

PUBLIC CONTRACTS REVIEW BOARD

Case 2144 – CT2242/2024 -- Tender for the Preventive Maintenance, Servicing, Repairs and Upkeep of the LPG Storage Including Their Distribution and Hot Water Production Plants at St Vincent De Paul

9th September 2025

The Board,

Having noted the letter of objection filed by Dr Patrick Valentino, acting for and on behalf of NAS LIMITED (C72456) (hereinafter referred to as the "Appellant"), filed on the 13th June 2025;

Having also noted the letter of reply filed by Dr Noel Bezzina, acting on behalf of BEZZINA Legal, acting for and on behalf of St Vincent De Paul Long Term Care Facility (hereinafter referred to as the "Contracting Authority"), filed on the 27th June 2025,;

Having heard and evaluated the testimony of the witness Mr. Pierre Farrugia (ID No. 162473M), (NAS LIMITED (C72456) Company Representative) as summoned by Dr Patrick Valentino;

Having heard and evaluated the testimony of the witness Mr. Anthony Caruana (ID No. 44470M), (Chairperson of the Tender Evaluation Committee) as summoned by Dr Noel Bezzina;

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

Having noted and evaluated the minutes of the Board sitting of the 2nd of September 2025, hereunder reproduced:

Minutes

Case 2144 Objection – CT2242/2024 – Tender for the Preventive Maintenance, Servicing, Repairs and Upkeep of the LPG Storage Including their Distribution and Hot Water Production Plants at St Vincent De Paul.

The tender was issued on the 23rd of October 2024, and the closing date was the 22nd of November 2024.

The estimated value of the tender, excluding VAT, was €743,280.00

On 13th June 2025, Nas Limited. lodged an appeal against St Vincent De Paul, the Contracting Authority, in accordance with Regulation 270 of the Public Procurement Regulations.

A deposit of €3,716.00 was paid.

There were two Bids.

On the 2nd of September 2025, the Public Contracts Review Board (PCRB), composed of Mr Kenneth Swain as Chairman, Dr Ing. Damien Gatt and Mr. Lawrence Ancilleri, as members, convened a public hearing to consider the appeal.

The attendance for this public hearing was as follows:

Appellant – NAS Limited. (C72456)

Dr Patrick Valentino – Legal Representative

Mr Pierre Farrugia – Company Representative

Contracting Authority – St Vincent De Paul Long Term Care Facility.

Dr Noel Bezzina – Legal Representative

Mr. Anthony Caruana – Chairperson of the Evaluation Committee

Mr. Sandro Ghigo – Secretary

Mr. Vincent Zammit – Evaluator

Ms. Marica Saliba – Procurement Manager

Interested Party – Easy Gas Malta Ltd.(C45789)

Dr Matthew Paris - Legal representative (online)

Dr Zack Esmail - Legal representative

Daniel Farrugia - company representative

Opening Statements.

Mr Kenneth Swain, Chairman of the Public Contracts Review Board, formally welcomed all parties in attendance. Present were the Appellant, NAS Limited; the Contracting Authority, Saint Vincent De Paul; and the representative of the Interested Party, Easygas Malta Ltd.

Initial Submissions

Initial submissions by the Appellant

Dr. Patrick Valentino opened his submissions by stressing that this appeal concerns two distinct elements: the service and repair of LPG tanks, and their requalification process. He argued that during the financial bid proceedings, the certification of the tanks was omitted, even though such work is specific and should have been included. The Appellant maintains that certification was in fact part of the tender.

Dr. Valentino noted that while the technical offer form contained a relevant clause, bidders were not expressly required to quote for this specific work. In the previous 2020 tender, however, the certification of tanks had been explicitly requested.

Initial submissions by the Contracting Authority

Dr. Noel Bezzina, on behalf of the Contracting Authority, stated that NAS Ltd. was found non-compliant on the technical offer form and was therefore disqualified. Under PPR regulations, all bidders must be treated equally. The Appellant, he argued, merely assumed what the Authority intended, instead of seeking clarification. Any error could have been remedied under Regulation 262, yet no remedy was sought.

He emphasized that the Appellant now claims technical compliance by shifting the alleged error onto the tender itself. This appeal, he concluded, amounts to a request for cancellation, but the responsibility for the error lies with the appellant.

Initial submissions by the Interested Party

Dr. Zack Esmail submitted that all bidders must be treated the same. The Appellant was correctly excluded after marking “non-compliant” in the technical form.

Dr. Matthew Paris, for Easygas Malta Ltd., added that the Appellant’s reliance on Regulation 262 was misplaced. The tender documents were clear, and no clarifications were requested. In such circumstances, the rules must be strictly applied.

Witness Testimony

Mr. Pierre Farrugia (ID No. 162473M), summoned by Dr. Patrick Valentino

Mr. Farrugia, NAS company representative, explained the process of tank certification. LPG tanks, generally located underground and used to fuel boilers, must be removed, sprayed, tested by an engineer, and reinstalled as part of requalification. Temporary tanks are typically inserted to maintain service. Each tank is about three by four meters, with roughly seven in total at St Vincent De Paul.

He highlighted that because this work was not listed in the financial offer, it appeared not to be required. The tender did mention that additional services might be needed, for which quotations would be requested. In the 2020 tender, however, tank requalification had been explicitly included.

Cross-Examination by Dr. Noel Bezzina

Mr. Farrugia conceded that, since the requirements were not in the financial bid, he assumed the Contracting Authority had not requested them.

Mr. Anthony Caruana (ID No. 44470M), summoned by Dr. Noel Bezzina

Mr. Caruana, Chairman of the Evaluation Committee, explained the evaluation process: eligibility, technical compliance, and financial evaluation. Both bidders met eligibility, but both failed at the technical stage.

In NAS Ltd.’s case, the technical offer form clause 4.2.7 contained a contradiction: “Yes” in one section, but “Not applicable to this tender” in another. This resulted in automatic exclusion. Accordingly, the Committee did not proceed to financial evaluation. He confirmed that the Committee had received no additional clarifications or information from the Appellant regarding the requirements.

Cross-Examination by Dr. Patrick Valentino

Mr. Caruana clarified that he had not drafted the tender documents; they were prepared by Ing. Leonard Diacono, who left his post in March 2024.

The Chairman noted that the drafting of the tender form was not part of the hearing.

Mr. Caruana insisted, however, that the requirement for LPG tank requalification was explicit. Writing “not applicable” was inconsistent with the certification process, which must be carried out by a competent professional and provides validity for another ten years.

Cross-Examination by Dr. Matthew Paris

Mr. Caruana cited the final paragraph of the technical offer form: *“Kindly tick yes/no in the table below for each item. A No answer will automatically define the Offer as non-compliant and is not rectifiable as per Note 3.”*

He explained that the Committee had no discretion: once NAS Ltd. wrote “No” and “not applicable,” exclusion was automatic. Rectification was not possible. The only conclusion for the Evaluation Committee was to exclude automatically the appellant’s offer.

Final Submissions

Final Submissions by Dr. Patrick Valentino (Appellant)

Dr. Valentino argued that the tender contained an inherent error. Two distinct jobs—maintenance and certification—were conflated, even though they are separate. Certification, valid for ten years, had been expressly included in previous tenders but was omitted here, save for a single paragraph.

He questioned why the financial bid did not include certification requirements, suggesting that the Evaluation Committee should have sought clarification rather than exclude the Appellant for marking “not applicable.”

Final Submissions by Dr. Noel Bezzina (Contracting Authority)

Dr. Bezzina reiterated that the tender dossier clearly required certification, as reflected in the technical offer form. The Appellant marked “No” and “not applicable” without requesting clarification or invoking a remedy before submission.

He emphasized that bidders were warned: *“A No answer will automatically define the offer as non-compliant and is not rectifiable as per Note 3.”*

The Appellant knowingly submitted a non-compliant bid and now seeks to have part of the tender disregarded so that the financial offer can be considered. There was no proof shown about requests on previous tenders. This, Dr. Bezzina argued, is untenable. If the tender were defective, it should have been annulled in its entirety, not reinterpreted. The appeal should therefore be rejected.

Final Submissions by Dr. Matthew Paris (Interested Party)

Dr. Paris stressed that the exclusion of the Appellant was a direct and necessary application of the rules. The technical form was explicit, and the Appellant’s “No” answer left no room for discretion, and he quotes:

‘A No answer will automatically define the Offer as non-compliant and is not rectifiable as per Note 3’.

If the tender itself was flawed, the proper course would be cancellation under Regulation 276, not reinterpretation, since neither bidder proofed to be complaint. The Contracting Authority would then have the opportunity to issue a new tender.

Conclusion of the Hearing

With no further submissions, Chairman Kenneth Swain thanked all parties and formally concluded the session.

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 2nd of September 2025.

Having noted the objection filed by NAS LIMITED (hereinafter referred to as the "Appellant") on the 13th of June 2025 and refers to the claims made by the same Appellant with regards to the tender of reference CT2242/2024 listed as case No. [2144] in the records of the Public Contracts Review Board.

Appearing for the Appellant:	Dr Patrick Valentino
Appearing for the Contracting Authority:	Dr Noel Bezzina
Appearing for the Interested Party:	Dr Matthew Paris & Dr Zack Esmail

Whereby, the Appellant contends with respect to:

First Ground of Appeal - Technical Non-Compliance Decision

- The appellant has the cheapest offer and notwithstanding was held to be technically non-compliant on the basis that section 4.2.7 in the Technical Offer Form was marked by the appellant as no with comments '*NOT APPLICABLE TO THIS TENDER*'.
- The appellant appreciates that instructions to tenderers which preceded the Tender requirements, specified that '*A no answer will automatically define the offer as non-compliant and is not rectifiable as per Note 3.*' however the appellant humbly notes that the same instructions specify that '*the items being offered in the technical offer must be in conformity with the specification requested under Section 3- Technical Specifications and/or the Bill of Quantities and/or any Drawing issued.*'
- It is strikingly obvious that the requirement 4.2.7 dealt with the **requalification process for LPG tank**, a requisite that was not included in the financial bid breakdown and therefore not applicable to this present tender. It is thus only logical to assume that the appellant marked as NO a question that is in fact mis-placed in the technical offer had absolutely no scope in this tender and was blatantly superfluous to the whole process.
- Suffice to mention that a similar tender was issued in 2020 (reference CT2503/2020) in which the **requalification process for LPG tank** was part of the required services and the relative items were listed in the financial bid breakdown.
- It is evident that since these services were excluded from the financial bid breakdown in this present tender, presumably the related question should have been removed from the **technical offer**. This is most probably a 'cut and paste lapsus' by the individual preparing the tender documents.
- It thus stands to reason that appellant indicated this in the technical offer that such is not applicable to this present tender. Instead of acknowledging its mistake Contracting Authority penalised the

appellant and deemed him to be technically non compliant for marking 'no' to a 'problem' the same Authority had created.

- It is humbly submitted that in view of the above Contracting Authority should have accepted qualification given by tenderer together with his negative answer and deem such to be compliant.

Second Ground of Appeal - Cancellation of Tender Process

- The appellant is aggrieved with the decision of the Contracting Authority that the whole tendering process is being cancelled.
- It is humbly submitted that barring the above issue, the appellant's submission is complete, technically compliant and within the Estimated Procurement Value of the tender. Therefore, no logical, legal or factual reason is seen in this decision.
- The appellant humbly submits that apart from the fact that they were awarded this tender between the years 2019 - 2022 and performed their duties to the full satisfaction of all involved, their offer is the lowest financially of those submitted in this present process. Appellant humbly submits that the company is well equipped to satisfy all tender requirements as per past involvement and have in this present tender process the lowest financial bid.

The Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 27th June 2025 and its verbal submission during the hearing held on 2nd September 2025, in that:

Response to First Grievance (That the appellant had the cheapest offer and that notwithstanding, it was deemed technically non-complaint)

- In order to provide some context, the tender, particularly clause 4.2.7 – Section 3 Terms of Reference, required that the contractor may be asked to carry out additional works on site such as installation of water pipe and fixtures (including supports, assembling of fittings and valves, modification of pipe lengths and other water plumbing needs within the Hot Water Plants and requalification of LPG Tanks as required by local code of practice and regulator).
- Likewise, this requirement was included in the technical offer form, for tenderers to mark whether they will be satisfying this requirement or not. It appears that the objector, when filling out the technical offer form, not only marked "NO" next to this specific requirement (meaning that he was unable to satisfy this requirement) but also added the words "NOT APPLICABLE TO THIS TENDER".
- In this ground of appeal, the objector is essentially arguing that, since this requirement was not included in the financial bid breakdown, then this requirement was not applicable to this tender and thus is implying that this requirement should have been removed from the tender dossier.

- Primarily, the Contracting Authority respectfully submits that, it is not up to any tenderer to dictate what is and what is not applicable to a tender in the technical offer form. It is the Contracting Authority which lays down the parameters and requirements of a tender and the tenderer cannot, on its own accord, decide to ignore certain requirements just because, according to its mistaken assumption, a particular requirement is not applicable.
- Secondly, it is extremely evident, that the objector is operating under the assumption that, since the requirement was not included in the financial bid, then this was not required by the Contracting Authority and thus, according to the objector, this requirement was erroneously included in the tender and should have been removed. The objector also argues that in previous tenders, this requirement was included in the financial bid and thus, since in this present tender, this requirement was not included in the financial bid, then it should have been removed from the tender requirements. Interestingly, the objector also makes use of the words 'presumably', 'most probably' and 'assume' - words which perfectly describe what the objector is doing, that is, assuming.
- This is being stated because, this requirement was purposefully included in this tender as one of the requirements being requested by the Contracting Authority and thus, the objector cannot just state that this requirement wasn't applicable just because he assumed so.
- It is also being submitted that, contrary to what the appellant seems to be alluding, tenders are adjudicated in a specific order, that is, first the eligibility criteria, then compliance with technical specifications and lastly the financial offer. It therefore follows that, since the appellant did not satisfy the technical requirements, his offer was deemed technically non-compliant irrespective of the financial offer and consequent adjudication thereto.
- Thirdly, although the objector argues that this requirement was not applicable, at no stage did the objector clarify this matter with the Contracting Authority by submitting a clarification or filing a precontractual remedy in the event that he deemed that there was some defect with the tender dossier. It is manifestly evident that, the tenderer failed to exercise any remedies which he could have and is now trying to rectify this omission by stating that he shouldn't have been deemed technically non compliant since this requirement "was not applicable".
- Fourthly, as the objector himself rightly states, the technical offer form specifically states "*Kindly tick yes/ no in the table below for each item. A No answer will automatically define the Offer as non-compliant and is not rectifiable as per Note 3*". It is therefore abundantly clear that, once the objector ticked 'No', he automatically was deemed to be technically non-compliant as per the instructions given.

Response to Second Grievance (That the tender in question is not to be cancelled since objector's offer was technically compliant)

- In this ground of appeal, the objector states that he feels aggrieved that the whole tender has been cancelled since his offer was complete, technically compliant and withing the estimated procurement value.

- Besides being an extended argument of the first ground of appeal, this ground has no merit. For starters, the objector is contradicting himself; while stating that the tender in question was flawed and that he pointed out a mistake carried out by the Contracting Authority, he opposes the cancellation of the tender and asks this board to order that the tender be reevaluated on the financial bid.
- Furthermore, the objector is opposing the cancellation of the tender process solely on the ground that his offer was technically compliant. Without repeating what has already been stated in relation to the first ground, since the objector ticked a 'No' answer in the technical offer form, his offer was deemed to be non-compliant by the evaluation board and this in conformity with the instructions in the technical offer form. Resultantly, since no offers, including that of the objector, were technically compliant, the tender was cancelled by the Contracting Authority.

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.

First Ground of Appeal - Technical Non-Compliance Decision

- The Board notes that section 4.2.7 of the technical offer form clearly required bidders to confirm their capability to carry out "*requalification of LPG Tanks as required by local code of practice and regulator*".
- The Appellant marked "NO" to this requirement and added the annotation "*NOT APPLICABLE TO THIS TENDER*", thereby indicating inability to satisfy this mandatory technical specification.
- The Board observes that the technical offer form contained explicit and unambiguous instructions stating: "*A No answer will automatically define the Offer as non-compliant and is not rectifiable as per Note 3.*"
- The Appellant's assertion that this requirement was not applicable based on its absence from the financial bid breakdown constitutes a unilateral assumption without basis in the tender documentation.
- The Board notes jurisprudence consistently affirms that it is the bidder's responsibility to ensure full clarity and compliance in its submissions.
- The Board finds that the Appellant's reliance on the structure and requirements of the previous 2020 tender (CT2503/2020) is irrelevant, as each tender must be evaluated on its own specific terms and documentation.
- At no stage did the Appellant seek clarification from the Contracting Authority during the tender process (Regulation 38 of the PPR), nor did it invoke any pre-contractual remedy (Regulation 262 of the PPR) if it believed the tender contained defects.

- It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner.

Therefore, the Board does not uphold the Appellant's grievance on this point.

Second Ground of Appeal - Cancellation of Tender Process

- The Appellant's objection to the tender cancellation is predicated on the assertion that its submission was technically compliant, which the Board has determined to be unfounded in the first grievance.
- The Board notes that both bidders were found to be technically non-compliant during the evaluation process, which necessitated the cancellation of the tender in accordance with the applicable procurement regulations.
- The Contracting Authority acted correctly in cancelling the tender when no compliant bids were received, in accordance with established procurement procedures.
- The Board finds that this grievance is intrinsically linked to the first ground of appeal and lacks independent merit.

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 to cancel 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