

PUBLIC CONTRACTS REVIEW BOARD

Case 2137 – TD/T/3851/2024 (11142) – Supply and Delivery of Outdoor Transformers

5th August 2025

The Board,

Having noted the letter of objection filed Mr Shaun Stoner acting for and on behalf of AG Installations Limited, (hereinafter referred to as the appellant) filed on the 4th June 2025;

Having also noted the letter of reply filed by Dr Chris Mizzi acting for Enemalta plc (hereinafter referred to as the Contracting Authority) filed on the 16th June 2025;

Having heard and evaluated the testimony of the witness Mr. Shaun stone (AG Installations Limited Company representative) as summoned by Dr Ian Stafrace acting for AG Installations Limited during the hearing on July 24, 2025;

Having heard and evaluated the testimony of the witness Mr Christopher Agius (Manager II at the IT Unit- Department of Contracts) as summoned by Dr Christopher Mizzi acting for Enemalta plc during the hearing on July 24, 2025;

Having taken cognisance and evaluated all the acts and documentation filed, as well as the submissions made by representatives of the parties;

Having noted and evaluated the minutes of the Board sitting of the 24th July 2025 hereunder reproduced.

Minutes

Case 2137 -TD/T/3851/2024 Objection – Supply and Delivery of Outdoor Transformers.

The tender was issued on the 9th of December 2024, and the closing date was the 28th of January 2025.

The estimated value of the tender, excluding VAT, was €84,000.00

On 4th June 2025, AG Installation Limited(C70397) lodged an appeal against Enemalta plc, the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations. The appellant's bid failed to submit updated technical literature.

A deposit of €420 was paid.

There were six bids.

On the 24th of July 2025, the Public Contracts Review Board (PCRB), composed of Mr. Kenneth Swain as Chairman, Mr Lawrence Ancilleri, and Dr Ing. Damien Gatt as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant: AG Installations LTD (C70397)

- Dr Janine Camilleri Mizzi – Legal Representative
- Dr Ian Stafrace – Legal Representative
- Mr Shaun Stone – Company Representative
- MS Laia Mangion – Student.

Contracting Authority: Enemalta plc.

- Dr Christopher Mizzi – Legal Representative.
- Ing Charles Bugeja – Chairperson.
- Mr. Jaden Formosa Tabone – Trainee Legal.

Opening Statements

Mr Kenneth Swain, Chairman of the Public Contracts Review Board, welcomed the parties, namely the appellant, AG Installations Ltd., and the Contracting Authority, Enemalta plc. He invited the appellant's legal representative, Dr Ian Stafrace, to present his initial submissions.

Initial Submissions

Initial submissions by the Appellant – AG Installations Ltd.

Dr Ian Stafrace, legal counsel for AG Installations Ltd., opened by stating that while the requested information and explanations were provided, the supporting file was inadvertently not uploaded. He argued that this omission neither benefited the appellant nor prejudiced Enemalta.

Dr Stafrace acknowledged that Enemalta was not authorized to request a second submission of documents; however, he emphasised that all relevant information had been provided in the text response, with the only omission being the attachment itself.

Initial submissions by the Contracting Authority – Enemalta

Dr Christopher Mizzi, representing Enemalta, responded that a rectification had been requested in accordance with the tender documentation. Although the clarification text referred to an attachment, the corresponding file was never uploaded. As a result, the Evaluation Committee had no access to the zip folder and was left with no choice but to disqualify the bidder.

Dr Mizzi indicated that a witness from the Department of Contracts would provide technical insights into the ePPS system, as the appellant might argue that the documents were submitted but not received by the committee. He emphasised that system logs would demonstrate that no such documents were received.

Chairman Mr Swain then asked the appellant if they intended to present any witnesses and reminded all parties that the Board had already received additional information days prior to the hearing.

Witness Testimonies

Mr Shaun Stone (ID 0357903L) – Summoned by Dr Ian Stafrace

Mr Stone, who was responsible for liaising with the manufacturer for bid submission (for the appellant), testified that he had assisted in responding to the clarification request and had prepared the zip file on his computer. The zip file contained the updated data sheet with the specified oil and required impedance voltage. He confirmed he had compiled Document A – entitled ‘Evaluation Clarifications Report’. (Note: Document A is attached to the Contracting Authority’s Reasoned Letter of Reply filed on 16th June 2025).

In his text response, Mr Stone had written:

“Kindly note updated Datasheet to rectify with the correct ‘Natural Ester Midel eN 1204’ insulation fluid. Kindly also find attached updated transformer datasheets to reach the correct impedance voltage range of 3.75 – 4.25.”

He affirmed that the contents of the data sheet matched the text submitted. Document AG2, which he presented, showed screenshots with timestamps indicating that the files were saved and modified on May 8th. One screenshot displayed a letter explaining the documents and the updated data sheet, which included the two transformer types and the specified oil.

He noted that he only became aware that the document had not been uploaded after receiving the disqualification notice. Mr Stone stressed that their bid was the lowest-priced and that they had no intention of submitting an incomplete clarification. He would be endangering himself and the company AG Installations Ltd of a disqualification.

Cross-Examination by Dr Christopher Mizzi

Dr Mizzi asked Mr Stone whether the screenshots in Document AG2 were taken from his personal computer. Mr Stone confirmed they were.

Mr Christopher Agius (ID 180772M) – Summoned by Dr Christopher Mizzi

Mr Agius, a Manager II at the IT Unit for the last eleven years at the Department of Contracts, testified that he had reviewed the ePPS system activity related to the tender TD/T/3851/2025. He confirmed that the system was functioning normally on May 8th and that AG Installations Ltd. had not uploaded the required zip file as claimed.

Mr. Agius stated that he had documents of communications between Mr. Jason Grech, the senior of IT section, and Ms. Panagiota Galanopoulou from the service provider. Ms Galanopoulou confirmed that there were no issues in the system on May 8th, when AG Installations replied with their clarification.

Mr. Agius shared copies of proof by Ms Galanopoulou stating that AG Installations Ltd. had not uploaded his zip attachment with the answers, on that day. He presented server logs showing that the system recorded no file upload at the time in question. On the second page of the logs, it was clearly indicated—marked in yellow—that the field indicating file upload status was marked as *null* and *false*. These were the server logs of the activity of AG Installations Ltd on that particular date of May 8th at 13:06 pm.

Mr Agius also demonstrated, via a demo system, what the proper process would look like had the file been successfully uploaded. The system logs showed activity from AG Installations Ltd. at 12:46 and a submission at 13:06 on May 8th, after which the system registered no further activity from the bidder. He pointed out that the system sends daily reminders about pending clarifications, meaning AG Installations had additional opportunities to rectify the submission before the May 12th deadline.

Cross-Examination by Dr Ian Stafrace

In cross-examination, Mr Agius confirmed that upon submitting a clarification, the system generates a confirmation email. He added that although some file upload fields are optional, the text field for replies is mandatory.

Final Submissions

Final Submissions by Dr Ian Stafrace (Appellant)

Dr Stafrace began by clarifying that he did not question the Evaluation Committee's compliance with regulations. However, he emphasised the financial impact of the disqualification, noting that AG Installations Ltd.'s bid was €80,000 compared to the awarded bid of €93,000.

He referred to Enemalta's rejection letter (dated 3rd June 2025), highlighting that the technical non-compliance cited could have been resolved had the clarification text been accepted. From the 3rd/4th paragraph, he quotes:

"For both cases, the tenderer failed to submit updated technical literature when offered the opportunity to rectify his position."

Dr Stafrace argued that the two clarifications requested by Enemalta were answered in the mandatory text field and reiterated that the intended data sheets were available and mentioned in the response.

Enemalta noted that the oil submitted was not compliant with the specs, however, in the mandatory text (refer to Document A – entitled 'Evaluation Clarifications Report' attached to the Contracting Authority's Reasoned Letter of Reply filed on 16th June 2025), he quotes:

"Find attached updated transformer data sheets to reach the correct impedance voltage range of 3.75 to 4.25".

Therefore, the answer asked for by Enemalta was submitted in the written text by May 8th. The data sheet is a supplementary formal sheet from the supplier. He quotes:

"Entities are reminded that requests for clarifications and or rectifications concerning a previous request dealing with the same shortcoming shall not be entertained".

The original request concerned technical data where data sheets were attached to show that the range requested was reachable. The evaluation committee did not access these data sheets, perhaps because Mr. Shaun did not upload this document. Dr Stafrace felt that Enemalta should have notified AG Installations Ltd. about the missing data sheets. Enemalta has the power and obligation to point such an administrative lack, where the text is stating that the data sheets were to be uploaded. This showed that there was possession of these data sheets, and there was no interest in not uploading these sheets. Rules are there to be honoured, nonetheless, he insisted that Enemalta should have flagged the missing documents, especially since the text made it clear that the data sheets were meant

to be attached. He argued that this oversight was administrative and should not have led to disqualification, especially when there was no attempt to gain an unfair advantage.

Final Submissions by Dr Christopher Mizzi (Contracting Authority)

Dr Mizzi emphasised the importance of procedural integrity. He recounted that on May 5th, the Evaluation Committee had issued a request for rectification of missing technical literature. The appellant responded in text form but failed to upload the supporting zip file.

As the literature was still missing at this second stage, Enemalta was not permitted to issue another request. The absence of the four required PDFs—essential technical documents—rendered the bid non-compliant despite being the lowest in price.

He concluded that without the required documentation, Enemalta had no option but to proceed with the next lowest technically compliant bidder.

Conclusion of the Hearing

With no further arguments presented, Chairman Mr Kenneth Swain thanked both parties and formally concluded the session.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 24th July 2025.

Having noted the objection filed by AG Installations Limited (hereinafter referred to as the Appellant) on 4th June 2025, refers to the claims made by the same Appellant with regard to the tender of reference TD/T/2851/2024 (11142) listed as case No. 2137 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Ian Stafrace

Appearing for the Contracting Authority: Dr Christopher Mizzi

Whereby, the Appellant contends that:

- a) Kindly note that on the 5th of May a request for clarification was issued through the EPPS Portal where the request highlighted 2 items to be rectified:
 - i. The impedance voltage was marked as compliant via the technical offer document; however, the submitted datasheet showed a different value of 3.6% - 4.4%.

- ii. The insulation fluid was marked as compliant via the technical offer document; however, the submitted datasheet was of a different insulating fluid, namely ES80.
- b) The clarification provided the opportunity to submit updated technical literature to support compliance for the specified impedance voltage range 3.75 - 4.25%, along with updated technical literature of the correct insulation fluid Natural Ester MIDELENI204.
- c) Following the receipt of such request, we as AG Installations Limited communicated with the manufacturer to update the necessary documentation.
- d) Furthermore, we as AG Installations Limited on the 8th of May submitted a covering letter and the necessary updated datasheets showing the compliant impedance voltage, and the compliant insulating fluid.
- e) We kindly ask following the above explanation and justification, along with the ensuing documentation supporting compliance that the Board re-review the Award considering AG Installations Limited as the Cheapest and Compliant Bid for Award.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 16th June 2025 and its verbal submission during the hearing held on 24th July 2025, in that:

a) ***No material replies to the Rectification Request***

First and foremost, the defendant would like to make reference to Doc. A, attached with this reply as being an extract of the rectification exercise during evaluation which has been carried out with the objector. This document shows a rectification being served onto the objector, and a reply afforded by the same objector on the 8th May 2025. Clearly this document shows, as can be reverified through any associated officer on the epps, that the objector has replied by referring to attached documentation - however such attachments were not included. The last line of the Evaluation Clarifications Report shows 'N/A' wherein this field should have contained the link to attached documentation such as zipfiles, pdfs, etc... This is only indicative that the objector (AG Installations Ltd.) in his reply to the rectification request did not attach any attachments and therefore the requested information was not sent. Therefore, the Evaluation Committee had no material rectification reply to assess any further the objector and thereby had no option but to disqualify the objector on technical grounds. The Evaluation Committee could not re-ask the objector to submit the documentation that was mentioned as this runs counter to Procurement Policy Note 40 - wherein it is not possible to re-send a Rectification Request to attain the originally requested rectification information/documentation. Also, any such second time request would run counter to basic principles of Public Procurement namely self-limitation and proportionality.

b) ***Rectification of Technical Literature submitted only with this objection***

The defendant makes reference to the technical literature that was submitted with this objection in front of this Board. The objector arguably is claiming that this technical literature was submitted as part of the rectification exercise. The evaluation committee has not assessed these documents

since these documents were submitted when the evaluation process has been already completed. The submission of bid material during the objection stage is outside the purview of the evaluation process, and the defendant would only focus to defend its evaluation outcome on the information that was presented by the bidder according to the Tender Document - i.e. at tendering stage and rectification stage only. Any evaluation of the material that was presented with this objection would also be in breach of the basic principles of public procurement such as transparency and equal Level playing field amongst bidders.

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

Grievance: Incorrect Disqualification despite being cheaper than the recommended bidder

- The Board notes that the Contracting Authority issued a rectification request on 5th May 2025 pursuant to Note 2 to Clause 5 of the tender document (SECTION 1 – INSTRUCTIONS TO TENDERERS), seeking updated technical literature to address two specific non-compliance issues: impedance voltage discrepancy and insulation fluid discrepancy.
- The requirements of this rectification request were unambiguous and legally binding. For the Insulating Ester Fluid, the request explicitly stated: *"Technical literature as requested in the Technical Literature Form Item 1.1, regarding the Insulation Ester Fluid, was missing from your technical offer... please rectify your position by submitting the correct technical literature."* Similarly, for Impedance Voltage, the request required the Appellant to *"submit updated technical literature to corroborate this."*
- These clear requirements derive directly from the tender's documentation. Item 1.1 of the Literature list unequivocally mandates that *"Detailed Technical Literature (Manufacturer's) must be submitted with each offer"* including *"Details of Insulation Ester Fluid used for the transformers."* This establishes that compliance verification required actual manufacturer's technical documentation, not mere self-declarations.
- Against this statutory backdrop, the Appellant's response was fundamentally deficient. While the Appellant submitted a text response on 8th May 2025 referencing attached documentation, the uncontested testimony of Mr Christopher Agius, corroborated by system server logs, conclusively demonstrates that no file attachment containing the requested technical literature was uploaded. The system logs unequivocally showed the file upload field marked as "null" and "false," establishing beyond any reasonable doubt that the mandatory technical literature was never submitted.

- This failure created an insurmountable legal impediment to further rectification. The Evaluation Committee was strictly bound by Public Procurement Policy Note 40 and the tender's Notes to Clause 5, which categorically prohibit "*Clarifications and/or Rectifications concerning a previous request dealing with the same shortcoming.*" Having already afforded the Appellant one opportunity to rectify the missing technical literature, any subsequent request would have addressed the identical deficiency and was therefore legally prohibited.
- The Board's determination is fortified by established judicial precedent. In *NQuayMT vs Agenzija għal Infrastruttura Malta* [Ref. 35/22/1] para 6, the Court of Appeal authoritatively held that "*The excess in clemency and attempts to save offers at all costs is not an expression of proportionality but disproportionate action against those who were 'compliant' from the very beginning... every bidder must, right from the very beginning strictly adhere to what the call for tenders stipulates and not expect to be asked to 'fix' the offer.*" This judicial pronouncement directly governs the present circumstances, where accepting the Appellant's position would constitute impermissible excessive clemency prejudicial to compliant bidders.
- Furthermore, the Appellant's reliance on price differential is legally misconceived. The tender documentation expressly stipulated that the contract would be awarded to "*the tenderer submitting the cheapest priced offer... and satisfying the administrative and technical criteria.*" The conjunctive 'and' establishes that price competitiveness and technical compliance constitute cumulative, not alternative, prerequisites. The Appellant's lower financial offer (€80,000 versus €93,000) cannot remedy the fundamental breach of mandatory technical documentation requirements.
- The Evaluation Committee's conduct exemplified proper adherence to procurement law. By maintaining strict procedural compliance, the Committee preserved self-limitation through refusal to exceed its prescribed authority, ensured transparency via consistent application of documented requirements, and safeguarded equal treatment by applying identical standards to all bidders. Any deviation from this approach would have compromised the integrity of the entire procurement process and violated fundamental public procurement principles.
- It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner, strictly adhering to established procurement procedures and in no way transgressed the principles of self-limitation, transparency, or equal treatment.
- Therefore, the Board does not uphold the Appellant's grievance on this point.

The Board,

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

- a) Does not uphold Appellant's Letter of Objection and contentions,
- b) Upholds the Contracting Authority's decision in the recommendation for the award of the tender,
- c) Directs that the deposit paid by Appellant **not** to be reimbursed.

Mr Kenneth Swain
Chairman

Dr Ing. Damien Gatt
Member

Mr Lawrence Ancilleri
Member