

PUBLIC CONTRACTS REVIEW BOARD

Case 2168 – CT3001/2025 – Finishing of Female Ward 2 at Mount Carmel Hospital, Inc. Minor Civil Works, and Mechanical and Electrical Installations, using environmentally friendly materials

29th October 2025

The Board,

Having noted the letter of objection filed Dr Janine Camilleri Mizzi and Dr Ian J. Stafrace on behalf of SalibaStafrace Legal acting for and on behalf of AG Installations Limited, (hereinafter referred to as the appellant) filed on the 31st July 2025;

Having also noted the letter of reply filed by Dr Christopher L. Vella on behalf of Old Mint Legal acting for and on behalf of Ministry for Health (hereinafter referred to as the Contracting Authority) filed on the 8th August 2025;

Having heard and evaluated the testimony of the witness of Mr. Joseph Piscopo, Chairperson of the Evaluation Committee, as summoned by Dr Ian Stafrace Maistre acting for AG Installations Limited, the appellant;

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 15th of October 2025 hereunder-reproduced.

Minutes

PUBLIC CONTRACTS REVIEW BOARD

Case 2168 CT3001/2025 – For the Finishing of Female Ward 2 at Mount Carmel Hospital, Inc. Minor Civil Works, and Mechanical and Electrical Installations, Using Environmentally Friendly Materials.

The tender was issued on the 9th January 2025, and the closing date was the 4th of March 2025.

The estimated value of the tender, excluding VAT, was €1,140,291.25.

On 31st July 2025 AG Installations Limited. (C70397) lodged an appeal against Foundation for Medical Services. – the Contracting Authority, and the Recommended Bidder, Camray Company Ltd. (9752) in accordance with Regulation 270 of the Public Procurement Regulations.

A deposit of €5,701.00 was paid.

There were four bids.

On the 15th of October 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 – AG Installations. (C70397)

Dr Ian Stafrace – Legal Representative

Dr Janine Camilleri Mizzi – Legal representative

Mr Andri Grech – Company Representative

Mr Shaun Stone – Company Representative

Mr Rajit Balakrishna – Company Representative

Contracting Authority – Foundation for Medical Services (FMS)

Dr Christopher Vella – Legal Representative

Mr Joseph Piscopo – Chairman

Mr Noel Bonello – Secretary

Arch Martha Coleiro Kingswell – Evaluator

Recommended Bidder – Camray Company Ltd. (9752)

Dr Reuben Farrugia – Legal Representative

Mr Ray Camilleri – Company Representative

Mr Richard Pullicino – Company Representative

Department of Contracts

Dr Audrey Marlene Buttigieg Vella – Legal Representative

Opening Statements

Mr. Kenneth Swain, Chairman of the Public Contracts Review Board (PCRB), formally welcomed the parties present, including representatives from the Appellant, AG Installations.; the Contracting Authority, Foundation for Medical Services (FMS).; the Department of Contracts and the Recommended Bidder, Camray Company Ltd.

Initial Submissions

Initial Submissions by Dr. Ian Stafrace (for the Appellant)

Dr. Stafrace stated that AG Installations Ltd. was disqualified because, according to the Contracting Authority, the documents submitted during the second round lacked the requested information. The clarification was denied, as the regulations stipulate that submissions can be made only once. A rectification was filed, requesting evidence of projects carried out by AG Installations Ltd., but the Contracting Authority deemed the documentation incomplete and lacking clear indications.

Dr. Stafrace noted that AG Installations Ltd. had previously been awarded tender CT 2220/24 within the same complex. The documents submitted for that tender, particularly those related to performance, were to be presented to the Board and were identical to those submitted in the tender

currently under appeal. Therefore, the first point was that the documents in CT 2220/24 were deemed sufficient, whereas the Contracting Authority found the same documents incomplete in this tender.

The second point was that the requested documentation related not to a private entity but to a government foundation, the 'Foundation for Tomorrow Schools'. The Contracting Authority could have verified the information directly with the entities referred to by AG Installations Ltd., without involving the company itself. The Contracting Authority required further references for the procedure, which it could have obtained from another contracting authority—FTS—within the same Mount Carmel Hospital complex. The information requested was not technical in nature but served merely as a referral for the Contracting Authority to determine the good standing of AG Installations Ltd. This was already established when AG Installations Ltd. was awarded tender CT 2220/24.

Initial Submissions by Dr. Christopher Vella (for the Contracting Authority).

Dr. Vella stated that this tender concerned the finishing of Female Ward 2 at Mount Carmel Hospital. There were four bids. The Tender Document, clause 5B (c)(1), required references for past projects valued at more than €450,000. The tender included and he quotes:

'Failure to list two (2) projects and their relevant values as requested shall render the tender offer as unacceptable and not eligible for further evaluation.'

The appellant submitted a 'Provisional Performance Certificate', not even a 'Final Completion Certificate'. This was not a proper letter of reference for the Evaluation Committee, as it contained no detailed information regarding overall experience. The Evaluation Committee therefore requested a rectification from the appellant, who presented an auditor's list in Document B, indicating the project title and the value of the contracting works. However, there was still no information on the works performed or on overall performance and experience.

The Tender Document clearly outlined the requirements in bullet form. No further rectification could be made, so a clarification was requested instead. The appellant, however, submitted new documents, which the Evaluation Committee deemed inadmissible. In note 2, clause 5, and he quotes:

'Requests for Clarifications and/ or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained.'

Based on the principles of self-limitation and equal treatment, the Evaluation Committee could not deviate from the terms of the tender. Any other decision would have prejudiced other bidders who had submitted all required documents. Dr. Vella referred to *NQuayMT vs Agenzija għal Infrastruttura Malta et, Court of Appeal (22 June 2022) [Ref. 35/22/1]*, where the Court held that a bidder who remains administratively non-compliant cannot later attempt to adjust the offer to make it compatible. The appellant expected the Committee to search for information that the bidder should have submitted in a clear and concise manner.

Dr. Vella objected to new documents presented by the appellant, since the Tribunal's email had stated that all documents were to be submitted three days prior to the hearing. The Chairman accepted this objection, confirming that new documents must be presented to the Board at least three days before the hearing. He also noted that it was not within the Board's remit to compare tenders, as specifications differed.

Dr. Stafrace stressed that he was not referring to specifications but to the format of the reference letter and requested that a witness from the Evaluation Committee be called. The Chairman agreed.

Initial Submissions by Dr. Reuben Farrugia (for the Recommended Bidder)

Dr. Farrugia emphasized that the requisites of the 2024 tender did not match those of the current tender. Each tender required specific experience-related information. The objection was not about the three-day lapse, but about the expectation that this Board, against its jurisdiction, would examine a past tender.

Under clause 5B(c)(1), the Contracting Authority requested proof of experience, including a satisfactory note from the client confirming good communication, responsiveness, and attention to detail. The Evaluation Committee required all these elements. Dr. Farrugia quoted: *'The letters of Reference shall be endorsed by the end client. Any letters reference provided, not endorsed by the end client, or not including the requested information mentioned above shall render the tender offer as unacceptable and not eligible for further evaluation.'*

The basis for evaluation was not merely the client's endorsement but also the inclusion of all required information. He further quoted:

'In so listing the end clients, the tenderer is giving his consent to the Evaluation Committee, so that the latter may, if it deems necessary, contact the relevant clients, with a view to obtain from them an opinion on the supplies provided to them, by the tenderer.'

This process was in line with regulations 239(1) and 239(3) of the PPR.

The appellant had not initially submitted the documents required by the tender. He later tried to remedy this through Clarification 1. The appellant claimed compliance with the original tender, but if that were true, he would not have needed to submit new documents. The Evaluation Committee evaluated the documentation as incomplete and issued Clarification Note 2, and Dr Farrugia quotes:

'Detailed information on the overall performance and experience, including, but not limited to, timely execution, communication, responsiveness, and attention to detail.'

This information was still missing. The appellant then submitted new documents which, under the regulations, could not be accepted. A section of the tender document therefore remained incomplete. The Evaluation Committee acted according to the principles of:

1. Self-limitation
2. Transparency
3. Equal treatment

Among the appellant's documents were two from FTS, including a 'certificate of provisional acceptance' which stated:

'This is to confirm that works on the above captioned project have been completed to our satisfaction and have been provisionally accepted on the 15th of August 2023.'

This document did not meet the tender's requisites. When a reference letter regarding experience is required, one cannot rely on the bidder's own declaration. In Document B, the appellant submitted a

self-declaration which could not substitute the required information. The appellant provided information intended to satisfy 5B(c)(1), but this document should not have been considered.

Witness Testimony

Mr. Joseph Piscopo (ID 395580M), summoned by Dr. Ian Stafrace.

Mr. Joseph Piscopo, Chairperson of the Evaluation Committee for the present tender, could not recall whether he had chaired tender CT 2220/24.

Dr. Farrugia objected and asked the Board whether reference to the past tender would be permitted. Dr. Stafrace insisted that AG Installations Ltd. had been disqualified due to the *format* of the reference letters. The Board needed to determine whether, based on the submitted information, the Evaluation Committee had sufficient grounds for disqualification. He argued that if he had proof, the Board should decide whether it was relevant. Dr. Stafrace requested to make a verbal statement if the proof could not be discussed, maintaining his right to mention that AG Installations Ltd. had been awarded tender CT 2220/24.

The Chairman noted that this appeal fell under regulation 270, which outlined the relevant grievances. However, Mr. Swain stated that tender CT 2220/24 was not relevant. Questions to the witness about that tender were also irrelevant, as committee members differed between tenders, and decisions were not taken by the Chairman alone.

The Board would decide based on the documentation submitted, in line with regulation 270 and not 262. The arguments should concern whether AG Installations Ltd. had submitted all documents required under 5B(c)(1), with the recommended bidder contesting that claim. Whether AG Installations Ltd. had won the 2024 tender was immaterial.

Dr. Stafrace reiterated that his argument related to the alleged lack of evidence of AG Installations Ltd past experience in this tender. The only proof available to substantiate AG Installations Ltd. claim was in the 2024 tender, and he had every right to present it. The Contracting Authority was not obliged but had the right to seek information from other Contracting Authorities.

Dr. Farrugia maintained that for the Board to make such an assessment, it would need to examine the 2024 documents, review the experience requirements, and re-assess AG Installations Ltd submissions from that year — which was beyond its remit.

Mr. Swain concluded that he had clarified on two occasions that the 2024 tender would not be accepted as proof. The discussion should focus solely on how the current appeal was filed, based on the evidence and documents presented to the Board. This was to be recorded in the minutes.

Verbal:

Dr. Stafrace, on behalf of the appellant, declared that regarding tender CT 2220/24, the only proof he wished to mention was confirmation of to whom that tender had been awarded, and not the process by which it was awarded.

Verbal:

Dr. Farrugia, referring to Dr. Stafrace's statement, reiterated his earlier submissions regarding the same matter.

Final Submissions

Final Submissions by Dr. Ian Stafrace.

Dr. Stafrace stated that the appeal concerned the *wording*. One of the documents criticized by the recommended bidder was issued by FTS. It had been submitted three times during the tender process. FTS, a public entity, was asked for a performance certificate and issued a document titled 'Certificate of Provisional Acceptance', stating:

'This is to confirm that the above captioned project has been completed.'

This wording was not drafted by AG Installations Ltd. When clarification was sought after rectification, FTS prepared a question-and-answer document. As a Contracting Authority, FTS fully understood what was required from bidders and considered its document sufficient. After all, FTS had awarded a similar contract to AG Installations Ltd. a few months earlier. While FTS's wording could have been clearer, the bidder could not dictate its phrasing. It would be inconsistent if FTS were to claim dissatisfaction with AG's performance and then a month later, states that it was satisfied.

Dr. Stafrace concluded that the Contracting Authority would now face higher costs for something that could have been easily verified, as it was entitled to request information directly from FTS.

Final Submissions by Dr. Christopher Vella

Dr. Vella disagreed regarding the wording or the letterhead of the documents. The Committee had requested crucial information to assess whether the bidder had experience with similar projects. This was not a best price-quality ratio tender; the award was based solely on the lowest price. Therefore, the Evaluation Committee's duty was to verify compliance. Essential details were requested but not provided.

The Board, like the Evaluation Committee, must follow the relevant regulations and cannot examine other tenders or submissions from past procedures. It must decide based solely on the evidence presented in this case.

Final Submissions by Dr. Reuben Farrugia

Dr. Farrugia stated that the question-and-answer document was submitted only after Clarification Note 2 and thus constituted new documentation, which the Evaluation Board could not accept under regulation 2393. Had the bidder requested it earlier, it could have been included before.

Regarding wording, *Provisional Acceptance* means that the project is complete except for a snag list, meaning the contract has not been fully completed in compliance with the tender requirements. Dr. Stafrace had argued that the term *satisfactory* should be interpreted as meeting all requisites under 5B(c)(1).

Dr. Farrugia referred to several legal sources to support his arguments:

Directive 2014/24/EU, Articles 18, 56(3), 59(4)

S.L. 601.03 – Public Procurement Regulations, Regulations 18, 259, 273

European Court of Justice Cases:

- C-599/10 *SAG ELV Slovensko*
- C-336/12 *Manova BVBA*
- C-131/16 *Archus and Gama* – benchmark for clarifications
- C-42/13 *Cartiera dell'Adda SpA*

PCRB Cases:

- *Gatt Tarmac Ltd vs Infrastructure Malta* (2023)
- *MCE Ltd vs Ministry for Education* (2022)
- *Bonnici Bros Ltd vs Wasteserv Corporation* (2024)

Conclusion of the Hearing

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

End of Minutes

Hereby resolves:

The Board refers to the minutes of the Board sitting of the 15th October 2025.

Having noted the objection filed by AG Installations Limited (hereinafter referred to as the Appellant) on 31st July 2025, refers to the claims made by the same Appellant with regard to the tender of reference CT3001/2025 listed as case No. 2168 in the records of the Public Contracts Review Board.

Appearing for the Appellant: Dr Janine Camilleri Mizzi & Dr Ian J. Stafrace

Appearing for the Contracting Authority: Dr Christopher L. Vella

Appearing for the Recommended Bidder: Dr Reuben Farrugia

Appearing for the Department of Contracts: Dr Audrey Marlene Buttigieg Vella

Whereby, the Appellant contends that:

- a) Before all else, the Objector underlines that the sole reason cited for the Objector's disqualification, as indicated in the letter dated 22nd July 2025, relates exclusively to the letters of reference required under *Section 1 - Instructions to Tenderers, Clause 5(C)i - Technical and Professional Ability - Performance of Works of the specified type*. These references were the subject of Clarification No. 1 raised in both the First and Second Requests issued by the Evaluation Committee. Consequently, this objection will

strictly address Clarification No. 1 only— specifically, paragraph (b) under the First Request and paragraph (a) under the Second Request—while expressly excluding any reference to Clarification Nos. 2 and 3, which fall entirely outside the scope of the disqualification reasoning. Accordingly, the annexes attached to this objection are similarly limited to documentation relevant solely to the aforementioned components of Clarification No. 1.

- b) On the basis of the foregoing, the Objector draws attention to the fact that, through the First Request, the Evaluation Committee stated as follows: *"The letters of reference provided for the projects listed under (i) and (ii) on the abovementioned form requested under 5(c)i are missing the detailed information requested above. Please advise where, in your offer, the Evaluation Committee can find the letters of reference including all the information being requested above; or alternatively, you may rectify your position by submitting new letters of reference, including all relative information as requested in the tender documentation. In view of the above you may also rectify your position by submitting new projects satisfying all tender conditions, together with all relative documentation and information as requested in tender document."*
- c) Following the Objector's comprehensive response, the Evaluation Committee, through the Second Request, further noted that: *"The letters of reference provided for the projects listed under (i) and (ii) requested under 5(c)i are missing the detailed information requested above. In view of the above, you are being given the opportunity to clarify where in the submitted documentation the Evaluation Committee can find the letters of reference including all the information being requested above."*
- d) The Objector categorically rejects the Evaluation Committee's unfounded assertion that the letters of reference submitted for the projects listed under (i) and (ii), as required by Section 5(c)i of the Tender Document, were deficient or incomplete. These references unequivocally satisfied every requirement explicitly laid down in the Tender Document.
- e) Without prejudice to the foregoing, the Evaluation Committee's Second Request was vague, incoherent, and entirely devoid of any clear indication as to what specific information was allegedly lacking. This level of ambiguity demonstrates an outright disregard for the basic principles of transparency, equal treatment and legal certainty that underpins public procurement procedures. In this context, the Second Request cannot, by any measure, be deemed a valid or lawful request for clarification. This lack of precision renders the evaluation process arbitrary and legally questionable under the applicable public procurement framework.

This Board also noted the Contracting Authority's Reasoned Letter of Reply filed on 8th August 2025 and its verbal submission during the hearing held on 15th October 2025, in that:

- a) Further to requirement Section 5(B)(c)(i), the Appellant provided the document which is being attached and marked as Doc. A which includes a schedule with 5 projects and two 'Provisional Acceptance' certificates as issued by the Foundation for Tomorrow's Schools in relation to two separate projects. Following a review of the documentation it emerged very clear that the

information was incomplete and that the documents provided were not letters of reference. The tender document was very clear in requiring letters of reference issued by the end client and not provisional acceptance. Moreover, the tender document requested that certain specific information is included. The following was evidently missing:

- Nature of the works provided;
- Declaration of satisfactory completion (or progress as appropriate) according to required project specifications and quality;
- Detailed information on the overall performance and experience, including, but not limited to, timely execution, communication, responsiveness, and attention to detail in respect to the works executed.

- b) In view of this on 21st March, 2025, the Evaluation Committee issued a rectification letter with a number of requests.
- c) Being subject to Note 2, the Appellant was permitted to rectify his position and therefore submit new documentation. In fact the clarification question referred to both the opportunity to clarify and also the opportunity to rectify. However in response to this request the Appellant, on the 28th of March, 2025, submitted the reply which is being attached and marked as Doc. B. As evident in the attached reply, although the Appellant provided more information, this was not submitted in the form of a letter of reference as submitted by the end client and there was still information which was missing. Information which was missing includes: - Detailed information on the overall performance and experience, including, but not limited to, timely execution, communication, responsiveness, and attention to detail in respect to the works executed. In view of this, the Evaluation Committee submitted a clarification request whereby it was made very clear that at this stage only clarifications on the submitted documentation were to be permitted - *"In view of the above, you are being given the opportunity to clarify where in the submitted documentation the Evaluation Committee can find the letters of reference including all the information being requested above"*. Clarification question as submitted on 24th April, 2025 attached and marked as Doc. C. In response to this the Appellant opted to send additional documentation and not a clarification. This was not deemed as admissible by the Evaluation Committee and in view of this the Evaluation Committee considered the bid of the Appellant as administratively non-compliant. To this end the Evaluation Committee issued the letter of the 22nd July, 2025 (attached and marked as Doc. D).
- d) The principle that requests for rectifications shall only be permitted once is a principle which the PCRБ embraces. The notes to clause 5 explicitly state that *'Requests for Clarifications and / or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained.'* This is a corollary of the principle of self-limitation which prevents a contracting authority from deviating from the terms and conditions it has set out in a tender document. This principle is a corollary to

the principles of equal treatment and transparency. In view of this the attempt made by the Appellant to provide further documentation after being already afforded the opportunity to rectify was deemed as inadmissible.

- e) On this basis the Evaluation Committee considered the tender document which stated that: *The Letters of Reference shall be endorsed by the end client. Any letters of reference provided, not endorsed by the end client, or not including the requested information mentioned above shall render the tender offer as unacceptable and not eligible for further evaluation.*
- f) Thus, it proceeded to deem as administratively non-compliant the offer submitted by the appellant. Any decision other than this would have been in breach of the principle of equal treatment and transparency.

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 witness duly summoned, will now consider Appellant's grievances.

Grievance: The Sufficiency and Completeness of Letters of Reference under Clause 5(B)(c)(i)

- The Appellant contends that the letters of reference submitted in respect of projects listed under Section 1, Clause 5(C)(i) satisfied all requirements explicitly laid down in the Tender Document, and that the Evaluation Committee's Second Request was vague, incoherent, and devoid of clear indication as to what specific information was allegedly lacking.
- The Board notes that Clause 5(B)(c)(i) of the Tender Document explicitly required letters of reference endorsed by the end client, containing “*detailed information on the overall performance and experience, including, but not limited to timely execution, communication, responsiveness, and attention to detail in respect to the works executed*”.
- The Appellant initially submitted a 'Certificate of Provisional Acceptance' issued by Foundation for Tomorrow's Schools, which stated: "*This is to confirm that works on the above captioned project have been completed to our satisfaction and have been provisionally accepted*".
- The Board notes that a Certificate of Provisional Acceptance is fundamentally distinct from a letter of reference. Provisional acceptance indicates that works are substantially complete pending final snagging but does not constitute the detailed performance assessment explicitly required by the tender specification.
- The Evaluation Committee acted proportionately and in accordance with the principles of transparency when it issued the First Rectification Request on 21st March 2025, affording the Appellant the opportunity to rectify (as per Note 2 in Notes to Clause 5 : 2. *Tenderers will be requested*

to either clarify/ rectify any incorrect and/ or incomplete documentation, and/ or submit any missing documents within five (5) working days from notification.”) by submitting proper letters of reference including all relative information as requested in the tender documentation.

- In response, the Appellant submitted Document B on 28th March 2025, which included an auditor's list indicating project titles and contract values, but crucially failed to provide the detailed information on overall performance and experience explicitly mandated by Clause 5(B)(c)(i).
- The Evaluation Committee subsequently issued a Second Clarification Request on 24th April 2025, expressly limiting the Appellant to clarifying "*where in the submitted documentation the Evaluation Committee can find the letters of reference including all the information being requested*", consistent with the Notes to clause 5, which states: "*Requests for Clarifications and/ or Rectifications concerning a previous request dealing with the same shortcoming shall not be entertained*".
- The Appellant's response constituted the submission of new documentation rather than a clarification of existing submissions, which the Evaluation Committee correctly deemed inadmissible pursuant to Regulations 62, 39 of the Public Procurement Regulations and the principle established in Note 2 of Clause 5.
- The Board notes established jurisprudence, including the Court of Appeal decision in *NQuayMT vs Agenzija għal Infrastruttura Malta et* (22 June 2022) [Ref. 35/22/1], which held that a bidder who remains administratively non-compliant cannot subsequently attempt to adjust the offer to achieve compatibility.
- The Board further notes the judgment delivered by the Court of Justice of the European Union on 10th October 2013 in *Ministeriet for Forskning, Innovation og Videregående Uddannelser vs Manova A/S*, which established: "*Lastly, as a general rule, when exercising its right to ask a tenderer to clarify its tender, the contracting authority must treat tenderers equally and fairly, in such a way that a request for clarification does not appear unduly to have favoured or disadvantaged the tenderer or tenderers to which the request was addressed, once the procedure for selection of tenders has been completed and in the light of its outcome*".
- It is the opinion of this Board that the Evaluation Committee acted in a diligent, fair and proportionate manner, strictly adhering to the principles of self-limitation, transparency, and equal treatment. Any deviation from the tender requirements would have prejudiced compliant bidders who submitted all required documentation in the prescribed format.
- 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