAT award criteria allowed for an element of discretion, this did not mean that objectivity had been compromised.

3.13.24 With respect to the first issue raised by the CCE Joint Venture, the defendants noted that a technical expert had reviewed all the documentation provided by the bidder. Moreover, the Evaluation Committee was comprised of several members and the evaluation of offers was a collective effort of all the members. The defendants maintained that, in a MEAT process, attention is focused on the quality of the submissions; therefore, the Evaluation Committee had a right to deduct any marks where it deemed the offer lacking.

3.13.25 In respect of the second issue raised, the defendants stated that the members of the Evaluation Committee adhered to the parameters in the call for tenders and that individual marks were awarded by each member of the Committee. The average of the marks awarded by the members was then assigned to each bid. This was in line with the call for tenders and indicative that the members adhered to the principles of objectivity and uniformity. In light of this, the defendants stated that the issues raised by the CCE Joint Venture only tantamounted to a criticism of the Evaluation Committee's opinion. Moreover, this was not a case of an illegality or irregularity in the process and therefore, according to the defendants, the Court should not undertake the technical evaluation itself and reject the requests put forward by the CCE Joint Venture. Counterarguments were also made to the specific issues brought forward by the appellant.

3.13.26 Following the hearing of the oral submissions made by the parties involved and the consideration of the documentation and evidence provided, the Court decided on 14 February 2017. The Court rejected the arguments made by the CCE Joint Venture and noted that, with regard to the first issue raised, it was common practice that witness evidence heard in front of a board viva voce is not transcribed, but recorded, and only a summary is prepared. With respect to the second issue, the Court noted that in a MEAT award process, a certain element of subjectivity is inevitable; in fact, certain cases necessitate an element of discretion by the evaluators.

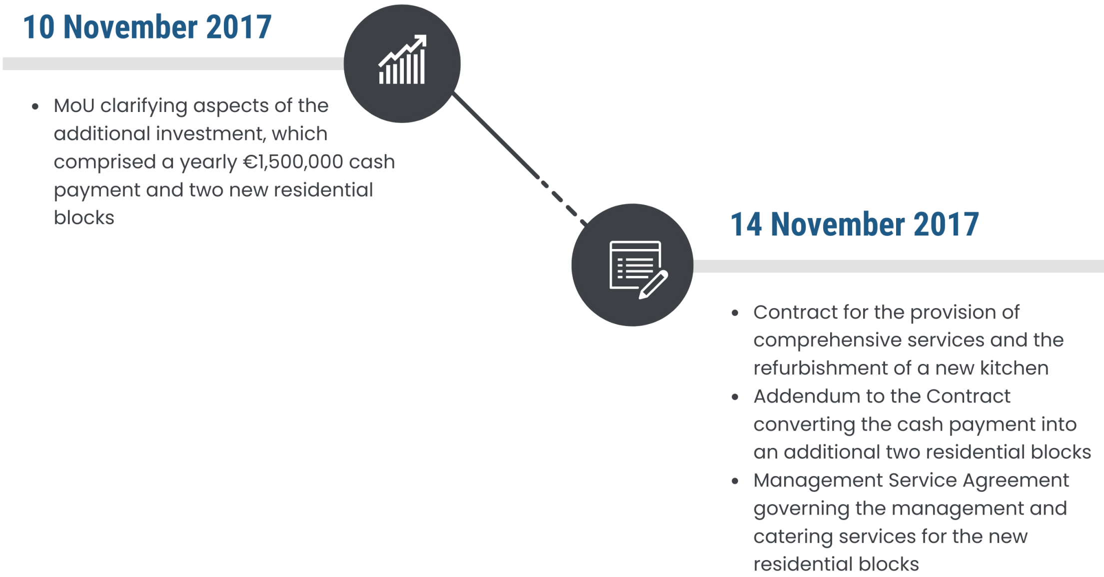
3.13.27 The Court stated that its role in this case was to determine whether the Evaluation Committee adhered to the established criteria and whether it followed the parameters indicated in the call for tenders. Furthermore, the Court was to ensure that the Committee was reasonable in its decision and that it had valid reasons for not awarding full marks to the CCE Joint Venture's offer. Considering all the points brought before it, the Court rejected the appellants' arguments and re-confirmed the decision taken by the PCRB on 20 September 2016.

3.13.28 With this decision, the evaluation of the tenders by the JCL and MHC Consortium and the CCE Joint Venture could resume with the review of package 3, that relating to the financial offers.

3.14 While the contracted catering services and the construction of a kitchen were in line with the requisites specified in the call for tenders and the offer by the JCL and MHC Consortium, this could not be said of the additional investment

3.14.1 Following the award of the tender for comprehensive services by the SVP to the JCL and MHC Consortium on 4 April 2017, the parties entered into several agreements relating thereto. It is to be noted that, due to the additional investment, another agreement was entered into to regulate this element of the call. The framework regulating the services contracted through the tender, the form of the additional investment and the negotiated contract eventually awarded to the Consortium for the management of the residential blocks is illustrated in Figure 20.

Figure 20: Timeline of the contractual framework entered into by the SVP and the JCL and MHC Consortium



3.14.2 The drafting of the contracts that were to be entered into was undertaken by the DoC and the SVP. The earliest correspondence traced by the NAO in this regard was dated 25 April 2017, with a draft contract exchanged early in May 2017. An overview of deviations in conditions between the tender document and the draft contract was submitted by the SVP on 17 May 2017. Following review, on 19 May 2017, the DoC indicated that given that the tender was an open procedure, deviations could only be acceptable in so far as they did not alter the substance of the published conditions. When queried by this Office, the DG DoC stated that the draft contract was proposed by the JCL and MHC Consortium and subsequently reviewed by the DoC. This draft contract was rejected by the DoC as some conditions were deemed unacceptable as they constituted significant departures from the call for tenders. Of note was the contract as proposed by the Consortium at this early stage in the process already featured a draft management service agreement corresponding to two residential blocks, which matter is delved into in the ensuing chapter.

3.14.3 In parallel, the DoC sought to assess the value and specifications of the additional investment proposed by the JCL and MHC Consortium. The technical advisor engaged by the DoC to this end indicated that the investment costs were €14,500,000 and outlined the need for the Consortium to provide more technical specifications at a later stage.

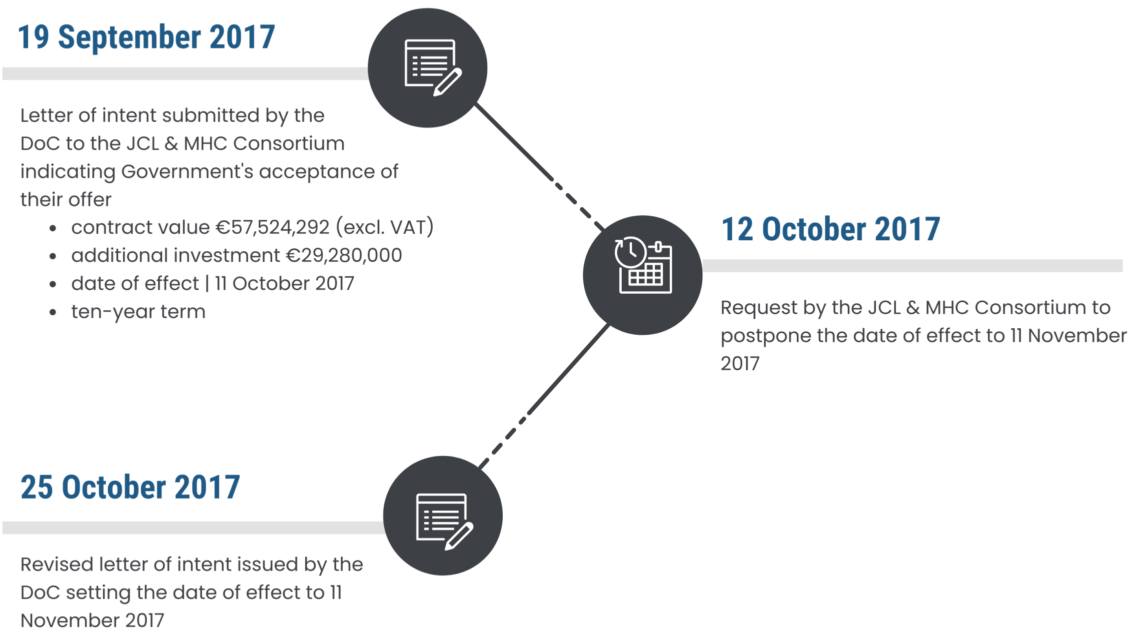
3.14.4 The drafting of the contracts proceeded through the collaboration of the DoC and the SVP. On 10 August 2017, the DoC informed the JCL and MHC Consortium that it was awarded the tender and was therefore requested to indicate its acceptance through the e-PPS. A draft MoU was also forwarded, which the Consortium was requested to endorse, so that the contract could be finalised. On 14 August 2017, the Consortium informed the DoC that it was not in agreement with the proposed memorandum and sought to convene a meeting.

Although, according to the DoC, this meeting was not held, matters were eventually resolved leading to the finalisation of the agreements.

3.14.5 During a meeting held with the NAO, the JCL and MHC Consortium explained that it was not in agreement with the proposed MoU and objected to the clause which required the Consortium to provide the additional blocks within the first three years of operation. The Consortium noted that, in its bid, it had not indicated a date by when these blocks were to be constructed. Furthermore, the MoU had not stipulated that these blocks were to be managed by the Consortium. Subsequent to this, the Consortium was informed by the DoC that the possibility of initiation of a negotiated procedure was to be explored.

3.14.6 A letter of intent was submitted by the DoC to the JCL and MHC Consortium on 19 September 2017, wherein the Consortium was notified that Government had accepted its offer for the supply of comprehensive services with effect from 11 October 2017. It was further reiterated that the value of the contract, excluding VAT, was €57,524,292 for a 10-year period and that the investment to be provided by the Consortium was to be not less than €29,280,000. On 12 October 2017, the JCL and MHC Consortium inquired whether it was possible for the effective date cited in the letter of intent to be postponed to 11 November 2017, in view of the fact that discussions were still ongoing. A revised letter of intent was issued by the DoC on 25 October 2017, amending the effective date to 11 November 2017 (Figure 21 refers).

Figure 21: Timeline - Letter of intent



The memorandum of understanding

3.14.7 The General Rules Governing Tenders state that after the lapse of the appeals period, provided that no objections are received, the successful tenderer may be invited to clarify certain contractual issues. However, such clarifications are to relate to issues that have no bearing on the choice of the successful tenderer. The outcome of such clarifications is to be set out in a MoU, to be signed by both parties, which is to be subsequently incorporated in the contract. The selected contractor is to sign and date the contract, and return it together with a copy of the performance guarantee within 15 days of receipt of the contract. The Rules further stipulate that only the signed contract will constitute an official commitment on the part of the contracting authority.

3.14.8 An MoU was signed between the SVP and the JCL and MHC Consortium on 10 November 2017, wherein aspects of the additional investment, which were not the subject of the award, were clarified. In particular, details on how the Consortium was to design, build, finish and equip the two additional blocks at the SVP were specified. According to the MoU, each block was to consist of 42 rooms and 126 beds and was to adhere to the national minimum standards established for homes for the care of the elderly. The cost of these blocks was to be at the sole expense of the Consortium. Reference was also made to the payment of a cash contribution of €1,500,000 that was to be made by the Consortium at the end of each year of the 10-year concession period. This was intended as a contribution towards the investment or refurbishment-related costs at the SVP. Should the contribution not be availed of in full in a particular year, the balance was to be carried forward to the successive years such that, by the end of the 10-year period, a total of €15,000,000 would have been paid. It is to be noted that, at the time of the signing of this MoU, the additional investment proposed by the JCL and MHC Consortium consisted of the construction of two new blocks and an annual contribution of €1,500,000 for the 10-year term of the concession, this notwithstanding that approval from the GCC to replace the cash contribution with the construction of a further two blocks had already been obtained on 25 October 2017.

3.14.9 The MoU stipulated that no changes to the composition of the JCL and MHC Consortium could be effected unless prior authorisation from the SVP was obtained. Furthermore, all members of the Consortium were to be jointly and severally liable for the correct execution of the MoU.

3.14.10 According to the MoU, the deliverables specified therein were not to be assigned; however, the JCL and MHC Consortium could subcontract any part of the works indicated. Nonetheless, any assignment without the appropriate authorisation would be rendered null and void. Moreover, subcontracting was valid only if there was a written agreement with the subcontractor/s, prior written authorisation was obtained from the SVP for the works to be subcontracted, and the Residence was informed of the identity of the subcontractor/s. In turn, the SVP was to seek written approval from the DoC prior to sanctioning any subcontracting. The SVP was to notify the Consortium of its approval, or otherwise, within seven days of the request.

Nonetheless, approval by the SVP to the subcontracting of any part of the contract did not relieve the Consortium of its obligations under the Contract [for the supply of comprehensive services] or the MoU.

3.14.11 In terms of the MoU, the SVP was to appoint a suitably qualified and experienced Supervisor who was to oversee the works on its behalf. Nonetheless, the Supervisor had no authority to amend the contract or the MoU. On the other hand, the JCL and MHC Consortium was also to nominate its Representative within seven days from the signing of the MoU. However, the Consortium could not revoke the appointment of its Representative or appoint a replacement without the prior consent of the SVP's Supervisor.

3.14.12 Plans, designs and specifications were prepared by the JCL and MHC Consortium and attached to the MoU. Both parties were to finalise these plans within 30 days from the signing of the Memorandum unless otherwise extended by mutual consent. Following agreement, the Consortium was to draw up a construction management plan that was to include the work methods, detailed bills of quantities, the materials to be used and the specifications. The Consortium was also to submit a furnishing and equipment plan that indicated the brand, specifications and quality of the equipment that was to be installed on site. Both plans were to be approved by the SVP.

3.14.13 According to the MoU, the JCL and MHC Consortium was responsible to file the necessary applications for the planning permits required. Furthermore, all fees and costs imposed by the Planning Authority were to be borne by the Consortium. The Consortium was also responsible for the provision of water and electricity to the site and for the payment of the utilities consumed during the construction of the two blocks until a provisional acceptance certificate was issued by the SVP.

3.14.14 During the execution of the MoU, unless otherwise agreed between the parties, the JCL and MHC Consortium was to prepare monthly progress reports that were to be submitted to the SVP's Supervisor. Moreover, the Memorandum stipulated that a works register was to be retained on site by the Supervisor, which was to include information about resources deployed and statements of elements of work accomplished.

3.14.15 The MoU was to enter into force on its signing by the parties. The construction and finishing works were to be finalised within 54 months from the date of signature or within 36 months from the date of issue of the approved building permits. According to the MoU, if the planning permits were not issued within 18 months from the date of signing, the SVP had the right to terminate the Memorandum; nonetheless, the JCL and MHC Consortium had no right to claim compensation for any costs incurred. However, the MoU clarified that prior to termination, the SVP had the discretion to extend the period by which the planning permits were to be issued.

3.14.16 On the other hand, the JCL and MHC Consortium could request an extension to the period of execution if the works were delayed for specific reasons cited in the MoU. Notwithstanding this, if the Consortium failed to complete the works by the specified deadline, the SVP was entitled to liquidated damages in the form of a penalty at the daily rate of €2,000, up to a maximum of €800,000. If the maximum penalty was reached, the SVP was authorised to finish the pending works at the expense of the Consortium.

3.14.17 Besides the penalties for delays, and without prejudice to the other liabilities arising out of the contract, the JCL and MHC Consortium would also become liable to a penalty for delay if the rate of progress of the work throughout the contract period was not satisfactory. The Consortium was to be considered in default if it failed to carry out at least 70 per cent of the estimated monthly average progress. If the progress registered by the Consortium fell below this minimum, it would become liable to a penalty equivalent to two per cent of the value of the contract for every month during which progress was below standard. However, if the whole contract was completed within the stipulated period, Government could consider the refund of any penalties incurred for slow monthly progress.

3.14.18 The MoU determined that, unless otherwise stated, the SVP was not to incur any costs directly or indirectly associated with the design, build, finish or equipment of the blocks. However, the MoU provided for situations whereby the JCL and MHC Consortium could make claims for payments. The Consortium was to submit to the Supervisor full and detailed particulars of the claim being made; however, no details as to what circumstances would give rise to such claims were indicated in the MoU.

3.14.19 When queried by the NAO as to what circumstances would give rise to such claims, the DG DoC referred to only one situation, namely hindrances in the progress of works due to claims put forward by a third party. This was provided for in Article 15(6) of the MoU, which stated that "in the unlikely event that a claim is put forward by any third party hindering the progress of the works, the contracting authority may choose to either ascertain the claims put forward and if necessary expropriate the land in question or else it may compensate the contractor for any works carried out and identify another site on which these works will recommence."

3.14.20 Similar enquiries were made with the SVP. According to the CEO SVP, there was one instance where an additional cost was incurred during the execution of the project. The original design of the project contemplated the installation of mechanical ventilation only in the bathrooms of residents' rooms in the new blocks; however, technical consultants had strongly advised that, given the characteristics of SVP residents and their complex needs, all the rooms were to be ventilated in accordance with established technical and health practices. The cost of the ventilation system was estimated at €641,296, excluding VAT. The CEO SVP indicated that, following meetings with the JCL and MHC Consortium, it was agreed that the cost was to be equally shared between the parties. The approval of the GCC for the additional funds required to cover this cost was sought. Approval "in principle" was given by the GCC on 1 October 2019 in terms of Regulations 151 and 246 of the Public Procurement Regulations (LN

352 of 2016). The CEO SVP followed up on the provisional approval with a memorandum to the DoC, wherein confirmation of the approval by the GCC was sought. The CEO SVP further noted that the works were in line with the standards required by law and with the best market practices; moreover, the installation of the ventilation system was considered as the most cost-effective solution. As directed by the DoC, the CEO SVP was to request formal approval once the final report on the commissioning of the ventilation systems in all blocks was drawn up.

3.14.21 In line with the provisions of the MoU, the two blocks were to be taken over by the SVP when these had satisfactorily passed the tests on completion and a certificate of provisional acceptance was issued by the Supervisor. The JCL and MHC Consortium could apply for a certificate of provisional acceptance not earlier than 15 days before the works were, in the Consortium's opinion, complete. Within 30 days of the application, the Supervisor was to either:

a. issue a certificate of provisional acceptance to the Consortium and submit a copy to the SVP and the DoC, stating the date when, in his opinion, the works were completed in accordance with the contract; or

b. reject the application, giving his reasons and specifying the action which, in his opinion, was required of the Consortium for the certificate to be issued.

3.14.22 Following the rectification of any defects and on the expiry of the maintenance period, established as 365 days from the next date after the provisional acceptance was issued, the Supervisor was to issue the JCL and MHC Consortium a final certificate of acceptance stating the date when the obligations were fulfilled. A copy of this certificate was also to be forwarded to the SVP and the DoC. The contract was not to be considered as complete until this certificate was issued. The permanent works executed by the Consortium, as well as furniture and equipment installed and certified by the Supervisor, were to become the property of the SVP.

3.14.23 The MoU entered into by the SVP and the JCL and MHC Consortium on 10 November 2017 only regulated those aspects of the additional investment that were not the subject of the award. In fact, the supply of the services contemplated in the call for tenders were sanctioned through another contract subsequently entered into by the parties.

The contract for comprehensive services

3.14.24 A contract for the provision of comprehensive services to the SVP was entered into by the DoC, on behalf of the MFSS, and the JCL and MHC Consortium on 14 November 2017. The commencement date of the contract was to be within two weeks of its signing and was for a duration of ten years, which could be extended for a further five years. Reference was made to the MoU signed earlier between the parties, which was to be considered part of the contract. According to the contract, the Consortium agreed to set up a PPP for the provision of comprehensive catering services to the SVP and the demolishing, building and equipping of a fully furnished kitchen at the Residence.

The catering element

3.14.25 The contract stipulated that the PPP was responsible to set up, integrate and manage a system at the SVP to provide catering services using a 'cook-chill/freeze – regenerate' catering service and breakfast. The PPP was also to set up a reliable and effective electronic meal ordering system and was responsible for transporting meals from the JCL and MHC Consortium's central processing unit to the SVP residents' wards and the staff dining room. The contract provided details in respect of menus and supplied samples of meals that the Consortium was to adhere to, and included a two-week cycle for daily lunches and dinners, a list of breakfast items, and a list of desserts. Provisions were also made for specific dietary requirements of the SVP residents and special meals to be served on national days and feasts. In terms of the contract, these meals were to be provided at no additional cost to the SVP. The contract prescribed that, every six months, representatives of the JCL and MHC Consortium and the SVP were to meet to discuss possible changes to improve the menu and to better meet the residents' needs.

3.14.26 According to the contract, the JCL and MHC Consortium was also to supply food trolleys that met the specifications in the call for tenders. In addition, food was to be transported from the Consortium's central processing unit to the SVP in refrigerated vans, which were to be in line with HACCP standards. The Consortium was also responsible for ensuring the timely collection of dirty food trolleys from all wards, including the management of swill.

3.14.27 The contract stipulated that the approval of the SVP was to be obtained by the JCL and MHC Consortium in respect of the staff it allocated to the Residence. The employment history in respect of each employee, as well as the number of staff to be allocated, were to be provided. The SVP reserved the right to accept or reject, subject to a reasonable explanation, any of the Consortium's nominated employees. Nonetheless, the stipulated staff complement was to be maintained to ensure the adequate operation of the catering and ancillary services being provided.

3.14.28 The contract established that all entitled SVP personnel were to be provided with a barcode that granted them entitlement to meals. This electronic system was to be connected with the SVP's human resources office and was to be updated daily. Following the expiration of the contract, the system was to remain the property of the SVP. With respect to additional staff meals, the JCL and MHC Consortium was to provide meals for those members of staff who were not entitled to free meals in terms of their contract of employment with the SVP. Meals provided to these employees were to be identical to those offered to the SVP residents, were to be at the employee's request, and were to be charged at the same rates charged to the SVP. Nonetheless, the Consortium could also offer meals other than those provided to residents at any other price. The Consortium was also to be responsible for the comprehensive management of the staff dining room. This included the provision of necessary equipment and detergents to keep the dining room clean and to ensure that scheduled thorough cleaning was carried out on a bi-monthly basis.

3.14.29 In terms of the contract, the JCL and MHC Consortium was to provide a minimum of eight hours of training to employees nominated by the SVP on how to properly use all catering systems in place, such as the ordering system, the running of equipment and plating procedures. Food handling courses were also to be offered to nominated SVP employees. Furthermore, the Consortium was to maintain an accredited on-going staff training programme for its employees. The contract also established that the Consortium was to carry out a minimum of three cookery sessions in different wards every month at no additional cost to the SVP. The aim of these sessions was to involve the residents in the preparation of their meals.

3.14.30 Monthly meetings were to be held between the JCL and MHC Consortium and the SVP, during which the quality of the services provided, any problems that arose and any improvements required were to be discussed. The contract also established that an autonomous survey was to be conducted at least every six months on a sample of the SVP population, at the Consortium's expense, to evaluate the quality of food being supplied. However, it was noted that in another section of the contract reference was made to the obligation to carry out a food quality audit at least every 12 months.

3.14.31 Appended to the contract were detailed terms of reference in relation to this part of the tender, that is, the provision of catering services. These terms were in fact those in the published call for tenders and included, among others, details of meals and the menu ordering system, the standards to be maintained and the management of the catering staff.

The demolishing, building and equipping of a fully furnished kitchen

3.14.32 In addition to the catering services, the JCL and MHC Consortium also undertook to design, construct, finish and furnish a new kitchen at the SVP. In terms of the contract, the kitchen was to be constructed within a period of three months from the date of award and was to be fully equipped within six months from this date. If, due to negligence, the Consortium failed to comply with the execution period, the SVP was entitled to liquidated damages of €2,000 daily for every day which elapsed between the expiry of the contractual period and the actual date of completion, up to a maximum of 25 per cent of the contract value.

3.14.33 Appended to the contract were detailed technical specifications in relation to this part of the tender, that is, the construction and furnishing of a new kitchen at the SVP. The specifications covered all aspects of the project, including the demolition and excavation of the current main kitchen structure and the building of the new kitchen. These included the working conditions to be observed during the demolition process and those for dismantling, health and safety considerations, drawings to be prepared, insurance to be taken out, supervision, and the required method statements and other reports to be prepared. Details were also provided in respect of the standards to be followed, the quality of concrete, the mechanical and electrical works to be installed, utilities, the measurement of works, noise control and pollution, among others. These specifications were in line with those stipulated in the call for tenders.

3.14.34 In terms of the contract, the JCL and MHC Consortium was to nominate designated personnel at contract stage. These included a contracts manager, a resident site manager, a qualified health and safety officer and an environmental site manager. The contract also required that several drawings were to be prepared by the Consortium following the signing of the contract. These drawings were to provide full details, dimensions, sizes, schematics and technical information of all the works to be undertaken and were to be approved by the SVP. On completion of the works, the Consortium was to prepare "as fitted" drawings of all works, which were to be submitted to the SVP for approval.

3.14.35 The contract stipulated that a work register was to be kept on site and maintained by the JCL and MHC Consortium. The register was to include daily records of the personnel on site and their trades, an indication of the activities carried out, health and safety risk assessments and incident reports, working drawings and modifications, unforeseen circumstances and any orders given to the Consortium.

3.14.36 The contract also required the SVP to provisionally accept the new fully furnished kitchen once completed. In this regard, on the completion of all works, the SVP, represented by its Project Manager, Architect, Engineer and Catering Managers, was to inspect and certify the works. Provisional acceptance would occur when all the works were completed, and the equipment and furnishings installed and commissioned, and certified by the SVP.

3.14.37 The JCL and MHC Consortium was also responsible to conduct preventive maintenance on the works carried out throughout the period of the contract, effective from the date of issue of the acceptance certificate. The contract also necessitated that the Consortium prepares a preventive maintenance schedule, indicating the maintenance regimes of all equipment as recommended by the respective manufacturer.

3.14.38 On the cessation of the contract, the kitchen, including all furnishings and equipment, was to be inspected by an independent board of architects and engineers, to be nominated and agreed on by the SVP and the JCL and MHC Consortium. If, during handing over, any damages to the equipment, furnishings or structure were reported, these were to be rectified by the Consortium at no cost to the SVP. On the lapse of the contract term, the kitchen was to become the property of the SVP.

3.14.39 An important clause included in the contract conceded the JCL and MHC Consortium the right to exploit its investment in the kitchen, whereby the Consortium was allowed its use for the preparation of public catering services entrusted to it, this without jeopardising the running of the supply of meals to the SVP. This concession was in effect in line with the provisions of the call for tenders. Queried as to the reasoning behind the inclusion of this condition, the SVP noted that the DoC had indicated that the tender should have provisions that mitigated the risk to the contractor; however, this Office was directed by the former to refer the matter to the DoC. When queried in this respect, the DG DoC maintained that one was to keep in mind that a contract must be implemented in good faith. This had been defined in such a way by the Courts to include the principle of equity; essentially, there can be a good deal but not a one-sided deal. According to the DG DoC, one was to consider this in the context of this tender, where the bidder was asked to build and equip the SVP kitchen and to provide a cash contribution in addition to the provision of catering services. In the circumstances, it made sense to allow a degree of flexibility to ensure a reasonable rate of return to the bidder who was investing considerable capital in the undertaking. The concession was also a means to encourage bidders to make a better investment since the risks were hedged in lieu of the use of the investment. The DG DoC contended that this right was limited to ensure that the focus of the tender, that is, the delivery of catering services, was adequately protected. Moreover, at the time of the issue of the tender, the SVP was in favour of the contractor providing the meals from the SVP kitchen so that the kitchen would be fully operational at all times during the execution of the contract. Government could benefit from this in instances of force majeure, strikes or other adverse circumstances, where the kitchen could be of use. However, according to the DG DoC, it was pertinent to note that the contractor was given the option to cater for other contracts from this kitchen solely in the case of public contracts.

Contract value and performance guarantee

3.14.40 Under the contract, Government agreed to pay a fixed rate for the meals for the entire duration of the contractual term at an approximate contract value of €57,524,292 over the 10-year contract period. The price for breakfast, lunch and dinner per person per day was €12.72, excluding VAT, made up of:

a. €0.72 for breakfast;

b. €8.50 for lunch; and

c. €3.50 for dinner.

3.14.41 The JCL and MHC Consortium was required to submit a performance guarantee amounting to €575,243, equivalent to 10 per cent of the annual contract value. This was to be renewed every year until the expiration of the contract and was to be held against payment to the SVP for losses that resulted from the Consortium's failure to perform its obligations. In fulfilment of this requirement, a performance guarantee was provided by a local bank by order of the Consortium on 14 November 2017. The guarantee was for €500,000 and was valid for one year. The NAO's attention was drawn to an email dated 19 September 2018, wherein the SVP informed the DoC that since the performance guarantee was set at 10 per cent of the contract value, the guarantee should have been for €575,243 rather than €500,000. Following queries with the SVP and the DoC, the NAO was informed that the €500,000 threshold was in line with Procurement Policy Note 22, issued by the DoC on 30 November 2015. This Office ascertained that all the performance guarantees provided to date were for €500,000. The latest performance guarantee is valid up to 13 November 2021.

3.14.42 The contract included several general conditions and clauses that governed the concession. These included the need for the JCL and MHC Consortium to take out an insurance against any loss or damage for which it was liable under the contract. The insurance was to cover all works, equipment and materials required, and the replacement cost which included an additional 15 per cent to cover any other direct or indirect costs or losses. Other provisions related to delays in execution. In this regard, if meals were not delivered in accordance with the terms of the contract, the Consortium was liable to pay the costs that could be incurred by the SVP for the provision of meals. In addition, the Consortium was liable to pay the stated penalties, which were not subject to abatement by any court. Other conditions related to charges and interest on late payments, abandonment or termination of the contract, and arbitration in case of disputes.

Addenda to the contract for comprehensive services

3.14.43 While the contract dated 14 November 2017 regulated the rights and obligations of the SVP and the JCL and MHC Consortium that emanated from the award of the tender, the NAO noted several addenda that were subsequently entered into by the parties. The first addendum was signed on 14 November 2017, the day of the signing of the contract; while the second and third addenda were signed on 19 June 2018 and 23 May 2019, respectively. A fourth addendum between the DoC, on behalf of the MFSS, and the Consortium was also entered into on 3 October 2019.

3.14.44 Notwithstanding that the contract referred to the additional investment of not less than €29,280,000 to be made by the JCL and MHC Consortium as consisting of the construction of two blocks and the payment of €1,500,000 at the end of each year for the term of the contract, an addendum to the contract was signed on 14 November 2017 wherein the nature of the additional investment was modified. This addendum, entered into by the DoC on behalf of the MFSS, and the Consortium, stipulated that in addition to the contract signed, further provisions were to apply.

3.14.45 According to the addendum, the parties agreed to replace the cash contribution of €15,000,000 payable by the JCL and MHC Consortium as part of the additional investment with the construction of two blocks of 126 beds each at the SVP. These were to be completed within three years from the signing of the contract, that is, by November 2020. The blocks were valued at €15,000,000, equivalent to that originally intended as a cash contribution. The parties agreed to extend the applicability of the MoU relating to the original two blocks to the construction of these additional blocks. The addendum also provided for the replacement of certain relevant clauses in the contract and the MoU to reflect the adjustments made through this addendum.

3.14.46 The parties agreed that two of the four blocks were to be delivered within the first 18 months of the contract term, while the remaining two blocks were to be delivered in the 18 months thereafter. If the JCL and MHC Consortium was able to deliver any of the blocks prior to these timeframes, the SVP was to be given written notice of the advanced delivery date, at least three months prior to the handover date. It is to be noted that, according to the MoU entered into, the construction and finishing works of the original two blocks were to be finalised within 54 months from the date of signature or within 36 months from the date of issue of the approved building permits. Through this addendum, the SVP gained on the completion date in that, within this timeframe, the four blocks were now to be completed.

3.14.47 A second addendum was signed on 19 June 2018 by the DoC, on behalf of the MFSS, and by the JCL and MHC Consortium on 14 June 2018. This Addendum provided for internal changes to the drawings included as part of the contract. The exterior and the building footprint were to remain unchanged and the alterations did not vary the submitted bill of quantities. Reference was also made to a clause in the call for tenders which stated that drawings were provided for indicative purposes only and could be amended if these did not give rise to monetary claims.

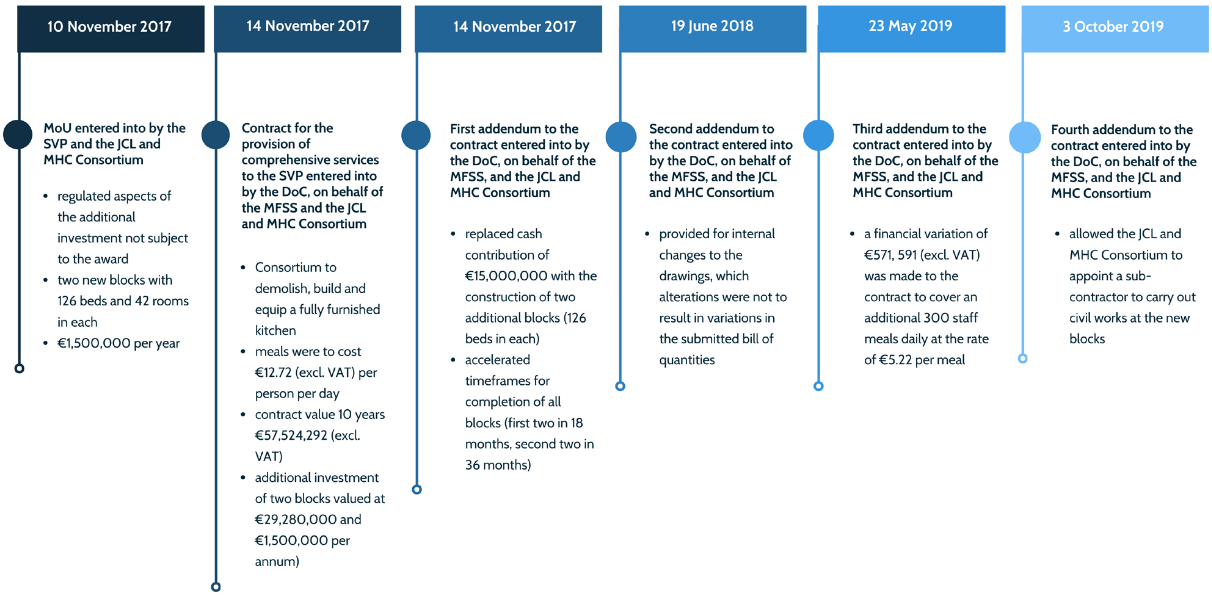
3.14.48 A third addendum was entered into on 23 May 2019 between the DoC, on behalf of the MFSS, and the JCL and MHC Consortium. Through this addendum, a financial variation of €571,590, excluding VAT, was made to the contract entered into by the parties on 14 November 2017. The variation was to cover an additional 300 staff meals daily, at the rate of €5.22 per meal, for a year. The NAO sought to ascertain the source of this variation. According to the DoC, at that time of entry into the contract for the supply of comprehensive services, the meal entitlement system at the SVP consented meals to Government employees who worked for eight hours either with, or ten hours without, direct patient contact. The policy was adopted in 2014 and was implemented in all local hospitals. However, between June and August 2018, three trade unions claimed that the SVP government employees were not receiving the same meal entitlement as their counterparts at the MDH. Following these claims, and after enquiries made by the SVP, it was ascertained that changes were made to the policy in 2018. Among the new provisions, all full timers with a 15-minute break were now entitled to free meals. The SVP had to adhere to this policy, hence the variation.

3.14.49 A fourth addendum was signed between the DoC, on behalf of the MFSS, and the JCL and MHC Consortium on 3 October 2019 whereby the Consortium was allowed to appoint TACA Insaat Ve Ticaret A.S as a sub-contractor to carry out the civil works on the new blocks at the SVP.

An altered additional investment

3.14.50 The MoU, the contract and the addenda formed the contractual framework that was to regulate the relationship between the SVP and the JCL and MHC Consortium and constituted an official commitment on the part of the former to contract the services and that of the latter to supply the deliverables agreed on and emanating from/in line with the call for tenders (Figure 22 refers).

Figure 22: Overview of the contractual framework



3.14.51 The call for tenders determined the objectives that were to be secured by the SVP. Primarily, these were:

a. the provision of comprehensive catering services to the Residence; and

b. the demolishing, building and equipping of a fully furnished new kitchen.

3.14.52 In addition, the call for tenders required bidders to include an additional investment at no cost to the SVP. Although no specific requirements as to what this investment was to entail were provided, the call indicated that this was to enhance the type of care provided at the Residence. With respect to the financial aspect, the call for tenders stipulated that the cost of meals was not to exceed €12.72, excluding VAT, per person per day. The cost of the kitchen refurbishment was to be borne by the contractor.

3.14.53 The Public Procurement Regulations implicitly imply that the requirements specified in a call for tenders are to be reflected in the bids submitted and, subsequently, in the contracts entered into. Norms would dictate that this should be the case.

3.14.54 Through a review of the bid by the JCL and MHC Consortium, the NAO ascertained that the offer submitted addressed the requirements stated in the call for tenders with regard to the catering services, the kitchen and the additional investment. This Office then sought to determine whether the contractual framework entered into between the SVP and the Consortium reflected that proposed by the bidder. With regard to the provision of comprehensive catering services and the construction of a fully functional kitchen, the NAO noted that the deliverables specified in the agreements entered into were generally as required in the call and reflected in that proposed by the Consortium. This, however, could not be said of the additional investment as proposed in the bid and as eventually contracted. While in its bid the Consortium had offered the construction of two residential blocks at the SVP and annual payments for the term of the contract as the additional investment, in the agreements entered into the cash payments were substituted with the construction of another two blocks. This change ensued following negotiations held by the parties in between the award of the tender and the signing of the MoU, the contract and the addenda.

3.14.55 The Public Procurement Regulations indicate that the deliverables tendered for are not to be substantially changed, even in cases where negotiations with the preferred bidder are contemplated and allowed. Based on the documentation reviewed, the NAO established that the deliverables as bid by the JCL and MHC Consortium and as contracted with the SVP differed. The substantial change was in the nature of part of the additional investment originally proposed by the Consortium, annual cash contributions, and that ultimately contracted, two additional residential blocks. While the substitution of the annual cash payments with the construction of an additional two blocks did not result in changes in terms of value, in that the cost of the additional blocks was estimated on par with the amounts that were to be paid, this gave rise to other obligations that Government was constrained to assume. This was because the change in the nature of the additional investment was contingent on Government awarding the management of the additional blocks to the Consortium.

3.14.56 While it can be argued that Government was gaining from this substitution, in that the completion of the blocks within three years from contract signing as against cash payments over a ten-year period accelerated Government's realisation of the additional investment, Government had to concede the management of the blocks to the JCL and MHC Consortium for this to happen. This obligation not only put an added onus on Government, in that it now had to enter into negotiations for the provision of this service, but also rendered it at the willing mercy of the Consortium in that it could not explore more advantageous ways of how to manage the additional blocks.

3.14.57 While, at this stage, it can unquestionably be concluded that changes in the deliverables as tendered by the JCL and MHC Consortium and as contracted with the SVP were made, the nature of these changes and how these impacted public finances are dealt with in detail in the ensuing chapter.

Payments made with respect to the contract for comprehensive services

3.14.58 The contract for comprehensive services came into effect in November 2017, through which the SVP was to source its catering requirements for residents and staff. One deliverable of the contract for comprehensive services related to the demolition and reconstruction of the SVP's kitchen. According to the SVP Annual Report for 2018, the newly constructed kitchen was inaugurated on 25 June 2018. Although no payments were to be effected in this regard, noted in the 2018 Annual Report was that the kitchen cost approximately €4,000,000.

3.14.59 The NAO reviewed the amounts charged by the JCL and MHC Consortium to the SVP for catering services provided, which was another deliverable of the contract for comprehensive services. Amounts invoiced in terms of this contract over the period November 2017 to December 2020 amounted to €13,667,830 (Figure 23 refers).

Figure 23: Amounts invoiced by the JCL and MHC Consortium for comprehensive services (excl. VAT), 2017-2020

Period	Residents (€)	Staff (€)	Total (€)
2017	-	-	388,289
2018 (01/01/18 –17/06/18)	-	-	2,374,554
2018 (18/06/18 – 31/12/18)	2,143,762	147,161	2,290,923
2019	3,916,740	402,109	4,318,849
2020	3,865,062	430,153	4,295,215
Total			**13,667,830**

Notes
1. The invoices corresponding to the period 2017 to mid-2018 did not distinguish between meals provided for residents and staff of the SVP.
2. The NAO was not provided with invoices corresponding to the period 28/11/2017 to 03/12/2017, 05/11/2018 to 02/12/2018, residents' breakfast and dinner from 15/07/2019 to 31/08/2019, residents' breakfast from 01/09/2019 to 30/09/2019, residents' breakfast and dinner from 01/10/2019 to 31/10/2019, residents' breakfast and dinner from 01/01/2020 to 31/01/2020 and staff meals from 15/07/2019 to 31/10/2019 and from 01/01/2020 to 31/01/2020.

3.14.60 The NAO sought to ascertain whether the completion of the residential blocks commissioned as the additional investment and the Management Service Agreement bore any effect on the supply of meals to residents in terms of the contract for comprehensive services. The residential blocks became operational between July and October 2020. The catering of these blocks did not fall under the contract for comprehensive services as this element was provided for by the Management Service Agreement. Figure 24 presents the total number of meals provided monthly to residents of the SVP (excluding those housed in the new blocks), from January 2020 to December 2020.

Figure 24: Monthly meals provided to the residents of the SVP, January-December 2020

Period	Breakfast (n)	Lunch (n)	Dinner (n)	Total (n)
January 2020	n/a	28,995	n/a	n/a
February 2020	27,527	27,082	26,854	81,463
March 2020	28,803	28,735	28,523	86,061
April 2020	27,121	26,987	26,960	81,068
May 2020	28,122	27,891	27,850	83,863
June 2020	26,831	26,573	26,620	80,024
July 2020	26,416	26,023	25,911	78,350
August 2020	24,252	23,818	23,743	71,814
September 2020	22,587	22,632	22,150	67,369
October 2020	22,146	22,085	22,012	66,243
November 2020	21,044	21,122	21,125	63,291
December 2020	21,265	21,485	21,508	64,258

3.14.61 Immediately apparent is the decline in the number of meals provided to residents in facilities managed directly by the SVP from July 2020 onwards. This decline coincides with the period when several of the new blocks became operational, thereby indicating the possible reallocation of residents from SVP-managed facilities to the blocks managed by the JCL and MHC Consortium. The CEO SVP informed the NAO that once the Consortium's blocks were completed, the Residence relocated some of its residents to these blocks to address overcrowding in other parts of the SVP. Although the reduction in meals cannot be wholly explained in terms of the admission of residents to the new blocks (Figure 31 refers), this matter was not verified by the NAO as it was deemed out of audit scope.

Chapter 4 | The negotiated contract awarded to the JCL and MHC Consortium for the management of an extension at the SVP comprising four residential blocks

4.0.1 On 4 April 2017, the JCL and MHC Consortium was informed that it was awarded the tender for the supply of comprehensive services to the SVP, subject to the lodgement of appeals until 17 April 2017. A review of the contractual framework subsequently entered into between the SVP and the Consortium indicated that this reflected that stipulated in the call for tenders in terms of the comprehensive services, and formalised the terms relating to the additional investment. However, a substantial change was made in the nature of part of the additional investment as originally proposed by the Consortium in its tender (an annual cash payment) and that ultimately contracted for (two additional residential blocks). This Office considered whether this change was made following negotiations and whether this was tantamount to a change in contractual obligations. While the substitution of the annual cash payments with the construction of an additional two blocks did not result in changes in terms of pecuniary value, in that the cost of the additional blocks was estimated to equal the comprehensive annual cash contributions that were to be paid, this was construed as a departure from that tendered. Moreover, this change gave rise to other commitments that Government was obligated to assume. In addition, these commitments were contracted through a negotiated procedure undertaken directly with the Consortium and which involved considerable public funds.

4.1 The nature of the additional investment tendered was substantially changed without sufficient analysis

4.1.1 According to the CEO SVP, the first meeting with the JCL and MHC Consortium was held on 15 May 2017, wherein the Consortium expressed interest to enter into negotiations with Government to take over the management and operation of the two residential blocks proposed as part of the additional investment. The Consortium reiterated its offer of a five per cent discount on the operational cost incurred by the SVP should they be assigned the management of these blocks. Furthermore, the CEO SVP stated that it was during this meeting that the Consortium proposed to convert the annual cash payment of €1,500,000 over ten years into the building of two additional blocks, increasing the bed capacity created in this respect from 252 to 504 beds. It must be noted that no documentation substantiating that stated by the CEO SVP was provided to the NAO.

4.1.2 The JCL and MHC Consortium provided an element of corroboration to that stated by the CEO SVP in a meeting held with the NAO. The Consortium indicated that during negotiations, it had offered to change the cash contribution to the construction of another two residential blocks. However, this was contingent on the contract for management services being extended from a ten to a fifteen-year term.

4.1.3 The first related correspondence traced by the NAO was dated 17 May 2017, submitted by the SVP to the DoC and the MFSS, wherein it was indicated that the offer made by the JCL and MHC Consortium consisted of a number of works, services and proposals, namely:

a. the provision of catering services to the SVP;

b. works for the demolishing, building and equipping of a fully furnished kitchen at the Residence; and

c. an additional investment consisting of the construction of two residential blocks and an annual payment of €1,500,000 for the duration of the contract, intended as a contribution towards the investment or refurbishment costs of the SVP.

4.1.4 According to the correspondence, the JCL and MHC Consortium had offered to manage the two residential blocks and had submitted a proposal management agreement in this regard. A list of the proposed services and corresponding costs was included in the proposal, most notable among which were the rates of €110.70 and €92.46 per person per night for occupied and available beds, respectively, which rates were to be discounted by five per cent. The SVP had reviewed the Consortium's draft management agreement within its limited capacity and since it did not have the in-house technical competencies required to assess the financial implications of that proposed, it was recommended that the responsible directorates employ their experts to audit the proposal for due consideration. The SVP indicated that, should the cost benefits as proposed in the management agreement by the Consortium be confirmed, the SVP would recommend that the potential gains which could be achieved through the contract could be further enhanced. In view of the urgency to increase the long-term care capacities for highly dependent older persons, the Consortium could be invited to allocate the cash contribution as a further investment in the building of two additional blocks of 252 beds. The SVP maintained that this approach would address the current crisis in the provision of long-term care beds while yielding more return in terms of aggregate future cash value to present value concept.

4.1.5 The SVP further indicated that several scenarios were generated to review the possible manner as to how the commitment by the JCL and MHC Consortium in terms of the cash contribution could best be invested. In this regard, in the cost benefit exercise undertaken by the SVP, three options were considered, namely:

a. Option 1: as offered - €1,500,000 per year for the 10-year contract term. The Consortium offered a cash contribution valued at €13,860,000 based on the aggregate cash payment over a 10-year concession period at a discounted rate to present value of 1.46 per cent. The discount rate was based on the current yield to maturity for ten-year Malta Government stocks. The SVP maintained that the annual contribution was not sufficient to cover the investment in any project that would increase bed capacity. Moreover, the cash contribution would probably be directed to cover costs that, till then, were funded through other sources.

b. Option 2: the JCL and MHC Consortium to build and operate two blocks with 252 beds - The SVP maintained that the possibility that the Consortium utilises the cash contribution as upfront investment to build an additional two blocks should be considered in lieu of Option 1. On the lapse of the ten-year period, all capital investment made would become the property of the SVP. The SVP estimated the capital costs as €14,460,000 and investment costs of €960,000, resulting in total development costs of €15,200,000. These were calculated assuming that the investment was funded through 10-year Malta Government stocks. Moreover, should the DoC confirm the costing benefits envisaged from the proposed management service agreement, the Consortium would be requested to manage all four blocks at a seven per cent saving on the current operational cost per resident incurred by the SVP. According to the SVP, the Consortium had offered a management daily rate of €110.70 per resident which, when deducted by the seven per cent savings proposed by the SVP, would result in a rate of €102.95. Therefore, when excluding the services that would not be undertaken by the Consortium, this option would cost Government €102.95 per resident per day. The SVP concluded that the total financial benefit would include a €1,140,000 investment that would be made in the first year of the contract, two new blocks with 252 beds that would ultimately be the property of the SVP which, at the end of the contract terms, would add €15,000,000 worth of capital assets to the SVP's books, and cost savings of €7.75 per day for 252 beds over a minimum period of ten years, totalling savings of €7,128,450 over this period.

c. Option 3: SVP to build and manage a 252-bed extension – Development costs were estimated at €15,120,000, assuming that the investment was funded through 10-year Malta Government stocks. Further assuming a daily rate of €110.70 for 252 residents, this option would cost Government an investment of over €15,000,000 and at least €10,182,186 per year in operating costs. This would require an immediate capital budget and result in higher recurrent costs.

4.1.6 According to the SVP, as indicated in its correspondence dated 17 May 2017 to the DoC and the MFSS, the outcome of this cost benefit exercise clearly indicated that with Option 2, Government would immediately increase the number of beds by 252 without the need for any capital investment. Furthermore, a seven per cent saving on recurrent expenditure, amounting to over €7,000,000, would be made. In conclusion, the SVP referred to the urgent need of at least 500 new long-term care beds in the immediate future to address the current shortfall. Nonetheless, the overall capacity was to increase to 1,500 if the waiting list was to be effectively managed. The current expansion in beds for long-term care was at a standstill in the public sector, while private sector growth was limited and no plans to increase supply that would effectively balance this deficit were visible. Further strengthening the SVP's case was that national or EU funding for such capital investment was non-existent. Moreover, the SVP was the only facility that provided for highly dependent elderly with medical complexities and already had the professional expertise in the care and services required in this sector. The SVP also had ample footprint that could be designated for further development. The SVP concluded that this financial analysis indicated that outsourcing the management of the additional blocks was the more cost-efficient option.

4.1.7 As a way forward, the SVP proposed that:

a. Government was to identify all potential areas for development to maximise the benefits from this project;

b. a holistic conceptual design was to be drawn up to ensure that the standards required in the proposed investment are met;

c. estimates of total bed capacity be compiled;

d. the Consortium was to be responsible to construct, furnish and ensure high quality operations in line with the National Minimum Standards;

e. the SVP would be the sole owner of these assets; and

f. Government was to enter into a service agreement at a seven per cent discounted cost on the current expenditure per capita incurred by the SVP.

4.1.8 In conclusion, through its correspondence dated 17 May 2017, the SVP maintained that the above would meet the following objectives:

a. increase the provision of long-term care facilities to address the demand at the national level;

b. increase about 450-500 beds within the short-term (18 months) to effectively address the current waiting list; and

c. realise cost benefits that would generate a positive balance for public funds.

4.1.9 The NAO sought to ascertain how the change between that tendered for by the JCL and MHC Consortium, then deemed the most advantageous to Government, and the change now being proposed originated. According to the SVP, the offer of an annual cash injection of €1,500,000 for ten years was made by the Consortium as part of its tender. The SVP carried out a cost benefit exercise to determine how best to invest this contribution. The SVP indicated that this exercise was compiled by the Residence's management, based on projections on demand for institutional long-term care in Malta, the recurrent and capital expenditure incurred by the SVP over previous years and a cost analysis prepared by an audit firm engaged to support it in this review. The NAO noted that the audit firm referred to by the SVP in this respect had not yet been engaged by the Residence at the time (May 2017), and would in fact be appointed to assist in July 2017.

4.1.10 From the three proposed options that were considered, as reported in paragraph 4.1.5, Option 2, that is, utilising the contribution as an upfront investment to engage the Consortium to build and operate two more blocks with 252 beds, was deemed the most viable option. The NAO sought some clarifications as to how some of the workings relating to this option were arrived at. In particular, this Office queried how:

a. the seven per cent savings on the current operational cost per resident was determined;

b. the estimated development costs of €14,460,000 and investment costs of €960,000 were arrived at; and

c. the cost per day of €110.70 was set.

4.1.11 In reply, the SVP indicated that, with respect to the seven per cent savings, the JCL and MHC Consortium had initially offered a five per cent discount. The SVP informed the NAO that the DoC was consulted prior to undertaking negotiations on the offered discount. Moreover, an independent review to determine the cost per bed, so that the SVP management would be better prepared in its negotiations with the Consortium, was commissioned. It was on the basis of this report that the SVP chose to enter into negotiations with a request for a discount of seven per cent. Eventually, following negotiations, the parties agreed on a discount rate of six per cent. Regarding the development and investment costs, the SVP stated that the estimates relied on certified audited costings carried out by third parties, which were further verified by the technical members on the Evaluation Committee. Despite requests by the NAO for records of meetings held by the SVP, and possibly others representing Government, with the Consortium, this Office was not provided with any documentation.

4.1.12 Seeking to justify the substitution of the cash payments with the construction of two additional blocks, the CEO SVP maintained that an increase in bed capacity would address overcrowding at the Residence and reduce the waiting list of older persons seeking long-term residential care. Furthermore, the CEO SVP contended that outsourcing management services for the additional capacity was necessary since the SVP lacked the required human and operational resources to cater for a significant increase in capacity in the short and medium term. In addition, the CEO SVP stated that the project model was consonant with the Government's declared policy of incentivising investment in the sector through PPPs and in line with the ongoing procurement of beds from privately-owned nursing homes. Finally, the CEO SVP noted that operations were to be delivered in a cost-efficient manner as evidenced by the discounted rate secured and a tenure that took advantage of economies of scale and sustainability in recurrent expenditure.

4.1.13 In turn, the Permanent Secretary MFSS stated that there was a trade-off to be considered at the point when the offer for the change in the additional investment was proposed. The decision to be made was whether to stick to the original offer and have two blocks of 252 beds within ten years, which would need to be staffed and managed, or whether to have four blocks of 504 beds inclusive of the management service provided by the JCL and MHC Consortium. The Permanent Secretary MFSS noted that there was a cost attached to this latter option in terms of the payments that were to be made by Government to the Consortium for the management services provided. Furthermore, the Permanent Secretary MFSS noted that Government would make substantial savings from contracting out the management of the blocks.

4.1.14 In submissions to this Office, the PSDAA (pre-2017) referred to the role of the DoC in later revisions to the contractual framework between the SVP and the JCL and MHC Consortium. The PSDAA (pre-2017) stated that the DoC was also responsible for the contracts entered into in view of the Department's role in drafting these documents.

4.1.15 Further queries regarding how the change between that tendered for by the JCL and MHC Consortium and that subsequently proposed originated were directed to the DoC. In submissions to the NAO, the DoC indicated that the Consortium had offered a discount on the management of the blocks in their original bid submission. Although the NAO noted that this was optional, the DoC contentiously indicated that since the Consortium had made the offer, then Government was constrained to negotiate with the Consortium. The DoC sought to justify this course of action through reference to the €1,000,000 in yearly savings that the SVP was to benefit from by contracting the management services to the Consortium. The DG DoC emphasised that the SVP had stated that this was a good deal for Government and maintained that adequate documentation had been provided to support this course of action. The DG DoC reiterated that the SVP was the contracting authority for this procurement, and therefore held ultimate responsibility.

4.1.16 Following the referral of the above options to the DoC and the MFSS on 17 May 2017, the DG DoC proposed that a meeting be held to discuss the tender. In fact, a meeting was held on 23 May 2017, which was attended by the Permanent Secretary MFSS, the CEO SVP, the DG DoC and other officials from these entities. In view of the pivotal importance of this meeting, wherein Government was considering the assignment of the management of four blocks with over 500 long-term care beds to the JCL and MHC Consortium for ten years, the NAO requested a copy of the minutes of the meeting. However, despite requests made to the SVP, the MFSS and the DoC, no minutes were provided.

4.1.17 According to the CEO SVP, the meeting was primarily held to discuss the way forward in light of the proposal by the successful tenderer to manage services at the new blocks. The CEO SVP indicated that the various options available were discussed, including the issuance of a separate tender to secure the management of the additional blocks. The SVP sought the DoC's guidance on that proposed by the JCL and MHC Consortium, and the DoC recommended a business model wherein the successful bidder would be allowed to manage the blocks. This recommendation was based on several considerations, namely that, the Consortium was already an operator at the SVP, the Consortium could possibly hand over the four blocks at the end of the ten-year term, and that Government had, for several years, adopted the negotiated procedure model in its procurement of beds and management services from the private sector, such as the Zejtun, Cospicua and Zammit Clapp Hospital Homes, as well as several other private homes. According to the CEO SVP, it was on these grounds that the DoC indicated that the SVP could enter into a negotiated procedure for the management of the new blocks that were to be constructed by the Consortium. In view of this decision, the SVP sought an independent bed cost analysis to be better placed to negotiate with the bidder. The CEO SVP indicated that the DoC had agreed with this proposal and a call for quotations was issued to appoint an audit firm to carry out this analysis. Although the CEO SVP indicated that the Residence had no minutes of the meeting held on 23 May 2017, she maintained that this meeting was presided over by the DoC, and that a general consensus had been reached between all attendees in respect of the way forward. The CEO SVP noted that the requests for approvals which ensued, for the SVP to enter into a negotiated procedure, resulted from this meeting.

4.1.18 Confounding the NAO was that the CEO SVP sought to justify the decision to pursue an increase in bed capacity for older persons as in line with Government policy and consistent with efforts to enlarge and modernise the SVP as pledged in the 2017 Electoral Manifesto of the Partit Laburista. This was deemed anomalous by the NAO as by the publication of the Manifesto, negotiations with the JCL and MHC Consortium were well underway.

4.1.19 In turn, the Permanent Secretary MFSS informed the NAO that, bearing in mind that the meeting was not requested by the Ministry, no minutes were retained. In additional submissions to the NAO, the Permanent Secretary MFSS stated that this was the only meeting that he was involved in; however, no final decisions were taken as further discussions and evaluation of the financial feasibility of the offer, if accepted, were deemed necessary. Nevertheless, the Permanent Secretary MFSS recalled that the DoC had stated that if the SVP wanted to accept the offer by the JCL and MHC Consortium, it could do so since, legally, it could enter into a negotiated procedure; however, an element of uncertainty persisted as this was an innovative concept. The Permanent Secretary MFSS noted that subsequent to this meeting, an audit firm was engaged to assess the feasibility of the project.An element of that stated by the Permanent Secretary MFSS was reiterated by the CEO SVP, in that the DoC had indicated that the construction of the two additional blocks could be included with the original contract as a variation, effectively replacing the cash contribution.

4.1.20 On the other hand, the DG DoC provided a different account of events, maintaining that the meeting was held at the MFSS and served as a status update on the project. The DoC did not take minutes since it was not deemed a particularly important meeting. Furthermore, the DG DoC negated that he had proposed the resort to a negotiated procedure; however, conceded that he may have suggested such an option or approved the request to resort to such a procedure. Moreover, the DG DoC emphasised that the meeting was requested by the SVP and only coordinated by the DoC.

4.1.21 In view of this lacuna, the NAO had no visibility of this meeting, the considerations that were discussed and the reasons that ultimately led to the decision to award the management of the blocks to the Consortium, and therefore had to rely solely on that stated by those involved based on recollections of a meeting that had taken place several years prior.

4.1.22 However, of more concern to the NAO is that the MFSS, the SVP and the DoC made the decision to pursue the offer proposed by the JCL and MHC Consortium and assign it the management of the new blocks without due consideration. Notwithstanding that the SVP sought approval to obtain an independent computation of the cost per resident being incurred at the Residence, the NAO maintains that this should have been determined prior to any decisions made, rather than when the decision to assign the management to the Consortium had effectively been taken. Instead, the parties representing Government solely sought to make minimal savings on the expenditure borne by the SVP through a discount that was to be given by the Consortium on these costs. Furthermore, there was no consideration of the possible inefficiencies of the SVP that would have resulted in an inflation of its rates. These inefficiencies have been documented in the audit reports compiled by the NAO over the past years. As a consequence, any savings made when compared to rates that are inherently laden with inefficiencies are resultantly false and overstated.

4.2 The independent bed cost analysis carried out was fraught with significant limitations

4.2.1 In its consideration of the decision to award the management of the additional blocks to the JCL and MHC Consortium, the SVP sought to determine whether the offer made by the Consortium in this regard was reasonable. To this end, on 11 July 2017, the SVP entered into an agreement with an audit firm that was to, through reference to the Residence's 2016 accounts:

a. provide/confirm the total expenditure per night;

b. determine the total expenditure per service per night for a number of services that included medical services, the day clinic and the X-ray Department, the mortuary, religious services, the day centre, the Medical Material and Management Unit, the allied health professionals, and nursing specialities and dementia; and

c. establish the total other costs per night, which included costs not allocated to specific services.

4.2.2 To meet the above objectives, the audit firm structured the assignment in two work streams, that is:

a. a cost verification exercise using a risk-based approach wherein line items and transactions were selected for examination of supporting documentation; and

b. a review of the calculation of the cost per night.

4.2.3 A draft report dated 20 September 2017 was prepared by the audit firm, wherein the cost per night incurred by the SVP was determined. Nonetheless, the audit firm noted that this exercise was hindered by significant limitations, mainly attributable to the SVP, including that:

a. the trial balance provided by the SVP was not balanced;

b. several expense line items were not recorded;

c. a substantial number of samples remained unverified and therefore an opinion could not be provided on the fairness of the presentation of these costs;

d. salary related expenses could not be verified in the absence of FSS forms; and

e. some costs related to actual purchases and were not allocated to the period under review.

4.2.4 Another limitation cited by the audit firm was that the divisor used was the generic number of nights and the total number of bed nights for each service and unallocated costs, despite that this could be a misleading divisor in that different costs behave differently. The NAO sought the SVP's views on what led to these limitations and whether these were subsequently addressed. However, the reply was somewhat vague, simply indicating that the SVP accorded full support to the audit firm and provided access to all necessary documentation. Moreover, the flagged cut-off issues were eventually adjusted.

4.2.5 As stated in the report by the audit firm, the total costs for the SVP for 2016, ascertained through unaudited figures, amounted to €48,066,533, of which €5,626,744 were for specific services and €42,439,789 were for other services. These resulted in a total cost per night of €131,689. Assuming 393,375 as the number of occupied beds in days and 422,231 as the number of available beds in days, the total cost per occupied bed per night was established at €122.19 and that per available bed per night as €113.84. Excluding specific services, these figures amounted to €107.89 and €100.51, respectively (Figure 25 refers).

Figure 25: Cost workings from unaudited figures

	Total costs	Specific services	Others
Cost	€48,066,533.00	€5,626,744.15	€42,439,788.85
Number of occupied beds in days	393,375	393,375	393,375
Number of available beds in days	422,231	422,231	422,231
Cost per night	€131,689.13	€15,415.74	€116,273.39
Cost per occupied bed per night	€122.19	€14.30	€107.89
Cost per available bed per night	€113.84	€13.33	€100.51

4.2.6 According to these figures, the cost to the SVP per occupied bed night amounted to €107.89. Applying this to 504 occupied beds for a ten-year period, excluding the labour component would amount to a total cost of €198,474,444. On the other hand, the SVP estimated the cost of the procurement as offered by the JCL and MHC Consortium to amount to €188,559,000. Therefore, the SVP calculated that selecting the offer proposed by the Consortium provided it with cost savings of €9,915,440 over the envisaged ten-year period for the management of the additional blocks. Based on these projections, on 28 September 2017, the SVP requested the approval of the Permanent Secretary MFCS[5] and the DoC to enter into a negotiated procedure with the Consortium for "the provision of management services at the New Hospital at the SVP".

4.2.7 The GCC approved the SVP's request on 3 October 2017. This endorsement was granted in terms of Article 154(b)(ii) of the Public Procurement Regulations 2016, under the following conditions, that:

a. the services were absolutely necessary;

b. the most cost-effective basis was taken into consideration when the request was submitted;

c. funds were available; and

d. the contracting authority was to revert to the DoC for final approval following the finalisation of negotiations.

In terms of Article 154(b)(ii), the negotiated procedure may be resorted to for public service contracts where the services can be supplied only by a particular economic operator when competition is absent for technical reasons.

4.2.8 In a separate thread of correspondence reviewed by the NAO, also dated 28 September 2017, the SVP requested the authorisation of the Permanent Secretary MFCS and the DoC for a

[5] Following the general election held on 3 June 2017, the Ministry for the Family and Social Solidary was redesignated as the Ministry for Family, Children's Rights and Social Solidarity. In light of this change in portfolio, the Permanent Secretary MFSS is, from this point onwards, referred to as the Permanent Secretary MFCS.

variation to the tender for the provision of comprehensive services to the SVP. The variation, proposed by the JCL and MHC Consortium, comprised the conversion of the €1,500,000 annual cash contribution to the construction of another two residential blocks in the first three years of the contract. The Permanent Secretary MFCS approved this request on 28 September 2017, while the GCC granted its approval on 25 October 2017.

4.2.9 The NAO noted that a final report, dated 20 October 2017, was prepared by the audit firm engaged to establish SVP costs. According to the report, the audit firm updated its costings following adjustments proposed in relation to the costs incurred by the SVP. Again, several issues were noted, including:

a. expenses amounting to nearly €2,000,000 not included in the trial balance;

b. a discrepancy of €700,000 between the debits and credits in the trial balance;

c. cut-off issues relating to expenses incurred in 2015 but recorded in 2016, or costs incurred in 2016 which were not recorded until 2017; and

d. expenses not apportioned.

4.2.10 Following the adjustments made, the audit firm revised the total costs for 2016 to €47,220,688, of which €5,720,546 and €41,500,142 were for specific and other services, respectively. Assuming the same number of occupied beds in days and the number of available beds in days, the total cost per night now amounted to €129,372, a rate per occupied bed per night of €120.04 and that per available bed per night of €111.84. When excluding specific services, the total cost per night amounted to €113,699, and a rate per occupied and unoccupied bed per night of €105.50 and €98.29, respectively (Figure 26 refers).

Figure 26: Finalised cost workings

	Total costs	Specific services	Others
Cost	€47,220,688.16	€5,720,546.41	€41,500,141.75
Number of occupied beds in days	393,375	393,375	393,375
Number of available beds in days	422,231	422,231	422,231
Cost per night	€129,371.75	€15,672.73	€113,699.02
Cost per occupied bed per night	€120.04	€14.54	€105.50
Cost per available bed per night	€111.84	€13.55	€98.29

4.2.11 The NAO noted that following this report, another request was made by the SVP on 8 November 2017, wherein final approval was sought from the Permanent Secretary MFCS and the DoC to enter into a negotiated procedure with the JCL and MHC Consortium for management services for the ''new hospital" at the SVP that would cater for an additional 504 beds. According to the request, following instructions given by the DoC on 3 October 2017, the SVP held a number of meetings with the Consortium and revisions to several provisions were proposed. In this regard, the Consortium had agreed in principle to the provision of an additional 252 beds for an investment of approximately €15,000,000 in lieu of the cash payments on an immediate basis and concurrently with the other aspect of the additional investment proposed in the tender, that is, the construction of two blocks. The Consortium also agreed to increase the discount from five per cent to six per cent on that offered in its tender. However, the Consortium maintained that these changes would entail significant additional costs, primarily emanating from:

a. the higher investment required at the initial phase of the contract, as opposed to a cash contribution disbursed over a 10-year term as per the tender submission;

b. higher interest costs in absolute terms to the Consortium, given that the funding would need to be effected in the immediate future rather than through profits generated from the other elements of the same tender;

c. the additional strains on the Consortium at a time when it also undertook, in terms of the tender requirements, the demolition and reconstruction of a new kitchen at the SVP;

d. the changes that would cost nearly €10,000,000 in additional investment by the Consortium in present value terms; and

e. the fact that bank funding would be very hard to secure on a 10-year contract when factoring in sensitivity analysis to the proposed immediate investment.

4.2.12 In view of the above, the JCL and MHC Consortium requested an extension of five years to the contract term, from 10 to 15 years, for the management of the four blocks. According to the SVP, applying the revised costs arrived at in the final report by the audit firm, it was estimated that, based on 504 beds for a period of 15 years, the total estimated cost to the Residence would amount to €291,116,700, with a daily rate per person of €105.50. On the other hand, taking into account a six per cent discount on the rate proposed by the Consortium in its tender would result in a cost per occupied night of €99.17, thereby reducing the total estimated cost over a 15-year period to €273,649,698. Consequently, the proposal offered by the Consortium would provide the SVP with yearly savings of €1,164,466, resulting in total savings of €17,467,002 over a 15-year term.

4.2.13 The NAO noted that the SVP did not take into account the inherent inefficiencies in the running of the Residence, but relied solely on the fact that the Consortium's rate was to be cheaper than that being incurred by the Residence in view of the negotiated discount rate. Although established independently by an audit firm, the rates arrived at were encumbered by serious limitations and did not account for the inefficiencies in the running of the Residence, which certainly inflated its cost estimates. This should not be construed as a criticism of the work of the audit firm, for it performed its assignment according to the parameters set and information made available by the SVP. Any savings claimed by the SVP in entrusting the management of the blocks to the Consortium must inevitably be considered in this context.

4.2.14 This Office could not help but note that, while a call for quotations was made when contracting the cost audit, which was a limited, one-time exercise that involved several thousands of euro, no call was made for an extended contract for extensive services that cost hundreds of millions of euro in public funds.

4.3 No other business models for the management of the additional blocks were considered by the SVP, thereby failing to ascertain that the best option was selected

4.3.1 Once the cost analysis was concluded, the SVP sought the DoC's approval to close the agreement with the JCL and MHC Consortium for the management of the four new blocks at the Residence. While the NAO is cognisant of the fact that the conversion of the annual cash contribution by the Consortium to the construction of an additional two blocks was conditional on the Consortium being awarded the management of all four blocks, this Office maintains that other options were available to the SVP in relation to the utilisation of the additional investment that had been secured. The SVP always had the possibility to opt for the building of the two blocks, retain the cash payment and seek alternative ways to manage the new blocks and increase its bed capacity.

4.3.2 The NAO sought to obtain the SVP's views on whether the construction of the blocks by the JCL and MHC Consortium constrained it to enter into a negotiated procedure with the Consortium for their management. While the SVP maintained that it was not constrained to do so, the CEO SVP indicated that the management model proposed by the Consortium was deemed feasible and efficient. This model transferred the substantial responsibility of manning the blocks for several years; however, the Residence still maintained a monitoring role. The CEO SVP explained that it was difficult for the Residence to cover an increase of 45 per cent in their bed capacity with its current resources and that recruitment would not have been possible within the timeframe. In addition, the CEO SVP claimed that the rate to be charged would be established for several years through this agreement, which was deemed beneficial to the Residence. Moreover, the CEO SVP noted that this model was also being implemented in other homes, namely, the Karin Grech Rehabilitation Hospital and the Gozo General Hospital. Notwithstanding this, the CEO SVP maintained that she had the consensus of all stakeholders involved, political and administrative. Finally, the CEO SVP noted that, in hindsight, this model proved to be successful when one considered the COVID-19 situation which developed in 2020. In sum, the Residence indicated that it had acted on the directions and approval of the DoC in the context of the preferred business model. Moreover, this business model was discussed in the high-level meeting held with the DoC and the MFSS on 23 May 2017.

4.3.3 When queried in this respect, the PSDAA (pre-2017) indicated that direction in terms of the consideration of other business models was not the role of the politician, but was the onus of public officials responsible for technical decisions, particularly the DoC, who could have recommended alternative options. The PSDAA (pre-2017) indicated that the proposal by the

JCL and MHC Consortium was providential in terms of Government's efforts at managing the impending problem of a shortage in capacity in residential care for older persons. This proposal resulted in a substantial increase in the supply of beds and therefore was deemed favourably.

4.3.4 Queried as to whether the SVP discussed the business model opted for, that is, the negotiated procedure with the JCL and MHC Consortium, with the DoC prior to its identification as the optimal solution for Government, the DoC maintained that discussions were undertaken with the principal focus of evaluating the justifications that were necessary in case where a request for a negotiated procedure would have been made by the Residence. The DoC did not submit any documentation to the NAO substantiating discussions held.

4.3.5 The Permanent Secretary MFSS made submissions to the NAO regarding the additional bed capacity that was to be sourced through the additional investment, the management of the new residential blocks and, if deemed financially viable, whether this was in line with the Public Procurement Regulations. According to the Permanent Secretary MFSS, studies commissioned by Government in 2015 showed that the demand for residential care was expected to increase substantially in the following 10 years and that in the short-term there was the need for an additional 600 beds for highly dependent persons. The Permanent Secretary MFSS asserted that there was no availability of such beds in the open market at the time and contended that Government opted to source the additional 504 beds based on the evidence available. The basis of the conclusion arrived at by the Permanent Secretary MFSS remained unclear to the NAO, particularly when one considers the exponential increase in beds procured by Government from the private sector between 2013 and 2017 (the point at which the decision to enter into a negotiated procedure with the JCL and MHC Consortium was taken) (Figure 4 refers).

4.3.6 Elaborating in this respect, the Permanent Secretary MFSS stated that since neither the SVP nor Government had the capacity to fully operate and manage an additional 504 beds, if the offer was to be accepted, the SVP had to outsource its management, including its staffing requirements. Furthermore, because of budgetary constraints at the time, Government was not able to finance the necessary capital expenditure. On its part, the SVP had endeavoured to obtain EU funding to extend the Residence and increase the number of beds; however, its application was rejected as it was not eligible for funding. At this stage, the SVP had to consider with the DoC if it could accept the preferred bidder's offer. If the offer was refused, it would have meant that the SVP would have had two blocks with 252 beds within the next 10 years and that the other 252 beds (or any additional beds as required) would have had to be procured elsewhere. Furthermore, the Permanent Secretary MFSS clarified that, as required by the Public Procurement Regulations, the SVP engaged with the DoC to determine the best way forward and in agreement with the DoC commissioned an audit firm to carry out a cost benefit analysis of the financial considerations of the proposal put forward by the JCL and MHC Consortium.

4.3.7 In addition, the Permanent Secretary MFSS argued that the negotiated rates for occupied and unoccupied bed nights were more favourable than the rates incurred by the SVP. The Permanent Secretary MFSS contended that, based on the commissioned cost-benefit analysis, the negotiated rates represented an overall saving of approximately €17,500,000 over the 15-year term of the Management Service Agreement. Moreover, the Permanent Secretary MFSS maintained that the rates to be charged by the JCL and MHC Consortium compared favourably with those for similar services charged to Government by other homes for older persons, despite the peculiarity and uniqueness of the SVP care service. Also stated was that the agreed rates were to remain effective for 15 years, bar for annual adjustments for inflation and any other increases induced by sectorial agreements.

4.3.8 Of interest to the NAO was that disclosed by the Permanent Secretary MFSS with regard to the resort to the negotiated contract awarded to the JCL and MHC Consortium. The Permanent Secretary MFSS noted that the budget allocation for PPPs and management agreements with private operators of homes for older persons under the Active Ageing and Community Care Department was approximately €48,000,000 in 2020. This outlay was to cater for approximately 2,200 beds for persons with high, medium and low dependency. The Permanent Secretary MFSS indicated that, on average, the annual cost per bed amounted to approximately €21,600. It is with interest that the NAO notes that this annual charge results in a daily cost per bed of approximately €60 per person emphasising, for correctness' sake, that this estimate includes the cost of beds for persons with all levels of dependency.

4.3.9 Nevertheless, the Permanent Secretary MFSS asserted that the cost outlay of the new blocks was higher as residents, particularly those with dementia, required tailored support as stipulated by the regulations of the Social Care Standards Authority, which support was more costly than standard nursing care. The Permanent Secretary MFSS maintained that these regulations are only applicable to the care services delivered by the SVP, rendering them incomparable to other care services offered.

4.3.10 Notwithstanding that stated, the only analysis carried out by the SVP that served to inform its decision to award the contract to the JCL and MHC Consortium, albeit undertaken when negotiations with the Consortium were well underway, was limited to the basic cost benefit review undertaken by the SVP and the verification of the costs incurred in-house for the running of the Residence. Once these costs were established, the SVP sought to obtain a more advantageous rate from the Consortium, notwithstanding the limitations inherent in establishing this expenditure, including missing or unallocated expenditure and in-house inefficiencies which were not considered.

4.3.11 While the Public Procurement Regulations do not define specific criteria on how the optimal business model for a public tender is to be determined, and policy notes issued by the DoC in this regard are limited, it is expected that entities assess diverse business models to ensure that the best value for money is obtained. In fact, good decision-making requires that all available approaches are duly assessed and as many solutions as may be possible are generated, from which the best alternative can then be selected. This Office is of the opinion that good practice would encourage an analysis of all the available options possible. Only following a thorough analysis can the best business model be ascertained. In the NAO's opinion, this context necessitated further prudence in ascertaining that public resources were being disbursed in accordance with the principles of sound financial management and good governance.

4.3.12 With regard to possible alternatives for the management of the additional blocks, the NAO was not provided with evidence that indicated that any other options, other than the award of the management services to the JCL and MHC Consortium, was actively considered by the SVP. The NAO maintains that several possibilities were available that could have resulted in a more positive outcome to the SVP and on public finances, even if the original offer of two blocks and a cash contribution, as submitted by the Consortium, was to be retained.

4.3.13 One option available was the in-house management of the new blocks. The SVP already had the skills and competencies required in this regard, and extending its current set up to cater for an additional two blocks could have been a viable option. The NAO acknowledges that pursuing this course of action would have implied that the discounted rate offered by the JCL and MHC Consortium would not have been availed of, hence resulting in higher costs being incurred. However, this Office is of the understanding that the SVP could have utilised the ten-year timeframe within which the blocks were to be developed to identify the source of its inefficiencies and devise means of redress. Moreover, the annual cash contribution could have contributed towards the address of these inefficiencies, thereby easing the burden on public finances. This option would have increased the bed capacity at the SVP by 252 over the ten-year term, with no need for any capital outlay by the Residence. However, the option of in-house management for the two blocks remains a moot point since, in the absence of any analysis, the likely outcome of this option remains indeterminate. Moreover, in reply to queries by this Office, the SVP indicated that it "was guided by DoC as to which procurement direction to follow".

4.3.14 A course of action that would have helped the SVP make a more informed decision prior to assigning the management of the additional blocks to the JCL and MHC Consortium was to explore the market. Market research could have provided the SVP with information on the availability of other service providers able to meet this requirement. While the NAO concedes that this was to be approached in a way that safeguarded the principles of transparency and equal treatment and avoided the disclosure of privileged information, this would have allowed for the most appropriate procurement approach to be determined by the SVP.

4.3.15 The SVP could have issued a call for tenders to generate offers from potential service suppliers willing to manage the additional blocks. In general, a competitive tender process carried out in an open, objective and transparent manner should achieve the best value for money in public procurement. Through this approach, the SVP could have obtained valuable information on the availability of other service providers and up to date market price information prior to committing the management of the additional blocks to the JCL and MHC Consortium. The NAO maintains that there were no valid reasons that constrained the SVP to assign these services to the Consortium, and the fact that the Consortium was to construct the additional blocks should have had no bearing on who was to be entrusted with their management. A call for tenders would have ensured competitive tension that could have improved the quality and value of supplier offers and resulted in savings to the SVP. Notwithstanding this, the SVP insisted that it was guided by the DoC as to which procurement direction to opt for.

4.3.16 A straightforward exercise that could have been carried out was the benchmarking of the rate offered by the JCL and MHC Consortium against the rates charged by private homes for the elderly for the purchase of beds by Government. The SVP did not question the rates established by the Consortium in respect of occupied and available beds per night, but solely rested on the fact that the Consortium had offered savings on the operational cost per resident being incurred by the Residence. No analysis as to what Government was being charged for highly dependent residents in other private care homes, or against other homes for the elderly run on a PPP basis with Government, was undertaken. A comparative analysis carried out by the NAO indicated that the rates charged by these homes were significantly lower than those proposed by the Consortium. In this Office's opinion, the fact that the SVP agreed to the higher rates proposed could distort the market, inflate the rates charged, expose Government to the risk of losing current contractors providing these additional beds, and instigate existing contractors to request revisions in rates being charged.

4.3.17 For this comparative exercise, the NAO utilised an operational cost consisting of a chargeable rate per resident per night. This operational cost comprised hotel services, such as catering and laundry, and the provision of caring and nursing services. It is pertinent to note that certain services, such as medical, pharmaceutical and nursing specialities, were excluded from the Management Service Agreement with the JCL and MHC Consortium (paragraph 4.6.7 refers). Therefore, these services were similarly excluded from the NAO's analysis. The excluded services were to be provided by the SVP to all of its residents, including those in the new blocks.

4.3.18 An important distinction to be made in the NAO's analysis is the type of care provided to the residents, which is contingent on their level of dependency. To be able to classify the level of dependency, a Barthel Index was referred to, which provides a scale to measure performance in activities of daily living. Variables representing daily activities and mobility are scored, with a high score reflecting a greater ability to function independently. The Management Service Agreement for the additional four blocks stipulated that all beds were to cater for highly dependent and/or dementia residents. Highly dependent residents are defined in the Agreement as persons with a Barthel score of 0-4 and those with complex long-term health and rehabilitation needs. Therefore, for appropriate comparisons, the rates utilised in this Office's analysis were limited to those charged for highly dependent residents.

4.3.19 Notwithstanding the standardisation of service levels made possible through reference to the Barthel Index, the SVP contended that the level of care at its Residence could not be compared to that provided in other homes. The CEO SVP maintained that this was evident in the licence issued by the Social Care Standards Authority which classified the Residence in a higher category than that of a high-dependency home. According to the CEO SVP, no other entity is in possession of the same level of licence as the SVP.

4.3.20 Elaborating in this regard, the CEO SVP noted that the residents at the SVP had complex medical needs, and were cognitively and physically frail with multiple comorbidities, which necessitated a different set-up to that of a residential nursing home for older people. The CEO SVP argued that the Residence is specialised in old age medicine and rehabilitation, which speciality centres on chronic diseases and end-stage multiple organ failures, frequently aggravated by acute-on-chronic flare-ups of the disease process. This necessitates a set-up that is heavily clinically oriented, with doctors, nurses, physiotherapists, occupational therapists, speech therapists, podiatrists, dental surgeons, and pharmacists, among others, featuring prominently. This pronounced medical orientation ensures that older persons are given evidence-based geriatric care without referral to the MDH.

4.3.21 The NAO took into account that stated by the CEO SVP regarding the particular level of care required by residents at the SVP. While this Office acknowledges that the medical requirements of the SVP's residents are more intensive than those catered for by other homes, it is noted that medical care, nursing specialities and other allied services are not catered for under the Management Service Agreement. Although the NAO concedes that the medical profile of the Residence's population may necessitate a higher degree of care provided for under the Management Service Agreement, when compared to that provided at other residential homes, this discrepancy in terms of the higher degree of care required was not quantified, captured or defined by the SVP, thereby limiting the NAO from factoring an adjustment in its comparison to other homes.

4.3.22 This Office's analysis was based on information drawn from contracts signed by Government with various service providers of residential care for elderly persons. The contracts reviewed were entered into between 2000 and 2020. The relevance of these contracts is that all were in effect during the period of interest, that is, 2016 to 2020, which period corresponds to the years leading to the decision taken by the SVP to enter into a negotiated procedure with the JCL and MHC Consortium to date. In earlier contracts, a Barthel Index score ranging between 0 to 20 was used, with patients having a score less than 5 classified as highly dependent. In recent contracts, a Modified Barthel Index was utilised, with a range of scores between 0 and 100. In the Modified Barthel Index, highly dependent residents were those with a score between 0 and 24 (Figure 27 refers).

Figure 27: Dependency as determined by the Barthel Index and the Modified Barthel Index

	Barthel Index	Modified Barthel Index
Highly dependent	0 - 4	0 - 24
Semi dependent	5 - 20	25 - 74
Low dependent		75 - 100

4.3.23 In addition to the consideration of occupied beds, the NAO's analysis included the consideration of charges levied for available beds, where payment is effected at a reduced rate owing to the fact that the person assigned to the bed would be temporarily away from the residence. This concept is referred to as the 'unoccupied bed rate' in the Management Service Agreement and as a 'temporary absence rate' in certain agreements with other residential homes.

4.3.24 To calculate the rate incurred by the SVP per resident per night, the Residence engaged an audit firm. Through this exercise, the cost per occupied bed night and per available bed night was estimated at €105.50 and €98.29, respectively. These rates were based on expenditure incurred in 2016. Applying the agreed discount rate of six per cent, the revised rates as cited in the Management Service Agreement with the JCL and MHC Consortium were €99.17 per day for every occupied bed night and €92.39 daily for every unoccupied bed night.

4.3.25 The NAO is of the understanding that interested parties with experience in the field could have been invited to submit an offer for the management of the additional beds through a public call for tenders. Such an option was not considered by the SVP, therefore rates that interested service providers would have offered cannot be presented. To mitigate this limitation, the NAO reviewed the contracts entered into between Government and private homes participating in the Buying of Beds Scheme. Through this Scheme, Government sourced beds from numerous residential homes run by private interests or faith-based institutions, entering into several agreements to this effect. The rates secured through these contracts with the relevant homes for highly dependent residents are presented in Figure 28.

4.3.26 The discounted price agreed with the JCL and MHC Consortium and cited in the Management Service Agreement was €99.17 daily per resident per occupied bed and €92.39 daily per resident per available bed. When compared with 2016, the year on which the rates cited in the Agreement were based, the difference in rates is stark. The average daily rate that Government was paying private contractors for persons with a high dependency in 2016 was €51.06 per occupied bed night. The highest daily rate paid by Government to a particular home in 2016 was €63 per occupied bed night.

4.3.27 The Management Service Agreement entered into by the SVP and the JCL and MHC Consortium allowed for the revision of rates. Further details regarding the mechanism of revision are provided in the ensuing sections of this report; however, by handover of the blocks to the SVP following completion, that is, November 2020, the rates were revised to €118.44 and €110.35 for occupied and unoccupied bed nights, respectively.

Figure 28: Buying of Beds Scheme rates per occupied bed per night for highly dependent persons, 2016-2020

Name of home	2016 (€)	2017 (€)	2018 (€)	2019 (€)	2020 (€)
Home A	-	64.00	64.00	64.00	64.00
Home B	49.00	55.51	55.51	65.00	65.00
Home C	-	-	65.50	65.50	65.50
Home D	47.53	52.67	52.67	52.67	67.80
Home E	-	-	-	65.00	65.00
Home F	-	-	-	70.00	70.00
Home G	63.00	63.82	63.82	63.82	69.92
Home H	-	-	-	70.00	70.00
Home I	49.00	49.31	49.98	61.00	61.00
Home J	57.00	67.00	67.00	67.00	-
Home K	44.48	53.42	53.42	62.04	64.83
Home L	57.13	65.55	65.55	65.55	65.55
Home M	-	65.55	65.55	65.55	65.55
Home N	-	65.55	65.55	65.55	65.55
Home O	57.73	65.55	65.55	65.55	65.55
Home P	57.21	62.53	63.39	64.12	65.17
Home Q	28.54	49.51	50.18	50.77	51.60
Average Daily Rate	**51.06**	**60.00**	**60.55**	**63.71**	**65.13**

4.3.28 Comparing the revised rates charged by the JCL and MHC Consortium to the average daily rate charged by service providers under the Buying of Beds Scheme in 2020 results in a sustained significant discrepancy, which detracts from the value for money sought by the SVP through its agreement with the Consortium. While the average daily rate for a highly dependent resident per occupied bed was €65.13, that secured by the SVP with the Consortium stood at €118.44. Similarly discrepant is the rate charged by the highest priced home, which was €70 daily per occupied bed, that is, a difference of approximately €50 per resident per day when compared to the rates levied by the JCL and MHC Consortium. The stark contrast between rates paid for beds sourced through other operators and that paid for beds provided by the Consortium is evident.

4.3.29 The NAO's attention was also drawn to the inconsistency that emerges when one considers the difference in the rates charged for occupied and unoccupied beds across the several homes where Government procures beds for the care of older persons and those levied by the JCL and MHC Consortium in 2020. Evident is that the difference in rates charged by the Consortium is minimal when compared to the other homes. Although the rates levied by the Consortium are significantly higher than those of the other homes reviewed, the difference between the unoccupied and occupied bed rate is merely of €8.09 in the case of the Consortium, yet averages at approximately €45 for the other homes. In other words, the Consortium charges 93 per cent of the occupied bed rates for its unoccupied beds, while the other homes charge an average of 32 per cent (Figure 29 refers).

Figure 29: Comparison between the occupied and unoccupied bed rates, 2020

Residence	Occupied bed rate (€) [A]	Unoccupied bed rate (€) [B]	Difference (€) [A] – [B]	Unoccupied rate as apercentage of the occupied rate (%) [B]/[A]
JCL and MHC Consortium	€118.44	€110.35	€ 8.09	93%
Home A	€64.00	€10.00	€ 54.00	16%
Home B	€65.00	€19.50	€ 45.50	30%
Home C	€65.50	€19.65	€ 45.85	30%
Home E	€65.00	€19.65	€ 45.35	30%
Home F	€70.00	€21.00	€ 49.00	30%
Home G	€69.92	€21.68	€ 48.24	31%
Home H	€70.00	€21.00	€ 49.00	30%
Home I	€61.00	€23.00	€ 38.00	38%
Home K	€64.83	€22.43	€ 42.40	35%
Home L	€65.55	€23.55	€ 42.00	36%
Home M	€65.55	€23.55	€ 42.00	36%
Home N	€65.55	€23.55	€ 42.00	36%
Home O	€65.55	€23.55	€ 42.00	36%
Home P	€65.17	€24.79	€ 40.38	38%

4.3.30 By way of conclusion, while the addition of approximately 500 beds contributed directly to Government's efforts at reducing the waiting list for the provision of residential care to highly dependent elderly persons, significant doubts as to whether value for money was secured persist. The award of a contract valued in excess of €270,000,000 through a negotiated procedure, rather than an open call, stifled any scope for competition that would have otherwise been generated. This in turn bore a direct impact on the pricing of the service being provided.

4.3.31 The NAO maintains that the fact that the SVP failed to comprehensively consider other business models for the management of the additional blocks, other than directly assigning this to the JCL and MHC Consortium, calls into question whether the most appropriate procurement option was determined. This concern assumes greater relevance when one considers the extent of public funds committed without a comprehensive analysis of all viable options being undertaken.

4.4 Approval for the negotiated procedure with the JCL and MHC Consortium for the management of the new blocks was vitiated and in breach of Public Procurement Regulations

Basis of the request to resort to a negotiated procedure

4.4.1 In its tender for the supply of comprehensive services to the SVP, the JCL and MHC Consortium had proposed the building of two blocks and a cash payment as the additional investment that was to be provided as part of its offer. The Consortium had subsequently agreed to convert the cash payment to the construction of two additional blocks, provided that it was entrusted with the management of all four blocks. This was acceded to and the SVP sought the approval of the Permanent Secretary MFSS and the DoC to enter into a negotiated procedure with the Consortium for the provision of the relevant management services.

4.4.2 To this end, on 17 May 2017, the SVP forwarded a preliminary copy of the contractual framework that was to be entered into with the JCL and MHC Consortium to the Permanent Secretary MFSS and the DoC for their review. This comprised a draft contract relating to the provision of the catering services and the demolishing, building and equipping of a kitchen at the SVP, as well as a proposed service agreement for the management of the blocks tendered as the additional investment, which at this stage of the procurement process still comprised the building of two blocks and a cash consideration.

4.4.3 This Office's attention was drawn to a clause in the proposed management service agreement, which stated that it was not permissible for the SVP to contract, sub-contract, hire or employ other personnel for the provision of catering services or management services to be provided in the new blocks during the course of this contractual term. This clause was ultimately not included in the Management Service Agreement subsequently entered into; however, the Agreement included the provision of catering to the four new blocks as part of the services to be provided by the JCL and MHC Consortium. This implied that while catering at the new blocks was to be provided by the Consortium for 15 years, the tender awarded to the same Consortium for the supply of comprehensive services, which included catering for the rest of the SVP was for a term of 10 years. Whether this difference in term would constrain Government to extend the catering contract for the rest of the Residence once the 10-year term expires is yet to be determined.

4.4.4 On 31 July 2017, the DoC provided its feedback, mainly indicating that any deviations from the published terms and conditions could not be considered. With specific reference to the management of the two blocks, the DoC indicated that this could not be considered under the contract for the supply of comprehensive services. The only departure from that originally bid that was deemed an acceptable change by the DoC was the conversion of the €1,500,000 annual cash contribution over ten years to two additional blocks. Following an enquiry by the CEO SVP, the DoC indicated that the contract was to imminently be made available to the JCL and MHC Consortium. The NAO understood this feedback by the DoC as the source from where recourse to an alternative procurement method for the management of the additional blocks, that is, the negotiated procedure subsequently entered into, originated.

4.4.5 When queried in this respect, the DG DoC stated that although the management of the additional blocks was part of the offer made by the JCL and MHC Consortium, it was not a requirement in the call for tenders for the supply of comprehensive services and that specifications relating to the management of the additional blocks had not been stipulated therein. Moreover, the award of this component would lead to changes in the contract value if it were included in the contract for the supply of comprehensive services. Consequently, a separate agreement for the management services was deemed necessary. The DoC argued that there was a risk with going to the open market, in that a tender could be unsuccessful. If such a circumstance was to happen, the SVP had no guarantee that the discounted offer by the Consortium would still be available. Notwithstanding this, the DoC indicated that resort to a negotiated procedure gave structure to an offer already at hand. Furthermore, the DoC maintained that the tender for comprehensive services awarded to the Consortium and the subsequent negotiated procedure entered into with the same Consortium were to be considered as one project.

4.4.6 The NAO also enquired about the decision to enter into a negotiated procedure for the management of the additional blocks with the CEO SVP, who indicated that the idea of a management service agreement was proposed by the JCL and MHC Consortium in its tender for the supply of comprehensive services. The CEO SVP maintained that the SVP had the responsibility to forward the proposal made by the Consortium to the DoC and relied on the expertise of the latter when it entered into a negotiated procedure. Moreover, clear direction in this respect was given to the SVP in the meeting held on 23 May 2017 with the Permanent Secretary MFSS and the DoC. However, as stated earlier, the NAO could not verify that stated by the CEO SVP as to the nature of the direction given since no minutes of this meeting were retained.

4.4.7 While the NAO came across evidence that some discussions were held with the JCL and MHC Consortium regarding the management of the additional blocks, the scant documentation retained in this respect provided little insight of the negotiations undertaken. The next definite development for which documentation was provided was on 26 September 2017, when the SVP requested the approval of the Permanent Secretary MFCS to enter into a negotiated procedure with the Consortium for the management of the additional blocks. According to the correspondence submitted, based on 504 beds, the estimated cost for a ten-year contract amounted to €188,559,000; however, the estimated annual total savings to the SVP when compared to actual expenditure being incurred would be €991,544. This would amount to savings of €9,915,440 over the ten-year contract term. In support of this request, the SVP forwarded a copy of the independent cost analysis carried out by an audit firm (reported on earlier in the chapter) and a paper titled 'Projections of the Demand for Institutional Long-Term Care in Malta' drawn up in 2015. On 28 September 2017, the Permanent Secretary MFCS sanctioned the request by the SVP which, on the same day, was forwarded to the DoC.

4.4.8 The GCC and the DoC granted approval to the SVP's request on 3 October 2017. This endorsement was granted in terms of Article 154(b)(ii) of the Public Procurement Regulations 2016 (understood by the NAO as reference to Article 154(1)(b)(ii)), under the following conditions:

a. the services were absolutely necessary;

b. the most cost-effective basis was taken into consideration when the request was submitted;

c. funds were available; and

d. the SVP was to revert to the DoC for final approval following the finalisation of negotiations.

4.4.9 On 8 November 2017, the SVP requested final approval from the DoC to enter into a negotiated procedure, following a number of meetings held with the Consortium. This request was sent through the Permanent Secretary MFCS and was submitted in terms of Articles 154(b)(ii) and 154(c) of the Public Procurement Regulations, 2016.

4.4.10 In its request, the SVP provided an overview of the stages and decisions made prior to this submission. According to the SVP, on 25 October 2017, the DoC had approved the conversion of the cash contribution of €15,000,000 that was to be given by the JCL and MHC Consortium into the construction of another two blocks of 252 beds. Moreover, the SVP indicated that the Consortium had, in principle, acceded to:

a. the provision of an additional 252 beds for an investment of approximately €15,000,000;

b. an increase in the contract discount from five to six per cent;

c. the provision of the additional investment on an immediate basis over the following 36 months; and

d. the full funding of the additional beds at no cost to the SVP.

4.4.11 It was further indicated that the above would entail significant additional costs to the JCL and MHC Consortium, primarily emanating from the higher investment required at the initial phase of the contract, as opposed to a yearly cash disbursement over a ten-year period. It would also place additional time strains on the Consortium to meet the requirements emanating from the tender for the supply of comprehensive services, as well as those emanating from the additional investment, within the required timeframes. According to the SVP, the Consortium had maintained that bank funding would be hard to secure on a ten-year contract; therefore, it requested a five-year extension in the contract for the management of the additional blocks. According to the correspondence, the total estimated cost for the 15-year period was €273,649,698 at a daily rate of €105.50 per resident less a six per cent discount, resulting in a daily rate of €99.17 per person. The SVP maintained that considerable financial gains from the outsourcing of the management services at the discounted rate would be realised which, the SVP maintained, would lead to annual savings of €1,164,466. The Permanent Secretary MFCS approved the request on 8 November 2017, subject that the necessary approval from MFIN was sought.

4.4.12 No such approval from MFIN was retrieved in documentation reviewed by the NAO. When queried in this respect, the Permanent Secretary MFCS stated that he was of the understanding that the MFIN had been consulted by the SVP; however, no further details were provided in this respect. On the other hand, the CEO SVP contended that the Permanent Secretary was responsible for overseeing that the necessary approvals were secured in accordance with the Public Procurement Regulations. Further elaborating on the matter, the SVP contended that a commitment form was not requested and therefore not prepared. Moreover, the SVP claimed that it acted in accordance with established procedures and that all issues were referred to the DoC, which Department advises, recommends, gives guidance and approvals in respect of public procurement. Furthermore, the SVP maintained that the Residence adhered to all instructions given by the DoC, particularly since the Department fell within the remit of MFIN.

4.4.13 The DG DoC rebutted that stated by the SVP in clarifications provided to the NAO, indicating that its approval was subject to funds being available. The DG DoC noted that it was then the duty of the contracting authority to obtain the necessary MFIN approval, a position with which the NAO concurs. The DoC reiterated that its approval was conditional, and if no MFIN authorisation was obtained, then one did not have the approval of the DoC.

4.4.14 It was in this context that the NAO sought the views of the Permanent Secretary MFIN regarding the SVP's failure to obtain the required budgetary clearance. Queried in this respect, the Permanent Secretary MFIN informed this Office that the SVP did not draw the Ministry's attention to and/or sought its views on the negotiated contract prior to its endorsement. The Permanent Secretary MFIN affirmed that the Ministry, excluding the DoC, was never involved at any stage in any discussions on this project before the relevant contract was entered into.

4.4.15 In addition, the Permanent Secretary MFIN noted that the MFCS and the SVP approached MFIN months after the relevant agreement was signed to evaluate and factor in the eventual impact of this contract on the Government budget. As a result, MFIN created a Budget Line Item Number 5296, termed 'SVPR Service Contract' and allocated the amounts of €10,000,000 and €20,500,000 in 2020 and 2021, respectively.

4.4.16 The Permanent Secretary MFIN informed the NAO that, as a result of this and other incidents, MFIN organised training with respect to PPPs to sensitise contracting authorities on the financial impacts of such contracting arrangements and re-emphasised with the DoC the need to ensure the availability of the appropriate funding for projects in respect of which tenders would be issued. The DG DoC similarly referred to developments that ensued this procurement, whereby the Department was to inform MFIN of negotiated procedures exceeding an established threshold of materiality, which would provide MFIN with greater visibility in terms of required budget. The NAO positively notes these initiatives.

4.4.17 The NAO is of the opinion that better budgetary control may be realised if the GCC's approval is provisional subject to clearance by MFIN in terms of budget availability. The GCC's approval would only be final and binding once MFIN's clearance is secured. In practical terms, this would necessitate referral to the GCC in two stages, first seeking provisional endorsement, and second, subject to MFIN clearance, seeking final authorisation. This revision in procedure would ensure that contracting authorities obtain all relevant approvals prior to committing public funds.

4.4.18 In correspondence dated 9 November 2017, the DoC notified the SVP that the GCC had considered the request, and approval was granted to the SVP to enter into a negotiated procedure with the JCL and MHC Consortium for an estimated price of €273,649,698. Approval was granted in terms of urgency, citing Articles 154(b)(ii) and 154(c), in accordance with the Public Procurement Regulations, 2016, subject to the following conditions, that:

a. the services were absolutely necessary;

b. the most cost-effective basis was taken into consideration when the request was submitted; and

c. funds were available.

4.4.19 The NAO noted that the approval of the GCC was granted in terms of urgency. However, in its request, the SVP had cited Articles 154(b)(ii) and 154(c) of the Public Procurement Regulations, 2016, understood by the NAO as referring to Articles 154(1)(b)(ii) and 154(1)(c), respectively. According to Article 154(1)(b)(ii), the negotiated procedure without prior publication may be used for public service contracts "where the services can be only supplied by a particular economic operator… as competition is absent for technical reasons." This Office finds no relevance to the application of this Article since the management of the additional blocks at the SVP could have readily been undertaken by other operators. The NAO finds no reason why the contractor who erected the premises should be awarded their management.

4.4.20 Urgency in terms of Article 154(1)(c) was to satisfy the requirements of this Article in that, "where in so far as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority". The SVP contended that the urgency of this procurement was justifiable in terms of the long-term care requirements identified in a study dated 2015 (referred to in 4.4.7) as well as the Partit Laburista electoral manifesto issued prior to the 2013 General Election. This argument was reflected in that stated by the DG DoC, who maintained that the urgency was driven by the need to address the long waiting list for residential care for the elderly. Moreover, the DoC indicated that the urgency was to be viewed in terms of addressing the needs of the elderly in a holistic manner as delivered through the complete project by means of the immediate availability of beds. Notwithstanding the reference to urgency, this Office maintains that, in this case, this was certainly not justified as the blocks were to be under construction for at least 18 months, during which the SVP had time to procure the management services through an open procedure. In view of this, the NAO deems the authorisation by the GCC as unfounded, since no real urgency existed that merited the procurement that involved hundreds of millions of euros and bound Government for a lengthy period.

4.4.21 A Management Service Agreement was signed between the SVP and the JCL and MHC Consortium on 14 November 2017, the same day on which the contract for the supply of comprehensive services to the SVP was entered into. The Management Service Agreement governed the ancillary services that were to be provided by the Consortium to the residents and staff of the additional four blocks.

4.4.22 The NAO noted that the 500-bed extension to the Residence and the outsourcing of management services required for this extension were not brought to the attention of the SVP Consultative Management Board. In response to queries made, the CEO SVP noted that the members appointed to this Board resigned prior to the 2017 General Election and a new Board was constituted in November 2017. According to the CEO SVP, the first meeting was only held in June 2018, that is, several months after the agreements entered into by the SVP had been finalised.

4.4.23 Having reviewed the documentation made available to the NAO regarding the negotiated contract, this Office made further enquiries regarding the political authorisation of this project. Considering the fact that the SVP was to increase its capacity by half through this project, the substantial value of the agreement that the Residence was to enter into with the JCL and MHC Consortium, and that the need to refurbish the kitchen was brought to the attention of Cabinet by the PSDAA (pre-2017) through the relevant Minister, then reason would dictate that, prior to the commitment of Government, the relevant political approval would have been sought.

4.4.24 Queries to this effect were submitted to the Cabinet Office by the NAO. This Office sought to ascertain whether the negotiated contract was brought to the attention of Cabinet. The Cabinet Office informed the NAO that it could not trace any Cabinet memoranda regarding the agreement for the management of the additional blocks at the SVP.

4.4.25 When queried by the NAO in this respect, the Minister for the Family and Social Solidarity indicated that he was not aware that Cabinet's attention was drawn to this disbursement. The PSDAA (pre-2017) indicated that while she had provided political direction early on, particularly in relation to the inclusion of the additional investment, she maintained that she was not involved at this stage of the process. The PSDAA (pre-2017) informed this Office that developments relating to the negotiated contract in May 2017 coincided with the run up to the 2017 General Election, which was the focus of all her efforts at the time. When confronted by the NAO regarding the fact that negotiations between the SVP and the JCL and MHC Consortium commenced in May 2017, that is prior to the Election, the PSDAA (pre-2017) stated that she was not aware of these developments, and could not confirm or otherwise the developments in this respect. Although the Permanent Secretary MFSS conceded that entry into the management service agreement was not referred to Cabinet, his understanding was that, as long as everything was in order, Government was politically in favour of this course of action. The CEO SVP indicated that a Cabinet memorandum was not prepared in this case, since the SVP was not requested to do so.

4.4.26 The 2017 General Election resulted in changes to the ministerial portfolios responsible for the SVP. Key developments regarding the negotiated contract were registered in the weeks leading to this Election and in the period immediately after. This made it imperative for the Office to seek the views of the Minister for the Family and Social Solidarity and the PSDAA (pre-2017) for insight into the nature and extent of their involvement in the period prior to the dissolution of Parliament, as well as those of the Minister for Family, Children's Rights and Social Solidarity and the PSDAA (post-2017) for the period following the Election.

4.4.27 In submissions to this Office, the Minister for the Family and Social Solidarity indicated that he was not requested to approve the initiation of any negotiations with the JCL and MHC Consortium. He reiterated that his role as a Minister was that of providing direction and it was up to the officials involved to assume responsibility for ensuring compliance with applicable regulations. The Minister for the Family and Social Solidarity maintained that, in this case, the approval of the DoC had been obtained.

4.4.28 In turn, the PSDAA (pre-2017) referred to the proximity of negotiations to the 2017 General Election and stated that due to incumbency, her involvement in such decisions was curtailed. However, the PSDAA (pre-2017) noted that had her attention been drawn to the proposed entry into a management service agreement, she would have recommended the SVP to obtain the authorisation of the DoC. Furthermore, the PSDAA (pre-2017) noted that this development relating to the entry into the management service agreement may have occurred not within her tenure.

4.4.29 Considering the fact that key developments relating to entry into the management service agreement ensued the 2017 General Election, queries were addressed to the newly appointed Minister for Family, Children's Rights and Social Solidarity. The Minister indicated that the process that eventually led to this agreement started back in 2015. Furthermore, the Minister confirmed that stated by this Office, that negotiations commenced sometime in April or May 2017, that is before his appointment as Minister responsible for the SVP. The Minister for Family, Children's Rights and Social Solidarity maintained that he was not involved in any discussion, decision, negotiation, consultation, or otherwise, in connection with the negotiated contract. He further affirmed that the contractual framework, finalised in November 2017, was arrived at as a result of a negotiated procedure with the involvement of the DoC, which was the appropriate governmental body responsible for same.

4.4.30 Queries regarding the involvement, or lack thereof, in relation to the management service agreement were addressed to the PSDAA (post-2017). Commenting in this respect, the PSDAA (post-2017) stated that on his appointment, the contracts, including that relating to the management service agreement, were close to conclusion. From the perspective of a policymaker, the prospect of the availability of 500 beds for highly dependent residents was positively considered. Moreover, the PSDAA (post-2017) deemed developments relating to this procurement process that occurred during his tenure as a continuation of the project initiated by the PSDAA (pre-2017) and since there was no change in Government, and the political direction had been agreed to by his predecessors, no changes to those tasked with negotiations were deemed necessary. Nevertheless, the PSDAA (post-2017) confirmed that he was not involved in negotiations with the JCL and MHC Consortium; however, maintained that he had faith in the negotiating team, particularly the CEO SVP in terms of the medical element, and the DoC in terms of the technical element. Elaborating in this respect, the PSDAA (post-2017) stated that his role was that of setting policy while that of the civil service was the implementation of policy. Of interest to the NAO was that the PSDAA (post-2017) assumed that his predecessors had secured the relevant approvals.

4.4.31 Having considered the extent of the project, its materiality, its significance in view of the increase in capacity of existing facilities, and the fact that negotiations had been underway for several months, the NAO deems it incredulous how this project did not draw the attention of the Parliamentary Secretaries responsible for care provided to older persons. Even if the project was never directly referred to the Parliamentary Secretaries for their authorisation, their failure to enquire as to the regularity of this procurement is in clear breach of their duty arising from the political post held. Although multiple references were made to the role of the DoC in providing comfort as to the regularity of the procurement undertaken by means of a negotiated procedure, the NAO asserts that the role of this Department is that of ensuring adherence with the Public Procurement Regulations. It is certainly not the role of the DoC to provide political direction on projects undertaken by Government.

4.4.32 In submissions to the NAO, the Permanent Secretary MFCS maintained that, at each stage of the negotiation process, the DoC was the point of reference and its input and approval provided comfort that all aspects were being reviewed and scrutinised in line with the Public Procurement Regulations. The Permanent Secretary MFCS noted that all requests made to the DoC were approved by the GCC and that the DoC and/or the GCC could have refused any request deemed not in order.

4.4.33 Notwithstanding the above, the NAO maintains that the SVP, the MFCS and the DoC acted in breach of legislative provisions when requesting or sanctioning recourse to a negotiated procedure for the management of the new blocks at the SVP on the basis of urgency. While the prescribed actions were apparently carried out, these were in reality in breach of the Public Procurement Regulations, thereby possibly leading to the invalidity of the procurement undertaken. Further aggravating matters is that Government was committed to a disbursement of hundreds of millions of euro without the required budgetary clearance being sought by the SVP from MFIN. Worse still is that a commitment of this magnitude and importance was entered into without the sanction of Cabinet, or the Ministers or the Parliamentary Secretaries responsible for the SVP.

Instances when a negotiated procedure is permitted by the Public Procurement Regulations

4.4.34 The Public Procurement Regulations clearly establish the circumstances when contracting authorities may resort to procurement through a negotiated procedure. If the management of the blocks was to be considered as part of the tender for comprehensive services, then the 2015 procurement regulations were to apply. However, in July 2017, the DoC had already informed the SVP that the management of the additional blocks could not be considered under the tender for comprehensive services, effectively implying that an alternative procurement method was to be considered. It must be noted that, in the interim, the Public Procurement Regulations had been revised, with amendments coming into force on 28 October 2016, signifying that any procurement initiated after this date was to be regulated by the Public Procurement Regulations, 2016. The NAO concurs with that stated by the DoC regarding the inapplicability of the 2015 Regulations for the acquisition of management services for the new blocks at the SVP. Essentially this meant that the negotiated procedure for the procurement of these services was to adhere to provisions of the Public Procurement Regulations, 2016.

4.4.35 The NAO sought to identify whether any of the provisions contemplated in the Public Procurement Regulations, 2016 with respect to negotiated contracts could apply to the process under review. According to Article 150(1) of the Public Procurement Regulations following a request from a contracting authority, the DG DoC may, subject to any appropriate conditions, approve recourse to a negotiated procedure without prior publication for public works, supply or service contracts as specified in the Regulations. Moreover, in terms of Article 150(2), in any request made, the contracting authority must duly substantiate the need for such a procedure. The Public Procurement Regulations then specify those circumstances where works, supplies and services can be procured through a negotiated procedure without prior publication, as was the case in the contract under review.

4.4.36 Specified in Article 154(1) was that, "The negotiated procedure without prior publication may be used for public service contracts in the following instances:

(a) where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission [the European Commission] where it so requests; or

(b) where the services can be supplied only by a particular economic operator for any of the following reasons:
   (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
   (ii) competition is absent for technical reasons; or
   (iii) the protection of exclusive rights, including intellectual property rights,

provided that the exceptions set out in subparagraphs (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement; or

(c) where in so far as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority; or

(d) for new services consisting in the repetition of similar services entrusted to the economic operator to which the same contracting authorities awarded an original contract, provided that such services are in conformity with a basic project for which the original contract was awarded pursuant to a procedure for which a call for competition has been published in accordance with these regulations; or

(e) for public service contracts, where the contract concerned follows a design contest organised in accordance with these regulations and is to be awarded, under the rules provided for in the design contest, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations; or

(f) for the purchase of services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations."

4.4.37 Having reviewed all the instances permitting resort to a negotiated procedure, the NAO is of the opinion that none applied to the circumstances of this case.

4.4.38 According to Article 154(2), certain provisions for the negotiated procedure without prior publication for public service contracts involving repetition of similar services were to apply. In this case, the service that was to be provided clearly did not qualify as a repetition of a similar service.

Resort to the negotiated procedure deemed in breach of legislative provisions

4.4.39 When, on 26 September 2017, the SVP first requested the approval of the Permanent Secretary MFCS to enter into a negotiated procedure for the management of the additional blocks, the SVP indicated that the request was being submitted in terms of Articles 154(1)(b)(ii) and 154(1)(c) of the Public Procurement Regulations, 2016.

4.4.40 The NAO sought to understand how the direct procurement of management services for the additional blocks was rationalised through the application of the cited Articles, particularly in terms of the Article 154(1)(b)(ii), which states that recourse to a negotiated procedure is permissible when "competition is absent for technical reasons". Nonetheless, this Office could not comprehend how this Article was applicable as no valid technical reasons existed that necessitated that the additional blocks were to be managed by the contractor erecting the actual structures. There were other service providers who could supply the service, yet the SVP did not tap the market thereby failing to ensure that the most favourable rates were obtained. Instead, the SVP opted to engage the JCL and MHC Consortium for the management of the additional blocks, solely ensuring that the rates charged were less than those being incurred in the running of the Residence.

4.4.41 With regard to Article 154(1)(c), this indicates urgency as a valid reason for resort to a negotiated procedure without prior publication for public service contracts, "where in so far as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority". Yet again, this Office does not endorse recourse to this Article as there existed no urgency to procure the management services. The period of construction of the additional blocks gave the SVP sufficient time to issue a public call for tenders. The only reason that compelled the SVP to award the management of the additional blocks directly to the Consortium was a self-imposed restriction when agreeing to convert the cash payment into additional blocks.

4.4.42 When queried on the decision to procure the management of the additional blocks directly without recourse to a competitive process, the CEO SVP stated that the Residence was guided by the DoC on which model to adopt. In a meeting with the NAO, the CEO SVP informed this Office that she had enquired on other possible models of procurement; however, she maintained that the advice provided by the DoC was that since the JCL and MHC Consortium was responsible for the construction of the residential blocks, then the Consortium could be entrusted with their management. The CEO SVP added that, at all stages of the procurement process, the Residence sought to be guided, advised and directed by the DoC and acted in accordance with the approvals provided by the GCC in terms of the Public Procurement Regulations. Therefore, the SVP had comfort that, throughout the process, its dealings and documentation were being scrutinised in accordance with the pertinent regulations.

4.4.43 A somewhat different version was provided by the DG DoC, who indicated that the SVP had forwarded a request to enter in a negotiated procedure with the JCL and MHC Consortium for the provision of management services. Moreover, the DoC was not involved in the drafting of the Management Service Agreement, but only approved the request by the SVP.

4.4.44 Elaborating in this regard, the DG DoC maintained that it was pertinent to be cognisant of the context of decisions taken at the time. When the tender for comprehensive services was issued, the extent and type of the additional investment that bidders were to propose was unknown. As part of its submission, the JCL and MHC Consortium offered to manage the new blocks, tendered as part of the additional investment, at a five per cent discount on rates then incurred by the SVP. The DG DoC maintained that this could also be considered as part of the additional investment. Elaborating in this respect, the DG DoC indicated that, in parallel and in no way linked to this tender, Government had been facing an ever-increasing demand for housing and care for an aging population. This demand meant that, for Government to cater for persons on waiting lists for residential care, it would have to source all beds available in private and faith-based institutions. The DG DoC also indicated that Government was facing a situation at the MDH wherein older persons were being cared for at the Hospital, rather than in homes, as no beds were available in residential care homes.

4.4.45 While acknowledging that this situation did not develop overnight, the DG DoC emphasised that the provision of residential care was an important service provided to persons at a time of vulnerability. Paradoxically, the DG DoC contended that Government was not responsible for this situation but that this was the result of demographic developments which, though foreseeable, required significant resources to address that were not always available.

4.4.46 The DG DoC contended that the investment proposed was sorely required since it increased the number of beds considerably. This situation was improved when the bidder was requested to inject all the investment at an initial stage of the project. Of note was that, in its offer, the JCL and MHC Consortium had not committed to a date when the investment was to be made. Hence, Government was faced with a situation where it could obtain the investment at the end of the contract term. The DG DoC argued that this would not have helped alleviate the extensive waiting list. Another issue that emerged with respect to this development was how the new blocks were to be managed. Accelerating the development of the blocks through negotiations with the Consortium created further challenges to Government to employ sufficient staff to offer the necessary care.

4.4.47 According to the DG DoC, given the urgency to cater for the increasing number of elderly persons, Government negotiated with the JCL and MHC Consortium the possibility to inject all the investment upfront, effectively doubling the amount of beds. The DG DoC contended that this led to a considerable improvement in the Consortium's financial offer at a significant cost to it; however, this change was subject to the condition that the Consortium would be assigned the management of the new blocks.

4.4.48 In this context, the DG DoC noted that since the new blocks were now to be delivered within three years from entry into the agreement, it was imperative to ensure that these new blocks could operate immediately. Consequently, Government was left with no alternative but to accept the offer made by the JCL and MHC Consortium. This decision was based on technical considerations and the fact that it addressed the urgent issue of manning the new blocks. The DG DoC claimed that it was evident that there would not have been the time nor the possibility to employ sufficient staff, and that a call for service too would not have addressed the matter in time, given the risk of appeals delaying the tendering procedure. Elaborating in this respect, the DG DoC noted that this did not take into consideration the possibility of the disqualification of bidders due to administrative and technical non-compliance, and the possibility that the tendering process was unsuccessful. When considering a situation where Government had an offer as part of a tendering process, it was evident that the benefits of opting for that proposed by the Consortium outweighed the risks of issuing a fresh call.

4.4.49 Moreover, the DoC indicated that throughout the vetting process of a tender, the Department relies on the good faith of the contracting authority. Furthermore, the DoC emphasised that the tender belongs to the contracting authority and not the Department and therefore developments registered in this procurement process must be seen from this perspective. The DG DoC argued that the role of the Department is that of a regulator, thereby ensuring that contracting authorities abide by the Public Procurement Regulations.

4.4.50 Finally, the DG DoC asserted that Government would have obtained four blocks valued at approximately €28,000,000 without incurring any capital expenditure. This is to be considered in terms of the recurrent cost incurred by Government when sourcing beds for the residential care of elderly persons from the private sector and church institutions, which arrangement does not result in the acquisition of the capital assets utilised at the end of such agreements. Furthermore, had Government sought to source beds in this manner, it would have increased its dependency on the private sector at the rates offered.

4.4.51 The NAO sought to understand whether the actions of the DoC in authorising resort to a negotiated procedure were the result of external pressures on the Department. The DG DoC stated that the Department regularly experienced pressure in its work from various sources, including economic operators, contracting authorities, permanent secretaries and ministers, with respect to advice and approvals. The DG DoC maintained that in this case the pressure was mainly coming from the SVP, although he could not recall whether any pressure emanated from the ministers or parliamentary secretaries responsible for the SVP or other political sources. In turn, the CEO SVP negated exerting any form of pressure on the DoC.

4.4.52 Irrespective of that stated by the SVP and the DoC, the NAO is of the opinion that the SVP could not place all the responsibility on the DoC and neglect the fact that it was also accountable for this procurement. On the other hand, the DoC could not shirk its responsibility, for in authorising the resort to a negotiated procedure, it sanctioned the breach of the Public Procurement Regulations that it is duty bound to uphold. It is in this context that this Office's censure of the SVP and the DoC persists.

4.4.53 Both requests for approval for the direct procurement of management services made by the SVP to the DoC were directed through the Permanent Secretary MFCS. On 28 September 2017 and 8 November 2017, the Permanent Secretary MFCS sanctioned the initial and the final request, respectively. This Office is of the opinion that a ministry should, in addition to its many other functions, provide an element of oversight to the departments and entities that fall within its portfolio. Through its monitoring function, a ministry should ensure that requests for procurement that involve significant public funds are justified and that departments appropriately spend the money allocated by parliament. As the accounting officer, a permanent secretary is, inter alia, responsible for controlling agreed budgets and for ensuring spending regularity and legal conformity. In this case, this Office maintains that the Permanent Secretary MFCS did not provide adequate direction, with the input provided solely serving to legitimise a procurement process that was flawed and in breach of legislative provisions.

4.4.54 The GCC and the DG DoC also gave their initial approval for the negotiated agreement for management services with the JCL and MHC Consortium on 3 October 2017 in terms of Article 154(1)(b)(ii). In this case, approval was granted on the basis that the services could be supplied only by a particular economic operator as competition was absent for technical reasons. Final approval by the GCC was granted on 9 November 2017, "in terms of urgency of Regulations 154(b)(ii) and 154(c) [sic] of the Public Procurement Regulations …". These Articles refer to instances where competition is absent for technical reasons and for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, respectively.

4.4.55 The NAO reiterates its rebuttal to any of these circumstances as a valid and justifiable reason for the negotiated contract with the JCL and MHC Consortium. This Office takes a more serious view in the case of the DoC since it "is responsible for the administration of the procurement procedures as laid down in the Public Procurement Regulations … [and] shall deliver an efficient and effective service to both economic operators and contracting authorities alike. Besides, the Department of Contracts shall ensure that there is no discrimination between economic operators and that all economic operators are treated equally and transparently." This Office directs criticism to the DoC for, through its endorsement of this negotiated procedure, the DoC was in fact discriminating against other economic operators that could have readily bid for and provided the services that Government sought to procure. This concern assumes relevance when one considers that it is the DoC's duty and obligation at law to ensure that economic operators are treated equally and transparently.

4.4.56 The NAO maintains that resort to a negotiated procedure for the procurement of management services for the additional blocks at the SVP was unjustified. The SVP could have retained the two blocks and cash payments as tendered by the JCL and MHC Consortium in its offer for the supply of comprehensive services to the SVP. Moreover, there was no real urgency or any technical reasons that necessitated that the contract for management services be awarded to the Consortium. This Office remains sceptical of the alleged benefits that Government gained through this arrangement and maintains that the SVP, the MFCS and the DoC acted in breach of legislative provisions when procuring the management services through a negotiated procedure with a particular supplier, excluding other economic operators who could provide the services in question.

4.4.57 While understanding the situation that Government was facing in terms of the aging population and the immediate need for beds to cater for the elderly, the NAO fails to understand how Government could justify not issuing an open call for the management of the additional blocks. This Office acknowledges that Government had negotiated a six per cent discount on the current operational cost per bed; however, without knowledge of what the market could offer, an informed decision could not be made.

4.5 Key decisions taken and negotiations carried out were not documented, leading to a lack of transparency in the procurement process

4.5.1 Good practice would dictate that purchasing processes ensure that the works, services and goods acquired are the result of transparent, objective and cost-effective decision-making, and that procurement is conducted in the public interest and is open to public scrutiny. These objectives could be partly ensured through the retention of sufficient documentation that shows how key decisions were arrived at and the basis for such decisions. Notwithstanding this, the NAO noted several lacunae in the documentation retained in the procurement of the management services assigned by the SVP to the JCL and MHC Consortium.

4.5.2 A critical lack of documentation existed regarding the decision to contract the management services through a negotiated procedure. This Office was informed that a meeting was held on 23 May 2017, for which the SVP, the MFSS and the DoC were present, during which the direct procurement of these services through a negotiated procedure was agreed. The NAO requested that the parties present a copy of the minutes of the meeting; however, for some reason or another, all indicated that no minutes were retained. Consequently, the NAO could not gain an insight on the discussions held, the role of each party during the discussions and the justifications put forward that seemingly warranted the direct procurement. The PSDAA (pre-2017) informed the NAO that she held regular meetings with the SVP; however, that discussed was often limited to high-level issues wherein an update was provided. Regardless, no documentation was made available to the NAO in this respect.

4.5.3 Another gap in documentation was in respect of the negotiations held between the SVP and the JCL and MHC Consortium in the interim between the award of the tender for the supply of comprehensive services to the SVP and the contracts entered into. During this period, several changes were made between that proposed by the Consortium in its tender and that ultimately contracted for. Primary in this respect was the change in the nature of the additional investment that was to be made by the Consortium, that transmuted from a cash payment to the construction of two blocks, the increase from five per cent to six per cent in the discount on the rate per bed proposed by the Consortium, and the extension to the management contract term from ten to fifteen years. The lack of documentation impeded any insight on how these changes originated and how these evolved until the final provisions were agreed on. This lack of information detracts from the transparency that is to be ensured in procurement where public monies are involved.

4.5.4 Similar gaps were noted in discussions held between the DoC and the JCL and MHC Consortium. Although traces of these interactions were identified by the NAO through queries submitted to the DoC and the SVP, no records were provided since minutes of meetings held were not retained. In a meeting with the NAO, the Consortium indicated that negotiations were held between April and November 2017, with meetings held at the DoC for which SVP officials were also present. The Consortium highlighted that the discount offered, originally set at five per cent and eventually revised to six per cent, was negotiated with the DG DoC.

4.5.5 According to the CEO SVP, she represented the Residence in negotiations undertaken together with another SVP official and the Residence's legal advisor. The DoC was also involved, duly represented by one of the Department's officials, a lawyer by profession. The CEO SVP confirmed that no minutes were taken; however, the conclusions reached were eventually summarised in the SVP's request for approval and transposed in the final contracts signed.

4.5.6 The NAO takes a serious view of this lack of documentation in respect of services procured directly with no justifiable restrictions to competition that involved an estimated €273,649,698 in public funds. The fact that key decisions taken were not appropriately documented detracted from the transparency that should characterise public procurement. This Office's concerns regarding the evident failures in transparency assume further relevance when one considers the discriminatory procurement process pursued by the SVP and endorsed by the MFSS and the DoC, which decreased the chances of Government obtaining good value through restrictions to open competition.

4.6 A services agreement for the management of the additional blocks at the SVP was entered between the SVP and the JCL and MHC Consortium; this involved over €273,000,000 in public funds, bound Government for a period of 15 years and was awarded following a negotiated procedure

4.6.1 A Management Service Agreement was signed between the SVP and the JCL and MHC Consortium on 14 November 2017, the same day on which the contract relating to the tender for the supply of comprehensive services was signed by the DoC on behalf of the MFSS and the Consortium. This agreement governed the management and catering services that were to be provided by the Consortium to the residents and staff of the additional four blocks, as previously defined in the MoU.

Preamble to the Agreement

4.6.2 In the preamble to the Agreement it was noted that, pursuant to the call for tenders published on 10 November 2015 for a PPP for the provision of comprehensive services to the SVP, the parties entered into the Contract Agreement, the MoU and the first Addendum to the Contract Agreement, collectively referred to as the Transaction Agreements. As agreed in the Transaction Agreements, the JCL and MHC Consortium was to, inter alia, carry out on the premises of the SVP an investment of not less than €29,280,000, consisting of the construction of four blocks at no cost to the SVP, for a total of 504 beds.

Term

4.6.3 According to the Management Service Agreement, as approved by the GCC, the JCL and MHC Consortium was to provide the indicated services for a consecutive period of 15 years, to be reckoned from the date of issue of the executable building permits as defined in the MoU. The Agreement established that the Consortium was to give the SVP a five-month prior notification of the intended date of commencement of services, and the SVP was obligated to commence payments to the Consortium, irrespective of whether the beds were assigned to residents or otherwise. The parties agreed that any extension of the contractual term was to be at the sole discretion of the SVP. Unless notification in this regard was provided prior to the lapse of the 15-year term, the Agreement would be terminated without the need for any formal notification.

Residents

4.6.4 The Management Service Agreement established that the new blocks were to cater solely for highly dependent patients and dementia residents. Schedule C to the Agreement defined highly dependent patients as "patients at a Barthel score of between 0 and 4 and persons with nursing complex long-term health needs and rehabilitation needs", and dementia residents as "cognitively impaired persons with mini-mental state examination of between 0 and 4, especially with severe behaviour and psychological symptoms of dementia". According to the Agreement, no more than 28 per cent of the beds available in the additional blocks were to cater for dementia residents unless this was altered following consultations between the JCL and MHC Consortium and the SVP.

Contractor's obligations

4.6.5 A list of obligations that the JCL and MHC Consortium was to meet as from the handover date was stipulated in the Management Service Agreement and entailed all the services, including catering, required for the management and operation of the additional blocks. According to the Agreement, the blocks were to be managed and serviced by appropriately qualified and trained workers, in accordance with the standards and operating policies and procedures of the SVP, all applicable laws and good industry practices. A list of the standard operating procedures in place at the SVP, and which the Consortium was to adopt, was included as a schedule to the Agreement. Nonetheless, the parties acknowledged that the schedule was not exhaustive and the SVP had the right to amend or add policies at its discretion and as it deemed necessary and that, once notified, the Consortium was obligated to operate the blocks in accordance therewith. The list included policies and procedures covering various operational aspects, such as:

a. the admission process of residents to the SVP;

b. ward checklists to be used by supervisors in respect of cleaning services;

c. procedures in relation to dirty laundry;

d. overtime and time-off in lieu application procedures;

e. best practices in the management of high-risk patients; and

f. actions to be taken in cases of alleged abuse of residents.

Services to be provided by the JCL and MHC Consortium

4.6.6 Cited in Schedule C to the Management Service Agreement were the services that were to be provided by the JCL and MHC Consortium in the management of the additional blocks at the SVP. These included:

a. car parking facilities (if made available to the Consortium) to staff, visitors, emergency services and residents;

b. catering services for residents and staff within the blocks;

c. daily in-house cleaning services, including the provision of the required cleaning materials;

d. estate management services, including planned and corrective maintenance, fire systems and property management;

e. general service, including the coordination of non-medical services such as leadership management, performance monitoring, staff development and policy strategy;

f. maintenance of the grounds and gardens, including horticulture, maintenance and site access;

g. operation of a 24/7 helpdesk;

h. daily laundry and linen service;

i. monthly pest control service;

j. in-house portering service;

k. daily in-house reception service, including the upkeep of a register of residents and a register of visitors;

l. security services;

m. waste management;

n. ward services, including ward administration, and the provision of nurses, carers, cleaners and activity coordinators;

o. storage of consumables;

p. transportation-related services;

q. care and safe-keeping of residents' medical records;

r. management of residents' money; and

s. overall maintenance of the blocks and assets.

4.6.7 Notwithstanding the above, certain services, referred to in the Management Service Agreement as "excluded services'', remained under the responsibility of the SVP. The excluded services included:

a. religious services;

b. mortuary services;

c. medical services;

d. services related to the day clinic;

e. services related to the X-ray department;

f. services related to the provision of medicinals and the Medical Material Management Unit;

g. services related to the allied health professionals, such as speech therapy, podiatry and physiotherapy;

h. services related to nursing specialities; and

i. services related to admission administration.

Staff skills mix

4.6.8 The Management Service Agreement set out the staff skills mix that the JCL and MHC Consortium was to adhere to in the provision of the agreed services. According to the SVP, the skills mix indicated, based on 2016 ratios, was sufficient, adequate and proper to manage and service the blocks in full occupancy by highly dependent residents and dementia residents. Nonetheless, the SVP could revise the agreed staff skills mix, which the Consortium was to immediately implement. Any changes made were to be reflected in the consideration payable by the SVP.

4.6.9 The staff skills, as indicated in Schedule D to the Management Service Agreement, is reproduced in Figure 30.

Figure 30: Staff skills mix

	Morning	Evening	Night
General Ward	**1:5**	**1:7**	**4**
(36 residents and over)	4 nurses, the rest carers	4 nurses, the rest carers	2 nurses, 2 carers
General Ward	**1:5**	**1:7**	**3**
(35 residents and under)	4 nurses, the rest carers	2 nurses, the rest carers	1 nurse, 2 carers
Closed Dementia Ward	**1:4**	**1:4**	**1:8**
(28 residents)	2 nurses, the rest carers	2 nurses, the rest carers	1 nurse, the rest carers

4.6.10 In addition, the JCL and MHC Consortium was to provide a charge nurse, a deputy charge nurse, a ward clerk and at least three cleaners for every ward within these blocks, deployed on different shifts.

Payment terms

4.6.11 The consideration payable by the SVP to the JCL and MHC Consortium for the services to be provided was formalised in the Management Service Agreement. The agreed daily rates due to the Consortium, excluding VAT, were determined as €105.50 for each occupied bed and €98.29 for each unoccupied bed. Nonetheless, these rates were based on pricing applied by the SVP for 2016; therefore, these rates were to be revised at the handover date and were to be agreed to by both parties.

4.6.12 The Management Service Agreement further provided for a one-time discount of these rates by six per cent. Therefore, the base rates as determined for 2016, were discounted to €99.17, excluding VAT, for each occupied bed and to €92.39, excluding VAT, for each unoccupied bed. The parties agreed that these discounted rates were to be increased by:

a. increases in wages and salaries deriving from collective agreements or other Government-induced variances, and were to factor in the impact of increases in the national insurance contribution, maternity benefit and other statutory benefits; and

b. increases in all operating costs on the basis of the Retail Price Index as issued by the National Statistics Office.

General provisions

4.6.13 Several general clauses were included in the Management Service Agreement. These included provisions regarding contactor default, compliance with local regulations, safety regulations, taxes and duties, force majeure, applicable law and jurisdiction, and notices and written communication.

4.6.14 Although no indicative total value was specified in the Management Service Agreement with regard to the outlay that the SVP was to incur for the outsourcing of the management services for the additional four blocks at the SVP, according to the notice published in the Government Gazette on 20 July 2018, this amounted to €273,649,698, excluding VAT, for the contract term. This was based on a daily rate of €99.17 for 504 beds over the 15-year contract term.

4.6.15 The publication of this notice on the Government Gazette by the DOI caused an element of controversy, in that the Parliamentary Secretariat for Persons with Disability and Active Ageing contended that this agreement was erroneously published as a direct contract. In submissions made to the NAO, the DOI confirmed that the Department adhered to the standard operating procedures regarding the publication of official notices and adverts on the Government Gazette.

4.6.16 The entry into the Management Service Agreement brought to a close the procurement process for the acquisition by Government from the JCL and MHC Consortium of the services required to manage the blocks that the Consortium had offered as an additional investment at no cost to public funds in its tender for the supply of comprehensive services to the SVP. Nonetheless, the signing of the Agreement remains of grave concern to the NAO, particularly when certain aspects of how this negotiated contract was awarded are considered.

4.7 Post contract developments

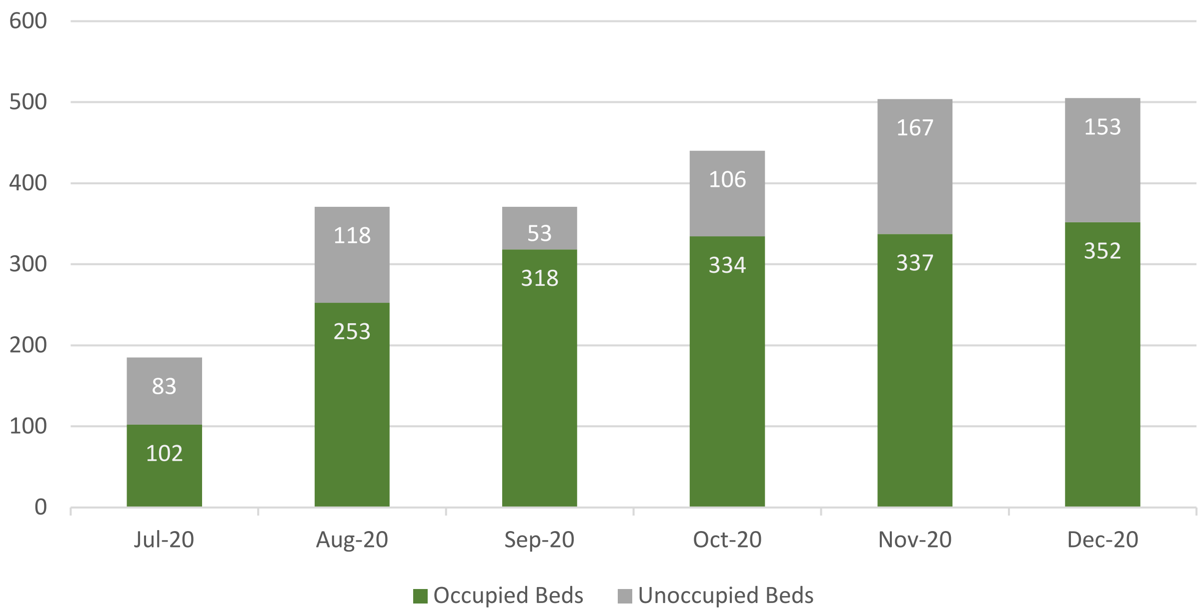
Completion of the blocks and payments made

4.7.1 The NAO reviewed the certificates of completion submitted with respect to the four blocks and the surrounding areas constructed by the JCL and MHC Consortium. The four blocks were certified as complete on 15 June 2020, 3 July 2020, 4 August 2020 and 29 September 2020. The mortuary and car park were certified as complete on 15 August 2020. According to the SVP Annual Report for 2018, construction of the blocks commenced in June 2018, which implies that completion thereof was realised within the stipulated timeframe. Cited in the SVP Annual Report for 2020 was that a foundation stone was laid by the PSDAA (post-2017) in January 2020.

4.7.2 Following completion of the required works, the blocks were shortly thereafter rendered operational. Based on invoices issued by the JCL and MHC Consortium, the NAO established that operations within the blocks commenced on 3 July 2020, 13 July 2020, 27 July 2020 and 16 October 2020. Although this Office noted that operations within one of the blocks initiated prior to its final certification, the NAO ascertained that actual certification for all the sub-components had been registered prior to operations.

4.7.3 The NAO sourced information regarding the payments effected by the SVP to the JCL and MHC Consortium from the start of operations of the additional blocks to end 2020. Payments were to be effected based on whether beds were occupied or unoccupied, charged at a daily rate excluding VAT of €99.17 and €92.39, respectively. According to information provided by the SVP, over the period July to December 2020, the rate of occupancy varied from 55 per cent in July 2020 to 86 per cent in September 2020 (Figure 31 refers). The incremental increase in capacity noted in July 2020 and October 2020 coincides with the staggered completion of particular blocks. While the general trend in the six-month period reviewed was an increase in the average monthly occupied bed rate, the limited span analysed, constrained by the short period of operation of the new blocks, rendered it too early for the NAO to comment any further.

Figure 31: Additional blocks: Average monthly occupied and unoccupied beds, July - December 2020



4.7.4 Over the period July to December 2020, the JCL and MHC Consortium invoiced the SVP a total of €7,656,660 for management services provided at the four residential blocks constructed by the Consortium (Figure 32 refers).

Figure 32: Amounts invoiced by the JCL and MHC Consortium for management services, July - December 2020

Month	Occupied bed nights (n)	Occupied bed rate (€)	Unoccupied bed nights (n)	Unoccupied bed rate (€)	Amount invoiced (€) (excluding VAT)
July 2020	3,168	99.17	2,563	92.39	550,966
August 2020	7,829	99.17	3,672	92.39	1,115,658
September 2020	9,549	99.17	1,581	92.39	1,093,042
October 2020	10,367	99.17	3,278	92.39	1,330,950
November 2020	10,118	118.44	5,002	110.35	1,750,347
December 2020	10,912	118.44	4,742	110.35	1,815,697
Total	**51,943**	-	**20,838**	-	**7,656,660**

4.7.5 The NAO noted that the rates invoiced by the JCL and MHC Consortium for the management services provided were revised in November 2020. Regulating this revision in rate was Article 3.2 of the Management Service Agreement, which stipulated that, "… since the Rates are based on pricing applied by the Contracting Authority for the calendar year 2016, these shall be revised to take into account the rates of the Contracting Authority as at the Handover Date. For this purpose the Parties shall, three (3) months prior to the Handover Date, establish, by means of an audit (the Audit) to be carried out by a certified reputable independent audit firm to be appointed by agreement between the Parties at the cost of the Contractor to determine any increases of whatever nature in the Rates and revise the rate to be applicable as at the Handover Date (the Handover Date Rates). The Parties shall jointly sign a document establishing the Handover Date Rate which shall as from the date of its signature be deemed to be an integral part of this Agreement."

4.7.6 In this regard, the JCL and MHC Consortium engaged an audit firm to conduct the audit cited in Article 3.2 of the Management Service Agreement. The report, dated 30 October 2020, was referred to the SVP. In essence, the daily rates for occupied and unoccupied beds increased from €99.17 and €92.39, respectively, to €118.44 and €110.35, respectively, which revised rates were to come into effect as from handover in November 2020. This revision accounted for an increase in bed rates of approximately 20 per cent.

4.7.7 Of concern to the NAO was that this mechanism of revision in rates accentuated cost inefficiencies already in place and brought to the fore new pitfalls of waste of public funds. Regarding the accentuation of cost inefficiencies, the major concern relates to employee costs, which have been the subject of several audits undertaken by this Office that invariably highlighted the less than optimal management of human resources at the SVP (the 2019 NAO Annual Report is a case in point). Between 2016 and 2020, employee costs increased by 13.4 per cent. While the NAO deems this increase as understandable in terms of revisions arising from sectoral agreements, it is the inefficiencies inherent in this cost element, that is staff costs incurred by the SVP, that draw this Office's concerns. It is in this context that cost inefficiencies incurred by the SVP result in higher costs charged by the JCL and MHC

Consortium. An additional avenue of waste of public resources emerges in respect of the catering services provided at the SVP, since this also formed part of the basis for the revision of the rates to be charged by the Consortium. Between 2016 and 2020, the percentage increase in catering costs, which was to subsequently effect the rate charged, was of 65.5 per cent. This Office's main concern regarding this increase in catering costs was that the reference points utilised to establish the revised rate was the direct contract awarded to the MHC in 2014, its subsequent extensions in 2016 and the contract for comprehensive services awarded to the JCL and MHC Consortium and in effect in 2020. It is with grave concern that the NAO notes that the rate of €12.72 (excluding VAT) cited for catering in the latter contract had been inflated to recover the cost of the additional investment.

4.7.8 It must be noted that Article 3.4 of the Management Service Agreement stipulated that a revision to these rates was due at the beginning of each calendar year, whereby the established rates were to be adjusted to reflect increases deriving from collective agreements, or any other Government induced increases of whatever nature, including but not limited to COLA, national insurance contributions, maternity benefit, or other statutory contributions or benefits, and all other operating costs, excluding the costs cited earlier in this paragraph, which were to be increased on the basis of the RPI of the previous year. As at the time of reporting, the revision to the rates for 2021 had not been effected; however, the SVP indicated that the rates were being revised.

4.7.9 The SVP independently commissioned a review of the agreed bed rates undertaken by another audit firm. The NAO noted that the audit firm based its workings on a 2019 baseline, which method resulted in rates that exceeded those arrived at by the firm engaged by the JCL and MHC Consortium. In this context, the revised rates applied were those determined by the Consortium.

Judicial action by the parties

4.7.10 Although the implementation of the contracts did not form part of the scope of this audit, the NAO noted that, at the time of reporting, two court cases relating to this project were ongoing. One was between the JCL and MHC Consortium and one of its sub-contractors, TACA Insaat Ve Ticaret AS. This Office understood that this dispute ultimately bore no impact on the SVP's interests as the project was completed within the established timeframe.

4.7.11 The other case is between the SVP and the JCL and MHC Consortium. In its action, the SVP stated that part of the services that were to be provided by the Consortium in accordance with the Management Service Agreement consisted of the provision of a constant watch service to residents who required it. The SVP stated that prior to the commencement of the Agreement, the Consortium had informed it that this service would not be rendered unless further compensation was provided. In its action, the SVP requested the Court to declare that this should have been provided and to order the Consortium to provide the service.

Furthermore, the Residence requested compensation for the constant watch service that it had provided at its own expense.

4.7.12 In its response, the JCL and MHC Consortium contested the fact that the constant watch was included in the Management Service Agreement on the basis that the nurse/carer – patient ratio agreed to did not provide for such a service. Furthermore, the Consortium stated that, despite this, the service was provided to several residents without additional compensation being requested. In addition, the Consortium alleged that doctors were at times directed by the SVP to, whenever possible, not certify residents as requiring constant watch, or alternatively to certify that residents did not require this service if provided with specialised equipment, which equipment was not very common and not readily available at the Residence.

4.7.13 This Office also noted a counter-request submitted by the JCL and MHC Consortium in terms of a tender variation consisting of an additional mechanical ventilation system costing €641,926, half of which was to be paid by the SVP. The Consortium requested the Court to order the Residence to pay €320,963, declare that the constant watch service is to be provided solely at an additional cost, declare that the staff skill mix as specified in the Management Service Agreement is inadequate and determine a sufficient skills mix, among others.

4.7.14 The SVP responded to this counter-request on 27 August 2020, arguing that with respect to the ventilation system, the project was to be fully completed and certified prior to effecting any payments. With respect to the constant watch service, the SVP reiterated that this was factored in the rate agreed to and therefore opposed any form of additional payment requested. Moreover, the SVP opposed all allegations relating to the certification of patients. Furthermore, the SVP stated that with respect to the agreed staff skills mix, the Consortium was not operating the blocks with the full complement as indicated in the Management Service Agreement.

4.7.15 In the documentation submitted by the SVP to Court, the NAO noted minutes of a meeting held on 6 August 2020, wherein officials from the Residence and from the JCL and MHC Consortium were present. In these minutes, the SVP stated that the staff skills ratio was not being maintained and reports to this end were being received from medical consultants. Furthermore, the SVP was also receiving reports regarding the lack of medical equipment in the blocks that the Consortium was managing, particularly, basic nursing equipment such as lifters, harnesses, slings and bed bumpers. The SVP also indicated that there were repeated reports from healthcare professionals describing the teams in the wards as lacking in knowledge, skills and experience in long-term care. Documentation noted in the case file rendered evident that staff shortages were still prevailing until 1 September 2020. As at November 2020, the point when the NAO accessed the relevant Court file, the matter had not yet been resolved.

Classification of the project on Government's balance sheet

4.7.16 In view of the SVP's failure to notify MFIN of the financial commitment that Government was to enter into, the NAO sought the views of the Permanent Secretary MFIN regarding the effect that entry into the agreement had on Government's budgeting function. Furthermore, reference was made to that stated by the Permanent Secretary MFCS, who indicated that MFIN was approached in the run up to the 2020 Budget, wherein reference was made to the financial commitments necessary to honour the obligations entered into by Government with respect to this project. It is to be noted that, at the time, the residential blocks that were to serve as the base for delivery of services through the negotiated contract were nearing completion and envisaged to be operational in 2020. In this context, the Permanent Secretary MFIN was requested to elaborate on how this development impacted public finances.

4.7.17 The Permanent Secretary MFIN informed the NAO that the balance between the risks and benefits between the parties to such an agreement would normally determine the statistical classification of this for Government finance purposes. In this case, the assessment of the balance of risks and benefits resulted in all project-related expenditure being re-routed to the Government balance sheet, with an impact on the government deficit and debt figures.

4.7.18 Further information on the matter was provided by the National Statistics Office. The main considerations for classifying the asset secured by this project on the Government's balance sheet were that:

a. there was no proportionality between the occupied bed rate (€105.50) and the unoccupied bed rate (€98.29);

b. in an availability-based payment mechanism, the operational payments should be proportional to the degree which the asset is available. This was not the case. In addition, there was a lack of adequate definition and measure of availability in the contract, that is, establishing the conditions in which the asset was genuinely capable of being used;

c. several important elements were missing or not described in detail:
   i. there was no information about the ownership of the site and allocation and conditions of the assets on expiry of the contract;
   ii. risks related to the design (construction delays, increased costs and operational failures) and the construction completion were not clearly transferred under the contract provided;
   iii. there was insufficient information about the minimum standards and sanction system in case of non-performance; and
   iv. there was no information on financing and government influence;

d. although force majeure events were defined, the inclusion of 'any other similar unforeseeable events' rendered this consideration not finite;

e. there was no explicit method to compile the compensation for the termination due to a Government default; and

f. the term of the contract of 15 years was low compared to the economic life of the asset, estimated at 50 years for the blocks. The Government would be benefiting for the remaining 35 years of the estimated economic life of the asset, thereby reaping more rewards from the asset than the private partner.

4.7.19 The National Statistics Office indicated that the implications on the public finances was that, since the project was classified on the Government balance sheet, this meant that the capital expenditure related to the project was to be recorded as a gross fixed capital formation for Government, with an impact on the fiscal balance, and a corresponding increase in Government's debt. As at the third quarter of 2020, the cumulative impact of the SVP extension was €35,600,000.

4.7.20 Although clearance by MFIN was not sought by the SVP prior to entry into the Management Service Agreement, given that the relevant agreement was entered into, MFIN was left with no alternative but to allocate the required budget to honour the commitments made. To this end, a provision was made in the budgetary estimates as from 2020.

Chapter 5 | Conclusion

5.1 A timeline of events

5.1.1 The Management Service Agreement entered into by the SVP with the JCL and MHC Consortium in November 2017, valued at approximately €274,000,000 over the 15-year contract term, was awarded following a negotiated procedure endorsed by the DoC and the MFCS. However, the negotiated procedure was in turn intricately connected to the call for tenders that the DoC issued on behalf of the SVP in November 2015. Although this tender was intended to address the dire state of the SVP's kitchen and source catering services, it served as a vehicle for the introduction of the concept of an 'additional investment' at no cost to the contracting authority, an undefined gift that was to be made by all bidders participating in the tender process as part of their submission. This additional investment would create the context within which the SVP would accept the Consortium's offer to manage the residential blocks that it was to build. The key events relating to and leading to these developments are highlighted in the following timeline (Figure 33 refers).

Figure 33: Timeline of events

Date	Details
February 2014	An unsigned risk assessment report, prepared by a consultancy firm, determined that most of the SVP kitchen areas inspected were a high-risk environment. This assessment was commissioned by the CEO SVP following reports received by the Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing on the dismal state of the Residence's kitchen.
12 May 2014	A Health Directorate inspection report revealed a considerable number of deficiencies in the SVP kitchen, including unhygienic conditions, lack of maintenance, neglect, improper storage conditions and lack of equipment. These deficiencies resulted in an overall risk factor of 61.3 per cent and the kitchen was consequently rated as Grade F (Very Bad).
30 May 2014	In a report commissioned by the SVP regarding the state of the Residence's kitchen, the ITS highlighted the dire state of the existing facilities. The ITS recommended that the SVP consider three options: a. temporarily shut down the kitchen and contract out the services and in the meantime build a new kitchen; or b. carry out the necessary modernisation of the kitchen piecemeal; or c. shut down the kitchen permanently and resort to contracting out the catering services.

4 June 2014	The first documented reference to the placing of a direct contract was made in correspondence submitted to the DG DoC by the SVP, wherein it was indicated that, "a decision has been taken to outsource the catering service as per standing contract with FMS" and that approval was being requested to include the SVP with the FMS contract. The contract being referred to was that for catering provided to the MDH.
17 June 2014	A memorandum was presented to Cabinet by the PSDAA (pre-2017), through the Minister MFSS, highlighting the dire state of the SVP kitchen and suggesting corrective action. Proposed in the memorandum was either the temporary closure of the kitchen and the outsourcing of catering services, or the carrying out of the necessary modernisation of the kitchen in a piecemeal manner.
24 June 2014	Cabinet decided that the kitchen should be closed immediately and an extension should be made to the MDH contract for a transition period. Moreover, Cabinet proposed three options as a way forward: a. catering services are farmed out; or b. Government refurbishes the kitchen and a private contractor is engaged to manage it; or c. engage a private contractor to undertake the kitchen upgrade and manage the catering service.
27 June 2014	A meeting was held at the SVP with James Caterers Ltd (a shareholder of MHC), in view of the extension to the MDH contract, wherein catering services that were to be provided to the Residence were discussed. Attention was drawn to this excerpt from the minutes, "If James Caterers takes the tender to refurbish the SVPR kitchen, Mr Barbara stated that work will be completed in three months' time."
4 July 2014	The SVP sought the approval of the DG DoC to extend the contract for catering services that the FMS had with the MHC, in respect of MDH, and thereby include the Residence. Cited in later correspondence was that the value of the direct contract was €2,702,700.
6 July 2014	The DG DoC gave provisional approval for this procurement under the Negotiated Procedure (Direct Order) regime, due to urgency.
8 July 2014	A direct contract was entered into between the SVP and the MHC, for the provision of catering services to the Residence, including the Meals on Wheels and other ancillary services. The commencement date of this contract was 21 July 2014 and was for a period of six months, until 20 January 2015. The prices and payment terms were defined in an appendix to the contract and the number of meals was indicated as "over 1,840". Stipulated in the contract was that it could be extended at the sole discretion of the SVP for further terms.
21 July 2014	Commencement date of the direct contract entered into between the SVP and the MHC.
21 August 2014	During a meeting of the SVP Consultative Management Board wherein the CEO SVP indicated that the Residence's kitchen was one of the projects planned for the coming three years. According to the minutes of the meeting, the Chair SVP Consultative Management Board stated the following, "…we should discuss with the food contractor the possibility of him refurbishing the kitchen and we could then offer him a contract for ten years."

27 January 2015	The first draft of the call for tenders for the provision of comprehensive services, including the demolition and construction of the kitchen, was submitted by the SVP to the DoC.
23 March 2015	Correspondence wherein the CEO SVP sought the approval of the Permanent Secretary MFSS to set up a meeting with the DG DoC to discuss the criteria that were to be adopted for the evaluation of offers.
10 April 2015	The DoC provided the SVP with copies of the MEAT evaluation grid that was to serve as guidance.
14 May 2015	A meeting was held between the SVP and the DoC, wherein the tender was discussed. The main concern raised during this meeting was that, as a result of the unspecified nature of the additional investment, variant bids would be submitted by bidders. It was ultimately agreed that the call for tenders would not state what the SVP was requesting and that this was to be determined by the bidders based on what they were willing to offer.
9 September 2015	Changes to the evaluation criteria were made wherein the financial element of the offers received was now to be allocated 40 per cent of the marks, which in turn was to be divided into 30 per cent for the offer with the lowest price and 70 per cent to that with the highest value in terms of additional investment. The technical element was allocated 60 per cent of the marks.
19 October 2015	First documented inclusion of the additional investment element in the call for tenders. Among other amendments, the document now included the provision of an additional service or item over and above those mandatory, that is, the catering and the kitchen. The additional investment that bidders were to propose was to be beneficial to the SVP and was to be at no additional cost to the Residence. Although no clear requirements were included as to what this investment was to comprise, the SVP outlined that the Residence provided care for a large number of highly dependent persons with complex medical and nursing needs, and that it was the only long-term care facility to provide such services in Malta.
21 October 2015	A Commitment Form indicating the approval by the Budget Affairs Division within MFIN for the tender estimated at €67,878,660, inclusive of VAT, was traced. This estimate was based on 1,239 residents and entitled staff, with daily meals costing €12.72 each, excluding VAT, for a period of ten years.
30 October 2015	A later draft of the call for tenders indicated that while the weighting of the technical and financial elements remained unchanged, the components of the financial element were revised to a weighting of 40 per cent for the price per meal and 60 per cent for the provision of the additional investment.
10 November 2015	The call for tenders for a PPP for the provision of comprehensive services to the SVP was issued by the DoC on behalf of the SVP. The aim of the tender, as indicated in the call, was twofold, that is, the provision of catering services to the SVP, and the demolishing of the existing kitchen and the building and equipping of a fully furnished new kitchen at the Residence. Bidders were also to provide an additional investment at no cost to the SVP. No information on the nature of the additional investment was provided in the call except that this was to be compatible with the services provided by the Residence.

13 November 2015	A contract notice was issued in the OJEU regarding this tender under the title 'Malta-Floriana: Catering services.' According to the contract notice, the tender was issued as an open procedure and was classified as a service contract.
19 November 2015	A clarification meeting for bidders, also comprising a site visit, was held.
16 December 2015	Deadline for the submission of requests for clarification by interested parties.
30 December 2015	Replies to clarifications were to be published by this date.
7 January 2016	Deadline for the submission of bids in respect of the call for tenders.
7 January 2016	Tender opening session. By the closing date, bids had been submitted by the JCL and MHC Consortium and the CCE Joint Venture.
19 January 2016	The CEO SVP sought, and obtained, the approval of the Permanent Secretary MFSS for the appointment of the members of the Evaluation Committee.
25 January 2016	The approval of the DoC was granted in view of the members to be appointed to the Evaluation Committee.
29 January 2016	The members of the Evaluation Committee and consultants identified to assist the Committee were appointed, except for one member who rejected the appointment due to personal reasons. The DoC's approval in respect of the new member was obtained on 1 February 2016.
11 February 2016	Declarations of impartiality and confidentiality were signed by all members of the Evaluation Committee and the relative consultants.
10 May 2016	The Evaluation Committee concluded its assessment of the technical component of the bids.
24 May 2016	A memorandum to the GCC was prepared by the Evaluation Committee proposing that both bids be considered further in the evaluation process since both had met the administrative and technical requirements.
24 May 2016	The GCC approved the recommendation of the opening of package three, the financial offers, of the two tenderers.
25 May 2016	A schedule of award for the first stage of evaluation was published. This schedule indicated that this decision was subject to any official objection that was to be submitted to the PCRB by 3 June 2016.
2 June 2016	An appeal was filed by the CCE Joint Venture with the PCRB, contesting the points assigned to it by the Evaluation Committee in terms of the technical compliance to the call for tenders, that is, package two.
18 August 2016	Objections to the appeal filed by the CCE Joint Venture were submitted by the DG DoC and the SVP. Based on the counter-arguments presented, the DoC and the SVP requested the PCRB to reject the appeal in full and allow the continuation of the tender procedure.
20 September 2016	The decision by the PCRB was published, wherein the Board found against the CCE Joint Venture and did not uphold any of its contentions. The Board recommended that the deposit paid by the Joint Venture was not to be reimbursed.
7 October 2016	The CCE Joint Venture filed an appeal before the Court of Appeal, contesting the decision of the PCRB. The Joint Venture requested the Court to uphold its appeal and revoke the decision taken by the Board on 20 September 2016 and order that the offer submitted by the Joint Venture be reconsidered.

14 February 2017	The Court of Appeal published its decision, wherein the arguments made by the CCE Joint Venture were rejected.
29 March 2017	The Evaluation Committee concluded its assessment of the financial component of the bids.
4 April 2017	The Evaluation Committee prepared a memorandum to the GCC recommending that the contract be awarded to the JCL and MHC Consortium for the daily price of meals of €15,760.08, excluding VAT, for a ten-year period and an additional investment of €29,280,000. The bid by the Consortium was deemed to be the most economically advantageous tender.
4 April 2017	The GCC approved the Evaluation Committee's recommendation.
4 April 2017	A notice of award was published indicating the decision taken. Tenderers were informed that any objections were to reach the PCRB by not later than 17 April 2017.
4 April 2017	Bidders were informed of the decision taken by the Evaluation Committee and approved by the GCC. The unsuccessful bidder was informed of the possibility of lodging an objection to this decision with the PCRB by 17 April 2017, against a deposit of €58,000.
23 May 2017	A meeting attended by the Permanent Secretary MFSS, the CEO SVP, the DG DoC and other officials of these entities, was held at the MFSS. This meeting was primarily held to discuss the way forward in light of the proposal by the JCL and MHC Consortium to manage the new blocks, offered as part of its additional investment. No minutes of this meeting were retained by any of the attendees.
11 July 2017	An audit firm was engaged by the SVP to provide the Residence with information against which it could determine whether the offer made by the JCL and MHC Consortium in relation to the provision of management services at the residential blocks that it was to construct was reasonable. To this end, the audit firm was engaged to determine, for 2016: a. the total expenditure per night; b. the total expenditure per service per night for specific services; and c. the total other costs per night, which included costs not allocated to specific services.
19 September 2017	Letter of intent from the DG DoC addressed to the JCL and MHC Consortium, wherein the Consortium was notified that Government had accepted its offer in response to the call for tenders with effect from 11 October 2017.
28 September 2017	Request by the SVP addressed to the Permanent Secretary MFCS and the DoC, seeking authorisation for a variation to the tender for comprehensive services awarded to the JCL and MHC Consortium. The variation comprised the conversion of the €1,500,000 annual cash contribution proposed as part of the additional investment to the construction of two additional residential blocks, which blocks were to be completed within the first three years of the contract.
28 September 2017	The Permanent Secretary MFCS authorised the variation to the tender for comprehensive services.
20 October 2017	A final report was prepared by the audit firm engaged to establish the SVP's costs. According to the report, based on 2016 expenditure, the total cost per occupied bed per night was €120.04 and that per available bed per night was €111.84. When excluding specific services, these amounted to €105.50 and €98.29, respectively.

25 October 2017	The GCC authorised the variation to the tender for comprehensive services.
25 October 2017	A revised letter of intent was issued by the DoC, amending the effective date to read 11 November 2017.
8 November 2017	The SVP sought final approval from the Permanent Secretary MFCS and the DoC to enter into a negotiated procedure with the JCL and MHC Consortium for management services for the ''new hospital" at the SVP, which would cater for an additional 504 beds.
8 November 2017	The Permanent Secretary MFCS approved entry into a negotiated procedure subject to approval from MFIN being sought.
9 November 2017	The GCC approved entry into a negotiated contract citing as justification articles of the Public Procurement Regulations that refer to instances where competition is absent for technical reasons and for reasons of extreme urgency brought about by events unforeseeable by the contracting authority.
10 November 2017	The direct contract for catering services, entered into as an interim measure on 8 July 2014 and extended several times, was terminated, four days prior to the signing of the contract agreement corresponding to the tender issued in relation thereto. By this date, the SVP had paid the MHC €13,162,331 on a direct contract, the value of which was originally set at €2,702,700.
10 November 2017	An MoU was signed between the SVP and the JCL and MHC Consortium. In this MoU, the parties clarified aspects on how the building, proposed by the Consortium as the additional investment, was to be delivered to the SVP at the sole expense of the Consortium.
14 November 2017	A contract for the provision of comprehensive services to the SVP and to demolish, build and equip a fully furnished new kitchen at the Residence was entered into by the DoC, on behalf of the MFSS, and the JCL and MHC Consortium. The commencement date of the contract was to be within two weeks of its signing.
14 November 2017	An Addendum was signed between the DoC, on behalf of the MFSS, and the JCL and MHC Consortium. According to this Addendum, both parties agreed to replace the ten-year cash contribution of €1,500,000 per annum with the construction of two blocks of 126 beds each, to be completed during the first three years from the signing of the contract. The parties agreed that two of the blocks were to be delivered within the first 18 months of the execution period, while the other blocks were to be delivered in the 18 months thereafter. The two additional blocks were comprehensively valued at an equivalent cost of €15,000,000.
14 November 2017	A Management Service Agreement was signed between the SVP and the JCL and MHC Consortium on the same day on which the contract relating to the tender for the supply of comprehensive services was entered into. This Agreement governed the management services that were to be provided by the Consortium to the residents and staff of the additional four blocks as previously defined in the MoU.
19 June 2018	A second Addendum was signed between the DoC and the JCL and MHC Consortium. This Addendum provided for internal changes made in relation to the drawings that were part of the contract entered into between the parties.
25 June 2018	Inauguration of the newly constructed kitchen at the SVP, which deliverable was part of the tender for comprehensive services awarded to the JCL and MHC Consortium.

20 July 2018	The contract awarded to the JCL and MHC Consortium for the management of the new blocks was published on the Government Gazette. The value of this negotiated contract was of €273,649,698, excluding VAT.
28 August 2018	The NAO was requested to audit the contract awarded to the JCL and MHC Consortium as published in the Government Gazette. The request was made by the Opposition members of the Public Accounts Committee.
15 September 2018	A contract award notice for the setting up of a PPP for the provision of comprehensive services to the SVP and to demolish, build and equip a fully furnished new kitchen complete with all the necessary equipment was published in the OJEU.
23 May 2019	A third Addendum was signed between the DoC and the JCL and MHC Consortium. This Addendum consisted of a financial variation of €571,590, excluding VAT, to cover an additional 300 staff meals per day at a daily rate of €5.22, for a period of one year.
3 October 2019	A fourth Addendum was signed between the DoC and the JCL and MHC Consortium. In this Addendum, TACA Insaat Ve Ticaret A.S. was appointed as a sub-contractor to carry out civil works on the new blocks at the SVP.
3 July 2020	The first block developed by the JCL and MHC Consortium received its first residents.
13 July 2020	The second block developed by the JCL and MHC Consortium received its first residents.
27 July 2020	The third block developed by the JCL and MHC Consortium received its first residents.
16 October 2020	The fourth block developed by the JCL and MHC Consortium received its first residents.

5.2 On gifts to Government: The SVP's Trojan horse

5.2.1 The NAO sought to ascertain whether the need to issue a call for tenders for the supply of comprehensive services was justified and supported by relevant analysis. To this end, this Office was provided with several reports, commissioned by the SVP, that evidenced the dire state of the Residence's kitchen and the need for alternative ways to provide the catering services at the SVP. On the basis of these reports, the NAO concluded that the call for tenders was justified as there was an urgent need to upgrade the kitchen and the catering facilities within the SVP.

5.2.2 A memorandum, outlining several courses of action to address the dire state of the SVP kitchen and the Residence's broader catering requirements, was presented to Cabinet by the PSDAA (pre-2017) on 17 June 2014. On 24 June 2014, Cabinet decided that the kitchen was to be closed and that an extension of the MDH contract be entered into for a transition period. Cabinet proposed several long-term options, including that eventually pursued, that is, the engagement of a contractor to upgrade the kitchen and manage the catering service. The NAO is of the opinion that Cabinet's approval was inevitably circumscribed, particularly when one considers the limited information regarding the costs involved put forward in the memorandum and Cabinet's failure to enquire on the cost element of this interim measure. Nevertheless, this Office acknowledges the dire situation faced by the SVP in its obligation to urgently cater for its numerous residents and staff, which obligation limited cost considerations.

5.2.3 Until the award of the tender intended to address the SVP's catering requirements, the Residence sought to meet these needs through a direct contract awarded to the MHC, the contractor engaged by the FMS to provide catering services at the MDH and other hospitals. A direct contract to this effect, valued at €2,702,700, was entered into on 8 July 2014 for a six-month term. The NAO noted that the decisions taken to secure catering services on this temporary basis were not always appropriately recorded. Although the urgency of the matter is uncontested by the NAO, this Office was limited in its understanding of how the decision to extend the MDH contract originated, of the internal discussions held by the MFSS, the Parliamentary Secretariat for Rights of Persons with Disability and Active Ageing, and the SVP on the matter, and of negotiations undertaken with the MHC.

5.2.4 The NAO's attention was drawn to the repeated extensions of the direct contract awarded to the MHC as an interim measure, which extensions could have been avoided had the tendering process been more expeditiously managed. This Office maintains that these extensions breached that reasonably approved by the DoC and Cabinet, in that the direct contract was protracted well beyond the term approved and greatly exceeded the value indicated. While some delays in the open contracting of the catering services were justified (particularly those relating to the processing of appeals lodged), others, such as the delayed issuance of the call for tenders, were not. This direct contract was terminated on 10 November 2017, by which date the SVP had paid the MHC over €13,000,000.

5.2.5 The NAO is of the opinion that the issue of the call for tenders for comprehensive services at the SVP was appropriately authorised by Cabinet, following a memorandum submitted by the PSDAA (pre-2017) through the Minister for Family and Social Solidarity. Also of note was that adherence to the Public Procurement Regulations with regard to the call was ascertained through coordination of the SVP with the DoC, while budgetary clearance for expenditure to be incurred under this tender was sought from MFIN. However, certain lacunae persisted, particularly in terms of the internal endorsement by the SVP of the options put forward to Cabinet and the determination of the preferred option following Cabinet's clearance of the various alternatives available to the Residence.

5.2.6 Of concern to the NAO was the evidence reviewed of meetings held by the SVP prior to the issue of the call for tenders. During these meetings, the MHC expressed interest in a tender that was yet to be issued – one that the contractor would eventually secure – and the SVP highlighted the possibility of the refurbishment of the kitchen being assigned to the contractor in exchange for a ten-year catering contract. This was ultimately reflected in the call for tenders issued by the SVP. It is in this context that the NAO's concerns regarding the possible prior understanding between the SVP and the MHC emerge.

5.2.7 A tender for comprehensive services was eventually issued by the DoC on behalf of the SVP on 10 November 2015. While the objectives of the tender were the provision of catering services to the SVP and the building of a fully furnished kitchen, the concept of an additional investment was also introduced. The additional investment corresponded to the submission to be made by bidders of an additional offer over and above that established in the call at no cost to the SVP. No specific requirements as to the nature of the investment were provided; however, this investment was to enhance the type of care provided at the SVP.

5.2.8 The NAO understood that the objectives of the call for tenders were mainly determined by the SVP, although guidance from the DoC was sought to ensure compliance with the Public Procurement Regulations. No concerns emerge in relation to the technical requirements for the catering and the construction of the kitchen. However, this Office's attention was drawn to the financial element of the catering service to be sourced. The NAO is of the opinion that the €12.72 capping for the daily price for meals per person inflated the cost of catering to compensate for the other elements of the tender, namely, the construction of the kitchen and the additional investment at 'no cost' to the SVP. With respect to the additional investment, the NAO understood that this was intended to obtain increased benefit to Government. Despite enquiries with the PSDAA (pre-2017), the CEO SVP and the DG DoC, this Office was unable to determine with any certainty how the additional investment component originated, notwithstanding that this was a critically important and innovative element of the call for tenders. Moreover, this Office has reservations as to why no parameters that were to guide potential tenderers formulate the additional investment that was to be provided were set. The NAO maintains that this omission allowed for the distortion of the level playing field that should be ensured in public calls for tender, where all effort is ordinarily made to streamline and standardise bidding parameters to ensure transparency, equal treatment and proportionality. This concern assumes greater relevance when one considers the disproportionate weighting assigned to the additional investment element in the evaluation criteria. Whereas the tender was justified based on the SVP's catering requirements, the financial weighting attributed secondary importance to this element while primary importance was given to the additional investment.

5.2.9 The concept of an additional investment at no cost to the contracting authority, as applied in this case, is in the NAO's opinion, fallacious, for in a transaction of significant value with commercial interests, nothing is ever secured for free. It is reasonable and inevitable for this Office to assume that the cost to the bidders of the additional investment was to be recovered in other elements of the commercial transaction. In this case, bidders could recover the additional investment by factoring this cost into the pricing of the provision of meals or through other related agreements. In reality, the SVP would simply be transferring part of its recurrent cost in the procurement of the catering services to fund another, possibly capital, expense. This Office deemed this concept as more of a balancing act, where the bidder would recover the outlay through that charged on the other deliverables, rather than provide an additional investment at no cost.

5.2.10 Another aspect of concern that the NAO sought to assess was whether the inclusion of an additional investment at no cost to the contracting authority in a public tender was in line with procurement legislation. This Office could not establish whether this concept was previously included in any other calls for tender and, despite enquiries made, no particular instance of resort to this concept was cited. The DG DoC indicated that while the additional investment was not regulated by any specific regulation, no legislation precluded it. Despite that stated by the DoC, that the inclusion of the additional investment was permissible and that the call for tenders was in line with applicable legislation, the NAO maintains reservations in this regard. The DoC's affirmation that this concept was not challenged by bidders offers no assurance to the NAO as to its legitimacy. This Office maintains that the onus in ascertaining regularity rested with the DoC. This was particularly relevant since the additional investment was an innovative concept that therefore warranted legal guidance, perhaps internally, through the DoC's legal experts, or externally through recourse to the Attorney General's Office. This Office is of the opinion that the inclusion of the additional investment, while not ostensibly illegal, created a situation whereby this element of a public call for tenders lacked definite provisions and regulations against which it could be assessed. Complications in this respect are not limited to the process of assessment but readily extend to the implementation phase, since the absence of defined parameters inevitably created risks in the execution of the contract.

5.2.11 The bids were to be assessed through the application of MEAT. The evaluation criteria set for this tender were assigned a weight of 60 per cent on the technical element and 40 per cent on the financial element. In turn, the financial element was sub-divided into the cost of meals per person per day and the value of the additional investment, weighted at 40 and 60 per cent, respectively. Although the evaluation criteria were detailed, the NAO maintains reservations on the weighting allocated to the additional investment. This Office is of the opinion that the financial weighting as allocated was not aligned to the objectives of the call for tenders. While the additional investment may have addressed other needs that the SVP had, the NAO maintains that this was not the main objective of the call for tenders; therefore, this should have been accordingly reflected in the weightings assigned. When one considers this, the fact that the additional investment was not adequately defined in the call allowing for a high degree of discretion to bidders, and that dissimilar proposals made evaluation problematic, the weighting assigned to the additional investment was considered unwarranted. Compounding matters were other factors that rendered the evaluation problematic, namely, that the additional investment was an innovative concept not previously resorted to and was not regulated under applicable regulations.

5.2.12 By the closing date for submissions, that is, 7 January 2016, two bids were received, one by the JCL and MHC Consortium and the other by the CCE Joint Venture. The bid by the JCL and MHC Consortium comprised a price per person of €12.72, excluding VAT, for daily meals provided, an estimated cost for the refurbishment of the SVP kitchen of €3,109,000 and an additional investment of €29,280,000. The additional investment proposed consisted of the construction of two residential blocks valued at approximately €14,000,000 and an annual cash payment of €1,500,000 over the ten-year period. On the other hand, the bid by the CCE Joint Venture was composed of a daily price per person for meals of €10.46, excluding VAT, a kitchen redevelopment cost of €2,873,000, and an additional investment of €10,905,000. The additional investment proposed by the CCE Joint Venture comprised the provision of residential care for persons with a disability costed at €5,935,000 and IT support to improve the quality of care provided estimated at €4,970,000. The NAO ascertained that the two offers submitted by the stipulated deadline were in line with the requirements set out in the call for tenders and therefore proceeded to the evaluation stage of the procurement process.

5.2.13 The NAO established that the Evaluation Committee tasked with the adjudication of this call for tenders was set up on 29 January 2016. The composition and expertise of the members of the Committee was deemed appropriate by the NAO as, collectively, they had the required competencies. Moreover, the Committee was assisted by consultants who were experts in different associated fields, including catering, law, and technical matters. However, this Office noted that the Committee was not set up during the publication stage of the tender as required by the Standard Operating Procedures/Guidelines for Tender Evaluation Committees.

5.2.14 In the NAO's understanding, the evaluation process was generally carried out in line with the prescribed procedures, which included the submission of bid bonds within the stipulated timeframe, the adoption of criteria in the evaluation process that were consistent with those specified in the tender, and the endorsement of the recommendations of the Evaluation Committee by the GCC. Shortcomings noted in this respect primarily related to the absence of minutes of meetings held by the Committee.

5.2.15 The Evaluation Committee deemed the bid submitted by the JCL and MHC Consortium as the most economically advantageous to Government. This conclusion was arrived at after consideration of the technical and financial elements of the bids. The technical component, which accounted for 60 per cent of the overall mark, resulted in the JCL and MHC Consortium obtaining a weighted technical score of 60, while the CCE Joint Venture was assigned 51.3. The financial component, which accounted for 40 per cent of the overall mark, was comprised of two sub-components, the cost of meals, weighted at 40 per cent, and the additional investment, weighted at 60 per cent. The JCL and MHC Consortium obtained a weighted financial score of 34.8, while the CCE Joint Venture was assigned 28.8. Overall, the JCL and MHC Consortium obtained 94.8 marks, while the CCE Joint Venture was awarded 80.1 marks.

5.2.16 The NAO sought to ascertain whether the evaluation criteria were fairly applied in the assessment of the two bids submitted. In this regard, this Office noted that the bid bonds provided were checked for compliance, that all components and literature requested were submitted, that expertise was sought to assist in the evaluation of offers and that individual assessments by the members of the Committee were carried out. While the NAO has no adverse comments on these aspects of the evaluation process, this Office maintains serious reservations with respect to the additional investment.

5.2.17 The main concerns emerge from the inclusion of the additional investment at no cost to the contracting authority as a deliverable, a new concept that was included in the tender for comprehensive services to the SVP. Consequently, there are no guidelines that address the regulation of such an investment. The NAO noted that, in the call for tenders, no parameters were established for the additional investment that bidders were requested to make. In this respect, bidders could propose anything as long as it was compatible with the services provided by the SVP. This can hardly be construed as providing any guidance to bidders which, although a problem in itself, led to another concern, that of how this additional investment was to be evaluated. This Office maintains that applying criteria fairly to deliverables that are dissimilar renders evaluation extremely difficult, as a comparison between diverse offers is hardly feasible. In this case, this difficulty was circumvented by applying value as the sole factor on which the additional investment was to be evaluated. Nonetheless, the NAO deemed this a limitation of the evaluation process. While price could be considered as the most straightforward evaluation criterion, it could result in strategic bidding, with tenderers offering a high-value additional investment to ensure that maximum points are obtained while anticipating to secure other works or services. In this case, the possibility of managing the additional blocks offered as the additional investment was already being contemplated, as evidenced in the tender submitted by the JCL and MHC Consortium. While the JCL and MHC Consortium maintained that the possible management of the new blocks would not compromise its offer, the NAO's concerns persist.

5.2.18 The NAO's concerns are heightened when one considers the preference in the weighting assigned to the additional investment in the assessment of the financial offers. Taking the offer by the JCL and MHC Consortium as the basis of analysis, the approximate tendered value of the additional investment was €29,000,000 while the cost of the meals was €57,000,000. Despite the considerable difference between the two, the additional investment was assigned a significantly higher weighting. This anomaly is aggravated when one considers that the €57,000,000 cost of meals corresponds to the ten-year contract term, and that this value could increase substantially should the term be extended by the optional period of five years permitted in the contract. This imbalance in weighting is evocative of offers where a very low price on heavily weighted elements and higher prices for lower weighted elements are made. The NAO's concerns were substantiated by that stated by the Consortium, which informed this Office that the weighting allocated to the additional investment was an indication that Government was willing to pay €12.72 per person per day subject to a substantial investment being given in return. This Office maintains that this was a flaw in the price scoring formula adopted.

5.2.19 Another aspect of concern emerges when one considers that more than half of the value of the contract was to be returned to Government as an additional investment. In this Office's opinion, the situation where €29,000,000 of a €57,000,000 contract is returned to Government as a gift may readily be traced back to the anomalous design of the tender.

5.2.20 If one were to consider the bid submitted by the CCE Joint Venture, the estimated value of the additional investment proposed was nearly €11,000,000, while the cost of meals for the contract term was approximately €47,000,000. On balance, comparing the bid by the CCE Joint Venture to that by the JCL and MHC Consortium, Government was still to gain from the selection of the latter, even though the losing bidder presented a more advantageous offer on the cost of meals component. While the NAO acknowledges this, later developments reinforce this Office's contentions that there is always a trade-off or some covert or implicit cost when one includes concepts such as a gift or the additional investment sought by Government in this case. This Office maintains that an offer of a free good or service with the purchase of another is an oxymoronic tactic that does not necessarily benefit the purchaser.

5.2.21 In sum, the Public Procurement Regulations state that contracting authorities shall determine the award of public contracts on the criteria of either being the most economically advantageous offer or the lowest price offer compliant with the tender specifications. In this case, the call for tenders clearly indicated that the contract was to be awarded to the most economically advantageous tender. While the NAO is of the opinion that the evaluation process resulted in the selection of the most economically advantageous offer according to the evaluation criteria established in the call for tenders, this Office maintains reservations regarding the evaluation scoring formula employed. In essence, the NAO's concern centres not on how the Evaluation Committee applied the criteria of evaluation, but on how these criteria, which criteria determined the outcome of the call for tenders, were designed at the outset.

5.2.22 Although appeals were lodged with respect to the tender for comprehensive services, these contested the application of the criteria by the Evaluation Committee, rather than the design of the criteria. On 2 June 2016, the CCE Joint Venture submitted an appeal to the PCRB contesting the marks assigned with respect to the technical element of the evaluation process. The PCRB dismissed the objections in its decision on 20 September 2016, which resulted in the CCE Joint Venture initiating legal action challenging the decision of the Board through the Court of Appeal. The matter was finally resolved on 14 February 2017, with the Court of Appeal rejecting the arguments brought forward by the CCE Joint Venture and confirming the decision of the PCRB.

5.2.23 With the resolution of appeals filed, the process of evaluation could proceed. To this end, the Evaluation Committee sought to obtain the input of an engineering, an architectural and an audit firm as an added safeguard in its assessment of the proposed additional investment by the JCL and MHC Consortium. The NAO reviewed the reports drawn up by the consultants, which were all prepared in March 2017, prior to the Consortium being awarded the tender. This Office has no adverse remarks regarding the engagement of these experts. While their engagement resulted in an added cost to the SVP, they provided an added layer of expertise in respect of the evaluation of the additional investment proposed by the preferred bidder.

5.2.24 Following the finalisation of the evaluation process and the approval of the GCC, on 4 April 2017, the JCL and MHC Consortium was awarded the tender for comprehensive services. The award of this tender triggered a process of negotiations involving the SVP, the DoC and the Consortium, which mainly related to the additional investment that was to be provided. Negotiations came to an end in November 2017, through entry into several agreements that regulated the diverse aspects associated with this tender.

5.2.25 An MoU was signed between the SVP and the JCL and MHC Consortium on 10 November 2017, wherein aspects of the additional investment, which were not the subject of the award, were clarified. In particular, details on how the Consortium was to design, build, finish and equip the two additional blocks at the SVP were specified. Reference was also made to the payment of a cash contribution of €1,500,000 by the Consortium at the end of each year of the 10-year concession period.

5.2.26 A contract for the provision of comprehensive services to the SVP was entered into by the DoC, on behalf of the MFSS, and the JCL and MHC Consortium on 14 November 2017. The contract was for a duration of ten years, which could be extended for a further five years. Reference was made to the MoU signed earlier between the parties, which was to be considered as part of the contract. According to the contract, the Consortium agreed to set up a PPP for the provision of comprehensive catering services to the SVP and the demolishing, building and equipping of a fully furnished kitchen at the Residence. Under this contract, Government agreed to pay a fixed rate for the meals for the entire duration of the contractual term, at an approximate contract value of €57,524,292 over the 10-year contract period. The NAO established that from the date of commencement of this contract up to end 2020, the SVP paid the Consortium in excess of €13,500,000 for comprehensive services.

5.2.27 While the contract dated 14 November 2017 regulated the rights and obligations of the SVP and the JCL and MHC Consortium that emanated from the award of the tender, the NAO noted several addenda that were subsequently entered into by the parties. The first addendum, entered into on the same day of the contract, entailed a fundamental change in the nature of the additional investment, with the replacement of the cash contribution of €15,000,000 with the construction of two additional blocks. Also contemplated in this addendum was the acceleration of timeframes for completion of the four blocks. The second, third and fourth addenda, dated 19 June 2018, 23 May 2019 and 3 October 2019, respectively, related to internal changes to drawings, a financial variation on meals provided and the sub-contracting of work.

5.2.28 The NAO sought to determine whether the contractual framework entered into between the SVP and the JCL and MHC Consortium reflected that proposed by the bidder. With regard to the provision of comprehensive catering services and the construction of a fully functional kitchen, the NAO noted that the deliverables specified in the agreements entered into were generally as required in the call and reflected in that proposed by the Consortium. This, however, could not be said of the additional investment as proposed in the bid and as eventually contracted. While in its bid the Consortium had offered the construction of two additional residential blocks at the SVP and annual payments for the term of the contract as the additional investment, in the agreements entered into the cash payments were substituted with the construction of another two blocks.

5.2.29 Although the substitution of the annual cash payments with the construction of an additional two blocks did not result in changes in terms of value, in that the cost of the additional blocks was estimated on a par with the amounts that were to be paid, this gave rise to other obligations that Government was constrained to assume. This was because the change in the nature of the additional investment was contingent on Government awarding the management of the additional blocks to the Consortium.

5.2.30 While it can be argued that Government was gaining from this substitution, in that the completion of the blocks within three years from contract signing as against cash payments over a ten-year period accelerated Government's realisation of the additional investment, Government had to concede the management of the blocks to the JCL and MHC Consortium for this to happen. This obligation not only put an added onus on Government, in that it now had to enter into negotiations for the provision of this service, but also rendered it at the willing mercy of the Consortium in that Government could not explore more advantageous ways of managing the additional blocks.

5.3 An offer Government could refuse

5.3.1 The NAO sought to understand how the decision to assign the management of the blocks to the JCL and MHC Consortium through a negotiated procedure was arrived at, the basis of any analysis undertaken and who was responsible. Despite the significant materiality of the management services that were to be outsourced, the NAO had severely limited visibility of the considerations that were discussed and the reasons that ultimately led to the decision to award the management of the blocks to the Consortium. In this context, this Office had to rely solely on that stated by those involved based on recollections of developments that had taken place several years prior.

5.3.2 This Office takes a serious view of this lack of documentation in respect of services procured directly with no justifiable restrictions to competition and that involved an estimated €274,000,000 in public funds. The fact that key decisions taken were not appropriately documented detracted from the transparency that should characterise public procurement. The NAO's concerns regarding the evident failures in transparency assume further relevance when one considers the discriminatory procurement process pursued by the SVP and endorsed by the MFSS and the DoC, which decreased the chances of Government obtaining good value through restrictions to open competition.

5.3.3 Based on that stated and the limited documentation provided, the NAO established that negotiations between the SVP, the DoC and the JCL and MHC Consortium were undertaken between May and November 2017. The involvement of the MFSS, although not in direct interaction with the Consortium, was also noted. The negotiations resulted in the conversion of the cash contribution that formed part of the originally proposed additional investment to two other blocks. The conversion also resulted in the acceleration of the construction of all blocks. However, these changes were contingent on Government acceding to entry into an agreement for the provision of management services at these blocks with the Consortium. In terms of the rate to be charged for such services, the Consortium proposed a five per cent discount on costs incurred by the SVP in its provision of similar services.

5.3.4 According to the DoC, in feedback provided to the SVP, while the conversion of the additional investment from one form to another could be transacted under the call for tenders for comprehensive services that had been issued by the SVP, entry into an agreement for the provision of management services could not be considered as part of this tender, as the services constituted a fundamental departure from the terms of the tender and altered its value. The NAO understood this feedback by the DoC as the source from where recourse to an alternative procurement method for the management of the additional blocks, that is, the negotiated procedure subsequently entered into, originated.

5.3.5 Of concern to the NAO is that the MFSS, the SVP and the DoC made the decision to pursue the offer proposed by the JCL and MHC Consortium and assign it the management of the new blocks without due consideration. Notwithstanding that the SVP sought an independent computation of the cost per resident being incurred at the Residence, the NAO maintains that this should have been determined prior to any decisions made, rather than when the decision to assign the management to the Consortium had effectively been taken. Instead, the parties representing Government solely sought to make minimal savings on the expenditure borne by the SVP through a discount that was to be given by the Consortium on these costs.

5.3.6 In its consideration of the decision to award the management of the additional blocks to the JCL and MHC Consortium, the SVP engaged an audit firm to determine the Residence's costs on a per night basis for 2016. In a report submitted on 20 October 2017, the audit firm established an occupied and an available bed per night rate of €105.50 and €98.29, respectively. The relevance of these rates is that they served as the basis for the discounted rates to be charged by the Consortium. Of note is that developments occurring in parallel resulted in the discounted rate being revised from five to six per cent; however, this was followed by an extension in the term of the proposed management service agreement from 10 to 15 years, resulting in an estimated contract value of approximately €274,000,000.

5.3.7 Although established independently by an audit firm, the rates arrived at were encumbered by serious limitations and did not account for the inefficiencies in the running of the Residence, which certainly inflated its cost estimates. This should not be construed as a criticism of the work of the audit firm, for it performed its assignment according to the parameters set and information made available by the SVP. Any savings claimed by the SVP in entrusting the management of the blocks to the Consortium must inevitably be considered in this context, for the rates established were inherently laden with inefficiencies, resultantly false and overstated.

5.3.8 Once the cost analysis was concluded, the SVP sought the DoC's approval to close the agreement with the JCL and MHC Consortium for the management of the four new blocks at the Residence. While the NAO is cognisant of the fact that the conversion of the annual cash contribution by the Consortium to the construction of an additional two blocks was conditional on the Consortium being awarded the management of all four blocks, this Office maintains that other options were available to the SVP in relation to the utilisation of the additional investment that had been secured.

5.3.9 With regard to possible alternatives for the management of the additional blocks, the NAO was not provided with evidence that indicated that any other option, other than the award of the management services to the JCL and MHC Consortium, was actively considered by the SVP. The NAO maintains that several possibilities were available that could have resulted in a more positive outcome to the SVP and on public finances, even if the original offer of two blocks and a cash contribution was to be retained. The SVP could have extended in-house services, sought to explore the market for alternative contractual arrangements or issued a public call for tenders for the management of the facilities that it was to acquire.

5.3.10 The NAO is of the opinion that the optimal course of action in this respect was the latter, that is, for the SVP to issue a call for tenders to generate offers from potential service suppliers willing to manage the additional blocks. In general, a competitive tender process carried out in an open, objective and transparent manner should achieve the best value for money in public procurement. Through this approach, the SVP could have obtained valuable information on the availability of other service providers and up to date market price information prior to committing the management of the additional blocks to the JCL and MHC Consortium. The NAO maintains that there were no valid reasons that constrained the SVP to assign these services to the Consortium, and the fact that the Consortium was to construct the additional blocks should have had no bearing on who was to be entrusted with their management. A call for tenders would have ensured competitive tension that could have improved the quality and value of supplier offers and resulted in savings to the SVP. Notwithstanding this, the SVP maintained that it was guided by the DoC as to which procurement direction to opt for.

5.3.11 A straightforward exercise that could have been carried out was the benchmarking of the rate offered by the JCL and MHC Consortium against the rates charged by private homes for the elderly for the purchase of beds by Government. The SVP did not question the rates established by the Consortium in respect of occupied and available beds per night, but solely rested on the fact that the Consortium had offered savings on the operational cost per resident being incurred by the Residence. No analysis as to what Government was being charged for highly dependent residents in other private care homes, or against other homes for the elderly run as PPPs with Government, was undertaken. A comparative analysis carried out by the NAO indicated that the rates charged by these homes were significantly lower than those proposed by the Consortium. In this Office's opinion, the fact that the SVP agreed to the higher rates proposed could distort the market, inflate the rates charged, expose Government to the risk of losing current contractors providing these additional beds, and instigate existing contractors to request revisions in rates being charged.

5.3.12 While this Office acknowledges that the medical requirements of the SVP's residents are more intensive than those catered for by other homes, it is noted that medical care, nursing specialities and other allied services are not catered for under the Management Service Agreement. Although the NAO concedes that the medical profile of the Residence's population may necessitate a higher degree of care provided for under the Agreement when compared to that provided at other residential homes, this discrepancy in terms of the higher degree of care required was not quantified, captured or defined by the SVP, thereby limiting the NAO from factoring an adjustment in its comparison to other homes.

5.3.13 The discounted price agreed with the JCL and MHC Consortium and cited in the Management Service Agreement was €99.17 daily per resident per occupied bed and €92.39 daily per resident per available bed. When comparing with 2016, the year on which the rates cited in the Agreement were based, the difference between the rates paid by Government to the Consortium and those paid by Government to private contractors from whom beds were procured is stark. The average daily rate that Government was paying private contractors for persons with a high dependency in 2016 was €51.06 per occupied bed night. The highest daily rate paid by Government to a particular home in 2016 was €63 per occupied bed night.

5.3.14 The Management Service Agreement entered into by the SVP and the JCL and MHC Consortium allowed for the revision of rates. In November 2020, that is, by the handover of the blocks, the rates were revised to €118.44 and €110.35 for occupied and unoccupied bed nights, respectively. Comparing the revised rates charged by the Consortium to the average daily rate charged by service providers under the Buying of Beds Scheme in 2020 results in a sustained significant discrepancy, which detracts from the value for money sought by the SVP through its agreement with the Consortium. While the average daily rate for a highly dependent resident per occupied bed was €65.13, that secured by the SVP with the Consortium stood at €118.44. Similarly discrepant is the rate charged by the highest priced home, which was €70 daily per occupied bed, that is, a difference of approximately €50 per resident per day when compared to the rates levied by the JCL and MHC Consortium. The stark contrast between the rates paid for beds sourced through other operators and those paid for beds provided by the Consortium is evident.

5.3.15 The NAO's attention was also drawn to the inconsistency that emerges when one considers the difference in the rates charged for occupied and unoccupied beds across the several homes where Government procures beds for the care of older persons and those levied by the JCL and MHC Consortium in 2020. The difference in rates charged by the Consortium is minimal when compared to the other homes. Although the rates levied by the Consortium are significantly higher than those of the other homes reviewed, the difference between the occupied and unoccupied bed rate is merely of €8.09 in the case of the Consortium. This difference averages at approximately €45 for the other homes. In other words, the Consortium charges 93 per cent of the occupied bed rates for its unoccupied beds, while the other homes charge an average of 32 per cent.

5.3.16 While the addition of approximately 500 beds contributed directly to Government's efforts at reducing the waiting list for the provision of residential care to highly dependent older persons, significant doubts as to whether value for money was secured persist. The award of a contract valued in excess of €270,000,000 through a negotiated procedure, rather than an open call, stifled any scope for competition that would have otherwise been generated. This in turn bore a direct impact on the pricing of the service being provided. The NAO maintains that the fact that the SVP failed to comprehensively consider other business models for the management of the additional blocks, other than directly assigning this to the JCL and MHC Consortium, calls into question whether the most appropriate procurement option was determined. This concern assumes greater relevance when one considers the extent of public funds committed without a comprehensive analysis of all viable options being undertaken.

5.3.17 On 8 November 2017, the SVP requested final approval from the DoC to enter into a negotiated procedure. This request was sent through the Permanent Secretary MFCS and was submitted in terms of Articles 154(1)(b)(ii) and 154(1)(c) of the Public Procurement Regulations, 2016. The total estimated cost of the 15-year contract term was €273,649,698, at a discounted daily rate of €99.17 per person. The Permanent Secretary MFCS approved the request that same day, subject to the necessary approval from MFIN being sought. Correspondence dated 9 November 2017 by the DoC notified the SVP that the GCC had considered the request, and approval was granted to the SVP to enter into a negotiated procedure with the JCL and MHC Consortium. Approval was granted in terms of urgency, citing Articles 154(1)(b)(ii) and 154(1)(c), in accordance with the Public Procurement Regulations, 2016, provided that funds were available.

5.3.18 Having secured the necessary authorisations, a Management Service Agreement was signed between the SVP and the JCL and MHC Consortium on 14 November 2017, the same day on which the contract for the supply of comprehensive services to the SVP was entered into. The Management Service Agreement governed the ancillary services that were to be provided by the Consortium to the residents and staff of the additional four blocks.

5.3.19 Three points of concern emerge when considering the developments leading to entry into the Management Service Agreement through a negotiated procedure. First, despite the instructions by the Permanent Secretary MFCS and the DoC, the SVP – as the contracting authority – failed to obtain the required clearance from MFIN regarding the availability of funds. The NAO maintains that better budgetary control may be realised if the GCC's approval is provisional subject to clearance by MFIN in terms of budget availability. The GCC's approval would only be final and binding once MFIN's clearance is secured. In practical terms, this would necessitate referral to the GCC in two stages, first seeking provisional endorsement, and second, seeking final authorisation once MFIN clearance has been secured. This revision in procedure would ensure that contracting authorities obtain all relevant approvals prior to committing public funds.

5.3.20 Second, conspicuously absent was any form of political authorisation endorsing Government's commitment to a project worth in excess of €274,000,000 and entered into through direct negotiations with one contractor, that is, the JCL and MHC Consortium. The NAO established that the agreement for the management of the additional blocks at the SVP was not brought to the attention of Cabinet despite the materiality of the expenditure and the fact that this project was one of national importance.

5.3.21 The 2017 General Election resulted in changes to the ministerial portfolios responsible for the SVP. Key developments regarding the negotiated contract were registered in the weeks leading to this Election and in the period immediately after. This made it imperative for the Office to seek the views of the Minister for the Family and Social Solidarity and the PSDAA (pre-2017) for insight into the nature and extent of their involvement in the period prior to the dissolution of Parliament, as well as those of the Minister for Family, Children's Rights and Social Solidarity and the PSDAA (post-2017) for the period following the Election.

5.3.22 In submissions to this Office, the Minister for the Family and Social Solidarity indicated that he was not requested to approve the initiation of any negotiations with the JCL and MHC Consortium. In turn, the PSDAA (pre-2017) referred to the proximity of negotiations to the 2017 General Election and stated that due to incumbency, her involvement in such decisions was curtailed. The Minister for Family, Children's Rights and Social Solidarity stated that negotiations commenced sometime in April or May 2017, that is, before his appointment as Minister responsible for the SVP. He maintained that he was not involved in any discussion, decision, negotiation, consultation, or otherwise, in connection with the negotiated contract. The PSDAA (post-2017) stated that on his appointment, the contracts, including that relating to the management service agreement, were close to conclusion. Moreover, the PSDAA (post-2017) deemed the developments relating to this procurement process that occurred during his tenure as a continuation of the project initiated by the PSDAA (pre-2017). Since there was no change in Government and the political direction had been agreed to by his predecessors, it was not deemed necessary to replace the officials tasked with negotiations. Nevertheless, the PSDAA (post-2017) confirmed that he was not involved in negotiations with the JCL and MHC Consortium. In view of the explanations provided and the documentation reviewed, the NAO concluded that no political authorisation to enter into a negotiated procedure with the Consortium was sought and provided.

5.3.23 Having considered the extent of the project, its materiality, its significance in view of the increase in capacity of existing facilities, and the fact that negotiations had been underway for several months, the NAO deems incredulous how this project did not draw the attention of the Parliamentary Secretaries responsible for care provided to older persons. Even if the project was never directly referred to the Parliamentary Secretaries for their authorisation, their failure to enquire as to the regularity of this procurement is in clear breach of their duty arising from the political post held. Although multiple references were made to the role of the DoC in providing comfort as to the regularity of the procurement undertaken by means of a negotiated procedure, the NAO asserts that the role of this Department is that of ensuring adherence to the Public Procurement Regulations. It is certainly not the role of the DoC to provide political direction on projects undertaken by Government.

5.3.24 Third and most grave among the concerns identified is that, in the NAO's understanding, the basis cited as justification for the authorisation of resort to a negotiated procedure was in breach of legislative provisions. According to Article 154(1)(b)(ii) of the Public Procurement Regulations, the negotiated procedure without prior publication may be used for public service contracts "where the services can be only supplied by a particular economic operator… as competition is absent for technical reasons." This Office finds no relevance to the application of this Article since the management of the additional blocks at the SVP could have readily been undertaken by other operators. The NAO finds no reason why the contractor who erected the premises should be awarded their management, and therefore, no technical reason for the absence of competition exists.

5.3.25 Urgency in terms of Article 154(1)(c) of the Public Procurement Regulations was to satisfy the requirements of this Article in that, "where in so far as is strictly necessary, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority". Notwithstanding the reference to urgency, this Office maintains that, in this case, such urgency was certainly not justified as the blocks were to be under construction for at least 18 months, during which the SVP had time to procure the management services through an open procedure. In view of this, the NAO deems the authorisation by the GCC as illegitimate, since no real urgency existed that merited the procurement that involved hundreds of millions of euros and bound Government for a lengthy period. Having reviewed all the instances permitting resort to a negotiated procedure, including those cited in the request to the DoC, the NAO is of the opinion that none applied to the circumstances of this case, thereby possibly leading to the invalidity of the procurement undertaken.

5.3.26 Although the DoC assumes primary responsibility for endorsing the negotiated procedure, the NAO is of the opinion that the SVP cannot shift all the responsibility on the Department and neglect the fact that, as the contracting authority, it was also accountable for this procurement. The SVP's failures in this respect have been highlighted in the preceding paragraphs.

5.3.27 Requests for approval for the direct sourcing of management services made by the SVP to the DoC were directed through the Permanent Secretary MFCS, who sanctioned the procurement. This Office is of the opinion that a ministry should, in addition to its many other functions, provide an element of oversight to the departments and entities that fall within its portfolio. In this case, this Office maintains that the Permanent Secretary MFCS did not provide adequate direction, with the input provided solely serving to endorse a procurement process that was flawed and in breach of legislative provisions.

5.3.28 The NAO takes a more serious view in the case of the DoC since it "is responsible for the administration of the procurement procedures as laid down in the Public Procurement Regulations … [and] shall deliver an efficient and effective service to both economic operators and contracting authorities alike. Besides, the Department of Contracts shall ensure that there is no discrimination between economic operators and that all economic operators are treated equally and transparently." This Office directs criticism to the DoC for, through its endorsement of this negotiated procedure, the DoC was in fact discriminating against other economic operators that could have readily bid for and provided the services that Government sought to procure. This concern assumes relevance when one considers that it is the DoC's duty and obligation at law to ensure that economic operators are treated equally and transparently.

5.3.29 In sum, the NAO maintains that the SVP, the MFCS and the DoC acted in breach of legislative provisions when requesting or sanctioning recourse to a negotiated procedure for the management of the new blocks at the SVP on the basis of urgency. While the prescribed actions were apparently carried out, these were in breach of the Public Procurement Regulations, thereby possibly leading to the invalidity of the procurement undertaken. Further aggravating matters is that Government was committed to a disbursement of hundreds of millions of euro without the required budgetary clearance being sought by the SVP from MFIN. Worse still is that a commitment of this magnitude and importance was entered into without the sanction of Cabinet or the Parliamentary Secretaries directly responsible for the SVP.

5.3.30 Certificates of completion submitted with respect to the four blocks constructed by the JCL and MHC Consortium indicated that these were completed on 15 June 2020, 3 July 2020, 4 August 2020 and 29 September 2020. Following completion of the required works, the blocks were shortly thereafter rendered operational. The NAO established that operations within the blocks commenced on 3 July 2020, 13 July 2020, 27 July 2020 and 16 October 2020.

5.3.31 Over the period July to December 2020, the JCL and MHC Consortium invoiced the SVP a total of €7,656,660 for management services provided at the four residential blocks constructed by the Consortium.

5.3.32 Of note is that, in November 2020, at handover, the daily rates for occupied and unoccupied beds increased from €99.17 and €92.39, respectively, to €118.44 and €110.35, respectively. This revision accounted for an increase in bed rates of approximately 20 per cent. Of concern to the NAO was that the mechanism of revision in rates accentuated cost inefficiencies already in place and brought to the fore new pitfalls of waste of public funds. As at the time of reporting, the revision to the rates for 2021 had not been effected.

5.3.33 The NAO's attention was drawn to the classification of the project on the Government balance sheet and the implication that this had on public finances. In this case, such classification meant that the capital expenditure related to the project was to be recorded as a gross fixed capital formation for Government, with an impact on the fiscal balance and a corresponding increase in Government's debt. As at the third quarter of 2020, the cumulative impact of the SVP extension was €35,600,000. Although clearance by MFIN was not sought by the SVP prior to entry into the Management Service Agreement, given that the relevant agreement was entered into, MFIN was left with no alternative but to allocate the required budget to honour the commitments made. To this end, a provision was made in the budgetary estimates as from 2020.

Appendix A | Request submitted by the Public Accounts Committee

Awditur Ġenerali
Uffiċċju tal-Awditur Ġenerali
Floriana

28 ta Awissu 2018

Talba għall-investigazzjoni dwar l-għoti ta' kuntratt għat-tmexxija tal-estensjoni li għad trid tinbena ta' 500 sodda fir-residenza San Vinċenz de Paul

Għażiż Sur C. Deguara,

Aħna hawn taħt iffirmati ninnotaw li:

- Il-Ħadd 5 ta' Awissu 2018, it-*Times of Malta* irrappurtat li l-Gvern ta' ordni diretta (direct order) b'valur ta' kwart ta' biljun ewro lil kumpaniji Malta Healthcare Caterers Ltd u James Caterers għat-tmexxija tal-estensjoni ta' 500 sodda li għad trid tinbena fir-residenza San Vincenz de Paul;

- Fis-6 ta' Awwissu l-Ministru tal-Finanzi qal li hu ma ta l-ebda approvazzjoni għal "direct order" kif rappurtat mill-ġurnal it-Times, anke jekk fil-ħarġa tal-Gazzetta tal-Gvern ta-20 ta' Lulju hemm imniżżel li fil-fatt ingħata direct order kif irrappurtat mit-Times;

- Fis-7 ta Awwissu il-Gvern permezz ta' stqarrija maħruġa mis-Segretarjat Parlamentari għall-Persuni b'Diżabilità u l-Anzjani ċaħad li ngħatat ordni diretta. F'din l–istqarrija jingħad ukoll li l-Gvern għamel użu mill-proċedura negozjata biex fl-aħħar mill-aħħar jingħata kuntratt li huwa sostanzjalment differenti minn dak li għalih inħareġ it-tender oriġinali fl-10 ta' Novembru 2015.

- Fit-23 ta Awwissu, d-Dipartiment tal-Informazzjoni, kif rappurtat mill-ġurnal Times of Malta, rribatta kummenti magħmula mis-Segretarjat Parlamentari għall-Persuni b'Diżabilità u l-Anzjani, liema Segretarjat Parlamentari pprova jagħti l-impressjoni li n-notifika li dehret fil-Gazzetta tal-Gvern li nghatat direct order ta' kwart ta' biljun, kien żball min-naħa tad-Dipartiment tal-Informazzjoni. Id-Dipartiment tal-Informazzjoni jippreċiża li xogħlu huwa li jippubblika l-informazzjoni mibgħuta mill-Ministeri u entitajiet pubbliċi u hekk għamel f'dan il-każ.

Aħna hawn taht iffirmati niġbdu l-attenzjoni wkoll, li skont regolamenti 150 sa' 156 tal-Avviż Legali 174.04 Regolamenti dwar l-Akkwist Pubbliku kif emendat, il-proċedura negozjata tista' tintuża f'dawn is-sitwazzjonijiet:

> (a) meta ma jkunux ġew sottomessi offerti jew offerti adattati jew talbiet għal parteċipazzjoni jew talbiet għal parteċipazzjoni mhux adattati f'rispons għal proċedura miftuħa jew proċedura ristretta, sakemm il-kundizzjonijiet inizjali tal-kuntratt ma jkunux mibdula sostanzjalment u sakemm jintbagħat rapport lill-Kummissjoni meta hija titlob li jsir dan; jew

REGISTRY
2 8 AUG 2018
NATIONAL AUDIT OFFICE

Partit Nazzjonalista
Dar Ċentrali Partit Nazzjonalista,
Triq Herbert Ganado, Pietà. PTA 1450
t. 21243641 **e.** info@pn.org.mt

(b) fejn ix-xogħlijiet jistgħu jiġu fornuti minn operatur ekonomiku partikolari biss minħabba xi waħda mir-raġunijiet li ġejjin:

(i) l-għan tal-akkwist huwa l-ħolqien jew l-akkwist ta'xogħol artistiku uniku jew prestazzjoni artistika unika;
(ii) ma jkunx hemm kompetizzjoni minħabba raġunijiet tekniċi;
(iii) il-protezzjoni ta' drittijiet esklużivi, inkluż drittijiet ta' proprjetà intellettwali: Iżda l-eċċezzjonijiet stabbiliti fis-subparagrafi (ii) u (iii) għandhom japplikaw biss meta ma teżistix alternattiva jew sostitut raġonevoli u n-nuqqas ta' kompetizzjoni mhix konsegwenza ta' limitazzjoni artifiċjali fil-parametri tal-akkwist; jew

(ċ) sa fejn huwa strettament neċessarju fejn, għal raġunijiet ta' urġenza kbira dovuti għal avvenimenti li ma setgħux ikunu previsti mill-awtorità kontraenti, il-limiti ta' żmien għal proċeduri miftuħa jew ristretti jew kompetittivi bin-negozjar ma jistgħux jiġu rispettati. Iċ-ċirkustanzi invokati għall-ġustifikazzjoni tal-urġenza estrema qatt ma għandhom ikunu attribwibbli għall-awtorità kontraenti; jew

(d) għal xogħlijiet ġodda li jikkonsistu fir-ripetizzjoni ta' xogħlijiet simili fdati lill-operatur ekonomiku li ngħata kuntratt oriġinali mill-istess awtoritajiet kontraenti, jekk dawn ix-xogħlijiet huma konformi ma' proġett bażiku li għalih ingħata l-kuntratt oriġinali skont proċedura li għaliha ġiet ippubblikata sejħa għal kompetizzjoni b'konformità ma' dawn ir-regolamenti.

Jidher ċar minn dan li hemm lok li ssir investigazzjoni biex jiġi stabbilit jekk il-Gvern mexiex mar-regolamenti dwar l-akkwist pubbliku. Għalhekk aħna l-membri tal-Kumitat dwar il-Kontijiet Pubblici (PAC) qegħdin nitolbu li skond paragrafu 9 (a) tal-Att dwar l-Uffiċċju tal-Awditur Ġenerali, ssir inkjesta fuq il-kuntratt li ngħata ta' kwart ta' biljun ewro għat-tmexxija tal-estensjoni li għad trid tinbena fir-residenza San Vinċenz de Paul.

Beppe Fenech Adami
Chairman PAC

Kristy Debono
Membru PAC

Claudio Grech
Membru PAC

Appendix B | Terms of reference set by the National Audit Office

N A O
National Audit Office
MALTA

National Audit Office
Notre Dame Ravelin
Floriana FRN 1601
Malta

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www.facebook.com/NAOMalta

Awditur Ġenerali

Rif: NAO 86/2018

30 ta' Settembru 2019

Onor. Beppe Fenech Adami, M.P.
Chairman
Kumitat tal-Kontijiet Pubbliċi
Parlament ta' Malta
Pjazza Ħelsien
VALLETTA

Għażiż Onor. Fenech Adami,

Nagħmel referenza għat-talba għall-investigazzjoni mibgħuta lill-Awditur Ġenerali mill-Membri tal-Oppożizzjoni fil-Kumitat tal-Kontijiet Pubbliċi fit-28 ta' Awwissu 2018, dwar l-għoti ta' kuntratt għat-tmexxija tal-estensjoni li għad trid tinbena ta' ħames mitt sodda fir-residenza San Vinċenz de Paul. F'din l-ittra, l-Uffiċċju Nazzjonali tal-Verifika ntalab jinvestiga l-għoti ta' dan il-kuntratt fl-isfond tar-regolamenti dwar l-akkwist pubbliku. Dan il-kuntratt ingħata lill-kumpaniji Malta Healthcare Caterers Ltd u James Caterers Ltd b' valur ta' kwart ta' biljun ewro.

Din it-talba ġiet milqugħa mill-Uffiċċju Nazzjonali tal-Verifika dakinhar stess. Ftit ta' ġimgħat ilu, l-Uffiċċju beda x-xogħol preliminari assoċjat ma' din il-verifika li wassal għat-tfassil ta' dawn it-termini ta' referenza:

1. evalwazzjoni tas-sejħa għall-offerti maħruġa fl-10 ta' Novembru 2015 mid-Dipartiment tal-Kuntratti (DoC) bit-titlu 'Public private partnership for the provision of comprehensive services to St Vincent de Paul Residence', liema sejħa kienet tinkludi servizzi ta' catering, it-twaqqigħ, bini u tagħmir tal-kċina, u investiment addizzjonali mhux speċifikat;

2. analiżi tal-ftehim li sar mid-DoC f'isem il-Ministeru għall-Familja u s-Solidarjetà Soċjali, u l-Konsorzju JCL u MHC fl-14 ta' Novembru 2017, fejn il-Konsorzju aċċetta li jipprovdi s-servizzi komprensivi u ddefinixxa l-investiment addizzjonali bħala l-kostruzzjoni ta' żewġ blokok fir-Residenza u kontribuzzjoni monetarja ta' € 15,000,000 fuq perjodu ta' għaxar snin;

3. eżami tal-memorandum ta' ftehim li sar bejn ir-Residenza San Vinċenz de Paul u l-Konsorzju JCL u MHC fl-14 ta' Novembru 2017, fejn l-investiment addizzjonali ġie definit f'aktar dettall;

4. valutazzjoni tal-addenda sussegwenti maqbula bejn id-DoC, f'isem il-Ministeru għall-Familja u Solidarjetà Soċjali, u l-Konsorzju JCL u MHC, fejn xi termini kuntrattwali nbidlu, inkluż il-bdil tal-kontribuzzjoni monetarja f'kostruzzjoni ta' żewġ blokok addizzjonali; u

5. analiżi tal-Management Services Agreement milħuq mir-Residenza San Vinċenz de Paul u l-Konsorzju JCL u MHC fl-14 ta' Novembru 2017 wara proċedura nnegozjata, fejn il-Konsorzju kellu jipprovdi servizzi ta' mmaniġġjar u catering għar-residenti u l-ħaddiema tal-erba' blokok.

Dan huwa qafas preliminarju tal-investigazzjoni mitluba u l-Uffiċċju jirriserva d-dritt li jagħmel tibdiliet jekk meħtieġa.

Verżjoni bl-Ingliż tat-termini ta' referenza hi annessa ma' din l-ittra.

Tislijiet,

C. Deguara

Ink.

Terms of Reference

The terms of reference set by the National Audit Office entailed the:

1. review of the tender issued on 10 November 2015 by the Department of Contracts (DoC) titled 'Public private partnership for the provision of comprehensive services to St Vincent de Paul Residence', which services comprised catering, the demolition, building and equipment of a kitchen, and an unspecified additional investment;

2. analysis of the agreement entered into by the DoC on behalf of the Ministry for the Family and Social Solidarity, and the JCL and MHC Consortium on 14 November 2017, wherein the Consortium agreed to provide the comprehensive services and defined the additional investment as the construction of two blocks at the Residence and a cash contribution of €15,000,000 over a ten-year period;

3. examination of the memorandum of understanding entered into between the St Vincent de Paul Residence and the JCL and MHC Consortium on 14 November 2017, wherein the additional investment was further defined;

4. evaluation of the subsequent addenda entered into by the DoC on behalf of the Ministry for the Family and Social Solidarity, and the JCL and MHC Consortium, wherein contractual terms were revised, which included the replacement of the cash contribution with the construction of an additional two blocks; and

5. analysis of the Management Services Agreement entered into by the St Vincent de Paul Long Term Care Facility and the JCL and MHC Consortium on 14 November 2017 following a negotiated procedure, wherein the Consortium was to provide management and catering services to the residents and staff of the four blocks.

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